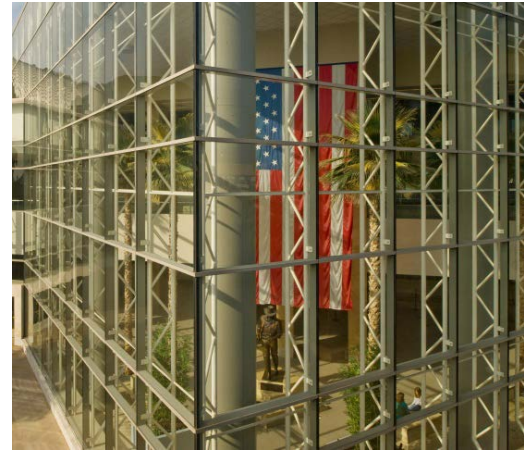
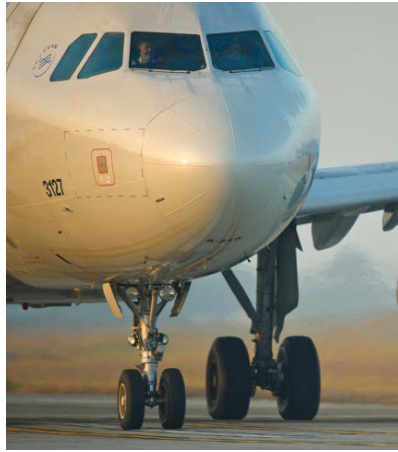




# JOHN WAYNE AIRPORT, ORANGE COUNTY

## Airline Competition Plan



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The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21), requires certain large and medium hub airports to prepare and submit an Airline Competition Plan to the FAA. The airports that are required under this legislation to prepare and submit an Airline Competition Plan (“covered airports”) are medium and large hub airports at which one or two airlines control more than fifty percent of annual passenger enplanements. Covered airports must submit an Airline Competition Plan in order for a new Passenger Facility Charge (PFC) to be approved for collection, or a grant to be issued under the Airport Improvement Program (AIP) beginning in federal fiscal year 2001.

The statute also provides for the periodic review of Airline Competition Plans for PFC purposes, and the FAA needs updated plans for action on subsequent PFC applications. In addition, the FAA must have a current Competition Plan to issue each AIP grant (the FAA will consider a Competition Plan or an update to be current for an entire federal fiscal year).

In Calendar Year (CY) 2013, John Wayne Airport (JWA or Airport) accounted for 0.67 percent of U.S. enplaned passengers. Southwest Airlines and United Airlines accounted for 56.96 percent of enplaned passengers at the Airport in CY 2013. As a result, an Airline Competition Plan is required to be submitted beginning in FY 2014 in order for a new PFC to be approved for collection, or a grant to be issued under AIP.

## **SECTION 1 AVAILABILITY OF GATES AND RELATED FACILITIES**

### **1.1 Number of gates available at the airport by lease arrangement, i.e., exclusive, preferential, or common-use, and current allocation of gates.**

John Wayne Airport provides a total of twenty gates with loading bridges and six ground-loaded gates. All gates are common-use.

### **1.2 Whether any air carriers that have been serving the airport for more than three years are relying exclusively on common-use gates.**

All gates at John Wayne Airport are common-use and air carrier leases do not specify which carrier may or does use a specific gate(s). While all gates are available to all carriers, carriers typically utilize specific gates, i.e. Alaska Airlines typically operates from Gates 5 and 6.

Two gates (Gates 13 and 14) are configured for international service and are made available on a preferential basis for this class of service. These gates are available, however, for domestic use when not needed for international arrivals.

### **1.3 Diagram of the airport’s concourses.**

The Airport's concourses are illustrated in Exhibit A.

**1.4 Description of gate use monitoring policies, including any differences in policy at gates subject to PFC assurance # 7 and samples of gate use monitoring charts, along with a description of how the charts are derived and how they are used by the airport.**

The Airport monitors gate activity by utilizing data generated from the Common Use Passenger Processing System (CUPPS) and Multi-User Flight Information Display (MUFID) which captures airline flight number, arriving and departing flights, date and time (duration) at the gate.

A gate occupancy time plot is created to visually display periods of occupancy and inactivity which helps to identify available capacity to accommodate additional operations by incumbent carriers, or service by a new entrant. The time plot is a standard report called "Gate Planner" generated by CUPPS using the airlines' arrival and departure activities. A sample daily time plot is attached as Exhibit B.

**1.5 Description of the process for accommodating new service and for service by a new entrant.**

Air carriers wishing to initiate service at JWA are asked to notify the Airport Director of their interest and ask to be placed on the New Entrant Waiting List as required in Section 3.7 of the Phase 2 Commercial Airline Access Plan and Regulation (Access Plan). A request to be added to the Waiting List may be submitted at any time. Prior to any allocation of capacity, a new entrant must successfully complete an Aircraft Qualification Test (Access Plan, Section 10) to demonstrate the carrier's ability to meet JWA's noise limits.

The Airport makes every effort to ensure that capacity is available to accommodate new entrants and has, traditionally, "held" at least three Class A Average Daily Departures (ADD) in any given Plan Year to accommodate at least one new entrant. Potential new entrants are also provided with JWA's current rates and charges schedule and are invited to tour the Riley terminal to identify facility needs.

Each year, typically in July, the Airport Director asks all incumbent carriers, and those carriers on the New Entrant Waiting List, to submit requests for operating capacity for the following calendar year. JWA reviews those requests and recommends capacity allocations for the following year to the Board of Supervisors. Recommendations are structured to maximize the use of capacity available under the limits established in the Settlement Agreement.

There is sufficient operating capacity and terminal space, including gates, to accommodate additional service by incumbents and/or new entrants.

**1.6 Description of any instances in which the PFC competitive assurance #7 operated to convert previously exclusive-use gates to preferential-use gates or it caused such gates to become available to other users.**

All gates at John Wayne Airport are common-use and air carrier leases do not specify which carrier may or does use a specific gate(s). PFC competitive assurance #7 has never been invoked as a result of the Airport's common-use gate policy.

**1.7 Gate utilization (departures/gate) per week and month reported for each gate.**

Please see Exhibit B for a sample chart representative of JWA's weekly and monthly scheduled gate utilization.

**1.8 The circumstances of accommodating a new entrant or expansion during the twelve months preceding filing, including the length of time between initial carrier contact of airport and start of service, the identity of the carriers and how they were accommodated.**

There were no requests by new entrants to initiate service in CY2013.

Southwest Airlines was the only incumbent carrier to request additional capacity (one additional average daily departure) in 2013. Southwest Airlines request was received in late July 2012, and was approved by the Board of Supervisors in October 2012 for use beginning in April 2013.

**1.9 Resolution of any access complaints by a new entrant or an air carrier seeking to expand service during the twelve months preceding the filing, including a description of the process used to resolve the complaint.**

JWA has received no complaints by a new entrant or incumbent seeking to provide new or expand existing service.

**1.10 Use/lose, or use/share policies and recapture policies for gates and other facilities. If no such policies exist, explain the role, if any under-utilized gates play in accommodating carrier requests for gates.**

JWA does not have "use/lose" policies for gates. We do, however, have some requirements with respect to the use of remain-over-night (RON) aircraft parking positions.

The limited physical facilities available at JWA for RON positions require that the County control RONs to maximize their utility to air carriers and passengers. Each incumbent and new entrant carrier is allocated at least one loading bridge RON position. The remaining RON positions are allocated to requesting carriers in proportion to the number of average daily departures used. Preference for allocating loading bridge RON positions is based on the most efficient use, and is given to an aircraft scheduled to depart at or before 0730 hours. All aircraft using a loading bridge RON position for departures scheduled at or before 0900 hours can occupy the loading bridge RON position for not more than 45 minutes during the early morning departure time period (0700-0900 hours). If an allocated RON position is utilized less than 80% of the calendar days each month, it may be subject to penalties including termination of use of that RON position. To the extent there are requests for more RON positions than are available, the County maintains a waiting list. Any returned or unallocated RON positions are made available to the carriers on a first-come first-served basis. JWA was able to accommodate all requests for RON positions in CY2013

**1.11 Plans to make gates and related facilities available to new entrants or to air carriers that want to expand service at the airport and methods of accommodating new gate demand by air carriers at the airport (common-use, preferential-use, or exclusive-use gates).**

All JWA gates are common use and are made available to both incumbents and new entrants. Requests for gate access associated with additional or new service have been and continue to be accommodated.

**1.12 Availability of an airport competitive access liaison to assist requesting carriers, including new entrants.**

John Wayne Airport's Access and Noise Office (ANO) is responsible for monitoring and ensuring compliance with all Access Plan regulations as well as for the Airport's robust and proactive air service development efforts. ANO staff communicates frequently with incumbent carriers regarding both existing and future service plans. The Manager of Access and Noise is JWA's primary point of contact for inquiries from potential new entrants. He responds to all inquiries promptly and coordinates with JWA Business Development, Facilities, Finance and Operations divisions to facilitate communication on service-related issues with incumbent and potential new entrants.

**1.13 Number of aircraft remain overnight (RON) positions available at the airport by lease arrangement, i.e. exclusive, preferential, common-use or unassigned, and distribution by carrier. Describe procedures for monitoring and assigning RON positions and for communicating availability of RON positions to users.**

JWA has thirty RON positions available for commercial passenger air carriers, of which twenty are at the terminal gates and ten are located to the south of the Thomas F. Riley Terminal. Additionally, there are six RON positions available for commuter carriers at the north and south ends of the terminal.

The 30 RON positions were based on the Airport's original RON Design Plan (Exhibits C-1 & C-2). The Plan allows flexibility to add four (4) additional RONs for commercial air carriers by adjusting the underutilized commuter RON positions, if the need should arise (Exhibits C-3 and C-4).

Please see the response to Section 1.10 for an explanation of the RON allocation process.

On average, twenty five RON positions are utilized by the commercial passenger air carriers for overnight parking. All operating air carriers are required to file a monthly report of operating activities at SNA covering the number of RON usage by aircraft type, landed weight, number of enplaned and deplaned passengers and other relevant data. The Airport utilizes the report to monitor carriers' RON usage. In addition, Airport Operations conducts a nightly RON inventory.

Exhibits C-1 through C-4 illustrate the various RON positions at the terminal and the South RON



## **SECTION 2 LEASING AND SUBLEASING ARRANGEMENTS**

### **2.1 Whether a subleasing or handling arrangement with an incumbent carrier is necessary to obtain access.**

No, neither a subleasing nor handling arrangement with an incumbent carrier is necessary to obtain access. All new entrants have the opportunity to lease their own space and manage their activities.

### **2.2 How the airport assists requesting airlines to obtain a sublease or handling arrangement.**

Airlines have the choice of leasing from JWA, or operating under an Operating Agreement, or subleasing from another airline. Should a carrier ask for assistance in obtaining a sublease or handling arrangement, JWA will provide corporate and local contact information for airlines operating at JWA. JWA works with the new entrant until all facility and operating requirements are fulfilled.

### **2.3 Airport policies for sublease fees levels (e.g. maximum 15 percent above lease rates), and for oversight of fees, ground/handling arrangements and incumbent schedule adjustments that could affect access to subtenants.**

With the completion of the new Terminal C including additional gates, loading bridges and commuter holdroom facilities, JWA currently has adequate capacity to accommodate new entrants, thereby mitigating the need for subleasing.

JWA has incorporated guidelines on subleasing arrangements in the Standard Airline Passenger Lease Agreement under the Joint Use Requirement provisions, in the event subleasing needs should arise. The Joint Use provisions allow incumbent airlines to consider for sublease the compatibility of the proposed new incoming airline's operations with the airline's existing and future flight schedules, labor cooperation needs, and competitive impacts on the airline's leased areas.

If necessary, the Airport has the option to review the existing airlines' space usage and require incumbent airlines to make available to new entrants their leased premises at reasonable pro-rata costs per square foot plus a reasonable administrative charge. The annual sublease rental rate may not exceed two times the annual rental rate per square foot currently paid by the airlines to the Airport. Additionally, the presence of various licensed third parties providing ground handling and airline related services at the Airport allow for competitive pricing options.

### **2.4 Process by which availability of facilities for sublease or sharing is communicated to other interested carriers and procedures by which sublease or sharing arrangements are processed.**

Because there is sufficient gate capacity at JWA for new entrants or service expansions by incumbent carriers without the need to rely on subleasing or handling arrangements, there has been no need to date for JWA to facilitate inter-airline sublease agreements. In the event a new entrant prefers a sublease arrangement, JWA will provide corporate or local contact information and

facilitate introductions to representatives of incumbent carriers. JWA will work with the new entrant until all facility and operating requirements are met. JWA has included language in the Certificated Passenger Airline Lease to allow airlines to sub-lease space; subleases must be submitted to JWA for review and approval.

**2.5 Procedures for resolving disputes or complaints among carriers regarding use of airport facilities, including complaints by subtenants about excessive sublease fees or unnecessary bundling of services.**

No disputes or complaints among carriers have been brought to JWA's attention. In the event a complaint is submitted, JWA would investigate the complaint and seek resolution at the local level or, if necessary, address the issue with corporate representatives. The chairman of the Airport and Airline Affairs Committee would be advised as appropriate. JWA would remain engaged until an acceptable resolution is achieved.

Article VIII, Accommodation, Section 8.01, Joint Use Requirement, of the JWA's Certificated Passenger Airline Lease addresses the use and fees related to subleasing, see Exhibit D-1.

**2.6 Resolution of any disputes over subleasing arrangements in the twelve months preceding filing.**

There have been no disputes over subleasing arrangements among carriers during the twelve months preceding the submission of this Initial Airline Competition Plan.

**2.7 Accommodation of independent ground service support contractors, including ground handling, maintenance, fueling, catering or other support services.**

There are numerous independent contractors providing ground service support and maintenance services to airlines. In addition, an independent flight kitchen is located adjacent to airport property. Airlines arrange for the purchase and delivery of their own fuel to the airport through a consortium. Under a lease agreement, JWA provides space for the consortium for fuel storage. Into-plane fueling services are also available through independent contractors.

JWA makes every effort to accommodate the independent contractors. Upon request, JWA will issue licenses to an independent contractor to provide services at the Airport. Independent contractors applying for said licenses are subject only to meeting standard insurance and indemnity requirements, and timely payment of license fees.

**2.8 Copies of lease and use agreements in effect at the airport.**

Exhibit D-1 is a copy of the Certificated Passenger Airline Lease (Lease) in effect at JWA. The lease allows signatory airlines to operate within exclusive use space at JWA. Exhibit D-2 is the Certificated Passenger Airline Operating License (Commercial License) in effect at JWA for carriers wishing to operate without a leasehold at JWA. Carriers operating under the Agreement do not have exclusive use space at JWA and operate within another airline's leasehold.

Exhibit D-3, Certificated Passenger Airline Operating License (Commuter License), is issued to commuter airlines, and like the Agreement, does not provide for exclusive use space. Commuter airlines serving JWA operate within another airline's leasehold.

### **SECTION 3 PATTERNS OF AIR SERVICE**

Per the FAA Modernization and Reform Act of 2012 (P.L. 112-65), Section 3: Patterns of Air Service is no longer required as part of the Airline Competition Plan.

### **SECTION 4 GATE ASSIGNMENT POLICY**

#### **4.1 Gate assignment policy and method of informing existing carriers and new entrants of this policy. This would include standards and guidelines for gate usage and leasing, such as security deposits, minimum usage, if any, fees, terms, master agreements, signatory and non-signatory requirements.**

The current gate utilization follows long-standing use patterns by the air carriers. More recent entrants to the market have been allowed to select from available gates in proximity to the terminal (A, B or C) in which their ticket counters are located. Carriers providing international service that requires clearance by U.S. Customs and Border Protection must schedule arriving flights at one of two specific gates (Gates 13 and 14). This is done on a first-come, first-served basis. Likewise, existing carriers and new entrants are permitted to expand into available gates on a first-come, first-served basis.

As a policy, JWA positions new entrants or existing carrier expansion at underutilized common-use gates. In the event there are no common-use gates available, or a common-use gate will not work from an operational standpoint for a new or expanding carrier, JWA will do one of two things; 1) work with an existing carrier to relocate it to an available common-use gate if that arrangement will accommodate both carriers or, 2) locate the new or expanding carrier at an underutilized gate that can accommodate the new entrant's or expanding carrier's flights.

There are no minimum use requirements for gate utilization and leasing, aside from those discussed in Section 1.10 this document related to RONs at gates equipped with loading bridges. JWA Operations staff communicates frequently, and largely informally, with all carriers operating at JWA regarding gate utilization. Communication with new entrants regarding gate utilization typically occurs in the context of discussion regarding the pending lease or operating agreement.

#### **4.2 Methods for announcing to tenant carriers when gates become available. The description should discuss whether all tenant air carriers receive information on gate availability and terms and conditions by the same process at the same time.**

JWA operates a Resource Management System (RMS) for gate scheduling and real time monitoring. Each of the Terminals (A,B and C) has an assigned Gate Captain that monitors and loads upcoming

schedules and coordinates with other carriers in that terminal based on their collective submittals. Each air carrier has access to the RMS with the ability to monitor and view real-time as well as future period schedules as part of their planning process. If a potential conflict arises, the Gate Captain will discuss with the affected carrier and seek a workable solution.

**4.3 Methods for announcing to non-tenant carriers, including both those operating at the airport and those that have expressed an interest in initiating service, when gates become available; and policies on assigning RON positions and how RON position availability announcements are made.**

Per our response to Section 1.5, each year, typically in July, the Airport Director asks all incumbent carriers, and those carriers on the New Entrant Waiting List, to submit requests for operating capacity (including RONS) for the following calendar year. JWA reviews those requests and recommends capacity allocations for the following year to the Board of Supervisors. Recommendations are structured to maximize the use of capacity available under the limits established in the Settlement Agreement. In addition to information provided during the annual capacity allocation process, availability of operating capacity and terminal facilities (including gates and RONS), is shared with potential new entrants through JWA's air service development efforts.

## **SECTION 5 GATE USE REQUIREMENTS**

**5.1 Gate use monitoring policy, including schedules for monitoring, basis for monitoring activity (i.e., airline schedules, flight information display systems, etc.), and the process for distributing the product to interested carriers.**

Currently, the Airport does not experience terminal facility capacity constraints and has the ability to accommodate existing and new entrants without requiring existing airlines to leave common-use gates. The Airport's Resource Management System (see Section 4.2 above) can be utilized to provide current gate use information to interested carriers.

**5.2 Requirements for signatory status and identity of signatory carriers.**

Section 5.2 is not applicable to JWA.

**5.3 Where applicable, minimum use requirements for leases (i.e., frequency of operations, number of seats, etc.)**

Although minimum use requirements, related to frequency of operations and number of seats, are not contained in operating agreements or leases agreements with airlines operating at JWA, operating capacity utilization requirements are contained in the Phase 2 Commercial Airline Access Plan and Regulation. The Access Plan can be found on the JWA web site at: [www.ocair.com/reportspublications/AccessNoise/AccessPlan-2011-Intl-7-2-12.pdf](http://www.ocair.com/reportspublications/AccessNoise/AccessPlan-2011-Intl-7-2-12.pdf).

JWA's Access Plan is designed to achieve the following objectives: (1) accommodate potential new

entrant carriers at JWA; (2) accommodate the average daily departures (“ADD”), Seat Capacity, RON and Passenger Capacity requests from incumbent Air Carriers and Commuter Carriers; (3) provide internal controls in order to ensure compliance with the JWA annual cap on the passenger service level and the annual cap on the number of regulated ADDs; and (4) meet all other legal and regulatory obligations.

All allocations of ADDs, Seat Capacity, Passenger Capacity and Remain-Overnight (“RON”) positions have minimum and maximum use requirements, referenced and cited below:

- Maximum Calendar Quarter Prorata Operations Levels for allocation of ADDs, Seats and Passenger Capacity (See Access Plan Section 8.3.5)
- Minimum Monthly, Quarterly and Plan Year Operations Levels for Air Carriers and Commuter Carriers (See Access Plan Sections 8.3.6 and 8.3.7)
- Minimum Utilization of RON Allocation (See Access Plan Sections 8.3.9)

**5.4 The priorities, if any, employed to determine carriers that will be accommodated through forced sharing or sub-leasing arrangements. Describe how these priorities are communicated to interested carriers.**

JWA has not, and does not anticipate a need to, force sharing or sub-leasing arrangements with respect to gate utilization.

**5.5 Justifications for any differences in gate use requirements among tenants.**

There are no differences in gate use requirements among tenants. The only requirements that exist concern RONs associated with gates (See response to 1.10) and these requirements are applied uniformly.

**5.6 Usage policies for common-use gates, including, where applicable, a description of priorities for use of common-use gates. Explain how these priorities are communicated to interested carriers.**

Common-use gates are assigned for use by airlines on a first-come, first-served basis. Factors that may influence use of common-use gates include air carrier ticket counter location, air carrier general preference, and air carrier club room location, as applicable. JWA holds monthly meetings with the local airline station managers and semi-annual Airport and Airline Affairs Committee meetings with airline property representatives where issues regarding gate usage and availability can be readily discussed. As stated in Section 4.2, all existing carriers have access to the Airport’s RMS and can review existing or upcoming schedules and gate usage relative to their operations.

**5.7 Methods for calculating rental rates or fees for leased and common-use space. Where applicable, provide an explanation of the basis for disparities in rental fees for common-use versus leased gates.**

JWA airline terminal rental rates are established under a commercial compensatory methodology where the rental rate is calculated to recover the average cost of each square foot of Rental Space in

the Terminal cost center. The landing fee and apron fee rates are established under a cost center residual approach where non-airline revenues are credited to each of the Airfield and Apron cost centers to determine the net cost to be paid by the airlines.

Space designated in the respective Passenger Airline Lease License as exclusive airline use spaces in the terminal and terminal apron are calculated on a rent per square foot basis (e.g. airline ticket counter, airline ticket office, baggage service office, operations office and equipment storage area).

For the terminal common-use areas (such as the holdrooms, concourse, baggage claim and baggage make-up), a fixed portion of the allocated costs are shared evenly among the signatory commercial airlines, and the remaining costs are prorated based on the airlines' activities at the airport (number of flights, enplaned or deplaned passengers).

Airline rates and charges are set on a biennial basis.

## **SECTION 6 FINANCIAL CONSTRAINTS**

### **6.1 The major source of revenue at the airport for terminal projects.**

The major sources of revenue for JWA's ongoing Capital Improvement Project (CIP) are airport operating revenue, Passenger Facility Charge (PFC) bonds and Guaranteed Annual Revenue Bonds (GARBS). Airport operating revenues include airline revenues, parking, rentals cars, and concessions.

### **6.2 Rates and charges methodology (residual, compensatory, or hybrid).**

JWA utilizes the compensatory methodology for terminal rental rates and charges calculation, and residual approach for airfield rates determination.

### **6.3 Past use, if any, of PFCs for gates and related terminal projects.**

The amount of PFC approved by DOT/FAA for JWA's terminal related projects were allocated for Terminal C construction that included new concourses, passenger hold rooms, six new loading bridges and baggage belts. Additional projects that were approved for PFC financing include the South Remain-Over-Night (RON), Common Use Passenger Processing System (CUPPS), and In-Line Baggage Screening.

### **6.4 Availability of discretionary income for airport capital improvement projects.**

JWA set up a separate fund exclusively for funding the Airport's capital construction and improvement projects. A portion of the Airport's available unrestricted funds are allocated annually for capital improvement projects and is incorporated as an integral part of the Airport annual operating budget plan.

## **SECTION 7 AIRPORT CONTROLS OVER AIRSIDE AND LANDSIDE CAPACITY**

JWA exercises total control over all airside and landside capacity within current legal requirements.

## **SECTION 8 AIRPORT INTENTIONS TO BUILD OR ACQUIRE GATES THAT WOULD BE USED AS COMMON FACILITIES**

### **8.1 The number of common-use gates that the airport intends to build or acquire and the timeline for completing the process of acquisition or construction.**

JWA has no plans to build or acquire any new common-use gates.

### **8.2 Whether common-use gates will be constructed in conjunction with gates leased through exclusive or preferential-use arrangements.**

JWA has no plans to build or acquire any new common, exclusive or preferential-use gates.

### **8.3 Whether gates being used for international service are available for domestic service.**

JWA has two gates that may be used for international service. Both gates are common-use and are currently available for international or domestic service.

### **8.4 Whether air carriers that only serve domestic markets now operate from international gates. If so, describe and explain any disparity in their terminal rentals versus domestic terminal rentals.**

There is one carrier serving only domestic markets that utilizes the two international gates for two flights per day. There is no difference in terminal rentals or charges between international gates and domestic-only gates.

## **SECTION 9 AIRFARE LEVELS COMPARED TO OTHER LARGE AIRPORTS**

Per the FAA Modernization and Reform Act of 2012 (P.L. 112-65), Section 9: *Airfare Levels Compared to Other Large Airport* is no longer required as part of the Airline Competition Plan.

## **SECTION 10 PUBLIC AVAILABILITY OF PLANS AND UPDATES**

### **10.1 Publication of Competition Plan and Updates**

Pursuant to the FAA's authority under 49 U.S.C., Competition Plans and Competition Plan Updates are reports within the meaning of section 47107(a)(15) and its implementing AIP grant assurance. Under the terms of AIP Grant Assurance 26, the Competition Plan and Competition Plan Updates must be made available to the public.

As recommended by the FAA in PGL 04-08, John Wayne Airport, Orange County intends to publish its Airline Competition Plan, Plan Updates, and FAA review letters to its web site as the method of satisfying the public availability requirement. Competition Plan documents will be posted at Internet address [www.ocair.com](http://www.ocair.com).



