



AIRLINE CLUB ROOM LEASE

Dated _____

Between

County of Orange

and

American Airlines, Inc.



**JOHN WAYNE AIRPORT
AIRLINE CLUB ROOM LEASE**

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LIST OF EXHIBITS

- EXHIBIT A LEASED PREMISES DESCRIPTION – TERMINAL EXCLUSIVE USE AREA
- EXHIBIT B MAP OF LEASED PREMISES
- EXHIBIT C FLOOR PLAN OF LEASED PREMISES – TERMINAL EXCLUSIVE USE AREA
- EXHIBIT D TENANT MAINTENANCE OBLIGATIONS



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THIS AIRPORT USE AND LEASE AGREEMENT ("LEASE") is made and entered into this ___ day of _____, 2016, by and between the COUNTY OF ORANGE, a political subdivision of the State of California ("COUNTY"), and AMERICAN AIRLINES, INC. ("TENANT").

RECITALS

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

WHEREAS, the TENANT desires to provide, as a convenience for its passengers at John Wayne Airport a club room/lounge facility; and

WHEREAS, the COUNTY and the TENANT mutually desire to enter into a lease in order to provide club room/lounge services to the passengers at the Airport; and

WHEREAS, the COUNTY has the right to permit the use of its property at the Airport and to grant the use of the Airport to the TENANT for the operation of the TENANT's club room/lounge facilities; and

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

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

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

ARTICLE I

DEFINITIONS

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

SECTION 1.01 AAAC

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

SECTION 1.02 AAAC CHAIR

“AAAC CHAIR” shall mean the Chairperson elected by the AAAC to act the spokesperson for



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carriers serving John Wayne Airport.

SECTION 1.03 AIRPORT

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

SECTION 1.04 AIRPORT DIRECTOR

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

SECTION 1.05 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 COUNTY

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

SECTION 1.08 DOT

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

SECTION 1.09 EXCLUSIVE USE AREA

"Exclusive Use Area" shall mean the areas of the Terminal that the COUNTY has granted the TENANT the right to use on an exclusive use basis during the term of this LEASE. The TENANT's Exclusive Use Area is described in Exhibit A and shown on Exhibits B and C.

SECTION 1.10 FAA

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

SECTION 1.11 HAZARDOUS SUBSTANCES

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



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SECTION 1.12 TERMINAL

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

SECTION 1.13 TSA

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

ARTICLE II

TERM OF LEASE

SECTION 2.01 TERM OF LEASE

The term of this LEASE shall commence on _____, 2016, and expire on December 31, 2020.

SECTION 2.02 HOLDING OVER

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

SECTION 2.03 TERMINATION FOR CONVENIENCE

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

ARTICLE III

LEASED PREMISES

SECTION 3.01 LEASED PREMISES

The COUNTY leases to the TENANT that certain property hereinafter referred to as "Leased Premises." Said premises are being leased to the TENANT in the "as-is" condition and shall consist of the exclusive use of the space located in the Terminal and described on Exhibit A, and shown on Exhibits B and C, which exhibits are attached hereto and by reference made a part hereof.



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SECTION 3.02 NATURE OF TENANT'S ESTATE

The TENANT acknowledges and agrees:

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

SECTION 3.03 INSTALLATION OF EQUIPMENT OUTSIDE THE LEASED PREMISES

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

ARTICLE IV

RENT, FEES AND CHARGES

SECTION 4.01 RENT, FEES AND CHARGES

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

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

(1) **Exclusive Use Areas**

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



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Exclusive use terminal space consists of the Leased Premises described in Exhibit A and shown on Exhibits B and C.

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

(2) **Statements**

The TENANT shall submit monthly reports of all services, merchandise and/or food and beverage purchases made from terminal concessionaires.

Upon thirty (30) days written notice from the Airport Director, the COUNTY may modify the rent, fees and charges described in Section 4.01. Said modification of rates and charges may not occur more often than every twelve (12) months. Changes may include fee revisions, establishment of new fee classifications or such other changes as needed to respond to the TENANT's use of the Airport, the need for the COUNTY to receive fair and equitable rent, fees and charges for all uses of the Airport, and to insure the Airport is operated at no cost to the local taxpayer. With regard to any dispute as to what may constitute reasonable rent, fees, and charges, the TENANT shall first exhaust all remedies provided by applicable federal law and FAA regulations.

Notwithstanding anything in this LEASE to the contrary, all amounts payable by the TENANT to or on behalf of the COUNTY under this LEASE, whether or not expressly denominated as rent, shall constitute rent for the purposes of the U.S. BANKRUPTCY CODE, 11 U.S.C. §502(b)(6). The TENANT shall notify the Airport in writing within thirty (30) days of filing a petition for Bankruptcy.

SECTION 4.02 PAYMENT PROCEDURE

- A. **Place of Payment and Filing.** Payments and statements required by Sections 4.01 and 5.01 in this LEASE shall be delivered to the County of Orange, Office of the Auditor-Controller, John Wayne Airport Accounting Services, 3160 Airway Avenue, Costa Mesa, California 92626.

The designated place of payment and filing may be changed at any time by the COUNTY upon ten (10) days' written notice to the TENANT. Payments may be remitted by wire transfer, automated clearing house (ACH/Direct deposit to the airport's designated bank account or made by check payable to the County of Orange. The TENANT assumes all risk of loss if payments are made by mail.

