

File No. 180211

Committee Item No. 12

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Sub-Committee

Date July 24, 2018

Board of Supervisors Meeting

Date _____

Cmte Board

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Completed by: Linda Wong Date July 20, 2018

Completed by: Linda Wong Date _____

1 [Lease Amendment - Airport Concession Lease - Gotham Enterprises, LLC - Minimum Annual
2 Guarantee \$154,482]

3 **Resolution approving Amendment No. 2 to the Specialty Coffee Facilities Lease**
4 **No. 03-0069, between Gotham Enterprises, LLC, and the City and County of San**
5 **Francisco, acting by and through its Airport Commission, to extend the term for three**
6 **years for a total term of November 10, 2003, through December 31, 2020, with an option**
7 **for early termination, and no change to the minimum annual guarantee of \$154,482.**

8
9 WHEREAS, On April 15, 2003, by Resolution No. 03-0069, the Airport Commission
10 approved a settlement of an unlitigated claims, which included the assignment of the Specialty
11 Coffee Facilities Lease No. 03-0069 (the "Lease") from D. Mitchell Concessions, Inc. to
12 Gotham Enterprises, LLC, to operate three Peet's Coffee & Tea facilities in Terminal 1
13 Boarding Area B and Terminal 3; and

14 WHEREAS, The Board of Supervisors approved the Lease by Resolution No. 142-03,
15 adopted on June 17, 2003; and

16 WHEREAS, On April 21, 2015, by Resolution No. 15-0100, the Airport Commission
17 approved Amendment No. 1 to the Lease, replacing the premises located in Terminal 1
18 Boarding Area B, and extending the term for the Terminal 1 Boarding Area B location
19 ("Amendment No. 1"); and

20 WHEREAS, The Board of Supervisors approved Amendment No. 1 by Resolution
21 No. 304-15, adopted on July 28, 2015; and

22 WHEREAS, To accommodate the Terminal 3 West renovation, the Airport Commission
23 approved adopted Resolution No. 17-0318 approving Amendment No. 2 to the Lease, which
24 extends the term to December 31, 2020, with the condition that the Airport Director, at his sole
25

1 and absolute discretion, may terminate earlier by providing six months' advance written notice
2 ("Amendment No. 2"); and

3 WHEREAS, A copy of Amendment No. 2 is on file with the Clerk of the Board of
4 Supervisors in File No. 180211, which is hereby declared to be a part of this resolution as if
5 set forth fully herein; now, therefore, be it

6 RESOLVED, That the Board of Supervisors hereby approves Amendment No. 2 to the
7 Specialty Coffee Facilities Lease No. 03-0069 with Gotham Enterprises, LLC; and be it

8 FURTHER RESOLVED, That within 30 days of Lease Amendment No. 2 being fully
9 executed by all parties, the Airport Commission shall provide a copy of the final Amendment
10 No. 2 to the Clerk of the Board for inclusion into the official file.

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<p>Items 9, 10, 11 and 12 Files 18-0208, 18-0209, 18-0210 and 18-0211</p>	<p>Department: San Francisco International Airport (Airport)</p>
<p>EXECUTIVE SUMMARY</p>	
<p>Legislative Objectives</p>	
<ul style="list-style-type: none"> • The proposed resolutions would approve amendments to concession lease agreements between San Francisco International Airport (Airport) as landlord and (i) Bay Area Restaurant Group, J.V. (File 18-0208); (ii) D-Lew Enterprises, LLC (File 18-0209); (iii) InMotion Entertainment Group, LLC (File 18-0210); and (iv) Gotham Enterprises, LLC (File 18-0211) as tenants, through December 31, 2020, to accommodate planned construction in Terminal 3 West. 	
<p>Key Points</p>	
<ul style="list-style-type: none"> • By various resolutions, the Board of Supervisors approved concession lease agreements with Bay Area Restaurant Group, D-Lew Enterprises, Edge 1 Cellular (later assigned to InMotion Entertainment Group), and Gotham Enterprises to operate in Terminal 3 West. The leases have all expired and the tenants are currently operating month-to-month. • The Airport is planning to renovate and expand Terminal 3 West, including a new concessions program. Construction is expected to begin between December 2018 and December 2020. The Airport has agreed to lease amendments with each of the tenants to remain operating until construction begins. Due to the upcoming construction, the Airport Commission determined that competitive bidding the leases is impractical. • The proposed resolutions approve amendments to the leases with Bay Area Restaurant Group, D-Lew Enterprises, InMotion Entertainment Group specifically to the Terminal 3 location, and Gotham Enterprises specifically to the two Terminal 3 locations, extending the terms of each lease through December 31, 2020. The Airport may terminate the leases earlier by providing six months written notice. The Minimum Annual Guaranteed (MAG) rent would not change with these amendments, but continue to adjust annually based on the Consumer Price Index (CPI). 	
<p>Fiscal Impact</p>	
<ul style="list-style-type: none"> • Over the approximately two-year and seven-month term of the lease extension, the Airport would receive at least \$1,601,088 in combined MAG rent from the four tenants. The Airport expects to continue receiving percentage rent, which would exceed the MAG. 	
<p>Recommendations</p>	
<ul style="list-style-type: none"> • Amend the proposed resolutions to state that the current MAG rent for File 18-0210 is \$412,485 and the current MAG rent for File 18-0211 is \$152,104. • Amend the proposed resolutions to provide for retroactive approval. • Approve the resolutions as amended. 	

MANDATE STATEMENT

City Charter Section 9.118(c) states that any modification, amendment or termination of a lease that had an initial term of ten years or more, including options to extend, or that had anticipated revenues of \$1 million or more is subject to Board of Supervisors approval.

BACKGROUND

By various resolutions, the Board of Supervisors has approved concession lease agreements between San Francisco International Airport (Airport) as landlord and (i) Bay Area Restaurant Group, J.V., (ii) D-Lew Enterprises, LLC, (iii) InMotion Entertainment Group, LLC, and (iv) Gotham Enterprises, LLC as tenants, for retail locations in Terminal 3 West, as follows:

- (a) In December 2003, the Board of Supervisors approved leases with Bay Area Restaurant Group, J.V. and D-Lew Enterprises, LLC (File 03-1710, Resolution 775-03), for terms of ten years, each with a two-year option to extend. The Airport executed the options, which expired in December 2016, and the tenants have since been operating on month-to-month bases.
- (b) In April 2010, the Board of Supervisors approved a lease with Edge 1 Cellular, L.P. (File 10-0321, Resolution 185-10), for a term of seven years. In December 2013, the Airport Commission approved assignment of the lease to InMotion Entertainment Group, LLC. In December 2015, the Board of Supervisors approved the First Amendment to the lease, correcting the definition of "Lease Year" (File 15-0963, Resolution 487-15). The lease expired on May 31, 2018.
- (c) In December 2003, the Board of Supervisors approved a lease with Gotham Enterprises, LLC (File 03-1710, Resolution 775-03) to operate three Peet's Coffee locations in the Domestic Terminals, with one location in Terminal 1 and two locations in Terminal 3, for a term of eleven years and two months, with a two-year option to extend. In July 2015, the Board of Supervisors approved the First Amendment to the lease to accommodate construction in Terminal 1, but not altering the terms of the Terminal 3 locations. The Airport executed the option to extend, which expired November 8, 2017, and the tenant has since been operating the Terminal 3 locations on a month-to-month basis.

The Airport is planning to renovate and expand Terminal 3 West, including a new concessions program. Construction is expected to begin between December 2018 and December 2020. According to Ms. Cheryl Nashir, Airport Director of Revenue Development and Management, the Airport expects to have a more precise construction timeline estimate later in summer 2018. The Airport has agreed to lease amendments with each tenant to continue operations and revenue generation until construction begins. Due to the upcoming construction, the Airport Commission determined that competitive bidding for the leases is impractical and approved the four lease amendments on December 19, 2017.

DETAILS OF PROPOSED LEGISLATION

The proposed resolutions would authorize amendments to concession lease agreements between the Airport as landlord and (i) Bay Area Restaurant Group, J.V. (File 18-0208); (ii) D-Lew Enterprises, LLC (File 18-0209); (iii) InMotion Entertainment Group, LLC (File 18-0210) specifically to the Terminal 3 location; and (iv) Gotham Enterprises, LLC (File 18-0210) specifically to the two Terminal 3 locations. Each lease would be extended through December 31, 2020, but the Airport may terminate earlier with six months advance written notice. The Minimum Annual Guaranteed (MAG) rent would not change for any of the leases, but continue to adjust annually based on the Consumer Price Index (CPI). The key provisions of the lease extensions are shown in Table 1 below.

Table 1: Key Provisions of Lease Extensions

	Bay Area Restaurant Group (File 18-0208)	D-Lew Enterprises (File 18-0209)	InMotion Entertainment Group (File 18- 0210) ^a	Gotham Enterprises (File 18-0211) ^b
Amendment	No. 1	No. 1	No. 2	No. 2
Business Name	Gordon Biersch	Yankee Pier	InMotion Entertainment	Peet's Coffee & Tea
MAG Rent per Square Foot (See Policy Consideration Below)	\$60.33	\$60.33	\$305.54	\$60.12
Square Footage	2,814	2,425	627	1,865
MAG Rent	\$169,769	\$146,300	\$191,576	\$112,115
Percentage Rent	8% of revenues up to \$600,000; 10% of revenues from \$600,000 to \$1,000,000; 12% of revenues above \$1,000,000	8% of revenues up to \$600,000; 10% of revenues from \$600,000 to \$1,000,000; 12% of revenues above \$1,000,000	12% of revenues up to \$500,000; 14% of revenues from \$500,000 to \$1,000,000; 16% of revenues above \$1,000,000	8% of revenues up to \$750,000; 10% of revenues from \$750,000 to \$1,400,000; 12% of revenues above \$1,400,000
Extension Term	Approximately two years and seven months, from about June 2018 through December 2020			
Early Termination	Airport may terminate early with six months written notice			
MAG Adjustment	Adjusted annually based on the Consumer Price Index (CPI)			

^a The total MAG for InMotion Entertainment Group's lease, comprising two locations, is \$412,485. The share of the MAG allocated to the Terminal 3 West location, based on square footage, is \$191,576, as shown in Table 1 above. The Budget and Legislative Analyst recommends amending the resolution to correctly state that the MAG is \$412,485, rather than \$401,690 as stated in the resolution.

^b The total MAG for Gotham Enterprises’ lease, comprising three locations, is \$152,104 for 2,530 square feet for three locations. The share of the MAG allocated to the two Terminal 3 locations, based on 1,865 square feet, is \$112,115, as shown in Table 1 above. The Budget and Legislative Analyst recommends amending the resolution to correctly state that the MAG is \$152,104, rather than \$154,482 as stated in the resolution.

Retroactive Lease Extensions

As noted above the leases between the Airport and Bay Area Restaurant Group (File 18-0208) and D-Lew Enterprises (File 18-0209) expired in December 2016, or approximately 18 months ago, and the lease between the Airport and Gotham Enterprises (File 18-0211) expired in November 2017, or approximately 6 months ago. The lease between the Airport and InMotion Entertainment expired on May 31, 2018. In December 2017, the Airport Commission approved the extension of the four leases through December 2020. According to Ms. Nashir, the delay in seeking Board of Supervisors approval to extend the three leases between the Airport and Bay Area Restaurant Group, D-Lew Enterprises, and Gotham Enterprises was due to uncertainty about the Terminal 3 construction timeline.

FISCAL IMPACT

Under the four leases, the tenants pay the greater of the MAG rent or percentage rent based on gross revenues. Over the approximately two-year and seven-month terms of the lease extensions (June 2018 through December 2020), the airport will receive at least \$1,377,910 in MAG rent. The annual MAG rent paid by each tenant is shown in Table 2 below.

Table 2: Annual MAG Rent Paid by Tenants

File	Tenant	2018 Rent (7 Months)	2019 Rent	2020 Rent	Total
18-0208	Bay Area Restaurant Group	\$99,037	\$169,777	\$169,777	\$438,591
18-0209	D-Lew Enterprises	85,346	146,308	146,308	377,962
18-0210	InMotion Entertainment Group	111,753	191,576	191,576	494,906
18-0211	Gotham Enterprises (2 Terminal locations)	65,400	112,115	112,115	289,630
Total		\$361,536	\$619,776	\$619,776	\$1,601,088

**2018 rent comprises a period of seven months, from June 2018 through December 2018*

According to Ms. Nashir, the Airport expects to receive percentage rent, which exceeds the MAG.

POLICY CONSIDERATION

In FY 2016-17, the four tenants paid a total of \$ 1,921,733 in percentage rent, which was more than three times the MAG in FY 2016-17. ¹ According to Ms. Nashir, the MAG in the three food

¹ FY 2016-17 rent paid by tenant as follows: Bay Area Restaurant Group- \$499,655; D-Lew Enterprises- \$603,003; InMotion Entertainment Group- \$361,753; Gotham Enterprises- \$457,322.

and beverage leases for Bay Area Restaurant Group, D-Lew Enterprises, and Gotham Enterprises were originally set in 2003, and were set at a dollar amount per square foot, increasing annually based on the CPI. However, since MAG rents have tended to be significantly less than percentage rents, the Airport now sets MAG rents since the 2016 competitive bidding process for each fully leased area, on an average, at 65 percent of projected percentage rent.² According to Ms. Nashir, the Airport did not consider it practical to revise the MAG in the four leases for the remaining 30 months under the proposed lease amendments.

RECOMMENDATIONS

1. Amend the resolution for File 18-0210 to correctly state that the MAG is \$412,485.
2. Amend the resolution for File 18-0211 to correctly state that the MAG is \$152,104.
3. Amend Files 18-0208, 18-0209, 18-0210, and 18-0211 to provide for retroactive approval.
4. Approve Files 18-0208, 18-0209, 18-0210, and 18-0211 as amended.

² According to Ms. Nashir, the Airport revised the MAG structure for food and beverage leases (but not retail leases) in 2016 to equal 65 percent of expected percentage rent. As noted, the Airport did not change the MAG structure for the three food and beverage leases that are the subject of this report: Bay Area Restaurant Group, D-Lew Enterprises, and Gotham Enterprises.

**AMENDMENT NO. 2 TO
SPECIALTY COFFEE FACILITIES IN THE DOMESTIC TERMINAL BUILDINGS
LEASE NO. 03-0069
AT SAN FRANCISCO INTERNATIONAL AIRPORT**

THIS AMENDMENT NO. 2 TO SPECIALTY COFFEE FACILITIES LEASE NO. 03-0069 AT THE SAN FRANCISCO INTERNATIONAL AIRPORT (“Amendment”), dated as of _____ (“Effective Date”), is entered by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through its AIRPORT COMMISSION (“City”), as landlord, and GOTHAM ENTERPRISES, LLC (“Tenant”), as tenant.

RECITALS

A. Tenant operates three Peet’s Coffee & Tea facilities in the Domestic Terminals of the San Francisco International Airport (“Airport”) under Lease No. 03-0069, dated November 10, 2003, as amended by Amendment No. 1 dated April 21, 2015 (the “Lease”).

B. As to Tenant’s one Peet’s Coffee & Tea facility in Terminal 1, the Term of the Lease expires in or around September 2019, when Terminal 1 Boarding Area B closes. As to Tenant’s two Peet’s Coffee & Tea facilities in Terminal 3 (collectively, the “Terminal 3 Premises”), the Term of the Lease expired on November 8, 2017, and Tenant has been operating such facilities on a month-to-month holdover tenancy.

C. 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”) and between Gates 84 and 90, replacing the stores and restaurants that are currently located on the departures level. It is anticipated that base building work will commence in these locations sometime between December 2018 and December 2020.

D. To preserve customer service and maintain revenue, and to accommodate the construction schedule of Terminal 3 project, City and Tenant have agreed to extend the term for the Terminal 3 Premises to December 31, 2020, and modify certain other terms of the Lease as set forth below.

E. All capitalized terms not otherwise defined herein shall have the same 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. **Term.** The Expiration Date applicable to Tenant's Terminal 3 Premises is extended to December 31, 2020. City may terminate the Lease earlier, as to Tenant's Terminal 3 Premises, at its sole and absolute discretion by providing six months' advance written notice to Tenant. The Expiration Date applicable to Tenant's other Peet's Coffee & Tea facility in Terminal 1 is not impacted by this Amendment.

3. **Minimum Annual Guarantee ("MAG").** From and after the Effective Date, the MAG applicable to Tenant's Terminal 3 Premises shall be reinstated at the then-current MAG, subject to upward adjustment in accordance with the Lease. Tenant shall pay the higher of the MAG and the Percentage Rent, as set forth in the Lease.

4. **Refurbishment.** Within six months of the Effective Date of this Amendment, Tenant, at Tenant's sole cost and expense, shall perform and complete a refurbishment of Tenant's Terminal 3 Premises ("Space Refresh"). The Space Refresh shall be subject to City's prior approval and shall comply with all applicable terms and conditions of the Lease. At minimum, Tenant shall complete the following work as part of the Space Refresh:

- a. Paint.
- b. Steam clean the floors.
- c. Stain the wood cabinets.
- d. Clean wood paneling.
- e. Replace the blade sign cover.
- f. Change out burnt light bulbs and repair broken light fixtures.
- g. Replace stanchions.
- h. Add waste trio receptacles with Airport signage for compost, recycling and landfill bins in the back-of-the-house area.

If Tenant fails to complete the Space Refresh by the six month anniversary of the Effective Date of this Amendment, City may impose fines on Tenant in the amount of \$100 per day until the Space Refresh is completed in addition to pursuing any other remedies available under the Lease.

5. **Entire Agreement.** This Amendment 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 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.

6. **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 City, 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.

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

///

///

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

TENANT: Gotham Enterprises, LLC,
a California limited liability company

By: _____

Name: Glenn Meyers
(type or print)

Title: CEO

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

Ivar C. Satero *if* *on*
Airport Director

AUTHORIZED BY AIRPORT
COMMISSION

Resolution:
Adopted;

Attest: _____
Secretary
Airport Commission

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

By: Bonnie D. Alcala
Deputy City Attorney

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AIRPORT COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 17-0318

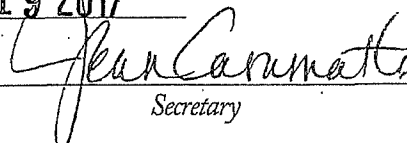
**APPROVAL OF AMENDMENT NO. 2 TO THE SPECIALTY COFFEE FACILITIES LEASE
NO. 03-0069 WITH GOTHAM ENTERPRISES, LLC**

- WHEREAS, on April 15, 2003, by Resolution No. 03-0069, the Commission approved a settlement of unlitigated claims which included the assignment of the Specialty Coffee Facilities Lease ("Lease") from D. Mitchell Concessions, Inc. to Gotham Enterprises, LLC, to operate three Peet's Coffee & Tea facilities in Terminal 1 Boarding Area B and Terminal 3, for a term of approximately twelve years with one option to extend the term for two years; and
- WHEREAS, on May 22, 2009, by Resolution No. 09-0120, the Commission approved the early exercise of the sole option to extend the term of the Lease, thereby extending the term to November 8, 2017; and
- WHEREAS, on April 21, 2015, by Resolution No. 15-0100, the Commission approved Amendment No. 1 to the Lease, replacing the premises located in Terminal 1 Boarding Area B, and extending the term for the Terminal 1 Boarding Area B location to September 2019 when the present Terminal 1 Boarding Area B closes; and
- WHEREAS, Gotham Enterprises, LLC is currently operating its two coffee concessions in Terminal 3 on a month-to-month holdover status; and
- WHEREAS, the next planned Terminal 3 renovation will include a new concessions program in T3 West and between Gates 84 and 90 as part of the T3 West expansion project, and it is anticipated that base building work will commence in this area sometime between December 2018 and December 2020; and
- WHEREAS, given the impending T3 West project, commencing a competitive process to select new concessionaires is not practical, as there is not adequate time to amortize capital investment in a new build-out; and
- WHEREAS, extending the Lease for a limited period without interruption prior to the commencement of the T3 West project is necessary to preserve customer service and maintain revenue; now, therefore, be it
- RESOLVED, that this Commission hereby approves Amendment No. 2 to the Specialty Coffee Facilities Lease No. 03-0069 with Gotham Enterprises, LLC, extending the term of both Terminal 3 locations to December 31, 2020, with a condition that that the Airport Director, at his sole and absolute discretion, may terminate earlier by providing six months' advance written notice; and, be it further
- RESOLVED, that this Commission hereby directs the Commission Secretary to seek approval of Lease Amendment No. 2 from the Board of Supervisors pursuant to Section 9.1118 of the Charter of the City and County of San Francisco.

I hereby certify that the foregoing resolution was adopted by the Airport Commission

at its meeting of _____

DEC 19 2017


Secretary

**LEASE AGREEMENT
FOR
SPECIALTY COFFEE FACILITIES
IN DOMESTIC TERMINAL BUILDINGS
AT SAN FRANCISCO INTERNATIONAL AIRPORT**

by and between

Gotnam Enterprises, LLC
as tenant

and

**CITY AND COUNTY OF SAN FRANCISCO
ACTING BY AND THROUGH ITS AIRPORT COMMISSION,
as landlord**

Mayor Willie L. Brown, Jr.

AIRPORT COMMISSION

Hon. Henry E. Berman, President
Hon. Larry Mazzola, Vice President
Hon. Caryl Ito
Hon. Michael S. Strunsky
Hon. Linda S. Crayton

John L. Martin
Airport Director

October, 2003

Lease No. 03-0069



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**LEASE AGREEMENT
FOR
SPECIALTY COFFEE FACILITIES
IN DOMESTIC TERMINAL BUILDINGS
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: NOV. 10, 2003.

Tenant: Gothum Enterprise, LLC
a Delaware limited liability company

Tenant's Notice Address: 606 Folsom St.
San Francisco, CA 94107
Attn: Glenn Meyers
Fax No. 415-243-8695
Tel. No. 415-706-8171

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
P. O. Box 8097
San Francisco, CA 94128
Attn: Airport Director
Fax No. (650) 821-5005
Tel. No. (650) 821-5000.

Premises: The following three locations in the Domestic Terminals (each, a "**Space**" and (§ 1) collectively, the "**Terminals**") at the San Francisco International Airport, comprising 2,367 square feet total, all as described on the attached *Exhibit A*.

<u>Space</u>	<u>Approx. Square Footage</u>
T3.2.061 ("T3 Space")	415
F.2.084 ("F Space")	1,450
B.2.053 ("B Space")	502

Summary, Page i



Relevant Boarding Area(s): T3 Space: Terminal 3
F Space: Boarding Area F
(§ 4.12) B Space: Boarding Area B

Reference Year: 2002
(§ 4.12)

Term: Approximately eleven (11) years two (2) months, commencing on the
(§ 2) Commencement Date. The Airport Commission will have one (1) two-year option, exercisable at the Airport Director's sole discretion.

Commencement Date: September 1, 2004
(§ 2.1)

Rent Commencement Date: The earlier of (a) the date on which the Initial Improvements (as defined below) are substantially complete and Tenant opens for business therein; and (b) the date that is ninety (90) days after the Commencement Date.
(§ 4.3)

December 1, 2004 (actual date to be inserted).

Expiration Date: November 8, 2015
(§ 2)

Permitted Use: The non-exclusive sale of food and beverages for immediate consumption, particularly described on the attached *Exhibit C*. Without limiting the generality of the foregoing, Tenant shall operate the Premises in strict conformity with the requirements herein, including those set forth on *Exhibit C*.
(§ 3)

Base Rent: Per Lease Year (as defined below), with respect to each Space, the greater of the Minimum Annual Guarantee (as defined below) or the following sum:
(§ 4)

- (a) 8% of Gross Revenues (as defined below) achieved up to and including \$750,000, plus,
- (b) 10% of Gross Revenues achieved from \$750,000,01 up to and including \$1,400,000; plus
- (b) 12% of Gross Revenues achieved over \$1,400,000.

