

File No. 106176

Committee Item No. 7

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee BUDGET AND FINANCE

Date 3/17/10

Board of Supervisors Meeting

Date \_\_\_\_\_

#### Cmte Board

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| <input type="checkbox"/>            | <input type="checkbox"/> | Legislative Digest                           |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Budget Analyst Report                        |
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| <input type="checkbox"/>            | <input type="checkbox"/> | Contract/Agreement                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Award Letter                                 |
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#### OTHER

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Lease</u> |
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Completed by: Gail Johnson

Date 3/12/10

Completed by: \_\_\_\_\_

Date \_\_\_\_\_

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.



1 [Approve a Lease with the Federal Express Corporation at Building 900.]

2  
3 **Resolution approving and authorizing the execution of Lease No. 09-0280 with Federal**  
4 **Express Corporation for cargo warehouse and support office space to be occupied by**  
5 **Federal Express Corporation in Building 900 at San Francisco International Airport.**

6  
7 WHEREAS, The Federal Express Corporation ("Federal Express") has occupied cargo  
8 warehouse and support office space in Building 900 in the North Field Cargo Area for the past  
9 ten years pursuant Commission Resolution 98-0173, adopted on July 14, 1998, and Board of  
10 Supervisors' Resolution No. 95-99, adopted February 8, 1999; and

11 WHEREAS, The aforementioned lease terminated on September 30, 2009, and  
12 Federal Express currently occupies the premises on a hold over basis; and

13 WHEREAS, Federal Express wishes to enter into a new lease for approximately one  
14 hundred nine thousand eight hundred twenty three (109,823) square feet of cargo warehouse  
15 space and twenty four thousand twenty three (24,023) square feet of support office space to  
16 accommodate its integrated cargo operation at Building 900; and

17 WHEREAS, Airport staff has negotiated a renewal lease with Federal Express with a  
18 Term of three (3) years and one (1) three-year option for cargo warehouse and support office  
19 space in Building 900 to accommodate Federal Express' cargo operation (the "Lease"); and

20 WHEREAS, On December 15, 2009, pursuant to Resolution No. 09-0280, the Airport  
21 Commission approved the Lease with Federal Express. A copy of the form of the Lease is on  
22 file with the Clerk of the Board of Supervisors in File No. 100176, which is hereby declared to  
23 be a part of this resolution as if set forth fully herein; now, therefore, be it

24 **RESOLVED**, That this Board of Supervisors hereby approves the Three (3) Year Lease  
25 with One (1) Three-Year Option for cargo warehouse and support office space in Building

1 900, between Federal Express and the City and County of San Francisco, acting by and  
2 through its Airport Commission.

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**Item # 7**  
**File 10-0176**

**Department(s):**  
San Francisco Airport (Airport) and Real Estate Division (RED)

## EXECUTIVE SUMMARY

### Legislative Objective

- The proposed resolution would approve a new lease between the San Francisco Airport (Airport) and Federal Express Corporation (Federal Express), for 133,846 square feet of space in Building 900 at the Airport, which includes 109,823 square feet of cargo warehouse space and 24,023 square feet of office space, from April 1, 2010 through March 31, 2013, or three years. The proposed lease also includes an option to extend the lease for an additional three years, from April 1, 2013 through March 31, 2016.

### Key Points

- Federal Express has an existing lease with the Airport for approximately 125,243 square feet of space in Building 900. The term of the existing lease was from April 1, 1999 through September 30, 2009, or ten years and six months, and has continued on a month-to-month basis since September 30, 2009. Federal Express uses the space to receive, deliver, dispatch, process, handle, and store air cargo and mail. The annual rent for the existing lease is \$3,516,823, or \$28.08 per square foot annually, which is approximately \$293,069 per month, or \$2.34 per square foot per month.
- The proposed new lease for 133,846 square feet of space is 8,603 square feet larger than the existing lease of 125,243 square feet of space. However, of the 8,603 square feet increase, only 8,142 square feet represents an actual increase in space. The balance of 461 square feet does not represent actual increased space because when the Airport used new Computer-Aided Design (CAD) technology to more precisely measure the leased space, it was determined that the existing lease had 125,704 square feet and not 125,243 square feet.

### Fiscal Impact

- Under the proposed new lease, Federal Express would pay the Airport \$3,449,211 in the first year, or \$25.77 per square foot, which is \$2.31, or approximately 8.23 percent less than the \$28.08 existing lease rate. Based on the Real Estate Division's review in the spring of 2009, cargo and office rental rates at the Airport ranged from \$19.21 to \$23.35 per square foot annually, such that the Airport advises the proposed \$25.77 rate is above fair market value.

### Policy Consideration

- The Airport did not conduct a competitive bidding process for the proposed new lease with Federal Express. In accordance with Administrative Code Section 2A.173, the Airport Commission is authorized to negotiate and execute leases of airport lands and space in Airport buildings, without conducting a competitive bidding process, if the original lease term does not exceed 50 years.

### Recommendation

- Approve the proposed resolution.

**BACKGROUND/MANDATE STATEMENT****Background**

Federal Express Corporation (Federal Express) has an existing lease with the San Francisco Airport (Airport) for approximately 125,243 square feet of space in Building 900 at the Airport, which includes 108,015 square feet of cargo warehouse space and 17,228 square feet of office space. On February 19, 1999, the Board of Supervisors approved the existing Federal Express lease with a term from April 1, 1999 through September 30, 2009, or ten years and six months (File No. 99-0040). The existing lease has continued on a month-to-month basis since September 30, 2009 because according to Mr. John Martin, Airport Director, it "allow(ed) Federal Express sufficient time to complete analysis on the current cargo market demand and attain corporate consensus regarding entering into a renewal lease." Federal Express uses the existing cargo warehouse and office space in Building 900 to receive, deliver, dispatch, process, handle, and store air cargo and mail. The annual rent for the existing lease is \$3,516,823, or \$28.08 per square foot, which is approximately \$293,069 per month or \$2.34 per square foot per month.

**Mandate Statement**

In accordance with Charter Section 9.118, any lease, in which the City would receive \$1,000,000 or more in revenues, is subject to Board of Supervisors approval.

In addition, Administrative Code Section 2A.173 authorizes the Airport Commission to negotiate and execute leases of Airport land and space in Airport buildings, without conducting a competitive bidding process, with any government agency or with any person, firm, or corporation engaged in air transportation or utility services, as long as the original term or any extension of the lease does not exceed 50 years.

**DETAILS OF PROPOSED LEGISLATION**

The proposed resolution would approve a new lease, between the Airport and Federal Express, for 133,846 square feet of space in Building 900 at the Airport, which includes 109,823 square feet of cargo warehouse space and 24,023 square feet of office space, with a term from April 1, 2010 through March 31, 2013, or three years. The proposed lease also includes an option to extend the lease for an additional three years, from April 1, 2013 through March 31, 2016.

Under the proposed lease, Federal Express would pay \$3,449,211 to the Airport in the first year, or \$25.77 per square foot. On a monthly basis, the rent would be \$287,434 or approximately \$2.15 per square foot per month. Under this proposed new lease, the rent would increase annually in accordance with a Consumer Price Index (CPI)<sup>1</sup> adjustment. Ms. Diane Artz, Senior Property Manager of the Airport, points out that, under the lease provisions, even if the CPI decreases, the rent will not decrease to a value less than the previous year's rent.

<sup>1</sup> The CPI represents changes in prices of all goods and services for All Urban Consumers in the San Francisco-Oakland-San Jose area and is published by the Bureau of Labor Statistics under the United States Department of Labor.

Under both the existing and proposed leases, the Airport provides Federal Express with all utilities services, which the Airport then charges back to Federal Express on a monthly basis.

Ms. Artz advises that the proposed new lease for 133,846 square feet of space is 8,603 square feet larger than the existing lease of 125,243 square feet of space. However, of the 8,603 square feet increase, only 8,142 square feet represents an actual increase in space. The balance of 461 square feet does not represent actual increased space because when the Airport used new Computer-Aided Design (CAD) technology to more precisely measure the leased space, it was determined that the existing lease had 125,704 square feet and not 125,243 square feet.

## FISCAL ANALYSIS

Under the proposed new lease, the Airport would charge Federal Express \$25.77 per square foot annually, which is \$2.31, or approximately 8.23 percent, less than the \$28.08 annual per square foot rent under the existing lease. Based on these proposed rates, Federal Express would pay \$3,449,211 to the Airport in the first year for the subject 133,846 square feet of cargo and office space in Building 900. According to Ms. Artz, the square foot rate in the proposed lease is less than the existing lease because of a decrease in fair market values.

According to Ms. Artz, in the spring of 2009, the City's Real Estate Division (RED) reviewed market rents for cargo warehouse and cargo office space<sup>2</sup>, both on and off the Airport. Based on RED's review, annual rental rates for cargo warehouse and cargo office space at the Airport ranged from \$19.21 to \$23.35 per square foot annually. Ms. Artz advises that the \$25.77 annual rental rate under the proposed lease is above the fair market value.

## POLICY CONSIDERATION

From April through November of 2009, the Airport negotiated the proposed new lease with Federal Express, which was approved by the Airport Commission on December 15, 2009 (Airport Commission Resolution No. 09-0280).

According to Ms. Artz, the Airport did not conduct a competitive bidding process for the proposed lease with Federal Express because, in accordance with Administrative Code Section 2A.173, the Airport Commission is authorized to negotiate and execute leases of Airport land and space in Airport buildings, without conducting a competitive bidding process, with any government agency or any person, firm, or corporation engaged in air transportation<sup>3</sup> or utility services, as long as the original term or any extension of the lease does not exceed 50 years.

<sup>2</sup> According to Ms. Artz, cargo warehouse and cargo office space at the Airport are rented at the same rate. Ms. Artz advises that office space located in non-cargo facilities was not included in the RED review because such non-cargo office space is not considered comparable to cargo office space.

<sup>3</sup> According to Ms. Artz, the Airport does not conduct competitive bidding for leases with air transportation companies, such as Federal Express, because (a) the primary goal of the Airport is to increase airline and cargo business, and (b) the Airport has adequate space for airline and cargo business growth. Ms. Artz advises that the Airport conducts competitive bids for concession leases because there is limited space at the Airport for such concessions.

**RECOMMENDATION**

Approve the proposed resolution.





San Francisco International Airport

February 10, 2010

P.O. Box 8097  
San Francisco, CA 94128  
Tel 650.821.5000  
Fax 650.821.5005  
www.flysfo.com

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

*File 100176*

**Subject: Approval of Lease No. 09-0280 between Federal Express Corporation and the City and County of San Francisco, acting by and through its Airport Commission**

Dear Ms. Calvillo:

AIRPORT  
COMMISSION  
CITY AND COUNTY  
OF SAN FRANCISCO

Pursuant to Section 9.118 of the City Charter, I am forwarding for the Board of Supervisors' approval of Lease No. 09-0280 (the "Lease") between the City and County of San Francisco, acting by and through its Airport Commission, and Federal Express Corporation ("Federal Express") for space to be occupied by Federal Express in Building 900. This Lease was approved by Airport Commission Resolution No. 09-0280, adopted December 15, 2009.

GAVIN NEWSOM  
MAYOR

LARRY MAZZOLA  
PRESIDENT

LINDA S. CRAYTON  
VICE PRESIDENT

CARYL ITO

ELEANOR JOHNS

RICHARD J. GUGGENHIME

JOHN L. MARTIN  
AIRPORT DIRECTOR

The Lease provides for rental of approximately one hundred nine thousand eight hundred twenty three (109,823) square feet of cargo warehouse space and twenty four thousand twenty-three (24,023) square feet of support office space in Building 900 for a term of three (3) years with one (1) three-year option and annual rent of \$3,449,221.

The following is a list of accompanying documents (five sets):

- Board of Supervisors Resolution; and
- Approved Airport Commission Resolution No. 09-0280; and
- Commission Memorandum; and
- Lease No. 09-0280

You may contact Diane Artz of the Airport Aviation Management Department at (650) 821-4525 regarding this matter.

Very truly yours,

*Jean Caramatti*  
Jean Caramatti  
Commission Secretary

Enclosures

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2010 FEB 17 PM 1:02





San Francisco International Airport

**MEMORANDUM**

December 15, 2009

P.O. Box 8097  
San Francisco, CA 94128  
Tel 650.821.5000  
Fax 650.821.5005  
www.flysfo.com

**TO:** AIRPORT COMMISSION  
Hon. Larry Mazzola, President  
Hon. Linda S. Crayton, Vice President  
Hon. Caryl Ito  
Hon. Eleanor Johns  
Hon. Richard J. Guggenhime

**FROM:** Airport Director

**SUBJECT:** Approval of a Lease with Federal Express Corporation

AIRPORT  
COMMISSION  
CITY AND COUNTY  
OF SAN FRANCISCO

GAVIN NEWSOM  
MAYOR

LARRY MAZZOLA  
PRESIDENT

LINDA S. CRAYTON  
VICE PRESIDENT

CARYL ITO

ELEANOR JOHNS

RICHARD J. GUGGENHIME

JOHN L. MARTIN  
AIRPORT DIRECTOR

**DIRECTOR'S RECOMMENDATION: ADOPT THE ACCOMPANYING RESOLUTION:**  
1) APPROVING A LEASE WITH FEDERAL EXPRESS CORPORATION FOR CARGO WAREHOUSE AND OFFICE SPACE AT BUILDING 900, NORTH FIELD CARGO BUILDING, ON PLOT 50, AND 2) DIRECTING THE COMMISSION SECRETARY TO FORWARD THE LEASE TO THE BOARD OF SUPERVISORS FOR APPROVAL.