- B. **Form of Payment.** All sums due under this LEASE shall be paid in lawful money of the United States of America without offset or deduction or prior notice or demand. No payment by the TENANT or receipt by the COUNTY of a lesser amount than the payment due shall be deemed to be other than on account of the payment due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and the COUNTY shall accept such



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check or payment without prejudice to the COUNTY's right to recover the balance of the amount due or pursue any other remedy in this LEASE.

SECTION 4.03 CHARGE FOR LATE PAYMENT

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

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

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

SECTION 4.04 PROVISION AGAINST SET-OFFS

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

SECTION 4.05 SECURITY DEPOSIT

The TENANT, prior to the commencement of operations, shall deposit with the COUNTY a security deposit approximately three (3) times the estimated monthly rent, fees and charges as determined by the Airport Director.

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



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The security deposit shall take one of the forms set out below and shall guarantee the 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 the TENANT's performance and that all or any part shall be paid to the COUNTY, or order upon demand by the Airport Director. Both the financial institution(s) and the form of the instrument(s) must be approved by the Airport Director.

- B. A Faithful Performance Bond executed by a surety company or financial institution qualified and admitted to do business in the State of California and issued in a form approved by the COUNTY. Under the bond, the surety company shall guarantee to the COUNTY full and complete performance of all the terms, conditions and covenants herein to be performed on the part of the TENANT, including the payment of use fees, charges, rent, 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 the Airport Director a minimum (30) days prior written notice of cancellation or material change in said bond. Such cancellation or material change without the Airport Director's prior written consent shall constitute a default under this LEASE.

Regardless of the form in which the 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 the TENANT, its successors or assigns, or for payment of expenses incurred by the COUNTY as a result of the failure of the TENANT, its successors or assigns, to faithfully perform all terms, covenants, and conditions of this LEASE.

Should the 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 the COUNTY, or order upon demand by the Airport Director.

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

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

The security deposit, after deduction of all amounts due the COUNTY, shall be rebated, reassigned, released or endorsed by the COUNTY to the TENANT or order, as applicable, after



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one hundred twenty (120) days have elapsed, or at a time to be determined by the Airport Director, following the expiration date of the LEASE term, provided the TENANT has fully and faithfully performed each and every term, covenant, and condition of this LEASE.

ARTICLE V

USE, OPERATION, MAINTENANCE AND CONDITION OF PREMISES

SECTION 5.01 USE

The TENANT's use of the Leased Premises and its operations shall be limited to the operation of an airline club room for the exclusive use of the TENANT's passengers and guests. This operation is subject to the following authorized uses:

- A. Serving meals and/or snacks.
- B. Serving alcoholic beverages and soft drinks.
- C. Lounges are for waiting passengers.
- D. Concierge Services.
- E. Passenger ticketing operations.

Subject to the prior written approval of the Airport Director, the TENANT may be granted the option to provide those additional services and uses which are ancillary to and compatible with the operational requirements of an airline club room.

The TENANT shall not use the Leased Premises for any other purpose nor to engage in or permit any other activity within or from the Leased Premises.

SECTION 5.02 RULES AND REGULATIONS

The COUNTY may adopt and enforce Rules and Regulations that the 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, with applicable rules, regulations and orders including those of the FAA and TSA with respect to all operations of the Airport, and with the terms of and TENANT's rights under this LEASE. Except in the case of emergency, the COUNTY shall give the TENANT written notice and opportunity to comment on any proposed changes or additions to the rules and regulations that could impact the TENANT's operations at the Airport before such proposed rules and regulations are adopted by the COUNTY. If requested, the COUNTY shall promptly provide a copy of such rules and regulations to the TENANT.



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

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

The COUNTY shall not be liable to the TENANT for any diminution or deprivation of possession, or of its rights hereunder, on account of the exercise of such right or authority provided in this LEASE, nor shall the TENANT be entitled to terminate the whole or any portion of the leasehold estate herein created by reason of the exercise of such right or authority, unless the exercise thereof shall so interfere with the 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

The TENANT shall operate the club room in a competent and efficient manner in accordance with the terms of this LEASE.

The TENANT shall at all times maintain qualified and experienced personnel to supervise the TENANT's club room operations and provide a high standard of service to passengers and their guests at the Airport. The TENANT shall require its employees to be properly dressed, clean, courteous and neat in appearance at all times. The TENANT's employees shall refrain from use of offensive language and/or act in an otherwise offensive manner.

The TENANT shall cooperate with and not interfere with the COUNTY's and other TENANT's use of and operations at the Airport. The TENANT shall not place any ropes, barricades and/or stanchions on the public or common use area without prior written approval of the Airport Director.

SECTION 5.04 MAINTENANCE AND OPERATION OF LEASED PREMISES

The TENANT agrees to maintain the Exclusive Use Areas in a safe, clean, sanitary condition and in compliance with all applicable laws. The TENANT shall be responsible to make all necessary repairs required to maintain the Leased Premises and improvements in good condition.



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All repairs and improvements made by the TENANT to the Leased Premises shall be in compliance with all current federal, state, local laws, regulations, ordinances and building codes, and all Airport regulations (Codes) adopted consistent with Section 5.02. 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. Maintenance obligations of the TENANT are shown on Exhibit D, which exhibit is attached hereto and by reference made a part hereof.