Lease Year: The period commencing on the Rent Commencement Date and terminating on the day before the first MAG Adjustment Date (as defined below), and each subsequent 12-month period, commencing on each MAG Adjustment Date and expiring on the day before the subsequent MAG Adjustment Date, or expiring on the Expiration Date, as the case may be.
(§ 4)

01
December 30 - November 30 (to be inserted upon determination)

Minimum Annual Guarantee: For each Space, \$40 per square foot, subject to adjustments upward as described below, and subject to MAG suspension as provided below, as follows:
(§ 4)

Space	Initial MAG	(monthly)
T3 Space	\$16,600	\$1,383.33
F Space	\$58,000	\$4,833.33
B Space	\$20,080	\$1,673.33

MAG Adjustment Date: The first anniversary of the Rent Commencement Date or the first day of the first calendar month following such anniversary if the Rent Commencement Date does not fall on the first day of a calendar month, and each anniversary of such adjustment date thereafter.
(§ 4)
September 1 (actual date to be inserted upon determination)

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

Deposit Amount: Equal to one-half (1/2) of the then current MAG - \$47,340 subject to adjustment as provided herein.
(§ 12)

Minimum Investment Amount: \$295,875
(§ 7.1)

Initial Promotional Charge: ONE DOLLAR (\$1) per square foot of the Premises which equals \$2,367.
(§ 11)

Resolution: Number 03-0069, approved by the Airport Commission on April 15, 2003

Initial Tenant Representative: Glenn Meyers
Tel. No. 415-706-8171
(§ 3.9)

Other Agreements: Lease No. 99-0292F (AW-80)
(§ 14.1) Lease No. 99-0292J (AE-20)
Lease No. 03-0069 A
PERMIT NO. 3671

Exhibits: A - Premises
B - Initial Improvements
C - Use and Operational Requirements
D - Construction Period Operations
E - Form of Commencement Date Acknowledgement
F-1 - Form of Performance Bond
F-1 - Form of Letter of Credit
All such exhibits are incorporated into this Lease and made a part hereof.

Initial of Authorized Representative of City _____ *JF* *CF*

Initial of Authorized Representative of Tenant _____



**LEASE AGREEMENT
FOR
SPECIALTY COFFEE FACILITIES
IN DOMESTIC TERMINAL BUILDINGS
AT SAN FRANCISCO INTERNATIONAL AIRPORT**

THIS LEASE AGREEMENT (this "Lease"), dated as of the Effective Date, is entered into by and between Tenant, and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Airport Commission ("Commission"). This Lease is made with reference to the following facts:

A. City owns the San Francisco International Airport (the "Airport") located in the County of San Mateo, State of California, which Airport is operated by and through the Airport Commission (the "Commission"), the chief executive officer of which is the Airport Director ("Director"). The Airport's "Terminal Building Complex" is currently comprised of a Terminal 1, Terminal 2, Terminal 3, and an International Terminal, together with connecting concourses, piers, boarding areas and extensions thereof, and satellite buildings now or hereafter constructed. Terminal 2 is currently closed to the public. Tenant acknowledges that, from time to time, the Airport undergoes certain construction and renovation projects, and is currently undergoing a master plan expansion program (the "Master Plan Expansion"). Unless otherwise specified, the term "Airport" or "Terminal Building Complex" as used herein shall mean the Airport or the Terminal Building Complex, respectively, as the same may be expanded, contracted, improved, modified, renovated, or changed in any way. Unless otherwise specified below, references to the "City" shall mean the City, acting by and through its Airport Commission.

B. Tenant desires to provide and operate the service described in the Permitted Use at the Airport, and City has determined that such service would be an accommodation and convenience for airline passengers and the public using the Terminal Building Complex.

C. Pursuant to the Resolution, Commission has awarded this Lease to Tenant.

Accordingly, Tenant and City agree as follows:

1. PREMISES

1.1 Extent of Leasehold. On the terms, conditions, and covenants in this Lease, City hereby leases to Tenant and Tenant hereby leases from City, the Premises. In addition, Tenant shall possess the non-exclusive right of ingress and egress to and from the Premises as may be necessary on areas designated by Director, subject to Airport Rules and Regulations, as amended from time to time (as amended, the "Airport Rules"), provided that Tenant's exercise of such right shall not impede or interfere unduly with the operation of the Airport by City, its tenants, customers, and other authorized occupants. Tenant shall not place or install any racks, stands or other display of food and beverage or merchandise, or trade fixtures in any Airport property outside the Premises, without the express prior consent of Director. In no event will Tenant

engage in any activity on the Airport outside the Premises for the recruitment or solicitation of business. For purposes of this Lease relating to Tenant's responsibilities, the "Premises" shall mean the area(s) shown on *Exhibit A*, where (a) the exact boundaries are deemed to be three (3) inches inside each wall separating the Premises from the adjacent premises or the external Terminal wall, and (b) with respect to the facade and/or wall on the front of the Premises, separating the Premises from the Terminal common areas, the exact boundary is deemed to be the external face of the facade and/or wall.

1.2 Relocation, Expansion, Contraction.

(a) At any time during the Term, City may require that (i) Tenant relocate and surrender all or part of the Premises (such change to the Premises referred to as a "Required Relocation"), and/or (ii) the Premises be contracted or expanded (such change to the Premises referred to as a "Premises Change") on the terms set forth in this Section 1.2. City shall give notice (the "Change Notice") setting forth a description of the Required Relocation or the Premises Change, as applicable, the approximate effective date thereof (the "Target Effective Date"), and with respect to a Required Relocation, the location of comparable on-Airport replacement premises. The Change Notice shall be given no less than six (6) months prior to the Target Effective Date.

(b) (i) With respect to a Required Relocation, if the replacement premises are deemed unsatisfactory to Tenant, then Tenant may terminate this Lease as to the Space subject to the Required Relocation, by giving notice thereof to City within thirty (30) days after the Change Notice is given. In the event Tenant gives such notice of termination, then this Lease shall terminate on the Target Effective Date, and on such date, Tenant shall surrender the Premises in the condition required by this Lease. In the event Tenant elects to terminate this Lease pursuant to this subclause (b)(i), then City shall pay to Tenant a Relocation-Related Termination Fee (as defined below) with respect to each Space subject to the Required Relocation. (ii) Provided Tenant does not terminate this Lease pursuant to the foregoing, Tenant shall surrender the Premises and relocate to the replacement premises on a date (the "Surrender Date") determined by City (which shall be no earlier than the Target Effective Date). On the Surrender Date, Tenant shall surrender the Premises in the condition required below. In the event of a relocation pursuant to this Section 1.2(b), Tenant shall refurbish, redecorate, and modernize the interiors and exteriors of the replacement premises, such that the replacement premises are of at least the same quality as the original premises. As part of City's approval of Tenant's plans and specifications and Tenant's budget for its remodeling, City may specify a "Maximum Reimbursement Amount." Once the remodeling of the replacement premises is completed, and City has approved the work, Tenant must submit to City (i) a certificate from Tenant's architect certifying that the remodeling was completed in strict compliance with the plans and specifications approved by City, (ii) copies of paid invoices showing the costs of actually paid by Tenant for the remodeling of the replacement premises and Tenant's out-of-pocket moving costs, and (iii) lien releases from all contractors, subcontractors, and materialmen entitled to payment in connection with the remodeling of the replacement premises. Following its review and approval of those submissions, City will reimburse Tenant for all reasonable costs of remodeling the replacement premises and moving its food and beverage and other personal property to the replacement premises from the original Premises; provided that in no event will City be required to reimburse Tenant for more than the Maximum Reimbursement Amount and further provided



that City may, in City's sole discretion, make such reimbursement by issuing Tenant a rent credit. In no event will City be obligated to pay or reimburse Tenant for any other costs or expenses, including business interruption costs. As used in this Section 1.2(b), the term "Relocation-Related Termination Fee" shall mean the following amount:

$$\frac{\$320,000 + A}{12} \quad \times \quad \text{Number of years between the effective date of termination and the Expiration Date}$$

Where "A" equals the actual out-of-pocket costs of Tenant's Initial Improvements for such Space, as reasonably evidenced by Tenant and reasonably approved by Director.

(c) (i) With respect to a Premises Change where the square footage of the original Premises will be expanded or contracted by more than ten percent (10%), Tenant may terminate this Lease by giving notice thereof to City within thirty (30) days after the Change Notice is given. In the event Tenant gives such notice of termination, then this Lease shall terminate on the Target Effective Date and on such date, Tenant shall surrender the Premises in the condition required below. (ii) Provided Tenant does not terminate this Lease pursuant to the foregoing, Tenant shall cause the Premises to be expanded or contracted as described in the Change Notice on or before the date described therein. As part of City's approval of Tenant's plans and specifications and Tenant's budget for its remodeling, City may specify a "Maximum Reimbursement Amount." Once the remodeling of the replacement premises is completed, and City has approved the work, Tenant must submit to City (i) a certificate from Tenant's architect certifying that the remodeling was completed in strict compliance with the plans and specifications approved by City, (ii) copies of paid invoices showing the costs of actually paid by Tenant for the remodeling of the replacement premises and Tenant's out-of-pocket moving costs, and (iii) lien releases from all contractors, subcontractors, and materialmen entitled to payment in connection with the remodeling of the replacement premises. Following its review and approval of those submissions, City will reimburse Tenant for all reasonable costs of remodeling the replacement premises and moving its food and beverage and other personal property to the replacement premises from the original Premises; provided that in no event will City be required to reimburse Tenant for more than the Maximum Reimbursement Amount and further provided that City may, in City's sole discretion, make such reimbursement by issuing Tenant a rent credit. In no event will City be obligated to pay or reimburse Tenant for any other costs or expenses, including business interruption costs.

(d) With respect to a Required Relocation, the Minimum Annual Guarantee shall be increased, or decreased, as the case may be, pro rata, to reflect the increase or decrease, as the case may be, in the size of the replacement premises compared to the original premises.

(e) With respect to a Premises Change where the square footage of the original premises will be expanded or contracted by more than ten percent (10%), the Minimum Annual Guarantee shall be increased, or decreased, as the case may be, pro rata to reflect the increase or decrease, as the case may be, in the size of the expanded or contracted premises compared to the original premises.



(f) At City's option, the parties shall amend this Lease or enter into a new lease on substantially the same terms as this Lease or acknowledge the change to the Premises without formal amendment to this Lease, to reflect the Required Relocation or the Premises Change.

(g) Notwithstanding anything to the contrary herein, City shall not require a Required Relocation or a Premises Change unless City shall have considered other reasonable alternatives and rejected them.

1.3 Remeasurement of Premises. At any time and from time to time, Director may cause City to conduct a space audit pursuant to which City remeasures the Premises using the Airport's then-current measurement specifications. At Director's request, Tenant and City shall enter into an amendment of this Lease reflecting the results of such remeasurement.

1.4 Changes to Airport. Tenant acknowledges and agrees that (a) City shall have the right at all times to change, alter, expand, and contract the Airport, including the Terminal Building Complex; (b) City has made no representations, warranties, or covenants to Tenant regarding the design, construction, pedestrian traffic, or views of the Airport or the Premises. Without limiting the generality of the foregoing, Tenant acknowledges and agrees that the Airport (i) is currently undergoing, and may from time to time hereafter undergo, renovation, construction, and other Airport modifications; and (ii) may from time to time adopt rules and regulations relating to security and other operational concerns that may affect Tenant's business. Although City will use reasonable efforts to minimize the effect of the Master Plan Expansion and other Airport changes on Tenant's business, Tenant acknowledges that such activity may have some effect on retail operations located at the Airport. Such construction and renovation programs might involve barricading, materials storage, noise, the presence of workers and equipment, rearrangement, utility interruptions, and other inconveniences normally associated with construction and renovation. Although City will use reasonable efforts to minimize the effect of the Master Plan Expansion and other Airport changes on Tenant's business, Tenant acknowledges that such activity may have some effect on retail operations located at the Airport, and Tenant shall not be entitled to any rent credit or other compensation therefor. At any time and from time to time, City may, without the consent of Tenant, and without affecting Tenant's obligations under this Lease, at City's sole discretion, (a) change the shape, size, location, number and extent of the improvements in any portion of the Airport, including without limitation the concourses, piers, boarding areas, retail areas and security areas located within the Terminal Building, (b) build additional stories above or below the Airport buildings, including of the Terminal Building, (c) eliminate or relocate public entrances to the Premises so long as there is at all times one public entrance to the Premises, (d) construct multi-level, elevated or subterranean parking facilities and (e) expand or contract the Airport, including redefining the Airport boundaries so as to include additional lands within the Airport or exclude lands from the Airport or both. Without limiting waivers set forth elsewhere in this Lease, Tenant hereby waives all claims against City and releases City from all Losses (as defined below) that Tenant suffers or incurs arising out of or in connection with any changes to the Airport or any portion of the Airport and Tenant further agrees that Tenant will not be entitled to any rent abatement or any other rent relief in connection with any changes to the Airport or any portion of the Airport.

1.5 Common Areas. The term "common areas" means all areas and facilities located within the Airport that are designated by City from time to time for the general use and



convenience of the tenants of the Airport and other occupants of the airport, and airline passengers and other visitors to the Airport such as concourses, sidewalks, elevators, escalators, moving walkways, parking areas and facilities, restrooms, pedestrian entrances, driveways, loading zones and roadways. City may, in its sole discretion, and without any liability to Tenant (a) change the common areas, (b) increase or decrease the common areas (including the conversion of common areas to leaseable areas and the conversion of leaseable areas to common areas), and (c) impose parking charges. City will, in its sole discretion, maintain the common areas, establish and enforce Airport Rules concerning the common areas, close temporarily portions of the common areas for maintenance purposes, and make changes to the common areas including changes in the location of security check points, driveways, entrances, exits, parking spaces, parking areas, and the direction of the flow of traffic. City reserves the right to make additional Airport Rules affecting the Airport throughout the Term, including the requirement that Tenant participate in a parking validation program.

2. TERM

2.1 Commencement and Expiration. The Term shall commence on the Commencement Date and expire on the Expiration Date, unless terminated prior thereto as provided herein. If for any reason (including, without limitation, the existing tenant's failure to vacate timely the Premises) City cannot deliver possession of the Premises to Tenant on the Commencement Date, this Lease shall remain in effect, City shall not be subject to any liability, and such failure shall not extend the Term hereof. In such event, and provided such delay is not caused by the act or omission of Tenant, or Tenant's contractor, employee, agent, licensee or invitee (a "**Tenant Entity**"), the Rent Commencement Date shall be extended to reflect such delay. If for any reason City is unable to deliver possession of the Premises to Tenant on the date that is one hundred eighty (180) days after the Commencement Date, each of City and Tenant shall have the right to terminate this Lease by notice to the other. After the Rent Commencement Date has occurred, upon Director's request, Tenant will execute a written acknowledgment of the Commencement Date and the Rent Commencement Date in the form attached as *Exhibit E*. In the event Tenant fails to execute and return promptly such acknowledgment to City, the dates described therein shall be deemed conclusive.

2.2 Tenant Improvements and Required Opening Day. Tenant shall (a) take possession of the Premises on the Commencement Date, (b) cause the initial Premises improvements (as described on the attached *Exhibit B*) (the "**Initial Improvements**") to be substantially completed on or before the Rent Commencement Date, and (c) cause the Premises to be open for business on or before the Rent Commencement Date. In the event the Premises are not open for business on or before the Rent Commencement Date, City will incur substantial damages, the exact amount of which are extremely difficult to fix. Accordingly, for each day after the Rent Commencement Date until the day on which Tenant opens the Premises for business, Tenant shall pay to City One Thousand Dollars (\$1,000 (in addition to Rent as provided below), 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 on or before the Rent Commencement Date. In the event the Premises are not open for business on the date that is sixty (60) days after the Rent Commencement Date, City shall have the option to terminate this Lease, exercisable by notice to Tenant.



2.3 City's Right to Extend Term. City shall have one option to extend the Term for an additional two (2) year period, on the terms and conditions of this Section 2.3 (the "Extension Option"). To exercise the Extension Option, City must give notice (an "Exercise Option Notice") to Tenant on or before the date that is sixty (60) days prior to the Expiration Date. In no event will City be required to exercise the Extension Option.

2.4 Holding Over. If, without objection by City, Tenant holds possession of the Premises after the Expiration Date, Tenant shall become a tenant from month to month, upon the terms of this Lease except that, at City's option, the Minimum Annual Guarantee shall be double the then prevailing Base Rent. No such holdover shall be deemed to operate as a renewal or extension of the Term. Such month-to-month tenancy may be terminated by City or Tenant by giving thirty (30) days' notice of termination to the other at any time.

3. USE AND OPERATION

3.1 Permitted Use. Tenant shall use the Premises for the Permitted Use and for no other purpose. In the event Tenant desires to use the Premises for any purpose other than the Permitted Use (including selling an item or service outside the scope of the Permitted Use), Tenant may submit a request to Director. Director may, in his/her sole and absolute discretion approves or denies such request. Any such decision shall be binding on Tenant.

3.2 No Exclusivity. Tenant acknowledges and agrees that Tenant has no exclusive rights to conduct the business of the Permitted Use and that City may arrange with others for similar activities at the Airport.

3.3 Operation of Business. Subject to the terms of this Lease, Tenant will operate Tenant's business in the Premises so as to maximize Gross Revenues (as defined below) and in accordance with the requirements set forth on *Exhibit C* relating to, among other things, food and beverage requirements and price requirements. Without limiting the generality of the foregoing, Tenant shall (a) conduct the business in a first-class, businesslike, safe, efficient, courteous and accommodating manner; (b) provide a wide-range of food and beverage products of top character, quantity, and quality; and (c) employ sufficient and experienced staff. In the event Director shall give notice to Tenant that any of the foregoing covenants (a) - (c) are not being satisfied, Tenant shall immediately discontinue or remedy the objectionable practice. In addition, Tenant shall render the following public services: make reasonable change, give directions, and assist the public generally. Tenant shall take all reasonable measures in every proper manner to maintain, develop, and increase the business conducted by it. Tenant will not divert or cause to be diverted any business from the Airport.

3.4 Use of Premises. Tenant shall use at least eighty-five percent (85%) of the Premises for the sale of food and beverages for immediate consumption as set forth in *Exhibit C*.

3.5 Hours of Operation. Tenant will carry on its business diligently and continuously in the Premises and will keep the Premises open for business not less than sixteen (16) consecutive hours each day seven (7) days per week, including holidays. Director may, from time to time, change such required hours of operation, in which event, Tenant will remain open during such revised hours. Tenant may not vacate or abandon the Premises at any time.



3.6 Prices. Tenant's prices for the food and beverage comprising the Permitted Use shall be the same or comparable to prices found in Tenant's menu, if any, and at Tenant's other food and beverage facilities, or as determined by Director to be comparable, plus a maximum of ten percent (10%), and shall otherwise comply with City's Street Pricing Program.

3.7 References to Airport. Tenant shall not, without the prior written consent of Director, reference City or the Airport for any purpose other than the address of the business to be conducted by Tenant in the Premises, nor will Tenant do or permit anything in connection with Tenant's business or advertising which in the judgment of City may reflect unfavorably on City or the Airport, or confuse or mislead the public as to the relationship between City and Tenant.

3.8 Other Operational Requirements.

(a) Tenant must keep the display windows of the Premises and display cases suitably illuminated at all times.

(b) Tenant must dispose of all trash and debris in areas and in containers designated by Director. If City provides common trash areas, Tenant may request a permit to use the same for a charge determined by Director from time to time. Tenant may not place or leave or permit to be placed or left in or upon any part of the common areas or corridors adjacent to the Premises any garbage, debris or refuse.

(c) Tenant acknowledges that the operational requirements of the Airport as an airport facility, including without limitation security requirements, are of paramount importance. Tenant acknowledges and agrees that it must conduct its business in a manner that does not conflict with the operational requirements of the Airport as an airport facility and that fully accommodates those requirements. Without limiting other waivers herein, Tenant waives all claims for any Losses arising out of or connected to the operation of the Airport as an airport facility. Without limitation on the foregoing, Tenant must:

(i) comply with the Airport Rules;

(ii) cause all deliveries and dispatches of food and beverage, supplies, fixtures, equipment and furniture to be made and conveyed to or from the Premises by means and during hours established by Director in Director's sole discretion. City has no responsibility regarding the delivery or dispatch of Tenant's food and beverage, supplies, fixtures, equipment and furniture. Tenant may not at any time park its trucks or other delivery vehicles in common areas; and

(iii) not park within the parking areas of the Airport except in those areas, if any, designated by City pursuant to permits obtained from the Airport's Permit Bureau. Nothing herein shall imply that Tenant shall be able to secure any on-Airport parking privileges

3.9 Prohibited Activities. Without limiting any other provision herein, Tenant shall not, without the prior written consent of Director: (a) use or permit the use of the Premises for the conduct in or on the Premises as an outlet store or a second-hand store; (b) advertise any distress, fire, bankruptcy, liquidation, relocation, closing, or going-out-of-business sales; (c) use



or permit the use on the Premises of any pinball machines, videogames, or other devices or equipment for amusement or recreation, or any vending machines, newspaper racks, pay telephones, or other coin, token, or credit card-operated devices; (d) cause or permit anything to be done, in or about the Premises, or bring or keep anything thereon which might (i) increase in any way the rate of fire insurance on the Terminal Building Complex or any of its contents; (ii) create a nuisance; (iii) in any way obstruct or interfere with the rights of others in the Terminal Building Complex or injure or annoy them; (e) commit or suffer to be committed any waste upon the Premises; (f) use, or allow the Premises to be used, for any improper, immoral, unlawful or objectionable purpose; (g) place any loads upon the floor, walls or ceiling which endanger the structure or obstruct the sidewalk, passageways, stairways or escalators, in front of, within, or adjacent to the Terminal Building Complex; (h) use any advertising or promotional medium that may be seen, heard, or otherwise experienced outside the Premises (such as searchlights, barkers or loudspeakers); (i) distribute handbills or circulars to Airport patrons or to cars in the parking lots, or engage in any other advertising in the Airport; (j) engage in any activity on the Airport outside the Premises for the recruitment or solicitation of business; or (k) do or permit to be done anything in any way tending to injure the reputation of City or appearance of the Airport.

3.10 Audit of Operations. At any time and from time to time, City may conduct an audit of Tenant's operations at the Airport (in addition to City's right to audit pursuant to Section 4.7 [Books and Records; Audit Rights] hereof) to confirm that such operations comply with the requirements set forth herein. Tenant shall cooperate with such audit. In the event such audit shows that Tenant is not complying with such requirements, without limiting City's ability to call a default hereunder, City may require that Tenant reimburse City for the costs of such audit. Tenant shall promptly remedy any noncompliance shown in any such audit.

3.11 Representative of Tenant. Tenant shall at all reasonable times retain in the Terminal Building Complex at least one qualified representative authorized to represent and act for it in matters pertaining to its operation, and shall keep Director informed in writing of the identity of each such person. The initial person so designated is the Initial Tenant Representative.

3.12 Investigation Reports. Tenant shall, if required by Director, employ, at its own cost and expense, an investigative organization approved by Director for the purpose of making investigations and observations and preparing a written report of the carrying out of any pricing policies, revenue control, and operational techniques being used on the Premises. Tenant shall cause such investigation and observation to be made at such reasonable times and in the manner directed by Director, and the investigator shall deliver forthwith to Director a true and complete written copy of any such reports made to Tenant.

