

File No. 210068

Committee Item No. 1

Board Item No. 10

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date May 26, 2021

Board of Supervisors Meeting

Date June 8, 2021

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- Airport Commission Resolution No. 20-0207
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Completed by: Linda Wong

Date May 21, 2021

Completed by: Linda Wong

Date May 27, 2021

1 [Lease Amendment - Domestic Terminal 3 Common Use Club Lease No. 13-0006 -
2 American Express Travel Related Services Company, Inc. - Minimum Annual Guarantee
3 \$3,226,546 - Annual Promotional Charge \$15,287]

4 **Resolution approving Amendment No. 2 to the Domestic Terminal 3 Common Use**
5 **Club Lease No. 13-0006 between American Express Travel Related Services**
6 **Company, Inc. and the City and County of San Francisco, acting by and through its**
7 **Airport Commission, to increase the square footage of the Lounge premises to**
8 **approximately 15,287 square feet, establish a new Minimum Annual Guarantee**
9 **amount of \$3,226,546 for the newly expanded premises, increase the annual**
10 **Promotional Charge to \$15,287 in proportion to the net increase in square footage of**
11 **the premises and to extend the ten year term by seven years with a new expiration**
12 **date of November 5, 2031, to commence upon Board approval.**

13
14 WHEREAS, On January 15, 2013, by Resolution No. 13-0006, the Airport
15 Commission (Commission) awarded the Terminal 3 Common Use Club Lease No. 13-0006
16 (Lease) to American Express Travel Related Services Company, Inc. (Tenant) which
17 operates the American Express Centurion Lounge, for a term of 10 years, currently expiring
18 November 5, 2024; and

19 WHEREAS, On October 22, 2013, by Resolution No. 367-13, the Board of Supervisors
20 approved the Lease; and,

21 WHEREAS, On October 6, 2020, by Resolution No. 20-0180, the Commission
22 approved the COVID-19 Emergency Relief Program for Airport Concession Operators, which
23 will be set forth in Amendment No. 1 to the Lease; and,

1 WHEREAS, On January 5, 2021, by Ordinance No. 5-21, the Board of Supervisors
2 approved the COVID-19 Emergency Relief Program for Airport Concession Operations, which
3 will be set forth in Amendment No.1 to the Lease; and,

4 WHEREAS, On November 10, 2020, by Resolution No. 20-0207, the Commission
5 approved Amendment No. 2 to the Lease, which increased the square footage of the
6 premises to approximately 15,287 square feet, established a new Minimum Annual Guarantee
7 amount of \$3,226,546 for the newly expanded premises, increased the annual Promotional
8 Charge to \$15,287 in proportion to the net increase in square footage of the premises, and
9 extended the term by seven years beyond its current expiration date of November 5, 2024;
10 and,

11 WHEREAS, Airport staff anticipates that Tenant's cost to construct tenant
12 improvements in the expansion space will be at least \$1,200 per square foot; now, therefore,
13 be it

14 RESOLVED, That this Board of Supervisors approves Amendment No. 2 to the
15 Domestic Terminal 3 Common Use Club Lease No. 13-0006 with American Express Travel
16 Related Services Company, Inc. to increase the square footage of the Lounge premises to
17 approximately 15,287 square feet, establish a new Minimum Annual Guarantee amount of
18 \$3,226,546 for the newly expanded premises, increase the annual Promotional Charge to
19 \$15,287 in proportion to the net increase in square footage of the premises, and extend the
20 term by seven years beyond the current expiration date of November 5, 2024, a copy of which
21 is on file with the Clerk of the Board of Supervisors in File No. 210068; and be it

22 FURTHER RESOLVED, That within thirty (30) days of the amendment being fully
23 executed by all parties, the Airport Commission shall provide the final amendment to the Clerk
24 of the Board for inclusion into the official file.

25

<p>Item 1 File 21-0068</p>	<p>Department: San Francisco International Airport (Airport)</p>
<p>EXECUTIVE SUMMARY</p>	
<p style="text-align: center;">Legislative Objectives</p> <ul style="list-style-type: none"> • The proposed resolution would approve Amendment No. 2 to the Terminal 3 lounge lease between San Francisco International Airport (Airport) as landlord and American Express Travel Related Services Company, Inc. (American Express) as tenant, (a) expanding the leased premises to 15,287 square feet; (b) establishing a new Minimum Annual Guaranteed (MAG) rent of \$3,226,546, (e) increasing the promotional charge to \$15,287, and (f) extending the term by seven years through November 5, 2031. <p style="text-align: center;">Key Points</p> <ul style="list-style-type: none"> • American Express has operated the 8,199 square foot Centurion Lounge in Terminal 3 since November 2014. According to Airport staff, prior to the COVID-19 pandemic, the lounge was very popular with travelers and often reached maximum capacity. Airport staff has explored expanding the space to accommodate demand and increase revenue. • Airport staff has identified 7,088 square feet of pre-security space adjacent to the lounge suitable for expansion. The space is occupied by offices and vacant corridor space and is not marketable as stand-alone concession space. The Airport and American Express have agreed to amend the lease to include the expansion space. The amendment extends the lease seven years through November 5, 2031 to amortize the expansion construction costs. <p style="text-align: center;">Fiscal Impact</p> <ul style="list-style-type: none"> • Under the proposed Amendment, American Express would pay MAG rent of \$3,226,546, subject to annual adjustment. Over the approximately nine-year and four-month term of the new rent structure, the Airport would receive at least \$30,114,429 in total MAG rent. <p style="text-align: center;">Policy Consideration</p> <ul style="list-style-type: none"> • The negotiated rental rate of \$160 per square foot for the expansion premises is less than the annual rental rate of \$255.21 per square foot for Category II terminal space set in the FY 2020-21 Airport Rates and Charges. The negotiated rate of \$160 per square foot for the expansion space is based on American Express’ costs to construct tenant improvements. Although the lease states that the minimum tenant investment per square foot is \$350, according to Airport staff, tenant investment costs are estimated to be approximately \$1,200 per square foot. Therefore, the proposed resolution should be amended to state that the Airport estimates that American Express’ cost to construct tenant improvements in the expansion space is at least \$1,200 per square foot. <p style="text-align: center;">Recommendations</p> <ul style="list-style-type: none"> • Amend the proposed resolution to state that the Airport estimates that American Express’ cost to construct tenant improvements in the expansion space is at least \$1,200 per square foot. • Approval of the proposed resolution as amended is a policy matter for the Board of Supervisors because (1) the negotiated rent is less than the scheduled rent set in the Airport Rates and Charges, and (2) the proposed lease term exceeds the original 10-year term advertised in the RFP. 	

MANDATE STATEMENT

City Charter Section 9.118(c) states that (1) any lease of real property for ten or more years, including options to renew, (2) have anticipated revenues to the City of \$1,000,000, or (3) the modification, amendment or termination of these leases is subject to Board of Supervisors approval.

BACKGROUND

In 2012, the San Francisco International Airport (Airport) conducted a Request for Proposals (RFP) for an airport lounge lease in Terminal 3. American Express Travel Related Services Company, Inc. (American Express) submitted the only proposal and was determined to be a responsive and responsible proposer and was awarded a lease. In October 2013, the Board of Supervisors approved a lease with American Express, with initial annual rent of \$1,515,475 and a term of 10 years, from November 6, 2014 through November 5, 2024 (File 13-0779).

Under the lease, American Express occupies approximately 8,199 square feet, branded as Centurion Lounge. According to Airport staff, prior to the COVID-19 pandemic, the lounge was very popular with travelers and often reached maximum capacity and had to turn away members and guests. Airport staff has explored expanding the space to accommodate demand and increase revenue. The lounge was closed from March 20, 2020 through October 11, 2020 but has now reopened and American Express expects demand to return. Furthermore, the Airport and American Express expect there to be an increased sensitivity to crowding due to the pandemic.

Airport staff has identified approximately 7,088 square feet of pre-security space adjacent to the lounge suitable for expansion. The space is occupied by offices, an employee break room and smaller concession operators under storage permits that can be terminated with 30 days' notice, as well as vacant corridor space. Due to the location of the space on a pre-security mezzanine level, the space is not marketable as stand-alone concession space. In November 2020, the Airport Commission approved Amendment No. 2¹ to the American Express lease to include the expanded space.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve Amendment No. 2 to the Terminal 3 lounge lease between the Airport as landlord and American Express as tenant, expanding the leased premises to approximately 15,287 feet, establishing a new Minimum Annual Guaranteed (MAG) rent of \$3,226,546, and extending the term seven years through November 5, 2031.

Under the existing lease, American Express pays \$2,092,467 in annual rent. The rent is determined by the FY 2020-21 Airport Rates and Charges, which sets the annual rental rate for Category II terminal space, including VIP clubs and lounges, at \$255.21 per square foot. Under the proposed Amendment No. 2, American Express would pay a negotiated Minimum Annual

¹ In October 2020, the Airport Commission approved Amendment No. 1 to the lease to memorialize the Airport's COVID-19 Emergency Rent Relief Program, which waived certain rents and fees to encourage business recovery, employee rehiring, and continued concession operations at the Airport (File 20-1278).

Guaranteed (MAG) rent of \$3,226,546. The MAG amount is based on the current annual rental rate of \$255.21 per square foot for the existing premises and a negotiated annual rental rate of \$160 per square foot for the expansion premises, as shown in Table 1 below.

Table 1: Initial MAG Rent Calculation

Premises	Square Footage	Rental Rate per Square Foot	Total Rent
Existing	8,199	\$255.21	\$2,092,467
Expansion	7,088	160.00	1,134,080
Total	15,287		\$3,226,546

Source: Airport. Totals may not add due to rounding.

According to Airport Management, the lower rental rate of \$160 per square foot was negotiated based on the location of the expansion premises, the significant demolition and construction costs to be incurred by the tenant in reconfiguring and incorporating the expansion premises from a pre-security mezzanine level space into a natural extension of the post-security existing premises, and the requisite buildout of lounge features and improvements for the expansion premises.² The total MAG rent of \$3,226,546 would be adjusted annually based on the Consumer Price Index (CPI), rather than through annual adjustments to the Airport Rates and Charges.

The proposed Amendment No. 2 would also extend the term of the lease seven years, through November 5, 2031, for a total term of 17 years. The 17-year term exceeds the 10-year lease term advertised in the 2012 RFP. According to Airport Management, the seven-year term extension allows the tenant to amortize the capital investment for the expansion and buildout costs. The Airport may also require the facility to close due to the future T3 West project. If closure is required, the lease may be extended by the amount of time the facility is closed.

The key terms of the proposed Amendment No. 2 are shown in Table 2 below.

Table 2: Key Provisions of Lease Amendment

Premises	15,287 square feet (increase of 7,088 square feet)
Term Extension	7 years, through November 5, 2031
Options to Extend	None
MAG Rent	\$3,226,546
MAG Adjustment	Annually based on CPI
Minimum Investment Amount	\$350 per square foot of expansion space (\$2,480,800)
Promotional Charge	\$1 per square foot per year (\$15,287)
T3 West Project Closure	Airport may require closure due to T3 West project with 90 days' notice. MAG rent is abated during closure period. Lease may be extended by number of days facility is closed.

Source: Proposed Lease Amendment No. 2

As noted above, the negotiated rate of \$160 per square foot for the expansion space is based on American Express' costs to construct tenant improvements. Although the lease states that the minimum tenant investment per square foot is \$350, according to Ms. Cheryl Nashir, Airport

² According to Airport staff, American Express invested \$10.3 million in its facility in 2014 and is expected to invest an additional \$9 million on this expansion.

Director of Revenue Development and Management, tenant investment costs are estimated to be approximately \$1,200 per square foot. Therefore, the proposed resolution should be amended to state that the Airport estimates that American Express' cost to construct tenant improvements in the expansion space is at least \$1,200 per square foot.

According to Ms. Nashir, the anticipated rent commencement date for the expansion premises is July 1, 2022. Until the expansion premises is opened, American Express will continue paying the Category II rental rate for the existing premises, which is currently \$255.21 per square foot annually.

FISCAL IMPACT

Under the proposed Amendment No. 2, American Express would pay \$3,226,546 in initial MAG rent, starting on the expected date of July 1, 2022, subject to annual adjustment. Over the approximately nine-year and four-month term of the new rent structure, the Airport would receive at least \$30,114,429 in total MAG rent.

The expansion premises are currently occupied by United Airlines and Covenant Security Services, which pay \$502,508 in combined annual rent. According to Ms. Nashir, both tenants will be relocated into other vacant space at the Airport, so rent will not be lost when the space is converted into a lounge.

POLICY CONSIDERATION

The proposed negotiated annual rental rate of \$160 per square foot is less than the annual rental rate of \$255.21 per square foot for Category II terminal space set in the FY 2020-21 Airport Rates and Charges. Over the approximately nine-year and three-month term of the negotiated rate structure, American Express will pay approximately \$6,298,586 less than it would have to under the Category II rental rate. The negotiated rental rate may signal to other prospective Airport terminal concessions tenants that the posted rates and charges are negotiable. According to Ms. Nashir, space rent published in the Airport Rates and Charges document is used solely for two common use lounge leases, and for concessions storage and office 30-day permits. All other terminal concessions rent is based on Minimum Annual Guarantees and sales activity.

According to Ms. Nashir, the negotiated rental rate is unique for this lease and is unlikely to be replicated for future leases. The proposed Amendment No. 2 is a mid-term modification of an existing lease, not a new lease. American Express will incur significant costs to convert existing office and corridor space into an airport lounge. According to Ms. Nashir, American Express spent approximately \$1,200 per square foot to construct the existing lounge in 2014 and will likely spend more for the expansion due to cost escalation and COVID-19 safety requirements. The tenant also provides free access to its lounge for American Express premium cardholders and does not receive sales revenue from the facility, unlike other concession tenants. Additionally, it differs from an airline lounge frequented by passengers who have made a purchase in the form of an airline ticket. According to Ms. Nashir, the premises cannot be marketed as stand-alone concession space as it is on a mezzanine level not within the passenger flow and currently has no post-security access, so utilizing the space for the lounge expansion provides the Airport the best opportunity to generate revenue.

The Budget and Legislative Analyst considers approval of the proposed resolution to be a policy matter for the Board of Supervisors because (1) the negotiated rent is less than the scheduled rent set by the Airport Commission in the Rates and Charges, and (2) the proposed lease term is extended by seven years beyond the original 10-year term advertised in the RFP.

RECOMMENDATIONS

1. Amend the proposed resolution to state that the Airport estimates that American Express' cost to construct tenant improvements in the expansion space is at least \$1,200 per square foot.
2. Approval the proposed resolution as amended is a policy matter for the Board of Supervisors.

