

**UNITED
CONTRACT
164932**

**LEASE AGREEMENT
OF UNITED AIRLINES, INC. FOR PORTION OF THE PLOT 40 SUPERBAY HANGAR
AND SUPPORT AREAS
AT SAN FRANCISCO INTERNATIONAL AIRPORT**

by and between

UNITED AIR LINES, INC
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. Michael S. Strunsky, Vice President
Hon. Linda S. Crayton
Hon. Caryl Ito
Hon. Eleanor Johns

June _____ 2004

Lease No. L-04- 0058

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**LEASE AGREEMENT
OF UNITED AIRLINES, INC. FOR PORTION OF PLOT 40 – SUPERBAY HANGAR
AND SUPPORT AREAS
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: June 1, 2004

Tenant: **United Air Lines, Inc.**
a Delaware corporation

**Tenant’s Notice
Address:** (US Mail)
United Airlines
(§ 19.1) Att’n: Vice President, Worldwide Real Estate
P. O. Box 66100 WHQOU
Chicago, IL 60666-0100

(Overnight Delivery)
United Airlines
Att’n: Vice President, Worldwide Real Estate
1200 East Algonquin Rd.
Elk Grove Township, IL 60007

Fax No. (847) 700-4841
Tel. No. (847) 700-6006

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
(§ 19.1): Administrative Offices
Building 100, International Terminal
North Shoulder Building, 5th Floor
P.O. Box 8097
San Francisco, CA 94128
Att’n: Airport Director
Fax No. (650) 821-5005
Tel. No. (650) 821-5000

Premises:
(§ 1)

Exclusive Use:

A portion of that certain parcel of real property commonly known as Plot 40, situated in the county of San Mateo, State of California, consisting of approximately 18.62 acres more or less, as identified on Exhibit A attached hereto and incorporated herein. The acreage may be adjusted pursuant to field verification within ninety (90) days of the Commencement Date, provided that such adjustment shall have no effect on the Annual Rent.

A portion of the hangar facilities commonly known as Superbay Hangar ("**Hangar**"), comprising approximately 127,900 square feet of first floor space, including Bay 3 and Bay 4, as identified on *Exhibit A* attached hereto and incorporated herein.

Non-Exclusive Space:

Equipment washrack area comprising approximately 1.5 acres located on the northwest side of the Hangar, as identified on Exhibit A attached hereto and incorporated herein.

Term:
(§ 2)

Commencing on the Commencement Date and continuing through June 30, 2013.

Option
(§ 2)

Tenant shall have one (1) option to extend the Term for an additional ten(10)-year period under the same terms and conditions.

Commencement Date:
(§ 2)

~~The Effective Date, as defined in that certain Cure Stipulation Agreement, by and between City and Tenant.~~

Actual Date: June 1, 2004.

SK/KGH
6-21-04

Expiration Date:
(§ 2)

June 30, 2013 or earlier as provided herein.

JW AG

Permitted Use:
(§ 3)

Aircraft maintenance, and related operations and support offices, aircraft parking and movement, ground service equipment activities, vehicle parking for employees working at the Premises (approximately 150 vehicles), equipment storage and related functions; Non-exclusive use of washrack.

Annual Rent:
(§ 4)

Two Million, Five Hundred Ten Thousand, Four Hundred Ninety Two (\$2,510,492.00) Dollars ("**Initial Annual Rent**") (\$209,207.67) per month, as adjusted pursuant to Section 4. Initial rent is based on a rate of \$19.63 per square foot of ground floor space per year.

Rent:
(§ 4)

Annual Rent, Additional Rent (as defined in Section 4.5 hereof), and all other amounts owing by Tenant to City hereunder.

Deposit Amount:
(§ 12)

A sum equal to three (3) times the monthly installment of Annual Rent, as adjusted. Initial Deposit: \$627,623 Dollars

Resolution:

Number 04-0058, approved by the Airport Commission on March 12, 2004

Initial Tenant Representative:
(§ 3.6)

Michael Lorenzini
Tel: 650-634-1391

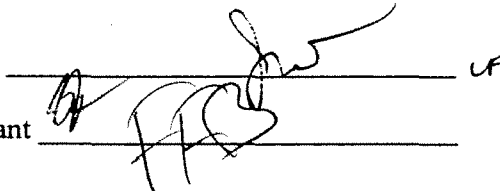
Other Agreements:
(§ 12.3)

Lease and Use Agreement No. 82-0126, Lease No's. 73-0066, 96-0268, and 00-0464.
Permit No's. 1190, 1784, 2105, 2104, 2859, 3085, 3314, 3375, 3452, 3560, 3508, 3512, 3590, 3678, Contract #6 & #11.

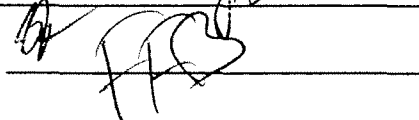
Exhibits:

A. Premises
B. Maintenance Responsibilities

Initials of Authorized Representative of City _____



Initials of Authorized Representative of Tenant _____



**LEASE AGREEMENT
OF UNITED AIRLINES, INC. FOR PORTION OF PLOT 40 – SUPERBAY HANGAR
AND SUPPORT AREAS
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 United Airlines, Inc. (“**Tenant**”).

