

**LEASE AGREEMENT
FOR THE
TERMINAL 1 FOOD AND BEVERAGE CONCESSION LEASE 9
AT SAN FRANCISCO INTERNATIONAL AIRPORT**

by and between

SF FOODWAYS, LLC,
as tenant

and

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

London N. Breed
Mayor

AIRPORT COMMISSION

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

Ivar C. Satero
Airport Director

July 2018

Lease No. 18-0216

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MAJOR LEASE TERM SUMMARY

For the convenience of Tenant and City (as such terms are defined below), this Major Lease Term Summary (this "**Summary**") summarizes certain terms of this Lease (as defined below). This Summary is not intended to be a detailed or complete description of this Lease, and reference must be made to the other Sections below for the particulars of this Lease. In the event of any inconsistency between the terms of this Summary and any other provision of this Lease, such other provision shall prevail. Capitalized terms used elsewhere in this Lease and not defined elsewhere shall have the meanings given them in this Summary.

Effective Date: APR 05 2019, 20 .

Tenant: SF Foodways, LLC,
a California limited liability company.

Tenant's Notice Address: 533 Airport Blvd., Suite 523
Burlingame, CA 94010

Attn: Adam Light, Managing Partner
Fax No. (650) 348-0557
Tel. No. (650) 280-1812

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

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

City's Rent San Francisco Airport Commission
Payment Address: Attn: Accounting
P.O. Box 59753
Los Angeles, CA 90074-9753

Overnight Delivery via Courier:
Lockbox LAC-059753
2706 Media Center Drive
Los Angeles, CA 90065

Federal Wire System or ACH:
Bank of America
555 Capitol Mall, Suite 765
Sacramento, CA 95814
Branch Locator #148
Bank Account No: 14997-21907
FedWire Bank ABA: 026-009-593
ACH Bank ABA: 121-000-358
SWIFT code: BOFAUS3N

City's Sales Report SFOConcessReport@flysf.com
Address:

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

Premises: The Premises (the "Premises") is approximately 2,982 sq. ft. (Space B.2.286)
(§ 1) located in Terminal 1, at the San Francisco International Airport, as described
below and on the attached Exhibit A.

Relevant Boarding Boarding Area B
Area:
(§ 4.14)

Term: The Development Term, plus a Ten (10) year Operating Term, collectively.
(§ 2)

Development Term is the period commencing on the Commencement Date and ending at 11:59 p.m. on the day prior to the Rent Commencement Date. If the Premises are comprised of a single Facility, the Rent Commencement Date shall also be the "**Full Rent Commencement Date**" under this Lease.

Operating Term is the period commencing on the earlier to occur of: (a) the Full Rent Commencement Date and (b) the first day of the calendar month following the date that is one hundred and fifty days after the Commencement Date, and ending on the Expiration Date.

The Airport Commission shall have one option to extend the term by two (2) years, exercisable at the sole and absolute discretion of the Airport Commission.

Commencement Date: The date on which the Airport Director gives notice to Tenant that the Premises is ready for Tenant to take possession.
(§ 2.1)

CCT 07 2019

(actual date to be inserted upon determination)

Rent for Interim Operations During Construction Period: In the event Tenant desires to operate a temporary Facility during the construction of its Initial Improvements for such Facility, Tenant shall pay Twelve Percent (12%) of Gross Revenues as Base Rent during such period (the "**Construction Period Percentage Rent**").
(§ 4.4)

Rent Prior to Rent Commencement Date: In the event Tenant completes its improvements and opens for business prior to the Rent Commencement Date, Base Rent will be greater of the Percentage Rent or a pro-rated MAG based on a thirty (30) day month.
(§ 4.5)

Rent Commencement Date: The earlier of: (a) the first day of the first calendar month following the date on which the Initial Improvements (as defined below) are substantially complete and Tenant opens for business therein, and (b) the first day of the first calendar month following the date that is one hundred fifty (150) days after the Commencement Date.
(§ 4)

Actual Dates (to be inserted upon determination):

Rent Commencement Date

December 1, 2020

Expiration Date: 11:59 p.m. on the day before the Tenth (10th) anniversary of the commencement of the Operating Term.
(§ 2)

November 30, 2030

(actual date to be inserted upon determination)

Reference Year: The calendar year immediately prior to the year in which this Lease is awarded: 2017.
(§ 4.14)

Permitted Use: The operation of a Sit-Down Restaurant and Bar (“Facility”) on a non-exclusive basis, as described on the attached Exhibit B.
(§ 3)

Base Rent: Per Lease Year (as defined below), the greater of the MAG (as defined below) or the following sum (such sum being referred to herein as the “Percentage Rent”):
(§ 4)

- 8% of Gross Revenues achieved up to and including \$1,500,000.00, plus,
- 10% of Gross Revenues achieved from \$1,500,000.01 up to and including \$2,000,000.00, plus,
- 12% of Gross Revenues achieved over \$2,000,000.00.

Lease Year: The period commencing on the first Rent Commencement Date and terminating on December 31 of the year in which the first Rent Commencement Date occurs, and each subsequent 12-month period except that the final Lease Year be less than 12 months.
(§ 4)

Minimum Annual Guarantee (“MAG”): Per annum, the Minimum Annual Guarantee is \$620,000.00 as described below; (a) subject to adjustments upward as described below and (b) suspension and reinstatement under certain circumstances as described herein.
(§ 4)

Due to the phased opening of Terminal 1, the MAGs for all Leases shall be reduced by 50% between the earlier of Phase 1 opening and July 23, 2019, and the earlier of Phase 3 opening and May 1, 2021.

Tenant shall begin paying full MAG at the earlier of May 1, 2021 and the opening of Phase 3.

MAG Adjustment Date: The first MAG adjustment shall occur on January 1st following the first full Lease Year and every January 1st thereafter.
(§ 4.3)

JAN 01 2022

(to be inserted upon determination)

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

Deposit Amount: Equal to one-half (1/2) of the initial MAG (subject to mid-term adjustment).
(§ 13)

Minimum Investment Amount: One Thousand Dollars (\$1,000.00) per square foot of the Premises. Tenant may spend less than said amount provided it complies with the Airport's Concessions Design Guidelines and receives Design Review Committee approval.
(§ 7.1)

Food and Beverage Cleaning Fee: The Food and Beverage Cleaning Fee does not apply to this Lease.
(§ 4.12)

Food and Beverage Infrastructure Fee: The Food and Beverage Infrastructure Fee does not apply to this Lease.
(§ 4.13)

Promotional Charge: One Dollar (\$1.00) per square foot per annum of the Premises.
(§ 11)

Pest Control Services Fee: Seventy Five Dollars (\$75.00) per month, subject to adjustment as described herein.
(§ 9.4)

Resolution: Number 18-0216, approved by the Airport Commission on July 10, 2018.

Initial Tenant Representative: Adam Light
Tel. No. (650) 280-1812
(§ 3.11)

Other Agreements: N/A
(§ 13.5)

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

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

Initial of Authorized Representative of City _____



CW KIC PLE

Initial of Authorized Representative of Tenant _____



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FOR THE
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AT SAN FRANCISCO INTERNATIONAL AIRPORT**

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

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

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

C. Following a competitive process, pursuant to Section 2A.173 of the San Francisco Administrative Code, the Commission has determined that Tenant is the highest or best responsible bidder or proposer. Pursuant to the Resolution, Commission has awarded this Lease to Tenant.

Accordingly, Tenant and City agree as follows:

1. PREMISES

1.1 Extent of Leasehold. On the terms, conditions, and covenants in this Lease, City hereby leases to Tenant and Tenant hereby leases from City, the Premises. In addition, Tenant shall possess the non-exclusive right of ingress and egress to and from the Premises as may be necessary on areas designated by Director, subject to Airport Rules and Regulations, as amended from time to time (as amended, the “**Airport Rules**”), provided that Tenant’s exercise of such right shall not impede or interfere unduly with the operation of the Airport by City, its tenants, customers, and other authorized occupants. Tenant shall not place or install any racks, stands or other display of merchandise or trade fixtures in any Airport property outside the Premises, without the express prior consent of Director. In no event will Tenant engage in any activity on the Airport outside the Premises for the recruitment or solicitation of business. For purposes of this Lease relating to Tenant’s responsibilities, the “**Premises**” shall mean the area(s) shown on Exhibit A, where (a) the exact boundaries are deemed to be three inches (3”) inside each wall separating the Premises from the adjacent premises or the external Terminal wall, and (b) with respect to the facade and/or wall on the front of the Premises, separating the Premises from the Terminal common areas, the exact boundary is deemed to be the external face of the facade and/or wall.

showing the costs actually paid by Tenant for the remodeling and Tenant's out-of-pocket moving costs, and (iii) lien releases from all contractors, subcontractors, and material suppliers entitled to payment in connection with the expansion/contraction work. Following its review and approval of those submissions, City will reimburse Tenant for all reasonable costs of the expansion/contraction work; provided that in no event will City be required to reimburse Tenant for more than the Maximum Reimbursement Amount and further provided that City may, in City's sole discretion, make such reimbursement by issuing Tenant a rent credit. In no event will City be obligated to pay or reimburse Tenant for any other costs or expenses, including business interruption costs.

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

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

(f) Any Required Relocation or Premises Change described herein can be effected on the terms and conditions set forth above without need for a formal amendment of this Lease.

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

1.3 Remeasurement of Premises. At any time and from time to time, Director may cause City to conduct a space audit pursuant to which City remeasures the Premises using the Airport's then-current measurement specifications, and in such event, the Lease terms based on square footage shall be deemed automatically adjusted to reflect such remeasurement. Only if such remeasurement results in a change in the total square footage of the Premises of more than ten percent (10%) will the Minimum Annual Guarantee be adjusted to reflect such remeasurement.

1.4 Changes to Airport. Tenant acknowledges and agrees that City shall have the right at all times to change, alter, expand, and contract the Airport, including the Terminal Building Complex, and that City has made no representations, warranties, or covenants to Tenant regarding the design, construction, pedestrian traffic, enplanements, airline locations, or views of the Airport or the Premises. Without limiting the generality of the foregoing, Tenant acknowledges and agrees that the Airport is currently undergoing, and may from time to time hereafter undergo, renovation, construction, and other Airport modifications, and may from time to time adopt rules and regulations relating to security and other operational concerns that may affect Tenant's business. Although City will use reasonable efforts to minimize the effect of such changes on Tenant's business, Tenant acknowledges that such activity may have some effect on its operations located at the Airport. Such construction and renovation programs might involve barricading, materials storage, noise, the presence of workers and equipment, rearrangement, utility interruptions, and other inconveniences normally associated with construction and renovation. Although City will use reasonable efforts to minimize the effect of such changes on Tenant's business, Tenant acknowledges that such activity may have some effect on its operations located at the Airport, and Tenant shall not be entitled to any rent credit or other compensation therefor. At any time and from time to time, City may, without the consent of Tenant, and without affecting Tenant's obligations under this Lease, at City's sole discretion, (a) change the shape, size, location, number and

exact amount of which are extremely difficult to fix. Accordingly, for each day after the Rent Commencement Date until the day on which Tenant opens the Facility for business, Tenant shall pay to City Five Hundred Dollars (\$500.00) (in addition to Rent as provided below), as liquidated damages. The parties have agreed that this amount represents a reasonable approximation of the damages likely to be suffered by City in the event Tenant shall fail to open on or before the Rent Commencement Date. In the event the Facility is not open for business on the date that is sixty (60) days after the Rent Commencement Date, City shall have the option to terminate this Lease, or to remove the applicable Facility from the Lease, exercisable by notice to Tenant. In the event the applicable Facility is removed from the Lease, any Rent components based on square footage shall be reduced accordingly. Tenant shall be liable for all damages associated with such termination or removal, including City's releasing costs.