## **EXHIBITS**

EXHIBIT A-1: CONCOURSE DIAGRAM

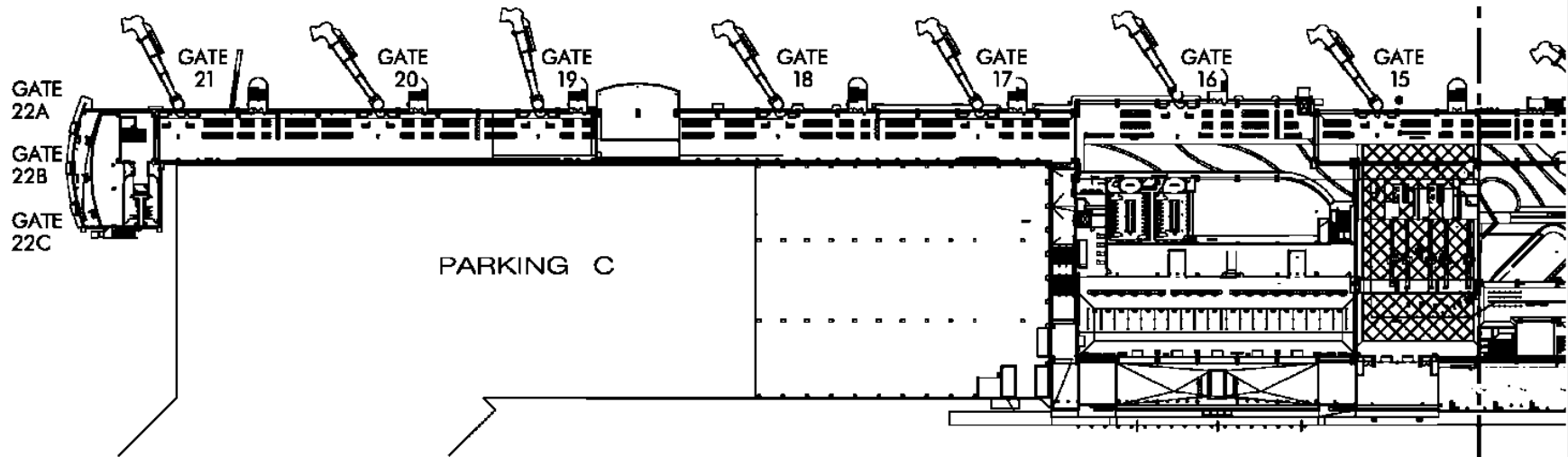


EXHIBIT A-1  
TERMINAL C

EXHIBIT A-2: CONCOURSE DIAGRAM

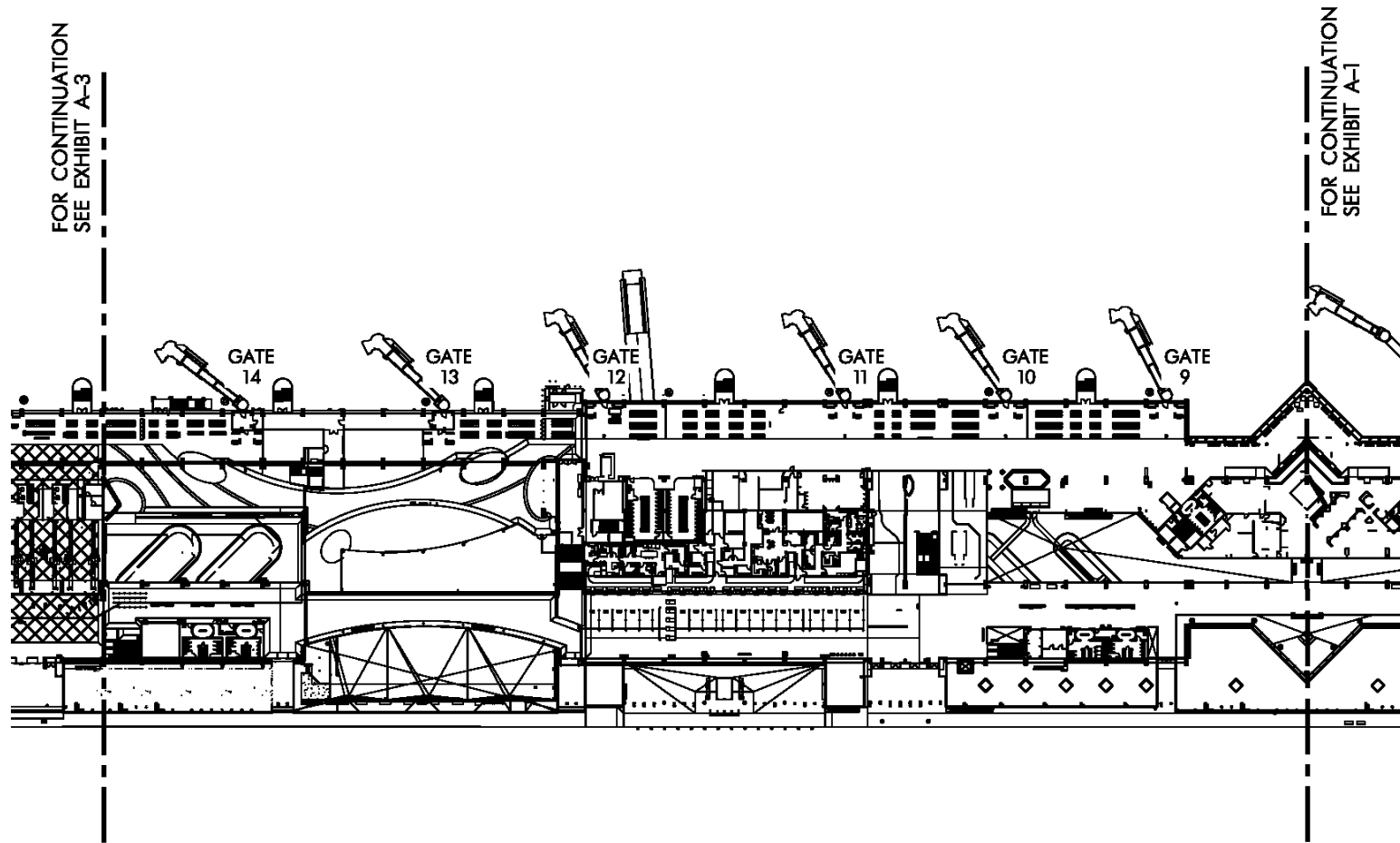


EXHIBIT A-2  
TERMINAL B AND TERMINAL C

EXHIBIT A-3: CONCOURSE DIAGRAM

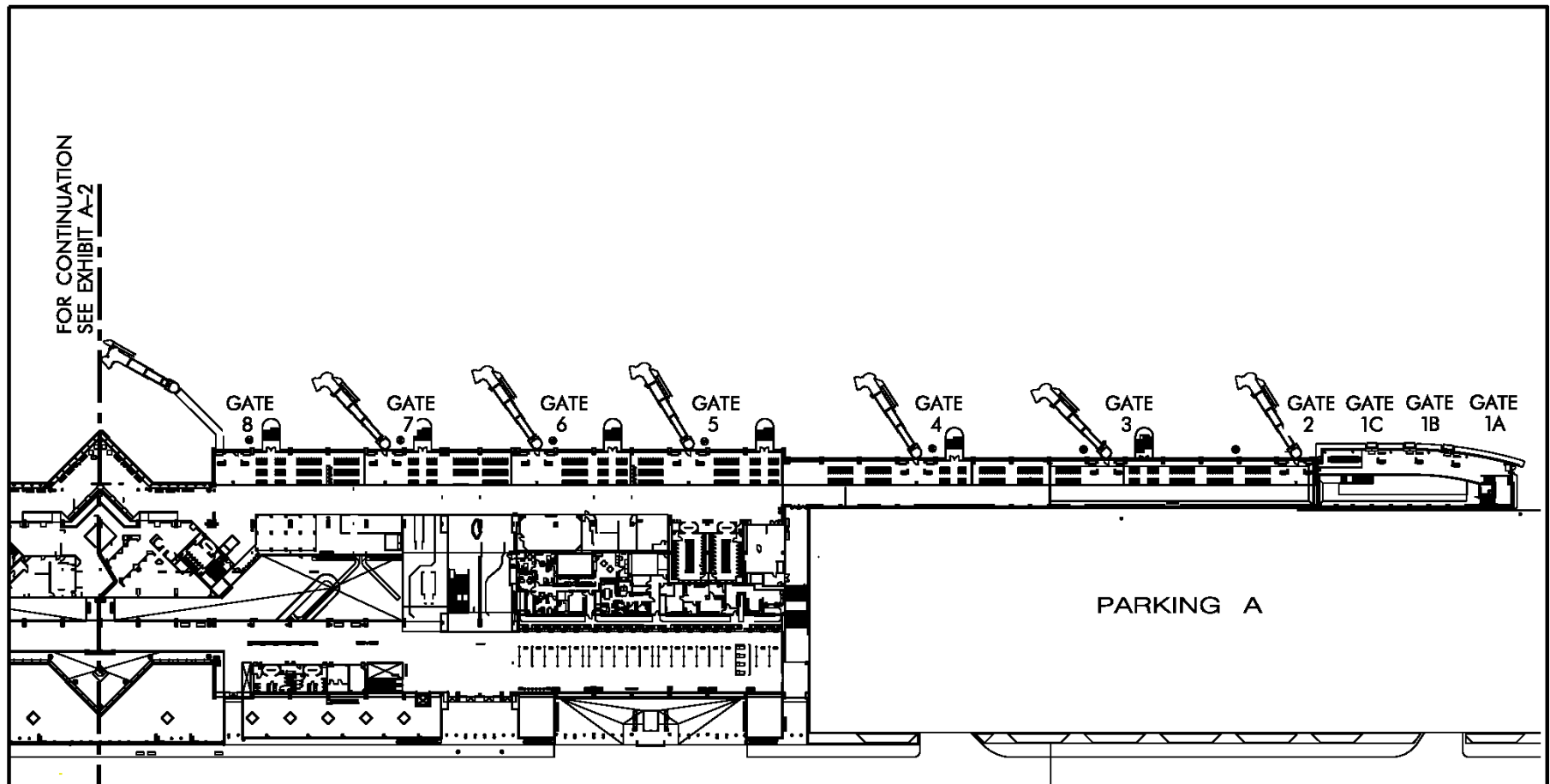


EXHIBIT A-3  
TERMINAL A

# EXHIBIT B: GATE OCCUPANCY TIME PLOT

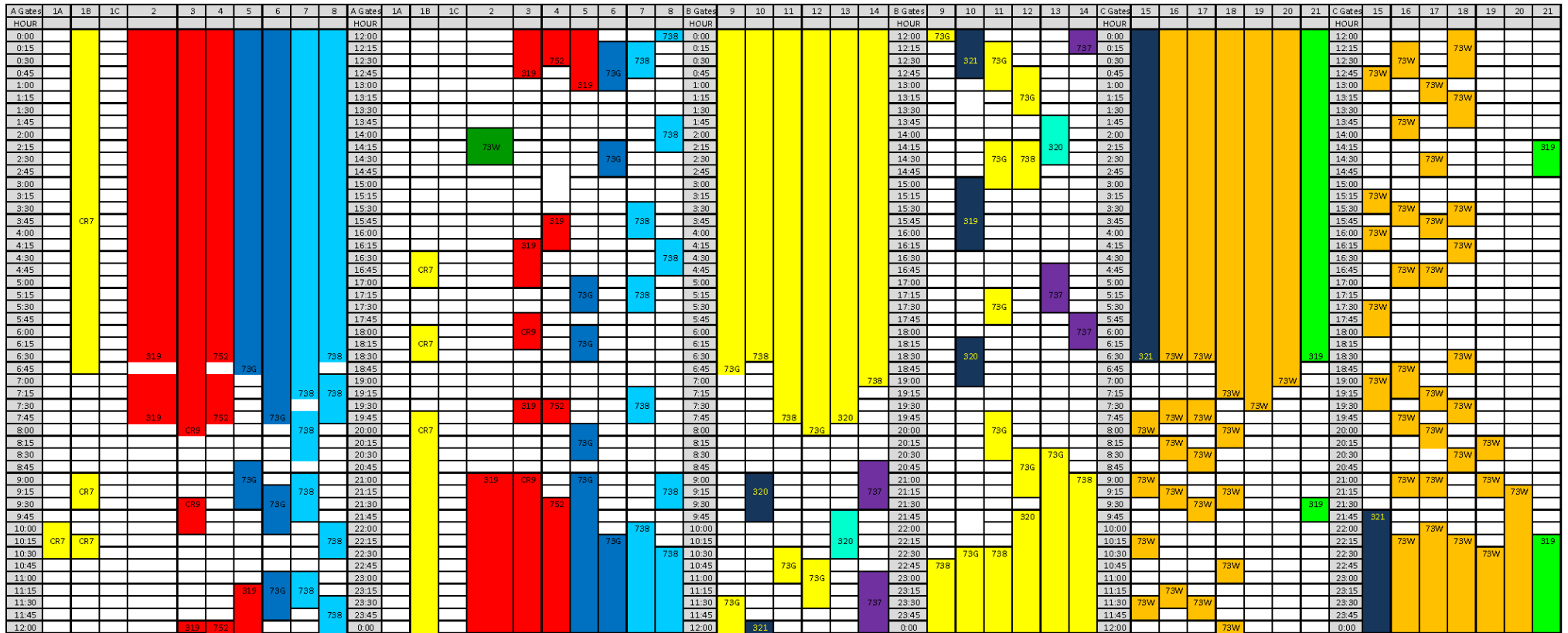


EXHIBIT C-1: REMAIN OVERNIGHT DIAGRAM

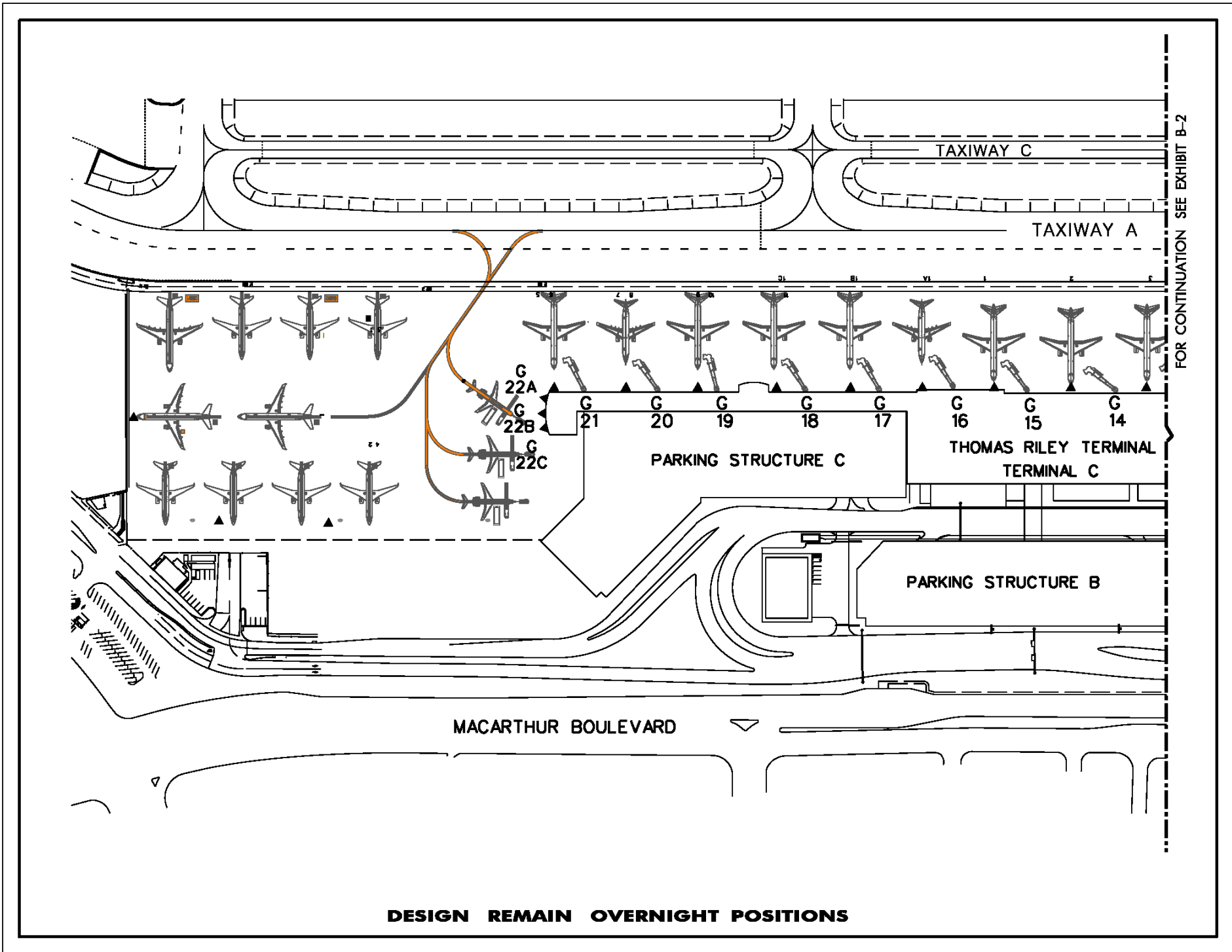


EXHIBIT C-2: REMAIN OVERNIGHT DIAGRAM

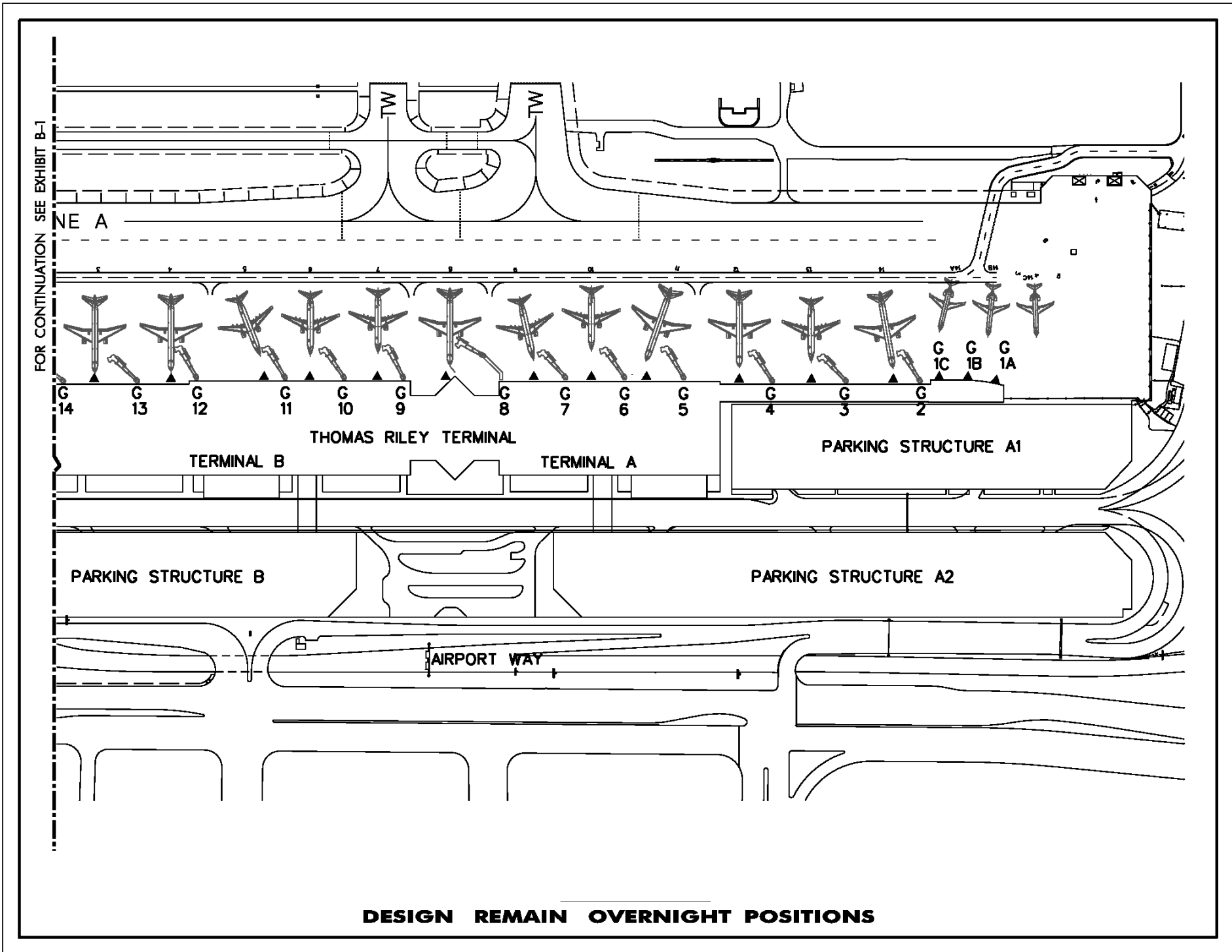
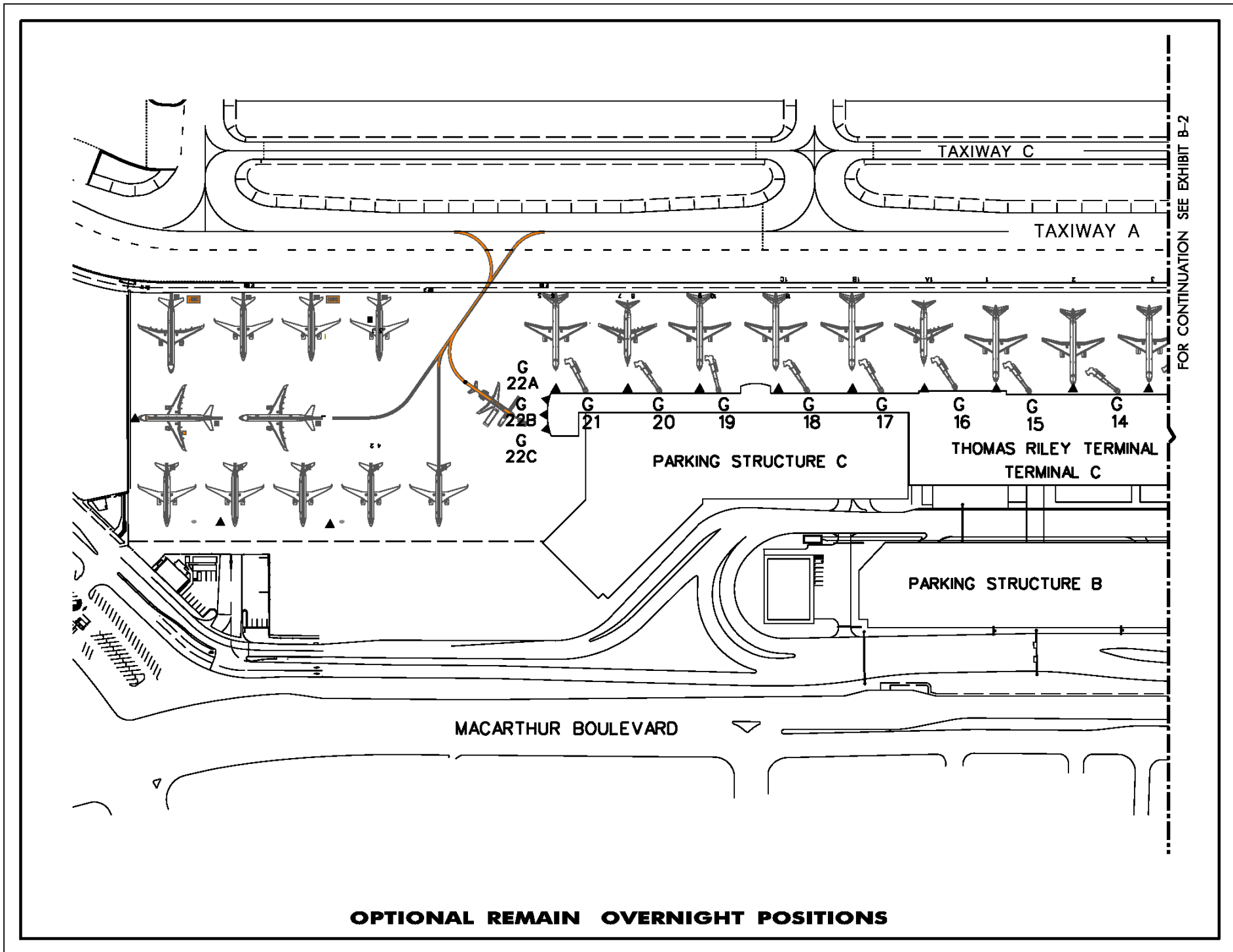


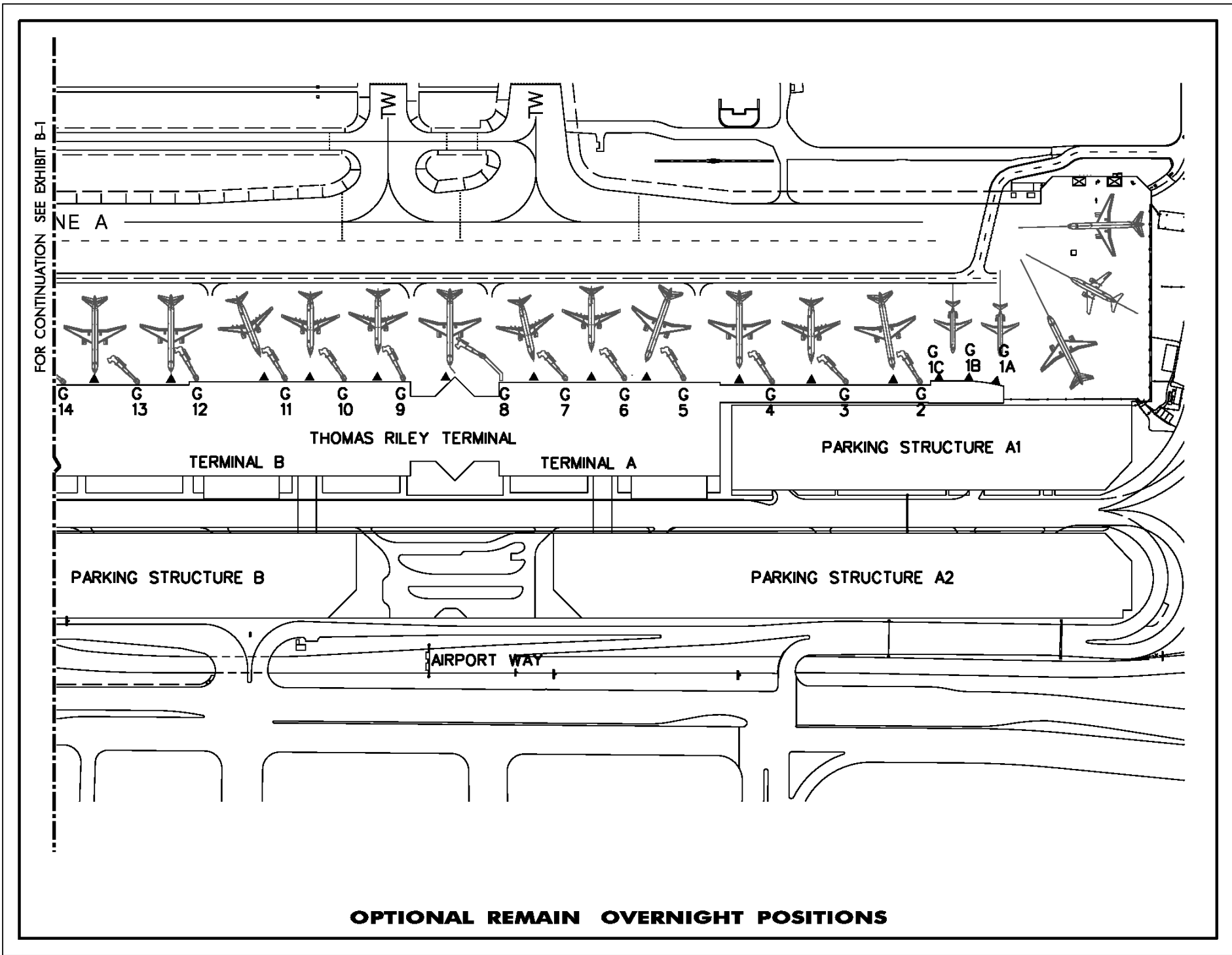
EXHIBIT C-3: REMAIN OVERNIGHT DIAGRAM



**OPTIONAL REMAIN OVERNIGHT POSITIONS**



EXHIBIT C-4: REMAIN OVERNIGHT DIAGRAM



**EXHIBIT D-1**  
**CERTIFICATED PASSENGER AIRLINE LEASE**



**CERTIFICATED PASSENGER  
AIRLINE LEASE**

**Dated** \_\_\_\_\_

**Between**

**County of Orange**

**and**

\_\_\_\_\_  
**Airline**



**JOHN WAYNE AIRPORT  
CERTIFICATED PASSENGER AIRLINE LEASE**

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**LIST OF EXHIBITS**

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- EXHIBIT B FLOOR PLAN OF LEASED PREMISES – TERMINAL EXCLUSIVE USE AREA
- EXHIBIT C MAP OF LEASED PREMISES – EXCLUSIVE USE APRON AREA
- EXHIBIT D MAP – COMMON USE AREAS





## JOHN WAYNE AIRPORT CERTIFICATED PASSENGER AIRLINE LEASE

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THIS AIRPORT USE AND LEASE AGREEMENT ("LEASE") is made and entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the COUNTY OF ORANGE, a political subdivision of the State of California ("COUNTY"), and \_\_\_\_\_ ("AIRLINE").

### RECITALS

WHEREAS, the COUNTY, through its Board of Supervisors, is the owner and proprietor of John Wayne Airport ("JWA" or "the Airport"), located in the County of Orange, State of California, and operates and maintains the Airport as a governmental function for the primary purpose of providing air transportation to the public; and

WHEREAS, the AIRLINE is engaged in the business of commercial air transportation of persons, property, cargo and mail as a scheduled air carrier and is certificated or otherwise authorized by the United States of America to engage in such business; and

WHEREAS, the AIRLINE desires to enter into an agreement addressing certain premises, facilities, rights, licenses, services and privileges at the Airport; and

WHEREAS, as part of its ongoing effort to operate the Airport in a manner sensitive to the residents who live under the Airport's approach and departure corridors, the COUNTY has developed one of the most stringent access and noise abatement programs in the country. The Airport monitors all aircraft operations, both commercial and private, for compliance with the program. These noise abatement and access restrictions are embodied in the 1985 Settlement Agreement between the COUNTY, City of Newport Beach and other parties, as well as in ordinances, resolutions (including Resolutions No. 85-255, 85-256, 85-259, 85-1231, 85-1232, and 85-1233), regulations (including the Phase 2 Commercial Airline Access Plan and Regulation) and policies of the COUNTY, as amended; and

WHEREAS, in 2003, the 1985 Settlement Agreement was amended by the COUNTY and the parties, and approved on February 25, 2005 by the United States District Court to, among other things, increase the authorized passenger levels at the Airport; and

WHEREAS, the 2003 amendments to the 1985 Settlement Agreement preserve and continue to implement important restrictions on the use of JWA, "grandfathered" under the AIRPORT NOISE AND CAPACITY ACT OF 1990 ("ANCA"), which reflect and accommodate historical policy decisions of the Board of Supervisors regarding the appropriate point of balance between the competing interests of the air transportation and aviation community and local residents living in the vicinity of the Airport. These policy decisions address, among other issues, existing nighttime operations restrictions and maximum permitted single event noise levels; and

WHEREAS, the COUNTY and AIRLINE mutually desire to enter into a LEASE in order to provide air transportation services to the community and its visitors; and



**JOHN WAYNE AIRPORT  
CERTIFICATED PASSENGER AIRLINE LEASE**

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WHEREAS, the COUNTY has the right to permit and grant the use of its property at the Airport to the AIRLINE for the operation of the AIRLINE's air transportation services; and

WHEREAS, the AIRLINE acknowledges that this LEASE is being entered into under the provisions of CAL. PUBLIC UTIL. CODE §§21690.5 *et seq.*, and, in particular, §21690.9.

NOW, THEREFORE, in consideration of the promises and mutual covenants hereinafter contained to be observed and performed by the respective parties hereto,

THE PARTIES HERETO COVENANT, AGREE AND BIND THEMSELVES AS FOLLOWS:

**ARTICLE I**

**DEFINITIONS**

The following words, terms and phrases whenever used in this LEASE shall have the meaning and significance attached to them in this Article, unless otherwise apparent from context.

**SECTION 1.01      ACCESS PLAN**

"Access Plan" shall mean the Phase 2 Commercial Airline Access Plan and Regulation for John Wayne Airport, Orange County, as that plan existed when originally adopted and approved by the Orange County Board of Supervisors in 1990, as it has been amended by the Board of Supervisors from time to time, and as it may be amended by the Board of Supervisors at any time during the term of this LEASE.

**SECTION 1.02      ADD**

"ADD" shall mean Average Daily Departure, as defined in the Access Plan. Except as expressly provided in the Access Plan, all commercial air carrier departures at JWA are regulated departures and require an ADD allocation. ADD allocations are the exclusive property of the COUNTY.

**SECTION 1.03      AIRLINE RATES AND CHARGES**

"Airline Rates and Charges" shall mean all rates, fees and charges payable to the COUNTY by the AIRLINE, as specified herein.

**SECTION 1.04      AIRPORT**

"Airport" shall mean the John Wayne Airport, Orange County, California.



## **JOHN WAYNE AIRPORT CERTIFICATED PASSENGER AIRLINE LEASE**

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### **SECTION 1.05      AIRPORT DIRECTOR**

"Airport Director" shall mean the Director of John Wayne Airport, County of Orange, as appointed by the County Executive Office, or Director's designee.

### **SECTION 1.06      APRON AREA**

"Apron Area" shall mean the land identified as Apron Area in Exhibit C attached hereto, and, except as otherwise provided herein, all facilities, equipment and improvements now or hereafter located thereon.

### **SECTION 1.07      AUDITOR-CONTROLLER**

"Auditor-Controller" shall mean the Auditor-Controller, County of Orange, or designee.

### **SECTION 1.08      BOARD OF SUPERVISORS**

"Board of Supervisors" shall mean the elected (or duly appointed) members of the Board of Supervisors of the County of Orange, as governing body of the County and proprietor of the Airport through its Airport Director, or designees, as appropriate.

### **SECTION 1.09      CERTIFICATED MAXIMUM LANDING WEIGHT**

"Certificated Maximum Landing Weight" shall mean the current maximum allowable gross landing weight of aircraft operated by the AIRLINE and certificated by the Federal Aviation Administration (FAA) for operation at the Airport.

### **SECTION 1.10      COMMON USE AREA**

"Common Use Area" shall mean the nonexclusive use of space, in common with other airlines, located in the Terminal, as shown on Exhibit D.

### **SECTION 1.11      COUNTY**

"COUNTY" shall mean the County of Orange, a political subdivision of the State of California.

### **SECTION 1.12      DOT**

"DOT" shall mean the U.S. Department of Transportation.

### **SECTION 1.13      EXCLUSIVE USE AREA**

"Exclusive Use Area" shall mean the areas of the Terminal and on the Terminal Apron that the COUNTY has granted the AIRLINE the right to use on an exclusive use basis, subject to the



## JOHN WAYNE AIRPORT CERTIFICATED PASSENGER AIRLINE LEASE

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Joint Use Requirement, during the term of this LEASE. The AIRLINE's Exclusive Use Area is described in Exhibit A and shown on Exhibits B and C.

### **SECTION 1.14      FAA**

"FAA" shall mean the Federal Aviation Administration created under the FEDERAL AVIATION ACT OF 1958, or such successor agency as may from time to time have similar jurisdiction over the AIRLINE or its business, and the Airport.

### **SECTION 1.15      GROUND SERVICE EQUIPMENT**

Ground Service Equipment ("GSE") shall mean any auxiliary power unit, mobile stairs, aircraft support equipment, machinery, spare parts, or other equipment used or stored by any qualified air carrier in support of its operations at JWA.

### **SECTION 1.16      HAZARDOUS SUBSTANCES**

"Hazardous Substances" are defined in Article VI, Section 6.01.

### **SECTION 1.17      INTERNATIONAL ARRIVAL FACILITY**

International Arrival Facility ("IAF") shall mean the areas of the terminal that house U.S. Customs and Border Protection and are for the use of arriving international passengers.

### **SECTION 1.18      NON STORM WATER DISCHARGE**

"Non Storm Water Discharge" shall mean any discharge to storm sewer systems that is not entirely composed of storm water. "Non Storm Water Discharge," includes "Unauthorized Non Storm Water Discharges" and "Authorized Non Storm Water Discharges" as defined by the State Water Resources Control Board's National Pollutant Discharge Elimination System General Permit for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities.

### **SECTION 1.19      PFC**

"PFC" shall mean federally approved Passenger Facility Charges or passenger facility fees, as authorized by 49 U.S.C. §40117 and regulated by 14 C.F.R. Part 158, as such statute and regulation currently exist or as they may be amended during the term of this LEASE.

### **SECTION 1.20      RON**

"RON" shall mean the remain overnight positions where the AIRLINE's aircraft are required to park when they "remain overnight" at JWA.



**JOHN WAYNE AIRPORT  
CERTIFICATED PASSENGER AIRLINE LEASE**

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**SECTION 1.21      STORM WATER**

"Storm Water" shall mean storm water runoff, snowmelt runoff, and storm water surface runoff and drainage.

**SECTION 1.22      TERMINAL**

"Terminal" shall mean the Thomas F. Riley commercial passenger terminal and concourses at John Wayne Airport, as may be modified at any time during the term of this LEASE.

**SECTION 1.23      TSA**

"TSA" shall mean the Transportation Security Administration of the U.S. Department of Homeland Security, the federal agency responsible for regulation of airport security, or any such successor agency.

**ARTICLE II**

**TERM OF LEASE**

**SECTION 2.01      TERM OF LEASE**

The term of this LEASE shall commence on \_\_\_\_\_, 20\_\_\_\_, and expire on December 31, 2011.

**SECTION 2.02      HOLDING OVER**

In the event the AIRLINE shall continue in possession of the Leased Premises after the term of this LEASE, such possession shall not be considered an extension or renewal of this LEASE but a tenancy from month-to-month and shall be governed by the conditions and covenants contained in this LEASE.

**SECTION 2.03      TERMINATION FOR CONVENIENCE**

This LEASE may be terminated for convenience by either party for any reason, and without cause, upon ninety (90) days written notice.

**ARTICLE III**

**LEASED PREMISES**

**SECTION 3.01      LEASED PREMISES**

The COUNTY leases to the AIRLINE that certain property hereinafter referred to as "Leased Premises."



## JOHN WAYNE AIRPORT CERTIFICATED PASSENGER AIRLINE LEASE

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Said premises are being leased to the AIRLINE in the "as-is" condition and shall consist of the following:

- A. **Exclusive Use Area.** Exclusive use of the space, subject to the requirements set forth in Section 8.01 of this LEASE entitled "JOINT USE REQUIREMENT," located in the Terminal and on the Apron and Airfield, as described on Exhibit A and shown on Exhibits B and C, which exhibits are attached hereto and by reference made a part hereof and hereinafter referred to as "Exclusive Use Area." Said "Exclusive Use Area" shall be subject to modification by the Airport Director as airline space is reassigned or reconfigured to accommodate the opening of Terminal C.
- B. **Common Use Area.** Nonexclusive use, in common with other airlines, of space located in the Terminal as shown on Exhibit D, which exhibit is attached hereto and by reference made a part hereof, and hereinafter referred to as "Common Use Areas." Common Use Areas include:
- (1) Baggage Claim and Baggage Make-up Areas;
  - (2) Hold-rooms (departure lounges);
  - (3) Airside Concourses;
  - (4) Landside Concourses;
  - (5) Baggage and Passenger Screening Areas;
  - (6) Security Areas.

The use of these Common Use Areas shall be subject to the reasonable control and regulation of the Airport Director.

### SECTION 3.02 NATURE OF AIRLINE'S ESTATE

The AIRLINE acknowledges and agrees:

- A. That the COUNTY has granted to the AIRLINE a leasehold interest in the Leased Premises only.
- B. That the COUNTY retains a fee ownership for federal income tax purposes in and to the Leased Premises, as well as all other ownership burdens and benefits connected with such fee ownership.
- C. That the AIRLINE has not been granted any direct or indirect right or option to purchase the Leased Premises from the COUNTY at any time during or after the termination of this LEASE.



**JOHN WAYNE AIRPORT  
CERTIFICATED PASSENGER AIRLINE LEASE**

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**SECTION 3.03      INSTALLATION OF EQUIPMENT OUTSIDE THE LEASED PREMISES**

The AIRLINE shall not install equipment of any kind outside the Leased Premises unless authorized in writing by the Airport Director prior to installation.

**ARTICLE IV**

**RENT, FEES AND CHARGES**

**SECTION 4.01      RENT, FEES AND CHARGES**

The rents, fees, and charges contained in this LEASE are established in accordance with (i) Resolution 02-062 dated March 12, 2002 (or as subsequently amended), which reasserts and establishes the John Wayne Airport Revenue Planning Policy, and (ii) the Bond Indenture for the Airport Revenue Bonds, Series 1987, and the First Supplemental, Second Supplemental, and Third Supplemental Indenture, Series 1993, 1997, 2003 and 2009.

A.     The AIRLINE shall make payment of the following rents, fees and charges in U.S. funds, which shall be due and payable monthly in advance on the first day of each month with a 15-day grace period; and the AIRLINE agrees that the COUNTY will not invoice for such rents, fees and charges:

(1)     **Exclusive Use Areas**

(a)     Terminal Building. Rent per square foot based on the latest schedule established by the COUNTY for exclusive use terminal space.

Exclusive use terminal space consists of the airline ticket counter, airline ticket office, baggage service office, operations office and equipment storage areas.

For purpose of calculating terminal building rent, the AIRLINE's Exclusive Use Area(s) of the terminal building contain the square feet described on Exhibit A and shown on Exhibit B.

(b)     Terminal Apron. Rent per square foot based on the latest schedule established by the COUNTY for exclusive use terminal apron space used for GSE. For purposes of calculating terminal apron rent, the AIRLINE's Exclusive Use Area(s) of the apron contains the square feet shown on Exhibit C. Exhibit C may be modified at any time by Airport Director.

(c)     Airport Tenant Improvements. The AIRLINE shall reimburse the COUNTY for tenant improvements constructed by the COUNTY based on the amortization schedule established by the Airport Director.



## JOHN WAYNE AIRPORT CERTIFICATED PASSENGER AIRLINE LEASE

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### (2) Common Use Areas

- (a) Arrival Level. Fees shall be established by the COUNTY for shared use of baggage claim and baggage make-up areas. Said fees shall be established on the basis of allocating the Airport's total costs and expenses associated with the baggage claim and baggage make-up areas to the commercial airlines in the terminal accordingly: twenty percent (20%) of the costs to be shared evenly among the commercial airlines and eighty percent (80%) of the costs to be shared based on each commercial airline's percentage of total deplaned passengers at the Airport, including their commuter affiliates.
- (b) Departure Level. Fees shall be established by the COUNTY for shared use of departure level common areas, including hold-rooms, airside concourses, baggage/passenger screening areas and security areas. Said fees shall be established by allocating the Airport's total costs and expenses associated with departure level common areas accordingly: ten percent (10%) of the costs to be shared evenly among the commercial airlines in the terminal, forty-five percent (45%) of the costs to be shared based on each commercial airline's percentage of total enplaned passengers at the Airport, including their commuter affiliates, and forty-five percent (45%) of the costs to be shared based on each commercial airline's percentage of total aircraft departures.

The monthly fees for arrival and departure level common areas shall be estimated by the COUNTY and recalculated based on actual operations on a six months basis, or such other intervals as approved by the COUNTY. At the end of each six (6) month period, the COUNTY shall establish monthly fees for the next six (6) month period and issue credits for any overpayments by the AIRLINE or invoice the AIRLINE for any underpayments for the previous period.

In the event an obligation to pay fees begins or terminates on some day other than the first or last day of the month, the fees shall be prorated to reflect the actual period of use on the basis of a thirty (30) day month. The fees for any partial calendar month during which this LEASE becomes effective will be payable on such effective date.

- (c) IAF. Fees shall be established by the COUNTY for shared use of the IAF. Said fees shall be established on the basis of allocating the Airport's total costs and expenses associated with the IAF.
- (d) Common Use Passenger Processing System. Fees shall be established by the COUNTY for the implementation and maintenance of the Common





## JOHN WAYNE AIRPORT CERTIFICATED PASSENGER AIRLINE LEASE

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Use Passenger Processing System (CUPPS). Said fees shall be established by allocating the Airport's total costs and expenses associated with departure level common areas accordingly: ten percent (10%) of the costs to be shared evenly among the commercial airlines in the terminal, forty-five percent (45%) of the costs to be shared based on each commercial airline's percentage of total enplaned passengers at the Airport, including their commuter affiliates, and forty-five percent (45%) of the costs to be shared based on each commercial airline's percentage of total aircraft departures.

(3) **Additional Fees**

Additional fees shall be established by the COUNTY for including, but not limited to, utility expenses, janitorial expenses, and annual security expenses resulting from any security measures implemented after September 11, 2001. Such fees shall be established annually by allocating the Airport's total cost accordingly: ten percent (10%) of the cost to be shared evenly among the commercial airlines in the terminal, forty five percent (45%) of the cost to be shared based on each commercial airline's percentage of total enplaned passengers at the Airport, including their commuter affiliates, and forty five percent (45%) of the costs to be shared based on each commercial airline's percentage of total aircraft departures.

B. The AIRLINE shall pay the following fees and charges payable monthly in arrears on or before the twentieth (20th) day of each month with no grace period. The AIRLINE agrees that the COUNTY will not invoice for the following fees and charges:

- (1) Landing fees based on the latest schedule established by the COUNTY covering the operation of scheduled airlines and commercial operations at the Airport. Landing fees shall be expressed in terms of a rate per one thousand (1,000) pounds of maximum gross landing weight of aircraft certified by the FAA.
- (2) Aircraft RON parking fees based on the latest schedule established by the COUNTY. Aircraft parking fees shall be expressed in dollars per night.
- (3) Operations fees (gate use fees) based on the schedule established by the COUNTY. Operations fees shall be expressed in dollars per daily departure.
- (4) IAF fees based on the schedule established by the COUNTY for commercial carriers operating international flights.

C. Upon thirty (30) days written notice from the Airport Director, the COUNTY may modify the rents, fees and charges described in Paragraphs A and B of section 4.01. Said modification of rates and charges may not occur more often than every six (6) months. Changes may include fee revisions, establishment of new fee classifications or such other



## JOHN WAYNE AIRPORT CERTIFICATED PASSENGER AIRLINE LEASE

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changes as needed to respond to the AIRLINE's use of the Airport, the need for the COUNTY to receive fair and equitable rents, fees and charges for all uses of the Airport, and to insure the Airport is operated at no cost to the local taxpayer. With regard to any dispute as to what may constitute reasonable rents, fees, and charges, the AIRLINE shall first exhaust all remedies provided by applicable federal law and FAA regulations.

Notwithstanding anything in this LEASE to the contrary, all amounts payable by the AIRLINE to or on behalf of the COUNTY under this LEASE, whether or not expressly denominated as rent, shall constitute rent for the purposes of the U.S. BANKRUPTCY CODE, 11 U.S.C. §502(b)(6).

The AIRLINE shall notify the Airport in writing within thirty (30) days of filing a petition for Bankruptcy.

### SECTION 4.02 PAYMENT PROCEDURE

- A. **Place of Payment and Filing.** Payments and statements required by Sections 4.01 and 5.06 in this LEASE shall be delivered to the County of Orange, Office of the Auditor-Controller, John Wayne Airport Accounting Services, 3160 Airway Avenue, Costa Mesa, California 92626. The designated place of payment and filing may be changed at any time by the COUNTY upon ten (10) days' written notice to the AIRLINE. Payments may be made by check payable to the County of Orange. The AIRLINE assumes all risk of loss if payments are made by mail.
- B. **Form of Payment.** All sums due under this LEASE shall be paid in lawful money of the United States of America without offset or deduction or prior notice or demand. No payment by the AIRLINE or receipt by the COUNTY of a lesser amount than the payment due shall be deemed to be other than on account of the payment due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and the COUNTY shall accept such check or payment without prejudice to the COUNTY's right to recover the balance of the amount due or pursue any other remedy in this LEASE.

### SECTION 4.03 CHARGE FOR LATE PAYMENT

The AIRLINE hereby acknowledges that the late payment of rent or any other sums due hereunder will cause the COUNTY to incur costs not contemplated by this LEASE, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, administrative processing of delinquent notices, increased accounting costs, lost interest income.

Accordingly, if any payment of rent as specified in Section 4.01 in this LEASE or of any other sum due the COUNTY is not received by the COUNTY by the due date, a late charge of one and one-half percent (1.5%) of the payment due and unpaid plus one hundred dollars (\$100) shall be added to the payment, and the total sum shall become immediately due and payable to the



## **JOHN WAYNE AIRPORT CERTIFICATED PASSENGER AIRLINE LEASE**

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COUNTY. An additional charge of one and one-half percent (1.5%) of said payment, excluding late charges, shall be added for each additional month that said payment remains unpaid.

The AIRLINE and COUNTY hereby agree that such late charges represent a fair and reasonable estimate of the costs that the COUNTY will incur by reason of the AIRLINE's late payment. Acceptance of such late charges (and/or any portion of the overdue payment) by the COUNTY shall in no event constitute a waiver of the AIRLINE's default with respect to such overdue payment, or prevent the COUNTY from exercising any of the other rights and remedies granted hereunder.

### **SECTION 4.04 PASSENGER FACILITY CHARGE**

The COUNTY expressly reserves the right to impose PFCs on airline passengers for the use of the Airport in accordance with 49 U.S.C. §40117 and applicable implementing regulations adopted by the FAA, 14 C.F.R. Part 158, as they may be amended from time to time (the "PFC Regulations").

The AIRLINE shall hold in trust for the COUNTY the net principal amount of all PFCs that are collected by the AIRLINE or its agents on behalf of the COUNTY. For the purposes of Section 4.04, net principal amount shall mean the total principal amount of all PFCs that are collected by the AIRLINE or its agents on behalf of the COUNTY, reduced by any amount that the AIRLINE is permitted to retain pursuant to 49 U.S.C. §40117 and the PFC Regulations. Monthly PFCs collected by the AIRLINE shall be remitted to the COUNTY no later than the last day of the following calendar month or, if that date falls on a weekend or holiday, the first business day thereafter. In addition, PFCs collected by the AIRLINE shall be remitted to the COUNTY at the address specified in Section 4.02, Part A, "Place of Payment and Filing" or at such other place as designated by the COUNTY.

Should the AIRLINE fail to remit the net principal amount of all PFCs to the COUNTY within five (5) days following the remittance date specified above, the AIRLINE shall be deemed to be in default pursuant to Article X hereof. In addition, any late payment of PFCs shall be subject to late fees computed at the rate of one and one-half percent (1.5%) of the payment due and unpaid plus one hundred dollars (\$100) per month or the highest rate allowable under applicable state law from the due date until paid.

Nothing contained herein shall be construed to supersede the rights and obligations provided in 14 C.F.R. Part 158 regarding PFCs. In the event that a conflict exists between such federal regulation and this agreement, the federal regulation shall govern.

### **SECTION 4.05 PROVISION AGAINST SET-OFFS**

It is the obligation of the AIRLINE to pay all fees and charges, free of any set-offs or claims, in the amount and at the times specified in this LEASE. In the event that the AIRLINE desires to contest the validity or amount of any such fees and charges, the AIRLINE shall first pay the same to the COUNTY and may then seek a refund in any appropriate forum.



## JOHN WAYNE AIRPORT CERTIFICATED PASSENGER AIRLINE LEASE

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### **SECTION 4.06      SECURITY DEPOSIT**

The AIRLINE, prior to the commencement of operations, shall deposit with the COUNTY a security deposit in the sum of THREE HUNDRED FOURTEEN THOUSAND FOUR HUNDRED FIFTY SIX U.S. DOLLARS (\$314,456), subject to the provisions for adjustment as provided hereinafter.

Concurrently with each revision of the rent pursuant to Section 4.01 in this LEASE, the security deposit to be provided by the AIRLINE shall be adjusted to approximately three (3) times the estimated monthly rent, fees and charges as determined by the Airport Director to guarantee the faithful performance by the AIRLINE of its obligations under this LEASE and the payment of all rents, fees and charges due hereunder.

The security deposit shall take one of the forms set out below and shall guarantee the AIRLINE's full and faithful performance of all the terms, covenants, and conditions of this LEASE:

- A. An instrument or instruments of credit from one or more financial institutions, subject to regulation by the State of California or federal government, pledging that funds necessary to secure performance of the LEASE terms, covenants, and conditions are on deposit and guaranteed for payment, and agreeing that said funds shall be trust funds securing the AIRLINE's performance and that all or any part shall be paid to the COUNTY, or order upon demand by the Airport Director. Both the financial institution(s) and the form of the instrument(s) must be approved by the Airport Director.
  
- B. A Faithful Performance Bond executed by a surety company or financial institution qualified and admitted to do business in the State of California and issued in a form approved by the COUNTY. Under the bond, the surety company shall guarantee to the COUNTY full and complete performance of all the terms, conditions and covenants herein to be performed on the part of the AIRLINE, including the payment of use fees, charges, rents, as well as any and all other payments. Said bond shall be maintained at the cost of the AIRLINE throughout the existence of this LEASE. Said Surety shall give the Airport Director a minimum (30) days prior written notice of cancellation or material change in said bond. Such cancellation or material change without the Airport Director's prior written consent shall constitute a default under this LEASE.

Regardless of the form in which the AIRLINE elects to make said security deposit, all or any portion of the principal sum shall be available unconditionally to the COUNTY for correcting any default or breach of this LEASE by the AIRLINE, its successors or assigns, or for payment of expenses incurred by the COUNTY as a result of the failure of the AIRLINE, its successors or assigns, to faithfully perform all terms, covenants, and conditions of this LEASE.

Should the AIRLINE elect to provide either an Instrument of Credit or a Faithful Performance Bond to fulfill the security deposit requirements of this LEASE, said instrument or bond shall have the effect of releasing depository or creditor therein from liability on account of the



## **JOHN WAYNE AIRPORT CERTIFICATED PASSENGER AIRLINE LEASE**

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payment of any or all of the principal sum to the COUNTY, or order upon demand by the Airport Director.

In the event the Airport Director withdraws all or any portion of the security deposit as provided herein, the AIRLINE shall, within ten (10) days of any withdrawal by the Airport Director, replenish the security deposit to maintain it at amounts herein required throughout the LEASE term. Failure to do so shall be deemed a default and shall be grounds for immediate termination of this LEASE.

The AIRLINE shall be obligated to maintain the security deposit in effect until the expiration date of the LEASE.

The security deposit, after deduction of all amounts due the COUNTY, shall be rebated, reassigned, released or endorsed by the COUNTY to the AIRLINE or order, as applicable, after one hundred twenty (120) days have elapsed following the expiration date of the LEASE term, provided the AIRLINE has fully and faithfully performed each and every term, covenant, and condition of this LEASE.

### **SECTION 4.07 NEW ENTRANT DEPOSIT**

A cash security deposit in the sum of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) shall be provided by a new entrant AIRLINE prior to the commencement of operations.

This deposit shall be returned after six (6) months of continuous operation.

## **ARTICLE V**

### **USE, OPERATION, MAINTENANCE AND CONDITION OF PREMISES**

#### **SECTION 5.01 USE**

The AIRLINE's use of the Leased Premises and its operations shall be limited to conducting a scheduled commercial airline operation. Subject to the limitations set forth in this Section and the Sections 5.03, 5.04, 5.05, and 8.01 in this LEASE, this operation is subject to the following authorized uses:

- A. Loading and unloading of passengers.
- B. Loading and unloading of baggage.
- C. Passenger processing operations.
- D. Flight operations office.



## JOHN WAYNE AIRPORT CERTIFICATED PASSENGER AIRLINE LEASE

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- E. The AIRLINE shall have the right to have its aircraft and other equipment serviced by suppliers of its choice. Such suppliers may provide materials and services, including, but not limited to, aviation fuel, ground vehicle fuel, lubricating oil, greases, parts, and all other materials and supplies and services required by the AIRLINE in the conduct of its air transportation service.
- F. Mail, freight and cargo operations, but only when such activity is incidental to, and conducted in connection with, regularly scheduled commercial passenger operations. The AIRLINE shall not conduct any operations at the Airport with aircraft which are:
  - 1) Used at the Airport exclusively or primarily for mail, freight or cargo services; or
  - 2) Which have been modified in any manner for the purpose or the primary effect of reducing the passenger carrying capacity and increasing the cargo or freight carrying capacity of the aircraft.
- G. Air charter activities in compliance with Access Plan.
- H. Commissary services for the AIRLINE's employees at the Airport and in-flight catering services in support of the AIRLINE's air operations at the Airport. This does not permit the AIRLINE to conduct commissary or in-flight services for any other airline or other person at the Airport without first obtaining a separate license to allow commissary or in-flight services for other airlines.
- I. Handling of other airlines' operations and ticketing pursuant to Section 8.01 in this LEASE.
- J. Employee training incidental to the other uses permitted under this Section.
- K. Areas identified on the attached "Exhibits A, B and C" as the AIRLINE Ticket Counter, AIRLINE Ticket Office, Baggage Service Office, Operations Office and Apron Equipment Storage are strictly limited to their identified uses.
- L. Other uses as authorized by the Airport Director.

### **SECTION 5.02 USE OF PUBLIC AIRPORT FACILITIES**

The COUNTY grants the AIRLINE a license for the nonexclusive use of all public Airport facilities including, but not limited to, taxiways, runways, navigational aids and facilities relating thereto for purposes of landings, takeoffs and taxiing of the AIRLINE's aircraft. All such use shall be in accordance with the laws of the United States of America, State of California, and the rules and regulations promulgated by their authority with reference to aviation and air navigation, and in accordance with all reasonable and applicable rules, regulations, and ordinances of the COUNTY now in force or hereafter prescribed or promulgated by ordinance or



## **JOHN WAYNE AIRPORT CERTIFICATED PASSENGER AIRLINE LEASE**

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by law, including the Access Plan. The use of these areas shall be subject to the control and regulation of the Airport Director.

This license for non-exclusive use is subject to all rights reserved by the COUNTY to license, permit, authorize, regulate and relocate concessionaires and other Airport tenants, including but not limited to, booths, counters, offices, lockers and wall space.

### **SECTION 5.03      RULES AND REGULATIONS**

The COUNTY may adopt and enforce Rules and Regulations that the AIRLINE agrees to observe and obey with respect to the use of the Airport and its appurtenances, facilities, improvements, equipment and services, provided that such rules and regulations shall not be inconsistent with safety and with rules, regulations and orders of the FAA and TSA with respect to all operations of the Airport. Except in the case of emergency, the COUNTY shall give the AIRLINE written notice and opportunity to comment on any proposed changes or additions to the rules and regulations that could impact the AIRLINE's operations at the Airport before such proposed rules and regulations are adopted by the COUNTY. If requested, the COUNTY shall promptly provide a copy of such rules and regulations to the AIRLINE.

The AIRLINE shall comply with all Airport Rules and Regulations and shall observe, obey, comply with and not otherwise hinder or obstruct any and all rules, regulations, laws, ordinances, statutes or orders of any governmental authority, whether federal, state, or local, lawfully exercising authority over the Airport or the activities thereon, including compliance with FAA, TSA and Airport security rules, regulations and plans.

