

**FOOD AND BEVERAGE CONCESSION OPERATOR and
LEASE AGREEMENT**

This Agreement dated as of _____, 20__ (“Effective Date”) is made by and between the County of Sonoma, a political subdivision of the State of California (“County”) and Food Maker, LLC, a California limited liability that is also known as Apple Spice (“Operator”). County and Operator are sometimes collectively referred to herein as the “Parties”.

RECITALS

This Agreement is made with reference to the following facts and objectives:

WHEREAS, County is owner and proprietor of the Charles M. Schulz-Sonoma County Airport (“Airport”) located in Sonoma County, State of California, and operates the same for the promotion, accommodation, and development of air commerce and transportation.

WHEREAS, Operator is engaged in the management and operation of a food and beverage enterprise serving the public and desires to conduct such business at the Airport.

WHEREAS, the Airport solicited bids for operating a limited-service restaurant (without seating) in the terminal and awarded the same to Operator for the non-exclusive right to operate a limited-service restaurant on the terms and conditions advertised in the request for proposal and contained in this agreement (“Agreement”).

WHEREAS, at the Request of the Airport, Operator has been operating a temporary limited-service area in Concourse B while the permanent limited-service restaurant was constructed as part of the Airport’s terminal expansion project. The construction is now complete, and the Operator is ready to occupy the permanent location.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

1. LEASED PREMISES

A. Definition of Leased Premises

County grants to Operator the non-exclusive right and privilege to lease, occupy, equip, furnish, maintain and conduct its operations of a full-service food and beverage restaurant concession within a six hundred (619±) square foot portion of the Airport terminal comprised of interior restaurant operations The entire Leased Premises is shown on Exhibit “A” attached hereto and made a part hereto.

B. Re-Measurement of Leased Premises

At any time and from time to time during the term of this Agreement, County may conduct a space audit to which County re-measures the Leased Premises using the Airport’s then-current measurement specifications, and in such event, the Agreement terms based on square footage shall be deemed automatically adjusted to reflect such re-measurement. Only if such re-measurement results in a change in the total square footage of the Premises of more than ten percent (10%) will rent be adjusted to reflect such re-measurement.

C. Acceptance of Leased Premises and Initial Improvements

The Leased Premises are rented in their current “as is” new condition to Operator with the following improvements:

The Airport participated in the initial improvement costs by constructing the shell of the Leased Premises. The total construction cost of the Leased Premises was approximately \$420,000. The Airport’s share of this construction cost is fifty-three percent (53%) and the Operator’s share is forty-seven percent (47%), rounded to \$200,000. Airport has agreed to finance Operator’s portion during the term of this lease at a three percent (3%) interest rate. Operator shall pay the Airport, in one-hundred twenty (120) monthly installments of \$1,931.21 each month, for the ten-year term of this Agreement. The Airport shall retain ownership of all improvements at the end of the term unless specifically excluded from the improvement cost and approved in writing by the Airport Manager.

If Operator wishes to construct and/or install additional improvements to the Leased Premises, as stated in Section 15, Alterations, of this Agreement, Operator will submit plans and/or drawings of any and all improvements. Such plans must be approved by the Airport in writing in advance of permits and/or construction of improvements. The Leased Premises are subject to current building codes and Operator agrees to conform to all laws, rules, and regulations. Operator shall obtain building permits, if required, for any and all alterations to the Leased Premises.

D. Relocation, Expansion, Contraction

County may require that (i) Operator relocate and surrender all or part of the Leased Premises, and/or (ii) the Leased Premises be contracted or expanded. County shall give notice with a description of the relocation or the Leased Premises change, as applicable; the approximate modification effective date (“Modification Date”) thereof; and with respect to a relocation, the location of comparable on-Airport replacement premises. The notice shall be given no less than six (6) months prior to the Modification Date.

Relocation

With respect to a relocation, if the replacement premises are deemed unsatisfactory to Operator, then Operator may terminate this Lease by giving notice thereof to County within thirty (30) days after the notice is given. In the event Operator gives such notice of termination, then this Agreement shall terminate no later than the Modification Date, and on such date, Operator shall surrender the Leased Premises in the condition required by this Agreement. If Operator does not terminate this Agreement pursuant to this section, Operator shall surrender the Leased Premises and relocate to the replacement premises on a date no later than the Modification Date. In the event of a relocation pursuant to this section, Operator shall refurbish, redecorate, and modernize the interiors and exteriors of the replacement premises, in a manner in such that the replacement premises are of at least the same quality as the original premises. Once the remodeling of the replacement premises is completed and County has approved the work, County will reimburse Operator for all reasonable costs of remodeling the replacement premises and moving its merchandise and other personal property to the replacement premises from the original Leased Premises; provided that in no event will County be required to reimburse Operator for more than the maximum amount specified. As part of Airport's approval of Operator's plans and specifications and its budget for remodeling, County may specify a maximum dollar amount to be reimbursed. County may, in County's sole discretion, make such reimbursement by issuing Operator a rent credit. In no event will County be obligated to pay or reimburse Operator for any other costs or expenses, including business interruption costs.

1. Leased Premises Change

With respect to a Leased Premises change where the aggregate square footage of the original indoor Leased Premises were deemed to be expanded or contracted by more than ten percent (10%), Operator may terminate this Agreement by giving notice to County within thirty (30) days after notice is given. In the event Operator gives such notice of termination, then this Agreement shall terminate on the Modification Date, and on such date, Operator shall surrender the Premises in the condition required below. If Operator does not terminate this Lease pursuant to the foregoing, Operator shall accept that the Leased Premises are expanded or contracted as described in the notice by the date described therein. Once the expansion/contraction work is completed and County has approved the work, County will reimburse Operator for all reasonable costs of the expansion/contraction work up to the specified maximum reimbursement amount. As part of Airport's approval of Operator's plans and specifications and budget for its expansion/contraction work, County may specify a maximum reimbursement amount. County may, in County's sole discretion, make such reimbursement by issuing Operator a rent credit. In no event will County be obligated to pay or reimburse Operator for any other costs or expenses, including business interruption costs.

E. Damage to Leased Premises and/or Airport

1. If the Leased Premises are partially damaged by fire, the elements, the public enemy, or other casualty, but not rendered untenable, County may elect either (a) to terminate this Agreement immediately, or (b) repair and reconstruct the shell of the Leased Premises. If County elects to repair the shell outlining the Premises, the same shall be repaired or reconstructed by County at its own cost and expense, Operator shall be responsible for reconstruction, repair and/or replacement to its improvements, furniture and fixtures. Except as otherwise provided in this Agreement, if the entire Leased Premises, or any portion thereof, is rendered untenable or unusable because of the condition thereof, and County does not elect to immediately terminate this Agreement, there shall be a reasonable and proportionate abatement of the rentals, fees and charges provided for herein during the period that the same are so untenable or unusable.
2. In the event of damage to any part of the Airport, Operator shall assist the Airport in determining the cause of damage to County property. Should any part of the facilities or equipment be determined to have been damaged as the result of any act or omission of Operator, repair or replacement will be undertaken by County on Operator's behalf and the cost of such repair or replacement will be billed to Operator. Operator assumes full and exclusive responsibility and liability for any and all damage or injury to any of Operator's personal property, equipment, fixtures, and facilities, at, in and about Airport and the Leased Premises, and for any and all personal property belonging to others in Operator's custody or possession at the Airport and the Leased Premises, with the sole exception and exclusion of such damage or injury, if any, caused solely by negligent or willful misconduct of County.

2. OBLIGATIONS OF OPERATOR TO OPERATE A FOOD AND BEVERAGE CONCESSION AT THE AIRPORT

Operator agrees to provide a limited-service food and beverage concession at the Airport in accordance with this Agreement and shall operate as provided herein in the Leased Premises during the term of this Agreement and for no other use or purpose. Operator shall not, at any time throughout the term of this Agreement, abandon any portion of the Leased Premises or cease operating therein without the prior written consent of the Airport.

A. High Quality Operation

Operator shall operate a limited-service restaurant in a quality manner, in accordance with high standards for this type of service within the travel and hospitality industry while meeting all applicable local, state and federal requirements and laws for operating a food

and beverage establishment at the Airport. Service shall be prompt, clean, courteous, professional, efficient, high quality, and adequate to meet all reasonable demands for such service at the Airport.

1. Illness Prevention

Sanitation is critical to reduce potential exposure to passengers and employees of viruses and other transmissible and food borne diseases. It is imperative that Operator, their employees, and contractors fully follow all procedures for layout, social distancing, employee screening, masking, as well as cleaning and sanitizing all facilities at all times as recommended or ordered by public health officials.

B. Airline Meal Vouchers

Operator shall work with airlines to honor meal vouchers provided by airlines and set up and manage associated accounts payable records to be billed to airline.

C. Adequate Inventory and Offerings

Operator, at its own cost and expense, shall maintain an adequate number of quality food and beverage items for sale to reasonably meet the public's demand at all times during operating hours.

- The menu may include options for those with special dietary needs such as gluten-free, vegetarian, and vegan options.
- The Airport is governed by federal regulations and therefore the sale of Cannabis and/or CBD products is prohibited.
- All alcohol handling and sales must be in full compliance with local, state, and federal regulations. Awareness of FAA regulations regarding carry-on alcohol is required. All alcohol sales require the appropriate State of California Alcohol Beverage Control license for operating on government property.
- No selling of items without the expressed written permission of the Airport Manager or designee.

D. Operator Provided Equipment

Operator, at its own cost and expense, shall provide all equipment, fixtures, decorations, materials and supplies which Operator may need to conduct operations in a business-like manner, all of which shall be of high quality, safe, modern in design, attractive in appearance and in keeping with the general architecture and decor of the Airport terminal facilities, and all of which shall be subject to written approval by the Airport prior to installation.

E. Prices

Operator's prices for food and beverages sold in the Leased Premises shall be the same or comparable to prices found in Operator's menu, if any, at Operator's other food and

beverage facilities, or as determined by Airport to be comparable, and shall otherwise comply with the industry “street pricing program”. As used herein, the price shall be deemed “comparable” if it is no more than ten percent (10%) higher than the price for the comparable item at Operator’s other off-Airport locations or other similar locations as determined by the Airport. For purposes of this section, if Operator is a licensee of a restaurant concept, then the street pricing comparison shall be to other restaurants with the same concept operated by the licensor or other licensees. Stadiums, entertainment venues, resorts, hotels and any venue that has a captive audience may not be used for comparison.

