

**RESOLUTION NO. 168-17 (CM)**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WATSONVILLE APPROVING FOUR-YEAR LEASE WITH ONE (1) FOUR-YEAR OPTION TERM BETWEEN THE CITY OF WATSONVILLE AND TIFFANY ELLA KING AND SERGIO ANGELES, INDIVIDUALLY, AND DBA ELLA'S AT THE AIRPORT FOR THE USE OF CITY OWNED PROPERTY WHICH INCLUDES 2400 SQUARE FEET OF BUILDING SPACE, 650 SQUARE FEET OF OUTSIDE STORAGE AREA AND 427 SQUARE FEET OF PATIO AREA LOCATED AT 100 AVIATION WAY, FREEDOM, CALIFORNIA, AND AUTHORIZING AND DIRECTING THE CITY MANAGER TO EXECUTE SAME**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WATSONVILLE, CALIFORNIA, AS FOLLOWS:**

1. That the four-year Lease with one (1) four-year option term between the City of Watsonville and Tiffany Ella King and Sergio Angeles, individually, and dba Ella's at the Airport for the use of City owned property which includes 2,400 square feet of building space, 650 square feet of outside storage area and 427 square feet of patio area located at 100 Aviation Way, Watsonville, California, a copy of which Lease is attached hereto and incorporated herein by this reference, is fair and equitable and is hereby ratified and approved.

2. That the City Manager be and is hereby authorized and directed to execute such Lease for the original term, and if properly exercised, a new lease to extend the term by four years.

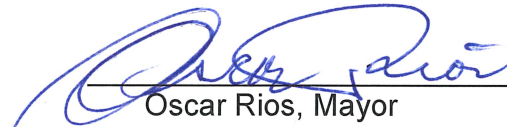
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The foregoing resolution was introduced at a regular meeting of the Council of the City of Watsonville, held on the 28<sup>th</sup> day of November, 2017, by Mayor Pro Tempore Hurst, who moved its adoption, which motion being duly seconded by Member Coffman-Gomez, was upon roll call carried and the resolution adopted by the following vote:

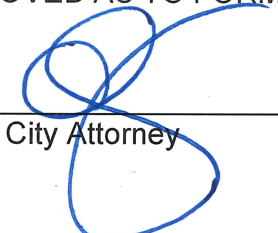
AYES:	COUNCIL MEMBERS:	<b>Bilicich, Coffman-Gomez, Dutra, Garcia, Hernandez, Hurst, Rios</b>
NOES:	COUNCIL MEMBERS:	<b>None</b>
ABSENT:	COUNCIL MEMBERS:	<b>None</b>

ATTEST:

  
\_\_\_\_\_  
City Clerk

  
\_\_\_\_\_  
Oscar Rios, Mayor

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

\*\*\*\*\*

I, Beatriz Vázquez Flores, City Clerk of the City of Watsonville, do hereby certify that the foregoing Resolution No. 168-17 (CM) was duly and regularly passed and adopted by the Watsonville City Council at a meeting thereof held on the 28<sup>th</sup> day of November, 2017, and that the foregoing is a full, true and correct copy of said Resolution.

  
\_\_\_\_\_  
Beatriz Vázquez Flores, City Clerk

Date DEC 5, 2017

# Restaurant Lease between the City of Watsonville and Tiffany Ella King and Sergio Angeles, individually and dba Ella's at the Airport

1

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1  
2 **LEASE**

3 THIS LEASE made and entered into this \_\_\_\_\_ of November, 2017 by and  
4 between the CITY OF WATSONVILLE, a municipal corporation, hereafter called  
5 "Landlord," and Tiffany Ella King and Sergio Angeles, individually, and dba Ella's at the  
6 Airport hereafter called "Tenant," IT IS AGREED BETWEEN THE PARTIES AS  
7 FOLLOWS:

8 **1. PREMISES.**

9 Landlord does hereby rent and Tenant does hereby hire and take from Landlord  
10 the facilities consisting of 2,400 square feet of Restaurant and Cocktail Lounge, 650  
11 square feet of outside storage and 427 square feet of patio located at the Watsonville  
12 Municipal Airport, 100 Aviation Way, in the City of Watsonville, Santa Cruz County,  
13 California, together with the right of ingress and egress to such Premises; hereafter  
14 collectively called "Premises. No representation is made or understood with respect to the  
15 actual area and the areas mentioned are for identification purposes only.

16 **2. TERM.**

17 **INITIAL TERM.**

18 The initial term of this Lease shall be four (4) years, commencing effective  
19 retroactive to November 1, 2017 and expiring on October 31, 2021. Tenant shall have no  
20 right to extend the term of this Lease other than as set forth herein

21 **OPTION TO EXTEND.**

22 If Tenant is not in breach of any term or condition of this Lease between the time  
23 this Option is exercised and the time any new lease is executed by both Landlord and  
24 Tenant, the Tenant shall have one option for a four-year term. This option must be  
25 exercised no sooner than twelve (12) and no later than six (6) months before expiration  
26 of the initial term. The Landlord and Tenant shall have ninety (90) days after Landlord  
27 receives the Notice of Exercise in which to agree on terms and conditions of a new lease.  
28 Unless a new lease is executed and approved by the Watsonville City Council at least  
29 nine months before the expiration date of the original, this original Lease will  
30 automatically expire on its original expiration date. This option to negotiate shall expire  
31 in any event automatically on its own terms, 60 days before the expiration of this Lease  
32 unless a new Lease is in effect with Tenant at that time.

1           **3. INITIAL TERM RENT.**

2           **BASE RENT.**

3           Rent is due on the 1<sup>st</sup> day of each month. During the initial term of this Lease,  
4           Tenant shall pay to Landlord the agreed monthly base rent as follows:

- 5           • For the months of December, 2017 through and including November,  
6           2018, the sum of \$2,700/month plus an annual rent adjustment as  
7           described below
- 8           • For the month of December, 2018 through and including November, 2019,  
9           the sum of \$2,800/month plus an annual rent adjustment as described  
10          below
- 11          • For the months of December, 2019 through and including November,  
12          2020, the sum of \$2,900/month plus an annual rent adjustment as  
13          described below
- 14          • For the months of December, 2020 through and including November,  
15          2021, the sum of \$2,900/month plus an annual rent adjustment as  
16          described below

17          **ANNUAL RENT ADJUSTMENT.**

18          The original monthly rent for each year of the initial term and for each year of the  
19          option term shall also be adjusted annually in July of each year as follows:

20          The base for computing the adjustment is the "All Urban Consumer California  
21          Wide Consumer Price Index," which is computed from April to April each year and  
22          published in May of each year. If the index published nearest the adjustment date  
23          ("extension index") has increased over the "Beginning Index," the monthly rent for the  
24          following year shall be set by multiplying the monthly rent by a fraction, the numerator  
25          of which is extension index and the denominator of which is the beginning index. The  
26          "beginning index" is defined as the first monthly rent for the first adjustment to be made  
27          after one (1) year and is thereafter defined as the new monthly rent thereafter established,  
28          after each adjustment date for each year remaining Lease term. On adjustment of the  
29          monthly rent for each year period, the parties shall confirm by letter stating the new  
30          monthly rent. In no event shall the monthly rent be less than the amount first specified  
31          in this Lease notwithstanding the fact that the index may, as of some adjustment date, be  
32          less than the original monthly rent.

1 If on any rental adjustment date there shall not exist a Consumer Price Index in  
2 the same format as recited herein, the parties shall substitute the Consumer Price Index for  
3 all Urban Consumers provided such index has been so revised or changed in such a way  
4 as to affect the direct comparability of such revised or changed index published by the  
5 Bureau of Labor Statistics or similar or successor governmental agency as may then be in  
6 existence and most nearly equivalent thereto (i.e. the Wholesale Price Index). If the  
7 parties are unable to agree on a successor index, then the parties shall refer the choice of  
8 the successor index to arbitration in accordance with rules of the American Arbitration  
9 Association.

10 Notwithstanding provisions set forth in this Section 3, no annual rental adjustment  
11 shall exceed five percent (5%) of the rent for the preceding year.

#### 12 **COMMON AREA MAINTENANCE**

13 Tenant shall pay \$900 per month in advance as additional rent for common area  
14 janitorial maintenance and supplies for daily and nightly cleaning of restrooms and  
15 weekly deep cleaning of the Airport Terminal Lobby. Landlord shall see that restroom  
16 paper products and supplies are stocked and available and that consumables are  
17 replenished.

#### 18 **TAXES.**

19 Tenant shall pay as additional rent all taxes, assessments and licenses levied,  
20 imposed or required by any governmental subdivision, body or authority on or in respect  
21 to:

- 22 a. Any improvement or property placed on the Premises by Landlord or  
23 Tenant or any person with Tenant's permission.
- 24 b. The use, occupancy or possessory rights in the Premises. Landlord,  
25 pursuant to §107.6 of the California Revenue and Taxation Code hereby  
26 gives notice that the interest of Tenant in this Lease may be subject to  
27 property taxation as a possessory interest. By signing this Lease, Tenant  
28 acknowledges that it is aware of such tax and agrees to pay same when  
29 due.

#### 30 **4. OPTION TERM RENT**

31 The first year of option term rent shall be \$3,600/month. Rent shall be adjusted  
32 by the cost of living in the manner described above on July 1, 2022, 2023, 2024 and  
33 2025.

1 Tenant shall pay additional monthly rent in advance for common area  
2 maintenance as described in the description of common area maintenance responsibilities  
3 for the initial term. The rent shall be determined solely by Landlord after discussions  
4 with Tenant based on actual expenses incurred during the initial term. CAM rent during  
5 the option term shall not however exceed \$1,200 per month.

6 If the parties fail to agree on the then fair market ground rent, the Parties shall  
7 agree upon an experienced appraiser who shall decide the fair market rent which  
8 determination shall be binding and final. If the parties do not agree on an appraiser, either  
9 party may apply to the Santa Cruz County Superior Court for appointment of an appraiser  
10 who shall establish fair market ground rent for similar property in Santa Cruz County.  
11 However established, said rent shall be the base rent for the option term except for the  
12 annual rent adjustment as described above. An annual rent adjustment shall be applied as  
13 described above as of July 1, 2021, July 1, 2022 and July 1, 2023.

#### 14 **5. SECURITY DEPOSIT**

15 Before providing this lease to the Council for consideration, Tenant shall deposit  
16 \$2,700 (\$2,700 base rent) as a Security Deposit with the Landlord. This Security Deposit  
17 is security that the Tenant will comply with all the terms of this Lease. This Security  
18 Deposit may not be used to pay the last month's rent without the Landlord's prior written  
19 consent.

20 If the Tenant breaks or otherwise violates this Lease before the prescribed  
21 expiration date, the Landlord may keep all or part of this Security Deposit to cover  
22 unpaid rent, CAM charges and or/damage to the property.

23 Upon Tenant's office move-out date, the Landlord will inspect and document the  
24 condition of the Premises. Within 30 days of the end of this Lease, if the Tenant has  
25 supplied the Landlord with a forwarding address, the Landlord will do one of two things.

26 1. If the Tenant has complied with all terms of this Lease and returns the Premises  
27 to the Landlord in the same good condition as when Tenant moved into the Premises, the  
28 Landlord will return the Security Deposit.

29 or

30 2. The Landlord will provide the Tenant with a written notice including an  
31 itemized list as to why the full Security Deposit amount is not being returned to the tenant  
32 and a check for any remaining Security Deposit owed to the Tenant after the allowed  
33 deductions have been made.



1           **6. CITY, COUNTY OR STATE LICENSES(S).**

2           Tenant's liability to pay taxes shall be prorated, if necessary, based on a 360-day  
3 year to account for any fractional portion of a fiscal tax year included in the term at its  
4 commencement and/or expiration. On demand by Landlord, Tenant shall furnish  
5 Landlord with satisfactory evidence of these payments.

6           a.       Any taxes, fees, assessments, license fees, and other charges that are  
7                   levied and/or assessed against Tenant's personal property or trade fixtures  
8                   installed or located in or on the Premises, whether, or not same that  
9                   become payable during the term of this Lease or while Tenant continues  
10                  in possession of the Premises.

11          b.       Any business, activity or transaction conducted thereon by Tenant.

12           **7. LATE PAYMENT.**

13           Rent is delinquent if not paid on or before the 1<sup>st</sup> of the month. If any monthly  
14 payment is delinquent for a period of ten (10) days or more, Tenant shall, as to each late  
15 payment penalty, pay to Landlord as and for a late payment the sum of ten percent (10%)  
16 of the amount due for each and every installment not paid when due, which penalty shall  
17 be payable with the delinquent monthly rental payment. Interest shall also accrue on any  
18 payment over 30 days late at 10% per annum, compounded monthly.

19           **8. PERMITTED AND PROHIBITED USES.**

20           **PERMITTED USES**

21           The Landlord hereby grants to Tenant the exclusive right, license, and privilege,  
22 to conduct and operate the restaurant and cocktail lounge in the Watsonville Airport  
23 terminal building at 100 Aviation Way during the term of this Lease. Tenant  
24 acknowledges and waives any claim(s) it may have resulting from interference with  
25 business associated with issuance of permits by the City Council during the annual  
26 Watsonville "Fly-In" or other public events at the Airport.

