

AMENDMENT NO. 2 TO
LEASE AGREEMENT FOR THE TERMINAL 3 COMMON-USE CLUB
AT SAN FRANCISCO INTERNATIONAL AIRPORT (LEASE NO. 13-0006)

THIS AMENDMENT NO. 2 TO LEASE AGREEMENT FOR THE TERMINAL 3 COMMON-USE CLUB AT SAN FRANCISCO INTERNATIONAL AIRPORT (LEASE NO. 13-0006) (this "Amendment"), dated as of the Effective Date (as defined below), for reference purposes only, is entered by and 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 AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC., as tenant ("Tenant").

RECITALS

A. On November 14, 2013, City and Tenant entered into that certain Lease Agreement for the Terminal 3 Common-Use Club at San Francisco International Airport (Lease No. 13-0006) (the "Original Lease"). The premises demised under the Lease is currently comprised of one location measuring approximately 8,171 square feet, in Terminal 3, Boarding Area F, (as further described in Exhibit A of the Lease, the "Existing Premises"). The Lease previously approved by the Airport Commission (the "Commission") by Resolution No. 13-0006, and the San Francisco Board of Supervisors (the "Board") by Resolution No. 67-13. The Original Lease, as amended by this Amendment is sometimes collectively referred to herein as the "Lease".

B. The Airport and Tenant have agreed to expand the Existing Premises, extend the Term, adjust the Rent structure and amount, and modify certain other terms of the Lease, as set forth below.

C. This Amendment is subject to the approval of the Commission under San Francisco Administrative Code 2A.173, and of the Board under Charter Section 9.118 (the "Required City Approvals").

D. All capitalized terms not otherwise defined herein shall have the same meaning given to them in the Original 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. This Amendment shall be deemed effective on the date of execution by the Airport following the receipt of all Required City Approvals:

JUN 25 2021

[Date to be Inserted] (the "Effective Date").

3. Expansion Space; Expansion Space Commencement Date.

- (a) Upon the Expansion Space Commencement Date (as defined below): (i) the Existing Premises shall be expanded to include the space directly adjacent to the Existing Premises, comprised of approximately 7,088 square feet (the "Expansion Space"), which together with the Existing Premises (8,199 square feet), will total 15,287 square feet ("Expanded Premises"), and (ii) Exhibit A of the Lease shall be deleted and replaced with the Exhibit A attached to this Amendment, which delineates the Expansion Space and the entire Expanded Premises. For purposes of this Amendment, the "Expansion Space Commencement Date" shall be the date upon which the Airport Director delivers possession of the Expansion Space to Tenant.
- (b) Notwithstanding the foregoing, the Expansion Space Commencement Date shall be extended by one day for each day until the date Tenant is issued all permits and approvals required for the construction of the Expansion Space

Initial Improvements (as hereinafter defined) in the Premises by the Airport and any applicable governmental authorities (the “Permits”), provided that, such day-for-day extension of the Expansion Space Commencement Date is subject to the express condition that Tenant shall have: (i) submitted all plans and specifications and any and all other documents and information to the Airport and any governmental authorities to commence the process for the issuance of the Permits no later than one hundred eighty (180) days from the Effective Date (“Required Permit Documents”); and (ii) continuously and diligently prosecuted the approval process for the issuance of the Permits, including timely responding to additional requests for information and/or revisions to such plans and specifications (with any total days of delay caused by a failure of Tenant to meet the foregoing obligation being a “Tenant Delay”).

- (c) If the Expansion Space Commencement Date has not occurred within three hundred sixty-five (365) days following the Effective Date through no fault of Tenant and not counting any periods constituting Tenant Delay, Tenant shall thereafter have the option to terminate this Amendment upon at least thirty (30) days’ written notice, unless the Expansion Space Commencement Date shall occur prior to the effective date of termination specified in such notice.
- (d) In the event that Tenant shall fail to have submitted all Required Permit Documents by the date that is one hundred eighty (180) days from the Effective Date, through no fault or delay of City, or if the Expansion Space Commencement Date shall not have occurred within three hundred sixty-five (365) days following the Effective Date due to a Tenant Delay (and through no delay or fault of City), then City shall have the right to terminate this Amendment upon at least thirty (30) days’ written notice, unless Tenant shall then obtain all Permits and the Expansion Space Commencement Date shall have occurred prior to the effective date of termination specified in such notice.
- (e) From and after the Expansion Space Commencement Date, all references to “Premises” in the Original Lease shall be deemed to refer to the Expanded Premises.

