

PROPOSED RESTAURANT LEASE - AIRPORTS

McCLELLAN –PALOMAR AIRPORT

CARLSBAD, CALIFORNIA

LESSOR: COUNTY OF SAN DIEGO, a Political
Subdivision of the State of California

LESSEE: _____

PARCEL: _____

COUNTY CONTRACT NO. _____

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COUNTY OF SAN DIEGO
RESTAURANT LEASE

THIS RESTAURANT LEASE AGREEMENT ("Lease") is made and entered into effective as of _____ ("Effective Date"), by and between the COUNTY OF SAN DIEGO, a political subdivision of the State of California ("County"), and _____ ("Lessee").

IN CONSIDERATION OF THE RENTS AND COVENANTS hereinafter set forth, County hereby leases to Lessee, and Lessee hereby leases from County, the Premises described below upon the following terms and conditions:

ARTICLE 1
SUMMARY OF BASIC LEASE PROVISIONS

1.1 Lessor: COUNTY OF SAN DIEGO, a political
subdivision of the State of California

Address for notice:

Director
Department of General Services
Building 2
5555 Overland Avenue
San Diego, California 92123

with a copy to:

Airports Director
1960 Joe Crosson Drive
El Cajon, California 92020

1.2 Lessee: _____

Address for notice:

With a copy to:

1.3 Premises. The Premises means that approximately _____ acres of real property designated as County Parcel Number _____, as delineated on Exhibit "A" (DESCRIPTION AND PLAT OF THE PREMISES) attached hereto and by this reference incorporated herein, and are located at McClellan-Palomar Airport, Carlsbad, California.

1.4 County's and Lessee's Lease Administrators. This Lease shall be administered on behalf of County by the Director, Department of General Services, County of San Diego, or by such person's duly-authorized designee (referred to collectively hereinafter as "County's Lease Administrator"), and on behalf of Lessee by _____ or by such other person as may be designated in writing by Lessee (referred to hereinafter as "Lessee's Lease Administrator").

1.5 Effective Date. The date this Lease is approved by the County's Board of Supervisors. See Section 3.1 (TERM; DEFINITIONS).

1.6 Commencement Date. The commencement date shall be July 1, 2008. See Section 3.1 (TERM; DEFINITIONS).

1.7 Term. The term of this Lease shall be Ten (10) years commencing on the Commencement Date and terminating June 30, 2018.

1.8 Rent Due Date. See Section 4.1 (MINIMUM MONTHLY RENT).

1.9 Rent. The Minimum Monthly Rent is _____ Dollars (\$_____). Minimum Monthly Rent is payable as stated in Section 4.1 (MINIMUM MONTHLY RENT).

1.10 Rental Rate Adjustments. See Section 4.3 (RENT RATES AND ADJUSTMENTS).

1.11 Additional Rent. Any and all sums of money or charges required to be paid by Lessee to County pursuant to the provisions of this Lease shall be paid as "Additional Rent" (for example: percentage rents, late charges, interest, equity payments, processing fees, etc.)

1.12 Security Deposit. \$_____ See Article 5 (SECURITY DEPOSIT).

1.13 General Description of Lessee's Use of Premises. Lessee shall use the Premises solely for the uses defined in Article 6 (POSSESSION AND USE).

1.14 Definitions. As used in this Lease, the following terms shall have the meanings attached to them in this Section unless otherwise apparent from their context:

- a. "Airport" means McClellan-Palomar Airport, Carlsbad, California.

- b. "F.A.A." means the Federal Aviation Administration.
- c. "ALP" means the FAA approved Airport Layout Plan for McClellan-Palomar Airport.
- d. "Board" means the Board of Supervisors of the County of San Diego.
- e. "Airports Director" means the Airports Director, of the Department of Public Works, County of San Diego, or upon written notice to Lessee, such other person as shall be designated from time-to-time by the Board.
- f. "Standards" means the Aviation Areas Development Standards and the Industrial and Aviation Areas Restaurant Performance Standards attached as Exhibits "C" and "D" hereto.
- g. "City" means the City of Carlsbad.

1.15 Exhibits To Lease. The following drawings and special provisions are attached hereto as exhibits and made a part of this Lease:

<u>EXHIBIT "A"</u>	-	Description and Plat of the Premises
<u>EXHIBIT "B"</u>	-	FAA Requirements
<u>EXHIBIT "C"</u>	-	Aviation Area Development Standards
<u>EXHIBIT "D"</u>	-	Industrial and Aviation Areas, Restaurant Performance Standards
<u>EXHIBIT "E"</u>	-	Insurance Requirements
<u>EXHIBIT "F"</u>	-	County of San Diego Required Sublease Provisions
<u>EXHIBIT "G"</u>	-	Intentionally omitted
<u>EXHIBIT "H"</u>	-	Work Letter Agreement - Airports
<u>EXHIBIT "I"</u>	-	Master Development Plan

1.16 Construction of Lease Provisions. The foregoing provisions of this Article summarize for convenience only certain key terms of the Lease delineated more fully in the Articles and Sections referenced therein. In the event of a conflict between the provisions of this Article and

the balance of the Lease, the latter shall control.

1.17 Custom Lease Charge. County utilizes a standard form to lease property at the McClellan-Palomar Airport. Significant modifications of the standard lease form are discouraged. In order to compensate County for the added expense of negotiating and drafting this non-standard Lease, Lessee shall pay to County \$5,000 upon the execution of this Lease by County. This amount shall be due and payable to County as Additional Rent.

ARTICLE 2 LEASE OF PREMISES

2.1 Description. County hereby leases to Lessee and Lessee hereby leases from County, for the rent and upon the covenants and conditions hereinafter set forth, the Premises described in Section 1.3 (PREMISES) above, together with the non-exclusive use of all public airport facilities at the Airport when reasonably related to the use and occupancy of the Premises for the purposes permitted by this Lease.

2.2 Mineral Rights. Notwithstanding any provision of this Lease to the contrary, County hereby expressly reserves all rights, title and interest in and to any and all gas, oil, mineral and water deposits located upon or beneath the surface of the Premises. County shall have the right to enter the Premises at any time during the Term for the purpose of operating or maintaining such drilling or other installations as may be necessary or desirable for the development of any such gas, oil, mineral or water deposits.

2.3 Reservations to County/Easement Reservations. Lessee accepts the Premises subject to any and all existing easements and encumbrances. County reserves the right to establish, to grant or to use easements or rights-of-way over, under, along and across the Premises for access, underground sewers, utilities, thoroughfares or such other facilities as it deems necessary for public health, convenience and welfare, whether or not such facilities directly or indirectly benefit the Premises, and to enter the Premises for any such purpose; provided, however, that any such grant of rights by County shall require that the Premises be restored to their preexisting condition. County hereby reserves unto itself, for the benefit and use for aviation purposes by the County and the public, an easement over any existing taxiways, or any taxiways developed by Lessee, within the Premises. Provided however, no right reserved by County in this Section 2.3 shall be so exercised as to interfere unreasonably with Lessee's operations hereunder. County agrees that should the exercise of any of the rights reserved by County in this Section 2.3 temporarily interfere with the use of any or all of the Premises by Lessee, the Rent shall be reduced in proportion to the interference with Lessee's use of the Premises.

2.4 Lease Subordinate to Conditions and Restrictions Imposed by Public Agencies on Airport Operations. This Lease shall be subordinate and subject to the terms, conditions, restrictions and other provisions of any existing or future permit, lease and agreement between County and any federal, State or local agency governing County's control, operation or maintenance of the Airport,

or affecting the expenditure of federal funds for the Airport. Lessee shall be bound by all such terms and conditions, and shall, whenever County may so demand, execute, acknowledge or consent to any instrument evidencing such terms, conditions, restrictions or provisions. Without limiting the generality of the foregoing, this Lease and Lessee's occupancy of the Premises are expressly made subordinate and subject to the terms, conditions, restrictions and other provisions of those requirements of the Federal Aviation Administration specifically set forth in Exhibit "B" (FAA REQUIREMENTS) and Lessee shall be bound by all such requirements.

ARTICLE 3 TERM OF LEASE

3.1 Term; Definitions. This Lease shall not take effect until the "Effective Date," which is defined as the date of approval of this Lease by County's Board of Supervisors. Subject to approval of this Lease by the County Board of Supervisors, the term ("Term") shall commence on the commencement date ("Commencement Date") specified in Article 1 (SUMMARY OF BASIC LEASE PROVISIONS) and shall continue thereafter for the period specified in such article, unless sooner terminated as hereinafter provided in this Lease. Except as otherwise specifically stated in this Lease or in any subsequent amendments hereof, the terms and conditions of this Lease shall remain in effect following any extension, renewal or holdover of the original Term.

3.2 Early Termination Through County Buy-Out.

3.2.1 Calculation of "Buy-Out" Price. In the event that County should require the Premises at any time during the Term, County reserves the right to terminate this Lease upon two hundred (200) days' prior written notice and payment to Lessee of a sum of money calculated as follows.

a. Commencing within twenty (20) days following receipt by Lessee of County's notice of its intention to terminate, County and Lessee shall attempt to agree upon the fair market value of the leasehold estate for the remaining term of the Lease in the Premises ("Fair Market Value"). If the parties are unable to agree upon the Fair Market Value within thirty (30) days thereafter, then each party shall designate, by written notice to the other party within ten (10) days after expiration of said 30-day period, a real estate appraiser who shall be a member of any nationally recognized professional real estate appraisal association that examines its designated members, and who also has at least five (5) years' full-time commercial appraisal experience in the area in which the Premises are located, to appraise and determine the Fair Market Value. If either party fails to designate an appraiser, or if either appraiser fails to appraise and determine the Fair Market Value, one appraiser shall determine the Fair Market Value.

b. If two appraisers are designated, the two shall promptly meet in an attempt to set the Fair Market Value. If the two appraisers are unable to agree upon the Fair Market Value based on their respective appraisals within sixty (60) days after designation of the second appraiser, they shall appoint a third appraiser meeting the qualifications stated above within ten (10) days after

expiration of the sixty-day period provided to the two appraisers to set the Fair Market Value. If the two appraisers are unable to agree on a third appraiser, either of the parties to this Lease, by giving ten (10) days' written notice to the other party, can apply to the then president of the Real Estate Board of San Diego County for the selection of a third appraiser, who will also appraise and determine the Fair Market Value. Each party shall pay the fee of the appraiser it designates and one-half (1/2) the cost of the third appraiser. Within sixty (60) days after the selection of the third appraiser, a majority of the appraisers shall set the Fair Market Value. If a majority of the appraisers are unable to agree, then the average of the three appraisals shall be the Fair Market Value; provided, however, if the low appraisal is more than ten percent (10%) lower and/or if the high appraisal is more than ten percent (10%) higher than the middle appraisal, then the low appraisal and/or high appraisal shall be disregarded in averaging the appraisals. If any of the designated appraisers shall fail to appraise and determine the Fair Market Value within the timeframes set forth herein, then the Fair Market Value shall be set based on the average of the appraisal(s) which were completed pursuant to this section.

c. In determining the Fair Market Value, the appraisals shall evaluate the monthly amount which the Premises could be expected to return to the County if offered for lease on the open market under normal circumstances, giving due consideration to other properties located in the geographic vicinity of the Premises, desirability and utility of the Premises and similar relevant matters. Improvements placed upon the Premises by the Lessee since the Commencement Date of this Lease shall be considered in arriving at the Fair Market Value. Any rent credits granted to Lessee by County for Capital Improvements will be deducted from Fair Market Value. After the Fair Market Value has been set, the appraisers shall immediately notify the parties in writing.

d. Notwithstanding any of the foregoing provisions of this Section to the contrary, if the procedure for calculating the Fair Market Value set forth above produces a sum less than the sum of the total outstanding principal balance(s) on any Mortgage(s) encumbering the Premises to which County has consented as required by this Lease, then the Fair Market Value shall be increased to an amount equal to the sum of the total outstanding principal balance(s) on said Mortgage(s), not including any interest, late charges or other penalty which may be due on said Mortgage(s), and the entire Fair Market Value payment shall be paid by County to the mortgagee(s) on such Mortgage(s). If the procedure for calculating the Fair Market Value set forth above produces a sum greater than the sum of the total outstanding principal balance(s) on any Mortgage(s) encumbering the Premises to which County has consented as required by this Lease, then the Fair Market Value shall be paid, first, to such mortgagee(s) to satisfy the sum of the total outstanding principal balance(s) on said Mortgage(s), not including any interest, late charges or other penalty which may be due on said Mortgage(s), with the remaining amount of the Fair Market Value payment paid to Lessee.

e. If the parties cannot arrive at the Fair Market Value through use of the foregoing procedure, the question may thereafter be submitted to arbitration by notice to the other party. The judgment in any such arbitration may be entered in any court having jurisdiction and shall be final and binding between the parties. The arbitration shall be conducted in accordance with

California Code of Civil Procedure § 1280, et seq. The arbitrator's fee shall be split by the parties.

3.2.2 Upon any termination of the Lease pursuant to this Article, all improvements of whatever nature located on the Premises shall become sole property of County, reserving, however, to County the right to require Lessee to remove such improvements within thirty (30) days' following termination of this Lease at Lessee's sole expense.

3.2.3 In consideration of County's agreement to enter into this Lease, Lessee hereby waives any and all rights it may now have, or may hereafter obtain, under the eminent domain and condemnation statutes and constitutional provisions of the State of California and the United States., as applicable. In the event County brings an action in condemnation to terminate this Lease and condemn Lessee's interest herein, the formula set forth above shall constitute a stipulation by the parties hereto as to the fair market value of Lessee's entire right, title and interest in and to the Premises.

3.3 Surrender of the Premises; Quitclaim of Lessee's Interest Upon Termination.

(a) Lessee shall surrender possession of the Premises to County upon expiration of the Term or earlier termination of this Lease. Upon termination of this Lease for any reason, including but not limited to termination because of default by Lessee, Lessee shall execute, acknowledge and deliver to County, within thirty (30) days following receipt of written demand therefor, a good and sufficient deed whereby Lessee quitclaims all right, title and interest in the Premises to County. Should Lessee fail or refuse to deliver such quitclaim deed to County, County may prepare and record a notice reciting the failure of Lessee to do so, and such notice shall be conclusive evidence of the termination of this Lease and of all right of Lessee or those claiming under Lessee to the Premises.

(b) Should the manner or method employed by County to re-enter or take possession of the Premises pursuant to the provisions of this Lease give Lessee a cause of action for damages or in forcible entry and detainer, the total amount of damages to which Lessee shall be entitled in any such action shall be one dollar (\$1.00). This provision may be filed in any action brought by Lessee against County, and when so filed shall constitute a stipulation by Lessee fixing the total damages to which Lessee is entitled in such an action.

ARTICLE 4 RENT

4. Rent. Rent shall be paid to the County during the entire term of this Lease. In addition to such other amounts as may from time to time be due and owing County in accordance with this Lease, Lessee shall pay Minimum Monthly Rent and Percentage Rent to the County. Lessee shall only be obligated to pay Percentage Rent to the County, when the Percentage Rent exceeds the Minimum Monthly Rent for the same month or fractional period of such month that the gross income which is used to calculate the Percentage Rent was received by or became due and owing to

Lessee. In no event, shall Lessee pay less than the Minimum Monthly Rent to County for each month or fractional period of a month during the Term of this Lease.

4.1 Minimum Monthly Rent. Subject to the adjustments as provided in Section 4.3 (Rent Rates and Adjustments) Lessee shall pay to County Minimum Monthly Rent of _____ Dollars (\$_____) per month for the use and occupancy of the Premises. Lessee shall pay the Minimum Monthly Rent in advance, without setoff, deduction, prior notice or demand, commencing on the Commencement Date. Should the Commencement Date of this Lease be on a day other than the first day of a calendar month, then the Minimum Monthly Rent for such first fractional month shall be computed on a daily basis for the period from the Commencement Date to the end of such calendar month and at an amount equal to one thirtieth (1/30th) of said monthly rent for each such day, and thereafter shall be computed as aforesaid.

4.2 Percentage Rent. County shall be entitled to receive a portion of the gross income of Lessee from the operation of the restaurant facilities required to be constructed by Article 10 of this Lease and calculated in accordance with Section 4.3 (Rent Rates and Adjustments) as additional rent (hereinafter "Percentage Rent"). Lessee shall only be obligated to pay to County that portion of the Percentage Rent which exceeds the Minimum Monthly Rent for the same month or fractional period of such month that the Percentage Rent was received by or became due and owing to Lessee. Lessee shall pay Percentage Rent to the County, without setoff, deduction, prior notice or demand, on the fifteenth (15) day of the month following the month or fractional period of such prior month that the Percentage Rent was received by or became due and owing to Lessee.