<p>Item 4 File 21-0068</p>	<p>Department: San Francisco International Airport (Airport)</p>
<p>EXECUTIVE SUMMARY</p>	
<p style="text-align: center;">Legislative Objectives</p> <ul style="list-style-type: none"> • The proposed resolution would approve Amendment No. 2 to the Terminal 3 lounge lease between San Francisco International Airport (Airport) as landlord and American Express Travel Related Services Company, Inc. (American Express) as tenant, (a) expanding the leased premises to 15,287 square feet; (b) establishing a new Minimum Annual Guaranteed (MAG) rent of \$3,226,546, (e) increasing the promotional charge to \$15,287, and (f) extending the term by seven years through November 5, 2031. <p style="text-align: center;">Key Points</p> <ul style="list-style-type: none"> • American Express has operated the 8,199 square foot Centurion Lounge in Terminal 3 since November 2014. According to Airport staff, prior to the COVID-19 pandemic, the lounge was very popular with travelers and often reached maximum capacity. Airport staff has explored expanding the space to accommodate demand and increase revenue. • Airport staff has identified 7,088 square feet of pre-security space adjacent to the lounge suitable for expansion. The space is occupied by offices and vacant corridor space and is not marketable as stand-alone concession space. The Airport and American Express have agreed to amend the lease to include the expansion space. The amendment extends the lease seven years through November 5, 2031 to amortize the expansion construction costs. <p style="text-align: center;">Fiscal Impact</p> <ul style="list-style-type: none"> • Under the proposed Amendment, American Express would pay MAG rent of \$3,226,546, subject to annual adjustment. Over the approximately nine-year and four-month term of the new rent structure, the Airport would receive at least \$30,114,429 in total MAG rent. <p style="text-align: center;">Policy Consideration</p> <ul style="list-style-type: none"> • The negotiated rental rate of \$160 per square foot for the expansion premises is less than the annual rental rate of \$255.21 per square foot for Category II terminal space set in the FY 2020-21 Airport Rates and Charges. The negotiated rate of \$160 per square foot for the expansion space is based on American Express’ costs to construct tenant improvements. Although the lease states that the minimum tenant investment per square foot is \$350, according to Airport staff, tenant investment costs are estimated to be approximately \$1,200 per square foot. Therefore, the proposed resolution should be amended to state that the Airport estimates that American Express’ cost to construct tenant improvements in the expansion space is at least \$1,200 per square foot. <p style="text-align: center;">Recommendations</p> <ul style="list-style-type: none"> • Amend the proposed resolution to state that the Airport estimates that American Express’ cost to construct tenant improvements in the expansion space is at least \$1,200 per square foot. • Approval of the proposed resolution as amended is a policy matter for the Board of Supervisors because (1) the negotiated rent is less than the scheduled rent set in the Airport Rates and Charges, and (2) the proposed lease term exceeds the original 10-year term advertised in the RFP. 	

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The key terms of the proposed Amendment No. 2 are shown in Table 2 below.

Table 2: Key Provisions of Lease Amendment

Premises	15,287 square feet (increase of 7,088 square feet)
Term Extension	7 years, through November 5, 2031
Options to Extend	None
MAG Rent	\$3,226,546
MAG Adjustment	Annually based on CPI
Minimum Investment Amount	\$350 per square foot of expansion space (\$2,480,800)
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Source: Proposed Lease Amendment No. 2

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Director of Revenue Development and Management, tenant investment costs are estimated to be approximately \$1,200 per square foot. Therefore, the proposed resolution should be amended to state that the Airport estimates that American Express' cost to construct tenant improvements in the expansion space is at least \$1,200 per square foot.

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FISCAL IMPACT

Under the proposed Amendment No. 2, American Express would pay \$3,226,546 in initial MAG rent, starting on the expected date of July 1, 2022, subject to annual adjustment. Over the approximately nine-year and four-month term of the new rent structure, the Airport would receive at least \$30,114,429 in total MAG rent.

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POLICY CONSIDERATION

The proposed negotiated annual rental rate of \$160 per square foot is less than the annual rental rate of \$255.21 per square foot for Category II terminal space set in the FY 2020-21 Airport Rates and Charges. Over the approximately nine-year and three-month term of the negotiated rate structure, American Express will pay approximately \$6,298,586 less than it would have to under the Category II rental rate. The negotiated rental rate may signal to other prospective Airport tenants that the posted rates and charges are negotiable.

According to Ms. Nashir, the negotiated rental rate is unique for this lease and is unlikely to be replicated for future leases. The proposed Amendment No. 2 is a mid-term modification of an existing lease, not a new lease. American Express will incur significant costs to convert existing office and corridor space into an airport lounge. According to Ms. Nashir, American Express spent approximately \$1,200 per square foot to construct the existing lounge in 2014 and will likely spend more for the expansion due to cost escalation and COVID-19 safety requirements. The tenant also provides free access to its lounge for American Express premium cardholders and does not receive sales revenue from the facility, unlike other concession tenants. Additionally, it differs from an airline lounge frequented by passengers who have made a purchase in the form of an airline ticket. According to Ms. Nashir, the premises cannot be marketed as stand-alone concession space as it is on a mezzanine level not within the passenger flow and currently has no post-security access, so utilizing the space for the lounge expansion provides the Airport the best opportunity to generate revenue.

The Budget and Legislative Analyst considers approval of the proposed resolution to be a policy matter for the Board of Supervisors because (1) the negotiated rent is less than the scheduled

rent set by the Airport Commission in the Rates and Charges, and (2) the proposed lease term is extended by seven years beyond the original 10-year term advertised in the RFP.

RECOMMENDATIONS

1. Amend the proposed resolution to state that the Airport estimates that American Express' cost to construct tenant improvements in the expansion space is at least \$1,200 per square foot.
2. Approval the proposed resolution as amended is a policy matter for the Board of Supervisors.

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

THIS AMENDMENT NO. 2 TO LEASE AGREEMENT FOR THE TERMINAL 3 COMMON-USE CLUB AT SAN FRANCISCO INTERNATIONAL AIRPORT (LEASE NO. 13-0006) (this “**Amendment**”), dated as of the Effective Date (as defined below), for reference purposes only, is entered by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the “**City**”), acting by and through the SAN FRANCISCO AIRPORT COMMISSION (the “**Airport**”), as landlord, and AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC., as tenant (“**Tenant**”).

RECITALS

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

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

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

D. All capitalized terms not otherwise defined herein shall have the same meaning given to them in the Original Lease.

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

AGREEMENT

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference as if fully set forth herein.
2. **Effective Date.** This Amendment shall be deemed effective on the date of execution by the Airport following the receipt of all Required City Approvals:

_____ [Date to be Inserted] (the “**Effective Date**”).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12. Entire Agreement. This Amendment, together with the Original Lease, contains all of the representations and the entire agreement between the parties with respect to the subject matter of this Amendment. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to the subject matter of this Amendment are superseded in their entirety by this Amendment. No prior drafts of this Amendment or changes between those drafts and the executed version of this Amendment shall be introduced as evidence in any litigation or other dispute resolution proceeding by any party or other person, and no court or other body should consider such drafts in interpreting this Amendment.

13. Miscellaneous. This Amendment shall bind, and shall inure to the benefit of, the successors and assigns of the parties hereto. This Amendment is made for the purpose of setting forth certain rights and obligations of Tenant and the Airport, and no other person shall have any rights hereunder or by reason hereof as a third-party beneficiary of otherwise. Each party hereto shall execute, acknowledge and deliver to each other party all documents, and shall take all actions, reasonably requested by such other party from time to time to confirm or effect the matters set forth herein, or otherwise to carry out the purposes of this Amendment. This Amendment may be executed in counterparts with the same force and effect as if the parties had executed one instrument, and each such counterpart shall constitute an original hereof. No provision of this Amendment that is held to be inoperative, unenforceable or invalid shall affect the remaining provisions, and to this end all provisions hereof are hereby declared to be severable. Time is of the essence of this Amendment. This Amendment shall be governed by the laws of the State of California. Neither this Amendment nor any of the terms hereof may be amended or modified except by a written instrument signed by all the parties hereto.

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

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

///
///

[SIGNATURE PAGE TO FOLLOW]

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

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

By: John G. Freel

Name: JOHN FREEL
(type or print)

Title: Vice President Global Real Estate

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

Ivar C. Satero
Airport Director

AUTHORIZED BY AIRPORT
COMMISSION

Resolution No. _____

Adopted: _____

Attest: _____

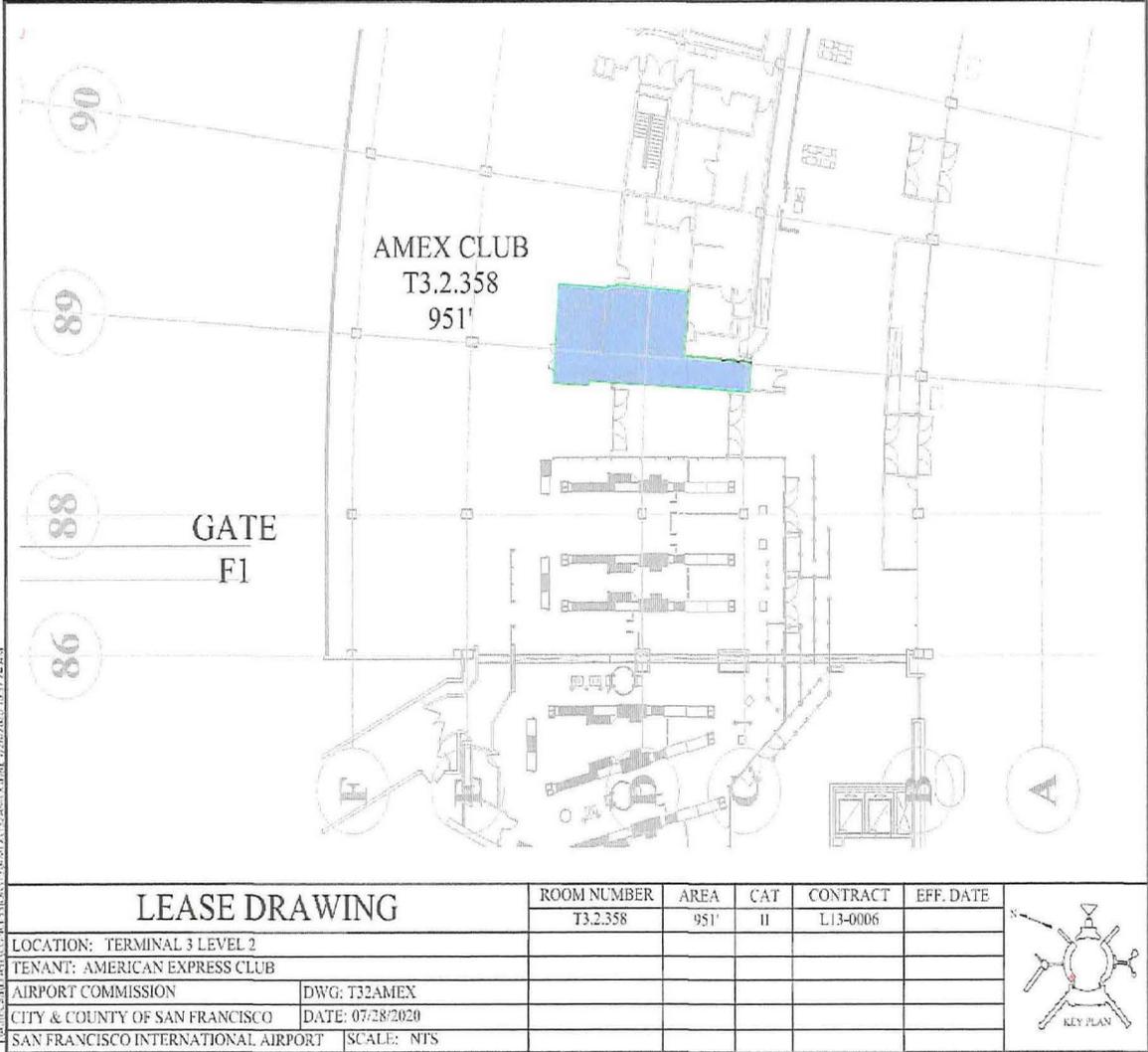
Secretary
Airport Commission

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

By: _____
Deputy City Attorney

**EXHIBIT A
EXPANSION SPACE AND EXPANDED
PREMISES**

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



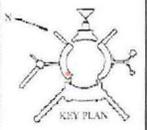
LEASE DRAWING		ROOM NUMBER	AREA	CAT	CONTRACT	EFF. DATE
LOCATION: TERMINAL 3 LEVEL 2		T3.2.358	951'	II	L13-0006	
TENANT: AMERICAN EXPRESS CLUB						
AIRPORT COMMISSION	DWG: T32AMEN					
CITY & COUNTY OF SAN FRANCISCO	DATE: 07/28/2020					
SAN FRANCISCO INTERNATIONAL AIRPORT	SCALE: NTS					

**EXHIBIT A
EXPANSION SPACE AND EXPANDED
PREMISES**



LEASE DRAWING

		ROOM NUMBER	AREA	CAT	CONTRACT	EFF. DATE
LOCATION: TERMINAL 3 LEVEL 3		T3.3.300	7248'	II	L13-0006	
TENANT: AMERICAN EXPRESS CLUB		T3.3.024	7088'	II	L13-0006	
AIRPORT COMMISSION	DWG: T33AMEX					
CITY & COUNTY OF SAN FRANCISCO	DATE: 07/28/2020					
SAN FRANCISCO INTERNATIONAL AIRPORT	SCALE: NTS					



**AMENDMENT NO. 1 TO SFO CONCESSION LEASE (SERVICES)
[COVID-19 Emergency Rent Relief Program]**

This LEASE AMENDMENT NO. 1 (this "**Amendment**") is dated as of the Effective Date (as defined below) and entered into by and between American Express Travel Related Services Company, Inc. ("**Tenant**") and City and County of San Francisco, acting by and through its Airport Commission ("**City**" or "**Airport**").

RECITALS:

A. Tenant and City are parties to Terminal 3 Common Use Club – Lease No. 13-0006 (as amended, the "**Lease**").

B. The parties desire to modify the Lease to address the devastating financial impacts of the COVID-19 pandemic and the dramatic and rapid reduction in enplanements at the Airport, resulting in the shutdown of many of the Airport concessions. Modifying the Lease to forgive certain payments due under the Lease will improve the financial feasibility of the Lease and preserve Tenant's ability to continue operations at the Airport, which is of considerable value to both parties. Providing such rent relief is also consistent with the written guidance provided all airport sponsors by the Federal Aviation Administration encouraging temporary rent abatements and minimum annual guarantee waivers.

C. On October 6, 2020, by Resolution No. 20-1080^{0180cc} (the "**Commission Resolution**"), the Airport Commission ("**Commission**") adopted the COVID-19 Emergency Rent Relief Program (the "**COVID-19 Rent Relief Program**") which provides for the rent relief set forth in this Amendment. On January 5, 2021, by Ordinance No. 5-21, the San Francisco Board of Supervisors authorized the Airport to implement the COVID-19 Rent Relief Program (the "**Rent Relief Ordinance**"). The Rent Relief Ordinance authorizes the Airport Director to enter into this Amendment without further approval by the Board of Supervisors under Charter Section 9.118 and without modifying the Lease to include Administrative Code and Environmental Code Requirements that were enacted since the most recent modification to the Lease.

D. This Amendment also provides the State of California accessibility disclosures required by California Civil Code Section 1938.

E. All capitalized terms used in this Amendment and not otherwise defined have the meaning provided 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 enter into this Amendment as follows:

AGREEMENT:

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference as if fully set forth in this Amendment.

2. **Effective Date.** This Amendment shall be deemed effective upon the date of execution by the Airport as set forth below (the “**Effective Date**”).

3. **COVID-19 Rent Relief Amounts.** Upon the satisfaction of the COVID-19 Rent Relief Program Requirements (as defined below) no later than August 31, 2021 (the “**COVID-19 Rent Relief Program Deadline**”) or such later date as determined by the Airport Director in his reasonable discretion in accordance with Section 8 of this Amendment, Tenant’s obligation to pay the following amounts under the Lease will be entirely waived and forgiven (such amounts, “**COVID-19 Rent Relief Amounts**”):

(a) for the month of March 2020, payments of the Rent only; and;

(b) for the months of April and May 2020, all payments of Rent, and all payments for fees and utilities (including electricity, water/sewage, gas and ITT charges), whether under the Lease or separate permit;

(c) for the period commencing April 1, 2020 through December 31, 2020, all payments for Promotional Fees, Storage Space Fees, and refuse/garbage fees, to the extent such fees are applicable to Tenant, whether under the Lease or separate permit.