3.13 Compliance with Laws. Tenant shall promptly, at its sole expense, cause the Premises (including any permitted Alterations (as defined below)), and Tenant's use of the Premises and operations therein, to comply at all times with all present and future federal, state and local laws, as the same may be amended from time to time, whether foreseen or unforeseen, ordinary as well as extraordinary, including all laws relating to (a) health and safety; (b) disabled access, including the Americans with Disabilities Act, 42 U.S.C.S. Sections 12101 et. seq. and Title 24 of the California Code of Regulations (collectively "ADA"), (c) Hazardous Materials (as



defined below); and (d) fire sprinkler, seismic retrofit, and other building code requirements (collectively "Laws"), and the Airport's Tenant Improvement Guide, including the Tenant Design Criteria, as amended from time to time (as amended, the "Airport's TI Guide"), and the Airport Rules. The parties acknowledge and agree that Tenant's obligation to comply with all Laws, the Airport's TI Guide, and the Airport Rules, is a material part of the bargained for consideration under this Lease. Notwithstanding the foregoing, this Section 3.13 shall not impose on Tenant any liability to make any structural alterations to the Terminal's roof, foundation, bearing and exterior walls and subflooring; or heating, ventilating, air conditioning, plumbing, electrical, fire protection, life safety, security and other mechanical, electrical and communications systems of the Terminal (collectively "Building Systems"), except to the extent the same is (x) installed by Tenant pursuant to Section 8 [Utilities], or otherwise, or (y) necessitated by Tenant's Alterations or by any act or omission of Tenant or any Tenant Entity.

3.14 Construction Period Operations. In the event Tenant desires to conduct any operations prior to the Rent Commencement Date, such operations shall be governed by the provisions on *Exhibit D*.

3.15 Fuel System. Tenant acknowledges that City has granted, or may in the future grant, to a party the sole and exclusive right to operate a fuel system on the Airport. In such event, Tenant acknowledges and agrees that, to the extent it desires to receive distribution of jet fuel on Airport premises, it must receive such distribution from such party, on the terms and conditions established by such party. In no event will Tenant have any right to operate a competing fuel system at the Airport.

4. RENT

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

(a) "Gross Revenues" means:

(i) The retail price of all food and beverage sold and services rendered in, on, about or from the Premises, whether operated by a subtenant or a concessionaire, or by any other person or entity, as may herein be provided, whether such sales be for cash or on credit, and in case of sales on credit, whether or not payment is actually made; provided, however, that in the event food and beverage is returned by a customer and the sale is canceled, the selling price shall be excluded; plus,

(ii) The full amount of all deposits forfeited by customers in connection with any business of Tenant in, on, about or from the Premises; plus,

(iii) The full amount of all orders for goods or services accepted by Tenant if, on, about or from the Premises, whether or not to be filled or performed at any other place, and the full amount of all orders accepted by Tenant elsewhere, but to be filled or performed in, on, about or from the Premises. In determining Gross Revenues, retail sales taxes shall not be included.



(iv) The retail price of all food and beverage orders placed on the Premises from Tenant's catalog.

The following shall not be included in "Gross Revenues":

- (I) Any exchange of food and beverage between stores of Tenant where such exchange is made solely for the convenient operation of Tenant's business and not for the purpose of consummating a sale made in, at or from the demised premises, or for the purpose of depriving City of the benefit of sales which would otherwise be made in or at the Premises.
- (II) Returns to the shippers or manufacturers.
- (III) Cash or credit refunds to customers on transactions (not to exceed the actual selling price of the item returned) otherwise included in Gross Revenues.
- (IV) Discount sales to employees.

(b) "**Consumer Price Index**" means that index published by the United States Department of Labor, Bureau of Labor Statistics known as "Food Away from Home Metropolitan San Francisco-Oakland-San Jose Area, California." In the event such index is discontinued, then "**Consumer Price Index**" shall mean an index chosen by Director which is, in Director's reasonable judgement, comparable to the index specified above.

(c) "**MAG Adjustment Date**" means the first anniversary of the Rent Commencement Date, or the first day of the first calendar month following such anniversary if the Rent Commencement Date does not fall on the first day of calendar month, and each anniversary of such adjustment date thereafter.

(d) "**Base Index**" means the most recent Consumer Price Index published immediately prior to the Commencement Date.

(e) "**Comparison Index**" means the most recent Consumer Price Index published immediately prior to each MAG Adjustment Date.

(f) "**Enplanements**" means the total number of passengers boarding airline carriers.

(g) "**Base Year Enplanements**" means the total Enplanements for the twelve month period preceding the Commencement Date.

(h) "**Comparison Year Enplanements**" mean the total Enplanements for the twelve month period preceding each MAG Adjustment Date.

4.2 Adjustments to Minimum Annual Guarantee. On each MAG Adjustment Date, the Minimum Annual Guarantee will be adjusted, as follows: if (a) the Comparison Index shall



exceed the Base Index, and (b) Comparison Year Enplanements equal or exceed Base Year Enplanements, then the Minimum Annual Guarantee with respect to the upcoming Lease Year shall be increased to equal the following amount:

$$\text{Initial MAG} \quad \times \quad \frac{\text{Comparison Index}}{\text{Base Index}}$$

If (i) the Comparison Index shall exceed the Base Index, and (ii) Comparison Year Enplanements are less than Base Year Enplanements, then the Minimum Annual Guarantee with respect to the upcoming Lease Year shall be increased to equal the following amount:

$$\text{Initial MAG} \quad \times \quad \frac{\text{Comparison Index}}{\text{Base Index}} \quad \times \quad \frac{\text{Comparison Year Enplanements}}{\text{Base Year Enplanements}}$$

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

4.3 Monthly Rent Payments. Tenant shall pay, as rent for the Premises, estimated monthly Base Rent in advance on or before the first (1st) day of each calendar month of the Term as set forth below:

(a) On or before the Rent Commencement Date and the first (1st) day of each calendar month thereafter, Tenant shall pay the current monthly Minimum Annual Guarantee. If the Rent Commencement Date occurs on a date other than the first day of a calendar month, then the monthly Minimum Annual Guarantee for such first month (the "First Month") shall be prorated based on a 30-day month.

(b) On or before the twentieth (20th) day of each calendar month after the First Month, concurrently with its submission of the Sales Reports described below covering the prior calendar month, Tenant shall pay to City the deficiency, if any, between the Base Rent payable by Tenant with respect to such prior calendar month (based on the Gross Revenues achieved with respect to such prior month), and the amount actually paid by Tenant pursuant to the foregoing subsection (a) with respect to such month.

(c) All payments hereunder shall be paid at the office of Director, or at such other place as City may from time to time designate in writing.

(d) The Minimum Annual Guarantee with respect to the first and last Lease Years of the Term will be prorated, based on a 365-day year. Without limiting the generality of the foregoing, as the Initial MAG is an annual amount, the Minimum Annual Guarantee with respect to the first Lease Year shall be prorated, based on a 365-day year, to reflect the fact that the first Lease Year shall be less than a full 12-month period.

(e) All Rent shall be paid in lawful money of the United States, free from all claims, demands, setoffs, or counterclaims of any kind.



(f) 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 (1½%) 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.

4.4 Sales Reports. On or before the twentieth (20th) day of each calendar month after the First Month, Tenant shall submit to City a report (the "Sales Report") showing all Gross Revenues achieved with respect to the prior month, segregated by each source or general type of article sold or service rendered. Such report shall be certified as being true and correct by Tenant and shall otherwise be in form and substance satisfactory to Director. As described below, City shall have the right, in addition to all other rights herein, to impose a fine in the event Tenant shall fail to submit such Sales Report timely.

4.5 Annual Report and Adjustment. Within ninety (90) days after the end of each Lease Year, Tenant shall submit to Director an unqualified year-end financial report certified by a Certified Public Accountant or a year-end financial report certified by Tenant's chief financial officer if such officer is approved by Director, showing Gross Revenues achieved with respect to the prior Lease Year. If such report shows that the total Base Rent actually paid by Tenant with respect the prior calendar year was less than the Base Rent payable with respect to such year, then Tenant shall immediately pay to City such deficiency. If such report shows that the Base Rent actually paid by Tenant with respect to such prior Lease Year exceeded the Base Rent payable with respect to such year, then such excess shall be applied as a rent credit to amounts next coming due. Notwithstanding anything to the contrary herein, in no event will the Base Rent payable to City be less than the Minimum Annual Guarantee. In addition, Tenant shall submit to City such other financial or other reports as Director may reasonably require.

4.6 Cash Register Requirements. Tenant shall install in the Premises at least one cash register. Such cash register and any other cash register used on the Premises shall be of a type approved by Director in writing and shall register every transaction made in, on, about or from the Premises, including every type of Gross Revenue, and the tape of each said cash register shall be accessible to and subject to inspection by Director or his/her agent. City may, at its option, require all such cash registers to be locked and accessible only by the use of one key in the hands of City. All cash receipts must include Tenant's identification thereon. Each sale or other transaction in the Premises must be recorded at the time of each sale or other transaction, in the presence of the customer, all receipts from such sale or other transaction, whether for cash, credit or otherwise, in a cash register or cash registers (including computerized cash registers or other similar electronic devices) serviced by an established agency approved by Director. Mechanical cash register(s) must have a non-resettable cumulative total, a detail audit tape, a transaction number with a four-digit capacity, an indicator readily visible to customers as the amount rung, and a seven-digit cumulative capacity or greater, as determined by Director based on the type of business, with a four-digit overrun counter. Tenant must furnish to City a statement from an established agency that the transaction number, the cumulative total and the overrun counter have been sealed in a manner approved by Director. If computerized cash registers or other similar electronic devices are used, that system must accurately record all sales at the Premises and be no more subject to tampering than mechanical cash register(s). Upon the installation or removal of any cash register (including computerized cash registers or other similar electronic



devices) used in the Premises, Tenant must immediately furnish to Director notice in writing stating make, model number, serial number and cumulative total reading and overrun counter reading of the cash register(s) (including computerized cash registers or other similar electronic devices). Any repair agency employed to repair or replace any cash register (including computerized cash registers or other similar electronic devices if used) in the Premises is hereby authorized and directed to disclose and furnish to City or its auditors any information obtained by the agency in the course of making such repair or replacement pertaining to said cash register (including computerized cash registers or other similar electronic devices if used). Each customer must be issued a receipt or sales slip for each transaction, which transaction must be recorded either on serially numbered sales slips or cash register tapes. City shall have the right during business hours to examine the totals of the cash register(s) (including computerized cash registers or other similar electronic devices if used) used in the Premises and to inspect for compliance with this section. City shall have the option to implement a common "point of sale" system. If such option is exercised, Tenant must, at its cost, purchase and install the necessary equipment, train its employees, and thereafter use, such equipment to take part in such system.

4.7 Books and Records; Audit Rights.

(a) Tenant shall maintain for a period of five (5) years after the Expiration Date, or, in the event of a claim by City, until such claim of City for payments hereunder shall have been fully ascertained, fixed and paid, separate and accurate daily records of Gross Revenues, whether for cash, credit, or otherwise. Tenant must require each subtenant, concessionaire, licensee, and assignee to maintain the same records. All such books and records shall be kept in accordance with "generally accepted accounting principles", consistently applied, showing in detail all business done or transacted in, on, about or from or pertaining to the Premises, and Tenant shall enter all receipts arising from such business in regular books of account, and all entries in any such records or books shall be made at or about the time the transactions respectively occur. The books and source documents to be kept by Tenant must include records of inventories and receipts of food and beverage, daily receipts from all sales and other pertinent original sales records and records of any other transactions conducted in or from the Premises by all persons or entities conducting business in or from the Premises. Pertinent original sales records include: (i) cash register tapes, including tapes from temporary registers, (ii) serially pre-numbered sales slips, (iii) the original records of all mail and telephone orders at and to the Premises, (iv) settlement report sheets of transactions with subtenants, concessionaires, licensees and assignees, (v) original records indicating that food and beverage returned by customers was purchased at the Premises by such customers, (vi) memorandum receipts or other records of food and beverage taken out on approval, (vii) detailed original records or any exclusions or deductions from Gross Revenues, (viii) sales tax records, and (ix) all other sales records, if any, that would normally be examined by an independent accountant pursuant to generally accepted auditing standards in performing an audit of Gross Revenues. Tenant must keep the required books, source documents and records of Gross Revenues available for inspection by City and its agents and employees at the Premises or at another location within the continental United States at all times during regular business hours. In addition, Tenant shall maintain monthly and annual reports of Gross Revenues derived from its operation under this Lease, using a form and method as is directed by Director. Such forms and methods shall be employed by Tenant throughout the term of this Lease. Upon Director's written request, Tenant shall make available immediately to City and/or its auditors any and all books, records and accounts pertaining to its operations under



this Lease. The intent and purpose of the provisions of this section are that Tenant shall keep and maintain records which will enable City and City's Controller to ascertain, determine and audit, if so desired by City, clearly and accurately, Gross Revenues achieved, and the adequacy of the form and method of Tenant's reporting thereof.

(b) Should any examination, inspection, and audit of Tenant's books and records by City disclose an underpayment by Tenant of the total Base Rent due, Tenant shall promptly pay to City such deficiency, and if such deficiency exceeds two percent (2%) of the total Base Rent due, Tenant shall also promptly reimburse City for all costs incurred in the conduct of such examination, inspection, and audit. Further, should any examination, inspection, and audit of Tenant's books and records by City disclose an underpayment by Tenant of the total Base Rent due and such deficiency exceeds five percent (5%) of the total Base Rent due, City shall have the right to terminate this Lease. In the event that City deems it necessary to utilize the services of legal counsel in connection with collecting the reimbursement for such examination, inspection, and audit, then Tenant shall reimburse City for reasonable attorneys' fees and litigation expenses as part of the aforementioned costs incurred.

4.8 Other Reports and Submissions. Tenant shall furnish City with such other financial or statistical reports as Director from time to time may reasonably require. Upon request by Director, Tenant shall furnish to City copies of its quarterly California sales and use tax returns covering the Premises operations as well as that pertinent portion of both the California and Federal income tax returns and possessory interest tax returns on the Premises operations at the time of filing, and any amendments thereto. All copies of such returns must be certified as exact copies of the original documents by a Certified Public Accountant. Tenant and all subtenants (to the extent permitted) shall also promptly notify Director of and furnish to City copies of any audit reports covering this facility conducted by the California Franchise Tax Board or the Board of Equalization.

4.9 Additional Rent. Tenant shall pay to City any and all charges and other amounts under this Lease as additional rent, at the same place where Base Rent is payable. City shall have the same remedies for a default in the payment of any such additional charges as for a default in the payment of Base Rent.

4.10 Prepay Rent. Notwithstanding anything to the contrary herein, in the event Tenant shall fail to pay any Rent when due hereunder, Director shall have the right to require Tenant to pay estimated monthly Rent (including Base Rent, utility charges, and all other amounts) one (1) month in advance of when such payment would otherwise be due. Such prepayment would be based on the highest monthly Rent previously due from Tenant. Such right shall be exercised by a notice from Director to Tenant, which notice may be given any time after such default by Tenant, regardless of whether the same is cured by Tenant.

4.11 Nature of Lease. Under no circumstances will City be expected or required to make any payment of any kind with respect to Tenant's use or occupancy of the Premises, except as may be otherwise expressly set forth herein. Except as may be specifically and expressly provided otherwise in this Lease, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, shall relieve Tenant from its liability to pay all of the sums required by this Lease, or relieve Tenant from any of its other obligations



under this Lease, or give Tenant the right to terminate this Lease in whole or in part. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease or to receive any abatement, diminution, reduction, or suspension of payment of such sums, on account of such occurrence or situation. Except as otherwise expressly provided herein, this Lease shall continue in full force and effect, and the obligations of Tenant hereunder shall not be released, discharged or otherwise affected, by reason of: (a) any damage to or destruction of the Premises or any portion thereof or any improvements thereon, or any taking thereof in eminent domain; (b) any restriction or prevention of or interference with any use of the Premises or the improvements or any part thereof; (c) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other proceeding relating to City, Tenant or any constituent partner of Tenant or any sublessee, licensee or concessionaire or any action taken with respect to this Lease by a trustee or receiver, or by any court, in any proceeding; (d) any claim that Tenant or any other person has or might have against City; (e) any failure on the part of City to perform or comply with any of the terms hereof or of any other agreement with Tenant or any other person; (f) any failure on the part of any sublessee, licensee, concessionaire, or other person to perform or comply with any of the terms of any sublease or other agreement between Tenant and any such person; (g) any termination of any sublease, license or concession, whether voluntary or by operation of law; or (h) any other occurrence whatsoever, whether similar or dissimilar to the foregoing in each case whether or not Tenant shall have notice or knowledge of any of the foregoing. The obligations of Tenant hereunder shall be separate and independent covenants and agreements. Tenant hereby waives to the full extent permitted by applicable law, all rights now or hereafter conferred by statute, including without limitation the provisions of Civil Code Sections 1932 and 1933, to quit, terminate or surrender this Lease or the Premises or any part thereof, or to any abatement, suspension, deferment, diminution or reduction of any rent hereunder.

4.12 Severe Decline in Enplanements.

(a) Defined Terms. For purposes of this Section, the following capitalized terms shall have the following meanings:

(i) **"Relevant Boarding Area"** shall have the meaning given it in the Summary.

(ii) **"Enplanements"** shall have the meaning given it in Section 4.1. For purposes of this Section 4.12, all Enplanement comparisons shall be done by Relevant Boarding Area.

(iii) **"Reference Month(s)"** shall mean the corresponding month in the Reference Year.

(iv) **"Reference Year"** shall have the meaning given it in the Summary.

(v) **"Percentage Rent"** shall have the meaning given it in the Summary.



(vi) **“Severe Decline in Enplanements for Three Months”** shall mean that the actual Enplanements achieved during a one month period is less than 80% of the actual Enplanements of the same Reference Month in the Reference Year, and such shortfall continues for three (3) consecutive months.

(vii) **“Enplanement Stabilization for Two Months”** means that actual Enplanements for a particular month equals or exceeds 80% of the actual Enplanements of the same Reference Month in the Reference Year, and such threshold is achieved for two (2) consecutive months.

(b) MAG Suspension. If at any time during the term, there is a Severe Decline in Enplanements for Three Months, then the MAG shall be temporarily suspended as follows:

(i) The MAG suspension shall be effective on the first day of the month immediately following the Severe Decline in Enplanements for Three Months.

(ii) During such MAG suspension period, Tenant shall be required to pay only the Percentage Rent, unless and until the MAG is reinstated as provided below. On or before the 20th day of each month, Tenant will submit to City a Sales Report showing Tenant’s Gross Revenues achieved with respect to the prior month, together with the Percentage Rent calculated on such Gross Revenues, cumulated by Lease Year.

(iii) If the Lease provides that the Percentage Rent is based on a tiered gross revenue structure, for purposes of determining the Percentage Rent payable, the annual Gross Revenues shall continue to cumulate as provided in the Lease. For example, if Tenant’s Lease Year is November 1 through October 31, then for purposes of calculating Percentage Rent for April 2003, all gross revenues achieved to date (from November 1 through April 30) will be cumulated.

(c) MAG Reinstatement. Once there is Enplanement Stabilization for Two Months, then the MAG is reinstated, and will continue unless and until there is another Severe Decline in Enplanements for Three Months, as follows:

(i) Such MAG reinstatement will be effective on the first day of the month following an Enplanement Stabilization for Two Months.

(ii) In the event the MAG is reinstated after the commencement of a “Lease Year” or other period of time for annual gross revenue accumulation specified in the Lease, the MAG will be pro-rated accordingly.

(d) Determination of Enplanements and “True-Ups.” The parties acknowledge that Enplanements for a particular month are not usually determined as of the first day of the following month. Accordingly, unless and until the MAG is suspended as provided herein, Tenant shall continue to pay the MAG as and when required hereunder. If and when a MAG is later suspended pursuant to Section 4.12(b), then City shall issue a rent credit to reflect any resulting overpayment in rent. If and to the extent Tenant has any outstanding obligations to City hereunder, City may decline to issue such rent credit or reduce the rent credit by the amount outstanding. If and when the MAG is reinstated, Tenant shall pay to City within five (5) days



after City shall have given notice to Tenant of such reinstatement, the deficiency, if any, between the Percentage Rent paid by the Tenant and the MAG, for the month(s) following such reinstatement.

(e) Enplanement Determinations. Director shall have the sole discretion as to the Enplanement calculations, and whether there exists a Severe Decline in Enplanements for Three Months and/or an Enplanement Stabilization for Two Months.

(f) No Effect. The MAG suspension shall have no effect on (i) any adjustments specified in this Lease to be made to the MAG, including those based on increases in the Consumer Price Index; or (ii) the Deposit Amount.

(g) Effect of Default. Notwithstanding anything to the contrary herein, in the event Tenant shall default under this Lease or any Other Agreement, the Airport Director may immediately reinstate the MAG, without giving to Tenant the benefit of any notice or right to cure as may otherwise be provided under this Lease or Other Agreement.

(h) Subtenants. Without limiting the provisions of Section 5 [Assignment or Subletting] if Tenant subleases any portion of the Premises, Tenant shall offer to such subtenant(s) the same types of MAG suspension as are provided herein.

(i) Example. The following is intended merely to provide an example of the mechanics of the foregoing provisions, and the numbers provided are not intended to be projections or guarantees. *Assume* (a) the Premises are in Boarding Area F, (b) the Lease is awarded on February 15, 2003, and (c) Reference Year Enplanements for Boarding Area F, by Reference Month in the Reference Year (January 1- December 31, 2002) are:

	<u>Jan</u> <u>2002</u>	<u>Feb</u> <u>2002</u>	<u>Mar</u> <u>2002</u>	<u>Apr</u> <u>2002</u>	<u>May</u> <u>2002</u>	<u>Jun</u> <u>2002</u>	<u>Jul</u> <u>2002</u>	<u>Aug</u> <u>2002</u>	<u>Sep</u> <u>2002</u>	<u>Oct</u> <u>2002</u>	<u>Nov</u> <u>2002</u>	<u>Dec</u> <u>2002</u>
Enp (‘000)	800	800	800	900	1,100	1,200	1,300	1,200	1,100	900	800	900

Assume further that actual Enplanements for Boarding Area F by Reference Month for 2005 are as follows:

	<u>Jan</u> <u>2005</u>	<u>Feb</u> <u>2005</u>	<u>Mar</u> <u>2005</u>	<u>Apr</u> <u>2005</u>	<u>May</u> <u>2005</u>	<u>Jun</u> <u>2005</u>	<u>Jul</u> <u>2005</u>	<u>Aug</u> <u>2005</u>	<u>Sep</u> <u>2005</u>	<u>Oct</u> <u>2005</u>	<u>Nov</u> <u>2005</u>	<u>Dec</u> <u>2005</u>
Enp (‘000)	900	900	700	700	800	800	900	1100	700	800	700	800
% of Ref. Month	112.5	112.5	87.5	77.8	72.2	72.2	69.2	91.7	63.6	88.9	87.5	88.9

Then, there occurs a Severe Decline in Enplanements for Three Months with respect to the months April 2005 – June 2005, and the MAG shall be suspended effective July 1, 2005. There occurs an Enplanement Stabilization for Two Months with respect to the months October 2005 – November 2005, and the MAG shall be reinstated effective December 1, 2005.



5. ASSIGNMENT OR SUBLETTING

5.1 No Assignment. Tenant shall not assign, sublet, encumber, or otherwise transfer, whether voluntary or involuntary or by operation of law, the Premises or any part thereof, or any interest herein, without City's prior written consent, which consent may be granted or denied in City's reasonable discretion (the term "Transfer" shall mean any such assignment, subletting, encumbrance, or transfer). City's consent to one Transfer shall not be deemed a consent to subsequent Transfers. Any Transfer made without City's consent shall constitute a default hereunder and shall be voidable at City's election.

