

**AMENDMENT NO. 2 TO
DOMESTIC FOOD AND BEVERAGE LEASE NO. 03-0185
AT SAN FRANCISCO INTERNATIONAL AIRPORT**

THIS AMENDMENT NO. 2 TO DOMESTIC TERMINAL FOOD AND BEVERAGE LEASE NO. 03-0185 AT THE SAN FRANCISCO AIRPORT ("Amendment No. 2"), dated as of March 20, 2012 for reference purposes only, is entered by and between the between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "City"), acting by and through the SAN FRANCISCO AIRPORT COMMISSION (the "Airport"), as landlord, and BAYSUBWAY AIRPORT as tenant (the "Tenant").

RECITALS

A. The Airport and GDDC, Inc. entered into Lease No. 03-0185, approved by Airport Commission Resolution No. 03-0185 on September 29, 2003, dated as of February 23, 2003 (the "Original Lease") for certain food and beverage space located at the Airport in Boarding Area E of Terminal 3 and Boarding Area C in Terminal 1. Under Resolution No. 07-0196, adopted on August 21, 2007, the Airport Commission approved assignment of the Lease to Tenant, Baysubway Airport.

B. Under the Original Lease Section 2.5, on May 22, 2009, the Airport Commission approved the early exercise of the option term of the Lease.

C. As part of the Airport's ongoing facilities improvement efforts, on April 14, 2011, the Airport closed Boarding Area E for approximately one calendar year for major renovation ("Renovation Period")

D. On April 5, 2011, the Airport Commission approved Amendment No. 1 under Resolution No. 11-0080, approving the conditions for the suspension and reinstatement of the Minimum Annual Guarantee, Tenant Infrastructure Fee, and Food Court Fee related to the Renovation Period.

E. The Original Lease, as amended by Lease Amendment No.1 and by this Amendment No. 2 shall be referred to from time to time collectively herein as the "Lease".

F. Due to changes in the proposed design of Boarding Area E, a complete demolition of Tenant's original premises is required, resulting in the extension of the Renovation Period, mentioned in Recital C above, by an additional eighteen (18) months until approximately November 1, 2013.

G. As a result of the revised Renovation Period extension, the Airport Commission adopted Resolution No. 12-0054 on March 20, 2012, approving certain amendments to the Lease such as replacement premises, reimbursement of unamortized construction investments, new commencement date, and other related provisions, on the terms and conditions set forth herein.

H. Airport and Tenant agree to the amendments set forth in this Lease Amendment No. 2. All capitalized terms not otherwise defined herein shall have the meaning given to them in the Lease

NOW, THEREFORE, in consideration of the foregoing and for valuable consideration the sufficiency of which is hereby acknowledged, City and Tenant hereby agree to amend the Lease as follows:

AGREEMENT

- 1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference as if fully set forth herein.
- 2. **Effective Date.** The effective date of the modifications to the Lease contained in this Lease Amendment No. 2 shall be the date upon which the Airport Director executes this amendment.
- 3. **Lease Summary.** The Lease Summary is hereby deleted in its entirety and replaced with the Attachment 1 titled "Major Lease Term Summary", attached hereto and made a part of this Lease that identifies New Premises; An Adjusted Term; Adjusted Dates; an Adjusted Minimum Investment Amount; an Adjusted Tenant Infrastructure Fee; and, an Adjusted Food Court Fee.
- 4. **Premises.** Exhibit A is hereby deleted in its entirety and replaced with the following:

“Exhibit A - Premises. A total of two facilities comprising approximately 1558 square feet of concession space located in Terminal 3 of the San Francisco International Airport, as described on the attached drawings and broken down as follows:”

<u>Space No.</u>	<u>Terminal</u>	<u>App. Sq Ft</u>	<u>Food Court</u>
T3.2.060	3	852	Yes
T3.3.020B	3	706	Yes

- 5. **Term.** Section 2.5, City’s Right to Extend the Term, is hereby deleted in its entirety.
- 6. **Rent.** Section 4.14 Boarding Area E Renovation is hereby deleted in its entirety and replaced with the following:

4.14 Boarding Area E Renovation.

- (a) Boarding Area E Renovation Period. The Renovation Period, as defined in Recital Paragraph B above, shall commence in or around on April 14, 2011, continue for approximately two and one half calendar years and shall end when the Airport Director, in his sole and absolute discretion, determines that the renovations are complete

- (b) Minimum Annual Guarantee (“MAG”) and Other Fees. During the Renovation Period, the MAG, Tenant Infrastructure Fee, and Food Court Fee shall be suspended for Tenant’s facility in Boarding Area E.
- (c) MAG Reinstatement. At the end of the Renovation Period, the MAG shall be reinstated. The MAG shall be subject to annual adjustments as specified in Lease Section 4.
- (d) Tenant Infrastructure Fee and Food Court Fee Reinstatement. At the end of the Renovation Period, the Tenant Infrastructure Fee and Food Court Fee shall be reinstated in accordance with the Lease.