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

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

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

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

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



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ARTICLE VI

HAZARDOUS SUBSTANCES AND IMDEMNIFICATION

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.

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

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

SECTION 6.02 ENVIRONMENTAL INDEMNIFICATION

To the fullest extent authorized by law, the 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 operations 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. The TENANT's indemnity obligations stated hereinabove shall not apply in the event of any loss, damage, or expense arising from the sole or active negligence and/or willful misconduct of the COUNTY or of the COUNTY's officers, employees, agents, servants, or independent contractors.

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



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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 the trier of fact. 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 THE COUNTY

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

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

SECTION 7.02 IMPROVEMENTS BY THE TENANT

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

- A. **Consent Required From the COUNTY.** No structures, improvements, or facilities shall be constructed, erected, altered, removed or made within the Leased Premises without prior written consent of the COUNTY, which consent may be withheld or conditioned in the COUNTY's discretion. Minor repairs, replacement and maintenance proposed for the Leased Premises, the cost of which does not exceed one hundred twenty five thousand dollars (\$125,000) annually, shall be approved by the Airport Director. All



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other structures, improvements, facilities, repairs, replacement, removal and maintenance items shall be approved by the Board of Supervisors.

- B. **Compliance with Plans and Construction Standards.** All improvements constructed by the TENANT within the Leased Premises shall be constructed in strict compliance with detailed plans and specifications approved by the Airport Director. All construction shall be conducted in a good and workmanlike manner and shall conform to applicable building codes, rules, regulations and the Airport's architectural standards as contained in reference document "John Wayne Airport, Architect and Engineer Guide," which can be provided by Airport upon request. All work shall be done in conformity with Airport approved plans, valid building and other necessary permits and shall be acceptable to the COUNTY and the appropriate governmental entity inspecting such work. The TENANT shall be responsible for filing Form 7460 for any construction and/or height of construction equipment with the FAA, if required.

All improvements constructed by the TENANT, including the plans and specifications therefor, shall conform in all respects to the applicable statutes, ordinances, building codes, rules and regulations of the COUNTY and such other governmental authority as may have jurisdiction. The Airport Director's approval shall not constitute a representation or warranty as to such conformity, which shall remain the TENANT's responsibility. The TENANT, at its own cost and expense, shall procure all permits necessary for such construction.

- C. **Insurance Requirements.** The 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 the COUNTY's Risk Management Services.
- D. **Noninterference.** The 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. The TENANT agrees to hold the COUNTY harmless from the cost of any time lost by the COUNTY or any damages to the COUNTY due to the actions or failure to act of the TENANT or its contractor.
- E. **Trailers and Modular Structures.** All improvements constructed by the 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 the COUNTY approved temporary modulars or trailers during construction. Upon completion of construction, all trailers or modulars must be immediately removed from the Leased Premises.
- F. **The TENANT's Cost and Expense.** All renovation or construction by the TENANT pursuant to this Section shall be at the TENANT's sole cost and expense. The TENANT shall keep its existing or future Exclusive Use Area and the improvements constructed thereon free and clear of all liens and shall pay all costs for labor and material arising out



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of such construction and shall hold the COUNTY harmless from any liability in respect thereto. The TENANT shall have the right to contest any and all liens filed against its existing or future Exclusive Use Area. The TENANT further agrees that the COUNTY shall have the right to post notices of non-responsibility as provided by Sections 3094 and 3129 of the CAL. CIV. CODE of the State of California.

- G. **Ownership of Improvements.** All improvements and facilities, exclusive of trade fixtures, constructed or placed within the Leased Premises by the TENANT must, upon completion, be free and clear of all liens, claims, or liability for labor or material and at the COUNTY's option shall become the property of the COUNTY at the expiration of this LEASE or upon earlier termination hereof. The COUNTY retains the right to require the TENANT, at the TENANT's cost, to remove any or all improvements located within the Leased Premises at the expiration or termination hereof.

SECTION 7.03 TENANT REIMBURSEMENT

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

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

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

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

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



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SECTION 7.04 EXCLUSIVE REMEDY

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

The TENANT agrees that exercise by the COUNTY of its termination rights hereunder shall not be construed as a taking by the COUNTY of any part of the Leased Premises, nor of the TENANT's rights under this LEASE, nor shall the 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 7.05 TENANT'S ASSURANCE OF CONSTRUCTION COMPLETION

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

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

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

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

SECTION 7.06 MECHANICS LIENS OR STOP-NOTICES

The TENANT shall at all times indemnify and hold the COUNTY harmless from all Mechanics Liens, Stop-Notices, claims, losses, demands, damages, cost, expenses or liability costs for labor or materials in connection with construction, repair, alteration, or installation of structures,



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improvements, equipment, or facilities within the Leased Premises undertaken by the TENANT, and from the cost of defending against such claims, including attorney's fees and costs.