5.2 Changes in Tenant. The merger of Tenant with any other entity or the transfer of any controlling ownership interest in Tenant, or the assignment or transfer of a substantial portion of the assets of Tenant, whether or not located on the Premises, shall constitute a Transfer. Without limiting the generality of the foregoing, if Tenant is a partnership, a withdrawal or change, voluntary, involuntary or by operation of law of the partner or partners owning fifty-one percent (51%) or more of the partnership, or the dissolution of the partnership, or the sale or transfer of at least fifty-one percent (51%) of the value of the assets of Tenant, shall be deemed a Transfer. If Tenant is a corporation or limited liability company, any dissolution, merger, consolidation or other reorganization of Tenant, or the sale or other transfer of a controlling percentage of the capital stock or membership interests of Tenant, or the sale or transfer of at least fifty-one percent (51%) of the value of the assets of Tenant, shall be deemed a Transfer. The phrase "**controlling percentage**" means the ownership of, and the right to vote, stock or interests possessing at least fifty-one percent (51%) of the total combined voting power of all classes of Tenant's capital stock or interests issued, outstanding and entitled to vote for the election of directors. Without limiting the restrictions on asset transfers, this paragraph shall not apply to stock or limited liability company interest transfers of corporations or limited liability companies the stock or interests of which is traded through an exchange or over the counter.

5.3 No Release. In no event will City's consent to a Transfer be deemed to be a release of Tenant as primary obligor hereunder.

5.4 Subleasing. Without limiting City's discretion in approving or disapproving a proposed Transfer, if and to the extent City permits Tenant to sublease the Premises, the following shall apply: (a) Prior to negotiating a sublease agreement, Tenant must submit to City a sublease proposal for City's approval, which approval may be granted or withheld in City's reasonable discretion; (b) Every sublease must be on the Standard Sublease Agreement form provided by Director to Tenant, and the actual sublease must be approved by City; (c) Each and every covenant, condition or obligation imposed upon Tenant by this Lease and each and every right, remedy or benefit afforded City by this Lease will not be impaired or diminished as a result of any sublease agreement; (d) No subtenant shall be obligated to pay to Tenant, and Tenant shall not be permitted to charge any rent, percentage rent, bonus rent, key money, administration fee, or the like, which exceeds, in the aggregate, the total sums that Tenant pays to City under this Lease for the portion of the Premises subleased by the subtenant under its sublease agreement (the "**Excess Rent**"). If, notwithstanding the foregoing prohibition, Tenant receives any Excess Rent, Tenant shall pay the same to City; (e) Tenant assigns to City all rent and other payments due from all subtenants under any sublease agreements; provided however, Tenant is hereby granted a license to collect rents and other payments due from subtenants under



their sublease agreements until the occurrence of an Event of Default, regardless of whether a notice of that default has been given by City. At any time, at Director's option, City may notify a subtenant of this assignment and upon such notice the subtenant will pay its rent other payments directly to City. City will credit Tenant with any rent received by City under such assignment, but the acceptance of any payment on account of rent from any subtenants as a result of an Event of Default will in no manner whatsoever serve to release Tenant from any liability under this Lease. No payment of rent or any other payment by a subtenant directly to City or other acceptance of such payments by City, regardless of the circumstances or reasons therefor, will in any manner whatsoever be deemed an attornment by the subtenants to City in the absence of either a specific written agreement signed by City to such an effect.

5.5 Acceptance of Rent. The acceptance of rent by City from any person or entity does not constitute a waiver by City of any provision of this Lease or a consent to any Transfer. City's consent to one Transfer will not be deemed to be a consent to any subsequent Transfer. If Tenant defaults in the performance of any of the terms of this Lease, City may proceed directly against the transferor (or if there has been more than one Transfer, then each transferor) without necessity of exhausting remedies against Tenant. City may consent to subsequent Transfers or amendments or modifications to this Lease with transferees, without notifying transferor (or if there has been more than one Transfer, then each transferor) and without obtaining its or their consent thereto and such action shall not relieve any transferor of liability under this Lease as amended.

5.6 Waiver. Tenant waives the provisions of Civil Code Section 1995.310 with respect to remedies available to Tenant should City fail to consent to a Transfer.

6. TAXES, ASSESSMENTS AND LIENS

6.1 Taxes.

(a) Tenant recognizes and understands that this Lease may create a possessory interest subject to property taxation and that Tenant may be subject to the payment of property taxes levied on such interest. Tenant further recognizes and understands that any Transfer permitted under this Lease and any exercise of any option to renew or other extension of this Lease may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder. Tenant shall pay all taxes of any kind, including possessory interest taxes, that may be lawfully assessed on the leasehold interest hereby created and to pay all other taxes, excises, licenses, permit charges and assessments based on Tenant's usage of the Premises, all of which shall be paid when the same become due and payable and before delinquency.

(b) Tenant shall report any Transfer, or any renewal or extension hereof, to the County of San Mateo Assessor within sixty (60) days after such Transfer transaction, or renewal or extension. Tenant further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements under applicable law with respect to possessory interests.

6.2 Other Liens. Tenant shall not permit or suffer any liens to be imposed upon the Terminal Building Complex or any part thereof, including without limitation, mechanics', materialmen's and tax liens, as a result of its activities without promptly discharging the same. Notwithstanding the foregoing, Tenant may in good faith contest any such lien if Tenant provides a bond in an amount and form acceptable to City in order to clear the record of any such liens. Tenant shall assume the defense of and indemnify and hold harmless City against any and all liens and charges of any and every nature and kind which may at any time be established against said premises and improvements, or any part thereof, as a consequence of any act or omission of Tenant or as a consequence of the existence of Tenant's interest under this Lease.

7. INVESTMENTS; ALTERATIONS

7.1 Minimum Investment. Prior to the Rent Commencement Date, Tenant shall refurbish, redecorate and modernize the interiors and exteriors of the Premises, and otherwise complete the Initial Improvements, at a minimum cost of the Minimum Investment Amount. Upon completion of construction, Tenant shall provide to Director a statement certified by its architect, setting forth the total construction costs, with appropriate detail showing the costs of elements of decoration, furnishings, fixtures and equipment. Tenant shall make available to Director, at Director's request, receipted invoices for labor and materials covering all construction and trade fixtures, including furniture, fixtures and equipment and architectural and engineering fees. The minimum investment may not include financial costs, interest, inventory, pre-opening expenses or inter-company charges related to construction. If the said actual investment cost is less than the Minimum Investment Amount, the deficiency will be paid to City within sixty (60) days after completion of construction. If Director disputes the amount of investment claimed by Tenant, Director may, at City's expense, hire an independent appraiser to determine the cost of the investment. If the independent appraiser determines that the investment is less than the Minimum Investment Amount, the deficiency, as well as City's costs of hiring such independent appraiser, will be paid to City by Tenant within sixty (60) days of the appraiser's determination.

7.2 City's Approval Rights. Tenant shall not make or suffer to be made any alterations, additions, or improvements to the Premises or any part thereof or attach any fixtures or equipment thereto, including the Initial Improvements (collectively, "Alterations") without City's prior written consent. Without limiting the generality of the foregoing, the initial layout and design of all Alterations shall conform to Commission's established architectural design scheme for the Terminal Building Complex and the provisions of Airport's TI Guide, including the Tenant Design Criteria. Prior to the construction of any Alterations (including the Initial Improvements), Tenant shall submit detailed plans and specifications to the Airport's Design Review Committee for approval. Tenant shall include with its plans and specifications schematic renderings of the public retail area, materials, a color board(s) and a detailed layout of the overall merchandising plan. All decisions by the Airport's Design Review Committee shall be made subject to the approval of the Airport Commission. City's approval rights will extend to and include architectural and aesthetic matters and City reserves the right to reject any designs submitted and to require Tenant to resubmit designs and layout proposals until they meet City's approval. The Rent Commencement Date shall not be extended if City elects to reject any designs or layout proposals submitted. In the event of disapproval by City of any portion of the plans and specifications, Tenant will promptly submit necessary modifications and revisions

thereof. No changes or alterations will be made in said plans or specifications after approval by City. City agrees to act within a reasonable period of time upon such plans and specifications and upon requests for approval of changes or alterations in said plans or specifications. One copy of plans for all improvements or subsequent changes therein or alterations thereof will, within fifteen (15) days after approval thereof by City, be signed by Tenant and deposited with City as an official record thereof. All Alterations shall be effected through the use of contractors approved by City who shall furnish to City upon demand such completion bonds and labor and material bonds as City may require so as to assure completion of the Alterations on a lien-free basis. Without limiting the requirements set forth above, Tenant acknowledges and agrees that Tenant may be required to obtain approvals for any desired Alterations from the Airport's Quality Control Department.

7.3 Structures and Fixtures. Tenant shall, at its sole cost and expense, design, erect, construct and install all fixtures, furnishings, carpeting, decorations, finishings, equipment, counters, or other necessary Alterations for its operation under this Lease. All construction shall be in conformity with the latest edition of the Airport TI Guide, including the Tenant Design Criteria, and in conformity with the approved plans and specifications submitted by Tenant, and shall meet all applicable local building codes and ordinances as well as all other Laws. Tenant shall submit complete plans and specifications to Director, and prior to the commencing any construction work, obtain Director's written approval of said plans and specifications. Tenant shall make no change or alteration in the plans and specifications without prior written approval of Director. In the event that Tenant fails to submit plans and specifications which meet the approval of City within thirty (30) days after the Effective Date, City may terminate this Lease. Nothing herein contained shall be construed to delay or otherwise affect the Commencement Date or the Rent Commencement Date.

7.4 Notice and Permits. Tenant shall give written notice to Director not less than seven (7) days prior to the commencement of any work in construction, alteration or repairs of the Premises, in order that City may post appropriate notices of non-responsibility, and agrees that such notices may remain posted until the acceptance of such work by City. Tenant shall obtain, and pay all fees for all permits required by the City or other legal jurisdictions, for improvements that it is required to construct or install, and it shall furnish copies of all such permits to City prior to the commencement of any work.

7.5 Title to Alterations. Title to all Alterations of such a nature as cannot be removed without substantial damage to the Terminal, including all carpeting, decorations, finishings, and counters, shall vest in City on the Expiration Date. All other equipment of such nature as to constitute trade fixtures shall remain the property of Tenant. On the Expiration Date, Tenant may remove said trade fixtures or Director may require that Tenant remove same at Tenant's expense. Prior to the Rent Commencement Date, Tenant shall submit to Director a proposed list of such trade fixtures; said list may be subsequently amended during the term of this Lease to reflect any changes in said trade fixtures. Tenant agrees and understands that "fixture" is defined as a thing affixed to premises that is bolted, nailed, screwed, cemented and/or plastered. For the purpose of this Lease, fixtures shall include slat wall, counters and the like, attached to the physical structure of the premises in any matter whatsoever. On the Expiration Date, all fixtures, other than those deemed trade fixtures by City, shall become the property of City.



Tenant shall be liable to City for City's costs for storing, removing and disposing of any alterations of Tenant's personal property, and of restoration of the Premises.

7.6 Effect of Alterations on Airport. If and to the extent that Tenant's activities or proposed Alterations trigger an obligation or requirement on the part of City to make changes to the Airport premises (including ADA requirements), Tenant shall indemnify, defend, and hold harmless City from and against any and all Losses (as defined below) arising out of such activities or Alterations.

7.7 Labor Harmony. The parties acknowledge that it is of the utmost importance to City, Tenant, and all those occupying or to occupy space in the Terminals that there be no interruption in the progress of the construction work. Accordingly, City and Tenant agree as follows:

(a) In any contract or undertaking which Tenant may make with a contractor for work in the Premises, provision shall be made for the dismissal from the job of workmen whose work is unskilled or otherwise objectionable, in the Director's (and, for this purpose, "the Director" shall include a reference to the Airport's Architect) reasonable judgment. Tenant shall cause any such workmen to be discharged from the project within twenty-four (24) hours after Director shall give notice to Tenant requiring such discharge.

(b) Tenant shall use, and Tenant shall require its contractor and subcontractors to use, their respective best efforts to prevent work stoppages on the Premises, and/or elsewhere on the Airport, to the extent attributable to work being performed on the Premises, irrespective of the reason of any such stoppage. In the event that the conduct or presence of any employee(s) of Tenant or Tenant's contractor(s) or subcontractor(s) causes a labor dispute or work stoppage, Tenant shall have such employee(s) immediately removed from the Airport upon Director's request.

(c) Tenant shall include, and shall cause its contractor to include, the following clause in all contracts with its general contractors and subcontractors:

Harmony Clause

There shall be no manifestations on the project of any dispute between any labor organization and any Tenant contractor or subcontractor, including but not limited to, any area standards picketing against said contractor or subcontractor. Should there be any manifestation of a labor dispute between any Tenant contractor or subcontractor and any union, which results in a stoppage of work on the part of said contractor or subcontractor's employees or the employees of any other employer or supplier on the project or at the Airport, which in the sole judgment of the Director will cause, or is likely to cause, unreasonable delay in the progress of construction or operation of any business at the Airport, then upon written notice from Director, Tenant shall declare the contractor or subcontractor in default of its contract, and upon such notice, Tenant shall have the right to take such steps as are necessary to finish the uncompleted portion of the work to be performed by the contractor or subcontractor.

(d) Without limiting the generality of indemnities elsewhere in this Lease, Tenant shall indemnify, defend, and hold harmless City and each City Entity for any all Losses which arise from the actions taken pursuant to this Section 7.7.

7.8 Mid-Term Refurbishment.

(a) Tenant shall refurbish, redecorate, and modernize the interior and exterior of the public retail area of the Premises after the fifth (5th) anniversary of the Rent Commencement Date (the "Mid-Term Refurbishment Date"). In connection with such refurbishment, redecoration, and modernization, Tenant shall invest a minimum amount (the "Minimum Mid-Term Amount") equal to:

$$\$125/\text{sq. ft} \quad \times \quad \frac{\text{Comparison Index (most recent)}}{\text{Base Index}} \quad \times \quad \frac{1}{2}$$

(b) On or before the date that is six (6) months prior to the Mid-Term Refurbishment Date, Tenant shall give notice to Director of its intended plan with respect to such refurbishment requirements. All such refurbishments will be subject to the requirements of this Lease, including Director's approval rights pursuant to this Section 7. Tenant shall complete all such refurbishments on or before the date that is six (6) months after the Mid-Term Refurbishment Date.

(c) Upon completion of refurbishment, Tenant shall provide City with documentation of expenses as specified in Section 7.1 [Minimum Investment] for initial investment. If said refurbishment is less than the Minimum Mid-Term Amount, Director may require the Tenant to pay the deficiency within sixty (60) days after completion of refurbishment. If Director disputes the amount of the refurbishment expenses claimed by Tenant, Director may at City's expense, hire an independent appraiser to determine the cost of refurbishment. If the independent appraiser determines that refurbishment expenses are less than the Minimum Mid-Term Amount, Director may require Tenant to pay the deficiency, as well as City's costs of hiring such independent appraiser, within sixty (60) days of the appraiser's determination.

(d) The Airport Director shall be authorized to waive or reduce such amount provided Airport Director is satisfied that Tenant shall perform such refurbishment and otherwise develop and implement a maintenance program necessary or appropriate to keep the facilities in good condition.

8. UTILITIES

8.1 Services Provided. City shall provide in the Terminal Building Complex the following utility services: reasonable amounts of water, electricity, telephone, sewage outlets, heating, ventilation, and air conditioning, to a point determined by the Director. All extensions of the facilities requested by Tenant for said utility services from said points shall be at the sole cost and expense of Tenant. In the event of any change desired by Tenant as to said points of supply by City, the expense of making such changes or alterations shall be at the sole cost of Tenant.

8.2 Utility Costs. Tenant shall pay the whole cost for all utility services as invoiced to Tenant by City and for such other special services which it may require in the Premises, and Tenant hereby expressly waives the right to contest any utility rates.



8.3 Shared Telecommunications Services. Tenant acknowledges that City has implemented or may in the future implement a shared telecommunications service program ("**STS Program**") to provide telecommunications services. The STS Program may involve City's provision of telephone, telefacsimile, local access, long distance service, internet, intranet, and other computer and telecommunications services. In such event, at City's option, Tenant shall participate in the STS Program by engaging City or its agent to provide such services at Tenant's expense, provided that the charges for such services are generally competitive. All payments for STS services shall be due and payable when invoiced by City.

8.4 Waiver of Damages. Tenant hereby expressly waives any and all claims for damages arising or resulting from failures or interruptions of utility services to the Premises, including electricity, gas, water, plumbing, sewage, telephone, communications, heat, ventilation, air conditioning, or for the failure or interruption of any public or passenger conveniences. Without limiting the generality of the foregoing, Tenant shall have no rights to abate Rent or terminate this Lease in the event of any interruption or failure of utility services.

9. MAINTENANCE AND REPAIR

9.1 "As-Is" Condition. TENANT SPECIFICALLY ACKNOWLEDGES AND AGREES THAT CITY IS LEASING THE PREMISES TO TENANT ON AN "AS IS WITH ALL FAULTS" BASIS AND THAT TENANT IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM CITY OR ITS AGENTS, AS TO ANY MATTERS CONCERNING THE PREMISES, INCLUDING: (i) the quality, nature, adequacy and physical condition and aspects of the Premises, including, but not limited to, landscaping, utility systems, (ii) the quality, nature, adequacy, and physical condition of soils, geology and any groundwater, (iii) the existence, quality, nature, adequacy and physical condition of utilities serving the Premises, (iv) the development potential of the Premises, and the Premise's use, habitability, merchantability, or fitness, suitability, value or adequacy of the Premises for any particular purpose, (v) the zoning or other legal status of the Premises or any other public or private restrictions on use of the Premises, (vi) the compliance of the Premises or its operation with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions and restrictions of any governmental or quasi-governmental entity or of any other person or entity, (vii) the presence of Hazardous Materials on, under or about the Premises or the adjoining or neighboring property, (viii) the quality of any labor and materials used in any improvements on the real property, (ix) the condition of title to the Premises, and (x) the agreements affecting the Premises, including covenants, conditions, restrictions, ground leases, and other matters or documents of record or of which Tenant has knowledge.

9.2 Tenant's Maintenance Obligations. Tenant, at all times during the Term and at Tenant's sole cost and expense, shall keep the Premises and every part thereof in good condition and repair, and in compliance with applicable Laws, including the replacement of any facility of City used by Tenant which requires replacement by reason of Tenant's use thereof, excepting (a) ordinary wear and tear, and (b) damage due to casualty with respect to which the provisions of Section 14 [Damage or Destruction] shall apply. Tenant hereby waives all right to make repairs at the expense of City or in lieu thereof to vacate the Premises as provided by California Civil Code Section 1941 and 1942 or any other law, statute or ordinance now or hereafter in

effect. In addition, if it becomes reasonably necessary during the term of this Lease, as determined by Director, Tenant will, at its own expense, redecorate and paint fixtures and the interior of the Premises and improvements, and replace fixtures, worn carpeting, curtains, blinds, drapes, or other furnishings. Without limiting the generality of the foregoing, at all times, Tenant shall be solely liable for the facade of the Premises separating the Premises from the Terminal common areas, including the external face thereof, all windows and display areas therein, and all finishes thereon. As provided below in Section 15.4 [City's Right to Perform], in the event Tenant fails to perform its maintenance and repair obligations hereunder, City shall have the right to do so, at Tenant's expense.

10. SIGNS AND ADVERTISING

Tenant may, at its own expense, install and operate necessary and appropriate identification signs on the Premises, subject to the approval of Director and the requirements of the TI Guide, including the Tenant Design Criteria, including but not limited to, the approval of the number, size, height, location, color and general type and design. Such approval shall be subject to revocation by Director at any time. Without express written consent of Director, Tenant shall not display any advertising, promotional, or informational pamphlets, circulars, brochures or similar materials. Without limiting the foregoing restrictions on advertising, in no event will there be permitted on the Premises any advertising of cigarettes or tobacco products.

11. PROMOTIONAL PROGRAM

11.1 Promotional Program. City, at City's election, may conduct, or cause to be conducted, an advertising, promotional and public relations program for the general purpose of promoting the name and identity of the Airport and the retail business conducted in the Airport. If City elects to do so, City will determine in its sole discretion the composition and manner of implementation of that program, and Tenant must participate in promotions, advertising and public relations, and cause its store manager to attend promotional program meetings. In such event, from and after the Rent Commencement Date (but prorated for any partial month), Tenant must pay to City, as a contribution to the cost of the promotional program, the Promotional Charge, in advance on the first (1st) day of each month during the Term.

11.2 Promotional Charge. At City's option, the Promotional Charge may be increased from time to time such that the new Promotional Charge will equal:

$$\text{Initial Promotional Charge} \quad \times \quad \frac{\text{Comparison Index}}{\text{Base Index}}$$

For purposes of the foregoing adjustment, the "Comparison Index" shall mean the Consumer Price Index published immediately prior to the adjustment date and the "Base Index" shall mean the Consumer Price Index published immediately prior to the Effective Date.

12. WAIVER; INDEMNITY; INSURANCE

12.1 Waiver. Tenant, on behalf of itself and its assigns, waives its rights to recover from and releases and discharges City and all City Entities and their respective heirs, successors,

personal representatives and assigns, from any and all Losses whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way connected with (a) the physical or environmental condition of the Premises or any law or regulation applicable thereto, (b) any damage that may be suffered or sustained by Tenant or any person whatsoever may at any time be using or occupying or visiting the Premises, or in or about the Airport, or (c) any act or omission (whether negligent, non-negligent or otherwise) of Tenant or any Tenant Entity, whether or not such Losses shall be caused in part by any act, omission or negligence of any of City, Commission, its members, or any officers, agents, and employees of each of them, and their successors and assigns (each, a "City Entity"), except if caused by the sole gross negligence or willful misconduct of City. In connection with the foregoing waiver, Tenant expressly waives the benefit of Section 1542 of the California Civil Code, which provides as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR EXPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM MUST HAVE MATERIALLY AFFECTED THE SETTLEMENT WITH THE DEBTOR."

12.2 Indemnity. In addition to, and not in limitation of the foregoing, Tenant shall forever indemnify, defend, hold and save City and each City Entity free and harmless of, from and against any and all Losses caused in whole or in part by or arising out of (a) any act or omission of Tenant or any Tenant Entity, (b) Tenant's use of the Premises or operations at the Airport, or (c) any default by Tenant or any Tenant Entity hereunder, whether or not Losses shall be caused in part by any act, omission or negligence of City or any City Entity. The foregoing indemnity shall not extend to any Loss caused by the sole gross negligence or willful misconduct of City.

12.3 "Losses". For purposes hereof "Losses" shall mean any and all losses, liabilities, judgments, suits, claims, damages, costs and expenses (including reasonable attorneys' fees, investigation costs, remediation costs, and court costs), of any kind or nature.

12.4 Notice. Without limiting the foregoing waiver and indemnity, each party hereto shall give to the other prompt and timely written notice of any Loss coming to its knowledge which in any way, directly or indirectly, contingently or otherwise, affects or might affect either, and each shall have the right to participate in the defense of the same to the extent of its own interest.

12.5 Insurance. Tenant shall procure and maintain during the Term the following insurance:

(a) Workers' Compensation Insurance with Employer's Liability limits not less than \$1,000,000 each accident.

(b) Comprehensive General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products Liability and Completed Operations Coverages.

(c) Comprehensive Automobile Liability Insurance with limits not less than \$2,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Employer's non-ownership liability and hired auto coverages.

(d) Property Insurance on an all risk form covering all Premises tenant improvements, fixtures, and equipment insuring against the perils of fire, lightning, extended coverage perils, vandalism and malicious mischief in the demised premises in an amount equal to the full replacement value of tenant improvements, fixtures and equipment.

(e) Business Interruption Insurance insuring that the Base Rent will be paid to City for a period of at least one (1) year if Tenant is unable to operate its business at the Premises due to a risk required to be insured against by Tenant hereunder. Said insurance shall also cover business interruptions due to failures or interruptions in telecommunications services, strikes, employee lockouts, riots, or other civil commotion. To calculate Base Rent during any such interruption of business, the Gross Revenues for the 12-month period immediately preceding the incident causing the business interruption shall be used.