7. A new Lease Section 19.28 is hereby added to the Lease:

“Lease Section 19.28 Airport’s Sustainable Food Guideline. In compliance with Executive Directive No. 09-03 issued by the Office of the Mayor on July 9, 2009, the Airport has established a 16-point Sustainable Food Guideline (the “Airport’s Sustainable Food Guideline”) that promotes public health, environmental sustainability, and social responsibility.

A. The following must be adhered to throughout the term of the Lease.

Tenants must feature:

- 1. Displays that promote healthy eating and good environmental stewardship
- 2. Visible food preparation areas
- 3. Portion sizes which support good health
- 4. Portion-appropriate menu items for children

Tenants must use:

- 5. Low- or non-phosphate detergents
- 6. Compostable, bio-resin bottles or paper boxes for all bottled water sales
- 7. Un-bleached paper products and compostable To Go containers and utensils

To the very greatest extent possible, Tenants must use:

- 8. Organic agricultural products from the Northern California region
- 9. Agricultural products that have not been genetically modified
- 10. Organic or all-natural meat from animals treated humanely and without hormones or antibiotics
- 11. rBST-free cheese, milk, yogurt and butter
- 12. Cage-free, antibiotic-free eggs"

8. **Reimbursement.** The City shall reimburse the Tenant for the unamortized cost of improvements to the original premises in an amount of One Hundred Fifty Four Thousand Nine Hundred Seven Dollars (\$154,907), subject to the reimbursement terms contained in the Airport letter dated March 8, 2012 and the memorandum on file with the Airport Commission Secretary for Resolution No.12-0054, incorporated herein by reference and made a part of this Lease.

9. **Entire Agreement.** This Amendment No. 2 contains all of the representations and the entire agreement between the parties with respect to the subject matter of this agreement. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to the subject matter of the Amendment No. 2 are superseded in their entirety by this

Amendment No. 2. No prior drafts of this Amendment No. 2 or changes between those drafts and the executed version of this Amendment No. 2 shall be introduced as evidence in any litigation or other dispute resolution proceeding by any party or other person, and no court or other body should consider such drafts in interpreting this Amendment No. 2.

10. **Miscellaneous.** This Amendment No. 2 shall bind, and shall inure to the benefit of, the successors and assigns of the parties hereto. This Amendment No. 2 is made for the purpose of setting forth certain rights and obligations of Tenant and the Airport, and no other person shall have any rights hereunder or by reason hereof as a third party beneficiary of otherwise.

Each party hereto shall execute, acknowledge, and deliver to each other party all documents, and shall take all actions, reasonably requested by such other party from time to time to confirm or effect the matters set forth herein, or otherwise to carry out the purposes of this Amendment No. 1. This Amendment No. 2 may be executed in counterparts with the same force and effect as if the parties had executed one instrument, and each such counterpart shall constitute an original hereof. No provision of this Amendment No. 2 that is held to be inoperative, unenforceable or invalid shall affect the remaining provisions, and to this end all provisions hereof are hereby declared to be severable. Time is of the essence of this Amendment No. 2. This Amendment No. 2 shall be governed by the laws of the State of California. Neither this Amendment No. 2 nor any of the terms hereof may be amended or modified except by a written instrument signed by all the parties hereto.


11. **Full Force and Effect.** Except as specifically amended herein, the terms and conditions of the Lease shall remain in full force and effect.

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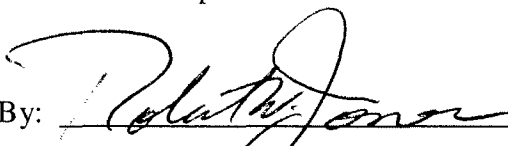
IN WITNESS WHEREOF, the Airport and the Tenant execute this Amendment No. 2 to the Lease as of the last date set forth below.

CITY: CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation,
acting by and through its Airport Commission



John L. Martin
Airport Director

TENANT: BAYSUBWAY AIRPORT,
a California corporation

By: 

Name: Robert W. Jones
Title: President

AUTHORIZED BY AIRPORT
COMMISSION

Resolution No. 12-0054
Adopted: March 20, 2012

Attest: 

Secretary
Airport Commission

APPROVED AS TO FORM:
DENNIS J. HERRERA,
City Attorney

By: 