27           **PROHIBITED USES.**

28           The leased Premises shall not be used any purpose other than a restaurant and  
29 cocktail lounge, and specifically not for any of the following purposes:

- 30           a.       Sale of aviation grade fuel, jet fuel, automobile or other fuel.
- 31           b.       Public tie down and hangar services which shall remain the exclusive  
32                   services of the Landlord.

- 1 c. Manufacturing aircraft.
- 2 d. The operation of a scheduled air cargo service.
- 3 e. The operation of a "UNICOMM" radio communication system with
- 4 aircraft.
- 5 f. The operation of a maintenance or repair service on non-aviation related
- 6 items, including but not limited to automobiles, motorized vehicles and
- 7 boats.
- 8 g. Any other use not expressly allowed in Section 4.0 of this Lease.

9 **9. NO SUBORDINATION.**

10 Landlord shall not subordinate the fee title to the Premises to any security  
11 transaction to enable Tenant to obtain financing for the new improvements. The Premises  
12 are now and shall remain free and clear of any liens, encumbrances or other Tenant  
13 obligations to third person.

14 **10. UTILITIES.**

15 Tenant shall pay all water, gas, heat, light, power, telecommunication services,  
16 telephone service, garbage disposal, storm and sanitary sewer services, and all other  
17 utilities or services supplied to the Premises, including installation and connection of such  
18 services from the main source thereof, including City meters, and hold harmless the  
19 Landlord therefor. Any failure to pay City of Watsonville municipal utility charges when  
20 due shall be a material breach of this Lease.

21 The Landlord will maintain the electric power standby generator in good repair.  
22 However, the Landlord assumes no liability for losses of any kind that Tenant may incur  
23 for failure of the standby power generator to operate in the event of electrical power  
24 disruption from whatever cause.

25 **11. ALTERATIONS AND ADDITIONS.**

26 Tenant shall not make any alterations or improvements to or erect any additional  
27 structures on the Premises without prior written consent of Landlord. Any alterations or  
28 additions approved by Landlord shall be constructed at the sole expense of Tenant. Such  
29 improvements shall become the property of Landlord at the expiration of this Lease.

1           **12.COMPLIANCE WITH RULES, REGULATIONS AND LAWS.**

2           In the use and occupancy of the Premises and in the conduct of all business,  
3 activities and transactions thereon, Tenant will comply with all applicable laws,  
4 ordinances, rules, regulations and orders of the City or any governmental subdivision,  
5 body or authority, including all federal, state and municipal laws and ordinances and all  
6 rules and regulations of the Federal Aviation Administration and the City of Watsonville  
7 rules and regulations concerning the operations of the Watsonville Municipal Airport and  
8 environs.

9           **13.STORAGE OF MATERIALS AND EQUIPMENT.**

10          No materials, supplies, products, equipment or other personal property, except for  
11 vehicles in regular use, shall be stored or permitted to remain on any portion of the  
12 Leased Premises outside of Landlord approved buildings or structures without Landlord's  
13 prior written consent. Tenant shall store personal property items, supplies, materials and  
14 combustibles inside the buildings in a safe, neat and sanitary manner. Tenant shall  
15 provide or cause to be provided adequate enclosures, screened areas and/or suitable  
16 covered metal receptacles within the Leased Premises for the short-term accumulation  
17 and storage of solid waste, such as rubbish, trash, garbage, and sludge. Such enclosures  
18 and/or screened areas shall be designed in such a way as to prevent, odors, fumes,  
19 attraction of pests, and dispersal of wastes due to wind or water runoff, and shall be  
20 serviced regularly by qualified waste removal and disposal services.

21           **14.ENVIRONMENTAL CONSIDERATIONS.**

22           **WASTE, NUISANCE, DISTURBANCE OF QUIET ENJOYMENT.**

23          Tenant shall not commit, or suffer to be committed, any waste upon the Premises,  
24 or any nuisance or other act or thing which may disturb the quiet enjoyment of the use of  
25 Watsonville Airport or surrounding property. Tenant shall ensure that no untreated liquid  
26 waste from any type of operation will enter the airport storm drainage system or sanitary  
27 sewer system.

1                   **RELEASE OF POLLUTANTS; STORAGE OF WASTE.**

2                   Tenant shall at all times comply with all applicable laws, rules and regulations of  
3 federal, state or local governmental agencies, including, but not limited to, the City of  
4 Watsonville, Santa Cruz County, Regional Air and Water Quality Control Boards, the  
5 Watsonville Airport Storm Water Pollution Prevention Plan in the Airport Minimum  
6 Commercial Standards and the laws and regulations of the Federal Aviation  
7 Administration. Tenant shall not permit any activity which directly or indirectly produces  
8 objectionable or unlawful amounts or levels of air pollution (gases, particulate matter,  
9 odors, fumes, smoke, or dust), water pollution, noise, glare, heat emissions, electronic or  
10 radio interference with navigational and communication facilities for the operation of the  
11 Airport and for its use by aircraft, trash or refuse accumulation, or which is hazardous or  
12 dangerous by reason or risk of explosion, fire or harmful emission.

13                   **HAZARDOUS SUBSTANCES.**

14                   The term "Hazardous Materials" shall mean any toxic substance, hazardous  
15 substance, hazardous material, or hazardous waste, pollutant or contaminant which is or  
16 during the term of this Lease becomes regulated by any local governmental authority, the  
17 State of California, or the United States government, including, but not limited to any,  
18 material or substance which is defined as a "hazardous waste," "extremely hazardous  
19 waste" or "restricted hazardous waste" under local, State, or federal law and as  
20 determined by the Watsonville Fire Department. Except in strict compliance with all  
21 government approvals, applicable laws and regulations pertaining to Hazardous  
22 Materials, and in accordance with the provisions of this Lease, Tenant shall not cause or  
23 permit the presence, use, handling, generation, emission, release, discharge, storage, or  
24 disposal of any Hazardous Materials on, under, in or about the Premises, excepting the  
25 presence of any Hazardous Materials on, under, in or about the Premises as of the date  
26 of this Lease or the migration to or seepage of Hazardous Materials from surrounding or  
27 adjacent property; and shall not cause or permit the transportation of any Hazardous  
28 Materials to or from the Premises. Tenant shall at all times notify Landlord of any  
29 Hazardous Materials present, used, generated, handled, emitted, released, discharged,  
30 stored or disposed of on or from the Premises.

1           **INDEMNIFICATION BY TENANT.**

2           Tenant shall defend, indemnify, protect and hold Landlord and Landlord's elected  
3 and appointed officials, successors and assigns, officers, directors, employees, agents,  
4 subtenants and assignees, harmless from and against all claims, liability, damages,  
5 penalties, expenses and costs of any required or necessary remediation, repair, removal,  
6 clean up or detoxification, of the Premises and surrounding properties, and from and  
7 against the preparation of any clean up, remediation, closure or other required plans,  
8 whether such action is required or necessary during or following the term of this Lease, to  
9 the full extent that the same is attributable to the use, handling, generation, emission,  
10 release, storage, discharge or disposal of hazardous material by Tenant, its agents,  
11 employees, and contractors.

12           **INDEMNIFICATION SURVIVES LEASE.**

13           The indemnification provisions of the foregoing shall survive the termination of  
14 this Lease.

15           **NO WARRANTY OF CURRENT CONDITION.**

16           Landlord makes no representation or warranty, express or implied, as to the  
17 physical condition of the Premises, including, but not limited to the condition of the air,  
18 soil, surface water or groundwater, the geology, the presence of known and unknown  
19 faults, the presence of any Hazardous Materials or other kinds of contamination or  
20 pollutants of any kind in the air, soil, groundwater or surface water, or the suitability of  
21 the Premises for the construction and use of the improvements thereon; except as stated  
22 in this Lease, Premises are conveyed in "as is" condition.

23           **15.REPAIRS.**

24           **LANDLORD'S PREMISES OBLIGATIONS.**

25           Landlord shall maintain the outside walls and roof of the building except if repair  
26 or replacement arises from negligence or misconduct of the Tenant or if Tenant fails to  
27 notify Landlord in writing within three (3) days of a need to repair.

28           Landlord shall pay to repair and maintain the heater air conditioner and thermostat  
29 control for the Premises.

1 Landlord shall provide maintenance services by its own employees at the  
2 published rate and schedule, but only if Tenant if completes the on-line maintenance  
3 request; i.e. no "Ad hoc" or "on demand requests will be honored with the exceptions of  
4 emergencies and then only with approval of Airport management.

5 **TENANT'S PREMISES OBLIGATIONS.**

- 6 a. Tenant shall sweep and if necessary, mop the two exterior restaurant  
7 building entrances and the entry to the exterior storage area and sweep  
8 sidewalks and keep them free of debris.
- 9 b. Tenant shall keep interior and exterior of Premises windows clean and  
10 shall wash all interior and exterior windows no less than twice yearly.
- 11 c. Tenant shall provide, at no cost to Landlord, sufficient daily ground coffee  
12 for Landlord to the Terminal for Landlord to serve to terminal customers.
- 13 d. Tenant shall secure and lock the Premises and the Terminal Building each  
14 evening at close of business, excluding days the Tenant may be closed.
- 15 e. Tiffany Ella King shall devote sufficient time to manage and operate the  
16 restaurant.
- 17 f. Tenant shall operate a facility serving as a general aviation fly in  
18 destination restaurant on the Premises open at least six days a week for at  
19 least lunch, afternoons and dinner.
- 20 g. Tenant shall maintain and repair all interior heating, air conditioning, and  
21 interior plumbing, air conditioning and heating ducts and vents, interior  
22 walls, doors, hardware, interior electrical, fire and intrusion alarms in as  
23 good order, condition and repair as they shall be upon the commencement  
24 of the term of this Lease.
- 25 h. Tenant shall be solely responsible for maintaining and repairing  
26 Landlord's ice machine, walk in refrigerator, oven and stove, Ansul or  
27 other stove hood fire suppression system and
- 28 i. Tenant shall keep concrete drainage swales, rain gutters and downspouts  
29 on the premises free from debris.

30 **16. MAINTENANCE INSPECTIONS**

31 Landlord may, but is not required, to inspect the Premises at least quarterly to be  
32 informed about the condition of the Premises and to determine if tenant is complying  
33 with Tenant's Premises inspection obligations.

1           **17.FREEDOM FROM LIENS.**

2           Tenant shall not create or permit to be created or to remain, and covenants to  
3 remove and discharge promptly, at its cost and expense, all liens, claims, stop notices,  
4 encumbrances and charges upon the Premises, or Tenant's leasehold interest therein  
5 which arise out of the use or occupancy of the Premises by Tenant or anyone using or  
6 occupying the Premises with the consent or sufferance of Tenant, or by reason of labor or  
7 materials furnished or claimed to have been furnished to Tenant for any construction,  
8 alteration, addition or repair of any part of the Premises. Tenant shall give Landlord  
9 fifteen (15) days' notice prior to commencing any work on the Premises, so that  
10 Landlord shall have a reasonable time within which to post notices of non-responsibility.

11           **18.HOLDING OVER.**

12           If Tenant shall hold possession of the Premises after the term of this Lease, Tenant  
13 shall become a Tenant from month to month at the rental and upon the terms herein  
14 specified and shall continue to be such tenant until the tenancy shall be terminated by  
15 Landlord on thirty (30) days-notice or until Tenant shall have given at least thirty (30)  
16 days-notice of Tenant's intention to terminate the tenancy. The provision of this Lease, so  
17 far as applicable, shall govern such tenancy, except that the monthly rent for such tenancy  
18 shall be the same as the last full month's rental rate.

19           **19.ABANDONMENT.**

20           Tenant shall not vacate or abandon the Premises at any time during the term  
21 thereof. If Tenant shall abandon, vacate or surrender the Premises or be dispossessed by  
22 process of law, or otherwise, any personal property belonging to Tenant and left on the  
23 Premises shall be deemed to be abandoned and at the option of Landlord shall become  
24 Landlord's property free from all claims of Tenant. If Tenant abandons the Premises  
25 Landlord shall have the option to terminate this Lease by giving Tenant notice of belief of  
26 abandonment pursuant to California Civil Code Section 1951.3 or Landlord has the  
27 remedy described in California Civil Code Section 1951.4, i.e., Landlord may continue  
28 the Lease after breach and abandonment and recover rent as it becomes due.

29           **20.ASSIGNMENT OR SUBLETTING.**

30           Tenant has the right to sublet or assign, subject to reasonable limitations as  
31 provided in this Section.

1           **RESTRICTION AGAINST ASSIGNMENT.**

2           Tenant shall not assign or encumber any interest in this Lease or in the Leased  
3 Premises, or sublease all or any part of the Premises, or allow any other person or entity  
4 (except Tenant's authorized representatives) to occupy or use all or any part of the  
5 Premises, without Landlord's prior written consent, and consent to one assignment or  
6 sublease shall not be construed as consent to any subsequent assignment or subleasing.