4. **COVID-19 Rent Relief Program Requirements.**

(a) In order to receive the benefit of the COVID-19 Rent Relief Amounts under this Amendment, Tenant must have satisfied each of the following conditions (the “**COVID-19 Rent Relief Program Requirements**”) and satisfy the Rent Relief Reporting Requirements (as set forth in Section 4(b) below) no later than the COVID-19 Rent Relief Program Deadline:

(i) if Tenant ceased operation due to the COVID-19 pandemic, then Tenant must reopen and recommence operations and continue to operate at the Airport in conformance with the schedule provided by the Airport, as the schedule may be modified by the Airport Director from time to time, in his sole and absolute discretion;

(ii) Tenant must remain in good standing under the Lease and not in default of any obligations under the Lease or any other agreements between Tenant and City (including the payment of all rent and other obligations, other than the COVID-19 Rent Relief Amounts), beyond any applicable notice and cure periods, and not be in any unresolved dispute with the City, in each case at

all times prior to and upon the COVID-19 Rent Relief Program Deadline, as determined by the Airport Director in his sole and absolute discretion;

(iii) Tenant must expend at least 33% of the total aggregate amount of Rent waived under this Amendment on “payroll costs, as defined in the Coronavirus Aid, Relief and Economic Security Act of 2020, or the “CARES Act” (the “**Rent Relief Payroll Requirement**”); and

(iv) Tenant must participate in the SFO employee rehiring program, which provides priority to rehiring of Tenant’s employees laid off as a result of the COVID-19 pandemic (the “**Tenant Employee Rehiring Requirement**”).

(b) In order to satisfy the Rent Relief Payroll Requirement and the Tenant Employee Rehiring Requirement, Tenant must comply with the requirements and complete the documentation as and when required (including, for the avoidance of doubt, monthly reporting on payroll and rehiring efforts), as set forth on **Exhibit A** attached hereto (the “**Rent Relief Reporting Requirements**”).

5. **Failure to Satisfy Requirements of COVID-19 Rent Relief Program.** In the event Tenant shall fail to satisfy any of the COVID-19 Rent Relief Program Requirements as of the COVID-19 Rent Relief Program Deadline (or such earlier date that it is evident that Tenant will be unable to satisfy such requirements even with the passage of time (i.e. Tenant fails to reopen for business when required)), Tenant shall remit to City all amounts of COVID-19 Rent Relief Amounts that would have otherwise been waived and forgiven under the COVID-19 Rent Relief Program, as set forth in this Amendment, no later than thirty (30) days of written demand from Airport.

6. **Credit for Rent Relief Amounts Already Paid; Credit Date.** To the extent any waived and forgiven amounts under this Amendment have already been paid by Tenant, such amounts shall only be credited towards future obligations of Rent and related fees due from Tenant (for the avoidance of doubt, only upon satisfaction of the COVID-19 Rent Relief Requirements, as set forth below). Upon satisfaction of the COVID-19 Rent Relief Program Requirements, all Rent and other fees waived under this Amendment will be credited towards Tenant’s account, contemplated to occur on or after the COVID-19 Rent Relief Program Deadline.

7. **Replacement of COVID-19 Rent Deferral Program.** The COVID-19 Rent Relief Program set forth in this Amendment replaces the terms of all rent deferral and/or forbearance previously offered to Tenant, including the forbearance of rent and other fees set forth in the letter from the Airport Director to all concession tenants dated March 18, 2020 (the “**COVID-19 Rent Forbearance Letter**”). In the event that Tenant shall execute this Amendment and enter into the COVID-19 Rent Relief Program, but shall subsequently fail to meet the COVID-19 Rent Relief Program Requirements by the COVID-19 Rent Relief Program Deadline, then the terms of the COVID-19 Rent Forbearance Letter shall remain in effect, and

Tenant shall remit the COVID-19 Rent Relief Amounts in accordance with Section 5 of this Amendment.

8. Adjustments to COVID-19 Rent Relief Program. Tenant acknowledges and agrees that in accordance with Commission Resolution and the Rent Relief Ordinance, the Director may make necessary and appropriate adjustments to the COVID-19 Rent Relief Program to ensure that it: (i) is implemented in a consistent manner and fairly applied to all Airport concessionaires; and (ii) continues to meet the operational requirements of the Airport and the goals of the Commission set forth in establishing the COVID-19 Rent Relief Program. Further, the Director may implement in his discretion modifications to the COVID-19 Rent Relief Program necessitated by changes in applicable law, regulation or guidance (including, without limitation, FAA guidance), as the same may be amended from time to time. Notwithstanding the foregoing, consistent with the Commission Resolution and the Rent Relief Ordinance, the Director must seek further approval of the Commission for any material change to the terms and conditions of the COVID-19 Rent Relief Program or the financial relief being offered.

9. Accessibility Disclosures. California Civil Code Section 1938 requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist (“CASp”) to determine whether the property meets all applicable construction-related accessibility requirements. The law does not require landlords to have the inspections performed. Tenant is advised that the Premises have not been inspected by a CASp. A CASp may inspect the Premises and determine if it complies with all the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the Premises, City may not prohibit Tenant from obtaining a CASp inspection of the Premises for the occupancy or potential occupancy of Tenant if requested by Tenant. City and Tenant will mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the CASp inspection fee, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises.

10. No Other Modifications. Except as otherwise expressly set forth above, the Lease remains unmodified and in full force and effect.

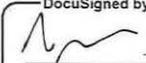
11. Counterparts and Electronic Signatures. This Amendment may be executed in multiple counterparts, each of which shall be deemed an original agreement and both of which shall constitute one and the same agreement. The counterparts of this Amendment may be executed and delivered by facsimile or other electronic signature (including portable document format) by either of the parties and the receiving party may rely on the receipt of such document so executed and delivered electronically or by facsimile as if the original had been received.

[Remainder of Page Intentionally Left Blank]

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

TENANT:

American Express Travel Related Services Company, Inc.,
a New York Corporation

By:  _____
5A92A1F70B6245F...
Name: Gagandeep Singh
Title: SVP - Global Real Estate and Workplace Experience

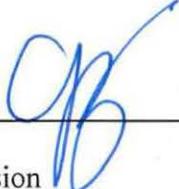
CITY:

CITY AND COUNTY OF SAN FRANCISCO, acting by and through its Airport Commission

By:  _____
Name: Ivar C. Satero
Title: Airport Director *KCS*

Effective Date (to be inserted by Airport only): 3/15/21

Authorized by Commission Resolution No. 20-0180 on October 6, 2020 and Ordinance No. 5-21 finally passed by the San Francisco Board of Supervisors on January 5, 2021.

Attest:  _____
Secretary
Airport Commission

APPROVED AS TO FORM:

DENNIS J. HERRERA,
City Attorney

By:  _____
Christopher W. Stuart
Deputy City Attorney



COVID-19 Emergency Rent Relief Program for Airport Concession Operators Payroll and Rehiring Program Requirements (*SFO Priority Rehire Program*)

SFO's Rent Relief Program supports the viability of concessionaires and addresses their employees' economic insecurity.

To be eligible for the rent relief, each concessionaire is required to comply with the following payroll and rehiring requirements (known as the SFO Priority Rehire Program):

- 1. Baseline Staffing and Payroll Information:** Within **five (5) business days** of a concessionaire's lease amendment execution, a baseline staffing and payroll report reflecting the period of December 2019 through the end of March 2020 must be submitted. This report will list employees on payroll during this period, employee contact information, date of hire, date of lay-off/furlough/separation, and employment occupation classification for each employee. **This needs to be submitted only once.**

- 2. Payroll Reports:** On a **monthly** basis, a complete record of payroll costs paid to every employee, including those in the baseline staffing information, must be submitted. *Payroll reports are to include salary, wages, commissions, or similar compensation; cash tips or the equivalent (based on employer records of past tips or, in the absence of such records, a reasonable, good-faith employer estimate of such tips); payment for vacation, parental, family, medical, or sick leave; allowance for separation or dismissal; payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums, and retirement; payment of state and local taxes assessed on compensation of employees; and for an independent contractor or sole proprietor, wage, commissions, income, or net earnings from self-employment or similar compensation. These reports are to be accompanied by a signed certifying statement (see attached). **Please submit your monthly payroll by the 15th of every month for the previous month.**

- 3. Summary of Hiring Activities and Expenditures:** On a **monthly** basis, submit the "SFO Priority Rehire Program Monthly Submittal Form" with answers to the re-hiring effort and payroll costs table and a signature certifying the submission of all supporting documentation. **Please submit the SFO Priority Rehire Program Monthly Questionnaire by the 15th of every month for the previous month.**

For assistance with hiring employees, please contact community@flysfo.com.

If any concessionaire that elects to participate in the Rent Relief Program fails to satisfy the requirements by August 31, 2021, then any amounts deferred under the Airport's COVID-19 Rent Deferral Program will become immediately due and payable and the concessionaire will be ineligible for all other benefits associated with the Rent Relief Program.

Monthly Payroll Report

Requirements:

1. Report format is at the discretion of the Tenant.
2. Report to include, on a monthly basis, a complete record of payroll costs paid to every employee, including those in the baseline staffing information, must be submitted.
*Payroll reports are to include salary, wages, commissions, or similar compensation; cash tips or the equivalent (based on employer records of past tips or, in the absence of such records, a reasonable, good-faith employer estimate of such tips); payment for vacation, parental, family, medical, or sick leave; allowance for separation or dismissal; payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums, and retirement; payment of state and local taxes assessed on compensation of employees; and for an independent contractor or sole proprietor, wage, commissions, income, or net earnings.
3. These reports are to be accompanied by a signed certifying statement:

The foregoing is certified to be true and correct to the best of our knowledge and belief.

Tenant Signature

Date

Concession Storefront

4. Tenant shall submit your monthly payroll by the 15th of every month for the previous month.



DATE: _____

CONCESSION/STOREFRONT: _____

SFO Priority Rehire Program Monthly Questionnaire

Answer the following questions:

1.	a. How many employees did you have on payroll this month?	
	b. How many of these employees are from your baseline payroll?	
2.	a. How many employees did you recall or hire this month?	
	b. How many employees brought on this month are from your baseline payroll?	
3.	If you hired any new employees this month who were not part of your staffing from December 2019 to March 2020, how did you recruit those employees?	<input type="checkbox"/> SFO Priority Hiring Program <input type="checkbox"/> Other Recruitment Method: _____ _____
4.	How much have you paid in payroll costs for this month?	
5.	How much have you paid in payroll costs since April 2020?	

Attach your monthly payroll records to your e-mail to community@flysfo.com.

Sign the following statement:

I, _____ (name), _____ (title) of _____ (leaseholder and "Tenant") hereby certify that the payroll statements and any other supporting documentation submitted for the month of _____ in connection with the consideration received by Tenant under the COVID-19 Emergency Rent Relief Program are true, correct and complete. I further hereby certify that I am an authorized representative of Tenant with all right, power and authority to deliver this certification on behalf of Tenant.

Tenant: _____

Signature: _____

Name: _____

Phone: _____

E-mail: _____

Submit this form and your monthly payroll statement to community@flysfo.com by the 15th of every month for the previous month.

Contact Jerrica Hau via e-mail jerrica.hau@flysfo.com or via phone 650.821.1004 with any questions.

LEASE AGREEMENT
FOR THE
TERMINAL 3 COMMON USE CLUB
AT SAN FRANCISCO INTERNATIONAL AIRPORT

by and between

AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC. ("TRS"),
as tenant

and

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

Edwin M. Lee
Mayor

AIRPORT COMMISSION

Hon. Larry Mazzola, President
Hon. Linda S. Crayton, Vice President
Hon. Eleanor Johns
Hon. Richard J. Guggenhime
Hon. Peter A. Stern

John L. Martin
Airport Director

January 15, 2013

Lease No. 13-0006

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**LEASE AGREEMENT
FOR THE
TERMINAL 3 COMMON USE CLUB
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 14 2013, 20 .

Tenant: American Express Travel Related Services Company, Inc. (“TRS”),
a New York Corporation

Tenant’s Notice Address: American Express Travel Related Services Company, Inc. (“TRS”)
1 Vesey Street
New York, NY 10285
Attn: Susan Chapman, Senior Vice President, GREWE
Fax No. 212-640-6806
Tel. No. 212-640-7080

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

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

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

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

Premises: Approximately 8,171 square feet of club space located in Boarding Area "F"
(§ 1) of Terminal 3, as described on the attached Exhibit A. This exhibit can be amended to accurately reflect the remeasurement by Airport staff, but shall not exceed 8,700 square feet.

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

Development Term is the period commencing on the "Commencement Date" and ending at 11:59 p.m. on the day prior to the Rent Commencement Date.

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

Commencement The date on which the Airport Director delivers the Premises to Tenant in
Date: Deliverable Condition.
(§ 2.1) **JUL 18 2014**

(actual date to be inserted upon determination)

Rent The earlier of: (a) the first day the Premises are operational, and (b) the date
Commencement that is one hundred eighty (180) days after the Commencement Date.
Date:

(§ 4) Actual Dates (to be inserted upon determination):

Commencement Date:	<u>July 18, 2014</u>
Development Term:	<u>July 18, 2014 - November 5, 2014</u>
Rent Commencement Date:	<u>November 6, 2014</u>
Operating Term:	<u>November 6, 2014 - November 5, 2024</u>
Expiration Date:	<u>November 5, 2024</u> 11:59 p.m.

Expiration Date: 11:59 p.m. on the day before the tenth (10th) anniversary of the Rent
(§ 2) Commencement Date.
November 5, 2024

(actual date to be inserted upon determination)

Permitted Use: The operation of a common use club facility to American Express card-members, on a non-exclusive basis, as described on the attached Exhibit B.
(§ 3)

Rent: The product of the Premises square footage (not to exceed 8,700 square feet) and the current Category II – VIP and Club Lounge Terminal Area Rental Rate.
(§ 4)

Deposit Amount: Equal to one-quarter (1/4) of the then current annual Rent (subject to adjustment).
(§ 13)

Minimum Investment Amount: Three Hundred Fifty Dollars (\$350.00) per square foot of the Premises, which equals Two Million Eight Hundred Fifty Nine Thousand Eight Hundred Fifty Dollars (\$2,859,850.00). Tenant may spend less than said amount provided it complies with the Concessions Design Guidelines and receives Design Review Committee approval.
(§ 7.1)

Reimbursement of construction costs, to build an elevator and stairwell between the lobby and mezzanine level of the club, is not to exceed six hundred thousand dollars (\$600,000.00) and will be available in the form of a rent credit.

Initial Promotional Charge: One Dollar (\$1.00) per square foot per annum of the Premises which equals Eight Thousand One Hundred Seventy One Dollars (\$8,171.00).
(§ 11) (subject to adjustment)

Resolution: Number 13-0006, approved by the Airport Commission on January 15, 2013.

Initial Tenant Representative: Susan Chapman
Tel. No. 212.640.7080
(§ 3.11)

Other Agreements: None
(§ 13.5)

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

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

Initial of Authorized Representative of City _____ *TC* *UK*

Initial of Authorized Representative of Tenant _____ *AC*
Summary, Page iii

**LEASE AGREEMENT
FOR THE TERMINAL 3 COMMON USE CLUB
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 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. Tenant acknowledges that, from time to time, the Airport undergoes certain construction and renovation projects. 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 or the Airport.

C. Following a competitive process, pursuant to Section 2A.173 of the San Francisco Administrative Code, the Commission has determined that Tenant is the highest or best responsible bidder or proposer. 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 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 direct, person to person solicitation 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, wherein the boundaries are measured from centerline of demising walls between tenants or inside face of wall if the adjacent space is a common area or non-leasable space. With respect to the facade and/or wall on the front or entry of the Premises, the boundary shall be measured from 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 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. If Tenant’s Premises are vacated at the request of the City and the Lease is terminated, City shall reimburse Tenant for their unamortized initial improvement costs using a straight-line amortization basis. (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 dollar amount to be reimbursed (the “**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 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 merchandise 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.

