

NORMAN Y. MINETA SAN JOSE INTERNATIONAL AIRPORT

**LEASE OF AIRPORT PREMISES
BETWEEN THE CITY OF SAN JOSE
AND
ELEVATE GOURMET BRANDS-SFO GROUP**

DOCUMENT NO. 10731-LE-22

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CERTIFICATE OF LLC AUTHORITY
CORPORATE SECRETARY CERTIFICATE

**LEASE OF AIRPORT PREMISES
BETWEEN CITY OF SAN JOSE
AND
ELEVATE GOURMET BRANDS-SFO GROUP**

This Lease of Airport Premises (“Lease”) is dated for convenience this 4th day of January, 2023, and is by and between the City of San José, a municipal corporation of the State of California (“City”), and ELEVATE GOURMET BRANDS-SFO GROUP, a joint venture (“Tenant”). All capitalized terms in this Lease shall have the meanings set forth in **Section 1**, “Definitions and Summary of Lease Terms”, unless otherwise specifically defined in this Lease.

RECITALS:

- A. City is the owner and operator of Norman Y. Mineta San José International Airport (“Airport”) and has available for lease certain Premises at the Airport.
- B. Tenant desires to lease the Premises subject to the terms, conditions, covenants and provisions of this Lease.
- C. Under the authorization contained in Section 25.08.1300 of the San José Municipal Code, the Director of Aviation (“Director”) has determined that: (1) adequate space is available to accommodate Tenant’s activities under this Lease consistent with the space requirements of other Airport uses; (2) Tenant’s activities under this Lease are appropriate for operation of the Airport; and (3) the proposed lease of space conforms to the most recent Airport layout plan for the Airport.
- D. Director may execute this Lease on behalf of City pursuant to Resolution 80289 as approved by City Council on November 16, 2021.
- E. The Director has determined pursuant to San José Municipal Code Section 25.08.1320 that the land, structure, or other premises to be leased pursuant to this Lease is limited as to its potential uses or as to the revenues which could be generated by the lease, such that the City would not benefit from solicitations of proposals.

NOW THEREFORE, in consideration of the terms, conditions, covenants and provisions contained in this Lease, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1 DEFINITIONS AND SUMMARY OF LEASE TERMS

Each reference in the body of this Lease to specific terms or phrases set forth in this Section shall have the specific meanings and/or contain the respective express information set forth below. To the extent there is a conflict between the information in this Section and any more specific provision of this Lease, such more specific provision shall control.

“Authorized Activities” (§0 PREMISES AND AUTHORIZED USE) shall mean use of the Premises further described in **Section 0** of this Lease solely for the purposes of storage of dry goods, liquor, produce, merchandise and other items, some in refrigerators and/or freezer(s) in support of Tenant’s operations under the Concession Agreement at the Airport, subject to the conditions set forth in **Section 3.1**.

“Concession Agreement” means that certain Food and Beverage Concession Agreement by and between City and Elevate Gourmet Brands-SFO Group, dated November 26, 2019, as amended from time to time (doc.no 10670-CA-19).

“Commencement Date” (§2 TERM) means the date March 1, 2023.

“Days” unless otherwise specified, means calendar days.

“Director” means the person designated Director of Aviation by City, or such other person, division, department, bureau, or agency as may be designated by the City Council or the City Manager from time to time to exercise functions equivalent or similar to those now exercised by the Director of Aviation. The term also includes any person expressly designated by the Director of Aviation to exercise rights and/or obligations empowered in the “Director” under this Lease.

“Effective Date” (§2 TERM) means the date upon which this Lease is fully executed by City.

“Environmental Laws” (§ 4 STANDARDS OF OPERATION) means and includes all federal, state and local laws, statutes, ordinances, regulations, resolutions, decrees and/or rules now or hereinafter in effect, as may be amended from time to time, and all implementing regulations, directives, orders, guidelines, and federal or state court decisions, interpreting, relating to, regulating or imposing liability (including, but not limited to, response, removal, remediation and damage costs) or standards of conduct or performance relating to industrial hygiene, occupational health, and/or safety conditions, environmental conditions, or exposure to, contamination by, or clean-up of, any and all Hazardous Materials, including without limitation, all federal or state superlien or environmental clean-up statutes.

“Event of Default” or **“Events of Default”** have the meanings ascribed to them in **Section 15.1**.

“Expiration Date” (§2 TERM) means the date June 30, 2035, subject to earlier termination as provided in this Lease.

“FAA” (§26 GRANT AGREEMENT COVENANTS; §27 MODIFICATIONS FOR GRANTING FAA FUNDS) means the Federal Aviation Administration, created by the United States Government under the Federal Aviation Act of 1958, as amended, or such other successor agency or agencies of the United States Government.

“Federal Inspection Building” or “FIS” means that certain airline terminal building and related parking facilities at 2065 Airport Boulevard, San José, California 95110

“Hazardous Materials” (§4 STANDARDS OF OPERATION, §29 HAZARDOUS MATERIALS – PROHIBITIONS & RESTRICTIONS) means any and all (a) substances, products, by-products, waste, or other materials of any nature or kind whatsoever which is or becomes listed, regulated or addressed under any Environmental Laws, and (b) any materials, substances, products, by-products, waste, or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by-products, or waste may give rise to liability under any Environmental Law or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of any state or federal court; and (c) any substance, product, by-product, waste or any other material which may be hazardous or harmful to the air, water, soil, environment or affect industrial hygiene, occupational health, safety and/or general welfare conditions, including without limitation, petroleum and/or asbestos materials, products, by-products, or waste.

“Interim Terminal” means that certain airline terminal building at 1675 Airport Boulevard, San José, California, 95110.

“Laws” means all present and future applicable judicial decisions, statutes, laws, ordinances, regulations, building codes, Airport rules and regulations adopted from time to time, regulations, orders and requirements and policies of all governmental authorities including without limitation city, state, municipal, county, federal agencies or the federal government and the Federal Aviation Administration (“FAA”), and their departments, boards, bureaus, commissions and officials and such other authority as may have jurisdiction including, without limitation, any regulation or order of a quasi-official entity or body.

“Lease” means this Lease between City and Tenant.

“Leased Premises” has the meaning ascribed to it in **Section 0, “PREMISES AND AUTHORIZED USE”**.

“**Municipal Code**” means the San José Municipal Code, as amended from time to time.

“**Person**” means an individual, a corporation, a partnership, a joint venture or any other form of business association.

“**Premises**” has the meaning ascribed to it in **Section 0, “PREMISES AND AUTHORIZED USE”**.

“**Ramp Area**” shall have the meaning ascribed to it in **Section 0, “PREMISES AND AUTHORIZED USE”**.

“**Rents, fees, and charges**” (**§5 –RENT, FEES AND CHARGES**) means the following amounts to be charged to and paid by Tenant in accordance with **Section 5** of this Lease:

(a) Space Rental: 390 sq ft. of terminal basement storage space (B0363)	\$67.07 per sq. ft. per year (\$26,157.30 annually or \$2,179.78 monthly).
(b) Security Deposit:	\$4,360.00
(c) Late Payment Fee:	One Percent (1%) per month of the amount that is due.

The amounts of all such rent, fees and charges are subject to adjustment as provided in **Section 5**.

“**Security Deposit**” means the initial amount of \$4,360.00 which may be adjusted from time to time pursuant to **Section 5.2**.

“**Tax**” means and includes any assessment, license, charge, fee, imposition, or levy imposed by any governmental body.

“**Tenant**” means Elevate Gourmet Brands-SFO Group, a joint venture.

“**Tenant Address**” (**§37 NOTICES**) means the following information for notices to Tenant:

Name:	Brian Laliberte
Title:	CEO

Mail Address:	4304 Redwood Hwy #200 San Rafael, CA 94903
Street Address: (If different)	Same as above
Telephone:	415-515-2303
E-mail Address: (email Notices cannot be used in lieu of Notice Required under Section 37 of this Lease)	brian@elevategourmetbrands.com

City Address for Payments (§5 RENT, FEES AND CHARGES):

Payment Processing – Airport
Finance Department
City of San José
200 East Santa Clara Street, 14th Floor
San José, CA 95113-1905

City Address for Notices (§37- NOTICES):

Norman Y. Mineta San José International Airport
Director of Aviation
1701 Airport Blvd., Suite B-1130
San José, CA 95110
Facsimile: (408) 441-4588

“**Term**” (§2 **TERM**) has the meaning ascribed to it in **Section 2** below.

“**Terminal A**” means that certain airline terminal building and related parking facilities at 2077 Airport Boulevard, San José, California 95110.

“**Terminal B**” means that certain airline terminal building and related parking facilities at 1701 Airport Boulevard, San José, California 95110, including the North Concourse and Interim Facility.

“**Terminals**” means all the Terminal buildings at the Airport, defined as “Terminal A”, “Terminal B”, “Interim Facility” and “FIS”, with the meanings ascribed to them in **Section 1**.

“**TSA**” means the Transportation Security Administration, part of the Department of Homeland Security, created by the United States Government under the Aviation and Transportation Security Act (“ATSTA”) of 2001, as amended, or such other successor agency or agencies of the United States Government.

2 TERM

2.1 Term

The term of this Lease shall commence on the Effective Date and shall continue until the Expiration Date, unless and until terminated by (i) no less than thirty (30) days written notice from Tenant; (ii) no less than thirty (30) days' written notice from City, subject to the new storage facility provisions in **Section 2.3**; and (iii) no less than thirty (30) days' written notice from either Tenant or City to extend the term pursuant to the term extension provisions in **Section 2.4**. In all cases, the Lease may be sooner terminated in accordance with the terms of this Lease.

2.2 Effect of Termination of Lease on Concession Agreement

This Lease will automatically terminate on the Expiration Date of the Concession Agreement; provided, however, if Tenant or City elects to terminate this Lease as provided in **Section 2.1** above, then the Concession Agreement will not automatically terminate.

2.3 New Storage Facility Lease Requirement

Tenant understands that City is considering constructing a separate facility for general tenant and concession storage purposes. If such construction occurs, City may terminate this Lease consistent with the provisions in **Section 2.1**. Upon such termination, Tenant will be allowed to enter into a new lease for access to this separate storage facility, if Tenant desires to continue leasing space to support its operations under the Concession Agreement at the Airport.

2.4 Extension of Term

Subject to the provisions in **Section 2.1**, and upon mutual agreement between the Tenant and the City, the term of this Lease may be extended for a single five (5) year period on the same terms and conditions in this Lease. In such event, City and Tenant agree to fully execute an amendment to the Lease memorializing the extension of the term to no later than June 30, 2033.

2.5 Holdover

It is not the intent of this Lease to create any tenancy by Tenant beyond the expiration or termination date hereinabove set forth. Any holding over after the expiration or earlier termination of the term of this Lease shall be

conditioned upon the approval of the City Council and on terms and conditions approved by the City Council.

3 PREMISES AND AUTHORIZED USE

- 3.1** City leases to Tenant, and Tenant leases from City, those premises described on **Exhibit A**, attached hereto and incorporated herein by this reference (the “Leased Premises” or “Premises”) to be used solely by Tenant for the Authorized Activities as described in **Section 1** and expressly excludes Tenant’s use of it for office space. Neither Tenant, nor any of its employees or agents, shall conduct, transact, or otherwise carry on any business or service on the Premises that is not specifically authorized by this Lease.
- 3.2** Tenant shall not conduct the activities authorized by this Section at any location on the Airport other than the location referred to herein, unless authorized under another written agreement between the City and Tenant.

