

**AMENDMENT NO. 2 TO  
DOMESTIC TERMINALS FOOD AND BEVERAGE LEASE NO. 03-0183  
AT SAN FRANCISCO INTERNATIONAL AIRPORT**

THIS AMENDMENT NO. 2 TO DOMESTIC TERMINAL FOOD AND BEVERAGE LEASE NO. 03-0183 AT THE SAN FRANCISCO AIRPORT ("Amendment No. 2"), dated as of April 21, 2015 for reference purposes only, is entered by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City"), acting by and through the SAN FRANCISCO AIRPORT COMMISSION (the "Airport"), as landlord, and Bayport Concessions, LLC, as tenant ("Bayport").

**RECITALS**

A. The Airport and Bayport entered into Lease No. 03-0183, approved by Airport Commission Resolution No. 03-0183 on February 23, 2003, (the "Original Lease") for certain food and beverage space located at the Airport in Terminal 1 (the "Terminal 1 Premises") and Terminal 3 (the "Terminal 3 Premises").

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, which extended the term to May 21, 2017.

C. On August 13, 2013, the Airport Commission approved Amendment No. 1 to the Original Lease under Resolution No.13-0175 ("Amendment No. 1"), for the lease to Bayport of a new space in the renovated Terminal 3 East for a new ten year term in consideration for the Airport's closure of Bayport's original Terminal 3 Premises.

D. In January 2014, the Airport started the expansion of the Terminal 3 Boarding Area F security checkpoint, as well as the expansion of the terminal's base building that required the early closure and demolition of Bayport's Willow Creek Grill along with other food and beverage tenants in the area.

E. The Airport has determined that the replacement space for Bayport's Terminal 3 Premises agreed upon in Amendment No. 1 is no longer available due to further changes in Terminal 3 East's overall design and the need for more public circulation space.

F. The Airport has identified a new replacement for the Terminal 3 Premises comprised of approximately 787 square feet in Terminal 3 Boarding Area F Hub that will be available in October 2015 ( the "Terminal 3 Replacement Premises"), and Bayport is amendable to leasing such space.

G. In addition, the Airport will need to close Bayport's Terminal 1 Premises due to the Terminal 1 Redevelopment Program. The portion of Terminal 1, Boarding Area B in which the Terminal 1 Premises are located, will permanently close in or around June 2016.

H. The Airport has identified a replacement for the Terminal 1 Premises in the portion of Boarding Area B that will remain operational as described in more detail below (the "Terminal 1 Replacement Premises"). The Airport expects that the Terminal 1 Replacement Premises will become available in or around June 2016, and Bayport has agreed to operate its Willow Creek Grill out of the Terminal 1 Replacement Premises until approximately September 2019, when the new Terminal 1 will open and that portion of Boarding Area B will permanently close.

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

J. All capitalized terms not otherwise defined herein shall be the 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 Bayport hereby agree to amend the Lease as follows:

### AGREEMENT

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by reference as if fully set forth herein.
2. **Effective Date.** The effective date of the modifications to the Lease contained in this Amendment No. 2 shall be the date the Airport Director executes this Amendment No. 2.
3. **Premises.**
  - A. **Terminal 3 Replacement Premises.** Approximately 787 square feet in the Terminal 3, Boarding Area F Hub food court, as shown on Exhibit A.
  - B. **Terminal 1 Replacement Premises.** Approximately 1,500 square feet in Terminal 1, Boarding Area B, the exact size and location to be determined by the Airport, as shown on Exhibit A.
  - C. **Premises.** From and after the Effective Date, references to "Premises" in the Lease shall mean, collectively, the Terminal 3 Replacement Premises and the Terminal 1 Replacement Premises.
4. **Term.**
  - A. **Terminal 3 Replacement Premises.** The ten year term for the Terminal 3 Replacement Premises authorized under Amendment No. 1 is reduced to a term of seven years with three one-year options to extend exercisable at the Airport Commission's discretion.
  - B. **Terminal 1 Replacement Premises.** The term for the Terminal 1 Replacement Premises is extended and will expire in or around September 2019, provided, however, such extended term may be shortened or further extended by City, in

City's sole discretion, to accommodate construction schedules. The Airport's delivery of the Terminal 1 Replacement Premises in or around June 2016 will coincide with its closing of Bayport's existing Terminal 1 Premises.

5. **Rent and Other Fees and Charges.** Rent and other Fees and Charges which are tied to the square footage of the premises will be adjusted based on the difference (if any) in square footage between the original premises and the replacement premises. Bayport's obligation to pay Rent for the Terminal 1 Replacement Premises will commence on the earlier to occur of (a) the date Bayport opens for business at the Terminal 1 Replacement Premises; and (b) seven days following City's delivery of the Terminal 1 Replacement Premises. Bayport's Rent Commencement Date for the Terminal 3 Replacement Premises shall be in accordance with the structure provided for in the Original Lease to accommodate for Bayport's build out of the space.

6. **Delivery and Build-Out.**

- A. **Terminal 3 Replacement Premises.** The Airport will deliver the Terminal 3 Replacement Premises in September 2015, and upon such delivery, Bayport, at Bayport's sole cost and expense, will build out the space for its operations in accordance with the terms of the Original Lease.
- B. **Terminal 1 Replacement Premises.** City, at City's expense, will construct Bayport's Terminal 1 Replacement Premises, which will be reasonably comparable to the existing Terminal 1 Premises while also reflecting the short term nature of the operation. City will re-use existing equipment to the greatest extent possible. Bayport will be consulted throughout the design and relocation process. Bayport will relocate all chattels and supplies to the Terminal 1 Replacement Premises and will prepare the space for opening of its business operations as soon as reasonably practicable following delivery by City. Bayport hereby agrees that upon delivery of the Terminal 1 Replacement Premises it shall accept such Terminal 1 Replacement Premises in its "as is" and "with all faults" condition and that City has not made any representations or warranties, express or implied concerning such Terminal 1 Replacement Premises. For avoidance of doubt and without limiting the applicability of other sections of the Lease, Sections 9.1 ["As Is" Condition] and 12.1 [Waiver] apply to the Terminal 1 Replacement Premises. Bayport waives all Claims against City for any delay in delivery of the Terminal 1 Replacement Premises and any such delay shall not result in a further extension of the Lease term or permit Bayport to occupy the existing Terminal 1 Premises beyond the closure of such premises as determined by City.

7. **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.

8. **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 Bayport 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. 2. 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.

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

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the Airport and Bayport 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

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**TENANT:** Bayport Concessions, LLC  
a California Limited Liability Company

By: [Signature]  
Name: MIGUEL D ROMERO  
Title: PARTNER.

AUTHORIZED BY AIRPORT  
COMMISSION

Resolution No. \_\_\_\_\_  
Adopted: April 21, 2015

Attest: \_\_\_\_\_  
Secretary  
Airport Commission

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

By: [Signature]  
Deputy City Attorney

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# Exhibit A - Premise