12.6 Form of Policies. All insurance required by Tenant hereunder shall be pursuant to policies in form and substance and issued by companies satisfactory to City and City's City Attorney. City may, upon reasonable notice and reasonable grounds increase or change the required insurance hereunder, in which event Tenant shall obtain such required insurance. Without limiting the generality of the foregoing, all Comprehensive General Liability Insurance, Comprehensive Automobile Liability Insurance, and Property Insurance policies shall be endorsed to provide the following:

(a) Name as additional insured the City and County of San Francisco, the Airport Commission and its members, and all of the officers, agents, and employees of each of them (collectively, "**Additional Insureds**");

(b) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Lease, and that insurance applies separately to each insured against whom claim is made or suit is brought.

(c) That the insurance company shall give thirty (30) days prior written notice to City of cancellation, non-renewal or reduction in coverage or limits, delivered to City at City Address.

12.7 Delivery of Policies or Certificates. On or before the Commencement Date, Tenant shall provide to City copies of its insurance policies or certificates thereof evidencing the above insurance.

12.8 Subrogation. Notwithstanding anything to the contrary herein, Tenant waives any right of recovery against City for any loss or damage to the extent the same is required to be covered by Tenant's insurance hereunder. Tenant shall obtain from its insurer, if possible, a waiver of subrogation the insurer may have against City or any City Entity in connection with any Loss covered by Tenant's property insurance policy.

13. DEPOSIT

13.1 Form of Deposit. On or before September 15, 2003, Tenant will deliver to Director a security deposit (the "Deposit") in the Deposit Amount. Such Deposit shall be in the form specified in Airport Commission Resolution No. 90-0204. If Deposit is in the form of a surety bond, such form must be payable to City, naming City as obligee, in the form attached as *Exhibit F-1*, and otherwise in form satisfactory to City's City Attorney, and issued by a surety company satisfactory to Director. If Deposit is in the form of a letter of credit, such form must name City as beneficiary, in the form attached as *Exhibit F-2*, and otherwise in form satisfactory to City's City Attorney, issued by a bank satisfactory to Director. Such bond or letter of credit shall be renewed annually and increased annually such that at all times, the Deposit is equal to one-half ($\frac{1}{2}$) the then current Minimum Annual Guarantee, all at Tenant's cost. Such Deposit shall be kept in full force and effect during the Term to ensure the faithful performance by Tenant of all covenants, terms, and conditions of this Lease, including payment of Rent. The sum designated as the "Deposit" is and will remain the sole and separate property of City until actually repaid to Tenant (or at City's option, the last assignee (if any) of Tenant's interest hereunder), said sum not being earned by Tenant until all provisions precedent for its payment to Tenant have been fulfilled. Tenant shall cause the surety company or bank issuing such bond or letter of credit to give Director notice in writing by registered mail at least forty-five (45) days prior to the expiration date of such bond or letter of credit of its intention not to renew said bond or letter of credit.

13.2 Use of Deposit. If Tenant fails to pay Rent or otherwise defaults with respect to any provision of this Lease, City may use, apply or retain all or any portion of the Deposit for the payment of Rent or other charge in default or for the payment of any other sum to which City may become obligated by reason of Tenant's default or to compensate City for any loss or damage which City may suffer thereby. If City so uses or applies all or any portion of the Deposit, Tenant, within ten (10) days after demand therefor, shall deposit other security acceptable to Director with City in an amount sufficient to restore the Deposit to the full amount thereof, and Tenant's failure to do so shall be a breach of this Lease. In the event the bonding company or bank declines to renew or elects to cancel the bond or letter of credit comprising the Deposit, Tenant shall, at least fifteen (15) days prior to the expiration or cancellation date, replace such bond or letter of credit with another bond or letter of credit. If Tenant fails to do so, City may, without notice to Tenant, draw on the entirety of the Deposit and hold the proceeds thereof as security hereunder. City shall not be required to keep the Deposit separate from its general accounts. If Tenant performs all of Tenant's obligations hereunder, the Deposit, or so much thereof as has not theretofore been applied by City, shall be returned, without payment of interest or other increment for its use, to Tenant (or, at City's option, to the last assignee, if any, of Tenant's interest hereunder) at the expiration of the Term, and after Tenant has vacated the Premises. No trust relationship is created herein between City and Tenant with respect to the Deposit.

13.3 Other Agreements. If Tenant defaults with respect to any provision of any other agreement between City and Tenant, including the Other Agreements, City may use, apply or retain all or any portion of the Deposit for payment of any sum owing to City or to which City may become obligated by reason of Tenant's default or to compensate City for any loss or damage which City may suffer thereby. Likewise, if Tenant defaults with respect to any

provision under this Lease, City may use, apply, or retain all or any portion of any deposit provided under any other agreement between City and Tenant, including the Other Agreements, for payment of any sum owing to City or to which City may become obligated by reason of Tenant's default or to compensate City for any loss or damage which City may suffer thereby. In the event the Deposit or any other deposit is so used, Tenant shall deposit other security acceptable to Director with City in an amount sufficient to restore the Deposit to the full amount thereof. As used in this paragraph, the term "Tenant" include any of Tenant's affiliates and any Tenant Entity.

14. DAMAGE OR DESTRUCTION

14.1 Partial Destruction of the Premises.

(a) In the event the improvements on the Premises are damaged by any casualty which is required to be insured against pursuant to this Lease, then Tenant shall repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect.

(b) In the event such improvements are damaged by any casualty not covered under an insurance policy required to be maintained pursuant to this Lease, then City may, at City's option, either (i) repair such damage as soon as reasonably possible at City's expense, in which event this Lease shall continue in full force and effect, or (ii) give written notice to Tenant within sixty (60) days after the date of occurrence of such damage of City's intention to terminate this Lease. Such termination shall be effective as of the date specified in such notice.

(c) Notwithstanding the foregoing, if such damage is caused by an act or omission to act of Tenant or a Tenant Entity, then Tenant shall repair such damage, promptly at its sole cost and expense.

(d) In the event City elects to terminate this Lease pursuant to this Section 14.1, Tenant shall have the right within ten (10) days after receipt of the required notice to notify City of Tenant's intention to repair such damage at Tenant's expense, without reimbursement from City, in which event this Lease shall continue in full force and effect and Tenant shall proceed to make such repairs as soon as reasonably possible. If Tenant does not give such notice within the ten (10) day period, this Lease shall be terminated as of the date specified in City's notice. City shall not be required to repair any injury or damage by fire or other cause, or to make any restoration or replacement of any paneling, decorations, office fixtures, partitions, railings, ceilings, floor covering, equipment, machinery or fixtures or any other improvements or property installed in the Premises by Tenant or at the direct or indirect expense of Tenant. Tenant shall be required to restore or replace same in the event of damage.

14.2 Total Destruction of Premises. If the improvements on the Premises are totally destroyed during the Term from any cause whether or not covered by the insurance required herein (including any destruction required by any authorized public authority), this Lease shall automatically terminate as of the date of such total destruction.

14.3 Partial Destruction of Terminal Building. If fifty percent (50%) or more of the Terminal Building shall be damaged or destroyed by an insured risk, or if fifteen percent (15%)

or more of the Terminal Building shall be damaged or destroyed by an uninsured risk, notwithstanding that the Premises may be unaffected thereby, each of City and Tenant may elect to terminate this Lease by giving notice to the other within ninety (90) days from the date of occurrence of such damage or destruction, in which event the Term of this Lease shall expire on a mutually agreed upon date and Tenant shall thereupon surrender the Premises to City as required hereunder.

14.4 Damage Near End of the Term. If during the last year of the Term the improvements on the Premises are partially destroyed or damaged, City may at City's option terminate this Lease as of the date of occurrence of such damage by giving written notice to Tenant of City's election to do so within thirty (30) days after the date of occurrence of such damage. In the event City elects to terminate this Lease pursuant hereto, Tenant shall have the right within ten (10) days after receipt of the required notice to notify City in writing of Tenant's intention to repair such damage at Tenant's expense, without reimbursement from City, in which event this Lease shall continue in full force and effect and Tenant shall proceed to make such repairs as soon as reasonably possible.

14.5 No Abatement of Rent; Tenant's Remedies.

(a) If the Premises are partially destroyed or damaged, Tenant shall have no claim against City for any damage suffered by reason of any such damage, destruction, repair or restoration. Tenant waives California Civil Code Sections 1932(2) and 1933(4) providing for termination of hiring upon destruction of the thing hired.

(b) In no event will Tenant be entitled to an abatement of Rent resulting from any damage, destruction, repair, or restoration described herein.

15. **DEFAULT; REMEDIES**

15.1 Event of Default. The occurrence of any one or more of the following events shall constitute a breach of this Lease and an "Event of Default" hereunder:

(a) Tenant shall fail duly and punctually to pay Rent, or to make any other payment required hereunder, when due to City, and such failure shall continue beyond the date specified in a written notice of such default from Director, which date shall be no earlier than the third (3rd) day after the effective date of such notice. Notwithstanding the foregoing, in the event there occurs two (2) defaults in the payment of Rent or other payment during the Term, thereafter Tenant shall not be entitled to, and City shall have no obligation to give, notice of any further defaults in the payment of Rent or other payment. In such event, there shall be deemed to occur an "Event of Default" immediately upon Tenant's failure to duly and punctually pay Rent or other payment hereunder; or

(b) Tenant shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy, or a petition or answer seeking an arrangement for its reorganization, or the readjustment of its indebtedness under the federal bankruptcy laws, or



under any other law or statute of the United States or of any state thereof, or consent to the appointment of a receiver, trustee, or liquidator of any or substantially all of its property; or

(c) A petition under any part of the federal bankruptcy laws, or an action under any present or future insolvency law or statute, shall be filed against Tenant and shall not be dismissed within thirty (30) days after the filing thereof; or

(d) There shall occur a Transfer without the prior approval of the City; or

(e) Tenant shall voluntarily abandon, desert or vacate the Premises; or

(f) Any lien shall be filed against the Premises as a result of any act or omission of Tenant, and shall not be discharged or contested by Tenant in good faith by proper legal proceedings within twenty (20) days after receipt of notice thereof by Tenant; or

(g) Tenant shall fail to provide the Deposit within ten (10) days after the Effective Date or shall fail to maintain in full such Deposit at all times during the term of this Lease, and such failure shall continue for a period of more than three (3) days after delivery by Director of written notice of such breach or default; or

(h) Tenant shall fail to obtain and maintain the insurance required hereunder, or provide copies of the policies or certificates to City as required herein; or

(i) Tenant shall fail to keep, perform and observe each and every other promise, covenant and agreement set forth in this Lease, and such failure shall continue for a period of more than three (3) days after delivery by Director of a written notice of such failure (the "First Notice"); or if satisfaction of such obligation requires activity over a period of time, if Tenant fails to commence the cure of such failure within three (3) days after receipt of the First Notice, or thereafter fails to diligently prosecute such cure, or fails to actually cause such cure within one hundred twenty (120) days after the giving of the First Notice; or

(j) Tenant shall use or give its permission to any person to use any portion of Airport or the Terminal Buildings used by Tenant under this Lease for any illegal purpose, or any purpose not approved by Director; or

(k) There shall occur a default under any other agreement between Tenant and City, including the Other Agreements, if any, and such default is not cured as may be provided in such agreement; provided, however, that nothing herein shall be deemed to imply that Tenant shall be entitled to additional notice or cure rights with respect to such default other than as may be provided in such other agreement. As used in this paragraph, the term "Tenant" include any of Tenant's affiliates and any Tenant Entity.

15.2 Statutory Notices. Notwithstanding anything to the contrary in this Section 15, any written notice, other than as specifically set forth in this Section 15, required by any statute or law now or hereafter in force is hereby waived by Tenant to the fullest extent available under law. Any notice given by City pursuant to Section 15.1 may be the notice required or permitted pursuant to Section 1161 et seq. of the California Code of Civil Procedure or successor statutes, and the provisions of this Lease will not require the giving of a notice in addition to the statutory

notice to terminate this Lease and Tenant's right to possession of the Premises. The periods specified in Section 15.1 within which Tenant is permitted to cure any default following notice from City will run concurrently with any cure period provided by applicable laws.

15.3 Remedies. Upon the occurrence and during the continuance of an Event of Default, City shall have the following rights and remedies in addition to all other rights and remedies available to City at law or in equity:

(a) City shall have the rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including the right to terminate Tenant's right to possession of the Premises. In the event this Lease is so terminated, City may recover from Tenant the following damages:

(i) The "**worth at the time of the award**" of the unpaid Rent earned to the time of termination hereunder;

(ii) The "**worth at the time of the award**" of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; and

(iii) The "**worth at the time of the award**" of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; and

(iv) Any other amount necessary to compensate City for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom.

For purposes of the foregoing, the "**worth at the time of award**" of the amounts referred to in clauses (i) and (ii) above is computed by allowing interest at the lower of 18% per annum and the highest rate legally permitted under applicable law. The "**worth at the time of award**" of the amount referred to in clause (iii) above is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus 1% (one percent). Notwithstanding any other provisions hereof, any efforts by City to mitigate damages caused by Tenant's breach of this Lease shall not constitute a waiver of City's right to recover damages hereunder and shall not affect the right of City to indemnification pursuant to the provisions of Section 12 [Waiver; Indemnity; Insurance] hereof. For purposes of calculating City's damages comprising Base Rent based on Gross Revenues, that amount will be computed by determining the highest Base Rent accruing in any Lease Year during the immediately preceding three Lease Years or such shorter period if the Term prior to termination was less than three Lease Years. Tenant agrees that Tenant's obligations under this Lease, including the payment of Base Rent, are independent covenants and are not conditioned on the covenants or warranties of City.

(b) City shall have the right and remedy described in California Civil Code Section 1951.4. City may elect not to terminate this Lease and let this Lease continue, in which case City may enforce all its rights and remedies under this Lease, including the right to recover Rent as it becomes due under this Lease. Acts of maintenance or preservation or efforts to relet

the Premises or the appointment of a receiver upon the initiative of City to protect City's interest under this Lease shall not constitute a termination of Tenant's right to possession.

(c) City shall have the right and power, as attorney in fact for Tenant, to enter and to sublet the Premises, to collect rents from all subtenants and to provide or arrange for the provision of all services and fulfill all obligations of Tenant (as permitted in accordance with the terms of this Lease) and City is hereby authorized on behalf of Tenant, but shall have absolutely no obligation, to provide such services and fulfill such obligations and to incur all such expenses and costs as City deems necessary in connection therewith. Tenant shall be liable immediately to City for all costs and expenses City incurs in collecting such rents and arranging for or providing such services or fulfilling such obligations. City is hereby authorized, but not obligated, to relet the Premises or any part thereof on behalf of Tenant, to incur such expenses as may be necessary to effect a relet and make said relet for such term or terms, upon such conditions and at such rental as City in its sole discretion may deem proper. Tenant shall be liable immediately to City for all reasonable costs City incurs in reletting the Premises required by the reletting, and other costs. If City relets the Premises or any portion thereof, such reletting shall not relieve Tenant of any obligation hereunder, except that City shall apply the rent or other proceeds actually collected by it as a result of such reletting against any amounts due from Tenant hereunder to the extent that such rent or other proceeds compensate City for the nonperformance of any obligation of Tenant hereunder. Such payments by Tenant shall be due at such times as are provided elsewhere in this Lease, and City need not wait until the termination of this Lease, by expiration of the Term hereof or otherwise, to recover them by legal action or in any other manner. City may execute any lease made pursuant hereto in its own name, and the lessee thereunder shall be under no obligation to see to the application by City of any rent or other proceeds, nor shall Tenant have any right to collect any such rent or other proceeds. City shall not by any reentry or other act be deemed to have accepted any surrender by Tenant of the Premises or Tenant's interest therein, or be deemed to have otherwise terminated this Lease, or to have relieved Tenant of any obligation hereunder, unless City shall have given Tenant express written notice of City's election to do so as set forth herein.

(d) City shall have the right to have a receiver appointed upon application by City to take possession of the Premises and to collect the rents or profits therefrom and to exercise all other rights and remedies pursuant to this Section 15.3.

(e) City shall have the right to enjoin, and any other remedy or right now or hereafter available to a landlord against a defaulting tenant under the laws of the State of California or the equitable powers of its courts, and not otherwise specifically reserved herein.

(f) City may elect to terminate any other agreement between Tenant and City, including the Other Agreements, if any.

15.4 City's Right to Perform. All agreements and provisions to be performed by Tenant under any of the terms of this Lease shall be at its sole cost and expense and without any abatement of Rent. If Tenant shall fail to make any payment or perform any act on its part to be performed hereunder and such failure shall continue for ten (10) days after notice thereof by City, City may, but shall not be obligated to do so, and without waiving or releasing Tenant from any obligations of Tenant, make any such payment or perform any such other act on Tenant's

part to be made or performed as provided in this Lease. All sums so paid by City and all necessary incidental costs shall be deemed additional rent hereunder and shall be payable to City on demand, and City shall have (in addition to any other right or remedy of City) the same rights and remedies in the event of the nonpayment thereof by Tenant as in the case of default by Tenant in the payment of Rent.

15.5 Rights Related to Termination. In the event of any termination based on any breach of the covenants, terms and conditions contained in this Lease, City shall have the option at once and without further notice to Tenant to enter upon the Premises and take exclusive possession of same. City may remove or store any personal property located therein, at the sole cost and expense of Tenant without City being liable to Tenant for damage or loss thereby sustained by Tenant. Upon such termination by City, all rights, powers and privileges of Tenant hereunder shall cease, and Tenant shall immediately vacate any space occupied by it under this Lease, and Tenant shall have no claim of any kind whatsoever against City or any City Entity by reason of such termination, or by reason of any act by City or any City Entity incidental or related thereto. In the event of the exercise by City of such option to terminate, Tenant shall have no right to or claim upon any improvements or the value thereof, which may have been previously installed by Tenant in or on the Premises.

15.6 Cumulative Rights. The exercise by City of any remedy provided in this Lease shall be cumulative and shall in no way affect any other remedy available to City under law or equity.

15.7 Prepayment. As provided in Section 4.10 [Prepay Rent], if Tenant defaults in the payment of Rent, City may require prepayment of Rent. Such right shall be in addition to and not in lieu of any and all other rights hereunder, or at law or in equity.

15.8 Fines. If Tenant defaults under any of the Lease terms specified below, Director may elect to impose the fines described below on the basis of per violation per day:

<u>Violation</u>	<u>Section</u>	<u>Fine</u>
Violation of Premises Clause	1	\$300
Failure to Complete Initial Improvements on time	2,2	\$1,000
Violation of Use Section	3	\$300
Failure to cause operations or Premises to comply with Laws	3.13	\$300
Failure to submit required documents and reports, including Sales Reports	4.4, 4.5, and others	\$300
Construction or Alterations without City approval	7	\$300

<u>Violation</u>	<u>Section</u>	<u>Fine</u>
Failure to make required repairs	9	\$300
Unauthorized advertising or signage	10	\$300
Failure to obtain/maintain insurance	12	\$300
Failure to obtain or maintain Deposit	13	\$300

Director's right to impose the foregoing fines shall be in addition to and not in lieu of any and all other rights hereunder, in the Airport Rules, or at law or in equity. City shall have no obligation to Tenant to impose fines on or otherwise take action against any other tenant at the Airport. Such fines shall constitute "Additional Rent."

15.9 City Lien. Tenant hereby grants to City a lien upon and security interest in all fixtures, chattels and personal property of every kind now or hereafter to be placed or installed in or on the Premises, and agrees that in the event of any default on the part of Tenant City has all the rights and remedies afforded the secured party by the chapter on "Default" of the Uniform Commercial Code in the state wherein the Premises are located on the date of this Lease and may, in connection therewith, also (a) enter on the Premises to assemble and take possession of the collateral, (b) require Tenant to assemble the collateral and make its possession available to the City at the Premises, (c) enter the Premises, render the collateral, if equipment, unusable and dispose of it in a manner provided by the Uniform Commercial Code on the Premises. Tenant agrees to execute such instruments as City may request to perfect such lien, and designates also Director his attorney-in-fact for purposes of executing such documents.

15.10 Commencement of Legal Actions. Any legal action by City to enforce any obligation of Tenant or in the pursuit of any remedy hereunder shall be deemed timely filed if commenced at any time prior to one (1) year after the expiration or termination of the Term hereof or prior to the expiration of the statutory limitation period that would be applicable except for this Section 15.10, whichever period expires later.

15.11 Waiver of Notice. Except as otherwise expressly provided in this Section 15, Tenant hereby expressly waives, so far as permitted by law, the service of any notice of intention to enter or re-enter provided for in any statute, or of the institution of legal proceedings to that end, and Tenant, for and on behalf of itself and all persons claiming through or under Tenant, also waives any right of redemption or relief from forfeiture under California Code of Civil Procedure Sections 1174 or 1179, or under any other present or future law, if Tenant is evicted or City takes possession of the Premises by reason of any default by Tenant hereunder.

16. SURRENDER

Tenant shall at the end of the Term surrender to City the Premises and all Alterations, additions and improvements thereto in the same condition as when received, ordinary wear and tear and damage by fire, earthquake, act of God, or the elements excepted. Subject to City's right



to require removal pursuant to Section 7 [Investments; Alterations] hereof, all Alterations and improvements installed in the Premises by Tenant (other than Tenant's trade fixtures), shall, without compensation to Tenant, then become City's property free and clear of all claims to or against them by Tenant or any third person. In the event that Tenant shall fail to remove its personal property, including trade fixtures, on or before the Expiration Date, such personal property shall become City's property free and clear of all claims to or against them by Tenant or any third person. In such event, City shall not be responsible for any Losses related to such personal property, and City may sell or otherwise dispose of such personal property.

17. HAZARDOUS MATERIALS

17.1 Definitions. As used herein, the following terms shall have the meanings hereinafter set forth:

(a) "**Environmental Laws**" shall mean any federal, state, local or administrative law, rule, regulation, order or requirement relating to industrial hygiene, environmental conditions or Hazardous Materials, whether now in effect or hereafter adopted, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Resources Conservation and Recovery Act of 1976 (42 U.S.C. Section 9601, et seq.), the Clean Water Act (33 U.S.C. Section 1251, et seq.), the Safe Drinking Water Act (14 U.S.C. Section 401, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801, et seq.), the Toxic Substance Control Act (15 U.S.C. Section 2601, et seq.), the California Hazardous Waste Control Law (California Health and Safety Code Section 25100, et seq.), the Porter-Cologne Water Quality Control Act (California Water Code Section 13000, et seq.), and the Safe Drinking Water and Toxic Enforcement Act of 1986 (California Health and Safety Code Section 25249.5, et seq.

(b) "**Hazardous Material**" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. "**Hazardous Material**" includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to any Environmental Law; any asbestos and asbestos containing materials; petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids; and any materials listed in the Airport's TI Guide, including the Tenant Design Criteria.

(c) "**Release**" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside the Building, or in, on, under or about the Property.

(d) "**Pre-Existing Condition**" means the existence of any Hazardous Materials on the Premises immediately prior to the Commencement Date.

17.2 Tenant's Covenants. Neither Tenant nor any Tenant Entity shall cause any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or the Airport, or transported to or from the Premises or the Airport;

provided that Tenant may use such substances as are customarily used in retail sales so long as such use is in compliance with all applicable Environmental Laws and the Airport's TI Guide, including the Tenant Design Criteria.

17.3 Environmental Indemnity. Tenant shall indemnify, defend, and hold harmless City from and against any and all Losses arising during or after the Term as a result of or arising from: (a) a breach by Tenant of its obligations contained in the preceding Section 17.2 [Tenant's Covenants], or (b) any Release of Hazardous Material from, in, on or about the Premises or the Airport caused by the act or omission of Tenant or any Tenant Entity, or (c) the existence of any Hazardous Materials on the Premises, except to the extent that Tenant can demonstrate that such Hazardous Materials constitutes a Pre-Existing Condition.

