

**LEASE AGREEMENT
BETWEEN
CITY OF MERCED
AND
ADVANCED AIR, LLC**

THIS LEASE AGREEMENT (“Agreement”), is made and entered into as of _____, 2021, by and between the City of Merced, a California Charter Municipal Corporation, hereinafter referred to as Lessor, and Advanced Air, a California Limited Liability Company, hereinafter referred to as Lessee.

WITNESSETH

WHEREAS, Lessor operates and administers an airport known as the Merced Yosemite Regional Airport located in the City of Merced, County of Merced, State of California, hereinafter called the Airport, the said Airport being more fully described as follows, to wit:

The north one-half of Section 35 and the south 1,320 feet of Section 26, Township 7 South, Range 13 East, Mount Diablo Base and Meridian, less roads and canals; and

WHEREAS, Lessee is engaged in the business of air transportation with respect to persons, property and cargo; and,

WHEREAS, Lessee desires to lease certain premises, facilities, rights, licenses, services and privileges in connection with and on the Airport, and Lessor is willing to lease the same to Lessee upon the terms and conditions hereinafter stated.

NOW, THEREFORE, for and in consideration of the promises and of the mutual covenants and agreements herein contained, and other valuable considerations, Lessor does hereby demise and let unto Lessee, and Lessee does hereby hire and take from Lessor, certain premises and facilities, rights, licenses, services and privileges in connection with and on the Airport, as follows:

ARTICLE I

Term of Agreement

Subject to earlier cancellation hereinafter provided, this Agreement shall continue in effect from January 1, 2022 to December 31, 2025, and shall continue thereafter until terminated by either party giving sixty (60) days prior written notice to the other party.

ARTICLE II

Use of Airport - Operation and Maintenance by Lessor

Lessee is hereby granted the right, in its air transport operation thereat, and for all purposes necessarily incident thereto, to use the Airport and all the facilities, equipment, improvements and services pertaining thereto which are now or hereafter provided by the Lessor in its maintenance and operation thereof. Such right shall be in common with other operators so authorized, and shall give Lessee no preferential right of use except as herein provided. All Federal Aviation Administration ("FAA") required equipment, if any, shall be supplied and paid for by Lessee.

Except as otherwise provided in this Agreement, Lessor, during the term of this Agreement, shall, at no cost to Lessee:

(a) Maintain and keep in good repair, the Airport, airport terminal building, vehicular parking space, all appurtenances, facilities and services now or hereafter connected with the foregoing;

(b) Keep the Airport free from obstructions and maintain and operate the Airport in a manner at least equal to the minimum standards or ratings as established by the FFA in support of air carrier operations.

(c) Provide and supply adequate field lighting on and for the Airport including without restriction because of enumeration, boundary lights, landing lights, floodlights and beacons.

All obligations provided for by this Article shall be executed in a manner comparable to standards of other airports of similar size and traffic.

ARTICLE III

Ground Transportation

Lessee shall have the right to operate, or contract for the operation of, any ground transportation service of its choice for the carriage of its passengers and cargo to and from the Airport. Loading and unloading space for vehicles so engaged shall be at locations convenient to Lessee's operations, whether on or off the premises leased to it exclusively hereunder. Parking space for such vehicles and for automobiles of Lessee's employees, passengers and invitees may be provided by Lessee, with or without charge, on its leased premises hereunder, without hindrance of Lessor.

ARTICLE IV

Public Parking Space

The Lessor hereby undertakes to provide at the Airport adequate and convenient outdoor public parking space for motor vehicles of the general public. Charge may be made by Lessor for such parking, at reasonable rates, but Lessor will not charge Lessee's accredited employees or ground transportation operators for their parking use of such space, and Lessor hereby accords them such use, gratis.

ARTICLE V

Ingress and Egress

Lessee shall have full and free right to ingress to and egress from Airport over roadways of Lessor, for itself, its employees, passengers and invitees.

ARTICLE VI

Leased Premises

The Leased Premises are located at the Merced Yosemite Regional Airport Terminal, 20 Macready Drive, Merced, California, and consist of approximately 689 square feet of offices and counters for Lessee's exclusive use, and approximately 2,018 square feet of common area for Lessee's non-exclusive use, including secured gate waiting area, restrooms, and lobby. Lessee also receives non-exclusive rights to use of the Airport and its aviation improvements, including

aprons, taxiways, and runways. The Leased Premises are illustrated in Attachment A.

