



FOUR SEPARATE FOOD & BEVERAGE CONCESSION OPPORTUNITIES AT OAKLAND INTERNATIONAL AIRPORT

ADDENDUM #2

June 8, 2018

1. Because of the changes to Exhibit "B" Drawings 6.2 and 7.8 as defined in Paragraph 8 of Addendum #1, Exhibit "D" attached to the RFP is hereby deleted and replaced with Exhibit "D" – a Revised as of June 1, 2018 as attached to this Addendum #2. Adjustments have been made to the Minimum Annual Guarantee for Unit Nos. T1-FB-1 and T2-FB-G23.
2. Comments to Form of *Space/Use Permit*: The Port has received questions and requests for information as addressed in Paragraph 5 below of this Addendum #2. The Port has amended the Form of *Space/Use Permit* as shown in redline on the Form of *Space/Use Permit* attached to this Addendum #2.
3. **Attachment 12** – Form of *Space/Use Permit* attached to the RFP is hereby deleted in its entirety and replaced with **Attachment 12** – Form of *Space/Use Permit* (revised as of June 8, 2018) attached to this Addendum #2.
4. Pursuant to Section II.B.3, the referenced Tenant Design Standards are attached to the Addendum #2 as a new **Attachment 13**, and incorporated into the RFP.
5. Complete responses to all questions, comments and requests for information (RFI) received by the Port are attached to this Addendum #2 and dated June 8, 2018. This matrix replaces and supersedes interim responses that were incorporated in Addendum #1.
6. Pursuant to the Port's response to Question/RFI Number C.4 for Flight Traffic Data, attached is the representative, currently scheduled, high traffic day on July 11, 2018 indicating all flight arrivals and departure.

Exhibit "D"
Minimum Annual Guarantee (MAG) per Unit
Revised June 1, 2018

Unit #	Square Feet	MAG per SF	MAG per Unit
Package 1			
T1-FB-1	1,390	\$ 75	\$ 104,250
T1-FB-G8	3,878	\$ 200	\$ 775,600
T1-FB-G9A	853	\$ 250	\$ 213,250
T2-FB-G24	1,583	\$ 200	\$ 316,600
T2-FB-C2-2	1,010	\$ 200	\$ 202,000
T2-FB-G27	487	\$ 250	\$ 121,750
T2-FB-G28	2,279	\$ 200	\$ 455,800
Fast Casual or C	11,480		
Package 2			
T2-FB-1	1,058	\$ 75	\$ 79,350
T1-FB-G4	1,577	\$ 200	\$ 315,400
T1-FB-G8A	1,158	\$ 200	\$ 231,600
T2-FB-G22	1,081	\$ 200	\$ 216,200
T2-FB-G25	5,553	\$ 100	\$ 555,300
T2-FB-C2-1	727	\$ 250	\$ 181,750
T2-FB-G29	1,495	\$ 200	\$ 299,000
T2-FB-G30	537	\$ 250	\$ 134,250
	13,186		
Package 3			
T1-FB-G9	1,283	\$ 200	\$ 256,600
Package 4			
T2-FB-G23	1,455	\$ 200	\$ 291,000

**SPACE/USE PERMIT
FOR
FOOD AND BEVERAGE CONCESSION**

BY AND BETWEEN

**THE CITY OF OAKLAND,
A MUNICIPAL CORPORATION,
ACTING BY AND THROUGH ITS BOARD OF PORT COMMISSIONERS**

AND

[_____]

DATED

_____, 2018

TABLE OF CONTENTS

	<u>Page</u>
PARAGRAPH A. PERMITTEE	1
PARAGRAPH B. USE AND OPERATION.....	2
Paragraph B.1 Permitted Uses	2
Paragraph B.2 No Exclusivity.....	3
Paragraph B.3 Storage Maximum.....	3
Paragraph B.4 Pricing.	3
PARAGRAPH C. TERM.....	4
PARAGRAPH D. ASSIGNED SPACE TO BE OCCUPIED; COMMON AREAS.	5
Paragraph D.1 Assigned Space – Initial Description.....	5
Paragraph D.2 Assigned Space – As-Built Condition.	5
Paragraph D.3 Common Areas.	5
PARAGRAPH E. RENT	6
Paragraph E.1 Minimum Annual Guaranty.	6
Paragraph E.2 Percentage Of Gross Receipts; Marketing Fund; Refurbishment Fund.....	7
Paragraph E.3 Rent Commencement Date; Late Opening Charges; Prepayments.....	7
Paragraph E.4 Remitting Payments.	8
PARAGRAPH F. PERFORMANCE DEPOSIT; GUARANTY.....	9
PARAGRAPH G. INSURANCE REQUIREMENTS.....	9
PARAGRAPH H. RELOCATION, EXPANSION, CONTRACTION; FUTURE TERMINAL BUILDING ADDITIONS.	12
Paragraph H.1 Relocation, Expansion, Contraction.	12
Paragraph H.2 Future Terminal Buildings Additions.	15
PARAGRAPH I. OPERATION OF CONCESSION UNITS.	15
Paragraph I.1 Management.	15

Paragraph I.2 Personnel	17
Paragraph I.3 Quality of Products and Services.	18
Paragraph I.4 Franchise Standards.....	20
Paragraph I.5 Reports and Surveys.	20
Paragraph I.6 Advertised Sales or Promotions.	20
Paragraph I.7 Credit/Charge Cards, Mobile Payment and Traveler’s Checks.	21
Paragraph I.8 Public Address System.	21
Paragraph I.9 Noise and Lights.....	21
Paragraph I.10 Strategic Beverage Partnership.	21
PARAGRAPH J. PERMITTEE’S OPERATING HOURS	21
PARAGRAPH K. ADMINISTRATIVE FEES	22
PARAGRAPH L. PERMITTEE’S DUE DILIGENCE; NO REPRESENTATIONS OR WARRANTIES BY PORT.....	22
PARAGRAPH M. PERMITTEE’S PROPOSAL.....	22
PARAGRAPH N. COMPLIANCE WITH PORT AND DEPARTMENT OF TRANSPORTATION (DOT) NON-DISCRIMINATION IN CONTRACTING REQUIREMENTS.....	23
PARAGRAPH O. ADDITIONAL TERMS AND CONDITIONS	24
PARAGRAPH P. AMENDMENTS	24
PARAGRAPH Q. WAIVER OF JURY TRIAL.....	24
PARAGRAPH R. DISPUTE RESOLUTION	24
PARAGRAPH S. PUT RIGHTS	25
ATTACHMENT "A" OTHER TERMS AND CONDITIONS OF SPACE/USE PERMIT	1
SECTION 1. CONSTRUCTION OF IMPROVEMENTS IN ASSIGNED SPACE.....	1
SECTION 2. MIDTERM REFURBISHMENT.	6
SECTION 3. MAINTENANCE AND REPAIR OF ASSIGNED SPACE.....	7
SECTION 4. OTHER OPERATIONAL REQUIREMENTS.	10

SECTION 5.	SIGNAGE AND ADVERTISING.	12
SECTION 6.	LABOR PEACE; AIRPORT LABOR POOL PROGRAM; FIRST SOURCE PROGRAM AND FAIR CHANCE HIRING PROGRAM.	13
SECTION 7.	PERMITTEE’S PROPERTY	14
SECTION 8.	WI-FI SYSTEM.....	15
SECTION 9.	UTILITIES.....	15
SECTION 10.	PORT’S RIGHT TO ENTER; PERMITTEE’S RIGHT OF ACCESS....	16
SECTION 11.	TAXES AND ASSESSMENTS.	16
SECTION 12.	COMPLIANCE WITH LAWS, RULES, POLICIES AND REGULATIONS.....	17
SECTION 13.	PERCENTAGE FEES.	19
SECTION 14.	AVIATION OPERATIONS.	24
SECTION 15.	INDEMNIFICATION.....	25
SECTION 16.	WAIVER OF DAMAGE.....	25
SECTION 17.	[RESERVED]	26
SECTION 18.	ASSIGNMENT AND SUBLETTING.	26
SECTION 19.	DEFAULT.	32
SECTION 20.	END OF TERM.	34
SECTION 21.	HOLDING OVER.	35
SECTION 22.	TAX TREATMENT.	35
SECTION 23.	INTENTIONALLY OMITTED.	36
SECTION 24.	NOTICES, APPROVALS OR CONSENTS.	36
SECTION 25.	SUMS PAID BY PORT.....	36
SECTION 26.	DELINQUENCY CHARGE.	36
SECTION 27.	PERFORMANCE DEPOSIT.....	37
SECTION 28.	BROKERAGE COMMISSIONS.	38

SECTION 29.	PORT’S RESERVED RIGHTS.....	38
SECTION 30.	DISCRIMINATION NOT PERMITTED.....	39
SECTION 31.	FEDERAL AVIATION ADMINISTRATION REQUIREMENTS.	43
SECTION 32.	ENVIRONMENTAL RESPONSIBILITIES	44
SECTION 33.	PREVAILING WAGE REQUIREMENTS.....	44
SECTION 34.	EMERGENCY AND PUBLIC CONTACTS.....	47
SECTION 35.	NO ACCORD AND SATISFACTION.....	47
SECTION 36.	MARITIME AND AVIATION PROJECT LABOR AGREEMENT.	47
SECTION 37.	DAMAGE OR DESTRUCTION; CONDEMNATION.....	48
SECTION 38.	RIGHT TO MODIFY.	51
SECTION 39.	SECURITY MANDATES.....	52
SECTION 40.	MISCELLANEOUS.	52
SECTION 41.	FORCE MAJEURE.....	54
SECTION 42.	DEFINED TERMS.....	54

ATTACHMENT “B” – ENVIRONMENTAL RESPONSIBILITIES

ATTACHMENT “C” – PORT’S PUT RIGHTS

EXHIBITS

EXHIBIT 1	ASSIGNED SPACE
EXHIBIT 2	TRANSITION PLAN
EXHIBIT 3	RECOGNITION AGREEMENT
EXHIBIT 4	INITIAL PROPOSED PRICING
EXHIBIT 5	CONCESSION UNIT
EXHIBIT 6	AIRPORT SECURITY REQUIREMENTS
EXHIBIT 7	ADMINISTRATIVE FEES
EXHIBIT 8	PERMITTEE’S PROPOSAL
EXHIBIT 9	ACDBES
EXHIBIT 10	CERTIFICATE FOR QUARTERLY REPORT
EXHIBIT 11	FORM OF LETTER OF CREDIT
EXHIBIT 12	RESERVED <u>GREEN CONCESSIONS PROGRAM</u>

EXHIBIT 13	[RESERVED]
EXHIBIT 14	QUALITY ASSURANCE AUDITS
EXHIBIT 15	LABOR PEACE AGREEMENT(S)
EXHIBIT 16	GUARANTY

Redline (06/08/2018)

SPACE/USE PERMIT

For the better promotion of commerce and navigation and the development of the Port of Oakland and Oakland International Airport for the benefit of the public, the City of Oakland, a municipal corporation acting by and through its Board of Port Commissioners, herein referred to as the “Port”, by its execution hereof, hereby authorizes the person or entity identified in Paragraph A below, hereinafter referred to as “Permittee,” to conduct business and/or occupy space at Oakland International Airport, hereinafter referred to as the “Airport,” for the purposes and on the terms and conditions hereinafter stated in this Space/Use Permit (“Permit”) dated _____, 2018. For purposes of this Permit, the definition of Permittee shall be deemed to include subtenants, joint venture partners or other contractual business arrangements between Permittee and such other persons, as approved by the Director.

The Port is established through Article VII of the Charter of the City of Oakland (“City”), and is under the exclusive control and management of the Board of Port Commissioners (the “Board”). In any case under this Permit that Port may or shall take any action, Port’s Director of Aviation (sometimes hereafter the “Director”) is authorized to take such action unless this Permit provides for action by the Board or by resolution or ordinance, and except as otherwise provided now or hereafter by law, the Charter of the City, or by resolution or ordinance of the Board.

Paragraph A. Permittee. The name, address, telephone number, e-mail address, fax number and contact of the Permittee hereunder are as follows:

Name:

Address:

Telephone:

Contact:

E-Mail:

Fax Number:

The name, address, telephone number, e-mail address, fax number and contact of the 24-hour **emergency contact** of Permittee under Section 34 of Attachment “A” of this Permit are as follows

Contact

Name:

Address:

Telephone:

Mobile:

E-Mail:

Fax Number:

The name, address, telephone number, e-mail address, fax number and contact of Permittee's **agent for service of process** under Section 40(9) of Attachment "A" of this Permit are as follows

Name:

Address:

Telephone:

Contact:

E-Mail:

Fax Number:

Paragraph B. **Use and Operation.**

Paragraph B.1 Permitted Uses. The permitted uses (the "Permitted Uses") consist only of the following: the right to sell food and beverages in the Assigned Space (as defined in Paragraph D below), as more particularly shown opposite each Concession Unit described on attached Exhibit "5" (each a "Concession Unit"). The Permitted Uses for each Concession Unit shall be specific to that Concession Unit, and the Permittee shall not, without the prior written consent of the Port, granted pursuant to the last paragraph of this Paragraph B.1, use that Concession Unit for the Permitted Uses authorized for any other Concession Unit. Permittee is only authorized to conduct at the Airport, and only from the Assigned Space as described in Paragraph D below, the Permitted Uses and no other business or uses. The Permitted Uses do not permit Permittee to have access to the air operations area of the Airport. Permittee shall not engage in any activity on the Airport outside of the Assigned Space for the recruitment or solicitation of business, except that after the commencement of the Interim Term or the Primary Term (as such terms are defined in Paragraph C below), Permittee shall have the right, substantially in accordance with Permittee's transition plan attached hereto as Exhibit "2" (the "Transition Plan"), to operate food and beverage carts outside of the Concession Units in locations in the Airport approved in writing by the Director, until the Director notifies Permittee in writing that he or she has determined that sufficient Concession Units in the Airport have opened to permit the elimination of such food and beverage carts.

In the event Permittee desires to use a Concession Unit for any purpose other than the Permitted Uses for that Concession Unit, Permittee may submit a request to the Director, and

the Director may, in his or her sole and absolute discretion, approve or deny such request in writing. Any such decision shall be final and binding on Permittee. Without limiting the generality of this Paragraph B.1 or any of the requirements set forth in Permittee's Proposal incorporated as part of this Permit, as provided in Paragraph M below, Permittee shall not operate any Concession Unit under any name or brand, other than a name or brand specifically permitted or required herein, or as otherwise approved in writing by the Director. The Director has no authority to approve any use of the Assigned Space, or of any Concession Unit included therein, for any use that is not for a food and beverage purpose.

Paragraph B.2 No Exclusivity . Permittee acknowledges and agrees that except for its exclusive use of the Assigned Space, to the extent provided in Paragraph D.1 below, Permittee has no exclusive rights to conduct the business of the Permitted Uses in the existing terminals at the Airport and that Port may arrange with others for similar activities in such terminals or at other locations at the Airport. Permittee shall have no right to occupy space or conduct business in any future terminal additions or unit terminals developed by Port during the Term of this Permit.

Paragraph B.3 Storage Maximum. Permittee shall use no more than five (5%) of the square footage in each Concession Unit for storage.

Paragraph B.4 Pricing.

(a) Permittee shall price its products in accordance with the Airport Pricing Policy. For the purposes of this Permit, the Airport Pricing Policy shall mean establishing prices that are no more than 10% higher than prices charged by comparable food and beverage businesses located off-Airport, excluding sale or promotional prices. "Comparable" shall mean (1) if Permittee is a licensee of a restaurant concept, then the pricing comparison shall be to the other restaurants with the same concept operated by the licensor or other licensees in the counties of Alameda, Contra Costa, San Francisco and Santa Clara, or (2) if Permittee operates food and beverage units that are not operated under license or franchise agreements, or that do not have other locations in the counties of Alameda, Contra Costa, San Francisco and Santa Clara, pricing will be compared to restaurants with a similar style of service and menu, located in shopping centers or commercial districts in the counties of Alameda, Contra Costa, San Francisco and Santa Clara. In addition to the price chargeable pursuant to the Airport Pricing Policy, Permittee may charge customers a separate three percent (3%) benefits surcharge line item to defray the costs of employee benefits, and such three percent (3%) benefits surcharge shall not be included as Gross Receipts for purposes of the rent calculation contained in Paragraph E.2 of this Permit.

(b) Permittee's initial proposed pricing and menus for each Concession Unit, which have been approved by the Director, is attached hereto as Exhibit "4". No changes to these menus or prices may be made without the prior written consent of the Manager of Aviation Properties. Any proposed changes to these prices must be submitted to the Port in writing, along with supporting documentation to show comparability. The Port shall consider such request and supporting data, and may conduct its own price comparisons with such off-Airport restaurants as the Port considers necessary. For the purposes of this Paragraph B.4(b), the decision of the Manager of Aviation Properties with respect to changes to Permittee's menu's or prices shall be final and binding on Permittee.

(c) Preprinted Prices. When an item is pre-priced, Permittee shall not charge a price higher than the preprinted price.

(d) Survey Procedure.

(i) Price Checks. Permittee shall conduct a price check on each of its Concession Units annually. To accomplish this, Permittee shall conduct a price check on one fourth of its total Concession Units each calendar quarter-year, at a minimum, and all reports must be presented to Port quarterly. Surveys of product items determined by Port will be performed by Permittee on each of Permittee and its authorized sublessee's Concession Units to ensure pricing is in accordance with this Permit and the Airport Pricing Policy. Port, at its option, may develop the list of Concession Units chosen for each price check and each chosen Concession Unit will be given the list of categories of product to be checked. Permittee can be requested at any time to produce a list of product sizes, brands and prices presently being sold in each Concession Unit. Port can review the list and select the items to be checked on a particular price check. Port may choose to select all items for any particular price check.

(ii) Spot Surveys. Additionally, Port may request Permittee to conduct "spot" or random surveys of the approved local comparison locations and the prices charged at the Airport periodically to ensure compliance with the Airport Pricing Policy.

(e) Failure to Adhere to the Airport Pricing Policy. Permittee will be given one (1) week to correct any price overage discrepancies shown in any survey or customer complaint provided by Port to Permittee, or to submit written justification for retaining current prices for these items. In response to Permittee's written justifications, Port will determine whether overages must be eliminated, and if so, Permittee must reduce prices within three (3) business days of the date of Port's decision. Port reserves the right to have Permittee conduct and complete a price compliance survey on selected products or other inventories at Port's sole discretion. This price compliance survey must be completed and submitted to Port within two (2) weeks of receipt of Port's written request. Port will not unreasonably withhold its consent to a request for a price increase and will respond to such requests within twenty-one (21) days of the date such request is submitted in writing by Permittee to the Director. If Port does not respond within said twenty-one (21) day period, the Permittee may implement the requested price increase, subject to Port's right to require rolling-back the price to the previous price at any time.

Paragraph C. Term. The Term of this Permit shall consist of the Interim Term (as hereafter defined in this Paragraph C) and the Primary Term (as hereafter defined in this Paragraph C). The Term of this Permit shall commence on February 1, 2019 (the "Commencement Date"), and shall expire on the expiration of the Primary Term, unless sooner terminated in accordance with the terms and provisions of this Permit. The Interim Term shall commence on the Commencement Date and shall expire at 11:59 PM Pacific Time on December 31, 2019. The Primary Term shall commence on January 1, 2020 and shall expire at 11:59 PM Pacific Time on December 31, 2029.

Paragraph D. **Assigned Space to be Occupied; Common Areas.**

Paragraph D.1 Assigned Space – Initial Description. The “Assigned Space” is the space set forth on the attached Exhibit “1”. Permittee shall have exclusive use of the Assigned Space, except to the extent otherwise provided in Paragraph I.3(c) below.

Paragraph D.2 Assigned Space – As-Built Condition.

Port shall have the right, at any time within one hundred twenty (120) days after the Rent Commencement Date (as defined in Paragraph E.3(a) below) applicable to a Concession Unit, to measure the “as-built” size of that Concession Unit. In determining such “as-built” size and in determining Permittee’s responsibilities for the Assigned Space, the exact boundaries of each Concession Unit shall be determined consistent with the Tenant Design Standards provided to Permittee. The Assigned Space does not include any storage and/or support space rented for additional consideration under a separate Space/Use Permit or other agreement with the Port.

If the Port exercises its rights under this Paragraph D.2, it shall notify the Permittee in writing of the “as-built” size of the Concession Unit. Permittee may at its expense within ten (10) days of its receipt of such written notice from the Port, have the Concession Unit re-measured and submit such re-measurement and/or its objections to the Port’s re-measurement in writing to the Port. The Port shall in good faith review any such timely submittals and determine what changes, if any, it will make in the “as built” size of the Concession Unit, but the Port shall not be required to make any changes and the Port’s decision shall be final and binding on Permittee. The Minimum Annual Guaranty (as defined in Paragraph E.1(a) below) applicable to that Concession Unit shall be recalculated by multiplying such “as-built” size, as determined by the Port pursuant to the foregoing provisions of this paragraph, by the rate per square foot specified in Exhibit “5”, effective as of the Rent Commencement Date for that Concession Unit (as defined in Paragraph E.3(a) below), with any increase in the amounts that were previously payable by Permittee to Port for that calendar year due with the next installment or installments of the Rent payable to Port under Paragraph E below, and with any decrease in the amounts that were previously payable by Permittee to Port for that calendar year deducted from the next installment or installments of the Rent otherwise payable to Port under Paragraph E below.

Paragraph D.3 Common Areas.

Permittee shall have the right, in common with others authorized by the Port, to use all Common Areas (as hereafter defined in this Paragraph D.3); provided, however, that Port may, in its sole discretion, and without liability to Permittee, change the size or location of the Common Areas, including, without limitation, converting Common Areas to leaseable areas and leaseable areas to Common Areas, and close Common Areas. Port may, in its discretion, maintain the Common Areas, establish and enforce Airport Rules, Policies and Regulations (as defined in Section 12 of Attachment “A” to this Permit) concerning the Common Areas, temporarily close portions of the Common Areas for maintenance purposes, and make changes to the Common Areas, including, without limitation, changes in the location of security check points, driveways, entrances, exits, parking spaces and the direction of the flow of traffic. As used in this Permit, “Common Areas” means all areas and facilities located within the Airport that are designated by Port from time to time for the general use and convenience of permittees, tenants and other

occupants at the Airport, airline passengers and other visitors to the Airport, such as concourses, sidewalks, elevators, escalators, moving sidewalks, parking areas and facilities, restrooms, pedestrian entrances, driveways, loading zones and roadways.

In the event the Port makes a change to the Common Areas that the Port determines, in the exercise of its sole discretion, negatively impacts a Concession Unit's access and/or visibility so as to materially and adversely affect that Concession Unit's ability to generate Gross Receipts (as defined in Section 13(1) of Attachment "A" to this Permit), then the Port will exercise its rights under Paragraph H below with respect to that Concession Unit.

Paragraph E. Rent. In consideration for the rights granted hereunder by Port, Permittee hereby agrees to pay to Port monthly, in advance, on the first (1st) day of each calendar month during the Term hereof, one twelfth (1/12th) of the Minimum Annual Guaranty applicable to each Concession Unit, as set forth in Paragraph E.1 below. In the event the Rent Commencement Date for a Concession Unit shall commence or end on any day other than the first and last day, respectively, of a calendar month, such consideration due hereunder for a portion of such month shall be prorated on a per-diem basis, based on the number of days in that calendar month, and the first payment of the applicable Minimum Annual Guaranty for each Concession Unit shall be due on or before the Rent Commencement Date applicable to that Concession Unit. As additional consideration for the rights granted hereunder by Port, Permittee hereby agrees to pay to Port the Percentage Fees specified in Paragraph E.2 below and in accordance with the provisions of Section 13 of Attachment "A" to this Permit. Amounts payable by Permittee to Port under this Paragraph E shall collectively be referred to as "Rent".

Paragraph E.1 Minimum Annual Guaranty.

(a) The Minimum Annual Guaranty for each Concession Unit, is shown opposite that Concession Unit on Exhibit "5" as such amount may be adjusted based on the "as built" condition of that Concession Unit, as provided in Paragraph D.2 above, and subject to further adjustment as provided in Paragraph E.1(b) below (the "Minimum Annual Guaranty").

(b) On the Initial Minimum Annual Guaranty Adjustment Date (as hereafter defined in this Paragraph E.1(b)), and on each subsequent anniversary of such Initial Minimum Annual Guaranty Adjustment Date, the Minimum Annual Guaranty applicable to each Concession Unit pursuant to Paragraph E.1 above, shall be increased or decreased (as applicable, and subject to the proviso at the end of this sentence) to eighty-five percent (85%) of the total Rent payable by Permittee to Port under Paragraph E above for each Concession Unit for the calendar year most recently ended prior to the Initial Minimum Annual Guaranty Adjustment Date, or the most recent anniversary thereof, as applicable; provided that the Minimum Annual Guaranty for any Concession Unit shall never be less than the amount in effect on the Rent Commencement Date. As used in this Permit, the "Initial Minimum Annual Guaranty Adjustment Date" for a Concession Unit shall mean the July 1st immediately following the expiration of the first full calendar year that commenced on or after the Rent Commencement Date for such Concession Unit. Thus, for example, if the Rent Commencement Date for a Concession Unit occurred on January 1, 2020, the Initial Minimum Annual Guaranty Adjustment Date for that Concession Unit shall occur on July 1, 2021, the adjustment shall be based on the Rent payable by Permittee to Port under

Paragraph E for the calendar year ending December 31, 2020, and subsequent adjustments shall occur on July 1, 2022 and on each subsequent July 1st during the remainder of the Term.

Paragraph E.2 Percentage Of Gross Receipts; Marketing Fund; Refurbishment Fund. The percentage of Gross Receipts derived from Permittee's business at the Airport ("Percentage Fees") payable by Permittee for each Concession Unit is shown opposite that Concession Unit on said Exhibit "5", including during that portion of the Interim or Primary Term that Permittee is authorized pursuant to Paragraph B.1 above to operate food or beverage carts outside a Concession Unit. Permittee shall subtract the amount of the monthly payment of the applicable Minimum Annual Guaranty from the applicable Percentage Fees payable to Port each month for each Concession Unit, and only the amount, if any, by which the applicable Percentage Fees for such Concession Unit exceeds the monthly payment of the applicable Minimum Annual Guaranty for such Concession Unit shall be paid to Port as Percentage Fees.

(b) In addition to Percentage Fees, Permittee shall pay to the Port 0.5% of Gross Receipts for a collective marketing fund ("Marketing Fund") that supports the food and beverage concessions at the Airport. The use of such marketing fund shall be solely at the discretion of the Port.

(c) Along with the other Rent payable under Paragraph E.1 and Paragraph E.2(a) and (b), commencing on the Rent Commencement Date, Permittee shall pay on a monthly basis to the Port 1/60th of the Minimum Mid-Term Amount as set forth in Section 2 of Attachment A until the full Minimum Mid-Term Amount has been paid. The amounts paid under this Paragraph E.2(c) shall be referred to as the "Refurbishment Fund." Any funds remaining in the Refurbishment Fund at the expiration or other termination of this Permit shall be exclusively the Port's and shall not be returned or otherwise credited to Permittee.

Paragraph E.3 Rent Commencement Date; Late Opening Charges; Prepayments.

(a) The Rent Commencement Date for each Concession Unit is the earlier of (i) the date on which the Permittee's Work in that Concession Unit, as described in Section 1(2) of Attachment "A" to this Permit, is substantially complete and Permittee opens for business therein, or (ii) January 1, 2020. After the Rent Commencement Date for a Concession Unit has occurred, Permittee shall, promptly after Port's written request, execute and return to the Port a written acknowledgment of the Rent Commencement Date for that Concession Unit. The Minimum Annual Guaranty, and payments into the Marketing Fund and Refurbishment Fund, for a Concession Unit begins on the Rent Commencement Date for such Concession Unit. Payment of Percentage Fees begins on the Commencement Date.

(b) In the event Permittee fails to open a Concession Unit for business on or before the Rent Commencement Date applicable to such Concession Unit, Port will incur substantial damages, the exact amount of which are extremely difficult to fix. Accordingly, for each day after the Rent Commencement Date of a Concession Unit until the day on which Permittee initially opens that Concession Unit for business, Permittee shall pay to Port Five Hundred Dollars (\$500) (in addition to the Rent provided in Paragraph E above), as liquidated damages. The parties have agreed that this amount represents a reasonable approximation of the

damages likely to be suffered by Port in the event Permittee shall fail to open a Concession Unit for business on or before the Rent Commencement Date for that Concession Unit. In the event a Concession Unit is not open for business on the date that is sixty (60) days after the Rent Commencement Date for that Concession Unit, Port shall have the option to remove that Concession Unit (and its associated Minimum Annual Guaranty) from the Assigned Space, exercisable by written notice to Permittee given before that Concession Unit is open for business. In the event a Concession Unit is removed from the Assigned Space pursuant to the foregoing provisions of this Paragraph E.3(b), the Port shall send to Permittee an amendment to this Permit showing the deletion of that Concession Unit from the Assigned Space, and this Permit shall be deemed amended thereby. Permittee shall be liable for all damages associated with such termination or removal, including Port's re-leasing costs, and for any Losses (as defined in Section 1(2)(d) of Attachment "A" to this Permit) arising under Section 1(2)(a) of Attachment "A" to this Permit.

(c) Notwithstanding anything in this Permit to the contrary, in the event Permittee shall fail to pay any Rent when due hereunder, the Port shall have the right to require Permittee to pay estimated monthly Rent (including the monthly installment of the Minimum Annual Guaranty and one month's Percentage Fees, and all other amounts payable by Permittee to Port in a calendar month under this Permit) one (1) month in advance of when such payment would otherwise be due. Such prepayment will be based on the highest monthly Rent previously due from Permittee under this Permit. Such right shall be exercised by a written notice from Port to Permittee, which notice may be given any time after such default by Permittee, regardless of whether the same is cured by Permittee. The provision of this Paragraph E.3(c) shall not limit the Port's rights under Section 19 of Attachment "A" to this Permit.

Paragraph E.4 Remitting Payments. All payments due under this Permit shall be remitted to: Port Department of the City of Oakland, P.O. Box 12545, Oakland, California 94604, or electronically to the following address:

Credit to: JPMorgan Chase Bank NA
San Francisco, California U.S.A. 94105
Wire ABA/ACH Routing #322271627
In favor of: Port Department of the City of Oakland
Account # 571803670
Reference: Port Department of the City of Oakland
(may add invoice no. or other identification)

or to such other address as shall be designated by Port by written notice to Permittee in accordance with the requirements of Section 24 of Attachment "A" to this Permit. To ensure proper credit for electronic transfers, Permittee shall notify the Port by facsimile transmission promptly after any such remittance, at (510) 839-7805, attention: Cashier / Financial Services Division, including the amount of the transfer, the date of the transfer and the invoice number or other identifying information. All such payments shall be made in lawful money of the United States, without demand, set-off or deduction of any kind.

Paragraph F. Performance Deposit; Guaranty. Permittee shall maintain with the Port a performance deposit (the "Performance Deposit") in the initial amount set forth on Exhibit "5" (equal to six months Minimum Annual Guaranty), which shall be the sum of the performance deposits required for each Concession Unit, and complying with and subject to the provisions of Section 27 of Attachment "A" to this Permit, including without limitation the provisions of Section 27 of Attachment "A" relating to adjustments to the amount of Permittee's Performance Deposit. The existence or amount of the Performance Deposit shall not limit Permittee's liability or the Port's rights in the event Permittee fails to make any payments to Port required by this Permit or to comply with any of Permittee's other obligations under this Permit.

If a third party or third parties joined in the Permittee's Proposal (as defined in Paragraph M) as a guarantor, then such third party or third parties, as applicable, shall execute and deliver to the Port the Guaranty in the form attached hereto as EXHIBIT "16" at the same time that this Permit is executed and delivered by Permittee to the Port.

Paragraph G. Insurance Requirements. Permittee shall maintain in force throughout the entire Term of this Permit, such insurance required by this Paragraph G, including:

(a) **Liability Insurance.** Permittee shall maintain in full force throughout the Term, commercial general liability insurance providing coverage on an occurrence basis with limits of not less than \$5,000,000 each occurrence for bodily injury and property damage combined with a \$3,000,000 liquor liability sub-limit, \$5,000,000 annual general aggregate, \$5,000,000 products and completed operations aggregate, 1,000,000 personal and advertising injury liability limit, and \$100,000 fire legal liability limit. Permittee's liability insurance policy or policies shall: (i) include coverage for premises and operations, products and completed operations, independent contractors, advertising injury, personal injury and blanket contractual liability including, to the maximum extent possible, coverage for the indemnification obligations of Permittee under this Permit; (ii) provide that the insurance company has the duty to defend all insureds under the policy; and (iii) provide that defense costs are paid in addition to and do not deplete any of the policy limits. Such insurance shall be provided by an insurance form with terms and conditions at least as broad as contained in the standard Insurance Services Office (ISO) form CG0001 10 93.

(b) **Property and Business Interruption Insurance.** Permittee shall at all times maintain in effect with respect to any Alterations and Permittee's Trade Equipment and personal property, commercial property insurance providing coverage, on an "all risk" or "special form" basis, in an amount equal to the full replacement cost of the covered property. Permittee may carry such insurance under a blanket policy, provided that such policy provides coverage equivalent to a separate policy. During the Term, the proceeds from any such policies of insurance shall be used for the repair or replacement of the Alterations, Trade Fixtures and personal property so insured. Permittee shall also carry business interruption insurance insuring loss of income, including all monthly Rental payable to the Port under this Permit for a period of up to twelve (12) months if the property is destroyed or rendered inaccessible by a risk insured against by the property insurance Permittee is required to maintain under this Subsection (b) of this Paragraph G. Port shall be provided coverage under the insurance required by this section to the extent of its insurable interest and, if requested by Port, both Port and Permittee shall sign all documents reasonably necessary or proper in connection

with the settlement of any claim or loss under such insurance. Port will have no obligation to carry insurance on any Alterations or on Permittee's Trade Fixtures or personal property.

(c) Builder's Risk Insurance. When Permittee undertakes construction on the Assigned Space, Permittee shall maintain builder's risk insurance for one hundred percent (100%) of the completed replacement cost value of construction on an "all risk" or "special form" basis, in an amount equal to the full replacement cost of the covered property. If requested by Port, both Port and Permittee shall sign all documents reasonably necessary or proper in connection with the settlement of any claim or loss under such insurance.

(d) Automobile Liability Insurance. Throughout the Term, Permittee shall obtain and maintain automobile liability insurance (covering any owned, non-owned or hired automobiles) issued on a form at least as broad as ISO Business Automobile Coverage form CA 00 01 12 93. Such automobile liability insurance shall be in an amount not less than \$5,000,000 combined single limit for each accident for bodily injury and property damage.

(e) Workers' Compensation and Employer's Liability Insurance. Throughout the Term, Permittee shall obtain and maintain workers' compensation insurance and employer's liability insurance. Such workers' compensation insurance shall carry minimum limits as statutorily required under California law. Such employer's liability insurance shall be in an amount not less than \$1,000,000 each accident, \$1,000,000 each employee, and \$1,000,000 policy limit for bodily injury by disease.

(f) Additional Insureds.

(i) With regard to the insurance required by Subsections (a) and (d) of this Paragraph G, each policy of liability insurance required thereby shall: (i) contain a cross liability or separation of insureds provision; (ii) provide for a waiver of subrogation in favor of the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, the Port of Oakland, its commissioners, officers, agents and employees; (iii) provide that the insurance is primary to and not contributing with, any policy of insurance carried by Port; and (iv) name the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, the Port of Oakland, its commissioners, officers agents and employees, and such other parties as Port may from time to time reasonably designate to Permittee in writing, as additional insureds. Such additional insureds shall be provided at least the same extent of coverage as is provided to Permittee under such policies with respect to liability arising out of the ownership, maintenance or use of the Assigned Space.

(ii) With regard to the insurance required by Subsections (b) and (c) of this Paragraph G, above, such insurance shall include the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, "Port of Oakland" as additional insured as their interests may appear and loss payee; such insurance also shall contain a waiver of subrogation in favor of City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, the Port of Oakland, its commissioners, officers agents and employees, and such other parties as Port may from time to time reasonably designate to Permittee in writing, as additional insureds, and shall be primary insurance; no insurance or self-insurance of the Port shall be called upon to contribute to a loss.

(iii) With regard to the insurance required by Subsection (e) of this Paragraph G, such insurance shall contain a waiver of subrogation in favor of City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, the Port of Oakland, its commissioners, officers agents and employees, and such other parties as Port may from time to time reasonably designate to Permittee in writing.

(g) Requirements For All Policies. Each policy of insurance required under this Paragraph G shall: (i) be in a form, and written by an insurer, reasonably acceptable to Port; (ii) be maintained at Permittee's sole cost and expense; and (iii) require at least thirty (30) days' written notice to Port prior to any cancellation, nonrenewal or modification of insurance coverage, except such notice may be ten (10) days for non-payment of premium. Insurance companies issuing such policies shall have rating classifications of "A-" or better and financial size category ratings of "VI" or better according to the latest edition of the A.M. Best Key Rating Guide. All insurance companies issuing such policies shall be admitted carriers licensed to do business in the state where the Assigned Space is located. Any deductible amount under such insurance shall not exceed \$25,000. Permittee shall provide to Port, upon request, evidence that the insurance required to be carried by Permittee pursuant to this Paragraph G, including any endorsement evidencing the additional insured status and waiver of subrogation, is in full force and effect and that premiums therefor have been paid. If Permittee maintains broader coverage and/or higher limits than the minimums shown above, the Port requires and shall be entitled to the broader coverage and/or higher limits maintained by the Permittee and evidence thereof. All requirements of this section shall apply to the full limits. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Port. If the minimum limits of insurance required by this section are met through a combination of primary and excess insurances, all requirements of this section shall apply to both primary and excess policies.

(h) Updating Coverage. Permittee may be required to increase the amounts of insurance as required not more frequently than once every three (3) years, if Port's risk manager determines that the amount of insurance required under this Permit is not adequate. Any limits set forth in this Permit on the amount or type of coverage required by Permittee's insurance shall not limit the liability of Permittee under this Permit.

(i) Certificates of Insurance. Prior to occupancy of the Assigned Space by Permittee, and not less than thirty (30) days prior to expiration of any policy thereafter, Permittee shall furnish to the Port Risk Management Department, certificate(s) of insurance satisfactory to the Port Risk Management Department, evidencing that the insurance required by this Section is in force, accompanied by any endorsement or other documentation showing the required additional insureds, loss payees and waivers of subrogation. Notwithstanding the requirements of this paragraph, Permittee shall, at Port's request, provide to Port copies of insurance policies required to be in force at any time pursuant to the requirements of this Permit. Certificates of Insurance must be sent to:

Port of Oakland
Attn: Risk Management Dept.
530 Water Street
Oakland, Ca 94607
Fax: (510) 627-1626
Email: risktransfer@portoakland.com

Paragraph H. **Relocation, Expansion, Contraction; Future Terminal Building Additions.**

Paragraph H.1 **Relocation, Expansion, Contraction.**

(a) On the terms set forth in this Paragraph H.1, the Port may at any time, require that (i) Permittee relocate and surrender all or part of the Assigned Space (such change to the Assigned Space is hereafter referred to as a “Required Relocation”), and/or (ii) the Assigned Space be contracted or expanded (such change to the Assigned Space is hereafter referred to as an “Assigned Space Change”). Port shall give Permittee at least 180 days prior written notice (the “Change Notice”) setting forth a description of the Required Relocation or the Assigned Space Change, as applicable, the approximate effective date thereof (the “Target Effective Date”), and the “Maximum Reimbursement Amount,” if any (as may be authorized in writing by the Director in his or her sole discretion, if One Hundred Thousand Dollars (\$100,000) or less, or if more, by the Board in its sole discretion and set forth in a resolution duly adopted by the Board), for Permittee’s remodeling of the replacement Assigned Space or for Permittee’s expansion/contraction work, and with respect to a Required Relocation, the location of the on-Airport replacement Assigned Space, as conclusively determined by the Port. The Change Notice shall be given no less than three (3) months prior to the Target Effective Date.

(b) With respect to a Required Relocation, if the replacement Assigned Space or the Maximum Reimbursement Amount is deemed unsatisfactory to Permittee, then Permittee may cause all (but not less than all) Concession Units included in the Assigned Space that was the subject of the Required Relocation to be deleted from this Permit by giving written notice thereof to Port within sixty (60) days after the Change Notice is given. In the event Permittee timely gives such notice of deletion, then each such Concession Unit shall be deleted from the Permit on the Target Effective Date, and on such date, Permittee shall surrender each such Concession Unit in the condition required by Section 20 of Attachment “A” to this Permit as if this Permit had terminated on the Target Effective Date. If Permittee does not timely cause the Assigned Space that was the subject of the Required Relocation to be deleted from this Permit pursuant to the foregoing, Permittee shall surrender such Assigned Space and relocate to the replacement Assigned Space on a date (the “Surrender Date”) determined by Port (which shall be no earlier than the Target Effective Date). On the Surrender Date, Permittee shall surrender such Assigned Space in the condition required by Section 20 of Attachment “A” to this Permit as if this Permit had terminated on the Target Effective Date. In the event of a relocation pursuant to this Paragraph H.1(b), Permittee shall refurbish, redecorate, and modernize the interiors and exteriors of the replacement Assigned Space, such that the replacement Assigned Space is of at least the same quality as the original Assigned Space. All such work shall be subject to all of the applicable requirements of this Permit, including without limitation, Section 1 of Attachment “A” to this Permit. If a Maximum Reimbursement Amount for the work has been established pursuant to Paragraph H.1(a) above, then once the remodeling of the replacement Assigned Space is completed, and Port has approved the work, Permittee must submit to Port (i) a certificate from Permittee’s architect certifying that the remodeling was completed in strict compliance with the plans and specifications approved by Port, (ii) summary of all costs incurred, including copies of paid invoices and cancelled checks showing the costs actually paid by Permittee for the remodeling

of the replacement Assigned Space and Permittee's out-of-pocket moving costs, and (iii) lien releases from all contractors, subcontractors, and materialmen entitled to payment in connection with the remodeling of the replacement Assigned Space. Following its review and approval of those submissions, Port will reimburse Permittee for all reasonable costs of remodeling the replacement Assigned Space and moving its merchandise and other personal property to the replacement Assigned Space from the original Assigned Space; provided that in no event will Port be obligated to reimburse Permittee for more than the Maximum Reimbursement Amount, if any, or to pay or reimburse Permittee for any other costs or expenses, including business interruption costs.

(c) With respect to an Assigned Space Change where the square footage of a Concession Unit originally included in the Assigned Space will be expanded or contracted by more than ten percent (10%), Permittee may cause such Concession Unit to be deleted from this Permit by giving notice thereof to Port within thirty (30) days after the Change Notice is given. In the event Permittee timely gives such notice of deletion, then such Concession Unit shall be deleted from the Assigned Space on the Target Effective Date, and on such date, Permittee shall surrender such Concession Unit in the condition required by Section 20 of Attachment "A" to this Permit as if this Permit had terminated on the Target Effective Date. If Permittee does not timely cause the Concession Unit to be deleted from the Assigned Space pursuant to the foregoing, Permittee shall in accordance with all of the applicable requirements of this Permit, including, without limitation, Section 1 of Attachment "A" to this Permit, cause the Concession Unit to be expanded or contracted as described in the Change Notice on or before the Target Effective Date. If a Maximum Reimbursement Amount for the work has been established pursuant to Paragraph H.1(a) above, then once the expansion/contraction work is completed, and Port has approved the work, Permittee must submit to Port (i) a certificate from Permittee's architect certifying that the expansion/contraction work was completed in strict compliance with the plans and specifications approved by Port, (ii) summary of all costs incurred, including copies of paid invoices and cancelled checks showing the costs actually paid by Permittee for the expansion/contraction work, and (iii) lien releases from all contractors, subcontractors, and materialmen entitled to payment in connection with the expansion/contraction work. Following its review and approval of those submissions, Port will reimburse Permittee for all reasonable costs of the expansion/contraction work; provided that in no event will Port be obligated to reimburse Permittee for more than the Maximum Reimbursement Amount, if any, or to pay or reimburse Permittee for any other costs or expenses, including business interruption costs.

(d) Permittee shall maintain in a true and accurate manner and in accordance with generally accepted accounting principles, such original books and records as would normally be examined by an independent certified public accountant pursuant to generally accepted auditing standards in performing an audit or examination of the expenditure of all funds for which reimbursement, if any, has been made by the Port pursuant to Paragraph H.1(b) or Paragraph H.1(c) above or Paragraph H.1(e) below. The Port shall have the right, upon three (3) business days' notice, at any time until the expiration of 36 months after the last such reimbursement by the Port (or such longer period as is reasonably required for the Port to conclude an audit commenced within such 36-month period) to audit and copy such books and records and source documents relating to such expenditures. Such books and records shall be made available at the Assigned Space or at the offices of the Port; provided, however, that if such is not possible,

Permittee shall pay for all reasonable and actual costs incurred by the Port in inspecting and auditing such books and records, including, but not limited to travel, lodging and subsistence costs. If the Port determines within such audit period that any such reimbursement by the Port should not have been made to Permittee, then the amount of such improper reimbursement, plus the delinquency charge provided for in Section 26 of Attachment "A" to this Permit from the date of reimbursement to the date of repayment to the Port, shall be repaid by Permittee to Port promptly after Port's written demand.

(e) In addition to its other rights under this Paragraph H, the Port shall have the right to give a Change Notice under Paragraph H.1(a) above that requires one or more Concession Units to be deleted entirely from the Assigned Space, in which event the Assigned Space Change shall specify a 100% contraction in the size of the Concession Unit(s) described in the Change Notice. In that event:

(i) Each Concession Unit specified in such Change Notice shall be deleted from the Permit on the Target Effective Date specified in such Change Notice, and on such date, Permittee shall surrender each such Concession Unit in the condition required by Section 20 of Attachment "A" to this Permit as if this Permit had terminated on the Target Effective Date; and

(ii) In lieu of payment of an amount not to exceed the Maximum Reimbursement Amount, after Permittee has fulfilled its obligations under (i) above, Port will pay Permittee an amount equal to the sum of the following:

(x) The hard construction costs of Permittee's Work in the Concession Unit(s) included in the Change Notice, determined under Section 2(b) of Attachment "A" to this Permit, multiplied by a fraction, the numerator of which is the number of full calendar months that remained in the Term of this Permit on the Target Effective Date, and the denominator of which is 120; plus

(y) If the Target Effective Date occurred after substantial completion of the Midterm Refurbishment in the Concession Unit(s) included in the Change Notice, the construction costs of such Midterm Refurbishment of such Concession Unit(s) determined under Section 2(3) of Attachment "A" to this Permit, multiplied by a fraction, the numerator of which is the number of full calendar months that remained in the Term of this Permit on the Target Effective Date, and the denominator of which is the number of full calendar months that remained in the Term of this Permit on the date of substantial completion of the Midterm Refurbishment of such Concession Unit(s).

(iii) Port shall not permit a Concession Unit deleted from the Assigned Space under this subparagraph (e) to be used for any of the Permitted Uses during the remainder of the Term of this Permit.

(f) With respect to a Required Relocation or Assigned Space Change where a Concession Unit has been deleted from the Assigned Space pursuant to the applicable provisions of Paragraph H.1(b) or (c) above, the Minimum Annual Guarantee applicable to that Concession Unit shall be deleted from this Permit effective on the applicable Target Effective Date. With respect to any other Required Relocation or Assigned Space Change, the applicable Minimum Annual Guarantee shall, effective on the applicable Surrender Date, in the case of a Required Relocation, and effective on the applicable Target Effective Date, in the case of an Assigned Space Change, 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 each replacement or expanded or contracted Concession Unit compared to the Concession Unit included in the original Assigned Space, as determined by the Port.

(g) In the event of a Required Relocation or Assigned Space Change, the Port shall send to Permittee and Permittee shall execute and return to the Port an amendment to this Permit to reflect the Required Relocation or the Assigned Space Change.

Paragraph H.2 Future Terminal Buildings Additions. Permittee acknowledges that the Port may construct additional terminal buildings and/or concourses after the Commencement Date and during the Term of this Permit. Port and Permittee acknowledge and agree that Permittee shall have no right to lease concession spaces in any future terminal buildings and/or concourses at the Airport.

Paragraph I. OPERATION OF CONCESSION UNITS.

Paragraph I.1 Management.

(a) Service Contracts, Subleases and Licensing Agreements.

(i) All service contracts, as deemed necessary by Port to maintain operation of the Concession Units, entered into by Permittee with respect to its responsibilities shall: (a) be in the name of Permittee; (b) be assignable, at Port's option, to Port or Port's nominee; (c) include a provision for cancellation without payment of a fee or penalty by Port or Permittee upon not more than thirty (30) days' written notice; and (d) shall require that all contractors provide evidence of sufficient insurance upon request. If this Permit is terminated, Permittee shall, at Port's option, assign to Port or Port's nominee all service agreements pertaining to the Concession Units, and if Port exercises this option, Permittee shall have no obligation under such service agreements that arise after the date of such assignment.

(ii) All subleases entered into by Permittee with an approved sublessee pursuant to Section 18 of Attachment "A" to this Permit shall be in a form acceptable to Port and shall provide for the continuation of such sublease directly with Port, at Port's option, exercisable by written notice by Port to such sublessee, if this Permit is terminated by Port pursuant to Section 19 of Attachment "A" to the Permit prior to the expiration of the Term of this Permit, and if Port exercises this option, Permittee shall have no obligations under such sublease that arise after the date of such assignment.

(iii) To the extent that that this Permit obligates Permittee to perform any act or to refrain from any act with respect to the use and operation of a Concession Unit, Permittee shall enforce such an obligation against its sublessees.

(iv) As a condition of signing any sublease with any sublessee, Permittee shall cause the sublessee to sign a recognition agreement is in the form of Exhibit "3" hereto and such executed recognition agreement must be delivered to the Port before the sublease shall be effective, which delivery must be acknowledged in writing by the Director of Aviation or his or her designee.

(v) All licensing agreements for licenses used by Permittee to operate the Concession Units shall: (a) be in the name of Permittee; (b) be assignable, at Port's option, to Port or Port's nominee; and (c) include a provision for cancellation without payment of a fee or penalty by Port upon not more than thirty (30) days' written notice to the licensor. If this Permit is terminated, Permittee shall, at Port's option, assign to Port or Port's nominee all such licensing agreements pertaining to the Concession Units, and if Port exercises this option, Permittee shall have no obligation under such licensing agreements that arise after the date of such assignment.

(vi) For the avoidance of any doubt, the obligations imposed on Permittee in this Paragraph 1.1(a) shall be imposed on Permittee's sublessee's.

(b) Permittee Management Responsibilities and Sublessee Default. Permittee shall be responsible for managing all of its approved sublessees as requested by Port and for ensuring that all its approved sublessees adhere to the terms of this Permit. Permittee shall act in a fiduciary capacity, with respect to the proper protection of and accounting for Port's assets, and Permittee shall comply with the highest standards of ethics, integrity and honesty. Permittee shall deal at arm's length with all third parties, and Permittee shall serve Port's interests at all times. Permittee is responsible for ensuring that all of its approved sublessees adhere to proper cash-handling and tracing techniques, including, without limitation any point of sale (POS) system and cash-handling criteria required by Port hereunder. Permittee shall, within thirty (30) days after written notice from the Port, ensure Permittee and Permittee's approved sublessees implement new procedures or revise existing procedures in such a manner as Port may reasonably require from time to time. In the event Permittee is not complying with existing procedures, the 30-day notice in the prior sentence shall not be applicable, and Permittee shall bring itself into compliance immediately. Permittee shall evaluate approved sublessees' revenue collection systems.

Permittee is responsible for terminating any approved sublease and/or license with approved sublessees, locking out an approved sublessee (if legally permissible), instituting suit for rent or for use or occupancy or proceedings for recovery of possession when (a) an approved sublessee defaults; or (b) Permittee is entitled to terminate an approved sublessee's sublease and/or license. All legal expenses incurred in bringing such action are Permittee's sole responsibility. Permittee shall not deduct from any amounts Permittee is obligated to pay Port, any rents, fees, or other income items any approved sublessee is obligated to pay pursuant to any sublease and/or license.

(c) Quality Assurance Audits. Permittee shall perform quality assurance audits on itself and its authorized sublessees on at least a quarterly basis, as described

on attached Exhibit “14”. Port reserves the right to prescribe and revise the audit criteria at any time. The purpose of said audits shall be to ensure consistent standards of customer service and quality among Permittee and Permittee’s authorized sublessees.

(d) Sublessee Default. If a sublessee authorized under Section 18 of Attachment “A” to this Permit fails to open its Concession Unit or goes out of business, Permittee shall be obligated to promptly install temporary storefront barriers, curtains, display boxes or signage as directed by the Port, and if Permittee fails to promptly do so, the Port shall have the right, in addition to its other rights and remedies under this Permit, to do so at Permittee’s expense.

Paragraph I.2 Personnel.

(a) Manager. The management, maintenance, and operation of all Concession Units in the Assigned Space shall be under the supervision and direction of an active, qualified, competent, and experienced manager, who shall at all times be authorized to represent and act for Permittee. Permittee shall cause such manager to be assigned a duty station or office in the Assigned Space, or other space at the Airport occupied under a separate agreement between the Port and Permittee, at which he or she shall be available during normal business hours, and Permittee will at all times during the absence of such manager, assign or cause to be assigned a qualified subordinate to assume and be directly responsible for the carrying out of the manager’s supervising duties. Permittee will provide to Port and update as necessary, contact information for Permittee’s managers to allow Port to contact them in emergencies or during non-business hours.

(b) Adequate and Competent Staff. Permittee shall employ and shall require its authorized sublessees to employ a sufficient number of properly trained personnel to manage and operate each Concession Unit at its maximum capacity and efficiency at all times that each Concession Units is opened for business. Sufficient number is a number, which consistently provides customers with no unreasonable delay or inconvenience, as determined by Port through the development of standards, in moving through point of sale or selecting products or service. All personnel shall be clean, neat in appearance and attired in proper uniform, if required, with name tag clearly visible. Permittee shall ensure that all employees of Permittee conform to personal hygiene and food handling requirements established by the Airport Rules, Policies and Regulations and the Laws (as such terms are defined in Section 12(1) of Attachment “A” to this Permit), whichever is most stringent. Permittee must ensure that all employees can adequately communicate with customers and are professional and courteous in interactions with customers.

(c) English Language. Permittee understand and agree that its operation at the Airport necessitates contact with the public, both in the course of normal business operations and in rendering public services such as making reasonable change, giving directions, and providing general assistance to the public. Employees in positions that involve contact with the public must be capable of speaking and understanding the English language at a high level consistent with the effective and efficient performance of the duties of the position.

(d) Port Objections. Port shall have the right to object to the demeanor, conduct, and appearance of any employee of Permittee or those doing business with them, subject to applicable Laws. Permittee shall take all steps reasonably necessary to remedy the cause of the objection. After written notice from Port, Permittee shall ensure the immediate removal from the

Concession Unit or discipline in accordance with Permittee's employee discipline policy for any employee or other representative of Permittee who participates in improper or illegal acts on the Airport, who violates any of the Airport Rules, Policies and Regulations or any provision of the Permit, or whose continued presence on the Airport is, in the opinion of Port, deemed not to be in the best interests of Port. However, in certain situations, Port shall have the right to request Permittee to take immediate action via a telephone call. Permittee shall not allow any of its agents, servants, contractors, or employees to conduct business in a loud, noisy, boisterous, offensive, or objectionable manner, and shall confine their business on the Airport to that of operating the Concession Unit unless otherwise approved in writing by Port.

(e) Port Not Liable for Employment Issues. This Permit is not one of agency by Permittee for Port, but one with Permittee engaged independently in the business of managing the Assigned Space on its own behalf. All employment arrangements and labor agreements are, therefore, solely Permittee's rights, obligations and liabilities, and Port shall have no obligations or liability with respect thereto. Permittee shall defend, protect, indemnify, and hold harmless, Port from any claims or causes of action of whatever nature that may be brought by present or former employees, present or former independent contractors, present or former labor unions, including any labor unions seeking to represent the employees or applicants for employment by Permittee, and all expenses, including reasonable attorneys' fees and other litigation expenses, resulting from or relating to such claims or causes of action..

(f) Port Living Wage Requirements. Permittee shall comply with all of the provisions of Section 728 of the Charter of the City and Port Ordinance No. 3666, as amended by Port Ordinance No. 3719 ("Port Living Wage Ordinance"), as they may be amended from time to time, including by any successor ordinance (collectively, the "Living Wage Law"), unless exempt under Section 728 of the Charter of the City. The Port Living Wage Ordinance requires Port contractors to additionally provide their employees with a minimum of twelve (12) compensated days off per year.

Paragraph I.3 Quality of Products and Services.

(a) First Class. It is an express condition of this Permit that Permittee conduct the Permitted Uses under this Permit in a first-class, business-like, safe, efficient, courteous, and accommodating manner, in accordance with all of the requirements of this Permit, including without limitation, Paragraph I.3(b) below, and the Airport Pricing Policy, as provided in Paragraph B.4 above, so as to maximize Gross Receipts (as defined in Section 13 of Attachment "A" to this Permit). The Port has foremost in mind providing the air traveler and the public with facilities, service, and food and beverages concessions of first class quality, commensurate with the trade accustomed to using facilities of this kind. Permittee must ensure that the air travelers and public are served and dispensed first-class quality foods with adequate portions. Permittee shall ensure that a decor is established and maintained substantially in accordance with Port design and facility plan, that each Concession Units is maintained and operated in a first-class manner and that at all times the Assigned Space is kept in a safe, clean, orderly, and inviting condition, satisfactory to Port. To accomplish these desires, Permittee must periodically review or cause to be reviewed, operations of each Concession Unit operated by Permittee at the Airport.

(b) Adequate Products and Service. Permittee shall ensure that the air traveler and public are furnished adequate services, and that Permittee shall keep in stock and have ready for sale at all times of operation a wide-range stock of food and beverage products and other articles and goods for sale of first-class character and quality in sufficient supply to meet the demand of customers at the Airport. Permittee must ensure the product variety is adequate for each Concession Unit.

If Port identifies any problem areas with respect to operation of a Concession Unit, including, without limitation quality and quantity of products or services offered, including the selection of items offered being inadequate in general or in any particular location, Permittee shall be notified in writing by Port and shall correct, or cause to be corrected, such problem or problems within one (1) calendar day, unless a longer period of time is required, but in no event shall the time-period extend beyond ten (10) calendar days after transmission of written notice by Port, unless Port permits a longer period. Failure of Permittee to so correct problem areas constitutes a default under Section 19 of Attachment "A" to this Permit.

(c) Trends and Merchandising; Public Services. Permittee shall employ attractive merchandising enticing customers to purchase food and beverages products. Permittee shall develop and implement creative and effective merchandising means within each Concession Unit, including without limitation, food and beverage displays; display cases; promotional displays; attractive packaging; menu boards or table-top menus; and pictures of food and beverage merchandise. Permittee shall use its highest and best efforts in its product assortment. Prices for all food and beverages, including alcoholic beverages, shall be displayed on menus or menu boards and available to all customers. All merchandise and other items used in Permittee's operations shall conform in all respects to all applicable Laws and the Airport Rules, Policies and Regulations. All food, drinks, beverages, confections, retail merchandise and other items sold or kept for sale at the Concession Unit shall be of high quality, wholesome and pure, and must conform in all respects to applicable Laws and the Airport Rules, Policies and Regulations. Permittee must adhere to the most stringent requirements in the foregoing. In addition, Port may require additional products that are in public demand to be added to Permittee's menus. Permittee printed menus shall include the appropriate use of descriptive terminology that accurately describes the food or beverages being offered and that includes no false or misleading claims. In addition, Permittee shall render the following public services: make reasonable change, give directions, and assist the public generally. Permittee recognizes that the Airport is space constrained and in order to maximize space for Permittee's operations, areas normally designated for passenger seating have been removed. Permittee shall not restrict seating in any of its Assigned Space to "customers only" and shall not refuse seating to any passenger who fails to make a purchase. Permittee shall have the right, however, to permit food only purchased from Permittee to be consumed on the Assigned Space. Permittee shall take all reasonable measures in every proper manner to maintain, develop, and increase the business conducted by it at the Concession Units. Permittee will not divert or cause to be diverted any business from the Airport.

Port reserves the right, to the maximum extent permitted by law, to approve or disapprove all products, prices, and product displays. Permittee hereby affirms that Port, in its sole discretion, has the absolute right to require that Permittee discontinue the sale of any product the Port deems unsatisfactory, distasteful, or inappropriate for any reason, in its sole and absolute

discretion, and to require Permittee to modify product displays for any reason, and the failure of Permittee to comply therewith within one (1) calendar day after transmission of written notice from Port constitutes a default under Section 19 of Attachment "A" to this Permit.

Port reserves the right to approve the pricing on all menu boards and printed menus used by Permittee prior to their initial installation as part of the menu board design review.

Paragraph I.4 Franchise Standards. Where applicable to a Concession Unit, all franchise standards shall be met or exceeded. In the event of an express conflict between the terms of such franchise standards and the terms of this Permit, the terms of the Permit shall prevail. Permittee shall provide Port with copies of a Concession Unit's franchise standards and related performance audit forms prior to such Concession Unit's opening date. Copies of inspections conducted by the franchisee, franchisor, or any mystery shopper service hired by the franchisee or franchisor shall be sent to Port within ten (10) calendar days of receipt by Permittee.

Paragraph I.5 Reports and Surveys. At Port's request, but no more often than once per quarter, Permittee shall meet with Port and make available for inspection all customer survey results, mystery shopper reports, health department reports, product pricing (conducted pursuant to Paragraph B.(4)), and any quality assurance audits (conducted pursuant to Paragraph I.1(c)), along with recommended corrective action if the survey shows corrective action is needed. If such information discloses any issue, in the sole discretion of Port, then Permittee must outline planned corrective action and discuss and disclose any additional available reports that measure the performance of each Concession Unit.

If Port conducts any customer satisfaction surveys, Port shall share results with Permittee, along with recommended corrective action, if appropriate. Permittee shall promptly undertake any such corrective action disclosed by either Permittee's or Port's surveys.

Permittee must submit to Port on a quarterly basis all reports detailing the results of all customer survey results, mystery shopper reports, health department reports, brand audits, and any other types of reports requested by Port.

Port reserves the right to audit Permittee regarding compliance with this subsection.

Paragraph I.6 Advertised Sales or Promotions. Permittee are required to participate in all advertised sales or promotions conducted by Permittee's parent corporation, if any, its franchisor, if any, or its selected operating brands, including, but not limited to, television, newspaper, radio and print media sales and promotions. Permittee is not required to participate in:

1. Liquidations, moving sales or closeouts or products or brands.
2. Internet promotions.
3. Specific mall-based advertisements.

Permittee must make every reasonable effort to ensure that all corporate advertisements that list multiple locations will list the Concession Units as participating locations for promotions or sales. In the event that participation in a sale or promotion harms the Permittee, or Permittee believes that it is not appropriate for a location at the Airport, the Permittee may request in writing to Port permission to not participate, which Port shall not unreasonably withhold. Permittee and Port agree to meet quarterly to review this requirement in light of all other revenue and customer service impacts.

Paragraph I.7 Credit/Charge Cards, Mobile Payment and Traveler's Checks. At all times during the Term of this Permit and any holdover period, Permittee and Permittee's authorized sublessees shall accept as payment for goods and services nationally recognized credit, debit or charge cards, including without limitation, American Express, MasterCard, and VISA, as well as internationally recognized Traveler's Checks and all current and future nationally recognized mobile payment options. Such cards shall be accepted for all purchases.

Paragraph I.8 Public Address System. Port shall have the right, in its sole discretion, to install one (1) or more public address system speakers in the Assigned Space for announcing flight arrivals and departures and other Airport information. Permittee or any of Permittee's authorized sublessees may only install a public address, paging, or other audio system on the Assigned Space with prior written approval of Port.

Paragraph I.9 Noise and Lights. No loudspeakers, televisions, video monitors, sound systems, audio players, radios, flashing lights or other devices shall be used in a manner so as to be heard or seen outside of the Assigned Space or a Concession Unit without the prior written consent of the Manager of Aviation Properties.

Paragraph I.10 Strategic Beverage Partnership. Permittee acknowledges that, before or after the commencement of this Permit, the Port may enter into a strategic beverage partnership, also known as an "Exclusive Pouring Rights Agreement," with one of the major beverage companies to become the exclusive provider of all (with minor exceptions) non-alcoholic and non-brewed beverages at the Airport. If the Port enters into such an agreement, Permittee agrees to participate. The Port will provide at least six months written notice to Permittee so that Permittee has adequate time to prepare the Concession Unit to accommodate the selected strategic beverage partner.

Paragraph J. Permittee's Operating Hours. Commencing on the Rent Commencement Date for each Concession Unit included in the Assigned Space, Permittee will conduct the Permitted Uses from each Concession Unit diligently and continuously and will keep each Concession Unit open for business with an adequate staff seven (7) days per week, including holidays, during the hours for that Concession Unit shown on attached Exhibit "5", as they may be modified from time to time by written notice from the ~~Manager of Aviation Properties~~ Director. If the Director extends or shortens the required operating hours, the Director shall give Permittee thirty (30) days written notice, except in the case of an emergency or major disruption of Airport operations, in which case the Director will give as much advance notice as is reasonably practicable. During the required operating hours, Permittee shall be fully operational with all menu items available. Permittee may not vacate or abandon the Assigned Space at any time.

Paragraph K. Administrative Fees. The parties agree that Permittee's performance of its obligations under this Permit are extremely important to Port and that Permittee's failure to perform those activities will result in administrative and monitoring expenses to the Port and its staff. Therefore, the parties agree that the Administrative Fees described on attached Exhibit "7" are reasonable estimates of such expenses and shall be imposed on Permittee at the sole discretion of the Director or his or her designee for any of the violations described on said Exhibit "7". The Director may elect to waive an assessment of Administrative Fees for a particular violation, but no such waiver shall apply to prior or subsequent violations of the same or any other provision of this Permit, and such waiver shall not be deemed to set a precedent for further waivers. If the Permittee disputes the violation that resulted in the imposition of an Administrative Fee, it may submit, within ten (10) calendar days of its receipt of written notice of the Administrative Fee, a written request for a review of such Administrative Fee, to the Director pursuant to Article 11.3 of Port Ordinance No. 4445 (or any successor thereto), in which event the hearing procedures set forth in said Article 11.3 shall be applicable to Port and Permittee with respect to such Administrative Fee.

The Port's right to impose the foregoing Administrative Fees shall be in addition to and not in lieu of any and all of Port's rights under this Permit, in the Airport Rules, Policies and Regulations, or at law or in equity. Port's decision to impose an Administrative Fee on Permittee for one of the violations described on attached Exhibit "7" shall not preclude Port, in the event Permittee subsequently commits the same or a different violation, from exercising any of such other rights of the Port, including, without limitation, its right to terminate this Permit pursuant to Section 19 of Attachment "A" to this Permit. Port shall have no obligation to Permittee to impose Administrative Fees or fines on or otherwise take any action against any other tenant or permittee at the Airport.

During the term of this Permit the Director may reasonably adjust upward the amount of the Administrative Fees set forth in Exhibit "7" by providing Permittee six (6) months' advance written notice.

Paragraph L. Permittee's Due Diligence; No Representations or Warranties by Port. Permittee acknowledges that it has conducted its own due diligence investigation of its prospects for successfully operating its Permitted Uses at the Airport, and has made its own determination of the accuracy of any information provided by Port with respect to the financial results of any prior operator of any similar business at the Airport, that Port has made no representations or warranties to Permittee with respect to any of such matters, and that all prior discussions between Port and Permittee with respect to such matters are superseded by this Permit pursuant to Section 40(8) of Attachment "A" to this Permit. In addition, Permittee must perform its own due diligence on all matters relating to the Assigned Space, including all technical and construction matters. Any "as-built" drawings, utility matrixes, or other technical information (including, but not limited to, architectural drawings or autoCAD or other computer files) provided by the Port may not be accurate or complete. Permittee's use of or reliance on any such information shall be at its sole risk, and the Port shall have no liability arising therefrom.

Paragraph M. Permittee's Proposal. Permittee agrees to comply with the terms of Permittee's Proposal dated _____, 2018 (the "Proposal") which are set forth in Exhibit "8"; provided, however, that in the event any provision of the Proposal expressly conflicts with any

other provision of this Permit, then the other provisions of this Permit shall prevail, and nothing contained in the Proposal shall eliminate the need for Permittee to obtain Port's approval or consent where such approval or consent is required by any other terms of this Permit or release Permittee from its obligation to comply with all applicable Laws (as defined in Section 12(1) of Attachment "A" to this Permit). Permittee represents and warrants to Port that it has obtained all license, franchise or other agreements necessary to operate Permittee's business for the Permitted Uses in accordance with the terms of the Proposal and this Permit, and Permittee covenants to keep all such license and concession agreements in full force and effect during the Term of this Permit.

Paragraph N. Compliance with Port and Department of Transportation (DOT) Non-Discrimination In Contracting Requirements. The Port strictly prohibits all unlawful discrimination and preferential treatment in contracting, subcontracting and purchasing, including the Permitted Uses or any subleasing, subcontracting or purchasing under this Permit (the "Port Non-Discrimination Policy"). Additionally, this Permit is subject to the requirements of the U.S. Department of Transportation's regulation, 49 Code of Federal Regulations Part 23 (the "ACDBE Rules"). Permittee shall comply with the Port Non-Discrimination Policy and the ACDBE Rules and shall not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with its performance under this Permit, the management of the Permitted Uses, subleasing, or purchasing. The Permittee shall cooperate with the Port in the Port's program of recruiting, training, providing technical assistance and holding workshops to ensure that contracting, subcontracting and purchasing opportunities available under this Permit are accessible and available to all qualified businesses owners, including Airport Concession Disadvantaged Business Enterprises, as defined in the ACDBE Rules ("ACDBE"). In order to assure compliance with the Port Non-Discrimination Policy and the ACDBE Rules, the Permittee agree as follows:

(a) Permittee agrees that within 30 days after the expiration of each calendar quarter during the Term of this Permit, it will provide a report to the Port, in a form acceptable to the Port, describing the total quarterly gross receipts, ACDBE dollars and ACDBE services provided in such calendar quarter of each such ACDBE described on attached Exhibit "9" and "10" (and each substitute ACDBE that may be obtained pursuant to subparagraph (c) below), in each case calculated in accordance with the requirements of this Permit.

(b) Permittee agrees that it will also submit within the same period described in subparagraph (a) above a quarterly report to the Port, in the form of the Sales Report required to be submitted by Permittee to Port pursuant to Section 13(3) of Attachment "A" to this Permit, describing the Permittee's total Gross Receipts in such calendar quarter under this Permit, calculated in accordance with the requirements of this Permit ("Quarterly Report"). Permittee shall include with each Quarterly Report a certificate in the form attached as Exhibit "10", certified by the chief financial officer or other authorized representative of Permittee acceptable to the Director.

(c) Permittee will have no right to terminate any ACDBE for convenience without the Port's prior written consent. If an ACDBE is terminated by the Permittee with the Port's written consent or because of the ACDBEs default, then the Permittee shall provide the Port with evidence satisfactory to the Port that Permittee will continue to comply with its non-

discrimination obligations under this Permit, which evidence may include the substitution of the terminated ACDBE with another ACDBE.

(d) The Permittee's breach of its obligations under subparagraphs (a), (b) or (c) above shall be a Default by Permittee under Section 19(1) of Attachment "A" to this Permit and shall entitle the Port to exercise all of its contractual and legal remedies, including termination of this Permit.

Paragraph O. Additional Terms and Conditions. Permittee does hereby further agree to abide fully by all of the Additional Terms and Conditions set forth in Attachment "A" to this Permit, which is incorporated herein and which forms a part of this Permit; provided, however, that in the event any provision of Paragraphs A-Q of this Permit conflict expressly with the provisions of Attachment "A" to this Permit, then the provisions of Paragraphs A-Q of this Permit shall prevail.

Paragraph P. Amendments. Except as otherwise expressly provided in Paragraph C or Paragraph E.3(b) above, or in Section 37(1)(b) or Section 37(2)(c) or Section 38 of Attachment "A" to this Permit, amendments to this Permit may only be made by written agreement authorized by resolution or ordinance, as appropriate, duly adopted by the Board and executed by Permittee and Port.

