

1 [SETTLEMENT OF UNLITIGATED CLAIM]

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3 **Ordinance approving settlement of an unlitigated claim by the City and County of San**

4 **Francisco, acting by and through its Airport Commission, against D. Mitchell**

5 **Concessions, Inc., by approving a lease of three coffee facilities in the Domestic**

6 **Terminals and the main restaurant in the International Terminal, to one or more entities**

7 **formed by Glenn Meyers, Dayna Meyers, and Garrett Meyers , approving the**

8 **suspension of the Minimum Annual Guarantee for two Airport restaurants, waiving the**

9 **competitive solicitation requirement in San Francisco Administrative Code Section**

10 **2A.173, and authorizing the Airport Director to execute agreements in furtherance of**

11 **the foregoing.**

12 Be it ordained by the People of the City and County of San Francisco:

13 Section 1. The proposed settlement of an unlitigated claim by the City and County of

14 San Francisco, acting by and through its Airport Commission (the "Airport"), against D.

15 Mitchell Concessions, Inc. ("Mitchell"), on the following major terms, is hereby approved:

- 16 a) Mitchell will assign Airport Lease No. 99-0292J covering a food and beverage
- 17 facility (the "Restaurant") in the Airport's New International Terminal comprising
- 18 approximately 2,510 square feet (the "Lease") to one or more entities formed by
- 19 Glenn Meyers, Dayna Meyers, and Garrett Meyers, and possibly other
- 20 nonmajority investor(s) (collectively, "Meyers"), and Meyers will assume all
- 21 obligations of the tenant under the Lease. Airport will consent to such
- 22 assignment and assumption, subject to the conditions set forth below.

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Supervisor Hall, Ma
Office of the City Attorney
BOARD OF SUPERVISORS

- 1 b) Meyers will pay \$1,600,000 for the Restaurant, with the purchase proceeds to
2 be paid as follows:¹ \$1,453,000 to the Bank of America (the "Bank") to pay off a
3 loan made by the Bank to Mitchell in connection with the development of such
4 Restaurant (thereby fully and finally releasing the Letter of Credit provided by
5 the Airport securing such loan and any further liability to the Bank of America for
6 such loan); \$133,000 to Airport to cure in full the default under the Lease
7 (including rent and collection charges); \$6,700 to Eva Airlines, and the balance,
8 if any, to Meyers.
- 9 c) Mitchell will cause the Bank to return to Airport the Letter of Credit, thereby
10 relieving Airport as contingent obligor for the Loan.
- 11 d) Airport will lease to Meyers the Airport space no. CS20 (the "Main Restaurant")
12 for a term of approximately twelve years five months, and space nos. T3.2.061,
13 F.2.084, and B.2.053 (the "Specialty Coffee Facilities") for a term of
14 approximately eleven years two months. The Main Restaurant will be operated
15 as a first-class, high quality casual dining or other concept approved by the
16 Airport and the Coffee Facilities will be operated as premium coffee facilities or
17 other concept approved by the Airport.
- 18 e) The rent payable with respect to all of the facilities will be consistent with the
19 rent specified by the Airport's current rent schedule for food and beverage
20 operations, as follows:

21 **Bar/Restaurant Concept (Restaurant) (already specified in existing**
22 **Lease):**

23 Annually, the greater of:

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25 ¹ The following amounts are approximate and may be adjusted slightly to reflect other charges as they accrue, or payments made, if any.

- 1 (1) the Minimum Annual Guarantee, \$100,400 (\$40/sq.ft.); or
2 (2) the sum of the following:
3 6% of Gross Revenues achieved up to and including \$1,000,000;
4 plus,
5 8% of Gross Revenues achieved over \$1,000,000 up to and
6 including \$1,500,000; plus,
7 10% of Gross Revenues achieved over \$1,500,000.

8 **Main Restaurant**

9 Annually, the greater of:

- 10 (1) the Minimum Annual Guarantee - \$134,300 (\$20/sq.ft.); or
11 (2) the sum of the following:
12 4% of Gross Revenues achieved up to and including \$1,000,000;
13 plus,
14 6% of Gross Revenues achieved over \$1,000,000.

15 **Specialty Coffee Facilities**

16 Annually, with respect to each facility, the greater of:

- 17 (1) the Minimum Annual Guarantee - (the square footage of each
18 facility multiplied by \$40/sq.ft.); or
19 (2) the sum of the following:
20 8% of Gross Revenues achieved up to and including \$750,000;
21 plus
22 10% of Gross Revenues achieved over \$750,000 up to and
23 including \$1,400,000; plus
24 12% of Gross Revenues achieved over \$1,400,000.

25 MAGs will be increased each year by increases in the CPI.

1 MAGs on the Restaurant and the Main Restaurant will be suspended until
2 annualized gross revenues equal or exceed \$1.5m and \$2.5m
3 respectively.

