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MASTER DEVELOPMENT AGREEMENT

by and between

RENO-TAHOE AIRPORT AUTHORITY

and

DP RTA Stead, LLC, a Delaware limited liability company

dated as of *DECEMBER 8*, 2016

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## DEVELOPMENT AGREEMENT

THIS MASTER DEVELOPMENT AGREEMENT (this "Development Agreement") is made and entered into as of the 8<sup>th</sup> day of *DECEMBER*, 2016, by and between the RENO-TAHOE AIRPORT AUTHORITY ("Authority"), a quasi-municipal corporation existing under the laws of the State of Nevada (the "State") and DP RTA Stead, LLC, a limited liability company ("Developer"), duly organized and validly existing under the laws of the state of Delaware and authorized to do business in the State. Capitalized words and terms in these preambles, unless stated otherwise or unless the context dictates otherwise, shall have the meanings given to them in Article 1 hereof.

### RECITALS:

WHEREAS, Authority is a quasi-municipal corporation organized and existing under Chapter 474, of Nevada Revised Statutes ("NRS") (as amended from time to time (the "Act")); and

WHEREAS, Authority is authorized and empowered to maintain, own and lease land for the development of projects, including facilities and activities which promote the purposes set forth in the Act; and

WHEREAS, Authority has and may exercise all powers necessary and convenient for carrying out the aforesaid purposes, including but not limited to (1) constructing, improving, leasing and maintaining projects, (2) making contracts of every name and nature necessary or convenient for carrying out projects and (3) doing all acts and things necessary or convenient for carrying out and exercising the purposes of and the powers granted under the Act; and

WHEREAS, Authority owns and operates the Reno-Stead Airport (the "Airport"), which is located in the City of Reno, Washoe County, Nevada, containing 5,000 acres and operated as a general aviation airport; and

WHEREAS, the Project (as defined herein) will provide material economic benefits to the Authority and its surrounding communities; and

WHEREAS, the Project will consist of the development of approximately 1,700-3,000 acres of certain land as set forth in Exhibit A for the construction, operation and/or maintenance of office buildings, flex office buildings, Aeronautic Use, manufacturing, industrial and other approved uses, including all supporting infrastructure necessary for the operation of such uses, including but not limited to roadways, parking areas, curbs, gutters, drainage facilities, water, sewer, gas, telephone, high speed data cables and other utilities sufficient for the same (collectively the "Improvements"); and

WHEREAS, Developer will develop the Project, will enter into a Ground Lease with the Authority with respect to each Phase of the Project and will enter into subleases in each respective Phase to subtenants. Developer will also have the right to sell, mortgage or otherwise transfer its interests in the Improvements as and to the extent allowed pursuant to the terms

hereof except to the extent Infrastructure Improvements are dedicated by the parties to utility providers in accordance with Section 4.6 hereof; and

WHEREAS, in accordance with the terms and conditions of this Development Agreement, Authority and Developer desire to enter into this Development Agreement to undertake the development of the Project; and

WHEREAS, the Recitals set forth herein are incorporated as if more fully set out in the Development Agreement.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants, agreements and conditions set forth herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, Authority and Developer agree as follows:

## **ARTICLE 1 DEFINITIONS**

In addition to the words and terms elsewhere defined in this Development Agreement and unless the context shall clearly require otherwise, the following words and terms are used herein with the following definitions:

1.1. “Aeronautic Use” means any activity that involves, makes possible, is required for the safety of, or is otherwise directly related to the operation of aircraft including, but not limited to, movement of passengers, luggage, mail and cargo on the Airport. Additionally, the operation of manned or unmanned aircraft, or providing flight support for same, are Aeronautic Uses.

1.2. “Airport” means the Reno-Stead Airport.

1.3. “Airport Rules and Regulations” means those certain rules and regulations, as the same may be adopted and thereafter amended from time-to-time, which generally govern the operations and other activities which may take place on the Airport. The Airport Rules and Regulations serve as minimum regulations designed to protect and promote the safety of the users of the Airport.

1.4. “Applicable Laws” means all applicable present and future laws, statutes, ordinances, rules, regulations, orders, requirements and common law, including but not limited to the reported decisions of all applicable federal, state and local governments, courts, departments, commissions, boards or agencies, and of any board of fire underwriters having jurisdiction, applicable to the Project, the matters set forth in this Development Agreement, and to the Airport as an operating airport facility, including all FAA regulations and Airport Rules and Regulations.

1.5. “Approved Affiliate” means (A) any entity into which or with which Developer has merged or consolidated or (B) any entity which acquires all or substantially all of the assets of or ownership interests in Developer, provided that any such entity described in (A) and (B) has a net worth (determined in accordance with generally accepted accounting principles

consistently applied), of at least Five Million Dollars (\$5,000,000), has the requisite experience owning, operating and/or managing a suburban office and/or office warehouse properties and has been approved by the Authority in writing.

1.6. “Approved Uses” shall have the meaning given to it in Section 2.3 hereof.

1.7. “Authorized Representative” means any person designated in writing to the Authority as an authorized representative by Developer. In the absence of such designation, the President of Dermody Properties shall be the Authorized Representative of Developer.

1.8. “Business Day” means any day other than a Saturday, Sunday or legal holiday or a day on which banking institutions in Nevada are required or authorized by law (including executive order) to close.

1.9. “Commencement Date” shall have the meaning given to it in Article 3.

1.10. “Consumer Price Index” or “CPI” means the Consumer Price Index for All Urban Consumers, U.S. City Average, All Urban, All Items 1982-1984 equals 100, as issued by the United States Department of Labor. If the manner in which the Consumer Price Index as determined by the Department of Labor shall be substantially revised, an adjustment shall be made in such revised index that would produce results equivalent, as nearly as possible, to those that would have been obtained if the Consumer Price Index had not been so revised. If the average of 1982-1984 shall no longer be used as an index of 100, such changes shall constitute a substantial revision. If the Consumer Price Index shall become unavailable to the public because publication is discontinued, or otherwise, the Authority will substitute therefor a comparable mutually acceptable index based upon changes in the cost of living or purchasing power of the consumer dollar published by any other governmental agency or, if no such index shall then be available, a comparable index published by a major bank or other financial institution or by a university or a recognized financial publication.

1.11. “Contamination” means the presence, storage or release of Hazardous Substances in violation of applicable Environmental Laws.

1.12. “Current Concept Plan” means the anticipated (as of the date hereof) phasing plan attached hereto as Exhibit B for the anticipated development of the Project Site and sets forth the number of acres allocated to each Phase, the current contemplated uses and the order in which each Phase will be developed.

1.13. “Design Guidelines” means, when adopted by the Authority, the written and graphic commercially reasonable requirements and principles, to be prepared for the Authority and as periodically updated, that address, among other matters, the aesthetic, functional and operational issues associated with the Improvements including, without limitation by way of example, site layout, access circulation, architecture, utilities, landscaping, lighting and signage, noise abatement and vibration reduction, all as more specifically set forth in Exhibit C. Until the Design Guidelines are adopted by the Authority, the Authority’s Standard Tenant Improvement Program will govern all the elements of design and construction on the Project Site.

1.14. “Designated Affiliate” means one or more special purpose, subsidiary entity(ies) formed by the Developer or Developer's Affiliate to enter into one or more Ground Leases.

1.15. “Development Schedule” means the schedule set forth in Article 4 for the development of the Project.

1.16. “Environmental Laws” means, collectively, all applicable current and future environmental, safety or health laws, statutes, rules, regulations, ordinances, permits, orders, directives or common law of or by the federal government or any applicable state or political subdivision thereof, or any agency, court or body of the federal government or any applicable state or political subdivision thereof, exercising executive, legislative, judicial, regulatory or administrative functions, including, but not limited to, the reported decisions of any applicable state or federal court and the following: the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 *et seq.*, as amended; the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*, as amended; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 *et seq.*, as amended; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*, as amended; the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*, as amended; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 *et seq.*, as amended; the Clean Air Act, 42 U.S.C. § 7401 *et seq.*, as amended; the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, as amended; the Oil Pollution Act of 1990, 33 U.S.C. § 2701 *et seq.*, as amended; the Safe Drinking Water Act, 42 U.S.C. § 1251 *et seq.*, as amended.<sup>1</sup> NRS Chapter 445B; NRS Chapter 455C; and NRS Chapter 459.

1.17. “Event of Bankruptcy” means an involuntary case under the federal bankruptcy law, as now or hereafter constituted, commenced against Developer, or under any other applicable federal or state bankruptcy, insolvency, reorganization or other similar law, or if there is filed against Developer a petition seeking the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of Developer or any substantial part of Developer’s property, or seeking the winding-up or liquidation of Developer’s affairs and such involuntary case or petition is not dismissed within one hundred twenty (120) days after the filing thereof, or if Developer commences a voluntary case or institutes proceedings to be adjudicated as bankrupt or insolvent or consents to the entry of an order for relief under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy or insolvency or other similar law, or consents to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official of Developer or of any substantial part of Developer’s property, or if Developer makes any assignment for the benefit of creditors or admits in writing its inability to pay its debts generally as they become due or fails to generally pay its debts as they become due or if Developer, or its members or board of directors, if any, or any committees thereof take any action in contemplation, preparation or furtherance of or for any of the foregoing..

1.18. “Event of Default” means any of the circumstances designated as such in Article 10 hereof.

1.19. “FAA” means the Federal Aviation Administration.

1.20. “FAA Requirements” means the rules and regulation promulgated from time to time by the FAA and the Grant Assurances applicable to the Authority.

1.21. “Facility” or “Facilities” means each building or buildings (as appropriate) and all Improvements related thereto and constructed or to be constructed on the Project Site for Approved Uses. Facilities are a part of the Improvements.

1.22. “FBO” means a fixed based operation providing commercial aeronautic services such as fueling, maintenance and hangaring of aircraft as well as transportation, aircraft sales and similar related services.

1.23. “Force Majeure Event(s)” means, with respect to each Party, acts, events or conditions beyond the reasonable control of such Party despite such Party’s commercially reasonable and diligent efforts, excluding the failure of such Party to fulfill any payment or monetary obligations for whatever reason. Such acts, events or conditions shall include, without limitation thereto: acts of God, including, but not limited to, fires, earthquakes, landslides, explosions, hurricanes, tornadoes, floods, wars, riots, acts of terrorism, material and adverse changes in Applicable Laws, unusual delay in issuance of governmental permits, licenses or other approvals by any governmental or quasi-governmental authority which are not due to the failure by a Party to diligently pursue compliance with any prerequisites to the issuance of such permits, licenses and approvals, any exercise of the power of eminent domain, condemnation or other taking by the action of any governmental body on behalf of any public, quasi-public or private entity and other governmental acts, including but not limited to the issuance of a temporary restraining order, injunction or other order by a court of competent jurisdiction. A Party required to perform under this Development Agreement shall give the other Party notice within ten (10) days after such Party knows of any Force Majeure Event and shall give the other Party notice within ten (10) days after such Force Majeure Event ceases to exist. The performance of every obligation under this agreement (except for the payment of monetary obligations) shall be subject to Force Majeure Events and such Force Majeure Events shall extend the time permitted for such performance only by the number of days by which any such Force Majeure Event actually delayed such performance.

1.24. “Grant Assurances” means the published assurances binding upon airport sponsors including the Authority and issued to the FAA in connection with the receipt of federal funds, as amended from time to time.

1.25. “Ground Lease” means one or more ground leases to be entered into by and between Developer (or a Designated Affiliate of Developer designated by Developer and approved by the Authority in accordance with the provisions of Article 6) and the Authority with respect to a development Phase providing Developer a leasehold estate in such Phase, which shall be described in each Ground Lease. A copy of the Ground Lease form is attached hereto as Exhibit D, it being agreed such form shall be modified as reasonably necessary to address the specific requirements of the applicable Phase and the Improvements to be constructed thereon.

1.26. “Ground Lease Rent Commencement Date” shall mean, with respect to each Ground Lease (except for the Phase I Ground Lease), the earlier of the following dates: (A) the date upon which a certificate of occupancy is first issued with respect to the Facility or Facilities constructed upon the land demised by such Ground Lease, or (B) the day after the expiration of the eighteenth (18th) full calendar month following the effective date of such Ground Lease (subject to unreasonable delays by the Authority to provide its approvals as required hereunder).

1.27. “Hazardous Substances” means (A) asbestos, flammables, volatile hydrocarbons, industrial solvents, explosives, chemicals, radioactive materials, oil, petroleum, petroleum products or by-products, crude oil, natural gas, natural gas liquids, chemical gases and liquids, volatile or highly volatile liquids and/or synthetic gases; (B) substances defined as “hazardous substances”, “hazardous materials”, “hazardous waste”, “toxic substances”, “pollutants” or “contaminants”, as those terms are used in any applicable Environmental Laws, including, but not limited to, common law; and (C) any and all other materials or substances that any governmental agency or unit having appropriate jurisdiction shall determine from time to time are hazardous, harmful, toxic, dangerous or otherwise required to be removed, cleaned-up or remediated.

1.28. “Improvements” has the meaning given to it in the preamble.

1.29. “Infrastructure Improvements” shall have the meaning given to it in Section 4.4 hereof.

1.30. “Subleases” shall mean collectively the subleases entered into by and between the Developer and subtenants for the Improvements constructed, or to be constructed, on the Phases of the Project Site subject to Ground Leases.

1.31. “Minimum Standards” means the standards to be adopted by the Authority from time to time to be applied to Aeronautic activities at the Airport, to ensure compliance with FAA regulations.

1.32. “Officer” means the President and Chief Executive Officer of the Authority, or the successor to such office.

1.33. “Party” means either Developer or the Authority, as the context may require; and “Parties” means both Developer and the Authority.

1.34. “Phase” means a portion of the Project Site, as mutually determined by the Parties, to be developed in accordance with the Phased Development Schedule.

1.35. “Phase Commencement Date” means the date by which the first Ground Lease for the applicable Phase is fully executed.

1.36. “Plans and Specifications” means Developer’s architectural and engineering plans and specifications for each Improvement or Facility as submitted to, or approved by, the Authority.

1.37. “Project” means the development of the Project Site, including the installation of all Improvements, Infrastructure Improvements and any Facilities.

1.38. “Project Site” means the real property described on Exhibit A.

1.39. “Term” means the term set forth in Article 3 hereof.

## **ARTICLE 2 DEVELOPMENT RIGHTS**

2.1. Development Rights. Developer is hereby granted the exclusive right, all as and to the extent provided for in this Development Agreement, for the Term to develop, for Approved Uses, the Project Site and to enter into Subleases with subtenants (which Sublease (although subleases may be termed "leases" in the actual Sublease). The Project Site is delivered to the Developer “as is” with no representations or warranties by the Authority whatsoever as to the condition thereof or suitability for Developer’s purposes. Subject to the terms and provisions of this Agreement, Developer shall, subject to Developer's compliance with all Applicable Laws, have exclusive control, possession, occupancy, use and management of the Project Site. Without limiting the generality of the foregoing, Developer shall, from time to time, (i) construct buildings or improvements on or under the Project Site, (ii) lease any portion of the Project Site for the construction of improvements or buildings, (iii) grant such easements, rights and dedications that have been approved by the Authority and which Developer has established to the Authority’s satisfaction are necessary or desirable, and (iv) cause the recordation of such covenants, conditions and restrictions against the Project Site which have been established by the Developer with the Authority’s approval. The Authority shall sign any documents reasonably necessary to effect the aforementioned rights upon request of Developer. Developer may enter into, terminate, modify, amend, or waive any existing or future contracts relating to management or operation of the Project Site and provision of services to the Project Site. With respect to each Phase Ground Lease, Developer may cause surveys to be prepared for the purpose of discretely delineating separate lease parcels (hereinafter "Subparcels" or a "Subparcel" in the singular), for one or more separate buildings to be constructed thereon based upon the proposed development thereof by Developer. Subparcels shall not cause or be created in a manner so as to cause a legal subdivision or parceling of the property under the Ground Lease for a Phase. The Authority and Developer shall, at the written request of Developer, enter into a separate Ground Lease (a "Subparcel Lease") for each such Subparcel. Upon the execution of any Subparcel Lease, the Authority’s and Developer's respective rights and obligations shall then be removed from such Phase Ground Lease to the extent such rights and obligations to be removed from the applicable Ground Lease are expressly set forth and re-established pursuant to the applicable Subparcel Lease(s). All Subparcel Leases (i) shall be in the same basic form as the form of Ground Lease attached hereto as Exhibit D as modified in keeping with the terms and provisions of Section 1.25, (ii) shall be subject to all terms and provisions of this Development Agreement applicable to Ground Leases and (iii) shall, in each instance, be entered into between the Authority and a Designated Affiliate. Each such lease for a Subparcel Lease shall not be cross-collateralized or cross-defaulted with such phase Ground Lease or any Subparcel Lease.

2.2. Reservation of Easement. In each Ground Lease, the Authority may reserve for itself commercially reasonable non-exclusive easements across the Project Site or the property

therein at the perimeters of such property subject to a particular Ground Lease for the installation and maintenance of utility lines which will not unreasonably interfere with the Project Site and for vehicular access to adjacent parcels and/or other Airport operation purposes. To the extent the same may be reasonably described, the terms and conditions of any such easement shall be as set forth in the particular Ground Lease.

### 2.3. Approved Uses.

(a) The Project Site is approved for the construction, operation and maintenance of Facilities to be utilized for industrial, warehouse, distributing/flex space, assembly, Aeronautic Uses, light manufacturing, and air cargo or logistics uses related thereto (“Approved Uses). Other uses as may be approved by the Authority (“Other Approved Uses”), such approval not to be unreasonably withheld, delayed or qualified and shall be granted if any such uses are consistent with the Current Concept Plan. Any Leases to subtenants shall be only in connection with, and for, such Approved Uses. Under no circumstances will any residential use or use restricted in connection with the then applicable FAA Requirements be allowed anywhere on the Project Site. The exterior design of all Facilities including the signage, landscaping, parking and other exterior elements on the site on which each building is located must be approved by the Authority, which approval shall not be unreasonably withheld, conditioned or delayed, provided they meet the Authority’s Design Guidelines.

(b) Aeronautic Uses, while defined as an Approved Use, are subject to the written approval (not to be unreasonably withheld, conditioned or delayed) of the Authority as to each specific potential subtenant. Subtenants engaged in Aeronautic Uses will be subject to the Authority’s Commercial Aeronautic Minimum Standards developed and amended by the Authority from time to time. The selection of, and marketing to, FBO uses is specifically reserved to the Authority.

(c) In addition to the exclusions set forth in Section 2.3(a), the Approved Uses shall exclude any use generally associated with (1) the sale at retail to the public of pornographic materials, (2) illegal activities, (3) the placement of cell towers or antennae, except as approved and permitted by the Authority in its sole and absolute discretion, (4) any activity that would interfere with the safe operation of the Airport per any Applicable Laws or Airport Rules and Regulations, (5) the placement of billboards or other forms of outdoor advertising from which the Authority could otherwise derive revenue, all of which are specifically prohibited.

(d) Authority hereby acknowledges that Developer will undertake the development of the Project Site pursuant to this Development Agreement and that construction and demolition activities shall be permitted on the Project Site pursuant to the terms of this Development Agreement and any Ground Lease then in effect.

2.4. Guidelines. The Developer and its architect/engineer have the responsibility to insure that the Project design shall be in full accordance with all applicable federal, state and local laws, ordinances and codes, as well as all applicable FAA regulations and, to the extent applicable (and not waived or modified by the Authority) Authority’s Design Guidelines as shown in Exhibit C. Before commencing construction of any Facility on the Project Site,

Developer must submit to the Authority for its review a proposed development plan for such Facility depicting the anticipated location of the proposed Facility on the Project Site together with a set of Plans and Specifications for such Facility. Except as and to the extent otherwise explicitly required by this Agreement, the Authority's review will include the exterior architectural features of the Facilities and determining whether any aspect of the Facilities reflected in the Plans and Specifications under review will (i) materially interfere with any operations conducted elsewhere on the Airport, (ii) not be in material compliance with federal or Authority siting or height criteria, or (iii) be materially at variance with any preliminary designs provided to the Authority depicting the siting or size of such Facilities.

2.5. Right of Flight. In addition to the provisions set forth in Article 12, reserving to the Authority, its successors and assigns, for the use and benefit of the Authority and the public, a right of flight for the passage of aircraft in the air space above the surface of the Project Site, together with the right to cause in said air space such noise as may be inherent in the operation of aircraft, now known or hereafter used for navigation of or flight in the air, using said air space or landing at, taking off from or operating on the Airport as described on Exhibit G. Developer shall comply with the notification and review requirements contained in Part 77 as to any structure or building planned on the Project Site or in the event of any future modification or alteration of any such structure or building. Furthermore, the Authority reserves the right to make such revisions to Developer's Plans and Specifications, as may be necessary to ensure that there is no negative impact to the National Championship Air Races or its safety corridor.

2.6. Marketing. Developer will develop a marketing plan in coordination with the Authority to market the Project to potential end user tenants and other users. The name of the Project will be mutually determined by Developer and the Authority and all materials, brochures and marketing will require the approval of the Authority not to be unreasonably withheld, conditioned or delayed. . In no event shall Developer use any trademarks, service marks, copyrights or intellectual property of the Authority without the Authority's written approval, which may be withheld in its sole discretion.

2.7. Authority Approval. In all cases in this Development Agreement where the consent of the Authority is required, such consent, unless otherwise specifically qualified herein, shall not be unreasonably withheld, conditioned or delayed.

### ARTICLE 3 TERM

3.1. Term of Development Agreement. The term of this Development Agreement (the "Term") shall commence on the date that this Development Agreement is executed by both Parties and delivered to each other (the "Commencement Date") and shall terminate, unless sooner terminated in accordance with Section 10 hereof, ten (10) years thereafter (except with respect to the Parties' obligations hereunder which are stated herein, or which by their terms would reasonably be expected, to survive termination of this Development Agreement). If and an uncured material Event of Default by Developer does not then exist hereunder in each instance, then Developer shall have the right to extend the term of this Development Agreement, at Developer's option, for seven (7) additional terms of five (5) years each, effective upon Developer's notice to the Authority of its election to renew, such notice to be delivered to the

Authority not less than one hundred eighty (180) days prior to the then expiration date of the Term, in each instance; provided, however, that in the event that Developer does not timely deliver such renewal notice, then the Authority will provide Developer notice that its rights to renew this Development Agreement have expired and extending Developer a right to renew this Agreement and unless Developer thereafter sends a renewal notice to the Authority within five (5) days of Authority's notice, then this Agreement and any rights granted to Developer hereunder will expire. Developer's failure to be in substantial compliance with the Development Schedule, after notice and opportunity to cure, shall be deemed an Event of Default.

#### **ARTICLE 4 DEVELOPMENT SCHEDULE**

##### 4.1 Development Phases.

A. Developer shall be required to complete development of the Project Site in Phases as set forth in this Section 4.1, it being agreed that the Parties shall mutually determine the location and configuration of the land comprising each Phase, commencing after the completion of Phase I generally as set forth on the Current Concept Plan. The Current Concept Plan may be revised by mutual agreement of the Parties. Developer shall execute and deliver the Phase I Ground Lease on or before February 28, 2017, and subject to the operation and effect of Article 5, shall diligently proceed to commence and thereafter continue the development of Phase I. With respect to the development of Phases II through V and the time requirements for Developer's development and construction of Improvements for such Phases, upon the occurrence of a change of circumstance as described in this paragraph, Developer may request that the Authority grant Developer up to an additional twelve (12) months to commence development of a particular Phase under a Ground Lease, and the Authority agrees that it will not unreasonably withhold its consent to Developer's request. A "change of circumstance" will be deemed to have occurred if the vacancy rate in the Reno-Sparks Nevada Metropolitan industrial property market is greater than fifteen percent (15%) for the two (2) consecutive quarters immediately prior to the report date of such vacancy rate as reported in the quarterly report published by the Reno Office of CBRE ("CBRE Report"). The Development Schedule will be reinstated effective on the earlier of the date of the next CBRE Report indicating that the industrial vacancy has fallen below fifteen percent (15%) for two consecutive quarters or five (5) years.

Developer may, at its option, upon ninety (90) days' notice to the Authority, accelerate the Development Schedule. Furthermore, while Developer agrees to comply, utilizing commercially reasonable and diligent efforts, with the Development Schedule, the Authority recognizes that due to the extended time period over which this Development Agreement may be effective, market conditions as to real estate projects in the region may change. To the extent such changes may be significant, the Authority will in its sole but reasonable discretion grant extensions to Developer. Likewise, if Developer determines such conditions render further development not feasible, Developer may terminate this Development Agreement and thereby relinquish any further development rights or obligations as to future Phases. Subject to Force Majeure Events, if Developer fails to commence a Phase in breach of its obligations under this Development Agreement and such breach is not cured within the cure period provided in Section

10.3 hereof, then the Authority, may terminate this Development Agreement by written notice to Developer.

B. Developer shall commence construction of the Infrastructure Improvements, as approved by the Authority, necessary to develop Phase II and shall execute a Ground Lease for not less than forty (40) acres on or before the date which is 5 years after the Commencement Date and each subsequent Phase III - V on or before the fifth (5<sup>th</sup>) anniversary of the Phase Commencement Date of the Prior Phase. In the event that Developer executes a Ground Lease or Ground Leases for at least one hundred (100) acres in a given Phase and associated Infrastructure Improvements for such Ground Lease or Ground Leases are completed, then Developer shall be deemed to have met its Development obligation for such Phase and shall retain the right to proceed with the next sequential Phase in the sequence then provided in the Current Concept Plan.

C. The **minimum area of the land** to be included in each Phase in accordance with the Current Concept Plan is as follows:

- |       |           |            |
|-------|-----------|------------|
| (i)   | Phase I   | 97 acres;  |
| (ii)  | Phase II  | 463 acres; |
| (iii) | Phase III | 439 acres; |
| (iv)  | Phase IV  | 292 acres; |
| (v)   | Phase V   | 410 acres. |

In the event that a land parcel leased by Developer in any Phase exceeds the minimum area set forth above in this Section 4.1(C), the excess land area shall be credited against the minimum development size of any next succeeding Phase(s), as selected by Developer. Revisions to the sequential Phasing order outlined in the Current Concept Plan may be made, subject to the Authority's written approval (not to be unreasonably withheld, conditioned or delayed), in the event market conditions change and/or Developer identifies tenant opportunities for subsequent Phases.

4.2 Phase Option Payments. In consideration of the Authority's grant of exclusivity rights to the Developer, Developer shall be required to make annual phase option payments ("Option Payments"). **The first Option Payment is for 2018 and shall be in the amount of Seventy-Five Thousand and 00/100 Dollars (\$75,000.00).** Thereafter, the Option Payment shall be adjusted annually on July 1 of each year based on the CPI published most recently prior to the applicable adjustment date, each adjustment to be equal to the increase, if any, in the CPI for the trailing twelve (12) month period, provided that in no event shall the Option Payment be less than \$75,000. **Option Payments shall be made to the Authority on or before August 1, 2018 and on August 1 of each year for the remainder of the Term and any extension thereof, at the address provided in Article 15.4 hereof.**

4.3 No Third Party Beneficiaries. Nothing in this Development Agreement is intended to confer any rights or remedies under this Development Agreement on any person other than Developer and the Authority and their respective successors and duly authorized and permitted assignees. Nothing in this Agreement is intended to or will be deemed to relieve, discharge, waive or limit any obligation or liability owed to Developer or the Authority by any

third party, and no provision of this Development Agreement will give or be deemed to give to any third party any right of subrogation or any other right, remedy, claim or cause of action against Developer or the Authority.

#### 4.4 Infrastructure Improvements.

(a) Developer shall be responsible for completion of the following improvements at its cost and expense and in accordance with the Master Plan and Applicable Laws (“Infrastructure Improvements”): (i) all mass grading of the Project Site; (ii) completion of all roads including the grade crossing by Union Pacific Railroad to enable the extension of Moya Boulevard into the Project Site; (iii) water, sewer and all other utility infrastructure; (iv) Gateway Entry offsite Improvements; and (v) all other infrastructure improvements, that in each case of items in clauses (i) through (v) are necessary or required pursuant to this Development Agreement or Applicable Laws for the development, construction and use of the Project and each Phase under development. Infrastructure Improvements include some as are, or may be, located on lands owned by the Authority outside of the Project Site, and for which Developer is granted an easement, license or right of way as determined by the Authority and as may be reasonably required by Developer for the construction, operation and maintenance of such Infrastructure Improvements. Additionally, all off-site Improvements required to complete the Infrastructure (if any), including traffic and wetlands mitigation, and any off-site Improvements with respect to any land demised by a Ground Lease, shall be the responsibility of the Developer. Developer shall be responsible for all final grading, utility connections and additional water and water service requirements related to the construction of the Improvements. The Authority will allocate a portion of its Truckee River surface water rights for the development and use of Phase I, based on Developer’s demonstration of actual need, such allocation to come from the Authority's banked water rights with the Truckee Meadows Water Authority and shall not exceed 50 acre feet.

(b) Permits. In connection with the development of each Phase, Developer shall be responsible for obtaining at its cost and expense all building and occupancy permits as well as any environmental permit for any Improvements. The Authority will assist Developer in a reasonable manner with respect to obtaining the zoning and environmental approvals. Developer is also responsible at its cost and expense for the completion of all Improvements necessary to accommodate on-site traffic control for any Phase. All construction of Improvements shall comply with Applicable Laws including, but not limited to, FAA Part 77 requirements imposing height restrictions on vertical structures and shall also be done in a manner so as not to interfere with Airport operations. Developer shall submit all Plans and Specifications to the Authority for throughout the Tenant Improvement Permit process for review and approval a minimum of fifteen (15) business days prior to commencing any construction. The Authority shall respond to such submissions promptly and shall not unreasonably withhold, delay or condition its approval of any plans submitted by Developer. Developer shall also utilize its commercially reasonable efforts to obtain the approval of Union Pacific Railroad for the installation of a grade crossing to enable the extension of Moya Boulevard into the Project Site as set forth on Exhibit A-1.

(c) Project Site Entrance. Subject to Force Majeure Events, Developer shall complete construction of the Project Site entrance by December 31, 2019. The entrance will

include the appropriate monuments, as approved by the Authority, as to design, materials used and Project name.

4.5 Construction Security. Prior to the start of construction of Improvements on any part of the Project including the Infrastructure Improvements and continuing during any construction period Developer shall adequately demonstrate to the Authority its financial capacity to complete construction of the Improvements including, but not limited to, the Authority's satisfaction with a completion guaranty provided by Developer. The Authority will require Developer to provide a completion bond and/or to have any contractor undertaking any construction activity to provide a performance and/or completion bond in the form attached hereto as Exhibit E.

4.6 Dedications. The Parties intend that, wherever possible, offsite and onsite Infrastructure Improvements in the nature of roads and utilities will be dedicated to, and the Parties will as necessary join in the dedication to, the local municipality water or sewer authorities or other applicable utility companies or providers.

4.7 Maintenance. Developer will be responsible at its cost and expense for all maintenance, repair and replacement of the Project Site including, but not limited to, entry monuments, landscaping, daily nonstructural upkeep and maintenance and periodic rehabilitation and upgrade of all Infrastructure Improvements (collectively, "Developer's On-going Maintenance Duties"). Developer's On-going Maintenance Duties shall be undertaken in a routine, consistent and diligent manner in keeping with commercially reasonable standards for first-class industrial properties in the Reno-Sparks metropolitan area. All assets owned by the Authority, including existing roads, hangars, buildings and airfield improvements, and/or future improvements funded by the Authority and not incorporated in this Agreement, special improvement districts, or subsequent ground leases shall be maintained by the Authority at its sole cost and expense..

4.8 Reservation of Easements by Authority. The Authority hereby reserves for itself commercially reasonable nonexclusive easements for (i) vehicular and pedestrian access across the Project Site for routine safety and wildlife control purposes; (ii) the installation and maintenance of underground utility services for the benefit of other property owned by the Authority; and (iii) for other Airport operational requirements, in each case in a manner that will not unreasonably interfere with the normal and customary use and operation of the Project Site by Developer or its subtenants.

4.9 Utility Costs. Developer shall pay for all electric, water, sewer, garbage, telephone, internet and other utilities connection fees and charges for the Project Site during the Term and the term of each Ground Lease. The metering devices installed by Developer for such utilities shall be installed at the cost and expense of Developer. Extension of utility mains or services to meet the needs of Developer and any of its subtenants on the Project Site shall be at the cost and expense of Developer.

4.10 Water, Industrial and Sanitary Sewage Systems. Developer shall operate and maintain at its sole cost and expense all non-dedicated and accepted components of any and all water, industrial and sanitary sewage system and storm water drainage facilities, for the Project

Site. Developer shall provide, operate and maintain adequate facilities for separating, neutralizing and treating industrial waste and foreign materials generated within the Project Site and the proper disposal thereof as required by all then Applicable Laws.

4.11 Construction Deliverables. Prior to undertaking any construction activity at the Project Site, and as each Improvement is completed, Developer shall provide Authority with georeferenced CAD files of its proposed or as-built drawings, as applicable.

## **ARTICLE 5 CONTINGENCIES**

The financing of the Project is the sole responsibility of Developer. Developer covenants to use its commercially reasonable, continual and diligent efforts to secure the necessary funding for the construction and installation of the Infrastructure Improvements and this Development Agreement is specifically contingent on Developer receiving such funding in the amount of \$5,000,000 for the Gateway Entry offsite Improvements and \$2,500,000 for the Phase I onsite Improvements. Such funding must be obtained within two (2) years of the Commencement Date or this Development Agreement may, at the option of the Authority, be immediately terminated. Developer shall not be entitled to a refund of any deposits or other payments made to the Authority nor reimbursement of any development or other expenses. Developer may otherwise satisfy this contingency by funding from other sources the costs of such construction; provided, however, that no such other sources may obtain a lien on any portion of the Airport property including, but not limited to, the Project Site nor on this Development Agreement.

Under no circumstances shall the Authority be responsible to fund, in whole or in part, any portion of the Project.

## **ARTICLE 6 GROUND LEASES**

6.1. Term. Prior to the delivery of a particular site to be developed, the Developer (or its Designated Affiliate) and Authority shall enter into the applicable Ground Lease. Each Ground Lease shall be in the form as attached hereto as Exhibit D (as the same may be modified with respect to each Ground Lease), and executed by Developer (or its Designated Affiliate) and Authority not later than thirty (30) days from the date that such Ground Lease is tendered to Developer by the Authority for execution (or as soon thereafter as reasonably possible). Each Ground Lease will provide for an initial 50-year term. Ground Leases shall be executed for each Phase not less than every five (5) years from the Commencement Date. The Ground Lease for Phase I will include approximately 90 acres in the southwest area of the Airport, as shown on Exhibit A-2. In no event shall any Ground Lease be subject or subordinate to this Development Agreement and upon the full execution and delivery of any Ground Lease, then the obligations of Developer pertaining to the Project Site which is the subject of the applicable Ground Lease, shall be governed by the terms and provisions of the Ground Lease (and not this Development Agreement), but only as and to the extent (i) the Authority agrees to the shifting of such obligations from this Development Agreement to such Ground Lease (which approval may be withheld in the Authority's sole but commercially reasonable discretion) and (ii) any such obligations agreed to be shifted by the Authority are expressly set forth as obligations of the

Designated Affiliate under the applicable Ground Lease. Without limiting the Authority's exercise of its sole discretion pursuant to clause (i) next preceding, in exercising such discretion the Authority shall have the right to consider, inter alia, the continued assurance of the full performance of Developer's obligations under this Development Agreement and the Authority's need for an efficient and reasonably convenient administration and enforcement of its right and Developer's obligations under and pursuant to this Agreement.

## 6.2. Rental Rates.

(a) The ground rent to be charged to Developer in accordance with each Ground Lease shall be determined based upon an appraisal conducted of the land area subject to the particular Ground Lease (without regard to the value of any Facilities or other Improvements constructed or to be constructed on the Project Site by the Developer). **The Parties agree that the initial appraised land valuation for the Phase I Ground Lease is \$1.60 per square foot per annum multiplied by eight (8%) percent. Accordingly, the initial rent for years 1 - 2 will be \$.13 per square foot, subject to adjustments as provided in paragraphs (c) and (d) below in this Section. Base rent for the Phase I Ground Lease shall commence on the earlier of (i) three (3) years from the Commencement Date hereunder or (ii) the date on which a certificate of occupancy is first issued (including any temporary certificate of occupancy) for a Facility or Facilities on Phase I.**

(b) The initial base rent for each subsequent Ground Lease shall be based on the appraisal process as outlined in paragraph (d) in this Section, shall be determined prior to the applicable Ground Lease Rent Commencement Date, and shall remain the base rent rate for the first two (2) years of such Ground Lease,

(c) For all Ground Leases, including the Phase I Ground Lease, base rent shall be subject to adjustment on each successive two-year anniversary of the Ground Lease Rent Commencement Date under the applicable Ground Lease (each such adjustment date, a "Base Rent Adjustment Date"). Such adjustments shall be determined in an amount derived by (i) assuming both a two percent (2%) increase and a CPI comparison adjustment of the base rent for each year under the Ground Lease, commencing with the first (1<sup>st</sup>) anniversary of the Ground Lease Rent Commencement Date, and continuing on the same day of each successive year, including the applicable Base Rent Adjustment Date, (ii) then determining the cumulative, compounded amount of such assumed two-year adjustments of Base Rent and then (iii) the lesser of such determined amounts shall be the new base rent rate as of the applicable Base Rent Adjustment Date. On each Base Rent Adjustment Date the base rent then in effect shall be adjusted in the manner provided in clauses (i) through (iii) above; provided, however, that there shall not be any decrease in the base rent on any Base rent Adjustment Date.

(d) On each successive ten-year anniversary of the Ground Lease Rent Commencement Date for each Ground Lease, the base rent shall be adjusted in accordance with the appraisal process set forth below in this paragraph (d). Each ten-year adjustment of base rent by the appraisal procedure set forth in this paragraph (d) shall be in lieu of the two-year adjustment that otherwise would occur pursuant to paragraph (c) above. On each such ten-year adjustment date, the base rent for the applicable Ground Lease shall be adjusted, if at all, pursuant to the following appraisal process:

(i) The adjusted fair market value rent shall be determined based on one or more appraisals to establish fair market rental value. The appraisal(s) shall comply with the Uniform Standards of Professional Appraisal Practice and any applicable Law, and will be completed by an appraiser with MAI (Member, Appraisal Institute) credentials licensed in Nevada, with at least ten (10) years of experience in the valuation of similar commercial properties located in the Reno-Sparks metropolitan area.

(ii) If the Parties agree on a single appraiser, the cost of the appraisal shall be split on a 50%-50% basis between the Parties, and the current fair market rental value shall be established by that appraisal; provided, however, that in no event shall adjusted base rent be less than the base rent in effect as of the fair market value adjustment date. If the Parties do not or cannot agree on a single appraiser, for whatever reason, the Parties shall each select a qualified appraiser and the costs of those appraisals shall be paid for by each Party, respectively. Each appraiser shall appraise the applicable property and submit a determination of the fair market rental value in writing to both Parties. If the appraisal reports contain fair market rental value determinations which are within ten percent (10%) of each other, then the fair market rental value shall be the arithmetic average of the values in the two (2) appraisals provided that if the average is less than the base rent in effect as of the fair market value adjustment date, then the adjusted base rent shall be the base rent in effect as of the fair market value adjustment date. If the reports contain fair market rental value determinations which are not within ten percent (10%) of each other, and no agreement between the Parties is then reached, the two appraisers shall select a third disinterested qualified appraiser to perform a third appraisal. The cost of the third appraisal shall be split on a 50%-50% basis between the Parties. The arithmetic average of the valuations in the three appraisal reports shall be determinative as to the fair market rental value of the applicable property; provided that in no event shall adjusted base rent be less than the base rent in effect as of the fair market value adjustment date.

(iii) Regardless of when the adjusted base rent is determined pursuant to subparagraph (ii) next above, such adjusted base rent shall be effective as of the applicable ten-year adjustment date. Accordingly, if a ten-year base rent adjustment is determined after the applicable ten-year adjustment date, then the positive difference between the base rent paid by Developer and the adjusted base rent that should have been paid by Developer for any period of time after such adjustment date shall be paid in full with the next monthly installment of base rent due under the applicable Ground Lease.

6.3. Net Basis. Each Ground Lease will be an absolute net lease and Developer will be responsible for all costs including, but not limited to, taxes, utilities, maintenance, repairs and assessments.

## **ARTICLE 7 ASSIGNMENT**

7.1. General Restriction. Except as expressly permitted pursuant to this Article 7, Developer shall not, without the prior written consent of the Authority, which consent may be withheld in the Authority's sole and absolute discretion, assign, pledge, encumber, hypothecate or suffer or permit any voluntary or involuntary assignment, attachment or execution upon this Development Agreement. Any of the foregoing acts (including any transfers, assignments or

other dispositions that are involuntary or are by operation of law, or merger or acquisition, except as to Approved Affiliates) without such consent shall be void and shall, at the option of the Authority, entitle the Authority to terminate this Development Agreement.

7.2. Right to Assign and Encumber. Notwithstanding the provisions of Section 7.1 above, (i) Developer shall have the right to assign its interest in this Agreement to an Approved Affiliate of Developer and (ii) Developer shall have the right to designate Approved Affiliates to enter into Ground Leases and develop one or more Phases. Without limiting the generality of the foregoing provisions, with respect to each Ground Lease, it is agreed that Developer may form a Designated Affiliate to be the lessee under, and to execute, such Ground Lease; provided, however, such Designated Affiliate is qualified in the same manner as an Approved Affiliate. In addition, the rights and obligations of Developer under this Agreement and any and all other agreements referenced herein may be assigned, in whole but not in part, at any time by Developer to secure mortgage loans or other indebtedness incurred by Developer in connection with any Developer Improvements pursuant to an approved leasehold mortgage or assignment.

## **ARTICLE 8 ACCESS/INDEMNITY**

The following provisions relate solely to Developer's activities with respect to portions of the Project Site which are not then subject to a Ground Lease duly executed:

8.1. Access to the Project Site. Developer and Developer's agents, employees, consultants and contractors have been given the right of access to the Project Site during the due diligence period extended to Developer's representatives prior to the date of this Agreement (the "Due Diligence Period") and shall have the continued access during the Term, subject to the conditions contained in this Article 8, in order to undertake such additional due diligence activities it deems necessary with respect to the condition of the Project Site and for the construction and pre-construction activities relative to the development of the Facilities described in the Ground Leases. Developer shall not use the Project Site for any other purpose without the Authority's prior written consent, which consent may be withheld for any reason. Developer shall not cause any waste, damage or injury to the Project Site and shall immediately repair any injury or damage caused by Developer, its agents, employees, contractors, or invitees. In no event shall Developer use, generate, handle, store, accumulate, dispose of, or transport to or from the Project Site any Hazardous Substances in violation of Applicable Laws (or permit or suffer any of the foregoing to occur). During the Due Diligence Period, Developer completed its investigation of the environmental condition of the Project Site and received a Phase I report. The results of the Phase I report have been delivered to the Authority and constitute the baseline environmental condition of the Project Site as of the date hereof (the "Baseline Condition"). Developer shall be solely responsible for the identification, management, and the proper containment, remediation, removal, abatement, clean-up, monitoring, treatment, and disposal of all Hazardous Substances already present in, on, under, about or emanating from the Project Site or (without limiting the foregoing sentence) arising from or attributable to the acts or omissions of Developer, its agents, employees, contractors or invitees. However, the Authority will reimburse Developer for such remediation activities as to Hazardous Substances which constitute a Baseline Condition. Developer will not perform any work that requires a dust control permit or an erosion and sedimentation permit until such permit is received and all applicable controls are

in place and Developer will not disturb vegetation in the buffer yards surrounding the Project Site.

8.2. Indemnification of the Authority. Except to the extent caused by the sole negligence or willful misconduct of the Authority, Developer shall indemnify, defend, protect and hold harmless the Authority, its officers, directors, employees, successors and assigns from and against any and all suits, actions, claims, losses, damages, liabilities, costs and expenses (including, but not limited to, attorneys' fees and litigation costs) which may arise out of or be attributable to (i) Developer's use of the Project Site; (ii) any accident, injury, death or damage to any person or property at the Project Site (whether such property is real or personal, and regardless of ownership) caused, in whole or in part, by Developer or its agents, servants, contractors or employees unless caused by the negligence or willful misconduct of the Authority, its agents, servants or employees; (iii) the exercise of any provision of this Agreement and/or (iv) any breach of a covenant, term, limitation, or condition of this Agreement to be performed or observed by Developer, or of any restrictions of record, or of any Applicable Laws (including, but not limited to Environmental Laws).

8.3. Waiver and Release. Except to the extent caused by the negligence or willful misconduct of the Authority, Developer assumes all risk of loss, damage or injury, including, without limitation, death, which may be sustained by Developer, its employees, agents, contractors or any of them, in connection with this Agreement and/or Developer's access to the Project Site.

8.4. Required Insurance Coverage. Throughout the Term, Developer shall, at its sole cost and expense, procure and maintain in force (i) comprehensive, commercial general liability insurance, including bodily injury, death and property damage liability, and umbrella liability insurance against claims arising out of or connected with the construction, possession, maintenance, use, occupancy, operation, leasing or condition of the Project Site and the Improvements in the amounts and coverages set forth on Exhibit F; and (ii) to the extent required by Applicable Law, statutory worker's compensation insurance with respect to any operation by Developer on the Project Site; and (iii) the fire and casualty insurance and other insurance requirements as set forth on Exhibit F. Developer shall deliver to the Authority copies of Certificates of Insurance immediately upon the execution of this Agreement and, thereafter, within thirty (30) days prior to any expiration, termination or alteration of each such policy. Such liability insurance shall be issued by a company qualified to do business in Nevada and of a financial size and rating reasonably acceptable to the Authority. Each policy shall be in a form that is reasonably acceptable to the Authority and shall: (i) name the Authority as an additional insured; (ii) include an endorsement insuring Developer's indemnity obligations pursuant to this Development Agreement; (iii) to the extent feasible under insurance industry custom and practice, contain a provision that the insurer will give the Authority not less than thirty (30) days advance written notice of any material change in, reduction of, or cancellation, termination, lapse or non-renewal of coverage; (iv) include an endorsement stating that the coverage afforded to the Authority is primary and does not contribute to, and is not in excess of, any coverage that the Authority may carry (which endorsement shall further state that no act or omission of the Authority shall invalidate the coverage); and (v) shall be on an "occurrence" basis and not a "claims made" basis.

8.5. Failure to Maintain. The Authority may, but shall not be obligated to, purchase any required insurance coverage that Developer fails to obtain or maintain as required by this Development Agreement and if such failure continues for ten (10) business days after Authority's written notice to Developer of such failure. Developer shall, immediately upon demand, promptly reimburse the Authority for the cost of all such insurance.

8.6. No Limitation. The insurance requirements set forth herein shall not be construed to modify, limit or reduce Developer's indemnification obligations pursuant to this Development Agreement.

