

REQUEST FOR PROPOSAL

FOR

**Hotel and Restaurant Development
at
Oakland International Airport**



PORT OF OAKLAND

AVIATION PROPERTIES DEPARTMENT
OAKLAND INTERNATIONAL AIRPORT
1 AIRPORT DRIVE – TERMINAL 1, BOX 45
OAKLAND, CA 94621



PORT OF OAKLAND

REQUEST FOR PROPOSAL

Hotel and Restaurant Development at Oakland International Airport

The Port of Oakland (the "Port"), Oakland, California, is hereby soliciting competitive proposals for the above mentioned development opportunity. The successful Respondent will be required to furnish all labor, material, equipment, supplies, applicable taxes, insurance, bonding, permits, and licenses to design, construct, maintain, and operate this development opportunity.

Proposal Information

| | |
|---------------------------------------|---|
| Proposal Title | Hotel and Restaurant Development at Oakland International Airport |
| Proposal Type | Airport Concession |
| Proposal Issued | April 27, 2018 |
| Issuing Department | Aviation Properties Department; Aviation Division |
| Mandatory Pre-Proposal Meeting | May 24, 2018 at 2:00 p.m. Oakland International Airport Muir Woods Conference Room (Terminal 1 - 2 nd Floor) |
| Scheduled Publication Date | April 27, 2018 |
| Proposal Due Date | No later than 3:00 p.m. (PST) on August 15, 2018 |

Instructions for Submitting Proposals

| | |
|--|---|
| Submittal Address | Port of Oakland Aviation Properties Department Attn: Paul Caruso 1 Airport Drive, Box 45 Oakland, CA 94621 |
| Submittal Copies | One (1) Original copy clearly marked "Original", four (4) Copies marked "Copy", and one .pdf electronic version on a flash memory device connectable to a computer by USB port. |
| Submittal Envelope Requirements | The Proposal package must be <u>sealed</u> and have the following information <u>clearly marked</u> and visible on the outside of the envelope and/or box: <ul style="list-style-type: none">• Proposal Name• Name of Your Company ("Respondent")• Address• Phone Number |
| Late Submittals | Proposals received after the time and date stated above shall be returned unopened to the Respondent. |

How to Obtain Proposal Documents

Copies of the Proposal documents may be obtained at:

| Available | Location |
|-----------|--|
| Yes | Port of Oakland – Aviation Properties Department 1 Airport Drive Oakland, CA 94621 Monday through Friday 9:00 AM to 4:00 PM (510) 563-3647 |
| Yes | Available at www.portofoakland.com/business/bids-rfps/ |

Questions about the Proposal

Questions and/or Requests for Information (RFI) must be submitted in writing and can be submitted by fax or email as follows:

| | |
|------------------------------|---|
| Primary Contact | Paul Caruso Fax: (510) 636-0626 Email: pcaruso@portoakland.com |
| Question/RFI Due Date | June 13, 2018 until 4:00 p.m. Please submit questions as soon as possible. No questions regarding any sections and/or attachments to this RFP (as hereinafter defined) will be responded to after the above date. All pertinent questions will be responded to and answered in writing no later than the Response Date listed below. |
| Response Date | July 11, 2018 All pertinent questions will be responded to via addendum emailed to all prospective Respondents who attended the Mandatory Pre-Proposal Meeting and also placed on the Port's website. Respondents who did not receive a copy of the addendum should download it from the Port's website. See the "How to Obtain Proposal Documents" section for our web address. All addenda must be acknowledged on the RFP Acknowledgement and Signature form. |

Once the RFP is issued, and until a recommendation for award is made to the Board of Port Commissioners (the "Board") at a public Board meeting (or in cases where a recommendation for award does not require a public Board meeting, when Respondents are notified by Port staff of the recommendation for award), each Respondent and its representatives, agents, and affiliates, shall not contact members of the Evaluation Committee, Port staff or the Board to discuss or ask questions about the contents of this RFP or the selection process. All questions or RFI shall be submitted in writing as described in this RFP. Any inappropriate contact by a Respondent, its representatives, agents, and affiliates may result in the Respondents' proposal being disqualified.

Full Opportunity

The Port's policy prohibits discrimination or preferential treatment because of race, color, religion, sex, national origin, ancestry, age (over 40), physical or mental disability, cancer-related medical condition, a known genetic pre-disposition to a disease or disorder, veteran status, marital status, or sexual orientation. It is the policy of the Port to encourage and facilitate full and equitable opportunities for small local businesses to participate in its contracts for the provision of goods and services. It is further the Port's policy that no discrimination shall be permitted in small local business participation in Port contracts or in the subcontracting of Port contracts. The successful Respondent shall comply with the Port's non-discrimination policy.

The Port reserves the right to reject any or all proposals, to waive any irregularities or informalities not affected by law, to evaluate the proposals submitted and to award the contract according to the proposal which best serves the interests of the Port.

A handwritten signature in black ink, appearing to read "Brandon".

Brandon J. Mark, IAP
Manager – Aviation Properties
Oakland International Airport
Port of Oakland

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Attachments

| Title | | Must Be Returned with Proposal |
|-------|--|--|
| 1 | Non-Collusion Declaration | Yes |
| 2 | Statement of Equal Employment Opportunity | Yes |
| 3 | RFP Acknowledgement and Signature Form | Yes |
| 4 | Statement of Adherence to Labor Peace Rule | Yes |
| 5 | Port of Oakland Airport Concession Disadvantaged Business Enterprise (ACDBE) Program A. Quarterly Reporting for Participation of Airport Concession Disadvantaged Business Enterprise B. Quarterly Report Certificate Letter | No (Note: Quarterly and final reports are required after contract award.) |
| 6 | Disadvantaged Business Enterprise Program Affidavit | Yes |
| 7 | City of Oakland City Charter § 728 Living Wage Information A. Employer Self-Evaluation for Port of Oakland Living Wage B. Certificate of Compliance—Living Wage | No (Note: Attachment 7-A and 7-B are required after contract award.) |
| 8 | Statement of Living Wage Requirements | Yes |
| 9 | Insurance Requirements (Incorporated into the form of <i>Ground Lease</i>) | No |
| 10 | Insurance Acknowledgement Statement | Yes |
| 11 | Proposal Deposit | Yes |

| Title | | Must Be Returned with Proposal |
|-------|-----------------------------|---|
| 12 | Form of <i>Ground Lease</i> | No (Note: The successful Respondent will execute the <i>Ground Lease</i> if awarded the contract.) |

Exhibits

Exhibit "A" – Illustration of Premises

Exhibit "B" – Port Ordinance No. 2030: North Airport Development Standards (and amendment)

Exhibit "C" – Port of Oakland Exterior Lighting Policy

Exhibit "D" – North Airport Landscape Guidelines

Exhibit "E" – North Airport Sign Standards

Exhibit "F" – FAA Form 7460: Notice of Proposed Construction or Alteration

Exhibit "G" – Preliminary Utility Information

Exhibit "H" – Link to Port of Oakland Post Construction Design Manual

Exhibit "I" – Labor Peace Rule

Exhibit "J" – Preliminary Developable Heights Analysis

I. Project Overview

The City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners (the "Port") is soliciting proposals for a **Hotel and Restaurant Development at Oakland International Airport**. This request for proposals ("RFP") will result in the award of a concession privilege for the construction, maintenance, and operation of, at a minimum standard of quality, a nationally branded Upper Midscale Class hotel (or better) and full service restaurant serving breakfast, lunch, and dinner (the "concession opportunity") serving all passengers at the Oakland International Airport ("OAK" or the "Airport"), as well as the local Airport community and its visitors. The successful Respondent will enter into a long-term *Ground Lease* (substantially in the form attached to this RFP) with the Port that governs the construction, maintenance, and operation of a hotel and restaurant.

Premises

The available Premises consists of a single parcel of approximately 3.86 acres at the southwest corner of Hegenberger Road and Doolittle Drive, Oakland. The Premises are currently improved with paved parking, a two-story office building totaling approximately 18,000 square feet, and a single story classroom and administration building of approximately 8,300 square feet. The existing improvements will need to be demolished prior to development of the hotel and restaurant. There are no known easements encumbering the Premises.

There is an approximately 75 square foot cable hut maintained by AT&T ("cable hut"), which distributes landline telephone service to the entire North Field of the Airport, located on the Premises. The development of the hotel and restaurant must preserve this landline telephone service, either by preserving the cable hut and providing access to AT&T, or relocating the cable hut at the sole cost of the successful Respondent to a location approved by the Port.

The subject site benefits from excellent exposure and access to Airport Drive, the primary arterial leading to the Airport's two passenger terminals, which are approximately 1.5 miles south of the Premises. The site is located between the Airport Rental Car Center and the passenger terminals and will be the closest hotel and restaurant to the terminals.

Other Project Requirements

The successful Respondent must comply with and be committed to all Port Policy Requirements described below, including the U.S. Department of Transportation's Airport Concession Disadvantaged Business Enterprise ("ACDBE") Rules the Port's related ACDBE Program, the Labor Peace Rule detailed in **Exhibit I**, anticipated community benefits provisions to be negotiated and included in the *Ground Lease*, and the Port's Maritime and Aviation Project Labor Agreement detailed in Paragraph III.G below. The successful Respondent must also comply with all applicable laws, regulations, and requirements governing both the construction and the maintenance/operations of the concession opportunity.

About the Port of Oakland

The Port of Oakland was established in 1927 and oversees the Oakland seaport, Oakland International Airport, Commercial Real Estate, and 20 miles of waterfront. The Oakland seaport is one of the top ten busiest container ports in the U.S. The Port's real estate includes commercial developments such as Jack London Square and hundreds of acres of public parks and conservation areas. Through Port operations and those of its tenants and users, the Port supports nearly 70,000 jobs in the region and over 800,000 jobs across the United States. The Port is an independent department of the City of Oakland.

Oakland International Airport is the fourth busiest airport in California and the second busiest in the San Francisco Bay Area. Serving over 13 million travelers annually with over 350 daily passenger and cargo flights, OAK is the closest airport to the region's top business and tourism venues. Oakland's air service roster to over 60 destinations is scheduled on 14 different airline brands – eight of which operate with OAK as their sole gateway into the San Francisco Bay region. International passenger volume is up over 150% from last year.

II. Project Scope

A. Qualifications and Experience

All Respondents must have developed at least two (2) Upper Midscale Class hotels (or better) and two (2) full service restaurants within the last ten (10) years within the top 100 "urbanized area" in the United States, as defined by the U.S. Census Bureau. Respondents may also submit proposals by partnering with an entity or entities with such experience. If Respondent plans to assign the operating rights of the hotel and/or restaurant to another entity or entities following occupancy, please note that any assignments are subject to the sole approval of the Board. The Port prefers, however, that this concession opportunity be performed by a single entity.

B. Construction of Hotel and Restaurant

The concession opportunity involves the construction of a hotel and restaurant on the Premises. The hotel must be an Upper Midscale Class hotel (or better) that is nationally branded in the United States with a national reservation system. The restaurant must be full service and be open for and serve breakfast, lunch, and dinner. The restaurant may be freestanding or incorporated into the hotel. If the restaurant is freestanding, it may serve lunch and dinner only so long as breakfast is served to guests and outside customers at the hotel.

Additional reference materials are attached as **Exhibits A-K**. These exhibits include an illustration of the Premises, various development and construction standards, Labor Peace Rule, and a Preliminary Developable Heights Analysis.

C. Management and Operations

The restaurant and hotel must provide professional services and facilities, and maintain appropriate personnel to provide expedient and courteous service at the highest standard of similar hotels and restaurants. The hotel and restaurant shall also be adequately refurbished and renovated at least one time approximately at the midpoint of the term, as set forth in the *Ground Lease*. The successful Respondent will take all measures, to the fullest extent provided by law, to avoid disruption of service and ensure continuity of operations, including by adhering to the Labor Peace Rule (**Exhibit I**). The successful Respondent will also need to comply with any and all community benefits provisions negotiated and included in the *Ground Lease*, as described further below.

D. Financial Offer and Investments

The concession opportunity involves the development and operation of a hotel and restaurant on Port owned land at the sole cost of the successful Respondent. The Port shall not be responsible for any costs associated with the financing, design, construction, installation, operation, maintenance, or any required upgrades to facilities throughout the term of the *Ground Lease*.

E. Projected Timeline and Ground Lease

Submission of a Proposal will confirm that the Respondent fully understands the provisions of the Port's *Ground Lease* and will execute such *Ground Lease* if awarded the concession opportunity. The *Ground Lease* shall be effective upon approval by the Board. The successful Respondent would be expected to complete construction and begin operations within approximately thirty (30) months from the Board's award of the concession opportunity. The overall term of the *Ground Lease* will be negotiated between the parties, but cannot exceed 66 years (pursuant to the City of Oakland Charter), and the length of term is subject to FAA (as defined below) approval.

III. Port Policy Requirements

The selected Respondent will be required to comply with the following Port Policy Requirements:

A. Federal Aviation Administration (FAA) Construction Requirements

The project will need to comply with all requirements of the Federal Aviation Administration ("FAA"), including compliance with 14 CFR Part 77 and an FAA Form 7460-1, "Notice of Proposed

Construction or Alteration”, which approval may impose height restrictions on some or all of the Premises. The successful Respondent must obtain the Port’s written approval of its application to the FAA (including the FAA Form 7460), prior to submitting to the FAA. Preliminary depictions of developable heights analysis is attached as **Exhibit J** for reference purposes only; this information is illustrative only and should not be relied on because the project is subject to formal application to, and approval by, the FAA and the Port.

B. Labor Peace Rule

The successful Respondent must fully adhere to the Labor Peace Rule attached as **Exhibit I** to this RFP and in Exhibit H to the *Ground Lease*, which requires, among other things, that the successful Respondent provide evidence of a Labor Peace Agreement prior to executing the *Ground Lease*. All Respondents must complete **Attachment 4** (Statement of Adherence to Labor Peace Rule) and return it with their Proposal.

C. Airport Concession Disadvantaged Business Enterprise (ACDBE) Program

The successful Respondent is subject to the requirements of the U.S. Department of Transportation's regulations, 49 Code of Federal Regulations (CFR) Part 23 (the “ACDBE Rules”) that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by the ACDBE Rules. . The successful Respondent shall also comply with all of the nondiscrimination requirements contained in the *Ground Lease*.

The Port is currently administering a race neutral Airport Concession Disadvantaged Business Enterprise (ACDBE) program requiring good faith efforts to reach its race-neutral goal, but the Port is not establishing a contract-specific goal for this concession opportunity. The overall goal is 20.26% for federal fiscal years 2018-2020, and the Port expects to meet its ACDBE participation goals entirely through race-neutral means. The Port encourages all Respondents to take active race/gender neutral steps to include ACDBE's, including but not limited to local ACDBE's, in this concession opportunity. Race/gender neutral steps include: unbundling large contracts, subcontract work the Respondent may self-perform, providing capital and bonding assistance, business development programs and providing technical assistance. To facilitate the Port’s compliance, each Respondent must in its Proposal identify those subcontractors or suppliers that are certified disadvantaged business enterprises under the ACDBE Rules, the percentage of each ACDBE’s participation and each ACDBE’s certification number.

The Port is required to report ACDBE accomplishments to the FAA, Part 23 - Uniform Report of ACDBE Participation) annually.

The successful Respondent will be required to submit quarterly ACDBE attainment reports and letter (herein attached as **Attachments 5-A and 5-B**). The successful Respondent shall carry out applicable requirements of the ACDBE Rules. Failure by the successful Respondent to carry out these requirements will be a material breach of the *Ground Lease*, which may result in the termination of the *Ground Lease* or such other remedy as the Port deems appropriate.

The successful Respondent shall cooperate with the Port in meeting its commitments and objectives with regard to ensuring nondiscrimination in the award and administration of the *Ground Lease* and shall use its best efforts to ensure that barriers to participation of ACDBEs do not exist. In order for its participation to count toward ACDBE attainment, Respondents and/or its subcontractors must be certified as of the date of Proposal opening by an authorized agency of the California Unified Certification Program or www.dot.ca.gov/hq/bep/business_forms.htm

D. Insurance Requirements

All Respondents who plan on submitting a Proposal in response to this RFP must meet the Port’s Insurance requirements incorporated into the *Ground Lease* (**Attachment 12**), and must provide proof of insurance at the time of award of this concession opportunity. Respondents must include a statement (**Attachment 10**) with their Proposal agreeing to the Port’s insurance

requirements and indicate they will be able to obtain the proper insurances at the time of award of this concession opportunity.

E. Living Wage Policy

On March 5, 2002, the voters in the City of Oakland voted to add City Charter Section 728 ("§728") entitled "Living Wage and Labor Standards at Port-assisted Businesses." §728 requires certain Port Aviation and Maritime businesses that employ more than 20 employees working at the Port to pay nonexempt employees a Living Wage rate established by City Ordinance. The current Living Wage rate, which is adjusted annually, as of July 1, 2017 is at least \$13.32 with credit given to the employer for the provision to covered employees of health benefits, and \$15.31 without credit for the provision of health benefits. §728 also establishes a worker retention policy, requires covered employers to submit quarterly payroll reports and requires covered employers to allow Port representatives access to payroll records in order to monitor compliance and labor organization representatives access to workforces during non-work time and on non-work sites. Additionally, Port Ordinance No. 3666, as amended by Ordinance No. 3719, additionally requires Port contractors to provide their employees with a minimum of 12 compensated days off per year ("Port Living Wage Ordinance"). The successful respondent, unless exempt under §728, must comply with §728 and the Port Living Wage Ordinance and any successor ordinance. When a contract is awarded, the Respondent will be required to fill out the attached Employer Self-Evaluation for Port of Oakland Living Wage Form (**see Attachment 7-A**) and Certificate of Compliance—Living Wage (**see Attachment 7-B**) and return them to the Social Responsibility Division. (i.e., do not include these forms in with your proposal). For more information, please call Connie Ng-Wong in the Port of Oakland's Social Responsibility Division at (510) 627-1390.

Respondent shall acknowledge reviewing the Port's Living Wage program and compliance, by submitting the Statement of Living Wage Requirement (**Attachment 8**) with their proposal.

F. Prevailing Wages License and Sub-Contracting Requirements

Respondent submitting a proposal for a "public works" project (defined below) are required to pay prevailing wages pursuant to California Labor Code, Section 1720, et seq., and to abide by all subcontracting and subletting practices as defined by California Public Contract Code section 4100 et seq., and to abide by any Contracting Licensing requirements as defined by California Business and Profession Code. All Contractors performing work on Port property are required by law to be licensed and regulated by the Contractors State License Board.

California Labor Code Section 1720, (a)(1) provides that the term "public works" means:

Construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds, except work done directly by any public utility company pursuant to order of the Public Utilities Commission or other public authority. For purposes of this paragraph, "construction" includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

General prevailing rate of per diem wages in the locality in which the work is to be performed for each craft, classifications or type of worker needed to execute the contract, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes is available at the Department on Industrial Relations Internet site accessible at www.dir.ca.gov/DLSR/statistics_research.html.

The schedule of per diem wages is based upon a working day of eight hours. The rate for holiday and overtime work shall be at least time and one half.

It shall be mandatory upon the Contractor to whom the contract is awarded, and upon any subcontractor under him, to pay not less than the specified rates to all workers employed by them in the execution of the contract. It is the Contractor's responsibility to determine any rate change, which may have or will occur during the intervening period between each issuance of published rates by the Director of Industrial Relations.

In addition, any Contractor or Subcontractor performing Public Works for this project must be registered with the Department of Industrial Relations pursuant to Labor Code § 1725.5 (with limited exceptions from this requirement for bid purposes only under Labor Code § 1771.1(a)).

No Contractor or Subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code s§ 1725.5.

The Port has adopted an electronic monitoring system to satisfy certain certified payroll reporting requirements. The successful Respondent will be required to utilize the Port of Oakland's Web Accessed Monitoring System (WAMS) to satisfy said requirements. Weekly certified payroll reports must be input into WAMS within one (1) week after a subject payroll date. All firms are required to register with Elations Systems to submit certified payroll reports. Instructions for using Elations Systems will be given to the selected proposer. There is no associated cost to use WAMS.

G. Maritime and Aviation Project Labor Agreement (MAPLA):

The Port is party to the Maritime and Aviation Project Labor Agreement (MAPLA) with the Building and Construction Trades Council of Alameda County, AFL-CIO and its affiliated unions, effective February 1, 2016. The MAPLA covers construction contracts within the Port's maritime and aviation areas, whether funded by the Port or by tenants, subject to limited exceptions. MAPLA will apply to all construction activity (as described in MAPLA Article 2 (Scope of Agreement)) performed in connection with this concession opportunity. In general, MAPLA requires obtaining workers referred through the applicable union hiring hall, complying with the Uniform Substance Abuse Prevention Policy, contributing to the Social Justice Labor Management Cooperation Trust Fund, utilizing apprentices and/or local hires, and complying with other uniform work rules and standards.

Respondents should review and be familiar with the terms of the MAPLA. Copies of MAPLA documents are available at www.portofoakland.com/port/social-responsibility/programs/.

H. Community Benefits Provisions:

The Port anticipates that the successful Respondent will need to include in the *Ground Lease* various community benefits provisions with input from relevant stakeholders, including, without limitation, organized labor, community organizations, housing organizations, and environmental organizations. These community benefits will likely relate to, but not be limited to, local employment, workforce training, and apprenticeship provisions that are administered through a form of first source hiring program that facilitates recruitment of local residents who face barriers to employment and a fair chance hiring program that prohibits disqualifying applicants with prior criminal history not directly related to job requirements. Any community benefits provisions would be consistent with all applicable laws, regulations, and policies, including those of the Port.

IV. Submission Requirements

The Port has scheduled a Mandatory Pre-Proposal Meeting on the date indicated in the table labeled "Proposal Information" (on the first page of the invitation for this RFP), to review the submission requirements.

Please respond to the following nine (9) submission requirements in a straightforward, concise delineation of your capabilities proposed to satisfy the requirements of the RFP. The Port will use your responses to objectively determine your capabilities and experience. Please label your responses 1 through 9, in the order presented below. Please limit your Proposal to a reasonable number of pages. Your Proposal must be accompanied by the Proposal Deposit specified in **Attachment 11**.

Submittal Format:

There is no minimum or maximum number of pages for your Proposal, however refrain from including excessive brochures, attachments, and materials outside of the requirements of the RFP. Provide a

reasonable number of pages to fully respond to this RFP printed on 8½" x 11" paper and formatted in no smaller than 10-point font. Each section shall be labeled according to the bolded section titles below. All Proposals must be bound.

1. Company Information: Provide the name of your Company and any proposed partners or subtenants (including the name of any parent company) and their business address, email address, website (if any), Federal Tax ID number, and telephone and fax numbers. Please also provide:

- A. A brief statement of who is authorized to submit the Proposal on behalf of your Company. Please make sure that person signs and dates the statement.
- B. Names, titles, relevant experience, and duties of key personnel (including the local management team) for your Company who will be assigned to work under this concession opportunity. Please also provide an organizational/functional chart of relevant personnel.
- C. A brief history of your Company.

The successful Respondent will be required to provide two (2) years of audited financial statements for your Company (and if applicable, for any parent company and partner(s)).

2. Knowledge and Experience: Describe your Company's relevant knowledge, qualifications, and experience to undertake this concession opportunity. In particular, include the following information:

- A. Description of relevant experience in developing, maintaining, and operating hotels and restaurants, especially on leased lands and on or near airports in the United States.
- B. Description of at least two (2) hotel projects and two (2) restaurant projects that are similar in size and scope to that of this concession opportunity, demonstrating your Company's experience, including brief descriptions of the venue, contract terms, and operating history.

3. Partner/Lender References: Provide names, addresses and contact information for at least two (2) current partners or lenders with whom your Company has developed prior projects. Provide the size and scope of each project and a brief description of the projects applicable to each partner or lender. Please make sure all contact information is current. By providing such information, you authorize the Port to contact such partners or lenders.

4. Plan and Approach: Describe the approach, scope and level of services, methodology, and timeline to fulfill the requirements of this RFP. In particular, include the following information:

- A. Project Timeline. Describe your desired term of the *Ground Lease* (not to exceed 66 years and subject to FAA approval.) Describe all project milestones, including entitlements, demolition and construction, operation, and maintenance. Indicate that you have reviewed and accounted for all applicable local, state, and federal agency requirements in preparing your timeline.
- B. Project Concept and Design. Provide all relevant and available details of the project concept and design, including:
 - a. Conceptual drawings portraying the site plan for the hotel and restaurant, including exterior elevations, signage, building materials, number of buildings, and landscaping. Indicate if the restaurant will be freestanding or incorporated into the hotel.
 - b. Architectural renderings of the overall design and size of the hotel and restaurant facilities including a typical guest room, lobby areas, restaurant seating, and meeting areas.
 - c. Description of the general color scheme, furniture, décor, and graphic elements of the hotel and restaurant.
 - d. Description of how these elements meet the quality standard of at least an Upper Midscale Class hotel and a full service restaurant.

- e. Identification of the flag/brand of the hotel and the brand or type of restaurant. If the flag, brand, or type is not yet known, please identify potential or anticipated options of such flags, brands, or types.
 - f. Description of any measures to encourage the use of green building principles, including, without limitation, energy and water efficiency measures.
 - g. Site Security Plan that contains a detailed description of all measures to be taken to comply with all security measure requirements under the *Ground Lease*, including (without limitation) access control, video surveillance, and security guard services. The Site Security Plan should, as necessary, include descriptions, specifications, and plans/drawings, as well as describe any other measures to address the enhanced security needs and realities of an Airport. The Site Security Plan, as approved, shall be incorporated into the *Ground Lease* as an exhibit.
- C. **Management and Operations.** Describe how your Company will operate and maintain this concession opportunity in a way that maximizes sales and service to the traveling public, employees, and other visitors to the Airport. Include:
- a. Detailed business plan to operate, maintain, staff, and market the hotel and restaurant. Include the proposed management structure, including local management and staffing.
 - b. Demonstration that your Company is committed to operating the hotel for the entire term of the *Ground Lease*. Disclose if your Company intends to assign the operating rights of the hotel and/or restaurant to another entity or entities following occupancy, and describe the details of such assignment.
 - c. Description of any proposed additional services or amenities that will enhance the customer experience. These additional services or amenities may extend beyond those described in the "Project Scope" section above.
5. **Proposed Financial Offer and Investments:** Describe how, if awarded this concession opportunity, your Company will enhance the Airport's overall appeal to the traveling public, optimize sales and services, and increase revenue to the Port. Include the following information:
- A. Proposed capital investment and sources of funds for improving the Premises by developing a hotel and restaurant, including mid-term refurbishments.
 - B. Five year pro-forma operating statement for the hotel and restaurant, including proposed rental and occupancy rates and cash flow from room rents and all other sources. Include underlying assumptions and any additional documentation supporting this pro-forma operating statement.
 - C. Proposed rental structure, including a minimum annual guaranteed (MAG) rent, percentage of sales payable to the Port as rent, and any fixed increases during the term of the concession opportunity.
6. **Debarment Statement:** Provide a written statement that your Company has not been debarred from providing services to or developing projects for any State or Federal Agency within the last five (5) years. Sign and date your statement. If your Company has been debarred, you will need to provide background information and reason for the debarment. Provide the name and contact information for the agency that debarred your Company. The Port must review the reason and duration for the debarment before it can determine if your Company can be considered for this concession opportunity.
7. **Litigation Information:** Provide information describing any litigation, arbitration, investigations, or any other similar actions that your Company, the principals, the directors, and employees have been involved in during the last five (5) years relating to your Company's projects. Please list (a) name and court case identification number of each case, (b) jurisdiction in which it was filed, and (c) outcome of litigation (e.g. whether the case is pending, a judgment was entered, a settlement was reached or the case was dismissed). The Port will review the reason and timing

of the action before it can determine if your Company can be considered for this concession opportunity. Failure to provide the litigation information may disqualify your Proposal.

8. **Adherence to Port Policy Requirements:** The Respondent must fill out all the forms included in this RFP (listed under the "Attachments" section and marked with a "Yes" in the column titled "Must Be Returned with Proposal"), and return them with your Proposal. By returning the listed forms, your Company is supporting and agreeing to the Port's Port Policy Requirements (listed in Section III (Port Policy Requirements).) Failure to provide any of the forms listed in this RFP may result in your Proposal being rejected for non-responsiveness.
9. **Exceptions to Form of *Ground Lease*:** The successful Respondent shall execute the Port's *Ground Lease*, as substantially set forth in this RFP. Please specifically describe any exceptions to any written term within this *Ground Lease*, the rationale for such exceptions, and proposed alternative language. Changes to the form *Ground Lease* are discouraged.

V. Evaluation Criteria

Prior to award of this concession opportunity, the Port must be assured that the Respondent selected has all of the resources required to successfully perform under the *Ground Lease*. This includes, but is not limited to, personnel with skills required, equipment/materials, and financial resources sufficient to provide services and develop the project described in this concession opportunity. If during the evaluation process the Port is unable to be assured that Respondent will be able to perform under the *Ground Lease* if awarded, the Port has the option of requesting from the Respondent any additional information that the Port deems necessary to determine the Respondent's capabilities. If such information is required, the Respondent will be notified and will be permitted five (5) working days to submit the requested information.

In awarding the concession opportunity, the Port will evaluate a number of factors in combination. Please make sure you have submitted responses to all items listed in the Submission Requirements section, as your responses will be evaluated based on the weights listed below.

A. Evaluation Points

| Item | Criteria | Points |
|-------------------------------|--|---------------|
| 1 | <p><u>Adherence to Debarment Statement and Port Policy Requirements</u> <i>(Submission Requirement Items 6 and 8)</i></p> <p>Proposals from companies who have not or will not adhere to the Port Policy Requirements or who have been debarred and have not provided sufficient reasons/justification for the Port to review the circumstances surrounding the debarment, will not be forwarded to the Evaluation Committee for review.</p> | Pass/Fail |
| 2 | <p><u>Knowledge and Experience and Plan and Approach</u> <i>(Submission Requirement Items 2, 4A, and 4B)</i></p> <p>Respondent’s relevant experience in developing, maintaining, and operating similar hotels and restaurants; the proposed standard of quality of the hotel and restaurant design and improvements; the project timeline and proposed development schedule.</p> | 30 |
| 3 | <p><u>Proposed Financial Offer and Investments</u> <i>(Submission Requirement Item 5)</i></p> <p>Respondent’s financial resources to construct, maintain, and operate a hotel and restaurant and the proposed capital investment in the project, including periodic refurbishments. The proposed rental structure – including MAG and percentage of sales – and the analysis that supports the proposed rental.</p> | 30 |
| 4 | <p><u>Company Information, Partner/Lender References, and Litigation Information</u> <i>(Submission Requirement Items 1, 3, and 7)</i></p> <p>Respondent’s capacity to provide professional service as evidenced by past performance, company information, partner/lender references, and litigation information.</p> | 5 |
| 5 | <p><u>Management and Operations Plan</u> <i>(Submission Requirement Item 4C)</i></p> <p>Respondent’s plan to maintain and operate a hotel and restaurant at OAK, including day-to-day operations, periodic facility refurbishment, relationships with any operating partners, and potential ancillary product sales to generate additional business and revenue for the Airport for the entire term of the <i>Ground Lease</i>.</p> | 30 |
| 6 | <p><u>Exceptions to Form of Ground Lease</u> <i>(Submission Requirement Item 9)</i></p> <p>The amount and nature of Respondent’s exceptions to the written terms of the <i>Ground Lease</i>, if any.</p> | 5 |
| TOTAL AVAILABLE POINTS | | 100 |

B. Selection Procedure

All Proposals received by the Proposal Due Date (the date indicated in the table labeled “Proposal Information” on the first page of the invitation for this RFP) and which meet the RFP’s requirements will be presented to the “Evaluation Committee” comprised of Port staff and/or external members. The Evaluation Committee will evaluate the Proposals and score all submissions according to the evaluation criteria above. The selection process may include interviews (at the discretion of the Evaluation Committee) for the top scoring Proposal(s). If interviews are held, the Port will notify the top scoring Respondent(s). Interview details and scoring requirements will be provided to selected Respondents prior to the interviews.

VI. Additional Provisions

The terms "Company", "Consultant", "Contractor", "Respondent", "Seller", "Supplier", and "Vendor" whenever appearing in this RFP or any attachments, are used interchangeably to refer to the company or firm (and any of their partners) submitting a proposal in response to this RFP.

A. Port's Legal Name and Jurisdiction

The Port of Oakland (the "Port") is legally known as the City of Oakland, a Municipal Corporation, Acting by and through its Board of Port Commissioners. The Port is an independent department of the City of Oakland. The Port has exclusive control and management of all Port facilities and properties. Port facilities and properties consist of marine terminals and adjacent and related properties (collectively, the "Seaport"); the Oakland International Airport (the "Airport"); and commercial and industrial land and properties (collectively, "Commercial Real Estate"); and other recreational land, other land, undeveloped land, and water areas, all located in Oakland, California. The Port issues Purchase Orders under the name "Port of Oakland".

B. Ownership of Proposal

All rights to information developed, disclosed, or provided in a Proposal and its attendant submissions are the property of Port, unless a Respondent makes specific reference to data that is considered proprietary. Blanket designations of proprietary information shall be invalid. To the extent that a Respondent does not make specific reference to data that is considered proprietary, submission of an RFP constitutes the Respondent's express (i) grant and assignment of a perpetual, transferable (in whole or in part), non-exclusive royalty-free license to the Port for copyright, patent, or other intellectual property right (collectively referred to as "intellectual property"), and (ii) agreement that the Port may use any such intellectual property without charge for any lawful purpose in connection with other Port development projects, including without limitation the creation of derivative works and issuance of sublicenses.

C. Deadline for Receipt of Proposal

Proposals must be sealed and delivered to the Submittal Address listed in the Request for Proposal (RFP) no later than the time specified in the RFP. The Port will place a clock ("Clock") in a conspicuous location at the place designated for submittal of Proposals. For purposes of determining the time that a Proposal is submitted, the Clock shall be controlling (unless at the time of the receipt the Clock malfunctions, then the Port's clock on its network phone system shall be controlling). The Port suggests that Proposals be hand delivered to the Submittal Address in order to ensure their timely receipt. Any Proposals mailed via an express mail service, US Postal Service, or other courier service shall not be considered timely received until date and time stamped by the controlling Clock. Any Proposals received after the time stated (regardless of the cause of the delay, including whether caused by the express mail service, US Postal Services, other courier service, or the Port's mail handling personnel) shall not be opened and shall be returned, sealed, to the Proposer.

D. Public Records Act

Under the Public Records Act (Gov. Code § 6250 et seq.), the Port may be obligated to make available to the public the submitted Proposal and all correspondence and written questions submitted during the RFP process. However, such disclosure shall not be made prior to the date on which the Port publishes a final Board agenda report recommending award of the concession opportunity. Any trade secrets or proprietary financial information, which a Respondent believes should be exempted from disclosure, shall be specifically identified and marked as such. Blanket-type identification by designating whole pages or sections shall not be permitted and shall be invalid.

Respondent acknowledges and agrees that the Port reserves the right to independently determine whether any document is subject to disclosure and to make such information available to the extent required by applicable law, without any restriction.

E. Indemnification and Respondent's Liability

If Respondent is awarded this concession opportunity, it will be required to agree to the indemnification clause contained in the *Ground Lease (Attachment 12)*. Respondent shall be responsible for any and all damages to the Port's premises resulting from the negligent acts or willful misconduct of the Respondent's agents or employees.

F. Title VI Solicitation Notice

The Port of Oakland, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

G. Race/Gender Neutral Solicitation

The requirements of 49 CFR Part 26 apply to this concession opportunity. It is the policy of the Port to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this concession opportunity. The Port encourages participation by all firms qualifying under this solicitation regardless of business size or ownership.

H. Port's Right to Modify; Amendments

Respondents are advised that the Port has not incurred any obligations or duties in soliciting this RFP. The Port, at its sole discretion, reserves the right to reject any or all proposals submitted in response to this RFP; to request additional information or clarification of information submitted; to cancel or modify, in part or in its entirety, this RFP; to request new RFPs or pursue any other means for obtaining the desired services and development; to waive any informalities or minor irregularities in the RFP, and other inconsequential deviations from the RFP's requirements. The Board retains the right to award this concession opportunity in part or in total to the Respondent(s) of its choice, and to decide to undertake the concession opportunity or to terminate the concession opportunity at any time prior to award of the concession opportunity and approval of *Ground Lease*.

The Port may, at its sole discretion, issue amendments to this RFP at any time before the time set for receipt of Proposals. Respondents are required to acknowledge receipt of any amendments (addenda) issued to this RFP by acknowledging the Addendum in the space provided on the RFP Acknowledgement and Signature Form. The Port shall not be bound by any representations, whether oral or written, made at a pre-proposal, pre-contract, or site meeting, unless such representations are incorporated in writing as an amendment to the RFP or as part of the final *Ground Lease*. All questions or requests for clarification concerning material terms of this RFP or the *Ground Lease* should be submitted in writing for consideration as an amendment.

I. Conflicts of Interest

By submitting a proposal, the Respondent represents that it is familiar with Section 1090 and Section 87100 et seq. of the California Government Code, and that it does not know of any facts that constitute a violation of said sections in connection with its proposal. Respondent also represents that its proposal has completely disclosed to the Port all facts bearing upon any possible interests, direct or indirect, which Respondent believes any member of Port, or other officer, agent or employee of Port or any department presently has, or will have, in any agreement arising from this RFP, or in the performance thereof, or in any portion of the profits there under. Willful failure to make such disclosure, if any, shall constitute ground for rejection of the proposals or termination of any agreement by Port for cause. Respondent agrees that if it enters into a contract with the Port, it will comply with all applicable conflict of interest codes adopted by the City of Oakland and Port of Oakland and their reporting requirements.

J. Respondent to Bear Cost of RFP Response

All costs directly or indirectly related to responding to this RFP, attending any Mandatory Pre-Proposal Meetings, selection meetings, and interviews are entirely the responsibility of the Respondent and shall not be chargeable to the Port.

K. Compliance With Laws

The Respondent must comply with all laws, ordinances, regulations and codes of the Federal, State, and Local Governments, which may in any way affect the preparation of proposals or the performance of the *Ground Lease*.

L. Respondent's Relationship

The Respondent's relationship to the Port shall be that of independent contractor and not deemed to be a partner, joint venture, principal, agent, employer, or employee of the Port.

M. Proposal Considerations and Legal Proceeding Waiver

The Port has absolute discretion with regard to acceptance and rejection of proposals. In order to be considered, the Respondent waives the right to bring legal proceedings challenging the Board's choice of the award.

N. False Statements

False statements in a Proposal will disqualify the Proposal.

O. Taxes

The Respondent will be responsible for all Federal, State, and Local taxes.

P. Withdrawal or Modification of Offers

The Respondent may modify a Proposal in writing at any time before the deadline for submission of a Proposal. The Respondent may withdraw a Proposal at any time after the Proposal Due Date, subject to forfeiture of the Proposal Deposit.

Q. Acceptance

Any Proposal received shall be considered a Proposal that may be accepted or rejected, in whole or in part, by the Port based on initial submission with or without discussions or negotiations.

R. Representations

No representations or guarantees of any kind, either made orally, or expressed or implied, are made with regard to the matters contained in this RFP, including any attachments, letters of transmittal, or any other related documents. The Respondent must rely solely on its own independent assessment as the basis for the submission of any Proposal made.

S. Award Consideration

The Port shall not be bound to accept the highest financial Proposal and will award the concession opportunity (if any) to the Company selected through the competitive process (and any subsequent interviews) outlined in this RFP.

T. Protest Procedures

Any Respondent that has timely submitted a responsive Proposal may file a protest of award in accordance with the provisions set forth below:

1. Any protest must be submitted in writing to the Secretary of the Board, by 5:00 p.m. of the fifth (5th) business day following publication of the identity of the apparent successful Respondent (or of notice of intended award, if such notice is issued).

2. The protest must include the name, address, and telephone number of the person representing the protesting party.
3. The initial protest document must contain a detailed and complete statement of the basis for the protest, including (without limitation) all facts, supporting documentation, legal authorities, and argument in support of the grounds for the protest; any matters not set forth in the written protest shall be deemed waived. All factual contentions must be supported by competent, admissible, and creditable evidence.

Any protest not conforming to the foregoing shall be rejected by the Port without recourse.



RFP: Hotel and Restaurant Development at Oakland International Airport

(To Be Executed By Respondent and Submitted With Proposal)

I, _____, declare as follows:

That I am the _____ of _____, the party making the attached proposal; that the attached proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the proposal is genuine and not collusive or sham; that the Respondent has not directly or indirectly induced or solicited any other Respondent to put in a false or sham proposal, or that anyone shall refrain from proposing; that the Respondent has not in any manner, directly or indirectly, sought by agreement, communication, or to fix any overhead, profit, or cost element of the proposal price, or of that of any other Respondent, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the proposal are true; and further, that the Respondent has not, directly or indirectly, submitted his or her proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, proposal depository, or to any member or agent thereof to effectuate a collusive or sham proposal.

Any person executing this declaration on behalf of a Respondent that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this _____ day of _____, 201__, at

_____ / _____

Signature

Authority: Public Contract Code § 7106; Code of Civ. Proc. § 2015.5



PORT OF OAKLAND

Attachment 2: Statement of Equal Employment Opportunity

RFP: Hotel and Restaurant Development at Oakland International Airport

I hereby certify that _____(Legal Name of Respondent/Supplier/Consultant/Contractor), will not discriminate against any employee or applicant for employment because of because of race, color, religion, sex, national origin, ancestry, age (over 40), physical or mental disability, cancer-related medical condition, a known genetic pre-disposition to a disease or disorder, veteran status, marital status, or sexual orientation.

I declare under penalty of perjury under the laws of the state of California that the information I have provided herein is true and correct and is of my own personal knowledge.

BY: _____
Date

Print Name



PORT OF OAKLAND

Attachment 3: RFP Acknowledgement and Signature Form

RFP: Hotel and Restaurant Development at Oakland International Airport

The undersigned having carefully examined the location of the proposed work, the local conditions of the place where the work is to be done, the Invitation, the General Conditions, the Specifications and all of the documents for this project, proposes to enter into a contract with the Port of Oakland to perform the work listed in this RFP, including all of its component parts, and to furnish any and all required labor, materials, equipment, insurance, bonding, taxes, transportation and services required for this project in strict conformity with the plans and specifications prepared, including any Addenda, within the time specified.

Addendum Acknowledgement:

The following addendum (addenda) is (are) acknowledged in this RFP: _____

Acknowledgement and Signature:

1. No Proposal is valid unless signed in ink by the person authorized to make the proposal.
2. I have carefully read, understand and agree to the terms and conditions on all pages of this RFP. The undersigned agrees to furnish the services stipulated in this RFP.
3. I represent that I am familiar with Section 1090 and Section 87100 et seq. of the California Government Code, and that I do not know of any facts that constitute a violation of said sections in connection with the proposal.

Respondent Name and Title: _____

Company Name: _____

Address: _____

Telephone: _____ Fax: _____

Email: _____ Cell Number: _____

Contractor License # (if applicable): _____ Expiration Date: _____

Federal Tax Identification Number: _____

Authorized Signature: _____ Date: _____

Decline RFP:

We **do not** wish to submit a Proposal on this Project. Please state your reason below. Please also indicate if you would like to remain on our Supplier list.

Reason: _____

Company: _____ Address: _____

Name: _____ Signature _____ Date: _____



Attachment 4: Statement of Adherence to Labor Peace Rule

RFP: Hotel and Restaurant Development at Oakland International Airport

The undersigned acknowledges that it has carefully reviewed, understand, and agree to the terms of the Labor Peace Rule attached to this RFP. The undersigned understands that compliance with the Labor Peace Rule is a material term to performing this concession opportunity. If selected as the successful Respondent, the undersigned agrees to fully comply with the Labor Peace Rule.

If selected as the successful Respondent, the undersigned agrees to obtain and provide to the Port the required Labor Peace Agreement prior to executing the *Ground Lease*.

The undersigned also agrees and acknowledges that the Port has a proprietary interest in the timely placement of the successful Respondent and the successful Respondent's operations under a Labor Peace Agreement (as defined in the Labor Peace Rule) and that undue delay in reaching such Labor Peace Agreement would interrupt the provision of services to Airport passengers and subject concessions to labor disruptions.

RESPONDENT

(to be signed by at least one authorized signatory from each entity/partner submitting this Proposal)

Entity Name: _____

Entity Name: _____

Signature: _____

Signature: _____

Title: _____

Title: _____

Date: _____

Date: _____

Entity Name: _____

Entity Name: _____

Signature: _____

Signature: _____

Title: _____

Title: _____

Date: _____

Date: _____



PORT OF OAKLAND

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

Prime Concessionaire Submitting Report: _____ For Quarter Ending: _____

| Name and Address of Prime Concessionaire and Airport Concession Disadvantaged Business Enterprise (ACDBE) | Telephone and Fax Numbers Email Address | ACDBE * Certification Number | Description of Prime and ACDBE Services | Dollar Amount of Sales, Purchase or Lease of Goods and Services | Lease Amount Or Minimum Annual Guarantee | Total Lease Amount |
|---|--|------------------------------------|---|--|---|--------------------------|
| | | | | | | |
| | | | | | | |
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*The certified firm is issued a certificate by the California Unified Certification Program (CUCP). ACDBE status may be obtained by accessing the CUCP website: www.dot.ca.gov/hq/bep/index.htm or by calling (916) 324-1700 or (866) 810-6346. If the firm was certified as an ACDBE at the time it started work on this lease, but was decertified before completing its portion of the work, enter the dollar amount of ALL services performed by the firm, INCLUDING SERVICES PERFORMED AFTER THE CERTIFICATION DATE. This report must be submitted with the Form of Quarterly Report Certificate. For questions regarding this form, contact Lila Zinn at (510) 627-1485.



PORT OF OAKLAND

Attachment 5-B: Quarterly Report Certificate Letter

(Below is a sample Quarterly Report Certificate Letter that must be filed with the quarterly Airport Concession Disadvantaged Business Enterprise Report)

(Print on Company Letterhead)

(Date)

Mr. Bryant L. Francis
Director of Aviation
Port of Oakland
530 Water Street
Oakland, CA 94607

Dear Mr. Francis:

I, _____, do hereby certify as follows:

1. I am the [**insert a title - *Chief Financial Officer***] of _____, the Permittee/Lessee under a Permit/Lease with the Port of Oakland for (*fill in type of service*) with dated _____, 20xx (the "Permit/Lease").

2. The attached Quarterly Report of the Permittee/Lessee for the quarter ending _____, 20__, was prepared in accordance with all of the applicable requirements of the Permit/Lease, and all of the information contained in this Quarterly Report is true and correct.

Sincerely,

Signature

Name

Title



PORT OF OAKLAND

Attachment 6: Disadvantaged Business Enterprise Program Affidavit

RFP: Hotel and Restaurant Development at Oakland International Airport

I hereby certify that _____(Legal Name of Respondent/Supplier/Consultant/Contractor), shall carry out applicable requirements of 49 Code of Federal Regulations (CFR) Part 23 in the award and administration of this contract and cooperate with the Port of Oakland in meeting its commitments and objectives with regard to ensuring nondiscrimination, and shall use best efforts to ensure that barriers to participation of Disadvantaged Businesses do not exist.

Upon execution of an Agreement, the selected consultant will be required to complete quarterly DBE attainment reports and a final report at contract completion, and submit them to the Social Responsibility Division.

I declare under penalty of perjury under the laws of the state of California that the information I have provided herein is true and correct.

BY: _____
Date

Print Name

Title



PORT OF OAKLAND

**Attachment 7: City of Oakland City Charter
§ 728 and Port Living Wage Policy
Information**

**EMPLOYERS SUBJECT TO § 728 OF THE CITY CHARTER MUST COMPLY WITH THE
FOLLOWING REQUIREMENTS:**

- 1) Pay all non-exempt employees the living wage rates (As of July 1, 2017, \$15.31 without health benefits or \$13.32 with health benefits). Port Ordinance No. 3666, as amended, also requires that covered businesses provide employees at least twelve compensated days off per year, including holidays.
- 2) Pay at least \$1.99 per hour worked toward the provision of health care benefits for employees and/or their dependents, if the employer claims credit for health benefits.
- 3) **Provide written notification to each current and new employee, at time of hire, of his or her rights to receive the benefits under the provisions of these regulations.** The notification shall be provided in English, Spanish and other languages spoken by a significant number of the employees, and shall be posted prominently in communal areas at the work site. A copy of said notification is available from the Port Division of Social Responsibility.
- 4) Provide all employees earning less than \$12/hour notification in English, Spanish, and any other language spoken by a significant number of employees of their right to advance Earned Income Credit payments.
- 5) **Maintain a list of the name, address, date of hire, occupation classification, rate of pay, benefits paid for each of its employees, and compensated time off - and submit this list to the Port's Social Responsibility Division, Attention: Connie Ng-Wong, Living Wage Compliance Officer, by March 31st, June 30th, September 30th, and December 31st of each year.** If a covered employer has obtained a waiver from the Port Board of Directors, then the employer must still submit an annual payroll report covering each of its employees by December 31st of each year. Failure to provide the list within five days of the due date will result in a penalty of \$500 per day. Covered employers shall maintain payrolls and basic records for all employees and shall preserve them for a period of at least three years after the close of the compliance period.
- 6) Require subcontractors, tenants and subtenants, or licensees who are covered by these requirements to comply with the provisions of these regulations. **Covered employers shall be responsible for including language committing the subcontractor's, tenant's or licensee's agreement to comply, in the contract with the subcontractor.** Covered employers shall submit a copy of such subcontracts or other such agreements to the Port Division of Social Responsibility.
- 7) Permit authorized Port representatives access to work sites and, with employee consent, relevant payroll records for the purpose of monitoring compliance with these regulations, investigating employee complaints of non-compliance and evaluating the operation and effects of these regulations, including the production for inspection and copying of its payroll records for any or all of its employees for the applicable compliance period. Permit a representative of the labor organizations in its industry to have access to its workforce at the Port during non-working time and in non-work areas to ensure compliance.

Employers who fail to submit documents, declarations or information required to demonstrate compliance with these regulations shall be deemed noncompliant or non-responsive and subject to the remedies as set forth in §728.



COVERED BUSINESS CHECKLIST WRITE YES/NO ANSWER IN APPROPRIATE BOX:

1. Is the Business entering into a contract, tenancy agreement or subordinate agreement (such as, subcontract, subtenancy, or sublicense) with the Port? *If no, go on to question 2. If yes, go to question 3.*
2. Has the Business amended an existing contract, tenancy agreement or subordinate agreement at any time since April 2002? *If no to 1 and 2, stop here: the business is not covered. If yes, go to question 3.*
3. Is the contract with Aviation or Maritime divisions for a value of greater than \$50,000 over the life of the contract (over the next five years if contract is for less than a year and expected to be renewed or extended)? *If no, stop here; the contract is not covered. If yes, go to question 4.*
4. Is the contract for service other than the delivery of products, equipment or commodities? *If no, stop here: the business is not covered. If yes, go to question 5.*
5. Does the Business employ more than 20 employees who spend at least 10 hours per week (4 hours per week if part time employees) working under the contract with the Port or on Port property? Indicate the number of employees that are employed by the Contractor _____. *If no, stop here the business is not covered. If yes, go to question 6. exemptions for specified employees of a covered employer.*

All employees of a covered employer are required to be provided compensation and other benefits as provided under §728 of the Charter, except for specified employees exempt under the following exemptions. The following questions should be answered for each employee.

6. *Does the employee work less than 25% of his/her time (10 hours per week for full time employee) under the contract with the Port? If yes, stop here; the specified employee is exempt. If no, go to question 7.*
7. *Is the employee under 21 years of age, employed by a government agency or nonprofit for after school or summer employment, or as a trainee for 90 days or less? If yes, stop here; the specified employee is exempt. If no, go to question 8.*
8. *Has the Business obtained a waiver that covers the employee? If yes, stop here; the specified employee is exempt. If no, go to question 9.*
9. *Is the employee participating in a bona-fide temporary job-training program in which a significant part of the compensation consists of acquiring specialized knowledge, abilities or skills in a recognized trade? If yes, stop here; the specified employee is exempt. If no, go to question 10.*

10. *Is the employee a volunteer who is not compensated other than for incidental expenses or stipends? If yes, stop here; the specified employee is exempt. If no, go to question 11.*
11. *Is the employee working for the Business less than 20 hours per week for a period of 6 months or less? If yes, stop here the specified employee is exempt. If no, go to question 12.*
12. *Of the remaining employees (employees for which no exemption applies as indicated by your answers to questions 6 through 11), are there 20 or fewer non-exempt employees working for the employer under the Port Contract? If yes, stop here; each of the remaining specified employee(s) is/are exempt. If no, each of the remaining specified employee(s) is covered by §728.*

The undersigned authorized representative of Contractor hereby certifies under penalty of perjury that all of the information on this form is true and accurate.

| | |
|----------------------------|--|
| Company Name | Signature of Authorized Representative |
| Address | Type or Print Name & Title |
| Area Code and Phone | Email Address |
| Name of Primary Contact | Date |
| Project Name (Be Specific) | |

Submit Completed Checklist To:

Connie Ng-Wong

Port of Oakland

Social Responsibility Division

530 Water Street

Oakland, CA 94607

Phone: (510) 627-1390 Fax: (510) 451-1656

Email: cng-wong@portoakland.com



PORT OF OAKLAND

Attachment 7-B: Certificate of Compliance – Living Wage

The City of Oakland Living Wage Charter §728 ("§728") and Port Ordinance No. 3666 ("Ordinance 3666") as amended, provide that certain employers that enter into a contract, lease, license (or a subcontract, sublease, sublicense, or other agreement) with the Port for \$50,000 or more over the term of the contract and certain recipients of Port financial assistance for \$50,000 or more shall pay a prescribed minimum level of compensation to their covered employees ("Employees").