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

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

B. Tenant desires to lease certain real property at the Airport for the Permitted Use.

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 have the non-exclusive rights 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 Airport by City or the use of the Airport by its tenants, passengers, or employees; (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; (c) shall be in or on hallways, roads, and other areas designated by Director from time to time; and (d) may be suspended or revoked by Director. 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 reasonable and non-discriminatory 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 Changes to Airport. Tenant acknowledges and agrees that (a) City shall have the right at all times to change, alter, expand, and contract the Airport, including the Terminal Building Complex, (b) City has made no representations, warranties, or covenants to Tenant regarding the design, construction, pedestrian traffic, or views of the Airport or the Premises. Without limiting the generality of the foregoing, Tenant acknowledges and agrees that the Airport (i) is currently undergoing, and may from time to time hereafter undergo, renovation, construction, and other Airport modifications; and (ii) may from time to time adopt rules and regulations relating to security and other operational concerns that may affect Tenant's business. Although City will use reasonable efforts to minimize the effect of such renovation, construction and other Airport changes on Tenant's business, Tenant acknowledges that such activity may have some effect on its aircraft maintenance operations occurring at the Airport. Notwithstanding the foregoing, City shall not eliminate Tenant's access to the Premises.

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 Term. Landlord hereby grants to Tenant an option to extend the term of this Lease by an additional ten(10)- year period, on the same terms and conditions of this Lease, except that the Annual Rent shall adjusted as provided in this Section 2.2. In the event Tenant exercises this option, then the term of this Lease shall be extended to June 30, 2023 (the "**Option Term**"). For the first year of the Option Term, the Annual rent shall be the greater of the Annual Rent in effect at the expiration of the initial Term as adjusted by CPI or the fair market value of the Premises all as determined in accordance with the methodology outlined in Section 4.4 [Fifth Year Rent Adjustment] hereof. In each subsequent year of the Option Term the Annual Rent shall be adjusted annually in accordance with the methodology outlined in Sections 4.3 [Adjustments to Annual Rent] and 4.4 [Fifth Year Adjustment] except that references to the fifth (5th) Rent Adjustment Date and the fifth (5th) and sixth (6th) Lease Year of the Term shall be deemed to refer to the corresponding Rent Adjustment Date and Lease Years of the Option Term.

2.3 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 double the then prevailing Annual Rent. No such holdover shall be deemed to operate as a renewal or extension of the Term. Such month-to-month tenancy may be terminated by City or Tenant by giving thirty (30) days' notice of termination to the other at any time.

3. USE AND OPERATION

3.1 Permitted Use. Tenant shall use the Premises for the Permitted Use, and for no other purpose. In the event Tenant desires to use the Premises for any purpose other than the Permitted Use, Tenant may submit a request to Director. Director may, in his/her sole and absolute discretion approve or deny such request.

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

3.3 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 the Hangar 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 the Hangar 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 improper, immoral, unlawful or objectionable 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 the Hangar; or (e) do or permit to be done anything in any way tending to injure the reputation of City or appearance of the Airport;

3.5 Inspections. Director may cause the Premises and Tenant's operations hereunder to be inspected at any time.

3.6 Representative of Tenant; Access. Tenant shall at all reasonable times retain on the Airport 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 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, including all Airport Operation Bulletins and Airport Directives (collectively "**Laws**"), the Airport's Tenant Improvement Guide, as amended from time to time (as amended, the "**Airport's TI Guide**"), and the Airport Rules. Tenant shall also promptly, at its sole expense, cause the Premises and related equipment, to comply with all applicable Laws and the Airport's TI Guide, to the extent such portions(s) of the Premises and/or equipment are deemed an Airline responsibility pursuant to **Exhibit B** attached hereto, except that in the case of conditions existing prior to May 1 1995, the provisions of Section 9.4 shall apply. The parties acknowledge and agree that such obligations are 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. 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. Tenant shall promptly upon request provide City with evidence of its compliance with any of the obligations required under this Section.

3.8 Fuel System. Tenant acknowledges that City has granted to a third-party the sole and exclusive right to operate a fuel system on the Airport. 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 Prevention of Trespass. Tenant shall use reasonable precautions to prevent unauthorized persons from gaining access to restricted flight and public aircraft operational areas and all other nonpublic areas around the Premises.

3.10 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. Tenant agrees, at the request of City, to permit City to install on the exterior of the Hangar, at City's sole cost, telecommunications or transmission equipment reasonably required or desired for City's, including use by Airport customers, and Tenant shall give City reasonable access to such exterior areas.

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 July 1, 2005 and each July 1st thereafter throughout the Term and any extension thereof.