4 STANDARDS OF OPERATION

- 4.1** Tenant shall ensure that its employees and agents make regular inspections of the Premises for the purpose of maintaining the degree of cleanliness, condition of repair and operational ability of the Premises required under this Lease.
- 4.2** Tenant shall conduct its operations at the Airport and on the Premises in such manner as will reduce to the minimum that it is reasonably practicable, the emanation from the Premises of dust, noise, vibration, movement of air fumes and odors so as not to interfere unreasonably with the use of adjoining Premises and operations of others at the Airport.
- 4.3** Tenant shall not do anything, or permit anything to be done, in or about the Premises that might: (i) invalidate or be in conflict with, or cause cancellation of, the provisions of any insurance policies covering the Premises, the Airport or any property located thereon; (ii) result in a refusal by casualty insurance companies to insure the Premises, the Airport or any property located thereon in amounts and on terms and conditions required by City; (iii) subject City to any liability or responsibility for injury or damages to any person or property by reason of any activity, use, business operation or other practice conducted on the Premises; or (iv) cause any increase in any insurance rates applicable to the Premises, the Airport or any property located thereon.

4.4 Tenant shall not use or knowingly allow the use of the Premises for the purpose of unlawfully selling, serving, using, storing, transporting, keeping, manufacturing, or giving away alcoholic beverages or any controlled substance specified in Division 10 of the California Health and Safety Code.

4.5 Disposal, Use and Storage of Hazardous Materials.

Tenant shall not store, use, or dispose of Hazardous Materials on the Airport, including the Premises, nor cause, permit, or allow any officer, agent, employee, contractor, permittee, or invitee of Tenant to store, use or dispose of Hazardous Materials on the Airport or on the Premises.

5 RENT, FEES AND CHARGES

In addition to any other fees, general charges or other amounts set forth elsewhere in this Lease, Tenant shall pay when due the following fees and amounts for the privilege of occupying the Premises:

5.1 Space Rentals

Commencing on the Commencement Date, a monthly space rental fee payable in advance on the first (1st) day of each month during the term of this Lease as set forth in **Section 1**, subject to adjustment as required by **Section 5.4**. In the event that the Commencement Date does not commence on the first (1st) day of a calendar month, the amount of the space rental fee for the portion of the first month commencing on the Commencement Date shall be prorated on the basis of the actual number of days in that parti

5.2 Security Deposit

Tenant shall deposit and maintain with City upon execution of this Lease a security deposit in an amount and form as determined by the Director, against which the City may deduct any delinquent or unpaid fees, costs or charges (including but not limited to employee parking and badging fees and any late payment fees and the charges stated in this Lease) resulting from Tenant's operations at the Airport, to ensure prompt payment of required rent, fees and charges. The initial amount of the Security Deposit shall be as specified in **Section 1**. The Director may adjust such deposit requirement from time to time upon a determination that such additional amount is warranted to protect the City and the Airport.

If the Director adjusts the amount of the Security Deposit or deducts any delinquent or unpaid rent, fees, costs or charges (including late payments) from the Security Deposit, Tenant shall promptly replenish the deposit to

the full amount required by the Director, within thirty (30) days of a written demand by Director. Tenant's failure to so replenish the Security Deposit shall constitute an Event of Default, which entitles the City to terminate this Lease as provided in **Section 15** of this Lease. The City shall not be required to keep the Security Deposit separate from its funds, and Tenant shall not be entitled to interest on the Security Deposit. Any amounts remaining from the Security Deposit (after deductions for delinquent or unpaid rent, fees, costs, or charges as specified above) at the expiration or earlier termination of this Lease (as it may be extended or renewed) shall be returned to Tenant, without interest, after a determination by the Director that all amounts owed to City under this Lease have either been paid in full or have been deducted from the Security Deposit.

5.3 Payment of Fees

5.4.1 The space rental fee and any other fee required to be paid in advance on or before the first (1st) day of each month pursuant to the terms of this Lease shall be paid on or before the first (1st) day of each month without any requirement of notice from City, deduction, credit or offset. Such fees shall be deemed delinquent if not received by City on or before the fifteenth (15th) day of the month. Any rent, fees or charges which are payable by Tenant in arrears for the preceding month's activity are due and payable within thirty (30) days from the date of City's invoice. Tenant hereby acknowledges that late payment to City of any rent, fee, charge or other sum due hereunder will cause City to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. If any such rent, fee, charge or other sum due from Tenant is not received by City on or before the due date, then Tenant shall pay to City a late payment fee equal to one percent (1%) per month of the amount not paid, calculated for each day, from the due date until the date that payment is received by City. City reserves the right to require that any late payments be made only in the form to be specified by the Director, and City further reserves the right to reject any late payment that is not in a form approved by the Director. The parties hereby agree that such late fee represents a fair and reasonable estimate of the cost that City will incur by reason of Tenant's late payment. City's acceptance of such late fees shall not constitute a waiver of Tenant's default with respect to such overdue amount or stop City from exercising any of the other rights and remedies granted hereunder either at law or in equity.

5.4.2 All rent, fees, charges shall be paid by check made payable to the "City of San José" and delivered or mailed to the address listed in **Section 1** "DEFINITIONS AND SUMMARY OF LEASE TERMS", or

to such other address as the Director may notify Tenant in accordance with **Section 37** "NOTICES". All such rent, fees, charges and other amounts payable by Tenant shall be in lawful money of the United States of America and in same day funds as of the due date.

5.4.3 City's assessment of the late payment fee shall be in addition to any other remedies City may have at law or in equity, including termination and revocation of this Lease and all rights and privileges granted herein.

5.4 Adjustment of Rent, Fees and Charges

The rent, fees and charges applicable to Tenant and/or this Lease are established by Resolution of the City Council and may be changed or revised from time to time in accordance with the resolution, or the resolution as revised or amended, and Tenant shall be required to pay the changed or revised rent or fees when the revised rent or fees become effective. Any such changes in rent or fees shall be submitted by Director in writing to Tenant.

5.5 No Offset or Deduction

All rent, fees, charges and other amounts due by Tenant under this Lease shall be paid without deduction, credit or offset of any kind and exclusive of any amounts which City may now or hereafter owe to Tenant.

5.7 Other Financial and Statistical Reports.

No later than thirty (30) days after receipt of a request from the Director, Tenant shall furnish the City with such other financial or statistical reports or records as the Director, from time to time, may reasonably require, including but not limited to the purpose of determining the accuracy of Gross Revenues, labor compliance and FAA requirements (as applicable). Unless Tenant has requested additional time to produce any such reports and Director has approved any such request, a Delinquent Report Fee in the amount of \$25.00, as may be amended from time to time by Resolution approved by the City Council, will be assessed for each day any such additional records and reports are not timely received by the City.

6 MAINTENANCE OF PREMISES

6.1 Maintenance

6.1.1 Tenant shall be obligated at all times throughout the term of this Lease, without cost to City, to maintain the Premises in good appearance, repair, and safe condition, except for ordinary wear and tear, and in a condition otherwise satisfactory to Director. Tenant shall maintain all improvements on the Premises whether installed by Tenant or City. Tenant shall be responsible, also without cost to City, for the repainting of the interior of any space occupied hereunder, replacing of light fixtures (including bulbs, tubes, ballasts and transformers), miscellaneous hardware, window glass and floor coverings. All maintenance shall be performed diligently and shall be of a quality equal to or better than the original work in materials and workmanship, and all work shall be subject to the prior written approval of Director. When used in this Lease, the term "maintenance" shall include all repairs, alterations, maintenance and/or removals deemed necessary by Director.

6.1.2 Director shall be the sole judge of the quality of maintenance. City's employees and agents may, during normal business hours, enter upon the Premises to determine if maintenance satisfactory to Director is being performed. If Tenant fails to perform the maintenance or the maintenance is not being performed in a manner satisfactory to Director, Director will notify Tenant in writing. If the maintenance is not so performed by Tenant within fifteen (15) calendar days after receipt of written notice, City shall have the right (but not the obligation) to enter upon the Premises and perform the necessary maintenance and upon receipt of the notice of maintenance cost, Tenant agrees to promptly reimburse City for the maintenance cost incurred, plus an additional amount equal to ten (10%) percent thereof for administrative overhead. The demand for any payment by City shall be prima facie evidence that the expense incurred was necessary and reasonable and that such expense was incurred by City on behalf of Tenant.

6.2 Trash and Refuse

Tenant, at its sole cost and expense, shall keep and maintain the areas occupied by Tenant clean and free of rubbish, dirt, garbage, and other waste matter at all times and shall provide and pay for regular janitorial and other service reasonably necessary for the proper maintenance of the Airport in a clean and sanitary manner. Tenant, at its sole cost and expense, shall cause all dirt, rubbish, trash, garbage and other waste matter to be removed daily from the Premises and deposited in suitable containers for regular removal from the Airport.

6.3 Waste or Nuisance

Tenant shall not commit, cause, maintain, permit, suffer, or allow to be committed, caused, maintained or permitted, any legal waste upon the Premises or the Airport, or any public or private nuisance, or injury, or any improper or unlawful use on the Premises or surrounding areas of the Airport, or any other act or thing, or omission to act, which may in any way disturb the quiet enjoyment of or obstruct or interfere with the rights of any other tenant, concessionaire, licensee, invitee or occupant of the Airport, or any portion thereof. Tenant shall maintain in safe, good and clean condition all areas of the Airport where Tenant conducts its operations.

7 IMPROVEMENTS

7.1 Construction of Improvements

Any improvement, alteration or construction of improvements on the Premises, other than with respect to any furniture, trade fixtures and equipment which are and remain movable and unattached to the Premises, shall be performed to the satisfaction of Director. Prior to the commencement of any improvement, alteration or construction upon the Premises, Tenant at its sole cost and expense shall obtain all necessary permits and approvals from all appropriate Departments of City and/or from any other governmental entity, as required by law. Tenant shall be responsible for the payment of all engineering, inspection and review fees required by City or any other governmental entity.

7.2 Approval of Plans and Specifications

7.2.1 Tenant shall not make any improvements to or upon the Premises, or any subsequent alterations or additions to the improvements, without the prior written approval of Director. Full and complete plans and specifications for all work, facilities, and improvements, and time required to complete same, shall be submitted to and receive the written approval of Director before work or construction is commenced. First-class standards of design and construction will be required in connection with all such work, facilities and improvements. All construction must conform with the plans and specifications as approved by Director and the established architectural design scheme for the Airport, and must be subject to City's Department of Public Works "Planning Guide". All of Tenant's construction, improvements and/or alterations shall conform with the Airport's "Tenant Improvement Design Criteria," as available at <https://www.flysanjose.com/standards-and-guidelines/tenant-guidelines>.

7.2.2 All improvements, equipment, and fixtures, including the plans and specifications therefor, constructed or installed by Tenant, its

agents, or contractors, shall conform in all respects to applicable statutes, ordinances, building codes, and rules and regulations. The approval given by Director under the immediately preceding subparagraph shall not constitute a representation or warranty as to such conformity; responsibility therefor shall at all times remain with Tenant.