The undersigned ("Contractor") submits this certificate under penalty of perjury and as a condition of payment of its invoice(s) for service provided under the _____ agreement between the Port and Contractor.

- 1) Contractor hereby certifies that it is in compliance with §728 and Ordinance 3666 with respect to all non-exempt Employees of Contractor engaged in Port-related employment or work on Port property.
- 2) Contractor hereby acknowledges that the Port is relying on Contractor's certification of compliance with §728 and Ordinance 3666 as a condition of payment of Contractor's invoice(s).
- 3) Contractor understands that it may be subject to fines or penalties for noncompliance with §728 and Ordinance 3666 up to and including potential fines of \$500 per day until Contractor complies.
- 4) Contractor hereby certifies that claims, records and statements relating to Contractor's compliance with §728 and Ordinance 3666 are true and accurate, that such claims, records and statements are made with the knowledge that the Port will rely on such claims, records and statements, and that such claims, records and statements are submitted to the Port for the express benefit of Contractor's employees engaged in Port-related employment or work on Port property.

Please check the appropriate box and sign below

- Contractor hereby certifies its compliance with all of its obligations under §728 and Ordinance 3666;
- Contractor hereby certifies that all Employees of Contractor working under Contractor's contract with the Port are compensated at wage rate(s) greater than \$12.00 per hour;
- Contractor hereby certifies that it is not currently covered by §728 or Ordinance 3666. Contractor further certifies that should §728 or Ordinance 3666 become applicable, Contractor will comply with all of its Living Wage obligations.

All terms used herein and not defined shall have the meaning ascribed to such terms in §728 and Ordinance 3666.

The undersigned authorized representative of Contractor hereby certifies under penalty of perjury that all of the information on this form is true and accurate.

| | |
|----------------------------|--|
| Company Name | Signature of Authorized Representative |
| Address | Type or Print Name & Title |
| Phone and Email | Date |
| Project Name (Be Specific) | |

Submit to: Connie Ng-Wong, Port of Oakland, Social Responsibility Division, 530 Water Street, Oakland, CA 94607. Email: cng-wong@portoakland.com



PORT OF OAKLAND

Attachment 8: Statement of Living Wage Requirements

RFP: Hotel and Restaurant Development at Oakland International Airport

I hereby certify that _____(Legal Name of Respondent/Supplier/Consultant/Contractor), has reviewed the Living Wage Requirements, included herein as **Attachment 7** to this Request for Proposal and will comply with said requirement. Upon execution of an Agreement, the selected consultant will be required to complete the attached Employer Self-Evaluation Form and Certificate of Compliance –Living Wage Form of this Request for Proposal, and submit them to the Social Responsibility Division.

I declare under penalty of perjury under the laws of the state of California that the information I have provided herein is true and correct.

Signature

Print Name

Title

Date



PORT OF OAKLAND

Attachment 9: Insurance Requirements

RFP: Hotel and Restaurant Development at Oakland International Airport

All of the Port's Insurance requirements are incorporated into the *Ground Lease* attached to this Request for Proposal (**Attachment 12**).



PORT OF OAKLAND

Attachment 10: Insurance Acknowledgement Statement

RFP: Hotel and Restaurant Development at Oakland International Airport

I hereby certify that _____ (Legal Name of Respondent) agrees to meet all of the Port's Insurance requirements included in the *Ground Lease* attached to this Request for Proposal **(Attachment 12)** and Respondent will be able to evidence such insurance when and if awarded the contract and will provide proof of insurance at the time of project award if awarded the contract.

I declare under penalty of perjury under the laws of the state of California that the information I have provided herein is true and correct and is of my own personal knowledge.

BY: _____ Date

_____ Print Name

_____ Title



**Deposit
Required**

Each Proposal must be accompanied by a Proposal Deposit in the form of a check in the amount of \$25,000, made payable to the Port of Oakland.

NOTE: In the event the Port cancels the RFP process or the award of the *Ground Lease* prior to its execution, all Respondents' Proposal Deposits will be returned within thirty (30) days.

**Successful
Respondent's
Proposal
Deposit**

The Port will return or refund the successful Respondent's Proposal Deposit within thirty (30) days after both the Port and the successful Respondent have executed the *Ground Lease* so long as the successful Respondent executes and returns the *Ground Lease* by the date required by the Port.

| If the successful Respondent... | Then the Proposal Deposit will be... |
|--|---|
| Executes and returns the <i>Ground Lease</i> by the date required by the Port | Refunded to the successful Respondent |
| Fails to execute and return the <i>Ground Lease</i> by the date required by the Port | Forfeited to and retained by the Port as liquidated damages |

NOTE: Claims by Respondent of error or mistake shall not be a basis for recovery of the Proposal Deposit.

**Unsuccessful
Respondent's
Proposal
Deposit**

Proposal Deposits from the unsuccessful Respondent(s) will be returned or refunded within thirty (30) days of the Board's award of the concession opportunity to the successful Respondent.

In no event, however, shall the unsuccessful Respondent's Proposal Deposit be held by the Port beyond a period of one-hundred-twenty (120) days after the Proposal Due Date.



PORT OF OAKLAND

Attachment 12: Ground Lease

(attached on following page)

L E A S E

**(Lease of Real Property
Located in City of Oakland,
County of Alameda)**

Between

PORT OF OAKLAND

And

[REDACTED]

Dated

[REDACTED], 20[REDACTED]

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Exhibits

- A Legal Description of Property**
- B Sketch of Property**
- C Irrevocable Letter of Credit**
- D Environmental Responsibilities**
- E FAA-Required Contract Provisions**
 - E-1 List of ACDBEs**
- F Standards for Operation of Hotel and Restaurant Concession**
- G Memorandum of Lease**
- H Labor Peace Rule**
- I Site Security Plan**

L E A S E

THIS LEASE (this "Lease"), dated for reference purposes as of [REDACTED], 20[REDACTED], by and between the **CITY OF OAKLAND**, a municipal corporation (the "City"), acting by and through its Board of Port Commissioners (the "Port"), and [REDACTED] ("Lessee"),

W I T N E S S E T H :

WHEREAS, the City of Oakland is the owner in fee of that certain property located in the Port Area of the City of Oakland (the "Port Area") at 9532 Earhart Road, Oakland, California, consisting of approximately 3.86 acres of land hereinafter referred to as the "Property," the Property together with the improvements presently and thereafter constructed and/or installed thereon being sometimes collectively being referred to hereinafter as the "Premises"; and

WHEREAS, the Port is vested with the complete and exclusive power, and it is the Port's duty for and on behalf of the City with respect to the Port Area, to make provisions for the needs of commerce, shipping, and navigation of the port, to promote and develop the Port Area, and in the exercise of such power and fulfillment of such duty, to enter into any lease of City-owned properties in the Port Area upon such terms and conditions as the Board of Port Commissioners shall prescribe, which terms and conditions shall include control over the rates, charges and practices of the Lessee to the extent permitted by law; and

WHEREAS, the Port desires to develop, alter and improve the Property in order to provide for improvements and facilities that will service and enhance the Port's use of the Port Area while promoting the commerce, shipping, and navigation in the Port Area; and

WHEREAS, the Port has determined that commerce, shipping, and navigation of the Port will be promoted and enhanced by leasing the Property to Lessee for the uses and purposes, and subject to the terms and conditions, set forth in this Lease;

NOW, THEREFORE, for the better promotion of commerce, shipping, and navigation and the development of the Port, and for and in consideration of the faithful performance of the Port and Lessee of the terms, covenants and conditions hereof and of the payments herein provided to be made by Lessee, the Port and Lessee hereby agree as follows:

[]
[] LEASE

1. Lease and Description of the Property:

1.1. Definitions: Definitions of terms used in this Lease are contained in Section 45 (Definitions) and elsewhere in this Lease. Those definitions shall apply unless otherwise provided in this Lease or otherwise reasonably required given the context in which a term is used in this Lease.

1.2. Premises:

(a) Description: The Port has leased and demised, and by these presents does lease and demise unto Lessee, and Lessee by these presents does lease, hire and take from the Port, the Premises, which are located in the Port Area of the City of Oakland, County of Alameda, State of California. The land included within the Premises is more particularly described and depicted respectively in **Exhibit A** and **Exhibit B** attached hereto and by this reference incorporated herein.

This Lease is subject to (1) all easements, covenants, conditions, restrictions, reservations, rights of way, liens, encumbrances and other matters of record, (2) all matters discoverable by physical inspection of the Premises or that would be discovered by an accurate survey of the Premises, and (3) all matters known to Lessee or of which Lessee has notice, constructive or otherwise including, without limitations, those shown on attached **Exhibits A** and **B**.

(b) Delivery of Premises: The Port will deliver possession of the Premises to Lessee on the Term Commencement Date (defined in Section 2.1 below).

1.3. Reserved Easements: The Port reserves to itself and the right to grant to others in the future nonexclusive utility easements (including easements for construction, maintenance, repair, replacement, and reconstruction) over, under, through, across or on the Premises in locations that will not unreasonably interfere with Lessee's use thereof. Lessee shall not be obligated to maintain or repair easement facilities unless the need for repair is caused by Lessee's negligence or other wrongful conduct. Any interference shall be temporary, and all work on the Premises shall proceed expeditiously. Lessee shall be given reasonable notice before commencement of any work on the Premises. Such work shall not result in the closure of any business on the Premises. In the event the installation or maintenance of such future utility lines in such easements causes any damage to the Premises, or any portion thereof, including, but not limited to, pavement, curbs, and sidewalks, the same shall be repaired by the Port at its expense, if not so repaired by the party installing and maintaining the line.

The Port also reserves to itself and the right to grant to others in the future nonexclusive easements over outside portions of the Premises for purposes of access to adjacent Port property (including, without limitation, access to improvements owned by others such as buildings owned by Port tenants on Port land and access for purposes such as maintenance, installation or repair of utilities, use of restrooms, and construction, maintenance, repair, replacement or reconstruction of improvements or facilities located on such Port property.)

1.4. Tidelands: This Lease and the Premises shall at all times during the Term of this Lease be subject to the limitations, conditions, restrictions and reservations contained in and

prescribed by the Act(s) of the Legislature of the State of California, entitled _____.

1.5. Access to Premises: Lessee, its agents, employees, and third persons using the Premises with the consent and approval of Lessee shall have necessary access to the Premises over other areas owned or controlled by the Port, but only in connection with the business operations of Lessee on the Premises, and only over those areas specifically designated from time-to-time by the Port.

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

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

2. Effective Date; Term; Options To Extend Term:

2.1. Effective Date; Term: This Lease shall become effective upon the effective date of the ordinance authorizing this Lease and the Port Attorney’s approval of the form and legality of this Lease (the “Effective Date”). However, if (a) because of the referendum process the ordinance does not become effective immediately upon the expiration of 30 days from and after the date of its final passage or (b) the Port Attorney does not approve the form and legality of this Lease within 30 days from and after the date that Lessee and the Port have executed this Lease, then this Lease shall not become effective except by mutual written agreement of the Port and Lessee.

The term of this Lease (“Term”) shall be [] years (subject to approval by the Federal Aviation Administration) commencing upon the first day of the first full calendar month after the Effective Date (the “Term Commencement Date”).

2.2. No Options To Extend Term: No party has any option to extend the Term of this Lease.

3. Use of Premises:

3.1. Required and Permitted Uses: The Property shall be used by Lessee only for the construction of Buildings and facilities incidental and reasonably related thereto, and except to the extent not reasonably practicable during said construction, the Premises shall be used continuously thereafter by Lessee only for use as a Hotel and Restaurant Concession, and for uses incidental and reasonably related thereto (but only to the extent allowed under the terms of this Lease). The Premises shall not be used for any other purpose, and specifically shall not be used for the Prohibited Uses.

Lessee and Port agree that a primary purpose and an essential consideration for this Lease is for the Port to promote, facilitate, aid, and enhance commerce, shipping, and navigation in the Port Area, including public access and facilities for public use and enjoyment, by providing for the development and operation of the Premises pursuant to this Lease. Lessee and the Port agree that consistent with that primary purpose and essential consideration, Lessee under this Lease has an affirmative obligation to undertake the construction and renovation specified hereunder and during the entire Term of this Lease to use the Premises for the mandatory purposes specified hereinabove. Lessee acknowledges that this Lease is a part of the Port's overall planning efforts to better promote and accommodate commerce and navigation in the Port Area, and that the terms and conditions specified herein concerning use of the Property are, and will in the future be, an integral part of the Port's overall planning. Lessee further acknowledges that any uses of the Property inconsistent with the uses specified herein will contravene the primary purpose of this Lease and interfere with the promotion and accommodation of commerce and navigation in the Port Area.

This Lease and all the provisions hereof shall be subject to whatever right the United States Government now has, or in the future may have or acquire, affecting the control, operation, regulation and taking over of the Airport or the exclusive or nonexclusive use of the Airport by the United States during the time of war or national emergency.

It is understood and agreed that this Lease to use the Premises, as provided herein, extends only to the Premises and does not extend to the use of or access to the ramps, taxiways, landing areas, or any other area of the Airport. It is also understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308(a) of the Federal Aviation Act of 1958 (49 U.S.C. § 40103(e)). The Port 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 Lessee and without interference or hindrance. The Port also reserves the right, but shall not be obligated to Lessee, 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 Lessee in this regard. This Lease shall be subordinate to the provisions and requirements of any existing or future agreements between the Port and the United States, relative to the development, operation or maintenance of the Airport.

3.2. Limited Uses; Compliance with Law; Indemnity: Lessee shall not use or permit the Premises or any part of the Premises, to be used in whole or in part for any purpose other than as set forth in this Lease, nor for any use, operation or activity in violation of any present or future laws, ordinances, general rules or regulations of any public or governmental authority

(including, without limitation, the City and the Port), including, without limitation, the Charter of the City (including, without limitation, Section 728 titled “Living Wage and Labor Standards at Port-Assisted Businesses”), laws, ordinances (including, without limitation, Port Ordinance No. 3666 titled “An Ordinance Establishing a Living Wage Requirement”), general rules, permits or regulations relating to human or public health, the environment, water, sanitation, safety, welfare (collectively solely for purposes of this Section “Laws or Regulations”); provided that, any Laws or Regulations adopted by the Port are of general application and do not unreasonably discriminate against Lessee. Lessee hereby expressly agrees at all times during the Term of this Lease, at its own cost, to maintain and operate the Premises in a clean, wholesome and sanitary condition, and Lessee agrees that such obligation shall apply in all cases, including circumstances such as required maintenance. Lessee shall at all times faithfully obey and comply with all Laws or Regulations.

Lessee may reasonably and in good faith contest any such Law or Regulation through appropriate proceedings, and, during such contest, Lessee need not comply therewith provided further, that Lessee shall at all times reasonably protect the interest of the Port under this Lease, shall indemnify the Port for all Port expenses (exclusive of general office and administrative expenses) actually and reasonably incurred as a result of said contest, and shall promptly comply with any such contested Law or Regulation if any such contest is resolved against Lessee. Lessee agrees to defend and indemnify the Port and Port officers, employees and agents from and against any penalties or charges and administrative and/or judicial proceedings (including, without limitation, attorneys’ fees and legal expenses incurred by the Port in connection with such penalties or charges and proceedings whether or not any such penalties or charges are actually imposed) imposed or sought to be imposed on or involving the Port for any violation or alleged violation, of any such Laws or Regulations, including Laws or Regulations regarding disabled or handicapped persons, including, without limitation, the Americans With Disabilities Act of 1990, and which violation is not solely the result of the wrongful acts or omissions on the part of the Port or its officers, agents or employees.

Lessee further agrees to waive and release the Port and Port officers, employees, agents and members of the Board of Port Commissioners from any and all claims, including claims of negligence, and liability that may arise from any act or failure to act by the Port in connection with the Port’s providing advice, guidance, or assistance to Lessee or any other tenant, sub-tenant or assignee regarding compliance with any such Laws or Regulations including, but not limited to, furnishing educational materials to and organizing meetings for tenants.

3.3. Encroachers, Trespassers and Other Third Party Hazards: Lessee shall cause all encroachers, trespassers, and other third parties not legitimately on the Premises to be lawfully removed.

3.4. Aviation Related Provisions:

3.4.1. Aviation Related Restrictions: In no event shall Lessee construct, install, or alter any Improvement at the Premises unless either (a) the Federal Aviation Administration or a successor federal agency has issued, and the Port has received, a written determination acceptable to the Port that the construction, installation or alteration will not obstruct or interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard to air navigation; or (b) the Port, in the Port’s sole discretion, provides to Lessee written

authorization for such construction, installation or alteration, expressly stating that such authorization is valid without the requirement for the issuance and the Port's receipt of said written determination. Lessee shall provide the Port with a copy of all paperwork submitted to the Federal Aviation Administration by or on behalf of Lessee prior to and in connection with the issuance of such written determination. Any submitted Federal Aviation Administration form requiring coordinates and/or elevations shall be signed and stamped by a Civil Engineer or Land Surveyor licensed in the State of California.

Lessee agrees for itself, its successors and assigns that it will not make use of the Premises in any manner which might obstruct or interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. In the event that any of the foregoing provisions are breached, the Port reserves the right to enter upon the Premises and cause, or require Lessee to cause, the abatement of any resulting obstruction, interference or hazard at the expense of Lessee. The foregoing limitations and requirements of this Section are in addition to other limitations and requirements of this Lease, including provisions regarding Lessee's construction of Improvements and permissible use of the Premises.

3.4.2. FAA-Required Contract Provisions: Lessee shall, at all times during the Term of this Lease, comply with the provisions of the FAA-Required Contract Provisions, attached as **Exhibit E** and incorporated by this reference. Lessee shall include compliance with these provisions in all other agreements it enters into with third parties regarding the Premises.

3.4.3. Elevation and Other Restrictions: In no event shall Lessee in any manner at any time (a) raise the elevation, or cause, allow or suffer the raising of the elevation, at any location on the Premises or any other Port property Lessee uses under this Lease, or any portion of any Improvements, structure or personal property, to higher than 200 feet above ground level, or such other elevation as may be specified from time to time by the Federal Aviation Administration or a successor federal agency to be applicable, or (b) take any action, or cause, allow or suffer any occurrence, at any location on the Premises or any other Port property Lessee uses under this Lease, which results in any Improvement, structure or personal property penetrating an imaginary surface emanating from the edge of the nearest airport runway at a 100 to 1 slope out to 20,000 feet from that runway, or penetrating any other imaginary surface as may be specified from time to time by general rule or regulation of the Federal Aviation Administration or a successor federal agency to be applicable, unless either: (1) the Federal Aviation Administration or a successor federal agency has issued, and the Port has received, a written determination acceptable to the Port that the elevation involved at the particular location will not be a hazard to air navigation; or (2) the Port in the Port's sole discretion otherwise provides to Lessee written authorization for such elevation or such penetration of the imaginary surface, expressly stating that such authorization is valid without the requirement for the issuance and the Port's receipt of said written determination. Lessee shall provide the Port with a copy of all paperwork submitted to the Federal Aviation Administration by or on behalf of Lessee prior to and in connection with the issuance of such written determination. Any submitted Federal Aviation Administration form requiring coordinates and/or elevations shall be signed and stamped by a Civil Engineer or Land Surveyor licensed in the State of California.

In the event any of the foregoing provisions are breached, the Port reserves the right to enter upon the Premises and cause, or require that Lessee cause, the abatement of any resulting obstruction, interference or hazard at the expense of Lessee. The limitations and requirements of the foregoing provisions of this Section are in addition to all other limitations and requirements in this Lease, including provisions regarding Lessee’s construction of Improvements and permissible use of the Premises.

3.5. Standards and Restrictions: The Port has imposed certain standards and restrictions applicable to the North Airport by Port Ordinance No. 2030, as amended (the “Standards and Restrictions”). Lessee shall be bound by and agrees to comply with and conform to the Standards and Restrictions as set forth in said ordinance and as they may from time-to-time be amended; provided, however, that after the Effective Date no amendment shall apply to the Premises which requires changes to any Improvements or which requires Lessee to change a use permitted under this Lease.

3.6. Public Art Program: This Lease incorporates Port Ordinance No. 3694 (the “Public Art Ordinance”) – including all related amendments, rules, and regulations – with the same effect as if they were set forth in full in this Lease, unless otherwise expressly provided in this Lease. In the event of any conflict between the Public Art Ordinance and any express provision of this Lease, this Lease shall prevail.

Lessee shall not permit a work of visual art (as defined in 17 U.S.C. § 107) to be installed in the Premises without the prior written consent of the Port, in the Port’s sole discretion. Any such request to install a work of visual art shall be accompanied by a written waiver, in a form acceptable to the Port, of the artist’s rights under the Visual Artist’s Rights Act of 1990 (17 U.S.C. §§ 106A and 113(d)), the California Art Preservation Act (Cal. Civil Code §§ 987 et seq.), and any other local, state, federal, or international laws that convey rights of the same nature as those conveyed under 17 U.S.C. § 106A, the California Civil Code §§ 987, et seq., or any other type of moral rights protecting the integrity of works of art.

3.7. Standards for Operation of Hotel and Concession: Lessee shall operate the Hotel and Concession on the Premises in accordance with the Standards for Operation of Hotel and Restaurant Concession, attached as **Exhibit F** and incorporated by this reference.

3.8. Security Measures: As a material term of this Lease, Lessee shall, at its sole cost, undertake all security measures to fulfill the requirements in this Section, including constructing all necessary Improvements and as further described in the Site Security Plan, attached as **Exhibit I** and incorporated by this reference.

3.8.1. Access Control: Lessee shall install, maintain, and operate access control systems for all entry or exit points on the Premises that provide access to pedestrians or vehicles (“Access Points”). Such access control systems must be installed, maintained, and operated at a standard reasonably approved by the Port, and may include electronic systems and continual (i.e., 24 hours per day, 7 days per week) monitoring by a security guard at each Access Point. Lessee shall endeavor to minimize the number of Access Points while adequately operating the Hotel and Restaurant Concession according to the terms of this Lease.

3.8.2. Video Surveillance: Lessee shall install, maintain, and operate a video surveillance system of the highest commercial quality (or better) and as further described in this Subsection (“Video Surveillance System”). The Video Surveillance System shall continuously record all Access Points, areas where vehicles park or transit (including, without limitation, parking areas, porte-cochères, and shuttle bus stops), and main entry points to the buildings on the Premises. The Video Surveillance System shall also connect to the Port’s security network, purchase and provide any additional storage space on the Port’s network, and maintain footage according to the Port’s specifications, as they may be amended.

3.8.3. Security Guard Services: At least one (1) security guard shall remain on and monitor the Premises at all times. Such security guard shall be uniformed and possess all necessary licenses (including, without limitation, those required by the California Bureau of Security & Investigative Services) and qualifications as reasonably required by the Port. Such security guard shall primarily serve security-related functions and shall be in addition to anyone monitoring the Access Points and any persons providing Hotel and Restaurant Concession services.

3.8.4. Additional Security Measures: As a material term of this Lease, Lessee agrees, at its sole cost, to promptly comply with any additional security measures reasonably requested of the Port to address any security concerns or to maintain the adequacy of existing security measures. Such additional security measures may include, without limitation, construction of a perimeter fence around the Premises and upgrading equipment and capabilities of the Video Surveillance System.

3.9. Labor Peace Rule: Lessee and its sublessees, successors, and assigns shall comply with the Labor Peace Rule, attached as **Exhibit H** and incorporated by this reference.

3.10. Community Benefits: Lessee and its sublessees, successors, and assigns shall comply with the Community Benefits Provisions, attached as **Exhibit J** and incorporated by this reference.

4. Rent; Rent Adjustment; Security Deposit:

4.1. Minimum Rent:

4.1.1. [Reserved]

4.1.2. Minimum Rent After Construction: Minimum Rent is \$[] per month.

Lessee shall pay to the Port Minimum Rent on or before the first day of each and every month during the Term of this Lease, without setoff, in advance and without previous demand, commencing upon the Minimum Rent Commencement Date which shall mean the first day of the first full calendar month immediately following the first to occur of the following:

A. Completion of construction of the Buildings pursuant to this Lease determined by (i) the recordation of a valid notice of completion or (ii) the issuance of a certificate of occupancy for all or any portion of the Buildings.

B. Any occupancy of any portion of the Buildings for use for the ultimate purpose as contemplated by this Lease, except for purposes of construction or installation of the Improvements or fixtures, or solely for purposes of Lessee's conducting management, leasing or general administrative functions.

C. Thirty (30) months from the Effective Date.

Lessee shall submit, or cause to be submitted, to the Port a copy of the recorded notice of completion and a copy of the certificate of occupancy for all or any portion of the Buildings, promptly after recordation of such notice and the issuance of such certificate respectively. Contemporaneously with the commencement of any business operations on the Premises giving rise to the payment of any Minimum Rent, Lessee shall submit to the Port a written notice of the date of such commencement and a description of the business operations.

4.1.3. Adjustment of Monthly Rent: At the end of the first 36 months of the Term of this Lease, and every 36 months thereafter during the remainder of said term ("Rent Adjustment Date"), the Minimum Rent herein provided to be paid by Lessee on or before the first day of each calendar month during said remaining term, shall be adjusted to 80% of the monthly average of the total of the Minimum Rent and Percentage Rent payable to the Port by Lessee for the 12-month period immediately preceding the Rent Adjustment Date; provided, however, that in no event shall the adjusted Minimum Rent be less than the theretofore existing Minimum Rent. Pending the final determination of the adjusted Minimum Rent, Lessee shall continue to pay to the Port the amount of the Minimum Rent for the preceding period, and if the adjusted Minimum Rent as finally so determined should exceed the amount of Minimum Rent for the previous period, Lessee shall pay to the Port the accrued excess amount then due within 30 days after the Port sends to Lessee a written request therefore.

In the event that during the 12-month period immediately preceding the Rent Adjustment Date no Percentage Rent (as defined hereinafter) was due to the Port, Minimum Rent shall be adjusted without reference to the average Minimum Rent and Percentage Rent payable during said 12-month period, but shall be adjusted solely with reference to said percentage increase, if any, in the Consumer Price Index.

After determination of the adjusted Minimum Rent the amount thereof may be adjusted upwards and made retroactive to the Rent Adjustment Date in the event and to the extent that the Port discovers through an audit or otherwise that Percentage Rent paid to the Port during said preceding 12-month period was less than the sum which actually should have been paid by Lessee to the Port pursuant to this Lease.

4.2. Percentage Rent:

4.2.1. Amount of Percentage Rent: Lessee shall pay to the Port, without setoff and without previous demand, within 15 days after the close of each calendar month of the Term of this Lease, a further sum, herein called Percentage Rent, equal to []% of Gross Receipts during said calendar month.

Notwithstanding any other provision (if any) of this Lease to the contrary, Lessee shall pay all Percentage Rent required by this Lease within 30 days after expiration or earlier termination of the Term of this Lease.

If any Gross Receipts, upon which Percentage Rent is payable and which under this Lease may be accounted for on an actual receipt basis, are received by or on behalf of Lessee after expiration or earlier termination of the Term of this Lease, Lessee shall render a full report thereof to the Port and shall pay to the Port Percentage rent thereon within 15 days after receipt of such "Gross Receipts".

4.2.2. Definition of Gross Receipts: The term "Gross Receipts" when used in this Lease shall include all gross receipts from any and all business carried on in whole or in part upon the Premises, by Lessee or any subtenant, licensee or concessionaire of Lessee, including, but not limited to, room rentals, sales of food and beverages, and any and all other revenue and sales. Gross Receipts shall be determined on an accrual basis whether or not actually received. Gross Receipts shall include cash and the fair market value of any other consideration from such business. Except as expressly provided herein, no cost or expense shall be deducted in computing Gross Receipts.

Sales taxes collected by Lessee from its patrons or through vending machines shall be excluded from Gross Receipts.

No deduction shall be made from Gross Receipts by reason of any credit loss sustained or discount or deduction that may be applicable by reason of the acceptance or use of credit cards, other credit arrangements or the like. If a charge for any sale is not made or collected, the fair market value thereof nevertheless shall be included in the term Gross Receipts.

4.2.3. Percentage Rent Offset: There shall be subtracted from the Percentage Rent otherwise payable to the Port each month during the term hereof pursuant to this Section the amount of Minimum Rent for the month upon which such Percentage Rent is based, and only the difference, if any, obtained after subtracting such Minimum Rent from the Percentage Rent shall be payable to the Port hereunder.

4.2.4. Monthly Accounting: Lessee shall maintain or cause to be maintained adequate accounting systems and controls to insure that all Gross Receipts are recorded on an accrual basis. Within 15 days after the close of each calendar month during the Term of this Lease, Lessee shall render to the Port, in a form reasonably satisfactory to the Port, an accounting for the preceding month of all business transactions that are subject to Percentage Rent, setting forth in particular for said month all Gross Receipts, as heretofore defined in this Section.

Lessee shall keep or cause to be kept true and accurate books and records, in accordance with generally accepted accounting principles, showing all of such business transactions, including, without limitation, business transactions of subtenants or any affiliate, and the Port shall have the right, through its representatives and at all reasonable times, upon at least seven (7) days' prior written notice to Lessee, to inspect such books and records (including, without limitation, Chart of Accounts, monthly profit and loss statements, system-generated monthly general ledger reports for all revenue and other relevant accounts, monthly sales journals and accounts receivable subsidiary

ledgers, sales agreements, customer billings or invoices, daily point of sales reports, worksheets or any other analyses supporting the reported Gross Receipts, sales and business tax returns including supporting schedules, cash register receipts, monthly bank statements and reconciliations, deposit slips, remittance details/advices, and merchant/credit card statements), and Lessee hereby agrees to make or cause to be made such books and records available to the Port or its authorized representatives upon request.

Lessee's failure to comply with such request shall constitute a default under this Lease and will result in an administrative penalty of One Hundred Dollars (\$100.00) per day for each item requested but not provided. The parties agree that such administrative penalty shall be liquidated damages and shall represent a reasonable estimate of expenses the Port will incur in completing its audit because of Lessee's failure to provide such items. The administrative penalty provided in this Section constitutes rent and is in addition to all other remedies that the Port may have under this Lease or otherwise by law or in equity.

The Port reserves the right to request and inspect any and all records deemed necessary in auditing this Lease at no cost to the Port. The right to inspect shall include the right to photocopy and make electronic copies of said books, records and data as the Port determines in its discretion to be necessary or convenient in connection with its review or audit thereof. Said books and records shall be retained for at least seven (7) years after occurrence of the transactions to which they relate. If such books and records are not kept and maintained within a radius of 50 miles from the main offices of the Port in Oakland, California, upon request of the Port Lessee shall make such books and records available to the Port for inspection and audit at a location within said 50-mile radius or Lessee shall pay to the Port the reasonable and actual costs incurred by the Port in inspecting and auditing such books and records, including, but not limited to, travel, lodging and subsistence costs. The Port or its authorized representative shall have full access to Lessee's personnel for inquiry, interview, walk-through, and observation as deemed necessary to conduct the inspection/audit.

If the Port's audit reveals that for any one-year period Gross Receipts reported in Lessee's monthly accounting to the Port were two percent (2%) or more less than the Gross Receipts required to be reported pursuant to this Lease, Lessee shall pay to the Port all of the Port's reasonable and actual costs (including, without limitation, the prorated salary of the Port's auditors, fringes and overhead allocation) incurred by the Port in auditing such books and records. If, however, the parties cannot agree on the results of the Port's audit, the Port may (but is not required to) have an audit performed by independent certified public accountants ("CPA"). The Port shall present to Lessee the names of three (3) CPA firms and Lessee within 15 days thereafter by written notice to the Port shall select one of said firms who shall be the firm to perform the audit. If Lessee fails to select a firm within said period, the Port shall select the firm. Lessee and Port agree that the CPA's decision shall be final and conclusive. Lessee shall pay to the Port the Port's costs of retaining the CPA firm, as well as the Port's said reasonable and actual costs incurred by the Port in inspecting such books and records, if the CPA determines that such accounting is two percent (2%) or more less than the said relevant items required to be reported hereinabove.

4.2.5. Maximum Percentage Rent: Lessee acknowledges that a substantial portion of the consideration for this Lease is the Percentage Rent to be paid to the Port, and it is therefore a condition of this Lease and Lessee hereby covenants and agrees that Lessee shall at all

times use its best efforts to operate and maintain the Premises in a manner that will produce at all times the maximum volume of Percentage Rent consistent with the terms and conditions of this Lease.

4.2.6. Airport Commercial Charges: In addition to the rent for the Premises provided elsewhere in this Lease, Lessee agrees to pay all commercial and other charges incurred by Lessee in the use of the Airport or its facilities (such as landing fees), and at the rates prescribed therefor by the Port.

4.3. Delinquency Charge: Any sum payable by Lessee under any provision of this Lease (all such payments are hereby agreed to constitute rent) that is not paid for a period of 10 days after it becomes due and payable shall be subject to a Delinquency Charge for violation of this Lease and as liquidated damages. The Delinquency Charge shall consist of: (1) a one-time sum of One Hundred Dollars (\$100.00), which amount shall be adjusted at the same time and by the same percentage amount as Minimum Rent is adjusted under Section 4, for each delinquent sum; and (2) a sum equal to five one-hundredths of one percent (0.05%) per day of such delinquent sum (but not to exceed the maximum interest rate permitted by applicable law) for each day from the date such payment became due and payable until payment has been received by the Port. Unpaid Delinquency Charges that accrue shall be compounded monthly.

The parties agree that the Delinquency Charge represents a reasonable estimate of expenses the Port will incur because of such unpaid sums. The Delinquency Charges shall constitute rent and are in addition to all other remedies that the Port may have that are provided by this Lease or otherwise available at law or in equity with respect to any payment that has become due and has not been paid. The Port, as a courtesy, may send invoices to Lessee for Monthly Rent or for Minimum Rent hereunder, but the Port's failure to send an invoice, or Lessee's late receipt of an invoice, shall in no event excuse or justify Lessee's non-payment of such rent or payment of such rent later than the first day of the month.

4.4. Accord and Satisfaction: No payment by Lessee or receipt by the Port of a lesser amount of any sum due hereunder, shall be deemed to be other than on account of the earliest due rent or payment, nor shall any endorsement or statement on any check or any letter accompanying any such check or payment be deemed an accord and satisfaction, and the Port may accept such check or payment and pursue any other remedy available in this Lease, at law or in equity. The Port may accept any partial payment from Lessee without invalidation of any contractual notice required to be given herein (to the extent such contractual notice is required) and without invalidation of any notice required to be given pursuant to California Code of Civil Procedure Section 1161, et seq., or of any successor statute thereto.

4.5. Security Deposit: Prior to commencement of the Term of this Lease, Lessee shall pay to the Port the sum of \$[REDACTED], which amount is equal to three (3) times the Minimum Rent payable hereunder, as a security deposit which sum (and any additions thereto required hereunder) shall be evidenced by cash or certificates of deposit payable to the Port, or such other similar interest-bearing instruments or securities acceptable at the sole discretion of the Port. Said sum, together with any additions thereto required hereunder, is sometimes herein referred to as the "Deposit." The Port reserves the right, in the exercise of its reasonable business judgment, to adjust the Deposit requirement during the Term of this Lease based upon Lessee's payment history

and credit history in accordance with the Port's adopted collections policy as it now exists or as it may be amended by the Board from time to time. The Deposit shall be retained by the Port as a debtor and not as a trustee. If Lessee defaults in the performance of any obligation hereunder, the Port at its election may, but is not required to, apply any portion of the Deposit as necessary to compensate the Port for the default, and Lessee, within 10 days after the Port's demand therefor, shall deposit with the Port the sum that is necessary to restore the Deposit to the full amount then required by this Lease. Neither the application by the Port of all or any portion of the Deposit, nor the Port's demand for or acceptance of money to restore the Deposit, shall result in any waiver of the Port's right under this Lease and applicable law to declare Lessee in default of this Lease or to terminate or declare a forfeiture of this Lease. Upon the termination of this Lease and Lessee's vacation of the Premises, the amount of the Deposit remaining, after curing Lessee's defaults and compensating the Port for damages caused by Lessee, shall be returned to Lessee at Lessee's last address known to the Port. Lessee grants to the Port a Uniform Commercial Code Security Interest in the Deposit and agrees that, in addition to all other rights and remedies available to the Port under applicable law, the Port has all of the rights of a secured party under the California Commercial Code with respect to the Deposit, including, but not limited to, the right to make all filings necessary or appropriate to perfect or renew such security interest and Lessee shall promptly execute all reasonable instruments requested in writing by the Port in connection therewith. Lessee hereby waives, to the maximum extent permitted by law, the protections of California Civil Code Section 1950.7.

Interest on interest-bearing obligations shall be payable to Lessee by the issuer thereof. The Port shall not be required to pay to or credit Lessee with any interest on any Deposit. The Port's preference is that a certificate of deposit be payable in San Francisco or Oakland.

If Minimum Rent is increased hereunder, the then required Deposit shall be increased by the same percentage as the percentage of increase of the Minimum Rent. In no event, however, shall the Deposit at any time be decreased. Lessee shall deposit with the Port the increased amount of the Deposit within 30 days after the Rent Adjustment Date, or in any case where adjusted rent is determined hereunder by appraisal, within 30 days after Lessee's receipt of the appraiser's opinions.

Lessee's payment of the Deposit shall not limit Lessee's liability to the Port for the payment of amounts due to the Port by Lessee in excess of the amount of the Deposit.

4.6 Proration: If the date that a monthly rent payment, or an adjustment thereto, is to commence under this Lease is other than the first day of a calendar month, or if the term expires or is terminated as of a date other than the expiration of a calendar month and Lessee quits and surrenders the Premises in compliance with this Lease, then the monthly rental payment in question shall be appropriately prorated in accordance with the number of days in the calendar month involved.

5. Standard of Service; Rates and Charges; Franchise Matters:

5.1 Standard of Service; Rates and Charges: Lessee shall construct, furnish, maintain, and operate the Premises, and provide all other services and facilities offered in connection therewith, in a first-class manner and shall furnish and maintain a standard of service at least equal to that of the better class of similar businesses providing similar services and facilities in the San

Francisco Bay Area. Lessee agrees to furnish or cause to be furnished good, prompt and efficient service and to furnish said service on a fair, reasonable and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable and not unjustly discriminatory prices for each unit of sale or service; provided, that Lessee may make reasonable and reasonably nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchasers. Noncompliance with this provision shall constitute a material breach of this Lease and in the event of such noncompliance, the Port shall have the right to terminate this Lease and any estate hereby created without liability therefor or at the election of the Port or the United States, either or both of said Governments shall have the right to judicially enforce this provision. Upon reasonable prior written notice to Lessee, the Port shall have reasonable access to and the right to inspect all rental schedules and schedules of rates or prices for products, services and facilities provided or performed upon the premises.

5.2 Franchise Matters: Unless the Port otherwise agrees in writing, and any such agreement is a matter of the Port’s sole discretion, during the entire Term, Lessee shall maintain a franchise arrangement with a national hotel franchisor (“Franchisor”) reasonably approved by the Port whose franchised brand is consistent with, or is of a higher standard than, the requirements of the Hotel and Restaurant Concession under this Lease. Lessee shall provide the Port with a true and correct copy of its franchise agreement, any amendments thereof, and a copy of any notice of default or termination thereunder given by either party to the franchise agreement to the other. Lessee shall discharge its obligations under the franchise agreement as they come due and shall keep such agreement in full force and effect in accordance with its terms. With respect to the expiration or other termination of any franchise agreement under any circumstances except for the expiration or other termination of this Lease, Lessee, but subject to the Port’s right to approve each and every Franchisor, shall execute and have in place a replacement franchise agreement that will be effective from and after such expiration or other termination.

6. Condition of the Property: Except as may be otherwise expressly provided in this Lease, the taking of possession of the Property by Lessee shall in itself constitute acknowledgment that the Property is in good and tenantable condition, and Lessee agrees to accept the Property in its presently existing condition, “as is,” “where is,” and “with all faults” and that the Port shall not be obligated to make any improvements or modifications thereto except to the extent that may otherwise be expressly provided in this Lease.

Lessee represents and acknowledges that it has made a sufficient investigation of the conditions of the Property existing immediately prior to the execution of this Lease and is satisfied that the Property will safely support the type of improvements to be constructed and maintained by Lessee upon the Property, that the Property is otherwise fully fit physically and lawfully for the uses required and permitted by this Lease and that Lessee accepts all risks associated therewith.

Lessee specifically acknowledges that except as otherwise may be expressly provided herein the Port has made no representations concerning the condition of the Property or any Improvements and/or the fitness of the Property or any Improvements for Lessee’s intended use, and/or the compliance of the Property and/or any Improvements with any federal, state, or local building code or ordinance, or with any laws or regulations or guidelines regarding disabled or handicapped persons, including, without limitation, the Americans With Disabilities Act of 1990, and

Lessee expressly waives any duty which the Port might have to make any such disclosures. Lessee further agrees that, in the event Lessee subleases all or any portion of the Property or assigns its interest in this Lease, Lessee shall indemnify and defend the Port for, from and against any matters which arise as a result of Lessee's failure to disclose any relevant information about the Property or Premises to any subtenant or assignee. It is the intention of the Port and Lessee that the immediately preceding sentence shall survive any release of Lessee by the Port upon any assignment of this Lease by Lessee.

Lessee agrees that, except as otherwise expressly provided in this Lease, Lessee is solely responsible without any cost or expense to the Port to take all actions necessary, off as well as on the Property to improve and continuously use the Property as required by this Lease and in compliance with all applicable laws and regulations.

7. Improvements:

7.1. Improvements by Lessee: Lessee covenants and agrees and it is an express condition of this Lease that Lessee with due diligence, at its own cost and expense, shall as soon as reasonably practicable commence to construct upon the Property the Improvements specified to be constructed in Section 3.1 (Required and Permitted Uses).

In addition to construction of said Improvements, Lessee agrees, at its own cost and expense, to perform the following work with respect to the Premises: (1) make all sewer, gas and water connections between the Improvements and main lines with meters for all utility services being located on the Property; (2) make all electrical service connections from the Improvements to utility lines with meters for all utility services being located on the Property; and (3) grade the Property, as necessary, for effective on-site drainage and provide all necessary underground connections or extensions to carry storm water from the Premises.

The layout, specifications, detailed plans and architectural plans of all Improvements to be constructed upon the Property and adjacent thereto shall be subject to the prior written approval of the Port. Lessee warrants that the proposed Improvements if constructed or installed consistently with the plans and specifications will comply with all laws and regulations regarding disabled or handicapped persons, including, without limitation, the Americans With Disabilities Act of 1990. In addition, construction or installation of Improvements shall not commence unless and until Lessee, or its licensed contractor, shall have secured, at no cost to the Port, all other necessary permits, including, but not limited to, building permits and any necessary approvals and permits from the City or any other applicable governmental agency. Lessee agrees to comply with all terms and conditions of permits whether secured by Lessee or the Port.

The "Pre-Construction Period" shall commence upon the Effective Date and continue for not more than eighteen (18) months unless otherwise agreed by the Executive Director in writing. During the Pre-construction Period, Lessee shall perform all of the following requirements:

(1) Not more than sixty (60) days after the Effective Date, Lessee shall contact the Port to schedule a pre-project meeting to brief Port staff on the proposed Improvement. Preliminary plans shall show the full extent of the Improvements to be constructed, including structural details and utility locations showing the relationship of the proposed improvements to

current buildings and utility connections. A minimum of seven (7) full sets of preliminary plans plus one (1) Compact disc (CD) containing a pdf, dwf, or tif set matching the prints, plus all the CAD related data used to create the plans in AutoCAD's "dwg" format, shall be submitted for approval to the Port.

(2) Civil engineering plans shall include plan drawings submitted on a scale not smaller than one (1) inch equals fifty (50) feet. Architectural plans shall include plan drawings at a suitable scale but in no case shall the scale be smaller than 1/16 inch equals one (1) foot. Plans shall include complete specifications in sufficient detail for the Port to determine compatibility with the Port's objectives for the overall aesthetic character and quality of the Improvements. Architectural plans shall include an accurate architectural perspective color rendering including the proposed exterior color, scheme, style, materials, wording and placement of all signs and fixtures.

(3) Within thirty (30) days of the date of receipt of the preliminary plans, the Port will return two (2) sets of plans with comments. The Port's review and comment on the preliminary plans does not mean or infer that the proposed improvement has been approved by the Port. Additional plans, specifications or design features beyond those submitted with the preliminary plans may be required and shall be prepared by Lessee at the request of the Port.

(4) A minimum of seven (7) copies of final plans and specifications showing responses to comments received and setting forth in all necessary detail the requirements for construction of the Improvements shall be submitted to the Port for approval prior to submitting plans to other applicable agencies so that the Port may check them for design conformance with the preliminary plans. A CD containing a pdf, dwf, or tif set matching the prints, plus all the CAD-related data used to create the plans in AutoCAD's "dwg" format must be included in the submittal.

(5) Within thirty (30) days of the date of receipt of the final plans, if final plans are approved, the Port will return final plans to Lessee with the Port's approval stamp on the plans. The Port will retain one (1) full set of final plans. The Port's approval of the final plans shall only mean that the proposed improvement is consistent with the Port's goals and objectives for the Property and does not infer that the proposed improvement is approved by the City's building department.

(6) Lessee shall, prior to the commencement of any work of improvement on the Property, and as a condition of this Lease, shall:

(a) Obtain all approvals required by federal, state (including California Environmental Quality Act) or local laws, including, but not limited to, any discretionary land use approvals and all ministerial permits, such building permits (collectively the "Required Approval and Permits");

(b) Deliver copies of the Required Approvals and Permits to the Port, together with a full set of the final and permitted construction drawings for the Improvements (the "Approved Plans");

(c) File a Notice of Proposed Construction or Alteration with the FAA as required by 14 CFR, Part 77 pursuant to 49 U.S.C. § 44718;

(d) Deliver to the Executive Director for approval all certificates of insurance and required endorsements for coverage evidencing Lessee's and Lessee's construction contractor's insurance coverage to be in compliance with the applicable insurance provisions of this Lease;

(e) Deliver all bonds of Lessee and its contractors required by this Lease to the Executive Director; and

(f) Deliver to the Port all other materials that this Lease requires to be delivered to the Port before the commencement of any work on the Property by Lessee.

(7) If and when Lessee satisfies the requirements of item (6) above, the Approved Plans and the Executive Director shall issue a written "Notice to Proceed," at which point Lessee shall commence and diligently complete the construction of the Improvements in accordance with the Approved Plans and Required Approvals and Permits.

Any modifications to the Required Approvals and Permits shall be submitted to the Port for approval prior to implementation.

Any material modifications to the Approved Plans shall be submitted to the Port for approval prior to implementation.

Lessee shall cause the project to be constructed and installed in accordance with the Approved Plans (as the same may be amended as permitted by the terms of this Lease), the Required Approvals and Permits (as the same may be amended as permitted by the terms of this Lease), this Lease, and all applicable laws, regulations, and permit requirements, including those of the City. The Port shall have the right to inspect the construction and installation of the Improvements for compliance with the requirements of this paragraph and Lessee, at Lessee's sole expense, shall modify any construction or installation found by the Port not to be in accordance with the requirements of this paragraph.

Any review or approval by the Executive Director of Lessee's plans and specifications and construction schedule, or any inspection by the Port of the project work or materials, shall not be deemed to constitute a waiver or release by the Port of any obligation or responsibility of Lessee under this Lease, or assumption of any risk or liability by the Port with respect thereto, and Lessee shall make no claim against the Port on account of such review, approval, or inspection. The Port reviews, approvals and inspections shall not constitute assumption by the Port of any responsibility for the adequacy of the design or the construction. Such responsibility shall remain totally with Lessee and Lessee's architects, engineers and contractors.

Within ten (10) days of construction completion, Lessee shall submit a Notice of Completion to the Port. Within ten (10) days of receipt of Notice of Completion, the Port, in addition to its other inspection rights may schedule an inspection of the Improvements to be accompanied by Lessee for purposes of confirming compliance with the final plans and any subsequent modifications to the final plans. This inspection tour may be scheduled at the same time Lessee schedules a final inspection in accordance with any requirements imposed by the City.

Within sixty (60) days after filing a Notice of Completion, which is due within ten (10) days after construction completion, Lessee shall furnish to the Port one (1) complete set of electronic AutoCAD format Record Drawings and one (1) complete set of either pdf, dwf, or tif files showing the "as-constructed" improvements. Record Drawings shall be dated and stamped by the engineer or architect of record. If by the sixty-first (61st) day after construction has been completed Lessee fails to submit "as-constructed" drawings, Lessee will pay penalties in the amount of One Hundred Dollars (\$100.00) per day until such a time drawings have been submitted.

Any review or approval by the Port any of Lessee's plans and specifications and construction schedule, or any inspection by the Port of any of Lessee's work or materials, shall not be deemed to constitute a waiver or release by the Port of any obligation or responsibility of Lessee under this Lease, or assumption of any risk or liability by the Port with respect thereto, and Lessee shall make no claim against the Port on account of such review, approval, or inspection. Review, approvals and inspections by the Port shall not constitute assumption by the Port of any responsibility for the adequacy of the design or the construction. Such responsibility shall remain totally with Lessee and Lessee's architects, engineers and contractors.

Lessee shall be responsible for the repair of any Port or other facilities which are damaged as a result of Lessee's construction activities.

Lessee, within 30 days of completion of the Improvements (as evidenced by a Notice of Completion and issuance of a Certificate of Occupancy for all or any portion of the Improvements), shall submit to the Port a statement signed by Lessee's chief financial officer of the total of Lessee's expenditures for the Improvements (including the cost of any tenant improvements then in place), equipment, furnishings and trade fixtures, together with a complete set of "as-built plans".

In recognition of the fact that the Property is located at or near the Airport and that special efforts will be required to minimize adverse impacts from Lessee's construction activities on public access, traffic, circulation and safety, and on other business and recreational functions in the vicinity of the Property, Lessee and the Port hereby agree as follows:

(1) Lessee shall maintain during construction fences and gates and other protective devices and/or systems along such portions of the boundaries of the Property and the area adjacent thereto and required to be improved hereunder by Lessee that are necessary in order to protect the public and private property.

(2) Lessee shall schedule and perform all construction work that would entail temporary closing of a public street or sidewalk in such manner as to reduce to a reasonably practicable minimum interference with public use and enjoyment of and business activities at the Airport and with automobile traffic; and

(3) Lessee shall provide, erect and maintain such barricades, warning and detour signs, lights and flashers, and furnish such watchpersons and flag persons as may be necessary to give adequate warning to all persons that work in a public street or sidewalk is in progress and of any dangerous conditions to be encountered as a result thereof.

7.2. No Improvements by the Port: The Port is not obligated to construct or install any improvements on or off of the Property. The Port shall have no obligation on account of any construction or installation of any improvement by Lessee to pay for or reimburse Lessee all or any portion of the costs or expenses arising out of such construction or installation, nor is Lessee permitted any credit, set off or deduction for all or any portion of such costs or expenses against any payment Lessee otherwise owes the Port.

7.3. Prevailing Wage Requirements and the Maritime and Aviation Project Labor Agreement:

(a) Prevailing Wage: When performing work under or in connection with this Lease, including construction of the Improvements and any alterations or additions to the Premises or Improvements, Lessee shall comply with (to the extent applicable) the Public Work Prevailing Wage Requirements, which are the applicable prevailing wage requirements of California Labor Code Sections 1720 et seq.

(b) Maritime and Aviation Project Labor Agreement: The Port's Maritime and Aviation Project Labor Agreement ("MAPLA"), as it may be amended from time to time, applies to any work undertaken by Lessee pursuant to this Lease that (1) constitutes construction work, as defined by the MAPLA; (2) is subject to a permit for construction issued by the Port during the term of the currently effective MAPLA; (3) and exceeds an estimated value of \$150,000. For Lessee's work covered by MAPLA, Lessee shall assure that each construction project contractor with whom Lessee contracts (i.e., the prime contractor) and each subcontractor, regardless of tier, signs a Letter of Assent to the MAPLA before beginning their respective work. The Building and Construction Trades Council of Alameda County and its signatory unions are third party beneficiaries of Lessee's obligations under this subsection and are entitled to proceed with grievance and arbitration against Lessee under the MAPLA for Lessee's breach of such obligations.

7.4. Right of Entry for Construction and Maintenance: The Port and Lessee each agree that the other shall be permitted to enter upon its property, as may reasonably be necessary in order for the Port or Lessee to make the improvements or do other work required by this Lease or in order for the Port to make improvements to adjacent Port property, and to maintain or repair the respective party's property that is adjacent to the other party's property. The right of the Port to enter the Property or the Premises shall extend to the Port's lessees, licensees, and contractors, including utilities approved by the Port. A party's exercise of its right of entry shall not unreasonably interfere with the other party's use of its property. Any interference shall be temporary and all work on the entering party's property shall proceed expeditiously as necessary to avoid or minimize any such interference. A party intending to exercise the right of entry shall first give to the other party reasonable notice before commencement of any work on the other party's property. In the event a party's entry results in any damage to the other party's property, the same shall be repaired expeditiously at the entering party's expense.

