

**SPECIAL MEETING OF THE
MONTEREY PENINSULA AIRPORT DISTRICT
BOARD OF DIRECTORS**

May 20, 2019 - 10:00 AM

**Board Room - Terminal Building
200 Fred Kane Drive, Suite 200
Monterey Regional Airport**

(Unless you are a public safety official, please turn off your cell phone or place it on vibrate mode during the meeting. Thank you for your compliance.)

A. CALL TO ORDER/ROLL CALL

B. PLEDGE OF ALLEGIANCE

C. COMMUNICATIONS/ANNOUNCEMENTS/INFORMATIONAL ITEMS

D. PUBLIC COMMENTS

Any person may address the Monterey Peninsula Airport District Board at this time. Presentations should not exceed three (3) minutes, should be directed to an item **NOT** on today's agenda, and should be within the jurisdiction of the Monterey Peninsula Airport District Board. Though not required, the Monterey Peninsula Airport District Board appreciates your cooperation in completing a speaker request form available on the staff table. Please give the completed form to the Monterey Peninsula Airport District Secretary. Comments concerning matters set forth on this agenda will be heard at the time the matter is considered.)

J. CLOSED SESSION

1. **REAL PROPERTY NEGOTIATIONS** (Government Code Section 54956.8) The Board will meet with Real Property Negotiators, Executive Director and District Counsel, regarding the property identified as 200 Fred Kane Drive, Suite 201, Monterey, CA 93940.

E. RECONVENE TO OPEN SESSION - REGULAR AGENDA - ACTION ITEMS

Approve 1. [Asset Purchase Agreement](#)

Approve 2. Concession Operating Agreement

F. ADJOURNMENT

AGENDA DEADLINE

Upon request and where feasible, the Monterey Peninsula Airport District will provide written agenda materials in appropriate alternate formats, or disability-related modification or accommodation, including auxiliary aids or services, to enable individuals with disabilities to participate in public meetings. To allow the District time within which to make appropriate arrangements, please submit a written request containing a brief description of the materials requested and preferred alternative format or auxiliary aid or service desired as far as possible in advance of the meeting. Requests should be sent to the District Secretary at 200 Fred Kane Drive, Suite 200, Monterey, California 93940.

This is the final Agenda that has been posted on the bulletin board outside the District Offices in the Terminal Building at the Monterey Peninsula Airport District no less than 24 hours prior to the meeting.

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this “Agreement”) is entered into as of the 15th day of May, 2019 (the “Effective Date”) by and among 4 Locals, Inc., a California corporation (“Restaurant Asset Seller”), and Monterey Peninsula Airport District, a California special district (“Restaurant Asset Buyer”). Restaurant Asset Seller is sometimes herein referred to as “Seller” and Restaurant Asset Buyer is sometimes herein referred to herein as “Buyer”.

WHEREAS, 4 Locals, Inc., owns and operates a restaurant, cocktail bar and snack lounge (the “Business”) known as The Golden Tee (the “Restaurant”) at 2801 Fred Kane Dr. #201, Monterey, CA 93940 (the “Location”); and

WHEREAS, Monterey Peninsula Airport District is the owner and operator of the Monterey Peninsula Airport (the “Airport”) and rents space for the Business to the Restaurant Asset Seller; and

WHEREAS, Restaurant Asset Seller holds certain licenses and permits, including a liquor license from the California Alcoholic Beverage Control (“ABC”), to operate the Restaurant Business; and

WHEREAS, subject to and on the terms and conditions set forth in this Agreement, the Restaurant Asset Seller desires to sell, and Restaurant Asset Buyer desires to buy, substantially all of the assets of the Restaurant Asset Seller.

NOW, THEREFORE, for and in consideration of the recitals, the mutual covenants and agreements hereafter described and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the parties agree as follows:

1. Sale and Purchase.

1.1. Assets. On and subject to the terms and conditions of this Agreement, Restaurant Asset Seller agrees to sell, convey, transfer, assign and deliver to Restaurant Asset Buyer and Restaurant Asset Buyer agrees to purchase from Restaurant Asset Seller, the Business and all of Restaurant Asset Seller’s right, title and interest in and to all of the Acquired Assets. As used herein “Acquired Assets” shall mean all right, title and interest in and to all of the assets of Restaurant Asset Seller of every kind, character and description which are related to or used in connection with the conduct and operation of the Business, whether personal or real, tangible or intangible and wherever located, including, but not limited to, all of its: (a) inventory of materials and supplies, and all furniture, furnishings, licenses, signage, fixtures, vending machines, point of sale systems, machinery, trade fixtures, including, but not limited to, leasehold improvements, security systems, kitchen and other equipment including, but not limited to, pots, pans, glassware, dishes, silverware and small wares, computer equipment, alarm systems, cameras and recording devices, protective cages, electrical installations, safes and all other tangible assets relating to the Business of every kind and nature, except for all liquor and alcoholic beverages; (b) trade names, trademarks and trademark applications, service marks and service mark applications, patents and patent applications, copyrights, assumed names, fictitious names,