7           **VOLUNTARY ASSIGNMENT.**

8           If Tenant is a corporation or partnership, any dissolution, merger, consolidation or  
9 other reorganization of Tenant or the sale or transfer of controlling percentage of the  
10 capital stock of Tenant or the sale of twenty-five percent (25%) of the value of the assets  
11 of Tenant shall be deemed a voluntary assignment. The phrase "controlling percentage"  
12 means the ownership of and the right to vote stock possessing at least twenty-five percent  
13 (25%) of the total combined voting power of all classes of Tenant's capital stock issued  
14 outstanding and entitled to vote for the election of directors.

15           **CONSENT BY LANDLORD.**

16           Landlord shall have the sole and unfettered discretion to approve or reject any  
17 sub-lease or assignment. Landlord may condition consent upon such factors as the  
18 identity, reputation, financial worth and stability and operating ability of any proposed  
19 assignee or subtenant. If the Premises are sublet to any person with the permission of  
20 Landlord, one hundred percent (100%) of any incremental leasing profits shall accrue to  
21 Landlord. Unless prior written consent of Landlord shall have been obtained, any  
22 transfer, or attempted assignment or transfer, of this Lease or any interest therein, or any  
23 subletting, either by voluntary or involuntary act of Tenant or by operation of law or  
24 otherwise, shall at the option of the Landlord terminate this Lease, and any such  
25 purported assignment, transfer or subletting without such consent shall be null and void.

26           **PROCEDURE FOR OBTAINING APPROVAL FOR ASSIGNMENT.**

27           Tenant shall not have the right to assign this Lease, except by Leasehold  
28 mortgage, without the prior written consent of Landlord. If Tenant desires to assign the  
29 Lease, Tenant shall comply with the following procedures:

30           Tenant shall give Landlord at least sixty (60) days prior written notice of its  
31 desire to assign the Lease.



1 Tenant shall simultaneously provide Landlord with the assignee's name, business  
2 organization, financial statement, and other documentation as may be requested by  
3 Landlord.

4 Tenant shall provide Landlord with a true copy of the proposed assignment and  
5 the proposed assignee shall, expressly assume all the covenants and conditions of this  
6 Lease.

7 Tenant shall pay Landlord at the time the request to assign is submitted, a deposit  
8 of FIVE THOUSAND AND NO/100 DOLLARS (\$5,000.00) against Landlord's  
9 expenses, including attorney's fee, in evaluating and documenting the assignment.  
10 Landlord shall charge against said deposit at the then current hourly rate for staff time.  
11 Any balance of said deposit shall be refunded to Tenant, and any excess amount charged,  
12 excluding said deposit, shall be paid by Tenant as a condition precedent for approval of  
13 any assignment.

14 Landlord and Tenant hereby deem it reasonable for the Landlord to refuse to  
15 consent to a proposed assignment in the following circumstances:

16 Landlord may object to any proposed assignment if, in the Landlord's sole and  
17 unfettered opinion, the proposed assignee is not a qualified assignee in terms of financial  
18 strength, business experience, restaurant style or ambiance, reputation or the ability to  
19 operate the food establishment and provide the required services in a manner consistent  
20 with the purposes for which this Lease was granted.

21 Landlord may object on any other grounds.

22 **COMMENCEMENT DATE OF ASSIGNMENT - LANDLORD'S DISAPPROVAL.**

23 The effective date of the assignment shall not occur until sixty (60) days after the  
24 Tenant's notice of the proposed assignment unless, within that time, Landlord gives  
25 notice of a valid objection or refusal of consent as set forth in subsection 17.4.a. hereof.  
26 If Landlord gives notice of a valid objection and withholds consent, the Lease will not be  
27 assigned.

28 **21.SUBLETTING.**

29 Not allowed under the terms of this Lease except as specifically authorized, and  
30 then only if one hundred percent (100%) of any leasing profits are assigned and paid to  
31 Landlord rather than Tenant.

1       **22.SIGNS, POSTERS, BUILDINGS AND TOWERS.**

2           No advertising signs, posters or similar devices shall be erected, displayed or  
3 maintained in, on, about or above the Premises or the structures thereon without a sign  
4 permit and the prior written approval of the Airport Manager.

5       **23.TOWERS OR STRUCTURES.**

6           No towers or structures erected on the Premises. Tenant in its operations shall not  
7 unreasonably interfere with the property, interests, operations or activities of the  
8 Landlord or of other tenants of the Landlord. Tenant shall not be permitted to operate  
9 any radio transmitting devices in or about the Premises.

10       **24.WAIVER OF DAMAGES AND INDEMNIFICATION.**

11           Landlord shall not be liable to Tenant for any injury or damage that may  
12 result to any person or property by or from any cause whatsoever, except as results from  
13 acts of the sole negligence on the part of Landlord, its agents, servants, employees or  
14 invitees. Without limiting the generality of the foregoing waiver, it is expressly extended  
15 to injury or damage caused by water leakage of any character from the roof(s), wall(s),  
16 basement or any part of the property, or caused by gas, oil, electricity or any other cause  
17 in or about the Premises or the building(s). Tenant agrees to defend, indemnify and hold  
18 Landlord harmless from and against, any and all claims or liability for any death of for  
19 injury to any person or damage to any property, whatsoever, occurring in, on or about  
20 the Premises.

21       **25.PAYMENT OF RENT AND SERVICES.**

22           Notwithstanding any other provision of this Lease, all rents shall be paid to City of  
23 Watsonville, c/o Finance Department, by delivering or mailing to the address provided  
24 herein.

          City of Watsonville  
          Accounts Payable  
          250 Main Street  
          Watsonville, CA 95076

1           **26. SECURITY DEPOSIT.**

2           Tenant shall furnish a good and sufficient surety, Certificate of Deposit or  
3 assignment for security of a deposit account, in a form satisfactory to the City Attorney.  
4 The sum shall be not less than Two Thousand Three Hundred Dollars (\$2,700.00), and  
5 shall guarantee faithful performance of this Lease, and any other financial obligation of  
6 Tenant to Landlord, by Tenant, it being understood that at all times during the term of  
7 this Lease such obligation, must be in full force and effect. Any interest that may accrue  
8 from the ownership of such security deposit will accrue and be paid to the owners of  
9 the security providing the tenant is not then in default of any term of this Lease. The  
10 Tenant shall be responsible for any fees associated with complying with this section, the  
11 Personal Property Security Agreement, being executed simultaneously, and City Utility  
12 Fees.

13           **HOLD HARMLESS & INDEMNIFICATION.**

14           Tenant shall save, protect, indemnify, and hold Landlord, its elective and  
15 appointive boards, commissions, officers, agents, and employees harmless from any and  
16 all claims, cost or liability of any kind allegedly suffered, incurred or threatened,  
17 including personal injury, death, property damage, inverse condemnation, or any  
18 combination of these, foreseeable or unforeseeable, arising directly or indirectly from or  
19 connected with any acts performed pursuant to this Lease, or any omission to perform,  
20 including, but not limited to, claims, costs or liability resulting from: (1) The conduct,  
21 negligent or otherwise, of Tenant, its subtenant(s), assignee(s), or any officer(s), agent(s)  
22 or employee(s) of one or more of them; (2) The joint conduct of the Landlord and  
23 Tenant, regardless of whether the Landlord is concurrently, active or passively negligent  
24 or not negligent at all; or (3) The sole concurrent conduct of any other person or  
25 entity. The indemnification provisions of the foregoing shall survive the termination of  
26 this Lease.

1           **27. NON-LIABILITY OF LANDLORD FOR DAMAGES.**

2           This Lease is made upon the express condition that Landlord is to be free from all  
3 liability and claim for damages by reason of any injury to any person or persons  
4 including, Tenant, or property of any kind whatsoever and to whomsoever belonging,  
5 including Tenant, from any cause or causes whatsoever while in, upon, or in any way  
6 connected with the Premises during the term of this Lease or any extension hereof or any  
7 occupancy hereunder, Tenant hereby covenanting and agreeing to indemnify and save  
8 harmless Landlord from all liability, loss, cost, attorneys fees, and obligations on  
9 account of or arising out of any such injuries or losses however occurring. The hold  
10 harmless provisions of the foregoing shall survive the termination of this Lease

11           **28. INSURANCE.**

12           **GENERAL LIABILITY LIABILITY POLICY.**

13           During the Lease term, Tenant shall, at its own expense, maintain in full force a  
14 policy or policies of commercial liability insurance, including property damage, written  
15 by one or more responsible insurance companies licensed to do business in California,  
16 and in good standing with the Insurance Commissioner of California, that will insure  
17 Tenant and Landlord as named insured (and such other persons, firms or corporations  
18 as are designated by Landlord) against liability for injury to persons and property and  
19 for death of any person or persons occurring in or about the Premises. The liability under  
20 such insurance shall not be less than One Million Dollars (\$1,000,000.00) bodily injury  
21 and One Hundred Thousand Dollars (\$100,000.00) for property damage.

22           **EVIDENCE OF INSURANCE.**

23           Tenant shall provide Landlord with endorsements naming Landlord as an  
24 additional insured in a form acceptable to the City Attorney and all policies required  
25 hereunder, including in each instance a certificate providing that such insurance shall not  
26 be canceled or terminated except after thirty (30) days written notice to Landlord.

27           **WAIVER OF SUBROGATION.**

28           Landlord hereby releases Tenant, and Tenant hereby releases Landlord, from any  
29 and all claims or demands for damages, loss, expense or injury to the Premises, or to the  
30 improvements, fixtures and equipment, or personal property or other property of either  
31 Landlord or Tenant in, about or upon the Premises adjoining property as the case may be,  
32 which is caused by or results from perils, *events* or happening which are the subject of  
33 insurance carried by the respective parties and in force at the time of any such loss.

1           **SURRENDER OF PREMISES.**

2           Tenant agrees to surrender the Premises and any addition thereto at the  
3 termination of the tenancy (including any shortened tenancy after financial reviews)  
4 herein created in the same condition as the Premises were in at the beginning of the  
5 tenancy or at the time of completion of the improvements as the case may be, reasonable  
6 use and wear thereof and damage by act of God or the elements excepted.

7           **29.EQUIPMENT AND SUPPLIES.**

8           Tenant agrees, at his own expense, to furnish all equipment and supplies  
9 necessary for the operation of the restaurant cocktail lounge. Title to such equipment  
10 supplied by the Tenant shall remain in him. However, upon termination or expiration of  
11 this Lease, any extension thereof, or if Tenant does not sell or assign this restaurant  
12 cocktail facility to a successful buyer approved by the Landlord, Landlord shall have the  
13 option to purchase same from Tenant at its fair market value to be established by an  
14 independent and reputable restaurant equipment firm to be selected mutually by the  
15 Tenant and the Landlord. Attached equipment shall become the property of the Landlord  
16 upon expiration or termination of this Lease.

17           **30.CLOSURE OF AIRPORT IN AN EMERGENCY.**

18           During any period when the Airport shall be closed or civil aircraft grounded by  
19 any lawful authority restricting the use of the Airport or civil aircraft in such a manner as  
20 to interfere substantially with the use of the Premises by Tenant, the rent payable under  
21 this Lease shall abate, and the period of such closure at the option of Tenant shall be  
22 added to the term of this Lease. During the time of war or national emergency, Landlord  
23 shall have the right to lease or lend the landing area of the Airport, or any part thereof, to  
24 the United States Government or State government for military or naval use, and if such  
25 lease or lending is executed and the use thereunder interferes substantially with the use of  
26 the Premises by Tenant, the rent shall abate, and this Lease shall be suspended or  
27 terminated.

28           **31.RESERVATION OF RIGHT.**

29           Landlord reserves the right, but shall not be obligated to maintain and keep in  
30 repair the landing area of the Airport and all publicly owned facilities at the Airport,  
31 together with the right to direct and control all activities of Tenant in this regard.

1           **32. RIGHT OF LANDLORD TO ENTER FOR INSPECTION.**

2           Landlord shall have the right to enter upon the Premises at all reasonable times  
3 during the term of this Lease for the purpose of making any inspection it may deem  
4 expedient to the proper enforcement of this Lease.

5           **33. NONDISCRIMINATION.**

6           Tenant hereby covenants that Tenant in its use of the Premises and any and  
7 all structures, buildings and improvements located hereon shall conduct the fixed base  
8 operation or any other activity hereafter authorized by the Landlord on the Premises on a  
9 non-exclusive and non-discriminatory basis in all respects with regard to any person, firm  
10 or group of persons. Tenant shall not act in any manner prohibited by Part 15 of the  
11 Federal Aviation Regulations and further agrees to be nondiscriminatory also with respect  
12 to price or cost of services or goods and in every other fashion.

13           **34. ENFORCEMENT OF NONDISCRIMINATION CLAUSE.**

14           Landlord shall have the right to take such action against the Tenant as the United  
15 States Government may direct or request to enforce the terms of the preceding  
16 paragraph on behalf of the United States Government or on behalf of any of its citizens  
17 or the Landlord itself.