To the fullest extent authorized by law, the AIRLINE shall be liable to the COUNTY for any and all claims, demands, damages, fines or penalties of any nature whatsoever which may be imposed upon the COUNTY due to the AIRLINE's violation of any governmental rules, regulations or standards as now or may hereafter be promulgated or enacted, including, but not limited to, the payment of any fines or penalties for any breach of security, arising from the unauthorized entry of any person or vehicle onto the Airport or from any other violations caused directly or indirectly by the act, omission, negligence, abuse or carelessness on the part of the AIRLINE, its employees, subtenants, agents or suppliers.

The COUNTY shall not be liable to the AIRLINE for any diminution or deprivation of possession, or of its rights hereunder, on account of the exercise of such right or authority provided in this LEASE, nor shall the AIRLINE be entitled to terminate the whole or any portion of the leasehold estate herein created by reason of the exercise of such right or authority, unless the exercise thereof shall so interfere with the AIRLINE's use and occupancy of the Leased Premises so as to constitute a termination in whole or in part of this LEASE by operation of law in accordance with the laws of the State of California.

### **SECTION 5.04      ACCESS PLAN LIMITATIONS ON USE**

The AIRLINE agrees that:



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- A. Notwithstanding any provision in this LEASE to the contrary, the AIRLINE shall conduct all of its operations and activities at the Airport in strict conformity with the Access Plan and each of its regulations and limitations on the AIRLINE's activities and operations at the Airport.
- B. The ADD allocations and other operating privileges made to the AIRLINE under the Access Plan are a privilege which may be revoked or modified by the COUNTY at any time during the terms of this LEASE, and that such privileges do not constitute property rights of the AIRLINE.
- C. The ADD allocations and other operating privileges made to the AIRLINE under the Access Plan are not transferable, assignable or delegable by the AIRLINE to any other person or entity by operation of law or otherwise, and that such allocations and other operating privileges may not be pledged, hypothecated or encumbered by the AIRLINE at any time for any purpose.
- D. The remedies specified in the Access Plan for any Access Plan violation by the AIRLINE are not the exclusive remedies of the COUNTY, but shall constitute additional nonexclusive remedies that the COUNTY may enforce separately or cumulatively with other remedies under the enforcement provisions of this LEASE.
- E. The AIRLINE shall not at any time, or for any reason, make any assertion to any court, administrative agency, administrative tribunal or other similar forum that is in any respect inconsistent with the terms and provisions of this Section, except that nothing in this Section shall prevent the AIRLINE from making any argument or asserting any position to the COUNTY, as applicable, in connection with any action by the COUNTY to revoke or modify allocations of operating privileges or any amendments to the Access Plan.
- F. All provisions of Section 5.01 and Article X in this LEASE are subject to the terms, provisions and limitations of this Section.

### SECTION 5.05 OPERATIONAL REQUIREMENTS

The AIRLINE agrees to abide by the following operational conditions and requirements:

- A. **Flight Operations and Reallocations.** The number of allocated ADDs, including "regularly scheduled," "charter," "maintenance" and "cargo" shall not exceed the number of departures authorized and allocated to the AIRLINE under the Access Plan. In addition to any and all remedies available to the COUNTY under this LEASE and all provisions of the Access Plan, the COUNTY may reallocate ADDs or other operating privileges granted to the AIRLINE under the provisions of the Access Plan. The AIRLINE shall not operate at JWA unless it conducts its operations with ADDs, allocated seat capacity or other Authorized Departures directly and formally allocated to the AIRLINE by action of the Board of Supervisors; the AIRLINE conducts all of its operations with aircraft which have been certified for operation at the Airport consistent





## JOHN WAYNE AIRPORT CERTIFICATED PASSENGER AIRLINE LEASE

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with Access Plan requirements; and, the AIRLINE has met all other applicable COUNTY requirements.

- B. **Hours of Operation.** Except as expressly authorized, the AIRLINE's aircraft shall not depart from the Airport between the hours of 10:00 p.m. and 7:00 a.m. (8:00 a.m. on Sundays) (local time) and shall not arrive at the Airport between the hours of 11:00 p.m. and 7:00 a.m. (8:00 a.m. Sundays) (local time), as measured at any JWA noise monitoring station.

The AIRLINE acknowledges that the COUNTY may by regulation permit some operations by general aviation (nonscheduled, noncommercial) users of the Airport during the nighttime hours with certain specific aircraft types that have noise characteristics similar to the noise characteristics of aircraft that can operate as "Class E" aircraft, as that term is defined in the Access Plan. The AIRLINE does now, or may during the term of this LEASE, operate Class E aircraft at the Airport; nevertheless, the AIRLINE agrees that the limitations on hours of operations contained in this Section shall be applicable to all of its operations at the Airport, including its Class E operations.

The AIRLINE further acknowledges that there is a rational basis for the COUNTY to distinguish between general aviation operations and regularly scheduled operations by Class E (or noise equivalent) aircraft during the nighttime hours, and that this distinction does not constitute unlawful or unjustly discriminatory action by the COUNTY in its operation and management of the Airport. The COUNTY agrees that this provision is, and during the term of this LEASE shall be, included in all leases, operating agreements or other service operating agreements between the COUNTY and any person conducting regularly scheduled commercial operations at the Airport.

- C. **Aircraft Types.** The AIRLINE agrees that it will not operate any aircraft at the Airport unless and until that aircraft type has been certified and qualified for operation by the COUNTY in accordance with the provisions and procedures of the Access Plan. The AIRLINE further agrees that it will abide by all aircraft-type restrictions and limitations contained in the Access Plan, as amended, or as it may hereafter be amended, and any other restrictions on aircraft types which may hereafter be adopted by the Board of Supervisors of the County of Orange.
- D. **Noninterference.** The AIRLINE shall cooperate with and not interfere with the COUNTY's and other airlines' use of and operations at the Airport. The AIRLINE shall not place any ropes, barricades and/or stanchions on the public or common use area without prior written approval of the Airport Director.

### SECTION 5.06 RECORDS AND ACCOUNTS

- A. **Records.** The AIRLINE shall at all times keep true and complete records of all transactions in the operation of all business activities, of whatever nature, conducted in pursuance of the rights granted by this LEASE. The AIRLINE shall maintain such



## JOHN WAYNE AIRPORT CERTIFICATED PASSENGER AIRLINE LEASE

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records for a period of five years beyond the expiration or earlier termination of this LEASE.

- B. **Reports.** The AIRLINE shall provide to the Auditor-Controller and the Airport Director at the end of each calendar month, on forms to be supplied by the COUNTY, statistical information respecting the AIRLINE's operations at the Airport including, but not limited to, the total number of all aircraft operations conducted by the AIRLINE; the total combined certificated gross landing weight of all such aircraft operations; the total number of enplaned, deplaned and through passengers; the total number of pounds of airmail, cargo and express mail enplaned and deplaned; and the total number of aircraft stored daily and monthly at the Airport. Such reports shall be submitted to the Airport Director no later than fifteen (15) calendar days following the last day of each month. The AIRLINE must attest that the list is an accurate representation of the AIRLINE's activity for the month.

The AIRLINE shall also provide to the Airport Director, for each day, a copy of the AIRLINE's flight dispatch logs, or a listing made from such logs, certified as correct by a responsible station manager or dispatcher, showing the type of equipment used for each flight and the actual takeoff and landing times and not gate times. Said copy of logs or listing shall be made available for each day's activities by noon (12:00 p.m., local time) of the following day.

- C. **Audits.** All the AIRLINE's records and supporting source documents related to rates and fees in this LEASE or to business operations conducted within or from the Leased Premises shall be kept and made available to the COUNTY at one location within the geographical limits of the COUNTY or shall be made available at offices in the COUNTY within ten (10) working days after notice to produce said records and source documents. The COUNTY shall, through its duly authorized agents or representatives, have the right to examine and audit said records and supporting source documents at any and all reasonable times for the purpose of determining the accuracy thereof, and of the monthly statements to the COUNTY.

The COUNTY, upon request of the AIRLINE, may authorize the above-referenced records and supporting source documents to be kept in a single location outside the limits of the COUNTY provided the AIRLINE shall agree to pay all expenses including, but not limited, to transportation, food and lodging necessary for the COUNTY to send a representative to audit said records. Said right shall not, unless determined necessary by the COUNTY, be exercised by the COUNTY more than once each accounting year.

The full cost of said audit, as determined by the COUNTY, shall be borne by the AIRLINE if either or both of the following conditions exist:

- (1) The audit reveals an underpayment of more than two percent (2%) between the rents and fees due as reported and paid by the AIRLINE in accordance with this LEASE and the rent due as determined by said audit; and/or



## JOHN WAYNE AIRPORT CERTIFICATED PASSENGER AIRLINE LEASE

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- (2) The AIRLINE has failed to maintain true and complete records and supporting source documents in accordance with paragraph A. above. The adequacy of records shall be determined at the sole discretion of the COUNTY's Auditor-Controller.

Otherwise, the COUNTY shall bear the cost of said audit, excluding the aforementioned expenses related to audit of documents kept outside the limits of the COUNTY. The cost of said audit, if due from the AIRLINE, shall be included as rent for the first month following invoice to the AIRLINE.

Upon the request of the Auditor-Controller, the AIRLINE shall promptly provide necessary data to enable the COUNTY to fully comply with requirements of the State of California or the United States of America for information or reports directly relating to this LEASE and to the AIRLINE's use of the Leased Premises.

- D. **Failure to Maintain Adequate Records.** In addition to any other remedies available to the COUNTY under this LEASE, at law or in equity, in the event that the AIRLINE fails to maintain and keep records and accounts from business operations conducted on or from the Leased Premises and/or source documents relating thereto, or to make the same available to the COUNTY for examination and audit as required by this LEASE, the COUNTY, at the COUNTY's option, may:

- (1) Perform such examinations, audits and/or investigations itself or through agents or employees as the COUNTY and/or its auditors may deem appropriate to confirm the amount of rents, fees and charges payable by the AIRLINE under this LEASE; and any and all costs and/or expenses incurred by the COUNTY in connection therewith shall be promptly reimbursed to the COUNTY by the AIRLINE upon demand.
- (2) Require that the AIRLINE pay rents and fees based on the COUNTY's best good faith estimate of the AIRLINE's activities from business operations conducted on or from the Leased Premises and Airport; and any such determination made by the COUNTY shall be conclusive and binding upon the AIRLINE.

Costs payable by the AIRLINE pursuant to this Section shall include reimbursement to the COUNTY of the COUNTY provided services at such rates as the COUNTY may from time to time, in good faith, establish for such services. In the case of services provided by the COUNTY's employees, such rates shall be sufficient to reimburse the COUNTY for employees' salaries, including employee taxes and benefits and the COUNTY's overhead or, at the Auditor-Controller's option, may be the rate for such services that would be charged by a qualified third party or parties, approved by the Auditor-Controller, if engaged by the COUNTY to perform such services. Said costs payable by the AIRLINE shall be included as rent for the first month following invoice to the AIRLINE.



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### **SECTION 5.07      MAINTENANCE AND OPERATION OF LEASED PREMISES**

The AIRLINE agrees to maintain the Leased Premises in a safe, clean, wholesome, sanitary condition and in compliance with all applicable laws. The AIRLINE shall be responsible to make all necessary repairs required to maintain the Leased Premises and improvements in good condition. All repairs and improvements made by the AIRLINE to the Leased Premises shall be in compliance with all current federal, state, local laws, regulations, ordinances and building codes, and all Airport regulations (Codes). The Codes encompass all fire, life and structural safety aspects and apply to the construction, alteration, moving, demolition, repair and use of the Leased Premises. Any additions, alterations, repairs and changes of use or occupancy in the Leased Premises shall comply with the provisions for new buildings and structures as set forth in the Codes. All devices or safeguards that are required by the Codes shall be maintained in conformance with the edition of the Codes under which it was installed.

The AIRLINE shall immediately notify the Airport Police Services Control Center of any fire, emergency, accident or reportable spill or release of fuel or Hazardous Substances. Reportable spills or releases are those that require notification to a government entity by any fire code or Environmental law as defined herein in Section 6.01.

The AIRLINE further agrees to provide approved containers for trash and garbage and to keep the Leased Premises free and clear of rubbish and litter. The Airport Director shall have the right to enter upon and inspect the AIRLINE's Leased Premises and other Airport facilities at any time for cleanliness, safety and maintenance inspections.

The AIRLINE shall designate in writing to the Airport Director an on-site representative who shall be responsible for the day-to-day operation and level of maintenance, cleanliness and general order.

If the AIRLINE fails to maintain or make repairs or replacements as required herein, the Airport Director shall notify or attempt to notify the AIRLINE in writing of said failure. Should the AIRLINE fail to correct the failure within the time specified in the notice, the Airport Director may make the necessary correction or cause it to be made and the cost thereof, including but not limited to the cost of labor, materials and equipment shall be charged to the AIRLINE. Thereafter, an administrative fee equal to fifteen percent (15%) of the sum of such items shall be paid by the AIRLINE within ten (10) days of receipt of a statement of said cost from the Airport Director. The Airport Director may, at the Director's option, choose other remedies available herein, or as provided by law.

If the AIRLINE fails to maintain or make repairs or replacements, including removal of all its GSE and/or any AIRLINE materials at its loading and unloading operations at the end of its approved hours of operation as required herein, the Airport Director may make the necessary correction or cause it to be made and the cost thereof, including but not limited to the cost of labor, materials and equipment shall be charged to the AIRLINE. Thereafter, an administrative fee equal to fifteen percent (15%) of the sum of such items shall be paid by the AIRLINE within



## **JOHN WAYNE AIRPORT CERTIFICATED PASSENGER AIRLINE LEASE**

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ten (10) days of receipt of a statement of said cost from the Airport Director. The Airport Director may, at Director's option, choose other remedies available herein, or as provided by law.

The AIRLINE expressly waives any and all claims against the COUNTY for compensation for any and all loss or damage to the AIRLINE's property sustained by reason of any defect, deficiency or impairment of any water supply system, drainage or sewer system, gas supply system, telephone system, electrical supply system or electrical apparatus or wires serving the Leased Premises, except to the extent caused by the COUNTY's negligence or willful misconduct.

### **SECTION 5.08      APRONS, GATE POSITIONS AND LOADING BRIDGES**

The COUNTY will provide as a means of access for aircraft between the terminal complex and the taxiway and runway system of the Airport, apron, airplane gate positions and aircraft loading bridges in the area immediately adjacent to the passenger terminal building. No special possessory, exclusive or vested right whatsoever, save and except the use in common with other airlines and other aircraft owners shall vest in the AIRLINE by reason of proximity of such facilities to the AIRLINE's gate loading positions.

Following each flight operation by the AIRLINE, the AIRLINE shall keep all areas associated with their loading bridges at the gate positions and departure lounges in a neat, clean and sanitary condition free of litter, trash, debris and other waste and refuse matter.

### **SECTION 5.09      ASSIGNMENT OF GATE POSITIONS AND LOADING BRIDGES**

All assignment of gate positions (*i.e.*, aircraft loading bridges and aircraft hardstand positions) shall be made in accordance with rules, regulations and directives provided in the Access Plan and made at the complete discretion of the Airport Director, as he/she may determine is appropriate. The Airport Director, in making assignments of gate (*i.e.*, loading bridge and hardstand) positions to the AIRLINE, may take into account the needs and requirements of the AIRLINE, as well as the requirements of other Airport users, for use of gate positions adjacent to the passenger terminal building, and other factors that the Airport Director determines are appropriate. Without liability, cost or obligation to the COUNTY, assignment of gate positions and aircraft loading bridge and hardstand positions may be changed from time to time as determined necessary by the Airport Director. The Airport Director may consider passenger activity, number of aircraft operations, type of aircraft used, scheduling needs, and any other factors he/she may deem appropriate when assigning gate positions, loading bridges and hardstand positions.

### **SECTION 5.10      VEHICLES AND AUTOMOTIVE EQUIPMENT ON APRON**

The COUNTY reserves the right to regulate, by adoption of ordinance, rules or other means, the use of vehicles and automotive equipment upon, over and across the apron and around the passenger terminal building. In the event of an emergency not specifically provided for in said rules and regulations, the Airport Director shall have power to take charge of the direction of



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such vehicle and automotive traffic in the area affected and regulate the same until the cause of such emergency has been removed. The existence of an emergency, other than aircraft emergency, shall be determined by the Airport Director.

### **SECTION 5.11 AIRCRAFT PARKING**

The AIRLINE shall make arrangements with the Airport Director for each aircraft parking space that may be made available to the AIRLINE subject to Section 4.01 in this LEASE.

If, in the judgment of the Airport Director, it becomes necessary to move the AIRLINE's aircraft in order to insure public safety, improve ramp area efficiency or otherwise, then the AIRLINE shall immediately move said aircraft to the location designated by the Airport Director.

Should any aircraft owned or operated by the AIRLINE, through accident or for any other reason, become disabled or be abandoned in any area which could interfere with the continuous, normal operations of any of the landing and field facilities at the Airport, the AIRLINE shall:

- A. Immediately remove said aircraft to such location as shall be designated by the Airport Director, unless such aircraft is required to remain in place pending investigation by the appropriate regulatory agency or agencies of the federal government; and
- B. In the event of any accident where federal investigation in place is required, immediately upon receiving clearance to do so from the appropriate federal agency, remove said aircraft and any wreckage or debris resulting therefrom to the area(s) designated by said federal agency authorizing such removal; otherwise, such aircraft wreckage and debris shall be immediately removed from the Airport or stored at a location approved by the Airport Director.

Should the AIRLINE fail to remove said aircraft, or should aircraft owned or operated by the AIRLINE be abandoned on the Airport, the COUNTY shall have the right to remove such aircraft by any means the Airport Director deems necessary under the circumstances, and the AIRLINE shall keep and hold the COUNTY harmless from any and all costs, loss, liability, damage or expense incurred by the COUNTY or claimed by anyone by reason of removal of said aircraft, injury to persons or property or damages to such aircraft caused by such removal as well as moving and storage costs therefor. The AIRLINE agrees that the designation of any aircraft parking positions anywhere on the Airport, if any, made for the AIRLINE's use is presently regulated by the Access Plan, and that nothing in this Section obligates the COUNTY to provide, make available or consent to any aircraft parking spaces for the AIRLINE's use. The AIRLINE agrees that it may not independently make arrangements for aircraft parking space at the Airport without express written consent of the Airport Director, which may be withheld in the Director's sole discretion.



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### SECTION 5.12 PORTER SERVICES

The AIRLINE may provide directly or indirectly adequate porter (skycap) and/or assistance service for the convenience of its passengers in areas designated by the Airport Director. Porter services include baggage check-in services, wheelchair services and ticket screening services. The AIRLINE shall provide the Airport Director a plan which enumerates the salient features of its porter services arrangements and a copy of its agreement if service is provided by other than the AIRLINE's employees. All podiums utilized for porter service shall be approved in writing by the Airport Director. The size, shape and color shall be coordinated with and must be identical to all other airlines' podiums. The AIRLINE's plan shall also provide the details of any podiums and their proposed locations necessary to provide porter services.

### ARTICLE VI

#### ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION

### SECTION 6.01 HAZARDOUS SUBSTANCES AND ENVIRONMENTAL COMPLIANCE

As used herein, the term "Hazardous Substances" shall mean any hazardous or toxic substance, material or waste which is or shall become regulated by any governmental entity, including, but not limited to, the COUNTY acting in its governmental capacity, State of California or United States Government. The term "Hazardous Substances" includes, without limitation, any material or substance which is (i) defined or listed as a "hazardous waste," "extremely hazardous waste," "restrictive hazardous waste" or "hazardous substance" or considered a waste, condition of pollution or nuisance under any Environmental Law; (ii) petroleum or a petroleum product or fraction thereof; (iii) asbestos or asbestos-containing materials; (iv) flammable or explosive substances; (v) mold, mold spores or fractions thereof; and/or (vi) substances designated by any governmental entity to cause cancer and/or reproductive toxicity.

As used herein, the term "Environmental Law" shall mean any federal, state or local law, statute, ordinance, code, judgment, order or regulation pertaining to the environment, Hazardous Substances, Pollutants, occupational safety and health, industrial hygiene or the environmental conditions on, under or about the Airport, and includes, without limitation the following; (i) CLEAN AIR ACT, 42 U.S.C. §§7401 *et seq.*; (ii) CLEAN WATER ACT, 33 U.S.C. §§1251 *et seq.*; (iii) COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980, as amended by the SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT OF 1986 ("CERCLA"), 42 U.S.C. §§9601 *et seq.*; (iv) 49 C.F.R. Parts 173 and 175; (v) SOLID WASTE DISPOSAL ACT, as amended by the RESOURCE CONSERVATION AND RECOVERY ACT OF 1986 and HAZARDOUS AND SOLID WASTE amendments of 1984 ("RCRA"), 42 U.S.C. §§6901 *et seq.*; (vi) OIL POLLUTION ACT OF 1990, 33 U.S.C. §§2701 *et seq.*; (vii) FEDERAL WATER POLLUTION CONTROL ACT, 33 U.S.C. §§1317 *et seq.*; (viii) SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986, CAL. HEALTH & SAF. CODE §§25249 *et seq.*; (ix) CAL. HEALTH & SAF. CODE §§25100, 25395.7, 25915, *et seq.*; (x) CAL. WATER CODE §§1300 *et seq.*; (xi) CAL. CIV. CODE §§3479 *et seq.*; (xii) Storm Water Discharge Rules, 40 C.F.R. §§122.26, 122.30-37;



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and, (xiii) all other state laws, rules, orders, directives, and codes, regulations judgments, and orders relating to (i) emissions, discharges, releases, or threatened releases of Hazardous Substances into the environment (including but not limited to ambient air, surface water, groundwater, land surface or subsurface strata); and (ii) the manufacture, processing, distribution, use, generation, treatment, storage, disposal, transport or handling of Hazardous Substances, as such laws are amended, and the regulations and administrative codes applicable thereto.

The AIRLINE agrees that it shall abide by all Hazardous Substances laws, rules and regulations, relating to Hazardous Substances including, but not limited to, 49 C.F.R. Parts 171 *et seq.* The AIRLINE agrees it will carry no Hazardous Substances on the Airport that are not permitted by law to be carried by passenger aircraft. Violation by the AIRLINE or any of its agents or employees of any Hazardous Substances laws, rules, or regulations are grounds for immediate termination of this LEASE and for immediate termination of all operations by the AIRLINE at or on the Airport.

The AIRLINE shall comply with all Environmental Laws and shall not engage in any activity on or about the Airport that violates any Environmental Law. In conducting its operations and maintenance on the Airport under this LEASE, the AIRLINE shall comply with such regulations regarding the storage, distribution, processing, handling and/or disposal, including the storm water discharge requirements, of Hazardous Substances including, but not limited to, gasoline, aviation fuel, jet fuel, diesel fuel, lubricants and/or solvents, whether the obligation for such compliance is placed on the owner of the land, owner of the improvements or user of the improvements.

The AIRLINE shall at its own expense take all investigatory and/or remedial action required or ordered by any governmental agency or Environmental Law for clean-up and removal of any contamination involving any Hazardous Substances caused by the AIRLINE. In conducting a clean-up of a Hazardous Substance release under this LEASE, the AIRLINE shall comply with applicable Environmental Laws.

The AIRLINE shall not allow or cause the entry of any Hazardous Substances under its control into the Airport Storm Water drainage system unless authorized by Environmental Law and the Airport's Storm Water Discharge Permit. The AIRLINE shall not allow or cause the entry of any Unauthorized Non-Storm Water Discharge that is under its control into the Storm Water drainage system of the Airport or into the Storm Water drainage system of any of its surrounding communities, unless such substances are first properly treated by equipment installed with the approval of the COUNTY for that purpose, and the AIRLINE complies with recommendations made by the state and/or federal Environmental Protection Agency and the Airport's Storm Water Discharge Permit requirements. The AIRLINE shall bear all costs and any other expenses related to the prohibited entry of such oil, fuel or other Hazardous Substances into said drainage systems prohibited by Environmental Law.

The AIRLINE shall provide all notices required pursuant to the SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986, CAL. HEALTH & SAF. CODE §§25249 *et seq.* The AIRLINE





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shall provide prompt written notice to the COUNTY within two (2) days of receipt of all written notices of violation of any Environmental Law received by the AIRLINE.

### **SECTION 6.02 ENVIRONMENTAL INDEMNIFICATION**

To the fullest extent authorized by law, the AIRLINE shall indemnify, defend, and hold harmless the COUNTY, its officers, and employees, from and against any and all Environmental Law claims, judgments, damages, penalties, fines, costs, liabilities, losses, orders, and lawsuits arising out of any actions by the AIRLINE, the AIRLINE's operations at the Airport or any action arising from and which involve the AIRLINE's officers, agents, subcontractors, and employees, including the cost of defense arising therefrom, including but not limited to the following:

- (1) The AIRLINE's placing, disposing, allowing or releasing of Hazardous Substances upon or within the Airport including any such claims, demands, liabilities and/or obligations related to the AIRLINE's release of Hazardous Substances on the Airport since the time the AIRLINE first occupied the Airport.
- (2) The AIRLINE's release of Hazardous Substances upon or within the Airport.
- (3) The AIRLINE's violation of any Environmental Law, except that the AIRLINE's obligations under this paragraph shall not extend to known conditions that are, as of the date of this LEASE, the subject of investigation and remediation by the COUNTY or others, or remediation conditions that arise from operations of third parties that are not affiliated with the AIRLINE that take place off of the Airport. A party shall be deemed to be affiliated with the AIRLINE if it is an employee, officer, director, agent, subtenant, contractor or subcontractor of the AIRLINE or if it is controlled by or under common control with the AIRLINE.
- (4) The AIRLINE's causing or allowing any discharge into the Airport Drainage System that is prohibited by Section 6.01 of this LEASE.

This indemnification includes, without limitation, reasonable attorney's fees/costs and other costs incurred by the COUNTY in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental entity because of any Hazardous Substances being present in the soil or groundwater under the Airport. However, the AIRLINE's indemnity obligation shall not apply in the event of any claims for any loss, damage or expense arising from the sole or active negligence or willful misconduct of the COUNTY or agents, servants or independent contractors who are directly responsible to the COUNTY.

In the event the indemnitees described hereinabove are named as defendants or respondents in any lawsuit or administrative proceeding, the AIRLINE shall, at the request of the COUNTY, represent the indemnitee with qualified counsel that is acceptable to the COUNTY.



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In the event that a monetary judgment is awarded against the COUNTY and the AIRLINE because of the concurrent negligence of the COUNTY and the AIRLINE or their respective officers, subcontractors, or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Both the COUNTY and the AIRLINE agree that neither party shall request a jury apportionment. Nothing stated in this LEASE and in this indemnity obligation shall be construed as authorizing any award of attorney's fees/costs in any action to enforce the terms of this LEASE.

The rights and obligations set forth in this indemnification shall survive the termination of this LEASE.

### **SECTION 6.03      CONFLICT WITH ENVIRONMENTAL LAW PROVISIONS**

In the event that any of the terms of these environmental requirements codified in this Article conflict with any other terms of this LEASE, the environmental requirements contained in Article VI shall apply.

## **ARTICLE VII**

### **CONSTRUCTION AND IMPROVEMENTS**

#### **SECTION 7.01      CONSTRUCTION AND/OR ALTERATION BY THE COUNTY**

The COUNTY may alter, repair, maintain, remodel, expand, remove or improve any of the facilities at the Airport or any of its appurtenances.

In addition, the COUNTY may reassign or relocate the AIRLINE's Exclusive Use Area. The COUNTY shall provide the AIRLINE advance notice of such action and shall attempt to provide the AIRLINE alternative space that is reasonably comparable for the AIRLINE's operations at the same rates and charges that the AIRLINE would have paid for the space being surrendered. In the event no alternative space is available, the AIRLINE shall surrender its space promptly to the COUNTY, provided that the AIRLINE shall be reimbursed for the reasonable cost of any such reassignment, reallocation or relocation and the cost of the AIRLINE's unamortized investment, if any, as documented by the AIRLINE to the satisfaction of the COUNTY and mutually agreed to by the Airport Director and AIRLINE. All of such costs, as well as the COUNTY's cost of providing the alternative space aforementioned, shall be included in the cost of the particular project requiring such reassignment, reallocation or relocation.

#### **SECTION 7.02      IMPROVEMENTS BY THE AIRLINE**

The AIRLINE shall not perform any construction upon the Leased Premises nor shall the AIRLINE modify, alter or remove any permanent improvements lying within the Leased Premises without prior written approval of the COUNTY. Any construction, modifications, alterations or removal of any permanent improvements by the AIRLINE shall be at the AIRLINE's expense.



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- A. **Consent Required From the COUNTY.** No structures, improvements, or facilities shall be constructed, erected, altered, removed or made within the Leased Premises without prior written consent of the COUNTY, which consent may be withheld or conditioned in the COUNTY's discretion. Minor repairs, replacement and maintenance proposed for the Leased Premises, the cost of which does not exceed one hundred twenty five thousand dollars (\$125,000) annually, shall be approved by the Airport Director. All other structures, improvements, facilities, repairs, replacement, removal and maintenance items shall be approved by the Board of Supervisors.
- B. **Compliance with Plans and Construction Standards.** All improvements constructed by the AIRLINE within the Leased Premises shall be constructed in strict compliance with detailed plans and specifications approved by the Airport Director. All construction shall be conducted in a good and workmanlike manner and shall conform to applicable building codes, rules, regulations and the Airport's architectural standards as contained in reference document "John Wayne Airport, Architect and Engineer Guide," which can be provided by Airport upon request. All work shall be done in conformity with Airport approved plans, valid building and other necessary permits and shall be acceptable to the COUNTY and the appropriate governmental entity inspecting such work. The AIRLINE shall be responsible for filing Form 7460 for any construction and/or height of construction equipment with the FAA, if required.
- All improvements constructed by the AIRLINE, including the plans and specifications therefor, shall conform in all respects to the applicable statutes, ordinances, building codes, rules and regulations of the COUNTY and such other governmental authority as may have jurisdiction. The Airport Director's approval shall not constitute a representation or warranty as to such conformity, which shall remain the AIRLINE's responsibility. The AIRLINE, at its own cost and expense, shall procure all permits necessary for such construction.
- C. **Insurance Requirements.** The AIRLINE shall obtain comprehensive public liability insurance during construction. If the construction is done by an independent contractor, insurance shall be procured by the contractor in the name of the AIRLINE and the COUNTY. All insurance shall be in the limits and coverages acceptable to the COUNTY's Risk Management Services.
- D. **Noninterference.** The AIRLINE warrants that it or its contractor shall in no way delay, cause delays to or interfere with any Airport operations or other contractors working in the terminal or on the Airport. The AIRLINE agrees to hold the COUNTY harmless from the cost of any time lost by the COUNTY or any damages to the COUNTY due to the actions or failure to act of the AIRLINE or its contractor.
- E. **Trailers and Modular Structures.** All improvements constructed by the AIRLINE shall be of a permanent nature. Trailers and modular buildings are prohibited on the Leased Premises. This provision shall not apply to the use of the COUNTY approved



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temporary modulars or trailers during construction. Upon completion of construction, all trailers or modulars must be immediately removed from the Leased Premises.

- F. **The AIRLINE's Cost and Expense.** All renovation or construction by the AIRLINE pursuant to this Section shall be at the AIRLINE's sole cost and expense. The AIRLINE shall keep its existing or future Exclusive Use Area and the improvements constructed thereon free and clear of all liens and shall pay all costs for labor and material arising out of such construction and shall hold the COUNTY harmless from any liability in respect thereto. The AIRLINE shall have the right to contest any and all liens filed against its existing or future Exclusive Use Area. The AIRLINE further agrees that the COUNTY shall have the right to post notices of non-responsibility as provided by Sections 3094 and 3129 of the CAL. CIV. CODE of the State of California.
  
- G. **Ownership of Improvements.** All improvements and facilities, exclusive of trade fixtures, constructed or placed within the Leased Premises by the AIRLINE must, upon completion, be free and clear of all liens, claims, or liability for labor or material and at the COUNTY's option shall become the property of the COUNTY at the expiration of this LEASE or upon earlier termination hereof. The COUNTY retains the right to require the AIRLINE, at the AIRLINE's cost, to remove any or all improvements located within the Leased Premises at the expiration or termination hereof.

**SECTION 7.03 AIRLINE REIMBURSEMENT**

In the event the COUNTY should require the Leased Premises, or any portion thereof, for any Airport purpose and removes any portion of the AIRLINE's Leased Premises from this LEASE or terminates the LEASE under the provisions of this Section, the COUNTY shall reimburse the AIRLINE for improvements completed during the term of this LEASE to the Leased Premises as follows:

Compensation for improvements located on the Leased Premises shall be calculated by means of the following formula:

$$\text{COMPENSATION} = A \times \frac{B}{C}$$

- A = The AIRLINE's actual leasehold improvement construction costs submitted in accordance with Section 7.07 in this LEASE."
  
- B = Number of full months remaining in Lease Term.
  
- C = Number of full months between the date the AIRLINE completed construction of leasehold improvements and the date the LEASE would expire by its terms if the COUNTY did not exercise its right to early termination.

The AIRLINE shall submit to the COUNTY within sixty (60) days of completion of construction of any leasehold improvement, notifications of completion of construction and submit detailed



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supporting documentation of construction costs together with "as-built" plans as required elsewhere in this LEASE. The AIRLINE acknowledges and agrees if the AIRLINE fails to submit notifications and supporting documentation for any such leasehold improvements in a timely manner, the AIRLINE waives its right to compensation for such improvements.

### **SECTION 7.04      EXCLUSIVE REMEDY**

The compensation provided pursuant to Section 7.03 in this LEASE shall be the AIRLINE's sole and exclusive remedy and form of compensation, costs or damages, including but not limited to, the eminent domain law and inverse condemnation (CAL. CODE CIV. PROC. §§1230.010 *et seq.*), and Relocation Assistance benefits (CAL. GOV. CODE §§7260 *et seq.*), due to termination, re-entry or acquisition of the leasehold by the COUNTY.

The AIRLINE agrees that exercise by the COUNTY of its termination rights hereunder shall not be construed as a taking by the COUNTY of any part of the Leased Premises, nor of the AIRLINE's rights under this LEASE, nor shall the AIRLINE, except as provided herein, be entitled to payment for any loss of goodwill, income, moving expenses or other amount because of partial or full termination of this LEASE.

### **SECTION 7.05      AIRLINE'S ASSURANCE OF CONSTRUCTION COMPLETION**

Prior to commencement of construction of approved facilities the AIRLINE shall furnish to the COUNTY evidence that assures the COUNTY that sufficient monies will be available to the AIRLINE and the COUNTY to complete the proposed construction. The amount of money available shall be at least the total estimated construction cost. Such evidence may take one of the following forms:

- A. Completion Bond issued to the COUNTY as obligee.
- B. Irrevocable letter of credit issued to the COUNTY that will remain in effect until the COUNTY acknowledges satisfactory completion of construction.
- C. Cash.
- D. Any combination of the above.

All bonds and letters of credit must be issued by a surety company, financial institution or advising bank qualified and admitted to do business in the State of California and issued in an approved form approved by the COUNTY. All bonds and letters of credit shall insure faithful and full observance and performance by the AIRLINE of all terms, conditions, covenants and agreements relating to the construction of improvements within the Leased Premises.

It is not the intent of the contracting parties herein to create a third party beneficiary, and nothing in this Section shall be construed to do so.



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### **SECTION 7.06        MECHANICS LIENS OR STOP-NOTICES**

The AIRLINE shall at all times indemnify and hold the COUNTY harmless from all Mechanics Liens, Stop-Notices, claims, losses, demands, damages, cost, expenses or liability costs for labor or materials in connection with construction, repair, alteration, or installation of structures, improvements, equipment, or facilities within the Leased Premises undertaken by the AIRLINE, and from the cost of defending against such claims, including attorneys' fees and costs.

In the event a mechanics lien or stop-notice is imposed upon the Leased Premises, the AIRLINE shall either:

- A.     Record a valid Release of Lien; or
- B.     Procure and record a bond in accordance with Section 3143 of the CAL. CIV. CODE, which frees the Leased Premises from the claim of the lien or stop-notice and from any action brought to foreclose the lien.

Should the AIRLINE fail to accomplish either of the two optional actions above within fifteen (15) days after the filing of such a lien or stop-notice, the LEASE shall be in default and shall be subject to immediate termination.

### **SECTION 7.07        "RECORD DRAWINGS" AND CONSTRUCTION COSTS**

Within sixty (60) days following completion of any improvement within the Leased Premises, the AIRLINE shall furnish the Airport Director a complete set of reproducibles, two sets of prints of "Record Drawings" and a recordable compact disc (CD-ROM) containing the "Record Drawings" plans in a form usable by the COUNTY, to the COUNTY's satisfaction, on the COUNTY's computer aided mapping and design (CAD) equipment. Basic specifications for CAD compatible plans are contained in the Airport's reference document "John Wayne Airport, CAD Standards," which can be provided by the Airport upon request.

In addition, the AIRLINE shall furnish the Airport Director an itemized statement of the actual, direct construction costs of such improvement. The construction costs may include actual, direct fees paid to contractors, architects, engineers, surveyors, laborers and suppliers, or permit fees required by governmental agencies to allow construction. Construction costs shall not include indirect costs such as financing costs, holding costs, legal fees, interest, administrative and overhead expenses, bond premiums or developer fees. The statement of cost shall be sworn to and signed by the AIRLINE or its responsible agent under penalty of perjury. The AIRLINE must obtain the Airport Director's approval of "Record Drawings" and the form and content of the itemized statement.

### **SECTION 7.08        DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS**

The AIRLINE shall be responsible for any damage caused by the AIRLINE, or the AIRLINE's aircraft, equipment, employees, agents, visitors or suppliers, to common use areas of the



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Terminal or Airport facilities, including but not limited to runways, taxiways, access roads, navigational aids, apron areas and loading bridges. Should such damage require immediate repairs or replacement and the AIRLINE is unable to respond immediately to complete said repairs or replacement, the Airport Director may cause to be made or make any necessary repairs or replacements and the cost thereof shall be paid by the AIRLINE. Said cost shall include all labor, materials, equipment and an administrative fee equal to fifteen percent (15%) of the sum of those items. Said cost shall be paid by the AIRLINE within fifteen (15) days of receipt of an invoice for costs from the Airport Director.

In the event of damage to or destruction of the AIRLINE-owned or constructed buildings, facilities or improvements located within the Leased Premises or in the event the AIRLINE-owned or constructed buildings, facilities, or improvements located within the Leased Premises are declared unsafe or unfit for use or occupancy by the COUNTY or any other public entity with jurisdiction to make and enforce such a declaration, the AIRLINE shall, within thirty (30) days, commence and diligently pursue completion of the repair, replacement or reconstruction of improvements to the same size and floor area as they existed immediately prior to the event causing the damage or destruction, as necessary to permit full use and occupancy of the Leased Premises for the purposes required by the LEASE.

Repair, replacement or reconstruction or improvements within the Leased Premises shall be accomplished in a manner and according to plans approved by the Airport Director. Except as otherwise provided herein, termination of this LEASE shall not reduce or nullify the AIRLINE's obligation under this paragraph. With respect to damage or destruction to be repaired by the COUNTY or which the COUNTY elects to repair, the AIRLINE waives and releases its rights under CAL. CIV. CODE Sections 1932(2) and 1933(4).

### **SECTION 7.09 HEALTH AND SAFETY**

The AIRLINE shall comply with the California Occupational Safety & Health Administration (CAL OSHA) requirements, and all federal, state or local safety orders. The AIRLINE shall post on the Lease Premises and at all construction sites a copy of "Construction Safety Orders" and "General Industry Safety Orders" issued by the California State Division of Industrial Safety.

The AIRLINE shall, within thirty (30) days after the execution of this LEASE, submit to the COUNTY a comprehensive Safety Plan outlining the code of safe work practices and procedures. The plan must include emergency response procedures, notification procedures, and personnel training procedures. The AIRLINE shall convene safety meetings at regularly scheduled times as described in its Safety Plan and as required by CAL OSHA.

The AIRLINE and/or AIRLINE's contractor shall submit, prior to the start of any tenant improvements, the AIRLINE or AIRLINE's contractor required CAL OSHA Safety Plan for approval by the Airport.



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The AIRLINE shall submit to the COUNTY an annual report detailing the status of all permits required and issued to the AIRLINE by CAL OSHA or any other federal, state or local government agency. Said report shall be due on or before January 31 of each calendar year.

### **ARTICLE VIII**

#### **ACCOMMODATION**

##### **SECTION 8.01 JOINT USE REQUIREMENT**

The AIRLINE and/or other airlines may be provided the opportunity by the COUNTY to initiate or expand service at the Airport and may have a need or requirement for certain types of Airport space and facilities. Such initiation or expansion of service may be reasonably implemented by the Airport Director based upon provisions of the Access Plan.

The AIRLINE agrees to make every reasonable effort to offer to any airline initiating service at the Airport the opportunity to share use of its Exclusive Use Area. In determining whether the use of another incoming airline initiating service at the Airport is reasonable and possible, the AIRLINE will have the right to consider the compatibility of the proposed operations of those with whom the AIRLINE has subleases or handling arrangements, the AIRLINE's existing and future flight schedules, the need for labor cooperation, the adverse competitive impacts resulting from the presence of the other aircraft operator on the AIRLINE's Exclusive Use Area and the availability of other such space at the Airport. Should the AIRLINE deny another airline initiating service at the Airport the opportunity to use the AIRLINE's Exclusive Use Area, the COUNTY may review the AIRLINE's space usage, and should it reasonably determine, considering all the factors noted herein (including the AIRLINE's reasons for such refusal), that the AIRLINE unreasonably refused usage by such other airline, it may require the AIRLINE to permit the other airline to use the AIRLINE's Exclusive Use Area, subject to the initiating airline executing an agreement with the AIRLINE acceptable to the COUNTY.

The AIRLINE shall, by separate agreement with such certificated and/or commuter airline as the COUNTY may designate, or by other arrangement as provided by the Airport Director, provide space and/or services within Leased Premises to accommodate said airlines' operation. Any said agreement for joint use shall be subject to the Airport Director's approval and subject to the terms and conditions of this LEASE. The AIRLINE agrees that, in the event it subleases its Leased Premises to another AIRLINE, any sublease rental rate shall be calculated on a per square foot basis.

Sublease per square foot rental rates for sublet space shall reflect a reasonable pro-rata allocation of the AIRLINE's actual and direct costs related to said space and shall be based upon the following factors:

- A. The square foot per annum rental rate currently paid by the AIRLINE to the COUNTY for space to be sublet; and





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- B. A reasonable square foot charge to compensate the AIRLINE for the pro-rata costs per square foot applicable to the AIRLINE improvement costs, maintenance costs, and a reasonable administrative fee.

