



ON-AIRPORT RENTAL CAR CONCESSION LEASE

Dated: December 1, 2019

Between

County of Orange

and

Enterprise Rent-A-Car Company of Los Angeles, LLC,
d/b/a Alamo Rent A Car



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THIS ON-AIRPORT RENTAL CAR CONCESSION LEASE ("LEASE") is made and entered into this 1st day of December, 2019, by and between the COUNTY OF ORANGE, a political subdivision of the State of California ("COUNTY"), and Enterprise Rent-A-Car Company of Los Angeles, LLC, d/b/a Alamo Rent A Car, ("TENANT").

RECITALS

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

WHEREAS, COUNTY issued a Request for Proposals for rental car concessions, and as a result of the proposal process, TENANT was selected as one of the firms to provide rental car services on Airport; and

WHEREAS, COUNTY and TENANT mutually desire to enter into a Lease for the operation of a non-exclusive rental car concession on Airport; and

WHEREAS, TENANT acknowledges that this Lease is being entered into under the provisions of CALIFORNIA PUBLIC UTILITIES CODE §§21690.5, *et seq.*, and in particular, §21690.9.

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

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

ARTICLE I - DEFINITIONS

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

SECTION 1.01 AIRPORT

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

SECTION 1.02 AIRPORT CUSTOMER

The term "Airport Customer" for shall mean any person who arrives at the Airport by aircraft and conforms to any one of the following: (1) who enters into a car rental agreement or secures a rental vehicle at the Airport, (2) who is transported by TENANT from the Airport to TENANT's business location for the purpose of entering into a car rental agreement or securing a rental vehicle, (3) who is referred to TENANT's business by another rental car company for the purpose of entering into a car rental agreement or securing a rental vehicle, (4) who makes rental car arrangements at one of TENANT'S offices located within a five (5) mile radius of the Airport, or (5) who enters



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into a motor vehicle rental agreement with TENANT within twenty-four (24) hours of arrival at the Airport.

SECTION 1.03 AIRPORT DIRECTOR

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

SECTION 1.04 ANNUAL PERIOD

“Annual Period” shall mean the 12-month period commencing on December 1 and ending on November 30.

SECTION 1.05 AUDITOR-CONTROLLER

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

SECTION 1.06 BOARD OF SUPERVISORS

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

SECTION 1.07 CAPITAL IMPROVEMENTS

“Capital Improvements” shall mean those improvements required by the “CONSTRUCTION AND/OR ALTERATION BY TENANT” Section of Article VII.

SECTION 1.08 COMMON AREAS

“Common Areas” shall mean all areas and facilities located in parking garage level 0 of the Airport as designated on Exhibit B, attached hereto and incorporated herein by reference.

SECTION 1.09 COUNTY

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

SECTION 1.10 DOT

“DOT” shall mean the Department of Transportation.

SECTION 1.11 FAA

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



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SECTION 1.12 HAZARDOUS SUBSTANCES

“Hazardous Substances” shall mean any hazardous or toxic substance, material or waste that is regulated by any governmental entity, including but not limited to COUNTY acting in its governmental capacity, the State of California or the United States.

SECTION 1.13 LEASED PREMISES

“Leased Premises” shall mean those certain locations in the Airport for use by TENANT as a rental car concession as described in Exhibit A attached hereto and incorporated herein by reference.

SECTION 1.14 OVERFLOW PARKING

“Overflow Parking” shall mean those certain locations off Airport for use by TENANT as overflow parking.

SECTION 1.15 READY CAR PARKING AREA

“Ready Car Parking Area” shall mean those certain locations on Airport for use by TENANT as ready car parking.

SECTION 1.16 RENTAL CAR RADIUS

“Rental Car Radius” shall mean any customer rental car facility of TENANT located within a five-mile radius of the Airport.

SECTION 1.17 TERMINAL

“Terminal” shall mean Terminals A, B and C commercial passenger terminals and concourses at John Wayne Airport, as may be modified at any time during the term of this Lease.

SECTION 1.18 TSA

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

ARTICLE II - TERM OF LEASE

SECTION 2.01 TERM OF LEASE

The term of this Lease shall be ten (10) years commencing on December 1, 2019.



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SECTION 2.02 HOLDING OVER

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

SECTION 2.03 TERMINATION FOR CONVENIENCE

This Lease may be terminated for convenience by COUNTY for any reason, and without cause, upon sixty days (60) written notice.

ARTICLE III - LEASED PREMISES

SECTION 3.01 LEASED PREMISES

COUNTY leases to TENANT those certain locations, hereinafter referred to as “Leased Premises”, as described below:

A. Service Counter. Airport Director shall assign to TENANT an area (“Service Counter”) within the Terminal consisting of “as is” rental car service counter and office space based on the proposal submitted under the Request for Proposal PM 1121-0390-0039. Said area is described on “Exhibit A” and shown on “Exhibit B”, attached hereto and made a part hereof. The Service Counter shall be for terminal office and counter space to operate a rental car concession.

B. Ready Car Parking Area. Airport Director has designated parking areas for rental cars within the Parking Structure Level Zero, (“Ready Car Parking Area”). Said area is described on “Exhibit A” and shown on “Exhibit B”, attached hereto and made a part hereof. Airport Director reserves the right to make minor alterations to the Ready Car Parking Area from time to time as required for the operational needs of the Airport.

- 1) Ready Car Parking Area. At the commencement of this Lease, TENANT will be assigned Ready Car Parking based on the proposal submitted under the Request for Proposal PM 1121-0390-0039.

C. Overflow Parking. Airport Director has designed parking areas for rental cars within the Main Street long-term parking lot (“Overflow Parking”). Said area is described on “Exhibit A” and shown on “Exhibit B”, attached hereto and made a part hereof.

- 1) Overflow Parking. In the event TENANT submitted a proposal under the Request for Proposal PM 1121-0390-0039 that included Overflow Parking, at the commencement of this Lease, or upon written request during the term of the lease, TENANT will be assigned an Overflow Parking area based on the proposal submitted under the Request for Proposal. Twenty-five (25) parking lot access cards will be provided at no cost to TENANT; however, the replacement fee for lost cards is twenty-five dollars (\$25.00) each.



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D. Common Areas. Airport Director has designated Common Areas and facilities located in parking garage level 0 of the Airport as depicted on Exhibit B. The Common Areas have been designated by County for the general non-exclusive use and convenience of the rental car concession tenants, other occupants of the Airport, and airline passengers and other visitors to the Airport such as walkways, elevators, restrooms, pedestrian entrances, driveways, and roadways. Airport Director may, in its sole discretion, establish and enforce Airport Rules and Regulations concerning the Common Areas, temporarily close portions of the Common Areas for maintenance purposes, and make changes to the Common Areas including changes in the location of driveways, entrances, exits, and the direction of the flow of traffic.

E. Additional Ready Car Parking Area. In the event Additional Ready Car Parking Area is available and is so designated by the Airport Director, an Additional Ready Car Parking Area will be offered to each rental car company.

F. Reduction and/or Relocation of Ready Car Parking Area. Due to the Airport's limited property area and changing needs, which may include construction, COUNTY reserves the right to reduce the Ready Car parking Area, and/or relocate the ready car parking, upon thirty (30) days' written notice to TENANT from Airport Director. TENANT shall not be allowed any reduction in its Minimum Annual Guarantee ("MAG") rent paid to COUNTY as a result of any requirement to relocate ready car parking.

TENANT accepts Leased Premises in an "as is" and "where is" condition, all faults, and acknowledges that such Leased Premises are in good and satisfactory condition for the use intended.

SECTION 3.02 DELIVERY OF EXISTING LOCATIONS

COUNTY's obligation to deliver the existing rental car concession locations to TENANT is subject to, and conditioned upon, termination of the agreement with and surrender by the current concessionaire.

SECTION 3.03 NATURE OF LEASE

TENANT acknowledges and agrees:

- A. That if this Lease for the operation of an On-Airport Rental Car Concession at John Wayne Airport is awarded to TENANT, it will operate as the Alamo Rent A Car brand. This brand will be assigned one Service Counter, one section of the Ready Car Parking Area in the Parking Structure Level 0, and if requested by TENANT, one section in the Overflow Parking for overflow parking. TENANT shall not add any additional brands nor shall TENANT substitute brands without prior written consent of Airport Director. The approval or denial of the Airport Director to an additional or substitute brands shall be at his or her sole discretion.



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- B. That this Lease shall not be construed to be exclusive, and COUNTY shall have the right to lease to additional rental car brands including the use of Service Counter, Ready Car Parking Area and the Overflow Parking.
- C. That COUNTY shall also have the right to enter into agreements with companies providing car rental services from locations off-airport as well as with Airport fixed base operators (“FBOs”) to conduct rental car services from their leaseholds. Any such agreements with companies operating from locations off-airport shall not include the right to staff Service Counters. TENANT may enter into agreements with Airport FBOs to conduct rental car services from the FBO leaseholds. TENANT shall provide Airport with a copy of any and all such agreements.
- D. That COUNTY retains a fee ownership for federal income tax purposes in and to the Leased Premises, as well as all other ownership burdens and benefits connected with such fee ownership.
- E. That TENANT has not been granted any direct or indirect right or option to purchase the Leased Premises from COUNTY at any time during or after the termination of this Lease.

**SECTION 3.04 INSTALLATION OR STORAGE OF EQUIPMENT OUTSIDE THE
LEASED PREMISES**

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

SECTION 3.05 READY CAR PARKING AREA REALLOCATION

In the event the market share for any one on-airport rental car concession has changed by 15% or more at the beginning of the fourth annual period compared to prior years, Airport Director or designee may establish a Ready Car Parking Area reallocation plan (“Reallocation Plan”) with which TENANT and the other rental car companies must comply. All costs for the Reallocation Plan will be paid for by the rental car companies. The Airport Director may stipulate a different Annual Period should it be appropriate.

ARTICLE IV - RENT

SECTION 4.01 RENT

TENANT agrees to pay each of the rent components including Annual Rent, Ready Car Parking Area Rent, Overflow Parking Rent and Common Area Rent as follows:

- A. Annual Rent (“Annual Rent”). TENANT shall pay to COUNTY for each annual period the greater of either the Minimum Annual Guarantee or the Percentage Rent, as defined below, in equal monthly installments, in arrears, on or before the twentieth day of each month.



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- 1) Minimum Annual Guarantee (“MAG”). The MAG for the Leased Premises shall be payable accordance with the following schedule:

Annual Period: December 1, 2019 to November 30, 2020
 Each succeeding year December 1 to November 30.

MAG: \$1,392,128.00

On December 1, 2020 and on each December 1 thereafter, the MAG shall be adjusted in accordance with the provisions of Section 4.02 (REVISION OF RENT).

- 2) Percentage Rent (“Percentage Rent”). Percentage Rent shall be ten percent (10%) of gross receipts from business operations conducted on or from the Airport, on or from an FBO leasehold and on or from any office located within the Rental Car Radius in accordance with Section 4.03 in this Lease entitled “DEFINITION OF GROSS RECEIPTS”.

Should this Lease be terminated during an annual period, or should the first Annual Period be other than a full calendar year, the applicable MAG, Ready Car Parking Area Rent, Common Area Rent, and Overflow Parking Rent shall be prorated on the basis of a three hundred sixty (360) day year.

- B. Ready Car Parking Area Rent. TENANT shall pay to COUNTY on the first of each month forty-eight cents (\$0.48) per month per square foot of Ready Car Parking Area assigned to TENANT in accordance with the provisions of Section 1.10 (LEASED PREMISES.)
- C. Overflow Parking Rent. In the event TENANT elected to utilize Overflow Parking, TENANT shall pay to COUNTY on the first of each month forty-five cents (\$0.45) per month per square foot of Overflow Parking Rent assigned to TENANT in accordance with the provisions of Section 1.10 (LEASED PREMISES.)
- D. Common Area Rent. TENANT shall pay to County on the first of each month forty-eight cents (\$0.48) per month per square foot for its use of the portion of Common Area assigned to tenant in accordance of the provisions of Section 1.10 (LEASED PREMISES).
- E. Payment of Rent. Rent payments shall be made in accordance with the provisions of Section 4.04 (PAYMENT PROCEDURE).