**Executive Summary**

Federal Express Corporation ("Federal Express") wishes to enter into a renewal lease for cargo warehouse and office space at Building 900 on Plot 50, as shown on the attached Exhibits A and A-1, to conduct its integrated cargo operation. The leasehold is comprised of 109,823 square feet of cargo warehouse space and 24,023 square feet of office space with an annual rent of \$3,449,211 based on a rate of \$25.77 per square foot per year (the "Lease"). The proposed Lease will have a Term of three (3) years and one (1) three-year option to extend the Term.

**Background**

Federal Express, an integrated cargo operator, has operated at San Francisco International Airport (the "Airport") as a Signatory Airline pursuant to Airline-Airport Lease and Use Agreement L82-0318 since 1981. It assumed this lease from Flying Tigers which operated out of Hangar C-01 on Plot 17. In FY 2009, Federal Express also paid \$934,150 in landing fees to the Airport.

In 1999, the Airport completed construction of Building 900, also known as North Field Cargo Building, located in the North Field Cargo Area. Pursuant to Airport Commission Resolution No. 98-0173 and Board of Supervisors' approval, Federal Express entered into a lease for 108,015 square feet of cargo warehouse space and 17,228 square feet of office space in Building 900, both of which were in shell condition. Federal Express constructed all tenant improvements at its sole cost. The Term of the lease was ten (10) years and six (6) months and, in the tenth year of the Term, the lease generated an annual rent of \$3,516,823 based on a rate of \$28.08 per square foot per year. The lease expired on September 30, 2009 and went into holdover status to allow Federal Express sufficient time to complete an analysis of the current cargo market demand and attain corporate consensus regarding entering into a renewal lease. It has now advised the Airport that it wishes to proceed.

**Proposal**

Airport staff has negotiated a renewal lease for cargo warehouse and office space at Building 900. Both the rental rate and Term of the lease were heavily negotiated and reflect the challenging business environment for integrated cargo operators in the near term, i.e., the next three to five years. The proposed major business terms are as follows:

1. **Approved Use:** Integrated air cargo related business including receiving, delivering, dispatching, processing, handling, and storage of air cargo and mail.
2. **Premises:** Approximately 109,823 square feet of cargo warehouse space and 24,023 square feet of office space, inclusive of 37 truck dock positions and 12 delivery truck ramp positions. The variance in square footage compared to the original lease reflects incremental office space constructed by Federal Express during the original term and the remeasurement of all space utilizing CAD technology.
3. **Non-Exclusive Areas:**  
Hardstand 50-3 and 50-5 on a "Preferential Basis"  
Hardstand 50-4 and 50-6 on an "As-Needed Basis"  
ULD/GSE Storage Area  
Employee Vehicle Parking
4. **Term:** Three (3) years.
5. **Option to Extend:** One (1) three-year option to extend at the tenant's discretion.
6. **Commencement Date:** Upon approval by City.
7. **Annual Rent:** \$3,449,211 based on a rate of \$25.77 per square foot per year.
8. **Rent Adjustment:** By annual CPI adjustment, including an adjustment in each year of the option term, if applicable.
9. **Services and Utilities:** At tenant's sole expense.
10. **Parking:** One hundred eighty-six (186) employee parking spaces at the employee parking rate per Airport Rates and Charges.
11. **Maintenance:** The Airport will maintain the base building infrastructure and building systems to a point of connection. The tenant will maintain all tenant improvements and all other systems or equipment located in the Premises.

Federal Express will be fully compliant with all City Regulations, including the City's Equal Benefits Ordinance, Minimum Compensation, and the Health Care Accountability Ordinance.

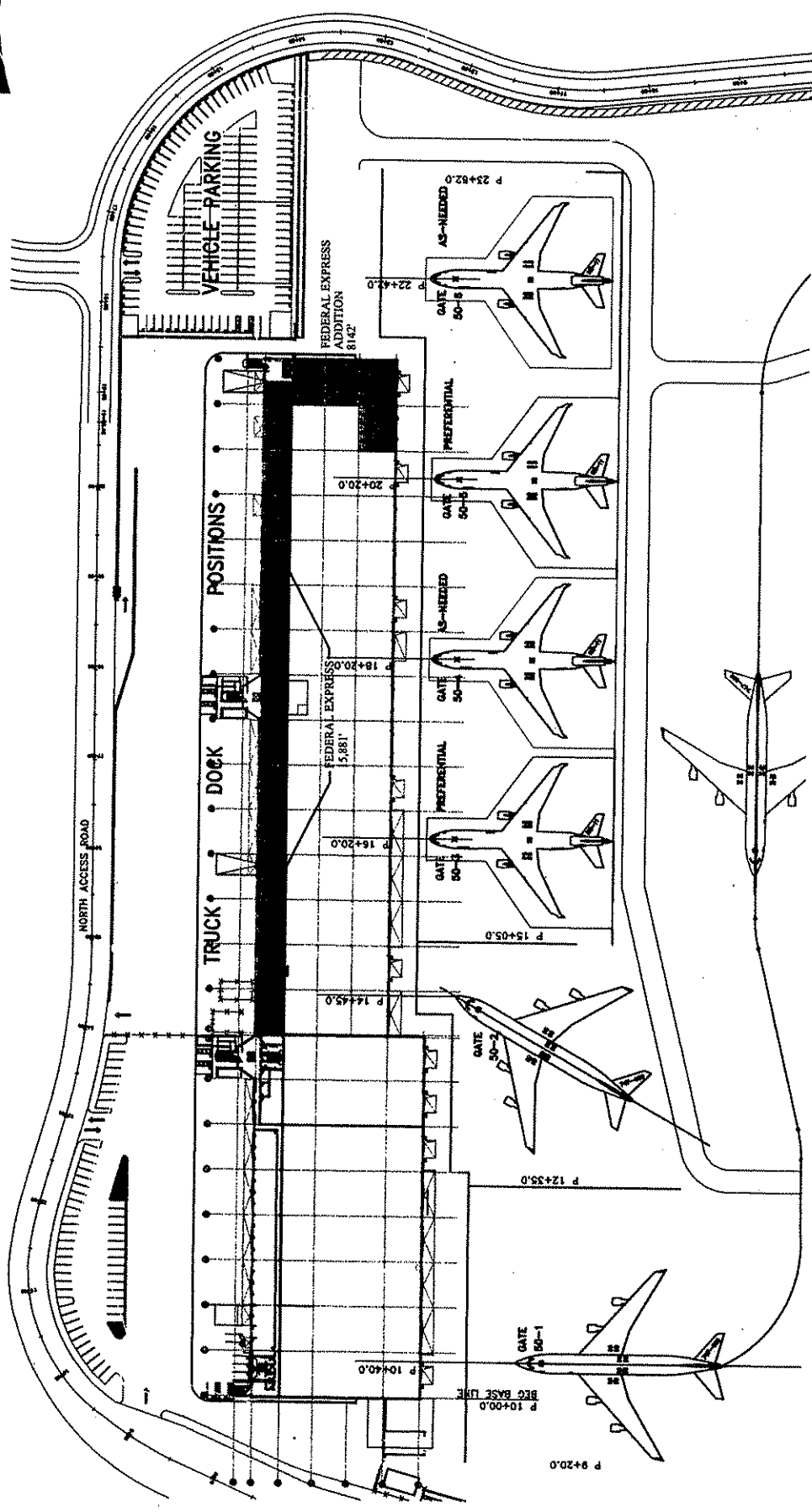
**Recommendation**

I recommend adoption of the accompanying Resolution that: 1) approves a Lease with Federal Express Corporation with a Term of three (3) years and one (1) three-year option at an annual rent of \$3,449,211 for 109,823 square feet of cargo warehouse space and 24,023 square feet of office space at Building 900, and 2) directs the Commission Secretary to forward the Lease to the Board of Supervisors for approval.

  
John L. Martin  
Airport Director

Prepared by: Leo Fermin  
Deputy Airport Director  
Business & Finance

Attachment



| TENANT PERMIT LOCATION DRAWING      |        | EXHIBIT A-1        |          |
|-------------------------------------|--------|--------------------|----------|
| LOCATION                            | TENANT | CAT                | CONTRACT |
| OFFICES                             | FED EX |                    |          |
| OFFICES                             | FED EX |                    |          |
| TOTAL                               | FED EX |                    |          |
| AREA                                |        | 15881'             |          |
| AREA                                |        | 8142'              |          |
| TOTAL                               |        | 24023'             |          |
| LOCATION: BUILDING 900              |        |                    |          |
| FEDERAL EXPRESS MEZZANINE           |        |                    |          |
| CITY & COUNTY OF SAN FRANCISCO      |        | DWG: B900FEDM      |          |
| AIRPORTS COMMISSION                 |        | SCALE: 1/4"=10'-0" |          |
| SAN FRANCISCO INTERNATIONAL AIRPORT |        | DATE: 12/03/2009   |          |

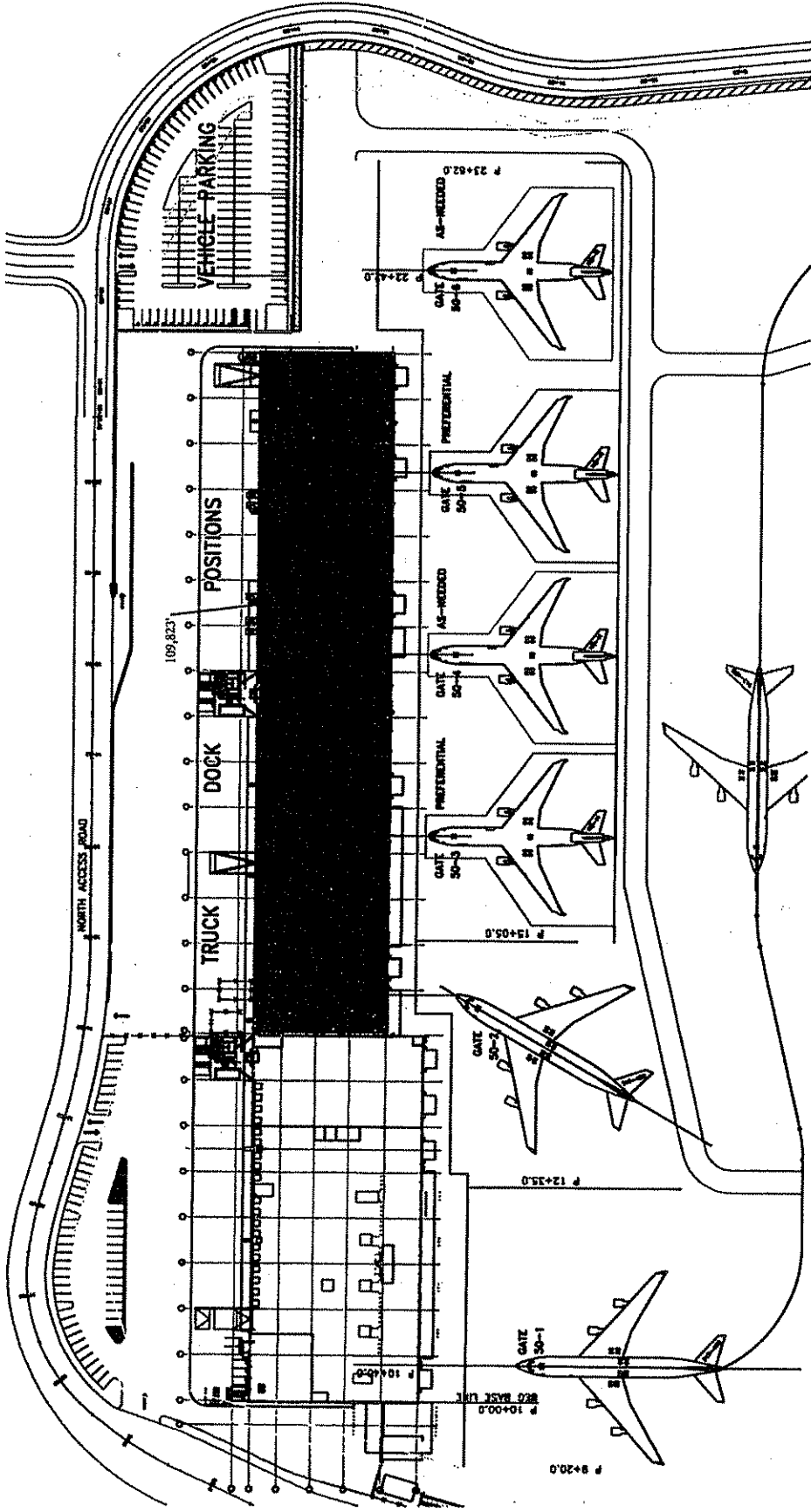


EXHIBIT A

| TENANT PERMIT LOCATION DRAWING      |  | LOCATION  | TENANT | CAT               | AREA     | CONTRACT | EFF DATE |
|-------------------------------------|--|-----------|--------|-------------------|----------|----------|----------|
|                                     |  | EXCLUSIVE | FED EX |                   | 109,823' |          |          |
| LOCATION: BUILDING 900              |  |           |        |                   |          |          |          |
| FEDERAL EXPRESS LEVEL 1             |  |           |        |                   |          |          |          |
| CITY & COUNTY OF SAN FRANCISCO      |  |           |        | DWG: B900FED1     |          |          |          |
| AIRPORTS COMMISSION                 |  |           |        | SCALE: 1"=100'-0" |          |          |          |
| SAN FRANCISCO INTERNATIONAL AIRPORT |  |           |        | DATE: 10/27/2009  |          |          |          |

AIRPORT COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 09-0280

**RESOLUTION 1) APPROVING A LEASE WITH FEDERAL EXPRESS CORPORATION FOR CARGO WAREHOUSE AND OFFICE SPACE AT BUILDING 900, NORTH FIELD CARGO BUILDING, ON PLOT 50, AND 2) DIRECTING THE COMMISSION SECRETARY TO FORWARD THE LEASE TO THE BOARD OF SUPERVISORS FOR APPROVAL.**

**WHEREAS,** Federal Express Corporation ("Federal Express") is a Signatory Airline pursuant to Airline-Airport Lease and Use Agreement L82-0318 and has operated an integrated cargo operation at San Francisco International Airport (the "Airport") in Building 900 in the North Field Cargo Area pursuant to Lease L98-0173 since 1998; and

**WHEREAS,** Lease L98-0173 expired on September 30, 2009 and Federal Express wishes to enter into a renewal lease at Building 900 at North Field Cargo Area to continue its integrated cargo operation at the Airport; and

**WHEREAS,** Airport staff has negotiated a lease with Federal Express with a Term of three (3) years and one (1) three-year option to extend the Term for approximately 109,823 square feet of cargo warehouse space and 24,023 square feet of office space in Building 900 (the "Lease"); and

**WHEREAS,** the annual rent of \$3,449,211 is based on a rental rate of \$25.77 per square foot per year; now, therefore, be it

**RESOLVED,** that the Airport Commission hereby approves and authorizes the Airport Director to execute a three (3) year Lease with Federal Express for approximately 109,823 square feet of cargo warehouse space and 24,023 square feet of office space in Building 900 with a Term of three (3) years plus one (1) three-year option, at an annual rental of \$3,449,211 and on the terms and conditions set forth in the Director's Memorandum; and be it further

**RESOLVED,** that the Airport Commission hereby directs the Commission Secretary to forward the Lease to the Board of Supervisors for approval.