7.2.3 Tenant shall obtain at its sole cost and expense all governmental reviews and approvals (including any approvals of the Director or any other City official), licenses, and permits which are, or may be, required and are necessary to install the improvements and/or alterations and to conduct the Authorized Activities, including, but not limited to, all plans and specifications approvals, site development reviews, development permits, and building permits. The costs and expenses which are payable by Tenant to secure these reviews and approvals may include City engineering and inspection fees (“E&I Fees”). A check in the amount of ten percent (10%) of the total estimated cost must be deposited with City with submission of construction plans, as a deposit amount toward payment of such E&I Fees. Any unused E&I Fees in excess of amount deposited shall be refunded to Tenant. Any amount incurred by City in excess of the deposit amount will be invoiced to and payable by Tenant in accordance with **Section 5**. Tenant shall comply with all conditions, restrictions or contingencies imposed upon, or attached to, the governmental approvals, licenses, and permits described herein.

7.2.4 Eight (8) copies of plans for all improvements or subsequent changes or alterations shall be given to Director for review prior to commencement of construction. Director, after giving his final approval, shall return to Tenant one (1) approved copy for its records.

7.2.5 Upon completion of all work, Tenant shall provide to Director two (2) completed sets of as-built drawings, a CAD disk if Tenant produces drawings on disks, and a breakdown which shows all costs incurred for such work. Tenant agrees that, upon the request of Director, Tenant will inspect the Premises jointly with Director to verify the as-built drawings.

7.3 Remediation of Asbestos-Containing Materials

7.3.1 If, in the construction of any improvements to or upon the Premises, Tenant causes disturbance to or damage of any asbestos and/or asbestos-containing materials, Tenant shall be solely responsible for the costs of remedying the disturbance or damage, including,

without limitation, the removal of any asbestos and asbestos-containing materials.

8 TITLE TO IMPROVEMENTS, ALTERATIONS AND REPAIRS

All improvements, alterations or construction of improvements made to the Premises by Tenant (other than furniture, trade fixtures and equipment which are and remain movable and unattached to the Premises) and additions and alterations thereto made upon the Premises shall be and remain the property of Tenant until the termination of this Lease, at which time the improvements may, at the option of Director in accordance with **Section 28**, become the property of City. Tenant shall execute any documents which Director feels necessary to further evidence the transfer of title to improvements from Tenant to City, including a quitclaim deed and/or bill of sale. Any failure by Tenant to execute any such transfer documents, however, shall not limit or preclude the transfer of title from Tenant to City provided in this Section.

9 PAYMENT BOND – CONSTRUCTION

Prior to the commencement of any construction, alteration or repair hereunder which exceeds Five Thousand Dollars (\$5,000) in cost, Tenant shall furnish to City and file with the City Clerk, at no cost to City, a payment bond. In addition to the specific requirements set forth below, the bond shall be issued by a surety, be in a sum of not less than one hundred percent (100%) of the total cost of the contract or contracts for the construction, alteration, demolition or repair of the Premises and/or improvements, be satisfactory to and approved by City's Risk Manager and Director and be approved as to form by the City Attorney for City. Immediately upon completion of any improvement, Tenant shall record in the Official Records of the Santa Clara County Recorder a notice of completion complying with the requirement of California Civil Code Section 9204.

9.1 Payment Bond

The payment bond shall guarantee the prompt payment to all persons named in California Civil Code Section 9100, and of amounts due under the Unemployment Insurance Code, amounts required to be deducted, withheld or paid over to the Employment Development Department from the wage of employees of the contractor and subcontractors pursuant to Section 13020 of the Unemployment Insurance Code, and reasonable attorneys' fees. The payment bond shall name Tenant as owner, Obligee or principal and Tenant's contractor or contractors as principals.

10 ACCEPTANCE OF PREMISES

10.1 Tenant has carefully examined the Premises and is satisfied with the current condition, subject to any improvements to be constructed by Tenant in accordance with **Section 7**. Tenant acknowledges that no representation or warranty has been made by City concerning the nature,

quality or suitability of the Premises or the Airport for Tenant's business, or the existence of any Hazardous Materials in, on, upon, under or about the Premises or the Airport, and Tenant acknowledges that it shall have no rights against City by reason of such matters or any claimed deficiencies therein. Tenant accepts the Premises "as is", and as being in good, safe and sanitary condition satisfactory for Tenant's use.

- 10.2** Tenant acknowledges that City has made no representations or warranties with respect to the Premises, the Airport or this Lease except as expressly set forth in this Lease, and no rights, easements or licenses, implied or otherwise, are or shall be acquired by Tenant unless expressly set forth in this Lease.

11 UTILITY SERVICES

- 11.1** Tenant has inspected and accepts the utility hookups in the Premises. The City shall provide all electrical, gas, water, sewer and telephone services to the Premises as Tenant may require. Utilities provided by City shall be paid by Tenant pro-rated basis on the ratio of Tenant's square footage to that of the Airport. The location, relocation and coordination of all utilities and telephone facilities to service the Premises shall be subject to the prior written approval of the Director. Notwithstanding the foregoing, the pro-rata payment provisions of this paragraph shall not apply in the event Tenant directly pays utility providers for utility services.
- 11.2** Tenant agrees that it shall take reasonable steps and any such other action which it deems necessary to protect Tenant's equipment from any damage that may be caused to such equipment in the event of any deficiency, impairment and/or interruption of utility services. As more fully set forth in **Section 17**, Tenant waives any and all claims and/or causes of action against City for any such damages.

12 SECURITY MEASURES

- 12.1** Tenant agrees to abide by all provisions of the Airport's Master Security Plan approved by the FAA and/or the Transportation Security Administration ("TSA") and agrees to institute and carry out all security measures as provided in said plan. Any violations of the security plan which result in fines to City by the FAA and/or TSA, and which are caused by Tenant, its officers, agents or employees or invitees, will be assessed to Tenant by City and will be deemed to be additional rental fees payable by Tenant to City following invoice thereof by City to Tenant pursuant to **Section 5** of this Lease.
- 12.2** Tenant shall be solely responsible for instituting and carrying out specific security measures required by the Airport's Master Security Plan in the

areas where it is authorized to operate to prevent vandalism or damage to persons or property. City shall be responsible only for providing general security throughout the Airport and shall not be liable for any vandalism or damage to persons or property that may occur in the areas of Tenant's operation.

- 12.3** Tenant understands and acknowledges that City reserves the right to implement or change security measures that may limit public access to the Airport or the Terminals. In such event, Tenant waives all rights against City for such limitation, and City shall not be liable to Tenant for any amount, including compensation in the form of reduction of any rent or fees.

13 SIGNS/ADVERTISING

Tenant shall not install, erect, affix, paint or place any sign, lettering or other advertising device or media in or upon any portion of the Airport or the Premises without the prior written consent of Director. Any and all signs, lettering or other advertising device or media, or any replacement thereof, which may be permitted by Director shall be subject to, and comply with, present and future Airport signing standards. Any and all such advertising device or media shall be removed by Tenant at its sole cost and expense upon termination or expiration of this Lease, without injury or damage to or defacement of any part of the Premises or of the Airport. Tenant will promptly restore to their original condition those portions of the Premises or Airport from which such advertising device or media have been so removed.

14 ASSIGNMENT OR TRANSFER

- 14.1** Tenant shall not assign, sublease, convey, sell, pledge, hypothecate, encumber by deed of trust, mortgage, or other instrument, or otherwise transfer this Lease, the Premises or any part thereof, or any rights of Tenant hereunder, whether voluntarily or by operation of law, without the prior written consent of City, which consent will not be unreasonably withheld.
- 14.2** A transfer within the meaning of this Section shall include, but is not limited to, the following: (i) the incorporation of an individual Tenant and the transfer of Tenant's rights hereunder to the corporation which is not wholly owned by Tenant; (ii) in the event that Tenant is a partnership, incorporation of Tenant and transfer of Tenant's rights hereunder to the corporation, or the withdrawal or addition of any partner to Tenant's partnership; (iii) in the event that Tenant consists of co-tenants, the incorporation of Tenant and transfer of its rights hereunder to the corporation, or the voluntary or involuntary transfer by any one or more co-tenants of his, her or its rights hereunder to his, her or its co-tenant or to a third person; (iv) in the event that Tenant is a corporation, the change in the ownership of fifty percent (50%) or more of the capital stock of Tenant;

and (v) in the event that Tenant is an unincorporated association, the incorporation of Tenant and the transfer of its rights hereunder to the corporation, or the change in fifty percent (50%) or more of the membership of the association.

In determining whether to consent to such a transfer, City may consider, without limitation: (i) the financial condition and responsibility of the proposed transferee; (ii) the type of activity proposed to be conducted by such transferee at the Airport; (iii) the capabilities and expertise of the proposed transferee to manage and operate the proposed activity; (iv) the past service record of the proposed transferee, (v) references of the proposed transferee; and (vi) any cost to City associated with such proposed transfer.

Reasonable grounds for denying consent shall include any of the following: (i) the proposed transferee's intended use of the Premises is not for an aviation-related purpose or will materially and adversely affect the City's interests at the Airport; (ii) the proposed transferee's financial condition is or may be inadequate to support its obligations under the Lease; or (iii) the proposed transferee has failed to meet any legal or contractual obligations to the City or is adverse to the City in any pending litigation.

- 14.3** In addition, City's consent to any proposed transfer under this Lease may be conditioned upon, among other things, the express written assumption by the proposed transferee of Tenant's obligations under this Lease and/or performance of required or necessary repairs or maintenance to the Premises.
- 14.4** City may require payment by Tenant of any processing fee established by City pursuant to a resolution or ordinance for reviewing the proposed transfer and preparing any documents in connection therewith. Tenant's failure to provide City with full, complete and necessary information, or to pay the processing fee, shall be sufficient cause for City to deny consent to, or to refuse to review, the proposed transfer.

- 14.5** The consent of City to any transfer described in this Section shall not relieve Tenant of its obligation to obtain the further consent of City for any subsequent transfer. Any attempt to transfer without the consent of City shall be void and shall constitute an Event of Default.