4.3 Rent Rates and Adjustments.

(a) Cost of Living Adjustments ("COLA") to the Base Monthly Rent. The Minimum Monthly Rent provided for in Section 4.1 (MINIMUM MONTHLY RENT) shall be adjusted as of the first (1st) anniversary of the Commencement Date, and thereafter every year on such date for the remainder of the Term (each such one-year period is referred to herein as a "COLA Period"), to reflect any increase or decrease in the purchasing power of the dollar. The rent adjustment to be effective during each COLA Period shall be determined by use of the following formula.

$$R=A (B/C)$$

Wherein:

"R" equals the adjusted Minimum Monthly Rent for each month of the COLA Period for which rent is being adjusted;

"A" equals the Minimum Monthly Rent set forth in Article 1 (SUMMARY OF BASIC LEASE PROVISIONS), but only until such time as the parties determine the Renegotiated Rent pursuant to Section 4.3(b) (RENEGOTIATION OF MINIMUM MONTHLY RENT), below, following which time "A" shall then equal such Renegotiated Rent;

"B" equals the monthly Consumer Price Index, as hereinafter defined, for the month of _____ immediately preceding the commencement of the COLA Period for which the rent is being adjusted; and

"C" equals the monthly Consumer Price Index, as hereinafter defined, for the month of _____ immediately preceding the commencement of the Term; provided, however, that following renegotiation of the rent pursuant to Section 4.3(b) (RENEGOTIATION OF MINIMUM MONTHLY RENT), below, "C" shall equal the Consumer Price Index for the month of _____ immediately preceding such rent renegotiation.

The consumer price index which shall be used as the source for the Consumer Price Index numbers shall be that published by the United States Department of Labor, entitled United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for the Los Angeles-Riverside-Orange County, CA Area, all items of the index entitled "Consumer Price Index for All Urban Consumers" for the Los Angeles-Riverside-Orange County, CA Area (1982-84 = 100). In the event that such index is not published for the Los Angeles-Riverside-Orange County, CA Area, then another comparable index or source of such information generally recognized as authoritative shall be substituted by agreement of the parties. If the parties should not agree, such source of information shall be determined by arbitration pursuant to the provisions of the California Code of Civil Procedure.

(b) Renegotiation of Minimum Monthly Rent. For each five year period of this Lease or any portion thereof, commencing five years from the Commencement Date, the Base Monthly Rent for the first twelve months, or any portion thereof, of any five-year period, shall be adjusted, as applicable, to the higher of (i) the Base Monthly Rent set forth in Article 1 (SUMMARY OF BASIC LEASE PROVISIONS) of the Lease, or (ii) fair market rent ("Fair Market Rent") for the Premises as of expiration of the preceding five-year period, calculated as follows:

(a) Commencing approximately two hundred (200) days prior to the applicable Rent Adjustment Date, County and Lessee shall attempt to agree upon the Fair Market Rent. If the parties are unable to agree upon the Fair Market Rent within thirty (30) days thereafter, then each party shall designate, by written notice to the other party within ten (10) days after expiration of said 30-day period, a real estate appraiser with at least five (5) years' full-time commercial appraisal experience in the area in which the Premises are located, to appraise and determine the Fair Market Rent for the Premises for the first twelve months of the next five-year period. If either party fails to designate an appraiser, or if either appraiser fails to appraise and determine the Fair Market Rent for the Premises, one appraiser shall determine the Fair Market Rent.

(b) If two appraisers are designated, the two shall promptly meet in an attempt to set the Fair Market Rent. If the two appraisers are unable to agree upon the Fair Market Rent for the Premises based on their respective appraisals within sixty (60) days after designation of the second appraiser, they shall appoint a third appraiser meeting the qualifications stated above within ten (10)

days after expiration of the sixty-day period provided to the two appraisers to set the Fair Market Rent. If the two appraisers are unable to agree on a third appraiser, either of the parties to this Lease, by giving ten (10) days' written notice to the other party, can apply to the then president of the Real Estate Board of San Diego County for the selection of a third appraiser, who will also appraise and determine the Fair Market Rent for the Premises. Each party shall pay the fee of the appraiser it designates and one-half (1/2) the cost of the third appraiser. Within sixty (60) days after the selection of the third appraiser, a majority of the appraisers shall set the Fair Market Rent. If a majority of the appraisers are unable to agree, then the average of the three appraisals shall be the Fair Market Rent; provided, however, if the low appraisal is more than ten percent (10%) lower and/or if the high appraisal is more than ten percent (10%) higher than the middle appraisal, then the low appraisal and/or high appraisal shall be disregarded in averaging the appraisals. If any of the designated appraisers shall fail to appraise and determine the Fair Market Rent for the Premises within the timeframes set forth herein, then the Fair Market Rent shall be set based on the average of the appraisal(s) which were completed pursuant to this section.

(c) In determining the Fair Market Rent, the appraisals shall evaluate the monthly amount which the Premises could be expected to return to the County if offered for lease on the open market under normal circumstances, giving due consideration to other properties located in the geographic vicinity of the Premises, desirability and utility of the Premises and similar relevant matters. Improvements placed upon the Premises by the Lessee since the Commencement Date of this Lease shall not be considered in arriving at the Fair Market Rent. After the Fair Market Rent has been set, the appraisers shall immediately notify the parties in writing.

(d) If the parties cannot arrive at the Fair Market Rent through use of the foregoing procedure, the question may thereafter be submitted to arbitration by notice to the other party. The judgment in any such arbitration may be entered in any court having jurisdiction and shall be final and binding between the parties. The arbitration shall be conducted in accordance with California Code of Civil Procedure § 1280, et seq. The arbitrator's fee shall be split by the parties.

(c) Percentage Rents. Percentage Rents will be calculated on a calendar month basis and will consist of the percentages as set forth below of the total gross income from all types of sales received by or due and payable to Lessee, without any offset or deductions.

<i>Business Activities</i>	<i>Percentages</i>
Food and Non-Alcoholic Beverages.....	_____ Percent (____%)
Alcoholic Beverages.....	_____ Percent (____%)
Aviation Catering Services.....	_____ Percent (____%)
Vending Machines, Telephones, or Any Other Pay for Service Type Devices.....	_____ Percent (____%)
Other Uses Pre-Approved by County (e.g., banquets or catering).....	_____ Percent (____%)
Uses Not Pre-Approved by County.....	_____ Percent (____%)

The Airports Director, in his sole discretion, may approve in writing additional activities that would otherwise be subject to the twenty percent (20%) fee for unapproved activities. Upon approval by the Airports Director, such previously unapproved activities may be subject to a percentage rate of up to twenty percent (20%) of the gross receipts received by or due and owing to Lessee for such activities.

(d) NOTE: LANGUAGE TO BE INSERTED REGARDING AVAILABLE RENT CREDITS AS AGREED TO BY THE PARTIES PRIOR TO EXECUTION OF THE RESTAURANT LEASE.

4.4 Additional Rent. Lessee shall pay, as Additional Rent, all sums of money required to be paid pursuant to the terms of this Lease which are not payable as Minimum Monthly Rent or Percentage Rent, collectively referred to herein as "Additional Rent." If such amounts or charges are not paid at the time provided in this Lease, they shall nevertheless be collectible as Additional Rent with the next installment of Minimum Monthly Rent thereafter falling due, but nothing herein contained shall be deemed to suspend or delay the payment of any amount of money or charge at the time the same becomes due and payable hereunder or to limit any other remedy of County. All amounts of Minimum Monthly Rent, Percentage Rent and Additional Rent payable in a given month shall be deemed to comprise a single rent obligation of Lessee to County.

4.5 Delivery of Rent Payments. All rent due under this Lease shall be made payable to the County of San Diego, and shall be considered paid when delivered to:

County of San Diego
DPW Financial Services
5555 Overland Avenue, Suite 2274, Bldg 2
San Diego, California 92123-1248

provided, however, that County may, at any time, by written notice to Lessee, designate a different address to which Lessee shall deliver the rent payments. County may, but is not obligated to, send monthly rent invoices to Lessee.

4.6 Failure to Pay Minimum Monthly Rent, Percentage Rent, or Additional Rent; Late Charge.

(a) If Lessee fails to pay rent due hereunder within fifteen (15) days of the time it is due and payable, such unpaid amounts shall bear interest at the rate of ten percent (10%) per year from the date due to the date of payment, computed on the basis of monthly compounding with actual days elapsed compared to a 360-day year. In addition to such interest, the late payment by Lessee of any monthly rental due hereunder will cause County to incur certain costs and expenses not contemplated under this Lease, the exact amount of which costs being extremely difficult or impracticable to fix. Such costs and expenses will include, without limitation, administrative and collection costs, and processing and accounting expenses. Therefore, if any such monthly rental is

not postmarked or received by County from Lessee within fifteen (15) days of the Due Date, or the first business day thereafter, Lessee shall immediately pay to County a late charge equal to five percent (5%) of such overdue amount. This late charge represents a reasonable estimate of such costs and expenses and is fair compensation to County for its loss caused by Lessee's nonpayment. Should Lessee pay said late charge but fail to pay contemporaneously therewith all unpaid amounts of rent due hereunder, County's acceptance of this late charge shall not constitute a waiver of Lessee's default with respect to such nonpayment by Lessee nor prevent County from exercising all other rights and remedies available to County under this Lease or under law.

(b) In the event of a dispute between the parties as to the Correct amount of Minimum Monthly Rent, Percentage Rent or Additional Rent owed by Lessee, County may accept any sum tendered by Lessee in payment thereof, without prejudice to County's claim as to the proper amount of rent owing. If it is later determined that Lessee has not paid the full amount of rent owing, the late charge specified herein shall apply only to that portion of the rent still due and payable from Lessee. Notwithstanding any provision of this Section to the contrary, however, County's Lease Administrator may waive any late charge or interest upon the written recommendation of the Airports Director.

ARTICLE 5 SECURITY DEPOSIT

Lessee has paid or will pay to County the amount set forth as a security deposit in Article 1, "Summary of Basic Lease Provisions," as security for Lessee's performance of this Lease. County shall not be required to keep this Security Deposit separate from its general funds, and Lessee shall not be entitled to interest thereon. County may apply all or a part of the Security Deposit to any unpaid rent or other charges due from Lessee, or to cure any other defaults of Lessee under this Lease, including repair and cleaning of the Premises at the expiration of the Term. If any portion of the Security Deposit is so applied, Lessee shall, within ten (10) days after County's demand, deposit cash sufficient to restore the Security Deposit to its original amount. Any time the Minimum Monthly Rent is increased, Lessee shall deposit additional cash funds sufficient to increase the Security Deposit by the same percentage amount. In the event of bankruptcy or other debtor-creditor proceedings against Lessee, the Security Deposit shall be deemed to be applied first to the payment of rent and other charges due County for the periods prior to the filing of such proceedings. The security deposit will not be a limitation on County's damages or other rights under this Lease, or a payment of liquidated damages, or an advance payment of the rent. If Lessee pays the rent and performs all of its other obligations under this Lease, County will return the unused portion of the security deposit to Lessee within sixty (60) days after the end of the Term.

ARTICLE 6 POSSESSION AND USE

6.1 Permitted Uses. Lessee shall use the Premises solely for the operation of a restaurant

in accordance the “Industrial and Aviation Areas, Restaurant Performance Standards” attached hereto as Exhibit “D” or such other uses as may be approved from time to time by the Airports Director in writing. No one other than Lessee, its agents and employees, or any sublessee of Lessee approved by County as provided in Article 15 (ASSIGNMENT, SUBLETTING AND ENCUMBRANCES) is permitted to use the Premises for the purposes described herein, and Lessee shall be fully responsible for the activities of its agents, employees and sublessees, if any, on the Premises. Lessee acknowledges that County reserves the right to permit others at the Airport to provide one or more of the services to be provided by Lessee on the Premises.

6.2 Duties and Prohibited Conduct. The uses permitted and the facilities and services provided under this Lease for the Premises are to serve the general public. Lessee shall operate and manage the services and facilities which it offers to the public in a competent and efficient manner at least comparable, in the opinion of the Airports Director, to other Airport operations of similar type.

Where Lessee is reasonably in doubt as to the propriety of any particular use, Lessee may request the written determination of County's Lease Administrator that such use is or is not permitted, and Lessee will not be in breach or default under this Lease if Lessee abides by such determination. Notwithstanding the foregoing, however, Lessee shall not use nor permit the use of the Premises in any manner that will tend to create waste or a nuisance. Lessee shall not use, or permit any person or persons to use, the Premises for the sale or display of any goods and/or services which, in the sole discretion of County, are inconsistent with the permitted uses of the Premises pursuant to this Lease.

Lessee shall keep the Premises, and every part thereof, in a decent, safe and sanitary condition, free from any objectionable noises or odors, except as may be typically present for the permitted uses specified above, and shall comply with all local, State and Federal ordinances and regulations in all respects. Lessee shall deposit all trash and rubbish of Lessee only within receptacles provided by Lessee and located in the areas designated by County. Lessee shall not allow or permit installation of any billboards or advertising signs, or aerials or antennas, upon the Premises without first obtaining, in each instance, the written consent of the Airports Director, which consent the Airports Director may give or withhold in his or her sole discretion. Any such signs or antenna installed without such written consent shall be subject to removal without notice at any time, at Lessee's expense.

6.3 Compliance with Laws.

(a) Lessee, at Lessee's sole expense, shall procure, maintain and hold available for County's inspection any governmental license or permit required for the proper and lawful conduct of Lessee's business. Lessee shall not use the Premises for any use or purpose in violation of the laws of the United States of America, or the laws, ordinances, regulations and requirements of the State of California, the County of San Diego or the city where the Premises are situated, or of other lawful authorities. Lessee shall, at Lessee's expense, comply promptly with all applicable statutes, laws, ordinances, rules, regulations, orders, covenants and restrictions of record, and requirements in effect during the Term, regulating the use by Lessee of the Premises. The final judgment of any court of competent jurisdiction, or the admission of Lessee or any sublessee or permittee in any action or proceeding against them or any of them, whether or not the County is a

party to such action or proceeding, that Lessee, or any such sublessee or permittee, has violated any such ordinance, law, statute, regulation, covenant, restriction or requirement pertaining to the use of the Premises, shall be conclusive as to that fact as between County and Lessee.

(b) Notwithstanding any other provision of this Lease to the contrary, Lessee shall be responsible for payment of all costs of complying with the requirements of the Americans with Disabilities Act of 1990 ("ADA") (42 USCS §§ 12101-12213), Title 24 of the California Code of Regulations ("Title 24") and California Civil Code § 54.1 as they may apply to the Premises. Lessee's obligations hereunder shall include, without limitation, all costs of bringing the Premises into compliance, and thereafter maintaining such compliance, with the requirements of Title III of the ADA ("Title III") (42 USCS §§ 12181 - 12189) applicable during the Term to public accommodations and commercial facilities, irrespective of whether or not the particular requirements of such compliance (i) are specifically required by Lessee's intended use of the Premises, or (ii) may also be required of County under Title II of the ADA ("Title II") (42 USCS §§ 12131 - 12165).

(c) Lessee's duty to comply with applicable laws and regulations shall include compliance with any and all zoning and land use regulations applicable to the Premises and Lessee's intended use thereof ("Land Use Regulations"). County's execution of this Lease shall in no way be deemed to constitute a determination by County that Lessee's intended use of the Premises complies with applicable Land Use Regulations, nor shall it infer any such conclusion by County, even if County is the agency which enacts or implements the Land Use Regulations applicable to the Premises. In the event of a conflict between any applicable Land Use Regulations and/or other laws, regulations or restrictions affecting the use of the Premises, the more restrictive provisions shall control.

6.4 Stormwater and Non-Stormwater Discharges. The Airport is subject to federal, state and local laws regarding the discharge of pollutants into the stormwater conveyance system in stormwater and non-stormwater. The programs established by these laws regulate existing activities, the construction process, and impose design requirements on new development and redevelopment. The development related parts of the local stormwater program implement a region-wide model plan, the Standard Urban Stormwater Management Plan or "SUSMP". In addition to the SUSMP, County has developed a Stormwater Pollution Prevention Plan (SWPPP) for the Airport that provides for the elimination of prohibited non-stormwater discharges and the prevention of stormwater pollution through the development, installation, implementation and maintenance of pollution prevention measures, source control measures, and Best Management Practices (BMPs). BMPs can include operational practices; water or pollutant management practices; physical site features; or devices to remove pollutants from stormwater, to affect the flow of stormwater or to infiltrate stormwater to the ground.