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

*at its meeting of* \_\_\_\_\_

DEC 15 2009

  
Secretary



**LEASE AGREEMENT  
OF FEDERAL EXPRESS CORPORATION  
IN AIRPORT BUILDING 900**

**AT SAN FRANCISCO INTERNATIONAL AIRPORT**

by and between

**FEDERAL EXPRESS CORPORATION,**  
as Tenant

and

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

Mayor Gavin Newsom

**AIRPORT COMMISSION**

Hon. Larry Mazzola, President  
Hon. Linda S. Crayton, Vice President  
Hon. Caryl Ito  
Hon. Eleanor Johns  
Richard J. Guggenhime

November 2009

Lease No. L09-\_\_\_\_\_

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## LIST OF EXHIBITS

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- EXHIBIT B – Non-Exclusive Areas
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- EXHIBIT D – Specialty Equipment

**LEASE AGREEMENT  
OF FEDERAL EXPRESS CORPORATION  
IN AIRPORT BUILDING 900  
Plot 50  
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.

**Reference Date:** \_\_\_\_\_, 2009

**Tenant:** Federal Express Corporation,  
a Delaware corporation

**Tenant's Notice Address:** Airport Relations & Development  
3680 Hacks Cross Road  
Building H, 3<sup>rd</sup> Floor  
Memphis, TN 38125  
Attention: Managing Director  
Real Estate and Airport Development  
Fax No. (901) 434-9480  
Tel No. (901) 434-9303

**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, 5th Floor  
P.O. Box 8097  
San Francisco, CA 94128  
Attention: Airport Director  
Fax No. (650) 821-5005  
Tel. No. (650) 821-5000

**Premises:** Portions of Airport Building 900 comprised of approximately 109,823 square feet of warehouse space, (inclusive of 37 truck dock positions and 12 delivery truck ramp positions), and 24,023 square feet of office space, located at Plot 50 at San Francisco International Airport, as described on Airport Drawing Nos. B900FED1 and B900FEDM, attached hereto as *Exhibits A and A-1*.

**Non-Exclusive Areas:** Hardstand 50-3 and 50-5 on "Preferential Basis"  
Hardstand 50-4 and 50-6 on "As-Needed Basis"  
**(§ 2)** ULD/GSE Storage Area  
Employee Vehicle Parking

All Non-Exclusive Areas above as described on Airport Drawing No. B900FEDD as shown on *Exhibit B*.

**Term:** Three (3) years.  
**(§ 2)**

**Option Term:** Tenant shall have one (1) option to extend the Term for an additional three (3) year period (the "**Option Term**") under the same terms and conditions.  
**(§ 2)**

**Option Exercise Date:** Nine (9) months prior to Expiration Date.  
**Date:** Actual Date: \_\_\_\_\_ (to be inserted on determination)  
**(§ 2)**

**Commencement Date:** \_\_\_\_\_ (to be inserted on determination)  
**(§ 2)**

**Expiration Date:** 11:59 p.m. on \_\_\_\_\_ or upon earlier termination of this Lease as provided herein. (to be inserted on determination)  
**(§ 2)**

**Permitted Use:** To conduct Tenant's integrated air cargo related business including receiving, delivering, dispatching, processing, handling, and storage of air cargo and mail and any other lawful purpose directly related to the foregoing activities (the "**Permitted Use**") and for no other purpose.  
**(§ 3)**

**Initial Annual Rent:** Three Million Four Hundred Forty-Nine Thousand Two Hundred and Eleven Dollars (\$3,449,211.00), ("**Annual Rent**") paid in advance in twelve (12) monthly installments (\$287,434.25 per month), based on a rate of \$25.77 per square foot per year for 133,846 square feet of warehouse and office space, and as adjusted pursuant to Section 4.4.  
**(§ 4)**

**Rent:** Annual Rent, Additional Rent (as defined below), and all other amounts owing by Tenant to City hereunder.  
**(§ 4)**

**Deposit Amount:** The higher of One Million Seven Hundred Twenty-Four Thousand Six Hundred and Five Dollars (\$1,724,605.00) and six (6) months of the Annual Rent for each Lease Year, subject to annual adjustment once the Annual Rent is determined.

**Resolution:** **09-0280** Number \_\_\_\_\_, approved by the Airport Commission \_\_\_\_\_.

**Initial Tenant Representative:** Glenn Van Winkle  
Tel. No. (650) 616-5907  
(§ 3.7)

**Other Agreements:** Lease and Use Agreement No. L82-0318.  
(§ 14.1)

- Exhibits:**
- A and A-1 – Premises
  - B – Non-Exclusive Areas
  - C – City's Maintenance Responsibilities
  - D – Specialty Equipment

Initials of Authorized Representative of City \_\_\_\_\_

Initials of Authorized Representative of Tenant \_\_\_\_\_

*RJG 11-10-09*  
APPROVED  
LEGAL DEPARTMENT

*JPH 10-27-09*

APPROVED  
ACCOUNTING DEPARTMENT

*2011/11/10/09*



**LEASE AGREEMENT  
OF FEDERAL EXPRESS CORPORATION  
IN AIRPORT BUILDING 900  
Plot 50  
AT SAN FRANCISCO INTERNATIONAL AIRPORT**

THIS LEASE AGREEMENT (this "Lease"), dated as of the Effective Date, is entered into by and between the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Airport Commission ("Commission"), and Federal Express Corporation, a Delaware corporation ("Tenant").

This Lease is made with reference to the following facts and objectives:

A. City owns San Francisco International Airport (the "Airport") located in the County of San Mateo, State of California, which Airport is operated by and through the Commission, the chief executive officer of which is the Airport Director ("Director"). The Airport's "Terminal Building Complex" is currently comprised of a Terminal 1, Terminal 2, Terminal 3, and the International Terminal, together with connecting concourses, piers, boarding areas and extensions thereof, and satellite, cargo, and support 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" or "Airport Building 900" as used herein shall mean the Airport, the Terminal Building Complex or Airport Building 900, respectively, as the same may be expanded, contracted, improved, modified, renovated, or changed in any way. Unless otherwise specified below, references to "City" shall mean City, acting by and through its Airport Commission.

B. City desires to lease certain real property at the Airport for the purpose of conducting an integrated air cargo business.

C. Pursuant to the Resolution, Commission has authorized the execution of this Lease by City.

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.

1.2 Rights of Ingress and Egress. Tenant shall also have the non-exclusive right of ingress and egress across Airport property to conduct its permitted operations hereunder provided that such ingress and egress activity: (a) shall not impede or interfere unduly with the operation of the Airport by City, its tenants, customers, employees and other authorized occupants; (b) shall be subject to Airport Rules and Regulations, as amended from time to time as amended, (the "Airport Rules"), including those pertaining to badge, permitting, and other security requirements, and the requirements of this Lease; and (c) shall be in or on highways,

roads, and other areas designated by Director from time to time. Said rights of ingress and egress shall likewise apply to Tenant's employees, guests, patrons and suppliers, including the right of transport of equipment, material, cargo, machinery and other property, provided however, that Director may impose a charge upon Tenant's suppliers or furnishers of service in an amount sufficient to compensate City for the out-of-pocket costs reasonably and directly incurred by City in the reasonable regulation by City of such suppliers or furnishers of service in the exercise by such suppliers or furnishers of the foregoing right of ingress and egress, and provided further, that such right of ingress and egress shall not alter or affect whatever contractual arrangements which may now or hereafter exist between City and Tenant's suppliers or furnishers of service.

1.3 Non-Exclusive Space. In addition to the Premises, the Tenant shall be granted non-exclusive use of areas (collectively, the "Non-Exclusive Areas") adjacent to Airport Building 900 as shown on *Exhibit B*, for the purposes set forth below:

(a) Tenant shall be entitled to the non-exclusive use of aircraft parking positions 50-3 and 50-5 and on a preferential basis, free of aircraft parking charges. Tenant agrees and understands that use of said aircraft parking positions on a "**Preferential Basis**" means the usage based on the Tenant's flight operation schedule submitted periodically in advance to the City. For such scheduled operations, Tenant is entitled to use said aircraft parking positions for cargo loading and unloading, basic aircraft servicing, rest overnight operations, and fueling. City reserves the right to utilize said aircraft parking positions for aircraft operations of other air carriers when Tenant is not using the aircraft positions on a Preferential Basis. The City will give preference to accommodate Tenant's unscheduled aircraft parking needs at aircraft parking positions 50-3 and 50-5 if the requested position is available.

(b) Tenant shall also be granted use of aircraft parking positions 50-4 and 50-6, if available, on an as needed basis, free of Airport aircraft parking charges. Tenant agrees and understands that the right to use aircraft parking positions 50-4 and 50-6 on an "**As Needed Basis**" shall mean at the sole discretion of the Director.

(c) Tenant shall be entitled to the use of 186 employee and customer parking spaces at a permit rate equal to the Airport's employee parking fee schedule, as may be amended from time to time. Tenant shall contract with City for appropriate parking permits through the Airport's Parking Management Department under separate contract. The parking spaces may not be available throughout the Term, and, following reasonable notice to Tenant, City may (i) relocate some or all such spaces, and/or (ii) require that Tenant cease using some or all such spaces.

(d) Tenant shall be entitled to the non-exclusive use of space on the ramp area, as shown on *Exhibit B*, or as otherwise designated by Director, for equipment and ULD storage.

For purposes of this Lease relating to Tenant's responsibilities and liabilities, including Sections 3.7, 3.11, 5.1, 6.1, 7, 9, 11, 15 and 16, and City's rights [including Sections 1.3, 1.4], unless otherwise specified, the term the "**Premises**" shall include the Non-Exclusive Areas; provided, however, that Tenant shall have no obligation to repair or make changes to the Non-Exclusive Areas except and to the extent the same is caused by or results from (a) any act or omission of Tenant or any Tenant Entity, or (b) any default by Tenant or any Tenant Entity

hereunder. As used herein, the term “**Tenant Entity**” shall mean any officer, employee, affiliate, contractor, agent, licensee, or invitee of Tenant.

1.4 Relocation, Expansion, Contraction.

(a) At any time City may, by appropriate Commission Resolution, and upon eighteen (18) months prior notice to Tenant, require that (i) Tenant relocate and surrender all or part of the Premises (such change to the Premises referred to as a “**Required Surrender**”), 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 1.4. City shall give notice (the “**Change Notice**”) setting forth a description of the Required Surrender or the Premises Change, as applicable, the approximate effective date thereof (the “**Target Effective Date**”), and with respect to a Required Surrender, the location of comparable on-Airport replacement premises if such replacement premises shall exist. Notwithstanding the foregoing, City shall have no obligation to give eighteen (18) months notice for any Required Surrender or Premises Change of any Non-Exclusive Areas; however, to the extent possible, City shall give the following notice before the Target Effective Date of the Required Surrender or Premises Change for the following Non-Exclusive Areas:

- Aircraft parking positions - six (6) months
- Ramp area - thirty (30) days
- Employee and customer parking spaces - three (3) days.

(b) With respect to a Required Surrender, if the replacement premises are deemed unsatisfactory to Tenant, then Tenant may terminate this Lease by giving notice thereof to City within one hundred twenty (120) 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. 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 Director (which shall be no earlier than the Target Effective Date). On the Surrender Date, Tenant shall surrender the Premises in condition required by this Lease.

(c) With respect to a Required Surrender, 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.

(d) With respect to a Premises Change where the original Premises will be expanded or contracted, 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.

(e) At Director’s option, the parties shall amend this Lease or enter into a new lease on substantially the same terms as this Lease, to reflect the Required Surrender or the Premises Change.

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

1.5 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, Airport Building 900, and Non-Exclusive Areas; (b) City has made no representations, warranties, or covenants to Tenant regarding the design, construction, pedestrian traffic, or views of the Airport or the Premises. Without limiting the generality of the foregoing, Tenant acknowledges and agrees that the Airport (i) is currently undergoing, and may from time to time hereafter undergo, renovation, construction, and other Airport modifications; and (ii) may from time to time adopt rules and regulations relating to security and other operational concerns that may affect Tenant's business. Although City will use reasonable efforts to minimize the effect of the Master Plan Expansion and other Airport changes on Tenant's business, Tenant acknowledges that such activity may have some effect on cargo operations occurring at the Airport.