(a) Improvements to Premises:

Lessee may make improvement to provide access to, and on the Premises, with consent of Lessor as to design and construction. Lessee shall fund all costs of development, including demolition, architecture and engineering, site preparation, building construction, public improvements, fees and permits, and financing costs, except as otherwise expressly provided.

(b) Design:

The Lessee shall coordinate design of any and all improvements on the Premises with the Lessor.

ARTICLE VII

Notices

All written notices to Lessee required by this Agreement shall be addressed as follows:

Advanced Air, LLC
12101 Crenshaw Boulevard, Suite 100
Hawthorne, California 90250

All written notices to Lessor required by this Agreement shall be addressed as follows:

City Clerk
City of Merced
678 West 18th Street
Merced, California 95340

with a copy to: City Attorney
City of Merced
678 W. 18th Street
Merced, California 95340

ARTICLE VIII

Rental and Fees

(a) Rental:

This Lease shall commence and continue for the term as set forth in Article I hereof, subject to earlier termination as provided in Article XIII hereof. The rents to be paid by Lessee shall be as follows:

Year 1 (January 1, 2022 to December 31, 2022)	\$6,050.00 per month
Year 2 (January 1, 2023 to December 31, 2023)	\$6,232.00 per month
Year 3 (January 1, 2024 to December 31, 2024)	\$6,418.00 per month
Year 4 (January 1, 2025 to December 31, 2025)	\$6,611.00 per month

Beginning January 1, 2026, rent shall increase three percent (3%) annually on January 1st of each year.

(b) Landing Fees:

Lessee agrees to pay to Lessor for the use of all the premises, facilities, rights, licenses, services and privileges granted hereunder, in addition to the rental as specified in Section (a) of this Article VIII, the following landing fees:

- (1) Lessee shall pay Lessor a landing fee of Seventeen Dollars (\$17.00) per landing.
- (2) Landing fees shall be applicable to all aircraft operated for revenue-producing purposes, including the pick-up or discharge of passengers and/or cargo.

(c) Records:

Lessee shall provide to Lessor at the end of each calendar month statistical information respecting Lessee's operations at Airport, including:

- (1) The total number of aircraft operations conducted by Lessee;
- (2) The total combined certificated gross landing weight of all such aircraft operations;
- (3) The total number of enplaned, deplaned, and through passengers;

(d) Delinquent Rent or Landing Fees:

In addition to other remedies contained in this Agreement, in the event any rental payment or landing fee payment is not made within 10 days of the date it is due, Lessee shall pay to Lessor a late charge on said unpaid balance calculated at the rate of twelve percent (12%) per year from the date such payment became delinquent until the date such payment is made.

(e) Deposit:

Prior to the commencement of Lessee's operations under this Agreement, Lessee shall maintain performance security in the amount of Five Thousand Dollars (\$5,000.00) to Lessor in a form acceptable to Lessor's City Attorney to guarantee Rental and Landing Fees payments. The balance of said performance security will be returned to Lessee within sixty (60) days of the termination of this Agreement, less any deductions for non-payment of rent or Landing Fees.

(f) Utilities:

Lessee shall be responsible for payment of its own utilities and phone bills.

(g) Common Area Maintenance and Utilities:

Lessee acknowledges that Lessor provides common area maintenance and janitorial service to non-exclusive use areas of the Premises, and utilities (electricity and natural gas) to both exclusive and non-exclusive use areas of the Premises. As compensation, Lessee shall pay Common Area Maintenance (CAM) fees as follows:

Year 1 (January 1, 2022 to December 31, 2022)	\$1,075.00 per month
Year 2 (January 1, 2023 to December 31, 2023)	\$1,107.00 per month
Year 3 (January 1, 2024 to December 31, 2024)	\$1,140.00 per month
Year 4 (January 1, 2025 to December 31, 2025)	\$1,175.00 per month

Beginning January 1, 2026, CAM fees shall increase three percent (3%) annually on January 1st of each year.