15 BREACH OF LEASE

15.1 Events of Default

An Event of Default shall occur under this Lease upon the occurrence of any of the following events (severally "Event of Default" and collectively "Events of Default"):

- A. Tenant shall have failed to pay when due any rent, fee, charge or obligation of Tenant requiring the payment of money under the terms of this Lease; or
- B. Tenant shall have violated the provisions of **Section 4.4**; or
- C. Tenant shall have failed to maintain any insurance required under **Section 18**; or
- D. Tenant shall have failed to perform any term, covenant, or condition of this Lease to be performed by Tenant, except those referred to in the immediately preceding three subparagraphs, and Tenant shall have failed to cure same within ten (10) days after written notice from City; provided, however, that if the nature of Tenant's default is such that more than ten (10) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commences such cure within said ten (10) day period and thereafter diligently prosecutes such cure to completion and to the satisfaction of Director; or
- E. Any representation or warranty made by Tenant hereunder shall have been false or misleading in any material respect as of the date on which such representation or warranty was made; or
- F. Tenant shall have made a general assignment of its assets for the benefit of its creditors; or
- G. Tenant shall have assigned or otherwise transferred its interest in this Lease in violation of the provisions contained in this Lease whether voluntarily or by operation of law; or
- H. Tenant shall have failed to occupy the Premises or to maintain continuous operations at the Airport, in each case, for any thirty

(30) consecutive days, have been dispossessed by process of law or otherwise, or have otherwise abandoned the Premises; or

- I. A court shall have made or entered any decree or order: (i) adjudging Tenant to be bankrupt or insolvent; (ii) approving as properly filed a petition seeking reorganization of Tenant or an arrangement under the bankruptcy laws or any other applicable debtor's relief law or statute of the United States or any state thereof; (iii) appointing a receiver, trustee or assignee of Tenant in bankruptcy or insolvency or for its property; (iv) directing the winding up or liquidation of Tenant and such decree or order shall have continued for a period of sixty (60) days; or (v) Tenant shall have voluntarily submitted to or filed a petition seeking any such decree or order; or
- J. The sequestration or attachment of or execution or other levy on Tenant's interest in this Lease or the Premises or any improvements located thereon shall have occurred and Tenant shall have failed to obtain a return or release of such property within thirty (30) days thereafter, or prior to sale pursuant to such levy, whichever first occurs; or
- K. The occurrence of any act or omission on the part of Tenant which operates to suspend, revoke or terminate any certificate, permit, franchise, approval, authorization or power necessary for Tenant to lawfully conduct the operations which Tenant is required or permitted to conduct on the Premises or on the Airport; or
- L. Any lien shall be filed against the Premises because of any act or omission of Tenant, and shall not be discharged or contested by Tenant in good faith by proper legal proceedings within twenty (20) calendar days after receipt of notice thereof by City.

15.2 Remedies

Upon an "Event of Default", City shall have the following remedies, in addition to all other rights and remedies provided by law, equity or otherwise under this Lease, to which City may resort cumulatively, or in the alternative:

- A. City may, at any time without notice and without any obligation to do so (implied or otherwise), and upon condition that it be for the account and at the expense of the Tenant, and without a waiver of such breach, perform any act which if performed by Tenant would otherwise cure the breach. If in so doing City is required or elects to pay any monies or do any acts which will require the payment of

any monies or the incurring of any costs or expenses, Tenant covenants to pay to City upon demand by City the sum or sums of money paid or incurred by City, together with interest at the rate of one percent (1%) per month plus costs and damages, as part of its rental fee due on the first (1st) day of the month which immediately follows City's demand therefor. The demand for any payment by City shall be prima facie evidence that the expense incurred was necessary and reasonable and that such expense was incurred by City on behalf of Tenant.

- B. City may, at its election, terminate this Lease upon written notice of termination in which event this Lease shall terminate on the date set forth in such notice. Any termination under this paragraph shall not relieve Tenant from the payment of any sums then due to City or from any claim for damages or rent previously accrued or then accruing against Tenant. In no event shall any one or more of the following actions by City, in the absence of a written election by City to terminate this Lease, constitute a termination of this Lease:
- (i) Appointment of a receiver or keeper in order to protect City's interest hereunder; or
 - (ii) Any other action by City or its agents intended to mitigate the adverse effects of any breach of this Lease by Tenant, including, without limitation, action to maintain and preserve the Premises or any action taken to relet the Premises or any portions thereof for the account of Tenant and in the name of Tenant.
- C. This Lease shall not terminate following an Event of Default and an abandonment of the Premises unless City gives Tenant written notice of its election to terminate this Lease. No act by or on behalf of City intended to mitigate the adverse effect of such breach, including those described by the immediately preceding subparagraphs (i) and (ii), shall constitute a termination of Tenant's right to possession unless City gives Tenant written notice of termination.
- D. In the event City terminates this Lease, City shall be entitled to damages in the following sums:
- (i) The worth at the time of award of all unpaid rental fees and other fees which have been earned at the time of termination;

- (ii) The worth at the time of award of the amount by which the unpaid rental fees and other fees which would have been earned after termination until the time of award exceeds the amount of such rental fee or other fee loss that Tenant proves could have been reasonably avoided;
- (iii) Any other amount necessary to compensate City for all detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, without limitation, the following: (a) expenses for cleaning, repairing or restoring the Premises; (b) expenses for altering, remodeling or otherwise improving the Premises for the purpose of reletting, including installation of leasehold improvements (whether such installation be funded by a reduction of rent, direct payment or allowance to tenant, or otherwise); (c) costs of carrying the Premises such as insurance premiums thereon, utilities and security precautions; (d) expenses in retaking possession of the property; and (e) late payment fees and court costs.
- (iv) The "worth at the time of award" of the amounts referred to in subparagraphs (i) and (ii) above is computed by allowing interest at the rate of twelve percent (12%) per annum. The "worth at the time of award" of the amount referred to in subparagraph (iii) above is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

- E. No payment by Tenant, or receipt by City, of a lesser amount than any rent, fee, charge or other amount due by Tenant hereunder shall be deemed to be other than on account of the earliest rent, fee, charge or other amount due, nor shall any endorsement or statement on any check from Tenant, or letter accompanying any check or payment, be deemed an accord and satisfaction. City may accept any such check or payment without prejudice to City's right to recover the balance of such rent, fee, charge or other amount or to pursue any other right or remedy available to City.
- F. No option, right, power, remedy or privilege of City shall be construed as being exhausted or discharged by the exercise thereof in one or more instances.

16 WAIVER OF BREACH

The waiver by City of any breach of any term, covenant, condition or provision herein contained shall not be deemed to be a waiver of any subsequent breach of such term, covenant or condition. The consent or approval by City to any act of Tenant requiring City's approval shall not be deemed to waive or render unnecessary the need for City's consent or approval to or of any subsequent similar act of Tenant. The subsequent acceptance of any fee, rent or charges hereunder by City shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease other than the failure of Tenant to pay the particular rent, fee or charge so accepted, regardless of City's knowledge of such preceding breach at the time of the accepting of such rent, fee or charge. No waiver, consent or approval by City shall be effective unless made by a duly authorized representative of City.

17 INDEMNITY AND WAIVER OF CLAIM

17.1 Indemnification

Tenant, for and on behalf of its directors, officers, employees and agents, covenants and hereby agrees to indemnify, defend, protect and hold harmless City, its officers, employees, contractors and agents, from and against any and all claims, demands, damages, obligations, liabilities, losses, costs, expenses, penalties, suits or judgments, at any time received, incurred or accrued by City, its officers, agents, employees, contractors or members of the public using Airport facilities, arising out of or resulting in whole or in part from any act (or failure to act) of Tenant, its officers, employees, contractors, agents, permittees or invitees, or which results from their noncompliance with any Laws respecting the condition, use, occupation or safety of the Premises or any part thereof, or which arises from Tenant's Authorized Activities or which arises from Tenant's failure to do anything required under this Lease, except as may arise from the sole active negligence or the willful misconduct of City, its officers, employees or agents. City's right to full indemnity hereunder shall arise notwithstanding that principles of joint, several or concurrent liability or comparative negligence, might otherwise impose liability on City pursuant to statutes, ordinances, regulations or other Laws. All of Tenant's obligations under this Section are intended to apply to the fullest extent permitted by law and shall survive the expiration or sooner termination of this Lease. In an action or claim against City in which Tenant is defending City, City shall have the right to approve legal counsel providing City's defense. The provisions of **Section 34** regarding the Americans with Disabilities Act of 1990 ("ADA") shall not limit Tenant's indemnification under this provision.

The indemnification obligations of Tenant shall include the obligation of Tenant to defend, indemnify, protect and hold harmless City, its officers,

agents or employees, from and against fines, costs, claims, damages, obligations, suits, judgments, penalties, proceedings, causes of action, losses, liabilities or costs arising under the ADA, which arise from Tenant's activities under this Lease.

17.2 Assumption of Risk

Tenant agrees to and covenants that it shall voluntarily assume any and all risk of loss, damage or injury to the person or property of Tenant, its directors, officers, employees, agents, and contractors which may occur in, on, or about the Premises or the Airport at any time and in any manner, except such loss, injury, or damage as may be caused by the sole active negligence or the willful misconduct of City, its officers, employees or agents.

17.3 Waiver of Claim

Tenant, as a material part of the consideration to be rendered to City under this Lease, hereby waives all claims or causes of action against City, its officers, agents, contractors or employees which it may now or hereafter have for damage to its operations (including, without limitation, any interruption thereof), or to goods, wares, merchandise or other property on or about the Premises, and for injuries or death to persons on or about the Premises, from any cause or causes arising at any time, except as may arise from the sole active negligence or willful misconduct of City, its officers, agents or employees.

By way of example and not limitation, save and except as arises out of the sole active negligence or the willful misconduct of City, its officers, agents, contractors or employees, Tenant hereby waives any and all claims or causes of action which it may now or hereafter have against City, its officers, agents, contractors or employees (a) for loss, injury or damage sustained by reason of any deficiency, impairment and interruption of any water, electrical, gas, plumbing, air conditioning or sewer service or system serving any portion of the Airport; (b) for any loss, injury or damage arising or resulting from any negligent act or omission of any other tenant, subtenant, contractor, airline or occupant of the Airport, or any person who uses the Airport with or without the authorization or permission of City; (c) from the flight of any aircraft of any kind and all kinds in, through, across or about any portion of the airspace above the Airport; (d) from noise, vibration, currents and other effects of air, illumination, and fuel consumption, or fear thereof, arising or occurring from or during the flight of any aircraft or from or during the use by aircraft of the Airport, including but not limited to, landing, storage, repair, maintenance, operation, run-up and take-off of such aircraft, and the approach and departure of aircraft to or from the Airport; and (e) for any loss or damage to the property of, or injury or damage to Tenant, its

officers, agents, employees, contractors, subtenants or any other person whomsoever, from any cause or causes arising at any time because of Tenant's use or occupancy of the Premises or the Airport, or its operations thereon.

18 INSURANCE

18.1 Required Insurance Coverage

Prior to commencing any work or operations under this Lease, Tenant at its sole cost and expense and for the full term of this Lease and all extensions thereof, shall obtain and maintain or shall cause to be obtained and maintained insurance against claims for injuries to persons or damages to property which may arise from or in connection with the activities of Tenant and its agents, employees and contractors, meeting at least the minimum insurance requirements set forth in **Exhibit B** on terms and conditions and in amounts as required by the Director of Human Resources or the Director's authorized designee ("Risk Manager"). City shall not be obligated to take out insurance on Tenant's property. Tenant shall provide City with certificates of insurance and such endorsements as may be required by City's Risk Manager. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager.

From time to time, at the request of the Risk Manager, Tenant shall provide a written statement of the replacement cost of the Tenant Improvements, with a copy to the Director.

18.2 Waiver of Subrogation

City and Tenant hereby mutually agree that so long as their respective insurance carriers concur, any fire and extended coverage insurance policies carried on properties which are the subject of this Lease shall include a waiver of subrogation against the other party hereto, provided that such waiver of subrogation applies only to subsequent loss.

19 BAILEE DISCLAIMER

It is hereby understood and agreed that City in no way purports to be a bailee, and is therefore not responsible in any way for any damage to the property of Tenant, Tenant's contractors, agents, employees and invitees.