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

(d) **"Comparison Index"** means the most recent Consumer Price Index published immediately 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 thereafter, 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 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 Rent 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 a 30-day 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 through the fifth (5th) lease year, 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 Fifth Year Rent Adjustment. On the fifth (5th) Rent Adjustment Date, in lieu of the annual adjustment set forth in Section 4.3 (Adjustments to Annual Rent), Annual Rent shall be reviewed and adjusted upward to equal the greater of the Annual Rent in effect in the fifth (5th) Lease Year as adjusted by CPI or the fair market value of the Premises as determined by reappraisal conducted by City's Director of Property.

Thereafter, the Annual Rent shall be adjusted annually by CPI adjustment, as provided in Section 4.3 above, except that such adjustment mechanism shall be modified as follows:

- Initial Annual Rent will be equal to the Annual Rent set for the sixth Lease Year of the Term pursuant to this Section 4.4; and
- Base Index will be equal to the most recent Consumer Price Index published immediately prior to the sixth Rent Adjustment Date.

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.

4.5 Additional Rent. Tenant shall pay to City any and all charges and other amounts under this Lease as additional rent, at the same place where 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.

4.6 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.

4.7 Nature of Lease. The Base Rent and other Rent due City hereunder shall be absolutely net to City and shall be paid 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.

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 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 one hundred percent (100%) 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. Notwithstanding anything to the contrary herein, Tenant shall be entitled to charge an approved subtenant an administration fee equal to no more than 15%

of the Rent payable by Tenant hereunder, and such administration fee shall not be deemed "Bonus Value."

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, the Hangar, the Terminal Building Complex, other Airport property, or any part thereof, or this Lease, 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, or this Lease, 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 [City's Approval Rights] 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.

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 (collectively, "Alterations") without Director's prior written consent. 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), 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 the Hangar. 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, materials, and a color board(s). 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 Director 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 upon demand 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 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.

7.4 Title to Alterations. Title to all Alterations of such a nature as cannot be removed without damage to the Premises including all carpeting, decorations, finishes, slat walls, 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. Prior to the Commencement Date, Tenant shall submit to Director a proposed list of such specialty equipment and trade fixtures; 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 and trade fixtures" are defined as objects, either affixed or unaffixed, to the realty by Tenant to aid it in carrying on its business on the Premises in accordance with the Permitted Use. On the Expiration Date, all fixtures and equipment, other than those deemed specialty equipment or trade fixtures by City, shall become the property of City. Tenant shall be liable to City for City's costs for storing, removing and disposing of any alterations or Tenant's personal property, and of restoration of the Premises. Notwithstanding anything to the contrary herein, any Alterations made by Tenant at Tenant's cost will not be considered in the reappraisals performed pursuant to Section 4.4 [Fifth Year Rent Adjustment].

7.5 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), Tenant shall indemnify, defend, and hold harmless City from and against any and all Losses (as defined below) arising out of such activities or Alterations.

7.6 Removal of Pipelines. In the event that any City-owned pipeline(s) located on the Premises that are in use by Tenant, or pipelines and appurtenances installed by Tenant be so located that it shall be necessary to change, alter, remove or reconstruct same in order to allow City to install a sewer or drain line, or if a change of Airport buildings or aircraft apron boundaries is required by City, Tenant at its own and sole expense, shall make such change, alteration, removal or reconstruction of said pipeline as is requested by City, necessitated by such change, even though said pipelines are owned by City; however, such relocation shall occur only after all other alternatives have been considered and deemed unreasonable by City.

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, provided that such entry, installation, construction, maintenance, operation, or removal, shall not reduce the useable square footage of the Premises (except to a *de minimis* extent). 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, 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 against the City 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; except if any such damages are caused solely by the active negligence or intentional wrongdoing of City, its employees, or agents. 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.

8.4 Telecommunications. In no event will Tenant have any rights to license, Lease, or sublease to a telecommunications provider the right to install or operate on the Premises telecommunications equipment, including antennas, unless such equipment is to service exclusively Tenant's operations. City reserves the right to license, permit, or lease to a telecommunication provider the right to install and operate such equipment on the Premises and the facilities thereon, with right of access thereof.

9. MAINTENANCE AND REPAIR

9.1 "As-Is" Condition. EXCEPT WITH RESPECT TO THAT CERTAIN ASBESTOS WORK ("**CITY'S WORK**") DESCRIBED IN SAN FRANCISCO INTERNATIONAL AIRPORT CONTRACT NO. 8291, 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 Premises 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. In performing City's Work, City shall coordinate with Tenant to ensure that disruption in operations is minimal. In the event that City's Work is not substantially complete by April 5, 2005, the parties will promptly (i.e., within ten (10) days following either party's notice to the other party) meet in person to review the status and progress of City's Work; identify all impediments to timely completion, and develop proposals, suggestions or recommendation reasonably calculated to achieve timely completion of City's Work, in accordance with all applicable requirements. In the event that such efforts fail to bring City's Work to timely completion and the failed or delayed completion of

the City's Work reduces the economic value of this Lease to Tenant by more than 15%, Tenant may terminate this Lease on sixty (60) days' prior written notice to City; provided that such termination notice shall be deemed withdrawn and of no force and effect, in the event that City's Work is, in fact, substantially complete within the aforesaid sixty (60) days.