In addition, the Port and Lessee each agree to grant to the other and to execute such reciprocal easements, agreements or covenants, conditions and restrictions relating to the Improvements and the improvements to be made by the Port as may be necessary for the proper and

efficient functioning thereof, and determined jointly, reasonably and in good faith by Lessee and the Port.

7.5. Other Requirements: Lessee shall ensure that the interior of the Improvements shall contain sufficient acoustic insulation of structures to assure that aircraft noise is reduced to an interior noise level of 45 dB CNEL or less.

8. Security Concerning Improvements: Before the commencement of any construction work hereunder, Lessee, or its contractors, at no cost or expense to the Port, shall furnish to the Port the following security concerning improvements and covering any obligation of Lessee under the Prevailing Wage Requirements provisions of this Lease:

8.1. Performance and Labor and Material Bonds: Lessee, or its contractor(s), at its or their own cost and expense, shall furnish to the Port bonds, as follows:

8.1.1. Performance Bond: A bond in cash, or securities satisfactory to the Port in its sole discretion, or issued by a surety company licensed to transact business in the State of California and satisfactory to the Port, in a sum of not less than 100% of the total estimated cost of the initial construction and other work required hereunder, payable to the Port and conditioned upon full, faithful and satisfactory performance by Lessee of the initial construction work within the period of time specified in this Lease. The "total estimated cost" for purposes of this Section shall be the cost agreed upon between Lessee and the Port based upon the plans and specifications for the Improvements submitted by Lessee to the Port together with Lessee's application for a Port building permit, but if the parties are unable to agree it shall be the cost reasonably established by the Port. Upon Lessee's full, faithful and satisfactory performance, said bond shall be cancelled or returned to Lessee, as the case may be; otherwise, such part of the amount of the bond as shall be required to complete the work shall be payable to or retained by the Port, as the case may be. In the event that said bond shall be in cash, the Port shall have the right to invest and reinvest the same as it shall see fit, and any interest earned thereon during the time it is so held by the Port shall accrue to and belong to the Port, and Lessee shall have no interest in or claim thereto.

8.1.2. Labor and Material Bond: A bond in cash or securities satisfactory to the Port in its sole discretion, or issued by a surety company licensed to transact business in the State of California and satisfactory to the Port with Lessee's contractor or contractors, as principals, in a sum not less than 100% of the total estimated cost of the contract or contracts for the initial construction and other work required hereunder, guaranteeing the payment for all materials, provisions, provender, supplies and equipment used in, upon, for or about the performance of said work or labor done thereon of any kind whatsoever and protecting the Port from any liability, losses or damages arising therefrom.

8.1.3. General Provisions: In the event and to the extent that Lessee obtains from Lessee's contractor or contractors the bonds required hereunder which are satisfactory to the Port, the Port, upon application by Lessee and upon naming the Port as an additional obligee of Lessee's principal and surety under such bond or bonds, shall release Lessee from and consent to the cancellation of the bond or bonds originally furnished by Lessee. It is understood and agreed that any bond which, as to the Port as obligee, is conditioned upon the Lessee making all necessary payments

to the contractor shall not be satisfactory to the Port. A combination performance and labor and material bond shall satisfy the foregoing requirements of this Section.

9. Title to Improvements:

9.1. Title to Realty Improvements: Lessee shall have title to the Improvements constructed on the Property by Lessee under this Lease and such title shall remain in Lessee during the Term of this Lease and upon termination of this Lease whether by expiration of its term, cancellation or otherwise, title thereto automatically shall pass to and vest in the Port. Title to Improvements on the Property upon the commencement of the Term of this Lease (the “Existing Improvements”) is retained by the Port; provided however, to the extent that the Approved Plans for the Improvements to be constructed by Lessee pursuant to this Lease provide for the destruction of any Existing Improvements owned by the Port, the Port shall be deemed to have approved the destruction of such Port-owned Existing Improvements. Subject to the foregoing, all Improvements shall remain upon and be surrendered with the Premises as part thereof upon termination of this Lease. No Improvements shall be removed from the Premises by Lessee at any time without the prior written consent of the Port. Title to all equipment, furnishings and trade fixtures placed by Lessee upon the Premises shall remain in Lessee, and replacements, substitutions and modifications thereof may be made by Lessee throughout the Term of this Lease, and Lessee may remove the same before termination of this Lease if Lessee is not then in default under this Lease; provided that before termination of this Lease, Lessee shall repair to the satisfaction of the Port any damage to the Premises caused by such removal and, provided further, that usual and customary lighting, plumbing, wall-to-wall carpeting, window coverings, air conditioning and heating fixtures shall remain upon the Premises and be surrendered therewith upon termination of this Lease at which time title thereto shall pass to the Port. Before termination of this Lease, Lessee shall remove all equipment, furniture, furnishings and trade fixtures from the Premises unless otherwise agreed in writing by the Port.

The Port shall have the right to cause Lessee, at Lessee’s expense, to demolish all or certain of the Improvements upon the expiration or other termination of the Term. Such election by the Port shall be made by written notice (the “Demolition Notice”) given to Lessee no later than one (1) year before the scheduled expiration of the Term or within thirty (30) days after the early termination of this Lease. The Demolition Notice shall specify the Improvements that are to be demolished. Upon receipt of the Demolition Notice, Lessee shall prepare plans for the demolition of the specified Improvements and deliver the same to the Port for review and approval of the Port. Upon the written approval of the demolition plans by the Port, Lessee, at Lessee’s expense and within thirty (30) days thereafter, shall secure all of the governmental permits and approvals required therefor. Upon the later of (i) the expiration of the Term or the early termination of this Lease, or (ii) the receipt of the required plans and approvals, (a) Lessee shall deliver copies of such permits and approvals to the Port, and (b) using licensed and qualified contractors approved by the Port (which approval shall not be unreasonable withheld), shall complete the demolition (including the lawful removal and disposal of all debris) within forty-five (45) days after the first to occur of (i) or (ii). Lessee’s contractors must comply with all of the insurance requirements imposed on contractors by the terms of this Lease and all the Port's policies relating to the performance of work on Port property. During the period from the expiration or early termination of this Lease through the completion of such demolition in accordance with the terms of this paragraph, Lessee shall have a license to enter the Premises for the purpose of completing the required demolition, which license shall not require

the payment of any fee; however, Lessee shall maintain all of the insurance protections specified by this Lease during the term of such license and all of Lessee's duties of defense, protection, indemnification, and hold harmless shall apply during the term of such license. The Port reserves the right to require the execution of a formal license agreement; however, such license agreement shall not require Lessee to pay any fee for such license.

9.2. Equipment Leasing: Some of the equipment, fixtures and furniture which under Section 9.1 hereof are not required to remain upon the Premises and be surrendered therewith upon termination of this Lease (collectively designated herein as "Trade Equipment") now or hereafter installed and used by Lessee on the Premises may or will be directly financed by a third-party lender or otherwise subjected to a security interest or owned by an equipment rental company or vendor ("Equipment Lessor") and leased to Lessee either directly from the Equipment Lessor or by way of equipment sublease or assignment of equipment lease from an equipment sublessor ("Equipment Sublessor"), and, provided that such lender, vendor, or Equipment Lessor or Equipment Sublessor (or assignees) gives to Lessor written notice identifying the Trade Equipment prior to its installation on the Premises, Lessor hereby agrees to recognize the rights therein of any such third-party lender, vendor, or Equipment Lessor or Equipment Sublessor (or assignee). Lessor agrees that all such items of financed or leased Trade Equipment installed or to be installed on the Premises shall be and remain personal property and not real property, notwithstanding the fact that the same may be nailed or screwed or otherwise attached or affixed to the Premises, and further agrees to recognize the rights therein of any such third-party lender, vendor, or Equipment Lessor or Equipment Sublessor (or assignee).

Lessee shall have the right at any time, provided Lessee is not in default hereunder, to remove or replace any or all Trade Equipment, whether or not financed or leased, regardless of whether attached or affixed to the Premises, and to the extent of their respective interests therein such third-party lender, vendor, or Equipment Lessor or Equipment Sublessor (or assignee) shall also have such a right regardless of whether Lessee is in default hereunder. Any damage to the Premises caused by such a removal shall be repaired promptly by and at the expense of Lessee or other party causing such removal. Lessor agrees that it does not have and shall not assert any right, lien or claim in or to the Trade Equipment against any third-party lender, vendor, or Equipment Lessor or Sublessor (or assignee), and, subject to the obligation promptly to repair any damage to the Premises, such party may remove and dispose of the same without reference to, and free and clear of, any or other demand of Lessor; provided, however that no such disposal or sale may be made on the Premises.

The Port agrees to execute upon request such reasonable documentation that confirms the foregoing provisions to a third party lender, lessor or other holder of a security interest, provided that Lessee is not in default hereunder and provided such documentation is approved as to form and legality by the Port Attorney.

9.3. Tax Treatment: Lessee agrees and hereby makes the irrevocable and binding election not to take for federal income tax purposes investment tax credits or depreciation on assets financed with the proceeds of tax exempt Port bonds or notes, unless the Port otherwise expressly agrees in advance in writing signed by the Port. Lessee also agrees at the Port's request from time to time to execute such additional documents reasonably requested by the Port or its bond counsel to effectuate and/or evidence said agreement and election. This agreement and election, and the

obligation to execute said documents relative thereto is binding on each successor or assignee of Lessee.

10. Maintenance of Premises; Alterations and Additions: Lessee agrees that during the entire Term of this Lease, at its own cost and expense, it shall keep and maintain the Premises, all furniture, fixtures and equipment, and all utilities within the Property to the points of connection with the utility companies' supplies, clean and in first-class order, repair and lawful condition. Lessee shall perform, at its own cost and expense, any and all maintenance, repairs, rehabilitation, reconstruction and cleanup or removal, whether required by structural failure or deterioration or by operations of Lessee, by actions of others or otherwise. The Port shall have absolutely no maintenance repair, rehabilitation, reconstruction, cleanup, removal or security obligations of any kind with respect to the Premises or the furniture, fixtures and equipment or the utilities used in connection with the Premises.

It is recognized that because of the length of the Term of this Lease it may be necessary for Lessee to perform certain substantial maintenance, repair, rehabilitation or reconstruction (hereinafter collectively referred to as "repair" or "repairs") of the Improvements in addition to Lessee's renovation obligations under Sections 10.1 and 10.2 hereof, in order to ensure that the Premises are kept in first-class order, repair and condition.

"First-class order, repair and condition," as used herein, shall mean the maintenance, repair, renovation or replacement of buildings, equipment, furniture, fixtures, landscaping and appurtenances necessary to keep the Premises in an efficient and attractive condition, given the nature and age of the Improvements at any time during the Term of this Lease. The Port and Lessee do not intend by the immediately preceding sentence that a property item is not first-class merely because of ordinary and reasonable wear and tear that does not materially and substantially reduce the attractiveness and utility of the item given the nature and age of the Improvements at any time during the Term of this Lease. Lessee and the Port also intend that notwithstanding that an item may be in first-class order, repair and condition, that shall not relieve Lessee of Lessee's obligations for renovation pursuant to Sections 10.1 and 10.2 hereof.

If, for a period of 30 days after written notice from the Port, Lessee shall fail, neglect or refuse to perform, or to commence and continuously and diligently proceed in good faith to complete, any required repair or maintenance, the Port may perform such repair or maintenance and Lessee shall reimburse the Port within 30 days after receipt of notice from the Port demanding payment for the cost thereof, including the Port's reasonable administrative overhead. In performing such repair, the Port shall interfere as little as reasonably possible with Lessee's operations on the Premises.

Lessee may make alterations, additions, or betterments to the Premises only after complete plans and specifications therefor have been submitted to, and approved by, the Port and after securing, at no cost to the Port, all necessary building and other permits from the Port, the City, and other appropriate governmental agencies. In addition, Lessee shall maintain, at its expense, all equipment, furnishings and trade fixtures upon the Premises required for the maintenance and operation of a business or the type to be conducted pursuant to this Lease, including installation of such systems and services consistent with a first-class hotel as have generally become accepted and/or considered prudent for a first-class hotel in the industry.

All repairs, modifications alterations or additions to the Premises by Lessee shall be made in accordance with and shall comply with the requirements of all applicable laws, regulations, ordinances and permits.

Lessee hereby expressly waives all rights to make repairs at the expense of Lessor, or in lieu thereof to vacate the Premises, and all of the other benefits contained in Sections 1941 and 1942 of the California Civil Code or any successor thereto and any other similar law now or hereafter in effect.

Without limitation of the foregoing obligations of Lessee under this Section, and notwithstanding the first-class order, repair and condition of the Premises, Lessee agrees to the following specific actions for renovation and replacement of improvements on the Premises:

10.1. Five-Year Plans for Renovation and Replacement: Lessee agrees to prepare and submit to the Port for approval no later than 10 months after Lessee commences business operations pursuant to this Lease, and, in addition, 60 days prior to the date of commencement of each subsequent Plan Year (as herein defined), a five-year plan for renovation and for replacement of furniture, fixtures and equipment including, without limitation, heating and air conditioning equipment.

This Subsection and said five-year plans shall apply to all of the Improvements.

Each of said five-year plans shall set forth a detailed systematic program of expenditures by Lessee for renovation and replacement for each Plan Year, and shall provide for establishment of a reserve for renovation and replacements for each Plan Year during the five-year plan period. The first year of the first five-year plan shall commence one year after business operations begin and said first year and each succeeding year thereafter are hereby designated a "Plan Year."

Representatives of the Port and Lessee shall conduct a joint maintenance inspection of the Premises not later than 120 days before commencement of each Plan Year. The purpose of the inspections shall be to determine items of maintenance, repair and renovation which should be performed by Lessee. Not later than 90 days before commencement of each Plan Year, the Port may notify Lessee of items requiring maintenance, repair and renovation. Lessee's five-year plan shall make provision for timely performance of all required work including, without limitation, work required by the Port.

The Port shall approve or disapprove each of said five-year plans within 30 days after its submission. If the Port disapproves said five-year plan or proposed amendment thereto, Lessee within 30 days thereafter shall submit to the Port a revised five-year plan and the Port shall approve or disapprove said revised five-year plan within 15 days after its submission. The Port's approval of said five-year plan or said five-year revised plan shall not unreasonably be withheld or delayed. Lessee shall comply with each approved five-year plan.

Each of said five-year plans shall, among other things, provide for Lessee's expenditure for renovations and replacements each Plan Year of the five-year plan of a minimum of

[]% of Gross Receipts during the Plan Year. So long as Lessee maintains the Premises in first-class order, repair and condition, Lessee shall be deemed to have complied with Lessee's five-year plan if Lessee has expended the said minimum percentage amount specified above for items covered by said plan; provided, however, that said percentage shall be 1% for the first Plan Year of the first five-year plan and the first Plan Year after the 22nd and 44th years of the Term of this Lease, and 2% for the second Plan Year of the first five-year plan and the second Plan Year after the 22nd and 44th years of the Term of this Lease; provided, however, that the Port and Lessee each agree that, upon the reasonable request from time to time by the other, it shall negotiate in good faith to adjust the percentage of Gross Receipts being deposited for renovations and replacements under this subsection, based upon prior experience and reasonable forecasts of funds necessary for renovations and replacements hereunder, but in no event do the Port and Lessee intend that the percentage of Gross Receipts for renovations and replacements be reduced due solely to the level of Gross Receipts.

This Subsection is intended to, and shall, apply only to expenditures for capital items, and shall not apply to expenditures such as are generally accepted as an expense item in a statement of income and expense for the primary business carried on under this Lease. Any expenditure to lease new furniture, fixtures or equipment shall qualify as an expenditure for capital items within the meaning of this subsection. Lessee shall promptly upon the close of each Plan Year deposit at least the above required percentage of Gross Receipts for the Plan Year in a bank account or other account acceptable to the Port especially designated and maintained to satisfy this subsection; provided, that all or a portion of said required sum may be directly expended at said time for purposes specified in this subsection; further provided that to the extent that at the end of any Plan Year Lessee's total expenditures pursuant to its Port-approved plan for capital items during the Plan Year exceeds the cumulative sum Lessee is then required to have expended or deposited in said special bank account, then up to the extent of said excess Lessee may refrain from further expenditures or deposits so long as the Premises are in the condition required by this Lease. Any money so deposited in said bank account shall not be withdrawn for any purpose other than expenditure for renovations and replacements hereunder. Lessee may in lieu of depositing said money in a bank account maintain said money in, or convert any of said money deposited in a bank account to, interest-bearing certificates of deposit which shall be specially earmarked for the uses specified by this subsection. Interest earned on said deposit and certificates is not required to be used for renovation and replacement under this subsection, and Lessee may use and dispose of said interest at any time for Lessee's own purposes. Lessee agrees to provide to the Port from time to time at the written request of the Port documentary evidence which clearly establishes that Lessee is and has been maintaining the special bank account and/or the specially earmarked certificates of deposit required by this subsection.

No part of the funds deposited in any account for renovation or replacement pursuant to this Subsection shall be included in the security of any Lender and such funds may not be withdrawn or used by any Lender upon foreclosure of any Leasehold Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Leasehold Mortgage, or any conveyance of the leasehold estate created hereby from Lessee to Lender, except solely for withdrawal to perform the maintenance and renovation for which the account was created and funded.

In each five-year plan Lessee shall state in reasonable detail sufficient to determine Lessee's full compliance with this Subsection all actions Lessee has taken since submittal of Lessee's last five-year plan to the Port to comply with this Subsection and said five-year plan. Such statement shall include, without limitation, the following:

- (1) The renovations and replacements made and the amount of expenditures therefor; and
- (2) The amount of money from Gross Receipts, deposited in said special bank account, maintained in said certificates of deposit or expended pursuant to this subsection.

Any portion of the minimum percentage amount to be expended for said renovation and replacement for a Plan Year may be deferred and carried over into the next year if permitted by the approved five-year plan or by the prior written consent of the Port.

10.2. Major Renovation: The obligations under this Subsection are separate from and in addition to all of the preceding obligations under this subsection. Lessee understands and agrees that, in order to operate a first-class business, maintain the Improvements in a first-class condition, and to provide up-to-date facilities of first-class order, periodic major renovation and refurbishing of the Improvements is necessary. During the thirty-second (32nd) year [if Term is shorter than 66 years, insert one year prior to the mid-point of the Term] of the Term of this Lease (or such other time approved in writing by the Port) Lessee shall submit to the Port for Port approval a detailed plan for Lessee's major renovation and refurbishing of the Improvements ("Major Renovation and Refurbishing"), which provides for the commencement of work before expiration of the thirty-third (33rd) year [If Term is shorter than 66 years, insert mid-point year of the Term] of the Term of this Lease, or such other date or dates as may be authorized in writing by the Port. Within 90 days after receipt of said detailed for the Major Renovation and Refurbishing, the Port shall approve, disapprove or request amendments to said plan, and Lessee within 30 days thereafter, as appropriate, shall submit to the Port a new or amended plan. The Port shall approve or disapprove the new or amended plan within 60 days after Lessee's submittal. The Port's approval shall not be unreasonably withheld or delayed. After approval of the plan and necessary building permits by the Port, Lessee shall promptly secure all necessary permits and approvals for the work and commence construction, and thereafter diligently complete the same as provided in said Port-approved plan.

In any event, Lessee shall expend not less than One Hundred Thousand Dollars (\$100,000) in Constant Dollars per hotel room in the course of each Major Renovation and Refurbishing and shall promptly provide the Port with reasonable evidence of such minimum required expenditure by Lessee.

11. Signs and Advertising: Lessee shall not have the right to place, construct, or maintain on the glass panes or supports of any show windows of the Improvements, on the doors, or on the exterior walls or roofs thereof or any interior portions thereof that may be visible from the exterior of the Improvements, or on any free-standing location on the Property, any signs, advertisements, names, insignia, trademarks, descriptive material, and any other similar item, except for such items advertising business on the Premises, which are consistent with the Standards and Restrictions and which have been authorized in advance in writing by the Port. The Port shall have

absolute discretion to withhold approval for any lighted sign or any sign with moving (or that has the appearance of moving) parts, or symbols, including, without limitation, electronic message boards and jumbotrons. The Port at Lessee's cost may remove any item placed, constructed, or maintained that does not comply with the provisions of this Section.

Before termination of this Lease, Lessee shall remove to the satisfaction of the Port all signs, advertisements, names, insignia, trademarks, descriptive material and any similar material installed, painted, inscribed or placed in or upon the Premises; provided that before termination of this Lease, Lessee shall repair and/or repaint the Premises to the satisfaction of the Port as required on account of such removal.

Except in accordance with the Standards and Restrictions, Lessee shall not place, construct, or maintain on the Premises any advertisement media that include moving or rotating parts, searchlights, flashing lights, loudspeakers, phonographs, or other similar visual or audio media. Lessee shall not solicit business in, on, or about the exterior of the Improvements, or distribute handbills or other advertising or promotional media in, on, or about said exterior, except that Lessee shall be entitled to engage in radio, television and newspaper advertising as is customarily used for the type of business authorized by and carried on pursuant to this Lease.

Any sign that Lessee has the right to place, construct, and maintain on or adjacent to the Premises shall comply with the Port's applicable sign policies, the Standards and Restrictions, and with all applicable laws, and Lessee shall obtain any approval required by such laws. The Port makes no representation with respect to Lessee's ability to obtain such approval.

12. Utilities: Lessee shall pay to the utility or service provider all costs of water, gas, heat, electricity, fuel, power, telephone service, and other utilities, as well as janitor or watchman services and mechanical fire alarm or security services that may be furnished to Lessee. In the event the Lessee requires a new service and/or utility connection or an upgrade to an existing service and/or utility connection, the Lessee shall be responsible for paying any applicable charges or fees for the new connection, service, or upgrade to an existing connection or service imposed by the utility or service provider on the Lessee or the Port for the Lessee's benefit. Lessee acknowledges that in certain cases, the Port may be the utility or service provider. In the event the utility or service provider imposes such charges or fees on the Port for the benefit of the Lessee, the Lessee shall pay the Port for such services or reimburse to the Port such payment not later than 10 days after the Port issues to Lessee a billing statement for said services or reimbursement. Any and all other utility and/or services required by Lessee shall be provided by Lessee at its expense.

13. Taxes and Assessments: The property interests created by this Lease may be subject to property taxation and Lessee hereunder in whom the possessory interest is vested may be subject to the payment of property taxes levied on such interest. Lessee agrees timely to pay all lawful taxes, assessments, fees or charges which at any time may be levied or charged by the federal government, the state, county, city or any tax or assessment levying body against the transfer of the leasehold interest hereunder upon recordation or otherwise, or upon any activity carried on under this Lease, any interest in this Lease or any possessory right which Lessee may have in or to any property covered hereby by reason of its use or occupancy thereof or otherwise, as well as all lawful taxes, assessments,

fees and charges on goods, merchandise, fixtures, appliances, equipment and property owned by Lessee in or about the Premises.

Lessee agrees timely to submit to appropriate taxing authorities all required reports, documents and notices with respect to its use, occupancy or ownership of the Premises or any goods, merchandise, fixtures, appliances, equipment or other property therein or used in connection with the Premises. Lessee shall concurrently provide to the Port a full and complete copy of all such reports, documents and notices submitted to said taxing authorities, and within 15 days after the request of the Port Lessee shall provide to the Port at no cost to the Port copies of all such reports, documents and notices.

Lessee at no cost to the Port reasonably may contest the legal validity or amount of any such taxes, assessments, or charges for which Lessee is responsible hereunder, and institute such proceedings as Lessee considers necessary; provided, however, that Lessee shall at all times defend and indemnify the Port against any and all losses and costs resulting therefrom, and protect the Port and the Premises from foreclosure of any lien, and that the Port shall not be required to join in any proceeding or contest brought by Lessee.

14. Builder's Risk and Fire Insurance: Lessee shall carry builder's all risk insurance (including earthquake and flood coverage), at its own cost and expense, at all times during construction of Improvements hereunder by Lessee and until Lessee has filed with the Port the originally executed endorsement or endorsements of fire and special extended insurance (all risk) coverage required herein on said Improvements as completed. Such coverage shall be in an amount equal to the full replacement cost of the Improvements. The policy or policies of such insurance shall state that the Port is a named insured and loss payee, that the insurer waives its rights of subrogation against the Port and that the insurance coverage shall not be canceled or excluded on account of completion, occupancy or use of the Improvements unless and until (1) the Port is given at least 30 days' prior written notice of cancellation after completion of construction; or (2) there is on file with the Port with respect to the same Improvements, a valid certificate of insurance along with an originally executed endorsement or endorsements required in this Section evidencing fire and extended insurance coverage. Before commencement of construction of Improvements, Lessee shall provide the Port a valid certificate of insurance along with an originally executed endorsement or endorsements evidencing said policy or policies. At the Port's request Lessee agrees promptly to provide to the Port a full and complete copy of each of said policies. Each policy shall be subject to the approval of the Port, which approval shall not unreasonably be withheld.

Lessee agrees to maintain, at its own cost and expense, during the entire Term of this Lease after such required builder's all risk coverage is canceled, a policy or policies of insurance against loss or damage by fire with special extended coverage endorsements (including demolition and including earthquake and flood coverage) covering all contents, furniture, fixtures and equipment and Improvements (excluding only paving, pilings, parking lot curbs and landscaping and foundations below the lowest surface of the ground), with an insured value in an amount equal to 100% of the full replacement costs of all contents and Improvements, including any increased costs of construction resulting from changes in applicable building codes and regulations. The policy or policies shall state that the Port is a named insured and loss payee and that the insurer waives its rights of subrogation against the Port. Lessee shall provide to the Port a valid certificate of insurance along with an

originally executed endorsement or endorsements evidencing such insurance coverage upon the completion of construction of the Improvements and prior to cancellation of builder's all risk coverage thereon. Such endorsement or endorsements shall provide that such insurance coverage will not be canceled or reduced without at least 30 days' prior written notice to the Port. Lessee shall provide to the Port at least 30 days prior to the expiration of any such policy a valid certificate of insurance along with an originally executed endorsement or endorsements showing that such insurance coverage has been renewed or replaced. If such coverage is canceled or reduced, then within 15 days after receipt of written notice of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, Lessee shall provide the Port a notice of reinstatement or an originally executed endorsement or endorsements as appropriate, showing that the required insurance has been reinstated or replaced. At the Port's request Lessee agrees promptly to provide the Port a full and complete copy of each policy required to be maintained hereunder. Each policy shall be subject to the approval of the Port, which approval shall not unreasonably be withheld.

During any time that there is in effect any Leasehold Mortgage such builder's all risk and fire insurance policies shall name the Lessee an insured, and the Port as a named insured and the Port and Lender as loss payees, as their interests may appear.

Unless Lessee's policy of fire insurance contains a rental income endorsement insuring the payment of Minimum Rent for a period up to 15 months, Lessee also shall maintain at its cost and expense business interruption insurance insuring that Minimum Rent will be paid to the Port for a period of up to 15 months if the Premises are destroyed or rendered inaccessible by a risk insured against by the policy or policies of fire insurance Lessee is required to maintain under this Section. Said insurance shall provide that the insurer waives its rights of subrogation against the Port. Lessee shall maintain on file with the Port during the entire term hereof, commencing with the Minimum Rent Commencement Date, a valid certificate of insurance along with an endorsement or endorsements evidencing said business interruption insurance. The cancellation and reduction provisions applicable to fire insurance under this Section shall also apply to business interruption insurance. At the Port's request, Lessee agrees promptly to provide the Port a full and complete copy of each policy required to be maintained hereunder. Each policy shall be subject to the approval of the Port, which approval shall not unreasonably be withheld.

Lessee shall obtain from its insurers under all policies of insurance maintained under this Section by Lessee at any time during the Term of this Lease, endorsements providing a waiver of all rights of subrogation which the insurer may have against the Port. Lessee hereby waives any right which it may have against the Port on account of any loss or damage occasioned to Lessee arising from any risk covered by the insurance that Lessee is required to carry under this Section or covered by any other insurance maintained by Lessee insuring the Improvements, its contents or other of Lessee's personal property on or about the Premises.

On failure to provide any endorsement or other document as required by this Section, Lessee shall be in substantial default of this Lease and the Port may proceed in accordance with the default section of this Lease. However, at its option and sole and absolute discretion the Port may, but is not obligated to (1) procure without further notice to Lessee all or portions of the required insurance at Lessee's expense and Lessee shall pay to the Port the Port's cost of procurement of such insurance upon receipt of billing from the Port for said cost; or (2) approve a program of self-insurance

in lieu of required insurance upon such terms, conditions and limitations as may be imposed at the Port's sole and absolute discretion.

Deductibles and self-insured retentions shall be permitted only at Lessee's written request and submittal to the Port of Lessee's current financial statement and upon the prior written approval of the Port, which approval shall not be unreasonably withheld or delayed; provided, however, that Lessee agrees that it shall be reasonable in all cases for the Port to condition its approval of any deductible or self-insured retention in excess of \$25,000 ("unsecured amount") on Lessee's first depositing with the Port, as additional security deposit and subject to all of the other provisions of this Lease applicable to a security deposit, a sum determined by the Port up to the amount of the deductible or self-insured retention in excess of the unsecured amount. The Port from time to time, but no more frequently than once a year may adjust the unsecured amount by the percentage change between the last CPI published before the Effective Date and the last CPI published before the adjustment. Such additional security deposit shall be in the form specified for a security deposit under other provisions of this Lease, but shall not be considered for purposes of increasing the security deposit pursuant to provisions of this Lease other than this Section.

In any case under this Section that Lessee is required to provide to the Port a certificate of insurance, an endorsement, or copy of a policy and the policy is not available, the Port agrees to accept in lieu thereof, and on a temporary basis only, a binder in a form reasonably satisfactory to the Port.

All policies of insurance required by this Lease to be maintained by Lessee or any sublessee shall be issued by carriers Financially Acceptable to the Port.

15. Damage or Destruction of Improvements: In any case under this Section that Lessee is required or elects to restore the Premises, or the contents, furniture, fixtures or equipment therein, after damage or destruction the Port agrees promptly to execute all adjustment documents and to endorse any proceeds to a trustee designated by Lessee and acceptable to the Port, provided that a trust agreement satisfactory to the Port is first executed by all interested parties and that all costs and expenses associated with said trust shall be the sole responsibility of Lessee and/or Lender. Lessee agrees to keep the Port advised during the adjustment process. In the case where Lessee is required or elects under this Section to restore the Premises, or the contents, furniture, fixtures or equipment therein and subject to the rights of any Lender set forth in this Lease, the proceeds of insurance shall be held by Lessee and/or Lender as trust funds to be used for the purpose of restoring the Premises damaged by fire or other casualty. Lessee agrees to use good faith reasonable efforts to have all Lenders agree in relevant loan documents to have insurance proceeds applied to restoration of the Premises. Lessee also agrees that if, nevertheless, a Lender will not so agree but reserves the power to apply all or portions of such proceeds against its loan, then in the event of a loss Lessee shall use diligent, good faith reasonable efforts (including legal action), in consultation with Lessee's legal counsel and the Port, to cause all proceeds of insurance to be applied to restoration, but not so as to jeopardize Lessee's interest in the leasehold estate in the good faith reasonable judgment of Lessee's attorney. In any case under this Section that Lessee elects to terminate this Lease on account of damage or destruction, Lessee agrees promptly to execute all adjustment documents and to endorse any proceeds to the Port subject to the rights of Lessee and any Lender as described in this Section.

For purposes of this Lease an “Uninsured Casualty” shall mean a casualty for which Lessee is not hereunder required to, and does not, maintain insurance. “Insured Casualty” shall mean any casualty for which Lessee is required hereunder to, or does, maintain insurance.

If during the Term of this Lease the Improvements are damaged or destroyed by an Insured Casualty, Lessee shall promptly repair and restore the Premises and all contents, furniture, fixtures and equipment therein, to a good and tenantable condition notwithstanding any inadequacy of insurance proceeds therefor; provided, however, if (a) such damage or destruction occurs during the final five (5) years of the scheduled Term and is not caused by Lessee’s willful or intentional and wrongful act or omission, and (b) will cost more than twenty-five percent (25%) of the Replacement Cost of the Improvements as of the date of the casualty, Lessee, by giving at least 60 days’ prior written notice to the Port (such notice to be given within 60 days after such damage or destruction), may terminate this Lease, in which event (i) any insurance proceeds payable as the result of such casualty remaining after (A) paying the cost of removing all debris and securing the Improvements and (B) paying off the Leasehold Mortgage, shall be paid to the Port, and (ii) upon termination, the Parties shall have no further obligations under this Lease, except for those that shall have accrued and remain undischarged.

If during the Term of this Lease the Improvements are damaged or destroyed by an Uninsured Casualty, Lessee shall promptly repair and restore the Premises and all contents, furniture, fixtures and equipment therein, to a good and tenantable condition notwithstanding the lack of insurance proceeds therefor; provided, however, if:

(1) Such damage or destruction (a) occurs after the fourth (4th) anniversary of the Term Commencement Date and before the thirty-second (32nd) anniversary of the Term Commencement Date and is not caused by Lessee’s willful or intentional and wrongful act or omission, and (b) will cost more than fifty percent (50%) of the Replacement Cost of the Improvements as of the date of the casualty, Lessee, by giving at least 60 days’ prior written notice to the Port (such notice to be given within 60 days after such damage or destruction), may terminate this Lease;

(2) Such damage or destruction (a) occurs after the thirty-second (32nd) anniversary of the Term Commencement Date and before the fifty-fifth (55th) anniversary of the Term Commencement Date and is not caused by Lessee’s willful or intentional and wrongful act or omission, and (b) will cost more than twenty-five percent (25%) of the Replacement Cost of the Improvements as of the date of the casualty, Lessee, by giving at least 60 days’ prior written notice to the Port (such notice to be given within 60 days after such damage or destruction), may terminate this Lease; and

(3) Such damage or destruction (a) occurs after the fifty-fifth (55th) anniversary of the Term Commencement Date and before the sixty-sixth (66th) anniversary of the Term Commencement Date and is not caused by Lessee’s willful or intentional and wrongful act or omission, and (b) will cost more than ten percent (10%) of the Replacement Cost of the Improvements as of the date of the casualty, Lessee, by giving at least 60 days’ prior written notice to the Port (such notice to be given within 60 days after such damage or destruction), may terminate this Lease.

If Lessee elects to terminate this Lease as the result of an Uninsured Casualty as provided above in this paragraph, upon termination, the parties shall have no further obligations under this Lease, except for those that shall have accrued and remain undischarged.

If this Lease is canceled or annulled in accordance with this Section, there shall be paid from insurance proceeds any amount which is payable to any Lender under its Leasehold Mortgage and the balance of such proceeds shall be paid to the Port.

No election by Lessee to terminate under this Section shall be effective if before the casualty the Port has given Lessee notice of default and Lessee has not cured each such default.

If Lessee elects to terminate this Lease as provided in this Section, the Port by written notice to Lessee given within 30 days of the date notice of termination is given by Lessee to the Port, may require Lessee, at Lessee's sole cost and expense within 90 days of receipt of such notice from the Port to demolish and lawfully dispose of off of Port property part or all of the Improvements and place the Premises in a secure, safe and reasonably level condition; provided, however, that in no event shall Lessee be obligated to repair or restore any portion of the Improvements; and provided, further, Lessee, by written notice to the Port given within 30 days of the giving by the Port of the written notice specified immediately above, may elect to rescind its notice to the Port canceling this Lease on account of such damage or destruction and, if such notice is timely given by Lessee, the provisions of this Section shall apply as though Lessee had elected not to cancel this Lease on account of such damage or destruction.

In the event of any damage or destruction of the Improvements (whether the same results from an Insured Casualty or an Uninsured Casualty), there shall be no abatement or reduction of rent.

The Port and Lessee hereby waive the provisions of California Civil Code Sections 1932 and 1933, and of any other statutes which relate to termination of a lease when leased property is destroyed and agree that such event shall be governed by the terms of this Lease.

In the event that this Lease is terminated in accordance with the terms and conditions of this Section 15, Lessee, as a condition of the actual termination of this Lease and at no expense to the Port expense, shall raze the damaged Improvements and remove and dispose of all debris, all in a lawful manner. Notwithstanding the foregoing, if it is elected by Lessee that this Lease shall terminate as provided in this Section 15, the Port, by written notice given to the Lessee within 15 days of the date of Lessee's termination notice, may elect to take possession of the damaged Improvements, which event, Lessee, at no expense to the Port, shall remove and dispose of all debris resulting from such damage in a lawful manner, secure the damaged Improvements, and surrender the damaged Improvements in such condition (but free of all debris), together with all keys and security codes, to the Port. No termination of this Lease pursuant to this Section 15 shall be effective until Lessee shall have completed all work required by this Section 15 lien-free, and Lessee shall have delivered reasonable evidence of such lien free completion.

16. Indemnification and Liability Insurance:

16.1. Indemnification: Lessee shall defend, indemnify and hold the Port harmless against all claims, suits, liability and expense for any loss of, cost of collection or damage, injury or death to, any person or any property (including the person or property of the Port or of Lessee, its officers, employees, agents or invitees), which directly or indirectly arises out of Lessee's occupancy or use of the Premises or Lessee's activities related thereto, or from the alleged violation of any civil rights act, including acts regarding disabled or handicapped persons, including, without limitation, the Americans With Disabilities Act of 1990. Defense counsel by Lessee retained by Lessee under this Section shall be subject to the Port Attorney's reasonable approval.

These obligations of Lessee shall not apply to any such loss, damage, injury or death caused solely by the negligence or other wrongful conduct of the Port, but shall apply under all other circumstances. The obligations of Lessee under this Section arising by reason of any occurrence taking place during the Term of this Lease, shall survive any termination of this Lease.

For purposes of this subsection, "the Port" shall include the Board of Port Commissioners and each of its Commissioners, officers, employees and agents.

Lessee hereby agrees that it is not, nor is it intended to be, the agent, servant or independent contractor of the Port, as such terms are used in California Civil Code Section 2782. In addition, Lessee agrees that neither it, nor any of its agents or representatives shall claim or assert that the negligence or willful misconduct of Lessee is or should be imputed to the Port under any agency or other legal theory. Lessee hereby waives, to the extent permitted by applicable law, the provision of California Civil Code Section 2782 (which Section places limitations on indemnifications in certain contracts).

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

16.2. Liability Insurance: Lessee shall maintain in force during the Term of this lease comprehensive general or commercial general liability insurance, including bodily injury and property damage insurance, with such types of coverage and minimum coverage amounts as may be reasonably requested by the Port from time to time, but in no event for less than the sum of Twenty-Five Million Dollars (\$25,000,000.00) (and for all owned, non-owned and hired automobiles, and for fire legal liability, the sums specified respectively in items 5 and below) combined single limit per occurrence and in no event with less than the following coverages:

1. Premises Operations
2. Completed Operations
3. Products Liability
4. Blanket Contractual Liability
5. Owned, Non-owned and Hired Automobiles Liability (\$25,000,000.00)
6. Personal Injury Liability
7. Broad Form Property Damage

- 8. Fire Legal Liability (\$100,000.00)
- 9. Independent Contractors Liability
- 10. Advertising Liability
- 11. Innkeepers Legal Liability
- 12. Liquor Liability (if applicable)

Each policy of insurance maintained pursuant to this Section shall provide the following:

(1) The City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, its commissioners, officers, agents and employees and any additional parties identified by the Port as additional insureds shall be named as additional insureds. All General Liability policies must provide this additional insured status through either the Insurance Services Office's (ISO) CG 20 10 11 85 endorsement, or a combination of the ISO's CG 20 10 07 04 and CG 20 37 07 04 endorsements, or a combination of the ISO's CG 20 10 04 13 and CG 20 37 04 13 endorsements, or equivalents.

(2) Coverage shall not be canceled, reduced or non-renewed without at least 30 days' prior written notice to the Port.

(3) Coverage shall be primary and non-contributory. The Port's insurance and/or self-insurance shall not be called upon to contribute in the event of loss.

(4) A severability of interest or cross-liability endorsement, reading generally as follows:

Cross-Liability - In the event of one of the assureds incurring liability to any other of the assureds, this policy shall cover the assured against whom claim is or may be made in the same manner as if separate policies had been issued to each assured. Nothing contained herein shall operate to increase underwriters' limit of liability.

(5) A waiver of subrogation in favor of the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, its commissioners, officers, agents and employees and any additional parties identified by the Port.

Lessee also shall maintain in force during the Term of this Lease, and provide to the Port evidence that it does maintain, the following, both with a subrogation waiver endorsement in favor of the Port:

- 1. Statutory workers' compensation insurance coverage under California law; and
- 2. Employer's liability coverage in the amount of not less than One Million Dollars (\$1,000,000.00).

Before commencement of the Term of this Lease, Lessee shall provide to the Port a valid certificate of insurance along with an originally executed endorsement or endorsements evidencing all of the liability insurance required under this Section. Lessee shall provide to the Port at least 30 days prior to the expiration of any such policy an endorsement showing that such insurance coverage has been renewed or replaced. If such coverage is canceled or reduced, then within 15 days after receipt of written notice of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, Lessee shall provide the Port a notice of reinstatement or an endorsement or endorsements as appropriate, showing that the required insurance has been reinstated or replaced. At the Port's request, Lessee agrees promptly to provide the Port a full, true and complete copy of each policy required to be maintained hereunder. Each policy shall be subject to the approval of the Port, which approval shall not unreasonably be withheld.

On failure to provide any such endorsement or other document as required by this Section, Lessee shall be in substantial default of this Lease and the Port may proceed in accordance with the default section of this Lease. However, at its option and sole and absolute discretion the Port may, but is not obligated to: (1) procure upon at least 15 days' prior written notice to Lessee all or portions of the required insurance at Lessee's expense and Lessee shall pay to the Port the Port's cost of procurement of such insurance upon receipt of billing from the Port for said cost; or (2) approve a program of self-insurance in lieu of required insurance upon such terms, conditions and limitations as may be imposed at the Port's sole and absolute discretion.

Deductibles and self-insured retentions shall be permitted only at Lessee's written request and upon the prior written approval of the Port, which approval the Port shall not unreasonably withhold or delay and shall be subject to the following covenants and conditions:

(1) In the event that, and so long as, Lessee satisfactorily establishes before the Executive Director that the insurance market is such that particular portions or elements of the coverage or limits herein required are unavailable (without regard to any circumstances peculiar to Lessee or any of its subtenants), then the Executive Director shall for the period of such unavailability excuse Lessee from maintaining such portion or element of coverage or limits but he may impose as a condition to granting such excuse that Lessee provide to the Port such reasonable alternate security as may be specified by the Executive Director.

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

(3) Lessee agrees that it shall be reasonable in all cases for the Port to condition its approval of any deductible or self-insured retention in excess of the first \$10,000.00 ("unsecured amount") on Lessee's first depositing with the Port, as additional security deposit and subject to all of the other provisions of this Lease applicable to a security deposit, a sum determined by the Port up

to the amount of the deductible or self-insured retention in excess of the unsecured amount. The Port, from time to time (but no more frequently than once each year), may adjust the unsecured amount by the percentage increase, if any, between the last CPI published before the Effective Date and the last CPI published. Such additional security deposit shall be in the form specified for a security deposit under other provisions of this Lease, but shall not be considered for purposes of increasing the security deposit pursuant to provisions of this Lease other than this Section. The additional security deposit is solely for the benefit of the Port to secure Lessee's agreement in item (1) immediately above to defend and indemnify the Port.

In any case under this Section that Lessee is required to provide to the Port an endorsement or copy of a policy and the policy is not available, the Port agrees to accept in lieu thereof, and on a temporary basis only, a binder in a form reasonably satisfactory to the Port.

All policies of insurance required by this Lease to be maintained by Lessee or any sublessee shall be issued by carriers who are Financially Acceptable.

16.3. Sublessees: Lessee shall include provisions in each sublease that Lessee enters into with respect to the Premises that (1) the sublessee agrees to indemnify and hold harmless the Port (as "Port" is defined in Section 16.1) in the same manner as Lessee agrees to indemnify and hold harmless the Port in accordance with this Section above; and (2) the sublessee agrees to maintain at all times during the term of the sublease the same insurance required of the lessee throughout Section 16, with the sole exception that the limit required of sublessee be not less than \$1,000,000.00 in Constant Dollars.

16.4. Additional Insurance Required for Construction-Related Activities: The Lessee shall require the general contractor and all subcontractors of any tier to obtain general liability and auto liability policies of insurance in amounts and forms and issued by carriers reasonably satisfactory to the Port, and the general contractor and its subcontractors shall carry worker's compensation insurance for their employees as required by law. For any construction-related activities in excess of Five Million Dollars (\$5,000,000.00) in Constant Dollars in construction value, Lessee shall require the general contractor to obtain general liability insurance in no event less than the sum of Twenty-Five Million Dollars (\$25,000,000.00) in Constant Dollars. In addition, contractors' pollution liability coverage will be required for any construction activities, or any grading, excavating, underground utilities, piping, trenching, or any work below the surface of the ground, or involves the hauling or disposal of hazardous or regulated materials. The contractors' pollution liability coverage shall be carried in amounts and forms and issued by carriers reasonably satisfactory to the Port. All liability and workers' compensation insurance shall contain a waiver of subrogation in favor of the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, its commissioners, officers, agents and employees, and any additional parties identified by the Port. All liability insurance policies shall include a cross liability/severability of interests clause, and include the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, its commissioners, officers, agents and employees, and any additional parties identified by the Port as additional insureds. All general liability policies must provide this additional insured status through either the Insurance Services Office's (ISO) CG 20 10 11 85 endorsement, or a combination of the ISO's CG 20 10 07 04 and CG 20 37 07 04 endorsements, or a combination of the ISO's CG 20 10 04 13 and CG 20 37 04 13 endorsements, or equivalents.

Indemnifications required of lessee herein must also be passed down to the general contractor and all subcontractors of any tier to the fullest extent allowed by law.

17. Mortgage of Leasehold and Protection of Lender: Notwithstanding any provision to the contrary contained in this Section or in any other provision of this Lease, Lessee, with the prior written and signed consent of the Port (which consent shall not unreasonably be withheld), may enter into a Leasehold Mortgage. Lessee shall have no right to require the Port to encumber the Port's fee interest in the Property, and notwithstanding anything herein contained to the contrary, Lessee hereby agrees that Lessee is entitled to enter into a Leasehold Mortgage for only the following purposes and on the following conditions (and Lessee shall have the burden of establishing that such purposes are met and that such conditions exist): (1) to finance construction of Improvements required to be constructed under this Lease; (2) to provide "take-out" financing of any construction loan not to exceed the greater of 90% of the original cost of construction and 90% of the value of Lessee's leasehold interest in the Premises as determined by a qualified real estate appraiser holding the MAI designation of the American Institute of Real Estate Appraisers or its successor organization with at least 5 years' full-time appraisal experience involving primarily commercial property in the San Francisco Bay Area; (3) to provide for refinancing of existing financing on the Premises previously approved by the Port; (4) to finance Lessee's capital additions and equipment, acquisitions and/or replacements reasonably required in pursuit of its business activities on the Premises; (5) to finance a purchase of Lessee's leasehold interest in the Premises, the encumbrance of which financing together with all other encumbrances on the leasehold interest shall not exceed 85% of the value of Lessee's leasehold interest in the Premises (as said value is determined by the appraiser described in item (2) immediately above); and (6) for any other purpose so long as the encumbrance of such financing together with all other encumbrances on the leasehold interest shall not exceed 70% of the value of Lessee's leasehold interest in the Premises (as said value is determined by the appraiser described in item (2) immediately above).

Lessee's rights to enter into a Leasehold Mortgage as herein provided shall be suspended so long as Lessee is in default hereunder and has received written notice of such default from the Port.

Anything hereinafter contained in this Lease to the contrary notwithstanding, a Lender shall not be entitled to any notice or copy of any notice from the Port to Lessee under this Lease, and such Lender's consent shall not be required pursuant to the provisions of this Lease hereinafter set forth, unless such Lender has provided, by written notice to the Port, the address or addresses to which such notice, copy of such notice or request for consent shall be sent, which address or addresses may be changed by such Lender from time to time by written notice to the Port.

Lessee shall promptly provide the Port with a fully executed complete copy of each Leasehold Mortgage and any and all amendments thereto. All notices of default, foreclosure and sale shall be given to the Port contemporaneously with service on Lessee.

A Leasehold Mortgage or amendment thereto shall be effective as to the Port only if and so long as a fully executed complete copy of the entire agreement and amendments thereto are provided to and consented to in writing by the Port. The Port agrees that it shall not unreasonably delay or deny its consent, and if the Port has not notified Lessee in writing within 20 working days

after receipt of the request for consent of the Port's consent or refusal to consent, the Port shall be deemed to have consented.

During the continuance of any Leasehold Mortgage and until such time as the lien of any Leasehold Mortgage has been extinguished the following provisions (hereinafter "Lender Provisions") shall apply:

A. Notwithstanding any default by Lessee in the performance or observance of any agreement, covenant or condition of this Lease on the part of Lessee to be performed or observed, the Port shall have no right to terminate this Lease unless an event of default shall have occurred and not be cured, the Port shall have given Lender notice of such event of default as provided below in Subsection F, and Lender shall have failed within the periods specified in Subsections C(1) and C(2) below to remedy such default or acquire Lessee's leasehold estate created hereby or commence and thereafter diligently pursue to completion foreclosure or other appropriate proceedings in the nature thereof, all as set forth in this Section.

B. Lender shall have the right, but not the obligation, at any time prior to termination of this Lease, to pay all of the rents due hereunder, to effect any insurance, to pay any taxes and assessments, to make any repairs and improvements, to do any other act or thing required of Lessee hereunder, and to do any act or thing not in violation of the provisions of this Lease which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions hereof to prevent termination of this Lease. All payments so made and all things so done and performed by Lender shall be as effective to prevent a termination of this Lease as the same would have been if made, done and performed by Lessee instead of by Lender.

C. Should any event of default under this Lease occur, the Port shall take no action to terminate this Lease or exercise any other remedy hereunder unless it first gives notice of such event or default to Lender as provided in Subsection F and:

(1) If such event of default is a failure to pay a monetary obligation of Lessee, Lender shall fail to cure such default within 30 days after such notice; or

(2) If such event of default is not a failure to pay a monetary obligation of Lessee, Lender shall fail, within 60 days of receipt of said written notice, either to cure such default or, if such default cannot be cured by Lender without Lender obtaining possession of the Premises or title to Lessee's leasehold estate, to obtain title to the leasehold estate and possession in lieu of foreclosure, or to commence foreclosure or other appropriate proceedings in the nature thereof and thereafter diligently prosecute such proceedings to completion, and then promptly after gaining possession of the Premises, and in no event more than 60 days thereafter, to cure such default; provided, however, that Lender shall mail or deliver to the Port a duplicate copy of any and all written notices and documents pertaining to obtaining title in lieu of foreclosure or to foreclosure or such other appropriate proceeding, which Lender may from time to time give to or serve upon Lessee and such copy shall be mailed or delivered to the Port at the same time such notices or documents are given or served by Lender.

All rights of the Port to terminate this Lease as the result of the occurrence of any such event of default shall be subject to, and conditioned upon, the Port having first given Lender

notice of such event of default and Lender having failed to remedy such default or acquire Lessee's leasehold estate created hereby or commence foreclosure or other appropriate proceedings in the nature thereof as set forth in and within the time specified by this Subsection C.

D. Any event of default under this Lease which in the nature thereof cannot be remedied by Lender shall be deemed to be remedied if (1) within 60 days after receiving notice from the Port setting forth the nature of such event of default, or prior thereto, Lender shall have acquired Lessee's leasehold estate created hereby or shall have commenced foreclosure or other appropriate proceedings in the nature thereof; (2) Lender shall diligently prosecute any such proceedings to completion; (3) Lender, within such 60-day period, shall have fully cured any event of default arising from failure to pay or perform any monetary obligations hereunder and shall thereafter continue to perform all such monetary obligations in accordance with the terms of this Lease; and (4) after gaining possession of the Premises Lender promptly, and within 60 days thereafter, shall cure all other defaults (whenever the same shall have occurred) and perform all other obligations of Lessee as and when the same are due in accordance with the terms of this Lease.

E. If Lender is prohibited by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Lessee from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, the times specified in Subsections C and D above for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition; provided that Lender shall have fully cured any default in the payment of any monetary obligations of Lessee under this Lease and shall continue to pay currently such monetary obligations as and when the same fall due.

F. The Port shall mail or deliver to Lender a duplicate copy of any and all notices in writing pertaining to a breach of a covenant or condition of this Lease which the Port is required under this Lease to give to or serve upon Lessee pursuant to the provisions of this Lease, and such copy shall be mailed or delivered to Lender at the same time such notices are given or served by the Port upon Lessee. No such required notice by the Port to Lessee shall be deemed to have been given unless and until a copy thereof shall have been mailed to or delivered to Lender.

G. Foreclosure of a Leasehold Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Leasehold Mortgage, or any conveyance of the leasehold estate created hereby from Lessee to Lender through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof shall not require the consent of the Port, except as provided in this Subsection G, or constitute a breach of any provision of or a default under this Lease, and upon such foreclosure, sale or conveyance the Port shall recognize Lender or (subject to the conditions specified immediately hereinafter) any other foreclosure sale purchaser, transferee or assignee from Lender after such sale or conveyance, as Lessee hereunder; provided, however, that the Port's said recognition as Lessee of such foreclosure sale purchaser and such transferee or assignee from Lender after such sale or conveyance is required only if (1) duplicate copies of all written notices and documents given to and served upon Lessee have been provided to the Port as required by Subsection C above; and (2) the Port gives its prior consent to such recognition, which consent the Port agrees the Port shall not unreasonably withhold or delay. In the event Lender becomes Lessee under this Lease, Lender shall not be liable for the obligations of Lessee which arise

after Lender has transferred and assigned this Lease to another party in accordance with the terms and conditions of this Lease.

