COUNTY OF SAN BERNARDINO

DEPARTMENT OF AIRPORTS

SOLICITATION OF PROPOSALS

FOR

CHINO AIRPORT

DOME HANGAR NO. 3 (A-340)

Key Solicitation of Proposals Dates:

Issued:	**May 31, 2006**
Property Walk-throughs:	**See General Instruction #B**
Written Question Submission:	**June 19, 2006**
Submittal of Proposal(s):	**July 7, 2006**
Committee Review Prior To:	**July 21, 2006**
Contract Start Date Approximately:	**Upon lease execution**

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I. INTRODUCTION

SOLICITATION OF PROPOSALS

CHINO AIRPORT

I. Introduction

A. Purpose of Solicitation of Proposals (SOP)

The purpose of this SOP is to solicit proposals from qualified aviation related users, depending upon compatibility, for the leasing of approximately 20,000 square feet of hangar space, 4,667 square feet of storage/shop space and 1.01 acres of outside tiedown area located in Dome Hangar No. 3 (A-340) at the Chino Airport, 7000 Merrill Avenue, Chino, California, on Attachment No. 2, Maps of Location and Airport.

The selected proposer shall be familiar with the aviation industry and the needs for various types of tenants at the Chino Airport.

The proposer shall submit a proposal based on the entire facility.

Each proposer understands that any contract that is entered into with the Department of Airports/County may vary from the original proposal. The SOP process provides for minimum guidelines and allows the County and proposer to negotiate further terms and conditions that may reflect numerous changes to the initial proposal.

The successful proposer shall be responsible for all costs associated with any type of remodel or modification to the existing facility. All modifications shall be required to obtain written approval of all plans and specifications from the Department of Airports. All necessary permits and proofs of insurance coverage shall be obtained prior to the beginning of the project.

II. GENERAL INSTRUCTIONS

II. GENERAL INSTRUCTIONS

A. Proposal Submittal

The Proposer shall submit an original and two (2) copies of its proposal by the date, time and **locations** as listed below:

Date:	July 7, 2006	**OR**	July 7, 2006
Time:	5:00 p.m.		5:00 p.m.
Location:	County of San Bernardino Real Estate Services 825 East Third Street, Room 207 San Bernardino, CA 92415-0832		County of San Bernardino Department of Airports Chino Airport - Manager's Office 7000 Merrill Ave., Box 1 Chino, CA 91710

Proposals received after 5:00 p.m., at the date, time and location as listed above, may at the sole discretion of the County, be rejected as nonresponsive and returned without review. In order to be considered all proposals must either be date-stamped or bear a handwritten inscription by an authorized representative of the County confirming receipt by the specified deadline. Facsimile or electronically transmitted proposals will not be accepted since they do not contain original signatures.

The County shall not be responsible for, nor accept as a valid excuse for late proposal delivery, any delay in mail service or other method of delivery used by the Proposer. Postmarks will not be accepted in lieu of actual delivery.

All proposals shall be enclosed in a single sealed package plainly marked with the words "Proposal Responding to Department of Airports SOP Dome Hangar No. 3 / Bldg. A-340.

All proposals shall be firm offers subject to acceptance by the County and may not be withdrawn for a period of 90 calendar days following the last day to accept proposals. Proposals may not be amended once submitted to Real Estate Services.

B. Property Inspection

Proposers interested in viewing the location as listed in Purpose of SOP shall contact the Airport Manager (909) 597-3910 at the Chino Airport to schedule a date and time to inspect the property/facility.

Location: Airport Administration Office
7000 Merrill Avenue
Chino, California (as per attached maps)

C. Questions from Proposers

Questions or comments regarding this SOP (except to inquire about the number of addenda issued) must be put in writing addressed to the "Real Property Agent" at the proposal submission address above or via facsimile. The County's facsimile number is (909) 387-7833.

The County shall not be obligated to answer any questions received after the specified deadline or any questions submitted in a manner other than as instructed above. Also, the County, its agents, officers, volunteers, and employees shall not be liable for any claims, liabilities, penalties, fines or for damage to any properties or effects of any person related to, caused by or resulting from acts, errors, or omissions of the Proposer or the Proposer's agents, employees or representatives.

D. SOP Addenda/Clarifications

If it becomes necessary for the County to revise any part of this SOP, or to provide clarification or additional information after the proposal documents are released, a written addendum will be sent to each recipient of record of the original SOP. Recipients of record are those parties that obtained a copy of the SOP directly from the County. Addenda will be sent by first-class U.S. Mail. It shall be the responsibility of the Proposers to inquire of the County as to any addenda issued. This may be done by calling the SOP Real Property Agent at (909) 387-7905 prior to the proposal-submittal deadline (this is the sole exception to the requirement that questions be submitted in writing). All addenda issued shall become part of the SOP.

Answers to all written questions will be communicated in writing as part of an addendum to the SOP **(only if question and/or answer completely modify the purposes of this SOP)**.

E. Pre-contractual Expenses and Liability.

Pre-contractual expenses are defined as any expenses incurred by the Proposer in: (1) preparing its proposal in response to this SOP; (2) submitting that proposal to the County; (3) negotiating with the County any matter related to this SOP, including a possible contract; or (4) engaging in any other activity prior to the effective date of award, if any, of a contract resulting from this SOP. The County shall not, under any circumstance, be liable for any pre-contractual expenses incurred by Proposers, and Proposers shall not include any such expenses as part of their proposals. The County of San Bernardino assumes no responsibility or liability for costs incurred by the Proposer in the preparation of a proposal and response to this SOP. The County assumes no responsibility or liability for the accuracy of any information set forth in maps, reports, or other documents/materials provided for the Proposer's use in developing their proposal. The Proposer assumes all liability in the use of such information in developing their proposal. The County, its agents, officers, volunteers, and employees, shall not be liable for any claims, liabilities, penalties, fines or for damage to any goods, properties or effects of any person related to, caused by or resulting from any acts, errors or omissions of the Proposer or the Proposer's agents, employees, or representatives.

F. No Commitment to Award

This is not a solicitation of bids. Issuance of this SOP and receipt of proposals does not commit the County to award a contract. The County expressly reserves the right to postpone proposal opening for its own convenience, to accept or reject any or all proposals received in response to this SOP, to negotiate with more than one Proposer concurrently, to cancel all or part of this SOP, or to issue a new SOP.

G. Joint Offers

Where two or more Proposers desire to submit a single proposal in response to this SOP, they should do so on a prime-subcontractor basis rather than as a joint venture or informal term. The County intends to contract with a single firm or person and not with multiple firms/persons doing business as a joint venture.

H. Contract Terms

The Proposer selected for contract award through this SOP shall be required to enter into a written lease agreement with the County. It is the County's intent that the contractual relationship between the Proposer and the County shall be substantially as set forth in the attached sample lease agreement (Exhibit A). In developing the proposal, the Proposer should carefully review the agreement to take into consideration the rights, obligations, and cost associated therewith. **"Any desired changes to or exceptions to the contract terms, or the Proposer's ability to comply with any of the provisions of the contract terms, must be specified in detail in the proposal."** The Proposer's attention is directed particularly to the insurance and indemnification paragraphs in the Contract Terms, which specify the minimum insurance requirements that must be met by the successful Proposer. The Proposer's inability or unwillingness to meet these requirements as a condition of award must be stated as an exception in the proposal. The Proposer's failure to specify in their proposal any changes or inability to meet the requirements of the Contract Terms will indicate the Proposer's acceptance of all Contract Terms as stated. Changes desired after proposal opening may result in the proposal being rejected. The Proposer is responsible for making all necessary investigations and examinations of documents affecting performance. Failure to do so will not act to relieve any condition of the proposed Contract Terms or other SOP documents. It is mutually agreed that the submission of a proposal shall be considered conclusive evidence that the Proposer has made such investigations and examinations.

I. Exceptions/Deviations.

Any exceptions to or deviations from the requirements set forth in this SOP, including the terms and conditions contained in the Contract Terms must be declared in the proposal submitted by the Proposer. Such exceptions or deviations must be segregated as a separate element of the proposal under the heading "Exceptions/Deviations," as instructed in Section III. B. 6 of this SOP.

J. Proposal Materials.

Materials submitted in connection with this SOP are for the exclusive use of the County of San Bernardino. All proposals will become the property of the County and will not be subject to return. All information contained therein shall be subject to public disclosure under the California Public Records Act, Government Code section 6250 and following. Except as provided below, submission of the proposal shall be deemed to be a waiver of any exemption or exception to disclosure that the Proposer may otherwise have. Any reasonable inquiry to determine the responsibility of a Proposer may be conducted by the County. The submission of a proposal shall constitute permission by the Proposer for the County to verify all information contained therein. If the County deems it necessary, additional information may be requested from the Proposer. Failure to comply with any such request may disqualify a Proposer from further consideration. Such additional information may include evidence of financial ability to perform, for example, tax returns, bank statements, etc. All financial information submitted in response to request for financial data is subject to disclosure under the provisions of the California Public Records Act, Government Code section 6250 and following. In the event the County receives a request for the disclosure of any such information, prior to the release of any such information, the County will contact the Proposer and will not release the information if the Proposer, within five (5) days of receipt of notice of the disclosure request, requests non-disclosure, provides County a legally sound basis for non-disclosure and agrees to indemnify, defend and hold harmless the County in any action brought to disclose such information. The Proposer, by submitting such information, agrees that the failure of County to contact the Proposer prior to the release of such information will not be a basis for liability by County or any County employee to Proposer.

K. Conflict of Interest

Proposer shall make all reasonable efforts to ensure that no County officer or employee, whose position in the County enables him/her to influence any award of this contract or any competing offer, shall have any direct or indirect financial interest resulting from the award of this contract or shall have any relationship to the Proposer or officer or employee of the Proposer.

L. Improper Consideration

Proposer shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to, cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the County in an attempt to secure favorable treatment regarding any agreement awarded by County.

The County, by written notice, may immediately terminate any agreement if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of the County with respect to the proposal and award process. This prohibition shall apply to any amendment, extension or evaluation process once an agreement has been awarded.

Proposer shall immediately report any attempt by a County officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from Proposer.

The report shall be made to the supervisor or manager charged with supervision of the employee or to the County Administrative Office. In the event of a termination under this provision, the County is entitled to pursue any available legal remedies.

M. Inaccuracies or Misrepresentations

If in the course of the SOP process or in the administration of a resulting agreement, the County determines the Proposer has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the County, the Proposer may be terminated from the SOP process or in the event an agreement has been awarded, the agreement may be immediately terminated. In the event of a termination under this provision, the County is entitled to pursue any available legal remedies.

N. Recycled Paper Products

The County has adopted a recycled product purchasing standards policy (County Policy No. 11-10), which requires contractors to use recycled paper for proposals and for any printed or photocopied material created as a result of a contract with the County. The Policy also requires Contractors to use both sides of the paper sheets for reports submitted to the County whenever practicable.

III. PROPOSAL FORMAT AND CONTENT

III. PROPOSAL FORMAT AND CONTENT

A. Presentation

Proposals shall be submitted in 8 1/2" x 11" size, using a simple method of fastening. Proposals should be typed and should not include any unnecessarily elaborate or promotional material. Lengthy narrative is discouraged; presentations should be brief and concise. The proposal should not exceed 25 pages in length, including appendixes, if any. The form, content and sequence of the proposal should follow the outline presented below.

B. Proposal Content

1. Transmittal Letter/Introduction

The letter of transmittal/introduction shall be addressed to the SOP Real Property Agent and must, at a minimum, contain the following:

a. Identification of the offering firm or individual, including name, address, telephone number, and facsimile number of firm and principals;

b. Proposed working relationship among the offering firms (e.g., prime-subcontractor), if applicable;

c. Acknowledgment of receipt of SOP addenda, if any;

d. Name, title, address, telephone number and facsimile number of contact person during period of proposal evaluation;

e. A statement to the effect that the proposal shall remain valid for a period of not less than sixty (60) days from the due date for proposals; and

f. Signature of the individual Proposer or a person authorized to bind the offering firm to the terms of the proposal.

2. Table of Contents

Immediately following the transmittal letter and introduction, there should be a complete table of contents for material included in the proposal.

3. Business Resume if applicable

a. Description of Proposer's experience and qualifications in the proposed operation.

b. Summary of training and education related to proposed business activity.

c. Copies of requisite certificates and/or licenses for the proposed business activity.

d. Financial information to evidence ability to perform and/or finance the proposed activity as required, including but not limited to most recent balance sheets, income statements, annual audits, and tax return conveying the most recent two years.

e. Profiles of the Proposer's principal officers.

f. Listing of references.

4. Proposal Description

a. Name of the proposed enterprise/proposer.

b. Description of the proposed use of the facilities.

c. Description of the anticipated construction modifications related to the use, and related budget to finance the modifications.

d. Hours of operation if applicable.

e. Any anticipated enhancement of the site aesthetics.

f. Recommended lease provisions to be included in the final lease agreement.

5. Consideration to County of San Bernardino

a. This section should disclose the compensation that the County will receive. The Proposer should provide compensation detailed in a format that provides for:

Proposer proposes the following based on Fee Ordinance Rates:

20,000 sq. ft. of hangar space at $0.15/sq.ft./month	$3,000.00
4,667 sq. ft. of shop/storage space at $0.15/sq.ft./month	$ 700.00
1.0123 acres of outside tiedown area at $.0166/sq.ft./month	$ 735.00
Proposer proposes a total monthly rental rate of: (excluding water and sewer)	$4,435.00
Water ($47.00) and sewer ($47.00) monthly	$ 94.00
Total Payment:	**$4,529.00**

6. Exceptions/Deviations

State any exceptions to or deviations from the requirements of this SOP, including the Proposed Contract presented in Exhibit A. If you wish to present alternative approaches to meet the County's requirements, these should be thoroughly explained.

7. Appendixes

a. Supporting Documents

Furnish as appendices those supporting documents (e.g., financial statements, staff resumes) requested in the preceding instructions.

b. Additional Information

Include any additional information you deem essential to a proper evaluation of your proposal and which is not solicited in any of the preceding sections. Proposers are cautioned, however, that this does not constitute an invitation to submit large amounts of extraneous material; appendices should be relevant and brief.

8. Former County Officials.

Provide information on former County of San Bernardino administrative officials (as defined below) who are employed by or represent your business. The information provided must include a list of former county administrative officials who terminated county employment within the last five years and who are now officers, principals, partners, associates or members of the business. Should also include the employment and/or representative capacity and the dates these individuals began employment with or representation of your business. For purposes of this section, "county administrative official" is defined as a member of the Board of Supervisors or such officer's staff, County Administrative Officer or member of such officer's staff, county department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit. Failure to provide this information may result in the response to the request for proposal being deemed non-responsive. (See Exhibit B, List of Former County Officials).

IV. PROPOSAL EVALUTION & CONTRACT AWARD

IV. PROPOSAL EVALUATION AND CONTRACT AWARD

A. Evaluation Panel

An Evaluation Panel may be responsible for reviewing, analyzing and evaluating the proposals received. The Evaluation Panel will make recommendations to the Department of Airports and the Airport Commission regarding selection of potential tenant(s).

B. Evaluation Criteria

Proposals will be evaluated by the Evaluation Panel against the factors specified below. Within each evaluation criterion listed, the sub criteria to be considered are those described in the "Proposal Format and Content" section of this SOP.

- Proposed Use
- Proposer's business experience
- Proposer's financial capability
- Revenue to County
- Terms/Benefits
- Building improvements/Site development
- SOP package responsiveness and completeness

All proposals will be evaluated using the same criteria and the contract may be awarded based on the best overall proposal as determined by the Evaluation Panel.