Paragraph Q. Waiver of Jury Trial. **TO THE EXTENT PERMITTED BY LAW, PERMITTEE AND PORT DO HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING RELATED TO, ARISING OUT OF OR IN CONNECTION WITH THE TERMS, CONDITIONS AND COVENANTS OF THIS PERMIT.** If, as of the date of this Permit, the waiver made in this Paragraph Q is not valid under California Law, but hereafter such waivers are permitted under California Law, then from the time that such waivers are permitted and with prospective effect only, this Paragraph Q shall be in full force and effect without the need for any further action of the parties.

Paragraph R. Dispute Resolution

. In the event of any dispute hereunder, either party or the parties acting together, may elect to have the dispute resolved through a reference for determination in accordance with the provisions of California Code of Civil Procedure Section 638 et seq. (the "Reference Procedure"). The Parties specifically agree to the following if the Reference Procedure is elected as provided in this Paragraph R:

(a) Within ten (10) business days after the demand therefor is given by a party or the parties otherwise agree to resolve a dispute pursuant to the Reference Procedure, the parties shall agree upon a single referee who shall then try all issues, whether of fact or law, and then report a finding or judgment thereon. If the parties are unable to agree upon a referee, either party may seek to have one appointed pursuant to California Code of Civil Procedure Section 640 by the presiding judge of the Superior Court for Alameda County. The referee shall be (i) a retired judge or, if none are available or deemed suitable by the parties, then (ii) a duly licensed attorney who has practiced in the San Francisco Bay Area in the field of real estate transactional law or real estate litigation for at least ten (10) years.

(b) Except as provided in this Paragraph R, the referee shall apply all California Rules of Procedure and Evidence and shall apply the substantive law of California in deciding the issues to be heard. Notice of any motions before the referee shall be given, and all matters shall be set at the convenience of the referee.

(c) The referee's decision under California Code of Civil Procedure Section 644 shall stand as the judgment of the court, subject to appellate review as provided by the laws of the State of California. The referee shall file his or her statement of decision with the Clerk of the Alameda County Superior Court within ten (10) days after conclusion of the hearing.

(d) The parties agree that they shall, in good faith, endeavor to cause any such dispute to be decided as soon as possible, but in any event within ninety (90) days after the appointment of the referee: provided, however, that the referee shall have jurisdiction to extend the time for hearing of the matter so as to provide any party with reasonable rights of discovery under applicable law. The date of hearing for any proceeding shall be determined by agreement of the parties and the referee or, if the parties cannot agree, then by the referee within twenty one (21) days after the referee has been selected, unless a request for discovery is made within such twenty one (21)-day period. Unless otherwise agreed by the parties, the hearing shall take place at a location acceptable to both parties in Alameda County, California. Subject to the availability of the referee, the hearing shall be concluded no later than forty-five (45) days after the initial hearing date, unless extended in accordance with the terms of this Paragraph R(d).

(e) Prior to the initiation of the Reference Procedure required under this Paragraph R, the parties are encouraged to engage in meaningful mediation of their differences, in an effort to avoid unnecessary time and expense associated with the employment of a referee and engagement in the process outlined above. Mediation may be requested by either party, using a mediator employed by a recognized mediation service doing business in Alameda County. Should either party request mediation, and such request is ignored by the other party, or should any party refuse to engage in the mediation process in good faith, then the party failing to act in good faith, shall not then be entitled to recover attorney's fees under and pursuant to any provision of this Permit. Any request for mediation shall automatically extend the time within which Reference Procedures outline in this Paragraph R shall be commenced, such extension to expire upon the sooner of the following events to occur: the expiration of fifteen (15) days follow a written request for mediation having been delivered to the other party and no meaningful response having been provided within said fifteen (15)-day period, or the completion of the mediation resulting in the matter not having been resolved despite reasonable efforts of the parties to do so. A party has no obligation to spend more than eight (8) hours in mediation with respect to any dispute regardless of the number of claims or issues presented by the dispute.

(f) Notwithstanding the provisions of this Paragraph R to the contrary, in the event that an emergency arising which prompts the need for an immediate resolution of a dispute, and either party reasonably concludes that there is insufficient time to invoke this provisions and procedures set forth in this Section 2, such party may seek immediate redress by application to the Alameda County Superior Court, in accordance with applicable State and Local Rules, including, but not limited to, the requirements regarding notice to the other party.

Paragraph S. Put Rights. In consideration of the Port's grant of this Permit to Permittee,

completely, forever, and conclusively agrees to, and unequivocally accepts, the obligations imposed on Permittee by the terms of "Attachment "C"" to this Permit.

Signatures of the Parties:

**CITY OF OAKLAND, a municipal corporation,
acting by and through its Board of Port
Commissioners**

By: _____
Executive Director

PERMITTEE:

By: _____
Name: _____
Title: _____

**THIS PERMIT SHALL NOT BE VALID OR
EFFECTIVE FOR ANY PURPOSE UNLESS
AND UNTIL IT IS SIGNED BY THE PORT
ATTORNEY**

Approved as to form and legality this
____ day of _____, 2018.

Port Attorney

Port Ordinance No. _____
P.A. # _____

If corporation: Chairman, President or Vice
President

Attest
By: _____
Name: _____
Title: _____

If corporation: Secretary, Assistant Secretary,
Chief Financial Officer, Treasurer or Assistant
Treasurer

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

(Seal)

ATTACHMENT "A"

OTHER TERMS AND CONDITIONS OF SPACE/USE PERMIT

Section 1. Construction of Improvements in Assigned Space.

(1) Aside from any construction obligations described as “Port’s Work”, if any, in the Work Letter approved by Port when it approves Permittee’s plans and specifications pursuant to Section 1(2)(c) below (the “Work Letter”), Port shall have no obligation to perform any construction work or improvements to prepare the Assigned Space for Permittee’s Work described in the Work Letter.

(2) (a) Commencing on the Delivery Date for each Concession Unit, Permittee must, at Permittee’s sole cost and expense (except as otherwise expressly provided in Section 2(g) below), construct, install and provide all of the “Permittee’s Work” as described in the Work Letter in strict conformity with the Construction Schedule described therein, in this Section 1(2)(a), and in accordance with the Director’s written instructions, if any. Permittee shall coordinate the timing of Permittee’s Work with the Construction Schedule and Director’s instructions so that Permittee’s Work will not interfere with or cause a delay in any other construction activities authorized by the Port. Permittee shall be liable for any Losses (as defined in Section 1(2)(d) below) incurred by Port arising out of Permittee’s breach of its obligations under this Section 1. The parties anticipate that Permittee will be required to perform Permittee’s Work in phases, in order for Permittee to implement its Transition Plan. As to each Concession Unit, Permittee must diligently complete Permittee’s Work and open that Concession Unit for business on or before the Rent Commencement Date applicable to such Concession Unit, all in accordance with the Work Letter and the other provisions of this Permit. In no event will Permittee be entitled to any financial contribution, loan guarantee, or other financial support from Port with regard to Permittee’s Work.

If alternative time frames and conditions are contained in the Tenant Design Standards, then the Tenant Design Standards shall prevail; otherwise, Permittee further agrees that it will submit the following to Port for its approval pursuant to this Section 1(2), in accordance with the schedule set forth below:

Conceptual and Transition Plan review within 60 days from the Commencement Date, for all Alterations in the Airport.

Schematic Design review within 30 days from approval of Conceptual and Transition Plan.

50% complete construction plans and specifications for Permittee’s Work within 30 days from the Port’s approval of Permittee’s conceptual plan.

100% complete construction plans and specifications for Permittee’s Work within 30 days from the Port’s approval of Permittee’s 50% complete construction plans and specifications.

Permittee further agrees to obtain the Port's written approval of Permittee's plans and specifications pursuant to Section 1(2)(c) below and all permits required by Section 1(2)(d) below prior to commencement of any of Permittee's Work, and to complete all of Permittee's Work in a Concession Unit in the Assigned Space prior to the opening date for that Concession Unit, as set forth opposite that Concession Unit on attached Exhibit "5".

(b) The hard construction costs of Permittee's Work in the Concession Units must equal or exceed \$600 per square foot for each Concession Units (each a "Minimum Investment Amount"), excluding any amount for which Permittee is reimbursed under Section 2(g) below. Such "hard construction costs" may include architectural and engineering fees, construction management costs and inspection costs associated with Permittee's Work, provided the credit for such costs against the applicable Minimum Investment Amount shall not exceed twenty percent (20%) of the applicable Minimum Investment Amount. Such "hard construction costs" may not include, by way of example but not by way of limitation, the cost of litigation, arbitration or other costs of any dispute, attorneys fees in preparing contracts, costs of insurance or insurance deductibles. Within one hundred twenty (120) days after substantial completion of Permittee's Work, Permittee must provide to Port an affidavit, signed by Permittee *and* any of the Permittee's general contractor, architect or construction manager, under penalty of perjury, stating the hard construction costs paid by Permittee to complete Permittee's Work, together with copies of paid invoices, cancelled checks and lien waivers substantiating the costs stated in the affidavit. Without limitation, hard construction costs do not include business interruption, inventory, pre-opening expenses, overhead, or debt service on any construction loan; or any charges paid by Permittee to any Affiliated Person (as hereafter defined), unless and to the extent such charges have been approved by Director. If the hard construction costs paid by Permittee to complete Permittee's Work do not equal or exceed the required Minimum Investment Amount for all food and beverage Concession Units, then Permittee must pay Port within sixty (60) days of substantial completion of Permittee's Work in the Concession Units an amount equal to the deficiency. Permittee shall maintain in a true and accurate manner and in accordance with generally accepted accounting principles, such original books and records as would normally be examined by an independent certified public accountant pursuant to generally accepted auditing standards in performing an audit or examination of such hard construction costs. At any time, upon three (3) business days notice, Port or its representatives may audit and copy all of Permittee's books, records and source documents related to the hard construction costs paid by Permittee to complete Permittee's Work in the Concession Units. Such books and records shall be made available at the Assigned Space or at the offices of the Port; provided, however, that if such is not possible, Permittee shall pay for all reasonable and actual costs incurred by the Port in inspecting and auditing such books and records, including, but not limited to, travel, lodging and subsistence costs. If the audit reveals that the hard construction costs paid by Permittee were less than those stated in Permittee's affidavit, then Permittee must pay Port for the costs incurred by Port in connection with the audit plus any additional deficiency discovered between the hard construction costs paid by Permittee and the Minimum Investment Amount for all Concession Units, plus interest thereon at the rate provided in Section 26 below from the date of substantial completion of Permittee's Work in the Concession Units until payment has been received by the Port. As used in this Permit, "Affiliated Person" shall mean, with respect to Permittee, any person or entity directly or indirectly Controlling, Controlled by or under Common Control with Permittee. As used in this Permit, "Control" (including the correlative meanings of the terms "Controlling",

“Controlled by” and “under Common Control with”, as used with respect to any person or entity, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such person or entity whether through ownership of voting securities, by contract or otherwise.

(c) Permittee shall not make or suffer to be made any alterations, additions, or improvements to the Assigned Space or any part thereof or attach any fixtures or equipment thereto, including Permittee’s Work (collectively, “Alterations”), without Port’s prior written consent. All Alterations shall be at Permittee’s sole cost and expense. Without limiting the generality of the foregoing, the initial layout and design of all Alterations shall conform to the Port’s established architectural design scheme for the Terminal Buildings, the provisions of the Port’s tenant improvement guide or if none has been adopted by the Port, in accordance with tenant improvement standards adopted by the Port (such guide or standards are hereafter the “Tenant Design Standards”), and the Work Letter. Prior to the construction of any Alterations, Permittee shall pay the Port all applicable fees payable under all Port ordinances and resolutions, including, without limitation, Port Ordinance No. 3859 (or any successor thereto), and submit detailed plans and specifications to the Port’s Permit Coordinator for written approval. Permittee shall include with its plans and specifications schematic renderings of the public concession area, materials, a color board(s) and a detailed layout of the overall merchandising plan. Port’s approval rights will extend to and include architectural and aesthetic matters and Port reserves the right to reject any designs submitted and to require Permittee to resubmit designs and layout proposals until they meet Port’s approval. In the event of disapproval by Port of any portion of the plans and specifications, Permittee will promptly submit necessary modifications and revisions thereof. No changes or alterations will be made in said plans or specifications after approval by Port without the prior written approval of the Director or his or her designee. Port agrees to act within a reasonable period of time upon such plans and specifications and upon requests for approval of changes or alterations in said plans or specifications. One copy of plans and specifications for all improvements or subsequent changes therein or alterations thereof will, within fifteen (15) days after approval thereof by Port, be signed by Permittee and deposited with Port as an official record thereof. Without limiting the requirements set forth above, Permittee acknowledges and agrees that Permittee may be required to obtain approvals for any desired Alterations from the Port’s Engineering Permit Department. In the event that Permittee fails to submit plans and specifications which meet the approval of Port within thirty (30) days after the Commencement Date, Port may terminate this Permit. Nothing herein contained shall be construed to delay or otherwise affect the Commencement Date or the Rent Commencement Date.

All construction shall be in conformity with the Work Letter, the latest edition of the Tenant Design Standards, and the plans and specifications submitted by Permittee and approved in writing by Port, the City and the Alameda County Health Department, and shall meet all applicable local building codes and ordinances and all other applicable Laws (as defined in Section 12 of this Attachment “A”). Permittee warrants that the proposed improvements, if constructed or installed consistently with the plans and specifications approved by the Port, will comply with all applicable Laws, including, without limitation, the Americans With Disabilities Act of 1990 and any amendments thereto (hereafter the “ADA Requirements”). The Port’s approval of any plans and specifications submitted by Permittee shall not constitute the assumption of any liability by the Port for the compliance or conformity of such plans and specifications with

such Laws, or for the accuracy or suitability of such plans and specifications for Permittee's intended purposes, and Permittee shall be solely responsible for such plans and specifications.

(d) Permittee shall give written notice to Director not less than seven (7) days prior to the commencement of any Alterations in order that Port may post appropriate notices of non-responsibility, and agrees that such notices may remain posted until the acceptance of such work by Port. Prior to commencing any such work or allowing Permittee's contractors to have access to the Assigned Space, Permittee shall (i) coordinate all such work with Port's aviation or engineering staff designated in writing by the Director (or with the Port's contractor, if so directed in writing by the Director) so that Permittee's Work will not interfere with or cause a delay in any other construction activities authorized by Port, and (ii) provide Port with such completion bonds and labor and material bonds and builders all risk insurance in such form and amount and issued by such company or companies as shall be acceptable to Port. Permittee shall be liable for any and all losses, liabilities, judgments, suits, claims, damages, costs and expenses (including attorneys fees, investigation costs, remediation costs, and court costs) of any kind or nature (collectively "Losses") incurred by Port arising out of Permittee's breach of its obligations under the prior sentence. Permittee shall obtain, and pay all fees for all permits and business licenses required by the Port, the City of Oakland or other governmental authority having jurisdiction, for any Alterations, and it shall furnish copies of all such permits to Port prior to the commencement of any work.

(e) If and to the extent that Permittee's activities or proposed Alterations trigger an obligation or requirement on the part of Port to make changes to the Airport (including ADA Requirements), Permittee shall indemnify, defend, and hold harmless Port from and against any Losses arising out of such activities or Alterations.

(f) Permittee shall pay for all labor done and materials furnished in any repairs or Alterations to the Assigned Space, and except as otherwise expressly authorized by Section 7(2) below, shall keep the Assigned Space and such improvements free and clear of any liens or encumbrances of any kind whatsoever created by or through Permittee. If any such lien or encumbrance (except liens expressly authorized by Section 7(2) below) is filed, Permittee shall not be deemed to be in default if within ten (10) days after the filing thereof, Permittee, at its sole cost and expense, has provided or caused to be provided to the Port a lien release bond in accordance with California Civil Code Section 3143 or successor statute, or such other assurance approved in writing by the Port. If Permittee fails to do so, the Port shall have the right and option, but not the duty, to obtain such lien release bond or pay or otherwise discharge, stay or prevent the execution of any lien or encumbrance. In such event, the Port shall not be deemed to have waived the Port's right to declare Permittee in default under this Permit, and Permittee shall reimburse the Port for all sums expended in connection with such lien or encumbrance, including Port's attorneys fees and costs, and such reimbursement shall be due and payable 10 days after Port's written demand for any such payments, fees or costs. Within ninety (90) days after Permittee's completion of any Alterations within or to the Assigned Space, Permittee shall furnish to the Port a set of reproducible, final "as built" drawings of all such alterations, additions or improvements, together with evidence acceptable to Port of Permittee's out-of-pocket cost of such alterations, additions or improvements.

(g) Permittee's Work, as described in Section 2(a) above, shall include (i) the removal, in accordance with all of the applicable requirements of this Permit, of any asbestos in the Assigned Space (hereinafter the "Removal") and (ii) the connection of any required utility service from their existing locations outside of the Assigned Space, as the Port shall designate to Permittee in writing, to the exterior boundary of the Assigned Space (the "Utility Service Connections"). Subject to Permittee's compliance with the remaining provisions of this Section 2(g), Permittee shall be entitled, on the issuance of a credit memorandum by Port to Permittee, to be reimbursed for Permittee's actual out of pocket costs of the Removal and Utility Service Connections by having such costs credited against the next payments of Rent that come due under Paragraph E of this Permit until the amount of such credit memorandum has been exhausted.

Port's obligation to issue a credit memorandum to Permittee pursuant to this Section 2(g) shall be subject to Permittee's satisfaction of all of the following conditions:

(i) Port's receipt of a certificate from Permittee's Chief Financial Officer (or the equivalent thereof), certifying the amount for which reimbursement is sought by Permittee, that such amount was properly incurred to pay Permittee's actual out of pocket costs of the Removal and Utility Service Connections, and that such amount has not been previously reimbursed by Port to Permittee. (For purposes of this Permit and such certificate, Permittee's actual out of pocket costs of the Removal and Utility Service Connections shall exclude any direct or indirect costs of any of the Permittee's employees, and any costs that arise out of Permittee's breach of any of its obligations under this Permit.)

(ii) Port's receipt of copies of Permittee's contracts under which such costs were incurred, together with information on unit prices for all bids for work for which reimbursement is requested by Permittee, and an assignment to the Port of all warranties and other contractual rights against the contractor for defective work for which reimbursement is requested by Permittee.

(iii) Port's receipt of invoices from third parties in the amount and describing the costs to be reimbursed by the Port, together with copies of the checks from Permittee to such third parties evidencing payment of such costs, and such other documentation as the Port shall reasonably request.

(h) Permittee shall maintain such books and records as would normally be examined by an independent certified public accountant pursuant to generally accepted auditing standards in performing an audit or examination of the costs reimbursed by Port to Permittee under Section 2(g) above. The Port shall have the right, at any time until the expiration of 36 months after the last credit against Rent under Section 2(g) above (or such longer period as is reasonably required for the Port to conclude an audit commenced within such 36-month period), upon seven (7)-calendar days' notice from the Port to Permittee, to inspect and audit such books and records, and all such books and records shall be made available, as Permittee shall elect by written notice to Port given within such seven (7) calendar day period, either at the Assigned Space, or at the offices of the Port, for inspection and audit by Port or through its duly authorized representatives. The right to inspect and audit shall include the right to photocopy such books and records as the Port determines in its discretion to be necessary or convenient in connection with its inspection or audit thereof. If the Port determines within such audit period that Permittee was reimbursed for

any amount other than Permittee's actual out of pocket costs (as defined in Section 2(g)(i) above) of the Removal or Utility Service Connections, then the amount of such improper reimbursement, plus the delinquency charge provided for in Section 26 below, from the date of payment by the Port to the date of repayment by Permittee to the Port, and the Port's reasonable and actual costs (including, without limitation, the prorated salary of the Port's auditor's, fringe benefits and overhead allocation) incurred by the Port in auditing such books and records, shall be paid by Permittee to the Port promptly after Port's written demand.

(i) Permittee shall comply with the requirements set forth in the Tenant Design Standards provided to Permittee in the construction of Permittee's Work in the Assigned Space located in the Airport.

Section 2. Midterm Refurbishment.

(1) Permittee shall refurbish, redecorate and modernize the interior and exterior of the public area of each Concession Unit (the "Midterm Refurbishment") after January 1, 2025 (the "Mid-Term Refurbishment Date"). Midterm Refurbishment shall not mean the expenditure of money for those ordinary maintenance and repair items that should have been maintained and repaired in accordance with Section 3 below. It is the intent of this Section 2 that all Concession Units, including Concession Units operated under sublease, shall undergo Midterm Refurbishment, and that such Midterm Refurbishment shall be conducted while the Concession Units are opened for business, unless the Port determines, in the exercise of its sole discretion, that Permittee's proposed scope of work in a Concession Unit is so extensive that such Concession Unit may be closed during its Midterm Refurbishment, in which event Permittee shall have the right to close that Concession Unit during its Midterm Refurbishment, but such closure shall not result in any abatement of the Rent on that Concession Unit. In connection with such refurbishment, redecoration, and modernization, Permittee shall invest a minimum amount in each Concession Unit (the "Minimum Mid-Term Amount") equal to \$150.00 per square foot.

(2) On or before July 1, 2024, Permittee shall give notice to Port of its intended development and construction plan, as well as a project budget, with respect to such refurbishment requirements. All such refurbishments will be subject to all of the applicable requirements of this Permit, including, without limitation, Section 1 above. Permittee shall complete all such refurbishments of a Concession Unit on or before June 30, 2025 (the "Mid-Term Refurbishment Complete Date"). In the event Permittee fails to complete all such refurbishments of a Concession Unit by the Mid-Term Refurbishment Complete Date, Port will incur substantial damages, the exact amount of which are extremely difficult to fix. Accordingly, for each day after the Mid-Term Refurbishment Complete of a Concession Unit until the day on which Permittee completes the Midterm Refurbishment, Permittee shall pay to Port Five Hundred Dollars (\$500) (in addition to the Rent provided in Paragraph E above), as liquidated damages. The parties have agreed that this amount represents a reasonable approximation of the damages likely to be suffered by Port in the event Permittee shall fail to complete the Midterm Refurbishment by the Mid-Term Refurbishment Complete Date for that Concession Unit.

(3) Within one hundred twenty (120) days after substantial completion of the Midterm Refurbishment of a Concession Unit, Permittee must provide to Port an affidavit, signed

by Permittee *and* any of the Permittee's general contractor, architect or construction manager, under penalty of perjury, stating the construction costs paid by Permittee to complete such Midterm Refurbishment, together with copies of paid invoices and lien waivers substantiating the costs stated in the affidavit. The Port will reimburse Permittee for all valid and approved costs from moneys in the Refurbishment Fund. Such construction costs may include architectural and engineering fees, construction management costs and inspection costs associated with such Midterm Refurbishment, provided the credit for such costs against the Minimum Mid-Term Amount shall not exceed twenty percent (20%) of the Minimum Mid-Term Amount. Such construction costs may not include, by way of example, but not by way of limitation, the cost of litigation, arbitration or other costs of any disputes, attorneys' fees in preparing contracts, costs of insurance or insurance deductibles. If the construction costs paid by Permittee to complete such Midterm Refurbishment do not equal or exceed the Minimum Mid-Term Amount for a Concession Unit, then Permittee must pay Port within sixty (60) days of substantial completion of such Midterm Refurbishment of that Concession Unit an amount equal to the deficiency (or to the extent such moneys are in the Refurbishment Fund, forfeit the amount in the Refurbishment Fund). Permittee shall maintain in a true and accurate manner and in accordance with generally accepted accounting principals, such books and records as would normally be examined by an independent certified public accountant pursuant to generally accepted auditing standards in performing an audit or examination of such Midterm Refurbishment. At any time, upon three (3) business days notice, Port or its representatives may audit and copy all of Permittee's books, records and source documents related to the construction costs paid by Permittee to complete such Midterm Refurbishment. Such books and records shall be made available at the Assigned Space or at the offices of the Port; provided, however, that if such is not possible, Permittee shall pay for all reasonable and actual costs incurred by the Port in inspecting and auditing such books and records, including, but not limited to, travel, lodging and subsistence costs. If the audit reveals that the construction costs paid by Permittee were less than those stated in Permittee's affidavit, then Permittee must pay Port for the costs incurred by Port in connection with the audit plus any additional deficiency discovered between the construction costs paid by Permittee and the Minimum Mid-Term Amount for a Concession Unit, plus interest thereon at the rate provided in Section 26 below from the date of substantial completion of such Midterm Refurbishment of a Concession Unit until payment has been received by the Port.

Section 3. **Maintenance and Repair of Assigned Space.**

(1) EXCEPT WITH RESPECT TO THOSE CONSTRUCTION OBLIGATIONS OF PORT, IF ANY, SPECIFIED AS "PORT WORK" IN THE WORK LETTER, PERMITTEE SPECIFICALLY ACKNOWLEDGES AND AGREES THAT PORT IS LEASING THE ASSIGNED SPACE TO PERMITTEE ON AN "AS IS WITH ALL FAULTS" BASIS AND THAT PERMITTEE IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM PORT OR ITS AGENTS, AS TO ANY MATTERS CONCERNING THE ASSIGNED SPACE, INCLUDING: (i) the quality, nature, adequacy and physical condition and aspects of the Assigned Space, including, but not limited to, landscaping, (ii) the quality, nature, adequacy, and physical condition of soils, geology and any groundwater, (iii) the existence, quality, nature, adequacy and physical condition of utilities serving the Assigned Space, (iv) the development potential of the Assigned Space, and the use, habitability, merchantability, or fitness, suitability, value or adequacy

of the Assigned Space for any particular purpose, (v) the zoning or other legal status of the Assigned Space or any other public or private restrictions on use of the Assigned Space, (vi) the compliance of the Assigned Space or its operation with all applicable Laws including without limitation, the ADA Requirements, (vii) the presence of Toxic Materials (as defined in Port Environmental Ordinance No. 4345) on, under or about the Assigned Space or the adjoining or neighboring property, (viii) the quality of any labor and materials used in any improvements in the Assigned Space, (ix) the condition of title to the Assigned Space, and (x) the agreements affecting the Assigned Space, including covenants, conditions, restrictions, ground leases, and other matters or documents of record or of which Permittee has knowledge. The taking possession of the Assigned Space by Permittee shall, in itself, constitute acknowledgement by Permittee that the Assigned Space is in a condition satisfactory for its use; provided, however, that notwithstanding the foregoing acknowledgment, the Port acknowledges that the Permittee has not conducted an audit or inspection of the Assigned Space that would disclose the presence of, or contamination of the Assigned Space by, Toxic Materials and therefore, except as expressly provided in Section 32 below, the Permittee bears no responsibility for the removal, remediation or clean-up of Toxic Materials that were on the Assigned Space prior to Permittee taking possession thereof.

(2) Except as otherwise expressly provided in this Section 3(2), the Port shall have no duty to maintain the Assigned Space or any improvements located thereon. Port shall maintain that portion of the HVAC system that serves the Assigned Space but that is located outside of the Assigned Space. Permittee shall be responsible to maintain all duct work within the Assigned Space. Permittee agrees that during the Term of this Permit, at its own cost and expense, it shall keep and maintain the Assigned Space in clean and first-class order and repair and in compliance with all applicable Laws, including the replacement of any facility of Port which requires replacement by reason of Permittee's use or damage thereof or due to damage by others, excepting (a) ordinary wear and tear, (b) structural repairs to the Assigned Space, unless (i) caused by the act or omission of Permittee or any principal, affiliate, contractor, employee, agent, licensee or invitee of Permittee, or (ii) required to be repaired by Permittee pursuant to Section 37 below, (c) damage caused solely by the Port's gross negligence or willful misconduct which shall be repaired by the Port at its expense, (d) damage due to casualty with respect to which the provisions of Section 37(1)(b)(ii)(v) or (y) below shall apply, or (e) damage due to a taking with respect to which the provisions of Section 37(2)(a) or Section 37(2)(b) shall apply. Permittee hereby waives all right to make repairs at the expense of Port or in lieu thereof to vacate the Assigned Space, and waives the benefit of the provisions of California Civil Code Section 1941 and 1942 or any successor statute thereto and any other similar law, statute or ordinance now or hereafter in effect. In addition, if it becomes necessary during the term of this Permit, as reasonably determined by the Manager of Aviation Properties, Permittee will, at its own expense, redecorate and paint fixtures and the interior of the Assigned Space and improvements, and replace furniture, fixtures, wall, floor and window coverings, or other furnishings, which expenditures shall not diminish Permittee's Midterm Refurbishment obligation under Section 2 above. Without limiting the generality of the foregoing, at all times, Permittee shall be solely liable for the facade of the Assigned Space separating the Assigned Space from the terminal Common Areas, including the external face thereof, all windows and display areas therein, and all finishes thereon. If after thirty (30) days' written notice from the Port, Permittee has failed to commence and diligently pursue completion of any and all such maintenance, replacement and repair which may be required to restore the Assigned Space and any of its improvements, fixtures, equipment and mechanical

systems to the condition required by the fourth sentence of this Section 3(2), then Port shall have the right, but not the duty, to perform such maintenance, replacement and repair at Permittee's expense and Permittee shall reimburse Port for such costs promptly upon Port's written demand. The performance of maintenance and repair by the Port shall in no event be construed as a waiver of the Permittee's duty to maintain and repair as herein provided. Unless the written approval of the Manager of Aviation Properties or his or her designee has been first obtained in each instance, Permittee shall not alter the point of supply of any utilities in the Assigned Space. Permittee shall not install any racks, stands or other display of merchandise or trade fixtures at the Airport outside of the Assigned Space without the prior written consent of the Manager of Aviation Properties or his or her designee. Permittee shall not permit a work of visual art, as defined in 17 USC § 101, to be installed in the Assigned Space without providing Port with a written waiver, in form acceptable to Port, of the artist's rights under the Visual Artists Rights Act of 1990, Pub. L. 101-650, and without obtaining Port's prior written approval.

The parties acknowledge and agree that Permittee's obligations under this Section 3 are a material part of the bargained-for consideration under this Permit. Permittee's compliance obligations shall include, without limitation, the obligation to make substantial or structural repairs and alterations to the Assigned Space (including the Permittee's Work), regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Permit, the length of the then remaining Term hereof, the relative benefit of the repairs to Permittee or Port, the degree to which curative action may interfere with Permittee's use or enjoyment of the Assigned Space, the likelihood that the parties contemplated the particular requirement involved, or the relationship between the requirement involved and Permittee's particular use of the Assigned Space. No occurrence or situation arising during the Term, nor any present or future requirement, whether foreseen or unforeseen, and however extraordinary, shall relieve Permittee of its obligations hereunder, nor give Permittee any right to terminate this Permit in whole or in part or to otherwise seek redress against Port. Permittee waives any rights now or hereafter conferred upon it by any existing or future requirement to terminate this Permit, to receive any abatement, diminution, reduction or suspension of payment of Rent, or to compel Port to make any repairs to comply with any such requirement, on account of any such occurrence or situation.

(3) Permittee shall at its own expense keep and maintain within the Assigned Space fire extinguishers and other portable fire fighting and emergency equipment of such number, type, and material as may be prescribed from time to time by the Airport Rules, Policies and Regulations, the Fire Prevention Bureau of the City, or other governmental authority having jurisdiction.

(4) A Certified Access Specialist ("CASp", as defined in California Civil Code Section 55.52) has not inspected the Assigned Space or the property. Permittee acknowledges the foregoing information and agrees that such statement is merely a statement of fact and is not an admission, covenant, representation, or warranty made by the Port for the benefit of Permittee and Permittee's employees, agents, contractors, customers, or other invitees as to the condition of the Assigned Space or any other property owned or controlled by the Port. As may be required by California Civil Code Section 1938, the Port provides the following notification:

"A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable

construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises."

Section 4. **Other Operational Requirements.**

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

(2) Permittee must keep the display windows of each Concession Unit in the Assigned Space suitably illuminated at all times and display its hours of operation in a manner that is clearly visible from the entrance to each such Concession Unit.

~~(3) Permittee must keep the Assigned Space free of pests and vermin, and must dispose of all trash and debris in the Assigned Space using covered, leak-proof containers, including recycling containers, approved by the Port and in locations designated by the Port.~~

(4) Permittee 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 Assigned Space any garbage, debris or refuse.

~~(3)~~(5) Permittee must install and maintain, and regularly clean and empty, all grease traps in the Assigned Space and dispose of the contents thereof in compliance with all applicable Laws, and Permittee will use its own EPA identification number and list itself as the owner on the Uniform Hazardous Waste Manifest or other Profile sheets if any need to be filled out in order for Permittee to comply with its obligations under this sentence. Upon the termination of this Permit, the Port may, at its sole option, require Permittee to remove any or all grease traps at Permittee's sole cost and expense, and in compliance with all Laws.

~~(4)~~(6) Permittee acknowledges that the operational requirements of the Airport as an airport facility, including, without limitation, security requirements, are of paramount importance. Permittee 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, Permittee 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, Permittee must:

(a) cause all deliveries and dispatches of food, beverage and retail products, supplies, fixtures, equipment and furniture to be made and conveyed to or from the Assigned Space by means and during hours established by Director in Director's sole discretion. Port has no responsibility regarding the delivery or dispatch of Permittee's products, supplies, fixtures, equipment and furniture. Permittee may not at any time park its trucks or other delivery vehicles in Common Areas; and

(b) not park within the parking areas of the Airport except in those areas, if any, designated by Port pursuant to permits obtained from the Airport. Nothing herein shall imply that Permittee shall be able to secure any on-Airport parking privileges.

~~(5)~~(7) Without limiting any other provision herein, Permittee shall not: (a) use or permit the use of the Assigned Space for the conduct in or on the Assigned Space as an outlet store or a second-hand store; (b) advertise any distress, fire, bankruptcy, liquidation, relocation, closing, or going-out-of-business sales; (c) use or permit the use on the Assigned Space of any pinball machines, videogames, computer or electronic games, or other devices or equipment for amusement or recreation, or any vending machines, newspaper racks, pay telephones, or other coin, token, or credit card-operated devices; (d) cause or permit anything to be done, in or about the Assigned Space, or bring or keep anything thereon which might (i) increase in any way the rate of fire insurance on the terminal building complex or any of its contents; (ii) create a nuisance; (iii) in any way obstruct or interfere with the rights of others in the terminal buildings or injure or annoy them; (e) commit or suffer to be committed any waste upon the Assigned Space; (f) use, or allow the Assigned Space to be used, for any improper, immoral, unlawful or objectionable purpose; (g) place any loads upon the floor, walls or ceiling of the Assigned Space which endanger the structure or obstruct the sidewalk, passageways, stairways or escalators, in front of, within, or adjacent to the terminal buildings; (h) use any advertising or promotional medium that may be seen, heard, or otherwise experienced outside the Assigned Space (such as searchlights, barkers or loudspeakers); (i) distribute handbills or circulars to Airport patrons or to cars in the parking lots, or engage in any other advertising at the Airport and outside of the Assigned Space, except through Port's authorized terminal display advertising concessionaire or the Port's authorized outdoor advertising concessionaire; or (j) do or permit to be done anything in any way tending to injure the reputation of Port or appearance of the Airport.

~~(6)~~(8) Permittee shall, if required by Director, employ, at its own cost and expense, an investigative organization approved by Director for the purpose of making investigations and observations and preparing a written report for Permittee of the carrying out of any pricing policies, revenue control, and operational techniques being used on the Assigned Space. Permittee shall cause such investigation and observation to be made at such reasonable times and in the manner directed by Director, and the investigator shall deliver forthwith to Director a true and complete written copy of any such reports made for Permittee.

~~(7)~~(9) In the event Permittee receives any customer complaint with respect to Permittee's operations in the Assigned Space, Permittee shall promptly respond in writing to the complainant, with a copy to the Director, and shall make a good-faith attempt to explain, resolve or rectify the cause of the complaint. If Port establishes a toll free customer complaint telephone number, Permittee shall be required to participate and shall respond to complaints immediately. All other issues regarding the quality of service and/or prices raised on Port's own initiative may

be submitted to Permittee for response, which response shall be provided by Permittee to the Port's Director within two (2) days.

~~(8)~~(10) Permittee shall comply with the Airport security requirements set forth in Exhibit 6.

(11) Permittee shall comply with the Green Concessions Program set forth in Exhibit 12.

(12) All strong odors emanating from Permittee operations, products and equipment must be controlled by venting, wrapping, enclosing, containing or otherwise treating to prohibit the entry of objectionable odors into the Common Area. Tenants that regularly deal in natural products and operations having odors generally regarded as pleasing, including odors such as sweet spices, coffee, herbs, fresh baking, etc. are allowed into the Common Area at the Port's discretion.

(13) Where required, Permittee shall provide individual grease traps specifically for the Assigned Space. Grease traps and sewer cleaning shall be done at the Permittee's expense on a regular basis in accordance with an approved schedule submitted to the Port. Frequency shall be determined by the anticipated loads and recommendation of the Permittee's Mechanical Engineer and approved in advance by the Port.

(14) Permittee is responsible to clean exhaust hoods and test hoods fire suppression systems at intervals required by the Authority Having Jurisdiction.

(15) Sound producing operations and equipment must be enclosed or otherwise controlled to prevent audibility in the Common Area. Sound production operations and equipment must not interfere with audibility of fire alarm and other emergency paging.

(16) Permittee is responsible for biannual maintenance of sewer and grease waste piping. The limits of this responsibility are for the waste sewer piping from the Assigned Space to the main, and grease waste line from the Assigned Space to the grease interceptor. Biannual maintenance requirements, at a minimum, include a snaking of the piping followed by pressure wash. Permittee shall coordinate the biannual maintenance and annual compliance information with the Port's Aviation Facilities Department. The Port may require Permittee to increase the frequency of these cleanings if found necessary by the Port.

Section 5. Signage and Advertising.

The Tenant Design Standards dictate criteria for signage and advertising outside Permittee's Assigned Space. Any signage that Permittee wants to install or display in or on the Assigned Space must be approved in advance and in writing by the Director or his or her designee, including, but not limited to, the number, size, height, location, color and general type and design of each such sign.

Permittee shall not display any advertising, promotional, or informational pamphlets, circulars, brochures or similar materials relating to its business in or about the Assigned Space, except as expressly approved by the Director or his or her designee in writing. In no event shall Permittee be permitted to display advertising or promotional materials on behalf of or benefiting third parties, such as credit card applications, table cards, banners, easel signs, travel promotions, banks, vendor supplied equipment displaying overt advertising, or the like. Without limiting the foregoing restrictions on advertising, in no event will there be permitted on the Assigned Space any advertising or promotion of cigarettes or tobacco products. No advertising or promotion shall be permitted on packaging (cups, cup holders, wrappers, bags, sacks, and the like) referring to or benefiting a third party, except 1) such packaging may include the name and/or logo of the Concession Unit using such packaging; and 2) if the package contains the product that is included within (such as a soft drink or coffee brand) and such packaging is required under the terms of the applicable license or franchise agreement.

Section 6. Labor Peace; Airport Labor Pool Program; First Source Program and Fair Chance Hiring Program.

(1) Permittee recognizes and agrees that: (a) the Port has a financial and proprietary interest in Permittee's operations under this Permit; (b) operations under this Permit materially affect Port revenues, the Port's investment in its Airport concession program, and the passenger experience at the Airport which contributes to the decisions made by potential Airport passengers as to which San Francisco Bay Area airports to patronize; (c) it is essential to the Port that operations under this Permit are conducted efficiently and without interruption, labor disputes, or boycotts; (d) the Airport can best protect its investments in the concession program by requiring its concessionaires to comply with the terms of the Port's "Labor Peace Rule," adopted pursuant to Port Resolution No. 17-35; and, (e) Permittee has had an opportunity to review, ask clarifying questions regarding, and to understand the Labor Peace Rule.

(2) As a material term, covenant and condition of this Permit, Permittee, on behalf of itself and on behalf of its subpermittees, subtenants, sublessees, successors, and assigns, agrees to comply with the Labor Peace Rule.

(3) Within the meanings and definitions set forth in the Labor Peace Rule, Permittee entered into one or more "Labor Peace Agreements" with all "Labor Organizations" which had requested a Labor Peace Agreement with Permittee. Such Labor Peace Agreement(s) are set forth in Exhibit 15 which is attached hereto and incorporated herein.

(4) Permittee understands and agrees that it shall expressly require its subtenants, sublessees, successors, and assigns to comply with the Labor Peace Rule and shall include language expressly requiring such compliance in any and all subleases and similar agreements.

(5) As a material term, covenant and condition of this Permit, Permittee agrees to comply with the Airport Labor Pool Program adopted pursuant to Resolution No. 15-056.

(6) As a material term, covenant and condition of this Permit, Permittee agrees to comply with the First Source Program and Fair Chance Hiring Program adopted pursuant to Resolution No. 18-32---.

(7) Permittee understands and agrees to utilize the Port's "First Source Hiring" program to make a good faith effort to hire residents from the Port's local impact area (Oakland, Alameda, San Leandro and Emeryville) and those who face barriers to employment. Permittee will partner with local workforce developments (as determined by the Port) as referral agencies for hiring. Permittee will provide upfront notice of job openings to these agencies and exclusively consider applicants from these agencies for five (5) business days before recruiting elsewhere. Upon the exhaustion of the referrals from these agencies, Permittee may then recruit candidates on their own.

(8) Permittee understands and agrees to the Port's commitment to non-discrimination in hiring and supports the creation of employment opportunities for local residents with barriers to employment, including individuals who have had former involvement in the criminal justice system. Fair Chance Hiring or ban the box prohibits discrimination against qualified applicants based upon their criminal history. Permittee shall comply with all federal and state laws related to fair chance hiring, including California AB 1008. In addition to complying with these laws, Port requires that the Permittee that employs two (2) or more employees may not inquire about or investigate an applicant's criminal history until a conditional offer of employment is made. Permittee may only consider convictions directly related to job requirements. Permittee also may not disqualify an applicant who has received a conditional offer of employment and meets the Port's policy requirements and the badging requirements of the Transportation Security Administration and Customs and Border Patrol based upon prior criminal history that is not directly related to the job requirements.

Section 7. **Permittee's Property.**

(1) Any and all property belonging to, or brought onto the Airport by Permittee or any of its officers, employees, agents, invitees or licensees shall be at the sole risk of Permittee. Subject to Port's right of approval as set forth in Section 1 hereof, Permittee may place and install trade fixtures and other personal property in the Assigned Space for use in connection with its operations hereunder (such trade fixtures and other personal property is hereafter collectively referred to as "Trade Equipment"), and the same shall be and remain the property of Permittee. Permittee shall, however, be responsible for the cost of repairing any damage to the Assigned Space or any other improvements of Port which are caused by the removal of any such Trade Equipment. Notwithstanding the foregoing, however, if Permittee shall at any time be in default hereunder, then Port shall have the benefit of any statutory liens on Permittee's property located in the Assigned Space which are available to it under the laws of the State of California, and except as otherwise expressly provided in Section 7(2) below, Permittee shall not remove or permit the removal of any of such property until all amounts secured by such liens have been paid and all other defaults under this Permit have been cured. In addition, if at the end of the Term or upon the earlier termination of this Permit, Permittee has not removed such property, Port shall have the right, at Permittee's expense, to remove and store or dispose of such property without liability to Permittee.

(2) Some of Permittee's Trade Equipment now or hereafter installed and used by Permittee on the Assigned Space may or will be directly financed by a third-party lender or otherwise subjected to a security interest or owned by an equipment rental company or vendor ("Equipment Lessor") and leased to Permittee either directly from the Equipment Lessor or by way of equipment sublease or assignment of equipment Permit from an equipment sublessor ("Equipment Sublessor"). If such lender, vendor, or equipment Lessor or Equipment Sublessor (or assignees) gives to Port written notice identifying the Trade Equipment prior to its installation on the Assigned Space, Port hereby agrees to recognize the rights therein of any such third-party lender, vendor, or Equipment Lessor or Equipment Sublessor (or assignee). Port agrees that all such items of financed or leased Trade Equipment installed or to be installed on the Assigned Space shall be and remain personal property and not real property, notwithstanding the fact that the same may be nailed or screwed or otherwise attached or affixed to the Assigned Space, and further agrees to recognize the rights therein of any such third-party lender, vendor, or Equipment Lessor or Equipment Sublessor (or assignee). Permittee shall have the right at any time, provided Permittee is not in default hereunder, to remove or replace any or all Trade Equipment, whether or not financed or leased, regardless of whether attached or affixed to the Assigned Space, and to the extent of their respective interests therein such third-party lender, vendor, or Equipment Lessor or Equipment Sublessor (or assignee) that timely gave the required written notice to the Port shall also have such a right regardless of whether Permittee is in default hereunder. Any damage to the Assigned Space caused by such a removal shall be repaired promptly by and at the expense of Permittee or other party causing such removal. Port agrees that it does not have and shall not assert any right, lien or claim in or to the Trade Equipment against any third-party lender, vendor, or Equipment Lessor or Equipment Sublessor (or assignee), that timely gave the required written notice to the Port, and, subject to the obligation promptly to repair any damage to the Assigned Space, such party may remove and dispose of the same without reference to, and free and clear of, any claim or other demand of Port; provided, however that no such disposal or sale may be made on the Assigned Space. The Port agrees to execute upon request such reasonable documentation that confirms the foregoing provisions to a third party lender, lessor or other holder of a security interest, provided that Permittee is not in default hereunder and provided such documentation is approved as to form and legality by the Port Attorney.

Section 8. **WI-FI System.**

Permittee acknowledges that Airport has an Airport-wide, open access wireless fidelity system (802.11g) that provides Wi-Fi services to the employees, passengers, tenants, and visitors at the Airport (the "Wi-Fi System"). Permittee agrees that: (a) it shall obtain the Port's written consent before installing any wireless network, and (b) it shall cooperate with the Port to eliminate radio frequency interference (RFI) from its competing wireless network. Permittee hereby agrees that during the Term it shall be obligated, on Port's request, to participate with Port and Port's other tenants in Port's designated dispute resolution process to resolve any RFI issues. Notwithstanding anything in this Permit to the contrary, in the event of any RFI between the Wi-Fi System and any third party wireless network, Port shall not be liable for any cost or damage arising directly or indirectly from such RFI, including, but not limited to, any degradation or inoperability of the third party wireless network.

Section 9. **Utilities.**

Port shall provide each Concession Unit with the utilities service as shown on attached Exhibit "5".

Permittee shall be responsible for obtaining and paying for all other utility service to the Assigned Space, and for any associated charges. Permittee shall pay for all utilities (including, without limitation, electricity, water, telephone, wireless access fee and sewer) used or consumed in the Assigned Space. ~~If the Permittee requires new electric service, a distribution line extension from an existing service or an increase in electric load demand from an existing service, Permittee shall pay the Port's applicable Cost of Service Fee, calculated pursuant to the provisions of Port Resolution No. 02410, as such resolution may hereafter be amended or replaced, or under any other Port resolution or ordinance, either existing or hereafter adopted by the Port, and shall also pay the cost of any new Port supplied electrical meter, if required. Permittee shall also be obligated to pay any Port electrical inspection fee~~ In the event the Permittee requires a new service and/or utility connection or an upgrade to an existing service and/or utility connection, the Permittee shall be responsible for paying any applicable charges or fees for the new connection, service, or upgrade to an existing connection or service imposed by the utility or service provider on the Permittee or the Port for the Permittee's benefit. Permittee acknowledges that in certain cases, the Port may be the utility or service provider. In the event the utility or service provider imposes such charges or fees on the Port for the benefit of the Permittee, the Permittee shall pay the Port for such services or reimburse to the Port such payment not later than ten (10) days after the Port issues to Permittee a billing statement for said services or reimbursement.

Section 10. Port's Right to Enter; Permittee's Right of Access.

(a) Port and its designated agents shall have the right to enter the Assigned Space at any reasonable time for inspection, maintenance, repair, attending to emergencies or any other reasonable purpose. Such entry shall not constitute a forceable or unlawful entry or detainer of the Assigned Space. The Port will make a reasonable effort, except in case of an emergency, to provide advance notice of its intent to enter the Assigned Space, which notice (notwithstanding the provisions of Section 24 to the contrary) may be given in person to Permittee's manager on duty, or by telephone or by e-mail as designated by Permittee in Paragraph A of the Permit, but Port will have no liability to Permittee if Port fails to give such notice or if such notice is given by Port but not received by Permittee.

(b) Permittee and its officers, employees, agents and invitees shall, subject to the Airport Rules, Policies and Regulations, have the right of ingress and egress to and from the Assigned Space.

Section 11. Taxes and Assessments.

(1) This Permit may create a property interest that is subject to property taxation and Permittee, in whom the possessory interest is vested, may be subject to the payment of property taxes levied on such interest. If the taxing authority assesses to Permittee a possessory interest tax with respect to any tax year any portion of which is included in the Term of this Permit, then Permittee shall be responsible for paying the entire annual possessory interest tax without deduction or proration, notwithstanding the expiration or termination of the Term prior to the close

of the tax year. Permittee acknowledges the foregoing and that the same constitutes a sufficient statement in accordance with the requirements of Section 107.6 of the California Revenue and Taxation Code. Permittee shall pay, on or before the due date established therefor, all taxes, assessments (including, without limitation, storm water utility charges, and any business tax lawfully imposed by the City) and impact fees which are levied against or in connection with the Assigned Space, Permittee's interest therein and the property and improvements of Permittee for the Term hereof or attributable to Permittee's activities at the Assigned Space or at the Airport. For purposes of this Section, a possessory interest tax shall be deemed a tax and not an assessment. Permittee's obligations under this Section 11 shall survive the expiration or earlier termination of this Permit. Nothing contained herein shall be construed as a release or waiver on the part of the Port, or the City, of the right to assess, levy or collect any license, personal, tangible, intangible, occupation or other tax, fee or assessment which they, or either of them, may lawfully impose on the business or property of Permittee.

(2) Permittee shall pay or cause to be paid all sales and/or use taxes levied on all materials, supplies, or equipment purchased and used on or incorporated into Permittee's Work, and all other taxes properly assessed against equipment or other property used in connection with Permittee's Work. Without limitation, Permittee shall be responsible for any documentary, excise, stamp and transfer tax and any sale, use or other tax imposed by reason of the design, delivery, sale, transfer, or installation of the materials, supplies, equipment or other property purchased and used on or incorporated into Permittee's Work, regardless of which party has liability for such tax under applicable law, and any deficiency, interest or penalty asserted with respect thereto. Permittee represents that Permittee has, or will obtain prior to the transfer of title to any materials, supplies, equipment or other property purchased and used on or incorporated into Permittee's Work, the necessary seller's permit as required by the State of California. Permittee represents that it will collect, report, and pay all sales and or use taxes arising out of Permittee's Work to the State Board of Equalization. Upon full payment Permittee will issue Port a receipt pursuant to California Revenue and Taxation Code Section 6203, relieving Port of all liability for any tax relating to the materials, supplies, equipment or other property purchased and used on or incorporated into Permittee's Work.

Section 12. **Compliance with Laws, Rules, Policies and Regulations.**

(1) Permittee covenants and agrees to observe and comply with (and to cause all of its sublessees authorized under Section 18 below to comply with) all present and future Laws, and all rules, policies and regulations of Port, including, without limitation, all safety, security and operations directives of the Director or his or her designee, which now exist or may hereafter be promulgated from time to time governing conduct on and operations at the Airport or the use of facilities at the Airport (hereafter collectively the "Airport Rules, Policies and Regulations"). The Airport Rules, Policies and Regulations may, without limitation, require Permittee to participate in a parking validation program at the Airport if one is established by the Port. Permittee further covenants and agrees to observe and comply with (and to cause all of its sublessees authorized under Section 18 below to comply with) any and all valid and applicable requirements of all duly-constituted public authorities (including, without limitation, the Department of Transportation, the Department of Homeland Security, the Federal Aviation Administration, and the Transportation Security Administration). Permittee agrees to pay or reimburse Port for any civil penalties or fines

which may be assessed against Port as a result of the violation by Permittee or any such sublessee of any of the foregoing requirements, which payment shall be made by Permittee within fifteen (15) days from receipt of Port's invoice for such amount and documentation showing that payment of such penalty or fine is Permittee's responsibility hereunder. As used in this Permit, "Laws" shall mean all present and future federal, state and local statutes, ordinances and regulations and Port ordinances applicable to Permittee, the Assigned Space, the Permitted Uses or the Airport, and judicial interpretations thereof, including, but not limited to, all acts and regulations relating to security (including, without limitation, those regulations promulgated by the Department of Homeland Security), the ADA Requirements, all acts and regulations relating in any way to food and drugs, worker's compensation, sales and use tax, credit card processing, social security, unemployment insurance, hours of labor, wages, working conditions, the Immigration Reform and Control Act of 1986, the Charter of the City (including, without limitation, Section 728 entitled "Living Wage and Labor Standards at Port-Assisted Businesses"), and all Environmental Laws (as defined in Port Environmental Ordinance No. 4345).

Without limiting the generality of the foregoing, to the extent Permittee's operations or activities or the operations or activities of any sublessee or assignee of Permittee approved by the Port on the Assigned Space constitute industrial activities within the meaning of the Federal Water Pollution Control Act, 33 U.S.C. §§1251, et seq. ("CWA") and the regulations promulgated thereunder, Permittee agrees that it will be responsible for faithfully obeying and complying with such law and regulations, including, but not limited to, obtaining, if required, an individual National Pollutant Discharge Elimination System ("NPDES") permit or, if required, requesting coverage under and faithfully obeying and complying with the terms and conditions of any applicable General Permit issued pursuant to such law or regulations.

Permittee further agrees to waive and release the Port and Port officers, employees, agents and members of the Board from any and all claims, including claims of negligence, and liability that may arise from any act or failure to act by the Port in connection with the Port's providing advice, guidance, or assistance to Permittee or any assignee of Permittee approved by the Port regarding compliance with any such Laws or regulations including, but not limited to, the following actions or activities: furnishing educational materials to and organizing meetings for tenants; explaining the alleged requirements of the CWA, the regulations promulgated pursuant thereto, or the terms and conditions or means of complying with any permits required by or issued pursuant to the CWA; preparing or furnishing draft Storm Water Pollution Prevention Plans or Group Monitoring Plans, or acting as leader of any Group Monitoring Plan.

Notwithstanding and in addition to any other provision of this Permit, Permittee shall maintain for periodic inspection by the Port and, concurrently with the receipt from or submission to a governmental agency, deliver to Port true and correct copies of documents (hereinafter referred to as the "Documents"), except for Documents protected by the attorney-client privilege, required to be provided, filed, lodged, maintained by the Permittee or obtained by or issued to Permittee pursuant to such Laws or regulations, including, but not limited to, the following documents:

Permits; approvals; reports and correspondence; applications for permits, Notices of Intent, Storm Water Pollution Prevention Plans, Annual Comprehensive Site Compliance Evaluations, Annual

Reports or monitoring results, or notice of violations relating or pertaining to the Assigned Space.

(2) Permittee agrees for itself, its successors and assigns that it will not make use of the Assigned Space in any manner which might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the Port reserves the right to enter upon the Assigned Space and cause the abatement of such interference at the expense of the Permittee. This Permit and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking off at the Airport or the exclusive or non-exclusive use of the Airport by the United States during the time of war or national emergency.

Section 13. **Percentage Fees.**

(1) For purposes of calculating the Percentage Fees payable by Permittee under Paragraph E of this Permit, "Gross Receipts" as used herein shall mean:

(a) (i) The retail price of all food, beverage and retail products sold and services rendered in, on, about or from the Assigned Space or from such other locations on Airport operated by Permittee, by any other person or entity, as may herein be authorized, whether such sales be for cash or on credit, and in case of sales on credit, whether or not payment is actually made; plus

(ii) The full amount of all deposits forfeited by customers in connection with any business of Permittee in, on, about or from the Assigned Space; plus

(iii) The full amount of all orders for goods or services accepted by Permittee in, on, about or from the Assigned Space, whether or not to be filled or performed at any other place, and the full amount of all orders accepted by Permittee elsewhere, but to be filled or performed in, on, about or from the Assigned Space; plus

(iv) The retail price of all orders placed on the Assigned Space from Permittee's catalog, internet or otherwise; plus

(v) The full amount of any charge the Permittee customarily makes for goods or services even though the Permittee fails to actually collect such a charge; provided, however, that Gross Receipts shall not include any discount granted to employees not to exceed 1% of annual Gross Receipts; plus

(vi) Any amounts paid or payable to the Permittee in exchange for coupons or vouchers which are redeemed at the Assigned Space.

(b) The following shall not be included in Gross Receipts:

(i) Any exchange of inventory between Permittee's business locations where such exchange is made solely for the convenient operation of Permittee's business and not for the purpose of consummating a sale made in, at or from the Assigned Space, or for the purpose of depriving Port of the benefit of sales which would otherwise be made in or at the Assigned Space.

(ii) Returns to the shippers or manufacturers.

(iii) Discount sales to employees, to the extent of the discount, not to exceed 1% of annual Gross Receipts.

(iv) The amount of all sales refunds previously included in Permittee's Gross Receipts.

(v) The amount of any separately-stated federal, state or local sales or use taxes mandated by a governmental entity to be imposed upon the Permittee's customers, collected by the Permittee and remitted to such governmental entity.

(2) No deduction shall be made from Gross Receipts by reason of any credit loss sustained or financing discount that may be applicable by reason of the acceptance or use of credit and/or debit cards or by reason of any other credit arrangements. Except as otherwise expressly provided in Section 13(1)(b) above, if any charge customarily made by Permittee for goods or services is not assessed, charged or collected, irrespective of the reason therefor, then the full amount of Permittee's customary charge therefor shall nevertheless be included in determining Gross Receipts. Permittee may not show the percentage of Gross Receipts payable to Port as a separate charge to Permittee's customers. All computations in the determination of Gross Receipts shall be made in accordance with the terms of this Permit, using the accrual basis of accounting.

(3) On or before the fifteenth (15th) day of each calendar month during the Term hereof, commencing with the first calendar month after the Rent Commencement Date, and ending on or before the fifteenth (15th) day of the calendar month immediately following the end of the Term, Permittee shall deliver to Port's finance department a report (the "Sales Report") certified as true and correct by an officer of Permittee, segregated by each source or general type of article sold or service rendered, or in such other manner as the Port shall direct, and by the Concession Unit at which the sale occurred, and in such form and with such detail as Port may reasonably request, setting forth Permittee's Gross Receipts (as the same are hereinbefore defined) from each Concession Unit included in the Assigned Space during the preceding calendar month, and separately identifying all receipts derived by Permittee from or at the Airport during such month which have been excluded from the computation of Gross Receipts, and identifying the location at the Airport at which such excluded Gross Receipts were derived, together with payment of the Percentage Fees due by reason thereof. As described in Paragraph K of this Permit, Port shall have the right, in addition to all other rights herein, to impose an Administrative Fee in the event Permittee fails to submit such Sales Report timely. If Permittee fails to provide Port by the fifteenth (15th) day of a calendar month with the Sales Report complying with the requirements of this Section 13(3), then Port may invoice Permittee for estimated Percentage Fees for the prior calendar month in an amount equal to the monthly Percentage Fees that would be payable based

on 1.5 times Permittee's actual Gross Receipts from or at the Airport for the last month reported by Permittee to Port, or if Permittee has filed no such report with Port, then as estimated in good faith by Port. Permittee shall, within five (5) days after its receipt of such invoice, pay the invoiced amount to Port; provided, however, that when Permittee determines its actual Gross Receipts for the preceding month, Permittee may tender the actual percentage fees payment to Port, but only if it is accompanied by the Sales Report for such prior calendar month. The acceptance of such estimated Percentage Fees by Port, and the acceptance of any delinquent Sales Report by Port, shall be without prejudice to any of Port's rights under Section 19 below. Any underpayment of Percentage Fees shall be paid with the Sales Report provided by Permittee to Port covering the period for which estimated Percentage Fees have been paid together with a delinquency charge, for violation of the terms of this Permit and as liquidated damages, of the Fifty Dollar (\$50.00) fee provided for in Section 26 below, plus interest on any unpaid amount from the date the estimated percentage fees became payable until payment has been received by the Port, at the rate provided in Section 26 below.

Within ninety (90) days after the end of each calendar year during the Term, Permittee shall submit to Director an unqualified year-end financial report (the "Annual Report") certified by an independent Certified Public Accountant or a year-end financial report certified by Permittee's chief financial officer if such officer is approved by the Director, showing Gross Receipts achieved with respect to the prior calendar year and identifying the location at the Airport where such Gross Receipts were derived. If such Annual Report shows that the total Rent actually paid by Permittee with respect the prior calendar year was less than the Rent payable with respect to such calendar year, then Permittee shall immediately pay to Port such deficiency, together with a delinquency charge and liquidated damages of the Fifty Dollar (\$50.00) fee provided for in Section 26 below, plus interest on such deficiency for each day from the date such Rent became due and payable until payment has been received by the Port, at the rate provided in Section 26 below. If such Annual Report shows that the Rent actually paid by Permittee with respect to such prior calendar year exceeded the Rent payable with respect to such calendar year, and if such Annual Report is acceptable to the Port, then on the issuance by Port to Permittee of a credit memorandum in the amount of such excess, such excess shall be applied as a credit against the amounts next coming due from Permittee to Port under this Permit. Notwithstanding anything to the contrary herein, in no event will the Rent payable to Port in any calendar year on a Concession Unit included in the Assigned Space be less than the Minimum Annual Guaranty for such Concession Unit for such calendar year. In addition, Permittee shall submit to Port such other financial or other reports as Director may reasonably require or as may be required by the FAA.

Any failure to timely deliver to Port any report required by this Section 13(3), excluding only delinquent reports for which a delinquency fee has already been paid by Permittee pursuant to the prior sentence, shall require payment by Permittee to Port, as liquidated damages, of a delinquency charge in the amount of Fifty Dollars (\$50.00), payable at the time the delinquent report is submitted to Port.

(4) Permittee shall maintain in a true and accurate manner and in accordance with generally accepted accounting principles, complete and accurate books and records as would normally be examined by an independent certified public accountant pursuant to generally accepted auditing standards in performing a separate audit or examination of Permittee's Gross

Receipts from each Concession Unit included in the Assigned Space. This includes, but not limited to: Financial statements, general ledgers, trial balances, subsidiary books of record, sales journals, daily or periodic summary reports, inventory and purchasing records, cash register or computer terminal tapes, POS records, sales invoices, bank deposit slips, bank statements, and tax reports filed with federal, state, county, city or other agencies. Such books and records shall contain records of Permittee's pertinent activity under this Permit in a form consistent with good accounting practice which may include, without limitation, electronic media compatible with computers available to the Port, computer generated hard copies or legible microfiche or microfilm copies. Such books and records shall be maintained in a form consistent with generally accepted accounting practices. Upon seven (7) calendar days' notice from Port, all such books and records shall be made available, as Permittee shall elect by written notice to Port given within such seven (7)-calendar day period, either at the Assigned Space, if any, or at the offices of the Port, for inspection by Port or through its duly authorized representatives at any time for up to seven (7) years after the calendar year to which such books and records pertain, whether or not the Term has expired or been earlier terminated; provided, however, that if prior to the expiration of such seven (7)-year period, any audit, review or investigation is commenced by the Port, or any claim is made or litigation is commenced relating to this Permit by the Port, such books and records shall continue to be maintained by Permittee, and Port shall continue to have the right to inspect such books and records in the manner stated above, until the audit, claim or litigation is finally resolved (including the determination of any and all appeals or the expiration of time for an appeal), whether or not the Term has expired or been earlier terminated. In the event that the Port determines, in its reasonable discretion, that any exclusions, deductions or allocations reducing Gross Receipts are not supported or substantiated by such books and records, all such amounts shall be deemed Gross Receipts for purposes of determining the Percentage Fees payable to the Port. The right to inspect shall include the right to photocopy said books, records and data as the Port determines in its discretion to be necessary or convenient in connection with its review or audit thereof. Any such inspection at the Assigned Space will be conducted during reasonable business hours and in such a manner and at such time as to not unduly interfere with the conduct of Permittee's business. In the event such books and records cannot be made available at the Assigned Space or at the offices of the Port, then Permittee shall pay for all reasonable and actual costs incurred by the Port in inspecting and auditing such books and records, including but not limited to travel, lodging and subsistence costs. Port shall further have the right, upon reasonable written notice to Permittee, to cause an audit to be made of the books and records of Permittee and its assignees and agents which relate to its operations at the Airport to determine the correctness of the Percentage Fees paid by Permittee hereunder. If, as a result of such audit conducted within any of the time periods permitted by this subsection, whether or not the Term has expired or been earlier terminated, it is established that Percentage Fees have been underpaid to Port, Permittee shall forthwith, upon written demand from Port, pay the difference to Port, together with a delinquency charge and liquidated damages of the Fifty Dollar (\$50.00) fee provided for in Section 26 below, plus interest on such underpaid amount for each day from the date such underpaid amount became due and payable until payment has been received by Port, at the rate provided in Section 26 below. Unpaid delinquency charges that accrue may be compounded monthly at the Port's sole election. Further, if such audit establishes that Permittee has understated and underpaid the total Percentage Fees due hereunder in any calendar year during the audit period by two percent (2%) or more, then all of the Port's reasonable and actual costs (including without limitation the costs of the audit firm designated by the Port's Chief Audit Officer to perform the audit, or the prorated salary of the

Port's auditor's, fringes and overhead allocation) incurred by the Port in auditing such books and records shall be paid by Permittee to Port. The delinquency charge, liquidated damages and audit costs provided by this Section 13(4) are in addition to all other remedies Port may have that are provided by this Permit or otherwise by law or in equity with respect to any payment that has become due and has not been paid. Further, if such audit establishes that Permittee has understated and underpaid total Percentage Fees due hereunder in any calendar year during the audit period by five percent (5%) or more, Port shall have the right to terminate this Permit as if Permittee had committed a default under Section 19 below that had not been cured prior to the expiration of any applicable grace period. The Permittee's obligations under this subsection shall survive the expiration or earlier termination of the Term, to the extent provided herein.

(5) Permittee agrees upon commencement of an audit by or on behalf of the Port pursuant to this Permit (an "Audit"), to toll for the Tolling Period (as defined below) all applicable periods of any statutes of limitations, laches or other defenses based on the Port's failure to file an action during the Tolling Period with regard to any matter arising out of the Audit. Such tolling shall commence on the Port's written notice to the permittee that the Audit has commenced (the "Tolling Effective Date") and shall end four (4) years after the date that the Port delivers to the Permittee a written copy of the Port's final findings on the Audit, or on such later date as may be set forth in a written agreement between the parties (the later of such dates is the "Tolling Termination Date," and the period commencing on the Tolling Effective Date and ending on the Tolling Termination Date is the "Tolling Period"). Permittee agrees not to assert the defense of laches, statute of limitations or any other defense based on the Port's failure to timely file an action during the Tolling Period with regard to any matter arising out of the Audit. Notwithstanding the foregoing, the tolling agreement set forth in this paragraph shall be inadmissible to determine liability or damages or any issue in dispute (other than the Tolling Period) under the Audit, whether before regulatory bodies, alternative dispute resolution proceedings or state or federal courts.

(6) Permittee shall install in each Concession Unit in the Assigned Space at least one cash register. "Cash register" shall mean a conventional mechanical cash register or computerized point-of-sale devices or other similar device serving a similar purpose. Such cash register and any other cash register used in each Concession Unit shall be of a type approved by Director in writing and shall register every transaction made in, on, about or from that Concession Unit, including every type of Gross Receipts, and the tape or digital record of each said cash register shall be accessible to and subject to inspection by Director or his/her agent. Port may, at its option, require all such cash registers to be locked and accessible only by the use of one key in the hands of Port. All cash receipts must include Permittee's identification thereon. Each sale or other transaction in each Concession Unit, including all receipts from such sale or other transaction, whether for cash, credit or otherwise, must be recorded at the time of each sale or other transaction, in the presence of the customer, in a cash register or cash registers serviced by an established agency approved by Director. Mechanical cash register(s) must have a non-resettable cumulative total, a detail audit tape, a transaction number with a four-digit capacity, an indicator readily visible to customers as the amount rung, and a seven-digit cumulative capacity or greater, as determined by Director based on the type of business, with a four-digit overrun counter. At Director's request, Permittee must furnish to Port a statement from an established agency that the transaction number, the cumulative total and the overrun counter have been sealed in a manner approved by Director. If computerized cash registers or other similar electronic devices are used,

that system must accurately record all sales at each Concession Unit and be no more subject to tampering than mechanical cash register(s). Upon the installation or removal of any cash register used in the Assigned Space, Permittee must immediately furnish to Director notice in writing stating make, model number, serial number and cumulative total reading and overrun counter reading of the cash register(s). Permittee shall require any repair agency employed to repair or replace any cash register in the Assigned Space to disclose and furnish to Port or its auditors any information obtained by the agency in the course of making such repair or replacement pertaining to said cash register. Each and every customer must be issued a receipt or sales slip for each transaction, which transaction must be recorded either on serially numbered sales slips or cash register tapes. Port shall have the right during business hours to examine the totals of the cash register(s) used in the Assigned Space and to inspect for compliance with this Section 13.

(7) Strong internal control procedures must be in place to ensure that all cash receipts are adequately safeguarded, deposited timely and recorded accurately in the books of Permittee and all of its approved sublessees. All cash receipts must include the identification of Permittee or its approved sublessee. All cash receipts must be recorded and receipted immediately in the presence of the customers with either cash register receipts or a pre-numbered official receipt of the Permittee or its approved sublessee. All cash must be kept in a secure location and must not be left unattended any time during the day. All cash receipts must be deposited intact daily. Under no circumstances are cash receipts to be used for making loans, advances or to pay expenses. The number of individuals authorized to receive and handle cash must be limited. There must be adequate segregation of duties between cash receiving, depositing and recording function. A supervisor must compare the record of all cash receipts with the amounts deposited. Any cash shortage or overage must be properly accounted for. Cash receipts must be reconciled regularly to the general ledgers and bank statements to ensure that they have been completely recorded and correctly coded to the proper accounts.

(8) Permittee shall include the provisions of this Section 13 in each sublease approved by the Port pursuant to Section 18 below, and Permittee shall require each of its sublessees to comply with such provision of such sublease.

Section 14. **Aviation Operations.**

Permittee releases the Port from any present or future liability whatsoever and covenants not to sue the Port for damages or any other relief based directly or indirectly upon noise, light, vibrations, smoke, air currents, electronic or other emissions or flight (including overflight of the Assigned Space) occurring as a result of aviation or airport or airport-related operations at or otherwise associated with the Airport, said release and covenant to include, but not be limited to claims (known or unknown) for damages for physical or emotional injuries, discomfort, inconvenience, property damage, death, interference with use and enjoyment of property, nuisance, or inverse condemnation or for injunctive or other extraordinary or equitable relief. It is further agreed that the Port shall have no duty to avoid or mitigate such damages by, without limitation, setting aside or condemning buffer lands, rerouting air traffic, erecting sound or other barriers, establishing curfews, noise or other regulations, relocating airport facilities or operations or taking other measures, except to the extent, if any, that such actions are validly required by governmental authority.

The Port reserves from the Assigned Space an easement for flight of aircraft in or adjacent to the airspace above the Assigned Space and for the existence and imposition over, on and upon said parcel of noise, light, vibrations, smoke, air currents, electronic or other emissions, discomfort, inconvenience, interference with use and enjoyment, and any consequent reduction in market value which may occur directly or indirectly as a result of aviation, airport or airport-related operations at or otherwise associated with use of the Airport. Permittee accepts the Assigned Space subject to the risks and activities hereinabove described.

Section 15. **Indemnification.**

(1) Permittee agrees to indemnify, defend and hold completely harmless Port (including, without limitation, members of the Port's Board of Commissioners), officers, employees and agents, from and against all liabilities (including, without limitation, liability under the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC Section 9601, et seq., or any other applicable Laws, including without limitation, the ADA Requirements), Losses, suits, claims, demands, judgments, damages, fines, penalties, costs and expenses (including all costs for investigation and defense thereof, including, but not limited to, court costs, expert fees and paralegal and attorneys' fees prior to institution of legal proceedings at both trial and appellate levels, and in any mediation or arbitration agreed to by Port), which may be incurred by, charged to or recovered from any of the foregoing (i) by reason or on account of damage to or destruction of any property of Port, or any property of, injury to or death of any person resulting from or arising out of the Permittee's construction of any of the Alterations, or its use, occupancy, maintenance or repair of the Assigned Space or any improvements thereto, of Permittee's operations thereon or anywhere else on the Airport, or the acts or omissions of Permittee's officers, agents, employees, contractors, subcontractors, sublessees, invitees, vendors, suppliers or licensees, regardless of where the damage, destruction, injury or death occurred, unless such liability, loss, suit, claim, demand, judgment, damage, fine, penalty, cost or expense was caused solely by Port's gross negligence or willful misconduct, or (ii) arising out of any allegation that Permittee, or the Port in concert with Permittee, has infringed on any Federal, state, or common law patent, trademark, copyright, or trade secret rights, or violated any Federal or state labor laws, or (iii) resulting from or arising out of the failure of Permittee to keep, observe or perform any of the covenants or agreements in this Permit to be kept, observed or performed by Permittee. In carrying out its obligations hereunder, Permittee shall use counsel acceptable to the Port Attorney.