2.4 Delivery Delay by City. If for any reason City cannot deliver possession of a Facility to Tenant on the Commencement Date, this Lease shall remain in effect, City shall not be subject to any liability, and such failure shall not extend the Term hereof. In such event, and provided such delay is not caused by the act or omission of a Tenant Entity, the Rent Commencement Date applicable to such Facility shall be extended day for day to reflect such delay.

2.5 City's Right to Extend Term. City shall have one (1) option to extend the Term by two (2) years, on the terms and conditions of this Section 2.5 (the "**Extension Option**"). To exercise an Extension Option, City must give notice (an "**Exercise Notice**") to Tenant on or before the date that is one hundred and eighty (180) days prior to the Expiration Date. In no event will City be required to exercise the Extension Option.

2.6 Holding Over. If, without objection by City, Tenant holds possession of the Premises after the Expiration Date, Tenant shall become a tenant from month to month, upon the terms of this Lease except that, the MAG shall not be applicable, and Base Rent shall be the Percentage Rent specified in the Summary during any such holdover period. No such holdover shall be deemed to operate as a renewal or extension of the Term. Such month-to-month tenancy may be terminated by City or Tenant by giving thirty (30) days' notice of termination to the other at any time. Tenant shall have no rights to renew or extend the Term of this Lease.

2.7 Early Lease Termination.

(a) Notwithstanding the Lease provisions herein, the Director, in his sole and absolute discretion, has the authority to terminate the Lease during the Operating Term if the use of the space is required in support of the Airport's Five-Year or Ten-Year Capital Plan, as published annually (the "**Early Lease Termination**"). In the event the Director exercises this Early Lease Termination, the Airport shall provide Tenant with six (6) months' written notice of the termination date of the Lease, upon which the Lease shall terminate and Tenant shall vacate the Premises in accordance with applicable Lease provisions contained herein.

(b) Under this provision only, Tenant is entitled to a Lease buy-out and no other monetary payment under this Lease, at law or at equity. The buy-out is computed as the unamortized investment in "hard construction costs" as defined further in Lease Section 7.1 [Minimum Investment]. In the absence of "hard construction costs," the required Minimum Investment Amount will be used. The amortization is based on a straight-line method as applied to the Operating Term. An example of the buy-out computation is as follows: Tenant invests \$500,000 in hard construction costs and has a five year Operating Term, and one two-year Extension Option. During the Operating Term and with two lease years remaining of the Operating Term, the Director exercises the Early Lease

restaurant concept, then the street pricing comparison shall be to the other restaurants with the same concept operated by the licensor or other licensees. Stadiums, entertainment venues, resorts, hotels and any venue which has a captive audience may not be used for comparison.

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

3.8 Other Operational Requirements.

(a) Tenant must keep the display cases and windows within the Premises presentable, clean, and suitably illuminated at all times.

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

(c) City shall have the right to implement a consolidated distribution center for delivery of merchandise to Tenant. If City elects to implement such a consolidated distribution center, Tenant must use the service and pay any associated fees.

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

- (i) comply with the Airport Rules;
- (ii) cause all deliveries and dispatches of merchandise, supplies, fixtures, equipment and furniture to be made and conveyed to or from the Premises by means and during hours established by Director in Director's sole discretion. City has no responsibility regarding the delivery or dispatch of Tenant's merchandise, supplies, fixtures, equipment and furniture. Tenant may not at any time park its trucks or other delivery vehicles in common areas; and
- (iii) not park within the parking areas of the Airport except in those areas, if any, designated by City pursuant to permits obtained from the Airport's Permit Bureau. Nothing herein shall imply that Tenant shall be able to secure any on-Airport parking privileges.

3.9 Prohibited Activities. Without limiting any other provision herein, Tenant shall not, without the prior written consent of Director: (a) use or permit the use of the Premises for the conduct of

regulations, permits, authorizations, orders and requirements, to the extent applicable to Tenant or the Premises or any portion of any of them whether or not in the contemplation of the parties, including, without limitation, all consents or approvals required to be obtained from, and all rules and regulations of, and all building and zoning laws of, all federal, state, county and municipal governments, the departments, bureaus, agencies or commissions thereof, authorities, board of officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions, including the Occupational Safety and Health Act and all other applicable laws relating to workplace safety or toxic materials, substances or wastes, Title XV (commencing with Section 3082) of the California Civil Code relating to works of improvement and all other applicable laws relating to construction projects, the provisions of the American with Disabilities Act, 42 U.S.C. Section 12101 et seq. and any governmental regulations with respect thereto (the “**ADA**”) (including, without limitation, the requirements under the ADA for the purposes of “public accommodations”, as that term is used in the ADA), the provisions of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Section 794 et seq.) and any governmental regulations with respect thereto, Title 24 of the California Administrative Code, all Environmental Laws, the Airport Rules, the Tenant Improvement Guide (including any design criteria) as the same may be amended from time to time (the “**TI Guide**”), and the requirements referenced in Section 19 [City and Other Governmental Provisions] hereof.

4. RENT

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

(a) “**Gross Revenues**” means:

- (i) The retail price of all merchandise sold and services rendered in, on, about or from the Premises or from such other locations on the Airport where Tenant operates, whether through a subtenant, concessionaire, or by any other person or entity herein permitted, regardless of where or by whom any such merchandise is prepared, whether such sales be for cash or on credit, and in case of sales on credit, whether or not payment is actually made; provided, however, that in the event merchandise is returned by a customer and the sale is canceled, the selling price shall be excluded; plus,
- (ii) The full amount of all deposits forfeited by customers in connection with any business of Tenant in, on, about or from the Premises; plus,
- (iii) The full amount of all orders for goods or services accepted by Tenant in, on, about or from the Premises, whether or not to be filled or performed at any other place, and the full amount of all orders accepted by Tenant elsewhere, but to be filled or performed in, on, about or from the Premises or from such other locations on the Airport where Tenant operates. In determining Gross Revenues, retail sales taxes shall not be included; plus,
- (iv) The retail price of all merchandise orders placed on the Premises from Tenant’s catalog.

The following shall not be included in Gross Revenues:

month), and the amount actually paid by Tenant pursuant to the foregoing subsection (a) with respect to such month.

(c) All payments hereunder shall be paid to City's Rent Payment Address, or at such other place as City may from time to time designate in writing.

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

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

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

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

4.4 Construction Period Operations. In the event Tenant desires to operate and conduct operations constituting the Permitted Use in a temporary facility prior to substantial completion of the Initial Improvements and the Rent Commencement Date, then prior to the Commencement Date, Tenant shall give notice thereof to Director requesting Director's approval of such interim operations. Such notice shall specify the nature of such operations, including the proposed area for such operations, the hours of such operations, and the inventory to be offered for sale. Director shall have the right to grant or deny such approval in Director's sole and absolute discretion. In the event Director grants approval of such interim operations, then such operations shall be on such terms and conditions required by Director, including: (a) Director may revoke Director's approval at any time, and following such revocation, Tenant must immediately cease such operations until the Rent Commencement Date; (b) Such interim operations may be conducted only in the area designated by Director; (c) Tenant's responsibilities and liabilities with respect to such designated area shall be the same responsibilities and liabilities that Tenant has with respect to the Premises, except that Tenant shall not be obligated to perform the Initial Improvements or any other Alterations on such designated area; (d) As Base Rent for the interim period, Tenant shall pay to City the Construction Period Percentage Rent identified in the Summary based on Gross Revenues achieved from such designated area during each month of such interim period. All such rent shall be due and payable on the twentieth (20th) day of the month following each month of operation, and otherwise as provided in Section 4 of the Lease. Tenant shall report all Gross Revenues achieved during such interim period and such Gross Revenues shall not be included as Gross Revenues for the purposes of calculation of Base Rent following the Rent Commencement Date; and (e) Tenant shall be solely responsible for making the designated area useable for Tenant's interim operations, and for protecting such area from construction and other activities in the Premises. At Director's request, Tenant shall restore such area to the condition existing prior to Tenant's use thereof.

4.5 Rent Prior to Rent Commencement Date. In the event Tenant completes its improvements and opens for business prior to the Rent Commencement Date, Base Rent will be greater of the

ensure a capability within its mobile POS for the installation of Airport and Airport partner applications that can be integrated with Tenant's POS to exchange data and make possible future opportunities to support passengers and airlines with vouchers, coupons and other mutually beneficial marketing programs.

4.9 Books and Records; Audit Rights.

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

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

or might have against City; (e) any failure on the part of City to perform or comply with any of the terms hereof or of any other agreement with Tenant or any other person; (f) any failure on the part of any sublessee, licensee, concessionaire, or other person to perform or comply with any of the terms of any sublease or other agreement between Tenant and any such person; (g) any termination of any sublease, license or concession, whether voluntary or by operation of law; or (h) any other occurrence whatsoever, whether similar or dissimilar to the foregoing in each case whether or not Tenant shall have notice or knowledge of any of the foregoing. The obligations of Tenant hereunder shall be separate and independent covenants and agreements. Tenant hereby waives to the full extent permitted by applicable law, all rights now or hereafter conferred by statute, including without limitation the provisions of Civil Code Sections 1932 and 1933, to quit, terminate or surrender this Lease or the Premises or any part thereof, or to any abatement, suspension, deferment, diminution or reduction of any rent hereunder.

4.16 Severe Decline in Enplanements.

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

- (i) **“Relevant Boarding Area”** shall have the meaning given it in the Summary.
- (ii) **“Enplanements”** shall mean the total number of passengers boarding airline carriers. For purposes of this Section 4.14, all Enplanement comparisons shall be done by Relevant Boarding Area.
- (iii) **“Reference Month(s)”** shall mean the corresponding month in the Reference Year.
- (iv) **“Reference Year”** shall have the meaning given it in the Summary.
- (v) **“Percentage Rent”** shall have the meaning given it in the Summary.
- (vi) **“Severe Decline in Enplanements for Three Months”** shall mean that the actual Enplanements achieved during a one month period is less than 80% of the actual Enplanements of the same Reference Month in the Reference Year, and such shortfall continues for three (3) consecutive months.
- (vii) **“Enplanement Stabilization for Two Months”** means that actual Enplanements for a particular month equals or exceeds 80% of the actual Enplanements of the same Reference Month in the Reference Year, and such threshold is achieved for two (2) consecutive months.