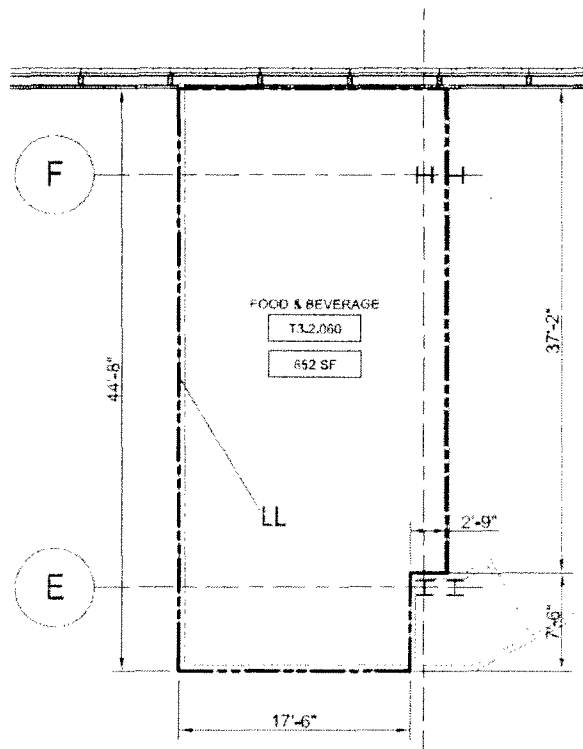
Deputy City Attorney

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Exhibit A Premises

A total of two facilities comprising approximately 1558 square feet of concession space located in Terminal 3 of the San Francisco International Airport, as described on the attached drawings and broken down as follows:

	<u>Terminal</u>	<u>App. Sq Ft</u>	<u>Food Court?</u>
T3.2.060	3	852	Yes
T3.3.020B	3	706	Yes



SPACE T3.2.060

SAN FRANCISCO INTERNATIONAL AIRPORT

TERMINAL 3, BOARDING AREA E
LEASE OUTLINE DRAWING

Attachment 1

LEASE AGREEMENT FOR THE DOMESTIC FOOD AND BEVERAGE LEASE NO. 03-0185 AT SAN FRANCISCO INTERNATIONAL AIRPORT

MAJOR LEASE TERM SUMMARY

For the convenience of Tenant and City (as such terms are defined below), this Major Lease Term Summary (this "**Summary**") summarizes certain terms of this Lease (as defined below). This Summary is not intended to be a detailed or complete description of this Lease, and reference must be made to the other Sections below for the particulars of this Lease. In the event of any inconsistency between the terms of this Summary and any other provision of this Lease, such other provision shall prevail. Capitalized terms used elsewhere in this Lease and not defined elsewhere shall have the meanings given them in this Summary.

Effective Date: JAN - 3 2013, 20 .

Tenant: Baysubway Airport
a California Corporation

Tenant's Notice Address: 1457 Lake Street San Francisco, CA 94118
Attn: Robert W. Jones
Fax No. (415) 661-5307
Tel. No. (415) 279-6545

City: The City and County of San Francisco, a municipal corporation,
acting by and through its Airport Commission.

City's Notice Address: San Francisco International Airport
International Terminal, North Shoulder Bldg., 5th Floor
Attn: Airport Director
P. O. Box 8097
San Francisco, CA 94128
Fax No. (650) 821-5005
Tel. No. (650) 821-5000.

City's Rent Payment Address: San Francisco International Airport
Attn: Accounting
575 N. McDonnell Road, 2nd Floor
P. O. Box 7743
San Francisco, CA 94120.

City's Insurance/Deposit Notice Address: San Francisco International Airport
Attn: Revenue Development and Management
575 N. McDonnell Road, Suite 3-329
P. O. Box 8097
San Francisco, CA 94128
Fax No. (650) 821-4519
Tel. No. (650) 821-4500.

Summary, Page i

Premises: The following facilities in the Domestic Terminal at the San Francisco International Airport, comprised of approximately 1307 1558 total square feet of space, as described on the attached Exhibit "A", broken down as follows:

<u>Space</u>	<u>Terminal</u>	<u>App Sq FT</u>
E.3.2.12b (closed 11-2011)	3	601
T3.2.060 (Replacement Premises)	3	852
T3.3.020B	3	706

Relevant Boarding Area: Boarding Area "E"
(§4)

Term: Development Term, plus the Operating Term, collectively.
(§2)

Delivery Date: The date on which the Director gives notice to Tenant that a facility is ready for Tenant to take possession and commence Tenant's work.
(§2)

Development Term is the period commencing on the delivery date of the Premises (the "**Commencement Date**") ending at 11:59 p.m. on the day prior to the Rent Commencement Date.

Operating Term is the period commencing on the Rent Commencement Date, and ending at 11:59 p.m. on the day prior to the tenth (10th) anniversary thereof (the "**Expiration Date**").

Adjusted Term: The period commencing on the earlier date of (a) the Replacement Premises is open for business or (b) the majority of gates in Boarding Area E are occupied as determined by the Airport Director and ending at 11:59 p.m. on the day prior to the tenth (10th) anniversary thereof (the "**Expiration Date**").