slogans, domain names, web addresses, web sites, all software and software licenses and all rights in all data processing systems and networks, and all operations manuals, computer hardware, data bases, related documentation, and know-how of any kind. All of the Acquired Assets are being sold, assigned, transferred, conveyed and delivered to Restaurant Asset Buyer hereunder free and clear of any Lien, in its as-is/where-is condition, subject only to those representations and warranties contained herein. As used herein "Lien" shall mean any mortgage, pledge, lien, claim, security interest, conditional sale agreement, prior assignment or encumbrance of any kind or nature whatsoever, including, without limitation, any Uniform Commercial Code lien or tax lien.

1.2. No Assumed Liabilities. Restaurant Asset Buyer shall not assume any liabilities or obligations of Restaurant Asset Seller. All debts, costs, invoices, liabilities and expenses shall be the responsibility of Restaurant Asset Seller.

2. Purchase Price. The Purchase Price for the Acquired Assets is One Hundred Thirty Thousand Dollars (\$130,000.00). The Purchase Price shall be paid immediately upon transfer of all Acquired Assets.

3. Closing. Time is of the essence with respect to all time periods and dates set forth in this Agreement. The closing (the "Closing") of the transactions contemplated by this Agreement to be on or before June 30, 2019 (the "Closing Date"). The Closing shall take place through an escrow company at such location which is mutually agreed upon by the parties.

4. Closing Deliveries.

(a) Closing Deliveries of Buyer. At Closing, Restaurant Asset Buyer shall deliver to Restaurant Asset Seller the following: (i) the Purchase Price; and (ii) such other documents as Restaurant Asset Seller may reasonably request or are required pursuant to this Agreement.

(b) Closing Deliveries of Restaurant Asset Seller. At Closing, Restaurant Asset Seller shall deliver to Restaurant Asset Buyer the following (i) duly executed bill of sale and assignment agreement with appropriate warranties of ownership covering the Acquired Assets, in form and substance reasonably acceptable to Restaurant Asset Buyer and Restaurant Asset Seller; (ii) certified copy of resolutions duly adopted by the Shareholder and the Restaurant Asset Seller's Owners, approving the terms and conditions of this Agreement and authorizing Restaurant Asset Seller's officers to execute, deliver and consummate the same for and on behalf of Restaurant Asset Seller; (iii) possession of the Acquired Assets; (iv) documentation related to the service history and maintenance records for all kitchen equipment and appliances; and (v) at Restaurant Asset Seller's cost, UCC, tax and judgment search reports issued by a company reasonably satisfactory to Restaurant Asset Buyer evidencing that the Acquired Assets are free from Liens or encumbrances of any sort.

5. Representations and Warranties of Asset Restaurant Seller. The Restaurant Asset Seller hereby represents and warrants to Restaurant Asset Buyer as of the date hereof as follows:

5.1 Title. Restaurant Asset Seller has, and Restaurant Asset Buyer will receive at Closing, good, valid and marketable title to all of the Acquired Assets, free and clear of all Liens, leases and tenancies. All tangible personal property at the Location is owned by the Restaurant Asset Seller and not leased. There are no financing statements under the Uniform Commercial Code filed with the California Secretary of State which name Restaurant Asset Seller as debtor, and Restaurant Asset Seller has not signed any security agreement authorizing any secured party thereunder to file any such financing statement.

5.2 Intellectual Property. Restaurant Asset Seller has not received any written notice or other objections to the use of the intellectual property which relates to the Business as now operated or used by the Restaurant Asset Seller. Any and all rights held by Restaurant Asset Seller to such intellectual property shall be assigned to Restaurant Asset Buyer at Closing.

5.3 Legal Proceedings. There are no actions, suits, litigation, proceedings or investigations pending or to the best of Restaurant Asset Seller's knowledge, threatened by or against Restaurant Asset Seller which relate to the Business or the Acquired Assets, and Restaurant Asset Seller has not received any written claim, complaint, or written notice of any such proceeding or claim or is aware of any basis for any such claim.

5.4 No Undisclosed or Transferee Liability. Restaurant Asset Seller has no debt, liability or obligation of any nature, whether accrued, absolute, contingent or otherwise.