18           **35. NONDISCRIMINATION/FAA, MBE (DBE) REQUIREMENTS**

19           **DISCRIMINATION PROHIBITED**

20           The Tenant, for itself, its heirs, personal representatives, successors in interest, and  
21 assigns, as a part of the consideration for this Lease, does hereby covenant and agree as a  
22 covenant running with the land that if facilities are constructed, maintained, or otherwise  
23 operated on the Premises for a purpose for which a Department of Transportation (DOT)  
24 program or activity is extended or for another purpose involving the provision of similar  
25 services or benefits, the Tenant shall maintain and operate such facilities and services in  
26 compliance with all other requirements imposed pursuant to Title 49, Code of Federal  
27 Regulations, DOT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in  
28 Federally- Assisted Programs of the Department of Transportation-Effectuation of Title  
29 VI of the Civil Rights Act of 1964, and as such Regulations may be amended.

1           The Tenant for itself, its personal representatives, successors in interest, and  
2 assigns, as a part of the consideration hereof, does hereby further covenant and agree as a  
3 covenant running with the land that: (a) no person on the grounds of race, color or  
4 national origin shall be excluded from participation in, denied the benefits of, or be  
5 otherwise subjected to discrimination in the use of facilities; (b) that in the construction  
6 of any improvements on, over, or under such land and the furnishing of services thereon,  
7 no person on the grounds of race, color, or national origin shall be excluded from  
8 participation in, denied the benefits of, or otherwise be subject to discrimination; that the  
9 Tenant shall use the Premises in compliance with all other requirements imposed by or  
10 pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle  
11 A, Office of the Secretary, Part 21, Nondiscrimination in Federally- Assisted Programs of  
12 the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of  
13 1964, and as such Regulations may be amended.

14           Tenant shall furnish its accommodations and/or services on a fair, equal and not  
15 unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not  
16 unjustly discriminatory prices for each unit or service; PROVIDED, THAT the Tenant  
17 may be allowed to make reasonable and nondiscriminatory discounts, rebates or other  
18 similar type of price reductions to volume purchasers.

19           Tenant shall insert the provisions of this section in any Lease agreement or  
20 contract by which Tenant grants a right of privilege to any person, firm or corporation  
21 to render accommodations and/or services to the public on the Premises.

22           **REMEDY FOR DISCRIMINATION.**

23           Upon of breach of any of the nondiscrimination covenants identified in Paragraph  
24 30, Landlord shall have the right to terminate this Lease and to reenter and repossess the  
25 Premises and the facilities thereon, and hold the same as if this Lease had never been  
26 made or issued. The provision does not become effective until the procedures of 49 CFR  
27 Part 21 are followed and completed including expiration of appeal rights.

28           Non-compliance with Paragraph 30 shall constitute a material breach thereof and  
29 if such Non-compliance Landlord shall have the right to terminate this Lease and the  
30 estate hereby created without liability therefore or at the election of the Landlord or the  
31 United States either or both Governments shall have the right to judicially enforces  
32 Paragraph 30.

1           **36.AFFIRMATIVE ACTION.**

2           Tenant assures that it will undertake an affirmative action program as required by  
3 14 CFR Part 152, Subpart E, to insure that no person shall be on the grounds of race,  
4 creed, color, national origin, or sex be excluded from participating in any employment  
5 activities covered in 14 CFR, Subpart E. Tenant assures that no person shall be excluded  
6 on these grounds from participating in or receiving the services or benefits of any  
7 program or activity covered by such subpart. Tenant assures that it will require that its  
8 covered by such subpart. Tenant assures that it will require that its covered  
9 suborganizations provide assurances to the Tenant that they similarly will undertake  
10 affirmative action programs and that they will require assurances from their  
11 suborganizations, as provided by 14 CFR Part 152, subpart 2, to the same effect.

12           **37.SUBORDINATION TO FUTURE FAA AGREEMENTS.**

13           This Lease shall be subordinate to the provisions and requirements of any  
14 existing or future agreement between the Landlord and the United States, relative to the  
15 development, operation or maintenance of the Airport.

16           **38.NOTICE TO FEDERAL AVIATION ADMINISTRATION.**

17           Tenant shall comply with the notification and review requirements covered in Part  
18 77 of the Federal Aviation Regulations in the event of future construction of a building  
19 planned for the Premises, or in the event of any planned modification or alteration of any  
20 present or future building or structure situated on the Premises.

21           **39.NON-EXCLUSIVE RIGHT.**

22           It is understood and agreed that nothing herein contained shall be construed to  
23 grant or authorize the granting of an exclusive right within the meaning of Section 308 of  
24 the Federal Aviation Act.

25           **40.DAMAGE OR DESTRUCTION.**

26           If the Premises shall be damaged by fire, earthquake, the elements or other  
27 casualty whether or not covered by insurance and whether or not such damage may be  
28 repaired, reconstructed or restored, Tenant shall promptly commence the work or repair,  
29 reconstruction and restoration, and shall diligently prosecute the same to completion at  
30 Tenant's expense. During this period or time, this Lease shall continue in full force and  
31 effect.



1           **41.CONDEMNATION.**

2           Should the whole or any part of the Premises be condemned and taken by any  
3 competent authority for any public or quasi-public use or purpose, or should Landlord  
4 make a conveyance in lieu thereof, all awards payable on account of such condemnation  
5 and taking or conveyance shall be payable to Landlord, and Tenant hereby waive all  
6 interest in or claim to said awards, or any part thereof. Tenant shall be entitled, however,  
7 to any award based upon the taking of or damage to Tenant's trade fixtures and  
8 improvement to the Premises to the extent Tenant has the right to remove them at the  
9 end of the Lease Term.

10           If the whole of the Premises of the Premises shall be so condemned and taken or  
11 conveyed, then this Lease shall terminate.

12           If a part only of the Premises is so condemned and taken or conveyed, and the  
13 remaining portion thereof is not suitable for the purpose for which Tenant has leased said  
14 Premises, Tenant shall have the right to terminate this Lease. If by such condemnation  
15 and taking only a part of the Premises, and the remaining part thereof is suitable for the  
16 purposes for which Tenant has leased said Premises, this Lease shall continue, but the  
17 rental shall be reduced in an amount proportionate to the value of the portion taken as it  
18 relates to the total value of the Premises or the Premises may be relocated on the same  
19 site depicted on Exhibit "A."

20           **42.DEFAULT AND REMEDIES.**

21           The occurrence of any one or more of the following events shall constitute a  
22 material default and breach of this Lease by Tenant:

23           **BANKRUPTCY AND INSOLVENCY.**

24           The filing or commencement of any proceeding by or against Tenant under the  
25 Federal Bankruptcy Code whether voluntary or involuntary, if not dismissed within sixty  
26 (60) days from the date of filing, shall constitute a default under this Lease.

27           **RECEIVERSHIP.**

28           Either the appointment of a receiver to take possession of all, or substantially all,  
29 of the assets of any Tenant or garnishment of or levy or writ of execution on, all or  
30 substantially all of the assets of any Tenant which remain in effect for more than sixty  
31 (60) days, or a general assignment by any Tenant for the benefit of creditors, shall constitute a  
32 breach of this Lease by Tenant.

1           **VACATION OR ABANDONMENT.**

2           The vacating or abandonment of the Premises by Tenant (which shall be  
3 conclusively presumed in Tenant leaves the Premises closed or unoccupied  
4 continuously for fifteen (15) days.

5           **FAILURE TO PAY RENT.**

6           The failure by Tenant to make any payment of rent or any other payment  
7 required to be made by Tenant hereunder as and when due and after five (5) days  
8 written notice to Tenant by Landlord to pay same.

9           **FAILURE TO PERFORM COVENANT OR SATISFY CONDITIONS.**

10          The failure by Tenant to observe or perform any of the covenant, conditions or  
11 provision of this Lease to be observed or performed by Tenant above, where such failure  
12 shall continue for a period of thirty (30) days after written notice thereof from  
13 Landlord to Tenant.

14          **FAILURE TO PAY VENDORS**

15          Failure to pay Tenant's vendors and public utilities on agreed terms.

16          **FAILURE TO PAY FOR CITY UTILITIES OR GARBAGE SERVICES.**

17          The failure by Tenant to pay City utilities or service fees when due.

18          **FAILURE TO PAY TAXES.**

19          The failure by Tenant to pay taxing agency applicable taxes described herein  
20 when due.

21          **43. REMEDIES.**

22          Upon any such material default or breach by Tenant, Landlord may at any time  
23 thereafter, with or without notice or demand and without limiting Landlord in the  
24 exercise of any right or remedy which Landlord may have by reason or such default or  
25 breach take advantage of the remedies set forth below.

1           **CONTRACT REMEDIES.**

2           Terminate Tenant's right to possession of the Premises by any lawful means,  
3           in which case this Lease shall terminate and Tenant shall immediately surrender  
4           possession of the Premise to Landlord. In such event, Landlord shall be entitled to  
5           recover from Tenant all damages incurred by Landlord by reason of Tenant's default,  
6           including, but not limited to expenses of reletting, reasonable attorney's fees, and any  
7           real estate commission actually paid; the worth at the time of award by a court having  
8           jurisdiction of unpaid rent which had been reasonably avoided; the worth at the time of  
9           such award of the amount by which the unpaid rent for the balance of the term after the  
10          time of cash award exceeds the amount of such rental loss that the Tenant proves could  
11          be reasonably avoided; and the portion of any real estate commission payable by  
12          Landlord applicable to the unexpired term of this Lease. Unpaid installment of rent or  
13          other sums shall bear interest from the date due at the rate of ten percent (10%) per  
14          annum, compounded monthly. If Tenant shall have abandoned the Premises, Landlord  
15          shall have the option of:

- 16               • retaking possession of the Premises and recovering from Tenant the  
17               amount specified in this Section or
- 18               • proceeding against Tenant as set forth in this Section. For purposes of this  
19               Section, the term "worth at the time of such award" shall have the meaning  
20               provided in Section 1951.2(b) of the California Civil Code.
- 21               • apply the Security Deposit described in Section to pay damages to which  
22               Landlord may be entitled.

23           **STATUTORY REMEDIES.**

24          Landlord shall have all the remedies provided in Section 1951.4 of the California  
25          Civil Code, including the right to maintain Tenant's right to possession, in which case  
26          this Lease shall continue in effect whether or not Tenant shall have abandoned the  
27          Premises. In such event, Landlord shall be entitled to enforce all of Landlord's rights and  
28          remedies under this Lease, including the right to recover the rent as it becomes due  
29          hereunder.

30           **OTHER REMEDIES.**

31          Landlord may also pursue any other remedy now or hereafter available to  
32          Landlord under the laws or judicial decisions of the State of California.

Should Tenant default, Landlord shall, at its option, be entitled to remove any property of Tenant from the Premises and store the same elsewhere for the account, and at expense and risk, of Tenant and should Tenant fail to pay the cost of storing any such property after it has been stored for a period of ninety (90) days or more, Landlord, after ten (10) days' written notice to Tenant and Tenants failure to pay the required amount, may sell any or all of such property at public or private sale, in such manner and all such times and places as Landlord, in its sole discretion, may deem proper, for the payment of any charges for the removal, storage and sale of such property and shall apply the proceeds of such sale: first, to the cost and expense of such sale: first, to the cost and expense of incurred; second, to the payment of the cost of or charges for removing and storing any such property; third, to the payment of any other sums of money which may then or thereafter be due to Landlord from Tenant under any of the terms hereof; and fourth, the balance, if any, to Tenant.

Tenant hereby waive all claims for damages that may be caused by Landlord's re-entering and taking possession of the Premises, of removing and storing the property of Tenant as hereby provide, and will hold Landlord harmless from loss, costs or damages occasioned thereby, and no such re-entry shall be considered or construed to be a forcible entry.

#### **44. ATTORNEY'S FEES.**

If suit is brought to enforce or interpret any part of this Lease, the prevailing party shall be entitled to recover as an element of costs of suit, and not as damages, a reasonable attorney's fee to be fixed by the court. The "prevailing party" shall be the party who is entitled to recover his costs of suit, whether or not the suit proceeds to final judgment. A party not entitle to recover his costs shall not recover attorney's fees. No sum for attorney's fees shall be counted in calculating the amount of a judgment for purposes of determining whether a party is entitle to recover his costs of attorney's fees.

**IN WITNESS WHEREOF**, the parties hereto have executed this Lease the  
day and year first above written.

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**"City"**

**CITY OF WATSONVILLE,**  
a municipal corporation

By:   
Charles A. Montoya, City Manager

Attest:

By:   
Beatriz Vásquez Flores, City Clerk


APPROVED AS TO FORM:

By:   
Alan J. Smith, City Attorney

**"Tenant"**

**Tiffany Ella King & Sergio Medina  
Angeles, individually, and dba Ella's at  
the Airport**

By:   
Tiffany Ella King

By:   
Sergio Medina Angeles



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

11/29/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> KBK Insurance Agency 1006 Freedom Boulevard  Watsonville CA 95076	<b>CONTACT NAME:</b> John Kane IV <b>PHONE (A/C, No, Ext):</b> (831)724-1085 <b>FAX (A/C, No):</b> (831)724-1089 <b>E-MAIL ADDRESS:</b>  <b>INSURER(S) AFFORDING COVERAGE</b> <b>INSURER A:</b> California Capital Ins. Co. <b>INSURER B:</b> <b>INSURER C:</b> <b>INSURER D:</b> <b>INSURER E:</b> <b>INSURER F:</b>	<b>NAIC #</b> 13544
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**COVERAGES** **CERTIFICATE NUMBER:** CL1711907048 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y		3-CMA-1-1999546	11/01/2017	11/01/2018	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<b>UMBRELLA LIAB</b> <b>EXCESS LIAB</b> DED <input type="checkbox"/> RETENTION \$ <input type="checkbox"/>						EACH OCCURRENCE \$ AGGREGATE \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	<input type="checkbox"/> Y <input checked="" type="checkbox"/> N	N/A				PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

City of Watsonville its elected officials and employees are included as additional insured.