F. Hours of Operation

Operator's food and beverage concession shall remain open to serve the public 365 days per year. Operator shall open and commence operations at least two (2) hours prior to the airline(s) outbound scheduled departures, accommodating for schedule changes, modified by the airline(s) periodically, and remain until all passengers depart (excluding overnight irregular operations). The airlines’ schedules changes frequently and Operator will adjust its operating hours to accommodate all inbound and outbound airline schedules. The minimum operating hours, regardless of airline schedules, shall be 8:00 am to 5:00 pm.

Operator shall maintain a ninety-five percent (95%) compliance (or better) in being open and operational for food and beverage service to all outbound flights occurring at the Airport within every thirty (30) day period.

1. Liquidated Damages

The parties hereby agree and acknowledge that the unavailability of Operator’s services for food and beverage operations is detrimental to the reputation and efficient function of the Airport, and will cause damage to the business of the Airport in the form of lost customers and lost revenue. The parties further agree that calculation of the monetary loss to County that will occur as a result of such unavailability of Operator’s services to air travelers is impracticable. If, upon review of Operator’s operational hours by the County, it is determined that Operator’s operational hours were not sufficient to achieve the aforementioned ninety-five percent (95%) minimum compliance rate, County shall provide Operator a written warning that failure to rectify such insufficient hours of operation within thirty (30) days of notice (“Grace Period”) shall result in the accrual of liquidated damages pursuant to this section.

County and Operator agree that the amount of \$200.00 per occurrence of the closure of Operator’s food and beverage operations during any hours as defined in this section, is a reasonable estimate of the actual damages to County arising out of that

failure. Operator shall pay to County, as additional rent, the amount of \$200.00 per occurrence of the closure of Operator’s food and beverage concession during scheduled hours that occurs after the Grace Period, due and owing by the date in the notice. The imposition of liquidated damages by the County pursuant to this section is in addition to any other remedies set forth in this Agreement and shall not prevent County from exercising its right to declare Operator in default pursuant to Section 22, Termination by Non-Performance. County and Operator agree that Operator must continually operate during all required hours for a period of three (3) months, after any missed required hours, to be entitled to a new Grace Period before liquidated damages are again assessed.

By their initials below, each party acknowledges they have read and understand the provision of this section and acknowledges and agrees that the liquidated damages set forth herein are a reasonable estimate of the actual loss to County they are intended to represent.

Operator

County

G. PERSONNEL

1. Operator shall, at all times, maintain a qualified, competent, professional, and experienced staff that shall be authorized to represent Operator.
2. Operator's employees shall be courteous, efficient, neat and clean in appearance. Operator shall not employ any persons in or about the Airport who shall use improper language or act in a loud, boisterous, or otherwise improper manner. Upon written notification to Operator that any person employed by Operator at the Airport, is, in the County's opinion, disorderly, discourteous, unkempt, or otherwise unsatisfactory, immediate and appropriate corrective action shall be taken by Operator to ensure that such unsatisfactory and unacceptable conduct does not reoccur.
3. Operator and Operator’s employees entering into the Premises shall be required to attend all Airport defined mandatory training (e.g. fire extinguisher handling and operation, human trafficking, etc.). Said training will be provided by the Airport at no cost to the Operator. Operator is responsible to schedule such training for each employee during the term of this Agreement, and ensure that new hires are trained as directed by Airport. At no time shall untrained employees be left in charge without express written permission from Airport. Operator shall maintain training records for each employee and allow periodic inspection by Airport.

H. PROHIBITED ACTIVITIES AT AIRPORT

1. Parking

Operator shall not permit or allow any vehicle(s) that belongs to or is/are controlled by Operator or Operator's employees, suppliers, shippers, customers, or invitees to be loaded or unloaded in areas other than those designated by Airport for that particular activity. Operator and employees shall park only in designated areas and must follow all parking regulations. Employee parking is available in designated areas and permits may be obtained by the Airport's parking management vendor.

2. Vending

Operator shall not use or permit the use on the Leased Premises of any vending machines, newspaper racks, pay telephones, or other coin, token, or credit card-operated devices.

3. Safety

Operator shall not place any loads upon the floor, walls, or ceiling which endanger the structure or obstruct the sidewalk, passageways, or emergency ingress/egress areas, in front of, within, or adjacent to the terminal. Operator shall immediately rectify any hazardous and potentially hazardous conditions (e.g. spills, etc.).

4. Advertising

Operator shall not permit or use any advertising or promotional medium that may be seen, heard, or otherwise experienced outside the Leased Premises (such as signs, searchlights, barkers, or loudspeakers).

5. Insurance and Nuisance

Operator shall not cause or permit anything to be done in or about the Leased Premises, or bring or keep anything thereon, which might (i) increase in any way the rate of fire insurance on the Airport or any of its contents; (ii) create a nuisance; (iii) in any way obstruct or interfere with the rights of others in the Airport or injure or annoy them.

6. Solicitation

Operator shall not engage in any activity on the Airport for the recruitment or solicitation of business.

7. Reputation and Appearance

Operator shall not do or permit to be done anything in any way tending to injure the reputation of County or Airport and their appearance thereof.

8. Smoking

Operator shall not permit smoking in any location other than the designated smoking premises.

9. Prohibited Items and Activity

Operator shall not allow any prohibited items or illegal activity on the LPased premises

3. NONEXCLUSIVE USE

It is expressly provided that the rights and privileges granted hereunder are non-exclusive, and nothing contained herein shall preclude the County from entering into an agreement with any other parties during the term of this Agreement for the sale of food and beverage items in any part of the Airport of the same or similar type which Operator is permitted to sell hereunder, whether such agreements are awarded competitively or through negotiations and whether or not the terms of such agreements are more or less favorable than the terms of this Agreement.

4. TERM

The term of this Agreement shall commence on January 1, 2024 (“Commencement Date”) and end on December 31, 2033. This Agreement may also terminate in accordance with Section 22, Termination by Non-Performance.

5. RENT AND FEES

A. Commencement of Rent Payments.

Rent payments shall begin on the Commencement Date.

B. Minimum Monthly Square Footage Rent

Operator shall pay to County, as compensation for the square footage granted under the Agreement, a minimum monthly square footage payment equal to the rate listed in the Airport’s rates and charges for terminal rent (“Minimum Monthly Square Footage Rent”). At the Commencement Date of this Agreement, the monthly square footage rent is \$2,433. This monthly rent includes common area expenses, restrooms, and amenities associated with and located near the Leased Premises.

1. The Minimum Monthly Square Footage Rent shall increase no more than once per year in accordance with the Airport’s published rates and charges (“Rates and Charges”). The Rates and Charges are published annually and increases may or may not occur on a yearly basis. If the Rates and Charges

published rate is not increased in a particular year, then there will be no increase.

C. Percentage Fee above Minimum Monthly Square Footage Rent

For gross sales in excess of 1000% of the minimum monthly square footage rent (e.g. \$24,330 for the first Agreement year), Operator shall pay to County, as compensation for the concession privileges granted under this Agreement, a percentage fee equal to 10% of Gross Receipts for food and non-alcoholic beverages, alcoholic beverages, and the remaining Gross Receipts earned by Operator (“Percentage Fee”). No Percent Fee is due on sales of Airport-branded merchandise. Said Percentage Fee shall be calculated in accordance with Section 6, Definition of Gross Receipts, of this Agreement.

All payments and fees shall be due and payable monthly in accordance with the provisions of Section 7, Payment Procedure, of this Agreement.

6. DEFINITION OF GROSS RECEIPTS

A. Gross Receipts

Gross Receipts shall include, but shall not be limited to, any and all revenues received or derived by the sale of authorized items under Section 2, Obligations of Operator to Operate a Food and Beverage Concession at the Airport, and that are amended from time to time.

B. Gross Sales

Gross sales shall not be reduced by bank charges, uncollected or uncollectible credit accounts, charges made by collection agencies, bad debt losses, or any commission or other amount paid out or rebated by the Operator in respect to any rental or sale of goods or services.

C. Exclusion from Gross Receipts

Each exclusion from Gross Receipts shall be segregated in the Operator's monthly statement of gross receipts. The following are the only exclusions to the definition of Gross Receipts under this Agreement:

1. Any taxes now or hereinafter levied or imposed by any local, state, or federal law and paid by the customer and which are directly payable to the taxing or tax collecting authority by the Operator.
2. Sums received as insurance or otherwise for damage to inventory or other property of Operator.

3. Any sums received from the disposal of furniture, fixtures, equipment, and inventory.
4. Any California Redemption Value fee imposed on certain recyclable beverage containers.
5. Employee or Airport staff discounts or rebates, but only to the extent that Operator provides auditable proof to the County that the discounts or rebates are specifically attributable to customers at the Airport.

D. Installment or Credit Transactions

Each Transaction made on installment or credit shall be treated as a transaction for the full price in the month during which such charge or transaction occurs, regardless of when the Operator receives payment, whether full or partial.

E. Negative Transactions

In no event shall the Operator's Gross Sales from any transaction be negative in any revenue category for purposes of this Agreement.

7. PAYMENT PROCEDURE

A. Minimum Monthly Square Footage Rent

On or before the first day of each month, Operator shall pay the Minimum Monthly Square Footage Rent, in advance, without deduction or off-set.

B. Monthly Statement of Gross Receipts and Percentage Fee Payment

On or before the twentieth (20th) day of each following month, throughout the term of this Agreement, Operator shall deliver to County correct statements and all applicable fees as follows:

Operator shall submit for the preceding month, a statement of gross receipts in accordance with Section 6, Definition of Gross Receipts, of this Agreement. The statement shall be prepared and signed by Operator or his/her designated agent, and shall indicate:

1. The total Gross Receipts for the preceding month;
2. Deduction of the Minimum Monthly Square Footage Rent allowance for the preceding month. The amount to be deducted is based upon 1000% of the Minimum Monthly Square Foot Rent (e.g. \$24,330 for year one of this Agreement) and may adjust annually in compliance with Section 5.C. "Percentage Fee above Minimum Monthly Square Footage Rent.";
3. The Percentage Fee calculated for the total Gross Receipts for the preceding

month, (exclusions from Gross Receipts shall be itemized); and,

4. The total amount of fees due for the preceding month.

C. Place of Payment and Filing

Payments, together with the statements and records required herein shall be delivered to and filed with:

Charles M. Schulz – Sonoma County Airport
Attn: Accounts Receivable
2290 Airport Blvd.
Santa Rosa, CA 95403

County may change the designated place of payment and filing at any time upon ten (10) days written notice to Operator. Fee and charge payments may be made by check payable to the County of Sonoma. Operator assumes all risk of loss if payments are made by mail.