SECTION 4.02 REVISION OF RENT

- A. On December 1, 2020, and annually thereafter, Ready Car Parking Area Rent, Common Area Rent and Overflow Parking Rent, if applicable, shall be automatically adjusted in proportion to changes in the Consumer Price Index for Los Angeles-Long Beach-Anaheim (All Urban Consumers - All Items) promulgated by the Bureau of Labor Statistics of the U.S. Department of Labor. This adjustment shall be calculated by means of the following formula:



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$$X = A \times B/C$$

Where:

X = Adjusted Ready Car Parking Area Rent, Common Area Rent, or Overflow Parking Rent

A = Prevailing Ready Car Parking Area Rent, Common Area Rent or Overflow Parking Rent

B = Monthly index for the fourth month prior to the month in which each rent adjustment is to become effective

C = Monthly index for the month in which this Lease is signed by COUNTY and thereafter on each successive anniversary of the date the Lease was signed.

In the event that the CPI ceases to use 1982-84 = 100 as the basis of calculation, or if, in COUNTY's sole judgment, a substantial change is made in the method used by the federal government to determine the CPI or the items used to calculate the CPI, then the CPI shall be converted to the figure that would have been calculated at (or as close to such figure as shall be practical) had the manner of calculating the CPI in effect at the date of this Lease not been altered.

In the event that the Consumer Price Index is not issued or published for the period for which such MAG Rent, Ready Car Parking Area Rent, Overflow Parking Area Rent is to be adjusted and computed hereunder, or in the event that the Bureau of Labor Statistics of the United States Department of Labor should cease to publish said index figures, then any similar index published by any other branch or department of the United States Government selected by COUNTY shall be used and if none is so published, then another index generally recognized as authoritative shall be substituted by COUNTY.

Notwithstanding the foregoing, in no event shall the Ready Car Parking Area Rent, Common Area Rent, or Overflow Parking Rent be reduced by any such adjustment.

B. On December 1, 2020, and annually thereafter, the MAG shall be automatically adjusted to the greater of the following:

1. Eighty-five percent (85%) of the annual rent paid by TENANT to COUNTY for the preceding annual period, or
2. The MAG adjusted in proportion to changes in the Consumer Price Index for Los Angeles - Anaheim - Riverside (All Urban Consumers - All Items) promulgated by the Bureau of Labor Statistics of the U.S. Department of Labor. This adjustment shall be calculated by means of the following formula:

$$X = \frac{A}{B} \times \text{MAG as determined in 1) above}$$

Where:

X = Adjusted minimum annual guarantee

A = Monthly index for the fourth month prior to the month in which each rent adjustment is to become effective.



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B = Monthly index for the month in which this Lease is signed by COUNTY.

Notwithstanding the foregoing, in no event shall the Annual Rent be reduced by reason of any such adjustment or be reduced to an amount below the original MAG.

SECTION 4.03 DEFINITION OF GROSS RECEIPTS

As used in this Section, the term “TENANT” shall include TENANT, its agents, subtenants, licensees, or any person or entity acting under contract or agreement with TENANT and employees at off-site locations renting cars to Airport customers located within the Rental Car Radius or from FBO leaseholds. The term “gross receipts” shall include any and all charges invoiced or collected by TENANT, or monetary or non-monetary consideration received by TENANT, resulting from any and all services provided by TENANT or items sold, leased or rented by TENANT at, on, or about the Airport, unless expressly excluded, including but not limited to the following:

- A. TENANT understands that COUNTY does not support the practice of transferring TENANT’s obligations for payment of rent to its customers. If such additional charges or fees are charged to customers, such charges shall be included in gross receipts. The sale price of all goods, wares, merchandise, and products sold on or from the Leased Premises by TENANT, whether for cash or credit, whether payment is actually made or not, whether delivery of the items sold is made from the Leased Premises and whether title to such items is transferred;
- B. The charges made by TENANT for the sale or rendition on or from the Leased Premises of services of any nature or kind whatsoever, whether for cash or credit, whether payment is actually made or not and whether the services are actually performed or not;
- C. All rental, admission, and other fees of any nature or kind charged by TENANT, including, but not limited to, the following:
 - 1) Time and Mileage or Rental Charges.
 - 2) Fees for coverage, protection, or liability waiver offered to the customer, including but not limited to:
 - A. Any waiver of liability to the customer for damage to the rental car, e.g., Collision Damage Waiver (CDW), Loss Damage Waiver (LDW)
 - B. Any coverage for injury or loss to the customer, e.g., Personal Accident Insurance (PAI), Personal Effects Coverage (PEC) or Cargo, life insurance, uninsured/underinsured motorist coverage
 - C. Any insurance for liability of the customer to third-parties, e.g., Supplemental Liability Insurance
 - D. Any coverage for a disabled rental car, e.g., Roadside Assistance
 - E. Any other insurance, coverage, protection, or liability waiver offered now or in the future
 - 3) Fees for rental of equipment or use of services, including but not limited to:
 - A. Child safety seats including infant seats, toddler seats, booster seats

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- B. Wireless phones (including revenues from use of)
 - C. Recreational gear and car racks for recreational gear
 - D. Tire chains
 - E. Portable personal computers and portable facsimile machines
 - F. Global Positioning Systems
 - G. Internet access fees
 - H. Satellite radio
 - I. Pet Fees
 - J. Other equipment offered now or in the future
- 4) Additional fees charged to Customers, including but not limited to:
- A. Additional and underage driver fees
 - B. Upgrade and exchange fees
 - C. Fueling fees of any kind including fuel fees paid for at time of rental inception or to refuel vehicle after drop-off
 - D. Cleaning fees
 - E. Inter-city charges (drop fees)
 - F. Transportation fees
 - G. Early pickup and late return fees
 - H. Parking fees, including fees for valet parking
 - I. Tire and battery recovery fees
 - J. Concession recovery fees
 - K. Vehicle license recovery fees
 - L. Frequent flyer recovery fees
 - M. Greenhouse gas emission or carbon offsets
 - N. Fees for miscellaneous services such as service calls
 - O. Referral Fees
 - P. Other fees charged now or in the future
- D. Any and all charges specified in Section 4.03, Subsection C charged to any passenger arriving by commercial aircraft into the Airport who is transported by TENANT, within 24-hours of the customer's arrival, to an off-site car rental facility for any reason. TENANT shall include in Gross Receipts any and all sales resulting from diverted passengers. The intentional diversion, through direct or indirect means, of rental car revenues includable in Gross Receipts, as defined in Section 4.03 of this Lease, is prohibited. Renting cars off airport to a customer who arrived at the Airport and not including the resulting rental car revenue in the Gross Receipts defined under the Lease is presumed to be intentional diversion. The taking of a reservation, advising or suggesting to a potential customer arriving at the Airport that the customer rent a car at a location other than the Airport regardless of the reason and not including the rental car revenue resulting from such transaction in Gross Receipts is presumed to be intentional diversion. Should TENANT transport any arriving airport passenger to any off-site rental car facility and fail to include the resultant car rental sale in Gross Receipts, TENANT shall be assessed \$500 per customer. In addition to all other remedies available by law, COUNTY shall have the right to immediately terminate this Lease upon a determination by JWA that the TENANT has intentionally diverted revenues as described herein. TENANT records shall include a means to identify any diverted passenger.



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- E. Deductions from gross receipts are only permitted for the following:
- 1) All federal, state and local taxes separately identified and collected by TENANT from customers for services provided under this Lease.
 - 2) Any sums received by the TENANT as compensation for damage to rental cars or other property of the TENANT or for loss, conversion, or abandonment of such rental cars.
 - 3) Amount of discounts applied to time and mileage charges, where no compensation is received from any source by TENANT or TENANT's parent company, provided that such discounts are separately identifiable on the original rental agreement.
 - 4) Sales of rental cars except for the rental fees incurred prior to sale whether or not such fees are waived in the sales transaction.
 - 5) Any sums received from a customer for reimbursement of towing fees, impound fees, parking tickets and toll road fees.
 - 6) The Tourism Commission Assessment (TCA) separately identified and collected by TENANT from customers for services provided under this Lease.
 - 7) Refunds for goods returned and deposits upon return.
- F. The following items shall not be deducted from gross receipts:
- 1) Bad debt losses.
 - 2) Allowances, deductions, rebates, kickbacks, hidden credits, discounts or other credits.

SECTION 4.04 PAYMENT PROCEDURE

- A. Gross Receipts Report. On or before the twentieth day of each month (the "due date"), TENANT shall deliver to Auditor-Controller an accurate statement of all applicable gross receipts, transactions and, transaction days, during the preceding calendar month for that portion of the annual period which ends with and includes the last day of the preceding calendar month. The statement shall be signed by TENANT or its responsible agent in a form prescribed by Auditor-Controller. Each statement shall indicate:
- 1) One-twelfth of the MAG payment;
 - 2) The total gross receipts as defined in Section 4.03 for said portion of the annual period, itemized as to each of the business categories. A breakdown of the gross receipts of each business conducted on the Leased Premises must be attached to



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each statement where a reported business category is comprised of more than one business operation;

- 3) The related itemized amounts of percentage rent computed as herein provided and the total thereof;
- 4) The total rent previously paid by TENANT for the annual period within which the preceding month falls; and
- 5) The rent due for the preceding month.

Concurrently with the rendering of each monthly statement, TENANT shall pay to COUNTY the greater of the following two amounts:

- 6) The total percentage rent computed for that portion of the annual period ending with and including the last day of the preceding month [Item 3), above] less total rents previously paid for the annual period [Item 4), above], or
- 7) One-twelfth of the MAG, multiplied by the number of months from the beginning of the annual period to and including the preceding month, less total rents previously paid for the annual period [Item 4), above].

B. Payment of Ready Car Parking Area Rent, Common Area Rent and Overflow Parking Rent. TENANT shall submit on or before the first day of each month, payable monthly in advance, payment of Ready Car Parking Area Rent, Common Area Rent and Overflow Parking Rent as provided in Section 4.01 (RENT).

C. Place of Payment and Filing. Payments and statements required by the Section in this Lease entitled "RENT" shall be delivered to the County of Orange, Office of the Auditor-Controller, John Wayne Airport Accounting Services, 3160 Airway Avenue, Costa Mesa, California 92626. The designated place of payment and filing may be changed at any time by COUNTY upon ten (10) days' written notice to TENANT. Payments may be made by check payable to the County of Orange. TENANT assumes all risk of loss if payments are made by mail.

D. Form of Payment. All sums due under this Lease shall be paid in lawful money of the United States of America without offset or deduction or prior notice or demand. No payment by TENANT or receipt by COUNTY of a lesser amount than the payment due shall be deemed to be other than on account of the payment due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and COUNTY shall accept such check or payment without prejudice to COUNTY's right to recover the balance of the amount due or pursue any other remedy in this Lease. All payments must be remitted by Automated Clearing House (ACH) or similar form of direct deposit to the County-Airport's designated bank account, or any future mode prescribed by the COUNTY. Any fees assessed to the COUNTY's bank account due to the use of other form of payment (e.g. wire transfer) not prescribed or



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approved by the COUNTY, shall be passed through to the TENANT plus \$25 processing fee.

- E. Penalty for NSF Check. In the event a check submitted by TENANT is returned for non-sufficient funds (“NSF”), TENANT agrees to pay COUNTY a penalty in the amount of twenty-five dollars (\$25) for the first check, and thirty-five dollars (\$35) for each subsequent check.