(c) (i) With respect to a Premises Change where the aggregate 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 expansion/contraction work, City may specify a Maximum Reimbursement Amount. Once the expansion/contraction work is completed, and City has approved the work, Tenant must submit to City (i) a certificate from Tenant’s architect certifying that the expansion/contraction work was completed in strict compliance with the plans

and specifications approved by City, (ii) copies of paid invoices showing the costs actually paid by Tenant for the remodeling 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 expansion/contraction work. Following its review and approval of those submissions, City will reimburse Tenant for all reasonable costs of the expansion/contraction work; 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 annual Rent 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 aggregate square footage of the original premises will be expanded or contracted by more than ten percent (10%), the annual Rent 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) Any Required Relocation or Premises Change described herein can be effected on the terms and conditions set forth above without need for a formal amendment of this Lease.

(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 following the Commencement Date, Director may cause City to conduct a space audit pursuant to which City remeasures the Premises using the Airport's then-current measurement specifications, and in such event, the Lease terms based on square footage shall be deemed automatically adjusted to reflect such remeasurement, but in no event shall the Premises exceed 8,700 square feet for the purposes of any such Lease terms.

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, enplanements, airline locations, 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 such changes on Tenant's business, Tenant acknowledges that such activity may have some effect on its 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 such changes on Tenant's business, Tenant acknowledges that such activity may have some effect on its 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, concession 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 Rent Commencement Date and expire on the Expiration Date, unless terminated prior thereto as provided herein. 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 event Tenant fails to execute and return promptly such acknowledgment to City, or reasonably suggest alternate dates, the dates described therein shall be deemed conclusive.

2.2 Required Opening. Tenant shall have no right to use or occupy any Facility until the Facility is so delivered on the Commencement Date. On the Commencement Date, Tenant shall (i) take possession of the Premises, (ii) cause the initial improvements necessary and appropriate to commence operations in the Premises (the “**Initial Improvements**”) to be substantially completed at Tenant’s sole cost, and (iii) cause the Facility to be open for business within one hundred and eighty (180) days. As used herein, the term “**Initial Improvements**” shall mean all improvements, alterations, fixture, equipment, and signage installation, and furniture placement necessary or appropriate for the conduct of the Permitted Use, including, without limitation, such work as may be necessary or appropriate, in Tenant’s discretion, to fully enclose and soundproof the Premises.

2.3 Late Opening Charge. In the event Tenant fails to open a Facility for business on the Rent Commencement Date applicable to such Facility, 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 Facility for business, Tenant shall pay to City Five Hundred Dollars (\$500.00) (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 Facility is not open for business on the date that is one hundred and eighty (180) days after the Rent Commencement Date, City shall have the option to terminate this Lease, or to remove the applicable Facility from the Lease, exercisable by notice to Tenant. In the event the applicable Facility is removed from the Lease, any Rent components based on square footage shall be reduced accordingly. Tenant shall be liable for all damages associated with such termination or removal, including City's releasing costs.

2.4 Deliverable Condition. Tenant shall accept the Premises in Deliverable Condition. "Deliverable Condition" shall mean (i) free of any occupancy and with the existing building systems (i.e., plumbing, lighting, fire alarm, electrical, generators, security, sprinkler, smoke detection, UPS systems and equipment) serving the Property in as-is condition, and (ii) with the City Work (as defined below) completed. The City Work shall mean the work items described on Exhibit D, attached hereto and made a part hereof.

2.5 Delivery Delay by City. The Anticipated Commencement Date is _____. 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 Anticipated 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 principal, affiliate, contractor, employee, agent, licensee or invitee (a "Tenant Entity"), the Rent Commencement Date shall be extended day for day to reflect such delay. If for any reason City is unable to deliver possession of the Premises to Tenant on or prior to the date that is one (1) year after the Anticipated Commencement Date, each of City and Tenant shall have the right to terminate this Lease by notice to the other.

2.6 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. 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. Tenant shall have no rights to renew or extend the Term of this Lease.

3. USE AND OPERATION

3.1 Permitted Use. Tenant shall use the Premises for the Permitted Use and for no other purpose. Tenant shall, at all times, operate the Premises in strict conformance with the Permitted Use attached as Exhibit B herein. 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 must submit a request to Director. Director may, in his/her sole and absolute discretion approve or deny such request. Any such decision shall be binding on Tenant. Without limiting the generality of this Section 3.1 or any of the requirements set forth on Exhibit B, Tenant shall not operate any Facility under any name or brand, other than a name or brand specifically permitted or required herein, or as otherwise approved by Director. Without limiting Section 5 [Assignment or Subletting], Tenant shall not, without the prior consent of Director, engage a third-party operator to conduct the Permitted Use or otherwise operate on the Premises, except for the provision of food and beverage services, cleaning, hosting and computer/internet services.

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 in accordance with the requirements set forth on Exhibit B relating to, among other things, merchandise 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) carry a wide-range stock of merchandise 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 Support Space - Left blank by agreement of the parties.

3.5 Hours of Operation. During the Operating Term, 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, provided that Tenant shall not be required to operate during periods of alterations or renovations to the Premises approved by Landlord in accordance with the provisions of this Lease governing Tenant improvements, construction and alterations, or other temporary closures to accommodate Tenant's legitimate business needs (such as conducting inventory), of which Landlord shall receive at least ten days prior notice. Director or his/her representative may, from time to time, change such required hours of operation, in which event, Tenant will remain open during such revised hours. Similarly, Tenant may, from time to time, request to revise its hours of operation. Such change must be approved by Director or his/her representative, in writing, prior to its occurrence. Tenant may not, at any time, vacate or abandon the Premises.

3.6 Prices. Tenant will be required to submit, on an annual basis or upon request, a pricing survey of items comprising the Permitted Use showing the same or comparable to prices found in Tenant's other Airport locations, if any. Should any variance in prices on specific items be deemed too great, the Director will have the right to require a price adjustment on the specified items.

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 its lobby or foyer area, on the departure level, and the vertical circulation elements exclusively serving the Premises presentable and clean 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 merchandise, 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 merchandise, 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 of 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, (except that the provision of i-pads or similar electronic equipment to lounge guests for entertainment purposes and the provision of a childrens' play area shall be permitted), newspaper racks, pay telephones, or other coin, token, credit card-operated devices; (provided that Tenant shall be permitted to accept and process American Express card payments within the Premises) or (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; (j) engage in any direct, person to person solicitation 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 and any Tenant Entity's use of the Premises and operations therein, to comply at all times with all Laws (as defined below). 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 (i) installed by Tenant or Tenant Entity, or (ii) necessitated by Tenant's Alterations or by any act or omission of Tenant or any Tenant Entity. As used herein, the term "**Laws**" shall mean all present and future laws, ordinances, rules, judgments, decrees, injunctions, regulations, permits, authorizations, orders and requirements, to the extent applicable to Tenant or the Premises or any portion of any of them whether or not in the contemplation of the parties, including, without limitation, all consents or approvals required to be obtained from, and all rules and regulations of, and all building and zoning laws of, all federal, state, county and municipal governments, the departments, bureaus, agencies or commissions thereof, authorities, board of officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions, having or acquiring jurisdiction of the Site or any portion thereof, including the Occupational Safety and Health Act and all other applicable laws relating to workplace safety or toxic materials, substances or wastes, Title XV (commencing with Section 3082) of the California Civil Code relating to works of improvement and all other applicable laws relating to construction projects, the provisions of the American with Disabilities Act, 42 U.S.C. Section 12101 et. seq. and any governmental regulations with respect thereto (the "**ADA**") (including, without limitation, the requirements under the ADA for the purposes of "public accommodations", as that term is used in the ADA), Title 24 of the California Administrative Code, all Environmental Laws, the Airport Rules, the Tenant Improvement Guide (including any design criteria) as the same may be amended from time to time (the "**TI Guide**"), and the requirements referenced in Section 19 [City and Other Governmental Provisions] hereof.

4. RENT

4.1 Definitions. Left blank by agreement of the parties.

4.2 Rent. Tenant shall pay, as annual rent for the Premises, the product of the number of square feet comprising the Premises and the rate in effect and referred to as Category II – VIP and Club Lounge Terminal Area Rental in the annually published Airport Rates and Charges (a copy of which shall be provided to Tenant a reasonable period, but not less than thirty (30) days, before any increases take effect), 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 rent (in amount equal to one-twelfth (1/12) of the rent amount established in the prior paragraph) to the City's Rent Payment Address, or at such other place as City may from time to time designate in writing.

(b) All Rent shall be paid in lawful money of the United States, free from all claims, demands, setoffs, or counterclaims of any kind, other than rent credits expressly permitted pursuant to this Lease.

(c) 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.

(d) Tenant shall not be required to pay any Percentage Rent.

4.3 Adjustments to the Minimum Annual Guarantee. Left blank by agreement of the parties.

4.4 Construction Period Operations. Left blank by agreement of the parties.

4.5 Rent During Construction. Left blank by agreement of the parties.

4.6 Sales Reports. On or before the twentieth (20th) calendar day of each month after the first month during which Tenant commences operations in the Premises, Tenant shall submit to City a report (the "**Sales Report**") showing all gross revenues achieved with respect to the prior month, for fees paid for entry into the common use club facility and goods, wares and merchandise sold and services, except Member Services as described in Exhibit B, to be performed by Tenant in the operation of the common use club facility.

4.7 Annual Certification of Sales and Adjustment. Left blank by agreement of the parties.

4.8 Cash Register Requirements. Left blank by agreement of the parties.

4.9 Books and Records; Audit Rights. Left blank by agreement of the parties.

4.10 Other Reports and Submissions. Tenant shall furnish City with such other financial or statistical reports as Director or his/her representative 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.

4.11 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.

4.12 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 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.

4.13 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.

4.14 Severe Decline in Enplanements. Left blank by agreement of the parties.

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 sole and absolute 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. Notwithstanding or limiting the foregoing, the City will allow a Tenant, including an individual or entity with any level of ownership in an Airport tenancy, to hold a maximum of eight (8) retail or food and beverage, or a combination therein, leases at the Airport at any given time. This policy does not

included subleases. Any transfer made without the City's consent shall constitute a default hereunder and shall be voidable at the 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 twenty-five percent (25%) or more of the partnership, or the dissolution of the partnership, or the sale or transfer of at least twenty-five percent (25%) 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 twenty-five percent (25%) 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 twenty-five percent (25%) 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 absolute and sole discretion; (b) Every sublease must be on a Standard Sublease Agreement form approved by Director, and the actual sublease must be approved by Director; (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 Excess Rent. City shall receive fifty percent (50%) of all Excess Rent payable in connection with any Transfer. "**Excess Rent**" means the excess of (a) all consideration received by

Tenant from a Transfer over (b) Rent payable under this Lease after deducting reasonable tenant improvements paid for by Tenant, reasonable attorneys' fees and any other reasonable out-of-pocket costs paid by Tenant as a result of the Transfer (but specifically excluding any Rent paid to City while the Premises is vacant).

5.6 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.

5.7 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 and any applicable rules and regulations of the Internal Revenue Service and the Securities and Exchange Commission in connection with any tax-exempt Airport revenue bonds financing the property leased to Tenant hereunder. Tenant agrees to make an irrevocable election not to claim depreciation or an investment credit with respect to any property leased hereunder.

6.2 Other Liens. Tenant shall not permit or suffer any liens to be imposed upon the 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. Within ninety (90) days after substantial completion of Tenant's Work, Tenant must provide to City an electronic AUTOCAD file and a hard copy set of as-built drawings and an affidavit, signed under penalty of perjury by both the Tenant and the Tenant's general contractor, architect or construction manager, stating the hard construction costs paid by Tenant to complete Tenant's Work, together with copies of paid invoices and lien waivers substantiating the costs stated in the affidavit. Such "hard construction costs," which must equal or exceed the Minimum Investment Amount, may include architectural and engineering fees, provided the credit for such costs against the Minimum Investment Amount shall not exceed fifteen percent (15%) of the Minimum Investment Amount. The minimum investment may not include financial costs, interest, inventory, pre-opening expenses, inter-company charges related to construction, business interruption, overhead, or debt service on any construction loan, or any charges paid by Tenant to an affiliate.

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. 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, 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 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 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 Full Rent Commencement Date (the "**Mid-Term Refurbishment Date**"). On or before the date that is thirty (30) days before the Mid-Term Refurbishment Date, Tenant shall give notice to Director of its intended plan with respect to such mid-term refurbishment requirements. All such mid-term refurbishments will be subject to the requirements of this Lease, including Director's approval rights under this Section 7. Tenant shall complete all such refurbishments on or before the date that is one (1) year after the Mid-Term Refurbishment Date.

(b) The Airport Director shall be authorized to waive, reduce or delay such requirement provided Director is satisfied that Tenant has developed and shall implement a maintenance program necessary or appropriate to keep the facilities in good condition throughout the term of the Lease.

7.8 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 Domestic and International 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 and all Losses which arise from the actions taken pursuant to this Section 7.8.

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 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. Further, Tenant shall pay to City when invoices, the Airport Communication Infrastructure Charge, as the same may be modified from time to time. 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. EXCEPT AS EXPRESSLY PROVIDED TO THE CONTRARY HEREIN, 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 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. The parties acknowledge and agree that Tenant's obligations under this Section are a material part of the bargained-for consideration under this Lease. Tenant's compliance obligations shall include, without limitation, the obligation to make substantial or structural repairs and alterations to the Premises (including the Initial Improvements), regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term hereof, the relative benefit of the repairs to Tenant or City, the degree to which curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the parties contemplated the particular requirement involved, or the relationship between the requirement involved and Tenant's particular use of the Premises. No occurrence or situation arising during the Term, nor any present or future requirement, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant of its obligations hereunder, nor give Tenant any right to terminate this Lease in whole or in part or to otherwise seek redress against City. Tenant waives any rights now or hereafter conferred upon it by any existing or future requirement to terminate this Lease, to receive any abatement, diminution, reduction or suspension of payment of Rent, or to compel City to make any repairs to comply with any such requirement, on account of any such occurrence or situation.

9.3 Tenant's Pest Management Obligations. Tenant shall, at all times during the Term of the Lease and at Tenant's sole cost and expense, keep the Premises and every part thereof in clean and sanitary conditions, including having a pest control program in place in accordance to the Airport's standards. Tenant shall hire a licensed pest control company or may contract with the Airport to provide these services. Tenant and the pest control company must adhere to the following set of standards in accordance to the City and County of San Francisco (CCSF) Environment Code, Chapter 3, including but not limited to the following:

- (a) Using pesticides on the CCSF allowed list only when application is made on City property i.e. SFO.
- (b) Any pesticide exemption must be granted by the San Francisco Department of Environment before using non-approved pesticides.
- (c) All posting requirements regarding pesticide application must be adhered to prior to use.
- (d) Pesticide use reports shall be made to Airport IPM (Integrated Pest Management) staff by the 10th of the month following application.
- (e) Tenant must provide Airport the name of the pest control company providing service within thirty (30) days from the effective date of the service contract.

10. SIGNS AND ADVERTISING

10.1 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 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, provided, however, that Tenant shall always be entitled to maintain signage containing its then prototypical

corporate lettering and logo. Without express written consent of Director, Tenant shall not display any advertising, promotional, or informational pamphlets, circulars, brochures or similar materials.

10.2 Prohibition of Tobacco Advertising. Tenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on the Premises. This advertising prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of cigarettes and tobacco products, or (ii) encourage people not to smoke or to stop smoking.

10.3 Prohibition of Alcoholic Beverage Advertising. Left blank by agreement of the parties.

11. PROMOTIONAL PROGRAM

11.1 Promotional Program. City, at City's election, may conduct, or cause to be conducted, advertising, promotional and public relations program for the general purpose of promoting the name and identity of the Airport and the concession and customer service businesses 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 at the same rate as it is increased for all concession tenants paying a Promotional Charge.