## CERTIFICATE HOLDER

## CANCELLATION

City of Watsonville 275 Main St. Ste 400  Watsonville CA 95076	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE  Exhibit "A" Page 30 of 30
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Rayvon Williams <rayvon.williams@cityofwatsonville.org>

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## Lease renewal - EATA, Inc.

1 message

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**T. Ella King** <ellakingthe@yahoo.com>

Wed, May 19, 2021 at 8:49 AM

To: Rayvon Williams <rayvon.williams@cityofwatsonville.org>, Alexandra Aguado <alexandra.aguado@cityofwatsonville.org>, Sergio Angeles <sergio@primehl.com>

Hello Rayvon,

Please find this email as official notice that we intend to renew our lease at 100 Aviation Way.

I did not see an email come over concerning it but wanted to confirm that we are going to be exercising the extension option.

We will look for the renewal from you folks.

Thank you,

T. Ella King



# Airport Memo

Date: 9/30/2021

To: Matt Huffaker, City Manager

Fr: Rayvon Williams, Airport Director

Subj: Proposed purchaser of Ella's at the Airport by Chielo Apac d/b/a Nancy's Airport Cafe

Cushman Wakefield's Reuben Helick has been helpful in bringing the Municipal Airport and Ella's-at-the-Airport to terms regarding lease renewal. On September 20<sup>th</sup> Reuben informed the Airport that EATA had discovered a potential purchaser for the restaurant business.

Reuben's initial review of the information provided to Ella, by Ms. Apac, noted that the airport's desire to: (a) confirm financial standing commensurate with current leasehold (P&L performance and Balance Sheet, Reasonable capital base and "Good" credit), (b) determine Experiential base (Demonstrated track record and success) and (c) obtain a cogent well-stated Business Plan.

Based on a review of the information there are a number of "Red Flags" lead the airport to pass on this offer and continue to task Reuben to shop for alternatives. **(Note: The Municipal Airport has independently been communicating with other airports for alternatives).** At a high level there are three areas that cause the airport to take a "Pass" on Ms. Apac. These are Financial, Experience and Management.

## FINANCIAL

A review of the submitted P&L by Ms. Apac is questionable on at least two fronts. First is the we find it difficult to believe a document would be submitted with the items highlighted in the attached and second a review of the metrics is questionable.

Data present is for a nine-month, two-week period (Jan 1, 2021 to Sept 14, 2021)

Adjusted sales for food for the period:

\$ [REDACTED]

Approximately monthly average

\$ [REDACTED]

Average Sales per day

\$ [REDACTED]

Points of Concern based on **P&L**

1. Cost of food is about 29% which is below standard for the menu price points and the protein heavy selections. Industry ratios would estimate this to be somewhere in the 37% to 39% range. Concern: **Understating food cost.**
2. Labor cost is 21.4% of food sales but with a minimum staff and an hourly rate of \$15 the number should be closer to 40%. Concern: **Understating labor cost.**
3. Top line revenue shows an additional \$ [REDACTED] in "uncategorized" income? **From where?**
4. A bottom-line expense of \$ [REDACTED] with an **"Ask my accountant." as an explanation?**

Points of Concern based on **BALANCE SHEET**

1. Additional Paid in Capital of \$ [REDACTED] **followed by...**
2. A Shareholder distribution of \$ [REDACTED]

Overall, reviewing a restaurant balance sheet should allow us to simultaneously verify the Exhibit "C" accuracy of a profit and loss statement while getting a more holistic view of the restaurant's financial health. With the presented data we just can't do that.





# Airport Memo

## EXPERIENCE

### Chielo D. Apac

Her resume lists several hourly and part-time management positions in the Sacramento area. The level of the positions is not commensurate with her listed qualifications.

Her dates of employment have overlaps, sometimes for years.

One of her positions was 7 years at Lido Café in Sacramento which was just fined \$160,000 for overtime violations, they immediately paid the fine. It's important to note Ms. Apac was not employed at the time of the violation.

### Chef John Pigott

John's resume shows 21 years with the Levy Restaurant Group in various southern California locations. His resume currently states he has been employed by a Los Angeles restaurant for at least a year before Nancy's Airport Café opened?

We would question his departure from that career to work in a new facility that is at least 200 miles away. Interestingly his resume also lists his address as New Milford, N.J.

## MANAGEMENT

Neither Ms. Apac nor Mr. Pigott have experience managing a full-time restaurant vs a diner or café.

Neither Ms. Apac nor Mr. Pigott have experience managing a full California ABC certificated 47 License.

Under "Management Team/Qualifications" of the submitted business plan there is not clearly defined experience base that give confidence both Apac and Pigott have communicated how their respective skill set can make EATA a continued success.

Conversation with the Willows Public Works interim Director did not result in a level of confidence that Ms. Apac could operate two restaurants that are 200 miles apart.

## SUMMARY

In summary we find that this fourth attempt to sell EATA, while a more complete package, still does not meet the best interest of the Municipal Airport. From potential purchasers who were competent, but not personally "liked", to potential purchasers who had the talent but could not come up with the funding, to potential purchasers who had the funding but had no relevant experience we have yet another potential who has questionable financial reporting and not the level of experience we think is required for the airport restaurant.

***Our recommendation is we express appreciation for the interest but at this time don't find Nancy's Airport Café a good fit. As a next step we will direct current interested parties, whom the airport has contacted, to contact EATA.***



# Airport Memo

Date: November 12, 2021

To: Watsonville City Council, Matt Huffaker, City Manager, Ella King and Sergio Angeles

Fr: Rayvon Williams, Airport Director

Subj: Ella's at the Airport Lease Status and Recommendation

This is a summary of the lease history of Tiffany Ella King and Sergio Angeles dba "Ella's at the Airport".

## 2017 EATA LEASE BACKGROUND

- (1) The now expired four-year lease (Reso 167-17) was with Tiffany Ella King and Sergio Angeles (Ella and Sergio) doing business as Ella's at the Airport (EATA)
- (2) The lease includes a clause allowing assignment of the lease (and sale of the restaurant business) if certain conditions are satisfied. See Exhibit 1.
- (3) Ella and Sergio have had EATA for sale at least since March 2019.
- (4) Ella and Sergio actively marketed the sale of the EATA furniture, fixtures, equipment and good will and assignment of the lease from March 2019 until September 2020

## WINTER 2020 SBDC ENGAGEMENT

The Airport contacted the Santa Cruz Small Business Development Center (SBDC) to assist Ella and Sergio to sell EATA and satisfy assignment conditions. (SBDC had assisted in evaluating and bringing EATA to the Airport in 2014) SBDC, Ella, Sergio and the Airport agreed to: (a) develop an "Assignment Checklist" (See Exhibit 2) and (b) to have SBDC develop a "Plan of Action" to market EATA for sale.

## OTHER AIRPORT LEASES

Several Airport leases expired in early 2021, leases with options required the tenant to notify the Airport so the Airport could plan ahead. Several tenants notified the Airport that they intended to exercise their option. Ella and Sergio did not notify the Airport until after the deadline to provide notice. (Exhibit 3). The Airport replied as provided in Exhibit 4. For a number of reasons, the Airport engaged an experienced commercial real estate broker (Reuben Helick) to negotiate with Ella and Sergio. By mid-August 2021 Mr. Helick was under contract and began negotiations.

## LEASE NEGOTIATIONS

After much discussion the Airport (represented by the Broker) and Ella and Sergio negotiated a new lease with the goal of presenting to the City Council by October 31, 2021. Agreement was reached by mid-September as set forth in Exhibit 5. The term sheet was signed in mid-September and the Airport began to prepare a revised lease as agreed.

## INTERESTED BUYER

On September 20, 2021, Mr. Helick informed the Airport that Ella and Sergio had engaged a Broker to sell EATA and had identified a purchaser who operated a small restaurant at the Willows-Glenn County Airport. (Willows-Glenn is 86 miles northwest of Sacramento just off Interstate 5, with 35 based aircraft, 20,000 annual operations and a nearby population of 7,000.)

- (1) Ella and Sergio's broker completed the assignment Checklist and forwarded it to the Airport. The Airport immediately forwarded the assignment checklist to SBDC for review and contacted Willows-Glenn Airport for an initial discussion. Someone said that someone spoke to the "Willows-Glenn Airport Manager" and said the Manager confirmed the restaurant there was a successful general aviation airport restaurant. The City contacted the Willows-Glenn Airport



## Airport Memo

and learned there is no current Willows-Glenn airport manager, but the airport is “supervised” by the Interim City Manager.

- (2) The Interim City Manager said she had no experience with airports but did confirm the proposed buyer-assignee was a “good tenant”, had an established clientele and apparently successful airport “diner”.

### REVIEW OF WILLOWS-GLENN COUNTY CHECKLIST

Watsonville Airport management then contacted SBDC to review proposed buyer documents. After an Airport and SBDC review of documents including analysis of the buyer’s Balance Sheet, Income and Expense Statement, income tax returns, a comparison to industry quick ratios and assessment of resumes, Watsonville Airport management forwarded a memo to the City Manager recommending not approving a purchase and assignment by the Willows-Glenn operator. *“Our recommendation is we express appreciation for the interest but at this time don’t find Nancy’s Airport Café a good fit. As a next step we will direct current interested parties, whom the Airport has contacted, to contact Ella and Sergio. See Exhibit 6.”*

### OUTREACH FROM EATA BROKER

The Airport told Ella and Sergio’s Broker the reasons why the Willows-Glenn County operator was not acceptable. Sergio and Ella’s broker requested reconsideration of the Willows-Glenn potential purchaser. He said the City’s finding of inadequate experience and financial strength were unwarranted, but did not include any additional information. Airport told Ella and Sergio’s broker to seek out buyers for EATA before the lease expired.

### OTHER INTERESTED BUYERS

Two other buyers expressed interest in purchasing EATA: “Elevation LVK” (an on-field restaurant at Livermore Municipal Airport) and “The Fish House”, an established off-field Watsonville restaurant. Principals from Elevation LVK visited the Airport and EATA on September 28. Shortly thereafter principals from the Fish House came forward. Both potential buyers were referred to Ella and Sergio’s broker and at least one contacted Ella and Sergio before the lease expired on October 31, 2021.

In early October 2021, Elevation LVK informed Airport management that EATA did not complement their business model and LVK would not make an offer. The owners of the Fish House expressed continued interest but apparently could not get the interest of Ella and Sergio or their broker.

Shortly thereafter, Airport management received the following message from Mr. Helick:

*“Hi Rayvon, Thank you for the voice message this morning. Yes, Ella King was updated by email Wednesday (Oct 27<sup>th</sup>) morning about the lease estimated time of arrival. Her broker told me by phone earlier this week that if Ms. Apac was not approved as an assignee that Ella King may just wrap things up and vacate the restaurant at the end of her lease or shortly thereafter, and not sign the new lease. I explained to him that we put this renewal together as an accommodation to her, but if she did not want to sign the new lease with the cancellation right in the event she does not find a suitable buyer, then that is her prerogative. I reminded him that I was hired by the City to either work out a new lease with Ella King et al or find a new tenant for the space. If she decides not to move forward then we will proceed to market the space for lease to a future tenant, whomever that would be. No business sale for Ella King. You have provided her with a viable path forward to sell her business. It is up to her to take it, or leave it.”*

Ella and Sergio say Airport Management has not explained why it rejects the Willows-Glenn County applicant. But the Airport did tell Ella and Sergio’s broker why. See attached Exhibit 6 explaining why



# Airport Memo

the Willows-Glenn County applicant does not satisfy the requirements based on vetting, financial analysis and experience.

## **CURRENT STATUS**

We have a lease on the terms agreed with Ella and Sergio and we need a signature. The Lease was negotiated by Sergio and Ella and the airport's representative, Mr. Helick. The new Lease is substantially the same except for terms making an assignment easier. Instead of signing, without objecting to the lease terms, Ella and Sergio insist the City approve the Willows-Glenn County buyer which the Airport found unqualified.

## **RECOMMENDATION**

Airport management believes Ella, Sergio and their attorney have had ample opportunity to review the lease. Airport Management requests lease be signed by 5:00pm on November 18, 2021.

## **Exhibits**

- #1 Assignment Clause
- #2 EATA Assignment Check List
- #3 COW Mail Lease Renewal
- #4 COW Mail Re: lease Renewal
- #5 DocuSign \_LOI\_Ellas\_At\_Airport
- #6 Memo Airport Resturant\_20210930

1           **RESTRICTION AGAINST ASSIGNMENT.**

2           Tenant shall not assign or encumber any interest in this Lease or in the Leased  
3 Premises, or sublease all or any part of the Premises, or allow any other person or entity  
4 (except Tenant's authorized representatives) to occupy or use all or any part of the  
5 Premises, without Landlord's prior written consent, and consent to one assignment or  
6 sublease shall not be construed as consent to any subsequent assignment or subleasing.

