FIRST AMENDMENT TO PERCENTAGE LEASE

THIS FIRST AMENDMENT TO PERCENTAGE LEASE ("**First Amendment**") is dated as of Sept. 12, 2024, for reference purposes only, and is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("**Landlord**"), and GRACIELA GONZALEZ and ALEXIS GONZALEZ, two individuals (together, "**Tenant**"). Landlord and Tenant are sometimes referred to in this First Amendment, each individually, as a "**Party**" and, collectively, as the "**Parties**." This First Amendment is entered into by the Parties with reference to the following recited facts ("**Recitals**"):

RECITALS

A. Landlord and Tenant are parties that certain Percentage Lease, dated as of April 26, 2024 (the "Lease"), with respect to that certain real property within Brown Field Terminal Building, commonly known as "The Landing Strip," which comprises approximately 3,070 square feet, located at 1424 Continental Street, Suite D, San Diego, California 92154, consisting of a full kitchen, restaurant, bar area, kitchen storage area, outside seating area, and propane tank area, as generally depicted and shown in Exhibit A to the Lease (the "Premises").

B. On or about July 24, 2024, following an on-site inspection, the Premises were closed due to multiple conditions requiring immediate attention and repair (the "Closure").

C. The cause of the Closure was not the fault of Tenant.

D. The Parties are working together in good faith to address the conditions and end the Closure.

E. Landlord and Tenant desire to amend the Lease as set forth in this First Amendment.

NOW, THEREFORE, in consideration of the respective promises of the Parties set forth in this First Amendment and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. **Amendment of Section 7.10**. Section 7.10 of the Lease is amended to read in its entirety as follows:

> 7.10. Offsets. Tenant shall pay all Rent without offset, defense, claim, counterclaim, reduction, or deduction of any kind whatsoever; provided, however, notwithstanding anything to the contrary in this Lease, in the event any condition (including one arising from action by Landlord in its regulatory or law enforcement capacity) prohibits Tenant from entering into or operating its business on the Premises (or any portion thereof) for any reason that is not (a) Tenant's fault or caused by Tenant; or (b) a Condemnation (a "Closure"), and provided Tenant is not at the time of or during such Closure in default of the Lease, Landlord may (but shall not be obligated) to reduce, defer, or abate the Rent (or any portion thereof) proportionate to the physical and temporal scope of the Closure. Any such Rent reduction, deferment, or abatement shall be in writing (letter agreement is sufficient) and signed by the Parties.

2. Confirmation of Agreement. The Lease, as amended by this First Amendment, is in all respects confirmed and all the terms, provisions, and conditions of the Lease, as amended by this First Amendment, shall be and remain in full force and effect.

3. Incorporation of Recitals. The Recitals set forth above are true and correct and are incorporated into this First Amendment by this reference, as though fully set forth in this First Amendment.

4. Governing Law. This First Amendment shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California.

5. Counterparts. This First Amendment may be signed by the authorized representatives of the Parties in multiple counterpart originals (including facsimile or electronic counterpart originals), each of which shall be deemed an original, and all such counterpart originals, when taken together, shall constitute one agreement.

6. No Other Amendments; First Amendment Governs and Controls. To the extent any provisions in this First Amendment are inconsistent with any provisions in the Lease, the provisions of this First Amendment shall govern and control. The Lease, as amended by this First Amendment, represents the entire understanding between the Parties as to the subject matter of the Lease.

7. Principles of Interpretation. No inference in favor of or against any Party shall be drawn from the fact that such Party drafted any part of this First Amendment. The Parties participated substantially in the negotiation, drafting, and revision of this First Amendment, with advice from legal and other counsel and advisers of their own selection. A word, term or phrase defined in this First Amendment may be used in the singular, plural, past tense or future tense, regardless of how it is defined, all in accordance with ordinary principles of English grammar, which shall govern all language in this First Amendment. The words "include" and "including" in this First Amendment shall be construed to be followed by the words "without limitation." Each collective noun in this First Amendment shall be interpreted as if followed by the words "(or any part of it)," except where the context clearly requires otherwise. Every reference to a document, including this First Amendment, refers to such document, as modified from time to time (excepting any modification that violates the Lease), and includes all exhibits, schedules, addenda, and riders to such document. The word "or" in this First Amendment includes the word "and," except where the context clearly requires otherwise. Every reference to a law, statute, regulation, order, form, or similar governmental requirement in this First Amendment refers to each such requirement as amended, modified, renumbered, superseded, or succeeded, from time to time.

8. Binding on Successors and Assigns. This First Amendment shall be binding upon and inure to the benefit of the Parties and their respective legal representatives, successors, and assigns.

9. Facsimile or Electronic Signatures. The Parties agree: (a) to deliver and accept signatures on or pursuant to this First Amendment by facsimile, e-mail, or electronic means (including digital signatures); and (b) that signatures delivered by facsimile, e-mail, or electronic means (including digital signatures) shall be binding as originals upon the Party so signing and delivering.

SIGNATURE PAGE
TO
FIRST AMENDMENT TO
PERCENTAGE LEASE

Landlord and Tenant sign and enter into this First Amendment by and through the signatures of their respective authorized representatives as follows:

LANDLORD:

THE CITY OF SAN DIEGO, a California municipal corporation

By: _____
Jorge Rubio
Deputy Director, Chief of Airports
Economic Development Department

TENANT:

GRACIELA GONZALEZ, an individual

By: _____

ALEXIS GONZALEZ, an individual

By: _____

Approved as to form on

Sept. 12, 2024 :

MARA W. ELLIOTT, City Attorney

By: _____
Brian Byun
Deputy City Attorney