Upon selection of the most qualified Proposers, the County may require the finalists to make an oral presentation to the Evaluation Panel to further explain their proposals. If such interviews are conducted, the County's appraisals of the presentations will also be factored into the evaluation of the proposals. However, Proposers are advised that award may be made without interviews or further discussion.

The County reserves the right to reject any or all proposals and to waive any irregularities or informalities in the offers received. In the event of any such rejection, or in the event a Proposer's offer is not rejected but does not result in a contract award, the County shall not be liable for any costs incurred by the Proposer in connection with the preparation and submittal of the proposal or other participation in the SOP process.

C. Contract Award

It is the intent of the County to award one or more contracts as the result of this SOP. The contract resulting from this SOP will be required to be approved by the County's Board of Supervisors.

Each proposer understands that any contract that is entered into with the Department of Airports/County may vary from the original proposal. The SOP process provides for minimum

guidelines and allows the County and proposer to negotiate further terms and conditions that may reflect numerous changes to the initial proposal.

If a lease agreement is not fully negotiated and prepared for presentation to the Board of Supervisors and/or for the appropriate signature within ninety (90) days from the date the proposer is notified that their proposal was selected, then the County's Department of Airports has the right to terminate negotiations upon written notification to proposer. The Department of Airports will proceed with negotiations with the next proposer in line or may consider re-marketing the facility and/or land.

ATTACHMENT 1
Scope of Service Requested

ATTACHMENT NO. 1 - Scope of Service Requested

Scope of Service Requested:

The successful proposer shall be responsible for all costs associated with such modifications/improvements to the existing facility and all necessary permits and proofs of insurance coverage shall be obtained and shall be in full force and effect from the date the lease is fully executed by both parties. Construction shall not commence on the project until the Department of Airports is satisfied that this has been accomplished.

Specific Requirements:

The successful proposer shall provide a general description of anticipated modification (if any) to the existing facility. Any such improvements/modifications (if any) shall comply with current City of Chino's Building and Safety Code Ordinances and must be approved in writing by the County of San Bernardino Department of Airports. All building permits must be obtained through the City of Chino's Building and Safety Department. All improvements will be at Proposer's expense.

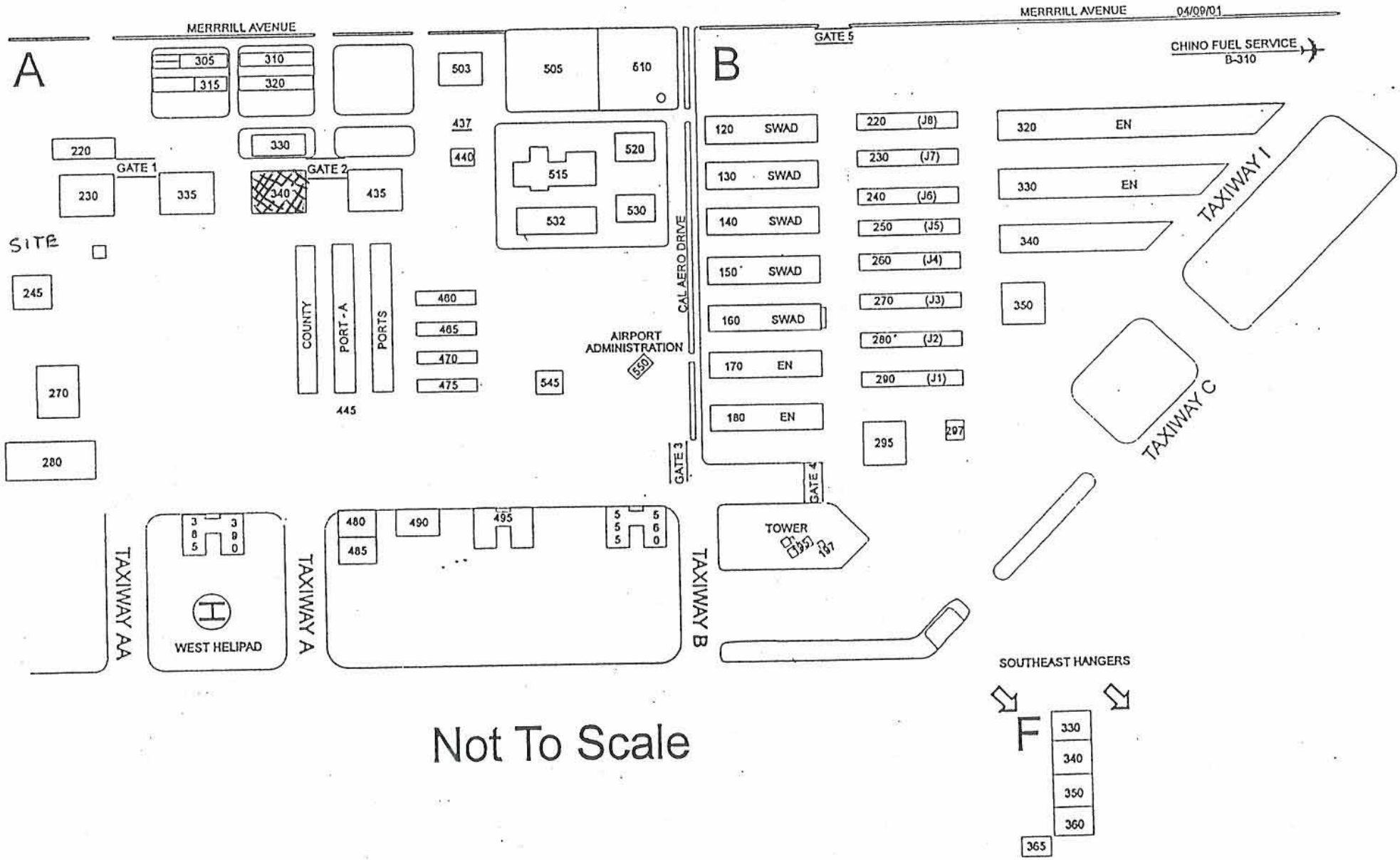
All proposals will be evaluated on the basis of which proposal will provide the highest and best use of space and service to the Chino Airport as defined in Section IV.B. of the SOP proposal package.

Proposed Term:

County of San Bernardino Department of Airports proposes a lease term, typically not to exceed three (3) years for aviation related use; however, the term can be negotiated based on the proposer's use, investment into the facilities and any other pertinent information as desired.

ATTACHMENT 2
Map of Location & Airport

CHINO AIRPORT RAMP



Not To Scale

Chino Airport

Building A-340

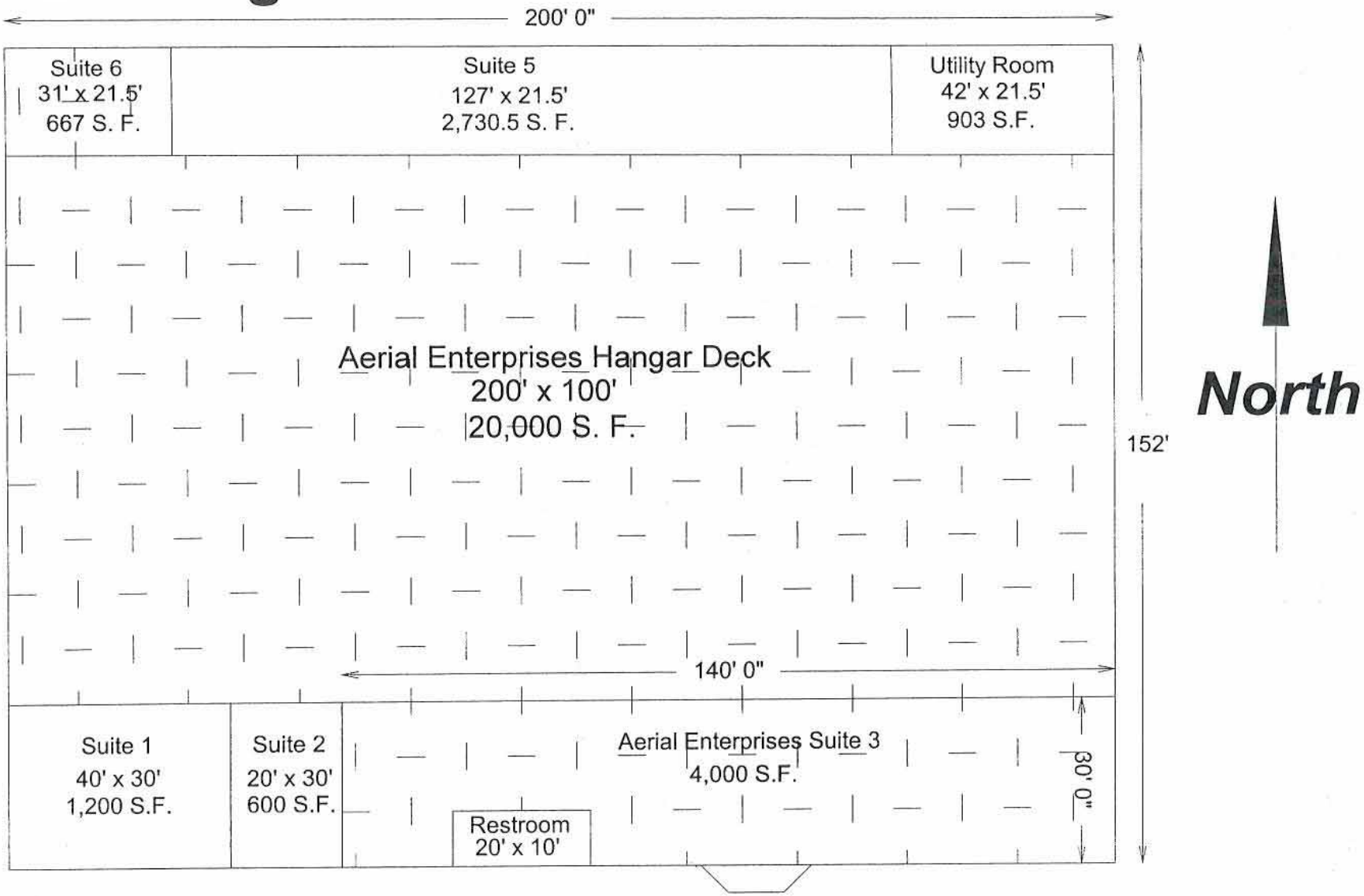


Exhibit "A"

EXHIBIT A - SAMPLE LEASE AGREEMENT

COUNTY OF SAN BERNARDINO

LEASE AGREEMENT

COUNTY: COUNTY OF SAN BERNARDINO
Department of Airports
825 East Third Street, Room 203
San Bernardino, CA 92415-0831

TENANT: _____
_____
_____

AIRPORT: _____

PREMISES: _____
_____

DOCUMENT NO.: _____

LEASE REFERENCE DATE: _____

REV. 4/26/2005

DATE TYPED:

COUNTY OF SAN BERNARDINO LEASE AGREEMENT

Basic Lease Terms - Reference Pages

AIRPORT:
DOCUMENT NO.
LESSOR: County of San Bernardino

LESSOR'S ADDRESS: County of San Bernardino
Department of Airports
825 East Third Street, Room 203
San Bernardino, California 92415-0831

LEASE REFERENCE DATE:
TENANT:

TENANT'S MAILING ADDRESS:

TENANT'S TELEPHONE NO.

TENANT'S FACSIMILE NO.:

PREMISES:

(see Exhibit "A" for additional description)

RENTABLE AREA:
USE:

SCHEDULED COMMENCEMENT DATE:

TERM OF LEASE:

TERMINATION DATE:

(unless sooner terminated pursuant to the Lease)

RENT AND OTHER CHARGES:

(a) Minimum Monthly Rent:
(b) Commercial Charges and Fees: $

(c) Commissions Payment: $

(d) Utilities:

ADJUSTMENTS TO RENT AND OTHER CHARGES:

(a) Consumer Price Index (CPI) Anniversary Date:
(b) Property Reappraisal Date:

SECURITY DEPOSIT:

MINIMUM ASSIGNMENT/SUBLETTING FEE:
OPTION TO EXTEND:
GUARANTOR:
TENANT'S LENDER:
REAL ESTATE BROKER:

EXHIBITS

(initial if Exhibit attached, or mark "not applicable")

"A"	Premises	_____
"B"	Computation of Rental Fees	_____
"C"	Commercial Charges and Fees	_____
"C-1"	Monthly Commercial Charges and Fee Statement	_____
"D"	Property Re-Appraisal Procedure	_____
"E"	Definition of Plans	_____
"F"	Proposed Construction Plans and Schedule	_____
"G"	Consent to Hypothecation	_____
"H"	Additional Lender Terms	_____
"I"	Guaranty	_____

The Reference Pages are incorporated into and made a part of the Lease. In the event of any conflict between any information on the Reference Pages and the Lease, the Lease shall control. This Lease includes the foregoing Exhibits all of which are made a part of this Lease.

IN WITNESS THEREOF, the parties executed this agreement.

LESSOR:

By_____

Date_____

TENANT: _____

By_____

Title_____

Date_____

SIGNED AND CERTIFIED THAT A COPY OF
THIS DOCUMENT HAS BEEN DELIVERED TO
THE CHAIRMAN OF THE BOARD

DENA SMITH, Clerk of the Board of Supervisors

By_____
Deputy

Date_____

APPROVED AS TO LEGAL FORM:

RONALD D. REITZ, County Counsel
San Bernardino County, California

By_____
Fiona G. Luke, Deputy County Counsel

Date_____

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COUNTY OF SAN BERNARDINO
PUBLIC SERVICES GROUP
DEPARTMENT OF AIRPORTS

AIRPORT LEASE
DOCUMENT NO. _____

By this Lease, COUNTY OF SAN BERNARDINO (hereinafter "COUNTY") Leases to TENANT, and TENANT Leases from COUNTY the Premises at the Airport set forth and described on the Reference Pages. The Reference Pages, including all terms defined thereon, are incorporated into and made a part of this Lease.

1. **PREMISES.** COUNTY, in consideration of covenants and conditions herein set forth, hereby Leases to TENANT and TENANT Leases from COUNTY, in the condition existing at the inception of this Lease, the Premises. The Premises are more particularly described on Exhibit "A". The Premises are leased subject to all easements, reservations, restrictions, rights and rights-of-way of record.

2. **USE.** TENANT shall use and occupy the Premises only for the Use set forth on the Reference Pages, and for no other purpose. TENANT shall not use or permit the use of the Premises in a manner that is unlawful or immoral, creates waste or a nuisance, or causes damage to the Premises or neighboring properties. TENANT shall not do or permit anything to be done in or about the Premises which will in any way obstruct, interfere, injure, annoy, or disturb the rights of other tenants, or occupants of the Airport, or visitors to the Airport. TENANT shall not sell or permit the sale of any alcoholic beverages from the Premises without the prior written consent of COUNTY. TENANT shall not store any of TENANT's personal property outside the buildings on the Premises without the prior written consent of COUNTY. If COUNTY authorizes TENANT to store property outside, said property will be stored in a neat and orderly manner. Unattractive and/or unsightly outside storage shall not be permitted in public view under any circumstances. TENANT shall comply with all laws, ordinances and regulations applicable to the use of the Premises, including the requirements of the Federal Aviation Administration, as may be amended. TENANT shall promptly comply with all governmental orders and directions for the correction, prevention and abatement of any violations in or upon, or in connection with Premises, at TENANT's sole expense.