D. Form of Payment

All fees and charges shall be paid in lawful money of the United States of America, without offset or deduction or prior notice or demand. No payment by Operator or receipt by County of a lesser amount than the fees and charges due shall be deemed to be other than on account of the fees and charges due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as fees or charges be deemed an accord and satisfaction, and County shall accept such check or payment without prejudice to County's right to recover the balance of said fees or charges, or pursue any other remedy in this Agreement.

E. Charge for Late Payment

Operator hereby acknowledges that the late payment of fees or any other sums due hereunder will cause County to incur costs not contemplated by this Agreement, the exact amount of which will be extremely difficult to ascertain. Such costs include but are not limited to costs such as administrative processing of delinquent notices, increased accounting costs, etc.

Accordingly, if any payment of rent or fees of this Agreement, or of any other sum due County is not received by County by the due date as specified above in this section, a late charge of ten percent (10%) of the payment due shall be added to the payment, and the total sum shall become immediately due and payable to County.

Operator and County hereby agree that such late charges represent a fair and reasonable estimate of the costs that County will incur by reason of Operator's late payment. Acceptance of such late charges (and/or any portion of the overdue payment) by County shall in no event constitute a waiver of Operator's default with respect to such overdue

payment, or prevent County from exercising any of the other rights and remedies granted hereunder.

8. RECORDS AND ACCOUNTS

A. Records

Operator shall, at all times during the term of this Agreement, keep or cause to be kept true and complete books, records, controls and accounts of all financial transactions in the operation of all business activities, to be supported by source documents such as sales slips, cash register tapes, purchase invoices or other pertinent documents.

B. The Accounting Year

The accounting year shall be twelve (12) calendar months commencing on the first day of July and ending on the last day of June the following year, corresponding to the County's fiscal year.

C. Public Disclosure

Operator acknowledges that any and all of the "Financial Records" submitted to the County pursuant to this Agreement are of Public Record and subject to public inspection. Income tax returns, if submitted to the County pursuant to this Agreement, shall be treated by the County as Confidential Business Information and therefore shall not voluntarily be made available to the public for inspection.

9. AUDITS

All Operator's books of account and records and supporting source documents related to this Agreement or to business operations conducted within or from the Airport shall be made available to County upon reasonable notice. County shall, through its duly authorized agents or representatives, have the right to examine and audit said books of account, records, and supporting source documents at any and all reasonable times, upon prior written request, for the purpose of determining the accuracy thereof, and of the monthly statements of sales made and monies received. Income tax returns, if submitted to the County pursuant to this Agreement, shall be treated by the County as Confidential Business Information and therefore not subject to public inspection, subject to applicable law.

The full cost of said audit, as determined by County, shall be borne by Operator if either of the following conditions exists:

A. Underpayment

The audit reveals an underpayment of more than three percent (3.0%) between the fees due as reported and paid by Operator in accordance with this Agreement and the fees due as determined by said audit; and/or

B. Adequacy of Records

Operator has failed to maintain true and complete books, records, accounts, and supporting source documents in accordance with Section 8, Records and Accounts, Sub-section A, Records. The adequacy of records shall be determined solely by County in its reasonable discretion. Otherwise, County shall bear the cost of said audit, except expenses related to the audit of documents kept outside the limits of Sonoma County.

Upon the request of County, Operator shall promptly provide, at Operator's expense, necessary data to enable County to fully comply with any requirement of the State of California or the United States of America for information or reports relating to this Agreement and to Operator's use of the Airport. Such data shall include, if required, a detailed breakdown of Operator's receipts and expenses.

10. POSSESSORY INTEREST/TAXES

Pursuant to Section 107.6 of the California Revenue and Taxation Code, Operator's interest in the Premises may be subject to property taxation on the possessory interest created by this Agreement. Operator agrees to pay, before delinquency, all lawful taxes, assessments or charges, including taxes on Operator's possessory interest, which, during the term hereof, may be or become a lien or may be levied upon the real property, improvements or personal property situated upon the Premises, or upon the subject matter of this Agreement.

11. ASSUMPTION OF RISKS

Operator represents that Operator has inspected said Airport and Leased Premises, and all facilities thereupon and in connection therewith, and that Operator accepts the condition of same and fully assumes all risks incidental to the use thereof. The County shall not be liable to Operator for any damages or injuries to the property or person, or to the agents, employees or business visitors of Operator, which may result from hidden, latent or other dangerous conditions upon said Airport or Leased Premises, or which may result from the negligence of the County, its agents, officers or employees, or which may result from any condition of fire, construction, earthquake, flood, rainfall, or escape of water from any channel, regardless of the cause thereof.

12. LIABILITY: INSURANCE AND INDEMNIFICATION

A. Required Insurance Coverage

With respect to this Agreement, Operator shall maintain and shall require all of its contractors, consultants, and other agents to maintain insurance as described in Exhibit “B”, which is attached hereto and incorporated herein by this reference.

B. Indemnification

1. County its officers, agents, and employees, shall not be liable to Operator for any loss or damage to Operator or Operator’s property from any cause. Operator expressly waives all claims against County, its officers, agents and employees, for injury or damage to person or property arising for any reason, whether or not there is concurrent passive or active negligence on the part of County, unless such injury or damage is caused by or due to the sole negligence or willful misconduct of County.

2. Operator shall indemnify, defend, protect, hold harmless, and release County, its officers, agents, and employees, from and against any and all claims, loss, proceedings, damages, causes of action, liability, costs, or expense (including attorneys’ fees and witness costs) arising out of or in connection with the death of or injury to any person or persons, damage to or destruction of any property, or any other asserted liability, resulting in any manner and to any extent from any act, omission, or negligence of Operator, its officers, agents, contractors, subcontractors, employees, or invitees, whether or not there is concurrent or contributory passive or active negligence on the part of County, unless such injury, death, damage, or destruction is caused by or due to the sole negligence or willful misconduct of County. Operator agrees to provide a complete defense for any claim or action brought against County based upon Operator’s act, omission, or negligence. This indemnification obligation is not limited in any way by any limitation on the amount or types of damages or compensation payable by or for Operator under workers compensation acts, disability benefit acts, or other employee benefit acts.

3. Operator shall be liable to County for any loss of or damage to any of County’s property at the Airport arising out of or in connection with any act, omission, or negligence of Operator, its officers, agents, contractors, subcontractors, employees or invitees, unless such loss or damage is caused by or due to the sole negligence or willful misconduct of County.

13. UTILITIES

County shall provide heating, ventilation, and air-conditioning systems for the Leased Premises. County will use its best efforts to provide adequate levels of such services, taking into account Apple Spice Limited-Service Restaurant

availability of such utility service from County's commercial suppliers and prudent energy conservation measures. Notwithstanding the forgoing, County shall not be liable for damage resulting from the failure or inability to provide such utilities. Operator shall be responsible for the costs for water, electricity, gas, telephone or data services required or desired to be installed in the Leased Premises. Operator will be billed, by the Airport, for its annual sewer charges.

14. MAINTENANCE and CLEANLINESS

- A.** County agrees to keep the roof, exterior walls, HVAC systems, and basic electric distribution system of the Leased Premises in good repair during the term of this Agreement; provided however, that Operator shall be responsible for all damage to County's property caused by any act, omission, or failure to act by Operator, its agents or employees.
- B.** County agrees to provide janitorial services for the public areas of the Airport and to keep the restrooms adequately supplied and equipped. Operator will provide janitorial services to its Leased Premises and shall not use any services or supplies from County to maintain and clean them.
- C.** Operator shall ensure that all fats, oils, and grease generated or used in the Leased Premises shall be captured by grease traps and or filters. The Airport has installed a main grease trap for the Leased Premises in conjunction with other food and beverage operations. Operator will be responsible for frequently checking of their output, the amount of grease being captured by the Grease Intercept (GI) and to provide that information to Airport to estimate an average servicing frequency to maintain a max 80% capacity of collected grease in the GI. Operator is responsible for the proper understanding, training, and care of the GI system such that grease is captured and that no grease shall be allowed to enter the drain system that bypasses the GI. Operator is liable for any clean up, damage, or blockage from operator's use including any associated fees and cleanup costs. Grease shall never be allowed to enter the drain system that bypasses the GI or filters. Used cooking oil shall be removed in accordance with local health department regulations.
- D.** Operator shall exercise diligence with hood maintenance to ensure proper function and fire safety as per code. At a minimum:
- High heat type 1 hoods - grease filters cleaned (and possibly soaked) daily.
 - Lighter service type 1 hoods – grease filter cleaned no less than weekly.
 - Exhaust duct - cleaned no less quarterly.
 - Ansul fire suppression systems - serviced/maintained no less than every six months.
 - Make up air units filters and fans - inspected regularly, with filters changed when

- dirty
 - Prevention and or control to prevent grease on the roof.
- E. Operator agrees to keep all portions of the Premises clear and free of all litter, garbage, debris, and refuse, and to keep such Premises and area in an orderly and sanitary condition at all times, including maintaining compliance with any and all applicable laws and regulations related to the operations described in this Agreement. Operator shall be responsible for removal of litter, garbage, and refuse and dispose of it in the location and means as instructed by Airport.
- F. Operator shall be responsible to maintain compliance with local health codes at all times as it relates to proper rodent, vermin, and pest control and prevention. Such maintenance includes and is not limited to maintenance of screens, door gaps, holes, and open door conditions that open to the outdoors requiring air curtains. Part of the prevention protocol is that open food etc. shall be properly sealed and stored so as to discourage infestation pursuant to government health department standards. The lessee is responsible to be diligent in prevention and or eradication of the leased premises, all of which is to be coordinated with County. Special consideration shall be taken for the health and safety of children and pets in the methods and application of prevention and eradication.
- G. Operator shall be responsible for recycling all eligible materials under the County of Sonoma Solid Waste Program. Operator shall be responsible for removal of recyclable materials from the portion of the Premises utilized by Operator and placing in them in appropriate receptacles for collection.