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

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

Should the 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 7.07 "RECORD DRAWINGS" AND CONSTRUCTION COSTS

Within ninety (90) days following completion of any improvement within the Leased Premises, the TENANT shall furnish the Airport Director a complete set of "Record Drawings", two sets of prints of "Record Drawings" and a recordable compact disc (CD-ROM) containing the "Record Drawings" plans in a form usable by the COUNTY, to the COUNTY's satisfaction, on the COUNTY's computer aided mapping and design (CAD) equipment. Basic specifications for CAD compatible plans are contained in the Airport's reference document "John Wayne Airport, CAD Standards," which can be provided by the Airport upon request.

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

SECTION 7.08 DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS

The TENANT shall be responsible for any damage caused by the TENANT, or the TENANT's aircraft, equipment, employees, agents, visitors or suppliers, to common use areas of the Terminal or Airport facilities, including but not limited to runways, taxiways, access roads, navigational aids, apron areas and loading bridges. Should such damage require immediate repairs or replacement and the TENANT is unable to respond immediately to complete said repairs or replacement, the Airport Director may cause to be made or make any necessary repairs or replacements and the cost thereof shall be paid by the TENANT. Said cost shall include all



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labor, materials, equipment and an administrative fee equal to fifteen percent (15%) of the sum of those items. Said cost shall be paid by the TENANT within fifteen (15) days of receipt of an invoice for costs from the Airport Director.

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

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

ARTICLE VIII

ASSIGNMENT AND SUBLEASE

SECTION 8.01 ASSIGNING, SUBLETTING, AND TRANSFERRING

The provisions of this Section are subject to, and subordinate to the limitations of Article V of this LEASE.

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

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

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



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

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

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

C. **Bankruptcy Transaction.** If the TENANT assumes this LEASE and proposes to assign the same pursuant to the provisions of the U.S. BANKRUPTCY CODE, 11 U.S.C. §§101 *et*



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seq., then notice of such proposed assignment shall be given to the COUNTY. The following information shall be provided to the COUNTY:

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

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

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.

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 club room and all related activities of the TENANT at the Airport.

SECTION 9.02 TERMINATION FOR DEFAULT

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

- A. Payment of rent, fees, and charges;
- B. A general assignment for the benefit of creditors and any Transfer without the prior written approval by the COUNTY;
- C. The issuance of any execution or attachment against the TENANT at the Airport that is



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- undischarged within sixty (60) days of levy or seizure or if the Leased Premises are occupied by someone other than the TENANT;
- D. The voluntary vacation or abandonment by the TENANT of the operation of a club room or conduct of air transportation business at the Airport;
 - E. The violation by the TENANT of any of the terms of any insurance policy referred to in the LEASE;
 - F. If the TENANT is found by the FAA, TSA, other government regulatory or successor agency to have violated specified safety standards in the conduct of the TENANT's business;
 - G. The violation of any written directions of the Airport Director;
 - H. The appointment of a receiver to take possession of all, or substantially all, the assets of the TENANT located at the Leased Premises or of the TENANT's leasehold interest in the Leased Premises.

Where applicable, and unless otherwise stated in this LEASE, or by written notice, the TENANT shall have fifteen (15) calendar days to cure any notices of default prior to termination of this 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, the TENANT shall redeliver possession of said Leased Premises to the COUNTY in substantially the same condition that existed immediately prior to the TENANT's entry thereon, reasonable wear and tear, flood, earthquakes, war and any act of war, excepted. References to the termination of the LEASE in this LEASE shall include termination by reason of expiration.

SECTION 9.04 DISPOSITION OF ABANDONED PERSONAL PROPERTY

If the TENANT abandons or quits the Leased Premises or is dispossessed thereof by process of law or otherwise, title to any personal property belonging to the TENANT and left on the Leased Premises fifteen (15) days after such event shall be deemed to have been transferred to the COUNTY. The COUNTY shall have the right to remove and to dispose of such property without liability therefor to the TENANT or to any person claiming under the 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 the TENANT possession of the Leased Premises during the fifteen (15) days after termination, expiration or abandonment of the LEASE.



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SECTION 9.05 THE COUNTY'S RIGHT TO RE-ENTER

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

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

The 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 the COUNTY re-enters and takes possession of the Leased Premises in a lawful manner.

ARTICLE X

SECURITY

SECTION 10.01 AIRPORT SECURITY

In addition to FAA, TSA and Airport security rules, regulations and plans, the 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. The TENANT is responsible for fines imposed by any regulatory agency as a result of the TENANT's failure to comply with applicable rules and regulations regarding airport security.

The TENANT shall be required to obtain airport security clearance in order to perform work under this LICENSE. The TENANT, 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 the TENANT personnel who will be working onsite, and engaged in the performance of work under this License, must pass Airport's screening requirements, which includes an F.B.I. Criminal History Records Check and a Security Threat Assessment, and shall pay any applicable fees. Upon successful completion of the background checks, the 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



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identification badges are not issued until designated the 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. The 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. The TENANT's designated personnel must successfully complete the badge acquisition process, unless other arrangements have been approved by the Airport. The 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.

The TENANT and all the 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 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 the TENANT personnel employment and/or termination of the LICENSE. The loss of a badge shall be reported within 24 hours to the Sheriff's Department–Airport Police Services by calling (949) 252-5000. The TENANT or the 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 the TENANT's badge is not returned to the Airport upon termination of the TENANT personnel employment and/or termination of the License, the TENANT and/or the TENANT personnel shall be liable to the County of Orange for a fine in the amount of \$250.00 per unreturned badge. The amount of the fine is subject to change without notice. The TENANT's security deposit may be applied to cover the cost of the fine.