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 Immediate Obligation to Defend. Tenant specifically acknowledges that it has an immediate and independent obligation to defend City or the City Entity from any claim which is actually or potentially within the scope of the indemnity provision of this Section 12 or any other indemnity provision under this Lease, even if such allegation is or may be groundless, fraudulent or false, and such obligation arises at the time such claim is tendered to Tenant and continues at all times thereafter.

12.5 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.

12.6 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) Commercial 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) Commercial 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 all causes of loss-special 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.

12.7 Form of Policies. All insurance required by Tenant hereunder shall be pursuant to policies in form and substance and issued by companies reasonably 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 provided such insurance is reasonably available in the commercial insurance marketplace. Without limiting the generality of the foregoing, all Commercial General Liability Insurance, and Commercial Automobile Liability Insurance, policies shall be endorsed to provide the following:

(a) Include 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**") for claims arising out of this Lease for which Tenant is responsible;

(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 for which Tenant is responsible, and that insurance-, with the exception of the limits, applies separately to each insured against whom claim is made or suit is brought.

(c) That Tenant, Tenant's insurance company or its agent shall use commercially reasonable efforts to give thirty (30) days prior written notice to City of cancellation, delivered to City at City's Insurance/Deposit Notice Address, unless the policy to be cancelled will be replaced by another policy that meets the requirements of this Lease prior to the cancellation date.

12.8 Delivery of Policies or Certificates. Within five (5) days after Director's request, and in any event on or before the Commencement Date, Tenant shall provide to City copies of its insurance policies or certificates thereof evidencing the above insurance, at City's Insurance/ Deposit Notice Address.

12.9 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 the date specified by the Director, Tenant will deliver to Director a security deposit (the "**Deposit**") in the Deposit Amount. Such Deposit shall be in the form of (a) a surety bond payable to City, naming City as obligee, in the form attached as Exhibit C-1, and otherwise in form satisfactory to City's City Attorney, and issued by a surety company satisfactory to Director, or a (b) letter of credit naming City as beneficiary, in the form attached as Exhibit C-2, and otherwise in form satisfactory to City's City Attorney, issued by a bank satisfactory to Director. Notwithstanding the foregoing, as may be provided in the Airport Commission Policy on Concession Deposits (Resolution No. 04-0153, August 3, 2004) as the same may be amended from time to time, Tenant shall be permitted to submit as the Deposit alternative forms of deposit as specified therein. Such Deposit shall be renewed annually and increased annually such that at all times, the Deposit is equal to one-quarter (1/4) of the then current annual Rent 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. For Deposits in the form of a bond or letter of credit, 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 Maintenance of Deposit. Tenant shall cause the Deposit to be increased from time to time such that at all times the Deposit is equal to one-quarter (1/4) of the then current annual Rent all at Tenant's cost. Tenant shall cause the bond or letter of credit to be kept in full force and effect during the Term and any holdover period to ensure the faithful performance by Tenant of all covenants, terms, and conditions of this Lease, including payment of Rent. If and to the extent City accepts a Deposit which has an expiration date or cancellation/termination provision, 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 or to cancel or terminate said bond or letter of credit. Tenant shall cause such bond or letter of credit to be renewed, extended, or replaced, at Tenant's sole cost, at least thirty (30) days before the expiration date or cancellation date of the bond or letter of credit, with another bond or letter of credit that complies with the requirements herein. 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. Tenant shall cause all notices to be given to City under this Section 13 to be given to City at City's Insurance/Deposit Notice Address.

13.3 Alternative Forms of Deposit. Notwithstanding the foregoing, if and to the extent alternative form(s) of Deposit are permitted pursuant to the Airport Bid Deposit and Performance Guarantee Policy, as authorized by Commission Resolution No. 04-0153, as such Policy may be amended from time to time, then Tenant may provide such alternative forms of Deposit. Tenant shall cause such Deposit to be increased from time to time such that at all times the Deposit is equal to one-quarter (1/4) of the then current annual Rent, all at Tenant's cost.

13.4 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 request therefore, 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. City shall not be required to keep the Deposit or any proceeds thereof, as applicable, separate from its general accounts. Any proceeds of the Deposit is and will remain the sole and separate property of City until actually repaid to Tenant, said sum not being earned by Tenant until all provisions precedent for its payment to Tenant have been fulfilled. If Tenant performs all of Tenant's obligations hereunder, the Deposit, or the proceeds thereof, 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) within sixty (60) days after 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 or any proceeds thereof.

13.5 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.

14. DAMAGE OR DESTRUCTION

14.1 Partial Destruction of 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, at its own cost, 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, maintain, increase, or replace, the Deposit as required herein; 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.

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;
- (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	\$100
Violation of Use Section	3	\$300
Failure to open Facility by Rent Commencement Date	2.3	\$500
Failure to cause operations or Premises to comply with Laws	3.13	\$100
Failure to submit required documents and reports, including Sales Reports	4.4, 4.5, 4.6	\$100
Construction or Alterations without City approval	7	\$100
Failure to make required repairs	9	\$300

<u>Violation</u>	<u>Section</u>	<u>Fine</u>
Unauthorized advertising or signage	10	\$100
Failure to obtain/maintain insurance	12	\$300
Failure to obtain or maintain Deposit	13	\$300
Failure to abide by any other term in this Lease		\$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.

(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.

(a) 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.

(b) Tenant shall handle Hazardous Materials discovered or introduced on the Premises during the Term in compliance with all Environmental Laws and the Airport’s TI Guide. Tenant shall protect its employees and the general public in accordance with all Environmental Laws.

(c) In the event Tenant becomes aware of the actual or possible Release of Hazardous Materials on the Premises or elsewhere on the Airport, Tenant shall promptly give notice of the same to City. Without limiting the generality of the foregoing, Tenant shall give notice to City of any of the

following: (i) notice of a Release of Hazardous Materials given by Tenant, any subtenant, or other occupant to any governmental or regulatory agency; (ii) notice of a violation or potential or alleged violation of any Environmental Law received by Tenant, any subtenant, other occupant on the Premises from any governmental or regulatory agency; (iii) any inquiry, investigation, enforcement, cleanup, removal, other action that is instituted or threatened by a government or regulatory agency; (iv) any claim that is instituted or threatened by a third party against Tenant, any subtenant, or other occupant on the Premises that relates to Hazardous Materials; and (v) any notice of termination, expiration, or material amendment to any environmental operating permit or license necessary for the use of the Premises.

(d) At Director's request, Tenant shall provide information necessary for City to confirm that Tenant is complying with the foregoing covenants.

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. Such investigation may include environmental sampling and equipment and facility testing, including the testing of secondary contamination. No such testing or investigation shall limit Tenant's obligations hereunder or constitute a release of Tenant's obligations therefor. 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, the Airport Rules, 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. Without limiting the foregoing provision, City reserves the right to require Tenant to, and in such event Tenant shall, at Tenant's sole cost and expense, decontaminate the Premises and remove any Hazardous Materials discovered during the Term, except those Hazardous Materials which constitute Pre-Existing Conditions. Such removal shall be performed to the Director's reasonable satisfaction.

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’s 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 annual Rent 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.

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. The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environmental Code, Tenant shall not provide any items to the construction of Alterations, or otherwise in the performance of this Lease which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Tenant fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environmental Code, Tenant shall be liable for liquidated damages for each violation in any amount equal to Tenant's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

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.

(a) 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.*"

(b) (i) This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR part 23. (ii) The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR part 23 that it enters and cause those businesses to similarly include the statements in the further agreements.

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 nondiscrimination 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 Contract Monitoring Division of the City and County of San Francisco (the "CMD") the Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits form (Form HRC-12B-101), with supporting documentation, and (ii) the CMD approved such form.

(e) The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to nondiscrimination 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. Through its execution of this Agreement, Tenant acknowledges that it is familiar with the provisions of section 15.103 of City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and sections 87100 et seq and sections 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provision and agrees that if it becomes aware of any such fact during the term of this Agreement it shall immediately notify City.

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

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 agree 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 S.F. Administrative Code Section 67.24(e), contractors' bids, responses to RFPs and all other records of communications between the City and persons or firms seeking contracts shall 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 or other benefits until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

19.18 Pesticide Prohibition. Tenant shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the "**Pesticide Ordinance**") which (i) prohibit the use

of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage and (iii) require Tenant to submit to the Airport an integrated pest management (“IPM”) plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the terms of this Lease, (b) describes the steps Tenant will take to meet the City’s IPM Policy described in Section 300 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 Sections 303(a) and 303(b) of the Pesticide Ordinance.

19.19 First Source Hiring Ordinance. Tenant shall comply with the San Francisco First Source Hiring Ordinance (Board of Supervisors Ordinance No. 264-98, as amended by Board of Supervisors Ordinance Nos. 32-09 and 149-09) 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.

19.20 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.

19.21 Requiring Minimum Compensation.

(a) 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.sfgov.org/olse/mco. A partial listing of some of Tenant's obligations under the MCO is set forth in this Section. Tenant is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

(b) The MCO requires Tenant to pay Tenant's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Tenant is obligated to keep informed of the then-current requirements. Any subcontract entered into by Tenant shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those

set forth in this Section. It is Tenant's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Tenant.

(c) Tenant shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

(d) Tenant shall maintain employee and payroll records as required by the MCO. If Tenant fails to do so, it shall be presumed that the Tenant paid no more than the minimum wage required under State law.

(e) The City is authorized to inspect Tenant's premises and conduct interviews with employees and conduct audits of Tenants.

(f) Tenant's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Tenant fails to comply with these requirements. Tenant agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Tenant's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

(g) Tenant understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. 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 shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

(h) 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.

(i) 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, but Tenant later enters Tenant 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 in the fiscal year.

19.22 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.

19.23 Requiring Health Benefits for Covered Employees. 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, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at www.sfgov.org/olse. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

(a) For each Covered Employee, Tenant shall provide the appropriate 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 the Tenant is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

(c) Tenant's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Tenant if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, 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, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

(d) Any Subcontract entered into by Tenant shall require the Subcontractor 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 City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Tenant shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Tenant based on the Subcontractor's failure to comply, provided that City has first provided Tenant with notice and an opportunity to obtain a cure of the violation.

(e) Tenant shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Tenant's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in 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 intent of the HCAO.

(g) Tenant shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.

(h) Tenant shall keep itself informed of the current requirements of the HCAO.

(i) Tenant shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

(j) Tenant shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

(k) Tenant shall allow City to inspect Tenant's premises and have access to Tenant's employees in order to monitor and determine compliance with HCAO.

(l) City may conduct random audits of Tenant to ascertain its compliance with HCAO. Tenant agrees to cooperate with City when it conducts such audits.

(m) If Tenant is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Tenant later enters into an agreement or agreements that cause Tenant's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Tenant and the City to be equal to or greater than \$75,000 in the fiscal year.

19.24 Notification of Limitations on Contributions. San Francisco Campaign and Governmental Conduct Code (the "**Conduct Code**") Section 1.126 prohibits any person who contracts with the City for selling or leasing any land or building to or from the City whenever such transaction would require the approval by a City elective officer or the board on which that City elective officer serves, from making a contribution to such an officer, or candidate for such an office, or committee controlled by such officer or candidate at any time from the commencement of negotiations for such contract until the termination of negotiations for such contract or three months has elapsed from the date the contract is approved by the City elective officer, or the board on which that City elective officer serves. San Francisco Ethics Commission Regulation 1.126-1 provides that negotiations are commenced when a prospective tenant first communicates with a City officer or employee about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective tenant or a City officer or employee. Negotiations are completed when a lease is finalized and signed by the City and the Tenant. Negotiations are terminated when the City and/or the prospective tenant end the negotiation process before a final decision is made to award the contract. Through its execution of this Agreement, Tenant acknowledges that it is familiar with the provisions of Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and sections 87100 et seq and sections 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions and agrees that if it becomes aware of any such fact during the term of this Agreement it shall immediately notify City.

19.25 Food Service Waste Reduction Ordinance. San Francisco's Food Service Waste Reduction Ordinance, Ordinance No. 295-06, SF Environment Code Chapter 16 (Ordinance) requires restaurants, retail food vendors, City departments, City contractors and City lessees to use biodegradable/compostable or recyclable disposable food service ware when selling or distributing prepared foods, unless there is no "affordable" alternative. The Ordinance also prohibits such businesses and the City from using disposable food service ware made from polystyrene (Styrofoam™). Violation of the Ordinance may result in contractual damages, a criminal fine, administrative penalty, or other civil enforcement action.

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, nor 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 and the Charter of the City and County of San Francisco.

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. Without limiting the generality of the foregoing, Tenant shall also pay all costs and expenses incurred by City related to City's participation in or monitoring of any Tenant bankruptcy, insolvency, or similar proceeding involving creditors' rights generally and any proceeding ancillary thereto. This Section shall survive expiration or earlier termination of this Lease.

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 re-measure 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, including possession of the Premises. 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. In such event, if City shall receive any such

partial payment after it shall have commenced an action against Tenant, City may amend its action as contemplated by Section 1161.1(c) of the California Civil Code to reflect any such partial payment, and no such payment shall limit any of City's rights to continue the action.

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, 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 Options Personal. If and to the extent Tenant has an option to extend the Term of this Lease, such option is personal to the original Tenant and may be exercised only by the original Tenant while occupying the Premises who does so without the intent of thereafter making any Transfer, and may not be exercised by or assigned, voluntarily or involuntarily, by or to any person or entity other than Tenant, unless the foregoing prohibition is waived by Director. The options, if any, herein granted to Tenant are not assignable separate and apart from this Lease, nor may any option be separated from this Lease in any manner, either by reservation or otherwise.

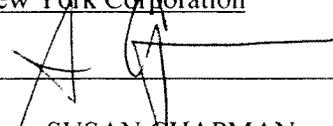
20.25 Counterparts. This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

///

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

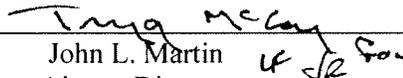
TENANT: American Express Travel Related Services Company, Inc. ("TRS")
[signatories to also initial Summary] a New York Corporation

By: 

Name: SUSAN CHAPMAN
(type or print)

Title: SVP, Global Real Estate & Workplace Enablement

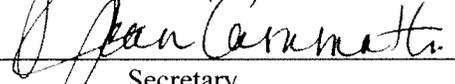
CITY: CITY AND COUNTY OF SAN FRANCISCO,
[signatories to also initial Summary] a municipal corporation,
acting by and through its Airport Commission


John L. Martin 4 JR
Airport Director

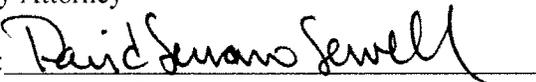
AUTHORIZED BY
AIRPORT COMMISSION

Resolution No.: 13-0006

Adopted: Jan. 15, 2013

Attest: 
Secretary
Airport Commission

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

By: 
Deputy City Attorney

X:\TENANTS\AMEX- TRS\Agreements\Working Docs\Amex Lease_Final 5-29-13.doc

LIST OF EXHIBITS

EXHIBIT A – Description of Premises

EXHIBIT B – Use and Operational Requirements

EXHIBIT C-1 – Form of Performance Bond

EXHIBIT C-2 – Form of Letter of Credit

EXHIBIT D – City Work

**EXHIBIT A
PREMISES**

A total of one (1) facility, comprising approximately 8,171 square feet of club space located in Terminal 3 Boarding Area F at San Francisco International Airport, as described on the attached drawings, broken down as follows:

<u>Location No./Description</u>	<u>Approx. Square Footage</u>
The Common Use Club:	
• A lobby on Level 2 (space T3.2.374).	923
• The Lounge on Level 3 (space T3.3.374).	<u>7,248</u>
Approximately total square feet of Centurion Lounge	8,171

EXHIBIT A PREMISES

Lobby on Level 2 – Approximately 923 square feet (Space T3.2.374). This exhibit can be amended to accurately reflect the remeasurement by Airport staff, but shall not exceed 8,700 square feet.