4 The Airport will also have an option to extend the term of the leases for
5 the Specialty Coffee Facilities and the Main Restaurant for two years.

- 6 f) Mitchell will provide a general release of the Airport.
- 7 g) With regard to the Restaurant and the Main Restaurant, Meyers will be required
8 to abide by the Airport's "street pricing program." With regard to the Specialty
9 Coffee Facilities, Meyers will be required to charge no more than "street-pricing"
10 plus 10%.
- 11 h) Meyers will abide by the Airport's Worker Retention Policy.
- 12 i) For a period of five years, Mitchell shall not bid for, propose for, or otherwise
13 seek to have a role with respect to, any Airport food and beverage facility.

14 Section 2. The requirements of San Francisco Administrative Code Section 2A.173²
15 pertaining to the requirement that certain Airport concession leases be subject to a
16 competitive process and awarded to the highest or best responsible bidder or proposer are
17 hereby waived for purposes of leasing the Main Restaurant and the Specialty Coffee Facilities
18 to Meyers.

19 Section 3. That the Airport Director be and hereby is authorized to take such other
20 actions as are necessary and appropriate in furtherance of this ordinance, including the
21 execution of lease agreement(s) and amendments, provided all such agreement(s) are
22 approved as to form by the City Attorney.

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24 ² "The Commission shall also have sole power, subject to a competitive process and award to the highest or best
25 responsible bidder or proposer to lease out any concession wherein the concessionaire is to be given an
exclusive right to occupy space on or in airport lands or buildings."

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APPROVED AS TO FORM
DENNIS J. HERRERA, City Attorney

By: Adrienne Go
Adrienne Go
Deputy City Attorney

RECOMMENDED:

San Francisco Airport Commission

By: John L. Martin
John L. Martin
Airport Director

Airport Commission Resolution No.

Adopted: April 17, 2003

Attest: 03-00697 Allen Caronatti
Secretary
Airport Commission



City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails

Ordinance

File Number: 030328

Date Passed:

Ordinance approving settlement of an unlitigated claim by the City and County of San Francisco, acting by and through its Airport Commission, against D. Mitchell Concessions, Inc., by approving a lease of three coffee facilities in the Domestic Terminals and the main restaurant in the International Terminal, to one or more entities formed by Glenn Meyers, Dayna Meyers, and Garrett Meyers, approving the suspension of the Minimum Annual Guarantee for two Airport restaurants, waiving the competitive solicitation requirement in San Francisco Administrative Code Section 2A.173, and authorizing the Airport Director to execute agreements in furtherance of the foregoing.

May 6, 2003 Board of Supervisors — CONTINUED

Ayes: 11 - Ammiano, Daly, Dufty, Gonzalez, Hall, Ma, Maxwell, McGoldrick, Newsom, Peskin, Sandoval

May 13, 2003 Board of Supervisors — CONTINUED

Ayes: 7 - Daly, Dufty, Gonzalez, Hall, Ma, Maxwell, Peskin
Absent: 3 - McGoldrick, Newsom, Sandoval
Excused: 1 - Ammiano

May 20, 2003 Board of Supervisors — CONTINUED

Ayes: 5 - Daly, Dufty, Ma, Newsom, Peskin
Noes: 2 - Gonzalez, McGoldrick
Absent: 4 - Ammiano, Hall, Maxwell, Sandoval

June 10, 2003 Board of Supervisors — PASSED ON FIRST READING

Ayes: 9 - Ammiano, Dufty, Gonzalez, Hall, Ma, Maxwell, McGoldrick, Newsom, Sandoval
Noes: 2 - Daly, Peskin

June 17, 2003 Board of Supervisors — FINALLY PASSED

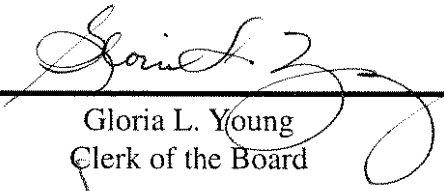
Ayes: 8 - Ammiano, Dufty, Gonzalez, Hall, Ma, Maxwell, Newsom, Sandoval
Noes: 2 - Daly, Peskin
Excused: 1 - McGoldrick

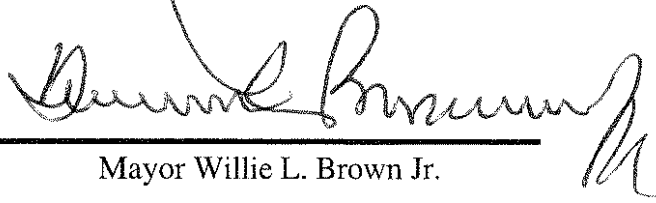
File No. 030328

I hereby certify that the foregoing Ordinance was FINALLY PASSED on June 17, 2003 by the Board of Supervisors of the City and County of San Francisco.

JUN 27 2003

Date Approved


Gloria L. Young
Clerk of the Board


Mayor Willie L. Brown Jr.