4. **Revised Expiration Date.** Upon the Expansion Space Commencement Date, the Expiration Date for all purposes of the Lease will be extended by seven (7) years from November 5, 2024 to November 5, 2031 (the “Revised Expiration Date”). Upon the Expansion Space Commencement Date, all references in the Original Lease to the “Expiration Date” shall be deemed to refer to the Revised Expiration Date. Notwithstanding the foregoing, the Revised Expiration Date may be subject to further extension pursuant to Section 10 of this Amendment.

5. **Expanded Premises Rent Commencement Date; Minimum Annual Guarantee.**

- (a) Effective as of the first calendar day of the month immediately following the earlier to occur of the following (the “Expanded Premises Rent Commencement Date”) (i) the date upon which Tenant opens for business in the Expansion Space and (ii) three hundred sixty five (365) days after the Expansion Space Commencement Date (the “Development Period”), the definition of “Rent” in the Major Lease Term Summary of the Original Lease shall be deleted and replaced with the following:

“Minimum Annual Guarantee (or “MAG”) of [Three Million Two Hundred and Thirty-Eight Thousand Eight Hundred Eighty-Eight and 00/100 Dollars (\$3,226,546) per annum; (Two Hundred Sixty-Eight Thousand Eight Hundred Seventy Eight Dollars and 83/100 Cents (\$268,878.83) per month)], subject to adjustments upward on an annual basis as described in Section 4.3 of the Lease.”

- (b) Effective as of the Expanded Premises Rent Commencement Date, the provisions of Section 4.1 of the Original Lease Definitions shall be deleted and replaced with the following:

“**Definitions.** For purposes of this Lease, the following capitalized terms shall have the following meanings:

“**Base Index**” means the most recent Consumer Price Index published immediately prior to the Expanded Premises Rent Commencement Date.

“**Consumer Price Index**” means that index published by the United States Department of Labor, Bureau of Labor Statistics known as “All Urban Consumers-Not Seasonally Adjusted- San Francisco/Oakland/San Jose, CA.” In the event such index is discontinued, then “**Consumer Price Index**” shall mean an index chosen by Director which is, in Director’s reasonable judgment, comparable to the index specified above.

“**Lease Year**” means the period commencing on the Expanded Premises Rent Commencement Date and terminating on December 31st of the year in which the Expanded Premises Rent Commencement Date occurs, and each subsequent 12-month period except that the final Lease Year may be less than 12 months.

“**MAG Adjustment Date**” means the date upon which the Minimum Annual Guarantee shall adjust pursuant to Section 4.3 of the Lease. The first MAG adjustment shall occur on January 1st following the first full Lease Year and shall then occur every January 1st thereafter. For avoidance of doubt, the parties agree that if Tenant opens in July 2021, the first full Lease Year would be calendar year 2022 and the first MAG Adjustment Date would be January 1, 2023.”

- (c) Effective as of the Expanded Premises Rent Commencement Date, the provisions of Section 4.2 of the Original Lease [Rent] shall be deleted and replaced with the following:

“Rent. Tenant shall pay, as annual rent for the Premises, on or before the Expanded Premises Rent Commencement Date and the first (1st) day of each calendar month thereafter, the current monthly rent (in an amount equal to one-twelfth of the Minimum Annual Guarantee amount set forth in the Major Lease Term Summary, as adjusted pursuant to Section 4.3 of the Lease). All Rent shall be paid in lawful money of the United States, free from all claims, demands, setoffs, or counterclaims of any kind, other than rent credits expressly permitted pursuant to this Lease. Any Rent not paid when due shall be subject to a service charge equal to the lesser of the rate of one and one-half percent (1.5%) per month, and the maximum rate permitted by law. Acceptance of any service charge shall not constitute a waiver of Tenant’s default on the overdue amount or prevent City from exercising any of the other rights and remedies available to City. Tenant shall not be required to pay any percentage rent.”