15. ALTERATIONS

Operator shall make no structural alterations, additions, or improvements upon said Premises, without the prior written consent of the Airport other than those improvements described in Section 1, Leased Premises, of this Agreement. The approval of any alterations to the Premises shall be in the sole and absolute discretion of the Airport. Any alterations, additions, or improvements shall be at the sole cost and expense of Operator.

A. Midterm Refurbishment

If the total term of this lease is longer than ten years, Operator shall be required to refurbish the Leased Premises. Midterm refurbishments shall be in addition to customary maintenance and repair of the Leased Premises and shall be, at a minimum, equal to twenty-five percent (25%) of the initial capital investment. Operator shall prepare a midterm refurbishment schedule, with costs, and submit it to the Airport Manager at the beginning of the sixth lease year for approval. All

midterm refurbishment work shall be completed within six months at the end of the fifth lease year.

B. Ownership

All alterations, additions, or improvements attached to the Premises made by Operator shall be the temporary property of Operator, and considered part of the Premises. Unless otherwise instructed by County, all aforementioned alterations, additions, or improvements shall, at the termination of this Agreement, become the property of County and shall be surrendered by Operator with the Premises.

C. Removal

By delivery to Operator of written notice, not later than thirty (30) days prior to the expiration of this Agreement, County may require Operator to remove any alterations, additions, or improvements that Operator has made to the Premises by the termination of this Agreement. County may require the removal, at any time, of all or any part of any alterations, additions, or improvements made to the Premises by Operator without the required consent of the Airport and the restoration of the Premises to the condition thereof prior to the unapproved alterations, additions, or improvements.

D. Personal Property

All furniture, furnishings, articles of moveable personal property and equipment installed in or on the Premises by or for the account of Operator that can be removed without structural or other material damage to the Premises (all of which are herein called “Operator’s Personal Property”) shall be and remain the property of Operator and may be removed by Operator subject to the provisions of this Section 15, Alterations.

E. Surrender

Operator shall surrender the Premises with all improvements, parts, and surfaces clean and free of debris, and in good operating order, condition and repair, ordinary wear and tear excepted. Ordinary wear and tear shall not include any damage or deterioration that would have been prevented by good maintenance practice. Operator shall repair any damage occasioned by Operator’s installation, maintenance or removal of any alterations, additions, improvements, or equipment on the Premises. Trade fixtures installed by the Operator and necessary to Operator’s business shall remain the property of Operator and shall be removed by Operator within a reasonable period of time in a manner that shall not cause damage to the Leased Premises.

16. INSPECTION

It is agreed that County, its authorized agents, officers or employees, shall have the right to enter said Premises at all reasonable times for the purpose of inspecting the same and to make such repairs as County, at its own expense, may deem necessary to preserve County's reversion; but it is expressly agreed that Operator, at Operator's own cost and expense, shall comply with the provisions of Sections 14, Maintenance and Cleanliness, and 15, Alterations.

17. STORAGE AND DISCHARGE OF HAZARDOUS MATERIALS

- A. Operator shall not cause or permit any Hazardous Materials (as hereinafter defined) to be brought upon, kept or used in or about the Premises or the Airport by Operator, its agents, employees, contractors or invitees.
- B. If, as the result of an occurrence arising out of Operator's or its agents', subcontractors' or invitees' use or presence on the Premises, Hazardous Materials become present on the Premises after the Commencement Date which results in contamination, then Operator agrees to be responsible for any damages or clean-up occasioned thereby. Without limiting the foregoing, if the presence of any Hazardous Materials on the Premises during the term of this Agreement result in any contamination of the Airport, or otherwise results in the release or discharge on, under or from the Premises of Hazardous Materials, Operator shall promptly take all actions at its sole expense as are necessary to return the Airport to the condition existing prior to the introduction of any such Hazardous Materials to the Airport or to otherwise remove and/or abate the release or discharged Hazardous Materials; provided that Airport's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Airport, will not unreasonably interfere with the use and enjoyment of other portions of the Airport, and will be performed in accordance with all Hazardous Materials Laws. Upon the termination of this Agreement, Operator shall surrender the Premises to Airport free of any and all Hazardous Materials (except any Hazardous Materials existing on the Premises prior to the Commencement Date) and in compliance with all Hazardous Materials Laws.
- C. For the purpose of this section, the term "Hazardous Materials" includes, without limitation, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. §1801 et seq.), the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. §6901 et seq.), Section 25117 of the California Health & Safety Code, Section 25316 of the California Health & Safety Code, and in the

regulations adopted and publications promulgated pursuant to them, or any other federal, state, or local environmental laws, ordinances, rules, or regulations concerning the environment, industrial hygiene or public health or safety now in effect or enacted after this date.

18. ADVERTISING

Operator shall conform to the Sign Ordinance of the County of Sonoma, as amended, and obtain permits from the appropriate department of said County; in addition, all signs shall be approved by the Airport Manager and shall comply with Airport’s Advertising Policy. Operator shall not erect, maintain, or display any signs or other advertising at or on the Airport premises without first obtaining the written approval of the County through its Airport Manager.

19. PEACEABLE POSSESSION

County agrees that Operator, paying the fees and performing the covenants to be paid, observed, kept, and performed on Operator's part, shall and may, peaceably and quietly have, hold and enjoy said Premises during the term of this Agreement. Operator, in turn, agrees to quit and deliver up possession of said Premises peaceably and quietly at the conclusion of this Agreement.

20. NONDISCRIMINATION

Operator shall comply with all applicable federal, state and local laws, rules and regulations relating to non-discrimination in employment and services because of race, color, ancestry, national origin, religion, sex, marital status, sexual orientation, age, medical condition and handicap.

21. SUBLETTING AND ASSIGNMENT

In view of the fact that the Premises constitutes a major and indispensable component of the County of Sonoma’s Airport Master Plan and that, therefore, the identity of the Operator and Operator's experience and qualifications as a food and beverage operator are of the utmost concern to the County of Sonoma, Operator shall not assign its interest in this Agreement either voluntarily or by operation of law or sublease all or any part of the Premises or allow any other person or entity (except Operator's authorized representatives or employees) to occupy or use all or any part of the Premises.

22. TERMINATION BY NON-PERFORMANCE OR VIOLATION

A. Termination by County

This Agreement may be terminated by County for non-performance and/or violation of the terms and covenants between County and Operator. Notice of such of termination for non-performance and/or violation shall be delivered according to Section 27, Notices.

The termination shall be effective immediately upon receipt of notice, or on the date listed within the notice, which date shall not be more than thirty (30) days after the receipt of notice. County may terminate this Agreement upon the occurrence of any of the following events:

1. Violation of any County, state or federal health order.
2. If Operator receives a Sonoma County Health Department “red” closed placard as the result of a health inspection more than once during the term of the Agreement. Operator must notify Airport within three (3) business days of any failure to pass a Sonoma County Health Department inspection.
3. The failure of Operator to comply with any TSA and/or FAA security procedure, rule, or regulation in effect or which may become effective during this Agreement.
4. The failure of Operator to fulfill any obligation under this Agreement which endangers or threatens life or property, where such failure continues for a period of three (3) business days following written notice to Operator.
5. The abandonment of the Premises by Operator.
6. The failure of Operator to observe and comply with any applicable laws, covenants, or restrictions of record, building codes, regulations and ordinances in the occupancy and use of the Premises where the failure (a) constitutes a risk to health or safety, in the reasonable opinion of the County; or (b) continues for a period of more than ten (10) days following written notice to Operator.
7. The second failure, within six (6) months of any prior failure, to maintain a ninety-five percent (95%) compliance, or better, of food and beverage operations as defined in Section 2.E, Hours of Operation.
8. The second failure of Operator to make any payment of concession fees or any other amount required under this Agreement where such failure continues for a period of ten (10) days following written notice to Operator.
9. The failure to maintain all required insurance under Article 12 Liability: Insurance and Indemnification of this Agreement.
10. The occurrence of any of the following events, to the fullest extent allowable by law: (a) the making of any general arrangement or assignment for the benefit of creditors; (b) becoming a “debtor” as defined in 11 U.S.C.§101 or any successor statute thereto; (c) the appointment of a trustee or receiver to take possession of substantially all of Operator’s assets located at the Premises or Operator’s interest in this Agreement, where possession is not restored to Operator within thirty (30) days; the attachment, execution or other judicial seizure of substantially all of Operator’s assets located at the Premises or Operator’s interest in this Agreement,

where such seizure is not discharged within thirty (30) days; provided, however, in the event that any provision of this subparagraph is contrary to any applicable law, such provision shall be of no force or effect and shall not affect the validity of the remaining provisions.

B. Remedies

In the event of termination of this Agreement by County pursuant to this Article, Operator shall immediately surrender possession of the Premises to County. If Operator fails to immediately surrender possession of the Premises, County may pursue any lawful means to obtain possession from Operator. Further, in the event of such termination by County, County shall be entitled to recover from Operator:

1. The worth at the time of award of any unpaid fees and other charges which had been earned at the time of such termination; and
2. Any other amount necessary to compensate County for all the detriment proximately caused by Operator's failure to perform its obligations under this Agreement or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, any costs or expenses incurred by County in terminating this Agreement, maintaining or preserving the Premises after such default, preparing the Premises for re-letting to a new Operator and any repairs or alterations to the Premises.

C. Remedies Not Exclusive

No right or remedy herein conferred upon or reserved to County or Operator is intended to be exclusive of any other right or remedy, except as expressly stated herein, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter existing at law or in equity or by statute, except such rights or remedies as are expressly limited herein.

D. Waiver of Rights of Redemption

Operator hereby waives for itself and all those claiming under it all rights which it may have under any present or future constitution, statute, or rule of law (a) to redeem the Premises after termination of Operator's right of occupancy by order or judgment of any court or by any legal process or writ or (b) which exempts property from liability for debt or for distress for fees.

23. WAIVER OF DEFAULT / BREACH

County's failure to declare a default or breach on the part of Operator shall not be construed as a waiver thereof; nor shall any custom or practice, which may arise between the parties in the course of administering this instrument, be construed so as to waive or to lessen the right of County to

insist upon the performance by Operator of any term, covenant or condition hereof, or to exercise any rights given them on account of any such default. A waiver of any particular Breach or Default shall not be deemed to be a waiver of the same or any other subsequent Breach or Default.