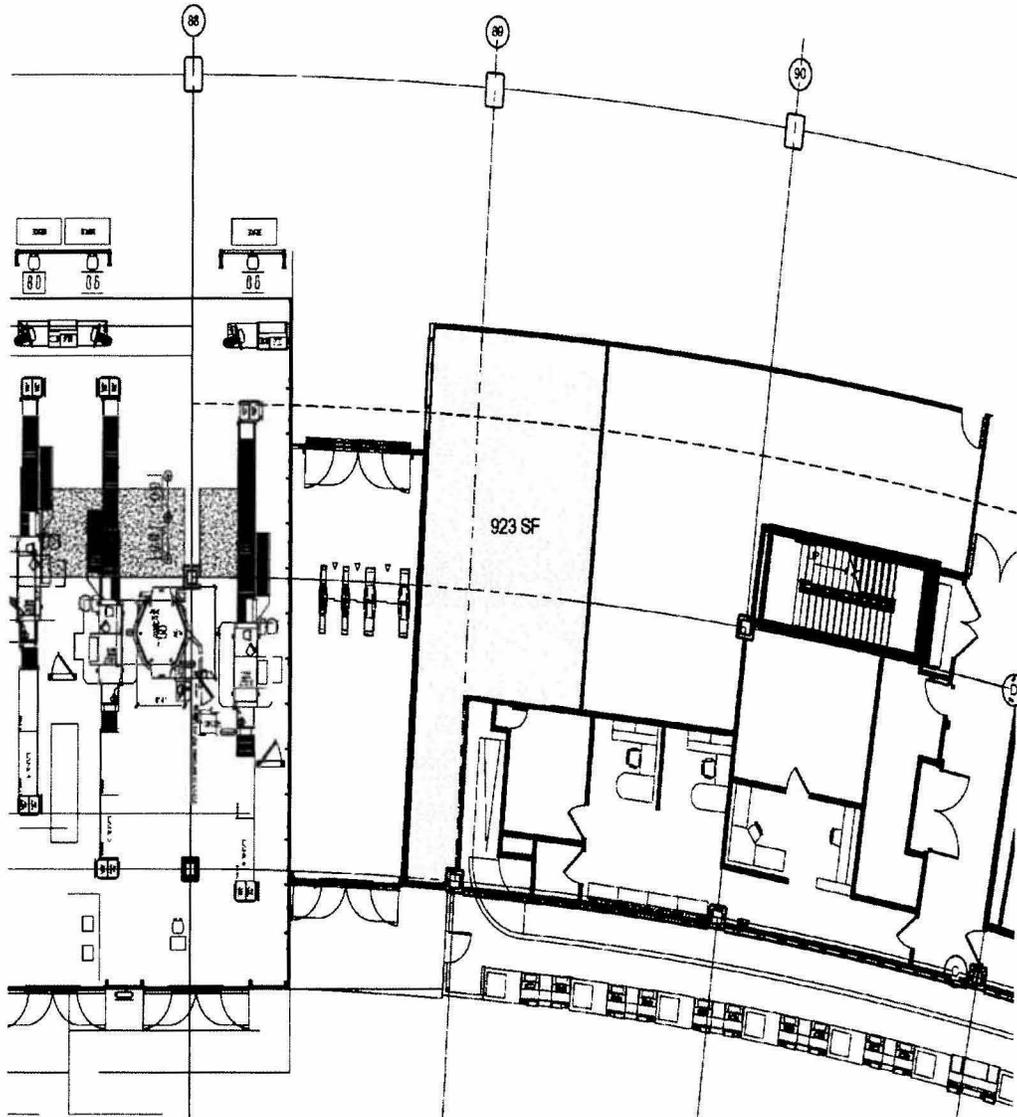
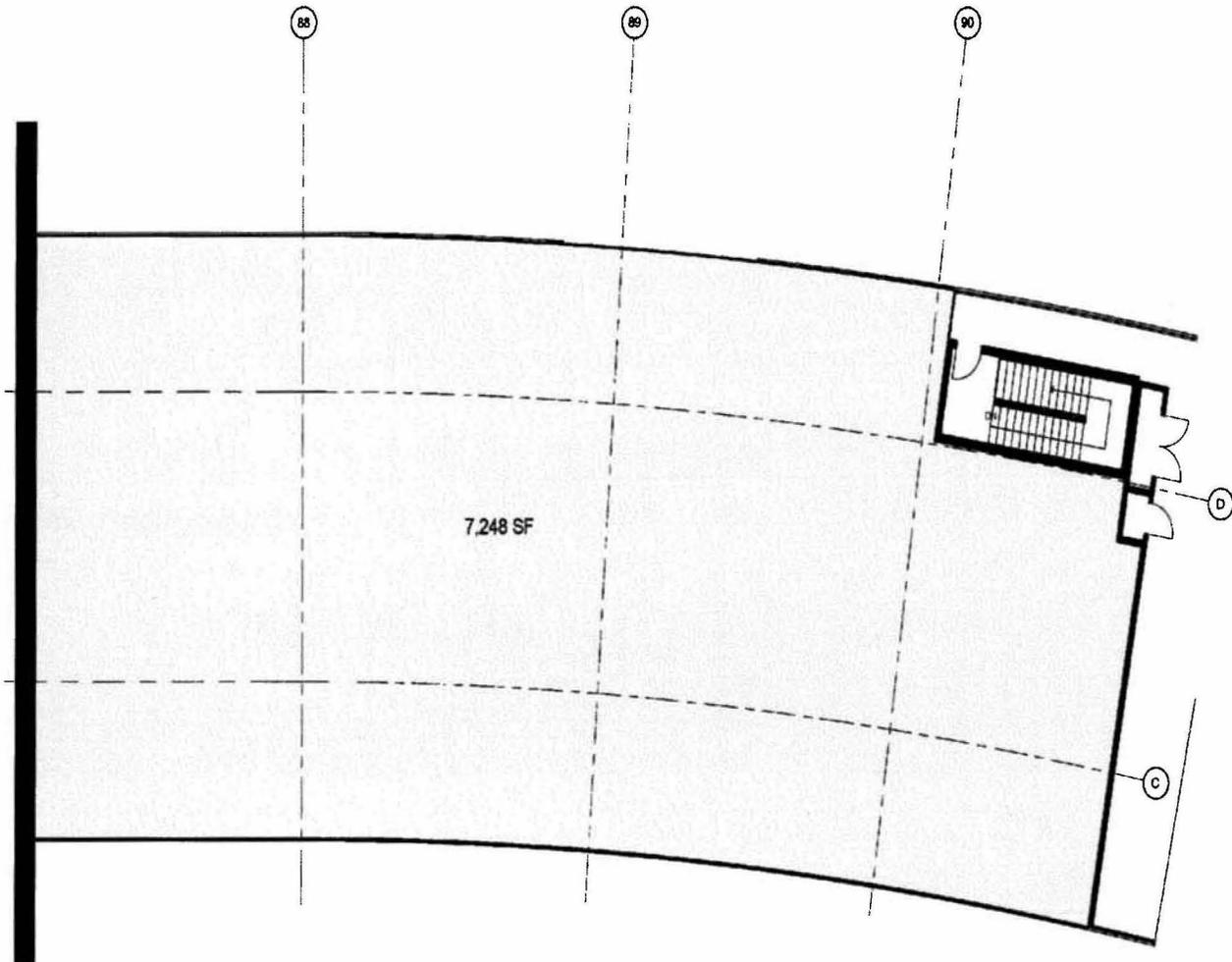


EXHIBIT A PREMISES

Lounge on Level 3 - Approximately 7,248 square feet (Space T3.3.374). This exhibit can be amended to accurately reflect the remeasurement by Airport staff, but shall not exceed 8,700 square feet.



**EXHIBIT B
USE AND OPERATIONAL REQUIREMENTS**

In the event of any lease interpretation issue this exhibit shall clarify, and represent the parties understanding, of the tenant's permitted use and activities.

- 1) **GENERAL REQUIREMENTS:** All merchandise shall be sold on a non-exclusive basis, and Airport reserves the right to sell and to permit other Airport tenants to sell merchandise. All such items must be sold at retail. Tenant may not display, sell, rent, or otherwise offer any merchandise or other product without Director's written prior consent. Tenant may display and distribute advertising, promotional or informational pamphlets, circulars, brochures and similar materials within the Premises and, so long as such materials are not visible (visibility shall be determined by the Airport Director or his designee in his sole and absolute discretion) to the traveling public from outside the Premises, Tenant shall not be required to submit such materials for prior consent of the Director. If the Airport Director determines materials are visible to the traveling public, then Tenant shall remove the visible materials within forty-eight hours of verbal notice by Airport staff. Tenant shall comply with all design Airport requirements within Lease, Airport Rules & Regulations, and by the Airport Design Review Committee.

- 2) **REQUIRED/OPTIONAL MERCHANDISE:** In the event Director permits any product or service to be sold or offered that is not listed below, or otherwise permits any other change in the Permitted Use, this Exhibit shall be deemed amended without need for a formal amendment of this Lease. Tenant's proposal dated December 5, 2012, including all representations, warranties and covenants, set forth therein is hereby incorporated herein by reference. If there is any conflict or inconsistency between the terms of this Lease and such proposal, the term of this Lease shall prevail.

Required

Tenant shall provide the following services, on a nonexclusive basis:

- VIP Club Room
- Living room seating areas
- Food and beverage offerings, including alcoholic beverages.
- Restrooms
- Member Services, including, without limitation:¹
 - Destination travel information
 - Emergency Card replacement assistance
 - Concierge services
 - American Express travel services
 - General Card account servicing
- Showers
- Luggage Storage
- Wi-Fi enabled work area
- Business Center
- Tranquility Area

¹ The proposed service categories list that was included at page 33 of Tenant's proposal dated December 5, 2012 is attached hereto as Exhibit 1 to Exhibit B sets forth many other services and amenities that are intended to be furnished in the Lounge and are deemed to be included within the Permitted Use.

- Children's Room

Optional

Tenant, at its own option, may display and sell, on a nonexclusive basis:

- Spa services such as massage, manicures, pedicures, and other like personal grooming services

3) **SUSTAINABLE FOOD POLICY:** In compliance with Executive Directive 09-03 issued by the Office of the Mayor on July 9, 2009, Tenant is required to provide good, clean, and fair food which has been responsibly sourced and deliciously prepared. The following must be adhered to, as appropriate and as practical, throughout the term of the Lease.

1. Displays that promote healthy eating and good environmental stewardship
2. Visible food preparation areas
3. Portion sizes which support good health
4. Portion-appropriate menu items for children
5. Low- or non-phosphate detergents
6. Compostable, bio-resin bottles or paper boxes for all bottled water sales
7. Un-bleached paper products and compostable To Go containers and utensils
8. Organic agricultural products from the Northern California region
9. Agricultural products that have not been genetically modified
10. Organic or all-natural meat from animals treated humanely and without hormones or antibiotics
11. rbST-free cheese, milk, yogurt and butter
12. Cage-free, antibiotic-free eggs
13. Sustainable seafood
14. Fairly Traded Organic Coffee
15. Products free of hydrogenated oils
16. Products free of artificial colors, flavors and additives

4) **PROHIBITED MERCHANDISE:** 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) Freshly prepared popcorn or peanuts in the shell intended for immediate consumption.
- (d) Any and all sales or rental of telecommunications equipment.
- (e) Any and all sales of phone cards.
- (f) Any retail sales of food, beverage or merchandise.

5) OTHER OPERATIONAL REQUIREMENTS:

- The Centurion Lounge is intended as a service offering and benefit to the American Express Centurion Card Members and, as such, the food and beverage and services will be provided to travelers at no cost, provided that, with the prior written consent of the Director, Amex may charge for premium drinks.
- Other American Express Card Members may be allowed to purchase a day pass to use the facility and additional fees may be added for certain services or amenities.
- Tenant may engage a third-party operator for cleaning, hosting and computer/internet services within the Premises.

EXHIBIT 1 TO EXHIBIT B

• **Proposed service category list and prices**

The airport lounge is a location that travelers pass through en route to somewhere else, but The Centurion Lounge will give guests the sense that they have arrived at a destination — similar to a boutique hotel or restaurant with special amenities. Whether guests only have a few minutes to spend with us, or several hours, they will find that the lounge offers business and hospitality services to ensure that their time is well spent.

Beyond delivering simply extraordinary service, the lounge will provide guests with a range of hospitality offerings tailored to their personal and professional needs, including:

BUSINESS SERVICES	MEMBER SERVICES	FOOD AND BEVERAGE
<ul style="list-style-type: none">• Conference room with video conferencing• Stationery• Computer stations• Dedicated work space• Complimentary high-speed Internet access• Printer/fax/copier	<ul style="list-style-type: none">• Destination travel information• Emergency Card replacement assistance• Concierge services• American Express travel services• General Card account servicing	<ul style="list-style-type: none">• Extensive hot/cold buffet• Beverage service throughout lounge• Passed hors d'oeuvres• Local beers/wines and premium wine selections showcased behind glass• Full-service bar with premium liquors and signature cocktails• Events and ongoing relationships with well-known culinary figures
RELAXATION AND ENTERTAINMENT		
<ul style="list-style-type: none">• Tranquility room with lounge chairs and "water basin" feature• Curated art• American Express-sponsored events• Tablets with pre-loaded content	<ul style="list-style-type: none">• In-lounge Web site• Multiple outlets and USB ports• High-definition televisions• Headphones for Cardmember use	<ul style="list-style-type: none">• A wide range of magazines and newspapers (hard and digital)• Children's room with movies, video games and toys• Private shower rooms

The Centurion Lounge is intended as a service offering and benefit to our customers and, as such, the food and beverages and services will be provided to travelers at no cost.

EXHIBIT C-1
FORM OF PERFORMANCE BOND FOR AIRPORT LEASES

_____ (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 entered into one or more leases, permits, or agreements with the City and County of San Francisco, Airport Commission (collectively, the “**Agreements**”).

NOW, THEREFORE, the condition of this obligation is such that if the Principal shall perform all terms of the Agreements (which by reference are made a part hereof), including the payment of rent or fees, in accordance with the terms of such Agreements, 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 in person or by registered mail, overnight mail, overnight courier service, or other courier service sent to our offices at:
_____.

Any such call by Obligee shall include a statement signed by the Airport Director of the Airport Commission of the City and County of San Francisco, or his/her designee, to the effect that any of the following events has occurred or is continuing:

- a) Principal has defaulted under one or more of the Agreements; or
- b) Principal has become insolvent, or has taken the benefit of any present or future insolvency statute, or has made a general assignment for the benefit of creditors, or has filed 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 any state thereof, or any jurisdiction available to Principal, or has consented to the appointment of a receiver, trustee, or liquidator of any or substantially all of its property; or
- c) A petition under any of the federal bankruptcy laws or an action under any present or future insolvency law or statute has been filed against Principal; or
- d) This bond is cancelled, terminated, or not renewed, and City has not received an acceptable replacement letter of credit or bond at least thirty (30) days prior to the cancellation, termination, or expiration date.

We shall honor and pay on such call within ten (10) days after receipt.

We shall give you notice in writing by registered mail at least forty-five (45) days prior to the cancellation date, termination date or expiration date of this bond, if any is stated, of our intention to cancel, terminate, or non-renew this bond. In the event we fail to give such notice promptly, then this bond shall be deemed renewed for an additional one-year period.

Signed, sealed and dated this ___ day of _____, 20__.