7           **VOLUNTARY ASSIGNMENT.**

8           If Tenant is a corporation or partnership, any dissolution, merger, consolidation or  
9 other reorganization of Tenant or the sale or transfer of controlling percentage of the  
10 capital stock of Tenant or the sale of twenty-five percent (25%) of the value of the assets  
11 of Tenant shall be deemed a voluntary assignment. The phrase "controlling percentage"  
12 means the ownership of and the right to vote stock possessing at least twenty-five percent  
13 (25%) of the total combined voting power of all classes of Tenant's capital stock issued  
14 outstanding and entitled to vote for the election of directors.

15           **CONSENT BY LANDLORD.**

16           Landlord shall have the sole and unfettered discretion to approve or reject any  
17 sub-lease or assignment. Landlord may condition consent upon such factors as the  
18 identity, reputation, financial worth and stability and operating ability of any proposed  
19 assignee or subtenant. If the Premises are sublet to any person with the permission of  
20 Landlord, one hundred percent (100%) of any incremental leasing profits shall accrue to  
21 Landlord. Unless prior written consent of Landlord shall have been obtained, any  
22 transfer, or attempted assignment or transfer, of this Lease or any interest therein, or any  
23 subletting, either by voluntary or involuntary act of Tenant or by operation of law or  
24 otherwise, shall at the option of the Landlord terminate this Lease, and any such  
25 purported assignment, transfer or subletting without such consent shall be null and void.

26           **PROCEDURE FOR OBTAINING APPROVAL FOR ASSIGNMENT.**

27           Tenant shall not have the right to assign this Lease, except by Leasehold  
28 mortgage, without the prior written consent of Landlord. If Tenant desires to assign the  
29 Lease, Tenant shall comply with the following procedures:

30           Tenant shall give Landlord at least sixty (60) days prior written notice of its  
31 desire to assign the Lease.

# Restaurant Facility Assignment Checklist

EXHIBIT 2



## Lease Section 20: CONSENT BY LANDLORD

Landlord shall have the sole and unfettered discretion to approve or reject any sub-lease or assignment. Landlord may condition consent upon such factors as the identity, reputation, financial worth and stability and operating ability of any proposed assignee or subtenant.

### Required Documents for an entity (Corporation, LLC, etc)

- ☐ Letter requesting Lease assignment
- ☐ \$5,000 Assignment deposit
- ☐ Resume(s) and at least three (3) references
- ☐ Documentation of demonstrated financial standing
  - ☐ If owner/operator of existing business: Income Statement, Balance Sheet and P&L of business
  - ☐ If individual: Financial statement, personal tax returns for two years and current credit report
- ☐ Business Plan similar to the [Open Table "How To Guidance"](#).
- ☐ Insurance Certificate (per lease)



### If individual, other than an entity is financially responsible, additional required documents

- ☐ Signed Personal Guaranty
- ☐ Signed Assignment document



Rayvon Williams <rayvon.williams@cityofwatsonville.org>

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## Lease renewal - EATA, Inc.

1 message

---

**T. Ella King** <ellakingthe@yahoo.com>

Wed, May 19, 2021 at 8:49 AM

To: Rayvon Williams <rayvon.williams@cityofwatsonville.org>, Alexandra Aguado <alexandra.aguado@cityofwatsonville.org>, Sergio Angeles <sergio@primehl.com>

Hello Rayvon,

Please find this email as official notice that we intend to renew our lease at 100 Aviation Way.

I did not see an email come over concerning it but wanted to confirm that we are going to be exercising the extension option.

We will look for the renewal from you folks.

Thank you,

T. Ella King



Rayvon Williams &lt;rayvon.williams@cityofwatsonville.org&gt;

**Re: Lease renewal - EATA, Inc.**

1 message

**Alexandra Aguado** <alexandra.aguado@cityofwatsonville.org>

Thu, May 20, 2021 at 4:51 PM

To: ella king &lt;ellakingthe@yahoo.com&gt;, "Sergio Primehl. Com" &lt;sergio@primehl.com&gt;

Cc: Rayvon Williams &lt;rayvon.williams@cityofwatsonville.org&gt;

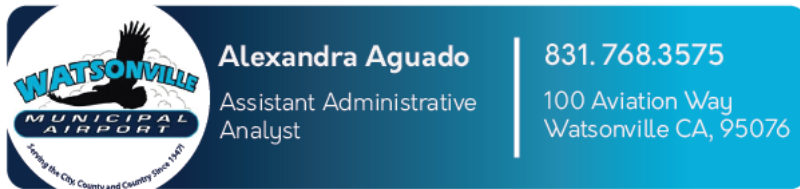
Hello Ella,

Thank you for your email.

Per your Lease, the City of Watsonville should've received written notice of your intention to exercise your option to extend the Lease by April 30, 2021.

Since written notice was not submitted by the deadline, that option is no longer available. We are more than happy to engage in a discussion to negotiate terms for a new lease, effective at the expiration of your current lease which is October 31, 2021. It's our desire that the term continue for an additional four years with a few minor adjustments.

Thank you,

*-Alex*

On Wed, May 19, 2021 at 8:49 AM T. Ella King &lt;ellakingthe@yahoo.com&gt; wrote:

Hello Rayvon,

Please find this email as official notice that we intend to renew our lease at 100 Aviation Way.

I did not see an email come over concerning it but wanted to confirm that we are going to be exercising the extension option.

We will look for the renewal from you folks.

Thank you,

T. Ella King





100 Aviation Way  
Watsonville, CA 95076

## EXHIBIT 5

September 3, 2021

Ella King – Sergio Angeles

**RE: Term Sheet to Lease Restaurant at 100 Aviation Way – City Response**

Dear Mr. Williams:

Here is a general outline of the terms and conditions whereby EATA, Inc. will lease space at the City of Watsonville Airport Terminal Building:

1. Lessee: EATA, Inc.,  
dba Ella's at the Airport, OR its assignee **approved**
- Lessor: City of Watsonville, a municipal corporation  
275 Main Street  
Watsonville, CA 95076 **approved**
2. Premises Location: 100 Aviation Way, Watsonville, CA 95076  
Located at the Watsonville Airport Terminal Building  
Watsonville, CA 95076  
A portion of APN: 015-221-01 (10,109,492± SF parcel) **approved**
3. Premises Size: 2,400± SF interior restaurant facility  
650± SF outside storage  
427± SF outside patio seating  
see §15
4. Term: FIVE (5) Years **approved**
5. Commencement: November 1, 2021
6. Early Occupancy: Not applicable – Lessee currently occupies under a lease.
7. Option to Renew: ONE (1) FIVE (5) Year Option to Renew at Fair Market Value.  
FMV not to exceed any annual increase in excess of 7% over the  
prior year's lease rent.
8. Option to Rescind: With a Sixty (60) day advance written notice, Lessee may cancel  
the Lease at any time during the initial 180 days of the Lease

Term. If Lessee cancels, Lessee must pay rent obligations through the termination date, pay unamortized leasing commissions expended by Lessor, and Lessee forfeits its security deposit. However, the above provision to pay unamortized leasing commissions expended by Lessor, and Lessee forfeiting its security deposit, will not apply if Lessee or its assign cancels and/or rescinds this Lease at any time on or before October 31, 2021 (the end date of the existing Lease)

9. Use: Rejected. No Exclusive Use Provision will be granted

10. Base Rent: Choose either fixed rental rate **or** blend of base plus gross sales

**Year 1:** \$4,000 plus \$900 NNN or \$3,000 + \$600 NNN & 1% Gross Sales

**Year 2:** (1<sup>st</sup> 6 months) \$4,500 + \$900 NNN or \$3,100 + \$600 NNN & 1% Gross Sales

**Year 2:** (2nd 6 months) \$4,750 + \$900 NNN or \$3,100 + \$600 NNN & 1% Gross Sales

**Year 3:** \$5,000 + \$900 NNN or \$3,200 + \$600 NNN & 1% Gross Sales

**Year 4:** \$5,250 + \$900 NNN or \$3,300 + \$600 NNN & 1% Gross Sales

**Year 5:** \$5,500 + \$900 NNN or \$3,400 + \$600 NNN & 1% Gross Sales

Additional Rent Mo. Prepayment: NNN costs are estimated to be \$900 Per mo.

11. Rent Commencement: November 1, 2021

12. Deposit: Security deposit of \$3,200 currently held by Lessor. \$3,300 additional to be paid on or before November 1, 2021 totaling \$6,500 security deposit.

13. Utilities: In addition to base rent and operating costs paid to Lessor, Lessee is solely responsible for the payment of gas/electric utilities, water, sewage, garbage, internet, telephone, and security systems for Premises.

Lessor will maintain the electric power standby generator in good repair, but Lessor will not be liable for any losses to Lessee in the event of failure of the standby power generator to operate

14. Common Area Maintenance.  
R.E. taxes & Insurance:

Lessor to maintain upkeep of fountain garden area at eastern entrance. Lessee has non-exclusive use of the common bathroom core located in the Terminal Lobby. Lessee is not charged base rent for this. Neither Lessee or its assign will be charged or assessed taxes or fees for "common area" for parking, lobby, airport ramp areas, public viewing areas about the terminal, or for any other space or usage not tied specifically to, and identified within, the Lease

Lessee will pay a flat fee for janitorial service & stocking of bathrooms with paper products/supplies, soap, light bulbs, repairs to the fixtures. – This is the monthly NNN fee of \$900/month

15. Specific Tenant Improvements:

Removed by December 31, 2021

NOTE: This seating was provided on a temporary basis. Airport willing to allow the temporary seating to continue until December 31, 2021, but then must be removed. The structure impedes airport access to the ramp, to include need for operations and emergency vehicles. Additionally the structure blocks security camera view of ramp by Airport Operations, Watsonville Police and FAA ATC.

16. American Disabilities Act (ADA):

The Building exterior and common areas must meet requirements as established by the Americans With Disabilities Act (ADA). Should they not be in compliance with ADA laws during the Term, Lessor shall make changes or alternations required to so comply, at no cost to Lessee (whether through Operating Expenses or otherwise). Lessee shall comply with ADA laws within the exclusive, demised Premises at Lessee's sole expense during its tenancy. approved

17. HVAC: Per §15 of the current Lease "Landlord shall pay to repair and maintain the heater air conditioner and thermostat control for the Premises."

18. Agency: Cushman & Wakefield represents Lessor as its exclusive agent (Listing Agent). Lessee is exclusively represented by its legal counsel. Leasing commissions paid by Lessor to Listing Agent.

19. Parking: Lessee shall be entitled to its unreserved, pro-rata share of parking.
20. Assignment: Lessee may assign and transfer all of Lessee's rights, duties and obligations under this Lease of the Premises subject to standard City of Watsonville Lease (as shown at bottom of §20 – current Lease: "Landlord and Tenant hereby deem it reasonable for the Landlord to refuse to consent to a proposed assignment in the following circumstances: Landlord may object to any proposed assignment if, in the Landlord's sole and unfettered opinion, the proposed assignee is not a qualified assignee in terms of financial strength, business experience, restaurant style or ambiance, reputation or the ability to operate the food establishment and provide the required services in a manner consistent with the purposes for which this Lease was granted. Landlord may object on any other grounds." . Lessee to follow the instructions per the attached EATA Assignment Checklist.
21. Signage: Signage remains "as-is" including prominent restaurant signage on Airport Monument located on Airport Boulevard, signage at its current location on the building.
22. Expiration: This letter must be responded to no later than September 10, 2021 or it becomes void, of no further effect.

\*\*\*\*\*

This proposal is merely a statement of the terms upon which the parties may be interested in pursuing further negotiations concerning the property and is not intended to be a complete or binding agreement. No binding agreements shall be created between the parties until a full and final written agreement, containing these and all other terms of the transaction, is prepared, reviewed, and approved by the parties' respective counsel, if any, and mutually executed and delivered.

Each party acknowledges that it has incurred, and will incur, costs and expenses in connection with the transaction contemplated hereby, including but not limited to the costs of investigation and assessment of the economic and other merits of the proposal, as well as legal expenses in connection with the preparation of a final and binding agreement, all of which costs are incurred at such party's sole cost and risk, and not in reliance upon any act or representations of the other party or its agent. Either party may terminate the negotiations at any time for any reason, or for no reason, without liability or obligation whatsoever.

The parties acknowledge that Broker has made no independent determination or investigation regarding the present or future use or zoning of the property, its compliance with state, local, or federal laws, availability of governmental permits or approvals, measurements of land and/or buildings, or the condition of the property, including, but not limited to its environmental, structural, mechanical and soils conditions. Broker recommends the parties consult with their own advisors with experience in these matters. Buyer/Lessee agrees to make its own investigation and determination regarding such items.

Any agreement reached pursuant to these negotiations shall be subject to all applicable federal, state and local laws, regulations, codes, ordinances and administrative orders having jurisdiction over the parties, property or subject matter of this proposal, including but not limited to, the 1964 Civil Rights Act and all amendments thereto, the Foreign Investment in Realty Property Tax Act, the Comprehensive Response Compensation and Liability Act, and Americans with Disabilities Act.

