

**FIRST AMENDMENT TO LEASE AGREEMENT**  
**BETWEEN THE CITY OF CUPERTINO AND HUNGRY**  
**JACK'S CORPORATION FOR PROPERTY LOCATED**  
**AT 22100 STEVENS CREEK BOULEVARD**

This First Amendment to Lease Agreement between the City of Cupertino and Hungry Jack's Corporation, for reference dated 7/1/2018, is by and between the CITY OF CUPERTINO, a municipal corporation (hereinafter "City") and Hungry Jack's Corporation, a California Corporation ("Lessee") whose address for the purposes of this lease is 22100 Stevens Creek Boulevard, and is made with reference to the following:

RECITALS:

A. On 7/3/2013, an agreement was entered into by and between City and Lessee (hereinafter "Agreement") for the lease of the property commonly known as "The Blue Pheasant Restaurant" located at 22100 Stevens Creek Boulevard, City of Cupertino, County of Santa Clara, State of California. The Agreement will expire on 6/30/2018.

B. City and Lessee desire to modify the Agreement on the terms and conditions set forth herein.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. **TERM**

Paragraph 2 of the Agreement is modified to read as follows: The lease of the property shall commence on July 1, 2018 and end on June 30, 2021, unless otherwise terminated under the provisions of this Agreement.

2. **LESSEE'S OBLIGATIONS**

Paragraph 7, Section i of the Agreement is modified to read as follows:

i. **Insurance**

A. **General Provisions**

Lessee shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Lessee's operation and use of the leased premises. The cost of such insurance shall be borne by the Lessee.

Lessee shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, his agents, representatives, employees, or subcontractors. With respect to General Liability, Errors & Omissions, Contractors Pollution Liability, and/or Asbestos Pollution Liability, coverage should be maintained for a minimum of five (5) years after contract completion.

Lessee shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Lessee, its agents, representatives, or employees.

B. **MINIMUM SCOPE AND LIMIT OF INSURANCE**

Coverage shall be at least as broad as:

(1) Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering

CGL on an “occurrence” basis, including but not limited to products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$10,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit. CGL policy must include Liquor Liability.

- (2) Property insurance against all risks of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision.
- (3) Automobile Liability: Insurance Services Office Form Number CA 0001 covering any auto (Code 1), or if Contractor has no owned autos, hired (Code 8) and non-owned (Code 9) autos, with limit no less than \$10,000,000 per accident for bodily injury and property damage.
- (4) Workers’ Compensation insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease.

If the Lessee maintains broader coverage and/or higher limits than the minimums shown above, the Entity requires and shall be entitled to the broader coverage and/or higher limits maintained. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Entity.

#### C. Other Insurance Provisions:

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

- (1) Additional Insured Status. The Entity, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Lessee including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Lessee’s insurance (at least as broad as ISO Form CG 20 10.)
- (2) Primary Coverage. For any claims related to this contract, the Lessee’s insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the Lessee’s insurance and shall not contribute with it.
- (3) Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the Entity.
- (4) Waiver of Subrogation. Lessee hereby grants to Entity a waiver of any right to subrogation which any insurer of said Lessee may acquire against the Entity by virtue of the payment of any loss under such insurance. Lessee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Entity has received a waiver of subrogation endorsement from the insurer.
- (5) Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best’s rating of no less than A: VII, unless otherwise acceptable to the Entity.
- (6) Self-Insured Retentions. Self-insured retentions must be declared to and approved by the Entity. At the option of the Entity, either: the Lessee shall obtain coverage to reduce or

eliminate such self-insured retentions as respects the Entity, its officers, officials, employees, and volunteers; or the Lessee shall provide a financial guarantee satisfactory to the Entity guaranteeing payment of losses and related investigations, claim administration, and defense expenses. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Entity.

(7) **Verification of Coverage.** Lessee shall furnish the Entity with original certificates and amendatory endorsements or copies of the applicable policy language providing the insurance coverage required above. All certificates and endorsements are to be received and approved by the Entity before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Lessee's obligation to provide them. The Entity reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

(8) **Waiver of Subrogation.** Lessee hereby grants to Entity a waiver of any right to subrogation which any insurer of said Lessee may acquire against the Entity by virtue of the payment of any loss under such insurance. This provision applies regardless of whether or not the Entity has received a waiver of subrogation endorsement from the insurer.

(9) **Special Risks or Circumstances.** Entity reserves the right to modify these requirements at any time, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

### 3. INDEMNITY

Paragraph 12 of the Agreement is modified to read as follows:

To the fullest extent allowed by law, Lessee, its officers, employees, agents and subcontractors (collectively, "Lessee") agrees to and shall indemnify, defend, and hold harmless the City, its City Council, boards and commissions, officers, officials, employees, agents, servants and volunteers (collectively "Indemnitees"), from and against any and all liability, loss, damage (including consequential damages), costs and expenses, claims and actions, regardless of nature or type ("Liabilities"), arising out of or in connection with Lessee's performance under this Lease, its business operations, and its failure to comply with any of its obligations in connection with this Lease, except for loss or damage caused by the sole negligence or willful misconduct of the City.

Liabilities for which Lessee agrees to indemnify, defend and hold harmless the City/Indemnitees include without limitation, property damage, injury, or death occurring in or about the premises or related to the use of the parking lot by Lessee or Lessee's guests or invitees, resulting from Lessee's failure to keep the Property in good condition and repair, or from any act or omission by Lessee, its agents, contractors, invitees, or employees. Lessee shall also be responsible for all damages, liability, fines, penalties and any other consequences arising from any noncompliance or violation of any laws, ordinances, codes, or regulations, including but not limited to the Occupational Safety and Health Act and the Americans with Disabilities Act. Litigation costs and expenses include without limitation, reasonable attorneys' fees, the costs of legal counsel of the City's choice, expert fees, and all other costs and fees incurred in investigating, defending, or prosecuting litigation or similar proceedings and the threat thereof.

Lessee hereby expressly waives all claims against the City for damages to goods, wares and merchandise in, upon or about the Property, and for injuries to persons in, upon or about the Property, from any cause arising at any time during the Lease term.

4. Except as expressly modified herein, all other terms and covenants set forth in the Agreement shall remain the same and shall be in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this modification of Agreement to be executed.

LESSEE

By \_\_\_\_\_

Title \_\_\_\_\_

CITY OF CUPERTINO

By \_\_\_\_\_

Title \_\_\_\_\_

RECOMMENDED FOR APPROVAL

By \_\_\_\_\_

Title \_\_\_\_\_

APPROVED AS TO FORM

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

ATTEST:

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

## REVENUE DISTRIBUTION

<b>Original</b>	
<b>Amendment #1:</b>	
<b>Total:</b>	