3. **TERM.** The obligations of the Parties pursuant to this Lease shall commence on the date of execution by COUNTY ("Commencement Date"), provided, however, that if the Commencement Date is not on the first day of the month, then the calculation of the Term of this Lease shall commence on the first day of the first full calendar month following the Commencement Date.

4. **RENT.**

A. **Minimum Monthly Rent.** TENANT shall pay to COUNTY the Minimum Monthly Rent, in advance, without deduction, setoff, prior notice, or demand, on the first day of each month. The Minimum Monthly Rent as of the Commencement Date is set forth on the Reference Pages. The Minimum Monthly Rent shall be adjusted in accordance with Paragraph 5.A., Annual Consumer Price Index Adjustment. Should this Lease commence on other than the first day of a calendar month, the Minimum Monthly Rent for that partial month shall be prorated based on a thirty (30) day month and shall be payable on the Commencement Date. The Minimum Monthly Rent shall be payable in advance.

B. **Commercial Charges and Commission Payments.** In addition to the Minimum Monthly Rent specified in paragraph 4.A., TENANT shall pay COUNTY, the Commercial Charges and Commission Payments (hereinafter known as "Fees") as shown in Exhibit "C", as amended from time to time by any change to the COUNTY's Schedule of Fees, San Bernardino County Code, Section 16.022, Airports. In the event the San Bernardino County Code does not set a fee for any item included in the Fees, the Director, Airports Department, (hereinafter "Director"), in his sole discretion, is authorized to modify such fees on an annual basis. Fees are payable monthly on the first day of the month, one month in arrears. TENANT shall keep and shall cause each of TENANT's subtenants conducting business at the Airport to keep, such accounting records required by law and such additional accounting records as may be necessary and appropriate to accurately compute the Fees. All such accounting records shall be open for inspection and audit by COUNTY during normal business hours. Failure by TENANT to keep and maintain such records and to make them available for inspection and audit by COUNTY shall be cause for termination and forfeiture of this Lease. TENANT shall complete and submit to COUNTY, no later than the fifth calendar day of each month during the Term, a Monthly Commercial Charges and Fee Statement in the form of Exhibit "C-1". Exhibit "C" shall be amended to reflect any change in the Fees.

C. **Late Payment Fees and Interest.** TENANT acknowledges that TENANT's late payment of either Minimum Monthly Rent or Fees to COUNTY will cause COUNTY to incur costs not contemplated by this Lease and that the exact amount of such costs are extremely difficult and impracticable to fix. Such costs include, without limitation, administrative, processing, accounting and interest charges. Therefore, if any installment of either Minimum Monthly Rent or Fees is not received by the tenth day after the due date, TENANT shall pay to COUNTY a late payment charge equal to thirty and 00/100 Dollars ($30.00) for each late payment. The parties agree that this late charge represents a fair and reasonable estimate of the costs that COUNTY will incur by reason of TENANT's late payment. Acceptance of any late charge shall not constitute a waiver of TENANT's default with respect to the overdue amount, or prevent COUNTY from exercising any of the other rights and remedies available to COUNTY pursuant to this Lease or under any applicable law. Minimum Monthly Rent and Fees which are not paid when due shall bear simple interest from due date at the rate of five hundredths percent (.05%) per day. **All late payments shall be made with certified funds and shall be credited in the following order: 1) to past due fees, 2) to interest, 3) to the balance of the accrued rent and fees.**

D. **Place and Method of Payment.** All checks shall be made payable to: Airports Department, County of San Bernardino and shall be submitted to: Airports Department, 825 East Third Street, Suite 203, San Bernardino, CA 92415-0831. The Document Number set forth above is the account number for this Lease and must be noted on the front of the TENANT's check. The Minimum Monthly Rent, Fees and all other monetary obligations of TENANT pursuant to this Lease shall be paid in lawful money of the United States. **The COUNTY reserves the right to demand that payment of rent, fees, interest or security deposit be made with certified funds.**

5. ADJUSTMENTS TO MINIMUM MONTHLY RENT.

A. **Annual Consumer Price Index Adjustment.** The Minimum Monthly Rent established by Paragraph 4, shall be subject to adjustment on the CPI Adjustment Date and each and every year thereafter, based on any change in the Consumer Price Index ("CPI"), published by the United States Department of Labor, Bureau of Labor Statistics, All Urban Consumers, Los Angeles, Riverside and Orange County, All Items ("Index"), from the Index published most immediately preceding the Commencement Date, (or the immediately preceding CPI Adjustment Date) ("Beginning Index") and the Index published most immediately preceding the Annual CPI Adjustment Date ("Adjustment Index"). If the Adjustment Index has changed from the Beginning Index, the Minimum Monthly Rent for the following year (until the next rent adjustment) shall be set by multiplying the current Minimum Monthly Rent, (whether established by Paragraph 4 or a prior CPI Adjustment pursuant to this Paragraph 5.A.), by a fraction, the numerator of which is the Adjustment Index and the denominator of which is the Beginning Index. The sum so calculated shall constitute the new Minimum Monthly Rent. In no event shall the new Minimum Monthly Rental be less than the Minimum Monthly Rent payable for the month immediately preceding the applicable CPI Adjustment Date. If the Index is changed during the Term of this Lease, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued during the Term, such other governmental index or replacement index or computation shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued.

B. **Maximum Adjustments**. In the case of a Consumer Price Index Adjustment pursuant to Paragraph 5A, the amount of any increase to the Minimum Monthly Rent shall not exceed six percent (6%) of the Minimum Monthly Rent in effect immediately prior to the CPI Adjustment Date.

C. **Amendment of Lease.** This Lease shall automatically reflect any adjustment amount to the Minimum Monthly Rent and the new Minimum Monthly Rent shall be the basis used to compute the next subsequent adjustment to the Minimum Monthly Rent.

6. SECURITY DEPOSIT.

A. Prior to the Commencement Date of this Lease, TENANT shall pay to COUNTY, or as permitted by the Director, deposit with a San Bernardino County area bank or

savings and loan company, the amount set forth on the Reference Pages as TENANT's Security Deposit. The Security Deposit shall be deposited in an interest bearing deposit account in the name of COUNTY. The Security Deposit shall secure TENANT's faithful performance of TENANT's obligations under this Lease. The Director may, in his discretion, accept substitute security under such terms and conditions as the Director determines, in lieu of the deposit mentioned in this paragraph.

B. If TENANT fails to pay the Minimum Monthly Rent or any other amount which TENANT is obligated to pay pursuant to this Lease or defaults on the performance of any of the terms, provisions, covenants and conditions contained in this Lease, COUNTY may withdraw the Security Deposit from the deposit account and use, apply, or retain the whole or any part of the Security Deposit for the payment of any amount in default or for any other sum which the COUNTY may spend or be required to spend by reason of TENANT's default. The Security Deposit or any balance of the Security Deposit remaining shall be returned to TENANT at the termination or expiration of the Term, less any accrued or accruing interest. COUNTY may require, at any time, that the Security Deposit be increased in proportion to the amount of any increase in the Minimum Monthly Rent. In the event COUNTY uses part or all of the Security Deposit as provided herein, TENANT shall replenish the amount used by COUNTY within ten (10) days of TENANT's receipt of written notice from COUNTY.

7. **INSURANCE.**

A. **Basic Insurance Requirements.** Without in any way affecting TENANT's obligation to defend and indemnify COUNTY as herein provided, and in addition thereto, TENANT shall secure and maintain the following types of insurance, with the following minimum limits throughout the Term of this Lease:

1. **Real Property Insurance.** Coverage for all buildings and improvements (whether built by TENANT or COUNTY) against loss or damage by fire, lightning, vandalism, malicious mischief or earthquake, in an amount equal to the full replacement value of such buildings and improvements. If the buildings and improvements at the Premises are owned by COUNTY or COUNTY and TENANT, any loss payable under such policies shall be paid to COUNTY. If the buildings and improvements at the Premises are owned exclusively by TENANT, then TENANT, or TENANT's Lender, if applicable, shall be the loss payee on such policies. All proceeds from any loss covered by said policy shall first be used to repair and restore the buildings and improvements at the Premises in accordance with Paragraph 15. COUNTY shall have discretion not to restore the buildings and improvements if cost of repair is greater than 60% of the most recent appraisal value of the Leased Premises or where all of the buildings or improvements are 60% or more destroyed or made unusable and irreparable. COUNTY has right to all insurance proceeds.

2. **Comprehensive General and Automobile Liability Insurance.** This policy to include contractual and automobile liability coverage for owned, hired and non-owned vehicles with combined single limits for bodily injury and property damage of not less than One Million and 00/100 Dollars ($1,000,000.00);

3. **Workers' Compensation Insurance.** Workers' compensation insurance or a state-approved self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability Insurance with a limit of Two Hundred Fifty Thousand and 00/100 Dollars ($250,000.00), covering all persons providing services on behalf of the TENANT and all risks to such persons under this Lease.

4. **Environmental Liability Insurance.** Environmental liability insurance with a combined single limit of not less than One Million and 00/100 Dollars ($1,000,000.00) per occurrence.

5. **Fire Insurance.** Fire insurance with limits adequate to cover full cash value of TENANT's personal property, as well as TENANT's improvements, at the Premises.

6. **Rental Value.** Insurance against the loss of the full rental and other charges and fees payable by TENANT for one year. Said policy shall be in the name of the COUNTY, with loss payable to COUNTY.

B. **Special Insurance Requirements.** In addition to the insurance requirements set forth in Paragraph 7A, TENANT shall maintain the following types of insurance with the following minimum limits, if applicable to TENANT's use of the Premises, as indicated below.

1. If TENANT stores, repairs or provides any service to aircraft utilizing the Airport, then TENANT shall maintain **Hangar Keeper's Insurance** in such amounts as may be required to cover all aircraft hangared for others.

2. If TENANT owns, manages, or operates aircraft utilizing any COUNTY owned or managed Airport, then TENANT shall maintain **Aircraft Liability Insurance** with combined single limits of not less than One Million and 00/100 Dollars ($1,000,000.00) for bodily injury (including passengers), death and property damage; and

3. If TENANT manufactures, assembles, fabricates or installs any goods at the Premises, TENANT shall maintain the **Products and Completed Operations Liability Insurance** with combined single limits for bodily injury, death and property damage of not less than One Million and 00/100 Dollars ($1,000,000.00).

4. If TENANT constructs any improvements on or about the Premises, TENANT shall, provide or cause TENANT's contractor or subcontractors to furnish **Builders All-Risk Insurance** covering the entire building or improvements against loss or damage from the commencement of construction until completion. The Builder's All-Risk Insurance shall be in an amount for the replacement value of the subject building and improvements and endorsed for broad form property damage, breach of warranty, and explosions, collapse, and underground hazards.

The Deductible amount on the Builder's All-Risk Insurance shall not exceed five percent (5%) of the construction cost.

C. **Required Policy Provisions.** Each of the insurance policies which TENANT is required to procure and maintain as part of this Lease shall include the following provisions:

1. Additional Named Insured: All policies, except for the Workers' Compensation Insurance, shall contain additional insured endorsements naming the COUNTY and its officers, employees, agents and volunteers, and TENANT's LENDER (as hereinafter defined in Paragraph 11E), if any, as additional named insured with respect to claims arising out of TENANT's use and the occupancy of the Premises. COUNTY shall have no liability for any premiums charged for such additional insured coverage and the inclusion of COUNTY as an additional named insured is not intended to and shall not make COUNTY a partner or joint venturer with TENANT in TENANT's operations at Airport.

2. Waiver of Subrogation Rights: TENANT shall require the insurance carriers on each of the foregoing policies to waive all rights of subrogation against COUNTY, its officers, employees, agents, volunteers, contractors and subcontractors. If TENANT is self-insured, TENANT waives subrogation rights, and releases the COUNTY from liability for any loss or damage covered by said insurance.

3. Policies Primary and Non-Contributory: All required policies are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the COUNTY.

D. **Insurance Policies and Proof of Coverage.** All insurance required pursuant to this Lease shall be with carriers duly licensed to transact business in the State of California and maintaining during the applicable policy term a "General Policyholder's Rating" of at least A, VII, in the most current issue of "Best's Insurance Guide." TENANT shall furnish certificates of insurance to the COUNTY, evidencing all of the required insurance coverage, including endorsements, prior to the Commencement Date, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the COUNTY. TENANT shall maintain all of the required insurance from the Commencement Date until the completion of TENANT's occupancy of the Premises. TENANT shall furnish certified copies all insurance policies and all endorsements within thirty (30) days of the Commencement Date.

E. **Right to Review and Alter Insurance Requirements.** The foregoing insurance requirements are subject to periodic review by the COUNTY. The COUNTY's Risk Manager is authorized, but not required, to reduce or waive any of the above insurance requirements whenever the Risk Manager determines that the above insurance is not available, is unreasonably priced, or is not needed to protect the interests of the COUNTY. If in the Risk Manager's reasonable discretion, additional or different insurance is required to adequately protect the interests of COUNTY, or, that heretofore unreasonably priced or unavailable types of insurance

coverage or coverage limits become reasonably priced or available, the Risk Manager is authorized to change the foregoing insurance requirements, require additional types of insurance coverage or require higher coverage limits. Any change in insurance requirements must be reasonable in light of TENANT's current use of the Premises, past claims against the COUNTY, inflation, or any other item reasonably related to the COUNTY's risk. Any reduction or waiver of the required insurance, as well as any change requiring additional or different types of insurance coverage or higher coverage limits, must be memorialized by a written amendment to this agreement. TENANT agrees to execute any such amendment within thirty (30) days of receipt.

F. **Adequacy of Insurance Coverage.** COUNTY makes no representation that the limits of liability specified in this Paragraph 7 are adequate to protect TENANT's interests. In the event TENANT believes that such insurance coverage is insufficient, TENANT shall provide, at TENANT's sole cost and expense, such additional insurance as TENANT deems adequate. In no event shall the limits of any coverage maintained by TENANT pursuant to this Lease limit TENANT's liability under this Lease.

G. **Failure to Procure or Maintain Insurance.** All insurance required as part of this Lease must be maintained in force at all times by TENANT. Failure to maintain said insurance, due to expiration, cancellation, or for any other reason shall be cause for COUNTY to direct TENANT to immediately suspend all business activities at the Airport. Failure to reinstate said insurance within ten (10) days of TENANT's receipt of COUNTY's notice shall be cause for termination and forfeiture of this Lease. Alternatively, COUNTY, in COUNTY's sole discretion and without any obligation to do so, may procure or renew such insurance and pay any and all premiums in connection therewith. All monies paid by COUNTY on account of insurance coverage which TENANT is obligated to procure and maintain pursuant to this Lease, shall be paid by TENANT to COUNTY within ten (10) days of TENANT's receipt of COUNTY's written demand, regardless of whether COUNTY could withdraw such sums from the TENANT's Security Deposit.

H. **Liability for Premiums.** COUNTY shall have no liability for any premiums charged for such coverage(s). The inclusion of COUNTY as additional named insured is not intended to and shall not make COUNTY a partner or joint venturer with TENANT in TENANT's operations at Chino Airport.

8. **HOLD HARMLESS.** Except to the extent that indemnification is prohibited by law, TENANT shall defend, with counsel approved by COUNTY, indemnify and hold harmless COUNTY, its authorized officers, agents, volunteers and employees, from and against any and all claims, actions, losses, damages, costs, expenses, and/or liability arising out of this Lease from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the COUNTY on account of any claim therefore. Such causes include but are not limited to, acts, errors or omissions involving, or in connection with TENANT's use or occupancy of the Premises, the conduct of TENANT's business, TENANT's failure to perform or breach of any of the terms of this Lease or any act, omission, error or neglect of TENANT, TENANT's agents, contractors, employees or invitees. COUNTY shall cooperate with TENANT in the defense of any such claims.