24. BANKRUPTCY

It is agreed that in the event Operator shall be adjudged bankrupt, either by voluntary or involuntary proceedings, then this Agreement shall immediately terminate and County shall have the right forthwith to re-enter said Premises, and in no event shall this Agreement be, or be treated as, an asset of Operator after adjudication of bankruptcy.

If Operator shall become insolvent or fail in business, then this Agreement may be terminated at the option of County, in which event County shall have the right to immediately re-enter said Premises, and in no event shall this Agreement be, or be treated as, an asset of Operator after the exercise of said option.

As hereinabove set forth and to the fullest extent allowable by law, it is agreed that this Agreement is not assignable by Operator, either voluntarily or involuntarily, or by any process of law, except as herein otherwise provided, and shall not be under the control of the creditors, or trustee or trustees of Operator in case of bankruptcy, or in the insolvency of Operator, but shall then be subject to termination, as herein provided.

25. FORFEITURE

If the following events occur, the County, at its option, may elect to do the things hereinafter set forth in this article:

- A. If Operator offers, causes or affects composition of creditors, or
- B. A reorganization or plan to reorganize, or
- C. Adjustment or plan of readjustment of Operator's debts, or
- D. If any receiver, attachment or keeper of the business or of the property or assets of Operator be instituted, and such receiver, attachment or keeper be not discharged or released within ten (10) days, or
- E. If the receiver makes a general or any assignment for the benefit of creditors, or
- F. If the receiver should abandon or vacate the Premises, then in any of such events, the County shall have the option:
 - 1. To collect by suit or otherwise, each installment of fees or other sum as it becomes due hereunder, or to enforce, by suit or otherwise, any other term or provision hereof on the part of Operator required to be kept or performed; or
 - 2. To re-enter said Premises, remove all persons therefrom, and either:
 - (a) With or without terminating or forfeiting this Agreement, and in either event without in any way affecting any rights or remedies of County or any duties or

obligations of Operator hereunder, to re-let said Premises as the agent and for the account of Operator upon such terms and conditions as County may deem advisable, in which event the fees received on any such re-letting shall be applied as follows: First, to the expenses of re-letting and collecting, including any necessary renovation and alteration of the Premises and a reasonable attorney's fee; and thereafter toward payment of all sums due or to become due to County hereunder. If a sufficient sum shall not be thus realized to pay such fee and other charges, then Operator shall pay to County monthly any deficiency and County may sue therefore as each monthly deficiency shall arise; such monthly deficiencies shall be paid promptly when due, as herein provided, notwithstanding the fact that County may thereafter receive monthly payments in excess of the monthly payments herein specified during subsequent months; or

(b) Terminate this Agreement.

The foregoing remedies of County shall not be exclusive, but shall be cumulative and in addition to all remedies now or hereafter allowed by law or elsewhere provided for.

26. SURRENDER OF PREMISES

At the termination of this Agreement, Operator shall surrender possession of the Premises to the County and all of Operator's personal property shall be removed by Operator on or prior to the date of termination of this Agreement.

27. NOTICES

Any notice required or permitted to be given under this Agreement shall be in writing and may be given by personal delivery (by hand or by messenger or courier service) or may be sent by regular, certified, or registered mail with the U.S. Postal Service, with postage prepaid or by email.

Notices, bills and payments shall be addressed as follows:

Airport: Airport Manager
Charles M. Schulz-Sonoma County Airport
2290 Airport Blvd.
Santa Rosa, CA 95403
Email: AirportRealEstate@sonoma-county.org

Operator: Apple Spice
c/o Food Maker, LLC
2000 Lakeville Hwy, Suite F
Petaluma, CA 94954

mail: Waseem@applespice.com

or to such other address as either party may have furnished to the other in writing as a place for the service of notice.

When a notice is given by a generally recognized overnight courier service, the notice shall be deemed received on the next business day. When a copy of a notice is sent by email, the notice shall be deemed received upon transmission as long as (1) the sender has a written confirmation of the email, and (2) the email is transmitted on a standard business day, excluding holidays, before 5:00 p.m. (recipient's time). Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no date is shown, the postmark thereon. If sent by regular mail, the notice shall be deemed given forty-eight (48) hours after the same is addressed as required herein and mailed with postage prepaid. In all other instances, notices shall be effective upon receipt by the recipient. Either party may at any time change its address for notices by giving written notice of such change to the other party in the manner provided in this paragraph.

28. COMPLETE UNDERSTANDING AND AMENDMENTS

This Agreement sets forth all of the agreements and understandings of the parties and any modification must be amended in writing and properly executed by both parties.

29. SUCCESSORS

This Agreement is intended to and does bind and shall inure to the benefit of all the parties hereto, and their respective heirs, executors, administrators, successors, and assigns.

30. REPRESENTATION

Operator hereby affirms that this Agreement is entered into upon the sole reliance of Operator's own observations and not because of any influence or representation of County or any other person.

31. TIME

Time is of the essence of this Agreement and all of the terms and covenants hereof are conditions.

32. CAPTIONS

The title or headings to the Articles of this Agreement are for convenience only and are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part hereof.

33. NON-INTERFERENCE WITH OPERATION OF AIRPORT

Operator covenants and agrees that it will not allow any condition on the Premises, nor permit the conduct of any activity on such Premises, which shall materially or adversely affect the development, improvement, operation, or maintenance of the Airport or its facilities; nor will Operator use or permit the Premises to be used in any manner which might interfere with landing and take-off of aircraft from the Airport or otherwise constitute a hazard.

If any proscribed or prohibited condition or activity, as described above, shall be permitted to exist on the Premises, or on any part thereof, then, as an alternative to termination of this Agreement under the provisions of Section 34, Subordination to Rights of Federal Government of this Agreement, the County, after giving thirty (30) days written notice to Operator, during which period Operator may abate or correct the omission or objection so set forth in County's notice, may thereupon correct such omission or objection by entering the Premises itself, or by its agents, servants or employees, without such entering causing or constituting a termination of this Agreement or an interference with possession of the Premises by Operator, and the County may cause abatement of such proscribed or prohibited condition or activity; and, in such event, the Operator agrees to pay the County the expenses of the County incurred in the above connection as additional fees within thirty (30) days after the submission of an invoice showing the reasonable expenditure or the incurring of any such reasonable expenditure by the County.

34. SUBORDINATION TO RIGHTS OF FEDERAL GOVERNMENT

It is understood and agreed that Operator accepts all of the terms of this Agreement subject to whatever right the United States government now has or in the future may have or acquire, affecting the control, operations, regulation or taking over of Airport; and Operator agrees to hold harmless and without liability the County in the event that the United States government, for any reason, exercises any such right, resulting in the County being unable to comply with any or all of the terms of this Agreement.

This Agreement and all of the provisions hereof shall be subject and subordinate at all times to all of the terms and conditions of the instruments and documents under which County acquired said property from the United States of America, and all other requirements of the United States government arising directly or indirectly therefrom, and shall be given only such effect as will not conflict or be inconsistent with such terms, conditions, and requirements.

In the event that Airport is closed by the order of the Federal Government, or any other governmental entity having jurisdiction over the Airport, this Agreement shall suspend in its entirety until such time that the Airport is allowed to resume normal operation. If the closure of the Airport will continue for thirty (30) days or more, Operator may elect to terminate this Agreement effective the day of Airport's closure.

35. FEDERAL AVIATION ADMINISTRATION REQUIREMENTS

In addition to the foregoing terms, covenants and conditions of this Agreement, the following covenants and agreements, together with all terms set forth in Exhibit “C” hereto, are fully incorporated in this agreement, and hereby made an integral part of this Agreement by reason of the requirements of the Federal Aviation Administration:

A. Discrimination Prohibited

Operator, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination, (3) that Operator shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

B. Violation

That in the event of a violation of any of the above nondiscrimination covenants, County shall have the right to terminate the Agreement and to reenter and repossess said concession area and the facilities thereon, and hold the same as if said Agreement had never been made or issued. This provision does not become effective until the procedures of 49 CFR Part 21 are followed and completed including expiration of appeal rights.

C. Accommodations, Services

Operator shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service; provided that Operator may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers.

D. Non-compliance with Section 35.C

Non-compliance with Section 35.C, FAA Accommodations, Services, above shall constitute a material Breach hereof and in the event of such non-compliance County shall have the right to terminate this Agreement and the estate hereby created without liability

therefore or at the election of County or the United States either or both said Governments shall have the right to judicially enforce those provisions.

E. Agreements with Operator

Operator agrees that it shall insert the above four provisions in any agreement, contract, etc. by which said Operator grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on the Leased Premises.

F. Affirmative Action

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

G. Future Development

County reserves the right to further develop or improve the landing area of the Airport as it sees fit, regardless of the desires or view of the Operator, and without interference or hindrance.

H. Right to Repair

County reserves the right, but shall not be obligated to Operator 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 the Operator in this regard.

I. Right of Flight

There is hereby reserved to County, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises herein leased. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from or operation on the Airport.

J. Approach Protection

Operator agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building is

planned for the Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the leased Premises.

K. Maximum Elevation, Right to Cure

Operator by accepting this Agreement expressly agrees for itself, its successors and assigns that it will not erect or permit the erection of any structure or project, nor permit the growth of any tree on the land leased hereunder above the mean sea level elevation of 147 feet.

L. Interference with Operations

Operator by accepting this Agreement agrees for itself, its successors and assigns that it will not make use of the Premises in any manner, which might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard.

In the event the aforesaid covenant is breached, County reserves the right to enter upon the Premises and cause the abatement of such interference at the expense of Operator.

M. Exclusive use Prohibited

It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308a of the Federal Aviation Act of 1958 (49 U.S.C. 1349a).

N. War or National Emergency

This Agreement 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 said Airport or the exclusive or non-exclusive use of the Airport by the United States during the time of war or national emergency.

36. AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE)

This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The Operator 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. The Operator agrees to include the prior statement 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.

The Airport is currently administering a race-neutral Airport Concession Disadvantaged Business Enterprise (ACDBE) program requiring good faith efforts to reach its race-neutral goal. The

Airport's ACDBE non-car rental overall concession goal is .3% for federal fiscal years 2020-2022, and the Airport expects to meet its ACDBE participation goals entirely through race-neutral means. The Airport encourages Operator to take active race/gender neutral steps to include ACDBE's, including but not limited to local ACDBE's.

Operator shall promptly comply with all County ACDBE requirements as outlined in **Exhibit "D" – County of Sonoma Airport Concession Disadvantaged Business Enterprise (ACDBE) Program Requirements**.