At such time as Lessor adds restroom facilities that can be accessed within the sterile area of the Airport, Lessee agrees to negotiate in good faith with the City to amend this Agreement for the purpose of increasing the monthly CAM fee to cover on a monthly basis the cost of maintaining the improvement.

(h) Rents and Fees Due:

Rents and fees will be due and payable in advance on the first of each month commencing January 1, 2022, subject to the incentive proposal described in Article X of this Agreement.

ARTICLE IX

Rules and Regulations

(a) Lessor Rules:

The Lessor has in force certain rules and regulations covering operations at the Airport. Lessee agrees to abide by these rules and regulations, which may be changed from time to time by Lessor without notification or approval by Lessee, but which shall always be consistent with safety and with the rules, regulations, and orders of the FAA. Such rules and regulations shall not be inconsistent with the provisions of this Agreement.

(b) Training of Lessee's Employees in Part 139 Requirements:

Lessee acknowledges that Lessor incurs expenses for FAA Part 139 required staffing levels, and that such staffing is necessary for Lessor due primarily to Lessee's activities. During the period of this Agreement, Lessee shall provide Part 139 training for its "Full-Time" Merced-based employees at Lessee's expense, with the intention that such employees may assist in meeting Part 139 requirements.

ARTICLE X

Control of Rates, Fares and Charges, Schedule, and Aircraft

The Lessor shall have no control whatsoever over the rates, fares, and charges that Lessee may prescribe for its transportation or services, and shall impose no fees or tolls upon Lessee's passengers, patrons, or other persons whom it serves at the Airport for the privilege of being so served; except that nothing in this Article shall be construed to prevent the imposition of Passenger Facilities Charges (PFCs). Lessee agrees not to oppose imposition of any PFC authorized by the FAA.

Lessee shall establish flight schedules after reasonable consultation with Lessor.

At such point as Lessee exceeds 10,000 revenue passenger enplanements for the Airport in a calendar year, the Lessor will reduce the rent by One Thousand Dollars (\$1,000.00) per month for the duration of the calendar year as a performance incentive.

ARTICLE XI

Marketing

Lessee shall use reasonable efforts to market its services with the intention that Lessee significantly increase the level of revenue enplanements for the Airport. Lessee shall provide a written report to Lessor summarizing its marketing efforts quarterly, in October, January, April and July of each year of the period of this Agreement.

ARTICLE XII

Damage or Destruction of Premises

If the Terminal Building is partially damaged by fire, the elements, the public enemy or other casualty, but Lessee's space is not rendered untenable, the Terminal Building shall be repaired with due diligence by Lessor at Lessor's own cost and expense. If the damage shall be so extensive as to render Lessee's space untenable but capable of being repaired in thirty (30) days, the same shall be repaired with due diligence by Lessor at Lessor's own cost and expense, and the rental payable hereunder shall be proportionately paid up to the time of such

damage and shall thenceforth cease until such time as such space shall be fully restored. In case such building is completely destroyed by fire, the elements, the public enemy or other causality, or so damaged that Lessee's space will or does remain untenable for more than thirty (30) days, at the option of Lessee, either (1) said building shall be repaired or reconstructed with due diligence by Lessor at Lessor's own cost and expense, and the retail payable hereunder paid up to the time of such damage or destruction and shall thenceforth cease until such time as Lessee's space shall be fully restored, or (2) if within twelve (12) months after the time of such damage or destruction Lessee's space shall not have been repaired or reconstructed for Lessee's use, Lessee may give Lessor written notice of its intention to then cancel this Agreement in its entirety or to cancel, as of the date of such damage or destruction, such part of this Agreement that related only to space.

In the event that the Airport is rendered unusable, there shall be a reasonable and proportionate abatement of the rentals, fees, and charges provided for herein during the period that the Airport is unusable.

In the event that the Terminal Building must be moved to a new location, by reason of any federal safety requirements or in order to comply with runway clearance requirements of the FAA, or for any other reason beyond the control of the Lessor, Lessor may, at its option, move or rebuild said building, subject to abatement of rental charges proportionate to the extent and the time that the building is thereby rendered untenable, or cancel this lease on thirty (30) days written notice to Lessee.