Lessee is required and agrees to use, operate, maintain, develop, redevelop and retrofit the Premises in accordance with all applicable federal, state and local laws restricting the discharge of non-stormwater at or from the Airport; and all such laws, regulations, or local guidance requiring

pollution prevention measures, source control measures, or the installation or use of BMPs. Lessee further agrees to develop, install, implement and/or maintain at Lessee's sole cost and expense, any BMPs or similar pollution control devices required by federal, state and/or local law and any implementing regulations or guidance. Lessee further agrees to conform to the specifications in the County of San Diego Watershed Protection, Stormwater Management, and Discharge Control Ordinance, Ordinance Nos. 9424 and 9426 (whether or not that County ordinance is legally applicable to Lessee at this Airport), and to the specifications in the SWPPP for the Airport as the same may be amended from time to time by the County Board of Supervisors or the Director of DPW, respectively.

Lessee understands and acknowledges that the stormwater and non-stormwater requirements applicable to the Airport and to Lessee may be changed from time to time by federal, state and/or local authorities, and that additional requirements may become applicable based on changes in Lessee's activities or development or redevelopment by Lessee or County. County may amend the SWPPP for the Airport in response to such changes, or to implement any County program for stormwater and non-stormwater management at the Airport. Lessee agrees to develop, install, implement, and maintain such additional BMPs and/or other pollution control practices at the Premises at Lessee's sole cost and expense. To the extent there is a conflict between any federal, state or local law, County ordinances, SUSMP, or the SWPPP for the Airport, Lessee shall be obligated to comply with the more restrictive provision. Lessee shall provide County with unrestricted access to the Premises and/or all pertinent records upon seven (7) days written notice for the purpose of monitoring the implementation and maintenance of required BMPs and/or other pollution control devices at the Premises. Failure to provide County with access or to implement, develop, install, and maintain any pollution control practices or BMPs required by this Section shall constitute a material breach of this Lease.

6.5 Substance Abuse. Lessee and its employees and agents shall not use or knowingly allow the use of the Premises for the purpose of unlawfully driving a motor vehicle or aircraft under the influence of an alcoholic beverage or any drug, or for the purpose of unlawfully selling, serving, using, storing, transporting, keeping, manufacturing or giving away alcoholic beverages or any "controlled substance," precursor or analog specified in Division 10 of the California Health and Safety Code, and violation of this prohibition shall be grounds for immediate termination of this Lease.

6.6 Control of Premises. Failure of Lessee to exercise control of the use of Premises to conform to the provisions of this Article shall constitute a material breach of this Lease and such shall be grounds for termination.

ARTICLE 7 UTILITIES

Lessee shall provide and pay for all initial utility deposits and fees, and for all utilities and

services necessary for its use and occupancy of the Premises during the Term, including but not limited to gas, water, electricity trash, sewer/septic tank charges and telephone; County shall have no responsibility to either provide or pay for such services. If any such services are not separately metered or billed to Lessee but rather are billed to and paid by County, Lessee will pay to County its pro rata share of the cost of such services, as determined by County, together with its pro rata share of the cost of making such determination. County will not be liable for any reason for any loss or damage resulting from an interruption of any of these services. County shall have the right, at no charge from Lessee, to connect to any water, sewer, electrical, gas and communications lines as are now or may hereafter be installed on the Premises, and shall have all necessary rights of access to construct and service such connections; provided, however, that Lessee shall have no obligation to pay any additional service fees or charges assessed by any governmental agency, or public or private utility company, for County's use of such connections.

ARTICLE 8 MECHANICS' LIENS

8.1 Mechanics' Liens. Lessee shall pay, or cause to be paid, all costs for work done by it, or caused to be done by it, on the Premises, and for all materials furnished for or in connection with any such work. If any lien is filed against the Premises, Lessee shall cause the lien to be discharged of record within ten (10) days after it is filed. Lessee shall indemnify, defend and hold County harmless from any and all liability, loss, damage, costs, attorneys' fees and all other expenses on account of claims of lien of laborers or materialmen or others for work performed or materials or supplies furnished for Lessee or persons claiming under Lessee.

8.2 Contest of Lien. If Lessee shall desire to contest any lien filed against the Premises, it shall, at the option of the Airports Director, furnish County, within the ten-day period following filing of the lien, security reasonably satisfactory to County of at least one hundred fifty percent (150%) of the amount of the lien, plus estimated costs and interest, or a bond of a responsible corporate surety in such amount, conditioned on the discharge of the lien. If a final judgment establishing the validity or existence of a lien for any amount is entered, Lessee shall immediately pay and satisfy the same.

8.3 Right to Cure. If Lessee shall be in default in paying any charge for which a mechanics' lien claim and suit to foreclose the lien have been filed, and shall not have given County security to protect the Premises and County from liability for such claim of lien, County may (but shall not be required to) pay said claim and any costs, and the amount so paid, together with reasonable attorneys' fees incurred in connection therewith, shall be immediately due and owing from Lessee to County as additional rent, and Lessee shall pay the same to County with interest at the rate specified in Section 16.8 (INTEREST).

8.4 Notice of Lien. Should any claim of lien be filed against the Premises or any action against the Premises or any action affecting the title to such property be commenced, the party receiving notice of such lien or action shall immediately give the other party written notice thereof.

8.5 Notice of Nonresponsibility. County or its representatives shall have the right to go upon and inspect the Premises at all reasonable times and shall have the right to post and keep posted thereon notices of nonresponsibility or such other notices which County may deem to be proper for the protection of County's interest in the Premises. Lessee shall, before the commencement of any work which might result in any such lien, give to County written notice of its intention to do so in sufficient time to enable posting of such notices.

ARTICLE 9 SECURITY

Lessee shall be responsible for and shall provide for the security of the Premises, and County shall have no responsibility therefore. Lessee shall construct and maintain fences, gates, walls, barriers and/or other security devices on the Premises in a manner reasonably determined by the Airports Director to prevent unauthorized access to the Premises and/or any adjoining taxiway, runway, building and/or other property from the Premises. All plans for security fencing, gates, walls, barriers and/or other devices must be submitted to and approved by the Airports Director in writing prior to construction. Lessee shall provide lighting adequate, in the judgment of the Airports Director, to prevent unobserved entry onto the Premises and/or any adjoining taxiway, runway, building and/or other property from the Premises during the hours of darkness.

ARTICLE 10
LESSEE'S RIGHT TO MAKE IMPROVEMENTS;
PERSONAL PROPERTY; FIXTURES

10.1 Improvements. As partial consideration and security for the granting of this Lease by County, Lessee shall, within + () days of the Commencement Date, complete the following required improvements ("Required Improvement") on the Premises,

_____ . In addition, with the prior written approval, and at the sole discretion, of the Airports Director, Lessee may, at Lessee's own expense, from time to time make such permanent and nonstructural alterations, replacements, additions, changes, and/or improvements (collectively referred to in this Lease as "Improvements") to the Premises as Lessee may find necessary or convenient for its purposes; provided, however, that the value of the Premises is not thereby diminished. In no event shall Lessee make or cause to be made any penetration into or through the roof or floor of any structure on the Premises without obtaining the prior written approval therefor from the Airports Director and by the appropriate building/inspection department having jurisdiction over the Premises. Lessee shall at all times conduct its construction operations so that such operations do not interfere with the normal operation and use of the Airport by County, the public and other persons and organizations entitled to use of the same.

10.2 Construction Requirements. All Improvements to be made to the Premises shall be made under the supervision of a competent architect or licensed structural engineer and made in conformity with any present or future ALP and Aviation Areas Development Standards which are or may be adopted and/or approved by County and the FAA; with the structural, mechanical, electrical, design and quality standards, requirements and criteria specified in Exhibit "H" (WORK LETTER AGREEMENT - AIRPORTS); and with plans and specifications approved in writing by the Airports Director, before commencement of any work. In connection therewith, Lessee shall provide a minimum of three (3) sets of working drawings or plans showing the planned Improvements, for County's approval, prior to commencing work. All work with respect to any Improvements must be done in a good and workmanlike manner, commenced within ninety (90) days following receipt of approval therefor from the Airports Director, and diligently prosecuted to completion to the end that the Premises shall at all times be a complete unit except during the period of work. Upon completion of such work, Lessee shall have recorded in the office of the San Diego County Recorder a Notice of Completion, as required or permitted by law, and Lessee shall deliver to County, within ten (10) days after completion of said work, a copy of the Notice of Occupancy and the building permit with respect thereto. Within sixty (60) days following completion of an Improvement, Lessee shall provide the County with two (2) complete sets of "as-built" plans of such Improvement. Any such Improvements shall be performed and done strictly in accordance with the laws and ordinances relating thereto.

10.3 County's Costs; Indemnity. Lessee shall reimburse County for all reasonable out-of-pocket costs and expenses (including, without limitation, any architect and/or engineer fees) incurred by County in approving or disapproving Lessee's plans for Improvements. Lessee shall be liable for and shall indemnify and defend County from any claim, demand, lien, loss, damage or expense, including reasonable attorneys' fees and costs, arising from Lessee's construction or installation of any Improvements permitted under this Article.

10.4 Personal Property. Subject to the provisions of the following Section, entitled "Fixtures", all of Lessee's trade fixtures, furniture, furnishings, signs and other personal property not permanently affixed to the Premises (collectively referred to as "Personal Property" in this Lease) shall remain the property of Lessee. Lessee shall, at its expense, immediately repair any damage occasioned to the Premises by reason of the removal of any such Personal Property

10.5 Fixtures. All Improvements constructed by Lessee together with all other fixtures, excepting Lessee's trade fixtures, permanently attached to the Premises (collectively referred to in this Lease as "Fixtures") shall become the property of County upon expiration or earlier termination of this Lease. Notwithstanding the foregoing, County may require Lessee to remove any Fixtures at Lessee's own expense upon termination of this Lease. Any damage to the Premises occasioned thereby shall be repaired by Lessee in a good and workmanlike manner and the Premises shall be left in as good order and condition as when Lessee took possession thereof, reasonable wear and tear and damage by the elements excepted. In the event Lessee does not remove any Fixtures, Improvements or equipment following direction by County, County may remove, sell or destroy the same, and Lessee shall pay to County the reasonable cost of such removal, sale or destruction, together with the

reasonable cost of repair of damages to County's property or improvements or to the Premises resulting therefrom.

10.6 Signs and Lighting. Lessee shall not construct nor permit the erection of any signs on the Premises without the prior written approval of the Airports Director. Lessee shall submit sketches of proposed signs to the Airports Director for approval showing size, materials, colors and location. Such signs must conform to the standards contained in Exhibit "C" (AVIATION AREAS DEVELOPMENT STANDARDS) and to any laws or ordinances of governmental agencies having jurisdiction over the Premises. All exterior lighting on the Premises must conform to the standards contained in Exhibit "D" (INDUSTRIAL AND AVIATION AREAS, RESTAURANT PERFORMANCE STANDARDS) and to any laws or ordinances of governmental agencies having jurisdiction over the Premises.

10.7 Environmental and ALP Compliance. Lessee acknowledges that Improvements may not be constructed on the Premises in accordance with the Master Development Plan until the Improvements are reflected on an FAA approved ALP. Lessee shall be responsible for completing the environmental reviews necessary under the California Environmental Quality Act ("CEQA"), Public Resources Code Section 21000, et seq., and/or the National Environmental Policy Act ("NEPA"), 42 United States Code Section 4321, et seq., for the County and/or FAA to approve this Lease and any revisions to the ALP to reflect the Master Development Plan. Lessee shall pay all costs incurred by County to make the CEQA and/or NEPA findings necessary for the County to approve the Lease and any revisions to the ALP to reflect the Master Development Plan. Lessee shall have the option to hire a qualified contractor to perform required environmental analysis for review by County. Notwithstanding anything in Section 10.1, above, to the contrary, the 36 month time period in which Lessee is required to construct the specified Improvements shall be extended until such time as the FAA approves revisions to the ALP to reflect the Master Development Plan.

ARTICLE 11 TAXES, ASSESSMENTS AND FEES

11.1 Responsibility for Payment of Taxes and Assessments. County shall not be obligated to pay any taxes or assessments accruing against Lessee on the Premises or any interest of Lessee therein before, during or after the Term, or any extension thereof; all such payments shall be the sole responsibility of Lessee. In addition, Lessee shall be solely responsible for payment of any taxes or assessments levied upon any Improvements, Fixtures or Personal Property located on the Premises, to the extent that such taxes or assessments result from the business or other activities of Lessee upon, or in connection with, the Premises.

11.2 Definition of "Taxes". As used herein, the term "taxes" means all taxes, governmental bonds, special assessments, Mello-Roos assessments, charges, rent income or transfer taxes, license and transaction fees, including, but not limited to, (i) any state, local, federal, personal or corporate income tax, or any real or personal property tax, (ii) any estate inheritance taxes, (iii) any franchise, succession or transfer taxes, (iv) interest on taxes or penalties resulting from Lessee's

failure to pay taxes, (v) any increases in taxes attributable to the sale of Lessee's leasehold interest in the Premises, or (vi) any taxes which are essentially payments to a governmental agency for the right to make improvements to the Premises.

11.3 Creation of Possessory Interest. Pursuant to the provisions of Revenue and Taxation Code Section 107.6, Lessee is hereby advised that the terms of this Lease may result in the creation of a possessory interest. If such a possessory interest is vested in Lessee, Lessee may be subjected to the payment of real property taxes levied on such interest. Lessee shall be solely responsible for the payment of any such real property taxes. Lessee shall pay all such taxes when due, and shall not allow any such taxes, assessments or fees to become a lien against the Premises or any improvement thereon; provided, however, that nothing herein shall be deemed to prevent or prohibit Lessee from contesting the validity of any such tax, assessment or fee in a manner authorized by law.

ARTICLE 12 REPAIRS; MAINTENANCE

12.1 Acceptance of Premises. Lessee acknowledges that Lessee has made a thorough inspection of the Premises prior to the Commencement Date of this Lease, and that it accepts the Premises as of the Commencement Date in their condition at that time. Lessee further acknowledges that County has made no oral or written representations or warranties to Lessee regarding the condition of the Premises, and that Lessee is relying solely on its inspection of the Premises with respect thereto.

12.2 Lessee's Repair and Maintenance Obligations. Lessee shall at all times from and after the Commencement Date, at its own cost and expense, repair, maintain in good and tenantable condition and replace, as necessary, the Premises and every part thereof, including, without limitation, the following as applicable: the roof; the heating, ventilation and air conditioning system; mechanical and electrical systems; all meters, pipes, conduits, equipment, components and facilities (whether or not within the Premises) that supply the Premises exclusively with utilities (except to the extent the appropriate utility company has assumed these duties); all Fixtures and other equipment installed in the Premises; all exterior and interior glass installed in the Premises; all signs, locking and closing devices; all interior window sashes, casements and frames; doors and door frames (except for the painting of the exterior surfaces thereof); floor coverings; and all such items of repair, maintenance, alteration, improvement or reconstruction as may be required at any time or from time to time by a governmental agency having jurisdiction thereof. Lessee's obligations hereunder shall apply regardless of whether the repairs, restorations and replacements are ordinary or extraordinary, foreseeable or unforeseeable, capital or non-capital, or the fault or not the fault of Lessee, its agents, employees, invitees, visitors, sublessees or contractors. All replacements made by Lessee in accordance with this Section shall be of like size, kind and quality to the items replaced and shall be subject to prior written approval by the Airports Director. Upon surrender of the Premises, Lessee shall deliver the Premises to County in good order, condition and state of repair, but shall not be responsible for damages resulting from ordinary wear and tear. Lessee shall provide for trash removal, at its expense, and shall maintain all trash receptacles and trash areas in a clean, orderly

and first-class condition.

12.3 Lessee's Failure to Maintain. If Lessee refuses or neglects to repair, replace, or maintain the Premises, or any part thereof, in a manner reasonably satisfactory to County, County shall have the right, upon giving Lessee reasonable written notice of its election to do so, to make such repairs or perform such maintenance on behalf of and for the account of Lessee. If County makes or causes any such repairs to be made or performed, as provided for herein, Lessee shall pay the cost thereof to County, as Additional Rent, promptly upon receipt of an invoice therefor.

12.4 Right to Enter. Lessee shall permit County, or its authorized representatives, to enter the Premises at all times during usual business hours to inspect the same, and to perform any work therein (a) that may be necessary to comply with any laws, ordinances, rules or regulations of any public authority, (b) that County may deem necessary to prevent waste or deterioration in connection with the Premises if Lessee does not make, or cause to be made, such repairs or perform, or cause to be performed, such work promptly after receipt of written demand from County, and (c) that County may deem necessary in connection with the expansion, reduction, remodeling, protection or renovation of any County-constructed or owned facilities on or off of the Premises or at the Airport. Nothing herein contained shall imply any duty on the part of County to do any such work which, under any provision of this Lease, Lessee may be required to do, nor shall County's performance of any repairs on behalf of Lessee constitute a waiver of Lessee's default in failing to do the same. No exercise by County of any rights herein reserved shall entitle Lessee to any compensation, damages or abatement of rent from County for any injury or inconvenience occasioned thereby.