## **ARTICLE 9 AUTHORITY PARTICIPATION**

9.1. Participation Right. Upon the occurrence of the initial sale deemed sale, transfer or attribution of ownership (in each instance, a "Sale") to any person other than an Approved Affiliate or a Designated Affiliate, at any time (or any transaction which may be deemed a disguised sale) of any Building prior to the Authority's ownership thereof pursuant to the reversion rights under Section 13.1 or the Ground Lease for such Building, the Authority shall have a right of participation in the Building's Net Sale Proceeds. Such participation shall be equal to the amount that is thirty-three percent (33%) of the Net Sale Proceeds in excess of Developer's calculated Internal Rate of Return of twenty percent (20%). The provisions of this Article 9 shall apply to the determination of the Developer's Internal Rate of Return and the calculation of Net Sale Proceeds. For purposes of Article 9, the term Building shall refer to any building developed and constructed under a Ground Lease and which is the subject of a Sale described in the first sentence of this Section 9.1.

9.2. Net Sale Proceeds. The term "Net Sale Proceeds" with respect to the Sale of any Building shall mean the gross Sales price or consideration of such Building, excluding the acreage allocated to such Building in the applicable Ground Lease less the following costs :

(a) the balance of any amounts due under any leasehold or other mortgage or deed of trust secured in whole or in part by the Building; and

(b) any real estate broker commissions owed by Developer specifically as to the Sale of the Building; and

(c) all customary closing costs assessed against the Developer in connection with the Sale of the Building including, but not limited to, reasonable attorneys' fees, transfer taxes, recording and other specific closing fees.

9.3 Internal Rate of Return. The term Internal Rate of Return or IRR means the calculation of the total return to the Developer including the Net Cash Flow realized by the Developer, based on its Total Building Investment Costs. Developer's Total Building Investment Costs will include and be limited to the Developer's construction cost incurred in construction of the Building as established by paid invoices for all contractors or others providing work and materials for the Building; and Developer soft costs, not to exceed twenty percent (20%) of the construction costs including, but not limited to, design, architectural, engineering, construction management fees, survey costs, external project supervision costs, costs of permits, capitalized

interest, and bonding costs, external legal and accounting fees directly incurred in connection with the construction of the Building. If any future Building or leasehold improvements take place after the initial building construction, any Project costs of \$5,000 or greater and a useful life of five (5) years or more may be included in the calculation of Total Building Costs. Costs do not include costs associated with any furniture, fixture or equipment for the Building or any tenant thereof. Costs associated with marketing and costs associated with tenant leasing, including any real estate brokerage fees, shall be excluded from the determination of Total Building Investment Costs.

The following costs are also not allowable for inclusion in the calculation of the Developer's Total Building Investment Costs:

- (i) financing provided by any public entity whether in the form of grants or loans;
- (ii) financing provided by any third party lenders;
- (iii) costs incurred by Developer or any Affiliate in connection with Developer's response to the Authority's requests for qualifications; and
- (iv) to the extent that the Authority elects, at its sole discretion, to provide any financing, whether debt or equity, to the Project, such financing costs are also excluded from the calculation of Developer's Total Building Investment Costs.

9.4 Documentation. Developer shall provide the Authority with an itemized and detailed summary of the Total Building Investment Costs within one hundred eighty (180) days of completion of the building. For purposes hereof, the term "Completion" means the earlier of the date that (i) a certificate of occupancy is issued for the building; (ii) the date any portion of the building is placed in use; or (iii) the architect for the building certifies completion for the payment of the construction contractor's final progress payment (exclusive of any retention). All evidence of Developer's Total Building Investment Costs shall be retained by the Developer for not less than three (3) years from Completion and shall be made available to the Authority within five (5) days of the Authority's written request. All summaries of Total Building Investment Costs shall be certified by an authorized representative of Developer as being true and correct. Additionally, unless disputed in writing by the Authority within one hundred and eighty (180) days of its receipt of Developer's detailed summary of Total Building Investment Costs, all itemized statements shall be deemed conclusive as to the total costs set forth therein and binding on the Parties.

The Developer shall also provide the Authority with: (i) all updated construction documents detailing all Improvements constructed on the Project Site; and (ii) a set of final "AS BUILT" reproducible drawings in digital format Auto CAD 2005 or later, or such equal compatible format reasonably satisfactory to the Authority evidencing the final Building Improvements. The foregoing items shall be provided within one hundred eighty (180) days of the Completion of the Building.

9.5 Net Cash Flow. Net Cash Flow means for each Building the Gross Revenues derived from the Building less the Operating Costs for such building. Gross Revenues means all

income derived from a building by the Developer, including but not limited to, Building rents , ground rents from any approved ground sublease and additional rents paid by the building tenants for triple net occupancy costs such as utilities, insurance and common area maintenance. Operating Costs means (a) direct Building maintenance and operations costs; (b) property management costs associated with the Building not to exceed ten (10%) percent of building rent; (c) insurance; (d) leasehold mortgage payments (principal and interest); (e) permits and fees; (f) real estate commissions paid to secure Building tenants; (g) taxes and (h) Ground Lease payments to the Authority allocated to the Building based on the Building square footage as a percentage of total Building square of the applicable Phase at the time of determination of such percentage.

The Net Cash Flow from the Building shall not include any depreciation or amortization of Building or Facility Investment Costs and/or any indirect costs, overhead, administrative costs, or indirect costs incurred by Developer allocated or assigned to Building Operating Costs

The amount of Authority's participation in Net Sales Proceeds will be paid, in full, concurrently with the consummation of the Sale of the Building.

Nothing contained in this Article 9 shall grant or imply any right of (a) the Developer to participate in any proceeds of the sales or lease of any building after title thereto has reverted to the Authority pursuant to Section 13.1.

See Exhibit I for an example of the application of the calculation set forth in this Article 9.

## **ARTICLE 10 EVENTS OF DEFAULT; REMEDIES**

### 10.1. Events of Default.

(a) Any breach of a "substantial and material obligation" under this Development Agreement that remains uncured following the applicable notice and cure period described in Section 10.2 shall constitute an "Event of Default".

(b) Developer agrees that the following events (subject to Force Majeure) shall constitute a breach of a substantial and material obligation by Developer under this Development Agreement:

(i) if Developer shall neglect, violate, be in default under or fail to perform or observe any of the material covenants, agreements, terms or conditions contained in this Development Agreement on its part to be performed including, but not limited to, any payment obligations of Developer;

(ii) an Event of Bankruptcy;

(iii) a failure to comply with any material conditions imposed in connection with any of the development components of the Project; or

(iv) the failure to commence the development of a Phase in accordance with the terms hereof, subject, however, to Force Majeure Events.

10.2. Notice of Breach. If a breach by Developer occurs with respect to a “substantial and material obligation” under this Development Agreement, the Authority will provide the Developer with written notice specifically describing the breach. Upon receipt of such a notice, the Developer shall proceed to cure or remedy such breach within 30 days of receipt of such notice, or such longer period due to Force Majeure Events or as may be necessary to cure said breach if within said 30 days the Developer commences to cure and diligently prosecutes such cure.

10.3. Event of Default Remedies. Upon the occurrence of an Event of Default by Developer, the Authority’s sole rights and remedies at law, equity or under this Development Agreement shall be the right to seek an injunction against Developer and, in addition, Authority will have the right, in its reasonable discretion, to terminate this Agreement as it pertains to any remaining phases set forth in the Development Schedule (i.e., Phases not subject to a Ground Lease then in effect) by providing thirty (30) days prior written notice to Developer. Developer shall have sixty (60) days after receipt of the Authority's termination notice to cure such breach or, if such default is not capable of being cured within such sixty (60) day period that Developer shall immediately undertake and diligently pursue completion of such cure. In the event of such termination, the Developer will be required to promptly repair any damage caused to the Project Site by Developer or any party acting by, through or under Developer, and to cure any violations of any Environmental Law or other Applicable Law to the extent caused by Developer or any party acting by, through or under Developer.

10.4. If the Authority fails, subject to Force Majeure Events, to observe and perform any material obligation on its part to be observed or performed hereunder within thirty (30) days (or within such other period expressly provided in this Agreement) after written notice to the Authority specifying such failure and requesting that it be remedied, or within such further period of time as is reasonably necessary to cure such failure, but only if the Authority has, within said thirty (30) day period, taken reasonable steps to undertake such cure and diligently pursue completion of same. In the event of Authority’s failure to effectuate a cure as set forth herein, Developer may pursue a claim for specific performance against the Authority (it being acknowledged and understood by the Authority that monetary damages may not be an adequate remedy to Developer for the Authority's failure to observe its obligations hereunder) or a claim for money damages so as to (i) protect the rights granted to Developer hereunder (including curing any Authority Event of Default for the account of the Authority), or (ii) enforce the performance and observance of any obligation of the Authority hereunder.

10.5. Surrender Upon Termination. Upon the expiration of the Term of this Development Agreement or upon its earlier termination for any reason whatsoever and subject to the other provisions contained herein, Developer shall vacate the Project Site as to all portions thereof not then subject to Ground Leases

**ARTICLE 11**  
**REPRESENTATIONS AND WARRANTIES**

11.1 Developer. Developer represents and warrants to the Authority that:

(a) Organization. Developer is a limited liability company duly organized and validly existing under the laws of the State of Delaware, is in good standing under the laws of the State of Delaware and has the full power and authority to carry on its business as now conducted and to enter into and perform its obligations under this Development Agreement.

(b) Authorization; No Conflict. Developer has by all necessary entity action duly authorized, executed and delivered this Development Agreement and neither Developer's execution and delivery hereof nor its compliance with the terms hereof (1) does or will contravene its operating agreement or any governmental rule or law or the terms or conditions of any judgment or decree, agreement or instrument applicable to or binding on it or any of its assets or (2) does or will require the consent or approval of any person, entity or instrumentality which has not already been obtained, except for environmental, land use and construction related permits or approvals.

(c) Enforceability. This Development Agreement is a legal, valid and binding obligation of Developer, enforceable against Developer in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(d) Litigation. There is no action, suit or proceeding, at law or in equity before or by any court or governmental authority, pending or, to the best of Developer's knowledge, threatened against Developer wherein an unfavorable decision, ruling or finding would materially adversely affect the performance of Developer's obligations hereunder or its performance in connection with the other transactions contemplated hereby or which, in any way, would materially adversely affect the validity or enforceability of this Development Agreement or any agreement or instrument entered into by Developer in connection with the transactions contemplated hereby.

11.2. Authority. Authority represents and warrants to Developer that:

(a) Organization. Authority is a body corporate and politic duly organized and validly existing under the laws of the State of Nevada, is in good standing under the laws of the State of Nevada and has the full power and Authority to carry on its business as now conducted and to enter into and perform its obligations under this Development Agreement.

(b) Authorization; No Conflict. Authority has duly authorized, executed and delivered this Development Agreement and neither Authority's execution and delivery hereof nor its compliance with the terms hereof (1) does or will contravene its articles of incorporation or bylaws or any other governmental rule or law or the terms or conditions of any judgment or decree, agreement or instrument applicable to or binding on it or any of its assets, including the Project Site, or (2) does or will require the consent or approval of any person, entity or instrumentality which has not already been obtained, except for environmental, land use and

construction related permits or approvals. There is no rule or law or the terms or conditions of any judgment or decree, agreement, lien or instrument binding on Authority or the Project Site that does or will prevent, limit or otherwise restrict the development and construction of the Project as contemplated herein.

(c) Enforceability. This Development Agreement is a legal, valid and binding obligation of Authority, enforceable against Authority in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(d) Litigation. There is no action, suit or proceeding, at law or in equity before or by any court or governmental authority, pending or, to the best of Authority's knowledge, threatened against Authority wherein an unfavorable decision, ruling or finding would materially adversely affect the performance of its obligations hereunder or in connection with the other transactions contemplated hereby or which, in any way, would materially adversely affect the validity or enforceability of this Development Agreement or any agreement or instrument entered into by Authority in connection with the transactions contemplated hereby.

(e) To the Authority's actual knowledge, there are no liens or written claims which have been asserted against the Project.

(f) No other person or entity has development rights with respect to the Project.

## **ARTICLE 12 SUPERVENING LAW/FAA PROVISIONS**

12.1. Subordinate to United States Agreements. This Development Agreement and all provisions set forth herein are and shall be subject and subordinate to the terms and conditions of any instruments and documents under which Authority acquired the land or improvements thereto, of which the Project Site is a part, and shall be given only such effect as will not conflict with or be inconsistent with such terms and conditions. This Development Agreement shall be subordinate to the provisions of any existing or future agreements between the Authority and the United States of America relative to the airfield operation and maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal funds for the development of the Airport. All provisions of this Agreement shall be subordinate to the right of the United States of America to lease or otherwise assume control over the Airport, or any part thereof, during time of war or national emergency for military or naval use and any provisions of this Agreement inconsistent with the provisions of such lease to, or assumption of control by, the United State of America shall be suspended.

12.2. Required Changes. In the event that the FAA requires, modifications, revisions, supplements or deletions of any of the terms, conditions or requirements of this Development Agreement, Developer agrees to such changes as may be reasonably required to enable Authority to obtain said modification; however, a Ground Lease entered into shall not be amended except as expressly described therein. Notwithstanding the foregoing, if any such changes result in a

material and adverse impairment or loss of the rights and benefits of Developer under this Development Agreement, then Developer may terminate this Development Agreement upon written notice thereof to the Authority, following which neither Party shall have any further liability to the other hereunder, except all indemnification obligations of each Party shall survive any such termination.

12.3. Regulatory Changes. It is anticipated that changes will come from agencies having jurisdiction over the Airport or Authority in the form of regulatory changes. It is Developer's responsibility to obtain all Notices of Proposed Rule Making directly from such agencies. Where possible, Authority may provide notice of proposed changes but nothing contained herein shall render this provision unenforceable by virtue of Developer not receiving notice of proposed changes.

12.4. Avigation Right-of-Way.

(a) There is and shall be the right of free passage of aircraft in the airspace over the Project Site at a height at or above the Mean Sea Level heights set forth on Exhibit G and shall be for the exclusive benefit of the Authority, its successors and assigns including the National Championship Air Races.

(b) Further, the rights granted pursuant to this Section 12.4 shall include the right to cause or deposit in all airspace above the surface of the Project Site such noise, vibrations, fumes, dust, fuel particles and other effects that may be caused by the passage of the aircraft over the Project Site; and by the operation of the aircraft landing at, or taking off from, or otherwise operating at or on the Airport. Developer does hereby waive, remise and release any right or cause of action which it now has or may have in the future against the Authority, its successors and assigns, due to such noise, vibrations, fumes, dust, fuel particles and other surface effects that may be caused or may have been caused by the operation of aircraft passing over the Project Site, or landing at, or taking off from, or otherwise operating at or on the Airport.

(c) Authority shall have the continuing right to prevent the erection or growth upon the Project Site of any building, structure, trees or any other object extending into the airspace above said surface at a height of mean sea level of the heights as set forth on Exhibit G and to remove from said airspace as mandated by the FAA or as otherwise determined by the Authority, to mark and light as obstructions to air navigation, any such building, structure, trees or other objects now upon, or which in the future may be upon the Project Site, together with the right of ingress to and egress from and passage over the Project Site (airspace and surface space) for such purposes.

(d) In the event Developer (or anyone holding through Developer) interferes with the Authority's right of free passage provided in this Section 12.4, the Authority reserves the right, upon reasonable prior notice to Developer (except in the case of an emergency), to enter upon the Project Site and to exercise its rights under this Agreement pertaining to the avigation right of way including, but not limited to, remove the offending structure or object and cut the offending tree, all of which shall be at the expense of Developer..

12.5. Reversion for Aeronautical Purposes. Authority may terminate this Development Agreement at any time that the Authority determines that the Project Site will be required for Aeronautical purposes. In such event, Developer agrees to release the Authority from any claims or liabilities resulting from such termination except such claim for equitable compensation limited to the Developer's out of pocket infrastructure costs for Infrastructure Improvements made to the Project Site in an area not subject to a Ground Lease. Any claims for equitable just compensation for the exercise of these rights by the Authority in connection with the Improvements made to property subject to a Ground Lease shall be determined as set forth in the Ground Lease. In the event a United States agency shall demand and take over the entire facilities of the Airport, or that portion of the Airport containing the Project Site, for public purposes, then and in that event Authority shall be released and fully discharged from any and all liability hereunder; provided, however, that Developer expressly reserves any and all legal rights, claims and causes of action which it may have against the United States of America or any agency thereof arising out of or resulting from the reclamation of the Project Site and the taking of any of Developer's improvements, fixtures and property located thereon.

12.6. Operation as a Public Airport. Developer acknowledges that Authority is required to operate and maintain the Airport as a public airport consistent with and pursuant to the Grant Assurances given by Authority to the United States Government under the Airport and Airway Improvement Act of 1982, as the same may be amended from time to time.

12.7. Airport Landing Area Development or Improvement. Authority reserves the right to further develop or improve off Project the landing area of the Airport as it sees fit, regardless of the desires or view of Developer, and without interference or hindrance.

12.8. Maintenance of Airport. Authority reserves the right, but shall not be obligated to Developer, to maintain and keep in repair the Landing Area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of Developer in this regard.

12.9. No Exclusive Right. It is understood and agreed that nothing contained in this Development Agreement shall be construed as granting or authorizing the granting of an exclusive right within the meaning of Section 308a of the Federal Aviation Act of 1958 (49 U.S.C., § 40103(e)), as the same may be amended from time to time.

12.10. Airport Security Plan and Facilities. [Reserved.]

12.11. Leases and Covenants. Developer, for itself, its heirs, personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree to the following, as a covenant running with the land:

(a) Intentionally Omitted.

(b) Compliance With Title 49. In the event facilities are constructed, maintained or otherwise operated on the Project Site for a purpose for which a United States Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, Developer shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations,

Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, as said regulations may be amended (49 CFR Part 21), and Title 49 CFR Part 27, Nondiscrimination on the Basis of Disability, in compliance with the intent of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C.794), as amended.

(c) Compliance with Title VI of Civil Rights Act of 1964.

1. No person, on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of or be otherwise subjected to discrimination in the use of said facilities;
2. In the construction of any improvements on, over or under the land and the furnishing of services thereon, no person shall be excluded from participation in, denied the benefits of or otherwise be subject to discrimination on the grounds of race, color, or national origin;
3. Developer shall use the Project Site in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21.

(d) Breach of Nondiscrimination Covenants - In the event of breach of any of the above nondiscrimination covenants described in paragraphs (b) and (c) above, Authority shall have the right to terminate this Development Agreement and to re-enter and repossess said land and the facilities thereon and hold the same as if this Lease had never been made or issued; provided, however, that Developer allegedly in breach shall have the right to contest said allegation of breach under applicable FAA procedures, and any sanctions under this Development Agreement, including but not limited to termination, shall be withheld pending completion of such procedures.

(e) Nondiscriminatory Pricing. Developer shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof, and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit of service, provided that Developer may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers. Noncompliance with this Paragraph and failure to substantially remedy such noncompliance within a reasonable period of time shall constitute a material breach hereof; and, in the event of such noncompliance, Authority shall have the right to terminate this Development Agreement without liability therefor or, at the election of Authority or the United States Government, either or both shall have the right to judicially enforce this paragraph (e).

(f) Inclusion of Provisions in Developer's Subleases. Developer agrees that the provisions of Paragraphs (b) through (e) of this Section 13.11, inclusive, will be included in each Ground Lease and in any sublease by which Developer grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on the premises to be leased in each Ground Lease.

(g) Disadvantaged Business Enterprise Program. Developer shall abide and be bound by the Disadvantaged Business Enterprise Program adopted and as amended from time to time by Authority pursuant to 49 CFR Part 23, Participation by Disadvantaged Business Enterprise

in Department of Transportation Programs, as may be applicable to Developer's activities hereunder.

(h) Affirmative Action Plan. Developer assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, as may be amended from time to time, to ensure that no person shall, on the grounds of race, creed, color, national origin or sex, be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Developer assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by said Subpart. Developer assures that it will require that its covered suborganizations provide assurances to Lessee and Authority that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

(i) Height Restriction. Developer will neither erect nor permit the erection of any structure or object, nor permit the growth of any tree, on the Project Site above the mean sea level elevation applicable to the most critical area of the Airport in accordance with Part 77 of the Federal Aviation Regulations. In the event the aforesaid covenant is breached, Authority reserves the right to enter upon the Project Site and to remove the offending structure or object or cut the offending tree, all of which shall be at the expense of Developer.

12.12. Federal Right to Reclaim. In the event a United States governmental agency shall demand and take over the entire facilities of the Airport, or that portion of the Airport containing the Project Site, for public purposes, then and in that event Authority shall be released and fully discharged from any and all liability hereunder; provided, however that Developer expressly reserves any and all legal rights, claims and causes of action which it may have against the United States Government or any agency thereof arising out of or resulting from the reclamation of the Leased Premises and the taking of any of Developer's improvements, fixtures and property located thereon.

12.13. Anti-Lobbying Certifications. Developer certifies, to the best of its knowledge and belief, that:

(a) No federally appropriated funds have been paid or will be paid by or on behalf of Developer, to any person for influencing or attempting to influence an officer or employee of any federal agency, a member, officer or employee of Congress, or an employee or member of Congress in connection with the award of any federal contract, in making any federal grant or federal loan, the entering into of any cooperative lease, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative lease.

(b) If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a member, officer or employee of Congress, or an employee or member of Congress in connection with any contract, grant, loan or cooperative Lease relating to this Development Agreement, Developer shall complete and submit Standard Form-LLL, "Disclosure of Lobby Activities," in accordance with its instructions.

(c) Developer shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants and contracts under grants, loans and cooperative Leases) and that all subrecipients shall certify and disclose accordingly.

12.14. Citizenship Certification.

(a) Developer certifies that it:

1. Is not owned nor controlled by one or more citizens or nationals of a foreign country included in the list, published by the Office of the United States Trade Representative or any successor thereto, of countries that discriminate against United States of America business entities;
2. Has not knowingly entered into any contract or subcontract hereunder with a contractor that is a citizen or national, owned or controlled directly or indirectly by one or more citizens or nationals, of such a country; or indirectly by one or more citizens or nationals of a foreign country on that list; and
3. Has not procured any product or subcontracted for the supply of any product, for use hereunder, that is produced in such a country.

(b) Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 C.F.R. Part 30.17, no contract shall be awarded to any party hereunder that is unable to certify to the above. If Developer knowingly procures or subcontracts for the supply of any product or service of such a country for use hereunder, the FAA, the TSA may direct, through Authority, cancellation of such contract, at no cost to the United States of America.

(c) Developer shall ensure the incorporation by reference of this provision for certification, without modification, in each contract and in all subcontracts. Developer may rely upon the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous. Developer shall provide immediate written notice to Authority if it learns that a prospective contractor's certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances, and shall require its contractors and their subcontractors to provide immediate written notice to Developer and Authority if, at any time, such contractor or subcontractor learns that its certification was erroneous by reason of changed circumstances.

(d) This certification is a material representation of fact upon which Authority relied when entering this Development Agreement. If it is determined that Developer or any contractor or subcontractor thereof knowingly rendered an erroneous certification, the FAA may direct, through Authority, termination of the contract or subcontract at no cost to the United States of America.

(e) Nothing contained herein shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The

knowledge and information required of Developer need not exceed that normally possessed by a prudent person in the ordinary course of business dealings.

(f) This certification concerns a matter within the jurisdiction of an agency of the United States of America, so that making a false, fictitious or fraudulent certification might render the maker subject to prosecution under 18 U.S.C. Section 1001.

### **ARTICLE 13 TITLE TO IMPROVEMENTS AND PERSONAL PROPERTY/SURRENDER**

13.1. Title to Improvements. Developer shall retain title to all Facilities and Improvements made to and upon the Project Site, but such title with respect to any portion of the Facilities and Improvements not subject to a Ground Lease will automatically vest in the Authority at the expiration or earlier termination of this Development Agreement.

13.2. Personal Property. Upon the termination (whether by expiration of the term of this Agreement, cancellation, forfeiture or otherwise, whichever first occurs) of this Development Agreement the Developer shall quit and surrender the Project Site to the Authority, peaceably, quietly and in its then existing condition as improved by Developer, reasonable wear and tear, insured casualty and condemnation excepted. Developer shall be permitted to enter into agreements with subtenants or other third parties which permits such subtenants or third parties to occupy any portion of the Project Site beyond the term for which the Developer is lawfully entitled to possession thereof; however, such agreements shall be assigned by the Developer to the Authority at the end of the Term. All property on the Project Site other than the Improvements shall, at the direction of the Authority, be removed by the Developer and the Developer shall promptly repair any damage to the Project Site resulting from such removal.

13.3. Evidence of Transfer of Ownership. Upon transfer of title to any Facilities or Improvements located on the Project Site in accordance with the provisions of this Agreement, the Authority may request, and Developer agrees to provide to the Authority upon such a request, a bill of sale or other evidence of the transfer of ownership of the Facilities and Improvements constructed by Developer on the Project Site together with evidence reasonably satisfactory to the Authority that the Facilities and Improvements are free from liens, mortgages and other encumbrances.

### **ARTICLE 14 LIABILITY**

14.1. Indemnification and Hold Harmless. Developer is and shall remain responsible for its actions and omissions, and Authority shall in no way be responsible therefor. Except to the extent caused by the Authority's gross negligence or willful misconduct, Developer shall keep, save, protect, defend at the option of Authority, indemnify and hold Authority harmless from any and all claims, fines, demands, suits, causes of action, liability and damages, including, but not limited to, costs of court and administrative proceedings and fees of attorneys and other professionals incurred by Authority, arising out of, in connection with, incidental to or in any way resulting from: (a) Developer's operations conducted on the Project Site and/or Airport; (b) Developer's development, improvement, use, occupancy, maintenance, management and

operation of the Project Site and the condition of the Project Site and improvements thereto; or (c) defect in equipment, components, fixtures and other products owned, used, installed or stored on the Project Site or any other approved location; (d) any Hazardous Substance, which is brought on, deposited or stored on or removed from the Project Site during the Term and the Term of any Ground Lease; or (e) any contamination of the Project Site or neighboring property or any other Airport property resulting from any of the foregoing. This indemnification of Authority by Developer includes, without limitation, costs incurred in connection with any investigation of site conditions or any clean-up, remediation, removal, reclamation or restoration work required by any federal, state or local governmental agency or political subdivision because of the presence of Hazardous Substances in the soil or ground water, upon or under the Project Site or neighboring property (if originating from the Project Site). Without limiting the foregoing, if the presence of any Hazardous Substances results in contamination as aforesaid, Developer shall promptly take all actions at its sole expense as necessary to restore the Project Site and other affected Airport property to the condition existing prior to the introduction of any such Hazardous Substances. Authority will not hold Developer responsible for contamination upon investigation by the governmental agency having authority in such matters, is found to conclusively be the result of operations of prior owners or tenants of the Project Site. Developer's obligation to indemnify as provided herein shall survive the expiration or early termination of this Agreement.

14.2. Survival. The provisions of this Article, as they apply to occurrences, or actual or contingent liabilities arising during the Term of this Development Agreement, shall survive any termination, cancellation or expiration of this Development Agreement.

14.3. Waiver and Release. In consideration of this Development Agreement, Developer (for itself, its successors and assigns) shall and does hereby remise, quitclaim, release and forever discharge Authority, its officers, employees, successors and assigns from any and all manner of actions and causes of action, suits, claims, demands, legal and administrative proceedings, rights and remedies of any kind or nature whatsoever, at law or in equity, which Developer ever had, now have or may have or acquire against Authority, resulting from or attributable to relating in any way whatsoever to the construction, design or development of the Project (or any part thereof). Developer shall assume all risk of loss, damage or injury, including, without limitation, death that may be sustained by Developer including the public in general or any of them, in connection with the design, development or construction of the Project (or any part thereof). Developer hereby waives any defenses and/or immunities it may have to any claim against Authority raised by or on behalf of any of its employees under any insurance policy maintained by or on behalf of Developer, and/or any Applicable Law.

## **ARTICLE 15 MISCELLANEOUS PROVISIONS**

15.1. No Personal Liability. No director, officer, member, agent or employee of either of the Parties shall be personally liable for the performance of either of the Parties' obligations under this Development Agreement or on account of any breach thereof or because of its execution or attempted execution. The obligations set forth in this Section shall survive the expiration of this Development Agreement.

15.2. Governing Law and Jurisdiction. This Development Agreement shall be deemed to have been made in the State of Nevada and shall be construed and enforced in accordance with the laws of the State of Nevada without respect to principles of conflicts of laws. The Authority and Developer hereby agree to submit to the exclusive jurisdiction of the Second Judicial District in and of the County of Washoe in the State of Nevada.

15.3. Waiver of Jury Trial. Each Party irrevocably waives all right of trial by jury in any action, proceedings or counterclaim arising out of or in connection with this Development Agreement or any matter arising hereunder.

15.4. Notices, Requests and Other Communications. Except as herein otherwise expressly provided, all notices, requests and other communications under this Development Agreement shall be in writing, shall be deemed given and effective (A) in the case of electronic mail upon receipt at the email address listed below or if received by 5:00 p.m. on a Business Day and if not, then as of the next Business Day, (B) when made by personal delivery with a written receipt of delivery, (C) one (1) Business Day after being sent by a nationally recognized overnight courier for next day delivery or (D) three (3) Business Days after being sent by United States registered or certified mail, postage prepaid, return receipt requested and, in each such case, shall be addressed as follows:

If to Developer:

Dermody Properties  
5500 Equity Avenue  
Reno, NV 89502  
Attn: C. Douglas Lanning  
Fax: 775-858-8089  
Email: dlanning@dermody.com

Dermody Properties  
O'Hare Atrium Office Plaza  
2860 South River Road, Suite 120  
Des Plaines, IL 60018  
Attn: Douglas A. Kiersey, Jr.  
Fax: 224-938-9605  
Email: dkiersey@dermody.com

with a copy to:

Allen Matkins Leck Gamble Mallory & Natsis LLP  
501 W. Broadway, 15<sup>th</sup> Floor  
San Diego, CA 92101-3541  
Attn: Martin L. Togni, Esq.  
Fax: 619-233-1158  
Email: mtogni@allenmatkins.com

If to Authority: Reno-Tahoe Airport Authority  
Reno-Tahoe International Airport  
2001 East Plumb Lane  
Reno, NV 89510-2490  
Attn: Marily M. Mora, A.A.E., President  
and Chief Executive Officer  
Email: [mmora@renoairport.com](mailto:mmora@renoairport.com)

with a copy to: Ann Morgan, Esquire  
Fennemore Craig, P.C.  
300 East Second Street  
Suite 1510  
Reno, NV 89501  
Email: [amorgan@fclaw.com](mailto:amorgan@fclaw.com)

The Parties, or either of them, may designate in writing from time to time any changes in addresses or any addresses of substitute or supplementary persons in connection with said notices, and said notices may be given on behalf of either Party by its counsel, and any such notice of changes shall be given and deemed received in the manner above provided. Except as otherwise expressly provided herein, any provision herein that one Party shall notify the other of some matter is to be construed as a requirement that notice is to be given in accordance with the provisions of this Section.

15.5. Entire Agreement; Amendment. This Development Agreement (including all exhibits hereto, which are fully incorporated herein, and documents required to be delivered hereunder) and the Ground Leases constitute the entire agreements among the Parties hereto with respect to the design, construction and occupancy of the Project and the other specific subject matter of this Agreement supersedes all other representations or statements heretofore made, oral or written, except as otherwise herein expressly provided. This Development Agreement may be amended only in writing, which amendments must be executed by duly authorized representatives of the Parties hereto.

15.6. Waiver. No waiver of default by either Party of any of the terms, covenants and conditions hereof to be performed, kept and observed by the other Party shall be construed as or operate as a waiver of any subsequent default of any of the terms, covenants or conditions herein contained to be performed, kept and observed by the other Party.

15.7. Successors. Subject to the limitations contained elsewhere in this Development Agreement, the respective rights and obligations provided in this Development Agreement shall bind and shall inure to the benefit of the Parties, their legal representatives, successors and assigns.

15.8. Severability. In the event any covenant, condition or provision herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained, provided the invalidity of any such covenant, condition or provision does not materially and adversely prejudice either Authority or Developer in their respective rights and

obligations contained in the valid covenants, conditions and provisions of this Development Agreement.

15.9. Headings. The headings and subheadings of the several Articles and Sections of this Development Agreement are inserted only as a matter of convenience and for reference. Such headings and subheadings in no way define, limit or describe the scope or intent of any of the provisions of this Development Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

15.10. No Encumbrances. Except as may be allowed pursuant to and in accordance with a Ground Lease, Developer shall not directly or indirectly create, incur, permit or suffer to exist any lien, pledge, mortgage, deed of trust, security interest, claim, easement, encumbrance or other restriction on the Project Site or any part thereof, including without limitation any Facilities or Improvements now or hereafter located thereon.

15.11. Approvals. Except as expressly provided to the contrary under this Development Agreement, whenever the approval of Authority or of Developer is required herein, no such approval shall be unreasonably withheld, conditioned or delayed. Unless otherwise specified herein, all approvals shall be in writing.

15.12. Records. Both Parties acknowledge that, in accordance with applicable FAA Regulations and state law, all records concerning the Airport are subject to inspection by any duly authorized agent of the United States Secretary of Transportation upon reasonable request and upon requests of the citizens of the State of Nevada.

15.13. Signs. Developer shall not, without the prior written approval of the Authority, erect, maintain and display signs on the grounds or exterior of buildings on the Project Site. The exact location, size and style shall be subject to the reasonable consent of Authority, it being understood that marketing the Project Site by Developer is a material condition to this Development Agreement. The term "signs" as used herein shall mean advertising signs, billboards, identification signs or symbols, posters or any similar devices. The size, location and design of all such approved signs shall be consistent with the Design Guidelines established by Authority. Prior to the erection, construction or placing of any sign on the Airport or upon the Project Site (except the interior of any buildings), Developer shall submit to Authority for approval drawings, sketches, design and dimensions of such signs. Any conditions, restrictions or limitations with respect to the use thereof, as stated by Authority in writing, shall become conditions of this Development Agreement.

15.14. Incorporation of Exhibits. All exhibits referred to herein and any appendices, exhibits or schedules which may, from time to time, be referred to in any duly executed amendment hereto are (and with respect to future amendments, shall be) by such reference incorporated herein and shall be deemed a part of this Development Agreement as fully as if set forth herein.

15.15. No Agency. Notwithstanding any provisions hereof, this Development Agreement does not constitute an appointment of Developer as an agent or representative of Authority for

any purpose whatsoever, and neither a partnership nor a joint venture is created hereby and Developer shall not hold itself out to be acting in any such capacity.

15.16. Brokers. Developer and the Authority warrant and represent to each other that no real estate brokers are involved in this real estate transaction. The Parties agree that in the event of a breach of this warranty and representation, the offending Party shall indemnify and hold the non-offending Party harmless with respect to any loss or claim for brokerage commission, including all attorneys' fees and costs of litigation through appellate proceedings.

15.17. Counterparts; Electronic Signatures. This Development Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute the same instrument. It is further acknowledged and agreed that electronically signed and/or facsimile copies will be acceptable in place of originals.

15.18. Attorney Fees. If any legal action or proceeding is instituted to enforce any terms, covenants or conditions of this Agreement, or litigation or other proceeding concerning the rights and duties of the Parties or to recover any amount due hereunder, the losing party shall pay the prevailing party, in addition to the costs and disbursements allowed by statute, such sum as the court or proceeding officer, might adjudge reasonable as attorney's fees in such action or proceeding, in both trial court and appellate court subject to statutory restrictions.

15.19. Survival. The terms and provisions of this Article 15, Section 4.4, Section 4.7, Section 4.10, Section 8.2, Section 8.3, Article 9, Article 12, Article 14, and any other term or provision in this Development Agreement which by its nature or as expressed is to survive or be performed in whole or in part after a termination of the Term, whether at its natural expiration or sooner, shall survive any termination of this Development Agreement.

15.20. Estoppel Certificate. Each party hereto agrees, within ten business (10) days of the written request of the other party or any then current or prospective holder of a leasehold mortgage, execute estoppel certificates regarding the status of the performance of the other party of its obligations hereunder, including, without limitation, whether a default or breach exists (or would exist with the passage of time, or giving of notice, or both) under this Agreement, if such be the case, and certifying as to whether or not one or both of the parties has at the date of such certification complied with any obligation of the party hereunder as to which such party or holder may inquire. The form of any estoppel certificate shall be prepared by the holder or party requesting the estoppel certificate, as applicable, and shall be in a form reasonably acceptable to the other party and the other party's legal counsel and shall be at no cost to the other party.

15.21. Recordation. Developer shall have the right to record a commercially reasonable memorandum of this Agreement and any Ground Lease.

15.22. Contingency. This Agreement is hereby made subject to and contingent upon the approval of the Authority's Board of Trustees.

**ARTICLE 16**  
**STORM WATER; SANITARY AND HAZARD MATERIALS BY REFERENCE**

16.1. Authority Permit.

(a) Authority is subject to federal storm water regulations, 40 C.F.R. Part 122, and, as applicable, state storm water regulations provided by the Nevada Water Pollution Control Law set forth in NRS 445.131 - 445.354, inclusive.

(b) Authority has taken steps necessary to apply for or obtain a storm water discharge permit as required by the applicable regulations for the Airport, which might include or affect the Project Site. The storm water discharge permit issued to Authority may name Developer as a co-permittee.

(c) Cooperation is necessary to ensure compliance with storm water discharge permit terms, and as well as to ensure safety, and to minimize costs and impacts to operations.

16.2. Permit Compliance.

(a) Authority will provide Developer with written notice of those storm water discharge permit requirements, if any, that Developer must perform including, but not limited to: certification of non-storm water discharges; collection of storm water samples; preparation of storm water pollution prevention or similar plans; implementation of good housekeeping measures and BMP; and maintenance of necessary records. Such written notice shall include applicable deadlines. Within fifteen (15) days of Developer's receipt of such written notice, it shall notify Authority in writing of its dispute of any permit requirement it has been directed to undertake and the reasoning and justification as a basis for such dispute. Developer's failure to provide such timely notice shall, , be its assent to undertake the required performance. If Developer provides Authority with timely written notice of its dispute and justification therefor, Authority and Developer shall negotiate a prompt resolution of their differences. Developer will not object to written notice from Authority for purposes of delay or of avoiding compliance Developer shall undertake, at its sole cost, those permit requirements, if any, directly related to its operations, for which it received written notice from Authority. Developer shall meet any and all deadlines imposed on or agreed to by Authority and Developer. Time is of the essence in complying with the terms hereof.

(b) Authority shall provide Developer, upon written request, with any non-privileged information collected and submitted to any governmental entity pursuant to applicable storm water regulations. The terms of Authority's storm water discharge permit might change from time to time, and Authority shall be Developer's agent solely to represent its interests concerning permit modifications by the pertinent regulatory agencies, provided that Authority shall first fully communicate the issues and consult with Developer. Authority will give Developer written notice of any violation by Developer of Authority's storm water discharge permit or of the terms of this Article 16, and Developer shall undertake immediately and pursue diligently the cure thereof. If Developer fails to cure any violation, or if such violation is material and of a continuing nature, Authority may seek any and all remedies provided for in Article 10 herein.

16.3. Environmental Laws; Hazardous Materials Handling.

(a) Developer shall comply with all Environmental Laws relative to the transportation, storage and release of Hazardous Substances, substances and waste, as might now or hereafter be defined by such Laws.

(b) Developer shall not improperly use, store or dispose of on the Project Site or elsewhere at the Airport any Hazardous Substance in violation of Environmental Laws. Notwithstanding, the presence of certain materials, which might be necessary to support Developer's operations, located within the proper receptacles of any motor vehicle or in other proper containers correctly stored on the Project Site or elsewhere at the Airport, shall not be a violation of this Section.

(c) Only persons who meet Authority's requirements and comply with Applicable Laws will be allowed to conduct business on the Project Site or elsewhere at the Airport to receive Hazardous Substances for shipping or storage. Developer, its agents, employees, invitees and licensees including, but not limited to, any sub-lessee, shall handle such articles or materials compliant with all Environmental Laws.

(d) To the extent required by Applicable Law, Developer shall maintain written procedures for handling and disposing of Hazardous Substances. Developer shall make such written procedures, if any are so required, available for Authority's review upon request.

16.4. Sanitary and Industrial Waste Disposal. Developer shall operate and maintain, in good working condition and at its cost, appropriate, adequate facilities for disposing of Hazardous Substances as required by Environmental Law.

16.5. Notice of Action. Developer shall immediately notify Authority in writing of: (a) Developer's receipt of written notice of any environmental enforcement, clean-up, removal or other action proposed, instituted or completed pursuant to any federal, state or local law; (b) Developer's receipt of written notice of any claim made by any person against Developer for damages, contribution or cost recovery resulting from or claimed to result from the presence of a Hazardous Substances; or (c) reports to any regulatory agency arising out of or in connection with the delivery to, storage on or removal from the Project Site of any Hazardous Substances including, but not limited to, any complaint, notice, warning or alleged violation in connection therewith. Developer shall provide Authority with copies of all non-privileged or non-confidential documentation relating to the foregoing.

16.6 Consent Decree. Authority is a party to a certain Consent Decree, incorporated herein, entered January 31, 2000, to settle an action filed in the United States District Court for the District of Nevada and captioned Nevada Division of Environmental Protection (NDEP) vs. United States of America, et al., No. CV-N-98-034-DWH (RAM), to which Authority was a party. The Decree established terms for certain environmental remediation of premises at and/or about the Airport. The Project Site may be affected by the terms of the Decree.

**SIGNATURE PAGE FOLLOWS:**

IN WITNESS WHEREOF, the Parties hereto have duly executed this Development Agreement as of the date first written above.