(2) The foregoing provisions of this Section 15 are not intended, and shall not be construed, to limit in any manner whatsoever the protection or benefits to which Port otherwise would be entitled as an additional insured under any liability insurance maintained or required to be maintained by Permittee under this Permit.

(3) The provisions of this Section 15 shall survive the expiration or earlier termination of the Term with respect to any acts or omissions occurring during the Term.

Section 16. **Waiver of Damage.**

Permittee hereby expressly waives and releases any cause of action or right of recovery for compensation for any and all loss or damage sustained by reason of any fire, defect,

deficiency or impairments of any of the services in or to the Assigned Space or the Airport, including, but not limited to, electrical power, gas, telephone service, steam, heating, air conditioning, water supply, drainage or sewage systems, or from wires leading to or inside of any space or structure, or by reason of any loss resulting from the failure of any such system or facility unless such loss or damage is due to the willful misconduct of Port or its officers, agents or employees. It is understood that Permittee shall take such steps as Permittee may consider necessary to protect Permittee's Trade Equipment from any damage that may be caused to such equipment in the event of failure or interruption of any such utility services. Whenever the Port shall find it necessary for the purpose of making repairs or improvements to any utility supply system it shall maintain, it shall have the right to suspend temporarily the delivery of gas, electricity, water or other utility service, or any thereof, but in all such cases (except in the event of an emergency) reasonable notice of such suspension will be given to Permittee.

The Port and its Board of Port Commissioners and its officers, employees and agents shall not be liable to Permittee or to any third party claiming through Permittee for any loss of business or any indirect, incidental, special or consequential damages or lost profits arising out of or relating to this Permit or the operation of Permittee at the Airport or for any other cause.

Section 17. **[RESERVED]**

Section 18. **Assignment and Subletting.**

(1) Notwithstanding any provision of this Permit to the contrary, Permittee shall have no right to sublease or assign all or any portion of the Assigned Space to any third party (except to sublessees approved by Port's Manager of Aviation Properties that were identified in the Proposal) until after Permittee has completed construction of all of the improvements that Permittee is required to construct pursuant to Section 1(2)(a) above.

(2) Except as hereinafter in this Section 18 expressly provided, and subject to the limitations in Section 18(1), Permittee shall not, either directly or indirectly, voluntarily or involuntarily, sublease, assign, hypothecate, encumber or transfer this Permit or any interest therein or right granted thereby, or license the use of same, or permit or suffer any other person or entity to occupy, use or manage (except management by Permittee's employees) the same, in whole or in part, without the prior written consent of the Port's Manager of Aviation Properties (for subleases), or the prior written consent of the Port evidenced by resolution of its Board (for assignments). The Port shall consider a request for its consent if the use of each Concession Unit in the Assigned Space under such sublease or assignment is a Permitted Use of such Concession Unit under Paragraph B of this Permit. No sublease under this Permit shall be valid unless and until the form of such sublease is approved, in writing, as to form and legality by the Port Attorney. No approval by the Port of any sublease pursuant to the provisions of this Section 18 shall result in any privity of contract between the Port and any such sublessee, and the Port shall have no obligations to such sublessee arising under any such sublease, and no liability to sublessee arising out of Permittee's breach of any of its obligations under such sublease, or violation of the sublessee's rights under Federal, state or common law.

(3) Except as hereinafter in this Section 18 expressly provided, no modification of any sublease, assignment or other transfer after the Port's initial consent shall be effective without the prior written approval of the Port's Manager of Aviation Properties (for subleases), or of the Port (for assignments or other transfers), by resolution of its Board if required under the circumstances. In case of a transfer by reason of death the transferee shall notify the Port in writing of the transfer within 60 days after the death.

(4) Neither this Permit nor any interest therein or right granted thereby shall be assignable or transferable in proceedings in attachment, garnishment or execution against Permittee, or in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against Permittee or by any process of law, and possession of the whole or any part of the Assigned Space shall not be divested from Permittee in such proceedings or by any process of law, without the prior written consent of the Port evidenced by resolution of its Board, which consent shall not unreasonably be withheld or delayed if the use of each Concession Unit included in the Assigned Space under such assignment is a Permitted Use of that Concession Unit under Paragraph B of this Permit.

(5) Any breach of the provisions of this Section 18 shall constitute a default and shall cause this Permit to terminate immediately at the option of the Port after not less than 10 days' written notice to Permittee.

(6) The Port's consent to or waiver of its option to terminate this Permit in the event of a default on account of any sublease, assignment, transfer, occupation or use requiring prior written Port consent shall not be construed or deemed to be a waiver of the restrictions hereinabove contained or to be a consent to or waiver of objections to any subsequent sublease, assignment, transfer or occupation or use by another person.

(7) Permittee and the Port acknowledge and agree that the rights retained by and granted to the Port pursuant to this Section 18 constitute a material part of the consideration for entering into this Permit and constitute a material and substantial inducement to the Port to enter into this Permit at the rental, for the terms, and upon the other covenants and conditions contained in this Permit, and that the acceptability of Permittee, and of any assignee or other transferee of any right or interest in this Permit, involves the exercise of broad discretion by the Port in promoting commerce, navigation and shipping in the Port area of the City. Therefore, Permittee agrees that the Port may condition its consent, if required hereunder, to a proposed assignment, subject to such provisions as are reasonable to protect the rights and interest of the Port hereunder and to assure promotion of aviation, commerce, navigation and shipping.

(8) Permittee agrees that its personal business skills and philosophy, its experience in constructing improvements like those it is required to construct under this Permit, and its experience in complying with the security mandates described in Section 39 below, were an important inducement to the Port for entering into this Permit and that the Port may reasonably object to the transfer of the Assigned Space to another whose proposed use, while a Permitted Use, would involve a different quality, manner or type of business skills and experience than that of Permittee, or which would result in the imposition upon the Port of any new or additional requirements under the provisions of any applicable Laws, including without limitation the ADA Requirements.

(9) Permittee agrees that as a condition to the Port's consideration of any request by Permittee for approval of any sublease, assignment or other transfer of this Permit not provided for in the Proposal, that Permittee shall deliver to the Port a nonrefundable processing fee of not less than \$5,000.00. The Port within 10 days of receipt of said fee may give to Permittee notice that said fee shall be increased by a sum, not to exceed an additional \$5,000.00, that the Port in its sole and absolute discretion determines is necessary to cover the anticipated Port administrative costs and expenses, including labor, in processing and investigating Permittee's request. In addition, if the Port determines in its sole and absolute discretion that it requires either an environmental assessment of the Property (consisting of, but not limited to, visual inspection, historical or document review and/or subsurface investigation) and/or environmental documentation or reports in connection with such proposed assignment or other transfer of this Permit, Permittee shall reimburse the Port for all reasonable costs incurred by the Port in connection therewith (including, but not limited to, internal Port costs incurred in connection with such environmental assessment). Permittee agrees that unless and until said fee, and any requested additional fee, is delivered to the Port, Permittee shall be deemed to have made no request to the Port to the assignment, sublease or other transfer of this Permit. The minimum and maximum fees shall be adjusted upon the commencement of each successive year of this Permit, in the same percentage as the change in the last Index published prior to the date of each succeeding one year period from the last such Index published prior to the Commencement Date; provided that in no event shall the adjusted fees be less than the theretofore existing fees.

(10) In addition, Permittee's request for consent to any proposed sublease (other than subleases that were identified in the Proposal, for which only the documents and information described in (iii) below must be provided), assignment or other transfer shall not be deemed to have been submitted to the Port unless and until Permittee, except as and to the extent excused by the Port in its sole and absolute discretion, shall have submitted to the Port, in writing, the following information and documents:

(i) The name of the proposed sublessee, assignee or other transferee;

(ii) The nature of proposed sublessee's or assignee's business to be carried on in the Assigned Space.

(iii) A copy of the proposed sublease, assignment or transfer, and a description of the full consideration for such sublease, assignment or transfer;

(iv) A balance sheet of the proposed assignee as of a date within at least 90 days of the request for the Port's consent;

(v) Audited financial statements of the proposed assignee (or the principals thereof, in the case of a newly formed entity) for the 2-year period preceding the request for the Port's consent, certified by an independent certified public accountant, and unaudited financial statements for any stub period preceding the request for the Port's consent, or if they are not available, unaudited financial statements for such periods

certified by the chief financial officer of the proposed assignee (or the principals thereof, in the case of a newly formed entity);

(vi) A statement in reasonable detail as to the business experience of the proposed assignee (or the principals thereof, in the case of a newly formed entity) during the 5-year period preceding the request for the Port's consent;

(vii) A copy of the proposed assignee's business and marketing plan;

(viii) Permittee's certificate certifying to the best of its knowledge (a) that this Permit is unmodified and in full force and effect (or, if there have been modifications, that this Permit is in full force and effect, as modified, and stating the modifications), (b) the commencement and expiration dates of the Permit Term and the dates, if any, to which the Rent has been paid, (c) whether there are then existing any charges, offsets or defenses against the enforcement by the Port or Permittee of any agreement, covenant or condition hereof on the part of the Port or Permittee to be performed or observed (and, if so, specifying the same), and (d) whether there are then existing any defaults by the Port or Permittee in the performance or observance by the Port or Permittee of any agreement, covenant or condition hereof on the part of the Port or Permittee to be performed or observed and whether any notice has been given to the Port or Permittee of any default which has not been cured (and, if so, specifying the same); and

(ix) Such other information and documents relating to the proposed sublessee's or assignee's business, experience and finances as the Port may reasonably request.

It is understood and agreed that the Port's consent to a requested sublease or assignment or other transfer, shall be conditioned upon the Port's receipt of each of the following:

- A. In the case of a proposed assignment, a full and complete executed copy of all documents to effectuate the assignment, together with a document in recordable form whereby the proposed assignee shall expressly assume all the covenants and conditions of this Permit and shall be in a form acceptable to Port.
- B. In the case of any other proposed encumbrance or proposed sublease or transfer, a full and complete executed copy of all documents to effectuate the encumbrance, sublease or transfer, which documents shall incorporate directly or by reference all of the

provisions of this Permit (except for the provisions of Section 6 of this Attachment "A" which may or may not be incorporated as Permittee may elect). The form of the proposed sublease shall satisfy the applicable requirements of Paragraph I.1(a) of this Permit.

(11) Unless otherwise provided by resolution duly adopted by the Board in its sole and absolute discretion, no sublease, assignment or any activity on the Assigned Space by any person other than Permittee, even with the Port's consent, shall relieve Permittee of its rental or other obligations of any nature whatsoever (including but not limited to indemnification and environmental obligations) hereunder, and Permittee shall continue to be liable as a principal and not as a guarantor or surety, to the same extent as though no sublease or assignment, and no such activity on the Assigned Space by any person other than Permittee, had been made or occurred, and as though all conduct of the assignee or such other person was Permittee's conduct. Specifically, in case of any assignment, the following shall apply, unless otherwise provided in such resolution of the Board:

(i) Permittee shall be and remain liable as a principal, without the necessity of any suit or proceedings on Port's part of any kind or nature whatsoever against Permittee and without the necessity of any notice of nonpayment, nonperformance, non-observance or default to which the Permittee might otherwise be entitled, all of which the Permittee hereby expressly waives. Permittee hereby expressly agrees that the validity of Permittee's said liabilities as a principal hereunder shall not be terminated, affected, diminished or impaired by reason of the assertion or the failure to assert by Port against any assignee of any of the rights or remedies reserved to the Port pursuant to the provisions of the Permit or by the relief of any assignee from any of the assignee's obligations under the Permit or otherwise by (a) the release or discharge of any assignee in any creditors' proceedings, receivership, bankruptcy or other proceedings, (b) the impairment, limitation or modification of the liability of any assignee or the estate of any assignee in bankruptcy, or of any remedy for the enforcement of any assignee's liability under the Permit, resulting from the operation of any present or future provision of the 2005 Bankruptcy Reform Act or other statute or from the decision in any court; or (c) the rejection or disaffirmance of the Permit in any such proceedings. The liability of Permittee as a principal shall in no way be affected, modified or diminished by reason of any assignment, amendment, renewal, supplement, modification or extension of the Permit or by reason of any modification or waiver of or change in any of the terms, covenants, conditions or provisions of the Permit, or by reason of any extension of time that may be granted by Port to any assignee or a changed or different use of the Assigned Space consented to in writing by the Port, or by reason of any dealings or transactions or matters or things occurring between Port and any assignee whether or not notice thereof is given to Permittee; and

(ii) The Port's consent to any further assignment or assignments, and successive assignments by any assignee and the assignee's assigns of the Permit, made either with or without notice to the Permittee, shall in no manner whatsoever release the Permittee from any liability as principal.

(12) For purposes of this Section 18, an assignment shall include, if the Permittee is a corporation (except if Permittee is a corporation whose stock is publicly traded), a limited liability company or other state-chartered entity, any dissolution, merger, consolidation or other reorganization of Permittee, or the sale, issuance or other transfer of a controlling percentage of the capital stock or other units representing ownership interests of Permittee, or the sale of more than 35% of the value of the assets of Permittee whether in one conveyance or cumulatively in the aggregate in more than one conveyance. The phrase "controlling percentage" means the ownership of and the right to vote, stock or other units representing ownership interests possessing at least 35% of the total combined voting power of all classes of Permittee's capital stock issued, outstanding, and entitled to vote for the election of directors, or at least 35% of the total combined voting power of all classes of other units representing ownership interests entitled to vote for the election of managers or entitled to vote on management matters of an entity managed by its members. If Permittee is a joint venture or a limited or general partnership, an assignment for purposes of this Section 18 shall include a withdrawal, or change, voluntary, involuntary, or by operation of law, of any general partner, or of any limited partner owning more than 35% of the limited partnership interests in that limited partnership, or a dissolution of Permittee or any general partner of Permittee, or a change in control of any general partner of Permittee or a change in control of any limited partner of Permittee owning more than 35% of the limited partnership interests in Permittee. If Permittee is a limited liability company, an assignment for purposes of this Section 18 shall include a change in the manager (or a change in control of the manager), if such entity is manager managed, or a transfer of an interest in the limited liability company that results in a change in control of such entity, if such entity is member managed. If a "controlling percentage" of Permittee is owned by another entity, or if another entity otherwise controls Permittee (such entity is hereafter the "Parent"), then an assignment for purposes of this Section 18 shall include any transaction involving the Parent that would have been an assignment for purposes of this Section 18 if that transaction had involved Permittee.

(13) Permittee shall indemnify and defend Port for, from and against any matters which arise as a result of Permittee's failure to disclose any relevant information about the Assigned Space to any assignee or sublessee of the Permittee.

(14) In the event that Permittee assigns this Permit, as a reasonable condition to the Port's consent to such assignment, Permittee shall pay to the Port any Bonus Value, as hereafter defined. "Bonus Value" means all consideration payable by or on behalf of an assignee to Permittee (including key money, bonus money and any payment in excess of fair market value for (i) services rendered by Permittee to or on behalf of an assignee or (ii) for assets, fixtures, inventory, equipment, furniture or improvements transferred by Permittee to or on behalf of an assignee in connection with an assignment). Such consideration shall be allocated between the Assigned Space described in Paragraph D of this Permit (excluding any improvements constructed by Permittee thereon), and the improvements constructed by Permittee pursuant to Section 1(2), based on their respective fair market rental value at the time of the assignment, as agreed to in

writing by the parties; provided, however, that if the parties have not reached such agreement within thirty (30) days after the Port's written request, then the fair market rental value shall be determined as follows: Each party, at its cost and by giving notice to the other party, shall appoint a real estate appraiser with experience appraising airport property to appraise and submit an opinion separately stating the fair market rental value of the Assigned Space (excluding any improvements constructed thereon by Permittee) and the fair market rental value of such improvements. If a party does not appoint an appraiser within ten (10) days after the other party has given notice of the name of its appraiser, the single appraiser appointed shall be the sole appraiser and that appraiser's opinion of the fair market rental value of the Assigned Space and the improvements shall be conclusive on the parties. If the two appraisers are appointed by the parties as stated in this Section 18(14), they shall meet promptly and attempt to select a third appraiser meeting the qualifications stated in this subsection within ten (10) days after the last day the two appraisers are appointed. If they are unable to agree on the third appraiser, either of the parties to this Permit by giving ten (10) days' written notice to the other party may apply to the American Arbitration Association for the selection of a third appraiser who meets the qualifications stated in this Permit. Each of the parties shall bear one-half of the cost of appointing the third appraiser and one-half of the third appraiser's fee. The third appraiser, however selected, shall be a person who has not previously acted in any capacity for either party. Within sixty (60) days after the selection of the third appraiser, each of the appraisers shall submit to each party the appraiser's report and opinion separately stating the fair market rental value of the Assigned Space (excluding any improvements constructed thereon by Permittee) and the fair market rental value of such improvements, and the median opinion shall be the opinion used under this Section 18(14). All appraisers appointed under this Section 18(14) shall hold the MAI designation of the American Institute of Real Estate Appraisers or its successor organization.

Section 19. **Default.**

(1) In the event that (a) Permittee shall fail to remit any payment due to Port under this Permit or shall fail to submit any financial report required to be submitted in connection therewith, within five (5) days after the due date thereof, or (b) Permittee shall fail, within the applicable time period provided in Section 27 below, to post any additional Performance Deposit required thereunder, or (c) if Permittee commits an Event of Default under any other agreement between Permittee and the Port, or (d) if Permittee makes a general arrangement or assignment for the benefit of creditors or becomes a "debtor" as defined in 11 U.S.C. § 101 or any successor statute (unless in the case of a petition filed against Permittee, the same is dismissed within 60 days), or (e) if a trustee or receiver is appointed to take possession of substantially all of Permittee's assets located in the Assigned Space or of Permittee's interest in this Permit, where possession is not restored to Permittee within 30 days, or (f) if Permittee shall fail three times within any period of one hundred eighty (180) consecutive days to fulfill any of its obligations under this Permit, which failure is set forth in a written notice from Port to Permittee, whether or not such failure is corrected within any applicable grace period provided in this Permit, or (g) if Permittee breaches its obligations under Section 6 or Paragraph N of this Permit, or (h) if a sublessee under any sublease with Permittee breaches its obligation under such sublease and Permittee does not satisfy the requirements in the next paragraphs of this Section 19(1), or (i) in the event that Permittee or any of its officers, employees, agents, invitees or licensees violates any other term, covenant or condition of this Permit and (except where otherwise expressly provided in this Permit) such

violation continues for ten (10) days after Port has given written notice thereof to Permittee, then in any such event Permittee will be in default under this Permit.

(2) On the occurrence of any such default, the Port, in addition to its other remedies available under the terms of this Permit or pursuant to law or in equity, may at any time thereafter, with or without notice or demand and without limiting Port in the exercise of any right or remedy which Port may have by reason of such default or breach:

(a) Terminate Permittee's right to possession of the Assigned Space by any lawful means, in which case this Permit shall terminate and Permittee shall immediately surrender possession of the Assigned Space to Port. In such event Port shall be entitled to recover from Permittee all damages incurred by Port by reason of Permittee's default including, but not limited to,

(x) The worth at the time of award of the unpaid Rent and any other sums equivalent to rent required to be paid by Permittee under this Permit that had been earned at the time of termination;

(xi) The worth at the time of award of the amount by which the unpaid Rent and any other sums equivalent to rent required to be paid by Permittee under this Permit that would have been earned after termination until the time of award exceeds the amount of such loss of Rent that Permittee proves could have been reasonably avoided;

(xii) The worth at the time of award of the amount by which the unpaid Rent and any other sums equivalent to rent required to be paid by Permittee under this Permit for the balance of the Term after the time of award exceeds the amount of such loss of Rent that Permittee proves could have been reasonably avoided; and

(xiii) Any other amounts permitted by law to compensate the Port for detriment caused by Permittee's default or which in the ordinary course of events would be likely to result therefrom, including, but not limited to, the costs and expenses incurred by the Port (A) in retaking possession of the Assigned Space, (B) in cleaning and making repairs of and alterations to the Assigned Space reasonably necessary to return the Assigned Space to good condition for the Permitted Uses and in otherwise preparing the Assigned Space for reletting, (C) in removing, transporting, and storing any of Permittee's property left at the Assigned Space although the Port shall have no obligation to remove, transport, or store any of such property, and (D) in reletting the Assigned Space, including, but not limited to, brokerage commissions, advertising costs, and attorney fees.

The "worth at the time of award" of the amounts referred to in items (i) and (ii) immediately above is computed by allowing interest at the maximum rate permitted by law. The "worth at the time of award" of the amount referred to in item (iii) immediately above is computed

by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

(b) Avail itself of the remedy described in California Civil Code Section 1951.4 (lessor may continue Permit in effect after Permittee's breach and abandonment and recover rent as it becomes due, if Permittee has right to sublet or assign, subject only to reasonable conditions or limitations, which Permittee conclusively and forever agrees it has). If such conditions or limitations become unreasonable, Port may waive such conditions or limitations and continue to avail itself of this remedy.

(c) In case of abandonment or vacating of the Assigned Space by Permittee, if the Port elects not to terminate the Permit, Permittee hereby irrevocably appoints the Port the agent of Permittee to enter upon the Assigned Space and remove any and all persons and/or property whatsoever situated upon the Assigned Space, and place all or any portion of said property in storage for account of and at expense of Permittee. In such case the Port may relet the Assigned Space upon such terms as to it may seem fit, and if a sufficient sum shall not thus be realized after paying all expenses enumerated in items A, B, C, and D in Section 19(2)(a)(iv) to satisfy the Rent and other sums herein agreed to be paid, Permittee agrees to satisfy and pay any deficiency, and to pay such expenses. Permittee hereby exempts and agrees to save harmless the Port from any Losses arising out of or caused (except to the extent caused solely by the gross negligence or intentional misconduct of the Port or its agents or contractors) by any such entry or re-entry upon said Assigned Space and/or the removal of persons and/or property and storage of such property by the Port or its agents, using defense counsel acceptable to the Port Attorney.

(d) Pursue any other remedy now or hereafter available to Port under the laws, in equity, or in judicial decision of the State of California.

(3) Permittee hereby expressly waives any notice of default from Port not expressly provided for in this Permit as a prerequisite to Port's termination of this Permit or its repossession of the Assigned Space. Any partial payment of any payment due to the Port under this Permit from Permittee and accepted by the Port shall not render ineffective any notice given by the Port to the Permittee pursuant to the terms of this Permit or California Code of Civil Procedure Section 1161, et. seq., or any successor statute thereto.

Section 20. **End of Term.**

At the expiration or earlier termination of the Term, Permittee shall deliver to Port possession of the Assigned Space and, except as otherwise expressly provided in this Permit, all of the fixtures and equipment thereon in their original condition in all respects, reasonable use and wear excepted (and except as otherwise expressly provided in this Permit, Permittee agrees to reimburse Port for the cost of any alterations, replacement, repairs or cleaning required to restore the same to such condition). All Alterations made pursuant to Section 1 of this Attachment "A" shall immediately become Port's property and, at the expiration or earlier termination of the Term, shall remain in the Assigned Space without compensation to Permittee unless Port advises Permittee that Permittee will be required to remove the same, in which event, at Port's election, Permittee shall promptly restore the Assigned Space to its condition prior to the installation of

such Alterations. At Port's election, Permittee shall remove all cabling and wiring, including telephone lines located within the Assigned Space, which are in excess of that determined by the Port to be required for normal use of the Assigned Space. In addition, Permittee shall repair, to the Port's reasonable satisfaction, all damage to the Assigned Space and the Airport resulting from Permittee's removal of such Alterations, cabling and wiring. Permittee's obligations under this Section 20 shall survive the expiration or earlier termination of the Term.

Section 21. **Holding Over.**

(1) If Permittee or any assignee or sublessee thereof continues to occupy the Assigned Space after the Term and the Port has not objected thereto, such holding over shall be deemed a month-to-month Permit terminable on thirty (30) days' notice given by either party (the "Hold-Over Permit") on the same terms and conditions as provided in this Permit, except (a) the Minimum Annual Guaranty and the Percentage Fees applicable to the Concession Units shall be fixed by the Director from time-to-time by giving Permittee written notice thereof at any time not less than seven (7) days before the expiration of any monthly period, to be effective at the expiration of such month, and (b) the Director, upon thirty (30) days' written notice to Permittee, may change any of the other terms and conditions of the Hold Over Permit.

(2) Notwithstanding the foregoing, nothing contained in this Permit shall give Permittee any right to occupy the Assigned Space at any time after expiration of the Term. Permittee acknowledges and agrees that upon such expiration or termination, it shall not be entitled to any relocation assistance or payment pursuant to the provisions of Title 1, Division 7, Chapter 16, of the Government Code of the State of California (Sections 7260 et seq.) or pursuant to any other laws or regulations with respect to any relocation of its business or activities upon the expiration of the Term or upon the termination of any holdover tenancy pursuant to this Section 21, and Permittee hereby waives and releases to the Port all rights, if any, to which Permittee may be entitled under said provisions or other law or regulations.

(3) If Permittee or any assignee or sublessee thereof shall continue to occupy the Assigned Space after the expiration or earlier termination of the Term and the Port has objected thereto, then the Port shall be entitled to double the Rent specified in Paragraph E of this Permit, and acceptance by Port of any sums after any such objection shall not constitute a renewal of this Permit or a consent to such occupancy, nor shall it waive Port's right of re-entry or any other right available to it under the laws of California or the provisions of this Permit.

(4) Permittee shall continue to be obligated to pay Percentage Fees during any period that Permittee or any assignee or sublessee thereof continues to occupy the Assigned Space after the expiration or earlier termination of the Term.

Section 22. **Tax Treatment.**

Permittee agrees and hereby makes the irrevocable and binding election not to take for federal income tax purposes investment tax credits or depreciation on assets financed with the proceeds of tax exempt Port bonds or notes, unless the Port otherwise expressly agrees in advance in writing signed by the Port. Permittee also agrees at the Port's request from time to time to

execute such additional documents reasonably requested by the Port or its bond counsel to effectuate and/or evidence said agreement and election. This agreement and election, and the obligation to execute said documents relative thereto is binding on each successor or assignee of Permittee.

Section 23. **Intentionally Omitted.**

Section 24. **Notices, Approvals or Consents.**

Any notice, approval or consent permitted or required to be given to Permittee hereunder shall be in writing and delivered either by hand to the Assigned Space, or by nationally recognized overnight courier service, or by U.S. Certified Mail, Return Receipt Requested, postage prepaid, to Permittee's address contained in Paragraph A of this Permit or to such other address in the United States as Permittee may, by written notice to the Port given in accordance with the requirements of this Section 24, direct from time to time. Any notice permitted or required to be given to Port hereunder shall be in writing and delivered either by hand to the Office of the Manager, Aviation Properties Department, Oakland International Airport, Oakland, California, provided Permittee obtains a written acknowledgment of receipt therefor from Port, or by nationally recognized overnight courier service, or by U.S. Certified Mail, Return Receipt Requested, postage prepaid, addressed as follows:

Manager, Aviation Properties Department
Oakland International Airport
1 Airport Drive – Terminal 1
Oakland, California 94621

with a copy to: Port Attorney
Port of Oakland
530 Water Street
Oakland, California 94607

or such other address as Port may, by written notice to Permittee given in accordance with the requirements of this subsection, direct from time to time. Any such notice, approval or consent shall be deemed given on receipt if delivered by hand or three (3) days after mailing provided such hand delivery or mailing was made in accordance with the requirements of this Section 24.

Section 25. **Sums Paid by Port.**

If Port has paid any sum or sums or has incurred any obligation or expense which Permittee has agreed to pay or reimburse Port for, or if Port is required or elects to pay any sum or sums or incurs any obligation or expense because of the failure, neglect or refusal of Permittee to perform or fulfill any of the terms or conditions of this Permit, then the same shall be deemed additional rent due hereunder and Permittee shall reimburse Port therefor promptly upon demand.

Section 26. **Delinquency Charge.**

Any sums payable by Permittee to Port under any provision of this Permit which are not paid for a period of 10 calendar days (30 calendar days for unpaid sums for utilities) after it becomes due and payable shall be subject to a delinquency charge, for violation of this Permit and as liquidated damages, of \$50.00, plus a sum equal to 0.05% (five one-hundredths of one percent) per day of such delinquent payment for each day from the date such payment became due and payable until payment has been received by Port, but not to exceed the maximum interest rate permitted by applicable law. Unpaid delinquency charges that accrue may be compounded monthly at the Port's sole election. The delinquency charges provided by this Section 26 are in addition to all other remedies that Port may have that are provided by this Permit or otherwise by law or in equity with respect to any payment that has become due and has not been paid.

Section 27. Performance Deposit.

(1) Permittee shall deposit the Performance Deposit required under Paragraph F of this Permit with Port upon execution of this Permit, which sum (and any additions thereto required hereunder) shall be by cash or irrevocable letters of credit, each in a form and from an issuer acceptable in Port's sole discretion. Any letter of credit provided as a Performance Deposit must be in the form of the letter of credit attached hereto as Exhibit "11", or such successor form as Port may from time to time require by written notice to Permittee, and shall be confirmed by and payable at the counters of a bank in San Francisco, California, Oakland, California, or at another location near the nine (9) county San Francisco Bay Area, California, as may be approved by the Port's Deputy Chief Financial Officer in the exercise of his or her sole discretion. (Letters of credit issued through correspondent banks will not be accepted.) Unless the Port receives a written extension or replacement of the letter of credit at least ninety (90) days before the end of the term of the letter of credit, the Port without notice to Permittee, may draw on the letter of credit and retain all proceeds as a cash Performance Deposit pursuant to the terms of this Section 27. The Performance Deposit shall be retained by Port as security for the faithful performance of Permittee's obligation hereunder and under any other agreement between Port and Permittee. Permittee shall be obligated, within fifteen (15) days after Port's written demand, to increase the amount of the Performance Deposit by the same percentage increase, if any, in the amount of the total Minimum Annual Guaranty applicable to all Concession Units included in the Assigned Space, determined pursuant to Paragraph E.1(b) of this Permit, or to such greater amount required by the Airport Rules, Policies and Regulations. Port shall have the right, but not the obligation, to apply said Performance Deposit to the payment of any sum due to Port which has not been paid, including, but not limited to, reimbursement of any expenses incurred by Port in curing any default of Permittee, or to the cost of restoring the Assigned Space or its furnishings, fixtures or equipment to their original condition, reasonable use and wear excepted, or to Port's future rent damages arising out of the termination of this Permit because of Permittee's default. In the event that all or any portion of the Performance Deposit is so applied, Permittee shall be obligated, within five (5) days after Port's written demand, to remit to Port the amount required to restore the Performance Deposit to the full amount required by this Section 27. If said Performance Deposit shall not have been applied for any of the foregoing purposes, it shall be returned to Permittee, without interest, within ninety (90) days after the end of the Term or the end of any hold-over as described in Section 21 above, whichever is later (as such ninety (90) day period may reasonably be extended by Port by written notice to Permittee to allow Port to determine if Permittee has satisfied all of its obligations under Section 32 of this Permit). The Port will not pay any interest on the Performance

Deposit. Permittee hereby expressly waives the protections of California Civil Code Section 1950.7.

(2) In the event that Permittee has another agreement or other agreements with the Port that requires or require Permittee to maintain a deposit with the Port, Permittee, at its election may satisfy the deposit requirements with a single non-cash deposit in the form acceptable to the Port, provided that: (i) the deposit instrument describes each agreement to which it is intended to apply, (ii) the deposit amount is not less than the aggregate of deposit requirements for all of the agreements to which the instrument applies and (iii) if the deposit is insufficient to satisfy the requirements of any of the agreements to which it applies, the Permittee shall be in default of each and every agreement to which the deposit applies.

Section 28. Brokerage Commissions.

Unless otherwise expressly provided in a written addendum to this Attachment "A" executed by Port and Permittee, Permittee warrants that no real estate commission is payable by Port to any person or entity in connection with this Permit, and Permittee hereby agrees to indemnify, defend and hold Port completely harmless from and against any and all liabilities, costs and expenses (including all costs for investigation and defense thereof, including, but not limited to, court costs, expert fees and paralegal and attorneys' fees prior to institution of legal proceedings at both trial and appellate levels, and in any mediation or arbitration agreed to by Port) incurred by Port as a result of any claims therefor.

Section 29. Port's Reserved Rights.

(1) Port reserves the right for itself and others to utilize and maintain existing utility easements over, under, across and through the Assigned Space, and to run water, electrical, telephone, gas, drainage, communications and other lines over, under, across and through the Assigned Space and to grant necessary utility easements therefor. Port shall also have the right, at any time and from time to time, to cause maintenance to be performed and repairs to be made in and to the Assigned Space and the fixtures, equipment and mechanical systems located therein. The Port also reserves to itself and the right to grant to others in the future nonexclusive easements over outside portions of the Assigned Space for purposes of access to adjacent Port property (including, without limitation, access to improvements owned by others such as buildings owned by Port tenants on Port land and access for purposes such as maintenance, installation or repair of utilities, use of restrooms, and construction, maintenance, repair, replacement or reconstruction of improvements or facilities located on such Port property.) Port shall also have the right, at any time and from time to time, to access the Assigned Space upon prior reasonable notice to the Permittee, except in the case of an emergency. The Port also reserve the exclusive right to use all areas of the Airport not comprising the Assigned Space, and the exterior walls and roofs of the Assigned Space, together with the right to install, maintain, use, repair and replace pipes, ducts, conduits, wires, columns, and structural elements serving other parts of the Airport in and through the Assigned Space. This reservation in no way affects Permittee's maintenance obligations under this Permit.

(2) Permittee acknowledges that the Port has made no representations or warranties to Permittee regarding the location of airlines or pedestrian traffic, or the design, construction or location of security check points or other improvements in the terminal facilities at the Airport. Permittee agrees that Port reserves the right (a) to further develop, improve, repair and alter the Airport and all roadways, parking areas, terminal facilities, landing areas and taxiways as it may see fit, free from any and all liability to Permittee for loss of business or damages of any nature whatsoever to Permittee occasioned during the making of such improvements, repairs, alterations and additions, including but not limited to any damages resulting from negligence of the Port or its employees, agents or contractors, and (b) to establish such fees and charges for the use of the Airport by Permittee and all others as Port may deem advisable, including, without limitation, parking charges on Permittee, its customers and employees and on Permittee's vendors making deliveries to Permittee anywhere on the Airport.

(3) Permittee acknowledges that construction on the roads and other portions of the Airport during the Term may temporarily disrupt Permittee's use of the Assigned Space. Permittee agrees that Port will not be required to pay or credit any sums to Permittee to reimburse Permittee for any disruption or loss of use of the Assigned Space, and that there will be no abatement in the Rent or other amounts payable by Permittee to Port under this Permit.

(4) Permittee covenants and agrees that this Permit shall be subject and subordinate to the provisions of any existing or future agreement between Port and the United States Government relative to the operation or maintenance of Airport, the execution of which has been or will be required as a condition precedent to the granting of federal funds or Passenger Facility Charges ("PFC's") for the development or operation of Airport. In the event that the Federal Aviation Administration or its successors shall require any modifications to this Permit as a condition precedent to the granting of such federal funds or PFC's, Permittee shall promptly consent in writing to such modifications.

(5) Port may, at any time and from time to time, using Port personnel, or using an outside audit firm designated by the Port's Chief Audit Officer, conduct an audit of Permittee's operations at the Airport (in addition to Port's audit rights provided elsewhere in this Permit) to confirm that such operations comply with the requirements of this Permit. Permittee shall cooperate fully with the Port in such audit and shall require all of its authorized sublessees to fully cooperate in such audit. If such audit shows that Permittee is not complying with any of such requirements, then without limiting Port's rights under Section 19 above, Permittee shall promptly remedy any noncompliance shown in such audit, and Port may require Permittee to reimburse Port for all of its costs of such audit.

Section 30. **Discrimination Not Permitted.**

(1) During the performance of this Permit, the Permittee, for itself, its assignees and successors in interest agrees as follows:

(a) Compliance with Regulations. The Permittee shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may

be amended from time to time (hereinafter referred to as the “Regulations”), which are herein incorporated by reference and made a part of this Permit.

(b) Nondiscrimination. The Permittee, with regard to the work performed by it during the Permit, shall not discriminate on the grounds of race, color, sex, creed, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Permittee shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the Permit covers a program set forth in Appendix B of the Regulations.

(c) Solicitations for Subcontracts, Including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the Permittee for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Permittee of the Permittee’s obligations under this Permit and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

(d) Information and Reports. The Permittee shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Port or the Federal Aviation Administration (“FAA”) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a Permittee is in the exclusive possession of another who fails or refuses to furnish this information, the Permittee shall so certify to the Port or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.

(2) The Permittee for itself, its successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the Assigned Space described in this Permit for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, the Permittee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

(3) The Permittee for itself, its successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

- (i) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities,
- (ii) that in the construction of any improvements on, over, or under such Assigned Space and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination,
- (iii) that the Permittee shall use the Assigned Space in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21. Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

(4) The Permittee assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, color, religion, sex, national origin, ancestry, age, disability or physical handicap as set forth in the Americans with Disabilities Act of 1990, veteran's status, marital status or actual or perceived sexual orientation, be excluded from participating in any activity conducted with or benefiting from Federal assistance. The Permittee also assures that it will comply with all applicable provisions of the Port's equal opportunity policy. This provision binds the Permittee during the Term of this Permit.

(5) In furtherance of Port's long-standing policy to insure that equal employment opportunity is achieved and nondiscrimination is guaranteed in all Port-related activities, Permittee for itself and its successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree with respect to Permittee's activities upon the Assigned Space and as a covenant running with the land:

(a) That Permittee shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, actual or perceived sexual orientation, national origin, age, physical handicap or disability as set forth in the Americans With Disabilities Act of 1990, or veteran's status. Permittee shall take affirmative action to ensure that applicants and employees are treated fairly. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship;

(b) That Permittee shall, in all solicitations or advertisements for employees placed by or on behalf of Permittee, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, actual or perceived sexual orientation, national origin, age, physical handicap or disability as set forth in the Americans With Disabilities Act of 1990, veteran's status, or marital status;

(c) If the Port's Office of Equal Opportunity provides any notices setting forth the provisions of this Section, Permittee agrees to post such notices in conspicuous places, available to employees and applicants for employment, and/or send such notices to employees or to any labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, as requested by the Port;

(d) That Permittee shall not discriminate by segregation or otherwise against any person or persons because of race, color, religion, sex, actual or perceived sexual orientation, age, national origin, physical handicap or disability as set forth in the Americans With Disabilities Act of 1990, veteran's status, or marital status in furnishing, or by refusing to furnish, to such person or persons the use of any public facility upon the Assigned Space, including any and all services, privileges, accommodations, and activities provided thereby;

(e) That in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person, on the grounds of race, color, national origin, shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination;

(f) That Permittee assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to ensure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E, as issued on February 7, 1980, or as subsequently amended by the United States Department of Transportation, Federal Aviation Administration. Permittee further 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. Permittee assures that it will require that its covered suborganizations provide assurances to Permittee that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect; and

(g) Permittee agrees that it shall not discriminate against any professional service or vendor because of race, color, religion, sex, actual or perceived sexual orientation, national origin, age, physical handicap or disability as set forth in the Americans With Disabilities Act of 1990, veteran's status, or marital status; and that the Permittee shall, in all solicitations or advertisements placed by or on behalf of Permittee, for professional services, vendors or contractors, state that all qualified bidders will receive consideration on merit, without regard to race, color, religion, sex, national origin, age, physical or mental disability or disability as set forth in the Americans With Disabilities Act of 1990, veteran's status or marital status.

(6) That Permittee's noncompliance with the provision of this Section 30 shall constitute a material breach of this Permit. In the event of a breach of any of the above-stated nondiscrimination and affirmative action covenants, the Port or the United States shall have the right to consider but not be limited to the following:

(a) Withholding of payments to the Permittee under this Permit until the Permittee complies; or

(b) The Port may terminate this Permit and re-enter and possess the Assigned Space and the facilities thereon, and hold the same as if this Permit had never been made, without liability therefor; or

(c) The Port or the United States may seek judicial enforcement of said covenants.

(7) Should the Permittee authorize another person, with Port's prior written consent, to provide services or benefits from the Assigned Space or at the Airport, Permittee shall obtain from such person a written agreement pursuant to which such person shall, with respect to the services or benefits which it is authorized to provide, undertake for itself the obligations contained in this Section 30. Permittee shall furnish the original or a true copy of such agreement to Port. Port may from time to time be required by the United States Government, or one or more of its agencies, to adopt additional or amended provisions, including non-discrimination provisions, concerning the use and operation of the Airport, and Permittee agrees that it will adopt any such requirement as a part of this Permit.

(8) If Permittee shall furnish any services to the public at the Airport, it shall furnish said services on a fair, equal and not unjustly discriminatory basis to all users thereof and

shall charge fair, reasonable and not unjustly discriminatory prices for each unit of service, provided that Permittee shall be allowed, subject to compliance with the provisions of Paragraph B.4 of this Permit, to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchasers, if any.

Section 31. **Federal Aviation Administration Requirements.**

(1) Permittee shall comply with all applicable regulations of the Federal Aviation Administration and the Transportation Security Administration relating to Airport security and shall control the Assigned Space so as to prevent or deter unauthorized persons from obtaining access to the air operations area of the Airport.

(2) Port reserves unto itself, and unto its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft through the airspace above the surface of the Assigned Space, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft now known or hereafter used, and for navigation of or flight in the said airspace, and use of said airspace for landing on, taking off from or operating on the Airport.

(3) Permittee expressly agrees, on behalf of itself and its successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions on the Assigned Space in compliance with the requirements of Federal Aviation Regulations, 14 CFR Part 77. In the event the aforesaid covenants are breached, the Port reserves the right to enter upon the Assigned Space and to remove the offending structure or object and cut the offending natural growth, all of which shall be at the expense of Permittee.

(4) Permittee agrees to require any lights in the Assigned Space to be constructed, focused or arranged in a manner that will prevent them from casting their beams in an upward direction so as to interfere with the vision of pilots in aircraft landing at or taking off from the Airport.

(5) Permittee expressly agrees, on behalf of itself and its successors and assigns, to prevent any use of the Assigned Space which would interfere with or adversely affect the operation or maintenance of the Airport, or which would otherwise constitute a hazard or nuisance at the Airport.

(6) Permittee agrees that it will not exercise or grant any right or privilege which would operate to prevent any person, firm or corporation operating aircraft on the Airport from performing any service (including, but not limited to maintenance and repair) on its own aircraft with its own employees that it may choose to perform. This Permit confers no right on Permittee or any other person, firm or corporation to fuel aircraft at the Airport.

(7) This Permit is subject to the requirements of the U.S. Department of Transportation's regulation, 49 CFR, Part 23; Permittee agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, subcontract or other agreement covered by 49 CFR, Part 23, or any successor regulation; and Permittee also agrees to

include the above statements in any subsequent concession agreement or contract covered by 49 CFR, Part 23, that it enters into and to cause those businesses to similarly include the statements in further agreements. This Section 32(7) does not authorize the operation of a concession at the Airport that is not part of the Permitted Uses under Paragraph B of this Permit.

Section 32. **Environmental Responsibilities**

During the performance of this Permit, the Permittee agrees to comply with its obligations set forth on Attachment "B" to this Permit, which is incorporated herein by this reference. If Permittee does not engage in an activity that is described in Attachment "B", then the provisions related to that activity would not apply. For illustrative purposes only, if the Premises are indoors, then most of the construction storm water provisions would be inapplicable to the Permittee.

Section 33. **Prevailing Wage Requirements.**

(1) Permittee agrees that in the performance of work under this Permit, if applicable, Permittee shall comply with the Public Work Prevailing Wage Requirements, which are the applicable prevailing wage requirements of California Labor Code Sections 1720 et seq. and Port Ordinance No. 4321, as amended, and which generally apply to construction, costing more than \$1,000.00, which is made on or to Port property and the cost of which is paid for in whole or in part by the Port's advance or reimbursement to Permittee or by credit against rent or other sums due the Port.

(2) "Construction" as used herein shall apply to construction, alteration, demolition or repair work, and the laying of carpet and maintenance work, provided, that Private Work Prevailing Wage Requirements shall not apply to maintenance work. "Construction" includes all construction of building core and shell, building annexes, tenant improvements and public works that are within the customary jurisdiction of the construction trades and crafts, whether performed on- or off-site. Off-site work, performed by Materialmen, as defined under California Law, is not included in the term "Construction".

(3) The following provisions of this Section 33(3) apply only if, and to the extent that, the prevailing wage requirements are applicable.

(a) The prevailing wage requirements shall apply to the employees of any employer including the Permittee, any tenant of Permittee, any general contractor or subcontractor or other contractor engaged in construction of any improvements in the Assigned Space or at the Airport for Permittee, including their successors and assignees, but shall not apply to supervisory or managerial personnel or to persons employed in the rental, operation or (in the case of Private Work Prevailing Wage Requirements only) maintenance of the Assigned Space.

(b) The Permittee shall cause the provisions of this Section 33 to be incorporated into each contract and subcontract, and Permit agreement which would be subject to this Section 33. In the event the provisions are not so incorporated, the Permittee shall be liable to the worker in any action or proceeding for the difference between the prevailing wage rate

required to be paid and the amount actually paid to the worker, including costs and attorney fees, as if the Permittee were the actual employer.

(4) The prevailing wage requirements of this Section 33 will be monitored and enforced by the Port. In addition to any other rights provided by California law to recover compensation, a worker that has been paid less than the prevailing wage rates shall have a right to commence an action or proceeding against the employer of the worker for the difference between the prevailing wage rates and the amount paid to such worker for each calendar day or portion thereof for which the worker was paid less than the compensation required to be paid under the provisions of this subsection. No issue other than that of the liability of the employer for the amount of unpaid wages allegedly due shall be determined in such action or proceeding, and the burden shall be on the employer to establish that the amounts demanded are not due. A worker recovering any or all of the wages claimed to be due shall recover his costs and attorney fees in securing such recovery. Nothing in this Section 33(4) shall preclude its enforcement by the California Division of Labor Standards Enforcement.

(5) Nothing in this Permit shall prevent the employment of any number of properly registered apprentices, as defined in Chapter 4, Division 3 of the Labor Code. Every such apprentice shall be paid not less than the standard wage paid to apprentices under the regulations of the crafts or trade at which the apprentice is employed, and shall be employed only at the work of the craft or trade to which the apprentice is registered. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which the apprentice is in training. Good faith efforts shall be made to maintain a ratio of apprentices to journeymen of not less than 20%, if the employer is signatory to an agreement to train, or otherwise bound to train, apprentices. When submitting the certified payroll records required hereunder Permittee shall submit documentary proof of the valid apprentice status of any worker listed as an apprentice.

(6) Permittee agrees that to the extent that Permittee is required to comply with the prevailing wage requirements, Permittee shall assure that all workers are paid the prevailing rate of per diem wages, and travel and subsistence payments (defined in applicable collective bargaining agreements filed in accordance with Section 1773.8 of the California Labor Code), in effect on the date of the Port's first approval of a building permit or other approval of the work. Copies of the applicable prevailing rate of per diem wages are on file at the Port's principal office and will be made available to any interested party on request. Permittee agrees to post a copy of the prevailing rate of per diem wages at each job site.

(7) Permittee, as a penalty to the Port, shall forfeit not more than Two Hundred Dollars (\$200.00) for each calendar day, or portion thereof (or such other sum as specified from time to time by Section 1775 of the California Labor Code), for each worker paid less than the applicable prevailing rates for such work or craft in which such worker is employed. The difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by Permittee.

(8) To the extent that there is insufficient money due Permittee as an advance, reimbursement or credit to cover all penalties forfeited and amounts due and in all cases where

this Permit does not provide for a money payment by the Port to Permittee, and except in cases where enforcement authority is vested in the State pursuant to Section 1775 of the California Labor Code, the Port not later than ninety (90) days after the filing of a valid notice of completion in the office of the Alameda County Recorder or not later than ninety (90) days after the Port's acceptance of the work, whichever last occurs, may maintain an action in any court of competent jurisdiction to recover the penalties and the amounts due provided for herein. Permittee agrees that no issue other than that of the liability of Permittee for the penalties allegedly forfeited and amounts due shall be determined in such action, and the burden shall be upon Permittee to establish that the penalties and amounts demanded in such action are not due. Out of any money withheld or recovered or both there shall first be paid the amount due each worker and if insufficient funds are withheld or recovered or both to pay each worker in full the money shall be prorated among all such workers.

(9) At least two weeks before the last date Permittee accepts initial bids for construction Permittee shall file with the Port a written list of the name of all contractors to whom Permittee has submitted a request for bids. In addition, Permittee shall file with the Port the name of each contractor with whom it proposes to contract, together with the name of the subcontractors of all tiers, at least five (5) working days before entering into the contract.

(10) Permittee agrees to keep or cause to be kept by each contractor and subcontractor an accurate payroll record for each worker employed on work covered by this Section 33 showing all of the information specified in subsection (a) of Section 1776 of the California Labor Code. All such payroll records shall be certified, available for inspection and filed in accordance with the procedures specified in subsections (b)-(e) inclusive of Section 1776 of the California Labor Code. In addition, copies of such certified payroll records shall be filed with the Port within a reasonable time not to exceed fifteen (15) days from close of payroll by the respective employer.

(11) It is understood and agreed that all documents that Permittee is required to submit to or file with the Port under this Section 33 shall constitute public records that shall be available to any member of the public for review or copying in accordance with the California Public Records Act.

(12) In the event of repetitive breach of the requirements of this subsection by Permittee, the Port shall be entitled, in addition to all other remedies hereunder for breach of this Permit, to appoint at Permittee's expense a special monitor to oversee Permittee's compliance. Fees for said special monitor shall be billed to Permittee, which fees Permittee agrees to pay as additional rent within 10 days after Permittee's receipt of such bill. In the event of noncompliance with the foregoing requirements concerning payroll records which continues for more than ten (10) days after the Port gives to Permittee written notice specifying in what respects Permittee must comply, Permittee shall forfeit as a penalty to the Port for each worker Twenty-Five Dollars (\$25.00) for each calendar day, or portion thereof, until strict compliance is effectuated.

(13) Permittee shall be responsible for complying with Section 1777.5 of the California Labor Code concerning apprenticeable occupations, with respect to all work covered by that section.

(14) Except where the context otherwise requires, the definitions of terms and phrases contained in the State prevailing wage law, Sections 1720 et seq. of the California Labor Code, and in the implementing administrative regulations, shall apply to the same terms and phrases which are used in the prevailing wage requirements of this Section 33.

Section 34. **Emergency and Public Contacts.**

At all times during the Term, Permittee shall maintain a twenty four (24) hour per day, seven (7) day per week, person and telephone number by which Airport Operations can contact Permittee. The contact information for such person is set forth in Paragraph A of the Permit. Permittee shall provide Port with written notice of any changes thereto.

Section 35. **No Accord and Satisfaction.**

No payment by Permittee or receipt by the Port of a lesser amount of any sum due hereunder, shall be deemed to be other than on account of the earliest due rent or payment, nor shall any endorsement or statement on any check or any letter accompanying any such check or payment be deemed an accord and satisfaction, and the Port may accept such check or payment and pursue any other remedy available in this Permit, or at law or in equity. A duplicate copy of all communications concerning disputes about debts that are owed or may be owed pursuant to this Permit, and instruments in less than the full amount claimed by the Port and tendered as full satisfaction of a disputed debt or other amount owed, shall be provided to the Port's Chief Financial Officer, either by hand delivery, provided Permittee obtains a written acknowledgment of receipt thereof from Port, or by nationally recognized overnight courier service, or by U.S. Certified Mail Return Receipt Requested, postage prepaid, addressed as follows:

Chief Financial Officer
Finance Division
530 Water Street
Oakland, California 94604-2064

or to such other address as shall be designated by Port by written notice to Permittee in accordance with the requirements of Section 24 above.

Section 36. **Maritime and Aviation Project Labor Agreement.**

The Port's Maritime and Aviation Project Labor Agreement ("MAPLA") may apply to Permittee's construction work and Permittee should be knowledgeable of and shall comply with all applicable provisions of the MAPLA. Specifically, any construction work undertaken by Permittee pursuant to this Permit that exceeds an estimated cost of \$150,000 for which the Port issues a permit for construction is subject to coverage by the MAPLA. As described further in the MAPLA, "construction work" includes work subject to prevailing wage determinations or work performed within the craft jurisdiction of the unions signatory to the MAPLA at the time the MAPLA was executed on or around February 1, 2016. Permittee's failure to utilize MAPLA could lead to grievance and arbitration and the potential for damages, attorney's

fees and costs should the Building & Construction Trades Council of Alameda County and/or its affiliated unions (collectively, “Unions”) prevail in arbitration.

With respect to any construction work that is subject to coverage under the MAPLA:

- Permittee shall assure that each construction project contractor with whom Permittee contracts (“Prime Contractor”), before beginning its respective construction work, signs a Letter of Assent to the MAPLA;
- Permittee shall require by contract that each Prime Contractor require that each subcontractor performing said construction work, regardless of tier, signs a Letter of Assent to the MAPLA;
- The Unions are third party beneficiaries of Permittee’s obligations under this Attachment “E” and are entitled to proceed with grievances and arbitration against Permittee under the MAPLA for Permittee’s breach of such obligations; and
- Permittee may not assert that the Unions do not have standing to proceed with any such grievance or arbitration proceeding described above or to recover from Permittee damages, attorneys’ fees, and costs if Permittee breaches any such obligations.

In the event the Port agrees to any revisions to MAPLA or enters into a new MAPLA, Port shall notify Permittee in writing of such revised or new requirements. After such written notice, such revised or new MAPLA requirements shall become part of this Attachment “A” and shall supersede any conflicting requirements of this Attachment “A”, and Permittee shall be obligated to comply with such revised or new MAPLA requirements as fully as if they were set forth herein.

Section 37. Damage or Destruction; Condemnation.

(1) (a) In the event the Assigned Space or the improvements thereon are damaged by any casualty which is required to be insured against by Permittee pursuant to this Permit, then Permittee shall, in accordance with all applicable requirements of this Permit (including without limitation Section 1(2) above), repair such damage (and replace any Trade Equipment damaged by such casualty) as soon as reasonable possible, at its own cost, and this Permit shall continue in full force and effect, with no abatement in the Rent payable by Permittee to Port under Paragraph E of this Permit.

(b) In the event the Assigned Space or the improvements thereon are damaged by any casualty which is not required to be insured against by Permittee pursuant to the provisions of this Permit, then Port may, at Port’s option, either (i) repair such damage as soon as reasonably possible at Port’s expense, in which event this Permit shall continue in full force and effect, and there shall be no abatement in the Rent payable by Permittee to Port under Paragraph E of this Permit, or (ii) give written notice to Permittee within sixty (60) days after the date of occurrence of such damage of Port’s intention to (v) to remove all damaged Concession Units (and

their associated Minimum Annual Guaranty) from the Assigned Space, effective as of the date of the occurrence of such damage, or (w) to terminate this Permit, in which event such termination shall be effective as of the date of the occurrence of such damage; provided, however, that notwithstanding the foregoing: (x) If such damage was caused by the act or omission of Permittee or any principal, affiliate, contractor, employee, agent, licensee or invitee of Permittee, then Permittee shall, in accordance with all applicable provisions of this Permit (including without limitation Section 1(2) above), repair such damage promptly and at its sole cost and expense, this Permit shall remain in full force and effect, and there shall be no abatement in the Rent payable by Permittee to Port under Paragraph E above; and (y) If such damage is not covered by Section 37(b)(ii)(x) above, and if such damage occurred during the last twelve months of the Term, then either party shall have the right, by written notice given to the other within sixty (60) days after the date of occurrence of such damage, to terminate this Permit as of the date of such damage, in which event all proceeds of the insurance against casualty that Permittee was required to maintain pursuant to this Permit shall be paid to Port.

In the event a Concession Unit is removed from the Assigned Space pursuant to Section 37(1)(b)(ii)(v) above, the Port, shall send to Permittee an amendment to this Permit showing the deletion of that Concession Unit from the Assigned Space, and this Permit shall be deemed amended thereby.

(c) If the Assigned Space is damaged or destroyed by casualty, Permittee shall have no claim against Port for any damage suffered by reason of any such damage or destruction, or for any required repair or restoration. Port and Permittee hereby waive the provisions of California Civil Code Sections 1932 and 1933, and of any other statutes which relate to the termination of a Permit when leased property is destroyed and agree that any such event shall be governed by the terms of this Permit.

(2) (a) If the whole of the Assigned Space should be taken by any public or quasi-public authority under the power or threat of eminent domain, then, in such event, on the earlier of the date title to the Assigned Space vests in such public or quasi-public authority, or the date on which said public or quasi-public agency takes possession of the Assigned Space, this Permit shall terminate with respect to Port's and Permittee's future obligations hereunder, but said termination shall not affect Port's and Permittee's rights to any compensation or damages for, on the account of, or arising out of such taking. For any period of time prior to termination during which Permittee (involuntarily on account of such taking or any proceedings related thereto) does not have full use of the Assigned Space, the monthly Rent due hereunder shall be equitably reduced. In the event of such a taking, the Port shall be entitled to receive all sums in the award of damages and compensation arising by reason of such taking except that an amount therefrom equal to the fair market value of Permittee's leasehold interest in the Assigned Space (as of the date of valuation of the taking) shall be paid to Permittee.

(b) If a substantial portion of the Assigned Space should be taken so as to impair materially the use of the Assigned Space as contemplated by the Permit, then on the earlier of the date title to such portion of the Assigned Space vests in such public or quasi-public agency, or the date on which such public or quasi-public agency takes possession of such portion of the Assigned Space and Permittee no longer has full possession of such portion, this Permit shall terminate with respect to Port's and Permittee's future obligations hereunder, but said

termination shall not affect Port's or Permittee's rights to any compensation or damages for, on account of, or arising out of such taking. For any period of time prior to termination during which Permittee (involuntarily on account of such taking or any proceedings related thereto) does not have full use of the Assigned Space, the monthly Rent due hereunder shall be equitably reduced. In the event of such a substantial taking, the award of damages and compensation arising by reason of such taking shall be distributed in the same manner as the last sentence of Section 37(2)(a) above.

(c) If a taking shall occur which does not result in termination of this Permit as provided in the previous subsections of this Section 37(2), but which requires the portion of the Assigned Space not so taken to be reconstructed and restored so as to be constituted an architecturally complete unit suitable for use by Permittee, all compensation and damages payable for or on account of such taking shall be payable to Permittee, and shall be held in a separate account approved in writing by Port in trust by Permittee to be used by Permittee in accordance with all applicable requirements of this Permit (including without limitation Section 1(2) above) solely to reconstruct and restore the portion of the Assigned Space not so taken to an architecturally complete unit suitable for use by Permittee; and the monthly Rent payable by Permittee hereunder shall be equitably reduced during the time Permittee does not have full use of the Assigned Space as a result of such taking to account for the reduced economic value to Permittee, if any, occasioned by reason of such taking. The balance of any compensation and damages remaining after the reconstruction and restoration contemplated by this subsection shall be distributed in the same manner as distribution of damages and compensation for a total taking under the last sentence of Section 37(2)(a) above. In the event of a taking covered by this Section 37(2)(c), Port shall send to Permittee an amendment to this Permit showing the deletion of that portion of the Assigned Space that was the subject of this taking, and this Permit shall be deemed amended thereby.

(d) If a taking shall occur which does not result in a termination of this Permit as provided in the previous subsections of this Section 37(2), and which does not require any portion of the Assigned Space not so taken to be reconstructed and restored so as to constitute an architecturally complete unit suitable for use by Permittee, the proceeds shall be distributed in accordance with the last sentence of Section 37(2)(a) above. Permittee, however, shall be entitled to an equitable reduction in the monthly Rent.

(e) No taking of Permittee's leasehold estate in the Assigned Space or any part thereof without a taking of the fee shall terminate or give Permittee the right to surrender this Permit, nor excuse the taker of such leasehold estate, including any successor in interest thereto, from full performance of the covenants for the payment of the Rent and other charges or any other obligations hereunder capable of performance by the taker of such leasehold estate, including any successor in interest thereto, after any such taking, but in such case, all compensation and damages payable for or on account of such taking shall be payable to and be the sole property of Port. During any period of time that Permittee is not in possession of the Assigned Space, or any portion thereof, as a result of the taking of any portion of its leasehold estate hereunder, but only during such period of time, (1) Permittee shall not be obligated to pay or in any way be liable for the payment of any Rent or to perform any of the other obligations or covenants otherwise to be performed by it hereunder with respect to, but only with respect to the portion of the Assigned Space affected by such taking, (2) the Port shall look solely to the taker of such leasehold interest,

including the successors in interest thereto and any party then in possession of all or such portion of the Assigned Space affected by such taking for the payment of the Rent and the performance of the other obligations and covenants hereunder with respect to such portion of the Assigned Space, and (3) as between Port and Permittee, Port shall not forfeit or terminate this Permit for breach by the taker of such leasehold interest, including its successors in interest thereto and any party then in possession, of any obligation or covenant hereunder, including the obligation to pay the Rent. Any taking that is the subject of this subsection (e) shall not extend the Term of this Permit.

(f) In the event of any taking of any portion of the Assigned Space, Permittee shall be entitled to receive all compensation and damages arising from such taking and payable for or on account of the Permittee's Trade Equipment located on the portion of the Assigned Space so taken, except for those trade fixtures and equipment that pursuant to this Permit are to remain with the Assigned Space on surrender.

(g) Except as otherwise expressly provided in this Section 37(2), no taking shall reduce or abate Permittee's obligation to pay the Rent during the Term of this Permit. Where Section 37(2) expressly provides for a reduction in the Rent payable by Permittee, if the parties cannot agree on the amount of such reduction, the same shall be determined by Arbitration. Such arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitrators shall have no power to modify any of the provisions of this Permit and their jurisdiction is limited accordingly. Each party hereby consents to the entry of judgment by any court having jurisdiction in accordance with the arbitration decision. No change in the Arbitration Rules which would deprive a party of the rights to be represented by counsel, to present evidence or to cross-examine witnesses presented by the other party shall be effective in any arbitration proceeding arising out of this Permit. Any arbitration provided for herein shall be conducted in the Port's offices in Alameda County, California. Disputes under this Permit shall be subject to Arbitration only to the extent expressly provided for in this Section 37(2)(g).

(h) Permittee acknowledges the Port's reserved power upon payment of just compensation to exercise its power of eminent domain as to the leasehold estate created hereunder; provided, however, that the foregoing acknowledgment shall not be deemed or construed to prejudice or waive any rights of Permittee to challenge or object to any attempt by the Port so to exercise such power.

Section 38. **Right to Modify.**

Permittee agrees that during the Term of this Permit, this Permit may be unilaterally modified by the Port, upon advice of the Port Attorney, and on at least thirty (30) days' prior written notice by Port to Permittee, in order to conform to changes in applicable Laws, including without limitation, judicial, Department of Transportation, Department of Homeland Security, Federal Aviation Administration, Transportation Security Administration, Federal Trade Commission or Federal Communications Commission rulings or opinions. This subsection shall not relieve Permittee from its independent obligation to comply with all applicable Laws, or preclude Permittee from contesting said matters, but Permittee shall abide by such modification.

Section 39. **Security Mandates.**

Permittee recognizes that Port is required to comply with the security mandates of the Department of Transportation, the Federal Aviation Administration, the Transportation Security Administration, the Department of Homeland Security, and with other governmental and administrative rules and regulations relating to airports. Any procedures determined by Port to be applicable to Permittee in order for Port to comply with the foregoing will be furnished to Permittee in writing, and delivered by facsimile transmission, confirmed by mail, to Permittee at its notice address provided in this Permit. Permittee and its agents, employees, representatives and permitted sublessees and assignees shall be responsible for full compliance with all procedures delivered by facsimile transmission to Permittee. Such procedures are subject to change without notice other than delivery thereof to Permittee, as provided for in this Section 39. Permittee shall reimburse Port, within fifteen (15) days from receipt of Port's invoice, and documentation showing that payment of such civil penalty or fine is Permittee's responsibility hereunder, the amount of any civil penalty or fine that may be assessed against Port by any governmental agency for any violation of applicable security rules or regulations which arises out of Permittee's failure to comply with the provisions of this Section 39. In such event, Port shall also have all of its other rights and remedies provided in this Permit and arising at law or in equity. Permittee shall perform a quarterly audit of active employees, and shall submit such list to the Manager, Aviation Security.

Section 40. **Miscellaneous.**

(1) The section and paragraph headings contained in this Permit are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of any provision hereof.

(2) It is expressly understood and agreed that, except for Permittee's right to possession of the Assigned Space described as exclusive in Paragraph D.1 of this Permit, and except to the extent otherwise expressly provided for in a written addendum to this Permit signed by Port, the rights granted Permittee under this Permit are non-exclusive.

(3) Except as expressly prohibited herein, the provisions of this Permit shall bind and inure to the benefit of the successors and assigns of the parties hereto.

(4) Time is expressed to be of the essence of this Permit.

(5) This Permit shall be governed by and construed in accordance with the laws of the State of California (without regard to principles of conflict of laws). It is agreed that if any covenant, condition or provision contained herein is held to be invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of any other covenant, condition or provision herein contained, and the invalid or unenforceable provision shall be limited to the extent necessary for it to be valid and enforceable.

(6) No recourse under or upon any obligation, covenant or agreement contained in this Permit, or any other agreement or document pertaining to the operations of Permittee hereunder, as such may from time to time be altered or amended in accordance with the provisions

hereof, or under any judgment obtained against Port, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any statute or otherwise, under or independent of this Permit, shall be had against any member (including, without limitation, members of Port's Board and its citizens advisory committees), officer, employee or agent, as such, past, present and future, of Port, either directly or through Port or otherwise, for any claim arising out of this Permit or the operations conducted pursuant to it, or for any sum that may be due and unpaid by Port. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any Port member, officer, employee or agent, as such, to respond by reason of any act or omission on his or her part or otherwise for any claim arising out of this Permit or the operations conducted pursuant to it, or for the payment for or to Port, or any receiver therefor or otherwise, of any sum that may remain due and unpaid by Port, is hereby expressly waived and released as a condition of and as consideration for the execution of this Permit.

(7) Permittee represents and warrants to Port that, to the best of its knowledge, except as may be disclosed in an Addendum hereto, no member, officer, employee or agent of Port has any interest, either directly or indirectly, in the business of Permittee to be conducted hereunder.

(8) (a) This Permit constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and any prior agreement, representation or statements heretofore or contemporaneously made with respect to such subject matter, whether oral or written (including, without limitations, any answers provided by Port to questions asked by Permittee or others in conjunction with the Port's Request For Proposals for the concession rights granted by this Permit), are merged herein. Except as otherwise expressly provided in this Permit, this Permit may be altered or amended only by written instrument executed by both parties hereto.

(b) Permittee acknowledges that it either was represented or had the opportunity to be represented by legal counsel in the negotiation of this Permit, and agrees that the terms of this Permit shall not be strictly construed against the Port as the drafter of this Permit.

(9) (a) All actions arising out of or filed in connection with this Permit shall be filed solely in the state and federal courts in Alameda County, California, and Permittee consents to the exclusive jurisdiction of such courts, and waives any objection which it may have at any time to the laying of venue of any such action brought in any such court, waives any claim that such action has been brought in an inconvenient forum and further waives the right to object, with respect to such action, that such court does not have any jurisdiction over Permittee. Permittee further irrevocably consents to the service of process by certified or registered mail (airmail if overseas) or the equivalent (return receipt requested), or the service of process in any other manner permitted by law, in any action instituted by the Port and arising against Permittee under this Permit. Port agrees to serve such process on Permittee's registered agent under California law if the name and address of Permittee's current registered agent in California has been provided to the Port in advance and in writing.

(b) In addition to the foregoing, pursuant to California Code of Civil Procedure, Section 416.10, Permittee hereby designates the person set forth in Paragraph A of the Permit as its agent for service of process.

(10) Permittee warrants that no person or agency has been employed or retained to solicit or obtain this Permit upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Port, at its option, may annul or immediately terminate this Permit or recover from Permittee the full amount of the contingent fee. As used in this section, “bona fide agency” means an established commercial or selling agency, maintained by Permittee for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Port contracts nor holds itself out as being able to obtain any Port contract or contracts through improper influence; “bona fide employee” means a person, employed by Permittee and subject to Permittee’s supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Port contracts nor holds itself out as being able to obtain any Port contract or contracts through improper influence; “contingent fee” means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Port contract; and “improper influence” means any influence that induces or tends to induce a Port Commissioner, employee or officer to give consideration or to act regarding a Port contract on any basis other than the merits of the matter.”

(11) Port agrees to make a reasonable effort to provide notice to Permittee of any public records request involving documents or information provided by Permittee to Port pursuant to the terms of this Permit. However, Port shall have no liability arising out of its failure to provide such notice to Permittee or out of Port’s production of such documents or information in response to any public records request.

(12) Permittee agrees to keep the receiving facility clean and tidy, and remove all pallets after unloading supplies. To facilitate receiving of supplies, Permittee agrees to have a dock manager. Should the Port in the future provide a consolidated receiving facility, Permittee agrees to participate in such consolidated receiving facility.

Section 41. **Force Majeure.**

In the event that Permittee or the Port is delayed, directly or indirectly, from the performance of any act or thing required under the terms hereof by acts of God, accidents, fire, floods, inclement weather, governmental action, restrictions, priorities or allocations of any kind and all kinds, strikes or labor difficulties of any and all kinds, shortages of or delay in the delivery of material, acts of war, riot and civil commotion, or by any similar cause reasonably beyond the control of Permittee or the Port, as the case may be, such failure (except for the payment of Rent or other sums required by this Permit to be paid by Permittee to Port, and except for any failure that arises out of Permittee’s breach of any of its obligations under this Permit, and except for any strikes or labor difficulties arising from Permittee’s breach of the Labor Peace Assurance) shall not be deemed to be a breach of this Permit or a violation of any such covenants and the time within which Permittee or the Port must perform any said act shall be extended by a period of time equal to the period of delay arising from any of said causes.

Section 42. **Defined Terms.**

The following terms, when used in this Permit with the initial letter(s) capitalized, whether in the singular or plural, shall have the meanings given to such terms in the following Paragraphs of this Permit, or in the following Sections of this Permit contained in this Attachment “A”:

TERM	LOCATION
ADA Requirements	Section 1(2)(c) of Attachment “A”
Affiliated Person	Section 1(2)(b) of Attachment “A”
Airport	1 st paragraph of Permit, on page 1
Airport Pricing Policy	Paragraph B.4
Airport Rules, Policies and Regulations	Section 12(1) of Attachment “A”
Alterations	Section 1(2)(c) of Attachment “A”
Annual Report	Section 13(3) of Attachment “A”
Assigned Space	Paragraph D.1
Assigned Space Change	Paragraph H.1(a)
Board	2 nd paragraph of Permit, on page 1
Branded	Paragraph E.2
Change Notice	Paragraph H.1(a)
City	2 nd paragraph of Permit, on page 1
Commencement Date	Paragraph C
Common Areas	Paragraph D.3
Concession Unit	Paragraph B.1
Control	Section 1(2)(b) of Attachment “A”
CWA	Section 12(1) of Attachment “A”
Delivery Date	Paragraph C
Director	2 nd paragraph of Permit, on page 1
Documents	Section 12(1) of Attachment “A”
Gross Receipts	Section 13 of Attachment “A”
Initial Minimum Annual Guaranty Adjustment Date	Paragraph E.1(b)
Interim Term	Paragraph C
Latest Delivery Date for a Concession Unit	As set forth opposite that Concession Unit on attached Exhibit “5”
Laws	Section 12(1) of Attachment “A”
Losses	Section 1(2)(d) of Attachment “A”
Maximum Reimbursement Amount	Paragraph H.1(a)
Midterm Refurbishment	Section 2(1) of Attachment “A”
Midterm Refurbishment Date	Section 2(1) of Attachment “A”
Minimum Annual Guaranty	Paragraph E
Minimum Investment Amount	Section 1(2)(b) of Attachment “A”
Minimum Mid-Term Amount	Section 2(1) of Attachment “A”
New Aircraft Boarding Gates	Paragraph H.2
Percentage Fees	Paragraph E.2
Performance Deposit	Paragraph F
Permit	1 st paragraph of Permit, on page 1
Permitted Uses	Paragraph B.1
Permittee	1 st paragraph of Permit, on page 1, and Paragraph A
Permittee’s Work	Section 1(2)(a) of Attachment “A”

TERM	LOCATION
Port	2 nd paragraph of Permit, on page 1
Primary Term	Paragraph C
Proposal	Paragraph M
Quarterly Report	Paragraph N(b)
Rent	Paragraph E
Rent Commencement Date	Paragraph E.3(a)
Required Relocation	Paragraph H.1(a)
RFI	Section 8 of Attachment “A”
Surrender Date	Paragraph H.1(b)
Target Effective Date	Paragraph H.1(a)
Term	Paragraph C
Tenant Design Standards	Section 1(2)(c) of Attachment “A”
Trade Equipment	Section 7(1) of Attachment “A”
Transition Plan	Paragraph B.1
Wi-Fi System	Section 8 of Attachment “A”
Work Letter	Section 1(1) of Attachment “A”

ATTACHMENT "B"

ENVIRONMENTAL RESPONSIBILITIES

Section 1. Compliance with Port Environmental and Storm Water Ordinances.