ARTICLE XIII

Cancellation

This Agreement may be canceled and terminated prior to its termination date as follows:

(a) Default by Lessee:

The Lessor may cancel and terminate this Agreement upon default by Lessee of any of the terms and conditions hereof and the failure of Lessee to remedy such default for a period of sixty (60) days after receipt of written request from the Lessor to remedy the same.

Notwithstanding the above, the failure of Lessee to pay rent or landing fees when due and the failure to remedy such default for a period of thirty (30) days shall result in the automatic cancellation and termination of this Agreement with ten (10) days written notice. Additionally, the failure to maintain at all times the insurance required by Article XV hereof shall result in the automatic cancellation and termination of this Agreement without notice.

(b) Default by Lessor:

Lessee may cancel and terminate this Agreement upon default by the Lessor of any of the terms and conditions hereof and the failure of the Lessor to remedy such default for a period of sixty (60) days after written request from Lessee to remedy the same.

(c) Bankruptcy of Lessee:

The Lessor may cancel this Agreement upon the filing by Lessee of a voluntary petition in bankruptcy, the institution of proceedings in bankruptcy against Lessee and the adjudication of Lessee as a bankrupt pursuant to such proceedings, the taking by a court of competent jurisdiction of Lessee and its assets pursuant to proceedings brought under the provisions of any federal reorganization act, or the appointment of a receiver of Lessee's assets.

(d) Governmental Action:

Lessee may cancel this Agreement upon the failure or refusal of the Department of Transportation at any time during the term of this Agreement or any renewal thereof to permit Lessee to operate into or from the Airport with any type of aircraft which Lessee may reasonably desire to operate into and from the Airport, including without limitation of the generality of the foregoing, the failure or refusal of the Department of Transportation at any such time to permit Lessee to operate into or from other airports of like size and character, upon the termination or restriction of Lessee's present right to operate into and from the Airport as an air carrier authorized to transport persons or property by the Department of Transportation, or the federal authorities charges with the national defense, or by any other duly constituted authority.

(e) The Federal Essential Air Service Program

Lessee may cancel and terminate this Agreement upon thirty (30) days prior written notice to Lessor, in the event of termination or material adverse change in the Federal Essential Air Service Program (“EAS”) relating to Lessee’s operation under this Agreement and/or Lessee’s contract under the EAS program for Merced, California. Said prior written notice shall include all documentation evidencing the termination or material adverse change in the EAS program. However, should Lessee terminate service before the date expected by Department of Transportation, the notice required with be thirty (30) days, plus the number of additional days before the new carrier begins service, up to a maximum of an additional thirty (30) days.

ARTICLE XIV

Prevention of Use

Lessee shall have the right to terminate this Agreement upon issuance by any court of competent jurisdiction of any injunction in any way preventing or restraining the use of the Airport or any part thereof for Airport purposes and the remaining in force in such injunction for a period of at least ninety (90) days, or upon the inability of Lessee to use for a period in excess of ninety (90) days the Airport or any of its premises, facilities, rights, licenses, services or privileges leased to Lessee hereunder because of any law or other order, rule, regulation or other action or non-action of the Department of Transportation, or of any other governmental authority, or because of fire, earthquake, other casualty or acts of God or the public enemy.

ARTICLE XV

Indemnity and Insurance

Lessee assumes all risks incident to, or in connection with, its operation at the Airport and shall be solely responsible for all accidents, death, or injuries to persons, or damage to property caused by its operations at the Airport, and shall further indemnify, protect, defend (with counsel selected by Lessor), and save harmless the Lessor, its officers, employees, and agents from any and all claims, suits, losses or damages for death or injuries to persons or damage to property arising out of the negligent or improper acts or omissions of Lessee, its agents, officers or employees; PROVIDED, however, that this assumption of risk and undertaking shall not apply to claims, suits, losses or damages arising out of the

sole negligence of Lessor's officers, employees, agents, or contractors. It is understood that the duty of Lessee to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by Lessor of insurance certificates and endorsements required under this Agreement does not relieve Lessee from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Lessee acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

Lessee agrees to furnish a certificate to Lessor, after approval of same by the City Attorney of Lessor, indicating that Lessee has purchased and is maintaining Airport liability insurance from a company satisfactory to Lessor insuring against:

(a) Legal liability for bodily injuries or death in the minimum sum of Four Million Dollars (\$4,000,000.00) for one accident.