12.5 Annual Leasehold Compliance Surveys. In addition to County's right to enter pursuant to Section 12.4, above, Lessee acknowledges and accepts County's right and intent to conduct periodic, but not more frequently than annual, Leasehold Compliance Surveys (Surveys). Said Surveys shall be scheduled at a mutually convenient time for County and Lessee, following written notice by County of its intent to conduct a Survey. Said Survey will focus on, but not be limited to, the condition of all leasehold improvements for proper maintenance and building code compliance, compliance with laws, a verification of aircraft locations, and a verification of all commercial subleases on the Premises. Lessee agrees to cooperate with County, or its authorized representative, during the Survey process and provide access to all areas of the Premises, both interior and exterior, including all aircraft storage hangers. In the event County, or its authorized agent, is not able to access all areas of the premises during the time of the scheduled Survey, Lessee will reschedule a mutually convenient time for a follow up survey to allow access to areas inaccessible during the initial Survey appointment, and Lessee agrees to compensate County for the personnel cost of the follow up Survey at the current county labor rate, including all overhead expenses, of such follow up Survey. Refusal by Lessee to provide access to all areas of the Premises shall be considered a material breach of the Lease and grounds for termination.

12.6 County Not Obligated to Repair or Maintain; Lessee's Waiver of California Civil Code Section 1942. To the extent that any remedies specified in this Lease conflict or are

inconsistent with any provisions of California Civil Code Section 1942, or any successor statute thereto ("CCC §1942"), the provisions of this Lease shall control. Lessee specifically waives any right it may have pursuant to CCC §1942 to effect maintenance or repairs to the Premises and to abate the costs thereof from rent due to the County under this Lease.

ARTICLE 13 INDEMNIFICATION AND INSURANCE

13.1. Definition of "Lessee Parties" and "County Parties." For purposes of this ARTICLE 13, the term "Lessee Parties" refers singularly and collectively to Lessee and Lessee's officers, members, partners, agents, employees, and independent contractors as well as to all persons and entities claiming through any of these persons or entities. The term "County Parties" refers singularly and collectively to County and its officers, directors, affiliated entities, personal representatives, assigns, licensees, invitees, agents, servants, employees, and independent contractors of these persons or entities.

13.2 [RESERVED]

13.3 Indemnification.

13.3.1. Lessee's Indemnification of County Parties. To the fullest extent permitted by law, Lessee shall, at Lessee's sole expense and with counsel reasonably acceptable to County, indemnify, protect, defend, and hold harmless County Parties from and against all Claims, as defined in SECTION 13.3.2, from any cause, arising out of or relating (directly or indirectly) to this Lease, the tenancy created under this Lease, or the Premises, including, without limitation:

(a) The use or occupancy, or manner of use or occupancy, of the Premises by Lessee Parties;

(b) Any act, error, omission, or negligence of Lessee Parties or of any invitee, guest, or licensee of Lessee Parties, including, without limitation, Detainees, in, on, or about the Premises;

(c) Lessee's conducting of its business;

(d) Any alterations, activities, work, or things done, omitted, permitted, allowed, or suffered by Lessee Parties in, at, or about the Premises, including construction of Improvements, and also including the violation of or failure to comply with any applicable laws, statutes, ordinances, standards, rules, regulations, orders, decrees, or judgments in existence on the Commencement Date or enacted, promulgated, or issued after the Commencement Date; and

(e) Any breach or default in performance of any obligation on Lessee's part to be performed under this Lease, whether before or during the Term or after its expiration or earlier termination.

13.3.2. Definition of Claims. For purposes of this Lease, "Claims" means any and all claims, losses, costs, damage, expenses, liabilities, liens, actions, causes of action (whether in tort or contract, law or equity, or otherwise), charges, assessments, fines, and penalties of any kind (including consultant and expert expenses, court costs, and attorneys' fees actually incurred).

13.3.3. Type of Injury or Loss. This indemnification extends to and includes Claims for:

(a) Injury to any persons (including death at any time resulting from that injury);

(b) Loss of, injury or damage to, or destruction of property (including all loss of use resulting from that loss, injury, damage, or destruction); and

(c) All economic losses and consequential or resulting damage of any kind.

13.3.4. Active or Passive Negligence; Strict Liability. Except as provided in this SECTION 13.3.4, the indemnification in SECTION 13.3.1 shall apply, without limitation, to Claims caused by the concurrent negligent act or omission, whether active or passive, of County Parties, and regardless of whether liability without fault or strict liability is imposed or sought to be imposed on County Parties. The indemnification in SECTION 13.3.1 shall not apply to the extent that a final judgment of a court of competent jurisdiction establishes that a Claim against one County Party was caused solely by the negligence or willful misconduct of that County Party. In that event, however, this indemnification shall remain valid for all other County Parties.

13.3.5. Indemnification Independent of Insurance Obligations. The indemnification provided in this ARTICLE 13 may not be construed or interpreted as in any way restricting, limiting, or modifying Lessee's insurance or other obligations under this Lease and is independent of Lessee's insurance and other obligations. Lessee's compliance with the insurance requirements and other obligations under this Lease shall not in any way restrict, limit, or modify Lessee's indemnification obligations under this Lease.

13.3.6 Survival of Indemnification. The clauses of this SECTION 13.3 shall survive the expiration or earlier termination of this Lease until all claims against County Parties involving any of the indemnified matters are fully, finally, and absolutely barred by the applicable statutes of limitations.

13.3.7 Duty To Defend. Lessee's duty to defend County Parties is separate and independent of Lessee's duty to indemnify County Parties. The duty to defend includes claims for which County Parties may be liable without fault or strictly liable. The duty to defend applies regardless of whether the issues of negligence, liability, fault, default, or other obligation on the part of Lessee Parties have been determined. The duty to defend applies immediately, regardless of whether County Parties have paid any sums or incurred any detriment arising out of or relating (directly or indirectly) to any Claims. It is the express intention of the parties that County Parties be entitled to obtain summary adjudication or summary judgment regarding Lessee's duty to defend County Parties at any stage of any claim or suit within the scope of this SECTION 13.3.

13.4 Insurance. Lessee shall provide and maintain, during the Term and for such other

period as may be required herein, at its sole expense, insurance in the amounts and form specified in this Section and in EXHIBIT "E," "INSURANCE REQUIREMENTS," attached hereto.

13.4.1 Compliance with Insurer Requirements. Lessee shall, at Lessee's sole expense, comply with all requirements, guidelines, rules, orders, and similar mandates and directives pertaining to the use of the Premises, whether imposed by Lessee's insurers, County's insurers, or both. If Lessee's business operations, conduct, or use of the Premises cause any increase in the premium for any insurance policies carried by County, Lessee shall, within ten (10) business days after receipt of written notice from County, reimburse County for the increase. Lessee shall, at Lessee's sole expense, comply with all rules, orders, regulations, or requirements of the American Insurance Association (formerly the National Board of Fire Underwriters) and of any similar body.

13.4.2. Survival of Insurance Requirements. Lessee shall, at Lessee's sole expense, maintain in full force and effect the liability insurance coverages required under this Lease and shall maintain County Parties and any lender specified by County as additional insureds, for a period of no less than two (2) years after expiration or earlier termination of this Lease.

13.4.3 Insurance Independent of Indemnification. The insurance requirements set forth in this Section are independent of Lessee's indemnification and other obligations under this Lease and shall not be construed or interpreted in any way to restrict, limit, or modify Lessee's indemnification, and other obligations or to limit Lessee's liability under this Lease.

ARTICLE 14 HAZARDOUS MATERIALS

14.1 Hazardous Materials Laws - Definition. As used in this Section, the term "Hazardous Materials' Laws" means any and all federal, state or local laws or ordinances, rules, decrees, orders, regulations or court decisions (including the so-called "common law"), including without limitation the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C., § 9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C., § 1801 et seq.), the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C., § 6901 et seq.), and the California Environmental Quality Act of 1970, relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions on, under or about the Premises, soil and ground water conditions or other similar substances or conditions.

14.2 Hazardous Materials - Definition. As used in this Section the term "Hazardous Materials" means any chemical, compound, material, substance or other matter that.

(a) is a flammable, explosive, asbestos, radioactive nuclear medicine, vaccine, bacteria, virus, hazardous waste, toxic, overtly injurious or potentially injurious material, whether injurious or potentially injurious by itself or in combination with other materials;

(b) is controlled, referred to, designated in or governed by any Hazardous Materials Laws;

(c) gives rise to any reporting, notice or publication requirements under any Hazardous Materials Laws, or

(d) is any other material or substance giving rise to any liability, responsibility or duty upon the County or Lessee with respect to any third person under any Hazardous Materials Law.

14.3 Lessee's Representations and Warranties. Lessee represents and warrants that, during the Term or any extension thereof, or for such longer period as may be specified herein, Lessee shall comply with the following provisions of this Section unless otherwise specifically approved in writing by County's Lease Administrator.

(a) Lessee shall not cause or permit any Hazardous Materials to be brought, kept or used in or about the Premises by Lessee, its agents, employees, sublessees, assigns, contractors or invitees, except as required by Lessee's permitted use of the Premises, as described in Section 6.1 (PERMITTED USES).

(b) Any handling, transportation, storage, treatment or usage by Lessee of Hazardous Materials that is to occur on the Premises following the Commencement Date shall be in compliance with all applicable Hazardous Materials Laws;

(c) Any leaks, spills, release, discharge, emission or disposal of Hazardous Materials which may occur on the Premises following the Commencement Date shall be promptly and thoroughly cleaned and removed from the Premises by Lessee at its sole expense, and any such discharge shall be promptly reported in writing to County, and to any other appropriate governmental regulatory authorities;

(d) No friable asbestos shall be constructed, placed on, deposited, stored, disposed of, or located by Lessee in the Premises;

(e) No underground improvements, including but not limited to treatment or storage tanks, or water, gas or oil wells shall be located by Lessee on the Premises without County's prior written consent;

(f) Lessee shall conduct and complete all investigations, studies, sampling, and testing procedures and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Materials on, from, or affecting the Premises in accordance with all applicable Hazardous Materials' Laws and to the satisfaction of County; including any Hazardous Materials deposited on the Premises prior to the Commencement date.

(g) Lessee shall promptly supply County with copies of all notices, reports, correspondence, and submissions made by Lessee to the United States Environmental Protection Agency, the United Occupational Safety and Health Administration, and any other local, state or federal authority which requires submission of any information concerning environmental matters or hazardous wastes or substances pursuant to applicable Hazardous Materials' Laws;

(h) Lessee shall promptly notify County of any liens threatened or attached against the Premises pursuant to any Hazardous Materials' Law. If such a lien is filed against the Premises, then, within the earlier of (i) twenty (20) days following such filing, or (ii) before any governmental authority commences proceedings to sell the Premises pursuant to the lien, Lessee shall either: (a) pay the claim and remove the lien from the Premises, or (b) furnish either (1) a bond or cash deposit reasonably satisfactory to County in an amount not less than the claim from which the lien arises, or (2) other security satisfactory to County in an amount not less than that which is sufficient to discharge the claim from which the lien arises at the end of this Lease.

(i) At the end of this Lease, Lessee shall surrender the Premises to County free of any and all Hazardous Materials and in compliance with all Hazardous Materials' Laws affecting the Premises.

14.4 Indemnification by Lessee. Lessee (and, if applicable, each of its general partners) and its successors, assigns, and guarantors, if any, jointly and severally agree to protect, indemnify, defend (with counsel selected by County) reimburse and hold County and its officers, employees and agents harmless from any claims, judgments, damages, penalties, fines, costs or expenses (known or unknown, contingent or otherwise), liabilities (including sums paid in settlement of claims), personal injury (including wrongful death), property damage (real or personal) or loss, including attorneys' fees, consultants' fees, and experts' fees (consultants and experts to be selected by County) which arise during or after the Term from or in connection with the presence or suspected presence of Hazardous Materials anywhere in the Premises, including the soil, ground water or soil vapor on or under the Premises. Without limiting the generality of the foregoing, the indemnification provided by this Section shall specifically cover costs incurred in connection with investigation of site conditions or any cleanup, remedial, removal or restoration work required by any Hazardous Materials Laws because of the presence of Hazardous Materials in the soil, ground water or soil vapor on the Premises, and the release or discharge of Hazardous Materials by Lessee during the course of Lessee's alteration or improvement of the Premises.

14.5 Remedies Cumulative; Survival. The provisions of this Article shall be in addition to any and all obligations and liabilities Lessee may have to County at common law, and any remedies and the environmental indemnities provided for herein shall survive the expiration or termination of this Lease and/or any transfer of all or any portion of the Premises, or of any interest in this Lease, and shall be governed by the laws of the State of California.

14.6 Inspection. County and County's agents, servants, and employees including, without limitation, legal counsel and environmental consultants and engineers retained by County, may (but

without the obligation or duty so to do), at any time and from time to time, on reasonable notice to Lessee (except in the event of an emergency in which case no notice shall be required), inspect the Premises to determine whether Lessee is complying with Lessee's obligations set forth in this Article, and to perform environmental inspections and samplings, during regular business hours (except in the event of an emergency) or during such other hours as County and Lessee may agree. If Lessee is not in compliance, County shall have the right, in addition to County's other remedies available at law and in equity, to enter upon the Premises immediately and take such action as County in its sole judgment deems appropriate to remediate any actual or threatened contamination caused by Lessee's failure to comply. County will use reasonable efforts to minimize interference with Lessee's use of Premises but will not be liable for any interference caused by County's entry and remediation efforts. Upon completion of any sampling or testing County will (at Lessee's expense if County's actions are a result of Lessee's default under this Section) restore the affected area of the Premises from any damage caused by County's sampling and testing.

ARTICLE 15

ASSIGNMENT, SUBLETTING AND ENCUMBRANCES

15.1 County's Consent to Assignment Required. Lessee shall not voluntarily or involuntarily assign, sublease, mortgage, encumber, or otherwise transfer (collectively, a "Transfer") all or any portion of the Premises or its interest in this Lease without County's prior written consent. County may withhold its consent until Lessee has complied with the provisions of the following Sections of this Article. Any attempted Transfer without County's consent shall be void and shall constitute a material breach of this Lease. As used herein, the term "Transfer" shall include (i) an arrangement (including without limitation management agreements, concessions, and licenses) that allows the use and occupancy of all or part of the Premises by anyone other than Lessee, and (ii) the transfer of any stock or interest in Lessee as a corporation, partnership or other business entity which, in the aggregate, exceeds twenty-five percent (25%) of the total ownership interest in Lessee.

15.2 County's Election to Consent to a Transfer. Lessee's request for consent to any Transfer shall be accompanied by a written statement setting forth the details of the proposed Transfer, including (i) the name, address, business, business history and financial condition of the proposed assignee or sublessee (collectively, "Transferee") sufficient to enable County to determine the financial responsibility and character of the Transferee, (ii) a copy of the proposed assignment or sublease and the financial details of the proposed Transfer (including the duration, the rent and any security deposit payable under an assignment or sublease), (iii) the Transferee's proposed use of the Premises, and (iv) any other related information which County may reasonably require. County shall have the right (a) to withhold consent to the Transfer, if reasonable; (b) to grant consent; or (c) to consent provided that County is paid, as additional rent hereunder, all sums or other consideration to be paid to Lessee under the terms of the Transfer in excess of the total rent due hereunder. Any permitted sublease shall incorporate the provisions of EXHIBIT "F" (COUNTY OF SAN DIEGO REQUIRED SUBLEASE PROVISIONS), attached hereto.

15.2.1 Consent to Assignment or Sublease. County's consent to an assignment or

sublease will not be effective until (i) a fully executed copy of the instrument accomplishing a Transfer ("Transfer Instrument") has been delivered to County, including, without limitation, a copy of any trust deed encumbering Lessee's leasehold and the note secured thereby, (ii) in the case of a sublease, County has received from Lessee an original of the executed sublease, and (iii) in the case of an assignment, County has received a written instrument in which the assignee has assumed and agreed to perform all of Lessee's obligations under this Lease. Any rights acquired by a Transferee pursuant to any Transfer Instrument shall be subject to each and every covenant, condition and restriction set forth in this Lease and to all of the rights and interest of County hereunder except as may be otherwise herein specifically provided. County may require any permitted sublessee to make rent payments directly to County, in the amount of rent due hereunder. In the event of any conflict between the provisions of this Lease and the provisions of any Transfer Instrument, the provisions of this Lease shall control.