17.4 Environmental Audit. Upon reasonable notice, Director shall have the right but not the obligation to conduct or cause to be conducted by a firm acceptable to Director, an environmental audit or any other appropriate investigation of the Premises for possible environmental contamination. Tenant shall pay all costs associated with said investigation in the event such investigation shall disclose any Hazardous Materials contamination as to which Tenant is liable hereunder.

17.5 Closure Permit. Prior to the termination or expiration of this Lease, Director shall have the right to require Tenant to file with the City an application for a Closure Permit for decontamination of the site and investigation and removal of all Hazardous Materials in compliance with the Airport's TI Guide, including the Tenant Design Criteria, the Airport's Rules and Regulations, and all Laws. The Closure Permit may require a plan for long-term care and surveillance of any contamination allowed to remain at the Premises or Airport property and an acknowledgment of responsibility and indemnification for any and all Losses associated with any such contamination.

18. EMINENT DOMAIN

18.1 Definitions. For purposes of this Section 18, the following capitalized terms shall have the following meanings:

(a) "Award" means all compensation, sums or value paid, awarded or received for a Taking, whether pursuant to judgment, agreement, settlement or otherwise.

(b) "Date of Taking" means the earlier of: (a) the date upon which title to the portion of the Premises taken passes to and vests in the condemnor, and (b) the date on which Tenant is dispossessed

(c) "Taking" means a taking or damaging, including severance damage, by eminent domain, inverse condemnation or for any public or quasi-public use under applicable Laws. A Taking may occur pursuant to the recording of a final order of condemnation, or by voluntary sale or conveyance in lieu of condemnation or in settlement of a condemnation action.

18.2 General. If during the Term or during the period between the execution of this Lease and the Commencement Date, any Taking of all or any part of the Premises or any interest



in this Lease occurs, the rights and obligations of the parties hereunder shall be determined pursuant to this Section 18. City and Tenant intend that the provisions hereof govern fully in the event of a Taking and accordingly, the Parties each hereby waives any right to terminate this Lease in whole or in part under Sections 1265.120 and 1265.130 of the California Code of Civil Procedure or under any similar Law now or hereafter in effect.

18.3 Total Taking; Automatic Termination. If a total Taking of the Premises occurs, then this Lease shall terminate as of the Date of Taking.

18.4 Partial Taking; Election to Terminate.

(a) If a Taking of any portion (but less than all) of the Premises occurs, then this Lease shall terminate in its entirety if all of the following exist: (a) the partial Taking renders the remaining portion of the Premises untenable or unsuitable for continued use by Tenant for the Permitted Use; (b) the condition rendering the Premises untenable or unsuitable either is not curable or is curable but City is unwilling or unable to cure such condition; and (c) City elects to terminate.

(b) If a partial Taking of a material portion of the Terminal occurs, City shall have the right to terminate this Lease in its entirety.

(c) City's elections to terminate this Lease pursuant to this Section 18 shall be exercised by City's giving notice to Tenant on or before the date that is one hundred twenty (120) days after the Date of Taking, and thereafter this Lease shall terminate upon on the thirtieth (30th) day after such notice is given.

18.5 Tenant Monetary Obligations; Award. Upon termination of this Lease pursuant to an election under Section 18.4 [Partial Taking; Election to Terminate] above, then: (a) Tenant's obligation to pay Base Rent shall continue up until the date of termination, and thereafter shall cease, and (b) City shall be entitled to the entire Award in connection therewith (including any portion of the Award made for the value of the leasehold estate created by this Lease), and Tenant shall have no claim against City for the value of any unexpired term of this Lease, provided that Tenant may make a separate claim for compensation, and Tenant shall receive any Award made specifically to Tenant, for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's personal property.

18.6 Partial Taking; Continuation of Lease. If a partial Taking of the Premises occurs and this Lease is not terminated in its entirety under Section 18.4 [Partial Taking; Election to Terminate] above, then this Lease shall terminate as to the portion of the Premises so taken, but shall remain in full force and effect as to the portion not taken, and the rights and obligations of the Parties shall be as follows: (a) the Minimum Annual Guarantee shall be adjusted by Director to reflect the Taking, and (b) City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease). Tenant shall have no claim against City for the value of any unexpired Term of this Lease, provided that Tenant may make a separate claim for compensation. Tenant shall retain any Award made specifically to Tenant for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's personal property.

18.7 Temporary Takings. Notwithstanding anything to contrary in this Section, if a Taking occurs with respect to all or any part of the Premises for a limited period of time not in excess of one hundred eighty (180) consecutive days, this Lease shall remain unaffected thereby, and Tenant shall continue to pay Rent, and to perform all of the terms, conditions and covenants of this Lease. In the event of such temporary Taking, City shall be entitled to receive any Award.

18.8 City Taking. In the event a Taking is initiated and consummated by the City and County of San Francisco, Airport Commission, and if this Lease is terminated pursuant to this Section 18, then City shall pay to Tenant the Relocation-Related Termination Fee based on the number of years remaining in the Lease after the effective date of such termination.

19. CITY AND OTHER GOVERNMENTAL PROVISIONS

19.1 MacBride Principles - Northern Ireland. Pursuant to San Francisco Administrative Code §12.F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Tenant acknowledges that he or she has read and understood this section.

19.2 Charter. The terms of this Lease shall be governed by and subject to the budget and fiscal provisions of the Charter of the City and County of San Francisco.

19.3 Tropical Hardwood and Virgin Redwood Ban. (a) Except as expressly permitted by the application of Sections 12I.3.b and 12I.4.b of the San Francisco Administrative Code, neither Tenant nor any of its contractors shall use in the construction of any Alterations or otherwise in the performance of this Lease any items or materials which are tropical hardwoods, or tropical hardwood products, virgin redwood or virgin redwood products; (b) City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood product, virgin redwood, or virgin redwood product.

19.4 No Representations. Tenant acknowledges and agrees that neither City nor any person on behalf of City has made, and City hereby disclaims, any representations or warranties, express or implied, regarding the business venture proposed by Tenant at the Airport, including any statements relating to the potential success or profitability of such venture. Tenant represents and warrants that it has made an independent investigation of all aspects of the business venture contemplated by this Lease and the Permitted Use.

19.5 Effect of City Approvals. Notwithstanding anything to the contrary herein, Tenant acknowledges and agrees that City is entering into this Lease as a landowner, and not as a regulatory agency with police powers. Accordingly, any construction, alterations, or operations contemplated or performed by Tenant hereunder may require further authorizations, approvals, or permits from governmental regulatory agencies, including the Airport's Quality Control Department. Nothing in this Lease shall limit Tenant's obligation to obtain such other authorizations, approvals, or permits. No inspection, review, or approval by City pursuant to this



Lease shall constitute the assumption of, nor be construed to impose, responsibility for the legal or other sufficiency of the matter inspected, reviewed, or approved. In particular, but without limiting the generality of the foregoing, in approving plans and specifications for Alterations, City (a) is not warranting that the proposed plan or other action complies with applicable Laws, and (b) reserves its right to insist on full compliance in that regard even after its approval has been given or a permit has been issued.

19.6 Limitation on Damages. Notwithstanding anything to the contrary herein, in no event will City or any City Entity be liable to Tenant or any Tenant Entity for any consequential, incidental, or special damages, or special damages, or lost revenues or lost profits.

19.7 Sponsor's Assurance Agreement. This Lease shall be subordinate and subject to the terms of any "Sponsor's Assurance Agreement" or any like agreement heretofore or hereinafter entered into by City and any agency of the United States of America.

19.8 Federal Nondiscrimination Regulations. Tenant understands and acknowledges that City has given to the United States of America, acting by and through the Federal Aviation Administration, certain assurances with respect to nondiscrimination, which have been required by Title VI of the Civil Rights Act of 1964, as effectuated by Title 49 of the Code of Federal Regulations, Subtitle A - Office of the Secretary of Transportation, Part 21, as amended, as a condition precedent to the government making grants in aid to City for certain Airport programs and activities, and that City is required under said Regulations to include in every agreement or concession pursuant to which any person or persons other than City, operates or has the right to operate any facility on the Airport providing services to the public, the following covenant, to which Tenant agrees as follows: "Tenant in its operation at and use of San Francisco International Airport, covenants that (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (3) that the grantee, licensee, permittee, etc., shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Subtitle A, Office of the Secretary of Transportation, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation Effectuations of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended."

19.9 Federal Affirmative Action Regulations. Tenant 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. Tenant 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. Tenant assures that it will require that its covered sub-organizations provide assurances to Tenant that they similarly will undertake affirmative action programs and that they will require assurances from their sub-organizations, as required by 14 CFR Part 152, Subpart E, to the same effect.



19.10 City's Nondiscrimination Ordinance.

(a) In the performance of this agreement, Tenant agrees not to discriminate against any employee, City and County employee working with Permittee, applicant for employment Tenant, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Tenant, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

(b) Tenant shall include in all subleases and other subcontracts relating to the Premises hereunder a non-discrimination clause in substantially the form of subsection (a) above. In addition, Tenant shall incorporate by reference in all subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subtenants and other subcontractors to comply with such provisions. Tenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

(c) Tenant does not as of the date of this Lease and will not during the Term, in any of its operations in San Francisco, where the work is being performed for the City, or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) Tenant hereby represents that prior to execution of this Lease (i) Tenant executed and submitted to the Human Rights Commission of the City and County of San Francisco (the "HRC") the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101)", with supporting documentation, and (ii) the HRC approved such form.

(e) The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Lease as though fully set forth herein. Tenant shall comply fully with and be bound by all of the provisions that apply to this Lease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Tenant understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Lease may be assessed against Tenant and/or deducted from any payments due Tenant.



19.11 Conflict of Interest. Tenant states that it is familiar with the provisions of City's Charter Section C8.105, and Section 87100 et seq. of the Government Code of the State of California and certifies that it knows of no facts in connection with this Lease which constitute a violation of said sections. It further certifies that it will make a complete disclosure to Director, if necessary, of all facts within its reasonable knowledge bearing upon any possible interest, direct or indirect, which it believes a member of Commission or other officer or employee of City presently has or will have in this Lease or in its performance. Willful failure of Tenant to make such disclosure, if any, to Commission, shall constitute grounds for termination of this Lease.

19.12 Prevailing Rates of Wage. Tenant shall abide by Airport Commission Policy No. 80-0031, requiring that Tenant pay generally prevailing rates of salaries, wages, and employee benefits, to its employees working at San Francisco International Airport pursuant to this agreement.

19.13 Declaration Regarding Airport Private Roads. Tenant hereby acknowledges and agrees that all roads existing at the date of execution hereof within the boundaries of the Airport, as shown on the current official Airport plan and as it may be revised, are the private property and private roads of the City and County of San Francisco, with the exception of that portion of the old Bayshore Highway which runs through the southern limits of the City of South San Francisco and through the northern portion of the Airport to the intersection with the North Airport Road as shown on said Airport Plan, and with the exception of that portion of the North Airport Road which runs from the off and on ramps of the State Bayshore Freeway to the intersection with said old Bayshore Highway as shown on said Airport Plan. It further acknowledges that any and all roads hereafter constructed or opened by City within the Airport boundaries will be the private property and road of City, unless otherwise designated by appropriate action.

19.14 No Relocation Assistance; Waiver of Claims. Tenant acknowledges that it will not be a displaced person at the time this Lease is terminated or expires by its own terms, and Tenant fully releases, waives, and discharges forever any and all claims or other Losses, against and covenants not to sue City or any City Entity under any Laws, including any and all claims for relocation benefits or assistance from City under federal and state relocation assistance laws. Without limiting Section 5 [Assignment or Subletting], Tenant shall cause any Transferee to expressly waive entitlement to any and all relocation assistance and benefits in connection with this Lease. Tenant shall indemnify, defend, and hold harmless City for any and all Losses arising out of any relocation assistance or benefits payable to any Transferee.

19.15 Drug-Free Workplace. Tenant acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City premises. Any violation of this prohibition by Tenant or any Tenant Entity shall constitute a default hereunder.

19.16 Compliance with Americans With Disabilities Act. Tenant acknowledges that, pursuant to the ADA, programs, services and other activities provided by a public entity, whether directly or through a contractor, must be accessible to the disabled public. Tenant shall provide the services specified in this Lease in a manner that complies with the ADA and any and all other



applicable federal, state and local disability rights legislation. Tenant agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Lease and further agrees that any violation of this prohibition on the part of Tenant, its employees, agents or assigns shall constitute a material breach of this Lease.

19.17 Sunshine Ordinance. In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between City and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

19.18 Tenant's Utilization of MBE/WBE. As described in Commission Resolution No. 95-0136, the City's Board of Supervisors has found that policies and programs that enhance the opportunities and entrepreneurial skills of local minority owned and women owned businesses ("MBE/WBE") will best serve the public interest because the growth and development of such businesses will have a significant positive impact on the economic health of the City and County of San Francisco and will serve to reduce racial tension in our community. As described in such resolution, the Commission desires to maximize the opportunities for San Francisco based MBE/WBEs to obtain construction, architectural, and engineering work with Airport tenants. Pursuant to the foregoing resolution, the Commission has adopted a Tenant Improvement Policy to maximize the contracting opportunities for local MBE/WBEs in tenant improvement work involving construction, architectural and engineering services at the Airport. In connection with any tenant improvement work hereunder that involves construction, architectural, and engineering services, (a) Airport staff will set recommended participation goals in the manner set forth in the San Francisco Administrative Code Chapter 12D.A.; and (b) Tenant will use its best efforts to utilize local MBE/WBEs for the performance of such work.

19.19 Pesticide Prohibition. As of January 1, 1998, Tenant shall comply with the provisions of Section 39.9 of the San Francisco Administrative Code (the "**Pesticide Ordinance**") which (i) prohibits the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding the pesticide usage, and (iii) require Tenant to submit to the Airport Director an integrated pest management ("**IPM**") plan that (1) lists, the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the City property during the term of this Lease, (b) describes the steps Tenant will make to meet the City's IPM Policy described in Section 39.1 of the Pesticide Ordinance, and (c) identifies, by name, title, address and telephone number, an individual to act as the Tenant's primary IPM contact person with the City. In addition, Tenant shall comply with the requirements of Section 39.4(a) and 39.4(b) of the Pesticide Ordinance as of January 1, 1999, and January 1, 2000, respectively. Nothing herein shall prevent Tenant, through the Airport Director, from seeking a determination from the Commission on the Environment that it is exempt from complying with certain provisions of the Pesticide Ordinance as provided in Section 39.8 thereof.



19.20 First Source Hiring. Tenant shall comply with the San Francisco First Source Hiring Ordinance (Board of Supervisors Ordinance No. 264-98) in cooperation with the Airport Commission Office of Employment and Community Partnerships pursuant to the First Source Hiring Agreement entered into between the Airport Commission and the Tenant concurrently herewith, and incorporated herein by reference.

19.21 Resource Efficiency Ordinance. With respect to operations and any construction activity, including renovation or remodeling on the Premises, Tenant shall comply with the City and County of San Francisco's Resource Efficiency Ordinance, Chapter 82 of the San Francisco Administrative Code, to the extent applicable.

19.22 Labor Peace/Card Check Rule. Without limiting the generality of other provisions herein requiring Tenant to comply with all Airport Rules, Tenant shall comply with the Airport's Labor Peace/Card Check Rule, adopted on February 1, 2000, pursuant to Airport Commission Resolution No. 00-0049 (the "**Labor Peace/Card Check Rule**"). Capitalized terms not defined in this provision are defined in the Labor Peace/Card Check Rule. To comply with the Labor Peace/Card Check Rule, Tenant shall, among other actions: (a) Enter into a Labor Peace/Card Check Agreement with any Labor Organization which requests such an agreement and which has registered with the Airport Director or his/her designee, within thirty (30) days after the Labor Peace/Card Check Agreement has been requested; (b) Not less than thirty (30) days prior to the modification of this Lease, Tenant shall provide notice by mail to any Labor Organization or federation of labor organizations which have registered with the Director or his/her designee ("**registered labor organization**"), that Tenant is seeking to modify or extend this Lease; (c) Upon issuing any request for proposals, invitations to bid, or similar notice, or in any event not less than thirty (30) days prior to entering into any Subcontract, Tenant shall provide notice to all registered labor organizations that Tenant is seeking to enter into such Subcontract; and (d) Tenant shall include in any subcontract with a Subcontractor performing services pursuant to any Covered Contract, a provision requiring the Subcontractor to comply with the requirements of the Labor Peace/Card Check Rule. If Airport Director determines that Tenant shall have violated the Labor Peace/Card Check Rule, Airport Director shall have the option to terminate this Lease, in addition to exercising all other remedies available to him/her.

19.23 Requiring Minimum Compensation. Tenant agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.ci.sf.ca.us/MCO. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12P. Consistent with the requirements of the MCO, Tenant agrees to all of the following:

(a) For each hour worked by a Covered Employee during a Pay Period on the property covered by this Agreement, Tenant shall provide to the Covered Employee no less than the Minimum Compensation, which includes a minimum hourly wage and compensated and uncompensated time off consistent with the requirements of the MCO. For the minimum hourly



gross compensation portion of the MCO, the Contractor shall pay \$10.00 an hour; provided, however, that if Contractor is a Nonprofit Corporation or a public entity, it shall be required to pay the increased amount only if the City makes the finding required by Section 12P.3(a)(ii) of the San Francisco Administrative Code. If Contractor is required to increase the minimum gross hourly compensation to \$10.00 an hour, it shall provide the 2.5% annual increase required by the MCO for each of the next three years.

(b) Tenant shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the City with regard to Tenant's compliance or anticipated compliance with the requirements of the MCO, for opposing any practice proscribed by the MCO, for participating in proceedings related to the MCO, or for seeking to assert or enforce any rights under the MCO by any lawful means.

(c) Tenant understands and agrees that the failure to comply with the requirements of the MCO shall constitute a material breach by Tenant of the terms of this Agreement. The City, acting through the Contracting Department, shall determine whether such a breach has occurred.

(d) If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Tenant fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Tenant fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City, acting through the Contracting Department, shall have the right to pursue the following rights or remedies and any rights or remedies available under applicable law:

- (1) The right to charge Tenant an amount equal to the difference between the Minimum Compensation and any compensation actually provided to a Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law;
- (2) The right to set off all or any portion of the amount described in Subsection (d)(1) of this Section against amounts due to Tenant under this Agreement;
- (3) The right to terminate this Agreement in whole or in part;
- (4) In the event of a breach by Tenant of the covenant referred to in Subsection (b) of this Section, the right to seek reinstatement of the employee or to obtain other appropriate equitable relief; and
- (5) The right to bar Tenant from entering into future contracts with the City for three (3) years.
- (6) Each of the rights provided in this Subsection (d) shall be exercisable individually or in combination with any other rights or remedies available to the City. Any amounts realized by the City pursuant to this subsection shall be paid to the Covered Employee who failed to receive the required Minimum Compensation.

(e) Tenant represents and warrants that it is not an entity that was set up, or is

being used, for the purpose of evading the intent of the MCO.

(f) Tenant shall keep itself informed of the current requirements of the MCO, including increases to the hourly gross compensation due Covered Employees under the MCO, and shall provide prompt written notice to all Covered Employees of any increases in compensation, as well as any written communications received by the Tenant from the CITY, which communications are marked to indicate that they are to be distributed to Covered Employees.

(g) Tenant shall provide reports to the City in accordance with any reporting standards promulgated by the City under the MCO, including reports on subtenants.

(h) The Tenant shall provide the City with access to pertinent records after receiving a written request from the City to do so and being provided at least five (5) business days to respond.

(i) The City may conduct random audits of Tenant. Random audits shall be (i) noticed in advance in writing; (ii) limited to ascertaining whether Covered Employees are paid at least the minimum compensation required by the MCO; (iii) accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten (10) days of the written notice; and (iv) limited to one audit of Tenant every two years for the duration of this Agreement. Nothing in this Agreement is intended to preclude the City from investigating any report of an alleged violation of the MCO.

(j) Any sublease entered into by Tenant and another party shall require that party to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. Tenant shall notify the Department of Administrative Services when it enters into such a sublease and shall certify to the Department of Administrative Services that it has notified the sub-tenant of the obligations under the MCO and has imposed the requirements of the MCO on the sub-tenant through the provisions of the subcontract. It is Tenant's obligation to ensure that any sub-tenants of any tier under this Agreement comply with the requirements of the MCO. If any sub-tenant under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Tenant.

(k) Any contract entered into by Tenant and another party to perform services on the property covered by this Lease shall require that party to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. Tenant shall notify the Department of Administrative Services when it enters into such a contract and shall certify to the Department of Administrative Services that it has notified the contractor of the obligations under the MCO and has imposed the requirements of the MCO on the contractor through the provisions of the subcontract. It is Tenant's obligation to ensure that any such contractors comply with the requirements of the MCO. If such a contractor fails to comply, City may pursue any of the remedies set forth in this Section against Tenant.

(l) Each Covered Employee is a third-party beneficiary with respect to the requirements of subsections (a) and (b) of this Section, and may pursue the following remedies in the event of a breach by Tenant of subsections (a) and (b), but only after the Covered Employee

has provided the notice, participated in the administrative review hearing, and waited the 21-day period required by the MCO. Tenant understands and agrees that if the Covered Employee prevails in such action, the Covered Employee may be awarded: (1) an amount equal to the difference between the Minimum Compensation and any compensation actually provided to the Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law; (2) in the event of a breach by Tenant of subsections (a) or (b), the right to seek reinstatement or to obtain other appropriate equitable relief; and (3) in the event that the Covered Employee is the prevailing party in any legal action or proceeding against Tenant arising from this Agreement, the right to obtain all costs and expenses, including reasonable attorney's fees and disbursements, incurred by the Covered Employee. Tenant also understands that the MCO provides that if Tenant prevails in any such action, Tenant may be awarded costs and expenses, including reasonable attorney's fees and disbursements, from the Covered Employee if the court determines that the Covered Employee's action was frivolous, vexatious or otherwise an act of bad faith.

(m) If Tenant is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000 (\$50,000 for nonprofits), but Tenant later enters into an agreement or agreements that cause Tenant to exceed that amount in a fiscal year, Tenant shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Tenant and this department to exceed \$25,000 (\$50,000 for nonprofits) in the fiscal year.

19.24 Airport Intellectual Property. Pursuant to Resolution No. 01-0118, adopted by the Airport Commission on April 18, 2001, the Airport Commission affirmed that it will not tolerate the unauthorized use of its intellectual property, including the SFO logo, CADD designs, and copyrighted publications. All proposers, bidders, contractors, tenants, permittees, and others doing business with or at the Airport (including subcontractors and subtenants) may not use the Airport intellectual property, or any intellectual property confusingly similar to the Airport intellectual property, without the Airport Director's prior consent.

19.25 Requiring Health Benefits for Covered Employees. Unless exempt, Tenant agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q (Chapter 12Q), including the implementing regulations, as the same may be amended or updated from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this Lease as though fully set forth herein. The text of the HCAO is currently available on the web at <http://www.amlegal.com/sanfran/viewcode.htm>. Capitalized terms used in this Section and not defined in this Lease shall have the meanings assigned to such terms in Chapter 12Q.

(a) For each Covered Employee Tenant shall provide the applicable health benefit set forth in Section 12Q.3 of the HCAO. If Tenant chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.



(b) Notwithstanding the above, if Tenant meets the requirements of a "small business" as described in Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with part (a) above.

