

**SPACE/USE PERMIT
FOR
SECURITY CHECKPOINT CUSTOMER EXPERIENCE ENHANCEMENT
PROGRAM**

Between

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

And

{PERMITTEE}

Dated

_____, 2016

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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, 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 purpose or purposes and on the terms and conditions hereinafter stated in this Space/Use Permit (“Permit”).

As used in this Permit, the term “Port” shall mean Port of Oakland, which consists of the Port Department of the City of Oakland (“City”), 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. The locations of the definitions of capitalized terms used in this Permit are set forth in Section 42 of Attachment “A” attached hereto and incorporated herein.

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

Permittee Name:

Street Address:

City/State/Zip:

Contact Name:

Contact Telephone:

Contact E-Mail Address:

Contact Fax Number:

Agent for Service Name:

Agent Street Address:

Agent City/State/Zip:

Agent E-Mail Address:

Paragraph B. **Use and Operation.**

Paragraph B.1 **Permitted Uses.** The permitted uses (the “Permitted Uses”) include only the following: the right to provide services and amenities (both directly and through sponsorship and/or partnerships) to enhance the customer experience as mutually agreed upon between Permittee and the Port in the Assigned Space (as defined in Paragraph D below),

as more particularly described in attached Exhibit “5” (the “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.

In the event Permittee desires to use the 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 the 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 the Concession Unit included therein, for any use that does not include a security checkpoint customer experience enhancement 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 C. **Term**. The Term of this Permit shall commence on the date this Permit is executed by the Permittee and the Director and then signed by the Port Attorney, with the date of execution by the Port Attorney, as set forth in the signature block immediately following Paragraph Q below, being the “Commencement Date,” and, unless earlier terminated or canceled as provided in this Permit, shall expire five (5) years from the Commencement Date.

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

Paragraph D.1 Assigned Space – Initial Description. The “Assigned Space” is the space depicted on attached Exhibit “1”. As used in this Permit, Terminal 1 shall mean the existing terminal building at the Airport designated by Port as “Terminal 1”, presently consisting of Buildings M-101, M-102 and M-103; Terminal 2 shall mean the existing terminal building at the Airport designated by Port as “Terminal 2”, presently consisting of buildings M-130 and M-152; and “Terminal 2 Extension” shall mean the improvements and extensions of Terminal 2, known as Buildings 367 and 368. Permittee shall have exclusive use of the Assigned Space, except to the extent otherwise provided in Paragraph I.3(c) below.

This Permit is subject to (1) all easements, covenants, conditions, restrictions, reservations, rights of way, liens, encumbrances and other matters of record, (2) all matters discoverable by physical inspection of the Assigned Space or that would be discovered by an

accurate survey of the Assigned Space, (3) all matters disclosed in the Environmental Responsibilities Exhibit in Exhibit “12”, and (4) all matters known to Permittee or of which Permittee has notice, constructive or otherwise including, without limitation, those shown on attached Exhibit “12”.

Paragraph D.2 [Intentionally Omitted]

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.

Paragraph E. **Consideration.** In consideration for the rights granted hereunder by Port, Permittee hereby agrees to pay to Port monthly, in advance and without previous demand, on the first (1st) day of each and every calendar month during the Term hereof, one twelfth (1/12th) of the Minimum Annual Guaranty. In the event the Rent Commencement Date 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 Minimum Annual Guaranty shall be due on or before the Rent Commencement Date. 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 are sometimes collectively referred to herein as “Rent”.

Paragraph E.1 Minimum Annual Guaranty.

The Minimum Annual Guaranty for the Concession Unit is shown on said Exhibit “5 (the “Minimum Annual Guaranty”).

Paragraph E.2 Percentage Of Gross Receipts. In addition to the Minimum Annual Guaranty payable under Paragraph E.1 hereof, Permittee shall also pay to the Port for the Term hereof not later than thirty (30) days after the end of each calendar month during the Term

of this Permit, commencing after the end of the calendar month that contained the Rent Commencement Date, a sum in the amount, if any, by which the Percentage Fees due through the end of the previous calendar month exceeds the installments of the Minimum Annual Guaranty payable to the Port through the end of such month. The percentage of Gross Receipts derived from Permittee's business at the Airport ("Percentage Fees") payable by Permittee is shown on said Exhibit "5". Permittee shall subtract the amount of the monthly payment of the Minimum Annual Guaranty from the Percentage Fees payable to Port each month, and only the amount, if any, by which the Percentage Fees exceed the monthly payment of the Minimum Annual Guaranty shall be paid to Port as Percentage Fees.

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

(a) The Rent Commencement Date is the earlier of the date on which the Permittee's Work in the Concession Unit, as described in Section 1(2) of Attachment "A" to this Permit, is substantially complete and Permittee opens for business therein, or the Latest Opening Date for the Concession Unit, as set forth on attached Exhibit "5" (the "Latest Opening Date"). After the Rent Commencement Date has occurred, Permittee shall, promptly after Port's written request, execute and return to the Port a written acknowledgment of the Rent Commencement Date.

(b) In the event Permittee fails to open the Concession Unit for business on or before the Rent Commencement Date, Port will incur substantial damages, the exact amount of which are extremely difficult to fix. Accordingly, for each day after the Rent Commencement Date until the day on which Permittee initially opens the 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 the Concession Unit for business on or before the Rent Commencement Date. In the event the Concession Unit is not open for business on the date that is sixty (60) days after the Rent Commencement Date, Port shall have the option to terminate this Permit, exercisable by written notice to Permittee given before the Concession Unit is open for business. In that event, 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. Permittee shall maintain with the Port a performance deposit (the "Performance Deposit") in the initial amount set forth on Exhibit "5", 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.

Paragraph G. Insurance Requirements. Permittee shall maintain the following minimum insurance coverages in accordance with the requirements of Paragraph in force, commencing on the date provided in Section 17(1) of Attachment "A" to this Permit and thereafter during the Term of this Permit, Workers Compensation/Employer's Liability, Comprehensive or Commercial General Liability Occurrence Form (CGL) Insurance insuring Bodily Injury and Property Damage Liability, and such other insurance required by this Paragraph G and Section 17 of Attachment "A" hereto, including to this Permit:

- Business Automobile Liability \$53,000,000 combined limit for bodily injury and property damage, each accident, except \$5,000,000 for vehicles operating in the South Field, the Aviation Operating Area ("AOA"), or any active airfields of the Oakland International Airport.

	<input type="checkbox"/>	Aircraft Liability	\$5,000,000 combined limit for bodily injury and property damage, each accident
	<input type="checkbox"/>	Aircraft Hangarkeepers' Liability	\$5,000,000 combined limit for bodily injury and property damage, per occurrence and aggregate
	<input checked="" type="checkbox"/>	Commercial General Liability	\$ 53 ,000,000 combined limit for bodily injury and property damage each occurrence and \$ 53 ,000,000 annual aggregate
	<input checked="" type="checkbox"/>	Fire Legal Liability	\$100,000 any one fire sublimit to Commercial General Liability above
	<input checked="" type="checkbox"/>	Premises or Operations liability	Included in Commercial General Liability above
	<input checked="" type="checkbox"/>	Completed Operations and Products Liability	Included in Commercial General Liability above
	<input type="checkbox"/> <input checked="" type="checkbox"/>	Contractor's Pollution Liability	\$1,000,000 per occurrence and annual aggregate
	<input checked="" type="checkbox"/>	Workers Compensation	Statutory limits, as required by the laws of California.
	<input checked="" type="checkbox"/>	Employers' Liability	\$1,000,000 each accident, \$1,000,000 bodily injury each employee, and \$1,000,000 policy limit for bodily injury by disease
	<input type="checkbox"/> <input checked="" type="checkbox"/>	Employee Dishonesty Bond	\$1,000,000 blanket limit covering all employees. Loss Payee: The City of Oakland, a municipal corporation, acting by the through its Board of Port Commissioners.
	<input checked="" type="checkbox"/>	Professional (Errors and Omissions) Liability	\$1,000,000 each claim and annual aggregate
	<input checked="" type="checkbox"/>	All risk property insurance covering Permittee's additions, alterations to the leased space (including builder's risk), Permittee's furniture, fixtures, equipment and loss of rents <u>where applicable</u>	Replacement cost value of the property covered and 12 months loss of rents

The City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, Port of Oakland, its commissioners, officers, agents and employees shall be named as additional insureds on all liability policies except for Professional (Errors and Omissions) Liability. All policies shall be primary and non-contributory. All policies except for Professional (Errors and Omissions) Liability shall provide waiver of subrogation in favor of additional insureds.