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

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

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

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

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

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

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

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

5. ASSIGNMENT OR SUBLETTING

5.1 No Assignment. Tenant shall not assign, sublet, encumber, or otherwise transfer, whether voluntary or involuntary or by operation of law, the Premises or any part thereof, or any interest herein, without City’s prior written consent, which consent may be granted or denied in City’s sole and absolute discretion (the term “**Transfer**” shall mean any such assignment, subletting, encumbrance, or transfer). City’s consent to one Transfer shall not be deemed a consent to subsequent Transfers. Any Transfer made without City’s consent shall constitute a default hereunder and shall be voidable at City’s election. Notwithstanding or limiting the foregoing, the City will allow a Tenant, including an individual or entity with any level of ownership in an Airport tenancy, to hold a maximum of eight (8) retail or food and beverage, or a combination therein, leases at the Airport at any given time. This policy does not included subleases. Any transfer made without the City's consent shall constitute a default hereunder and shall be voidable at the City's election.

5.2 Changes in Tenant. The merger of Tenant with any other entity or the transfer of any controlling ownership interest in Tenant, or the assignment or transfer of a substantial portion of the

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

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

6. TAXES, ASSESSMENTS AND LIENS

6.1 Taxes.

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

(b) Tenant shall report any Transfer, or any renewal or extension hereof, to the County of San Mateo Assessor within sixty (60) days after such Transfer transaction, or renewal or extension. Tenant further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements under applicable law with respect to possessory interests and any applicable rules and regulations of the Internal Revenue Service and the Securities and Exchange Commission in connection with any tax-exempt Airport revenue bonds financing the property leased to Tenant hereunder. Tenant agrees to make an irrevocable election not to claim depreciation or an investment credit with respect to any property leased hereunder.

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

7. INVESTMENTS; ALTERATIONS

7.1 Minimum Investment. Prior to the Rent Commencement Date, Tenant, at Tenant's sole cost and expense, shall refurbish, redecorate and modernize the interiors and exteriors of the Premises, and otherwise complete the initial improvements necessary and appropriate to commence operations in

signed by Tenant and deposited with City as an official record thereof. In the event Tenant fails to have its Initial Improvement designs approved by the Airport's Design Review Committee and BICE by the date that is thirty (30) days in advance of the Commencement Date, the Director may elect to impose fines of two hundred fifty dollars (\$250) per day until such time that approvals are received. All Alterations shall be effected through the use of contractors approved by City who shall furnish to City upon demand such completion bonds and labor and material bonds as City may require so as to assure completion of the Alterations on a lien-free basis. If the estimated cost of any Alterations exceeds \$750,000 per building permit, unless otherwise exempt, Tenant agrees to comply with the Local Hiring Requirements as described in Section 19.28 of this Lease. Without limiting the requirements set forth above, Tenant acknowledges and agrees that Tenant may be required to obtain approvals for any desired Alterations from BICE.

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

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

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

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

of the Director will cause, or is likely to cause, unreasonable delay in the progress of construction or operation of any business at the Airport, then upon written notice from Director, Tenant shall declare the contractor or subcontractor in default of its contract, and upon such notice, Tenant shall have the right to take such steps as are necessary to finish the uncompleted portion of the work to be performed by the contractor or subcontractor.

(d) Without limiting the generality of indemnities elsewhere in this Lease, Tenant shall indemnify, defend, and hold harmless City and each City Entity for any and all Losses which arise from the actions taken pursuant to this Section 7.8.

8. UTILITIES

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

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

8.3 Shared Telecommunications Services. Tenant acknowledges that City has implemented a shared telecommunications service program (“**STS Program**”) to provide telecommunications services. The STS Program may involve City’s provision of telephone, telefacsimile, local access, long distance service, internet, intranet, and other computer and telecommunications services. In such event, at City’s option, Tenant shall participate in the STS Program by engaging City or its agent to provide such services at Tenant’s expense, provided that the charges for such services are generally competitive. Further, Tenant shall pay to City when invoiced, the Airport Communication Infrastructure Charge, as the same may be modified from time to time. All payments for STS services shall be due and payable when invoiced by City.

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

9. MAINTENANCE AND REPAIR

9.1 “As-Is” Condition. TENANT SPECIFICALLY ACKNOWLEDGES AND AGREES THAT CITY IS LEASING THE PREMISES TO TENANT ON AN “AS IS WITH ALL FAULTS” BASIS AND THAT TENANT IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM CITY OR ITS AGENTS, AS TO ANY MATTERS CONCERNING THE PREMISES, INCLUDING: (i) the quality, nature, adequacy and physical condition and aspects of the Premises, including, but not limited to, landscaping, utility systems, (ii) the quality, nature, adequacy, and physical condition of soils, geology

use or enjoyment of the Premises, the likelihood that the parties contemplated the particular requirement involved, or the relationship between the requirement involved and Tenant's particular use of the Premises. No occurrence or situation arising during the Term, nor any present or future requirement, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant of its obligations hereunder, nor give Tenant any right to terminate this Lease in whole or in part or to otherwise seek redress against City. Tenant waives any rights now or hereafter conferred upon it by any existing or future requirement to terminate this Lease, to receive any abatement, diminution, reduction or suspension of payment of Rent, or to compel City to make any repairs to comply with any such requirement, on account of any such occurrence or situation.

9.4 Tenant's Pest Management Obligations. Tenant shall, at all times during the Term of the Lease and at Tenant's sole cost and expense, keep the Premises and every part thereof in a clean and sanitary condition, including having a pest control program in place in accordance to the Airport's standards. Tenant shall contract with the Airport to provide pest control services and shall pay a monthly Pest Control Services Fee for such services. The Pest Control Services Fee may be adjusted from time to time at the sole discretion of the Director. Tenant must adhere to the following set of standards in accordance with the City and County of San Francisco (CCSF) Environment Code, Chapter 3, including but not limited to the following:

(a) Using pesticides on the CCSF allowed list only when application is made on City property, i.e. SFO.

(b) Any pesticide exemption must be granted by the San Francisco Department of Environment before using non-approved pesticides.

(c) All posting requirements regarding pesticide application must be adhered to prior to use.

(d) Pesticide use reports shall be made to Airport IPM (Integrated Pest Management) staff by the 10th of the month following application.

10. SIGNS AND ADVERTISING

10.1 Signs and Advertising. Tenant may, at its own expense, install and operate necessary and appropriate identification signs on the Premises, subject to the approval of Director and the requirements of the TI Guide, including but not limited to, the approval of the number, size, height, location, color and general type and design. Such approval shall be subject to revocation by Director at any time. Without express written consent of Director, Tenant shall not display any advertising, promotional, or informational pamphlets, circulars, brochures or similar materials.

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

10.3 *Left blank by agreement of the parties.*

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

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

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

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

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

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

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

12.7 Form of Policies. Before commencing the Initial Improvements or other operations under this Lease, Tenant shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Tenant's liability hereunder. City may, upon reasonable notice and reasonable grounds increase or change the required insurance hereunder, in which event Tenant shall obtain such required insurance. Without limiting the generality of the foregoing, all Commercial General Liability Insurance and Commercial Automobile Liability Insurance policies shall be endorsed to provide the following:

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

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

Rent or other charge in default or for the payment of any other sum to which City may become obligated by reason of Tenant's default or to compensate City for any loss or damage which City may suffer thereby. If City so uses or applies all or any portion of the Deposit, Tenant, within ten (10) days after request therefore, shall deposit other security acceptable to Director with City in an amount sufficient to restore the Deposit to the full amount thereof, and Tenant's failure to do so shall be a breach of this Lease. City shall not be required to keep the Deposit or any proceeds thereof, as applicable, separate from its general accounts. Any proceeds of the Deposit is and will remain the sole and separate property of City until actually repaid to Tenant, said sum not being earned by Tenant until all provisions precedent for its payment to Tenant have been fulfilled. If Tenant performs all of Tenant's obligations hereunder, the Deposit, or the proceeds thereof, or so much thereof as has not theretofore been applied by City, shall be returned, without payment of interest or other increment for its use, to Tenant (or, at City's option, to the last assignee, if any, of Tenant's interest hereunder) within sixty (60) days after the expiration of the Term, and after Tenant has vacated the Premises. No trust relationship is created herein between City and Tenant with respect to the Deposit or any proceeds thereof. Tenant waives to the fullest extent permitted by law the provisions of California Civil Code Section 1950.7 or other similar laws, which provide that a landlord may claim from a security deposit only those sums reasonably necessary to remedy a default in the payment of rent, to repair damage caused by a tenant, or to clean the premises.

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

14. DAMAGE OR DESTRUCTION

14.1 Partial Destruction of Premises.

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

(b) In the event such improvements are damaged by any casualty not covered under an insurance policy required to be maintained pursuant to this Lease, then City may, at City's option, either

(i) repair such damage as soon as reasonably possible at City's expense, in which event this Lease shall continue in full force and effect, or (ii) give written notice to Tenant within sixty (60) days after the date of occurrence of such damage of City's intention to terminate this Lease. Such termination shall be effective as of the date specified in such notice.

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

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

(b) Tenant shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy, or a petition or answer seeking an arrangement for its reorganization, or the readjustment of its indebtedness under the federal bankruptcy laws, or under any other law or statute of the United States or of any state thereof, or consent to the appointment of a receiver, trustee, or liquidator of any or substantially all of its property; or

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

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

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

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

(g) Tenant shall fail to provide, maintain, increase, or replace, the Deposit as required herein; or

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

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

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

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

(b) City shall have the right and remedy described in California Civil Code Section 1951.4. City may elect not to terminate this Lease and let this Lease continue, in which case City may enforce all its rights and remedies under this Lease, including the right to recover Rent as it becomes due under this Lease. Acts of maintenance or preservation or efforts to relet the Premises or the appointment of a receiver upon the initiative of City to protect City's interest under this Lease shall not constitute a termination of Tenant's right to possession.

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

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

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

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

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

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

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

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

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

16. SURRENDER

Tenant shall at the end of the Term surrender to City the Premises in "broom clean" condition with all Alterations, additions and improvements thereto in the same condition as when received, ordinary wear and tear and damage by fire, earthquake, act of God, or the elements excepted. Tenant shall abide by the vacating instructions in the Tenant Improvement Guide and shall remove all trade dress, signage inserts, equipment and furnishings not permanently affixed to the base building or chattels. Additionally, Tenant shall be responsible for ensuring that its telecommunications cables and all other low voltage special systems cables are capped off and service discontinued. If Tenant utilized a hood, grease receptacle, or grease interceptor in the operation of its business, all items must be professionally cleaned with a receipt for same submitted to City. Subject to City's right to require removal pursuant to Section 7 [Investments; Alterations] hereof, all Alterations and improvements installed in the Premises by Tenant (other than Tenant's trade fixtures), shall, without compensation to Tenant, then become City's property free and clear of all claims to or against them by Tenant or any third person. In the event that Tenant shall fail to remove its personal property, including trade fixtures, on or before the Expiration Date, such personal property shall become City's property free and clear of all claims to or against them by Tenant or any third person. In such event, City shall not be responsible for any Losses related to such personal property, and City may sell or otherwise dispose of such personal property. If any of the surrender requirements of this Section are not met, City may at its sole discretion deduct reasonable costs for the work from the Tenant's Deposit.