The annual sublease rental rate shall not exceed two times the square foot per annum rental rate currently paid by the AIRLINE to the COUNTY unless the AIRLINE can demonstrate to the satisfaction of the Airport Director that its costs for the subleased premises, exclusive of the administrative fee, justify a higher rate.

### ARTICLE IX

#### ASSIGNMENT AND SUBLEASE

##### SECTION 9.01 ASSIGNING, SUBLETTING, AND TRANSFERRING

The provisions of this Section are subject to, and subordinate to the limitations of Section 5.04 of this LEASE."

- A. **Transfers.** The AIRLINE shall not transfer, assign, sublet, or hypothecate (hereinafter referred to as "Transfer") any interest of the AIRLINE in the Leased Premises without the prior written approval of the COUNTY. The AIRLINE shall give the COUNTY thirty (30) days prior written notice of all proposed Transfers. The AIRLINE shall not make any such Transfers for a period longer than the remaining term of the LEASE.

If the COUNTY approves such Transfers, such approval does not constitute a waiver of any of the terms of the LEASE. All Transfer documents shall be consistent with the terms, covenants, and conditions of the LEASE, and in the event of any inconsistency, the provisions of this LEASE shall govern.

If the AIRLINE is a corporation, an unincorporated association, or a partnership, Transfers include the acquisition by any person other than the AIRLINE of any stock or interest in said corporation, unincorporated association, or partnership in the aggregate amount of fifty-one percent (51%) or more.

The failure by the AIRLINE to obtain the prior written approval by the COUNTY of any Transfer of the LEASE or any interest in the Leased Premises shall constitute a material breach of this LEASE by, and shall not confer any leasehold rights upon the transferee. Such failure shall be grounds for termination of this LEASE for default per Article X, Section 10.02.

- B. **Conditions of the COUNTY Approval.** The COUNTY agrees that it will not arbitrarily withhold consent to any Transfer, but the COUNTY may withhold consent at its sole discretion if any of the following conditions exist:



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- (1) The AIRLINE, its successors or assigns are in default of any term, covenant or condition of this LEASE, whether notice of default has or has not been given by the COUNTY.
- (2) The prospective subtenant, assignee or transferee has not agreed in writing to keep, perform and be bound by all the terms, covenants, and conditions of this LEASE.
- (3) The prospective subtenant, assignee or transferee is not financially capable or not experienced in performing the LEASE obligations, as determined by the Airport Director.
- (4) Subtenant's use is in conflict with the terms of this LEASE.
- (5) All the terms, covenants and conditions of Transfer, including the consideration therefore, of any and every kind, have not been revealed in writing to the Airport Director.
- (6) Any construction required of the AIRLINE as a condition of this LEASE has not been completed to the satisfaction of the COUNTY.
- (7) The AIRLINE has not provided the Airport Director with a copy of all documents relating to the Transfer, including, but not limited to, appraisals, notes, trust deeds, title reports, escrow instructions, *etc.*
- (8) The AIRLINE attempts to hypothecate the leasehold for an amount greater than the cost of new improvements to be constructed on the Leased Premises. Hypothecation of the leasehold shall not be permitted for any reason other than to obtain Loan Proceeds necessary to construct new improvements on the Leased Premises.

C. **Affiliate Transactions.** The COUNTY has adopted in the Access Plan policies and regulations regarding transactions and aircraft operations at the Airport involving affiliations of commercial airlines operating, or desiring to operate, at the Airport ("the affiliate policy"). The AIRLINE acknowledges that the COUNTY considers the affiliate policy to be an important and significant policy in support of the COUNTY's regulation of the Airport.

The AIRLINE acknowledges that there is a rational basis for this policy under the operational and historical circumstances affecting the Airport, that under such circumstances this policy maintains appropriate equity between the rights and privileges of competing commercial operators using the Airport, and that the affiliate policy does not constitute unlawful or unjustly discriminatory action by the COUNTY in its operation and management of the Airport. The AIRLINE agrees to comply fully and completely



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with the affiliate policy and all related regulations which appear in the Access Plan and or this LEASE.

Any affiliate transaction described and defined in the Access Plan, and any affiliate transaction between the AIRLINE and any other person which then has a written agreement with the COUNTY to conduct regularly scheduled air service operations at the Airport, shall constitute a Transfer within the meaning of Paragraph A, above. In the event an affiliate transaction involving the AIRLINE is initiated, then not later than the time when the affiliate transaction is publicly announced:

- (1) The AIRLINE shall notify the Airport Director of the fact of the initiation of the affiliate transaction.
- (2) If the affiliate transaction is initiated by the AIRLINE, the AIRLINE shall promptly provide to the Airport Director copies of all agreements, or written offers or proposals, made with respect to the transaction, and copies of all documents filed with federal authorities with respect to the transaction. If the affiliate transaction is initiated by some other person in respect of the AIRLINE, the AIRLINE shall promptly and continuously provide such documentation or other information regarding the transaction as may be available to the AIRLINE.
- (3) In addition to all other obligations of the AIRLINE, if the affiliate transaction involves the AIRLINE and any other person which then has a written agreement with the COUNTY to conduct regularly scheduled air service operations at the Airport, the AIRLINE shall promptly arrange to negotiate with the Airport Director regarding the terms and conditions upon which the Director would recommend consent by the Board of Supervisors to a Transfer of this LEASE, or a Transfer of the written agreement(s) between the other person or entity involved in the affiliate transaction and the COUNTY.

Notwithstanding any other provision of this LEASE, the LEASE may be terminated by the COUNTY on thirty (30) days' notice to the AIRLINE without further obligation of the COUNTY, and without any liability of the COUNTY to the AIRLINE whatsoever, if:

- (4) The AIRLINE fails to comply with Paragraph C, of this Section; or if
- (5) The Airport Director fails to make a favorable recommendation to the Board of Supervisors regarding the Transfer within sixty (60) days after initiation and public announcement of the affiliate transaction, which contains terms and conditions agreed to by the AIRLINE and its affiliate(s); or if
- (6) The Board of Supervisors fails to consent to the Transfer on terms and conditions which have been accepted by the AIRLINE within thirty (30) days after receipt of the recommendations of the Airport Director.



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- D. **Bankruptcy Transaction.** If the AIRLINE assumes this LEASE and proposes to assign the same pursuant to the provisions of the U.S. BANKRUPTCY CODE, 11 U.S.C. §§101 *et seq.*, then notice of such proposed assignment shall be given to the COUNTY. The following information shall be provided to the COUNTY:
- (1) The name and address of proposed assignee;
  - (2) All of the terms and conditions of such offer; and
  - (3) Adequate assurance to the COUNTY of the proposed assignee's future performance under the LEASE, including, without limitation, the assurance referred to in the U.S. BANKRUPTCY CODE, 11 U.S.C. §365(b)(3).

Any person or entity to which this LEASE is assigned pursuant to the provisions of the U.S. BANKRUPTCY CODE, 11 U.S.C. §§101 *et seq.*, shall be deemed without further act or deed to have assumed all of the obligations arising under this LEASE on and after the date of such assignment. Any such assignee shall upon demand execute and deliver to the COUNTY an instrument confirming such assumption.

- E. **Non-Transferable Privileges.** Aircraft operations and ADDs authorized by Section 5.05 in this LEASE and the Access Plan are not property interests of the AIRLINE and are non-transferable in any form, and as such, are not subject to sale, assignment, hypothecation, and transfer by the AIRLINE under the terms of this Section. Any such attempted hypothecation, assignment, encumbrance, sale or other such attempted transfer of operations, privileges or ADDs is in violation of the public policy of the COUNTY and shall be void and shall constitute a breach and default of this LEASE.

### SECTION 9.02 SUCCESSORS IN INTEREST

Unless otherwise provided in this LEASE, the terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of all parties hereto, all of whom shall be jointly and severally liable hereunder.

## ARTICLE X

### TERMINATION AND DEFAULT

#### SECTION 10.01 TERMINATION OF PRIOR AGREEMENTS

It is mutually agreed that this LEASE shall terminate and supersede any prior leases or agreements between the parties hereto for the purpose of commercial air transportation and all related activities of the AIRLINE at the Airport.



## JOHN WAYNE AIRPORT CERTIFICATED PASSENGER AIRLINE LEASE

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### **SECTION 10.02      TERMINATION FOR DEFAULT**

The COUNTY may terminate this LEASE and all of its obligations hereunder with or without prior notice to the AIRLINE and may exercise all rights of entry for default and breach if the AIRLINE fails to perform any of its obligations under this LEASE, including, but not limited to:

- A.      Payment of rents, fees, charges and PFCs;
- B.      A general assignment for the benefit of creditors and any Transfer without the prior written approval by the COUNTY;
- C.      The issuance of any execution or attachment against the AIRLINE at the Airport that is undischarged within sixty (60) days of levy or seizure or if the Leased Premises are occupied by someone other than the AIRLINE;
- D.      The voluntary vacation or abandonment by the AIRLINE of the conduct of air transportation business at the Airport;
- E.      The violation by the AIRLINE of any of the terms of any insurance policy referred to in the LEASE;
- F.      If the AIRLINE is found by the FAA, TSA, other government regulatory or successor agency to have violated specified safety standards in the conduct of the AIRLINE's business;
- G.      The violation or breach of any provision of the Access Plan;
- H.      The violation of any written directions of the Airport Director;
- I.      The appointment of a receiver to take possession of all, or substantially all, the assets of the AIRLINE located at the Leased Premises or of the AIRLINE's leasehold interest in the Leased Premises.

### **SECTION 10.03      CONDITION OF LEASED PREMISES UPON TERMINATION OR DEFAULT**

Except as otherwise agreed to herein, upon termination or default of this LEASE, the AIRLINE shall redeliver possession of said Leased Premises to the COUNTY in substantially the same condition that existed immediately prior to the AIRLINE's entry thereon, reasonable wear and tear, flood, earthquakes, war and any act of war, excepted. References to the termination of the LEASE in this LEASE shall include termination by reason of expiration.

### **SECTION 10.04      DISPOSITION OF ABANDONED PERSONAL PROPERTY**

If the AIRLINE abandons or quits the Leased Premises or is dispossessed thereof by process of



## JOHN WAYNE AIRPORT CERTIFICATED PASSENGER AIRLINE LEASE

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law or otherwise, title to any personal property belonging to the AIRLINE and left on the Leased Premises fifteen (15) days after such event shall be deemed to have been transferred to the COUNTY. The COUNTY shall have the right to remove and to dispose of such property without liability therefor to the AIRLINE or to any person claiming under the AIRLINE, and shall have no need to account therefor. Personal property left on the Leased Premises after termination, expiration, or abandonment of the LEASE shall not be construed as giving the AIRLINE possession of the Leased Premises during the fifteen (15) days after termination, expiration or abandonment of the LEASE.

### **SECTION 10.05 THE COUNTY'S RIGHT TO RE-ENTER**

The AIRLINE agrees to yield and peaceably deliver possession of the Leased Premises to the COUNTY on the date of termination or default of this LEASE, whatsoever the reason for such termination or default.

Upon giving written notice of termination or default to the AIRLINE, the COUNTY shall have the right to re-enter and take possession of the Leased Premises on the date such termination or default becomes effective without further notice of any kind and without institution of summary or regular legal proceedings. Termination or default of the LEASE and re-entry of the Leased Premises by the COUNTY shall in no way alter or diminish any obligation of the AIRLINE under the lease terms and shall not constitute an acceptance or surrender.

The AIRLINE waives any and all right of redemption under any existing or future law or statute in the event of eviction from or dispossession of the Leased Premises for any lawful reason or in the event the COUNTY re-enters and takes possession of the Leased Premises in a lawful manner.

## **ARTICLE XI**

### **SECURITY**

#### **SECTION 11.01 AIRPORT SECURITY**

- A. **Local Security.** The AIRLINE shall be responsible for the security of gates or doors that are located on the Leased Premises. Said gates and/or doors on the Leased Premises permitting entry to the restricted areas of the Airport shall be locked when not in use and/or under the AIRLINE's constant surveillance. The AIRLINE shall install such security equipment, including, but not limited to, video monitoring equipment, as may be required by the Airport Director to insure compliance with all regulations of the FAA, TSA or other governmental agencies having jurisdiction over Airport security. The AIRLINE shall exercise control over any person or vehicle escorted by the AIRLINE onto restricted or secure areas of the Airport, or issued an access badge by or at the request of the AIRLINE, and ensure the person or vehicle shall comply with all Airport security regulations.



## JOHN WAYNE AIRPORT CERTIFICATED PASSENGER AIRLINE LEASE

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- B. **Federal Security.** As of the date of this LEASE, the TSA provides for all passenger and baggage screening conducted at the Airport. The AIRLINE may be required to provide assistance to TSA in their efforts to carry out its federal mandates. At some point during the term of this LEASE, the Airport or another entity may be authorized to provide these security services in lieu of the TSA.
- C. **Penalties and Fines.** The AIRLINE shall promptly pay any penalties for which the AIRLINE is responsible. These penalties include but are not limited to, civil penalties or fines assessed against the Airport or the AIRLINE, by the FAA, TSA or any other governmental agency for the violation of any security related laws, rules, policies or regulations at the Airport.

### ARTICLE XII

#### INSURANCE AND INDEMNITY

##### SECTION 12.01 INSURANCE

The AIRLINE agrees to purchase all required insurance at the AIRLINE's expense and to deposit with the COUNTY certificates of insurance, including all endorsements required herein, necessary to satisfy the COUNTY that the insurance provisions of this LEASE have been complied with and to keep such insurance coverage and the certificates and endorsements therefore on deposit with the COUNTY during the entire term of this LEASE. This LEASE shall automatically terminate at the same time the AIRLINE's insurance coverage is terminated. If within ten (10) business days after termination under this Section the AIRLINE obtains and provides evidence of the required insurance coverage acceptable to the Airport Director, this LEASE may be reinstated at the sole discretion of the Airport Director. The AIRLINE shall pay the COUNTY \$300.00 for processing the reinstatement of this LEASE. Said \$300.00 processing cost may be adjusted annually, in accordance with CPI Index by the Airport Director at his sole discretion.

The AIRLINE agrees that the AIRLINE shall not operate on the Premises at any time the required insurance is not in full force and effect as evidenced by a certificate of insurance and necessary endorsements or, in the interim, an official binder being in the possession of the Airport Director. In no cases shall assurances by the AIRLINE, its employees, agents, including any insurance agent, be construed as adequate evidence of insurance. The Airport Director will only accept valid certificates of insurance and endorsements, or in the interim, an insurance binder as adequate evidence of insurance. The AIRLINE also agrees that upon cancellation, termination, or expiration of the AIRLINE'S insurance, the COUNTY may take whatever steps are necessary to interrupt any operation from or on the Premises until such time as the Airport Director reinstates the LEASE.

If the AIRLINE fails to provide the Airport Director with a valid certificate of insurance and endorsements, or binder at any time during the term of the LEASE, the COUNTY and the AIRLINE agree that this shall constitute a material breach of the LEASE. Whether or not a



## JOHN WAYNE AIRPORT CERTIFICATED PASSENGER AIRLINE LEASE

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notice of default has or has not been sent to the AIRLINE, said material breach shall permit the COUNTY to take whatever steps necessary to interrupt any operation from or on the Premises, and to prevent any persons, including, but not limited to, members of the general public, and the AIRLINE employees and agents, from entering the Premises until such time as the Airport Director is provided with adequate evidence of insurance required herein. The AIRLINE further agrees to hold the COUNTY harmless for any damages resulting from such interruption of business and possession, including, but not limited to, damages resulting from any loss of income or business resulting from the COUNTY's action.

All contractors performing work on behalf of the AIRLINE pursuant to this LEASE shall obtain insurance subject to the same terms and conditions as set forth herein for the AIRLINE. The AIRLINE shall not allow contractors or subcontractors to work if contractors have less than the level of coverage required by the COUNTY from the AIRLINE under this LEASE. It is the obligation of the AIRLINE to provide written notice of the insurance requirements to every contractor and to receive proof of insurance prior to allowing any contractor to begin work within the Premises. Such proof of insurance must be maintained by the AIRLINE through the entirety of this LEASE and be available for inspection by a COUNTY representative at any reasonable time.

All insurance policies required by this LEASE shall declare any deductible or self-insured retention (SIR) in an amount in excess of \$25,000.00 (\$5,000.00 for automobile liability), which shall specifically be approved by the COUNTY's County Executive Office (CEO)/Office of Risk Management. The AIRLINE shall be responsible for reimbursement of any deductible to the insurer. Any SIRs or deductibles shall be clearly stated on the certificate of insurance.

If the AIRLINE fails to maintain insurance acceptable to the COUNTY for the full term of this LEASE, the COUNTY may terminate this LEASE.

### **Qualified Insurer**

The policy or policies of insurance must be issued by an insurer which meets the minimum insurance company ratings as determined by the most current edition of the *Best's Key Rating Guide/Property-Casualty/United States* or [www.ambest.com](http://www.ambest.com) shall be A- (Secure Best's Rating) and VIII (Financial Size Category). A California admitted carrier is preferred.

The policy or policies of insurance maintained by the AIRLINE shall provide the minimum limits and coverage as set forth below:

<b>Coverages</b>	<b>Minimum Limits</b>
Aircraft Liability Insurance	\$250,000,000.00 per occurrence
Commercial General Liability with broad form property damage, contractual liability and products liability	\$1,000,000.00 combined single limit per occurrence; \$2,000,000.00 aggregate





**JOHN WAYNE AIRPORT  
CERTIFICATED PASSENGER AIRLINE LEASE**

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<b>Coverages</b>	<b>Minimum Limits</b>
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000.00 combined single limit per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000.00 per occurrence
Fire and Extended Coverage including contents and business income	The AIRLINE shall insure all AIRLINE constructed buildings, facilities and improvements, including water damage and debris cleanup, to at least 90% of their replacement cost, using a standard form fire insurance policy containing the "extended coverage" endorsement.  Prior to the completion of construction, the AIRLINE shall provide such insurance by a Builder's Risk insurance policy.

All general liability insurance required by this LEASE shall be at least \$1,000,000.00 combined single limit per occurrence. The minimum aggregate limit for the Commercial General Liability policy shall be \$2,000,000.00. All aircraft liability insurance required by this LEASE shall be at least \$250,000,000.00 per occurrence.

The COUNTY shall be added as an additional insured on all insurance policies required by this LEASE with respect to work done by the AIRLINE under the terms of this LEASE (except Workers' Compensation/Employers' Liability, and Fire and Extended Coverage).

The COUNTY shall be a loss payee on the Fire policy.

All insurance policies required by this LEASE shall be primary insurance, and any insurance maintained by the COUNTY shall be excess and non-contributing with insurance provided by these policies.

All insurance policies required by this LEASE shall give the COUNTY thirty (30) days notice in the event of cancellation. This shall be evidenced by an endorsement separate from the certificate of insurance. In addition, the cancellation Section must include language as follows:

**SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL**



## JOHN WAYNE AIRPORT CERTIFICATED PASSENGER AIRLINE LEASE

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~~ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT. BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENT OR REPRESENTATIVE.~~

All insurance policies required by this LEASE shall waive all rights of subrogation against the COUNTY and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

The Commercial General Liability and Aircraft Liability policies shall contain a severability of interests section.

The AIRLINE is aware of the provisions of Section 3700 of the CAL. LAB. CODE, which requires every employer to be insured against liability for workers' compensation or be self-insured in accordance with provisions of that code. The AIRLINE will comply with such provisions and shall furnish the COUNTY satisfactory evidence that the AIRLINE has secured, for the period of this LEASE, statutory workers' compensation insurance and employers' liability insurance with minimum limits of \$1,000,000 per occurrence.

The COUNTY expressly retains the right to require the AIRLINE to increase or decrease insurance of any of the above insurance types throughout the term of this LEASE. Any increase or decrease in insurance will be as deemed by the County of Orange Risk Manager as appropriate to adequately protect the COUNTY.

The COUNTY shall notify the AIRLINE in writing of changes in the insurance requirements. If the AIRLINE does not deposit copies of acceptable certificates of insurance and endorsements with the COUNTY incorporating such changes within thirty (30) days of receipt of such notice, this LEASE may be in breach without further notice to the AIRLINE, and the COUNTY shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit the AIRLINE's liability hereunder nor to fulfill the indemnification provisions and requirements of this LEASE.

### **SECTION 12.02 INDEMNITY**

To the fullest extent authorized by law, the AIRLINE shall indemnify, defend, and hold harmless the COUNTY, its officers, and employees, from and against any and all claims, judgments, damages, penalties, fines, costs, orders, and lawsuits, arising out of the AIRLINE's operations at JWA, including the cost of defense arising therefrom. The AIRLINE's indemnity obligations stated hereinabove also apply to those actions arising from and which involve the AIRLINE's officers, agents, subcontractors, and employees. The AIRLINE's indemnity obligations stated hereinabove shall not apply in the event of any loss, damage, or expense arising from the sole or active negligence and/or willful misconduct of the COUNTY or of the COUNTY's officers, employees, agents, servants, or independent contractors.



## **JOHN WAYNE AIRPORT CERTIFICATED PASSENGER AIRLINE LEASE**

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In the event the indemnitees described hereinabove are named as defendants or respondents in any lawsuit or administrative proceeding, the AIRLINE shall, at the request of the COUNTY, represent the indemnitee with qualified counsel that is acceptable to the COUNTY.

In the event that a monetary judgment is awarded against the COUNTY and the AIRLINE because of the concurrent negligence of the COUNTY and the AIRLINE or their respective officers, subcontractors, or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Both the COUNTY and the AIRLINE agree that neither party shall request a jury apportionment. Nothing stated in this LEASE and in this indemnity obligation shall be construed as authorizing any award of attorneys' fees in any action to enforce the terms of this LEASE. The rights and obligations set forth in this paragraph shall survive the termination of this LEASE.

### **ARTICLE XIII**

#### **FEDERAL GRANT ASSURANCES AND REQUIREMENTS**

##### **SECTION 13.01     NONDISCRIMINATION**

- A. The AIRLINE, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that:
- (1) No person on the grounds of race, color, or national origin shall be excluded from participation, denied the benefits of, or be otherwise subjected to discrimination in the use of the Leased Premises.
  - (2) This LEASE is subject to the requirements of the U.S. Department of Transportation's regulations, 49 C.F.R. Part 23, Subpart F. The AIRLINE agrees that it will not discriminate against any business owner because of the owner's race, color, national origin or sex in connection with the award or performance of any agreement covered by 49 C.F.R. Part 23, Subpart F.
  - (3) In the construction of any improvements on, over or under the Leased Premises and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination.
  - (4) The AIRLINE shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to 49 C.F.R. Part 21, Subtitle A, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the CIVIL RIGHTS ACT OF 1964, and as said regulations may be amended.



## JOHN WAYNE AIRPORT CERTIFICATED PASSENGER AIRLINE LEASE

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- (5) In the event facilities are constructed, maintained or otherwise operated on the Leased Premises for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, the AIRLINE shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 C.F.R. Part 21, Subtitle A, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the CIVIL RIGHTS ACT OF 1964, and as said regulations may be amended.
- B. In the event of breach of any of the above nondiscrimination covenants, the COUNTY shall have the right to terminate the LEASE and to re-enter and repossess said land and the facilities thereon, and hold the same as if said LEASE had never been made or issued. This provision does not become effective until the procedures of 49 C.F.R. Part 21, are followed and completed, including expiration of appeal rights.
- C. The AIRLINE shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service.
- D. Noncompliance with Paragraph C above shall constitute a material breach thereof and, in the event of such noncompliance, the COUNTY shall have the right to terminate this LEASE and the estate hereby created without liability therefor; or, at the election of the COUNTY or United States, either or both said governments shall have the right to judicially enforce Paragraphs A, B, and C.
- E. The AIRLINE agrees that it shall insert the above four paragraphs in any lease (agreement, contract, *etc.*) by which said AIRLINE grants a right or privilege to any person, firm or corporation to render accommodations and/or service to the public on the Leased Premises.

### **SECTION 13.02 DEVELOPMENT/MAINTENANCE OF AIRPORT**

The COUNTY reserves the right to further develop or improve the Airport as it sees fit, regardless of the desires or view of the AIRLINE, and without interference or hindrance.

The COUNTY reserves the right, but shall not be obligated to the AIRLINE, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of the AIRLINE in this regard.

### **SECTION 13.03 LEASE SUBORDINATE TO AGREEMENT WITH U.S.A.**

This LEASE shall be subordinate to the provisions and requirements of any existing or future agreement between the COUNTY and United States or any lawful requirement of the United States relative to the development, operation or maintenance of the Airport.



## **JOHN WAYNE AIRPORT CERTIFICATED PASSENGER AIRLINE LEASE**

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### **SECTION 13.04 USE TO CONFORM WITH FEDERAL AVIATION REGULATIONS**

The AIRLINE agrees that the AIRLINE's use of the Leased Premises, including all construction thereon, shall conform to applicable FEDERAL AVIATION REGULATIONS.

The AIRLINE agrees to comply with the notification and review requirements covered in Part 77 of the FEDERAL AVIATION REGULATIONS (as same may be amended from time to time or such other regulation replacing Part 77 as may be adopted by Federal authority) prior to the construction of the improvements described herein and prior to the construction of any future structure or building upon the Leased Premises or in the event of any planned modification or alteration of any present or future building or structure situated on the Leased Premises.

### **SECTION 13.05 NONEXCLUSIVE RIGHT**

It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of §308a of the FEDERAL AVIATION ACT OF 1958 (49 U.S.C. §1349).

### **SECTION 13.06 RESERVATION OF AVIGATION EASEMENT**

The COUNTY hereby reserves for itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the air space above the surface of the Leased Premises, together with the right to cause in said air space such noise as may be inherent in the operation of aircraft now known or hereafter used for navigation of, or flight in the air, using said air space, or landing at, taking off from, or operating at the Airport.

### **SECTION 13.07 HEIGHT LIMITATION OF STRUCTURES**

The AIRLINE by accepting this LEASE expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object nor permit the growth of any tree on the land leased hereunder (if any) which would penetrate the imaginary surfaces as defined in Part 77 of the FEDERAL AVIATION REGULATIONS (as same may be amended from time to time or as such regulation replacing Part 77 may be adopted by Federal authority) or such other lesser altitude as may be required by the COUNTY. In the event the aforesaid covenants are breached, the COUNTY reserves the right to enter upon the land leased hereunder and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of the AIRLINE. The AIRLINE shall be responsible for filing Form 7460 for any construction and/or height of construction equipment with the FAA, if required.

### **SECTION 13.08 NONINTERFERENCE WITH AIRCRAFT**

The AIRLINE by accepting this LEASE agrees for itself, its successors and assigns that it will not make use of the Leased Premises in any manner which might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. In the event the aforesaid



## **JOHN WAYNE AIRPORT CERTIFICATED PASSENGER AIRLINE LEASE**

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covenant is breached, the COUNTY reserves the right to enter upon the leased premises and hereby cause the abatement of such interference at the expense of the AIRLINE.

### **SECTION 13.09      WAR OR NATIONAL EMERGENCY**

This LEASE and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of the Airport or the exclusive or nonexclusive use of the Airport by the United States during the time of war or national emergency.

### **SECTION 13.10      AFFIRMATIVE ACTION REQUIREMENTS**

The AIRLINE assures that it will undertake an affirmative action program as required by 14 C.F.R. Part 152, Subpart E, to insure that no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from participating in any employment activities covered in 14 C.F.R. Part 152, Subpart E. The AIRLINE assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Subpart. The AIRLINE assures that it will require that its covered suborganizations provide assurances to the AIRLINE that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 C.F.R. Part 152, Subpart E, to the same effect.

## **ARTICLE XIV**

### **MISCELLANEOUS PROVISIONS**

#### **SECTION 14.01      TIME**

Time is of the essence in this LEASE.

#### **SECTION 14.02      LEASE ORGANIZATION**

The various headings and numbers herein, the grouping of provisions of this LEASE into separate sections and paragraphs, and the organization hereof, are for the purpose of convenience only and shall not be considered otherwise.

#### **SECTION 14.03      AMENDMENTS**

This LEASE sets forth all of the agreements and understandings of the parties with regard to its subject matter and any modification must be written and properly executed by both parties.

#### **SECTION 14.04      SIGNS**

The AIRLINE agrees not to construct, maintain or allow any sign upon the Leased Premises



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except as approved by the Airport Director. Unapproved signs, banners, flags, etc., may be removed by the Airport Director without prior notice to the AIRLINE.

### **SECTION 14.05 PERMITS AND LICENSES**

The AIRLINE shall be required to obtain any and all approvals, permits and/or licenses that may be required in connection with the operation of the Leased Premises as set out herein. No permit, approval or consent given hereunder by the COUNTY in its governmental capacity shall affect or limit the AIRLINE's obligations hereunder, nor shall any approvals or consents given by the COUNTY as a party to this LEASE be deemed approval as to compliance or conformance with applicable governmental codes, laws, ordinances, rules, or regulations.

### **SECTION 14.06 TAXES AND ASSESSMENTS**

This LEASE may create a possessory interest that is subject to the payment of taxes levied on such interest. It is understood and agreed that all taxes and assessments (including but not limited to said possessory interest tax) that become due and payable upon the Leased Premises or upon fixtures, equipment or other property installed or constructed thereon, shall be the full responsibility of the AIRLINE, and the AIRLINE shall cause said taxes and assessments to be paid promptly.

### **SECTION 14.07 CIRCUMSTANCES WHICH EXCUSE PERFORMANCE**

If either party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, restrictive governmental laws or regulations or other cause without fault and beyond the control of the party obligated (financial inability excepted), performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. However, nothing in this Section shall excuse the AIRLINE from the prompt payment of any rental or other charge required of the AIRLINE except as may be expressly provided elsewhere in this LEASE.

### **SECTION 14.08 PARTIAL INVALIDITY**

If any term, covenant, condition, or provision of this LEASE is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

### **SECTION 14.09 WAIVER OF RIGHTS**

The failure of the COUNTY or the AIRLINE to insist upon strict performance of any of the terms, covenants or conditions of this LEASE shall not be deemed a waiver of any right or remedy that the COUNTY or the AIRLINE may have, and shall not be deemed a waiver of the right to require strict performance of all the terms, covenants and conditions of the LEASE thereafter, nor a waiver of any remedy for the subsequent breach or default of any term, covenant



## **JOHN WAYNE AIRPORT CERTIFICATED PASSENGER AIRLINE LEASE**

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or condition of this LEASE. Any waiver, in order to be effective, must be signed by the party whose right or remedy is being waived.

### **SECTION 14.10      RESERVATIONS TO THE COUNTY**

The Leased Premises are accepted "as is" and the AIRLINE is subject to any and all existing easements and encumbrances. The COUNTY reserves the right to install, lay, construct, maintain, repair and operate sanitary sewers, drains, storm water sewers, pipelines, manholes and connections; water, oil and gas pipelines; telephone and telegraph power lines; and the appliances and appurtenances necessary or convenient in connection therewith, in, over, upon, through, across, under and along the Leased Premises or any part thereof; and to enter the Leased Premises for any and all such purposes. The COUNTY also reserves the right to grant franchises, easements, rights of way and permits in, over, upon, through, across, under and along any and all portions of the Leased Premises. No right reserved by the COUNTY in this Section shall be so exercised as to interfere unreasonably with the AIRLINE's operations hereunder or to impair the security of any secured creditor of the AIRLINE.

The COUNTY agrees that rights granted to third parties by reason of this Section shall contain provisions that the surface of the land shall be restored as nearly as practicable to its original condition upon the completion of any construction. The COUNTY further agrees that should the exercise of these rights temporarily interfere with the use of any or all of the Leased Premises by the AIRLINE, the AIRLINE shall only be entitled to a reduction in the rent payable to the COUNTY during the period of interference, which shall be reduced in proportion to the interference with AIRLINE's use of the Leased Premises. The AIRLINE shall not be entitled to any other form of compensation.

### **SECTION 14.11      AUTHORITY OF THE AIRLINE**

If the AIRLINE is a corporation, each individual executing this LEASE on behalf of said corporation represents and warrants that he is duly authorized to execute and deliver this LEASE on behalf of said corporation, in accordance with the by-laws of said corporation, and that this LEASE is binding upon said corporation.

### **SECTION 14.12      PUBLIC RECORDS**

The AIRLINE understands that written information submitted to and/or obtained by the COUNTY from the AIRLINE related to this LEASE and/or the Leased Premises, either pursuant to this LEASE or otherwise, may be open to inspection by the public pursuant to the CAL. PUBLIC RECORDS ACT (CAL. GOV. CODE §§6250 *et seq.*) as now in force or hereafter amended, or any Act in substitution thereof, or otherwise made available to the public.

### **SECTION 14.13      RELATIONSHIP OF PARTIES**

The relationship of the parties hereto is that of lessor and tenant, and it is expressly understood and agreed that the COUNTY does not in any way or for any purpose become a partner of the





**JOHN WAYNE AIRPORT  
CERTIFICATED PASSENGER AIRLINE LEASE**

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AIRLINE in the conduct of the AIRLINE's business or otherwise, or a joint venturer with the AIRLINE; and the provisions of this LEASE and the agreements relating to rent payable hereunder are included solely for the purpose of providing a method by which rental payments are to be measured and ascertained. This LEASE is intended for the sole benefit of the parties hereto and their successors, and, unless otherwise provided herein, or by law, no rights are created, or are intended to be created, for the benefit of, or enforceable by, any third parties.

**SECTION 14.14    NOTICES**

All notices pursuant to this LEASE shall be addressed to either party as set forth below and shall be sent through United States mail in the State of California, duly registered or certified, return receipt requested with postage prepaid, or by an overnight carrier service. If any notice is sent by an overnight carrier service, the same shall be deemed to have been served or delivered twenty-four (24) hours after mailing thereof. Notwithstanding the above, the COUNTY may also provide notices to the AIRLINE by personal delivery or by regular mail postage prepaid and any such notice so given shall be deemed to have been given upon the date of personal delivery or three (3) days after the date of deposit in the United States Mail, respectively.

TO: COUNTY

John Wayne Airport  
3160 Airway Avenue  
Costa Mesa, CA 92626

TO: AIRLINE

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Either party hereto may from time to time, by written notice to the other in the method described above, designate a different address which shall be substituted for the one above specified.

IN WITNESS WHEREOF, the parties have executed this LEASE the day and year first above written.

\_\_\_\_\_  
(AIRLINE)

By: \_\_\_\_\_

By: \_\_\_\_\_

APPROVED AS TO FORM:

County Counsel

By: \_\_\_\_\_

APPROVED AS TO AUDIT AND ACCOUNTING:

Auditor-Controller

By: \_\_\_\_\_

RECOMMENDED FOR APPROVAL:

John Wayne Airport

By: \_\_\_\_\_

Alan L. Murphy  
Airport Director

Signed and certified that a copy of this document has been delivered to the Chair of the Board per G.C. Sec. 25103, Reso 79-1535

Attest:

COUNTY

COUNTY OF ORANGE

By: \_\_\_\_\_

Chair, Board of Supervisors

\_\_\_\_\_  
Darlene J. Bloom  
Clerk of the Board of Supervisors  
of Orange County, California

**EXHIBIT D-2**  
**CERTIFICATED PASSENGER AIRLINE OPERATING LICENSE**  
**(COMMERCIAL LICENSE)**



**CERTIFICATED PASSENGER  
AIRLINE OPERATING LICENSE**

**Dated** \_\_\_\_\_

**Between**

**County of Orange**

**and**

\_\_\_\_\_  
**Airline**



# JOHN WAYNE AIRPORT CERTIFICATED PASSENGER AIRLINE OPERATING LICENSE

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EXHIBIT B    MAP – APRON AREA

EXAMPLE



**JOHN WAYNE AIRPORT  
CERTIFICATED PASSENGER AIRLINE OPERATING LICENSE**

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THIS CERTIFICATED PASSENGER AIRLINE OPERATING LICENSE is made and entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the COUNTY OF ORANGE, a political subdivision of the State of California ("COUNTY"), and \_\_\_\_\_ ("LICENSEE").

**RECITALS**

WHEREAS, the COUNTY, through its Board of Supervisors, is the owner and proprietor of John Wayne Airport ("JWA" or "the Airport"), located in the County of Orange, State of California, and operates and maintains the Airport as a governmental function for the primary purpose of providing air transportation to the public; and

WHEREAS, the LICENSEE is engaged in the business of commercial air transportation of persons, property, cargo and mail as a scheduled air carrier and is certificated or otherwise authorized by the United States of America to engage in such business; and

WHEREAS, the LICENSEE desires to enter into an agreement addressing certain premises, facilities, rights, licenses, services and privileges at the Airport; and

WHEREAS, as part of its ongoing effort to operate the Airport in a manner sensitive to the residents who live under the Airport's approach and departure corridors, the COUNTY has developed one of the most stringent access and noise abatement programs in the country. The Airport monitors all aircraft operations, both commercial and private, for compliance with the program. These noise abatement and access restrictions are embodied in the 1985 Settlement Agreement between the COUNTY, City of Newport Beach and other parties, as well as in ordinances, resolutions (including Resolutions No. 85-255, 85-256, 85-259, 85-1231, 85-1232, and 85-1233), regulations (including the Phase 2 Commercial Airline Access Plan and Regulation) and policies of the COUNTY, as amended; and

WHEREAS, in 2003, the 1985 Settlement Agreement was amended by the COUNTY and the parties and approved on February 25, 2005 by the United States District Court to, among other things, increase the authorized passenger levels at the Airport; and

WHEREAS, the 2003 amendments to the 1985 Settlement Agreement preserve and continue to implement important restrictions on the use of JWA, "grandfathered" under the AIRPORT NOISE AND CAPACITY ACT OF 1990 ("ANCA"), which reflect and accommodate historical policy decisions of the Board of Supervisors regarding the appropriate point of balance between the competing interests of the air transportation and aviation community and local residents living in the vicinity of the Airport. These policy decisions address, among other issues, existing nighttime operations restrictions and maximum permitted single event noise levels; and

WHEREAS, the COUNTY and the LICENSEE mutually desire to enter into a LICENSE in order to provide air transportation services to the community and its visitors; and

WHEREAS, the COUNTY has the right to permit and grant the use of its property at the Airport to the LICENSEE for the operation of the LICENSEE's air transportation services; and



**JOHN WAYNE AIRPORT  
CERTIFICATED PASSENGER AIRLINE OPERATING LICENSE**

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WHEREAS, the LICENSEE acknowledges that this LICENSE is being entered into under the provisions of CAL. PUBLIC UTIL. CODE §§21690.5, *et seq.*, and in particular, §21690.9.

NOW, THEREFORE, in consideration of the promises and mutual covenants hereinafter contained to be observed and performed by the respective parties hereto,

THE PARTIES HERETO COVENANT, AGREE AND BIND THEMSELVES AS FOLLOWS:

**ARTICLE I**

**DEFINITIONS**

The following words, terms and phrases whenever used in this LICENSE shall have the meaning and significance attached to them in this Article, unless otherwise apparent from context.

**SECTION 1.01      AAAC**

"AAAC" shall mean the John Wayne Airport – Airport Airline Affairs Committee. The AAAC is composed of the airline properties representatives for the carriers serving John Wayne Airport.

**SECTION 1.02      AAAC CHAIR**

"AAAC CHAIR" shall mean the Chairperson elected by the AAAC to act the spokesperson for carriers serving John Wayne Airport.

**SECTION 1.03      ACCESS PLAN**

"Access Plan" shall mean the Phase 2 Commercial Airline Access Plan and Regulation for John Wayne Airport, Orange County, as that plan existed when originally adopted and approved by the Orange County Board of Supervisors in 1990, as it has been amended by the Board of Supervisors from time to time, and as it may be amended by the Board of Supervisors at any time during the term of this LICENSE.

**SECTION 1.04      ADD**

"ADD" shall mean Average Daily Departure, as defined in the Access Plan. Except as expressly provided in the Access Plan, all commercial air carrier departures at JWA are regulated departures and require an ADD allocation. ADD allocations are the exclusive property of the COUNTY.

**SECTION 1.05      AIRLINE RATES AND CHARGES**

"Airline Rates and Charges" shall mean all rates, fees and charges payable to the COUNTY by the LICENSEE as specified herein.



**JOHN WAYNE AIRPORT  
CERTIFICATED PASSENGER AIRLINE OPERATING LICENSE**

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**SECTION 1.06      AIRPORT**

"Airport" shall mean the John Wayne Airport, Orange County, California.

**SECTION 1.07      AIRPORT DIRECTOR**

"Airport Director" shall mean the Director of John Wayne Airport, County of Orange, as appointed by the County Executive Office, or Director's designee.

**SECTION 1.08      APRON AREA**

"Apron Area" shall mean the land identified as Apron Area in Exhibit A attached hereto, and, except as otherwise provided herein, all facilities, equipment and improvements now or hereafter located thereon.

**SECTION 1.09      AUDITOR-CONTROLLER**

"Auditor-Controller" shall mean the Auditor-Controller, County of Orange, or designee.

**SECTION 1.10      BOARD OF SUPERVISORS**

"Board of Supervisors" shall mean the elected (or duly appointed) members of the Board of Supervisors of the County of Orange, as governing body of the County and proprietor of the Airport through its Airport Director, or designees, as appropriate.

**SECTION 1.11      CERTIFICATED MAXIMUM LANDING WEIGHT**

"Certificated Maximum Landing Weight" shall mean the current maximum allowable gross landing weight of aircraft operated by the LICENSEE and certificated by the Federal Aviation Administration (FAA) for operation at the Airport.

**SECTION 1.12      COMMON USE AREA**

"Common Use Area" shall mean the nonexclusive use of space, in common with other airlines, located in the Terminal, as shown on Exhibit B.

**SECTION 1.13      COUNTY**

"COUNTY" shall mean the County of Orange, a political subdivision of the State of California.

**SECTION 1.14      DOT**

"DOT" shall mean the U.S. Department of Transportation.



**JOHN WAYNE AIRPORT  
CERTIFICATED PASSENGER AIRLINE OPERATING LICENSE**

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**SECTION 1.15      FAA**

"FAA" shall mean the Federal Aviation Administration created under the Federal Aviation Act of 1958, or such successor agency as may from time to time have similar jurisdiction over LICENSEE or its business, and the Airport.

**SECTION 1.16      GROUND SERVICE EQUIPMENT**

Ground Service Equipment ("GSE") shall mean any auxiliary power unit, mobile stairs, aircraft support equipment, machinery, spare parts, or other equipment used or stored by any qualified air carrier in support of its operations at JWA.