The Permittee shall comply with Port Environmental Ordinance No. 4345 (the "Environmental Ordinance") and Port Storm Water Ordinance No. 4311 (the "Storm Water Ordinance") and, together with the Environmental Ordinance, the "Port Ordinances"). All terms in this Environmental Exhibit shall have the meanings as defined in the Environmental Ordinance.

Section 2. Notices and Disclosures Regarding Toxic Materials.

Pursuant to H&S Code Section 25359.7, the Port notifies the Permittee that the Port has reasonable cause to believe that Toxic Materials have come to be located on, at, beneath or emanating from the Premises. Information regarding the Toxic Materials on the Premises may be included in reports available on DTSC's Envirostor Website <http://www.envirostor.dtsc.ca.gov/public/>, the RWQCB's Geotracker Website <http://geotracker.waterboards.ca.gov/>, or Alameda County's ftp site <http://www.acgov.org/MAPS/deh/InspectionResults/?SITE=LOP>. In addition, the Permittee may request any non-privileged Toxic Material reports concerning the Premises that are in the possession of the Port.

Section 3. Storage Tanks.

Existing Storage Tanks: Yes ☐ No ☐

If yes, list Storage Tank number, location, date of installation, material stored and size

If there are Storage Tanks on the Premises, Permittee has certain responsibilities for operation, monitoring, reporting, maintenance and removal of such Storage Tanks, *See* Environmental Ordinance, Sections 3 and 10.

Section 4. Covenant to Restrict Use of Property ("CRUP").

Existing CRUP: Yes ☐ No ☐

If the Yes box is checked, the attached CRUP is incorporated and Permittee shall comply with the CRUP.

Required Disclosure:

Section 5. Performance Deposit.

Permittee shall, not later than the Effective Date, deposit with the Port and during the entire Term shall maintain with the Port a deposit as specified in the Agreement, which deposit will be retained by the Port as a performance deposit (the “Performance Deposit”) and may be used or applied as the Port, in its sole discretion, may determine to: (a) pay the Cost of Response Actions on the Premises that are the responsibility of Permittee; (b) repair any damage to the Premises caused by Permittee or Permittee’s Representatives; (c) replace any Improvements which are the property of the Port and which have been damaged, removed or otherwise misplaced during the Term; (d) pay any other outstanding amounts due the Port from Permittee pursuant to any of the provisions of the Port Ordinances; (e) pay any compensation or other amount payable to the Port pursuant to the Port Ordinances that is not paid when due; (f) pay or reimburse the Port for any amount that the Port may spend or become obligated to spend in exercising its rights under the Port Ordinances; or (g) compensate the Port for any expense, loss or damage that the Port may suffer because of a default with respect to any obligation of Permittee under the Port Ordinances.

Section 6. Release

Permittee, for itself, Permittee Representatives, successors and assigns, waives, releases, acquits, and forever discharges the Port of, from, and against any Actions, direct or indirect, at any time on account of, or in any way arising out of or in connection with: (i) the Port providing advice, guidance, or assistance to Permittee or Permittee Representatives regarding Permittee’s compliance with Environmental Laws; and (ii) Toxic Materials existing at, on, or under the Premises as of the Effective Date, and any migration of Toxic Materials to, within, or from the Premises regardless of the origin or source of the Toxic Materials, whether known or unknown. A Permittee’s release of the Port shall apply to all unknown and known Actions and contingent or liquidated Actions, and shall specifically cover any potential liability which may be based on any Environmental Laws.

The release shall also include a release of the rights provided under California Civil Code Section 1542 which states:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

As indicated by the initials below, it is Permittee’s intention that it waive and relinquish any and all protections, privileges, rights and benefits it may have under Section 1542.

Permittee: _____

ATTACHMENT "C"

PORT'S PUT RIGHTS

Section 1. Reservation and Acceptance of Put Right.

Permittee acknowledges that on or about the time that the Port and Permittee enter into this Permit, the Port is entering into additional Space Use/Permits for Food and Beverage Concessions (collectively, the "Other Permittee Permits," and each, an "Other Permittee Permit") with different permittees (Other Permittees," and each, an "Other Permittee"), which are on generally similar terms for certain additional concession spaces in the Terminals (collectively, the "Other Permittee Spaces," and each, an "Other Permitted Space"). In consideration of the Port's entry into this Permit with Permittee, which Permittee forever, completely, and irrevocably agrees and acknowledges that the Port would not have done had not Permittee agreed to accept the obligations imposed on Permittee by this Attachment "C", Permittee agrees to the terms and conditions of this Attachment "C" and assumes the obligations imposed Permittee thereby.

Section 2. Put Right.

If during the term of this Permit, there is at least one (1) year remaining on the term of this Permit at the time of the "Other Permittee Space Delivery Date" (as hereinafter defined), if any of the Other Permittee Permits terminates or the Port obtains possession of any Other Permittee Space, the Port shall have the right to cause Permittee to take possession of the Other Permittee Space and to operate it for the balance of the term of this Permit after the Other Permittee Space Delivery Date (the "Balance of the Term") on the terms and conditions of this Permit, as the same shall be amended hereby with respect to the subject Other Permittee Space, which right is hereinafter called the "Put Right."

Section 3. Exercise of Put Right.

The Put Right shall be exercised as a matter of the Port's sole discretion by written notice (the "Put Notice") given to Permittee by the Port no later than sixty (60) days' before the intended Other Permittee Space Delivery Date, which Put Notice must specify (a) the intended Other Permittee Space Delivery Date, and (b) describe in reasonable detail (i) the nature of the operation that the Other Permittee had been operating in the Other Permittee Space (the "Other Permittee's Business"), (ii) any third-party licenses that the Other Permittee utilized in the operation of the Other Permittee's Business (the "Third Party Licenses") and whether the Port has the right to assign those rights to Permittee, and (iii) the intangible rights held by the Other Permittee with respect to the Other Permittee's Business (the "Other Permittee's Intangible Rights") and whether the Port has the right to assign those rights to Permittee so that, subject to the next sentence, Permittee shall be permitted to legally operate the Other Permitted Space for the Balance of the Term. Subject to the provisions of Section 4 of this "Attachment "C"", if the Port can assign all of the Third Party Licenses and all Other Permittee's Intangible Rights so that Permittee shall be permitted to legally operate the Other Permitted Space for the Other Permittee's Business for the Balance of the Term, the Port shall have the right to cause Permittee to operate the Other Permittee Space for the Other Permittee's Business for the Balance of the Term. Such an operation by Permittee is a "Business Continuation." In addition to the other requirements above, the Put Notice shall specify whether

the Port elects that Permittee undertake a Business Continuation. For the avoidance of any confusion, the Business Continuation would be for the benefit of Permittee (and not the Other Permittee) and all revenue therefrom would accrue to the benefit of Permittee (provided, however, the foregoing shall not be construed to terminate or limit Permittee's obligation to pay the Rent for the Other Permittee Space during the Balance of the Term).

Section 4. Permittee's Right to Object.

Permittee, by written notice given to the Port no later than ten (10) days after the receipt of a Put Notice specifying the Port elects to have Permittee undertake a Business Continuation (the "Objection"), shall have the right to object thereto if Permittee in good faith believes that the Business Continuation is not commercially viable from a prudent business standpoint, which may be ~~an~~ reasonable opinion that the Business Continuation will not be profitable or that Permittee's brand agreements would prohibit operation of the brands associated with the Business Continuation. The Objection shall specify in reasonable detail why Permittee believes in good faith why the Business Continuation is not feasible.

Section 5. Use for a Purpose other than Business Continuation.

If (a) the Port does not exercise its Put Right, or (b) the Port does exercise its Put Right, but the Permittee's issues an Objection, then, at the Port's request, the Permittee shall enter into good faith negotiations on a concept for the operation of the subject Other Permitted Space by Permitted for the Balance of the Term. For its part, Permittee shall not propose any food or beverage concept that cannot use the Other Permitted Space on a so-called "turn-key" basis subject to the substitution of any replacement signage and associated trade dress that can be completed within five (5) business days of the Other Permittee Space Delivery Date.

Section 6. Other Permittee Space Delivery Date.

~~On~~ Subject to Section 4, on the scheduled Other Permittee Space Delivery Date specified in the Put Notice, the Other Permittee Space shall be delivered to Permittee; provided, however, Permittee's obligation to accept the Other Permittee Space is subject to the satisfaction of the following conditions: (a) the Other Permittee Space, and all of its component equipment, shall be in a good and operating condition (provided, however, that ordinary wear and tear occurring since the commencement of the Other Permittee's operations is permitted so long as the Other Permittee Space, and all of its component equipment, shall be otherwise in a good and operating condition), and (b) all of the Third Party Licenses and the Other Permittee's Intangible Rights (if needed for the operation of the Other Permittee Space by Permittee) shall be assigned to Permittee. The Port shall bear the costs incurred in satisfying such conditions. The actual Other Permittee Space Delivery Date shall be the date that the Other Permittee Space is delivered to Permittee with the conditions contained in this Section 6 being satisfied; provided, such date shall not occur prior to the scheduled Other Permittee Space Delivery Date specified in the Put Notice unless Permittee agrees thereto in writing. Once the conditions contained in clauses (a) and (b) of this Section 6 are satisfied, must accept the Other Permittee Space (provided, that the date specified as the intended Other Permittee Space Delivery Date in the Put Notice has occurred).

Section 7. Incorporation of the Other Permittee Space as Concession Unit.

On the actual Other Permittee Space Delivery Date, the subject Other Permittee Space shall become a Concession Unit for the purposes of this Permit and Permittee shall discharge all of its obligations with respect thereto under this Permit; provided, however, that, with respect to such Concession Unit, Rent shall not commence until the first to occur of (a) the day that Permittee begins to operate with the public from the subject Other Permittee Space or (b) the fifth (5^h) day after such actual Other Permittee Space Delivery Date. Notwithstanding any other provision of this Permit, Permittee shall open for business in the required manner and concept no later than the tenth (10th) day after the actual Other Permittee Space Delivery Date. All costs incurred by Permittee in preparing to open for business in the Other Permittee Space shall be borne by Permittee without contribution by the Port.

EXHIBIT “1”

ASSIGNED SPACE

Redline (06/08/2018)

EXHIBIT “2”

TRANSITION PLAN

Redline (06/08/2018)

EXHIBIT "3"

RECOGNITION AGREEMENT

THIS RECOGNITION AGREEMENT (this "Agreement") is made by and between the CITY OF OAKLAND, a municipal corporation ACTING BY AND THROUGH ITS BOARD OF PORT COMMISSIONERS ("Port"), and _____, a _____ ("Sublessee"), as of this _____ day of _____, 20____ (the "Effective Date").

Recitals

A. Port, as grantor, and _____, a _____ ("Permittee") are the current parties to that certain Space/Use Permit for Food and Beverage Concession dated _____, 20____ (the "Permit"), whereby Permittee has been granted certain rights to operate certain food and beverage concessions at Port's Oakland International Airport, which rights include certain rights to sublease certain concession spaces, all as provided in, and regulated by, the Permit. A copy of the Permit, from which certain economic or proprietary terms have been redacted, is Schedule 1, attached hereto and incorporated herein by this reference.

B. Permittee, as sublessor, and Sublessee, as sublessee, are the parties to that certain _____ dated _____, 20____ (the "Sublease"), whereby Sublease has been granted certain rights to sublease certain concession space granted to Permittee by the Permit (the "Sublet Concession").

C. Port, as is required by the terms of the Permit, has consented to the making of the Sublease by Permittee and Sublessee; however, as a condition of such consent and as required by the terms of the Permit, Sublessee is required to execute this Agreement, without which Port would not have consented to the making of the Sublease.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants hereinafter contained, and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby conclusively, forever, and irrevocably acknowledged and accepted, the parties agree as follows:

1. Terms of Permit. Sublessee conclusively, forever, and irrevocably acknowledges and agrees that it has received and read the copy of the Permit that is Schedule 1 hereto. Sublessee further conclusively, forever, and irrevocably acknowledges and agrees that the terms of the Permit impose certain obligations upon Sublessee and that the terms of the Permit give Port the right to enforce such obligations directly against Sublessee, which obligations specifically include, but are not limited to:

Obligation

Initials of Sublessee Confirming its
Obligation

(a) The obligation to operate the Sublet Concession in accordance with certain standards in accordance with Paragraph I of the Permit, including, but limited to, the Living Wage Law (as defined in the Permit).

(b) Compliance with the Port Non-Discrimination Policy and ACDBE (as such terms are defined in the Permit).

(c) Compliance with the Labor Peace Rule and the Airport Labor Pool Program (as defined in Section 6 of Attachment "A" of the Permit).

(d) Compliance with the Airport Rules, Policies and Regulations (as defined in Section 12 of Attachment "A" of the Permit).

(e) Compliance with Section 30 of Attachment "A" of the Permit pertaining to Federal Aviation Administration Requirements.

(f) Compliance with Section 33 of Attachment "A" of the Permit pertaining to Prevailing Wage Requirements.

(g) Compliance with Section 36 of Attachment "A" of the Permit pertaining to Maritime and Aviation and Project Labor Agreement.

2. Port is not a Party to the Sublease. Sublessee, conclusively, forever, and irrevocably acknowledges and accepts, that while Port has the right to enforce such Permit obligations against Sublessee, (a) Port is not a party to the Sublease, (b) Port has no obligation to perform or enforce Permittee's obligations as sublessor under the Sublease, and (c) Port shall have absolutely no liability to Sublessee due to Permittee's failure to perform its obligations under the Sublease in whole or in any part (and Sublessee hereby waives, disclaims, and releases any such claims against Port).

3. Governing Law. This Agreement shall be governed and enforced by, and construed in accordance with, the laws of the State of California. Any action brought to enforce or determine the rights and obligations of the parties hereunder shall be filed and litigated in the Superior Court for Alameda County.

4. Successors and Assigns; Miscellaneous. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns. This the sole agreement between the parties and all prior agreements and discussions are of no force and effect. This Agreement cannot be modified except in a writing duly executed and authorized by the Port and Sublessee. The use of the word "grant" has the connotation

generally given thereto and not the connotation afforded such word in Section 1113 of the California Civil Code.

IN WITNESS WHEREOF, each of the parties has executed this Agreement as of the Effective Date by executing the signature page for such party that follows and is a part of this Agreement.

Redline (06/08/2018)

Signature Page for Port:

**CITY OF OAKLAND, a municipal corporation,
acting by and through its Board of Port
Commissioners**

By: _____
Executive Director

**THIS PERMIT SHALL NOT BE VALID OR
EFFECTIVE FOR ANY PURPOSE UNLESS
AND UNTIL IT IS SIGNED BY THE PORT
ATTORNEY**

Approved as to form and legality this
___ day of _____, 201___.

Port Attorney

Port Ordinance No. _____
P.A. # _____

Signature Page for Sublessee:

_____,
a _____

By: _____

Name: _____

Title: _____

If corporation: Chairman, President or Vice
President

Attest

By: _____

Name: _____

Title: _____

If corporation: Secretary, Assistant Secretary,
Chief Financial Officer, Treasurer or Assistant
Treasurer

EXHIBIT “4”

INITIAL PROPOSED PRICING

Redline (06/08/2018)

EXHIBIT “5”

CONCESSION UNIT

Concession Unit #	Sq. Ft.	Performance Deposit	MAG	% Rate	Permitted Use	Hours of Operation

**EXHIBIT “5”
(CONTINUED)**

Concession Unit#	Delivery Date	Re- opening/ rent adj. date	Capital Improvement Amount	Tenant Infrastructure Fee	Utilities to be Provided

EXHIBIT “6”

AIRPORT SECURITY REQUIREMENTS

- a. It is essential that during the performance of obligations of the Permit, Airport security be maintained by Permittee. Security of existing facilities must be maintained by Permittee at all times. When entrance into secure areas is required at any time by workers, it must be coordinated in advance with the Port and strict limitations will be set and enforced as to what areas contractor personnel can access. Any violations of these limits will subject the violator to immediate discharge from a project at the Port’s request.
- b. When beginning a project, contractors need to contact the Port’s Resident Engineer for Tenant Improvements (RETI) to attain project access.
- c. All construction personnel must adhere to the security policies and regulations set forth below, and as may be modified by the Port.
 - i. Safety / Security Plan
 1. A Construction Site Security Plan (CSSP), including a Tool Control Plan for work in the Sterile Area, is required for all construction activities. Tenant to use Port standard form (to be provided).
 2. Areas under construction in the Sterile Area will require full-height (floor-to-false ceiling) “mall walls” enclosing the work zone.
 3. Access points to work zones in the Sterile Area (inside the “mall walls”) will be required to be secured on Cyberlock (locks and keys to be provided and installed by tenant or tenant’s contractors; provided to Port for programming).
 4. Access points to work zones in the Sterile Area (inside the “mall walls”) must remain secured AT ALL TIMES from the Sterile Area side (“storeroom” function).
 5. For work zones in the Sterile Area, tools (and any TSA-prohibited items) when not in use must be locked inside a “job box” or other approved-Port container (lock may be on contractor’s lock-key system or Cyberlock) and the construction site (inside the “mall wall”) secured (via Cyberlock as described above) anytime the site is unattended. Port will conduct inspections of work zones to ensure compliance with this requirement.

6. The Permittee's contractor and subcontractor personnel (i.e., construction workers) are expected to obtain Port-issued badges (at tenant / contractor's expense – see Airport web site for cost information). If a worker for the contractor or a subcontractor requires only intermittent access to the construction site (i.e., less than 4 hours per week), he / she may be escorted by badged contractor / subcontractor personnel with escort privileges. In general, only 50% of all badges issued to a tenant, including those authorized by the tenant for its contractor / subcontractors, will be allowed to have escort authority. A badge holder with escort privileges may escort up to 5 unbadged individuals only. The Port may revoke escort authority if escort rules / procedures are not rigorously followed. If escort privileges are revoked, all personnel (even those requiring intermittent access) will be required to obtain a Port-issued badge.
7. For anyone to be escorted, the Permittee must provide copies (scans) of unexpired, government-issued photo identification and biographical information requested by the Port (generally full legal name, date-of-birth, and gender) in a format acceptable to the Port at least 48 business-hours prior to the intended escort. The Port may conduct background investigations of the individual(s) to be escorted and will advise Permittee if the individual may not be escorted on the Airport.
8. Port-approved security guards may not be available to assist with site security, access control, and/or escorting. Permittee should plan to complete all construction work with its own badged contractors / subcontractors and limited escorting as described above. All guard requests must be made on the Port's guard request form and emailed to opsec@portoakland.com by 12p on the Wednesday prior to the week (Sun. – Sat.) needed. The Port will assess the request and advise (generally no later than 5p on the Thursday prior to the week needed) if it can provide the requested guards.
9. The Port-approved CSSP will identify contractor access route(s) to/from the work zone(s) to/from public areas of the Airport. The Port may restrict contractor's access to doors and/or gates along the approved access route(s).

ii. Tool Control Plan

1. In addition to CSSP required for construction, any contractor or vendor bringing TSA prohibited items into the Sterile Area must have a Port-approved Tool Control Plan (using Port standard form).

iii. Armored Cars / Guards

1. Armored cars must park in Port-designated areas (e.g., loading docks) and may not park curbside or block roadways.
2. Guards may not be armed in any TSA-regulated area (e.g., Sterile Area beyond TSA checkpoint, Secured Area / ramp, etc.). Armed guards are only allowed in publicly accessible areas.
3. Guards accessing TSA-regulated areas must be badged or escorted by a properly badged individual.

iv. Door Locks

1. Door between Sterile Area and kitchens must be on Airport's access control system or Cyberlock. If Cyberlock, then lock must function in "storeroom" mode (always locked / key required to open)
2. Doors between "back of counter" areas (not intended for public access) and kitchens must be on Cyberlock, then lock may function in "classroom" mode (unlock mode available, e.g., during business hours).
3. Permittee to procure and install access control system hardware (Airport will make final connections to field controllers and program).
4. Permittee to procure and install Cyberlock system (cores and keys) and provide to Port for programming.
5. Other tenant spaces (e.g., storage) with access to Sterile Area must be on Cyberlock ("storeroom" mode).

v. ID Badge Control Plan

1. Permittee shall submit ID Badge Control Plan to Port for approval (if Permittee needs access to TSA-regulated areas), addressing at least the following topics:
 - a. Badge recovery from terminated employees and employees that resign, including those that are not present at the Airport when they resign.
 - b. Audits and audit frequency, including Port- and TSA-directed audits.

- c. How Permittee will ensure that no more than 5% of unexpired badges issued to it are unaccounted for at any time.
2. Permittee will only be allowed to SIDA-badge 25% of its employees (remaining will have Sterile Area-only badges with access through TSA security checkpoint only).
3. SIDA-badged tenant employees must use TSA checkpoint to access TSA-regulated areas if they are not performing a delivery function.
4. New employees may only be escorted for 30 days.

vi. CCTV

1. Video recorded through cameras installed by Permittee (for Permittee use) must be made available to the Port upon request, including outside of normal business hours.
2. Permittee shall provide “security network drop” (Cat. 6 cable to nearest IDF with security network switch) for Port to add its own CCTV camera in vicinity of all doors between the Sterile Area and kitchens (drop will be on the Sterile Area-side of the door).

EXHIBIT “7”

**ADMINISTRATIVE FEES
FOR VIOLATION OF OPERATING STANDARDS**

Sanitation, Hygiene & Cleanliness.	\$500 per day per occurrence
Failure to comply with construction requirements as referenced in Section 1.	\$500 per day occurrence
Failure to contain operations and noise pollution as determined by Port within the Leased Premises or Levels of noise exceed such volume in which people in Airport immediately adjacent to the Concession Unit cannot hear public address system.	\$500 per day per occurrence
Failure to maintain Concession Unit.	\$500 per day per occurrence
Failure to comply with reporting requirements as referenced in each subsection of Section 13.	\$500 per occurrence
Failure to comply with the requirements as referenced in Paragraph I.2 (a)	\$500 per occurrence
Failure to comply with quality and quantity of products or services requirements as referenced in Paragraph I.3	\$500 per day per occurrence
Failure to comply with submitting reports and services as required in Paragraph I.5 and any other Sections (other than Section 3) that require reports.	\$500 per occurrence
Failure to comply with Pricing requirements as referenced in Paragraph B.4.	\$500 per day per occurrence
Failure to comply with Sign requirements as referenced in Section 5.	\$500 per day per occurrence
Failure to comply with maintenance requirements as referenced in Section 3.	\$500 per day per occurrence
Failure to comply with the DBE requirements as referenced in Paragraph N.	\$500 per day per occurrence
Personnel issue violating Permit terms not appropriately addressed.	\$500 per day per occurrence

Failure to provide requested audit records and information per Paragraph H, Section 1 or Section 13.	\$500 per day per occurrence
Continuing Labor-Related Disruption as referenced in Section 6.	\$500 per day
Failure to promptly install temporary storefront barriers, curtains, display boxes or signage as referenced in Paragraph I.1(c).	\$500 per day per occurrence
Products and Product Displays violate Agreement terms or declared objectionable.	\$500 per day per occurrence
Unit out of product while advertised on menu or display.	\$500 per day per occurrence
Minimum hours of operation not followed.	\$500 per day per occurrence
Food/beverage product or merchandise below brand standard identified by brand.	\$500 per day per occurrence
Other non-monetary violations of this Agreement.	\$500 per occurrence

Except for violations of requirements regarding the minimum hours of operation, health standards, signage and the noise levels, Administrative Fees begin accruing on the second (2nd) day unless waived by the Port (and each succeeding day until compliance is reestablished) following written notice from the Port of the violation. Payment of Administrative Fees shall occur within thirty (30) days following demand by the Port. For those violations where a plan is required to correct the violation, then Permittee and Port shall develop such plan, including a time schedule under which resolution can be achieved.

EXHIBIT “8”

PERMITTEE’S PROPOSAL

Redline (06/08/2018)

EXHIBIT “9”
ACDBEs



PORT OF OAKLAND

**Attachment 5-A: Quarterly Reporting for Participation of Airport
Concession Disadvantaged Business Enterprises (ACDBE)**

Prime Concessionaire Submitting Report: _____ **For Quarter Ending:** _____

Name and Address of Prime Concessionaire and Airport Concession Disadvantaged Business Enterprise (ACDBE)	Telephone and Fax Numbers Email Address	ACDBE * Certification Number	Description of Prime and ACDBE Services	Dollar Amount of Sales, Purchase or Lease of Goods and Services	Lease Amount Or Minimum Annual Guarantee	Total Lease Amount

--	--	--	--	--	--	--

*The certified firm is issued a certificate by the California Unified Certification Program (CUCP). ACDBE status may be obtained by accessing the CUCP website: www.dot.ca.gov/hq/bep/index.htm or by calling (916) 324-1700 or (866) 810-6346. If the firm was certified as an ACDBE at the time it started work on this lease, but was decertified before completing its portion of the work, enter the dollar amount of ALL services performed by the firm, INCLUDING SERVICES PERFORMED AFTER THE CERTIFICATION DATE. This report must be submitted with the Form of Quarterly Report Certificate. For questions regarding this form, contact Lila Zinn at (510) 627-1485.

**REPORT OF CERTIFIED ACDBE FORM
(CONCESSIONAIRES/SUBCONCESSIONAIRES/
SUPPLIERS/MANAGEMENT CONTRACTORS - COUNTED TOWARD GOALS)**

Name of Airport _____

Airport Sponsor _____

City/State/Zip _____

Preparer _____

Telephone Number _____

Date _____

List below each ACDBE that participated in a concession during the preceding fiscal year and which are included in your submission of the Uniform Report of ACDBE Participation. If no ACDBE firm participated, write "NONE" below.

Name of ACDBE Firm _____

Address _____

City _____ State _____ Zip _____

Type of concession/subconcession/supplier, etc., business _____

Date Agreement (i.e., lease, sublease) Began _____ Date Agreement (i.e., lease, sublease) Expires _____

Options to Renew _____ How Many _____ Length of time _____

Dates that material amendments have been or will be made to agreement, if known _____

Estimated gross receipts for this reporting period: _____

The disadvantaged individual having the largest ownership interest is:

_____ Black _____ Hispanic _____ Native American _____ Asian-Indian American

_____ Asian-Pacific American _____ Non-Minority Woman _____ Other Disadvantaged

Name of ACDBE Firm _____

Address _____

City _____ State _____ Zip _____

Type of concession/subconcession/supplier, etc., business _____

Date Agreement (i.e., lease, sublease) Began _____ Date Agreement (i.e., lease, sublease) Expires _____

Options to Renew _____ How Many _____ Length of time _____

Dates that material amendments have been or will be made to agreement, if known _____

Estimated gross receipts for this reporting period: _____

The disadvantaged individual having the largest ownership interest is:

_____ Black _____ Hispanic _____ Native American _____ Asian-Indian American

_____ Asian-Pacific American _____ Non-Minority Woman _____ Other Disadvantaged

Name of ACDBE Firm _____
Address _____
City _____ State _____ Zip _____
Type of concession/subconcession/supplier, etc., business _____
Date Agreement (i.e., lease, sublease) Began _____ Date Agreement (i.e., lease, sublease) Expires _____
Options to Renew _____ How Many _____ Length of time _____
Dates that material amendments have been or will be made to agreement, if known _____
Estimated gross receipts for this reporting period: _____
The disadvantaged individual having the largest ownership interest is:
_____ Black _____ Hispanic _____ Native American _____ Asian-Indian American
_____ Asian-Pacific American _____ Non-Minority Woman _____ Other Disadvantaged

Name of ACDBE Firm _____
Address _____
City _____ State _____ Zip _____
Type of concession/subconcession/supplier, etc., business _____
Date Agreement (i.e., lease, sublease) Began _____ Date Agreement (i.e., lease, sublease) Expires _____
Options to Renew _____ How Many _____ Length of time _____
Dates that material amendments have been or will be made to agreement, if known _____
Estimated gross receipts for this reporting period: _____
The disadvantaged individual having the largest ownership interest is:
_____ Black _____ Hispanic _____ Native American _____ Asian-Indian American
_____ Asian-Pacific American _____ Non-Minority Woman _____ Other Disadvantaged

(Use additional sheets as needed)

Please refer to the Instructions sheet for directions on filling out this form

Please refer to the Instructions sheet for directions on filling out this form

1. Name of Recipient:									
2. Contact Information: Preparer's Name:				Phone No. ()		Fax No. ()			
email address:									
3a. Federal fiscal year in which reporting period falls:		FY ()		3b. Date This Report Submitted					
4. Current Non-Car Rental ACDBE Goal:		Race Conscious Goal		%		Race Neutral Goal		%	
		A		B		C		D	
		Total Dollars (Everyone)		Total Number (Everyone)		Total to ACDBEs (dollars) [E+F]		Total to ACDBEs (number)	
5. NON-CAR RENTAL CUMULATIVE ACDBE PARTICIPATION									
Prime Concessions									
Subconcessions									
Management Contracts									
Goods and Services									
Total Cumulative Non-Car Rental ACDBE Participation									
6. NON-CAR RENTAL NEW ACDBE PARTICIPATION THIS PERIOD		A		B		C		D	
		Total Dollars (Everyone)		Total Number (Everyone)		Total to ACDBEs (dollars) [E+F]		Total to ACDBEs (number)	
Prime Concessions									
Subconcessions									
Management Contracts									
Goods and Services									
Total Non-Car Rental New ACDBE Participation									
7. Current Car Rental ACDBE Goal:		Race Conscious Goal		%		Race Neutral Goal		%	
		A		B		C		D	
		Total Dollars (Everyone)		Total Number (Everyone)		Total to ACDBEs (dollars) [E+F]		Total to ACDBEs (number)	
8. CAR RENTAL CUMULATIVE ACDBE PARTICIPATION									
Prime Concessions									

EXHIBIT “10”

CERTIFICATE FOR QUARTERLY REPORT

(On Company Letterhead)

[Date]

Director of Aviation
Port of Oakland
530 Water Street
Oakland, CA 94607

Dear _____:

I, _____, do hereby certify as follows:

1. I am the **[Chief Financial Officer]** of _____, the Permittee under a Space/Use Permit with the Port of Oakland for Food and Beverage Concession dated _____, 2018 (the “Permit”).
2. The attached Quarterly Report of the Permittee for the quarter ended (March, June, September or December) __, 201__, was prepared in accordance with all of the applicable requirements of Section 13 of the Permit, and all of the information contained in this Quarterly Report is true and correct.

Sincerely,

Signature

Name

Title

EXHIBIT "11"

FORM OF LETTER OF CREDIT

IRREVOCABLE LETTER OF CREDIT

Irrevocable and Transferable

Letter of Credit # _____

Amount: U.S. \$ _____

To: City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners
("Port of Oakland")
530 Water Street
Oakland, California 94607 _____, 20____

Ladies and Gentlemen:

For the account of **[Insert applicant]**, a **[Insert type of entity]** ("Applicant"), we hereby issue in your favor our Irrevocable Letter of Credit for U.S. \$ _____.

The amount of this credit is available to you by your drafts on us at sight accompanied by the following statement signed by your Executive Director or Chief Financial Officer.

"I certify that the amount of our drawing is due the Port of Oakland (1) pursuant to the terms of the **[Insert name of agreement]** dated **[date of agreement]** between the Port of Oakland and **[Name of applicant]**, a **[Insert type of entity]** ("Applicant") or any other agreement between the Port of Oakland and Applicant, (2) pursuant to the terms of this credit, or (3) because a payment previously made to the Port of Oakland by or on behalf of Applicant has been recovered by settlement or otherwise from the Port of Oakland by a trustee, receiver, creditor or other party."

Drafts must clearly specify the number of this credit and (except as set forth below) be presented at our counters at **[Insert location of counters of bank in San Francisco or Oakland]** not later than the close of business on _____, 20____, or such later date as this credit shall have been extended to (the "Expiration Date"). If a demand for payment made by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you prompt notice that the purported demand for payment was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefor, and that we are returning any documents to you. Upon being notified that the purported demand for payment was not effected in accordance with this Letter of Credit, you may attempt to correct any such non-conforming demand for payment on or prior to the Expiration Date.

Drawings may also be presented to us by facsimile transmission to facsimile number _____ (each such drawing, a "Fax Drawing"). If you present a Fax Drawing under this Letter of Credit, you do not need to present the original of any drawing documents, and if we receive any such original drawing documents, they will not be examined by us. In the event of a full or final drawing, the original standby Letter of Credit must be returned to us by overnight courier.

This credit shall be deemed automatically extended without amendment for additional periods of one year from the present or any future expiration date unless at least ninety (90) days prior to any such date we notify you (Attention: Chief Financial Officer) and Applicant by a nationally recognized overnight courier service that we elect not to consider the letter of credit renewed for any such additional period. You may then draw on us at sight with the above-specified signed statement.

This Letter of Credit is subject to the International Standby Practices ("ISP98"), International Chamber of Commerce Publication No. 590 and as to matters not governed by ISP98, shall be governed by and construed in accordance with the Laws of California, without regard to principles of conflicts of Law.

We engage with you that drafts for full or partial payment drawn under and in compliance with the terms of this credit will be duly honored by us on delivery of documents as specified.

All bank charges and commissions are for the account of Applicant.

Very truly yours,

Authorized Signature and Title

SIGHT DRAFT

City

Date

Pay to the order of the Port of Oakland, at sight, _____ (\$ _____) U.S. Dollars,
drawn under Letter of Credit # _____, issued by _____
to the Port of Oakland for the account of **[Insert name of applicant]**.

**City of Oakland, a municipal corporation, acting
by and through its Board of Port Commissioners
("Port of Oakland")**

By:

Name:

Title:

EXHIBIT “12”

GREEN CONCESSIONS PROGRAM

Port Sustainability Policy: The Board has adopted Resolution No. 20467: Resolution Implementing Port Sustainability Policy (the “Policy”). All operations throughout the Port, including food, beverage, retail and duty free concessions should be guided by this Policy. In addition, the Port requires the following actions to be undertaken by its Permittee:

- I. **Cleaning:** Permittee is required to use green cleaning methods in conformance with the product manufacturer’s recommendations and in compliance with OAK’s Green Cleaning Program. Tenants are required to develop a Green Cleaning Plan in compliance with the OAK Green Clean Program and provide regular staff training to implement this program.
- II. **Construction & Demolition Waste Management:** Permittee shall reduce total waste material during construction and demolition (goal – a maximum of 2.5 lbs. per square foot) or divert at least 75% of the total construction and demolition material generated during construction (by weight or volume) from the landfill via recycling or reusing materials. All material leaving the site shall be tracked and documented by Permittee, and Permittee shall provide Port with weight slips or other similar documentation in form reasonably acceptable to Port.
- III. **Employee Benefits and Training:**
 - A. Permittee must offer commuter benefits program for employees and participate in BART’s OAK Connector discount program.
 - B. Permittee shall commit to annual training and new employee training with a focus on sustainability as outlined and required in this Exhibit.
- IV. **Energy Efficiency:** To maximize energy efficiency, Permittee shall target the refrigerator temperature at a minimum of 36 degrees Fahrenheit, and freezer at a minimum of 0 degrees Fahrenheit. All refrigerated cases, refrigerator doors and strip curtains must be maintained in good working order (replace worn gaskets, align doors, etc.).
- V. **Food Donation Program:** Permittee to develop, participate and collaborate in a food donation program. Permittee is required to establish a plan for surplus food donation to be phased-in over a three-year period, with at least 30% surplus food donated in 2020; at least 60% in 2021, and at least 90% in 2022, with the ultimate goal of 100% of all surplus food donated beyond 2023.
- VI. **Indoor Air Quality:** Permittee shall comply with the IAQ Management Plan established for the construction project including building flush-out after construction, but before occupancy.
- VII. **Service Ware/Supplies:** “Service Ware” is defined and includes, but is not limited to, all bags, bowls, boxes, cartons, cups, cutlery, drink lids, napkins, pizza boxes, plates, sacks, stir sticks, straws, trays, utensils, and wrapping. All Service Ware shall meet ASTM D6400 or ASTM D6868 or Biodegradable Products Institute (BPI) www.bpiworld.com for compostability.
 - A. To reduce waste, Permittee:
 1. Is required to first ask customer before providing or making available drink lids, straws, stirsticks, utensils, napkins, bags.

2. Should encourage and use electronic/paperless receipts and not print a receipt if the customer does not request or declines on offer to provide a printed receipt.
3. Shall assure that all packaging or Service Ware provided to customer is reusable metal, glass, ceramic or compostable. Cutlery must be metal or compostable (and labeled as such on each piece).
4. Shall minimize packaging and use of single-use Service Ware.
5. Shall eliminate individually wrapped cutlery.
6. Shall not utilize Styrofoam (or similar) products, petroleum-based plastic bags, or petroleum-based plastic utensils.
7. Minimize single-serving packages of sweeteners and creamers by establishing coffee stations where these items are made available in bulk.
8. Minimize single-serving packages of condiments by establishing condiment stations where these items are made available in bulk.
9. Stock and sell water only in compostable or bio-resin bottles or paper boxes for all bottled water sales. Permittee shall offer, advertise and provide an incentive for customers to use their own reusable cup and/or bottle.
10. Discourage the use of pizza boxes. If used, pizza boxes they must be unbleached e-flute boxes <http://www.pmq.com/May-June-2004/Packaging-That-Delivers/>

B. Hierarchy of usage:

1. 1st choice shall be reusable metal, glass, ceramic Service Ware (plates, cups, cutlery, etc.). If not practicable then,
2. 2nd choice shall be compostable Service Ware derived from plant fiber (wheat straw, sugarcane or bamboo). If not practicable then,
3. 3rd choice shall be compostable, tree-based Service Ware and products certified by the Forest Stewardship Council (FSC). The FSC label ensures that the forest products used are from responsibly harvested and verified sources. All paper/cardboard should be unbleached. Paper bags, printer paper, menu paper must be non-bleached and contain 50% post-consumer waste recycled content.
4. 4th choice, only acceptable in limited applications, is the use of clear, compostable PLA (polylactic acid) is a bio-based plastic derived from renewable resources such as corn starch, tapioca roots, or sugarcane). May only be used in limited applications when clear clamshells or cups are required to broaden appeal of grab-and-go items salads, parfaits, etc. when content visibility is essential. In these cases, containers must be compostable PLA and clearly labeled as such.

C. The only allowable plastics are for pre-packaged drinks: PETE #1, HDPE #2 and PP#5.

D. Fryer oil must be recycled pursuant to Port direction.

E. Light bulbs must be recycled by Permittee.

F. Store broken bulky waste in your own storage areas, not in common areas. Must participate in Port-sponsored bulky waste FOD (Foreign Object Debris) disposal events.

VIII. **Waste Reduction Program:** consists of source-separated, three-stream diversion program in the Assigned Space located throughout the Terminal Complex, including Permittee storage areas and offices. The three waste streams are:

A. **Organic Waste (Green):** Consisting of food, food-soiled paper, compostable plates, cups, flatware, straws, any takeout containers, including grease-stained pizza boxes, napkins, paper towels, straws and lids.

B. **Mixed Recycling (Blue):** Consisting of clean cardboard, paper and newspaper, glass, metals, and non-compostable plastic.

C. **Landfill (Black):** Any residual waste that cannot be recycled or composted.

Waste must be placed in the appropriate Terminal 1 compactor and/or Terminal 2 trash chute, or as otherwise designated by the Port. Fully enclosed containers must be used by Permittee to transport waste to the compactors/chute rooms.

IX. **Waste Receptacles:** Permittee must separate all waste in the Assigned Space into organic waste, mixed recycling or landfill receptacles. All receptacles must be leak-proof with a bag liner. All public (front-of-house) receptacles must be approved by the Port and in locations designated by the Port.

Permittee shall include co-located appropriately-sized waste receptacles in their Assigned Space that are clearly labeled for organic waste, mixed recycling and landfill. Receptacles shall be adequately sized and placed in all appropriate areas - front of house, back of house and in offices and breakrooms within leasehold. All waste receptacles must be maintained in good working order. They must be kept clean, well-labeled and emptied at an interval that prevents overflowing. They must be maintained with the appropriate liner type – compostable green for organic waste, clear for mixed recycling, and black for landfill.

EXHIBIT “14”

QUALITY ASSURANCE AUDITS

To ensure the public receives consistent customer service at desired quality standards, Permittee shall ensure all Concession Units undergo regular concession inspections, called “Quality Assurance Audits” herein. Port may require Permittee to perform Quality Assurance Audits if a particular Concession Unit needs attention in which event the results shall be compiled and forwarded to Port for review.

Service shall be timely, attentive, and friendly. Customers shall be promptly attended to and in a friendly and courteous manner. Self-service elements shall be easily seen and accessible by customers. Processing of payments for food, beverages and retail merchandise shall be prompt. Receipts shall be properly itemized, reflecting precisely the products and services purchased, and shall present individual prices, total and taxes. All customers shall be thanked for patronage. Quality Assurance Audits must evaluate the following:

Premises

- (a) Design
- (b) Maintenance
- (c) Equipment
- (d) Cleanliness

2. Product

- (a) Delivered as represented
- (b) Taste
- (c) Attractiveness

3. Personnel

- (a) Professionalism
- (b) Appearance
- (c) Activity

4. Price Value

- (a) Visibility
- (b) Appropriateness
- (c) Compliance with Airport Pricing Policy

5. Promotions

- (a) Promotional and marketing program
- (b) Effectiveness

EXHIBIT “15”

LABOR PEACE AGREEMENT

Redline (06/08/2018)

EXHIBIT "16"

FORM OF GUARANTY

WHEREAS, the City of Oakland, a municipal corporation doing business by and through its Board of Port Commissioners, hereafter referred to as "Port", and _____, hereafter referred to as "Permittee", are about to execute a document entitled Space/Use Permit for Food and Beverage Concession (the "Permit") dated _____, 20 , under which Permittee will operate food and beverage concession units at Oakland International Airport; and

WHEREAS, the undersigned, hereinafter referred to as "Guarantor," has a financial interest in and/or will receive benefit from Permittee, and

WHEREAS, Port would not execute the Permit if Guarantor did not execute and deliver to Port this Guaranty.

NOW THEREFORE, for and in consideration of the execution of the Permit by Port and as a material inducement to Port to execute said Permit, Guarantor hereby unconditionally and irrevocably guarantees the prompt payment by Permittee of all sums payable by Permittee under the Permit and the faithful and prompt performance by Permittee of each and every one of the terms, conditions and covenants of the Permit to be kept and performed by Permittee that arise during the Term of the Permit.

It is specifically agreed and understood that the terms of the Permit may be altered, affected, modified, waived or changed by agreement between Port and Permittee, including, without limitation, the amount of the Rent, the Term of the Permit and the location of the Assigned Space, and the Permit may be assigned by Port or any assignee of Port without consent or notice to Guarantor and that this Guaranty shall thereupon and thereafter continue to guarantee the performance of the Permit as so changed, modified, affected, altered or assigned, irrespective of the lack of prior notice to or consent by Guarantor.

In the event the Permit is renewed and/or extended by the Port, this Guaranty shall also apply to the Permit as so extended or renewed, notwithstanding any changes in the provisions thereof, with the same effect as if this Guaranty had been executed by the undersigned with reference to the renewed or extended Permit at the time of said renewal or extension.

This Guaranty shall not be released, modified or affected by failure or delay on the part of Port to enforce any of the rights or remedies of the Port under the Permit, whether pursuant to the terms thereof or at law or in equity.

No notice of occurrence, existence or continuance of any failure of performance or payment under the Permit, or any other event of default or default by Permittee under the Permit need be given to Guarantor. It is specifically agreed and understood that the guarantee of the undersigned is a continuing guarantee under which Port may proceed forthwith and immediately against Permittee or against one or more of the Guarantor following any breach or default by Permittee or for the enforcement of any rights which Port may have as against Permittee pursuant to or under the terms of the Permit or at law or in equity.

Port shall have the right to proceed against the Guarantor hereunder following any breach or default by Permittee without first proceeding against Permittee and without previous notice to or demand upon either Permittee or Guarantor. Guarantor further assents, without the requirement or condition that notice of any kind or nature be given to such Guarantor on account thereof, to (a) any failure to resort to or exhaust other rights, powers or remedies on the part of Port; (b) the acceptance by Port of (i) any prepayments or partial payments under the Permit and (ii) any payment in full satisfaction of less than all of the amount due under the Permit.

Guarantor hereby waives (a) notice of acceptance of this Guaranty, (b) demand of payment, diligence, presentation and protest, including, without limitation, of claims with a court in the event of receivership or bankruptcy of Permittee, (c) notice of the reliance of Port upon this Guaranty; (d) any right to require the Port to proceed against the Permittee or any other Guarantor or any other person or entity liable to Port, (e) any right to require Port to apply to any default any security deposit or other security it may hold under the Permit, (f) any right to require Port to proceed under any other remedy Port may have before proceeding against Guarantor, (g) any right of subrogation, reimbursement, indemnification, and contribution, and (h) any other rights and defenses that are or may become available to Guarantor by reason of sections 2787 to 2855 of the California Civil Code. In addition, Guarantor agrees that the performance of any act or payment that tolls the statute of limitations applicable to the Permit shall similarly operate to toll the statute of limitations applicable to Guarantor's liability hereunder.

Guarantor does hereby subrogate all existing or future indebtedness or other obligations of Permittee to Guarantor to the obligations owed to Port under the Permit and this Guaranty.

This Guaranty and the liability of Guarantor hereunder shall not be subject to or contingent upon (a) the genuineness, validity, regularity or enforceability of the Permit, or (b) any law, ordinance, rule, regulation, writ, order or decree now or hereafter in effect which might in any manner affect the Permittee's obligations under the Permit or any rights, powers or remedies of Port in respect thereof, or cause or permit to be invoked any alteration of time, amount or manner of payment or performance of any obligation of the Permittee under the Permit. Further, this Guaranty shall not be deemed discharged, impaired or affected by (x) the power or authority of Permittee to enter into or to obtain the Permit; (y) any subcontracting or assignment by Permittee of its interest in the Permit; or (z) the existence or non-existence of Permittee as a legal entity.

All of the rights, powers and remedies of Port under the Permit and this Guaranty are intended to be distinct, separate and cumulative, and none of such rights, powers and remedies therein and herein contained is intended to be exclusive of or a waiver of any other right, power or remedy therein or herein contained.

This Guaranty shall be governed by, and construed in accordance with, the laws of the State of California. Each provision hereof is intended to be severable. If any clause, phrase, provision or portion of this Guaranty or the application thereof is determined by a court of competent jurisdiction to be invalid or unenforceable under applicable law, the remaining clauses, phrases, provisions and portions of this Guaranty shall not be affected or impaired thereby, but each remaining clause, phrase, provision and portion shall be valid and be enforceable to the fullest extent permitted by law.

The term " Permittee " whenever used in this Guaranty refers to and means the Permittee named in the Permit and also to any successor to the interests of the Permittee authorized pursuant to the

terms of the Permit. Capitalized terms used herein without definition shall have the meanings set forth in the Permit.

This Guaranty shall be binding on the Guarantor and their respective heirs, executors, personal representatives, successors and assigns.

In the event any action is brought by the Port against Guarantor or any of them to enforce the obligation of Guarantor hereunder, the unsuccessful party in such action shall pay to the prevailing party therein a reasonable attorney's fee, which shall be fixed by the court.

IN WITNESS WHEREOF, Guarantor hereby executes this Guaranty this _____ day of _____, 20____.

Signature: _____

Print
Name: _____

Address: _____



PORT OF OAKLAND

Attachment 12: Space/Use Permit

Revised as of June 8, 2018

(attached on following page)

ATTACHMENT 12

**SPACE/USE PERMIT
FOR
FOOD AND BEVERAGE CONCESSION**

BY AND BETWEEN

**THE CITY OF OAKLAND,
A MUNICIPAL CORPORATION,
ACTING BY AND THROUGH ITS BOARD OF PORT COMMISSIONERS**

AND

[_____]

DATED

_____, 2018

TABLE OF CONTENTS

	<u>Page</u>
PARAGRAPH A. PERMITTEE	1
PARAGRAPH B. USE AND OPERATION.....	2
Paragraph B.1 Permitted Uses	2
Paragraph B.2 No Exclusivity.....	3
Paragraph B.3 Storage Maximum.....	3
Paragraph B.4 Pricing.	3
PARAGRAPH C. TERM.....	4
PARAGRAPH D. ASSIGNED SPACE TO BE OCCUPIED; COMMON AREAS.	5
Paragraph D.1 Assigned Space – Initial Description.....	5
Paragraph D.2 Assigned Space – As-Built Condition.	5
Paragraph D.3 Common Areas.	5
PARAGRAPH E. RENT	6
Paragraph E.1 Minimum Annual Guaranty.	6
Paragraph E.2 Percentage Of Gross Receipts; Marketing Fund; Refurbishment Fund.....	7
Paragraph E.3 Rent Commencement Date; Late Opening Charges; Prepayments.....	7
Paragraph E.4 Remitting Payments.	8
PARAGRAPH F. PERFORMANCE DEPOSIT; GUARANTY.....	9
PARAGRAPH G. INSURANCE REQUIREMENTS.....	9
PARAGRAPH H. RELOCATION, EXPANSION, CONTRACTION; FUTURE TERMINAL BUILDING ADDITIONS.	12
Paragraph H.1 Relocation, Expansion, Contraction.	12
Paragraph H.2 Future Terminal Buildings Additions.	15
PARAGRAPH I. OPERATION OF CONCESSION UNITS.	15
Paragraph I.1 Management.	15

Paragraph I.2 Personnel.	17
Paragraph I.3 Quality of Products and Services.	18
Paragraph I.4 Franchise Standards.....	20
Paragraph I.5 Reports and Surveys.	20
Paragraph I.6 Advertised Sales or Promotions.	20
Paragraph I.7 Credit/Charge Cards, Mobile Payment and Traveler’s Checks.	21
Paragraph I.8 Public Address System.	21
Paragraph I.9 Noise and Lights.....	21
Paragraph I.10 Strategic Beverage Partnership.	21
PARAGRAPH J. PERMITTEE’S OPERATING HOURS	21
PARAGRAPH K. ADMINISTRATIVE FEES	22
PARAGRAPH L. PERMITTEE’S DUE DILIGENCE; NO REPRESENTATIONS OR WARRANTIES BY PORT.....	22
PARAGRAPH M. PERMITTEE’S PROPOSAL.....	22
PARAGRAPH N. COMPLIANCE WITH PORT AND DEPARTMENT OF TRANSPORTATION (DOT) NON-DISCRIMINATION IN CONTRACTING REQUIREMENTS.....	23
PARAGRAPH O. ADDITIONAL TERMS AND CONDITIONS	24
PARAGRAPH P. AMENDMENTS	24
PARAGRAPH Q. WAIVER OF JURY TRIAL.....	24
PARAGRAPH R. DISPUTE RESOLUTION	24
PARAGRAPH S. PUT RIGHTS	25
ATTACHMENT "A" OTHER TERMS AND CONDITIONS OF SPACE/USE PERMIT	1
SECTION 1. CONSTRUCTION OF IMPROVEMENTS IN ASSIGNED SPACE.....	1
SECTION 2. MIDTERM REFURBISHMENT.	6
SECTION 3. MAINTENANCE AND REPAIR OF ASSIGNED SPACE.....	7
SECTION 4. OTHER OPERATIONAL REQUIREMENTS.	10

SECTION 5.	SIGNAGE AND ADVERTISING.	12
SECTION 6.	LABOR PEACE; AIRPORT LABOR POOL PROGRAM; FIRST SOURCE PROGRAM AND FAIR CHANCE HIRING PROGRAM.	13
SECTION 7.	PERMITTEE’S PROPERTY	14
SECTION 8.	WI-FI SYSTEM.....	15
SECTION 9.	UTILITIES.....	15
SECTION 10.	PORT’S RIGHT TO ENTER; PERMITTEE’S RIGHT OF ACCESS.	16
SECTION 11.	TAXES AND ASSESSMENTS.	16
SECTION 12.	COMPLIANCE WITH LAWS, RULES, POLICIES AND REGULATIONS.....	17
SECTION 13.	PERCENTAGE FEES.	19
SECTION 14.	AVIATION OPERATIONS.	24
SECTION 15.	INDEMNIFICATION.....	25
SECTION 16.	WAIVER OF DAMAGE.....	25
SECTION 17.	[RESERVED]	26
SECTION 18.	ASSIGNMENT AND SUBLETTING.	26
SECTION 19.	DEFAULT.	32
SECTION 20.	END OF TERM.	34
SECTION 21.	HOLDING OVER.	34
SECTION 22.	TAX TREATMENT.	35
SECTION 23.	INTENTIONALLY OMITTED.	35
SECTION 24.	NOTICES, APPROVALS OR CONSENTS.	35
SECTION 25.	SUMS PAID BY PORT.....	36
SECTION 26.	DELINQUENCY CHARGE.	36
SECTION 27.	PERFORMANCE DEPOSIT.....	37
SECTION 28.	BROKERAGE COMMISSIONS.	38

SECTION 29.	PORT’S RESERVED RIGHTS.....	38
SECTION 30.	DISCRIMINATION NOT PERMITTED.....	39
SECTION 31.	FEDERAL AVIATION ADMINISTRATION REQUIREMENTS.	42
SECTION 32.	ENVIRONMENTAL RESPONSIBILITIES.....	43
SECTION 33.	PREVAILING WAGE REQUIREMENTS.....	44
SECTION 34.	EMERGENCY AND PUBLIC CONTACTS.....	46
SECTION 35.	NO ACCORD AND SATISFACTION.....	47
SECTION 36.	MARITIME AND AVIATION PROJECT LABOR AGREEMENT.	47
SECTION 37.	DAMAGE OR DESTRUCTION; CONDEMNATION.....	48
SECTION 38.	RIGHT TO MODIFY.	51
SECTION 39.	SECURITY MANDATES.....	51
SECTION 40.	MISCELLANEOUS.	52
SECTION 41.	FORCE MAJEURE.	54
SECTION 42.	DEFINED TERMS.	54

ATTACHMENT “B” – ENVIRONMENTAL RESPONSIBILITIES

ATTACHMENT “C” – PORT’S PUT RIGHTS

EXHIBITS

EXHIBIT 1	ASSIGNED SPACE
EXHIBIT 2	TRANSITION PLAN
EXHIBIT 3	RECOGNITION AGREEMENT
EXHIBIT 4	INITIAL PROPOSED PRICING
EXHIBIT 5	CONCESSION UNIT
EXHIBIT 6	AIRPORT SECURITY REQUIREMENTS
EXHIBIT 7	ADMINISTRATIVE FEES
EXHIBIT 8	PERMITTEE’S PROPOSAL
EXHIBIT 9	ACDBES
EXHIBIT 10	CERTIFICATE FOR QUARTERLY REPORT
EXHIBIT 11	FORM OF LETTER OF CREDIT
EXHIBIT 12	GREEN CONCESSIONS PROGRAM

EXHIBIT 13	[RESERVED]
EXHIBIT 14	QUALITY ASSURANCE AUDITS
EXHIBIT 15	LABOR PEACE AGREEMENT(S)
EXHIBIT 16	GUARANTY

ATTACHMENT 12

SPACE/USE PERMIT

For the better promotion of commerce and navigation and the development of the Port of Oakland and Oakland International Airport for the benefit of the public, the City of Oakland, a municipal corporation acting by and through its Board of Port Commissioners, herein referred to as the “Port”, by its execution hereof, hereby authorizes the person or entity identified in Paragraph A below, hereinafter referred to as “Permittee,” to conduct business and/or occupy space at Oakland International Airport, hereinafter referred to as the “Airport,” for the purposes and on the terms and conditions hereinafter stated in this Space/Use Permit (“Permit”) dated _____, 2018. For purposes of this Permit, the definition of Permittee shall be deemed to include subtenants, joint venture partners or other contractual business arrangements between Permittee and such other persons, as approved by the Director.

The Port is established through Article VII of the Charter of the City of Oakland (“City”), and is under the exclusive control and management of the Board of Port Commissioners (the “Board”). In any case under this Permit that Port may or shall take any action, Port’s Director of Aviation (sometimes hereafter the “Director”) is authorized to take such action unless this Permit provides for action by the Board or by resolution or ordinance, and except as otherwise provided now or hereafter by law, the Charter of the City, or by resolution or ordinance of the Board.

Paragraph A. Permittee. The name, address, telephone number, e-mail address, fax number and contact of the Permittee hereunder are as follows:

Name:

Address:

Telephone:

Contact:

E-Mail:

Fax Number:

The name, address, telephone number, e-mail address, fax number and contact of the 24-hour **emergency contact** of Permittee under Section 34 of Attachment “A” of this Permit are as follows

Contact

Name:

Address:

Telephone:

Mobile:

E-Mail:

Fax Number:

The name, address, telephone number, e-mail address, fax number and contact of Permittee's **agent for service of process** under Section 40(9) of Attachment "A" of this Permit are as follows

Name:

Address:

Telephone:

Contact:

E-Mail:

Fax Number:

Paragraph B. **Use and Operation.**

Paragraph B.1 Permitted Uses. The permitted uses (the "Permitted Uses") consist only of the following: the right to sell food and beverages in the Assigned Space (as defined in Paragraph D below), as more particularly shown opposite each Concession Unit described on attached Exhibit "5" (each a "Concession Unit"). The Permitted Uses for each Concession Unit shall be specific to that Concession Unit, and the Permittee shall not, without the prior written consent of the Port, granted pursuant to the last paragraph of this Paragraph B.1, use that Concession Unit for the Permitted Uses authorized for any other Concession Unit. Permittee is only authorized to conduct at the Airport, and only from the Assigned Space as described in Paragraph D below, the Permitted Uses and no other business or uses. The Permitted Uses do not permit Permittee to have access to the air operations area of the Airport. Permittee shall not engage in any activity on the Airport outside of the Assigned Space for the recruitment or solicitation of business, except that after the commencement of the Interim Term or the Primary Term (as such terms are defined in Paragraph C below), Permittee shall have the right, substantially in accordance with Permittee's transition plan attached hereto as Exhibit "2" (the "Transition Plan"), to operate food and beverage carts outside of the Concession Units in locations in the Airport approved in writing by the Director, until the Director notifies Permittee in writing that he or she has determined that sufficient Concession Units in the Airport have opened to permit the elimination of such food and beverage carts.

In the event Permittee desires to use a Concession Unit for any purpose other than the Permitted Uses for that Concession Unit, Permittee may submit a request to the Director, and

the Director may, in his or her sole and absolute discretion, approve or deny such request in writing. Any such decision shall be final and binding on Permittee. Without limiting the generality of this Paragraph B.1 or any of the requirements set forth in Permittee's Proposal incorporated as part of this Permit, as provided in Paragraph M below, Permittee shall not operate any Concession Unit under any name or brand, other than a name or brand specifically permitted or required herein, or as otherwise approved in writing by the Director. The Director has no authority to approve any use of the Assigned Space, or of any Concession Unit included therein, for any use that is not for a food and beverage purpose.

Paragraph B.2 No Exclusivity . Permittee acknowledges and agrees that except for its exclusive use of the Assigned Space, to the extent provided in Paragraph D.1 below, Permittee has no exclusive rights to conduct the business of the Permitted Uses in the existing terminals at the Airport and that Port may arrange with others for similar activities in such terminals or at other locations at the Airport. Permittee shall have no right to occupy space or conduct business in any future terminal additions or unit terminals developed by Port during the Term of this Permit.

Paragraph B.3 Storage Maximum. Permittee shall use no more than five (5%) of the square footage in each Concession Unit for storage.

Paragraph B.4 Pricing.

(a) Permittee shall price its products in accordance with the Airport Pricing Policy. For the purposes of this Permit, the Airport Pricing Policy shall mean establishing prices that are no more than 10% higher than prices charged by comparable food and beverage businesses located off-Airport, excluding sale or promotional prices. "Comparable" shall mean (1) if Permittee is a licensee of a restaurant concept, then the pricing comparison shall be to the other restaurants with the same concept operated by the licensor or other licensees in the counties of Alameda, Contra Costa, San Francisco and Santa Clara, or (2) if Permittee operates food and beverage units that are not operated under license or franchise agreements, or that do not have other locations in the counties of Alameda, Contra Costa, San Francisco and Santa Clara, pricing will be compared to restaurants with a similar style of service and menu, located in shopping centers or commercial districts in the counties of Alameda, Contra Costa, San Francisco and Santa Clara. In addition to the price chargeable pursuant to the Airport Pricing Policy, Permittee may charge customers a separate three percent (3%) benefits surcharge line item to defray the costs of employee benefits, and such three percent (3%) benefits surcharge shall not be included as Gross Receipts for purposes of the rent calculation contained in Paragraph E.2 of this Permit.

(b) Permittee's initial proposed pricing and menus for each Concession Unit, which have been approved by the Director, is attached hereto as Exhibit "4". No changes to these menus or prices may be made without the prior written consent of the Manager of Aviation Properties. Any proposed changes to these prices must be submitted to the Port in writing, along with supporting documentation to show comparability. The Port shall consider such request and supporting data, and may conduct its own price comparisons with such off-Airport restaurants as the Port considers necessary. For the purposes of this Paragraph B.4(b), the decision of the Manager of Aviation Properties with respect to changes to Permittee's menu's or prices shall be final and binding on Permittee.

(c) Preprinted Prices. When an item is pre-priced, Permittee shall not charge a price higher than the preprinted price.

(d) Survey Procedure.

(i) Price Checks. Permittee shall conduct a price check on each of its Concession Units annually. To accomplish this, Permittee shall conduct a price check on one fourth of its total Concession Units each calendar quarter-year, at a minimum, and all reports must be presented to Port quarterly. Surveys of product items determined by Port will be performed by Permittee on each of Permittee and its authorized sublessee's Concession Units to ensure pricing is in accordance with this Permit and the Airport Pricing Policy. Port, at its option, may develop the list of Concession Units chosen for each price check and each chosen Concession Unit will be given the list of categories of product to be checked. Permittee can be requested at any time to produce a list of product sizes, brands and prices presently being sold in each Concession Unit. Port can review the list and select the items to be checked on a particular price check. Port may choose to select all items for any particular price check.

(ii) Spot Surveys. Additionally, Port may request Permittee to conduct "spot" or random surveys of the approved local comparison locations and the prices charged at the Airport periodically to ensure compliance with the Airport Pricing Policy.

(e) Failure to Adhere to the Airport Pricing Policy. Permittee will be given one (1) week to correct any price overage discrepancies shown in any survey or customer complaint provided by Port to Permittee, or to submit written justification for retaining current prices for these items. In response to Permittee's written justifications, Port will determine whether overages must be eliminated, and if so, Permittee must reduce prices within three (3) business days of the date of Port's decision. Port reserves the right to have Permittee conduct and complete a price compliance survey on selected products or other inventories at Port's sole discretion. This price compliance survey must be completed and submitted to Port within two (2) weeks of receipt of Port's written request. Port will not unreasonably withhold its consent to a request for a price increase and will respond to such requests within twenty-one (21) days of the date such request is submitted in writing by Permittee to the Director. If Port does not respond within said twenty-one (21) day period, the Permittee may implement the requested price increase, subject to Port's right to require rolling-back the price to the previous price at any time.

Paragraph C. **Term.** The Term of this Permit shall consist of the Interim Term (as hereafter defined in this Paragraph C) and the Primary Term (as hereafter defined in this Paragraph C). The Term of this Permit shall commence on February 1, 2019 (the "Commencement Date"), and shall expire on the expiration of the Primary Term, unless sooner terminated in accordance with the terms and provisions of this Permit. The Interim Term shall commence on the Commencement Date and shall expire at 11:59 PM Pacific Time on December 31, 2019. The Primary Term shall commence on January 1, 2020 and shall expire at 11:59 PM Pacific Time on December 31, 2029.

Paragraph D. **Assigned Space to be Occupied; Common Areas.**

Paragraph D.1 Assigned Space – Initial Description. The “Assigned Space” is the space set forth on the attached Exhibit “1”. Permittee shall have exclusive use of the Assigned Space, except to the extent otherwise provided in Paragraph I.3(c) below.

Paragraph D.2 Assigned Space – As-Built Condition.

Port shall have the right, at any time within one hundred twenty (120) days after the Rent Commencement Date (as defined in Paragraph E.3(a) below) applicable to a Concession Unit, to measure the “as-built” size of that Concession Unit. In determining such “as-built” size and in determining Permittee’s responsibilities for the Assigned Space, the exact boundaries of each Concession Unit shall be determined consistent with the Tenant Design Standards provided to Permittee. The Assigned Space does not include any storage and/or support space rented for additional consideration under a separate Space/Use Permit or other agreement with the Port.

If the Port exercises its rights under this Paragraph D.2, it shall notify the Permittee in writing of the “as-built” size of the Concession Unit. Permittee may at its expense within ten (10) days of its receipt of such written notice from the Port, have the Concession Unit re-measured and submit such re-measurement and/or its objections to the Port’s re-measurement in writing to the Port. The Port shall in good faith review any such timely submittals and determine what changes, if any, it will make in the “as built” size of the Concession Unit, but the Port shall not be required to make any changes and the Port’s decision shall be final and binding on Permittee. The Minimum Annual Guaranty (as defined in Paragraph E.1(a) below) applicable to that Concession Unit shall be recalculated by multiplying such “as-built” size, as determined by the Port pursuant to the foregoing provisions of this paragraph, by the rate per square foot specified in Exhibit “5”, effective as of the Rent Commencement Date for that Concession Unit (as defined in Paragraph E.3(a) below), with any increase in the amounts that were previously payable by Permittee to Port for that calendar year due with the next installment or installments of the Rent payable to Port under Paragraph E below, and with any decrease in the amounts that were previously payable by Permittee to Port for that calendar year deducted from the next installment or installments of the Rent otherwise payable to Port under Paragraph E below.

Paragraph D.3 Common Areas.

Permittee shall have the right, in common with others authorized by the Port, to use all Common Areas (as hereafter defined in this Paragraph D.3); provided, however, that Port may, in its sole discretion, and without liability to Permittee, change the size or location of the Common Areas, including, without limitation, converting Common Areas to leaseable areas and leaseable areas to Common Areas, and close Common Areas. Port may, in its discretion, maintain the Common Areas, establish and enforce Airport Rules, Policies and Regulations (as defined in Section 12 of Attachment “A” to this Permit) concerning the Common Areas, temporarily close portions of the Common Areas for maintenance purposes, and make changes to the Common Areas, including, without limitation, changes in the location of security check points, driveways, entrances, exits, parking spaces and the direction of the flow of traffic. As used in this Permit, “Common Areas” means all areas and facilities located within the Airport that are designated by Port from time to time for the general use and convenience of permittees, tenants and other

occupants at the Airport, airline passengers and other visitors to the Airport, such as concourses, sidewalks, elevators, escalators, moving sidewalks, parking areas and facilities, restrooms, pedestrian entrances, driveways, loading zones and roadways.

In the event the Port makes a change to the Common Areas that the Port determines, in the exercise of its sole discretion, negatively impacts a Concession Unit's access and/or visibility so as to materially and adversely affect that Concession Unit's ability to generate Gross Receipts (as defined in Section 13(1) of Attachment "A" to this Permit), then the Port will exercise its rights under Paragraph H below with respect to that Concession Unit.

Paragraph E. Rent. In consideration for the rights granted hereunder by Port, Permittee hereby agrees to pay to Port monthly, in advance, on the first (1st) day of each calendar month during the Term hereof, one twelfth (1/12th) of the Minimum Annual Guaranty applicable to each Concession Unit, as set forth in Paragraph E.1 below. In the event the Rent Commencement Date for a Concession Unit shall commence or end on any day other than the first and last day, respectively, of a calendar month, such consideration due hereunder for a portion of such month shall be prorated on a per-diem basis, based on the number of days in that calendar month, and the first payment of the applicable Minimum Annual Guaranty for each Concession Unit shall be due on or before the Rent Commencement Date applicable to that Concession Unit. As additional consideration for the rights granted hereunder by Port, Permittee hereby agrees to pay to Port the Percentage Fees specified in Paragraph E.2 below and in accordance with the provisions of Section 13 of Attachment "A" to this Permit. Amounts payable by Permittee to Port under this Paragraph E shall collectively be referred to as "Rent".

Paragraph E.1 Minimum Annual Guaranty.

(a) The Minimum Annual Guaranty for each Concession Unit, is shown opposite that Concession Unit on Exhibit "5" as such amount may be adjusted based on the "as built" condition of that Concession Unit, as provided in Paragraph D.2 above, and subject to further adjustment as provided in Paragraph E.1(b) below (the "Minimum Annual Guaranty").

(b) On the Initial Minimum Annual Guaranty Adjustment Date (as hereafter defined in this Paragraph E.1(b)), and on each subsequent anniversary of such Initial Minimum Annual Guaranty Adjustment Date, the Minimum Annual Guaranty applicable to each Concession Unit pursuant to Paragraph E.1 above, shall be increased or decreased (as applicable, and subject to the proviso at the end of this sentence) to eighty-five percent (85%) of the total Rent payable by Permittee to Port under Paragraph E above for each Concession Unit for the calendar year most recently ended prior to the Initial Minimum Annual Guaranty Adjustment Date, or the most recent anniversary thereof, as applicable; provided that the Minimum Annual Guaranty for any Concession Unit shall never be less than the amount in effect on the Rent Commencement Date. As used in this Permit, the "Initial Minimum Annual Guaranty Adjustment Date" for a Concession Unit shall mean the July 1st immediately following the expiration of the first full calendar year that commenced on or after the Rent Commencement Date for such Concession Unit. Thus, for example, if the Rent Commencement Date for a Concession Unit occurred on January 1, 2020, the Initial Minimum Annual Guaranty Adjustment Date for that Concession Unit shall occur on July 1, 2021, the adjustment shall be based on the Rent payable by Permittee to Port under

Paragraph E for the calendar year ending December 31, 2020, and subsequent adjustments shall occur on July 1, 2022 and on each subsequent July 1st during the remainder of the Term.

Paragraph E.2 Percentage Of Gross Receipts; Marketing Fund; Refurbishment Fund. The percentage of Gross Receipts derived from Permittee's business at the Airport ("Percentage Fees") payable by Permittee for each Concession Unit is shown opposite that Concession Unit on said Exhibit "5", including during that portion of the Interim or Primary Term that Permittee is authorized pursuant to Paragraph B.1 above to operate food or beverage carts outside a Concession Unit. Permittee shall subtract the amount of the monthly payment of the applicable Minimum Annual Guaranty from the applicable Percentage Fees payable to Port each month for each Concession Unit, and only the amount, if any, by which the applicable Percentage Fees for such Concession Unit exceeds the monthly payment of the applicable Minimum Annual Guaranty for such Concession Unit shall be paid to Port as Percentage Fees.

(b) In addition to Percentage Fees, Permittee shall pay to the Port 0.5% of Gross Receipts for a collective marketing fund ("Marketing Fund") that supports the food and beverage concessions at the Airport. The use of such marketing fund shall be solely at the discretion of the Port.