Operator shall complete the attached form outlined in **Exhibit "E" – ACDBE Race-Neutral Participation Listing** at the Commencement Date of this lease and when there are any changes to its ACDBE participants. Operator shall send said listing to County as soon as practical.

Operator shall also complete the attached form outlined in **Exhibit "F" - Concessionaire Monthly Participation Report – Concession** and send to County within thirty (30) days from the end of each reporting month during the term of this Agreement.

Operator acknowledges that exhibits relating to ACDBE requirements may be modified during the term of this Agreement in accordance with federal regulations.

37. REMODEL, ALTERATION AND CONSTRUCTION ACTIVITIES ON AIRPORT

County may reconstruct, alter, or remodel any portion of the Airport at any time and will provide notice to Operator in advance of such activities. County will coordinate with Operator on schedules of such activities and communicate updates. Disruption to Operator's concession shall be minimized, as to the extent possible; but some activities may temporarily suspend Operator's concessions.

It is understood by Operator that dirt and dust may be created from time to time by the maintenance, remodel, alteration or construction of the Airport and associated facilities. Operator accepts this condition without reservation as a part of this Agreement and as such, shall not be entitled to a reduction in its fees to County as a result of any dust or dirt landing on Operator's Premises.

Operator further understands that any remodel, alternation or construction may cause inconvenience and disruption. Operator accepts this condition without reservation as part of this Agreement and as such, shall not be allowed any compensation or reduction in fees to County for losses suffered as a result of said remodel, alteration, or construction.

38. NO JOINT VENTURE

It is agreed that nothing contained in this Agreement shall be deemed or construed as creating a partnership or joint venture between County and Operator or between County and any other party or cause County to be responsible in any way for the debts or obligations of Operator or any other party.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date:

OPERATOR: Food Maker, LLC, a California limited liability that is also known as Apple Spice

By: _____
Waseem Khan,
Managing Member

Date: _____

COUNTY: COUNTY OF SONOMA, a political subdivision of the State of California

By: _____
Jon Stout, CAE, AAE
Airport Manager

Date: _____

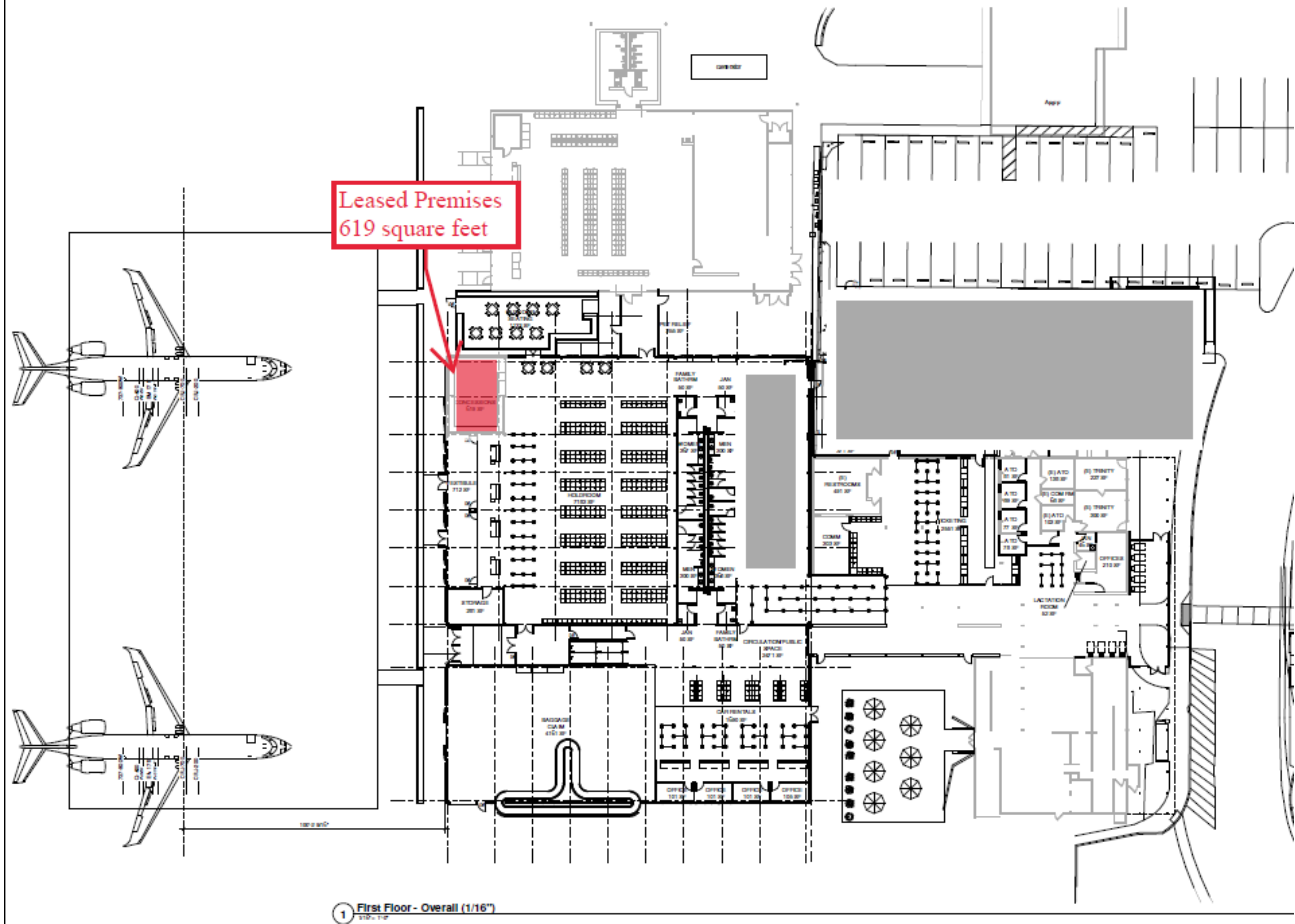
APPROVED AS TO FORM
FOR COUNTY:

CERTIFICATES OF INSURANCE
ON FILE WITH DEPARTMENT:

Deputy County Counsel

Airport Property Specialist

EXHIBIT A: PREMISES



1 First Floor - Overall (1/16")

EXHIBIT B: INSURANCE REQUIREMENTS

Tenant shall maintain and require its subcontractors and agents to maintain, during the term of this Lease or any extensions of the term, insurance as described below unless such insurance has been expressly waived by the attachment of a *Waiver of Insurance Requirements*.

County reserves the right to review any and all of the required insurance policies and/or endorsements, but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements set forth in this Lease or failure to identify any insurance deficiency shall not relieve Tenant from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the term of this Lease.

1. Liquor Liability Insurance

- a. Minimum Limits: \$1,000,000 for each Common Cause or Occurrence; \$1,000,000 Aggregate.
- b. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by County. Licensee is responsible for any deductible or self-insured retention.
- c. Required Evidence of Insurance: Certificate of Insurance.

2. Workers Compensation and Employers Liability Insurance

- a. Required if Tenant has employees as defined by the Labor Code of the State of California.
- b. Workers Compensation insurance with statutory limits as required by the Labor Code of the State of California.
- c. Employers Liability with minimum limits of \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.
- d. The policy shall be endorsed to include a written waiver of the insurer's right to subrogate against County.
- e. Required Evidence of Insurance:
 - i. Subrogation waiver endorsement; and
 - ii. Certificate of Insurance.

If Tenant currently has no employees as defined by the Labor Code of the State of California, Tenant agrees to obtain the above-specified Workers Compensation and Employers Liability insurance should employees be engaged during the term of this Lease or any extensions of the term.

3. General Liability Insurance

- a. Commercial General Liability Insurance on a standard occurrence form, no less broad than Insurance Services Office (ISO) form CG 00 01.
- b. Minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; the General Aggregate shall apply separately to each location. The required limits may be provided by a combination of General Liability Insurance and Commercial Excess or Commercial Umbrella Liability Insurance. If Tenant maintains higher limits than the specified minimum limits, County requires and shall be entitled to coverage for the higher limits maintained by Tenant.
- c. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by County. Tenant is responsible for any deductible or self-insured retention and shall fund it

upon County’s written request, regardless of whether Tenant has a claim against the insurance or is named as a party in any action involving the County.

- d. County of Sonoma, its officers, agents and employees, Attn : Airport Manager, Charles M. Schulz – Sonoma County Airport, 2290 Airport Boulevard, Santa Rosa, CA 95403 shall be endorsed as additional insureds for liability arising out the ownership, maintenance or use of that part of the premises leased to Tenant (ISO endorsement CG 20 11 or equivalent).
- e. The insurance provided to the additional insureds shall be primary to, and non-contributory with, any insurance or self-insurance program maintained by them.
- f. The policy shall be endorsed to include a written waiver of the insurer's right to subrogate against County.
- g. The policy shall cover inter-insured suits between County and Tenant and include a “separation of insureds” or “severability” clause which treats each insured separately.
- h. Required Evidence of Insurance:
 - i. Copy of the additional insured endorsement or policy language granting additional insured status;
 - ii. Copy of the endorsement or policy language indicating that Insurance is primary and non-contributory; and
 - iii. Certificate of Insurance.

4. Property Insurance for Business Personal Property and Tenants Improvements
(Required only during the Post-Construction Period)

- a. Property insurance on a “special form” or “all risks” basis.
- b. Minimum Limit: the full current combined replacement cost of Tenant’s Business Personal Property and Tenant’s improvements.
- c. The insurance shall apply on a replacement cost basis, without deduction for depreciation.
- d. Tenant shall disclose any deductible or self-insured retention in excess of \$25,000 and such deductible or self-insured retention must be approved in advance by County. Tenant is responsible for any deductible or self-insured retention.
- e. Required Evidence of Insurance: Certificate of Property Insurance or Evidence of Commercial Property Insurance.

5. Automobile Liability Insurance

- a. Minimum Limit: \$1,000,000 combined single limit per accident. The required limit may be provided by a combination of Automobile Liability Insurance and Commercial Excess or Commercial Umbrella Liability Insurance.
- b. Insurance shall cover all owned autos. If Tenant currently owns no autos, Tenant agrees to obtain such insurance should any autos be acquired during the term of this Lease or any extensions of the term.
- c. Insurance shall cover hired and non-owned autos.
- d. Required Evidence of Insurance: Certificate of Insurance.