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ARTICLE XI

INSURANCE AND INDEMNITY

SECTION 11.01 INSURANCE

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

LESSEE agrees that LESSEE shall not operate on the Airport 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 cases shall assurances by LESSEE, 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. LESSEE also agrees that upon cancellation, termination, or expiration of LESSEE's insurance, COUNTY may take whatever steps are necessary to interrupt any operation from or on the Airport Premises until such time as the Airport Director reinstates the LEASE.

If LESSEE 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 LESSEE agree that this shall constitute a material breach of the LEASE. Whether or not a notice of default has or has not been sent to LESSEE, said material breach shall permit COUNTY to take whatever steps necessary to interrupt any operation from or on the Airport Premises, and to prevent any persons, including, but not limited to, members of the general public, and LESSEE employees and agents, from entering the Premises until such time as Airport Director is provided with adequate evidence of insurance required herein. LESSEE 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 COUNTY's action.

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



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

All self-insured retentions (SIRs) and deductibles shall be clearly stated on the Certificate of Insurance. If no SIRs or deductibles apply, indicate this on the Certificate of Insurance with a zero (0) by the appropriate line of coverage. Any self-insured retention (SIR) or deductible in excess of \$25,000 (\$5,000 for automobile liability), shall specifically be approved by the County Executive Office (CEO)/Office of Risk Management upon review of LESSEE's current audited financial report.

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

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 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 LESSEE shall provide the minimum limits and coverage as set forth below:

Coverages	Minimum Limits
Commercial General Liability	\$1,000,000.00 per occurrence; \$2,000,000.00 aggregate
Commercial Auto Liability	\$1,000,000.00 single limit
Workers' Compensation/Employers Liability	Statutory/\$1,000,000 per occurrence
Liquor Liability	\$1,000,000.00 per occurrence
Commerical Property – Special Form Including contents, tenant improvements, 12-mo BI/Loss of Rents	100% Replacement , No co-insurance provision



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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 following endorsements must be submitted with the Certificate of Insurance.

- 1) The Commercial General Liability policy shall contain an Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the County of Orange, its elected and appointed officials, officers, employees, agents as Additional Insureds.
- 2) The Commercial General Liability policy shall contain a primary non-contributing endorsement evidencing that the LESSEE's insurance is primary and any insurance of self-insurance maintained by the County of Orange shall be excess and non-contributing.
- 3) 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.
- 4) The Commercial Property policy shall contain a Loss Payee endorsement naming the County of Orange as respects the County's financial interest when applicable.

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

Lessee shall notify COUNTY in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to COUNTY. Failure to provide written notice of cancellation may constitute a material breach of the LEASE, upon which the COUNTY may suspend or terminate this LEASE.

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 address provided in the Clause (NOTICES) below or to an address provided by Airport Director. LESSEE has ten (10) business days to provide adequate evidence of insurance or this LEASE may be cancelled.



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COUNTY expressly retains the right to require LESSEE 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 LESSEE in writing of changes in the insurance requirements. If LESSEE 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 LESSEE, 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 LESSEE's liability hereunder nor to fulfill the indemnification provisions and requirements of this LEASE.

SECTION 11.02 INDEMNITY

To the fullest extent authorized by law, the 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 operations at JWA, 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. The TENANT's indemnity obligations stated hereinabove shall not apply in the event of any loss, damage, or expense arising from the sole or active negligence and/or willful misconduct of the COUNTY or of the COUNTY's officers, employees, agents, servants, or independent contractors.

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

In the event that a monetary judgment is awarded against the COUNTY and the 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 attorneys' fees in any action to enforce the terms of this LEASE. The rights and obligations set forth in this paragraph shall survive the termination of this LEASE.



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ARTICLE XII

FEDERAL GRANT ASSURANCES AND REQUIREMENTS

SECTION 12.01 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, or 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, or 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.
 - (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.



JOHN WAYNE AIRPORT AIRLINE CLUB ROOM LEASE

- 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 12 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 the 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 12.02 DEVELOPMENT/MAINTENANCE OF AIRPORT

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

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

SECTION 12.03 LEASE SUBORDINATE TO AGREEMENT WITH U.S.A.

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

SECTION 12.04 USE TO CONFORM WITH FEDERAL AVIATION REGULATIONS

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

The 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.



**JOHN WAYNE AIRPORT
AIRLINE CLUB ROOM LEASE**

SECTION 12.05 FEDERAL LAW PREEMPTION

Notwithstanding any provisions of this LEASE, to the contrary and notwithstanding any provision of any other agreements, laws, or ordinances to the contrary, any requirement that is imposed on the TENANT in this LEASE, or any local authorities shall not apply to the TENANT to the extent that such requirement is or would otherwise be preempted by federal law, including but not limited to the Airline Deregulation Act (49 U.S.C. § 41713).

SECTION 12.06 NONEXCLUSIVE RIGHT

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

SECTION 12.07 WAR OR NATIONAL EMERGENCY

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

SECTION 12.08 AFFIRMATIVE ACTION REQUIREMENTS

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

ARTICLE XIII

MISCELLANEOUS PROVISIONS

SECTION 13.01 TIME

Time is of the essence in this LEASE.