SECTION 4.05 CHARGE FOR LATE PAYMENT

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

Accordingly, if any payment of rent as specified in Section 4.01 (RENT) or of any other sum due COUNTY is not received by the due date, a late charge of five percent (5%) of the payment due and unpaid, plus one hundred dollars (\$100) shall be added to the payment. The total sum shall become immediately due and payable to COUNTY. An additional charge of five percent (5%) of said payment, excluding late charges, shall be added for each additional month that said payment remains unpaid.

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

SECTION 4.06 RECORDS AND ACCOUNTS

- A. Records Defined. “TENANT’s Records” shall include any and all information, materials, and data of every kind and character in any format, including, but not limited to records, accounts, financial transactions, books, papers, documents, recordings, notes, receipts, vouchers, memoranda, sales invoices, accounts receivable records, commission payment records, tax remittance records, expenditures for improvements or refurbishments, any and all other agreements, sources of information and matters that may, at COUNTY’s sole discretion, have any bearing on or pertain to any matters, rights, duties, or obligations under or covered by the Lease, and any other TENANT Records which may have a bearing on matters of interest to COUNTY in connection with TENANT’s dealings with COUNTY to the extent necessary to adequately permit evaluation and verification of any or all of the following:
- 1) Accuracy of amounts owed to COUNTY resulting from TENANT’s operation of the Leased Premises.
 - 2) Compliance with any requirement in the Lease.



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TENANT's Records must be supported by source documents such as sales slips, cash register tapes, purchase invoices, or other pertinent documents. Computer generated, not pre-numbered rental agreements, may be utilized provided the TENANT can demonstrate there are sufficient internal controls in place to ensure the integrity of the procedure for generating rental contracts cannot be compromised to the satisfaction of COUNTY's Auditor-Controller. TENANT must have the ability to generate daily and monthly detailed and summary sales reports on activities at John Wayne Airport and produce same if requested by Auditor-Controller.

Except as otherwise provided herein, all retail sales and charges shall be recorded by means of cash registers or other comparable devices that display to the customer the amount of the transaction and automatically issue a receipt. The registers shall be equipped with devices which lock in sales totals and other transaction records, or with counters which are not resettable and which record transaction numbers and sales details. Totals registered shall be read and recorded by TENANT at the beginning and end of each business day.

TENANT shall, at all times during the term of this Lease, keep or cause to be kept true and complete books, records, and accounts of all financial transactions in the operation of all business activities, of whatever nature, conducted in pursuance of the rights granted herein. The records must be supported by source documents such as sales slips, cash register tapes, purchase invoices, or other pertinent documents.

If TENANT shall fail to provide Airport by the thirtieth (30th) day after a calendar month with the Receipts Report complying with the requirements of this Section 10.2, then AIRPORT may invoice TENANT for estimated Percentage Fees for the prior calendar month in an amount equal to the monthly Percentage Fees that would be payable based on 1.15 times TENANT's actual Gross Receipts from or at the Airport for the last month reported by TENANT to AIRPORT, or if TENANT has filed no such report with AIRPORT, then as estimated in good faith by AIRPORT. TENANT shall, within five (5) days after its receipt of such invoice, pay the invoiced amount to AIRPORT; provided, however, that when TENANT determines its actual Gross Receipts for the preceding month, TENANT may tender the actual Percentage Fees payment to AIRPORT, but only if it is accompanied by the Receipts Report for such prior calendar month. The acceptance of such estimated Percentage Fees by AIRPORT, and the acceptance of any delinquent Receipts Report by AIRPORT, shall be without prejudice to any of AIRPORT's rights under this Lease.

- B. The Accounting year. The accounting year shall be twelve full calendar months. The accounting year may be established by TENANT provided TENANT notifies Auditor-Controller in writing of the accounting year to be used. Said accounting year shall be deemed to be approved by Auditor-Controller unless Auditor-Controller has objected to TENANT's selection in writing within sixty (60) days of TENANT's writing notification.

In the event TENANT fails to establish an accounting year of its choice, regardless of the cause, the accounting year shall be synonymous with the twelve-month period contained in the first one-year term of the Lease.



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Any portion of a year that is not reconciled, should the accounting year and the anniversary year of the Lease commencement not be the same, shall be accounted for as if it were a complete accounting year.

Once an accounting year is established, it shall be continued through the term of the Lease unless Auditor-Controller specifically approves in writing a different accounting year. Auditor-Controller shall only approve a change in accounting years in the event of undue hardship being placed on either the TENANT or COUNTY and not because of mere convenience or inconvenience

- C. **CPA-Audited Statement of Gross Receipts.** Within ninety (90) days after the end of each accounting year, TENANT at its own expense shall submit to Auditor-Controller an audited statement of gross receipts for all Airport operations. This statement shall include a breakdown schedule of total gross receipts for the accounting year by month and sales as classified according to the categories of business established for percentage rental and listed in Section 4.01 (RENT) and for any other business conducted on or from the Leased Premises. This statement must be prepared by an independent Certified Public Accountant (CPA) or CPA firm holding a current and valid license and completion of attest experience ("A") with the State Board of Accountancy. The audit must be performed in accordance with current Generally Accepted Auditing Standards (GAAS) authorized by the American Institute of Certified Public Accountants (AICPA).

A reviewed statement of gross receipts may be requested by TENANT instead of an audited statement of gross receipts if there is undue hardship to obtain an audited statement. TENANT must request and obtain written approval for a reviewed statement from the Auditor-Controller prior to the start of the financial statement engagement for the year to be audited. If a reviewed statement of gross receipts is approved by the Auditor-Controller, COUNTY reserves the right to require an audited statement of gross receipts for future years.

TENANT shall provide COUNTY with copies of any Certified Public Accountant management letters and audited or reviewed financial statements prepared in conjunction with their audit of TENANT's operations from the Leased Premises. Copies of management letters and/or financial statements shall be provided directly to COUNTY by the CPA at the same time TENANT's copy is provided to TENANT.

TENANT acknowledges that any and all of the "Financial Statements" submitted to COUNTY pursuant to this Lease become Public Records and are subject to public inspection pursuant to California Government Code Sections 6250 *et seq.* .

- D. **Failure to Submit Financial Statements.** In addition to any other remedies available to COUNTY at law or in equity or under this Lease, in the event that TENANT fails to submit any financial statements by the due date listed in this Section, Subsection "D. **Financial Statements**". Airport Director may require TENANT to submit the greater of:
- 1) \$5,000 fine; or



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- 2) Any and all costs incurred by COUNTY for the Certified Public Accountant hired by the COUNTY to prepare the required financial statements, including an administrative fee equal to fifteen percent (15%) of those costs.
- E. Audits. All TENANT's books of account and records and supporting source documents related to this Lease or to business operations conducted within or from the Airport, whether from on-site or off-site locations, shall be kept and made available to COUNTY at one location within the limits of the County of Orange or shall be made available at offices in the county within ten (10) business days after notice to provide said records and source documents. COUNTY shall, through its duly authorized agents or representatives, have the right to examine and audit said books of account and records and supporting source documents at any and all reasonable times for the purpose of determining the accuracy thereof, and of the monthly statements of transactions and the dollar amount of said transactions. The full cost of said audit shall be borne by COUNTY.

Auditor-Controller, upon request of TENANT and in Auditor-Controller's sole discretion, may authorize the above-referenced books and records and supporting source documents to be kept in a single location outside the geographical limits of Orange County provided TENANT shall agree to pay all expenses including but not limited to transportation, food, and lodging necessary for Auditor-Controller to send a representative to audit said books and records. Said right shall not be exercised by Auditor-Controller more than once each accounting year

Upon the request of Auditor-Controller, TENANT shall promptly provide, at TENANT's expense, necessary data to enable COUNTY to fully comply with any and every requirement of the State of California or the United States of America for information or reports relating to this Lease and to TENANT's use of the Airport. Such data shall include, if required, a detailed breakdown of TENANT's receipts and expenses.

The full cost of said audit, as determined by Auditor-Controller, shall be borne by TENANT if either or both of the following conditions exist:

- 1) The audit reveals an underpayment of more than one percent (1%) between the rent due as reported and paid by TENANT in accordance with this Lease and the rent due as determined by said audit;
- 2) TENANT has failed to maintain true and complete books, records, accounts and supporting source documents in accordance with this Section, Subsection "A. Records Defined" above. The adequacy of records shall be determined at Auditor-Controller's reasonable sole discretion.

Otherwise, COUNTY shall bear the cost of said audit, excluding the aforementioned expenses related to audit of documents kept outside the limits of the County of Orange.

- F. Failure to Maintain Adequate Records. In addition to any other remedies available to COUNTY at law or in equity or under this Lease, in the event that TENANT fails to maintain and keep books, records and accounts of gross receipts from business operations

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conducted on or from the Leased Premises and/or source documents relating thereto, or to make the same available to Auditor-Controller for examination and audit, or to record sales and/or to maintain registers to record sales, or to provide financial statements and other information to Auditor-Controller regarding gross sales as required by this Lease, Auditor-Controller, at Auditor-Controller's option, may:

- 1) Perform such examinations, audits and/or investigations itself or through agents or employees as COUNTY and/or its auditors may deem appropriate to confirm the amount of percentage rents payable by TENANT under this Lease and any and all costs and/or expenses incurred by COUNTY in connection therewith shall be promptly reimbursed to COUNTY by TENANT upon demand.
- 2) Provide accounting services and/or a system for recording retail sales and charges, including without limitation, cash registers, for use by TENANT in business transactions upon or from the Leased Premises, and, at COUNTY's option, maintain personnel on the Leased Premises to observe and/or record such sales during TENANT's business hours, or from time to time, all at TENANT's sole cost and expense and, in such event, TENANT shall promptly reimburse COUNTY for any and all costs incurred by COUNTY in connection therewith; and/or
- 3) Require that TENANT pay percentage rents based on COUNTY's best good faith estimate of TENANT's gross receipts from business operations conducted on or from the Leased Premises and Airport and any such determination made by COUNTY shall be conclusive and binding upon TENANT.

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

- G. Review Period. COUNTY or its designee may conduct such audits or inspections throughout the term of this Lease and for a period of three (3) years after final payment or longer if permitted by law.
- H. Methodology. COUNTY or designee may, without limitation by TENANT, conduct verifications including, but not limited to, inspection of TENANT's Records, observation of TENANT's employees in or about the Leased Premises, and verification of information and amounts through interview and/or written communications with TENANT's employees or sub-contractors.



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- I. Record Retention. All of TENANT's Records shall be retained by TENANT for a period of the balance of the fiscal year in which the Record was created, recorded, or otherwise prepared, plus five (5) years regardless of when this Lease expires or is terminated.

SECTION 4.07 PROVISION AGAINST SETOFFS

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

SECTION 4.08 SECURITY DEPOSIT

TENANT, prior to the commencement of operations, shall deposit with COUNTY a security deposit in the sum of Four Hundred Sixty Four Thousand Forty Three Dollars (\$464,043.00), subject to the provisions for adjustment as provided hereinafter.

Concurrently with each revision of the rents pursuant to Section 4.01 (RENT), the security deposit to be provided by TENANT shall be adjusted to approximately four (4) times the estimated monthly rent as determined by Airport Director to guarantee the faithful performance by TENANT of its obligations under this Lease and the payment of all rent due hereunder.

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

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

Regardless of the form in which TENANT elects to make said security deposit, all or any portion of the principal sum shall be available unconditionally to the COUNTY for correcting any default or breach of this Lease by TENANT, its successors or assigns, or for payment of expenses incurred



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by COUNTY as a result of the failure of TENANT, its successors or assigns, to faithfully perform all terms, covenants, and conditions of this Lease.

Should TENANT elect to provide either an Instrument of Credit or a Faithful Performance Bond to fulfill the security deposit requirements of this Lease, said instrument or bond shall have the effect of releasing depository or creditor therein from liability on account of the payment of any or all of the principal sum to COUNTY, or order upon demand by Airport Director.