9. **EXEMPTION OF COUNTY FROM LIABILITY.** COUNTY shall not be liable for any injury or damage to the person or property of TENANT, TENANT's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects in pipes, fire sprinklers, wires, appliances, plumbing systems, fixtures, air conditioning systems or lighting fixtures, or from any other cause, whether said injury or damage results from conditions arising upon the Premises or upon other portions of the Airport of which the Premises are a part or from other sources or places. COUNTY shall not be liable for any damages arising from any act or neglect of any other tenant at the Airport or from COUNTY's failure to enforce the provisions of any other lease at the Airport. Notwithstanding COUNTY's negligence or breach of this Lease, COUNTY shall not be liable for any injury to TENANT's business or any loss of income or profit therefrom, or for any consequential damages allegedly sustained by TENANT.

10. **TAXES, ASSESSMENTS AND LICENSES.** TENANT shall pay before delinquency any and all property taxes, assessments, fees, or charges, including but not limited to possessory interest taxes, which may be levied or assessed upon any personal property, improvements or fixtures installed or belonging to TENANT and located in or about the Premises. TENANT recognizes and understands that this Lease may create a possessory interest subject to property taxation and that the TENANT is obligated to pay and discharge such taxes. TENANT shall also pay all license or permit fees necessary or required by law for the conduct of TENANT's business or operation.

11. **IMPROVEMENTS.** TENANT may construct buildings or other improvements upon the Premises, or may alter, improve or modify the existing buildings and improvements situated at the Premises ("Improvements"), provided that said Improvements shall be approved in writing by COUNTY prior to the commencement of any work and provided further that all Improvements are completed in: (i) accordance with the plans and specifications (as defined on Exhibit "E") approved by COUNTY, (ii) a good and workmanlike manner, (iii) conformity with all county, city, state and federal regulations, any and all applicable permits and the Master Plan for the Airport. TENANT shall provide COUNTY with not less than ten (10) day's notice prior to the commencement of any work in, on or about the Premises so that COUNTY, at COUNTY'S option, may post a Notice of Non Responsibility as provided by law. All work shall be completed by duly licensed and insured contractors, which contractors shall be acceptable to COUNTY.

A. **Utilities and Utility Installations.** 1. **Utility Plans.** Upon TENANT's request, the COUNTY will provide TENANT or TENANT's architect with a plan showing the approximate location of known utility lines on or about the Premises ("Utility Plans"). TENANT understands that Utility Plans show only the approximate location of the utility lines at the Airport and that the Utility Plans are furnished to TENANT without any warranty or representation as to completeness or accuracy. COUNTY's delivery of the Utility Plans to TENANT shall not relieve TENANT of TENANT's obligation to locate all utilities and TENANT agrees that TENANT shall be responsible for determining the actual location of all utility lines.

2. **Utility Installations.** After obtaining COUNTY's consent and approval TENANT may extend any utility lines serving the Premises to the COUNTY approved points on the Premises. TENANT may also install such distribution panels and equipment, meters and other facilities and equipment as may be reasonably required to connect to the utilities serving the Premises ("Utility Installations"). TENANT agrees that all Utility Installations shall be constructed in accordance with provisions of this paragraph and that TENANT shall pay all costs associated with such Utility Installations, including but not limited to the extension and connection of said utilities. As additional consideration for this Lease, TENANT agrees that all extended Utility Installations shall become the COUNTY's property upon completion of the extension work. TENANT shall execute any documentation necessary to transfer the Utility Installations to the COUNTY. COUNTY shall not be required to reimburse TENANT for the cost of any of the foregoing work.

B. **Plans and Specifications.** Prior to the commencement of any construction at the Premises, TENANT shall provide COUNTY with a complete set of Working Plans and Specifications in compliance with Exhibit "E", for the proposed Improvements to the Premises and a proposed schedule for the construction of said improvements. COUNTY's review of TENANT's plans and specifications, as well as COUNTY's consent to the construction of the proposed Improvements, shall not constitute a representation of the adequacy of the plans or specifications or expose COUNTY to any liability. The Working Plans, Specifications and Construction Schedule prepared by TENANT and approved by COUNTY shall be attached to this Lease as Exhibit "F", Proposed Construction Plans. TENANT shall construct on the Premises, only those improvements shown on the Construction Plans. Said Construction Plans shall be the master plan for development of the Premises. All improvements and facilities depicted on the Construction Plans shall be constructed and completed within the time set forth on the construction schedule approved by COUNTY. Upon the completion of the construction of the improvements, TENANT, at its sole cost, shall prepare as-built plans for the Improvements and shall give three (3) copies of each as-built plan to COUNTY.

C. **Performance and Payment Bonds.** As a condition of COUNTY's consent to TENANT's proposed construction of any Improvements at the Premises, TENANT shall furnish a performance bond and a labor and material (payment) bond (if applicable to TENANT's requested improvements) to COUNTY prior to the Commencement of any construction. The bonds shall be issued by a surety qualified to do business in the State of California and shall be in an amount equal to one hundred percent (100%) of the estimated cost of construction. The bonds shall also name COUNTY as obligee and shall provide that in the event TENANT does not complete the proposed construction in accordance with the Construction Plans and/or Construction Schedule, the surety shall complete the construction or at COUNTY's option and upon COUNTY's demand shall return the parcel to grade. The Director is authorized, but not required, to accept substitute security under such terms and conditions as the Director determines, in lieu of the above performance, and labor and material bonds described in this paragraph.

D. **Cost of Construction.** All costs of construction shall be the sole responsibility of TENANT and shall be paid by TENANT when due. The TENANT shall conduct any construction program in such a manner so that no mechanic's liens or materialmen's liens shall

be asserted, or purportedly asserted, against the Premises or any improvements thereon. If any such lien shall be asserted, TENANT shall indemnify, defend and hold harmless COUNTY and the Premises in accordance with Paragraph 8, HOLD HARMLESS, of this Lease. If requested by COUNTY, in COUNTY's sole discretion, TENANT shall post a surety bond to release the Premises from any mechanic's liens recorded against the Premises. Said bond shall be issued by a surety qualified to do business in California and shall be in an amount prescribed by law.

E. **Construction Financing.** As part of the construction of the Improvements at the Premises, TENANT may encumber its leasehold interest in the Premises to a Lender furnishing construction financing to TENANT (or permanent financing to reimburse TENANT for the costs of construction), provided that COUNTY has consented to such encumbrance by executing a Consent of Hypothecation (the "County Consent"). The County Consent shall be in the form attached hereto as Exhibit "G", Consent to Hypothecation. The term "Approved Encumbrance" shall mean an encumbrance approved by the COUNTY by way of a County Consent. The term "LENDER" shall mean the owner and holder of an Approved Encumbrance.

1. Upon default by TENANT under any of the terms of an Approved Encumbrance, the LENDER may exercise any rights provided in such Approved Encumbrance, provided that before any sale of TENANT's leasehold interest, whether under power of sale or foreclosure, the LENDER shall give to COUNTY notice of the same character and duration as is required to be given to TENANT by the terms of the encumbrance or the laws of the State of California.

2. If any default shall continue after the giving of such notice, COUNTY, prior to sale of the leasehold, shall have the right to correct such default and initiate as action under Paragraph 21, DEFAULT AND RIGHT TO TERMINATE, to terminate this Lease. COUNTY shall pay to LENDER an agreed amount or the amount of principal, accrued interest and other charges which remain unpaid upon any termination pursuant to this Paragraph in exchange for deed of clear title.

3. If a sale or foreclosure under an Approved Encumbrance occurs or if the LENDER acquires the property by assignment in lieu of foreclosure, said purchaser or assignee, as a successor in interest to TENANT, will be bound by all the terms of this Lease and will assume all the obligations of TENANT hereunder. Any acquisition of the leasehold interest by a party other than LENDER (whether by purchase at judicial foreclosure proceedings, trustee's sale, or upon assignment from LENDER) shall be subject to COUNTY's written approval, which approval shall not be unreasonably withheld, provided that the proposed transferee's overall financial position is substantially as strong as TENANT's financial position as of the Commencement Date. Upon COUNTY'S approval of such transferee, LENDER shall no longer be liable for the performance of any of TENANT's obligations under this Lease and the transferee shall become the TENANT hereunder.

4. Any other terms applicable to any Approved Encumbrance which are acceptable to COUNTY and which are to be part of this Lease shall be attached to this Lease as Exhibit "H," Additional Lender Terms.

F. **Ownership of Improvements and Alterations.** All improvements and alterations constructed by TENANT on or about the Premises shall be the property of and owned by TENANT during the Term of this Lease, but shall be considered to be improvements to real property and shall become the property of COUNTY at the termination of this Lease, the expiration of the current term of the lease, or as otherwise provided herein. COUNTY may require the TENANT to remove, at any time, all or any part of any alterations or improvements made without COUNTY's consent.

12. **MAINTENANCE OF PREMISES.**

A. **Tenant's Obligation.** TENANT shall, at TENANT's sole cost and expense and at all times, keep the Premises and every part thereof in good order, condition and repair (whether or not such portion of the Premises requiring repair, or the means of repairing the same, are reasonably or readily accessible to TENANT, and whether or not the need for such repairs occurs as a result of TENANT's use, any prior use, the elements or the age of the Premises). Without limiting the generality of the foregoing, TENANT shall maintain all equipment or facilities specifically serving the Premises, such as plumbing, heating, air conditioning, ventilating, electrical, lighting facilities, boilers, fired or unfired pressure vessels, fire sprinkler systems, fire hose connections, and ramp areas, but excluding any items which are the responsibility of COUNTY to maintain pursuant to Paragraph 12.B. below. TENANT's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon in good order, condition and state of repair. TENANT, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices. If the sewer lines and water lines serving the Premises and maintained by TENANT are causing problems with the main lines, COUNTY reserves the right to assume the maintenance of said lines and invoice TENANT for the cost of such maintenance. TENANT agrees to reimburse COUNTY for all costs incurred by COUNTY in connection with the maintenance of TENANT's sewer and/or water lines within ten (10) days of COUNTY's demand. Should TENANT fail to perform any of TENANT's maintenance obligations, COUNTY may enter upon the Premises, after ten (10) days' prior written notice to Lessee (except in the case of an emergency, in which case no notice shall be required), and perform such obligations on TENANT's behalf. If COUNTY performs any of TENANT's maintenance obligations, such maintenance shall be at TENANT's sole cost and expense and TENANT shall reimburse COUNTY for all costs incurred by COUNTY within ten (10) days of COUNTY's demand. TENANT acknowledges that the Premises are located at an airport and that the control of potential damage to aircraft utilizing the Airport ("Foreign Object Damage") is of utmost importance. TENANT, in performing TENANT's maintenance obligations, shall maintain the Premises and implement such maintenance procedures as are required to eliminate the risk of Foreign Object Damage.

B. **County's Obligation.** COUNTY shall maintain all access routes to the Premises and COUNTY's water mains and main sewer lines. COUNTY shall, procure and maintain a maintenance contract with a contractor specializing and experienced in the inspection, maintenance and service of the COUNTY owned heating, ventilation and air conditioning

systems ("HVAC Systems") for the HVAC Systems at the Premises or shall provide maintenance by a qualified COUNTY employee.

C. **Surrender and Restoration of the Premises.** TENANT shall surrender the Premises at the end of the last day of the Term or any earlier termination date, clean and free of debris and in good operating order, condition and state of repair, ordinary wear and tear excepted. Ordinary wear and tear shall not include any damage or deterioration that could have been prevented by good maintenance practice or by TENANT performing all of its obligations under this Lease. TENANT's obligation shall include the repair of any damage occasioned by the installation, maintenance or removal of TENANT's trade fixtures, furnishings, equipment, as well as the removal of any storage tank installed by or for TENANT, and the removal, replacement, or remediation of any soil, material or ground water contaminated by TENANT, all as may then be required by any applicable law, ordinance or regulation and/or good practice.

D. **Utilities.** TENANT understands and agrees that provision of all utilities, including but not limited to, electrical, water, gas, telephone, refuse collection, sewage disposal, etc., shall be the responsibility of the TENANT. TENANT shall coordinate all utility connections with COUNTY, and TENANT shall assume all costs involved with said connections, all costs for services thereafter and maintenance within the leased premises.

13. ASSIGNMENT AND SUBLETTING.

A. **County's Consent Required.** TENANT shall not voluntarily or by operation of law, assign TENANT's interest in this Lease, in the Premises or in any options contained in this Lease, nor sublease, all or any part of the Premises, nor allow any other person or entity (except TENANT's authorized representatives) to occupy or use all or any part of the Premises, without first obtaining COUNTY's written consent. Except as provided in Paragraph 11, IMPROVEMENTS, TENANT shall not encumber TENANT's interest in this Lease or the Premises. Any assignment, sublease or encumbrance without COUNTY's consent shall be voidable and, at COUNTY's election, shall constitute a default under this Lease. COUNTY's consent to any assignment, sublease or encumbrance shall not constitute a waiver of COUNTY's right to require consent to any subsequent assignment or sublease. For the purposes of this paragraph, the following events shall be deemed to be an assignment requiring COUNTY's prior written consent:

The transfer, on a cumulative basis, of twenty-five percent (25%) or more of the voting control of TENANT shall constitute an assignment requiring COUNTY's consent; and (2) the involvement of TENANT or TENANT's assets in any transaction, or series of transactions (whether by way of merger, sale, acquisition, financing, transfer, or otherwise) which results or which will result in a reduction of a TENANT's Net Worth, (as hereinafter defined), by an amount equal to or greater than twenty-five percent (25%) of TENANT's Net Worth as of the Commencement Date, or as of the date of the most recent assignment to which COUNTY has consented, or which exists immediately prior to said transaction or transactions, shall be considered an assignment of this Lease by TENANT and requiring COUNTY's consent. For the purposes of this Lease, the term "Net Worth" shall be the Net Worth of TENANT established under generally accepted accounting principles consistently applied.

B. **Terms and Conditions Applicable To Assignment and Subletting.** The following provisions shall apply to any sublease or assignment pursuant to this Lease:

1. Irrespective of COUNTY's consent, any assignment or sublease shall not: (i) be effective without the express written assumption by such assignee or sublessee of all of TENANT's obligations under this Lease; (ii) release TENANT of any of its obligations hereunder; (iii) alter the primary liability of TENANT for the payment of the Minimum Monthly Rent and other sums due COUNTY pursuant to this Lease or for the performance of any of TENANT's other obligations under this Lease; nor (iv) alter, discharge or release the liability of any Guarantor on this Lease.

2. Each request for consent to an assignment or sublease shall be in writing, and shall be accompanied by the following: (i) the current financial statements of the proposed assignee or sublessee (ii) information related to the responsibility and appropriateness of the proposed assignee or sublessee; and (iii) information related to the intended use of the Premises by the proposed assignee or sublessee TENANT agrees to pay all costs incurred by COUNTY in reviewing TENANT's request and to provide COUNTY with such other and/or additional information and/or documentation as COUNTY may reasonably require in connection with TENANT's request.

3. If any prior adjustment to Minimum Monthly Rent pursuant to Paragraph 5.A. Annual Consumer Price Index Adjustment, was limited by virtue of the maximum amount set forth in paragraph 5.C., COUNTY may require that the Minimum Monthly Rent payable under this Lease be readjusted without regard to the maximum amount set forth in Paragraph 5.C. as a condition of COUNTY's consent.