- (d) Effective as of the Expanded Premises Rent Commencement Date, the provisions of Section 4.3 of the Original Lease [Adjustments to the Minimum Annual Guarantee] shall be deleted and replaced with the following:

“Adjustments to the Minimum Annual Guarantee. On each MAG Adjustment Date, the Minimum Annual Guarantee will be adjusted such that the Minimum Annual Guarantee with respect to the upcoming Lease Year shall be increased to equal the following amount:

$$\text{MAG X } \frac{\text{Comparison Index}}{\text{Base Index}}$$

Notwithstanding anything to the contrary herein, in no event will the Minimum Annual Guarantee for any Lease Year be lower than the Minimum Annual Guarantee with respect to the prior Lease Year.”

6. **Expansion Space Initial Improvements.** After the Expansion Space Commencement Date, Tenant shall: (i) promptly accept possession of the Expansion Space and (ii) diligently and continuously perform to completion the Expansion Space Initial Improvements (as defined below) at Tenant's sole cost and expense. As used herein, the term "**Expansion Space Initial Improvements**" shall mean all improvements, alterations, fixture, equipment and signage installation, and furniture placement necessary or appropriate for the conduct of the Permitted Use, including, without limitation, such work as may be necessary or appropriate, in Tenant's discretion, to fully enclose and soundproof the Premises (as expanded by the Expansion Space). All Expansion Space Initial Improvements shall be conducted in accordance with the applicable terms and conditions of this Amendment and the Original Lease, including, without limitation, Article 7 of the Original Lease.

7. **Expansion Space Late Opening Charge.** In the event Tenant fails to open the Expansion Space for business on or before the date which is thirty (30) days following the expiration of the Development Period (the "**Required Opening Date**"), City will incur substantial damages, the exact amount of which are extremely difficult to fix. Accordingly, for each day after the Required Opening Date until the day on which Tenant opens the Expansion Space for business with the Expansion Space Initial Improvements completed as required in Section 6 of this Amendment, in addition to all Rent due for the Expanded Premises, Tenant shall pay to City Five Hundred Dollars (\$500.00), as liquidated damages. The parties have agreed that this amount represents a reasonable approximation of the damages likely to be suffered by City in the event Tenant shall fail to open the Expansion Space on or before the Required Opening Date. Notwithstanding the foregoing, the Required Opening Date shall be extended one day for every day that Tenant is delayed in opening the Expansion Space for business with the Expansion Space Initial Improvements completed as required in Section 6 of this Amendment is due to force majeure, as reasonably determined by the Airport Director, or any delays caused directly by the City (but expressly excluding any Tenant Delays).

8. **Annual Promotional Charge.** Upon the Expanded Premises Rent Commencement Date, the Promotional Charge shall be increased to the amount of \$1.00 per square foot per annum of the Expanded Premises.

9. **Mid-Term Refurbishment.** City acknowledges that notwithstanding anything to the Lease to the contrary, including Section 7.7 thereof, Tenant's midterm refurbishment requirements in Lease shall be satisfied by the performance of the Expansion Space Initial Improvements and Tenant shall have no further midterm refurbishment obligations under the Lease.

