

**AMENDMENT NO. 1 TO
DOMESTIC TERMINAL FOOD AND BEVERAGE LEASE NO. 03-0201 AT
SAN FRANCISCO INTERNATIONAL AIRPORT**

THIS AMENDMENT NO. 1 TO LEASE AGREEMENT FOR THE DOMESTIC TERMINAL FOOD AND BEVERAGE LEASE NO. 03-0201 (“Amendment No. 1”), dated as of July 9, 2014 for reference purposes only, is entered by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“City”), acting by and through its SAN FRANCISCO AIRPORT COMMISSION (“Airport”), as landlord, and EMPORIO RULLI, INC., as tenant (“Tenant”).

RECITALS

- A. Airport and Tenant entered into Lease No. 03-0201, dated as of August 30, 2004 (the “Lease”) for a food and beverage facility located in Terminal 3 Boarding Area F (the “Original Premises”) to serve customers who utilize United Airlines’ Gates 76A to 79. Emporio Rulli, Inc.’s Gran Caffé commenced operation on November 19, 2006.
- B. In September 2012, United Airlines began ramp construction work and relocated flights from Gates 76A through Gate 79 to other parts of Terminal 3 and Terminal 1. Since then, Emporio Rulli, Inc.’s Gran Caffé experienced a severe decline in sales due to a decrease in passenger traffic, which negatively impacted its cash flow.
- C. While the parties acknowledge that the Airport has no obligation under the Lease or at law to remedy the Tenant's sales decline, as described in Recital B above; the parties seek to address the decline in sales and the need for a tenant to occupy the vacant café concession location at Terminal 3, Boarding Area F, Hub Food Court by executing this Lease Amendment No. 1.
- D. This Lease Amendment No. 1 will allow Tenant to operate from a second location, as described in Agreement Item No. 3 [Premises] written below (“Additional Premises”), and for Tenant to remove its fixed improvements from the premises at the expiration of the Lease.
- E. Airport and Tenant have agreed to modify the premises pursuant to Lease Section 1, by adding the Additional Premises, adjust the rent accordingly, and other related provisions, on the terms and conditions set forth below.
- F. The Airport will seek a waiver of the Airport Commission’s competitive leasing requirement under Administrative Code Section 2A.173 and approval under Charter Section 9.118 to the Board of Supervisors.
- G. All capitalized terms not otherwise defined herein shall have the same meaning given to them in the Lease.

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

AGREEMENT

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference as if fully set forth herein.
2. Effective Date. The effective date of the modifications to the Lease contained herein shall be the date on which the Tenant signs the Agreement.
3. Premises. Section 1 of the Lease referencing Exhibit A is hereby deleted in its entirety and replaced with the following:

“Exhibit A - Premises. A total of two (2) facilities in Boarding Area F of Terminal 3, comprising approximately 2,797 square feet, broken down as follows:

 - Space A – Approximately 2,392 square feet, located across from Gate 77, and
 - Space B – Approximately 405 square feet, located in the Hub Food Court.”
4. Minimum Annual Guarantee. Section 4.2 The Minimum Annual Guarantee shall be increased to reflect the Additional Premises on the earlier of: a) the date that the Additional Premises is open for business therein, and b) the date that is sixty (60) days after the Airport delivers possession of Additional Premises to Tenant.
5. Promotional Charge. Section 11.2 The Promotional Charge shall be increased to \$2,797.00 annually to reflect the Additional Premises.
6. Other Fees. Section 4.9 Tenant shall pay the following fees for the Additional Premises in the Boarding Area F Hub food court on the earlier of: a) the date that the Additional Premises is open for business therein, and b) the date that is sixty (60) days after the Airport delivers possession of Additional Premises to Tenant:
 - (a) Tenant Infrastructure Fee. Tenant shall pay the Tenant Infrastructure Fee for the Additional Premises in monthly installments, in advance, each of which shall be due on the first day of each month. The annual Infrastructure Fee shall be calculated at \$15.00 per square foot, totaling \$6,075.00 (\$15.00 x 405 square feet) or \$506.25 per month.
 - (b) Food Court Fee. Tenant shall pay the Food Court Fee for the Additional Premises in monthly installments, in advance, each of which shall be due on the first day of each month. The annual Food Court Fee shall be calculated at \$15.00 per square foot, totaling \$6,075.00 (\$15.00 x 405 square feet) or \$506.25 per month.
 - (c) Food Court Maintenance Fee. Tenant shall pay the Food Court Maintenance Fee for the Additional Premises in monthly installments, in advance, each of which shall be due on the first day of each month. The Food Court Maintenance Fee shall be calculated by taking the Airport’s cost recovery amount for providing custodial services in the food court common areas 1.) by dividing twenty percent (20%) of that amount evenly among the food court

tenants in the domestic terminals and 2.) allocating the remaining eighty percent (80%) of that amount to the food court tenants in the domestic terminals based upon the tenants' market share of gross receipts. Such fee shall be adjusted annually in conjunction with the Airport's Rates and Charges adjustments. Tenant's monthly Food Court Maintenance Fee for Fiscal Year 2014/2015 is \$4,347.00.

7. Removal of Personal Property. Airport and Tenant hereby agree to modify Section 7.6 [Title of Alterations] of the Lease to allow Tenant to remove all decorations, seating, light fixtures, sound systems, finishings and counters provided that such removal may only be undertaken if there is no damage to the Terminal. All other equipment of such nature as to constitute trade fixtures shall remain the property of Tenant and Tenant shall remove at Tenant's sole expense on the Expiration Date.

8. Waiver Language. The Tenant waives any right to any future claims for the period of time mentioned as September 2012 to present day.

9. Entire Agreement. This Amendment No. 1 contains all of the representations and the entire agreement between the parties with respect to the subject matter of this agreement. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to the subject matter of the Amendment No. 1 are superseded in their entirety by this Amendment No. 1. No prior drafts of this Amendment No. 1 or changes between those drafts and the executed version of this Amendment No. 1 shall be introduced as evidence in any litigation or other dispute resolution proceeding by any party or other person, and no court or other body should consider such drafts in interpreting this Amendment No. 1.

10. Miscellaneous. This Amendment No. 1 shall bind, and shall inure to the benefit of, the successors and assigns of the parties hereto. This Amendment No. 1 is made for the purpose of setting forth certain rights and obligations of 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 No. 1. This Amendment No. 1 may be executed in counterparts with the same force and effect as if the parties had executed one instrument, and each such counterpart shall constitute an original hereof. No provision of this Amendment No. 1 that is held to be inoperative, unenforceable or invalid shall affect the remaining provisions, and to this end all provisions hereof are hereby declared to be severable. Time is of the essence of this Amendment No. 1. This Amendment No. 1 shall be governed by the laws of the State of California. Neither this Amendment No. 1 nor any of the terms hereof may be amended or modified except by a written instrument signed by all the parties hereto.

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

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IN WITNESS WHEREOF, the Airport and the Tenant execute this Amendment No. 1 to the Lease as of the last date set forth below.

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

John L. Martin
Airport Director *lf w*

TENANT: Emporio Rulli, Inc.

By: _____
[Handwritten Signature]

Name: Gary Rulli
(type or print)

Title: Owner

AUTHORIZED BY AIRPORT
COMMISSION

Resolution No.
Adopted:

Attest: _____
Secretary
Airport Commission

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

By: *David Snowball*
Deputy City Attorney

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