20 RIGHT TO ENTER

City reserves and shall have the right by its officers, employees, agents and contractors to enter into and upon the Premises at all reasonable times (and in emergencies at all times):

- A. To make any inspection Director may deem expedient or desirable for the proper enforcement of the covenants, conditions, restrictions, limitations and provisions of this Lease;
- B. To install, construct and maintain, repair, replace and use any and all public utilities, sewer lines, drainage lines, water lines, water systems, irrigation lines, electrical lines, fuel lines and any municipal uses and appurtenances thereto, either above, on or below the surface of, in, along and/or across the Premises;
- C. To otherwise maintain the Premises, the building in which the Premises is located and the Airport, or to do any other repair, maintenance, alteration or removal under the conditions set forth herein; or
- D. To post notices of nonresponsibility for improvements, alterations or repairs if and when City shall desire to do so;

When reasonably necessary, City may temporarily close entrances, doors, corridors, elevators or other facilities in connection with the foregoing. City shall use reasonable efforts not to cause any interruption of Tenant's operation. Any action taken by City under this Section shall be without abatement of rent or payment of damages or other amounts to Tenant for any loss of occupancy or quiet enjoyment of the Premises or the buildings, betterments and improvements, without liability on the part of City for loss or damage that may be sustained by Tenant thereby, and without such action by City being construed as an eviction of Tenant or a release of Tenant from the duty of observing and performing any of the provisions of this Lease.

21 TAXES; ABSENCE OF LIENS

21.1 Payment by Tenant

Tenant shall pay before delinquency, and without notice or demand, any and all taxes, (including without limitation any gross receipts, income tax or excise tax) assessments, licenses, fees, possessory interest taxes and other public charges or penalties which shall be levied, imposed, or assessed upon any of Tenant's leasehold interest, upon Tenant's business, or upon Tenant for the privilege of conducting business within the Premises, or upon any other property of Tenant within the Airport. Payment of any and all taxes, assessments, licenses, fees or other public charges shall not reduce the amount of rentals, charges or any other fee

that is required to be paid by Tenant to City under the provisions of this Lease.

21.2 Possessory Interest

Tenant recognizes and understands that this Lease may, but is not intended to, create a real property possessory interest that may be, but is not intended to be, subject to real property taxation, and that Tenant may be subject to the payment of real property taxes levied on such interest. If any possessory interest tax is levied on the Premises, the Leasehold Improvements and/or Tenant's estate created by this Lease, Tenant shall pay such tax before delinquency. City shall have no obligation to pay any possessory interest tax. No such possessory interest tax, or any other tax by any governmental entity, shall in any way reduce or substitute for the rent, charges or fees required to be paid as a condition of this Lease or as otherwise required by City.

21.3 No Liens

Tenant shall not permit or suffer any liens or encumbrances to be imposed upon the Premises, the Airport or any building or structure thereon, as a result of its activities without promptly discharging the same; provided, however, that Tenant may, if it so desires, contest the legality of same following prior written notice to City. In the event of a contest, Tenant shall provide a bond in an amount and in a form acceptable to City immediately following request therefor by City.

21.4 Indemnity for Tenant's Failure to Comply

Tenant shall protect, defend, indemnify and hold City, including the Airport, and any Leasehold improvements now or hereafter on the Premises, free and harmless from and against any liability, loss, or damage resulting from any taxes, assessments, or other charges required by this Lease to be paid by Tenant and from all interests, penalties, and other sums imposed thereon and from any proceedings to enforce collection of any such taxes, assessments, or other charges.

21.5 Payment by City

If Tenant fails to pay any tax or charge required by this Section to be paid by Tenant, City may, but is not obligated to, on five (5) days' prior written notice to Tenant, pay, discharge, or adjust such tax or charge for Tenant's benefit. In such event, Tenant, on receipt of written demand of City, shall reimburse City promptly for the full amount paid by City in paying, discharging or adjusting such tax or charge together with interest thereon from its due date at the rate of one percent (1%) per month until paid, plus pay any penalties.

21.6 Contest of Tax or Charge

21.6.1 Notice of Contest

In the event that Tenant desires, in good faith, to contest or review by appropriate legal or administrative proceedings any tax or charge specified hereunder, Tenant, at least ten (10) days prior to the delinquency of any such tax or charge or within the applicable period of time allowed by law, shall give City written notice of its intention to contest such tax or charge.

21.6.2 Procedure for Contest

Tenant may withhold payment of the tax or charge being contested if, but only if, nonpayment is permitted during the pendency of such proceedings without the foreclosure of any tax lien or the imposition of any fine or penalty. The contest shall be prosecuted to completion (whether or not this Lease has expired or terminated) without delay at Tenant's sole cost and expense.

21.6.3 Payment upon Final Determination

Within the applicable period of time allowed by law after the final determination of the amount of tax due, Tenant shall pay the amount determined to be due, together with all costs, expenses and interest (whether or not this Lease has then expired or terminated).

21.6.4 Failure to Pay Constitutes Event of Default

The failure to pay any tax or charge hereunder shall constitute an Event of Default, and the obligation to pay the same shall survive the termination of this Lease.

22 QUIET ENJOYMENT

Subject to the provisions of this Lease, City covenants that Tenant, on paying the rentals and otherwise performing its covenants and other obligations hereunder, shall have quiet and peaceable possession of the Premises.

23 DAMAGE OR DESTRUCTION

23.1 Destruction Covered by Insurance

In the event improvements on the Premises are damaged by any casualty which is covered under an insurance policy required to be maintained pursuant to this Lease, Tenant shall repair such damage as promptly as reasonably possible in accordance with **Section 7** and this Lease shall continue in full force and effect, without any abatement of rent or payment of any damages or other amounts by City to Tenant.

23.2 Destruction Not Covered by Insurance

In the event the improvements on the Premises are damaged by any casualty not covered under an insurance policy required to be maintained pursuant to this Lease, then City (through Director) may, at City's option, give written notice to Tenant within thirty (30) days after the date of occurrence of such damage, of City's intention to cancel and terminate this Lease as of the date of the occurrence of the damage. Regardless of whether or not City elects to terminate this Lease, if such damage is caused by an act or omission of Tenant, its agents or employees, then Tenant shall promptly repair such damage, at its sole cost and expense, in accordance with **Section 7**.

23.3 Survival of Obligation to Repair

Tenant's obligation pursuant to this **Section 23** to repair any damage or destruction that occurs during the term of this Lease shall survive the Expiration Date or earlier termination of this Lease.

24 COMPLIANCE WITH LAWS

24.1 This Lease is issued by City subject and subordinate to all existing and future agreements between the City and the United States of America, and Tenant shall act in compliance therewith. Tenant shall, at its sole cost and expense, comply with and conform to all Laws applicable to or affecting, directly or indirectly, Tenant, the Premises, or Tenant's operations and activities under this Lease. Further, Tenant shall not do anything in, on or about the Premises, or the Airport, or bring anything that is prohibited by a standard form of fire insurance policy or that in any way would increase or affect the then existing rate of fire or other insurance required to be carried upon the Premises, the Airport or any part thereof, or any of their contents, or that will cause a cancellation of any insurance policy covering the Premises, the Airport, or any part thereof, or any of their contents. Tenant agrees to observe and obey all rules and regulations adopted by City from time to time with respect to the use of Airport property and related facilities.

The judgment of any court of competent jurisdiction, or the admission of Tenant in any action or proceedings against Tenant, whether City be a party thereto or not, that Tenant has violated any such law, statute, ordinance, rule, regulation, order or requirement in the use of the Premises or the Airport shall be conclusive of that fact as between City and Tenant.

In connection with its operations in or about the Airport, Tenant shall pay to City all amounts, fees, charges and taxes due City under any

ordinance, resolution or other applicable law governing activities in or about the Airport.

- 24.2** Without limitation of the foregoing, Tenant shall conduct its operations in accordance with all applicable United States Department of Transportation authorizations and FAA Operating Certificates. Tenant shall obtain any and all permits and licenses required by City or other governmental entity as are necessary to conduct the activities authorized under this Lease.

25 AGREEMENTS WITH UNITED STATES

This Lease shall be subordinate to the provisions of any Federal agreement relative to the use, operation or maintenance of the Airport, the execution of which Federal agreement has been or may now or hereafter be required as a condition precedent to the obtaining and/or expenditure of Federal funds for the development of the Airport, and any properties acquired in conjunction with its operations. Tenant agrees that to the extent that any such Federal agreement shall affect Tenant and its use of the Premises and the Airport, Tenant shall act in compliance therewith.

26 GRANT AGREEMENT COVENANTS

Tenant acknowledges that City is subject to Federal grant agreement obligations as a condition precedent to granting of funds for improvement of the Airport, and, accordingly, agrees to, and agrees to be bound by, the following covenants provided by the FAA as they may apply to Tenant:

- 26.1** Tenant for itself, its personal representatives, 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 said property described in this Lease for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, Tenant shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21 Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
- 26.2** Tenant for itself, its personal representatives, successors-in-interest and assigns, as a part of the consideration hereof, does hereby covenant and agree that: (i) no person on the grounds of race, color or national origin shall be excluded from participation, denied the benefits of, or be otherwise subjected to discrimination in the use of the facilities; (ii) that in the construction of any improvements on, over or under the Premises and

the furnishing of services thereon, no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and (iii) that Tenant shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as the Regulations may be amended.

- 26.3** That in the event of breach of any of the above nondiscrimination covenants, City (through Director) shall have the right to terminate this Lease, and to re-enter and repossess the Premises, and hold the same as if this Lease had never been made or issued. This provision does not become effective until the procedures of 49 Code of Federal Regulations Part 21 are followed and completed including expiration of appeal rights.
- 26.4** Tenant shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service. Tenant may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers.
- 26.5** Without limiting the generality of any other terms or provisions of this Lease, noncompliance with **Section 26.4** above shall constitute a material breach thereof and in the event of such noncompliance City (through Director) shall have the right to terminate this Lease and the estate hereby created without liability therefor or, at the election of City or the United States, either or both said governments shall have the right to judicially enforce **Sections 26.1, 26.2, 26.3 and 26.4** of this **Section 26**.
- 26.6** Tenant agrees that it shall insert the above five (5) provisions in any agreement by which Tenant grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on the Premises.
- 26.7** Tenant 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, creed, color, national origin, sex, age or handicap be excluded from participating in any activity conducted with or benefiting from federal assistance. This **Section 26.7** obligates Tenant or its transferee for the period during which federal assistance is extended to the Airport, except where federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or

improvements thereon. In these cases, this **Section 26.7** obligates Tenant or transferee for the longer of the following periods: (i) the period during which the property is used by City or any transferee for a purpose for which federal assistance is extended, or for any purpose involving the provision of similar services or benefits; or (ii) the period during which City or any transferee retains ownership or possession of the property. In the case of contractors, this **Section 26.7** binds the contractors from the bid solicitation period through the completion of the contract.