## 2 TERM

2.1 Commencement and Expiration. The Term shall commence on the Commencement Date and expire on the Expiration Date, unless terminated prior thereto as provided herein.

2.2 Option to Extend. City hereby grants to Tenant one (1) option to extend the Term for a period of three (3) years (the "Option"), on the same terms and conditions of this Lease, except that the Annual Rent shall be adjusted as provided in Section 4.3 [Adjustments To Annual Rent]. To exercise the Option, Tenant must give written notice of such exercise to City on or before the Option Exercise Date in the Major Lease Term Summary. In the event Tenant shall timely exercise the Option, then the Term shall be deemed extended for three (3) years commencing on the date in the Major Lease Term Summary (the "Option Term").

2.3 Early Termination Right. Without limiting City's rights in Section 1.4 [Relocation, Expansion, Contraction], notwithstanding anything to the contrary herein, City shall have the right to terminate this Lease early, in the sole and absolute discretion of the Director, and as provided in this Section 2.3. Such early termination shall be accomplished by giving Tenant eighteen (18) months prior written notice of City's intent to exercise the right of early termination. In the event of such early termination, City shall reimburse Tenant an amount equal to the Unamortized Approved Alteration Costs, which in no event will exceed the amount approved by the Director prior to issuance of the building permit for such Alterations. In no event will Tenant be entitled to any reimbursement for Alterations in a Non-Exclusive Area.

2.4 Holding Over. If, without objection by City, Tenant holds possession of the Premises after the Expiration Date, Tenant shall become a tenant from month-to-month, upon the terms of this Lease except that, at City's sole discretion, Annual Rent shall be: (a) 125% of the then prevailing Annual Rent during the first three (3) months after the Expiration Date; (b) 150% of the then prevailing Annual Rent during the fourth, fifth and sixth months after the Expiration Date; and (c) 200% of the then prevailing Annual Rent during the seventh month after the Expiration Date and any months thereafter. 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.

2.5 No Renewal or Extension Rights. Except as set forth in Section 2.2 [Option To Extend] and Section 2.4 [Holding Over] , 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 to conduct Tenant's integrated air cargo related business including receiving, delivering, dispatching, processing, handling, and storage of air cargo and mail and for any other lawful purpose directly related to the foregoing activities (the "**Permitted Use**") and for no other purpose. In the event Tenant desires to use the Premises for any purpose other than the Permitted Use, Tenant may 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.

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, including at Airport Building 900.

3.3 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.

3.4 Prohibited Activities. Without limiting any other provision herein, Tenant shall not, without the prior written consent of Director: (a) 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 Airport Building 900 or the Airport or any of its contents by way of increased risk of fire or explosion; (ii) create a nuisance; (iii) in any way obstruct or interfere with the rights of others in Airport Building 900 or injure or annoy them; (b) commit or suffer to be committed any waste upon the Premises; (c) use, or allow the Premises to be used, for any unlawful purpose; (d) 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 Airport Building 900; or (e) do or permit to be done, anything in any way tending to injure the reputation of City or appearance of the Airport; or (f) conduct any advertising or promotional activities on the Airport; or (g) conduct any non-emergency aircraft maintenance operations; or (h) conduct any aircraft washing.

3.5 Inspection of Operations. At any reasonable time and from time to time, City may conduct an inspection of Tenant's operations at the Airport to confirm that such operations comply with the requirements set forth herein. City shall use reasonable efforts to avoid any unreasonable interference with Tenant's operations in conjunction with said inspection(s). Tenant shall cooperate with such inspection(s).

3.6 Representative of Tenant; Access. Tenant shall at all reasonable times retain in Airport Building 900 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. Tenant shall assure City of emergency access to the Premises by providing a list of current emergency telephone numbers at which Initial Tenant Representative may be reached on a 24-hour basis.

3.7 Compliance with Laws. Tenant shall promptly, at its sole expense, cause the Premises (including any permitted Alterations (as defined below), and Tenant's use of the Premises and operations therein, to comply at all times with all present and future federal, state and local laws, as the same may be amended from time to time, whether foreseen or unforeseen, ordinary as well as extraordinary, including all laws relating to (a) health and safety; (b) disabled access, including the Americans with Disabilities Act, 42 U.S.C.S. Sections 12101 et. seq. and Title 24 of the California Code of Regulations (collectively "ADA"), (c) Hazardous Materials (as defined below); and (d) fire sprinkler, seismic retrofit, and other building code requirements (collectively "Laws"), and the Airport's Tenant Improvement Guide, as amended from time to time (as amended, the "Airport's TI Guide"), and the Airport Rules. The parties acknowledge and agree that Tenant's obligation to comply with all Laws, the Airport's TI Guide, and the Airport Rules, is a material part of the bargained for consideration under this Lease. Any work or installations made or performed by or on behalf of Tenant or any person or entity claiming through or under Tenant on the Premises shall be subject to and performed in compliance with the provisions of this Lease, including this Section 3.7. Notwithstanding the foregoing, this Section 3.7 shall not impose on Tenant any liability to make any alterations to the portion of the Premises maintained by City pursuant to Section 9.3 [City's Maintenance Obligations] or to the Building Systems, except to the extent the same is (x) installed by Tenant pursuant to Section 8 [Utilities], or otherwise, or (y) necessitated by Tenant's Alterations or by any act or omission of Tenant or any Tenant Entity. Tenant shall keep current all licenses and permits, whether municipal, county, Airport, state or federal, required for conduct of its operations at Airport, and pay all fees promptly when due.

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

3.9 No Continuous Use. Notwithstanding any provision of this Lease to the contrary, Tenant shall not be required to occupy or to continuously operate the Premises, and Tenant shall have the right to cease operations (whether or not Tenant vacates the Premises) without same constituting a default by Tenant provided Tenant continues to pay Rent and perform its obligations under this Lease.

3.10 Certified Handlers. Tenant may utilize handlers to perform the Permitted Use provided that all such handlers shall be (a) Airport-certified, (b) party to an Airport-issued operating permit, and (c) obligated to operate in compliance with this Lease.

3.11 Third-Party Handling. With the prior written consent of Director, which consent shall not be unreasonably withheld, conditioned, or delayed, Tenant may handle air cargo and

mail of other airlines. Tenant acknowledges and agrees to submit, in writing to Director, any subsequent amendments to an Airport approved handling agreement during the Term to reflect changes and termination. Director's consent of a singular request does not constitute a blanket approval. Director's consent is required on each individual handling request.

3.12 Prevention of Trespass. Tenant shall use reasonable precautions to prevent unauthorized persons from gaining access to restricted flight and aircraft operational areas and all other nonpublic areas around restricted flight and aircraft operational areas and all other nonpublic areas around the Premises.

3.13 Antennae and Telecommunications Dishes. No antennae, telecommunications dish, wireless telecommunications system, or other similar facilities may be installed on the Premises without the prior written approval of Director, which approval shall not be unreasonably withheld, conditioned or delayed. No such antennae shall interfere with City's emergency and non-emergency communications facilities or the transmission facilities of City.

#### 4 RENT

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

(a) **"Consumer Price Index"** means that index published by the United States Department of Labor, Bureau of Labor Statistics known as "All Urban Consumers - All Items for the San Francisco/Oakland/San Jose Area (1982-84 = 100)." 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.

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

(c) **"Base Index"** means the most recent Consumer Price Index published **three (3) months** prior to the Commencement Date.

(d) **"Comparison Index"** means the most recent Consumer Price Index published **three (3) months** prior to each Rent Adjustment Date.

(e) **"Lease Year"** means the period commencing on the Commencement Date and expiring on the day before the first Rent Adjustment Date, and each subsequent 12-month period, commencing on each Rent Adjustment Date and expiring on the day before the subsequent Rent Adjustment Date, or expiring on the Expiration Date, as the case may be.

4.2 Monthly Rent Payments. Tenant shall pay, as rent for the Premises, the monthly installment of the Annual Rent in advance on or before the first (1st) day of each calendar month of the Term:

(a) On or before the Rent Commencement Date and the first (1st) day of each calendar month thereafter, Tenant shall pay the monthly installment of the current Annual Rent.

If the Commencement Date occurs on a date other than the first day of a calendar month, then the monthly Rent for such first month (the "First Month") shall be prorated based on the actual numbers in days, as the case may be, in such month.

(b) All payments hereunder shall be paid at the office of Director, or at such other place as City may from time to time designate in writing. All Rent shall be paid in lawful money of the United States, free from all claims, demands, setoffs, or counterclaims of any kind. Any Rent not paid when due shall be subject to a service charge equal to the lesser of the rate of one and one-half percent (1½%) per month, and the maximum rate permitted by law. Acceptance of any service charge shall not constitute a waiver of Tenant's default on the overdue amount or prevent City from exercising any of the other rights and remedies available to City.

4.3 Adjustments to Annual Rent. On each Rent Adjustment Date, the Annual Rent will be adjusted, as follows: if the Comparison Index shall exceed the Base Index, then the Annual Rent with respect to the upcoming Lease Year shall be increased to equal the following amount:

$$\text{Initial Annual Rent} \times \frac{\text{Comparison Index}}{\text{Base Index}}$$

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

4.4 Additional Rent. Tenant shall pay to City any and all charges and other amounts under this Lease as additional rent, including fines pursuant to Section 14.7 [Special Liquidates Damages], at the same place where Annual 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 Annual Rent.

4.5 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 Rent (including Annual Rent, utility charges, and all other amounts) one (1) month in advance of when such payment would otherwise be due. 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.

4.6 Nature of Lease. The Annual Rent and other Rent due City hereunder shall be absolutely net to City and shall be paid, except as otherwise provided expressly herein, without assertion of any counterclaim, setoff, deduction or defense and without abatement, suspension, deferment or reduction. Under no circumstances or conditions, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the parties, shall City be expected or required to make any payment of any kind whatsoever with respect to the Premises or be under any obligation or liability hereunder except as expressly set forth in this Lease. 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.

4.7 Cargo Services Revenue Policy. Tenant acknowledges that City is considering the adoption of a Cargo Services Revenue Policy, which policy may initiate the imposition of a charge or fee assessed on cargo-related activity that (1) occurs on the Premises, and/or (2) is performed by subtenants, third-party vendors, contractors, or agents on behalf of Tenant. Accordingly, Tenant agrees that if City adopts such policy, Tenant shall: (a) pay to City as "Additional Rent" the cargo services charge or fee consistent with such policy; provided, however, City agrees that such charge or fee will not exceed five cents (\$0.05) per metric ton of cargo; (b) provide the cargo services reports and permit City audit rights as required by such policy; and (c) perform such other related actions as may be required by the Cargo Service Revenue Policy. City shall use reasonable efforts to give notice to Tenant outlining the proposed Cargo Services Revenue Policy prior to the adoption thereof.

4.8 Accounting. If City adopts the Cargo Services Revenue Policy referenced above or other activity based program, Tenant shall maintain for a period of five (5) years after the revocation or termination of this Lease or, in the event of a claim by City, until such claim of City for payments hereunder shall have been fully ascertained, fixed and paid, separate and accurate records of Tenant's operations hereunder. All such books and records shall be kept in accordance with generally accepted accounting principles, consistently applied, showing in detail all business done or transacted in, on, about or from or pertaining to the Airport. Within thirty (30) days of Director's written request, Tenant shall make available immediately to City and/or its auditors any and all books, records and accounts pertaining to its operations under this Lease.

## 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.

5.2 No Bonus Value. It is the intent of the parties hereto that the Lease shall confer upon Tenant only the right to use and occupy the Premises and Non-Exclusive Areas and to exercise such other rights as are conferred upon Tenant by Lease. The parties agree that this Lease is not intended to have and thus shall have no Bonus Value (as defined below) nor serve as a vehicle whereby Tenant may profit by a future Transfer of this Lease or by the right to use or occupy the Premises as a result of any favorable terms contained herein or any future changes in the market for leased space. As used herein, the term "**Bonus Value**" shall mean consideration or compensation paid or payable under or by virtue of any Transfer, immediately or over the aggregate of the Term, directly or indirectly exceeding that paid or payable by Tenant under the Lease (less expenses for verifiable and reasonable costs for tenant improvements, lease concessions, value of Tenant's trade fixtures and special equipment conveyed in connection with the Transfer). If Tenant receives any Bonus Value during the Term of this Lease or in case of the sublease of a portion of the Premises in excess of such rent that is fairly allocable to such portion, Tenant shall pay City fifty percent (50%) of the difference between each such payment of sublease rent or other consideration and the Rent required hereunder. Accordingly, all such Bonus Value shall belong exclusively to and be paid or payable to City as additional rent hereunder. Such additional amounts shall not affect or reduce any other obligation of Tenant to pay Rent under this Lease.

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

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

## 6 TAXES, ASSESSMENTS AND LIENS

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

6.2 Other Liens. Tenant shall not permit or suffer any liens to be imposed upon the Premises, Airport Building 900, the Terminal Building Complex, other Airport property, or any part thereof including 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 TENANT IMPROVEMENTS; ALTERATIONS

7.1 Improvements. Subject to the provisions of Section 7.2 below, Tenant at its own expense may construct, place or erect on the Premises any improvements which it may consider necessary or useful in connection with or related to Tenant's business, including Tenant's trade fixtures, specialty equipment, furnishings, finishes, or other necessary improvements to Premises and thereafter, to alter, modify or enlarge the same. Tenant will have the right, without being subject to the provisions of Section 7.2 [City's Approval Rights], to make Alterations to the interior of the Premises, conditioned upon their compliance with Section 105.2 of the California Building Code.