(c) Along with the other Rent payable under Paragraph E.1 and Paragraph E.2(a) and (b), commencing on the Rent Commencement Date, Permittee shall pay on a monthly basis to the Port 1/60th of the Minimum Mid-Term Amount as set forth in Section 2 of Attachment A until the full Minimum Mid-Term Amount has been paid. The amounts paid under this Paragraph E.2(c) shall be referred to as the "Refurbishment Fund." Any funds remaining in the Refurbishment Fund at the expiration or other termination of this Permit shall be exclusively the Port's and shall not be returned or otherwise credited to Permittee.

Paragraph E.3 Rent Commencement Date; Late Opening Charges; Prepayments.

(a) The Rent Commencement Date for each Concession Unit is the earlier of (i) the date on which the Permittee's Work in that Concession Unit, as described in Section 1(2) of Attachment "A" to this Permit, is substantially complete and Permittee opens for business therein, or (ii) January 1, 2020. After the Rent Commencement Date for a Concession Unit has occurred, Permittee shall, promptly after Port's written request, execute and return to the Port a written acknowledgment of the Rent Commencement Date for that Concession Unit. The Minimum Annual Guaranty, and payments into the Marketing Fund and Refurbishment Fund, for a Concession Unit begins on the Rent Commencement Date for such Concession Unit. Payment of Percentage Fees begins on the Commencement Date.

(b) In the event Permittee fails to open a Concession Unit for business on or before the Rent Commencement Date applicable to such Concession Unit, Port will incur substantial damages, the exact amount of which are extremely difficult to fix. Accordingly, for each day after the Rent Commencement Date of a Concession Unit until the day on which Permittee initially opens that Concession Unit for business, Permittee shall pay to Port Five Hundred Dollars (\$500) (in addition to the Rent provided in Paragraph E above), as liquidated damages. The parties have agreed that this amount represents a reasonable approximation of the

damages likely to be suffered by Port in the event Permittee shall fail to open a Concession Unit for business on or before the Rent Commencement Date for that Concession Unit. In the event a Concession Unit is not open for business on the date that is sixty (60) days after the Rent Commencement Date for that Concession Unit, Port shall have the option to remove that Concession Unit (and its associated Minimum Annual Guaranty) from the Assigned Space, exercisable by written notice to Permittee given before that Concession Unit is open for business. In the event a Concession Unit is removed from the Assigned Space pursuant to the foregoing provisions of this Paragraph E.3(b), the Port shall send to Permittee an amendment to this Permit showing the deletion of that Concession Unit from the Assigned Space, and this Permit shall be deemed amended thereby. Permittee shall be liable for all damages associated with such termination or removal, including Port's re-leasing costs, and for any Losses (as defined in Section 1(2)(d) of Attachment "A" to this Permit) arising under Section 1(2)(a) of Attachment "A" to this Permit.

(c) Notwithstanding anything in this Permit to the contrary, in the event Permittee shall fail to pay any Rent when due hereunder, the Port shall have the right to require Permittee to pay estimated monthly Rent (including the monthly installment of the Minimum Annual Guaranty and one month's Percentage Fees, and all other amounts payable by Permittee to Port in a calendar month under this Permit) one (1) month in advance of when such payment would otherwise be due. Such prepayment will be based on the highest monthly Rent previously due from Permittee under this Permit. Such right shall be exercised by a written notice from Port to Permittee, which notice may be given any time after such default by Permittee, regardless of whether the same is cured by Permittee. The provision of this Paragraph E.3(c) shall not limit the Port's rights under Section 19 of Attachment "A" to this Permit.

Paragraph E.4 Remitting Payments. All payments due under this Permit shall be remitted to: Port Department of the City of Oakland, P.O. Box 12545, Oakland, California 94604, or electronically to the following address:

Credit to:	JPMorgan Chase Bank NA San Francisco, California U.S.A. 94105 Wire ABA/ACH Routing #322271627
In favor of:	Port Department of the City of Oakland Account # 571803670
Reference:	Port Department of the City of Oakland (may add invoice no. or other identification)

or to such other address as shall be designated by Port by written notice to Permittee in accordance with the requirements of Section 24 of Attachment "A" to this Permit. To ensure proper credit for electronic transfers, Permittee shall notify the Port by facsimile transmission promptly after any such remittance, at (510) 839-7805, attention: Cashier / Financial Services Division, including the amount of the transfer, the date of the transfer and the invoice number or other identifying information. All such payments shall be made in lawful money of the United States, without demand, set-off or deduction of any kind.

Paragraph F. Performance Deposit; Guaranty. Permittee shall maintain with the Port a performance deposit (the "Performance Deposit") in the initial amount set forth on Exhibit "5" (equal to six months Minimum Annual Guaranty), which shall be the sum of the performance deposits required for each Concession Unit, and complying with and subject to the provisions of Section 27 of Attachment "A" to this Permit, including without limitation the provisions of Section 27 of Attachment "A" relating to adjustments to the amount of Permittee's Performance Deposit. The existence or amount of the Performance Deposit shall not limit Permittee's liability or the Port's rights in the event Permittee fails to make any payments to Port required by this Permit or to comply with any of Permittee's other obligations under this Permit.

If a third party or third parties joined in the Permittee's Proposal (as defined in Paragraph M) as a guarantor, then such third party or third parties, as applicable, shall execute and deliver to the Port the Guaranty in the form attached hereto as EXHIBIT "16" at the same time that this Permit is executed and delivered by Permittee to the Port.

Paragraph G. Insurance Requirements. Permittee shall maintain in force throughout the entire Term of this Permit, such insurance required by this Paragraph G, including:

(a) **Liability Insurance.** Permittee shall maintain in full force throughout the Term, commercial general liability insurance providing coverage on an occurrence basis with limits of not less than \$5,000,000 each occurrence for bodily injury and property damage combined with a \$3,000,000 liquor liability sub-limit, \$5,000,000 annual general aggregate, \$5,000,000 products and completed operations aggregate, 1,000,000 personal and advertising injury liability limit, and \$100,000 fire legal liability limit. Permittee's liability insurance policy or policies shall: (i) include coverage for premises and operations, products and completed operations, independent contractors, advertising injury, personal injury and blanket contractual liability including, to the maximum extent possible, coverage for the indemnification obligations of Permittee under this Permit; (ii) provide that the insurance company has the duty to defend all insureds under the policy; and (iii) provide that defense costs are paid in addition to and do not deplete any of the policy limits. Such insurance shall be provided by an insurance form with terms and conditions at least as broad as contained in the standard Insurance Services Office (ISO) form CG0001 10 93.

(b) **Property and Business Interruption Insurance.** Permittee shall at all times maintain in effect with respect to any Alterations and Permittee's Trade Equipment and personal property, commercial property insurance providing coverage, on an "all risk" or "special form" basis, in an amount equal to the full replacement cost of the covered property. Permittee may carry such insurance under a blanket policy, provided that such policy provides coverage equivalent to a separate policy. During the Term, the proceeds from any such policies of insurance shall be used for the repair or replacement of the Alterations, Trade Fixtures and personal property so insured. Permittee shall also carry business interruption insurance insuring loss of income, including all monthly Rental payable to the Port under this Permit for a period of up to twelve (12) months if the property is destroyed or rendered inaccessible by a risk insured against by the property insurance Permittee is required to maintain under this Subsection (b) of this Paragraph G. Port shall be provided coverage under the insurance required by this section to the extent of its insurable interest and, if requested by Port, both Port and Permittee shall sign all documents reasonably necessary or proper in connection

with the settlement of any claim or loss under such insurance. Port will have no obligation to carry insurance on any Alterations or on Permittee's Trade Fixtures or personal property.

(c) Builder's Risk Insurance. When Permittee undertakes construction on the Assigned Space, Permittee shall maintain builder's risk insurance for one hundred percent (100%) of the completed replacement cost value of construction on an "all risk" or "special form" basis, in an amount equal to the full replacement cost of the covered property. If requested by Port, both Port and Permittee shall sign all documents reasonably necessary or proper in connection with the settlement of any claim or loss under such insurance.

(d) Automobile Liability Insurance. Throughout the Term, Permittee shall obtain and maintain automobile liability insurance (covering any owned, non-owned or hired automobiles) issued on a form at least as broad as ISO Business Automobile Coverage form CA 00 01 12 93. Such automobile liability insurance shall be in an amount not less than \$5,000,000 combined single limit for each accident for bodily injury and property damage.

(e) Workers' Compensation and Employer's Liability Insurance. Throughout the Term, Permittee shall obtain and maintain workers' compensation insurance and employer's liability insurance. Such workers' compensation insurance shall carry minimum limits as statutorily required under California law. Such employer's liability insurance shall be in an amount not less than \$1,000,000 each accident, \$1,000,000 each employee, and \$1,000,000 policy limit for bodily injury by disease.

(f) Additional Insureds.

(i) With regard to the insurance required by Subsections (a) and (d) of this Paragraph G, each policy of liability insurance required thereby shall: (i) contain a cross liability or separation of insureds provision; (ii) provide for a waiver of subrogation in favor of the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, the Port of Oakland, its commissioners, officers, agents and employees; (iii) provide that the insurance is primary to and not contributing with, any policy of insurance carried by Port; and (iv) name the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, the Port of Oakland, its commissioners, officers agents and employees, and such other parties as Port may from time to time reasonably designate to Permittee in writing, as additional insureds. Such additional insureds shall be provided at least the same extent of coverage as is provided to Permittee under such policies with respect to liability arising out of the ownership, maintenance or use of the Assigned Space.

(ii) With regard to the insurance required by Subsections (b) and (c) of this Paragraph G, above, such insurance shall include the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, "Port of Oakland" as additional insured as their interests may appear and loss payee; such insurance also shall contain a waiver of subrogation in favor of City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, the Port of Oakland, its commissioners, officers agents and employees, and such other parties as Port may from time to time reasonably designate to Permittee in writing, as additional insureds, and shall be primary insurance; no insurance or self-insurance of the Port shall be called upon to contribute to a loss.

(iii) With regard to the insurance required by Subsection (e) of this Paragraph G, such insurance shall contain a waiver of subrogation in favor of City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, the Port of Oakland, its commissioners, officers agents and employees, and such other parties as Port may from time to time reasonably designate to Permittee in writing.

(g) Requirements For All Policies. Each policy of insurance required under this Paragraph G shall: (i) be in a form, and written by an insurer, reasonably acceptable to Port; (ii) be maintained at Permittee's sole cost and expense; and (iii) require at least thirty (30) days' written notice to Port prior to any cancellation, nonrenewal or modification of insurance coverage, except such notice may be ten (10) days for non-payment of premium. Insurance companies issuing such policies shall have rating classifications of "A-" or better and financial size category ratings of "VI" or better according to the latest edition of the A.M. Best Key Rating Guide. All insurance companies issuing such policies shall be admitted carriers licensed to do business in the state where the Assigned Space is located. Any deductible amount under such insurance shall not exceed \$25,000. Permittee shall provide to Port, upon request, evidence that the insurance required to be carried by Permittee pursuant to this Paragraph G, including any endorsement evidencing the additional insured status and waiver of subrogation, is in full force and effect and that premiums therefor have been paid. If Permittee maintains broader coverage and/or higher limits than the minimums shown above, the Port requires and shall be entitled to the broader coverage and/or higher limits maintained by the Permittee and evidence thereof. All requirements of this section shall apply to the full limits. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Port. If the minimum limits of insurance required by this section are met through a combination of primary and excess insurances, all requirements of this section shall apply to both primary and excess policies.

(h) Updating Coverage. Permittee may be required to increase the amounts of insurance as required not more frequently than once every three (3) years, if Port's risk manager determines that the amount of insurance required under this Permit is not adequate. Any limits set forth in this Permit on the amount or type of coverage required by Permittee's insurance shall not limit the liability of Permittee under this Permit.

(i) Certificates of Insurance. Prior to occupancy of the Assigned Space by Permittee, and not less than thirty (30) days prior to expiration of any policy thereafter, Permittee shall furnish to the Port Risk Management Department, certificate(s) of insurance satisfactory to the Port Risk Management Department, evidencing that the insurance required by this Section is in force, accompanied by any endorsement or other documentation showing the required additional insureds, loss payees and waivers of subrogation. Notwithstanding the requirements of this paragraph, Permittee shall, at Port's request, provide to Port copies of insurance policies required to be in force at any time pursuant to the requirements of this Permit. Certificates of Insurance must be sent to:

Port of Oakland
Attn: Risk Management Dept.
530 Water Street
Oakland, Ca 94607
Fax: (510) 627-1626
Email: risktransfer@portoakland.com

Paragraph H. **Relocation, Expansion, Contraction; Future Terminal Building Additions.**

Paragraph H.1 **Relocation, Expansion, Contraction.**

(a) On the terms set forth in this Paragraph H.1, the Port may at any time, require that (i) Permittee relocate and surrender all or part of the Assigned Space (such change to the Assigned Space is hereafter referred to as a “Required Relocation”), and/or (ii) the Assigned Space be contracted or expanded (such change to the Assigned Space is hereafter referred to as an “Assigned Space Change”). Port shall give Permittee at least 180 days prior written notice (the “Change Notice”) setting forth a description of the Required Relocation or the Assigned Space Change, as applicable, the approximate effective date thereof (the “Target Effective Date”), and the “Maximum Reimbursement Amount,” if any (as may be authorized in writing by the Director in his or her sole discretion, if One Hundred Thousand Dollars (\$100,000) or less, or if more, by the Board in its sole discretion and set forth in a resolution duly adopted by the Board), for Permittee’s remodeling of the replacement Assigned Space or for Permittee’s expansion/contraction work, and with respect to a Required Relocation, the location of the on-Airport replacement Assigned Space, as conclusively determined by the Port. The Change Notice shall be given no less than three (3) months prior to the Target Effective Date.

(b) With respect to a Required Relocation, if the replacement Assigned Space or the Maximum Reimbursement Amount is deemed unsatisfactory to Permittee, then Permittee may cause all (but not less than all) Concession Units included in the Assigned Space that was the subject of the Required Relocation to be deleted from this Permit by giving written notice thereof to Port within sixty (60) days after the Change Notice is given. In the event Permittee timely gives such notice of deletion, then each such Concession Unit shall be deleted from the Permit on the Target Effective Date, and on such date, Permittee shall surrender each such Concession Unit in the condition required by Section 20 of Attachment “A” to this Permit as if this Permit had terminated on the Target Effective Date. If Permittee does not timely cause the Assigned Space that was the subject of the Required Relocation to be deleted from this Permit pursuant to the foregoing, Permittee shall surrender such Assigned Space and relocate to the replacement Assigned Space on a date (the “Surrender Date”) determined by Port (which shall be no earlier than the Target Effective Date). On the Surrender Date, Permittee shall surrender such Assigned Space in the condition required by Section 20 of Attachment “A” to this Permit as if this Permit had terminated on the Target Effective Date. In the event of a relocation pursuant to this Paragraph H.1(b), Permittee shall refurbish, redecorate, and modernize the interiors and exteriors of the replacement Assigned Space, such that the replacement Assigned Space is of at least the same quality as the original Assigned Space. All such work shall be subject to all of the applicable requirements of this Permit, including without limitation, Section 1 of Attachment “A” to this Permit. If a Maximum Reimbursement Amount for the work has been established pursuant to Paragraph H.1(a) above, then once the remodeling of the replacement Assigned Space is completed, and Port has approved the work, Permittee must submit to Port (i) a certificate from Permittee’s architect certifying that the remodeling was completed in strict compliance with the plans and specifications approved by Port, (ii) summary of all costs incurred, including copies of paid invoices and cancelled checks showing the costs actually paid by Permittee for the remodeling

of the replacement Assigned Space and Permittee's out-of-pocket moving costs, and (iii) lien releases from all contractors, subcontractors, and materialmen entitled to payment in connection with the remodeling of the replacement Assigned Space. Following its review and approval of those submissions, Port will reimburse Permittee for all reasonable costs of remodeling the replacement Assigned Space and moving its merchandise and other personal property to the replacement Assigned Space from the original Assigned Space; provided that in no event will Port be obligated to reimburse Permittee for more than the Maximum Reimbursement Amount, if any, or to pay or reimburse Permittee for any other costs or expenses, including business interruption costs.

(c) With respect to an Assigned Space Change where the square footage of a Concession Unit originally included in the Assigned Space will be expanded or contracted by more than ten percent (10%), Permittee may cause such Concession Unit to be deleted from this Permit by giving notice thereof to Port within thirty (30) days after the Change Notice is given. In the event Permittee timely gives such notice of deletion, then such Concession Unit shall be deleted from the Assigned Space on the Target Effective Date, and on such date, Permittee shall surrender such Concession Unit in the condition required by Section 20 of Attachment "A" to this Permit as if this Permit had terminated on the Target Effective Date. If Permittee does not timely cause the Concession Unit to be deleted from the Assigned Space pursuant to the foregoing, Permittee shall in accordance with all of the applicable requirements of this Permit, including, without limitation, Section 1 of Attachment "A" to this Permit, cause the Concession Unit to be expanded or contracted as described in the Change Notice on or before the Target Effective Date. If a Maximum Reimbursement Amount for the work has been established pursuant to Paragraph H.1(a) above, then once the expansion/contraction work is completed, and Port has approved the work, Permittee must submit to Port (i) a certificate from Permittee's architect certifying that the expansion/contraction work was completed in strict compliance with the plans and specifications approved by Port, (ii) summary of all costs incurred, including copies of paid invoices and cancelled checks showing the costs actually paid by Permittee for the expansion/contraction work, and (iii) lien releases from all contractors, subcontractors, and materialmen entitled to payment in connection with the expansion/contraction work. Following its review and approval of those submissions, Port will reimburse Permittee for all reasonable costs of the expansion/contraction work; provided that in no event will Port be obligated to reimburse Permittee for more than the Maximum Reimbursement Amount, if any, or to pay or reimburse Permittee for any other costs or expenses, including business interruption costs.

(d) Permittee shall maintain in a true and accurate manner and in accordance with generally accepted accounting principles, such original books and records as would normally be examined by an independent certified public accountant pursuant to generally accepted auditing standards in performing an audit or examination of the expenditure of all funds for which reimbursement, if any, has been made by the Port pursuant to Paragraph H.1(b) or Paragraph H.1(c) above or Paragraph H.1(e) below. The Port shall have the right, upon three (3) business days' notice, at any time until the expiration of 36 months after the last such reimbursement by the Port (or such longer period as is reasonably required for the Port to conclude an audit commenced within such 36-month period) to audit and copy such books and records and source documents relating to such expenditures. Such books and records shall be made available at the Assigned Space or at the offices of the Port; provided, however, that if such is not possible,

Permittee shall pay for all reasonable and actual costs incurred by the Port in inspecting and auditing such books and records, including, but not limited to travel, lodging and subsistence costs. If the Port determines within such audit period that any such reimbursement by the Port should not have been made to Permittee, then the amount of such improper reimbursement, plus the delinquency charge provided for in Section 26 of Attachment "A" to this Permit from the date of reimbursement to the date of repayment to the Port, shall be repaid by Permittee to Port promptly after Port's written demand.

(e) In addition to its other rights under this Paragraph H, the Port shall have the right to give a Change Notice under Paragraph H.1(a) above that requires one or more Concession Units to be deleted entirely from the Assigned Space, in which event the Assigned Space Change shall specify a 100% contraction in the size of the Concession Unit(s) described in the Change Notice. In that event:

(i) Each Concession Unit specified in such Change Notice shall be deleted from the Permit on the Target Effective Date specified in such Change Notice, and on such date, Permittee shall surrender each such Concession Unit in the condition required by Section 20 of Attachment "A" to this Permit as if this Permit had terminated on the Target Effective Date; and

(ii) In lieu of payment of an amount not to exceed the Maximum Reimbursement Amount, after Permittee has fulfilled its obligations under (i) above, Port will pay Permittee an amount equal to the sum of the following:

(x) The hard construction costs of Permittee's Work in the Concession Unit(s) included in the Change Notice, determined under Section 2(b) of Attachment "A" to this Permit, multiplied by a fraction, the numerator of which is the number of full calendar months that remained in the Term of this Permit on the Target Effective Date, and the denominator of which is 120; plus

(y) If the Target Effective Date occurred after substantial completion of the Midterm Refurbishment in the Concession Unit(s) included in the Change Notice, the construction costs of such Midterm Refurbishment of such Concession Unit(s) determined under Section 2(3) of Attachment "A" to this Permit, multiplied by a fraction, the numerator of which is the number of full calendar months that remained in the Term of this Permit on the Target Effective Date, and the denominator of which is the number of full calendar months that remained in the Term of this Permit on the date of substantial completion of the Midterm Refurbishment of such Concession Unit(s).

(iii) Port shall not permit a Concession Unit deleted from the Assigned Space under this subparagraph (e) to be used for any of the Permitted Uses during the remainder of the Term of this Permit.

(f) With respect to a Required Relocation or Assigned Space Change where a Concession Unit has been deleted from the Assigned Space pursuant to the applicable provisions of Paragraph H.1(b) or (c) above, the Minimum Annual Guarantee applicable to that Concession Unit shall be deleted from this Permit effective on the applicable Target Effective Date. With respect to any other Required Relocation or Assigned Space Change, the applicable Minimum Annual Guarantee shall, effective on the applicable Surrender Date, in the case of a Required Relocation, and effective on the applicable Target Effective Date, in the case of an Assigned Space Change, 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 each replacement or expanded or contracted Concession Unit compared to the Concession Unit included in the original Assigned Space, as determined by the Port.

(g) In the event of a Required Relocation or Assigned Space Change, the Port shall send to Permittee and Permittee shall execute and return to the Port an amendment to this Permit to reflect the Required Relocation or the Assigned Space Change.

Paragraph H.2 Future Terminal Buildings Additions. Permittee acknowledges that the Port may construct additional terminal buildings and/or concourses after the Commencement Date and during the Term of this Permit. Port and Permittee acknowledge and agree that Permittee shall have no right to lease concession spaces in any future terminal buildings and/or concourses at the Airport.

Paragraph I. **OPERATION OF CONCESSION UNITS.**

Paragraph I.1 Management.

(a) Service Contracts, Subleases and Licensing Agreements.

(i) All service contracts, as deemed necessary by Port to maintain operation of the Concession Units, entered into by Permittee with respect to its responsibilities shall: (a) be in the name of Permittee; (b) be assignable, at Port's option, to Port or Port's nominee; (c) include a provision for cancellation without payment of a fee or penalty by Port or Permittee upon not more than thirty (30) days' written notice; and (d) shall require that all contractors provide evidence of sufficient insurance upon request. If this Permit is terminated, Permittee shall, at Port's option, assign to Port or Port's nominee all service agreements pertaining to the Concession Units, and if Port exercises this option, Permittee shall have no obligation under such service agreements that arise after the date of such assignment.

(ii) All subleases entered into by Permittee with an approved sublessee pursuant to Section 18 of Attachment "A" to this Permit shall be in a form acceptable to Port and shall provide for the continuation of such sublease directly with Port, at Port's option, exercisable by written notice by Port to such sublessee, if this Permit is terminated by Port pursuant to Section 19 of Attachment "A" to the Permit prior to the expiration of the Term of this Permit, and if Port exercises this option, Permittee shall have no obligations under such sublease that arise after the date of such assignment.

(iii) To the extent that that this Permit obligates Permittee to perform any act or to refrain from any act with respect to the use and operation of a Concession Unit, Permittee shall enforce such an obligation against its sublessees.

(iv) As a condition of signing any sublease with any sublessee, Permittee shall cause the sublessee to sign a recognition agreement is in the form of Exhibit "3" hereto and such executed recognition agreement must be delivered to the Port before the sublease shall be effective, which delivery must be acknowledged in writing by the Director of Aviation or his or her designee.

(v) All licensing agreements for licenses used by Permittee to operate the Concession Units shall: (a) be in the name of Permittee; (b) be assignable, at Port's option, to Port or Port's nominee; and (c) include a provision for cancellation without payment of a fee or penalty by Port upon not more than thirty (30) days' written notice to the licensor. If this Permit is terminated, Permittee shall, at Port's option, assign to Port or Port's nominee all such licensing agreements pertaining to the Concession Units, and if Port exercises this option, Permittee shall have no obligation under such licensing agreements that arise after the date of such assignment.

(vi) For the avoidance of any doubt, the obligations imposed on Permittee in this Paragraph 1.1(a) shall be imposed on Permittee's sublessee's.

(b) Permittee Management Responsibilities and Sublessee Default. Permittee shall be responsible for managing all of its approved sublessees as requested by Port and for ensuring that all its approved sublessees adhere to the terms of this Permit. Permittee shall act in a fiduciary capacity, with respect to the proper protection of and accounting for Port's assets, and Permittee shall comply with the highest standards of ethics, integrity and honesty. Permittee shall deal at arm's length with all third parties, and Permittee shall serve Port's interests at all times. Permittee is responsible for ensuring that all of its approved sublessees adhere to proper cash-handling and tracing techniques, including, without limitation any point of sale (POS) system and cash-handling criteria required by Port hereunder. Permittee shall, within thirty (30) days after written notice from the Port, ensure Permittee and Permittee's approved sublessees implement new procedures or revise existing procedures in such a manner as Port may reasonably require from time to time. In the event Permittee is not complying with existing procedures, the 30-day notice in the prior sentence shall not be applicable, and Permittee shall bring itself into compliance immediately. Permittee shall evaluate approved sublessees' revenue collection systems.

Permittee is responsible for terminating any approved sublease and/or license with approved sublessees, locking out an approved sublessee (if legally permissible), instituting suit for rent or for use or occupancy or proceedings for recovery of possession when (a) an approved sublessee defaults; or (b) Permittee is entitled to terminate an approved sublessee's sublease and/or license. All legal expenses incurred in bringing such action are Permittee's sole responsibility. Permittee shall not deduct from any amounts Permittee is obligated to pay Port, any rents, fees, or other income items any approved sublessee is obligated to pay pursuant to any sublease and/or license.

(c) Quality Assurance Audits. Permittee shall perform quality assurance audits on itself and its authorized sublessees on at least a quarterly basis, as described

on attached Exhibit “14”. Port reserves the right to prescribe and revise the audit criteria at any time. The purpose of said audits shall be to ensure consistent standards of customer service and quality among Permittee and Permittee’s authorized sublessees.

(d) Sublessee Default. If a sublessee authorized under Section 18 of Attachment “A” to this Permit fails to open its Concession Unit or goes out of business, Permittee shall be obligated to promptly install temporary storefront barriers, curtains, display boxes or signage as directed by the Port, and if Permittee fails to promptly do so, the Port shall have the right, in addition to its other rights and remedies under this Permit, to do so at Permittee’s expense.

Paragraph I.2 Personnel.

(a) Manager. The management, maintenance, and operation of all Concession Units in the Assigned Space shall be under the supervision and direction of an active, qualified, competent, and experienced manager, who shall at all times be authorized to represent and act for Permittee. Permittee shall cause such manager to be assigned a duty station or office in the Assigned Space, or other space at the Airport occupied under a separate agreement between the Port and Permittee, at which he or she shall be available during normal business hours, and Permittee will at all times during the absence of such manager, assign or cause to be assigned a qualified subordinate to assume and be directly responsible for the carrying out of the manager’s supervising duties. Permittee will provide to Port and update as necessary, contact information for Permittee’s managers to allow Port to contact them in emergencies or during non-business hours.

(b) Adequate and Competent Staff. Permittee shall employ and shall require its authorized sublessees to employ a sufficient number of properly trained personnel to manage and operate each Concession Unit at its maximum capacity and efficiency at all times that each Concession Units is opened for business. Sufficient number is a number, which consistently provides customers with no unreasonable delay or inconvenience, as determined by Port through the development of standards, in moving through point of sale or selecting products or service. All personnel shall be clean, neat in appearance and attired in proper uniform, if required, with name tag clearly visible. Permittee shall ensure that all employees of Permittee conform to personal hygiene and food handling requirements established by the Airport Rules, Policies and Regulations and the Laws (as such terms are defined in Section 12(1) of Attachment “A” to this Permit), whichever is most stringent. Permittee must ensure that all employees can adequately communicate with customers and are professional and courteous in interactions with customers.

(c) English Language. Permittee understand and agree that its operation at the Airport necessitates contact with the public, both in the course of normal business operations and in rendering public services such as making reasonable change, giving directions, and providing general assistance to the public. Employees in positions that involve contact with the public must be capable of speaking and understanding the English language at a high level consistent with the effective and efficient performance of the duties of the position.

(d) Port Objections. Port shall have the right to object to the demeanor, conduct, and appearance of any employee of Permittee or those doing business with them, subject to applicable Laws. Permittee shall take all steps reasonably necessary to remedy the cause of the objection. After written notice from Port, Permittee shall ensure the immediate removal from the

Concession Unit or discipline in accordance with Permittee's employee discipline policy for any employee or other representative of Permittee who participates in improper or illegal acts on the Airport, who violates any of the Airport Rules, Policies and Regulations or any provision of the Permit, or whose continued presence on the Airport is, in the opinion of Port, deemed not to be in the best interests of Port. However, in certain situations, Port shall have the right to request Permittee to take immediate action via a telephone call. Permittee shall not allow any of its agents, servants, contractors, or employees to conduct business in a loud, noisy, boisterous, offensive, or objectionable manner, and shall confine their business on the Airport to that of operating the Concession Unit unless otherwise approved in writing by Port.

(e) Port Not Liable for Employment Issues. This Permit is not one of agency by Permittee for Port, but one with Permittee engaged independently in the business of managing the Assigned Space on its own behalf. All employment arrangements and labor agreements are, therefore, solely Permittee's rights, obligations and liabilities, and Port shall have no obligations or liability with respect thereto. Permittee shall defend, protect, indemnify, and hold harmless, Port from any claims or causes of action of whatever nature that may be brought by present or former employees, present or former independent contractors, present or former labor unions, including any labor unions seeking to represent the employees or applicants for employment by Permittee, and all expenses, including reasonable attorneys' fees and other litigation expenses, resulting from or relating to such claims or causes of action..

(f) Port Living Wage Requirements. Permittee shall comply with all of the provisions of Section 728 of the Charter of the City and Port Ordinance No. 3666, as amended by Port Ordinance No. 3719 ("Port Living Wage Ordinance"), as they may be amended from time to time, including by any successor ordinance (collectively, the "Living Wage Law"), unless exempt under Section 728 of the Charter of the City. The Port Living Wage Ordinance requires Port contractors to additionally provide their employees with a minimum of twelve (12) compensated days off per year.

Paragraph I.3 Quality of Products and Services.

(a) First Class. It is an express condition of this Permit that Permittee conduct the Permitted Uses under this Permit in a first-class, business-like, safe, efficient, courteous, and accommodating manner, in accordance with all of the requirements of this Permit, including without limitation, Paragraph I.3(b) below, and the Airport Pricing Policy, as provided in Paragraph B.4 above, so as to maximize Gross Receipts (as defined in Section 13 of Attachment "A" to this Permit). The Port has foremost in mind providing the air traveler and the public with facilities, service, and food and beverages concessions of first class quality, commensurate with the trade accustomed to using facilities of this kind. Permittee must ensure that the air travelers and public are served and dispensed first-class quality foods with adequate portions. Permittee shall ensure that a decor is established and maintained substantially in accordance with Port design and facility plan, that each Concession Units is maintained and operated in a first-class manner and that at all times the Assigned Space is kept in a safe, clean, orderly, and inviting condition, satisfactory to Port. To accomplish these desires, Permittee must periodically review or cause to be reviewed, operations of each Concession Unit operated by Permittee at the Airport.

(b) Adequate Products and Service. Permittee shall ensure that the air traveler and public are furnished adequate services, and that Permittee shall keep in stock and have ready for sale at all times of operation a wide-range stock of food and beverage products and other articles and goods for sale of first-class character and quality in sufficient supply to meet the demand of customers at the Airport. Permittee must ensure the product variety is adequate for each Concession Unit.

If Port identifies any problem areas with respect to operation of a Concession Unit, including, without limitation quality and quantity of products or services offered, including the selection of items offered being inadequate in general or in any particular location, Permittee shall be notified in writing by Port and shall correct, or cause to be corrected, such problem or problems within one (1) calendar day, unless a longer period of time is required, but in no event shall the time-period extend beyond ten (10) calendar days after transmission of written notice by Port, unless Port permits a longer period. Failure of Permittee to so correct problem areas constitutes a default under Section 19 of Attachment “A” to this Permit.

(c) Trends and Merchandising; Public Services. Permittee shall employ attractive merchandising enticing customers to purchase food and beverages products. Permittee shall develop and implement creative and effective merchandising means within each Concession Unit, including without limitation, food and beverage displays; display cases; promotional displays; attractive packaging; menu boards or table-top menus; and pictures of food and beverage merchandise. Permittee shall use its highest and best efforts in its product assortment. Prices for all food and beverages, including alcoholic beverages, shall be displayed on menus or menu boards and available to all customers. All merchandise and other items used in Permittee’s operations shall conform in all respects to all applicable Laws and the Airport Rules, Policies and Regulations. All food, drinks, beverages, confections, retail merchandise and other items sold or kept for sale at the Concession Unit shall be of high quality, wholesome and pure, and must conform in all respects to applicable Laws and the Airport Rules, Policies and Regulations. Permittee must adhere to the most stringent requirements in the foregoing. In addition, Port may require additional products that are in public demand to be added to Permittee’s menus. Permittee printed menus shall include the appropriate use of descriptive terminology that accurately describes the food or beverages being offered and that includes no false or misleading claims. In addition, Permittee shall render the following public services: make reasonable change, give directions, and assist the public generally. Permittee recognizes that the Airport is space constrained and in order to maximize space for Permittee’s operations, areas normally designated for passenger seating have been removed. Permittee shall not restrict seating in any of its Assigned Space to “customers only” and shall not refuse seating to any passenger who fails to make a purchase. Permittee shall have the right, however, to permit food only purchased from Permittee to be consumed on the Assigned Space. Permittee shall take all reasonable measures in every proper manner to maintain, develop, and increase the business conducted by it at the Concession Units. Permittee will not divert or cause to be diverted any business from the Airport.

Port reserves the right, to the maximum extent permitted by law, to approve or disapprove all products, prices, and product displays. Permittee hereby affirms that Port, in its sole discretion, has the absolute right to require that Permittee discontinue the sale of any product the Port deems unsatisfactory, distasteful, or inappropriate for any reason, in its sole and absolute

discretion, and to require Permittee to modify product displays for any reason, and the failure of Permittee to comply therewith within one (1) calendar day after transmission of written notice from Port constitutes a default under Section 19 of Attachment “A” to this Permit.

Port reserves the right to approve the pricing on all menu boards and printed menus used by Permittee prior to their initial installation as part of the menu board design review.

Paragraph I.4 Franchise Standards. Where applicable to a Concession Unit, all franchise standards shall be met or exceeded. In the event of an express conflict between the terms of such franchise standards and the terms of this Permit, the terms of the Permit shall prevail. Permittee shall provide Port with copies of a Concession Unit’s franchise standards and related performance audit forms prior to such Concession Unit’s opening date. Copies of inspections conducted by the franchisee, franchisor, or any mystery shopper service hired by the franchisee or franchisor shall be sent to Port within ten (10) calendar days of receipt by Permittee.

Paragraph I.5 Reports and Surveys. At Port’s request, but no more often than once per quarter, Permittee shall meet with Port and make available for inspection all customer survey results, mystery shopper reports, health department reports, product pricing (conducted pursuant to Paragraph B.(4)), and any quality assurance audits (conducted pursuant to Paragraph I.1(c)), along with recommended corrective action if the survey shows corrective action is needed. If such information discloses any issue, in the sole discretion of Port, then Permittee must outline planned corrective action and discuss and disclose any additional available reports that measure the performance of each Concession Unit.

If Port conducts any customer satisfaction surveys, Port shall share results with Permittee, along with recommended corrective action, if appropriate. Permittee shall promptly undertake any such corrective action disclosed by either Permittee’s or Port’s surveys.

Permittee must submit to Port on a quarterly basis all reports detailing the results of all customer survey results, mystery shopper reports, health department reports, brand audits, and any other types of reports requested by Port.

Port reserves the right to audit Permittee regarding compliance with this subsection.

Paragraph I.6 Advertised Sales or Promotions. Permittee are required to participate in all advertised sales or promotions conducted by Permittee’s parent corporation, if any, its franchisor, if any, or its selected operating brands, including, but not limited to, television, newspaper, radio and print media sales and promotions. Permittee is not required to participate in:

1. Liquidations, moving sales or closeouts or products or brands.
2. Internet promotions.
3. Specific mall-based advertisements.

Permittee must make every reasonable effort to ensure that all corporate advertisements that list multiple locations will list the Concession Units as participating locations for promotions or sales. In the event that participation in a sale or promotion harms the Permittee, or Permittee believes that it is not appropriate for a location at the Airport, the Permittee may request in writing to Port permission to not participate, which Port shall not unreasonably withhold. Permittee and Port agree to meet quarterly to review this requirement in light of all other revenue and customer service impacts.

Paragraph I.7 Credit/Charge Cards, Mobile Payment and Traveler's Checks. At all times during the Term of this Permit and any holdover period, Permittee and Permittee's authorized sublessees shall accept as payment for goods and services nationally recognized credit, debit or charge cards, including without limitation, American Express, MasterCard, and VISA, as well as internationally recognized Traveler's Checks and all current and future nationally recognized mobile payment options. Such cards shall be accepted for all purchases.

Paragraph I.8 Public Address System. Port shall have the right, in its sole discretion, to install one (1) or more public address system speakers in the Assigned Space for announcing flight arrivals and departures and other Airport information. Permittee or any of Permittee's authorized sublessees may only install a public address, paging, or other audio system on the Assigned Space with prior written approval of Port.

Paragraph I.9 Noise and Lights. No loudspeakers, televisions, video monitors, sound systems, audio players, radios, flashing lights or other devices shall be used in a manner so as to be heard or seen outside of the Assigned Space or a Concession Unit without the prior written consent of the Manager of Aviation Properties.

Paragraph I.10 Strategic Beverage Partnership. Permittee acknowledges that, before or after the commencement of this Permit, the Port may enter into a strategic beverage partnership, also known as an "Exclusive Pouring Rights Agreement," with one of the major beverage companies to become the exclusive provider of all (with minor exceptions) non-alcoholic and non-brewed beverages at the Airport. If the Port enters into such an agreement, Permittee agrees to participate. The Port will provide at least six months written notice to Permittee so that Permittee has adequate time to prepare the Concession Unit to accommodate the selected strategic beverage partner.

Paragraph J. Permittee's Operating Hours. Commencing on the Rent Commencement Date for each Concession Unit included in the Assigned Space, Permittee will conduct the Permitted Uses from each Concession Unit diligently and continuously and will keep each Concession Unit open for business with an adequate staff seven (7) days per week, including holidays, during the hours for that Concession Unit shown on attached Exhibit "5", as they may be modified from time to time by written notice from the Director. If the Director extends or shortens the required operating hours, the Director shall give Permittee thirty (30) days written notice, except in the case of an emergency or major disruption of Airport operations, in which case the Director will give as much advance notice as is reasonably practicable. During the required operating hours, Permittee shall be fully operational with all menu items available. Permittee may not vacate or abandon the Assigned Space at any time.

Paragraph K. Administrative Fees. The parties agree that Permittee's performance of its obligations under this Permit are extremely important to Port and that Permittee's failure to perform those activities will result in administrative and monitoring expenses to the Port and its staff. Therefore, the parties agree that the Administrative Fees described on attached Exhibit "7" are reasonable estimates of such expenses and shall be imposed on Permittee at the sole discretion of the Director or his or her designee for any of the violations described on said Exhibit "7". The Director may elect to waive an assessment of Administrative Fees for a particular violation, but no such waiver shall apply to prior or subsequent violations of the same or any other provision of this Permit, and such waiver shall not be deemed to set a precedent for further waivers. If the Permittee disputes the violation that resulted in the imposition of an Administrative Fee, it may submit, within ten (10) calendar days of its receipt of written notice of the Administrative Fee, a written request for a review of such Administrative Fee, to the Director pursuant to Article 11.3 of Port Ordinance No. 4445 (or any successor thereto), in which event the hearing procedures set forth in said Article 11.3 shall be applicable to Port and Permittee with respect to such Administrative Fee.

The Port's right to impose the foregoing Administrative Fees shall be in addition to and not in lieu of any and all of Port's rights under this Permit, in the Airport Rules, Policies and Regulations, or at law or in equity. Port's decision to impose an Administrative Fee on Permittee for one of the violations described on attached Exhibit "7" shall not preclude Port, in the event Permittee subsequently commits the same or a different violation, from exercising any of such other rights of the Port, including, without limitation, its right to terminate this Permit pursuant to Section 19 of Attachment "A" to this Permit. Port shall have no obligation to Permittee to impose Administrative Fees or fines on or otherwise take any action against any other tenant or permittee at the Airport.

During the term of this Permit the Director may reasonably adjust upward the amount of the Administrative Fees set forth in Exhibit "7" by providing Permittee six (6) months' advance written notice.

Paragraph L. Permittee's Due Diligence; No Representations or Warranties by Port. Permittee acknowledges that it has conducted its own due diligence investigation of its prospects for successfully operating its Permitted Uses at the Airport, and has made its own determination of the accuracy of any information provided by Port with respect to the financial results of any prior operator of any similar business at the Airport, that Port has made no representations or warranties to Permittee with respect to any of such matters, and that all prior discussions between Port and Permittee with respect to such matters are superseded by this Permit pursuant to Section 40(8) of Attachment "A" to this Permit. In addition, Permittee must perform its own due diligence on all matters relating to the Assigned Space, including all technical and construction matters. Any "as-built" drawings, utility matrixes, or other technical information (including, but not limited to, architectural drawings or autoCAD or other computer files) provided by the Port may not be accurate or complete. Permittee's use of or reliance on any such information shall be at its sole risk, and the Port shall have no liability arising therefrom.

Paragraph M. Permittee's Proposal. Permittee agrees to comply with the terms of Permittee's Proposal dated _____, 2018 (the "Proposal") which are set forth in Exhibit "8"; provided, however, that in the event any provision of the Proposal expressly conflicts with any

other provision of this Permit, then the other provisions of this Permit shall prevail, and nothing contained in the Proposal shall eliminate the need for Permittee to obtain Port's approval or consent where such approval or consent is required by any other terms of this Permit or release Permittee from its obligation to comply with all applicable Laws (as defined in Section 12(1) of Attachment "A" to this Permit). Permittee represents and warrants to Port that it has obtained all license, franchise or other agreements necessary to operate Permittee's business for the Permitted Uses in accordance with the terms of the Proposal and this Permit, and Permittee covenants to keep all such license and concession agreements in full force and effect during the Term of this Permit.

Paragraph N. Compliance with Port and Department of Transportation (DOT) Non-Discrimination In Contracting Requirements. The Port strictly prohibits all unlawful discrimination and preferential treatment in contracting, subcontracting and purchasing, including the Permitted Uses or any subleasing, subcontracting or purchasing under this Permit (the "Port Non-Discrimination Policy"). Additionally, this Permit is subject to the requirements of the U.S. Department of Transportation's regulation, 49 Code of Federal Regulations Part 23 (the "ACDBE Rules"). Permittee shall comply with the Port Non-Discrimination Policy and the ACDBE Rules and shall not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with its performance under this Permit, the management of the Permitted Uses, subleasing, or purchasing. The Permittee shall cooperate with the Port in the Port's program of recruiting, training, providing technical assistance and holding workshops to ensure that contracting, subcontracting and purchasing opportunities available under this Permit are accessible and available to all qualified businesses owners, including Airport Concession Disadvantaged Business Enterprises, as defined in the ACDBE Rules ("ACDBE"). In order to assure compliance with the Port Non-Discrimination Policy and the ACDBE Rules, the Permittee agree as follows:

(a) Permittee agrees that within 30 days after the expiration of each calendar quarter during the Term of this Permit, it will provide a report to the Port, in a form acceptable to the Port, describing the total quarterly gross receipts, ACDBE dollars and ACDBE services provided in such calendar quarter of each such ACDBE described on attached Exhibit "9" and "10" (and each substitute ACDBE that may be obtained pursuant to subparagraph (c) below), in each case calculated in accordance with the requirements of this Permit.

(b) Permittee agrees that it will also submit within the same period described in subparagraph (a) above a quarterly report to the Port, in the form of the Sales Report required to be submitted by Permittee to Port pursuant to Section 13(3) of Attachment "A" to this Permit, describing the Permittee's total Gross Receipts in such calendar quarter under this Permit, calculated in accordance with the requirements of this Permit ("Quarterly Report"). Permittee shall include with each Quarterly Report a certificate in the form attached as Exhibit "10", certified by the chief financial officer or other authorized representative of Permittee acceptable to the Director.

(c) Permittee will have no right to terminate any ACDBE for convenience without the Port's prior written consent. If an ACDBE is terminated by the Permittee with the Port's written consent or because of the ACDBEs default, then the Permittee shall provide the Port with evidence satisfactory to the Port that Permittee will continue to comply with its non-

discrimination obligations under this Permit, which evidence may include the substitution of the terminated ACDBE with another ACDBE.

(d) The Permittee's breach of its obligations under subparagraphs (a), (b) or (c) above shall be a Default by Permittee under Section 19(1) of Attachment "A" to this Permit and shall entitle the Port to exercise all of its contractual and legal remedies, including termination of this Permit.

Paragraph O. Additional Terms and Conditions. Permittee does hereby further agree to abide fully by all of the Additional Terms and Conditions set forth in Attachment "A" to this Permit, which is incorporated herein and which forms a part of this Permit; provided, however, that in the event any provision of Paragraphs A-Q of this Permit conflict expressly with the provisions of Attachment "A" to this Permit, then the provisions of Paragraphs A-Q of this Permit shall prevail.

Paragraph P. Amendments. Except as otherwise expressly provided in Paragraph C or Paragraph E.3(b) above, or in Section 37(1)(b) or Section 37(2)(c) or Section 38 of Attachment "A" to this Permit, amendments to this Permit may only be made by written agreement authorized by resolution or ordinance, as appropriate, duly adopted by the Board and executed by Permittee and Port.

Paragraph Q. Waiver of Jury Trial. **TO THE EXTENT PERMITTED BY LAW, PERMITTEE AND PORT DO HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING RELATED TO, ARISING OUT OF OR IN CONNECTION WITH THE TERMS, CONDITIONS AND COVENANTS OF THIS PERMIT.** If, as of the date of this Permit, the waiver made in this Paragraph Q is not valid under California Law, but hereafter such waivers are permitted under California Law, then from the time that such waivers are permitted and with prospective effect only, this Paragraph Q shall be in full force and effect without the need for any further action of the parties.

Paragraph R. Dispute Resolution

. In the event of any dispute hereunder, either party or the parties acting together, may elect to have the dispute resolved through a reference for determination in accordance with the provisions of California Code of Civil Procedure Section 638 et seq. (the "Reference Procedure"). The Parties specifically agree to the following if the Reference Procedure is elected as provided in this Paragraph R:

(a) Within ten (10) business days after the demand therefor is given by a party or the parties otherwise agree to resolve a dispute pursuant to the Reference Procedure, the parties shall agree upon a single referee who shall then try all issues, whether of fact or law, and then report a finding or judgment thereon. If the parties are unable to agree upon a referee, either party may seek to have one appointed pursuant to California Code of Civil Procedure Section 640 by the presiding judge of the Superior Court for Alameda County. The referee shall be (i) a retired judge or, if none are available or deemed suitable by the parties, then (ii) a duly licensed attorney who has practiced in the San Francisco Bay Area in the field of real estate transactional law or real estate litigation for at least ten (10) years.

(b) Except as provided in this Paragraph R, the referee shall apply all California Rules of Procedure and Evidence and shall apply the substantive law of California in deciding the issues to be heard. Notice of any motions before the referee shall be given, and all matters shall be set at the convenience of the referee.

(c) The referee's decision under California Code of Civil Procedure Section 644 shall stand as the judgment of the court, subject to appellate review as provided by the laws of the State of California. The referee shall file his or her statement of decision with the Clerk of the Alameda County Superior Court within ten (10) days after conclusion of the hearing.

(d) The parties agree that they shall, in good faith, endeavor to cause any such dispute to be decided as soon as possible, but in any event within ninety (90) days after the appointment of the referee: provided, however, that the referee shall have jurisdiction to extend the time for hearing of the matter so as to provide any party with reasonable rights of discovery under applicable law. The date of hearing for any proceeding shall be determined by agreement of the parties and the referee or, if the parties cannot agree, then by the referee within twenty one (21) days after the referee has been selected, unless a request for discovery is made within such twenty one (21)-day period. Unless otherwise agreed by the parties, the hearing shall take place at a location acceptable to both parties in Alameda County, California. Subject to the availability of the referee, the hearing shall be concluded no later than forty-five (45) days after the initial hearing date, unless extended in accordance with the terms of this Paragraph R(d).

(e) Prior to the initiation of the Reference Procedure required under this Paragraph R, the parties are encouraged to engage in meaningful mediation of their differences, in an effort to avoid unnecessary time and expense associated with the employment of a referee and engagement in the process outlined above. Mediation may be requested by either party, using a mediator employed by a recognized mediation service doing business in Alameda County. Should either party request mediation, and such request is ignored by the other party, or should any party refuse to engage in the mediation process in good faith, then the party failing to act in good faith, shall not then be entitled to recover attorney's fees under and pursuant to any provision of this Permit. Any request for mediation shall automatically extend the time within which Reference Procedures outline in this Paragraph R shall be commenced, such extension to expire upon the sooner of the following events to occur: the expiration of fifteen (15) days follow a written request for mediation having been delivered to the other party and no meaningful response having been provided within said fifteen (15)-day period, or the completion of the mediation resulting in the matter not having been resolved despite reasonable efforts of the parties to do so. A party has no obligation to spend more than eight (8) hours in mediation with respect to any dispute regardless of the number of claims or issues presented by the dispute.

(f) Notwithstanding the provisions of this Paragraph R to the contrary, in the event that an emergency arising which prompts the need for an immediate resolution of a dispute, and either party reasonably concludes that there is insufficient time to invoke this provisions and procedures set forth in this Section 2, such party may seek immediate redress by application to the Alameda County Superior Court, in accordance with applicable State and Local Rules, including, but not limited to, the requirements regarding notice to the other party.

Paragraph S. Put Rights. In consideration of the Port's grant of this Permit to Permittee,

completely, forever, and conclusively agrees to, and unequivocally accepts, the obligations imposed on Permittee by the terms of "Attachment "C"" to this Permit.

Signatures of the Parties:

**CITY OF OAKLAND, a municipal corporation,
acting by and through its Board of Port
Commissioners**

By: _____
Executive Director

PERMITTEE:

By: _____
Name: _____
Title: _____

**THIS PERMIT SHALL NOT BE VALID OR
EFFECTIVE FOR ANY PURPOSE UNLESS
AND UNTIL IT IS SIGNED BY THE PORT
ATTORNEY**

Approved as to form and legality this
___ day of _____, 2018.

Port Attorney

Port Ordinance No. _____
P.A. #_____

If corporation: Chairman, President or Vice
President

Attest
By: _____
Name: _____
Title: _____

If corporation: Secretary, Assistant Secretary,
Chief Financial Officer, Treasurer or Assistant
Treasurer

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

ATTACHMENT "A"

OTHER TERMS AND CONDITIONS OF SPACE/USE PERMIT

Section 1. **Construction of Improvements in Assigned Space.**

(1) Aside from any construction obligations described as “Port’s Work”, if any, in the Work Letter approved by Port when it approves Permittee’s plans and specifications pursuant to Section 1(2)(c) below (the “Work Letter”), Port shall have no obligation to perform any construction work or improvements to prepare the Assigned Space for Permittee’s Work described in the Work Letter.

(2) (a) Commencing on the Delivery Date for each Concession Unit, Permittee must, at Permittee’s sole cost and expense (except as otherwise expressly provided in Section 2(g) below), construct, install and provide all of the “Permittee’s Work” as described in the Work Letter in strict conformity with the Construction Schedule described therein, in this Section 1(2)(a), and in accordance with the Director’s written instructions, if any. Permittee shall coordinate the timing of Permittee’s Work with the Construction Schedule and Director’s instructions so that Permittee’s Work will not interfere with or cause a delay in any other construction activities authorized by the Port. Permittee shall be liable for any Losses (as defined in Section 1(2)(d) below) incurred by Port arising out of Permittee’s breach of its obligations under this Section 1. The parties anticipate that Permittee will be required to perform Permittee’s Work in phases, in order for Permittee to implement its Transition Plan. As to each Concession Unit, Permittee must diligently complete Permittee’s Work and open that Concession Unit for business on or before the Rent Commencement Date applicable to such Concession Unit, all in accordance with the Work Letter and the other provisions of this Permit. In no event will Permittee be entitled to any financial contribution, loan guarantee, or other financial support from Port with regard to Permittee’s Work.

If alternative time frames and conditions are contained in the Tenant Design Standards, then the Tenant Design Standards shall prevail; otherwise, Permittee further agrees that it will submit the following to Port for its approval pursuant to this Section 1(2), in accordance with the schedule set forth below:

Conceptual and Transition Plan review within 60 days from the Commencement Date, for all Alterations in the Airport.

Schematic Design review within 30 days from approval of Conceptual and Transition Plan.

50% complete construction plans and specifications for Permittee’s Work within 30 days from the Port’s approval of Permittee’s conceptual plan.

100% complete construction plans and specifications for Permittee’s Work within 30 days from the Port’s approval of Permittee’s 50% complete construction plans and specifications.

Permittee further agrees to obtain the Port's written approval of Permittee's plans and specifications pursuant to Section 1(2)(c) below and all permits required by Section 1(2)(d) below prior to commencement of any of Permittee's Work, and to complete all of Permittee's Work in a Concession Unit in the Assigned Space prior to the opening date for that Concession Unit, as set forth opposite that Concession Unit on attached Exhibit "5".

(b) The hard construction costs of Permittee's Work in the Concession Units must equal or exceed \$600 per square foot for each Concession Units (each a "Minimum Investment Amount"), excluding any amount for which Permittee is reimbursed under Section 2(g) below. Such "hard construction costs" may include architectural and engineering fees, construction management costs and inspection costs associated with Permittee's Work, provided the credit for such costs against the applicable Minimum Investment Amount shall not exceed twenty percent (20%) of the applicable Minimum Investment Amount. Such "hard construction costs" may not include, by way of example but not by way of limitation, the cost of litigation, arbitration or other costs of any dispute, attorneys fees in preparing contracts, costs of insurance or insurance deductibles. Within one hundred twenty (120) days after substantial completion of Permittee's Work, Permittee must provide to Port an affidavit, signed by Permittee *and* any of the Permittee's general contractor, architect or construction manager, under penalty of perjury, stating the hard construction costs paid by Permittee to complete Permittee's Work, together with copies of paid invoices, cancelled checks and lien waivers substantiating the costs stated in the affidavit. Without limitation, hard construction costs do not include business interruption, inventory, pre-opening expenses, overhead, or debt service on any construction loan; or any charges paid by Permittee to any Affiliated Person (as hereafter defined), unless and to the extent such charges have been approved by Director. If the hard construction costs paid by Permittee to complete Permittee's Work do not equal or exceed the required Minimum Investment Amount for all food and beverage Concession Units, then Permittee must pay Port within sixty (60) days of substantial completion of Permittee's Work in the Concession Units an amount equal to the deficiency. Permittee shall maintain in a true and accurate manner and in accordance with generally accepted accounting principles, such original books and records as would normally be examined by an independent certified public accountant pursuant to generally accepted auditing standards in performing an audit or examination of such hard construction costs. At any time, upon three (3) business days notice, Port or its representatives may audit and copy all of Permittee's books, records and source documents related to the hard construction costs paid by Permittee to complete Permittee's Work in the Concession Units. Such books and records shall be made available at the Assigned Space or at the offices of the Port; provided, however, that if such is not possible, Permittee shall pay for all reasonable and actual costs incurred by the Port in inspecting and auditing such books and records, including, but not limited to, travel, lodging and subsistence costs. If the audit reveals that the hard construction costs paid by Permittee were less than those stated in Permittee's affidavit, then Permittee must pay Port for the costs incurred by Port in connection with the audit plus any additional deficiency discovered between the hard construction costs paid by Permittee and the Minimum Investment Amount for all Concession Units, plus interest thereon at the rate provided in Section 26 below from the date of substantial completion of Permittee's Work in the Concession Units until payment has been received by the Port. As used in this Permit, "Affiliated Person" shall mean, with respect to Permittee, any person or entity directly or indirectly Controlling, Controlled by or under Common Control with Permittee. As used in this Permit, "Control" (including the correlative meanings of the terms "Controlling",

“Controlled by” and “under Common Control with”, as used with respect to any person or entity, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such person or entity whether through ownership of voting securities, by contract or otherwise.

(c) Permittee shall not make or suffer to be made any alterations, additions, or improvements to the Assigned Space or any part thereof or attach any fixtures or equipment thereto, including Permittee’s Work (collectively, “Alterations”), without Port’s prior written consent. All Alterations shall be at Permittee’s sole cost and expense. Without limiting the generality of the foregoing, the initial layout and design of all Alterations shall conform to the Port’s established architectural design scheme for the Terminal Buildings, the provisions of the Port’s tenant improvement guide or if none has been adopted by the Port, in accordance with tenant improvement standards adopted by the Port (such guide or standards are hereafter the “Tenant Design Standards”), and the Work Letter. Prior to the construction of any Alterations, Permittee shall pay the Port all applicable fees payable under all Port ordinances and resolutions, including, without limitation, Port Ordinance No. 3859 (or any successor thereto), and submit detailed plans and specifications to the Port’s Permit Coordinator for written approval. Permittee shall include with its plans and specifications schematic renderings of the public concession area, materials, a color board(s) and a detailed layout of the overall merchandising plan. Port’s approval rights will extend to and include architectural and aesthetic matters and Port reserves the right to reject any designs submitted and to require Permittee to resubmit designs and layout proposals until they meet Port’s approval. In the event of disapproval by Port of any portion of the plans and specifications, Permittee will promptly submit necessary modifications and revisions thereof. No changes or alterations will be made in said plans or specifications after approval by Port without the prior written approval of the Director or his or her designee. Port agrees to act within a reasonable period of time upon such plans and specifications and upon requests for approval of changes or alterations in said plans or specifications. One copy of plans and specifications for all improvements or subsequent changes therein or alterations thereof will, within fifteen (15) days after approval thereof by Port, be signed by Permittee and deposited with Port as an official record thereof. Without limiting the requirements set forth above, Permittee acknowledges and agrees that Permittee may be required to obtain approvals for any desired Alterations from the Port’s Engineering Permit Department. In the event that Permittee fails to submit plans and specifications which meet the approval of Port within thirty (30) days after the Commencement Date, Port may terminate this Permit. Nothing herein contained shall be construed to delay or otherwise affect the Commencement Date or the Rent Commencement Date.

All construction shall be in conformity with the Work Letter, the latest edition of the Tenant Design Standards, and the plans and specifications submitted by Permittee and approved in writing by Port, the City and the Alameda County Health Department, and shall meet all applicable local building codes and ordinances and all other applicable Laws (as defined in Section 12 of this Attachment “A”). Permittee warrants that the proposed improvements, if constructed or installed consistently with the plans and specifications approved by the Port, will comply with all applicable Laws, including, without limitation, the Americans With Disabilities Act of 1990 and any amendments thereto (hereafter the “ADA Requirements”). The Port’s approval of any plans and specifications submitted by Permittee shall not constitute the assumption of any liability by the Port for the compliance or conformity of such plans and specifications with

such Laws, or for the accuracy or suitability of such plans and specifications for Permittee's intended purposes, and Permittee shall be solely responsible for such plans and specifications.

(d) Permittee shall give written notice to Director not less than seven (7) days prior to the commencement of any Alterations in order that Port may post appropriate notices of non-responsibility, and agrees that such notices may remain posted until the acceptance of such work by Port. Prior to commencing any such work or allowing Permittee's contractors to have access to the Assigned Space, Permittee shall (i) coordinate all such work with Port's aviation or engineering staff designated in writing by the Director (or with the Port's contractor, if so directed in writing by the Director) so that Permittee's Work will not interfere with or cause a delay in any other construction activities authorized by Port, and (ii) provide Port with such completion bonds and labor and material bonds and builders all risk insurance in such form and amount and issued by such company or companies as shall be acceptable to Port. Permittee shall be liable for any and all losses, liabilities, judgments, suits, claims, damages, costs and expenses (including attorneys fees, investigation costs, remediation costs, and court costs) of any kind or nature (collectively "Losses") incurred by Port arising out of Permittee's breach of its obligations under the prior sentence. Permittee shall obtain, and pay all fees for all permits and business licenses required by the Port, the City of Oakland or other governmental authority having jurisdiction, for any Alterations, and it shall furnish copies of all such permits to Port prior to the commencement of any work.

(e) If and to the extent that Permittee's activities or proposed Alterations trigger an obligation or requirement on the part of Port to make changes to the Airport (including ADA Requirements), Permittee shall indemnify, defend, and hold harmless Port from and against any Losses arising out of such activities or Alterations.

(f) Permittee shall pay for all labor done and materials furnished in any repairs or Alterations to the Assigned Space, and except as otherwise expressly authorized by Section 7(2) below, shall keep the Assigned Space and such improvements free and clear of any liens or encumbrances of any kind whatsoever created by or through Permittee. If any such lien or encumbrance (except liens expressly authorized by Section 7(2) below) is filed, Permittee shall not be deemed to be in default if within ten (10) days after the filing thereof, Permittee, at its sole cost and expense, has provided or caused to be provided to the Port a lien release bond in accordance with California Civil Code Section 3143 or successor statute, or such other assurance approved in writing by the Port. If Permittee fails to do so, the Port shall have the right and option, but not the duty, to obtain such lien release bond or pay or otherwise discharge, stay or prevent the execution of any lien or encumbrance. In such event, the Port shall not be deemed to have waived the Port's right to declare Permittee in default under this Permit, and Permittee shall reimburse the Port for all sums expended in connection with such lien or encumbrance, including Port's attorneys fees and costs, and such reimbursement shall be due and payable 10 days after Port's written demand for any such payments, fees or costs. Within ninety (90) days after Permittee's completion of any Alterations within or to the Assigned Space, Permittee shall furnish to the Port a set of reproducible, final "as built" drawings of all such alterations, additions or improvements, together with evidence acceptable to Port of Permittee's out-of-pocket cost of such alterations, additions or improvements.

(g) Permittee's Work, as described in Section 2(a) above, shall include (i) the removal, in accordance with all of the applicable requirements of this Permit, of any asbestos in the Assigned Space (hereinafter the "Removal") and (ii) the connection of any required utility service from their existing locations outside of the Assigned Space, as the Port shall designate to Permittee in writing, to the exterior boundary of the Assigned Space (the "Utility Service Connections"). Subject to Permittee's compliance with the remaining provisions of this Section 2(g), Permittee shall be entitled, on the issuance of a credit memorandum by Port to Permittee, to be reimbursed for Permittee's actual out of pocket costs of the Removal and Utility Service Connections by having such costs credited against the next payments of Rent that come due under Paragraph E of this Permit until the amount of such credit memorandum has been exhausted.

Port's obligation to issue a credit memorandum to Permittee pursuant to this Section 2(g) shall be subject to Permittee's satisfaction of all of the following conditions:

(i) Port's receipt of a certificate from Permittee's Chief Financial Officer (or the equivalent thereof), certifying the amount for which reimbursement is sought by Permittee, that such amount was properly incurred to pay Permittee's actual out of pocket costs of the Removal and Utility Service Connections, and that such amount has not been previously reimbursed by Port to Permittee. (For purposes of this Permit and such certificate, Permittee's actual out of pocket costs of the Removal and Utility Service Connections shall exclude any direct or indirect costs of any of the Permittee's employees, and any costs that arise out of Permittee's breach of any of its obligations under this Permit.)

(ii) Port's receipt of copies of Permittee's contracts under which such costs were incurred, together with information on unit prices for all bids for work for which reimbursement is requested by Permittee, and an assignment to the Port of all warranties and other contractual rights against the contractor for defective work for which reimbursement is requested by Permittee.

(iii) Port's receipt of invoices from third parties in the amount and describing the costs to be reimbursed by the Port, together with copies of the checks from Permittee to such third parties evidencing payment of such costs, and such other documentation as the Port shall reasonably request.

(h) Permittee shall maintain such books and records as would normally be examined by an independent certified public accountant pursuant to generally accepted auditing standards in performing an audit or examination of the costs reimbursed by Port to Permittee under Section 2(g) above. The Port shall have the right, at any time until the expiration of 36 months after the last credit against Rent under Section 2(g) above (or such longer period as is reasonably required for the Port to conclude an audit commenced within such 36-month period), upon seven (7)-calendar days' notice from the Port to Permittee, to inspect and audit such books and records, and all such books and records shall be made available, as Permittee shall elect by written notice to Port given within such seven (7) calendar day period, either at the Assigned Space, or at the offices of the Port, for inspection and audit by Port or through its duly authorized representatives. The right to inspect and audit shall include the right to photocopy such books and records as the Port determines in its discretion to be necessary or convenient in connection with its inspection or audit thereof. If the Port determines within such audit period that Permittee was reimbursed for

any amount other than Permittee's actual out of pocket costs (as defined in Section 2(g)(i) above) of the Removal or Utility Service Connections, then the amount of such improper reimbursement, plus the delinquency charge provided for in Section 26 below, from the date of payment by the Port to the date of repayment by Permittee to the Port, and the Port's reasonable and actual costs (including, without limitation, the prorated salary of the Port's auditor's, fringe benefits and overhead allocation) incurred by the Port in auditing such books and records, shall be paid by Permittee to the Port promptly after Port's written demand.

(i) Permittee shall comply with the requirements set forth in the Tenant Design Standards provided to Permittee in the construction of Permittee's Work in the Assigned Space located in the Airport.

Section 2. **Midterm Refurbishment.**

(1) Permittee shall refurbish, redecorate and modernize the interior and exterior of the public area of each Concession Unit (the "Midterm Refurbishment") after January 1, 2025 (the "Mid-Term Refurbishment Date"). Midterm Refurbishment shall not mean the expenditure of money for those ordinary maintenance and repair items that should have been maintained and repaired in accordance with Section 3 below. It is the intent of this Section 2 that all Concession Units, including Concession Units operated under sublease, shall undergo Midterm Refurbishment, and that such Midterm Refurbishment shall be conducted while the Concession Units are opened for business, unless the Port determines, in the exercise of its sole discretion, that Permittee's proposed scope of work in a Concession Unit is so extensive that such Concession Unit may be closed during its Midterm Refurbishment, in which event Permittee shall have the right to close that Concession Unit during its Midterm Refurbishment, but such closure shall not result in any abatement of the Rent on that Concession Unit. In connection with such refurbishment, redecoration, and modernization, Permittee shall invest a minimum amount in each Concession Unit (the "Minimum Mid-Term Amount") equal to \$150.00 per square foot.

(2) On or before July 1, 2024, Permittee shall give notice to Port of its intended development and construction plan, as well as a project budget, with respect to such refurbishment requirements. All such refurbishments will be subject to all of the applicable requirements of this Permit, including, without limitation, Section 1 above. Permittee shall complete all such refurbishments of a Concession Unit on or before June 30, 2025 (the "Mid-Term Refurbishment Complete Date"). In the event Permittee fails to complete all such refurbishments of a Concession Unit by the Mid-Term Refurbishment Complete Date, Port will incur substantial damages, the exact amount of which are extremely difficult to fix. Accordingly, for each day after the Mid-Term Refurbishment Complete of a Concession Unit until the day on which Permittee completes the Midterm Refurbishment, Permittee shall pay to Port Five Hundred Dollars (\$500) (in addition to the Rent provided in Paragraph E above), as liquidated damages. The parties have agreed that this amount represents a reasonable approximation of the damages likely to be suffered by Port in the event Permittee shall fail to complete the Midterm Refurbishment by the Mid-Term Refurbishment Complete Date for that Concession Unit.

(3) Within one hundred twenty (120) days after substantial completion of the Midterm Refurbishment of a Concession Unit, Permittee must provide to Port an affidavit, signed

by Permittee *and* any of the Permittee's general contractor, architect or construction manager, under penalty of perjury, stating the construction costs paid by Permittee to complete such Midterm Refurbishment, together with copies of paid invoices and lien waivers substantiating the costs stated in the affidavit. The Port will reimburse Permittee for all valid and approved costs from moneys in the Refurbishment Fund. Such construction costs may include architectural and engineering fees, construction management costs and inspection costs associated with such Midterm Refurbishment, provided the credit for such costs against the Minimum Mid-Term Amount shall not exceed twenty percent (20%) of the Minimum Mid-Term Amount. Such construction costs may not include, by way of example, but not by way of limitation, the cost of litigation, arbitration or other costs of any disputes, attorneys' fees in preparing contracts, costs of insurance or insurance deductibles. If the construction costs paid by Permittee to complete such Midterm Refurbishment do not equal or exceed the Minimum Mid-Term Amount for a Concession Unit, then Permittee must pay Port within sixty (60) days of substantial completion of such Midterm Refurbishment of that Concession Unit an amount equal to the deficiency (or to the extent such moneys are in the Refurbishment Fund, forfeit the amount in the Refurbishment Fund). Permittee shall maintain in a true and accurate manner and in accordance with generally accepted accounting principals, such books and records as would normally be examined by an independent certified public accountant pursuant to generally accepted auditing standards in performing an audit or examination of such Midterm Refurbishment. At any time, upon three (3) business days notice, Port or its representatives may audit and copy all of Permittee's books, records and source documents related to the construction costs paid by Permittee to complete such Midterm Refurbishment. Such books and records shall be made available at the Assigned Space or at the offices of the Port; provided, however, that if such is not possible, Permittee shall pay for all reasonable and actual costs incurred by the Port in inspecting and auditing such books and records, including, but not limited to, travel, lodging and subsistence costs. If the audit reveals that the construction costs paid by Permittee were less than those stated in Permittee's affidavit, then Permittee must pay Port for the costs incurred by Port in connection with the audit plus any additional deficiency discovered between the construction costs paid by Permittee and the Minimum Mid-Term Amount for a Concession Unit, plus interest thereon at the rate provided in Section 26 below from the date of substantial completion of such Midterm Refurbishment of a Concession Unit until payment has been received by the Port.

Section 3. **Maintenance and Repair of Assigned Space.**

(1) EXCEPT WITH RESPECT TO THOSE CONSTRUCTION OBLIGATIONS OF PORT, IF ANY, SPECIFIED AS "PORT WORK" IN THE WORK LETTER, PERMITTEE SPECIFICALLY ACKNOWLEDGES AND AGREES THAT PORT IS LEASING THE ASSIGNED SPACE TO PERMITTEE ON AN "AS IS WITH ALL FAULTS" BASIS AND THAT PERMITTEE IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM PORT OR ITS AGENTS, AS TO ANY MATTERS CONCERNING THE ASSIGNED SPACE, INCLUDING: (i) the quality, nature, adequacy and physical condition and aspects of the Assigned Space, including, but not limited to, landscaping, (ii) the quality, nature, adequacy, and physical condition of soils, geology and any groundwater, (iii) the existence, quality, nature, adequacy and physical condition of utilities serving the Assigned Space, (iv) the development potential of the Assigned Space, and the use, habitability, merchantability, or fitness, suitability, value or adequacy

of the Assigned Space for any particular purpose, (v) the zoning or other legal status of the Assigned Space or any other public or private restrictions on use of the Assigned Space, (vi) the compliance of the Assigned Space or its operation with all applicable Laws including without limitation, the ADA Requirements, (vii) the presence of Toxic Materials (as defined in Port Environmental Ordinance No. 4345) on, under or about the Assigned Space or the adjoining or neighboring property, (viii) the quality of any labor and materials used in any improvements in the Assigned Space, (ix) the condition of title to the Assigned Space, and (x) the agreements affecting the Assigned Space, including covenants, conditions, restrictions, ground leases, and other matters or documents of record or of which Permittee has knowledge. The taking possession of the Assigned Space by Permittee shall, in itself, constitute acknowledgement by Permittee that the Assigned Space is in a condition satisfactory for its use; provided, however, that notwithstanding the foregoing acknowledgment, the Port acknowledges that the Permittee has not conducted an audit or inspection of the Assigned Space that would disclose the presence of, or contamination of the Assigned Space by, Toxic Materials and therefore, except as expressly provided in Section 32 below, the Permittee bears no responsibility for the removal, remediation or clean-up of Toxic Materials that were on the Assigned Space prior to Permittee taking possession thereof.