4. As a further condition to COUNTY giving its consent to any sublease, COUNTY may at its sole discretion require that fifty percent (50%) of all rent received by TENANT from its subtenants in excess of the Minimum Monthly Rent payable by TENANT to COUNTY under this Lease shall be paid to COUNTY, and if the TENANT sublets only a portion of the Premises, that the foregoing adjustment shall be applicable only to the portion of the Premises utilized by subtenant.

5. COUNTY may require TENANT to increase the amount of the Security Deposit set forth on the Reference Pages as part of COUNTY's consent to any assignment or subletting. TENANT agrees to execute an amendment confirming the adjustment to the Minimum Monthly Rent or increase of the Security Deposit as part of COUNTY's consent to any assignment or sublease.

C. **Assignment of Rents.** TENANT irrevocably assigns to COUNTY, as security for TENANT's obligations under this Lease, all rent due TENANT from any subletting of all or a part of the Premises pursuant to this Lease, and COUNTY, as assignee and as attorney-in-fact for TENANT, may collect such rent and apply it toward TENANT's obligations under this

Lease, except that until the occurrence of a Default by TENANT, TENANT shall have the right to collect such rent.

14. **COUNTY'S ENTRY ON PREMISES.**

A. COUNTY and its authorized representatives shall have the right to enter the Premises at all reasonable times for any of the following purposes:

1. To determine whether the Premises are in good condition and whether TENANT is complying with its obligations under this Lease;

2. To do any necessary maintenance and to make any restoration to the Premises that COUNTY has the right or obligation to perform;

3. To serve, post, or keep posted any notices required or allowed under the provisions of this Lease;

4. To post "for sale" signs at any time during the Term and to post "for rent" or for lease" signs during the last six (6) months of the Term or during any period while TENANT is in default;

5. To show the Premises to brokers, agents, prospective buyers, or other persons interested in the purchase of the Premises at any time during the Term;

6. To show the Premises to brokers, agents, prospective tenants and other persons interested in leasing the Premises during the last six (6) months of the Term;

7. To shore the foundations, footings, and walls of the building and other improvements that are a part of the Premises, if any excavation or other construction is undertaken or is about to be undertaken on any adjacent property or nearby street; to erect scaffolding and protective barricades around and about the Premises, and to do any other act or thing necessary for the safety or preservation of the Premises or the building and other improvements in which the Premises are located, provided that COUNTY's actions do not prevent entry to the Premises. COUNTY's rights under this provision extends to the owner of the adjacent property on which excavation or construction is to take place and the adjacent property owner's authorized representatives.

B. COUNTY shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of COUNTY's entry on the Premises as provided in this paragraph, except for property damage resulting from the negligent acts or omissions of COUNTY or its authorized representatives. TENANT shall not be entitled to an abatement or reduction of rent if COUNTY exercises any rights reserved in this paragraph. COUNTY shall conduct COUNTY's activities on the Premises pursuant to this paragraph in a manner that will cause the least possible inconvenience, annoyance, or disturbance to TENANT.

15. **DAMAGE OR DESTRUCTION OF PREMISES.** In the event any of the buildings, structures or improvements erected on the Premises are damaged or destroyed during the term of this Lease, COUNTY shall repair and restore such buildings, structures or improvements to the original condition prior to said damage or destruction, except as set forth herein. However if the Premises are part of a multi tenant building, structure or improvement, then the repair or restoration of the building, structure or improvement shall be governed by paragraph 15.A. Damaged or destroyed buildings, structures or improvements that are owned by TENANT shall be repaired or restored by TENANT at the sole cost of TENANT. The obligation of the COUNTY to repair or restore buildings, structures or improvements shall not exceed available insurance proceeds. COUNTY shall have a right not to repair and restore when the buildings or improvements are 60% or more destroyed or made unusable or irreparable or when the cost of repair is greater than 60% of the most recent appraisal value. COUNTY shall also have the right to terminate this Lease when damage or destruction exceeds 60%. TENANT or COUNTY, as appropriate, shall commence the repair and restoration of the Premises within forty-five (45) days of the event causing such damage or destruction and shall diligently prosecute such work until completion. All proceeds of any property insurance maintained by TENANT pursuant to this Lease shall be used to repair and restore the Premises, and for no other purpose, without COUNTY's express written consent. TENANT shall comply with all the procedures set forth in Paragraph 11 IMPROVEMENTS as part of TENANT's repair and restoration work. If TENANT fails to commence the repair or restoration work in a timely manner, or fails to diligently prosecute such work, or fails to comply with the requirements of paragraph 11, IMPROVEMENTS, COUNTY shall have the right to terminate this Lease under Paragraph 21, DEFAULT AND RIGHT TO TERMINATE.

A. **Multi Tenant Buildings and Improvements.** If the Premises are part of a multi-tenant building or improvement, COUNTY shall be obligated to repair or restore the Premises, unless the damage or destruction is the result of the negligence or willful misconduct of TENANT, in which case TENANT shall repair and/or restore the Premises in accordance with the preceding paragraph. If COUNTY is obligated to repair and/or restore the Premises, COUNTY shall commence the work within ninety (90) days of the event causing the damage or destruction and shall diligently prosecute such work. Notwithstanding the foregoing, if COUNTY is obligated to repair or restore the buildings of improvements which contain the Premises and the completion of the repair and restoration work is estimated to take in excess of six (6) months, or the damage or destruction occurs with the last twelve (12) months of the Term, COUNTY shall have the right to terminate this Lease on thirty (30) days written notice to TENANT. COUNTY's notice of termination shall be given within ninety (90) days following the event causing the damage or destruction. If COUNTY is obligated to repair or restore the building in which the Premises is located and COUNTY fails to commence the work within ninety (90) days of the event causing such damage or construction, TENANT may, at any time prior to COUNTY's commencement of such repair or restoration work, give written notice to COUNTY of TENANT's election to terminate this Lease on a date not less than sixty (60) days following the date of such notice. If TENANT gives COUNTY such notice and COUNTY fails to commence the repair or restoration work within thirty (30) days of COUNTY's receipt of such TENANT's notice of TENANT's election to terminate, this Lease shall terminate as of the date specified in TENANT's notice. If COUNTY commences the repair or restoration work within thirty (30) days following the receipt of TENANT's notice, this Lease shall continue in full force and effect.

B. **Commencement of the Work.** As used in this paragraph, the phrase "commencement of the work" shall mean either the unconditional authorization for the preparation of the required plans, or the beginning of the actual work on the Premises, whichever occurs first.

C. **Abatement of Rent.** If the Premises are part of a multi-tenant building and the building is damaged or destroyed during the Term and TENANT is not legally responsible for such damage or destruction, the Minimum Monthly Rent due from by TENANT under this Lease shall be abated in proportion to the degree to which TENANT's use of the Premises is impaired during the period of repair or restoration, provided, however the amount of any abated rent shall not exceed the proceeds of the insurance required under Paragraph 7.A. which apply to abatement of rent.

16. **CONDUCT OF EMPLOYEES.** TENANT shall be responsible for the conduct of its employees, invitees, subtenants, contractors and agents on the entire Airport property.

17. **ERECTION OF SIGNS.** TENANT may erect signs on the Premises or the structures on the Premises, but erection or application of said signs shall be allowed only with the written permission of the COUNTY. All signs shall be approved by COUNTY and shall be erected in conformity with the County and City codes, ordinances, and policies with regard to signage.

18. **AIRPORT DEVELOPMENT.** COUNTY, at its sole discretion, shall determine and may from time to time change the routes of surface ingress and egress to the Premises, but agrees to locate such routes as conveniently as may be done for TENANT, having in mind the reasonable requirements of COUNTY with respect to the operation of the Airport. COUNTY also reserves the right to further develop or improve the Airport as it sees fit, regardless of the desires or views of the TENANT and without interference or hindrance. COUNTY, at COUNTY's sole expense, on at least ninety (90) days prior written notice, may require a tenant to move from the Premises to other space of comparable size at the Airport in order to facilitate the development of the Airport or to consolidate the space leased to other tenants of the Airport. In the event of any such relocation, COUNTY will pay all expenses associated with preparing the new premises so that such premises will be substantially similar to the Premises from which TENANT is moving. COUNTY will also pay the TENANT's reasonable moving expenses. In such event, this Lease and each and all of the Terms, Covenants and Conditions contained herein shall remain in full force and effect and shall be deemed applicable to such new space, except that the Reference Pages and Exhibit Page to this Lease shall be revised to reflect the location of the new premises. As an alternative to such relocation, TENANT shall have the right to terminate this Lease if TENANT so desires.

19. **SPECIAL USE COVENANTS AND RESTRICTIONS.**

A. **Right of Flight.** COUNTY, its successors and assigns, hereby reserves for the use and benefit of the public a right of flight for the passage of aircraft in the airspace above the surface of the Premises, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft. TENANT agrees not to make any claim or institute legal

action against COUNTY under any theory of recovery for any interference with TENANT's use and enjoyment of the Premises which may result from the operation of aircraft to or from the Airport.

B. **Noninterference With Aircraft.** TENANT, by accepting this Lease expressly agrees for itself, its successors and assigns, that it will not make use of the Premises in any manner which might interfere with the landing and/or taking off of aircraft from the Airport, or any part therein or otherwise constitute a hazard to navigation on the use of the Airport by aircraft. In the event the aforesaid covenant is breached, the COUNTY reserves the right to enter upon the Premises and cause the abatement of such interference at the sole cost and expense of the TENANT.

C. **Federal Aviation Administration Requirements.** TENANT agrees to conform to all applicable federal, state and county rules and regulations and to further conform to any and all requirements or regulations of the Federal Aviation Administration as may be applicable to the TENANT and the TENANT's use of the PREMISES.

D. **Hazardous Substances.**

1. **Definitions.** The following terms shall have the meanings set forth in this paragraph:

a. **Applicable Requirements** shall mean all laws, rules, regulations, ordinances, directives, covenants, easements and restrictions of record, permits, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of COUNTY's engineers and/or consultants, relating in any manner to the Premises now in effect or which may hereafter come into effect.

b. **Hazardous Substance** shall mean any product, substance, chemical, material or waste whose presence, nature, quantity and/or intensity of existence, use, manufacture, disposal, transportation, spill, release or effect, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, or the environment, or the Premises; (ii) regulated or monitored by any governmental authority; or (iii) a basis for potential liability of COUNTY to any governmental agency or third party under any Applicable requirements or common law theory. Hazardous Substance shall include, but not be limited to aviation fuel, hydrocarbons, petroleum products, gasoline, crude oil or any products or by-products thereof.

c. **Reportable Use** shall mean the installation or use of any above or below ground (i)storage tank; (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority; and (iii) the presence in, on or about the Premises of a Hazardous Substance with respect to which any Applicable Requirements require that a notice be given to persons entering or occupying the Premises or neighboring properties.

2. **Tenant's Covenants.** TENANT, at its sole cost, shall comply with any and all the Applicable Requirements with respect to Hazardous Substances, including but not limited to the following:

(i) California Health & Safety Code, Chapters 6.5, Hazardous Waste Control (inclusive); 6.7, Underground Storage of Hazardous Substances (inclusive); and 6.95, Hazardous Materials Release Response Plans and Inventory (inclusive);

(ii) California Code of Regulations Title 22, Division 4, Chapter 30; Title 23, Chapter 3, Subchapter 16, Underground Storage Tank Regulations; and

(iii) San Bernardino County Code, Division 3, Chapters 1, 2, 3 and 7, Hazardous Materials and Toxics Control, and 8, Waste Management.

TENANT shall not engage in any activity in or about the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of COUNTY and compliance in a timely manner (at TENANT's sole cost and expense) with all Applicable Requirements. Notwithstanding the foregoing, TENANT may, without COUNTY's prior consent, but upon notice to COUNTY and in compliance with all Applicable Requirements, use any ordinary and customary materials reasonably required to be used by TENANT in the normal course of the Use set forth on the Reference Pages, so long as such use is not a Reportable Use and does not expose the Premises or neighboring properties to any meaningful risk of contamination or damage or expose COUNTY to any liability therefor. COUNTY may (but without any obligation to do so) condition its consent to any Reportable Use of any Hazardous Substance by TENANT upon TENANT's giving COUNTY such additional assurances as COUNTY, in the reasonable discretion of the Director of Airports, deems necessary to protect itself, the public, the Premises and the environment against damage, contamination or injury and/or liability therefor, including, but not limited to, the installation (and, at COUNTY's option, and TENANT's sole cost and expense) of reasonably necessary protective modifications to the Premises and/or the deposit of an additional Security Deposit under Paragraph 7 hereof. TENANT shall not cause or permit any Hazardous Substance to be spilled or released in, on, under or about the Premises (including, without limitation, through the plumbing or sanitary sewer system).

3. **Duty to Inform Lessor.** If TENANT knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises or the Airport, other than as previously consented to by COUNTY, TENANT shall immediately give COUNTY notice thereof, together with a copy of any statement, report, notice, registration, application, permit, business plan, license, claim, action, or proceeding given to, or received from, any governmental authority or private party concerning the presence, spill, release, discharge of, or exposure to, such Hazardous Substance including, but not limited to, all such documents as may be involved in any Reportable Use involving the Premises to be followed up in writing within two (2) days. TENANT will provide to COUNTY, prior to the termination of this Lease agreement, a soil test and a fuel tank test that will indicate if any leakage has occurred from any tank located on or under the Premises and used by TENANT. If any leakage is found,

TENANT shall repair the tanks and remove any contaminated soil at TENANT's sole cost and expense.

4. **Indemnification.** TENANT shall indemnify, protect, defend and hold COUNTY, its agents and employees, and the Premises, harmless from and against any and all damages, liabilities, judgments, costs, claims, liens, expenses, penalties and loss of permits (including COUNTY's attorneys' and consultants' fees) arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee or by anyone under Lessee's control. TENANT's obligations under this Paragraph shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by TENANT, and the cost of investigation (including consultants' and attorneys' fees and testing), removal, remediation, restoration and/or abatement thereof, or of any contamination therein involved, and shall survive the expiration or earlier termination of this Lease. No termination, cancellation or release agreement entered into by COUNTY and TENANT shall release TENANT from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by COUNTY in writing at the time of such agreement.

E. **Continuous Use.** The TENANT covenants and agrees that TENANT shall operate and conduct in compliance with minimum standards that may be promulgated by COUNTY within the Premises, those activities noted in the use section of the Reference Pages, continuously and uninterruptedly, during normal business hours, without the written consent of COUNTY. Notwithstanding the foregoing, TENANT shall not be obligated to operate TENANT's business while Premises are untenable by reason of fire or other casualty or while TENANT is prevented from conducting TENANT's business due to an Act of God, governmental authority, or other matters beyond TENANT's control.

F. **Priority of Agreements with United States.** This Lease shall be subordinate to the provisions and requirements of any existing or future agreement between the COUNTY and the United States relative to the development, operation or maintenance of the Airport.

G. **Licenses and Certifications.** TENANT agrees that before commencing any use of or business operations at the Premises, TENANT will acquire, provide and maintain those notices, certifications, licenses, approvals and permits required by any federal, state or local jurisdiction or authority for carrying out the purpose of this Lease. Failure to comply with this provision will constitute a default and right to terminate by COUNTY under subparagraph 21, DEFAULT AND RIGHT TO TERMINATE of this Lease.

H. **Rules and Regulations.** TENANT agrees to abide by, keep and observe all minimum standards, reasonable rules and regulations which COUNTY may make from time to time for the management, safety, care, cleanliness of the grounds, parking areas, and the preservation of good order, as well as for the convenience of other tenants, occupants, or visitors to the Airport.