H. Should the Port terminate this Lease by reason of any default by Lessee hereunder, the Port, upon request by Lender given within 30 days after such termination, immediately shall execute and deliver a new lease of the Premises to Lender, or its nominee, purchaser, assignee or transferee, for the remainder of the Term of this Lease with the same agreements, covenants and conditions (except for any requirements which have been fulfilled by Lessee prior to termination) as are contained herein and any amendments hereto and with priority equal to that hereof; provided, however, that Lender shall promptly cure any defaults of Lessee to the maximum extent they are susceptible to cure by Lender and shall as a condition to execution and delivery of such new lease pay to the Port any and all rent and all other sums, to the extent such rent and other sums are reasonably ascertainable, payable to the Port by Lessee pursuant to this Lease, including such rent and other sums which absent termination would have accrued during the period from the date of termination of this Lease to the date of execution and delivery of such new lease, and Lender shall agree in such new lease to pay promptly upon reasonable determination and written notice from the Port all other rent and other sums payable to the Port under this Lease or that, absent termination, would have accrued during such period. Upon execution and delivery of such new lease, the Port, at the expense of the Lender or any new lessee, as the case may be, shall take such reasonable action as shall be necessary to remove Lessee named herein from the Premises.

I. The Port and Lessee shall cooperate in including in this Lease by suitable amendment from time to time any provisions which may reasonably be requested by any proposed Lender for the purpose of implementing the Lender protection provisions contained in this Lease and allowing such Lender reasonable means to protect or preserve the lien of any Leasehold Mortgage on the occurrence of a default under the terms of this Lease. The Port and Lessee each agree to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effect any such amendment; provided, however, that any such amendment shall not in any way affect the term or rent under this Lease or otherwise in any material respect adversely affect any rights of the Port hereunder.

18. Liens, Assignment and Subletting:

18.1. General: Except as hereinafter in this Section expressly provided, and except as expressly provided in the Leasehold Mortgage provisions of this Lease, Lessee shall not, either directly or indirectly, voluntarily or involuntarily, assign, hypothecate, encumber or transfer this Lease or any interest therein or right granted thereby or sublet the whole or any part of the Premises, or license the use of same, or permit or suffer any other person or entity to occupy, use or manage (except management by Lessee's employees) the same, in whole or in part, without the prior written consent of the Port evidenced by resolution of its Board of Port Commissioners, which consent shall not unreasonably be withheld or delayed.

Except as hereinafter in this Section expressly provided, no modification of a sublease, assignment or other transfer after the Port's initial consent shall be effective without the prior written approval of the Port. Lessee agrees that it immediately shall notify the Port in writing

of any cancellation or surrender of a sublease. In case of a transfer by reason of death the transferee shall notify the Port in writing of the transfer within 60 days after the death.

Neither this Lease nor any interest therein or right granted thereby shall be assignable or transferable in proceedings in attachment, garnishment or execution against Lessee, or in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against Lessee or by any process of law, and possession of the whole or any part of the demised premises shall not be divested from Lessee in such proceedings or by any process of law, without the prior written consent of the Port evidenced by resolution of its Board of Port Commissioners, which consent shall not unreasonably be withheld or delayed.

Any breach of the provisions of this Section shall constitute a default and shall cause this Lease to terminate immediately at the option of the Port after not less than 15 days' notice to Lessee.

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

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

Lessee agrees that its personal business skills and philosophy were an important inducement to the Port for entering into this Lease and that the Port may reasonably object to the transfer of the Premises to another whose proposed use, while permitted by the use clause of this Lease, would involve a different quality, manner or type of business skills than that of Lessee, or which would result in the imposition upon the Port of any new or additional requirements under the provisions of any law or regulation, including any law or regulation regarding disabled or handicapped persons, such as the Americans With Disabilities Act of 1990.

Lessee agrees that as a condition to the Port's consideration of any request by Lessee for approval of a sublease, assignment, or other transfer of this Lease, Lessee shall deliver to the Port a nonrefundable processing fee of not less than \$5,000 in Constant Dollars. The Port within 10 days of receipt of said fee may give to Lessee notice that said fee shall be increased by a sum, not to exceed an additional \$5,000 in Constant Dollars, that the Port in its discretion determines is necessary to cover the anticipated Port administrative costs and expenses, including labor, in

processing and investigating Lessee's request. Lessee agrees that unless and until said fee, and any request for such additional fee, is delivered to the Port, Lessee shall be deemed to have made no request to the Port to assign or sublease.

In addition, Lessee's request for consent to any proposed sublease, assignment or other transfer shall not be deemed to have been submitted to the Port unless and until Lessee, except as and to the extent excused in advance by the Port, shall have submitted to the Port, in writing, the following information and documents:

- A. The name of the proposed subtenant, assignee or other transferee;
- B. The nature of proposed subtenant's or assignee's business to be carried on in the Premises.
- C. Each of the terms and provisions of the proposed sublease, assignment or transfer, including, without limitation, the full consideration for such sublease, assignment or transfer;
- D. A balance sheet of the proposed subtenant or assignee as of a date within at least 90 days of the request for the Port's consent;
- E. Statements of income or profit and loss of the proposed subtenant or assignee (or the principals thereof, in the case of a newly formed entity) for the two-year period preceding the request for the Port's consent;
- F. A statement in reasonable detail as to the business experience of the proposed subtenant or assignee (or the principals thereof, in the case of a newly formed entity) during the 5-year period preceding the request for the Port's consent;
- G. A copy of the proposed subtenant's or assignee's business and marketing plan.
- H. Such other information and documents relating to the proposed sublessee's or assignee's business, experience, finances as the Port may reasonably request.

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

- A. In the case of a proposed assignment, a full and complete executed copy of all documents to effectuate the assignment, together with a document in recordable form whereby the proposed assignee shall expressly assume all the covenants and conditions of this Lease.
- B. In the case of a proposed sublease, a full and complete copy of the executed sublease, which sublease shall contain, if requested by the Port, a provision subject to the prior rights of any Lender, satisfactory to the Port, requiring sublessee at the Port's option to attorn to the Port if Lessee defaults under this Lease and if the sublessee is notified of Lessee's default and instructed to make sublessee's rental payments to the Port. The Port shall have no obligation to

recognize any sublessee after Lessee's default unless and until the Port, at the Port's option, signs a recognition and attornment agreement among the Port, Lessee and the sublessee. Lessee shall not accept, directly or indirectly, more than 3 months' prepaid rent from any sublessee and said copy of the executed sublease shall recite this restriction and sublessee's acknowledgment of the same.

C. In the case of any other proposed encumbrance or proposed transfer, a full and complete executed copy of all documents to effectuate the encumbrance or transfer, which documents shall incorporate directly or by reference all of the provisions of this Lease.

Unless otherwise provided by resolution adopted by the Board of Port Commissioners or expressly in this Section, no subletting or assignment or any activity on the Premises by any person other than Lessee, even with the Port's consent, shall relieve Lessee of its rental or other obligations hereunder, and Lessee shall continue to be liable as a principal and not as a guarantor or surety, to the same extent as though no assignment or subletting, and no such activity on the Premises by any person other than Lessee, had been made or occurred, and as though all conduct of the assignee, subtenant or such other person was Lessee's conduct. Specifically, in case of any assignment, the following shall apply:

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

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

Lessee immediately and irrevocably hereby assigns to the Port, as security for Lessee's obligations under this Lease, all rent from any subletting of all or a part of the Premises as permitted by this Lease, and the Port, as assignee and as attorney-in-fact for Lessee, or a receiver for Lessee appointed on the Port's application, may collect such rent and apply it toward Lessee's obligations under this Lease; provided, however, that, until the occurrence of an act of default by Lessee and the expiration of all periods for cure, Lessee shall have the right to collect such rent.

18.2. Liens, Attachments, Bankruptcy: Except as otherwise expressly provided in this Lease, Lessee shall pay for all labor done and materials furnished in the repair, replacement, development or improvement of the Property and any areas adjacent thereto and shall keep the Premises and such adjacent land, and Lessee's possessory interest in the premises, free and clear of any lien or encumbrance (hereinafter "lien") of any kind whatsoever created by Lessee.

If a lien is filed, Lessee shall promptly either cause such lien to be released of record or diligently contest the claim relating to the lien, provided that if such contest is resolved against Lessee, Lessee promptly shall cause such lien to be released of record, and if Lessee fails so to do, the Port shall have the right and option, but not the duty, to pay or otherwise discharge, stay or prevent the execution of any judgment or lien or both. If the Port exercises such option, the Port shall not be deemed to have waived the Port's right to declare a default of this Lease and Lessee shall reimburse the Port for all sums expended in connection with any such judgment or lien, or both, including the Port's reasonable attorneys' fees and costs, together with any delinquency charge provided for in this Lease, and said reimbursement shall be due and payable 10 days from the date the Port gives to Lessee written notice of any such payments, fees or costs.

Lessee shall not be deemed to be in default if Lessee causes an attachment or execution to be removed within 45 days of levy, or if Lessee causes an involuntary proceeding in bankruptcy to be dismissed or receiver to be removed within 90 days of the date of commencement of said proceeding or appointment of said receiver.

18.3. Death, Incompetence, Incapacity: In the event of a transfer by testacy or intestacy, or by reason of a person's mental or physical incompetence or incapacity, the Port may require by written notice to the transferee within 60 days after the Port receives written notice of such transfer, that the transferee, within 1 year from date of transfer either (1) establish that the transferee qualifies as an assignee or transferee for which the Port shall not unreasonably withhold or delay its consent; or (2) transfer transferee's testate or intestate interest to an assignee or transferee that is so qualified and approved by the Port.

18.4. Assignments:

18.4.1. Assignments Requiring Prior Port Consent: Assignments or transfers requiring Port consent include any and all assignments or transfers of any right, title or interest in this Lease except arising from death or otherwise expressly exempt by the provisions of this Lease from the requirement for prior Port approval.

An assignment within the meaning of this Section shall include, but is not limited to, the following:

A. If Lessee is other than a corporation, the transfer of this Lease or any of Lessee's interests therein to a corporation that is not wholly owned or controlled by Lessee.

B. If Lessee consists of more than one person or entity, or a combination of a person or persons and an entity or entities, a purported assignment, voluntary, involuntary, or by operation of law of any interest in this Lease from one or more such persons or entities, to any other person or persons or entity or entities whether or not such other person or persons or entity or entities are Lessees.

C. If Lessee is a partnership, a withdrawal or change, voluntary, involuntary, or by operation of law, of any general partner (but not of any limited partner), or the dissolution of the partnership.

D. If Lessee is a corporation, any dissolution, merger, consolidation, or other reorganization of Lessee, or the sale or other transfer of a controlling percentage of the capital stock of Lessee, or the sale of more than 50% of the value of the assets of Lessee whether in one conveyance or cumulatively in the aggregate in more than one conveyance. The phrase "controlling percentage" means the ownership of, and the right to vote, stock possessing at least 50% of the total combined voting power of all classes of Lessee's capital stock issued, outstanding, and entitled to vote for the election of directors. This Subsection D shall not apply to a corporation the stock of which is publicly traded through an exchange or over the counter or to any transfer, distribution or contribution of a controlling percentage of the capital stock of Lessee (1) by any corporate shareholder of Lessee to one or more of its own shareholders; or (2) by any shareholder of Lessee to another corporation the capital stock of which such shareholder owns a controlling percentage; provided, however, Lessee shall however give the Port prompt written notice of each such transfer, distribution or contribution.

E. Any transaction or series of transactions in which more than an aggregate of twenty-five (25%) of the ultimate beneficial ownership of the leasehold interest under this Lease changes.

18.4.2. Investment or Net Worth: The parties hereto agree that it shall be reasonable for the Port to withhold its consent if the proposed assignee or transferee shall not have (upon the effective date of such assignment or transfer) (1) at least a tangible net worth attributable to this Lease equal to the lesser of (a) that portion of the net worth of assignor attributable to this Lease, and (b) \$10,000,000 in Constant Dollars; and (2) a total net worth equal to at least \$10,000,000 in Constant Dollars all as determined in conformity with generally accepted accounting principles consistently applied. A request for consent to assignment shall not be deemed submitted unless and until Lessee files with the Port an independent certified public accountant's written determination that the proposed assignee or transferee has said investment or net worth, together with the certified public accountant's detailed written summary of the bases for such determination, and said determination shall be based on the proposed assignee's net worth as of a stated date not more than 90 days prior to the proposed date of assignment. The Port shall not unreasonably withhold its consent, and shall issue its consent within a reasonable time in no event to exceed 30 days after the request for consent is submitted.

If an assignee or transferee meets the foregoing minimum requirements of this Subsection and the Port otherwise approves the proposed assignment or transfer, then upon the later of (1) the date the assignee expressly assumes all the covenants and conditions of this Lease; or (2) the date of satisfaction of all conditions to the Port's consent, the assignor shall be relieved of all obligations under this Lease that arise after said date.

18.5. Subleases: Except as provided in this subsection, no sublease shall be entered into, nor shall occupancy or use of the Premises occur thereunder or in anticipation thereof, without prior Port consent as required in the foregoing provisions of this Section. The Port shall determine, in its sole and absolute discretion, whether approval by the Federal Aviation Administration is required for any such sublease.

18.5.1. Occupancy Subleases Over 500 Square Feet: A sublease or other occupancy tenancy agreement or other agreement granting any right to occupy or use any part of the Premises in excess of 500 square feet of surface area, requires prior consent of the Port's Board.

18.5.2. Occupancy Subleases 500 Square Feet Or Less: A sublease or other occupancy tenancy agreement or other agreement granting any right to occupy or use any part of the Premises which is 500 square feet or less in surface area for retail purposes permitted by Section 3 of this Lease shall not become effective until the expiration of 10 days after its receipt by the Executive Director or if within said 10 days the Executive Director gives Lessee notice of disapproval of the agreement. Any disapproval by the Executive Director shall be reasonable and shall specify the reasons therefore. The processing fee requirements, and the other requirements for submission of information and documents, as set forth in Section 18.1, shall not apply to a sublease or other occupancy tenancy agreement or other agreement granting any right to occupy or use any part of the Premises subject to this Section 18.5.2. Lessee shall prepare and receive the written approval of a form retail occupancy agreement from the Executive Director prior to submitting specific proposed retail use agreements to the Executive Director. Except as approved by the Executive Director on a case-by-case basis, no retail use agreement subject to this Section shall be for a term in excess of 10 years.

18.5.3. Non-Disturbance and Attornment: Lessee may request the Port to enter into a Non-Disturbance and Attornment Agreement (as used in this Subsection, the "Agreement") as to any sublease or proposed sublease, together with Lessee and the sublessee. Evidence of the Port's entering into such Agreement shall be the signing of the Agreement by the Executive Director.

The Port agrees that it shall not unreasonably deny Lessee's request that the Port enter into such an Agreement, which is consistent with the following:

(1) The provisions of the Agreement shall be set forth in full in the appropriate sublease to which it relates, the sublease shall provide that it is subject to all of the terms and conditions of this Lease, and the sublease shall be signed by Lessee and the sublessee.

(2) The Agreement shall provide substantially as follows:

(a) If, after expiration of the applicable period that Lessee has in which to cure its default, Lessee defaults under this Lease, the Port shall notify sublessee of the default. On receipt of the notice from the Port, sublessee shall attorn to the Port, shall immediately pay to the Port the security deposit and prepaid sums that sublessee had paid to Lessee, and shall perform all sublessee's obligations under the sublease directly to the Port as if the Port were the landlord under the sublease. If sublessee is not, at the time of the notice, in default, the Port shall continue to recognize the estate of the sublessee created under the sublease. If sublessee is not in default, the sublease shall continue (subject to item (d) immediately below) with the same force and effect as if the Port and sublessee had entered into a lease on the same provisions as those contained in the sublease.

(b) If this Lease terminates as provided in Section 15 (Damage or Destruction of Improvements) or Section 29 (Eminent Domain Proceedings), the sublease also shall terminate on the date this Lease terminates.

(c) From the date sublessee attorns to the Port as provided in the Agreement, sublessee shall not be further liable to Lessee for performance under the sublease, and Lessee shall return to sublessee, immediately on sublessee's demand, the security deposit and other prepaid sums that sublessee paid to Lessee under the provisions of the sublease.

(d) The Port's obligation to recognize sublessee's rights under the sublease, and sublessee's obligation to attorn to the Port, are subject to the following:

(i) The Port and sublessee, from the date of recognition and attornment, shall have the same rights that can be enforced against each other as Lessee and Sublessee have that can be enforced against each other under the sublease. The Port shall not be liable for any act or omission of Lessee and its authorized representatives, shall not be subject to any offsets or defenses that sublessee has against Lessee, and shall not be bound by any prepaid rent, security deposit, or other prepaid sum that sublessee has paid in advance to Lessee.

(ii) The Port and sublessee immediately shall enter into a written agreement with the same provisions as those in the sublease, except for any changes that are necessary because of the substitution of the Port in the place of Lessee. Among such changes that shall be made because of the substitution of the Port in the place of Lessee shall be the addition of provisions substantially the same as following Sections of this Lease: 5 (Standard of Service; Rates and Charges), 13 (Taxes and Assessments), 19 (Environmental Responsibilities; Garbage; Nuisances), and 21 (Surrender and Holding Over).

(e) Any amendment of the sublease in any material respect shall have no force or effect on the Port for purposes of this Section 18.5.3 unless and until the Port consents to such amendment as evidenced by writing signed by its Executive Director, which consent shall not unreasonably be withheld.

(f) Nothing in the Agreement shall be deemed to change in any manner the provisions of this Lease as between the Port and Lessee, or to waive any right that the Port may now have or later acquire against Lessee by reason of said Lease.

(g) If any party commences an action against any of the other parties arising out of or in connection with the Agreement, the prevailing party shall be entitled to recover from the losing party reasonable attorney's fees and costs of suit.

19. Environmental Responsibilities; Garbage; Nuisances: Lessee is aware of and shall fully comply with the terms of the Environmental Responsibilities Exhibit, attached as **Exhibit D** and incorporated herein.

No offensive or dangerous trade, business or occupation shall be carried on within the Premises, and nothing shall be done on the Premises, other than as is provided for in the use provisions of this Lease, which will suspend the insurance upon the Premises or increase the rate of insurance or suspend the insurance on other structures of the Port; and no machinery or apparatus shall be used or operated on the Premises which will in any way injure the Premises or adjacent buildings; provided, however, that nothing in this Section shall preclude Lessee from bringing, keeping or using on or about the Premises goods, merchandise, materials, supplies, equipment and machinery as are appropriate or customary in carrying on its said business, or from carrying on its business in all respects as is generally usual, so long as Lessee at all times is in full compliance with the attached Environmental Responsibilities Exhibit and all other applicable laws, regulations, permits, licenses and any other approvals or authorizations.

Lessee agrees to conduct its operations upon the Premises so as to reduce to the minimum that is reasonably practicable the emanation from the Premises of fumes and odors.

Lessee agrees to handle and dispose of its trash, garbage and refuse in a sanitary manner and not to store or maintain any boxes, cartons, barrels, trash, debris or refuse in or about the Premises where they will be visible from any direction outside the Premises. Lessee shall provide its own facilities within the Premises for the cleaning of garbage cans.

20. Defaults; Remedies: The Port's rights under this Section are subject to any Leasehold Mortgage Lender provisions of this Lease.

20.1. Defaults: The occurrence of any one or more of the following events shall constitute a material default and breach of this Lease by Lessee:

(a) The vacating or abandonment of the Premises by Lessee.

(b) The failure by Lessee to make any payment of rent or any other payment required to be made by Lessee hereunder, as and when due, where such failure shall continue for a period of 10 days after written notice thereof from Port to Lessee. In the event that Port serves Lessee with a Notice to Pay Rent or Quit pursuant to applicable Unlawful Detainer statutes such Notice to Pay Rent or Quit shall also constitute the notice required by this paragraph (b).

(c) The failure by Lessee to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Lessee, other than described in paragraph (b) above, where such failure shall continue for a period of 30 days after written notice hereof from Port to Lessee; provided, however that if the nature of Lessee's default is such that more than 30 days are reasonably required for its cure, then Lessee shall not be deemed to be in default if

Lessee commenced such cure within said 30-day period and thereafter diligently prosecutes such cure to completion. In the event that Port serves Lessee with a Notice to Perform or Quit pursuant to applicable Unlawful Detainer statutes, such Notice to Perform or Quit shall also constitute the notice required by this paragraph (c).

(d) (i) The making by Lessee of any general arrangement or assignment for the benefit of creditors; (ii) Lessee becomes a "debtor" as defined in 11 U.S.C. § 101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within 30 days; provided, however, in the event that any provision of this paragraph (d) is contrary to any applicable law, such provision shall be of no force or effect.

(e) The discovery by Port that any financial statement given to Port by Lessee, any assignee of Lessee, any successor in interest of Lessee or any guarantor of Lessee's obligation hereunder, and any of them, was materially false.

20.2. Remedies: In the event of any such material default or breach by Lessee, Port may at any time thereafter, with or without notice or demand and without limiting Port in the exercise of any right or remedy which Port may have by reason of such default or breach:

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

(i) The worth at the time of award of the unpaid rent and sums equivalent to rent required to be paid by Lessee under this Lease that had been earned at the time of termination;

(ii) The worth at the time of award of the amount by which the unpaid rent and sums equivalent to rent required to be paid by Lessee under this Lease that would have been earned after termination until the time of award exceeds the amount of such rental loss that Lessee proves could have been reasonably avoided;

(iii) The worth at the time of award of the amount by which the unpaid rent and sums equivalent to rent required to be paid by Lessee under this Lease for the balance of the term after the time of award exceeds the amount of such rental loss that Lessee proves could be reasonably avoided; and

(iv) Any other amounts permitted by law to compensate the Port for detriment proximately caused by Lessee's default or which in the ordinary course of events would be likely to result therefrom, including, but not limited to, the costs and expenses incurred by the Port (A) in retaking possession of the Premises, (B) in cleaning and making repairs of and alterations to the Premises reasonably necessary to return the Premises to good condition for uses permitted by this

Lease and in otherwise preparing the Premises for reletting, (C) in removing, transporting, and storing any of Lessee's property left at the Premises although the Port shall have no obligation to remove, transport, or store any of such property, (D) in providing project management, and (E) in reletting the Premises, including, but not limited to, brokerage commissions, advertising costs, and attorneys' fees.

The "worth at the time of award" of the amounts referred to in items (i) and (ii) immediately above is computed by allowing interest at the maximum rate permitted by law. The "worth at the time of award" of the amount referred to in item (iii) immediately above is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

(b) Avail itself of the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has right to sublet or assign, subject only to reasonable limitations) and Lessee conclusively and irrevocably agrees that Lessee has right hereunder to sublet or assign, subject only to reasonable limitations.

(c) In case of abandonment or vacating of the Premises by Lessee, if the Port elects not to terminate this Lease, Lessee hereby irrevocably appoints the Port the agent of Lessee to enter upon the Premises and remove any and all persons and/or property whatsoever situated upon the Premises, and place all or any portion of said property in storage for account of and at expense of Lessee. In such case the Port may relet the Premises upon such terms as to it may seem fit, and if a sufficient sum shall not thus be realized after paying all expenses enumerated in items A, B, C, and D in paragraph (a)(iv) of this Section 20.2 and collecting to satisfy the rent and other sums herein agreed to be paid, Lessee agrees to satisfy and pay any deficiency, and to pay such expenses. Lessee hereby exempts and agrees to save harmless the Port from any cost, loss or damage arising out of or caused (except to the extent caused by the active negligence of the Port or its agents or contractors) by any such entry or re-entry upon said Premises and/or the removal of persons and/or property and storage of such property by the Port or its agents.

(d) If Lessee is in default under this Lease, the Port shall have the right to have a receiver appointed to collect rent. Neither filing of a petition for the appointment of a receiver nor the appointment itself shall constitute an election by the Port to terminate this Lease.

(e) The Port, at any time beyond any applicable cure period after Lessee commits a default, can cure the default at the Port's cost. If the Port at any time, by reason of Lessee's default, pays a sum or does any act that requires the payment of any sum, the sum paid by the Port shall be due immediately from Tenant to the Port at the time the sum is paid, and if paid at a later date shall bear interest at the Overdue Rate from the date the sum is paid by Landlord until Landlord is reimbursed by Tenant. The sum, together with interest on it, shall be Additional Rent.

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

21. Surrender and Holding Over: Lessee covenants that at the expiration of the Term of this Lease or upon its earlier termination it will quit and surrender the Premises, together with all tenant improvements and all equipment, furniture and trade fixtures which are required to be

surrendered with the Premises, in good state and condition (reasonable wear and tear and damage by the elements excepted), clean and free of all subtenants, trash, debris, equipment, furniture and trade fixtures not required to remain on the Premises under this Lease, and otherwise in compliance with all the terms of this Lease. The Port shall have the right upon such termination to enter upon and take possession of all the Premises. Should Lessee with the Port's written consent hold over the use of the Premises after this Lease has been terminated in any manner, such holding over shall be deemed merely a tenancy from month to month on such terms and conditions, and at a rent (payable monthly in advance), as may be fixed from time to time by the Port, but otherwise on the same terms and conditions as herein set forth; provided, however, that rent may be fixed by the Port from time to time by giving to Lessee written notice thereof at any time not less than 7 days before the expiration of any such month, to be effective upon the expiration of such month.

It is understood and agreed that nothing contained in this Lease shall give Lessee any right to occupy the Premises at any time after expiration of the Term of this Lease or its earlier termination or termination of any holdover tenancy by any means whatsoever, and that this Lease shall not create any right in Lessee for relocation assistance or payment from the Port upon expiration of the Term of this Lease or upon its earlier termination or upon the termination of any holdover tenancy by any means whatsoever. Lessee acknowledges and agrees that upon such expiration or termination, it shall not be entitled to, and expressly hereby waives, any relocation assistance or payment pursuant to the provisions of Title 1, Division 7, Chapter 16, of the California Government Code (Sections 7260 et seq.) with respect to any relocation of its business or activities upon the expiration of the Term of this Lease or upon its earlier termination or upon the termination of any holdover tenancy by any means whatsoever.

22. Security and Protection of Premises; Security Mandates: Lessee shall assume the sole responsibility for all personal security and for guarding and safekeeping of and risk of loss to all property, stock merchandise, and equipment stored or located upon or used in connection with the said Premises.

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

obligations under this Section 22 arising out of acts or omissions that occurred during the Term of this Lease shall survive the expiration earlier termination of this Lease.

23. Waivers: No waiver by either party at any time of any of the terms, conditions or covenants or agreements of this Lease or of any default shall be deemed or taken as a waiver at any time thereafter of the same or of any other term, condition or covenant or agreement herein contained, nor of the strict and prompt performance thereof. No delay, failure or omission of the Port to re-enter the Premises or to exercise any right, power or privilege, or option, arising from any default, nor any subsequent acceptance of rent then or thereafter accrued shall impair any such right, power, privilege or option or be construed a waiver of any such default or relinquishment thereof, or acquiescence therein, and no notice by the Port shall be required to restore or revive time as of the essence after waiver by the Port of default in one or more instance. No option, right, power, remedy or privilege of the Port shall be construed as being exhausted by the exercise thereof in one or more instances. It is agreed that each and all of the rights, powers, options or remedies given to the Port by this Lease are cumulative, and no one of them shall be exclusive of the other or exclusive of any remedies provided by law, and that exercise of one right, power, option or remedy by the Port shall not impair its rights to any other right, power, option or remedy.

24. Right to Inspect Premises: The Port or its duly authorized representatives, or agents and other persons for it, may enter upon the Premises at any and all reasonable times during the Term of this Lease for the purpose of determining whether or not Lessee is complying with the terms and conditions hereof or for any other purpose incidental to rights of the Port. The Port shall not unreasonably interfere with the use and occupancy of Lessee or sublessees during such entry.

25. Agent for Service of Process: It is expressly agreed and understood that if Lessee is not a resident of this state, or is an association or partnership without a member or partner resident of this state, or is a foreign corporation, then in any such event Lessee shall file with the Port a designation of a natural person residing in the County of Alameda, State of California, giving the person's name, residence and business address as Lessee's agent for the purpose of service of process in any court action between Lessee and the Port arising out of or based upon this Lease, and the delivery to such agent of a copy of any process in any such action shall constitute valid service upon such Lessee. Notwithstanding the foregoing, if Lessee is a foreign corporation, then in lieu of filing with the Port a designation as provided above in this Section, Lessee may file with the Port a certified copy of its designation of agent filed with the California Secretary of State under California Corporations Code Section 2105. If for any reason service of such process upon such agent is not possible, then in such event Lessee may be personally served with such process out of this state, and Lessee agrees that such service shall constitute valid service upon such Lessee; and it is further expressly agreed that Lessee is amenable to the process so served, submits to the jurisdiction of the court so acquired, and waives any and all objection and protest thereto.

26. Promotion of Port and Facilities: Lessee shall in good faith and with all reasonable diligence when advertising the Premises seek to promote the harbor and Airport facilities in the City of Oakland in order to promote and aid the commerce and trade of the Port of Oakland and the use of its facilities.

27. Estoppel Certificates: Lessee or the Port, as the case may be, shall execute, acknowledge and deliver to the other and/or to Lender, promptly upon request, its certificate certifying to the best of its knowledge (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the modifications); (b) the commencement and expiration dates of this Lease term and the dates, if any, to which the Minimum Rent and Percentage Rent have been paid; (c) whether there are then existing any charges, offsets or defenses against the enforcement by the Port or Lessee of any agreement, covenant or condition hereof on the part of the Port or Lessee to be performed or observed (and, if so, specifying the same); and (d) whether there are then existing any defaults by the Port or Lessee in the performance or observance by the Port or Lessee of any agreement, covenant or condition hereof on the part of the Port or Lessee to be performed or observed and whether any notice has been given to the Port or Lessee of any default which has not been cured (and, if so, specifying the same).

Lessee and the Port also agree at the request of the other to provide other information readily available and reasonably related to a transaction and required therefor by the requesting party; provided, however, that such other information shall not include financial information or other confidential information unless required to be provided by other provisions of this Lease, and a party may condition its supply of such other information upon the requesting party's prior deposit of a reasonable estimate of costs of providing such information.

28. Force Majeure: In the event that Lessee or the Port is delayed, directly or indirectly, from the performance of any act or thing required under the terms hereof by acts of God, accidents, fire, floods, inclement weather, governmental action, restrictions, priorities or allocations of any kind and all kinds, strikes or labor difficulties of any and all kinds (except for delays or disruptions that are related to a violation of the Labor Peace Rule under this Lease), shortages of or delay in the delivery of material, acts of war, riot and civil commotion, or by any similar cause reasonably beyond the control of Lessee or the Port, as the case may be, such failure (except for the payment of rent or other sums required by this Lease) shall not be deemed to be a breach of this Lease or a violation of any such covenants and the time within which Lessee or the Port must perform any said act shall be extended by a period of time equal to the period of delay arising from any of said causes.

Notwithstanding any provision of this Section or any other provision of this Lease to the contrary, it is understood and agreed that there shall be no abatement of, or delay in the commencement of, payment of any sum due to the Port under this Lease except as follows: In the event that the commencement of construction or the completion of the Premises is delayed in any way by reason of any act or event falling within or covered by this Section 28, and as a result of such delay the Buildings are not completed within the time period provided for in Section 4.1.2.C hereof, then the time relating to the payment or commencement of the payment by Lessee of Minimum Rent for the Premises shall be extended for a period equal to the period of such delay but not more than a total period of 180 days. Lessee shall, however, be entitled to said extension only upon satisfaction of the following conditions: (1) not later than 10 days after Lessee acquires knowledge of such a delay, Lessee shall give written notice thereof to the Port, setting forth the facts giving rise to such delay and the time extension that Lessee believes may be necessary and is requesting on account of such delay; (2) the Port shall within 15 days of receipt of said written notice from Lessee state to Lessee by written notice whether the Lessee's request for extension is granted and, if so, the number of days of extension; and (3) no extension shall exceed 30 days, and for any further extensions for a particular

delay Lessee shall give additional such written notices to the Port not more than 10 days after expiration of the last effective extension period granted by the Port with respect to such delay, and the Port shall reply thereto within the time and in the manner provided in item (2) above. If the Port fails so to reply to any of Lessee's written notice within said 15-day period, the Port shall be deemed to have granted to Lessee (unless said grant would exceed the 180-day total extension period set forth in this Section), the shorter of (1) the period of extension requested by Lessee; and (2) 30 days. The Port shall not unreasonably withhold or delay the granting of any such extension requested by Lessee.

29. Eminent Domain Proceedings:

29.1. Total Taking: If the whole of the Premises should be taken by any public or quasi-public authority under the power or threat of eminent domain, then, in such event, on the earlier of the date title to the Premises vests in such public or quasi-public authority, or the date on which said public or quasi-public agency takes possession of the Premises, this Lease shall terminate with respect to Lessor's and Lessee's future obligations hereunder, but said termination shall not affect Lessor's and Lessee's rights to any compensation or damages for, on the account of, or arising out of such taking. For any period of time prior to termination during which Lessee (involuntarily on account of such taking or any proceedings related thereto) does not have full use of the Premises, the Minimum Rent due hereunder shall be equitably reduced. In the event of such a taking, the Port shall be entitled to receive all sums in the award of damages and compensation arising by reason of such taking except that an amount therefrom equal to the fair market value of Lessee's leasehold interest in the Premises (as of the date of valuation of the taking) shall be paid as follows: (1) first to any Lender any sums due under a Leasehold Mortgage; and (2) then, as to any remainder from such amount, to Lessee.

29.2. Partial Taking; Termination: If a substantial portion of the Premises should be taken so as to impair materially the use of the Premises as contemplated by this Lease on the earlier of the date title to such portion of the Premises vests in such public or quasi-public agency, or the date on which such public or quasi-public agency takes possession of such portion of the Premises and Lessee no longer has full possession of such portion, this Lease shall terminate with respect to Lessor's and Lessee's future obligations hereunder, but said termination shall not affect Lessor's or Lessee's rights to any compensation or damages for, on account of, or arising out of such taking. For any period of time prior to termination during which Lessee (involuntarily on account of such taking or any proceedings related thereto) does not have full use of the Premises, the Minimum Rent due hereunder shall be equitably reduced. In the event of such a substantial taking, the award of damages and compensation arising by reason of such taking shall be distributed in the same manner as the last sentence of Section 29.1 above.

29.3. Partial Taking; No Termination; Reconstruction: If a taking shall occur which does not result in termination of this Lease as provided in the previous subsections of this Section, but which requires the portion of the Premises not so taken to be reconstructed and restored so as to be constituted an architecturally complete unit suitable for use by Lessee, all compensation and damages payable for or on account of such taking shall be payable to Lessee and/or its Lender and shall be used to reconstruct and restore the portion of the Premises not so taken to an architecturally complete unit suitable for use by Lessee; provided, however, that the Lessee's and/or Lender's obligation so to reconstruct and restore the Premises shall be limited solely to the amount of

such compensation and damages made available to them pursuant to this subsection, and the Minimum Rent payable by Lessee hereunder shall be equitably reduced during the time Lessee does not have full use of the Premises as a result of such taking to account for the reduced economic value to Lessee, if any, occasioned by reason of such taking. The balance of any compensation and damages remaining after the reconstruction and restoration contemplated by this Subsection shall be distributed in the same manner as distribution of damages and compensation for a total taking under Section 29.1 hereof.

29.4. Partial Taking; No Termination; No Reconstruction: If a taking shall occur which does not result in a termination of this Lease as provided in the previous subsections of this Section, and which does not require any portion of the Premises not so taken to be reconstructed and restored so as to constitute an architecturally complete unit suitable for use by Lessee, the proceeds shall be distributed in accordance with the last sentence of immediately preceding subsection. Lessee, however, shall be entitled to all compensation or damages payable for, or on account of, Lessee's trade fixtures located on the Premises, and shall be entitled to an equitable reduction of Minimum Rent.

29.5. Taking of Leasehold Estate: No taking of Lessee's leasehold estate in the Premises or any part thereof without a taking of the fee shall terminate or give Lessee the right to surrender this Lease, nor excuse the taker of such leasehold estate, including any successor in interest thereto, from full performance of the covenants for the payment of rent and other charges or any other obligations hereunder capable of performance by the taker of such leasehold estate, including any successor in interest thereto, after any such taking, but in such case, all compensation and damages payable for or on account of such taking shall be payable to and be the sole property of Lessee. During any period of time that Lessee is not in possession of the Premises, or any portion thereof, as a result of the taking of any portion of its leasehold estate hereunder, but only during such period of time, (1) Lessee shall not be obligated to pay or in any way be liable for the payment of any rental or to perform any of the other obligations or covenants otherwise to be performed by it hereunder with respect to, but only with respect to the portion of the Premises affected by such taking; (2) the Port shall look solely to the taker of such leasehold interest, including the successors in interest thereto and any party then in possession of all or such portions of the Premises affected by such taking for the payment of rental and the performance of the other obligations and covenants hereunder with respect to such portion of the Premises; and (3) as between Port and Lessee, Port shall not forfeit or terminate this Lease for breach by the taker of such leasehold interest, including its successors in interest thereto and any party then in possession, of any obligation or covenant hereunder, including the obligation to pay rental.

29.6. Relocation Benefits and Goodwill: Anything contained in this Section to the contrary notwithstanding, all compensation, damages, reimbursements or other benefits payable to Lessee or Lessee's subtenants, licensees and concessionaires for or in connection with any relocation, displacement, inability to relocate, loss of business or loss of goodwill resulting from or in connection with any taking covered by this Section shall be payable to and be the sole property of Lessee or Lessee's subtenants, licensees and concessionaires, as appropriate.

29.7. Reduction in Minimum Rent; Arbitration: If the parties cannot agree upon the amount of any reduction of Minimum Rent, as may be contemplated by this Section, the same shall be determined by Arbitration.

29.8. Trade Fixtures and Equipment: In the event of any taking of any portion of the Premises, Lessee shall be entitled to receive all compensation and damages arising from such taking and payable for or on account of Lessee's trade fixtures and equipment at any time located on the portion of the Premises so taken, except for those trade fixtures that pursuant to this Lease are to remain with the Premises on surrender.

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

29.10. Lender's Provision: Lessee agrees to use good faith reasonable efforts to have all Lenders agree in relevant loan documents to have damages and compensation proceeds applied to restoration of the Premises. Lessee also agrees that if, nevertheless, a Lender will not so agree but reserves the power to apply all or portions of such proceeds against its loan, then in the event of a loss Lessee shall use diligent, good faith reasonable efforts (including legal action), in consultation with the Port, to cause all damages and compensation proceeds to be applied to restoration, but not so as to jeopardize Lessee's interest in the leasehold estate in the good faith judgment of Lessee's attorney. Notwithstanding any other provision of this Section, in the event that Lender elects not to use its share of damages and compensation for reconstruction, the Port shall not be obligated to use any portion of damages or compensation paid to it for land to restore the improvements.

29.11. Waiver of Right to Petition Court for Termination: The Port and Lessee each waives their rights, if any, to petition the court to terminate this Lease in the event of a partial taking of the Premises since this Lease is a complete expression of the parties' agreement with respect to the consequences of a partial taking.

30. Waiver of Claims: The Lessee hereby waives any claim against the City of Oakland, and the Board of Port Commissioners, its officers, agents or employees, for damage or loss caused by any claim, suit or proceedings directly or indirectly attacking the validity of this Lease or any part thereof or right granted thereby or asserting any right or interest in the Premises inconsistent with rights granted to Lessee by this Lease, or by any judgment or award in any suit or proceedings instituted by a party other than the Port directly or indirectly attacking the validity of this Lease, or any part thereof, or by any judgment or award in any suit or proceeding declaring this Lease null, void or voidable, or delaying the same, or any part thereof, from being carried out; provided, however, that such waiver shall not apply or run to any damage or loss in any way caused by any suit or proceeding directly or indirectly attacking the validity of this Lease which suit or proceeding is based in whole or in part upon an alleged "conflict of interest" of any elected or appointed official, officer, agent or employee of the City of Oakland or the Board of Port Commissioners of the Port of Oakland, including any "conflict of interest" or other matter alleged to violate or violating California

Government Code Sections 1090 or 1092. The Port and Lessee each agree that it shall not in any way attempt to have this Lease declared null or void, and that it shall reasonably cooperate with the other to defend the validity of this Lease and of the rights and obligations granted by this Lease.

31. Extensions of Time: The Port shall have the right, but not the obligation, to grant reasonable extensions of time to Lessee for any purpose or for the performance of any obligation of Lessee hereunder.

32. Successors: Each and every of the provisions, agreements, terms, covenants and conditions herein contained to be performed, fulfilled, observed and kept shall be binding upon the successors and assigns of the parties hereto, and the rights hereunder, and all rights, privileges and benefits arising under this Lease and in favor of either party shall be available in favor of the successors and assigns thereof, respectively; provided no assignment by or through Lessee in violation of the provisions of this Lease shall vest any rights in such assignee or successor.

33. Time of Essence: Time is hereby expressly declared to be of the essence of this Lease.

34. Notices: All notices and other communications made pursuant to or with regard to this Lease, including, without limitation, a statutory notice, a notice of default, a Notice to Pay Rent or Quit, or a Notice to Perform or Quit, shall be in writing and shall be deemed properly delivered, given or served when (1) personally delivered against receipted copy; or (2) mailed by certified or registered U.S. mail, postage prepaid, to the parties at the following addresses:

Port: **Port of Oakland
Director of Aviation
1 Airport Drive
Oakland, CA 94621**

With copy to: **Port of Oakland
Port Attorney
530 Water Street
Oakland, CA 94607**

Lessee: [REDACTED]

If notice of any change in its address is given by a party in accordance with the foregoing, the other party shall thereafter give notices at such changed address. The parties shall also endeavor to send courtesy electronic copies of all notices and other communications.

35. Equal Opportunity; Nondiscrimination

35.1. Equal Opportunity; Nondiscrimination: In furtherance of the Port's long-standing policy to ensure that equal employment opportunity is achieved and nondiscrimination is

guaranteed in all Port-related activities, it is expressly understood and agreed with respect to Lessee's activities upon the demised premises:

a. That Lessee shall not discriminate against any employee or applicant for employment or against any professional service, vendor, or contractor because of race, color, religion, sex (including gender identity), actual or perceived sexual orientation, marital status, national origin, age, physical handicap disability as set forth in the Americans With Disabilities Act of 1990, medical condition, mental disability, genetic information, or veteran's status.

b. That Lessee shall, in all solicitations or advertisements for employees placed by or on behalf of Lessee or for professional services, vendors, or contractors, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex (including gender identity), actual or perceived sexual orientation, marital status, national origin, age, physical handicap disability as set forth in the Americans With Disabilities Act of 1990, medical condition, mental disability, genetic information, or veteran's status.

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

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

e. That Lessee's noncompliance with the provision of this Section shall constitute a material breach of this Lease. The Port may seek judicial enforcement in the event of a breach of any of the above-stated nondiscrimination covenants.

35.2. Agreements with the United States, State of California, and City of Oakland: This Lease shall be subject to all restrictions of record affecting the Airport and the use thereof, all federal, state, and City laws and Port ordinances and regulations (as amended) affecting the same, and shall be subject and subordinate to the provisions of any rights of the United States in the Property and the provisions of any and all existing agreements between Port and the City, and those between Port or the City and the United States of America or the State of California, or their boards, agencies or commissions, and to any future agreements between or among the foregoing relative to the operation or maintenance of the Airport, the execution of which may be required as a condition precedent to the expenditure of federal, state, or City funds or Passenger Facility Charges ("PFC's") for the development of the Airport, or any part thereof. All provisions hereof shall be subordinate to the right of the United States to occupy or use the Airport, or any part thereof, during time of war or national emergency.

35.2.1. Lessee shall comply with all applicable regulations of the Federal Aviation Administration and the Transportation Security Administration relating to Airport security and shall control the Permitted Uses and the Premises so as to prevent or deter unauthorized persons from obtaining access to the air operations area of the Airport.

35.2.2 Port reserves unto itself, and unto its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft through the airspace above the Premises, together with the right to cause in said airspace such noise, light, vibrations, smoke, air currents, electronic or other emissions, discomfort, inconvenience, interference with use and enjoyment, and any consequent reduction in market value which may occur directly or indirectly as a result of or as may be inherent in the operation of aircraft now known or hereafter used, and for navigation of or flight in the said airspace, and the use of said airspace for landing on, taking off from, or operating on the Airport. Lessee accepts this Lease and the Premises subject to the risks and activities herein described.

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

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

35.2.5 Lessee expressly agrees, on behalf of itself and its successors and assigns, to prevent any use of the Premises that would interfere with or adversely affect the operation or maintenance of the Airport, or that would otherwise constitute a hazard or nuisance at the Airport, including, without limitation, uses that will (i) produce electrical interference with radio communications, (ii) make it difficult for pilots to distinguish between airport lights and others, (iii) project glare in the eyes of the pilots, (iv) impair visibility in the vicinity of the airport, or (v) otherwise endanger the landing, take-off or maneuvering of aircraft.

35.2.6 Lessee agrees that it will not exercise or grant any right or privilege which would operate to prevent any person, firm or corporation operating aircraft on the Airport from performing any service (including, but not limited to, maintenance and repair) on its own aircraft with its own employees that it may choose to perform.

35.2.7 If the Permitted Uses under Section 3 of this Lease include the operation of a “concession”, as defined in 49 C.F.R. Part 23, then this Lease is subject to the requirements of 49 C.F.R. Part 23. Lessee agrees that it will not discriminate against any business owner because of the owner’s race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract or subcontract, purchase or lease agreement, or other agreement covered by 49 C.F.R. Part 23 or any successor regulation. Lessee also agrees to include the above statements in any subsequent concession agreement or contract covered

by 49 C.F.R. Part 23 that it is authorized to enter under this Lease and to cause those businesses to similarly include the statements in further agreements. This clause does not authorize the operation of a concession at the Airport that is not part of the Permitted Uses under Section 3 of this Lease.

35.2.8 This Lease and all the provisions hereof shall be subject to whatever right the United States Government now has, or in the future may have or acquire, affecting the control, operation, regulation and taking over of the Airport or the exclusive or nonexclusive use of the Airport by the United States during the time of war or national emergency.

35.2.9 It is understood and agreed that this Lease to use the Premises, as provided herein, extends only to the Premises and does not extend to the use of or access to the ramps, taxiways, or landing areas of the Airport. It is also understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308(a) of the Federal Aviation Act of 1958 (49 U.S.C. § 40103(e)).

35.2.10 Lessee expressly agrees that the reservations and restrictions set forth in this Lease shall run with the land, which shall be the servient tenement, it being intended that the lands now and hereafter comprising the Airport shall be the dominant tenement; excepting, however, that such reservations and restrictions shall become void and of no force and effect on such date as the lands comprised in the aforesaid Airport shall cease to be used for Airport purposes.

35.3. Right to Amend: Lessee covenants and agrees that this Lease shall be subordinate to the provisions of any existing or future agreements between the Port and the United States Government relative to the operation and maintenance of the Airport, the execution of which has been or will be required as a condition precedent to the granting of federal funds or the use of PFC's for the development of the Airport. In the event that the Federal Aviation Administration or its successors require modifications or changes in this Lease as a condition precedent to the granting of its approval or to the obtaining of funds for improvements at the Airport or as a requirement of any prior grants, Lessee hereby consents to any and all such modifications and changes as may be reasonably required.

35.4. Covenants Against Discrimination:

(a) Lessee, for itself, its successors in interest and its assigns, as a part of the consideration hereof, does hereby covenant and agree that (i) no person on the grounds of race, color, religion, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises, or otherwise in connection with the Lessee's operations hereunder; (ii) that in the construction of any Improvements at the Premises and the furnishing of services in connection therewith, no person on the grounds of race, color, religion, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and (iii) that the Lessee shall operate at 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, Non-discrimination in Federally Assisted Programs of the Department of Transportation-effectuation of Title VI of the Civil Rights Act of 1964 (the "Regulations"), and as said Regulations may be amended.

(b) Lessee shall comply with all laws of the State of California prohibiting discrimination because of race, color, religion, sex, sexual orientation, national origin, age, handicap, medical condition, genetic information, mental disability, or marital status.

(c) Should the Lessee authorize another person, with Port's prior written consent, to provide services or benefits from a location on or relating to Lessee's operation on the Premises, Lessee shall obtain from such person a written agreement pursuant to which such person shall, with respect to the services or benefits which it is authorized to provide, undertake for itself the obligations contained in this Section 35. Lessee shall furnish the original or a true copy of such agreement to Port. Lessee also assures Port that it will require any contractors to provide assurances to the same effect and ensure that such assurances are included in subcontracts at all tiers which are entered into in connection with Lessee's operations under this Lease.

(d) Lessee will provide all information and reports required by said Regulations, or by directives issued pursuant thereto, and shall permit access to its books, records, accounts, the other sources of information, and its facilities as may be determined by the Port or the Federal Aviation Administration to be pertinent to ascertain whether there has been compliance with said Regulations and directives. Where any information required of the Lessee is in the exclusive possession of another who fails or refuses to furnish this information, the Lessee shall so certify to the Port or the Federal Aviation Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.

(e) Port may from time to time be required by the United States Government, or one or more of its agencies, to adopt additional or amended provisions, including non-discrimination provisions, concerning the use and operation of the Premises, and Lessee agrees that it will adopt any such requirement as a part of this Lease.

(f) If Lessee shall furnish any services to the public at the Premises, it shall furnish said services on a fair, equal and not unjustly discriminatory basis to all users thereof and shall charge fair, reasonable and not unjustly discriminatory prices for each unit of service, provided that Lessee shall be allowed to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchasers, if any.

(g) Further, Lessee assures Port that no person shall be excluded on the grounds of race, creed, color, national origin, or sex from participating in or receiving the services or benefits of any program or activity covered by Title 14, Code of Federal Regulations, Part 152, Subpart E, Federal Aviation Administration, Nondiscrimination in Airport Aid Program, and that it will be bound by and comply with all other applicable provisions of such Subpart E, as it may be amended. Lessee also assures Port that it will require its covered suborganizations to provide written assurances to the same effect and provide copies thereof to Port.

35.5 Workforce Development: Lessee agrees to support the Port's workforce development and job creation mission and will endeavor to provide information on available employment opportunities to Port staff upon request.

35.6 Building Permits: Lessee shall establish to the reasonable satisfaction of the Port, as a prerequisite to the issuance of a building permit from the Port for the Premises, that Lessee

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

36. Quiet Possession: Lessee, upon performing its obligations hereunder, and subject to the provisions of the Section hereof entitled "Waiver of Claims," shall have the quiet and undisturbed possession of the Premises through the Term of this Lease. In no event shall Lessee have the right to terminate this Lease as a result of the Port's default and Lessee's remedies for the Port's default shall be limited to damages and/or an injunction.

37. Attorneys' Fees and Costs: If Lessee or the Port commences any action or proceeding against the other arising out of or in connection with this Lease, the prevailing party, as determined by the court (whether at trial or upon appeal), shall be entitled to have and recover from the losing party reasonable attorneys' fees and costs of suit. The Port also shall be entitled to reasonable attorneys' fees and costs to protect the Port's interest under this Lease in the event of Lessee's bankruptcy, and all such fees and costs shall be deemed actual pecuniary losses within the meaning of the federal Bankruptcy Code.

38. Trade Names: The name or names under which Lessee shall elect to operate the Premises shall be subject to the prior written approval of the Port, which approval shall not be unreasonably withheld. Lessee agrees to operate only under the names so approved. Lessee shall not maintain, operate or authorize by franchise any similar facility in the City of Oakland or in the East Bay Area within five (5) miles of the Premises under any name or names the same or similar to the name under which the facility constructed hereunder is maintained and operated.

39. Lease the Entire Agreement; Other Agreements: The Lessee agrees that the provisions of this written Lease constitute the entire agreement between the Lessee and the Port regarding the demised Premises and the parties' rights and obligations with respect thereto. No representation, covenant or other matter oral or written, that is not expressly set forth in this Lease or in documents expressly referred to in this Lease shall be a part of, modify or affect this Lease; provided, however, that this Lease may be modified at the sole discretion of each of the Port and Lessee if the modification is in writing executed by the Port and Lessee and authorized by ordinance or resolution of the Board of Port Commissioners. It is expressly acknowledged, understood and agreed that, except as may otherwise be expressly provided herein, neither the Port nor Lessee shall have any obligation whatsoever to amend or revise any term or condition of this Lease, including, without limitation, any amendment or revision relating to allowable uses of the Property or Premises or to the term or rent, or which may in any respect modify any rights or obligations of the Port or Lessee under the provisions of this Lease.

40. Applicable Law and Venue; ARBITRATION OF DISPUTES:

40.1. Applicable Law and Venue: This Lease shall be construed and interpreted in accordance with the laws of the State of California. All disputes that cannot be settled amicably by the parties, except for disputes subject to Arbitration pursuant to the next Subsection, shall be determined by a competent state court in Alameda County, California, which state court shall be the only agency with any authority to determine any such dispute. Neither party shall commence any action in any other court or attempt to remove an action to any other court, it being agreed that any

violation of this Section may be specifically enforced by mandatory injunction because money damages would be an inadequate remedy. The foregoing shall not be construed to prohibit an appeal of a judgment of said court.