Written binders are acceptable as interim evidence. Operations or occupancy may be interrupted without proper evidence. Send certificates to:

Port of Oakland
Attn: Risk ~~Manager~~ Management Department
530 Water Street
Oakland, CA 94607
Fax #: 510-627-1626
Email: risktransfer@portoakland.com

Evidence of insurance coverage required by this Paragraph G or by Section 17 of Attachment “A” to this Permit is to be kept on file by Permittee with Port in accordance with the requirements of Section 17 of said Attachment “A”.

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

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

(a) At any time during the Term of this Permit, the Port may 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 90 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”), the “Maximum Reimbursement Amount,” if any, 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 90 days prior to the Target Effective Date. The “Maximum Reimbursement Amount” shall be an amount equal to the unamortized costs of Permittee’s improvements to the original Assigned Space. The basis of the amortization shall be straight-line depreciation over the lesser of the useful life of such improvements or the Term of the Permit (without taking into account any extensions) or the depreciation method then currently in use by Permittee, whichever results in the lesser unamortized amount. The foregoing notwithstanding, Permittee acknowledges that if it uses an automated machine to provide the permitted services, the Port shall have the right to request that said machine(s) be relocated at Permittee’s expense upon 30 days’ notice.

(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, by giving written notice thereof to Port within thirty (30) days after the Change Notice is given, terminate this Permit on the Target Effective Date. In the event Permittee timely gives such notice of termination, then this Permit shall terminate on the Target Effective Date, and on such date, Permittee shall surrender the Assigned Space in the condition required by Section 20 of Attachment “A” to this Permit. Unless this Permit has been terminated by

Permittee pursuant to the foregoing provisions of this Paragraph H(1)(b), then 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. Unless this Permit has been terminated by Permittee pursuant to the foregoing provisions of this Paragraph H(1)(b), then in the event of a Required 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.

(c) Permittee acknowledges and agrees that it shall not be entitled to any relocation assistance, payment or other benefits pursuant to the provisions of Title I, Division 7, Chapter 16 of the California Government Code (Sections 7260, et seq.) or pursuant to 42 USC §§ 4601 – 4655 or pursuant to any other laws or regulations with respect to any relocation of its business or activities under this Paragraph H, other than receipt of the Maximum Reimbursement Amount as provided herein, and Permittee hereby waives and releases to Port all rights, if any, to which Permittee may be entitled under said provisions or other law or regulations.

(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) above. 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 (with an auditor of its choosing) 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) With respect to any Required Relocation or Assigned Space Change, unless this Permit has been terminated by Permittee pursuant to the foregoing provisions of this Paragraph H, the applicable Minimum Annual Guaranty shall not be adjusted.

(f) In the event of a Required Relocation or Assigned Space Change, unless this Permit has been terminated by Permittee pursuant to the foregoing provisions of this

Paragraph H, 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 is considering adding 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 UNIT.**

Paragraph I.1 Management.

(a) Service Contracts and Sublicenses. All service contracts, as deemed necessary by Port to maintain operation of the Concession Unit, 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 contracts pertaining to the Concession Unit, and if Port exercises this option, Permittee shall have no obligation under such service contracts that arise after the date of such assignment. Permittee shall deal at arm's length with all third parties, and Permittee shall serve the Port's interests at all times.

(b) Quality Assurance Audits. [Intentionally Omitted]

Paragraph I.2 Personnel.

(a) Manager. The management, maintenance, and operation of 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 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.

(i) Adequate and Competent Staff. Permittee shall employ a sufficient number of properly trained personnel to manage and operate the Assigned Space at its maximum capacity and efficiency at all times that the Concession Unit is opened for business. All personnel shall be clean, neat in appearance and attired in proper uniform, if required, with name tag clearly visible. Permittee must ensure that all employees can adequately communicate with customers and are professional and courteous in interactions with customers.

(ii) English Language. Permittee understands and agrees 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.

(iii) 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 Assigned Space 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 this 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.

(iv) Port Not Liable for Employment Issues. Nothing contained in this Permit shall be deemed or construed by the parties hereto or by any third party as creating an employment, agency, joint venture or partnership relationship between Port and Permittee. 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, 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.

(b) Port Living Wage Requirements. Permittee shall comply with all of the provisions of Section 728 of the Charter of the City and the Port's living wage ordinance and regulations, as amended (the "Living Wage Law").

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. Port has foremost in mind providing the air traveler and the public with facilities and service of first class quality, commensurate with the trade accustomed to using facilities of this kind. Permittee shall ensure that a decor is established and maintained substantially in accordance with Port design and facility plans, that the Concession Unit 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 the 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 amenities, and that Permittee shall keep in good working order and condition.

If Port identifies any problem areas with respect to operation of the Concession Unit, including without limitation functionality of Permittee's or Permittee's partners (if any) furnishings, fixtures or equipment, Permittee shall be notified in writing by Port and shall correct, or cause to be corrected, such problem or problems within one (1) day, unless a longer period of time is required, but in no event shall the time-period extend beyond ten (10) 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.

Port's Rights. All products and other items used in Permittee's operations shall conform in all respects to all applicable Laws and the Airport Rules, Policies and Regulations. Port reserves the right, to the maximum extent permitted by Law, to approve or disapprove all products, product displays, and signage. Permittee hereby affirms that Port, in its sole discretion, has the absolute right to require that Permittee discontinue the offering of any product or service 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) day after transmission of written notice from Port constitutes a default under Section 19 of Attachment "A" to this Permit.

Paragraph I.4 **Advertising Contents.**

(a) Subject to (i) the rights of the Port with respect to the Assigned Space as set forth in this Permit and (ii) the restrictions set forth below, Permittee shall have exclusive, complete and sole control over the advertising copy to be placed on the Advertising Displays. The rights of Permittee, as aforesaid, are subject to the following:

(b) Permittee shall provide Port with a copy of all proposed advertising copy at least five business days prior to its installation in the Assigned Space. Permittee shall insure that all advertising that it accepts for the Assigned Space conforms to standards of good taste which generally prevail in the placing of commercial advertising in public places. Permittee shall not display or otherwise produce or publish any of the following types of advertising at the Assigned Space:

(i) Advertising which is obscene or which is patently contrary to prevailing standards of adults in the greater metropolitan area of the City of Oakland as to suitability for display to a captive audience which include minors;

(ii) Advertising which is deceptive, false or misleading in any way;

(iii) Advertising which proposes an illegal transaction;

(iv) Any advertising which is illegal under applicable Federal or California law, including without limitation, under California Business and Professions Code Sections 17200 and 17500;

(v) Advertising of (x) any other airport located within a radius of 200 miles from the Airport, or (y) any automobile parking lot or automobile parking garage that is not located on the Airport.

The Port reserves the right, in its reasonable discretion, to further restrict or prohibit the content of advertising copy in furtherance of any legitimate, substantial governmental interest. The Port shall have no liability to Permittee for requiring Permittee to refuse or remove advertising copy on Port's exercise of its rights under this paragraph.

The Director may disapprove any Advertising Display submitted for approval by Permittee upon determining that the structure or placement of such display would interfere with or impede the use of the Terminals for Airport purposes, including, without limitation, the Port's use or operation thereof, the convenience and comfort of the traveling public within the areas adjacent to such Advertising Displays, or that the structure or placement of any such display would be incompatible with the design and décor of the Terminal or that such Advertising Display would interfere unreasonably with other permitted uses or activities within the Terminals. The Director may disapprove any advertising copy submitted for approval by Permittee upon determining that such advertising copy is prohibited by the provisions contained herein.

(i) In the event that the Director determines that a proposed advertisement or Advertising Display does not meet the advertising standards set out in this Permit, the Director shall provide Permittee with written notice of the specific reasons for the rejection of the proposed advertisement or Advertising Display. Permittee shall notify its Advertiser within seven (7) days of the Port's rejection of the reasons for the rejection of the proposed advertisement or Advertising Display.

(ii) In the event that the Director rejects a proposed advertisement on the grounds that it is either deceptive or misleading, Permittee shall notify its Advertiser within seven (7) days of the Port's rejection and request substantiation from its Advertiser of the claims made in the proposed advertisement. Permittee shall promptly submit any material submitted to substantiate such claims to the Director for a determination.