SECTION 13.02 LEASE ORGANIZATION

The various headings and numbers herein, the grouping of provisions of this LEASE into



JOHN WAYNE AIRPORT AIRLINE CLUB ROOM LEASE

separate sections and paragraphs, and the organization hereof, are for the purpose of convenience only and shall not be considered otherwise.

SECTION 13.03 AMENDMENTS

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

SECTION 13.04 SIGNS

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

SECTION 13.05 PERMITS AND LICENSES

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

SECTION 13.06 TAXES AND ASSESSMENTS

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

SECTION 13.07 CIRCUMSTANCES WHICH EXCUSE PERFORMANCE

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



JOHN WAYNE AIRPORT AIRLINE CLUB ROOM LEASE

SECTION 13.08 PARTIAL INVALIDITY

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

SECTION 13.09 WAIVER OF RIGHTS

The failure of the COUNTY or the 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 the COUNTY or the 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 13.10 AUTHORITY OF THE TENANT

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

SECTION 13.11 PUBLIC RECORDS

The TENANT understands that written information submitted to and/or obtained by the COUNTY from the 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 CAL. PUBLIC RECORDS ACT (CAL. GOV. CODE §§6250 *et seq.*) as now in force or hereafter amended, or any Act in substitution thereof, or otherwise made available to the public.

SECTION 13.12 RELATIONSHIP OF PARTIES

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



**JOHN WAYNE AIRPORT
AIRLINE CLUB ROOM LEASE**

SECTION 13.13 GOVERNING LAW AND VENUE

This LEASE has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this LEASE, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for trial to another county.

SECTION 13.14 ATTORNEY FEES

In any action or proceeding to enforce or interpret any provision of this LEASE, or where any provision hereof is validly asserted as a defense, each party shall bear its own attorney's fees, costs and expenses.

SECTION 13.15 NOTICES

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

John Wayne Airport
3160 Airway Avenue
Costa Mesa, CA 92626

TO: TENANT

American Airlines, Inc., MD 5317
4333 Amon Carter Boulevard
Fort Worth, TX 76155

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



JOHN WAYNE AIRPORT
AIRLINE CLUB ROOM LEASE

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

AMERICAN AIRLINES, INC.

By: _____

By: _____

APPROVED AS TO FORM:

County Counsel

By: Samon Kramer 11-8-16

APPROVED AS TO AUDIT AND ACCOUNTING:

Auditor-Controller

By: _____

RECOMMENDED FOR APPROVAL:

John Wayne Airport

By: _____

Barry A. 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: _____

Chair, Board of Supervisors

Robin Steiler
Clerk of the Board of Supervisors
of Orange County, California

LEASE DESCRIPTION

Parcel Numbers: PM 1121-300-68; 68.1

Project Name: John Wayne Airport

Secondary Party: American Airlines, Inc.

All the premises shown on a floor plan marked "Exhibit B" attached hereto and made a part hereof, being those certain Airline Club Room areas designated as Parcel 300-68, containing approximately 3,553 square foot, located on the mezzanine level; and that certain elevator remote mechanical machine room designated as 300-68.1 containing approximately 56 square feet located on the arrival level, all of which are situated within the John Wayne Airport passenger terminal building at 18601 Airport Way, in the City of Santa Ana, County of Orange, State of California, and located on Lots 132 and 135 of Block 7 of the Irvine Subdivision, per map recorded on Book 1, page 88 of Miscellaneous Maps, in the Office of the County Recorder of Orange County, together with the right of ingress and egress thereto.