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

(d) Any items containing Hazardous Materials in use by Tenant, which are customarily used in retail, must be disposed of in a manner consistent with all applicable Environmental Laws.

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

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

17.4 Environmental Audit. Upon reasonable notice, Director shall have the right but not the obligation to conduct or cause to be conducted by a firm acceptable to Director, an environmental audit or any other appropriate investigation of the Premises for possible environmental contamination. Such investigation may include environmental sampling and equipment and facility testing, including the testing of secondary contamination. No such testing or investigation shall limit Tenant's obligations hereunder or constitute a release of Tenant's obligations therefor. Tenant shall pay all costs associated with said investigation in the event such investigation shall disclose any Hazardous Materials contamination as to which Tenant is liable hereunder.

17.5 Closure Permit. Prior to the termination or expiration of this Lease, Director shall have the right to require Tenant to file with the City an application for a Closure Permit for decontamination of the site and investigation and removal of all Hazardous Materials in compliance with the Airport's TI Guide, the Airport Rules, and all Laws. The Closure Permit may require a plan for long-term care and surveillance of any contamination allowed to remain at the Premises or Airport property and an acknowledgment of responsibility and indemnification for any and all Losses associated with any such contamination. Without limiting the foregoing provision, City reserves the right to require Tenant to, and in such event Tenant shall, at Tenant's sole cost and expense, decontaminate the Premises and remove any Hazardous Materials discovered during the Term, except those Hazardous Materials which constitute Pre-Existing Conditions. Such removal shall be performed to the Director's reasonable satisfaction.

18. EMINENT DOMAIN

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

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

entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease). Tenant shall have no claim against City for the value of any unexpired Term of this Lease, provided that Tenant may make a separate claim for compensation. Tenant shall retain any Award made specifically to Tenant for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's personal property.

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

19. CITY AND OTHER GOVERNMENTAL PROVISIONS

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

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

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

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

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

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

19.10 City's Nondiscrimination Ordinance.

(a) In the performance of this agreement, Tenant agrees not to discriminate against any employee, City and County employee working with 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) Tenant shall include in all subleases and other subcontracts relating to the Premises hereunder a nondiscrimination clause in substantially the form of subsection (a) above. In addition, Tenant shall incorporate by reference in all subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subtenants and other subcontractors to comply with such provisions. Tenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

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

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

(e) The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to nondiscrimination by parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Lease as though fully set forth herein. Tenant shall comply fully with and be bound by all of the provisions that apply to this Lease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Tenant understands that pursuant to Section 12B.2(h) of the San Francisco

under this Lease, and further agree that any violation of this prohibition on the part of Tenant, its employees, agents or assigns shall constitute a material breach of this Lease.

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

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

19.19 First Source Hiring Ordinance. Tenant shall comply with the San Francisco First Source Hiring Ordinance (Board of Supervisors Ordinance No. 264-98, as amended by Board of Supervisors Ordinance Nos. 32-09 and 149-09) in cooperation with the Airport Commission Office of Employment and Community Partnerships pursuant to the First Source Hiring Agreement entered into between the Airport Commission and the Tenant concurrently herewith, and incorporated herein by reference.

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

19.21 Requiring Minimum Compensation.

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

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

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

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

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

(b) Notwithstanding the above, if the Tenant is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

(c) Tenant's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Tenant if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Tenant fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Tenant fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

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

prospective tenant or a City officer or employee. Negotiations are completed when a lease is finalized and signed by the City and the Tenant. Negotiations are terminated when the City and/or the prospective tenant end the negotiation process before a final decision is made to award the contract. Through its execution of this Agreement, Tenant acknowledges that it is familiar with the provisions of Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and sections 87100 et seq. and sections 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions and agrees that if it becomes aware of any such fact during the term of this Agreement it shall immediately notify City.

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

19.26 Multi-Employer Bargaining Group Participation. Tenant agrees and acknowledges that a multi-employer bargaining group is an established mechanism for employers to bargain collectively with any lawful labor organization representing its employees in an appropriate bargaining unit in conformity with the Airport Commission's labor peace/card check agreement. Tenant will maintain membership in the Airport Restaurant Employers Council or its successor multi-employer bargaining group, and further agrees to become a party to, and be bound by, a collective bargaining agreement for its operations under this Lease in the event a collective bargaining agreement is negotiated on behalf of its employees authorizing, by majority determination through the labor peace/card check resolution or otherwise, the negotiation of such collective bargaining agreement. Tenant agrees to be an active member of the Airport Restaurant Employers Council or its successor multi-employer bargaining group by attending and participating in the groups meetings.

19.27 Worker Retention Policy. Tenant acknowledges the Airport's Worker Retention Policy and agrees to comply with its requirements.

19.28 Local Hire Policy. Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.62 (the "Local Hiring Requirements"). All Alterations under this Lease are subject to the Local Hiring Requirements unless the cost for such work is (a) estimated to be less than \$750,000 per building permit or (b) meets any of the other exemptions in the Local Hiring Requirements. Tenant agrees that it shall comply with the Local Hiring Requirements to the extent applicable. Before starting any Alteration, Tenant shall contact City's Office of Economic Workforce and Development ("OEWD") to verify if the Local Hiring Requirements apply to the work (i.e., whether the work is a "Covered Project"). Tenant shall include, and shall require its subtenants to include, a requirement to comply with the Local Hiring Requirements in any contract for a Covered Project with specific reference to San Francisco Administrative Code Section 23.62. Each such contract shall name the City and County of San Francisco as a third party beneficiary for the limited purpose of enforcing the Local Hiring Requirements, including the right to file charges and seek penalties. Tenant shall cooperate, and require its subtenants to cooperate, with City in any action or proceeding against a contractor or subcontractor that fails to comply with the Local Hiring Requirements when required. Tenant's failure to comply with its obligations under this Section shall constitute a material breach of this Lease. A contractor's or subcontractor's failure to comply with this Section will

party responsible for drafting any part of this Lease. Provisions in this Lease relating to number of days shall be calendar days. Use of the word “**including**” shall mean “including, without limitation.” References to statutes, sections, ordinances or regulations are to be construed as including all statutory, ordinance, or regulatory provisions consolidating, amending, replacing, succeeding or supplementing the statute, section, ordinance or regulation. Whenever the singular number is used in this Lease and when required by the context, the same includes the plural, the plural includes the singular, and the masculine gender includes the feminine and neuter genders, and the word “**person**” shall include corporation, partnership, firm, limited liability company, and association.

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

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

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

20.9 Brokers. Neither party has had any contact or dealings regarding the leasing of the Premises, nor any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder’s fee in connection with the lease contemplated herein. In the event that any broker or finder perfects a claim for a commission or finder’s fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes his/her claim shall be responsible for such commission or fee and shall indemnify, defend, and hold harmless the other party from any and all Losses incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination or expiration of this Lease.

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

20.11 Governing Law. This Lease shall be construed and enforced in accordance with the laws of the State of California and the Charter of the City and County of San Francisco.

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

due stipulated rent, or deemed to be on account of rent owing for the current period only, notwithstanding any instructions by or on behalf of Tenant to the contrary, which instructions shall be null and void, and no endorsement or statement on any check or any letter accompanying any such check or payment will be deemed an accord and satisfaction, and City may accept such check or payment without prejudice to City's right to recover the balance of such rent or payment or pursue any other remedy available in this Lease, at law or in otherwise, including possession of the Premises. City may accept any partial payment from Tenant without invalidation of any contractual notice required to be given herein (to the extent such contractual notice is required) and without invalidation of any notice given or required to be given pursuant to applicable law. In such event, if City shall receive any such partial payment after it shall have commenced an action against Tenant, City may amend its action as contemplated by Section 1161.1(c) of the California Civil Code to reflect any such partial payment, and no such payment shall limit any of City's rights to continue the action.

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

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

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

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

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

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

///

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

TENANT: SF Foodways, LLC,
[signatories to also initial Summary] a California limited liability company

By: [Signature]

Name: JOSE PLACENCIA
(type or print)

Title: MANAGING PARTNER

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

[Signature]
Ivar C. Satero
Airport Director al
RC

AUTHORIZED BY
AIRPORT COMMISSION

Resolution No.: 18-0216

Adopted: July 10, 2018

Attest: [Signature]
Secretary
Airport Commission

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

By: [Signature]
Deputy City Attorney

X:\TENANTS\Adam Light_SF Foodways, LLC\Agreements\Flyaway by Drake's\T1 F&B Lease 9 - FLYAWAY BY DRAKE'S BREWING CO
final

LIST OF EXHIBITS

EXHIBIT A – Description of Premises

EXHIBIT B – Use and Operational Requirements

EXHIBIT C-1 – Form of Performance Bond

EXHIBIT C-2 – Form of Letter of Credit

EXHIBIT D – Tenant Work Letter

EXHIBIT A PREMISES

One (1) facility, comprising approximately 2,982 square feet of space (Space B.2.286) located in Terminal 1, Boarding Area B at San Francisco International Airport, as described on the attached drawing.