- 26.8** City reserves the right to further develop or improve the landing area of the Airport as it sees fit, regardless of the desires or views of Tenant, and without interference or hindrance.
- 26.9** City reserves the right, but shall not be obligated to Tenant, to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport, together with the right to direct and control all activities of Tenant in this regard.
- 26.10** This Lease shall be subordinate to the provisions and requirements of any existing or future agreement between City and the United States, relative to the development, operation or maintenance of the Airport.
- 26.11** There is hereby reserved to City, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises. This public right of flight shall include the right to cause in the airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from or operation on the Airport.
- 26.12** Tenant agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations ("FAR") in the event any future structure or building is planned for the location(s) of its activities, or in the event of any planned modification or alteration of any present or future building or structure situated at the Airport.
- 26.13** Tenant, by accepting this Lease expressly agrees for itself, its successors and assigns, that it will not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the Premises to a height above the mean sea level that would exceed FAR Part 77 standards or elevations affecting the Airport navigable airspace. In the event the aforesaid covenants are breached, City reserves the right to enter upon any area utilized by Tenant and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of Tenant.

26.14 Tenant, by accepting this Lease, agrees for itself, its successors and assigns that it will not make use of the Premises in any manner which might interfere with the landing and taking off of aircraft from Norman Y. Mineta San José International Airport or otherwise constitute a hazard. In the event this covenant is breached, City reserves the right to enter upon the Premises and cause the abatement of such interference at the expense of Tenant.

26.15 It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of 49 U.S.C. § 40103.

26.16 This Lease and its provisions 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 Airport or the exclusive or non-exclusive use of Airport by the United States during the time of war or national emergency.

27 MODIFICATIONS FOR GRANTING FAA FUNDS

In the event that the FAA requires, as a condition precedent to granting of funds for the improvement of the Airport, modifications or changes to this Lease, Tenant agrees to consent in writing upon the request of City to such reasonable amendments, modifications, revisions, supplements or deletions of any of the terms, conditions, or requirements of this Lease as may be reasonably required to enable City to obtain FAA funds, provided that in no event shall such changes materially impair the rights of Tenant hereunder. A failure by Tenant to so consent shall constitute a breach of this Lease.

28 SURRENDER OF PREMISES

28.1 On the last day, or sooner termination of this Lease, Tenant shall quit and surrender, in good condition and repair (ordinary wear and tear excepted), the Premises and all alterations, additions, improvements and betterments which may have been made in or to the Premises, except: (i) movable and unattached furniture and trade fixtures installed at the expense of Tenant; and (ii) such other property, if any, which Tenant is expressly authorized in writing by Director to remove from the Premises.

28.2 Tenant shall ascertain in writing from Director not less than thirty (30) days prior to the end of the term of this Lease whether Director desires to have Tenant remove any construction, betterment, alterations or additions which may have been made by Tenant upon the Premises and to restore the Premises to the condition they were in when received (reasonable use and wear thereof excepted). If Director should so desire, then Tenant shall remove any such construction, betterment, alterations or additions and restore the Premises at its sole cost and expense. Any failure by Tenant to so notify Director shall not relieve Tenant of its obligations under this subparagraph.

28.3 Tenant shall, on or before the end of the term of this Lease, remove all personal property owned by it (except such as it may be required to surrender under the provisions of the two immediately preceding paragraphs) from the Premises. All such property not so removed prior to any vacation, abandonment, dispossession or surrender of the Premises shall be deemed, at the option of Director, to have been abandoned by Tenant. City may, at the option of Director, retain any such property so abandoned by Tenant or remove and/or dispose of such property. Tenant shall reimburse City for any costs or expenses incurred by City in removing and/or disposing of such property promptly upon demand by City.

29 HAZARDOUS MATERIALS - PROHIBITIONS AND RESTRICTIONS

Tenant shall at all times comply with the provisions of this Lease, including those provisions of **Exhibit C**, regarding Hazardous Materials.

30 STATEMENTS, RECORDS AND INFORMATION

Tenant represents and warrants to City that all statements, records, reports, certifications and other information submitted by Tenant to City have been true and accurate and covenants that all future statements, records, reports, certifications and other information submitted by Tenant to City will be true and accurate in all respects.

31 GIFTS

Tenant is familiar with City's prohibition against the acceptance of any gift by a City officer or designated employee, which prohibition is found in Chapter 12.08 of the San José Municipal Code. Tenant agrees not to offer any City officer or designated employee any gift prohibited by said Chapter. The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of this Lease by Tenant. In addition to any other remedies City may have at law or in equity, City may terminate this Lease for such breach as provided in **Section 15** of this Lease.

32 HEIRS, SUCCESSORS AND ASSIGNS

All of the covenants, agreements, conditions and undertakings herein contained shall apply to and bind the representatives, heirs, executors, administrators, successors and/or assigns of all the parties hereto.

33 REPRESENTATIONS AND WARRANTIES

If Tenant is a partnership or joint venture, at least two (2) partners or each of the joint ventures, as the case may be, shall execute this Lease on behalf of Tenant.

34 AMERICANS WITH DISABILITIES ACT

34.1 Disability Access Disclosure. Pursuant to California Civil Code Section 1938, City states that, as of the Effective Date, the Premises has not undergone inspection by a Certified Access Specialist to determine whether the Premises meet all applicable construction-related accessibility standards under California Civil Code section 55.53. A Certified Access Specialist (CASp) can inspect the Premises and determine whether the Premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the Premises, the City may not prohibit the Tenant from obtaining a CASp inspection of the Premises for the occupancy or potential occupancy of the Tenant if requested by the Tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection. The parties mutually agree that Tenant shall be responsible for the payment of any fees for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises.

34.2 Tenant shall be solely and fully responsible for complying with the ADA in connection with: (i) the Premises or any portion thereof and its operations thereon; (ii) removing physical barriers on the Premises; (iii) providing auxiliary aids and services for use of the Premises, where necessary or required; and (iv) modifying its policies, practices and procedures to comply with the ADA. Tenant shall develop a workplan to correct or avoid any violations or non-compliance with the ADA. Tenant shall deliver to the City, upon City's request, a copy of each such report and workplan. City's approval of or acceptance of any aspect of Tenant's activities under this Lease shall not be deemed or construed in any way as a representation that such item, activity or practice complies with the ADA. Tenant agrees to indemnify, defend and hold the City harmless from any and all costs incurred by City with respect to Tenant's failure to comply with the ADA.

Nothing herein shall relieve Tenant from the obligation to seek and obtain City's consent prior to commencing any construction, alteration or renovation pursuant to **Section 7** hereof.

35 RELOCATION, EXPANSION OR CONTRACTION OF PREMISES

In the event that implementation of the City's requirements for the Airport, changes in airlines or flight schedules, or other changes in business conditions necessitate the relocation, expansion or contraction of the Premises, or any part thereof, Tenant shall, at Tenant's sole cost and expense, relocate all or part of its operations on the Premises, or any part thereof, or contract or expand the size of the Premises in an expeditious manner only as may be permitted, directed or required by the Director.

Amendments to this Lease which change or modify the description of the Premises set forth in **Section 0** above to specify in writing increases, decreases, or relocation of space at any of the Terminals, and which include only such rental rates on a per square foot basis as are specified or authorized in accordance with **Section 5** above, may be executed on behalf of the City by the Director.

36 MISCELLANEOUS

36.1 Consent

Unless expressly stated otherwise, whenever in this Lease the approval or consent of a party is required, such approval or consent must be in advance, shall be in writing and shall be executed by a person having the express authority to grant such approval or consent.

36.2 Controlling Law

Except as federal law may apply, the parties agree that this Lease shall be governed and construed by and according to the laws of the State of California.

36.3 Entire Agreement

This instrument contains all of the terms and conditions entered into and made by and between the parties and may not be modified orally, or in any manner, other than by an agreement in writing signed by all the parties hereto or their respective successors-in-interest.

36.4 Exhibits and Addenda

All exhibits and addenda referred to herein, and any exhibits or schedules which may from time to time be referred to in any duly executed amendment thereto, are by such reference incorporated herein and shall be deemed a part of this Lease as if set forth fully herein.

36.5 Force Majeure

If performance by a party of any portion of this Lease is made impossible by any prevention, delay, or stoppage caused by: strikes; trade embargoes or sanctions; lockouts; labor disputes; acts of God; inability to obtain services, labor, or materials or reasonable substitutes for those items; government actions or inactions; civil commotions; terrorism; riots; war; enemy or hostile governmental action; judicial orders; fire or other casualty; delay, failure, or interruption of any utility service; or other causes beyond the reasonable control of the party obligated to perform, any such performance made impossible for a period equal to the period of that prevention, delay or stoppage shall not constitute a default under this Lease. However, Tenant's obligation to pay Rent or any other fees and charges payable pursuant to this Lease is not excused by this Section.

36.6 Headings

The headings of the several paragraphs and sections of this Lease 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 provisions of this Lease and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

36.7 Hold Harmless

Tenant shall defend, indemnify and hold City harmless from and against claims for any broker's commissions, finder's fee or other commission or fee relating to the leasing of the Premises by anyone claiming by or through Tenant.

36.8 Joint and Several

If there be more than one Tenant designated in or signatory to this Lease, the obligations hereunder imposed upon Tenant shall be joint and several; and the term Tenant as used herein shall refer to each and every of said signatory parties, severally as well as jointly.

36.9 Material Considerations

Each and every term, condition, covenant and provision of this Lease is and shall be deemed to be a material part of the consideration for City's entry into this Lease, and any breach hereof by Tenant shall be deemed to be a material breach. Each term and provision of this Lease to be performed by Tenant shall be construed to be both a covenant and a condition.

36.10 Modification of Lease

This Lease shall not be modified, unless the parties first agree to and approve of such modification in writing.

36.11 No Assumption

The review, approval, inspection, examination or consent of City of or to any item to be reviewed, approved, inspected, examined or consented to by City shall not constitute the assumption of any responsibility by City for either accuracy or sufficiency of any item or the quality or suitability of such item for its intended use, but rather for the sole purpose of protecting City's interests. No third parties, including Tenant or persons claiming under Tenant, shall have any rights hereunder resulting therefrom or otherwise.

36.12 Number and Gender

Whenever the singular number is used in this Lease and when required by the context, the same shall include the plural, and words of any gender used herein shall include each other gender, where appropriate.

36.13 Resolutions

Tenant shall submit a copy of any corporate resolution, if requested by City, which authorizes any director or officer to act on behalf of Tenant or which authorizes Tenant to enter into this Lease.

36.14 Severability

If a court of competent jurisdiction finds or rules that any provision of this Lease is void or unenforceable, the remaining provisions of this Lease shall remain in effect.

36.15 Successors and Assigns

The provisions of this Lease shall, subject to the provisions concerning transfer, apply to and bind the successors and assigns of the parties hereto.

36.16 Tenant not an Agent of City

Tenant is not an agent, contractor or employee of City and nothing in this Lease nor any action of Tenant shall be construed in any way to constitute Tenant as an agent, contractor or employee of City for any purpose.

36.17 Time of Essence

Time is of the essence of this Lease and each of its provisions, and failure to comply with this provision shall be a material breach of this Lease.

36.18 Venue

In the event that suit shall be brought by either party hereunder, the parties agree that venue shall be exclusively vested in the state courts of California in the County of Santa Clara or if federal jurisdiction is

appropriate, exclusively in the United States District Court in the Northern District of California, San José, California.

36.19 Counterparts

This Lease may be executed in any number of counterparts and by each party in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

36.20 Use of electronic signatures

Unless otherwise prohibited by law or City policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a writing as set forth in Evidence Code Section 1550. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by the City.