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 Director's prior written consent. In no event will Tenant construct any Alterations on the Non-Exclusive Areas. Tenant shall cause all such Alterations to be performed in a workmanlike manner, in compliance with the requirements of the Airport's TI Guide and all applicable Laws. Without limiting the generality of the foregoing, all Exterior Alterations (as defined below) shall conform to Commission's established architectural design scheme for Airport Building 900, and may require the approval of the Airport's Design Review Committee. As used herein, the term "Exterior Alterations" means Alterations to be installed on the exterior of Airport Building 900 or visible from any common area space within Airport Building 900. Prior to the construction of any Alterations, Tenant shall submit detailed plans and specifications to the Director for approval. Tenant shall include with its plans and specifications schematic renderings of the common area, materials, and a color board(s). With respect to the Exterior Alterations, all decisions by the Airport's Design Review Committee shall be made subject to the approval of the Airport Commission. Director'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 until they meet Director's approval. The Commencement Date shall not be extended if Director rejects any designs 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 Director. 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 proposed Alterations will, within fifteen (15) days after approval thereof by Director 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 Director who shall furnish to Director within fifteen (15) days such completion bonds and labor and material bonds as Director may require so as to assure completion of the Alterations on a lien-free basis.

7.3 Costs of Alterations. Within thirty (30) days after the Completion Date for any Alterations project, Tenant shall certify to the Director all out-of-pocket costs incurred by Tenant in connection with an approved Alterations project, which certification shall include copies of invoices for such Alterations, together with evidence of payment of such Alterations. The term "**Approved Alteration Costs**" shall mean the actual out-of-pocket costs incurred by Tenant for Alterations projects approved by City, to the extent such costs are approved by Director. "**Approved Alteration Costs**" shall not include any oversight or management fees, any relocation costs incurred by Tenant in connection with any Alteration, or the cost of any of Tenant's personal property, equipment, or specialty fixtures. In the event Tenant fails to give such notice, the actual initial cost of such permanent improvement shall be determined by Director. As used herein, the term "**Completion Date**" means the earlier of: (a) the date on which any Alterations are substantially complete; and (b) the date on which Tenant takes occupancy of any such Alteration.

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

7.5 Title to Alterations. Title to all Alterations of such a nature as cannot be removed without substantial damage to the Premises including all carpeting, decorations, finishes, and counters, shall vest in City on the Expiration Date. All other equipment of such nature as to constitute specialty equipment or trade fixtures shall remain the property of Tenant. On the Expiration Date, Tenant may remove said specialty equipment or trade fixtures or Director may require that Tenant remove same at Tenant's expense. Tenant has submitted to Director a proposed list of such specialty equipment and trade fixtures as specified on Exhibit D, dated December 10, 1997; said list may be subsequently amended during the Term to reflect any changes in said specialty equipment and trade fixtures. Tenant agrees and understands that "specialty equipment or trade fixtures" are defined as objects affixed to Premises that are 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 and equipment, other than Tenant's specialty equipment or trade fixtures, 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 other Airport premises (including ADA requirements) including other areas of Airport Building 900, 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.

## 8 UTILITIES

### 8.1 Services

(a) Tenant shall have the right to obtain service from City's water, sewerage, storm water drainage and electric power facilities, but shall acquire no title thereto. Tenant shall have the right to request and receive telephone and communications services and illuminating or industrial gas service, subject to the customary rules and regulations of these utility companies, from the utility companies furnishing such services, whether the companies deliver such services directly through their own conduits or pipes or through conduits or pipes owned by City. Tenant agrees to pay all charges legally exacted for said utility services. Tenant may alter, relocate, or add to said existing facilities and utilities, provided written approval by City of plans for such alteration or relocation is first obtained. Tenant shall not cross connect water supplies from sources other than City's supply pipes. City shall have the right, at all times, without unreasonably or unduly interfering with Tenant's use of the Premises to enter upon the Premises and install, construct, maintain, operate and remove water pipes, drainage pipes, electric power supply lines, telephone and communication conduits, sewerage lines for general airport use. Unless due to the fault of Tenant, the expense of any said operation shall be borne by City. In the event of any excavation by City upon the Premises for any of said purposes, said Premises shall be restored to the immediately prior condition at City's expense, unless due to the fault of Tenant.

(b) Prior to the beginning of any construction by Tenant, Tenant shall locate all existing underground utilities belonging to City or its tenants in order to avoid damage to said utilities. Any damage to existing pavement, underground facilities or other improvements belonging to City caused by Tenant's operations shall be repaired to the satisfaction of City by Tenant at its expense. Tenant shall promptly backfill any trench made by it on the Premises so as to leave the surface of the ground thereover, as nearly normal as practical, and restore pavement and landscaping to its original condition. This shall include Tenant's restoration of landscaping, fencing, gates, roadways, traffic signs, dryways, driveways, parking lots, guardrails or any other improvements.

(c) Drains or other facilities provided by Tenant for the purpose of disposing of storm or other waters shall in no case be connected to sanitary sewers. In the event that Tenant's facilities (either storm or sanitary) are below an elevation that will permit gravity flow into facilities provided by City, then Tenant shall provide and maintain such pumping facilities as may be necessary to deliver storm water or sanitary sewage to the proper drainage system facilities or sanitary sewers provided by City for the disposal of same. Tenant must provide adequate separations to prevent flow into the sanitary sewer system of petroleum products or

chemicals or any foreign matter. Tenant shall take all reasonable precautions to prevent material going into the drainage system which would create interference with the flow therein, or which would cause undue hazards or unlawful contamination of the waters of the San Francisco Bay into which the drainage flow may be deposited.

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 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. THE PARTIES ACKNOWLEDGE AND AGREE THAT TENANT HAS USED, OCCUPIED, AND CONTROLLED THE PREMISES AND THE NON-EXCLUSIVE AREAS CONTINUOUSLY SINCE APRIL 1999. 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 THE NON-EXCLUSIVE AREAS, INCLUDING: (i) the quality, nature, adequacy and physical condition and aspects of the Premises including landscaping, (ii) the quality, nature, adequacy, and physical condition of soils, geology and any groundwater, (iii) the existence, quality, nature, adequacy and physical condition of utilities serving the Premises, (iv) the development potential of the Premises, and the Premise's use, habitability, merchantability, or fitness, suitability, value or adequacy of the Premises for any particular purpose, (v) the zoning or other legal status of the Premises or any other public or private restrictions on use of the Premises (vi) the compliance of the Premises or its operation with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions and restrictions of any governmental or quasi-governmental entity or of any other person or entity, (vii) the presence of Hazardous Materials on, under or about the Premises or the adjoining or neighboring property, (viii) the quality of any labor and materials used in any improvements on the real property, (ix) the condition of title to the Premises, and (x) any agreements affecting the Premises.

### 9.2 Tenant's Maintenance Obligations.

(a) Except as provided in Section 9.3 [City's Maintenance Obligations], Tenant shall at all times during the Term, and at Tenant's sole cost and expense, keep the Premises and every part thereof in good condition and repair, and in compliance with applicable Laws and the Airport's TI Guide, 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 13

[Damage or Destruction] shall apply; provided however, if damage to the Premises, is caused by City, and is not the result of normal wear and tear, then the cost to repair or replace the same shall be borne by City.

(b) 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. As provided below in Section 14.3 [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.

(c) Tenant shall, and shall cause its Tenant Entities to, maintain and keep the ramp and parking area in a neat, clean and orderly condition, free from litter, debris, refuse, petroleum products or grease that may accumulate thereon as a result of Tenant's operations hereunder.

9.3 City's Maintenance Obligations. City shall at all times, at City's sole cost and expense, keep Airport Building 900 Base Building infrastructure, systems, and equipment deemed City Responsibility, as provided on *Exhibit C*, in good condition and repair, and replace the same as necessary; provided however, if damage to such Premises, infrastructure, systems, and/or equipment is caused by Tenant or Tenant Entity, and is not the result of normal wear and tear, then the cost to repair or replace the same shall be borne by Tenant.

The maintenance, repair and replacement of all other systems or equipment, including all systems or systems installed by Tenant, or located within the Premises, shall be the sole obligation of the Tenant. Notwithstanding anything to the contrary herein, City shall have no obligation to perform any maintenance or repair if such maintenance or repair arose from the negligence or misconduct of Tenant as to which Tenant shall be solely liable.

## 10 SIGNS AND ADVERTISING

10.1 No Advertising. Tenant may, at its own expense, install and operate necessary and appropriate identification signs on the Premises, subject to the approval of Director, including the approval of the number, size, height, location, color and general type and design. Such approval shall be subject to revocation by Director at any time. Without express written consent of Director, Tenant shall not display any advertising or promotional materials. In no event will any advertising of any cigarettes or tobacco products be permitted. This prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

10.2 Removal of Signage. Upon the expiration or the sooner termination of this Lease, Tenant, if requested by Director, shall remove, obliterate, or paint out any and all signs, and similar devices placed by Tenant on the Premises. In the event of the failure on the part of Tenant to so remove, obliterate, or paint out each and every sign so requested by Director, City may perform such work and Tenant shall pay the cost thereof to City within (30) days of invoice.

## 11 WAIVER; INDEMNITY; INSURANCE

11.1 Waiver. Tenant, on behalf of itself and its successors and assigns, waives its rights to recover from and forever 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 be connected with (a) the physical and environmental condition of the Premises or any law or regulation applicable thereto, including all Environmental Laws; (b) any damage suffered or sustained by Tenant or any person whosever may at any time be using or occupying or visiting the Premises or 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 benefits 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."

11.2 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 (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 solely by the sole gross negligence or willful misconduct of City.

11.3 "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.

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

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

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

(b) Commercial General Liability Insurance with limits not less than \$25,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including coverages for Premises Operations, Contractual Liability, Personal Injury, Products Liability and Completed Operations Coverages, Cargo Legal Liability, Vehicles operated on



restricted access airport premises; and Hangars-Keepers Liability; Explosion; Collapse; and Underground, Sudden and Accidental Pollution.

(c) Commercial Automobile Liability Insurance with limits not less than \$5,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Employer's non-ownership liability and hired auto coverages.

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

(e) Business Interruption Insurance insuring that the Rent will be paid to City for a period of at least one (1) year if Tenant is unable to operate its business at the Premises due to a risk required to be insured against by Tenant hereunder. Said insurance shall also cover business interruptions due to failures or interruptions in telecommunications services, strikes, employee lockouts, riots, or other civil commotion.

11.6 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. Tenant shall not do anything, or permit anything to be done, in or about the Premises or any improvements permitted hereunder that would create any unusual fire risk, and shall take commercially reasonable steps to protect City from any potential premises liability. Tenant shall faithfully observe, at its expense, any and all reasonable requirements of City's Risk Manager with respect thereto and with the requirements of any policies of public liability, fire or other policies of insurance at any time in force with respect to the Premises and any improvements as required hereunder. Without limiting the generality of the foregoing, all Commercial General Liability Insurance, Commercial Automobile Liability Insurance, and Property Insurance policies shall be endorsed to provide the following:

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

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

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

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

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

## 12 DEPOSIT

12.1 Form of Deposit. Within ten (10) days after the Effective Date, 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, and otherwise in form satisfactory to City's City Attorney, and issued by a surety company satisfactory to Director, or (b) a letter of credit naming City as beneficiary, and otherwise in form satisfactory to City's City Attorney, issued by a bank satisfactory to Director. Such bond or letter of credit shall be renewed annually and increased annually such that at all times, the Deposit is equal to six (6) times the monthly installment of the then current Annual Rent, all at Tenant's cost. Such bond or letter of credit 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. 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. City acknowledges possession of a Deposit in the amount \$1,758,412.00 from Tenant's previous lease agreement (L98-0173) with City.

12.2 Use of Deposit. If Tenant fails to pay Rent or otherwise defaults with respect to any provision of this Lease, City may use, apply or retain all or any portion of the Deposit for the payment of Rent or other charge in default or for the payment of any other sum to which City may become obligated by reason of Tenant's default or to compensate City for any loss or damage which City may suffer thereby. If City so uses or applies all or any portion of the Deposit, Tenant, within ten (10) days after demand therefor, shall deposit other security acceptable to Director with City in an amount sufficient to restore the Deposit to the full amount thereof. In the event the bonding company or bank declines to renew or elects to cancel the bond or letter of credit comprising the Deposit, Tenant shall, at least fifteen (15) days prior to the expiration or cancellation date, replace such bond or letter of credit with another bond or letter of credit. If Tenant fails to do so, City may, without notice to Tenant, draw on the entirety of the Deposit and hold the proceeds thereof as security hereunder. City shall not be required to keep the Deposit separate from its general accounts. If Tenant performs all of Tenant's obligations hereunder, the Deposit, or so much thereof as has not theretofore been applied by City, shall be returned, without payment of interest or other increment for its use, to Tenant (or, at City's option, to the last assignee, if any, of Tenant's interest hereunder) within thirty (30) days after the expiration of the Term and Tenant's vacating of the Premises. No trust relationship is created herein between City and Tenant with respect to the Deposit.

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

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

### 13 DAMAGE OR DESTRUCTION

13.1 Partial Destruction of the Premises. In the event the improvements on the Premises are damaged by any casualty which is required to be insured against pursuant to this Lease, then Tenant shall repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. 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. Notwithstanding the foregoing, if such damage is caused solely 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. In the event City elects to terminate this Lease pursuant to this Section 13.1, 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 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.

13.2 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.