40.2. ARBITRATION OF DISPUTES: Any disputes that this Lease provides to be resolved by Arbitration shall be determined by Arbitration. "Arbitration" is defined in Section 45 (Definitions).

NOTICE: BY INITIALLING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALLING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.

Port: _____

Lessee: _____

41. Real Estate Brokers: Lessee and the Port each represent that it has not had dealings with any real estate broker, finder or other similar person, with respect to this Lease in any manner. Lessee and the Port each shall hold harmless the other from all damages resulting from any claims that may be asserted against the other by any broker, finder or other similar person with whom it has or purportedly has dealt.

42. Covenant Against Contingent Fees: Lessee warrants that no person or agency has been employed or retained to solicit or obtain this Lease upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Port shall have the right to recover three times the full amount of the contingent fee.

"Bona fide agency," as used in this Section means an established commercial or selling agency, maintained by Lessee for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Port contracts nor holds itself out as being able to obtain any Port contract or contracts through improper influence.

"Bona fide employee," as used in this Section, means a person, employed by Lessee and subject to Lessee's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Port contracts nor holds itself out as being able to obtain any Port contract or contracts through improper influence.

"Contingent fee," as used in this Section, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Port contract.

"Improper influence," as used in this Section, means any influence that induces or tends to induce a Port Commissioner, employee or officer to give consideration or to act regarding a Port contract on any basis other than the merits of the matter.

43. Third Party Rights: Nothing herein is intended to nor shall be construed to create any rights of any kind whatsoever in third persons or entities not parties to this Lease.

44. No Partnership: Notwithstanding any provision which could be construed to the contrary herein, this Lease shall not be deemed or construed to make Lessee and Port partners or joint venturers, principal and agent, or employer and employee, or to render one party liable for any of the debts or obligations of any other party unless expressly so provided herein.

45. Definitions: The following terms, when used in this Lease with the initial letter(s) capitalized, whether in the singular or plural, shall have the following meaning:

“Airport”: The Oakland International Airport.

“Arbitration”: Arbitration proceedings conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitrators shall have no power to modify any of the provisions of this Lease and their jurisdiction is limited accordingly. Each party hereby consents to the entry of judgment by any court having jurisdiction in accordance with the arbitration decision. No change in the Arbitration Rules which would deprive a party of the rights to be represented by counsel, to present evidence or to cross-examine witnesses presented by the other party shall be effective in any arbitration proceeding arising out of this Lease. Any arbitration provided for herein shall be conducted in Port Offices in Alameda County. Disputes under this Lease shall be subject to Arbitration only to the extent expressly provided for in other Sections of this Lease.

“Board”: The Board of Port Commissioners of the City of Oakland, acting for and on behalf of the City.

“Buildings”: Any permanent or temporary structure enclosed within exterior walls and a roof, and including all attached apparatus, equipment, and fixtures that cannot be removed without cutting into ceiling, floors, or walls, together with all appurtenances thereto (including, but not limited to, swimming pools, so-called hot tubs, cabanas, patios, porticos, garages, car ports, and trash enclosures) that Lessee may construct on the Premises from time to time during the Term in accordance with the terms and conditions of this Lease. For the avoidance of confusion, (a) the Building and other Improvements are not part of the Premises, and (b) during the Term, Lessee owns the Building and the other Improvements (however, subject to the other terms and conditions of this Lease, upon the

expiration or other termination of this Lease, title to the Building and the other Improvements shall pass to the Port).

“City”: The City of Oakland.

“Constant Dollars”: The present value of the dollars to which such phrase refers. An adjustment shall occur on January 1 of each calendar year following the Effective Date. Constant Dollars shall be determined by multiplying the dollar amount to be adjusted by a fraction, the numerator of which is the Current Index Number and the denominator of which is the Base Index Number. The “Base Index Number” shall be the level of the CPI for the month during which the Effective Date occurs; the “Current Index Number” shall be the level of the CPI for the month during the annual adjustment occurs. In no event shall the value of any specified dollar amount ever decrease as the result of the application of the Constant Dollar concept.

“Consumer Price Index” or “CPI”: The Consumer Price Index for Urban Wage Earners and Clerical Workers, All Items, San Francisco-Oakland (1982-84 equals 100), of the Bureau of Labor Statistics of the United States Department of Labor, or the official successor of said Index. If said Index is changed so that the base year differs from the base year used in the last index published prior to the commencement of the Term of this Lease, the former Index shall be converted to the new Index in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If said Index is discontinued or revised during the Term of this Lease, such other government index or computation with which it is replaced, as determined by said Department or said Bureau, or, failing such determination, such other government index or computation which is most similar to said Index, shall be used in order to obtain substantially the same result as would be obtained if said Index had not been discontinued or revised; provided, that in the event the parties are unable to agree upon such other government index or computation, it shall be selected by arbitration pursuant to the rules of the American Arbitration Association.

“Effective Date”: The date this Lease becomes effective.

“Executive Director”: The Port’s Executive Director referred to in the Charter of the City of Oakland and any other person authorized by the Board to act for the Executive Director, or the Board.

“Financially Acceptable”: A rating of A-VII or higher in the most current available "Best's Insurance Reports," or such other ratings or carriers as may be acceptable at the sole discretion of the Port; provided, however, that the Port may disapprove carriers with an A+VII or higher rating if the Port has a reasonable basis for such disapproval.

“Hotel and Restaurant Concession”: The operation of: (1) a Upper Midscale Class hotel, or better, that is nationally branded in the United States with a national reservation system, and (2) a full service restaurant serving breakfast, lunch, and dinner seven days per week. This shall include, but is not limited to, rental of guest rooms, coordination of meeting facility rentals and related catering, operation of a newsstand and gift shop within the Premises, and any services incidental to such operations, as such operations shall evolve over time across the United States hospitality industry during the Term. Each room shall have a cable television, telephone, and Internet access as the same may evolve or develop during the Term, whether by technical evolution or innovation. The hotel shall offer all services, such as a pool and fitness center, which are now or may hereafter become

typically incidental to the operation of an Upper Midscale Class hotel across the United States hospitality industry during the Term.

“Improvements”: Buildings, landscaping and other permanent improvements located from time to time on the Property.

“Leasehold Mortgage”: Any mortgage, deed of trust or other security instrument (including, without limitation, an assignment of the rents, issues and profits generated on or by the Premises) and any obligation relating thereto, which secures Lessee’s repayment of any loan to, and associated obligations of, Lessee, and in which all or any part of the security consists of an encumbrance on the leasehold estate created by this Lease, the Improvements, Lessee’s trade fixtures on the Premises, or Lessee’s equipment or other personal property used on or about the Premises.

“Lender”: The party or parties who are beneficiaries of a Leasehold Mortgage.

“Overdue Rate”: “Overdue Rate” means the lesser of:

- (a) The highest rate not prohibited by law to be either paid on such type of obligation by the person obligated to make such payment or charged by the person to whom payment is due, whichever is less; or
- (b) Three percent (3%) per annum in excess of the so-called “prime rate” from time to time publicly announced by the “Money Rates” feature of The Wall Street Journal on the date such obligation to pay interest accrues (the “Accrual Date”).

If the Accrual Date is not a day that The Wall Street Journal is published, reference shall be made to the next day of such publication; and if The Wall Street Journal ceases to publish the prime rate (either in print or on-line), reference shall be made to another financial periodical (whether in print or on-line) generally given credence in financial matters in the global financial marketplace.

“Port”: The Port of Oakland, which consists of the Port Department of the City, under the exclusive control and management of the Board. In any case under this Lease that the Port may or shall take any action, the Executive Director is authorized to take such action unless this Lease provides for action by the Board or by resolution or ordinance, and except as otherwise provided now or hereafter by law, the Charter of the City of Oakland, or by resolution or ordinance of the Board.

“Premises”: The Property together with the Improvements.

“Prohibited Uses”: Any illegal, offensive, noisy or dangerous trade, business, activity or occupation and any other unreasonable use not compatible with the operation of the Hotel and Restaurant Concession, well maintained in accordance with the standards of this Lease. Without limiting the generality of the foregoing, “Prohibited Uses” shall include the following:

- (a) Any use that produces or releases obnoxious odor (other than normal and customary odors emanating from the operation of restaurants and coffee shops);

- (b) Any use that produces or releases noxious, toxic, caustic, or corrosive fuel or gas;
- (c) Any use that produces or releases dust, dirt, or fly ash in excessive quantities;
- (d) Any unusual fire, explosion, or other damaging or dangerous hazard, including the storage, display or sale of explosives or fireworks;
- (e) Any warehouse, storage facility or any assembling, manufacturing, distilling, refining, smelting, agricultural or mining operation;
- (f) Any retail facility other than the restaurant, coffee shop, or gift shop incidental to the Hotel and Restaurant Concession;
- (g) The display, sale, lease, rental, or repair of new or used automobiles, trucks, trailers, boats or recreational vehicles;
- (h) Any facility for the sale or dispensing of fuel for motor vehicles (provided, however, this clause (h) shall not prevent the installation and use of electric charging stations or other fueling modalities that may be required as a matter of law as part of a hotel or restaurant operation);
- (i) Any animal raising or boarding facilities;
- (j) Any funeral home or mortuary;
- (k) Any adult theater, adult entertainment facility, or adult bookstore, or any establishment engaged in the business of selling, exhibiting or delivering pornographic or obscene materials (provided, however, this clause (k) shall not apply to media content delivered to guest rooms via cable television, internet or any replacement therefor as the result technological innovation so long the delivery of such content is limited to private use within individual guest rooms);
- (l) Any so called “head shop” or establishment which stocks, displays, or sells merchandise or material commonly used or intended for use with, or to consume, any narcotic or other illegal, controlled substance;
- (m) Any mobile home park or trailer court;
- (n) Any church, temple, synagogue, mosque, or other place of religious worship;
- (o) Any school, day care center, reading room, or library;
- (p) Any massage parlor (provided, however, this clause (p) shall not prohibit bona fide massage services provided by a day spa or similar operation conducted as an incidental part of the Hotel and Restaurant Concession);
- (q) Any illegal, immoral, or improper purposes; or

(r) Any gambling facility or operation, including, but not limited to, off track or sports betting parlor; table games such as blackjack or poker; slot machines, video poker/blackjack/keno machines or similar devices; or bingo hall.

“Property”: The land leased by the Port to Lessee under this Lease. The Property is described and depicted respectively in attached **Exhibits A and B**.

46. Warranty of Signatories: Each of the persons signing this Lease on behalf of Lessee represent and warrant to the Port that Lessee is a [describe Lessee entity], that each said person has been duly authorized by Lessee to sign this Lease, and that this Lease is a valid and binding obligation of Lessee.

47. Recordation: This Lease will not be recorded; however, to establish the priority of this Lease, the Port and Lessee, will execute a memorandum of this Lease in the form of **Exhibit G**, which, at the option and expense (if any) of Lessee, will be recorded in the Official Records of Alameda County (the “Records”) once the Effective Date occurs. Following the expiration or earlier termination of this Lease, Lessee, upon the receipt of the Port’s written request (and without charge to the Port or any delay), shall execute, acknowledge, and deliver to the Port any quitclaim deed or other document which may be requested by the Port or any reputable title insurance company to remove this Lease and any other rights created hereby from the Records (as the case may be, the “Lease Termination”). If Lessee fails to execute and record the Lease Termination within ten (10) days after receipt of the Port’s request therefor, the Port, without exonerating Lessee of its obligation under this Section 47, may act as Lessee’s attorney-in-fact to cause such instrument to be executed and recorded in the Records.

48. Agreement in Multiple Copies: This Lease is executed in multiple copies, each copy of which shall be deemed an original.

49. Lessee Not on Government List: Lessee represents and warrants that neither Lessee nor any Person controlling Lessee (i) is included on any Government List (as hereinafter defined); (ii) has been determined by competent authority to be subject to the prohibitions contained in Presidential Executive Order No. 133224 (September 23, 2001) or in any enabling or implementing legislation or other Presidential Executive Orders in respect thereof; (iii) has been previously indicted for or convicted of any felony involving a crime or crimes of moral turpitude or for any offense under the criminal laws against terrorists, the criminal laws against money laundering, the Bank Secrecy Act, as amended, the Money Laundering Control Act of 1986, as amended, or the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorists (USA PATRIOT ACT) Act of 2001, Public Law 107-56 (October 26, 2001), as amended; or (iv) is currently under investigation by any governmental authority for alleged criminal activity. For purposes of this Lease, the term “Government List” means (1) the Specially Designated Nationals and Blocked Persons Lists maintained by the Office of Foreign Assets Control, United States Department of the Treasury (“OFAC”); (2) the Denied Persons List and the Entity List maintained by the United States Department of Commerce; (3) the List of Terrorists and List of Disbarred Parties maintained by the United States Department of State; (4) any other list of terrorists, terrorist organizations or narcotics traffickers maintained pursuant to any of the lists, laws, rules and regulations maintained by OFAC pursuant to any authorizing statute, Executive Order or regulation;

(5) any other similar list maintained by the United States Department of State, the United States Department of Commerce or any other governmental authority or pursuant to any Executive Order of the President of the United States of America; and (6) any list or qualification of “Designated Nationals” as defined in the Cuban Assets Control Regulations, 31 C.F.R. Part 515, as all such Government Lists may be updated from time to time.

50. Waiver of Jury Trial. TO THE FULLEST EXTENT PERMITTED BY LAW, LESSEE AND PORT DO HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING RELATED TO, ARISING OUT OF OR IN CONNECTION WITH THE TERMS, CONDITIONS AND COVENANTS OF THIS LEASE. IF, AS OF THE EFFECTIVE DATE, THE WAIVER MADE IN THIS SECTION 50 IS NOT VALID UNDER CALIFORNIA LAW, BUT HEREAFTER SUCH WAIVERS ARE PERMITTED UNDER CALIFORNIA LAW, THEN FROM THE TIME THAT SUCH WAIVERS ARE PERMITTED AND WITH PROSPECTIVE EFFECT ONLY, THIS SECTION 50 SHALL BE IN FULL FORCE AND EFFECT WITHOUT THE NEED FOR ANY FURTHER ACTION OF THE PARTIES.

51. Certified Access Specialist Inspection Notification. A Certified Access Specialist (“CASp”, as defined in California Civil Code Section 55.52) has not inspected the Premises or the Property. Lessee acknowledges the foregoing information and agrees that such statement is merely a statement of fact and is not an admission, covenant, representation, or warranty made by the Port for the benefit of Lessee and Lessee’s employees, agents, contractors, customers, or other invitees as to the condition of the Premises, Property, or any other property owned or controlled by the Port. As required by California Civil Code Section 1938, the Port provides the following notification:

“A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.”

The Port and Lessee hereby acknowledges and agrees that in the event that Lessee elects to perform a CASp inspection of the Premises hereunder (the “Inspection”), such Inspection shall be (a) performed at Lessee’s sole cost and expense, (b) limited to the Premises, and (c) performed by a CASp who has been approved or designated by the Port prior to the Inspection. Any Inspection must be performed in a manner which minimizes the disruption of business activities in the Premises, and at a time reasonably approved by the Port. The Port reserves the right to be present during the Inspection.

Lessee agrees to: (i) promptly provide to the Port a copy of the report or certification prepared by the CASp inspector upon request (the “Report”), and (ii) keep the information contained in the Report confidential, except to the extent required by law, or to the extent disclosure is needed in order to complete any necessary modifications or improvements required to comply with all applicable

accessibility standards under state or federal law, as well as any other repairs, upgrades, improvements, modifications or alterations required by the Report or that may be otherwise required to comply with applicable laws or accessibility requirements (the "Access Improvements"). Lessee shall be solely responsible for the cost of Access Improvements to the Premises or the Improvements necessary to correct any such violations of construction-related accessibility standards identified by such Inspection as required by law, which Access Improvements may, at the Port's option, be performed in whole or in part by the Port at Lessee's expense, payable as additional rent within ten (10) days following the Port's demand Lessee hereby completely, forever, and conclusively acknowledges that the disclosures made by the Port in this Section 51 satisfy the Port's obligations to Lessee under such Section 1938.

[Text continues on next page.]

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year first above written.

PORT

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

Dated: _____

By: _____

J. Christopher Lytle
Executive Director

LESSEE

[REDACTED]

Dated: _____

By: _____

(Signature)

(Print Name and Title)

(If Corporate: Chairman, President or Vice-President)

Dated: _____

By: _____

(Signature)

(Print Name and Title)

(If Corporate: Secretary, Assistant Secretary, Chief Financial Officer, or Assistant Treasurer)

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

Approved as to form and legality this _____ day of _____ 20____.

Port Attorney

Port Ordinance No. _____

PA #: _____

EXHIBIT A TO LEASE
LEGAL DESCRIPTION OF PROPERTY

EXHIBIT B TO LEASE
SKETCH OF PROPERTY

EXHIBIT C TO LEASE

IRREVOCABLE LETTER OF CREDIT

Irrevocable and Transferable
Letter of Credit # _____

Amount: U.S. \$ _____

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

Ladies and Gentlemen:

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

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

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

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

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

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

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

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

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

Very truly yours,

Authorized Signature and Title

SIGHT DRAFT

City

Date

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

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

By:

Name:

Title:

EXHIBIT D TO LEASE

ENVIRONMENTAL RESPONSIBILITIES

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

Lessee (or “Tenant”) shall comply, at its sole cost and expense, with Port Environmental Ordinance No. 4345 (the “Environmental Ordinance”) and Port Storm Water Ordinance No. 4311 (the “Storm Water Ordinance” and, together with the Environmental Ordinance, the “Port Ordinances”). All terms in this Environmental Responsibilities Exhibit shall have the meanings as defined in the Environmental Ordinance.

Section 2. Notices and Disclosures Regarding Toxic Materials.

Pursuant to H&S Code Section 25359.7, the Port notifies the Tenant that the Port has reasonable cause to believe that Toxic Materials have come to be located on, at, beneath or emanating from the Premises. Tenant acknowledges that, prior to execution of this Lease, the Port has given to Tenant written notice of the following final non-privileged reports that relate to Toxic Materials on the Premises:

| Date | Title | Author |
|-------------|---|-------------------------------------|
| 8/12/1938 | Metropolitan Oakland International Airport Utilities Map - File No 61-7 | Port of Oakland |
| 6/9/1994 | Preliminary Geotechnical Data Report, Earhart Road Improvement Project, Oakland | Geomatrix |
| 11/11/1994 | Site Investigation Earhart Road Realignment | ERM-West, Inc. |
| 11/1/1995 | Soil and Groundwater Sampling Report, East Bay Municipal Utility District Pipeline Project, Earhart Road, CA | Alisto Engineering Group |
| 4/22/1998 | Bulk Sampling results - Building L-107, 9532 Earhart | ACC Environmental Consultants, Inc. |
| 2/12/1999 | 9267_ACC Environmental Cons_Asbestos survey report Vacant ID L105_02-12-99.pdf | ACC Environmental Consultants, Inc. |
| 2/12/1999 | 9275_ACC Environmental Cons_Asbestos survey report-Oakland International airport-north field ID L107_02-12-99.pdf | ACC Environmental Consultants, Inc. |
| 6/26/2000 | Asbestos Abatement Project - Monitoring Report - Port of Oakland, North Airport Facility, Building L107, Roof Removal | IHI Environmental |
| 6/30/2000 | Asbestos Air Sampling - Building L107 Offices | IHI Environmental |
| 9/19/2013 | Phase II Environmental Site Assessment, North Field - Oakland International Airport | ACC Environmental Consultants, Inc. |
| 6/6/2016 | Cultural Resources Assessment of Building L-105 and Building L-107, North Field, Oakland International Airport | CH2MHill |

Information regarding the Toxic Materials on the Premises may also be included in reports available on DTSC’s Envirostor Website <http://www.envirostor.dtsc.ca.gov/public/>, the RWQCB’s

Geotracker Website <http://geotracker.waterboards.ca.gov/>, or Alameda County's ftp site <http://gis.acgov.org/DEH/InspectionResults/?SITE=LOP>. In addition, the Tenant may request any non-privileged Toxic Material reports concerning the Premises that are in the possession of the Port.

Section 3. Air Quality.

(a) Air Quality Policy, Maritime Air Quality Improvement Plan ("MAQIP"), and Comprehensive Truck Management Plan ("CTMP").

By its Resolution No. 08057, the Board adopted its Air Quality Policy and by Resolution No. 09038, the Board approved the MAQIP that guides the Port's plans and actions with respect to air quality improvements and reduction of health risks. One of the programs described in the MAQIP is the CTMP, which the Board adopted on June 16, 2009, by Resolution No. 09082. The full text of the Air Quality Policy, as stated in Resolution No. 08057, is as follows:

The Board of Port Commissioners affirms that it has the social responsibility to minimize exposure of neighboring residents to air pollution from Port sources and to support and^[1] rights of community, local businesses and workers to clean air and fair working conditions. Therefore, the Board is committed to improving air quality, safety and quality of life for neighboring residents and workers by reducing environmental impacts of Port operations, while fulfilling the Port's basic obligations to maximize commerce and to provide economic and job opportunities. To these ends, the Board hereby adopts the following policy principles that shall guide the Port's plans and actions, including the adoption of the Port's Maritime Air Quality Improvement Plan ("MAQIP"), Comprehensive Truck Management Plan (CTMP) and Early Actions (as defined below).

1. The Port adopts the goal of reducing the health risks to our neighboring communities (expressed as increase in cancer risk) related to exposure of people to diesel particulate matter emissions from Port sources by 85% by the year 2020 through all practicable and feasible means. Reduction will be calculated based on the Port's 2005 Seaport Emissions Inventory baseline.
2. The Board commits to adopting funding mechanisms, including imposition of fees, to fund air emissions reduction measures. To the maximum extent possible, Port fee revenues shall leverage matching federal, state and private funds. Fees for the purpose of funding the measures shall be evaluated for legality and be enacted to the extent that they do not damage the Port's or its customers' market competitiveness.
3. The Port will implement certain air emissions reduction measures prior to the dates that such measures are required by state or federal regulations, in order to reduce the duration of people's exposure to emissions that may cause health risks ("Early Actions"). The Port shall implement, beginning in 2008, Early Action measures for the purpose of immediately reducing the impacts of Port-serving trucks and other Port operations on West Oakland and surrounding communities. These measures shall include (a) incentives for Early Action replacement or retrofit of older polluting truck engines, (b) mechanisms for enforcing the prohibitive of Port truck parking or operation on neighborhood streets, including truck registration and tracking and (c) feasible and cost-effective means of

^[1] The word "and" was erroneously included in the Resolution instead of the word "the". The sentence should read as follows: "The Board of Port Commissioners affirms that it has the social responsibility to minimize exposure of neighboring resolutions to air pollution from Port sources and to support the rights of community, local businesses and workers to clean air and fair working conditions."

reducing ship idling emissions. In order to fund these Early Action measures, the Board will adopt truck or containers fees and apply for matching state and federal funds.

(b) MAQIP Update.

Tenant acknowledges that the Port is in the process of updating the MAQIP as further described in the Board Agenda Report dated December 14, 2017, entitled “Maritime Air Quality Improvement Plan (‘MAQIP’) Status Report” which update is expected to be approved by the Board (“MAQIP Update”).

(c) Compliance with Laws.

Tenant shall comply with, and shall require Tenant Representatives, to comply with, at their sole cost and expense, all applicable Environmental Laws, including, specifically, the MAQIP and the MAQIP Update (once adopted by the Board). To the extent that Tenant has a written contract with Tenant Representatives regarding Tenant Operations, Tenant shall require in such contract that the Representatives comply with all applicable Environmental Laws regarding air quality and shall notify the Port if Tenant becomes aware of non-compliance with such contractual air quality requirements by Tenant Representatives and shall use best efforts to enforce the contractual air quality requirements.

(d) Compliance with Port Air Quality Requirements.

Tenant shall comply with requirements adopted by the Board (including any maritime tariff requirements) related to the operation of locomotives, vehicles, vessels, off-road diesel-fuel equipment, cargo handling equipment, or drayage trucks (“Emission Sources”), including any requirement under the MAQIP, MAQIP Update (once adopted by the Board), and CTMP.

(e) Air Emissions Monitoring and Facilities.

The Port reserves the right to, at any time: 1) install and operate air emissions monitoring equipment on the Premises; 2) sample and analyze air emissions; and 3) install feasible and practicable air emissions filter facilities or other devices or technologies.

(f) Annual Equipment Inventory and Use.

On December 31 of each calendar year during the Term of the Agreement (except for month to-month agreements) starting with December 31, 2018, to the extent Tenant operates a marine terminal, is a railroad, or leases Premises greater than 100,000 square feet, Tenant shall provide the Port with a written inventory of all equipment used on the Premises including, without limitation, cargo-handling equipment, switcher engines, and locomotive engines (“Equipment Inventory”). The Equipment Inventory shall include the estimated hours of use, truck gate counts, lift counts, and fuel usage associated with the equipment.

(g) Annual Meeting Regarding Equipment Inventory and Lower-Emissions Equipment.

Within thirty (30) days of receipt of each of the annual Equipment Inventories (if one is provided pursuant to Section 3(f) above) by the Port, the Port and the Tenant shall meet in good faith to discuss the Equipment Inventory, and evaluate the feasibility of Tenant using zero-emissions equipment on the Premises.

(h) Least Polluting Emission Sources.

Tenant shall use best efforts to use the least polluting Emission Sources on the Premises. Upon the Port’s request, Tenant shall negotiate in good faith with the Port during the Term to implement new air quality control measures when new technologies or other opportunities arise.

(i) Application for Air Quality-Related Grants.

Tenant shall use best efforts to apply for and obtain air quality-related grants to secure funding to: 1) obtain zero emission Emission Sources for use on the Premises; and 2) construct infrastructure on the Premises to support zero emission Emission Sources. Port staff shall assist the Tenant with air quality-related grant applications concerning the Premises, as reasonably requested by the Tenant.

(j) Shore Power.

To the extent Tenant allows vessels to operate at or adjacent to the Premises, Tenant shall plug in 100% of the shore-power ready vessels and shall use best efforts to otherwise capture/control emissions from all other vessels at-berth.

(k) Pilot Projects.

Tenant shall use best efforts to participate in pilot projects of new zero-emission marine terminal (if applicable) technologies upon the request of the Port, subject to feasibility.

Section 3. Storage Tanks.

Existing Storage Tanks: Yes No

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

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

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

Existing CRUP: Yes No

If the Yes box is checked, the attached CRUP is incorporated and Tenant shall comply with the CRUP. Required Disclosure:

Section 5. Performance Deposit.

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

The Performance Deposit shall be cash or an irrevocable letter of credit in the form required by the Port (a "Letter of Credit"), issued by a bank ("Issuer") located within the continental United States, acceptable to the Port and with a branch office located in Oakland or San Francisco, California, at which such Letter of Credit may be drawn. In the event the Port is required to utilize the Performance Deposit or any portion thereof during the Term for the purposes hereinabove set forth, Tenant shall deposit with the Port an additional sum or a replacement Letter of Credit sufficient to restore the Performance Deposit to the amount hereinabove set forth. Tenant waives the provisions of Section 1950.7 of the California Civil Code to the extent that such Section: (i) provides that the Performance Deposit can be applied only to remedy certain defaults by Tenant; (ii) requires that all or any unused portion of the Performance Deposit must be returned to Tenant within a specified period of time; or (iii) is otherwise inconsistent with this Section 5, it being the Parties' intention that this Section 5 shall be controlling.

Section 6. Release

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

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

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

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

Tenant: _____

Section 7. Storm Water

Tenant represents and warrants that it shall comply with the use provisions in the Agreement and shall only perform activities on the Premises consistent with the Standard Industrial Classification ("SIC") code (or North American Industry Classification System ("NAICS") code if the SIC code is not available), listed below. SIC codes may be searched at <https://www.osha.gov/pls/imis/sicsearch.html>; NAICS codes may be searched at <https://www.bls.gov/bls/naics.htm>. Tenant shall seek and obtain prior written approval from the Port before performing any activities on the Premises that are inconsistent with the below-referenced SIC or NAICS code.

SIC or NAICS Code: 721110

Section 8. Tenant Environmental Contact Information

Name: _____

Title: _____

Work Address: _____

Phone Number: _____

Email Address: _____

EXHIBIT E TO LEASE

FAA-REQUIRED CONTRACT PROVISIONS

For purposes of the foregoing sections, Lessee may also be referred to as “contractor” or “concessionaire”, the Port may also be referred to as “sponsor” or “owner”, and this Lease may also be referred to as the “agreement” or “contract”.

(A) General Civil Rights Provisions

The tenant/concessionaire/lessee and its transferee agree 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.

This provision obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport through the Airport Improvement Program.

In cases where Federal assistance provides, or is in the form of personal property; real property or interest therein; structures or improvements thereon, this provision obligates the party or any transferee for the longer of the following periods:

- "(A) The period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or
- "(B) The period during which the airport sponsor or any transferee retains ownership or possession of the property.

(B) Compliance with Nondiscrimination Requirements

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

- (A) **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 contract.
- (B) **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, 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 contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- (C) **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 contract and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.

- (D) **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 sponsor 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 sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- (E) **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract 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 contract until the contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
- (F) **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in this Section B 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 sponsor 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 sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

(C) **Title VI List of Pertinent Nondiscrimination Acts and Authorities**

During the performance of this contract, the contractor, 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:

1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
2. 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);
3. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
4. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;

5. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
6. 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);
7. 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);
8. 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 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 CFR Parts 37 and 38;
9. The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
10. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination 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;
11. 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);
12. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 *et seq.*)

(D) Fair Labor Standards Act

This Lease incorporates by reference the provisions of 29 U.S.C. § 201, *et seq.* (the Federal Fair Labor Standards Act (FLSA)), and its implementing regulations, 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.

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

(E) Occupational Safety and Health Act

This Lease incorporates by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Lessee must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. Lessee retains full responsibility to monitor its compliance and its subcontractor’s compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (29 U.S.C. § 651, *et seq.*; 29 CFR Part 1910). Lessee 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.

(F) Transfer of Real Property

Lessee, for itself and its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the Premises 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, Lessee 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 in Section C above (as they 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.

In the event of breach of any of the above Nondiscrimination covenants, the Port will have the right to terminate this Lease and to enter, re-enter, and repossess the Premises and hold the same as if this Lease had never been made or issued.

(G) Construction on Real Property

Lessee, for itself and its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (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 Lessee will use the Premises in compliance with all requirements imposed by or pursuant to the List of discrimination Acts And Authorities.

In the event of breach of any of the above Nondiscrimination covenants, the Port will have the right to terminate this Lease and to enter, re-enter, and repossess the Premises and hold the same as if this Lease had never been made or issued.

(H) Prime Contracts

- (c) **Contract Assurance (§ 26.13).** The Lessee shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Lessee shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the Lessee to carry out these requirements is a material breach of this Lease, which may result in the termination of this Lease or such other remedy, as the Port deems appropriate. Lessee shall ensure that this assurance pursuant to 49 CFR § 26.13 is included in all contract and subcontracts for the Improvements.
- (d) **Prompt Payment (§ 26.29).** The Lessee shall ensure that the following provision is included in any contract with a prime contractor for the Improvements. The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than the days provided in the applicable Maritime and Aviation Project Labor Agreement (“MAPLA”) from the receipt of each payment the prime contractor receives from Lessee. The prime contractor agrees further to return retainage payments to each subcontractor within at least the same number of days provided in the MAPLA after the subcontractor’s work is satisfactorily completed. Any delay or

postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Lessee and the Port. This clause applies to both DBE and non-DBE subcontractors.

(I) **Airport Concessions Disadvantaged Business Enterprises**

(c) **Compliance with ACDBE Policies.** Lessee understands that the Port desires that Airport Concession Disadvantaged Business Enterprises (“ACDBEs”), as defined in 49 CFR Part 23, which are certified by an authorized certifying entity, should have the maximum practical opportunity, in compliance with Federal law, to participate in the process of supplying services and goods to the Port as owners, managers, and contractors at the Airport. Accordingly, Lessee must, to the fullest extent provided by law, comply with all applicable laws, regulations, and programs relating to ACDBEs, including (without limitation) those in 49 CFR Part 23 and in the Oakland International Airport’s ACDBE Program.

(d) **Non-Discrimination.** (49 CFR § 23.9)

- i. This agreement is subject to the requirements of the U.S. Department of Transportation’s regulations, 49 CFR Part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner’s race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23.
- ii. The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

(e) **Oakland International Airport ACDBE Program – Required Contract Provisions.** (49 CFR § 23.29)

- i. Lessee has advised the Port that it will use the ACDBEs listed on the attached **Exhibit E-1** (List of ACDBEs) in providing the services described thereon. Lessee agrees that within 30 days after the expiration of each calendar quarter during the term of this Agreement, it will provide a report to the Port, in a form acceptable to the Port, describing the gross receipts of each ACDBE described on attached Exhibit E-1 (and each substitute ACDBE obtained pursuant to paragraph (C) below), or in the case of a rental car concession, the dollar value of vehicles and other goods and services purchased by the Lessee from each such ACDBE, in each case calculated in accordance with the requirements of 49 CFR Part 23.
- ii. Lessee agrees that it will also submit within the same period described in (A) above a report to the Port, in a form acceptable to the Port, describing the Lessee’s total gross receipts for the entire contract, or in the case of a rental car concession, the total dollar value of vehicles and other goods and services purchased by the Lessee. Lessee will have no right to terminate an ACDBE for convenience without the Port’s prior written consent.
- iii. If an ACDBE is terminated by the Lessee with the Port’s consent or because of the ACDBEs default, then the Lessee must make a good faith effort, in accordance

with the requirements of 49 CFR Part 23.25(e)1(III) and (iv), and 49 CFR § 26.53, to find another ACDBE to substitute for the original ACDBE to perform the same estimated gross receipts (or in the case of a rental car concession, to sell the same amount of vehicles and other goods and services) under the contract as the ACDBE that was terminated.

- iv. The Lessee's breach of its obligations under (A), (B), or (C) above shall be a default by Lessee under this Lease and shall entitle the Port to exercise all of its contractual and legal remedies, including termination of this Lease.

(f) **Long-Term Exclusive Concession Agreement Provisions.** (49 CFR § 23.75)

- i. To the fullest extent applicable, Lessee shall comply with all provisions of 49 CFR Part 23 and of the Oakland International Airport ACDBE Program regarding long-term exclusive concession agreements, including (without limitation) the provisions stated below.
- ii. Prior to the exercise of each renewal option of the Lease, if any, the Port shall review the extent of ACDBE participation to consider whether an increase or decrease in ACDBE participation is warranted.
- iii. Lessee shall replace any ACDBE that is unable to perform successfully with another ACDBE if the remaining term of the Lease makes such replacement feasible. If such replacement is not feasible, Lessee shall make good faith efforts during the remaining term of the Lease to encourage ACDBEs to compete for the purchases and/or leases of goods and services to be made by the concessionaire.
- iv. Lessee's ACDBE participation shall be in a form acceptable to the Port, such as a sublease, joint venture, or partnership, or any legal structure that meets federal and state legal requirements which results in bona fide ownership and control by the ACDBE.
- v. Lessee shall provide to the Port upon request adequate documentation, as determined by the Port, that the ACDBE's participants are properly certified.
- vi. Lessee shall provide an adequate description, as determined by the Port, of the type of business(es) to be operated, its location, and other amenities (such as details on storage and delivery space) that will increase the ACDBEs' chance to succeed.
- vii. Lessee shall provide information on the investment required by the ACDBE and any unusual management or financial arrangements between the prime concessionaire and the ACDBE.
- viii. Lessee shall provide information on the estimated gross receipts and net profits expected to be earned by the ACDBE.

EXHIBIT E-1 TO LEASE

LIST OF ACDBEs

In compliance with the Oakland International Airport ACDBE Program, Lessee provides the following list of ACDBEs to be used in performing work under this Lease. Lessee agrees to promptly provide to the Port any changes to this list.

| Name & Address | Telephone & Fax Numbers; Email Address | ACDBE Certification Number* | Description of ACDBE Services | Lease Amount or Minimum Annual Guarantee |
|---------------------------|---|------------------------------------|--------------------------------------|---|
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* The certified firm is issued a certificate by the California Unified Certification Program (CUCP). ACDBE status may be obtained by accessing the CUCP website: <http://www.dot.ca.gov/hq/bep/index.htm> or by calling (916) 324-1700 or (866) 810-6346.

EXHIBIT F TO LEASE

STANDARDS FOR OPERATION OF HOTEL AND RESTAURANT CONCESSION

EXHIBIT G TO LEASE
MEMORANDUM OF LEASE

(Attached)

PORT OF OAKLAND - OFFICIAL BUSINESS

**DOCUMENT ENTITLED
TO FREE RECORDATION
UNDER GOVERNMENT CODE
SECTION 27383**

**RECORDED ON BEHALF OF AND
WHEN RECORDED RETURN TO:**

**Port Attorney
Port of Oakland
530 Water Street
Oakland, CA 94607**

MEMORANDUM OF LEASE

9532 Earhart Road, Oakland, CA
APN: _____

Documentary Transfer Tax is: \$ _____
(TAX MUST BE A GOOD MULTIPLE OF \$0.55)
 computed on full value of property conveyed.
 computed on full value less value of liens and
encumbrances remaining.
 Unincorporated area
 City of: Oakland
City transfer tax is \$ _____

Signature of Declarant

THIS MEMORANDUM OF LEASE (this "Memorandum"), dated for reference purposes as of [REDACTED], 20[REDACTED], by and between the **CITY OF OAKLAND**, a municipal corporation (the "City"), acting by and through its Board of Port Commissioners (the "Port"), and [REDACTED] ("Lessee"),

W I T N E S S E T H:

A. The City of Oakland is the owner in fee of that certain property located in the Port Area of the City of Oakland at 9532 Earhart Road, Oakland, California, which (I) is more particularly described on Attachment A, attached hereto and incorporated herein, (II) consists of approximately 3.86 acres of land, and (III) is hereinafter referred to as the "Property." The Property together with the improvements presently constructed and/or installed thereon, is referred to hereinafter as "Premises"; and

B. The Port, as lessor, and Lessee, as lessee, are the parties to that certain Lease dated as of the Lease Date (the "Lease"), whereby the Port leases the Premises to Lessee and Lessee leases the Premises from the Port.

C. The Parties are recording this Memorandum to give notice of the Lease.

NOW THEREFORE, in consideration of the foregoing Recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Incorporation of Terms. All of the terms and provisions of the Lease are incorporated in this Memorandum by this reference with the same force and effect as if set forth in full in this Memorandum. Capitalized terms used in this Memorandum without definition will have the same meanings as set forth in the Lease. In the event of any inconsistency between the terms of this Memorandum and the Lease, the terms of the Lease will prevail as between the Port and Lessee.

2. Lease of Premises. By this Memorandum and by the Lease, as of the Effective Date, Landlord hereby leases the Premises to Tenant and Tenant leases the Premises from Landlord.

3. Lease Terms. Among other things:

3.1 Term. Section 2.1 of the Lease provides that the Term of the Lease will be _____ (___) years. Lessee has no right to extend the Term of the Lease.

3.2 Incorporation of Terms. All of the terms of the Lease are incorporated herein as if set forth in full thereof.

4. General. This Memorandum and the Lease will be binding upon and inure to the benefit of the parties and their respective permitted transferees, successors, and assigns. This Memorandum may be executed in counterparts, each of which, when taken together, will constitute one and the same instrument.

5. Recording. This Memorandum may be recorded in the Official Records of Alameda County, California.

[Signatures follow on next page.]

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year first above written.

PORT

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

Dated: _____

By _____
J. Christopher Lytle
Executive Director

LESSEE

[REDACTED]

Dated: _____

By: _____
(Signature)

(Print Name and Title)

Dated: _____

By: _____
(Signature)

(Print Name and Title)

THIS MEMORANDUM OF LEASE SHALL NOT BE VALID OR EFFECTIVE FOR ANY PURPOSE UNLESS AND UNTIL IT IS SIGNED BY THE PORT ATTORNEY.

Approved as to form and legality this _____ day of _____ 20____.

Port Attorney

Port Ordinance No. _____
PA #: _____

[To Be Notarially acknowledged.]

ATTACHMENT A TO MEMORANDUM OF LEASE

LEGAL DESCRIPTION

EXHIBIT H TO LEASE

LABOR PEACE RULE

I. DEFINITIONS

Whenever used in this Rule, the following terms shall have the meanings set forth below.

- (A) **“Agreement”** means the Lease.
- (B) **“Airport”** means Oakland International Airport.
- (C) **“Airport Director”** means the Director of Aviation at the Oakland International Airport.
- (D) **“Board”** means the Board of Port Commissioners.
- (E) **“Concessionaire”** means the party or parties to the Agreement, together with any such individual or business’s tenants, lessees, subtenants, sublessees, successors and assigns where the rent or lease payment payable to the Port depends on the volume of revenues from services provided by such Concessionaire.
- (F) **“Executive Director”** means the Executive Director of the Port.
- (G) **“Labor Disruption”** means any concerted activity, including strikes, picketing, handbilling, boycotts of, or other interference with, any Concessionaire operations or those of any of its Subcontractors at the Premises or the operations of the Airport at the Premises.
- (H) **“Labor Organization”** means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with Concessionaires concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.
- (I) **“Labor Peace Agreement”** means a written agreement between a Concessionaire and a Labor Organization that prohibits a Labor Organization, its members and any employees represented by the Labor Organization from engaging in any Labor Disruptions (1) during any organizing, membership drive or negotiation of a collective bargaining agreement; and (2) in the case where the Labor Organization has entered into a collective bargaining agreement with the Concessionaire, during the entire term of the Agreement.
- (J) **“Port”** means the City of Oakland, a municipal corporation acting by and through its Board of Port Commissioners.
- (K) **“Premises”** means the premises defined in the Agreement.

- (L) **“Rule”** means this Labor Peace Rule.
- (M) **“Subcontractor”** means any person or business entity, not an employee that enters into a subcontract, sublicense, or sublease or similar agreement with a Concessionaire to perform duties within the Premises related in any way to the Agreement.

II. REQUIREMENT TO KEEP LABOR PEACE AND PREVENT LABOR INTERRUPTIONS

(A) Concessionaire Duties

- (1) Prior to entering into the Agreement, a Concessionaire shall enter into a Labor Peace Agreement with any Labor Organization that has requested such a Labor Peace Agreement, and shall provide the Port with written evidence of such Labor Peace Agreement prior to entering into the Agreement. The Concessionaire shall enter into the Labor Peace Agreement within thirty (30) days from the request.
- (2) The Concessionaire shall require its tenant, lessee, subtenants, sublessees, successors, and assigns to include in the sublease or similar agreement a provision to comply with the requirements of this Rule.
- (3) Concessionaire agrees that the Port has a proprietary interest in the timely placement of Concessionaire and its operations under the Agreement under a Labor Peace Agreement. Concessionaire acknowledges and agrees that undue delay in reaching a Labor Peace Agreement with a Labor Organization would interrupt the provision of services to Airport passengers and subject concessions to Labor Disruptions.
- (4) In the event that a Concessionaire is unable to negotiate a Labor Peace Agreement with any Labor Organization within the thirty (30) day period set forth in Section II(A)(1) above, it may request to be excused from such obligations with respect to that Labor Organization by delivering a written request to the Executive Director. Upon the receipt of the written request from the Concessionaire, the Executive Director may appoint a hearing officer (who shall not be an employee of the Port working at the Airport) who shall hold an informal hearing after notice to the Concessionaire and the subject Labor Organization. The Concessionaire may be relieved of and excused from its obligations under Section II(A)(1) with respect to the subject Labor Organization if the hearing officer finds, after holding the noticed hearing, that:
 - a. the Concessionaire has attempted to reach a Labor Peace Agreement with the subject Labor Organization, and
 - b. the Labor Organization has (i) refused to negotiate to reach a Labor Peace Agreement, or (ii) placed condition(s) on Labor Peace Agreement that are arbitrary and capricious.

The findings of the hearing officer shall be final and may be based on any evidence or fact he or she deems relevant or credible whether or not the Concessionaire or subject Labor Organization presented evidence or appeared at the hearing. The provision of a hearing is at the discretion of the Executive Director to facilitate the Port's proprietary interest in the timely compliance with the Rule. This Section II(A)(4) neither implies any legal duty of the Port nor confers any constitutional, legal, or contractual right of the Concessionaire to enter into the Agreement or of any party to contest the findings of the hearing officer in court or otherwise.

(B) Airport Director Duties

- (1) The Concessionaire must abide by the requirements imposed under Section II(A) of this Rule as a condition of entering into or modifying the Agreement.
- (2) The Airport Director shall not enter into or recommend to the Board the Agreement with a Concessionaire without finding that (a) the Concessionaire has entered into a Labor Peace Agreement with all Labor Organizations that, to the actual knowledge of the Port, has requested a Labor Peace Agreement with the Concessionaire, (b) the Concessionaire is excused from compliance pursuant to Section II(A)(4) above, or (c) that any exemption from this Rule as set forth in Section II(D), below, applies.
- (3) The Airport Director shall grant exemptions from this Rule as set forth in Section II(D), below.

(C) Labor Organization Duties

- (1) Any Labor Organization seeking enforcement of this Rule must request a Labor Peace Agreement with a Concessionaire under provisions of this Rule and must submit to the Airport Director a copy of the written request it has sent to the Concessionaire showing the date of the request and specifying the agreement, subcontract, sublicense, sublease, or similar agreement related to the Agreement with respect to which the request is made.
- (2) Any Labor Organization seeking enforcement of this Rule shall not engage in Labor Disruptions at the Port in violation of any applicable Labor Peace Agreement.

(D) Exemptions

The provisions of this Rule shall not apply to any of the following:

- (1) A bargaining unit of any Concessionaire which has already recognized a Labor Organization for that bargaining unit;
- (2) A Labor Organization that has not submitted a written request to enter into a Labor Peace Agreement to a Concessionaire covered under this Rule or that has not submitted evidence of such written request to the Airport Director as set forth in Section II(C)(1) of this Rule;

- (3) Any Concessionaire whose operations at the Airport are subject to the Railway Labor Act either by final decision by a court or agency of competent jurisdiction, or by mutual agreement between the Concessionaire and a Labor Organization which is the exclusive bargaining representative of its employees. In such cases, the Labor Peace Agreement shall be voluntary;
- (4) A subcontract, sublicense, sublease, or similar agreement related to the Agreement under which the Concessionaire does not operate on a regular basis with a defined complement of employees within the Premises;
- (5) Any agreement between the Airport and a public agency; or
- (6) Any subcontract, sublicense, sublease, or similar agreement related to the Agreement where the Airport Director determines that the risk to the Airport's financial or other nonregulatory interest resulting from labor/management conflict is so minimal or speculative so as not to require a Labor Peace Agreement to achieve the Airport's proprietary, investment, or other nonregulatory interest.

III. ENFORCEMENT

- (A) The Airport Director or his/her designee shall investigate complaints alleging that this Rule has been violated, and shall take any action necessary to enforce compliance, including referring such violation to the Port Attorney for civil action.
- (B) In addition to any other remedies available to the Airport, the Port may terminate the Agreement upon thirty (30) days' notice to the Concessionaire to cure its breach where the Concessionaire has failed to (1) enter into a Labor Peace Agreement as required by this Rule or (2) include in a sublease or similar agreement the provision requiring compliance with this Rule as required by Section II(A)(2) of this Rule.
- (C) Where a Concessionaire has failed to prevent a Labor Disruption that is directly or indirectly caused by the Concessionaire's violation of this Rule or breach of its obligations under the Agreement, or by its violation of laws or of rules and regulations of the Port, the Port may consider the Concessionaire in breach of the Agreement, provide concession services through means or person other than breaching Concessionaire, and terminate the Agreement upon thirty (30) days' notice to the Concessionaire to cure its breach.
- (D) Any challenge to the applicability of this Rule to a particular Concessionaire or Labor Organization shall be brought to the Board only after first seeking an exemption from the Airport Director as provided for in this Rule. Any such challenge must be commenced with the Board within 15 days after notification that such exemption has been denied by the Airport Director.

IV. CONSTRUCTION

Nothing in this Rule shall be construed as requiring any Concessionaire to change the terms and conditions of employment for its employees, recognize a Labor Organization as the bargaining representatives for its employees, adopt any particular recognition process, or enter into a collective bargaining agreement with a Labor Organization. Nothing in this Rule permits or requires the Port or any Concessionaire to enter into any agreement in violation of the National Labor Relations Act of 1935. Provisions of this Rule shall be interpreted to achieve the Port's proprietary interest in preventing Labor Disruptions. This Rule shall not apply to any subcontract, sublicense, sublease, or similar agreement related to the Agreement in which the Port's proprietary interest in preventing Labor Disruptions is so minimal or speculative so as not to warrant concern for the Airport's proprietary, investment, or other non-regulatory interest.

V. SEVERABILITY

If any part or provision of this Rule, or the Application thereof to any person, business entity or circumstance, is held invalid by any court of competent jurisdiction, the remainder of this Rule including the application of such part or provisions to other persons, business entities or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this Rule are severable.

EXHIBIT I TO LEASE
SITE SECURITY PLAN

EXHIBIT J TO LEASE
COMMUNITY BENEFITS PROVISIONS



PORT OF OAKLAND

Exhibit A: Illustration of Premises

Exhibit "A"

Illustration of Premises

Oakland International Airport Hotel Development Parcel Report

PURPOSE

The purpose of this report is to provide relevant property information for the Oakland International Airport (OAK) Hotel Development Parcel (Hotel Parcel).

The approximate bounds of the Hotel Parcel are as follows: Doolittle Drive (state highway) on the northeast, the south extension of Hegenberger Road on the southeast, Earhart Road (undedicated) on the southwest, and the parking lot for Building L-151 on the northwest.

The Hotel Parcel available for development is not an existing parcel in the context of the Subdivision Map Act (SMA). The Hotel Parcel will be made up of property owned by the Port of Oakland situated within the airport boundary of OAK. The exact limits of the Hotel Parcel will be determined during lease negotiations, and the proposed premises will be described by metes and bounds and depicted on a plat.

ASSESSOR PARCELS

The Hotel Parcel is made up of portions of Alameda County APN 42-4404-9 and APN 42-4404-11-2. It is very unlikely that a new APN will be created for the Hotel Parcel because it will not be created through the SMA process. The Port is explicitly exempt from the SMA because it is a public agency that owns tidelands and submerged lands subject to the public trust. The Hotel Parcel is made up of both granted tidelands and "after acquired" lands subject to the trust only because they were purchased with trust proceeds, which is why the Port does not want the subject property combined into a single parcel through the SMA.

VESTING DOCUMENTS

There are four separate conveyances that vest ownership of the Hotel Parcel in the Port of Oakland:

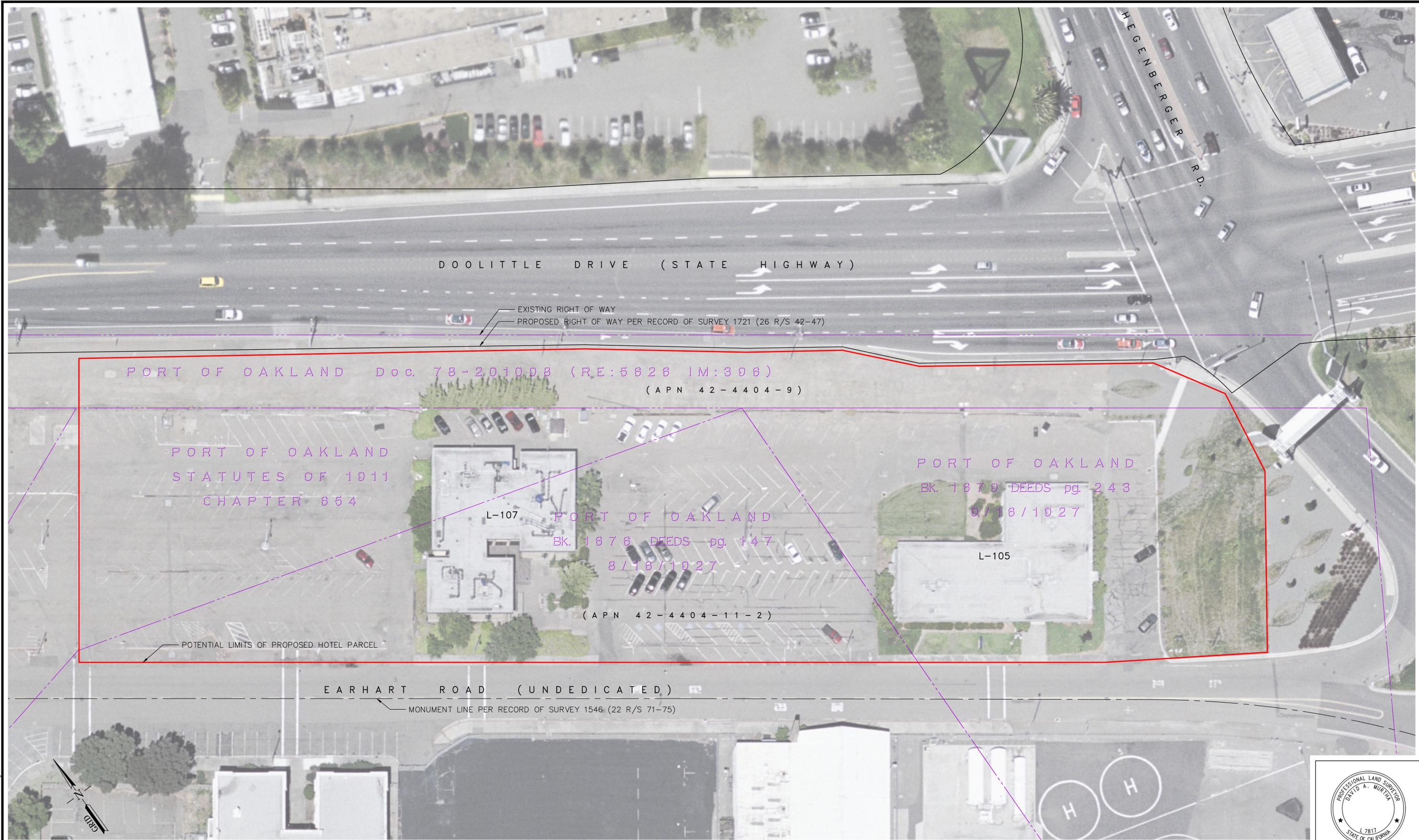
1. Legislative tidelands trust grant, Statutes of 1911, Chapter 654.
2. Grant Deed from Frank L Taylor, et al., to the Port of Oakland, recorded in Alameda County on 8/16/1927 in Book 1676 of Deeds at page 147.
3. Grant Deed from E B Stone, et al., to the Port of Oakland, recorded in Alameda County on 9/16/1927 in Book 1679 of Deeds at page 243.
4. Grant Deed from Southern Pacific Transportation Company to the Port of Oakland, recorded in Alameda County on 10/16/1978 on Reel 5626 of Official Records at image 396.