(iii) Permittee's contracts with Advertisers for advertising in the Assigned Space shall in no way bind the Port as to the content of such advertising nor shall such contracts obligate the Port to provide or approve Advertising Displays for Permittee's Advertisers, except as may be expressly provided herein. All such advertising within the Assigned Space shall be subject to approval of the Director as to content and form pursuant to the standards set forth in this Permit and all of Permittee's agreements with Advertisers shall so state.

(iv) The Director shall have the absolute right and authority to remove any Advertising Displays which are placed anywhere other than in an Assigned Space, or which were not submitted for Director's approval, or which are not in accordance with the displays submitted for Director's approval, or which are prohibited in accordance with the provisions of this Permit. Permittee shall pay or reimburse the Port the cost of removing any

such Advertising Displays if invoiced by Port, and such invoice shall be treated the same as other Rent due under this Permit.

Paragraph I.5 [Intentionally Omitted.]

Paragraph I.6 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, and any quality assurance audits (conducted pursuant to Paragraph I.1(b)), 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 the 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.

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

Paragraph I.7 [Intentionally Omitted.]

Paragraph I.8 [Intentionally Omitted.]

Paragraph I.9 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.

Paragraph I.10 [Intentionally Omitted.]

Paragraph J. [Intentionally Omitted.]

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) days of its receipt of written notice of the Administrative Fee, a written request for a review of such Administrative Fee, to the Airport Assistant Director of Aviation pursuant to Article 11.3 of Port Ordinance No. 4255 (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 of Aviation may reasonably adjust upward the amount of the Administrative Fees set forth in Exhibit 7 by providing Permittee six 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.** Except as otherwise expressly provided on attached Exhibit "8", Permittee agrees to comply with all of the terms of Permittee's Proposal dated _____, 20__ (the "Proposal"), a copy of which is incorporated herein and which forms a part of this Permit; and provided further, 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's"). 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 substantially the form set forth in Exhibit "10A" or another form acceptable to the Port, describing the Gross Receipts in such calendar quarter of each such ACDBE described on attached Exhibit "9" (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) Intentionally Omitted.

(c) Permittee will have no right to terminate an 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 ACDBE's 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.

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

NOTE: Please also initial page
A-70 of Attachment "A" and Page 2 of Exhibit
"12".

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 _____, 2016.

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

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, before me, _____
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared _____
Name(s) of Signer(s)

- checkbox personally known to me
checkbox proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature of Notary Public

Place Notary Seal Above

-----OPTIONAL-----
Though the information below is not require by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

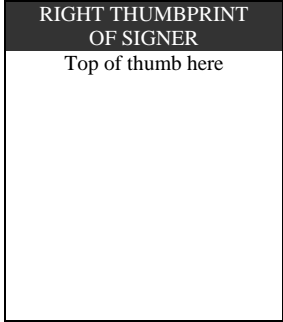
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- checkbox Individual
checkbox Corporate Officer - Title(s): _____
checkbox Partner -checkbox Limited checkbox General
checkbox Attorney in Fact
checkbox Trustee
checkbox Guardian or Conservator
checkbox Other: _____

Signer is Representing: _____



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) Permittee must, at Permittee’s sole cost and expense, 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 subsection 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. Permittee must diligently complete Permittee’s Work and open the Concession Unit for business on or before the Rent Commencement Date, 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.

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 review within 60 days from the Commencement Date, for all Alterations.

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

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

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 the Assigned Space prior to the Latest Opening Date for the Concession Unit, as set forth on attached Exhibit “5”.

(b) The hard construction costs of Permittee's Work in the Concession Unit must equal or exceed the Minimum Investment Amount of _____ Dollars (\$_____) per square foot, based on the size of the Concession Unit as shown on attached Exhibit "5". 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 Minimum Investment Amount shall not exceed twenty percent (20%) of the 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, attorney's 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 Minimum Investment Amount for the Concession Unit, then Permittee must pay Port within sixty (60) days of substantial completion of Permittee's Work in such Concession Unit 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 such Concession Unit. 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 such Concession Unit, plus interest thereon at the rate provided in Section 26 below from the date of substantial completion of Permittee's Work in such Concession Unit 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 Airport, the provisions of the Port's tenant improvement guide or if none has been adopted by the Port, and, if and to the extent adopted by the Port, in accordance with tenant improvement standards adopted by the Port (such guide or standards are hereafter the "TI Guide"), 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 Airport's Design Review Committee 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.

Permittee warrants that all construction shall be in conformity with the Work Letter, the latest edition of the TI Guide, 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 also warrants that the proposed Alterations, 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.

Permittee shall establish to the reasonable satisfaction of the Port, as a prerequisite to the issuance of a permit from the Port for any building permit for the Assigned

Space, that Permittee is in compliance with the Port's Non-Discrimination and Small Local Business Utilization Policy, as amended from time-to-time, with respect to such permit.

(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 builder's 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 hereunder 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, with interest as provided in Section 26 below, 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.

Section 2. **Intentionally Omitted.**

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 PERMITTEE IS OCCUPYING THE ASSIGNED SPACE 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) except as expressly provided in Section 32 hereto, the presence of Toxic Materials (as defined in Section 32 below) 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 or would have knowledge with due investigation. 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 Sections 1941 and 1942 or any successor statute thereto and any other similar Law now or hereafter in effect. In addition, if it becomes necessary during the Term of this Permit, as reasonably determined by the Manager of Airport Properties, Permittee will, at its own expense, redecorate and paint fixtures and the interior of the Assigned Space and improvements, and replace furniture, fixtures, equipment, wall, floor and window coverings, or other furnishings in the Concession Unit. 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 Airport 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 Airport Properties or his or her designee. Permittee shall not permit a work of visual art, as defined in 17 USC § 101, or any work of fine art, as defined in the California Art Preservation Act (California Code Section 987, et seq.), 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 under applicable provisions of California law, 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, any agency, department or bureau of the City, or other governmental authority having jurisdiction.

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 the 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. 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.

(4) 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 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) Without limiting any other provision herein, Permittee shall not: (a) 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; (b) commit or suffer to be committed any waste upon the Assigned Space; (c) use, or allow the Assigned Space to be used, for any improper, immoral, unlawful or objectionable purpose; (d) 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; (e) use any advertising or promotional medium that may be seen, heard, or otherwise experienced outside the Assigned Space (such as searchlights, barkers or loudspeakers); (f) 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 (g) do or permit to be done anything in any way tending to injure the reputation of Port or appearance of the Airport.

(6) 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) 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) Permittee shall comply with the following additional requirements in the operation of the Assigned Space:

Recycling: Provide collection receptacles and storage capacity to recycle paper, corrugated cardboard, glass, plastics, and metals.

Food Waste: Participate in the Port's Food Waste Composting program.

Cleaning: Comply with the approved products and practices established by the Port's non-toxic cleaning policy.

Supplies: Utilize recycled content materials for serving and packaging. Paper products (napkins, towels, toilet paper, etc.) shall have a post-consumer recycled content of at least 30%.

(9) Permittee and Port agree that a primary purpose and an essential consideration for this Permit is for the Port to promote, facilitate, aid and enhance commerce, aviation, shipping and navigation in the Port area, by providing for the development and operation of the Assigned Space pursuant to this Permit. Permittee and the Port agree that consistent with that primary purpose and essential consideration, Permittee under this Permit has an affirmative obligation during the entire Term of the Permit to use the Assigned Space for the purposes specified. Permittee acknowledges that this Permit is a part of the Port's overall planning efforts to better promote and accommodate commerce, aviation and navigation in the Port and that the terms and conditions specified herein concerning use of the Assigned Space are and will in the future be an integral part of the Port's overall planning. Permittee further acknowledges that any uses of the Assigned Space inconsistent with the Permitted Uses specified herein will contravene the primary purpose of this Permit and interfere with the promotion and accommodation of commerce, aviation and navigation in the Port Area.

Section 5. **Signage and Advertising.**

Permittee may not install any signage outside its Assigned Space, or any signage inside its Assigned Space that is intended to be primarily visible from outside a Terminal building. Any signage that is not prohibited by the first sentence of this Section 5 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.