(2) Except as otherwise expressly provided in this Section 3(2), the Port shall have no duty to maintain the Assigned Space or any improvements located thereon. Port shall maintain that portion of the HVAC system that serves the Assigned Space but that is located outside of the Assigned Space. Permittee shall be responsible to maintain all duct work within the Assigned Space. Permittee agrees that during the Term of this Permit, at its own cost and expense, it shall keep and maintain the Assigned Space in clean and first-class order and repair and in compliance with all applicable Laws, including the replacement of any facility of Port which requires replacement by reason of Permittee's use or damage thereof or due to damage by others, excepting (a) ordinary wear and tear, (b) structural repairs to the Assigned Space, unless (i) caused by the act or omission of Permittee or any principal, affiliate, contractor, employee, agent, licensee or invitee of Permittee, or (ii) required to be repaired by Permittee pursuant to Section 37 below, (c) damage caused solely by the Port's gross negligence or willful misconduct which shall be repaired by the Port at its expense, (d) damage due to casualty with respect to which the provisions of Section 37(1)(b)(ii)(v) or (y) below shall apply, or (e) damage due to a taking with respect to which the provisions of Section 37(2)(a) or Section 37(2)(b) shall apply. Permittee hereby waives all right to make repairs at the expense of Port or in lieu thereof to vacate the Assigned Space, and waives the benefit of the provisions of California Civil Code Section 1941 and 1942 or any successor statute thereto and any other similar law, statute or ordinance now or hereafter in effect. In addition, if it becomes necessary during the term of this Permit, as reasonably determined by the Manager of Aviation Properties, Permittee will, at its own expense, redecorate and paint fixtures and the interior of the Assigned Space and improvements, and replace furniture, fixtures, wall, floor and window coverings, or other furnishings, which expenditures shall not diminish Permittee's Midterm Refurbishment obligation under Section 2 above. Without limiting the generality of the foregoing, at all times, Permittee shall be solely liable for the facade of the Assigned Space separating the Assigned Space from the terminal Common Areas, including the external face thereof, all windows and display areas therein, and all finishes thereon. If after thirty (30) days' written notice from the Port, Permittee has failed to commence and diligently pursue completion of any and all such maintenance, replacement and repair which may be required to restore the Assigned Space and any of its improvements, fixtures, equipment and mechanical

systems to the condition required by the fourth sentence of this Section 3(2), then Port shall have the right, but not the duty, to perform such maintenance, replacement and repair at Permittee's expense and Permittee shall reimburse Port for such costs promptly upon Port's written demand. The performance of maintenance and repair by the Port shall in no event be construed as a waiver of the Permittee's duty to maintain and repair as herein provided. Unless the written approval of the Manager of Aviation Properties or his or her designee has been first obtained in each instance, Permittee shall not alter the point of supply of any utilities in the Assigned Space. Permittee shall not install any racks, stands or other display of merchandise or trade fixtures at the Airport outside of the Assigned Space without the prior written consent of the Manager of Aviation Properties or his or her designee. Permittee shall not permit a work of visual art, as defined in 17 USC § 101, to be installed in the Assigned Space without providing Port with a written waiver, in form acceptable to Port, of the artist's rights under the Visual Artists Rights Act of 1990, Pub. L. 101-650, and without obtaining Port's prior written approval.

The parties acknowledge and agree that Permittee's obligations under this Section 3 are a material part of the bargained-for consideration under this Permit. Permittee's compliance obligations shall include, without limitation, the obligation to make substantial or structural repairs and alterations to the Assigned Space (including the Permittee's Work), regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Permit, the length of the then remaining Term hereof, the relative benefit of the repairs to Permittee or Port, the degree to which curative action may interfere with Permittee's use or enjoyment of the Assigned Space, the likelihood that the parties contemplated the particular requirement involved, or the relationship between the requirement involved and Permittee's particular use of the Assigned Space. No occurrence or situation arising during the Term, nor any present or future requirement, whether foreseen or unforeseen, and however extraordinary, shall relieve Permittee of its obligations hereunder, nor give Permittee any right to terminate this Permit in whole or in part or to otherwise seek redress against Port. Permittee waives any rights now or hereafter conferred upon it by any existing or future requirement to terminate this Permit, to receive any abatement, diminution, reduction or suspension of payment of Rent, or to compel Port to make any repairs to comply with any such requirement, on account of any such occurrence or situation.

(3) Permittee shall at its own expense keep and maintain within the Assigned Space fire extinguishers and other portable fire fighting and emergency equipment of such number, type, and material as may be prescribed from time to time by the Airport Rules, Policies and Regulations, the Fire Prevention Bureau of the City, or other governmental authority having jurisdiction.

(4) A Certified Access Specialist ("CASp", as defined in California Civil Code Section 55.52) has not inspected the Assigned Space or the property. Permittee acknowledges the foregoing information and agrees that such statement is merely a statement of fact and is not an admission, covenant, representation, or warranty made by the Port for the benefit of Permittee and Permittee's employees, agents, contractors, customers, or other invitees as to the condition of the Assigned Space or any other property owned or controlled by the Port. As may be required by California Civil Code Section 1938, the Port provides the following notification:

"A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable

construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises."

Section 4. **Other Operational Requirements.**

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

(2) Permittee must keep the display windows of each Concession Unit in the Assigned Space suitably illuminated at all times and display its hours of operation in a manner that is clearly visible from the entrance to each such Concession Unit.

(3) Permittee must keep the Assigned Space free of pests and vermin.

(4) Permittee 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 Assigned Space any garbage, debris or refuse.

(5) Permittee must install and maintain, and regularly clean and empty, all grease traps in the Assigned Space and dispose of the contents thereof in compliance with all applicable Laws, and Permittee will use its own EPA identification number and list itself as the owner on the Uniform Hazardous Waste Manifest or other Profile sheets if any need to be filled out in order for Permittee to comply with its obligations under this sentence. Upon the termination of this Permit, the Port may, at its sole option, require Permittee to remove any or all grease traps at Permittee's sole cost and expense, and in compliance with all Laws.

(6) Permittee acknowledges that the operational requirements of the Airport as an airport facility, including, without limitation, security requirements, are of paramount importance. Permittee 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, Permittee 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, Permittee must:

(a) cause all deliveries and dispatches of food, beverage and retail products, supplies, fixtures, equipment and furniture to be made and conveyed to or from the Assigned Space by means and during hours established by Director in Director's sole discretion.

Port has no responsibility regarding the delivery or dispatch of Permittee's products, supplies, fixtures, equipment and furniture. Permittee may not at any time park its trucks or other delivery vehicles in Common Areas; and

(b) not park within the parking areas of the Airport except in those areas, if any, designated by Port pursuant to permits obtained from the Airport. Nothing herein shall imply that Permittee shall be able to secure any on-Airport parking privileges.

(7) Without limiting any other provision herein, Permittee shall not: (a) use or permit the use of the Assigned Space for the conduct in or on the Assigned Space as an outlet store or a second-hand store; (b) advertise any distress, fire, bankruptcy, liquidation, relocation, closing, or going-out-of-business sales; (c) use or permit the use on the Assigned Space of any pinball machines, videogames, computer or electronic games, or other devices or equipment for amusement or recreation, or any vending machines, newspaper racks, pay telephones, or other coin, token, or credit card-operated devices; (d) cause or permit anything to be done, in or about the Assigned Space, or bring or keep anything thereon which might (i) increase in any way the rate of fire insurance on the terminal building complex or any of its contents; (ii) create a nuisance; (iii) in any way obstruct or interfere with the rights of others in the terminal buildings or injure or annoy them; (e) commit or suffer to be committed any waste upon the Assigned Space; (f) use, or allow the Assigned Space to be used, for any improper, immoral, unlawful or objectionable purpose; (g) place any loads upon the floor, walls or ceiling of the Assigned Space which endanger the structure or obstruct the sidewalk, passageways, stairways or escalators, in front of, within, or adjacent to the terminal buildings; (h) use any advertising or promotional medium that may be seen, heard, or otherwise experienced outside the Assigned Space (such as searchlights, barkers or loudspeakers); (i) distribute handbills or circulars to Airport patrons or to cars in the parking lots, or engage in any other advertising at the Airport and outside of the Assigned Space, except through Port's authorized terminal display advertising concessionaire or the Port's authorized outdoor advertising concessionaire; or (j) do or permit to be done anything in any way tending to injure the reputation of Port or appearance of the Airport.

(8) Permittee shall, if required by Director, employ, at its own cost and expense, an investigative organization approved by Director for the purpose of making investigations and observations and preparing a written report for Permittee of the carrying out of any pricing policies, revenue control, and operational techniques being used on the Assigned Space. Permittee shall cause such investigation and observation to be made at such reasonable times and in the manner directed by Director, and the investigator shall deliver forthwith to Director a true and complete written copy of any such reports made for Permittee.

(9) In the event Permittee receives any customer complaint with respect to Permittee's operations in the Assigned Space, Permittee shall promptly respond in writing to the complainant, with a copy to the Director, and shall make a good-faith attempt to explain, resolve or rectify the cause of the complaint. If Port establishes a toll free customer complaint telephone number, Permittee shall be required to participate and shall respond to complaints immediately. All other issues regarding the quality of service and/or prices raised on Port's own initiative may be submitted to Permittee for response, which response shall be provided by Permittee to the Port's Director within two (2) days.

(10) Permittee shall comply with the Airport security requirements set forth in Exhibit 6.

(11) Permittee shall comply with the Green Concessions Program set forth in Exhibit 12.

(12) All strong odors emanating from Permittee operations, products and equipment must be controlled by venting, wrapping, enclosing, containing or otherwise treating to prohibit the entry of objectionable odors into the Common Area. Tenants that regularly deal in natural products and operations having odors generally regarded as pleasing, including odors such as sweet spices, coffee, herbs, fresh baking, etc. are allowed into the Common Area at the Port's discretion.

(13) Where required, Permittee shall provide individual grease traps specifically for the Assigned Space. Grease traps and sewer cleaning shall be done at the Permittee's expense on a regular basis in accordance with an approved schedule submitted to the Port. Frequency shall be determined by the anticipated loads and recommendation of the Permittee's Mechanical Engineer and approved in advance by the Port.

(14) Permittee is responsible to clean exhaust hoods and test hoods fire suppression systems at intervals required by the Authority Having Jurisdiction.

(15) Sound producing operations and equipment must be enclosed or otherwise controlled to prevent audibility in the Common Area. Sound production operations and equipment must not interfere with audibility of fire alarm and other emergency paging.

(16) Permittee is responsible for biannual maintenance of sewer and grease waste piping. The limits of this responsibility are for the waste sewer piping from the Assigned Space to the main, and grease waste line from the Assigned Space to the grease interceptor. Biannual maintenance requirements, at a minimum, include a snaking of the piping followed by pressure wash. Permittee shall coordinate the biannual maintenance and annual compliance information with the Port's Aviation Facilities Department. The Port may require Permittee to increase the frequency of these cleanings if found necessary by the Port.

Section 5. **Signage and Advertising.**

The Tenant Design Standards dictate criteria for signage and advertising outside Permittee's Assigned Space. Any signage that Permittee wants to install or display in or on the Assigned Space must be approved in advance and in writing by the Director or his or her designee, including, but not limited to, the number, size, height, location, color and general type and design of each such sign.

Permittee shall not display any advertising, promotional, or informational pamphlets, circulars, brochures or similar materials relating to its business in or about the Assigned Space, except as expressly approved by the Director or his or her designee in writing. In no event shall Permittee be permitted to display advertising or promotional materials on behalf of or

benefiting third parties, such as credit card applications, table cards, banners, easel signs, travel promotions, banks, vendor supplied equipment displaying overt advertising, or the like. Without limiting the foregoing restrictions on advertising, in no event will there be permitted on the Assigned Space any advertising or promotion of cigarettes or tobacco products. No advertising or promotion shall be permitted on packaging (cups, cup holders, wrappers, bags, sacks, and the like) referring to or benefiting a third party, except 1) such packaging may include the name and/or logo of the Concession Unit using such packaging; and 2) if the package contains the product that is included within (such as a soft drink or coffee brand) and such packaging is required under the terms of the applicable license or franchise agreement.

Section 6. Labor Peace; Airport Labor Pool Program; First Source Program and Fair Chance Hiring Program.

(1) Permittee recognizes and agrees that: (a) the Port has a financial and proprietary interest in Permittee's operations under this Permit; (b) operations under this Permit materially affect Port revenues, the Port's investment in its Airport concession program, and the passenger experience at the Airport which contributes to the decisions made by potential Airport passengers as to which San Francisco Bay Area airports to patronize; (c) it is essential to the Port that operations under this Permit are conducted efficiently and without interruption, labor disputes, or boycotts; (d) the Airport can best protect its investments in the concession program by requiring its concessionaires to comply with the terms of the Port's "Labor Peace Rule," adopted pursuant to Port Resolution No. 17-35; and, (e) Permittee has had an opportunity to review, ask clarifying questions regarding, and to understand the Labor Peace Rule.

(2) As a material term, covenant and condition of this Permit, Permittee, on behalf of itself and on behalf of its subpermittees, subtenants, sublessees, successors, and assigns, agrees to comply with the Labor Peace Rule.

(3) Within the meanings and definitions set forth in the Labor Peace Rule, Permittee entered into one or more "Labor Peace Agreements" with all "Labor Organizations" which had requested a Labor Peace Agreement with Permittee. Such Labor Peace Agreement(s) are set forth in Exhibit 15 which is attached hereto and incorporated herein.

(4) Permittee understands and agrees that it shall expressly require its subtenants, sublessees, successors, and assigns to comply with the Labor Peace Rule and shall include language expressly requiring such compliance in any and all subleases and similar agreements.

(5) As a material term, covenant and condition of this Permit, Permittee agrees to comply with the Airport Labor Pool Program adopted pursuant to Resolution No. 15-056.

(6) As a material term, covenant and condition of this Permit, Permittee agrees to comply with the First Source Program and Fair Chance Hiring Program adopted pursuant to Resolution No. 18-32.

(7) Permittee understands and agrees to utilize the Port's "First Source Hiring" program to make a good faith effort to hire residents from the Port's local impact area (Oakland,

Alameda, San Leandro and Emeryville) and those who face barriers to employment. Permittee will partner with local workforce developments (as determined by the Port) as referral agencies for hiring. Permittee will provide upfront notice of job openings to these agencies and exclusively consider applicants from these agencies for five (5) business days before recruiting elsewhere. Upon the exhaustion of the referrals from these agencies, Permittee may then recruit candidates on their own.

(8) Permittee understands and agrees to the Port's commitment to non-discrimination in hiring and supports the creation of employment opportunities for local residents with barriers to employment, including individuals who have had former involvement in the criminal justice system. Fair Chance Hiring or ban the box prohibits discrimination against qualified applicants based upon their criminal history. Permittee shall comply with all federal and state laws related to fair chance hiring, including California AB 1008. In addition to complying with these laws, Port requires that the Permittee that employs two (2) or more employees may not inquire about or investigate an applicant's criminal history until a conditional offer of employment is made. Permittee may only consider convictions directly related to job requirements. Permittee also may not disqualify an applicant who has received a conditional offer of employment and meets the Port's policy requirements and the badging requirements of the Transportation Security Administration and Customs and Border Patrol based upon prior criminal history that is not directly related to the job requirements.

Section 7. **Permittee's Property.**

(1) Any and all property belonging to, or brought onto the Airport by Permittee or any of its officers, employees, agents, invitees or licensees shall be at the sole risk of Permittee. Subject to Port's right of approval as set forth in Section 1 hereof, Permittee may place and install trade fixtures and other personal property in the Assigned Space for use in connection with its operations hereunder (such trade fixtures and other personal property is hereafter collectively referred to as "Trade Equipment"), and the same shall be and remain the property of Permittee. Permittee shall, however, be responsible for the cost of repairing any damage to the Assigned Space or any other improvements of Port which are caused by the removal of any such Trade Equipment. Notwithstanding the foregoing, however, if Permittee shall at any time be in default hereunder, then Port shall have the benefit of any statutory liens on Permittee's property located in the Assigned Space which are available to it under the laws of the State of California, and except as otherwise expressly provided in Section 7(2) below, Permittee shall not remove or permit the removal of any of such property until all amounts secured by such liens have been paid and all other defaults under this Permit have been cured. In addition, if at the end of the Term or upon the earlier termination of this Permit, Permittee has not removed such property, Port shall have the right, at Permittee's expense, to remove and store or dispose of such property without liability to Permittee.

(2) Some of Permittee's Trade Equipment now or hereafter installed and used by Permittee on the Assigned Space may or will be directly financed by a third-party lender or otherwise subjected to a security interest or owned by an equipment rental company or vendor ("Equipment Lessor") and leased to Permittee either directly from the Equipment Lessor or by way of equipment sublease or assignment of equipment Permit from an equipment sublessor

("Equipment Sublessor"). If such lender, vendor, or equipment Lessor or Equipment Sublessor (or assignees) gives to Port written notice identifying the Trade Equipment prior to its installation on the Assigned Space, Port hereby agrees to recognize the rights therein of any such third-party lender, vendor, or Equipment Lessor or Equipment Sublessor (or assignee). Port agrees that all such items of financed or leased Trade Equipment installed or to be installed on the Assigned Space shall be and remain personal property and not real property, notwithstanding the fact that the same may be nailed or screwed or otherwise attached or affixed to the Assigned Space, and further agrees to recognize the rights therein of any such third-party lender, vendor, or Equipment Lessor or Equipment Sublessor (or assignee). Permittee shall have the right at any time, provided Permittee is not in default hereunder, to remove or replace any or all Trade Equipment, whether or not financed or leased, regardless of whether attached or affixed to the Assigned Space, and to the extent of their respective interests therein such third-party lender, vendor, or Equipment Lessor or Equipment Sublessor (or assignee) that timely gave the required written notice to the Port shall also have such a right regardless of whether Permittee is in default hereunder. Any damage to the Assigned Space caused by such a removal shall be repaired promptly by and at the expense of Permittee or other party causing such removal. Port agrees that it does not have and shall not assert any right, lien or claim in or to the Trade Equipment against any third-party lender, vendor, or Equipment Lessor or Equipment Sublessor (or assignee), that timely gave the required written notice to the Port, and, subject to the obligation promptly to repair any damage to the Assigned Space, such party may remove and dispose of the same without reference to, and free and clear of, any claim or other demand of Port; provided, however that no such disposal or sale may be made on the Assigned Space. The Port agrees to execute upon request such reasonable documentation that confirms the foregoing provisions to a third party lender, lessor or other holder of a security interest, provided that Permittee is not in default hereunder and provided such documentation is approved as to form and legality by the Port Attorney.

Section 8. **WI-FI System.**

Permittee acknowledges that Airport has an Airport-wide, open access wireless fidelity system (802.11g) that provides Wi-Fi services to the employees, passengers, tenants, and visitors at the Airport (the "Wi-Fi System"). Permittee agrees that: (a) it shall obtain the Port's written consent before installing any wireless network, and (b) it shall cooperate with the Port to eliminate radio frequency interference (RFI) from its competing wireless network. Permittee hereby agrees that during the Term it shall be obligated, on Port's request, to participate with Port and Port's other tenants in Port's designated dispute resolution process to resolve any RFI issues. Notwithstanding anything in this Permit to the contrary, in the event of any RFI between the Wi-Fi System and any third party wireless network, Port shall not be liable for any cost or damage arising directly or indirectly from such RFI, including, but not limited to, any degradation or inoperability of the third party wireless network.

Section 9. **Utilities.**

Port shall provide each Concession Unit with the utilities service as shown on attached Exhibit "5".

Permittee shall be responsible for obtaining and paying for all other utility service to the Assigned Space, and for any associated charges. Permittee shall pay for all utilities (including, without limitation, electricity, water, telephone, wireless access fee and sewer) used or consumed in the Assigned Space. In the event the Permittee requires a new service and/or utility connection or an upgrade to an existing service and/or utility connection, the Permittee shall be responsible for paying any applicable charges or fees for the new connection, service, or upgrade to an existing connection or service imposed by the utility or service provider on the Permittee or the Port for the Permittee's benefit. Permittee acknowledges that in certain cases, the Port may be the utility or service provider. In the event the utility or service provider imposes such charges or fees on the Port for the benefit of the Permittee, the Permittee shall pay the Port for such services or reimburse to the Port such payment not later than ten (10) days after the Port issues to Permittee a billing statement for said services or reimbursement.

Section 10. **Port's Right to Enter; Permittee's Right of Access.**

(a) Port and its designated agents shall have the right to enter the Assigned Space at any reasonable time for inspection, maintenance, repair, attending to emergencies or any other reasonable purpose. Such entry shall not constitute a forceable or unlawful entry or detainer of the Assigned Space. The Port will make a reasonable effort, except in case of an emergency, to provide advance notice of its intent to enter the Assigned Space, which notice (notwithstanding the provisions of Section 24 to the contrary) may be given in person to Permittee's manager on duty, or by telephone or by e-mail as designated by Permittee in Paragraph A of the Permit, but Port will have no liability to Permittee if Port fails to give such notice or if such notice is given by Port but not received by Permittee.

(b) Permittee and its officers, employees, agents and invitees shall, subject to the Airport Rules, Policies and Regulations, have the right of ingress and egress to and from the Assigned Space.

Section 11. **Taxes and Assessments.**

(1) This Permit may create a property interest that is subject to property taxation and Permittee, in whom the possessory interest is vested, may be subject to the payment of property taxes levied on such interest. If the taxing authority assesses to Permittee a possessory interest tax with respect to any tax year any portion of which is included in the Term of this Permit, then Permittee shall be responsible for paying the entire annual possessory interest tax without deduction or proration, notwithstanding the expiration or termination of the Term prior to the close of the tax year. Permittee acknowledges the foregoing and that the same constitutes a sufficient statement in accordance with the requirements of Section 107.6 of the California Revenue and Taxation Code. Permittee shall pay, on or before the due date established therefor, all taxes, assessments (including, without limitation, storm water utility charges, and any business tax lawfully imposed by the City) and impact fees which are levied against or in connection with the Assigned Space, Permittee's interest therein and the property and improvements of Permittee for the Term hereof or attributable to Permittee's activities at the Assigned Space or at the Airport. For purposes of this Section, a possessory interest tax shall be deemed a tax and not an assessment. Permittee's obligations under this Section 11 shall survive the expiration or earlier termination of

this Permit. Nothing contained herein shall be construed as a release or waiver on the part of the Port, or the City, of the right to assess, levy or collect any license, personal, tangible, intangible, occupation or other tax, fee or assessment which they, or either of them, may lawfully impose on the business or property of Permittee.

(2) Permittee shall pay or cause to be paid all sales and/or use taxes levied on all materials, supplies, or equipment purchased and used on or incorporated into Permittee's Work, and all other taxes properly assessed against equipment or other property used in connection with Permittee's Work. Without limitation, Permittee shall be responsible for any documentary, excise, stamp and transfer tax and any sale, use or other tax imposed by reason of the design, delivery, sale, transfer, or installation of the materials, supplies, equipment or other property purchased and used on or incorporated into Permittee's Work, regardless of which party has liability for such tax under applicable law, and any deficiency, interest or penalty asserted with respect thereto. Permittee represents that Permittee has, or will obtain prior to the transfer of title to any materials, supplies, equipment or other property purchased and used on or incorporated into Permittee's Work, the necessary seller's permit as required by the State of California. Permittee represents that it will collect, report, and pay all sales and or use taxes arising out of Permittee's Work to the State Board of Equalization. Upon full payment Permittee will issue Port a receipt pursuant to California Revenue and Taxation Code Section 6203, relieving Port of all liability for any tax relating to the materials, supplies, equipment or other property purchased and used on or incorporated into Permittee's Work.

Section 12. **Compliance with Laws, Rules, Policies and Regulations.**

(1) Permittee covenants and agrees to observe and comply with (and to cause all of its sublessees authorized under Section 18 below to comply with) all present and future Laws, and all rules, policies and regulations of Port, including, without limitation, all safety, security and operations directives of the Director or his or her designee, which now exist or may hereafter be promulgated from time to time governing conduct on and operations at the Airport or the use of facilities at the Airport (hereafter collectively the "Airport Rules, Policies and Regulations"). The Airport Rules, Policies and Regulations may, without limitation, require Permittee to participate in a parking validation program at the Airport if one is established by the Port. Permittee further covenants and agrees to observe and comply with (and to cause all of its sublessees authorized under Section 18 below to comply with) any and all valid and applicable requirements of all duly-constituted public authorities (including, without limitation, the Department of Transportation, the Department of Homeland Security, the Federal Aviation Administration, and the Transportation Security Administration). Permittee agrees to pay or reimburse Port for any civil penalties or fines which may be assessed against Port as a result of the violation by Permittee or any such sublessee of any of the foregoing requirements, which payment shall be made by Permittee within fifteen (15) days from receipt of Port's invoice for such amount and documentation showing that payment of such penalty or fine is Permittee's responsibility hereunder. As used in this Permit, "Laws" shall mean all present and future federal, state and local statutes, ordinances and regulations and Port ordinances applicable to Permittee, the Assigned Space, the Permitted Uses or the Airport, and judicial interpretations thereof, including, but not limited to, all acts and regulations relating to security (including, without limitation, those regulations promulgated by the Department of Homeland Security), the ADA Requirements, all acts and regulations relating in any way to food

and drugs, worker's compensation, sales and use tax, credit card processing, social security, unemployment insurance, hours of labor, wages, working conditions, the Immigration Reform and Control Act of 1986, the Charter of the City (including, without limitation, Section 728 entitled "Living Wage and Labor Standards at Port-Assisted Businesses"), and all Environmental Laws (as defined in Port Environmental Ordinance No. 4345).

Without limiting the generality of the foregoing, to the extent Permittee's operations or activities or the operations or activities of any sublessee or assignee of Permittee approved by the Port on the Assigned Space constitute industrial activities within the meaning of the Federal Water Pollution Control Act, 33 U.S.C. §§1251, et seq. ("CWA") and the regulations promulgated thereunder, Permittee agrees that it will be responsible for faithfully obeying and complying with such law and regulations, including, but not limited to, obtaining, if required, an individual National Pollutant Discharge Elimination System ("NPDES") permit or, if required, requesting coverage under and faithfully obeying and complying with the terms and conditions of any applicable General Permit issued pursuant to such law or regulations.

Permittee further agrees to waive and release the Port and Port officers, employees, agents and members of the Board from any and all claims, including claims of negligence, and liability that may arise from any act or failure to act by the Port in connection with the Port's providing advice, guidance, or assistance to Permittee or any assignee of Permittee approved by the Port regarding compliance with any such Laws or regulations including, but not limited to, the following actions or activities: furnishing educational materials to and organizing meetings for tenants; explaining the alleged requirements of the CWA, the regulations promulgated pursuant thereto, or the terms and conditions or means of complying with any permits required by or issued pursuant to the CWA; preparing or furnishing draft Storm Water Pollution Prevention Plans or Group Monitoring Plans, or acting as leader of any Group Monitoring Plan.

Notwithstanding and in addition to any other provision of this Permit, Permittee shall maintain for periodic inspection by the Port and, concurrently with the receipt from or submission to a governmental agency, deliver to Port true and correct copies of documents (hereinafter referred to as the "Documents"), except for Documents protected by the attorney-client privilege, required to be provided, filed, lodged, maintained by the Permittee or obtained by or issued to Permittee pursuant to such Laws or regulations, including, but not limited to, the following documents:

Permits; approvals; reports and correspondence; applications for permits, Notices of Intent, Storm Water Pollution Prevention Plans, Annual Comprehensive Site Compliance Evaluations, Annual Reports or monitoring results, or notice of violations relating or pertaining to the Assigned Space.

(2) Permittee agrees for itself, its successors and assigns that it will not make use of the Assigned Space in any manner which might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the Port reserves the right to enter upon the Assigned Space and cause the abatement of such interference at the expense of the Permittee. This Permit and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or

acquire, affecting the control, operation, regulation and taking off at the Airport or the exclusive or non-exclusive use of the Airport by the United States during the time of war or national emergency.

Section 13. **Percentage Fees.**

(1) For purposes of calculating the Percentage Fees payable by Permittee under Paragraph E of this Permit, "Gross Receipts" as used herein shall mean:

(a) (i) The retail price of all food, beverage and retail products sold and services rendered in, on, about or from the Assigned Space or from such other locations on Airport operated by Permittee, by any other person or entity, as may herein be authorized, whether such sales be for cash or on credit, and in case of sales on credit, whether or not payment is actually made; plus

(ii) The full amount of all deposits forfeited by customers in connection with any business of Permittee in, on, about or from the Assigned Space; plus

(iii) The full amount of all orders for goods or services accepted by Permittee in, on, about or from the Assigned Space, whether or not to be filled or performed at any other place, and the full amount of all orders accepted by Permittee elsewhere, but to be filled or performed in, on, about or from the Assigned Space; plus

(iv) The retail price of all orders placed on the Assigned Space from Permittee's catalog, internet or otherwise; plus

(v) The full amount of any charge the Permittee customarily makes for goods or services even though the Permittee fails to actually collect such a charge; provided, however, that Gross Receipts shall not include any discount granted to employees not to exceed 1% of annual Gross Receipts; plus

(vi) Any amounts paid or payable to the Permittee in exchange for coupons or vouchers which are redeemed at the Assigned Space.

(b) The following shall not be included in Gross Receipts:

(i) Any exchange of inventory between Permittee's business locations where such exchange is made solely for the convenient operation of Permittee's business and not for the purpose of consummating a sale made in, at or from the Assigned Space, or for the purpose of depriving Port of the benefit of sales which would otherwise be made in or at the Assigned Space.

(ii) Returns to the shippers or manufacturers.

(iii) Discount sales to employees, to the extent of the discount, not to exceed 1% of annual Gross Receipts.

(iv) The amount of all sales refunds previously included in Permittee's Gross Receipts.

(v) The amount of any separately-stated federal, state or local sales or use taxes mandated by a governmental entity to be imposed upon the Permittee's customers, collected by the Permittee and remitted to such governmental entity.

(2) No deduction shall be made from Gross Receipts by reason of any credit loss sustained or financing discount that may be applicable by reason of the acceptance or use of credit and/or debit cards or by reason of any other credit arrangements. Except as otherwise expressly provided in Section 13(1)(b) above, if any charge customarily made by Permittee for goods or services is not assessed, charged or collected, irrespective of the reason therefor, then the full amount of Permittee's customary charge therefor shall nevertheless be included in determining Gross Receipts. Permittee may not show the percentage of Gross Receipts payable to Port as a separate charge to Permittee's customers. All computations in the determination of Gross Receipts shall be made in accordance with the terms of this Permit, using the accrual basis of accounting.

(3) On or before the fifteenth (15th) day of each calendar month during the Term hereof, commencing with the first calendar month after the Rent Commencement Date, and ending on or before the fifteenth (15th) day of the calendar month immediately following the end of the Term, Permittee shall deliver to Port's finance department a report (the "Sales Report") certified as true and correct by an officer of Permittee, segregated by each source or general type of article sold or service rendered, or in such other manner as the Port shall direct, and by the Concession Unit at which the sale occurred, and in such form and with such detail as Port may reasonably request, setting forth Permittee's Gross Receipts (as the same are hereinbefore defined) from each Concession Unit included in the Assigned Space during the preceding calendar month, and separately identifying all receipts derived by Permittee from or at the Airport during such month which have been excluded from the computation of Gross Receipts, and identifying the location at the Airport at which such excluded Gross Receipts were derived, together with payment of the Percentage Fees due by reason thereof. As described in Paragraph K of this Permit, Port shall have the right, in addition to all other rights herein, to impose an Administrative Fee in the event Permittee fails to submit such Sales Report timely. If Permittee fails to provide Port by the fifteenth (15th) day of a calendar month with the Sales Report complying with the requirements of this Section 13(3), then Port may invoice Permittee for estimated Percentage Fees for the prior calendar month in an amount equal to the monthly Percentage Fees that would be payable based on 1.5 times Permittee's actual Gross Receipts from or at the Airport for the last month reported by Permittee to Port, or if Permittee has filed no such report with Port, then as estimated in good faith by Port. Permittee shall, within five (5) days after its receipt of such invoice, pay the invoiced amount to Port; provided, however, that when Permittee determines its actual Gross Receipts for the preceding month, Permittee may tender the actual percentage fees payment to Port, but only if it is accompanied by the Sales Report for such prior calendar month. The acceptance of such estimated Percentage Fees by Port, and the acceptance of any delinquent Sales Report by Port, shall be without prejudice to any of Port's rights under Section 19 below. Any underpayment of

Percentage Fees shall be paid with the Sales Report provided by Permittee to Port covering the period for which estimated Percentage Fees have been paid together with a delinquency charge, for violation of the terms of this Permit and as liquidated damages, of the Fifty Dollar (\$50.00) fee provided for in Section 26 below, plus interest on any unpaid amount from the date the estimated percentage fees became payable until payment has been received by the Port, at the rate provided in Section 26 below.

Within ninety (90) days after the end of each calendar year during the Term, Permittee shall submit to Director an unqualified year-end financial report (the “Annual Report”) certified by an independent Certified Public Accountant or a year-end financial report certified by Permittee’s chief financial officer if such officer is approved by the Director, showing Gross Receipts achieved with respect to the prior calendar year and identifying the location at the Airport where such Gross Receipts were derived. If such Annual Report shows that the total Rent actually paid by Permittee with respect the prior calendar year was less than the Rent payable with respect to such calendar year, then Permittee shall immediately pay to Port such deficiency, together with a delinquency charge and liquidated damages of the Fifty Dollar (\$50.00) fee provided for in Section 26 below, plus interest on such deficiency for each day from the date such Rent became due and payable until payment has been received by the Port, at the rate provided in Section 26 below. If such Annual Report shows that the Rent actually paid by Permittee with respect to such prior calendar year exceeded the Rent payable with respect to such calendar year, and if such Annual Report is acceptable to the Port, then on the issuance by Port to Permittee of a credit memorandum in the amount of such excess, such excess shall be applied as a credit against the amounts next coming due from Permittee to Port under this Permit. Notwithstanding anything to the contrary herein, in no event will the Rent payable to Port in any calendar year on a Concession Unit included in the Assigned Space be less than the Minimum Annual Guaranty for such Concession Unit for such calendar year. In addition, Permittee shall submit to Port such other financial or other reports as Director may reasonably require or as may be required by the FAA.

Any failure to timely deliver to Port any report required by this Section 13(3), excluding only delinquent reports for which a delinquency fee has already been paid by Permittee pursuant to the prior sentence, shall require payment by Permittee to Port, as liquidated damages, of a delinquency charge in the amount of Fifty Dollars (\$50.00), payable at the time the delinquent report is submitted to Port.

(4) Permittee shall maintain in a true and accurate manner and in accordance with generally accepted accounting principles, complete and accurate books and records as would normally be examined by an independent certified public accountant pursuant to generally accepted auditing standards in performing a separate audit or examination of Permittee’s Gross Receipts from each Concession Unit included in the Assigned Space. This includes, but not limited to: Financial statements, general ledgers, trial balances, subsidiary books of record, sales journals, daily or periodic summary reports, inventory and purchasing records, cash register or computer terminal tapes, POS records, sales invoices, bank deposit slips, bank statements, and tax reports filed with federal, state, county, city or other agencies. Such books and records shall contain records of Permittee’s pertinent activity under this Permit in a form consistent with good accounting practice which may include, without limitation, electronic media compatible with computers available to the Port, computer generated hard copies or legible microfiche or microfilm

copies. Such books and records shall be maintained in a form consistent with generally accepted accounting practices. Upon seven (7) calendar days' notice from Port, all such books and records shall be made available, as Permittee shall elect by written notice to Port given within such seven (7)-calendar day period, either at the Assigned Space, if any, or at the offices of the Port, for inspection by Port or through its duly authorized representatives at any time for up to seven (7) years after the calendar year to which such books and records pertain, whether or not the Term has expired or been earlier terminated; provided, however, that if prior to the expiration of such seven (7)-year period, any audit, review or investigation is commenced by the Port, or any claim is made or litigation is commenced relating to this Permit by the Port, such books and records shall continue to be maintained by Permittee, and Port shall continue to have the right to inspect such books and records in the manner stated above, until the audit, claim or litigation is finally resolved (including the determination of any and all appeals or the expiration of time for an appeal), whether or not the Term has expired or been earlier terminated. In the event that the Port determines, in its reasonable discretion, that any exclusions, deductions or allocations reducing Gross Receipts are not supported or substantiated by such books and records, all such amounts shall be deemed Gross Receipts for purposes of determining the Percentage Fees payable to the Port. The right to inspect shall include the right to photocopy said books, records and data as the Port determines in its discretion to be necessary or convenient in connection with its review or audit thereof. Any such inspection at the Assigned Space will be conducted during reasonable business hours and in such a manner and at such time as to not unduly interfere with the conduct of Permittee's business. In the event such books and records cannot be made available at the Assigned Space or at the offices of the Port, then Permittee shall pay for all reasonable and actual costs incurred by the Port in inspecting and auditing such books and records, including but not limited to travel, lodging and subsistence costs. Port shall further have the right, upon reasonable written notice to Permittee, to cause an audit to be made of the books and records of Permittee and its assignees and agents which relate to its operations at the Airport to determine the correctness of the Percentage Fees paid by Permittee hereunder. If, as a result of such audit conducted within any of the time periods permitted by this subsection, whether or not the Term has expired or been earlier terminated, it is established that Percentage Fees have been underpaid to Port, Permittee shall forthwith, upon written demand from Port, pay the difference to Port, together with a delinquency charge and liquidated damages of the Fifty Dollar (\$50.00) fee provided for in Section 26 below, plus interest on such underpaid amount for each day from the date such underpaid amount became due and payable until payment has been received by Port, at the rate provided in Section 26 below. Unpaid delinquency charges that accrue may be compounded monthly at the Port's sole election. Further, if such audit establishes that Permittee has understated and underpaid the total Percentage Fees due hereunder in any calendar year during the audit period by two percent (2%) or more, then all of the Port's reasonable and actual costs (including without limitation the costs of the audit firm designated by the Port's Chief Audit Officer to perform the audit, or the prorated salary of the Port's auditor's, fringes and overhead allocation) incurred by the Port in auditing such books and records shall be paid by Permittee to Port. The delinquency charge, liquidated damages and audit costs provided by this Section 13(4) are in addition to all other remedies Port may have that are provided by this Permit or otherwise by law or in equity with respect to any payment that has become due and has not been paid. Further, if such audit establishes that Permittee has understated and underpaid total Percentage Fees due hereunder in any calendar year during the audit period by five percent (5%) or more, Port shall have the right to terminate this Permit as if Permittee had committed a default under Section 19 below that had not been cured prior to the expiration of any

applicable grace period. The Permittee's obligations under this subsection shall survive the expiration or earlier termination of the Term, to the extent provided herein.

(5) Permittee agrees upon commencement of an audit by or on behalf of the Port pursuant to this Permit (an "Audit"), to toll for the Tolling Period (as defined below) all applicable periods of any statutes of limitations, laches or other defenses based on the Port's failure to file an action during the Tolling Period with regard to any matter arising out of the Audit. Such tolling shall commence on the Port's written notice to the permittee that the Audit has commenced (the "Tolling Effective Date") and shall end four (4) years after the date that the Port delivers to the Permittee a written copy of the Port's final findings on the Audit, or on such later date as may be set forth in a written agreement between the parties (the later of such dates is the "Tolling Termination Date," and the period commencing on the Tolling Effective Date and ending on the Tolling Termination Date is the "Tolling Period"). Permittee agrees not to assert the defense of laches, statute of limitations or any other defense based on the Port's failure to timely file an action during the Tolling Period with regard to any matter arising out of the Audit. Notwithstanding the foregoing, the tolling agreement set forth in this paragraph shall be inadmissible to determine liability or damages or any issue in dispute (other than the Tolling Period) under the Audit, whether before regulatory bodies, alternative dispute resolution proceedings or state or federal courts.

(6) Permittee shall install in each Concession Unit in the Assigned Space at least one cash register. "Cash register" shall mean a conventional mechanical cash register or computerized point-of-sale devices or other similar device serving a similar purpose. Such cash register and any other cash register used in each Concession Unit shall be of a type approved by Director in writing and shall register every transaction made in, on, about or from that Concession Unit, including every type of Gross Receipts, and the tape or digital record of each said cash register shall be accessible to and subject to inspection by Director or his/her agent. Port may, at its option, require all such cash registers to be locked and accessible only by the use of one key in the hands of Port. All cash receipts must include Permittee's identification thereon. Each sale or other transaction in each Concession Unit, including all receipts from such sale or other transaction, whether for cash, credit or otherwise, must be recorded at the time of each sale or other transaction, in the presence of the customer, in a cash register or cash registers serviced by an established agency approved by Director. Mechanical cash register(s) must have a non-resettable cumulative total, a detail audit tape, a transaction number with a four-digit capacity, an indicator readily visible to customers as the amount rung, and a seven-digit cumulative capacity or greater, as determined by Director based on the type of business, with a four-digit overrun counter. At Director's request, Permittee must furnish to Port a statement from an established agency that the transaction number, the cumulative total and the overrun counter have been sealed in a manner approved by Director. If computerized cash registers or other similar electronic devices are used, that system must accurately record all sales at each Concession Unit and be no more subject to tampering than mechanical cash register(s). Upon the installation or removal of any cash register used in the Assigned Space, Permittee must immediately furnish to Director notice in writing stating make, model number, serial number and cumulative total reading and overrun counter reading of the cash register(s). Permittee shall require any repair agency employed to repair or replace any cash register in the Assigned Space to disclose and furnish to Port or its auditors any information obtained by the agency in the course of making such repair or replacement pertaining to said cash register. Each and every customer must be issued a receipt or sales slip for each

transaction, which transaction must be recorded either on serially numbered sales slips or cash register tapes. Port shall have the right during business hours to examine the totals of the cash register(s) used in the Assigned Space and to inspect for compliance with this Section 13.

(7) Strong internal control procedures must be in place to ensure that all cash receipts are adequately safeguarded, deposited timely and recorded accurately in the books of Permittee and all of its approved sublessees. All cash receipts must include the identification of Permittee or its approved sublessee. All cash receipts must be recorded and receipted immediately in the presence of the customers with either cash register receipts or a pre-numbered official receipt of the Permittee or its approved sublessee. All cash must be kept in a secure location and must not be left unattended any time during the day. All cash receipts must be deposited intact daily. Under no circumstances are cash receipts to be used for making loans, advances or to pay expenses. The number of individuals authorized to receive and handle cash must be limited. There must be adequate segregation of duties between cash receiving, depositing and recording function. A supervisor must compare the record of all cash receipts with the amounts deposited. Any cash shortage or overage must be properly accounted for. Cash receipts must be reconciled regularly to the general ledgers and bank statements to ensure that they have been completely recorded and correctly coded to the proper accounts.

(8) Permittee shall include the provisions of this Section 13 in each sublease approved by the Port pursuant to Section 18 below, and Permittee shall require each of its sublessees to comply with such provision of such sublease.

Section 14. **Aviation Operations.**

Permittee releases the Port from any present or future liability whatsoever and covenants not to sue the Port for damages or any other relief based directly or indirectly upon noise, light, vibrations, smoke, air currents, electronic or other emissions or flight (including overflight of the Assigned Space) occurring as a result of aviation or airport or airport-related operations at or otherwise associated with the Airport, said release and covenant to include, but not be limited to claims (known or unknown) for damages for physical or emotional injuries, discomfort, inconvenience, property damage, death, interference with use and enjoyment of property, nuisance, or inverse condemnation or for injunctive or other extraordinary or equitable relief. It is further agreed that the Port shall have no duty to avoid or mitigate such damages by, without limitation, setting aside or condemning buffer lands, rerouting air traffic, erecting sound or other barriers, establishing curfews, noise or other regulations, relocating airport facilities or operations or taking other measures, except to the extent, if any, that such actions are validly required by governmental authority.

The Port reserves from the Assigned Space an easement for flight of aircraft in or adjacent to the airspace above the Assigned Space and for the existence and imposition over, on and upon said parcel of noise, light, vibrations, smoke, air currents, electronic or other emissions, discomfort, inconvenience, interference with use and enjoyment, and any consequent reduction in market value which may occur directly or indirectly as a result of aviation, airport or airport-related operations at or otherwise associated with use of the Airport. Permittee accepts the Assigned Space subject to the risks and activities hereinabove described.

Section 15. **Indemnification.**

(1) Permittee agrees to indemnify, defend and hold completely harmless Port (including, without limitation, members of the Port's Board of Commissioners), officers, employees and agents, from and against all liabilities (including, without limitation, liability under the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC Section 9601, et seq., or any other applicable Laws, including without limitation, the ADA Requirements), Losses, suits, claims, demands, judgments, damages, fines, penalties, costs and expenses (including all costs for investigation and defense thereof, including, but not limited to, court costs, expert fees and paralegal and attorneys' fees prior to institution of legal proceedings at both trial and appellate levels, and in any mediation or arbitration agreed to by Port), which may be incurred by, charged to or recovered from any of the foregoing (i) by reason or on account of damage to or destruction of any property of Port, or any property of, injury to or death of any person resulting from or arising out of the Permittee's construction of any of the Alterations, or its use, occupancy, maintenance or repair of the Assigned Space or any improvements thereto, of Permittee's operations thereon or anywhere else on the Airport, or the acts or omissions of Permittee's officers, agents, employees, contractors, subcontractors, sublessees, invitees, vendors, suppliers or licensees, regardless of where the damage, destruction, injury or death occurred, unless such liability, loss, suit, claim, demand, judgment, damage, fine, penalty, cost or expense was caused solely by Port's gross negligence or willful misconduct, or (ii) arising out of any allegation that Permittee, or the Port in concert with Permittee, has infringed on any Federal, state, or common law patent, trademark, copyright, or trade secret rights, or violated any Federal or state labor laws, or (iii) resulting from or arising out of the failure of Permittee to keep, observe or perform any of the covenants or agreements in this Permit to be kept, observed or performed by Permittee. In carrying out its obligations hereunder, Permittee shall use counsel acceptable to the Port Attorney.

(2) The foregoing provisions of this Section 15 are not intended, and shall not be construed, to limit in any manner whatsoever the protection or benefits to which Port otherwise would be entitled as an additional insured under any liability insurance maintained or required to be maintained by Permittee under this Permit.

(3) The provisions of this Section 15 shall survive the expiration or earlier termination of the Term with respect to any acts or omissions occurring during the Term.

Section 16. **Waiver of Damage.**

Permittee hereby expressly waives and releases any cause of action or right of recovery for compensation for any and all loss or damage sustained by reason of any fire, defect, deficiency or impairments of any of the services in or to the Assigned Space or the Airport, including, but not limited to, electrical power, gas, telephone service, steam, heating, air conditioning, water supply, drainage or sewage systems, or from wires leading to or inside of any space or structure, or by reason of any loss resulting from the failure of any such system or facility unless such loss or damage is due to the willful misconduct of Port or its officers, agents or employees. It is understood that Permittee shall take such steps as Permittee may consider necessary to protect Permittee's Trade Equipment from any damage that may be caused to such equipment in the event of failure or interruption of any such utility services. Whenever the Port

shall find it necessary for the purpose of making repairs or improvements to any utility supply system it shall maintain, it shall have the right to suspend temporarily the delivery of gas, electricity, water or other utility service, or any thereof, but in all such cases (except in the event of an emergency) reasonable notice of such suspension will be given to Permittee.

The Port and its Board of Port Commissioners and its officers, employees and agents shall not be liable to Permittee or to any third party claiming through Permittee for any loss of business or any indirect, incidental, special or consequential damages or lost profits arising out of or relating to this Permit or the operation of Permittee at the Airport or for any other cause.

Section 17. **[RESERVED]**

Section 18. **Assignment and Subletting.**

(1) Notwithstanding any provision of this Permit to the contrary, Permittee shall have no right to sublease or assign all or any portion of the Assigned Space to any third party (except to sublessees approved by Port's Manager of Aviation Properties that were identified in the Proposal) until after Permittee has completed construction of all of the improvements that Permittee is required to construct pursuant to Section 1(2)(a) above.

(2) Except as hereinafter in this Section 18 expressly provided, and subject to the limitations in Section 18(1), Permittee shall not, either directly or indirectly, voluntarily or involuntarily, sublease, assign, hypothecate, encumber or transfer this Permit or any interest therein or right granted thereby, or license the use of same, or permit or suffer any other person or entity to occupy, use or manage (except management by Permittee's employees) the same, in whole or in part, without the prior written consent of the Port's Manager of Aviation Properties (for subleases), or the prior written consent of the Port evidenced by resolution of its Board (for assignments). The Port shall consider a request for its consent if the use of each Concession Unit in the Assigned Space under such sublease or assignment is a Permitted Use of such Concession Unit under Paragraph B of this Permit. No sublease under this Permit shall be valid unless and until the form of such sublease is approved, in writing, as to form and legality by the Port Attorney. No approval by the Port of any sublease pursuant to the provisions of this Section 18 shall result in any privity of contract between the Port and any such sublessee, and the Port shall have no obligations to such sublessee arising under any such sublease, and no liability to sublessee arising out of Permittee's breach of any of its obligations under such sublease, or violation of the sublessee's rights under Federal, state or common law.

(3) Except as hereinafter in this Section 18 expressly provided, no modification of any sublease, assignment or other transfer after the Port's initial consent shall be effective without the prior written approval of the Port's Manager of Aviation Properties (for subleases), or of the Port (for assignments or other transfers), by resolution of its Board if required under the circumstances. In case of a transfer by reason of death the transferee shall notify the Port in writing of the transfer within 60 days after the death.

(4) Neither this Permit nor any interest therein or right granted thereby shall be assignable or transferable in proceedings in attachment, garnishment or execution against

Permittee, or in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against Permittee or by any process of law, and possession of the whole or any part of the Assigned Space shall not be divested from Permittee in such proceedings or by any process of law, without the prior written consent of the Port evidenced by resolution of its Board, which consent shall not unreasonably be withheld or delayed if the use of each Concession Unit included in the Assigned Space under such assignment is a Permitted Use of that Concession Unit under Paragraph B of this Permit.

(5) Any breach of the provisions of this Section 18 shall constitute a default and shall cause this Permit to terminate immediately at the option of the Port after not less than 10 days' written notice to Permittee.

(6) The Port's consent to or waiver of its option to terminate this Permit in the event of a default on account of any sublease, assignment, transfer, occupation or use requiring prior written Port consent shall not be construed or deemed to be a waiver of the restrictions hereinabove contained or to be a consent to or waiver of objections to any subsequent sublease, assignment, transfer or occupation or use by another person.

(7) Permittee and the Port acknowledge and agree that the rights retained by and granted to the Port pursuant to this Section 18 constitute a material part of the consideration for entering into this Permit and constitute a material and substantial inducement to the Port to enter into this Permit at the rental, for the terms, and upon the other covenants and conditions contained in this Permit, and that the acceptability of Permittee, and of any assignee or other transferee of any right or interest in this Permit, involves the exercise of broad discretion by the Port in promoting commerce, navigation and shipping in the Port area of the City. Therefore, Permittee agrees that the Port may condition its consent, if required hereunder, to a proposed assignment, subject to such provisions as are reasonable to protect the rights and interest of the Port hereunder and to assure promotion of aviation, commerce, navigation and shipping.

(8) Permittee agrees that its personal business skills and philosophy, its experience in constructing improvements like those it is required to construct under this Permit, and its experience in complying with the security mandates described in Section 39 below, were an important inducement to the Port for entering into this Permit and that the Port may reasonably object to the transfer of the Assigned Space to another whose proposed use, while a Permitted Use, would involve a different quality, manner or type of business skills and experience than that of Permittee, or which would result in the imposition upon the Port of any new or additional requirements under the provisions of any applicable Laws, including without limitation the ADA Requirements.

(9) Permittee agrees that as a condition to the Port's consideration of any request by Permittee for approval of any sublease, assignment or other transfer of this Permit not provided for in the Proposal, that Permittee shall deliver to the Port a nonrefundable processing fee of not less than \$5,000.00. The Port within 10 days of receipt of said fee may give to Permittee notice that said fee shall be increased by a sum, not to exceed an additional \$5,000.00, that the Port in its sole and absolute discretion determines is necessary to cover the anticipated Port administrative costs and expenses, including labor, in processing and investigating Permittee's request. In addition, if the Port determines in its sole and absolute discretion that it requires either

an environmental assessment of the Property (consisting of, but not limited to, visual inspection, historical or document review and/or subsurface investigation) and/or environmental documentation or reports in connection with such proposed assignment or other transfer of this Permit, Permittee shall reimburse the Port for all reasonable costs incurred by the Port in connection therewith (including, but not limited to, internal Port costs incurred in connection with such environmental assessment). Permittee agrees that unless and until said fee, and any requested additional fee, is delivered to the Port, Permittee shall be deemed to have made no request to the Port to the assignment, sublease or other transfer of this Permit. The minimum and maximum fees shall be adjusted upon the commencement of each successive year of this Permit, in the same percentage as the change in the last Index published prior to the date of each succeeding one year period from the last such Index published prior to the Commencement Date; provided that in no event shall the adjusted fees be less than the theretofore existing fees.

(10) In addition, Permittee's request for consent to any proposed sublease (other than subleases that were identified in the Proposal, for which only the documents and information described in (iii) below must be provided), assignment or other transfer shall not be deemed to have been submitted to the Port unless and until Permittee, except as and to the extent excused by the Port in its sole and absolute discretion, shall have submitted to the Port, in writing, the following information and documents:

(i) The name of the proposed sublessee, assignee or other transferee;

(ii) The nature of proposed sublessee's or assignee's business to be carried on in the Assigned Space.

(iii) A copy of the proposed sublease, assignment or transfer, and a description of the full consideration for such sublease, assignment or transfer;

(iv) A balance sheet of the proposed assignee as of a date within at least 90 days of the request for the Port's consent;

(v) Audited financial statements of the proposed assignee (or the principals thereof, in the case of a newly formed entity) for the 2-year period preceding the request for the Port's consent, certified by an independent certified public accountant, and unaudited financial statements for any stub period preceding the request for the Port's consent, or if they are not available, unaudited financial statements for such periods certified by the chief financial officer of the proposed assignee (or the principals thereof, in the case of a newly formed entity);

(vi) A statement in reasonable detail as to the business experience of the proposed assignee (or the principals thereof, in the case of a newly formed entity) during the 5-year period preceding the request for the Port's consent;

(vii) A copy of the proposed assignee's business and marketing plan;

(viii) Permittee's certificate certifying to the best of its knowledge (a) that this Permit is unmodified and in full force and effect (or, if there have been modifications, that this Permit is in full force and effect, as modified, and stating the modifications), (b) the commencement and expiration dates of the Permit Term and the dates, if any, to which the Rent has been paid, (c) whether there are then existing any charges, offsets or defenses against the enforcement by the Port or Permittee of any agreement, covenant or condition hereof on the part of the Port or Permittee to be performed or observed (and, if so, specifying the same), and (d) whether there are then existing any defaults by the Port or Permittee in the performance or observance by the Port or Permittee of any agreement, covenant or condition hereof on the part of the Port or Permittee to be performed or observed and whether any notice has been given to the Port or Permittee of any default which has not been cured (and, if so, specifying the same); and

(ix) Such other information and documents relating to the proposed sublessee's or assignee's business, experience and finances as the Port may reasonably request.

It is understood and agreed that the Port's consent to a requested sublease or assignment or other transfer, shall be conditioned upon the Port's receipt of each of the following:

- A. In the case of a proposed assignment, a full and complete executed copy of all documents to effectuate the assignment, together with a document in recordable form whereby the proposed assignee shall expressly assume all the covenants and conditions of this Permit and shall be in a form acceptable to Port.
- B. In the case of any other proposed encumbrance or proposed sublease or transfer, a full and complete executed copy of all documents to effectuate the encumbrance, sublease or transfer, which documents shall incorporate directly or by reference all of the provisions of this Permit (except for the provisions of Section 6 of this Attachment "A" which may or may not be incorporated as Permittee may elect). The form of the proposed sublease shall satisfy the applicable requirements of Paragraph I.1(a) of this Permit.

(11) Unless otherwise provided by resolution duly adopted by the Board in its sole and absolute discretion, no sublease, assignment or any activity on the Assigned Space by any person other than Permittee, even with the Port's consent, shall relieve Permittee of its rental or other obligations of any nature whatsoever (including but not limited to indemnification and environmental obligations) hereunder, and Permittee shall continue to be liable as a principal and not as a guarantor or surety, to the same extent as though no sublease or assignment, and no such activity on the Assigned Space by any person other than Permittee, had been made or occurred, and as though all conduct of the assignee or such other person was Permittee's conduct. Specifically, in case of any assignment, the following shall apply, unless otherwise provided in such resolution of the Board:

(i) Permittee shall be and remain liable as a principal, without the necessity of any suit or proceedings on Port's part of any kind or nature whatsoever against Permittee and without the necessity of any notice of nonpayment, nonperformance, non-observance or default to which the Permittee might otherwise be entitled, all of which the Permittee hereby expressly waives. Permittee hereby expressly agrees that the validity of Permittee's said liabilities as a principal hereunder shall not be terminated, affected, diminished or impaired by reason of the assertion or the failure to assert by Port against any assignee of any of the rights or remedies reserved to the Port pursuant to the provisions of the Permit or by the relief of any assignee from any of the assignee's obligations under the Permit or otherwise by (a) the release or discharge of any assignee in any creditors' proceedings, receivership, bankruptcy or other proceedings, (b) the impairment, limitation or modification of the liability of any assignee or the estate of any assignee in bankruptcy, or of any remedy for the enforcement of any assignee's liability under the Permit, resulting from the operation of any present or future provision of the 2005 Bankruptcy Reform Act or other statute or from the decision in any court; or (c) the rejection or disaffirmance of the Permit in any such proceedings. The liability of Permittee as a principal shall in no way be affected, modified or diminished by reason of any assignment, amendment, renewal, supplement, modification or extension of the Permit or by reason of any modification or waiver of or change in any of the terms, covenants, conditions or provisions of the Permit, or by reason of any extension of time that may be granted by Port to any assignee or a changed or different use of the Assigned Space consented to in writing by the Port, or by reason of any dealings or transactions or matters or things occurring between Port and any assignee whether or not notice thereof is given to Permittee; and

(ii) The Port's consent to any further assignment or assignments, and successive assignments by any assignee and the assignee's assigns of the Permit, made either with or without notice to the Permittee, shall in no manner whatsoever release the Permittee from any liability as principal.

(12) For purposes of this Section 18, an assignment shall include, if the Permittee is a corporation (except if Permittee is a corporation whose stock is publicly traded), a limited liability company or other state-chartered entity, any dissolution, merger, consolidation or other

reorganization of Permittee, or the sale, issuance or other transfer of a controlling percentage of the capital stock or other units representing ownership interests of Permittee, or the sale of more than 35% of the value of the assets of Permittee whether in one conveyance or cumulatively in the aggregate in more than one conveyance. The phrase “controlling percentage” means the ownership of and the right to vote, stock or other units representing ownership interests possessing at least 35% of the total combined voting power of all classes of Permittee’s capital stock issued, outstanding, and entitled to vote for the election of directors, or at least 35% of the total combined voting power of all classes of other units representing ownership interests entitled to vote for the election of managers or entitled to vote on management matters of an entity managed by its members. If Permittee is a joint venture or a limited or general partnership, an assignment for purposes of this Section 18 shall include a withdrawal, or change, voluntary, involuntary, or by operation of law, of any general partner, or of any limited partner owning more than 35% of the limited partnership interests in that limited partnership, or a dissolution of Permittee or any general partner of Permittee, or a change in control of any general partner of Permittee or a change in control of any limited partner of Permittee owning more than 35% of the limited partnership interests in Permittee. If Permittee is a limited liability company, an assignment for purposes of this Section 18 shall include a change in the manager (or a change in control of the manager), if such entity is manager managed, or a transfer of an interest in the limited liability company that results in a change in control of such entity, if such entity is member managed. If a “controlling percentage” of Permittee is owned by another entity, or if another entity otherwise controls Permittee (such entity is hereafter the “Parent”), then an assignment for purposes of this Section 18 shall include any transaction involving the Parent that would have been an assignment for purposes of this Section 18 if that transaction had involved Permittee.

(13) Permittee shall indemnify and defend Port for, from and against any matters which arise as a result of Permittee’s failure to disclose any relevant information about the Assigned Space to any assignee or sublessee of the Permittee.

(14) In the event that Permittee assigns this Permit, as a reasonable condition to the Port’s consent to such assignment, Permittee shall pay to the Port any Bonus Value, as hereafter defined. “Bonus Value” means all consideration payable by or on behalf of an assignee to Permittee (including key money, bonus money and any payment in excess of fair market value for (i) services rendered by Permittee to or on behalf of an assignee or (ii) for assets, fixtures, inventory, equipment, furniture or improvements transferred by Permittee to or on behalf of an assignee in connection with an assignment). Such consideration shall be allocated between the Assigned Space described in Paragraph D of this Permit (excluding any improvements constructed by Permittee thereon), and the improvements constructed by Permittee pursuant to Section 1(2), based on their respective fair market rental value at the time of the assignment, as agreed to in writing by the parties; provided, however, that if the parties have not reached such agreement within thirty (30) days after the Port’s written request, then the fair market rental value shall be determined as follows: Each party, at its cost and by giving notice to the other party, shall appoint a real estate appraiser with experience appraising airport property to appraise and submit an opinion separately stating the fair market rental value of the Assigned Space (excluding any improvements constructed thereon by Permittee) and the fair market rental value of such improvements. If a party does not appoint an appraiser within ten (10) days after the other party has given notice of the name of its appraiser, the single appraiser appointed shall be the sole

appraiser and that appraiser's opinion of the fair market rental value of the Assigned Space and the improvements shall be conclusive on the parties. If the two appraisers are appointed by the parties as stated in this Section 18(14), they shall meet promptly and attempt to select a third appraiser meeting the qualifications stated in this subsection within ten (10) days after the last day the two appraisers are appointed. If they are unable to agree on the third appraiser, either of the parties to this Permit by giving ten (10) days' written notice to the other party may apply to the American Arbitration Association for the selection of a third appraiser who meets the qualifications stated in this Permit. Each of the parties shall bear one-half of the cost of appointing the third appraiser and one-half of the third appraiser's fee. The third appraiser, however selected, shall be a person who has not previously acted in any capacity for either party. Within sixty (60) days after the selection of the third appraiser, each of the appraisers shall submit to each party the appraiser's report and opinion separately stating the fair market rental value of the Assigned Space (excluding any improvements constructed thereon by Permittee) and the fair market rental value of such improvements, and the median opinion shall be the opinion used under this Section 18(14). All appraisers appointed under this Section 18(14) shall hold the MAI designation of the American Institute of Real Estate Appraisers or its successor organization.

Section 19. **Default.**

(1) In the event that (a) Permittee shall fail to remit any payment due to Port under this Permit or shall fail to submit any financial report required to be submitted in connection therewith, within five (5) days after the due date thereof, or (b) Permittee shall fail, within the applicable time period provided in Section 27 below, to post any additional Performance Deposit required thereunder, or (c) if Permittee commits an Event of Default under any other agreement between Permittee and the Port, or (d) if Permittee makes a general arrangement or assignment for the benefit of creditors or becomes a "debtor" as defined in 11 U.S.C. § 101 or any successor statute (unless in the case of a petition filed against Permittee, the same is dismissed within 60 days), or (e) if a trustee or receiver is appointed to take possession of substantially all of Permittee's assets located in the Assigned Space or of Permittee's interest in this Permit, where possession is not restored to Permittee within 30 days, or (f) if Permittee shall fail three times within any period of one hundred eighty (180) consecutive days to fulfill any of its obligations under this Permit, which failure is set forth in a written notice from Port to Permittee, whether or not such failure is corrected within any applicable grace period provided in this Permit, or (g) if Permittee breaches its obligations under Section 6 or Paragraph N of this Permit, or (h) if a sublessee under any sublease with Permittee breaches its obligation under such sublease and Permittee does not satisfy the requirements in the next paragraphs of this Section 19(1), or (i) in the event that Permittee or any of its officers, employees, agents, invitees or licensees violates any other term, covenant or condition of this Permit and (except where otherwise expressly provided in this Permit) such violation continues for ten (10) days after Port has given written notice thereof to Permittee, then in any such event Permittee will be in default under this Permit.

(2) On the occurrence of any such default, the Port, in addition to its other remedies available under the terms of this Permit or pursuant to law or in equity, may at any time thereafter, with or without notice or demand and without limiting Port in the exercise of any right or remedy which Port may have by reason of such default or breach:

(a) Terminate Permittee's right to possession of the Assigned Space by any lawful means, in which case this Permit shall terminate and Permittee shall immediately surrender possession of the Assigned Space to Port. In such event Port shall be entitled to recover from Permittee all damages incurred by Port by reason of Permittee's default including, but not limited to,

(x) The worth at the time of award of the unpaid Rent and any other sums equivalent to rent required to be paid by Permittee under this Permit that had been earned at the time of termination;

(xi) The worth at the time of award of the amount by which the unpaid Rent and any other sums equivalent to rent required to be paid by Permittee under this Permit that would have been earned after termination until the time of award exceeds the amount of such loss of Rent that Permittee proves could have been reasonably avoided;

(xii) The worth at the time of award of the amount by which the unpaid Rent and any other sums equivalent to rent required to be paid by Permittee under this Permit for the balance of the Term after the time of award exceeds the amount of such loss of Rent that Permittee proves could have been reasonably avoided; and

(xiii) Any other amounts permitted by law to compensate the Port for detriment caused by Permittee's default or which in the ordinary course of events would be likely to result therefrom, including, but not limited to, the costs and expenses incurred by the Port (A) in retaking possession of the Assigned Space, (B) in cleaning and making repairs of and alterations to the Assigned Space reasonably necessary to return the Assigned Space to good condition for the Permitted Uses and in otherwise preparing the Assigned Space for reletting, (C) in removing, transporting, and storing any of Permittee's property left at the Assigned Space although the Port shall have no obligation to remove, transport, or store any of such property, and (D) in reletting the Assigned Space, including, but not limited to, brokerage commissions, advertising costs, and attorney fees.

The "worth at the time of award" of the amounts referred to in items (i) and (ii) immediately above is computed by allowing interest at the maximum rate permitted by law. The "worth at the time of award" of the amount referred to in item (iii) immediately above is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

(b) Avail itself of the remedy described in California Civil Code Section 1951.4 (lessor may continue Permit in effect after Permittee's breach and abandonment and recover rent as it becomes due, if Permittee has right to sublet or assign, subject only to reasonable conditions or limitations, which Permittee conclusively and forever agrees it has). If such conditions or limitations become unreasonable, Port may waive such conditions or limitations and continue to avail itself of this remedy.

(c) In case of abandonment or vacating of the Assigned Space by Permittee, if the Port elects not to terminate the Permit, Permittee hereby irrevocably appoints the Port the agent of Permittee to enter upon the Assigned Space and remove any and all persons and/or property whatsoever situated upon the Assigned Space, and place all or any portion of said property in storage for account of and at expense of Permittee. In such case the Port may relet the Assigned Space upon such terms as to it may seem fit, and if a sufficient sum shall not thus be realized after paying all expenses enumerated in items A, B, C, and D in Section 19(2)(a)(iv) to satisfy the Rent and other sums herein agreed to be paid, Permittee agrees to satisfy and pay any deficiency, and to pay such expenses. Permittee hereby exempts and agrees to save harmless the Port from any Losses arising out of or caused (except to the extent caused solely by the gross negligence or intentional misconduct of the Port or its agents or contractors) by any such entry or re-entry upon said Assigned Space and/or the removal of persons and/or property and storage of such property by the Port or its agents, using defense counsel acceptable to the Port Attorney.

(d) Pursue any other remedy now or hereafter available to Port under the laws, in equity, or in judicial decision of the State of California.

(3) Permittee hereby expressly waives any notice of default from Port not expressly provided for in this Permit as a prerequisite to Port's termination of this Permit or its repossession of the Assigned Space. Any partial payment of any payment due to the Port under this Permit from Permittee and accepted by the Port shall not render ineffective any notice given by the Port to the Permittee pursuant to the terms of this Permit or California Code of Civil Procedure Section 1161, et. seq., or any successor statute thereto.

Section 20. **End of Term.**

At the expiration or earlier termination of the Term, Permittee shall deliver to Port possession of the Assigned Space and, except as otherwise expressly provided in this Permit, all of the fixtures and equipment thereon in their original condition in all respects, reasonable use and wear excepted (and except as otherwise expressly provided in this Permit, Permittee agrees to reimburse Port for the cost of any alterations, replacement, repairs or cleaning required to restore the same to such condition). All Alterations made pursuant to Section 1 of this Attachment "A" shall immediately become Port's property and, at the expiration or earlier termination of the Term, shall remain in the Assigned Space without compensation to Permittee unless Port advises Permittee that Permittee will be required to remove the same, in which event, at Port's election, Permittee shall promptly restore the Assigned Space to its condition prior to the installation of such Alterations. At Port's election, Permittee shall remove all cabling and wiring, including telephone lines located within the Assigned Space, which are in excess of that determined by the Port to be required for normal use of the Assigned Space. In addition, Permittee shall repair, to the Port's reasonable satisfaction, all damage to the Assigned Space and the Airport resulting from Permittee's removal of such Alterations, cabling and wiring. Permittee's obligations under this Section 20 shall survive the expiration or earlier termination of the Term.

Section 21. **Holding Over.**

(1) If Permittee or any assignee or sublessee thereof continues to occupy the Assigned Space after the Term and the Port has not objected thereto, such holding over shall be deemed a month-to-month Permit terminable on thirty (30) days' notice given by either party (the "Hold-Over Permit") on the same terms and conditions as provided in this Permit, except (a) the Minimum Annual Guaranty and the Percentage Fees applicable to the Concession Units shall be fixed by the Director from time-to-time by giving Permittee written notice thereof at any time not less than seven (7) days before the expiration of any monthly period, to be effective at the expiration of such month, and (b) the Director, upon thirty (30) days' written notice to Permittee, may change any of the other terms and conditions of the Hold Over Permit.

(2) Notwithstanding the foregoing, nothing contained in this Permit shall give Permittee any right to occupy the Assigned Space at any time after expiration of the Term. Permittee acknowledges and agrees that upon such expiration or termination, it shall not be entitled to any relocation assistance or payment pursuant to the provisions of Title 1, Division 7, Chapter 16, of the Government Code of the State of California (Sections 7260 et seq.) or pursuant to any other laws or regulations with respect to any relocation of its business or activities upon the expiration of the Term or upon the termination of any holdover tenancy pursuant to this Section 21, and Permittee hereby waives and releases to the Port all rights, if any, to which Permittee may be entitled under said provisions or other law or regulations.

(3) If Permittee or any assignee or sublessee thereof shall continue to occupy the Assigned Space after the expiration or earlier termination of the Term and the Port has objected thereto, then the Port shall be entitled to double the Rent specified in Paragraph E of this Permit, and acceptance by Port of any sums after any such objection shall not constitute a renewal of this Permit or a consent to such occupancy, nor shall it waive Port's right of re-entry or any other right available to it under the laws of California or the provisions of this Permit.

(4) Permittee shall continue to be obligated to pay Percentage Fees during any period that Permittee or any assignee or sublessee thereof continues to occupy the Assigned Space after the expiration or earlier termination of the Term.

Section 22. **Tax Treatment.**

Permittee agrees and hereby makes the irrevocable and binding election not to take for federal income tax purposes investment tax credits or depreciation on assets financed with the proceeds of tax exempt Port bonds or notes, unless the Port otherwise expressly agrees in advance in writing signed by the Port. Permittee also agrees at the Port's request from time to time to execute such additional documents reasonably requested by the Port or its bond counsel to effectuate and/or evidence said agreement and election. This agreement and election, and the obligation to execute said documents relative thereto is binding on each successor or assignee of Permittee.

Section 23. **Intentionally Omitted.**

Section 24. **Notices, Approvals or Consents.**

Any notice, approval or consent permitted or required to be given to Permittee hereunder shall be in writing and delivered either by hand to the Assigned Space, or by nationally recognized overnight courier service, or by U.S. Certified Mail, Return Receipt Requested, postage prepaid, to Permittee's address contained in Paragraph A of this Permit or to such other address in the United States as Permittee may, by written notice to the Port given in accordance with the requirements of this Section 24, direct from time to time. Any notice permitted or required to be given to Port hereunder shall be in writing and delivered either by hand to the Office of the Manager, Aviation Properties Department, Oakland International Airport, Oakland, California, provided Permittee obtains a written acknowledgment of receipt therefor from Port, or by nationally recognized overnight courier service, or by U.S. Certified Mail, Return Receipt Requested, postage prepaid, addressed as follows:

Manager, Aviation Properties Department
Oakland International Airport
1 Airport Drive – Terminal 1
Oakland, California 94621

with a copy to: Port Attorney
Port of Oakland
530 Water Street
Oakland, California 94607

or such other address as Port may, by written notice to Permittee given in accordance with the requirements of this subsection, direct from time to time. Any such notice, approval or consent shall be deemed given on receipt if delivered by hand or three (3) days after mailing provided such hand delivery or mailing was made in accordance with the requirements of this Section 24.