I. **Auctions.** TENANT shall not conduct, nor permit to be conducted, either voluntarily or involuntary, any auction upon the Premises without COUNTY's prior written consent. Notwithstanding Paragraph 25 with regard to reasonableness, COUNTY shall not be obligated to exercise any standard of reasonableness in determining whether to consent to any requested auction.

J. **Reservation of Right to Use Roof Areas.** COUNTY reserves all right to use the roof of any building or improvement situated on the Premises for the installation of signs, antennae and/or other communications equipment, provided that COUNTY's use of the roof does not unreasonably interfere with TENANT's use of the Premises. COUNTY shall be entitled to all revenues received as the result of result of such signs, antennae and/or communications equipment.

20. **CONDEMNATION.** If the Premises or any part thereof are taken under the power of eminent domain, this Lease shall terminate as to the part so taken as of the date the condemning authority takes possession thereof. In such event, the rent shall be reduced in the proportion that the floor area (or other surface area), taken bears to the total floor area (or other surface area), prior to the taking. If more than twenty percent (20%) of the floor area of the buildings or the Premises or more than fifty percent (50%) of the surface area leased to TENANT but not occupied by any building, is taken by condemnation, TENANT may, at TENANT's option, and upon securing approval of the LENDER identified under Paragraph 11, IMPROVEMENTS, terminate this Lease. If TENANT elects to exercise its option to terminate this Lease pursuant to this paragraph, TENANT shall give written notice of termination to COUNTY within thirty (30) days after the condemning authority takes such possession and this Lease shall terminate sixty (60) days thereafter. If TENANT does not exercise TENANT's right to terminate this Lease, then the rent payable shall be reduced as set forth above and this Lease shall remain in full force and effect. Any compensation awarded as damages for the taking of the Premises or COUNTY owned improvements, together with any severance damage, shall be the sole property of the COUNTY, except that any compensation awarded for TENANT's improvements, trade fixtures, equipment and moving costs shall be paid to TENANT or TENANT's LENDER if any.

21. **DEFAULT AND RIGHT TO TERMINATE.**

A. **Definitions.** A "Default" by TENANT shall refer to any failure by TENANT to observe, comply with or perform any of the terms, covenants, conditions or rules applicable to TENANT under this Lease. The term "Breach" shall refer to the occurrence of any one or more of the following Defaults, and, where a grace period for cure after notice is specified herein, the failure of TENANT to cure such Default prior to the expiration of the applicable grace period:

(i) TENANT's unexcused failure to conduct TENANT's business at the Premises in accordance with the terms of this Lease including but not limited to the failure to comply with the limitations of use of the Premises.

(ii) Vacating the Premises without the evident intention to reoccupy same, an abandonment of the Premises, or notice of intent to abandon Premises expressed in written notice.

(iii) TENANT's failure to make any payment of Minimum Monthly Rent, Commercial Charges and Fees, or any other monetary payment required to be made by TENANT hereunder as and when due, the failure of TENANT to provide COUNTY with reasonable evidence of insurance or surety bond required under this Lease, or TENANT's failure to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of three (3) days, or such reasonable time as agreed by COUNTY, following written notice thereof by or on behalf of COUNTY to TENANT.

(iv) The failure by TENANT to provide COUNTY with reasonable written evidence (in duly executed original form, if applicable) (in compliance with minimum standards that may be promulgated by COUNTY) of (a) compliance with Applicable Requirements per Paragraph 19.D, (b) the inspection, maintenance and service contracts required under Paragraph 12.A, (c) the rescission of an unauthorized assignment or subletting per Paragraph 13, (d) the guaranty of the performance of TENANT'S obligations under this Lease if required by the Reference Pages, or (e) any other documentation or information which COUNTY may reasonably require of TENANT under the terms of this Lease, where any such failure continues for a period of ten (10) days following written notice by or on behalf of COUNTY to TENANT.

(v) A Default by TENANT as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 19.H. hereof that are to be observed, complied with or performed by TENANT in compliance with minimum standards that may be promulgated by COUNTY, other than those described in subparagraphs 21.A.(i) through (iv) inclusive, where such Default continues for a period of thirty (30) days after written notice thereof by or on behalf of COUNTY to TENANT; provided, however, that if the nature of TENANT's Default is such that more than thirty (30) days are reasonably required for its cure, then it shall not be deemed to be a Breach of this Lease by TENANT if TENANT commences such cure within said thirty (30) day period and thereafter continuously and diligently prosecutes such cure to completion.

(vi) A Default by TENANT as to the terms of any Approved Encumbrance, where such Default continues for a period of thirty (30) days after written notice thereof by or on behalf of COUNTY;

(vii) The occurrence of any of the following events: (a) the making by TENANT of an assignment for the benefit of creditors; (b)TENANT's becoming a "debtor" as defined in 11 U.S. Code Section 101 or any successor statute thereto (unless, in the case of a petition filed against TENANT, the same is dismissed within sixty (60) days); (c) the appointment of a trustee or receiver to take possession of substantially all of TENANT's assets located at the Premises or of TENANT's interest in this Lease, where possession is not restored to TENANT within thirty (30) days; or (d) the attachment, execution or other judicial seizure of

substantially all of TENANT'S assets located at the Premises or of TENANT's interest in this Lease, where such seizure is not discharged within thirty (30) days.

(viii) The discovery by COUNTY that any financial statement of TENANT or of any Guarantor, given to COUNTY by TENANT or any GUARANTOR, was materially false; or TENANT'S default pursuant to Paragraph 35.B .

(ix) If the performance of TENANT's obligations under this Lease is guaranteed: (a) the death of a Guarantor, (b) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (c) a Guarantor's becoming insolvent or the subject of a bankruptcy filing, or (d) a Guarantor's refusal to honor the guaranty, and TENANT'S failure, within sixty (60) days following written notice by or on behalf of COUNTY to TENANT of any such event, to provide COUNTY with written alternative assurances of security, which, when coupled with the then existing resources of TENANT, equals or exceeds the combined financial resources of TENANT and the Guarantors that existed at the time of execution of this Lease.

B. **Remedies.**

1. Other than as provided in Paragraph 21.A., if TENANT fails to perform any affirmative duty or obligation of TENANT under this Lease, within ten (10) days after written notice to TENANT (or in case of an emergency, without notice), COUNTY may at its option (but without obligation to do so), perform such duty or obligation on TENANT's behalf, including, but not limited to, the obtaining of reasonably required, insurance policies, or governmental licenses, permits or approvals. The costs and expenses of any such performance by COUNTY shall be due and payable by TENANT to COUNTY within ten (10) days of COUNTY's demand.

2. In the event of a Breach of this Lease by TENANT (as defined in Paragraph 21.A), with or without further notice or demand, and without limiting COUNTY in the exercise of any right or remedy which COUNTY may have by reason of such Breach, COUNTY may:

(a) Terminate TENANT's right to possession of the Premises by any lawful means, in which case this Lease and the term hereof shall terminate and TENANT shall immediately surrender possession of the Premises to COUNTY. In such event COUNTY shall be entitled to recover from TENANT: (i) the worth at the time of the award of the unpaid rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the TENANT proves could have been reasonably avoided; (iii) 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 rental loss that the TENANT proves could be reasonably avoided; and (iv) any other amount necessary to compensate COUNTY for all the detriment proximately caused by the TENANT's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely

to result therefrom, including, but not limited to, the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by COUNTY in connection with this Lease and applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco or the Federal Reserve Bank District in which the Premises are located at the time of award plus one percent (1%). COUNTY's attempt to mitigate damages caused by TENANT's Default or Breach of this Lease shall not waive COUNTY's right to recover damages under this Paragraph 21.B. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, COUNTY shall have the right to recover in such proceeding the unpaid rent and damages as are recoverable therein, or COUNTY may reserve the right to recover all or any part thereof in a separate suit for such rent and/or damages.

(b) Continue the Lease and TENANT'S right to possession in effect under California Civil Code Section 1951.4 after TENANT'S Breach and recover the rent as it becomes due, provided TENANT has the right to sublet or assign, subject only to reasonable limitations. COUNTY and TENANT agree that the limitations on assignment and subletting in this Lease are reasonable. COUNTY's maintenance of the Premises or efforts to relet the Premises, or the appointment of a receiver to protect the COUNTY's interest under this Lease, shall not constitute a termination of the TENANT'S right to possession.

(c) Pursue any other remedy now or hereafter available to COUNTY under the laws or judicial decisions of the State of California.

3. If, at any time TENANT is in default in monthly rent or fees or any other provision for forty-five (45) days, or if TENANT defaults on any provision(s) three (3) times within any twelve (12) consecutive months, COUNTY may terminate this Lease on ten (10) days notice.

C. **Survival of Indemnity Provisions.** The expiration or termination of this Lease and/or the termination of TENANT's right to possession shall not relieve TENANT from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the Term or by reason of TENANT's occupancy of the Premises.

D. **Tenant's Personal Property.** Immediately upon termination of this Lease, TENANT covenants and agrees to remove and properly dispose of all of TENANT's personal property, machinery or fixtures from the Premises. If TENANT fails to remove any such personal property, COUNTY may remove such personal property and place the same in storage at the expense of TENANT and without liability to COUNTY for losses. TENANT agrees to pay COUNTY for all expenses incurred by COUNTY in connection with the removal, and storage charges of TENANT's personal property, including attorney's fees and court costs. Alternatively, COUNTY may at its option and on not less than ten (10) days written notice to TENANT sell all or any part of said personal property at public or private sale for such prices as COUNTY may obtain. COUNTY shall apply the proceeds of any such sale to the amounts due from TENANT under this

Lease and to any expense incidental to such sale. Any surplus arising from such sale shall be refunded to TENANT.

E. **No Waiver by County.** COUNTY's receipt of any rent or of any other sum of money paid by TENANT after the termination and forfeiture of this Lease, or after the giving by COUNTY of any notice to effect such termination, shall not waive the Default, reinstate, continue or extend the Term of this Lease, or destroy or impair the efficacy of COUNTY's notice of termination, unless otherwise agreed in writing by COUNTY. COUNTY's acceptance of the keys to the Premises or any other act of the COUNTY or its agents or employees during the Term of this Lease shall not be deemed to be an acceptance or a surrender of the Premises, unless otherwise agreed in writing by COUNTY.

F. **Recapture of Inducement.** COUNTY's agreement for free or abated rent or other charges applicable to the Premises, or for the giving or paying by COUNTY to or for TENANT of any cash or other bonus, inducement or consideration for TENANT's entering into this Lease, all of which concessions are hereinafter referred to as "Inducement Provisions" shall be deemed conditioned upon TENANT's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon the occurrence of a Breach (as defined in Paragraph above) of this Lease by TENANT, any such Inducement Provisions shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration therefore abated, given or paid by COUNTY under such an Inducement Provision shall be immediately due and payable by TENANT to COUNTY, and recoverable by COUNTY, as additional rent due under this Lease. The acceptance by COUNTY of rent or the cure of the Breach which initiated the operation of this paragraph shall not be deemed a waiver by COUNTY of the provisions of this Paragraph, unless specifically agreed in writing by COUNTY.

22. **HOLDING OVER.** If the TENANT continues in possession of the Premises after the expiration of the Term or after any termination of this Lease prior to the expiration of the Term, and if said occupancy is with the consent of the COUNTY, then TENANT shall be deemed to be holding the Premises on a month-to-month tenancy subject to all the provisions of this Lease. The Minimum Monthly Rent payable during such period of holding over shall be subject to the same adjustments set forth in Paragraph 5.

23. **TIME OF ESSENCE.** Except as otherwise specifically provided, time is of the essence for each provision of this Lease which specifies a time within which performance is to occur. In the absence of any specified time for performance, performance may be made within a reasonable time.

24. **PROVISIONS ARE COVENANTS AND CONDITIONS.** All provisions, whether covenants or conditions, on the part of either party, shall be deemed to be both covenants and conditions.

25. **CONSENT.** Whenever consent or approval of either party is required, that party shall not unreasonably withhold such consent or approval.

26. **EXHIBITS.** All exhibits referred to in this Lease or attached to this Lease are incorporated herein by reference.

27. **LAW.** This Lease shall be construed and interpreted in accordance with the laws of the State of California.

28. **RESERVED.**

29. **ATTORNEYS' FEES AND COSTS.** If any legal action is instituted to enforce or declare any party's rights hereunder, each party, including the prevailing party, must bear its own costs and attorneys' fees. This paragraph shall not apply to those costs and attorneys' fees directly arising from any third party legal action against a party hereto and payable under Paragraph 8, HOLD HARMLESS, or payable on account of TENANT's violation of Paragraph 19.D.

30. **VENUE.** The parties acknowledge and agree that this Lease was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue for any action or claim brought by any party to this Lease will be San Bernardino County. Each party hereby waives any law or rule of court which would allow them to request or demand a change of venue. If any action or claim concerning this Lease is brought by any third party, the parties hereto agree to use their best efforts to obtain a change of venue to the San Bernardino District of San Bernardino County.

31. **CAPTIONS, TABLE OF CONTENTS AND COVER PAGE.** The paragraph captions, table of contents and the cover page of this Lease shall have no effect on its interpretation.

32. **NOTICES.** Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party, including but not limited to, notices required under the California unlawful detainer statutes, or any other person, shall be in writing and either served personally or sent by prepaid, first-class mail to the other party at the address listed in the Reference Pages. Any such notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be addressed to the other party. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated two (2) working days from the time of mailing if mailed as provided in this paragraph to the addresses set forth on the Reference Pages.

33. **OPTION TO EXTEND TERM.** In the event the Reference Pages provide that TENANT is given one or more options to extend the Term, the following provisions shall apply:

A. **Tenant's Option Notice.** TENANT shall notify COUNTY of TENANT's intention to exercise TENANT's option to extend the Term of this Lease by giving written notice of the exercise of the option ("Option Notice") to COUNTY at least three (3) months, but not more than six (6) months, before the expiration of the current term (unless otherwise provided).

B. **Options Personal to Original TENANT.** Each option granted to TENANT in this Lease is personal to the original TENANT and cannot be voluntarily or involuntarily assigned or exercised by any person or entity other than said original TENANT, while the original TENANT is in full and actual possession of the Premises without the written consent of the COUNTY.

C. **Effect of Default on Options.** If TENANT is in Default on the date of giving the Option Notice, TENANT shall have no right to exercise any Option and the Option Notice shall be totally ineffective. If TENANT is in Default on the date the extended term is to commence, the extended term shall not commence and this Lease shall expire at the end of the current Term. Further, TENANT understands and agrees that if TENANT is in default described in Paragraph 21.A. or if TENANT is in default in monthly rent or fees or any other provision for forty-five (45) days, or if TENANT defaults on any provision(s) three (3) times within any twelve (12) consecutive months, COUNTY, in its sole discretion, may reject the exercise of TENANT's option, and such rejection shall be deemed a reasonable withholding of consent and shall be binding on the TENANT, TENANT's assignees, and/or LENDER .

D. **Multiple Options.** In the event that TENANT has multiple options to extend this Lease, a later option cannot be exercised unless the prior options to extend this Lease have been validly exercised and/or consented to.

E. **Minimum Monthly Rent.** The Minimum Monthly Rent, for the extended term, shall initially be set at the Fair Market Rental identified in the then most current appraisal pursuant to the COUNTY'S adopted procedures for PROPERTY REAPPRAISAL ADJUSTMENT as set forth in Exhibit"D", without regard for the limitations set forth in Paragraph 5, and adjusted in accordance with Paragraph 5.A., up to and including the commencement date of the extended term. The Minimum Monthly Rent for the extended term shall be adjusted and/or reestablished in accordance with Paragraph 5.A., Annual Consumer Price Index Adjustment thereafter.