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

TENANT shall be obligated to maintain the security deposit in effect for one hundred twenty days beyond expiration date of the Lease.

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

SECTION 4.09 MARKETING FUND

County has established a marketing fund for the Airport to conduct sales promotions, Airport-wide advertising, and related activities intended to promote the Airport and its tenants. Commencing January 1 of each calendar year, TENANT shall be required to make an annual marketing fund payment in the amount of ten thousand dollars (\$10,000.00). TENANT agrees to pay this amount on or before January 1 of each year. All monies received by the Airport for the marketing fund shall be used solely for the purpose of Airport tenants' promotions and directly related expenses. In the event any year of the LEASE contains less than 12 months, TENANT shall pay a pro-rata portion of the annual amount corresponding to the number of months remaining in that calendar year.

For example, if the LEASE commences on November 1, TENANT shall pay the monthly pro-rata portion (\$833.33 per month) of the annual marketing fund amount for November and December (totaling \$1,666.66). Then, commencing on January 1, TENANT shall make the full annual marketing fund payment of \$10,000.00. Should the LEASE expire on September 15, TENANT shall pay a pro-rata portion of the annual amount for the months of January through September.

**ARTICLE V - USE, OPERATION, MAINTENANCE AND CONDITION OF LEASED
PREMISES**

SECTION 5.01 USE

A. Required Services and Uses. TENANT shall have a nonexclusive right to operate and manage a rental car concession on Airport. For that purpose, and under the terms and conditions of this Lease, TENANT agrees to install, operate and maintain a Service



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Counter in the terminal, Ready Car Parking Area as assigned by the Airport, and a rental car kiosk in the Parking Structure Level Zero Ready Car Parking Area as may be approved by Airport Director.

- B. Optional Services and Uses. Subject to the prior written approval of Airport Director, TENANT may be granted the option to provide those additional services and uses that are ancillary to and compatible with the required services and uses herein.
- C. Prohibited Use. The above listed services and uses, both required and optional, shall be the only services and uses permitted. TENANT agrees not to use the Leased Premises for any other purpose nor to engage in or permit any other activity within or from the Leased Premises. TENANT agrees not to refer customers to any rental car company not licensed by the Airport. TENANT shall not pick up its guests, customers, or employees from the curbside areas of the Airport terminal except with the express written permission of the Airport Director.
- D. In the event of a dispute between TENANT and any other Airport tenant as to the services to be offered, TENANT shall meet and confer with Airport Director. Airport Director, in Airport Director's sole discretion, shall determine the services to be offered and TENANT shall be bound by said determination.

In the event TENANT breaches this Lease by using or permitting the Leased Premises to be used in any manner other than as expressly permitted under this Lease, TENANT shall pay COUNTY a sum equal to 100% of the "gross receipts", as defined in the Section 4.03 (DEFINITION OF GROSS RECEIPTS) for any service or use that is not permitted by this Lease, or otherwise authorized in this Lease. Said payment is subject to the "due date" provided in the Section 4.04 (PAYMENT PROCEDURE) and the "charge for late payment" provided in the Section 4.05 (CHARGE FOR LATE PAYMENT). The existence of the 100% charge in this Section, or the payment or receipt of money under this Section, does not constitute an authorization for a particular service or use and does not constitute a waiver of COUNTY's right to require TENANT to terminate such service or use. The parties agree that COUNTY's actual damages, in the event of such a breach by TENANT would be extremely difficult or impossible to determine; therefore, an amount equal to the amount of 100% of such gross receipts has been agreed upon as the parties' best estimate of COUNTY's actual damages.

TENANT agrees not to conduct or permit to be conducted any public or private nuisance (as defined in Civil Code section 3479) in, on or from the Leased Premises, or to commit or permit to be committed any waste in, on or from the Leased Premises.

SECTION 5.02 RULES AND REGULATIONS

COUNTY may adopt and enforce Rules and Regulations which TENANT agrees to observe and obey, with respect to the use of the Airport and its appurtenances, facilities, improvements, equipment and services; provided that such rules and regulations shall not be inconsistent with safety and with rules, regulations and orders of the FAA and TSA with respect to all operations of the Airport.



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

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

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

SECTION 5.03 OPERATIONAL REQUIREMENTS

TENANT shall operate an On-Airport Rental Car Concession in a competent manner in accordance with the terms and conditions of this Lease, which includes the following:

A. Operation

- 1) Quality and Service Standards. Service shall be safe, prompt, courteous, and efficient. The Airport Director or authorized representative shall have the right to make reasonable objections to the character of the service rendered to the public and the appearance and condition of the premises. TENANT shall take full responsibility for ensuring that the employees of the TENANT and TENANT's customers obey all posted speed limits, stop signs, stop lights, and park only in the area assigned to TENANT while on Airport property. TENANT agrees to promptly remedy any such objectionable practice. Failure to comply with the foregoing shall constitute a material breach of this Lease. Should a disagreement arise, Airport Director's decision shall be final and conclusive, and TENANT agrees to abide by such decision. Airport Director at his or her sole discretion shall have the right to require TENANT to terminate or suspend an employee of the TENANT that violates any aspect of the Quality and Service Standards defined in this section.
- 2) Customer Service Program. TENANT shall provide a Customer Service Program for Airport review and approval. TENANT shall designate a customer service representative responsible for investigating and responding to complaints. Within



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48 hours of receipt of a complaint, TENANT shall begin an investigation and contact the customer if contact information is provided. TENANT shall follow up with a written response to the customer regarding the action taken including, if appropriate, a refund or other restitution. TENANT shall provide a monthly-itemized report to Airport, prepared by an independent third-party reporting service, which includes follow up information and resolutions for each complaint. For each customer complaint verified by TENANT and not resolved by TENANT to the satisfaction of the COUNTY concerning any of the standards and requirements outlined in this LEASE, liquidated damages may be assessed to the TENANT in the amount of one hundred dollars (\$100) for each complaint. In the event one of TENANT's employees receives three (3) complaints from Airport customers on his or her performance within a 6-month period, TENANT shall remove the employee from service at the Airport. Airport Director, in his sole discretion, reserves the right to demand that TENANT remove an employee on a first offense when warranted, including but not limited to circumstances such as the use of inappropriate language, inappropriate behavior and displays of violent or threatening behavior.

- 3) Credit Card Sales. TENANT shall provide "credit card swipe" or an up-to-date system acceptable to Airport Director to expedite credit card transactions.
- 4) Quality of rental vehicles. TENANT shall at all times maintain, at its own cost and expense, all its rental vehicles in good operating order and free from known mechanical defects; said vehicles shall be kept in a clean, neat, attractive condition, inside and out. TENANT shall at no time use vehicles whose year model is more than two years older than the current year model. The rental of antique or classic vehicles shall require the prior written approval of the Airport Director.
- 5) TENANT agrees that its automobile rental services shall be available from the Leased Premises at the Airport each day commencing at least one (1) hour before the first passenger flight is scheduled to depart the Airport and ending at least one (1) hour after the last scheduled passenger flight has arrived at the Airport, and during such additional hours as the Airport Director may determine are necessary to service the airport passengers.
- 6) Anti-Idling Policy. Within six months of Lease execution, TENANT must develop, implement and submit to the Airport Director for approval, a fleet-wide anti-idling policy. At a minimum, the anti-idling policy shall include the requirement that vehicle engines shall be turned off when vehicles are not occupied, and that occupied vehicles be turned off after no more than a five-minute idling period. TENANT's policy shall also include all third party vehicles that enter Airport property at the direction of TENANT.
- 7) Security Requirements. Those employees requiring access to secure areas of the Airport shall comply with all Airport and FAA/TSA security requirements for access.

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8) Utilities.

A. Services Provided By COUNTY:

- 1) Within the common areas of the Terminal, COUNTY shall provide janitorial services to the extent that such services are typically provided to County facilities.
- 2) COUNTY shall provide trash pickup service including containers at a designated area outside the Terminal for disposal of compacted, bagged trash.
- 3) COUNTY shall provide utilities to the Terminal, which include water, sewer, gas, electricity and telephone. Extension of those utility lines to TENANT's Leased Premises and the cost thereof shall be the responsibility of TENANT.

B. Services Provided by Tenant:

- 1) TENANT shall be responsible for and pay, prior to the delinquency date, all charges for separately metered utilities supplied to the Leased Premises.
- 2) TENANT shall provide at its own cost and expense all repair, maintenance and janitorial services to the Leased Premises. Janitorial service shall include collection of any concession-generated trash, and cleanup of vandalism or spills in the Leased Premises and the area immediately adjacent to the Leased Premises entry and exits.

B. Terminal Communications Systems and Operations

- 1) Wireless Communications. In the interests of public safety and the efficient operation of the Airport, COUNTY reserves the sole right to resolve any conflicts between or among any wireless communication devices or systems of the Airport TENANT, and any third party users at the Airport, and to require TENANT to change over to any future Airport-wide network once installed.
- 2) Interference with Systems. TENANT shall not interfere with the effectiveness of utility, heating, ventilating or air-conditioning systems or portions thereof on or adjoining the Leased Premises (including power and utility lines, pipes, wires, conduits and equipment connected with or appurtenant thereto) or interfere with the effectiveness of elevators or escalators in or adjoining the Leased Premises, or overload any floor in the Leased Premises.
- 3) Smoking Prohibited. TENANT shall not do anything contrary to COUNTY's ordinance, prohibiting smoking. Said ordinance prohibits smoking in the terminal building, including all food and beverage areas.
- 4) Noninterference. TENANT shall cooperate with and not interfere with COUNTY's and other TENANT's use of and operations at the Airport. TENANT shall not



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place any ropes, barricades and/or stanchions on the public or common use area without prior written approval of Airport Director.

SECTION 5.04 AIRPORT SECURITY

In addition to FAA, TSA and Airport security rules, regulations and plans, TENANT shall comply with all security requirements of the United States Customs and Border Protection (USCBP), and all applicable federal, state and local regulations regarding airport security. TENANT is responsible for fines imposed by any regulatory agency as a result of TENANT's failure to comply with applicable rules and regulations regarding airport security.

TENANT shall be required to obtain airport security clearance in order to perform work under this Lease. TENANT and its employees and contractors must complete a background clearance Security Identification Display Area (SIDA) class in order to obtain an I.D. badge for access to secure areas and a driver's permit to drive on the airfield.

A. Badge Acquisition

Prior to issuance of a security badge(s), designated TENANT personnel who will be working onsite, and engaged in the performance of work under this Lease, must pass Airport's screening requirements, which includes an FBI Criminal History Records Check and a Security Threat Assessment, and shall pay any applicable fees. Upon successful completion of the background checks, TENANT designated personnel will be required to attend a 3-hour SIDA class and pass a written test. Those personnel who may be permitted by the Airport to drive on the Airport Operations Area (AOA) perimeter road must also complete a Driver's Training class and written test. Airport identification badges are not issued until designated TENANT personnel have: 1) completed appropriate application forms and submitted proof of identity and employment eligibility, 2) passed both background checks, 3) completed and passed appropriate classroom training and 4) paid an identification badge fee for each badged person. TENANT should anticipate a minimum of five (5) business days to complete the security badge process if all requirements listed above are fulfilled by individual badge applicants in a timely manner. TENANT's designated personnel must successfully complete the badge acquisition process, unless other arrangements have been approved by the Airport. TENANT shall be responsible for all applicable fees and costs associated with the background checks and badging process. The amount of such fees is subject to change without notice.

B. Badge Holder Requirements and Responsibilities

The Airport Security Plan ("ASP") requires that each person issued an Airport security badge be made aware of his responsibilities regarding the privilege of access to restricted areas of the Airport.