15.2.2 Sublease Rent to County. In each and every sublease of all or a portion of the Premises consented to by County for a use not subject to Percentage Rent, Lessee hereby obligates itself to pay to County, in addition to the rent specified in Article 4 (Rent) above, Additional Rent for each sublease. The County and Lessee will establish an equitable rental rate for non-restaurant uses. Notwithstanding the foregoing, in no case shall sublease rent to County for any non-restaurant use be less than five percent (5%) of the rental due Lessee from its sublessee during the term of the sublease. Calculation of such sublease rental shall include, but not be limited to, all compensation paid from sublessee to Lessee for taxes, insurance, and maintenance for the Premises or any portion thereof.

15.2.3 Denial of Consent to Transfer. Lessee shall submit all requests for approval of Transfers to the County in writing. If County fails to provide a written response to the request within forty-five (45) days from the date of receipt, the County shall be conclusively presumed to have denied its consent to the Transfer in question. If County communicates its denial of a proposed Transfer to Lessee within forty-five (45) days from the receipt of a request, and if Lessee shall so request in writing, County shall provide Lessee a statement of the basis on which County denied its consent within a reasonable time after the receipt of Lessee's notice. Lessee shall have the burden of proving that County's consent to the proposed Transfer was withheld unreasonably; such burden may be satisfied if County fails to provide a statement of a reasonable basis for withholding its consent within a reasonable time after Lessee's request therefor. Notwithstanding any of the foregoing provisions of this Section to the contrary, the following shall be deemed to be reasonable grounds for County to withhold consent to a Transfer for purposes of compliance with California Civil Code Section 1951.4:

(a) Lessee or any of its successors, assigns or sublessees are in default as to any term, covenant or condition of this Lease, whether or not notice of default has been given by County.

(b) The prospective assignee or sublessee has not agreed in writing to keep, perform and be bound by all of the terms, covenants and conditions of this Lease.

(c) County reasonably objects to the business or financial condition of the prospective assignee or sublessee and/or to the financial details of the proposed Transfer.

(d) All of the terms, covenants and conditions of the assignment or sublease, including any consideration therefor, have not been disclosed in writing to County.

(e) Any construction of improvements required of Lessee as a condition of this Lease has not been completed to the satisfaction of County.

(f) Nonpayment of the Transfer Fee described below. If Lessee believes that County has unreasonably withheld its consent to a Transfer, Lessee's sole remedy will be to seek a declaratory judgment that County has unreasonably withheld its consent or an order of specific performance or mandatory injunction requiring County's consent. Lessee will not have any right to recover damages or to terminate this Lease.

15.3 Encumbering the Leasehold Estate with a Mortgage. Any Transfer which consists of the grant of a deed of trust or similar encumbrance (such encumbrances are collectively referred to herein as a "Mortgage") by Lessee to secure the beneficial interest of a lender ("Beneficiary") in the Premises or Lessee's interests under this Lease, shall be subject to all of the provisions of this Article pertaining to the conclusion and approval of other Transfers, and shall also be subject to the additional terms and conditions set forth below:

(a) No Mortgage granted by Lessee shall encumber the fee title to the Premises at any time;

(b) Immediately following the recordation of any Mortgage affecting the Premises or Lessee's interest in this Lease, Lessee, at Lessee's expense, shall cause to be recorded in the Office of the Recorder, San Diego County, California, a written request for delivery to County of a copy of any notice of default and of any notice of sale under such Mortgage, as provided by the statutes of the State of California pertaining thereto. Inclusion in the body of the recorded mortgage itself of a request for notice having the effect described above shall constitute compliance with this provision. County shall have thirty (30) days in which to cure any default after the time for Lessee to cure it has expired. Neither County's right to cure any default nor any exercise of such a right shall constitute an assumption of liability under the Mortgage. If any default is noncurable, it shall not be grounds for foreclosure of the Mortgage if County, or lessee-in-possession of the Premises, promptly performs all other provisions of the Mortgage.

(c) The Mortgage documents shall provide that any proceeds from fire or extended coverage insurance shall be used first for repair or rebuilding of the leasehold Improvements and then to repay part of the outstanding mortgage.

(d) No permitted Mortgage shall cover any interest in any real property other than interests specifically subjected to mortgage by this Lease. No Mortgage permitted by this Lease shall cover any indebtedness not related to the Premises or cover more than one indebtedness.

15.3.1 Curable and Noncurable Defaults Under the Lease; County's Covenant of Forbearance. Where County has consented to a Mortgage encumbering Lessee's leasehold as required pursuant to this Article, then County, notwithstanding anything to the contrary in this Lease, shall not exercise its remedies under this Lease for Lessee's default, during the periods specified in this Section so long as the Beneficiary of such Mortgage takes the following actions.

15.3.1.1 If a curable breach of the Lease occurs, a Beneficiary shall have the right to begin foreclosure proceedings and to obtain possession of the Premises, so long as Beneficiary complies with the conditions set forth below:

(a) Cures Lessee's default within the same time period allotted to Lessee for cure of such default, plus an additional thirty (30) days (except that only ten (10) additional days shall be permitted in the case of a default in the payment of money from Lessee to County).

(b) Notifies County, within thirty (30) days following receipt of County's notice of Lessee's default, of its intention to effect this remedy;

(c) Institutes immediate steps or legal proceedings to foreclose on or recover possession of the leasehold, and thereafter prosecutes the remedy or legal proceedings to completion with due diligence and continuity; and

(d) Keeps and performs, during the period until the leasehold shall be either (i) sold upon foreclosure pursuant to the Mortgage, or (ii) released or reconveyed pursuant to the Mortgage (such period being referred to hereinafter as the "Foreclosure Period"), all of the covenants and conditions of this Lease, including, without limitation, payment of all rent, taxes, assessments, utility charges and insurance premiums required by this Lease to be paid by Lessee and which become due during the Foreclosure Period.

15.3.1.2 If a noncurable breach of the Lease occurs, a Beneficiary shall have the right to begin foreclosure proceedings and to obtain possession of the Premises, so long as Beneficiary complies with the conditions set forth below:

(a) Notifies County, within ten (10) days after receipt of County's notice of Lessee's default, of its intention to effect this remedy;

(b) Institutes immediate steps or legal proceedings to foreclose on or recover possession of the leasehold, and thereafter prosecutes the remedy or legal proceedings to completion with due diligence and continuity; and

(c) Keeps and performs, during the Foreclosure Period, all of the covenants and conditions of this Lease requiring the payment of money, including, without limitation, payment of all rent, taxes, assessments, utility charges and insurance premiums required by this Lease to be paid by Lessee and which become due during the Foreclosure Period.

15.3.1.3 If Lessee fails to cure any curable default within the time period allowed for such cure in this Lease, no cure by a Beneficiary of any such default in the manner allowed under this Section shall reinstate Lessee in good standing under this Lease. If, following expiration of the cure period applicable to Lessee, the Beneficiary shall fail or refuse to comply with any or all of the conditions of this Section applicable to Lessee's default, including failing to expeditiously obtain title to Lessee's leasehold, then County shall be released from its covenant of forbearance hereunder, and may immediately terminate this Lease.

15.3.2 Transfer of Leasehold Estate; County's Option to Purchase. Any Beneficiary who acquires title to the leasehold estate shall immediately provide County with written notice of such transfer. Notwithstanding any provision of this Section to the contrary, transfer of the leasehold estate to a Beneficiary in any manner, County shall have the option to purchase all right, title and interest in and to the leasehold and the Premises directly from the Beneficiary for the amounts, and pursuant to the terms, set forth in SECTION 3.2 (EARLY TERMINATION THROUGH COUNTY BUY-OUT) above.

15.3.2.1 Should County elect to not exercise its option to purchase the leasehold within the period described above, then, subject to the provisions of SECTIONS 15.4 (TRANSFER FEE), 15.6 (NO RELEASE OF LESSEE) and 15.7 (NO MERGER) below, and so long as the Beneficiary shall have observed all of the conditions of SECTION 15.3.1, above, then the following breaches, if any, relating to the prior Lessee shall be deemed cured: (i) attachment, execution of or other judicial levy upon the leasehold estate, (ii) assignment of creditors of Lessee, (iii) judicial appointment of a receiver or similar officer to take possession of the leasehold estate or the Premises or (iv) filing any petition by, for or against Lessee under any chapter of the Federal Bankruptcy Code. Any further transfer of the leasehold estate, however (whether by a Beneficiary or by a third-party bidder acquiring the estate at a foreclosure sale), shall be subject to the following conditions:

a. The provisions of SECTIONS 15.1, "COUNTY'S CONSENT TO ASSIGNMENT REQUIRED," and 15.2, "COUNTY'S ELECTION," above, shall apply to such further Transfer, and County's consent shall be required to such further Transfer; and

b. By its acceptance of the leasehold estate, the Transferee of such further Transfer assumes this Lease as to the entire leasehold estate and covenants with County to be bound hereby.

15.3.3 Article Controlling. In the event of any conflict between the provisions of

this Article and any other provision of this Lease, this Article shall control.

15.3.4 Failure to Give Notice. Except as expressly set forth in this Article, County shall have no obligation to any Beneficiary or to give any notice to any Beneficiary, and County's failure to provide any Beneficiary with any notice of any default hereunder shall not create any right or claim against County on behalf of Lessee or any Beneficiary.

15.4 Transfer Fee. If County is requested to consent to a Transfer hereunder, Lessee shall pay all County's attorneys' fees, plus a nonrefundable fee ("Transfer Fee") to reimburse County or County's agent for costs and expenses incurred in connection with such request. The Transfer Fee in effect as of January 2008 is Seven Hundred Fifty Dollars (\$750.00). County reserves the right to adjust the Transfer Fee at any time during the term of the lease to accommodate for staff costs increases. The adjusted amount shall be determined by use of the following formula:

$$A = \$750.00 \times (B/C)$$

Wherein:

"A" equals the adjusted Transfer Fee;

"\$750.00" equals the Base Transfer Fee that has been in effect as of January 2008;

"B" equals the monthly Consumer Price Index, as defined in Section 4.2.1, published for the month of January most closely preceding the date of request for consent to transfer; and

"C" equals the monthly Consumer Price Index, as defined in Section 4.2.1, published for the month of January 2008.

The Transfer Fee shall be delivered to County concurrently with Lessee's request for consent.

15.5 Transfer Premium. Transfer Premiums apply to assignments and may be collected in addition to any Transfer Fees which are applicable to the transaction.

15.5.1 Transfer Premium Payment. As a reasonable condition to County's consent to any assignment, Lessee shall pay to County five percent (5%) of a Transfer Premium which involves an assignment of the Lease, as defined in SECTION 15.5.2, below. Lessee shall pay to the County the Transfer Premium concurrently with assignment of the Lease.

15.5.2 Definition of "Transfer Premium". "Transfer Premium" means all consideration associated with an assignment above and beyond the costs that Lessee can document in connection with the development of the Premises and construction of the Improvements made by Lessee, or in the event of a subsequent assignment, all consideration paid by new Transferee which is above and beyond the consideration paid by Transferor to acquire its interest in the leasehold. If

part of the Transfer Premium is payable by Transferee other than in cash, County's share of that non-cash consideration shall be in a form reasonably satisfactory to County.

15.5.3 Exemption from Recapture. This SECTION 15.5 does not apply to any "Exempt Transfer." An Exempt Transfer consists of any of the following:

- (a) Any Transfer for which County's consent is not required; or
- (b) Any Transfer to an Affiliate of Lessee, as defined below.

As used herein, the term "Affiliate" means any entity that controls, is controlled by, or is under common control with Lessee. "Control" means the direct or indirect ownership of fifty-one percent (51%) of the voting securities of an entity or possession of the right to vote fifty-one percent (51%) of the voting interest in the ordinary direction of the entity's affairs.

15.6 No Release of Lessee. No permitted Transfer shall release or change Lessee's primary liability to pay the rent and to perform all other obligations of Lessee under this Lease, except to the extent the Lease is terminated as described above. Lessee may not amend the assignment or sublease in such a way as to reduce or delay payment of amounts that are provided in the assignment or sublease approved by County. County's acceptance of rent from any other person is not a waiver of any provision of this Article or consent to Transfer. County's consent to one Transfer shall not be deemed to imply County's consent to any subsequent Transfer. If Lessee's Transferee defaults under this Lease, County may proceed directly against Lessee without pursuing remedies against the Transferee. County may consent to subsequent assignments or modifications of this Lease by Lessee's Transferee, without notifying Lessee or obtaining its consent, and such action shall not relieve Lessee's liability under this Lease.

15.7 No Merger. No merger shall result from a Transfer pursuant to this Article, Lessee's surrender of this Lease, or a mutual cancellation of this Lease in any other manner except at the express election of the owner and the consent of the mortgagee or mortgagees under all mortgages existing under provisions of this Lease relating to the purchase or construction of Improvements. In the event of any such merger, County may either terminate any or all subleases or succeed to the interest of Lessee thereunder.

15.8 Approval of Temporary or Limited Activities. Notwithstanding any provision of this Article to the contrary, the County's Lease Administrator may, at his or her sole discretion, and without charging a Transfer Fee, give written authorization for the following activities on the Premises: (i) activities of a temporary nature, not to exceed one hundred twenty (120) calendar days, and (ii) activities of a limited nature which do not exceed ten (10) hours per week. Lessee shall maintain, on an approved County form, a listing of all such activities approved by the County, stating the nature, duration and other relevant matters regarding such activities, and shall make such form available to County for inspection upon request. Nothing herein shall relieve Lessee from its responsibilities under this Lease, and Lessee shall be responsible for insuring that any such activity

approved by the County complies with all of the provisions of this Lease. Any such temporary or limited activity shall be subject to immediate termination upon delivery of written notification thereof from the County.

ARTICLE 16

DEFAULTS BY LESSEE; COUNTY'S REMEDIES

16.1 Events of Default. The occurrence of any of the following shall constitute a default by Lessee and a breach of this Lease:

(a) Failing or refusing to pay Minimum Monthly Rent, Percentage Rent or Additional Rent when due in accordance with the provisions of this Lease, and the default continues for five (5) days after notice from County; provided, however, that Lessee will not be entitled to more than one (1) notice for default in payment of any type of rent during any twelve-month period, and if, within twelve (12) months after any such notice, any rent is not paid when due, an event of default will have occurred without further notice;

(b) Failing or refusing to occupy and operate the Premises in accordance with the provisions of this Lease;

(c) Failing or refusing to perform fully and promptly any covenant or condition of this Lease, other than those specified in subparagraphs (a) and (b) above, the breach of which Lessee is capable of curing after reasonable notice from County;

(d) Maintaining, committing or permitting on the Premises waste, a nuisance, or use of the Premises for an unlawful purpose, or assigning or subletting this Lease in a manner contrary to the provisions of this Lease; or understating Gross Sales by more than five percent (5%)

(e) Failing or refusing to permit County access to all areas of the Premises as set forth in Section 12.5 (Annual Leasehold Compliance Surveys) above;

(f) The occurrence of any of the events set forth in Section 19.1 (RIGHT OF TERMINATION) below.

16.2 Notices. Following the occurrence of any of the defaults specified in the preceding Section, County shall give Lessee a written notice specifying the nature of the default and the provisions of this Lease breached and demanding that Lessee either fully cure each such default within the time period specified in the subparagraphs below or quit the Premises and surrender the same to County:

(a) For nonpayment of Minimum Monthly Rent, Percentage Rent or Additional Rent, ten (10) working days;

(b) For a curable default, a reasonable period not to exceed ten (10) working days, provided, however, that if such default cannot be cured within said time period, Lessee shall be deemed to have cured such default if Lessee so notifies County in writing, commences cure of the default within said time period, and thereafter diligently and in good faith continues with and actually completes said cure; and

(c) For a noncurable default, County shall give Lessee a written notice specifying the nature of the default and the provisions of this Lease breached and County shall have the right to demand in said notice that Lessee, and any subtenant, quit the Premises within five (5) working days.

To the extent permitted by applicable State law, the time periods provided in this Section for cure of Lessee's defaults under this Lease or for surrender of the Premises shall be in lieu of, and not in addition to, any similar time periods described by California law as a condition precedent to the commencement of legal action against Lessee for possession of the Premises.