Principal: By: _____

Title: _____

Seal: _____

Surety By: _____
Company:

Title: _____

Seal:

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

EXHIBIT C-2
FORM OF LETTER OF CREDIT FOR AIRPORT LEASES

Date _____

Irrevocable Letter of Credit No. _____

Airport Commission
City and County of San Francisco
Att'n: Deputy Director, Business & Finance
San Francisco International Airport
International Terminal, No. Shoulder Bldg., 5/F
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 _____ (“**Account Party**”), 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, or his/her designee, to the effect that any of the following events has occurred or is continuing:

- a) Account Party has defaulted under the one or more agreements with the City and County of San Francisco, acting by and through its Airport Commission at San Francisco International Airport; or
- b) Account Party has become insolvent, or has taken the benefit of any present or future insolvency statute, or has made a general assignment for the benefit of creditors, or has filed 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 any state thereof, or any jurisdiction available to Account Party, or has consented to the appointment of a receiver, trustee, or liquidator of any or substantially all of its property; or
- c) A petition under any of the federal bankruptcy laws or an action under any present or future insolvency law or statute has been filed against Account Party; or
- d) This letter of credit is cancelled or not renewed, and City has not received an acceptable replacement letter of credit or bond at least thirty (30) days prior to the cancellation or expiration date.

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 in person or by registered mail, overnight mail, overnight courier service, or other courier service sent to our offices at:

We shall give you notice in writing by registered mail at least forty-five (45) days prior to the cancellation date or expiration date of this letter of credit, if any is stated, of our intention to cancel or non-renew this letter of credit. In the event we fail to give such notice promptly, then this letter of credit shall be deemed renewed for an additional one-year period. Notwithstanding the foregoing, this letter of credit shall finally expire on _____, 20_.

Sincerely,

**EXHIBIT D
CITY WORK**

The following work items shall comprise the City Work and completion of the City Work shall be a pre-condition to the effective delivery of the Premises to Tenant in Deliverable Condition.

- (i) Demolition of an existing egress stairwell, infill of the prior stairwell space,
- (ii) Construction of a new egress stairwell to the east of the Premises,
- (iii) Vacation of existing office space,
- (iv) Relocation of one existing telecommunications closet within the Premises and
- (v) Demolition of the Premises that previously served the prior Burger King concession on level 2.

AIRPORT COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 20-0207

APPROVAL OF AMENDMENT NO. 2 TO THE TERMINAL 3 COMMON USE CLUB LEASE NO. 13-0006 WITH AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC.

- WHEREAS, on January 15, 2013, by Resolution No. 13-0006, the Commission awarded the Terminal 3 Common Use Club Lease No. 13-0006 (Lease) to American Express Travel Related Services Company, Inc. (Tenant), which operates the American Express Centurion Lounge (Lounge), for a term of 10 years currently expiring November 5, 2024; and
- WHEREAS, the Lounge has proven to be very successful and popular with travelers since commencing operations in 2014 in the Terminal 3 West area of the Airport (T3 West), and Airport staff is satisfied with Tenant as an operator; and
- WHEREAS, due to its success, the Lounge has had to turn away members and their guests when it is at maximum capacity, which occurs with frequency during peak travel times, due to a severe shortage of space; and
- WHEREAS, the Airport and Tenant have agreed that, in order to address this deficiency, improve the quality of service and the guest experience, the Lounge should be expanded to accommodate additional guests; and
- WHEREAS, Staff has identified a space adjacent to the current Lounge suitable for the expansion; and
- WHEREAS, due to the current pre-security location of this adjacent space and the necessity to maintain adequate flexibility in accommodating construction in the areas around the space arising from the capital improvement project in Terminal 3 West (T3 West Project), Staff has determined that the space is not otherwise currently marketable as a stand-alone concession space; and
- WHEREAS, Tenant has indicated its willingness to expand into the adjacent space and assume all construction costs for the reconfiguration and expansion of the Lounge facilities into such space, in consideration of the Airport agreeing to extend the term of the Lease by approximately seven years, which will allow for an appropriate capital investment amortization period for such costs; and
- WHEREAS, given the opportunity presented to have the space improved and rented by a proven lounge operator well in advance of the current Lease expiration date of November 5, 2024, Staff believes entering into this transaction is in the best interest of the City and the Airport; now, therefore, be it

AIRPORT COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 20-0207

RESOLVED, that this Commission hereby approves Amendment No. 2 to the Lease, which (1) increases the square footage of the Lounge premises to approximately 15,287 square feet, (2) establishes a combined Minimum Annual Guarantee amount of \$3,226,546 for the newly expanded premises, (3) increases the annual Promotional Charge to \$15,287 in proportion to the net increase in square footage of the premises, and (4) extends the term by seven years beyond its current expiration date of November 5, 2024, as set forth in the Director's Memorandum included with this Resolution; and, be it further

RESOLVED, that this Commission authorizes the Airport Director to enter into any further modifications to the Lease that the Airport Director determines are in the best interests of the City and County of San Francisco and that do not materially increase the obligations or liabilities of the City, provided such modifications shall only be made when necessary or advisable to effectuate the purposes of the Lease, Amendment No. 2, or this Resolution, and are in compliance with all applicable laws, including the Charter of the City and County of San Francisco; and, be it further

RESOLVED, that this Commission directs the Commission Secretary to forward Amendment No. 2 to the Board of Supervisors for approval pursuant to Section 9.118 of the Charter of the City and County of San Francisco.

Page 2 of 2

I hereby certify that the foregoing resolution was adopted by the Airport Commission
at its meeting of _____ **NOV 10 2020** _____



Secretary



San Francisco International Airport

MEMORANDUM

November 10, 2020

TO: AIRPORT COMMISSION
Hon. Larry Mazzola, President
Hon. Eleanor Johns, Vice President
Hon. Richard J. Guggenhime
Hon. Everett A. Hewlett, Jr.
Hon. Malcolm Yeung

20-0207

NOV 10 2020

FROM: Airport Director

SUBJECT: Approval of Amendment No. 2 to the Terminal 3 Common Use Club Lease No. 13-0006 with American Express Travel Related Services Company, Inc.

DIRECTOR'S RECOMMENDATION: (1) APPROVE AMENDMENT NO. 2 TO THE TERMINAL 3 COMMON USE CLUB LEASE NO. 13-0006 WITH AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC., AND (2) DIRECT THE COMMISSION SECRETARY TO REQUEST APPROVAL BY THE BOARD OF SUPERVISORS.

Executive Summary

American Express Travel Related Services Company, Inc. (Tenant) operates its Centurion Lounge (Lounge) in the post-security mezzanine level of Terminal 3 (T3 West). Since opening in November 2014, the Lounge has been very well received, but suffered from a severe shortage of space. Before the pandemic, guests were being turned away during normal operations because the Lounge was full.

To address this deficiency, improve the guest experience and increase revenue to the Airport, Staff recommends approval of Amendment No. 2 to the Lease (Amendment). The Amendment will (1) expand the premises into an adjacent, otherwise unmarketable space (Expansion Premises), (2) extend the term of the Lease by seven years, and (3) adjust the rent and promotional charge for the Expansion Premises. Upon Airport Commission approval, Staff will seek Board of Supervisors' approval of Amendment No. 2 under Section 9.118 of the Charter of the City and County of San Francisco.

Background

On January 15, 2013, by Resolution No. 13-0006, the Commission awarded the Terminal 3 Common Use Club Lease (Lease) to Tenant, with a base operating term of 10 years that expires on November 5, 2024. Tenant operates the location branded as a "Centurion Lounge," which is a premium line of lounges operated by Tenant at other large hub airports across the United States

THIS PRINT COVERS CALENDAR ITEM NO. 6

AIRPORT COMMISSION CITY AND COUNTY OF SAN FRANCISCO

LONDON N. BREED MAYOR LARRY MAZZOLA PRESIDENT ELEANOR JOHNS VICE PRESIDENT RICHARD J. GUGGENHIME EVERETT A. HEWLETT, JR. MALCOLM YEUNG IVAR C. SATERO AIRPORT DIRECTOR

and in select international locations. The Lounge is located in T3 West (as depicted on Attachment 1 to this Memorandum), the site of a capital improvement project (T3 West Project) that is presently suspended but likely to proceed before the Lease expires.

On October 6, 2020, by Resolution No. 20-0180, the Commission adopted the COVID-19 Emergency Rent Relief Program for Airport Concession Tenants, which included the Lounge and will be memorialized in Amendment No. 1 to the Lease. With the rapid decline of enplanements as a result of a global pandemic, the COVID-19 Emergency Rent Relief Program for Airport Concession Tenants authorized the waiver of certain rent and fees to encourage business recovery, employee rehiring, and continued operation of concessions at SFO.

The Lounge has proven to be very successful and popular with travelers since commencing operations in 2014, and the Airport is satisfied with Tenant as an operator. Although it is a membership lounge for premium American Express cardholders, the Lounge has had to turn away members and their guests when it is at maximum capacity, which occurs with frequency during peak travel times. Airport staff and Tenant have studied the operation of the Lounge in the last year and have determined that there is a severe shortage of space. In order to address this deficiency, improve the guest experience, and increase revenue to the Airport, Staff has been considering expansion options for the Lounge. The Lounge was closed from March 20 to October 11 of 2020 due to the COVID-19 pandemic and dramatically lower enplanement activity. However, the Lounge is now open, and both Airport and Tenant expect demand to return and there to be an increased sensitivity to crowding due to public health issues emphasized by the pandemic.

Staff has identified pre-security space adjacent to the Lounge currently used as offices for aviation support service providers and a couple of smaller concession operators under permits, all terminable upon 30 days' notice. Areas in and around this adjacent space will likely be impacted by the construction scheduled to take place in connection with the T3 West Project (although that project schedule is itself subject to change due to the impact of the COVID-19 pandemic on capital projects at SFO). Due to the current pre-security location of the ingress and egress of the adjacent space and the necessity to maintain adequate flexibility in accommodating construction in the areas around the space arising from the T3 West Project, the space is not currently marketable as a stand-alone concession space.

The adjacent space, however, is suitable for an expansion space for the Lounge. The Expansion Premises totals approximately 7,088 square feet. Adding the Expansion Premises to the Lounge will both remedy the guest experience problem caused by the acute shortage of space and allow the Airport to generate additional revenue from space that would otherwise lie dormant or generate minimal revenue given the T3 West Project construction activities. Tenant has indicated its willingness to expand into the Expansion Premises and assume all construction costs for such expansion, which are substantial. In order for Tenant to fully amortize such costs, Staff recommends extending the Lease through November 5, 2031.

This expansion will require an amendment to the Lease, which will provide for:

- (i) the addition of approximately 7,088 square feet;
- (ii) the extension of the current Lease term by seven years to allow for an appropriate capital investment amortization period; and

- (iii) an adjustment of the rent and promotional charge to reflect the Expansion Premises, all as further set forth below.

Given the significant time that the Expansion Premises would otherwise be unused or underused as a result of its pre-security location and the construction activities in and around the area contemplated by the T3 West Project, and the opportunity presented to have the space improved at no cost to the Airport and rented well in advance of the current expiration date of the Lease in November 2024, Staff believes entering into this transaction, including the extension of the Lease, is in the best interest of the City and the Airport. In addition, although the expansion of the Lounge was under discussion between the parties prior to the outbreak of the COVID-19 pandemic, Staff believes this transaction is even more beneficial to the City and the Airport at this time, given the anticipated lack of demand for concession space that is expected to persist for the next three to four years due to the pandemic, which is beyond the timeframe during which a replacement tenant for the lounge premises would otherwise need to be procured.

Proposal

Staff recommends entering into the Amendment, in accordance with the following terms and conditions:

1. **Premises** – The Lounge will increase from approximately 8,199 square feet (Existing Premises) to approximately 15,287 square feet (Revised Premises) by capturing the Expansion Premises.
2. **Base Rent and Annual Rent Adjustments**
 - a. Existing Premises – Until the Expansion Premises Rent Commencement Date (as defined below), the Base Rent for the Existing Premises will continue to be charged at \$255.21 per square foot per annum, as previously set according to Category II - VIP and Club Lounge Terminal Area Rental Rates of the current Lease and Use Agreement.
 - b. Expansion Premises – Base Rent for the Expansion Premises will be based upon a rate of \$160 per square foot per annum and will commence upon the earlier to occur of (i) 365 days from the delivery of the Expansion Premises to Tenant with all permits and approvals for construction in place for buildout; and (ii) the date upon which the Expansion Premises is open for business (Expansion Premises Rent Commencement Date). This lower per square foot rental rate was negotiated with the Tenant based upon the location of the Expansion Premises, the significant construction costs to be incurred by Tenant in reconfiguring and incorporating the Expansion Premises from a pre-security mezzanine level space into a natural extension of the post-security Existing Premises (which will not change), and the requisite build-out of lounge fixtures and improvements for the Expansion Premises.
 - c. The combined base rents for the Existing Premises and the Expansion Premises will be reflected in the Amendment as the Minimum Annual Guarantee (MAG) and, upon the Expansion Premises Rent Commencement Date, will initially be set in the aggregate amount of \$3,226,546 for the entire Revised Premises.
 - d. The MAG will be subject to annual increases based on a local Consumer Price Index. In no event will the adjustment be lower than the previous year's MAG.

3. Promotional Charge – The annual Promotional Charge will increase from \$8,199 to \$15,287 to reflect the increase in square footage.
4. Term – In order to allow for an appropriate capital investment amortization period by Tenant for its expansion and buildout costs, the Term will be extended by seven years, for a new expiration date of November 5, 2031.

Additionally, given the complexities of the buildout of the Expansion Premises and the potential impacts of the T3 West Project, Staff recommends that the Airport Director be given authority to enter into any further modifications to the Lease that the Airport Director determines are in the best interests of the City and County of San Francisco and that do not materially increase the obligations or liabilities of the City. Such modifications shall only be made when necessary or advisable to effectuate the purposes of the Lease and the Amendment, and are in compliance with all applicable laws, including the Charter of the City and County of San Francisco.

Recommendation

I recommend the Commission adopt the accompanying Resolution approving Amendment No. 2 to the Terminal 3 Common Use Club Lease No. 13-0006 with American Express Travel Related Services Company, Inc., which (1) increases the Lounge premises to approximately 15,287 square feet; (2) establishes a MAG of \$3,226,546 for the revised premises; (3) increases the annual Promotional Charge to \$15,287 in proportion to the net increase in square footage of the premises, and (4) extends the term of the Lease by seven years, through November 5, 2031. I also recommend forwarding Amendment No. 2 to the Board of Supervisors for approval pursuant to Section 9.118 of the Charter of the City and County of San Francisco.