TENANT and all TENANT personnel within an access controlled area (AOA, SIDA, secured area or sterile area) are required to display on their person an Airport security badge, unless they are escorted by a properly badged individual with escort privileges. When working in a secure area, each badged person is responsible for challenging any



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individual who is not properly displaying an Airport issued or approved and valid I.D. badge. Any person who is not properly displaying or who cannot produce a valid Airport security badge must immediately be referred to the Sheriff's Department – Airport Police Services Office for proper handling.

The Airport security badge is the property of the County of Orange and must be returned upon termination of TENANT personnel employment and/or termination of the Lease. The loss of a badge shall be reported within 24 hours to the Sheriff's Department–Airport Police Services by calling (949) 252-5000. TENANT or TENANT personnel who lose their badges shall be required to pay a fee before receiving a replacement badge. The charge for lost badge replacement will be posted in the Airport Administration Office and is subject to change without notice. A report shall be made before a replacement badge will be issued.

The Airport security badge is nontransferable.

In the event that TENANT's badge is not returned to the Airport upon termination of TENANT personnel employment and/or termination of the Lease, the TENANT and/or TENANT personnel shall be liable to the County of Orange for a fine in the amount of \$250 per unreturned badge. The amount of the fine is subject to change without notice. TENANT's security deposit may be applied to cover the cost of the fine.

SECTION 5.05 MAINTENANCE OF LEASED PREMISES

TENANT shall, at all times during the term of the Lease, operate and keep the Leased Premises, inclusive of Service Counter, Ready Car Parking Area, Common Area and if applicable, Overflow Parking in good condition and repair, in a safe, secure, clean and sanitary condition, and in full compliance with all federal, state and local laws, regulations, rules and ordinances and policies and procedures as the Airport Director shall maintain in effect from time to time, including the Airport Rules and Regulations.

TENANT shall, to the satisfaction of Airport Director, keep and maintain the Leased Premises and all improvements of any kind, which may be erected, installed, or made thereon in good condition and in substantial repair. It shall be TENANT's responsibility to take all steps necessary or appropriate to maintain such a standard of condition and repair. TENANT agrees to maintain the Leased Premises in a safe, clean, wholesome, sanitary condition, to the complete satisfaction of Airport Director and in compliance with all applicable laws. Airport Director shall have the right to enter upon and inspect the Leased Premises at any time for cleanliness and safety. It shall be the TENANT's responsibility to make all necessary repairs required to maintain the Leased Premises and improvements in good condition. All repairs and improvements made by the TENANT to the Leased Premises shall be in compliance with all applicable federal, State, and local laws and regulations, ordinances, building codes, and Airport Regulations, as they exist or may be updated (Codes). The Codes encompass all fire, life and structural safety aspects and apply to the construction, alteration, moving, demolition, repair and use of the Leased Premises. Any additions, alterations, repairs and changes of use or occupancy in the Leased Premises shall comply with the provisions for new buildings and structures as set forth in the Codes. All devices or safeguards that are required by the Codes shall be maintained in conformance with the edition of the Codes under which it was installed



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TENANT agrees to provide approved containers for trash and garbage and to keep the Leased Premises free and clear of rubbish and litter.

A. Equipment and Improvements

- 1) Maintenance of Equipment and Improvements. TENANT shall maintain all equipment and improvements located within the Leased Premises including but not limited to, trade fixtures, wiring, software and communications equipment in good condition. TENANT agrees that all repairs will be conducted within twenty-four (24) hours of notification by Airport Director or designee unless a longer period of time is approved by Airport Director or designee.
- 2) Removal of Equipment or Improvements. During the term of this Lease, TENANT shall not remove any improvements and/or furnishings, trade fixtures, and equipment without the prior written consent of Airport Director.

B. Repairs and Maintenance

- 1) Repairs. TENANT shall designate in writing to Airport Director an on-site manager, and any assistant managers who shall be responsible for the day-to-day operation and level of maintenance, cleanliness and general order. TENANT shall notify the Airport Director in writing within twenty-four (24) hours of any change in on-site manager and assistant managers. TENANT's on-site manager or assistant managers shall respond to any request or communication from the Airport within three (3) hours. If TENANT fails to maintain or make repairs or replacements as required herein, Airport Director shall notify or attempt to notify the TENANT in writing of said failure. Should TENANT fail to correct the failure within the time specified in the notice, Airport Director may make the necessary correction or cause it to be made and the cost thereof, including but not limited to the cost of labor, materials and equipment shall be charged to TENANT. Thereafter, an administrative fee equal to fifteen percent (15%) of the sum of such items shall be paid by TENANT within thirty (30) days of receipt of a statement of said cost from Airport Director. Airport Director may, at Director's option, choose other remedies available herein, or as provided by law.

SECTION 5.06 ADMINISTRATIVE FEES

The parties agree that TENANT's performance of its obligations under this Lease is extremely important to Airport and that TENANT's failure to perform those activities will result in administrative and monitoring expenses to the Airport and its staff. Therefore, the parties agree that the Administrative Fees described in "Exhibit D" attached hereto and incorporated herein by reference, are reasonable estimates of such expenses and shall be imposed on TENANT at the sole discretion of the Airport Director or designee for any of the violations described in said Exhibit "D". The Airport Director may elect to waive an assessment of Administrative Fees for a particular violation, but no such waiver shall apply to prior or subsequent violations of the same or any other provision of this Lease, and any such waiver shall not be deemed to set a precedent for further



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waivers. The Airport's right to impose the foregoing Administrative Fees shall be in addition to and not in lieu of any and all of Airport's rights under this Lease, in the Airport Rules, Policies and Regulations, or at law or in equity. Airport's decision to impose an Administrative Fee on TENANT for one of the violations described in Exhibit D shall not preclude Airport, in the event TENANT subsequently commits the same or a different violation, from exercising any of such other rights of the Airport, including, without limitation, its right to terminate this Lease pursuant to ARTICLE IX. The Airport shall have no obligation to TENANT to impose Administrative Fees or fines on or otherwise take any action against any other tenant at the Airport. During the term of this Lease, the Airport Director may reasonably adjust upward the amount of the Administrative Fees set forth in Exhibit D by providing TENANT three months advance written notice. Administrative Fees shall be paid within 30 days of assessment. Continued violations, or two of the same violations in any thirty (30) day period, may result in the Airport Director's ability to raise the fines.

ARTICLE VI - HAZARDOUS SUBSTANCES AND INDEMNIFICATION

SECTION 6.01 HAZARDOUS SUBSTANCES

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

TENANT shall comply with and obey all applicable federal, state, and local environmental laws and regulations. TENANT shall not place, dispose of, allow, cause, or release any Hazardous Substances upon the Leased Premises or within the Airport premises. TENANT shall also immediately notify John Wayne Airport of any release, contamination, spill, or dispersing of any Hazardous Substances which the TENANT has reason to believe it caused. TENANT's obligations herein shall survive the termination or expiration of this Lease.

TENANT shall bear the entire cost of removal, clean up and remediation of all Hazardous Substance contamination as a result of TENANT's operations. In addition to all other rights and remedies of the COUNTY, if TENANT does not immediately cleanup and remove any such hazardous substance(s) release, COUNTY may pay to have same removed, and TENANT shall reimburse the COUNTY of all costs incurred by COUNTY.

SECTION 6.02 ENVIRONMENTAL INDEMNIFICATION

To the fullest extent authorized by law, TENANT shall indemnify, defend with counsel approved in writing by County, and hold the COUNTY, its officers, employees, and any entity for which the Board of Supervisors serves as governing body, harmless, from and against any and all claims,



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judgments, damages, penalties, fines, costs, orders, and lawsuits of any kind whatsoever, arising out of TENANT's operations at John Wayne Airport, including all costs related to any defense arising therefrom. TENANT's indemnity obligations stated hereinabove also apply to those actions arising from and which involve TENANT's officers, agents, subcontractors, and employees. TENANT's indemnity obligations shall not apply in the event of any loss, damage, or expense arising from the sole or active negligence and/or willful misconduct of COUNTY or of COUNTY's officers, employees, agents, servants, or independent contractors.

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

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

ARTICLE VII - CONSTRUCTION AND IMPROVEMENTS

SECTION 7.01 CONSTRUCTION AND/OR ALTERATION BY COUNTY

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

In the event COUNTY should require any portion of the Leased Premises in connection with construction of improvements and/or alterations, Airport Director may, upon thirty (30) days' written notice, or immediately should Airport Director determine in Director's sole discretion that an emergency exists, require TENANT to remove or relocate vehicles, equipment, or other items owned by the TENANT. Airport Director will make every reasonable effort to offer TENANT substitute replacement space during the construction period to the extent such space is available.

SECTION 7.02 CONSTRUCTION AND/OR ALTERATION BY TENANT

TENANT shall not perform any construction upon the Leased Premises nor shall TENANT modify, alter, or remove any permanent improvements lying within the Leased Premises without prior written approval of COUNTY. Any construction, modifications, alterations or removal of any permanent improvements by TENANT shall be at the TENANT's expense. All construction must follow the Tenant Guidelines for John Wayne Airport, which can be found at <http://ocair.com/businessandemployment/docs/TenantDesignStandards.pdf>.

- A. Consent Required From COUNTY. No structures, improvements, or facilities shall be constructed, erected, altered, removed or made within the Leased Premises without prior written consent of COUNTY, which consent may be withheld or conditioned at



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COUNTY's discretion. Minor repairs, replacement and facility maintenance proposed for the Leased Premises, the cost of which does not exceed two hundred thousand dollars (\$200,000), must be approved by Airport Director. All other structures, improvements, facilities, repairs, replacement, removal and maintenance items must be approved by the Board of Supervisors.

- B. Insurance Requirements. TENANT shall obtain comprehensive public liability insurance during construction. If the construction is done by an independent contractor, insurance shall be procured by the contractor in the name of the TENANT and the COUNTY. All insurance shall be in the limits and coverages acceptable to COUNTY's Risk Management Services.
- C. Indemnification During Construction. To the fullest extent authorized by law, TENANT shall indemnify, defend, and hold harmless the COUNTY, its officers, and employees, from and against any and all claims, judgments, damages, penalties, fines, costs, orders, and lawsuits, arising out of the TENANT's construction or alteration of the Leased Premises at John Wayne Airport, including the cost of defense arising therefrom. The TENANT's indemnity obligations stated hereinabove also apply to those actions arising from and which involve the TENANT's officers, agents, subcontractors, and employees.
- D. Noninterference. TENANT warrants that it or its contractor shall in no way delay, cause delays to or interfere with any Airport operations or other contractors working in the terminal or on the Airport. TENANT agrees to hold COUNTY harmless from the cost of any time lost by COUNTY or any damages to COUNTY due to the actions or failure to act of TENANT or its contractor.
- E. Trailers and Modular Structures. All improvements constructed by TENANT shall be of a permanent nature. Trailers and modular buildings are prohibited on the Leased Premises. This provision shall not apply to the use of COUNTY approved temporary modular buildings, barricades or trailers during construction. Upon completion of construction, all trailers, barricades or modular buildings must be immediately removed from the Leased Premises.
- F. Capital Improvements. TENANT shall cause to be designed, constructed, and installed within the Leased Premises in the Parking Structure Level Zero, at no cost to COUNTY, a kiosk appropriate to conduct rental car operations, and shall cause the ceiling of the Leased Premises to be painted to enhance the lighting.
- G. TENANT shall plan, phase, construct, equip and complete the Capital Improvements in accordance with the Tenant Design Guidelines. TENANT shall submit a conceptual drawing of the Capital Improvements with a proposed construction schedule indicating the duration of construction activities from commencement of demolition to operation of the newly constructed facility. Work may commence upon JWA's written approval. At its sole discretion, JWA may direct the timing of Capital Improvements among all Proposers to minimize impacts to RAC operations during construction. A copy of John Wayne Airport's Tenant Design Guidelines is available at www.ocair.com or may be requested from JWA.