16.3 County's Rights and Remedies. Should Lessee fail to cure any such defaults within the time periods specified in the immediately preceding Section, or fail to quit the Premises as required thereby, County may exercise any of the following rights without further notice or demand of any kind to Lessee or any other person, except as may otherwise be required by applicable California law:

(a) The right of County to terminate this Lease and Lessee's right to possession of the Premises and to reenter the Premises, take possession thereof and remove all persons therefrom, following which Lessee shall have no further claim on the Premises or under this Lease;

(b) The right of County without terminating this Lease and Lessee's right to possession of the Premises, to reenter the Premises and occupy the whole or any part thereof for and on account of Lessee and to collect any unpaid rents and other charges, which have become payable, or which may thereafter become payable pursuant to Civil Code Section 1951.4; or

(c) The right of County, even though it may have reentered the Premises in accordance with the immediately preceding subparagraph (b) of this Section, to elect thereafter to terminate this Lease and Lessee's right to possession of the Premises.

Should County have reentered the Premises under the provisions of subparagraph (b) of this Section, County shall not be deemed to have terminated this Lease, the liability of Lessee to pay rent or other charges thereafter accruing, or Lessee's liability for damages under any of the provisions hereof, by any such reentry or by any action, in unlawful detainer or otherwise, to obtain possession of the Premises, unless County shall have notified Lessee in writing that it has so elected to terminate this Lease and Lessee's right to possession. Lessee further covenants that the service by County of any notice pursuant to the unlawful detainer statutes of the State of California and the surrender of possession pursuant to such notice shall not (unless County elects to the contrary at the time of, or at

any time subsequent to, the serving of such notice and such election is evidenced by a written notice to Lessee) be deemed to be a termination of this Lease. In the event of any reentry or taking possession of the Premises as aforesaid, County shall have the right, but not the obligation, at Lessee's expense, to remove therefrom (i) all or any part of any buildings or structures placed on the Premises by Lessee or its agents, and (ii) any or all merchandise, Fixtures or Personal Property located therein and to place the same in storage at a public warehouse at the expense and risk of Lessee. The rights and remedies given to County in this Section shall be additional and supplemental to all other rights or remedies which County may have under laws in force when the default occurs.

16.4 County's Damages. Should County terminate this Lease and Lessee's right to possession of the Premises pursuant to the provisions of subparagraph (a) or (c) of the immediately preceding Section, or Article 16 (DEFAULTS BY LESSEE; COUNTY'S REMEDIES), County may recover from Lessee as damages any or all of the following:

(a) The worth at the time of award of any unpaid rent that had been earned at the time of such termination;

(b) The worth at the time of award of the amount by which the unpaid rent that would have been earned after termination until the time of award exceeds the amount of such rent loss that Lessee proves could have been reasonably avoided;

(c) The worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of such rent loss that Lessee proves could be reasonably avoided;

(d) Any other amount necessary to compensate County for all the detriment proximately caused by Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, without limitation, any costs or expense incurred by County in (i) retaking possession of the Premises, including reasonable attorneys' fees therefor, (ii) maintaining or preserving the Premises after such default, (iii) preparing the Premises for reletting to a new tenant, including repairs or alterations to the Premises for such reletting, (iv) leasing commissions, and (v) any other costs necessary or appropriate to relet the Premises; and

(e) At County's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State of California.

As used in subparagraphs (a) and (b) of this Section, the "worth at the time of award" is computed by allowing interest at the maximum rate allowed by California law. As used in subparagraph (c) of this Section, "the worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award, plus one percent (1%).

All rent, other than Minimum Monthly Rent shall, for the purposes of calculating any amount due under the provisions of subparagraph (c) of this Section, be computed on the basis of the average monthly amount thereof accruing during the immediately preceding sixty (60) month period, except that, if it becomes necessary to compute such rent before such a sixty (60) month period has occurred, then such rent shall be computed on the basis of the average monthly amount hereof accruing during such shorter period.

16.5 Fixtures and Personal Property. In the event of Lessee's default, all of Lessee's merchandise, Fixtures and Personal Property shall remain on the Premises and, continuing during the length of said default, County shall have the right to take the exclusive possession of same and to use the same free of rent or charge until all defaults have been cured or, at its option, to require Lessee to remove same forthwith.

16.6 County's Security Interest. To secure Lessee's performance of any and all of Lessee's obligations under this Lease, Lessee hereby grants County an express first and prior contractual lien and security interest in Lessee's merchandise, Fixtures and Personal Property located on the Premises, and also upon all proceeds of any insurance that may accrue to Lessee by reason of the destruction or damage to such property. Lessee waives the benefit of all exemption laws in favor of this lien and security interest. This lien and security interest is given in addition to County's statutory lien and is cumulative with it. Upon the occurrence of an event of default, these liens may be foreclosed with or without court proceedings by public or private sale, so long as County gives Lessee at least fifteen (15) days' notice of the time and place of the sale. County shall have the right to become the purchaser if it is the highest bidder at the sale. To perfect said security interest, Lessee shall execute and deliver to County such financing statements required by the applicable Uniform Commercial Code as County may request.

16.7 Lessee's Waiver. Notwithstanding anything to the contrary contained in this Article, Lessee waives (to the fullest extent permitted under law) any written notice (other than such notice as this Article specifically requires) which any statute or law now or hereafter in force prescribes be given Lessee. Lessee further waives any and all rights of redemption under any existing or future law in the event its eviction from, or dispossession of, the Premises for any reason, or in the event County reenters and takes possession of the Premises in a lawful manner.

16.8 Interest. Any amounts, other than rent, due from Lessee under the provisions of this Lease which are not paid when due shall bear interest at the rate of four percent (4%) over the discount rate charged from time to time by the Federal Reserve Bank of San Francisco, but not to exceed the maximum rate which County is permitted by law to charge.

ARTICLE 17

DEFAULTS BY COUNTY; REMEDIES

If County shall neglect or fail to perform or observe any of the terms, covenants, or

conditions contained in this Lease on its part to be performed or observed within thirty (30) days after written notice of default or, when more than thirty (30) days shall be required because of the nature of the default, if County shall fail to proceed diligently to cure such default after written notice thereof, then County shall be liable to Lessee for any and all damages sustained by Lessee as a result of County's breach; provided, however, that (a) any money judgment resulting from any default or other claim arising under this Lease shall be satisfied only out of the current rents, issues, profits and other income County receives from its operation of the Premises, net of all current operating expenses, liabilities, reserves and debt service associated with said operation ("Net Income" for purposes of this Article only), (b) no other real, personal or mixed property of County, wherever located, shall be subject to levy on any such judgment obtained against County, (c) if such Net Income is insufficient to satisfy such judgment, Lessee will not institute any further action, suit, claim or demand, in law or in equity, against County for or on the account of such deficiency, and (d) such neglect or failure shall not constitute consent by County for Lessee to perform or observe such terms, covenants or conditions at County's expense. Lessee hereby waives, to the extent permitted under law, any right to satisfy said money judgment against County except from Net Income.

ARTICLE 18 ABANDONMENT

Lessee shall not vacate or abandon the Premises at any time during the term of this Lease nor permit the Premises to remain unoccupied for a period of longer than five (5) consecutive days during the term of this Lease. If Lessee shall abandon, vacate or surrender the Premises, or be dispossessed by process of law, or otherwise, any Personal Property or Fixtures belonging to Lessee and left on the Premises shall, at the option of County, be deemed abandoned. In such case, County may dispose of said Personal Property and Fixtures in any manner provided by California law and is hereby relieved of all liability for doing so. These provisions shall not apply if the Premises should be closed and business temporarily discontinued therein on account of strikes, lockouts, or similar causes beyond the reasonable control of Lessee.

ARTICLE 19 BANKRUPTCY

19.1 Right of Termination. Should any of the following events occur, County may terminate this Lease and any interest of Lessee therein, effective with the commencement of the event:

(a) Proceedings are instituted whereby all, or substantially all, of Lessee's assets are placed in the hands of a receiver, trustee or assignee for the benefit of Lessee's creditors, and such proceedings continue for at least thirty (30) days;

(b) Any creditor of Lessee institutes judicial or administrative process to execute on, attach or otherwise seize any of Lessee's merchandise, Fixtures or Personal Property, located on the

Premises and Lessee fails to discharge, set aside, exonerate by posting a bond, or otherwise obtain a release of such property within thirty (30) days;

(c) A petition is filed for an order of relief under the Federal Bankruptcy Code or for an order or decree of insolvency or reorganization or rearrangement under any state or federal law, and is not dismissed within thirty (30) days;

(d) Lessee makes a bulk sale of all, or substantially all, of Lessee's merchandise, Fixtures or Personal Property located on the Premises, except in accordance with the provisions of Article 10 (LESSEE'S RIGHT TO MAKE IMPROVEMENTS; PERSONAL PROPERTY; FIXTURES) of this Lease or except in connection with a permitted assignment or subletting under this Lease, and fails to replace the same with similar items of equal or greater value and utility within three (3) days.

If a court of competent jurisdiction determines that any of the foregoing events is not a default under this Lease, and a trustee is appointed to take possession (or if Lessee remains a debtor in possession), and such trustee or Lessee transfers Lessee's interest hereunder, then County shall receive, as Additional Rent, the difference, if any, between the rent (or other consideration) paid in connection with such transfer, minus the rent payable by Lessee hereunder. Any assignee pursuant to the provisions of any bankruptcy law shall be deemed without further act to have assumed all of the obligations of the Lessee hereunder arising on or after the date of such assignment. Any such assignee shall upon demand execute and deliver to County an instrument confirming such assumption.

19.2 Request for Information. Within ten (10) days after County's request therefor, Lessee shall provide County and any mortgagee or proposed mortgagee of County, as County shall specify, such financial, legal and business information concerning any of the events described in this Article as County shall request.

ARTICLE 20

DAMAGE OR DESTRUCTION

20.1 Insured Casualty. Should the Lessee's merchandise, Fixtures, improvements or personal property be damaged by fire, or other perils covered by the insurance Lessee is required to carry under the terms of this Lease, Lessee shall undertake to restore such merchandise, Fixtures, improvements or personal property to substantially the same condition as they were in immediately preceding such damage or destruction. In the event of a total destruction of the Premises so that the Premises are rendered unusable, either party shall have the right to terminate this Lease. If the parties to this Lease cannot agree upon the extent and amount of such damage or destruction, County shall promptly designate a certified architect, registered engineer, or licensed building contractor who shall determine such matters, and the determination of such architect, engineer, or contractor shall be final and binding upon the parties to this Lease.

20.2 Construction Provisions. In the event of any reconstruction of the Premises required of Lessee pursuant to this Article, Lessee shall, to the extent of available insurance proceeds, repair or rebuild such building and improvements to substantially the same condition they were in immediately preceding such damage or destruction. Lessee shall, to the extent of available insurance proceeds, also repair or replace its Personal Property situated upon the Premises which may have been damaged or destroyed by such cause as may in the opinion of County be necessary for the resumption by Lessee of its business upon the Premises.

20.3 Abatement of Rent. In the event of reconstruction by Lessee pursuant to this Article, Lessee shall continue the operation of its business on the Premises during any such period to the extent reasonably practicable from the standpoint of prudent business management, and the obligation of Lessee to pay Minimum Monthly Rent, Percentage Rent and Additional Rent shall remain in full force and effect. Lessee shall not be entitled to any compensation or damages from County for loss of use of the whole or any part of the Premises, the building of which the Premises are a part, Lessee's Personal Property, or any inconvenience or annoyance occasioned by such damage, reconstruction or replacement. Lessee hereby waives any statutory rights of termination which may arise by reason of any partial or total destruction of the Premises.

20.4 Release of Liability. Upon any termination of this Lease under any of the provisions of this Article, the parties shall be released thereby without further obligation to the other party coincident with the surrender of possession of the Premises to County, except for items which have theretofore accrued and are then unpaid. In the event of termination of this Lease under this Article, all proceeds from Lessee's insurance, but excluding proceeds for Lessee's merchandise and Personal Property, shall be disbursed and paid to County. Monthly rent shall be apportioned and paid to the time of termination.

20.5 Uninsured Casualty. In the event the Premises are damaged by any flood, earthquake, act of war, nuclear reaction, nuclear radiation or radioactive contamination, or any other casualty not covered by Lessee's insurance, and (i) the Premises are damaged or destroyed to the extent of more than twenty-five percent (25%) of their replacement cost, or (ii) the damage is such that the Premises cannot be repaired and restored within ninety (90) days after the casualty, Lessee shall have the election, and shall within thirty (30) days following the date of such damage give County written notice of Lessee's election, either to commence reconstruction of the Premises and prosecute the same diligently to completion, in which event this Lease shall continue in full force and effect, or not to perform such reconstruction of the Premises, in which event this Lease shall cease and terminate upon Lessee's notice of its election to terminate.

20.6 Major Destruction. Notwithstanding any of the foregoing provisions of this Article to the contrary, in the event that: (i) the Premises are damaged or destroyed to an extent of more than twenty-five percent (25%) of their replacement cost; or (ii) the damage is such that the Premises cannot be repaired or restored within ninety (90) days after the casualty, County shall have the right to terminate this Lease upon thirty (30) days notice.

ARTICLE 21 EMINENT DOMAIN

21.1 Condemnation. If all of the Premises is taken under eminent domain proceedings by a party other than County, or, if less than all of the Premises is taken under such proceeding and in the opinion of County's Lease Administrator the part taken substantially impairs the ability of Lessee to use the remainder of the Premises for the purposes permitted by this Lease, then either County or Lessee may terminate this Lease as of the date that the condemning authority takes possession by delivery of written notice of such election within twenty (20) days after such party has been notified of the taking or, in the absence thereof, within twenty (20) days after the condemning authority shall have taken possession.

21.2 Continuation of Lease After Condemnation. If this Lease is not terminated by County or Lessee, it shall remain in full force and effect as to any portion of the Premises remaining, and:

(a) This Lease will end as of the date possession of the part is taken by the public entity as to the part of the Premises that is taken;

(b) Prepaid rent will be allocated in proportion to the relationship that the compensation paid to Lessee and County by the public entity for the portion of the Premises condemned, including any amount paid to Lessee for damages to the remainder of the Premises, bears to the value of the whole of the Premises as of the date possession of the part is taken by the public entity; and

(c) Minimum Monthly Rent shall be reduced in proportion to the relationship that the compensation paid by the public entity for the portion of the Premises condemned, including any amount paid to Lessee for damages to the remainder of the Premises, bears to the value of the whole of the Premises as of the date possession of the part is taken by the public entity; and

(d) At its cost, Lessee shall restore so much of the remaining portion of the Premises as is required to create a reasonably sound architectural (or economically feasible) unit substantially suitable for the purposes for which they were used immediately before the taking, using good workmanship and new first class materials, all in accordance with the requirements of Article 10 (LESSEE'S RIGHT TO MAKE IMPROVEMENTS; PERSONAL PROPERTY; FIXTURES) above;

21.3 Lessee's Award. In connection with any taking, Lessee may prosecute its own claim by separate proceedings against the condemning authority for damages legally due to it (such as the loss of Fixtures that Lessee was entitled to remove and moving expenses) only so long as Lessee's award does not diminish or otherwise adversely affect County's award.

21.4 Allocation of Condemnation Award for a Total Taking of the Premises. All awards

for the total taking of the Premises or proceeds from the sale made under the threat of the exercise of the power of eminent domain shall be the property of County, whether made as compensation for diminution of value of the leasehold estate, for the taking of the fee, or as severance damage; provided, however, that Lessee shall be entitled to any award for (i) the value of Lessee-constructed improvements minus depreciation of that percent per year which is determined by dividing 100 years by the length of the initial Term, and (ii) loss of or damage to Lessee's trade fixtures, and removable personal property. Notwithstanding the foregoing, any amount of condemnation compensation due to Lessee pursuant hereto shall go first to County to satisfy (i) County's attorneys' fees, appraisal fees, and other costs incurred in prosecuting the claim for the award, (ii) County's lost rent and the value of the reversion as of the ending date, and (iii) any financial obligations of Lessee to County pursuant to the provisions of this Lease, and second to any creditors of Lessee to satisfy the remaining balance of any due to such creditor from any County-approved loan encumbering the Premises.

ARTICLE 22

SALE OR MORTGAGE BY COUNTY

22.1 Sale or Mortgage. County may at any time, without the consent of Lessee, sell, purchase, exchange, transfer, assign, lease, encumber or convey County's interest in whole or in part, in the Lease, the Premises, the realty underlying the Premises and/or any portion of or interest in the realty or improvements on the Premises (collectively referred to in this Article as a "Sale").

22.2 Release on Sale. From and after a Sale, County shall be released from all liability toward Lessee and Lessee's successors and assigns arising from this Lease because of any act, occurrence or omission of County occurring after such Sale.