Rent Commencement Date: With respect to each Facility, the Rent Commencement Date shall be the date that is the earlier of (a) the date on which the Tenant's Work (as defined below) is substantially complete and Tenant opens for business therein, and (b) the majority of gates in Boarding Area E become operational, regardless of whether Tenant is open for business in Boarding Area E.
(§4)

Actual Dates (to be inserted upon determination):

Commencement Date: June 4, 2004

Development Term: June 4, 2004 - March 14, 2015

Operating Term: March 15, 2005 - March 14, 2015

Expiration Date: March 14, 2015 11:59 p.m.

Adjusted Expiration Date: October 31, 2023 11:59 p.m.

Reference Year: The calendar year immediately prior to the year in which this Lease is awarded: 2002.
(§4)

Permitted Use: The operation of a quick-serve facility, on a non-exclusive basis, as described on the attached Exhibit B.
(§3)

Base Rent: Per Lease Year (as defined below), the greater of the MAG (as defined below) or the following sum (such sum being referred to herein as the "**Percentage Rent**"): (§4)

- (a) 6% of Gross Revenues (as defined below) achieved up to and including \$600,000, plus,
- (b) 8% of Gross Revenues achieved from \$600,000.01 up to and including \$1,000,000, plus,
- (c) 10% of Gross Revenues achieved over \$1,000,000.

(For purposes of the above formula, the Gross Revenues achieved from all Facilities and all other operations of Tenant under this Lease such as catering to the extent permitted shall be aggregated.)

Lease Year: The period commencing on January 1 and ending on December 31 of each year. (§4)

Minimum Annual Guarantee: Fifty Two Thousand Two Hundred Eighty Dollars (\$52,280) per annum; Four Thousand Three Hundred Fifty Seven Dollars (\$4,357) per month, based on \$40 per square foot, subject to annual adjustments upward as described below. (§4)

MAG Adjustment Date: January 1 of each year (§4)

Rent: Base Rent, together with all other amounts owing by Tenant to City hereunder. (§4)

Deposit Amount: Equal to one-half (1/2) of the then current MAG (subject to adjustment). (§13)

Minimum Investment Amount: With respect to the original Premises, Two Hundred Fifty Dollars (\$250) per square foot. Unless otherwise waived by Director, the foregoing Minimum Investment Amount is applicable to each Facility and may not be considered in the aggregate across all Facilities. Minimum Investment Amount: **Three Hundred Twenty Six Thousand Seven Hundred Fifty Dollars (\$326,750)**. (§7)

With respect to Replacement Premises Space No. T3.2.060, the Minimum Investment Amount applicable is **Three Hundred Fifty Dollars (\$350)** per square foot which equals **Two Hundred Ninety Eight Thousand Two Hundred Dollars (\$298,200)**.

Tenant Infrastructure and Food Court Fees: Tenant Infrastructure Fee
Per Lease Year for original Premises: Nineteen Thousand Six Hundred Five Dollars (\$19,605); calculated at Fifteen Dollars (\$15.00) per square foot comprising the Premises.
(§4)

Food Court Fee Per Lease Year of original Premises: Nineteen Thousand Six Hundred Five Dollars (\$19,605); calculated at Fifteen Dollars (\$15.00) per square foot comprising the Premises.

With respect to Replacement Premise Space No. T3.2.060, the Tenant Infrastructure and Food Court Fee combined per Lease Year is: **Twelve Thousand Five Hundred Sixteen Dollars (\$12,516)**; calculated at **Fourteen Dollars Sixty Nine Cents (\$14.69)** per square foot of the Premises.

Food Court Maintenance Fee: For the first lease year, _____ Dollars (\$ _____), subject to annual adjustments. (amount to be inserted after 2013/2014 food court maintenance fee calculation is completed in May or June 2013)
(§4)

Initial Promotional Charge One Dollar (\$1.00) per square foot of the Premises (subject to adjustment)
(§11)

Resolution: Number 03-0185, approved by the Airport Commission on September 29, 2003.
Number 11-0080, approved by the Airport Commission on April 5, 2011.
Number 12-0054, approved by the Airport Commission on March 20, 2012.

Initial Tenant Representative: Robert W. Jones
Tel. No. (415) 279-6545
(§3)

Other Agreements: N/A
(§13)

Exhibits: A – Premises
B – Use and Operational Requirements
C-1 – Form of Performance Bond
C-2 – Form of Letter of Credit
D – Tenant Work Letter

All such exhibits are incorporated into this Lease and made a part hereof.

Initial of Authorized Representative of City _____ ^{UF}

Initial of Authorized Representative of Tenant _____ ^{UF}

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