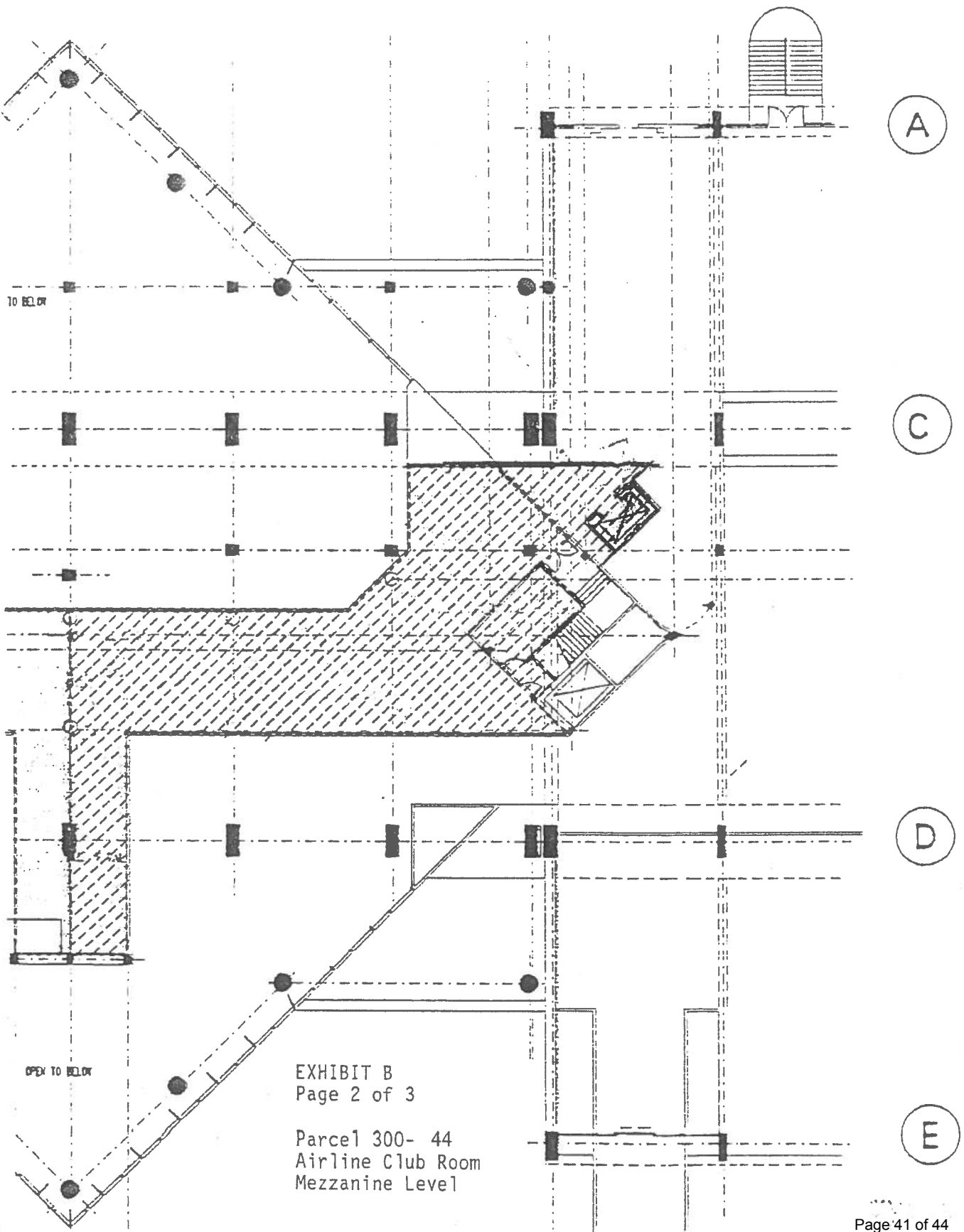
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A