ATTEST:

**THE RENO-TAHOE AIRPORT AUTHORITY  
AUTHORITY**

  
Name: Tina Zeffiger  
Title: VP of Airport Economic Development

By: Marilyn M. Mora  
Marilyn M. Mora, A.A.E.  
Title: President and Chief Executive Officer

ATTEST:

**DP RTA Stead, LLC, a Delaware limited liability company**

By: Douglas A. Kiersey, Jr.  
Name: Douglas A. Kiersey, Jr.  
Title: President

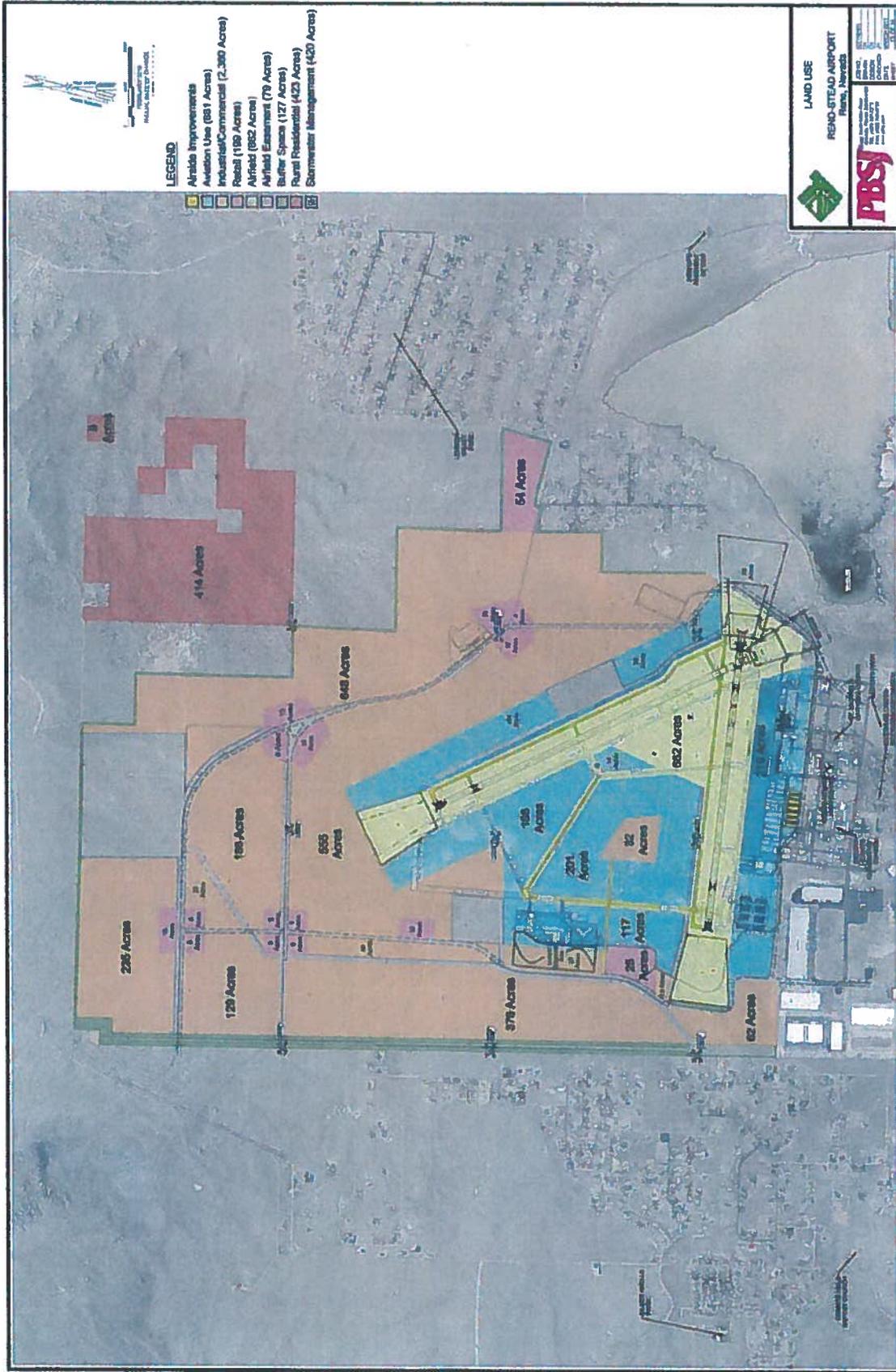
By: Michael C. Dermody  
Name: Michael C. Dermody  
Title: Chairman & CEO

(Corporate Seal)

## LIST OF EXHIBITS

- Exhibit A - Land/Property Description
- Exhibit A-1 - Moya Boulevard Extension
- Exhibit A-2 - 90 Acres / SW Area of the Airport re: Ground Lease for Phase I
- Exhibit B - Current Concept Plan
- Exhibit C - Design Guidelines
- Exhibit D - Ground Lease Form
- Exhibit E - Performance/Completion Bond
- Exhibit F - Insurance Coverages
- Exhibit G - Code of Federal Regulations Title 14 Part 77 Surfaces
- Exhibit H - Grant Assurances
- Exhibit I - Participation Rights Calculation Example

# EXHIBIT A LAND/PROPERTY DESCRIPTION



**EXHIBIT A-1  
MOYA BOULEVARD EXTENSION  
PAGE 1 OF 2**



**PROPOSED GATEWAY AT MOYA BOULEVARD AND ECHO AVENUE**



**PROPOSED GATEWAY AT PHASE 1**



**PROPOSED GATEWAY AT PHASE 1 WITH RAILROAD CROSSING**



**MOYA BLVD. GATEWAY OPTIONS - HORIZONTAL CONCEPT**



GATEWAY IMAGES

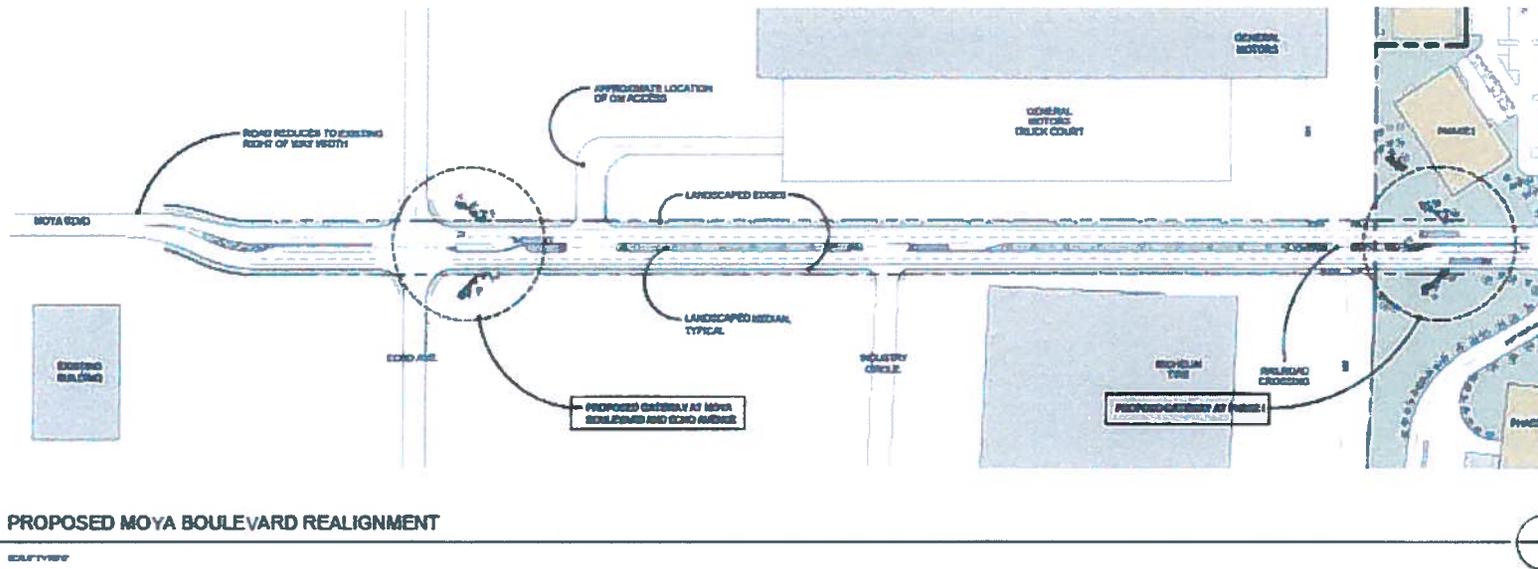
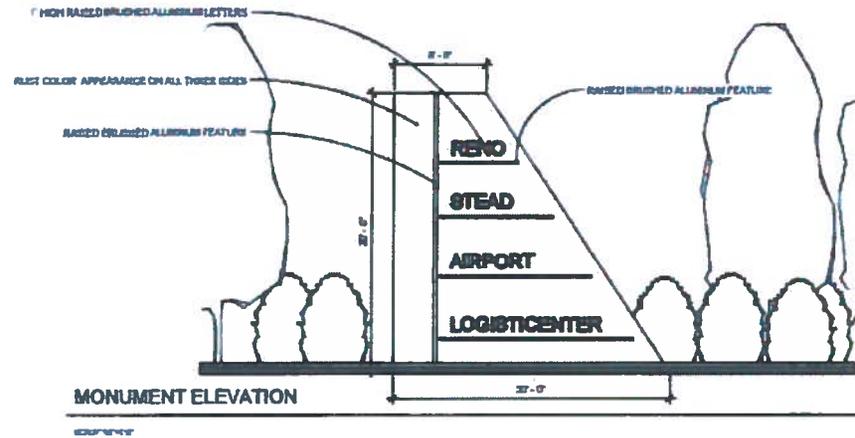
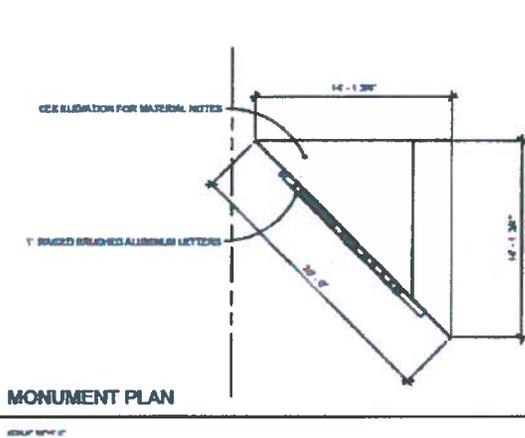
RENO STEAD AIRPORT  
STEAD, NEVADA

04.28.15

5300 FBI Street  
Reno, Nevada 89502

T 775.858.5090  
F 775.856.5375

# EXHIBIT A-1 MOYA BOULEVARD EXTENSION PAGE 2 OF 2



# EXHIBIT A-2 90 ACRES/ SW AREA OF THE AIRPORT PHASE 1 GROUND LEASE



## PHASE I PARK PLAN

**SITE DATA SUMMARY:**

AGREEMENT:	CITY OF RENO
OCCUPANCY:	24 24
CONSTRUCTION TYPE:	2-4

**TOTAL ACRES:**  
PHASE I LEASE AREA - 90 ACRES

PARK PLAN  
1" = 200' - 0"



**PROPOSED PHASE I**

RENO STEAD AIRPORT  
STEAD NEVADA

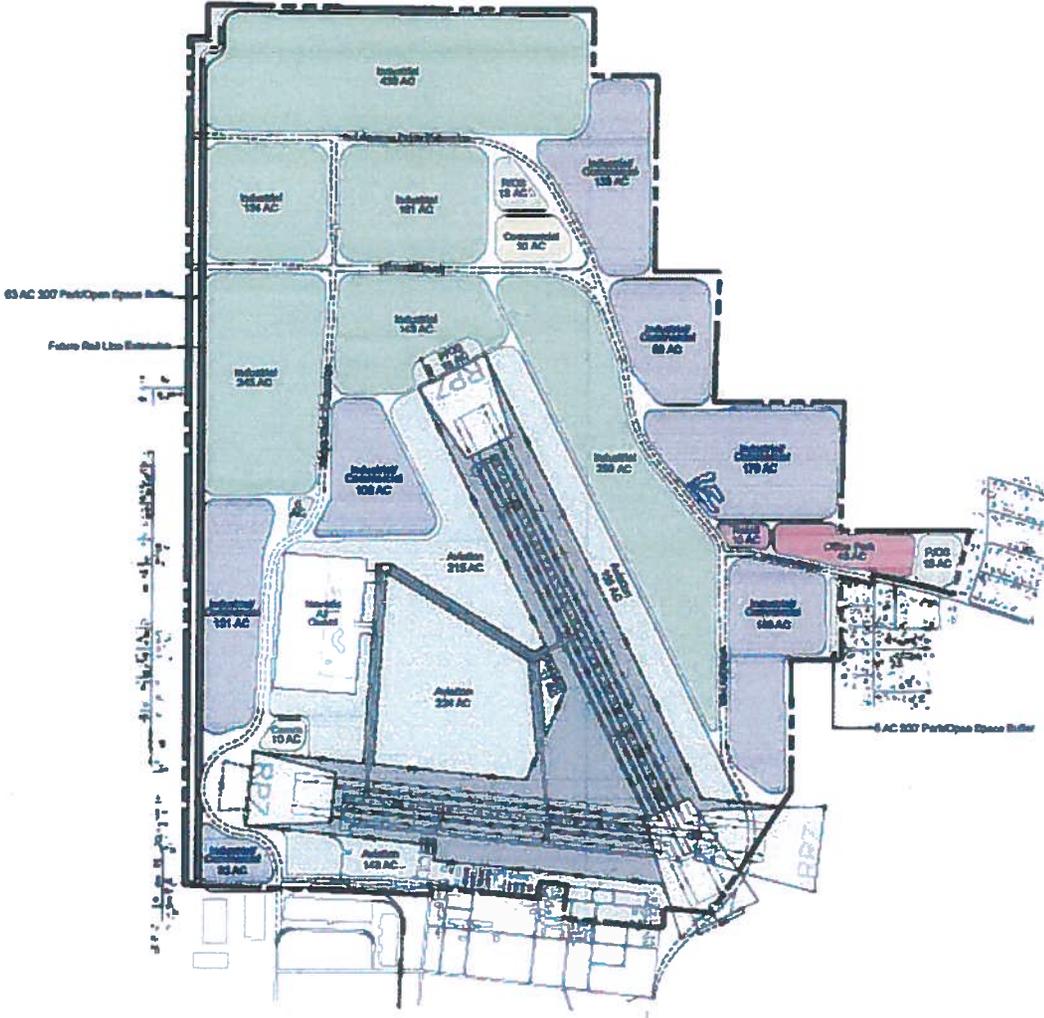
**CONFIDENTIAL - NOT FOR REPRODUCTION**

05.20.18



5320 W. J. Street  
Reno, Nevada 89502  
P 775.336.1020  
F 775.870.5275

# EXHIBIT B CURRENT CONCEPT PLAN



	Industrial	1421 AC Total
	Industrial/Commercial	832 AC Total
	Aviation Use	753 AC Total
	Commercial	40 AC Total
	Office Park	48 AC Total
	Retail	10 AC Total
<b>Total Developable Acreage</b>		<b>3,104 AC Total</b>
	Park/Open Space	124 AC Total



**EXHIBIT C**  
**DESIGN GUIDELINES**  
[see attached]

**BUSINESS PARK**  
**at**  
**Reno-Stead Airport**  
**Landscape and Design Guidelines**

June 2016

# TABLE OF CONTENTS

<b>I.</b>	<b>INTRODUCTION.....</b>	<b>3</b>
A.	PURPOSE .....	3
B.	PROJECT LOCATION .....	3
<b>II.</b>	<b>SUBMISSION REQUIREMENTS AND REVIEW PROCEDURES.....</b>	<b>4</b>
A.	PURPOSE .....	4
B.	FAA REVIEW .....	4
C.	ARCHITECTURAL REVIEW ALLIANCE .....	4
D.	DEVELOPER RESPONSIBILITIES .....	4
E.	PROJECTS REQUIRED TO SUBMIT .....	5
F.	REQUIRED PLANS .....	5
<b>III.</b>	<b>USE CATEGORIES &amp; SITE DEVELOPMENT STANDARDS.....</b>	<b>8</b>
A.	USE CATEGORY PLAN .....	8
B.	USE CATEGORIES AND SITE SPECIFIC DEVELOPMENT STANDARDS .....	8
C.	PROJECT SUMMARY.....	9
	<i>Industrial Use Category.....</i>	<i>10</i>
	<i>Industrial/Commercial Use Category.....</i>	<i>11</i>
	<i>Aviation Use Category.....</i>	<i>12</i>
	<i>Commercial Use Category.....</i>	<i>13</i>
	<i>Office Use Category.....</i>	<i>14</i>
	<i>Retail Use Category.....</i>	<i>15</i>
	<i>Open Space Use Category.....</i>	<i>16</i>
D.	GENERAL SITE DEVELOPMENT STANDARDS.....	17
1.	<i>Off-Street Parking.....</i>	<i>17</i>
2.	<i>Noise Attenuation.....</i>	<i>18</i>
3.	<i>Building Exteriors.....</i>	<i>18</i>
4.	<i>Outside Storage and Service Areas.....</i>	<i>19</i>
5.	<i>Fences and Walls.....</i>	<i>19</i>
6.	<i>Safety &amp; Security.....</i>	<i>20</i>
<b>IV.</b>	<b>SIGNAGE .....</b>	<b>21</b>
<b>V.</b>	<b>LIGHTING .....</b>	<b>25</b>
<b>VI.</b>	<b>GENERAL LANDSCAPE AND IRRIGATION DESIGN GUIDELINES .....</b>	<b>27</b>
<b>VII.</b>	<b>LANDSCAPE MAINTENANCE .....</b>	<b>30</b>

# **I. INTRODUCTION**

## **A. Purpose**

In 2016, the Reno-Tahoe Airport Authority entered into a partnership with DPHW to develop the available land (refer to Exhibit 1 – Use Category Map). DPHW is the Master Developer of the BUSINESS PARK at Reno-Stead Airport. All of the properties identified on Exhibit 1 are subject to the design guidelines contained in this handbook.

The BUSINESS PARK at Reno Stead Airport as approved by the Reno Tahoe Airport Authority (RTAA) created a Master Developer Agreement (MDA). The requirements of this MDA call for the preparation of these Landscape and Design Guidelines to ensure a high quality aerospace centric business park environment.

The BUSINESS PARK at Reno-Stead Airport Landscape and Design Guidelines were prepared to set standards that, once implemented, will create a cohesive, environmentally sensitive development. These Design Guidelines are not intended to limit design, but to communicate an expected level of quality. The principal objective is to provide a sophisticated, mixed-use industrial and business park area which creates a compatible bridge between airport operations and residential neighbors. These Guidelines will further ensure that airspace around the airport is adequately protected and that FAA airspace safety requirements are adhered to. Incompatible land uses that are likely to create or contribute to air navigation hazards or any other uses that could threaten aircraft operator safety or the future viability of the airport will not be permitted.

This document will be used to implement the general intent and spirit of the BUSINESS PARK at Reno-Stead Airport Land Use Plan Summary Report as referenced in the MDA. As an implementation tool, these guidelines will encourage a distinct identity reflecting this project's relationship to the airport and the orientation of parcels towards open space/recreation corridors. This plan acknowledges the mix of land uses approved by the BUSINESS PARK at Reno-Stead Airport Special Planning Area Zoning Designation of Mixed Use. The mix includes: Industrial, Industrial/Commercial, Aviation, Commercial, Office Park, and Open Space.

## **B. Project Location**

The BUSINESS PARK at Reno-Stead Airport is located approximately 10 miles northwest of the central business district of the City of Reno, Nevada. The Airport is surrounded by open space to the north, BLM to the east, commercial and industrial uses to the south and sparsely populated residential uses to the west.

The Reno-Stead Airport (Airport) is a 5,170 acre general aviation airport owned and operated by the Reno-Tahoe Airport Authority (Authority). The Airport includes a number of existing structures used primarily to support aviation activities such as buildings used for aircraft storage (e.g. hangars), aircraft maintenance, service and fueling, and airport operations. The Airport Terminal is a two-story, 12,000 square foot building that houses Airport Administrative Offices, an Emergency Operations Center, a Pilot's Lounge, and a Community Conference Room.

## **II. SUBMISSION REQUIREMENTS AND REVIEW PROCEDURES**

### **A. Purpose**

Development may not take place on any property within the BUSINESS PARK at Reno-Stead Airport until approval of a site development plan is obtained from the Architectural Review Alliance (see below) and City of Reno Planning Department. Development plans shall follow the Reno Municipal Code (RMC) Title 18 Annexation and Land Development requirements. The BUSINESS PARK at Reno-Stead Airport Design Guidelines are intended to provide additional guidance on aesthetic issues in order to create a project that has a distinctive, cohesive high quality image. It is the responsibility of the project lead and/or developer to be familiar with all applicable project submittal requirements.

The following section describes the site plan process for the BUSINESS PARK at Reno-Stead Airport. It is the responsibility of the project lead, and/or developer to obtain all applicable permits and approvals from local governing agencies.

### **B. FAA Review**

Prior to approval of a Site Development Plan, the architect or applicant shall work with RTAA Planning & Engineering to prepare required Federal Aviation Administration (FAA) applications for approval including an Obstruction Analysis for building height, transmission, potential electronic interference with aircraft, a Solar Glare Analysis, and a Form 7460-1. All of these applications can be found on the FAA website.

### **C. Architectural Review Alliance**

The Architectural Review Alliance (ARA) will consist of four members of the RTAA Staff, and four members of the DPHW Staff. The ARA will have the authority to review all building plans and enforce guidelines. Plans must be submitted to the ARA before submittal to the City of Reno Community Development Department to allow confirmation of the allocated acreage for the proposed land use, and to insure that the proposed building and landscaping is consistent with these guidelines. The ARA shall respond back within thirty (30) working days with comments and any necessary revisions, and shall endeavor to expedite processing of building permits where possible.

### **D. Developer Responsibilities**

The developer will be responsible for preparing and submitting, at their own expense, all plans including development, design & construction, for review, approval and permitting.

The developer and/or tenant of individual parcels shall be responsible for the improvement and landscaping of the building site, including the parking lot, designated landscape setbacks along all public roads as well as the building. Landscape areas shall be planted in accordance with landscaping guidelines set forth in this document.

Maintenance shall be provided by the developer and/or tenant, while the Master Developer will provide for the planting and long-term maintenance of open space corridors and public rights-of-way.

#### **E. Projects Required to Submit**

ARA review is required for any new construction in the BUSINESS PARK at Reno-Stead Airport. This requirement applies to but is not limited to solar, fumes, smoke, wind turbine, antenna, fuel facilities, exterior lighting, exterior signage, any exterior additions to buildings, facade and signage remodeling; all changes in building occupancy that question permitted land designations; projects affecting drainage, pedestrian and auto circulation patterns; vegetation, building, or structure replacement; or changes to or proposals for street furniture.

#### **F. Required Plans**

Developer and/or builder shall furnish to the ARA a complete, legible set of final, reproducible, "as built" drawings, on paper and in digital format preferably AutoCAD 2008 or later compatible format satisfactory to Authority in form and content, of any improvement, not later than ninety (90) calendar days after the completion, occupancy or initial use of such improvements, whichever comes first. The following additional standards shall also apply:

- All Architectural project drawings shall comply with the National CAD Standards and AIA CAD Standards for layer management.
- All drawings shall be prepared on 24"x36" size sheets.
- The Developer and/or builder shall use the RTAA Cover, G1.0 and Title Block sheets provided by the RTAA.
- The Developer and/or builder shall use the RTAA Color Dependent Plot Style Table (CTB) provided by the RTAA.
- All sheets shall indicate the title of the sheet, the name, phone number and address of the primary A/E firm, the sub-consultant information for the sheet discipline, the level of completion (i.e. 90% Construction Documents), and the date.
- The Developer and/or builder will provide two (2) sets of full size plans and two (2) CD's with Pdf's of the plan set for distribution to the ARA.

Submitted plan sets shall, at a minimum, include the following sheets:

##### **1. Site Plan**

A drawing of the overall project shall be submitted at a minimum 1"=40' scale with the following information:

- Project address and title.
- Scale and north arrow.
- Dimensioned property lines, easements, rights-of-way and setbacks.
- Square footage of buildings, hardscape, parking and landscape areas.

- Building relationships, light illumination patterns, open space areas, circulation, walk and corridor connections.
- All areas and/or architectural elements that are to be preserved.
- Emergency Evacuation Plan
- Drainage Plan
- Lighting Plan
- Utility Plan

**2. *Architectural Plans***

Plans will include fully dimensioned floorplans and elevations of buildings at a scale not less than 1/8" = 1'-0". Submitted plans shall identify: Materials; Colors, finishes and textures; proposed lighting fixtures make and placement; and signage elements and placement.

**3. *Renovation/Remodel Plans***

In addition to the information required on architectural plans, when additions or alterations to existing buildings are planned, photographs of existing structural elements and surrounding conditions shall also be submitted to the architectural review alliance. Architectural plans should clearly depict how the addition or renovation will blend with the materials and colors of the existing building so that the line between new and old will be indiscernible.

**4. *Signage***

Detailed plans at a scale of 1/2" = 1'-0" are required for the construction of signage elements. Submitted plans shall identify materials, textures, colors, lettering size, font style and illumination patterns. Refer to Section IV Signage for specific signage standards including prohibited signage.

**5. *Public Art***

If Public Art is desired, a detailed site plan at a scale of 1" = 20'-0" or larger, indicating the location of the piece(s) in relationship to the building, parking and landscape area is required. Detailed drawings, sketches, elevations and/or section, of the piece(s) at a scale of 1" = 1'-0" or larger is required to show materials, colors, finishes, textures, lighting elements and illumination patterns.

**6. *Landscape Plans***

Four (4) sets of blueprints and four (4) CD's including landscape plans at a scale of not less than 1"=20'-0" shall be submitted. Plans shall meet or exceed RMC Section 18.12.1205 landscape requirements. The following items shall be included in the landscape submittal package:

- Address of the project and title.
- Scale and north arrow.
- Dimensioned property lines, easements, rights-of-way and setbacks.
- Square footages of landscape areas.

*Submission Requirements and Review Procedures*

---

- Proposed and/or existing structures.
- Hardscape element locations, dimensions, heights, connections, materials finishes, textures and/or patterns.
- All notes, schedules, specifications, and legends.
- Name, address, telephone number of licensed Landscape Architect with license number, expiration date, and signature.

Note: All elements of the landscape plans must be prepared by a Nevada Registered Landscape Architect.

a. Landscape Removal

All existing conditions and/or vegetation scheduled to be removed from the site shall be identified on the demolition plan. Existing items to remain shall be graphically distinguishable from items scheduled to be removed.

b. Landscape Grading Plan

The Landscape Grading Plan shall identify all existing and proposed contours, finish grades, top of walls, top of pilasters, high points, low points, swales, drainage patterns, drain inlets, drain outlets, catch basins, clean outs, connections, pipe sizes and slopes.

c. Irrigation Plans

Landscape irrigation plans shall indicate the following:

- All notes, specifications and legends.
- Materials, connections and hydrozones.
- Backflow preventer type(s), size, location and enclosure.
- Automatic controller type, size, location and footing/mount.
- Plans shall meet or exceed RMC Section 18.12.1205 landscape requirements.
- Location of all sprinkler heads, rotors, pipes, sleeves, electrical conduits and valves.

d. Soil Report

A soils report shall be included as part of the landscape plan submittals. The soil testing shall be conducted by a soils laboratory and include analysis on soil texture, cation exchange capacity, soil fertility and provide recommendations for soil amendments to ensure the best chance of success for landscape plantings.

e. Water Conservation Requirements All plans shall meet or exceed RMC Section 18.12.1210.

## **III. USE CATEGORIES & SITE DEVELOPMENT STANDARDS**

### **A. Use Category Plan**

The Reno-Stead Airport is located in the northern section of an area known as the Stead Neighborhood, which is within the City of Reno’s zoning jurisdiction. Lands surrounding the Stead Neighborhood and RTS are under the jurisdiction of Washoe County. Areas east, west and north of RTS include federal lands, open spaces, general rural and low density suburban land uses. Industrial, residential, public and open space land uses are located south of RTS.

RTS is located in the Reno-Stead Airport Regional Center Planning Area Overlay Zoning District (RSARC) as governed by the City of Reno. The purpose of the RSARC District, as identified in Reno Municipal Code Title 18: Annexation and Land Development (RMC), is to “modify the underlying Mixed Use (MU) zoning land uses, developmental standards, and development review procedures within the Reno-Stead Airport Regional Center Planning Area Overlay District. This zoning district is intended to maintain the viability of regional airport operations and promote airport compatible uses on property owned by the Authority”.

In addition to the uses identified through the RSARC, the Use Category Plan further defines development areas by Use Category. The BUSINESS PARK at Reno-Stead Airport includes six Use Category designations: Industrial, Industrial/Commercial, Aviation Use, Commercial, Office Park, Retail, and Open Space. These Design Guidelines govern development only within these designations. These Design Guidelines do not apply to development of the airfield, airport operations, or Fixed Base Operators. Any development that requires access to the airfield infrastructure (e.g. runways, taxiways, taxilanes, aircraft apron, etc.) would be subject to FAA requirements and would require RTAA review and approval independently.

Use Categories have been established within the BUSINESS PARK at Reno-Stead Airport to provide buffers between existing and future Airport operations and future non-aviation development. The site has been configured to allow the most effective use of the site and proposed infrastructure.

### **B. Use Categories and Site Specific Development Standards**

This section addresses the following approved and permitted uses for the BUSINESS PARK at Reno-Stead Airport based on Use Category. Developers or builders are responsible for verifying City of Reno conformance with all applicable code and ordinances.

**C. Project Summary**

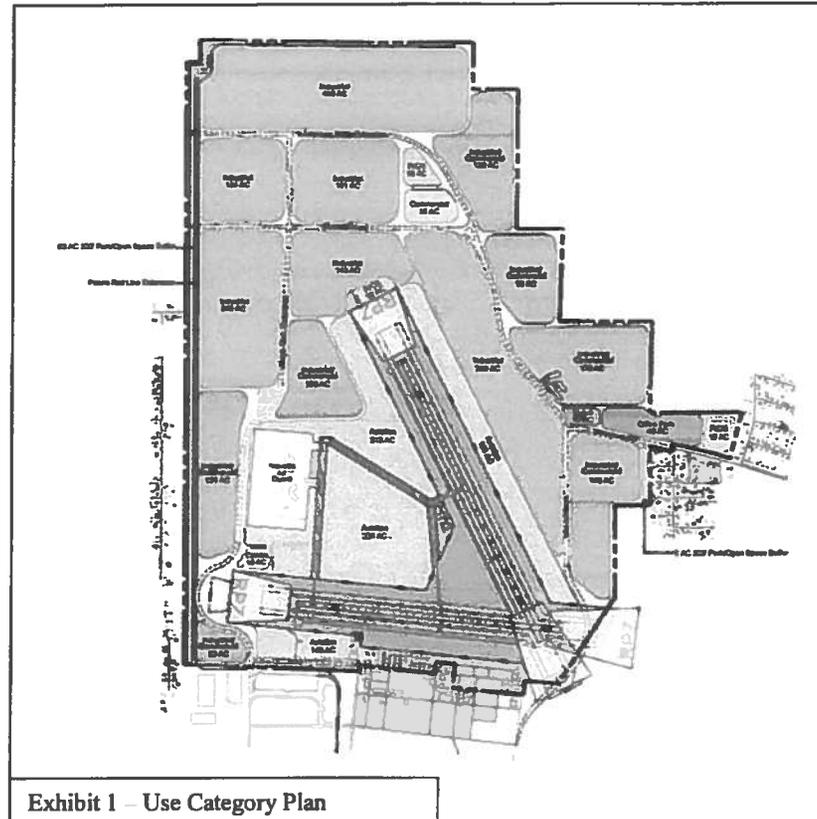
The Use Category summary, Table 1 below, indicates the distribution of uses throughout the project. These are not land uses or zoning designations. Use categories are meant to identify development type by area.

**Table 1: Use Category Summary**

Use Category	Acres (±)(net)	%Mix
Industrial	1421 ac.	46.0%
Industrial/Commercial	832 ac.	26.8%
Aviation Use	753 ac.	24.2%
Commercial	40 ac.	1.3%
Office Park	48 ac.	1.5%
Retail	10 ac.	0.3%
<b>Total Developable:</b>	<b>3,104 ac</b>	<b>100%</b>
Open Space	124 ac	

**Legend**

	Industrial	1421 AC Total
	Industrial/Commercial	832 AC Total
	Aviation Use	753 AC Total
	Commercial	40 AC Total
	Office Park	48 AC Total
	Retail	10 AC Total
<b>Total Developable Acreage</b>		<b>3,104 AC Total</b>
	Park/Open Space	124 AC Total



***Industrial Use Category***

Approved and permitted uses in the Industrial Use Category shall be in accordance with RMC Table 18.08-6-B “Uses Permitted in Regional Center Base Zoning Districts”. All primary, accessory and conditional uses allowed under the “RSARC” either outright or with a site plan review or special use permit in the I or IC zoning districts, as defined by City of Reno Development Code, are allowed without discretionary review.

**Site Layout Guidelines**

**Minimum Lot Area:**

The minimum lot area for this category shall be in accordance with RMC Section 18.12.104.

**Minimum Lot Width:**

The minimum permitted lot width shall be in accordance with RMC Section 18.12.104.

**Minimum Floor Elevations:**

All structures must comply with RMC Section 18.12.104.

**Minimum Building Setbacks:**

The minimum building front yard setback shall be ten feet (10'). The minimum side yard and rear yard setbacks are zero (0') or ten feet (10'). The building shall either be placed on the property line or setback a minimum of ten feet. If adjacent to residentially zoned property, the minimum setback shall be ten feet and subject to RMC 18.12.304.

**Maximum Building Height:**

The maximum permitted building height shall comply with Federal Aviation Regulations Part 77 and 7460-1 requirements and RMC. Final building height shall be determined prior to the issuance of a building permit.

**Landscaping:**

On-site landscaping will be provided in accordance with the landscape design guidelines as defined in this document.

**Parking:**

Parking shall be provided in accordance with RMC Section 18.12.1101 - 1108.

***Industrial/Commercial Use Category***

Approved and permitted uses in the Industrial/Commercial Use Category shall be in accordance with RMC Table 18.08-6-B “Uses Permitted in Regional Center Base Zoning Districts”. All primary, accessory and conditional uses allowed under the “RSARC” either outright or with a site plan review or special use permit in the I or IC zoning districts, as defined by City of Reno Development Code, are allowed without discretionary review.

**Site Layout Guidelines**

**Minimum Lot Area**

The minimum lot area for this category shall be in accordance with RMC Section 18.12.104.

**Minimum Lot Width:**

The minimum permitted lot width shall be in accordance with RMC Section 18.12.104.

**Minimum Floor Elevations:**

All structures must comply with RMC Section 18.12.104.

**Minimum Building Setbacks:**

The minimum building front yard setback shall be ten feet (10'). The minimum side yard and rear yard setbacks are zero (0') or ten feet (10'). The building shall either be placed on the property line or setback a minimum of ten feet. If adjacent to residentially zoned property, the minimum setback shall be ten feet and subject to RMC 18.12.304.

**Maximum Building Height:**

The maximum permitted building height shall comply with Federal Aviation Regulations Part 77 and 7460-1 requirements and RMC. Final building height shall be determined prior to the issuance of a building permit.

**Landscaping:**

On-site landscaping will be provided in accordance with the landscape design guidelines as defined in this document.

**Parking:**

Parking shall be provided in accordance with RMC Section 18.12.1101 - 1108.

### ***Aviation Use Category***

Approved and permitted uses in the Aviation Use Category shall be in accordance with RMC Table 18.08-6-B “Uses Permitted in Regional Center Base Zoning Districts”. All primary, accessory and conditional uses allowed under the “RSARC” either outright or with a site plan review or special use permit in the I or IC zoning districts, as defined by City of Reno Development Code, are allowed without discretionary review.

Any development that requires access to the airfield infrastructure including runways, taxiways, taxilanes, and/or aircraft parking on the apron shall not be governed by these Design Guidelines. Any of these uses will require RTAA review and approval independently.

### **Site Layout Guidelines**

#### **Minimum Lot Area:**

The minimum lot area for this category shall be in accordance with RMC Section 18.12.104.

#### **Minimum Lot Width:**

The minimum permitted lot width shall be in accordance with RMC Section 18.12.104.

#### **Minimum Floor Elevations:**

All structures must comply with RMC Section 18.12.104.

#### **Minimum Building Setbacks:**

The minimum building front yard setback shall be ten feet (10'). The minimum side yard and rear yard setbacks are zero (0') or ten feet (10'). The building shall either be placed on the property line or setback a minimum of ten feet. If adjacent to residentially zoned property, the minimum setback shall be ten feet and subject to RMC 18.12.304.

#### **Maximum Building Height:**

The maximum permitted building height shall comply with Federal Aviation Regulations Part 77 and 7460-1 requirements and RMC. Final building height shall be determined prior to the issuance of a building permit.

#### **Landscaping:**

On-site landscaping will be provided in accordance with the landscape design guidelines as defined in this document.

#### **Parking:**

Parking shall be provided in accordance with RMC Section 18.12.1101 - 1108.

**Commercial Use Category**

Approved and permitted uses in the Commercial Use Category shall be in accordance with RMC Table 18.08-6-B “Uses Permitted in Regional Center Base Zoning Districts”. All primary, accessory and conditional uses allowed under the “RSARC” either outright or with a site plan review or special use permit in the I or IC zoning districts, as defined by City of Reno Development Code, are allowed without discretionary review.

**Site Layout Guidelines**

**Minimum Lot Area:**

The minimum lot area for this district shall be in accordance with RMC Section 18.12.104.

**Minimum Lot Width:**

The minimum permitted lot width shall be in accordance with RMC Section 18.12.104.

**Minimum Floor Elevations:**

All structures must comply with RMC Section 18.12.104.

**Minimum Building Setbacks:**

The minimum building front yard setback shall be ten feet (10'). The minimum side yard and rear yard setbacks are zero (0') or ten feet (10'). The building shall either be placed on the property line or setback a minimum of ten feet. If adjacent to residentially zoned property, the minimum setback shall be ten feet and subject to RMC 18.12.304.

**Maximum Building Height:**

The maximum permitted building height shall comply with Federal Aviation Regulations Part 77 and 7460-1 requirements and RMC. Final building height shall be determined prior to the issuance of a building permit.

**Landscaping:**

On-site landscaping will be provided in accordance with the landscape design guidelines as defined in this document.

**Parking:**

Parking shall be provided in accordance with RMC Section 18.12.1101 - 1108.

### ***Office Use Category***

Approved and permitted uses in the Industrial Use Category shall be in accordance with RMC Table 18.08-6-B “Uses Permitted in Regional Center Base Zoning Districts”. All primary, accessory and conditional uses allowed under the “RSARC” either outright or with a site plan review or special use permit in the I or IC zoning districts, as defined by City of Reno Development Code, are allowed without discretionary review.

#### **Site Layout Guidelines**

**Minimum Lot Area:**

The minimum lot area for this district shall be in accordance with RMC Section 18.12.104.

**Minimum Lot Width:**

The minimum permitted lot width shall be in accordance with RMC Section 18.12.104.

**Minimum Floor Elevations:**

All structures must comply with RMC Section 18.12.104.

**Minimum Building Setbacks:**

The minimum building front yard setback shall be ten feet (10'). The minimum side yard and rear yard setbacks are zero (0') or ten feet (10'). The building shall either be placed on the property line or setback a minimum of ten feet. If adjacent to residentially zoned property, the minimum setback shall be ten feet and subject to RMC 18.12.304.

**Maximum Building Height:**

The maximum permitted building height shall comply with Federal Aviation Regulations Part 77 and 7460-1 requirements and RMC. Final building height shall be determined prior to the issuance of a building permit.

**Landscaping:**

On-site landscaping will be provided in accordance with the landscape design guidelines as defined in this document.

**Parking:**

Parking shall be provided in accordance with RMC Section 18.12.1101 - 1108.

***Retail Use Category***

Approved and permitted uses in the Retail Use Category shall be in accordance with RMC Table 18.08-6-B “Uses Permitted in Regional Center Base Zoning Districts”. All primary, accessory and conditional uses allowed under the “RSARC” either outright or with a site plan review or special use permit in the I or IC zoning districts, as defined by City of Reno Development Code, are allowed without discretionary review.

**Site Layout Guidelines**

**Minimum Lot Area:**

The minimum lot area for this district shall be in accordance with RMC Section 18.12.104.

**Minimum Lot Width:**

The minimum permitted lot width shall be in accordance with RMC Section 18.12.104.

**Minimum Floor Elevations:**

All structures must comply with RMC Section 18.12.104.

**Minimum Building Setbacks:**

The minimum building front yard setback shall be ten feet (10'). The minimum side yard and rear yard setbacks are zero (0') or ten feet (10'). The building shall either be placed on the property line or setback a minimum of ten feet. If adjacent to residentially zoned property, the minimum setback shall be ten feet and subject to RMC 18.12.304.

**Maximum Building Height:**

The maximum permitted building height shall comply with Federal Aviation Regulations Part 77 and 7460-1 requirements and RMC. Final building height shall be determined prior to the issuance of a building permit.

**Landscaping:**

On-site landscaping will be provided in accordance with the landscape design guidelines as defined in this document.

**Parking:**

Parking shall be provided in accordance with RMC Section 18.12.1101 - 1108.

### ***Open Space Use Category***

#### **Intent**

The Open Space category provides an environmental corridor through the entire development and is intended to:

- Enhance the environmental quality of the developed areas by providing adjacent open space for employees and visitors.
- Provide a buffer between the existing residential located and new buildings different land use areas.
- Allow storm drainage facilities to be integrated into a natural or improved open space setting that stretches from one end of BUSINESS PARK at Reno-Stead Airport to the other.

Approved and permitted land uses are as follows:

#### **A. Limited Service Uses:**

1. Underground utilities

#### **Site Layout Guidelines**

##### **Vegetation:**

The Open Space shall incorporate a mix of native plants that do not create a bird/wildlife habitat.

##### **Drainage:**

The storm drainage system within the Open Space area is designed to appear as a natural amenity and is integrated into the design of the Business Park.

##### **Site Connections:**

Appropriate building orientation and pedestrian connections to the Open Space areas are strongly encouraged.

##### **Fencing and Screening:**

All utility elements, storage, truck and parking areas shall be screened from public view and rights-of-way in accordance with RMC Section 18.12.404.

This can be accomplished through the use of berms, landscape materials, and walls or fences. In the case of screening utility structures, allow access from the one side that is the least visible from public rights-of-way.

## **D. General Site Development Standards**

The following General Site Development Standards are applicable to all development projects within each of the Use Categories.

### **1. Off-Street Parking**

#### **Description:**

All uses and buildings within BUSINESS PARK at Reno-Stead Airport will provide adequate on-site parking. Off-street parking areas shall be in conformance with the provisions for off-street parking. Off-street parking shall be provided in accordance with the current RMC Section 18.12.1101 – 1108.

#### **Guidelines:**

- Parking areas adjacent to streets should be screened with a combination of solid shrubs and berms.
- Planting "islands" with low-growing, drought-resistance groundcover or shrubs are encouraged in large parking areas to provide shade.
- All parking spaces should be clearly outlined on the surface of the parking facility with painted white lines or stone, brick, textured or smooth concrete banding.
- Under no circumstance is on-street parking allowed.
- All handicap accessible stalls shall be indicated with the proper identification markings and signage.
- Parking lots should be placed at the side or rear of the building, when feasible, to ensure direct connections between the street and the building entrance and to avoid obstructing views of the building's front façade from the street.
- Primary access points for automobiles, especially visitors, should be enhanced with elements such as ornamental landscaping, low-level decorative walls, monument-type signs, and decorative paving to emphasize site access locations.
- On-site vehicular circulation shall be clear, direct and efficient. Dead-end parking aisles are not acceptable.
- Driveways and vehicular aisle ways must meet the minimum City and Fire Department access and turning radius requirements.
- Required off-street parking shall be provided on the site of the use served, or on a contiguous site within three hundred (300) feet of the subject site.
- Designated space must be provided in convenient locations for handicapped, hybrid/electric, carpool, motorcycle and bicycle parking. All parking areas, including bicycle and motorcycle areas are to be designed for orderly, uncluttered parking. Bicycle parking areas are to be provided with racks and locking capabilities.

## **2. Noise Attenuation**

### **Description:**

Special consideration shall be given to noise attenuation due to location in relation to the Reno-Stead Airport runway facilities. During the construction documentation of a building, specifically for noise sensitive uses such as the office portion of industrial or commercial uses and conference rooms, the project applicant shall provide a list, verified by a qualified acoustical consultant, of construction methods to be utilized for noise attenuation to a maximum interior noise level of 45 dBA prior to the issuance of a building permit to the City of Reno. It is highly recommended that the interior decibel level be lower than the maximum allowed.

### **Guidelines:**

- All noise attenuation measures shall utilize approved industrial standards and pose no harmful effects to the surrounding environment and building occupants.

## **3. Building Exteriors**

### **Description:**

Architecture is one of the strongest elements in defining a sense of place. The Master Developer shall be responsible for establishing the theme and providing placemaking imagery. Careful consideration will be given by the Architectural Review Alliance to assure a high quality design consistent with the Master Developer's overall theme for the project.

### **Guidelines:**

- The use of architectural elements such as recessed entries and windows, columns and walls shall be balanced to create visually interesting structures.
- Windows facing south and west shall be recessed or incorporate shade structures and/or shading from trees. In the case where shade structures are to be added, it is recommended that all windows incorporate the same element in context with the architectural design of the building.
- Building entrances shall be architecturally apparent, visible from the street, and accessible from parking lots.
- All sides of a building shall receive the same level of detail and architectural enrichment. Loading or distributing areas may provide less detail if effectively screened from public view.
- Parapets on flat roofs shall be high enough to hide roof top equipment from pedestrian level. Rooftop equipment that exceeds reasonable parapet heights should be screened from view.
- Exterior materials for buildings should reflect and expand on the character of northern Nevada.
- Simple corrugated tin or metal buildings are not recommended in the BUSINESS PARK. Such a structure may be allowed only where the

industrial use would call for this building type. Additional screening measures may be required by the BUSINESS PARK at Reno-Stead Airport Architectural Review Alliance.

- All solar applications will be reviewed by FAA for compatibility with Airport operations.

#### **4. *Outside Storage and Service Areas***

**Guidelines:**

- Outside storage of materials, merchandise, products, parts or equipment, other than company vehicles, shall not be permitted unless screened from roadway view and approved by ARA.
- All permitted storage structures and service areas shall be screened from roadways.
- No storage areas shall be allowed within any landscape or open space easement or within front yard setback areas.
- A combination of solid fencing and plant materials shall be used as a screening technique.
- All loading activity, including turn around and maneuvering, shall be designed to occur on the site. Loading areas shall be located and/or screened in such a manner as to not be visible from any street.

#### **5. *Fences and Walls***

**Guidelines:**

- Airfield Operations Area perimeter fencing will be required to prevent unauthorized airfield access. Fence height, materials, location, design and style to be reviewed and approved by RTAA.
- Fences and walls are strongly discouraged in highly visible areas next to public right-of-ways, but may be allowed under extenuating circumstances where the need exists to utilize a wall or fence for security. When utilized, walls should be viewed as an extension of the architecture.
- Along public rights-of-way and open space corridors, no solid walls or fences are to be used.
  - a. All fences and walls designed shall be screened with landscaping and berms.
  - b. Fences and walls should not exceed six feet (6') in height.
  - c. All walls are to be structurally engineered and insured.
  - d. The use of chain link fencing is prohibited.
- Unsightly areas such as truck service areas, storage areas and loading areas shall be screened from public rights-of-way and open space corridors.
- Fencing and walls adjacent to streets shall not be located any closer to the street than the minimum building setback line.

**6. Safety & Security**

**Guidelines:**

- The Master Developer and/or builder will provide a private security service to monitor the BUSINESS PARK at Reno-Stead Airport to ensure safety in and around airport operational areas. Included with this service, each tenant shall be provided with the name, phone number and on-site address of the security firm providing the safety service.
- A dialogue with the City of Reno Police Department shall be established by the tenant's architect/designer and security service to ensure the implementation of appropriate crime prevention construction and design.

## IV. SIGNAGE

The Master Developer shall establish sign criteria appropriate for an airport-centric development that will be utilized in the BUSINESS PARK at Reno-Stead Airport. The guidelines below establish a hierarchy of criteria to regulate and control the size, location, type and quality of signage. The intent of these guidelines is to inform, direct visitors, accommodate public safety and orchestrate circulation through the plan area.

All signage shall be approved by the Architectural Review Alliance prior to its construction or installation in accordance with Section II Submission Requirements and Review Procedures.

### A. General Guidelines

1. All signage shall be in accordance with RMC Section 18.16.
2. All signs will be maintained in good condition, including the display surface. Signage shall be legible, kept clean and free of graffiti and/or other disfigurement.
3. Only wall mounted or monument signs allowed. Pole or pylon signs to identify buildings or tenants are prohibited.
4. All signage shall be designed free of bracing, angle-iron, guy wire, cables and/or similar devices.
5. Signage shall be of professional quality, utilizing materials, finishes, and accent elements that match adjacent architectural and site design.
6. Structures that accommodate several tenants shall utilize a single monument sign that identifies the overall project name and individual tenants.
7. Color palettes for signage shall match and accent other graphics, signs and themes in the area to achieve project consistency.
8. The height and width of all signs shall be measured from the highest and widest point of the sign and the area of signs shall be calculated from the height and width of the sign surface. A simple font style such as Helvetica Medium shall be used for all signs in public rights-of-way to contribute towards a well-coordinated project appearance.
9. All signs shall conform to these standards or be removed.
10. Signage that projects above the roof line and standalone signage including monument signage must be compliant with FAR Part 77. All maximum heights described in document should reflect “compliant with FAR Part77” or max height described – whichever is lower.

### B. Sign Maintenance

The cost and responsibility for establishing and maintaining infill area signage shall fall to the individual site users. Signage at all times shall present an as-new appearance and must be maintained in such a manner as to ensure proper and safe operation.

### C. Prohibited Sign Types

The following sign types are prohibited:

## *Signage*

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1. Signs which constitute a hazard to airspace, aircraft operation, traffic, or pedestrians.
2. Signs located within any stream or drainage corridor.
3. Mobile sign, A-framed, or portable signs.
4. Inflatable or other temporary or wind signs.
5. Signs which imitate or simulate official signs, or which use yellow, red, or blue blinking intermittent light resembling danger or warning signals.
6. Sign on public property or rights-of-way or signs attached to utility poles, street-light standards, fences, sheds, trees, hydrants, or similar structures.
7. Roof signs.
8. Signs emitting and or producing noise, odor, sound, smoke, fire or other such emissions.

### **D. On-Premises Signage**

1. Streetscape elements located in the public right-of-way will be a neutral, unobstructed backdrop for landscape and architecture.
2. Ground mounted entry signage identifying multi-building projects is encouraged. Multi-building shall mean three or more separate buildings on the same site. This signage allowance shall be in addition to individual identification signage. One sign shall be allowed per site entry.
3. Copy shall be limited to the project name and logo, the name of the primary user(s) (limit 3), and the street address.
4. All signage shall be approved by the Architectural Review Alliance prior to its construction or installation. All provisions of these criteria shall be strictly adhered to on an ongoing basis. Nonconforming or unapproved signage shall be removed or brought into compliance with these guidelines within 21 days of notification by the Architectural Review Alliance.
5. Signs within each site shall be designed as a signage package with selected elements such as lighting, materials, colors, form, typestyles, or layout remaining consistent throughout.
6. The sign plan should provide efficiency by striving to establish the fewest number of signs required to serve the use. This goal may be accomplished by providing:
  - a. Directional signs at decision points.
  - b. Unified messages.
  - c. Identification signs visible from adjacent right-of-ways.
  - d. The least redundancy in structures.