ARTICLE 23

SUBORDINATION; ATTORNMENT

23.1 Subordination. Without the necessity of any other document being executed and delivered by Lessee, this Lease is and shall be junior, subject and subordinate to any existing or future permits, agreements, contracts or approvals issued by the United States of America or any local, State or federal agency affecting the control or operation of the Premises; Lessee shall be bound by the terms and provisions of such permits, agreements, contracts or approvals. In addition, this Lease is and shall also be subject, subordinate and junior to all ground leases, mortgages, deeds of trust and other security instruments of any kind now covering the Premises, or any portion thereof.

23.2 Attornment. In the event any proceedings are brought to foreclose, or in the event of the exercise of the power of sale under any mortgage or deed of trust made by County covering the Premises, Lessee shall attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as landlord under this Lease.

ARTICLE 24 COUNTY'S RIGHT OF ACCESS

24.1 County's Right to Enter the Premises. County, its agents, employees, and contractors may enter the Premises at any time in response to an emergency, and at reasonable hours to (a) inspect the Premises, (b) exhibit the Premises to prospective purchasers or Lessees, (c) determine whether Lessee is complying with its obligations in this Lease (including its obligations with respect to compliance with Hazardous Materials Laws), (d) supply cleaning service and any other service that this Lease requires County to provide, (e) post notices of nonresponsibility or similar notices, (f) make repairs that this Lease requires County to make, or make repairs to any adjoining space or utility services, or make repairs, alterations, or improvements to any other portion of the Premises, or (g) exercise its rights pursuant to Section 2.3, "Reservations to County/Easement Reservations," above; provided, however, that all work will be done as promptly as reasonably possible and so as to cause as little interference to Lessee as reasonably possible.

24.2 Lessee's Waiver of Damages Claims. Lessee waives any claim of injury or inconvenience to Lessee's business, interference with Lessee's business, loss of occupancy or quiet enjoyment of the Premises, or any other loss occasioned by such entry. If necessary, Lessee shall provide County with keys to unlock all of the doors in the Premises (excluding Lessee's vaults, safes, and similar areas designated in writing by Lessee in advance). County will have the right to use any means that County may deem proper to open doors in the Premises and to the Premises in an emergency. No entry to the Premises by County by any means will be a forcible or unlawful entry into the Premises or a detainer of the Premises or an eviction, actual or constructive, of Lessee from the Premises, or any part of the Premises, nor will the entry entitle Lessee to damages or an abatement of rent or other charges that this Lease requires Lessee to pay. Notwithstanding any provision of this Lease to the contrary, however, should County's entry on the Premises temporarily interfere with the use of any or all of the Premises by Lessee, County's Lease Administrator, in his or her sole discretion, may temporarily reduce the rental in proportion to the interference, as determined by County's Lease Administrator, with Lessee's use of the Premises. Nothing in this Section shall apply to any actions in eminent domain, which shall be governed solely by Article 21, "Eminent Domain," above.

ARTICLE 25 QUIET ENJOYMENT

If Lessee is not in breach under the covenants made in this Lease, County covenants that Lessee shall have peaceful and quiet enjoyment of the Premises without hindrance on the part of County. County will defend Lessee in the peaceful and quiet enjoyment of the Premises against claims of all persons claiming through or under the County.

ARTICLE 26 HOLDING OVER

If Lessee remains in possession of the Premises, for any reason, after the expiration of the term of this Lease without executing a new Lease, or after County has declared a forfeiture by reason of a default by Lessee, then such holding over shall be construed as a tenancy from month to month, subject to all the conditions, provisions and obligations of this Lease insofar as they are applicable to a month-to-month tenancy. The Base Monthly Rent payable during any period of holding over shall be equal to one hundred fifty percent (150%) of the Base Monthly Rent payable during the period immediately preceding Lessee's holding over.

ARTICLE 27 NOTICES

27.1 Notices. Whenever in this Lease it shall be required or permitted that notice or demand be given or served by either party to this Lease to or on the other, such notice or demand shall be in writing, mailed or delivered to the other party at the addresses specified in Article 1 (SUMMARY OF BASIC LEASE PROVISIONS). Mailed notices shall be sent by United States Postal Service, certified or registered mail, postage prepaid and shall be deemed to have been given, delivered and received three (3) business days after the date such notice or other communication is posted by the United States Postal Service. All other such notices or other communications shall be deemed given, delivered and received upon actual receipt. Either party may, by written notice delivered pursuant to this provision, at any time designate a different address to which notices shall be sent.

27.2 Default Notices. Notwithstanding anything to the contrary contained within this Article, any notices County is required or authorized to deliver to Lessee in order to advise Lessee of alleged violations of Lessee's covenants under this Lease must be in writing but shall be deemed to have been duly given or served upon Lessee by County attempting to deliver at the Premises during normal business hours a copy of such notice to Lessee or its managing employee and by County mailing a copy of such notice to Lessee in the manner specified in the preceding Section.

ARTICLE 28 NONDISCRIMINATION

Lessee hereby covenants by and for itself, its successors, assigns and all persons claiming under or through it, that this Lease is made and accepted upon and subject to the condition that there shall be no discrimination against, or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Premises, nor shall Lessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the Premises.

ARTICLE 29 AFFIRMATIVE ACTION PROGRAM

Lessee, by maintaining a business location within San Diego County and by being able to use such business location by virtue, in whole or in part, of this Lease, shall comply with the Affirmative Action Program for Vendors as set forth in Article IIIk (commencing at Section 84) of the San Diego County Administrative Code, which program is incorporated herein by this reference. A copy of such Affirmative Action Program for Vendors will be furnished to Lessee by County's Lease Administrator upon request.

ARTICLE 30

WAIVER OF RELOCATION ASSISTANCE BENEFITS

30.1 Relocation Assistance Benefits. Lessee is hereby informed and acknowledges the following:

(a) By entering into this Lease and becoming a tenant of County, Lessee may become entitled to receipt of "relocation assistance benefits" ("Relocation Benefits") pursuant to the Federal Uniform Relocation Assistance Act (42 U.S.C. §§ 4601 et seq.) and/or the California Relocation Assistance Law (Cal. Gov. Code, §§ 7260 et seq.) (collectively, the "Relocation Statutes"), should County at some time make use of the Premises in such a way as to "displace" Lessee from the Premises. Pursuant to the Relocation Statutes, County may then become obligated to make such payments to Lessee even where such displacement of Lessee does not otherwise constitute a breach or default by County of its obligations pursuant to this Lease.

(b) Under the Relocation Statutes in effect as of the Effective Date of this Lease, Relocation Benefits may include payment to such a "displaced person" of (i) the actual and reasonable expense of moving himself or herself and a family, business, or farm operation, including personal property, (ii) the actual direct loss of reestablishing a business or farm operation, but not to exceed Ten Thousand Dollars (\$10,000), or (iii) payment in lieu of moving expenses of not less than One Thousand Dollars (\$1,000) or more than Twenty Thousand Dollars (\$20,000).

30.2 Lessee's Waiver and Release of Relocation Benefits. In consideration of County's agreement to enter into this Lease, Lessee hereby waives any and all rights it may now have, or may hereafter obtain, to Relocation Benefits arising out of the County's assertion or exercise of its contractual rights to terminate this Lease pursuant to its terms, whether or not such rights are contested by Lessee or any other entity, and releases County from any liability for payment of such Relocation Benefits; provided, however, that Lessee does not waive its rights to Relocation Benefits to the extent that Lessee's entitlement thereto may arise out of any condemnation or pre-condemnation actions taken by the County or any other public agency with respect to the Premises. Lessee shall in the future execute any further documentation of the release and waiver provided hereby as County may reasonably require.

ARTICLE 31

RECORDS, ACCOUNTS AND AUDITS

31.1 Lessee's Duty to Keep Records. Lessee shall, at all times during the term of this Lease, and for a period of at least five (5) years following termination or expiration of this Lease, keep or cause to be kept, true and complete books, records and accounts of all financial transactions in the operation of all business activities, of whatever nature, conducted pursuant to the rights granted herein. Such records shall also include the source and disposition of all trash collected and disposed of by Lessee in the operation of its business. Said records must be supported by source documents such as sales slips, cash register tapes, purchase invoices or other pertinent documents.

31.2 County's Right to Audit. All Lessee's books or accounts and records shall be kept and made available at one location within the limits of the County of San Diego. County shall have the right at any reasonable time to examine and perform audits of Lessee's records pertaining to its operations on the Premises. The cost of said audits shall be borne by County; however, if the county's audit finds that the gross sales were under reported by 5% or more, the Lessee shall pay the cost of the audit. Lessee shall provide to County at Lessee's expense, necessary data to enable County to fully comply with each and every requirement of the State of California or by the United States of America for information or reports relating to this Lease and to Lessee's use of the Premises.

ARTICLE 32 GENERAL PROVISIONS

32.1 Authority. Lessee represents and warrants that it has full power and authority to execute and fully perform its obligations under this Lease pursuant to its governing instruments, without the need for any further action, and that the person(s) executing this Lease on behalf of Lessee are the duly designated agents of Lessee and are authorized to do so.

32.2 Brokers. Lessee warrants that it has had no dealings with any real estate broker or agent in connection with the negotiation and/or execution of this Lease. In the event any broker other than the brokers acknowledged in writing by County make claim for monies owed, Lessee shall indemnify, defend and hold County harmless therefrom.

32.3 Captions. The captions, headings and index appearing in this Lease are inserted for convenience only and in no way define, limit, construe, or describe the scope or intent of the provisions of this Lease.

32.4 County Approval. Except where stated herein to the contrary, the phrases "County's approval," and "County's written approval" or such similar phrases shall mean approval of County's Lease Administrator or said Administrator's representative as authorized by said Administrator in writing.

32.5 Cumulative Remedies. In the event of a default under this Lease, each party's remedies shall be limited to those remedies set forth in this Lease; any such remedies are cumulative

and not exclusive of any other remedies under this Lease to which the non-defaulting party may be entitled.

32.6 Entire Agreement. This Lease, together with all addenda, exhibits and riders attached hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof, and all prior or contemporaneous agreements, understandings and representations, oral or written, are superseded.

32.7 Estoppel Certificate. Lessee shall at any time during the term of this Lease, within five (5) business days of written notice from County, execute and deliver to County a statement in writing certifying that this Lease is unmodified and in full force and effect or, if modified, stating the nature of such modification. Lessee's statement shall include other details requested by County, such as the date to which rent and other charges are paid, Lessee's knowledge concerning any outstanding defaults with respect to County's obligations under this Lease and the nature of such defaults if they are claims. Any such statement may be relied upon conclusively by any prospective purchaser or encumbrancer of the Premises. Lessee's failure to deliver such statements within such time shall be conclusive upon Lessee that this Lease is in full force and effect, except to the extent any modification has been represented by County, and that there are no uncured defaults in the County's performance, and that not more than one month's rent has been paid in advance.

32.8 Exhibits. All exhibits referred to herein are attached hereto and incorporated by reference.

32.9 Force Majeure. In the event either party is prevented or delayed from performing any act or discharging any obligation hereunder, except for the payment of rent by Lessee, because of any and all causes beyond either party's reasonable control, including unusual delays in deliveries, abnormal adverse weather conditions, unavoidable casualties, strikes, labor disputes, inability to obtain labor, materials or equipment, acts of God, governmental restrictions, regulations or controls, any hostile government actions, civil commotion and fire or other casualty, legal actions attacking the validity of this Lease or the County's occupancy of the Premises, or any other casualties beyond the reasonable control of either party except casualties resulting from Lessee's negligent operation or maintenance of the Premises ("Force Majeure"), performance of such act shall be excused for the period of such delay, and the period for performance of such act shall be extended for a period equivalent to the period of such delay. Force Majeure shall not include any bankruptcy, insolvency, or other financial inability on the part of either party hereto.

32.10 Governing Law. This Lease shall be governed, construed and enforced in accordance with the laws of the State of California.

32.11 Interpretation. The parties have each agreed to the use of the particular language of the provisions of this Lease, and any question of doubtful interpretation shall not be resolved by any rule of interpretation providing for interpretation against the parties who cause an uncertainty to exist or against the draftsman.

32.12 Joint and Several Liability. If more than one person or entity executes this Lease as Lessee, each of them is jointly and severally liable for all of the obligations of Lessee hereunder.

32.13 Lessee's Lease Administration. Lessee confirms that Lessee's Lease Administrator has been given full operational responsibility for compliance with the terms of this Lease. Lessee shall provide County with a written schedule of its normal hours of business operation on the Premises, and post notice of such schedule in an area visible to pilots and Lessee's Lease Administrator or a representative designated thereby shall be (i) available to County on a twenty-four (24) hour a day, seven (7) days a week, basis, and (ii) present on the Premises during Lessee's normal business hours, to resolve problems or answer question pertaining to this Lease and Lessee's operations on the Premises.

32.14 Modification. The provisions of this Lease may not be modified, except by a written instrument signed by both parties.

32.15 Partial Invalidity. If any provision of this Lease is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby. Each provision shall be valid and enforceable to the fullest extent permitted by law.

32.16 Payments. Except as may otherwise be expressly stated, each payment required to be made by Lessee shall be in addition to and not in substitution for other payments to be made by Lessee.

32.17 Successors & Assigns. This Lease shall be binding on an inure to the benefit of the parties and their successors and assigns, all of whom shall be jointly and severally liable hereunder, except as may otherwise be provided herein.

32.18 Time of Essence. Time is of the essence of each and every provision of this Lease.

32.19 Waiver. No provision of this Lease or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed. The waiver by County of any breach of any term, covenant or condition contained in this Lease shall not be deemed to be a waiver of such term, covenant or condition of any subsequent breach thereof, or of any other term, covenant or condition contained in this Lease. County's subsequent acceptance of partial rent or performance by Lessee shall not be deemed to be an accord and satisfaction or a waiver of any preceding breach by Lessee of any term, covenant or condition of this Lease or of any right of County to a forfeiture of the Lease by reason of such breach, regardless of County's knowledge of such preceding breach at the time of County's acceptance. The failure on the part of County to require exact or full and complete compliance with any of the covenants, conditions of agreements of this Lease shall not be construed as in any manner changing or waiving the terms of this Lease or as estopping County from enforcing in full the provisions hereof. No custom or practice which may

arise or grow up between the parties hereto in the course of administering this Lease shall be construed to waive, estop or in any way lessen the right of County to insist upon the full performance of, or compliance with, any term, covenant or condition hereof by Lessee, or construed to inhibit or prevent the rights of County to exercise its rights with respect to any default, dereliction or breach of this Lease by Lessee.

IN WITNESS WHEREOF, County and Lessee have duly executed this Lease as of the day and year first above written.

Lessee:

County:

By: _____

By: _____

Clerk, Board of Supervisors

Title: _____

By: _____

Title: _____

APPROVED AS TO FORM AND LEGALITY
COUNTY COUNSEL

BY _____
SENIOR DEPUTY

EXHIBIT A
DESCRIPTION AND PLAT OF THE PREMISES
[To be provided]

EXHIBIT B
FAA REQUIREMENTS

EXHIBIT C
MCCLELLAN-PALOMAR AIRPORT AVIATION AREAS DEVELOPMENT STANDARDS

EXHIBIT D
INDUSTRIAL AND AVIATION AREAS RESTAURANT PERFORMANCE STANDARDS

EXHIBIT E INSURANCE REQUIREMENTS

Without limiting Lessee's indemnification obligations to County under this Lease, Lessee shall provide and maintain for the duration of this Lease insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Lessee's operation and use of the leased premises. The cost of such insurance shall be borne by the Lessee.

1. Minimum Scope of Insurance

Coverage shall be at least as broad as:

- A. Airport Liability or Commercial General Liability, Occurrence form, Insurance Services Office Form CG0001.
- B. Automobile Liability covering all owned, non owned and hired auto, Insurance Services Office Form CA0001.
- C. Workers Compensation, as required by State of California and Employer's Liability Insurance.
- D. Property Insurance against all risk or special form perils, including Replacement Cost coverage, without deduction for depreciation, for any buildings owned by Lessee, Lessee's merchandise, fixtures owned by Lessee, any items identified in this Lease as improvements to the Premises constructed and owned by Lessee, and the personal property of Lessee, its agents and employees.
- E. Rental Income Insurance assuring County of receiving the minimum monthly rent from the time the Premises are damaged or destroyed with a minimum period of coverage for one (1) year.

2. Minimum Limits of Insurance

Lessee shall maintain limits no less than:

- A. Commercial General Liability including Premises, Operations, Products and Completed Operations, Contractual Liability and Independent Contractors: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. The General Aggregate limit shall be \$2,000,000 and shall be a Per Location Aggregate. Fire Damage Limit (Any One Fire) \$300,000 and Medical Expense Limit (Any One Person) \$5,000.
- B. Automobile Liability: \$1,000,000 each accident for bodily injury and property damage. Coverage will include contractual liability.
- C. Employers Liability: \$1,000,000 each accident for bodily injury or disease. Coverage shall

include a waiver of subrogation endorsement in favor of County of San Diego.