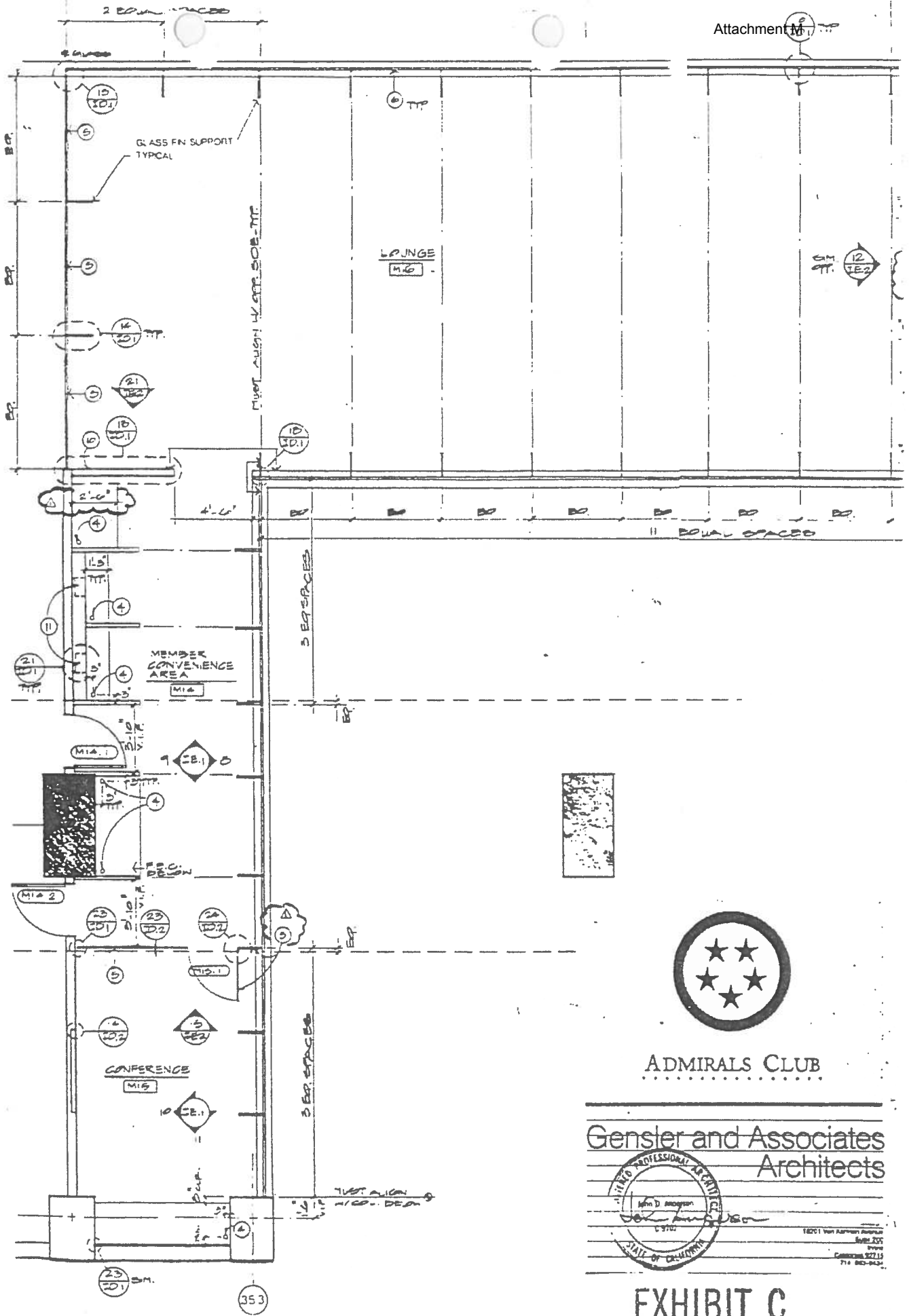
C

D

E

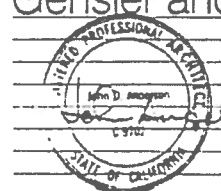
EXHIBIT B
Page 2 of 3

Parcel 300- 44
Airline Club Room
Mezzanine Level



ADMIRALS CLUB

Genster and Associates
Architects



1801 Van Alden Avenue
Suite 201
Irvine
California 92714
714 852-9424

EXHIBIT C

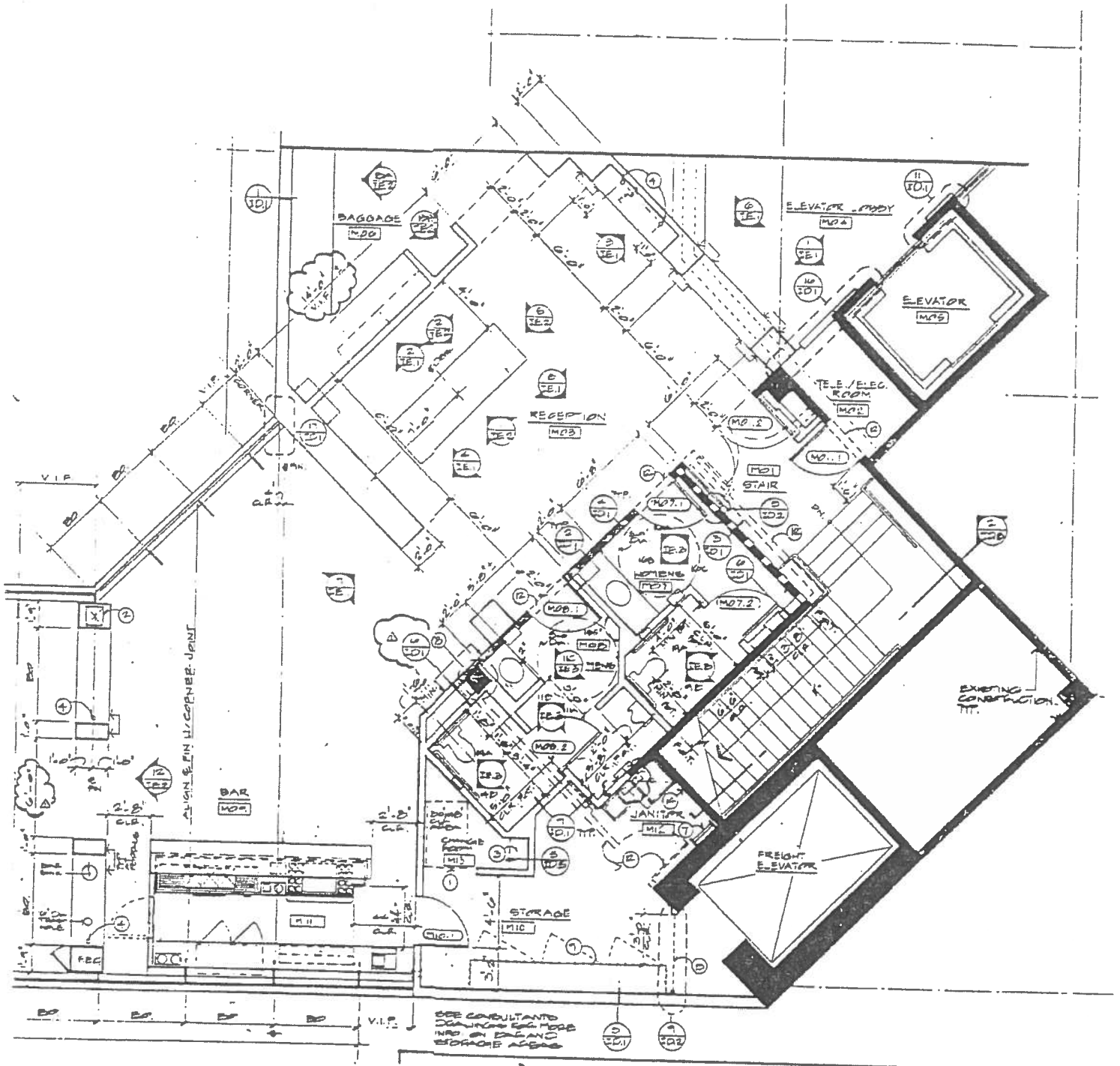


EXHIBIT C