37 NOTICES

All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments or designations hereunder by either party to the other, shall be in writing and shall be addressed as follows:

If to City, the same shall be addressed to:

Norman Y. Mineta San José International Airport
Director of Aviation
1701 Airport Blvd., Suite B-1130
San José, CA 95110
Facsimile: (408) 441-4588

If to Tenant, the same shall be addressed to the address set forth in **Section 1**, or to such other place as Director or Tenant, respectively, may notify the other in writing. All notices shall be sufficiently given and served upon the other party if sent by first-class U.S. mail, postage prepaid, or by facsimile to the facsimile numbers indicated herein for either party. All termination notices shall be served in accordance with California Code of Civil Procedure Section 1162, as may be amended or modified.

38 GENERAL CIVIL RIGHTS PROVISIONS

The (tenant/concessionaire/lessee) agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the (tenant/concessionaire/lessee) transfers its obligation to another, the transferee is obligated in the same manner as the (tenant/concessionaire/lessor).

This provision obligates the (tenant/concessionaire/lessee) for the period during which the property is owned, used or possessed by the (tenant/concessionaire/lessee) and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

39 TITLE VI CLAUSES FOR COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS

During the performance of this Lease, the Tenant, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”), agrees as follows:

1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Lease.
2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the Lease, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Lease covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor’s obligations under this Lease and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City or the Federal Aviation Administration to be pertinent to ascertain compliance with

such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the City or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this Lease, the City will impose such Lease sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the Contractor under the Lease until the Contractor complies; and/or
 - b. Cancelling, terminating, or suspending the Lease, in whole or in part.
6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the City or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the City to enter into any litigation to protect the interests of the City. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

40 TITLE VI CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

- A. The Tenant for himself/herself, his/her heirs, personal representatives, 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:
 1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this Lease for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the Tenant will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

- B. With respect to the Lease, in the event of breach of any of the above Nondiscrimination covenants, City will have the right to terminate the Lease and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the Lease had never been made or issued.

41 TITLE VI CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

- A. The Tenant for himself/herself, his/her heirs, personal representatives, 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 (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Tenant will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.
- B. With respect to Lease, in the event of breach of any of the above nondiscrimination covenants, City will have the right to terminate the Lease and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued.

42 TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS AND AUTHORITIES

During the performance of this Lease, the Tenant, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);

- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).

43 FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part-time workers.

The Tenant has full responsibility to monitor compliance to the referenced statute or regulation. The Tenant must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

44 OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. The employer must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The employer retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). The employer must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

45 INTENTIONALLY OMITTED

46 INTENTIONALLY OMITTED

47 ENVIRONMENTALLY PREFERABLE PROCUREMENT POLICY

Tenant shall perform its obligations under this Lease in conformance with City Council Policy 4-6, entitled “Environmentally Preferable Procurement Policy.” Tenant shall procure environmentally preferable products and services that meet environmental product standards established by governmental or other widely recognized authorities. Examples include the Green Seal 37 standard for janitorial products (www.greenseal.org), EPEAT for IT equipment, and GreenGuard for furniture.

[remainder of page intentionally left blank]

Executed as of the day and year first written above.

APPROVED AS TO FORM:

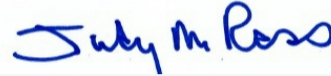
Attorney
Jon Calegari



Email: jon.calegari@sanjoseca.gov
Date: 01/03/2023 GMT

JON CALEGARI
Senior Deputy City Attorney

“CITY”
CITY OF SAN JOSE,
a municipal corporation of the State of
California



Email: judy.ross@sanjoseca.gov
Date: 01/04/2023 GMT

JOHN AITKEN, A.A.E.
Director of Aviation

“TENANT”

ELEVATE GOURMET BRANDS-SFO GROUP, a joint venture

Elevate Gourmet Brands, Inc.,
a California corporation

AIMHIGH ESG, LLC,
a California limited liability company



Email: brian@elevategourmetbrands.com
Date: 12/21/2022 GMT

By: _____
Name: Brian Laliberte
Its: Chief Executive Officer



Email: ebon@ahesg.com
Date: 12/23/2022 GMT

By: _____
Name: Ebon Glenn
Its: Sole Member



Email: benedikt@elevategourmetbrands.com
Date: 12/23/2022 GMT

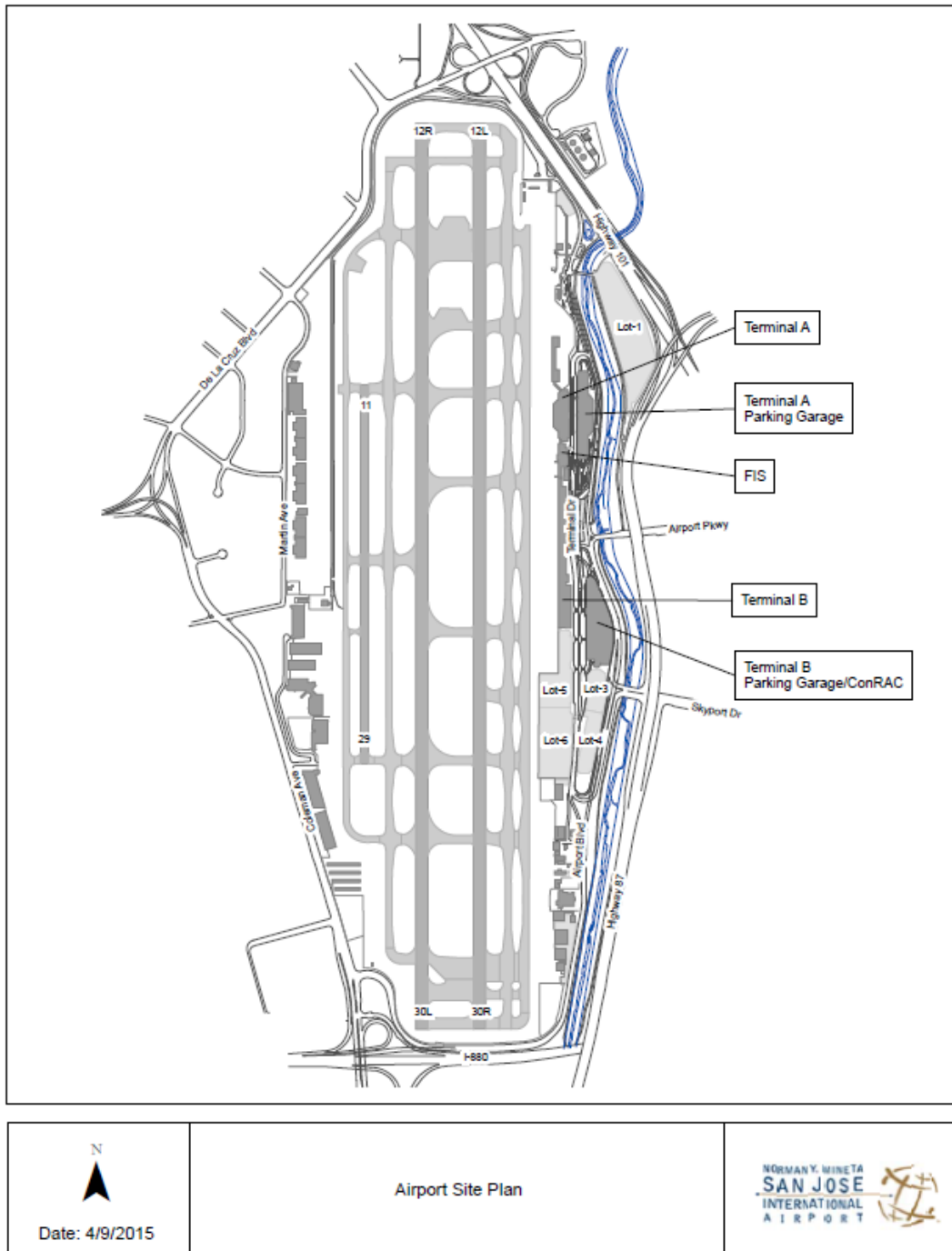
By: _____
Name: Benedikt Reifler
Its: Chief Financial Officer

EXHIBIT A

Description of Premises:

Approximately 390 square feet of terminal basement storage space located at Terminal B at 1701 Airport Boulevard, Floor 0 as shown on Exhibit A.

Exhibit A



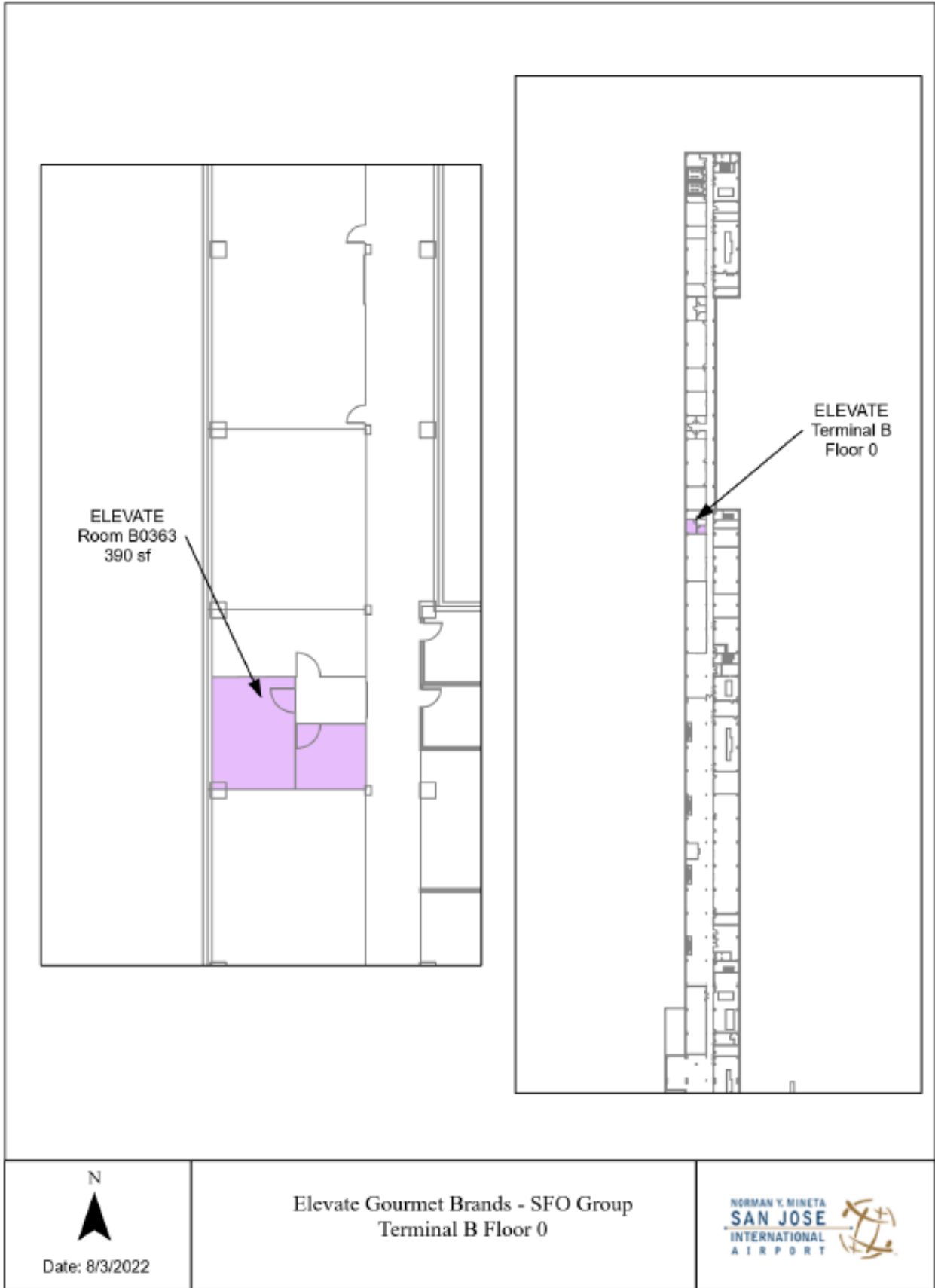


EXHIBIT B
INSURANCE

At all times during this Lease, Tenant, at Tenant's sole cost and expense, shall procure and maintain for the duration of this Lease insurance against claims for injuries to persons or damages to property which may arise from, or in connection with the Tenant's operation and use of the leased premises.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001) including, Fire Legal Liability, Liquor Liability (if the sale of alcohol.)
2. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
3. The coverage provided by Insurance Service Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobile; and
4. Property insurance against all risks of loss to any tenant improvements or betterments including plate glass, if applicable.
5. Builders Risk during build outs, remodels or tenant improvements and betterments, if applicable.