9.2 Tenant's Maintenance Obligations. Tenant shall at all times, at its sole cost and expense, assure that those Premises and equipment deemed an Airline Responsibility on **Exhibit B** are in good condition and repair, and, except as otherwise provided in Section 9.4 below, replace the same as necessary. Tenant shall, and shall cause its Tenant Entities to, maintain and keep the ramp and parking areas 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. 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.

9.3 City's Maintenance Obligations. City shall at all times, at its sole cost and expense, assure that those Premises and equipment deemed a City Responsibility on **Exhibit B** are in good condition and repair, and replace the same as necessary; **provided however**, if damage to such Premises and/or equipment is caused by Tenant or a 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.

9.4 Replacement or Renewal of Systems or Equipment. City and Tenant acknowledge that some of the systems and equipment identified on **Exhibit B** may be approaching the end of their economic life and may require renewal and replacement during the Term. The parties agree that the responsibility to maintain and repair equipment or systems identified on **Exhibit B** may not extend to replacement in kind of any such systems or equipment that have reached the end of their economic life (*i.e.*, when it is no longer cost effective to maintain the system or equipment). On or about July 1 of each year, City and Tenant will meet to identify what, if any, of the building systems or equipment identified on **Exhibit B** may require replacement or renewal and confer (Meet and Confer) regarding allocation of costs and funding sources for such replacement or renewal. If as a result of such Meet and Confer process Tenant funds the replacement or renewal of any of the systems or equipment for which City is responsible under **Exhibit B**, City shall reimburse Tenant through credit against Rent in such amounts agreed upon by the parties through the Meet and Confer process. In the event City funds the replacement or renewal of any of the systems or equipment for which Tenant is responsible under **Exhibit B**, Tenant shall reimburse City through rental equipment surcharge or other means agreed upon and in such amounts agreed upon by the parties through the Meet and Confer process. If after completing the Meet and Confer process City and Tenant are unable to agree on the proper remedy and financing for replacement or renewal of a system and Tenant is able to demonstrate that the financial effect of continuing its use of the premises without the replacement or renewal of a system will be impaired by at least 15%, Tenant may terminate this agreement on 60 days notice. As an example: if Tenant were to lose the use of one wide-body parking position, it would reduce the economic value of the lease by more than 15%, thereby triggering Tenant's right to terminate pursuant to this Section 9.4. Similarly, if the expense of an improvement identified as a City responsibility would cause the City to incur costs that would exceed its required economic return on the property City may terminate the agreement on 60 days notice.

10. SIGNS AND ADVERTISING

10.1 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 thirty (30) days after City's demand.

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 whatsoever 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 active 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 or arising out of (a) any act or omission of Tenant or any Tenant Entity, (b) Tenant's use of the Premises or operations at the Airport, or (c) any representation or warranty of Tenant hereunder being untrue, or (d) 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 active 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) Comprehensive General Liability Insurance with limits not less than \$25,000,000 each occurrence and in the annual aggregate with respect to Products, Completed Operations, Personal Injury and Property Damage for Contractual Liability, Combined Single Limit for Bodily Injury and Property Damage, including Premises Operations, Contractual Liability, Personal Injury, Products Liability and Completed Operations Coverages, Cargo Legal Liability, Vehicles operated on restricted access airport premises, Hangars-Keepers Liability

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

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

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 Comprehensive General Liability Insurance, Comprehensive Automobile Liability Insurance, and Property Insurance policies shall be endorsed to provide the following:

(a) Name as additional insured the City and County of San Francisco, the Airport Commission and its members, and all of the officers, agents, and employees of each of them but only as respects operations of the Named Insured as their interests may appear (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) Notice will not be given for non-renewal and will only be provided if the insurance company cancels or materially alters the policy affecting the requirements of the City.

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 Waiver of Subrogation. City and Tenant agree to have all fire and extended coverage and material damage insurance carried with respect to the Airport or the Premises endorsed with a clause that

waives all rights of subrogation that the insurer of one party might have against the other party. To that effect, City and Tenant will employ their respective diligent efforts to cause their insurance companies to endorse the affected property (fire and extended coverage, multiple peril) coverage with the waiver of subrogation; provided that: (A) in the event that the waiver of subrogation is available only upon payment of additional premium, the party requesting the waiver of subrogation from its insurance company will bear the additional cost; and (B) in the event that a waiver of subrogation is not available (even with the payment of additional premium), so that one or both parties are unable to secure the issuance of the waiver of subrogation, the party so unable to procure the waiver of subrogation will immediately cause the other party to be named as a loss payee on its fire and extended coverage policy as their interests may appear.

11.9 Waiver of Claims. City and Tenant each hereby waives (and releases the other from) each and every claim for recovery based on any loss of or damage to the Airport or the Premises or to the contents of either, to the extent that such loss or damage is covered by valid and collectible fire and extended coverage insurance policies carried or required to be carried, without regard to whether such loss or damage was occasioned by the negligence of the other, its agents or employees.

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 three (3) 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 at all times 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.