10. **T3 West Project Closure Period; Potential Extension of Operating Term.** As part of the Airport's ongoing facilities improvement efforts, the next planned Terminal 3 renovation will include a new concessions program in Terminal 3 West ("**T3 West Project**"), which may affect the areas in and around where the Existing Premises and the Expansion Space are located. Prior to the Effective Date, the Airport anticipated that base building work would have commenced in these locations at the beginning of calendar year 2021. Due to the COVID-19 pandemic, the T3 West Project is currently on hold, however, the Airport may recommence the T3 West Project at any time in its sole discretion. Tenant acknowledges and agrees that the performance of the T3 West Project may impact Tenant's business operations in the Existing Premises and/or the Expansion Space, and reaffirms the provisions of Section 1.4 of the Original Lease [Changes to Airport], except as otherwise provided herein. City shall provide Tenant at least ninety (90) days' prior written notice of any required closure of all or any portion of Tenant's business operations in the Existing Premises and/or the Expansion Space due to the T3 West Project. Notwithstanding the foregoing, City agrees that to the extent that the City requires Tenant to close all or any portion of its business operations in the Existing Premises and/or the Expansion Space for any period or periods of time due to the requirements of the T3 West Project ("**T3 West Project Closure Period**"), (i) the Term of the Lease shall be further extended on a day for day basis equal to the total amount of days in the T3 West Project Closure Period, and (ii) the MAG payable under the Lease shall be abated on a day for day basis equal to the total amount of days in the T3 West Project Closure Period on a proportional basis as to the portion of the Existing Premises and/or the Expansion Space which Tenant is required to close. Promptly after completion of the T3 West Project (or the portion of the T3 West Project affecting the Existing Premises and/or the Expansion Space), the parties shall memorialize the calculation of the T3 West Project Closure Period and the determination of the Revised Expiration Date as set forth hereunder, and such writing shall not be considered a further modification or amendment of the Lease. Upon any such calculation, the term "Revised Expiration Date" shall refer to the Revised Expiration Date, as extended by the T3 West Project Closure Period. Tenant expressly acknowledges and agrees that the foregoing determination of the T3 West Project Closure Period, the new Revised Expiration Date and the abatement of Rent shall be the sole accommodations provided to Tenant in connection with any disruption to Tenant's business operations in the Existing Premises and/or the Expansion Space resulting from the T3 West Project, and except as expressly set forth herein, reaffirms the waivers provided by Tenant in favor of City set forth in Section 1.4 of the Original Lease.

11. **Additional City and Other Governmental Provisions.** The following provisions are hereby incorporated as new sections of the Article 19 of the Lease:

“19.27 **Vending Machines; Nutritional Standards and Calorie Labeling Requirements.** Tenant may not install or permit any vending machine on the Premises without the prior written consent of the Airport Director. Any permitted vending machine will comply with the food and beverage nutritional standards and calorie labeling requirements set forth in San Francisco Administrative Code Section 4.9-1(c), as may be amended from time to time (the “**Nutritional Standards Requirements**”). Tenant will incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the Premises or for the supply of food and beverages to that vending machine. Failure to comply with the Nutritional Standards Requirements or to otherwise comply with this Section 18.25 will be a material breach of this Lease. Without limiting City’s other rights and remedies under this Lease, City will have the right to require the immediate removal of any vending machine on the Premises that is not permitted or that violates the Nutritional Standards Requirements.

19.28 **Consideration of Salary History.** Tenant shall comply with Administrative Code Chapter 12K (“**Chapter 12K**”), the Consideration of Salary History Ordinance or “Pay Parity Act.” Tenant is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Lease or in furtherance of this Lease, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee’s salary history without that employee’s authorization unless the salary history is publicly available. Tenant is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>. Tenant is required to comply with all of the applicable provisions of Chapter 12K, irrespective of the listing of obligations in this Section. Tenant shall include this obligation in all subleases, licenses, sublicenses and any other contracts for work to be performed in the Premises entered into by Tenant, and failure to do so shall constitute a material breach of this Lease.

19.29 **Local Hire.** Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.62 (the “**Local Hiring Requirements**”). All Alterations under the Lease are subject to the Local Hiring Requirements unless the cost for such work is (a) estimated to be less than \$750,000 per building permit or (b) meets any of the other exemptions in the Local Hiring Requirements. Tenant agrees that it shall comply with the Local Hiring Requirements to the extent applicable. Before starting any Alteration, Tenant shall contact City’s Office of Economic Workforce and Development (“**OEWD**”) to verify if the Local Hiring Requirements apply to the work (i.e., whether the work is a “**Covered Project**”). Tenant shall include, and shall require its subtenants to include, a requirement to comply with the Local Hiring Requirements in any contract for a Covered Project with specific reference to San Francisco Administrative Code Section 23.62. Each such contract shall name the City and County of San Francisco as a third-party beneficiary for the limited purposes of enforcing the Local Hiring Requirements, including the right to file charges and seek penalties. Tenant shall cooperate, and require its subtenants to cooperate, with City in any action or proceeding against a contractor or subcontractor that fails to comply with the Local Hiring Requirements when required. A contractor’s or subcontractor’s failure to comply with this Section will enable City to seek the remedies specified in San Francisco Administrative Code Section 23.62 against the breaching party. So long as Tenant requires compliance with San Francisco Administrative Code 23.62 in the construction contract for the Covered Project and reasonably cooperates with the City in any enforcement action, Tenant shall not be in breach of the Lease due to a contractor’s or subcontractor’s failure to comply with the Local Hiring Requirements.