## Signage

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7. Signs and typography shall fit comfortably into designated architectural spaces, leaving sufficient margins and negative space on all sides. Wall signs shall appear balanced and in scale within the context of the sign space and the building as a whole. Thickness, height and color of sign lettering shall be visually balanced and in proportion to other signs on the building.
8. The sign plan should demonstrate contextual considerations in the design of all signs. Materials should relate to the overall Business Park site design as well as to the project architecture.
9. Sign colors should provide accent and interest appropriate to associated architectural statements. Note: Sign colors will be strictly regulated to assure harmony with the site architecture.
10. Proposed signage should reflect a sophisticated corporate image and should be in keeping with the overall design theme of the BUSINESS PARK NAME at Reno-Stead Airport.
11. Signage should demonstrate an intent to identify, not advertise.
12. Wall signs, including dimensional letters and plaques, shall be affixed without visible means of attachment, unless attachments make an intentional statement. Wall signs need to be directly attached to the space to which they refer.

### **E. Monument Signage**

1. Permanent monument signs shall not exceed 4 feet in maximum average height.
2. Monument signs may be placed in building setbacks. Where monument signs are placed in setback areas, signs shall be positioned so that safe sight distances are maintained at entrances to the public right-of-way. Monument signs shall be placed 10 feet from property lines and driveways.
3. All sign fabrication work shall be of superior quality. All logo images and typestyles shall be accurately reproduced. Lettering that approximates typestyles shall not be acceptable.
4. Sign construction shall typically be of permanent materials. Stucco, as a component of any sign construction, is not allowed. The use of wood signage is discouraged and strictly limited.

### **F. Temporary Construction and Marketing Signage**

1. Temporary signs may be established to serve the marketing and communication needs of individual site developers and users within the BUSINESS PARK NAME at Reno-Stead Airport. These signs should present a cohesive, well-organized, and identifiable community image and shall conform to the following provisions:

## *Signage*

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2. All temporary signage shall be maintained in good visual condition and removed in a timely manner upon completion of the purpose to which they relate or as otherwise specified in this section.
3. Add-ons, flags and other post-design attachments are not allowed. Temporary signage shall be non-illuminated.
4. Temporary signage shall be built to the size & color specifications as detailed in this section.
5. No other temporary construction/marketing signage shall be allowed.
6. Signage may be single or double-faced and shall be placed either parallel or perpendicular to the roadway.
7. Only one sign per street frontage is allowed.
8. To maintain consistency and an integrated community image, all temporary signs for infill/user sites within the BUSINESS PARK NAME at Reno-Stead Airport shall adhere strictly to these design criteria.
9. Prior to displaying any temporary sign, the owner of such a sign shall register the sign with the City of Reno Director of Planning or his or her designee by completing a form provided by the city. The form shall include the owner's name, address and telephone number, as well as dates the owner intends on displaying the sign. The city may charge a reasonable registration fee to cover the cost of inspection and enforcement, as determined by resolution of the city council.

### **G. Building Address Signage**

1. This type of signage shall identify individual buildings on a parcel of land.
2. Signage and materials for the building address sign shall match and be incorporated into the architecture.
3. The dimension of the font signage shall be four inches (4") in height.
4. The font type shall be Helvetica Medium or similar font.
5. Accent lighting shall be concealed beyond the text and/or logo.
6. An address may follow a company name on the automobile direction signage.
7. Address signage shall be approved by City of Reno Fire and Sheriff Departments.

## V. LIGHTING

### A. Purpose and Intent

The design of lighting along public rights-of-way within BUSINESS PARK at Reno-Stead Airport shall serve as a unifying element in the architectural theme of the community as well as provide safety for site users. The development of a hierarchy in lighting standards as established by the Master Developer will play an important role in defining the character of BUSINESS PARK at Reno-Stead Airport.

All lighting shall be approved by the Architectural Review Alliance prior to its construction or installation in accordance with Section II Submission Requirements and Review Procedures.

### B. General Guidelines

1. Where these Guidelines are silent, Lighting shall be provided in accordance with RMC Section 18.12.1301.
2. Throughout the development white lighting is recommended. No bright colored, blinking, flashing lights, or up-lighting will be allowed.
3. On site lighting shall be top-shielded to reduce nighttime glow and side-shielded to reduce spill over into adjacent land uses.
4. All lighting visible from adjacent streets shall be indirect and shall incorporate full cut-off shield fixtures.
5. Service area lighting shall be contained within the service yard boundaries. Shielded light sources shall be required.
6. Lighting fixtures shall be complimentary to building design.
7. All Building and Site Lighting shall conform to the specific requirements of the Federal Aviation Administration.
8. Lighting elements shall accent and highlight the area's architecture, pedestrian areas and hardscape.
9. If painting light fixtures is desired, to accent or carry the architectural theme, one uniform color, as identified by the Master Developer, shall be used throughout the entire BUSINESS PARK at Reno-Stead Airport Project area.
10. Lighting will be designed and installed so as not to cast any glare onto adjacent lots or streets, nor should it decrease the ambience of adjacent areas nor reduce the safety of pedestrian and vehicular movement.
11. If neon lighting is to be used in corporate signage design, it shall be limited to single illumination and/or incorporated in corporate graphics. Flashing neon and regular illuminating lights will not be allowed.
12. Concrete footings are required for light fixtures placed in planting areas and shall be constructed flush with the ground plane. For poles mounted in parking lots, footings/bases shall extend two feet (2') above a paved surface. Electrical utility and service connections shall be located below grade.
13. Light fixtures and standards in or within 100 feet of any single family residential zoning district shall not exceed 20 feet in height. (RMC Section 18.12.304).

14. The lighting design shall provide a horizontal luminance on pavement of a minimum 0.8 foot candles with a maximum uniformity ratio of 6 to 1 for parking and pedestrian areas.
15. To highlight architectural features accent lighting shall be encouraged. Indirect or hidden light sources may be used to wash' walls. Overhead, down and interior lighting, from architectural sources, that spill into outdoor spaces shall be allowed. The accent light source shall be located flush with building architecture, screen above or located below grade.
16. Building entrances shall provide a minimum of 5.0 foot candles.
17. To provide maximum safety for pedestrian and vehicular movement along travel ways, lighting shall meet the requirements of governing codes and standards. A concentration of light sources shall be focused on intersection, crosswalks, pedestrian travel ways and connections.
18. For all pedestrian travel ways the maximum height of light fixtures shall be twenty feet (20') with a minimum clearance of ten feet (10') provided above walkways.

**C. Parking Lot Lighting**

In many circumstances lighting fixtures, in these parking areas, will be hidden by vegetation. Light fixtures in these areas could employ a less detailed standard.

1. Surface parking lots shall be landscaped and screened in accordance with RMC Section 18.12.1205(e)(2) and FAA requirements.
2. Lighting shall not create greater than 0.50 foot candle of spillover light at a single family zoned residential property line. (RMC Section 18.12.301)
3. Light fixtures and standards in or within 100 feet of any single family residential zoning district shall not exceed 20 feet in height. (RMC Section 18.12.301) Pole height should generally be sized so as not to exceed the height of adjacent buildings or roadways lights.
4. Light sources shall be metal halide, halogen, and fluorescent light sources on-site. "Wall-pack" type fixtures should be limited to service area use.
5. Luminaries used for drive aisles and parking areas shall be pole mounted. Pole heights shall be between 15 and 20 feet in height.
6. All parking area, access drive and internal vehicular circulation area lighting fixtures shall be in accordance with RMC Section 18.12.1301.
7. Lights shall be dark sky certified and fully shielded to direct light down on development rather than on adjacent properties and the night time sky.
8. "Wall-pack" type fixtures shall not be permitted on the street side of buildings. These fixtures, where used, shall be exclusively of the adjustable sharp cut-off type.
9. Pedestrian lighting shall be provided for entry areas, courtyard and other people gathering places. Point-to-point lighting shall be provided for pedestrian walkways.

## VI. GENERAL LANDSCAPE AND IRRIGATION DESIGN GUIDELINES

### A. Purpose

Developments within BUSINESS PARK at Reno-Stead Airport are allowed a degree of self-expression within the parameters of these guidelines; however, common elements should be highlighted to unify the project. Consistent use of plant materials and hardscape elements will strengthen the sense of community. The need for a coordinated appearance is most critical at public rights-of-way and less critical internal to a project.

### B. General Requirements

1. Where these Guidelines are silent, RMC Section 18.12.1205 shall apply unless otherwise expressly allowed below.
2. All new or renovated facilities must be designed to minimize the impact of storm water discharges on the environment and assure that the facility can be operated in compliance with environmental laws and regulations. Facilities may be subject to Spill Prevention Control and Countermeasures Plan (SPCC) regulations of 40 CFR 112.
3. New buildings shall provide 5% minimum landscape area (% of gross acreage of project site) if Floor Area Ration (FAR) is over 1.5. If FAR is below 1.5, project shall provide a minimum of 20% landscape area. (RMC Section 18.12)
4. One tree and six shrubs shall be provided for every 300 square feet of required landscaped area, plus one tree for every ten off-street parking space.
5. Landscaping will avoid use of any plants that attract birds and wildlife (e.g. provides food or shelter) in accordance with FAA Advisory Circular 150/5200-33B, titled *Hazardous Wildlife Attractants on or near Airports*. Developers are responsible for verifying that 33b is the most current Advisory Circular related to this matter.
6. A root barrier shall be provided where trees are located five feet (5') from adjacent walls or paving.
7. Tree plantings shall not interfere with aircraft operations, night illumination, site line visibility at driveways or intersections or be located within minimum clearance zones of service utilities. Trees, which have been determined to interfere with aircraft operations, will be topped and/or removed by the tenant at the request of the Stead Airport Manager.
8. Groundcover and shrubs planted adjacent to public right-of-ways and landscape easements shall blend with existing plantings and shall be used to screen parking courts, utility services, loading and unloading areas.
9. One gallon container or equal shall be the minimum shrub size allowed.
10. Landscape plans shall be submitted and prepared separately for private developments and those areas in the maintenance district.

**C. Water Conservation**

The BUSINESS PARK at Reno-Stead Airport is committed to providing landscape design that exceeds ordinary standards and basic vegetation pallets. Construction and improvements that occur within the development shall implement water-conserving planting designs and shall be consistent with RMC Section 18.12.1210.

**D. Irrigation Design**

Irrigation techniques that encourage water conservation are strongly encouraged and shall be consistent with RMC Section 12.12.1211.

1. A Nevada Registered Landscape Architect and/or Certified Irrigation Designer shall design all irrigation systems within the development.
2. An automatically controlled underground irrigation system shall be used to irrigate all landscape areas.
3. The use of reclaimed water is strongly encouraged to irrigate landscape areas throughout the site if it is available. Materials used in a non-potable irrigation system must be appropriately labeled and color identified per local codes and requirements.
4. All above ground equipment shall be winterized, to prevent freezing, with insulation and/or enclosures. Anti-siphon drain valves shall be provided at the lowest elevation in the irrigation system.
5. Landscape areas shall be individually valved in relation to each respective hydrozone. Hydrozones shall consider solar orientation exposure, slope and soil conditions and other constraints.
6. The installation of all backflow preventers shall meet all local applicable codes and standards. All back flow preventers shall be located in shrub areas and screened from public view.
7. All turf areas must be irrigated with pop- up spray or rotary impact heads. A minimum riser of six inches (6") shall be used for all spray and rotor heads. Sprinkler spacing shall insure head to head coverage.
8. Low precipitation spray heads and rotors are encouraged. Micro-irrigation equipment, moisture sensing devices and/or pressure regulating bubblers is recommended.
9. Irrigation shall be designed to prevent overspray onto adjacent walks, walls, pavement streets and other non-vegetated areas.
10. Pop-up spray heads and rotors shall be used. No fixed risers shall be installed adjacent to rights-of-ways.
11. Automatic controllers shall be capable of manual shut-off and include, at a minimum, a fourteen (14) day calendar and two independent programs.
12. Irrigation systems within public right of ways shall operate independently from private projects.

**E. Open Space Requirements**

An open space corridor has been designated within the BUSINESS PARK at Reno-Stead Airport to create a multi-use corridor that allows for a

system of interconnecting buffers and green areas. Off-street pedestrian routes will provide connections between uses.

Landscaping along the open space corridors will be designed and installed to create a cohesive and uniform background for key architectural elements.

Projects adjacent to open space shall create a transition that allows the open space corridor to visually extend from the open space into privately developed areas.

Utilizing the same or similar plant materials will blur the distinction between the corridor and private parcels. The office component of industrial buildings, key entries or pedestrian areas such as lunch rooms or plazas shall be designed to connect with the open space corridor and provide trail linkages. The open space corridor will provide a system of recreational trails that aid in pedestrian circulation and lessen the reliance of the automobile within the BUSINESS PARK at Reno-Stead Airport site.

These corridor extensions will meander to and through adjacent entrances and use zones, creating a "campus-like" setting. Such corridors are to be located within the developable parcels in an effort to avoid incompatible situations which may arise between pedestrians and aircraft.

## VII. LANDSCAPE MAINTENANCE

### A. Summary

The Master Developer may create a Landscape and Lighting Assessment District or some other mechanism to provide for the long-term maintenance of all landscape areas along public right-of-ways and open space corridors shall be formed prior to the issuance of the first building permit. To ensure long-term success and overall attractive appearance of landscapes on private developments, businesses are required to perform regular maintenance in conformance with these standards. Proper horticultural and irrigation practices should be used with care and regularity. All maintenance shall be performed by experienced landscape maintenance professionals who are familiar with the specific requirements and growth habitats of plant materials in the area.

### B. General Guidelines

1. In cases where required landscaping would interfere with safe airport operations, landscaping features that will not interfere with safe airport operations shall be substituted.
2. Plant materials shall be maintained in a healthy growth condition and kept in a neat, attractive appearance through the year.
3. Irrigation systems, monumentation and hardscape elements shall maintain the original integrity of the design and installation.
4. Plant establishment periods, under the installation contract and in project specifications, are required for all landscape installations to be a minimum of ninety (90) days.

### C. Regularly Performed Maintenance

#### 1. *Turf Requirements:*

- a. Mowing and edging of all turf areas should be accomplished every seven (7) days during the growing season and on an as needed basis during the cooler part of the year. All clippings shall be disposed of in a legal manner.
- b. Edging should be accomplished by mechanical means only.
- c. Lawn areas should be irrigated according to water schedules developed by a Nevada Registered Landscape Architect and/or Certified Irrigation Designer.
- d. Lawn areas should be fertilized regularly according to recommendations from the soil analysis turf need requirements.
- e. To improve the absorption of water and fertilization, lawn areas shall be aerated on a semiannual basis.

#### 2. *Annual Bed Maintenance:*

- a. Annual color beds shall be replanted a minimum of four times per year with seasonally available varieties.

- b. Soil in annual bed planting areas shall be thoroughly prepared prior to each planting, including the addition of fertilizers. Shredded bark mulch or similar amendments shall be incorporated to improve soil conditions on a regular basis.
3. ***Groundcover Maintenance:***
    - a. Groundcovers shall be maintained to create an attractive, uniform ground plane.
    - b. Weeds shall be controlled by means of pre-emergent herbicides as well as experienced hand labor. Weeds shall be removed on an as needed basis from groundcover areas.
  4. ***Tree Maintenance***
    - a. Lower branches shall be tipped or pinched to retain as much foliage as possible and to promote strong trunk growth. Lower branches shall be removed only if they possess a danger to public safety. The branches are to be cut flush with the trunk, only when the tree is able to stand without the aid of stakes or guys and as previously described.
    - b. Evergreen trees shall be thinned and shaped as necessary to prevent hazardous situations. Primary pruning shall be accomplished during the tree's dormant season or when a significant fire hazard arises.
    - c. Tree staking ties shall be inspected and adjusted annually for ringing, strangulation or excess rubbing of the tree.
    - d. Tree stakes shall be removed when the tree has the ability to stand upright on its own.
    - e. All trees in turf areas shall have a thirty- six inch (36") circle of unplanted, mulched soil maintained at their bases at all times to encourage tree vigor and to minimize damage by trimmers, mowers and other equipment.
    - f. Trees, which have been determined to interfere with aircraft operations, will be topped and/or removed by the tenant at the request of the Stead Airport Manager.
  5. ***Pruning***
    - a. Trees and shrubs shall be pruned to maintain a natural appearance by selecting permanent scaffold branches or by following the designer's intent.
    - b. The pruning of trees and shrubs shall be performed to meet the following goals:
      - Maintaining the natural form and habitat of each particular plant. Do not pollard, topiary or hedge into abstract configurations.
      - Remove diseased or unsound branching structures on all trees at the time found or reported to landscape maintenance.
      - At a minimum, provide 8'-0" clearance above all sidewalks. Provide a 10'-0" clearance above parking lot areas, loading and unloading areas at building entrances interior access drives. Provide a 16'-0" clearance above all primary vehicular travelways, delivery/pick-up areas. Postpone pruning in this manner until the size and the structure of the tree warrant it.
      - All pruning shall be performed using the "International Society of Agriculture (ISA) Pruning Standards".

**6. *Diseases, Pests and Weeds***

- a. Diseases, pests and weeds should be controlled by regular inspection.
- b. All tree basins, planting areas, turf areas, sidewalks, curbing and paving should be kept free of weeds. Avoid frequent cultivation which may harm shallow roots and break the seal of pre-emergent herbicides. Mulch can be added to planters as a method to help control weeds.
- c. Pests and diseases should be eradicated or eliminated only by the use of approved lawful methods. These shall be defined as those methods, approved by the federal government's Environmental Protection Agency, the State of Nevada, and the City of Reno.
- d. All chemical controls should be applied by a licensed pest control applicator.

**7. *Trash and Debris Removal:***

- e. Trash should be removed from all landscape areas on an as needed basis, and when other regular maintenance is performed. Debris shall be disposed of in a lawful manner.

**EXHIBIT D  
GROUND LEASE**

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# GROUND LEASE

*Between*

**RENO-TAHOE AIRPORT AUTHORITY,  
a quasi-municipal corporation organized under  
Chapter 474, Statutes of Nevada 1977, as amended,**

**as Landlord**

*And*

**[Designated Affiliate],**

**a \_\_\_\_\_,**

**as Tenant**

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## TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 DEFINITIONS.....	1
ARTICLE 2 TERM .....	11
Section 2.1. Term .....	11
Section 2.2. [Reserved].....	12
Section 2.3. Surrender.....	12
Section 2.4. Holdover .....	12
ARTICLE 3 PREMISES AND PRIVILEGES .....	12
Section 3.1. Lease of Premises .....	12
Section 3.2. Condition.....	12
Section 3.3. Quiet Enjoyment .....	13
Section 3.4. Access and Inspection.....	13
ARTICLE 4 RENT, FEES, CHARGES, RECORDS AND AUDIT .....	14
Section 4.1. Security .....	14
Section 4.2. Rent .....	16
Section 4.3. Adjustment of Fixed Rent - Adjustment Each Second Year .....	16
Section 4.4. Fair Market Value Adjustments.....	16
Section 4.5. Payment; Proration; Etc .....	18
Section 4.6. Additional Rent.....	18
Section 4.7. No Offsets .....	18
Section 4.8. Government Restriction on Rent .....	18
Section 4.9. Additional Payments by Tenant.....	18
ARTICLE 5 USE AND OPERATION.....	20
Section 5.1. Permitted Use.....	20
Section 5.2. Exclusive Control.....	20

	<u>Page</u>
Section 5.3. Management Fees .....	21
Section 5.4. Safety Procedures and Fire Protection System .....	21
Section 5.5. Premises Security .....	21
ARTICLE 6 MAINTENANCE AND ALTERATIONS .....	22
Section 6.1. Obligation to Maintain .....	22
Section 6.2. Compliance .....	22
Section 6.3. Construction Work.....	22
Section 6.4. Performance and Payment Bonds .....	22
Section 6.5. Guidelines; Plans and Specifications .....	23
Section 6.6. Required Notice of Certificate of Occupancy.....	23
Section 6.7. Notice of Nonresponsibility; Disinterested Owner.....	23
Section 6.8. Applications and Filings .....	24
Section 6.9. Ownership of Improvements During Term.....	24
Section 6.10. Ownership of Improvements at Expiration.....	24
Section 6.12. WE NEED AN ALTERATIONS PROVISION .....	24
ARTICLE 7 PROHIBITED LIENS .....	27
Section 7.1. Tenant's Covenant.....	27
Section 7.2. Protection of Landlord .....	27
ARTICLE 8 HAZARDOUS SUBSTANCES .....	27
Section 8.1. Restrictions .....	27
Section 8.2. Notice of Action.....	28
Section 8.3. Consent Decree .....	28
Section 8.4. Compliance; Clean-Up.....	28
Section 8.5. SPCC.....	29
ARTICLE 9 INDEMNIFICATION; LIABILITY OF LANDLORD.....	30

	<u>Page</u>
Section 9.1. Obligations.....	30
Section 9.2. Liability of Landlord.....	30
Section 9.3. Indemnification Procedures .....	30
ARTICLE 10 RIGHT OF CONTEST .....	31
Section 10.1. Tenant's Right; Contest Conditions .....	31
Section 10.2. Landlord Obligations and Protections .....	32
Section 10.3. Miscellaneous .....	32
ARTICLE 11 INSURANCE.....	33
Section 11.1. Tenant to Insure .....	33
Section 11.2. Nature of Insurance Program .....	34
Section 11.3. Policy Requirements and Endorsements.....	34
Section 11.4. Deliveries to Landlord .....	35
Section 11.5. Waiver of Certain Claims .....	35
Section 11.6. No Representation.....	35
Section 11.7. Additional Policies and Increased Limits .....	35
Section 11.8. Construction and Contractor's Insurance .....	36
ARTICLE 12 LOSSES AND LOSS PROCEEDS .....	36
Section 12.1. Notice.....	36
Section 12.2. Effect of Casualty .....	36
Section 12.3. Adjustment of Claims; Use of Property Insurance Proceeds.....	36
Section 12.4. Landlord's Right to Recover Premises.....	37
Section 12.5. Substantial Condemnation .....	37
Section 12.6. Minor Condemnation .....	38
Section 12.7. Temporary Condemnation .....	38
ARTICLE 13 REPRESENTATIONS AND WARRANTIES.....	39

	<u>Page</u>
Section 13.1. Tenant .....	39
Section 13.2. Landlord.....	39
ARTICLE 14 LANDLORD PARTICIPATION .....	40
Section 14.1. Participation Right .....	40
Section 14.2. Net Sale Proceeds .....	41
Section 14.3. Internal Rate of Return.....	41
Section 14.4. Documentation.....	41
Section 14.5. Net Cash Flow.....	42
ARTICLE 15 ASSIGNMENT AND SUBLEASING .....	43
Section 15.1. Tenant's Right .....	43
Section 15.2. Tenant's Right to Sublet.....	43
Section 15.3. Required Provisions .....	44
Section 15.4. Conditions to Effectiveness of Assignment Transactions .....	44
ARTICLE 16 LENDER PROTECTION.....	45
Section 16.1. Definition .....	45
Section 16.2. Tenant's Right to Mortgage.....	45
Section 16.3. Assignment of Mortgage.....	45
Section 16.4. Production of Documents .....	45
Section 16.5. Mortgage not Assignment.....	45
Section 16.6. Cure Rights of Lender.....	46
Section 16.7. Notice of Termination and Cure Periods .....	46
Section 16.8. Performance of Tenant Obligations by Lender.....	46
Section 16.9. No "Subordination of Fee" .....	47
Section 16.10. Right to a New Lease .....	48
Section 16.11. Lease Amendments and Termination .....	49

	<u>Page</u>
Section 16.12. Lender's Liability Hereunder .....	49
Section 16.13. No Merger .....	49
Section 16.14. Further Assurances.....	49
Section 16.15. Notices .....	49
ARTICLE 17 EQUIPMENT LIENS .....	50
Section 17.1. Tenant's Rights.....	50
Section 17.2. Required Provisions for Equipment Liens.....	50
ARTICLE 18 EVENTS OF DEFAULT; REMEDIES.....	50
Section 18.1. Definition of "Event of Default" .....	50
Section 18.2. Remedies.....	51
Section 18.3. Proceeds of Reletting .....	53
Section 18.4. Tenant's Late Payments; Late Charges .....	53
Section 18.5. Landlord's Right to Cure.....	53
Section 18.6. WAIVERS .....	54
Section 18.7. Accord and Satisfaction; Partial Payments.....	54
Section 18.8. Miscellaneous .....	54
Section 18.9. Landlord's Default.....	55
ARTICLE 19 EXPIRATION.....	56
Section 19.1. End of Term .....	56
ARTICLE 20 AIRPORT REGULATIONS .....	56
Section 20.1. Operation as a Public Airport .....	56
Section 20.2. Airport Landing Area Development or Improvement .....	56
Section 20.3. Maintenance of the Airport.....	57
Section 20.4. Right of Flight.....	57
Section 20.5. No Exclusive Right .....	57

	<u>Page</u>
Section 20.6. Tenant Agreements and Covenants .....	57
Section 20.7. Federal Review .....	59
Section 20.8. Federal Right to Reclaim .....	59
Section 20.9. Anti-Lobbying Certifications.....	59
Section 20.10. Citizenship Certification .....	60
ARTICLE 21 GENERAL.....	61
Section 21.1. Estoppel Certificates .....	61
Section 21.2. Notices .....	61
Section 21.3. National Emergency.....	62
Section 21.4. Costs and Expenses; Legal Costs.....	62
Section 21.5. Compliance with NRS 338.125 .....	62
Section 21.6. Unavoidable Delay.....	62
Section 21.7. Governing Law .....	62
Section 21.8. Venue; Jurisdiction .....	63
Section 21.9. Waivers .....	63
Section 21.10. Brokerage Commissions .....	63
Section 21.11. Amendment.....	63
Section 21.12. Relationship of Parties .....	63
Section 21.13. Representative of Landlord.....	63
Section 21.14. Successors and Assigns.....	63
Section 21.15. Entire Agreement .....	63
Section 21.16. Signature Authority.....	64
Section 21.17. Nonrecourse .....	64
Section 21.18. Memorandum of Lease .....	64
Section 21.19. Counterparts .....	64

	<u>Page</u>
Section 21.20. Partial Invalidity.....	64
Section 21.21. Interpretation.....	64
Section 21.22. Delivery of Drafts .....	65
Section 21.23. Captions .....	65

## GROUND LEASE

This GROUND LEASE ("Lease" or "Agreement") is made and entered into effectively as of \_\_\_\_\_, 20\_\_ ("Effective Date"), between RENO-TAHOE AIRPORT AUTHORITY, a quasi-municipal corporation organized under Chapter 474, Statutes of Nevada 1977, as amended ("Landlord"), and [Designated Affiliate], a \_\_\_\_\_ ("Tenant"), with respect to the following facts, and is as follows:

### RECITALS:

A. Landlord owns the land described in Exhibit A, consisting of approximately \_\_\_\_\_ acres of land (the "Land") (the Land, together with Landlord's interest, if any, in any and all Improvements (below defined) now and hereafter existing on the Land, and all appurtenances thereto, collectively, the "Premises").

B. The Land is a part of the Airport (as defined herein) which is owned and/or operated by Landlord.

C. Landlord desires to lease the Premises to Tenant, and Tenant desires to lease the Premises from Landlord.

**NOW, THEREFORE**, for good and valuable consideration, by entering into this Lease Landlord leases and demises the Premises to Tenant, and Tenant takes and hires the Premises from Landlord for the Term, upon the terms and conditions of this Lease.

### ARTICLE 1 DEFINITIONS

The following definitions apply in this Lease, together with any other definitions set forth otherwise in this Lease. A term defined in the plural may be used in the singular, and vice versa, all in accordance with ordinary principles of English grammar.

"Additional Rent" means any and all sums and payments that this Lease expressly requires Tenant to pay Landlord or any third party, whether or not expressly designated as Additional Rent, except Fixed Rent.

"Aeronautic Use" means any activity that involves, makes possible, is required for the safety of, or is otherwise directly related to the operation of aircraft including, but not limited to, movement of passengers, luggage, mail and cargo on the Airport. Additionally, the operation of manned or unmanned aircraft, or providing flight support for same, are Aeronautic Uses.

"Affiliate" of any specified Person means (i) any other Person directly or indirectly Controlling or Controlled by or under direct or indirect common Control with such specified Person (ii) subject to limitations for a Transfer set forth in this Lease, any successor to the party in question by merger, consolidation or reorganization, and (iii) subject to limitations for a Transfer set forth in this Lease, any purchaser of all or substantially all of the assets or

membership interests of the party in question as a going concern (whether such acquisition takes the form of an asset sale, a stock sale or a combination thereof). The term "Affiliated" shall have the correlative meaning.

"Airport" means the Reno-Stead Airport owned and operated by Landlord, including all real property and easements, improvements and appurtenances thereto, structures, buildings, fixtures, machinery and other tangible personal property or interest in any of the foregoing, now or hereafter owned or operated by Landlord.

"Airport Rules and Regulations" means those certain rules and regulations, as the same may be adopted and thereafter amended from time-to-time, which generally govern the operations and other activities which may take place on the Airport. The Airport Rules and Regulations serve as minimum regulations designed to protect and promote the safety of the users of the Airport.

"Applications and Filings" (or "Applications or Filings" and other variations on such term) means any instrument, document, agreement, certificate, or filing (or amendment of any of the foregoing): (a) necessary or appropriate for any Construction Work this Lease allows, including any application for any utility service or hookup, easement, covenant, condition, restriction, subdivision plat, or such other instruments as Tenant may from time to time request in connection with such Construction Work; (b) to enable Tenant to obtain any abatement, deferral or other benefit that may otherwise be available for Impositions; (c) if and to the extent (if any) this Lease permits, to allow Tenant to change the use or zoning of the Premises; (d) to enable Tenant from time to time to seek any Approval or to use and operate the Premises in accordance with this Lease; (e) otherwise reasonably necessary and appropriate to permit Tenant to realize the benefits of the Premises under and in accordance with this Lease; or (f) that this Lease otherwise requires Landlord to sign for Tenant.

"Approvals" means any and all licenses, permits (including building, demolition, alteration, use, environmental and special permits), approvals, consents, certificates (including certificate(s) of occupancy), rulings, variances, authorizations, or amendments to any of the foregoing as shall be necessary or appropriate under any Law during the Term in connection with the commencement, performance, or completion of any Construction Work, or the zoning, rezoning (to the extent permitted by this Lease), use, occupancy, maintenance, or operation of, the Premises.

"Approved Affiliate" means (A) any entity into which or with which Tenant has merged or consolidated or (B) any entity which acquires all or substantially all of the assets of or ownership interests in Tenant, provided that any such entity described in (A) and (B) continues to be Controlled by Tenant, has a net worth (determined in accordance with generally accepted accounting principles consistently applied), of at least Five Million Dollars (\$5,000,000), has the requisite experience owning, operating and/or managing suburban office and/or industrial properties, and has been approved by Landlord in writing, such approval not to be withheld unreasonably, as determined in Landlord's discretion.

"Approved Loan Documents" has the meaning given to such term in Section 16.2.

"Bankruptcy Law" means Title 11, United States Code, and any other or successor state or federal bankruptcy, insolvency, reorganization, moratorium, or similar law for the relief of debtors.

"Bankruptcy Proceeding" means any bankruptcy, composition, insolvency, reorganization, or similar proceeding, whether voluntary or involuntary, under Bankruptcy Law, including any assignment for the benefit of creditors, appointment of a receiver or trustee, or any similar proceeding.

"Baseline Condition" has the meaning given to such term in Section 8.4.

"Building" means any building located on any part of the Land at any time during the term of this Lease.

"Building Equipment" means all fixtures incorporated into those Improvements owned or leased by Tenant and useful or necessary for the operation of the Improvements as such (as opposed to the operation of any business within the Building), including, without limitation, machinery, equipment, engines, boilers, escalators, elevators, compactors, heating, ventilating and air conditioning systems, compressors, ducts, pipes, conduits, and fittings.

"Business Day" means any weekday on which banks in the State are generally open to conduct regular banking business with bank personnel.

"Casualty" has the meaning given to such term in Section 12.1 of this Lease.

"Casualty Termination" means a termination of this Lease because of a Substantial Casualty, when and as this Lease expressly allows such a termination. Any election by Tenant of a Casualty Termination shall not be effective without Lender's consent.

"Certificate of Occupancy" means the document issued by the applicable Government, whether such document is temporary, conditional or final in its effect, allowing for the occupancy of an Improvement in accordance with Law.

"Commencement Date" has the meaning given to such term in Section 2.1 of this Lease.

"Condemnation" has the meaning given to such term in Section 12.1 of this Lease.

"Construction Work" means any alteration, addition, development, redevelopment, modification, expansion, demolition, Restoration, or other construction or reconstruction work affecting any or all Improvements from time to time constituting part of the Premises, or the construction or reconstruction of any new Improvements, or repair of any existing Improvements, located on or at the Premises.

"Contest" has the meaning given to such term in Section 10.1 of this Lease.

"Control" means the possession, directly or indirectly, of both: (a) at least fifty-one percent (51%) direct or indirect ownership of a Person; and (b) the power to direct or cause the

direction of the management and policies of such Person, whether by ownership of Equity Interests, by contract, or otherwise.

"County" means the County of Washoe, Nevada.

"CPI" or "Index" means the Consumer Price Index for All Urban Consumers, U.S. City Average, All Urban, All Items, 1982-84 = 100, published by the United States Department of Labor, Bureau of Labor Statistics. If, in the future, the manner in which the Index is determined by the Department of Labor shall be substantially revised, an adjustment shall be made in such revised index that would produce results equivalent, as nearly as possible, to those that would have been obtained if the Index had not been so revised. If the average of 1982-1984 shall no longer be used as an index of 100, such changes shall constitute a substantial revision. If the Index shall become unavailable to the public because publication is discontinued, or otherwise, the Landlord will substitute therefor a comparable index based upon changes in the cost of living or purchasing power of the consumer dollar published by any other governmental agency or, if no such index shall then be available, a comparable index published by a major bank or other financial institution or by a university or a recognized financial publication.

"Credit Enhancement" has the meaning given to such term in Section 4.1 of this Lease.

"Date of Certificate of Occupancy" means the date on which a temporary or permanent Certificate of Occupancy is first issued for a Building or Improvement on the Premises.

"Default" or "Event of Default" means any Monetary Default, Non-Monetary Default, or Insurance Maintenance Default.

"Default Interest" means interest at an annual rate equal to the lesser of: (a) eighteen percent (18%) per annum or (b) the highest rate permitted by law under the circumstances.

"Deposited Funds" means any funds (if any) that this Lease requires or allows Landlord (or anyone acting for or on behalf of Landlord) to hold for purposes of this Lease, and in which Tenant has an interest.

"Depository" means an Institutional Lender designated by a Lender (or, if no Leasehold Mortgage exists, then by Tenant). A Lender that is an Institutional Lender may designate itself as Depository.

"Design Guidelines" means the written and graphic requirements and principles that address, among other matters, the aesthetic, functional and operational issues associated with the Improvements including, without limitation by way of example, site layout, access circulation, architecture, utilities, landscaping, lighting and signage, noise abatement and vibration reduction, all as more specifically set forth in Exhibit D, and subject to updating by Landlord. At any time that Landlord updates the Design Guidelines, Landlord may deliver Notice to Tenant with a copy of the Design Guidelines and/or the update thereof, which in each instance upon delivery of such Notice shall be deemed a part of Exhibit D attached hereto; provided, however, that such Design Guideline updates shall be applicable to Construction Work pursuant to Section 6.5 only to the extent Tenant has not already submitted plans, specifications and drawings for such Construction

Work to Landlord pursuant to Section 6.5. The Design Guidelines apply to all improvements constructed by third parties on Airport property.

"Designated Affiliate" means one or more special purpose, subsidiary entity(ies) formed by Tenant or Tenant's Affiliate to enter into one or more Subparcel Leases.

"Environmental Law" means any Law related to environmental conditions on, under, or about the Premises, or relating to soil, air and ground water conditions at, under, in, or upon the Premises, or governing the use, generation, storage, transportation, disposal, release, clean-up or control of Hazardous Substances in, under, on, at, to, or from the Premises. Environmental Law shall also include any and all federal, state and local environmental, health or safety laws, statutes, ordinances, codes, regulations, rules of common law, orders, decrees or any other requirement of any governmental authority, as now or at any time hereafter are in effect, relating to or imposing liability or standards of conduct concerning gasoline, petroleum and other petroleum by-products, asbestos (including any product or construction material containing sufficient asbestos to be subject to any applicable Environmental Laws) explosives, PCBs, radioactive materials or any "hazardous" or "toxic" material, substance or waste that is defined by those or similar terms or is regulated as such under any statute, law, ordinance, rule or regulation of any Government having jurisdiction over the Premises or any portion thereof or its use, including any material, substance or waste which is: (i) defined as a "hazardous substance" under Section 311 of the Water Pollution Control Act (33 U.S.C. § 1317), as amended; (ii) defined as a "hazardous waste" under Section 1004 of The Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, et seq., as amended; (iii) defined as a "hazardous substance" or "hazardous waste" under Section 101 of The Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended by the Superfund Reauthorization Act of 1986, 42 U.S.C. § 9601 et seq. ("SARA") or any so-called "superfund" or "superlien" law, including the judicial interpretations thereof; (iv) defined as a "pollutant" or "contaminant" under 42 U.S.C.A. § 9601(33); (v) defined as "hazardous waste" under 40 C.F.R. Part 260; (vi) defined as a "hazardous chemical" under 29 C.F.R. Part 1910; or (vii) subject to any other law or other past (and still in effect), present, or future requirement of any Government regulating, relating to or imposing obligations, liability or standards of conduct concerning the protection of human health, plant life, animal life, natural resources, property or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor or any form of energy from whatever source.

"Equipment Lien" means any security interest, financing lease, personal property lien, conditional sales agreement, chattel mortgage, security agreement, title retention arrangement or any similar arrangement (including the related UCC-1 financing statements) for Tenant's (or any Subtenant's) acquisition or leasing of any Financed FF&E used in connection with the Premises (or any business operated thereon) that is leased, purchased under conditional sale or installment sale arrangements, encumbered by a security interest, or used under a license, provided that each Equipment Lien encumbers or otherwise relates to only the Financed FF&E for which such secured party provides actual bona fide purchase-money financing or an actual bona fide equipment lease. A Leasehold Mortgage is not an Equipment Lien.

"Equity Interest" means all or any portion of any direct or indirect equity or ownership interest(s) (whether stock, partnership interest, membership interest, or other interest of an

ownership or equity nature) in any entity at any tier of ownership that directly or indirectly owns or holds any ownership or equity interest in the Leasehold Estate, as applicable.

"Estoppel Certificate" means a statement, addressed to the other party to this Lease or as such other party shall direct, containing statements to the following effect (identifying in reasonable detail any exceptions that may exist at the time), as requested by either party: (a) this Lease has not been amended, constitutes the entire agreement between the parties relating to the Premises, and is in full force and effect; (b) neither party is, to the actual, good faith knowledge of the applicable signer, in default under this Lease and to the actual, good faith knowledge no facts or circumstances exist that, with the passage of time or the giving of Notice or both, would constitute defaults under this Lease by either party; (c) Tenant has paid all Rent that has accrued to date; (d) the Commencement Date and any other then-ascertainable dates relevant to this Lease but not expressly set forth in the text of this Lease, and the basis for each such date; (e) the signing party is not, to its actual, good faith knowledge, entitled to any defenses, offsets, claims, counterclaims or rights or recoupment against its obligations under this Lease; (f) the current Fixed Rent, if not ascertainable from the text of this Lease; (g) names and addresses of all existing Lenders of which the signing party has received Notice; (h) confirmation (where appropriate) that each such Lender is entitled to the rights of a Lender as set forth under this Lease; (i) the signing party's address for notices; and (j) such other matters as either party shall reasonably request.

"Expiration Date" means the date when this Lease terminates or expires in accordance with its terms, whether on the Scheduled Expiration Date, or by Tenant's exercise of its rights and remedies for a Landlord Default, or by Landlord's exercise of remedies for an Event of Default or otherwise.

"FBO" means a fixed based operation providing commercial aeronautic services such as fueling, maintenance and hangaring of aircraft as well as transportation, aircraft sales, and similar related services.

"FAA Requirements" means the rules and regulation promulgated from time to time by the FAA and applicable to Landlord and/or the Airport.

"Federal Aviation Administration" or "FAA" means the United States of America, Department of Transportation, Federal Aviation Administration, or any successor agency.

"Fee Estate" means the fee simple estate in the Land, and any remainder interest in the Improvements under this Lease, but subject to all the terms and conditions of this Lease, and excluding the Tenant's fee simple interest in the Improvements for the duration of the Term of this Lease.

"FF&E" means all movable furniture, fixtures, equipment, and personal property of Tenant or any Subtenant (excluding Building Equipment) that may be removed from the Premises without material damage thereto (unless Tenant or any Subtenant agrees to repair such damage) and without adversely affecting: (a) the structural integrity of the Premises; (b) any electrical, plumbing, mechanical, or other system of the Premises; (c) the present or future operation of any such system; or (d) the present or future provision of any utility service to the

Premises. FF&E includes items such as factory equipment, material handling equipment, conveyor systems, racking systems, furniture, fixtures and other equipment, telephone, telecommunications and facsimile transmission equipment, point of sale equipment, televisions, radios, and computer systems, and other removable items associated specifically with Tenant's or any Subtenant's operations, but not the general operation or use of the applicable Improvement.

"Financed FF&E" means any FF&E subject to an Equipment Lien in favor of a Lender that: (a) is not an Affiliate of Tenant, and (b) actually provided bona fide financing or a bona fide equipment lease after the Commencement Date for Tenant's or any Subtenant's acquisition or use of such FF&E.

"Government" means each and every governmental authority, quasi-governmental body, department, agency, bureau, or other entity or instrumentality having or claiming jurisdiction over the Premises, including the federal government of the United States, the State government and any subdivisions and municipalities thereof, including the County government, and all other applicable governmental authorities and subdivisions thereof. "Government" shall also include any planning commission, board of standards and appeals, department of buildings, and city council having or claiming jurisdiction over the Premises.

"Hazardous Substances" includes flammable substances, explosives, radioactive materials, asbestos, polychlorinated biphenyls, pollutants, contaminants, hazardous wastes, medical wastes, toxic substances or related materials, petroleum and petroleum products, and substances declared to be hazardous or toxic by, or otherwise regulated or controlled under, Environmental Law.

"Hazardous Substances Discharge" means any deposit, spill, discharge, or other release of Hazardous Substances that occurs at or from the Premises, or into the Premises, or that arises at any time from the use, occupancy, or operation of the Premises or any activities conducted therein or any adjacent or nearby real property, or resulting from the seepage, leakage, or other transmission of Hazardous Substances from other real property to the Premises, whether or not caused by a party to this Lease or any Person controlled by said causing party and whether occurring before or after the Commencement Date.

"Impositions" means all general and special real estate taxes (including any taxes on FF&E, sales taxes, use taxes, and the like), assessments, water and sewer rents, rates and charges, excises, levies, license and permit fees, fines, penalties and other governmental charges and any interest or costs with respect thereto, charges for any easement or agreement benefiting the Premises, and charges for public and private utilities (including gas, electricity, water, light, heat, air conditioning, power and telephone and other communication services), general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever which at any time before or during the Term and applicable to the Term or any part thereof may be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or in respect of, or charged with respect to or become a lien on, the Premises, or the sidewalks or streets in front of or adjoining the Premises, or any vault, passageway or space in, over or under such sidewalk or street, or any other appurtenances of the Premises, or any FF&E, Building Equipment or other facility used in the operation thereof, or the rent or income received therefrom, or any use or occupancy thereof, or the Rent, or any document to which Tenant is a

party creating or transferring an interest or estate in the Premises. The "Impositions" shall not, however, include any of the following, all of which Landlord shall pay before delinquent or payable only with a penalty: (a) any franchise, income, excess profits, estate, inheritance, succession, transfer, gift, corporation, business, capital levy, or profits tax, or license fee, of Landlord; and (b) the incremental portion of any of the items listed in this Section that would not have been levied, imposed or assessed but for any sale or other direct or indirect transfer of the Fee Estate during the Term. Notwithstanding the foregoing, (1) Tenant shall be responsible for and shall pay any tax on Rent and any occupancy or rent tax that accrues during the Term and (2) if at any time during the Term the method of taxation prevailing at the Commencement Date shall be altered so that any new tax, assessment, levy (including any municipal, state or federal levy), imposition, or charge, or any part thereof, shall be measured by or be based in whole or in part upon the Premises and shall be imposed upon Landlord, then all such new taxes, assessments, levies, impositions, or charges, or the part thereof to the extent that they are so measured or based, shall be deemed to be included within the term "Impositions," to the extent that such Impositions would be payable if the Premises were the only property of Landlord subject to such Impositions, and Tenant shall pay and discharge the same as this Lease requires for the payment of Impositions, except to the extent that such tax, assessment, or levy referred to in item "2" is not included in the definition of "Impositions" under the preceding sentence.

"Improvements" means any and all improvements located on the Premises including, without limitation, any Building and Building Equipment, sidewalks, curbs, parking areas, driveways, lighting systems, landscaping, signage, storm water retention and detention systems, storm and sanitary sewer systems and facilities, water, gas, electric and telecommunication utility systems and facilities, and all related improvements.

"Indemnify" means, wherever this Lease states that any Indemnitor shall "Indemnify" any Person from, against, or for a particular matter (the "Indemnified Risk"), that the Indemnitor shall indemnify the Indemnitee and defend and hold the Indemnitee harmless from and against any and all loss, cost, claims, liability, penalties, judgments, damages, and other injury, detriment, or expense (including Legal Costs, interest and penalties) that the Indemnitee suffers or incurs: (a) from, as a result of, or on account of the Indemnified Risk or (b) in enforcing the Indemnitor's indemnity; provided, however, that in no event shall Landlord or Tenant's indemnity obligations in this Lease extend to loss of business or loss of profit damages which may be suffered by the other party.

"Indemnitee" means: (a) a party entitled to be Indemnified under this Lease and (b) its partners, members, officers, directors, agents, employees, and lenders.

"Indemnitor" means a party that agrees or is required by this Lease to Indemnify any other Person.

"Insurance Maintenance Default" means any failure by Tenant to: (a) maintain or pay premiums for any insurance that this Lease requires Tenant to maintain; or (b) give Landlord evidence of such insurance when and as this Lease requires but only if (in each case) such failure continues beyond the expiration of all applicable notice and cure periods).

"Landlord" initially means **Reno-Tahoe Airport Authority**, a quasi-municipal corporation organized under Chapter 474, Statutes of Nevada 1977, as amended, and its successors and assigns as holders of the landlord's interest under this Lease.

"Landlord Approved Lender" has the meaning given such term in the definition of Leasehold Mortgage.

"Landlord Default" has the meaning given to such term in Section 18.9.

"Laws" means all laws, ordinances, requirements, orders, proclamations, directives, rules, and regulations of any Government affecting the Premises or this Lease in any way, including the development, improvement, alteration, use, maintenance, taxation, operation, or occupancy of, or environmental conditions affecting, the Premises or any part of the Premises, or relating to any Impositions, or otherwise relating to this Lease or the parties' rights and remedies under this Lease, or any Transfer of any of the foregoing, whether in force at the Commencement Date or passed, enacted or imposed at some later time, subject in all cases, however, to any applicable waiver, variance, or exemption.