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 therefore, 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. Notwithstanding anything to the contrary herein, Tenant shall have no interest in the Deposit proceeds. If and when Tenant provides to City a replacement Deposit meeting all of the requirements hereof, City shall promptly (and in all events within fifteen (15) days) return the cash proceeds of the previously-drawn Deposit, together with interest accrued thereon. 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 (other than interest accrued on the cash proceeds of the Deposit, if any) or other increment for its use, to Tenant (or, at City’s option, to the last assignee, if any, of Tenant’s interest hereunder) at the expiration of the Term, and after

Tenant has vacated the Premises. No trust relationship is created herein between City and Tenant with respect to the Deposit.

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 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 Hangar is totally destroyed during the Term from any cause whether or not covered by the insurance required herein, this Lease shall automatically terminate as of the date of such total destruction.

13.3 Partial Destruction. If fifteen percent (15%) or more of the Hangar or the space routinely used for aircraft parking is damaged or destroyed, each of City and Tenant may elect to terminate this Lease by giving notice to the other within thirty (30) 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. Without limiting Section 13.3, if during the last year of the Term the improvements on the Premises are partially destroyed or damaged, either party may at its option terminate this Lease as of the date of occurrence of such damage by giving written notice to the other party of its election to do so within thirty (30) days after the date of occurrence of such damage. In

the event either party elects to terminate this Lease pursuant hereto, the other party shall have the right within ten (10) days after receipt of the required notice to notify the terminating party in writing of its intention to repair such damage at its expense, without reimbursement from the terminating party, in which event this Lease shall continue in full force and effect and the non-terminating party 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 any twelve (12)-consecutive month period of 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; provided, that the foregoing shall not apply to the voluntary petition for reorganization relief initiated by Tenant on December 9, 2002; 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, desert or vacate the Premises; or

(f) Any lien shall be filed against the Premises or this Lease 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 thirty (30) days after receipt of notice thereof by Tenant; or

(g) Tenant shall fail to provide the Deposit within ten (10) days after the Commencement Date or shall fail to maintain in full such Deposit at all times during the Term of this Lease; or

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

(i) Tenant shall fail to keep, perform and observe each and every other promise, covenant and agreement set forth in this Lease, and such failure shall continue for a period of more than three (3) days after delivery by Director of a written notice of such failure (the "First Notice"); or if satisfaction of such obligation requires activity over a period of time, if Tenant fails to commence the cure of such failure within three (3) days after receipt of the First Notice, or thereafter fails to diligently prosecute such cure, or fails to actually cause such cure within ninety (90) days after the giving of the First Notice; or

(j) Tenant shall use or give its permission to any person to use any portion of Airport or the Premises for any illegal purpose, or any purpose not approved by Director.

(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; and

(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 there from.

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

(d) City shall have the right to have a receiver appointed upon application by City to take possession of the Premises and to collect the rents or profits therefrom and to exercise all other rights and remedies pursuant to this Section 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 ten (10) days after notice thereof by City, City may, but shall not be obligated to do so, and without waiving or releasing Tenant from any obligations of Tenant, make any such payment or perform any such other act on Tenant's part to be made or performed as provided in this Lease. All

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

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.

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

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 three (3) 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 Section	1	\$300
Violation of Use Section	3	\$300
Failure to cause operations or Premises to comply with Laws	3.7	\$300
Construction or Alterations without City approval	7.2	\$300
Failure to make repairs	9	\$300
Failure to obtain or maintain insurance	11	\$100
Failure to obtain or maintain Deposit	12	\$100

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 to enforce any obligation of Tenant or in the pursuit of any remedy hereunder shall be deemed timely filed if commenced at any time prior to one (1) year after the expiration or termination of the Term hereof or prior to the expiration of the statutory limitation period that would be applicable except for this Section 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, the elements or changes occasioned by condemnation 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, and all fixtures and equipment (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, protection of human health and safety, environmental conditions or Hazardous Materials, whether now in effect or hereafter adopted, including, but not limited to, 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 Materials”** 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 any material or substance identified, listed, or defined as a “hazardous waste,” “hazardous substance,” or “pollutant” or “contaminant” or term of similar import, or is otherwise regulated pursuant to Environmental Laws; 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 Materials shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or any property or the environment.

(d) **“Pre-Existing Condition”** means the existence of any Hazardous Materials on the Premises immediately prior to the Effective Date. 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 above ground, used, stored, generated, treated, managed, or disposed of in, on or about the Airport, or transported to or from the Airport, without the prior written consent of Director, which Director shall not unreasonably withhold as long as Tenant demonstrates to Director’s reasonable satisfaction that such Hazardous Material is necessary or useful to Tenant’s business and will be used, kept, stored, and managed in a manner that complies with all Environmental Laws, the Airport’s TI Guide, the Airport Rules, and all other Laws. At all times, Tenant shall ensure and certify that decontamination of the Premises and disposal of Hazardous Materials is in compliance with the foregoing. 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]; (b) any Release of Hazardous Material from, in, on or about the Airport caused by the act or omission of Tenant or any Tenant Entity or otherwise arising from Tenant’s operations hereunder except to the extent such claims arise solely due to City’s negligence; or (c) the existence of any Hazardous Materials on the Premises, except to the extent that Tenant can demonstrate that such Hazardous Materials constitutes a Pre-Existing Condition.