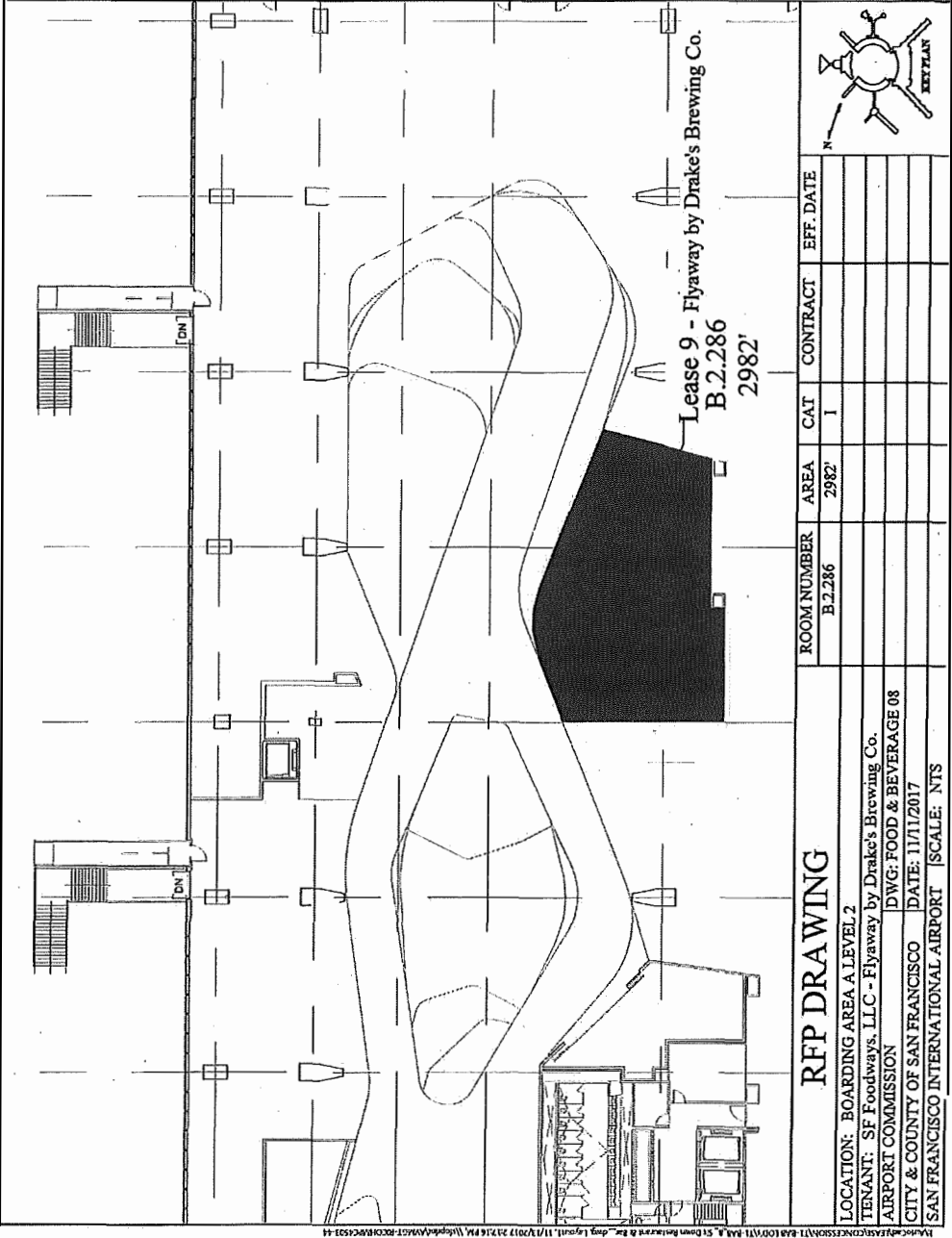


Exhibit A - Page 1

<p>Pair with Best Coast IPA 7% ABV ••• 20oz</p> <p>GRILLED STEAK - spinach, avocado, tomatoes, pancetta, gorgonzola, crispy onions</p> <p>Pair with hop vice white IPA 6.4% ABV ••• 20oz</p> <p>CLASSIC COBB - butter lettuce, chicken breast, pancetta, cherry tomato, hard-boiled egg, sliced avocado, point Reyes blue cheese</p> <p>Pair with Flyway 4.6% ABV ••• 20oz 8</p> <p>TRADITIONAL CAESAR - romaine hearts, parmigiano, grilled chicken</p> <p>Pair with Blonde, Drake's Blonde 4.5% ABV ••• 20oz 9</p>	<p>DRIVE-IN BURGER - Cream Co. beef, cheddar, drive-in sauce, ginger pickle, onion, shredded iceberg</p> <p>GRILLED CHICKEN SANDWICH - whole wheat bun, spicy slaw, havarti, lime crema</p> <p>(All sandwiches served with kettle chips)</p> <p>FRIES CHILI CUP, SPICY OR GARLIC FRIES</p> <p>THE IMPOSSIBLE BURGER - Impossible Burger meatless patty, green leaf lettuce, tomato, sliced red onion, vegan avocado spread, brioche bun</p> <p>Get It Draked: add slow-poached egg</p> <p>FISH & CHIPS - fresh white fish, Hefe batter, natural cut fries, remoulade</p>
<p style="text-align: center;"><u>SOMETHING SWEET</u></p> <p>BREAD PUDDING – bread pudding with pecan, caramel, cinnamon caramel ice cream</p> <p>DOUBLE RAINBOW - ICE CREAM choice of vanilla, cinnamon caramel, or raspberry sorbet</p> <p>PORTER FLOAT - Black Robusto Porter, cinnamon caramel ice cream, caramel</p> <p>RAZZLANDER FLOAT - Bright Side berlinerweisse raspberry sorbet</p> <p style="text-align: center;"><u>Children's Menu</u> (served all day)</p> <p>SCRAMBY EGGS WITH BACON - cage-free eggs scrambled and served with crispy bacon</p> <p>PANCAKES AND SAUSAGE - three silverollar-sized pancakes, served with organic sausage</p>	<p style="text-align: center;"><u>BREAKFAST</u></p> <p style="text-align: center;">COME AND GET IT</p> <p>THE SCANDANAVIAN - smoked salmon, poached egg, microgreens, California avocado</p> <p>TRADITIONAL HASH - lean corned beef, mild yellow onion, red bell pepper, Yukon gold potatoes, poached egg, chives</p> <p>CHILAQUILES - shredded chicken, salsa verde, cotija cheese, poached egg, crispy tortillas, California avocado</p> <p>OBLIGATORY YOGURT BOWL - Strauss organic yogurt, organic granola, raw honey, Tahitian vanilla</p> <p>SO BASIC - Keep it simple with scramby eggs and homefries. Add a breakfast meat.</p> <p>VEGGIE OMELET WITH GOAT CHEESE - cage-free eggs, seasonal vegetables, Sonoma goat cheese, San Francisco sourdough</p>

HOPOCALYPSE DOUBLE IPA 8.4% - Overwhelm your senses with a devastating quantity of hops, evoking notes of ripe guava, lemon blossom, and caviar lime.	
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Optional

Tenant, at its own option, may sell the following items, on a nonexclusive basis:

- Grab ‘n Go items such as baked good, sandwiches, salads, and hot & cold beverages.

- 3) **SUSTAINABLE FOOD POLICY:** In compliance with Executive Directive 09-03 issued by the Office of the Mayor on July 9, 2009, Tenant is required to provide good, clean, and fair food which has been responsibly sourced and deliciously prepared. Tenant is encouraged to ensure that at least 25% of the meals offered on the menu meet the nutritional guidelines set forth in San Francisco Administrative Code section 4.9-1(e), as may be amended. The following must be adhered to throughout the term of the Lease.

Tenant must feature:

1. Displays that promote healthy eating and good environmental stewardship
2. Visible food preparation areas
3. Portion sizes which support good health
4. Portion-appropriate menu items for children

Tenant must use:

5. Low- or non-phosphate detergents
6. Un-bleached paper products and compostable To Go containers and utensils

To the very greatest extent possible, Tenants must use:

7. Organic agricultural products from the Northern California region
8. Agricultural products that have not been genetically modified
9. Organic or all-natural meat from animals treated humanely and without hormones or antibiotics
10. rBST-free cheese, milk, yogurt and butter
11. Cage-free, antibiotic-free eggs
12. Sustainable seafood
13. Fairly Traded Organic Coffee
14. Products free of hydrogenated oils
15. Products free of artificial colors, flavors and additives

- 4) **AIRPORT WASTE MANAGEMENT PROGRAM:** Tenant shall dispose of waste in a manner that produces the very least possible contribution to a landfill. Tenant must maximize recycling, composting and compostable to-go containers and utensils. Tenant must donate un-

Tenant shall also be committed to using certified organic, biodegradable and compostable caterware. Tenant shall ensure Flyaway by Drake’s participation in the airport’s recycling program.

Tenant shall require all new kitchen staff hires to go through training on food preparation, including time, temperature, and food safety.

Maintenance

Tenant shall take responsibility and accountability to help ensure that good repair and cleanliness of its establishment. Flyaway by Drake’s staff shall pay attention to every detail within the facility and shall be responsible for managing all threats to the cleanliness or good repair of the restaurant. Tenant shall concur with the age-old philosophy of “if you have time to lean, you have time to clean.”

Managers shall also walk through the establishment regularly making sure all aspects of the environment are in proper working order and employees of the establishment shall keep cleaning logs and perform preventive maintenance on equipment to make sure everything is kept in excellent condition. Further, a proactive approach to maintenance as it pertains to equipment shall be emphasized, and regular cleaning and a preventative maintenance schedule shall be adhered to in order to ensure no interruption to operations.

Staffing

	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
Cook 1			12:30 pm-8:30 pm	12:30 pm-8:30 pm	12:30 pm-8:30 pm	12:30 pm-8:30	12:30 pm-8:30 pm
Cook 2	12:30 pm- 8:30 pm	12:30 pm-8:30 pm		5 am- 1:30 pm	5 am- 1:30 pm		5 am- 1:30 pm
Cook 3	5 am- 1:30 pm	5 am- 1:30 pm	5 am- 1:30 pm			5 am- 1:30 pm	5 am- 1:30 pm
Cook 4	5 am- 1:30 pm	5 am- 1:30 pm	5 am- 1:30 pm				
Cook 5 (prep)	7 am- 4:30 pm			7 am- 4:30 pm	7 am- 4:30 pm	7 am- 4:30 pm	7 am- 4:30 pm
Cook 6	2:30 pm-11 pm	2:30 pm- 11 pm	2:30 pm-11 pm				2:30 pm-11 pm
Cook 7	4 pm- 11pm			5 am -1:30pm	5 am -1:30pm	5 am -1:30pm	4 pm – 11 pm
Cook 8		7 am- 4:30 pm	7 am- 4:30 pm	2:30 pm- 11pm	2:30 pm- 11pm	2:30 pm- 11pm	
Cook 9		4 pm-11pm	4pm-11pm	4pm-11pm	4pm-11pm	4pm- 11 pm	
Cook 10 (prep)	4 pm-10 pm		4 pm -10 pm	4 pm-10 pm	3 pm -10 pm		3 pm- 10pm
Host 1		2 pm-11pm	5 am- 1:30 pm		5 am- 1:30 pm	2 pm-11pm	
Host 2				5 am- 1:30 pm	2 pm-11pm	5 am- 1:30 pm	2 pm-11pm
Host 3	11 am-7pm	11 am-7pm	11 am-7pm	11 am-7pm	11 am-7pm		
Host 4	2 pm-11pm		2 pm-11pm	2 pm-11pm		11 am-7pm	11 am-7pm
Host 5	5 am- 1:30 pm	5 am- 1:30 pm					5 am – 1:30 pm
Grab-n-go Cashier1	6:30 am-3 pm			6:30 am-3 pm	6:30 am-3 pm	6:30 am-3 pm	6:30 am-3 pm
Grab-n-go Cashier2	6:30 am-3 pm	6:30 am-3 pm	6:30 am-3 pm	6:30 am-3 pm	6:30 am-3 pm		

6) PAYMENT CARD INDUSTRY (PCI) DATA SECURITY STANDARD REQUIREMENTS:

- A. For purposes of this subsection, the term "Cardholder Data" means personally identifiable data about the cardholder (i.e. the plastic card number, card expiration date in combination with the plastic card number, cardholder name in combination with the plastic card number and/or sensitive authentication data (track data/magnetic stripe, verification numbers CVV2, CVC2, CID, and PIN Block). This term also accounts for other personal insights gathered about the cardholder (i.e., addresses, telephone numbers, and so on), assigned by the card issuer that identifies the cardholder's account or other cardholder personal information. For purposes of this section, a "Tenant" means any person or entity that stores, processes, transmits or otherwise is permitted access to Cardholder Data, while performing the Permitted Uses authorized in this Lease. Customer Information shall include cardholder data and such other customer information as may be defined elsewhere in this Lease.
- B. As a Merchant or Service Provider as defined by the PCI Security Council, Tenant must be familiar with and adhere to the Payment Card Industry Data Security Standards (PCI DSS). This requirement includes, but is not limited to, full compliance with the twelve (12) DSS Security Standards as published by the PCI Security Standards Council at all times. The current standards may be found at <https://www.pcisecuritystandards.org/index.php>. Tenant is responsible for keeping informed about any and all modifications to the PCI DSS, and shall validate yearly compliance with PCI DSS by completing the appropriate Self-Assessment Questionnaire (SAQ) or Report On Compliance (ROC) and accompanying Attestation of Compliance (AOC). Tenant must provide copy of the compliance validation documentation to San Francisco International Airport Revenue Development and Management office every 12 months. Should any assessment result in evidence of non-compliance with PCI DSS standards, Tenant shall immediately: (1) provide written notification to the Airport regarding the specific compliance failures and a Remediation Action Plan Tenant intends to undertake to come into compliance; and (2) immediately remediate operations to come into compliance.
- i. Tenant represents and warrants that it shall implement and maintain Payment Card Industry Data Security Standard Requirements ("PCI Data Security Standard Requirements") for Cardholder Data, as they may be amended by the PCI Security Standards Council from time to time. The current PCI Data Security Standard Requirements are available on the following internet site; <https://www.pcisecuritystandards.org/>. As evidence of compliance with PCI DSS, Tenant shall provide current evidence of compliance with these data security standards certified by a third party authority recognized by the payment card industry for that purpose.
- ii. Tenant shall maintain and protect in accordance with all applicable federal, state, local and PCI laws, rules and regulations the security of all Cardholder Data when performing the Permitted Uses under this Lease. Tenant will use reasonable precautions, including but not limited to, physical, software and network security measures, employee screening, training, and supervision and appropriate agreements with employees, to prevent anyone other than City or its authorized employees from monitoring, using, gaining access to or learning the import of the Cardholder Data; protect appropriate copies of Cardholder Data from loss, corruption or

EXHIBIT C-1
FORM OF PERFORMANCE BOND FOR AIRPORT LEASES

_____ (Surety)

KNOW ALL MEN BY THESE PRESENT:

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

WHEREAS, the Principal has entered into one or more leases, permits, or agreements with the City and County of San Francisco, Airport Commission (collectively, the "Agreements").

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

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

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

- a) Principal has defaulted under one or more of the Agreements; or
- b) Principal has become insolvent, or has taken the benefit of any present or future insolvency statute, or has made a general assignment for the benefit of creditors, or has filed a voluntary petition in bankruptcy, or a petition or answer seeking an arrangement for its reorganization, or the readjustment of its indebtedness under the federal bankruptcy laws, or under any other law or statute of the United States or any state thereof, or any jurisdiction available to Principal, or has consented to the appointment of a receiver, trustee, or liquidator of any or substantially all of its property; or
- c) A petition under any of the federal bankruptcy laws or an action under any present or future insolvency law or statute has been filed against Principal.

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

Date _____

Irrevocable Letter of Credit No. _____

Airport Commission
City and County of San Francisco
Attn: Chief Business and Finance Officer
San Francisco International Airport
International Terminal, No. Shoulder Bldg., 5/F
PO Box 8097
San Francisco, CA 94128

Ladies and Gentlemen:

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

A statement signed by the Airport Director of the Airport Commission of the City and County of San Francisco, or his/her designee, to the effect that any of the following events has occurred or is continuing:

- a) Account Party has defaulted under the one or more agreements with the City and County of San Francisco, acting by and through its Airport Commission at San Francisco International Airport; or
- b) Account Party has become insolvent, or has taken the benefit of any present or future insolvency statute, or has made a general assignment for the benefit of creditors, or has filed a voluntary petition in bankruptcy, or a petition or answer seeking an arrangement for its reorganization, or the readjustment of its indebtedness under the federal bankruptcy laws, or under any other law or statute of the United States or any state thereof, or any jurisdiction available to Account Party, or has consented to the appointment of a receiver, trustee, or liquidator of any or substantially all of its property; or
- c) A petition under any of the federal bankruptcy laws or an action under any present or future insolvency law or statute has been filed against Account Party.

EXHIBIT D
TERMINAL 1
TENANT WORK LETTER

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 - 1. General
 - 2. Airport's Work
 - 3. Tenant's Work
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 - b. Sanitary Sewer
 - c. Grease Waste
 - d. Natural Gas
 - 2. Fire Sprinklers
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 - a. Lease Outlines, Point of Connections, and Base Building Drawings
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 - e. Design Review Meetings
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 - g. San Mateo County Health Permit
 - h. ABC Liquor License Permit
 - 3. Construction
 - a. Notice that Premises are ready for Tenant's Work
 - b. Tenant Verification of Existing Conditions
 - c. Local Hiring Ordinance

obtain a health permit from the San Mateo County Environmental Health Department. Tenant is required to comply with the Airport's sustainability requirements as further detailed below, which must be coordinated with the Airport's ZERO Committee.

3. RIGHTS OF WAY

The Airport will provide right-of-way to Tenant if the Premises lie above or below occupied or restricted space to accommodate Tenant's mechanical equipment and grease exhaust system. Tenant plumbing and waste lines will not be allowed to cross above or go through special systems rooms, tenant wiring closets, elevator machine rooms or electrical rooms.

B. SUSTAINABILITY REQUIREMENTS

- 1. General.** SFO is committed to prudent environmental stewardship and has integrated sustainable planning, design, construction, and operational strategies into its physical facilities. It is anticipated that this process will result in exceptional project outcomes that provide long-term positive environmental, social, and financial benefits. Tenant is encouraged to contribute to these sustainable development efforts, and to use creative and innovative design, construction, and operational strategies to create aesthetically pleasing and environmentally responsible space in alignment with SFO's sustainability goals.
- 2. Airport's Work.** The Airport will design and construct the building where the Premises are located such that when completed it will at a minimum be energy and water efficient, use materials and products that are environmentally preferable and that support improved indoor environmental quality, comply with the 2016 or current version of CALGreen, and be designed to achieve a LEED v4 BD+C or C+S minimum Gold certification.
- 3. Tenant's Work.**
 - (1)** All tenants are required to comply with the following:
 - (a) Sustainability Narrative: Tenant shall review SFO's sustainability goals and guidelines and shall submit to the Airport for ZERO Committee approval a narrative describing how Tenant's design and operations will meet these goals and guidelines. Relevant Airport documents include:
 - (i) Guiding Principles of Sustainability as described in San Francisco International Airport's Delivering Exceptional Projects – Our Guiding Principles (pg. 49-54), located at <http://www.sfoconstruction.com/>.
 - (ii) SFO Sustainable Planning, Design and Construction Guidelines located at <http://www.flysfo.com/community-environment/environmental-sustainability-reports>.
 - (b) California Building Standards: Tenant shall provide documentation to the ZERO Committee to demonstrate compliance with the California Building Standards Code (California Code of Regulations (CCR) Title 24) Part 6

- (h) Code Compliance: In addition to and without limiting the foregoing sustainability requirements, Tenant shall comply with all applicable green building laws, codes, ordinances, rules and regulations, including but not limited to, those required under the San Francisco Environment Code and the 2016 California Building Standards Code (Title 24 of the California Code of Regulations), Part 6 (Energy Code) and Part 11- (CALGreen).
<https://law.resource.org/pub/us/code/bsc.ca.gov/>
- (2) For tenant improvement projects of 10,000 gross square feet or more LEED v4 ID+C minimum Gold level certification is required.
- (a) Tenant shall be responsible for all work and costs related to the LEED certification.
 - (b) The LEED certification shall conform to the standards set forth in San Francisco Environment Code Chapter 7, and Tenant shall coordinate with the San Francisco Department of the Environment (“SF Environment”) and ZERO Committee on the LEED certification and documentation requirements, including, but not limited to, the preparation and submission of a LEED Scorecard. The LEED Scorecard is to be submitted at the conclusion of each design phase and at project close-out, along with required documentation and a copy of the project LEED certificate.
 - (c) Tenant shall demonstrate that the project achieves the following LEED credits required through Chapter 7 of the San Francisco Environment Code:
 - (i) LEED prerequisite Fundamental Commissioning and Verification and Enhanced and Monitoring-Based Commissioning;
 - (ii) LEED credit for Construction and Demolition (C&D) Debris Management – diverting 75% C&D Material from the landfill;
 - (iii) LEED credit for Enhanced Indoor Air Quality Strategies, LEED credit for Construction Indoor Air Quality Management Plan, and LEED credit Indoor Air Quality Assessment Option 2: Air Testing.
 - (iv) LEED credit for Low Emitting Materials.
 - (d) SFO has been registered with the Green Business Certification Inc. (GBCI) using the Campus Master Site Program. SFO will provide Tenant with access to the GBCI online website for use by Tenant in registering and certifying its project. Tenant shall be responsible for adding its team to this website and for providing LEED administration for its project on this website. Once Tenant has registered the project on this website, it will be able to utilize a number of pre-approved LEED v4 ID+C pre-requisites and credits.
- (3) For tenant improvement projects less than 10,000 gross square feet, Tenant is not required to achieve LEED certification but is required to submit the LEED Scorecard

C. GREASE WASTE

General. The Terminal's grease waste will be serviced by an Airport-contracted provider at the expense of Tenant. In addition to grease waste, Tenant shall provide for disposal of cooking oil waste, as further described in Section 9 "Cooking Oil Waste" below.

Airport's Work. The Airport will provide a 4-inch grease waste piping under the slab originating within the footprint of the Premises to an area terminating at a designated location on the ramp level, and this piping will be of materials that will not allow grease to coat the interior of the pipe line. These lines will be labeled with the space number every 10 feet and at point of connection. The Airport will also provide a 4-inch line at this designated ramp level location connected to the sanitary sewer system and a vent line connection point.

Tenant's Work. Tenant is responsible for installing a complete grease waste interceptor system in an approved location. The GI unit itself shall have a plaque with the space name and a 24 hour contact number attached to it. This designated location is where the Tenant-provided grease waste interceptor will be installed by the Tenant's plumbing contractor. Tenant shall make the necessary inter-connections to the sanitary sewer, grease waste lines and vent from its grease waste interceptor. The kitchen area floor drains and prep sinks of food and beverage tenants shall be tied to the grease waste line point of connection provided by the base building contractor.