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- H. TENANT shall not construct, maintain, or allow any sign upon the kiosk except as approved by Airport Director. Unapproved signs, banners, flags, etc. may be removed by the Airport without prior notice to TENANT.
- I. TENANT's Cost and Expense. All renovation or construction by TENANT pursuant to this Section shall be at TENANT's sole cost and expense. TENANT shall keep its existing or future Leased Premises and the improvements constructed thereon free and clear of all liens and shall pay all costs for labor and material arising out of such construction and shall hold COUNTY harmless from any liability in respect thereto. TENANT shall have the right to contest any and all liens filed against its existing or future exclusive use area. TENANT further agrees that COUNTY shall have the right to post notices of non-responsibility as provided by California Civil Code Sections 3094 and 3129.
- J. Ownership of Improvements. All improvements and facilities, exclusive of trade fixtures, constructed or placed within the Leased Premises by TENANT must, upon completion, be free and clear of all liens, claims, or liability for labor or material and at COUNTY's option shall become the property of COUNTY at the expiration of this Lease or upon earlier termination hereof. COUNTY retains the right to require TENANT, at TENANT's cost, to remove any or all improvements located within the Leased Premises at the expiration or termination hereof.
- K. Satellite Antenna Dish. For purposes of this Lease, satellite antenna dishes or antennae that may be installed by TENANT on the roof of the Terminal or any location outside the Leases Premises shall be considered a TENANT improvement. The type and design of antenna, location, TENANT identification, method of installation, and cable path shall be subject to review and approval by Airport Director. COUNTY retains the right to require TENANT, at TENANT's cost, to remove any antenna installed by TENANT. Airport Director shall have the right to use TENANT's security deposit to cover the cost of removal of said antenna should TENANT fail to do so at the expiration or termination of this Lease.
- L. In the event TENANT fails to complete construction of its Leased Premises within ninety (90) days of its receipt of the notice to proceed from Airport, COUNTY will incur substantial damages, the exact amount of which are extremely difficult to determine. Accordingly, for each day TENANT fails to complete the construction of its improvements after the ninety (90) days, TENANT shall pay County \$2,000.00 per day, in addition to rent as provided herein as penalty fees. The parties have agreed that this amount represents a reasonable approximation of the damages likely to be suffered by the County. In the event TENANT requests in writing an extension of the ninety days (90) construction period, Airport Director, may have the option to extend the construction period.

SECTION 7.03 CONCESSION MIDTERM REFURBISHMENT

Five (5) years after the Commencement Date of the Lease, TENANT shall be required to make a reinvestment, in an amount to be determined by Airport Director but not exceeding 50% of the total cost of its Capital Improvements, for the purpose of keeping the rental car concession contemporary and competitive with current rental car industry trends ("Concession Midterm



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Refurbishment”). TENANT shall complete the Concession Midterm Refurbishment, as approved by the Airport Director, within one hundred eighty (180) days from the date of the five (5) year Commencement Date anniversary. Failure to complete the refurbishment by said date shall be cause for termination of the Lease, or, at Airport Director’s discretion, TENANT shall pay to COUNTY the sum of two thousand dollars (\$2,000.00) per day until the Concession Midterm Refurbishment has been completed to the satisfaction of the COUNTY. This amount shall be in addition to all other sums due under this Lease.

TENANT shall be required to submit plans for the Concession Midterm Refurbishment at least one hundred eighty (180) days prior to the five (5) year Commencement Date anniversary. The plans and specifications must be certified by an architect or engineer and shall consist of (a) working drawings (b) technical specifications and (c) proposed equipment upgrades or changes.

Within sixty (60) calendar days following the completion of the Concession Midterm Refurbishment to the satisfaction of the Airport Director, TENANT must provide certified documentation of the capital investment actually expended in the design and installation of the Concession Midterm Refurbishment, together with “as-built” plans/records drawings as required elsewhere in this Lease. When documenting each refurbishment minimum investment required by this Lease, architectural and engineering charges not exceeding 15% of the total investment may be included. Construction costs shall not include indirect costs such as financing costs, holding costs, legal fees, interest, administrative and overhead expenses, internal design, review, management and oversight of construction on Leased Premises, TENANT’s licensing or franchising costs, bond premiums or developer fees.

In the event of a shortfall between said Concession Midterm Refurbishment amount and TENANT’s actual investment cost, TENANT shall pay to COUNTY an amount equal to the shortfall, as of one hundred eighty (180) days after the date of the completion of the Concession Midterm Refurbishment, and said payment shall be due and payable within thirty (30) days. The amount spent for refurbishment shall be exclusive of any amount spent for normal repair and maintenance as determined at the sole discretion of Airport Director.

SECTION 7.04 TENANT REIMBURSEMENT

In the event COUNTY should require a portion of the Leased Premises for any Airport purpose, COUNTY shall make a good faith effort to provide alternate space if available. In the event COUNTY should require 50% or more of the Leased Premises for any Airport purpose, COUNTY shall reimburse TENANT for the improvements completed on that portion of the Leased Premises during the term of this Lease as follows:

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

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



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- A = TENANT's actual Leased Premises improvement construction costs submitted in accordance with the Section in this Lease entitled "RECORD DRAWINGS AND CONSTRUCTION COSTS".
- B = Number of full months remaining in the Lease term.
- C = Number of full months between the date TENANT completed construction of Leased Premises improvements and the date the Lease would expire by its terms if COUNTY did not exercise its right to early termination.

TENANT shall submit to COUNTY within sixty (60) days of completion of construction of any Leased Premises improvement, notifications of completion of construction and submit detailed supporting documentation of construction costs together with "as-built" plans/record drawings as required elsewhere in this Lease. TENANT acknowledges and agrees if TENANT fails to submit notifications and supporting documentation for any such Leased Premises improvements in a timely manner, TENANT waives its right to compensation for such improvements.

SECTION 7.05 EXCLUSIVE REMEDY

The compensation provided pursuant to Section 7.04 (TENANT REIMBURSEMENT) shall be TENANT's sole and exclusive remedy and form of compensation, costs or damages for improvements, including but not limited to, the eminent domain law and inverse condemnation (CAL. CODE CIV. PROC. §§1230.010, *et seq.*), and Relocation Assistance benefits (CAL. GOV. §§7260, *et seq.*), due to termination, re-entry or acquisition of the Leased Premises by COUNTY.

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

SECTION 7.06 TENANT'S ASSURANCE OF CONSTRUCTION COMPLETION

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

- A. Completion Bond issued to COUNTY as obligee.
- B. Irrevocable letter of credit issued to COUNTY that will remain in effect until COUNTY acknowledges satisfactory completion of construction.

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



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construction of improvements within the Leased Premises. TENANT must satisfactorily complete Section “Record Drawings” and Construction Costs to be eligible for return or refund of Completion Bond and/or its letter of credit.

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

SECTION 7.07 MECHANIC’S LIENS OR STOP NOTICES

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

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

- 1) Record a valid Release of Lien, or
- 2) Procure and record a bond in accordance with Section 3143 of the CALIFORNIA CIVIL CODE, which frees the Leased Premises from the claim of the lien or stop-notice and from any action brought to foreclose the lien.

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

SECTION 7.08 “RECORD DRAWINGS” AND CONSTRUCTION COSTS

Within sixty (60) days following completion of any improvement within the Leased Premises, TENANT shall furnish Airport Director a complete set of plans that are reproducible, two sets of prints of “Record Drawings,” also referred to as “As-Built” plans, and a recordable compact disc (CD-ROM) containing the Record Drawings plans in a form usable by COUNTY, to COUNTY’s satisfaction, on COUNTY’s computer aided mapping and design (CAD) equipment. Basic specifications for CAD compatible plans are contained in “Exhibit E” document “REQUIREMENTS FOR CAD COMPATIBLE PLANS”, attached hereto.

In addition, TENANT shall furnish Airport Director an itemized statement of the actual, direct construction costs of such improvement. The construction costs may include actual, direct fees paid to contractors, architects, engineers, surveyors, laborers and suppliers, transportation corridor fees, or permit fees required by governmental agencies to allow construction. Construction costs shall not include indirect costs such as financing costs, holding costs, legal fees, interest, administrative and overhead expenses, internal design, review, management and oversight of construction on Leased Premises, TENANT’s licensing or franchising costs, bond premiums or developer fees. The statement of cost shall be sworn to and signed by TENANT or its responsible



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agent under penalty of perjury. TENANT must obtain Airport Director's approval of "Record Drawings" and the form and content of the itemized statement.

SECTION 7.09 DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS

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

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

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

SECTION 7.10 AMERICANS WITH DISABILITIES ACT

TENANT shall be solely and fully responsible for complying with the Americans with Disabilities Act of 1990 ("ADA") in connection with: (a) the Leased Premises or any portion thereof and its operations thereon, TENANT's furnishings, trade fixtures and equipment and the concession improvements; (b) removing physical barriers from the Concession Area; (c) providing auxiliary aids and services for use of the Concession Improvements and TENANT's furnishings, trade fixtures and equipment, where necessary or required; and (d) modifying its policies, practices and procedures to comply with the ADA. TENANT shall develop a work plan to correct or avoid any violations or non-compliance with the ADA. TENANT shall deliver to the COUNTY, upon COUNTY's request, a copy of each report and work plan. COUNTY's approval of or acceptance of any aspect of TENANT's activities under this Lease shall not be deemed or construed in any way as a representation that such item, activity of practice complies with the ADA. TENANT agrees to indemnify, defend, and hold the COUNTY harmless from and against any and all costs incurred by COUNTY with respect to TENANT's failure to comply with the ADA.



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ARTICLE VIII - ASSIGNMENT

SECTION 8.01 ASSIGNING AND TRANSFERRING

The provisions of this Section are subject to, and subordinate to the limitations of Article V of this Lease entitled “USE, OPERATION, MAINTENANCE AND CONDITION OF LEASED PREMISES”.

- A. Transfers. TENANT shall not transfer, assign, or hypothecate (hereinafter referred to as “Transfer”) any interest of the TENANT in the Leased Premises without the prior written approval of the COUNTY. TENANT shall give COUNTY ninety (90) day’s prior written notice of all proposed Transfers. TENANT shall not make any such Transfers for a period longer than the remaining term of the Lease.

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

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

The failure by TENANT to obtain the prior written approval by COUNTY of any Transfer of the Lease or any interest in the Leased Premises shall constitute a material breach of this Lease by and shall not confer any rights upon the transferee. Such failure shall be grounds for termination of this Lease for default per Article IX, Section 9.02.

- B. Conditions of COUNTY Approval. COUNTY agrees that it will not arbitrarily withhold consent to any Transfer, but COUNTY may withhold consent at its sole discretion if any of the following conditions exist:
- 1) TENANT, its successors or assigns are in default of any term, covenant or condition of this Lease, whether notice of default has or has not been given by COUNTY.
 - 2) The prospective subtenant, assignee or transferee has not agreed in writing to keep, perform and be bound by all the terms, covenants, and conditions of this Lease.
 - 3) The prospective subtenant, assignee or transferee is not financially capable or not experienced in performing the obligations of this Lease, as determined by Airport Director.
 - 4) Subtenant’s use is in conflict with the terms of this Lease.



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- 5) All the terms, covenants and conditions of Transfer, including the consideration therefore, of any and every kind, have not been revealed in writing to Airport Director.
- 6) Any construction required of TENANT as a condition of this Lease has not been completed to the satisfaction of COUNTY.
- 7) TENANT has not provided Airport Director with a copy of all documents relating to the Transfer, including, but not limited to, appraisals, notes, trust deeds, title reports, escrow instructions, *etc.*
- 8) TENANT attempts to hypothecate the rights granted by this Lease for an amount greater than the cost of new improvements to be constructed on the Leased Premises. Hypothecation shall not be permitted for any reason other than to obtain loan proceeds necessary to construct new improvements on the Leased Premises.
- 9) The Processing Fee required by COUNTY and set out below has not been paid to Airport Director.