13.3 Partial Destruction of Airport Building 900. If fifty percent (50%) or more of the improvements shall be damaged or destroyed by an insured risk, or if fifteen percent (15%) or more of Airport Building 900 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.

13.4 Damage Near End of the Term. If during the last six (6) months 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.

13.5 No Abatement of Rent; Tenant's Remedies. 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. In no event will Tenant be entitled to an abatement of Rent resulting from any damage, destruction, repair, or restoration described herein.

## 14 **DEFAULT; REMEDIES**

14.1 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 tenth (10th) 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 City; or

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

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

(g) Tenant shall fail to provide the Deposit within ten (10) days after the Effective Date or shall fail to maintain in full such Deposit at all times during the Term of this Lease, and such failure shall continue for a period of more than five (5) days after delivery by Director of written notice of such breach or default; or

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

(i) Tenant shall fail to keep, perform and observe each and every other promise, covenant and agreement set forth in this Lease, and such failure shall continue for a period of more than ten (10) 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 ten (10) 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 Premises 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.

14.2 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 rent loss that Tenant proves could be reasonably avoided; and

(iii) The "**worth at the time of the award**" of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such rent 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 11 [Waiver; Indemnity; Insurance] hereof.

(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 tenants 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 may, but is not obligated to, relet the Premises or any part thereof, 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 14.2.

(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.

14.3 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 fifteen (15) 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.

14.4 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 except with respect to Tenant's specialty equipment and fixtures as may be otherwise provided in this Lease.

14.5 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.

14.6 Prepayment. As provided in Section 4.5 [Prepay Rent], if Tenant defaults in the payment of Rent, City may require repayment 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.

14.7 Special Liquidated Damages. If Tenant defaults under any of the Lease terms specified below, after notice by City that such a default has occurred, and affording Tenant fifteen (15) days to cure such a default, Director may elect to impose the special liquidated damages (“Fines”) described below on the basis of per violation per day:

| <u>Violation</u>  | <u>Section</u> | <u>Fine</u> |
|---|----------------|-------------|
| Violation of Premises Clause                                | 1              | \$300.00    |
| Violation of Use Section                                    | 3              | \$300.00    |
| Failure to cause operations or Premises to comply with Laws | 3.7            | \$300.00    |
| Construction or Alterations without City approval           | 7.2            | \$300.00    |
| Failure to make required repairs                            | 9              | \$300.00    |
| Failure to obtain or maintain insurance                     | 11.5           | \$100.00    |
| Failure to obtain or maintain Deposit                       | 12             | \$100.00    |

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. THE PARTIES HAVE AGREED THAT A VIOLATION OF ANY OF THE ABOVE TERMS SHALL RESULT IN CITY INCURRING DAMAGES WHICH ARE IMPRACTICAL OR IMPOSSIBLE TO DETERMINE. THE PARTIES HAVE AGREED THAT THE ABOVE FINES ARE A REASONABLE APPROXIMATION OF SUCH DAMAGES. Such fines shall constitute “Additional Rent.”

14.8 Commencement of Legal Actions. Any legal action by City or Tenant to enforce any obligation 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 14.8, whichever period expires later.

14.9 Waiver of Notice. Except as otherwise expressly provided in this Section 14, 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.



## 15 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 [Tenant Improvements; Alterations] hereof, all Alterations and improvements installed in the Premises by Tenant (other than Tenant's specialty equipment and 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 specialty equipment and 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.

## 16 HAZARDOUS MATERIALS

16.1 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 the 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 any property or the environment.

(d) **“Pre-Existing Condition”** means the existence of any Hazardous Materials on the Premises immediately prior to the date on which Tenant took possession of the Premises, on April 1, 1999. Notwithstanding anything to the contrary herein, a “Pre-Existing Condition” shall not include the existence of any Hazardous materials caused or contributed to by the act or omission of Tenant or any Tenant Entity at any time.

16.2 **Tenant’s Covenants.** Neither Tenant nor any Tenant Entity shall cause any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or the Airport, or transported to or from the Premises or the Airport without the written consent of Director, which Director shall not unreasonably withhold, except to the extent that such Hazardous Material, in kind and quantity, is normally necessary or useful to Tenant’s conduct of the Permitted Use under Section 3.1, and will be used, kept and stored in a manner that complies with Environmental Laws, the Airport TI Guide, the Airport Rules and all other laws. At all times Tenant shall ensure and certify that decontamination of the Premises of Tenant’s Hazardous Materials (as defined below) and disposal of Hazardous Materials is in compliance with the foregoing and federal, state and local laws. Any reuse of contaminated soil by Tenant shall be subject to this Section and considered a Release of Hazardous Materials caused by Tenant and not a Pre-Existing Condition, unless Director otherwise agrees in writing to a different interpretation.

16.3 **Environmental Indemnity.** Tenant shall indemnify, defend, and hold harmless City from and against any and all Losses resulting or arising from: (a) a breach by Tenant of its obligations contained in the preceding Section 16.2 [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 constitute a Pre-Existing Condition.

16.4 **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 City, an environmental audit or any other appropriate investigation of Tenant’s operations for possible environmental contamination issues. 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.

16.5 **Notice by Tenant.** Tenant shall give City verbal and written notice of any unauthorized Release of any Hazardous Material, except for Releases considered to be de minimis under Environmental Law, known to Tenant. Such report shall be made in conformance with those procedures established in the Airport’s TI Guide and the Airport Rules. Tenant shall immediately notify City in writing of: (a) pre-existing condition of contamination other than such conditions previously disclosed to the Tenant by City; (b) any enforcement, clean-up, removal or other Government or regulatory action instituted, completed or threatened pursuant to any Environmental Laws; (b) any claim made or threatened by any person against Tenant or the Airport relating to damage, contribution, cost recovery compensation, loss or injury resulting from or claimed to result from any Hazardous Materials on or about the Premises; and (c) any reports made to any environmental agency arising out of or in connection with any Hazardous Materials or pursuant to any Environmental Laws on or about the Premises. Tenant shall also supply to City as promptly as possible, and in any event within five (5) business days after

Tenant first receives or sends the same, with copies of all claims, reports, complaints, notices or warnings of, and any other communications related to asserted violations relating in any way to the Premises or Tenant's use thereof.

16.6 Closure Permit. Prior to the termination or revocation of this Lease, Director shall have the right to require Tenant to file with the City and application for a Closure Permit for decontamination of the site and investigation and removal of all Tenant's Hazardous Materials in compliance with the Airport's TI Guide, the Airport's 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.

16.7 Reports. Without limiting other provisions herein requiring Tenant to comply with Airport's TI Guide, Tenant shall comply with all provisions of the Airport's TI Guide Article 515, Hazardous Materials Inventory and Analysis. Pursuant to Sec. 515.2, tenants and permittees handling Hazardous Materials at any one time during the reporting year shall submit a Hazardous Materials Permit Application and attachments to the address listed below. Exempt tenants and permittees shall fill out and return the Declaration Form included in the Airport's TI Guide including a list of Hazardous Materials stored and the approximate maximum quantities to: San Francisco International Airport, Facilities Division, Building Inspection and Code Enforcement, P.O. Box 8097, San Francisco, CA 94128, Attn: BICE Section Head. Nothing in this Section 16.7 shall require Tenant to report any Hazardous Materials that Tenant is using or transporting in kind and quantity as normally necessary or useful to Tenant's conduct of the Permitted Use in Section 3.1, so long as Tenant at all times is in full compliance with all Environmental Laws, the Airport Rules, and all other laws:

## 17 EMINENT DOMAIN

17.1 Definitions. For purposes of this Section 17, 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.

17.2 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 17. 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.

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

17.4 Partial Taking; Election to Terminate. 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. If a partial Taking of a material portion of Airport Building 900 occurs, each of Tenant and City shall have the right to terminate this Lease in its entirety. For purposes of the foregoing, a "material portion of Airport Building 900" shall mean fifty percent (50%) of the Airport Building 900 or twenty-five percent (25%) of the Premises. City's elections to terminate this Lease pursuant to this Section 17 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 the thirtieth (30<sup>th</sup>) day after such notice is given.

17.5 Tenant Monetary Obligations; Award. Upon termination of this Lease pursuant to an election under Section 17.4 [Partial Taking; Election to Terminate] above, then: (a) Tenant's obligation to pay 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.

17.6 Partial Taking; Continuation of Lease. If a partial Taking of the Premises occurs and this Lease is not terminated in its entirety under Section 17.4 [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 Rent shall be adjusted by Director to reflect the Taking, and (b) City shall be entitled to the entire Award in connection therewith proportionately (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.

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

## 18 CITY AND OTHER GOVERNMENTAL PROVISIONS

18.1 MacBride Principles - Northern Ireland. The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, et seq. The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Tenant acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

18.2 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.

18.3 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 products, virgin redwood, or virgin redwood product.

18.4 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.

18.5 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. 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.

18.6 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 or any consequential, incidental, or special damages, or any lost profits or lost revenues.

18.7 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.

18.8 Federal Nondiscrimination Regulations. Tenant understands and acknowledges that City has given to the United States of America, acting by and through the Federal Aviation Administration, certain assurances with respect to nondiscrimination, which have been required by Title VI of the Civil Rights Act of 1964, as effectuated by Title 49 of the Code of Federal

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

18.9 Federal Affirmative Action Regulations. Tenant assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to ensure 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.

18.10 Nondiscrimination in City Contracts and Benefits Ordinance.

(a) Covenant Not To Discriminate. In the performance of this Lease, Tenant agrees not to discriminate against any employee, City and County employee working with Tenant, applicant for employment with 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) Subcontracts. Tenant shall include in all subleases and other subcontracts relating to the Premises a nondiscrimination clause applicable to such subtenant or other subcontractor in substantially the form of subsection (a) above. In addition, Tenant shall incorporate by reference in all subleases and other subcontracts Sections 12B.2(a), 12B.2(c)-12B.2(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) Nondiscrimination in Benefits. Tenant does not as of the date of this Lease and will not during the term of this Lease, in any of its operations in San Francisco or where work is being performed for the City, or elsewhere in 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 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) HRC Declaration. Tenant hereby represents that prior to execution of this Lease (i) Tenant executed and submitted to the Human Rights Commission of the City and County of San Francisco (the "HRC") the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101)", with supporting documentation, and (ii) the HRC approved such form.

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

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

18.12 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.

18.13 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.

18.14 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 Tenant Entity shall constitute a default hereunder.

18.15 Compliance with Americans With Disabilities Act. Tenant acknowledges that, pursuant to the ADA, programs, services and other activities provided by a public entity, whether directly or through a contractor, must be accessible to the disabled public. Tenant shall provide the services specified in this Lease in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Tenant agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Lease and further agrees that any violation of this prohibition on the part of Tenant, its employees, agents or assigns shall constitute a material breach of this Lease.

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

18.17 Public Transit Information. Tenant shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Tenant employed on the Premises, including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the Building and encouraging use of such facilities, all at Tenant's sole expense.

18.18 Resource Conservation. [Intentionally Deleted]

18.19 Tenant's Utilization of MBE/WBE. As described in Commission Resolution No. 95-0136, the City's Board of Supervisors has found that policies and programs that enhance the opportunities and entrepreneurial skills of local minority owned and women owned businesses ("MBE/WBE") will best serve the public interest because the growth and development of such



businesses will have a significant positive impact on the economic health of the City and County of San Francisco and will serve to reduce racial tension in our community. As described in such resolution, the Commission desires to maximize the opportunities for San Francisco based MBE/WBEs to obtain construction, architectural, and engineering work with Airport tenants. Pursuant to the foregoing resolution, the Commission has adopted a Tenant Improvement Policy to maximize the contracting opportunities for local MBE/WBEs in tenant improvement work involving construction, architectural and engineering services at the Airport. In connection with any tenant improvement work hereunder that involves construction, architectural, and engineering services, (a) Airport staff will set recommended participation goals in the manner set forth in the San Francisco Administrative Code Chapter 12D.A.; and (b) Tenant will use its best efforts to utilize local MBE/WBEs for the performance of such work.

18.20 Pesticide Prohibition. Tenant shall comply with the provisions of Section 39.9 of the San Francisco Administrative 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 Director 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 term of this Lease, (b) describes the steps Tenant will take to meet the City's IPM Policy described in Section 39.1 of the Pesticide Ordinance, and (c) identifies, by name, title, address, and telephone number, an individual to act as the Tenant's primary IPM contact person with the City. In addition, Tenant shall comply with the requirements of Sections 39.4(a) and 39.4(b) of the Pesticide Ordinance as of January 1, 1999, and January 1, 2000, respectively. Nothing herein shall prevent Tenant, through Director, from seeking a determination from the Commission on the Environment that it is exempt from complying with certain provisions of the Pesticide Ordinance as provided in Section 39.8 thereof.

18.21 First Source Hiring Ordinance. The City and County of San Francisco has adopted a First Source Hiring Ordinance (Board of Supervisors Ordinance No. 264-98), that establishes specific requirements, procedures and monitoring for the hiring for entry level jobs of qualified, economically disadvantaged individuals ( defined by the ordinance) by certain contractors and tenants doing business with the City. Within 30 Days after the Airport Commission adopts a First Source Hiring Plan ("**Airport Plan**") in accordance with the Ordinance, Tenant shall enter into a First Source Hiring Agreement with the Airport Commission. Such Agreement will require Tenant to make good faith efforts to meet targeted hiring goals of qualified, economically disadvantaged individuals for work on the subject Lease. The Agreement will also require the Tenant to provide to the Airport Commission records necessary for the Airport Commission to monitor compliance with the Ordinance.