B. Minimum Limits of Insurance

Tenant shall maintain limits no less than:

1. Commercial General Liability: \$5,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. Fire Legal Liability \$100,000; and
2. Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by the California Labor and Employers Liability limits of \$1,000,000 per accident; and
3. Commercial automobile liability insurance insuring all owned, non-owned and hired vehicles used in the conduct of Tenant's business and operated upon

or parked upon common area with limits of liability not less than \$1,000,000 combined single limit for both bodily injury and property damage.

4. Property insurance against all risks of loss including but not limited to fire, vandalism and malicious mischief, and other perils at the Landlords discretion, in an amount equal to 100% of the replacement cost of all furniture, fixtures, stock and equipment, including fixtures, improvements and betterments installed by Tenant, in the leased Premises. Plate glass insurance covering the full replacement value of plate glass, frames and lettering thereon within and part of the Leased Premises, including safety glazing material endorsement.

5. During the period of the Tenant's build out, remodeling or any Tenant Improvements and Betterments, Tenant shall carry Builders' Risk insurance under which the building containing the leased premises and work in process are insured against loss or damage resulting from the acts or omissions of Tenant, its agents and contractors in the course of such remodeling. Landlord shall be named as additional insured and loss payee on such policies of insurance.

Builder's Risk: Completed value of the project. No deductible shall exceed \$25,000.

C. **Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to, and approved by City's Risk Manager. At the option of City, either; the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officer, employees, agents and Tenants; or Tenant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the City's Risk Manager.

D. **Other Insurance Provisions**

The general liability policy is to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability

a. The City of San José its officers, agents, employees and volunteers are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, Tenant; products and completed operations of Tenant; premises owned, leased or used by Tenant; and automobiles owned, leased, hired or borrowed by Tenant. The coverage shall contain no special limitations on the scope of protection afforded to City its officers, employees, agents, volunteers and contractors.

b. Tenant's insurance coverage shall be primary insurance as respects City its officers, employees, agents and Tenants. Any insurance or self-insurance maintained by City its officers, employees, agents or

Tenants shall be excess of Tenant's insurance and shall not contribute with it.

c. Any failure to comply with reporting provisions of the policies by Tenant shall not affect coverage provided City its officers, employees, agents, or Tenants.

d. Coverage shall state that Tenant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

e. Coverage shall contain a waiver of subrogation in favor of the City, its officials, employees, agents, and contractors.

2. Workers' Compensation and Employers Liability Coverage shall be endorsed to state waiver of subrogation against the City, its officials, employees, agents and contractors.

3. Builders' Risk policies shall contain the following provisions:

a. City of San José shall be named as loss payee.

b. The insurer shall waive all rights of subrogation against the City of San José its officials, employees, agents and contractors.

4. All Coverages

Each insurance policy required by this Lease shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to City, except that ten (10) days ' prior written notice shall apply in the event of cancellation for non-payment of premium.

E. Acceptability of Insurers

Insurance is to be placed with insurers acceptable to City's Risk Manager.

F. Subtenants

Tenant shall include all contractors, subcontractors and subtenants as insured under its policies or shall obtain separate certificates and endorsements for each subtenant.

G. Verification of Coverage

Tenant shall furnish City with certificates of insurance and with original endorsements affecting coverage required by this Lease. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

There are two (2) options for the delivery of insurance to Risk Management

- PDF via e-mail: Riskmgmt@sanjoseca.gov
- Proof of insurance shall be mailed to the following address, or any subsequent address as may be directed in writing by the Risk Manager:

City of San José, Finance Department
Risk Management
200 East Santa Clara St., 14th Floor
San José, CA 95113-1905

with a copy mailed to:

Airport Property Management
Norman Y. Mineta San José International Airport
1701 Airport Blvd., Suite B-1130
San José, CA 95110
FAX No. (408) 441-4588

H. **Review of Coverage**

These insurance requirements shall be subject to review by City's Risk Manager. Should the Risk Manager require any change in coverage, any such change shall be noticed in writing by City to Tenant and Tenant shall comply with the change within thirty (30) days of the date of receipt of the notice.

During the period of the Tenant's build out, remodeling or any Tenant Improvements, Tenant's Contractors, and/or Professional Consultants, Insurance Requirements are as follows

INSURANCE

Contractor/Consultant, at Contractors/Consultants sole cost and expense, shall procure and maintain for the duration of this AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by Contractor/Consultant, its agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and
2. The coverage provided by Insurance Service Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance.
4. Professional Liability Errors and Omissions appropriate to consultant's profession. Architects' and engineers' coverage is to be endorsed to include contractual liability.
(For Contractors or Subcontractors performing any type of design or engineering services or other professional services including but not limited to, surveying, sampling, testing and similar activities)
5. Builders' Risk refer to Tenants requirements above.

B. Minimum Limits of Insurance

Contractor/Consultant shall maintain limits no less than:

1. Commercial General Liability: \$5,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and

2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and
3. Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by the California Labor and Employers' Liability limits of \$1,000,000 per accident.
4. Professional Liability Errors and Omissions \$2,000,000 Aggregate Limit.
5. Builder's Risk: Completed value of the project. No deductible shall exceed \$25,000. Refer to Tenant's requirements above.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by City's Risk Manager. At the option of City, either; the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, employees, agents and contractors; or Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the City's Risk Manager.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages:
 - a. The City of San José its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, Contractor; products and completed operations of Contractor; premises owned, leased or used by Contractor; and automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to City its officers, employees, agents and contractors.
 - b. Contractor's insurance coverage shall be primary insurance as respects City its officers, employees, agents and contractors. Any insurance or self-insurance maintained by City its officers, employees, agents or contractors shall be excess of Contractor's insurance and shall not contribute with it.
 - c. Any failure to comply with reporting provisions of the policies by Contractor shall not affect coverage provided City its officers, employees, agents, or contractors.

d. Coverage shall state that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

e. Coverage shall contain a waiver of subrogation in favor of the City its officials, employees, agents, and contractors.

2. Workers' Compensation and Employers Liability

Coverage shall be endorsed to state waiver of subrogation against the City its officials, employees, agents and contractors.

3. Professional Liability:

Contractor/Consultant agrees to maintain continuous coverage for professional liability applicable to work performed on this project for a period no less than five years after completion of the work on this project. Any claims-made policy used to meet the requirements of this Lease shall have a retroactive date prior to commencement of work on this project.

4. Builders Risk - Refer to requirements listed in Tenant's requirements above.

5. All Coverages:

Each insurance policy required by this Lease shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to City, except that ten (10) days 'prior written notice shall apply in the event of cancellation for non-payment of premium.

E. **Acceptability of Insurers**

Insurance is to be placed with insurers acceptable to City's Risk Manager.

F. **Verification of Coverage**

Contractor/Consultant shall furnish City with certificates of insurance and with original endorsements affecting coverage required by this Lease. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

There are two (2) options for the delivery of insurance to Risk Management

- PDF via e-mail: Riskmgmt@sanjoseca.gov
- Proof of insurance shall be mailed to the following address, or any subsequent address as may be directed in writing by the Risk Manager:

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Risk & Insurance
200 East Santa Clara St., 14th Floor
San José, CA 95113-1905

with a copy mailed to:

Airport Property Management
Norman Y. Mineta San José International Airport
1701 Airport Blvd., Suite B-1130
San José, CA 95110
FAX No. (408) 441-4588

G. **Subcontractors**

Contractor shall include all subcontractors as insured under its policies or shall obtain separate certificates and endorsements for each subcontractor.

H. **Review of Coverage**

These insurance requirements shall be subject to review by City's Risk Manager. Should the Risk Manager require any change in coverage, any such change shall be noticed in writing by City to Tenant and Tenant shall comply with the change within thirty (30) days of the date of receipt of the notice.

EXHIBIT C
HAZARDOUS MATERIALS

Tenant shall solely and fully be responsible for notifying the appropriate public agencies of any Hazardous Material release which occurs on Premises or is caused by or result(ing)s from the activities of Tenant, Tenant's officers, agents, employees, contractors, permittees or invites on the airport other than the Premises. Tenant shall immediately notify City of any Hazardous Material release which occurs on the Premises, regardless of whether the release was caused by or results from Tenant's activities or is in a quantity that would otherwise be reportable to a public agency of which occurs on the Airport other than the Premises and is caused by or results from the activities of Tenant, Tenant's officers, agents, employees, contractors, permittees or invitees, regardless of whether the release is in a quantity that would otherwise be reportable to a public agency.

CERTIFICATE OF LLC AUTHORITY

This Certificate of LLC Authority shall be executed by the manager of the limited liability company.

I, Ebon Glenn, certify that I am the manager of the
Name of Manager
limited liability company named in the attached agreement;

that Ebon Glenn signed the agreement on behalf of the limited
Name of Person that Signed Agreement

liability company as the Sole Member of the limited liability
Title of Person that Signed Agreement

company; and that the agreement was duly signed for and on behalf of the limited liability company by authority of its members, and is within the scope of its limited liability company powers.



Email: ebon@ahesg.com
Date: 12/23/2022 GMT

By: _____

Name: Ebon Glenn

Its: Manager

CORPORATE SECRETARY CERTIFICATE

This certificate shall be executed by the secretary or assistant secretary of a corporation.

I, Benedikt Reifler certify that I
Name of Secretary or Assistant Secretary

am the Secretary or Assistant Secretary of the corporation named in the

attached agreement; that Brian Laliberte
Name of Person that Signed Agreement

signed the agreement on behalf of the corporation as the Chief Executive Officer
Title of Person that Signed the Agreement

of the corporation; and that the agreement was duly signed for and on behalf of

the corporation by authority of its Board of Directors, and is within the scope of its

corporate powers.

Benedikt Reifler

Email: benedikt@elevategourmetbrands.com
Date: 12/23/2022 GMT

Signature of Secretary or Assistant Secretary