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 Director, 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 Release of any Hazardous Material (a) on the Airport caused by Tenant or any person or entity related to or controlled by Tenant, including but not limited to Tenant’s employees, agents, contractors, any subcontractors, consultants, visitors, suppliers, customers, or any other person who uses or is related to Tenant’s facilities in any manner or (b) on the Premises caused by any party. 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; (b) any enforcement, clean-up, removal or other Government or regulatory action instituted, completed or threatened pursuant to any Environmental Laws; (c) any claim made or threatened by any person against Tenant or the Premises 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 (d) 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 an application for a Closure Permit for decontamination of the site and investigation and removal of all Hazardous Materials in compliance with the Airport's TI Guide, the Airport'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 Operations and Maintenance, Building Inspection and Code Enforcement, P.O. Box 8097, San Francisco, CA 94128, Attn: BICE Section Head.

16.8 Release of "Future Environmental Costs". The mutual release in the Cure Stipulation Agreement shall apply to Phase II Past Costs and Future Environmental Costs to the extent provided for in the Cure Stipulation Agreement notwithstanding any provisions of this Lease.

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 fifteen percent (15%) or more of the Hanger or the space routinely used for aircraft parking is Taken and either party elects to terminate. Any election to terminate this Lease pursuant to this Section 17 shall be exercised by giving notice to the other party on or before the date that is one hundred twenty (120) days after the Date of Taking, and thereafter this Lease shall terminate upon on the thirtieth (30th) day after such notice is given.

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

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

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 insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Tenant assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. Tenant assures that it will require that its covered sub-organizations provide assurances to Tenant that they similarly will undertake affirmative action programs and that they will require assurances from their sub-organizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

18.10 Non-Discrimination 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 non-discrimination clause applicable to such subcontractor in substantially the form of subsection (a) above. In addition, Tenant shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all 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) Non-Discrimination 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 elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the 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. Through its execution of this Agreement, Tenant acknowledges that it is familiar with the provisions of Section 15.103 of City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and sections 87100 et seq and sections 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provision and agrees that if it becomes aware of any such fact during the term of this Agreement it shall immediately notify Landlord.

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 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 any 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 [Intentionally Deleted.]

18.18 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.

18.19 Pesticide Prohibition. Tenant shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the "**Pesticide Ordinance**") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage and (iii) require Tenant to submit to [insert name of City department overseeing the Lease] an integrated pest management ("**IPM**") plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the terms of this Lease, (b) describes the steps Tenant will take to meet the City's IPM Policy described in Section 300 of the Pesticide Ordinance and (c) identifies, by name, title, address and telephone number, an individual to act as the Tenant's primary IPM contact person with the City. In addition, Tenant shall comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance.

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

18.21 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. 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 obligations under the MCO and has imposed the requirements of the MCO on the contractor through the provisions of the subcontract. It is Tenant's obligation to ensure that any such contractors comply with the requirements of the MCO. If such a contractor fails to comply, City may pursue any of the remedies set forth in this Section against Tenant.

(l) Each Covered Employee is a third-party beneficiary with respect to the requirements of subsections (a) and (b) of this Section, and may pursue the following remedies in the event of a breach by Tenant of subsections (a) and (b), but only after the Covered Employee has provided the notice, participated in the administrative review hearing, and waited the 21 day period required by the MCO. Tenant understands and agrees that if the Covered Employee prevails in such action, the Covered Employee may be awarded: (1) an amount equal to the difference between the Minimum Compensation and any compensation actually provided to the Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law; (2) in the event of 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.

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

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

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

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

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

(d) Any Sublease or Contract regarding services to be performed on the Premises entered into by Tenant shall require the Subtenant or Contractor and Subcontractors, as applicable, to comply with the requirements of the HCAO and shall contain contractual obligations substantially the

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

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

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

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

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

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

18.24 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 Landlord.

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 three (3) 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. 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.

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 (during the last year of the Term), to post notices of non-responsibility, to remeasure the Premises, to repair any part of the Premises or adjoining areas, to install equipment for adjoining areas, and for any other lawful purpose; (b) without advance notice, enter the Premises to conduct an environmental audit, operational audit, or general inspection, or in an emergency. City shall use reasonable efforts to minimize disruption in Tenant's business. Such entry shall not constitute a forcible or unlawful entry into or a detainer of the Premises, or an eviction, actual or constructive of Tenant from the Premises. City reserves the 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, so long as Tenant's access to the Premises is not materially impaired, and so long as the useable square footage of the Premises is not materially diminished. 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: (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, where 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, or materially interfere with Tenant's access to 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 effect any provision of this Lease that expressly states it shall survive termination hereof. Each party hereto specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Lease, the indemnitor has an immediate and independent obligation to defend the indemnitees from any claim which actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to the indemnitor by the indemnitee.

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.