**SECTION 1.17      HAZARDOUS SUBSTANCES**

"Hazardous Substances" are defined in Article V, Section 5.01.

**SECTION 1.18      INTERNATIONAL ARRIVAL FACILITY**

International Arrival Facility ("IAF") shall mean the areas of the terminal that house U.S. Customs and Border Protection and are for the use of arriving international passengers.

**SECTION 1.19      NON STORM WATER DISCHARGE**

"Non Storm Water Discharge" shall mean any discharge to storm sewer systems that is not entirely composed of storm water. "Non Storm Water Discharge" includes "Unauthorized Non Storm Water Discharges" and "Authorized Non Storm Water Discharges" as defined by the State Water Resources Control Board's National Pollutant Discharge Elimination System General Permit for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities.

**SECTION 1.20      OPERATING AREA**

"Operating Area" shall mean the areas of the Airport available to LICENSEE for the operation of its schedule Airline service.

**SECTION 1.21      PFC**

"PFC" shall mean federally approved Passenger Facility Charges or passenger facility fees, as authorized by 49 U.S.C. § 40117 and regulated by 14 C.F.R. Part 158, as such statute and regulation currently exist or as they may be amended during the term of this LICENSE.

**SECTION 1.22      RON**

"RON" shall mean the remain overnight positions where the LICENSEE's aircraft are required to park when they "remain overnight" at JWA.



**JOHN WAYNE AIRPORT  
CERTIFICATED PASSENGER AIRLINE OPERATING LICENSE**

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**SECTION 1.23      STORM WATER**

"Storm Water" shall mean storm water runoff, snowmelt runoff, and storm water surface runoff and drainage.

**SECTION 1.24      TERMINAL**

"Terminal" shall mean the Thomas F. Riley commercial passenger terminal and concourses at John Wayne Airport, as may be modified at any time during the term of this LICENSE.

**SECTION 1.25      TSA**

"TSA" shall mean the Transportation Security Administration of the U.S. Department of Homeland Security, the federal agency responsible for regulation of airport security, or any such successor agency.

**ARTICLE II**

**TERM OF LICENSE**

**SECTION 2.01      TERM OF LICENSE**

The term of this LICENSE shall commence on \_\_\_\_\_, 2011, and shall continue on a month-to-month basis until terminated by either party.

**SECTION 2.02      TERMINATION FOR CONVENIENCE**

This LICENSE may be terminated for convenience by either party for any reason, and without cause, upon thirty (30) days written notice.

**ARTICLE III**

**FEES AND CHARGES**

**SECTION 3.01      FEES AND CHARGES**

The fees and charges contained in this LICENSE are established in accordance with (i) Resolution 02-062 dated March 12, 2002 (or as subsequently amended), which reasserts and establishes the John Wayne Airport Revenue Planning Policy, and (ii) the Bond Indenture for the Airport Revenue Bonds, Series 1987, and the First Supplemental, Second Supplemental, Third Supplemental, and Fourth Supplemental Indenture, Series 1993, 1997, 2003 and 2009. The Airport Director and the AAAC Chair shall present any modifications to the fees and charges to the AAAC prior to implementation.

- A. The LICENSEE shall make payment of the following fees and charges which shall be due and payable monthly in advance on the first day of each month with a 15-day grace



**JOHN WAYNE AIRPORT**  
**CERTIFICATED PASSENGER AIRLINE OPERATING LICENSE**

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period; and the LICENSEE agrees that the COUNTY will not invoice for such fees and charges:

(1) **Common Use Areas**

- (a) Arrival Level. Fees shall be established by the COUNTY for shared use of baggage claim and baggage make-up areas. Said fees shall be established on the basis of allocating the Airport's total costs and expenses associated with the baggage claim and baggage make-up areas to the commercial airlines in the terminal accordingly: twenty percent (20%) of the costs to be shared evenly among the commercial airlines and eighty percent (80%) of the costs to be shared based on each commercial airline's percentage of total deplaned passengers at the Airport including their commuter affiliates.
- (b) Departure Level. Fees shall be established by the COUNTY for shared use of departure level common areas including hold-rooms, airside concourses, baggage/passenger screening areas and security areas. Said fees shall be established by allocating the Airport's total costs and expenses associated with departure level common areas accordingly: ten percent (10%) of the costs to be shared evenly among the commercial airlines in the terminal, forty-five percent (45%) of the costs to be shared based on each commercial airline's percentage of total enplaned passengers at the Airport including their commuter affiliates, and forty-five percent (45%) of the costs to be shared based on each commercial airline's percentage of total aircraft departures.

The monthly fees for arrival and departure level common areas shall be estimated by the COUNTY and recalculated based on actual operations on a six months basis or such other intervals as approved by the COUNTY. At the end of each six (6) month period the COUNTY shall establish monthly fees for the next six (6) month period and issue credits for any overpayments by the LICENSEE or invoice the LICENSEE for any underpayments for the previous period.

In the event an obligation to pay fees begins or terminates on some day other than the first or last day of the month, the fees shall be prorated to reflect the actual period of use on the basis of a thirty (30) day month. The fees for any partial calendar month during which this LICENSE becomes effective will be payable on such effective date.

- (c) IAF. Fees shall be established by the COUNTY for shared use of the IAF. Said fees shall be established on the basis of allocating the Airport's total costs and expenses associated with the IAF.
- (d) Common Use Passenger Processing System. Fees shall be established by the COUNTY for the implementation and maintenance of the Common





## JOHN WAYNE AIRPORT CERTIFICATED PASSENGER AIRLINE OPERATING LICENSE

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Use Passenger Processing System (CUPPS). Said fees shall be established by allocating the Airport's total costs and expenses associated with departure level common areas accordingly: ten percent (10%) of the costs to be shared evenly among the commercial airlines in the terminal, forty-five percent (45%) of the costs to be shared based on each commercial airlines' percentage of total enplaned passengers at the Airport, including their commuter affiliates, and forty-five percent (45%) of the costs to be shared based on each commercial airlines' percentage of total aircraft departures.

(2) **Additional Fees**

Additional fees shall be established by the COUNTY for including, but not limited to, utility expenses, janitorial expenses, and annual security expenses resulting from any security measures implemented after September 11, 2001. Such fees shall be established annually by allocating Airport's total cost accordingly: ten percent (10%) of the cost to be shared evenly among the commercial airlines in the terminal, forty five percent (45%) of the cost to be shared based on each commercial airlines' percentage of total enplaned passengers at Airport including their commuter affiliates, and forty five percent (45%) of the costs to be shared based on each commercial airline's percentage of total aircraft departures.

B. The LICENSEE shall pay the following fees and charges payable monthly in arrears on or before the twentieth (20th) day of each month with no grace period. The LICENSEE agrees that the COUNTY will not invoice for the following fees and charges:

- (1) Landing fees based on the latest schedule established by the COUNTY covering the operation of scheduled airlines and commercial operations at the Airport. Landing fees shall be expressed in terms of a rate per one thousand (1,000) pounds of maximum gross landing weight of aircraft certified by the FAA.
- (2) Aircraft RON parking fees based on the latest schedule established by the COUNTY. Aircraft parking fees shall be expressed in dollars per night.
- (3) Operations fees (gate use fees) based on the schedule established by the COUNTY. Operations fees shall be expressed in dollars per daily departure.
- (4) Equipment Storage fees based on the schedule established by the COUNTY. Equipment Storage fees shall be expressed in dollars per square foot.
- (5) IAF fees based on the schedule established by the COUNTY for commercial carriers operating international flights.

C. Upon thirty (30) days written notice from the Airport Director, the COUNTY may modify the fees and charges described in Paragraphs A and B of section 3.01. Said modification of rates and charges may not occur more often than every six (6) months.



## JOHN WAYNE AIRPORT CERTIFICATED PASSENGER AIRLINE OPERATING LICENSE

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Changes may include fee revisions, establishment of new fee classifications or such other changes as needed to respond to the LICENSEE's use of Airport, the need for the COUNTY to receive fair and equitable fees and charges for all uses of Airport and to insure Airport is operated at no cost to the local taxpayer. With regard to any dispute as to what may constitute reasonable fees and charges, the LICENSEE shall first exhaust all remedies provided by applicable federal law and FAA regulations.

Notwithstanding anything in this LICENSE to the contrary, all amounts payable by the LICENSEE to or on behalf of the COUNTY under this LICENSE, whether or not expressly denominated as rent, shall constitute rent for the purposes of the U.S. BANKRUPTCY CODE, 11 U.S.C. §502(b)(6).

The LICENSEE shall notify Airport in writing within thirty (30) days of filing a petition for Bankruptcy.

### **SECTION 3.02      PAYMENT PROCEDURE**

- A.    **Place of Payment and Filing.** Payments and statements required by Sections 3.01 and 4.06 in this LICENSE shall be delivered to the County of Orange, Office of the Auditor-Controller, John Wayne Airport Accounting Services, 3160 Airway Avenue, Costa Mesa, California 92626. The designated place of payment and filing may be changed at any time by the COUNTY upon ten (10) days' written notice to the LICENSEE. Payments may be made by check payable to the County of Orange. The LICENSEE assumes all risk of loss if payments are made by mail.
- B.    **Form of Payment.** All sums due under this LICENSE shall be paid in lawful money of the United States of America without offset or deduction or prior notice or demand. No payment by the LICENSEE or receipt by the COUNTY of a lesser amount than the payment due shall be deemed to be other than on account of the payment due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and the COUNTY shall accept such check or payment without prejudice to the COUNTY's right to recover the balance of the amount due or pursue any other remedy in this LICENSE.

### **SECTION 3.03      CHARGE FOR LATE PAYMENT**

The LICENSEE hereby acknowledges that the late payment of fees and charges or any other sums due hereunder will cause the COUNTY to incur costs not contemplated by this LICENSE, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, administrative processing of delinquent notices, increased accounting costs, lost interest income.

Accordingly, if any payment of fees and charges as specified in Section 3.01 in this LICENSE entitled "FEES AND CHARGES" or of any other sum due to the COUNTY is not received by COUNTY by the due date, a late charge of one and one-half percent (1.5%) of the payment due and unpaid plus one hundred dollars (\$100) shall be added to the payment, and the total sum shall become immediately due and payable to the COUNTY. An additional charge of one and



## **JOHN WAYNE AIRPORT CERTIFICATED PASSENGER AIRLINE OPERATING LICENSE**

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one-half percent (1.5%) of said payment, excluding late charges, shall be added for each additional month that said payment remains unpaid.

The LICENSEE and the COUNTY hereby agree that such late charges represent a fair and reasonable estimate of the costs that the COUNTY will incur by reason of the LICENSEE's late payment. Acceptance of such late charges (and/or any portion of the overdue payment) by the COUNTY shall in no event constitute a waiver of LICENSEE's default with respect to such overdue payment, or prevent the COUNTY from exercising any of the other rights and remedies granted hereunder.

### **SECTION 3.04 PASSENGER FACILITY CHARGE**

The COUNTY expressly reserves the right to impose PFCs on LICENSEE's passengers for the use of the Airport in accordance with 49 U.S.C. § 40117 and applicable implementing regulations adopted by the FAA, 14 C.F.R. Part 158, as they may be amended from time to time (the "PFC Regulations").

The LICENSEE shall hold in trust for the COUNTY the net principal amount of all PFCs that are collected by the LICENSEE or its agents on behalf of the COUNTY. For the purposes of this Section 3.04, net principal amount shall mean the total principal amount of all PFCs that are collected by the LICENSEE or its agents on behalf of the COUNTY, reduced by any amount that the LICENSEE is permitted to retain pursuant to 49 U.S.C. § 40117 and the PFC Regulations. Monthly PFCs collected by the LICENSEE shall be remitted to the COUNTY no later than the last day of the following calendar month or if that date falls on a weekend or holiday, the first business day thereafter. In addition, PFCs collected by the LICENSEE shall be remitted to the COUNTY at the address specified in Section 3.02, Part A, "Place of Payment and Filing" or at such other place as designated by the COUNTY.

Should the LICENSEE fail to remit the net principal amount of all PFCs to the COUNTY within five (5) days following the remittance date specified above, the LICENSEE shall be deemed to be in default pursuant to Article VIII hereof. In addition, any late payment of PFCs shall be subject to late fees computed at the rate of one and one-half percent (1.5%) per month of the payment due and unpaid plus one hundred dollars (\$100) or the highest rate allowable under applicable state law from the due date until paid in accordance with Section 3.03 of this LICENSE.

Nothing contained herein shall be construed to supersede the rights and obligations provided in 14 C.F.R. Part 158 regarding PFC's. In the event that a conflict exists between such federal regulation and this agreement, the federal regulation shall govern.

### **SECTION 3.05 PROVISION AGAINST SET-OFFS**

It is the obligation of the LICENSEE to pay all fees and charges, free of any set-offs or claims, in the amount and at the times specified in this LICENSE. In the event that the LICENSEE desires to contest the validity or amount of any such fees and charges, the LICENSEE shall first pay the same to the COUNTY and may then seek a refund in any appropriate forum.



## JOHN WAYNE AIRPORT CERTIFICATED PASSENGER AIRLINE OPERATING LICENSE

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### SECTION 3.06      SECURITY DEPOSIT

The LICENSEE, prior to the commencement of operations, shall deposit with the COUNTY a security deposit in the sum of Two Hundred Eighty One Thousand Forty Eight dollars (\$281,048.00), subject to the provisions for adjustment as provided hereinafter.

Concurrently with each revision of the fees and charges pursuant to the Section 3.01 in this LICENSE, the security deposit to be provided by the LICENSEE shall be adjusted to approximately three (3) times the estimated monthly fees and charges as determined by the Airport Director to guarantee the faithful performance by the LICENSEE of its obligations under this LICENSE and the payment of all fees and charges due hereunder. PFCs shall be excluded from the fees and charges used to determine the LICENSEE's security deposit.

The security deposit shall take one of the forms set out below and shall guarantee the LICENSEE's full and faithful performance of all the terms, covenants, and conditions of this LICENSE:

- A. An instrument or instruments of credit from one or more financial institutions, subject to regulation by the State of California or federal government, pledging that funds necessary to secure performance of the LICENSE terms, covenants, and conditions are on deposit and guaranteed for payment, and agreeing that said funds shall be trust funds securing the LICENSEE's performance and that all or any part shall be paid to the COUNTY, or order upon demand by Airport Director. Both the financial institution(s) and the form of the instrument(s) must be approved by Airport Director.
  
- B. A Faithful Performance Bond executed by a surety company or financial institution qualified and admitted to do business in the State of California and issued in a form, approved by the COUNTY. Under the bond, the surety company shall guarantee to COUNTY full and complete performance of all the terms, conditions and covenants herein to be performed on the part of the LICENSEE, including the payment of use fees, charges, as well as any and all other payments. Said bond shall be maintained at the cost of the LICENSEE throughout the existence of this LICENSE. Said Surety shall give Airport Director a minimum (30) days' prior written notice of cancellation or material change in said bond. Such cancellation or material change without Airport Director's prior written consent shall constitute a default under this LICENSE.

Regardless of the form in which the LICENSEE elects to make said security deposit, all or any portion of the principal sum shall be available unconditionally to the COUNTY for correcting any default or breach of this LICENSE by the LICENSEE, its successors or assigns, or for payment of expenses incurred by the COUNTY as a result of the failure of the LICENSEE, its successors or assigns, to faithfully perform all terms, covenants, and conditions of this LICENSE.

Should the LICENSEE elect to provide either an Instrument of Credit or a Faithful Performance Bond to fulfill the security deposit requirements of this LICENSE, said instrument or bond shall have the effect of releasing depository or creditor therein from liability on account of the



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payment of any or all of the principal sum to the COUNTY, or order upon demand by Airport Director.

In the event Airport Director withdraws all or any portion of the security deposit as provided herein, the LICENSEE shall, within ten (10) days of any withdrawal by Airport Director, replenish the security deposit to maintain it at amounts herein required throughout the LICENSE term. Failure to do so shall be deemed a default and shall be grounds for immediate termination of this LICENSE, as per article VIII of this LICENSE.

The LICENSEE shall be obligated to maintain the security deposit in effect until the expiration date of the LICENSE.

The security deposit, after deduction of all amounts due to the COUNTY, shall be rebated, reassigned, released or endorsed by the COUNTY to the LICENSEE or order, as applicable, after one hundred twenty (120) days have elapsed or at the time to be determined by the Airport Director, following the expiration date of the LICENSE term, provided the LICENSEE has fully and faithfully performed each and every term, covenant, and condition of this LICENSE.

**SECTION 3.07 NEW ENTRANT DEPOSIT**

A cash security deposit in the sum of Five Hundred Thousand Dollars (\$500,000.00) shall be provided by a new entrant LICENSEE prior to the commencement of operations.

This deposit shall be returned after six (6) months of continuous operation.

**ARTICLE IV**

**USE, OPERATION, MAINTENANCE AND CONDITION OF PREMISES**

**SECTION 4.01 USE**

The COUNTY hereby grants to the LICENSEE the authorization to conduct a scheduled commercial airline operation at the Airport and for no other purpose whatsoever. Said operation shall be conducted in accordance with an agreement between the LICENSEE and Delta Air Lines, Inc. and subject to the terms and conditions of the Certificated Passenger Airline Lease between the COUNTY and Delta Air Lines, Inc. The terms and conditions of this LICENSE shall prevail in the event of any conflict with said agreement between the LICENSEE and Delta Air Lines, Inc. and subject to the limitations set forth in the Sections 4.03 and 4.05 in this LICENSE, this operation may include any or all of the following uses and no other uses whatsoever:

**AUTHORIZED USES:**

- A. Loading and unloading of passengers.
- B. Loading and unloading of baggage.



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- C. Passenger processing operations.
- D. Flight operations office.
- E. The LICENSEE shall have the right to have its aircraft and other equipment serviced by suppliers of its choice. Such suppliers may provide materials and services, including, but not limited to, aviation fuel, ground vehicle fuel, lubricating oil, greases, parts, and all other materials and supplies and services required by the LICENSEE in the conduct of its air transportation service.
- F. Mail, freight and cargo operations but only when such activity is incidental to, and conducted in connection with, regularly scheduled commercial passenger operations. The LICENSEE shall not conduct any operations at the Airport with aircraft which are:
  - 1) Used at the Airport exclusively or primarily for mail, freight or cargo services; or
  - 2) Which have been modified in any manner for the purpose or the primary effect of reducing the passenger carrying capacity and increasing the cargo or freight carrying capacity of the aircraft.
- G. Air charter activities in compliance with Access Plan.
- H. Commissary services for the LICENSEE's employees at the Airport and in-flight catering services in support of the LICENSEE's air operations at the Airport. This does not permit the LICENSEE to conduct commissary or in-flight services for any other LICENSEE or other person at Airport without first obtaining a separate license to allow commissary or in-flight services for other airlines.
- I. Employee training incidental to the other uses permitted under this Section.
- J. Other uses as authorized by the Airport Director.

### **SECTION 4.02 USE OF PUBLIC AIRPORT FACILITIES**

The COUNTY grants the LICENSEE a LICENSE for the nonexclusive use of all public Airport facilities including, but not limited to, taxiways, runways, navigational aids and facilities relating thereto for purposes of landings, takeoffs and taxiing of the LICENSEE's aircraft. All such use shall be in accordance with the laws of the United States of America, the State of California, and the rules and regulations promulgated by their authority with reference to aviation and air navigation, and in accordance with all reasonable and applicable rules, regulations, and ordinances of the COUNTY now in force or hereafter prescribed or promulgated by ordinance or by law, including the Access Plan. The use of these areas shall be subject to the control and regulation of Airport Director.

This LICENSE for non exclusive use is subject to all rights reserved by the COUNTY to license, permit, authorize, regulate and relocate concessionaires and other Airport tenants, including but not limited to, booths, counters, offices, lockers and wall space.



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**SECTION 4.03      RULES AND REGULATIONS**

The COUNTY may adopt and enforce Rules and Regulations that the LICENSEE agrees to observe and obey, with respect to the use of the Airport and its appurtenances, facilities, improvements, equipment and services; provided that such rules and regulations shall not be inconsistent with safety, with applicable rules, regulations and orders including those of the FAA and TSA with respect to all operations of the Airport, and with the terms of and LICENSEE's rights under this LICENSE. Except in the case of emergency, the COUNTY shall give the LICENSEE written notice and opportunity to comment on any proposed changes or additions to the rules and regulations that could impact the LICENSEE's operations at the Airport before such proposed rules and regulations are adopted by the COUNTY. If requested, the COUNTY shall promptly provide a copy of such rules and regulations to the LICENSEE.

The LICENSEE's operation under the LICENSE shall comply with all Airport Rules and Regulations and shall observe, obey, comply with and not otherwise hinder or obstruct any and all rules, regulations, laws, ordinances, statutes or orders of any governmental authority, whether federal, state, or local, lawfully exercising authority over the Airport or the activities thereon, including compliance with FAA, TSA and Airport security rules, regulations and plans.

To the fullest extent authorized by law, the LICENSEE shall be liable to the COUNTY for any and all claims, demands, damages, fines or penalties of any nature whatsoever which may be imposed upon the COUNTY due to the LICENSEE's violation of any governmental rules, regulations or standards as now or may hereafter be promulgated or enacted, related to LICENSEE's operation under this LICENSE, including, but not limited to, the payment of any fines or penalties for any breach of security, arising from the unauthorized entry of any person or vehicle onto the Airport or from any other violations caused directly or indirectly by the act, omission, negligence, abuse or carelessness on the part of the LICENSEE, its employees, subtenants, agents or suppliers related to LICENSEE's operation under this LICENSE.

The COUNTY shall not be liable to the LICENSEE for any diminution or deprivation of possession, or of its rights hereunder, on account of the exercise of such right or authority provided in this LICENSE, nor shall the LICENSEE be entitled to terminate the whole or any portion of the operating area herein created by reason of the exercise of such right or authority, unless the exercise thereof shall so interfere with the LICENSEE's use and occupancy of the Operating Area so as to constitute a termination in whole or in part of this LICENSE by operation of law in accordance with the laws of the State of California.

**SECTION 4.04      ACCESS PLAN LIMITATIONS ON USE**

The LICENSEE agrees that:

- A. Notwithstanding any provision in this LICENSE to the contrary, the LICENSEE shall conduct all of its operations and activities at the Airport in strict conformity with the Access Plan and each of its regulations and limitations on the LICENSEE's activities and operations at the Airport.



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- B. The ADD allocations and other operating privileges made to the LICENSEE under the Access Plan are a privilege which may be revoked or modified by the COUNTY at any time during the terms of this LICENSE, and that such privileges do not constitute property rights of the LICENSEE.
- C. The ADD allocations and other operating privileges made to the LICENSEE under the Access Plan are not transferable, assignable or delegable by the LICENSEE to any other person or entity, by operation of law or otherwise, and that such allocations and other operating privileges may not be pledged, hypothecated or encumbered by the LICENSEE at any time for any purpose.
- D. That the remedies specified in the Access Plan for any Access Plan violation by the LICENSEE are not the exclusive remedies of the COUNTY, but shall constitute additional nonexclusive remedies that the COUNTY may enforce separately or cumulatively with other remedies under the enforcement provisions of this LICENSE.
- E. That LICENSEE shall not at any time, or for any reason, make any assertion to any court, administrative agency, administrative tribunal or other similar forum that is in any respect inconsistent with the terms and provisions of this Section; except that nothing in this Section shall prevent the LICENSEE from making any argument or asserting any position to the COUNTY as applicable in connection with any action by the COUNTY to revoke or modify allocations of operating privileges or any amendments to the Access Plan.
- F. All provisions of Section 4.01 and 8.02 in this LICENSE are subject to the terms, provisions and limitations of this Section.

### SECTION 4.05 OPERATIONAL REQUIREMENTS

The LICENSEE agrees to abide by the following operational conditions and requirements:

- A. **Flight Operations and Reallocations.** The number of allocated ADDs, including "regularly scheduled," "charter," "maintenance" and "cargo" shall not exceed the number of departures authorized and allocated to the LICENSEE under the Access Plan. In addition to any and all remedies available to the COUNTY under this LICENSE and all provisions of the Access Plan, the COUNTY may reallocate ADDs or other operating privileges granted to the LICENSEE under the provisions of the Access Plan. The LICENSEE shall not operate at JWA unless it conducts its operations with ADDs, allocated seat capacity or other Authorized Departures directly and formally allocated to the LICENSEE by action of the Board of Supervisors; the LICENSEE conducts all of its operations with aircraft which have been certified for operation at the Airport consistent with Access Plan requirements; and the LICENSEE has met all other applicable COUNTY requirements.
- B. **Hours of Operation.** Except as expressly authorized, the LICENSEE's aircraft shall not depart from the Airport between the hours of 10:00 p.m. and 7:00 a.m. (8:00 a.m. on Sundays) (local time) and shall not arrive at the Airport between the hours of 11:00 p.m.





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and 7:00 a.m. (8:00 a.m. Sundays) (local time), as measured at any JWA noise monitoring station.

The LICENSEE acknowledges that the COUNTY may by regulation permit some operations by general aviation (nonscheduled, noncommercial) users of the Airport during the nighttime hours with certain specific aircraft types that have noise characteristics similar to the noise characteristics of aircraft that can operate as "Class E" aircraft, as that term is defined in the Access Plan. The LICENSEE does now, or may during the term of this LICENSE, operate Class E aircraft at the Airport; nevertheless, the LICENSEE agrees that the limitations on hours of operations contained in this Section shall be applicable to all of its operations at the Airport, including its Class E operations.

The LICENSEE further acknowledges that there is a rational basis for the COUNTY to distinguish between general aviation operations and regularly scheduled operations by Class E (or noise equivalent) aircraft during the nighttime hours, and that this distinction does not constitute unlawful or unjustly discriminatory action by the COUNTY in its operation and management of the Airport. The COUNTY agrees that this provision is, and during the term of this LICENSE shall be included in all Licenses, operating agreements or other service operating agreements between the COUNTY and any person conducting regularly scheduled commercial operations at the Airport.

- C. **Aircraft Types.** The LICENSEE agrees that it will not operate any aircraft at the Airport unless and until that aircraft type has been certified and qualified for operation by the COUNTY in accordance with the provisions and procedures of the Access Plan. The LICENSEE further agrees that it will abide by all aircraft-type restrictions and limitations contained in the Access Plan, as amended, or as it may hereafter be amended, and any other restrictions on aircraft types which may hereafter be adopted by the Board of Supervisors of the County of Orange.
- D. **Noninterference.** The LICENSEE shall cooperate with and not interfere with the COUNTY's and other airlines' use of and operations at the Airport. The LICENSEE shall not place any ropes, barricades and/or stanchions on the public or common use area without prior written approval of the Airport Director.
- E. **Disposal of Refuse from International Operations.** Airlines operating international service shall contract with a CBP approved vendor for the disposal of refuse from arriving international flights.

### SECTION 4.06 RECORDS AND ACCOUNTS

- A. **Records.** The LICENSEE shall at all times keep true and complete records of all transactions in the operation of all business activities, of whatever nature, conducted in pursuance of the rights granted by this LICENSE. The LICENSEE shall maintain such records for a period of five years beyond the expiration or earlier termination of this LICENSE.



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- B. **Reports.** The LICENSEE shall provide to Auditor-Controller and Airport Director at the end of each calendar month, on forms to be supplied by the COUNTY, statistical information respecting the LICENSEE's operations at Airport including, but not limited to, the total number of all aircraft operations conducted by the LICENSEE; the total combined certificated gross landing weight of all such aircraft operations; the total number of enplaned, deplaned and through passengers; the total number of pounds of airmail, cargo and express mail enplaned and deplaned; and the total number of aircraft stored daily and monthly at the Airport. Such reports shall be submitted to the Airport Director no later than fifteen (15) calendar days following the last day of each month. The LICENSEE must attest that the list is an accurate representation of the LICENSEE's activity for the month.

The LICENSEE shall also provide to the Airport Director, for each day, a copy of the LICENSEE's flight dispatch logs, or a listing made from such logs, certified as correct by a responsible station manager or dispatcher, showing the type of equipment used for each flight and the actual takeoff and landing times and not gate times. Said copy of logs or listing shall be made available for each day's activities by noon (12:00 p.m., local time) of the following day.

- C. **Audits.** All the LICENSEE's records and supporting source documents related to rates and fees in this LICENSE or to business operations conducted within or from the Operating Area shall be kept and made available to the COUNTY at one location within the geographical limits of the COUNTY or shall be made available at offices in the COUNTY within ten (10) working days after notice to produce said records and source documents. The COUNTY shall, through its duly authorized agents or representatives, have the right to examine and audit said records and supporting source documents at any and all reasonable times for the purpose of determining the accuracy thereof, and of the monthly statements to the COUNTY.

The COUNTY, upon request of the LICENSEE, may authorize the above referenced records and supporting source documents to be kept in a single location outside the limits of the COUNTY provided the LICENSEE shall agree to pay all expenses including, but not limited, to transportation, food and lodging necessary for the COUNTY to send a representative to audit said records. Said right shall not, unless determined necessary by the COUNTY, be exercised by the COUNTY more than once each accounting year.

The full cost of said audit, as determined by the COUNTY, shall be borne by the LICENSEE if either or both of the following conditions exist:

- (1) The audit reveals an underpayment of more than two percent (2%) between the fees and charges due as reported and paid by the LICENSEE in accordance with this LICENSE and the fees and charges due as determined by said audit; and/or
- (2) The LICENSEE has failed to maintain true and complete records and supporting source documents in accordance with paragraph A. above. The adequacy of records shall be determined at the sole discretion of the COUNTY's Auditor-Controller.



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Otherwise, the COUNTY shall bear the cost of said audit excluding the aforementioned expenses related to audit of documents kept outside the limits of the COUNTY. The cost of said audit, if due from the LICENSEE, shall be included as fees and charges for the first month following invoice to LICENSEE.

Upon the request of Auditor-Controller, the LICENSEE shall promptly provide, necessary data to enable the COUNTY to fully comply with requirements of the State of California or the United States of America for information or reports directly relating to this LICENSE and to the LICENSEE's use of the Operating Area.

D. **Failure to Maintain Adequate Records.** In addition to any other remedies available to the COUNTY under this LICENSE, at law or in equity, in the event that the LICENSEE fails to maintain and keep records and accounts from business operations conducted on or from the Operating Area and/or source documents relating thereto, or to make the same available to the COUNTY for examination and audit as required by this LICENSE, the COUNTY, at the COUNTY's option, may:

- (1) Perform such examinations, audits and/or investigations itself or through agents or employees as the COUNTY and/or its auditors may deem appropriate to confirm the amount of fees and charges payable by the LICENSEE under this LICENSE; and any and all costs and/or expenses incurred by the COUNTY in connection therewith shall be promptly reimbursed to the COUNTY by the LICENSEE upon demand.
- (2) Require that the LICENSEE pay fees and charges based on the COUNTY's best good faith estimate of the LICENSEE's activities from business operations conducted on or from the Operating Area and Airport; and any such determination made by the COUNTY shall be conclusive and binding upon the LICENSEE.

Costs payable by the LICENSEE pursuant to this Section shall include reimbursement to the COUNTY of the COUNTY provided services at such rates as the COUNTY may from time to time, in good faith, establish for such services. In the case of services provided by the COUNTY's employees, such rates shall be sufficient to reimburse the COUNTY for employees' salaries, including employee taxes and benefits and the COUNTY's overhead or, at Auditor-Controller's option, may be the rate for such services that would be charged by a qualified third party or parties, approved by Auditor-Controller, if engaged by the COUNTY to perform such services. Said costs payable by the LICENSEE shall be included as fees and charges for the first month following invoice to the LICENSEE.

### **SECTION 4.07 MAINTENANCE AND OPERATION**

The LICENSEE agrees to provide approved containers for trash and garbage and to keep the Operating Area free and clear of rubbish and litter. Airport Director shall have the right to enter upon and inspect the LICENSEE'S Operating Area and other Airport facilities at any time for cleanliness, safety and maintenance inspections.



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The LICENSEE shall designate in writing to Airport Director an on-site representative who shall be responsible for the day-to-day operation and level of maintenance, cleanliness and general order.

The LICENSEE shall immediately notify the Airport Police Services Control Center of any fire, emergency, accident or reportable spill or release of fuel or Hazardous Substances. Reportable spills or releases are those that require notification to a government entity by any fire code or Environmental law as defined herein in Section 5.01.

The LICENSEE agrees to maintain or make repairs or replacements, including removal of all its GSE and/or any of the LICENSEE materials at its loading and unloading operations at the end of its approved hours of operation. If the LICENSEE fails to maintain, make repairs, replacements or removals, as required herein, the Airport Director shall notify or attempt to notify the LICENSEE in writing of said failure. Should the LICENSEE fail to correct the failure within the time specified in the notice, the Airport Director may make the necessary correction or cause it to be made and the cost thereof, including but not limited to the cost of labor, materials and equipment shall be charged to the LICENSEE. Thereafter, an administrative fee equal to fifteen percent (15%) of the sum of such items shall be paid by the LICENSEE within ten (10) days of receipt of a statement of said cost from the Airport Director. The Airport Director may, at Director's option, choose other remedies available herein, or as provided by law.

The LICENSEE expressly waives any and all claims against the COUNTY for compensation for any and all loss or damage to the LICENSEE's property sustained by reason of any defect, deficiency or impairment of any water supply system, drainage or sewer system, gas supply system, telephone system, electrical supply system or electrical apparatus or wires serving the Operating Area, except to the extent caused by the COUNTY's negligence or willful misconduct.

### **SECTION 4.08      APRONS, GATE POSITIONS AND LOADING BRIDGES**

The COUNTY will provide as a means of access for aircraft between the terminal complex and the taxiway and runway system of Airport, apron, airplane gate positions and aircraft loading bridges in the area immediately adjacent to the passenger terminal building. No special possessory, exclusive or vested right whatsoever, save and except the use in common with other airlines and other aircraft owners shall vest in the LICENSEE by reason of proximity of such facilities to the LICENSEE's gate loading positions.

Following each flight operation by the LICENSEE, the LICENSEE shall keep all areas associated with their loading bridges at the gate positions and departure lounges in a neat, clean and sanitary condition free of litter, trash, debris and other waste and refuse matter.

### **SECTION 4.09      ASSIGNMENT OF GATE POSITIONS AND LOADING BRIDGES**

All assignment of gate positions (*i.e.*, aircraft loading bridges and aircraft hardstand positions) shall be made in accordance with rules, regulations and directives provided in the Access Plan and made at the complete discretion of the Airport Director, as he may determine is appropriate. The Airport Director, in making assignments of gate (*i.e.*, loading bridge and hardstand) positions to the LICENSEE, may take into account the needs and requirements of the



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LICENSEE, as well as the requirements of other Airport users, for use of gate positions adjacent to the passenger terminal building, and other factors that the Airport Director determines are appropriate. Without liability, cost or obligation to the COUNTY, assignment of gate positions and aircraft loading bridge and hardstand positions may be changed from time to time as determined necessary by the Airport Director. The Airport Director may consider passenger activity, number of aircraft operations, type of aircraft used, scheduling needs, and any other factors he/she may deem appropriate when assigning gate positions, loading bridges and hardstand positions.

### **SECTION 4.10      VEHICLES AND AUTOMOTIVE EQUIPMENT ON APRON**

The COUNTY reserves the right to regulate, by adoption of ordinance, rules or other means, adopted consistent with Section 4.03, the use of vehicles and automotive equipment upon, over and across the apron and around the passenger terminal building. In the event of an emergency not specifically provided for in said rules and regulations, the Airport Director shall have power to take charge of the direction of such vehicle and automotive traffic in the area affected and regulate the same until the cause of such emergency has been removed. The existence of an emergency, other than aircraft emergency, shall be determined by the Airport Director.

### **SECTION 4.11      AIRCRAFT PARKING**

The LICENSEE shall make arrangements with the Airport Director for each aircraft parking space that may be made available to the LICENSEE subject to the Section 3.01 in this LICENSE.

If, in the judgment of the Airport Director, it becomes necessary to move the LICENSEE's aircraft in order to insure public safety, improve ramp area efficiency or otherwise, then LICENSEE shall immediately move said aircraft to the location designated by the Airport Director.

Should any aircraft owned or operated by the LICENSEE, through accident or for any other reason, become disabled or be abandoned in any area which could interfere with the continuous, normal operations of any of the landing and field facilities at Airport, the LICENSEE shall:

- A. Immediately remove said aircraft to such location as shall be designated by the Airport Director, unless such aircraft is required to remain in place pending investigation by the appropriate regulatory agency or agencies of the federal government; and
- B. In the event of any accident where federal investigation in place is required, immediately upon receiving clearance to do so from the appropriate federal agency, remove said aircraft and any wreckage or debris resulting there from to the area(s) designated by said federal agency authorizing such removal; otherwise, such aircraft wreckage and debris shall be immediately removed from Airport or stored at a location approved by Airport Director.

Should the LICENSEE fail to remove said aircraft, or should aircraft owned or operated by the LICENSEE be abandoned on Airport, the COUNTY shall have the right to remove such aircraft



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by any means the Airport Director deems necessary under the circumstances, and the LICENSEE shall keep and hold the COUNTY harmless from any and all costs, loss, liability, damage or expense incurred by the COUNTY or claimed by anyone by reason of removal of said aircraft, injury to persons or property or damages to such aircraft caused by such removal as well as moving and storage costs therefore. The LICENSEE agrees that the designation of any aircraft parking positions anywhere on the Airport, if any, made for the LICENSEE's use is presently regulated by the Access Plan, and that nothing in this Section obligates the COUNTY to provide, make available or consent to any aircraft parking spaces for the LICENSEE's use. The LICENSEE agrees that it may not independently make arrangements for aircraft parking space at the Airport without express written consent of the Airport Director, which may be withheld in Director's sole discretion.

### **SECTION 4.12 PORTER SERVICES**

The LICENSEE may provide directly or indirectly adequate porter (skycap) and/or assistance service for the convenience of its passengers in areas designated by the Airport Director. Porter services include baggage check-in services, wheelchair services and ticket screening services. The LICENSEE shall provide the Airport Director a plan which enumerates the salient features of its porter services arrangements and a copy of its agreement if service is provided by other than the LICENSEE's employees. All podiums utilized for porter service shall be approved in writing by the Airport Director. The size, shape and color shall be coordinated with and must be identical to all other airlines' podiums. The LICENSEE's plan shall also provide the details of any podiums and their proposed locations necessary to provide porter services.

## **ARTICLE V**

### **ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION**

#### **SECTION 5.01 HAZARDOUS SUBSTANCES AND ENVIRONMENTAL COMPLIANCE**

As used herein, the term "Hazardous Substances" shall mean any hazardous or toxic substance, material or waste which is or shall become regulated by any governmental entity, including, but not limited to, the COUNTY acting in its governmental capacity, State of California or United States Government. The term "Hazardous Substances" includes, without limitation, any material or substance which is (i) defined or listed as a "hazardous waste," "extremely hazardous waste," "restrictive hazardous waste" or "Hazardous Substance" or considered a waste, condition of pollution or nuisance under any applicable Environmental Law; (ii) petroleum or a petroleum product or fraction thereof; (iii) asbestos or asbestos-containing materials; (iv) flammable or explosive substances; (v) mold, mold spores or fractions thereof; and/or (vi) substances designated by any governmental entity to cause cancer and/or reproductive toxicity.

As used herein, the term "Environmental Law" shall mean any federal, state or local law, statute, ordinance, code, judgment, order or regulation pertaining to the environment, Hazardous Substances, Pollutants, occupational safety and health, industrial hygiene or the environmental conditions on, under or about the Airport, and includes, without limitation the following; (i) CLEAN AIR ACT, 42 U.S.C. §§7401 *et seq.*; (ii) CLEAN WATER ACT, 33 U.S.C. §§1251 *et seq.*;



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(iii) COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980, as amended by the SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT OF 1986 ("CERCLA"), 42 U.S.C. §§9601 *et seq.*; (iv) 49 C.F.R. Parts 173 and 175; (v) SOLID WASTE DISPOSAL ACT, as amended by the RESOURCE CONSERVATION AND RECOVERY ACT OF 1986 and HAZARDOUS AND SOLID WASTE amendments of 1984 ("RCRA"), 42 U.S.C. §§6901 *et seq.*; (vi) OIL POLLUTION ACT OF 1990, 33 U.S.C. §§2701 *et seq.*; (vii) FEDERAL WATER POLLUTION CONTROL ACT, 33 U.S.C. §§1317 *et seq.*; (viii) SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986, CAL. HEALTH & SAF. CODE §§25249 *et seq.*; (ix) CAL. HEALTH & SAF. CODE §§25100, 25395.7, 25915, *et seq.*; (x) CAL. WATER CODE §§1300 *et seq.*; (xi) CAL. CIV. CODE §§3479 *et seq.*; (xii) Storm Water Discharge Rules, 40 C.F.R. §§122.26, 122.30-37; and, (xiii) all other state laws, rules, orders, directives, and codes, regulations judgments, and orders relating to (i) emissions, discharges, releases, or threatened releases of Hazardous Substances into the environment (including but not limited to ambient air, surface water, groundwater, land surface or subsurface strata); and (ii) the manufacture, processing, distribution, use, generation, treatment, storage, disposal, transport or handling of Hazardous Substances, as such laws are amended, and the regulations and administrative codes applicable thereto.

The LICENSEE agrees that it shall abide by all applicable Hazardous Substances laws, rules and regulations, relating to Hazardous Substances including, but not limited to, 49 C.F.R. Parts 171 *et seq.* The LICENSEE shall not cause any Hazardous Substances to be brought upon, kept, used, stored, generated, treated, managed or disposed of in, on or about or transferred to or from the Airport, except to the extent that such Hazardous Substances are (i) necessary for or useful to the LICENSEE's business and (ii) used, kept and stored in a manner that complies with all applicable Environmental Laws, the Airport Rules and Regulations, and all other applicable laws.

The LICENSEE shall comply with all applicable Environmental Laws and shall not engage in any activity on or about the Airport that violates any applicable Environmental Law. In conducting its operations and maintenance on the Airport under this LICENSE, the LICENSEE shall comply with such regulations regarding the storage, distribution, processing, handling and/or disposal, including the storm water discharge requirements, of Hazardous Substances including, but not limited to, gasoline, aviation fuel, jet fuel, diesel fuel, lubricants and/or solvents, whether the obligation for such compliance is placed on the owner of the land, owner of the improvements or user of the improvements.

The LICENSEE shall at its own expense take all investigatory and/or remedial action required or ordered by any governmental agency having jurisdiction or any applicable Environmental Law for clean-up and removal of any contamination involving any Hazardous Substances caused by the LICENSEE. In conducting a clean-up of a Hazardous Substance release under this LICENSE, the LICENSEE shall comply with applicable Environmental Laws.