"Lease Year" means: (a) the twelve (12) calendar months starting on the first day of the first full calendar month after the Commencement Date (if the Commencement Date is not the first day of a calendar month); and (b) every successive period of twelve calendar months thereafter during the Term.

"Leasehold Estate" means Tenant's leasehold estate, and all of Tenant's rights and privileges under this Lease, upon and subject to all the terms and conditions of this Lease and Tenant's duties and obligations hereunder.

"Leasehold Mortgage" means any mortgage, deed of trust, or other security instrument: (a) that encumbers the Improvements, the Leasehold Estate or any interest in the Leasehold Estate; and (b) that is held by either (i) a Lender that is a state or nationally chartered bank or national association, or nationally recognized life insurance company, financial services company, securities company, insurance company or capital markets entity (each such Lender described above as being an "**Institutional Lender**") or (ii) such other or subordinate Lender (other than described above) as is approved by Landlord, and in each case subject to the jurisdiction of the courts of the State and not immune from suit (in each instance, a "Landlord Approved Lender")."

"Legal Costs" of any Person means all reasonable costs and expenses such Person incurs in any legal proceeding (or other matter for which such Person is entitled to be reimbursed for its Legal Costs), including, without limitation, reasonable attorneys' fees, court costs, expert witness cost and expenses, and expenses at the trial and any appellate level, and in or as a result of any Bankruptcy Proceedings.

"Lender" has the meaning given to such term in Section 16.1 of this Lease.

"Loan Documents" has the meaning given to such term in Section 16.2.

"Loss" means any Casualty.

"Minimum Standards" means the standards to be adopted by Landlord from time to time to be applied to aeronautic activities at the Airport, to ensure compliance with FAA regulations.

"Monetary Default" means any failure by Tenant to pay any Rent or Additional Rent (including Impositions and insurance premiums) payable under this Lease beyond the expiration of all applicable notice and cure periods.

"Non-Monetary Default" means any material failure by Tenant to perform as required by this Lease, other than a Monetary Default or an Insurance Maintenance Default beyond the expiration of all applicable notice and cure periods.

"Notice" means any notice, demand, request, election, designation, or consent relating to this Lease, including any Notice of Default. Notices shall be delivered, and shall become effective, only in accordance with the "Notices" Article of this Lease.

"Notify" means give a Notice.

"Notice of Default" means any Notice from one party to the other claiming or giving Notice of a Default or alleged Default by the recipient.

"Notice of Nonresponsibility" means a document, compliant with Chapter 108 of NRS and prepared and noticed by the Landlord, reciting that the Landlord is not and will not be responsible for any materials furnished or labor performed on the Premises or elsewhere at the Airport by or on behalf of Tenant.

"Permitted Alterations" means Improvements made or caused to be made by Tenant to the extent (i) such Improvements are made solely within a Building, (ii) such Improvements are not a part of and do not materially adversely affect the structural components of the Building, such as load bearing walls, foundations, roofs, etc. and (iii) are not visible from the outside of such Building.

"Permitted Exceptions" means only: (1) the title exceptions affecting the Fee Estate recorded prior to the Commencement Date of this Lease, including those listed as exceptions in Tenant's leasehold policy of title insurance covering this Lease (if any); (2) any Applications and Filings entered into at Tenant's request; (3) this Lease and its terms and provisions; (4) any state of facts an accurate survey or an inspection of the Land would show; and (5) the Additional Permitted Exceptions listed on **Exhibit B**.

"Person" means any natural person and any, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, limited liability company, Government, or other entity. (The foregoing definition does not limit any Transfer restrictions in this Lease.)

"Premises" has the meaning set forth in the Recitals of this Lease.

"Prime Rate" means the prime rate or equivalent "base" or "reference" rate for corporate loans that, at Landlord's election, by Notice to Tenant, is from time to time: (a) published in the Wall Street Journal; (b) announced by any large United States "money center" commercial bank

Landlord designates; or (c) if such rate is no longer so published or announced, then a reasonably equivalent rate published by an authoritative third party that Landlord reasonably designates. Notwithstanding anything to the contrary in this Section, the Prime Rate shall never exceed a rate of interest that would otherwise require any party to pay interest above the highest rate legally permitted under the circumstances.

"Prohibited Lien" means any judgment or other involuntary lien recorded of record against the Leasehold Estate, or any mechanic's, vendor's, laborer's or material supplier's statutory lien or other similar lien arising from work, labor, services, equipment, or materials supplied, or claimed to have been supplied, to Tenant or any Subtenant (or anyone claiming through either), which lien attaches (or may attach upon termination of this Lease) to the Fee Estate. An Equipment Lien is not a Prohibited Lien. A Leasehold Mortgage is not a Prohibited Lien.

"Property Insurance Proceeds" means those insurance proceeds payable with respect to a Loss.

"Purpose" has the meaning given to such term in Section 5.1 of this Lease.

"Rent" means Fixed Rent and Additional Rent.

"Restoration" has the meaning given to such term in Section 12.3 of this Lease.

"Restoration Funds" has the meaning given to such term in Section 12.3 of this Lease.

"Scheduled Expiration Date" has the meaning given to such term in Section 2.1 of this Lease.

"State" means the State of Nevada.

"Sublease" means any sublease of the Premises or any part of the Premises, or any other agreement or arrangement (including a license, occupancy, concession, or management agreement) made by Tenant granting any third party the right to occupy, use or possess all or any portion of the Premises, together with any sublease or any further level of subletting of the Premises or any part of the Premises, as any of the foregoing may be assigned, extended, renewed, or amended from time to time.

"Subrent" means all subrents and other money due and payable by Subtenants under Subleases.

"Subtenant" means any person having rights of occupancy, use, or possession under a Sublease.

"Supplementary Agreement" means any agreement, security instrument, guaranty, letter of credit or other document (other than this Lease) by which any party to this Lease, or any other party, provides assurances, security, or credit enhancement regarding any party's performance under this Lease.

"Tenant Improvement Permit" means a written permit, in a form provided by Landlord, issued upon approval and execution by Landlord authorizing Tenant to commence a particular construction project, improvement, installation or modification, subject to any conditions of Landlord.

"Transfer" of any property means any of the following, whether by operation of law or otherwise, whether voluntary or involuntary, and whether direct or indirect: (a) any sale, grant, conveyance, assignment, mortgage, pledge, hypothecation, or other transfer, whether direct or indirect, of all or any part of such property, or of any legal, beneficial, or equitable interest or estate in the same or any portion thereof (including the grant of any lien, easement, or other encumbrance); (b) any sale, other transfer, issuance, modification, conversion, exchange, or other reallocation(s), singly or in the aggregate, of more than forty-nine percent (49%) of the Equity Interest(s) in the owner of such property by the holder of such Equity Interest(s); (c) any other direct, indirect, voluntary, or involuntary transfer, assignment, sale, conveyance, pledge, or hypothecation, singly or in the aggregate, affecting more than forty-nine percent (49%) of the Equity Interest(s) or any other interest in such property or in any such owner (or in any other direct or indirect owner at any higher tier of ownership) through any manner or means whatsoever; or (d) any transaction that is in substance equivalent to any of the foregoing transactions. A transaction affecting Equity Interests in Tenant or another entity, as referred to in clauses "b" through "d," shall be deemed a Transfer by Tenant even though Tenant is not technically the transferor. The term "Transfer" shall not, however, include any transfer (provided that the other party to this Lease has been given prior Notice of such transfer) of an Equity Interest: (a) that constitutes a mere change in form of ownership with no material change in beneficial ownership and is a tax-free transaction under federal income tax law; (b) to member(s) of the immediate family(ies) of the transferor(s) or trusts for their benefit, in each instance for estate planning purposes only; or (c) to any Person that already holds an Equity Interest in the entity whose Equity Interest is being transferred.

"Unavoidable Delay" means delay in performance of any obligation under this Lease (excluding any obligation to pay money) arising from or on account of any cause whatsoever beyond the reasonable control of the Person required to perform, notwithstanding such Person's commercially reasonable diligent efforts, including industry-wide strikes, labor troubles or other union activities (but only to the extent such actions (a) affect similar premises at that time and (b) do not result from an act or omission of the Person claiming Unavoidable Delay), such Person's inability to obtain required labor or materials after reasonable commercial efforts to do so, litigation (unless caused by the party claiming Unavoidable Delay), Loss, accidents, Laws, governmental preemption, war, or riots. Unavoidable Delay shall not include any delay caused by the insolvency, financial condition, or illiquidity of the Person obligated to perform. A party required to perform under this Lease shall give the other party Notice within ten (10) days after such party knows of any such Unavoidable Delay and shall give the other party Notice within ten (10) days after such Unavoidable Delay ceases to exist. Where this Lease states that performance of any obligation is subject to Unavoidable Delay(s) or words of similar import, such Unavoidable Delay(s) shall extend the time permitted for such performance only by the number of days by which such Unavoidable Delay(s) actually delayed such performance. Unavoidable Delay excludes the following events: (i) the financial condition of Tenant; (ii) Tenant's cost or other terms of financing; and (iii) the global, United States, Nevada or Washoe County economy.

"Waiver of Subrogation" means a provision in, or endorsement to, any policy of insurance, by which the insurance carrier agrees to waive all rights of recovery by way of subrogation against either party to this Lease in connection with any loss covered by such policy.

## ARTICLE 2 TERM

**Section 2.1. Term.** The term of this Lease (the "Term") shall be for fifty (50) Lease Years and shall commence on \_\_\_\_\_, 20\_\_ (the "Commencement Date"). The Term shall continue until 11:59 p.m. on the last day of the fiftieth (50th) Lease Year of the Term (the "Scheduled Expiration Date"), unless terminated sooner. If the Commencement Date is not the first (or the Expiration Date is not the last) day of a month, then from the Commencement Date through the day before the first Lease Year (or from the day after the last Lease Year through the Expiration Date), the parties shall have all the same rights and obligations under this Lease (including regarding Rent) that they do during the first (or the last) Lease Year, all prorated daily.

**Section 2.2. [Reserved].**

**Section 2.3. Surrender.** Notwithstanding any other provision of this Agreement to the contrary, no notice to quit possession at the expiration date of the Term of the Agreement shall be necessary. Tenant covenants and agrees that at the expiration of the Term, or at any earlier termination thereof, Tenant will peaceably surrender possession of the Premises in good condition, reasonable wear and tear, and acts of God excepted, and Landlord shall have the right, in compliance with all Laws, to take possession of the Premises with or without due process of law.

**Section 2.4. Holdover.** In the event Tenant remains in possession of the Premises after the expiration or termination of this Agreement without any written extension thereof or the express written consent by Notice from Landlord, such holding over shall not be deemed as a renewal or extension of this Agreement but shall create only a holdover tenancy at sufferance, under the same operating conditions contained here, except as to Rent and fees, which shall be one hundred fifty percent (150%) of the current Fixed Rent rate. Said tenancy shall be subject to Landlord's termination and repossession of the Premises at any time. Tenant shall be liable to Landlord for all loss or damage on account of any holding over against Landlord's will after the expiration or cancellation of this Agreement, whether such loss or damage may be contemplated at this time or not. No receipt or acceptance of money by Landlord from Tenant after the expiration, termination or cancellation of this Agreement or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue or extend the Term, or affect any such notice, demand or suit or imply consent for any action for which Landlord's consent is required or operate as a waiver of any right of the Landlord to retake and resume possession of the Premises.

### ARTICLE 3 PREMISES AND PRIVILEGES

**Section 3.1. Lease of Premises.** Subject to the terms and conditions of this Agreement, Landlord hereby leases to Tenant, and Tenant leases from Landlord, the Premises.

**Section 3.2. Condition.** Tenant has inspected the Premises and accepts the Premises in the condition existing as of the Commencement Date, "AS IS," with all faults and defects, latent and patent, and with no assurances, warranties, representations or guarantees of any kind or nature whatsoever, including, without limitation, representations or warranties as to the soil, water or other material condition as might result in unexpected costs for site preparation, development or operations, or the suitability of the Premises for Tenant's purposes; and Landlord makes no representation as to the drainage or storm water runoff through the Premises and/or to the condition or quality of the Premises at the Commencement Date. Tenant shall be solely responsible to perform all due diligence with respect to the Premises, including, without limitation, to survey, test, measure and be aware of change in elevations or grades and the resulting water flows and to make provisions to protect the Premises and all Improvements placed or existing thereon.

**Section 3.3. Quiet Enjoyment.**

A. Landlord covenants that, so long as this Lease is in full force and effect and has not been terminated, Tenant shall and may peaceably and quietly have, hold and enjoy the Premises for the Term, subject to the terms and conditions of this Lease, without disturbance by or from Landlord or anyone claiming by or through Landlord or having title to the Premises paramount to Landlord, and free of any encumbrance created or suffered by Landlord, except Permitted Exceptions.

B. Notwithstanding Paragraph A, above, the National Championship Air Races ("**NCAR**") and Pylon Racing School ("**PRS**") are held at Airport each year and conducted by the Reno Air Racing Association, Inc. ("**RARA**"), and certain inconveniences, such as lack of parking and restricted access, will occur while the NCAR, PRS or other aviation related special events, conducted by RARA or other tenants or users of Airport, are being conducted at Airport. Tenant shall relinquish operational use of any Offsite Area (defined as any area outside the boundary lines of the Premises) of Airport during closure of Airport for the NCAR, PRS or other such event; provided, however, that under no circumstance shall Tenant be denied actual access to the Premises during any such events, and in no event shall any third party other than Tenant and Tenant's invitees be allowed to park on the Premises or use the Premises (except in the case of exigent or emergency circumstances attendant to such event(s), such as, for example but not by limitation, any disabled or crashed airplane on the Premises and emergency personnel and others accessing and occupying the Premises in connection therewith). Tenant shall not be entitled to any abatement or reduction of Rent or any other compensation, recourse or remedy as a result of Tenant's inability to use or inconvenience associated with the use of the Premises or Airport while the NCAR, PRS or other such event is being conducted. Tenant shall cooperate with the FAA, RARA and/or any other such tenant or user to establish special aircraft ingress and

egress on any Offsite Area. The terms of this Paragraph B shall also apply to any limitation and/or restriction of Tenant's and/or any Subtenant's activities caused by, resulting from, arising out of, relating to or in connection or conjunction with any firefighting activities of the United States of America, Department of Interior, Bureau of Land Management, any similar agency, its agents or employees, to, from, in, on, at, around or about Airport.

**Section 3.4. Access and Inspection.** Notwithstanding anything to the contrary in this Lease, Landlord and its agents, representatives, and designees shall have the right to enter the Premises upon reasonable Notice (which shall be no less than 24 hours' prior written notice, unless emergency or exigent circumstances make such prior notice unreasonable in Landlord's discretion) to Tenant during regular business hours, and in accordance with Tenant's reasonable instructions, solely to: (a) ascertain whether Tenant is complying with this Lease; (b) cure Tenant's Defaults of which Landlord has given Tenant Notice pursuant to Section 18.1(d) of this Lease; (c) inspect the Premises and any Construction Work; (d) perform such tests, borings, and other analyses as Landlord shall have a reasonable factual basis to determine may be necessary or appropriate relating to the (non)compliance of the Premises with any Environmental Law or possible existence of Hazardous Substances on, at, or under the Premises; or (d) show the Premises to prospective purchasers or Transferees during the last two (2) years of the Term. In entering the Premises, Landlord and its designees shall not unreasonably interfere with operations on the Premises and shall comply with Tenant's reasonable instructions, reasonable security measures and confidentiality requirements of any Subtenant. In exigent circumstances, as determined in Landlord's reasonable discretion, Landlord shall have immediate access to the Premises, the Building and other Improvements on the Land, with only such Notice, if any, as is reasonable in light of such circumstance, for the purpose of protecting the Airport and its operations. Tenant at all times shall designate and provide contact information for an emergency manager of the Premises, or acceptable security company, through whom Landlord shall have "24/7" emergency access to the Premises.

#### **ARTICLE 4 RENT, FEES, CHARGES, RECORDS AND AUDIT.**

**Section 4.1. Security.** To secure Tenant's payment of all rent, fees, and other charges due Landlord under this Lease, and to ensure Tenant's performance of all terms and conditions of this Lease, Tenant shall deliver to Landlord, not later than the Commencement Date, security in a form and amount satisfactory to Landlord to be held and applied by Landlord in accordance with the provisions of this Section 4.1 (in each instance and form, a "**Credit Enhancement**").

- A. The Credit Enhancement shall be in the form of a payment bond, irrevocable letter of credit, or other third-party credit enhancement from a Lender, each as determined and approved by the Landlord. The Credit Enhancement shall (i) be in the aggregate amount of three (3) months' total Rent hereunder, (ii) be effective on or before the Rent Commencement Date, and (iii) be written for such duration and renewal as to ensure that the said security is available for payment upon any of Tenant's defaults for not less than three (3) months after the Expiration Date. Accordingly, the Credit Enhancement shall provide that it remains in full force and effect throughout the Term and for a period of ninety (90) days following the

Expiration Date, and Tenant shall cause the Credit Enhancement to be continuously maintained in effect (whether through replacement, renewal, extension or so-called evergreen clauses) for such time period. The amount of the Credit Enhancement shall be subject to adjustment by Landlord pursuant to this Section 4.1. Paragraph B, and, in addition to all other provisions set forth herein, the Credit Enhancement shall comply with the following minimum requirements:

1. All payment bonds shall be issued by a surety or bonding company authorized to do business within the State of Nevada. The issuer of the bond shall be required to pay Landlord the amount of Tenant's default upon presentation to the issuer of a statement signed by the President/CEO of Landlord stating the Tenant is in default of the provisions of this Lease and setting forth the amount of the default.
2. All letters of credit shall be issued by a federally chartered bank acceptable to Landlord having offices within the City of Reno, State of Nevada, unless specifically waived in writing by Landlord. All letters of credit must be irrevocable standby letters of credit and shall contain the following provisions: (a) only Landlord, its successors and assigns, shall be named as the beneficiaries; (b) partial and multiple drawings shall be permitted; (c) the letter of credit shall be available to the Landlord at sight drafts; (d) all monetary references shall be in United States currency; and (e) draws upon the letter of credit shall be allowed upon compliance with the following conditions: (1) the original of the letter of credit shall be presented to the issuing institution; and (2) the letter of credit shall be accompanied by a statement signed by the President/CEO of Landlord stating that the Tenant is in default of the provisions of this Agreement and setting forth the amount of the draw.

All other provisions of the letter of credit shall be subject to Landlord's approval, which approval shall not be unreasonably withheld.

- B. The amount of the Credit Enhancement shall be subject to review and adjustment by Landlord from time to time during the Term. Upon said review, Landlord may elect to require Tenant to increase the amount of the Credit Enhancement for any of the following reasons: if Tenant's financial obligation under this Lease has increased, whether by rent rate adjustments, increased activity or such other event or reason as determined reasonably by Landlord; if Tenant has failed to pay any rents, fees, charges or assessments when due (unless said default in payment is the subject of a bona fide dispute); or if Tenant's financial condition has changed since the Commencement Date to such extent that Landlord is reasonably concerned about Tenant's ability to perform its obligations hereunder. In no event will the security be reduced.
- C. Notwithstanding the foregoing, if at any time during the Term, Tenant fails to make any payment due hereunder of any Rent, fee, charge or assessment (including, but not limited to, late payment charges and any and all costs of

collection), and the same has not been cured according to the provisions of Section 18 hereof, then Landlord may make a demand upon the issuer for Tenant's unpaid obligations, without prior notice to Tenant. In such event, Tenant shall promptly ensure that the Credit Enhancement again satisfies the requirements hereof, including replacement of the amount drawn, and, Landlord, at its option, may require Tenant to deliver supplemental security to Landlord in an amount and in such form as Landlord deems necessary to protect Landlord against future defaults.

- D. Within thirty (30) days following the Expiration Date, Landlord may make a demand upon the issuer of the Credit Enhancement for payment of any remaining unpaid obligation of Tenant, without notice to Tenant. Any such demand by Landlord and payment by the issuing institution shall not serve to relive Tenant of its obligations hereunder or waive Landlord's rights and remedies under this Lease.
- E. The proceeds of the Credit Enhancement shall constitute Landlord's sole and separate property (and not Tenant's property or the property of Tenant's bankruptcy estate). Landlord and Tenant acknowledge and agree (a) that in no event or circumstance shall the Credit Enhancement or any renewal thereof or substitute therefor or any proceeds thereof be deemed to be or treated as a "security deposit" under any law applicable to security deposits in the commercial context ("Security Deposit Laws"), (b) that the Credit Enhancement (including any renewal thereof or substitute therefor or any proceeds thereof) is not intended to serve as a security deposit, and the Security Deposit Laws shall have no applicability or relevancy thereto, and (c) to waive any and all rights, duties and obligations either party may now or, in the future, will have relating to or arising from the Security Deposit Laws. Tenant hereby waives any provisions of law, now or hereafter in effect, which (i) establish the time frame by which Landlord must refund a security deposit under a lease, and/or (ii) provide that Landlord may claim from the security deposit only those sums reasonably necessary to remedy defaults of Tenant, it being agreed that the terms of this Lease shall govern the application of the proceeds of the Credit Enhancement.

**Section 4.2. Rent.** Commencing on the earlier to occur of (i) the first occurring issuance date of a Certificate of Occupancy for an Improvement (but in any event no later than the date Tenant first occupies an Improvement or places same into service), or (ii) the day after the expiration of the twenty-fourth (24<sup>th</sup>) full calendar month following the Effective Date<sup>1</sup> (such earlier date, the "Rent Commencement Date"), Tenant shall pay Landlord, without notice or demand, in lawful money of the United States of America, a net annual rental (the "Fixed Rent") of \_\_\_\_\_ and \_\_\_/100ths Dollars (\$\_\_\_\_\_) payable in twelve (12) equal monthly installments of \_\_\_\_\_ and \_\_\_/100ths Dollars (\$\_\_\_\_\_) ("Fixed Monthly Rent"), all subject to adjustment as next provided in Section 4.3. Such Fixed Monthly Rent is based on \_\_\_\_\_ and \_\_\_/100ths Dollars (\$\_\_\_\_\_) per \_\_\_\_\_

<sup>1</sup> Phase 1 Ground Lease will be different..

square foot of the land area of the Premises. Such Fixed Monthly Rent is subject to reallocation in the event of a partial assignment of this Lease pursuant to Section 15.1 of this Lease.

**Section 4.3. Adjustment of Fixed Rent - Adjustment Each Second Year.** Fixed Rent shall be increased on each successive two-year anniversary date of the first (1<sup>st</sup>) day of the first (1<sup>st</sup>) Lease Year throughout the Term (each such adjustment date, a "**Fixed Rent Adjustment Date**"). Such adjustments shall be determined in an amount derived by (i) assuming both a fixed two percent (2%) increase and a CPI comparison adjustment of the Fixed Rent for each Lease Year, commencing with the first (1<sup>st</sup>) anniversary of the first (1<sup>st</sup>) Lease Year, and continuing on the same day of each successive Lease Year, including the applicable Fixed Rent Adjustment Date, (ii) then determining the cumulative, compounded amount of such assumed two-year adjustments of Fixed Rent and then (iii) the lesser of such determined amounts shall be the new Fixed Rent rate as of the applicable Fixed Rent Adjustment Date. On each Fixed Rent Adjustment Date the Fixed Rent then in effect shall be adjusted in the manner provided in clauses (i) through (iii) above; provided, however, that there shall not be any decrease in the Fixed Rent on any Fixed Rent Adjustment Date.

**Section 4.4. Fair Market Value Adjustments.** On each successive ten-year anniversary of the first (1<sup>st</sup>) day of the first (1<sup>st</sup>) Lease Year throughout the Term (each such date, a "**FMV Adjustment Date**"), the Fixed Rent then in effect shall be adjusted to an amount equal to the fair market rental value of the Land as of the FMV Adjustment Date, as provided below in this Section 4.4, not to include, however, the value of any Improvements owned by the Tenant that are installed or erected on the Premises according to the terms of this Lease in determining such fair market value; provided, however, that if Tenant constructs Improvements that are or will be formally funded by or dedicated, accepted and transferred to a state or local government or utility company, title or ownership to such Improvements shall no longer be considered as Improvements owned by Tenant, and shall be included in the determination of fair market rental value of the Premises as outlines in this Section 4.4.

Each ten-year fair market value adjustment of Fixed Rent in the manner set forth in this Section 4.4 shall be in lieu of the two-year adjustment that otherwise would occur pursuant to Section 4.3 above. On each FMV Adjustment Date, the then Fixed Rent shall be adjusted, if at all, pursuant to the following appraisal process:

A. The adjusted Fixed Rent shall be determined based on one or more appraisals to establish fair market rental value. The appraisal(s) shall comply with the Uniform Standards of Professional Appraisal Practice and any applicable Law, and will be completed by an appraiser with MAI (Member, Appraisal Institute) credentials licensed in Nevada, with at least ten (10) years of experience in the valuation of similar commercial properties located in the Reno-Sparks metropolitan area.

B. If Landlord and Tenant agree on a single appraiser, the cost of the appraisal shall be split on a 50%-50% basis between Landlord and Tenant, and the current fair market rental value shall be established by that appraisal; provided, however, that in no event shall adjusted Fixed Rent be less than the Fixed Rent in effect as of the FMV Adjustment Date. If Landlord and Tenant do not or cannot agree on a single appraiser, for whatever reason, then Landlord and Tenant shall each select a qualified

appraiser and the costs of those appraisals shall be paid for by Landlord and Tenant, respectively. Each appraiser shall appraise the Premises and submit a determination of the fair market rental value in writing to both Landlord and Tenant. If the appraisal reports contain fair market rental value determinations which are within ten percent (10%) of each other, then the fair market rental value shall be the arithmetic average of the values in the two (2) appraisals, provided that if the average is less than the Fixed Rent in effect as of the FMV Adjustment Date, then the adjusted Fixed Rent shall be the Fixed Rent in effect as of the FMV Adjustment Date. If the reports contain fair market rental value determinations which are not within ten percent (10%) of each other, and no agreement between Landlord and Tenant is then reached, the two appraisers shall select a third disinterested qualified appraiser to perform a third appraisal. The cost of the third appraisal shall be split on a 50%-50% basis between Landlord and Tenant. The arithmetic average of the valuations in the three appraisal reports shall be determinative as to the fair market rental value of the Premises; provided that in no event shall adjusted Fixed Rent be less than the Fixed Rent in effect as of the FMV Adjustment Date.

C. An adjustment of Fixed Rent under this Section 4.4 shall be effective on and after the FMV Adjustment Date, regardless of the date upon which the fair market rental value for the Premises is finally determined. If the Fixed Rent adjustment process is not completed before the applicable FMV Adjustment Date, Tenant shall continue to pay Fixed Rent at the rate then in effect immediately prior to the FMV Adjustment Date until the adjusted Fixed Rent is determined. Upon final determination of the adjusted Fixed Rent, Tenant shall promptly pay to Landlord the difference between the amount paid between the first calendar day immediately following the FMV Adjustment Date, and the amount of the Fixed Rent as adjusted for that period; provided that no late charge under Section 18.4 shall apply to any such difference timely paid following determination of the adjusted Fixed Rent. On the adjustment of the Fixed Rent under this Section and upon the request of either Landlord or Tenant, the parties shall acknowledge in writing the new Fixed Rent and Fixed Monthly Rent; provided, however, that the failure of either party to make such request, or acknowledge the new Fixed Rent or new Fixed Monthly Rent pursuant to such request, shall in no way or manner delay or impair the full applicability of such new Fixed Rent or new Fixed Monthly Rent as above provided in this Section 4.4.

**Section 4.5. Payment; Proration; Etc.** Tenant shall pay Fixed Rent in equal monthly installments in advance on the first (1<sup>st</sup>) day of each month. Rent for partial months as of the Rent Commencement Date or end of the Term shall be prorated daily. Tenant shall pay all Rent payable to Landlord by good and sufficient check payable to Landlord or by wire transfer, at such address as Landlord shall designate from time to time. Rent tendered by check shall be deemed paid only when honored by the institution upon which drawn. All delinquencies in the timely payment of Rent as and when due are subject to the operation and effect of Section 18.4 of this Lease with respect to Default Interest and late charges.

**Section 4.6. Additional Rent.** In addition to Fixed Rent, Tenant shall pay Landlord (or the appropriate third party, as applicable) all Additional Rent as and when due.

**Section 4.7. No Offsets.** Tenant shall pay all Rent without offset, defense, claim, counterclaim, reduction, or deduction of any kind whatsoever.

**Section 4.8. Government Restriction on Rent.** During any period when any Rent shall be or become uncollectible, reduced, or required to be refunded because of any rent control Law or other Law (a "Rent Regulation Period"), Tenant shall, at Landlord's expense, including reasonable legal fees, enter into such agreement(s) and take such other steps as Landlord may reasonably request and as may be legally permissible to permit Landlord to collect the maximum Rent that, from time to time during such Rent Regulation Period, may be legally permissible (and not in excess of the amounts then reserved therefor under this Lease to the extent then due and payable under this Lease). After any Rent Regulation Period: (a) Rent shall become and thereafter be payable in accordance with this Lease; and (b) Tenant shall promptly pay in full to Landlord, unless prohibited by Law, an amount equal to the excess, if any, of the following during the Rent Regulation Period: (1) the Rent that this Lease required Tenant to pay under the express terms of this Lease; less (2) the Rent Tenant actually paid.

**Section 4.9. Additional Payments by Tenant.**

A. **Landlord's Net Return.** This Lease shall constitute an absolutely "net lease". The Rent shall give Landlord an absolutely "net" return for the Term, free of any expenses or charges for the Premises, except as this Lease expressly provides. Tenant shall pay as Additional Rent and discharge (subject to Tenant's right of Contest as this Lease expressly provides), before failure to pay shall create a material risk of forfeiture or penalty, each and every item of expense, of every kind and nature whatsoever, related to or arising from the Premises, or by reason of or in any manner connected with or arising from the development, leasing, operation, management, maintenance, repair, use, or occupancy of, or Construction Work affecting, the Premises or any portion of the Premises. Notwithstanding anything to the contrary in this Lease, Tenant shall not be required to pay any of the following: (a) depreciation, amortization, financing or refinancing costs, management fees, or leasing expenses for the Fee Estate; (b) consulting, overhead, accounting, tax preparation, other professional fees, travel, legal and staff costs, bank service charges, and other costs incidental to Landlord's ownership of the Fee Estate and administration and monitoring of this Lease and not as a result of a Tenant Default; (c) any costs arising from or under any instrument or agreement affecting the Fee Estate but that is not a Permitted Exception and to which Landlord is a party and Tenant is not a party; (d) any Impositions, insurance premiums, utilities, operating expenses, or other costs related to the Premises that accrued before the Commencement Date; provided, however, that if any such accrual is payable in installments, then Tenant shall pay such amounts as are applicable to installments due and payable after, but only to the extent due and payable for the period after, the Commencement Date; (e) any sums expressly payable by Landlord under this Lease and (f) any costs related to the Baseline Condition (to the extent applicable to the Premises) as and to the extent provided in Section 8.4.

B. **Impositions.** During the Term (with daily proration for periods partially within the Term and partially outside the Term), Tenant shall pay and discharge as Additional Rent all Impositions, before failure to pay shall create a material risk to

Landlord of forfeiture or penalty, subject however to Tenant's right of Contest as this Lease expressly provides. Tenant shall also pay all interest and penalties any Government assesses for late payment of any Imposition, except late payment that is caused because Landlord failed to remit an Imposition (paid to Landlord by Tenant) in accordance with Tenant's reasonable instructions (provided they involve only ministerial functions) or failed to forward to Tenant within a reasonable time frame prior to its due date a copy of any applicable bill that Landlord receives. In the latter case Landlord shall pay such interest and penalties. Tenant shall, within a reasonable time after Notice from Landlord, give Landlord reasonable proof that Tenant has paid any Imposition(s) that this Lease requires Tenant to pay. Tenant shall have the sole right and authority to contest Impositions, in compliance with the Contest Conditions (as defined in Article 10). Tenant expressly acknowledges and agrees that Landlord has not, and does not, make any representation or warranty whatsoever concerning Impositions applicable to the Premises or Tenant's use thereof, including, and without limitation, the levy and assessment of ad valorem real property taxes in connection therewith.

C. **Assessments in Installments.** To the extent permitted by Law, Tenant shall have the right to apply to have any Imposition payable in installments. Tenant shall then pay and discharge only such installments as shall become due and payable during the Term.

D. **Direct Payment by Landlord.** If any Imposition or other Additional Rent must be paid directly by Landlord, then: (a) Landlord appoints Tenant as Landlord's attorney-in-fact for making such payment; and (b) if the payee nevertheless refuses to accept payment from Tenant, then Tenant shall Notify Landlord of such fact and shall pay such amount to Landlord in a timely manner accompanied by reasonable instructions on the further remittance of such payment. Landlord shall with reasonable promptness comply with Tenant's reasonable instructions. Landlord shall Indemnify Tenant against Landlord's failure to do so.

E. **Utilities.** Tenant shall arrange and pay for all fuel, gas, light, power, water, sewage, garbage disposal, telephone, and other utility charges, and the expenses of installation, maintenance, use, and service in connection with the foregoing, for the Premises during the Term. Landlord shall have absolutely no liability or responsibility in connection with any of the foregoing, except that Landlord will perform its obligations regarding any related Applications and Filings.

## ARTICLE 5 USE AND OPERATION.

**Section 5.1. Permitted Use.** Tenant may use the Premises only for the development, construction, maintenance and operation of Improvements to be used for industrial, warehouse, distributing/flex space, assembly, Aeronautic Uses, light manufacturing, air cargo or logistics uses related thereto, and such other uses as may be approved by Landlord in Landlord's sole discretion (such allowed uses, the "**Purpose**"). In no event shall the foregoing obligate Tenant or its Subtenants to conduct business on the Premises. Any Leases to Subtenants shall be only in connection with, and for, such Purpose. Under no circumstances will any residential use or use

restricted in connection with the then applicable FAA Requirements be allowed anywhere on the Premises. The exterior design of all Improvements, including the signage, landscaping, parking and other exterior elements on the site on which each Building is located must be approved by Landlord, which approval shall not be unreasonably withheld, provided they meet the Design Guidelines. Aeronautic Uses are subject to the written approval of Landlord as to each Person engaged in such uses under the auspices of this Lease or any Sublease under this Lease. Tenant and Subtenants engaged in Aeronautic Uses will be subject to the Minimum Standards developed and amended by Landlord from time to time. The selection of, and marketing to, FBO uses is specifically reserved to Landlord exclusively. In no event or manner shall the Purpose include any use generally associated with (1) the sale at retail to the public of pornographic materials, or the conduct of any illegal activities, (2) the placement of cell towers or antennae, except as approved and permitted by the Landlord in its sole and absolute discretion, (3) any activity that would interfere with the safe operation of the Airport per any Laws or Airport Rules and Regulations, or (4) the placement of billboards or other forms of outdoor advertising from which Landlord could otherwise derive revenue, all of which are specifically prohibited. Tenant shall not commit or permit any waste material or dispose of such materials in violation of any Laws to the Premises or any Improvements located thereon, except that the foregoing shall not in any way limit the right of Tenant, its agents, employees and subtenants, to demolish, renovate, rebuild, construct, modify, alter and improve, in whole or in part, at any time or from time to time, the Improvements now or hereafter located on the Premises, subject to and in full compliance with the terms and conditions of this Lease.

**Section 5.2. Exclusive Control.** Subject to the terms and provisions of this Lease, including Section 20 hereof, Tenant shall, subject to Tenant's compliance with all Laws, have exclusive control, possession, occupancy, use, and management of the Premises. Tenant may enter into, terminate, modify, amend, or waive any existing or future contracts relating to management or operation of the Premises and provision of services to the Premises. Any such contracts shall automatically expire on the Expiration Date. Tenant shall Indemnify Landlord for any claims relating to the control, possession, occupancy, and management of the Premises during the Term, subject only to the terms of this Lease. Without limiting the generality of the foregoing, Tenant is hereby granted the exclusive right, for the Term and as and to the extent provided in this Lease, to develop, for the Purpose, the Premises and to enter into Subleases with subtenants (although subleases may be termed "leases" in the actual Sublease). Tenant shall have the right, from time to time, to (i) construct buildings or improvements on or under the Premises, (ii) lease any portion of the Premises for the construction of improvements or buildings, (iii) grant such easements, rights and dedications that have been reasonably approved by Landlord and which Tenant has established to the Landlord's reasonable satisfaction are necessary or desirable, and (iv) cause the recordation of such covenants, conditions and restrictions against the Premises which have been established by the Tenant with the Landlord's reasonable approval. Landlord shall sign any documents reasonably necessary to effect the aforementioned rights upon request of Tenant, at no liability, cost or expense to Landlord. Tenant may, from time to time during the Term, cause surveys to be prepared for the purpose of discretely delineating separate lease parcels (hereinafter "Subparcels" or a "Subparcel" in the singular), for one or more separate Buildings to be constructed thereon based upon the proposed development thereof by Tenant. Subparcels shall not cause, or be created in a manner so as to cause, a legal subdivision or parceling of the Premises. Landlord and Tenant shall, at the written request of Tenant, enter into a separate ground lease (a "Subparcel Lease") for each such Subparcel. Upon the execution of

any Subparcel Lease, Landlord's and Tenant's respective rights and obligations shall then be removed from this Lease to the extent such rights and obligations to be removed from this Lease are expressly set forth and re-established pursuant to the applicable Subparcel Lease(s). All Subparcel Leases (i) shall be in the same basic form as this Lease and (iii) shall, in each instance, be entered into between the Authority and a Designated Affiliate. No Subparcel Lease shall be cross-collateralized or cross-defaulted with this Lease or any other Subparcel Lease. The land area covered by a Subparcel Lease shall be deemed removed from the land area of the Premises under this Lease following the effective date of the Subparcel Lease, and the Fixed Monthly Rent and Additional Rent payable by Tenant under this Lease shall be reallocated between this Lease and each Subparcel Lease, based on the relative resulting square footages of this Lease and the applicable Subparcel Lease. In no event shall any such reallocation of Fixed Monthly Rent or Additional Rent result in a reduction of the Fixed Monthly Rent nor Additional Rent which Landlord is entitled to receive under this Lease.

**Section 5.3. Management Fees.** Tenant shall timely pay and discharge all fees, costs, and expenses related to or arising from the management or operation of the Premises and the provision of services to the Premises pursuant to agreements expressly entered into by and among Tenant and third parties.

**Section 5.4. Safety Procedures and Fire Protection System.** Tenant will comply with all fire safety rules, regulations and procedures in effect at the Airport and applicable to the Premises, including the installation of such extinguishing devices or fixtures on and in the Premises, including all Improvements thereto, as may be required by such fire safety rules, regulations and procedures, and combustible/flammable liquid storage will meet applicable Uniform Fire Code requirements. Tenant shall, at its own cost and expense, maintain in good working order on the Premises a fire protection system, which Tenant shall cause to be certified as meeting all applicable fire and safety standards, at least annually, by a qualified fire protection system inspector, with a copy of each such certification provided to the Landlord.

**Section 5.5. Premises Security.** Tenant will comply with all rules and regulations imposed upon or required by Landlord as to Airport and airfield security to the extent applicable to the Premises. Tenant shall be responsible for providing its own security for the Premises, including but not limited to Improvements thereto, for any equipment, vehicles, materials and other personal property brought onto the Premises by or for Tenant, and for any services provided or activities conducted by Tenant or by anyone for Tenant under this Lease. Landlord shall be responsible (at its sole cost) for implementing security plans or installing and operating security systems to meet requirements of the United States Department of Homeland Security, Transportation Security Administration and its successors in function, if any, ("TSA"). Tenant's responsibility and agreement hereunder shall include, without limitation, compliance with any and all Laws governing airport and airfield security, as the same exist and as may hereafter be enacted, promulgated, augmented and amended.

## ARTICLE 6 MAINTENANCE AND ALTERATIONS

**Section 6.1. Obligation to Maintain.** Except to the extent that (a) this Lease otherwise expressly provides otherwise or permits or (b) Tenant is performing Construction Work in

compliance with this Lease, Tenant shall during the Term keep and maintain the Premises in good order, condition, and repair, and in compliance with Law. Without limiting the scope of the foregoing, Tenant's obligation in this regard includes a requirement to maintain the Premises in a manner that is consistent with good and prudent commercial practices for similar properties and uses of a first class nature (whether the maintenance required is structural or nonstructural, foreseen or unforeseen, capital or operating).

**Section 6.2. Compliance.** With respect to Tenant's use and occupancy of the Premises, Tenant shall at all times during the Term, at Tenant's expense and in all material respects, but subject to Tenant's right of Contest (a) comply fully with all Laws and Permitted Exceptions, and (b) procure and comply with all Approvals required by Law. If Tenant receives notice from any Government that Tenant lacks or is in violation of, any permit or license applicable to the Premises and Tenant's use thereof, Tenant shall provide Landlord with timely written notice of the same.

**Section 6.3. Construction Work.** Except as otherwise required in this Lease, and subject to Tenant's full compliance with Sections 6.4, 6.5, 6.6 and 6.7 below, Tenant may perform Construction Work, considered necessary or appropriate by Tenant. Tenant shall perform all Construction Work in full and timely compliance with Law. To the extent that Tenant commences any Construction Work, Tenant shall complete it with reasonable diligence and within a reasonable period. Tenant shall pay for all Construction Work when and as required, and all Construction Work shall be at Tenant's sole cost and expense. Tenant shall timely obtain and promptly deliver to Landlord all Approvals necessary or appropriate for any Construction Work, and Landlord shall cooperate, to the extent necessary, in Tenant securing such Approvals.

**Section 6.4. Performance and Payment Bonds.** Before commencing any Construction Work ~~on the Premises~~ for any infrastructure Improvements (excluding any Building or Building Equipment Improvements), Tenant shall furnish Landlord performance and payment bonds, approved as to form and surety by Landlord, with Tenant's contractor(s) as principals, each bond in a sum not less than one hundred percent (100%) of the amount of the contract securing Tenant's completion of the work in accordance with the plans and specifications approved in writing by Landlord. The bonds shall also guarantee the payment of wages of employees and benefits, subcontractor's contracts, materials, supplies and equipment used in the performance of the work, and shall protect Landlord from liability, losses or damages arising therefrom. Tenant shall ensure that Landlord is an additional obligee of its principal and surety under such bonds.

**Section 6.5. Guidelines; Plans and Specifications.** Tenant has the responsibility to insure that the design for all Improvements shall be in full accordance with all Laws, as well as all applicable FAA Requirements and, to the extent applicable (and not waived or modified by Landlord) the Design Guidelines. Before commencing construction of any Improvement other than Permitted Alterations, Tenant must submit to Landlord for its review a proposed development plan for such Improvement depicting the proposed location of the proposed Improvement on the Land. Before commencing any Construction Work on the Premises other than Permitted Alterations, Tenant shall furnish to Landlord a copy of all plans, specifications, drawings and surveys obtained by or for Tenant in connection with Construction Work for Improvements to the Premises for Landlord's review and prior written approval, which approval shall not be withheld unreasonably withheld, conditioned or delayed. Upon completion of any

Construction Work, Tenant shall provide to Landlord final "AS BUILT" reproducible drawings, in digital format (preferably AutoCADDr14 or later compatible) reasonably satisfactory to Landlord in form and content of any and all Improvements (including all Permitted Alterations), not later than ninety (90) days following the latter of the completion, occupancy or initial use of such Improvements, whichever occurs first. Copies of any and all Certificates of Occupancy shall be delivered to Landlord promptly upon the issuance thereof. Tenant shall ensure that all Improvements, as constructed or installed, comply with the plans and specifications as approved by Landlord, and that any material defects, errors or omissions in construction are corrected, so that all Improvements are constructed or installations are made in a proper, workmanlike manner. Tenant's submittal hereunder shall include a completed Tenant Improvement Permit. As of the Effective Date, the current form of the Tenant Improvement Permit is attached hereto as **Exhibit E**, which form may be revised by Landlord from time to time during the Term in Landlord's discretion.

**Section 6.6. Required Notice of Certificate of Occupancy.** Tenant shall promptly Notify Landlord of the first date a Certificate of Occupancy is issued for a Building, in each instance.

**Section 6.7. Notice of Nonresponsibility; Disinterested Owner.** As applicable, and as permitted by Laws, before commencement of any work Landlord shall be allowed to post the work site, in a conspicuous location, with an appropriate, statutory Notice of Nonresponsibility, setting forth that Landlord is not and will not be responsible for any materials furnished or labor performed on the Premises. Tenant shall notify Landlord at least ten (10) days before commencing any work, so that Landlord may record, in the Office of the Recorder of Washoe County, Nevada, a copy of the Notice of Nonresponsibility.

IN ADDITION, AND NOTWITHSTANDING ANY TERM OR PROVISION OF THIS LEASE TO THE CONTRARY, TO THE EXTENT THE COST OF SAME WOULD EXCEED \$5,000.00, TENANT SHALL NOT COMMENCE OR CONDUCT, OR ALLOW TO BE COMMENCED OR CONDUCTED, ANY PERMITTED ALTERATIONS, ANY OTHER CONSTRUCTION WORK, OR MAJOR WORK OF REPAIR OR REPLACEMENT AT ITS REQUEST OR AUTHORIZATION, OR ALLOW THE DELIVERY OF ANY MATERIALS IN CONNECTION THEREWITH, UNLESS AND UNTIL TENANT HAS COMPLIED WITH EACH AND EVERY TERM OF NEVADA REVISED STATUTES ("**NRS**") 108.2403, SUCH THAT LANDLORD ACHIEVES THE STATUS OF A "**DISINTERESTED OWNER**" AS DEFINED AND DESCRIBED IN NRS 108.234.

**Section 6.8. Applications and Filings.** Upon Tenant's request, Landlord shall, without cost or liability to Landlord, join in and execute any Application or Filing as Tenant may from time to time request, provided that: (a) such Application or Filing is in customary form and imposes no material obligations (other than obligations that are ministerial in nature or merely require compliance with Law) upon Landlord; (b) no uncured Event of Default exists; and (c) Tenant reimburses Landlord's Legal Costs, if any, incurred in performing under this Section.

**Section 6.9. Ownership of Improvements During Term.** All Improvements (other than FF&E) constructed, installed or erected upon the Land by Tenant during the Term, immediately upon completion thereof, shall be and become a part of and an appurtenance to the Land upon which they are erected or part of the Building to which they are affixed. The title or ownership

of all such Improvements shall be deemed to remain with Tenant during the Term until the Expiration Date, and all benefits and burdens of ownership, including, without limitation, title, depreciation, tax credit and other tax items, shall be and remain in Tenant until the Expiration Date.