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 fifteen (15) days after request therefor by City, Tenant shall deliver, in recordable form, a an estoppel statement certifying that this Lease is in full force and effect; the date of Tenant's most recent payment of Rent, and that Tenant has no defenses or offsets outstanding, or stating those claimed, and any other information reasonably requested. Failure to deliver said statement within the specified period shall be conclusive upon Tenant that: (i) this Lease is in full force and effect, without modification except as may be represented by City; (ii) there are no uncured defaults in City's performance and Tenant has no right of offset, counterclaim or deduction against Rent hereunder; and (iii) no more than one month's Rent has been paid in advance.

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 the Premises, 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, subject, however to the express grant by such successor to Tenant of a right of quiet enjoyment. The provisions of this Section shall be self-operative and no further instrument shall be required. Tenant agrees, however, to execute and deliver, within thirty (30) days after demand by City and in the form reasonably requested by City, any additional documents evidencing the priority or subordination of this Lease.

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 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.

/ / / / / / / / / / / / / / / /

DS:bv
X:\AV\TENANTS\AIRLINES\LEASES\Superbay - United Final Draft March 9.doc
3/10/2004

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

TENANT:

United Air Lines, Inc.
a Delaware corporation

By: 

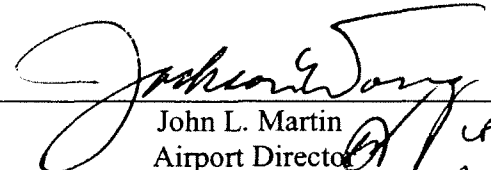
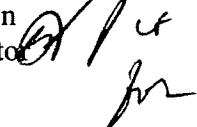
[Signatory also to initial summary]

Name: Frederic F. Brace
Executive Vice President &
Title: Chief Financial Officer

CITY:

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

[Signatory also to initial summary]

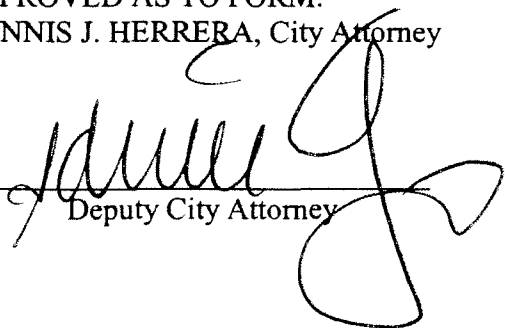

John L. Martin
Airport Director 

**AUTHORIZED BY AIRPORT
COMMISSION**

Resolution No. 04-0058
Adopted: MARCH 12, 2004

Attest: 
Secretary
Airport Commission

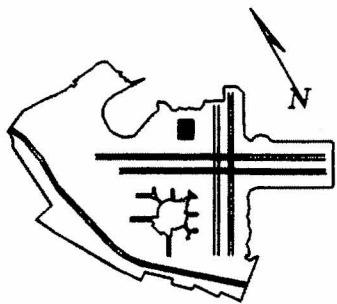
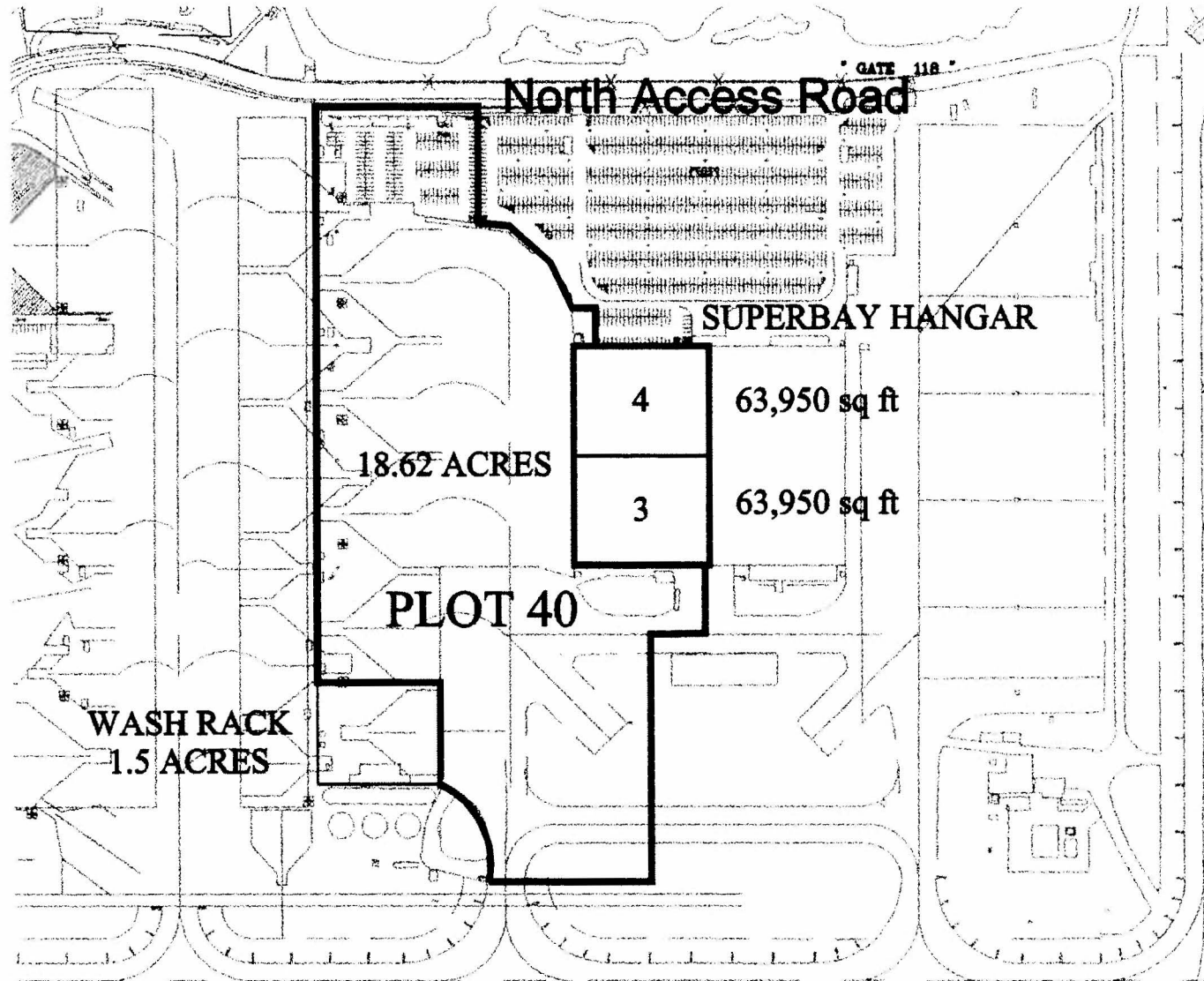
**APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney**