- D. Property: Full replacement cost with no coinsurance penalty provision.

3. Deductibles and Self-Insured Retention's

Any liability deductible or self-insured retention must be declared to and approved by the County's Risk Manager. The property insurance deductible shall not exceed \$5,000 per occurrence and shall be borne by Lessee.

4. Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain the following provisions:

- A. Additional Insured Endorsement

Any general liability policy provided by Lessee shall contain an additional insured endorsement applying coverage to the County of San Diego, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers of the County, individually and collectively.

- B. Primary Insurance Endorsement

For any claims related to this Lease, the Lessee's insurance coverage shall be primary insurance as respects the County, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers of the County, individually and collectively. Any insurance or self-insurance maintained by the County, the members of the Board of Supervisors of the County, its officers, officials, employees, or volunteers shall be excess of the Lessee's insurance and shall not contribute with it.

- C. Notice of Cancellation

Each required insurance policy shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the County at the address shown in section of Lease entitled "Notices".

General Provisions

5. Qualifying Insurers

All required policies of insurance shall be issued by companies which have been approved to do business in the State of California by the State Department of Insurance, and which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII according to the current Best's Key Rating guide, or a company of equal financial stability that is approved in writing by County's Risk Manager.

6. Evidence of Insurance

Prior to commencement of this Lease, but in no event later than effective date of the Lease, Lessee shall furnish the County with certificates of insurance and amendatory endorsements effecting coverage required by this clause. Lessee shall furnish certified copies of the actual insurance policies specified herein, within thirty days after commencement of Lease. Thereafter, copies of renewal certificates and amendatory endorsements shall be furnished to County within thirty days of the expiration of the term of any required policy. Lessee shall permit County at all reasonable times to inspect any policies of insurance of Lessee which Lessee has not delivered to County. Policies, renewal certificates and amendatory endorsements shall be delivered to County at:

County of San Diego
1960 Joe Crosson Drive
El Cajon CA 92020.

7. Failure to Obtain or Maintain Insurance; County's Remedies

Lessee's failure to provide insurance specified or failure to furnish certificates of insurance, amendatory endorsements and certified copies of policies, or failure to make premium payments required by such insurance, shall constitute a material breach of the Lease, and County may, at its option, terminate the Lease for any such default by Lessee.

8. No Limitations of Obligations

The foregoing insurance requirements as to the types and limits of insurance coverage to be maintained by Lessee, and any approval of said insurance by the County are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Lessee pursuant to the Lease, including, but not limited to, the provisions concerning indemnification.

9. Review of Coverage

County retains the right at any time to review the coverage, form and amount of insurance required herein and may require Lessee to obtain insurance reasonably sufficient in coverage, form and amount to provide adequate protection against the kind and extent of risk which exists at the time a change in insurance is required.

10. Self-Insurance

Lessee may, with the prior written consent of County's Risk Manager, fulfill some or all of the insurance requirements contained in this Lease under a plan of self-insurance. Lessee shall only be permitted to utilize such self-insurance if in the opinion of County's Risk Manager, Lessee's (i) net worth, and (ii) reserves for payment of claims of liability against Lessee, are sufficient to adequately compensate for the lack of other insurance coverage required by this Lease. Lessee's utilization of self-insurance shall not in any way limit liabilities assumed by Lessee under this Lease.

11. Sublessees' Insurance

Lessee shall require any sublessee, and any sub-sublessee, of all or any portion of the Premises to provide the insurance coverage described herein prior to occupancy of the Premises.

12. Waiver of Subrogation

Lessee and County waive all rights to recover against each other or against any other tenant or occupant of the building, or against the officers, directors, shareholders, partners, employees, agents or invitees of each other or of any other occupant or tenant of the building, from any Claims (as defined in the Article entitled "Indemnity") against either of them and from any damages to the fixtures, personal property, Lessee's improvements, and alterations of either County or Lessee in or on the Premises and the Property, to the extent that the proceeds received from any insurance carried by either County or Lessee, other than proceeds from any program of self-insurance, covers any such Claim or damage. Included in any policy or policies of insurance provided by Lessee shall be a standard waiver of rights of subrogation against County by the insurance company issuing said policy or policies.

EXHIBIT F
COUNTY OF SAN DIEGO REQUIRED SUBLEASE PROVISIONS

EXHIBIT H
WORK LETTER AGREEMENT - AIRPORTS

This Work Letter Agreement ("Agreement") states the agreement of the parties regarding the construction of Improvements by Lessee.

1. IMPROVEMENTS. Lessee shall complete, at Lessee's expense, the Required Improvements to the Premises identified in the Lease, and, at Lessee's option and expense, may construct the Optional Improvements to the Premises identified in the Lease. The Required and Optional Improvements (referred to collectively herein as the "Improvements") shall be completed or constructed in a manner consistent with any present or future ALP which is or may be adopted by the Board and the FAA, and with Exhibit "C" (AVIATION AREAS DEVELOPMENT STANDARDS) and Exhibit "D" (INDUSTRIAL AND AVIATION AREAS RESTAURANT PERFORMANCE STANDARDS) attached hereto (referred to collectively herein as "Standards"), and shall be at least comparable in quality to other similar facilities completed or constructed in the area of the Premises within the past five years.

2. PLANS AND SPECIFICATIONS.

(a) Final Plans. Lessee shall deliver to the Airports Director plans and specifications ("Plans") prepared by Lessee's architect in conformity with the Standards (i) for those Required Improvements consisting of construction of _____

_____, within thirty (30) days following the Commencement Date of the Lease, and, (ii) for any Optional Improvements, within one hundred twenty (120) days prior to scheduled commencement of construction. The Plans shall include, as applicable, site layout, building design and architectural treatment, exterior elevations, signage and landscaping. Airports Director shall have the right to approve the Plans and all material changes thereto, but approval shall not be unreasonably withheld. Airports Director shall approve or disapprove the Plans and any modifications thereto within fifteen (15) days after receipt. If Airports Director disapproves, County and Lessee shall promptly meet and attempt to resolve any dispute. If the parties are unable to mutually approve the Plans on or before the date which is seven (7) days following Airports Director's notification to Lessee of its disapproval of the Plans, either party may terminate this Lease upon ten (10) days prior written notice to the other party. "Final Plans" means the Plans as approved by Airports Director and Lessee.

(b) Working Drawings. Lessee shall prepare working drawings for any Improvements, at Lessee's expense, in conformance with the Final Plans ("Working Drawings"). Lessee shall submit the Working Drawings to Airports Director within sixty (60) days after Airports Director's approval of the Final Plans. Airports Director shall have the right to approve the Working Drawings and all material changes thereto, but Airports Director shall not unreasonably disapprove if the Working Drawings are consistent with the Final Plans. Airports Director shall approve or disapprove the Working Drawings within thirty (30) days after receipt.

3. PRE-CONSTRUCTION REQUIREMENTS.

(a) Building Permit. Within ten (10) days following Airports Director's approval of the Working Drawings for an Improvement pursuant to Section 2(b), above, Lessee shall submit and diligently process an application for building permits with the City of Carlsbad. Lessee shall obtain, at Lessee's expense, all other governmental permits required to complete the Improvements and shall comply with all conditions thereto and with all other applicable governmental laws, regulations and requirements.

(b) Bonds. Prior to the commencement of construction of any of the Improvements, at the option of the Airports Director, Lessee shall obtain or cause its contractor ("Contractor") to obtain payment and performance bonds ("Bonds") covering the faithful performance of the contract for the construction of the Improvements and the payment of all obligations arising thereunder. The Bonds shall be on forms approved by County and shall be issued by a surety satisfactory to County; provided, however, that said surety shall have a current A.M. Best rating of A-5, or better, and shall be currently licensed to transact its insurance business in the State of California. The Bonds shall (i) name County as a primary co-obligee, (ii) name Contractor as principal, and (iii) assure full and satisfactory completion of the Improvements by the deadlines set forth in ARTICLE 10 (LESSEE'S RIGHT TO MAKE IMPROVEMENTS; PERSONAL PROPERTY; FIXTURES) of this Lease. Bonds shall also guarantee that (i) all materials and workmanship supplied and/or installed as part of the Improvements shall be free from original or developed defects, and (ii) any original or developed defects or failures which appear in the Improvements within one (1) year after installation shall be repaired and/or replaced with all due diligence, at no cost to Lessee or County. The Bonds shall be maintained in full force and effect by Lessee during the construction and installation of the Improvements and for a period of one year after completion thereof. Lessee shall ensure that the surety company familiarizes itself with all of the terms and conditions of the Lease and shall require the surety company to waive (i) notification of any modifications or alterations of the Final Plans or Working Drawings, (ii) notification of any County-requested Changes (including any extension of the construction performance deadlines set forth in Article 10 (LESSEE'S RIGHT TO MAKE IMPROVEMENTS; PERSONAL PROPERTY; FIXTURES) of the Lease), and (iii) its rights under the provisions of Section 2819 of the Civil Code of the State of California. The cost of the Bonds shall be paid by Lessee.

(c) Insurance. From commencement of construction of the Improvements, Lessee shall maintain, or cause its Contractor to maintain, Commercial General Liability, Comprehensive Automobile, and Statutory Workers' Compensation and Employer's Liability Insurance naming the County as Additional Insured, in the form and amounts specified in the Lease, and shall also maintain, during the course of construction of the Improvements and until completion thereof, Builder's Risk Insurance in an amount equal to the expected value of the Improvements when construction is completed. Prior to commencement of construction, Lessee shall provide written evidence to County of such insurance coverage.

(d) Contract for Construction. County reserves the right to approve Contractor, but approval shall not be unreasonably withheld. County's right to approve Contractor shall not give rise to an obligation on County's part to assume Lessee's obligations and rights under the contract in the event Lessee should default thereunder. The contractor shall be bondable and shall meet all licensing and insurance requirements of the State of California. It is further understood and agreed that the items set forth below shall be

incorporated as "Special Conditions" into the contract between Lessee and its contractor (with a copy of the contract to be furnished County for County's reasonable approval prior to the commencement by Lessee of the Improvements):

(1) Prior to start of the Improvements, Contractor shall provide County with a construction schedule in "bar graph" form indicating the completion dates of all phases of the Improvements.

(2) Contractor shall be responsible for the repair, replacement or cleanup of any damage done by Contractor to others' property.

(3) Contractor shall contain his storage of materials and his operations within the Premises and such other space as Contractor may be assigned by Lessee or County. Should Contractor be assigned space outside of the Premises, Contractor shall move to such other space as County shall direct from time to time to avoid interference or delays with Airport operations.

(4) All trash and surplus construction materials shall be stored within the Premises and shall be promptly removed from the Premises at the sole cost of the Contractor.

(5) Contractor shall provide temporary utilities, portable toilet facilities and potable drinking water as required for his work within the Premises.

(6) Contractor shall notify the Airports Director of any planned work to be done on weekends or other than normal job hours.

(7) Contractor shall be responsible for compliance with all applicable codes and regulations of duly constituted authorities having jurisdiction insofar as the performance of the work and completed improvements are concerned for all work performed by Contractor, and all applicable safety regulations, and Contractor shall save and hold County harmless for said work as provided herein and in Article 13 (INDEMNIFICATION AND INSURANCE) of the Lease.

(8) Contractor or subcontractors shall not post signs on any part of the Premises or the Airport.

(9) Contractor shall perform said work in a manner and at times that does not impede or delay County's operations at the Airport.

(10) Contractor shall notify the Airports Director at least two (2) business days in advance of the proposed use by contractor of any cranes, boom or other construction equipment that will intrude into the "7:1 slope" or reach a height of 30 feet or more.

4. COMMENCEMENT OF IMPROVEMENTS. As used herein and in the Lease, the "commencement" of work on any Improvement shall be deemed to have occurred upon fulfillment by Lessee, and acceptance thereof by County, of all of the requirements set forth in Sections 2 and 3 of this Work Letter

Agreement, above.

5. PROSECUTION OF WORK.

(a) Diligent Construction. Lessee shall cause Contractor to diligently commence and complete the actual construction of the Improvements (i) in a good and workmanlike manner by well-trained, adequately supervised workers; (ii) in strict compliance with the Final Plans and approved working drawings (except for insubstantial deviations which do not interfere with the utility or use of the Improvements); (iii) in strict compliance with all governmental and quasi-governmental rules, regulations, laws and building codes (including safety requirements), and all requirements of the parties' insurers and lenders; and (iv) in a manner free from all design, material and workmanship defects.

(b) Change Orders. Airports Director shall have the right to approve all material change orders made by Lessee to the Final Plans or Working Drawings, but approval shall not be unreasonably withheld or delayed. "Material changes" shall include, but shall not be limited to any change in the site layout; building configuration, size, or square footage; the drive-through or parking configuration; and the exterior appearance of any building.

(c) County's Rules, Requirements. Lessee shall comply with such reasonable rules and regulations as County may establish regarding Lessee's construction work in order to avoid interference or delays with other work, to protect the property of County and other tenants, and to enhance the safety of the site.

(d) County's Right to Enter. County shall have the right during construction of the Improvements to enter the Premises for the purpose of inspecting construction progress, and making punch-list inspections. County will use its best efforts to minimize interference with Lessee's construction of the Improvements and will give prior reasonable notice to Lessee and Contractor of County's desire to enter the Premises.

(e) Indemnity. Lessee shall protect, indemnify, hold harmless and defend County from and against any loss or damage to property and any liability for death or personal injury arising out of the construction of the Improvements, unless caused solely by the negligence or intentional misconduct of County or its agents or employees.

(f) Mechanic's Liens. Lessee shall cause the Improvements to be constructed free of any vendor's, mechanics' or workers' or other liens whatsoever, as further provided in the Lease.

(g) As-Built Drawings. Within thirty (30) days of completion of the Improvements, Lessee shall deliver to County's Lease Administrator two (2) sets of "as-built" drawings, showing the construction of the Improvements in place.

6. COMPLETION OF IMPROVEMENT. As used herein and in the Lease, the phrase "completion of an Improvement" shall mean Lessee's submission to Airports Director of all of the following documents:

- (1) The original Certificate of Occupancy for the Improvement, as issued by the city of Carlsbad, County of San Diego, California.
- (2) A certified copy of a Notice of Completion, recorded by Lessee;
- (3) A complete list of the names, addresses, telephone numbers and contract amount for all contractors, subcontractors, vendors and/or suppliers providing materials and/or labor for the Improvement;
- (4) Copies of all invoices from Contractor, subcontractors, vendors and/or suppliers of labor and/or materials for the Improvement, which Lessee has paid;
- (5) Copies of all mechanics' lien releases or other lien releases on account of the Improvement, which are notarized, unconditional and in such form as County shall have approved;
- (6) Copies of all building permits, indicating inspection and approval by the issuer of said permits; and
- (7) An architect's or engineer's certification that the Improvements have been constructed in accordance with the Final Plans and are one hundred percent (100%) complete in accordance with this Exhibit.

7. CALCULATION OF LESSEE'S COSTS OF CONSTRUCTION.

(a) Lessee's Costs - Definition. As used herein, the term "Lessee's Costs" means the costs actually expended by Lessee, as certified by the project architect, to install any Improvement in accordance with the Final Plans and Working Drawings, including, as applicable, the following: Costs of preparing space plans, construction plans, Final Plans and Working Drawings; costs of labor; costs of equipment and material; Contractor's field overhead and engineering fees; costs of governmental permits and plan-check fees; testing and inspection Costs; Lessee's direct field supervision fees (not to exceed five percent (5%) of the total costs); sales and use taxes (but not real property taxes); bonds; and other costs directly related to the construction of the Improvements. Other than as set forth above, Lessee's Costs shall not include any profit, fee or compensation to Lessee, or interest on Lessee's construction financing or construction loan fees, if any.

(b) Approval of Costs. For purposes of calculating any rent credit due to Lessee pursuant to Article 4 (RENT) of the Lease, Lessee, as soon as reasonably possible following completion of an Improvement, shall prepare and submit to County copies of invoices in a form approved by County representing the total Costs incurred by Lessee in completing such Improvement. County shall deliver its written approval or disapproval of such Costs to Lessee within thirty (30) days after receipt. Notwithstanding any provision of the Lease or this Work Letter Agreement to the contrary, Lessee shall be fully responsible for paying the total Costs incurred to complete any Improvements; County shall have no responsibility to pay such costs.

EXHIBIT I
MASTER DEVELOPMENT PLAN
[To be provided]