(b) Legal liability for damage to property of others in the minimum sum of One Million Dollars (\$1,000,000.00).

Said certificate shall state that Lessor will be notified at least thirty (30) days before cancellation (except 10 days with respect to non-payment of premium) of the policy or any material change thereof.

The Lessee also shall file a certificate of insurance with Lessor, in a form satisfactory to Lessor, certifying that the Lessee has in force public liability, passenger liability, and property damage insurance for operation of aircraft in amounts not less than One Million Dollars (\$1,000,000) for one person, Four Million Dollars (\$4,000,000) for one accident, and One Million Dollars (\$1,000,000) for property damage. Said certificates shall state that Lessor will be notified at least thirty (30) days before cancellation of the policy (except 10 days with respect to non-payment of premium) or any material change thereof.

All of the above insurance policies shall contain a contractual liability endorsement recognizing the hold harmless agreement contained in this paragraph and the City of Merced, its officers, employees, volunteers, and agents shall be named as additional insureds under the policies, and that the policies shall stipulate that this insurance will operate as primary insurance for purposes of this

Agreement, and that no other insurance effected by Lessor or other named insureds will be called on to cover a loss covered thereunder.

ARTICLE XVI

Assignment

Lessee shall not at any time assign this Agreement or sublet the demised premises or any part thereof without the prior written consent of Lessor, provided that the foregoing shall not prevent the assignment of the Agreement to any corporation with which Lessee may merge or consolidate or which may success to the business of Lessee. However, this restriction against assignment shall not operate to prevent Lessee from contracting with any operator of its choice for the performance of any of the ground operations or services the right of performance of which is accorded Lessee hereunder.

ARTICLE XVII

Licenses, Fees and Taxes

If Lessee is required to procure any licenses or permits from Lessor, other than such as any be required by the United States of America or the State of California, to authorize or permit Lessee to pursue any of the activities or operations which Lessee is authorized to carry on under this Agreement, Lessee may deduct the cost of such licenses and permits other than those imposed by ordinance and statutes in force at the time of execution of this Agreement, from any rentals or fees payable to Lessor herein.

Lessee agrees to pay, without the right to deduct from rental fees provided for herein, any and all personal property taxes assessed against its property on said leased premises, such portion of real estate taxes as may be levied against improvements owned by Lessee and erected upon land owned by Lessor, and any tax assessed upon any possessory interest owned by Lessee at the Airport, including the rights in this Agreement.

ARTICLE XVIII

Attorney and Collection Fees

In the event that suit or arbitration shall be brought by Lessee or Lessor to enforce any provision of this Agreement, or for any unlawful detainer of the leased

premises, for the recovery of any rental fees or charges due under the provisions of this Agreement, or for any breach by Lessee or Lessor of any condition, term or covenant herein contained, the prevailing party in such suit or arbitration shall be entitled to recover costs, reasonable attorney's fees, and costs of suit together with any other costs of collection of enforcement, whether incurred prior or subsequent to commencement of legal action, as fixed by the arbitrator.

ARTICLE XIX

Non-Discrimination Clause

The Lessee assures that it will undertake an affirmative action program as required by 14 CFR 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 CFR Part 152, Subpart E. The Lessee 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 Lessee assures that it will require that its covered suborganizations provide assurances to the Lessee that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

ARTICLE XX

Waiver

In the event that either Lessor or Lessee shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

ARTICLE XXI

Venue

This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Agreement shall be held exclusively in a state court in the County of Merced.

ARTICLE XXII

Amendment

This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

ARTICLE XXIII

Integration

This Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or contemporaneous understanding or agreement between the parties with respect to all or any part of the subject matter hereof.