The LICENSEE shall not allow or cause the entry of any Hazardous Substances under its control into the Airport Storm Water drainage system unless authorized by applicable Environmental Law and the Airport's Storm Water Discharge Permit. The LICENSEE shall not allow or cause the entry of any Unauthorized Non-Storm Water Discharge that is under its control into the Storm Water drainage system of the Airport or into the Storm Water drainage system of any of



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its surrounding communities, unless such substances are first properly treated by equipment installed with the approval of the COUNTY for that purpose, and the LICENSEE complies with recommendations made by the state and/or federal Environmental Protection Agency and the Airport's Storm Water Discharge Permit requirements. The LICENSEE shall bear all costs and any other expenses related to the prohibited entry of such oil, fuel or other Hazardous Substances into said drainage systems prohibited by any applicable Environmental Law.

The LICENSEE shall provide all notices required pursuant to the SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986, CAL. HEALTH & SAF. CODE § 25249 *et seq.* The LICENSEE shall provide prompt written notice to the COUNTY within three (3) days of receipt of all written notices of violation of any applicable Environmental Law received by the LICENSEE.

### **SECTION 5.02 ENVIRONMENTAL INDEMNIFICATION**

To the fullest extent authorized by law, the LICENSEE shall indemnify, defend, and hold harmless the COUNTY, its officers, and employees, from and against any and all applicable Environmental Law claims, judgments, damages, penalties, fines, costs, liabilities, losses, orders, and lawsuits arising out of any actions by the LICENSEE, the LICENSEE's operations at the Airport or any action arising from and which involve the LICENSEE's officers, agents, subcontractors, and employees, including the cost of defense arising therefrom, including but not limited to the following:

- (1) The LICENSEE's placing, disposing, allowing or releasing of Hazardous Substances upon or within the Airport including any such claims, demands, liabilities and/or obligations related to the LICENSEE's release of Hazardous Substances on the Airport since the time the LICENSEE first occupied the Airport.
- (2) The LICENSEE's release of Hazardous Substances upon or within the Airport.
- (3) The LICENSEE's violation of any applicable Environmental Law, except that the LICENSEE's obligations under this paragraph shall not extend to known and pre-existing conditions that are, as of the date of this LICENSE, the subject of investigation and remediation by the COUNTY or others, or remediation conditions that arise from operations of third parties that are not affiliated with the LICENSEE that take place off of the Airport. For purposes of this provision, a party shall be deemed to be affiliated with the LICENSEE if it is an employee, officer, director, agent, subtenant, contractor or subcontractor of the LICENSEE or if it is controlled by or under common control with the LICENSEE.
- (4) The LICENSEE's causing or allowing any discharge into the Airport Drainage System that is prohibited by Section 6.01 of this LICENSE.

This indemnification includes, without limitation, reasonable attorney's fees/costs and other costs incurred by the COUNTY in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental entity because of any Hazardous Substances being present in the soil or groundwater under the Airport.





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However, the LICENSEE's indemnity obligation shall not apply in the event of any claims for any loss, damage or expense arising from the sole or active negligence or willful misconduct of the COUNTY or agents, servants or independent contractors who are directly responsible to the COUNTY.

In the event the indemnitees described hereinabove are named as defendants or respondents in any lawsuit or administrative proceeding, the LICENSEE shall, at the request of the COUNTY, represent the indemnitee with qualified counsel that is acceptable to the COUNTY.

In the event that a monetary judgment is awarded against the COUNTY and the LICENSEE because of the concurrent negligence of the COUNTY and the LICENSEE or their respective officers, subcontractors, or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Both the COUNTY and the LICENSEE agree that neither party shall request a jury apportionment. Nothing stated in this LICENSE and in this indemnity obligation shall be construed as authorizing any award of attorney's fees/costs in any action to enforce the terms of this LICENSE.

The rights and obligations set forth in this indemnification shall survive the termination of this LICENSE.

### **SECTION 5.03 CONFLICT WITH ENVIRONMENTAL LAW PROVISIONS**

In the event that any of the terms of these environmental requirements codified in this Article conflict with any other terms of this LICENSE, the environmental requirements contained in Article V shall apply.

## **ARTICLE VI**

### **CONSTRUCTION AND IMPROVEMENTS**

#### **SECTION 6.01 CONSTRUCTION AND/OR ALTERATION BY COUNTY**

The COUNTY may alter, repair, maintain, remodel, expand, remove or improve any of the facilities at the Airport or any of its appurtenances.

In addition, the COUNTY may reassign or relocate LICENSEE's Operating Area. The COUNTY shall provide the LICENSEE advance notice of such action and shall make every reasonable effort to provide the LICENSEE alternative space that is reasonably to provide comparable for the LICENSEE's operations at the same rates and charges that the LICENSEE would have paid for the space being surrendered. In the event no alternative space is available, the LICENSEE shall surrender its space promptly to the COUNTY, provided that the LICENSEE shall be reimbursed for the reasonable cost of any such reassignment, reallocation or relocation and the cost of the LICENSEE's unamortized investment, if any, as documented by the LICENSEE to the satisfaction of the COUNTY and mutually agreed to by the Airport Director and LICENSEE. All of such costs, as well as the COUNTY's cost of providing the alternative space aforementioned, shall be included in the cost of the particular project requiring such reassignment, reallocation or relocation.



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### **SECTION 6.02      DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS**

The LICENSEE shall be responsible for any damage caused by the LICENSEE, or the LICENSEE's aircraft, equipment, employees, agents, visitors or suppliers, to common use areas of the Terminal or Airport facilities, including but not limited to runways, taxiways, access roads, navigational aids, apron areas and loading bridges. Should such damage require immediate repairs or replacement and the LICENSEE is unable to respond immediately to complete said repairs or replacement, the Airport Director may cause to be made or make any necessary repairs or replacements and the cost thereof shall be paid by the LICENSEE. Said cost shall include all labor, materials, equipment and an administrative fee equal to fifteen percent (15%) of the sum of those items. Said cost shall be paid by the LICENSEE within fifteen (15) days of receipt of an invoice for costs from the Airport Director. Except as otherwise provided herein, termination of this LICENSE shall not reduce or nullify the LICENSEE's obligation under this paragraph. With respect to damage or destruction to be repaired by COUNTY or which COUNTY elects to repair, the LICENSEE waives and releases its rights under CALIFORNIA CIVIL CODE Sections 1932(2) and 1933(4).

### **SECTION 6.03      HEALTH AND SAFETY**

The LICENSEE shall comply with the California Occupational Safety & Health Administration (CAL OSHA) requirements, and all federal, state or local safety orders. The LICENSEE shall post on the Operating Area and at all construction sites a copy of "Construction Safety Orders" and "General Industry Safety Orders" issued by the California State Division of Industrial Safety.

The LICENSEE shall, within thirty (30) days after the execution of this LICENSE, submit to the COUNTY a comprehensive Safety Plan outlining the code of safe work practices and procedures. The plan must include emergency response procedures, notification procedures, and personnel training procedures. The LICENSEE shall convene safety meetings at regularly scheduled times as described in its Safety Plan and as required by CAL OSHA. The LICENSEE and/or LICENSEE's contractor shall submit, prior to the start of any tenant improvements, the LICENSEE or LICENSEE's contractor required CAL OSHA Safety Plan for approval by the Airport.

The LICENSEE shall submit to the COUNTY an annual report detailing the status of all permits required and issued to the LICENSEE by CAL OSHA or any other federal, state or local government agency. Said report shall be due on or before January 31 of each calendar year.

## **ARTICLE VII**

### **ASSIGNMENT**

#### **SECTION 7.01      ASSIGNING AND TRANSFERRING**

The provisions of this Section are subject to, and subordinate to the limitations of Section 4.04 of this LICENSE.



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- A. **Transfers.** The LICENSEE shall not transfer or assign (hereinafter referred to as "Transfer") any interest of the LICENSEE in the LICENSE without the prior written approval of the COUNTY. The LICENSEE shall give the COUNTY thirty (30) days prior written notice of all proposed Transfers. The LICENSEE shall not make any such Transfers for a period longer than the remaining term of the LICENSE.

If the COUNTY approves such Transfers, such approval does not constitute a waiver of any of the terms of the LICENSE. All Transfer documents shall be consistent with the terms, covenants, and conditions of the LICENSE, and in the event of any inconsistency, the provisions of this LICENSE shall govern.

If the LICENSEE is a corporation, an unincorporated association, or a partnership, Transfers include the acquisition by any person other than the LICENSEE of any stock or interest in said corporation, unincorporated association, or partnership in the aggregate amount of fifty-one percent (51%) or more.

The failure by the LICENSEE to obtain the prior written approval by the COUNTY of any Transfer of the LICENSE or the Operating Area shall constitute a material breach of this LICENSE by, and shall not confer any rights to the Operating Area upon the transferee. Such failure shall be grounds for termination of this LICENSE for default per Article VIII, Section 8.02.

- B. **Conditions of COUNTY Approval.** The COUNTY agrees that it will not arbitrarily withhold consent to any Transfer, but the COUNTY may withhold consent at its sole discretion if any of the following conditions exist:

- (1) The LICENSEE, its successors or assigns are in default of any term, covenant or condition of this LICENSE, whether notice of default has or has not been given by the COUNTY.
- (2) The prospective subtenant, assignee or transferee has not agreed in writing to keep, perform and be bound by all the terms, covenants, and conditions of this LICENSE.
- (3) The prospective subtenant, assignee or transferee is not financially capable or not experienced in performing the LICENSE obligations, as determined by the Airport Director.
- (4) Subtenant's use is in conflict with the terms of this LICENSE.
- (5) All the terms, covenants and conditions of Transfer, including the consideration therefore, of any and every kind, have not been revealed in writing to the Airport Director.
- (6) Any construction required of LICENSEE as a condition of this LICENSE has not been completed to the satisfaction of COUNTY.



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- (7) The LICENSEE has not provided the Airport Director with a copy of all documents relating to the Transfer, including, but not limited to, appraisals, notes, trust deeds, title reports, escrow instructions, *etc.*

- C. **Affiliate Transactions.** The COUNTY has adopted in the Access Plan policies and regulations with respect to transactions and aircraft operations at the Airport involving affiliations of commercial airlines operating, or desiring to operate, at the Airport ("the affiliate policy"). The LICENSEE acknowledges that the COUNTY considers the affiliate policy to be an important and significant policy in support of COUNTY's regulation of the Airport.

The LICENSEE acknowledges that there is a rational basis for this policy under the operational and historical circumstances affecting the Airport, that under such circumstances this policy maintains appropriate equity between the rights and privileges of competing commercial operators using the Airport, and that the affiliate policy does not constitute unlawful or unjustly discriminatory action by the COUNTY in its operation and management of the Airport. The LICENSEE agrees to comply fully and completely with the affiliate policy and all related regulations which appear in the Access Plan and or this LICENSE.

Any affiliate transaction described and defined in the Access Plan, and any affiliate transaction between the LICENSEE and any other person which then has a written agreement with the COUNTY to conduct regularly scheduled air service operations at the Airport, shall constitute a Transfer within the meaning of paragraph A, above. In the event an affiliate transaction involving the LICENSEE is initiated, then not later than the time when the affiliate transaction is publicly announced:

- (1) The LICENSEE shall notify the Airport Director of the fact of the initiation of the affiliate transaction.
- (2) If the affiliate transaction is initiated by the LICENSEE, the LICENSEE shall promptly provide to the Airport Director copies of all agreements, or written offers or proposals, made with respect to the transaction, and copies of all documents filed with Federal authorities with respect to the transaction. If the affiliate transaction is initiated by some other person in respect of the LICENSEE, the LICENSEE shall promptly and continuously provide such documentation or other information regarding the transaction as may be available to the LICENSEE.
- (3) In addition to all other obligations of the LICENSEE, if the affiliate transaction involves the LICENSEE and any other person which then has a written agreement with the COUNTY to conduct regularly scheduled air service operations at the Airport, the LICENSEE shall promptly arrange to negotiate with the Airport Director regarding the terms and conditions upon which the Director would recommend consent by the Board of Supervisors to a Transfer of this LICENSE, or a Transfer of the written agreement(s) between the other person or entity involved in the affiliate transaction and COUNTY.



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Notwithstanding any other provision of this LICENSE, the LICENSE may be terminated by COUNTY on thirty (30) days' notice to LICENSEE without further obligation of COUNTY, and without any liability of the COUNTY to the LICENSEE whatsoever, if:

- (4) The LICENSEE fails to comply with paragraph C. of this Section; or if
- (5) The Airport Director fails to make a favorable recommendation to the Board of Supervisors regarding the Transfer within sixty (60) days after initiation and public announcement of the affiliate transaction, which contains terms and conditions agreed to by the LICENSEE and its affiliate(s); or if
- (6) The Board of Supervisors fails to consent to the Transfer on terms and conditions which have been accepted by the LICENSEE within thirty (30) days after receipt of the recommendations of the Airport Director.

D. **Bankruptcy Transaction.** If the LICENSEE assumes this LICENSE and proposes to assign the same pursuant to the provisions of the U.S. BANKRUPTCY CODE, 11 U.S.C. §§101, *et seq.*, then notice of such proposed assignment shall be given to the COUNTY. The following information shall be provided to the COUNTY:

- (1) The name and address of proposed assignee;
- (2) All of the terms and conditions of such offer; and
- (3) Adequate assurance to COUNTY of the proposed assignee's future performance under the LICENSE, including, without limitation, the assurance referred to in the U.S. BANKRUPTCY CODE, 11 U.S.C. §365(b)(3).

Any person or entity to which this LICENSE is assigned pursuant to the provisions of the U.S. BANKRUPTCY CODE, 11 U.S.C. §§101, *et seq.*, shall be deemed without further act or deed to have assumed all of the obligations arising under this LICENSE on and after the date of such assignment. Any such assignee shall upon demand execute and deliver to the COUNTY an instrument confirming such assumption.

E. **Non-Transferable Privileges.** Aircraft operations and ADDs authorized by the Section 4.05 in this LICENSE and the Access Plan are not property interests of the LICENSEE and are non-transferable in any form, and as such, are not subject to sale, assignment, and transfer by the LICENSEE under the terms of this Section. Any such attempted assignment, sale or other such attempted transfer of operations, privileges or ADDs is in violation of the public policy of the COUNTY and shall be void and shall constitute a breach and default of this LICENSE.

**SECTION 7.02      SUCCESSORS IN INTEREST**

Unless otherwise provided in this LICENSE, the terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of all



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parties hereto, all of whom shall be jointly and severally liable hereunder.

**ARTICLE VIII**

**TERMINATION AND DEFAULT**

**SECTION 8.01      TERMINATION OF PRIOR AGREEMENTS**

It is mutually agreed that this LICENSE shall terminate and supersede any prior Licenses or agreements between the parties hereto for the purpose of commercial air transportation and all related activities of the LICENSEE at the Airport.

**SECTION 8.02      TERMINATION FOR DEFAULT**

The COUNTY may terminate this LICENSE and all of its obligations hereunder with or without prior notice to the LICENSEE and may exercise all rights of entry for default and breach, if the LICENSEE fails to perform on any of its obligations under this LICENSE, including, but not limited to:

- A.      Payment of fees, charges and PFCs;
- B.      A general assignment for the benefit of creditors and any Transfer without the prior written approval by the COUNTY;
- C.      The issuance of any execution or attachment against the LICENSEE at the Airport which is undischarged within sixty (60) days of levy or seizure or if the operating area are occupied by someone other than the LICENSEE;
- D.      The voluntary vacation or abandonment by the LICENSEE of the conduct of air transportation business at the Airport;
- E.      The violation by the LICENSEE of any of the terms of any insurance policy referred to in the LICENSE;
- F.      If the LICENSEE is found by the FAA, TSA, other government regulatory or successor agency to have violated specified safety standards in the conduct of the LICENSEE's business;
- G.      The violation or breach of any provision of the Access Plan;
- H.      The violation of any written directions of the Airport Director;
- I.      The appointment of a receiver to take possession of all, or substantially all, the assets of the LICENSEE located at the Airport.



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Where applicable, and unless otherwise stated in this LICENSE, or by written notice, the LICENSEE shall have fifteen (15) calendar days to cure any notices of default prior to termination of this LICENSE.

### **SECTION 8.03      DISPOSITION OF ABANDONED PERSONAL PROPERTY**

If the LICENSEE abandons or terminates its operation or is dispossessed thereof by process of law or otherwise, title to any personal property belonging to the LICENSEE and left on the Airport fifteen (15) days after such event shall be deemed to have been transferred to the COUNTY. The COUNTY shall have the right to remove and to dispose of such property without liability therefor to the LICENSEE or to any person claiming under LICENSEE, and shall have no need to account therefor. Personal property left on the operating area after termination, expiration, or abandonment of the LICENSE shall not be construed as giving LICENSEE possession of the Operating Area during the fifteen (15) days after termination, expiration or abandonment of the LICENSE.

### **ARTICLE IX**

#### **SECURITY**

### **SECTION 9.01      AIRPORT SECURITY**

- A. **Local Security.** The LICENSEE shall be responsible for the security of gates or doors that are utilized during their operations. Said gates and/or doors permitting entry to the restricted areas of the Airport shall be locked when not in use and/or under the LICENSEE's constant surveillance. The LICENSEE shall install such security equipment, including, but not limited to, video monitoring equipment, as may be required by the Airport Director to insure compliance with all regulations of the FAA, TSA or other governmental agencies having jurisdiction over Airport security. The LICENSEE shall exercise control over any person or vehicle escorted by the LICENSEE onto restricted or secure areas of the Airport, or issued an access badge by or at the request of the LICENSEE, and ensure the person or vehicle shall comply with all Airport security regulations.
- B. **Federal Security.** As of the date of this LICENSE, the TSA provides for all passenger and baggage screening conducted at the Airport. The LICENSEE may be required to provide assistance to TSA in their efforts to carry out its federal mandates. At some point during the term of this LICENSE, the Airport or another entity may be authorized to provide these security services in lieu of the TSA.
- C. **Penalties and Fines.** The LICENSEE shall promptly pay any penalties for which the LICENSEE is responsible. These penalties include but are not limited to, civil penalties or fines assessed against the Airport or LICENSEE, by the FAA, TSA or any other governmental agency for the violation of any security related laws, rules, policies or regulations at the Airport.



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**ARTICLE X**

**INSURANCE AND INDEMNITY**

**SECTION 10.01 INSURANCE**

The LICENSEE agrees to purchase all required insurance at the LICENSEE's expense and to deposit with the COUNTY certificates of insurance, including all endorsements required herein, necessary to satisfy the COUNTY that the insurance provisions of this LICENSE have been complied with and to keep such insurance coverage and the certificates and endorsements therefore on deposit with the COUNTY during the entire term of this LICENSE. This LICENSE shall automatically terminate at the same time the LICENSEE's insurance coverage is terminated. If within ten (10) business days after termination under this Section the LICENSEE obtains and provides evidence of the required insurance coverage acceptable to the Airport Director, this LICENSE may be reinstated at the sole discretion of the Airport Director. The LICENSEE shall pay the COUNTY \$300.00 for processing the reinstatement of this LICENSE. Said \$300.00 processing cost may be adjusted annually, in accordance with CPI Index by the Airport Director at his sole discretion.

The LICENSEE agrees that the LICENSEE shall not operate on the Premises at any time the required insurance is not in full force and effect as evidenced by a certificate of insurance and necessary endorsements or, in the interim, an official binder being in the possession of the Airport Director. In no cases shall assurances by the LICENSEE, its employees, agents, including any insurance agent, be construed as adequate evidence of insurance. The Airport Director will only accept valid certificates of insurance and endorsements, or in the interim, an insurance binder as adequate evidence of insurance. The LICENSEE also agrees that upon cancellation, termination, or expiration of the LICENSEE's insurance, the COUNTY may take whatever steps are necessary to interrupt any operation from or on the Premises until such time as the Airport Director reinstates the LICENSE.

If the LICENSEE fails to provide the Airport Director with a valid certificate of insurance and endorsements, or binder at any time during the term of the LICENSE, the COUNTY and the LICENSEE agree that this shall constitute a material breach of the LICENSE. Whether or not a notice of default has or has not been sent to the LICENSEE, said material breach shall permit the COUNTY to take whatever steps necessary to interrupt any operation from or on the Premises, and to prevent any persons, including, but not limited to, members of the general public, and the LICENSEE employees and agents, from entering the Premises until such time as the Airport Director is provided with adequate evidence of insurance required herein. The LICENSEE further agrees to hold the COUNTY harmless for any damages resulting from such interruption of business and possession, including, but not limited to, damages resulting from any loss of income or business resulting from the COUNTY's action.

All contractors performing work on behalf of the LICENSEE pursuant to this LICENSE shall obtain insurance subject to the same terms and conditions as set forth herein for the LICENSEE. The LICENSEE shall not allow contractors or subcontractors to work if contractors have less than the level of coverage required by the COUNTY from the LICENSEE under this LICENSE. It is the obligation of the LICENSEE to provide written notice of the insurance requirements to





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every contractor and to receive proof of insurance prior to allowing any contractor to begin work within the Premises. Such proof of insurance must be maintained by the LICENSEE through the entirety of this LICENSE and be available for inspection by a COUNTY representative at any reasonable time.

All insurance policies required by this LICENSE shall declare any deductible or self-insured retention (SIR) in an amount in excess of \$25,000.00 (\$5,000.00 for automobile liability), which shall specifically be approved by the COUNTY's County Executive Office (CEO)/Office of Risk Management. The LICENSEE shall be responsible for reimbursement of any deductible to the insurer. Any SIRs or deductibles shall be clearly stated on the certificate of insurance.

If the LICENSEE fails to maintain insurance acceptable to the COUNTY for the full term of this LICENSE, the COUNTY may terminate this LICENSE.

**Qualified Insurer**

The policy or policies of insurance must be issued by an insurer which meets the minimum insurance company ratings as determined by the most current edition of the *Best's Key Rating Guide/Property-Casualty/United States* or [www.ambest.com](http://www.ambest.com) shall be A- (Secure Best's Rating) and VIII (Financial Size Category). A California admitted carrier is preferred.

The policy or policies of insurance maintained by the LICENSEE shall provide the minimum limits and coverage as set forth below:

<b>Coverages</b>	<b>Minimum Limits</b>
Aircraft Liability Insurance	\$250,000,000.00 per occurrence
Commercial General Liability with broad form property damage, contractual liability and products liability	\$1,000,000.00 combined single limit per occurrence; \$2,000,000.00 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000.00 combined single limit per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000.00 per occurrence
Fire and Extended Coverage including contents and business income	The LICENSEE shall insure all LICENSEE constructed buildings, facilities and improvements, including water damage and debris cleanup, to at least 90% of their replacement cost, using a standard form fire insurance policy containing



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**Coverages**

**Minimum Limits**

the "extended coverage" endorsement.

Prior to the completion of construction, the LICENSEE shall provide such insurance by a Builder's Risk insurance policy.

All general liability insurance required by this LICENSE shall be at least \$1,000,000.00 combined single limit per occurrence. The minimum aggregate limit for the Commercial General Liability policy shall be \$2,000,000.00. All aircraft liability insurance required by this LICENSE shall be at least \$250,000,000.00 per occurrence.

The COUNTY shall be added as an additional insured on all insurance policies required by this LICENSE with respect to work done by the LICENSEE under the terms of this LICENSE (except Workers' Compensation/Employers' Liability, and Fire and Extended Coverage).

The COUNTY shall be a loss payee on the Fire policy.

All insurance policies required by this LICENSE shall be primary insurance, and any insurance maintained by the COUNTY shall be excess and non-contributing with insurance provided by these policies.

All insurance policies required by this LICENSE shall give the COUNTY thirty (30) days notice in the event of cancellation. This shall be evidenced by an endorsement separate from the certificate of insurance. In addition, the cancellation Section must include language as follows:

~~SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT. BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENT OR REPRESENTATIVE.~~

All insurance policies required by this LICENSE shall waive all rights of subrogation against the COUNTY and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

The Commercial General Liability and Aircraft Liability policies shall contain a severability of interests section.

The LICENSEE is aware of the provisions of Section 3700 of the CAL. LAB. CODE, which requires every employer to be insured against liability for workers' compensation or be self-insured in accordance with provisions of that code. The LICENSEE will comply with such



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provisions and shall furnish the COUNTY satisfactory evidence that the LICENSEE has secured, for the period of this LICENSE, statutory workers' compensation insurance and employers' liability insurance with minimum limits of \$1,000,000 per occurrence.

The COUNTY expressly retains the right to require the LICENSEE to increase or decrease insurance of any of the above insurance types throughout the term of this LICENSE. Any increase or decrease in insurance will be as deemed by the County of Orange Risk Manager as appropriate to adequately protect the COUNTY.

The COUNTY shall notify the LICENSEE in writing of changes in the insurance requirements. If the LICENSEE does not deposit copies of acceptable certificates of insurance and endorsements with the COUNTY incorporating such changes within thirty (30) days of receipt of such notice, this LICENSE may be in breach without further notice to the LICENSEE, and the COUNTY shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit the LICENSEE's liability hereunder nor to fulfill the indemnification provisions and requirements of this LICENSE.

### **SECTION 10.02 INDEMNITY**

To the fullest extent authorized by law, the LICENSEE shall indemnify, defend, and hold harmless the COUNTY, its officers, and employees, from and against any and all claims, judgments, damages, penalties, fines, costs, orders, and lawsuits, arising out of the LICENSEE's operations at JWA, including the cost of defense arising therefrom. The LICENSEE's indemnity obligations stated hereinabove also apply to those actions arising from and which involve the LICENSEE's officers, agents, subcontractors, and employees. The LICENSEE's indemnity obligations stated hereinabove shall not apply in the event of any loss, damage, or expense arising from the sole or active negligence and/or willful misconduct of the COUNTY or of the COUNTY's officers, employees, agents, servants, or independent contractors.

In the event the indemnitees described hereinabove are named as defendants or respondents in any lawsuit or administrative proceeding, the LICENSEE shall, at the request of the COUNTY, represent the indemnitee with qualified counsel that is acceptable to the COUNTY.

In the event that a monetary judgment is awarded against the COUNTY and the LICENSEE because of the concurrent negligence of the COUNTY and the LICENSEE or their respective officers, subcontractors, or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Both the COUNTY and the LICENSEE agree that neither party shall request a jury apportionment. Nothing stated in this LICENSE and in this indemnity obligation shall be construed as authorizing any award of attorneys' fees in any action to enforce the terms of this LICENSE. The rights and obligations set forth in this paragraph shall survive the termination of this LICENSE.



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**ARTICLE XI**

**FEDERAL GRANT ASSURANCES AND REQUIREMENTS**

**SECTION 11.01    NONDISCRIMINATION**

- A. The LICENSEE, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that:
- (1) No person on the grounds of race, color, or national origin shall be excluded from participation, denied the benefits of, or be otherwise subjected to discrimination in the use of the operating area.
  - (2) This LICENSE is subject to the requirements of the U.S. Department of Transportation's regulations, 49 C.F.R. Part 23, Subpart F. The LICENSEE agrees that it will not discriminate against any business owner because of the owner's race, color, national origin or sex in connection with the award or performance of any agreement covered by 49 C.F.R. Part 23, Subpart F.
  - (3) In the construction of any improvements on, over or under the Operating Area and the furnishing of services thereon as provided in this LICENSE, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination.
  - (4) The LICENSEE shall use the Operating Area in compliance with all other requirements imposed by or pursuant to 49 C.F.R. Part 21, Subtitle A, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the CIVIL RIGHTS ACT OF 1964, and as said regulations may be amended.
  - (5) In the event facilities are constructed, maintained or otherwise operated on the Airport as allowed under this LICENSE for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, LICENSEE shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CODE C.F.R. Part 21, Subtitle A, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the CIVIL RIGHTS ACT OF 1964, and as said regulations may be amended.
- B. In the event of breach of any of the above nondiscrimination covenants, the COUNTY shall have the right to terminate the LICENSE and to re-enter and repossess said land and the facilities thereon, and hold the same as if said LICENSE had never been made or issued. This provision does not become effective until the procedures of 49 C.F.R. Part 21, are followed and completed, including expiration of appeal rights.



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- C. The LICENSEE shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service.
- D. Noncompliance with Paragraph C above shall constitute a material breach thereof and in the event of such noncompliance, the COUNTY shall have the right to terminate this LICENSE and the estate hereby created without liability therefor; or at the election of the COUNTY or the United States either or both said Governments shall have the right to judicially enforce Paragraphs A, B, and C.
- E. The LICENSEE agrees that it shall insert the above four paragraphs in any license (agreement, contract, *etc.*) by which said LICENSEE grants a right or privilege to any person, firm or corporation to render accommodations and/or service to the public on the Licensed Premises.

### **SECTION 11.02 DEVELOPMENT/MAINTENANCE OF AIRPORT**

The COUNTY reserves the right to further develop or improve the Airport as it sees fit, regardless of the desires or view of the LICENSEE, and without interference or hindrance.

The COUNTY reserves the right, but shall not be obligated to the LICENSEE, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of the LICENSEE in this regard.

### **SECTION 11.03 LICENSE SUBORDINATE TO AGREEMENT WITH U.S.A.**

This LICENSE shall be subordinate to the provisions and requirements of any existing or future agreement between the COUNTY and the United States or any lawful requirement of the United States relative to the development, operation or maintenance of the Airport.

### **SECTION 11.04 USE TO CONFORM WITH FEDERAL AVIATION REGULATIONS**

The LICENSEE agrees that the LICENSEE's use of the Operating Area, including all construction thereon, shall conform to applicable FEDERAL AVIATION REGULATIONS.

The LICENSEE agrees to comply with the notification and review requirements covered in Part 77 of the FEDERAL AVIATION REGULATIONS (as same may be amended from time to time or such other regulation replacing Part 77 as may be adopted by Federal authority) prior to the construction of the improvements described herein and prior to the construction of any future structure or building upon the Operating Area or in the event of any planned modification or alteration of any present or future building or structure situated on the Operating Area.

### **SECTION 11.05 FEDERAL LAW PREEMPTION**

Notwithstanding any provisions of this LICENSE, to the contrary and notwithstanding any provision of any other agreements, laws, or ordinances to the contrary, any requirement that is



**JOHN WAYNE AIRPORT  
CERTIFICATED PASSENGER AIRLINE OPERATING LICENSE**

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imposed on the LICENSEE in this LICENSE, or any local authorities shall not apply to the LICENSEE to the extent that such requirement is or would otherwise be preempted by federal law, including but not limited to the Airline Deregulation Act (49 U.S.C. § 41713).

**SECTION 11.06      NONEXCLUSIVE RIGHT**

It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of §308a of the FEDERAL AVIATION ACT OF 1958 (49 U.S.C. §1349).

**SECTION 11.07      RESERVATION OF AVIGATION EASEMENT**

The COUNTY hereby reserves for itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the air space above the surface of the Operating Area, together with the right to cause in said air space such noise as may be inherent in the operation of aircraft now known or hereafter used for navigation of, or flight in the air, using said air space, or landing at, taking off from, or operating at the Airport.

**SECTION 11.08      HEIGHT LIMITATION OF STRUCTURES**

The LICENSEE by accepting this LICENSE expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object nor permit the growth of any tree on the land Licensed hereunder (if any) which would penetrate the imaginary surfaces as defined in Part 77 of the FEDERAL AVIATION REGULATIONS (as same may be amended from time to time or as such regulation replacing Part 77 may be adopted by Federal authority) or such other lesser altitude as may be required by the COUNTY. In the event the aforesaid covenants are breached, the COUNTY reserves the right to enter upon the land Licensed Area hereunder and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of the LICENSEE. The LICENSEE shall be responsible for filing Form 7460 for any construction and/or height of construction equipment with the FAA, if required.

**SECTION 11.09      NONINTERFERENCE WITH AIRCRAFT**

The LICENSEE by accepting this LICENSE agrees for itself, its successors and assigns that it will not make use of the Airport in any manner which might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the COUNTY reserves the right to enter upon the Operating Area and hereby cause the abatement of such interference at the expense of the LICENSEE.

**SECTION 11.10      WAR OR NATIONAL EMERGENCY**

This LICENSE and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of the Airport or the exclusive or nonexclusive use of the Airport by the United States during the time of war or national emergency.



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**SECTION 11.11 AFFIRMATIVE ACTION REQUIREMENTS**

The LICENSEE assures that it will undertake an affirmative action program as required by 14 C.F.R. Part 152, Subpart E, to insure that no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from participating in any employment activities covered in 14 C.F.R. Part 152, Subpart E. The LICENSEE assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Subpart. The LICENSEE assures that it will require that its covered suborganizations provide assurances to the LICENSEE that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 C.F.R. Part 152, Subpart E, to the same effect.

**ARTICLE XII**

**MISCELLANEOUS PROVISIONS**

**SECTION 12.01 TIME**

Time is of the essence in this LICENSE.

**SECTION 12.02 LICENSE ORGANIZATION**

The various headings and numbers herein, the grouping of provisions of this LICENSE into separate sections and paragraphs, and the organization hereof, are for the purpose of convenience only and shall not be considered otherwise.

**SECTION 12.03 AMENDMENTS**

This LICENSE sets forth all of the agreements and understandings of the parties with regard to its subject matter and any modification must be written and properly executed by both parties.

**SECTION 12.04 SIGNS**

LICENSEE agrees not to construct, maintain or allow any sign upon the Operating Area except as approved by Airport Director. Unapproved signs, banners, flags, etc., may be removed by the Airport Director without prior notice to the LICENSEE.

**SECTION 12.05 PERMITS AND LICENSES**

The LICENSEE shall be required to obtain any and all approvals, permits and/or licenses which may be required in connection with its operation as set out herein. No permit approval or consent given hereunder by the COUNTY in its governmental capacity shall affect or limit the LICENSEE's obligations hereunder, nor shall any approvals or consents given by the COUNTY as a party to this LICENSE, be deemed approval as to compliance or conformance with applicable governmental codes, laws, ordinances, rules, or regulations.



**JOHN WAYNE AIRPORT**  
**CERTIFICATED PASSENGER AIRLINE OPERATING LICENSE**

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**SECTION 12.06 TAXES AND ASSESSMENTS**

This LICENSE may create a possessory interest that is subject to the payment of taxes levied on such interest. It is understood and agreed that all taxes and assessments (including but not limited to said possessory interest tax) that become due and payable upon fixtures, equipment or other property installed or constructed thereon, shall be the full responsibility of the LICENSEE, and the LICENSEE shall cause said taxes and assessments to be paid promptly.

**SECTION 12.07 CIRCUMSTANCES WHICH EXCUSE PERFORMANCE**

If either party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, restrictive governmental laws or regulations or other cause without fault and beyond the control of the party obligated (financial inability excepted), performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. However, nothing in this Section shall excuse the LICENSEE from the prompt payment of any fees and charges or other charges required of the LICENSEE except as may be expressly provided elsewhere in this LICENSE.

**SECTION 12.08 PARTIAL INVALIDITY**

If any term, covenant, condition, or provision of this LICENSE is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

**SECTION 12.09 WAIVER OF RIGHTS**

The failure of the COUNTY or the LICENSEE to insist upon strict performance of any of the terms, covenants or conditions of this LICENSE shall not be deemed a waiver of any right or remedy that the COUNTY or the LICENSEE may have, and shall not be deemed a waiver of the right to require strict performance of all the terms, covenants and conditions of the LICENSE thereafter, nor a waiver of any remedy for the subsequent breach or default of any term, covenant or condition of this LICENSE. Any waiver, in order to be effective, must be signed by the party whose right or remedy is being waived.

**SECTION 12.10 RESERVATIONS TO THE COUNTY**

The Operating Area is accepted as is and the LICENSEE is subject to any and all existing easements and encumbrances. The COUNTY reserves the right to install, lay, construct, maintain, repair and operate sanitary sewers, drains, storm water sewers, pipelines, manholes and connections; water, oil and gas pipelines; telephone and telegraph power lines; and the appliances and appurtenances necessary or convenient in connection therewith, in, over, upon, through, across, under and along the Operating Area or any part thereof; and to enter the Operating Area for any and all such purposes. The COUNTY also reserves the right to grant franchises, easements, rights of way and permits in, over, upon, through, across, under and along any and all portions of the Operating Area. No right reserved by the COUNTY in this Section





## **JOHN WAYNE AIRPORT CERTIFICATED PASSENGER AIRLINE OPERATING LICENSE**

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shall be so exercised as to interfere unreasonably with the LICENSEE's operations hereunder or to impair the security of any secured creditor of the LICENSEE.

The COUNTY agrees that rights granted to third parties by reason of this Section shall contain provisions that the surface of the land shall be restored as nearly as practicable to its original condition upon the completion of any construction. The COUNTY further agrees that should the exercise of these rights temporarily interfere with the use of any or all of the Operating Area by the LICENSEE, the LICENSEE shall only be entitled to a reduction in the fees and charges payable to the COUNTY during the period of interference, which shall be reduced in proportion to the interference with the LICENSEE's use of the Operating Area. The LICENSEE shall not be entitled to any other form of compensation.

### **SECTION 12.11 AUTHORITY OF LICENSEE**

If the LICENSEE is a corporation, each individual executing this LICENSE on behalf of said corporation represents and warrants that he is duly authorized to execute and deliver this the LICENSE on behalf of said corporation, in accordance with the by-laws of said corporation, and that this LICENSE is binding upon said corporation.

### **SECTION 12.12 PUBLIC RECORDS**

The LICENSEE understands that written information submitted to and/or obtained by the COUNTY from the LICENSEE related to this LICENSE and/or the Operating Area, either pursuant to this LICENSE or otherwise, may be open to inspection by the public pursuant to the CAL. PUBLIC RECORDS ACT (CAL. GOV. CODE §§6250 *et seq.*) as now in force or hereafter amended, or any Act in substitution thereof, or otherwise made available to the public.

### **SECTION 12.13 RELATIONSHIP OF PARTIES**

The relationship of the parties hereto is that of Licensor and Licensee, and it is expressly understood and agreed that the COUNTY does not in any way or for any purpose become a partner of the LICENSEE in the conduct of the LICENSEE's business or otherwise, or a joint venturer with the LICENSEE; and the provisions of this LICENSE and the agreements relating to fees and charges payable hereunder are included solely for the purpose of providing a method by which fees and charges payments are to be measured and ascertained. This LICENSE is intended for the sole benefit of the parties hereto and their successors, and, unless otherwise provided herein, or by law, no rights are created, or are intended to be created, for the benefit of, or enforceable by, any third parties.

### **SECTION 12.14 NOTICES**

All notices pursuant to this LICENSE shall be addressed to either party as set forth below and shall be sent through the United States Mail, in the State of California, duly registered or certified, return receipt requested with postage prepaid or by an overnight carrier service. If any notice is sent by an overnight carrier service, as aforesaid, the same shall be deemed to have been served or delivered twenty-four (24) hours after mailing thereof. Notwithstanding the above



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COUNTY may also provide notices to the LICENSEE by personal delivery or by regular mail postage prepaid and any such notice so given shall be deemed to have been given upon the date of personal delivery or three (3) days after the date of deposit in the United States Mail, respectively.

TO: COUNTY

John Wayne Airport  
3160 Airway Avenue  
Costa Mesa, CA 92626

TO: LICENSEE

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Either party hereto may from time to time, by written notice to the other in the method described above, designate a different address which shall be substituted for the one above specified.

EXAMPLE

IN WITNESS WHEREOF, the parties have executed this LICENSE the day and year first above written.

\_\_\_\_\_ ( LICENSEE)

By: \_\_\_\_\_

By: \_\_\_\_\_

APPROVED AS TO FORM:

County Counsel

By: \_\_\_\_\_

APPROVED AS TO AUDIT AND ACCOUNTING:

Auditor-Controller

By: \_\_\_\_\_

RECOMMENDED FOR APPROVAL:

John Wayne Airport

By: \_\_\_\_\_

Alan L. Murphy  
Airport Director

Signed and certified that a copy of this document has been delivered to the Chair of the Board per G.C. Sec. 25103, Reso 79-1535  
Attest:

COUNTY

COUNTY OF ORANGE

By: \_\_\_\_\_  
Chair, Board of Supervisors

\_\_\_\_\_  
Darlene J. Bloom  
Clerk of the Board of Supervisors  
of Orange County, California

**EXHIBIT D-3**  
**CERTIFICATED PASSENGER AIRLINE OPERATING LICENSE**  
**(COMMUTER LICENSE)**



**CERTIFICATED PASSENGER  
AIRLINE OPERATING LICENSE**

**Dated** \_\_\_\_\_

**Between**

**County of Orange**

**and**

\_\_\_\_\_  
**Licensee**



**JOHN WAYNE AIRPORT  
CERTIFICATED PASSENGER AIRLINE OPERATING LICENSE**

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EXAMPLE



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**LIST OF EXHIBITS**

EXHIBIT A    MAP – COMMON USE AREAS

EXHIBIT B    MAP – APRON AREA

EXAMPLE



**JOHN WAYNE AIRPORT  
CERTIFICATED PASSENGER AIRLINE OPERATING LICENSE**

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THIS CERTIFICATED PASSENGER AIRLINE OPERATING LICENSE is made and entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the COUNTY OF ORANGE, a political subdivision of the State of California ("COUNTY"), and \_\_\_\_\_ ("LICENSEE").

**RECITALS**

WHEREAS, the COUNTY, through its Board of Supervisors, is the owner and airport proprietor of John Wayne Airport ("JWA" or "the Airport"), located in the County of Orange, State of California, and operates and maintains the Airport as a governmental function for the primary purpose of providing to the public air transportation; and

WHEREAS, the LICENSEE is an Airline engaged in the business of commercial air transportation of persons, property, cargo and mail as a scheduled air carrier and is certificated or otherwise authorized by the United States of America to engage in such business; and

WHEREAS, the LICENSEE desires to enter into a LICENSE covering certain premises, facilities, rights, licenses, services and privileges at the Airport; and

WHEREAS, as part of its ongoing effort to operate the Airport in a manner sensitive to the residents who live under the approach and departure corridors, the County of Orange has developed one of the most stringent access and noise abatement programs in the country. The Airport monitors all aircraft operations, both commercial and private, for compliance with the program. These noise abatement and access restrictions are embodied in the 1985 Settlement Agreement between the COUNTY, the City of Newport Beach and other parties, as well as in ordinances, resolutions (including Resolutions No. 85-255, 85-256, 85-259, 85-1231, 85-1232, and 85-1233), regulations (including the Phase 2 Commercial Airline Access Plan and Regulation) and policies of the COUNTY, as amended; and

WHEREAS, in 2003, the 1985 Settlement Agreement was amended by the COUNTY and the parties and approved on February 25, 2005 by the United States District Court to, among other things, increase the authorized passenger levels at the Airport; and

WHEREAS, the 2003 amendments to the 1985 Settlement Agreement preserve and continue to implement the important restrictions on the use of JWA, "grandfathered" under the AIRPORT NOISE AND CAPACITY ACT OF 1990 ("ANCA"), which reflect and accommodate historical policy decisions of the Board of Supervisors regarding the appropriate point of balance between the competing interests of the air transportation and aviation community and local residents living in the vicinity of the Airport. These include existing nighttime operations restrictions and maximum permitted single event noise levels; and

WHEREAS, the COUNTY and the LICENSEE mutually desire to enter into a LICENSE in order to provide air transportation services to the community and its visitors; and

WHEREAS, the COUNTY has the right to permit the use of its property at the Airport and to grant the use of the Airport to the LICENSEE for the operation of the LICENSEE's air transportation services; and



**JOHN WAYNE AIRPORT  
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WHEREAS, the LICENSEE acknowledges that this LICENSE is being entered into under the provisions of CALIFORNIA PUBLIC UTILITIES CODE §§21690.5, *et seq.*, and in particular, §21690.9.