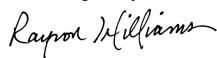
If you are interested in proceeding to the preparation of a complete and formal agreement encompassing the foregoing general terms and conditions, please execute and return a copy of this proposal to Broker.

cc: file

Read & Approved:

**Lessor:**


City of Watsonville

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9/4/2021 | 12:15:32 PM PDT

**Lessee:**

Tiffany Ella King & Sergio Angeles, individually  
 dba: Ella's at the Airport

DocuSigned by:  
  
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9/17/2021

DocuSigned by:  
  
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9/16/2021

## Real Property Disclosures

Cushman & Wakefield ("**Broker**") provides this Notice in reference to a proposed transaction by and between **City of Santa Cruz ("Lessor")** and **Tiffany Ella King & Sergio Angeles, individually dba Ella's at the Airport ("Lessee")** regarding real property identified as: **a portion of 100 Aviation Way, Watsonville, CA 95076** (the "**Property**"). This Notice applies to any transaction involving any type of real property, whether improved or unimproved. As used herein, "seller" includes, where applicable, a seller, landlord, lessor, or sublessor, and "buyer" includes, where applicable, a buyer, tenant, lessee, or subtenant.

### Hazardous Materials and Underground Storage Tanks

Comprehensive federal and state laws and regulations ("Laws") control the use, storage, handling, removal and disposal of hazardous substances ("Hazardous Materials"). The term "Hazardous Materials" includes, but is not limited to, products containing petroleum, paint, solvents, lead, cyanide, DDT, inks, acids, pesticides, ammonium, asbestos, heavy metals, PCBs and a wide variety of other products. Hazardous Materials may be present at the Property due to current or prior use, or the use of adjacent properties. Some Laws impose liability upon owners, tenants, and users for clean-up costs and damages, regardless of such party's lack of fault or involvement in the presence of such Hazardous Materials. Other Laws establish certain duties of disclosure which may apply to this transaction. For instance, a seller who has reason to believe that Hazardous Materials are present is required to disclose such knowledge to a buyer; the seller of any Property which contains any residential unit must disclose whether lead-based paint is present; and a seller or landlord must disclose reports and other information regarding the presence of asbestos in the Property to a buyer or tenant, and to contractors, employees, and others who may occupy the Property. A party who fails to make required disclosures may face substantial liability.

The Laws regulating Hazardous Materials are extensive and complex, and it is not practical to list all such Laws in this Notice; nor is Broker qualified to advise you regarding your rights, obligations or liability that may arise in connection with Hazardous Materials. Broker recommends that you consult with your advisors with respect to these issues, and investigate prior and surrounding uses which may have caused Hazardous Materials to be present at the Property.

### Americans with Disabilities Act (ADA)

The Americans with Disabilities Act (42 USC §12101 et seq.) requires, among other things, that owners of "public accommodations" remove barriers to access by disabled persons, and provide auxiliary aids and services for hearing, vision or speech impaired persons. Any change of use or alterations of the Premises may trigger such requirements, even if existing use is in compliance with the ADA. Broker recommends that you consult with your advisors regarding the ADA and related Laws, to determine whether and how the ADA might affect you.

## Broker Disclaimer

Broker has made no independent investigation regarding the present or future use or zoning of the Property; ADA-related issues, matters relating to Hazardous Materials, or the compliance of the Property with the Occupational Safety and Health Act or any other federal, state, county or municipal Law. Broker has not investigated, and is not qualified to provide any opinion about the structural, mechanical, or soils conditions of the Property. Broker has not independently verified the size, measurements, or boundaries of the Property, and any representation thereof is made solely based upon information provided to Broker, which Broker deems reliable but does not warrant to be accurate. You should consult your advisors on these matters. Buyer agrees to make its own investigation and determination regarding all matters affecting the value, condition, utility, size, compliance with Laws, and all aspects of the Property's suitability for Buyer's intended use.

## Broker Representation

Broker has a wide variety of clients, and may represent another buyer interested in the same property as Buyer, or may represent sellers with property similar to Seller's which may be competing with Seller's. Broker may on occasion represent both the buyer and the seller in a transaction. Broker will not disclose the confidential information of one client to another client.

## Dual Agency - NONE

☐ **NOTE:** A real estate agent, either acting directly or through one or more associate licensees, can legally be agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer. In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer.

- (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Seller or the Buyer.
- (b) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of the parties.

A dual agent is not obligated to reveal to either party any confidential information obtained from the other party which does not involve the affirmative duties set forth above. In representing both Seller and Buyer, the agent may not, without the express permission of the respective party, disclose to the other party that the Seller will accept a price less than the listing price or that the Buyer will pay a price greater than the price offered. The above duties of the agent in a real estate transaction do not relieve a Seller or a Buyer from the responsibility to protect their own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction.

## Natural Hazards (Sale Only)

Various state Laws require the seller and its broker to disclose the existence of certain Natural Hazards to a buyer, including whether the Property is located in an Earthquake Fault Zone, a Seismic Hazard Zone, a Special Flood Hazard Area, Area of Potential Flooding, a Fire Hazard Severity Zone, or a Wildland Fire Area. If Broker represents the Seller, Broker shall provide Buyer with a report prepared by an independent third party regarding such Natural Hazards during the due diligence period under the purchase contract.

In addition, some lenders require as a condition of obtaining financing on a property located in certain flood zones that flood insurance be carried. The National Flood Insurance Program provides such insurance at a reasonable cost. Cities or counties participating in the National Flood Insurance Program may have adopted building or zoning restrictions, or other measures affecting the Property, as part of their participation in the program. Broker has not made any independent investigation of these matters and recommends that you consult with the local governmental authorities and your advisors regarding the requirement for, availability, and cost of such insurance.

## Taxes – Sale Only

Any real estate transaction may have federal, state and local tax consequences. Internal Revenue Code §1446 (FIRPTA) requires a buyer to withhold and pay to the IRS 10% of the gross sales price within 10 days after closing, unless the buyer can establish that the seller is a "nonforeign person." The amount of tax required to be withheld may, depending on the structure of the transaction, exceed the seller's net proceeds, for which the buyer may be liable. The title company will require that seller deliver a "Non-Foreign Seller Affidavit" prior to closing, or in the alternative will withhold such proceeds and may require the buyer to pay any additional sums necessary to satisfy this requirement. In addition, California Revenue & Taxation Code §18662 requires a buyer to withhold and pay to the California Franchise Tax Board 3-1/3% of the gross sales price, subject to certain exceptions.

Broker is not qualified to provide tax or accounting advice, and has made no independent investigation as to the possible tax withholding liabilities in this transaction. Broker recommends that you consult with your advisors regarding these issues.

## Commercial Property Owner's Guide to Earthquake Safety – Sale Only

California Government Code §§8875.6 and 8893 et seq. require that the Seller (or its agent) of a precast concrete or reinforced or unreinforced masonry building with wood frame floors or roof which was built before January 1, 1975 must deliver to the Buyer a copy of "The Commercial Property Owner's Guide to Earthquake Safety" published by the California Seismic Safety Commission. Buyer acknowledges that Seller and/or Broker has disclosed whether such requirement applies to this Property, and if so, that Broker has delivered to Buyer a copy of that Guide.

## Water Heater Bracing Disclosure and Certification – Sale Only

Seller hereby certifies that all water heaters in or on the Property are braced, anchored or strapped to resist falling or horizontal displacement due to earthquake motions as required by state and applicable local codes.

**A real estate broker is qualified to advise on real estate matters, but is not authorized to give legal or tax advice. No representation or recommendation is made by Broker or its agents or employees as to the legal sufficiency, legal effect or investment or tax consequences of this document, the purchase and sale agreement, or any transaction relating thereto since these are matters which should be discussed with your consultants and advisors.**

Read and Approved:

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

### DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP (As required by the Civil Code)

When you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand what type of agency relationship or representation you wish to have with the agent in the transaction.

#### SELLER'S AGENT

A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or a subagent of that agent has the following affirmative obligations:

To the Seller: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Seller.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties. An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

#### BUYER'S AGENT

A selling agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a Buyer has the following affirmative obligations:

To the Buyer: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Buyer.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties. An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

#### AGENT REPRESENTING BOTH SELLER AND BUYER

A real estate agent, either acting directly or through one or more associate licensees, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer. In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer:

(a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either the Seller or the Buyer.

(b) Other duties to the Seller and the Buyer as stated above in their respective sections.

In representing both Seller and Buyer, the agent may not, without the express permission of the respective party, disclose to the other party that the Seller will accept a price less than the listing price or that the Buyer will pay a price greater than the price offered.

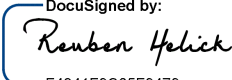
The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect his or her own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

Throughout your real property transaction you may receive more than one disclosure form, depending upon the number of agents assisting in the transaction. The law requires each agent with whom you have more than a casual relationship to present you with this disclosure form. You should read its contents each time it is presented to you, considering the relationship between you and the real estate agent in your specific transaction.

This disclosure form includes the provisions of Sections 2079.13 to 2079.24, inclusive, of the Civil Code set forth on the reverse hereof. Read it carefully.

**I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS DISCLOSURE AND THE PORTIONS OF THE CIVIL CODE PRINTED ON THE REVERSE HEREOF.**

Buyer/Seller/Tenant/Landlord	DocuSigned by: <i>Raymon Williams</i> A28C52541489413...	Date: 9/4/2021   12:15:32 PM PDT
Buyer/Seller/Tenant/Landlord	DocuSigned by: <i>T. ELLA KING</i> 6BE0236F287F4E3...	DocuSigned by: <i>SEPGIO MEDINA</i> CE54CE6C2A8B421... Date: ANGELES
Cushman & Wakefield U.S., Inc. (Brokerage Firm)	9/17/2021	9/16/2021 BRE Lic. No. 018810493

By  DocuSigned by:  
F4341F9C05F9479...  
Date: 9/4/2021 | 7:22:02 AM PDT BRE Lic. No. 01171272  
(Reuben Helick, Managing Director)

**CALIFORNIA CIVIL CODE SECTIONS 2079.13-2079.24**

**2079.13.** As used in Sections 2079.14 to 2079.24, inclusive, the following terms have the following meanings: **(a)** "Agent" means a person acting under provisions of Title 9 (commencing with Section 2295) in a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code, and under whose license a listing is executed or an offer to purchase is obtained. **(b)** "Associate licensee" means a person who is licensed as a real estate broker or salesperson under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code and who is either licensed under a broker or has entered into a written contract with a broker to act as the broker's agent in connection with acts requiring a real estate license and to function under the broker's supervision in the capacity of an associate licensee. The agent in the real property transaction bears responsibility for his or her associate licensees who perform as agents of the agent. When an associate licensee owes a duty to any principal, or to any buyer or seller who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the associate licensee functions. **(c)** "Buyer" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. "Buyer" includes vendee or lessee. **(d)** "Commercial real property" means all real property in the state, except single-family residential real property, dwelling units made subject to Chapter 2 (commencing with Section 1940) or Title 5, mobilehomes, as defined in Section 798.3, or recreational vehicles, as defined in Section 799.29. **(e)** "Dual agent" means an agent acting, either directly or through an associate licensee, as agent for both the seller and the buyer in a real property transaction. **(f)** "Listing agreement" means a contract between an owner of real property and an agent, by which the agent has been authorized to sell the real property or to find or obtain a buyer. **(g)** "Listing agent" means a person who has obtained a listing of real property to act as an agent for compensation. **(h)** "Listing price" is the amount expressed in dollars specified in the listing for which the seller is willing to sell the real property through the listing agent. **(i)** "Offering price" is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property. **(j)** "Offer to purchase" means a written contract executed by a buyer acting through a selling agent that becomes the contract for the sale of the real property upon acceptance by the seller. **(k)** "Real property" means any estate specified by subdivision (1) or (2) of Section 761 in property that constitutes or is improved



with one to four dwelling units, any commercial real property, any leasehold in these types of property exceeding one year's duration, and mobilehomes, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business and Professions Code. **(l)** "Real property transaction" means a transaction for the sale of real property in which an agent is employed by one or more of the principals to act in that transaction, and includes a listing or an offer to purchase. **(m)** "Sell," "sale," or "sold" refers to a transaction for the transfer of real property from the seller to the buyer, and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of a leasehold exceeding one year's duration. **(n)** "Seller" means the transferor in a real property transaction, and includes an owner who lists real property with an agent, whether or not a transfer results, or who receives an offer to purchase real property of which he or she is the owner from an agent on behalf of another. "Seller" includes both a vendor and a lessor. **(o)** "Selling agent" means a listing agent who acts alone, or an agent who acts in cooperation with a listing agent, and who sells or finds and obtains a buyer for the real property, or an agent who locates property for a buyer or who finds a buyer for a property for which no listing exists and presents an offer to purchase to the seller. **(p)** "Subagent" means a person to whom an agent delegates agency powers as provided in Article 5 (commencing with Section 2349) of Chapter 1 of Title 9. However, "subagent" does not include an associate licensee who is acting under the supervision of an agent in a real property transaction.