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

Section 6. **Labor Peace Assurance.**

As a material term, covenant and condition of this Permit, Permittee agrees to assure labor peace ("Labor Peace Assurance") so that, during the term of this Permit, there shall be no picketing, work stoppages, boycotts or any other economic actions by or involving personnel employed in the Concession Operations that interfere with or disrupt the Concession Operations ("Labor-Related Disruption"). The occurrence of any Labor-Related Disruption, as determined by the Port in its sole discretion, shall be a default under this Permit. For the purpose of this Section 6, "Concession Operations" shall mean any work required to be done or services required to be performed under this Permit for the Permitted Uses of the Assigned Space.

The grant by the Port of this Permit is conditioned and contingent upon the Permittee having entered into a Labor Peace Agreement prior to any deadline established at the sole discretion of the Port for the execution of this Permit. A "Labor Peace Agreement" shall mean a valid agreement by and between the Permittee and a labor organization that represents or

seeks to represent the Permittee's employees, which contains a provision prohibiting the labor organization and its members from engaging in, causing or encouraging any Labor-Related Disruption.

The Permittee may use any available legal means, including securing valid agreements with labor organizations, in order to assure the Port that there will be no Labor-Related Disruption during the term of this Permit. However, nothing in this Permit shall be construed to imply that any party other than the Permittee is required by the Port to enter into any labor agreement.

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 at the Airport 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 or otherwise on the Airport 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 of Port 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 the Concession Unit with the utilities service at the utility connection point as described on attached Exhibit “5”.

Permittee shall be responsible for obtaining and paying for all utilities (including, without limitation, electricity, water, telephone, wireless access fee, and sewer), and for any associated charges, used or consumed in the Assigned Space, and 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 a Port supplied electrical meter. Permittee shall also be obligated to pay any Port electrical inspection fee.

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 forcible 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 means of 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.

(3) Permittee agrees timely to submit to appropriate taxing authorities all required reports, documents and notices with respect to its use, occupancy or ownership of the Assigned Space or any goods, merchandise, fixtures, appliances, equipment or other property therein or used in connection with the Assigned Space. Permittee shall concurrently provide to the Port a full and complete copy of all such reports, documents and notices submitted to said taxing authorities, and within 15 days after the request of the Port, Permittee shall provide to the Port at no cost to the Port copies of all such reports, documents and notices not previously transmitted to the Port.

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

(1) Permittee covenants and agrees to observe and 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. The Port shall not have any duty or obligation to Permittee to enforce the Airport Rules, Policies and Regulations or the terms and conditions in any permit, lease or other agreement against any third party, and the Port shall not be liable to Permittee for violations of same by third parties, their employees, contractors, agents, invitees or licensees. Permittee further covenants and agrees to observe and 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 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 in any way 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 Section 32 below).

Without limiting the generality of the foregoing, to the extent Permittee's operations or activities or the operations or activities of any sublicensee, 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.

If any governmental license or permit, other than a certificate of occupancy, shall be required for the proper and lawful conduct of Permittee’s business at the Airport, Permittee shall procure and maintain such license or permit and submit the same for inspection by the Port. Permittee at all times shall comply with the terms and conditions of each such license or permit.

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 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) “**Gross Receipts,**” as used herein shall mean all receipts derived by Permittee or any agent of Permittee from its business at the Airport, excluding only (a) commission actually paid by Permittee to a recognized advertising agency or media buying service that has a contractual relationship with an advertiser requiring the payment of such commissions; (b) fees charged by Permittee to an advertiser for capital or maintenance inventory where the standard fees charged are not discounted as a result of this separately stated fee; and (c) sales or use tax levied by Port, the City, the County of Alameda or the State of California, or pursuant to Federal law, and actually paid by Permittee to the taxing authority in connection with its operations in the Assigned Space authorized by this Permit. Gross Receipts shall be determined on an accrual basis whether or not actually received. Gross Receipts shall include all cash and the fair market value of any and all other consideration derived from such use of the Assigned Space, including but not limited to bonusing or discounts at other advertising outlets in consideration for advertising at the Airport and bonusing or discounting advertising at the Airport in consideration for advertising at any other outlet and including fee income for telephone, brochures, technology and similar services provided by Permittee. Except as expressly provided herein, no cost or expense shall be deducted in computing Gross Revenue.

(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. 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. Notwithstanding the preceding sentence, it is understood that Permittee shall be entitled to set pricing for advertising within the Assigned Space as Permittee shall reasonably determine in the exercise of Permittee’s business expertise, and that from time to time when Permittee has been unable to obtain replacement advertising, Permittee may decide to permit advertisements to continue to be displayed at no charge after the expiration of a particular advertising agreement (“**Overriding**”). In such event, Permittee will not be obligated to include the fair market value of such Overriding in Gross Receipts; provided, however that (i) Permittee shall not permit such Overriding in exchange for any other consideration whatsoever; (ii) Permittee shall have notified the Port that it has been unable to obtain replacement advertising; and (iii) Permittee has offered the Port the opportunity to have Port-related advertising copy displayed within the Terminals in lieu of Overriding and the Port has declined to the offer, which offer shall be deemed reoffered to the Port every thirty (30) days during any period of Overriding. If the Port elects to have Port related advertising displayed within the Assigned Space pursuant to this clause, the Port will pay all cost of the Port related advertising. The Port further agrees that Permittee is entitled to displace such Port advertising at any time that Permittee is able to obtain paid advertising. If Permittee shows the percentage of Gross Receipts payable to Port as a separate charge to Permittee’s customers, then this separate charge must also be included in Permittee’s Gross Receipts. All computations in the determination of Gross Receipts shall be made in accordance with the terms of this Permit.

(3) On or before the fifteenth (15th) day of each calendar month, Permittee shall deliver to Port a report and account, with a copy in electronic form, or in such other manner as the Port shall direct, and in such form and with such detail as Port may reasonably request, setting forth Permittee’s Gross Receipts during the preceding calendar month, together with payment of the Percentage Fees due by reason thereof. If Permittee shall fail to provide

Port by the tenth (10th) day of a calendar month with such Sales Report, 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. 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. Any overpayment of Percentage Fees shall be credited by Port against the next Rent payable by Permittee to Port. The Permittee's obligations under this subsection shall survive the expiration or earlier termination of the term.

(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. 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 four (4) years after the calendar year to which such books and records pertain, whether or not the term of the Permit has expired or been earlier terminated; provided, however, that if prior to the expiration of such four (4) 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 of the Permit 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 of the Permit 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 fifty dollars (\$50.00), 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. The delinquency charge, liquidated damages and audit costs are in addition to all other remedies Port may have or otherwise by applicable Laws with respect to any payment that has become due and has not been paid. The Permittee's obligations under this subsection shall survive the expiration or earlier termination of the term of the Permit, to the extent provided herein.

(5) 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. All cash must be kept in a secure location and must not be left unattended any time during the day. 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.

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), 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 (including an allocation of the costs attributable to the work of in-house counsel) 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 indemnified parties (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, subtenants, invitees, vendors, suppliers or licensees, regardless of where the damage, destruction, injury or death occurred, unless such liability, Losses, 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 or violated 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 this Permit with respect to any acts or omissions by Permittee.

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 solely 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 any failure or interruption of such utility service. 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.

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 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. **Insurance Requirements.**

(1) Permittee shall, at its own cost and expense, purchase and maintain throughout the Term of this Permit the following insurance:

(a) Business Automobile Liability Insurance. Such insurance shall cover liability for all owned, non-owned and hired automobiles, trucks and trailers and shall provide coverage, with a combined single limit of not less than ~~FiveThree~~ **FiveThree** Million Dollars (\$~~53,000,000.00~~ **53,000,000.00**) each accident for bodily injury and property damage, except \$5,000,000 for vehicles operating in the South Field, the Aviation Operating Area (“AOA”), or any active airfields of the Oakland International Airport. Such insurance shall include as additional insureds the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, Port of Oakland, its commissioners, officers, agents and employees; such insurance also shall contain a waiver of subrogation in favor of such additional insureds, and shall be primary insurance; no insurance or self-insurance of the Port shall be called upon to contribute to a loss. If Permittee’s insurance company gives Permittee the right to select or recommend counsel, Permittee will select or recommend counsel reasonably acceptable to the Port.

(b) Aircraft Liability. Not applicable.

(c) Aircraft Hangarkeepers’ Liability. Not applicable.