NOW, THEREFORE, in consideration of the promises and the mutual covenants hereinafter contained to be observed and performed by the respective parties hereto,

THE PARTIES HERETO COVENANT, AGREE AND BIND THEMSELVES AS FOLLOWS:

**ARTICLE I**

**DEFINITIONS**

The following words, terms and phrases whenever used in this LICENSE shall have the meaning and significance attached to them in this Article, unless otherwise apparent from context.

**SECTION 1.01      ACCESS PLAN**

"Access Plan" shall mean the Phase 2 Commercial Airline Access Plan and Regulation for John Wayne Airport, Orange County, as that plan existed when originally adopted and approved by the Orange County Board of Supervisors during 1990, as it has been amended by the Board of Supervisors from time to time, and as it may be amended by the Board of Supervisors at any time during the term of this LICENSE.

**SECTION 1.02      ADD**

"ADD" shall mean Average Daily Departure, as defined in the Access Plan. Except as expressly provided in the Access Plan, all commercial air carrier departures at JWA are regulated departures and require an ADD allocation. ADD allocations are the exclusive property of the County of Orange.

**SECTION 1.03      AIRLINE RATES AND CHARGES**

"Airline Rates and Charges" shall mean all rates, fees and charges payable to the COUNTY by the LICENSEE as specified herein.

**SECTION 1.04      AIRPORT**

"Airport" shall mean the John Wayne Airport, Orange County, California.

**SECTION 1.05      AIRPORT DIRECTOR**

"Airport Director" shall mean the Director of John Wayne Airport, County of Orange, as appointed by the County Executive Office, or Director's designee.



**JOHN WAYNE AIRPORT  
CERTIFICATED PASSENGER AIRLINE OPERATING LICENSE**

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**SECTION 1.06      APRON AREA**

"Apron Area" shall mean the land identified as Apron Area in Exhibit A attached hereto, and, except as otherwise provided herein, all facilities, equipment and improvements now or hereafter located thereon.

**SECTION 1.07      AUDITOR-CONTROLLER**

"Auditor-Controller" shall mean the Auditor-Controller, County of Orange, or designee.

**SECTION 1.08      BOARD OF SUPERVISORS**

"Board of Supervisors" shall mean the elected (or duly appointed) members of the Board of Supervisors of the County of Orange, as governing body of the County and proprietor of the Airport through its Airport Director, or designees, as appropriate.

**SECTION 1.09      CERTIFICATED MAXIMUM LANDING WEIGHT**

"Certificated Maximum Landing Weight" shall mean the current maximum allowable gross landing weight of aircraft operated by LICENSEE and certificated by the Federal Aviation Administration (FAA) for operation at the Airport.

**SECTION 1.10      COMMON USE AREA**

"Common Use Area" shall mean the nonexclusive use of space, in common with other airline's, located in the Terminal, as shown on Exhibit B.

**SECTION 1.11      COUNTY**

"COUNTY" shall mean the County of Orange, a political subdivision of the State of California.

**SECTION 1.12      DOT**

"DOT" shall mean the Department of Transportation.

**SECTION 1.13      FAA**

"FAA" shall mean the Federal Aviation Administration created under the Federal Aviation Act of 1958, or such successor agency as may from time to time have similar jurisdiction over LICENSEE or its business, and the Airport.

**SECTION 1.14      GROUND SERVICE EQUIPMENT**

Ground Service Equipment ("GSE") shall mean any auxiliary power unit, mobile stairs, aircraft support equipment, machinery, spare parts, or other equipment used by any qualified air carrier in support of its operations, or stored, at JWA.



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**SECTION 1.15      HAZARDOUS SUBSTANCES**

"Hazardous Substances" are defined in Article V, Section 5.01.

**SECTION 1.16      INTERNATIONAL ARRIVAL FACILITY**

International Arrival Facility ("IAF") shall mean the areas of the terminal that house U.S. Customs and Border Protection and are for the use of arriving international passengers.

**SECTION 1.17      NON STORM WATER DISCHARGE**

"Non Storm Water Discharge" shall mean any discharge to storm sewer systems that is not entirely composed of storm water. "Non Storm Water Discharge" includes "Unauthorized Non Storm Water Discharges" and "Authorized Non Storm Water Discharges" as defined by the California Environmental Protection Agency State Water Resources Control Board National Pollutant Discharge Elimination System General Permit for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities.

**SECTION 1.18      OPERATING AREA**

"Operating Area" shall mean the areas of the Airport available to LICENSEE for the operation of its schedule Airline service.

**SECTION 1.19      PFC**

"PFC" shall mean federally approved Passenger Facility Charges or passenger facility fees, as authorized by 49 U.S.C. § 40117 and regulated by 14 CFR Part 158, as such statute and regulation currently exist or as they may be amended during the term of this agreement.

**SECTION 1.20      RON**

"RON" shall mean the remain overnight positions where the LICENSEE's aircraft are required to park when they "remain overnight" at JWA.

**SECTION 1.21      STORM WATER**

"Storm Water" shall mean storm water runoff, snowmelt runoff, and storm water surface runoff and drainage.

**SECTION 1.22      TERMINAL**

"Terminal" shall mean the Thomas F. Riley commercial passenger terminal and concourses at John Wayne Airport, as may be modified at any time during the term of this LICENSE.



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**SECTION 1.23      TSA**

"TSA" shall mean the Transportation Security Administration of the United States Department of Homeland Security, the federal agency responsible for regulation of airport security, or any such successor agency.

**ARTICLE II**

**TERM OF LICENSE**

**SECTION 2.01      TERM OF LICENSE**

The term of this LICENSE shall commence on \_\_\_\_\_, 20\_\_, and shall continue on a month-to-month basis until terminated by either party.

**SECTION 2.02      TERMINATION FOR CONVENIENCE**

This LICENSE may be terminated for convenience by either party for any reason, and without cause, upon thirty (30) days written notice.

**ARTICLE III**

**FEES AND CHARGES**

**SECTION 3.01      FEES AND CHARGES**

The fees, and charges contained in this LICENSE are established in accordance with (i) Resolution 02-062 dated March 12, 2002 (or as subsequently amended), which reasserts and establishes the John Wayne Airport Revenue Planning Policy, and (ii) with the Bond Indenture for the Airport Revenue Bonds, Series 1987, and the First Supplemental, Second Supplemental, and Third Supplemental Indenture, Series 1993, 1997, 2003 and 2009.

A. The LICENSEE shall make payment of the following fees and charges which shall be due and payable monthly in advance on the first day of each month with a 15-day grace period; and the LICENSEE agrees that the COUNTY will not invoice for such fees and charges:

(1) **Common Use Areas**

- (a) Arrival Level. Fees shall be established by the COUNTY for shared use of baggage claim and baggage make-up areas. Said fees shall be established on the basis of allocating the Airport's total costs and expenses associated with the baggage claim and baggage make-up areas to the commercial Airlines in the terminal accordingly: twenty percent (20%) of the costs to be shared evenly among the commercial Airlines and eighty



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percent (80%) of the costs to be shared based on each commercial Airlines' percentage of total deplaned passengers at the Airport including their commuter affiliates.

- (b) Departure Level. Fees shall be established by the COUNTY for shared use of departure level common areas including hold-rooms, airside concourses, baggage/passenger screening areas and security areas. Said fees shall be established by allocating Airport's total costs and expenses associated with departure level common areas accordingly: ten percent (10%) of the costs to be shared evenly among the commercial Airlines in the terminal, forty-five percent (45%) of the costs to be shared based on each commercial LICENSEE's percentage of total enplaned passengers at the Airport including their commuter affiliates, and forty-five percent (45%) of the costs to be shared based on each commercial Airlines' percentage of total aircraft departures.

The monthly fees for arrival and departure level common areas shall be estimated by the COUNTY and recalculated based on actual operations on a six months basis or such other intervals as approved by the COUNTY. At the end of each six (6) months, the COUNTY shall establish monthly fees for the next six (6) month period and issue credits for any overpayments by the LICENSEE or invoice the LICENSEE for any underpayments for the previous period.

In the event an obligation to pay fees begins or terminates on some day other than the first or last day of the month, the fees shall be prorated to reflect the actual period of use on the basis of a thirty (30) day month. The fees for any partial calendar month during which this LICENSE becomes effective will be payable on such effective date.

- (c) IAF. Fees shall be established by the COUNTY for shared use of the IAF. Said fees shall be established on the basis of allocating the Airport's total costs and expenses associated with the IAF.
- (d) Common Use Passenger Processing System. Fees shall be established by the COUNTY for the implementation and maintenance of the Common Use Passenger Processing System (CUPPS). Said fees shall be established by allocating the Airport's total costs and expenses associated with departure level common areas accordingly: ten percent (10%) of the costs to be shared evenly among the commercial Airlines in the terminal, forty-five percent (45%) of the costs to be shared based on each commercial Airlines percentage of total enplaned passengers at the Airport, including their commuter affiliates, and forty-five percent (45%) of the costs to be shared based on each commercial Airlines' percentage of total aircraft departures.





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**(2) Additional Fees**

Additional fees shall be established by the COUNTY for including, but not limited to, utility expenses, janitorial expenses, and annual security expenses resulting from any security measures implemented after September 11, 2001. Such fees shall be established annually by allocating Airport's total cost accordingly: ten percent (10%) of the cost to be shared evenly among the commercial Airlines in the terminal, forty five percent (45%) of the cost to be shared based on each commercial airlines percentage of total enplaned passengers at Airport including their commuter affiliates, and forty five percent (45%) of the costs to be shared based on each commercial airline's percentage of total aircraft departures.

- B. The LICENSEE shall pay the following fees and charges payable monthly in arrears on or before the twentieth (20th) day of each month with no grace period. The LICENSEE agrees that the COUNTY will not invoice for the following fees and charges:
- (1) Landing fees based on the latest schedule established by the COUNTY covering the operation of scheduled airlines and commercial operations at the Airport. Landing fees shall be expressed in terms of a rate per one thousand (1,000) pounds of maximum gross landing weight of aircraft certified by the FAA.
  - (2) Aircraft RON parking fees based on the latest schedule established by the COUNTY. Aircraft parking fees shall be expressed in dollars per night.
  - (3) Operations fees (gate use fees) based on the schedule established by the COUNTY. Operations fees shall be expressed in dollars per daily departure.
  - (4) Equipment Storage fees based on the schedule established by the COUNTY. Equipment Storage fees shall be expressed in dollars per square foot.
- C. Upon thirty (30) days' written notice from the Airport Director, the COUNTY may modify the fees and charges described in paragraphs A and B of this section. Said modification of rates and charges may not occur more often than every six (6) months. Changes may include fee revisions, establishment of new fee classifications or such other changes as needed to respond to the LICENSEE's use of Airport, the need for the COUNTY to receive fair and equitable fees and charges for all uses of Airport and to insure Airport is operated at no cost to the local taxpayer. With regard to any dispute as to what may constitute reasonable fees and charges, the LICENSEE shall first exhaust all remedies provided by applicable federal law and FAA regulations.

Notwithstanding anything in this LICENSE to the contrary, all amounts payable by the LICENSEE to or on behalf of the COUNTY under this LICENSE, whether or not expressly denominated as rent, shall constitute rent for the purposes of the UNITED STATES BANKRUPTCY CODE, 11 USC §502(b)(6).



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The LICENSEE shall notify Airport in writing within thirty (30) days of filing a petition for Bankruptcy.

### **SECTION 3.02      PAYMENT PROCEDURE**

- A.     **Place of Payment and Filing.** Payments and statements required by the Sections in this LICENSE entitled "FEES AND CHARGES" and "RECORDS AND ACCOUNTS" shall be delivered to the County of Orange, Office of the Auditor-Controller, John Wayne Airport Accounting Services, 3160 Airway Avenue, Costa Mesa, California 92626. The designated place of payment and filing may be changed at any time by the COUNTY upon ten (10) days' written notice to the LICENSEE. Payments may be made by check payable to the County of Orange. The LICENSEE assumes all risk of loss if payments are made by mail.
- B.     **Form of Payment.** All sums due under this LICENSE shall be paid in lawful money of the United States of America without offset or deduction or prior notice or demand. No payment by the LICENSEE or receipt by the COUNTY of a lesser amount than the payment due shall be deemed to be other than on account of the payment due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and the COUNTY shall accept such check or payment without prejudice to the COUNTY's right to recover the balance of the amount due or pursue any other remedy in this LICENSE.

### **SECTION 3.03      CHARGE FOR LATE PAYMENT**

The LICENSEE hereby acknowledges that the late payment of fees and charges or any other sums due hereunder will cause the COUNTY to incur costs not contemplated by this LICENSE, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, administrative processing of delinquent notices, increased accounting costs, lost interest income.

Accordingly, if any payment of fees and charges as specified in the section in this LICENSE entitled "FEES AND CHARGES" or of any other sum due to the COUNTY is not received by COUNTY by the due date, a late charge of one and one-half percent (1.5%) of the payment due and unpaid plus one hundred dollars (\$100) shall be added to the payment, and the total sum shall become immediately due and payable to the COUNTY. An additional charge of one and one-half percent (1.5%) of said payment, excluding late charges, shall be added for each additional month that said payment remains unpaid.

The LICENSEE and the COUNTY hereby agree that such late charges represent a fair and reasonable estimate of the costs that the COUNTY will incur by reason of the LICENSEE's late payment. Acceptance of such late charges (and/or any portion of the overdue payment) by the COUNTY shall in no event constitute a waiver of LICENSEE's default with respect to such overdue payment, or prevent the COUNTY from exercising any of the other rights and remedies granted hereunder.



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**SECTION 3.04 PASSENGER FACILITY CHARGE**

The COUNTY expressly reserves the right to impose PFCs on LICENSEE passengers for the use of the Airport in accordance with 49 U.S.C. § 40117 and applicable implementing regulations adopted by the FAA, 14 CFR Part 158, as they may be amended from time to time (the “PFC Regulations”).

The LICENSEE shall hold in trust for the COUNTY the net principal amount of all PFCs that are collected by the LICENSEE or its agents on behalf of the COUNTY. For the purposes of this Section 3.04, net principal amount shall mean the total principal amount of all PFCs that are collected by the LICENSEE or its agents on behalf of the COUNTY, reduced by any amount that the LICENSEE is permitted to retain pursuant to 49 U.S.C. § 40117 and the PFC Regulations. Monthly PFCs collected by the LICENSEE shall be remitted to the COUNTY no later than the last day of the following calendar month or if that date falls on a weekend or holiday, the first business day thereafter. In addition, PFCs collected by the LICENSEE shall be remitted to the COUNTY at the address specified in Section 3.02, part A, “Place of Payment and Filing” or at such other place as designated by the COUNTY.

Should the LICENSEE fail to remit the net principal amount of all PFCs to the COUNTY within five (5) days following the remittance date specified above, the LICENSEE shall be deemed to be in default pursuant to Article VIII hereof. In Addition, any late payment of PFCs shall be subject to late fees computed at the rate of one and one-half percent (1.5%) of the payment due and unpaid plus one hundred dollars (\$100) or the highest rate allowable under applicable state law from the due date until paid.

Nothing contained herein shall be construed to supersede the rights and obligations provided in 14 CFR Part 158 regarding Passenger Facility Charges. In the event that a conflict exists between such federal regulation and this agreement, the federal regulation shall govern.

**SECTION 3.05 PROVISION AGAINST SET-OFFS**

It is the obligation of the LICENSEE to pay all fees and charges, free of any set-offs or claims, in the amount and at the times specified in this LICENSE. In the event that the LICENSEE desires to contest the validity or amount of any such fees and charges, the LICENSEE shall first pay the same to the COUNTY and may then seek a refund in any appropriate forum.

**SECTION 3.06 SECURITY DEPOSIT**

The LICENSEE, prior to the commencement of operations, shall deposit with the COUNTY a security deposit in the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), subject to the provisions for adjustment as provided hereinafter.

Concurrently with each revision of the fees and charges pursuant to the Section in this LICENSE entitled "FEES AND CHARGES", the security deposit to be provided by the LICENSEE shall be adjusted to approximately three (3) times the estimated monthly fees and charges as determined by Airport Director to guarantee the faithful performance by the LICENSEE of its obligations under this LICENSE and the payment of all fees and charges due hereunder.



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The security deposit shall take one of the forms set out below and shall guarantee the LICENSEE's full and faithful performance of all the terms, covenants, and conditions of this LICENSE:

- A. An instrument or instruments of credit from one or more financial institutions, subject to regulation by the State of California or Federal government, pledging that funds necessary to secure performance of the LICENSE terms, covenants, and conditions are on deposit and guaranteed for payment, and agreeing that said funds shall be trust funds securing the LICENSEE's performance and that all or any part shall be paid to the COUNTY, or order upon demand by Airport Director. Both the financial institution(s) and the form of the instrument(s) must be approved by Airport Director.
  
- B. A Faithful Performance Bond executed by a surety company or financial institution qualified and admitted to do business in the State of California and issued in a form, approved by the COUNTY. Under the bond, the surety company shall guarantee to COUNTY full and complete performance of all the terms, conditions and covenants herein to be performed on the part of the LICENSEE, including the payment of use fees, charges, as well as any and all other payments. Said bond shall be maintained at the cost of the LICENSEE throughout the existence of this LICENSE. Said Surety shall give Airport Director a minimum (30) days' prior written notice of cancellation or material change in said bond. Such cancellation or material change without Airport Director's prior written consent shall constitute a default under this LICENSE.

Regardless of the form in which the LICENSEE elects to make said security deposit, all or any portion of the principal sum shall be available unconditionally to the COUNTY for correcting any default or breach of this LICENSE by the LICENSEE, its successors or assigns, or for payment of expenses incurred by the COUNTY as a result of the failure of the LICENSEE, its successors or assigns, to faithfully perform all terms, covenants, and conditions of this LICENSE.

Should the LICENSEE elect to provide either an Instrument of Credit or a Faithful Performance Bond to fulfill the security deposit requirements of this LICENSE, said instrument or bond shall have the effect of releasing depository or creditor therein from liability on account of the payment of any or all of the principal sum to the COUNTY, or order upon demand by Airport Director.

In the event Airport Director withdraws all or any portion of the security deposit as provided herein, the LICENSEE shall, within ten (10) days of any withdrawal by Airport Director, replenish the security deposit to maintain it at amounts herein required throughout the LICENSE term. Failure to do so shall be deemed a default and shall be grounds for immediate termination of this LICENSE.

The LICENSEE shall be obligated to maintain the security deposit in effect until the Expiration Date of the LICENSE.



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The security deposit, after deduction of all amounts due to the COUNTY, shall be rebated, reassigned, released or endorsed by the COUNTY to the LICENSEE or order, as applicable, after one hundred twenty (120) days have elapsed following the expiration date of the LICENSE term, provided the LICENSEE has fully and faithfully performed each and every term, covenant, and condition of this LICENSE.

**SECTION 3.07      NEW ENTRANT DEPOSIT**

A cash security deposit in the sum of Five Hundred Thousand Dollars (\$500,000.00) shall be provided by a new entrant LICENSEE prior to the commencement of operations.

This deposit shall be returned after six (6) months of continuous operation.

**ARTICLE IV**

**USE, OPERATION, MAINTENANCE AND CONDITION OF PREMISES**

**SECTION 4.01      USE**

The COUNTY hereby grants to the LICENSEE the authorization to conduct a scheduled commercial Airline operation at the Airport and for no other purpose whatsoever. Said operation shall be conducted in accordance with an agreement between the LICENSEE and \_\_\_\_\_ and subject to the terms and conditions of the Certificated Passenger Airline Lease between the COUNTY and \_\_\_\_\_ dated \_\_\_\_\_. The terms and conditions of this LICENSE shall prevail in the event of any conflict with said agreement between the LICENSEE and \_\_\_\_\_ and subject to the limitations set forth in the sections in this LICENSE entitled "OPERATIONAL REQUIREMENTS" and "RULES AND REGULATIONS", this operation may include any or all of the following uses and no other uses whatsoever:

**AUTHORIZED USES:**

- A. Loading and unloading of passengers.
- B. Loading and unloading of baggage.
- C. Passenger processing operations.
- D. Flight operations office.
- E. The LICENSEE shall have the right to have its aircraft and other equipment serviced by suppliers of its choice. Such suppliers may provide materials and services, including, but not limited to, aviation fuel, ground vehicle fuel, lubricating oil, greases, parts, and all other materials and supplies and services required by the LICENSEE in the conduct of its air transportation service.



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- F. Mail, freight and cargo operations but only when such activity is incidental to, and conducted in connection with, regularly scheduled commercial passenger operations. The LICENSEE shall not conduct any operations at the Airport with aircraft which are:
- 1) used at the Airport exclusively or primarily for mail, freight or cargo services; or
  - 2) which have been modified in any manner for the purpose or the primary effect of reducing the passenger carrying capacity and increasing the cargo or freight carrying capacity of the aircraft.
- G. Air charter activities in compliance with Access Plan.
- H. Commissary services for the LICENSEE's employees at the Airport and in-flight catering services in support of the LICENSEE's air operations at the Airport. This does not permit the LICENSEE to conduct commissary or in-flight services for any other LICENSEE or other person at Airport.
- I. Employee training incidental to the other uses permitted under this Section.
- J. Other uses as authorized by the Airport Director

### **SECTION 4.02 USE OF PUBLIC AIRPORT FACILITIES**

The COUNTY grants the LICENSEE a LICENSE for the nonexclusive use of all public Airport facilities including, but not limited to, taxiways, runways, navigational aids and facilities relating thereto for purposes of landings, takeoffs and taxiing of the LICENSEE's aircraft. All such use shall be in accordance with the laws of the United States of America, the State of California, and the rules and regulations promulgated by their authority with reference to aviation and air navigation, and in accordance with all reasonable and applicable rules, regulations, and ordinances of the COUNTY now in force or hereafter prescribed or promulgated by ordinance or by law, including the Access Plan. The use of these areas shall be subject to the control and regulation of Airport Director.

This LICENSE for non exclusive use is subject to all rights reserved by the COUNTY to license, permit, authorize, regulate and relocate concessionaires and other Airport tenants, including but not limited to, booths, counters, offices, lockers and wall space.

### **SECTION 4.03 RULES AND REGULATIONS**

The COUNTY may adopt and enforce Rules and Regulations which the LICENSEE agrees to observe and obey, with respect to the use of the Airport and its appurtenances, facilities, improvements, equipment and services; provided that such rules and regulations shall not be inconsistent with safety and with rules, regulations and orders of the FAA and TSA with respect to all operations of the Airport. Except in the case of emergency, the COUNTY shall give the LICENSEE written notice and opportunity to comment on any proposed changes or additions to the rules and regulations that could impact the LICENSEE's operations at the Airport before such



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proposed rules and regulations are adopted by the COUNTY. If requested, the COUNTY shall promptly provide a copy of such rules and regulations to the LICENSEE.

The LICENSEE shall comply with all Airport Rules and Regulations and shall observe, obey, comply with and not otherwise hinder or obstruct any and all rules, regulations, laws, ordinances, statutes or orders of any governmental authority, whether Federal, State, or local, lawfully exercising authority over the Airport or the activities thereon, including compliance with FAA, TSA and Airport security rules, regulations and plans.

To the fullest extent authorized by law, the LICENSEE shall be liable to the COUNTY for any and all claims, demands, damages, fines or penalties of any nature whatsoever which may be imposed upon the COUNTY due to the LICENSEE's violation of any governmental rules, regulations or standards as now or may hereafter be promulgated or enacted, including, but not limited to, the payment of any fines or penalties for any breach of security, arising from the unauthorized entry of any person or vehicle onto Airport or from any other violations caused directly or indirectly by the act, omission, negligence, abuse or carelessness on the part of the LICENSEE, its employees, subtenants, agents or suppliers.

The COUNTY shall not be liable to the LICENSEE for any diminution or deprivation of possession, or of its rights hereunder, on account of the exercise of such right or authority as in this section provided, nor shall the LICENSEE be entitled to terminate the whole or any portion of the operating area herein created, by reason of the exercise of such right or authority, unless the exercise thereof shall so interfere with the LICENSEE's use and occupancy of the operating area so as to constitute a termination in whole or in part of this LICENSE by operation of law in accordance with the laws of the State of California.

### **SECTION 4.04 ACCESS PLAN LIMITATIONS ON USE**

The LICENSEE agrees that:

- A. Notwithstanding any provision in this LICENSE to the contrary, the LICENSEE shall conduct all of its operations and activities at the Airport in strict conformity with the Access Plan and each of its regulations and limitations on the LICENSEE's activities and operations at the Airport.
- B. The ADD allocations and other operating privileges made to the LICENSEE under the Access Plan are a privilege which may be revoked or modified by the COUNTY at any time during the terms of this LICENSE, and that such privileges do not constitute property rights of the LICENSEE.
- C. The ADD allocations and other operating privileges made to the LICENSEE under the Access Plan are not transferable, assignable or delegable by the LICENSEE to any other person or entity, by operation of law or otherwise, and that such allocations and other operating privileges may not be pledged, hypothecated or encumbered by the LICENSEE at any time for any purpose.



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- D. That the remedies specified in the Access Plan for any Access Plan violation by the LICENSEE are not the exclusive remedies of the COUNTY, but shall constitute additional nonexclusive remedies which the COUNTY may enforce separately or cumulatively with other remedies under the enforcement provisions of this LICENSE.
- E. That LICENSEE shall not at any time, or for any reason, make any assertion to any court, administrative agency, administrative tribunal or other similar forum, which is in any respect inconsistent with the terms and provisions of this Section; and except that nothing in this Section shall prevent the LICENSEE from making any argument or asserting any position to the COUNTY as applicable in connection with any action by the COUNTY to revoke or modify allocations of operating privileges or any amendments to the Access Plan.
- F. All provisions of the Sections in this LICENSE entitled "USE" and "TERMINATION" are subject to the terms, provisions and limitations of this Section.

### SECTION 4.05 OPERATIONAL REQUIREMENTS

The LICENSEE agrees to abide by the following operational conditions and requirements:

- A. **Flight Operations and Reallocations.** The number of allocated ADDs, including "regularly scheduled," "charter," "maintenance" and "cargo" shall not exceed the number of departures authorized and allocated to the LICENSEE under the Access Plan. In addition to any and all remedies available to the COUNTY under this LICENSE and all provisions of the Access Plan, the COUNTY may reallocate ADDs or other operating privileges granted to the LICENSEE under the provisions of the Access Plan. The LICENSEE shall not operate at JWA unless it conducts its operations with ADDs, allocated seat capacity or other Authorized Departures directly and formally allocated to the LICENSEE by action of the Board of Supervisors; the LICENSEE conducts all of its operations with aircraft which have been certified for operation at the Airport consistent with Access Plan requirements; and the LICENSEE has met all other applicable COUNTY requirements.
- B. **Hours of Operation.** Except as expressly authorized, the LICENSEE's aircraft shall not depart from the Airport between the hours of 10:00 p.m. and 7:00 a.m. (8:00 a.m. on Sundays) (local time) and shall not arrive at the Airport between the hours of 11:00 p.m. and 7:00 a.m. (8:00 a.m. Sundays) (local time), as measured at any JWA noise monitoring station.

The LICENSEE acknowledges that the COUNTY may by regulation permit some operations by general aviation (nonscheduled, noncommercial) users of the Airport during the nighttime hours with certain specific aircraft types which have noise characteristics similar to the noise characteristics of aircraft which can operate as "Class E" aircraft, as that term is defined in the Access Plan. The LICENSEE does now, or may during the term of this LICENSE, operate Class E aircraft at the Airport; nevertheless, the LICENSEE agrees that the limitations on hours of operations contained in this Section shall be applicable to all of its operations at the Airport, including its Class E operations.





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The LICENSEE further acknowledges that there is a rational basis for the COUNTY to distinguish between general aviation operations and regularly scheduled operations by Class E (or noise equivalent) aircraft during the nighttime hours, and that this distinction does not constitute unlawful or unjustly discriminatory action by the COUNTY in its operation and management of the Airport. The COUNTY agrees that this provision is, and during the term of this LICENSE shall be included in all Licenses, operating agreements or other service operating agreements between the COUNTY and any person conducting regularly scheduled commercial operations at the Airport.

- C. **Aircraft Types.** The LICENSEE agrees that it will not operate any aircraft at the Airport unless and until that aircraft type has been certified and qualified for operation by the COUNTY in accordance with the provisions and procedures of the Access Plan. The LICENSEE further agrees that it will abide by all aircraft-type restrictions and limitations contained in the Access Plan, as amended, or as it may hereafter be amended, and any other restrictions on aircraft types which may hereafter be adopted by the Board of Supervisors of the County of Orange.
- D. **Noninterference.** The LICENSEE shall cooperate with and not interfere with the COUNTY's and other airlines' use of and operations at the Airport. The LICENSEE shall not place any ropes, barricades and/or stanchions on the public or common use area without prior written approval of the Airport Director.

### SECTION 4.06 RECORDS AND ACCOUNTS

- A. **Records.** The LICENSEE shall at all times keep true and complete records of all transactions in the operation of all business activities, of whatever nature, conducted in pursuance of the rights granted by this LICENSE. The LICENSEE shall maintain such records for a period of five years beyond the expiration or earlier termination of this LICENSE.
- B. **Reports.** The LICENSEE shall provide to Auditor-Controller and Airport Director at the end of each calendar month, on forms to be supplied by the COUNTY, statistical information respecting the LICENSEE's operations at Airport including, but not limited to, the total number of all aircraft operations conducted by the LICENSEE; the total combined certificated gross landing weight of all such aircraft operations; the total number of enplaned, deplaned and through passengers; the total number of pounds of airmail, cargo and express mail enplaned and deplaned; and the total number of aircraft stored daily and monthly at the Airport. Such reports shall be submitted to the Airport Director no later than fifteen (15) calendar days following the last day of each month. The LICENSEE must attest that the list is an accurate representation of the LICENSEE's activity for the month.

The LICENSEE shall also provide to the Airport Director, for each day, a copy of the LICENSEE's flight dispatch logs, or a listing made from such logs, certified as correct by a responsible station manager or dispatcher, showing the type of equipment used for each flight and the actual takeoff and landing times and not gate times. Said copy of logs or



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listing shall be made available for each day's activities by noon (12:00 p.m., local time) of the following day.

- C. **Audits.** All the LICENSEE's records and supporting source documents related to rates and fees in this LICENSE or to business operations conducted within or from the Licensed Premises shall be kept and made available to the COUNTY at one location within the geographical limits of the COUNTY or shall be made available at offices in the COUNTY within ten (10) working days after notice to produce said records and source documents. The COUNTY shall, through its duly authorized agents or representatives, have the right to examine and audit said records and supporting source documents at any and all reasonable times for the purpose of determining the accuracy thereof, and of the monthly statements to the COUNTY.

The COUNTY, upon request of the LICENSEE, may authorize the above referenced records and supporting source documents to be kept in a single location outside the limits of the COUNTY provided the LICENSEE shall agree to pay all expenses including, but not limited, to transportation, food and lodging necessary for the COUNTY to send a representative to audit said records. Said right shall not, unless determined necessary by the COUNTY, be exercised by the COUNTY more than once each accounting year.

The full cost of said audit, as determined by the COUNTY, shall be borne by the LICENSEE if either or both of the following conditions exist:

- (1) The audit reveals an underpayment of more than two percent (2%) between the fees and charges due as reported and paid by the LICENSEE in accordance with this LICENSE and the fees and charges due as determined by said audit; and/or
- (2) The LICENSEE has failed to maintain true and complete records and supporting source documents in accordance with paragraph A. above. The adequacy of records shall be determined at the sole discretion of the COUNTY's Auditor-Controller.

Otherwise, the COUNTY shall bear the cost of said audit excluding the aforementioned expenses related to audit of documents kept outside the limits of the COUNTY. The cost of said audit, if due from the LICENSEE, shall be included as fees and charges for the first month following invoice to LICENSEE.

Upon the request of Auditor-Controller, the LICENSEE shall promptly provide, necessary data to enable the COUNTY to fully comply with requirements of the State of California or the United States of America for information or reports directly relating to this LICENSE and to the LICENSEE's use of the Operating Area.

- D. **Failure to Maintain Adequate Records.** In addition to any other remedies available to the COUNTY under this LICENSE, at law or in equity, in the event that the LICENSEE fails to maintain and keep records and accounts from business operations conducted on or from the Licensed Premises and/or source documents relating thereto, or to make the



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same available to the COUNTY for examination and audit as required by this LICENSE, the COUNTY, at the COUNTY's option, may:

- (1) Perform such examinations, audits and/or investigations itself or through agents or employees as the COUNTY and/or its auditors may deem appropriate to confirm the amount of fees and charges payable by the LICENSEE under this LICENSE; and any and all costs and/or expenses incurred by the COUNTY in connection therewith shall be promptly reimbursed to the COUNTY by the LICENSEE upon demand.
- (2) Require that the LICENSEE pay fees and charges based on the COUNTY's best good faith estimate of the LICENSEE's activities from business operations conducted on or from the operating area and Airport; and any such determination made by the COUNTY shall be conclusive and binding upon the LICENSEE.

Costs payable by the LICENSEE pursuant to this Section shall include reimbursement to the COUNTY of the COUNTY provided services at such rates as the COUNTY may from time to time, in good faith, establish for such services. In the case of services provided by the COUNTY's employees, such rates shall be sufficient to reimburse the COUNTY for employees' salaries, including employee taxes and benefits and the COUNTY's overhead or, at Auditor-Controller's option, may be the rate for such services that would be charged by a qualified third party or parties, approved by Auditor-Controller, if engaged by the COUNTY to perform such services. Said costs payable by the LICENSEE shall be included as fees and charges for the first month following invoice to the LICENSEE.

### **SECTION 4.07 MAINTENANCE AND OPERATION**

The LICENSEE agrees to provide approved containers for trash and garbage and to keep the Operating Area free and clear of rubbish and litter. Airport Director shall have the right to enter upon and inspect the LICENSEE'S Operating Area and other Airport facilities at any time for cleanliness, safety and maintenance inspections.

The LICENSEE shall designate in writing to Airport Director an on-site representative who shall be responsible for the day-to-day operation and level of maintenance, cleanliness and general order.

The LICENSEE shall immediately notify the Airport Police Services Control Center of any fire, emergency, accident or reportable spill or release of fuel or Hazardous Substances. Reportable spills or releases are those that require notification to a government entity by any fire code or Environmental law as defined herein in Section 5.01.

The LICENSEE agrees to maintain or make repairs or replacements, including removal of all its GSE and/or any of the LICENSEE materials at its loading and unloading operations at the end of its approved hours of operation. If the LICENSEE fails to maintain, make repairs, replacements or removals, as required herein, the Airport Director shall notify or attempt to notify the LICENSEE in writing of said failure. Should the LICENSEE fail to correct the failure within the



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time specified in the notice, the Airport Director may make the necessary correction or cause it to be made and the cost thereof, including but not limited to the cost of labor, materials and equipment shall be charged to the LICENSEE. Thereafter, an administrative fee equal to fifteen percent (15%) of the sum of such items shall be paid by the LICENSEE within ten (10) days of receipt of a statement of said cost from the Airport Director. The Airport Director may, at Director's option, choose other remedies available herein, or as provided by law.

The LICENSEE expressly waives any and all claims against the COUNTY for compensation for any and all loss or damage to the LICENSEE's property sustained by reason of any defect, deficiency or impairment of any water supply system, drainage or sewer system, gas supply system, telephone system, electrical supply system or electrical apparatus or wires serving the Operating Area, except to the extent caused by the COUNTY's negligence or willful misconduct.

### **SECTION 4.08          APRONS, GATE POSITIONS AND LOADING BRIDGES**

The COUNTY will provide as a means of access for aircraft between the terminal complex and the taxiway and runway system of Airport, apron, airplane gate positions and aircraft loading bridges in the area immediately adjacent to the passenger terminal building. No special possessory, exclusive or vested right whatsoever, save and except the use in common with other airlines and other aircraft owners shall vest in the LICENSEE by reason of proximity of such facilities to the LICENSEE's gate loading positions.

Following each flight operation by the LICENSEE, the LICENSEE shall keep all areas associated with their loading bridges at the gate positions and departure lounges in a neat, clean and sanitary condition free of litter, trash, debris and other waste and refuse matter.

### **SECTION 4.09          ASSIGNMENT OF GATE POSITIONS AND LOADING BRIDGES**

All assignment of gate positions (*i.e.*, aircraft loading bridges and aircraft hardstand positions) shall be made in accordance with rules, regulations and directives provided in the Access Plan and made at the complete discretion of the Airport Director, as he may determine is appropriate. The Airport Director, in making assignments of gate (*i.e.*, loading bridge and hardstand) positions to the LICENSEE, may take into account the needs and requirements of the LICENSEE, as well as the requirements of other Airport users, for use of gate positions adjacent to the passenger terminal building, and other factors that the Airport Director determines are appropriate. Without liability, cost or obligation to the COUNTY, assignment of gate positions and aircraft loading bridge and hardstand positions may be changed from time to time as determined necessary by the Airport Director. The Airport Director may consider passenger activity, number of aircraft operations, type of aircraft used, scheduling needs, and any other factors he/she may deem appropriate when assigning gate positions, loading bridges and hardstand positions.

### **SECTION 4.10          VEHICLES AND AUTOMOTIVE EQUIPMENT ON APRON**

The COUNTY reserves the right to regulate, by adoption of ordinance, rules or other means, the use of vehicles and automotive equipment upon, over and across the apron and around the passenger terminal building. In the event of an emergency not specifically provided for in said



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rules and regulations, the Airport Director shall have power to take charge of the direction of such vehicle and automotive traffic in the area affected and regulate the same until the cause of such emergency has been removed. The existence of an emergency, other than aircraft emergency, shall be determined by the Airport Director.

### **SECTION 4.11      AIRCRAFT PARKING**

The LICENSEE shall make arrangements with the Airport Director for each aircraft parking space that may be made available to the LICENSEE subject to the Section in this LICENSE entitled "FEES AND CHARGES".

If, in the judgment of the Airport Director, it becomes necessary to move the LICENSEE's aircraft in order to insure public safety, improve ramp area efficiency or otherwise, then LICENSEE shall immediately move said aircraft to the location designated by the Airport Director.

Should any aircraft owned or operated by the LICENSEE, through accident or for any other reason, become disabled or be abandoned in any area which could interfere with the continuous, normal operations of any of the landing and field facilities at Airport, the LICENSEE shall:

- A. Immediately remove said aircraft to such location as shall be designated by the Airport Director, unless such aircraft is required to remain in place pending investigation by the appropriate regulatory agency or agencies of the federal government; and
- B. In the event of any accident where federal investigation in place is required, immediately upon receiving clearance to do so from the appropriate federal agency, remove said aircraft and any wreckage or debris resulting there from to the area(s) designated by said federal agency authorizing such removal; otherwise, such aircraft wreckage and debris shall be immediately removed from Airport or stored at a location approved by Airport Director.

Should the LICENSEE fail to remove said aircraft, or should aircraft owned or operated by the LICENSEE be abandoned on Airport, the COUNTY shall have the right to remove such aircraft by any means the Airport Director deems necessary under the circumstances, and the LICENSEE shall keep and hold the COUNTY harmless from any and all costs, loss, liability, damage or expense incurred by the COUNTY or claimed by anyone by reason of removal of said aircraft, injury to persons or property or damages to such aircraft caused by such removal as well as moving and storage costs therefore. The LICENSEE agrees that the designation of any aircraft parking positions anywhere on the Airport, if any, made for the LICENSEE's use is presently regulated by the Access Plan, and that nothing in this Section obligates the COUNTY to provide, make available or consent to any aircraft parking spaces for the LICENSEE's use. The LICENSEE agrees that it may not independently make arrangements for aircraft parking space at the Airport without express written consent of the Airport Director, which may be withheld in Director's sole discretion.



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**SECTION 4.12 PORTER SERVICES**

The LICENSEE may provide directly or indirectly adequate porter (skycap) and/or assistance service for the convenience of its passengers in areas designated by the Airport Director. Porter services include baggage check-in services, wheelchair services and ticket screening services. The LICENSEE shall provide the Airport Director a plan which enumerates the salient features of its porter services arrangements and a copy of its agreement if service is provided by other than the LICENSEE's employees. All podiums utilized for porter service shall be approved in writing by the Airport Director. The size, shape and color shall be coordinated with and must be identical to all other airlines' podiums. The LICENSEE's plan shall also provide the details of any podiums and their proposed locations necessary to provide porter services.

**ARTICLE V**

**ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION**

**SECTION 5.01 HAZARDOUS SUBSTANCES AND ENVIRONMENTAL COMPLIANCE**

As used herein, the term "Hazardous Substances" shall mean any hazardous or toxic substance, material or waste which is or shall become regulated by any governmental entity, including but not limited to the COUNTY acting in its governmental capacity, the State of California or the United States Government. The term "Hazardous Substances" includes, without limitation, any material or substance which is (i) defined or listed as a "hazardous waste," "extremely hazardous waste," "restrictive hazardous waste" or "Hazardous Substance" or considered a waste, condition of pollution or nuisance under any Environmental Law; (ii) petroleum or a petroleum product or fraction thereof; (iii) asbestos or asbestos-containing materials; (iv) flammable or explosive substances; (v) mold, mold spores or fractions thereof; and/or (vi) substances designated by any governmental entity to cause cancer and/or reproductive toxicity.