Tenant is responsible for installing grease waste lines with the same material as the base building material within the Premises. Tenant shall submit its mechanical, electrical and plumbing (MEP) design no later than two weeks following the Airport's request

D. NATURAL GAS

General. SFO is committed to reducing greenhouse gas emissions across its operations, including among its tenants. The Airport operates using SF Public Utilities Commission greenhouse gas-free electric power and promotes the use of electric commercial cooking equipment over emission-intensive natural gas alternatives. Natural gas will be provided upon request to tenants operating concessions designated as food and beverage tenants and other select tenant locations within the Terminal. Food and beverage uses designated as Specialty Coffee or Café will not have gas service available.

The Airport's natural gas system is designed to support up to 1,500cf/hr at 0.25 psig. Each Food and Beverage space has a designated "Maximum Connected Load" associated with the space. Additional infrastructure may be added by the tenant as required. The natural gas system operates at 7" water column or 0.25 psig pressure and is available at Tenant's lease line. Tenant gas usage is metered by the Airport.

The gas meter will be provided and installed by the base building contractor. All meters will be read in cubic feet and located in an accessible and readable location and connected to the Airport SCADA system.

Airport's Work. The Airport will provide gas service to the Premises terminated at a gate valve for Tenant's exclusive use.

food and beverage tenants and 250 sf/ton for retail tenants.

For Premises located in areas served by central overhead supply air systems, the Airport will provide points of connection to the supply and return ducts. If the Premise is located on the apron level, cooling supply air allowance will be 0.85 CFM/ft². If the Premise is located at the interior of the mezzanine level, cooling supply air allowance will be 1.0 CFM/ft². If the Premises is located at the exterior of the mezzanine level, cooling supply air allowance will be 1.5 CFM/ft². The Airport will also provide 30 Btuh/SF of heating to food and beverage tenants and 30 Btuh/SF of heating to retail tenants.

The Airport will install chilled and hot water BTU meters at the points of connection to the Premises. The BTU meters will be specified by the Airport for connection to the EMCS monitoring and control system.

Tenant's Work Tenant will connect Tenant's HVAC system at the designated location(s) of the base building's central HVAC systems and extend systems as necessary through the Premises, providing fan coil units or VAV terminal boxes and necessary DDC controls to maintain proper temperature and maximize energy conservation in the space. Should Tenant need additional cooling or heating beyond the capacity of the base building hydronic or airflow provisions, Tenant must install its own supplemental rooftop equipment at a location approved by the Airport.

Tenant is responsible for contracting with the base building roofing subcontractor for any repairs to the roof. If Tenant operates a food and beverage facility, Tenant is responsible for providing make-up air system interlocked with Tenant's grease exhaust system so that the exhaust system cannot operate without the make-up air system operating. Tenant's HVAC design shall comply with the TIG and building codes. Tenant shall also be responsible for compliance with SFO sustainable goals and objectives. HVAC design shall comply with LEED standards and California Title 24 for energy efficiency and air quality (refer to Section B above). To control odor migration, the make-up air system is to be designed such that the make-up air quantity plus outside air capacity of Tenant's HVAC system equals 80 percent of the exhaust air quantity. The Premises (enclosed spaces) are to be 0.05" water column negative pressure with respect to the Terminal or concourse area. Tenant's mechanical equipment shall be sound and vibration attenuated. Tenant shall submit plans, specifications and load calculations to BICE for permitting.

Tenant shall prepare an Air Balance Report for its mechanical systems as part of the required BICE permit closeout submittals. Tenant is required to use the base building air balancing subcontractor.

4. GREASE EXHAUST

General. Food and beverage tenants will be required to install a grease exhaust system (Smog Hog) at their own expense where hamburgers or other grease-producing foods are a main menu item.

Airport's Work. The Airport will work with Tenant to determine an appropriate location for Tenant's roof equipment. The Airport will provide a right-of-way, when necessary, to pass through occupied space above Tenant's Premises.

Tenant's Work. Where required, Tenant will furnish and install a grease exhaust system "Smog Hog" or approved equal that complies with NFPA 96, CBC and CHC requirements,

Exhibit D - Page 9

Airport's 277/480V Tenant Metering Switchboard shall be Square D model Power Pact type HJ with GFM (ground fault module add-on). Tenant may transform the 480V service to another voltage from the Tenant's Distribution Panel. Tenant's Distribution Panel and all other Tenant-installed electrical equipment shall be located within the lease line as indicated on the Tenant's lease outline drawings.

For a 120/208V electrical service connection, Tenant shall install a maximum 50A feeder circuit breaker in the Tenant Metering Switchboard. Breakers within the Airport's Tenant Metering Switchboard shall be Square D model SE R ET. Tenant's Distribution Panel and all other Tenant-installed electrical equipment shall be located within the lease line as indicated on the Tenant's lease outline drawings.

Electrical meter circuit transformers (CTs) are sized according to the service load: for 100A service use 100:5 CT. CT wiring should be lengthened when necessary with color coded twisted pair #16 gauge using butt splices (not wire nuts) and clearly labeled where terminated at the shorting block. CT ratio shall be labeled at the shorting block where the CTs are terminated.

6. FIRE ALARM

General. The Terminal will have a fire alarm system that covers the base building and leased spaces in compliance with applicable codes.

Airport's Work. The Airport will install one empty ¾" conduit with pull strings from the base building fire alarm system to within the Premises. One conduit will be provided for a "Class B" fire alarm system except in the International Terminal where conduits will be provided for a "Class A" fire alarm system.

Tenant's Work. Tenant shall provide a fire alarm terminal box inside the Premises and connect all required fire alarm devices to allow for Airport monitoring and control functions of both the Airport's and Tenant's fire alarm equipment. Tenant's fire alarm devices and equipment must connect to SFO base building fire alarm system and/or fire alarm network. Tenant is required to use the same fire alarm system as the base building's fire alarm system and must be able to communicate with the base building Fire Alarm Control Panel (FACP). Signal wiring to leasehold sensing devices will be in a separate conduit from signal wiring from leasehold sensing devices. Storage cages are excluded. Tenant must use the base building fire alarm subcontractor for all tie-ins to the base building fire alarm system. Tenant shall meet interim fire alarm requirements and conditions per the TIG until Tenant's system is tied-in to the base building fire alarm system.

7. COMMUNICATIONS INFRASTRUCTURE

General. The Airport's Information Technology and Telecommunication Department (ITT) provides a multitude of services via the Airports Passive Infrastructure and Active Systems. Services include but are not limited to: Airport Shared Tenant Services (STS); (Voice, Ethernet, Common Use Connectivity, etc.), Extension of Service Provider WAN Services, and DirecTV services via IP (IPTV) throughout the Airport Campus.

For all provisioning of New Services, Moves, Adds or Changes (MAC) to existing services please contact the Airport ITT Provisioning Group at 650-821-HELP (4357)

inch relay rack.

- c. If IPTV Services will be required within the Premises in addition to the cables referenced above a dedicated CAT 6A Cable per Set Top Box shall be installed within the dedicated Tenant Communications Utility Conduit so IPTV services from SFO can be distributed into this space. If more than four (4) individual connections are required then a router/network switch shall be installed in the Premises which can distribute multiple IPTV connections. The individual CAT 6A cabling inside of the Airport TWC will need to be terminated on an Airport provided Ethernet Patch Panel by Tenant. Inside the Premises, it is recommended that the cable be terminated on an Ethernet Patch Panel on an accessible communication backboard or 19-inch relay rack or physically at the TV location on a modular type outlet.
- d. Horizontal Station Cabling inside of the Premises is Tenant's responsibility and shall be installed in a manner that follows applicable codes and industry standards. If for any reason the horizontal infrastructure within the Premises is not installed in an acceptable manner or non-accessible this will need to be addressed by Tenant prior to final extension of Airport Services.
- e. Tenant shall provide the following information in its Communication Drawings within its BICE submittal package: (1) a space plan which identifies the location of the Tenant Communications Backboard, Voice, Data and Cable TV WAO with callouts identifying what cable will be installed at each location within the Premises. (2) a single line riser diagram showing the Airport Communication Utility conduit(s) run from the Premises to the designated Airport TWC, including what will be installed within the conduit.

8. SOLID WASTE MANAGEMENT

General. San Francisco has adopted a goal of zero waste by 2020. Tenant is required to divert as much waste generated through its operations from the landfill as possible by maximizing the rate of onsite composting, recycling and source separation.

Airport's Work. The Airport will supply specially designed compost, recyclables and landfill waste containers for depositing source separated materials in Material Recovery Areas in the terminal and share a map to easily distinguish these areas. The Airport will ensure that all food and beverage concessions have access to adequate composting facilities to ensure that food waste and compostable serviceware can be collected and reclaimed in these Material Recovery Areas. The Airport will also make available signage to distinguish recycling, composting, and landfill materials to tenants for use within their leasehold area that mirrors signage present throughout the terminals and in the Materials Recovery Areas.

Tenant's Work. Tenant is required to minimize solid waste to landfill and maximize composting and recycling and shall submit to the ZERO Committee a Zero Waste Management Plan to achieve zero waste from its operations. Tenant shall design the space for source separation of the following materials: (a) Compostable; (b) Recyclable; (c) Cardboard; and (d) Landfill. Tenant is required to provide recycling, composting and landfill receptacles within its Premises and shall ensure these source separated materials are deposited in the appropriate collection container within the designated courtyard / Materials Recovery Area.

with a BCPM (Branch Circuit Power Meter) will power and meter the cage areas. Each cage will be assigned a maximum of four 20A circuits, three outlets and one lighting circuit with a switch per cage feed from the distribution panel. Corridors and elevator lobby crash protection shall be installed from the floor to 3' high along each wall and include corner guards. Some retail cages will be provided with an empty ¾" conduit with a pull string above the ceiling tile. Each conduit will terminate within the nearest TWC for tenant data use.

Tenant's Work. If Tenant requires additional power within its cage, the power shall be supplied by Tenant's main distribution panel within its Premises. This work must be performed by Tenant's contractor.

D. TENANT LEASEHOLD DESIGN AND CONSTRUCTION

1. GENERAL

Tenant shall design, engineer and construct, at its sole expense, all improvements and alterations necessary for Tenant to conduct the Permitted Use in the Premises, in accordance with all applicable Laws and other requirements. Any work not specifically described as the "Airport's Work" shall be performed by Tenant at the sole expense of Tenant without reimbursement or other compensation from the Airport. Workshops and meetings are delineated herein that will provide information about the process, criteria and schedule that should enable Tenant and its consultants to accomplish their responsibilities in a timely, cost effective manner. It is Tenant's responsibility to manage its project, consultants and contractors. Attendance at all workshops and meetings is mandatory.