(d) Commercial General Liability Insurance. Such insurance shall not be less than that provided in ISO Commercial General Liability Insurance occurrence form. The limits of such insurance shall not be less than ~~FiveThree~~ **FiveThree** Million Dollars (\$~~53,000,000.00~~ **53,000,000.00**) per occurrence and annual general aggregate, ~~FiveThree~~ **FiveThree** Million Dollars (\$~~53,000,000.00~~ **53,000,000.00**) products and completed operations aggregate, ~~OneThree~~ **OneThree** Million Dollars (\$~~13,000,000.00~~ **13,000,000.00**) personal and advertising injury and One Hundred Thousand Dollars (\$100,000.00) fire legal liability. Coverage shall include premises and operations liability, blanket contractual liability, broad form property damage and independent contractors’ liability. Liquor liability must also be included if liquor is served or sold. Such insurance shall include as additional insureds the City of Oakland,

a municipal corporation, acting by and through its Board of Port Commissioners, Port of Oakland, its commissioners, officers, agents and employees, with additional insured coverage at least as broad as that provided in ISO endorsement CG 20 10 11/85, and shall be primary insurance; no insurance or self-insurance of the Port shall be called upon to contribute to a loss. Such insurance shall have a cross liability/separation of insureds provision and a waiver of subrogation in favor of the Port, its commissioners, officers, agents and employees. If Permittee's insurance company gives Permittee the right to select or recommend counsel, Permittee will select or recommend counsel reasonable acceptable to the Port.

(e) Contractor's Pollution Liability – Not applicable~~Intentionally Omitted.~~

(f) Workers Compensation and Employers Liability Insurance. Such insurance shall be statutory workers compensation coverage and also include employer's liability insurance in the amount of at least One Million Dollars (\$1,000,000.00) per accident, One Million Dollars (\$1,000,000.00) bodily injury each employee and One Million Dollars (\$1,000,000.00) policy limit for bodily injury by disease. Such insurance shall contain a waiver of subrogation in favor of the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, Port of Oakland, its commissioners, officers, agents and employees.

(g) Professional (Errors and Omissions) Liability Insurance. Such insurance shall not be less than \$1,000,000 each claim and in annual aggregate. Such insurance shall remain in place until at least 2 years after completion and acceptance of the Services.

(h) Employee Dishonesty Bond. ~~Such insurance shall not be less than \$1,000,000 blanket limit. Such insurance shall cover all employees. Such insurance shall name the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners as Loss Payee.~~ Not applicable

(i) All risk property Insurance – Such insurance shall include all risk, 100% replacement cost coverage for Permittee's additions, alterations to the Assigned Space, Permittee's furniture, fixtures, equipment including coverage for any increased costs of construction resulting from changes in applicable building codes and regulations and include coverage for 12 months loss of rents where applicable. Such insurance shall include the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners as additional insured and loss payee as their interests may appear; such insurance also shall contain a waiver of subrogation in favor of such additional insured, and shall be primary insurance; no insurance or self-insurance of the Port shall be called upon to contribute to a loss. Additional property insurance requirements are as follows:

(i.1) Permittee shall be required to maintain builder's risk insurance during construction of all improvements (additions/alterations) where applicable. Each policy shall be subject to the approval of Port, which approval shall not be unreasonably withheld.

(ii.2) Unless Permittee's policy of property insurance contains a rental income endorsement insuring the payment of the Minimum Monthly Payment for a period of not less than twelve (12) months, Permittee shall also be required to maintain business interruption insurance insuring that the Minimum Monthly Payment will be paid to Port for a period of not less than twelve (12) months if the Assigned Space is destroyed or rendered inaccessible by a risk insured against by the policy or policies of property insurance Permittee is required to maintain under subsection (hi) above. Said insurance shall provide that the insurer waives its rights of subrogation against Port. Permittee shall maintain on file with Port, commencing with the Commencement Date and thereafter throughout the Term hereof, an endorsement or endorsements evidencing said rental income or business interruption insurance.

(2) 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 lease when leased property is destroyed and agree that any such event shall be governed by the terms of this Permit.

(3) Independent Contractors. Permittee shall also require its independent contractors to maintain Business Automobile Liability, Commercial General Liability, Workers' Compensation and Employers' Liability and Contractor's Pollution Liability, if applicable, as described above and provide evidence reasonably acceptable to Port that such contractor has complied with the provisions of this Section 17.

(4) Permittee hereby waives any right which it may have against Port on account of any loss or damage occasioned to Permittee arising from any risk covered by the insurance that Permittee is required to carry under this Section 17 or covered by any other insurance maintained by Permittee insuring the Assigned Space, its contents, or any improvements thereto.

(5) All policies of insurance required by this Permit to be maintained by Permittee or any sublessee shall be issued by insurance carriers whose financial condition is acceptable to Port, but in no event less than an A.M. Best Guide rating of A VII or better.

(6) Cancellation or Reduction of Coverage. The Permittee or its agent shall provide at least thirty (30) days' prior written notice to Port (except ten (10) days prior written notice shall be allowed for non-payment of premium) and seven (7) days' notice shall be allowed for cancellation of war risk) in the event any of the above required insurance is suspended, voided, canceled, or reduced in coverage or in limits.

If Permittee fails to provide the required insurance certificates and policies, the Port may without further notice and, at its option, (1) exercise the Port's rights under the terms of the Agreement or any other rights available to the Port; (2) procure such insurance coverage at Operator's expense and Permittee shall promptly reimburse the Port for such expense and (3) interrupt or limit Permittee's operations or occupancy.

(7) Proof of Coverage. Prior to commencing the services under this Agreement and annually thereafter, Permittee shall furnish a certificate of insurance, satisfactory to the Port of Oakland Risk Management Department, evidencing that the above insurance is in

force in compliance with the terms of these insurance requirements, placed with insurance carriers financially acceptable to the Port, stating the name(s) of the insurance carriers, policy numbers, dates of expiration and limits of liability. In addition to the certificate of insurance, Permittee shall provide the Port with copies of the actual insurance policies if requested by the Port of Oakland at any time. The Port reserves the right to approve or disapprove of any deductible or self-insured retention under any insurance required by the Agreement.

Written binders may be acceptable as interim evidence of insurance. Send certificates to:

Port of Oakland
Attn: Risk Management Department
530 Water Street
Oakland, CA 94607
Email: risktransfer@portoakland.com

(8) Deductibles and self-insured retentions shall be permitted only at Permittee's written request and upon the prior written approval of the Port's Risk Manager, which approval may be granted or withheld in the Port's sole and absolute discretion and shall be subject to the following covenants and conditions:

(a) Permittee agrees that for any such deductible or self-insured retention amount, Permittee shall provide to the Port defense and indemnification at least equal to the defense and indemnification to which the Port would be entitled as an additional insured had Permittee provided the above-specified coverages respectively under Insurance Services Office form number GL 0001, and Insurance Services Office form numbers CA 0001 and CA 0404, or such other successor forms as may be deemed appropriate by the Port's Risk Manager from time to time, as evidenced by a written notice from Port to Permittee. It is understood that Permittee's agreement to provide such defense and indemnification to the Port includes cases where such defense and indemnification would be required under said insurance policy forms for claimed loss, damage, injury or death which was caused solely by the active or passive negligence or other wrongful conduct of the Port.

(b) Permittee agrees that it shall be reasonable in all cases for the Port to condition its approval of any deductible in excess of the first Twenty Five Thousand Dollars (\$25,000.00) ("unsecured amount") on Permittee's first depositing with the Port, as additional security deposit and subject to all of the other provisions of this Permit applicable to a security deposit, a sum determined by the Port up to the amount of the deductible or self-insured retention in excess of the unsecured amount. Such additional security deposit shall be in the form specified for the Performance Deposit under Paragraph T below, but shall not be considered for purposes of increasing any performance or security deposit pursuant to provisions of this Permit other than this subsection (8)(b). The additional security deposit is solely for the benefit of the Port to secure Permittee's agreement in Paragraph J) Indemnification above to defend and indemnify the Port.

(9) Port reserves the right, during the Term of this Permit, to reasonably amend the monetary limits or coverages herein specified, but in so doing will give Permittee at least thirty (30) days prior written notice.