The exact boundaries of these vesting parcels is not important for this project but have been depicted approximately in the attached drawing.

SURVEY MAPS

There are two Records of Survey near the Hotel Parcel:

1. Record of Survey 1546 (22 R/S 71-75) established a horizontal alignment for Earhart Road which is an undedicated roadway.
2. Record of Survey 1721 (26 R/S 42-47) shows the proposed right of way for Doolittle Drive as was needed for the project that built the 98th Avenue undercrossing. The Port of Oakland and Caltrans never executed any deeds to modify the right of way, so the actual right of way limits do not coincide with the proposed right of way lines shown on this survey map.



DATE OF PHOTOGRAPHY 7/21/2011

CAUTION: THIS PLAN MAY BE REDUCED



REFERENCES:

HORIZONTAL:

VERTICAL:

NOTE:

USE PROJECT SURVEY CONTROL TO ACCESS DATUM

| NO. | REVISIONS | DATE | REV'D | APP'D |
|-----|-----------|------|-------|-------|
| | | | | |
| | | | | |
| | | | | |

SURVEYED _____

DRAWN D. MURTHA

CHECKED _____ L 7817
LIC. SURVEYOR NO.

PORT OF OAKLAND

530 WATER ST. OAKLAND, CALIFORNIA

CHIEF ENGINEER _____

REG. ENGINEER NO. _____

APPROVED _____

REG. ENGINEER NO. _____

RECOMMENDED _____

LIC. SURVEYOR NO. _____

NORTH FIELD

HOTEL DEVELOPMENT
REQUEST FOR PROPOSALS

PROPOSED HOTEL PARCEL

DATE: 03/20/17

SCALE: 1" = 30'

SHEET: 1 OF 1 SHEETS

V01 V-17707

5/20/2017 12:13 PM V01-17107.dwg



PORT OF OAKLAND

Exhibit B: Port Ordinance No. 2030:
North Airport Landscape Guidelines

Exhibit "B"

Port Ordinance No. 2030
North Airport Development Standards (and amendment)

**BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND**

E

PORT ORDINANCE NO. 2479

AN ORDINANCE ESTABLISHING AND REVISING FEES FOR CERTAIN PERMITS, APPROVALS AND PREPARATION OF ENVIRONMENTAL DOCUMENTS, AND AMENDING PORT ORDINANCE NOS. 2083, 1343, 1830, 2030, 1332, 2124 AND 2044.

BE IT ORDAINED by the Board of Port Commissioners of the City of Oakland as follows:

Section 1. Section 4 of Port Ordinance No. 2083 is hereby amended to read as follows:

"A Port design review fee of \$50.00 for projects with an estimated construction cost of less than \$1,000,000.00, and \$100.00 for projects with an estimated construction cost of \$1,000,000.00 or more, shall accompany all applications for work for which design review is required by Section 3(1)(c) of this ordinance. The design review fee shall be nonrefundable and shall be in addition to all other charges and fees required by any other law or Port ordinance."

Section 2. Subsection (9) of Section 2 of Port Ordinance No. 1343 is hereby amended to read as follows:

"(9) Use. Each site in the Industrial Park shall be used for manufacturing, warehousing, processing, laboratory, office, professional, or research and development activities. No other uses shall be permitted. Retail and commercial uses that are restricted to sales of goods and services required for the convenience of occupants of the Industrial Park such as automobile service stations, restaurants and banks may be approved by the Port upon written application to the Port. Application for Port approval of such uses shall be accompanied by a processing fee of \$125.00, which fee shall be nonrefundable and in addition to all other charges and fees required by any other law or Port ordinance."

Section 3. Subsection (1) of Section 4 of Port Ordinance No. 1343 is hereby amended by adding at the end thereof the following:

"Each application for variance shall be accompanied by a processing fee of \$150.00, which shall be nonrefundable and shall be in addition to all other charges and fees required by any other law or Port ordinance."

Section 4. Subsection (7) of Section 2 of Port Ordinance No. 1830 is hereby amended to read as follows:

"(7) Use. Each site in the Distribution Center shall be used for warehousing, trucking, cargo-handling, and related activities, and office or professional services incidental thereto. No other use shall be permitted. Retail and commercial uses that are restricted to sales of goods and services intended to serve occupants of the Distribution Center, such as automobile service stations, restaurants and banks may be approved by the Port upon written application to the Port. Application for Port approval of such uses shall be accompanied by a processing fee of \$125.00, which fee shall be nonrefundable and in addition to all other charges and fees required by any other law or Port ordinance."

Section 5. Subsection (1) of Section 4 of Port Ordinance No. 1830 is hereby amended by adding at the end thereof the following:

"Each application for variance shall be accompanied by a processing fee of \$150.00, which shall be nonrefundable and shall be in addition to all other charges and fees required by any other law or Port ordinance."

Section 6. Subsection (1) of Section 5 of Port Ordinance No. 2030 is hereby amended by adding at the end thereof the following:

"Each application for variance shall be accompanied by a processing fee of \$150.00, which shall be nonrefundable and shall be in addition to all other charges and fees required by any other law or Port ordinance."

Section 7. Section 4 of Port Ordinance No. 1332 is hereby amended by adding a new subsection (h) to read as follows:

"(h) Be accompanied by a processing fee, which shall be nonrefundable and shall be in addition to all other charges

and fees required by any other law or Port ordinance, in accordance with the following schedule:

| <u>Proposed Work</u> | <u>Fee</u> |
|--------------------------------------|------------|
| All Dredging | \$ 50.00 |
| Fill, less than 1,000 cubic yards | 50.00 |
| Fill, 1,000 cubic yards or more | 250.00" |

Section 8. Section (2) of Article 5 of Port Ordinance No. 2124 is hereby amended to read as follows:

"(2) At the time of filing a Tentative Map with the Secretary of the Board, the subdivider shall pay a fee of \$1,400.00 per map plus \$30.00 for each lot within the subdivision. At the time of filing a Tentative Map for a condominium conversion, the subdivider shall pay a fee of \$1,200.00 per map plus \$6.00 for each unit within the subdivision."

Section 9. Section (1) of Article 7 of Port Ordinance No. 2124 is hereby amended by adding at the end thereof the following:

"Requests for extension of time limits shall be accompanied by a processing fee of \$35.00."

Section 10. Section (9) of Article 7 of Port Ordinance No. 2124 is hereby amended to read as follows:

"(9) Checking Engineering Information on Final Map. The subdivider shall furnish the Chief Engineer copies of the field notes, traverse sheets and all other data necessary to ascertain that the Final Map is technically correct. When the Final Map is presented to the Chief Engineer, the subdivider shall pay a fee to the Port to cover the cost of checking the information shown on the Final Map in the sum of \$600.00 plus \$40.00 for each numbered lot shown on said Final Map. The Chief Engineer shall complete and file with the Secretary of the Board within twenty (20) days after receiving the Final Map and other required information, the certificate required by Paragraph 27 of Appendix A."

Section 11. Section (2) of Article 8 of Port Ordinance No. 2124 is hereby amended to read as follows:

"(2) Waiver of Parcel Map. The requirements of a Parcel Map may be

waived by the Executive Director if the Executive Director finds that the proposed division of land complies with the requirements of this ordinance and the Subdivision Map Act as to consistency with general or specific plans, area, improvement and design, flood water and drainage control, street improvement, sanitary disposal facilities, water supply availability, environmental protection and any other requirements of this ordinance and the Subdivision Map Act. Requests for waiver shall be accompanied by a \$185.00 processing fee. If a Parcel Map is required, the \$185.00 fee shall be deducted from the Tentative Parcel Map filing fee."

Section 12. Section (4) of Article 8 of Port Ordinance No. 2124 is hereby amended to read as follows:

"(4) Filing Fee and Review of Tentative Parcel Map. Five (5) prints of a Tentative Parcel Map, prepared in conformance with this ordinance shall be filed with the Secretary of the Board, together with payment of a filing fee of \$650.00. At the time of filing a Tentative Parcel Map for a condominium conversion, the subdivider shall pay a fee of \$600.00 per map plus \$6.00 for each unit within the subdivision. The Secretary of the Board shall refer to the Chief Engineer of the Port Tentative Parcel Map for review and reporting. The Chief Engineer shall submit to the Executive Director a report and recommendation. The Executive Director, within fifty (50) days after the Secretary's receipt of the Tentative Parcel Map meeting all requirements of this ordinance, shall act upon the map and thereafter notify the subdivider that the map is: (a) approved, (b) conditionally approved or (c) disapproved. The Executive Director shall not approve the Tentative Parcel Map or Parcel Map unless he finds that the proposed subdivision, together with the provisions for its design and improvement, is consistent with the City of Oakland General Plan and any applicable Port specific plan. If the Executive Director fails to act within the prescribed time limit, the Tentative Parcel Map shall be deemed approved.

"The time limits prescribed herein for acting upon a Tentative Parcel Map may be extended by mutual consent of the subdivider and the Executive Director."

Section 13. Section (7) of Article 8 of Port Ordinance No. 2124 is hereby amended by adding at the end of the first paragraph thereof the following:

"Requests for extension of time limits shall be accompanied by a processing fee of \$35.00."

Section 14. Section (3) of Article 9 of Port Ordinance No. 2124 is hereby amended to read as follows:

"(3) Certificate of Compliance. A certificate of compliance shall be issued and recorded as provided in Section 66499.35 of the Subdivision Map Act. Application therefor shall be made to the Chief Engineer and a fee of \$50.00 shall be assessed to cover the cost of issuing and recording the certificate."

Section 15. The schedule of charges set forth in subsection (a) of Section 15053 of the Port of Oakland Guidelines for the Implementation of the California Environmental Quality Act of 1970, as adopted by Section 1 of Port Ordinance No. 2044, is hereby amended to read as follows:

| "Total Project Cost | EIR | Negative Declaration |
|---------------------|---|----------------------|
| Less than \$100,000 | \$1,500 | \$150 |
| Over \$100,000 | \$1,500 plus .01% of Total Project Cost | |

In Board of Port Commissioners, Oakland, California, October 5, 1982. Passed to print for one day by the following vote: Ayes: Commissioners Creque, Goodroe, Higgins, Hunter, Pineda, Smith and President Eng - 7. Noes: None. Absent: None.

CHRISTOPHER C. MARSHALL
Secretary, Board of Port Commissioners

Adopted at a regular meeting held October 19, 1982

By the following Vote:

Ayes: Commissioners Creque, Goodroe, Higgins, Hunter, Pineda, Smith and President Eng - 7

Noes: None

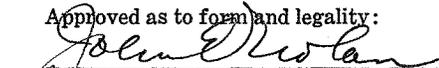
Absent: None



President.
Attest 

Secretary.

Approved as to form and legality:



Assistant Port Attorney

BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND

PORT ORDINANCE NO. 2030

Introduced by

Seconded by

AN ORDINANCE ESTABLISHING STANDARDS
AND RESTRICTIONS FOR THE USE OF LAND
AND FOR THE DESIGN AND CONSTRUCTION
OF BUILDINGS, STRUCTURES AND OTHER
IMPROVEMENTS AT THE PORT OF OAKLAND
NORTH AIRPORT - METROPOLITAN OAKLAND
INTERNATIONAL AIRPORT.

WHEREAS, the Board of Port Commissioners of the City of Oakland is vested with the authority and responsibility to make provision for the needs of commerce, shipping and navigation of the Port of Oakland; and

WHEREAS, said Board has the complete and exclusive control and jurisdiction of the Port Area of the City of Oakland and the power to enforce therein general rules and regulations to the extent that they may be necessary or requisite for port purposes and harbor development and in carrying out the powers vested in the Board; and

WHEREAS, the orderly development of public and private lands in the Port Area is the responsibility of the Board; and

WHEREAS, the Port of Oakland North Airport at the Metropolitan Oakland International Airport is a portion of the City of Oakland lying within the Port Area; and

WHEREAS, the uncontrolled development of public lands at the North Airport is not consistent with the comprehensive and adequate development and improvement of the Port Area; now, therefore, be it

ORDAINED by the Board of Port Commissioners of the City of Oakland as follows:

Section 1. DESIGNATION OF THE PORT OF OAKLAND NORTH AIRPORT.

For the purposes of this ordinance, the North Airport is hereby designated as being all that property located at the Metropolitan Oakland International Airport, within the "Port Area" of the City of Oakland, County of Alameda, State of California, which property is bounded by

Doolittle Drive on the north and northeast, Hegenberger Road and Airport Drive on the east, the line of the "old dike" which is approximately 700 feet southerly and parallel to Runway 9R/27L and the City of Oakland-City of Alameda boundary on the west.

Section 2. DEFINITIONS.

Unless the provision or context otherwise requires, the definitions contained in this Section 2 shall govern the construction of this ordinance.

(1) Aircraft Operating Area. "Aircraft operating area" means that portion of the North Airport operated by or under the immediate control of the Board of Port Commissioners, hereinafter referred to as the "Port", and/or the Federal Aviation Administration, hereinafter referred to as the "FAA", which includes runways, helicopter pads, public taxiways, all required clear areas and a perimeter apron roadway for authorized vehicular traffic.

(2) Site. "Site" means a parcel or lot of property at the North Airport which is leased or available for lease to individual Category A, B or C tenants.

(3) Apron Front Site. "Apron front site" means a site at the North Airport having direct access to the aircraft operating area and intended for lease to Category A tenants.

(4) Non-Apron Front Site. "Non-apron front site" means a site at the North Airport having no direct access to the aircraft operating area and intended for lease to Category B and Category C tenants.

(5) Primary Street. "Primary street" means a street that serves as a part of the principal North Airport roadway network, providing access, traffic flow through the airport, and connecting areas of traffic generation.

(6) Secondary Street. "Secondary street" means a street other than a primary street.

(7) Category A Tenant. "Category A tenant" means a tenant who by virtue of the tenant's specific type of aviation activity should occupy a site at the North Airport with contiguous aircraft apron and direct access to the aircraft operating area.

(8) Category B Tenant. "Category B tenant" means a tenant who by virtue of the tenant's specific type of aviation activity

should occupy a site at the North Airport, but who does not need a site contiguous to the aircraft apron and who does not need direct access to the aircraft operating area.

(9) Category C Tenant. "Category C tenant" means a tenant who by virtue of the tenant's general type of aviation-oriented activity need not occupy a site at the North Airport.

(10) Fixed Base Operator. "Fixed base operator" means a major North Airport aviation business providing comprehensive general aviation sales and services including, but not limited to, an aircraft dealership selling and servicing new and used aircraft and component parts and providing complete services and facilities for locally based and itinerant aircraft. Additional activities of a fixed base operator may include aviation training, aerial photography, aircraft rental/charter, fuel and oil sales and complete services regarding aircraft powerplants, instruments, electric/hydraulic systems, propellers and other aircraft components.

Section 3. STANDARDS AND RESTRICTIONS.

Within the North Airport, the following standards and restrictions shall apply and are hereby established:

(1) Setback Lines. The Port hereby establishes the following minimum front, side and rear site setback lines prohibiting the construction of all buildings and structures, permanent or temporary, within the stated distances from site boundary lines, from curbs and sidewalks and from taxiways and runways maintained for public use on the boundary of or within the site.

Front setback lines shall be measured from the existing curb or where applicable the designated curb line, and side and rear setback lines shall be measured from the site boundary lines, and shall be as follows:

(a) The minimum front setback from the primary or secondary street curb line shall be twenty-five (25) feet for buildings and structures not exceeding fourteen (14) feet in height, thirty (30) feet for buildings and structures from fourteen (14) to twenty-five (25) feet in height and thirty-five (35) feet for buildings and structures exceeding twenty-five (25) feet in height, unless greater distances are required on account of utility easements.

(b) The minimum side setback from the site boundary line shall be fifteen (15) feet for sites up to and including two hundred (200) feet in width and twenty (20) feet for sites over two hundred (200) feet in width, unless greater distances are required on account of utility easements.

(c) The minimum rear setback from the site boundary line shall be twenty (20) feet unless a greater distance is required on account of utility easements.

Corner sites shall conform to minimum front setback requirements for each of the primary and/or secondary frontage streets and to minimum side setback requirements. Corner sites are deemed to have neither rear boundary lines nor rear setback lines.

When more than one building or structure is proposed for a site, each building or structure shall be deemed to be located on a separate site and applicable setback requirements shall apply to each such site; provided, however, that this requirement may be waived by the Port if it first approves a comprehensive plan provided by the tenant showing current and proposed site development and the planned inter-relationship of all buildings, structures and other site improvements.

The minimum setback requirements for apron front sites that adjoin runways and/or public taxiways shall apply only to the extent such requirements do not conflict with applicable FAA clearance criteria.

(2) Height Restrictions. The maximum height of all buildings and structures, permanent or temporary, shall be governed by Federal Aviation Regulations (FAR) Part 77 or other applicable FAA regulations. Prior to commencing any proposed construction or alteration that temporarily or upon completion will be higher than an imaginary surface extending outward and upward at a 100 to 1 slope from the nearest point of the nearest runway the tenant shall notify the Administrator of the FAA in the form and manner required by FAA regulations (presently Form 7460-1 required by FAR Part 77).

(3) Site Size. Apron front sites shall be not less than one (1) acre in size, except that sites for a fixed base operator shall be not less than three (3) acres in size. All other sites shall not be less than one-half (1/2) acre in

size. Apron front sites shall extend from the street to the aircraft operating area. Site boundary lines shall be determined according to the minimum site size and the avoidance of small or irregular sites of limited use. The shape of a site shall where practicable range from the width being one-half (1/2) to two (2) times the depth, and where rectangular sites are not practicable the site shall conform to such proportional range to the greatest extent practicable.

(4) Ground Coverage. Not more than fifty (50) per cent of any apron front site shall be covered by buildings and structures and not more than seventy (70) per cent of any non-apron front site shall be covered by buildings and structures. All of the tenant's site not covered by buildings and structures shall be landscaped or paved as provided in this ordinance and kept clean and free from weeds and debris at all times; provided, however, that the Port may, pursuant to this ordinance, grant exceptions to said requirement in the event that a tenant has agreed to a Port approved phased development plan of the site.

(5) Taxiway Access. The location of taxiway access, if any, for each site shall be subject to Port approval.

(6) Landscaping. Each tenant, at the tenant's own cost and expense, shall landscape, plant and maintain landscaping and planting in accordance with Port approved landscaping plans and the following requirements:

(a) Corner sites and other sites fronting on streets shall be completely landscaped from the sidewalk and/or curb line to the front building line with reasonable allowance for necessary walkways, paved driveways and aircraft display pads for tenants engaged in the sale of new aircraft.

(b) All driveways, walkways and display pads shall be separated from landscaped areas by suitable curbs or dividers.

(c) Rock, wood chips or similar material shall not be permitted as ground cover in any area requiring landscaping. Not less than seventy-five (75) per cent of the area to be landscaped forward of building lines shall be planted in low growing ground cover such as lawn, ivy or ice plant and the use of low earth mounds is encouraged.

(d) Not less than one (1) approved fifteen (15) gallon minimum container size specimen tree for each thirty-five (35) linear feet of street frontage of the site shall be planted in landscaped areas forward of building lines.

(e) Employee and visitor auto parking areas shall contain landscaped areas that are separated from paved areas by raised concrete curbs.

(f) If the Port approves a tenant's phased site development plan, the tenant need only comply with landscaping requirements for the area of the site developed; provided, however, that the installation of specimen trees along the entire street frontage of a site shall be required with the first phase of development of the site in order to maintain continuity and the tenant at all times shall keep the entire developed and undeveloped portion of the site, including easement areas and any area under lease option, clean and free from weeds and debris.

(g) Landscaped and planted areas shall be provided with an automatic irrigation system.

(h) Landscaping plans and specifications, and irrigation plans and specifications shall be submitted for Port approval with final construction plans and specifications. If the total landscaping work, including irrigation system, is not installed in accordance with approved plans and these standards and restrictions, or is not completed within ninety (90) days after the completion of building construction or the completion of any building alteration, or if landscaping and irrigation systems are not properly maintained, the Port, upon the tenant's continued failure to complete or properly maintain such work for thirty (30) days after the Port gives to the tenant written notice of such failure, may landscape, plant, irrigate or maintain such landscaping and planting upon the site at the tenant's own cost and expense.

(7) Automobile and Truck Parking. No on-street or curb-side parking shall be permitted at any time at the North Airport. The tenant shall provide lighted off-street parking facilities on the site or on an adjoining site for the tenant's employees, customers and visitors. The tenant shall provide at such facilities a minimum of three (3) parking stalls for each four (4) persons employed on the site per

work shift, plus adequate customer and visitor parking stalls. Additional parking stalls shall be provided where tenant work shifts overlap. Site areas used for vehicular parking, including truck parking areas, shall be paved and screened from view from any street by means of landscaped earth mounds and/or landscaping. Fences may be used for screening purposes subject to prior Port approval. No parking shall be permitted between the front site boundary line and the minimum front setback line. Parking between the minimum front setback line and the front building line may be permitted by the Port subject to the tenant providing Port approved screening at the minimum front setback line. At the time final construction plans and specifications are submitted to the Port for Port approval, the tenant shall demonstrate that sufficient parking areas are provided for the type of building proposed and its intended use. Subsequent modified use of the site which will generate parking requirements in excess of available spaces shall not be permitted without the construction of additional parking stalls.

Aisle widths for parking lots shall be not less than twenty-four (24) feet for ninety (90) degree parking, eighteen (18) feet for sixty (60) degree parking, thirteen (13) feet for forty-five (45) degree parking and twelve (12) feet for parallel parking. Minimum size of parking spaces shall be nine (9) feet by twenty (20) feet. There shall be a maximum parking lot allowance of twenty (20) per cent for compact car spaces, which spaces shall be a minimum size of eight (8) feet six (6) inches by sixteen (16) feet. Landscaped median strips and islands of a minimum width of five (5) feet shall be provided within each parking area and landscaping of a minimum width of five (5) feet shall be provided immediately surrounding the parking area and the total area of such landscaping within and surrounding the parking area shall be not less than five (5) per cent of the total paved area used for parking. Vehicles shall not be permitted to overhang landscaped areas or walkways.

(8) Truck Loading. The loading or unloading of trucks shall take place only on the site and trucks being loaded or unloaded shall not project onto any street or sidewalk. Truck docks for sites on primary streets may be provided only at the side or rear of buildings and shall be screened from primary streets. Truck docks may face secondary streets provided such docks and trucks are completely behind the minimum front setback line and are screened from view from secondary streets.

(9) Architectural and Design Standards. All buildings and structures shall be architecturally designed to create a creditable and acceptable appearance. Particular emphasis shall be placed on the design of building surfaces facing street

frontages, taxiways and other areas exposed to the public. Design features, use of material and construction standards shall be submitted to the Port for the Port's approval and the Port may reject, or require changes to, such design features, material or construction standards. Metal building materials for siding and/or roof construction shall be permitted only in the event that such materials are architecturally acceptable to the Port and all buildings and structures are integrated with the landscaping plan. Color and color combinations of all buildings, structures and signs shall be submitted to the Port for the Port's approval. No roof of any building, or mechanical equipment, vents, skylights or projections of any type located on any roof, shall be visible from ground level, unless architecturally treated in a manner acceptable to the Port. Hangar roofs and roofs of unique architectural character shall be given special consideration during early stages of design, and shall be subject to final Port approval. Security fences and all other fences and barriers of any kind shall be subject to Port approval as to height, security features, architectural treatment, type and location and shall be located at or behind the front setback line, but such structures may be located on the side or rear site boundary lines or in the area between the minimum side and minimum rear setback lines and the site boundary lines. Apron front property shall be fenced or otherwise secured in conformance with FAA Airport certification and security requirements.

(10) Signs. Exterior signs of any type, or interior signs readily apparent from the exterior of a building or structure, whether attached to such building or structure, or free-standing, shall be approved by the Port prior to attachment or erection and shall conform to the Port's applicable sign standards as to number, size, shape, color, height, materials, illumination, location and content.

(11) Outside Storage. No materials, supplies, products, equipment or other personal property, except for assembled aircraft and ramp equipment and vehicles in regular use, shall be stored or permitted to remain on any portion of the site outside of Port approved buildings or structures without the prior written consent of the Port's Executive Director. Such approval for outside storage may be granted pursuant to the following conditions:

(a) That the storage area be confined to the area between the rear site boundary line and the rear building line, and/or the area between the minimum side setback lines and the side building lines; and

(b) That the approved outside storage area is adequately screened from view from facing street frontages, taxiways and areas exposed to the public.

(12) Site Maintenance. All buildings, structures, signs, driveways, curbs, walkways, pads, aprons, taxiways, mechanical equipment, utility lines, drainage and sewage lines, fuel storage and dispensing facilities, environmental control equipment, irrigation systems and landscaping shall at all times be maintained by the tenant in good order, repair and condition. All painted exterior surfaces and surfaces requiring treatment of any kind shall be maintained in first-class condition and shall be repainted or treated as often as required at the discretion of the Port's Executive Director in order to preserve the structure and to maintain high standards of appearance at the North Airport.

(13) Nuisance Control. No activity shall be permitted within any site which directly or indirectly produces objectionable or unlawful amounts or levels of air pollution (gases, particulate matter, odors, fumes, smoke, or dust), water pollution, noise, glare, heat emissions, electronic or radio interference with navigational and communication facilities for the operation of Metropolitan Oakland International Airport and for its use by aircraft, trash or refuse accumulation, vibration, prop-wash, or jet blast, of which is hazardous or dangerous by reason or risk of explosion, fire or harmful emission.

(14) Disposable Waste. Within the site, a separate drainage, collection and/or separation system shall be provided by the tenant at the tenant's sole cost and expense to insure that no untreated liquid waste from any type of operation, including, but not limited to, paint stripping, steam and chemical cleaning, washing or other types of maintenance activity on aircraft, vehicles, equipment or component parts thereof, enters the North Airport storm drainage system or sanitary sewer system. Each tenant shall at all times comply with all applicable laws, rules and regulations of federal, state, or local governmental agencies, including, but not limited to, the Port, the City of Oakland, the East Bay Municipal Utilities District and the San Francisco Bay Regional Water Quality Control Board. Adequate enclosures and/or screened areas shall be provided within the site for the short term accumulation and storage of solid waste, such as rubbish, trash, garbage, sludge, discarded machinery or parts and any other solid industrial wastes. Such enclosures and/or screened areas shall be designed in such a way as to prevent odors, fumes, attraction of pests, and dispersal of wastes due to wind or water run-off, and shall be serviced frequently by qualified waste removal and disposal services.

(15) Environmental Assessment. Any construction or alteration of facilities at the North Airport shall be subject to all applicable laws and rules and regulations of federal, state and local governmental agencies, including the Port, regarding the preparation of environmental documents and environmental review. Application to the Port for approval of construction or alteration of facilities at the North Airport shall include all information necessary for such environmental review and preparation of environmental documents.

(16) Direction and Flow of Traffic. The Port reserves and retains the right to designate the point or points at which auto vehicular traffic and aircraft traffic may enter and leave any site, and may establish directional control where and as it deems appropriate or necessary.

(17) Security. Tenants of apron-front sites shall provide through the use of buildings, structures, walls, fences, and similar barriers, or a combination thereof, positive uninterrupted on-site security at all times for the prevention of unauthorized pedestrian and vehicular access to the aircraft operating area by way of the tenant's site. Direct or indirect points of entry to the aircraft operating area to accommodate authorized individuals and authorized vehicles shall be controlled by the tenant in compliance with FAA and Port security requirements. The tenant shall also provide security for on-site facilities such as vehicular parking lots, aircraft tie-down aprons, buildings, hangars, fuel storage areas and shops. Adequate lighting shall be provided for all-night illumination of the perimeter of all buildings, aprons, aircraft tie-down areas, vehicular parking lots and pedestrian walkways. Lighting visible from street frontages shall be glare free and lighting in proximity to aprons, taxiways and runways shall be glare free or shielded to prevent interference with aircraft operations. The Port may require the tenant to provide unimpeded access through the site to all areas within and beyond the site by emergency vehicles.

(18) Fuel Storage. All fuel storage facilities shall be located underground within the site and in a location insuring safe and efficient fuel truck circulation patterns for both the distribution of fuel and for bulk delivery to the storage facility. Such facilities shall include a vapor recovery system and be properly shielded, vented and otherwise protected to insure against fire, explosion, and pollution of the air or water in accordance with requirements of all governmental agencies having jurisdiction thereof.

(19) Application of Standards and Restrictions. Except as otherwise expressly provided by applicable written agreement between the Port and its tenant, these standards and restrictions shall apply to the

use of all sites at the North Airport. These standards and restrictions shall be applicable to all new improvements and to substantial alterations of or additions to existing improvements. Presently existing buildings, structures and other improvements shall be exempt from these standards and restrictions; provided, however, that these standards and restrictions shall be applicable to all new lease agreements with a minimum lease term of five (5) years or longer. In addition to the provisions of these standards and restrictions, all buildings and structures must conform to applicable codes and standards of the City of Oakland, and each tenant shall comply with all of the terms, covenants and conditions of any agreement the tenant has entered into with the Port before or after the effective date of these standards and restrictions.

(20) Abatement. Any activity, operation or use of the site which is established, operated, erected, moved, altered, enlarged, painted or maintained contrary to these standards and restrictions shall be and is hereby declared to be unlawful and a public nuisance and may be abated as such.

Section 4. PROCEDURE FOR AMENDMENT.

The following provisions of this Section 4 shall prescribe the procedure by which the text of this ordinance may be changed, the standards and restrictions set forth in Section 3 of this ordinance may be amended or new standards and restrictions may be incorporated in said Section 3:

(1) Initiation. The Port may initiate action to change this ordinance, to amend or delete the standards and restrictions set forth in Section 3 of this ordinance or to establish new standards and restrictions to be incorporated into said Section 3.

(2) Port Action. Following initiation of action by the Port to amend this ordinance, the Port shall within a reasonable period of time hold a public hearing on its proposal. Notice of such hearing shall be given in the official newspaper of the City of Oakland at least ten (10) days prior to the date of the hearing. Within sixty (60) days after the date of the hearing, the Port shall make a decision on the proposed amendment. The Port shall consider whether the existing ordinance or ordinances is or are inadequate for the orderly, comprehensive and adequate development and improvement of the North Airport, and may approve, modify or disapprove the proposal for amendment, or may defer action until completion of such studies or plans as may be necessary to determine the advisability of the proposal. In case of approval or modified approval, the Port shall thereafter adopt the necessary ordinance to accomplish the proposed amendment. The decision of the Port shall be final and conclusive.

Section 5. VARIANCE PROCEDURE.

The provisions of this Section 5 shall prescribe the procedure for relaxation of any substantive provision of the standards and restrictions contained in Section 3 of this ordinance, under specified conditions. This following procedure shall apply to all proposals, except by lease or lease amendment, to vary the strict requirements of the said standards and restrictions:

(1) Application. Application for a variance shall be made by the tenant or its authorized agent, on a form prescribed by the Port and shall be filed with the Secretary of the Board of Port Commissioners, hereinafter in this Section 5 referred to as the "Port" or "Board". The application shall be accompanied by such information including, but not limited to, site and building plans, drawing and elevations, and operational data, as may be required to permit the review of the proposal in the context of the required findings.

(2) Procedure for Consideration. An application for a variance from a provision of the said standards and restrictions shall be considered by the Port's Executive Director. The Executive Director shall determine whether the conditions required in Subsection (4) of this Section 5 are present, and may grant or deny an application for a variance or require such changes in the proposed use or impose such reasonable conditions of approval as are in the Executive Director's judgment necessary to promote the purposes of the said standards and restrictions. A determination by the Port's Executive Director shall become final ten (10) days after the date of decision unless appealed to the Board in accordance with the provisions of Subsection (5) of this Section 5. Written notice of the determination of the Port's Executive Director shall be given to the applicant for the variance.

(3) Period of Consideration. Should a decision not be rendered pursuant to Subsection (2) of this Section 5 within sixty (60) days after filing, the application shall be deemed approved unless said time has been extended by agreement between the Port's Executive Director and the applicant.

(4) Findings Required. A variance may be granted only upon determination that all of the following conditions are present:

(a) That strict compliance with the specified standard or restriction would result in impractical difficulty or unnecessary hardship inconsistent with the purposes of the said standards and restrictions due to unique physical or topographical circumstances or conditions of design; or, as an alternative that such strict compliance would preclude an effective design solution improving operational efficiency or appearance.

(b) That strict compliance with the standard or restriction would preclude an effective design solution fulfilling the basic intent of the applicable provision.

(c) That the variance, if granted, will not adversely affect the character or appropriate development of abutting sites or the surrounding area, and will not be contrary to adopted plans or development policy of the Port.

(d) That the variance will not constitute a grant of special privilege inconsistent with the purposes of the said standards and restrictions.

(5) Appeal to the Board of Port Commissioners.

Within ten (10) days after a decision by the Port's Executive Director on an application for a variance from one of the provisions of said standards and restrictions or of revocation of such a variance in accordance with Subsection (7) of this Section 5, an appeal from said decision may be taken to the Board of Port Commissioners by the applicant, the holder of the variance, or any other interested party. Such appeal shall be on a form prescribed by the Port and shall be filed with the Secretary of the Board. The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Port or wherein its decision is not supported by the evidence in the record. Upon receipt of such appeal, the Secretary of the Board shall set the time for consideration thereof. The Secretary of the Board shall, not less than five (5) days prior to the date set for hearing of the appeal, give written notice to the applicant and to any other parties who have made written request for such notice, or to their designated representatives, of the time and place of the hearing. In considering the appeal the Board shall determine whether the conditions required by Subsection (4) of this Section 5 are present, and may grant or deny an application for a variance or require such changes in the proposed use or impose such reasonable conditions of approval as are in its judgment necessary to carry out the purposes of said standards. The decision of the Port shall be final and conclusive.

(6) Adherence to Approved Plans. A variance shall be subject to the plans and other specified conditions upon the basis of which it was granted. Unless a different termination date is prescribed, the permit shall terminate one (1) year from the effective date of its granting unless actual construction or alteration, or actual commencement of the authorized activities in the case of a variance not involving construction or alteration, has begun under valid permits within such period. However, such period of time may be extended by the Port's

Executive Director, or the Board in the case of a variance granted after appeal to said Board, upon application filed at any time before said period has expired.

(7) Revocation. In the event of a violation of any of the provisions of said standards and restrictions, or in the event of a failure to comply with any prescribed condition of approval of a variance, or in the event that one (1) year has elapsed since the granting of a variance and no building permit has been issued pursuant thereto, or in the event that the authorized activities, in cases not requiring a building permit, have not commenced within said period, the Port's Executive Director, or the Board in the case of a variance granted after appeal to said Board, may, after notice and hearing, revoke any variance. In the case of revocation of a variance, the determination of the Board or the Port's Executive Director, as the case may be, shall become effective ten (10) days after the date of decision unless appealed to the Board in accordance with Subsection (5) of this Section 5.

Section 6. SEPARABILITY.

In case any section or part of any section of this ordinance shall be found to be invalid for any reason, the remainder of the ordinance shall not be invalidated thereby, but in accordance with the intention of the Board hereby expressed, shall remain in full force and effect, all parts of this ordinance being hereby declared to be separable and independent of all others.

In Board of Port Commissioners, Oakland, California, October 20, 1976. Passed to print for one day by the following vote: Ayes: Commissioners Berkley, Connolly, Gainor, Lange, Soda and President Walters -6. Noes: None. Absent: Commissioner Mortensen -1.

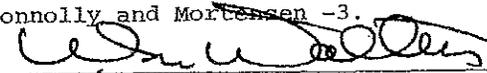
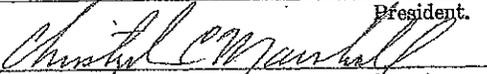
Adopted at a regular meeting held November 3, 1976

By the following Vote:

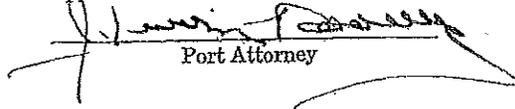
Ayes: Commissioners Gainor, Lange, Soda and President Walters -4.

Noes: None.

Absent: Commissioners Berkley, Connolly and Mortensen -3.


President.
Attest 
Secretary.

Approved as to form and legality:


Port Attorney



PORT OF OAKLAND Exhibit C: Port of Oakland Exterior Lighting Policy

Exhibit "C"

Port of Oakland Exterior Lighting Policy



Port of Oakland Exterior Lighting Policy

Port of Oakland Sustainability Opportunities Program

Purpose:

The Port of Oakland through its *Sustainability Opportunities Program* seeks to mitigate the impact of exterior lighting on the surrounding community and to conserve energy. Under the Port of Oakland's Lighting Policy, the Port and Port of Oakland tenants shall comply with the prescribed lighting measures to prevent potential lighting pollution that may be generated by development and operations and to conserve energy in all areas under the jurisdiction of the Port of Oakland.

Area and Lighting Systems Covered by Policy:

Policy shall apply to all new development or modification that includes the construction of exterior lighting systems at the Oakland International Airport, harbor facilities, and commercial, retail, and industrial mixed-use areas which include the Airport Business Park, Jack London Square and Embarcadero Cove Areas.

Exterior lighting systems proposed for the following development shall be covered by the Policy: automobile and aircraft parking areas, roadways, medians, sidewalks, container yards, rail and joint intermodal facilities, biking and walking pathways, architectural and landscape ornamental lighting fixture installations, building exterior wall and roof mounted lighting fixtures, storefront and marketing areas, and billboards and signs.

Port Staff and Port and Tenant Engineering and Architectural Design Consultants:

Port of Oakland Engineering staff, Port contracted Engineering and Architectural Consultants and technical representatives responsible for design of tenants' facilities shall comply with the mitigation measures presented herein.

Tenants:

Exterior lighting plans shall comply with the mitigation measures specified in the *Port of Oakland Exterior Lighting Policy* for glare control and energy conservation stated herein, prior to issuance of Port of Oakland Building Permit.

General Mitigation Measures and Practices:

Design of exterior lighting shall generally follow Illuminating Engineering Society of North America (IESNA)- *Recommended Lighting Levels for Exterior Lighting*. The *Dark-Sky Association* further recommends that lighting designers minimize illumination levels, pole height and spacing, glare, lighting system depreciation and life-cycle cost, (see *Lighting Criterion Schedule*). Another reference that addresses lighting pollution mitigation is the US Green Building Councils' LEED-NC Reference guide. Additionally, lighting pollution

mitigation measures include specifying full cutoff light fixtures, horizontally oriented lamps (bulb), and low-reflectivity architectural surfaces.

Lighting Plan Submission Requirements:

Plans submitted by Port Engineering Staff, tenants and consultants for a Port of Oakland Building Permit or project review and approval, which propose the installation of exterior lighting for a new development or a modification to existing area shall clearly indicate the following:

- 1) Location and quantity of lighting fixtures
- 2) Proposed lux or footcandle levels
- 3) Specified type(s) and manufacturer(s) fixture(s), manufacturer's photometric data sheet, lamp wattage, top shield and side guard cut sheets
- 4) Pole height and spacing
- 5) Bi-level illumination plan operated by automatic shutoff controllers, photocells and/or astronomical timer system (high/full for high activity operation level; and low, approx. 50% or less of full illumination for security/low night activity level).
- 6) Calculation on plan sheet indicating the lamp wattage in full activity operation mode and power usage in security/low night activity mode (if applicable)
- 7) Calculation of lighting watts/ft² for all exterior lighting systems (Total watts of all light fixtures / ft² of the lighted area that at least receive the min. fc)
- 8) Building exterior type and color of architectural finishes
- 9) Written request for any exemption from the lighting policy accompanied by all supporting documentation of reasons for consideration.

Lighting Policy Technical Liaison:

Contact Joe Marsh at (510) 627-1480 if you need additional information on Policy compliance requirement.

Contact Jill Bornor-Brown, P.E. at (510) 627-11167 for questions regarding compliance.

ASHRAE and State Legislation Development:

The State of California Energy Commission (CEC) has contracted a team of engineering firms in response to a Senate bill to develop standards for energy conservation and lighting pollution mitigation requirements for outdoor lighting. The proposed legislation is entitled: **Senate Bill 5X Outdoor Lighting Standards**. The bill became effective October 1, 2005. The enforcement of the standard is facilitated through an amendment to the California Energy Code-Title 24 adoption into the Title 24 of the existing Federal ASHRAE/IESNA 90.1-1999, which mandates standards for energy conservation of outdoor lighting systems. The Port of Oakland Lighting Policy will be evaluated bi-annually and the Executive Director will make appropriate revisions to the Policy as necessary to be consistent with the CEC Standards.

Summary of Mandatory Measures-Senate Bill 5X

The Standards require that outdoor lighting be automatically controlled so that it is turned off during daytime hours and during times when it is not needed. The mandatory measures also require that most of these controls be manufactured by a manufacturer that is listed and certified in the Energy Commission directories. Luminaires with lamps larger than 175 watts must be classified as cutoff so that the majority of the light is directed toward the

ground. Luminaires with lamps larger than 60 watts must also be high efficacy and controlled by a motion sensor. Automatic controllers include photo cell sensors, astronomical time switches or a combination of both.

Lighting Criterion Schedule:

| Illumination Subject Area | Recommended IESNA, Dark-Sky Assoc. Lighting Level (fc) | Required Uniformity Avg./Min. (fc/fc) | Port Policy Glare Mitigation Requirements | Energy Conservation Requirements |
|--|---|--|---|---|
| Auto Parking Lots Retail Centers, Airport | 2.4 Avg. | 4/1 | Full cut-off fixtures | Photocells, timers optional |
| Aircraft Parking Areas | 2 Avg. | 4/1 | Provide Pole height less than 80 feet, full cut-off fixtures, install side shields and visors, review of AOA lighting by local Air Traffic Control Rep. | Photocells, timers, bi-level, push button hi level energizing with auto shut-off of hi level after specified period |
| Roadways and Streets (Maintained by Port or Tenants) | 0.6 Avg. | 6/1 | Full cut-off fixtures, install side shields and visors | Photocells |
| Driveway Entrances | 0.6 Min. | NA | Illumination level to match fc/ix level of street or parking area | Photocells |
| Rail/Intermodal Facilities | 5 Avg. | 3/1 | Full cut-off fixtures, fully equipped with shields, guards | Bi-level lighting plan, Photocells, and timers |
| Container/Shipping Yards | 5 Avg. | 3/1 | Full cut-off fixtures, fully equipped with shields, guards | Bi-level lighting plan, Photocells and timers, shutoff plan for fixtures illuminating estuary (berth position) |
| Biking/Walking Pathways | See tables 5,6,7, and 8 in IESNA RP-8-00 | 4/1 | Full cut-off fixtures, max. height less than 28 feet | Photocells |
| Sidewalks/medians | See tables 5,6,7, and 8 in IESNA RP-8-00 | 4/1 | Full cut-off fixtures, max. height less than 35 feet | Photocells |
| Architectural/Landscaping | 1 Avg. | 4/1 | Minimize use of up-lights, less than 100W, Aim on specific subject (i.e. tree, sign, monument) | Photocell, timer optional |
| Storefronts/Marketing Areas | 10 Avg. | NA | Direct light downward, minimize spill into adjoining areas, minimize light level contrast between pedestrian and vehicle travel areas | Timer control system |
| Building Exterior –Light Colored Surfaces | 5 Avg. | NA | Aim downward | Photocell, timer |

Lighting Criterion Schedule continued...

| Illumination Subject Area | Recommended IESNA, Dark-Sky Assoc. Lighting Level (fc) | Required Uniformity Avg./Min. (fc/ft) | Port Policy Glare Mitigation Requirements | Energy Conservation Requirements |
|---|--|---------------------------------------|---|--|
| Building Exterior –Dark Colored Surfaces | 20 Avg. | NA | Illumination aimed downward | Photocell, timer |
| Billboards | 15 Avg. | NA | Light from the top down | Photocell |
| Sports Fields near residential park areas | 30-50 (infield) Avg. 20-30 (outfield) Avg. | 4/1 | Plant trees on perimeter of field, full cut-off fixtures, top shields, minimize height of poles | Photocell and timer controls, bi-level for non use periods |

Outdoor Lighting Standard Table- Energy Budget

| Lighting Application | Allowances (Watts/square foot) |
|-------------------------------------|----------------------------------|
| Vehicular Parking Lots | 0.19 w/sf |
| Airport/Harbor Container Terminals | 0.34 w/sf |
| Pedestrian used sidewalks, plazas, | 0.21 w/sf |
| Walkways and bikeways | 1.0 w/lf (0.2 w/sf > 10ft width) |
| Vehicular driveways | 5.0 w/sf |
| Building entrances (without canopy) | 1.0 w/sf |
| Building entrances (with canopy) | 1.25 w/sf |

Port Specific Average Maintained Lighting levels in foot candles:

| | |
|---------------------------------------|-------|
| Active building entrances | 5 fc |
| Airport Terminal Apron/Cargo Handling | 5 fc |
| Airport Parking Area | 2 fc |
| Building Construction (Temporary) | 10 fc |
| Fuel Handling | 5 fc |
| Fuel Service Pumping Station | 10 fc |
| Maritime Pier/Wharf (High Activity) | 20 fc |
| Maritime Terminal Yard | 5 fc |

Port Specific Average Maintained Lighting levels in foot candles continued...

| | |
|---|----------|
| Parks & playgrounds | 5 fc |
| Roadside Sidewalks & Bikeways | 2-3 fc |
| Walkways & Bikeways distant from Roadways | 0.5-1 fc |

Glossary of Terms:

AOA: Aircraft Operations Area, secure area for aircraft movement

Footcandle: Unit of measure of illumination in lumens per square foot (fc).

Full Cutoff Luminaires: A light fixture with a light distribution with no illumination (lumens) above the horizontal or vertical behind the fixture/s. All cutoff luminaires that use lamps greater than 175 watts in the following areas are required to be of the cutoff type:

Parking lots and service stations

Building entrances

Outdoor dining

Cutoff is not required when they are used to illuminate the following:

Unfiltered signs

Building Facades, public monuments and vertical surfaces of bridges

Temporary outdoor lighting

Fully Shielded: Top shields and side guards constructed in such a manner that all light emitted by the fixture, either directly from the lens or diffusing element, or by the lens or reflective surfaces is projected below the horizontal plane of the fixture.

Glare: The sensation that illumination is greater than the luminance to which the eyes are adapted and may cause annoyance, discomfort, and loss of visibility.

IES: Illuminating Engineering Society, body that establishes recommended illumination practices, IESNA - Illuminating Engineering Society of North America is the originator of International Dark Sky Association recommendations.

LEED-NC: Leadership in Energy and Environmental Design – New Construction

Lumens: SI (System International) unit of measure of luminous used to measure light emitted by lamps (bulbs).

Lux: Metric measurement of illumination 1 lux= 1 lumen/square meter (10.76 lx = 1 fc).

Glossary of Terms continued...

Photometrics: Fixture/lamp performance characteristics.

Shield: An opaque baffle placed along the top edge of a lighting fixture to control light distribution in the vertical direction.

Side Guards: Opaque baffles placed on the side or sides of a lighting fixture to control light distribution in the horizontal direction.

Uniformity: The measure of the consistency or evenness of illumination: Uniformity ratio is calculated as the Maximum (fc, lx) to minimum (fc, lx) or Average (fc, lx) to minimum (fc/lx).