34. **RECORDATION OF LEASE.** TENANT shall not record this Lease, or a short form memoranda of this Lease without the prior written consent of COUNTY. If COUNTY consents to the recordation of this Lease, TENANT shall pay all charges incident to such recording.

35. **GUARANTOR.**

A. **Form of Guaranty.** If the Reference Pages provide that TENANT's obligations pursuant to this Lease are to be guaranteed by one or more Guarantors, then each Guarantor shall execute the form of the guaranty attached hereto as Exhibit "I" "Guaranty" and each such Guarantor shall have the same obligations as TENANT under this Lease.

B. **Additional Obligations of Guarantor.** It shall constitute a Default of the TENANT under this Lease if any of TENANT's Guarantor fails or refuses, upon reasonable request by COUNTY to give: (i) evidence of the due execution of the guaranty required by this Lease, including the authority of the Guarantor (and of the party signing on Guarantor's behalf) to

obligate such Guarantor on said guaranty, and resolution of its board of directors authorizing the making of such guaranty, together with a certificate of incumbency showing the signatures of the persons authorized to sign on its behalf, (ii) current financial statements of Guarantor as may from time to time be requested by COUNTY, or (iii) written confirmation that the Guaranty is still in effect.

36. **SEVERANCE.** If any provision of this Lease is determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this Lease and all such other provisions shall remain in full force and effect. It is the intention of the parties hereto that if any provision of this Lease is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

37. **SURVIVAL.** The obligations of the parties, which by their nature continue beyond the term of this Lease, will survive the termination of this Lease.

38. **REPRESENTATIONS AND AUTHORITY.** If TENANT is a corporation, each of the persons executing this Lease on behalf of TENANT represents or warrants that TENANT has been and is qualified to do business in the State of California, that the corporation has full right and authority to enter into this Lease, and that all persons signing on behalf of the corporation were authorized to do so by the appropriate corporate actions. If TENANT is a partnership, limited liability company, trust or other legal entity, each of the persons executing this Lease on behalf of TENANT represents or warrants that TENANT has complied with all applicable laws, rules and governmental regulations relative to its right to do business in the State of California and that all persons signing on behalf of such entity were authorized to do so by any and all appropriate actions. TENANT agrees to furnish upon COUNTY's request a corporate resolution, or other appropriate documentation evidencing the authorization of TENANT to enter into this Lease.

39. **DISCLOSURE.** All information received by the COUNTY from any source concerning this Lease, including the Lease itself, may be treated by the COUNTY as public information subject to disclosure under the provisions of the California Public Records Act, Government Code Section 6250 et seq. (the "Public Records Act"). TENANT understands that although all materials received by the COUNTY in connection with this contract are intended for the exclusive use of the COUNTY, they are potentially subject to disclosure under the provisions of the Public Records Act. In the event a request for disclosure of any part or all of any information which a TENANT has reasonably requested COUNTY to hold in confidence is made to the COUNTY, the COUNTY shall notify the TENANT of the request and shall thereafter disclose the requested information unless the TENANT, within five (5) days of receiving notice of the disclosure request, requests nondisclosure, provides COUNTY a legally sound basis for the nondisclosure, and agrees to indemnify, defend, and hold the COUNTY harmless in any/all actions brought to require disclosure. TENANT waives any and all claims for damages, lost profits, or other injuries of any and all kinds in the event COUNTY fails to notify TENANT of any such disclosure request and/or releases any information concerning the contract received from the TENANT or any other source.

40. **INTERPRETATIONS.** As this Lease was jointly prepared by both parties, the language in all parts of this Lease shall be construed, in all cases, according to its fair meaning, and not for or against either party hereto.

41. **ENTIRE AGREEMENT.** This agreement, including recitals, constitutes a single, integrated contract, expressing the entire agreement and understanding of the parties concerning the subject matter of this agreement, and this agreement supersedes and replaces all prior understandings, negotiations, proposed agreements and agreements, whether oral or written, express or implied.

42. **AMENDMENT.** No waiver, modification or amendment of any term condition or provision of this Lease shall be valid or shall have any force or effect unless made in writing and signed by all of the parties hereto. This provision shall not apply to amendment of such Lease pursuant to Paragraph 5 or 7.

43. **NO RELIANCE.** In entering into this agreement, each of the parties acknowledges, represents and warrants that it has not relied upon any promise, statement or representation, express or implied, of any other party or such other party's agents, employees, or attorneys, not contained in this agreement.

44. **SIGNATURES.** All parties to this Lease represent that the signators executing this document are fully authorized to enter into this agreement.

IN WITNESS THEREOF, the parties executed this agreement.

COUNTY OF SAN BERNARDINO:

By_____

Date_____

TENANT:

By_____
(Print Name)

Title

Date_____

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

DENA SMITH, Clerk of the Board of Supervisors

By_____
Deputy

Date_____

APPROVED AS TO LEGAL FORM:

RONALD D. REITZ, County Counsel
San Bernardino County, California

By_____
Fiona G. Luke, Deputy County Counsel

Date_____

EXHIBIT "B"

COMPUTATION OF RENTAL FEES

_____ sq. ft. @ $_____ per square foot	$ _____	
_____ aircraft parking areas @ $_____	$ _____	
Subtotal	$_____	**(per month per Paragraph 4)**
Water & Sewer	$ 94.00	**(per month per Paragraph 12D.)**
TOTAL PAYMENT*	$_____	

*** Also see Exhibit "C", Commercial Charges & Fees.**

EXHIBIT "C"

COMMERCIAL CHARGES AND FEES

1. TENANT shall pay COUNTY two percent (2%) of adjusted gross revenue from business activities conducted on the premises, said payments to be made monthly, one (1) month in arrears.

   "Gross revenue" is defined as the total revenue received from all business activities conducted on the premises by TENANT and/or its subtenants pursuant to this lease. "Adjusted gross revenue" is defined as gross revenue minus the following: Minimum monthly rent under this lease, revenue received from items in paragraphs 2-6 below, and sales taxes paid by TENANT due to business activities pursuant to this lease.

   In no event shall adjusted gross revenue be less than zero (0) in computing the amount due on adjusted gross revenue. In no event shall any negative amount, less than zero (0), of adjusted gross revenue be carried forward to any subsequent month.

2. TENANT shall pay COUNTY six point five cents (6.5¢) per gallon on all aviation fuel delivered to TENANT on the airport.

3. TENANT shall pay COUNTY seven point five cents (7.5¢) per quart on all aviation oil delivered to TENANT on the airport.

4. TENANT shall pay COUNTY six point five cents (6.5¢) per gallon on all jet fuel delivered to TENANT on the airport.

5. TENANT shall pay COUNTY one percent (1%) of gross sales for new/used aircraft owned by TENANT.

6. TENANT shall pay COUNTY three percent (3%) of commissions received for brokerage of aircraft owned by individuals other than the TENANT.

   When submitting payment for the commercial charges and fees, TENANT shall submit a monthly report of all commercial charges and fees, and shall identify the source of said charges and fees. This report shall be prepared in the format contained in Exhibit "D-1", Monthly Commercial Charges and Fee Statement.

EXHIBIT "C-1"

MONTHLY COMMERCIAL CHARGES AND FEE STATEMENT

TENANT: _____

LEASE NO.: _____

FOR THE MONTH OF _____

GROSS REVENUE RECEIVED $_____

Adjustments:

a. . . . . Minimum Monthly Rent	$ ____.
b. . . . . Aviation Fuel Sales	$ ____.
c. . . . . Aviation Oil Sales	$ ____.
d. . . . . Jet Fuel Sales	$ ____.
e. . . . . Aircraft Gross Sales	$ ____.
f. . Aircraft Broker Commissions	$ ____.
g. . . . Sales Taxes	$ ____.

TOTAL ADJUSTMENTS (Lines a through g) $_____

Adjusted Gross Revenue (Gross Revenue Received Less Total Adjustments) $_____*

*(If less than zero, enter zero (0) on Line 1, "Adjusted Gross Revenue" below.)

PAYMENT CALCULATION	AMOUNT
1. Adjusted Gross Revenue: $_____ @ two percent (2%)	$_____
2. Aviation Fuel Delivered: _____ Gallons @ 6.5¢/gallon	$_____
3. Aviation Jet Fuel Delivered: _____ Gallons @ 6.5¢/gallon	$_____
4. Aviation Oil Delivered: _____ Quarts @ 7.5¢/quart	$_____
5. Aircraft Gross Sales: $_____ @ one percent (1%)	$_____
6. Aircraft Broker Commissions: $_____ @ three percent (3%)	$_____

EXHIBIT "C-1", continued

TOTAL PAYABLE TO COUNTY (Total of Lines 1 through 6) $_____

I HEREBY CERTIFY THE ABOVE STATEMENTS TO THE BEST OF MY KNOWLEDGE ARE TRUE AND CORRECT.

Signed: _____ Date _____
(TENANT)

EXHIBIT "D"

Property Reappraisal Procedure

Property Reappraisal Adjustment. The Minimum Monthly Rent set forth in Paragraph 4, as adjusted by Paragraph 5.A., shall be reestablished on the exercise of any option to extend the term of this Lease to be effective with the commencement date of such option period, hereafter referred to as the Property Reappraisal Date, to the Fair Market Rental of the Premises. The term "Fair Market Rental" shall mean the most probable monthly lease rate, in terms of money, which the Premises, including only those improvements thereon owned by COUNTY, would bring if exposed for lease in the open market, with a reasonable time allowed to find a tenant, leasing with full knowledge of the highest and best use for the Premises and after consideration of the current requirements of COUNTY, Airport Department and the FAA. Fair Market Rental shall be reestablished in accordance with terms, conditions and procedure set forth in this paragraph.

1. **Appraisal Procedure.** If COUNTY elects to utilize an airport wide appraisal, the appraisal may, but need not be, divided into various geographical, use or other zones and into various categories of improved and unimproved types of properties. Unless otherwise agreed by the parties, the appraisal shall be made by a senior designated member of a nationally recognized professional appraisal association that examines its designated members. The association shall be a member of the Appraisal Foundation and subscribe to the Uniform Standards of Professional Appraisal Practice. The appraiser may also be an employee of the appraising party provided that the appraiser meets the above criteria. In accomplishing the appraisal and determining Fair Market Rental for the Premises, the appraiser shall:

a. Use a valuation date ("Valuation Date") six (6) months prior to the Property Re-appraisal Date;

b. Apply appropriate approaches to valuation which shall include at a minimum, Cost Analysis and Market Comparison.

c. Determine the Fair Market Rental as of the Valuation Date.

The return on investment rate used to establish the Fair Market Rental rate, shall be the greater of ten percent (10%) or the discount rate plus four percent (4%) as announced by the Federal Reserve Bank of San Francisco to be in effect on the Valuation Date.

2. **County Notification.** Prior to the Property Reappraisal Date, COUNTY shall notify TENANT of the new Minimum Monthly Rent to be effective on the Property Reappraisal Date. The new Minimum Monthly Rent shall be based upon the Fair Market Rental determined in accordance with the Appraisal Procedure set forth above, provided, however, that the new Minimum Monthly Rent shall not be less than the Minimum Monthly Rent payable immediately prior to the Property Reappraisal Date. TENANT shall pay the new Minimum Monthly Rent commencing on the Property Reappraisal Date, unless and until changed by an amendment to this Lease or the Arbitrator's Decision (as defined and provided below). TENANT's failure to timely

pay the Minimum Monthly Rent shall waive TENANT's rights to object to the new Minimum Monthly Rent and elect arbitration. Further, TENANT's failure to provide any of the notices or information set forth below in a timely manner shall waive TENANT's rights under 3. TENANT'S Right to Object and Appraise the Premises. All time limits concerning TENANT's obligations pursuant to this paragraph shall be strictly construed.

3. **Tenant's Right to Object and Appraise the Premises.**

(a) **Notice of Objection.** In the event TENANT does not agree with the new Minimum Monthly Rent established in accordance with the appraisal procedure set forth above, then TENANT shall notify COUNTY of TENANT's disagreement within thirty (30) calendar days of TENANT's receipt of COUNTY's notice to TENANT setting the new Minimum Monthly Rent. Concurrently with TENANT's notice of objection to COUNTY, TENANT shall provide COUNTY with TENANT's proposal with respect to the new Minimum Monthly Rent for the Premises. Upon COUNTY's receipt of TENANT's notice and proposal for the new Minimum Monthly Rent, COUNTY and TENANT shall meet and attempt to agree on the Minimum Monthly Rent. TENANT's failure to timely notify COUNTY of TENANT's disagreement with the new Minimum Monthly Rent or failure to provide COUNTY with an alternative proposal for the Minimum Monthly Rent, shall waive TENANT's rights to appraise the Premises and elect binding arbitration.

(b) **Tenant's Appraisal.** If within thirty (30) days of COUNTY's receipt of TENANT's notification and proposal with respect to Minimum Monthly Rent, COUNTY and TENANT have not reached an agreement for the new Minimum Monthly Rent, then TENANT shall have the right, at TENANT's sole cost, to conduct its own appraisal of the Premises to determine the Fair Market Rental ("Tenant's Appraisal"). TENANT shall complete its appraisal and deliver a complete copy of the appraisal to COUNTY, within one hundred and twenty (120) calendar days after TENANT's receipt of COUNTY's notice to TENANT reestablishing the Minimum Monthly Rent. Failure of TENANT to timely complete and deliver its appraisal to COUNTY shall waive TENANT's rights to appraise the Premises and elect binding arbitration. Within ten (10) days of COUNTY's receipt of a complete copy of TENANT's appraisal. COUNTY shall deliver a complete copy of its appraisal to TENANT, if COUNTY has not already done so. COUNTY may, but COUNTY shall not be obligated to, provide TENANT with a copy of or access to its appraisal, prior to COUNTY's receipt of a complete copy of the TENANT's Appraisal. Within the thirty (30) days following COUNTY's receipt of TENANT's Appraisal, COUNTY and TENANT shall meet and attempt agree on the Fair Market Rental and the Minimum Monthly Rent.

4. **Tenant's Right to Elect Arbitration.** If within thirty (30) days of COUNTY's receipt of a complete copy of TENANT's appraisal, TENANT and COUNTY have not reached agreement with respect to Minimum Monthly Rent, TENANT shall (after the thirty (30) days have passed) have the right to elect binding arbitration on the issue of Fair Market Rental by giving COUNTY notice of its election to arbitrate within sixty (60) days following COUNTY's receipt of a complete copy of TENANT's appraisal. Failure of TENANT to timely so notify COUNTY of TENANT's election to arbitrate shall waive TENANT's right to arbitration. The arbitration shall be conducted in accordance with the following procedures:

a. **Selection of Arbitrator.** Within thirty (30) days of COUNTY's receipt of TENANT's notice of election of arbitration, the appraiser who prepared COUNTY's appraisal and the appraiser who prepared TENANT's appraisal shall select an arbitrator to arbitrate the issue of Fair Market Rental. The arbitrator shall be an appraiser familiar with properties in San Bernardino County and specifically airport properties, and who meets the qualifications prescribed herein. Further, the arbitrator must: (i) not be currently employed by either party; (ii) be willing to perform the binding arbitration as set forth herein; and (iii) charge fees which are reasonable and customary for appraisers in San Bernardino County. As soon as the arbitrator is selected, the appraisers shall provide COUNTY and TENANT with the name, address, and estimated fee to be charged by the arbitrator, in writing. If the two appraisers are unable to agree on the selection of an arbitrator, the arbitrator shall be selected by the president of the Appraisal Foundation.

b. **Submissions to the Arbitrator.**

(1) TENANT shall, within ten (10) days of its receipt of the notice of appointment of the arbitrator, pay the arbitrator's estimated fee and deliver to the arbitrator an exact duplicate of the complete appraisal the TENANT previously supplied to COUNTY. TENANT shall also, within five (5) days of complying with the above, notify COUNTY of its compliance. Failure of TENANT to timely pay the arbitrator's estimated charge, provide its appraisal to the arbitrator, and notify COUNTY of the same, shall constitute a waiver of TENANT's right to proceed with arbitration.