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

18.23 Requiring Minimum Compensation. Tenant agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance ("**MCO**"), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are

incorporated herein by reference and made a part of this Lease as though fully set forth. The text of the MCO is available on the web at [www.ci.sf.ca.us/MCO](http://www.ci.sf.ca.us/MCO). Capitalized terms used in this Section and not defined in this Lease shall have the meanings assigned to such terms in Chapter 12P. Consistent with the requirements of the MCO, Tenant agrees to all of the following:

(a) For each hour worked by a Covered Employee during a Pay Period on the property covered by this Lease, Tenant shall provide to the Covered Employee no less than the Minimum Compensation, which includes a minimum hourly wage and compensated and uncompensated time off consistent with the requirements of the MCO. For the minimum hourly gross compensation portion of the MCO, the Tenant shall pay \$9.00 an hour through December 31, 2001. On January 1, 2002, Tenant shall increase the minimum hourly gross compensation to \$10.00 an hour; provided, however, that if Tenant is a Nonprofit Corporation or a public entity, it shall be required to pay the increased amount only if the City makes the finding required by Section 12P.3(a)(ii) of the San Francisco Administrative-Code. If Tenant is required to increase the minimum gross hourly compensation to \$10.00 an hour, it shall provide the 2.5% annual increase required by the MCO for each of the next three years.

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

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

(d) If, within 30 days after receiving written notice of a breach of this Lease 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, City, acting through the Contracting Department, shall have the right to pursue the following rights or remedies and any rights or remedies available under applicable law:

(i) The right to charge Tenant an amount equal to the difference between the Minimum Compensation and any compensation actually provided to a Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law;

(ii) The right to set off all or any portion of the amount described in Subsection (d)(1) of this Section against amounts due to Tenant under this Lease;

(iii) The right to terminate this Lease in whole or in part;

(iv) In the event of a breach by Tenant of the covenant referred to in Subsection (b) of this Section, the right to seek reinstatement of the employee or to obtain other appropriate equitable relief; and

(v) The right to bar Tenant from entering into future contracts with City for three (3) years.

Each of the rights provided in this Subsection (d) shall be exercisable individually or in combination with any other rights or remedies available to City. Any amounts realized by City pursuant to this subsection shall be paid to the Covered Employee who failed to receive the required Minimum Compensation.

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

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

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

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

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

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

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

such contractors comply with the requirements of the MCO. If such a contractor fails to comply, City may pursue any of the remedies set forth in this Section against Tenant.

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

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

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

18.25 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](http://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 thirty (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 contractor 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 contractor based on the subcontractor's failure to comply, provided that City has first provided contractor 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 job sites 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.

18.26 Contributions from Contractors. 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 contractor 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 contractor or a City officer or employee. Negotiations are completed when a contract is finalized and signed by the City and the contractor. Negotiations are terminated when the City and/or the prospective contractor 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 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 provisions and agrees that if it becomes aware of any such fact during the term of this Agreement it shall immediately notify City.

18.27 Food Service Waste Reduction Requirements. Effective June 1, 2007, Tenant agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in the San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Lease as though fully set forth. This provision is a material term of the Lease. By entering into this Lease, Tenant agrees that if it breaches this provision, City will suffer actual damages that will be impractical to extremely difficult to determine; further, Tenant agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Lease

was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Tenant's failure to comply with this provision.

## 19 GENERAL PROVISIONS

19.1 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 by 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.

19.2 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.

19.3 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.

19.4 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.

19.5 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.

19.6 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.

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

19.8 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.

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

19.10 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.

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

19.12 Attorneys' Fees.

(a) 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 court costs and reasonable attorneys' fees. For purposes of this Agreement, 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.



(b) For the purposes of this Lease, reasonable fees of attorneys in Tenant's legal department shall be based on the fees regularly charged by private attorneys with equivalent number of years of experience in the subject matter area of the law for which Tenant's corporate attorney's services were rendered who practice in the City of Memphis in law firms with approximately the same number of attorneys as employed in the Tenant's legal department.

19.13 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.

19.14 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.

19.15 Reservations by City. City may (a) at any time, upon reasonable advance written or oral notice, enter the Premises to show the Premises to prospective tenants or other interested parties, to post notices of non-responsibility, to remeasure the Premises, 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 right to grant easements or crossings in, over, upon and under the Premises, and nothing herein contained shall be construed as limiting the powers of City to lease, convey or otherwise transfer or encumber during the term of this Lease the hereinbefore described lands for any purpose whatsoever not inconsistent or incompatible with the rights or privileges granted to Tenant by this Lease. City also reserves the right to construct, reconstruct, install, maintain, repair, remove, renew, operate and use from time to time, other pipelines, conduits, power lines, telephone lines, sewer drains, roads and roadways or other structures across, over or under the Premises and any rights of way or easements and/or pipelines used by Tenant. Each of City and Tenant shall be responsible for sufficiently identifying, locating and ensuring protection of its respective appurtenances and connecting subsurface pipelines, telecommunications equipment, utility equipment and pipes, and any other subsurface items from damage caused by any such construction within the Premises and any rights of way or easements. Notwithstanding anything to the contrary in this Lease, City reserves and retains all of the following rights relating to the Premises and the Airport Building 900: (a) Any and all water and water rights, including (i) any and all surface water and surface water rights, including riparian rights and appropriative water rights to surface streams and the underflow of streams, and (ii) any and all groundwater and subterranean water rights, including, the right to export percolating groundwater for use by City or its water customers; and (b) Any and all minerals and mineral rights of every kind and character now known to exist or hereafter discovered in the Premises, including oil and gas and rights thereof, together with the sole, exclusive, and perpetual right to explore for, remove, and dispose of those minerals by any means or methods suitable to City or its successors and assigns, in such manner as not to damage permanently the surface of the Premises or to unreasonably interfere with the permitted use thereof by Tenant, without Tenant's prior written consent. In addition, City reserves all rights in and with respect to the Premises not inconsistent with the Permitted Use, including the right of City, at all reasonable times and, if reasonably practicable, following advance notice to Tenant, to enter and to permit the City, the County of San Mateo, the County Water District, other governmental bodies, public or private utilities and other persons to enter upon the Premises for the purposes of

installing, using, operating, maintaining, renewing, relocating and replacing such underground wells and water, oil, gas, steam, storm sewer, sanitary sewer and other pipelines, and telephone, electric, power and other lines, conduits, and facilities, and flood access and maintenance rights of way and equipment, as City may deem desirable in connection with the development or use of, or remediation of Hazardous Materials in, on, or under, the Premises or any other property in the neighborhood of the Premises, whether owned by City or not. No such wells, pipelines, lines conduits, facilities or right of way shall interfere with the use or stability of any building or improvement on the Premises. Tenant hereby waives any claims for damages for any injury or inconvenience to or interference with Tenant's business on the Premises, any loss of occupancy or quiet enjoyment of the Premises or any other loss occasioned by City's exercise of its rights hereunder.

19.16 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 affect 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 related 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.

19.17 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. City's failure to perform the obligations set forth in this Section 19.17 shall be a material breach of this Lease. 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, provided that City does not unreasonably interfere with Tenant's use of the Premises.

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

19.19 Estoppel Statements. Within thirty (30) days after request therefor by City, Tenant shall deliver a notarized 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 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.

19.20 Subordination. This Lease is and shall be subordinate to any reciprocal easement agreement, ground lease, facilities lease or other underlying lease and the lien of any mortgage or deed of trust, that may now exist or hereafter be executed affecting Airport Building 900 Property, or any part thereof, or City's interest therein. Notwithstanding the foregoing, City or the holder shall have the right to subordinate any such interests to this Lease. If any ground lease or underlying lease terminates for any reason or any mortgage or deed of trust is foreclosed or a conveyance in lieu of foreclosure is made for any reason, Tenant shall attorn to the successor-in-interest to City, at the option of such successor-in-interest. The provisions of this Section shall be self-operative and no further instrument shall be required. Tenant agrees, however, to execute and deliver, upon demand by City and in the form requested by City, any additional documents evidencing the priority or subordination of this Lease. City will provide to Tenant an opportunity to review and comment of said form.

19.21 Representations and Warranties of Tenant. Tenant represents, warrants and covenants to City as follows, as of the date hereof and as of the Commencement Date:

(a) Valid Existence; Good Standing. Tenant is a company duly organized and validly existing under the laws of the country of the **United States of America**. Tenant has the requisite power and authority to own its property and conduct its business as presently conducted. Tenant is in good standing in the State of California.

(b) Authority. Tenant has the requisite power and authority to execute and deliver this Lease and the agreements contemplated hereby and to carry out and perform all of the terms and covenants of this Lease and the agreements contemplated hereby to be performed by Tenant.

(c) No Limitation on Ability to Perform. Neither Tenant's articles of organization or operating agreement, nor any applicable Law, prohibits Tenant's entry into this Lease or its performance hereunder. No consent, authorization or approval of, and no notice to or filing with, any governmental authority, regulatory body or other person is required for the due execution and delivery of this Lease by Tenant and Tenant's performance hereunder, except for consents, authorizations and approvals which have already been obtained, notices which have already been given and filings which have already been made. Except as may otherwise have been disclosed to City in writing, there are no undischarged judgments pending against Tenant, and Tenant has not received notice of the filing of any pending suit or proceedings against Tenant before any court, governmental agency, or arbitrator, which might materially adversely affect the enforceability of this Lease or the business, operations, assets or condition of Tenant.

(d) Valid Execution. The execution and delivery of this Lease and the performance by Tenant hereunder have been duly and validly authorized. When executed and delivered by City and Tenant, this Lease will be a legal, valid and binding obligation of Tenant.

(e) Defaults. The execution, delivery and performance of this Lease (i) do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default by Tenant under (A) any agreement, document or instrument to which Tenant is a party or by which Tenant is bound, (B) any law, statute, ordinance, or regulation applicable to Tenant or its business, or (C) the articles of organization or the operating agreement of Tenant, and (ii) do not result in the creation or imposition of any lien or other encumbrance upon the assets of Tenant, except as contemplated hereby.

(f) Financial Matters. Except to the extent disclosed to City in writing, (i) Tenant is not in default under, and has not received notice asserting that it is in default under, any agreement for borrowed money, (ii) Tenant has not filed a petition for relief under any chapter of the U.S. Bankruptcy Code, (iii) there has been no event that has materially adversely affected Tenant's ability to meet its Lease obligations hereunder, and (iv) to Tenant's knowledge, no involuntary petition naming Tenant as debtor has been filed under any chapter of the U.S. Bankruptcy Code.

The representations and warranties herein shall survive any termination or expiration of this Lease.

19.22 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.

////////

X:\TENANTS\AIRLINES\LEASES\FEDEX Lease\_Agreement revisions to Fed Ex 10-23.docx

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

**TENANT:** I have read and understood the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

APPROVED  
ACCOUNTING DEPARTMENT  
*[Signature]* 11-10-09

APPROVED  
LEGAL DEPARTMENT  
*[Signature]* 10-27-09

FEDERAL EXPRESS CORPORATION,  
a Delaware corporation

[Signatory also to initial summary]

By: *[Signature]*  
Name: Leonard B. Feiler  
Title: 11-13-09

*RJG 11-10-09*

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

[Signatory also to initial summary]