A processing fee of three thousand dollars (\$3,000), (“Processing Fee”) shall be paid to LESSOR for processing each consent to assignment, merger, transfer, sublease, mortgage, pledge, hypothecation, or encumbrance submitted to COUNTY as required by this Lease. This processing fee shall be deemed earned by COUNTY when paid and shall not be refundable.

C. Bankruptcy Transaction. If TENANT assumes this Lease and proposes to assign the same pursuant to the provisions of the UNITED STATES BANKRUPTCY CODE, 11 U.S.C. §§101, *et seq.*, then notice of such proposed assignment shall be given to COUNTY.

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

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

SECTION 8.02 SUCCESSORS IN INTEREST

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



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ARTICLE IX - TERMINATION AND DEFAULT

SECTION 9.01 TERMINATION OF PRIOR AGREEMENTS

It is mutually agreed that this Lease shall terminate and supersede any prior Leases or agreements between the parties hereto for the purpose of operating a rental car concession and all related activities of TENANT at the Airport.

SECTION 9.02 TERMINATION FOR DEFAULT

The COUNTY may terminate this Lease and all of its obligations hereunder, with prior written notice to TENANT and may exercise all rights of entry for default and breach, if the TENANT fails to perform on any of its obligations under this Lease including but not limited to the following:

- A. The failure to timely submit payment of Rents;
- B. A general assignment for the benefit of creditors and any transfer of ownership without the prior written approval by the COUNTY;
- C. The issuance of any execution or attachment against TENANT at the Airport which is undischarged within sixty (60) days of levy or seizure or if the Leased Premises are occupied by someone other than TENANT;
- D. The voluntary vacation, or abandonment, by TENANT of the operation of a rental car concession at the Airport in excess of seventy-two (72) hours;
- E. The violation by TENANT of any of the terms of any insurance policy referred to in the Lease;
- F. Persistently, willfully, or knowingly failing to comply with applicable laws and regulations;
- G. If TENANT is found by the FAA, TSA, other government regulatory or successor agency to have violated specified safety standards in the conduct of TENANT's business;
- H. The violation of any written directions of Airport Director, including but not limited to, TENANT's failure to take possession of the Concession Location within fourteen (14) days from Airport Director's written Notice to Take Possession to TENANT.
- I. The appointment of a receiver to take possession of all, or substantially all, the assets of TENANT located in the Leased Premises or of TENANT's rights in the Leased Premises;
- J. In the opinion of the Board of Supervisors, TENANT is not substantially complying in good faith with the requirements of this Lease.



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

**SECTION 9.03 CONDITION OF LEASED PREMISES UPON TERMINATION OR
DEFAULT**

Except as otherwise agreed to herein, upon termination or default of this Lease, TENANT shall redeliver possession of said Leased Premises to COUNTY and shall repair any damage which was caused to the Airport premises by such installation and removal, including removing the wiring back to the junction box or panel, patching any holes and any painting necessary to restore to the preexisting condition. References to termination of this Lease shall include termination by reason of expiration.

During the term of this Lease, TENANT shall not remove the concession improvements and/or TENANT's furnishings, trade fixtures and equipment, in whole or in part, without Airport Director's prior written consent. Airport Director may exercise his absolute discretion and condition such consent upon the obligation of TENANT to replace the same with other improvements or equipment specified in such consent.

SECTION 9.04 DISPOSITION OF ABANDONED PERSONAL PROPERTY

If TENANT abandons or quits the Leased Premises or is dispossessed thereof by process of law or otherwise, title to any personal property belonging to TENANT and left on the Leased Premises Areas thirty (30) days after such event shall be deemed to have been transferred to COUNTY. COUNTY shall have the right to remove and to dispose of such property without liability therefor to TENANT or to any person claiming under TENANT, and shall have no need to account therefor. Personal property left on the Leased Premises after termination, expiration, or abandonment of the Lease shall not be construed as giving TENANT possession of the Leased Premises during the thirty (30) days after termination, expiration or abandonment of the Lease.

**SECTION 9.05 QUITCLAIM OF TENANT'S INTEREST UPON
TERMINATION OR DEFAULT**

Upon termination of this Lease for any reason, including, but not limited to, termination because of default by TENANT, TENANT shall execute, acknowledge, and deliver to COUNTY within thirty (30) days after receipt of written demand therefor, a good and sufficient deed whereby all right, title and interest of TENANT in the Leased Premises is quitclaimed to COUNTY. Should TENANT fail or refuse to deliver the required deed to COUNTY, COUNTY may prepare and record a notice reciting the failure of TENANT to execute, acknowledge and deliver such deed and said notice shall be conclusive evidence of the termination of this Lease and of all right of TENANT or those claiming under TENANT in and to the Leased Premises.



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SECTION 9.06 COUNTY'S RIGHT TO RE-ENTER

TENANT agrees to yield and peaceably deliver possession of the Leased Premises to COUNTY on the date of termination or default of this Lease whatsoever the reason for such termination or default.

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

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

Upon the expiration or early termination of this Lease, TENANT shall cooperate fully with the COUNTY and any successor to TENANT to ensure an effective and efficient transition of TENANT's operations within the Leased Premises to TENANT's successor. TENANT acknowledges its responsibility to help ensure continued operations within the Leased Premises in a first class manner during any transition to a successor. TENANT shall take no action that would impair the ability of any successor to commence and maintain such concession operations.

ARTICLE X - INSURANCE

SECTION 10.01 INSURANCE

TENANT agrees to purchase all required insurance at TENANT's expense and to deposit with the COUNTY certificates of insurance, including all endorsements required herein, necessary to satisfy the COUNTY that the insurance provisions of this Lease have been complied with and to keep such insurance coverage and the certificates and endorsements therefore on deposit with the COUNTY during the entire term of this Lease.

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

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



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

TENANT may occupy the Leased Premises only upon providing to County the required insurance stated herein and maintain such insurance for the entire term of this Lease. County reserves the right to terminate this Lease at any time TENANT's insurance is canceled or terminated and not reinstated within ten (10) days of said cancellation or termination. TENANT shall pay COUNTY a fee of Three Hundred dollars (\$300.00) for processing the reinstatement of the Lease. TENANT shall provide to County immediate notice of said insurance cancellation or termination.

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

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of TENANT's current audited financial report. If TENANT's SIR is approved, TENANT, in addition to, and without limitation of, any other indemnity provision(s) in this Lease, agrees to all of the following:

- 1) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from TENANT's, its agents, employee's or subcontractor's performance of this Agreement, TENANT shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- 2) TENANT's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- 3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the TENANT's SIR provision shall be interpreted as though the TENANT was an insurer and the County was the insured.

Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current



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edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

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

<u>Coverages</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 limit per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Commercial Property Insurance on an "All Risk" or "Special Causes of Loss" basis covering all, contents and any tenant improvements including Business Interruption/Loss of Rents with a 12 month limit.	100% of the Replacement Cost Value and no coinsurance provision.

Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing liability coverage as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of insurance:

- 1) An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the ***County of Orange, its elected and appointed officials, officers, employees, agents*** as Additional Insureds. Blanket coverage may also be provided which will state- ***As Required By Written Agreement***.
- 2) A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad, evidencing that the TENANT's insurance is primary and



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any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the *County of Orange, its elected and appointed officials, officers, agents and employees*. Blanket coverage may also be provided which will state- *As Required By Written Agreement*.

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

The Commercial Property policy shall contain a Loss Payee endorsement naming the County of Orange as respects the County's financial interest when applicable.

The Commercial General Liability policy shall contain a severability of interests clause, also known as a "separation of insureds" clause (standard in the ISO CG 001 policy).

Insurance certificates should be forwarded to the COUNTY address provided in Section 12.15 Notices below or to an address provided by *Airport Director*. TENANT has ten (10) business days to provide adequate evidence of insurance or this Lease may be cancelled.

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

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

The procuring of such required policy or policies of insurance shall not be construed to limit TENANT's liability hereunder nor to fulfill the indemnification provisions and requirements of this Lease, nor in any way to reduce the policy coverage and limits available from the insurer.

SECTION 10.02 INDEMNITY

To the fullest extent authorized by law, the TENANT shall indemnify, defend with counsel approved in writing by County, and hold the COUNTY, its officers, employees, and any entity whose governing body is the Board of Supervisors, harmless from and against any and all claims, judgments, damages, penalties, fines, costs, orders, and lawsuits of any kind whatsoever, arising out of the TENANT's operations at John Wayne Airport, including all related costs of defense arising therefrom. The TENANT's indemnity obligations also apply to those actions arising from and which involve the TENANT's officers, agents, subcontractors, and employees. The



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TENANT's indemnity obligations shall not apply in the event of any loss, damage, or expense arising from the sole or active negligence and/or willful misconduct of the COUNTY or of the COUNTY's officers, employees, agents, servants, or independent contractors.

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

In the event that a monetary judgment is awarded against the COUNTY and the TENANT because of the concurrent negligence of the COUNTY and the TENANT or their respective officers, subcontractors, or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Both the COUNTY and the TENANT agree that neither party shall request a jury apportionment.

Nothing stated in this Lease and in this indemnity obligation shall be construed as authorizing any award of attorney's fees in any action to enforce the terms of this Lease. The rights and obligations set forth in this paragraph shall survive the termination of this Lease.

ARTICLE XI - FEDERAL GRANT ASSURANCES AND REQUIREMENTS

SECTION 11.01 NONDISCRIMINATION

A. The TENANT, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that:

- 1) No person on the grounds of race, creed, color, national origin, sex, age, or disability, shall be excluded from participation, denied the benefits of, or be otherwise subjected to discrimination in the use of, or services provided from the Leased Premises.
- 2) This Lease is subject to the requirements of the U.S. Department of Transportation's regulations, 49 C.F.R. Part 23. The TENANT agrees that it will not discriminate against any Airport Concession Disadvantaged Business Enterprise (ACDBE) in connection with provision of service, or the award or performance of any agreement covered by 49 C.F.R. Part 23.
- 3) In the construction of any improvements on, over or under the Leased Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, national origin, sex, age, or disability, shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination.
- 4) The TENANT shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to 49 C.F.R. Part 21, Subtitle A, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended.



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- 5) In the event facilities are constructed, maintained or otherwise operated on the Leased Premises for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, the TENANT shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 C.F.R. Part 21, Subtitle A, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended.

B. In the event of breach of any of the above nondiscrimination covenants, the COUNTY shall have the right to terminate the LEASE and to re-enter and repossess said land and the facilities thereon, and hold the same as if said LEASE had never been made or issued. This provision does not become effective until the procedures of 49 C.F.R. Part 21, are followed and completed, including expiration of appeal rights.

C. The TENANT shall furnish its accommodations and/or services on a reasonable and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service.

D. Noncompliance with the provisions found in Section 11.01 shall constitute a material breach thereof and, in the event of such noncompliance, the COUNTY shall have the right to terminate this LEASE and the estate hereby created without liability therefor; or, at the election of the COUNTY or the United States, either or both said governments shall have the right to judicially enforce Paragraphs A, B, and C.

E. The TENANT agrees that it shall insert the above four paragraphs in any lease (agreement, contract, etc.) by which said TENANT grants a right or privilege to any person, firm or corporation to render accommodations and/or service to the public on the Leased Premises.

SECTION 11.02 DEVELOPMENT/MAINTENANCE OF AIRPORT

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

COUNTY reserves the right, but shall not be obligated to TENANT, 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 TENANT in this regard.

SECTION 11.03 LEASE SUBORDINATE TO AGREEMENT WITH U.S.A.

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



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SECTION 11.04 USE TO CONFORM WITH FEDERAL AVIATION REGULATIONS

TENANT agrees that TENANT's use of the Leased Premises, including all construction thereon, shall conform to applicable FEDERAL AVIATION REGULATIONS. TENANT shall also obey all local, State and federal rules, regulations and laws, including compliance with Transportation Security Administration and Airport security rules and regulations.