Section 18. **Assignment and Subletting.**

Notwithstanding any provision of this Permit to the contrary, Permittee shall have no right (i) to sublease all or any portion of the Assigned Space during the Term, or (ii) to assign all or any portion of the Assigned Space to any third party until after Permittee has completed construction of all of the improvements that Permittee is required to construct pursuant to Section 1(2)(a) above.

Subject to the limitations in the first paragraph of this Section 18, Permittee shall not at any time, in any manner, either directly or indirectly, voluntarily or involuntarily, assign, hypothecate, encumber or transfer this Permit or any interest in this Permit or right granted by this Permit, 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 evidenced by resolution of its Board. The Port shall consider a request for its consent if the use of the Concession Unit in the Assigned Space under such assignment is a Permitted Use of such Concession Unit under Paragraph B of this Permit.

Except as hereinafter in this Section 18 expressly provided, no modification of any assignment or other transfer after the Port's initial consent shall be effective without the prior written approval of the Port, 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.

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 the Concession Unit included in the Assigned Space under such assignment is a Permitted Use of that Concession Unit under Paragraph B of this Permit.

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.

The Port's consent to or waiver of its option to terminate this Permit in the event of a default on account of any 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 assignment, transfer or occupation or use by another person.

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.

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.

Permittee agrees that as a condition to the Port's consideration of any request by Permittee for approval of any assignment or other transfer of this Permit, that Permittee shall deliver to the Port a nonrefundable processing fee of not less than \$2,500.00. 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 \$2,500.00, 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 Assigned Space (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 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.

In addition, Permittee's request for consent to any proposed 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 assignee or other transferee ("assignee");
- (ii) The nature of proposed assignee's business to be carried on in the Assigned Space.

(iii) A copy of the proposed assignment or transfer, and a description of the full consideration for such 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 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 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 transfer, a full and complete executed copy of all documents to effectuate the 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).

Unless otherwise provided by resolution duly adopted by the Board in its sole and absolute discretion, no assignment or any activity under this Permit or 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 assignment, and no such activity under this Permit or 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 Permitted Use under this Permit 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.

For purposes of this Section 18, an assignment shall include, if the Permittee is a corporation, a limited liability company or other state-chartered entity, any dissolution, merger, consolidation or other reorganization of Permittee, or the direct or indirect sale, issuance or other transfer of a controlling percentage of the capital stock or other units representing ownership interests of Permittee, or (except if Permittee is a corporation whose stock is publicly traded) 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.

No sublicense or assignment shall relieve the sublicensor or assignor from any of the obligations of Permittee under this Permit, whether they accrue before or after the date of such sublicense or assignment.

Permittee shall indemnify and defend Port for, from and against any and all Losses which arise as a result of Permittee's failure to disclose any relevant information about the Assigned Space to any assignee of the Permittee.

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 fifty percent (50%) of 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 subsection, 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 subsection. All appraisers appointed under this Section 18 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 Paragraph E of 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 violate any of the provisions of Section 18 above, or (c) Permittee shall fail, within the applicable time period provided in Section 27 below, to post any additional Performance Deposit required thereunder, or (d) if Permittee shall violate any of its obligations under Section 30 of this Permit, or (e) if Permittee shall fail to perform or observe any term or condition of this Permit which, because of its character, would immediately jeopardize the Port's operations or expose the Port to liability (such as, but without limitation, any failure to carry

required insurance or any action that would subject the Port to liability or present a safety or security hazard), or would constitute a violation of the security or public safety requirements of this Permit or any applicable Federal Aviation Regulation, including without limitation 14 CFR Parts 107 or 108, or Transportation Security Regulations, 49 CFR, Chapter XII, Parts 1500, et seq., or (f) if Permittee should abandon and cease to use the Assigned Space for a period of thirty (30) consecutive days, or (g) if Permittee shall fail three times within any period of one hundred and 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 (h) if Permittee breaches its obligations under Section 6 or Paragraph N of this Permit, 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, or (j) if Permittee commits an event of default under any other agreement between Permittee and the Port, or (k) 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 (l) 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 (m) in the event any guarantor of any of Permittee’s obligations under this Permit shall have made a material misrepresentation in such guaranty or breached any covenant or obligation of such guarantor contained in such guaranty, 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) With or without terminating this Permit, terminate Permittee’s right to possession of the Assigned Space by any lawful means, in which case 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,

(i) 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;

(ii) 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;

(iii) 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

(iv) 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 (Port 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). 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 subsection 2(a)(iv) of this Section 19 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 at law, in equity, or under any judicial decision of the State of California.

Permittee hereby expressly waives any notice of default from Port not expressly provided for in this Permit as a prerequisite to surrender of possession 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.**

In addition to the requirements set forth in Section 32 below, 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 subpermittee thereof continues to occupy the Assigned Space after the expiration or earlier termination of 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 applicable to the Concession Unit 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 the expiration or earlier termination of the Term. Permittee acknowledges and agrees that upon such expiration or termination, it shall not be entitled to any relocation assistance, payment to other benefits pursuant to the provisions of Title 1, Division 7, Chapter 16, of the California Government Code (Sections 7260, et seq.), pursuant to 42 U.S.C. §§ 4601-4655 (Uniform Relocation Assistance and Real Property Acquisition Policies Act), 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 subpermittee 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.

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, Airport 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, Airport Properties Department
Oakland International Airport
9532 Earhart Road, Suite 201
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, with interest as provided in Section 26, below.

Section 26. **Delinquency Charge.**

Any sum payable by Permittee to Port under any provision of this Permit which is 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, but not to exceed the maximum interest rate permitted by applicable law, for each day from the date such payment became due and payable until payment has been received by Port. 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. The Port as a courtesy may send invoices to Permittee for Rent hereunder, but the Port's failure to send an invoice, or Permittee's late receipt of an invoice, shall in no event excuse or justify Permittee's non-payment of such Rent or payment of such Rent later than the applicable due date specified in Paragraph E of this Permit.

Section 27. **Performance Deposit.**

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 drawn on a bank located within the continental United States acceptable to the Port's Chief Financial Officer. The Port's preference is for Permittee to provide a letter of credit that can be drawn at a site or counter of such a bank with a branch office located in Oakland or San

Francisco, California. (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 obligations hereunder and under any other agreement between Port and Permittee. From time to time, the Port shall have the right to increase the amount of the Performance Deposit to reflect any increases in the amount of the total Minimum Annual Guaranty (rounded to the nearest thousand), or to such greater amount required by Port Administrative Policy No. 509 – Collection of Delinquent Accounts, as such Policy may be amended from time to time, by giving Permittee fifteen (15) days written notice and Permittee shall be obligated to increase the Performance Deposit to such amount by the end of such fifteen (15) day period. 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.

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.

Permittee waives the provisions of Section 1950.7 of the California Civil Code to the extent that such Section (i) provides that the Performance Deposit can be applied only to remedy certain defaults by Permittee, (ii) requires that all or any unused portion of the Performance Deposit must be returned to Permittee within a specified period of time or (iii) is otherwise inconsistent with this Section 27, it being the Parties' intention that this Section 27 shall be controlling.

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.) The Port also reserves 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. 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 to Permittee, its customers and employees and to 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. 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 rights of the United States in the land subject to this Permit and any existing or future agreement between Port and the United States Government relative to the operation or maintenance of the Airport, the execution of which has been or will be required as a condition precedent to the granting of federal funds or the Port's right to impose or use 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 the Port's right to impose or use 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. 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 Term of this Permit, the Permittee, for itself, and its authorized 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 the Regulations.

(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 the Regulations.

(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 or national origin be excluded from participating in any activity conducted with or benefiting from Federal assistance. 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 American 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. Permittee agrees to post in conspicuous places, available to

employees and applicants for employment, notices to be provided by the Port's Equal Opportunity Employment representative setting forth the provisions of this paragraph;

(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 American with Disabilities Act of 1990, or veteran's status;

(c) That Permittee will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Port's Equal Opportunity Employment Officer, advising the labor union or workers' representative of the Permittee's commitments under this Section 30, and shall post copies of the notice in conspicuous places available to employees and applicants for employment;

(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, national origin, age, physical handicap or disability as set forth in the American with Disabilities Act of 1990, or veteran's 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 Permittee shall maintain work force records showing male, female and minority employees by job category and similar information with respect to new hires and shall permit the Port's Equal Opportunity Employment Officer to inspect such records at all reasonable times and not less than annually and shall submit a summary of such information annually on a form provided by the Port;

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

(g) 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

(h) 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 American with Disabilities Act of 1990, or veteran's 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, actual or perceived sexual orientation, national origin, age, physical handicap or disability as set forth in the American with Disabilities Act of 1990, or veteran's status.