(2) COUNTY shall, within thirty (30) days of its receipt of TENANT's notice that the arbitrator's estimated fee has been paid and TENANT's appraisal has been delivered to the arbitrator, deliver to the arbitrator an exact duplicate of the complete appraisal the COUNTY previously supplied to TENANT. Failure of COUNTY to timely provide its appraisal to the arbitrator shall constitute a waiver of COUNTY's right to have the arbitrator consider its appraisal and the arbitrator shall select the TENANT's appraisal.

(3) The parties shall not add to, delete or in any way amend their own appraisal after they have given each other complete copies thereof. Further, neither party shall make any comment on, rebut, or supply any information or other evidence about the other party's appraisal to the arbitrator.

c. **Arbitration Procedure.** The arbitrator shall review both appraisals and select the one which in the arbitrator's professional opinion should be used to set the Fair Market Rental. In making the selection, the arbitrator shall act within the powers and limitations set forth below:

(i) The arbitrator may, but is not required to, make an on-site inspection of the Premises and its environs, subject to subparagraph (ii) below;

(ii) The arbitrator shall not have the power to question either party, their employees, or any third persons concerning the Premises, nor to receive and/or demand any information or other evidence from either party, their employees or any third persons beyond the

respective appraisals and a copy of this Lease, except as required to ascertain the location of the Premises if an on-site inspection is made under subparagraph (i) above;

(iii) The arbitrator shall not make an appraisal of the Premises;

(iv) The arbitrator shall select one of the parties' appraisals and may not make any other decision, recommendation or modifications;

(v) The arbitrator shall notify both parties of his selection within thirty (30) days of receiving both appraisals (the "Arbitrator's Decision"). The Arbitrator's Decision shall be in writing and shall state only that both appraisals were reviewed, an on-site inspection was or was not made, and which appraisal should be used to set the Fair Market Rental. The arbitrator shall not give any reason(s) for the Arbitrator's Decision.

d. **Adjustments based on Arbitrator's Decision.**

(1) In the event the COUNTY's appraisal is selected, the TENANT shall continue to pay the Minimum Monthly Rent established by the property appraisal performed by COUNTY unless the Arbitrator's Decision was made before the Property Reappraisal Date, in which case TENANT shall commence to pay the new Minimum Monthly Rent on the Property Reappraisal Date. COUNTY and TENANT shall not be reimbursed for any costs associated with establishing the Minimum Monthly Rent and TENANT shall pay all of the arbitrator's fees and costs.

(2) In the event TENANT's appraisal is selected, the Minimum Monthly Rent shall be adjusted in accordance with the TENANT's Appraisal as of the Property Reappraisal Date, provided however that the Minimum Monthly Rental shall not be less than the Minimum Monthly Rental for the month immediately preceding the Property Reappraisal Date. In the event the Arbitrator's Decision was made after the Property Reappraisal Date and TENANT paid the Minimum Monthly Rent based upon the COUNTY's appraisal as of the Property Reappraisal Date in accordance with this Lease, any excess rent payments shall be credited to future rents payments due from TENANT until TENANT is repaid in full. Further, the amount TENANT paid the arbitrator for the Arbitrator's estimated charge shall be credited to future rent payments due from TENANT until TENANT is repaid in full. Neither COUNTY or TENANT shall be reimbursed for the cost of their appraisals or other costs associated with establishing the Minimum Monthly Rent. COUNTY shall pay any arbitrator's fee if in excess of the estimated charge.

5. It is the intent of the parties that the appraisal and arbitration process set forth above shall be the exclusive remedy available to TENANT to challenge the Minimum Monthly Rent established for this Lease and shall be binding on the parties unless vacated as provided for by Code of Civil Procedure Section 1285 et seq. Further, the arbitration process set forth above and arbitration in general is not to be used to resolve any other issue, beyond the determination of fair market rental under this Lease.

6. Should COUNTY fail to do an appraisal to reestablish the Minimum Monthly Rent and give TENANT notice of the reestablished Minimum Monthly Rent before the

Property Reappraisal Date, COUNTY may thereafter complete an appraisal, which shall use the same Valuation Date, to reestablish the Minimum Monthly Rent. In such case, TENANT shall immediately commence to pay the reestablished Minimum Monthly Rent on the day TENANT receives notice of the new Minimum Monthly Rent, but shall not be liable for any increase in Minimum Monthly Rent from the Property Reappraisal Date until the notice was received. Any such delay in reestablishing the Minimum Monthly Rent shall not result in any alteration or delay of the next scheduled Property Reappraisal Date, nor shall any such delay alter or delay the next scheduled CPI Adjustment Date.

EXHIBIT "E"
DEFINITION OF PLANS

A. **Schematic Plans**

Schematic Plans shall include a site layout of all land and drainage flow areas showing uses, buildings, landscape development, and other features, schematic floor plans of all structures, simple elevations of buildings, architectural theme, and a detailed description of improvements and methods of operation, and a general outline specification indicating materials and methods of construction, and an estimate of the total cost of improvements planned.

B. **Preliminary Plans**

Preliminary plans shall consist of the following:

1. A detailed site plan of all land and water areas showing all improvements planned for the site. This plan shall include any easements set forth in the lease, location of all utilities, drainage plan and grade elevations of all structures;

2. Floor plans, elevations, and sections of all structures;

3. Finalized landscape development plans with horticulture palette and irrigation plans;

4. Complete outline specifications to cover all phases of the work;

5. A detailed cost estimate of all improvements;

6. Exterior color scheme; and

7. Colored rendering or model.

C. **Working Drawings**

These shall consist of the following:

1. Complete architectural, landscape, and engineering working drawings;

2. Complete specifications; and

3. Construction schedule.

EXHIBIT "G"
CONSENT TO HYPOTHECATION

The COUNTY OF SAN BERNARDINO, hereinafter referred to as "COUNTY" and _____ hereinafter referred to as "TENANT", entered into a Lease Agreement dated _____, hereinafter after referred to as "Lease", covering certain real property located in the County of San Bernardino, State of California, hereinafter referred to as "Demised Premises".

By use of the following documents which are attached hereto and made a part hereof, and hereinafter collectively referred to as "Documents", TENANT proposes to hypothecate its leasehold estate created under said Lease:

These documents are for financing related to leasehold development of said Demised Premises.

On this _____ day of _____, _____, COUNTY hereby consents to the execution, delivery, and recordation of the above stated documents subject to the following terms and conditions:

1. That _____, hereinafter referred to as "LENDER", shall fully reconvey all interest in said real property upon repayment of the loan described in the loan document since the sole purpose of the hypothecation of the subject leasehold estate is to secure the loan amount for LENDER.

2. Except as otherwise provided herein, the above-referenced documents and any other future additional instruments which may be approved by COUNTY or its agents, shall be subject to each and every covenant, condition, and restriction set forth in said Lease, and to all rights and interest of the COUNTY therein, none of which are or shall be waived by this Consent.

3. In the event of any conflict between the provisions of said Lease and the provisions of said documents, the provisions of said Lease shall control.

4. Any additions or modifications to said financing documents shall first be approved by the COUNTY. TENANT warrants that all documents and agreements pertaining to the hypothecation of its leasehold have been fully disclosed to COUNTY.

5. The proceeds of the loan to TENANT shall be used solely for payment of expenses incident to construction on the Demised Premises of the improvements allowed under paragraph 14, CONSTRUCTION OR IMPROVEMENT, of the Lease and describe in the loan documents.

COUNTY OF SAN BERNARDINO

► _____

Date: _____

NAME OF TENANT

By ► _____

(Authorized signature - sign in blue ink)

Name: _____

Title: _____

Date: _____

APPROVED AS TO LEGAL FORM

RONALD D. REITZ, County Counsel
San Bernardino County, California

By _____
FIONA G. LUKE, Deputy County Counsel

Date: _____

EXHIBIT "I"
GUARANTY OF LEASE

This Guaranty of Lease ("Guaranty") dated as of _____ *[date]* is executed by _____ *[guarantor's name, including capacity, if appropriate]* ("Guarantor") in favor of Landlord, County of San Bernardino ("Landlord").

Recitals

A. Landlord and _____ *[tenant's name, including capacity, if appropriate]* ("Tenant") have entered into a lease dated as of _____ [*date-identify as Lease referenced date or execution date*] ("Lease"), whereby Landlord agreed to lease to Tenant and Tenant agreed to lease from Landlord the premises located at _____ *[address of leased premises]* more particularly described in Exhibit A to the Lease, to which the Guaranty is attached.

B. As a condition to entering into the Lease, Landlord has required that Guarantor execute and deliver to Landlord this Guaranty.

In consideration of Landlord entering into the Lease of the Premises to Tenant, Guarantor covenants and agrees as follows:

Section 1. Guaranty.

Guarantor absolutely and unconditionally guarantees to Landlord the timely payment of all amounts that Tenant may at any time owe under the Lease, or any extensions, renewals, or modifications of the Lease. Guarantor further guarantees to Landlord the full, faithful, and timely performance by Tenant of the Lease, or any extensions, renewals, or modifications of the Lease. If Tenant shall default at any time in the payment of any rent or any other sums, costs, or charges, or in the performance of any covenant or obligation under the Lease, then Guarantor, at Guarantor's expense, shall on demand by Landlord fully and promptly pay all rent, sums, costs, and charges to be paid and perform all other covenants and obligations to be performed by Tenant pursuant to the Lease. In addition, and not withstanding any contrary language in the Lease, Guarantor shall on demand by Landlord pay to Landlord all sums due to Landlord, including, without limitation, all interest on past due obligations of Tenant, costs advanced by Landlord, damages, and all expenses (including, without limitation, court costs and reasonable attorney fees) that may arise in consequence of Tenant's default.

Section 2. Waivers.

Guarantor authorizes Landlord, without notice or demand and without affecting Guarantor's liability under this Guaranty, to:

(a) consent to any extensions, accelerations, or other changes in the time for any payment provided for in the Lease, or consent to any other alteration of any covenant, term, or condition of the Lease in any respect, and to consent to any assignment, subletting, or reassignment of the Lease;

(b) take and hold security for any payment provided for in the Lease or for the performance of any covenant, term, or condition of the Lease, or exchange, waive, or release any security; and

(c) apply this security and direct the order or manner of its sale as Landlord may determine. Notwithstanding any termination, renewal, extension or holding over of the Lease, this Guaranty of Lease shall continue until all of the covenants and obligations on the part of Tenant to be performed have been fully and completely performed by Tenant and Guarantor shall not be released of any obligation or liability under this Guaranty so long as there is any claim against Tenant arising out of the Lease that has not been settled or discharged in full.

Section 3. Independent Obligations.

The obligations of Guarantor under this Guaranty are independent of, and may exceed, the obligations of Tenant. A separate action may, at Landlord's option, be brought and prosecuted against Guarantor, whether or not any action is first or subsequently brought against Tenant, or whether or not Tenant is joined in any action, and Guarantor may be joined in any action or proceeding commenced by Landlord against Tenant arising out of, in connection with, or based upon the Lease. Guarantor waives any right to

(a) require Landlord to proceed against Tenant or any other person or entity or pursue any other remedy in Landlord's power;

(b) complain of delay in the enforcement of Landlord's rights under the Lease; and

(c) require Landlord to proceed against or exhaust any security held from Tenant or Guarantor. Guarantor waives any defense arising by reason of any disability or other defense of Tenant or by reason of the cessation from any cause of the liability of Tenant. Guarantor waives all demands upon and notices to Tenant and to Guarantor, including, without limitation, demands for performance, notices of nonperformance, notices of non-payment, and notices of acceptance of this Guaranty of Lease.

Section 4. Definition of Tenant.

For purposes of this Guaranty of Lease and the obligations and liabilities of Guarantor, the term "Tenant" shall be deemed to include any and all concessionaires, licensees, franchisees, department operators, assignees, subtenants, or others directly or indirectly leasing or occupying the Premises leased under the Lease or operating or conducting a business in or from these Premises.

Section 5. No Reporting Duty.

Guarantor assumes full responsibility for keeping fully informed of the financial condition of Tenant and all other circumstances affecting Tenant's ability to perform Tenant's obligations under the Lease, and agrees that Landlord will have no duty to report to Guarantor any information that Landlord receives about Tenant's financial condition or any circumstances bearing on Tenant's ability to perform such obligations.

Section 6. Continuing Guaranty.

This Guaranty shall remain in full force notwithstanding the appointment of a receiver to take possession of all or substantially all of the assets of Tenant, or an assignment by Tenant for the benefit of creditors, or any action taken or suffered by Tenant under an insolvency, bankruptcy, reorganization, moratorium, or other debtor relief act or statute, whether now existing or later amended or enacted, or the disaffirmance of the Lease in any action or otherwise.

Section 7. Joint and Several Obligations.

If this Guaranty of Lease is signed, or if the obligations of Tenant are otherwise guaranteed, by more than one party, their obligations shall be joint and several, and the release or limitation of liability of any one or more of the guarantors shall not release or limit the liability of any other guarantors.

Section 8. Successors and Assigns.

This Guaranty of Lease shall be binding upon Guarantor and Guarnator's heirs, administrators, personal and legal representatives, successors, and assigns, and shall inure to the benefit of Landlord and Landlord's successors and assigns. Landlord may, without notice, assign this Guaranty of Lease, the Lease, or the rents and other sums payable under the Lease, in whole or in part.

Section 9. Guaranty of Costs and Fees.

In addition to the amounts guaranteed, Guarantor agrees to pay reasonable attorney fees and all other costs and expenses incurred by Landlord in enforcing this Guaranty of Lease or in any action or proceeding arising out of, or relating to, this Guaranty of Lease.

Section 10. Governing Law

This Guaranty of Lease shall be deemed to be made under and shall be governed by California law in all respects, including matters of construction, validity, and performance, and the terms and provisions of this Guaranty may not be waived, altered, modified, or amended except in a writing signed by an authorized officer of Landlord and by Guarantor.

Section 11. Severance.

If any of the provisions of this Guaranty of Lease shall contravene or be held invalid under the laws of any jurisdiction, this Guaranty of Lease shall be construed as if it did not contain those provisions, and the rights and obligations of the parties shall be construed and enforced accordingly.

Section 12. Counterparts.

This Guaranty of Lease may be executed in any number of counterparts, each of which shall be a valid and binding original, but all of which together shall constitute one and the same instrument.

Guarantor has executed this Guaranty as of the date first written above.

_____

[Guarantor's name, including capacity, if appropriate, and signature]

Attach Exhibit A

EXHIBIT B - LIST OF FORMER COUNTY EMPLOYEES

EXHIBIT B

LIST OF FORMER COUNTY OFFICIALS

INSTRUCTIONS: List the full name of the former COUNTY Administrative Official, the title/description of the Official's last position with the COUNTY, the date the Official terminated COUNTY employment, the Official's current employment and/or representative capacity with the CONTRACTOR, the date the Official entered CONTRACTOR's employment and/or representation.

OFFICIAL'S NAME: **REQUIRED INFORMATION**