ARTICLE XXIV

Authority to Execute

The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

ARTICLE XXV

Counterparts

This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

LESSOR:
CITY OF MERCED
A California Charter Municipal Corporation

BY: _____
City Manager

ATTEST:
STEPHANIE R. DIETZ, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: Kimberly Mally 10/14/21
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

LESSEE:
ADVANCED AIR, LLC,
A California Limited Liability Company

BY: _____

ITS: _____

BY: _____

ITS: _____

Taxpayer I.D. No. _____

ADDRESS: 12101 Crenshaw Blvd.
Suite 100
Hawthorne, CA 90250

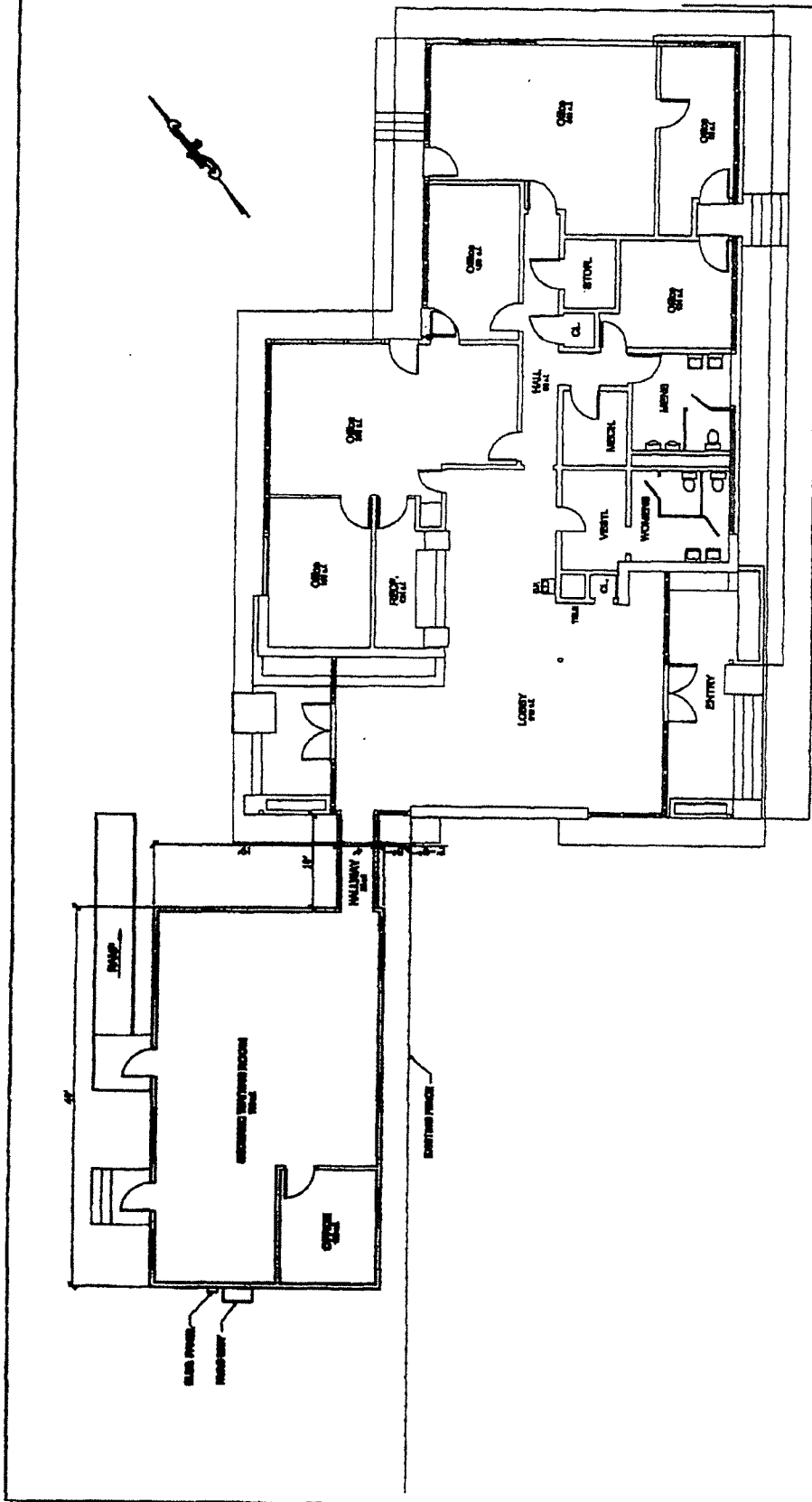
TELEPHONE: (310) 644-3344

FACSIMILE: (310) 644-9344

E-MAIL:

bookings@advancedairlines.com

Attachment A



TERMINAL/SECURED WAITING BUILDING FLOOR PLAN
SCALE 1/8" = 1'-0"