6. Increases in Limits of Insurance

County may periodically require higher policy limits if such increased limits are reasonably available in commercial insurance markets.

7. Standards for Insurance Companies

Insurers, other than the California State Compensation Insurance fund, shall have an A.M. Best's rating of at least A:VII.

8. Documentation

- a. The Certificate of Insurance must include the following reference: [Limited-Service Restaurant, 2200 Airport Blvd.](#)
- a. All required Evidence of Insurance shall be submitted prior to the execution of this Lease. Tenant agrees to maintain current Evidence of Insurance on file with County for the required period of insurance.
- b. The name and address for Additional Insured endorsements and Certificates of Insurance is: [County of Sonoma, its officers, agents and employees c/o Airport Manager, Charles M. Schulz - Sonoma County Airport 2290 Airport Blvd., Santa Rosa, CA 95403](#)
- c. Required Evidence of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.
- d. Tenant shall provide immediate written notice if: (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased.
- e. Upon written request, certified copies of required insurance policies must be provided within thirty (30) days.

9. Policy Obligations

Tenant's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

10. Material Breach

If Tenant fails to maintain insurance which is required pursuant to this Lease, it shall be deemed a material breach of this Lease. County, at its sole option, may terminate this Lease and obtain damages from Tenant resulting from said breach. Alternatively, County may purchase such required insurance and Tenant shall immediately reimburse County for any premium costs advanced by County for such insurance. These remedies shall be in addition to any other remedies available to County.

Exhibit C: Federal Provisions

1. Civil Rights- Real Property

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.

2. 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:

1. Compliance with Regulations: The Contractor (which hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Statutes and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.
2. Non-discrimination: The Contractor, with regard to the work performed by it , 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 Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the Contractor’s obligations under this Agreement and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.

4. Information and Reports: The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the County or the Federal Aviation Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of the 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.

5. Sanctions for Noncompliance: In the event of Contractor's noncompliance with the Non-discrimination provisions of this Agreement, the County will impose such 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 Agreement until the Contractor complies; and/or
- b. Cancelling, terminating, or suspending the Agreement, in whole or in part.

6. Incorporation of Provisions: The Contractor will include the provisions of paragraphs one through five 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 County 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 County to enter into any litigation to protect the interests of the County. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

7. List of Pertinent Nondiscrimination Authorities. During the performance of this Agreement, the Contractor, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 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);

- 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;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- 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);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures 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;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

3. Civil Rights - Breach

The Operator, for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that:

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

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

Exhibit D

Airport Concession Disadvantaged Business Enterprise (ACDBE) Program Requirements

A. Airport Concession Disadvantaged Business Enterprise (ACDBE) Participation

i. Race-Neutral ACDBE Participation

The Concessionaire is required to submit an ACDBE Race-Neutral Participation Listing to identify ACDBE subcontractor(s) proposed in the performance of this agreement, and further agrees to ensure that ACDBE subcontractors listed in the “ACDBE Race-Neutral Participation Listing” perform work and/or supply materials in accordance with original commitments, unless otherwise directed and/or approved by the County of Sonoma (County) prior to the Prime Concessionaire effectuating any changes to its race-neutral ACDBE participation commitments. The Concessionaire is required to submit this form whether or not ACDBE subcontractors have been proposed.

Prime Concessionaire shall ensure the ACDBE information submitted shall include the North American Industry Classification System (NAICS) code applicable to the kind of work the ACDBE subcontractor(s) will perform on the contract.

In the event the Concessionaire commits to utilizing an ACDBE in the performance of this contract after contract award, the Concessionaire will comply with the same reporting requirements delineated above and submit an “ACDBE Race-Neutral Participation Listing” for new ACDBE commitments made after award and during contract performance.

ii. ACDBE Policy and Applicability

In accordance with federal financial assistance agreements with the U.S. Department of Transportation (U.S. DOT), County has adopted an Airport Concession Disadvantaged Business Enterprise (ACDBE) Policy and Program, in conformance with Title 49 CFR part 23, “Participation by Disadvantaged Business Enterprises in Airport Concessions”.

The project is subject to these stipulated regulations. In order to ensure that County achieves its overall ACDBE Program goal, County encourages the participation of ACDBEs as defined in 49 CFR 23 in the performance of contracts financed in whole or in part with U.S. DOT funds. Pursuant to the intent of these regulations, it is also the policy of County to:

- a. Fulfill the spirit and intent of the Federal ACDBE Program regulations (“Regulations”) published under U.S. DOT Title 49 CFR, Part 23, by ensuring that ACDBE’s have equitable access to participate in all of County’s and identified Prime Concessionaire airport concession contracting opportunities.
- b. Ensure that ACDBEs can fairly compete for and perform on all concession contracts and subcontracts
- c. Ensure non-discrimination in the award and administration of County’s airport concession contracts.
- d. Create a level playing field on which ACDBEs can compete fairly for airport concession contracts.
- e. Ensure that only firms that fully meet 49 CFR, Part 23 eligibility standards are permitted to participate as ACDBEs in airport concession contracts.

- f. Help remove barriers to the participation of ACDBEs in airport concession contracts.
- g. Assist in the development of firms that can compete successfully in the marketplace outside the ACDBE Program.

Concessionaire will not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.

Any terms used in this section that is defined in 49 CFR Part 23, or elsewhere in the Regulations, will have the meaning set forth in the Regulations. In the event of any conflicts or inconsistencies between the Regulations and County’s ACDBE Program with respect to airport concession contracts, the Regulations will prevail.

iii. County’ Race-Neutral ACDBE Policy Implementation Directives

Pursuant to Race-Neutral ACDBE policy directives issued by the U.S. DOT in response to the Ninth Circuit U.S. Court of Appeals decision in *Western States Paving Co. v. Washington State Department of Transportation*, County has implemented a wholly Race-Neutral ACDBE Program.

A Race-Neutral ACDBE Program is one that, while benefitting ACDBEs, is not solely focused on ACDBE firms. Therefore, under a Race-Neutral ACDBE Program, County does not establish numeric race-conscious ACDBE participation goals on its airport concession contracts. However, the Prime Concessionaire will adhere to race-neutral ACDBE participation commitment(s) made at the time of contract award.

iv. Definitions

The following definitions apply to the terms as used in these provisions:

- a. “Airport Concession Disadvantaged Business Enterprise (ACDBE)” means a concession that is a for-profit small business concern –
 - (1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
 - (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- b. “Socially and Economically Disadvantaged Individual” means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is –
 - (1) Any individual determined by a recipient to be a socially and economically disadvantaged individual on a case-by-case basis.
 - (2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - (i) “Black Americans,” which includes persons having origins in any of the Black racial groups of Africa;

(ii) “Hispanic Americans,” which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(iii) “Native Americans,” which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

(iv) “Asian-Pacific Americans,” which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

(v) “Subcontinent Asian Americans,” which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

(vi) Women;

(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

c. “Concession” means one or more of the types of for-profit businesses listed in paragraph (1) or (2) of this definition:

(1) A business, located on an airport subject to this part, that is engaged in the sale of consumer goods or services to the public under an agreement with the recipient, another concessionaire, or the owner or lessee of a terminal, if other than the recipient.

(2) A business conducting one or more of the following covered activities, even if it does not maintain an office, store, or other business location on an airport subject to this part, as long as the activities take place on the airport: Management contracts and subcontracts, a web-based or other electronic business in a terminal or which passengers can access at the terminal, an advertising business that provides advertising displays or messages to the public on the airport, or a business that provides goods and services to concessionaires.

(3) For purposes of this subpart, a business is not considered to be “located on the airport” solely because it picks up and/or delivers customers under a permit, license, or other agreement. For example, providers of taxi, limousine, car rental, or hotel services are not considered to be located on the airport just because they send shuttles onto airport grounds to pick up passengers or drop them off. A

business is considered to be “located on the airport,” however, if it has an on-airport facility. Such facilities include in the case of a taxi operator, a dispatcher; in the case of a limousine, a booth selling tickets to the public; in the case of a car rental company, a counter at which its services are sold to the public or a ready return facility; and in the case of a hotel operator, a hotel located anywhere on airport property.

(4) Any business meeting the definition of concession is covered by this subpart, regardless of the name given to the agreement with the recipient, concessionaire, or airport terminal owner or lessee. A concession may be operated under various types of agreements, including but not limited to the following:

- (i) Leases.
- (ii) Subleases.
- (iii) Permits.
- (iv) Contracts or subcontracts.
- (v) Other instruments or arrangements.

(5) The conduct of an aeronautical activity is not considered a concession for purposes of this subpart. Aeronautical activities include scheduled and non-scheduled air carriers, air taxis, air charters, and air couriers, in their normal passenger or freight carrying capacities; fixed base operators; flight schools; recreational service providers (e.g., sky-diving, parachute-jumping, flying guides); and air tour services.

(6) Other examples of entities that do not meet the definition of a concession include flight kitchens and in-flight caterers servicing air carriers, government agencies, industrial plants, farm leases, individuals leasing hangar space, custodial and security contracts, telephone and electric service to the airport facility, holding companies, and skycap services under contract with an air carrier or airport.

- d. “Concessionaire” means a firm that owns and controls a concession or a portion of a concession.
- e. “Joint Venture” means an association of an ACDBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the ACDBE is responsible for a distinct, clearly defined portion of the work of the contract and whose shares in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest. Joint venture entities are not certified as ACDBEs.

v. Race-Neutral ACDBE Submission and Ongoing Reporting Requirements (Post- Award)

Concessionaire will complete and submit the following ACDBE form at the times specified:

“Monthly Race-Neutral ACDBE Subcontractors Paid Report Summary and Payment Verification: (Form 103).

If the Concessionaire is an ACDBE firm and/or has proposed to utilize ACDBE firms, the Concessionaire will be required to complete and submit a Form 103 to County designee by the 15th of each month until completion of the contract to facilitate reporting of race-neutral ACDBE participation, following the first month of contract activity. The Concessionaire will report the total dollar value paid to ACDBEs for the applicable reporting period. The Concessionaire will also report the ACDBE’s scope of work and the total subcontract value of commitment for each ACDBE reported.

Concessionaire is advised not to report the participation of ACDBEs toward the Concessionaire’s race-neutral ACDBE attainment until the amount being counted has been paid to the ACDBE.