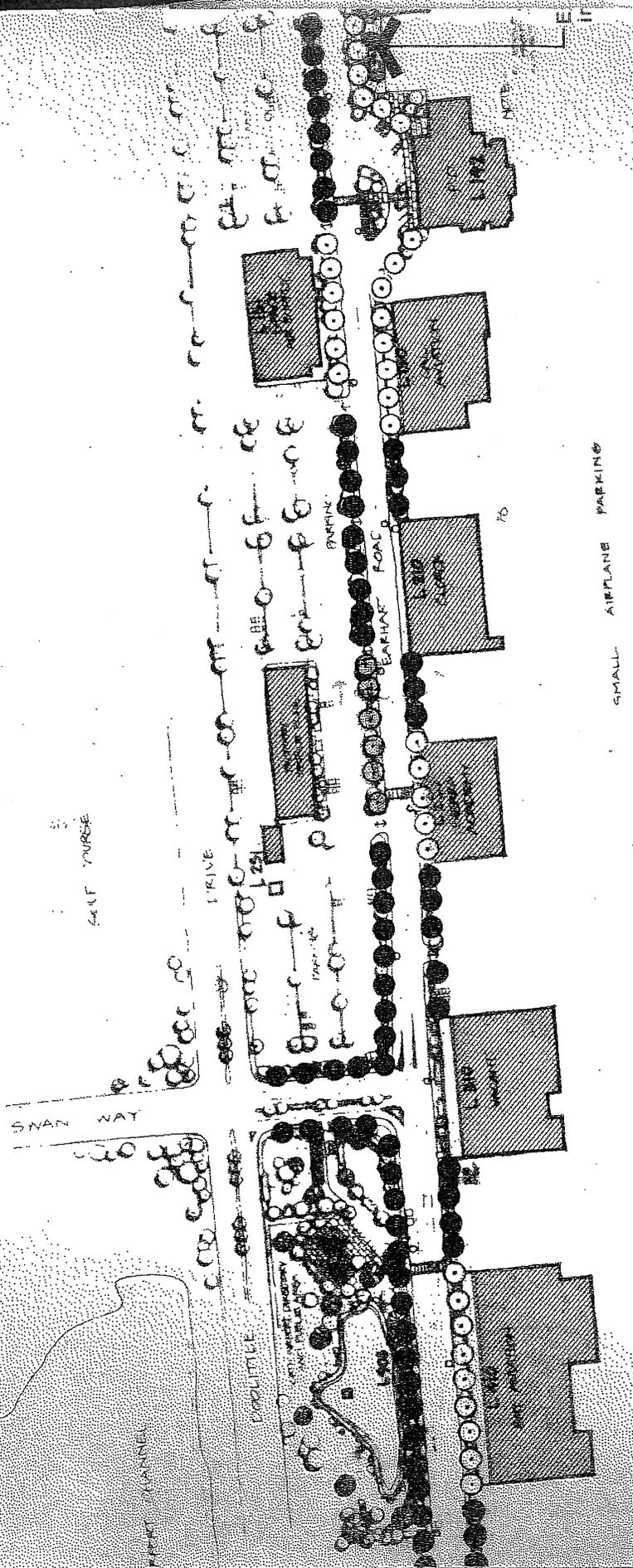
PORT OF OAKLAND

Exhibit D: North Airport Landscape Guidelines

Exhibit "D"

North Airport Landscape Guidelines

LANDSCAPING GUIDELINES FOR
EARHART RD. - NORTH AIRPORT



FRAMEWORK TREES

- EUCALYPTUS FICIFOLIA
- RED-FLOWERING GUM
- EUCALYPTUS RUDIS
- DESERT GUM
- EUCALYPTUS SIDEROXYLON RC
- RED IRONBARK

NOTE: See Section 10 for typical pla

SHRUBS

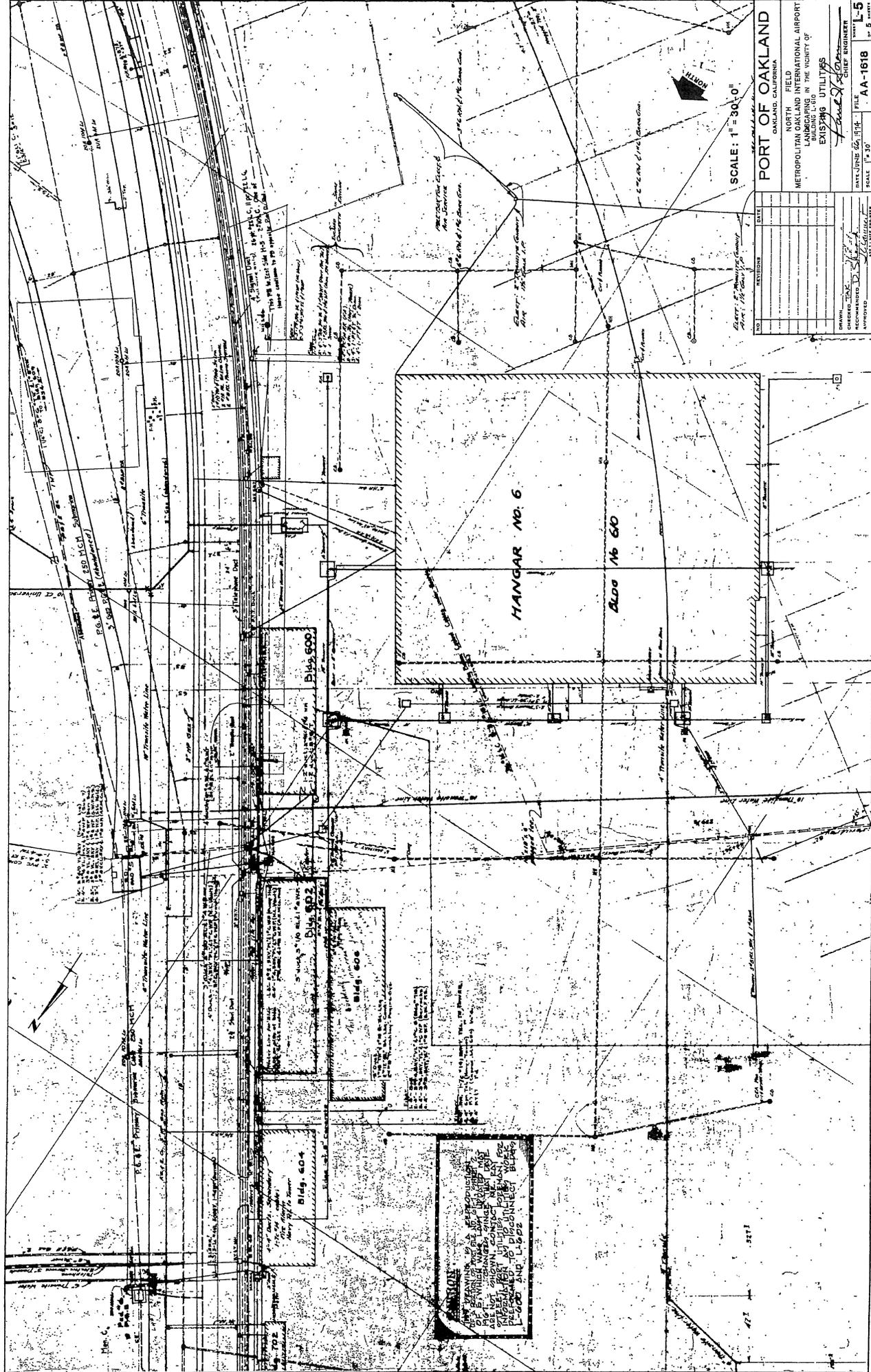
| | | |
|----|------------------------------------|--------------------------|
| 1 | <i>Abelia grandiflora</i> | Glossy Abelia |
| 2 | <i>Acacia Longifolia</i> | Sydney Golden Wattle |
| 3 | <i>Acacia verticillata</i> | Star Acacia |
| 4 | <i>Agapanthus africanus</i> | Lily-of-the-Nile |
| 5 | <i>Arbutus unedo</i> | Strawberry Tree |
| 6 | <i>Callistemon viminalis</i> | Weeping Bottlebrush |
| 7 | <i>Carissa grandiflora</i> | Natal Plum |
| 8 | <i>Ceanothus arboreus</i> | Feltleaf Ceanothus |
| 9 | <i>Ceanothus gloriosus</i> | Point Reyes Ceanothus |
| 10 | <i>Ceanothus thyrsiflorus</i> | Blue Blossom |
| 11 | <i>Chaenomeles japonica</i> | Flowering Quince |
| 12 | <i>Cistus hybridus</i> | White Rockrose |
| 13 | <i>Cistus purpureus</i> | Orchid Rockrose |
| 14 | <i>Coprosma repens</i> | Mirror Plant |
| 15 | <i>Dodonaea viscosa purpurea</i> | Purple-leaf Hopseed Bush |
| 16 | <i>Echium fastuosum</i> | Pride of Madeira |
| 17 | <i>Escallonia rubra</i> | Red Escallonia |
| 18 | <i>Felicia amelloides</i> | Blue Marguerites |
| 19 | <i>Griselinia littoralis</i> | |
| 20 | <i>Hebe andersonii</i> | |
| 21 | <i>Hebe menziesii</i> | |
| 22 | <i>Hemerocallis fulva</i> | Twany Day-lily |
| 23 | <i>Heteromeles arbutifolia</i> | Toyon |
| 24 | <i>Hypericum patulum henryi</i> | |
| 25 | <i>Lantana montevidensis</i> | |
| 26 | <i>Leptospermum laevigatum</i> | Australian Tea Tree |
| 27 | <i>Leptospermum scoparium</i> | Ruby Glow |
| 28 | <i>Ligustrum texanum</i> | Texas Privet |
| 29 | <i>Myoporum laetum</i> | |
| 30 | <i>Nandina domestica</i> | Heavenly Bamboo |
| 31 | <i>Pittosporum crassifolium</i> | Karo |
| 32 | <i>Pittosporum tobira</i> | Tobira |
| 33 | <i>Podocarpus gracilior</i> | Fern Pine |
| 34 | <i>Podocarpus macrophylla</i> | Yew Pine |
| 35 | <i>Raphiolepis indica rosea</i> | Pink India Hawthorn |
| 36 | <i>Rosmarinus officinalis</i> | Rosemary |
| 37 | <i>Trachelospermum jasminoides</i> | Star Jasmine |
| 38 | <i>Viburnum suspensum</i> | Sandankwa Viburnum |
| 39 | <i>Xylosma congestum</i> | Shiny Xylosma |

GROUND COVERS

| | | |
|----|--|------------------------|
| 1 | <i>Carpobrotus edule</i> | Fig Marigold |
| 2 | <i>Ceanothus griseus horizontalis</i> | Carmel Creeper |
| 3 | <i>Gazania uniflora leucolaena</i> | Trailing Gazania |
| 4 | <i>Hedera canariensis</i> | Algerian Ivy |
| 5 | <i>Hypericum calycinum</i> | Aaron's Beard |
| 6 | <i>Juniperus conferta</i> | Shore Juniper |
| 7 | <i>Lantana montevidensis</i> | Trailing Lantana |
| 8 | <i>Mesembryanthemum filifera</i> | Redondo Creeper |
| 9 | <i>Osteospermum fruticosus</i> | Trailing African Daisy |
| 10 | <i>Polygonum capitatus</i> | Pink Clover Blossom |
| 11 | <i>Rosmarinus officinalis</i> <i>Prostratus lockwoodi</i> | Dwarf Rosemary |
| 12 | <i>Vinca minor</i> | Dwarf Periwinkle |

TREES

| | | |
|----|-------------------------------------|-----------------------|
| 1 | <i>Acacia baillyana</i> | Bailey Acacia |
| 2 | <i>Acacia decurrens</i> | Green Wattle |
| 3 | <i>Albizzia julibrissins</i> | Silk Tree |
| 4 | <i>Ceratonia silqua</i> | Carob Tree |
| 5 | <i>Cupressus macrocarpa</i> | Monterey Cypress |
| 6 | <i>Ginkgo biloba</i> | Maidenhair Tree |
| 7 | <i>Eriobotrya deflexa</i> | Bronze Loquat |
| 8 | <i>Eucalyptus ficifolia</i> | Red-flowering Gum |
| 9 | <i>Eucalyptus lehmannii</i> | Bushy Yate |
| 10 | <i>Eucalyptus rudis</i> | Desert Gum |
| 11 | <i>Eucalyptus sideroxylon rosea</i> | Pink Ironbark |
| 12 | <i>Libocedrus decurrens</i> | Incense Cedar |
| 13 | <i>Liquidambar styraciflua</i> | Sweet Gum |
| 14 | <i>Maytenus boaria</i> | Mayten Tree |
| 15 | <i>Metrosideros excelsa</i> | New Zealand Christmas |
| 16 | <i>Myoporum laetum</i> | |
| 17 | <i>Pinus canariensis</i> | Canary Island Pine |
| 18 | <i>Pinus halepensis</i> | Aleppo Pine |
| 19 | <i>Pinus radiata</i> | Monterey Pine |
| 20 | <i>Pinus thunbergii</i> | Japense Black Pine |
| 21 | <i>Pittosporum undulatum</i> | Victorian Box |
| 22 | <i>Populus nigra italica</i> | Lombardy Poplar |
| 23 | <i>Prunus c. atropurpurea</i> | Purpleleaf Plum |
| 24 | <i>Quercus ilex</i> | Holly Oak |



SCALE: 1" = 30'-0"

PORT OF OAKLAND
 OAKLAND, CALIFORNIA

NORTH OAKLAND INTERNATIONAL AIRPORT
 METROPOLITAN AIR TERMINAL BUILDING LAYOUT
 EXISTING UTILITIES

DATE: JUNE 24, 1964
 FILE: AA-1618
 SCALE: 1" = 30'

RECOMMENDED: *D. S. [Signature]*
 CHECKED: *D. S. [Signature]*
 DRAWN: *D. S. [Signature]*
 DATE: JUNE 24, 1964
 FILE: AA-1618
 SCALE: 1" = 30'

CHIEF ENGINEER

CAUTION
 THE DRAWING IS FOR INFORMATION ONLY. ANY CHANGES SHOULD BE MADE BY THE ARCHITECT. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND INFORMATION AS TO ALL UTILITIES, BIDDING, AND LAYOUTS.

CAUTION - CHECK TRACING FOR LATEST REVISIONS.

10'

20'



PORT OF OAKLAND

Exhibit E: North Airport Sign Standards

Exhibit "E"

North Airport Sign Standards

A POLICY
ESTABLISHING STANDARDS
FOR THE
DESIGN, CONSTRUCTION AND INSTALLATION OF TENANT SIGNS
AT THE
PORT OF OAKLAND NORTH AIRPORT
METROPOLITAN OAKLAND INTERNATIONAL AIRPORT

ADOPTED BY THE BOARD OF PORT COMMISSIONERS
APRIL 7, 1976

A POLICY ESTABLISHING STANDARDS
FOR THE
DESIGN, CONSTRUCTION AND INSTALLATION OF TENANT SIGNS
AT THE
PORT OF OAKLAND NORTH AIRPORT - METROPOLITAN OAKLAND INTERNATIONAL AIRPORT

APRIL 7, 1976

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INTRODUCTION

Realizing the need for a standardized North Airport tenant sign program, the Board of Port Commissioners in 1970 adopted a sign policy to govern the installation of all new signs. In the intervening years, it became apparent that the policy was in some cases unnecessarily restrictive, and at the request of tenants at the North Airport and the Oakland Aviation Council, the Board agreed to the formulation of a new more comprehensive sign program. This action reflected the Board's interest in adjusting its policy to meet changing tenant needs for signing and corporate identification. Further, by the Board's adoption of new sign standards as a twelve month policy, any provisions of the standards that are found to be unworkable can readily be changed prior to the adoption of a sign ordinance at the end of the twelve month period. Finally, with an ordinance, tenants with potential problems of non-compliance will be able to utilize a routine variance procedure, and the ordinance itself can be amended periodically as conditions and circumstances change.

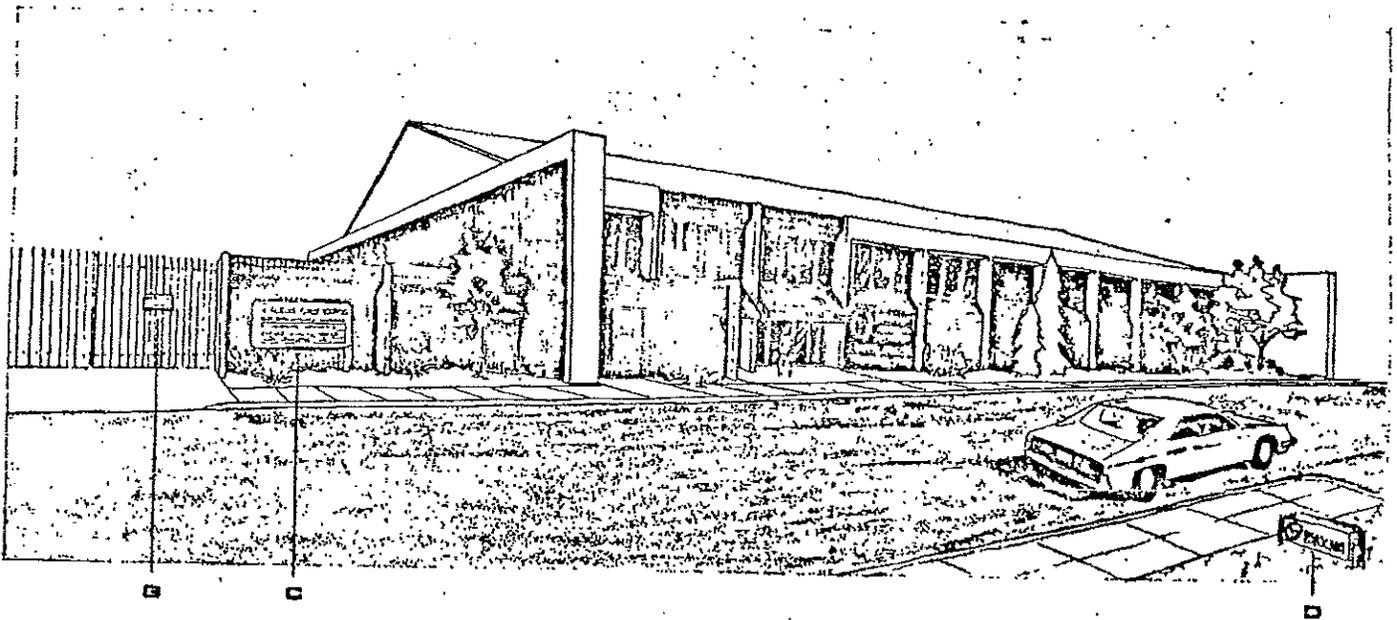
Yet another matter of genuine concern to the Board and to North Airport tenants is the use of standard manufacturers signs. To the extent that signs provided by manufacturers conform to the standards contained in this policy, such signs are clearly permissible. In the event a manufacturer's sign varies slightly from the policy, the Board would not unreasonably withhold approval.

Clearly, the objective of this sign standards policy is to provide for necessary tenant identification through the orderly, planned use of signs, with appropriate provisions for adequate size, content, number, placement and illumination.

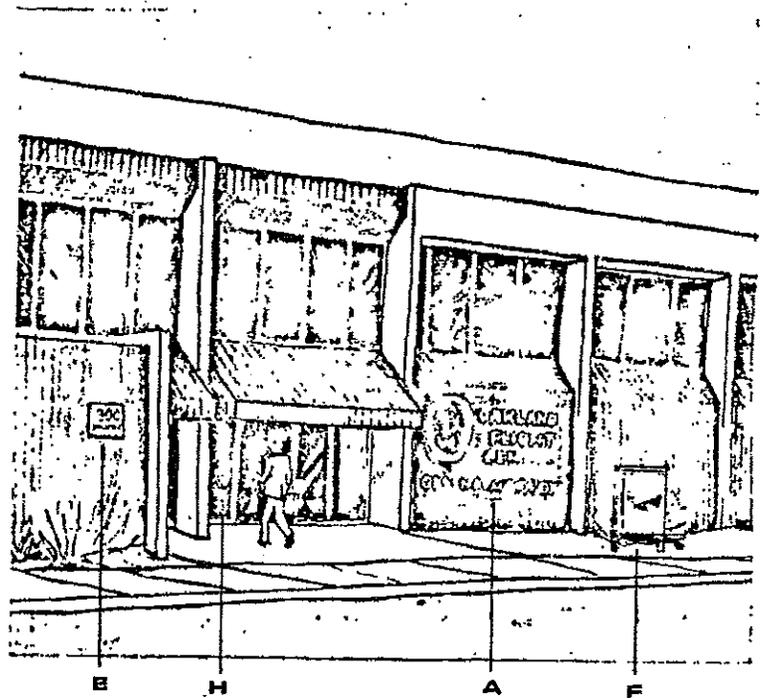
Provisions are made for tenant identification signing mounted on building surfaces, signs which are free standing, those mounted on free standing walls, and combinations thereof; tenant sites which front on aircraft operating areas are permitted additional identification signs visible from the side and rear. Also included are standards governing the installation of directional signs (for on-site pedestrian and vehicular traffic), street address signs, real estate lease/rental signs, window signs, and miscellaneous signs covering safety and security. Standards describing each of these types of signs are carefully detailed in Section 3 - paragraphs a. through h. Also detailed are provisions for the use of combinations of tenant identification signs, as well as a description of the application of these standards where multiple site occupancy or multiple building occupancy occurs.

To facilitate and expedite tenant requests for the installation of signs, a sign permit application procedure is described in Section 3 - paragraph n. In this regard, the Port offers to assist the tenant in every way possible to understand the provisions of the sign policy in order to develop an optimum signing program and to expedite the review and approval procedure.

ILLUSTRATIONS OF TYPICAL SIGNS



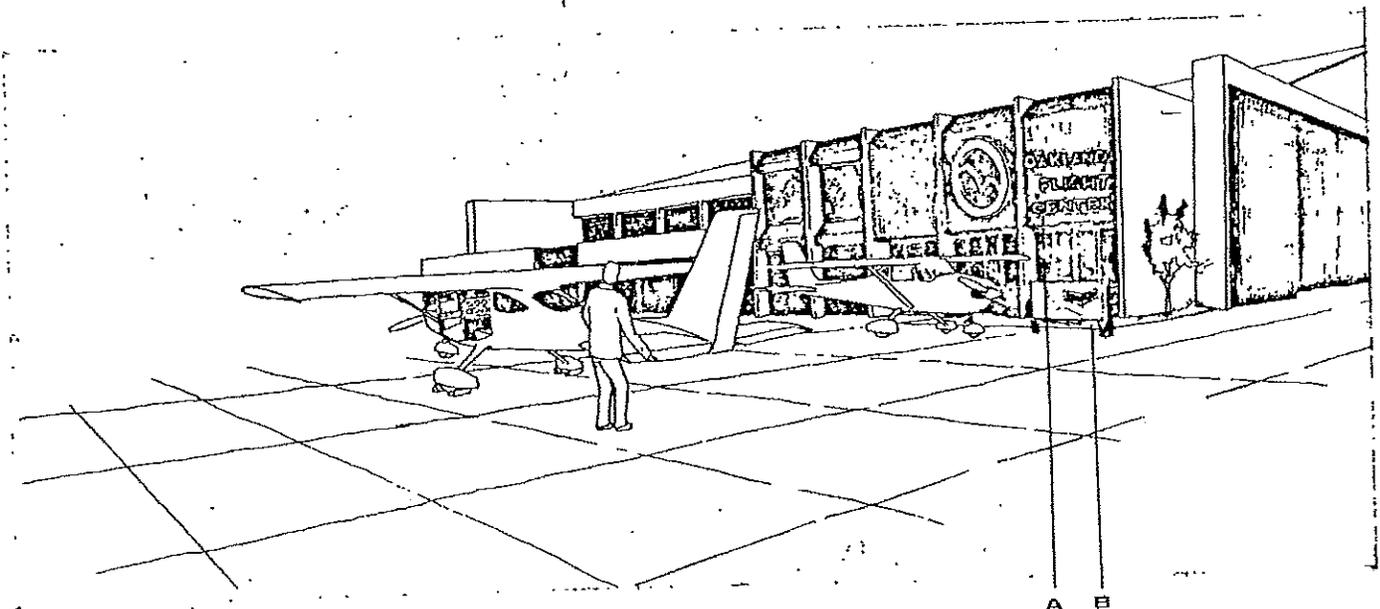
- A SURFACE MOUNTED BUILDING SIGN
- B FREE STANDING TENANT SIGN
- C TENANT WALL SIGN
- D DIRECTIONAL SIGN
- E STREET ADDRESS SIGN
- F REAL ESTATE LEASE/RENTAL SIGN
- G MISCELLANEOUS SIGNS (SECURITY)
- H WINDOW SIGNS



SUMMARY

This Summary is intended to provide for those tenants anticipating the installation of signs, a description of the various types of signs and a brief listing of the general characteristics of each sign. For detailed characteristics and precise definitions, please refer to Section 3, paragraphs a through h. If differences appear to exist between this summary and the information contained in Section 3, the latter will apply.

- a. Surface Mounted Building Sign - This type of sign is intended to be installed on the surface of a building to provide primary site identification. Sign size for all building fronts can be 5% of the front building area or 10 square feet whichever is larger. In addition, buildings situated on apron front sites are permitted to have side signs and rear signs, with the former sized the same as front signs and the latter 10% of the rear building area or 20 square feet, whichever is larger. Each sign, at the option of the tenant, may be illuminated.
- b. Free Standing Tenant Signs - This type of sign is intended to provide eye-level (5 feet or lower - 24 square feet maximum) tenant identification as well as supplemental information such as services, manufacturers, sub-tenants, etc. Whereas one free standing sign is permitted for non-apron front sites, two are permitted on the street side and two are permitted on the field side of apron front sites. The signs may be illuminated.
- c. Tenant Wall Sign - The characteristics of this type of sign are identical to that of the Free Standing Tenant Sign, except that placement may be on a free standing wall, fence or barrier of any type.



SUMMARY (CONT'D)

- d. Directional Sign - Such signs, not in excess of two square feet nor higher than 5 feet, are intended to provide on-site pedestrian and vehicular traffic direction. Criterion for the number and placement of directional signs is that lack of such signs might cause confusion or congestion and possibly compromise safety.
- e. Street Address Sign - Standard 12" x 12" street address signs have been designed to provide a uniform street address system throughout the North Airport. Placement, in proximity to main building entrances, would be surface mounted, or in the case of buildings set back from the street, free standing.
- f. Real Estate Lease/Rental Signs - In the event a tenant wishes to indicate the availability of building space, free standing, non-illuminated lease/rental signs are permitted providing that they do not exceed 12 square feet and are not in excess of 5 feet in height. One lease/rental sign is permitted for non-apron front sites and two signs are permitted for apron front sites.
- g. Miscellaneous Signs - Included in this category are signs involving safety, security, danger, etc. and size must not exceed 2 square feet. However, exceptions are noted where more stringent standards may apply, such as OSHA, FAA, etc.
- h. Window Signs - This standard applies to small signs placed in windows or doors and includes "hours of operation" signs, small decals, etc.
- i. Combination of Signs - To allow for sign flexibility to meet identification needs, a tenant may (1) install surface mounted building signs only, (2) free standing tenant signs only (3) tenant wall signs only, or a combination of (1) and (2) or a combination of (1) and (3).

Other conditions and standards, such as sign provisions where a building or site has multiple tenancy, problems of obstruction or interference, appearance, maintenance, and sign materials are detailed in these Standards. Also described is the sign permit procedure, sign removal conditions, compliance, abatement and revision procedures.

A POLICY
ESTABLISHING STANDARDS
FOR THE
DESIGN, CONSTRUCTION AND INSTALLATION OF TENANT SIGNS
AT THE
PORT OF OAKLAND NORTH AIRPORT
METROPOLITAN OAKLAND INTERNATIONAL AIRPORT

The Board of Port Commissioners, hereinafter referred to as the Port, hereby establishes policy Standards for the design, construction and installation of tenant signs at the North Airport.

Port policy standards for the use of land and for the design and construction of buildings, structures and other improvements at the North Airport are contained in a separate but related document entitled North Airport Development Standards.

SECTION 1 - DESIGNATION OF THE PORT OF OAKLAND NORTH AIRPORT

For purposes of this policy, the Port of Oakland North Airport is hereby designated as being all that portion of Metropolitan Oakland International Airport, within the Port area of the City of Oakland, County of Alameda, State of California, which is bounded by Doolittle Drive on the north and northeast, Hegenberger Road and Airport Drive on the east, the line of the "old dike" which is approximately 700' southerly and parallel to Runway 9R/27L, and the City of Oakland-City of Alameda boundary on the west. Notwithstanding, this policy does not apply to existing or future sites directly fronting on Hegenberger Road and/or Airport Drive.

SECTION 2 - DEFINITIONS

In establishing specific standards, the following airport definitions and sign definitions will apply:

a. Airport Definitions

- 1) Leasable Areas - Those areas at the North Airport within which sites are leased to tenants, excluding the aircraft operating area, streets, areas for Port of Oakland facilities (utilities, drainage, signs, open space, etc.), and areas for public use in general.
- 2) Site - Within the leasable areas of the North Airport, that property which is leased or available for lease to single tenants, or to principal tenants having sub-tenants.
- 3) Apron Front Sites - Those portions of leasable areas having direct access to the aircraft operating area; all others are considered non-apron-front sites.
- 4) Front Building Setback Area - Area between existing and/or designated curb line and front building setback line as defined in the North Airport Development Standards Policy.

b. Sign Definitions

- 1) Tenant Sign - Any graphic display, illuminated or non-illuminated, containing letters, numerals, symbols, or a combination thereof, meant to provide tenant identification, information and/or direction. This includes exterior signs of any type, or interior signs that can be readily seen from the exterior, whether free standing or attached to the surface of a building or wall.
- 2) Surface Mounted Building Sign - A sign applied to or mounted upon the surface of a building where the sign face, letters, numerals and/or symbols are parallel to the supporting surface.
- 3) Free Standing Tenant Sign - A sign which is separate and apart from any building, having its own integral supporting structure.
- 4) Tenant Wall Sign - A sign applied to or mounted upon the surface of a free standing wall, fence, or barrier of any type where the sign face, letters, numerals and/or symbols are parallel to the supporting surface.
- 5) Double-faced Sign - A free standing sign having two faces mounted back to back designed to be seen from opposite directions.
- 6) Primary Signing - That signing which identifies the principal operation, the single tenant and/or the principal tenant.
- 7) Secondary Signing - That signing which identifies sub-tenants, manufacturers (Logotype and/or symbol), products, services, FAA certification, etc.
- 8) Directional Signing - That signing for providing pedestrian and/or vehicular traffic direction.
- 9) Real Estate Lease/Rental Sign - A sign to indicate availability of space on a site for lease or rental.
- 10) Miscellaneous Signs - All other signs which are not specifically identified above, involving safety, security, danger, etc.
- 11) Manufacturers Sign - Any sign fabricated by a manufacturer of aviation products which is standardized and mass-produced for the purpose of display by those companies selling its product.
- 12) Sign Face Area - The gross area of the surface of each sign including face and frame. When calculating sign face areas, only one surface of a double-faced sign need be computed. In the case of individual surface mounted letters, to compute the gross area, an imaginary line circumscribing the letters (top, bottom and end border equaling 1/2 of maximum letter height) should be used; where individual surface mounted letters are used in proximity to and in combination with a symbol (Logotype), this will be considered a single sign with the sign face area computed using an imaginary line circumscribing both the letters and the symbol.

SECTION 3 - SIGN STANDARDS

Within the Port of Oakland North Airport, the following standards shall apply:

a. Surface Mounted Building Sign - The following standard is applicable to each building on a tenant site (See Sec. 3-j for multiple tenancy criteria):

- 1) Front Sign Size (facing street) - The maximum sign face area for the front of each building on apron front or non-apron front sites will be 5% of the total square footage of all vertical building surfaces parallel to the street, or 10 square feet, whichever is larger, except that in no event will the sign face area exceed 20% of the single architectural building feature to which the sign is mounted.
- 2) Rear Sign Size (facing apron) - For apron front sites, the rear of one building on each site (or that building surface most directly facing the aircraft operating area), may accommodate a surface mounted building sign with a maximum sign face area of 10% of the total of all rear vertical building surfaces of that building or 20 square feet, whichever is larger. In no event will the sign face area exceed 20% of the single architectural building feature to which the sign is mounted.

For non-apron front sites, no rear signing will be permitted.

- 3) Side Sign Size - For apron front sites, sign requirements may be accommodated on one or both sides of one building on the site, with a maximum sign face area of 5% of the total square footage of all vertical building surfaces, or 10 square feet, whichever is larger. In no event will the sign face area exceed 20% of the single architectural building feature to which the sign is mounted.

For non-apron front sites, no side signing will be permitted; however, buildings with primary orientation to either side may at the discretion of the Port install side signs in lieu of front signs, with standards for front signs being acceptable.

- 4) Sign Content - Content is limited to primary signing; however to the extent that the symbol and logotype of certain nationally recognized General Aviation manufacturers can be considered vital to site or building identification, such secondary signing may be utilized in conjunction with or in lieu of primary signing. Sign content must appear on the sign face or building with each letter, numeral, symbol and/or line of type placed horizontally on the supporting surface. Letters, numerals and/or symbols must be arranged on the sign face or building surface in a graphically acceptable manner so as to avoid crowding and otherwise poor appearance.
- 5) Sign Placement - Signs must be located on each supporting surface in a way that is architecturally acceptable so as to assure compatibility between structural features and the sign. Signs are not permitted on any projecting surface such as a canopy, marquee, or awning, nor are signs permitted on the roof or above the eave line of any building or structure.

- 6) Illumination - Signs which require illumination must have all lighting elements (neon, fluorescent, incandescent, etc.) and electrical components (conduit, transformers, sockets, sensors, etc.) integrally installed and concealed from view. Sign boxes may have translucent letters and/or faces, and in the case of individual letters, numerals and/or symbols, each may have a translucent face or be back-lighted. Translucent letters, numerals, symbols and/or faces must be uniformly illuminated. Under appropriate architectural and/or sign placement conditions, grade level flood lighting is permissible providing there is no harmful glare.
 - 7) Prohibited Signs - Building signs of any type including letters, numerals, symbols and combinations thereof, may not be directly painted on any building surface, nor may signs be applied to or mounted upon hangar doors. No signs may flash, revolve, move or in any way be other than static. No sign will be permitted which does not identify or relate to the authorized business being conducted on the site.
 - 8) Port Signs - The Port retains the right to maintain existing building identification signs, and to remove, modify and/or replace such signs as required at any time.
- b. Free Standing Tenant Sign - The following standard will apply to free standing tenant signs: (See Section 3-j for multiple tenancy criteria):
- 1) Sign Size - Free standing tenant signs, whether single face or double face will have a width of 1 to 5 times the height (including face and frame), the width being not more than 10 feet nor less than 4 feet. In no event will the single sign face area exceed 24 square feet. The maximum overall height of each sign above site grade including supporting structure will be 5 feet, or lower if architectural design so dictates. In locations where free standing signs may be obstructed from view, the Port will consider tenant requests for signs of greater height.
 - 2) Sign Content - Sign content, which may include primary signing and/or secondary signing, must appear on the sign face with each letter, numeral, symbol and/or line of type placed horizontally on the supporting surface. Letters, numerals and/or symbols must be arranged on the sign face in a graphically acceptable manner so as to avoid crowding and otherwise poor appearance.
 - 3) Sign Location and Number - Free standing tenant signs will be located within or behind the front setback area, and may be installed parallel to the curb line or perpendicular to the curb line. Corner sites will be considered to have two front setback areas. One free standing tenant sign will be permitted for non-apron front sites and not more than two free standing tenant signs will be permitted on the street side of apron front sites. Also, not more than two free standing tenant signs will be permitted at the rear of apron front sites, but within 10 feet of the building or structure. The placement of free standing tenant signs must be compatible with architectural features of the building or structure.

- 4) Illumination - Free standing signs which require illumination must have all lighting elements (neon, fluorescent, incandescent, etc.) and electrical components (conduit, transformers, sockets, sensors, etc.) integrally installed and concealed from view. However, remote grade level flood lighting is permissible providing there is no harmful glare. Outrigger lights are not permitted. Sign boxes may have translucent letters and/or faces and must be uniformly illuminated.
 - 5) Prohibited Signs - No free standing sign may flash, revolve, move, or in any way be other than static. No sign will be permitted which does not identify or relate to the authorized business being conducted on the site.
- c. Tenant Wall Sign - The following standard will apply to tenant signs mounted upon a free standing wall, fence, or barrier of any type (See Section 3-j for multiple tenancy criteria):
- 1) Sign Size - This type of sign will have a width of 1 to 5 times the height (including face and frame), the width being not more than 10 feet nor less than 4 feet: for individual letters, numerals and/or symbols, the same proportions apply in determining allowable width and height. In no event will the single sign face area exceed 24 square feet. The maximum overall height of each sign must not exceed 5 feet, with proper placement determined by the height of the supporting surface as well as architectural features.
 - 2) Sign Content - Sign content, which may include primary signing, and/or secondary signing, must appear on the wall or sign face with each letter, numeral, symbol and/or line of type placed horizontally on the supporting surface. Letters, numerals and/or symbols must be arranged on the wall or sign face in a graphically acceptable manner so as to avoid crowding and otherwise poor appearance.
 - 3) Sign Location and Number - The placement of a front wall sign(s) may be within or behind the front setback area. Corner sites will be considered to have two front setback areas. One tenant wall sign will be permitted for non-apron front sites, and not more than two tenant wall signs will be permitted on the street side of apron front sites. Also, not more than two tenant wall signs will be permitted at the rear of apron front sites. Such signs, if architecturally desirable, may be recessed into the supporting surface.
 - 4) Illumination - Signs which require illumination must have all lighting elements (neon, fluorescent, incandescent, etc.) and electrical components (conduit, transformers, sockets, sensors, etc.) integrally installed and concealed from view. However, remote grade level flood lighting is permissible providing there is no harmful glare. Outrigger lights are not permitted. Sign boxes may have translucent letters and/or faces, and in the case of individual letters, numerals and/or symbols, each may have a translucent face or be back-lighted. Translucent letters, numerals, symbols and/or faces must be uniformly illuminated.
 - 5) Prohibited Signs - Wall signs of any type including letters, numerals, symbols and combinations thereof may not be directly painted on any wall surface. No signs may flash, revolve, move or in any way be other than static. No sign will be permitted which does not identify or relate to the authorized business being conducted on the site.

d. Directional Signs - The following standard will apply to all directional signs:

- 1) Sign Size - Directional signs, whether single face or double face, will be free standing with a single sign face area not in excess of 2 square feet and an overall sign height including supporting structure not in excess of 5 feet. To encourage standardization and uniformity, a drawing is available upon request showing appropriate dimensions, colors, materials, letter type, letter spacing and installation details. However, a tenant may choose to develop directional signs as an integral part of an overall site sign program which may depart from the Port standard providing the limitations described herein apply.
- 2) Sign Content. - The specific need served by directional signs is guidance to pedestrian and/or vehicular traffic, only where lack of such signs would create confusion or congestion. Letters, numerals and/or symbols may be applied to or painted upon the sign face, and must be designed in a graphically acceptable manner so as to avoid crowding and otherwise poor appearance.
- 3) Sign Location and Number - To provide optimum pedestrian and/or vehicular guidance, directional signs may be placed at any location on a site. However, emphasis must be placed on attaining optimum guidance with the smallest practical number of signs.
- 4) Illumination - Under the assumption that pedestrian traffic can read directional signs under ambient lighting conditions, and vehicular traffic will utilize headlights to read directional signs, sign illumination is optional.
- 5) Prohibited Signs - Directional signs may not be other than static, and must relate to pedestrian and/or vehicular traffic on the site.

e. Street Address Sign - The following standard is intended to provide uniform street address signs throughout the North Airport; it is applicable to all buildings having direct street frontage where building street address identification is required by the tenant:

- 1) Sign Size - Each street address sign will be single face, measuring 12" x 12" overall. To achieve standardization and uniformity, a drawing is available upon request showing all dimensions, colors, materials, letter type, letter spacing, and mounting details.
- 2) Sign Content - Each sign will contain both street addresses and street name (Earhart, Lockheed, Langley, etc.), with letter type, size and spacing as defined in the drawing referenced in above item e.1.
- 3) Sign Location and Number - Street address signs will be surface mounted on each building at an overall height not in excess of 5 feet and located in proximity to the main building entrance. In the event a building is set back 50 feet or more from the existing and/or designated curb line, a single face, free standing address sign may be installed within the front building setback area parallel to the curb line and at an overall height not in excess of 5 feet.
- 4) Illumination - No special provisions for illumination will be permitted other than lighting provided by ambient conditions.

f. Real Estate Lease/Rental Sign - The following standard will apply to lease/rental signs:

- 1) Sign Size - Lease/rental signs, whether single face or double face, will be free standing with a single sign face area not in excess of 12 square feet and an overall sign height not in excess of 5 feet. In locations where lease/rental signs may be obstructed from view, the Port will consider requests for signs of greater height.
- 2) Sign Content - The sign will contain no more than a brief description of available space on a site for lease or rental, as well as pertinent data such as name, address, and telephone number. Letters, numerals, and/or symbols may be applied to or painted upon the sign face, and must be designed in a graphically acceptable manner so as to avoid crowding and otherwise poor appearance.
- 3) Sign Location and Number - In all cases, lease/rental signs will be located within or behind the front setback area, and may be installed parallel to the curb line or perpendicular to the curb line. Placement should be compatible with architectural features of the building or structure. One lease/rental sign will be permitted for non-apron front sites, and not more than two lease/rental signs will be permitted for apron front sites.

Corner sites will be considered to have two setback areas.

- 4) Illumination - Because of the temporary nature of lease/rental signs, no illumination will be permitted.
 - 5) Prohibited Signs - Lease/rental signs may not be other than static, and must relate to authorized activities on the site.
- g. Miscellaneous Signs - The following standard will apply to all signs of a miscellaneous nature such as those involving safety, security, danger, etc.:
- 1) Sign Size - Such signs in all cases will be single face and attached to an appropriate surface, with a sign face not in excess of 2 square feet and installed at eye level.
 - 2) Sign Content - Because of the alert or warning nature of these signs, the content should be simple, succinct and bold. Letters, numerals and/or symbols may be painted upon the sign face, and must be designed in a graphically acceptable manner so as to avoid crowding and otherwise poor appearance.
 - 3) Sign Location - Sign location will be dictated by the required proximity of such signs to the activity for which the alert/warning signs are intended.
 - 4) Illumination - Such signs will not be illuminated but may be fabricated with reflective material.
 - 5) Prohibited Signs - Where alert/warning signs relate to the overall operation of the airport, or to a Port facility which may exist within a tenant site, the Port at its option may prohibit the tenant from installing such signs in favor of the Port making such an installation.

- 6) Exceptions - The foregoing safety and security sign criteria represents a guideline only: requirements established and/or recommended by the National Safety Council, Occupational Safety and Health Act (OSHA), Federal Aviation Administration and other agencies having authority or jurisdiction shall prevail in the event of conflicting standards.
- h. Window Signs - Signs displayed in glass doors or windows are limited to an "hours of operation" sign plus small decals describing credit card affiliation, security system, etc.
- i. Combinations of Signs - To achieve a balance of primary and secondary signing on a site, the following signs or combinations of signs are acceptable:
 - 1) Surface mounted building sign(s) only
 - 2) Free standing tenant sign(s) only
 - 3) Tenant wall sign(s) only
 - 4) Combination of 1 and 2
 - 5) Combination of 1 and 3

This standard will apply uniformly to each site whether the site is occupied by a single tenant or multiple tenants. These combinations are also intended to apply to front signing for apron front and non-apron front sites, and to rear signing for apron front sites.

- j. Multiple Tenancy - Where one tenant occupies a site or building, all sign size criteria described heretofore applies. However, in the case of occupancy by two or more principal tenants, the following sizes and/or number of signs will apply:
 - 1) Surface Mounted Building Signs - Each principal building tenant is permitted to install a building sign(s) provided however: that the maximum allowable sign size be apportioned equally among principal tenants, that the total square footage of all signs on a building face not exceed the maximum allowable sign size, and that all signs and sign placement be uniform so as to insure acceptable architectural appearance.
 - 2) Free Standing Tenant Signs - For single or multiple occupancy, one free standing tenant sign is permitted for each non-apron front site and not more than two such signs are permitted for each front and rear of apron front sites. However, the sign face area may be utilized as a directory-type sign with the total area apportioned equally among all tenants. Design of the sign should allow for periodic revision by each tenant without affecting the entire sign.
 - 3) Tenant Wall Signs - For single or multiple occupancy, one tenant wall sign is permitted for each non-apron front site and not more than two such signs are permitted for each front and each rear of apron front sites. However, the sign face area may be used as a directory-type sign with the total area apportioned equally among all tenants. Design of the sign should allow for periodic revision by each tenant without affecting the entire sign.

- 4) Directional Signs - To maintain continuity on each site, directional signs will be uniform as to size and overall design.
- 5) Real Estate Lease/Rental Signs - For single or multiple occupancy one lease/rental sign will be permitted for non-apron front sites, and not more than two lease/rental signs will be permitted for each apron front site. Where a multiple need exists for providing lease/rental information, permitted sign areas will be shared equally.

Where multiple tenancy occurs in a building or on a site, all tenants are encouraged to collectively establish a comprehensive sign plan for review and approval by the Port. In this way, individual tenant sign needs can be assessed on the basis of overall requirements and the desire for uniformity.

- k. Obstruction/Interference - No sign of any type will be permitted which directly or indirectly obstructs or compromises the safety of aircraft, vehicle and/or pedestrian traffic. Furthermore, no illuminated sign of any type will be permitted which may cause electronic or other radio interference which would impair electronic navigation or communication.
- l. Sign Appearance and Maintenance - All signs shall be maintained by the tenant in good order, repair and condition at all times.
- m. Sign Materials - To assist the tenant in developing properly engineered, serviceable signs, the following minimum standards are recommended:
 - 1) Metal sign cabinets should be 24 gauge sheet metal or .030 aluminum, properly reinforced, with internal electrical raceways and/or electrical boxes of comparable gauge or heavier. Cabinets should be properly fitted to inhibit the penetration of moisture and dirt but with sign faces easily removable for cleaning and lamp replacement. Fluorescent lamps should be cool white T/12 high output (800 MA). Plexiglas sign faces should be 3/16" thick with allowances of 1/16" per foot in each direction to allow for expansion and contraction. Sheet metal surfaces should be cleaned, primed and finished with a baked enamel; galvanized sheet metal surfaces should be etched, primed and finished with a baked enamel; and aluminum surfaces should be washed with lacquer, and then finished with zinc chromate and spray fog coated before applying the finish coat.
 - 2) Individual three dimensional sign letters should be 24 gauge sheet metal or .025 aluminum with plexiglas faces when illumination is required. Size, color and number of neon tubes will depend upon the character of sign; plexiglas faces should be 1/8" to 3/16" thick depending upon size of letters. Letters cut from flat sheets of material such as plexiglas or metal are acceptable providing perimeter trim is used to give the letter a minimum depth of 1" for letters up to 12" in height, and a minimum letter depth of 2" for letters greater than 12" in height.
 - 3) Where non-illuminated wood signs are considered appropriate and necessary for architectural reasons, such wood surfaces shall be properly primed, painted and/or sealed to prevent chipping, peeling, discoloration, etc.

3. Permit Approval - The issuance of a permit will occur immediately after the review process which involves staff evaluation to determine compliance with all conditions in Section 3, a staff recommendation, and finally Port approval. However, for directional signs, street address signs, real estate lease/rental signs, window signs and other miscellaneous signs, staff approval will suffice. After Port approval, the applicant must apply to the City of Oakland Building Department for the issuance of a sign permit.

The average time required for normal processing of a sign permit application including staff review and Port approval is three weeks.

- o. Sign Removal - Upon lease termination, the tenant and/or subtenants will be required to remove all signs, and to patch, repair and/or paint all surfaces to which the signs were attached.
- p. Compliance - The Port hereby establishes this sign policy for the North Airport and such policy shall be applicable to all new signs. Signs existing at the time this policy is adopted shall be exempt; provided, however, (1) that proposed new tenant signs which essentially duplicate existing sign information will require that such existing signs be immediately removed, (2) that this sign policy shall be immediately applicable to all new lease agreements with a minimum term of five years and/or (3) that not later than five years from the date of the adoption of this policy, tenants will be required to remove all signs which do not conform to this policy. No sign shall be erected or constructed or modified in any way without prior written approval by the Port; such approval will not be withheld unreasonably, and will be subject to the policy standards contained herein.

In addition to these sign policy standards, all signs must conform to applicable codes and standards of the City of Oakland.

- q. Abatement - Any sign erected, moved or altered contrary to these sign policy standards and any sign not properly maintained, shall be and is hereby declared to be unlawful and a public nuisance and may be required to be abated, eliminated and/or removed as such.

SECTION 4 - REVISION PROCEDURE

The Port may at any time initiate action to change the text of this sign policy, to revise or delete the standards set forth in Section 3 of this policy, or to establish new standards to be incorporated into said Section 3.



PORT OF OAKLAND

**Exhibit F: FAA Form 7460
Notice of Proposed Construction or Alteration**

Exhibit "F"

**FAA Form 7460
Notice of Proposed Construction or Alteration**

NOTICE OF PROPOSED CONSTRUCTION OR ALTERATION

§ 77.7 Form and time of notice.

(a) If you are required to file notice under §77.9, you must submit to the FAA a completed FAA Form 7460-1, Notice of Proposed Construction or Alteration. FAA Form 7460-1 is available at FAA regional offices and on the Internet.

(b) You must submit this form at least 45 days before the start date of the proposed construction or alteration or the date an application for a construction permit is filed, whichever is earliest.

(c) If you propose construction or alteration that is also subject to the licensing requirements of the Federal Communications Commission (FCC), you must submit notice to the FAA on or before the date that the application is filed with the FCC.

(d) If you propose construction or alteration to an existing structure that exceeds 2,000 ft. in height above ground level (AGL), the FAA presumes it to be a hazard to air navigation that results in an inefficient use of airspace. You must include details explaining both why the proposal would not constitute a hazard to air navigation and why it would not cause an inefficient use of airspace.

(e) The 45-day advance notice requirement is waived if immediate construction or alteration is required because of an emergency involving essential public services, public health, or public safety. You may provide notice to the FAA by any available, expeditious means. You must file a completed FAA Form 7460-1 within 5 days of the initial notice to the FAA. Outside normal business hours, the nearest flight service station will accept emergency notices.

§ 77.9 Construction or alteration requiring notice.

If requested by the FAA, or if you propose any of the following types of construction or alteration, you must file notice with the FAA of:

(a) Any construction or alteration that is more than 200 ft. AGL at its site.

(b) Any construction or alteration that exceeds an imaginary surface extending outward and upward at any of the following slopes:

(1) 100 to 1 for a horizontal distance of 20,000 ft. from the nearest point of the nearest runway of each airport described in paragraph (d) of this section with its longest runway more than 3,200 ft. in actual length, excluding heliports.

(2) 50 to 1 for a horizontal distance of 10,000 ft. from the nearest point of the nearest runway of each airport described in paragraph (d) of this section with its longest runway no more than 3,200 ft. in actual length, excluding heliports.

(3) 25 to 1 for a horizontal distance of 5,000 ft. from the nearest point of the nearest landing and takeoff area of each heliport described in paragraph (d) of this section.

(c) Any highway, railroad, or other traverse way for mobile objects, of a height which, if adjusted upward 17 feet for an Interstate Highway that is part of the National System of Military and Interstate Highways where overcrossings are designed for a minimum of 17 feet vertical distance, 15 feet for any other public roadway, 10 feet or the height of the highest mobile object that would normally traverse the road, whichever is greater, for a private road, 23 feet for a railroad, and for a waterway or any other traverse way not previously mentioned, an amount equal to the height of the highest mobile object that would normally traverse it, would exceed a standard of paragraph (a) or (b) of this section.

(d) Any construction or alteration on any of the following airports and heliports:

(1) A public use airport listed in the Airport/Facility Directory, Alaska Supplement, or Pacific Chart Supplement of the U.S. Government Flight Information Publications;

(2) A military airport under construction, or an airport under construction that will be available for public use;

(3) An airport operated by a Federal agency or the DOD.

(4) An airport or heliport with at least one FAA-approved instrument approach procedure.

(e) You do not need to file notice for construction or alteration of:

(1) Any object that will be shielded by existing structures of a permanent and substantial nature or by natural terrain or topographic features of equal or greater height, and will be located in the congested area of a city, town, or settlement where the shielded structure will not adversely affect safety in air navigation;

(2) Any air navigation facility, airport visual approach or landing aid, aircraft arresting device, or meteorological device meeting FAA-approved siting criteria or an appropriate military service siting criteria on military airports, the location and height of which are fixed by its functional purpose;

(3) Any construction or alteration for which notice is required by any other FAA regulation.

(4) Any antenna structure of 20 feet or less in height, except one that would increase the height of another antenna structure.

Mail Processing Center
Federal Aviation Administration
Southwest Regional Office
Obstruction Evaluation Group
2601 Meacham Boulevard
Fort Worth, TX 76193
Fax: (817) 321-7765
Phone: (817) 321-7750

Website: <https://oeaaa.faa.gov>

INSTRUCTIONS FOR COMPLETING FAA FORM 7460-1

PLEASE TYPE or PRINT

ITEM #1. Please include the name, address and phone number of a personal contact point as well as the company name.

ITEM #2. Please include the name, address and phone number of a personal contact point as well as the company name.

ITEM #3. New Construction would be a structure that has not yet been built.

Alteration is a change to an existing structure such as the addition of a side mounted antenna, a change to the marking and lighting, a change to power and/or frequency, or a change to the height. The nature of the alteration shall be included in ITEM #21 "Complete Description of Proposal".

Existing would be a correction to the latitude and/or longitude, a correction to the height, or if filing on an existing structure which has never been studied by the FAA. The reason for the notice shall be included in ITEM #21 "Complete Description of Proposal".

ITEM #4. If Permanent, so indicate. If Temporary, such as a crane or drilling derrick, enters the estimated length of time the temporary structure will be up.

ITEM #5. Enter the date that construction is expected to start and the date that construction should be completed.

ITEM #6. Please indicate the type of structure. DO NOT LEAVE BLANK.

ITEM #7. In the event that obstruction marking and lighting is required, please indicate type desired. If no preference, check "other" and indicate "no preference" DO NOT LEAVE BLANK. NOTE: High Intensity lighting shall be used only for structures over 500' AGL. In the absence of high intensity lighting for structures over 500' AGL, marking is also required.

ITEM #8. If this is an existing tower that has been registered with the FCC, enter the FCC Antenna Structure Registration number here.

ITEM #9 and #10. Latitude and longitude must be geographic coordinates, accurate to within the nearest second or to the nearest hundredth of a second if known. Latitude and longitude derived solely from a hand-held GPS instrument is NOT acceptable. A hand-held GPS is only accurate to within 100 meters (328 feet) 95 percent of the time. This data, when plotted, should match the site depiction submitted under ITEM #20.

ITEM #11. NAD 83 is preferred; however, latitude and longitude may be submitted in NAD 27. Also, in some geographic areas where NAD 27 and NAD 83 are not available other datum may be used. It is important to know which datum is used. DO NOT LEAVE BLANK.

ITEM #12. Enter the name of the nearest city and state to the site. If the structure is or will be in a city, enter the name of that city and state.

ITEM #13. Enter the full name of the nearest public-use (not private-use) airport or heliport or military airport or heliport to the site.

ITEM #14. Enter the distance from the airport or heliport listed in #13 to the structure.

ITEM #15. Enter the direction from the airport or heliport listed in #13 to the structure.

ITEM #16. Enter the site elevation above mean sea level and expressed in whole feet rounded to the nearest foot (e.g. 17'3" rounds to 17', 17'6" rounds to 18'). This data should match the ground contour elevations for site depiction submitted under ITEM #20.

ITEM #17. Enter the total structure height above ground level in whole feet rounded to the next highest foot (e.g. 17'3" rounds to 18'). The total structure height shall include anything mounted on top of the structure, such as antennas, obstruction lights, lightning rods, etc.

ITEM #18. Enter the overall height above mean sea level and expressed in whole feet. This will be the total of ITEM #16 + ITEM #17.

ITEM #19. If an FAA aeronautical study was previously conducted, enter the previous study number.

ITEM #20. Enter the relationship of the structure to roads, airports, prominent terrain, existing structures, etc. Attach an 8-1/2" x 11" non-reduced copy of the appropriate 7.5 minute U.S. Geological Survey (USGS) Quadrangle Map MARKED WITH A PRECISE INDICATION OF THE SITE LOCATION. To obtain maps, contact USGS at 1-888-275-8747 or via internet at "<http://store.usgs.gov>". If available, attach a copy of a documented site survey with the surveyor's certification stating the amount of vertical and horizontal accuracy in feet.

ITEM #21.

- For transmitting stations, include maximum effective radiated power (ERP) and all frequencies.
- For antennas, include the type of antenna and center of radiation (Attach the antenna pattern, if available).
- For microwave, include azimuth relative to true north.
- For overhead wires or transmission lines, include size and configuration of wires and their supporting structures (Attach depiction).
- For each pole/support, include coordinates, site elevation, and structure height above ground level or water.
- For buildings, include site orientation, coordinates of each corner, dimensions, and construction materials.
- For alterations, explain the alteration thoroughly.
- For existing structures, thoroughly explain the reason for notifying the FAA (e.g. corrections, no record or previous study, etc.).

Filing this information with the FAA does not relieve the sponsor of this construction or alteration from complying with any other federal, state or local rules or regulations. If you are not sure what other rules or regulations apply to your proposal, contact local/state aviation's and zoning authorities.