19.30 **Resource-Efficient City Buildings.** Tenant acknowledges that City has enacted Chapter 7 of the San Francisco Environment Code relating to green building requirements. Tenant hereby agrees that it shall comply with all applicable provisions of Chapter 7, including but not limited to those relating to Leadership in Energy and Environmental Design (LEED) certification.

19.31 **All Gender Toilet Facilities.** If applicable, Tenant will comply with San Francisco Administrative Code Section 4.1-3 requiring at least one all-gender toilet facility on each floor of the Premises in any building where extensive renovations are made by Tenant. An “all-gender toilet facility” means a toilet that is not restricted to use by persons of a specific sex or gender identity by means of signage, design, or the installation of fixtures, and “extensive renovations”

means any renovation where the construction cost exceeds fifty percent (50%) of the cost of providing the toilet facilities required by Administrative Code Section 4.1-3. If Tenant has any question about applicability or compliance, Tenant should contact Building Inspection and Code Enforcement (BICE) for guidance.

19.32 Federal Fair Labor Standards Act. The Lease incorporates by reference the provisions of 29 USC §201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers. Tenant has full responsibility to monitor compliance to the referenced statute or regulation for its employees in the Premises. Tenant must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

19.33 OSHA. The Lease incorporates by reference the requirements of 29 CFR §1910 with the same force and effect as if given in full text. Tenant retains full responsibility to monitor its compliance and their contractor's and subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (29 CFR §1910). Tenant must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration."

12. Entire Agreement. This Amendment, together with the Original Lease, contains all of the representations and the entire agreement between the parties with respect to the subject matter of this Amendment. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to the subject matter of this Amendment are superseded in their entirety by this Amendment. No prior drafts of this Amendment or changes between those drafts and the executed version of this Amendment 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.

13. Miscellaneous. This Amendment shall bind, and shall inure to the benefit of, the successors and assigns of the parties hereto. This Amendment 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. This Amendment 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 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. This Amendment shall be governed by the laws of the State of California. Neither this Amendment nor any of the terms hereof may be amended or modified except by a written instrument signed by all the parties hereto.

14. Full Force and Effect. Except as specifically amended by this Amendment, the terms and conditions of the Lease shall remain in full force and effect.

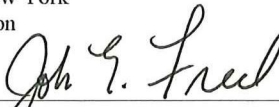
15. Counterparts. This Amendment may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one and the same agreement. The signature of a party transmitted electronically (e.g., e-signature) or by facsimile, PDF and/or other electronic image file format shall constitute and have the same force and effect as the original signature of the party. Following execution, a PDF (or similar image file format) of this entire agreement (whether signed electronically or in ink) shall be considered to be the original agreement for all purposes.

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[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Amendment as of the Effective Date.

TENANT: American Express Travel Related Services Company,
Inc., a New York
corporation

By: 

Name: JOHN FREEL
(type or print)

Title: Vice President Global Real Estate

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


Ivar C. Satero
Airport Director

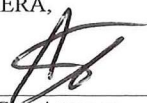
AUTHORIZED BY AIRPORT
COMMISSION

Resolution No. 20-0207

Adopted: November 10, 2020

Attest: 
Secretary
Airport Commission

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

By: 
Deputy City Attorney

**EXHIBIT A
EXPANSION SPACE AND EXPANDED
PREMISES**

15,287 Square Feet in Terminal 3 as shown below.