2. DESIGN

Plan Development and Approvals. Tenant shall engage architectural/engineering professionals licensed by the State of California, experienced in food, retail or other concession service design, to prepare Tenant's leasehold improvement plans. Tenant and Tenant's design professional shall meet with the Airport's base building architect to understand design intent. Tenant is responsible for obtaining all necessary approvals, including Airport Design Review Committee (DRC) design approval, a building permit issued by Building Inspection and Code Enforcement (BICE), LEED Certification (if required), ZERO Committee approval, and a health permit issued by the San Mateo County Environmental Health Department (if required). BICE will not accept an application for a building permit without prior approval by the Airport's DRC, ZERO Committee and IRC.

- a. **Lease Outlines, Point of Connection, and Base Building Drawings.** The Airport will distribute Tenant Lease Outline Drawings and Point of Connection Drawings in AutoDesk Revit format to enable Tenant's design consultants to prepare Tenant's leasehold improvement plans.
- b. **Tenant Verification of Existing Conditions.** Tenant shall physically survey the Premises at the earliest opportunity after executing the Lease to verify existing conditions and acknowledge the results in writing on an Airport-provided form.
- c. **Tenant Signage Requirements.** All Tenants primary, blade and unique signage will be powered by a base building circuit. Tenant shall submit vector image graphics for its primary, blade, secondary branding and unique tenant

expedite the conceptual design phase Tenant is encouraged to schedule informal meetings as soon as possible with the DRC. At such early meetings Tenant may provide rough sketches and floor plans.

- iii. **DRC Approval.** After approval of conceptual design palate Tenant may proceed with the formal design review process. Tenant shall submit six copies of plans and an electronic copy for preliminary and subsequent DRC reviews. Full material boards, renderings, plans and elevations are required for DRC meetings. Additional DRC reviews may be required to obtain final design approval. In the event Tenant needs to change the design after DRC approval has been given, Tenant must return to the DRC for approval of any changes, including substitutions of materials.

- iv. **ZERO Committee Approval.** SFO's ZERO (Zero Energy & Resilient Outcomes) Committee is responsible for ensuring all projects align with the Guiding Principles of Sustainability and contribute to the attainment of the Airport's 5-Year Strategic Plan goals of becoming a zero net energy, zero carbon and zero waste to landfill campus. To that end, Tenants must electronically submit a Sustainability Project Narrative (noting areas of alignment with SFO's Guiding Principles of Sustainability and SFO's Sustainable Planning, Design and Construction Guidelines), Green Business Checklist, LEED Scorecard (SF GS-6 Form representing the project's LEED Checklist, CALGreen Checklist), Energy Performance Target, and a Construction and Demolition Debris Management Plan (CDDMP) to the ZERO Committee for review during schematic design. Tenant will present these materials to the ZERO Committee at a regularly scheduled meetings and be expected to provide a Final Diversion Report (Construction and Demolition Debris Report), PG&E Authorization to Receive Customer Information, Final LEED Scorecard and other materials as requested by the ZERO Committee.

- f. **BICE Review and Permitting.** Tenant shall submit complete construction documents to BICE for review and permitting. BICE will review Tenant's plans for conformance with local, state and federal code requirements as defined in Part 1.A of this Work Letter - Governing Codes. Upon satisfaction of BICE reviews and requirements, including submittal of the "Conformed Drawings" in AutoDesk Revit format, Tenant will be issued building permit. Construction inspection requirements will be defined in the Building Permit. Tenant shall provide the SFO Tenant Coordinator with one ½ size set and one electronic set of permit drawings prior to starting construction on site.

- g. **San Mateo County Health Permit.** Food and beverage tenants shall submit an application to the County of San Mateo for a Health Permit, concurrent with their BICE review. San Mateo County Health Permit requirements and processes can be found at www.co.sanmateo.ca.us.

- h. **ABC Liquor License Permit.** Tenants seeking a transfer, renewal, or new Liquor License may go to: <http://www.abc.ca.gov/>. For information regarding zoning as it applies to ABC forms, contact Tiare Pena at the San Mateo County Planning Department (650) 363-1850. Posting of liquor license notices shall be coordinated

1. Name as additional insured the Tenant, the City and County of San Francisco, the Airport Commission and its members, and all of the officers, agents, and employees of each of them (collectively, “**Additional Insureds**”);
 2. 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.
 3. That the insurance company shall give thirty (30) days prior written notice to City of cancellation, non-renewal or reduction in coverage or limits, delivered to City at City’s Insurance/Deposit Notice Address.
- iii. **Delivery of Certificates.** Upon request by the Airport, Tenant’s contractor shall submit copies of its insurance certificates and additional insured endorsements evidencing the above insurance requirements for review and approval.
- iv. **Subrogation.** Tenant’s contractor waives any right of recovery against City for any loss or damage to the extent the same is required to be covered by Tenant’s contractor’s insurance hereunder.
- e. **Cooperation with Base Building Contractor.** Tenant and other entities hired by the Tenant including Tenant’s contractor and design professionals must cooperate with the base building contractor at all times. This includes compliance with all airport rules pursuant to Section 3.8 [Other Operational Requirements] of your Lease and adherence to the prohibited activities restrictions in Section 3.9 [Prohibited Activities] of your Lease. Failure to comply may result in fines up to \$300.00 per day per incident, as stated in Section 15.8 [Fines]. Tenant’s contractor must coordinate with the base building contractor for all construction activities, including overtime work. Tenant’s contractor must accommodate the base building contractor during the installation of any time intensive work, such as the installation of terrazzo flooring. Access to the Premises may be limited or restricted at times. Tenant’s contractor is responsible for proper trash and debris disposal. Tenant is required to submit an SFO-approved debris management plan prior to starting work.
- f. **Site Logistics.** Tenant contractors must plan for lay down space within their tenant space. The base building contractor will supply and maintain the following items on site for the use of all of tenant contractors.
- Lavatory facilities;
 - Debris boxes;
 - Temp power – Tenants requiring welding will need to provide for their power;
 - Parking within the construction site: One foreman truck per tenant GC to be negotiated with the Base Building Contractor.

necessary outside the confines of the Premises to facilitate Tenant's construction. The Airport's designated roofing contractor will perform the repair of any Tenant contractor's roof penetrations at the sole cost of Tenant. Tenant is responsible for maintaining the integrity of any required fire caulking and fireproofing within the confines of the Premises. Any fireproofing that is removed by Tenant or its subcontractors will need to be repaired by the base building fireproofing subcontractor at the sole cost to the tenant. Tenant must keep the exterior floor and areas adjacent to the construction barricade clean and free of dust and debris.

p. **Demising Walls**

- i. **Airport's Work.** The Airport will construct all demising walls that separate the Premises from adjoining tenancies or other Airport space. The wall will be constructed of 6" steel studs. Demising walls between tenant spaces will be constructed of double 6" bare stud walls. The base building side of the wall will be finished, insulated and fire stopped (if required) at the top and bottom track. All other required finishes and fire stopping shall be performed by Tenant, at Tenant's expense. Tenant will repair any damage to the demising wall assembly resulting from Tenant's construction.
 - ii. **Tenant's Work.** Finished demising walls must extend from the floor to the roof deck. Any wall finishes and furnishings must meet the flame-spread requirements as defined in Table 8B of the California Building Code (CBC).
- q. **Ceilings and Access Doors.** Tenant shall install finished ceilings throughout the Premises. Tenant is responsible for providing access doors for base building systems that may exist within the Premises
- r. **Floor Finishes.** Tenant shall install finish flooring throughout the Premises. Tenant shall install a waterproof membrane under Tenant's finish flooring in all areas that have water service, such as kitchens, bars, etc. Tenant's finished floor shall conform to adjoining Airport floor finishes.
- s. **Record Drawings.** One (1) set of record drawings depicting the fire sprinkler and fire alarm system must be submitted in electronic PDF format to BICE within 30 days of issuance of the Temporary Certificate of Occupancy (TCO). One (1) set of all other record drawings must be submitted in electronic BIM/Revit format to the designated Airport Property Manager within ninety (90) days of issuance of TCO. Electronic files on either a CD or Travel Disk in BIM/Revit format should be mailed to Tenant's Property Manager at: Revenue Development and Management, San Francisco International Airport, 575 North McDonnell Road, Suite 3-329, San Francisco, CA. 94128.
- t. **Indemnity.** Tenant's release and indemnification of the Airport as set forth in Sections 12.1 and 12.2 of the Lease also shall apply with respect to any and all Losses related in any way to any act or omission of Tenant, its contractor, subcontractor, engineer, consultant, employee or agent, or anyone directly or indirectly employed by any of them, with respect to Tenant's Work, or in connection with Tenant's non-payment of any amount arising out of or related to Tenant's

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

This LEASE AMENDMENT NO. 1 (this “**Amendment**”) is dated as of the Effective Date (as defined below) and entered into by and between SF Foodways, LLC (“**Tenant**”) and City and County of San Francisco, acting by and through its Airport Commission (“**City**” or “**Airport**”).

RECITALS:

A. Tenant and City are parties to Terminal 1 Food and Beverage Concession Lease 9 - Lease No. 18-0216 (as amended, the “**Lease**”).

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

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

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

E. All capitalized terms used in this Amendment and not otherwise defined have the meaning provided in the Lease.

NOW, THEREFORE, in consideration of the foregoing and for valuable consideration the sufficiency of which is hereby acknowledged, City and Tenant hereby agree to enter into this Amendment as follows:

AGREEMENT:

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

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

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

(a) for the month of March 2020, payments of Minimum Annual Guarantee only, and Percentage Rent shall remain due and payable (and if such Percentage Rent remains unpaid as of the Effective Date, then such amount shall be paid no later thirty (30) days from the Effective Date);

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

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

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

(a) In order to receive the benefit of the COVID-19 Rent Relief Amounts under this Amendment, Tenant must have satisfied each of the following conditions (the “**COVID-19 Rent Relief Program Requirements**”) and satisfy the Rent Relief Reporting Requirements (as set forth in Section 5(b) below) no later than the COVID-19 Rent Relief Program Deadline:

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

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

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

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

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

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

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

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

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

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

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

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


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

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


[Remainder of Page Intentionally Left Blank]

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

TENANT:
SF Foodways, LLC,
a California limited liability company

By: 
Name: JOSE PLACENCIA
Title: MANAGING PARTNER

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


By: 
Name: Ivar C. Satero
Title: Airport Director *and*
Effective Date (to be inserted by Airport only): 9/9/21

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

Attest:


Secretary
Airport Commission

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

By: 
Christopher W. Stuart
Deputy City Attorney



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

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

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

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

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

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

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

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

Baseline Staffing and Payroll Report

CONCESSION/STOREFRONT	(ENTER HERE)
FILLED OUT BY	
E-MAIL	
PHONE NUMBER	

Baseline Payroll					
Name	Job Classification	Phone	Email	Date of Hire	Date of Layoff/ Furlough/ Separation

Monthly Payroll Report

Requirements:

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

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

Tenant Signature

Date

Concession Storefront

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



DATE: _____

CONCESSION/STOREFRONT: _____

SFO Priority Rehire Program Monthly Questionnaire

Answer the following questions:

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

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

Sign the following statement:

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

Tenant: _____

Signature: _____

Name: _____

Phone: _____

E-mail: _____

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

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