(c) Tenant's failure to comply with the requirements of the HCAO shall constitute a material breach by Tenant of this Lease. If, within 30 days after receiving City's written notice of a breach of this Lease for violating the HCAO, Tenant fails to cure such breach or, if such breach cannot reasonably be cured within such 30-day period, Tenant fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

(d) Any Sublease or Contract regarding services to be performed on the Premises entered into by Tenant shall require the Subtenant or Contractor and Subcontractors, as applicable, to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Tenant shall notify the Purchasing Department when it enters into such a Sublease or Contract and shall certify to the Purchasing Department that it has notified the Subtenant or Contractor of the obligations under the HCAO and has imposed the requirements of the HCAO on the Subtenant or Contractor through written agreement with such Subtenant or Contractor. Tenant shall be responsible for ensuring compliance with the HCAO by each Subtenant, Contractor and Subcontractor performing services on the Premises. If any Subtenant, Contractor or Subcontractor fails to comply, City may pursue the remedies set forth in this Section against Tenant based on the Subtenant's, Contractor's, or Subcontractor's failure to comply, provided that the Contracting Department has first provided Tenant with notice and an opportunity to cure the violation.

(e) Tenant shall not discharge, reprimand, penalize, reduce the compensation of, or otherwise discriminate against, any employee for notifying City of any issue relating to the HCAO, for opposing any practice proscribed by the HCAO, for participating in any proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) Tenant represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the requirements of the HCAO.

(g) Tenant shall keep itself informed of the requirements of the HCAO, as they may change from time to time.

(h) Upon request, Tenant shall provide reports to City in accordance with any reporting standards promulgated by City under the HCAO, including reports on Subtenants, Contractors, and Subcontractors.

(i) Within five (5) business days after any request by City, Tenant shall provide City with access to pertinent records relating to any Tenant's compliance with the HCAO. In addition, City and its agents may conduct random audits of Tenant at any time during the term of this Lease. Tenant agrees to cooperate with City in connection with any such audit.

19.26 Worker Retention. Tenant shall abide by City's Worker Retention Policy.



20. GENERAL PROVISIONS

20.1 Notices. Except as otherwise specifically provided in this Lease, any notice, consent, request, demand, or other correspondence given under this Lease shall be in writing and given by delivering the notice in person or by commercial courier, or by sending it by first-class mail, certified mail, return receipt requested, or overnight courier, return receipt requested, with postage prepaid, to: (a) Tenant at Tenant's Notice Address; or (b) City at City's Notice Address; or (c) such other address as either Tenant or City may designate as its new address for such purpose by notice given to the other in accordance with this Section. Any notice hereunder shall be deemed to have been given and received and effective two (2) days after the date when it is mailed, if sent by first-class, certified mail, one day after the date when it is mailed if sent by overnight courier, or upon the date personal delivery is made. For convenience of the parties, copies of notices may also be given by facsimile to the number set forth in the Summary or such other number as may be provided from time to time; however, neither party may give official or binding notice by facsimile.

20.2 No Implied Waiver. No failure by either party to insist upon the strict performance of any obligation of the other party under this Lease or to exercise any right, power or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of such term, covenant or condition. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver.

20.3 Entire Agreement. The parties intend that this Lease (including all of the attached exhibits, which are made a part of this Lease) shall be the final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous written or oral agreements or understandings. The parties further intend that this Lease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts hereof and changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Lease.

20.4 Amendments. Except as specifically provided herein, neither this Lease nor any term or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the party against which the enforcement of the change, waiver, discharge or termination is sought.

20.5 Interpretation of Lease. The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Lease. This Lease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the parties, without any presumption against the party responsible for drafting any part of this Lease. Provisions in this Lease relating to number of days shall be calendar days. Use of the word "**including**" shall mean "including, without limitation." References to statutes, sections, ordinances or regulations are to be construed as including all statutory, ordinance, or regulatory provisions consolidating, amending, replacing, succeeding or supplementing the statute, section, ordinance or regulation. Whenever the singular number is used in this Lease and when required



by the context, the same includes the plural, the plural includes the singular, and the masculine gender includes the feminine and neuter genders, and the word "person" shall include corporation, partnership, firm, limited liability company, and association.

20.6 Successors and Assigns. Subject to the provisions of Section 5 [Assignment or Subletting], the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of Tenant and City and, except as otherwise provided herein, their personal representatives and successors and assigns.

20.7 No Third-Party Beneficiaries. There are no third-party beneficiaries to this Lease.

20.8 No Joint Venture. It is expressly agreed that City is not, in any way or for any purpose, a partner of Tenant in the conduct of Tenant's business or a member of a joint enterprise with Tenant, and does not assume any responsibility for Tenant's conduct or performance of this Lease.

20.9 Brokers. Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the lease contemplated herein. In the event that any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes his/her claim shall be responsible for such commission or fee and shall indemnify, defend, and hold harmless the other party from any and all Losses incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination or expiration of this Lease.

20.10 Severability. If any provision of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Lease shall be valid and be enforceable to the full extent permitted by law.

20.11 Governing Law. This Lease shall be construed and enforced in accordance with the laws of the State of California.

20.12 Attorneys' Fees. In the event that either City or Tenant fails to perform any of its obligations under this Lease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Lease, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder (whether or not such action is prosecuted to judgment), including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Lease, reasonable fees of attorneys of City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

20.13 Cumulative Remedies. All rights and remedies of either party hereto set forth in this Lease shall be cumulative, except as may otherwise be provided herein.

20.14 Time of Essence. Time is of the essence with respect to all provisions of this Lease in which a definite time for performance is specified.

20.15 Reservations by City. City may (a) at any time, upon reasonable advance written or oral notice, enter the Premises to show the Premises to prospective tenants or other interested parties, to post notices of non-responsibility, to remeasure the Premises, to repair any part of the Premises or adjoining areas, to install equipment for adjoining areas, and for any other lawful purpose; (b) without advance notice, enter the Premises to conduct an environmental audit, operational audit, or general inspection, or in an emergency. City shall use reasonable efforts to minimize disruption in Tenant's business. Such entry shall not constitute a forcible or unlawful entry into or a detainer of the Premises, or an eviction, actual or constructive of Tenant from the Premises. City reserves the exclusive right to use all areas of the Airport not comprising the Premises, and the exterior walls and roofs the Premises. City reserves the exclusive right to use such areas together with the right to install, maintain, use, repair, and replace pipes, ducts, conduits, wires, columns, and structural elements serving other parts of the Airport in and through the Premises. This reservation in no way affects maintenance obligations imposed in this Lease.

20.16 Survival of Indemnities. Expiration or termination of this Lease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Lease, nor shall it effect any provision of this Lease that expressly states it shall survive termination hereof. Each party hereto specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Lease, the indemnitor has an immediate and independent obligation to defend the indemnitees from any claim which actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to the indemnitor by the indemnitee. Further, Tenant's obligation to make payments to City in respect of accrued charges (including those which have not yet been billed) and to make repairs (including those relating to the return of the Premises to City) which are accrued at the expiration or earlier termination of this Lease shall survive the expiration or earlier termination of this Lease.

20.17 Quiet Enjoyment and Title. Tenant, upon paying the Rent hereunder and performing the covenants hereof, shall peaceably and quietly have, hold and enjoy the Premises and all appurtenances during the full Term as against all persons or entities claiming by and through City. Tenant expressly acknowledges that Tenant's right to quiet possession of the Premises does not preclude City's right to make changes and additions to the Airport, including the Premises, and to do work in the Premises as permitted by this Lease.

20.18 No Right of Redemption. Tenant waives any right of redemption or reinstatement of Tenant under any present or future case law or statutory provision (including Code of Civil Procedure Sections 473 and 1179 and Civil Code Section 3275) in the event Tenant is dispossessed from the Premises for any reason. This waiver applies to future statutes enacted in addition or in substitution to the statutes specified herein.

20.19 Accord and Satisfaction. The payment by Tenant or the receipt by City of a lesser amount than the rent stipulated in this Lease may be, at City's sole option, deemed to be on account of the earliest due stipulated rent, or deemed to be on account of rent owing for the current period only, notwithstanding any instructions by or on behalf of Tenant to the contrary, which instructions shall be null and void, and no endorsement or statement on any check or any letter accompanying any such check or payment will be deemed an accord and satisfaction, and City may accept such check or payment without prejudice to City's right to recover the balance of such rent or payment or pursue any other remedy available in this Lease, at law or in otherwise. City may accept any partial payment from Tenant without invalidation of any contractual notice required to be given herein (to the extent such contractual notice is required) and without invalidation of any notice given or required to be given pursuant to applicable law.

20.20 Joint and Several Liability. The liabilities hereunder of the entities and/or person(s) comprising Tenant shall be joint and several.

20.21 Estoppel Statements. Within ten (10) days after request therefor by City, Tenant shall deliver, in recordable form, a an estoppel statement certifying that this Lease is in full force and effect; the date of Tenant's most recent payment of Rent, and that Tenant has no defenses or offsets outstanding, or stating those claimed, and any other information reasonably requested. Failure to deliver said statement within the specified period shall be conclusive upon Tenant that: (i) this Lease is in full force and effect, without modification except as may be represented by City; (ii) there are no uncured defaults in City's performance and Tenant has no right of offset, counterclaim or deduction against Rent hereunder; and (iii) no more than one month's Base Rent has been paid in advance. Notwithstanding the conclusiveness of Tenant's failure to deliver such statement, Tenant's failure shall constitute a breach of this Lease.

20.22 Authority. If Tenant signs as a corporation, a limited liability company, or a partnership, each of the persons executing this Lease on behalf of Tenant does hereby covenant and warrant that Tenant is a duly authorized and existing entity, that Tenant has and is duly qualified to do business in California, that Tenant has full right and authority to enter into this Lease, and that each and all of the persons signing on behalf of Tenant are authorized to do so. Upon City's request, Tenant shall provide City evidence reasonably satisfactory to City confirming the foregoing representations and warranties.

20.23 Consents. If City is required to reasonably grant consent or approval, but does not do so, Tenant's sole and exclusive remedy is to seek specific performance and in no event will City be liable for any monetary damages.

20.24 Counterparts. This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

20.25 Lease to be Signed. The preparation and submission of a draft of this Lease by either party to the other does not constitute an offer nor will either party be bound to any of the terms of this Lease or the entirety of the Lease itself until both parties have fully executed a final document and an original signature document has been received by both parties.



Upon City's request, Tenant shall provide City evidence reasonably satisfactory to City confirming the foregoing representations and warranties.

20.23 Consents. If City is required to reasonably grant consent or approval, but does not do so, Tenant's sole and exclusive remedy is to seek specific performance and in no event will City be liable for any monetary damages.

20.24 Counterparts. This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

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

TENANT: Gotnam Enterprise, LLC
a Delaware limited liability company

By: Glenn Meyers 4/19/03
Glenn Meyers
Member

By: Dayna Meyers 4-19-03
Dayna Meyers
Member

[signatories to also initial Summary]

By: Garrett Meyers 4/20/03
Garrett Meyers
Member

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

[signatories to also initial Summary]

John L. Martin
John L. Martin
Airport Director

AUTHORIZED BY AIRPORT
COMMISSION

Approved as to form:
DENNIS J. HERRERA
City Attorney

Resolution No. 03 - 0069
Adopted: April 15, 2003
Attest: Jean Caramatti

By: Adriana G
Deputy City Attorney



LIST OF EXHIBITS

EXHIBIT A – Description of Premises

EXHIBIT B – Description of Initial Improvements

EXHIBIT C – Use and Operational Requirements

EXHIBIT D – Construction Period Operations

EXHIBIT E – Form of Commencement Date Acknowledgment

EXHIBIT F-1 – Form of Performance Bond

EXHIBIT F-2 – Form of Letter of Credit

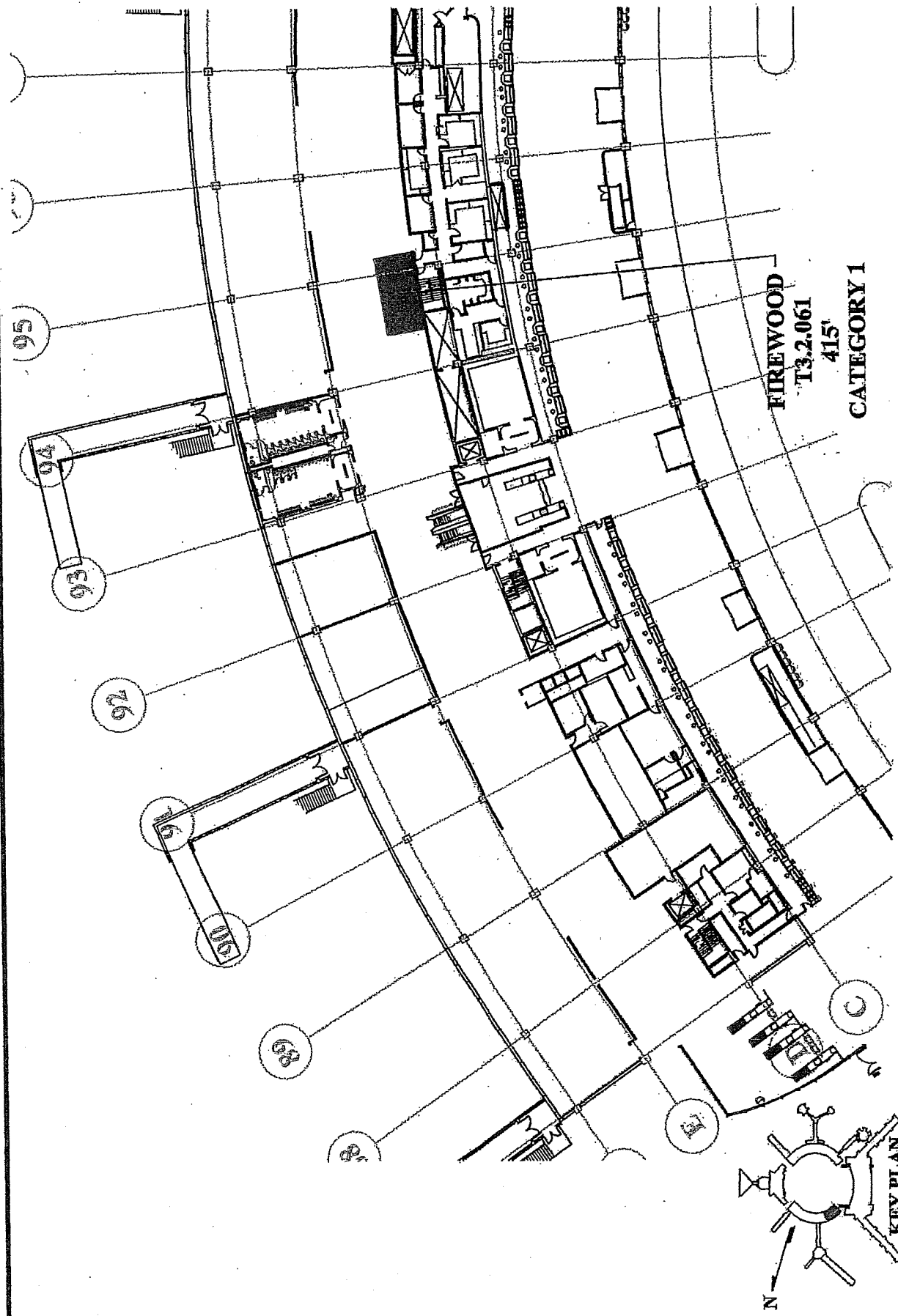


**EXHIBIT A
PREMISES**

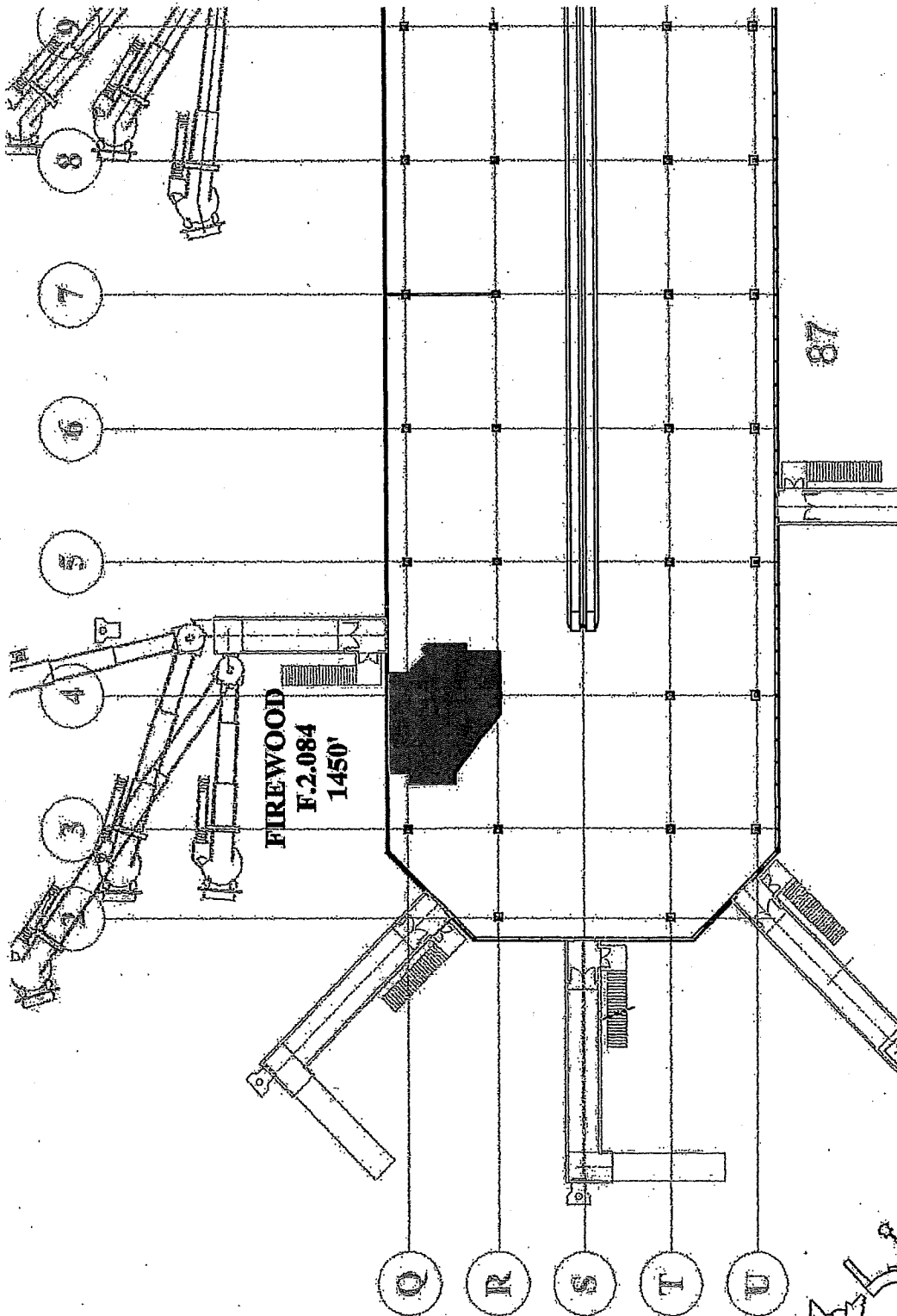
DESCRIPTIONS:

1. T3.2.061 ("T3 Space) - 415'
2. F.2.084 ("F Space") - 1,450
3. B.2.053 ("B Space") = 502'

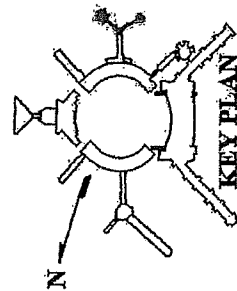
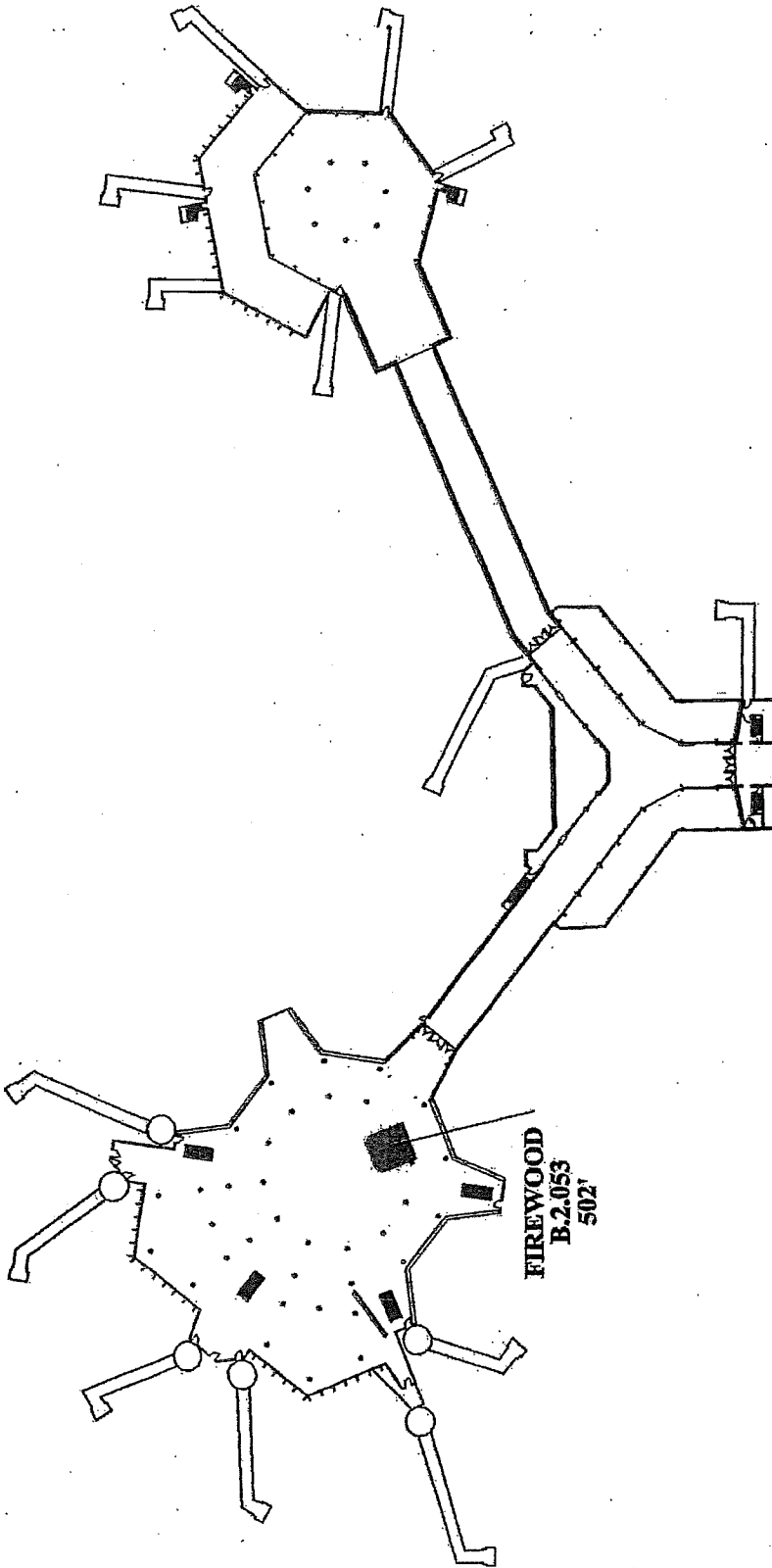




TENANT LOCATION LEASE DRAWING		LOCATION	TENANT	CAT	AREA	CONTRACT	EFF DATE
LOCATION: TERMINAL 3, 2ND FLOOR		T3.2.061	FIREWOOD	1	415'		
GOTHAM ENTERPRISE, LLC, FIREWOOD COFFEE							
CITY & COUNTY OF SAN FRANCISCO							
AIRPORTS COMMISSION							
SAN FRANCISCO INTERNATIONAL AIRPORT							
DWG: T32062							
SCALE: 1"=50'-0"							
DATE: 10/20/2003							



TENANT LOCATION LEASE DRAWING				LOCATION	TENANT	CAT	AREA	CONTRACT	EFF DATE
				F.2.084	FIREWOOD	I	1450'		
LOCATION: NORTH TERMINAL HUB, 2ND FLOOR									
GOTHAM ENTERPRISE, LLC, FIREWOOD COFFEE									
CITY & COUNTY OF SAN FRANCISCO				DWG: BAF2FIRE					
AIRPORTS COMMISSION				SCALE: 1"=50'-0"					
SAN FRANCISCO INTERNATIONAL AIRPORT				DATE: 10/20/2003					



TENANT LOCATION LEASE DRAWING		LOCATION	TENANT	CAT	AREA	CONTRACT	EFF DATE
		B-2.053	FIREWOOD	1	502'		
LOCATION: TERMINAL 1, BOARDING AREA B, 2ND FLOOR							
GOTHAM ENTERPRISE, LLC, FIREWOOD COFFEE							
CITY & COUNTY OF SAN FRANCISCO							
AIRPORTS COMMISSION							
SAN FRANCISCO INTERNATIONAL AIRPORT							
DWG: BAB2FIRE							
SCALE: 1"=100'-0"							
DATE: 10/20/2003							

EXHIBIT B
INITIAL IMPROVEMENTS

Tenant shall refurbish, redecorate and modernize the interior and exterior of the Premises to convert it to the "Firewood" traddress or other concept approved by the Airport Director.