Ivar C. Satero
Airport Director

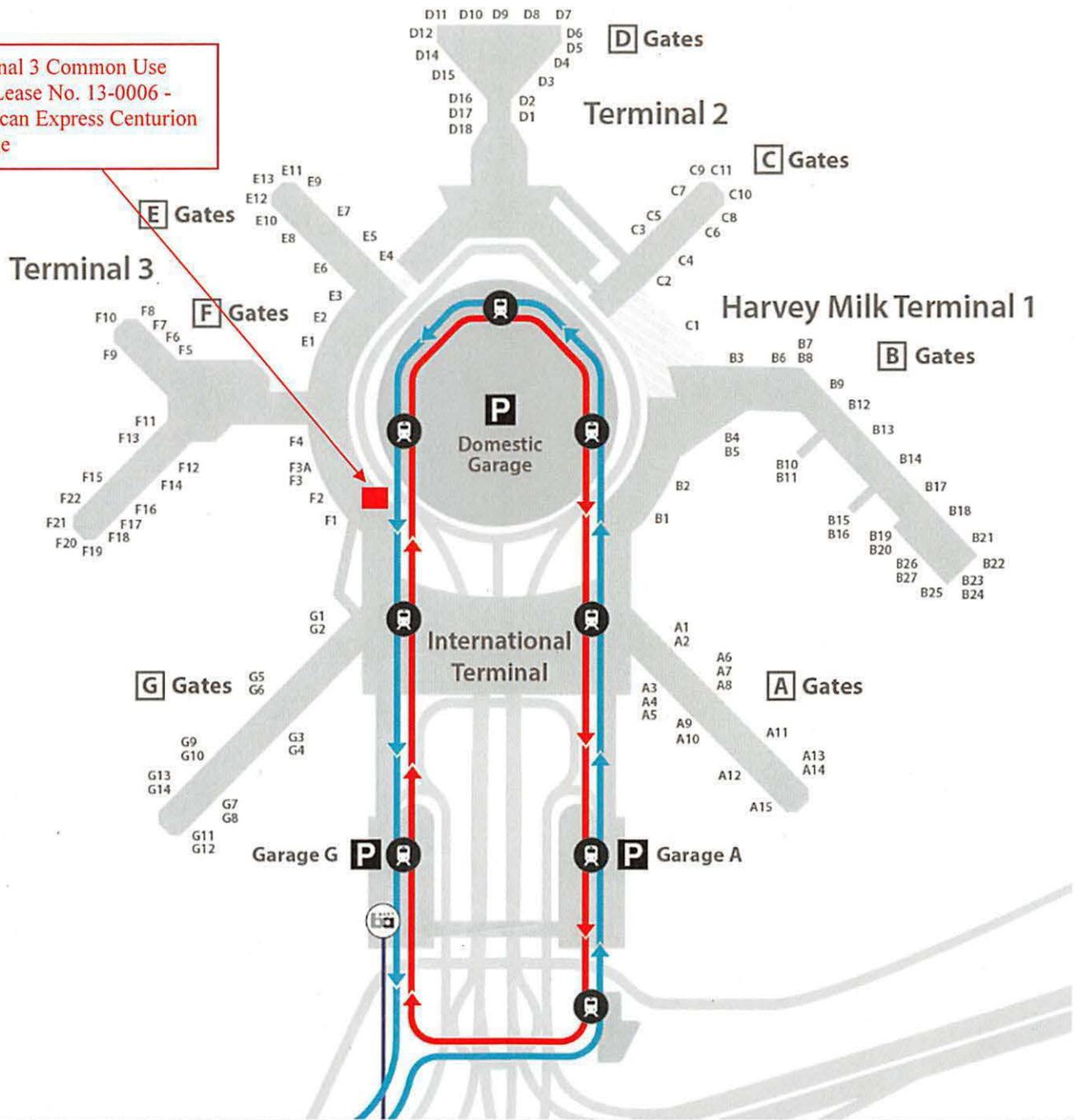
Prepared by: Kevin Bumen
Chief Commercial Officer

Attachments

Attachment 1

Terminal 3 Common Use Club Lease

Terminal 3 Common Use
Club Lease No. 13-0006 -
American Express Centurion
Lounge





San Francisco International Airport

December 29, 2020

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: Lease Amendment No. 2 to the Terminal 3 Common Use Club Lease
No. 13-0006 with American Express Travel Related Services Company, Inc. and the City
and County of San Francisco, acting by and through its Airport Commission

Dear Ms. Calvillo:

Pursuant to Section 9.118 of the City Charter, I am forwarding for the Board of Supervisors' approval the proposed Resolution, which approves Lease Amendment No. 2 to the Terminal 3 Common Use Club Lease No. 13-0006 with American Express Travel Related Services Company, Inc.

The following is a list of accompanying documents:

- Board of Supervisors Resolution (one original and one copy);
- Approved Airport Commission Resolution No.; 20-0207
- Memorandum accompanying Airport Commission Resolution No.; 20-0207
- SFEC-126(f)4 (Board of Supervisors) for American Express Travel Related Services Company, Inc;
- A copy of Terminal 3 Common Use Club Lease No. 13-0006, and;
- A copy of Lease Amendment No. 2 to the Terminal 3 Common Use Club Lease No. 13-0006, approved as to form by the City Attorney's Office.

The following person may be contacted regarding this matter:

Cheryl Nashir
Director
Revenue Development and Management
650.821.4500
cheryl.nashir@flysf.com

Very truly yours,

Corina Monzón /s/

Corina Monzón
Commission Secretary

Enclosures

cc: Cathy Widener, Governmental Affairs
Cheryl Nashir, Revenue Development and Management



San Francisco Ethics Commission

25 Van Ness Avenue, Suite 220, San Francisco, CA 94102

Phone: 415.252.3100 . Fax: 415.252.3112

ethics.commission@sfgov.org . www.sfethics.org

Received On:

File #: 210068

Bid/RFP #:

Notification of Contract Approval

SFEC Form 126(f)4

(S.F. Campaign and Governmental Conduct Code § 1.126(f)4)

A Public Document

Each City elective officer who approves a contract that has a total anticipated or actual value of \$100,000 or more must file this form with the Ethics Commission within five business days of approval by: (a) the City elective officer, (b) any board on which the City elective officer serves, or (c) the board of any state agency on which an appointee of the City elective officer serves. For more information, see: <https://sfethics.org/compliance/city-officers/contract-approval-city-officers>

1. FILING INFORMATION

TYPE OF FILING	DATE OF ORIGINAL FILING (for amendment only)
Original	
AMENDMENT DESCRIPTION – Explain reason for amendment	

2. CITY ELECTIVE OFFICE OR BOARD

OFFICE OR BOARD	NAME OF CITY ELECTIVE OFFICER
Board of Supervisors	Members

3. FILER'S CONTACT

NAME OF FILER'S CONTACT	TELEPHONE NUMBER
Angela Calvillo	415-554-5184
FULL DEPARTMENT NAME	EMAIL
office of the clerk of the Board	Board.of.Supervisors@sfgov.org

4. CONTRACTING DEPARTMENT CONTACT

NAME OF DEPARTMENTAL CONTACT	DEPARTMENT CONTACT TELEPHONE NUMBER
Cheryl Nashir	650-821-4500
FULL DEPARTMENT NAME	DEPARTMENT CONTACT EMAIL
Airport Commission	Cheryl.Nashir@flysfo.com

5. CONTRACTOR	
NAME OF CONTRACTOR American Express Travel Related Services Company, Inc.	TELEPHONE NUMBER 917.790.3389
STREET ADDRESS (including City, State and Zip Code) 200 Vesey St, New York, NY 10285	EMAIL dylan.slinger@aexp.com

6. CONTRACT		
DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)	ORIGINAL BID/RFP NUMBER	FILE NUMBER (If applicable) 210068
DESCRIPTION OF AMOUNT OF CONTRACT Annual Rent: \$3,226,546 - Promotional charge: \$15,287		
NATURE OF THE CONTRACT (Please describe) To address space deficiency, improve passenger experience and increase revenue to the Airport, the contract expands the lease premises into an adjacent, otherwise unmarketable space, extends the term of the Lease by seven years, and increases the rent and promotional charges for the expansion Premises. (Terminal 3 Common Use Club Lease No. 13-0006)		

7. COMMENTS

8. CONTRACT APPROVAL	
This contract was approved by:	
<input type="checkbox"/>	THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM
<input checked="" type="checkbox"/>	A BOARD ON WHICH THE CITY ELECTIVE OFFICER(S) SERVES Board of Supervisors
<input type="checkbox"/>	THE BOARD OF A STATE AGENCY ON WHICH AN APPOINTEE OF THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM SITS

9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
1	Squeri	Stephen	CEO
2	Campbell	Jeffrey	CFO
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9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
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9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
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Check this box if you need to include additional names. Please submit a separate form with complete information. Select “Supplemental” for filing type.

10. VERIFICATION

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information I have provided here is true and complete.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

<p>SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK</p> <p>BOS Clerk of the Board</p>	<p>DATE SIGNED</p>
---	---------------------------

From: [RivamonteMesa, Abigail \(BOS\)](#)
To: [Cathy Widener \(AIR\)](#); [Haney, Matt \(BOS\)](#)
Cc: [Safai, Ahsha \(BOS\)](#); [Mar, Gordon \(BOS\)](#); [Wong, Linda \(BOS\)](#); [Chung, Lauren \(BOS\)](#); [Quan, Daisy \(BOS\)](#); [Dyanna V. Quizon](#); [Campbell, Severin \(BUD\)](#); [Menard, Nicolas \(BOS\)](#); [Holober, Reuben \(BOS\)](#)
Subject: Re: File No. 210068 - Domestic Terminal 3 Common Use Club Lease No. 13-0006 - American Express Travel Related Services Company, Inc.
Date: Thursday, May 13, 2021 2:54:39 PM
Attachments: [image001.png](#)
[image002.png](#)

Thank you, Cathy, for the additional information.

Abigail Rivamonte Mesa, Chief of Staff
Office of Supervisor Matt Haney, District 6
abigail.rivamontemesa@sfgov.org

For Covid-19 updates | WWW.SF.GOV | Dial 311 | Text COVID19SF to 888-777

I am working from home due to the COVID-19 Stay Safer at Home Order and will be most responsive via email

From: Cathy Widener (AIR) <Cathy.Widener@flysfo.com>
Sent: Thursday, May 13, 2021 10:44 AM
To: Haney, Matt (BOS) <matt.haney@sfgov.org>
Cc: Safai, Ahsha (BOS) <ahsha.safai@sfgov.org>; Mar, Gordon (BOS) <gordon.mar@sfgov.org>; Wong, Linda (BOS) <linda.wong@sfgov.org>; RivamonteMesa, Abigail (BOS) <abigail.rivamontemesa@sfgov.org>; Chung, Lauren (BOS) <lauren.l.chung@sfgov.org>; Quan, Daisy (BOS) <daisy.quan@sfgov.org>; Dyanna V. Quizon <dvquizon@gmail.com>; Campbell, Severin (BUD) <severin.campbell@sfgov.org>; Menard, Nicolas (BOS) <nicolas.menard@sfgov.org>; Holober, Reuben (BOS) <reuben.holober@sfgov.org>
Subject: File No. 210068 - Domestic Terminal 3 Common Use Club Lease No. 13-0006 - American Express Travel Related Services Company, Inc.

Chair Haney:

The Airport would like to request that the Domestic Terminal 3 Common Use Club Lease No. 13-0006 - American Express Travel Related Services Company, Inc. item, continued at the Finance Committee on April 7, 2021 be re-calendared for the May 26, 2021 meeting.

Airport staff has talked to Supervisor Safai and explained the reasoning and cost benefit of the proposed American Express common-use lounge expansion at SFO. I've cc'd the Budget Analyst staff on this email as it also addresses their comments on the category of rent assigned to the additional premises.

After reviewing the Finance Committee concerns, airport staff took another look at the rationale behind the lower/non-Category II rent for the expanded premises. We discovered that there is disconnect in how we currently classify lounge space related to the relatively new

common-use concept, rather than the traditional airline lounge. The important distinction is that the AMEX lounge is a concession lease and not subject to the Lease and Use Agreement/Rates and Charges. The lounge does not receive revenue support from airline tickets, mileage programs, etc. like the more traditional airline lounge model. We should have identified and made this distinction during the Budget Analyst’s reporting process.

After the proposed expansion, AMEX will pay a total blended per square foot rate of \$211.06 for the entire expanded lounge space (\$255 for the current space, and \$160 for the expansion space). This lower blended rate is justified in part due to the extensive tenant improvement investment AMEX is making in joining the existing space with the expansion space and building out the expansion space, as well as the fact that the expanded space is not usable space of value for any other concession purpose. For comparison: existing concession leases in Harvey Milk Terminal 1 pay between \$208 to \$225 per square foot, making the proposed \$211 blended rate extremely competitive.

Although Covenant and United Airlines (UAL) are currently paying a higher per square footage rate of \$255.21 (Cat 2 Rent), they are only utilizing 28% of the overall expansion space proposed to be absorbed by AMEX. The other 82% is non-usable/marketable space and the return on that space is zero. If you calculate the revenue SFO currently receives from UAL and Covenant over the entire expansion space, the blended per square foot rate is \$70.90. By approving the modification with AMEX the Airport will receive twice the premium lounge space with an overall MAG of \$211 per square foot up from the current \$70.90 per square foot and will generate revenue from previously unimproved and unmarketable space. In addition, the revenue SFO currently receives from UAL and Covenant will not be a loss, but relocated. The proposed expanded AMEX lease will increase revenue to the airport by \$1,134,080.

	Sq Ft		Rental Rate	Rent
Existing Lounge	8,199		\$255.21	\$2,092,467
Lounge Expansion	7,088		\$160.00	\$1,134,080
Total	15,287		\$211.06	\$3,226,547
	Sq Ft		Rental Rate	Rent
UAL/Covenant	1,969	28%	\$255.21	\$502,508
Non-Revenue SFO Occupied Space*	5,119	72%	\$0.00	\$0
Total	7,088	100%	\$70.90	\$502,508

Additionally, UAL and Covenant currently occupy their spaces by permit, which are terminable at any time upon 30 days’ written notice. The revenue that SFO currently earns from those permittees could be reduced to zero within 30 days’ notice. Under the modification with

AMEX, the expansion space will become subject to a non-terminable lease through 2031 with a Minimum Annual Guarantee.

SFO believes this remains a sound business decision and we appreciate the opportunity to review how the airport came to this proposed modification and review our rent standard moving forward on common use lounge leases.

Please let me know if there is any additional information the airport can provide.

Best,

Cathy Widener



Cathy Widener

SFO

Director | Government Affairs

650-821-5023

From: [Dyanna Quizon \(AIR\)](#)
To: [BOS Legislation, \(BOS\)](#)
Cc: [Corina Monzon \(AIR\)](#); [Cathy Widener \(AIR\)](#); [Carolyn Jayin \(AIR\)](#)
Subject: BOS E-FILE SUBMITTAL: Approval of Amendment No. 2 to Terminal 3 Common Use Club Lease with AMEX
Date: Friday, January 15, 2021 3:18:23 PM
Attachments: [image001.png](#)
[Approved Airport Commission Resolution No. 20-0207.pdf](#)
[Memorandum accompanying Airport Commission Resolution No. 20-0207.pdf](#)
[SFEC Form 126f4BOS---Notification of Contract \(AMEX L13-0006\).pdf](#)
[AMEX \(TRS\) L13-0006 T3 Common Use Club fully executed.pdf](#)
[Amendment 2 AMEX L 13-0006 \(Tenant signed\).pdf](#)
[BOS Resolution AMEX-Amendment No. 2 \(Expansion\)-final \(002\).docx](#)
[BOS Cover Letter Am 2 12-9-2020.doc](#)
[RE BOS E-FILE SUBMITTAL Approval of Amendment No. 2 to Terminal 3 Common Use Club Lease with AMEX.msg](#)

CITY AND COUNTY OF SAN FRANCISCO

AIRPORT COMMISSION

BOARD OF SUPERVISORS LEGISLATION

To: BOS Legislation

Date: January 15, 2020

RE: Approval of Amendment No. 2 to the Terminal 3 Common Use Club Lease No. 13-0006 with American Express Travel Related Services Company, Inc., and the City and County of San Francisco, acting by and through its Airport Commission

Attached is proposed legislation concerning approval of the Lease Amendment No. 2 to the Terminal 3 Common Use Club Lease No. 13-0006 with American Express Travel Related Services Company, Inc.

The following is a list of accompanying documents:

- Board of Supervisors Resolution (one original and one copy);
- Approved Airport Commission Resolution No.; 20-0207
- Memorandum accompanying Airport Commission Resolution No.; 20-0207
- SFEC-126(f)4 (Board of Supervisors) for American Express Travel Related Services Company, Inc;
- A copy of Terminal 3 Common Use Club Lease No. 13-0006, and;
- A copy of Lease Amendment No. 2 to the Terminal 3 Common Use Club Lease No. 13-0006, approved as to form by the City Attorney's Office.

These documents were also delivered in hard copy.

Contacts:

Cathy Widener, Governmental Affairs Administrator
650-821-5023

Cheryl Nashir, Revenue Development and Management
650-821-4500

Thank you.



Dyanna Quizon (*preferred pronouns: she/her/hers*)
Manager | Government Affairs