(6) That Permittee's noncompliance with any 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 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 or adjacent to the surface of the Assigned Space, together with the right to cause in said airspace such 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 or 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. Permittee accepts this Permit and the Assigned Space subject to the risks and activities herein described.

(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 subsection (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.

(8) 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 over of the Airport or the exclusive or nonexclusive use of the Airport by the United States during the time of war or national emergency.

(9) It is understood and agreed that this Permit to use the Assigned Space, as provided herein, extends only to the Assigned Space and does not extend to the use of or access to the ramps, taxiways, or landing areas of the Airport. It is also understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308(a) of the Federal Aviation Act of 1958 (49 U.S.C. § 40103(e)). This Permit shall be subordinate to the provisions and requirements of any existing or future agreements between the Port and the United States of America granting Federal funds to the Airport or relating to the development, operation or maintenance of the Airport.

Section 32. **Environmental Responsibilities**

Environmental Responsibilities under this Permit shall be subject to all terms contained in Exhibit "12" (Environmental Responsibilities).

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. "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 subsection (4) 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) Permittee shall cause the provisions of this Section 33 to be incorporated into each contract and subcontract, and 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 subsection (5) 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) 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 names 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) through (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 ten (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) 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. Permittee shall provide Port with written notice of such name(s) and number(s) and 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 94607

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.**

Any construction project undertaken by Permittee pursuant to this Permit, for which the Port approves a permit for construction (the "subject permit") and for which the estimated cost of construction exceeds \$150,000 is subject to coverage under the terms of the Port's Maritime and Aviation Project Labor Agreement ("MAPLA") as it is currently in effect (and may be amended) and as it applies to Port tenants.

Before undertaking any construction, modifications, alterations, or other improvements or other work that may be under the jurisdiction of a craft union member of the Alameda County Buildings and Construction Trade Council, Permittee is solely responsible for verifying if a MAPLA is currently in effect and will apply to the work. Permittee agrees to fully comply with the requirements of any currently effective MAPLA 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 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 subsection (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.

(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 subsection (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 subsection (h).

(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 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.

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) Permittee hereby consents to the jurisdiction of the State of California Superior Court of the County of Alameda and of the Federal District Court for the Northern District of California with respect to any action instituted by the Port and arising against Permittee under this Permit, 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 as its agent for service of process the agent set forth in Paragraph A of the Permit.

(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, 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."

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 Rules, Policies and Regulations	Section 12(1) of Attachment “A”
Alterations	Section 1(2)(c) of Attachment “A”
Assigned Space	Paragraph D.1
Assigned Space Change	Paragraph H.1(a)
Board	2 nd paragraph of Permit, on page 1
Change Notice	Paragraph H.1(a)
City	2 nd paragraph of Permit, on page 1
Commencement Date	Paragraph C
Common Areas	Paragraph D.3
Comparable	Paragraph B.4
Concession Unit	Paragraph B.1
Control	Section 1(2)(b) of Attachment “A”
CWA	Section 12(1) of Attachment “A”
Director	2 nd paragraph of Permit, on page 1
Documents	Section 12(1) of Attachment “A”
Gross Receipts	Section 13 of Attachment “A”
Labor Peace Agreement	Section 6 of Attachment “A”
Labor Peace Assurance	Section 6 of Attachment “A”
Labor-Related Disruption	Section 6 of Attachment “A”
Latest Opening Date	Paragraph E.3
Laws	Section 12 of Attachment “A”
Losses	Section 1(2)(d) of Attachment “A”
Maximum Reimbursement Amount	Paragraph H.1(a)
Minimum Annual Guaranty	Paragraph E
Minimum Investment Amount	Section 1(2)(b) of Attachment “A”
Percentage Fees	Paragraph E.2
Performance Deposit	Paragraph F
Permit	1 st paragraph of Permit, on page 1

TERM	LOCATION
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
Proposal	Paragraph M
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
Terminal 1	Paragraph D.1
Terminal 2	Paragraph D.1
Terminal 2 Extension	Paragraph D.1
TI Guide	Section 1(2)(c) of Attachment "A"
Toxic Materials	Section 32 of Attachment "A"
Trade Equipment	Section 7(1) of Attachment "A"
Wi-Fi System	Section 8 of Attachment "A"
Work Letter	Section 1(1) of Attachment "A"

EXHIBIT "1"
ASSIGNED SPACE

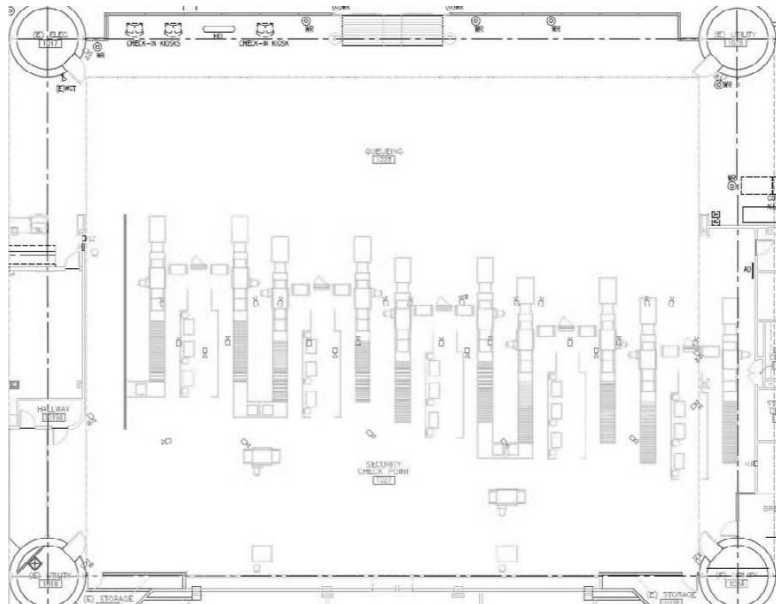
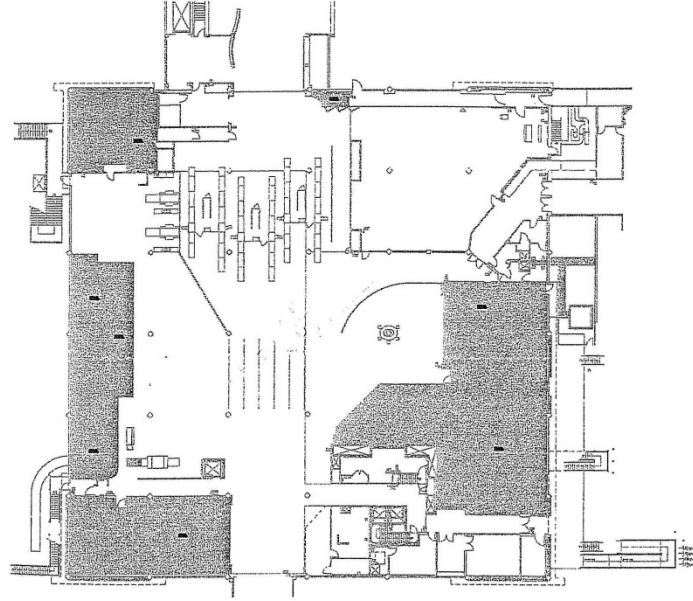


EXHIBIT "2"

INTENTIONALLY OMITTED

EXHIBIT “3”

INTENTIONALLY OMITTED

EXHIBIT "4"

INTENTIONALLY OMITTED

EXHIBIT "5"

THE CONCESSION UNIT

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

Concession Unit#	Latest Opening Date	Re-opening/ rent adj. date	Capital Improvement Amount		Utilities to be Provided

EXHIBIT "6"

INTENTIONALLY OMITTED

EXHIBIT “7”