**Section 6.10. Ownership of Improvements at Expiration.** Upon the Expiration Date, or earlier termination of this Lease, Tenant shall not be required to remove any Improvements or alterations constructed by or on behalf of Tenant. Upon the Expiration Date, or earlier termination of this Lease, title and ownership in all Improvements, erected, installed or constructed by Tenant, shall automatically pass to Landlord without any further act on the part of either party, and Landlord shall have no responsibility, liability or obligation to pay Tenant for such Improvements.

**Section 6.11. Environmental Regulatory Compliance.** Notwithstanding any other provisions or terms of this Lease, and except only for Landlord's obligations pertaining to the Baseline Condition, as expressly set forth in Section 8.4, Tenant will comply fully with all applicable Environmental Laws including, but not limited to, the Federal Clean Water Act and Safe Drinking Water Act, the Environmental Laws of the State of Nevada and local ordinances governing environmental matters including, but not limited to, the national pollutant discharge elimination system, flood hazard areas, drainageway protection standards, and erosion and sediment control, as might now or hereafter be defined by such Environmental Laws. Tenant acknowledges that it is familiar with and understands these Environmental Laws and acknowledges that it is aware and understands that there are significant penalties for submitting false information in connection therewith, including fines and imprisonment for knowing violations. Tenant shall undertake, at its sole cost, those Approval requirements, if any, directly related to its operations at the Premises.

## ARTICLE 7 PROHIBITED LIENS

**Section 7.1. Tenant's Covenant.** If a Prohibited Lien is filed, then Tenant shall, within fifteen (15) days after receiving Notice from Landlord of such filing (but in any case prior to the commencement of foreclosure proceedings), commence appropriate action to cause such Prohibited Lien to be paid, discharged, bonded, or cleared from title under applicable Law. Tenant shall thereafter prosecute such action with reasonable diligence and continuity. If Landlord receives Notice of any such filing, then Landlord shall promptly Notify Tenant. If any Subtenant causes a Prohibited Lien, then Tenant's obligations under this Section shall be suspended so long as both: (a) Tenant is with reasonable diligence endeavoring to cause the Subtenant to remove the Prohibited Lien; and (b) the holder of the Prohibited Lien has not commenced foreclosure proceedings or any other action adverse to Landlord or the Premises.

**Section 7.2. Protection of Landlord.** NOTICE IS HEREBY GIVEN THAT LANDLORD SHALL NOT BE LIABLE FOR ANY LABOR OR MATERIALS FURNISHED OR TO BE FURNISHED TO TENANT UPON CREDIT, AND THAT NO MECHANIC'S OR OTHER LIEN FOR ANY SUCH LABOR OR MATERIALS SHALL ATTACH TO OR AFFECT THE FEE ESTATE. NOTHING IN THIS LEASE SHALL BE DEEMED OR CONSTRUED IN ANY WAY TO CONSTITUTE LANDLORD'S CONSENT OR REQUEST, EXPRESS OR

IMPLIED, BY INFERENCE OR OTHERWISE, TO ANY CONTRACTOR, SUBCONTRACTOR, LABORER, EQUIPMENT OR MATERIAL SUPPLIER FOR THE PERFORMANCE OF ANY LABOR OR THE FURNISHING OF ANY MATERIALS OR EQUIPMENT FOR ANY CONSTRUCTION WORK, NOR AS GIVING TENANT ANY RIGHT, POWER OR AUTHORITY TO CONTRACT FOR, OR PERMIT THE RENDERING OF, ANY SERVICES, OR THE FURNISHING OF ANY MATERIALS THAT WOULD GIVE RISE TO THE FILING OF ANY LIENS AGAINST THE FEE ESTATE.

## **ARTICLE 8 HAZARDOUS SUBSTANCES**

**Section 8.1. Restrictions.** Tenant shall not cause or permit to occur on, under or at the Premises during the Term: (a) any violation of any Environmental Law; or (b) the use, generation, release, manufacture, refining, production, processing, storage, or disposal of any Hazardous Substance, or the transportation to or from the Premises of any Hazardous Substance, unless both: (i) reasonably necessary and customary for the conduct of Tenant's business in accordance with customary industry standards for the Purpose, or to operate and maintain the Premises for uses this Lease permits consistent therewith and (ii) in full compliance with all applicable Environmental Laws. Without limiting the foregoing, only persons who meet "Landlord's commercially reasonable requirements" and comply with Laws will be allowed to conduct business on the Premises or elsewhere at the Airport to receive Hazardous Substances for shipping or storage. As used in this Section 8.1 above, "Landlord's commercially reasonable requirements" includes those criteria established by Landlord with notice to Tenant based on the following factors: (i) the nature and amount of the specific Hazardous Substance(s) involved, (ii) the risk posed to human health, the Premises, the Airport or the environment by the specific Hazardous Substance(s) involved if not handled, stored or disposed of properly, (iii) the specific area within the Premises or the Airport in which the Hazardous Substance(s) is to be handled, stored or located, and (iv) the compliance history of Tenant with Law, the Environmental Laws or other terms and conditions of this Lease relating to Hazardous Substance(s). Tenant, its agents, employees, invitees and licensees including, but not limited to, any Subtenant, shall handle such articles or materials compliant with all Environmental Laws. To the extent required by Law, Tenant shall maintain written procedures for handling and disposing of Hazardous Substances. Tenant shall make such written procedures, if any are so required, available for Landlord's review upon request. As and to the extent required by Law, Tenant shall operate and maintain, in good working condition and at its cost, appropriate, adequate facilities for separating, neutralizing and treating any sanitary and/or industrial waste, foreign materials and Hazardous Substances, and for the proper disposal thereof, as required by Environmental Law.

**Section 8.2. Notice of Action.** Tenant shall immediately notify Landlord in writing of: (a) any environmental enforcement, clean-up, removal or other action proposed, instituted or completed pursuant to any federal, state or local law; (b) any claim made by any person against Tenant for damages, contribution or cost recovery resulting from or claimed to result from the presence of a Hazardous Substances; (c) any occurrence which might give rise to or result in such a claim; and/or (d) reports to any regulatory agency arising out of or in connection with the delivery to, storage on or removal from the Premises of any Hazardous Substances including, but not limited to, any complaint, notice, warning or alleged violation in connection therewith. Tenant shall

provide Landlord with copies of all non-privileged or non-confidential documentation relating to the foregoing.

**Section 8.3. Consent Decree.** Landlord is a party to a certain Consent Decree, incorporated herein, entered January 31, 2000, to settle an action filed in the United States District Court for the District of Nevada and captioned Nevada Division of Environmental Protection (NDEP) vs. United States of America, et al., No. CV-N-98-034-DWH (RAM), to which Landlord was a party. The Decree established terms for certain environmental remediation of premises at and/or about the Airport. The Premises may be affected by the terms of the Decree. Landlord (and not Tenant) shall be responsible for any Landlord obligations set forth in such Decree and Landlord shall indemnify and hold Tenant harmless in connection with any obligation which any third party imposes upon Tenant or the Premises on account of such Decree.

**Section 8.4. Compliance; Clean-Up.** Subject to Landlord's obligations below with respect to the Baseline Condition, Tenant shall, at Tenant's expense, as to all Environmental Law matters now or hereafter existing: (a) comply with all applicable Environmental Laws and, to the extent required by Environmental Laws, clean-up any Hazardous Substance Discharge on, at, or under the Premises (but with respect to any such clean-up only to the extent caused or suffered to be caused by Tenant); (b) make all submissions to, deliver all information required by, and otherwise fully comply with all requirements of any Government arising under Environmental Laws to the extent relating to any violation of Environmental Laws arising out of Tenant's possession, use or operation of the Premises; (c) if any Government requires any clean-up plan or clean-up measures because of a Hazardous Substances Discharge caused or suffered to be caused by Tenant, prepare and submit the required plans and all related bonds and other financial assurances; (d) promptly and diligently carry out all such clean-up plans; (e) Indemnify Landlord against any Hazardous Substances Discharge caused or suffered to be caused by Tenant; and (f) make available to Landlord promptly upon request any and all submissions, instruments and materials relating to such Environmental Law matters. Any party's obligations under this Section shall not limit such party's rights against third parties. A phase 1 environmental report previously was prepared for the Premises and/or other property in the area of the Premises as follows: **[Describe phase 1 report]** (the "**Phase 1 Report**"). Those specific items of environmental contamination of the Premises disclosed by the Phase 1 Report, if any, are the "Baseline Condition." Notwithstanding any other term or provision of this Lease, Landlord agrees to and shall, except to the extent the Baseline Condition is exacerbated by the negligence or intentional misconduct of Tenant, reimburse Tenant for its commercially reasonable and actual out-of-pocket costs and expenses incurred and paid to the extent required by Environmental Laws or any Leasehold Mortgagee for the remediation and clean-up of the Baseline Condition. Except for Landlord's obligations with respect to the Baseline Condition as above provided (which obligations will be all of Landlord's obligations to Tenant with respect to the matters covered by the Baseline Condition and any and all other violations of Environmental Laws and the presence of Hazardous Substances with respect to the Premises as of the Commencement Date) nothing in this Section 8.4 otherwise shall be in derogation of Tenant's rights and remedies with respect to any Environmental Substance Discharge to the extent caused by Landlord after the Commencement Date.

**Section 8.5. SPCC.**

A. **Landlord Permit.** Landlord is subject to federal storm water regulations, 40 C.F.R. Part 122, and, as applicable, state storm water regulations provided by the Nevada Water Pollution Control Law set forth in NRS 445.131 - 445.354, inclusive. Landlord has taken steps necessary to apply for or obtain a storm water discharge permit as required by the applicable regulations for the Airport, which might include or affect the Premises. The storm water discharge permit issued to Landlord might name Tenant as a co-permittee. Cooperation is necessary to ensure compliance with storm water discharge permit terms, and as well as to ensure safety, and to minimize costs and impacts to operations.

B. **Permit Compliance.** Landlord will provide Tenant with written notice of those storm water discharge permit requirements, if any, that Tenant must perform including, but not limited to: certification of non-storm water discharges; collection of storm water samples; preparation of storm water pollution prevention or similar plans; implementation of good housekeeping measures and BMP; and maintenance of necessary records. Such written notice shall include applicable deadlines. Within fifteen (15) days of Tenant's receipt of such written notice, it shall notify Landlord in writing of its dispute of any permit requirement it has been directed to undertake and the reasoning and justification as a basis for such dispute. Tenant's failure to provide such timely notice shall be its assent to undertake the required performance. If Tenant provides Landlord with timely written notice of its dispute and justification therefor, Landlord and Tenant shall negotiate a prompt resolution of their differences. Tenant will not object to written notice from Landlord for purposes of delay or of avoiding compliance. Tenant shall undertake, at its sole cost, those permit requirements, if any, directly related to its operations, for which it received written notice from Landlord. Tenant shall meet any and all deadlines imposed on or agreed to by Landlord and Tenant. Time is of the essence in complying with the terms hereof.

Landlord shall provide Tenant, upon written request, with any non-privileged information collected and submitted to any governmental entity pursuant to applicable storm water regulations. The terms of Landlord's storm water discharge permit might change from time to time, and Landlord shall be Tenant's agent solely to represent its interests concerning permit modifications by the pertinent regulatory agencies, provided that Landlord shall first fully communicate the issues and consult with Tenant. Landlord will give Tenant written notice of any violation by Tenant of Landlord's storm water discharge permit or of the terms of this Section 8.5, and Tenant shall undertake immediately and pursue diligently the cure thereof. If Tenant fails to cure any violation, or if such violation is material and of a continuing nature, Landlord may seek any and all remedies provided herein or by Law.

**ARTICLE 9  
INDEMNIFICATION; LIABILITY OF LANDLORD**

**Section 9.1. Obligations.** Tenant shall Indemnify Landlord (and all Persons deemed a part of, Affiliated with, responsible for, representing or employed by Landlord) against any: (a) negligent act or omission of Tenant (and anyone claiming by or through Tenant) or its or their

partners, members, directors, officers, or employees; and (b) breach or default of Tenant under this Lease. In addition, Tenant shall Indemnify Landlord against all the following matters during the Term and so long as Tenant remains in possession after the Expiration Date: (u) any Applications and Filings entered into at Tenant's request; (v) the use, occupancy, management and operation of the Premises; (w) any Construction Work and any agreements made by Tenant or anyone claiming through Tenant regarding Construction Work; (x) the condition of the Premises or of any vaults, tunnels, passageways or space created by Tenant under, adjoining or appurtenant to the Premises; (y) any accident, injury or damage whatsoever caused to any person or property in or on the Premises; and (z) any Hazardous Substances Discharge occurring from and after the Commencement Date by Tenant or any Tenant Parties (as defined bellow) and not Landlord's responsibility as provided above. Notwithstanding anything to the contrary in this Lease, Tenant shall not be required to Indemnify Landlord regarding Landlord's intentional wrongdoing, or Landlord's grossly negligent acts or omissions and in no event shall Tenant's indemnity obligations extend to any loss of business or loss of profits damages which may be suffered by Landlord.

**Section 9.2. Liability of Landlord.** During the Term: (a) Tenant is and shall be in exclusive control and possession of the Premises; and (b) Landlord shall not be liable for any injury or damage to any property (of Tenant or any other Person) or to any person occurring on or about the Premises, unless caused by Landlord's intentional wrongdoing, or Landlord's negligent act or omission. Landlord's right to enter and inspect the Premises is intended solely to allow Landlord to ascertain whether Tenant is complying with this Lease and (to the extent permitted by this Lease) to cure any Default. Such provisions shall not impose upon Landlord any liability to third parties, but nothing in this Lease shall be construed to exculpate, relieve or Indemnify Landlord from or against any liability of Landlord: (a) to third parties existing at or before the Commencement Date; or (b) arising from Landlord's intentional wrongdoing or gross negligence.

**Section 9.3. Indemnification Procedures.** Wherever this Lease requires an Indemnitor to Indemnify an Indemnitee:

A. **Prompt Notice.** The Indemnitee shall give the Indemnitor prompt Notice of any claim. To the extent, and only to the extent, that both (a) the Indemnitee fails to give prompt Notice and (b) such failure materially prejudices the Indemnitor, the Indemnitor shall be relieved of its indemnity obligations under this Lease regarding such claim.

B. **Selection of Counsel.** Landlord shall select counsel, subject, however, to the Indemnitor's insurance carrier required selection thereof, which selection shall be deemed satisfactory. Even though the Indemnitor shall defend the action, the Indemnitee may, at its option and its own expense, engage separate counsel to advise it regarding the claim and its defense. Such counsel may attend all proceedings and meetings. The Indemnitor's counsel shall actively consult with the Indemnitee's counsel. The Indemnitor and the Indemnitor's counsel shall, however, fully control the defense.

C. **Settlement.** The Indemnitor may, with the consent of the Indemnitee, not to be unreasonably withheld, settle the claim. The Indemnitee's consent

shall not be required for any settlement by which: (w) the Indemnitor procures (by payment, settlement, or otherwise) a full release of the Indemnitee by which the Indemnitee is not required to make any payment whatsoever or otherwise perform any duty or obligation to the claimant, (x) neither the Indemnitee nor the Indemnitor on behalf of the Indemnitee makes any admission of liability, (y) the continued effectiveness of this Lease is not jeopardized in any way, and (z) the Indemnitee's interest in the Premises is not jeopardized in any way.

D. **Insurance Proceeds.** The Indemnitor's obligations shall be reduced by net insurance proceeds actually collected by the Indemnitee on account of, and applied to the satisfaction of, the matter giving rise to the indemnification.

## ARTICLE 10 RIGHT OF CONTEST

**Section 10.1. Tenant's Right; Contest Conditions.** Notwithstanding anything to the contrary in this Lease, Tenant shall have the right to contest, at its sole expense, by appropriate legal proceedings diligently conducted in good faith, the amount or validity of any Imposition or Prohibited Lien; the valuation, assessment, or reassessment (whether proposed, phased, or final) of the Premises for purposes of Impositions; the amount of any Imposition; the validity of any Law or its application to the Premises; the terms or conditions of, or requirements for, any Approval; or the validity or merit of any claim against which this Lease requires Tenant to Indemnify Landlord (any of the foregoing, a "**Contest**"). Tenant may defer payment or performance of the contested obligation pending the outcome of the Contest, provided that Tenant causes the following conditions (collectively, the "**Contest Conditions**") to remain satisfied:

A. **No Criminal Act.** Such deferral or noncompliance shall not constitute a criminal act on the part of Landlord or subject Landlord to a material risk of any fines or penalties, other than civil penalties for which Tenant has given Landlord a bond, letter of credit, or other security reasonably satisfactory to Landlord (the "**Contest Security**") in an amount equal to the reasonably estimated amount of such civil penalties.

B. **No Liability.** Such deferral or noncompliance will not create a material risk of a lien, charge, or other liability of a material nature against the Fee Estate, unless Tenant has given Landlord Contest Security equal to the reasonably estimated amount of such lien, charge, or other liability.

C. **No Forfeiture.** Such deferral or noncompliance will not place the Fee Estate in material danger of being forfeited, impaired or lost.

D. **No Cost to Landlord.** Such Contest shall be without cost, liability, or expense to Landlord.

E. **Diligence.** Tenant shall prosecute such Contest with reasonable diligence and in good faith.

F. **Payment.** If required for such Contest, Tenant shall have paid the Contested Impositions or other matter.

G. **Collection of Impositions.** If such Contest relates to an Imposition, then such Imposition shall have been paid under protest, if allowed, or the Contest shall suspend the collection of the contested Imposition from Landlord and the Fee Estate.

H. **No Tax Deed.** If, at any time, payment of any Imposition is necessary to prevent the imminent (i.e., within 30 days) delivery of a tax deed conveying the Fee Estate or any portion thereof as a result of nonpayment of Impositions, then Tenant shall pay or cause to be paid the sums in sufficient time to prevent delivery of such deed.

I. **No Default.** No Event of Default shall exist under this Lease at the time of or any time during such Contest.

J. **Named Parties.** If Landlord has been named as a party in any action, then at Landlord's request Tenant shall cause Landlord to be removed as such party, and Tenant substituted in Landlord's place, if permissible under the circumstances.

**Section 10.2. Landlord Obligations and Protections.** Landlord need not join in any Contest unless (a) Tenant has complied with the Contest Conditions and (b) such Contest must be initiated or prosecuted in Landlord's name. In such case, Landlord shall cooperate at Tenant's cost and expense, as Tenant shall reasonably request, to permit the Contest to be prosecuted in Landlord's name. Landlord shall give Tenant any non-privileged documents, deliveries, and information in Landlord's control and reasonably necessary for Tenant to prosecute its Contest. Landlord shall otherwise assist Tenant in such Contest as Tenant shall reasonably require. Tenant shall pay all reasonable costs and expenses, including Legal Costs, incident to any Contest. Tenant shall, upon Landlord's request, advance (when Landlord incurs them) any actual, documented and reasonable, actual third party out-of-pocket costs and expenses, including reasonable Legal Costs, that Landlord incurs or reasonably anticipates incurring, for Tenant's Contest and Landlord's assistance with such Contest. Tenant shall Indemnify Landlord regarding Tenant's Contest.

**Section 10.3. Miscellaneous.** Tenant shall be entitled to any refund of any Imposition (and penalties and interest paid by Tenant), to the extent attributable to periods within the Term, whether such refund is made during or after the Term. Upon termination of Tenant's Contest of an Imposition, Tenant shall pay the amount of such Imposition (if any) as has been finally determined in such Contest to be due, to the extent attributable to periods within the Term, together with any costs, interest, penalties, or other liabilities in connection with such Imposition. Upon final determination of Tenant's Contest of a Law by a court of competent jurisdiction, Tenant shall comply with such final determination. So long as the Contest Conditions remain satisfied, Landlord shall not enter any objection to any Contest. Landlord may contest any matter for which Tenant is entitled to (but does not) prosecute a Contest, but only if: (a) Landlord Notifies Tenant of Landlord's intention to do so; and (b) Tenant fails to commence such Contest within forty-five (45) days after receipt of such Notice.

**ARTICLE 11  
INSURANCE**

**Section 11.1. Tenant to Insure.** Tenant shall, at its sole expense, during the Term, maintain the following insurance (or its then reasonably available equivalent):

A. **Commercial General Liability ("Liability Insurance")** insurance against claims for personal injury, death, or property damage occurring upon, in, or about the Premises or adjoining streets and passageways, providing coverage for a minimum combined single limit of \$5,000,000.00 for any one accident; and

B. **Property Liability ("Property Insurance")** insurance providing coverage for the Premises and the Building, and all Building Equipment at or in the Premises, against loss, damage, or destruction by fire and other hazards encompassed under the broadest form of property insurance coverage then customarily used for like properties in the County from time to time during the Term, in an amount equal to the replacement value (without deduction for depreciation) of the insurable Building, Improvements and Building Equipment (excluding excavations and foundations) located on the Premises and in any event sufficient to avoid co-insurance, with "ordinance or law" coverage; such insurance may contain a deductible clause not exceeding \$25,000.00, subject to CPI adjustments over the Term as reasonably determined by Landlord; to the extent customary for like properties in the County at the time, such insurance shall include an "increased cost of construction" endorsement; and an endorsement covering demolition and cost of debris removal. Property Insurance shall also include rental or business interruption insurance in an amount at least equal to twelve (12) times monthly Fixed Rent and Impositions.

C. **Causes of Loss – Special Form Property Insurance** upon property of every description and kind owned by Tenant and located in the Premises, or for which Tenant is legally liable, or which constitute improvements installed by or on behalf of Tenant, including, without limitation, Tenant's furnishings, fixtures and equipment. Such insurance shall be in an amount equal to one hundred percent (100%) of the full insurable replacement value of such property. The proceeds of such insurance shall be used for the repair and replacement of the property insured. Landlord shall not be liable for any damage to Premises improvements or for damage to any personal property brought onto the Premises.

D. **Automobile Liability** policy, (including bodily injury and property damage), covering owned, non-owned and hired automobiles for use under this Agreement, with minimum limit of \$5,000,000.00 combined single limit per occurrence.

E. **Workers' Compensation Insurance and Employer's Liability** coverage shall be in accordance with the laws of the State of Nevada applicable to all employees.

F. **Insurance Requirements Are Not Limits.** The foregoing requirements and any approval or waiver of said insurance by the Landlord are not

intended to and will not in any manner limit or qualify Tenant's liabilities, whether imposed by applicable law or assumed pursuant to the Agreement including, but not limited to, the provisions concerning indemnification as herein described. The Landlord in no way warrants that the minimum limits contained herein are sufficient to protect Tenant from liabilities that might arise out of the performance of the work under the Agreement by Tenant or Tenant's agents, representatives, employees or subcontractors, and Tenant is free to purchase such additional insurance as may be determined necessary.

**Section 11.2. Nature of Insurance Program.** All insurance policies this Lease requires shall be issued by carriers that: (a) have a policyholders' rating of "B+-VIII" or better, based on the latest rating publication of Property and Casualty Insurers by A.M. Best Company (or its equivalent if such publication ceases to be published) and (b) are lawfully doing business in the State; and shall be issued on an "occurrence" and not "claims made" basis. Tenant may provide any insurance and/or any aspect of insurance under a "blanket" or "umbrella" insurance policy, provided that (i) such policy or a certificate of such policy shall specify the amount(s) of the total insurance allocated to the Premises, which amount(s) shall equal or exceed the amount(s) required by this Lease and shall not be reduced for claims made for other properties and (ii) such policy otherwise complies with this Lease.

**Section 11.3. Policy Requirements and Endorsements.** All insurance policies this Lease requires shall contain (by endorsement or otherwise) the following provisions:

A. **Insureds.** Liability Insurance policies shall name Landlord as an "additional insured" and all Lenders permitted by this Lease as "additional insureds." Property Insurance policies shall name Landlord and Tenant as loss payees as their interests may appear, and each Lender permitted by this Lease under a standard noncontributing lender clause. Notwithstanding anything to the contrary in this Section, all Property Insurance Proceeds shall be paid and applied as provided in the applicable Approved Loan Documents.

B. **Primary Coverage.** All policies shall be written as primary policies not contributing to or in excess of any coverage that Landlord may carry.

C. **Contractual Liability.** Liability Insurance policies shall contain contractual liability coverage, for Tenant's indemnity obligations under this Lease, to the extent covered by customary contractual liability insurance coverage. Tenant's failure to obtain such contractual liability coverage shall not relieve Tenant from any indemnity obligation under this Lease.

D. **Notice to Landlord.** The insurance carrier shall give Landlord thirty (30) days' prior Notice of cancellation or nonrenewal.

E. **Ordinance Coverage.** Property Insurance Policies shall contain "ordinance or law" coverage.

All policies (primary and excess) and Certificates of Insurance provided by Tenant to Landlord shall evidence the proper limits of coverage as set forth herein. Each policy shall be and shall

specifically provide that the insurance afforded by such policy is primary coverage for all claims and losses arising from the use, occupancy and operation of the Premises and the Airport, and that any insurance carried by Landlord, its Trustees, agents or employees shall be excess and non-contributing. All policies shall name, and Certificates shall show by separate endorsement, that policies name Landlord, its Trustees, officers, agents and employees as additional insureds using ISO Endorsement Form CG2011 (Managers or Lessors of Premises) or similar document. Each policy shall contain an endorsement that the insurer waives its right to subrogation as described below. Landlord has and hereby reserves for all purposes of this Agreement the right to revise the insurance requirements set forth herein as to amounts, limitations and types of coverage, and Tenant hereby agrees to comply with such revised requirements upon notice from Landlord.

**Section 11.4. Deliveries to Landlord.** On the Commencement Date, and no later than thirty (30) days before any Liability Insurance, Property Insurance or other required insurance expires or is cancelled, Tenant shall deliver to Landlord certificates of insurance evidencing Tenant's maintenance of all insurance this Lease requires, in each case providing coverage for at least one year from the date delivered.

**Section 11.5. Waiver of Certain Claims.** [DISCUSS LANDLORD'S INSURANCE] To the extent that Landlord or Tenant purchases any policy of property insurance, the party purchasing such insurance (the "**Insurance Purchaser**") shall attempt to cause the insurance carrier to agree to a Waiver of Subrogation, if not already included in the policy. If any insurance policy cannot be obtained with a Waiver of Subrogation, or a Waiver of Subrogation is obtainable only by paying an additional premium, then the Insurance Purchaser shall so Notify the other party. The other party shall then have ten (10) Business Days after receipt of such Notice either to (a) direct the Insurance Purchaser to place such insurance with a company that is reasonably satisfactory to the other party and that will issue the insurance with a Waiver of Subrogation at no greater or additional cost, or (b) agree to pay the additional premium if such a policy can be obtained only at additional cost. To the extent that the parties actually obtain insurance with a Waiver of Subrogation, the parties release each other, and their respective authorized representatives, from any claims for damage to any person or the Premises that are caused by or result from risks insured against under such insurance policies, but only to the extent of the available insurance proceeds.

**Section 11.6. No Representation.** Neither party makes any representation that the limits, scope or forms of insurance coverage this Lease requires are adequate or sufficient.

**Section 11.7. Additional Policies and Increased Limits.** During the Term, Landlord may require Tenant to acquire and maintain in accordance with the terms and provisions of this Section 11 such additional insurance policies providing such additional coverages as Landlord determines is prudent and commercially reasonable for similar tenants, uses, improvements, premises and lease relationships; and Landlord may require that Tenant increase the limits of any insurance required pursuant to this Article 11 if Landlord determines that such increases are prudent and commercially reasonable in the reasonable exercise of its discretion.

**Section 11.8. Construction and Contractor's Insurance.** For and during any design or Construction Work with respect to the Premises, Tenant shall maintain, and shall require its

contractor(s) to maintain, insurance for design, construction and installation of Improvements, protecting Landlord and Tenant, in amounts reasonably acceptable to Landlord (refer to **Exhibit C**). Such insurance shall include, without limitation and as applicable, comprehensive or commercial general liability, automobile liability, worker's compensation, employer liability, industrial aid and builder's risk equal to the maximum probable loss covering the design and construction and all materials and equipment to be used therefor. Without limiting the foregoing, in any contract pertaining to improving or equipping the Premises, Tenant shall require its contractor(s) to cause Landlord, and Landlord's Trustees, officers, agents and employees to be insured against (as additional insureds) the risk of claims or demands by third persons against the same. Such insurance shall be in a minimum amount of One Million and No/100ths Dollars (\$1,000,000.00) combined single limit per occurrence for bodily injury and property damage liability. Such insurance required under this **Section 11.8** shall be in a form acceptable to Landlord.

## ARTICLE 12 LOSSES AND LOSS PROCEEDS.

**Section 12.1. Notice.** If either party becomes aware of any damage or destruction (including any damage or destruction for which insurance was not obtained or obtainable) of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, affecting any or all Improvements located on or constituting part of the Premises (a "**Casualty**") or any actual, threatened, or contemplated (a) temporary or permanent taking of (or of the right to use or occupy) all or part of the Premises by condemnation, eminent domain, or any similar proceeding; and/or (b) any action by any Government not resulting in an actual transfer of an interest in (or of the right to use or occupy) all or part of the Premises but creating a right to compensation, such as a change in grade of any street upon which the Premises abut (if either (a) or (b), a "**Condemnation**"), then such party shall promptly Notify the other.

**Section 12.2. Effect of Casualty.** If any Casualty occurs, then: (a) no Rent shall abate; (b) this Lease shall not terminate or be impaired; and (c) Subject to the rights of any Lender with respect to Loss Proceeds Loan Documents for which Landlord's approval has been obtained as provided in **Section 16.2**, including the right to apply the Tenant Property Insurance Proceeds to be deposited with Lender and applied in accordance with the applicable provisions of the Loss Proceeds Loan Documents, Tenant shall accomplish a Restoration (below defined) with reasonable promptness (as measured by prevailing industry standards in Northern Nevada for the specific Restoration at issue) regardless of cost. If, however, the Casualty is a Substantial Casualty, then Tenant may, by Notice to Landlord, given within thirty (30) days after such Substantial Casualty, terminate this Lease effective thirty (30) days after such Notice, provided that Tenant, subject to the rights of any Lender (which shall take priority), assigns to Landlord all Property Insurance Proceeds (and rights thereto) arising from the Casualty. "**Substantial Casualty**" shall mean a Casualty that: (a) renders twenty-five percent (25%) or more of the Building or essential Improvements not capable of being used or occupied; (b) occurs less than fifteen (15) months before the end of the Term and renders ten percent (10%) or more of the Premises not capable of being used or occupied, or materially and adversely affects the access to and from the Premises; or (c) pursuant to Law, prevents the Premises from being Restored to substantially the same bulk, and for the same use(s), as before the Casualty.

**Section 12.3. Adjustment of Claims; Use of Property Insurance Proceeds.** Unless Tenant has validly elected a Casualty Termination, Tenant shall be solely responsible for adjusting any insurance claim, subject to rights of Lender(s). If the reasonably estimated cost of the Restoration is less than \$2,000,000.00, Property Insurance Proceeds shall be disbursed to Tenant to be used for the repair and restoration of the Premises. If the reasonably estimated cost of the Restoration exceeds \$2,000,000.00, then subject to any Lender's loan documents, Property Insurance Proceeds shall be disbursed to Depository, to be released in installments for the safeguarding, clearing, repair, restoration, alteration, replacement, rebuilding, and reconstruction of the damaged or remaining Improvements substantially consistent with their condition before the Loss, in compliance with this Lease, subject to any changes in Law that would limit the foregoing (in each instance, "**Restoration**"), provided that the amount of the Property Insurance Proceeds, together with any additional deposit made by Tenant (collectively, "**Restoration Funds**") is sufficient to accomplish the Restoration. To the extent provided in Approved Loan Documents, Lender shall have the right to control the disbursement of the insurance proceeds. To obtain each such disbursement, Tenant shall deliver to Depository:

A. **Architect's Certificate.** A certificate of Tenant's licensed architect, confirming that in such architect's professional judgment: (a) the sum then being requested is then properly due and payable to contractors, subcontractors, or other Persons providing materials or services for the Restoration; (b) the Restoration is proceeding in substantial compliance with the applicable plans and specifications and otherwise in a satisfactory manner; (c) the sum then being requested does not exceed the amount then due and payable; (d) except in the case of the final disbursement of Restoration Funds, the remaining Restoration Funds after such disbursement are reasonably anticipated to be sufficient to pay for the remaining Restoration yet to be performed; and (e) in the case of the final disbursement of Restoration Funds, Tenant has substantially completed Restoration and has obtained a temporary certificate of occupancy for the Restoration to the extent Law requires and delivered (or simultaneously delivers in exchange for payment) final and complete lien waivers from all Persons otherwise entitled to claim a Prohibited Lien because of the Restoration;

B. **Status of Title.** Evidence reasonably satisfactory to Depository that no Prohibited Lien exists, other than any to be paid in full from the current disbursement;

C. **Lien Waivers.** Progress lien waivers for Restoration completed and paid for through the date of the preceding disbursement; and

D. **Other.** Such other documents, deliveries, certificates, and information as Depository shall reasonably require.

**Section 12.4. Landlord's Right to Recover Premises.** Tenant acknowledges that Landlord is a public agency with eminent domain powers and nothing herein shall be construed as a waiver by Landlord of its right to exercise its power of eminent domain.

**Section 12.5. Substantial Condemnation.** If a Condemnation occurs that (a) takes the entire Premises or renders twenty-five percent (25%) or more of the Building or essential

Improvements not capable of being used or occupied; (b) in Tenant's reasonable determination (with Lender's written consent) renders the remaining Premises uneconomic and unviable for Tenant's continued use; or (c) occurs less than eighteen (18) months before the end of the Term, then Tenant shall have the right to terminate this Lease (except as it relates to allocation of the Condemnation Award) on the first date when the condemning Government acquired title to or possession of any portion of the Premises that is subject to the Condemnation (for any Condemnation, the "**Condemnation Effective Date**"). Rent shall be apportioned accordingly. The interest of each party in the Condemnation Award shall be equal to the ratio of the fair market value of its interest in the Premises so taken to the total of the fair market value of the Landlord's and Tenant's interests in the Premises so taken. Tenant shall have the right to make a separate claim against the condemning authority for the fair market value of the leasehold estate including the Improvements. In the event applicable at the time of the condemnation does not provide or allow for separate condemnation awards for landlords and tenants, then Tenant shall be entitled to receive the portion of the condemnation award allocable to the leasehold estate including the Improvements and the remainder of the award shall be paid to Landlord. The amounts payable to Landlord under this Section shall be paid first to a Lender holding a Leasehold Mortgage, if any, in the amount required to be paid to such Lender pursuant to the terms and conditions of the Loss Proceeds Loan Documents approved by Landlord as provided in Section 16.2, with the remainder to be paid to Landlord.

**Section 12.6. Minor Condemnation.** If any Condemnation occurs except a Substantial Condemnation or a Temporary Condemnation (a "**Minor Condemnation**"), then (subject to Leasehold Mortgages) any Condemnation Award shall be paid to Depository to be applied first for Restoration in the same manner, and subject to the same conditions, as Property Insurance Proceeds. Tenant shall accomplish the Restoration in the same manner as Restoration upon Casualty. After Restoration, Tenant shall receive any remaining Condemnation Award. From and after the Condemnation Effective Date, Fixed Rent shall be adjusted as follows. New Fixed Rent shall equal the product of (a) Fixed Rent before the Condemnation, times (b) a fraction whose numerator is the aggregate value of the Premises after the Condemnation and whose denominator is the aggregate value of the Premises immediately before such Condemnation, without considering such Condemnation. Subsequent Fixed Rent shall be adjusted proportionately. Any Condemnation Award remaining after Restoration shall be applied in the same manner as a Substantial Condemnation Award.

**Section 12.7. Temporary Condemnation.** If a Condemnation of the temporary right to use or occupy all or a part of the Premises occurs (a "**Temporary Condemnation**"), and such Temporary Condemnation relates to a period longer than one hundred eighty (180) days, then Tenant may, by Notice within thirty (30) after the entry of the final order (or its equivalent) for such Temporary Condemnation, terminate this Lease effective on the Condemnation Effective Date. If the Temporary Condemnation relates to a shorter period, or if Tenant does not terminate this Lease, then Tenant shall receive any Condemnation Award (to the extent for periods within the Term), without affecting Tenant's obligations in any way.

**ARTICLE 13**  
**REPRESENTATIONS AND WARRANTIES**

**Section 13.1. Tenant.** Tenant hereby makes the following representations and warranties to Landlord:

A. **Organization.** Tenant is a [limited liability company] [corporation] [joint ventures] [partnership] duly organized and validly existing under the laws of the State of [\_\_\_\_], is in good standing under the laws of the State of [\_\_\_\_] and has the full power and authority to carry on its business as now conducted and to enter into and perform its obligations under this Lease.

B. **Authorization; No Conflict.** Tenant has by all necessary entity action duly authorized, executed and delivered this Lease and neither Tenant's execution and delivery hereof nor its compliance with the terms hereof (1) does or will contravene its [certificate of incorporation or bylaws] [operating agreement] [certificate of organization] [partnership agreement] [joint venture agreement] or any governmental rule or law or the terms or conditions of any judgment or decree, agreement or instrument applicable to or binding on it or any of its assets or (2) does or will require the consent or approval of any person, entity or instrumentality which has not already been obtained, except for environmental, land use and construction related permits or approvals.

C. **Enforceability.** This Lease is a legal, valid and binding obligation of Tenant, enforceable against Tenant in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

D. **Litigation.** There is no action, suit or proceeding, at law or in equity before or by any court or governmental authority, pending or, to the best of Tenant's knowledge, threatened against Tenant wherein an unfavorable decision, ruling or finding would materially adversely affect the performance of Tenant's obligations hereunder or its performance in connection with the other transactions contemplated hereby or which, in any way, would materially adversely affect the validity or enforceability of this Lease or any agreement or instrument entered into by Tenant in connection with the transactions contemplated hereby.

**Section 13.2. Landlord.** Landlord hereby makes the following representations and warranties to Tenant:

A. **Organization.** Landlord is a body corporate and politic duly organized and validly existing under the laws of the State of Nevada, is in good standing under the laws of the State of Nevada and has the full power and Landlord to carry on its business as now conducted and to enter into and perform its obligations under this Lease.

B. **Authorization; No Conflict.** Landlord has duly authorized, executed and delivered this Lease and neither Landlord's execution and delivery hereof nor its compliance with the terms hereof (1) does or will contravene its articles of incorporation or bylaws or any other governmental rule or law or the terms or conditions of any judgment or decree, agreement or instrument applicable to or binding on it or any of its assets, including the Premises, or (2) does or will require the consent or approval of any person, entity or instrumentality which has not already been obtained, except for environmental, land use and construction related permits or approvals.

C. **Enforceability.** This Lease is a legal, valid and binding obligation of Landlord, enforceable against Landlord in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

D. **Litigation.** There is no action, suit or proceeding, at law or in equity before or by any court or governmental Landlord, pending or, to the best of Landlord's knowledge, threatened against Landlord wherein an unfavorable decision, ruling or finding would materially adversely affect the performance of its obligations hereunder or in connection with the other transactions contemplated hereby or which, in any way, would materially adversely affect the validity or enforceability of this Lease or any agreement or instrument entered into by Landlord in connection with the transactions contemplated hereby.

E. **Other Matters.** (a) that Landlord has good fee simple title to the Premises and that, to Landlord's knowledge, the Premises are free and clear of and from all liens, security interests, restrictions, leases, encumbrances, or title restrictions (whether recorded or unrecorded) other than Permitted Exceptions; (b) except as disclosed to Tenant, that there are no outstanding notices of, nor, to Landlord's knowledge, are there, any violations of any Laws with respect to the Land.

## ARTICLE 14 LANDLORD PARTICIPATION

**Section 14.1. Participation Right.** Upon the occurrence of the initial sale, deemed sale, transfer or attribution of ownership (in each instance, a "**Sale**") to any person other than an Approved Affiliate, at any time (or any transaction which may be deemed a disguised sale) of any Building prior to Landlord's ownership thereof pursuant to the reversion rights under Section 12.4, Landlord shall have a right of participation in the Building's Net Sale Proceeds. Such participation shall be equal to the amount that is thirty-three percent (33%) of the Net Sale Proceeds in excess of Tenant's calculated Internal Rate of Return of twenty percent (20%). The provisions of this Article 14 shall apply to the determination of Tenant's Internal Rate of Return and the calculation of Net Sale Proceeds. For purposes of this Article 14, the term Building shall refer to any building developed and constructed under this Lease and which is the subject of a Sale described in the first sentence of this Section 14.1.

**Section 14.2. Net Sale Proceeds.** The term "Net Sale Proceeds" with respect to the Sale of any Building shall mean the gross Sales price or consideration of such Building, excluding the acreage of the Premises, less the following costs :

(a) the balance of any amounts due under any Leasehold Mortgage secured in whole or in part by the Building; and

(b) any real estate broker commissions owed by Tenant specifically as to the Sale of the Building; and

(c) all customary closing costs assessed against Tenant in connection with the Sale of the Building including, but not limited to, reasonable attorneys' fees, transfer taxes, recording and other specific closing fees.

**Section 14.3. Internal Rate of Return.** The term "Internal Rate of Return" or "IRR" means the calculation of the total return to Tenant including the Net Cash Flow realized by Tenant, based on its Total Building Investment Costs. Tenant's Total Building Investment Costs will include and be limited to Tenant's construction cost incurred in construction of the Building as established by paid invoices for all contractors or others providing work and materials for the Building; and Tenant soft costs, not to exceed twenty percent (20%) of the construction costs including, but not limited to, design, architectural, engineering, construction management fees, survey costs, external project supervision costs, costs of permits, capitalized interest, and bonding costs, external legal and accounting fees directly incurred in connection with the construction of the Building. If any future Building or leasehold improvements take place after the initial building construction, any Project costs of \$5,000 or greater and a useful life of five (5) years or more may be included in the calculation of Total Building Costs. Costs do not include costs associated with any furniture, fixture or equipment for the Building or any tenant thereof. Costs associated with marketing and costs associated with tenant leasing, including any real estate brokerage fees, shall be excluded from the determination of Total Building Investment Costs.

The following costs are also not allowable for inclusion in the calculation of Tenant's Total Building Investment Costs:

(i) financing provided by any public entity whether in the form of grants or loans;

(ii) financing provided by any third party lenders;

(iii) costs incurred by Tenant or any Affiliate in connection with Tenant's response to Landlord's requests for qualifications; and

(iv) to the extent that Landlord elects, at its sole discretion, to provide any financing, whether debt or equity, to the Project, such financing costs are also excluded from the calculation of Tenant's Total Building Investment Costs.

**Section 14.4. Net Cash Flow.** "Net Cash Flow" means for each Building the Gross Revenues derived from the Building less the Operating Costs for such Building. "Gross Revenues" means

all income derived from a building by the Tenant, including but not limited to, Building rents, ground rents from any approved ground sublease and additional rents paid by the building tenants for triple net occupancy costs such as utilities, insurance and common area maintenance. "Operating Costs" means (a) direct Building maintenance and operations costs; (b) property management costs associated with the Building not to exceed ten percent (10%) of building rent; (c) insurance; (d) Leasehold Mortgage payments (principal and interest); (e) permits and fees; (f) real estate commissions paid to secure Building tenants; (g) Impositions and (h) Fixed Rent payments allocated to the Building based on the Building square footage as a percentage of total Building square footage of the Buildings located on the Premises at the time of determination of such percentage.

The Net Cash Flow from the Building shall not include any depreciation or amortization of Building or Facility Investment Costs and/or any indirect costs, overhead, administrative costs, or indirect costs incurred by Tenant allocated or assigned to Building Operating Costs

The amount of Landlord's participation in Net Sales Proceeds will be paid, in full, concurrently with the consummation of the Sale of the Building.

Nothing contained in this Article 14 shall grant or imply any right of Tenant to participate in any proceeds of the Sales or lease of any Building after title thereto has reverted to the Landlord pursuant to Section 12.4.

See Exhibit H for an example of the application of the calculation set forth in this Article 14.

**Section 14.5. Documentation.** Tenant shall provide the Landlord with an itemized and detailed summary of the Total Building Investment Costs within one hundred eighty (180) days of completion of the building. For purposes hereof, the term "Completion" means the earlier of the date that (i) a Certificate of Occupancy is issued for the building; (ii) the date any portion of the Building is placed in use; or (iii) the architect for the Building certifies completion for the payment of the construction contractor's final progress payment (exclusive of any retention). All evidence of Tenant's Total Building Investment Costs shall be retained by the Tenant for not less than three (3) years from Completion and shall be made available to the Landlord within five (5) days of the Landlord's written request. All summaries of Total Building Investment Costs shall be certified by an authorized representative of Tenant as being true and correct. Additionally, unless disputed in writing by the Landlord within one hundred and eighty (180) days of its receipt of Tenant's detailed summary of Total Building Investment Costs, all itemized statements shall be deemed conclusive as to the total costs set forth therein and binding on the Parties.

The Tenant shall also provide the Landlord with: (i) all updated construction documents detailing all Improvements constructed on the Project Site; and (ii) a set of final "AS BUILT" reproducible drawings in digital format Auto CAD 2005 or later, or such equal compatible format reasonably satisfactory to the Landlord evidencing the final Building Improvements. The foregoing items shall be provided within one hundred eighty (180) days of the Completion of the Building.

**ARTICLE 15**  
**ASSIGNMENT AND SUBLEASING**

**Section 15.1. Tenant's Right.** Tenant may Transfer this Lease or the Leasehold Estate to an Approved Affiliate without Landlord's consent (but only with prior Notice of such assignment to Landlord). In all other instances Tenant may Transfer this Lease or the Leasehold Estate only with Landlord's prior written consent, such consent not to be withheld, conditioned or delayed unreasonably, with such discretion to be exercised administratively by Landlord (as opposed to requiring approval of Landlord's Board of Trustees) to the extent then allowed by Laws; and in any event Landlord's discretion in approving or not approving an assignment shall be exercised in a commercially reasonable manner. The Transfer of more than forty-nine percent (49%) of the Equity Interest in Tenant shall be deemed a Transfer of Tenant's interest in this Lease, including the Leasehold Estate. Any assignee of Tenant shall expressly assume all obligations and liabilities of Tenant under this Lease. After Tenant assigns this Lease and the assignee assumes it, if assignee performs all of the terms of this Lease to be performed by Tenant for the successive ~~twenty-four (24)~~twelve (12) calendar months immediately following the effective date of such assignment, then (i) Tenant shall have no continuing obligation or liability under this Lease beyond such ~~twenty-four (24)~~twelve (12) month period and (ii) Landlord will release any Credit Enhancement then held by it. In addition, Developer shall have the right to request that Landlord release Tenant from its obligations under this Lease accruing from and after the date of such assignment. Developer's request for such earlier release shall not be unreasonably withheld and shall be granted so long as the Developer provides Landlord with relevant financial, background and other information regarding the proposed assignee, including the assignee's experience and financial capabilities reasonably demonstrating that such assignee has reasonably sufficient experience and financial capabilities to fulfill Tenant's remaining obligations under this Lease. If Tenant assigns this Lease, then as between Landlord and Tenant, Tenant shall be deemed to have assigned to the assignee or transferee all claims against Landlord then existing, and the assignee shall be deemed, by assuming this Lease, to have assumed all liabilities and obligations of Tenant then existing or thereafter arising under this Lease (except as this Lease otherwise expressly states). In each and every instance in which Tenant desires or intends to assign its interest in and under this Lease, Tenant, prior to and as a condition precedent of, the validity of such assignment, shall deliver to Landlord such financial, background and other information regarding the proposed assignee as Landlord may require in the commercially reasonable exercise of its discretion. The assignment documents to be used to effectuate any such assignment shall, in Landlord's ~~sole~~reasonable discretion, be prepared by Landlord in such commercially reasonable form as Landlord requires. In all instances, but without limiting the foregoing provisions requiring Landlord's consent to all Transfers and assignments, Tenant shall Notify Landlord immediately of such Transfer or assignment.