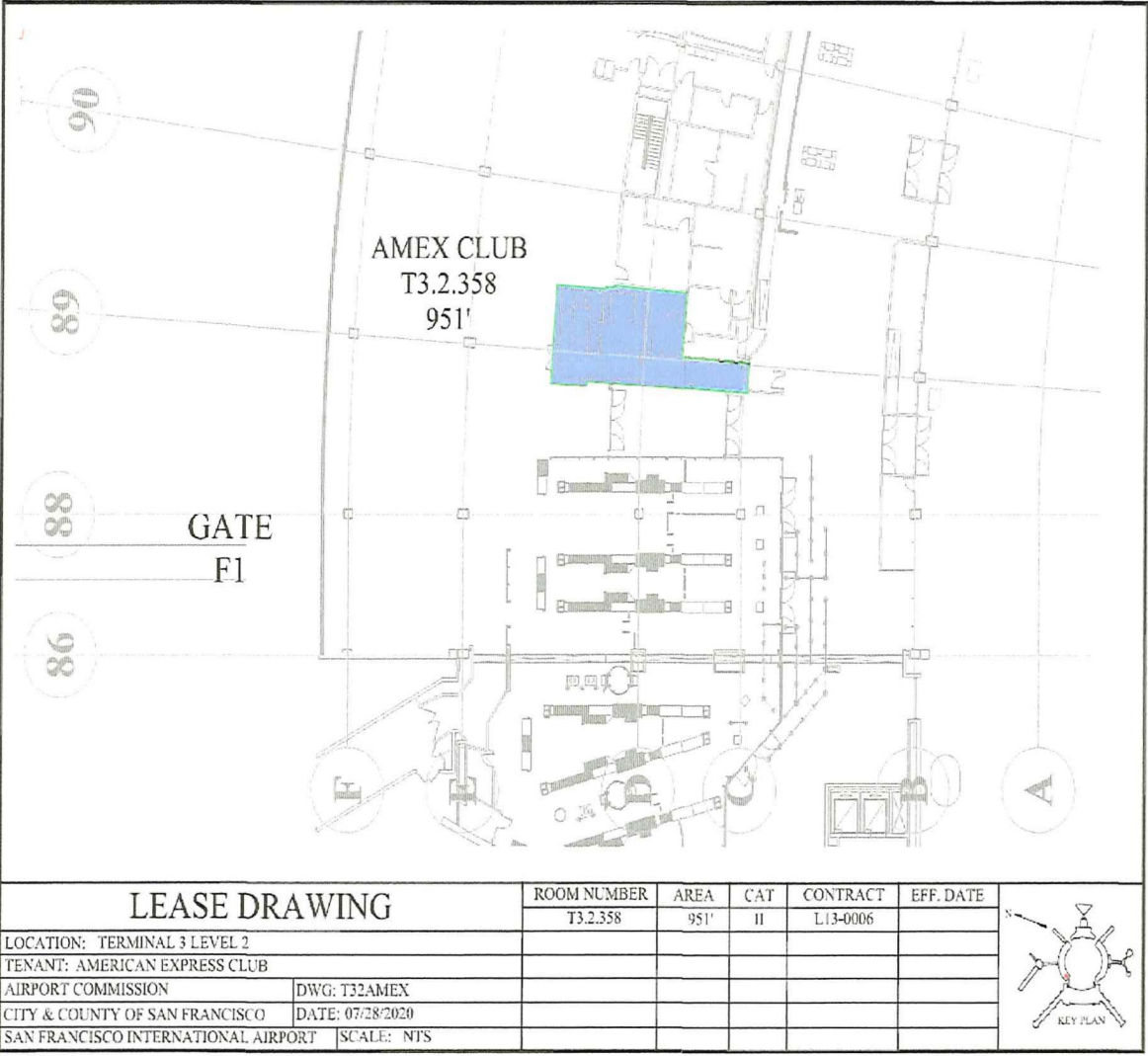


EXHIBIT A
EXPANSION SPACE AND EXPANDED
PREMISES