EXHIBIT C
USE AND OPERATIONAL REQUIREMENTS

1. **GENERAL REQUIREMENTS:** All food and beverage shall be sold on a non-exclusive basis, and Airport reserves the right to sell and to permit other Airport tenants to sell such food and beverage. All such items must be sold at retail. Tenant may not display, sell, rent, or otherwise offer any food and beverage or other product that is inconsistent with the Permitted Use.

2. **REQUIRED CONCEPT:** Tenant shall cause all aspects of its operations, including its traddress, food and beverage products, menu, and prices to be consistent with the following concept described on the attached. On or before the date that is sixty (60) days prior to the Rent Commencement Date, Tenant shall submit to Director for Director's approval its proposed menu, including pricing. Provided that such menu is approved by Director, Tenant shall not make any changes (including changes to the pricing) without Director's prior consent. Tenant shall be entitled to offer "specials" without Director's prior approval provided the "special" is seasonal and temporary and the price of such "special" is comparable to the other menu items.

3. **PROHIBITED MERCHANDISE AND FOOD AND BEVERAGE:** Tenant understands and agrees that the following products or services are not included within the Permitted Use, without the prior written consent of Director, which consent may be granted or denied in Director's absolute and sole discretion.
 - (A) The sale or delivery of any duty free/in-bond merchandise;

 - (B) Any and all sales from vending machines or other mechanical devices, including but not limited to such items as: cigarettes, candy, maps, coffee and soft drinks, newspapers, stamps, insurance policies, and dispensation of cash, money orders and checks;

 - (C) Any and all sales of meals, alcoholic beverages by the drink, and soft drinks, whether for immediate consumption or for public sale, with the exception of the food and beverage items listed above;

 - (D) Freshly prepared popcorn or peanuts in the shell;

 - (E) Souvenir items; provided, however, that, with Director's prior consent, Tenant shall be permitted to sell products which bear the logo of Tenant's operation or are directly related to Tenant's permitted concept; provided that such souvenir items shall not, in the aggregate, take up more than 10% of Tenant's operations space;

 - (F) Any and all sales or rental of telecommunications equipment; and

 - (G) Any and all sales of phone cards.



EXHIBIT C

SPACE T3.2.061, F.2.084, B.2.53

FIREWOOD coffee

Or a

National Coffee.

Company Name

(I.e. Starbucks Coffee, Peets Coffee, Peerless Coffee etc...)

Or other Coffee Company reasonably acceptable to the Airport Director.

Permitted Uses:

A first-class, high quality specialty coffee venue serving specialty coffee drinks, whole beans, teas, pre-packed sandwiches, soups, muffins; assorted pastries and ready to drink beverages. All items are sold for off-premise consumption. Subject to approval of Airport Director.



EXHIBIT D
CONSTRUCTION PERIOD OPERATIONS

During the construction period after the Commencement Date and prior to the completion of the Initial Improvements, Tenant shall, at Director's request, conduct limited operations constituting the Permitted Use. Prior to commencing such operations, Tenant shall outline the proposed area for such operations, the hours of such operations, and the inventory to be offered for sale. Such operations shall be on such items and conditions required by Director, including the following terms and conditions:

- a) Director may revoke Director's approval at any time, and following such revocation, Tenant must immediately cease such operations until the Rent Commencement Date.
- b) Such interim operations may be conducted only in the area designated by Director. Tenant's responsibilities and liabilities with respect to such designated area shall be the same responsibilities and liabilities that Tenant has with respect to the Premises, except that Tenant shall not be obligated to perform the Initial Improvements or any other Alterations on such designated area.
- c) As rent for the interim period, Tenant shall pay to City **Twenty percent (20%)** of all Gross Revenues achieved from such designated area during each month of such interim period. All such rent shall be due and payable on the twentieth (20th) day of the month following each month of operation, and otherwise as provided in Section 4 of the Lease. Tenant shall report all Gross Revenues achieved during such interim period and such Gross Revenues shall not be included as "Gross Revenues" for the purposes of calculation of rent following the Rent Commencement Date.
- d) Tenant shall be solely responsible for making the designated area useable for Tenant's interim operations, and for protecting such area from construction and other activities in the Premises. At Director's request, Tenant shall restore such area to the condition existing prior to Tenant's use thereof.

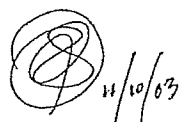
A handwritten signature in a circular scribble, followed by the date 11/10/07.

EXHIBIT E
FORM OF COMMENCEMENT DATE ACKNOWLEDGEMENT

SPECIALTY COFFEE FACILITIES – DOMESTIC TERMINALS

Name and Notice	City:	Tenant:
Address of	City and County of San Francisco	_____
Parties:	acting by and through its Airport Commission	_____
	San Francisco International Terminal,	_____
	5th Floor	_____
	P.O. Box 8097	
	San Francisco, CA 94128	
	Attention: Airport Director	
	Premises: _____	
	Commencement Date: _____	
	Rent Commencement Date: _____	
	MAG Adjustment Date: _____	

The above terms are incorporated into this Acknowledgment of Commencement as indicated above and referenced herein.

This Acknowledgment of Commencement is made with reference to that certain lease agreement (the "Lease") between the party designated above as City ("City"), as landlord, and the party designated above as Tenant ("Tenant") dated as of _____ regarding the certain premises generally described above, all as is more particularly set forth in the Lease (the "Premises"). Tenant certifies to City the following:

1. Tenant accepted possession of the Premises on the Commencement Date and acknowledges that the Premises are as represented by City and in good and sanitary order, condition and repair; and that the improvements, if any, required to be constructed by City under the Lease have been constructed and are satisfactorily completed in all respects.
2. The Commencement Date, Rent Commencement Date, and MAG Adjustment Date are as set forth above.
3. Tenant has not made any "Transfer" (as defined in the Lease) of any of the Premises, the Lease, or Tenant's leasehold interest.

TENANT By: _____

Name: _____

Title: _____

Date: _____



EXHIBIT F-1
FORM OF PERFORMANCE BOND

Bond for Deposit under Lease
Sample Format

_____ (Surety)

KNOW ALL MEN BY THESE PRESENT:

That we, _____, as Principal, and _____, a corporation duly organized and existing under and by virtue of the laws of the State of _____, as Surety, are held and firmly bound unto the City and County of San Francisco, acting by and through its Airport Commission, as obligee, in the sum of _____ Dollars (\$ _____) lawful money of the United States of America, to be paid to the City and County of San Francisco, acting by and through its Airport Commission, for which payment, well and truly to be made, we bind ourselves, our heirs, executors and successors, jointly and severally, firmly by these presents.

WHEREAS, the Principal has executed a [INSERT NAME OF LEASE/PERMIT] (the "Agreement").

NOW, THEREFORE, the condition of this obligation is such that if the Principal shall perform all terms of the Agreement (which by reference is made a part hereof), including the payment of rent or fees, in accordance with the terms of such Agreement, then this obligation shall be null and void, otherwise to remain in full force and effect; and shall be effective _____.

This bond may be called upon by Obligee by a notice sent to the Surety by registered mail, overnight mail, overnight courier service, or other courier service sent to our offices at: _____.

Signed, sealed and dated this _____ day of _____.

Principal: By: _____
 Title: _____
 Seal: _____

Surety By: _____
Company: Title: _____
 Seal: _____

(Attach Notary Public Certificate and Attorney-in-Fact form)



EXHIBIT F-2
FORM OF LETTER OF CREDIT

Irrevocable Letter of Credit for Deposit for Lease
Sample Format

Date _____

Letter of Credit No. _____

Airport Commission
City and County of San Francisco
San Francisco International Airport
PO Box 8097
San Francisco, CA 94128

Ladies and Gentlemen:

We hereby establish an irrevocable letter of credit in your favor in the amount of _____ United States Dollars (US\$ _____) for the account of _____, available by your draft at sight, when accompanied by the following document:

A statement signed by the Airport Director of the Airport Commission of the City and County of San Francisco, to the effect that _____ has defaulted under the [insert name of Lease/Permit] with the City and County of San Francisco, acting by and through its Airport Commission at San Francisco International Airport.

Drafts drawn under and in compliance with the terms of this letter of credit will be duly honored by us upon presentation and delivery of the statement specified above. Partial draws are permitted. Such drafts may be presented by registered mail, overnight mail, overnight courier service, or other courier service sent to our offices at:

Sincerely,

**AMENDMENT NO. 1 TO
SPECIALTY COFFEE FACILITIES IN THE DOMESTIC TERMINAL BUILDINGS
LEASE NO. 03-0069
AT SAN FRANCISCO INTERNATIONAL AIRPORT**

THIS AMENDMENT NO. 1 TO DOMESTIC TERMINAL SPECIALTY COFFEE FACILITIES LEASE AT THE SAN FRANCISCO AIRPORT LEASE NO. 03-0069 ("Amendment No. 1"), dated as of April 21, 2015 for reference purposes only, is entered into by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City"), acting by and through the SAN FRANCISCO AIRPORT COMMISSION, as landlord, and Gotham Enterprises, LLC, as tenant ("Gotham").

RECITALS

A. Pursuant to Resolution No. 03-0069, adopted April 15, 2003, the Airport Commission ("Commission") approved a settlement of an un-litigated claim, which included an assignment of Lease No. 99-0292J from D. Mitchell Concessions, Inc. to an entity formed by Glenn, Dayna and Garrett Meyers for Gotham's operation of three coffee facilities at San Francisco International Airport ("Airport"). Gotham operates as Peet's Coffee & Tea in the Domestic Terminals under Lease No. 03-0069 ("Lease"), which has a term of approximately twelve years and an option to extend the term by two years.

B. On May 22, 2009, the Commission approved the early exercise of the option term of the Lease, thus extending the Expiration Date to November 8, 2017.

C. The Airport has commenced a Terminal 1 Redevelopment Program that will require the early closure of Gotham's Terminal 1, Boarding Area B location as shown on the drawing titled B.2.053 attached as part of Exhibit A to the Lease ("Terminal 1 Premises"), which is scheduled to occur in or around June 2016.

D. Staff has identified a suitable replacement space for the Terminal 1 Premises comprised of a comparable square footage located in the portion of Terminal 1 Boarding Area B that will remain open as described in more detail below ("Terminal 1 Replacement Premises"). The Airport expects that the Terminal 1 Replacement Premises will become available in or around June 2016.

E. The parties desire to extend the term of the Lease for the Terminal 1 Replacement Premises only, so that Gotham will operate a Peet's Coffee & Tea in Terminal 1 Boarding Area B until it permanently closes and the newly renovated Terminal 1 opens, which is scheduled to occur in or around September 2019.

F. The Lease as amended by this Amendment No. 1 shall be referred to below as the "Lease".

G. 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 Gotham hereby agree 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. **Terminal 1 Replacement Premises.** The description of the Premises under the Lease is amended by deleting reference to the Terminal 1 Premises and replacing it with the Terminal 1 Replacement Premises, which shall be comprised of approximately 502 square feet of concession space located in Terminal 1 of the San Francisco International Airport in or around the location described on Attachment 1, the exact location of which shall be determined by City.
3. **Term.** Section 2.3 of the Lease [City's Right to Extend Term] is deleted in its entirety.
4. **Extension of Term for the Terminal 1 Replacement Premises.**
 - a. 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.
 - b. The term for the two Terminal 3 Peet's Coffee & Tea locations will remain unchanged and expire on November 8, 2017 in accordance with the original term of the Lease.
5. **Build out of Terminal 1 Replacement Premises.** City, at City's expense, will construct Gotham'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. Gotham will be consulted throughout the design and relocation process. Gotham 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 practicable following delivery by City. Gotham 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. Gotham 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 Gotham to occupy the existing Terminal 1 Premises beyond the closure of such premises as determined by City.

6. **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 existing Terminal 1 Premises and the Terminal 1 Replacement Premises. Gotham's obligation to pay Rent for the Terminal 1 Replacement Premises will commence on the earlier to occur of (a) the date Gotham opens for business at the Terminal 1 Replacement Premises; and (b) seven days following City's delivery of the Terminal 1 Replacement Premises.

7. **Entire Agreement.** This Amendment No. 1 contains the entire agreement between the parties with respect to the subject matter of this Amendment No. 1. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to the subject matter of the Amendment No. 1 are superseded in their entirety by this Amendment No. 1. No prior drafts of this Amendment No. 1 or changes between those drafts and the executed version of this Amendment No. 1 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. 1.

8. **Miscellaneous.** This Amendment No. 1 shall bind, and shall inure to the benefit of, the successors and assigns of the parties hereto. This Amendment No. 1 is made for the purpose of setting forth certain rights and obligations of Gotham and City, 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. 1 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. 1 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. 1. This Amendment No. 1 shall be governed by the laws of the State of California. Neither this Amendment No. 1 nor any of the terms hereof may be amended or modified except by a written instrument signed by all the parties hereto.

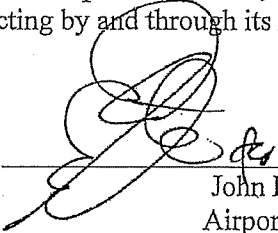
9. **Full Force and Effect.** Except as specifically amended herein, the terms and conditions of the Lease shall remain in full force and effect.

///
///

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, City and Gotham execute this Amendment No. 1 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 cl

TENANT: Gotham Enterprises, LLC
a California Limited Liability Company

By: _____

Name: Glenn Meyers
(type or print)

Title: Managing Member 5/12/15

AUTHORIZED BY AIRPORT
COMMISSION

Resolution No. 15-0100
Adopted: April 21, 2015

Attest: Jan Cannatti
Secretary
Airport Commission

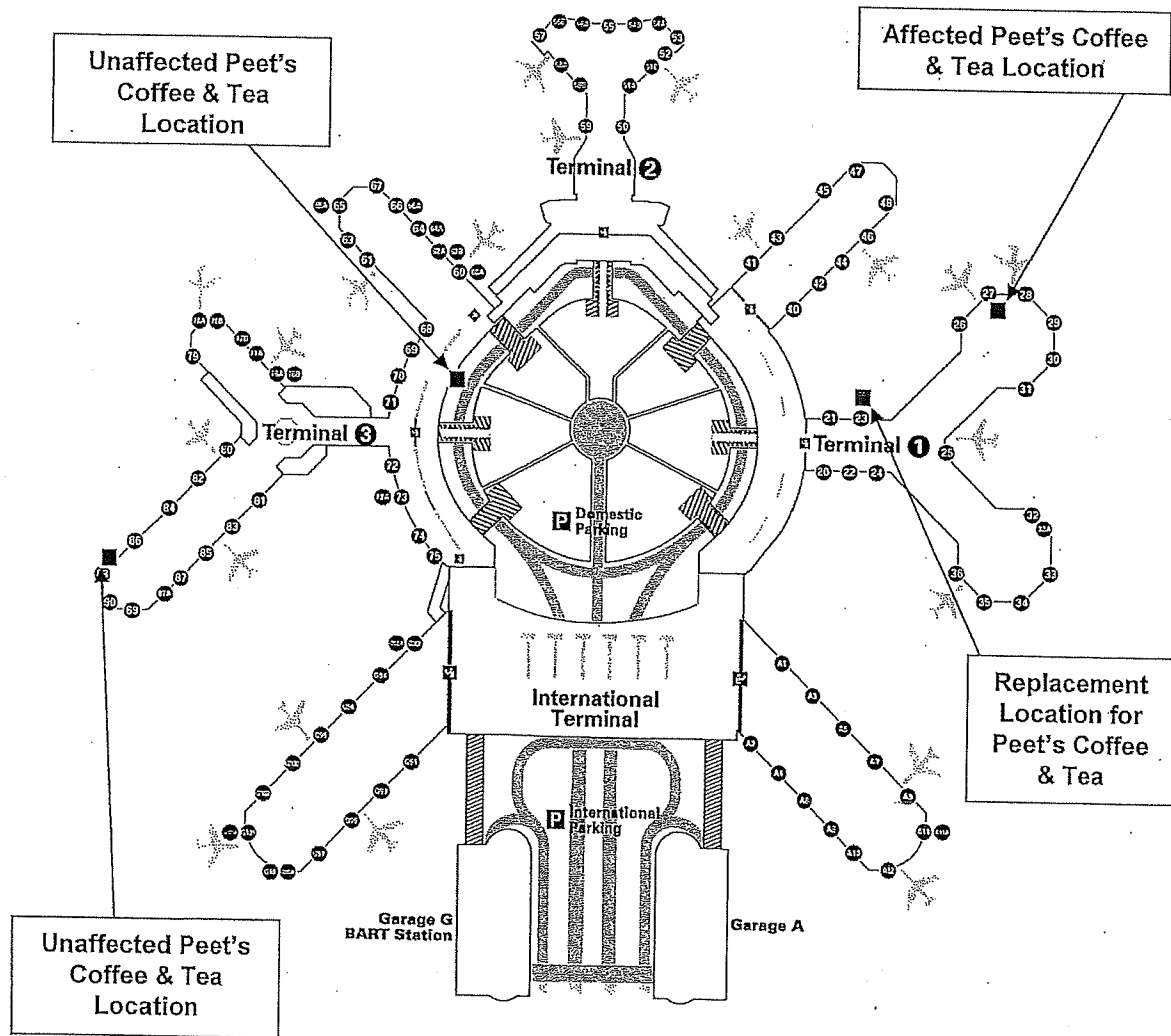
APPROVED AS TO FORM:
DENNIS J. HERRERA,
City Attorney

By: 
Deputy City Attorney

4.21.2015
X:\TENANTS\Gotham_Meyers\Agreements\Working Docs\Amend 1 Peet's Coffee BAB 04-21-15x.docx

Attachment 1

Peet's Coffee & Tea Locations under Lease No. 03-0069





San Francisco International Airport
February 28, 2018

Ms. Angela Calvillo
Clerk of the Board
Board of Supervisors
City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

Subject: Approval of Amendments to Four Leases with the City and County of San Francisco, acting by and through its Airport Commission, specifically Amendment No. 1 to Domestic Terminal Food and Beverage Program Lease No. 03-0204, with Bay Area Restaurant Group; Amendment No. 1 to Domestic Terminal Food and Beverage Program Lease No. 03-0203, with D-Lew Enterprises, LLC; Amendment No. 2 to the Specialty Coffee Facilities Lease No. 03-0069 with Gotham Enterprises, LLC; and Amendment No. 2 to the Electronics and Technology Stores in Terminal 2 and Terminal 3 Lease No. 10-0038 with InMotion Entertainment Group, LLC

Dear Ms. Calvillo:

Pursuant to Section 9.118 of the City Charter, I am forwarding for the Board of Supervisors' approval, the following Lease Amendments:

1. Amendment No. 1 to Domestic Terminal Food and Beverage Program Lease No. 03-0204, with Bay Area Restaurant Group
2. Amendment No. 1 to Domestic Terminal Food and Beverage Program Lease No. 03-0203, with D-Lew Enterprises, LLC
3. Amendment No. 2 to the Specialty Coffee Facilities Lease No. 03-0069 with Gotham Enterprises, LLC
4. Amendment No. 2 to the Electronics and Technology Stores in Terminal 2 and Terminal 3 Lease No. 10-0038 with InMotion Entertainment Group, LLC

The Airport Commission has approved the Lease Amendments by adopting Resolution Nos. 17-0316, 17-0317, 17-0318 and 17-0319, respectively, on December 19, 2017:

Original and two copy sets of the following documents for each of the Lease Amendments are enclosed for review:

- Board of Supervisors Resolutions;
- Approved Airport Commission Resolutions No. 17-0316, 17-0317, 17-0318 and 17-0319;
- Ethics Form SFEC-126 for the Board of Supervisor;
- Ethics Form SFEC-126 for the Mayor;
- A copy of the Domestic Terminal Food and Beverage Program Lease No. 03-0204, with Bay Area Restaurant Group, Domestic Terminal Food and Beverage Program Lease No. 03-0203, with D-Lew

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO, CA
2018 MAR -2 PM 2:20
BY [Signature]

AIRPORT COMMISSION CITY AND COUNTY OF SAN FRANCISCO

MARK FARRELL MAYOR	LARRY MAZZOLA PRESIDENT	LINDA S. CRAYTON VICE PRESIDENT	ELEANOR JOHNS	RICHARD J. GUGGENHIME	PETER A. STERN	IVAR C. SATERO AIRPORT DIRECTOR
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Ms. Angela Calvillo
February 6, 2018
Page 2

Enterprises, LLC, Specialty Coffee Facilities Lease No. 03-0069 with Gotham Enterprises, LLC, and Electronics and Technology Stores in Terminal 2 and Terminal 3 Lease No. 10-0038 with InMotion Entertainment Group, LLC; and

- A copy of Amendment No. 1 to the Specialty Coffee Facilities Lease No. 03-0069 with Gotham Enterprises, LLC; and Amendment No. 1 to the Electronics and Technology Stores in Terminal 2 and Terminal 3 Lease No. 10-0038 with InMotion Entertainment Group, LLC.

You may contact Cheryl Nashir of Airport Revenue Development and Management at 650.821.4500 regarding this matter.

Very truly yours,



Jean Caramatti
Jean Caramatti
Commission Secretary

Enclosures

cc: Cheryl Nashir, Director, Revenue Development and Management

**FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL**
(S.F. Campaign and Governmental Conduct Code § 1.126)

City Elective Officer Information <i>(Please print clearly.)</i>	
Name of City elective officer(s): Members, SF Board of Supervisors	City elective office(s) held: Members, SF Board of Supervisors
Contractor Information <i>(Please print clearly.)</i>	
Name of contractor: Gotham Enterprise, LLC	
<i>Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.</i>	
1) N/A; 2) Glenn Meyers, Managing Member; 3) N/A; 4) None; 5) N/A	
Contractor address: 123 2nd Street, Sausalito, CA 94965	
Date that contract was approved: Click here to enter text.	Amount of contract: \$154,482 (Minimum Annual Guarantee)
Describe the nature of the contract that was approved: Three specialty coffee facilities, operating as Peet's Coffee & Tea.	
Comments: The Airport Commission approved a settlement of un-litigated claims which included the assignment of the Lease to Gotham Enterprise, LLC. Amendment No. 1 to the Lease provides new replacement premises for Gotham's T1 location.	

This contract was approved by (check applicable):

the City elective officer(s) identified on this form

a board on which the City elective officer(s) serves **San Francisco Board of Supervisors**
Print Name of Board

the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

Filer Information <i>(Please print clearly.)</i>	
Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: (415) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., SF, CA 94102	E-mail: <u>Board.of.Supervisors@sfgov.org</u>

Signature of City Elective Officer (if submitted by City elective officer)

Date Signed

Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

Date Signed