By 
Deputy City Attorney

DEPT.	NAME	INITIALS
LAW		
USING		
EXCISE		

LIST OF EXHIBITS

EXHIBIT A	Premises
EXHIBIT B	Maintenance Responsibilities



KEY PLAN

EXHIBIT A

TENANT LOCATION LEASE DRAWING		LOCATION	TENANT	CAT	AREA	CONTRACT	EFF DATE
LOCATION: PLOT 40 AND SUPERBAY HANGAR		PLOT 40	UA		18.62 AC		
UNITED AIRLINES		SUPERBAY 3	UA		63950'		
CITY & COUNTY OF SAN FRANCISCO		SUPERBAY 4	UA		63950'		
DWG: UAPLOT40		WASH RACK	UA		1.5 ACRES		
AIRPORTS COMMISSION	SCALE: 1"=1000"						
SAN FRANCISCO INTERNATIONAL AIRPORT	DATE: 03/09/2004						

**Exhibit B
Maintenance Responsibilities**

Description	Responsible Party	
	City	Airline
400 hz Synchronous Generator		X
Air Conditioners		X
Aircraft Wash Systems		X
Structural related hazardous materials:		
- Asbestos	X	
- Lead base paint	X	
- Light fixture PCB	X	
Structural Maintenance:		
- Floors - structural substrata	X	
- Ramp Area	X	
- Roof	X	
- Storm Drain Systems - Hangar	X	
- Substructure	X	
- Hangar Doors	X	
- Structural walls and Exterior Coverings	X	
Non-structural maintenance and repairs; cleaning:		
- Floors		X
- Ramp Area		X
- Interior walls and partitions		X
Card Readers & Alarms for Personnel Doors	X	
Compressors - Penthouse Spare & Pump House		X
Diversion Valve - Washrack		X
Door Closers		X
Electric Power High Voltage Switch Gear		X
Electric Feed Rails & Trolleys		X
Elevators - Passengers & Freight		X
Emergency Lights		X
Equipment Fans		X
Exhaust Fans		X
Floor coverings		X
Fire Protection Systems:		
- Fire Alarm Bells	X	
- Fire Extinguishers	X	
- Fire Prevention Inspection	X	
- Fire Protection Hose Cabinets	X	
- Fire Protection System & 4 Valve Rooms	X	
- Foam Pumps	X	
Fire Water Tanks (3), including Cathodic Protection	X	
Grimmer Schmidt Air Compressor - Penthouse		X
Hangar Doors Electric		X
Hazmat Storage Area		X
Hypar Heaters		X
Industrial Waste Sump Pits		X
Jockey Pump		X
Lavatories - Group		X
Lift, Dock Loader		X
Light Poles - Ramp & Parking Lot		X
Monitor Panels		X
Pit Cover & Snubbers		X
Pole Lights & Roof Lights		X
Sanitary Waste System		X
Security Fencing	X	
Standby Generator - Supply		X
Steamcleaner		X
Storm Drain Systems - Ramp and 2 Lift Stations	X	
Sump Pumps	X	
Supply Fans		X
Taxiways Lights	X	
Underground Vaults	X	
Utility Pit Covers		X
Wall Heaters		X
Water Heaters		X
Water Traps		X

Note: The parties may change and update this Exhibit from time to time by mutual agreement and such changes shall not be deemed an ammendment of this Lease