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

SECTION 11.05 NONEXCLUSIVE RIGHT

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

SECTION 11.06 RESERVATION OF AVIGATION EASEMENT

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

SECTION 11.07 HEIGHT LIMITATION OF STRUCTURES

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

SECTION 11.08 NONINTERFERENCE WITH AIRCRAFT

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



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is breached, COUNTY reserves the right to enter upon the Leased Premises and hereby cause the abatement of such interference at the expense of TENANT.

SECTION 11.09 WAR OR NATIONAL EMERGENCY

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

**SECTION 11.10 AIRPORT CONCESSION DISADVANTAGED BUSINESS
ENTERPRISE (ACDBE) PARTICIPATION**

TENANT understands and acknowledges the following:

This Lease is subject to the requirements of the U.S. Department of Transportation's regulations 49 CFR Part 23. TENANT agrees that it will not discriminate against any business owner because of the owner's race, color, national origin or sex in connection with the award or performance of any concession agreement, management contract or subcontract, purchase or lease agreement covered by 49 CFR Part 23. TENANT agrees to include the above statements in any subsequent agreement or contract covered by 49 CFR part 23, that it enters and cause those businesses to similarly include such statements in further agreements.

TENANT shall provide a monthly report of ACDBE participation, if any, reported as a dollar amount and as a percent of total contract gross receipts. If there is no ACDBE participation in the agreement, no report is required. In addition, TENANT shall provide all information and reports required by the Airport and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the Airport to be pertinent to ascertain compliance with the regulations or directives.

ARTICLE XII - MISCELLANEOUS PROVISIONS

SECTION 12.01 TIME

Time is of the essence in this Lease.

SECTION 12.02 LEASE ORGANIZATION

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

SECTION 12.03 AMENDMENTS

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



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SECTION 12.04 SIGNS

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

SECTION 12.05 PERMITS AND LICENSES

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

SECTION 12.06 EMERGENCY/DECLARED DISASTER REQUIREMENTS

In the event of an emergency or if Orange County is declared a disaster area by the County, state or federal government, this Contract may be subjected to unusual usage. The Contractor shall service the County during such an emergency or declared disaster under the same terms and conditions that apply during non-emergency/disaster conditions. The pricing quoted by the Contractor shall apply to serving the County's needs regardless of the circumstances. If the Contractor is unable to supply the goods/services under the terms of the Contract, then the Contractor shall provide proof of such disruption and a copy of the invoice for the goods/services from the Contractor's supplier(s). Additional profit margin as a result of supplying goods/services during an emergency or a declared disaster shall not be permitted. In the event of an emergency or declared disaster, emergency purchase order numbers will be assigned. All applicable invoices from the Contractor shall show both the emergency purchase order number and the Contract number.

SECTION 12.07 TAXES AND ASSESSMENTS

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

SECTION 12.08 CIRCUMSTANCES WHICH EXCUSE PERFORMANCE

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



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other charge required of TENANT except as may be expressly provided elsewhere in this Lease.

SECTION 12.09 PARTIAL INVALIDITY

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

SECTION 12.10 WAIVER OF RIGHTS

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

SECTION 12.11 RESERVATIONS TO COUNTY

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

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

SECTION 12.12 AUTHORITY OF TENANT

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



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SECTION 12.13 PUBLIC RECORDS

TENANT understands that written information submitted to and/or obtained by COUNTY from TENANT related to this Lease and/or the Leased Premises, either pursuant to this Lease or otherwise, may be open to inspection by the public pursuant to the California Records Act (GOVERNMENT CODE §§6250, *et seq.*) as now in force or hereafter amended, or any law in substitution thereof, or otherwise made available to the public.

SECTION 12.14 RELATIONSHIP OF PARTIES

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

SECTION 12.15 RAC CONSORTIUM

TENANT together with the on-airport rental car companies shall establish a RAC consortium ("RAC Consortium"). The RAC Consortium must meet quarterly with meeting minutes supplied to JWA within 30 days of the meeting. If the RAC Consortium fails to complete the work identified in item i below or is unable to form a RAC Consortium to timely complete the work by the date established by Airport Director, the COUNTY may then make the necessary improvements, including but not limited to the cost of labor, materials and equipment and charge the TENANT its prorata share of costs. The RAC Consortium shall govern and implement the following:

- i. Design, installation and maintenance of improvements to Level 0 Common Area ("Common Area Improvements") including but not limited to a minimum of nine (9) stop signs, a minimum of six (6) smart lighted crosswalks, a minimum of nine (9) speed bumps, a minimum of two (2) radar speed signs in close proximity to the elevators, security including cameras, and painted ceilings;
- ii. Compliance with ADA requirements;
- iii. Compliance with all other applicable federal, State, and local laws and regulations; and
- iv. Maintenance, to the satisfaction of JWA and in manner compatible with other first class airports.

SECTION 12.16 NOTICES

All notices pursuant to this Lease shall be addressed to either party as set forth below and shall be sent through the United States Mail, in the State of California, duly registered or certified, return receipt requested with postage prepaid or by an overnight carrier service. If any notice is sent by an overnight carrier service, as aforesaid, the same shall be deemed to have been served or



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delivered twenty-four (24) hours after mailing thereof as above provided. Notwithstanding the above COUNTY may also provide notices to TENANT by personal delivery or by regular mail postage prepaid and any such notice so given shall be deemed to have been given upon the date of personal delivery or three (3) days after the date of deposit in the United States Mail, respectively.

TO: COUNTY

TO: TENANT

John Wayne Airport
Attention: Deputy Airport Director
Business Development
3160 Airway Avenue
Costa Mesa, CA 92626

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



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

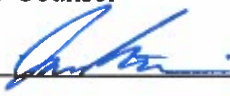
Enterprise Rent-A-Car Company of Los Angeles, LLC, d/b/a Alamo Rent A Car

By: _____

By: _____

APPROVED AS TO FORM:

County Counsel

By: 

APPROVED AS TO AUDIT AND ACCOUNTING:

Auditor-Controller

By: _____

RECOMMENDED FOR APPROVAL:

John Wayne Airport

By: _____
Barry Rondinella
Airport Director

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

Attest:

COUNTY

COUNTY OF ORANGE

By: _____
Chairwoman, Board of Supervisors

Clerk of the Board of Supervisors
Orange County, California

EXHIBIT A

LEASED PREMISES DESCRIPTION

Parcel Number: PM 1121-390-0042
Rental Car Concession (On Airport)

Project Name: John Wayne Airport

Leased Premises are those certain locations designated for rental car services (On Airport) as set forth in below.

Service Counter consisting of _____ square feet as shown on “Exhibit B”, attached hereto.

Ready Car Parking Area consisting of _____ square as shown on “Exhibit B”, attached hereto.

Common Areas consisting of _____ square feet as shown on ‘Exhibit B’, attached hereto.

Overflow Parking consisting of _____ square feet as shown on “Exhibit B”, attached hereto.

NOTES:
 1. RENT-A-CAR AREAS ARE FROM INSIDE FACE OF EXTERIOR WALL TO DRIVE LANE AISLE BOUNDARY
 2. COLUMNS ARE INCLUDED IN GROSS LEASE AREAS

Exhibit B

KIOSK		SF
	ALAMO	34,145 SF
	PEDESTRIAN WALKWAY	

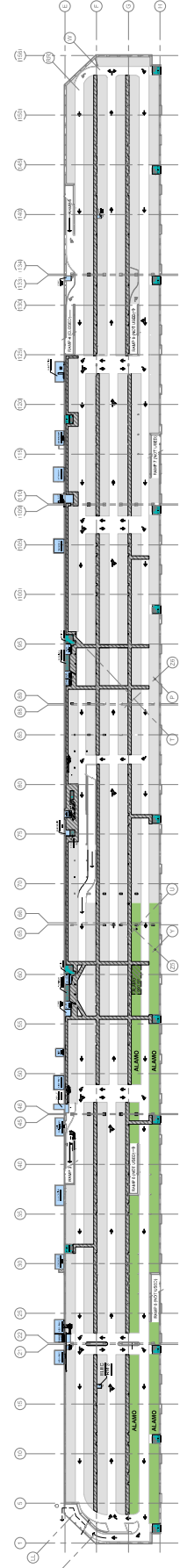
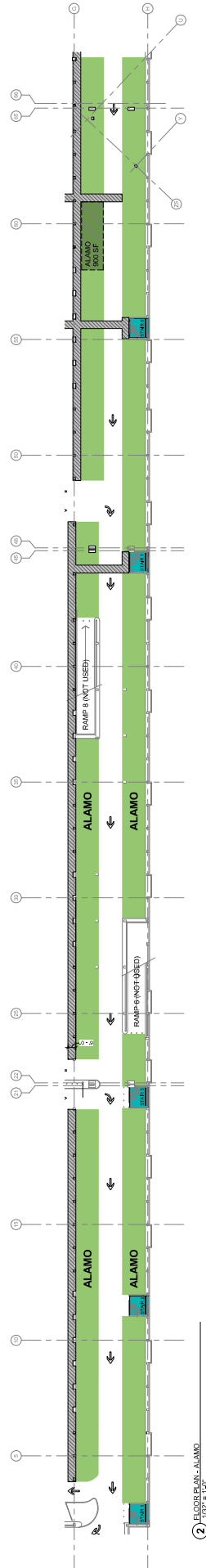


EXHIBIT C

REQUIREMENTS FOR CAD COMPATIBLE PLANS

A complete set of as-built drawing files or Report's Exhibits and Figures will be required by the County of Orange, John Wayne Airport CAD Division. The CAD Division will only accept CAD files which are completed in the following manner:

All architectural, engineering, and construction CAD drawing files will be done using MicroStation, or newer version and/or Microstation-based design and drafting package.

All geographic data, spatial analysis, GIS maps, exhibits, and figures will be done using Intergraph GeoMedia or ISRI Arc View or Bentley MicroStation Geographics.

All CAD files must conform to John Wayne Airport CAD Specifications.

Hardcopy requirements for the CAD Division are:

One complete set of full size and one 18" by 24" size set of as-built drawings.

One complete set of Reports.

EXHIBIT D
ADMINISTRATIVE FEES

	Administrative Fees	Frequency of Administrative Fees	Amount of Administrative Fees
1.	Failure to maintain insurance required in Article X.	Per Day	\$500
2.	Violation of hours of operation, Section 5.03, A 5).	Per Day	\$250
3.	Failure to comply with ACDBE reporting requirements per Section 11.10.	Per Day	\$100
4.	Failure to comply with any use, maintenance or operational requirements of Article V.	Per Day	\$250
5.	Failure to maintain security deposit required in Section 4.08.	Per Day	\$500
6.	Violating anti-idling guidelines Section 5.03, A 6).	Per Occurrence	\$250
7.	Overflow Parking violations including misuse of access cards.	Per Occurrence	\$100
8.	Parking in roadway, fire lane, or marked no parking zones and drop off or pick up of employees or vendors in roadway.	Per Occurrence	\$100
9.	Failure to resolve customer service complaints within 48 hours.	Per Occurrence	\$100
10.	Reinstatement of Lease for termination due to failure to maintain insurance per Section 10.01.	Per Occurrence	\$300
11.	Violation of any law, ordinance, rule or regulation.	Per Occurrence	\$500
12.	Failure to provide Financial Statements required in Section 4.06, C.	Per Day	\$250
13.	Unauthorized advertising on Airport Premises.	Per Day	\$100
14.	Unsafe driving and/or unsafe parking of vehicles.	Per Occurrence	\$500
15.	Vandalism including public urination or defecation.	Per Occurrence	\$500
16.	Diversion of customers.	Per Customer	\$500

Administrative Fees shall be paid within thirty (30) days of their assessment. In addition to other remedies available at law or equity, continued violations, or two incidents of the same violation in any thirty (30) day period, may result in increased fees.