Paperwork Reduction Work Act Statement: This information is collected to evaluate the effect of proposed construction or alteration on air navigation and is not confidential. Providing this information is mandatory or anyone proposing construction or alteration that meets or exceeds the criteria contained in 14 CFR, part 77. We estimate that the burden of this collection is an average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information. A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. The OMB control number associated with this collection is 2120-0001. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave SW, Washington, DC 20591, Attn: Information Collection Clearance Officer, AES-200.



PORT OF OAKLAND
AVIATION PLANNING AND DEVELOPMENT
Oakland International Airport
530 Water Street
Oakland, CA 94607

**When Do I Need to File an FAA Form 7460-1?
Objects Affecting Navigable Airspace (14CFR77)**

June 2013

Background

The Federal Aviation Administration (FAA) has jurisdiction over airspace in the U.S. It is the FAA's responsibility to define and provide airspace to allow aircraft to safely maneuver on take-off, departure, approach, landing, and enroute. As such, the FAA requires sponsors of new projects to notify them of proposed construction/alteration plans so that they can determine whether the proposed construction/alteration will be (1) an obstruction to air navigation, in which case the FAA may require appropriate obstruction marking and/or lighting, or (2) a hazard to air navigation (i.e., the project interferes with the safe and efficient use of airspace). FAA requirements and procedures are set forth in the Federal Aviation Regulations Part 77 (Objects Affecting Navigable Airspace), Subchapter C (Aircraft) of Title 14 (Aeronautics and Space) of the Code of Federal Regulations, or 14CFR77.

It is important to note that the FAA does not regulate land use or projects. As such, the FAA cannot legally prohibit or stop construction, even if it determines that a project is a hazard to air navigation. The FAA's recourse is to (1) negotiate with the project sponsor (in fact, most project sponsors are willing to negotiate, as it is difficult to obtain insurance on a project that has been determined to be a hazard to air navigation), or (2) if the sponsor proceeds with the project, adjust flight procedures to mitigate the hazard. In the case of airspace around an airport, the FAA may need to restrict approaches to certain runways during certain weather conditions (e.g., the FAA may need to raise the minimum descent altitude on instrument approach procedures to certain runways).

The FAA also enlists the help of airport owners/operators (e.g., the Port of Oakland) in protecting airspace for the safe and efficient use by aircraft. Because the Port receives federal grant funding for capital projects at Oakland International Airport, the Port is bound by FAA grant assurances. One of the grant assurances requires the Port to "take appropriate action to assure that such commercial airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards."

What kinds of proposed projects require notice to the FAA?

Essentially, all proposed construction or alteration projects over a certain height (see below) require notice to the FAA, including, but not limited to, terrain modifications, buildings, construction equipment (e.g., construction cranes, graders, compacters, etc.) used to build a project, mobile objects (e.g., maritime cranes), tanks, light standards/luminaires, bridge structures, roadways (including the height of vehicles), railways (including the height of trains), antennas, etc.

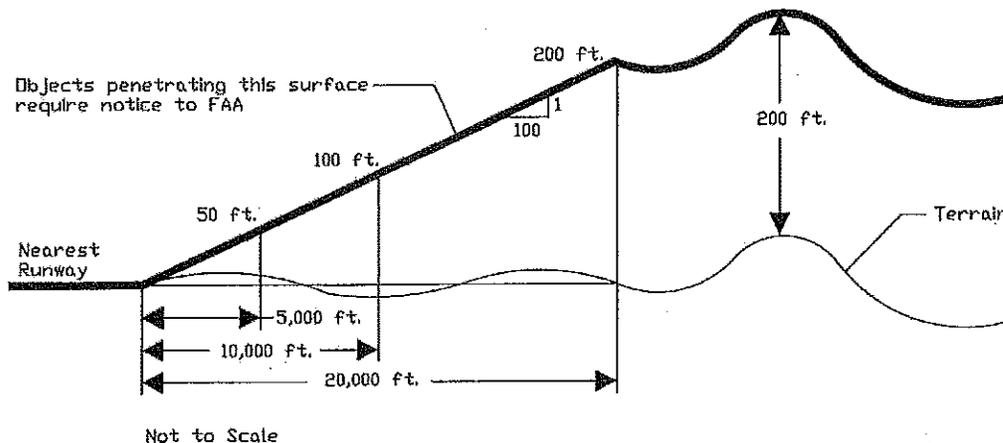
How tall does my proposed project have to be before I notify the FAA?

The FAA requires that the project sponsor notify them of proposed construction or alterations using FAA Form 7460 (Notice of Proposed Construction or Alteration). In addition to general contact and project information, the most important data that must be provided on FAA Form 7460 are (1) the coordinates of the construction/alteration (in longitude and latitude, preferably down to hundredths of seconds) and (2) the proposed height of the construction/alteration above mean sea level (not above Port datum, the ground, or any other datum).

FAA Form 7460 must be filed for any construction/alteration at any of the following locations:

- (1) On-Airport: Any and all construction or alterations (essentially, all airside and landside projects not in an existing building, anywhere within the airport boundary).
- (2) Off-Airport: Any construction/alteration more than 200 ft. in height above ground level at the site, anywhere. (For example, a new 201 ft. tall structure (above the ground) at a site located 100 miles away from Oakland International Airport would likely not have any direct impact on the airspace around the Airport; however, it may have an impact on airspace around another airport/airports or enroute airspace; therefore, the FAA requires that FAA Form 7460 be filed for any construction/alteration more than 200 ft. in height above ground level at the site, anywhere.)
- (3) Off-Airport: Any construction/alteration penetrating an imaginary surface emanating from the edge of the nearest runway at a 100 to 1 slope out to 20,000 ft. from that runway.

In graphical form, any construction/alteration that penetrates the following requires notice to the FAA:



For on-Airport projects (i.e., at Oakland International Airport), FAA Form 7460 should be filed with the FAA's San Francisco Airports District Office:

Federal Aviation Administration
San Francisco Airports District Office
Attn.: Mr. Peter Hong
1000 Marina Boulevard, Suite 220
Brisbane, CA 94005-1853
(650) 827-7624

For off-Airport projects, FAA Form 7460 should be filed on-line at <https://oeaaa.faa.gov>. Before e-filing, the project sponsor must become a registered user by completing a web-based form with contact information and selecting a user name and password. Project sponsors without internet access may file their FAA Form 7460 by mailing it to the following address:

Express Processing Center
Federal Aviation Administration
Southwest Regional Office
Air Traffic Airspace Branch, ASW-520
2601 Meacham Boulevard
Fort Worth, TX 76137-0520

Are there any exceptions where I do not have to file FAA Form 7460?

Yes, there is an exception where the FAA does not require FAA Form 7460 for a construction or alteration project, even when the above criteria are satisfied, but extreme caution is required. According to 14CFR77.15, FAA Form 7460 is not required for “any object that would be shielded by existing structures of a permanent and substantial character or by natural terrain or topographic features of equal or greater height, and would be located in the congested area of a city, town, or settlement where it is evident beyond all reasonable doubt that the structure so shielded will not adversely affect safety in air navigation.” By electing to use this exception and not file FAA Form 7460, the project sponsor (and/or possibly the permitting agency) is accepting responsibility for determining beyond all reasonable doubt that the proposed construction or alteration project is not an obstruction or hazard to air navigation. Because of this rather onerous requirement, it is usually better to plan ahead and submit FAA Form 7460, allowing the FAA to determine whether a proposed project might be an obstruction or hazard to air navigation. Stated another way, it is not recommended to use this exception under almost any circumstance.

How long does it take for the FAA to review FAA Form 7460?

Project sponsors, including the Port of Oakland, should allow up to two months for the FAA to review FAA Form 7460, prepare an aeronautical study, and issue an FAA Notice of Determination with the results. FAA Form 7460 is relatively easy to complete as long as you know some basic details about the proposed construction/alteration (i.e., the location and height above mean sea level), which are usually available relatively early in the project development process. By submitting the form well in advance of the start of construction/alteration, the FAA can complete an aeronautical study, and the project sponsor can make adjustments (and re-file) if necessary. Please remember that although your project may be very important, the FAA receives hundreds of these forms each month from all over the western U.S. From their perspective, your project is no more or less important than those submitted on the other forms. Allow enough time (up to two months) for the FAA to review FAA Form 7460, prepare an aeronautical study, and issue an FAA Notice of Determination with the results.

What does the FAA check for?

When FAA Form 7460 is submitted to the FAA, they undertake a comprehensive aeronautical study to check both visual and instrument flight paths for take-off, departure, approach, landing, and enroute. The FAA checks the requirements in 14CFR77 to determine if the proposed construction is a potential obstruction, in which case, they may require that the project be appropriately marked and lit. The FAA will also determine if the proposed construction/alteration is a potential hazard to air navigation using the requirements in FAA Order 8260.3B, U.S. Standard for Terminal Instrument Procedure (TERPS), and related orders. The FAA, in association with the Federal Communications Commission (FCC), also

checks for potential electronic interference with navigation aids, such as instrument landing systems, very high frequency omnidirectional ranges (VORS), radar antennas, etc. The results of the FAA's aeronautical study are returned to the project sponsor in an FAA Notice of Determination.

Tips for Completing FAA Form 7460

Accuracy of latitude/longitude coordinates: We suggest that all coordinates submitted on FAA Form 7460 be presented and accurate to hundredths of seconds of latitude and longitude (e.g., N37°42'48.21" W122°12'54.13"). Because Part 77 and TERPS imaginary surfaces are quite complex, small changes in location can yield significant changes in the allowable height (i.e., where an object would not be considered an obstruction or hazard).

Elevations must be submitted with a reference datum of mean sea level: On FAA Form 7460, the elevation of the site must be submitted "above mean sea level" (or in FAA surveying terminology "above North American Vertical Datum of 1988" or "above NAVD 88"). Elevations should NOT be submitted in reference to the Port of Oakland datum or any other datum.

Complex structures: FAA Form 7460 requires project sponsors provide one elevation (above mean sea level) and one latitude/longitude coordinate to describe the proposed project. However, it is often difficult to describe more complicated projects, such as buildings, moveable gantry cranes, etc., with one elevation and coordinate. For these situations, it is recommended that the project sponsor file multiple forms to more fully define the project for the FAA to evaluate. For example, the project sponsor of a new building should file four separate forms with the four coordinates and four elevations for the four corners of the proposed building. For a movable crane, several forms should be filed with multiple coordinates and elevations defining the operating envelope of the crane. Each coordinate and associated elevation should be placed on a separate FAA Form 7460.

Getting help prior to submitting FAA Form 7460: The Aviation Planning and Development Department of the Port of Oakland is available to assist Port staff and project sponsors with understanding potential airspace issues and completing FAA Form 7460. We are pleased to review FAA Form 7460 prior to being submitted to FAA. Although we may be able to assist project sponsors in determining if a project might be an obstruction, the FAA is ultimately responsible for making this determination. For assistance, please contact:

Aviation Planning and Development

Mr. Hugh Johnson
Senior Aviation Project Manager
Port of Oakland
530 Water Street, 6th Floor
Oakland, CA 94607
(510) 627-1449
hjohnson@portoakland.com

File FAA Form 7460 early: Please understand that it might take the FAA up to about 2 months to complete an aeronautical study for your project to determine if it is an obstruction or hazard. Remember, your emergency is not the FAA's emergency.

Guarantee the maximum height of your construction/alteration within stated tolerances: The FAA will assume that maximum elevation that you provide on FAA Form 7460 is subject to error (e.g., survey or construction error), and will add some amount to the elevation provided to account for any potential error.

It is therefore recommended that the project sponsor guarantee the height of the proposed construction/alteration (on FAA Form 7460) within certain tolerances (e.g., plus/minus 3 feet, plus/minus 10 feet, plus/minus 20 feet). In certain instances (e.g., depending on how close the construction/alteration is to being considered an obstruction or hazard), the FAA may require a post-construction/alteration survey to verify that the maximum height stated on FAA Form 7460 is indeed what was constructed. For further information on tolerances, please refer to FAA Order 8260.19, Flight Procedures and Airspace, Appendix 2 (Obstacle Accuracy, Standards, Codes, and Sources).

Port permit requirements relative to FAA Form 7460: Prior to issuance of a Port of Oakland building permit, the Port requires that the project sponsor provide (1) a copy of the FAA Form 7460 filed with the FAA, and (2) the results of the FAA aeronautical study (i.e., the FAA Notice of Determination). Please note that any FAA Form 7460 prepared and submitted by a Port tenant must be signed and stamped by a registered professional engineer or land surveyor (in the State of California).

For further information on Port permit requirements, please contact the Port's Permit Coordinator:

Mr. Joe Marsh
Port of Oakland
530 Water Street, 2nd Floor
Oakland, CA 94607
(510) 627-1480
jmarsh@portoakland.com

Before issuing local Notices to Airmen (NOTAMs) for temporary crane operations, please obtain a copy of the contractor's original FAA Form 7460 and FAA Notice of Determination.

Please remind your tenants of this important Port permit requirement.

How to obtain FAA Form 7460: The most recent version of FAA Form 7460 can be obtained on the FAA's web site at www.faa.gov (search for Form 7460).

Disclaimer

The above information is believed to be accurate as of the date of this technical memorandum and is provided for educational purposes only. Please consult the latest version of 14CFR77 and instructions on FAA Form 7460. Also, please note that there may be other height restrictions for any particular site beyond those imposed by FAA (e.g., city general plans, local zoning ordinances, State requirements, county airport land use commission restrictions, etc.).



PORT OF OAKLAND

Exhibit G: Preliminary Utility Information

Exhibit "G"

Preliminary Utility Information

Utility services at Oakland International Airport are provided as follows:

Electricity- Provided by Port through Port infrastructure, billed to tenants at Port Rates (see attached sample rate schedule) based on metered usage. Rates and charges are subject to change.

Natural Gas - Provided by PG&E and billed directly to tenant.

Water- Provided by EBMUD and billed directly to tenant.

Sewer - Provided by EBMUD through City of Oakland/Port Infrastructure, billed to tenant as a pass-through charge based on tenant's water metered usage (see attached Excel spreadsheet)

The cost of service fee (sometimes referred to as a capacity fee) cannot be determined until detailed plans are submitted and reviewed. Generally, the cost of service fee will apply under certain conditions, including:

1. The design load is greater than the current infrastructure can support
2. There is a net projected increase to an existing connection (i.e. the current potable connection is 2 inch but the proposed project will require a 3 inch connection - the fee will be based on the 1 inch increase)
3. A brand new customer that requires a new service connection

PORT OF OAKLAND ELECTRIC RATE (Effective January 1, 2015)

| Rate Schedule | Charges | Aviation (all year around rates) |
|--|--|---|
| A | Electric Customer Charge Distribution (\$/kWh) Energy Charge (\$/kWh) State Energy Surcharge (\$/kWh) Environmental Surcharge City Electric User Tax | \$10.00 \$0.07895 \$0.13073 \$0.00029 2.85% 7.50% |
| B | Electric Customer Charge Distribution (\$/kWh) Energy Charge (\$/kWh) State Energy Surcharge (\$/kWh) Environmental Surcharge City Electric User Tax | \$15.00 \$0.07895 \$0.13073 \$0.00029 2.85% 7.50% |
| C Demand > 100 KW and < 500 KW | Electric Customer Charge Distribution (\$/kWh) Energy Charge (\$/kWh) Demand Charge (\$/kW) State Energy Surcharge (\$/kWh) Environmental Surcharge City Electric User Tax | \$125.00 \$0.03684 \$0.13073 \$4.63000 \$0.00029 2.85% 7.50% |
| OS Secondary Service Demand >= 500 KW and < 1,000 KW | Electric Customer Charge Peak Energy (\$/kWh) Partial-Peak Energy (\$/kWh) Off-Peak Energy (\$/kWh) Peak Demand (\$/kW) Partial Peak Demand (\$/kW) Maximum Demand (\$/kW) State Energy Surcharge (\$/kWh) Environmental Surcharge City Electric User Tax | \$600.00 \$0.15563 \$0.13169 \$0.11972 \$8.88000 \$2.03000 \$5.63000 \$0.00029 2.85% 7.50% |
| DP Primary Service Demand >= 500 KW and < 1,000 KW | Electric Customer Charge Peak Energy (\$/kWh) Partial-Peak Energy (\$/kWh) Off-Peak Energy (\$/kWh) Peak Demand (\$/kW) Partial Peak Demand (\$/kW) Maximum Demand (\$/kW) State Energy Surcharge (\$/kWh) Environmental Surcharge City Electric User Tax | \$600.00 \$0.14822 \$0.12542 \$0.11402 \$8.46000 \$1.94000 \$5.36000 \$0.00029 2.85% 7.50% |
| EP Primary Service Demand >= 1,000 KW | Electric Customer Charge Peak Energy (\$/kWh) Partial-Peak Energy (\$/kWh) Off-Peak Energy (\$/kWh) Peak Demand (\$/kW) Partial Peak Demand (\$/kW) Maximum Demand (\$/kW) State Energy Surcharge (\$/kWh) Environmental Surcharge City Electric User Tax | \$1,000.00 \$0.14822 \$0.12542 \$0.11402 \$7.28000 \$1.67000 \$4.62000 \$0.00029 2.85% 7.50% |

Port of Oakland
WATER and WASTEWATER RATES
 Effective July 1, 2014
 One-Month Billing

| WASTEWATER (WW)= (3) + (4) | | | |
|---|--------------------------|----------------------------------|-------------------|
| (3) WASTEWATER CHARGE: R1(S) - Non-Residential | | | |
| Monthly Total Minimum Charge= Service Charge+ SF Bay Commercial Pollu. Prevent. Fee+ Min. Treatment Charge | | | |
| Monthly Service Charge | SF Bay Commercial P2 Fee | Minimum Monthly Treatment Charge | AIRPORT (A) |
| \$7.13 | \$5.48 | \$7.20 | |
| Total Minimum Wastewater Treatment Charge Per Month | | | \$19.81000 |
| | | - "ST/ TT" Category | \$0.03017 |
| | | - "RT" Category | \$0.04340 |
| | | - "HT" Category | \$0.03090 |
| | | - "AT" Category | \$0.01860 |
| (4) Wastewater Treatment Flow Charge r\$/Cu.Ft.: | | - "CT" Category | \$0.01260 |

Hotel Site Utilities

Telecom points

- Telecom - Manhole
- Telecom - Fire Alarm Annunciator Station
- Telecom - Fire Alarm
- Telecom - Pull Box
- Telecom - Camera

Telecom lines

- Electric points
- Electric - Meter
- Electric - Box
- Electric - Manhole
- Electric - Pullbox
- Electric - Power Pole
- Electric - Vault
- Electric - Oil Sectionalizing Switch
- Electric - Substation/Switchgear
- Electric - Transformer

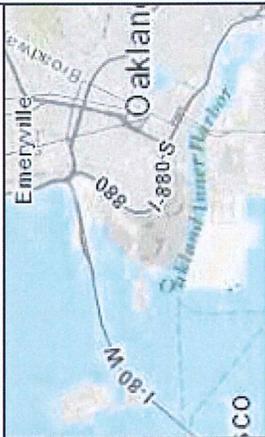
Electric line

- Electric - Low Voltage
- Electric - High Voltage
- Electric - High Voltage - PG&E
- Electric - Joint
- Electric - Unknown

Lighting points

- RDR
- REBCC
- Lighting - Electroler - 40ft to 50ft, flood lights

Notes:



X: 6,089,218.2
Y: 2,091,662.0

This map is a user-generated static output from an intranet map viewer, and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. THIS MAP IS NOT TO BE USED FOR NAVIGATION



101
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PORT OF OAKLAND

**Exhibit H: Link of Oakland Post Construction
Design Manual**

Exhibit "H"

Link to Port of Oakland Post Construction Design Manual

Exhibit "H" – Link to Port of Oakland Post Construction Design Manual

http://www.portofoakland.com/files/pdf/environment/cleanwater_manual.pdf



PORT OF OAKLAND

Exhibit I: Labor Peace Rule

Exhibit "I"

Labor Peace Rule

Hotel and Restaurant Development at OAK RFP

Exhibit "I" – Labor Peace Rule

I. DEFINITIONS

Whenever used in this Rule, the following terms shall have the meanings set forth below.

- (A) **"Agreement"** means the Lease.
- (B) **"Airport"** means Oakland International Airport.
- (C) **"Airport Director"** means the Director of Aviation at the Oakland International Airport.
- (D) **"Board"** means the Board of Port Commissioners.
- (E) **"Concessionaire"** means the party or parties to the Agreement, together with any such individual or business's tenants, lessees, subtenants, sublessees, successors and assigns where the rent or lease payment payable to the Port depends on the volume of revenues from services provided by such Concessionaire.
- (F) **"Executive Director"** means the Executive Director of the Port.
- (G) **"Labor Disruption"** means any concerted activity, including strikes, picketing, handbilling, boycotts of, or other interference with, any Concessionaire operations or those of any of its Subcontractors at the Premises or the operations of the Airport at the Premises.
- (H) **"Labor Organization"** means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with Concessionaires concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.
- (I) **"Labor Peace Agreement"** means a written agreement between a Concessionaire and a Labor Organization that prohibits a Labor Organization, its members and any employees represented by the Labor Organization from engaging in any Labor Disruptions (1) during any organizing, membership drive or negotiation of a collective bargaining agreement; and (2) in the case where the Labor Organization has entered into a collective bargaining agreement with the Concessionaire, during the entire term of the Agreement.
- (J) **"Port"** means the City of Oakland, a municipal corporation acting by and through its Board of Port Commissioners.
- (K) **"Premises"** means the premises defined in the Agreement.
- (L) **"Rule"** means this Labor Peace Rule.

- (M) **“Subcontractor”** means any person or business entity, not an employee that enters into a subcontract, sublicense, or sublease or similar agreement with a Concessionaire to perform duties within the Premises related in any way to the Agreement.

II. REQUIREMENT TO KEEP LABOR PEACE AND PREVENT LABOR INTERRUPTIONS

(A) Concessionaire Duties

- (1) Prior to entering into the Agreement, a Concessionaire shall enter into a Labor Peace Agreement with any Labor Organization that has requested such a Labor Peace Agreement. The Concessionaire shall enter into the Labor Peace Agreement within thirty (30) days from the request.
- (2) The Concessionaire shall require its tenant, lessee, subtenants, sublessees, successors, and assigns to include in the sublease or similar agreement a provision to comply with the requirements of this Rule.
- (3) Concessionaire agrees that the Port has a proprietary interest in the timely placement of Concessionaire and its operations under the Agreement under a Labor Peace Agreement. Concessionaire acknowledges and agrees that undue delay in reaching a Labor Peace Agreement with a Labor Organization would interrupt the provision of services to Airport passengers and subject concessions to Labor Disruptions.
- (4) In the event that a Concessionaire is unable to negotiate a Labor Peace Agreement with any Labor Organization within the thirty (30) day period set forth in Section II(A)(1) above, it may request to be excused from such obligations with respect to that Labor Organization by delivering a written request to the Executive Director. Upon the receipt of the written request from the Concessionaire, the Executive Director may appoint a hearing officer (who shall not be an employee of the Port working at the Airport) who shall hold an informal hearing after notice to the Concessionaire and the subject Labor Organization. The Concessionaire may be relieved of and excused from its obligations under Section II(A)(1) with respect to the subject Labor Organization if the hearing officer finds, after holding the noticed hearing, that:
 - a. the Concessionaire has attempted to reach a Labor Peace Agreement with the subject Labor Organization, and
 - b. the Labor Organization has (i) refused to negotiate to reach a Labor Peace Agreement, or (ii) placed condition(s) on Labor Peace Agreement that are arbitrary and capricious.

The findings of the hearing officer shall be final and may be based on any evidence or fact he or she deems relevant or credible whether or not the Concessionaire or subject Labor Organization presented evidence or appeared at the hearing. The provision of a hearing is at the discretion of the Executive Director to facilitate the Port’s proprietary interest in the

timely compliance with the Rule. This Section II(A)(4) neither implies any legal duty of the Port nor confers any constitutional, legal, or contractual right of the Concessionaire to enter into the Agreement or of any party to contest the findings of the hearing officer in court or otherwise.

(B) Airport Director Duties

- (1) The Concessionaire must abide by the requirements imposed under Section II(A) of this Rule as a condition of entering into or modifying the Agreement.
- (2) The Airport Director shall not enter into or recommend to the Board the Agreement with a Concessionaire without finding that (a) the Concessionaire has entered into a Labor Peace Agreement with all Labor Organizations that, to the actual knowledge of the Port, has requested a Labor Peace Agreement with the Concessionaire, (b) the Concessionaire is excused from compliance pursuant to Section II(A)(4) above, or (c) that any exemption from this Rule as set forth in Section II(D), below, applies.
- (3) The Airport Director shall grant exemptions from this Rule as set forth in Section II(D), below.

(C) Labor Organization Duties

- (1) Any Labor Organization seeking enforcement of this Rule must request a Labor Peace Agreement with a Concessionaire under provisions of this Rule and must submit to the Airport Director a copy of the written request it has sent to the Concessionaire showing the date of the request and specifying the agreement, subcontract, sublicense, sublease, or similar agreement related to the Agreement with respect to which the request is made.
- (2) Any Labor Organization seeking enforcement of this Rule shall not engage in Labor Disruptions at the Port in violation of any applicable Labor Peace Agreement.

(D) Exemptions

The provisions of this Rule shall not apply to any of the following:

- (1) A bargaining unit of any Concessionaire which has already recognized a Labor Organization for that bargaining unit;
- (2) A Labor Organization that has not submitted a written request to enter into a Labor Peace Agreement to a Concessionaire covered under this Rule or that has not submitted evidence of such written request to the Airport Director as set forth in Section II(C)(1) of this Rule;
- (3) Any Concessionaire whose operations at the Airport are subject to the Railway Labor Act either by final decision by a court or agency of competent jurisdiction, or by mutual agreement between the Concessionaire and a Labor Organization which is the exclusive bargaining representative of its employees. In such cases, the Labor Peace Agreement shall be voluntary;

- (4) A subcontract, sublicense, sublease, or similar agreement related to the Agreement under which the Concessionaire does not operate on a regular basis with a defined complement of employees within the Premises;
- (5) Any agreement between the Airport and a public agency; or
- (6) Any subcontract, sublicense, sublease, or similar agreement related to the Agreement where the Airport Director determines that the risk to the Airport's financial or other nonregulatory interest resulting from labor/management conflict is so minimal or speculative so as not to require a Labor Peace Agreement to achieve the Airport's proprietary, investment, or other nonregulatory interest.

III. ENFORCEMENT

- (A) The Airport Director or his/her designee shall investigate complaints alleging that this Rule has been violated, and shall take any action necessary to enforce compliance, including referring such violation to the Port Attorney for civil action.
- (B) In addition to any other remedies available to the Airport, the Port may terminate the Agreement upon thirty (30) days' notice to the Concessionaire to cure its breach where the Concessionaire has failed to (1) enter into a Labor Peace Agreement as required by this Rule or (2) include in a sublease or similar agreement the provision requiring compliance with this Rule as required by Section II(A)(2) of this Rule.
- (C) Where a Concessionaire has failed to prevent a Labor Disruption that is directly or indirectly caused by the Concessionaire's violation of this Rule or breach of its obligations under the Agreement, or by its violation of laws or of rules and regulations of the Port, the Port may consider the Concessionaire in breach of the Agreement, provide concession services through means or person other than breaching Concessionaire, and terminate the Agreement upon thirty (30) days' notice to the Concessionaire to cure its breach.
- (D) Any challenge to the applicability of this Rule to a particular Concessionaire or Labor Organization shall be brought to the Board only after first seeking an exemption from the Airport Director as provided for in this Rule. Any such challenge must be commenced with the Board within 15 days after notification that such exemption has been denied by the Airport Director.

IV. CONSTRUCTION

Nothing in this Rule shall be construed as requiring any Concessionaire to change the terms and conditions of employment for its employees, recognize a Labor Organization as the bargaining representatives for its employees, adopt any particular recognition process, or enter into a collective bargaining agreement with a Labor Organization. Nothing in this Rule permits or requires the Port or any Concessionaire to enter into any agreement in violation of the National Labor Relations Act of 1935. Provisions of this Rule shall be interpreted to achieve the Port's proprietary interest in preventing Labor Disruptions. This Rule shall not apply to any subcontract, sublicense, sublease, or similar agreement related

to the Agreement in which the Port's proprietary interest in preventing Labor Disruptions is so minimal or speculative so as not to warrant concern for the Airport's proprietary, investment, or other non-regulatory interest.

V. SEVERABILITY

If any part or provision of this Rule, or the Application thereof to any person, business entity or circumstance, is held invalid by any court of competent jurisdiction, the remainder of this Rule including the application of such part or provisions to other persons, business entities or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this Rule are severable.



PORT OF OAKLAND

Exhibit J: Preliminary Developable Heights Analysis

Exhibit "J"

Preliminary Developable Heights Analysis

OAKLAND INTERNATIONAL AIRPORT PROPOSED HOTEL DEVELOPMENT 3D RENDERINGS



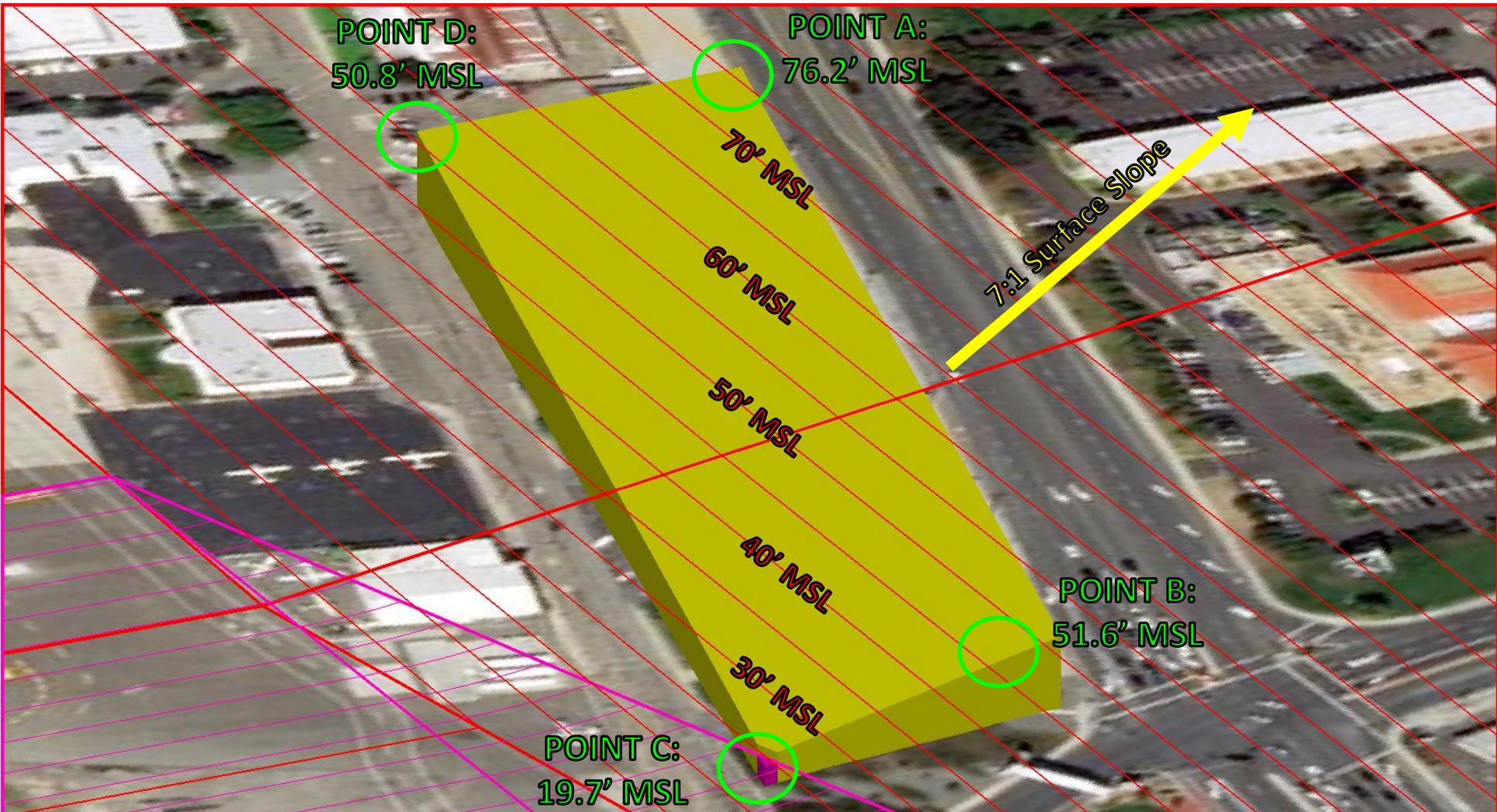
FEBRUARY 20, 2018





PART 77 TRANSITIONAL SURFACE &
TERPS DEPARTURES SURFACE ELEVATIONS
OVER HOTEL DEVELOPMENT SITE

Controlling Airspace Surfaces: TERPS Departure Surface & Part 77

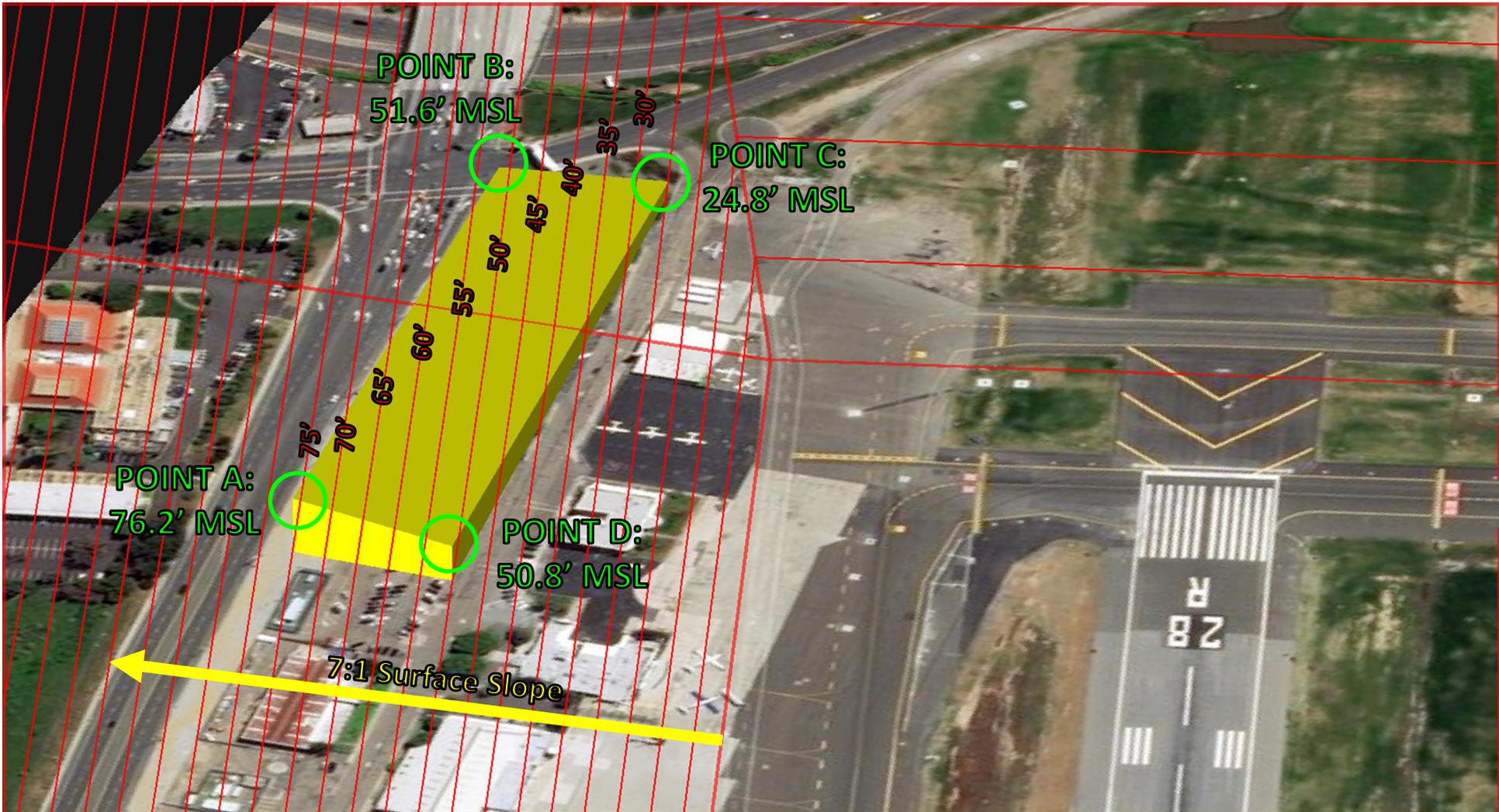


Note: TERPS departure surface is the lowest controlling surface over Point C of the proposed hotel site development. All elevations are depicted as feet above mean sea level (MSL). Ground elevation is approximately 5 feet MSL at the site.



PART 77 TRANSITIONAL SURFACE
OVER HOTEL DEVELOPMENT SITE

FAR Part 77 Allowable Development Heights

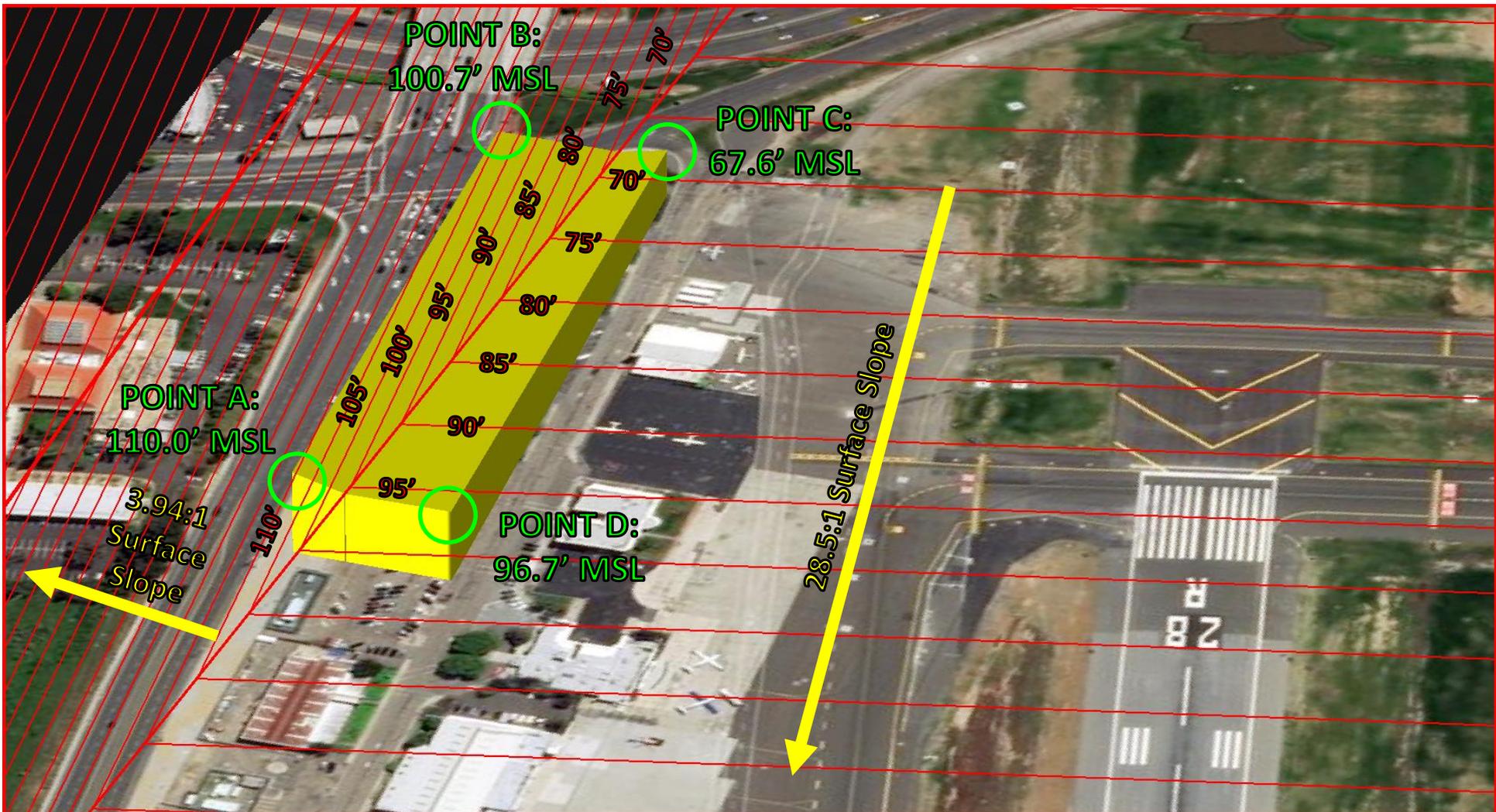


Note: FAR Part 77 transitional surface is the lowest controlling surface over the proposed hotel site development with the exception of Point C as demonstrated in Slide 3. All elevations are depicted as feet above mean sea level (MSL). Ground elevation is approximately 5 feet MSL at the site.

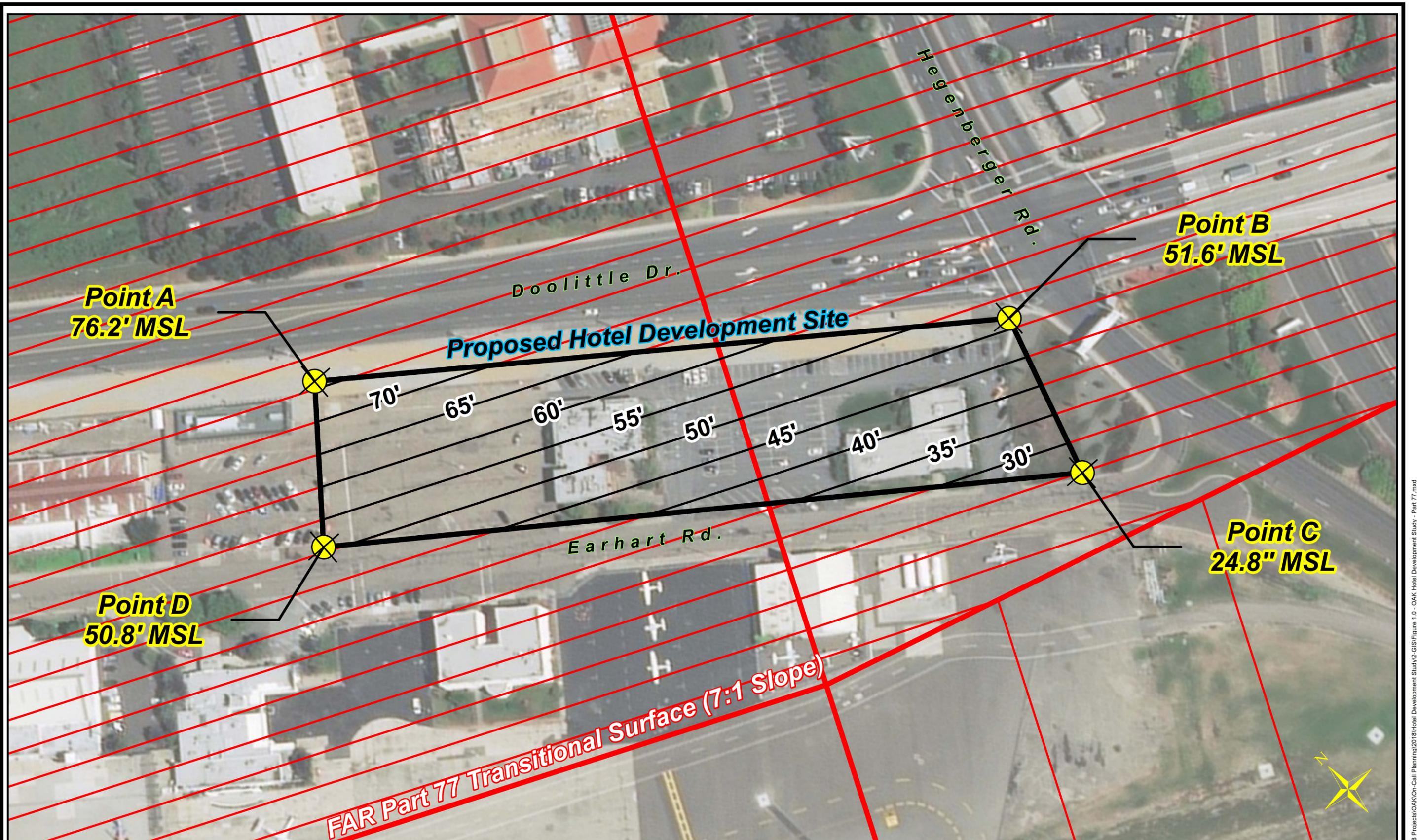
A faint, light blue world map is visible in the background of the slide, centered behind the text.

TERPS CAT I ILS MISSED APPROACH SURFACE
OVER PROPOSED HOTEL SITE

TERPS Allowable Development Heights



Note: Surface depicted is the TERPS ILS CAT I missed approach surfaces over the proposed hotel site development. I elevations are depicted as feet above mean sea level (MSL). Ground elevation is approximately 5 feet MSL at the site.



**Proposed Hotel Site Development
Developable Heights Analysis**

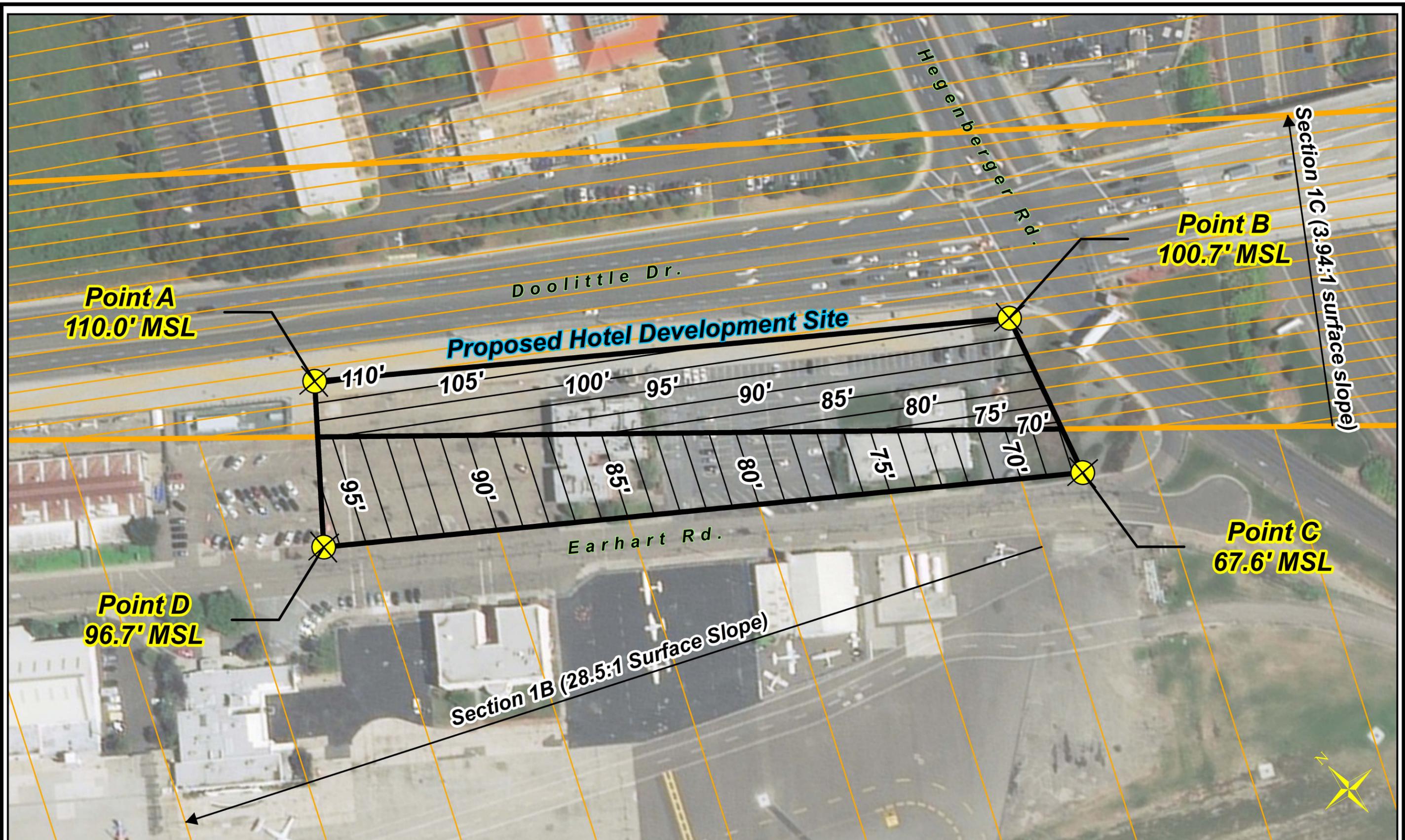
FAR Part 77 Transitional Surface



DATE: 2/16/18

FIGURE 1.0

DRAWN BY: JBT



**Proposed Hotel Site Development
Developable Heights Analysis**

TERPS CAT I ILS Missed Approach



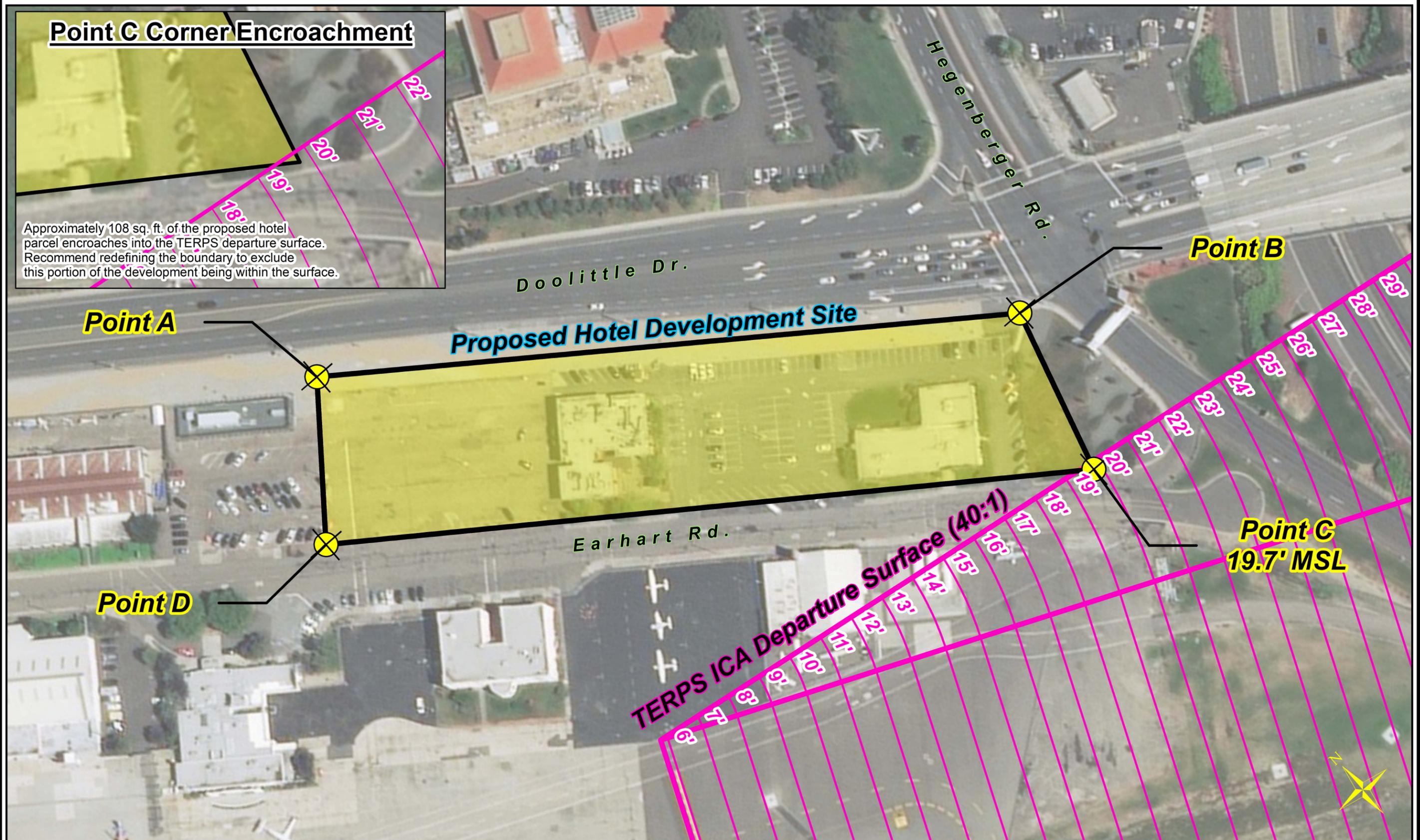
DATE: 2/16/18

FIGURE 1.1

DRAWN BY: JBT

Point C Corner Encroachment

Approximately 108 sq. ft. of the proposed hotel parcel encroaches into the TERPS departure surface. Recommend redefining the boundary to exclude this portion of the development being within the surface.



**Proposed Hotel Site Development
Developable Heights Analysis**

TERPS Departure Initial Climb Area



DATE: 2/16/18

FIGURE 1.2

DRAWN BY: JBT