As used herein, the term "Environmental Law" shall mean any federal, state or local law, statute, ordinance, code, judgment, order or regulation pertaining to the environment, Hazardous Substances, occupational safety and health, industrial hygiene or the environmental conditions on, under or about the Airport, and includes, without limitation the following; (i) the CLEAN AIR ACT, 42 USCA §§ 7401, et seq.; (ii) CLEAN WATER ACT, 33 USCA §§ 1251, et seq.; (iii) the COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980, as amended by the SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT OF 1986 ("CERCLA"), 42 U.S.C. §§9601 et seq.; (iv) 49 CFR, Sections 173.5 (Transportation of Hazardous Materials) (v) the SOLID WASTE DISPOSAL ACT, as amended by the RESOURCE CONSERVATION AND RECOVERY ACT OF 1986 and HAZARDOUS and SOLID WASTE amendments of 1984 ("RCRA"), 42 U.S.C. §§6901, et seq.; (vi) the OIL POLLUTION ACT of 1990, 33 USCA §§ 2701, et seq. (vii) the FEDERAL WATER POLLUTION CONTROL ACT, 33 U.S.C. §§1317, et seq.; (viii) the SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986, CALIFORNIA HEALTH AND SAFETY CODE §§25249.5 et seq.; (ix) the CALIFORNIA HEALTH AND SAFETY CODE §§25100, 25395.7, 25915, et seq.; (x) the CALIFORNIA WATER CODE §§1300, et



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*seq.*; (xi) the CALIFORNIA CIVIL CODE §§3479, *et seq.*; (xii) Storm Water Discharge Rules, 40 C.F.R. §§ 122.26, 122.30-37; (xiii) All other state laws, rules, orders, directives, and codes, regulations judgments, and orders relating to (i) emissions, discharges, releases, or threatened releases of Hazardous Substances into the environment (including but not limited to ambient air, surface water, groundwater, land surface or subsurface strata); and (ii) the manufacture, processing, distribution, use, generation, treatment, storage, disposal, transport or handling of Hazardous Substances, as such laws are amended, and the regulations and administrative codes applicable thereto.

The LICENSEE agrees that it shall abide by all hazardous substances laws, rules and regulations, relating to Hazardous Substances including, but not limited to, 49 CODE OF FEDERAL REGULATIONS, Parts 171, *et seq.* The LICENSEE agrees it will carry no hazardous substances on the Airport which are not permitted by law to be carried by passenger aircraft. Violation by the LICENSEE or any of its agents or employees of any Hazardous Substances laws, rules, or regulations is grounds for immediate termination of this LICENSE and for immediate termination of all operations by the LICENSEE at or on the Airport.

The LICENSEE shall comply with all Environmental Laws and shall not engage in any activity on or about the Airport that violates any Environmental Law. In conducting its operations and maintenance on the Airport under this LICENSE, the LICENSEE shall comply with such regulations regarding the storage, distribution, processing, handling and/or disposal, including the storm water discharge requirements, of Hazardous Substances including, but not limited to, gasoline, aviation fuel, jet fuel, diesel fuel, lubricants and/or solvents, whether the obligation for such compliance is placed on the owner of the land, owner of the improvements or user of the improvements.

The LICENSEE shall at its own expense take all investigatory and/or remedial action required or ordered by any governmental agency or Environmental Law for clean-up and removal of any contamination involving any Hazardous Substances caused by the LICENSEE. In conducting a clean-up of a Hazardous Substance release under this LICENSE, the LICENSEE shall comply with applicable Environmental Laws.

The LICENSEE shall not allow or cause the entry of any Hazardous Substances under its control into any Airport drainage system unless authorized by Environmental Law and the Airport's Storm Water Discharge permit. The LICENSEE shall not allow or cause the entry of any Unauthorized Non Storm Water Discharge that is under its control into the Storm Water drainage system of the Airport or into the Storm Water drainage system of any of its surrounding communities, unless such substances are first properly treated by equipment installed with the approval of the COUNTY for that purpose, and the LICENSEE complies with recommendations made by the State and/or Federal Environmental Protection Agency and the Airport's Storm Water Discharge Permit requirements. The LICENSEE shall bear all costs and any other expenses related to the prohibited entry of such oil, fuel or other Hazardous Substances into said drainage systems prohibited by Environmental Law.

The LICENSEE shall provide all notices required pursuant to the SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986, CALIFORNIA HEALTH AND SAFETY CODE §§25249, *et seq.*



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The LICENSEE shall provide prompt written notice to the COUNTY within two (2) days of receipt of all written notices of violation of any Environmental Law received by the LICENSEE.

**SECTION 5.02 ENVIRONMENTAL INDEMNIFICATION**

To the fullest extent authorized by law, the LICENSEE shall indemnify, defend, and hold harmless the COUNTY, its officers, and employees, from and against any and all Environmental Law claims, judgments, damages, penalties, fines, costs, liabilities, losses, orders, and lawsuits arising out of any actions by the LICENSEE, the LICENSEE's operations at the Airport or any action arising from and which involve the LICENSEE's officers, agents, subcontractors, and employees, including the cost of defense arising therefrom, including but not limited to the following:

- (1) The LICENSEE's placing, disposing, allowing or releasing of Hazardous Substances upon or within the Airport including any such claims, demands, liabilities and/or obligations related to LICENSEE's release of Hazardous Substances on the Airport since the time LICENSEE first occupied the Airport.
- (2) The LICENSEE's release of Hazardous Substances upon or within the Airport.
- (3) The LICENSEE's violation of any Environmental Law, except that LICENSEE's obligations under this paragraph shall not extend to known conditions that are, as of the date of this LICENSE, the subject of investigation and remediation by the COUNTY or others, or remediation conditions that arise from operations of third parties that are not affiliated with the LICENSEE that take place off of the Airport. A party shall be deemed to be affiliated with the LICENSEE if it is an employee, officer, director, agent, subtenant, contractor or subcontractor of the LICENSEE or if it is controlled by or under common control with the LICENSEE.
- (4) The LICENSEE's causing or allowing any Non-Storm Water Discharge into the Airport's Drainage System.

This indemnification includes, without limitation, reasonable attorney's fees/costs and other costs incurred by the COUNTY in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any Federal, State or local governmental entity because of any Hazardous Substances being present in the soil or groundwater under the Airport. However, LICENSEE's indemnity obligation shall not apply in the event of any claims for any loss, damage or expense arising from the sole or active negligence or willful misconduct of the COUNTY or agents, servants or independent contractors who are directly responsible to the COUNTY.

In the event the indemnitees described hereinabove are named as defendants or respondents in any lawsuit or administrative proceeding, the LICENSEE shall, at the request of the COUNTY, represent the indemnitee with qualified counsel that the COUNTY determines, in its sole and exclusive discretion, is acceptable to the COUNTY, unless the COUNTY, at its sole and exclusive discretion, undertakes legal representation, in which event the LICENSEE shall





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reimburse the COUNTY for the reasonable costs incurred by it in defending such lawsuit or administrative proceeding, including reasonable attorney's fees, expert and consultant's fees, and investigative and court costs.

In the event that a monetary judgment is awarded against the COUNTY and the LICENSEE because of the concurrent negligence of the COUNTY and the LICENSEE or their respective officers, subcontractors, or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Both the COUNTY and the LICENSEE agree that neither party shall request a jury apportionment. Nothing stated in this LICENSE and in this indemnity obligation shall be construed as authorizing any award of attorney's fees in any action to enforce the terms of this LICENSE.

The rights and obligations set forth in this indemnification shall survive the termination of this LICENSE.

### **SECTION 5.03      CONFLICT WITH ENVIRONMENTAL LAW PROVISIONS**

In the event that any of the terms of these environmental requirements codified in this Article conflict with any other terms of this LICENSE, the environmental requirements contained in Article V shall apply.

## **ARTICLE VI**

### **CONSTRUCTION AND IMPROVEMENTS**

#### **SECTION 6.01      CONSTRUCTION AND/OR ALTERATION BY COUNTY**

The COUNTY may alter, repair, maintain, remodel, expand, remove or improve any of the facilities at the Airport or any of its appurtenances.

In addition, the COUNTY may reassign or relocate LICENSEE's Operating Area. The COUNTY shall provide LICENSEE advance notice of such action and shall attempt to check airline license to make available alternative space that is reasonably comparable for LICENSEE's operations at the same rates and charges which LICENSEE would have paid for the space being surrendered. The LICENSEE shall surrender its space promptly to COUNTY, provided that the LICENSEE shall be reimbursed for the reasonable cost of any such reassignment, reallocation or relocation and the cost of the LICENSEE's unamortized investment, if any, as documented by LICENSEE to the satisfaction of the COUNTY and mutually agreed to by the Airport Director and the LICENSEE. All of such costs, as well as COUNTY's cost of providing the alternative space aforementioned, shall be included in the cost of the particular Capital Project requiring such reassignment, reallocation or relocation.

#### **SECTION 6.02      DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS**

The LICENSEE shall be responsible for any damage caused by the LICENSEE, or the LICENSEE's aircraft, equipment, employees, agents, visitors or suppliers, to common use areas of the Terminal or Airport facilities, including but not limited to runways, taxiways, access



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roads, navigational aids, apron areas and loading bridges. Should such damage require immediate repairs or replacement and the LICENSEE is unable to respond immediately to complete said repairs or replacement, the Airport Director may cause to be made or make any necessary repairs or replacements and the cost thereof shall be paid by the LICENSEE. Said cost shall include all labor, materials, equipment and an administrative fee equal to fifteen percent (15%) of the sum of those items. Said cost shall be paid by the LICENSEE within fifteen (15) days of receipt of an invoice for costs from the Airport Director. Except as otherwise provided herein, termination of this LICENSE shall not reduce or nullify the LICENSEE's obligation under this paragraph. With respect to damage or destruction to be repaired by COUNTY or which COUNTY elects to repair, the LICENSEE waives and releases its rights under CALIFORNIA CIVIL CODE Sections 1932(2) and 1933(4).

### **SECTION 6.03 HEALTH AND SAFETY**

The LICENSEE shall comply with the California Occupational Safety & Health Administration (CAL OSHA) requirements, and all federal, state or local safety orders. The LICENSEE shall post on the operating area and at all construction sites a copy of "Construction Safety Orders" and "General Industry Safety Orders" issued by the California State Division of Industrial Safety.

The LICENSEE shall, within thirty (30) days after the execution of this LICENSE, submit to the COUNTY a comprehensive Safety Plan outlining the code of safe work practices and procedures. The plan must include emergency response procedures, notification procedures, and personnel training procedures. The LICENSEE shall convene safety meetings at regularly scheduled times as described in its Safety Plan and as required by CAL OSHA.

The LICENSEE and/or LICENSEE's contractor shall submit prior to the start of any tenant improvements, the LICENSEE or LICENSEE's contractor required CAL OSHA Safety Plan for approval by the Airport.

The LICENSEE shall submit to COUNTY an annual report detailing the status of all permits required and issued to the LICENSEE by CAL OSHA or any other Federal, State or local government agency. Said report shall be due on or before January 31 of each calendar year.

## **ARTICLE VII**

### **ASSIGNMENT**

#### **SECTION 7.01 ASSIGNING AND TRANSFERRING**

The provisions of this Section are subject to, and subordinate to the limitations of Section 4.04 of this LICENSE.

- A. **Transfers.** The LICENSEE shall not transfer or assign (hereinafter referred to as "Transfer") any interest of the LICENSEE in the LICENSE without the prior written approval of the COUNTY. The LICENSEE shall give the COUNTY thirty (30) days



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prior written notice of all proposed Transfers. The LICENSEE shall not make any such Transfers for a period longer than the remaining term of the LICENSE.

If the COUNTY approves such Transfers, such approval does not constitute a waiver of any of the terms of the LICENSE. All Transfer documents shall be consistent with the terms, covenants, and conditions of the LICENSE, and in the event of any inconsistency, the provisions of this LICENSE shall govern.

If the LICENSEE is a corporation, an unincorporated association, or a partnership, Transfers include the acquisition by any person other than the LICENSEE of any stock or interest in said corporation, unincorporated association, or partnership in the aggregate amount of fifty-one percent (51%) or more.

The failure by the LICENSEE to obtain the prior written approval by the COUNTY of any Transfer of the LICENSE or the Operating Area shall constitute a material breach of this LICENSE by, and shall not confer any rights to the Operating Area upon the transferee. Such failure shall be grounds for termination of this LICENSE for default per Article VIII, Section 8.02.

B. **Conditions of COUNTY Approval.** The COUNTY agrees that it will not arbitrarily withhold consent to any Transfer, but the COUNTY may withhold consent at its sole discretion if any of the following conditions exist:

- (1) The LICENSEE, its successors or assigns are in default of any term, covenant or condition of this LICENSE, whether notice of default has or has not been given by the COUNTY.
- (2) The prospective subtenant, assignee or transferee has not agreed in writing to keep, perform and be bound by all the terms, covenants, and conditions of this LICENSE.
- (3) The prospective subtenant, assignee or transferee is not financially capable or not experienced in performing the LICENSE obligations, as determined by the Airport Director.
- (4) Subtenant's use is in conflict with the terms of this LICENSE.
- (5) All the terms, covenants and conditions of Transfer, including the consideration therefore, of any and every kind, have not been revealed in writing to the Airport Director.
- (6) Any construction required of LICENSEE as a condition of this LICENSE has not been completed to the satisfaction of COUNTY.
- (7) The LICENSEE has not provided the Airport Director with a copy of all documents relating to the Transfer, including, but not limited to, appraisals, notes, trust deeds, title reports, escrow instructions, *etc.*



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- C. **Affiliate Transactions.** The COUNTY, has adopted in the Access Plan policies and regulations with respect to transactions and aircraft operations at the Airport involving affiliations of commercial airlines operating, or desiring to operate, at the Airport ("the affiliate policy"). The LICENSEE acknowledges that the COUNTY considers the affiliate policy to be an important and significant policy in support of COUNTY's regulation of the Airport.

The LICENSEE acknowledges that there is a rational basis for this policy under the operational and historical circumstances affecting the Airport, that under such circumstances this policy maintains appropriate equity between the rights and privileges of competing commercial operators using the Airport, and that the affiliate policy does not constitute unlawful or unjustly discriminatory action by the COUNTY in its operation and management of the Airport. The LICENSEE agrees to comply fully and completely with the affiliate policy and all related regulations which appear in the Access Plan and or this LICENSE.

Any affiliate transaction described and defined in the Access Plan, and any affiliate transaction between the LICENSEE and any other person which then has a written agreement with the COUNTY to conduct regularly scheduled air service operations at the Airport, shall constitute a Transfer within the meaning of paragraph A, above. In the event an affiliate transaction involving the LICENSEE is initiated, then not later than the time when the affiliate transaction is publicly announced:

- (1) The LICENSEE shall notify the Airport Director of the fact of the initiation of the affiliate transaction.
- (2) If the affiliate transaction is initiated by the LICENSEE, the LICENSEE shall promptly provide to the Airport Director copies of all agreements, or written offers or proposals, made with respect to the transaction, and copies of all documents filed with Federal authorities with respect to the transaction. If the affiliate transaction is initiated by some other person in respect of the LICENSEE, the LICENSEE shall promptly and continuously provide such documentation or other information regarding the transaction as may be available to the LICENSEE.
- (3) In addition to all other obligations of the LICENSEE, if the affiliate transaction involves the LICENSEE and any other person which then has a written agreement with the COUNTY to conduct regularly scheduled air service operations at the Airport, the LICENSEE shall promptly arrange to negotiate with the Airport Director regarding the terms and conditions upon which the Director would recommend consent by the Board of Supervisors to a Transfer of this LICENSE, or a Transfer of the written agreement(s) between the other person or entity involved in the affiliate transaction and COUNTY.



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Notwithstanding any other provision of this LICENSE, the LICENSE may be terminated by COUNTY on thirty (30) days' notice to LICENSEE without further obligation of COUNTY, and without any liability of the COUNTY to the LICENSEE whatsoever, if:

- (4) The LICENSEE fails to comply with paragraph C. of this Section; or if
- (5) The Airport Director fails to make a favorable recommendation to the Board of Supervisors regarding the Transfer within sixty (60) days after initiation and public announcement of the affiliate transaction, which contains terms and conditions agreed to by the LICENSEE and its affiliate(s); or if
- (6) The Board of Supervisors fails to consent to the Transfer on terms and conditions which have been accepted by the LICENSEE within thirty (30) days after receipt of the recommendations of the Airport Director.

D. **Bankruptcy Transaction.** If the LICENSEE assumes this LICENSE and proposes to assign the same pursuant to the provisions of the UNITED STATES BANKRUPTCY CODE, 11 U.S.C. §§101, *et seq.*, then notice of such proposed assignment shall be given to the COUNTY.

- (1) The name and address of proposed assignee;
- (2) All of the terms and conditions of such offer; and
- (3) Adequate assurance to COUNTY of the proposed assignee's future performance under the LICENSE, including, without limitation, the assurance referred to in the UNITED STATES BANKRUPTCY CODE, 11 U.S.C. §365(b)(3).

Any person or entity to which this LICENSE is assigned pursuant to the provisions of the UNITED STATES BANKRUPTCY CODE, 11 U.S.C. §§101, *et seq.*, shall be deemed without further act or deed to have assumed all of the obligations arising under this LICENSE on and after the date of such assignment. Any such assignee shall upon demand execute and deliver to the COUNTY an instrument confirming such assumption.

E. **Non-Transferable Privileges.** Aircraft operations and ADDs authorized by the Section in this LICENSE entitled "OPERATIONAL REQUIREMENTS" and the Access Plan are not property interests of the LICENSEE and are non-transferable in any form, and as such, are not subject to sale, assignment, and transfer by the LICENSEE under the terms of this Section. Any such attempted assignment, sale or other such attempted transfer of operations, privileges or ADDs is in violation of the public policy of the COUNTY and shall be void and shall constitute a breach and default of this LICENSE.

### SECTION 7.02 SUCCESSORS IN INTEREST

Unless otherwise provided in this LICENSE, the terms, covenants, and conditions contained



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herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of all parties hereto, all of whom shall be jointly and severally liable hereunder.

**ARTICLE VIII**

**TERMINATION AND DEFAULT**

**SECTION 8.01      TERMINATION OF PRIOR AGREEMENTS**

It is mutually agreed that this LICENSE shall terminate and supersede any prior Licenses or agreements between the parties hereto for the purpose of commercial air transportation and all related activities of the LICENSEE at the Airport.

**SECTION 8.02      TERMINATION FOR DEFAULT**

The COUNTY may terminate this LICENSE and all of its obligations hereunder with or without prior notice to the LICENSEE and may exercise all rights of entry for default and breach, if the LICENSEE fails to perform on any of its obligations under this LICENSE including but not limited to the following:

- A.     Payment of Fees, Charges and PFCs;
- B.     A general assignment for the benefit of creditors and any Transfer without the prior written approval by the COUNTY;
- C.     The issuance of any execution or attachment against the LICENSEE at the Airport which is undischarged within sixty (60) days of levy or seizure or if the operating area are occupied by someone other than the LICENSEE;
- D.     The voluntary vacation or abandonment by the LICENSEE of the conduct of air transportation business at the Airport;
- E.     The violation by the LICENSEE of any of the terms of any insurance policy referred to in the LICENSE;
- F.     If the LICENSEE is found by the FAA, TSA, other government regulatory or successor agency to have violated specified safety standards in the conduct of the LICENSEE's business;
- G.     The violation or breach of any provision of the Access Plan;
- H.     The violation of any written directions of the Airport Director;
- I.     The appointment of a receiver to take possession of all, or substantially all, the assets of the LICENSEE located at the Airport.



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**SECTION 8.03      DISPOSITION OF ABANDONED PERSONAL PROPERTY**

If the LICENSEE abandons or terminates its operation or is dispossessed thereof by process of law or otherwise, title to any personal property belonging to the LICENSEE and left on the Airport fifteen (15) days after such event shall be deemed to have been transferred to the COUNTY. The COUNTY shall have the right to remove and to dispose of such property without liability therefor to the LICENSEE or to any person claiming under LICENSEE, and shall have no need to account therefor. Personal property left on the operating area after termination, expiration, or abandonment of the LICENSE shall not be construed as giving LICENSEE possession of the Operating Area during the fifteen (15) days after termination, expiration or abandonment of the LICENSE.

**ARTICLE IX**

**SECURITY**

**SECTION 9.01      AIRPORT SECURITY**

- A. **Local Security.** The LICENSEE shall be responsible for the security of gates or doors that are utilized during their operations. Said gates and/or doors permitting entry to the restricted areas of the Airport shall be locked when not in use and/or under the LICENSEE's constant surveillance. The LICENSEE shall install such security equipment, including, but not limited to, video monitoring equipment, as may be required by the Airport Director to insure compliance with all regulations of the FAA, TSA or other governmental agencies having jurisdiction over Airport security. The LICENSEE shall exercise control over any person or vehicle escorted by the LICENSEE onto restricted or secure areas of the Airport, or issued an access badge by or at the request of the LICENSEE, and ensure the person or vehicle shall comply with all Airport security regulations.
- B. **Federal Security.** As of the date of this LICENSE, the TSA provides for all passenger and baggage screening conducted at the Airport. The LICENSEE may be required to provide assistance to TSA in their efforts to carry out its federal mandates. At some point during the term of this LICENSE, the Airport or another entity may be authorized to provide these security services in lieu of the TSA.
- C. **Penalties and Fines.** The LICENSEE shall promptly pay any penalties for which the LICENSEE is responsible. These penalties include but are not limited to, civil penalties or fines assessed against the Airport or LICENSEE, by the FAA, TSA or any other governmental agency for the violation of any security related laws, rules, policies or regulations at the Airport.



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**ARTICLE X**

**INSURANCE AND INDEMNITY**

**SECTION 10.01 INSURANCE**

The LICENSEE agrees to purchase all required insurance at the LICENSEE's expense and to deposit with the COUNTY certificates of insurance, including all endorsements required herein, necessary to satisfy the COUNTY that the insurance provisions of this LICENSE have been complied with and to keep such insurance coverage and the certificates and endorsements therefore on deposit with the COUNTY during the entire term of this LICENSE. This LICENSE shall automatically terminate at the same time the LICENSEE's insurance coverage is terminated. If within ten (10) business days after termination under this Section the LICENSEE obtains and provides evidence of the required insurance coverage acceptable to the Airport Director, this LICENSE may be reinstated at the sole discretion of the Airport Director. The LICENSEE shall pay the COUNTY \$300.00 for processing the reinstatement of this LICENSE. Said \$300.00 processing cost may be adjusted annually, in accordance with CPI Index by the Airport Director at his sole discretion.

The LICENSEE agrees that LICENSEE shall not operate on the Premises at any time the required insurance is not in full force and effect as evidenced by a certificate of insurance and necessary endorsements or, in the interim, an official binder being in the possession of the Airport Director. In no cases shall assurances by the LICENSEE, its employees, agents, including any insurance agent, be construed as adequate evidence of insurance. The Airport Director will only accept valid certificates of insurance and endorsements, or in the interim, an insurance binder as adequate evidence of insurance. The LICENSEE also agrees that upon cancellation, termination, or expiration of the LICENSEE'S insurance, the COUNTY may take whatever steps are necessary to interrupt any operation from or on the Premises until such time as the Airport Director reinstates the LICENSE.

If LICENSEE fails to provide the Airport Director with a valid certificate of insurance and endorsements, or binder at any time during the term of the LICENSE, the COUNTY and LICENSEE agree that this shall constitute a material breach of the LICENSE. Whether or not a notice of default has or has not been sent to the LICENSEE, said material breach shall permit the COUNTY to take whatever steps necessary to interrupt any operation from or on the Premises, and to prevent any persons, including, but not limited to, members of the general public, and the LICENSEE employees and agents, from entering the Premises until such time as the Airport Director is provided with adequate evidence of insurance required herein. The LICENSEE further agrees to hold the COUNTY harmless for any damages resulting from such interruption of business and possession, including, but not limited to, damages resulting from any loss of income or business resulting from the COUNTY's action.

All contractors performing work on behalf of the LICENSEE pursuant to this LICENSE shall obtain insurance subject to the same terms and conditions as set forth herein for the LICENSEE. The LICENSEE shall not allow contractors or subcontractors to work if contractors have less than the level of coverage required by the COUNTY from the LICENSEE under this LICENSE. It is the obligation of the LICENSEE to provide written notice of the insurance requirements to





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every contractor and to receive proof of insurance prior to allowing any contractor to begin work within the Premises. Such proof of insurance must be maintained by the LICENSEE through the entirety of this LICENSE and be available for inspection by a COUNTY representative at any reasonable time.

All insurance policies required by this LICENSE shall declare any deductible or self-insured retention (SIR) in an amount in excess of \$25,000.00 (\$5,000.00 for automobile liability), which shall specifically be approved by the COUNTY’s County Executive Office (CEO)/Office of Risk Management. The LICENSEE shall be responsible for reimbursement of any deductible to the insurer. Any self-insured retentions (SIRs) or deductibles shall be clearly stated on the certificate of insurance.

If the LICENSEE fails to maintain insurance acceptable to the COUNTY for the full term of this LICENSE, the COUNTY may terminate this LICENSE.

**Qualified Insurer**

The policy or policies of insurance must be issued by an insurer which meets the minimum insurance company ratings as determined by the most current edition of the *Best's Key Rating Guide/Property-Casualty/United States* or [www.ambest.com](http://www.ambest.com) shall be A- (Secure Best's Rating) and VIII (Financial Size Category). A California admitted carrier is preferred.

The policy or policies of insurance maintained by the LICENSEE shall provide the minimum limits and coverage as set forth below:

<b>Coverages</b>	<b>Minimum Limits</b>
Aircraft Liability Insurance	\$250,000,000.00 per occurrence
Commercial General Liability with broad form property damage, contractual liability and products liability	\$1,000,000.00 combined single limit per occurrence \$2,000,000.00 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000.00 combined single limit per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000.00 per occurrence
Fire and Extended Coverage including contents and business income	LICENSEE shall insure all LICENSEE-constructed buildings, facilities and improvements, including water damage and debris cleanup, to at least 90% of their replacement cost, using a standard form fire insurance policy containing the “extended coverage” endorsement.



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Prior to the completion of construction, LICENSEE shall provide such insurance by a Builder's Risk insurance policy.

The COUNTY shall be added as an additional insured on all insurance policies required by this LICENSE with respect to work done by the LICENSEE under the terms of this LICENSE (except Workers' Compensation/Employers' Liability, and Fire and Extended Coverage).

The COUNTY shall be a loss payee on the Fire policy.

All insurance policies required by this LICENSE shall be primary insurance, and any insurance maintained by the COUNTY shall be excess and non-contributing with insurance provided by these policies.

All insurance policies required by this LICENSE shall give the COUNTY thirty (30) days notice in the event of cancellation. This shall be evidenced by an endorsement separate from the certificate of insurance. In addition, the cancellation Section must include language as follows:

~~SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT. BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENT OR REPRESENTATIVE.~~

All insurance policies required by this LICENSE shall waive all rights of subrogation against the COUNTY and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

The Commercial General Liability and Aircraft Liability policies shall contain a severability of interests Section.

The LICENSEE is aware of the provisions of Section 3700 of the CALIFORNIA LABOR CODE which requires every employer to be insured against liability for Workers' Compensation or be self-insured in accordance with provisions of that code. The LICENSEE will comply with such provisions and shall furnish the COUNTY satisfactory evidence that the LICENSEE has secured, for the period of this LICENSE, statutory Workers' Compensation insurance and Employers' Liability insurance with minimum limits of \$1,000,000 per occurrence.

The COUNTY expressly retains the right to require the LICENSEE to increase or decrease insurance of any of the above insurance types throughout the term of this LICENSE. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect COUNTY.

The COUNTY shall notify the LICENSEE in writing of changes in the insurance requirements. If the LICENSEE does not deposit copies of acceptable certificates of insurance and endorsements with the COUNTY incorporating such changes within thirty (30) days of receipt of



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such notice, this LICENSE may be in breach without further notice to the LICENSEE, and the COUNTY shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit the LICENSEE's liability hereunder nor to fulfill the indemnification provisions and requirements of this LICENSE.

**SECTION 10.02 INDEMNITY**

To the fullest extent authorized by law, the LICENSEE shall indemnify, defend, and hold harmless the COUNTY, its officers, and employees, from and against any and all claims, judgments, damages, penalties, fines, costs, orders, and lawsuits, arising out of the LICENSEE's operations at John Wayne Airport, including the cost of defense arising therefrom. The LICENSEE's indemnity obligations stated hereinabove also apply to those actions arising from and which involve the LICENSEE's officers, agents, subcontractors, and employees. The LICENSEE's indemnity obligations stated hereinabove shall not apply in the event of any loss, damage, or expense arising from the sole or active negligence and/or willful misconduct of the COUNTY or of the COUNTY's officers, employees, agents, servants, or independent contractors.

In the event the indemnitees described hereinabove are named as defendants or respondents in any lawsuit or administrative proceeding, the LICENSEE shall, at the request of the COUNTY, represent the indemnitee with qualified counsel that the COUNTY determines, in its sole and exclusive discretion, is acceptable to the COUNTY, unless the COUNTY, at its sole and exclusive discretion, undertakes legal representation, in which event the LICENSEE shall reimburse the COUNTY for the reasonable costs incurred by it in defending such lawsuit or administrative proceeding, including reasonable attorney's fees, expert and consultant's fees, and investigative and court costs.

In the event that a monetary judgment is awarded against the COUNTY and the LICENSEE because of the concurrent negligence of the COUNTY and the LICENSEE or their respective officers, subcontractors, or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Both the COUNTY and the LICENSEE agree that neither party shall request a jury apportionment. Nothing stated in this LICENSE and in this indemnity obligation shall be construed as authorizing any award of attorney's fees in any action to enforce the terms of this LICENSE. The rights and obligations set forth in this paragraph shall survive the termination of this LICENSE.

**ARTICLE XI**

**FEDERAL GRANT ASSURANCES AND REQUIREMENTS**

**SECTION 11.01 NONDISCRIMINATION**

- A. The LICENSEE, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that:



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- (1) No person on the grounds of race, color, or national origin shall be excluded from participation, denied the benefits of, or be otherwise subjected to discrimination in the use of the operating area.
  - (2) This LICENSE is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CODE OF FEDERAL REGULATIONS Part 23, Subpart F. The LICENSEE agrees that it will not discriminate against any business owner because of the owner's race, color, national origin or sex in connection with the award or performance of any agreement covered by 49 CODE OF FEDERAL REGULATIONS Part 23, Subpart F.
  - (3) In the construction of any improvements on, over or under the Operating Area and the furnishing of services thereon as provided in this LICENSE, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination.
  - (4) The LICENSEE shall conduct its operation at the Airport in compliance with all other requirements imposed by or pursuant to Title 49, CODE OF FEDERAL REGULATIONS, Part 21, Subtitle A, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the CIVIL RIGHTS ACT OF 1964, and as said Regulations may be amended.
  - (5) In the event facilities are constructed, maintained or otherwise operated on the Airport as allowed under this LICENSE for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, LICENSEE shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CODE OF FEDERAL REGULATIONS, Part 21, Subtitle A, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the CIVIL RIGHTS ACT OF 1964, and as said Regulations may be amended.
- B. In the event of breach of any of the above nondiscrimination covenants, the COUNTY shall have the right to terminate the LICENSE and to re-enter and repossess said land and the facilities thereon, and hold the same as if said LICENSE had never been made or issued. This provision does not become effective until the procedures of 49 CODE OF FEDERAL REGULATIONS, Part 21, are followed and completed, including expiration of appeal rights.
- C. The LICENSEE shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service.
- D. Noncompliance with paragraph C above shall constitute a material breach thereof and in the event of such noncompliance, the COUNTY shall have the right to terminate this LICENSE and the estate hereby created without liability therefor; or at the election of the COUNTY or the United States either or both said Governments shall have the right to judicially enforce paragraphs A, B, and C.



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- E. The LICENSEE agrees that it shall insert the above four paragraphs in any license (agreement, contract, *etc.*) by which said LICENSEE grants a right or privilege to any person, firm or corporation to render accommodations and/or service to the public on the Licensed Premises.

**SECTION 11.02 DEVELOPMENT/MAINTENANCE OF AIRPORT**

The COUNTY reserves the right to further develop or improve the Airport as it sees fit, regardless of the desires or view of the LICENSEE, and without interference or hindrance.

The COUNTY reserves the right, but shall not be obligated to the LICENSEE, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of the LICENSEE in this regard.

**SECTION 11.03 LICENSE SUBORDINATE TO AGREEMENT WITH U.S.A.**

This LICENSE shall be subordinate to the provisions and requirements of any existing or future agreement between the COUNTY and the United States or any lawful requirement of the United States relative to the development, operation or maintenance of the Airport.

**SECTION 11.04 USE TO CONFORM WITH FEDERAL AVIATION REGULATIONS**

The LICENSEE agrees that the LICENSEE's use of the Operating Area, including all construction thereon, shall conform to applicable FEDERAL AVIATION REGULATIONS.

The LICENSEE agrees to comply with the notification and review requirements covered in Part 77 of the FEDERAL AVIATION REGULATIONS (as same may be amended from time to time or such other regulation replacing Part 77 as may be adopted by Federal authority) prior to the construction of the improvements described herein and prior to the construction of any future structure or building upon the Operating Area or in the event of any planned modification or alteration of any present or future building or structure situated on the Operating Area.

**SECTION 11.05 NONEXCLUSIVE RIGHT**

It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of §308a of the FEDERAL AVIATION ACT OF 1958 (49 U.S.C. §1349).

**SECTION 11.06 RESERVATION OF AVIGATION EASEMENT**

The COUNTY hereby reserves for itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the air space above the surface of the Operating Area, together with the right to cause in said air space such noise as may be inherent in the operation of aircraft now known or hereafter used for navigation of, or flight in the air, using said air space, or landing at, taking off from, or operating at the Airport.



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**SECTION 11.07      HEIGHT LIMITATION OF STRUCTURES**

The LICENSEE by accepting this LICENSE expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object nor permit the growth of any tree on the land Licensed hereunder (if any) which would penetrate the imaginary surfaces as defined in Part 77 of the FEDERAL AVIATION REGULATIONS (as same may be amended from time to time or as such regulation replacing Part 77 may be adopted by Federal authority) or such other lesser altitude as may be required by the COUNTY. In the event the aforesaid covenants are breached, the COUNTY reserves the right to enter upon the land Licensed Area hereunder and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of the LICENSEE. The LICENSEE shall be responsible for filing Form 7460 for any construction and/or height of construction equipment with the FAA, if required.

**SECTION 11.08      NONINTERFERENCE WITH AIRCRAFT**

The LICENSEE by accepting this LICENSE agrees for itself, its successors and assigns that it will not make use of the Airport in any manner which might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the COUNTY reserves the right to enter upon the Operating Area and hereby cause the abatement of such interference at the expense of the LICENSEE.

**SECTION 11.09      WAR OR NATIONAL EMERGENCY**

This LICENSE and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of the Airport or the exclusive or nonexclusive use of the Airport by the United States during the time of war or national emergency.

**SECTION 11.10      AFFIRMATIVE ACTION REQUIREMENTS**

The LICENSEE assures that it will undertake an affirmative action program as required by 14 CODE OF FEDERAL REGULATIONS, Part 152, Subpart E, to insure that no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from participating in any employment activities covered in 14 CODE OF FEDERAL REGULATIONS, Part 152, Subpart E. The LICENSEE assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Subpart. The LICENSEE assures that it will require that its covered suborganizations provide assurances to the LICENSEE that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CODE OF FEDERAL REGULATIONS, Part 152, Subpart E, to the same effect.



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**ARTICLE XII**

**MISCELLANEOUS PROVISIONS**

**SECTION 12.01      TIME**

Time is of the essence in this LICENSE.

**SECTION 12.02      LICENSE ORGANIZATION**

The various headings and numbers herein, the grouping of provisions of this LICENSE into separate sections and paragraphs, and the organization hereof, are for the purpose of convenience only and shall not be considered otherwise.

**SECTION 12.03      AMENDMENTS**

This LICENSE sets forth all of the agreements and understandings of the parties with regard to its subject matter and any modification must be written and properly executed by both parties.

**SECTION 12.04      SIGNS**

LICENSEE agrees not to construct, maintain or allow any sign upon the Operating Area except as approved by Airport Director. Unapproved signs, banners, flags, etc., may be removed by the Airport Director without prior notice to the LICENSEE.

**SECTION 12.05      PERMITS AND LICENSES**

The LICENSEE shall be required to obtain any and all approvals, permits and/or licenses which may be required in connection with its operation as set out herein. No permit approval or consent given hereunder by the COUNTY in its governmental capacity shall affect or limit the LICENSEE's obligations hereunder, nor shall any approvals or consents given by the COUNTY as a party to this LICENSE, be deemed approval as to compliance or conformance with applicable governmental codes, laws, ordinances, rules, or regulations.

**SECTION 12.06      TAXES AND ASSESSMENTS**

This LICENSE may create a possessory interest which is subject to the payment of taxes levied on such interest. It is understood and agreed that all taxes and assessments (including but not limited to said possessory interest tax) which become due and payable upon fixtures, equipment or other property installed or constructed thereon, shall be the full responsibility of the LICENSEE, and the LICENSEE shall cause said taxes and assessments to be paid promptly.

**SECTION 12.07      CIRCUMSTANCES WHICH EXCUSE PERFORMANCE**

If either party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, restrictive governmental laws or regulations or other cause without fault and beyond the control of the party obligated (financial inability excepted),



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performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. However, nothing in this Section shall excuse the LICENSEE from the prompt payment of any fees and charges or other charges required of the LICENSEE except as may be expressly provided elsewhere in this LICENSE.

### **SECTION 12.08      PARTIAL INVALIDITY**

If any term, covenant, condition, or provision of this LICENSE is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

### **SECTION 12.09      WAIVER OF RIGHTS**

The failure of the COUNTY or the LICENSEE to insist upon strict performance of any of the terms, covenants or conditions of this LICENSE shall not be deemed a waiver of any right or remedy that the COUNTY or the LICENSEE may have, and shall not be deemed a waiver of the right to require strict performance of all the terms, covenants and conditions of the LICENSE thereafter, nor a waiver of any remedy for the subsequent breach or default of any term, covenant or condition of this LICENSE. Any waiver, in order to be effective, must be signed by the party whose right or remedy is being waived.

### **SECTION 12.10      RESERVATIONS TO COUNTY**

The Operating Area is accepted as is and where is by the LICENSEE subject to any and all existing easements and encumbrances. The COUNTY reserves the right to install, lay, construct, maintain, repair and operate sanitary sewers, drains, storm water sewers, pipelines, manholes and connections; water, oil and gas pipelines; telephone and telegraph power lines; and the appliances and appurtenances necessary or convenient in connection therewith, in, over, upon, through, across, under and along the Operating Area or any part thereof; and to enter the Operating Area for any and all such purposes. The COUNTY also reserves the right to grant franchises, easements, rights of way and permits in, over, upon, through, across, under and along any and all portions of the Operating Area. No right reserved by the COUNTY in this Section shall be so exercised as to interfere unreasonably with the LICENSEE's operations hereunder or to impair the security of any secured creditor of the LICENSEE.

The COUNTY agrees that rights granted to third parties by reason of this Section shall contain provisions that the surface of the land shall be restored as nearly as practicable to its original condition upon the completion of any construction. The COUNTY further agrees that should the exercise of these rights temporarily interfere with the use of any or all of the Operating Area by the LICENSEE, the LICENSEE shall only be entitled to a reduction in the fees and charges payable to the COUNTY during the period of interference, which shall be reduced in proportion to the interference with the LICENSEE's use of the Operating Area. The LICENSEE shall not be entitled to any other form of compensation.





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**SECTION 12.11      AUTHORITY OF LICENSEE**

If the LICENSEE is a corporation, each individual executing this LICENSE on behalf of said corporation represents and warrants that he is duly authorized to execute and deliver this the LICENSE on behalf of said corporation, in accordance with the by-laws of said corporation, and that this LICENSE is binding upon said corporation.

**SECTION 12.12      PUBLIC RECORDS**

The LICENSEE understands that written information submitted to and/or obtained by the COUNTY from the LICENSEE related to this LICENSE and/or the Operating Area, either pursuant to this LICENSE or otherwise, may be open to inspection by the public pursuant to the California Records Act (GOVERNMENT CODE §§6250, *et seq.*) as now in force or hereafter amended, or any Act in substitution thereof, or otherwise made available to the public.

**SECTION 12.13      RELATIONSHIP OF PARTIES**

The relationship of the parties hereto is that of lessor and tenant, and it is expressly understood and agreed that the COUNTY does not in any way or for any purpose become a partner of the LICENSEE in the conduct of the LICENSEE's business or otherwise, or a joint venturer with the LICENSEE; and the provisions of this LICENSE and the agreements relating to fees and charges payable hereunder are included solely for the purpose of providing a method by which fees and charges payments are to be measured and ascertained. This LICENSE is intended for the sole benefit of the parties hereto and their successors, and, unless otherwise provided herein, or by law, no rights are created, or are intended to be created, for the benefit of, or enforceable by, any third parties.

**SECTION 12.14      NOTICES**

All notices pursuant to this LICENSE shall be addressed to either party as set forth below and shall be sent through the United States Mail, in the State of California, duly registered or certified, return receipt requested with postage prepaid or by an overnight carrier service. If any notice is sent by an overnight carrier service, as aforesaid, the same shall be deemed to have been served or delivered twenty-four (24) hours after mailing thereof as above provided. Notwithstanding the above COUNTY may also provide notices to the LICENSEE by personal delivery or by regular mail postage prepaid and any such notice so given shall be deemed to have been given upon the date of personal delivery or three (3) days after the date of deposit in the United States Mail, respectively.

TO: COUNTY

TO: LICENSEE

John Wayne Airport  
3160 Airway Avenue  
Costa Mesa, CA 92626

Either party hereto may from time to time, by written notice to the other in the method described above, designate a different address which shall be substituted for the one above specified.

IN WITNESS WHEREOF, the parties have executed this LICENSE the day and year first above written.

LICENSEE

By: \_\_\_\_\_

By: \_\_\_\_\_

APPROVED AS TO FORM:

County Counsel

By: \_\_\_\_\_

APPROVED AS TO AUDIT AND ACCOUNTING:

Auditor-Controller

By: \_\_\_\_\_

RECOMMENDED FOR APPROVAL:

John Wayne Airport

By: \_\_\_\_\_

Alan L. Murphy  
Airport Director

Signed and certified that a copy of this document has been delivered to the Chair of the Board per G.C. Sec. 25103, Reso 79-1535  
Attest:

COUNTY

COUNTY OF ORANGE

By: \_\_\_\_\_

Chair, Board of Supervisors

\_\_\_\_\_  
Darlene J. Bloom  
Clerk of the Board of Supervisors  
of Orange County, California