Upon completion of the contract, the Concessionaire will be required to prepare and submit to County a “Race-Neutral ACDBE Subcontractor Paid Report Summary and Payment Verification” (Form 103) clearly marked “Final” to facilitate reporting and capturing actual ACDBE race-neutral attainments. Concessionaire will complete and submit a Final Form 103 whether or not ACDBEs were utilized in the performance of the contract.

Concessionaire is responsible for providing subcontractor’s proof of ACDBE Certification.

Concessionaire and subcontractors are subject to periodic audits by County and or their designated representative. Program audits serve as a part of County assessing program compliance. The audit may include comprehensive review of program related forms, documents and procedures, including but not limited to site visits. The information presented for review shall be provided in an auditable manner.

vi. ACDBE Eligibility and Commercially Useful Function Standards

- a. An ACDBE must be a small business concern as defined pursuant to Section 3 of the U.S. Small Business Act and relevant regulations promulgated pursuant thereto.
- b. An ACDBE may participate as a prime concessionaire, subcontractor, or as a joint venture partner with a prime or subcontractor, or as a vendor of material or supplies.
- c. An ACDBE joint venture partner must be responsible for specific contract items of work, or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The ACDBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.
- d. ACDBEs must be certified by the California Unified Certification Program (CUCP). Listings of ACDBEs certified by the CUCP are available from the following sources:
 1. The CUCP website, accessed at [California ACDBE Certifying Agencies](#).

2. The CUCP ACDBE Directory, which may be obtained from the Department of Transportation, Material Operations Branch, Publication Distribution Unit, 1900 Royal Oaks Drive, Sacramento, CA 95815; Telephone (916) 445-3520.

vii. ACDBE Crediting Provisions

- a. Count the total dollar value of gross receipts an ACDBE earns under a concession agreement and the total dollar value of a management contract or subcontract with an ACDBE toward the goal. However, if the ACDBE enters into a subconcession agreement or subcontract with a non-ACDBE, do not count any of the gross receipts earned by the non-ACDBE.
- b. When an ACDBE performs as a subconcessionaire or subcontractor for a non-ACDBE, count only the portion of the gross receipts earned by the ACDBE under its subagreement.
- c. When an ACDBE performs as a participant in a joint venture, count a portion of the gross receipts equal to the distinct, clearly defined portion of the work of the concession that the ACDBE performs with its own forces toward ACDBE goals.
- d. Count the entire amount of fees or commissions charged by an ACDBE firm for a bona fide service, provided that, as the recipient, you determine this amount to be reasonable and not excessive as compared with fees customarily allowed for similar services. Such services may include, but are not limited to, professional, technical, consultant, legal, security systems, advertising, building cleaning and maintenance, computer programming, or managerial.
- e. Count 100 percent of the cost of goods obtained from an ACDBE manufacturer. For purposes of this part, the term manufacturer has the same meaning as in part 26, §26.55(e)(1)(ii).
- f. Count 100 percent of the cost of goods purchased or leased from an ACDBE regular dealer. For purposes of this part, the term “regular dealer” has the same meaning as in part 26, §26.55(e)(2)(ii).
- g. Count credit toward ACDBE goals for goods purchased from an ACDBE which is neither a manufacturer nor a regular dealer as follows:
 - (1) Count the entire amount of fees or commissions charged for assistance in the procurement of the goods, provided that this amount is reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the goods themselves.
 - (2) Count the entire amount of fees or transportation charges for the delivery of goods required for a concession, provided that this amount is reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of goods themselves.
- h. If a firm has not been certified as an ACDBE in accordance with the standards in this part, do not count the firm's participation toward ACDBE goals.

- i. Do not count the work performed or gross receipts earned by a firm after its eligibility has been removed toward ACDBE goals. However, if an ACDBE firm certified on April 21, 2005 is decertified because one or more of its disadvantaged owners do not meet the personal net worth criterion or the firm exceeds business size standards of this part during the performance of a contract or other agreement, the firm's participation may continue to be counted toward ACDBE goals for the remainder of the term of the contract or other agreement (but not extensions or renewals of such contracts or agreements.)
- j. Do not count costs incurred in connection with the renovation, repair, or construction of a concession facility (sometimes referred to as the “build-out”).
- k. Do not count the ACDBE participation of car rental companies toward your ACDBE achievements toward this goal.

viii. Performance of ACDBE Subcontractors

ACDBE subcontractors listed by the Prime Concessionaire in its “ACDBE Race-Neutral Participation Listing” submitted at the time of proposal submission or added during performance of the contract will perform the work and supply the materials for which they are listed, unless the Concessionaire has received prior written authorization from County to perform the work with other forces or to obtain the materials from other sources.

The Concessionaire will provide written notification to County in a timely manner of any changes to its anticipated ACDBE participation. This notice should be provided prior to commencement of that portion of the work and the Prime Concessionaire shall demonstrate good faith efforts in continuing doing business with ACDBEs.

ix. Additional ACDBE Subcontractors

In the event Concessionaire identifies additional ACDBE subcontractors or suppliers not previously identified by Concessionaire for race-neutral ACDBE participation under the contract, Concessionaire will notify County by submitting the form “ACDBE Race-Neutral Participation Listing” to enable Concessionaire and County to capture all race-neutral ACDBE participation. Concessionaire will also submit, for each ACDBE identified after contract execution, a written confirmation from the ACDBE acknowledging that it is participating in the contract for a specified value, including the corresponding scope of work (a subcontract agreement can serve in lieu of the written confirmation).

x. ACDBE Certification Status

If a listed ACDBE subcontractor is decertified during the life of the project, the decertified subcontractor will notify the Concessionaire in writing with the date of decertification. The Concessionaire will furnish the written documentation to County in a timely manner.

xi. Concessionaire’s Assurance Clause Regarding Non-Discrimination

In compliance with State and Federal anti-discrimination laws, the Concessionaire will affirm that they will not exclude or discriminate on the basis of race, color, national origin, or sex in consideration of contract award opportunities. Further, the Concessionaire will affirm that they will consider, and utilize subcontractors and vendors, in a manner consistent with non-discrimination objectives.

Concessionaire (and each subcontract the Concessionaire signs with a subcontractor) must include the following assurance: The Concessionaire or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Concessionaire shall carry out applicable requirements of 49 CFR Part 23 in the award and administration of Airport concession contracts. Failure by the Concessionaire to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the concessionaire from future bidding as non-responsible.

xii. Records Retention

Prime Concessionaire shall maintain all ACDBE program records, including a thorough and updated bidder's list.

Exhibit E

ACDBE RACE-NEUTRAL PARTICIPATION LISTING

Concessionaire: _____

Agreement #: _____

INSTRUCTIONS TO CONCESSIONAIRE:

1. *The concessionaire must execute and submit this form entitled “ACDBE race-neutral participation listing” to County, even if no ACDBE participation will be reported. In the event of no ACDBE participation, concessionaire shall mark “none” under ACDBE firm name.*

2. *Refer to “ACDBE crediting provisions” listed in the ACDBE program requirements attachment concerning ACDBE race-neutral participation crediting.*

3. *The concessionaire shall use the same form when adding new ACDBE firms after contract award.*

ACDBE Firm Name*:	ACDBE Certification No. and Expiration Date:	Item of Work and Description or Services to be Subcontracted or Materials to be Provided:											
Street Address:		Check Appropriate Box Describing Subcontractor/Supplier Activity: <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <tr> <td style="width: 33%;">Subcontractor</td> <td style="width: 33%;">Supplier</td> <td style="width: 33%;"></td> </tr> <tr> <td>Regular Dealer</td> <td>Broker</td> <td></td> </tr> <tr> <td>Manufacturer</td> <td>Transportation</td> <td></td> </tr> </table>			Subcontractor	Supplier		Regular Dealer	Broker		Manufacturer	Transportation	
Subcontractor	Supplier												
Regular Dealer	Broker												
Manufacturer	Transportation												
Contact Person:													
Telephone:	Fax:												
License No., Classification and Expiration:													
Subcontract Amount:													

Concessionaire:		Agreement No.:	
Contact Name:		Total Contract Amount:	\$
Title:			
Address:		ACDBE Race Neutral Participation Value (% of Total Contract Value):	
City/State/Zip:			
Phone:			
Fax:			

ACDBE Race-Neutral Participation Crediting Provisions:


Identify all ACDBE firms participating in the contract, regardless of tier. Names of the ACDBE subcontractors and their respective item(s) of work listed above should be consistent, where applicable, with the names and items of work for subcontractors listed in your proposal. Provide copies of ACDBE subcontract agreements, and if applicable, copies of joint venture agreements.

1. Enter ACDBE prime and subcontractors' certification numbers. Prime contractors shall indicate all work to be performed by ACDBEs, including work performed by its own forces.
2. If 100% of a work item is not to be performed or furnished by an ACDBE, describe the exact portion of the item to be performed or furnished by the DBE.
3. Refer to "ACDBE Crediting Provisions" and 49 CFR 23.55: "Counting ACDBE Participation" for ACDBE calculating and crediting provisions.

Signature of Authorized Representative	Printed Name
Date	Title

Exhibit F

ACDBE Concessionaire Monthly Participation Report



Concessionaire Monthly Participation Report

Charles M. Schulz - Sonoma County Airport
2200 Airport Blvd., Santa Rosa, CA 95403

Concessions Report

<p>In accordance with 49 CFR 23, Charles M. Schulz Sonoma County Airport requires this report to be submitted monthly during the Term of the Concession Agreement. This report is used to monitor ACDBE participation dollars and compliance the contractual ACDBE contract contribution percentage.</p> <p>Instructions:</p> <p>1. Complete one report for each separate contract held with the Airport Authority</p> <p>2. Fill each concept and respective ACDBE participation, along with the activities performed (if applicable, attach additional pages if necessary, revenue received, and JV participation)</p> <p>3. Ensure qualifications are completed by each ACDBE participant and an official responsible for the Prime Concessionaire's financial records.</p> <p>4. Signatures are necessary to verify that the reported values are complete and accurate to the best of the signatory's knowledge (Pictures of signatories WILL NOT BE ACCEPTED).</p> <p>5. ACDBE firms must sign on each line to which their participation is reported.</p> <p>6. Submit copies to the Airport Authority and to the involved firm's accountant to hold of contract.</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 2px;">Contract #:</td> <td style="width: 80%;"></td> </tr> <tr> <td style="padding: 2px;">Reporting Period:</td> <td></td> </tr> </table>	Contract #:		Reporting Period:																																																																																																																																																																																												
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