Section 25. **Sums Paid by Port.**

If Port has paid any sum or sums or has incurred any obligation or expense which Permittee has agreed to pay or reimburse Port for, or if Port is required or elects to pay any sum or sums or incurs any obligation or expense because of the failure, neglect or refusal of Permittee to perform or fulfill any of the terms or conditions of this Permit, then the same shall be deemed additional rent due hereunder and Permittee shall reimburse Port therefor promptly upon demand.

Section 26. **Delinquency Charge.**

Any sums payable by Permittee to Port under any provision of this Permit which are not paid for a period of 10 calendar days (30 calendar days for unpaid sums for utilities) after it becomes due and payable shall be subject to a delinquency charge, for violation of this Permit and as liquidated damages, of \$50.00, plus a sum equal to 0.05% (five one-hundredths of one percent) per day of such delinquent payment for each day from the date such payment became due and payable until payment has been received by Port, but not to exceed the maximum interest rate permitted by applicable law. Unpaid delinquency charges that accrue may be compounded monthly at the Port's sole election. The delinquency charges provided by this Section 26 are in addition to

all other remedies that Port may have that are provided by this Permit or otherwise by law or in equity with respect to any payment that has become due and has not been paid.

Section 27. **Performance Deposit.**

(1) Permittee shall deposit the Performance Deposit required under Paragraph F of this Permit with Port upon execution of this Permit, which sum (and any additions thereto required hereunder) shall be by cash or irrevocable letters of credit, each in a form and from an issuer acceptable in Port's sole discretion. Any letter of credit provided as a Performance Deposit must be in the form of the letter of credit attached hereto as Exhibit "11", or such successor form as Port may from time to time require by written notice to Permittee, and shall be confirmed by and payable at the counters of a bank in San Francisco, California, Oakland, California, or at another location near the nine (9) county San Francisco Bay Area, California, as may be approved by the Port's Deputy Chief Financial Officer in the exercise of his or her sole discretion. (Letters of credit issued through correspondent banks will not be accepted.) Unless the Port receives a written extension or replacement of the letter of credit at least ninety (90) days before the end of the term of the letter of credit, the Port without notice to Permittee, may draw on the letter of credit and retain all proceeds as a cash Performance Deposit pursuant to the terms of this Section 27. The Performance Deposit shall be retained by Port as security for the faithful performance of Permittee's obligation hereunder and under any other agreement between Port and Permittee. Permittee shall be obligated, within fifteen (15) days after Port's written demand, to increase the amount of the Performance Deposit by the same percentage increase, if any, in the amount of the total Minimum Annual Guaranty applicable to all Concession Units included in the Assigned Space, determined pursuant to Paragraph E.1(b) of this Permit, or to such greater amount required by the Airport Rules, Policies and Regulations. Port shall have the right, but not the obligation, to apply said Performance Deposit to the payment of any sum due to Port which has not been paid, including, but not limited to, reimbursement of any expenses incurred by Port in curing any default of Permittee, or to the cost of restoring the Assigned Space or its furnishings, fixtures or equipment to their original condition, reasonable use and wear excepted, or to Port's future rent damages arising out of the termination of this Permit because of Permittee's default. In the event that all or any portion of the Performance Deposit is so applied, Permittee shall be obligated, within five (5) days after Port's written demand, to remit to Port the amount required to restore the Performance Deposit to the full amount required by this Section 27. If said Performance Deposit shall not have been applied for any of the foregoing purposes, it shall be returned to Permittee, without interest, within ninety (90) days after the end of the Term or the end of any hold-over as described in Section 21 above, whichever is later (as such ninety (90) day period may reasonably be extended by Port by written notice to Permittee to allow Port to determine if Permittee has satisfied all of its obligations under Section 32 of this Permit). The Port will not pay any interest on the Performance Deposit. Permittee hereby expressly waives the protections of California Civil Code Section 1950.7.

(2) In the event that Permittee has another agreement or other agreements with the Port that requires or require Permittee to maintain a deposit with the Port, Permittee, at its election may satisfy the deposit requirements with a single non-cash deposit in the form acceptable to the Port, provided that: (i) the deposit instrument describes each agreement to which it is intended to apply, (ii) the deposit amount is not less than the aggregate of deposit requirements for

all of the agreements to which the instrument applies and (iii) if the deposit is insufficient to satisfy the requirements of any of the agreements to which it applies, the Permittee shall be in default of each and every agreement to which the deposit applies.

Section 28. Brokerage Commissions.

Unless otherwise expressly provided in a written addendum to this Attachment "A" executed by Port and Permittee, Permittee warrants that no real estate commission is payable by Port to any person or entity in connection with this Permit, and Permittee hereby agrees to indemnify, defend and hold Port completely harmless from and against any and all liabilities, costs and expenses (including all costs for investigation and defense thereof, including, but not limited to, court costs, expert fees and paralegal and attorneys' fees prior to institution of legal proceedings at both trial and appellate levels, and in any mediation or arbitration agreed to by Port) incurred by Port as a result of any claims therefor.

Section 29. Port's Reserved Rights.

(1) Port reserves the right for itself and others to utilize and maintain existing utility easements over, under, across and through the Assigned Space, and to run water, electrical, telephone, gas, drainage, communications and other lines over, under, across and through the Assigned Space and to grant necessary utility easements therefor. Port shall also have the right, at any time and from time to time, to cause maintenance to be performed and repairs to be made in and to the Assigned Space and the fixtures, equipment and mechanical systems located therein. The Port also reserves to itself and the right to grant to others in the future nonexclusive easements over outside portions of the Assigned Space for purposes of access to adjacent Port property (including, without limitation, access to improvements owned by others such as buildings owned by Port tenants on Port land and access for purposes such as maintenance, installation or repair of utilities, use of restrooms, and construction, maintenance, repair, replacement or reconstruction of improvements or facilities located on such Port property.) Port shall also have the right, at any time and from time to time, to access the Assigned Space upon prior reasonable notice to the Permittee, except in the case of an emergency. The Port also reserve the exclusive right to use all areas of the Airport not comprising the Assigned Space, and the exterior walls and roofs of the Assigned Space, together with the right to install, maintain, use, repair and replace pipes, ducts, conduits, wires, columns, and structural elements serving other parts of the Airport in and through the Assigned Space. This reservation in no way affects Permittee's maintenance obligations under this Permit.

(2) Permittee acknowledges that the Port has made no representations or warranties to Permittee regarding the location of airlines or pedestrian traffic, or the design, construction or location of security check points or other improvements in the terminal facilities at the Airport. Permittee agrees that Port reserves the right (a) to further develop, improve, repair and alter the Airport and all roadways, parking areas, terminal facilities, landing areas and taxiways as it may see fit, free from any and all liability to Permittee for loss of business or damages of any nature whatsoever to Permittee occasioned during the making of such improvements, repairs, alterations and additions, including but not limited to any damages resulting from negligence of the Port or its employees, agents or contractors, and (b) to establish such fees and charges for the

use of the Airport by Permittee and all others as Port may deem advisable, including, without limitation, parking charges on Permittee, its customers and employees and on Permittee's vendors making deliveries to Permittee anywhere on the Airport.

(3) Permittee acknowledges that construction on the roads and other portions of the Airport during the Term may temporarily disrupt Permittee's use of the Assigned Space. Permittee agrees that Port will not be required to pay or credit any sums to Permittee to reimburse Permittee for any disruption or loss of use of the Assigned Space, and that there will be no abatement in the Rent or other amounts payable by Permittee to Port under this Permit.

(4) Permittee covenants and agrees that this Permit shall be subject and subordinate to the provisions of any existing or future agreement between Port and the United States Government relative to the operation or maintenance of Airport, the execution of which has been or will be required as a condition precedent to the granting of federal funds or Passenger Facility Charges ("PFC's") for the development or operation of Airport. In the event that the Federal Aviation Administration or its successors shall require any modifications to this Permit as a condition precedent to the granting of such federal funds or PFC's, Permittee shall promptly consent in writing to such modifications.

(5) Port may, at any time and from time to time, using Port personnel, or using an outside audit firm designated by the Port's Chief Audit Officer, conduct an audit of Permittee's operations at the Airport (in addition to Port's audit rights provided elsewhere in this Permit) to confirm that such operations comply with the requirements of this Permit. Permittee shall cooperate fully with the Port in such audit and shall require all of its authorized sublessees to fully cooperate in such audit. If such audit shows that Permittee is not complying with any of such requirements, then without limiting Port's rights under Section 19 above, Permittee shall promptly remedy any noncompliance shown in such audit, and Port may require Permittee to reimburse Port for all of its costs of such audit.

Section 30. **Discrimination Not Permitted.**

(1) During the performance of this Permit, the Permittee, for itself, its assignees and successors in interest agrees as follows:

(a) Compliance with Regulations. The Permittee shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Permit.

(b) Nondiscrimination. The Permittee, with regard to the work performed by it during the Permit, shall not discriminate on the grounds of race, color, sex, creed, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Permittee shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the Permit covers a program set forth in Appendix B of the Regulations.

(c) Solicitations for Subcontracts, Including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the Permittee for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Permittee of the Permittee's obligations under this Permit and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

(d) Information and Reports. The Permittee shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Port or the Federal Aviation Administration ("FAA") to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a Permittee is in the exclusive possession of another who fails or refuses to furnish this information, the Permittee shall so certify to the Port or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.

(2) The Permittee for itself, its successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the Assigned Space described in this Permit for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, the Permittee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

(3) The Permittee for itself, its successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

- (i) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities,
- (ii) that in the construction of any improvements on, over, or under such Assigned Space and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination,
- (iii) that the Permittee shall use the Assigned Space in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21. Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

(4) The Permittee assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, color, religion, sex, national origin, ancestry, age, disability or physical handicap as set forth in the Americans with Disabilities Act of 1990, veteran's status, marital status or actual or perceived sexual orientation, be excluded from participating in any activity conducted with or benefiting from Federal assistance. The Permittee also assures that it will comply with all applicable provisions of the Port's equal opportunity policy. This provision binds the Permittee during the Term of this Permit.

(5) In furtherance of Port's long-standing policy to insure that equal employment opportunity is achieved and nondiscrimination is guaranteed in all Port-related

activities, Permittee for itself and its successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree with respect to Permittee's activities upon the Assigned Space and as a covenant running with the land:

(a) That Permittee shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, actual or perceived sexual orientation, national origin, age, physical handicap or disability as set forth in the Americans With Disabilities Act of 1990, or veteran's status. Permittee shall take affirmative action to ensure that applicants and employees are treated fairly. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship;

(b) That Permittee shall, in all solicitations or advertisements for employees placed by or on behalf of Permittee, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, actual or perceived sexual orientation, national origin, age, physical handicap or disability as set forth in the Americans With Disabilities Act of 1990, veteran's status, or marital status;

(c) If the Port's Office of Equal Opportunity provides any notices setting forth the provisions of this Section, Permittee agrees to post such notices in conspicuous places, available to employees and applicants for employment, and/or send such notices to employees or to any labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, as requested by the Port;

(d) That Permittee shall not discriminate by segregation or otherwise against any person or persons because of race, color, religion, sex, actual or perceived sexual orientation, age, national origin, physical handicap or disability as set forth in the Americans With Disabilities Act of 1990, veteran's status, or marital status in furnishing, or by refusing to furnish, to such person or persons the use of any public facility upon the Assigned Space, including any and all services, privileges, accommodations, and activities provided thereby;

(e) That in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person, on the grounds of race, color, national origin, shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination;

(f) That Permittee assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to ensure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E, as issued on February 7, 1980, or as subsequently amended by the United States Department of Transportation, Federal Aviation Administration. Permittee further 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. Permittee assures that it will require that its covered suborganizations provide assurances to Permittee that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect; and

(g) Permittee agrees that it shall not discriminate against any professional service or vendor because of race, color, religion, sex, actual or perceived sexual orientation, national origin, age, physical handicap or disability as set forth in the Americans With Disabilities Act of 1990, veteran's status, or marital status; and that the Permittee shall, in all solicitations or advertisements placed by or on behalf of Permittee, for professional services, vendors or contractors, state that all qualified bidders will receive consideration on merit, without regard to race, color, religion, sex, national origin, age, physical or mental disability or disability as set forth in the Americans With Disabilities Act of 1990, veteran's status or marital status.

(6) That Permittee's noncompliance with the provision of this Section 30 shall constitute a material breach of this Permit. In the event of a breach of any of the above-stated nondiscrimination and affirmative action covenants, the Port or the United States shall have the right to consider but not be limited to the following:

(a) Withholding of payments to the Permittee under this Permit until the Permittee complies; or

(b) The Port may terminate this Permit and re-enter and possess the Assigned Space and the facilities thereon, and hold the same as if this Permit had never been made, without liability therefor; or

(c) The Port or the United States may seek judicial enforcement or said covenants.

(7) Should the Permittee authorize another person, with Port's prior written consent, to provide services or benefits from the Assigned Space or at the Airport, Permittee shall obtain from such person a written agreement pursuant to which such person shall, with respect to the services or benefits which it is authorized to provide, undertake for itself the obligations contained in this Section 30. Permittee shall furnish the original or a true copy of such agreement to Port. Port may from time to time be required by the United States Government, or one or more of its agencies, to adopt additional or amended provisions, including non-discrimination provisions, concerning the use and operation of the Airport, and Permittee agrees that it will adopt any such requirement as a part of this Permit.

(8) If Permittee shall furnish any services to the public at the Airport, it shall furnish said services on a fair, equal and not unjustly discriminatory basis to all users thereof and shall charge fair, reasonable and not unjustly discriminatory prices for each unit of service, provided that Permittee shall be allowed, subject to compliance with the provisions of Paragraph B.4 of this Permit, to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchasers, if any.

Section 31. **Federal Aviation Administration Requirements.**

(1) Permittee shall comply with all applicable regulations of the Federal Aviation Administration and the Transportation Security Administration relating to Airport security and shall control the Assigned Space so as to prevent or deter unauthorized persons from obtaining access to the air operations area of the Airport.

(2) Port reserves unto itself, and unto its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft through the airspace above the surface of the Assigned Space, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft now known or hereafter used, and for navigation of or flight in the said airspace, and use of said airspace for landing on, taking off from or operating on the Airport.

(3) Permittee expressly agrees, on behalf of itself and its successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions on the Assigned Space in compliance with the requirements of Federal Aviation Regulations, 14 CFR Part 77. In the event the aforesaid covenants are breached, the Port reserves the right to enter upon the Assigned Space and to remove the offending structure or object and cut the offending natural growth, all of which shall be at the expense of Permittee.

(4) Permittee agrees to require any lights in the Assigned Space to be constructed, focused or arranged in a manner that will prevent them from casting their beams in an upward direction so as to interfere with the vision of pilots in aircraft landing at or taking off from the Airport.

(5) Permittee expressly agrees, on behalf of itself and its successors and assigns, to prevent any use of the Assigned Space which would interfere with or adversely affect the operation or maintenance of the Airport, or which would otherwise constitute a hazard or nuisance at the Airport.

(6) Permittee agrees that it will not exercise or grant any right or privilege which would operate to prevent any person, firm or corporation operating aircraft on the Airport from performing any service (including, but not limited to maintenance and repair) on its own aircraft with its own employees that it may choose to perform. This Permit confers no right on Permittee or any other person, firm or corporation to fuel aircraft at the Airport.

(7) This Permit is subject to the requirements of the U.S. Department of Transportation's regulation, 49 CFR, Part 23; Permittee agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, subcontract or other agreement covered by 49 CFR, Part 23, or any successor regulation; and Permittee also agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR, Part 23, that it enters into and to cause those businesses to similarly include the statements in further agreements. This Section 32(7) does not authorize the operation of a concession at the Airport that is not part of the Permitted Uses under Paragraph B of this Permit.

Section 32. **Environmental Responsibilities**

During the performance of this Permit, the Permittee agrees to comply with its obligations set forth on Attachment "B" to this Permit, which is incorporated herein by this reference. If Permittee does not engage in an activity that is described in Attachment "B", then the provisions related to that activity would not apply. For illustrative purposes only, if the

Premises are indoors, then most of the construction storm water provisions would be inapplicable to the Permittee.

Section 33. **Prevailing Wage Requirements.**

(1) Permittee agrees that in the performance of work under this Permit, if applicable, Permittee shall comply with the Public Work Prevailing Wage Requirements, which are the applicable prevailing wage requirements of California Labor Code Sections 1720 et seq. and Port Ordinance No. 4321, as amended, and which generally apply to construction, costing more than \$1,000.00, which is made on or to Port property and the cost of which is paid for in whole or in part by the Port's advance or reimbursement to Permittee or by credit against rent or other sums due the Port.

(2) "Construction" as used herein shall apply to construction, alteration, demolition or repair work, and the laying of carpet and maintenance work, provided, that Private Work Prevailing Wage Requirements shall not apply to maintenance work. "Construction" includes all construction of building core and shell, building annexes, tenant improvements and public works that are within the customary jurisdiction of the construction trades and crafts, whether performed on- or off-site. Off-site work, performed by Materialmen, as defined under California Law, is not included in the term "Construction".

(3) The following provisions of this Section 33(3) apply only if, and to the extent that, the prevailing wage requirements are applicable.

(a) The prevailing wage requirements shall apply to the employees of any employer including the Permittee, any tenant of Permittee, any general contractor or subcontractor or other contractor engaged in construction of any improvements in the Assigned Space or at the Airport for Permittee, including their successors and assignees, but shall not apply to supervisory or managerial personnel or to persons employed in the rental, operation or (in the case of Private Work Prevailing Wage Requirements only) maintenance of the Assigned Space.

(b) The Permittee shall cause the provisions of this Section 33 to be incorporated into each contract and subcontract, and Permit agreement which would be subject to this Section 33. In the event the provisions are not so incorporated, the Permittee shall be liable to the worker in any action or proceeding for the difference between the prevailing wage rate required to be paid and the amount actually paid to the worker, including costs and attorney fees, as if the Permittee were the actual employer.

(4) The prevailing wage requirements of this Section 33 will be monitored and enforced by the Port. In addition to any other rights provided by California law to recover compensation, a worker that has been paid less than the prevailing wage rates shall have a right to commence an action or proceeding against the employer of the worker for the difference between the prevailing wage rates and the amount paid to such worker for each calendar day or portion thereof for which the worker was paid less than the compensation required to be paid under the provisions of this subsection. No issue other than that of the liability of the employer for the amount of unpaid wages allegedly due shall be determined in such action or proceeding, and the burden shall be on the employer to establish that the amounts demanded are not due. A worker

recovering any or all of the wages claimed to be due shall recover his costs and attorney fees in securing such recovery. Nothing in this Section 33(4) shall preclude its enforcement by the California Division of Labor Standards Enforcement.

(5) Nothing in this Permit shall prevent the employment of any number of properly registered apprentices, as defined in Chapter 4, Division 3 of the Labor Code. Every such apprentice shall be paid not less than the standard wage paid to apprentices under the regulations of the crafts or trade at which the apprentice is employed, and shall be employed only at the work of the craft or trade to which the apprentice is registered. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which the apprentice is in training. Good faith efforts shall be made to maintain a ratio of apprentices to journeymen of not less than 20%, if the employer is signatory to an agreement to train, or otherwise bound to train, apprentices. When submitting the certified payroll records required hereunder Permittee shall submit documentary proof of the valid apprentice status of any worker listed as an apprentice.

(6) Permittee agrees that to the extent that Permittee is required to comply with the prevailing wage requirements, Permittee shall assure that all workers are paid the prevailing rate of per diem wages, and travel and subsistence payments (defined in applicable collective bargaining agreements filed in accordance with Section 1773.8 of the California Labor Code), in effect on the date of the Port's first approval of a building permit or other approval of the work. Copies of the applicable prevailing rate of per diem wages are on file at the Port's principal office and will be made available to any interested party on request. Permittee agrees to post a copy of the prevailing rate of per diem wages at each job site.

(7) Permittee, as a penalty to the Port, shall forfeit not more than Two Hundred Dollars (\$200.00) for each calendar day, or portion thereof (or such other sum as specified from time to time by Section 1775 of the California Labor Code), for each worker paid less than the applicable prevailing rates for such work or craft in which such worker is employed. The difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by Permittee.

(8) To the extent that there is insufficient money due Permittee as an advance, reimbursement or credit to cover all penalties forfeited and amounts due and in all cases where this Permit does not provide for a money payment by the Port to Permittee, and except in cases where enforcement authority is vested in the State pursuant to Section 1775 of the California Labor Code, the Port not later than ninety (90) days after the filing of a valid notice of completion in the office of the Alameda County Recorder or not later than ninety (90) days after the Port's acceptance of the work, whichever last occurs, may maintain an action in any court of competent jurisdiction to recover the penalties and the amounts due provided for herein. Permittee agrees that no issue other than that of the liability of Permittee for the penalties allegedly forfeited and amounts due shall be determined in such action, and the burden shall be upon Permittee to establish that the penalties and amounts demanded in such action are not due. Out of any money withheld or recovered or both there shall first be paid the amount due each worker and if insufficient funds are withheld or recovered or both to pay each worker in full the money shall be prorated among all such workers.

(9) At least two weeks before the last date Permittee accepts initial bids for construction Permittee shall file with the Port a written list of the name of all contractors to whom Permittee has submitted a request for bids. In addition, Permittee shall file with the Port the name of each contractor with whom it proposes to contract, together with the name of the subcontractors of all tiers, at least five (5) working days before entering into the contract.

(10) Permittee agrees to keep or cause to be kept by each contractor and subcontractor an accurate payroll record for each worker employed on work covered by this Section 33 showing all of the information specified in subsection (a) of Section 1776 of the California Labor Code. All such payroll records shall be certified, available for inspection and filed in accordance with the procedures specified in subsections (b)-(e) inclusive of Section 1776 of the California Labor Code. In addition, copies of such certified payroll records shall be filed with the Port within a reasonable time not to exceed fifteen (15) days from close of payroll by the respective employer.

(11) It is understood and agreed that all documents that Permittee is required to submit to or file with the Port under this Section 33 shall constitute public records that shall be available to any member of the public for review or copying in accordance with the California Public Records Act.

(12) In the event of repetitive breach of the requirements of this subsection by Permittee, the Port shall be entitled, in addition to all other remedies hereunder for breach of this Permit, to appoint at Permittee's expense a special monitor to oversee Permittee's compliance. Fees for said special monitor shall be billed to Permittee, which fees Permittee agrees to pay as additional rent within 10 days after Permittee's receipt of such bill. In the event of noncompliance with the foregoing requirements concerning payroll records which continues for more than ten (10) days after the Port gives to Permittee written notice specifying in what respects Permittee must comply, Permittee shall forfeit as a penalty to the Port for each worker Twenty-Five Dollars (\$25.00) for each calendar day, or portion thereof, until strict compliance is effectuated.

(13) Permittee shall be responsible for complying with Section 1777.5 of the California Labor Code concerning apprenticeable occupations, with respect to all work covered by that section.

(14) Except where the context otherwise requires, the definitions of terms and phrases contained in the State prevailing wage law, Sections 1720 et seq. of the California Labor Code, and in the implementing administrative regulations, shall apply to the same terms and phrases which are used in the prevailing wage requirements of this Section 33.

Section 34. Emergency and Public Contacts.

At all times during the Term, Permittee shall maintain a twenty four (24) hour per day, seven (7) day per week, person and telephone number by which Airport Operations can contact Permittee. The contact information for such person is set forth in Paragraph A of the Permit. Permittee shall provide Port with written notice of any changes thereto.

Section 35. **No Accord and Satisfaction.**

No payment by Permittee or receipt by the Port of a lesser amount of any sum due hereunder, shall be deemed to be other than on account of the earliest due rent or payment, nor shall any endorsement or statement on any check or any letter accompanying any such check or payment be deemed an accord and satisfaction, and the Port may accept such check or payment and pursue any other remedy available in this Permit, or at law or in equity. A duplicate copy of all communications concerning disputes about debts that are owed or may be owed pursuant to this Permit, and instruments in less than the full amount claimed by the Port and tendered as full satisfaction of a disputed debt or other amount owed, shall be provided to the Port's Chief Financial Officer, either by hand delivery, provided Permittee obtains a written acknowledgment of receipt thereof from Port, or by nationally recognized overnight courier service, or by U.S. Certified Mail Return Receipt Requested, postage prepaid, addressed as follows:

Chief Financial Officer
Finance Division
530 Water Street
Oakland, California 94604-2064

or to such other address as shall be designated by Port by written notice to Permittee in accordance with the requirements of Section 24 above.

Section 36. **Maritime and Aviation Project Labor Agreement.**

The Port's Maritime and Aviation Project Labor Agreement ("MAPLA") may apply to Permittee's construction work and Permittee should be knowledgeable of and shall comply with all applicable provisions of the MAPLA. Specifically, any construction work undertaken by Permittee pursuant to this Permit that exceeds an estimated cost of \$150,000 for which the Port issues a permit for construction is subject to coverage by the MAPLA. As described further in the MAPLA, "construction work" includes work subject to prevailing wage determinations or work performed within the craft jurisdiction of the unions signatory to the MAPLA at the time the MAPLA was executed on or around February 1, 2016. Permittee's failure to utilize MAPLA could lead to grievance and arbitration and the potential for damages, attorney's fees and costs should the Building & Construction Trades Council of Alameda County and/or its affiliated unions (collectively, "Unions") prevail in arbitration.

With respect to any construction work that is subject to coverage under the MAPLA:

- Permittee shall assure that each construction project contractor with whom Permittee contracts ("Prime Contractor"), before beginning its respective construction work, signs a Letter of Assent to the MAPLA;
- Permittee shall require by contract that each Prime Contractor require that each subcontractor performing said construction work, regardless of tier, signs a Letter of Assent to the MAPLA;

- The Unions are third party beneficiaries of Permittee's obligations under this Attachment "E" and are entitled to proceed with grievances and arbitration against Permittee under the MAPLA for Permittee's breach of such obligations; and
- Permittee may not assert that the Unions do not have standing to proceed with any such grievance or arbitration proceeding described above or to recover from Permittee damages, attorneys' fees, and costs if Permittee breaches any such obligations.

In the event the Port agrees to any revisions to MAPLA or enters into a new MAPLA, Port shall notify Permittee in writing of such revised or new requirements. After such written notice, such revised or new MAPLA requirements shall become part of this Attachment "A" and shall supersede any conflicting requirements of this Attachment "A", and Permittee shall be obligated to comply with such revised or new MAPLA requirements as fully as if they were set forth herein.

Section 37. Damage or Destruction; Condemnation.

(1) (a) In the event the Assigned Space or the improvements thereon are damaged by any casualty which is required to be insured against by Permittee pursuant to this Permit, then Permittee shall, in accordance with all applicable requirements of this Permit (including without limitation Section 1(2) above), repair such damage (and replace any Trade Equipment damaged by such casualty) as soon as reasonable possible, at its own cost, and this Permit shall continue in full force and effect, with no abatement in the Rent payable by Permittee to Port under Paragraph E of this Permit.

(b) In the event the Assigned Space or the improvements thereon are damaged by any casualty which is not required to be insured against by Permittee pursuant to the provisions of this Permit, then Port may, at Port's option, either (i) repair such damage as soon as reasonably possible at Port's expense, in which event this Permit shall continue in full force and effect, and there shall be no abatement in the Rent payable by Permittee to Port under Paragraph E of this Permit, or (ii) give written notice to Permittee within sixty (60) days after the date of occurrence of such damage of Port's intention to (v) to remove all damaged Concession Units (and their associated Minimum Annual Guaranty) from the Assigned Space, effective as of the date of the occurrence of such damage, or (w) to terminate this Permit, in which event such termination shall be effective as of the date of the occurrence of such damage; provided, however, that notwithstanding the foregoing: (x) If such damage was caused by the act or omission of Permittee or any principal, affiliate, contractor, employee, agent, licensee or invitee of Permittee, then Permittee shall, in accordance with all applicable provisions of this Permit (including without limitation Section 1(2) above), repair such damage promptly and at its sole cost and expense, this Permit shall remain in full force and effect, and there shall be no abatement in the Rent payable by Permittee to Port under Paragraph E above; and (y) If such damage is not covered by Section 37(b)(ii)(x) above, and if such damage occurred during the last twelve months of the Term, then either party shall have the right, by written notice given to the other within sixty (60) days after the date of occurrence of such damage, to terminate this Permit as of the date of such damage, in

which event all proceeds of the insurance against casualty that Permittee was required to maintain pursuant to this Permit shall be paid to Port.

In the event a Concession Unit is removed from the Assigned Space pursuant to Section 37(1)(b)(ii)(v) above, the Port, shall send to Permittee an amendment to this Permit showing the deletion of that Concession Unit from the Assigned Space, and this Permit shall be deemed amended thereby.

(c) If the Assigned Space is damaged or destroyed by casualty, Permittee shall have no claim against Port for any damage suffered by reason of any such damage or destruction, or for any required repair or restoration. Port and Permittee hereby waive the provisions of California Civil Code Sections 1932 and 1933, and of any other statutes which relate to the termination of a Permit when leased property is destroyed and agree that any such event shall be governed by the terms of this Permit.

(2) (a) If the whole of the Assigned Space should be taken by any public or quasi-public authority under the power or threat of eminent domain, then, in such event, on the earlier of the date title to the Assigned Space vests in such public or quasi-public authority, or the date on which said public or quasi-public agency takes possession of the Assigned Space, this Permit shall terminate with respect to Port's and Permittee's future obligations hereunder, but said termination shall not affect Port's and Permittee's rights to any compensation or damages for, on the account of, or arising out of such taking. For any period of time prior to termination during which Permittee (involuntarily on account of such taking or any proceedings related thereto) does not have full use of the Assigned Space, the monthly Rent due hereunder shall be equitably reduced. In the event of such a taking, the Port shall be entitled to receive all sums in the award of damages and compensation arising by reason of such taking except that an amount therefrom equal to the fair market value of Permittee's leasehold interest in the Assigned Space (as of the date of valuation of the taking) shall be paid to Permittee.

(b) If a substantial portion of the Assigned Space should be taken so as to impair materially the use of the Assigned Space as contemplated by the Permit, then on the earlier of the date title to such portion of the Assigned Space vests in such public or quasi-public agency, or the date on which such public or quasi-public agency takes possession of such portion of the Assigned Space and Permittee no longer has full possession of such portion, this Permit shall terminate with respect to Port's and Permittee's future obligations hereunder, but said termination shall not affect Port's or Permittee's rights to any compensation or damages for, on account of, or arising out of such taking. For any period of time prior to termination during which Permittee (involuntarily on account of such taking or any proceedings related thereto) does not have full use of the Assigned Space, the monthly Rent due hereunder shall be equitably reduced. In the event of such a substantial taking, the award of damages and compensation arising by reason of such taking shall be distributed in the same manner as the last sentence of Section 37(2)(a) above.

(c) If a taking shall occur which does not result in termination of this Permit as provided in the previous subsections of this Section 37(2), but which requires the portion of the Assigned Space not so taken to be reconstructed and restored so as to be constituted an architecturally complete unit suitable for use by Permittee, all compensation and damages payable

for or on account of such taking shall be payable to Permittee, and shall be held in a separate account approved in writing by Port in trust by Permittee to be used by Permittee in accordance with all applicable requirements of this Permit (including without limitation Section 1(2) above) solely to reconstruct and restore the portion of the Assigned Space not so taken to an architecturally complete unit suitable for use by Permittee; and the monthly Rent payable by Permittee hereunder shall be equitably reduced during the time Permittee does not have full use of the Assigned Space as a result of such taking to account for the reduced economic value to Permittee, if any, occasioned by reason of such taking. The balance of any compensation and damages remaining after the reconstruction and restoration contemplated by this subsection shall be distributed in the same manner as distribution of damages and compensation for a total taking under the last sentence of Section 37(2)(a) above. In the event of a taking covered by this Section 37(2)(c), Port shall send to Permittee an amendment to this Permit showing the deletion of that portion of the Assigned Space that was the subject of this taking, and this Permit shall be deemed amended thereby.

(d) If a taking shall occur which does not result in a termination of this Permit as provided in the previous subsections of this Section 37(2), and which does not require any portion of the Assigned Space not so taken to be reconstructed and restored so as to constitute an architecturally complete unit suitable for use by Permittee, the proceeds shall be distributed in accordance with the last sentence of Section 37(2)(a) above. Permittee, however, shall be entitled to an equitable reduction in the monthly Rent.

(e) No taking of Permittee's leasehold estate in the Assigned Space or any part thereof without a taking of the fee shall terminate or give Permittee the right to surrender this Permit, nor excuse the taker of such leasehold estate, including any successor in interest thereto, from full performance of the covenants for the payment of the Rent and other charges or any other obligations hereunder capable of performance by the taker of such leasehold estate, including any successor in interest thereto, after any such taking, but in such case, all compensation and damages payable for or on account of such taking shall be payable to and be the sole property of Port. During any period of time that Permittee is not in possession of the Assigned Space, or any portion thereof, as a result of the taking of any portion of its leasehold estate hereunder, but only during such period of time, (1) Permittee shall not be obligated to pay or in any way be liable for the payment of any Rent or to perform any of the other obligations or covenants otherwise to be performed by it hereunder with respect to, but only with respect to the portion of the Assigned Space affected by such taking, (2) the Port shall look solely to the taker of such leasehold interest, including the successors in interest thereto and any party then in possession of all or such portion of the Assigned Space affected by such taking for the payment of the Rent and the performance of the other obligations and covenants hereunder with respect to such portion of the Assigned Space, and (3) as between Port and Permittee, Port shall not forfeit or terminate this Permit for breach by the taker of such leasehold interest, including its successors in interest thereto and any party then in possession, of any obligation or covenant hereunder, including the obligation to pay the Rent. Any taking that is the subject of this subsection (e) shall not extend the Term of this Permit.

(f) In the event of any taking of any portion of the Assigned Space, Permittee shall be entitled to receive all compensation and damages arising from such taking and payable for or on account of the Permittee's Trade Equipment located on the portion of the

Assigned Space so taken, except for those trade fixtures and equipment that pursuant to this Permit are to remain with the Assigned Space on surrender.

(g) Except as otherwise expressly provided in this Section 37(2), no taking shall reduce or abate Permittee's obligation to pay the Rent during the Term of this Permit. Where Section 37(2) expressly provides for a reduction in the Rent payable by Permittee, if the parties cannot agree on the amount of such reduction, the same shall be determined by Arbitration. Such arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitrators shall have no power to modify any of the provisions of this Permit and their jurisdiction is limited accordingly. Each party hereby consents to the entry of judgment by any court having jurisdiction in accordance with the arbitration decision. No change in the Arbitration Rules which would deprive a party of the rights to be represented by counsel, to present evidence or to cross-examine witnesses presented by the other party shall be effective in any arbitration proceeding arising out of this Permit. Any arbitration provided for herein shall be conducted in the Port's offices in Alameda County, California. Disputes under this Permit shall be subject to Arbitration only to the extent expressly provided for in this Section 37(2)(g).

(h) Permittee acknowledges the Port's reserved power upon payment of just compensation to exercise its power of eminent domain as to the leasehold estate created hereunder; provided, however, that the foregoing acknowledgment shall not be deemed or construed to prejudice or waive any rights of Permittee to challenge or object to any attempt by the Port so to exercise such power.

Section 38. **Right to Modify.**

Permittee agrees that during the Term of this Permit, this Permit may be unilaterally modified by the Port, upon advice of the Port Attorney, and on at least thirty (30) days' prior written notice by Port to Permittee, in order to conform to changes in applicable Laws, including without limitation, judicial, Department of Transportation, Department of Homeland Security, Federal Aviation Administration, Transportation Security Administration, Federal Trade Commission or Federal Communications Commission rulings or opinions. This subsection shall not relieve Permittee from its independent obligation to comply with all applicable Laws, or preclude Permittee from contesting said matters, but Permittee shall abide by such modification.

Section 39. **Security Mandates.**

Permittee recognizes that Port is required to comply with the security mandates of the Department of Transportation, the Federal Aviation Administration, the Transportation Security Administration, the Department of Homeland Security, and with other governmental and administrative rules and regulations relating to airports. Any procedures determined by Port to be applicable to Permittee in order for Port to comply with the foregoing will be furnished to Permittee in writing, and delivered by facsimile transmission, confirmed by mail, to Permittee at its notice address provided in this Permit. Permittee and its agents, employees, representatives and permitted sublessees and assignees shall be responsible for full compliance with all procedures delivered by facsimile transmission to Permittee. Such procedures are subject to change without notice other

than delivery thereof to Permittee, as provided for in this Section 39. Permittee shall reimburse Port, within fifteen (15) days from receipt of Port's invoice, and documentation showing that payment of such civil penalty or fine is Permittee's responsibility hereunder, the amount of any civil penalty or fine that may be assessed against Port by any governmental agency for any violation of applicable security rules or regulations which arises out of Permittee's failure to comply with the provisions of this Section 39. In such event, Port shall also have all of its other rights and remedies provided in this Permit and arising at law or in equity. Permittee shall perform a quarterly audit of active employees, and shall submit such list to the Manager, Aviation Security.

Section 40. **Miscellaneous.**

(1) The section and paragraph headings contained in this Permit are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of any provision hereof.

(2) It is expressly understood and agreed that, except for Permittee's right to possession of the Assigned Space described as exclusive in Paragraph D.1 of this Permit, and except to the extent otherwise expressly provided for in a written addendum to this Permit signed by Port, the rights granted Permittee under this Permit are non-exclusive.

(3) Except as expressly prohibited herein, the provisions of this Permit shall bind and inure to the benefit of the successors and assigns of the parties hereto.

(4) Time is expressed to be of the essence of this Permit.

(5) This Permit shall be governed by and construed in accordance with the laws of the State of California (without regard to principles of conflict of laws). It is agreed that if any covenant, condition or provision contained herein is held to be invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of any other covenant, condition or provision herein contained, and the invalid or unenforceable provision shall be limited to the extent necessary for it to be valid and enforceable.

(6) No recourse under or upon any obligation, covenant or agreement contained in this Permit, or any other agreement or document pertaining to the operations of Permittee hereunder, as such may from time to time be altered or amended in accordance with the provisions hereof, or under any judgment obtained against Port, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any statute or otherwise, under or independent of this Permit, shall be had against any member (including, without limitation, members of Port's Board and its citizens advisory committees), officer, employee or agent, as such, past, present and future, of Port, either directly or through Port or otherwise, for any claim arising out of this Permit or the operations conducted pursuant to it, or for any sum that may be due and unpaid by Port. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any Port member, officer, employee or agent, as such, to respond by reason of any act or omission on his or her part or otherwise for any claim arising out of this Permit or the operations conducted pursuant to it, or for the payment for or to Port, or any receiver therefor or otherwise, of any sum that may remain due and unpaid by Port, is hereby expressly waived and released as a condition of and as consideration for the execution of this Permit.

(7) Permittee represents and warrants to Port that, to the best of its knowledge, except as may be disclosed in an Addendum hereto, no member, officer, employee or agent of Port has any interest, either directly or indirectly, in the business of Permittee to be conducted hereunder.

(8) (a) This Permit constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and any prior agreement, representation or statements heretofore or contemporaneously made with respect to such subject matter, whether oral or written (including, without limitations, any answers provided by Port to questions asked by Permittee or others in conjunction with the Port's Request For Proposals for the concession rights granted by this Permit), are merged herein. Except as otherwise expressly provided in this Permit, this Permit may be altered or amended only by written instrument executed by both parties hereto.

(b) Permittee acknowledges that it either was represented or had the opportunity to be represented by legal counsel in the negotiation of this Permit, and agrees that the terms of this Permit shall not be strictly construed against the Port as the drafter of this Permit.

(9) (a) All actions arising out of or filed in connection with this Permit shall be filed solely in the state and federal courts in Alameda County, California, and Permittee consents to the exclusive jurisdiction of such courts, and waives any objection which it may have at any time to the laying of venue of any such action brought in any such court, waives any claim that such action has been brought in an inconvenient forum and further waives the right to object, with respect to such action, that such court does not have any jurisdiction over Permittee. Permittee further irrevocably consents to the service of process by certified or registered mail (airmail if overseas) or the equivalent (return receipt requested), or the service of process in any other manner permitted by law, in any action instituted by the Port and arising against Permittee under this Permit. Port agrees to serve such process on Permittee's registered agent under California law if the name and address of Permittee's current registered agent in California has been provided to the Port in advance and in writing.

(b) In addition to the foregoing, pursuant to California Code of Civil Procedure, Section 416.10, Permittee hereby designates the person set forth in Paragraph A of the Permit as its agent for service of process.

(10) Permittee warrants that no person or agency has been employed or retained to solicit or obtain this Permit upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Port, at its option, may annul or immediately terminate this Permit or recover from Permittee the full amount of the contingent fee. As used in this section, "bona fide agency" means an established commercial or selling agency, maintained by Permittee for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Port contracts nor holds itself out as being able to obtain any Port contract or contracts through improper influence; "bona fide employee" means a person, employed by Permittee and subject to Permittee's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Port contracts nor holds itself out as being able to obtain any Port contract or contracts through improper influence; "contingent fee" means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person

or concern has in securing a Port contract; and “improper influence” means any influence that induces or tends to induce a Port Commissioner, employee or officer to give consideration or to act regarding a Port contract on any basis other than the merits of the matter.”

(11) Port agrees to make a reasonable effort to provide notice to Permittee of any public records request involving documents or information provided by Permittee to Port pursuant to the terms of this Permit. However, Port shall have no liability arising out of its failure to provide such notice to Permittee or out of Port’s production of such documents or information in response to any public records request.

(12) Permittee agrees to keep the receiving facility clean and tidy, and remove all pallets after unloading supplies. To facilitate receiving of supplies, Permittee agrees to have a dock manager. Should the Port in the future provide a consolidated receiving facility, Permittee agrees to participate in such consolidated receiving facility.

Section 41. **Force Majeure.**

In the event that Permittee or the Port is delayed, directly or indirectly, from the performance of any act or thing required under the terms hereof by acts of God, accidents, fire, floods, inclement weather, governmental action, restrictions, priorities or allocations of any kind and all kinds, strikes or labor difficulties of any and all kinds, shortages of or delay in the delivery of material, acts of war, riot and civil commotion, or by any similar cause reasonably beyond the control of Permittee or the Port, as the case may be, such failure (except for the payment of Rent or other sums required by this Permit to be paid by Permittee to Port, and except for any failure that arises out of Permittee’s breach of any of its obligations under this Permit, and except for any strikes or labor difficulties arising from Permittee’s breach of the Labor Peace Assurance) shall not be deemed to be a breach of this Permit or a violation of any such covenants and the time within which Permittee or the Port must perform any said act shall be extended by a period of time equal to the period of delay arising from any of said causes.

Section 42. **Defined Terms.**

The following terms, when used in this Permit with the initial letter(s) capitalized, whether in the singular or plural, shall have the meanings given to such terms in the following Paragraphs of this Permit, or in the following Sections of this Permit contained in this Attachment “A”:

TERM	LOCATION
ADA Requirements	Section 1(2)(c) of Attachment “A”
Affiliated Person	Section 1(2)(b) of Attachment “A”
Airport	1 st paragraph of Permit, on page 1
Airport Pricing Policy	Paragraph B.4
Airport Rules, Policies and Regulations	Section 12(1) of Attachment “A”
Alterations	Section 1(2)(c) of Attachment “A”
Annual Report	Section 13(3) of Attachment “A”
Assigned Space	Paragraph D.1

TERM	LOCATION
Assigned Space Change	Paragraph H.1(a)
Board	2 nd paragraph of Permit, on page 1
Branded	Paragraph E.2
Change Notice	Paragraph H.1(a)
City	2 nd paragraph of Permit, on page 1
Commencement Date	Paragraph C
Common Areas	Paragraph D.3
Concession Unit	Paragraph B.1
Control	Section 1(2)(b) of Attachment “A”
CWA	Section 12(1) of Attachment “A”
Delivery Date	Paragraph C
Director	2 nd paragraph of Permit, on page 1
Documents	Section 12(1) of Attachment “A”
Gross Receipts	Section 13 of Attachment “A”
Initial Minimum Annual Guaranty Adjustment Date	Paragraph E.1(b)
Interim Term	Paragraph C
Latest Delivery Date for a Concession Unit	As set forth opposite that Concession Unit on attached Exhibit “5”
Laws	Section 12(1) of Attachment “A”
Losses	Section 1(2)(d) of Attachment “A”
Maximum Reimbursement Amount	Paragraph H.1(a)
Midterm Refurbishment	Section 2(1) of Attachment “A”
Midterm Refurbishment Date	Section 2(1) of Attachment “A”
Minimum Annual Guaranty	Paragraph E
Minimum Investment Amount	Section 1(2)(b) of Attachment “A”
Minimum Mid-Term Amount	Section 2(1) of Attachment “A”
New Aircraft Boarding Gates	Paragraph H.2
Percentage Fees	Paragraph E.2
Performance Deposit	Paragraph F
Permit	1 st paragraph of Permit, on page 1
Permitted Uses	Paragraph B.1
Permittee	1 st paragraph of Permit, on page 1, and Paragraph A
Permittee’s Work	Section 1(2)(a) of Attachment “A”
Port	2 nd paragraph of Permit, on page 1
Primary Term	Paragraph C
Proposal	Paragraph M
Quarterly Report	Paragraph N(b)
Rent	Paragraph E
Rent Commencement Date	Paragraph E.3(a)
Required Relocation	Paragraph H.1(a)
RFI	Section 8 of Attachment “A”
Surrender Date	Paragraph H.1(b)
Target Effective Date	Paragraph H.1(a)
Term	Paragraph C
Tenant Design Standards	Section 1(2)(c) of Attachment “A”
Trade Equipment	Section 7(1) of Attachment “A”

TERM	LOCATION
Transition Plan	Paragraph B.1
Wi-Fi System	Section 8 of Attachment “A”
Work Letter	Section 1(1) of Attachment “A”

ATTACHMENT “B”

ENVIRONMENTAL RESPONSIBILITIES

Section 1. Compliance with Port Environmental and Storm Water Ordinances.

The Permittee shall comply with Port Environmental Ordinance No. 4345 (the “Environmental Ordinance”) and Port Storm Water Ordinance No. 4311 (the “Storm Water Ordinance”) and, together with the Environmental Ordinance, the “Port Ordinances”). All terms in this Environmental Exhibit shall have the meanings as defined in the Environmental Ordinance.

Section 2. Notices and Disclosures Regarding Toxic Materials.

Pursuant to H&S Code Section 25359.7, the Port notifies the Permittee that the Port has reasonable cause to believe that Toxic Materials have come to be located on, at, beneath or emanating from the Premises. Information regarding the Toxic Materials on the Premises may be included in reports available on DTSC’s Envirostor Website <http://www.envirostor.dtsc.ca.gov/public/>, the RWQCB’s Geotracker Website <http://geotracker.waterboards.ca.gov/>, or Alameda County’s ftp site <http://www.acgov.org/MAPS/deh/InspectionResults/?SITE=LOP>. In addition, the Permittee may request any non-privileged Toxic Material reports concerning the Premises that are in the possession of the Port.

Section 3. Storage Tanks.

Existing Storage Tanks: Yes ☐ No ☐

If yes, list Storage Tank number, location, date of installation, material stored and size

If there are Storage Tanks on the Premises, Permittee has certain responsibilities for operation, monitoring, reporting, maintenance and removal of such Storage Tanks, *See* Environmental Ordinance, Sections 3 and 10.

Section 4. Covenant to Restrict Use of Property (“CRUP”).

Existing CRUP: Yes ☐ No ☐

If the Yes box is checked, the attached CRUP is incorporated and Permittee shall comply with the CRUP.

Required Disclosure:

Section 5. Performance Deposit.

Permittee shall, not later than the Effective Date, deposit with the Port and during the entire Term shall maintain with the Port a deposit as specified in the Agreement, which deposit will be retained by the Port as a performance deposit (the “Performance Deposit”) and may be used or applied as the Port, in its sole discretion, may determine to: (a) pay the Cost of Response Actions on the Premises that are the responsibility of Permittee; (b) repair any damage to the Premises caused by Permittee or Permittee’s Representatives; (c) replace any Improvements which are the property of the Port and which have been damaged, removed or otherwise misplaced during the Term; (d) pay any other outstanding amounts due the Port from Permittee pursuant to any of the provisions of the Port Ordinances; (e) pay any compensation or other amount payable to the Port pursuant to the Port Ordinances that is not paid when due; (f) pay or reimburse the Port for any amount that the Port may spend or become obligated to spend in exercising its rights under the Port Ordinances; or (g) compensate the Port for any expense, loss or damage that the Port may suffer because of a default with respect to any obligation of Permittee under the Port Ordinances.

Section 6. Release

Permittee, for itself, Permittee Representatives, successors and assigns, waives, releases, acquits, and forever discharges the Port of, from, and against any Actions, direct or indirect, at any time on account of, or in any way arising out of or in connection with: (i) the Port providing advice, guidance, or assistance to Permittee or Permittee Representatives regarding Permittee’s compliance with Environmental Laws; and (ii) Toxic Materials existing at, on, or under the Premises as of the Effective Date, and any migration of Toxic Materials to, within, or from the Premises regardless of the origin or source of the Toxic Materials, whether known or unknown. A Permittee’s release of the Port shall apply to all unknown and known Actions and contingent or liquidated Actions, and shall specifically cover any potential liability which may be based on any Environmental Laws.

The release shall also include a release of the rights provided under California Civil Code Section 1542 which states:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

As indicated by the initials below, it is Permittee’s intention that it waive and relinquish any and all protections, privileges, rights and benefits it may have under Section 1542.

Permittee: _____

ATTACHMENT "C"

PORT'S PUT RIGHTS

Section 1. Reservation and Acceptance of Put Right.

Permittee acknowledges that on or about the time that the Port and Permittee enter into this Permit, the Port is entering into additional Space Use/Permits for Food and Beverage Concessions (collectively, the "Other Permittee Permits," and each, an "Other Permittee Permit") with different permittees (Other Permittees," and each, an "Other Permittee"), which are on generally similar terms for certain additional concession spaces in the Terminals (collectively, the "Other Permittee Spaces," and each, an "Other Permitted Space"). In consideration of the Port's entry into this Permit with Permittee, which Permittee forever, completely, and irrevocably agrees and acknowledges that the Port would not have done had not Permittee agreed to accept the obligations imposed on Permittee by this Attachment "C", Permittee agrees to the terms and conditions of this Attachment "C" and assumes the obligations imposed Permittee thereby.

Section 2. Put Right.

If during the term of this Permit, there is at least one (1) year remaining on the term of this Permit at the time of the "Other Permittee Space Delivery Date" (as hereinafter defined), if any of the Other Permittee Permits terminates or the Port obtains possession of any Other Permittee Space, the Port shall have the right to cause Permittee to take possession of the Other Permittee Space and to operate it for the balance of the term of this Permit after the Other Permittee Space Delivery Date (the "Balance of the Term") on the terms and conditions of this Permit, as the same shall be amended hereby with respect to the subject Other Permittee Space, which right is hereinafter called the "Put Right."

Section 3. Exercise of Put Right.

The Put Right shall be exercised as a matter of the Port's sole discretion by written notice (the "Put Notice") given to Permittee by the Port no later than sixty (60) days' before the intended Other Permittee Space Delivery Date, which Put Notice must specify (a) the intended Other Permittee Space Delivery Date, and (b) describe in reasonable detail (i) the nature of the operation that the Other Permittee had been operating in the Other Permittee Space (the "Other Permittee's Business"), (ii) any third-party licenses that the Other Permittee utilized in the operation of the Other Permittee's Business (the "Third Party Licenses") and whether the Port has the right to assign those rights to Permittee, and (iii) the intangible rights held by the Other Permittee with respect to the Other Permittee's Business (the "Other Permittee's Intangible Rights") and whether the Port has the right to assign those rights to Permittee so that, subject to the next sentence, Permittee shall be permitted to legally operate the Other Permitted Space for the Balance of the Term. Subject to the provisions of Section 4 of this "Attachment "C"", if the Port can assign all of the Third Party Licenses and all Other Permittee's Intangible Rights so that Permittee shall be permitted to legally operate the Other Permitted Space for the Other Permittee's Business for the Balance of the Term, the Port shall have the right to cause Permittee to operate the Other Permittee Space for the Other Permittee's Business for the Balance of the Term. Such an operation by Permittee is a "Business Continuation." In addition to the other requirements above, the Put Notice shall specify whether

the Port elects that Permittee undertake a Business Continuation. For the avoidance of any confusion, the Business Continuation would be for the benefit of Permittee (and not the Other Permittee) and all revenue therefrom would accrue to the benefit of Permittee (provided, however, the foregoing shall not be construed to terminate or limit Permittee's obligation to pay the Rent for the Other Permittee Space during the Balance of the Term).

Section 4. Permittee's Right to Object.

Permittee, by written notice given to the Port no later than ten (10) days after the receipt of a Put Notice specifying the Port elects to have Permittee undertake a Business Continuation (the "Objection"), shall have the right to object thereto if Permittee in good faith believes that the Business Continuation is not commercially viable from a prudent business standpoint, which may be a reasonable opinion that the Business Continuation will not be profitable or that Permittee's brand agreements would prohibit operation of the brands associated with the Business Continuation. The Objection shall specify in reasonable detail why Permittee believes in good faith why the Business Continuation is not feasible.

Section 5. Use for a Purpose other than Business Continuation.

If (a) the Port does not exercise its Put Right, or (b) the Port does exercise its Put Right, but the Permittee's issues an Objection, then, at the Port's request, the Permittee shall enter into good faith negotiations on a concept for the operation of the subject Other Permitted Space by Permitted for the Balance of the Term. For its part, Permittee shall not propose any food or beverage concept that cannot use the Other Permitted Space on a so-called "turn-key" basis subject to the substitution of any replacement signage and associated trade dress that can be completed within five (5) business days of the Other Permittee Space Delivery Date.

Section 6. Other Permittee Space Delivery Date.

Subject to Section 4, on the scheduled Other Permittee Space Delivery Date specified in the Put Notice, the Other Permittee Space shall be delivered to Permittee; provided, however, Permittee's obligation to accept the Other Permittee Space is subject to the satisfaction of the following conditions: (a) the Other Permittee Space, and all of its component equipment, shall be in a good and operating condition (provided, however, that ordinary wear and tear occurring since the commencement of the Other Permittee's operations is permitted so long as the Other Permittee Space, and all of its component equipment, shall be otherwise in a good and operating condition), and (b) all of the Third Party Licenses and the Other Permittee's Intangible Rights (if needed for the operation of the Other Permittee Space by Permittee) shall be assigned to Permittee. The Port shall bear the costs incurred in satisfying such conditions. The actual Other Permittee Space Delivery Date shall be the date that the Other Permittee Space is delivered to Permittee with the conditions contained in this Section 6 being satisfied; provided, such date shall not occur prior to the scheduled Other Permittee Space Delivery Date specified in the Put Notice unless Permittee agrees thereto in writing. Once the conditions contained in clauses (a) and (b) of this Section 6 are satisfied, must accept the Other Permittee Space (provided, that the date specified as the intended Other Permittee Space Delivery Date in the Put Notice has occurred).

Section 7. Incorporation of the Other Permittee Space as Concession Unit.

On the actual Other Permittee Space Delivery Date, the subject Other Permittee Space shall become a Concession Unit for the purposes of this Permit and Permittee shall discharge all of its obligations with respect thereto under this Permit; provided, however, that, with respect to such Concession Unit, Rent shall not commence until the first to occur of (a) the day that Permittee begins to operate with the public from the subject Other Permittee Space or (b) the fifth (5^h) day after such actual Other Permittee Space Delivery Date. Notwithstanding any other provision of this Permit, Permittee shall open for business in the required manner and concept no later than the tenth (10th) day after the actual Other Permittee Space Delivery Date. All costs incurred by Permittee in preparing to open for business in the Other Permittee Space shall be borne by Permittee without contribution by the Port.

EXHIBIT “1”

ASSIGNED SPACE

EXHIBIT “2”

TRANSITION PLAN

EXHIBIT "3"

RECOGNITION AGREEMENT

THIS RECOGNITION AGREEMENT (this "Agreement") is made by and between the CITY OF OAKLAND, a municipal corporation ACTING BY AND THROUGH ITS BOARD OF PORT COMMISSIONERS ("Port"), and _____, a _____ ("Sublessee"), as of this _____ day of _____, 20____ (the "Effective Date").

Recitals

A. Port, as grantor, and _____, a _____ ("Permittee") are the current parties to that certain Space/Use Permit for Food and Beverage Concession dated _____, 20____ (the "Permit"), whereby Permittee has been granted certain rights to operate certain food and beverage concessions at Port's Oakland International Airport, which rights include certain rights to sublease certain concession spaces, all as provided in, and regulated by, the Permit. A copy of the Permit, from which certain economic or proprietary terms have been redacted, is Schedule 1, attached hereto and incorporated herein by this reference.

B. Permittee, as sublessor, and Sublessee, as sublessee, are the parties to that certain _____ dated _____, 20____ (the "Sublease"), whereby Sublease has been granted certain rights to sublease certain concession space granted to Permittee by the Permit (the "Sublet Concession").

C. Port, as is required by the terms of the Permit, has consented to the making of the Sublease by Permittee and Sublessee; however, as a condition of such consent and as required by the terms of the Permit, Sublessee is required to execute this Agreement, without which Port would not have consented to the making of the Sublease.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants hereinafter contained, and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby conclusively, forever, and irrevocably acknowledged and accepted, the parties agree as follows:

1. Terms of Permit. Sublessee conclusively, forever, and irrevocably acknowledges and agrees that it has received and read the copy of the Permit that is Schedule 1 hereto. Sublessee further conclusively, forever, and irrevocably acknowledges and agrees that the terms of the Permit impose certain obligations upon Sublessee and that the terms of the Permit give Port the right to enforce such obligations directly against Sublessee, which obligations specifically include, but are not limited to:

Obligation

Initials of Sublessee Confirming its
Obligation

(a) The obligation to operate the Sublet Concession in accordance with certain standards in accordance with Paragraph I of the Permit, including, but limited to, the Living Wage Law (as defined in the Permit).

(b) Compliance with the Port Non-Discrimination Policy and ACDBE (as such terms are defined in the Permit).

(c) Compliance with the Labor Peace Rule and the Airport Labor Pool Program (as defined in Section 6 of Attachment "A" of the Permit).

(d) Compliance with the Airport Rules, Policies and Regulations (as defined in Section 12 of Attachment "A" of the Permit).

(e) Compliance with Section 30 of Attachment "A" of the Permit pertaining to Federal Aviation Administration Requirements.

(f) Compliance with Section 33 of Attachment "A" of the Permit pertaining to Prevailing Wage Requirements.

(g) Compliance with Section 36 of Attachment "A" of the Permit pertaining to Maritime and Aviation and Project Labor Agreement.

2. Port is not a Party to the Sublease. Sublessee, conclusively, forever, and irrevocably acknowledges and accepts, that while Port has the right to enforce such Permit obligations against Sublessee, (a) Port is not a party to the Sublease, (b) Port has no obligation to perform or enforce Permittee's obligations as sublessor under the Sublease, and (c) Port shall have absolutely no liability to Sublessee due to Permittee's failure to perform its obligations under the Sublease in whole or in any part (and Sublessee hereby waives, disclaims, and releases any such claims against Port).

3. Governing Law. This Agreement shall be governed and enforced by, and construed in accordance with, the laws of the State of California. Any action brought to enforce or determine the rights and obligations of the parties hereunder shall be filed and litigated in the Superior Court for Alameda County.

4. Successors and Assigns; Miscellaneous. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns. This the sole agreement between the parties and all prior agreements and discussions are of no force and effect. This Agreement cannot be modified except in a writing duly executed and authorized by the Port and Sublessee. The use of the word "grant" has the connotation

generally given thereto and not the connotation afforded such word in Section 1113 of the California Civil Code.

IN WITNESS WHEREOF, each of the parties has executed this Agreement as of the Effective Date by executing the signature page for such party that follows and is a part of this Agreement.

Signature Page for Port:

**CITY OF OAKLAND, a municipal corporation,
acting by and through its Board of Port
Commissioners**

By: _____
Executive Director

**THIS PERMIT SHALL NOT BE VALID OR
EFFECTIVE FOR ANY PURPOSE UNLESS
AND UNTIL IT IS SIGNED BY THE PORT
ATTORNEY**

Approved as to form and legality this
___ day of _____, 201___.

Port Attorney

Port Ordinance No. _____

P.A. #_____

Signature Page for Sublessee:

_____,
a _____

By: _____

Name: _____

Title: _____

If corporation: Chairman, President or Vice
President

Attest

By: _____

Name: _____

Title: _____

If corporation: Secretary, Assistant Secretary,
Chief Financial Officer, Treasurer or Assistant
Treasurer

EXHIBIT “4”

INITIAL PROPOSED PRICING

EXHIBIT “5”

CONCESSION UNIT

Concession Unit #	Sq. Ft.	Performance Deposit	MAG	% Rate	Permitted Use	Hours of Operation

**EXHIBIT “5”
(CONTINUED)**

Concession Unit#	Delivery Date	Re- opening/ rent adj. date	Capital Improvement Amount	Tenant Infrastructure Fee	Utilities to be Provided

EXHIBIT “6”

AIRPORT SECURITY REQUIREMENTS

- a. It is essential that during the performance of obligations of the Permit, Airport security be maintained by Permittee. Security of existing facilities must be maintained by Permittee at all times. When entrance into secure areas is required at any time by workers, it must be coordinated in advance with the Port and strict limitations will be set and enforced as to what areas contractor personnel can access. Any violations of these limits will subject the violator to immediate discharge from a project at the Port’s request.
- b. When beginning a project, contractors need to contact the Port’s Resident Engineer for Tenant Improvements (RETI) to attain project access.
- c. All construction personnel must adhere to the security policies and regulations set forth below, and as may be modified by the Port.
 - i. Safety / Security Plan
 - 1. A Construction Site Security Plan (CSSP), including a Tool Control Plan for work in the Sterile Area, is required for all construction activities. Tenant to use Port standard form (to be provided).
 - 2. Areas under construction in the Sterile Area will require full-height (floor-to-false ceiling) “mall walls” enclosing the work zone.
 - 3. Access points to work zones in the Sterile Area (inside the “mall walls”) will be required to be secured on Cyberlock (locks and keys to be provided and installed by tenant or tenant’s contractors; provided to Port for programming).
 - 4. Access points to work zones in the Sterile Area (inside the “mall walls”) must remain secured AT ALL TIMES from the Sterile Area side (“storeroom” function).
 - 5. For work zones in the Sterile Area, tools (and any TSA-prohibited items) when not in use must be locked inside a “job box” or other approved-Port container (lock may be on contractor’s lock-key system or Cyberlock) and the construction site (inside the “mall wall”) secured (via Cyberlock as described above) anytime the site is unattended. Port will conduct inspections of work zones to ensure compliance with this requirement.

6. The Permittee's contractor and subcontractor personnel (i.e., construction workers) are expected to obtain Port-issued badges (at tenant / contractor's expense – see Airport web site for cost information). If a worker for the contractor or a subcontractor requires only intermittent access to the construction site (i.e., less than 4 hours per week), he / she may be escorted by badged contractor / subcontractor personnel with escort privileges. In general, only 50% of all badges issued to a tenant, including those authorized by the tenant for its contractor / subcontractors, will be allowed to have escort authority. A badge holder with escort privileges may escort up to 5 unbadged individuals only. The Port may revoke escort authority if escort rules / procedures are not rigorously followed. If escort privileges are revoked, all personnel (even those requiring intermittent access) will be required to obtain a Port-issued badge.
7. For anyone to be escorted, the Permittee must provide copies (scans) of unexpired, government-issued photo identification and biographical information requested by the Port (generally full legal name, date-of-birth, and gender) in a format acceptable to the Port at least 48 business-hours prior to the intended escort. The Port may conduct background investigations of the individual(s) to be escorted and will advise Permittee if the individual may not be escorted on the Airport.
8. Port-approved security guards may not be available to assist with site security, access control, and/or escorting. Permittee should plan to complete all construction work with its own badged contractors / subcontractors and limited escorting as described above. All guard requests must be made on the Port's guard request form and emailed to opsec@portoakland.com by 12p on the Wednesday prior to the week (Sun. – Sat.) needed. The Port will assess the request and advise (generally no later than 5p on the Thursday prior to the week needed) if it can provide the requested guards.
9. The Port-approved CSSP will identify contractor access route(s) to/from the work zone(s) to/from public areas of the Airport. The Port may restrict contractor's access to doors and/or gates along the approved access route(s).

ii. Tool Control Plan

1. In addition to CSSP required for construction, any contractor or vendor bringing TSA prohibited items into the Sterile Area must have a Port-approved Tool Control Plan (using Port standard form).

iii. Armored Cars / Guards

1. Armored cars must park in Port-designated areas (e.g., loading docks) and may not park curbside or block roadways.
2. Guards may not be armed in any TSA-regulated area (e.g., Sterile Area beyond TSA checkpoint, Secured Area / ramp, etc.). Armed guards are only allowed in publicly accessible areas.
3. Guards accessing TSA-regulated areas must be badged or escorted by a properly badged individual.

iv. Door Locks

1. Door between Sterile Area and kitchens must be on Airport's access control system or Cyberlock. If Cyberlock, then lock must function in "storeroom" mode (always locked / key required to open)
2. Doors between "back of counter" areas (not intended for public access) and kitchens must be on Cyberlock, then lock may function in "classroom" mode (unlock mode available, e.g., during business hours).
3. Permittee to procure and install access control system hardware (Airport will make final connections to field controllers and program).
4. Permittee to procure and install Cyberlock system (cores and keys) and provide to Port for programming.
5. Other tenant spaces (e.g., storage) with access to Sterile Area must be on Cyberlock ("storeroom" mode).

v. ID Badge Control Plan

1. Permittee shall submit ID Badge Control Plan to Port for approval (if Permittee needs access to TSA-regulated areas), addressing at least the following topics:
 - a. Badge recovery from terminated employees and employees that resign, including those that are not present at the Airport when they resign.
 - b. Audits and audit frequency, including Port- and TSA-directed audits.

- c. How Permittee will ensure that no more than 5% of unexpired badges issued to it are unaccounted for at any time.
2. Permittee will only be allowed to SIDA-badge 25% of its employees (remaining will have Sterile Area-only badges with access through TSA security checkpoint only).
3. SIDA-badged tenant employees must use TSA checkpoint to access TSA-regulated areas if they are not performing a delivery function.
4. New employees may only be escorted for 30 days.

vi. CCTV

1. Video recorded through cameras installed by Permittee (for Permittee use) must be made available to the Port upon request, including outside of normal business hours.
2. Permittee shall provide “security network drop” (Cat. 6 cable to nearest IDF with security network switch) for Port to add its own CCTV camera in vicinity of all doors between the Sterile Area and kitchens (drop will be on the Sterile Area-side of the door).

EXHIBIT “7”

**ADMINISTRATIVE FEES
FOR VIOLATION OF OPERATING STANDARDS**

Sanitation, Hygiene & Cleanliness.	\$500 per day per occurrence
Failure to comply with construction requirements as referenced in Section 1.	\$500 per day occurrence
Failure to contain operations and noise pollution as determined by Port within the Leased Premises or Levels of noise exceed such volume in which people in Airport immediately adjacent to the Concession Unit cannot hear public address system.	\$500 per day per occurrence
Failure to maintain Concession Unit.	\$500 per day per occurrence
Failure to comply with reporting requirements as referenced in each subsection of Section 13.	\$500 per occurrence
Failure to comply with the requirements as referenced in Paragraph I.2 (a)	\$500 per occurrence
Failure to comply with quality and quantity of products or services requirements as referenced in Paragraph I.3	\$500 per day per occurrence
Failure to comply with submitting reports and services as required in Paragraph I.5 and any other Sections (other than Section 3) that require reports.	\$500 per occurrence
Failure to comply with Pricing requirements as referenced in Paragraph B.4.	\$500 per day per occurrence
Failure to comply with Sign requirements as referenced in Section 5.	\$500 per day per occurrence
Failure to comply with maintenance requirements as referenced in Section 3.	\$500 per day per occurrence
Failure to comply with the DBE requirements as referenced in Paragraph N.	\$500 per day per occurrence
Personnel issue violating Permit terms not appropriately addressed.	\$500 per day per occurrence

Failure to provide requested audit records and information per Paragraph H, Section 1 or Section 13.	\$500 per day per occurrence
Continuing Labor-Related Disruption as referenced in Section 6.	\$500 per day
Failure to promptly install temporary storefront barriers, curtains, display boxes or signage as referenced in Paragraph I.1(c).	\$500 per day per occurrence
Products and Product Displays violate Agreement terms or declared objectionable.	\$500 per day per occurrence
Unit out of product while advertised on menu or display.	\$500 per day per occurrence
Minimum hours of operation not followed.	\$500 per day per occurrence
Food/beverage product or merchandise below brand standard identified by brand.	\$500 per day per occurrence
Other non-monetary violations of this Agreement.	\$500 per occurrence

Except for violations of requirements regarding the minimum hours of operation, health standards, signage and the noise levels, Administrative Fees begin accruing on the second (2nd) day unless waived by the Port (and each succeeding day until compliance is reestablished) following written notice from the Port of the violation. Payment of Administrative Fees shall occur within thirty (30) days following demand by the Port. For those violations where a plan is required to correct the violation, then Permittee and Port shall develop such plan, including a time schedule under which resolution can be achieved.

EXHIBIT “8”

PERMITTEE’S PROPOSAL

EXHIBIT “9”
ACDBEs



PORT OF OAKLAND

**Attachment 5-A: Quarterly Reporting for Participation of Airport
Concession Disadvantaged Business Enterprises (ACDBE)**

Prime Concessionaire Submitting Report: _____ **For Quarter Ending:** _____

Name and Address of Prime Concessionaire and Airport Concession Disadvantaged Business Enterprise (ACDBE)	Telephone and Fax Numbers Email Address	ACDBE * Certification Number	Description of Prime and ACDBE Services	Dollar Amount of Sales, Purchase or Lease of Goods and Services	Lease Amount Or Minimum Annual Guarantee	Total Lease Amount

--	--	--	--	--	--	--

*The certified firm is issued a certificate by the California Unified Certification Program (CUCP). ACDBE status may be obtained by accessing the CUCP website: www.dot.ca.gov/hq/bep/index.htm or by calling (916) 324-1700 or (866) 810-6346. If the firm was certified as an ACDBE at the time it started work on this lease, but was decertified before completing its portion of the work, enter the dollar amount of ALL services performed by the firm, INCLUDING SERVICES PERFORMED AFTER THE CERTIFICATION DATE. This report must be submitted with the Form of Quarterly Report Certificate. For questions regarding this form, contact Lila Zinn at (510) 627-1485.

**REPORT OF CERTIFIED ACDBE FORM
(CONCESSIONAIRES/SUBCONCESSIONAIRES/
SUPPLIERS/MANAGEMENT CONTRACTORS - COUNTED TOWARD GOALS)**

Name of Airport _____

Airport Sponsor _____

City/State/Zip _____

Preparer _____

Telephone Number _____

Date _____

List below each ACDBE that participated in a concession during the preceding fiscal year and which are included in your submission of the Uniform Report of ACDBE Participation. If no ACDBE firm participated, write "NONE" below.