**Section 15.2. Tenant's Right to Sublet.** Tenant may enter into or modify any Sublease, terminate any Sublease or evict any Subtenant, and grant any consent or waiver under any Sublease, without Landlord's consent but subject to Tenant's compliance, in each instance with this Section 15.2 and Sections 15.3 and 15.4. No Sublease shall affect any obligations of Tenant or rights of Landlord under this Lease, all of which shall continue in full force and effect notwithstanding any Sublease. Any Sublease shall expire no later than one day before the last day of the Term. The fact that any Subtenant causes any Default shall not be in derogation or limitation of the effects of such Default, nor relieve Tenant of Tenant's obligation to cure it.

Landlord shall recognize the attornment of and not disturb the tenancy of each Subtenant who is not then in default and attorning to Landlord and thereby allow the continuation of such Subtenant's Sublease in effect on the same terms and conditions as set forth in such Sublease but as a direct lease, subject to the payment, when due, of all rentals payable for any period after termination of this Lease and compliance on the part of the Subtenant with each and every term and condition of its Sublease, and the terms and provisions of this Lease applicable to such Sublease. Landlord agrees to execute a commercially reasonable subordination, non-disturbance and attornment agreement with Subtenants in order to memorialize Landlord's obligations hereunder. Within ten (10) days of any demand therefor by Landlord, any Subtenant entitled to have its Sublease recognized and non-disturbed by Landlord hereunder will execute and deliver to Landlord and/or Landlord's designee a recordable certificate stating that such Subtenant has attorned to Landlord hereunder, attached thereto is a true, complete and correct copy of such Subtenant's Sublease, that such Sublease is unmodified and in full force and effect, such defenses or offsets as are claimed by such Subtenant, if any, the date to which all rentals have been paid, and such other information concerning the Sublease, subleased premises and Subtenant as Landlord or said designee may reasonably request. Landlord's recognition of any such attornment by a Subtenant shall be conditioned upon such Subtenant's compliance with all the terms, covenants and conditions hereof. If a Subtenant entitled to automatic recognition and non-disturbance (upon Subtenant's attornment) under this Section 15.2 above so requests, Landlord agrees to enter into a commercially reasonable, recordable separate recognition, attornment and non-disturbance agreement with said Subtenant.

**Section 15.3. Required Provisions.** Each Sublease shall contain the provisions set forth in Section 20 hereof, and a provision in form and substance substantially as set forth below in this Section 15.3. By executing its Sublease, each Subtenant shall be deemed to have agreed to these provisions, which reflect the definitions in this Lease. All such defined terms shall be modified in the Sublease as appropriate to reflect the definitions in the Sublease.

All terms, covenants, and provisions of this Sublease and all rights, remedies, and options of Subtenant under this Sublease are and shall at all times remain fully subject and subordinate in all respects to the Lease. If the Lease and the Leasehold Estate terminate then this Sublease, likewise, shall terminate; provided, however, that Subtenant, at the option and request of Landlord (except as Landlord has agreed otherwise in writing), shall nevertheless attorn to Landlord and recognize Landlord as Subtenant's direct landlord under this Sublease. Subtenant shall execute and deliver, at any time and from time to time, upon the request of Tenant, Landlord, or any Lender, any reasonable instrument necessary or appropriate to evidence such attornment. Subtenant appoints each of the foregoing as Subtenant's attorney-in-fact, irrevocably, with full power of substitution, to execute and deliver any such instrument. This appointment is coupled with an interest and is irrevocable. Subtenant waives any present or future statute or rule of law that may allow Subtenant to terminate this Sublease or to surrender possession of the demised subpremises if the Lease terminates. This Sublease shall not be affected in any

way whatsoever by any such termination by Subtenant or any proceeding for such a termination proposed or initiated by Subtenant.

**Section 15.4. Conditions to Effectiveness of Assignment Transactions.** No assignment or Sublease shall be effective unless and until such assignment or Sublease otherwise complies with the terms and provisions of this Article 15, as applicable in each instance, and Landlord shall have first received: (1) a copy of the fully executed counterpart of the instrument of assignment; (2) in the case of an assignment, an executed assumption of this Lease by the assignee, in recordable form, effective as of the date of the assignment; and (3) in the case of a Sublease, a copy of the fully executed Sublease complying with this Lease; and (4) Notice of the identity of the assignee or Subtenant. No assignment of this Lease except upon full compliance with the provisions of this Section shall have any validity, and shall be null and void *ab initio*. Any assignee of Tenant as permitted pursuant to this Article 15 shall thereafter be the "Tenant" under this Lease.

## **ARTICLE 16 LENDER PROTECTION.**

**Section 16.1. Definition.** As used in this Lease "Lender" shall mean, each and every lender which (a) is either an Institutional Lender or a Landlord Approved Lender, (b) is the beneficiary under a Leasehold Mortgage recorded in the office of the County Recorder of Washoe County, Nevada, and (c) has notified Landlord of such recorded Leasehold Mortgage.

**Section 16.2. Tenant's Right to Mortgage.** Tenant shall have the right, without Landlord's consent, to mortgage its leasehold estate in the Premises or any part thereof to a Lender, subject, however, to the requirements and limitations of this Article 16. This leasehold mortgage right is granted provided that the funds obtained are utilized for the purpose of constructing Improvements for the Purpose, or financing or re-financing completed Improvements. Tenant shall notify Landlord with prior Notice of any proposed Leasehold Mortgage. Said Notice shall include copies of the Leasehold Mortgage and all other documents to be recorded by Tenant and the Lender with respect to the Premises, and any other documents pertinent to the disposition of Property Insurance Proceeds and any Condemnation Award (the "Loss Proceeds Loan Documents"). The Loss Proceeds Loan Documents shall be subject to Landlord's prior review and approval with respect to the negotiation, settlement, payment and disposition of Property Insurance Proceeds and Condemnation Awards, such approval not to be withheld or delayed unreasonably. The Lender shall be entitled to be a named insured and a mortgagee of the Leasehold Estate under the policies of insurance to be maintained by Tenant under this Lease, provided that any insurance proceeds received shall be held and disbursed in accordance with the provisions of this Lease but subject to the rights of such Lender under its Approved Loan Documents.

**Section 16.3. Assignment of Mortgage.** A Lender may assign its Leasehold Mortgage without Landlord's consent to another Lender. In the event of such assignment, Lender shall send Landlord advance Notice of its intent to assign the Leasehold Mortgage, which Notice shall include the name and address of the New Lender assignee and copies of all documents to be recorded.

**Section 16.4. [Reserved].**

**Section 16.5. Mortgage not Assignment.** For the purpose of this Article 16, the mere making of a Leasehold Mortgage shall not be deemed to constitute a Transfer, nor shall any Lender be deemed an assignee of this Lease or of the Leasehold Estate so as to require such Lender to assume the performance of any of the terms, covenants or conditions on the part of Tenant to be performed hereunder unless and until such Lender succeeds to the Leasehold Estate by foreclosure of its Leasehold Mortgage or by acceptance of an assignment in lieu of such foreclosure (either such event, a "**Foreclosure Assignment**") and executes a written assumption of this Lease. A Foreclosure Assignment of the Leasehold Estate to Lender or Lender's Affiliate shall not require the consent of Landlord; but immediate Notice of such Foreclosure Assignment shall be provided to Landlord, and Landlord shall not be required to recognize such assignment until such Notice is given. Any Foreclosure Assignment to a Person other than Lender or a Lender Affiliate (a "**Third Party Assignee**") shall be subject to the requirements for assignment set forth in Sections 15.1 and 15.4; provided, however, that Landlord agrees to provide such consent if the proposed Third Party Assignee has demonstrated experience in the management of comparable commercial real estate properties (i.e., at least five (5) years of such management experience or a contractual relationship with a manager with such minimum experience), and (2) financial resources sufficient, in Landlord's reasonable business judgment, to be financially secure to perform Tenant's obligations hereunder (i.e., having a net worth of at least Five Million Dollars (\$5,000,000) as such \$5,000,000 net worth requirement is increased annually after the Commencement Date according to the compounded percentage increase during each preceding year in the Index, with such increase not to exceed four percent (4%) for any given annual period). Further, any such assignment will be specifically subject to all provisions of this Lease.

**Section 16.6. Cure Rights of Lender.** Landlord, upon providing any Notice of Default, termination, or Notice of a matter on which Landlord may predicate or claim a Default, shall provide a copy of such Notice to every Lender in the manner provided in Section 16.15. In the event Tenant fails to timely cure a Default after receipt of written notice and expiration of any applicable cure period, Landlord agrees to provide any Lender with a second written Notice and provide such Lender with an additional thirty (30) day cure period for such Default(s). Landlord will not have the right to exercise any remedies under this Agreement, other than pursuant to Section 18.5B, so long as Lender is diligently prosecuting to completion a cure of any Default. If such Default is of a nature which is incapable of being cured by Lender, Landlord agrees not to exercise its remedies arising from such Default, other than pursuant to Section 18.5B, if (a) Lender provides Notice to Landlord within such thirty (30) day cure period that Lender intends to foreclose its Leasehold Mortgage and Lender commences and diligently pursues such foreclosure; and (b) Lender makes all payments due by Tenant under this Lease and cures all other Default(s) capable of cure by Lender, all through the date of foreclosure. In connection with Lender's cure rights in this Section 16.6, Lender shall be allowed sufficient time reasonably necessary to complete any foreclosure action so long as Lender is making payments and curing defaults as required by the previous sentence. Landlord shall accept such performance by or at the instigation of such Lender as if Tenant had done the same.

**Section 16.7. Notice of Termination and Cure Periods.** Upon the occurrence of an Event of Default that entitles Landlord to terminate this Lease, Landlord may terminate this Lease only if it delivers notice as provided in Section 16.6 above to Lender that Landlord intends to terminate this Lease as a result of an Event of Default not less than thirty (30) days prior to the proposed

effective date of such termination. The Lender may perform the obligations of Tenant as described in Section 16.8 below if, during such thirty (30) day termination notice period, the Lender shall:

- (i) Notify Landlord of such Lender's desire to cure such Event of Default;
- (ii) Pay or cause to be paid all Rent and other payments then due and in arrears as specified in the termination notice to such Lender and which may become due during such thirty (30) day period; and
- (iii) Comply, or in good faith, with reasonable diligence and continuity, commence to comply, with all non-monetary requirements of this Lease in Default and reasonably susceptible of being complied with by such Lender.

**Section 16.8. Performance of Tenant Obligations by Lender.**

A. If Landlord elects to terminate this Lease by reason of any Event of Default of Tenant, and if a Lender shall have proceeded and continues to proceed in the manner provided for by Section 16.7, then the specified date for the termination of this Lease as fixed by Landlord in its termination notice shall be extended for a period of six (6) months, provided that such Lender shall, during such six (6) month period:

- (i) Pay or cause to be paid all Rent under this Lease as the same becomes due, and continue its good faith and diligent efforts to perform all of Tenant's other obligations under this Lease; and
- (ii) If not enjoined or stayed, take steps to acquire or sell Tenant's Leasehold Estate by foreclosure of the Leasehold Mortgage or other appropriate means and procedures, which shall be completed with due diligence; and
- (iii) Cure all Events of Default.

If at the end of such six (6) month period such Lender is in compliance with this Section 16.8, then this Lease shall not then terminate, and the time for completion by such Lender of its foreclosure or other proceedings shall continue for so long as such Lender is not enjoined or stayed from doing so and, thereafter, for so long as such Lender proceeds to diligently and continuously pursue the acquisition or sale of Tenant's Leasehold Estate by foreclosure of the Leasehold Mortgage or by other appropriate means, and provided that the Lender continues to comply with this Section 16.8 in all respects. Nothing in this Section 16.8, however, shall be construed to extend this Lease beyond the Term.

B. Notwithstanding any other language in this Article 16, the consents and agreements of Landlord are granted on the condition that the Leasehold Mortgage is and shall be subordinate and subject to this Lease.

C. In the event of a Foreclosure Assignment, Lender shall be entitled to receive a permit from Landlord, for a term up to nine (9) months, that allows Lender (subject to continued compliance with Section 16.8A.) to make necessary repairs to the

Improvements or to otherwise protect the Improvements from deterioration, and to market the property to prospective assignees, and that also obligates Lender to assume only that liability under the Lease that accrues during the term of the permit, subject in all instances, however, to Lender's full compliance with the performance and cure requirements of Section 16.8A.

**Section 16.9. No "Subordination of Fee".** Tenant acknowledges that Landlord has not agreed to in any manner encumber Landlord's reversionary interest in the Premises, to join in the execution of any mortgage, deed of trust, or other security instrument encumbering the Premises, or to "subordinate the fee". In no event shall Landlord's fee estate in the Premises be subject to any future encumbrances without the approval of Tenant and any Lender and, as a condition to such approval, any such future encumbrance shall be subordinated to this Lease, as the same may be modified, amended or supplemented, and all rights of Tenant hereunder, and any Leasehold Mortgage of any Lender of Tenant hereunder are and shall have priority over, and shall be senior and superior to, the lien of any such future encumbrance, security agreement or other lien now or hereafter made by Landlord and affecting the Premises, whether or not such security agreement or other lien or encumbrance shall also cover other lands and/or buildings.

**Section 16.10. Right to a New Lease.** Notwithstanding any provision to the contrary set forth herein, if for any reason this Lease is terminated by reason of, or in connection with, any court proceeding relating to any state or federal law for the relief of debtors, and if at such time any Lender holds a Leasehold Mortgage in the Leasehold Estate so terminated, then such Lender shall be entitled to receive a new lease for the Premises ("New Lease"), wherein such Lender shall have the same rights and obligations under such New Lease as if such Lender had acquired the Leasehold Estate through a Foreclosure Assignment. Such New Lease shall have the same relative priority and be upon the same terms and provisions as this Lease. No such termination of this Lease shall in any manner affect the rights of any Lender until all of the following events have occurred: (i) Landlord shall have notified such Lender in writing of the termination of this Lease and shall have offered such New Lease to such Lender (or failing such offer Lender otherwise elects to enter into such New Lease), which Notice and offer shall be communicated to such Lender in the manner set forth in Section 16.15, and (ii) such Lender shall have failed to accept in writing such offer of Landlord for a New Lease and to communicate such acceptance to Landlord by Notice in the manner provided in Section 21.2 within thirty (30) days after Landlord's delivery of Notice of such written offer for a New Lease and if such failure continues for an additional ten (10) business days after Landlord's second Notice and offer to Lender; or the events described in clauses (i) and (ii) above have occurred, but such Lender has failed within such thirty (30) day period to cure any and all Defaults of Tenant under this Lease as and to the extent required pursuant to the terms and provisions of this Lease, or for Defaults which cannot be cured without entry into possession, proceed and effect cure with due diligence following delivery of possession (and Leasehold Mortgage shall have such additional time as is reasonably necessary (including time to obtain relief from any bankruptcy stay in Tenant's bankruptcy)) to enable the Lender to either foreclose the lien of the Leasehold Mortgage or obtain the appointment of a receiver or secure other remedies necessary to enable the Lender to cure the default. If Lender fails to comply with the provisions of this Section 16.10 its right to a New Lease as set forth in this Section shall terminate and Lender shall thereafter have no further right, title or interest in and to the Leasehold Estate or the Premises. In the event Lender

complies with the provisions of this Section 16.10, the existing Subleases of the Premises shall not be affected.

In the event there is more than one Lender, and if such Lenders have entered into an agreement regarding such New Lease ("**Lender Agreement**"), then the New Lease shall be offered first to the Lender entitled to be offered such New Lease pursuant to such Lender Agreement and otherwise such New Lease shall be offered to the most junior in priority, subject, however, to the Leasehold Mortgages of the other Lenders. If the most junior Lender fails to execute such New Lease within thirty (30) days after receipt of the offer of a New Lease, then the new lease shall be offered to the Lender who is next junior in priority, who shall have thirty (30) days after such Notice is received by such Lender to execute a New Lease. Landlord shall continue to offer a New Lease to Lenders in the reverse order of their priority, subject to all senior Leasehold Mortgage, until such New Lease is tendered to all Lenders and all Lenders have failed to execute such New Lease.

Upon the execution and delivery of the New Lease, title to all Improvements on the Premises, shall automatically vest in the same manner and to the same extent as held by Tenant pursuant to this Lease, absent termination.

**Section 16.11. Lease Amendments and Termination.** Landlord and Tenant shall not voluntarily and materially modify, amend, or change the provisions of this Lease, without the prior written consent of all Lenders, which consent shall not be unreasonably withheld or delayed. Landlord and Tenant shall not agree to voluntarily terminate this Lease unless the obligations to all Lenders have been paid in full. The above provisions of this Section 16.11 are subject to and not in limitation of the operation and effect of Section 12.4, Article 20, and any other provision of this Lease that requires Landlord to consent to or take action inconsistent with the first sentence of this Section 16.11, provided that Landlord agrees to provide prompt Notice of any such actions.

**Section 16.12. Lender's Liability Hereunder.** In no event shall the liability of any Lender (including any Approved Affiliate) exceed the value of such Lender's or Approved Affiliate's interest in the Premises and this Lease.

**Section 16.13. No Merger.** So long as any debt secured by a Leasehold Mortgage shall remain unpaid, unless Lender shall otherwise consent in writing, the Fee Estate to the Premises and the Leasehold Estate in the Premises shall not merge but shall always be kept separate estates, notwithstanding the union of such estates either in the Landlord or in Tenant or in a third party by purchase or otherwise.

**Section 16.14. Further Assurances.** Landlord shall cooperate by reasonably suitable amendment, from time to time, any provision which may reasonably be requested by any Lender or proposed Lender for the purpose of implementing the mortgagee-protection provisions contained in this Lease and allowing such Lender reasonable means to protect or preserve the lien of the Leasehold Mortgage and the value of its security. Landlord agrees to execute and deliver (and to acknowledge, if necessary for recording purposes) any agreement reasonably necessary to effect any such amendment provided, however, that in no event shall Landlord be required to agree to or accommodate, any such amendment that would materially add to the

obligations of Landlord under this Lease or that in any material way would affect the terms of this Lease or Rent under this Lease, encumber or subordinate the Fee Estate, or otherwise in any material respect adversely affect any rights of Landlord under this Lease.

**Section 16.15. Notices.** Landlord hereby agrees that no Notice to Tenant under the terms and provisions of this Lease shall be effective against a Lender unless a duplicate copy thereof is mailed in the manner provided herein. All Notices to a Lender shall be delivered to such Lender in the same manner as Notices to Tenant pursuant to Section 21.2 at such address as then having been provided to Landlord at the address and in the manner set forth for Landlord in Section 21.2. Landlord may rely conclusively on the Notice address for each Lender then provided to Landlord as set forth in this Section 16.15.

## ARTICLE 17 EQUIPMENT LIENS

**Section 17.1. Tenant's Rights.** Notwithstanding any existing or future statute, law or rule of law to the contrary, Landlord hereby waives, releases and relinquishes any and all rights of distraint, levy, attachment or recourse to the FF&E belonging to Tenant or any Subtenant or any other person, firm or corporation and the foregoing waiver, release and relinquishment shall be self-operative without the necessity for any further instrument or document. If at any time or from time to time Tenant or any Subtenant desires to enter into or grant any Equipment Lien and such Equipment Lien otherwise complies with this Lease, and provided that no uncured Event of Default exists, then upon Tenant's or such Subtenant's request Landlord shall enter into such customary documentation regarding the Financed FF&E as Tenant shall reasonably request, providing for matters such as: (a) waiver of any right to take possession of such Financed FF&E upon an Event of Default; (b) waiver of any other right, title, or interest in the Financed FF&E; and (c) agreements to enable the holder of such Equipment Lien to repossess such Financed FF&E if such holder exercises remedies under its Equipment Lien in a reasonable and timely manner.

**Section 17.2. Required Provisions for Equipment Liens.** If Tenant enters into any Equipment Lien, then Tenant shall: (i) not file (or cause or permit to be filed) such Equipment Lien as a lien against the Premises or any part of the Premises (other than the Financed FF&E) and (ii) cause to be inserted in the documents for such Equipment Lien a provision to the following effect:

Notwithstanding anything to the contrary herein, this chattel mortgage, conditional sales agreement, title retention agreement or security agreement shall not create, be deemed to create, or be filed as a lien against the land, building and improvements constituting the real property in which the Financed FF&E covered hereby are to be located or installed.

## ARTICLE 18 EVENTS OF DEFAULT; REMEDIES

**Section 18.1. Definition of "Event of Default".** An "Event of Default" or "Default" means the occurrence of any one or more of the following:

A. **Monetary Default.** If a Monetary Default shall occur and shall continue for ten (10) Business Days after Landlord has Notified Tenant of such Monetary Default, specifying in reasonable detail the amount of money not paid and the nature of each such payment.

B. **Insurance Maintenance Default.** If an Insurance Maintenance Default shall occur and not be remedied by Tenant within twenty (20) Business Days after Landlord shall have given Tenant Notice of such Insurance Maintenance Default.

C. **Restrictions and Prohibitions.** If any failure to comply with any restriction, prohibition or other negative covenant contained in this Lease shall occur and not be remedied by Tenant within thirty (30) days after Landlord shall have delivered to Tenant Notice of such Failure.

D. **Non-Monetary Default.** If any other Non-Monetary Default (not listed above) shall occur and shall continue and not be remedied by Tenant within thirty (30) days after Landlord shall have delivered to Tenant a Notice describing the same in reasonable detail, or, in the case of a Non-Monetary Default that cannot with due diligence be cured within thirty (30) days from such Notice, if Tenant shall not (a) within thirty (30) days from Landlord's Notice advise Landlord of Tenant's intention to take reasonable steps necessary to remedy such Non-Monetary Default; (b) duly commence the cure of such Non-Monetary Default within such period, and then (c) diligently prosecute to completion the cure of the Non-Monetary Default.

**Section 18.2. Remedies.** If an Event of Default occurs, then Landlord shall (subject to the rights of Lender as described herein), at Landlord's option, have any or all of the following remedies, all of which shall be cumulative (so that Landlord's exercise of one remedy shall not preclude Landlord's exercise of another remedy), in addition to, and without limitation on, such other remedies as may be available at law or in equity or under any other terms of this Lease. Landlord's remedies shall include:

A. **Termination of Tenant's Rights.** Landlord may terminate Tenant's right to possession of the Premises by any lawful means, in which case this Lease and the Term shall terminate (and such date of termination shall be the Expiration Date) and Tenant shall immediately surrender possession of the Premises to Landlord.

B. **Taking of Possession.** Landlord may re-enter and take possession of the Premises with process of law, whether by summary proceedings or otherwise, and remove Tenant, but only with having terminated this Lease, and without thereby being liable for damages or guilty of trespass. This is intended to constitute an express right of re-entry on Landlord's part. No re-entry by Landlord, whether had or taken under summary proceedings or otherwise, shall absolve or discharge Tenant from liability under this Lease. The terms "enter," "re-enter," "entry," and "re-entry," as used in this Lease, are not restricted to their technical legal meaning.

C. **Suits Before Expiration Date.** Landlord may sue for all damages and to recover Rent from time to time at Landlord's election.

D. **Receipt of Moneys.** No receipt of moneys by Landlord from Tenant after termination of this Lease, or after the giving of any notice of termination of this Lease, shall reinstate, continue or extend the Term or affect any Notice theretofore given to Tenant, or operate as a waiver of the right of Landlord to enforce the payment of Rent payable by Tenant hereunder or thereafter falling due, or operate as a waiver of the right of Landlord to recover possession of the Premises by proper remedy, except as this Lease expressly states otherwise, it being agreed that after service of notice to terminate this Lease or the commencement of suit or summary proceedings, or after final order or judgment for the possession of the Premises, Landlord may demand, receive and collect any moneys due or thereafter falling due without in any manner affecting such notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of the use and occupation of the Premises or, at the election of Landlord, on account of Tenant's liability hereunder.

E. **No Waiver.** No failure by Landlord to insist upon the strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy consequent upon a Default in such performance, and no acceptance of full or partial Rent by Landlord during the continuance of any such Default, shall constitute a waiver of any such Default or of such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Lease to be performed or complied with by Tenant, and no default thereof, shall be waived, altered or modified except by a written instrument executed by Landlord. No waiver of any Default shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent Default of such covenant, agreement, term or condition of this Lease.

F. **Intentionally Omitted.**

G. **Intentionally Omitted.**

H. **Damages.** Landlord may recover from Tenant all damages incurred by Landlord by reason of Tenant's Default, including the reasonable costs of recovering possession, reletting the Premises, and any and all other damages legally recoverable by Landlord, together with reasonable out of pocket costs and expenses incurred by Landlord, including Legal Costs and bank fees for checks returned by the bank but excluding loss of business or loss of profits damages which may be suffered by Landlord. Such damages shall include, at Landlord's election, but without limitation (a) the present value, calculated at a discount rate equal to the then current Prime Rate plus two percent (2%) per annum, of the excess of the total Fixed Rent under this Lease over the fair market rental value of the Premises for the balance of the Term; or (b) the Rent payable to Landlord provided for in this Lease, when and as due and payable under this Lease, less (in the case of this clause "b" only) Landlord's actual proceeds of reletting net of Landlord's actual reasonable costs of reletting. Landlord may recover such damages at any time after Tenant's Default, including after expiration of the Term. Notwithstanding anything in Law to the contrary, Landlord shall not be required to commence separate actions to enforce Tenant's obligations with respect to each month's Rent not paid, or each month's accrual of damages. Landlord agrees to use its

commercially reasonable efforts to mitigate its damages on account of a Default by Tenant under his Lease.

I. **Injunction of Breaches.** Whether or not an Event of Default has occurred, Landlord shall be entitled to obtain a court order enjoining Tenant from continuing conduct constituting a breach or that threatens to constitute a breach of Tenant's covenants in this Lease. Tenant specifically and expressly acknowledges that damages would not constitute an adequate remedy for Tenant's breach of any nonmonetary covenant contained in this Lease.

J. **Continue Lease.** Landlord may at Landlord's option maintain Tenant's right to possession. In that case, this Lease shall continue in effect and Landlord shall be entitled to continue to enforce it, including the right to collect Rent when due and the right to any remedies for nonpayment.

K. **Restoration Funds.** Upon any termination of this Lease, to the extent that Landlord or Depository then holds any Restoration Funds, they shall be applied as provided in this Lease.

**Section 18.3. Proceeds of Reletting.** Landlord shall apply any proceeds of any reletting as follows, without duplication:

A. **Landlord's Costs.** First, to pay to itself the cost and expense of terminating this Lease, re-entering, retaking, repossessing, repairing, altering and/or completing construction of any improvements, or any portion thereof, and the cost and expense of removing all persons and Premises therefrom, including in such costs reasonable and customary brokerage commissions and Legal Costs and Default Interest on the foregoing;

B. **Preparation for Reletting.** Second, to pay to itself the cost and expense reasonably sustained in securing any new tenants and other occupants, including in such costs all brokerage commissions, Legal Costs, and any other reasonable costs of preparing the Premises for reletting, and Default Interest on the foregoing;

C. **Costs of Maintenance and Operation.** Third, to the extent that Landlord shall maintain and operate the Premises, to pay to itself the reasonable cost and expense of operating and maintaining the Premises and Default Interest on the foregoing; and

D. **Residue.** Fourth, to pay to itself any balance remaining on account of the liability of Tenant to Landlord.

**Section 18.4. Tenant's Late Payments; Late Charges.** If Tenant fails to make any payment to Landlord required under this Lease within ten (10) business days after such payment is first due and payable, then in addition to any other remedies of Landlord, and without reducing or adversely affecting any of Landlord's other rights and remedies, Tenant shall pay Landlord within five (5) days after demand Default Interest on such late payment, beginning on the date

such payment was first due and payable and continuing until the date when Tenant actually makes such payment. In addition, and without limiting any other rights or remedies of Landlord, Tenant shall pay Landlord, as Additional Rent, an administrative charge equal to five percent (5%) of any payment that Tenant fails to pay within five (5) business days after such payment is first due and payable; provided, however, that Landlord will waive the imposition of the late charge for the first late payment of rent in any one calendar year during the Term. Such administrative charge is intended to compensate Landlord for the inconvenience and staff time incurred by Landlord to handle the late or missed payment, shall not be deemed a penalty or compensation for use of funds, and shall not be credited against any other obligations of Tenant under this Lease.

**Section 18.5. Landlord's Right to Cure.** If Tenant at any time fails to make any payment or take any action this Lease requires, then Landlord, after twenty (20) Business Days' Notice to Tenant, or in an emergency with such notice (if any) as is reasonably practicable under the circumstances, and without waiving or releasing Tenant from any obligation of Tenant or from any Default by Tenant and without waiving Landlord's right to take such action as this Lease may permit as a result of such Default, may (but shall be under no obligation to) make such payment or take such action. Tenant shall reimburse Landlord, as Additional Rent (within twenty (20) days after Notice from Landlord accompanied by reasonable backup documentation), for an amount equal to the sum of all reasonable sums paid by Landlord and all costs and expenses reasonably incurred by Landlord, together with Landlord's Legal Costs, in connection with the exercise of Landlord's cure rights under this Section plus, Default Interest thereon from the date of each such expenditure, until paid in full by Tenant.

**Section 18.6. WAIVERS.** TENANT AND LANDLORD IRREVOCABLY WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, COUNTERCLAIM OR OTHER LITIGATION ARISING OUT OF OR RELATING TO THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT UNDER THIS LEASE, THE ENFORCEMENT OF THIS LEASE, TENANT'S USE OR OCCUPANCY OF THE PREMISES, ANY CLAIM OF INJURY OR DAMAGE ARISING BETWEEN LANDLORD AND TENANT, OR ANY ACTIONS OF LANDLORD IN CONNECTION WITH OR RELATING TO THE ENFORCEMENT OF THIS LEASE. TENANT WAIVES ANY RIGHT OF REDEMPTION PROVIDED FOR BY LAWS. TENANT WAIVES ANY RIGHT TO INTERPOSE ANY COUNTERCLAIM (OTHER THAN COMPULSORY COUNTERCLAIMS) IN ANY ACTION BY LANDLORD TO ENFORCE THIS LEASE OR ANY RIGHTS AND REMEDIES OF LANDLORD UNDER THIS LEASE.

**Section 18.7. Accord and Satisfaction; Partial Payments.** No payment by Tenant or receipt by Landlord of a lesser amount than the amount required to be paid by Tenant under this Lease shall be deemed to be other than a part payment on account by Tenant, nor shall any endorsement or statement on any check or any letter accompanying any check or payment of Rent be deemed an accord or satisfaction. Landlord may accept any such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy for nonpayment, including termination of this Lease and commencement of a summary dispossess proceeding.

**Section 18.8. Miscellaneous.** Landlord and Tenant further agree as follows with respect to any Defaults and Landlord's rights and remedies.

A. **Survival.** No termination of this Lease and no taking possession of and/or reletting the Premises (or any part thereof) shall relieve Tenant of its obligations to Indemnify or any other liabilities and obligations hereunder, all of which shall survive such expiration, termination, repossession, or reletting, but subject to any limitations on personal liability or recourse contained in this Lease.

B. **Multiple Suits.** Landlord may sue to recover damages, or a sum equal to any installment(s) of Rent payable hereunder or any deficiencies or other sums payable by Tenant to Landlord under this Article 18, from time to time at Landlord's election. Nothing in this Lease shall be deemed to require Landlord to await the date when this Lease or the Term would have expired absent an Event of Default by Tenant and a resulting termination of this Lease.

C. **Receipt of Monies.** Unless such payment shall fully cure all Monetary Defaults, no receipt of moneys by Landlord from Tenant after the giving of a termination Notice or a Notice to obtain possession, or after the retaking of possession by Landlord as aforesaid, shall reinstate, continue, or extend the Term or affect any Notice previously given to Tenant, or operate as a waiver of Landlord's right to enforcement of Rent payable by Tenant under this Lease or thereafter falling due, or operate as a waiver of Landlord's right to recover possession of the Premises. After the service of any such Notice, or the commencement of any suit or summary proceedings, or after a final order or judgment for possession of the Premises, Landlord may demand, receive and collect any moneys due or thereafter falling due without in any manner affecting such Notice, proceeding, order, suit, or judgment, unless such payments shall fully cure all Monetary Defaults. Any sums so collected (without thereby curing all Monetary Defaults) shall instead be deemed payments on account of use and occupation of the Premises or, at Landlord's election, to have been made on account of Tenant's liability under this Lease.

**Section 18.9. Landlord's Default.** It shall be a "**Landlord Default**" if Landlord shall fail to observe or perform any of Landlord's covenants, agreements or obligations hereunder and such failure shall continue unremedied for a period of thirty (30) days after Tenant shall have given to Landlord written notice specifying wherein Landlord has failed to observe or perform any such covenant, agreement or obligation, plus such additional time as is reasonably required to correct any such failure if Landlord has instituted corrective action within such thirty (30) day period and is diligently pursuing the same to completion. Upon the occurrence of a Landlord Default and at any time thereafter so long as the same shall be continuing Tenant may, at its election, give Landlord Notice of its intention to terminate this Lease on such date specified in said Notice, which date shall not be earlier than thirty (30) days after such Notice is given. Tenant shall be, and shall remain, liable for all Rent accrued hereunder to the date such termination becomes effective and for all other sums then owing by Tenant hereunder. To the extent Tenant is prevented from using the Premises as a result of a Landlord Default, Fixed Rent for such period shall be equitably abated. In addition to the foregoing, Tenant shall have all rights and remedies afforded to it at law or in equity, including the right to seek damages due to Landlord's

Default. No failure by Tenant to insist upon the strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy consequent upon a Landlord Default in such performance, shall constitute a waiver of any such Landlord Default or of such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Lease to be performed or complied with by Landlord, and no default thereof, shall be waived, altered or modified except by a written instrument executed by Tenant. No waiver of any Landlord Default shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent Landlord Default of such covenant, agreement, term or condition of this Lease.

## **ARTICLE 19 EXPIRATION**

**Section 19.1. End of Term.** Upon any Expiration Date: (a) ownership of all Improvements (including any Building and all Building Equipment, but excluding any FF&E) shall transfer automatically to and become Landlord's property, subject to the exercise of Landlord's rights pursuant to Section 6.10 for the removal of Improvements by Tenant; (b) Tenant shall deliver to Landlord possession of the Premises, in the condition required by this Lease, subject to any Loss that this Lease does not require Tenant to Restore; (c) Tenant shall surrender any right, title, or interest in and to the Premises and deliver such evidence and confirmation thereof as Landlord shall reasonably require; (d) Tenant shall deliver the Premises free and clear of all: (i) Subleases (except only those elected to be assigned to Landlord pursuant to clause (d) next below), and (ii) liens except (1) Permitted Exceptions and (2) liens created as a result of Landlord's or any of its agents' acts or omissions; (e) Tenant shall, as and to the extent expressly directed by Landlord, assign to Landlord, without recourse, and give Landlord copies or originals of, all Subleases and all assignable licenses, permits, warranties, and guarantees then in effect for the Premises; (f) the parties shall cooperate to achieve an orderly transition of operations from Tenant to Landlord without interruption, including delivery of such books and records (or copies thereof) as Landlord shall reasonably require; (g) the parties shall adjust for Impositions and all other expenses and income of the Premises and any prepaid Rent and shall make such payments as shall be appropriate on account of such adjustment in the same manner as for a sale of the Premises (but any sums otherwise payable to Tenant shall first be applied to cure any Default); and (h) the parties shall terminate the Memorandum of Lease by appropriate instrument recorded in Official Records, Washoe County, Nevada. Tenant may remove from the Premises any FF&E, but Tenant must do so, if at all, before or within sixty (60) days after the Expiration Date. Tenant shall repair any damage from such removal. During such 30-day period: (a) Tenant may enter the Premises for such purposes, without being deemed a holdover; (b) Landlord shall have no obligation to preserve or protect such FF&E; and (c) in entering the Premises, Tenant shall comply with Landlord's reasonable instructions and requirements. Tenant's FF&E not removed from the Premises within sixty (60) days after the Expiration Date shall be deemed abandoned.

## **ARTICLE 20 AIRPORT REGULATIONS**

**Section 20.1. Operation as a Public Airport.** Tenant acknowledges that Landlord is required to operate and maintain the Airport as a public airport consistent with and pursuant to the

Sponsor's Assurances given by Landlord to the United States Government under the Airport and Airway Improvement Act of 1982, as the same may be amended from time to time.

**Section 20.2. Airport Landing Area Development or Improvement.** Landlord reserves the right to further develop or improve all areas of the Airport outside of the Land and all other land covered by that certain Master Development Agreement entered into between Landlord and **DPHW Reno, LLC** as of June 30, 2016, as it sees fit, regardless of the desires or view of Tenant, and without interference or hindrance; provided, however, that if the effect of such development or improvement is substantially the same as if a Condemnation of the Land had occurred, then Tenant shall have the same rights with respect thereto as are provided to Tenant pursuant to Article 12.

**Section 20.3. Maintenance of the Airport.** Landlord reserves the right, but shall not be obligated to Tenant, to maintain and keep in repair all areas of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of Tenant in this regard.

**Section 20.4. Right of Flight.** Landlord reserves unto itself, its successors and assigns, for the use and benefit of the public, the right of flight for the passage of aircraft in the airspace above the Critical Height Limitation (as defined in Section 20.61.). This right of flight shall include the right to cause in said airspace such noise, vibrations, fumes, dust, air movement and other similar phenomena as may be inherent in the operation of any aircraft now known or hereafter used for navigation or flight through the said airspace for landing at, taking off from or operating on the Airport.

**Section 20.5. No Exclusive Right.** It is understood and agreed that nothing contained in this Lease shall be construed as granting or authorizing the granting of an exclusive right within the meaning of Section 308a of the Federal Aviation Act of 1958 (49 U.S.C. 1349a), as the same may be amended from time to time.

**Section 20.6. Tenant Agreements and Covenants.** Tenant, for itself, its heirs, personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree to the following, as a covenant running with the Land:

A. **Subordination of Lease.** This Lease shall be subordinate, automatically and without the need of any express subordination by Tenant beyond this provision in any circumstance, to the provisions and requirements of any existing or future agreement between Landlord and the United States of America, or any of its agencies, relative to the airfield development, airfield operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport.

B. **Compliance With Title 49.** In the event facilities are constructed, maintained or otherwise operated on the Premises for a purpose for which a United States Department of Transportation program or activity is extended, or for another purpose involving the provision of similar services or benefits, Tenant shall maintain and operate such facilities and services in compliance with all other

requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, as said regulations may be amended (49 CFR Part 21), and Title 49 CFR Part 27, Nondiscrimination on the Basis of Disability, in compliance with the intent of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C.794), as amended.

C. **Compliance With Title VI of Civil Rights Act of 1964.**

1. No person, on the grounds of race, color or national origin, shall be excluded from participation, denied the benefits of or be otherwise subjected to discrimination in the use of said facilities;

2. In the construction of any improvements on, over or under the land and the furnishing of services thereon, no person shall be excluded from participation in, denied the benefits of or otherwise be subject to discrimination on the grounds of race, color or national origin;

3. Tenant shall use the Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21.

D. **Breach of Nondiscrimination Covenants.** In the event of breach of any of the above nondiscrimination covenants described above, Landlord shall have the right to terminate this Lease and to re-enter and repossess the Premises and the facilities thereon and hold the same as if this Lease had never been made or issued; provided, however, that Tenant allegedly in breach shall have the right to contest said allegation of breach under applicable FAA procedures, and any sanctions under this Lease, including but not limited to termination, shall be withheld pending completion of such procedures.

E. **Intentionally Omitted.**

F. **Inclusion of Provisions in Tenant's Agreements.** Tenant shall insert the provisions of this Section 20.5, inclusive, in any Sublease and in any other agreement by which Tenant grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on the Premises.

G. **Disadvantaged Business Enterprise Program.** Tenant shall abide and be bound by the Disadvantaged Business Enterprise Program adopted and as amended from time to time by Landlord pursuant to 49 CFR Part 23, Participation by Disadvantaged Business Enterprise in Department of Transportation Programs, as may be applicable to Tenant's activities hereunder.

H. **Affirmative Action Plan.** Tenant assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, as may be amended from time to time, to ensure that no person shall, on the grounds of race, creed, color, national origin or sex, be excluded from participating in any employment,

contracting or leasing activities covered in 14 CFR Part 152, Subpart E. Tenant assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by said Subpart. Tenant assures that it will require that its covered suborganizations provide assurances to Tenant and the Landlord that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

I. **Height Restriction.** Tenant will neither erect nor permit the erection of any structure or object, nor permit the growth of any tree, on the Premises above the lower of (i) the mean sea level elevation applicable to the most critical area of the Airport in accordance with Part 77 of the Federal Aviation Regulations (14 C.F.R. Part 77) ("**Critical Height Limitation**") at any given time during the Term and (ii) the applicable mean sea levels set forth in **Exhibit F** attached hereto. In the event the aforesaid covenant is breached, Landlord reserves the right to enter upon the Premises and to remove the offending structure or object or cut the offending tree, all of which shall be at the sole expense of the Tenant.

**Section 20.7. Federal Review.** It is anticipated that changes will come from regulatory agencies having jurisdiction over the Airport or Landlord in the form of regulatory changes. Landlord shall provide Tenant with copies of all Notices of Proposed Rule Making issued by such agencies that directly affect the Premises; provided however, Landlord's failure to provide said copies shall not be a Landlord default under this Lease.

**Section 20.8. Federal Right to Reclaim.** In the event a United States agency shall demand and take over the entire facilities of the Airport, or any portion of the Airport containing any or all of the Premises, for public purposes, then and in that event Landlord, to the extent Landlord has not, in the free exercise of Landlord's discretion, initiated or consented to such taking, shall be released and fully discharged from any and all liability hereunder; provided, however that Tenant expressly reserves any and all legal rights, claims and causes of action which it may have against the United States of America or any agency thereof arising out of or resulting from the reclamation of the Premises and the taking of any of Tenant's Improvements and FF&E located thereon.

**Section 20.9. Anti-Lobbying Certifications.** Tenant certifies, to the best of its knowledge and belief, that:

A. No federally appropriated funds have been paid or will be paid by or on behalf of Tenant, to any person for influencing or attempting to influence an officer or employee of any federal agency, a member, officer or employee of Congress, or an employee or member of Congress in connection with the award of any federal contract, in making any federal grant or federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.

B. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or

employee of any federal agency, a member, officer or employee of Congress, or an employee or member of Congress in connection with any contract, grant, loan or cooperative agreement relating to this Lease, Tenant shall complete and submit Standard Form-LLL, "Disclosure of Lobby Activities," or any successor form, in accordance with its instructions.

C. Tenant shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

**Section 20.10. Citizenship Certification.**

A. Tenant certifies that it:

1. Is not owned nor controlled by one or more citizens or nationals of a foreign country included in the list, published by the Office of the United States Trade Representative or any successor thereto, of countries that discriminate against United States of America business entities;

2. Has not knowingly entered into any contract or subcontract hereunder with a contractor that is a citizen or national, owned or controlled directly or indirectly by one or more citizens or nationals, of such a country; or indirectly by one or more citizens or nationals of a foreign country on that list; and

3. Has not procured any product or subcontracted for the supply of any product, for use hereunder, that is produced in such a country.

B. Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 C.F.R. Part 30.17, no contract shall be awarded to any party hereunder that is unable to certify to the above. If Tenant knowingly procures or subcontracts for the supply of any product or service of such a country for use hereunder, the FAA and/or the TSA may direct, through Landlord, cancellation of such contract, at no cost to the United States of America.

C. Tenant shall ensure the incorporation by reference of this provision for certification, without modification, in each contract and in all subcontracts. Tenant may rely upon the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous. Tenant shall provide immediate written notice to Landlord if it learns that a prospective contractor's certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances, and shall require its contractors and their subcontractors to provide immediate written notice to Tenant and Landlord if, at any time, such contractor or subcontractor learns that its certification was erroneous by reason of changed circumstances.

D. This certification is a material representation of fact upon which Landlord relied when entering this Lease. If it is determined that Tenant or any contractor or subcontractor thereof knowingly rendered an erroneous certification, the FAA and/or the TSA may direct, through Landlord, termination of the contract or subcontract at no cost to the United States of America.

E. Nothing contained herein shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information required of Tenant need not exceed that normally possessed by a prudent person in the ordinary course of business dealings.

F. This certification concerns a matter within the jurisdiction of an agency of the United States of America, so that making a false, fictitious or fraudulent certification might render the maker subject to prosecution under 18 U.S.C. Section 1001.

## ARTICLE 21 GENERAL

**Section 21.1. Estoppel Certificates.** From time to time, Landlord may, up to twice a year, require Tenant to execute, acknowledge and deliver to Landlord (or directly to a designated third party) up to four original counterparts of an Estoppel Certificate. Tenant shall sign, acknowledge, and return such Estoppel Certificate within ten (10) Business Days after request, and failure to deliver such Estoppel Certificate within such ten (10) day period shall be a Default, not subject to cure pursuant to Section 18.1D. Any third party to whom an Estoppel Certificate is directed may rely on such Estoppel Certificate. Within thirty (30) days after a written request by Tenant or any Lender (but not more than once in any calendar year, except in case of a proposed financing or refinancing), Lender will execute, acknowledge and deliver to Tenant or such Lender or other person or entity as Tenant designates, an Estoppel Certificate. Any Estoppel Certificate may be relied upon by a prospective purchaser, mortgagee or trustee or beneficiary under a deed of trust of the Premises or the leasehold estate hereunder or any part thereof.

**Section 21.2. Notices.** Any communication, Notice or demand of any kind whatsoever that either party may be required or may desire to give to or serve upon the other shall be in writing, addressed to the parties at the addresses set forth below, and delivered by personal service, by Federal Express or other reputable overnight delivery service, or by facsimile transmission:

If to Landlord:	Reno-Tahoe Airport Authority Attention: President/CEO 2001 E. Plumb Lane Reno, NV 89502
-----------------	--

and: P.O. Box 12490  
Reno, NV 89510-2490  
Telephone: (775) 328-6400  
Facsimile: (775) 328-6564

If to Tenant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

Any such notice shall be deemed delivered as follows: (a) if personally delivered, the date of delivery to the address of the person to receive such notice; (b) if sent by Federal Express or other reputable overnight courier service, the date of delivery to the address of the person to receive such notice; or (c) if sent by facsimile transmission, on the Business Day transmitted to the person to receive such notice if sent by 5:00 p.m., Pacific time, on such Business Day, and the next Business Day if sent after 5:00 p.m., Pacific time, or on a day other than a Business Day. Any notice sent by facsimile transmission must be confirmed by sending, on the same Business Day such facsimile is deemed sent as above provided, by Federal Express or other reputable overnight delivery service, a copy of the notice sent by facsimile transmission. Any party may change its address for notice by written notice given to the other at least five (5) calendar days before the effective date of such change in the manner provided in this Section 21.2.