John L. Martin  
Airport Director

AUTHORIZED BY AIRPORT  
COMMISSION

Resolution No. \_\_\_\_\_

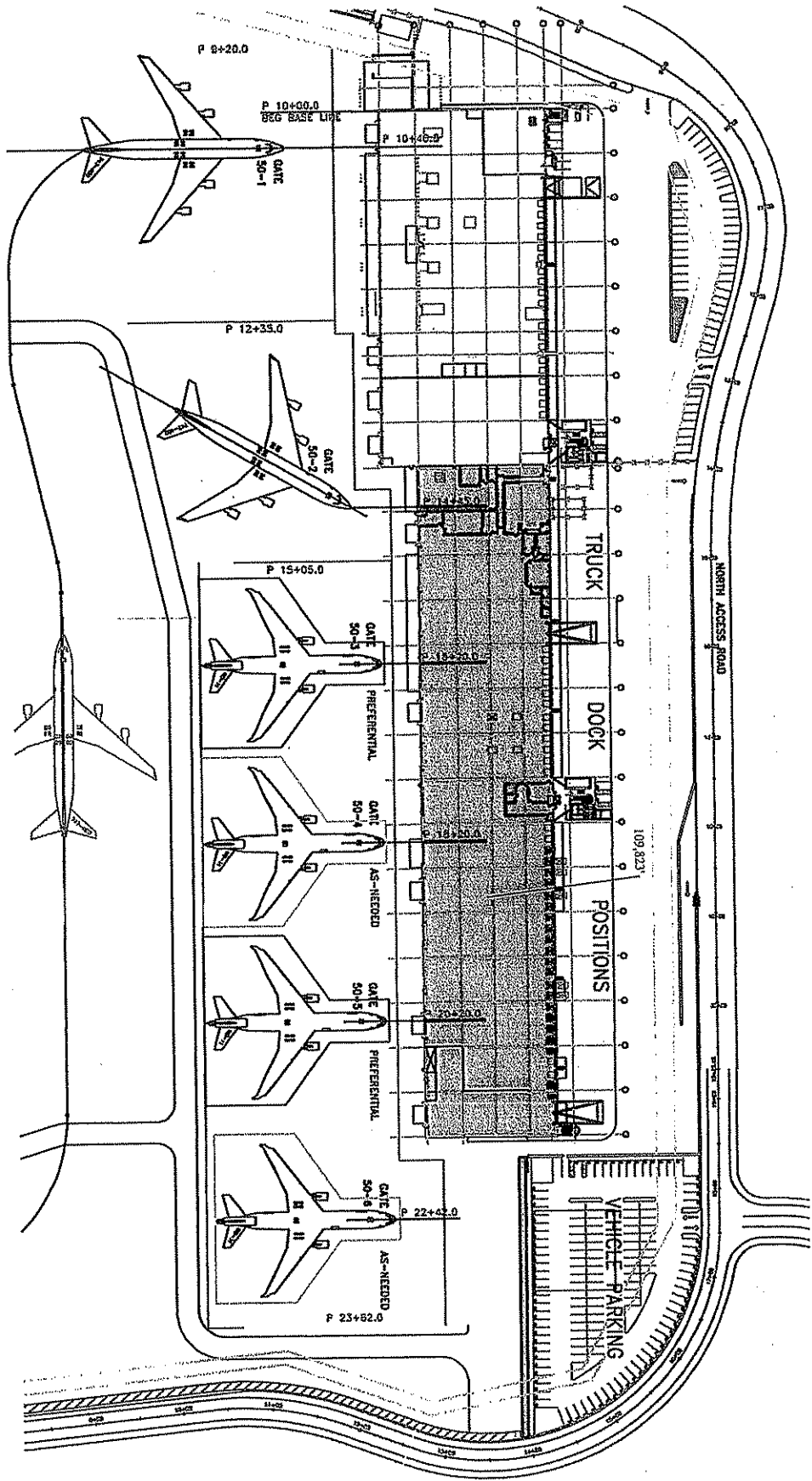
Adopted: \_\_\_\_\_

Attest: \_\_\_\_\_

Secretary  
Airport Commission

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

By \_\_\_\_\_  
Deputy City Attorney



TENANT PERMIT LOCATION DRAWING

LOCATION: BUILDING 900

FEDERAL EXPRESS LEVEL 1

CITY & COUNTY OF SAN FRANCISCO

AIRPORTS COMMISSION

SAN FRANCISCO INTERNATIONAL AIRPORT

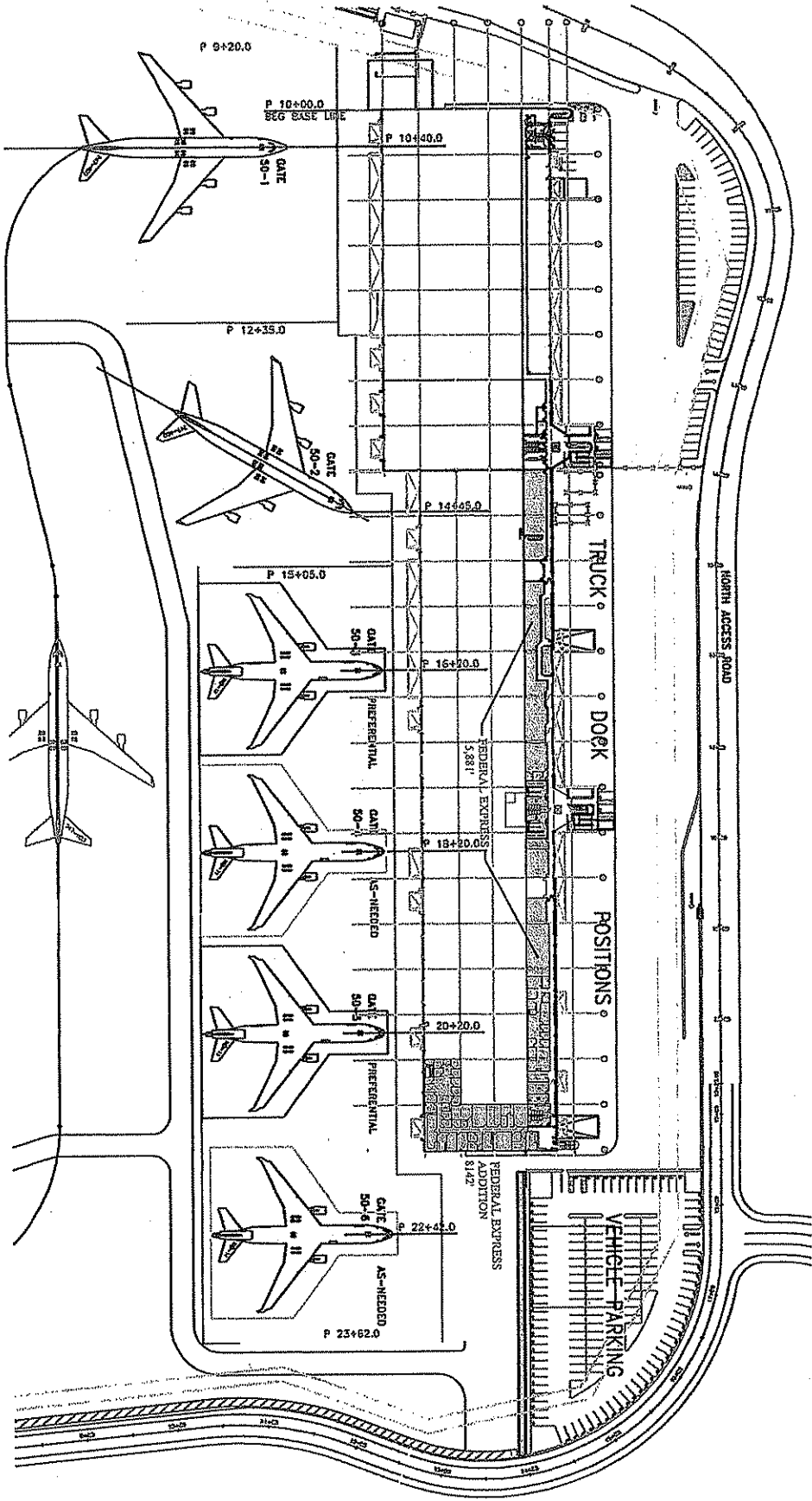
| LOCATION  | TENANT | CAT | AREA     | CONTRACT | EFF DATE |
|-----------|--------|-----|----------|----------|----------|
| EXCLUSIVE | FED EX |     | 109.823' |          |          |

EXHIBIT A

DWG: B900FED1

SCALE: 1/8"=1'-0"

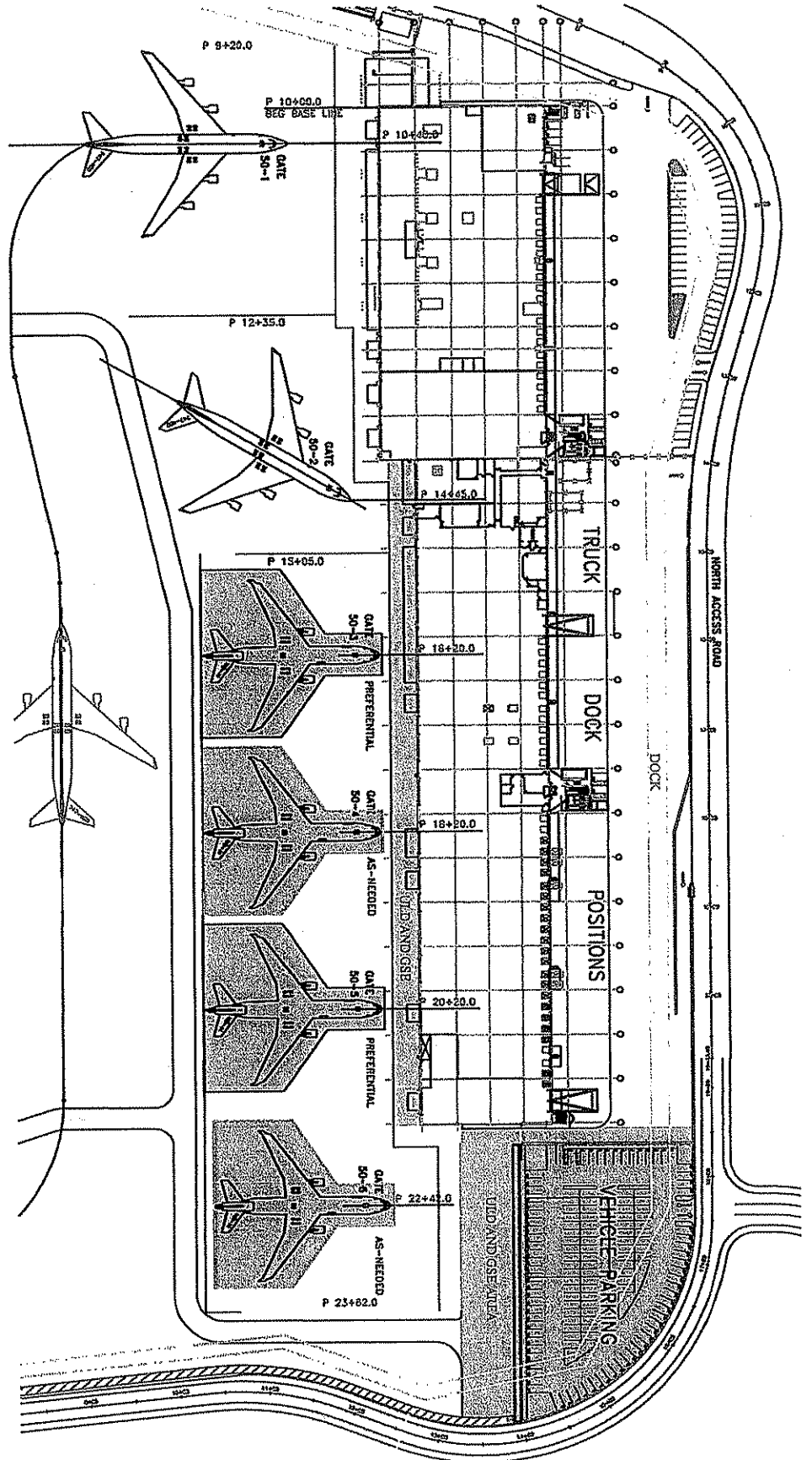
DATE: 10/27/2009



TENANT PERMIT LOCATION DRAWING

|                                     |                   |          |        |     |        |          |          |
|-------------------------------------|-------------------|----------|--------|-----|--------|----------|----------|
| LOCATION: BUILDING 900              |                   | LOCATION | TENANT | CAT | AREA   | CONTRACT | EFF DATE |
| FEDERAL EXPRESS MEZZANINE           |                   | OFFICES  | FED EX |     | 15881' |          |          |
| CITY & COUNTY OF SAN FRANCISCO      |                   | ADDITION | FED EX |     | 8142'  |          |          |
| AIRPORTS COMMISSION                 |                   |          |        |     |        |          |          |
| SAN FRANCISCO INTERNATIONAL AIRPORT |                   |          |        |     |        |          |          |
| DWG: B900FEDM                       | SCALE: 1"=100'-0" |          |        |     |        |          |          |
| DATE: 10/23/2009                    |                   |          |        |     |        |          |          |

EXHIBIT A-1



TENANT PERMIT LOCATION DRAWING

LOCATION: BUILDING 900 NON-EXCLUSIVE AREAS

FEDERAL EXPRESS LEVEL 1

CITY & COUNTY OF SAN FRANCISCO

AIRPORTS COMMISSION

SAN FRANCISCO INTERNATIONAL AIRPORT

| LOCATION    | TENANT | CAT | AREA | CONTRACT | EFF DATE |
|-------------|--------|-----|------|----------|----------|
| ULD/GSE     | FEDEX  |     |      |          |          |
| HARD STAND  | FEDEX  |     |      |          |          |
| VEHICLE PAR | FEDEX  |     |      |          |          |

DWG: B900FEDD

SCALE: 1/8"=1'-0"

DATE: 10/27/2009

EXHIBIT B



## EXHIBIT C

### Airport Building 900 City's Maintenance Obligations

| <b>Facilities Division</b> | <b>Infrastructure, System, or Equipment</b>   |
|----------------------------|---|
| Mechanical Maintenance     | HVAC Valves<br>Exhaust Fans on Roof<br>Gas Heaters – Interior<br>Emergency Generators – Exterior<br>Elevators<br>Sump Pump  |
| Electrical                 | Electrical High Voltage Distribution Transformer<br>Electrical High Voltage Gear Switch<br>Common Area Lighting – Interior<br>Exterior Lighting, Landside and AOA<br>Fire Alarm Bells<br>Emergency Lighting<br>Main Supply Lines and Distribution Systems       |
| Plumbing                   | Hot Water Heaters in Common Restrooms<br>Common Restroom Plumbing and Drains<br>Fire Protection (Hose Cabinet)<br>Discharge (Sump) Pump<br>Main Supply Lines and Distribution System Including<br>Central Plumbing Risers<br>Fire Detection & Sprinkler Systems |
| Sheet Metal                | Fire Protection Hose Cabinets   |
| Pavement and Grounds       | Paving – AOA Ramp Area<br>Paving – Landside Parking Areas<br>Pavement Striping – AC Parking   |
| Fire Department            | Common Area Fire Extinguishers  |
| Cross Department           | Infrastructure<br>Building Envelope<br>Foundations<br>Load Bearing Walls<br>Non-Load Bearing Walls<br>Roof System<br>Common Stairwells<br>Floor Slabs<br>Exterior Surface of Facility<br>Glazing  |

**EXHIBIT D**

**SPECIALTY EQUIPMENT**

**January 27, 1998**

List of items to take:

- Dock levelers
- FedEx emergency generator
- 400HZ power system
- FedEx air compressor
- FedEx security equipment
- FedEx telecommunication equipment
- FXTV equipment
- FedEx aircraft aids
- FedEx guard shack
- FedEx signage
- FedEx customer service counter in Room 122
- FedEx movable fencing in building
- FedEx sort equipment

Note: This list, dated January 27, 1998, is excerpted from Lease # L98-0173, between the City and Tenant, the predecessor lease to this renewal Lease.