**2079.14.** Listing agents and selling agents shall provide the seller and buyer in a real property transaction with a copy of the disclosure form specified in Section 2079.16, and, except as provided in subdivision (c), shall obtain a signed acknowledgment of receipt from that seller or buyer, except as provided in this section or Section 2079.15, as follows: **(a)** The listing agent, if any, shall provide the disclosure form to the seller prior to entering into the listing agreement. **(b)** The selling agent shall provide the disclosure form to the seller as soon as practicable prior to presenting the seller with an offer to purchase, unless the selling agent previously provided the seller with a copy of the disclosure form pursuant to subdivision (a). **(c)** Where the selling agent does not deal on a face-to-face basis with the seller, the disclosure form prepared by the selling agent may be furnished to the seller (and acknowledgment of receipt obtained for the selling agent from the seller) by the listing agent, or the selling agent may deliver the disclosure form by certified mail addressed to the seller at his or her last known address, in which case no signed acknowledgment of receipt is required. **(d)** The selling agent shall provide the disclosure form to the buyer as soon as practicable prior to execution of the buyer's offer to purchase, except that if the offer to purchase is not prepared by the selling agent, the selling agent shall present the disclosure form to the buyer not later than the next business day after the selling agent receives the offer to purchase from the buyer.

**2079.15.** In any circumstance in which the seller or buyer refuses to sign an acknowledgment of receipt pursuant to Section 2079.14, the agent, or an associate licensee acting for an agent, shall set forth, sign, and date a written declaration of the facts of the refusal.

**2079.16.** [The language of Section 2079.16 appears on the front of this form.]

**2079.17.** (a) As soon as practicable, the selling agent shall disclose to the buyer and seller whether the selling agent is acting in the real property transaction exclusively as the buyer's agent, exclusively as the seller's agent, or as a dual agent representing both the buyer and the seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller, the buyer, and the selling agent prior to or coincident with execution of that contract by the buyer and the seller, respectively. (b) As soon as practicable, the listing agent shall disclose to the seller whether the listing agent is acting in the real property transaction exclusively as the seller's agent, or as a dual agent representing both the buyer and seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller and the listing agent prior to or coincident with the execution of that contract by the seller. (c) The confirmation required by subdivisions (a) and (b) shall be in the following form:

\_\_\_\_\_ is the agent of (check one):

(Name of Listing Agent)

- ☐ the seller exclusively; or  
☐ both the buyer and seller.

\_\_\_\_\_ is the agent of (check one):

(Name of Selling Agent if not the same as the Listing Agent)

- ☐ the buyer exclusively; or  
☐ the seller exclusively; or  
☐ both the buyer and seller.

(d) The disclosures and confirmation required by this section shall be in addition to the disclosure required by Section 2079.14.

**2079.18.** No selling agent in a real property transaction may act as an agent for the buyer only, when the selling agent is also acting as the listing agent in the transaction.

**2079.19.** The payment of compensation or the obligation to pay compensation to an agent by the seller or buyer is not necessarily determinative of a particular agency relationship between an agent and the seller or buyer. A listing agent and a selling agent may agree to share any compensation or commission paid, or any right to any compensation or commission for which an obligation arises as the result of a real estate transaction, and the terms of any such agreement shall not necessarily be determinative of a particular relationship.

**2079.20.** Nothing in this article prevents an agent from selecting, as a condition of the agent's employment, a specific form of agency relationship not specifically prohibited by this article if the requirements of Section 2079.14 and Section 2079.17 are complied with.

**2079.21.** A dual agent shall not disclose to the buyer that the seller is willing to sell the property at a price less than the listing price, without the express written consent of the seller. A dual agent shall not disclose to the seller that the buyer is willing to pay a price greater than the offering price, without the express written consent of the buyer.

This section does not alter in any way the duty or responsibility of a dual agent to any principal with respect to confidential information other than price.

**2079.22.** Nothing in this article precludes a listing agent from also being a selling agent, and the combination of these functions in one agent does not, of itself, make that agent a dual agent.

**2079.23.** (a) A contract between the principal and agent may be modified or altered to change the agency relationship at any time before the performance of the act which is the object of the agency with the written consent of the parties to the agency relationship. (b) A lender or an auction company retained by a lender to control aspects of a transaction of real property subject to this part, including validating the sales price, shall not require, as a condition of receiving the lender's approval of the transaction, the homeowner or listing agent to defend or indemnify the lender or auction company from any liability alleged to result from the actions of the lender or auction company. Any clause, provision, covenant, or agreement purporting to impose an obligation to defend or indemnify a lender or an auction company in violation of this subdivision is against public policy, void, and unenforceable.

**2079.24.** Nothing in this article shall be construed to either diminish the duty of disclosure owed buyers and sellers by agents and their associate licensees, subagents, and employees or to relieve agents and their associate licensees, subagents, and employees from liability for their conduct in connection with acts governed by this article or for any breach of a fiduciary duty or a duty of disclosure.

**STANDARD AGENCY CONFIRMATION**  
**(per California Civil Code Section 2079.17)**

Property Address: **100 Aviation Way, Watsonville, CA 95076**

The following agency relationship(s) is/are hereby confirmed for this transaction:

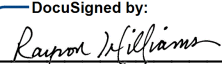
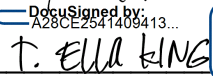
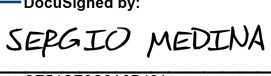
**Cushman & Wakefield U.S., Inc.** is the agent of (check one):

☒ the Lessor exclusively; or

**Legal counsel** is the representative of (check one):

☒ the Lessee exclusively

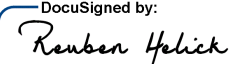
**I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS DOCUMENT.**

Seller/Landlord	<div>DocuSigned by:  A28CE2541409413...</div>	Date: 9/4/2021   12:15:32 PM PDT
Buyer/Tenant	<div>DocuSigned by:  6BE0236F287F4E3...</div> <div>DocuSigned by:  CE54CE6C2A8B421...</div>	Date: 9/16/2021

Cushman & Wakefield U.S., Inc.  
01880493

By:

01171272 Reuben Helick, Managing Director

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BRE Lic. No.

BRE Lic. No.

Date:

9/4/2021 | 7:22:02 AM PDT



# Airport Memo

Date: 9/30/2021

To: Matt Huffaker, City Manager

Fr: Rayvon Williams, Airport Director

Subj: Proposed purchaser of Ella's at the Airport by Chielo Apac d/b/a Nancy's Airport Cafe

Cushman Wakefield's Reuben Helick has been helpful in bringing the Municipal Airport and Ella's-at-the-Airport to terms regarding lease renewal. On September 20<sup>th</sup> Reuben informed the Airport that EATA had discovered a potential purchaser for the restaurant business.

Reuben's initial review of the information provided to Ella, by Ms. Apac, noted that the airport's desire to: (a) confirm financial standing commensurate with current leasehold (P&L performance and Balance Sheet, Reasonable capital base and "Good" credit), (b) determine Experiential base (Demonstrated track record and success) and (c) obtain a cogent well-stated Business Plan.

Based on a review of the information there are a number of "Red Flags" lead the airport to pass on this offer and continue to task Reuben to shop for alternatives. **(Note: The Municipal Airport has independently been communicating with other airports for alternatives).** At a high level there are three areas that cause the airport to take a "Pass" on Ms. Apac. These are Financial, Experience and Management.

## FINANCIAL

A review of the submitted P&L by Ms. Apac is questionable on at least two fronts. First is the we find it difficult to believe a document would be submitted with the items highlighted in the attached and second a review of the metrics is questionable.

Data present is for a nine-month, two-week period (Jan 1, 2021 to Sept 14, 2021)

Adjusted sales for food for the period:

Approximately monthly average

Average Sales per day

Points of Concern based on **P&L**

1. Cost of food is about 29% which is below standard for the menu price points and the protein heavy selections. Industry ratios would estimate this to be somewhere in the 37% to 39% range. Concern: **Understating food cost.**
2. Labor cost is 21.4% of food sales but with a minimum staff and an hourly rate of \$15 the number should be closer to 40%. Concern: **Understating labor cost.**
3. Top line revenue shows an additional [REDACTED] in "uncategorized" income? **From where?**
4. A bottom-line expense of [REDACTED] with an **"Ask my accountant." as an explanation?**

Points of Concern based on **BALANCE SHEET**

1. Additional Paid in Capital of [REDACTED] **followed by...**
2. A Shareholder distribution of [REDACTED]

Overall, reviewing a restaurant balance sheet should allow us to simultaneously verify the accuracy of a profit and loss statement while getting a more holistic view of the restaurant's financial health. With the presented data we just can't do that.



# Airport Memo

## EXPERIENCE

### Chielo D. Apac

Her resume lists several hourly and part-time management positions in the Sacramento area. The level of the positions is not commensurate with her listed qualifications.

Her dates of employment have overlaps, sometimes for years.

One of her positions was 7 years at Lido Café in Sacramento which was just fined \$160,000 for overtime violations, they immediately paid the fine. It's important to note Ms. Apac was not employed at the time of the violation.

### Chef John Pigott

John's resume shows 21 years with the Levy Restaurant Group in various southern California locations. His resume currently states he has been employed by a Los Angeles restaurant for at least a year before Nancy's Airport Café opened?

We would question his departure from that career to work in a new facility that is at least 200 miles away. Interestingly his resume also lists his address as New Milford, N.J.

## MANAGEMENT

Neither Ms. Apac nor Mr. Pigott have experience managing a full-time restaurant vs a diner or café.

Neither Ms. Apac nor Mr. Pigott have experience managing a full California ABC certificated 47 License.

Under "Management Team/Qualifications" of the submitted business plan there is not clearly defined experience base that give confidence both Apac and Pigott have communicated how their respective skill set can make EATA a continued success.

Conversation with the Willows Public Works interim Director did not result in a level of confidence that Ms. Apac could operate two restaurants that are 200 miles apart.

## SUMMARY

In summary we find that this fourth attempt to sell EATA, while a more complete package, still does not meet the best interest of the Municipal Airport. From potential purchasers who were competent, but not personally "liked", to potential purchasers who had the talent but could not come up with the funding, to potential purchasers who had the funding but had no relevant experience we have yet another potential who has questionable financial reporting and not the level of experience we think is required for the airport restaurant.

***Our recommendation is we express appreciation for the interest but at this time don't find Nancy's Airport Café a good fit. As a next step we will direct current interested parties, whom the airport has contacted, to contact EATA.***



# Glynn P. Falcon

ATTORNEY AT LAW

November 19, 2021

Emailed to: [cityclerk@cityofwatsonville.org](mailto:cityclerk@cityofwatsonville.org)

City Clerk of Watsonville

275 Main Street, Suite 400, 4th Floor

Watsonville, CA 95076

Dear Madam Clerk:

This letter constitutes the Notice of the Appeal, pursuant to Chapter 4 of the Watsonville Municipal Code, and such other relevant Code sections and provisions, of the negative determination by the Director of the Watsonville Municipal Airport to the application for assignment and sale of Ella's at the Airport ("Ella's") restaurant and bar to Ms. Chielo Apac, and the threats by such Director to deny Ella a Lease of the restaurant premises. The Airport Director reports directly to the City Manager, whom said City Manager has failed to respond to numerous requests for his involvement in this matter. Hence, Appellant "Ella" has no other recourse but to apply to the City Council for a review and fair hearing of the Director's "sole and unfettered discretion to approve or reject any sub-lease or assignment" and his unfounded, unsupported opinions," dated and disclosed to Appellant and the City Council on or about November 12, 2021 in the Director's Memo, which is attached hereto as **Exhibit A**.

Said decision of the Director was arbitrary, discriminatory (race, national origin, and gender), abusive, vindictive, retaliatory, and not in conformance with the law or the facts. Appellant is informed and believes, and thereon alleges, that said Director has referred to Appellant in an extremely offensive, derogatory, and misogynistic term. The Director's refusal of the proposed assignment and assignee is unreasonable, not based upon facts or substance, and is contrary to established California law (see: CC §§1995.260, 1995.270(b)).

Appellant will bring forward expert testimony and declarations, citizen testimony and declarations, as well as produce the proposed assignee, Chielo Apac, for presentation at the Council's hearing of this matter. Attached hereto are the following for the Council's advance review and consideration:

- Exhibit B** November 18, 2021, Ella King & Sergio Angeles response to Airport Memo dated November 12, 2021.
- Exhibit C** Resume of Chielo Apac.
- Exhibit D** Resume of Chef John Pigott.
- Exhibit E** Verification of Tenancy: Willows Airport LL5 - Nancy's Airport Café - Chielo Arce Apac.
- Exhibit F** Nov. 14, 2021 Email from Keith Simpson to Director Williams, and others in response to Director's Nov. 12, 2021 Memo.
- Exhibit G** Director Rayvon William's resume. No restaurant experience, education, training, or expertise.
- Exhibit H** Business Plan of Ms. Apac continuing Ella's same menu, theme, staff, and name.
- Exhibit I** Email Nov 17, 2021 to Mayor Dutra.

Please confirm receipt of this Notice of Appeal.

Sincerely,

*Glynn Falcon*

Glynn Falcon

Attorney for Ella's

Exhibit "E"

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