**Section 21.3. National Emergency.** This Lease and all the provisions hereof shall be subject to whatever right the United States Government now has, or in the future may have or acquire, affecting the control, operation, regulation and taking over of the Airport or the exclusive or nonexclusive use of the Airport by the United States Government during time of war or national emergency.

**Section 21.4. Costs and Expenses; Legal Costs.** In the event of any litigation or dispute between Landlord and Tenant, or claim made by either against the other, arising from this Lease or the landlord-tenant relationship under this Lease, or on account of Landlord's enforcement of this Lease upon Tenant's Default, or to enforce or interpret this Lease or seek declaratory or injunctive relief in connection with this Lease, or to exercise any rights or remedies under or with respect to this Lease, or to regain or attempt to regain possession of the Premises or otherwise terminate this Lease, or in any Bankruptcy Proceeding affecting the other party to this Lease, the prevailing party shall be entitled to reimbursement of its Legal Costs together with

Default Interest thereon, together with all other reasonable costs and expenses incurred in enforcing this Lease or curing the other party's default.

**Section 21.5. Compliance with NRS 338.125.** In connection with work performed hereunder, Tenant shall not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, sexual orientation, gender identity or expression, or age. In addition, Tenant shall require the inclusion of these terms in all contracts for work on the Premises.

**Section 21.6. Unavoidable Delay.** Each party's obligation to perform or observe any term, condition, covenant or agreement on such party's part to be performed or observed under this Agreement shall be subject to Unavoidable Delay.

**Section 21.7. Governing Law.** This Lease, its interpretation and performance, the relationship between the parties, and any disputes arising from or relating to any of the foregoing, shall be governed, construed, interpreted, and regulated under the laws of the State, without regard to principles of conflict of laws.

**Section 21.8. Venue; Jurisdiction.** The parties each hereby irrevocably agree that any legal action or other proceeding relating to this Lease which may be brought by one party against the other party in a court of law shall be commenced and prosecuted in the Second Judicial District Court in and of the County of Washoe in the State of Nevada, District of Nevada-Reno, and each party further irrevocably consents to the jurisdiction of such courts, which shall be the exclusive and only proper forum for adjudicating such a claim to the full extent of such court's subject matter jurisdiction as allowed by Law.

**Section 21.9. Waivers.** Failure of either party to complain of any act or omission on the part of the other party shall not be deemed a waiver by the non-complaining party of any of its rights under this Lease. No waiver by either party at any time, express or implied, of any breach of any provisions of this Lease shall be a waiver of a breach of any other provision of this Lease or a consent to any subsequent breach of the same or any other provision.

**Section 21.10. Brokerage Commissions.** Each party warrants to the other that the warranting party has incurred no obligations, by reason of this Lease or the transactions contemplated hereby, for a real estate brokerage commission or finder's fee for which the other party would be liable. Each party will indemnify the other party with respect to any untruth as to the warranting party of the foregoing warranty.

**Section 21.11. Amendment.** This Agreement may be amended only in writing and executed by duly authorized representatives of the parties hereto, at a date subsequent to the date of this Agreement.

**Section 21.12. Relationship of Parties.** Nothing contained herein will be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers, or any other similar such relationship between the parties hereto. The parties will understand and agree that no provision contained herein, nor any acts of the parties hereto creates a relationship other than the relationship of Landlord and Tenant.

**Section 21.13. Representative of Landlord.** The President/CEO of Landlord is hereby designated as the official representative of the Landlord in all matters pertaining to this Lease and will have the right and Landlord to act on behalf of the Landlord with respect to all action required of the Landlord in this Lease.

**Section 21.14. Successors and Assigns.** This Lease shall bind and benefit Landlord and Tenant and their successors and assigns, but this shall not limit or supersede any restrictions on Transfer contained in this Lease. Nothing in this Lease confers on any Person (except Landlord, Tenant, and Lenders) any right to insist upon, or to enforce against Landlord or Tenant, the performance or observance by either party of its obligations under this Lease.

**Section 21.15. Entire Agreement.** This Lease contains all the terms, covenants and conditions relating to Tenant's leasing of the Premises, and all prior and contemporaneous understandings, agreements, representations and warranties are deemed merged into, and made a part, of this Lease. The parties have no separate understandings or agreements, oral or written, relating to the Premises or Tenant's use or occupancy of, or any interest of Tenant in, the Premises.

**Section 21.16. Signature Authority.** Each natural person signing this instrument, for or on behalf of a legal entity party hereto, represents, warrants, assures and guarantees to each other such natural person, and to each other such legal entity, that he or she is duly authorized and has legal power and/or authority so to sign.

**Section 21.17. Nonrecourse.** Notwithstanding anything to the contrary in this Lease, the liability under this Lease of Landlord shall only be enforceable against, and shall not extend beyond, its interest in the Premises (including the proceeds thereof). No property or assets whatsoever, other than Landlord's interest in the Premises (including the proceeds thereof), shall be subject to levy, execution or any other enforcement procedure for the satisfaction of any remedies (monetary or otherwise) of Landlord arising under or in connection with this Lease, and then only as allowed by Laws. No trustee, officer, manager, director, agent or employee of Landlord or Tenant shall have any liability under this Lease. (This Lease sometimes refers to this Section as the "**Nonrecourse Clause.**")

**Section 21.18. Memorandum of Lease.** Upon request by either, the parties shall promptly execute, acknowledge, and deliver duplicate originals of a "Memorandum of Lease" in the form attached hereto as **Exhibit G** or such other form and content reasonably acceptable to and reasonably approved by Landlord and Tenant. Either party may record such Memorandum of Lease. Any taxes imposed upon such recording shall be paid by the party that caused such recordation to occur. If the parties amend this Lease, then the parties shall have the same rights and obligations regarding a memorandum of such amendment as they do for the Memorandum of Lease. Upon the Expiration Date or any earlier termination of this Lease, Tenant shall execute, acknowledge and deliver to Landlord such instrument deemed appropriate by Landlord to terminate and remove any Memorandum of Lease from the public record. Tenant shall Indemnify Landlord from and against Tenant's failure, refusal or unreasonable delay in complying with such execution, acknowledgment and delivery of such instrument.

**Section 21.19. Counterparts.** This Lease may be executed in any number of counterparts hereof, each of which shall be deemed an original hereof, but all of which shall constitute but one and the same document.

**Section 21.20. Partial Invalidity.** If any term or provision of this Lease or the application of such term or provision to any party or circumstance shall to any extent be invalid or unenforceable, then the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected by such invalidity. All remaining provisions of this Lease shall be valid and be enforced to the fullest extent permitted by law.

**Section 21.21. Interpretation.** No inference in favor of or against any party shall be drawn from the fact that such party has drafted any portion of this Lease. The parties have both participated substantially in the negotiation, drafting and revision of this Lease with representation by counsel and such other advisers as they have deemed appropriate. A term defined in the singular may be used in the plural, and vice versa, all in accordance with the normal principles of English grammar, which shall also govern all other language used in this Lease. The words "include" and "including" shall be construed to be followed by the words: "without limitation." The parties acknowledge and recognize that the document and version numbers and footers in this Lease may vary from page to page because of the timing and sequencing of this transaction. Each of the following terms shall be interpreted as if followed by the words "(or any part thereof)" except where the context clearly requires otherwise: Building Equipment; FF&E; Fee Estate; Land; Leasehold Estate; Premises; and Improvements.

**Section 21.22. Delivery of Drafts.** Neither party shall be bound by this Lease unless and until such party shall have executed at least one counterpart of this Lease and delivered such executed counterpart to the other party. The submission of draft(s) of this Lease or comment(s) on such drafts shall not bind either party in any way. Such draft(s) and comment(s) shall not be considered in interpreting this Lease.

**Section 21.23. Captions.** The captions of this Lease are for convenience and reference only. They in no way affect this Lease.

*[Signatures appear on following page.]*

WHEREAS, Landlord and Tenant have executed this Lease as of the date first written above.

LANDLORD:

**RENO-TAHOE AIRPORT AUTHORITY**, a quasi-municipal corporation organized under Chapter 474, Statutes of Nevada 1977, as amended

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

TENANT:

\_\_\_\_\_ [Designated Affiliate],  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

***Attachments:***

- Exhibit A** = Legal Description
- Exhibit B** = Additional Permitted Exceptions
- Exhibit C** = Contractor's Insurance and Indemnification Requirements
- Exhibit D** = Design Guidelines
- Exhibit E** = Form of Tenant Improvement Permit
- Exhibit F** = Code of Federal Regulations Title 14 Part 77 Surfaces
- Exhibit G** = Form of Memorandum of Lease
- Exhibit H** = Participation Rights Calculation Example

**EXHIBIT A**  
**Legal Description**

## EXHIBIT B

### Additional Permitted Exceptions

Permitted Exceptions shall include all of the following, as they existed on the Commencement Date of the Lease:

1. All leases, subleases, tenancies and rights of occupancy affecting the Premises caused or permitted by Tenant or by anyone claiming by, through, or under Tenant;
2. All rights, if any, for electricity, gas, telephone, water, cable television and any other utilities to maintain and operate lines, cables, poles and distribution boxes in, over and upon the Premises, to the extent of record or disclosed to Tenant by Landlord in writing prior to the date of this Lease;
3. Possible projections and/or encroachments of retaining walls, foundations, stoops, areas, steps, sills, trim, cornices, standpipes, fire escapes, coal chutes, casings, ledges, water tables, lintels, porticos, keystones, windows, hedges, copings, cellar doors, sidewalk elevators, fences, fire escapes and the like, or similar projections or objects upon, under or above any adjoining buildings and/or streets or avenues or those belonging to adjoining premises which encroach upon the Premises or within any set-back areas, and variations between the lines of record title and fences, retaining walls, hedges, and the like – subject to Tenant's approval;
4. Variations between the tax diagram or the tax map and the record description;
5. Zoning, environmental, municipal, building and all other laws, regulations or similar matters imposed by any federal, state, municipal or local government or any public or quasi-public board, authority or similar agency having jurisdiction over the Premises or any portion thereof;
6. All notes or notices of any violation of law or municipal ordinances, orders or requirements noted in or issued by any governmental or quasi-governmental authority or departments having or asserting jurisdiction, now or hereafter affecting the Premises, to the extent of record or disclosed to Tenant by Landlord in writing prior to the date of this Lease;
7. The lien for all taxes, charges, rents, assessments and any other governmental charges which are not yet due and payable.

## EXHIBIT C

### CONTRACTOR'S INSURANCE AND INDEMNIFICATION REQUIREMENTS

During the design and construction of any Improvements to the Premises, and of any modifications thereto, Tenant shall require its contractors (in each instance, a "**Contractor**") to provide and maintain the following insurance coverage for itself, all subcontractors, suppliers, material men, and all others accessing the project on the Contractor's behalf:

#### A. **INSURANCE**

1. **Commercial General Liability Insurance.** Using Insurance Services Office "Commercial General Liability" policy form CG 00 01, with an edition date prior to 2004, or the exact equivalent.
2. **Course of Construction Insurance.** Builder's Risk or Course of Construction Insurance insuring on an "all risks" basis, with a limit equal to the completed value of the project and all materials and equipment to be incorporated therein, including property in transit or elsewhere and insuring the interests of the Landlord, Contractor and its subcontractors of any tier providing equipment, materials, or services for the project. The Landlord shall be named as loss payee; and the insurers shall waive all rights of recovery against Landlord.
3. **Worker's Compensation and Employer's Liability Insurance.** Contractor and its subcontractor shall procure Nevada Worker's Compensation Insurance as evidenced by a Certificate of Insurance from an acceptable insurance company covering contractor's employees for at least the statutorily required limits, and Employer's Liability Insurance with a minimum limit of \$1,000,000 per occurrence.
4. **Business Automobile Coverage.** Contractor or subcontractor shall be responsible for maintaining Business Auto Coverage on ISO form CA 00 01 including owned, and non- owned and hired autos, or the exact equivalent. Limits shall be no less than \$1,000,000 per accident, Combined Single Limit. If Contractor or Contractor's employees will use personal autos in any way on this project, Contractor shall obtain evidence of personal auto liability coverage for each person.
5. **Contractor's Tools and Equipment.** Contractor is responsible for its own construction tools and equipment whether owned, leased, rented, or borrowed for use at the Airport worksite.
6. **Deductibles and Self-Insured Retentions.** Contractor's Commercial General Liability is a minimum of \$25,000 per claim; Course of Construction Insurance is a minimum of \$10,000 per claim. Any changes to the deductibles or self-insured retentions made during the term of the Agreement or during the term of any policy must be approved by the Landlord prior to the change taking effect.

7. **Additional Insurance Criteria.**

- (a) Contractor shall furnish the Landlord with insurance certificates as evidence that the foregoing insurance is in force prior to commencement of work on the contract. Said policies shall be with insurance companies authorized to do business in the State of Nevada with an A.M. Best rating of A-VII or better. Such policies shall provide that written notice shall be given to Landlord thirty (30) days prior to cancellation or material change of any protection which said policies provide.
- (b) Said policies, except Worker's Compensation, shall name Landlord, its Trustees, officers, employees, and authorized agents as additional insureds. The policies will be primary and any other insurance carried by Contractor and/or Landlord shall be excess and not contributing therewith.
- (c) In the event Contractor fails to provide Landlord with the insurance described, no work shall commence on the contract site. If the coverage required by the Contractor is terminated or reduced for any reason, all work on the contract site shall immediately stop until the all the required coverages are in place.
- (d) The extent of coverage or the limits of liability provided under the policies procured by the Contractor and/or subcontractors shall not be construed to be a limitation on the nature or extent of the Contractors' obligations or to relieve the Contractor of any such obligations or representation by the Landlord as to the adequacy of the insurance to protect the Contractor against the obligations imposed on it by this or any other contract.
- (e) To the fullest extent permitted by law, Contractor covenants and agrees to indemnify and hold the Landlord, its Trustees, officers, employees and authorized agents harmless of and from all liability, claims, demands, and causes of action whatsoever for injury or property damage arising out of acts of commission or omission by the Contractor, its agents, employees, subcontractors, or subordinate subcontractors or arising out of any other operation or transaction no matter by whom performed for, or on behalf of the Contractor. The Landlord reserves the right to have the Contractor furnish the Contractor's actual insurance policies for examination by the Landlord.
- (f) It is the Contractor's responsibility to familiarize itself with the coverages described herein.
- (g) Contractor must give immediate notification to the Landlord and/or its agent upon receiving any knowledge or notification of claim or litigation on which the Landlord may be named.
- (h) Costs for providing such insurance as described above shall be incidental to the work.

## **B. INDEMNIFICATION**

To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend the Landlord, its Trustees, officers, directors, agents, servants, and employees from any and all liabilities, losses, suits, claims, judgments, fines, penalties, demands or expenses, including all reasonable costs for investigation and defense thereof (including, but not limited to, attorneys' fees, court costs, and expert fees), for injury or damage to persons or property sustained in or about the Reno-Tahoe International Airport, as a proximate result of the acts or omissions of the Contractor, its agents, servants, or employees, or arising out of the operations of the Contractor upon and about the Airport, excepting such liability as may result from the sole negligence of the Landlord, its Trustees, officers, directors, agents, servants, and employees. Contractor shall further use legal counsel reasonably acceptable to the Landlord in carrying out Contractor's obligations hereunder. Any final judgment rendered against the Landlord for any cause for which Contractor is liable hereunder shall be conclusive against Contractor as to liability and amount, where the time for appeal therefrom has expired. The Indemnity provisions set forth herein shall survive the expiration or early termination of any Agreement.

**EXHIBIT D**  
**Design Guidelines**

**EXHIBIT E**

**Form of Tenant Improvement Permit**



**EXHIBIT G**

**Form of Memorandum of Lease**

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

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

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE ("Memorandum") is made as of \_\_\_\_\_, 20\_\_ by and between Reno-Tahoe Airport Authority, a quasi-municipal corporation organized under Chapter 474, Statutes of Nevada 1977, as amended ("Landlord"), and \_\_\_\_\_ ("Tenant").

Landlord and Tenant have entered into that certain Ground Lease dated as of \_\_\_\_\_ ("Lease"), pursuant to which Landlord has ground leased to Tenant, and Tenant has ground leased from Landlord, that certain real property more particularly described on Exhibit "A" attached hereto (the "Premises"), all subject to the terms and covenants set forth in the Lease. The purpose of this Memorandum is to give notice of the existence of the Lease and the provisions thereof, including without limitation provisions providing for the entry into a new ground lease following a foreclosure upon the circumstances described therein. To the extent that any provision of this Memorandum conflicts with any provision of the Lease, the Lease shall control.

This Memorandum may be executed in counterparts, each of which shall be an original, but all of which, together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Memorandum as of the date first written above.

"Landlord"

RENO-TAHOE AIRPORT AUTHORITY, a quasi-municipal corporation organized under Chapter 474, Statutes of Nevada 1977, as amended

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

"Tenant"

\_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Exhibit A**

**PREMISES LEGAL DESCRIPTION**

[TO BE PROVIDED]

**ACKNOWLEDGMENT**

State of Nevada )  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(insert name of notary)

Notary Public, personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose  
name(s) is/are subscribed to the within instrument and acknowledged to me that  
he/she/they executed the same in his/her/their authorized capacity(ies), and that by  
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of  
which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Nevada  
that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

**ACKNOWLEDGMENT**

State of Nevada )  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(insert name of notary)

Notary Public, personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose  
name(s) is/are subscribed to the within instrument and acknowledged to me that  
he/she/they executed the same in his/her/their authorized capacity(ies), and that by  
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of  
which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Nevada  
that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

**EXHIBIT H**

**PARTICIPATION RIGHTS  
CALCULATION EXAMPLE**

Document comparison by Workshare Professional on Friday, October 21, 2016  
1:42:49 PM

<b>Input:</b>	
Document 1 ID	interwovenSite://RFCWORKSITE/iManage/11866344/2
Description	#11866344v2<iManage> - SD-Ground_Lease_(Reno-Tahoe: WCD working comments to Dermody 7/30 draft)
Document 2 ID	interwovenSite://RFCWORKSITE/iManage/11866344/3
Description	#11866344v3<iManage> - SD-Ground_Lease_(Reno-Tahoe: WCD 10-21-16)
Rendering set	Standard

<b>Legend:</b>	
<a href="#">Insertion</a>	
<del>Deletion</del>	
<del>Moved from</del>	
<a href="#">Moved to</a>	
Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

<b>Statistics:</b>	
	Count
Insertions	21
Deletions	18
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	39

**EXHIBIT E**  
**PERFORMANCE/COMPLETION BOND**  
**[see attached]**



## PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned \_\_\_\_\_

\_\_\_\_\_  
(Name and Address or Legal Designation of Contractor)

as Principal, and \_\_\_\_\_  
(Legal Designation and Address of Surety)

authorized to do business of surety in the State of Nevada, as Surety, hereinafter called "Surety", are held and firmly bound unto the RENO-TAHOE AIRPORT AUTHORITY, a quasi-municipal corporation of the State of Nevada, as Obligee, hereinafter called "Owner" in the amount of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) for the payment of such amount, will and truly to be made to the Owner and to its successors, the Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has by written agreement dated \_\_\_\_\_ entered into contract with Owner for **INSERT PROJECT NAME**, which contract and exhibits, if any, hereinafter called "Contract", are attached hereto and by reference made a part hereof as if fully and completely set out in full herein: and

WHEREAS, under the Contract, said Principal agrees to perform certain duties with the time limits set out in the Contract in accordance with the terms, specifications and conditions contained in the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is the condition that if the Principal as Contractor in the Contract shall faithfully perform each and all of the conditions of the Contract to be performed by Contractor, at the times and places therein agreed upon and in conformity with the terms, specifications and conditions stated and referred to in the Contract, then this obligation shall be void; otherwise, it shall remain and be in full force and effect and the sum of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_) shall be payable to Owner on demand.

THE SURETY, for value received, hereby stipulates and agrees that no prepayment or delay in payment and no change, extension, addition or alteration of any provision of the Contract or in the plans, profiles, detailed drawings, specifications, and no forbearance on the part of Owner shall operate to relieve Surety from liability in this given bond and consent thereto without notice to or consent by Surety is hereby given, and the Surety hereby waives provisions of any law relating thereto; Surety shall further be bound to take notice and shall be held to have knowledge of all acts or omissions of the Principal, its agents and representatives in such matter pertaining to the Contract and Surety further relieves Owner and its representatives from the exercise of any diligence whatsoever in securing compliance on the part of the Principal with the aforesaid provisions of the Contract.



THIS BOND is executed and no right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the heirs, executors, administrators or successors of Owner.

IN WITNESS WHEREOF, the above bounden Principal and the above bounden Surety hereunto set their hands and seals this \_\_\_\_\_ of \_\_\_\_\_, 2015.

IN THE PRESENCE OF:

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

\_\_\_\_\_  
Principal (Seal)

\_\_\_\_\_  
Title (Seal)

\_\_\_\_\_  
Surety (Seal)

\_\_\_\_\_  
Title Attorney-in-Fact

NOTE: The person executing this bond on behalf of the Surety must attach power of attorney.



## LABOR AND MATERIALS PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned \_\_\_\_\_

\_\_\_\_\_  
(Name and Address or Legal Designation of Contractor)

as Principal, and \_\_\_\_\_  
(Legal Designation and Address of Surety)

authorized to do business of surety in the State of Nevada, as Surety, hereinafter called "Surety", are held and firmly bound unto the RENO-TAHOE AIRPORT AUTHORITY, a quasi-municipal corporation of the State of Nevada, as Obligee, hereinafter called "Owner", for the use and benefit of claimants supplying labor or materials to the Principal or to any of the Principal's subcontractors in the prosecution of the work provided for in the Contract referred to below in the amount of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_) for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has by written agreement dated \_\_\_\_\_ entered into contract with Owner for **INSERT PROJECT NAME**, which contract exhibits, if any, hereinafter called "Contract", are attached hereto and by reference made a part hereof as if fully and completely set out in full herein; and

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if Principal shall promptly make payment to all claimants as hereinabove defined for all labor and material used or reasonably required for use in the performance of this Contract, then this obligation shall be void; otherwise it shall remain in full force and effect.

THIS BOND is executed for the purpose of complying with the laws of the State of Nevada, and all acts amendatory thereof, and this Bond shall inure to the benefit of any and all persons who perform labor upon or furnish materials to be used in or furnish appliances, teams or power contributing to the work described in said Contract in accordance with the provisions of the Nevada Revised Statutes.



IN WITNESS WHEREOF, the above bounden Principal and the above bounden Surety hereunto set their hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

IN THE PRESENCE OF:

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

\_\_\_\_\_  
Principal (Seal)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Surety (Seal)

\_\_\_\_\_  
Title Attorney-in-fact

**NOTE:** The person executing this bond on behalf of the Surety must attach power of attorney.

**EXHIBIT F**  
**INSURANCE COVERAGES**  
**[see attached]**

**ARTICLE 12**  
**INSURANCE**

**Section 12.1 Tenant to Insure** Tenant shall, at its sole expense, during the Term, maintain the following insurance (or its then reasonably available equivalent):

- a) **Commercial General Liability ("Liability Insurance")** insurance against claims for bodily injury, including death, personal and advertising injury, and property damage occurring upon, in, or about the Premises, including all areas appurtenant thereto, adjoining streets and passageways, providing coverage for a combined single limit of \$5 million per occurrence (suggest minimum of \$1,000,000). Coverage shall include contractual liability.
- b) (If RTAA will require tenant to provide real property insurance on building, keep this in – otherwise delete this paragraph b as non-applicable). **Property Liability ("Property Insurance")**. Upon completion of construction, and thereafter throughout the term of the Lease, Tenant shall maintain Property insurance providing coverage for the Premises and the Building, and all Building Equipment at or in the Premises, against loss, damage, or destruction by fire and other hazards encompassed under Special Form (All-Risk) property insurance coverage during the Term, in an amount equal to the full replacement value (without deduction for depreciation) of the insurable Building, Improvements and Building Equipment (excluding excavations and foundations) located on the Premises and in any event sufficient to avoid co-insurance, and shall include "ordinance or law" coverage; such insurance may contain a deductible clause not exceeding \$25,000.00. To the extent commercially available, such insurance shall include an "increased cost of construction" endorsement; and an endorsement covering demolition and cost of debris removal. Property Insurance shall also include rental or business interruption insurance in an amount at least equal to twelve (12) months' Fixed Rent and Impositions. The property policy shall be endorsed to name Landlord as loss payee.
- c) **Lessee's Improvements, Fixtures and Personal Property. Causes of Loss – Special Form Property Insurance** upon property of every description and kind owned by Lessee and located in the Leased Premises, or for which Lessee is legally liable, or which constitute improvements installed by or on behalf of Lessee, including, without limitation, Lessee's furnishings, fixtures and equipment. Such insurance shall be in an amount equal to one hundred percent (100%) of the full insurable replacement value of such property. The proceeds of such insurance shall be used for the repair and replacement of the property insured. Landlord shall not be liable for any damage to Leased Premises improvements or for damage to any personal property brought onto the Leased Premises.
- d) **Automobile Liability** policy, (including bodily injury and property damage), covering owned, non-owned and hired automobiles for use under this Lease, with minimum limit of \$5,000,000.00 (suggest minimum \$1,000,000) combined single limit per accident.

- e) **Workers' Compensation Insurance and Employer's Liability** coverage shall be in accordance with the laws of the State of Nevada applicable to all employees.
- f) **Course of Construction (Builder's Risk).** If Lessee is permitted to perform construction work under the Lease, Lessee shall maintain, or require its Contractor to maintain, Builder's Risk or Course of Construction Insurance insuring on an "all risks" basis, with a limit equal to the completed value of the project and all materials and equipment to be incorporated therein, including property in transit or elsewhere the Landlord, Contractor and soft costs such as loss of income, architect and engineer fees, bond premiums, building permit fees and any other non-recurring costs as may be appropriate for construction, and insuring the interests of its subcontractors of any tier providing equipment, materials, or services for the project. The Landlord shall be named as loss payee; and the insurers shall waive all rights of recovery against Landlord.
- g) **Insurance Requirements Are Not Limits.** The foregoing requirements and any approval or waiver of said insurance by the Landlord are not intended to and will not in any manner limit or qualify Lessee's liabilities, whether imposed by applicable law or assumed pursuant to the Lease including, but not limited to, the provisions concerning indemnification as herein described. The Landlord in no way warrants that the minimum limits contained herein are sufficient to protect Lessee from liabilities that might arise out of Lessee's use, occupancy, maintenance or operations in or about the Premises or the performance of any work under the Agreement by Lessee or Lessee's agents, representatives, employees or subcontractors, and Lessee is free to purchase such additional insurance as may be determined necessary.

**Section 12.2 Contractors and Subcontractors.** Lessee agrees to require that all contractors and/or subcontractors performing services on behalf of Lessee comply with the insurance and indemnification requirements set forth in this Lease.

**Section 12.3 Acceptability of Insurance Policies.** All insurance policies this Lease requires shall be issued by carriers that: (a) have a policyholders' rating of "A -VII" or better, based on the latest rating publication of Property and Casualty Insurers by A.M. Best Company (or its equivalent if such publication ceases to be published) and (b) are lawfully doing business in the State; and shall be issued on an "occurrence" and not "claims made" basis. Tenant may satisfy the insurance requirements hereunder using a combination of primary and umbrella or excess insurance policies, provided that (i) such policy(ies) or certificates of such policy(ies) shall equal or exceed the amount(s) required by this Lease and (ii) such policy(ies) otherwise comply with this Lease.

**Section 12.4 Policy Requirements and Endorsements.** All insurance policies this Lease requires shall contain or be endorsed to contain the following provisions:

- a) **Insureds.** All policies (primary and excess) and Certificates of Insurance provided by Tenant to Landlord shall evidence the proper limits of coverage as set forth herein. Said Liability Insurance policies shall name, and shall evidence by separate endorsement, that the Landlord, its Trustees, officers, agents and employees are additional insureds using ISO Endorsement Form CG 20 11 (Managers or Lessors of Premises) or similar document with coverage as broad as

provided thereunder. Said policies shall also be endorsed to name each Lender, where applicable, as additional insured. Property Insurance policies shall name Landlord and Tenant as loss payees as their interests may appear, and each Lender permitted by this Lease under a standard noncontributing lender clause. Notwithstanding anything to the contrary, all Property Insurance Proceeds shall be paid and applied as this Lease provides.

- b) **Primary Coverage.** All policies shall be endorsed to state that the coverages provided are primary for all claims and losses arising from Lessee's use, occupancy and operation of the Leased Premises and all areas appurtenant thereto, including the Airport, and that any insurance carried by Landlord, its trustees, agents or employees shall be excess and non-contributing.
- c) **Contractual Liability.** The Commercial General Liability Insurance policy shall contain contractual liability coverage, for Tenant's indemnity obligations under this Lease. Tenant's failure to obtain such contractual liability coverage shall not relieve Tenant from any indemnity obligation under this Lease.
- d) **Notice to Landlord.** The insurance policies required under this Lease shall not be cancelled, suspended or non-renewed without thirty (30) days' prior written Notice to Landlord, except where cancellation is due to the non-payment of premiums, in which event ten (10) days prior written notice shall be provided to Landlord.
- e) **Ordinance Coverage.** Property Insurance policies shall contain "ordinance or law" coverage.

**Section 12.5 Deliveries to Landlord.** On the Commencement Date, and no later than thirty (30) days before any Liability Insurance, Property Insurance or other required insurance expires or is cancelled, Tenant shall deliver to Landlord certificates of insurance evidencing Tenant's maintenance of all insurance this Lease requires, in each case providing coverage for at least one year from the date delivered.

**Section 12.6 Waiver of Subrogation.** To the extent that Landlord or Tenant purchases any policy of property insurance, the party purchasing such insurance (the "**Insurance Purchaser**") shall cause the insurance carrier to agree to a Waiver of Subrogation, if not already included in the policy. If any insurance policy cannot be obtained with a Waiver of Subrogation, or a Waiver of Subrogation is obtainable only by paying an additional premium, then the Insurance Purchaser shall so Notify the other party. The other party shall then have ten (10) Business Days after receipt of such Notice either to (a) direct the Insurance Purchaser to place such insurance with a company that is reasonably satisfactory to the other party and that will issue the insurance with a Waiver of Subrogation at no greater or additional cost, or (b) agree to pay the additional premium if such a policy can be obtained only at additional cost. To the extent that the parties actually obtain insurance with a Waiver of Subrogation, the parties release each other, and their respective authorized representatives, from any claims for damage to any person or the Premises that are caused by or result from risks insured against under such insurance policies.

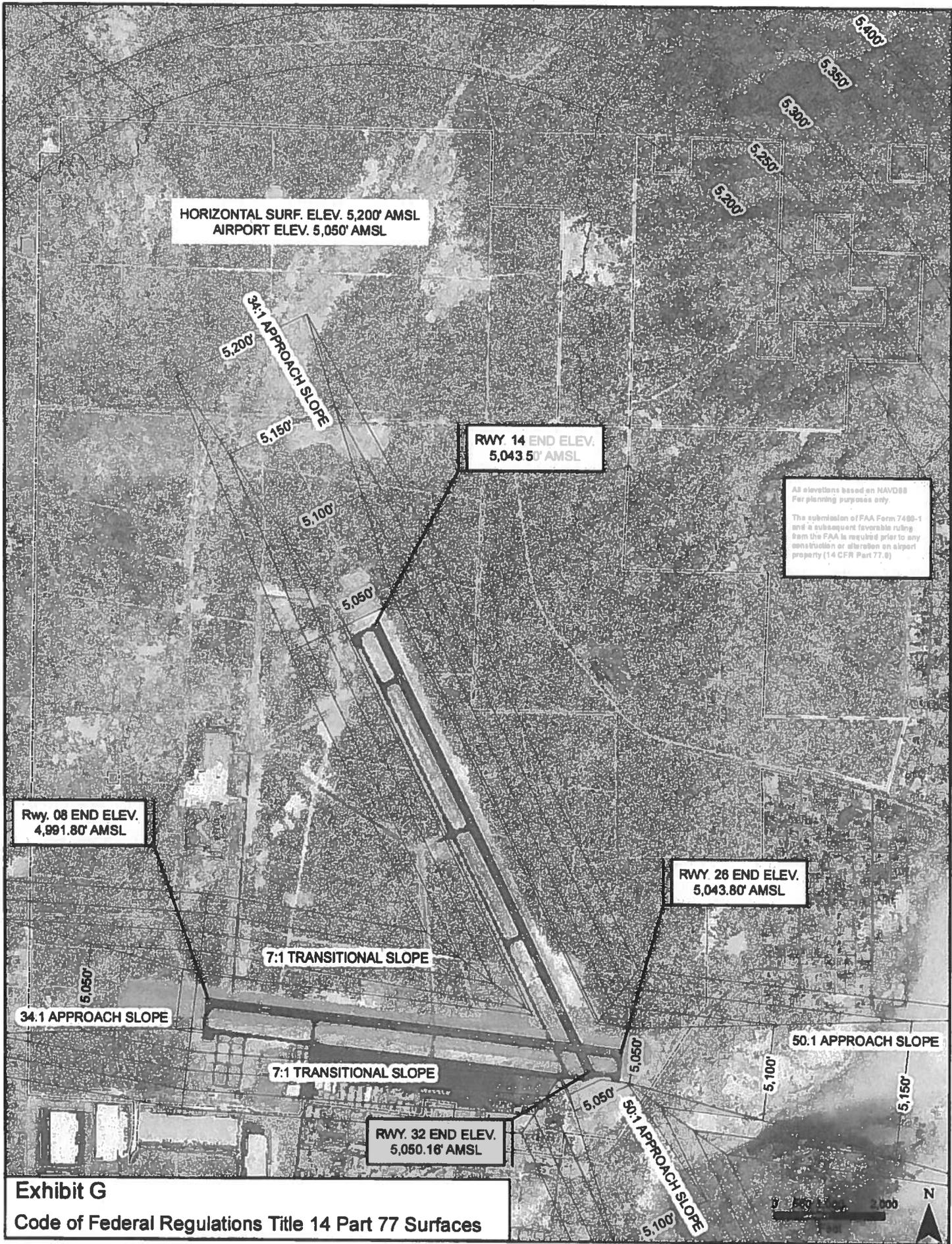
**Section 12.7 No Representation.** Neither party makes any representation that the limits, scope or forms of insurance coverage this Lease requires are adequate or sufficient to cover their respective liabilities or indemnity obligations hereunder.

**Section 12.8 Additional Policies and Increased Limits.** During the Term, Landlord may require Tenant to acquire and maintain such additional insurance policies providing such additional coverages as Landlord determines is prudent and commercially reasonable for similar uses, improvements, premises and lease relationships; and Landlord may require that Tenant increase the limits of any insurance required if Landlord determines in good faith that such increases are commercially reasonable. Lessee hereby agrees to comply with such revised requirements upon notice from Landlord.

**Section 12.9 Construction and Contractor's Insurance.** For and during any design or Construction Work with respect to the Premises, Tenant shall maintain, and shall require its contractor(s) to maintain, insurance for design, construction and installation of Improvements, protecting Landlord and Tenant, in amounts reasonably acceptable to Landlord. Such insurance shall include, without limitation, and as applicable, commercial general liability, automobile liability, worker's compensation, employer liability, and builder's risk insurance. The builder's risk insurance shall be equal to the completed value of the project, including all materials and equipment to be used therefor. Without limiting the foregoing, in any contract pertaining to improving or equipping the Premises, Tenant shall require its contractor(s) and subcontractors' to name Landlord, and Landlord's Trustees, officers, agents and employees as additional insureds on their respective liability policies against the risk of claims or demands by third persons against the same. Landlord shall be endorsed as a loss payee on the builder's risk policy. With the exception of builder's risk insurance which shall be at the completed value of the project, the liability policies maintained by Tenant's contractors and/or subcontractors shall be in an amount of not less than One Million and No/100ths Dollars (\$1,000,000.00) combined single limit per occurrence/accident for bodily injury and property damage liability. Workers' compensation coverage shall be provided in accordance with state law. Such insurance required shall be in a form acceptable to Landlord.

**EXHIBIT G**  
**Code of Federal Regulations Title 14 Part 77 Surfaces**

**[see attached]**



**Exhibit G**  
**Code of Federal Regulations Title 14 Part 77 Surfaces**



**EXHIBIT H**  
**Grant Assurances**

**[see attached]**



**FAA  
Airports**

## **ASSURANCES**

### **Airport Sponsors**

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#### **A. General.**

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

#### **B. Duration and Applicability.**

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

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

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

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

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

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

### C. Sponsor Certification.

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

#### 1. General Federal Requirements.

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

#### Federal Legislation

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

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

#### **Executive Orders**

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

#### **Federal Regulations**

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- a. 2 CFR Part 180 - OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).
- b. 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. [OMB Circular A-87 Cost Principles Applicable to Grants and Contracts with State and Local Governments, and OMB Circular A-133 - Audits of States, Local Governments, and Non-Profit Organizations].<sup>4, 5, 6</sup>
- c. 2 CFR Part 1200 – Nonprocurement Suspension and Debarment
- d. 14 CFR Part 13 - Investigative and Enforcement Procedures 14 CFR Part 16 - Rules of Practice For Federally Assisted Airport Enforcement Proceedings.
- e. 14 CFR Part 150 - Airport noise compatibility planning.
- f. 28 CFR Part 35- Discrimination on the Basis of Disability in State and Local Government Services.
- g. 28 CFR § 50.3 - U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964.
- h. 29 CFR Part 1 - Procedures for predetermination of wage rates.<sup>1</sup>
- i. 29 CFR Part 3 - Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States.<sup>1</sup>
- j. 29 CFR Part 5 - Labor standards provisions applicable to contracts covering federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act).<sup>1</sup>
- k. 41 CFR Part 60 - Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements).<sup>1</sup>
- l. 49 CFR Part 18 - Uniform administrative requirements for grants and cooperative agreements to state and local governments.<sup>3</sup>
- m. 49 CFR Part 20 - New restrictions on lobbying.
- n. 49 CFR Part 21 – Nondiscrimination in federally-assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.
- o. 49 CFR Part 23 - Participation by Disadvantage Business Enterprise in Airport Concessions.

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

### **Specific Assurances**

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

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

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- <sup>1</sup> These laws do not apply to airport planning sponsors.
- <sup>2</sup> These laws do not apply to private sponsors.
- <sup>3</sup> 49 CFR Part 18 and 2 CFR Part 200 contain requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon State and Local Governments by this regulation and circular shall also be applicable to private sponsors receiving Federal assistance under Title 49, United States Code.
- <sup>4</sup> On December 26, 2013 at 78 FR 78590, the Office of Management and Budget (OMB) issued the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR Part 200. 2 CFR Part 200 replaces and combines the former Uniform Administrative Requirements for Grants (OMB Circular A-102 and Circular A-110 or 2 CFR Part 215 or Circular) as well as the Cost Principles (Circulars A-21 or 2 CFR part 220; Circular A-87 or 2 CFR part 225; and A-122, 2 CFR part 230). Additionally it replaces Circular A-133 guidance on the Single Annual Audit. In accordance with 2 CFR section 200.110, the standards set forth in Part 200 which affect administration of Federal awards issued by Federal agencies become effective once implemented by Federal agencies or when any future amendment to this Part becomes final. Federal agencies, including the Department of Transportation, must implement the policies and procedures applicable to Federal awards by promulgating a regulation to be effective by December 26, 2014 unless different provisions are required by statute or approved by OMB.

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

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

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

**a. Public Agency Sponsor:**

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

**b. Private Sponsor:**

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

**3. Sponsor Fund Availability.**

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

**4. Good Title.**

a. It, a public agency or the Federal government, holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.

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

**5. Preserving Rights and Powers.**

a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

- b. It will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in this grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of this grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this grant agreement.
- c. For all noise compatibility program projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise compatibility program project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government if there is substantial non-compliance with the terms of the agreement.
- d. For noise compatibility program projects to be carried out on privately owned property, it will enter into an agreement with the owner of that property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement.
- e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.
- f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to insure that the airport will be operated and maintained in accordance Title 49, United States Code, the regulations and the terms, conditions and assurances in this grant agreement and shall insure that such arrangement also requires compliance therewith.
- g. Sponsors of commercial service airports will not permit or enter into any arrangement that results in permission for the owner or tenant of a property used as a residence, or zoned for residential use, to taxi an aircraft between that property and any location on airport. Sponsors of general aviation airports entering into any arrangement that results in permission for the owner of residential real property adjacent to or near the airport must comply with the requirements of Sec. 136 of Public Law 112-95 and the sponsor assurances.

**6. Consistency with Local Plans.**

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

**7. Consideration of Local Interest.**

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

**8. Consultation with Users.**

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

**9. Public Hearings.**

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

**10. Metropolitan Planning Organization.**

In projects involving the location of an airport, an airport runway, or a major runway extension at a medium or large hub airport, the sponsor has made available to and has provided upon request to the metropolitan planning organization in the area in which the airport is located, if any, a copy of the proposed amendment to the airport layout plan to depict the project and a copy of any airport master plan in which the project is described or depicted.

**11. Pavement Preventive Maintenance.**

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

**12. Terminal Development Prerequisites.**

For projects which include terminal development at a public use airport, as defined in Title 49, it has, on the date of submittal of the project grant application, all the safety equipment required for certification of such airport under section 44706 of Title 49, United States Code, and all the security equipment required by rule or regulation, and

has provided for access to the passenger enplaning and deplaning area of such airport to passengers enplaning and deplaning from aircraft other than air carrier aircraft.

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

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

**14. Minimum Wage Rates.**

It shall include, in all contracts in excess of \$2,000 for work on any projects funded under this grant agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

**15. Veteran's Preference.**

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

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

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

specifications, and schedules shall also be subject to approval of the Secretary, and incorporated into this grant agreement.

**17. Construction Inspection and Approval.**

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

**18. Planning Projects.**

In carrying out planning projects:

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

**19. Operation and Maintenance.**

- a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal,

state and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary. In furtherance of this assurance, the sponsor will have in effect arrangements for-

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

**20. Hazard Removal and Mitigation.**

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

**21. Compatible Land Use.**

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

**22. Economic Nondiscrimination.**

- a. It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.
- b. In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or

to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to-

- 1) furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and
  - 2) charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
- c. Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.
  - d. Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.
  - e. Each air carrier using such airport (whether as a tenant, non-tenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications such as tenants or non-tenants and signatory carriers and non-signatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.
  - f. It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees [including, but not limited to maintenance, repair, and fueling] that it may choose to perform.
  - g. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.
  - h. The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.
  - i. The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

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

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

- a. It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and
- b. If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport. It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, United States Code.

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

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

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

- a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. The following exceptions apply to this paragraph:
  - 1) If covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or

operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.

- 2) If the Secretary approves the sale of a privately owned airport to a public sponsor and provides funding for any portion of the public sponsor's acquisition of land, this limitation on the use of all revenues generated by the sale shall not apply to certain proceeds from the sale. This is conditioned on repayment to the Secretary by the private owner of an amount equal to the remaining unamortized portion (amortized over a 20-year period) of any airport improvement grant made to the private owner for any purpose other than land acquisition on or after October 1, 1996, plus an amount equal to the federal share of the current fair market value of any land acquired with an airport improvement grant made to that airport on or after October 1, 1996.
  - 3) Certain revenue derived from or generated by mineral extraction, production, lease, or other means at a general aviation airport (as defined at Section 47102 of title 49 United States Code), if the FAA determines the airport sponsor meets the requirements set forth in Sec. 813 of Public Law 112-95.
- b. As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a manner consistent with Title 49, United States Code and any other applicable provision of law, including any regulation promulgated by the Secretary or Administrator.
  - c. Any civil penalties or other sanctions will be imposed for violation of this assurance in accordance with the provisions of Section 47107 of Title 49, United States Code.

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

It will:

- a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;
- b. for airport development projects, make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request;
- c. for noise compatibility program projects, make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of this grant agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request; and

- d. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:
  - 1) all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and
  - 2) all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

**27. Use by Government Aircraft.**

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

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

**28. Land for Federal Facilities.**

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

**29. Airport Layout Plan.**

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

roads), including all proposed extensions and reductions of existing airport facilities;

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

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

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

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

- 3) Real Property. Where the sponsor receives a grant or other Federal financial assistance in the form of, or for the acquisition of real property or an interest in real property, the assurance will extend to rights to space on, over, or under such property.

c. Duration.

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

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

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

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

e. Required Contract Provisions.

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

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

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

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

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

eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order: (1) reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of title 49 United States Code, (3) reinvestment in an approved airport development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund.

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

**32. Engineering and Design Services.**

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

**33. Foreign Market Restrictions.**

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

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

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

with applicable state policies, standards, and specifications approved by the Secretary.

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

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

**36. Access By Intercity Buses.**

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

**37. Disadvantaged Business Enterprises.**

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

**38. Hangar Construction.**

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

**39. Competitive Access.**

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

**EXHIBIT I**  
**Participation Rights Calculation Example**

[see attached]

**Total Building Investment**

Construction (Hard Costs)	\$ 16,800,000
Soft Costs -20%	4,200,000
	<u>\$ 21,000,000</u>

Less: Leasehold Mortgage \$ (14,000,000) Permanent Financing - 20 Years

Net Developer Investment **7,000,000**

INTEREST RATE

**4.20%**

	Year	NET RENTAL INCOME	DEBT SERVICE	NET CASHFLOW		PRINCIPAL PAYMENTS
2018	0	\$ -	\$ -	\$ (7,000,000)	7/1/2018	
2019	1	1,798,471	(1,048,471)	750,000	7/1/2019	\$ 460,000
2020	2	1,798,471	(1,048,471)	750,000	7/1/2020	\$ 480,000
2021	3	1,798,471	(1,048,471)	750,000	7/1/2021	\$ 500,000
2022	4	1,798,471	(1,048,471)	750,000	7/1/2022	\$ 521,000
2023	5	1,798,471	(1,048,471)	750,000	7/1/2023	\$ 543,000
2024	6	26,250,000	(11,750,000)	14,500,000	7/1/2024	
		<b>\$ 35,242,353</b>	<b>\$ (16,992,353)</b>	<b>\$ 11,250,000</b>		<b>\$ 2,504,000</b>

Internal Rate of Return

**20.00%**

Closing Costs

\$ (11,500,000)

\$ (250,000)

**\$ (11,750,000)**