Name of ACDBE Firm _____

Address _____

City _____ State _____ Zip _____

Type of concession/subconcession/supplier, etc., business _____

Date Agreement (i.e., lease, sublease) Began _____ Date Agreement (i.e., lease, sublease) Expires _____

Options to Renew _____ How Many _____ Length of time _____

Dates that material amendments have been or will be made to agreement, if known _____

Estimated gross receipts for this reporting period: _____

The disadvantaged individual having the largest ownership interest is:

_____ Black _____ Hispanic _____ Native American _____ Asian-Indian American

_____ Asian-Pacific American _____ Non-Minority Woman _____ Other Disadvantaged

Name of ACDBE Firm _____

Address _____

City _____ State _____ Zip _____

Type of concession/subconcession/supplier, etc., business _____

Date Agreement (i.e., lease, sublease) Began _____ Date Agreement (i.e., lease, sublease) Expires _____

Options to Renew _____ How Many _____ Length of time _____

Dates that material amendments have been or will be made to agreement, if known _____

Estimated gross receipts for this reporting period: _____

The disadvantaged individual having the largest ownership interest is:

_____ Black _____ Hispanic _____ Native American _____ Asian-Indian American

_____ Asian-Pacific American _____ Non-Minority Woman _____ Other Disadvantaged

Name of ACDBE Firm _____
Address _____
City _____ State _____ Zip _____
Type of concession/subconcession/supplier, etc., business _____
Date Agreement (i.e., lease, sublease) Began _____ Date Agreement (i.e., lease, sublease) Expires _____
Options to Renew _____ How Many _____ Length of time _____
Dates that material amendments have been or will be made to agreement, if known _____
Estimated gross receipts for this reporting period: _____
The disadvantaged individual having the largest ownership interest is:
_____ Black _____ Hispanic _____ Native American _____ Asian-Indian American
_____ Asian-Pacific American _____ Non-Minority Woman _____ Other Disadvantaged

Name of ACDBE Firm _____
Address _____
City _____ State _____ Zip _____
Type of concession/subconcession/supplier, etc., business _____
Date Agreement (i.e., lease, sublease) Began _____ Date Agreement (i.e., lease, sublease) Expires _____
Options to Renew _____ How Many _____ Length of time _____
Dates that material amendments have been or will be made to agreement, if known _____
Estimated gross receipts for this reporting period: _____
The disadvantaged individual having the largest ownership interest is:
_____ Black _____ Hispanic _____ Native American _____ Asian-Indian American
_____ Asian-Pacific American _____ Non-Minority Woman _____ Other Disadvantaged

(Use additional sheets as needed)

---Please refer to the Instructions sheet for directions on filling out this form---

---Please refer to the Instructions sheet for directions on filling out this form---

1. Name of Recipient:									
2. Contact Information: Preparer's Name:				Phone No. ()		Fax No. ()			
email address:									
3a. Federal fiscal year in which reporting period falls:		FY ()		3b. Date This Report Submitted					
4. Current Non-Car Rental ACDBE Goal:		Race Conscious Goal		%		Race Neutral Goal		%	
		ACDBE OVERALL Goal		%				%	
5. NON-CAR RENTAL CUMULATIVE ACDBE PARTICIPATION		A		B		C		D	
		Total Dollars (Everyone)		Total Number (Everyone)		Total to ACDBEs (dollars) [E+F]		Total to ACDBEs (number)	
Prime Concessions									
Subconcessions									
Management Contracts									
Goods and Services									
Total Cumulative Non-Car Rental ACDBE Participation									
6. NON-CAR RENTAL NEW ACDBE PARTICIPATION THIS PERIOD		A		B		C		D	
		Total Dollars (Everyone)		Total Number (Everyone)		Total to ACDBEs (dollars) [E+F]		Total to ACDBEs (number)	
Prime Concessions									
Subconcessions									
Management Contracts									
Goods and Services									
Total Non-Car Rental New ACDBE Participation									
7. Current Car Rental ACDBE Goal:		Race Conscious Goal		%		Race Neutral Goal		%	
		ACDBE OVERALL Goal		%				%	
8. CAR RENTAL CUMULATIVE ACDBE PARTICIPATION		A		B		C		D	
		Total Dollars (Everyone)		Total Number (Everyone)		Total to ACDBEs (dollars) [E+F]		Total to ACDBEs (number)	
Prime Concessions									
Subconcessions									
Management Contracts									
Goods and Services									
Total Car Rental Cumulative ACDBE Participation									
9. CAR RENTAL NEW ACDBE PARTICIPATION THIS PERIOD		A		B		C		D	
		Total Dollars (Everyone)		Total Number (Everyone)		Total to ACDBEs (dollars) [E+F]		Total to ACDBEs (number)	
Prime Concessions									
Subconcessions									
Management Contracts									
Goods and Services									
Total Car Rental New ACDBE Participation									

Page 2

	A	B	C	D	E	F	G
	Total Dollars (Everyone)	Total Number (Everyone)	Total to ACDBEs (dollars) [E+F]	Total to ACDBEs (number)	Total to ACDBEs/Race Conscious (dollars)	Total to ACDBEs/Race Neutral (dollars)	Percentage of total dollars to ACDBEs [C/A]
9. CAR RENTAL NEW ACDBE PARTICIPATION THIS PERIOD							
Prime Concessions							
Subconcessions							
Goods and Services							
Total Cumulative Car Rental New ACDBE participation							

	A	B	C	D	E	F	G
10. CUMULATIVE ACDBE PARTICIPATION BY RACE/GENDER	Black Americans (numbers & dollars)	Hispanic Americans (numbers & dollars)	Asian-Pacific Americans (numbers & dollars)	Asian - Indian Americans (numbers & dollars)	Native Americans (numbers & dollars)	Non-Minority Women (numbers & dollars)	Other (i.e. not of any other group listed here) (numbers & dollars)
Car Rental							
Non-Car Rental							
Total Cumulative Race/Gender ACDBE Participation							

11. For each ACDBE firm that is participating, please fill out the attached Report of Certified ACDBE Firm or list the following information for each ACDBE firm participating in your program during this report: (1) Firm name; (2) Type of business; (3) Beginning and expiration dates of agreement; including options to renew; (4) Dates that material amendments have been or will be made to agreement (if known); and (5) Estimated gross receipts for the firm during this reporting period.

EXHIBIT “10”

CERTIFICATE FOR QUARTERLY REPORT

(On Company Letterhead)

[Date]

Director of Aviation
Port of Oakland
530 Water Street
Oakland, CA 94607

Dear _____:

I, _____, do hereby certify as follows:

1. I am the [**Chief Financial Officer**] of _____, the Permittee under a Space/Use Permit with the Port of Oakland for Food and Beverage Concession dated _____, 2018 (the “Permit”).
2. The attached Quarterly Report of the Permittee for the quarter ended (March, June, September or December) __, 201__, was prepared in accordance with all of the applicable requirements of Section 13 of the Permit, and all of the information contained in this Quarterly Report is true and correct.

Sincerely,

Signature

Name

Title

EXHIBIT "11"

FORM OF LETTER OF CREDIT

IRREVOCABLE LETTER OF CREDIT

Irrevocable and Transferable

Letter of Credit # _____

Amount: U.S. \$ _____

To: City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners
("Port of Oakland")
530 Water Street
Oakland, California 94607 _____, 20____

Ladies and Gentlemen:

For the account of **[Insert applicant]**, a **[Insert type of entity]** ("Applicant"), we hereby issue in your favor our Irrevocable Letter of Credit for U.S. \$ _____.

The amount of this credit is available to you by your drafts on us at sight accompanied by the following statement signed by your Executive Director or Chief Financial Officer.

"I certify that the amount of our drawing is due the Port of Oakland (1) pursuant to the terms of the **[Insert name of agreement]** dated **[date of agreement]** between the Port of Oakland and **[Name of applicant]**, a **[Insert type of entity]** ("Applicant") or any other agreement between the Port of Oakland and Applicant, (2) pursuant to the terms of this credit, or (3) because a payment previously made to the Port of Oakland by or on behalf of Applicant has been recovered by settlement or otherwise from the Port of Oakland by a trustee, receiver, creditor or other party."

Drafts must clearly specify the number of this credit and (except as set forth below) be presented at our counters at **[Insert location of counters of bank in San Francisco or Oakland]** not later than the close of business on _____, 20____, or such later date as this credit shall have been extended to (the "Expiration Date"). If a demand for payment made by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you prompt notice that the purported demand for payment was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefor, and that we are returning any documents to you. Upon being notified that the purported demand for payment was not effected in accordance with this Letter of Credit, you may attempt to correct any such non-conforming demand for payment on or prior to the Expiration Date.

Drawings may also be presented to us by facsimile transmission to facsimile number _____ (each such drawing, a "Fax Drawing"). If you present a Fax Drawing under this Letter of Credit, you do not need to present the original of any drawing documents, and if we receive any such original drawing documents, they will not be examined by us. In the event of a full or final drawing, the original standby Letter of Credit must be returned to us by overnight courier.

This credit shall be deemed automatically extended without amendment for additional periods of one year from the present or any future expiration date unless at least ninety (90) days prior to any such date we notify you (Attention: Chief Financial Officer) and Applicant by a nationally recognized overnight courier service that we elect not to consider the letter of credit renewed for any such additional period. You may then draw on us at sight with the above-specified signed statement.

This Letter of Credit is subject to the International Standby Practices ("ISP98"), International Chamber of Commerce Publication No. 590 and as to matters not governed by ISP98, shall be governed by and construed in accordance with the Laws of California, without regard to principles of conflicts of Law.

We engage with you that drafts for full or partial payment drawn under and in compliance with the terms of this credit will be duly honored by us on delivery of documents as specified.

All bank charges and commissions are for the account of Applicant.

Very truly yours,

Authorized Signature and Title

SIGHT DRAFT

City

Date

Pay to the order of the Port of Oakland, at sight, _____ (\$_____) U.S. Dollars,
drawn under Letter of Credit #_____, issued by _____
to the Port of Oakland for the account of **[Insert name of applicant]**.

**City of Oakland, a municipal corporation, acting
by and through its Board of Port Commissioners
("Port of Oakland")**

By:

Name:

Title:

EXHIBIT “12”

GREEN CONCESSIONS PROGRAM

Port Sustainability Policy: The Board has adopted Resolution No. 20467: Resolution Implementing Port Sustainability Policy (the “Policy”). All operations throughout the Port, including food, beverage, retail and duty free concessions should be guided by this Policy. In addition, the Port requires the following actions to be undertaken by its Permittee:

- I. **Cleaning:** Permittee is required to use green cleaning methods in conformance with the product manufacturer’s recommendations and in compliance with OAK’s Green Cleaning Program. Tenants are required to develop a Green Cleaning Plan in compliance with the OAK Green Clean Program and provide regular staff training to implement this program.
- II. **Construction & Demolition Waste Management:** Permittee shall reduce total waste material during construction and demolition (goal – a maximum of 2.5 lbs. per square foot) or divert at least 75% of the total construction and demolition material generated during construction (by weight or volume) from the landfill via recycling or reusing materials. All material leaving the site shall be tracked and documented by Permittee, and Permittee shall provide Port with weight slips or other similar documentation in form reasonably acceptable to Port.
- III. **Employee Benefits and Training:**
 - A. Permittee must offer commuter benefits program for employees and participate in BART’s OAK Connector discount program.
 - B. Permittee shall commit to annual training and new employee training with a focus on sustainability as outlined and required in this Exhibit.
- IV. **Energy Efficiency:** To maximize energy efficiency, Permittee shall target the refrigerator temperature at a minimum of 36 degrees Fahrenheit, and freezer at a minimum of 0 degrees Fahrenheit. All refrigerated cases, refrigerator doors and strip curtains must be maintained in good working order (replace worn gaskets, align doors, etc.).
- V. **Food Donation Program:** Permittee to develop, participate and collaborate in a food donation program. Permittee is required to establish a plan for surplus food donation to be phased-in over a three-year period, with at least 30% surplus food donated in 2020; at least 60% in 2021, and at least 90% in 2022, with the ultimate goal of 100% of all surplus food donated beyond 2023.
- VI. **Indoor Air Quality:** Permittee shall comply with the IAQ Management Plan established for the construction project including building flush-out after construction, but before occupancy.
- VII. **Service Ware/Supplies:** “Service Ware” is defined and includes, but is not limited to, all bags, bowls, boxes, cartons, cups, cutlery, drink lids, napkins, pizza boxes, plates, sacks, stir sticks, straws, trays, utensils, and wrapping. All Service Ware shall meet ASTM D6400 or ASTM D6868 or Biodegradable Products Institute (BPI) www.bpiworld.com for compostability.
 - A. To reduce waste, Permittee:
 1. Is required to first ask customer before providing or making available drink lids, straws, stirsticks, utensils, napkins, bags.

2. Should encourage and use electronic/paperless receipts and not print a receipt if the customer does not request or declines on offer to provide a printed receipt.
 3. Shall assure that all packaging or Service Ware provided to customer is reusable metal, glass, ceramic or compostable. Cutlery must be metal or compostable (and labeled as such on each piece).
 4. Shall minimize packaging and use of single-use Service Ware.
 5. Shall eliminate individually wrapped cutlery.
 6. Shall not utilize Styrofoam (or similar) products, petroleum-based plastic bags, or petroleum-based plastic utensils.
 7. Minimize single-serving packages of sweeteners and creamers by establishing coffee stations where these items are made available in bulk.
 8. Minimize single-serving packages of condiments by establishing condiment stations where these items are made available in bulk.
 9. Stock and sell water only in compostable or bio-resin bottles or paper boxes for all bottled water sales. Permittee shall offer, advertise and provide an incentive for customers to use their own reusable cup and/or bottle.
 10. Discourage the use of pizza boxes. If used, pizza boxes they must be unbleached e-flute boxes <http://www.pmq.com/May-June-2004/Packaging-That-Delivers/>
- B. Hierarchy of usage:
1. 1st choice shall be reusable metal, glass, ceramic Service Ware (plates, cups, cutlery, etc.). If not practicable then,
 2. 2nd choice shall be compostable Service Ware derived from plant fiber (wheat straw, sugarcane or bamboo). If not practicable then,
 3. 3rd choice shall be compostable, tree-based Service Ware and products certified by the Forest Stewardship Council (FSC). The FSC label ensures that the forest products used are from responsibly harvested and verified sources. All paper/cardboard should be unbleached. Paper bags, printer paper, menu paper must be non-bleached and contain 50% post-consumer waste recycled content.
 4. 4th choice, only acceptable in limited applications, is the use of clear, compostable PLA (polylactic acid) is a bio-based plastic derived from renewable resources such as corn starch, tapioca roots, or sugarcane). May only be used in limited applications when clear clamshells or cups are required to broaden appeal of grab-and-go items salads, parfaits, etc. when content visibility is essential. In these cases, containers must be compostable PLA and clearly labeled as such.
- C. The only allowable plastics are for pre-packaged drinks: PETE #1, HDPE #2 and PP#5.
- D. Fryer oil must be recycled pursuant to Port direction.
- E. Light bulbs must be recycled by Permittee.
- F. Store broken bulky waste in your own storage areas, not in common areas. Must participate in Port-sponsored bulky waste FOD (Foreign Object Debris) disposal events.

VIII. **Waste Reduction Program:** consists of source-separated, three-stream diversion program in the Assigned Space located throughout the Terminal Complex, including Permittee storage areas and offices. The three waste streams are:

- A. **Organic Waste (Green):** Consisting of food, food-soiled paper, compostable plates, cups, flatware, straws, any takeout containers, including grease-stained pizza boxes, napkins, paper towels, straws and lids.
- B. **Mixed Recycling (Blue):** Consisting of clean cardboard, paper and newspaper, glass, metals, and non-compostable plastic.
- C. **Landfill (Black):** Any residual waste that cannot be recycled or composted.

Waste must be placed in the appropriate Terminal 1 compactor and/or Terminal 2 trash chute, or as otherwise designated by the Port. Fully enclosed containers must be used by Permittee to transport waste to the compactors/chute rooms.

IX. **Waste Receptacles:** Permittee must separate all waste in the Assigned Space into organic waste, mixed recycling or landfill receptacles. All receptacles must be leak-proof with a bag liner. All public (front-of-house) receptacles must be approved by the Port and in locations designated by the Port.

Permittee shall include co-located appropriately-sized waste receptacles in their Assigned Space that are clearly labeled for organic waste, mixed recycling and landfill. Receptacles shall be adequately sized and placed in all appropriate areas - front of house, back of house and in offices and breakrooms within leasehold. All waste receptacles must be maintained in good working order. They must be kept clean, well-labeled and emptied at an interval that prevents overflowing. They must be maintained with the appropriate liner type – compostable green for organic waste, clear for mixed recycling, and black for landfill.

EXHIBIT “14”

QUALITY ASSURANCE AUDITS

To ensure the public receives consistent customer service at desired quality standards, Permittee shall ensure all Concession Units undergo regular concession inspections, called “Quality Assurance Audits” herein. Port may require Permittee to perform Quality Assurance Audits if a particular Concession Unit needs attention in which event the results shall be compiled and forwarded to Port for review.

Service shall be timely, attentive, and friendly. Customers shall be promptly attended to and in a friendly and courteous manner. Self-service elements shall be easily seen and accessible by customers. Processing of payments for food, beverages and retail merchandise shall be prompt. Receipts shall be properly itemized, reflecting precisely the products and services purchased, and shall present individual prices, total and taxes. All customers shall be thanked for patronage. Quality Assurance Audits must evaluate the following:

Premises

- (a) Design
- (b) Maintenance
- (c) Equipment
- (d) Cleanliness

2. Product

- (a) Delivered as represented
- (b) Taste
- (c) Attractiveness

3. Personnel

- (a) Professionalism
- (b) Appearance
- (c) Activity

4. Price Value

- (a) Visibility
- (b) Appropriateness
- (c) Compliance with Airport Pricing Policy

5. Promotions

- (a) Promotional and marketing program
- (b) Effectiveness

EXHIBIT “15”

LABOR PEACE AGREEMENT

EXHIBIT "16"

FORM OF GUARANTY

WHEREAS, the City of Oakland, a municipal corporation doing business by and through its Board of Port Commissioners, hereafter referred to as "Port", and _____, hereafter referred to as "Permittee", are about to execute a document entitled Space/Use Permit for Food and Beverage Concession (the "Permit") dated _____, 20 , under which Permittee will operate food and beverage concession units at Oakland International Airport; and

WHEREAS, the undersigned, hereinafter referred to as "Guarantor," has a financial interest in and/or will receive benefit from Permittee, and

WHEREAS, Port would not execute the Permit if Guarantor did not execute and deliver to Port this Guaranty.

NOW THEREFORE, for and in consideration of the execution of the Permit by Port and as a material inducement to Port to execute said Permit, Guarantor hereby unconditionally and irrevocably guarantees the prompt payment by Permittee of all sums payable by Permittee under the Permit and the faithful and prompt performance by Permittee of each and every one of the terms, conditions and covenants of the Permit to be kept and performed by Permittee that arise during the Term of the Permit.

It is specifically agreed and understood that the terms of the Permit may be altered, affected, modified, waived or changed by agreement between Port and Permittee, including, without limitation, the amount of the Rent, the Term of the Permit and the location of the Assigned Space, and the Permit may be assigned by Port or any assignee of Port without consent or notice to Guarantor and that this Guaranty shall thereupon and thereafter continue to guarantee the performance of the Permit as so changed, modified, affected, altered or assigned, irrespective of the lack of prior notice to or consent by Guarantor.

In the event the Permit is renewed and/or extended by the Port, this Guaranty shall also apply to the Permit as so extended or renewed, notwithstanding any changes in the provisions thereof, with the same effect as if this Guaranty had been executed by the undersigned with reference to the renewed or extended Permit at the time of said renewal or extension.

This Guaranty shall not be released, modified or affected by failure or delay on the part of Port to enforce any of the rights or remedies of the Port under the Permit, whether pursuant to the terms thereof or at law or in equity.

No notice of occurrence, existence or continuance of any failure of performance or payment under the Permit, or any other event of default or default by Permittee under the Permit need be given to Guarantor. It is specifically agreed and understood that the guarantee of the undersigned is a continuing guarantee under which Port may proceed forthwith and immediately against Permittee or against one or more of the Guarantor following any breach or default by Permittee or for the enforcement of any rights which Port may have as against Permittee pursuant to or under the terms of the Permit or at law or in equity.

Port shall have the right to proceed against the Guarantor hereunder following any breach or default by Permittee without first proceeding against Permittee and without previous notice to or demand upon either Permittee or Guarantor. Guarantor further assents, without the requirement or condition that notice of any kind or nature be given to such Guarantor on account thereof, to (a) any failure to resort to or exhaust other rights, powers or remedies on the part of Port; (b) the acceptance by Port of (i) any prepayments or partial payments under the Permit and (ii) any payment in full satisfaction of less than all of the amount due under the Permit.

Guarantor hereby waives (a) notice of acceptance of this Guaranty, (b) demand of payment, diligence, presentation and protest, including, without limitation, of claims with a court in the event of receivership or bankruptcy of Permittee, (c) notice of the reliance of Port upon this Guaranty; (d) any right to require the Port to proceed against the Permittee or any other Guarantor or any other person or entity liable to Port, (e) any right to require Port to apply to any default any security deposit or other security it may hold under the Permit, (f) any right to require Port to proceed under any other remedy Port may have before proceeding against Guarantor, (g) any right of subrogation, reimbursement, indemnification, and contribution, and (h) any other rights and defenses that are or may become available to Guarantor by reason of sections 2787 to 2855 of the California Civil Code. In addition, Guarantor agrees that the performance of any act or payment that tolls the statute of limitations applicable to the Permit shall similarly operate to toll the statute of limitations applicable to Guarantor's liability hereunder.

Guarantor does hereby subrogate all existing or future indebtedness or other obligations of Permittee to Guarantor to the obligations owed to Port under the Permit and this Guaranty.

This Guaranty and the liability of Guarantor hereunder shall not be subject to or contingent upon (a) the genuineness, validity, regularity or enforceability of the Permit, or (b) any law, ordinance, rule, regulation, writ, order or decree now or hereafter in effect which might in any manner affect the Permittee's obligations under the Permit or any rights, powers or remedies of Port in respect thereof, or cause or permit to be invoked any alteration of time, amount or manner of payment or performance of any obligation of the Permittee under the Permit. Further, this Guaranty shall not be deemed discharged, impaired or affected by (x) the power or authority of Permittee to enter into or to obtain the Permit; (y) any subcontracting or assignment by Permittee of its interest in the Permit; or (z) the existence or non-existence of Permittee as a legal entity.

All of the rights, powers and remedies of Port under the Permit and this Guaranty are intended to be distinct, separate and cumulative, and none of such rights, powers and remedies therein and herein contained is intended to be exclusive of or a waiver of any other right, power or remedy therein or herein contained.

This Guaranty shall be governed by, and construed in accordance with, the laws of the State of California. Each provision hereof is intended to be severable. If any clause, phrase, provision or portion of this Guaranty or the application thereof is determined by a court of competent jurisdiction to be invalid or unenforceable under applicable law, the remaining clauses, phrases, provisions and portions of this Guaranty shall not be affected or impaired thereby, but each remaining clause, phrase, provision and portion shall be valid and be enforceable to the fullest extent permitted by law.

The term " Permittee " whenever used in this Guaranty refers to and means the Permittee named in the Permit and also to any successor to the interests of the Permittee authorized pursuant to the

terms of the Permit. Capitalized terms used herein without definition shall have the meanings set forth in the Permit.

This Guaranty shall be binding on the Guarantor and their respective heirs, executors, personal representatives, successors and assigns.

In the event any action is brought by the Port against Guarantor or any of them to enforce the obligation of Guarantor hereunder, the unsuccessful party in such action shall pay to the prevailing party therein a reasonable attorney's fee, which shall be fixed by the court.

IN WITNESS WHEREOF, Guarantor hereby executes this Guaranty this ____ day of _____, 20____.

Signature: _____

Print
Name: _____

Address: _____



PORT OF OAKLAND

Attachment 13: Tenant Design Standards

(Uploaded to the Port's website as a separate document)

FOUR SEPARATE FOOD & BEVERAGE CONCESSION OPPORTUNITIES AT OAKLAND INTERNATIONAL AIRPORT
QUESTIONS & COMMENTS ON THE RFP
JUNE 8, 2018

On May 4, 2018 the Port of Oakland issued a **Request for Proposal – Four Separate Food & Beverage Concessions Opportunities at Oakland International Airport** as posted on the Port’s website at: <https://www.portofoakland.com/business/bids-rfps/>; the “RFP”.

Pursuant to the RFP, Questions and Requests for Information (“RFI”) are to be submitted to the Port at email address: concessions@portoakland.com by 4:00 p.m. on May 29, 2018. Questions, comments and RFI have been received. Staff has collected these questions, comments and RFI, reviewed, consolidated similar questions, comments and RFI, and summarized below. Please note: an interim response was posted on the Port’s website on June 1, 2018. The below represents the Port’s answers and responses to all questions, comments and RFI received by the above-referenced deadline:

	Question/Comment/Issue/Concern	Port Response			
A.	DATES & DEADLINES				
1.	<u>Proposal Due Date</u>	The Proposal Due Date shall be extended from no later than 3:00 p.m. (PDT) July 13, 2018 to <u>no later than 3:00 p.m. (PDT) July 27, 2018</u> .			
2.	<u>Questions/RFI Due Date</u>	The May 29, 2018 deadline for submitting Questions and Requests for Information will not be extended, <u>except</u> : A separate Due Date for Questions/RFI specifically related to the “Tenant Design Standards” and revisions to the Space/Use Permit will be established when the Tenant Design Standards are formally integrated into the RFP.			
3.	<u>Tenant Design Standards – Questions/Requests for Information (RFI) Due Date:</u>	Due to the delay in releasing the Tenant Design Standards (TDS), a supplemental Questions/Request for Information (RFI) specifically for the TDS will be established as follows: <table><tr><td>Questions/Request for Information (RFI) Due Date – For Tenant Design Standards (TDS) and Revisions to the Space/Use Permit ONLY. (The deadline for questions/RFI for the RFP has expired)</td><td>June 15, 2018 until 4:00 p.m. Please submit questions and/or requests for information (RFI) specific to the TDS or revisions to the Space/Use Permit as soon as possible. No questions or RFIs regarding the TDS or revisions to the Space/Use Permit will be accepted after the above date. All pertinent questions</td></tr></table>		Questions/Request for Information (RFI) Due Date – For Tenant Design Standards (TDS) and Revisions to the Space/Use Permit ONLY. (The deadline for questions/RFI for the RFP has expired)	June 15, 2018 until 4:00 p.m. Please submit questions and/or requests for information (RFI) specific to the TDS or revisions to the Space/Use Permit as soon as possible. No questions or RFIs regarding the TDS or revisions to the Space/Use Permit will be accepted after the above date. All pertinent questions
Questions/Request for Information (RFI) Due Date – For Tenant Design Standards (TDS) and Revisions to the Space/Use Permit ONLY. (The deadline for questions/RFI for the RFP has expired)	June 15, 2018 until 4:00 p.m. Please submit questions and/or requests for information (RFI) specific to the TDS or revisions to the Space/Use Permit as soon as possible. No questions or RFIs regarding the TDS or revisions to the Space/Use Permit will be accepted after the above date. All pertinent questions				

Question/Comment/Issue/Concern		Port Response	
			<p>will be responded to and answered in writing no later than the Response Date listed below.</p> <p>Email at: concessions@portoakland.com</p> <p>Mail Address:</p> <p>Port of Oakland Aviation Properties Department Attn: Brandon J. Mark 1 Airport Drive, Box 45 Oakland, CA 94621</p>
		Response Date	<p>June 22, 2018</p> <p>All pertinent questions will be responded to via addendum emailed to all prospective Respondents who attended the Mandatory Pre-Proposal Meeting and also placed on the Port's website. Respondents who did not receive a copy of the addendum should download it from the Port's website. See the "How to Obtain RFP Documents" section for our web address. All addenda must be acknowledged on the RFP Acknowledgement and Signature form.</p>
B.	UNIT INFORMATION		
1.	<u>Alcohol</u> : Clarify that the sale of alcohol in Units identified is "desirable" (especially in pre-security Units), but optional, particularly if the chosen brand is one that does not sell alcohol on the street.	<p>The Port will not revise Exhibit "C" to address this issue. Section II.A. (last paragraph on Page 8) states: "Requests for deviations from the requirement for each category, if any, should be noted in the Proposal. However, the justification for the change in category may be considered in the evaluation of each Proposal." If Respondent does not wish to sell alcohol in one of the Units listed with "Yes" in the alcohol column, the Proposal should provide an explanation.</p>	
2.	<u>Asbestos</u> : Are there any known asbestos, lead paint or other hazards with respect to the Units being redeveloped?	<p>Exhibit "K" is an exhaustive list of environmental reports covering all areas of OAK's Terminal Complex. Respondents should review the list and request that specific reports be made available for review; requests to receive environmental</p>	

	Question/Comment/Issue/Concern	Port Response
		reports are not subject to the Questions/RFI deadlines and such environmental reports may be requested at any time throughout the RFP process.
3.	<u>Bar</u> : Can a full bar be included in the “Fast Casual” or “Quick Serve” categories?	The definitions of both Quick Serve and Fast Casual in Sections II.A.2 and II.A.3 include “alcohol service”; the Port does not object to incorporating a full bar into Units with those concepts.
4.	<u>Coffee</u> : Clarify that offering “coffee” does not necessarily mean that specialty coffee drinks (espresso, cappuccino, etc.) must be included unless coffee is the primary category for the Unit.	As shown in Exhibit “C” , a variety of specialty coffee drinks are expected to be provided in those Units in the column titled “Proposed Concept Category” – Café/Bar & Coffee. For all other Units, where there is a “Yes” in the “Coffee” column, it is the discretion of the Respondent to determine the types and variety of coffee served in the Unit.
5.	<u>Exhibits A, B & C</u> : Clarify the differences between these three exhibits.	<p>Exhibit “A” shows the current location of existing Units. This exhibit is included because it will be helpful in illustrating current operations and when reviewing the sales information provided in Exhibit J. Because many of the Unit square footages are changing, the Port decided to retire the current numbering system and start with fresh Unit numbering/identification.</p> <p>Exhibit “B” is the Location Plans that are part of the <i>draft</i> Tenant Design Standards and illustrates the location of all units included in the RFP. The red and green coloring of the Units are <u>not</u> applicable to the Packages and the colors should be ignored.</p> <p>Exhibit “C” is the accurate Unit information showing the Unit Numbers and square feet by package, and should be used in preparation of Proposals. All should be considered correct except for Unit T1-FB-1 (detailed elsewhere in this Addendum).</p>
6.	<u>Existing Conditions of Units</u> : Will the Port provide as-built drawings? Chart showing existing utility service including data?	For whatever documents the Port can readily identify, the Port will provide this information to the successful Respondents. However, Respondents should note that for most Units, this will be a redevelopment project of existing food and beverage operations. Respondent is responsible for conducting its own, independent investigation into the current condition of each Unit.
7.	<u>Mid-Term Refurbishment</u> : The Port requires that all mid-term refurbishments must be completed in a six-month period. If operators of Packages 1 and 2 are performing refurbishments during the	Refer to <i>Space/Use Permit</i> , Attachment “A”, Section 2; the Port does expect a large number of Units to actually close during the Mid-Term Refurbishment process, and the Port controls which Units will be permitted to be closed. The Port will not extend the six-month Mid-Term Refurbishment time frame.

	Question/Comment/Issue/Concern	Port Response
	same period, with some of the Units being closed for a period of time, the Port risks having far too few units open for its customers. Please consider extending this period to one year.	
8.	<u>Mid-Term Refurbishment</u> : Given that the Mid-Term Refurbishment Fund is returned to concessionaire upon proof of receipts post-refurbishment, does that mean that concessionaire is expected to extend/invest funds twice?	That is correct; the Port will retain the Mid-Term Refurbishment Fund until it is reimbursed after proof of investment has been provided to the Port.
9.	<u>Property Taxes</u> : What are the current property taxes for the Oakland International Airport?	<p>The Port does not assess any taxes.</p> <p>Alameda County Assessor's Office calculates a Possessory Interest Tax based on:</p> <ul style="list-style-type: none"> • Rents • Expenses of agency • Term of the tenancy agreement (including any options) • Discount Rate <p>Possessory Interest Tax = Assessed Value × Tax Rate (approximately 1.35%)</p> <p>The Port suggests contacting Joann Chau of the Alameda County Assessor's Office at 510.272.3602 or joann.chau@acgov.org</p> <p>In addition, the City of Oakland charges business taxes, license and permit fees: see: http://oaklandbusinesscenter.com</p> <p>Please note that the Port does not give any tax advice, and Respondent should consult with their own tax advisors.</p>
10.	<u>Quick Serve & Fast Casual</u> : Expand the scope of Fast Casual and Quick Serve concepts to allow small bars with quick or casual menus. A number of Units that logically need a bar component are not described that way in the RFP.	The definitions of both Quick Serve and Fast Casual in Sections II.A.2 and II.A.3 include "alcohol service". The Port does not believe there is any need to amend those definitions.
11.	<u>Trash Fee</u> : Does the Port charge a fee for trash generated by concessions?	The Port does not charge a separate fee for disposing of trash, recycled or compostable materials.

	Question/Comment/Issue/Concern	Port Response
12.	<u>Storage Space Within Unit</u> : Please clarify if the 5% maximum storage allowed is per location or per package.	Pursuant to Paragraph B.3 of the <i>Space/Use Permit</i> : “ <u>Storage Maximum</u> . Permittee shall use no more than five (5%) of the square footage in each Concession Unit for storage.” Emphasis Added ; the referenced 5% maximum square footage allotted to storage is <u>per Unit</u> , not per package.
13.	<u>Unit T1-FB-1 Terminal 1 Pre-Security</u> : Please provide an explanation for the difference in Unit size of F-2 showing 935 square feet vs the renumbered T1-FB-1 at 3,026 square feet.	The gross area of Unit T1-FB-1 currently shows total square footage of 3,026. The Port has determined that the food and beverage space – front-of-house (“FOH”) – should be 1,390 square feet, subject to the requirements of Minimum Initial and Mid-Term Capital Investment, and MAG. Exhibits “B” and “C” have been updated and incorporated into Addendum #1. The balance of the space – back-of-house (“BOH”) – is 1,636 square feet and is to be covered separately as commissary, storage, back-office, etc. As a reminder, all square footage numbers in the RFP are subject to adjustment based on Paragraph D.2 of the <i>Space/Use Permit</i> .
14.	<u>Unit T2-FB-G25 (formerly Unit F-11)</u> : Will the Port allow a single casual dining restaurant in this location?	Exhibit “C” defines Unit T2-FB-G25 as “Fast Casual/Quick Serve plus Seating” or Restaurant/Lounge and Fast Casual/Quick Serve”. As illustrated on the example renderings in Exhibit “B”, Pages 102 through 109, the Port would expect either a food hall with multiple Fast Casual and Quick Serve concepts or a Full Service Restaurant/Lounge incorporating a Quick Service component.
15.	<u>Grab & Go</u> : Please identify in there are any locations that are not allowed to offer “Grab & Go” food items.	There are no restrictions for any Unit to offer “Grab & Go” food items as part of the Respondent’s Proposal.
16.	<u>Initial Capital Investment – Section I.C.1.e. – Packages 3 and 4</u> : Would the Port consider reducing the Minimum Capital Investment from \$600 PSF to \$500 PSF for the Independent Units?	The Initial Capital Investment as defined in Section I.C.1.e. will not be changed.
17.	<u>Renderings & Tenant Design Standards</u> : With late release of TDS, if Respondent has already prepared renderings which have a discrepancy with TDS, may Respondent avoid the expense of new	The Port acknowledges this is a reasonable request; if applicable, Respondent may make an affirmative statement addressing discrepancies between its rendering(s) and requirements of the TDS.

	Question/Comment/Issue/Concern	Port Response
	renderings but make an affirmative statement that if awarded a package, the Unit design will conform with TDS?	
18.	<u>Unit T1-FB-G9</u> : Drawing No. 7.5 of Exhibit “B” appears to not match existing conditions.	Except as detailed in Paragraphs 6. and 7. in Addendum #1 to the RFP dated June 1, 2018, the Port will not remeasure or redraw any other Unit drawings in Exhibit “B”. Paragraph D.2 of the <i>Space/Use Permit</i> defines the “As-Built” condition of the Assigned Space. For Unit T1-FB-G9, the expectation is that the Unit will adjoin the Escape Lounge premises on the concourse and Gate 9 sides. The outer limits will be the existing window line and the terrazzo defining the concourse walk way. On the Gate 9 side, an imaginary line should be drawn from the outer wall of the storage area directly to the terrazzo.
19.	<u>Unit T1-FB-G9</u> : Can the ceiling be raised above the current seating area? Alternatively, can a lower ceiling element be added that connects the seating area to the primary lease area? How low? How far forward can the counter be? Can the current storage closet be replaced with a walk-in freezer? Can the walls of the storage closet be extended to the ceiling? Is there a minimum seating requirement?	Respondents are encouraged to be creative in the design of each Unit. The Tenant Design Standards should address these questions and/or the Respondent may include any deviations from the TDS as an explanation in its Proposal.
20.	<u>Unit T2-FB-G23</u> : How far forward can the counter be? Is there a minimum seating requirement?	Respondents are encouraged to be creative in the design of each Unit. Responses to these questions can be found in the Tenant Design Standards.
21.	<u>Unit Walk Through</u> : Will there be a follow-up walk through after the Tenant Design Standards have been issued?	The Tenant Design Standards should provide the necessary information for Respondents to develop renderings of each Unit and generally know the location of utility hookups, etc. Each Unit is to be totally demolished and redeveloped, so existing conditions/tenant improvements are generally irrelevant. <u>After award</u> , the successful Respondent will be provided access.

	Question/Comment/Issue/Concern	Port Response
C.	GENERAL INFORMATION	
1.	<u>Enplanements</u> : Please clarify the number of enplanements for OAK. Are there any enplaning projections for 2018 based on the first 5 months of the calendar year and for 2019?	<p>See revised/updated Exhibit “J” in Addendum #1 which includes Year-To-Date CY2018 gross receipts and enplanements, plus estimated full year CY2018 enplanements.</p> <p>Also see Exhibit “I-4” which includes forecasted/extrapolated enplanements for CYs 2020, 2021 and 2022. Based on this same extrapolation, CY 2019 total passengers may be estimated at 14,322,500 with enplanements at approximately 50% of that number.</p> <p>Note Section VI.R: The Port makes no representation or guarantee concerning forecasted enplanements; “The Respondent must rely solely on its own independent assessment as the basis for the submission of any Proposal made.”</p>
2.	<u>Layout of the Interior</u> : Please confirm the term “Layout of Interior” = Floor Plan.	In Section IV.A.Tab B.1.c: The Port intends that a “Layout of Interior” will be a detailed, two-dimensional floor plan.
3.	<u>Small Business Certification</u> : If a small business is submitting a proposal in response to the RFP, can this entity self certify by filling out Exhibit “M” Self-Certification Form in lieu of the online application and process?	A business may self-certify as a Small Business by completing and submitting Exhibit “M” – Small Business Self-Certification Form (provided conditions are met) with its Proposal in lieu of the Port’s online application.
4.	<u>Flight Traffic Data</u> : Please share daily/hourly traffic fluctuations per terminal.	The Port does not track this type of data. Respondents may access: www.flightradar24.com/data/airports/oak . Also attached is a representative, currently scheduled, high traffic day on July 11, 2018 indicating all flight arrivals and departure.
5.	<u>Limited Liability Company (LLC) and ACDBE</u> : Confirm that if Respondent forms a LLC with its ACDBE partners, such relationship will be acceptable.	Forming a LLC with your ACDBE partners would be acceptable to the Port. However, please note Section IV.A.Tab E.3, which requires a Guaranty if the Respondent LLC submits the financial condition of a third party to be considered by the Port in its Proposal.
6.	<u>Remote Concessions Storage</u> : Is there any remote storage available for Units?	Section II.B.5. defines storage and support spaces. Each Package will have a limited amount of such space assigned, subject to this section of the RFP.
7.	<u>Asbestos/Utility Construction Delay</u> : Will the Port consider granting a	The Port will not commit to any time frame extensions at this point in the RFP process.

	Question/Comment/Issue/Concern	Port Response
	concessionaire time line relief if asbestos removal or extensive utility pulls are required in order to redevelop the Unit?	
8.	<u>Unit Utility Availability</u> : Please share utility availability matrix for all spaces.	Utility information is contained in the Tenant Design Standards. In addition note Section 1.(g), Attachment “A”, <i>Space/Use Permit</i> that requires the Port to provide utilities to the Lease Line and/or will reimburse Respondent for cost to connect utilities from point of connection to the Lease Line.
9.	<u>Utility Fees</u> : What are the utilities provided by the Airport and estimated charges?	<ul style="list-style-type: none"> The Port currently charges concessionaires for electricity, natural gas and sewer. <ul style="list-style-type: none"> The Port reserves the right to recover cost for water use in the future. All rates are subject to change. Electricity rates are set by the Board unless otherwise noted and are dependent on level of usage. Rates charge to the current concessionaire based on current usage profile <ul style="list-style-type: none"> \$15 per meter – Monthly Customer Charge \$0.21 per KWH – Energy and Distribution Charge 2.85% Environmental Surcharge (on above rates) \$0.00029 per KWH – State Energy Surcharge (Set by Board of Equalization) 7.5% - City of Oakland Electric Users Tax (Set by the City of Oakland) Natural Gas usage rates are set by PG&E and pass through to concessionaires (~\$0.93 per therm as of June 2018) and a monthly administrative fee of \$50.64 per meter. Sewer <ul style="list-style-type: none"> \$5.83 – Monthly Fee \$5.48 – SF Bay Commercial Fee \$0.0307 – Sewer Treatment (per Cubic Feet of water used) Existing Units are likely already metered. For those Units that are not, concessionaires will be responsible for installing the meter at its cost for all utilities.
D.	RENTAL STRUCTURE	
1.	<u>Enplaned Passengers – Decrease</u> : Will the Port consider adding a section to the <i>Space/Use Permit</i> that will provide for	Pursuant to the <i>Space/Use Permit</i> , Paragraph E.1(b), each year MAG “shall be increased or decreased to... 85% of the total Rent payable... provided that the

	Question/Comment/Issue/Concern	Port Response
	MAG recalculation in case of enplaned passenger drop of 20% or more.	[MAG] shall never be less than the amount in effect on the Rent Commencement Date.” The Port will not agree to reduce MAG to less than the amount shown in Section I.C.3.b.
2.	<u>Gross Receipts</u> : Please provide CY2018 Year-to-Date gross receipts for all food and beverage operations.	See revised Exhibit “J” in Addendum #1 to RFP which now includes Gross Receipts for CY2016, CY2017 and CY2018 (January through April).
3.	<u>MAG Calculation</u> : Some of the individual minimum annual guarantee (“MAG”) calculations are significantly higher than the projected percentage rent for those units. Consider lowering the MAGs for these units in line with percentage rent projections. Alternatively, considering applying MAG at the package level, which provides concessionaires the flexibility to have stronger units support weaker ones.	MAG will remain fixed based on Unit Size. MAG will remain applicable on a <u>per-unit</u> basis and not on a <u>per-package</u> basis.
4.	<u>Percentage Rent</u> : Please confirm that Percent Rental Rates (8%/10%/12%) apply to food only, and gross receipts for alcohol and retail merchandise are calculated separately.	Pursuant to Section I.C.3.a, variable rent is calculated as percentage of gross receipts. Food and beverage sales are subject to the stepped percentage rates specified in Sections I.C.3.a.i. through I.C.3.a.iii. To this calculation, there should be separate calculations of 15% for alcoholic beverages plus 15% of any related retail merchandise.
E.	PROPOSAL FORMAT & SUBMISSION	
1.	<u>Alternative Concepts</u> : Exhibit “G” footnote requests Respondents to provide “alternative concepts” that may be submitted substituted/switched to other locations. Are Respondents expected to provide an alternative for each location within a package or one alternative brand for one of the locations?	Two alternative concepts should be included in the Proposal that could be substituted for any unit in the package. Information for these alternative concepts is limited to the requirements in Tab A, Items 1 to 3.

	Question/Comment/Issue/Concern	Port Response
2.	<u>Architectural Renderings – Exterior & Interior Elevations</u> : We assume the required renderings will suffice to meet the criteria for delineating both “Interior” and “Exterior: elevations. Or are separate 2 dimensional flat elevations also required?	Section IV.A.Tab B.1 will be amended to require architectural full-colored renderings (11” × 17”) for each Unit. The Port does not require that these renderings be either two-dimensional or three-dimensional; either is acceptable.
3.	<u>Architectural Renderings – Small Units</u> : RFP requires “Three architectural full-colored renderings (11”×17”) for each concept.” Since for smaller locations, the Exterior Elevation would be the same view as the Interior Elevation, would just one Exterior/Interior Elevation plus a Layout of the Interior (floor plan) be acceptable for smaller locations?	Section IV.A.Tab B.1 will be amended to require: Three architectural full-colored renderings (11” × 17”) for each Unit 1,000 square feet or larger. For Units less than 1,000 square feet, two architectural full-colored renderings (11” × 17”) consisting of one rendering illustrating the Interior/Exterior and a second illustrating the Layout/Floor Plan.
4.	<u>Tabs for Sections & Subsections</u> : Did the Port intend for Sections and Subsection to have “tabs”?	Section IV.A second sentence will be amended to read: “Each section should be delineated by a divider with a tab labeled appropriately, and each subsection should have a tab subsection title .” Tabs are required for major sections; i.e., Tabs A through G, but <u>not</u> required for subsections.
5.	<u>Litigation – Section IV.A.Tab F.2</u> : If there was a dispute and Respondent settled in mediation prior to going to court, should that be disclosed?	Yes
6.	<u>Litigation – Section IV.A.Tab F.2</u> : If during union negotiation, the National Labor Relations Board got involved, though did not reach going to court, should Respondent disclose?	Yes
7.	<u>SBE Required Forms in Proposal</u> : Please clarify the “in addition” paragraph: Beyond the required Exhibit “M” Small Business Self-Certification Form, what are	Even though Small Business and ACDBEs are the target market for Packages 3 and 4, an entity pursuing either of the two independent Units set aside for a Small Business will be required to submit the chart and forms found in Exhibit “N” and more specifically ACDBE OUTREACH-Attachment A,

	Question/Comment/Issue/Concern	Port Response
	the required charts and forms from Exhibit “N” than a SBE Respondent must submit with the Proposal within the separate package/flash drive?	ATTACHMENT ACDBE-B ACDBE Business Utilization Commitment, SBE OUTREACH-Attachment A and Attachment SBE-B Small Business Utilization Commitment (i.e. food suppliers, vendors, uniforms, janitorial services, insurance carrier etc.). Please note the entity pursuing Package 3 or 4 must be a certified Small Business Enterprise (SBE).
8.	<u>Small Business & ACDBE Outreach – Section IV.B:</u> How many copies should Respondent submit of the separate ACDBE submission? Just one or one original plus eight copies?	Respondent shall submit one original and three copies of the separate response. Please reference the RFP-page 18 of 22, B. Small Business & ACDBE Outreach.
F.	EVALUATION CRITERIA	
1.	<u>Exhibit “G”.1.f.</u> states: “Balance between full service, fast casual and quick serve concepts.” Package 2 has only one potential full-service location (T2-FB-G25) that can also be used for fast casual/quick serve. Please confirm that acceptability of a Proposal for Package 2 that does not include any full-service concept.	A Proposal for Package 2 that does not include a Full Service Restaurant/Lounge will not be considered non-responsive.
G.	SPACE/USE PERMIT	
1.	<u>Strategic Beverage Partnership Section I.10:</u> Will the Port consider eliminating the language in the RFP and the <i>Space/Use Permit</i> ? Or if not, will the Port add language (as other airports have done), that promises a negotiation to modify the <i>Space/Use Permit</i> to compensate concessionaires for negative impacts to profitability caused by an Exclusive Pouring Rights Agreement”?	The Port will not eliminate Strategic Beverage Partnership Section I.10. If and when the Port determines it is appropriate to explore a Strategic Beverage Partnership, it will confer with Airport concessionaires and, consistent with the Port’s Concessions Policy (Resolution No. 16-144), will do a competitive process.
2.	<u>Performance Deposit – Attachment “A”, Section 27:</u> Requires that Performance Deposit must be delivered in cash or	A Performance Bond will not be accepted as the Performance Deposit.

	Question/Comment/Issue/Concern	Port Response
	irrevocable letter of credit. Would the Port consider a Performance Bond?	
3.	<u>Port's Put Right – Attachment "C"</u> : This section describes the Port's "Put Rights" as well as Permittee's right to object, but only for viability options. Please amend the language in Section 4 such that Permittee may object on the grounds that its brand agreement might prohibit the operation of a brand suggested by the Port. Also, revise Section 6 to ensure it is dependent not only on the conditions stated, but also on Permittee's right to object as provided in (revised) Section 4.	The Port has revised Attachment "C" of the SUP to address these comments.
4.	<u>Sublease</u> : Can a proposer assume that (subject to Port's document review and approval), the Port will approve any sublease arrangement contained in the Proposal, or is a secondary procedure required? Will the \$5,000 review fee apply to each sublease, even those described in the approval response?	If a proposer proposes a sublease arrangement in its Proposal, and such proposer is awarded a package, then the sublease arrangement will be accepted. The form of the sublease will need to be approved by the Port. The Port will also waive the \$5,000 processing fee set forth in Section 18(9), Attachment "A" of the Space/Use Permit for subleases included as part of a proposer's Proposal."
5.	<u>Utilities</u> : Section 1.(g) of Attachment "A", <i>Space/Use Permit</i> seems to conflict with Section 9, under which concessionaire is promised reimbursement for the cost of pulling utility connections to the space.	The provisions of Section 1.(g) shall dictate the Port's requirement to provide and/or reimburse Respondent for the cost of "the connection of any required utility service from their existing locations outside of the Assigned Space... to the exterior boundary of the Assigned Space."

Schedule Daily Bank Structure Report for Passenger (Air - All) flights from OAK for travel on July 11, 2018

Seats	Equip	Mkt AI	Flight	Stops	Orig	Dep Time	Hub Time	Arr Time	Dest	Stops	Mkt AI	Flight	Equip	Seats
143	73W	WN	408	0	SAN	2245	0005							
159	73H	AS	868	0	LIH	1550	0007							
182	32A	NK	741	0	LAS	2237	0007							
150	320	AA	1770	0	DFW	2235	0010							
143	73W	WN	1370	0	LAX	2255	0010							
							0010	0619	MLM	0	Y4	991	320	179
143	73W	WN	179	0	SEA	2210	0020							
178	73J	AS	865	0	KOA	1621	0026							
175	73H	WN	1517	0	MDW	2255	0125							
							0510	0640	LAX	0	WN	1431	73W	143
							0515	1040	DAL	0	WN	2130	73W	143
							0520	0850	DEN	0	WN	2282	73H	175
							0525	0700	PDX	0	WN	1389	73W	143
							0525	0700	SAN	0	WN	1409	73W	143
							0535	1130	MDW	0	WN	2311	73H	175
							0555	0720	LAS	0	WN	2470	73W	143
							0555	0750	SEA	0	WN	2326	73H	175
							0555	0757	PHX	0	AA	516	320	150
							0600	0715	ONT	0	WN	2076	73W	143
							0600	0727	LAS	0	NK	188	32A	182
							0600	0730	LGB	0	B6	247	320	150
							0600	0732	LAX	0	DL	1568	717	110
							0600	0805	SEA	0	AS	281	73J	178
							0610	0900	SLC	0	DL	1700	M90	158
							0610	1137	DFW	0	NK	408	319	145
143	73W	WN	1073	0	LAX	0500	0615							
							0615	0750	SAN	0	WN	31	73W	143
143	73W	WN	1476	0	ONT	0515	0625							
							0630	0945	ABQ	0	WN	1392	73H	175
							0640	0835	PHX	0	WN	2481	73W	143
							0640	1450	BWI	0	WN	1406	73H	175
175	73H	WN	264	0	BOI	0615	0655							
							0655	0805	BUR	0	WN	2375	73W	143
							0700	0923	OGG	0	AS	811	73H	159
							0700	0956	MSO	0	G4	1020	319	156
							0700	1220	MCI	0	WN	1476	73W	143
							0700	1440	ATL	0	WN	1073	73W	143
							0705	0835	SAN	0	WN	2258	73H	175
							0705	0910	SEA	0	WN	2231	73H	175
143	73W	WN	2054	0	SLC	0620	0710							
							0715	1305	HOU	0	WN	2330	73H	175
143	73W	WN	2553	0	PHX	0530	0720							
							0720	1040	DEN	0	WN	1412	73H	175
143	73W	WN	2270	0	SEA	0520	0725							
143	73W	WN	1501	0	PDX	0540	0725							
143	73W	WN	2219	0	GEG	0525	0730							

Seats	Equip	Mkt Al	Flight	Stops	Orig	Dep Time	Hub Time	Arr Time	Dest	Stops	Mkt Al	Flight	Equip	Seats
175	73H	WN	643	0	DEN	0600	0730							
							0730	0949	KOA	0	AS	857	73J	178
							0735	0900	SNA	0	WN	1384	73W	143
143	73W	WN	2168	0	LAS	0620	0745							
							0755	0955	PHX	0	WN	2223	73W	143
178	73J	AS	342	0	SEA	0558	0759							
143	73W	WN	1106	0	LAX	0645	0800							
							0800	1030	HNL	0	HA	47	332	278
145	319	NK	949	0	LAX	0645	0801							
143	73W	WN	1933	0	SNA	0645	0815							
							0815	0905	RNO	0	WN	2270	73W	143
							0815	0925	BUR	0	WN	1501	73W	143
							0815	0935	ONT	0	WN	2219	73W	143
							0815	0940	LAX	0	WN	1003	73W	143
74	ERJ	LF	3201	0	CEC	0700	0820							
							0820	0945	LAS	0	WN	643	73H	175
							0820	1435	MSY	0	WN	265	73H	175
76	E75	AS	2537	0	PDX	0625	0822							
156	319	G4	298	0	AZA	0630	0824							
175	73H	WN	360	0	ABQ	0705	0830							
							0830	1000	SNA	0	WN	2168	73W	143
							0835	1005	LGB	0	WN	983	73W	143
175	7M8	WN	2123	0	DAL	0710	0845							
143	73W	WN	2503	0	SAN	0720	0845							
143	73W	WN	2554	0	LAS	0720	0845							
							0850	1025	SAN	0	WN	2067	73W	143
							0850	1026	LAX	0	NK	502	319	145
							0850	1115	OGG	0	HA	23	763	259
							0902	1050	PDX	0	AS	2636	E75	76
							0907	1108	SEA	0	AS	353	73J	178
							0909	1103	AZA	0	G4	299	319	156
143	73W	WN	1098	0	LGB	0755	0910							
143	73W	WN	1427	0	ONT	0755	0910							
76	CR9	AA	5796	0	PHX	0720	0919							
143	73W	WN	252	0	PHX	0720	0920							
							0920	1025	BUR	0	WN	2554	73W	143
143	73W	WN	1813	0	BUR	0820	0930							
							0930	1505	STL	0	WN	2305	7M8	175
76	E75	DL	5829	0	LAX	0810	0931							
143	73W	WN	599	0	SNA	0815	0935							
							0935	1755	EWR	0	WN	544	73H	175
160	738	DL	2927	0	SLC	0840	0937							
175	73H	WN	980	0	SAN	0810	0940							
143	73W	WN	2443	0	LAX	0820	0940							
143	73W	WN	973	0	RNO	0845	0940							
							0945	1115	LAX	0	WN	2516	73W	143
							0949	1148	PHX	0	AA	5796	CR9	76
							0955	1125	LAS	0	WN	252	73W	143
143	73W	WN	196	0	DEN	0815	1000							
							1001	1140	LAX	0	DL	5829	E75	76

Seats	Equip	Mkt AI	Flight	Stops	Orig	Dep Time	Hub Time	Arr Time	Dest	Stops	Mkt AI	Flight	Equip	Seats
150	320	B6	148	0	LGB	0853	1005	1545	PVR	0	WN	124	73W	143
							1008							
							1010	1615	MDW	0	WN	1813	73W	143
143	73W	WN	2182	0	HOU	0820	1015							
143	73W	WN	2131	0	LAS	0845	1018	1300	SLC	0	DL	2927	738	160
							1020							
							1020	1425	SJD	0	WN	902	73W	143
143	73W	WN	2540	0	BNA	0745	1025							
							1025	1230	SEA	0	WN	2443	73W	143
							1025	1250	BOI	0	WN	599	73W	143
							1025	1310	SLC	0	WN	973	73W	143
							1030	1800	CMH	0	WN	980	73H	175
							1035							
156	319	G4	1806	0	BLI	0830	1035							
175	73H	WN	2053	0	MDW	0805	1035	1230	GEG	0	WN	196	73W	143
							1040							
							1040							
143	73W	WN	1016	0	PDX	0855	1040							
150	320	AA	890	0	DFW	0905	1048	1207	LGB	0	B6	147	320	150
							1049							
							1050	1415	DEN	0	WN	138	73W	143
228	32B	NK	939	0	IAH	0910	1055	1205	BUR	0	WN	2131	73W	143
							1100							
							1100	1240	PDX	0	WN	2540	73W	143
143	73W	WN	1502	0	BUR	0955	1110							
143	73W	WN	847	0	SAN	0955	1115							
9	PL2	4B	324	0	MCE	1031	1115	1313	BLI	0	G4	1807	319	156
							1117							
							1120							
143	73W	WN	1533	0	ONT	1005	1125	1255	LAS	0	WN	2053	73H	175
							1125	1255	SNA	0	WN	1016	73W	143
							1135	1705	DFW	0	AA	890	320	150
							1140	1310	LAX	0	WN	1503	73W	143
							1145							
							1148							
143	73W	WN	1855	0	LAX	1015	1150							
156	319	G4	1021	0	MSO	1036	1150							
143	73W	WN	1613	0	BWI	0900	1150							
128	319	AA	695	0	PHX	0956	1150							
175	73H	WN	2391	0	SLC	1100	1150							
178	73J	AS	532	0	SEA	0945	1150	1300	BUR	0	WN	1534	73W	143
							1155							
							1155							
143	73W	WN	984	0	LGB	1035	1155							
143	73W	WN	2479	0	SNA	1035	1155							
179	320	Y4	990	0	MLM	0924	1155	1330	SAN	0	WN	2339	73W	143
							1200							
							1200	1243	MCE	0	4B	325	PL2	9
175	73H	WN	2360	0	SEA	0955	1215							
143	73W	WN	2281	0	BUR	1100	1215							
182	32A	NK	209	0	ORD	0945	1215	1443	HNL	0	AS	827	73H	159
							1221							
							1225	1755	AUS	0	WN	2312	73W	143
							1225	1820	IAH	0	NK	906	32B	228
							1233	1429	PHX	0	AA	695	319	128

Seats	Equip	Mkt AI	Flight	Stops	Orig	Dep Time	Hub Time	Time	Arr Time	Dest	Stops	Mkt AI	Flight	Equip	Seats			
143	73W	WN	2161	0	MCI	1050		1233	1829	MEM	0	G4	1006	319	156			
143	73W	WN	2265	0	PDX	1100		1235	1355	ONT	0	WN	985	73W	143			
143	73W	WN	2006	0	LAX	1120		1240	1440	PHX	0	WN	1856	73W	143			
175	73H	WN	2239	0	ABQ	1125		1240	1845	MDW	0	WN	2391	73H	175			
143	73W	WN	2286	0	SAN	1200		1245	1410	SAN	0	WN	609	73W	143			
177	320	G4	508	0	LAS	1130		1250	1400	BUR	0	WN	759	73W	143			
182	32A	NK	352	0	LAS	1140		1255	1454	SEA	0	AS	213	73J	178			
143	73W	WN	859	0	EWR	0955		1256										
143	73W	WN	1398	0	LAS	1200		1300	1850	HOU	0	WN	2360	73H	175			
76	E75	AS	2589	0	PDX	1138		1309										
143	73W	WN	553	0	BUR	1235		1310	1510	SEA	0	WN	2161	73W	143			
143	73W	WN	1283	0	SNA	1245		1315	1923	ORD	0	NK	872	32A	182			
175	73H	WN	1161	0	SEA	1150		1320	1440	LAX	0	WN	2265	73W	143			
143	73W	WN	1939	0	PHX	1215		1320	1916	GDL	0	Y4	903	320	179			
143	73W	WN	553	0	BUR	1235		1330	2135	BWI	0	WN	1664	73H	175			
76	E75	DL	5682	0	LAX	1240		1335										
143	73W	WN	1283	0	SNA	1245		1341	1644	FCA	0	G4	584	320	177			
175	73H	WN	1161	0	SEA	1150		1350	1510	ONT	0	WN	859	73W	143			
143	73W	WN	1939	0	PHX	1215		1400	1530	LAS	0	NK	360	32A	182			
175	7M8	WN	436	0	DEN	1240		1402										
150	320	B6	248	0	LGB	1311		1405										
143	73W	WN	2533	0	PDX	1250		1405	1535	LAS	0	WN	2286	73W	143			
143	73W	WN	441	0	ONT	1320		1410										
143	73W	WN	331	0	LAS	1320		1415	1545	SNA	0	WN	1398	73W	143			
143	73W	WN	16	0	LAX	1325		1415	1603	PDX	0	AS	2644	E75	76			
143	73W	WN	2042	0	LGB	1355		1420										
143	73W	WN	2006	0	LAX	1120		1424										
143	73W	WN	2239	0	ABQ	1125		1425	1600	PDX	0	WN	553	73W	143			
143	73W	WN	2265	0	PDX	1100		1434	1607	LAX	0	DL	5682	E75	76			
143	73W	WN	2239	0	ABQ	1125		1435										
143	73W	WN	2239	0	ABQ	1125		1445	1555	BUR	0	WN	1939	73W	143			
143	73W	WN	2239	0	ABQ	1125		1450	1620	LAX	0	WN	2297	73W	143			
143	73W	WN	2239	0	ABQ	1125		1455										
143	73W	WN	2239	0	ABQ	1125		1500	0730	TER	0	S4	236	330	283			
143	73W	WN	2239	0	ABQ	1125		1500	2110	BNA	0	WN	1161	73H	175			
143	73W	WN	2239	0	ABQ	1125		1505	2105	MDW	0	WN	2256	7M8	175			
143	73W	WN	2239	0	ABQ	1125		1507	1625	LGB	0	B6	447	320	150			
143	73W	WN	2239	0	ABQ	1125		1510	1635	LGB	0	WN	2533	73W	143			

Seats	Equip	Mkt AI	Flight	Stops	Orig	Dep Time	Hub Time	Time	Arr Time	Dest	Stops	Mkt AI	Flight	Equip	Seats
								1515	1645	SAN	0	WN	1927	73W	143
								1530	1730	PHX	0	WN	332	73W	143
175	73H	WN	5514	0	SAT	1400		1540							
143	73W	WN	760	0	BUR	1425		1540							
								1545	1900	ABQ	0	WN	16	73W	143
143	73W	WN	406	0	MDW	1320		1550							
143	73W	WN	2175	0	STL	1340		1550							
								1550	1915	DEN	0	WN	2042	73W	143
182	32A	NK	576	0	LAX	1435		1553							
143	73W	WN	893	0	SAN	1430		1600							
143	73W	WN	1871	0	SNA	1440		1600							
158	M90	DL	51	0	SLC	1500		1600							
344	789	DY	7067	0	ARN	1435		1610							
								1615	1720	BUR	0	WN	761	73W	143
143	73W	WN	417	0	BWI	1330		1620							
338	789	DI	7073	0	LGW	1330		1625							
								1625	1745	LAS	0	WN	406	73W	143
								1625	1750	SAN	0	WN	2175	73W	143
								1625	2145	SAT	0	WN	1736	73H	175
143	73W	WN	310	0	LAX	1515		1630							
								1635	1755	ONT	0	WN	894	73W	143
								1635	1800	SNA	0	WN	1872	73W	143
								1642	0044	BWI	0	NK	576	32A	182
								1645	1932	SLC	0	DL	2943	M90	158
								1655	1815	LAX	0	WN	417	73W	143
143	73W	WN	1390	0	BUR	1555		1705							
								1705	1815	BUR	0	WN	311	73W	143
143	73W	WN	2462	0	PHX	1525		1710							
143	73W	WN	903	0	SJD	1520		1715							
143	73W	WN	577	0	DEN	1535		1715							
143	73W	WN	1052	0	LAX	1605		1720							
143	73W	WN	1768	0	ONT	1625		1730							
178	73J	AS	528	0	SEA	1535		1739							
175	73H	WN	170	0	ATL	1530		1740							
143	73W	WN	1705	0	SAN	1620		1740							
143	73W	WN	291	0	LAS	1615		1745							
								1745	1910	CEC	0	LF	3202	ERJ	74
150	320	B6	348	0	LGB	1634		1747							
								1750	1910	LAX	0	WN	2035	73W	143
								1750	1925	SAN	0	WN	500	73W	143
								1750	2310	DAL	0	WN	2447	73W	143
143	73W	WN	1286	0	BUR	1645		1800							
								1800	1930	SNA	0	WN	1056	73W	143
								1800	2000	SEA	0	WN	2007	73W	143
273	345	DY	7075	0	BCN	1455		1805							
								1805	1930	LGB	0	WN	1769	73W	143
9	PL2	4B	328	0	MCE	1724		1810							
								1810	1315	ARN	0	DY	7068	789	344
143	73W	WN	554	0	PDX	1635		1815							
143	73W	WN	125	0	PVR	1640		1815							

Seats	Equip	Mkt AI	Flight	Stops	Orig	Dep Time	Hub Time	Arr Time	Dest	Stops	Mkt AI	Flight	Equip	Seats
76	E75	DL	5847	0	LAX	1650	1815							
							1815	1935	ONT	0	WN	1706	73W	143
							1815	1950	PDX	0	WN	291	73W	143
							1820	1230	LGW	0	DI	7074	789	338
182	32A	NK	583	0	BWI	1537	1821							
143	73W	WN	1693	0	AUS	1635	1825							
							1829	1946	LGB	0	B6	347	320	150
128	319	AA	775	0	PHX	1645	1834							
							1835	1940	BUR	0	WN	1287	73W	143
							1839	2039	SEA	0	AS	335	73J	178
							1840	2010	SAN	0	WN	170	73H	175
							1845	1928	MCE	0	4B	329	PL2	9
							1845	2020	LAX	0	DL	5847	E75	76
143	73W	WN	1319	0	SNA	1735	1850							
177	320	G4	585	0	FCA	1729	1853							
259	763	HA	24	0	OGG	1050	1855							
143	73W	WN	762	0	BUR	1745	1855							
143	73W	WN	2070	0	BOI	1815	1855							
							1855	2020	LAX	0	WN	554	73W	143
175	73H	WN	1413	0	CMH	1705	1900							
							1900	2030	SNA	0	WN	1428	73W	143
							1900	2145	SLC	0	WN	1693	73W	143
143	73W	WN	1367	0	GEG	1655	1905							
175	73H	WN	449	0	SEA	1655	1905							
143	73W	WN	2081	0	MSY	1640	1910							
143	73W	WN	2442	0	MCI	1735	1910							
175	73H	WN	1353	0	HOU	1715	1915							
143	73W	WN	580	0	SLC	1825	1915							
							1915	2110	PHX	0	AA	775	319	128
							1925	2049	LAX	0	NK	583	32A	182
							1925	2050	LAS	0	WN	1319	73W	143
182	32A	NK	431	0	LAS	1759	1927							
143	73W	WN	2066	0	LAS	1805	1930							
							1930	2120	PHX	0	WN	765	73W	143
							1930	2135	SEA	0	WN	2070	73W	143
76	E75	AS	2563	0	PDX	1735	1932							
143	73W	WN	2125	0	ONT	1825	1935							
							1938	2102	LAS	0	G4	509	320	177
143	73W	WN	416	0	SAN	1820	1940							
							1945	2050	BUR	0	WN	2081	73W	143
							1945	2115	LAX	0	WN	1367	73W	143
							1950	0105	MCI	0	WN	2508	73H	175
							1955	2050	RNO	0	WN	2442	73W	143
							1955	2125	SAN	0	WN	580	73W	143
143	73W	WN	278	0	LAX	1840	2000							
							2000	2115	ONT	0	WN	2468	73W	143
							2000	2130	PDX	0	WN	450	73H	175
							2000	2320	DEN	0	WN	2055	73H	175
143	73W	WN	950	0	BUR	1855	2005							
							2005	1555	BCN	0	DY	7076	345	273

Seats	Equip	Mkt AI	Flight	Stops	Orig	Dep Time	Hub Time	Arr Time	Dest	Stops	Mkt AI	Flight	Equip	Seats	
								2005	2125	LGB	0	WN	1411	73W	143
								2010	2130	SNA	0	WN	1132	73W	143
								2012	2200	PDX	0	AS	2574	E75	76
								2015	2147	LAS	0	NK	466	32A	182
								2020	2330	ABQ	0	WN	286	73W	143
145	319	NK	955	0	LAX	1906		2024							
278	332	HA	48	0	HNL	1215		2025							
								2035	2155	LAX	0	WN	1322	73W	143
143	73W	WN	977	0	SAN	1915		2040							
175	73H	WN	2139	0	LAX	1935		2050							
								2050	2150	BUR	0	WN	951	73W	143
143	73W	WN	1129	0	ABQ	1930		2055							
150	320	B6	167	0	JFK	1720		2059							
143	73W	WN	1242	0	SEA	1855		2105							
143	73W	WN	1466	0	SNA	1945		2105							
143	73W	WN	537	0	BUR	1955		2110							
								2110	2237	LAX	0	NK	658	319	145
								2115	2235	LAS	0	WN	185	73W	143
143	73W	WN	1770	0	LGB	2005		2120							
143	73W	WN	2222	0	ONT	2010		2120							
143	73W	WN	1303	0	RNO	2025		2120							
156	319	G4	1007	0	MEM	1909		2132							
143	73W	WN	2271	0	SAN	2010		2135							
150	320	B6	448	0	LGB	2022		2135							
160	738	DL	2630	0	ATL	1929		2136							
175	73H	WN	2243	0	LAS	2015		2140							
143	73W	WN	1648	0	PHX	1955		2145							
175	73H	WN	1495	0	DAL	2010		2145							
								2145	2305	LAX	0	WN	1242	73W	143
								2145	2315	SAN	0	WN	4767	73W	143
175	73H	WN	1280	0	MDW	1930		2155							
143	73W	WN	2210	0	LAX	2040		2155							
179	320	Y4	902	0	GDL	1951		2200							
143	73W	WN	1386	0	BUR	2045		2200							
								2205	0005	SEA	0	WN	1770	73W	143
								2205	0040	SLC	0	WN	2222	73W	143
								2205	2340	PDX	0	WN	1466	73W	143
150	320	AA	418	0	PHX	2017		2211							
175	73H	WN	375	0	SAN	2055		2215							
								2215	0050	BOI	0	WN	2271	73W	143
								2219	0656	BOS	0	B6	276	320	150
								2220	0020	GEG	0	WN	1648	73W	143
143	73W	WN	283	0	BUR	2120		2230							
								2230	0025	PHX	0	WN	1906	73W	143
								2230	2355	LAX	0	WN	261	73W	143
143	73W	WN	2008	0	SEA	2035		2235							
145	319	NK	437	0	DFW	2100		2236							
228	32B	NK	848	0	DTW	2040		2238							
150	320	B6	1475	0	BOS	1857		2239							
								2240	0005	LAS	0	WN	1386	73W	143

Seats	Equip	Mkt Al	Flight	Stops	Orig	Dep Time	Hub Time	Arr Time	Dest	Stops	Mkt Al	Flight	Equip	Seats
143	73W	WN	966	0	SNA	2125	2245							
143	73W	WN	3837	0	LAX	2140	2250							
							2255	0630	ATL	0	DL	2630	738	160
110	717	DL	2353	0	LAX	2150	2312							
143	73W	WN	1810	0	SAN	2155	2315							
158	M90	DL	2591	0	SLC	2216	2319							
178	73J	AS	982	0	SEA	2120	2327							
175	73H	WN	377	0	PHX	2145	2335							
							2348	0514	DFW	0	AA	484	320	150
175	73H	WN	2314	0	DEN	2215	2350							
175	73H	WN	1354	0	LAS	2225	2350							
159	73H	AS	840	0	OGG	1555	2354							
143	73W	WN	2043	0	PDX	2215	2355							
							2355	0722	DTW	0	NK	849	32B	228
							2359	0830	JFK	0	B6	168	320	150

Schedule Daily Bank Structure Report run on May 29, 2018 in 1 seconds by OAK-JA with parameters:

Marketing Airlines

Trip Origin OAK

Orig/Dest Country/Region

Stage Length 0 To 25000

Stops 0

Seats Between 0 And 999

Show Operating Airlines? No

Include Restricted Flights? Yes

Show Airport Terminals? No

Service Type Passenger (Air - All)

Travel Period on July 11, 2018

Show overlapping markets in both directions? No (Half Alpha)