ADMINISTRATIVE FEES

Sanitation, Hygiene & Cleanliness.	\$500 per day per occurrence
Failure to comply with construction requirements as referenced in Section 1.	\$250 per day occurrence
Failure to contain operations and noise pollution as determined by Port within the Assigned Space or Levels of noise exceed such volume in which people in Airport immediately adjacent to the Concession Unit cannot hear public address system.	\$250 per day per occurrence
Failure to maintain Concession Unit.	\$250 per day per occurrence
Failure to comply with reporting requirements as referenced in each subsection of Section 13.	\$250 per occurrence
Failure to provide requested audit records and information per Paragraph H, Section 1 or Section 13.	\$100 per day per occurrence
Failure to comply with the requirements as referenced in Paragraph I.2 (a)	\$250 per occurrence
Failure to comply with Sign requirements as referenced in Section 5.	\$250 per day per occurrence
Failure to comply with maintenance requirements as referenced in Section 3.	\$250 per day per occurrence
Unit(s) out of service or nonfunctioning	\$250 per day per occurrence
Other non-monetary violations of this Permit.	\$250 per occurrence

Except for violations of requirements regarding the minimum hours of operation, 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"

EXCEPTIONS TO PERMITTEE'S PROPOSAL

EXHIBIT "9"

INTENTIONALLY OMITTED

EXHIBIT "10"

CERTIFICATE FOR ANNUAL REPORT

(On Company Letterhead)

_____, 20__

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

Dear Director of Aviation:

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 Security Checkpoint Customer Experience Enhancement Program dated _____, 201_ (the "Permit").
2. The attached Annual Report of the Permittee for the year ended December __, 200_, was prepared in accordance with all of the applicable requirements of Section 13 of the Permit, and all of the information contained in this Annual Report is true and correct.

Sincerely,

Signature

Name

Title

EXHIBIT 10A
Port of Oakland
UTILIZATION OF AIRPORT CONCESSION DISADVANTAGED BUSINESS
ENTERPRISES (ACDBE)

CONTRACT NAME		CONTRACT NUMBER	MINIMUM ANNUAL GUARANTEE	CONTRACT BID AMOUNT	REPORTING PERIOD <input type="checkbox"/> Quarter Ending: _____ <input type="checkbox"/> Final Cumulative: _____			
PRIME CONCESSIONAIRE		BUSINESS ADDRESS		TOTAL CONTRACT AMOUNT INCLUDING CHANGE ORDERS	CONTRACT COMPLETION DATE			
(1) Name and Address of Airport Concession Disadvantaged Business Enterprises (ACDBEs)	(2) ACDBE Telephone, Fax Number, and Email Address	(3) ACDBE Certification Number	(4) Description of ACDBE Services	CONTRACT PAYMENTS				
				(5) Dollar Amount of Purchase or Lease of Goods and Services	(6) Contract Amount	(7) Change Order Amount to Date	(8) Total Contract Amount	(9) Date of Final Payment
TOTAL FINAL UTILIZATION:								
\$ _____ ACDBE		\$ _____ ACDBE Minority						
\$ _____ ACDBE (Non-Minority Women)		\$ _____ ACDBE (Minority Women)						
				\$	\$	\$	\$	TOTAL

List all Sub Tiers, Airport Concession Disadvantaged Business Enterprises (ACDBE's) whether or not firms were listed on original bid. (Photocopy this page if additional sheets are needed.)

If final ACDBE utilization was different than that approved at time of award, provide comments on back of form. List actual amount paid to each ACDBE, even if different than originally listed on bid. If the amount is a negative number from the time of award, a written explanation for the shortfall is required.

I CERTIFY THAT THE ABOVE INFORMATION IS COMPLETE, TRUE AND CORRECT		
AUTHORIZED CONCESSIONAIRE REPRESENTATIVE SIGNATURE and TITLE	BUSINESS PHONE NUMBER	DATE

Distribution: Original – SRD Copy To – Airport Properties

COMMENTS:

Port of Oakland
UTILIZATION OF AIRPORT CONCESSION DISADVANTAGED BUSINESS
ENTERPRISES (ACDBEs)

- (I) Enter the contract information requested on the first two rows (Contract Name, Contract Number, Minimum Annual Guarantee, Contract Bid Amount, etc.)
- (II) Provide the following information **for each portion of services provided and amount under this contract:**
- Column 1: Name and address of the firm providing services and/or performing work.
Column 2: Telephone, fax number, and email address by the firm listed in Column 1.
Column 3: If the firm listed in Column 1 is certified as an Airport Concession Disadvantaged Business Enterprise (ACDBE) by the California Unified Certification Program (CUCP), enter the firm's ACDBE Certification Number. (CUCP-certified ACDBEs should provide their certification number to the Prime Concessionaire and notify Prime Concessionaire in writing with the date of the decertification if their status should change during the course of the project.) If the firm is not a CUCP-certified DBE, enter "N/A".
- Column 4: Description of the services and/or work performed by said firm.
Column 5: Enter the dollar amount of purchase or lease of goods and services, contract amount, and change order amount to date by the firm, depending on the firm's DBE program status.
Column 7: The DBE program status is determined by the CUCP based on ethnicity, gender, ownership and control issues at time of certification. The certified firm is issued a certificate by CUCP that states their program status as well as the expiration date of the certification. DBE Program status may be obtained by accessing the CUCP website: (<http://www.dot.ca.gov/hq/bep/index.htm>) or by calling (916) 324-1700 or (866) 810-6346.
- If the firm was certified as a DBE at the time it started work on this contract, 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 DATE OF DECERTIFICATION.
 - If the firm was not certified as DBE at the time it started work on the contract, but became certified before completing its portion of the work. ENTER THE DOLLAR AMOUNT OF ALL SERVICES PERFORMED AFTER THE CERTIFICATION DATE, and provide details in the "COMMENTS" section of this form.
- For an explanation of the CUCP's DBE program categories, see Table 1, below.
- Column 8: List the total contract amount.
Column 9: Date on which prime concessionaire made the 'final payment' for the services described in Column 4 to subconcessionaire for the portion of service listed.
- (III) In the "TOTAL" row, enter the column sums of the dollar amounts listed in Columns 5 through 7.
- (IV) In the "TOTAL FINAL UTILIZATION" section, enter the dollar amounts listed at award of the contract, and the dollar value of those subconcessionaires listed.
- (V) The authorized concessionaire representative shall certify the information supplied by signing in the space provided.

TABLE 1: CUCP DISADVANTAGED BUSINESS ENTERPRISE CRITERIA

DBE: Only small business concerns (as defined by the United States Small Business Administration) which are owned and controlled by one or more socially and economically disadvantaged individuals (as described below), can be certified as a DBE. Owned and controlled means: At least 51 percent of the small business concern is owned by one or more socially and economically disadvantaged individuals; and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

MBE: A small business owned and controlled by one or more minorities. Owned and controlled means: At least 51 percent of the small business concern is owned by one or more minorities or, in the case of a publicly owned business, at least 51 percent of all issued stock is owned by one or more minorities; and whose management and daily business operations are controlled by one or more such individuals.

WBE: A small business owned and controlled by one or more women. Owned and controlled means: At least 51 percent of the small business concern is owned by one or more women; and whose management and daily business operations are controlled by one or more women who own it.

Socially and Economically Disadvantaged Individual means: Any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:

1. Any individual determined by a recipient to be a socially and economically disadvantaged individual on a case-by-case basis.

2. Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

- (i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
- (ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- (iii) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
- (iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- (v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
- (vi) Women;
- (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the U.S. Small Business Administration (SBA), at such time as the SBA designation becomes effective
<http://www.sba.gov/aboutsba/sbaprograms/sdb/index.html>.

EXHIBIT "11"

FORM OF 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 [Date]

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 then 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 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 [REDACTED]

Date [REDACTED]

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

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

By:

Name: [REDACTED]
Title: [REDACTED]

EXHIBIT "12"

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. This information includes, without limitation, the following reports:

- (1) RGA Environmental. Supplemental Asbestos Survey Report, Terminal 1, South Field, Oakland International Airport, Oakland, California. April 1, 2011.
- (2) IHI Environmental. Asbestos-Containing Material Field Survey Report, Port of Oakland, Oakland International Airport, Terminal One Complex, 1 Airport Drive, Oakland, California. January 31, 2005, revised September 2, 2005.
- (3) IHI Environmental. Lead-Based Paint Field Survey Report, Port of Oakland, Oakland International Airport, Terminal One Complex, 1 Airport Drive, Oakland, California. May 11, 2005.

Additional 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 Permit, 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: _____

EXHIBIT "13"

INTENTIONALLY OMITTED

EXHIBIT "14"

[INTENTIONALLY OMITTED]