5.5 Taxes. Restaurant Asset Seller is not delinquent with respect to money due to any federal, state, or local taxing authority or any other governmental entity for income tax or any other tax, or interest, penalties, assessments or deficiencies relating thereto (collectively, "Taxes"). Restaurant Asset Seller has filed all federal, state and local and all other tax returns which it is required to have filed. Restaurant Asset Seller has paid or made adequate provision for the payment of all Taxes which have or may become due pursuant to said returns or pursuant to any assessment received with respect thereto, or which is otherwise due and payable by such Restaurant Asset Seller. As of the Closing Date, Restaurant Asset Seller shall have paid all accrued sales taxes owed by Restaurant Asset Seller in the state of California. No adjustment of or deficiency of any Taxes or claim for additional Taxes has been proposed, or to the best of Restaurant Asset Seller's knowledge, threatened, asserted or assessed against Restaurant Asset Seller. Except as otherwise disclosed by Restaurant Asset Seller to Restaurant Asset Buyer, there are no audits or other examinations being conducted or, to the best of Restaurant Asset Seller's knowledge, after due inquiry, threatened by any taxing authority, and there is no deficiency or refund litigation or controversy in progress or, to the best of Restaurant Asset Seller's knowledge, after due inquiry, threatened, with respect to any Taxes previously paid by Restaurant Asset Seller or with respect to any returns previously filed by Restaurant Asset Seller or on behalf of Restaurant Asset Seller. Restaurant Asset Seller has not made any express waiver of any statute of limitations relating to the assessment or collection of Taxes.

5.6 Solvency. Assuming that Restaurant Asset Buyer performs all of its obligations under this Agreement, Restaurant Asset Seller will have sufficient funds to satisfy all obligations owed to its creditors, if any. Restaurant Asset Seller is solvent and has assets which have a fair value in excess of its liabilities. The Purchase Price is fair, has been negotiated on an arms-length basis,

and is greater than what Restaurant Asset Seller could obtain for the Assets if such Assets were sold on a liquidation sale basis. Restaurant Asset Seller has had the opportunity to obtain consult with its independent advisors as to the merits of the transaction described herein. Restaurant Asset Seller is not entering into this transaction under duress nor as result of the requirement of any lender or creditor.

6. Liquor License. The parties acknowledge that, subject to those requirements and conditions established from time to time by the applicable governmental and quasi-governmental authorities, the liquor license is not transferrable without approval of the ABC. Restaurant Asset Purchaser desires to facilitate the transfer of the liquor license to the subsequent restaurant operator at the Location, which shall be identified at a future date. The Restaurant Asset Seller will reasonably cooperate and assist the Restaurant Asset Buyer in all matters relating to the transfer and assignment of its liquor license to the subsequent restaurant operator at the Location including, without limitation, the execution and delivery of all documentation required by the governmental authorities with reference thereto, but at no cost or expense to the Restaurant Asset Seller. Without in any manner limiting to the foregoing, Restaurant Asset Seller will, within a reasonable time of Restaurant Asset Buyer's request, execute the ABC applications and have its signatures notarized. Restaurant Asset Seller and Restaurant Asset Buyer agree to use their best efforts to immediately cure any deficiencies caused by Restaurant Asset Seller or Restaurant Asset Buyer, as the case may be, that may affect the subsequent restaurant operator's ability to obtain a transfer of the liquor license or the issuance of a temporary the liquor license.

7. Indemnification. The Restaurant Asset Seller agrees to and shall defend, indemnify and hold harmless Restaurant Asset Buyer and its managers, members, employees, agents, representatives (collectively, the "Restaurant Asset Buyer Indemnified Parties") harmless from and against any and all losses, damages, actions, lawsuits, demands, proceedings, judgments, deficiencies, costs, expenses (including without limitation, reasonable attorneys' fees and expenses), and governmental actions of every kind, nature or description (collectively, "Losses") which arise out of or relate to any of the following: (a) any breach of any representation, warranty or covenant made by the Restaurant Asset Seller in the Acquisition Agreements; (b) any failure by the Restaurant Asset Seller to perform, comply with or observe any one of more of its covenants, agreement or obligations contained in this Agreement. If there is any indemnification claim hereunder, Restaurant Asset Buyer shall promptly cause notice of the claim to be delivered to the Restaurant Asset Seller. The Restaurant Asset Seller shall defend such claim at its sole cost and expense with legal counsel selected by the Restaurant Asset Seller. In the event Seller is not pursuing the payment, settlement or defense of the claim in a commercially reasonable manner to the detriment of the Restaurant Asset Buyer, the Restaurant Asset Buyer and its counsel shall have the right to participate in the defense of any such claim and/or compromise or settle the claim.

8. Miscellaneous

8.1 Notices. All notices consents, demands and other communications hereunder are to be in writing and must be sent or transmitted by (i) United States mail, certified or registered, return receipt requested (ii) confirmed overnight courier service, or (iii) confirmed facsimile transmission properly addressed or transmitted to the address of the party below or to such other mailing address or facsimile number as one party shall provide to the other party in accordance with this provision

and are deemed to have been duly given or made on the delivery date if delivery is made during applicable normal working hours, or on the next business day if delivered after applicable normal working hours. In the event a delivery or notice deadline falls on a weekend or holiday, then the applicable deadline will be extended to include the first business day following such weekend or holiday.

If to Asset Buyer: Executive Director
Monterey Peninsula Airport District
200 Fred Kane Dr., #200
Monterey, CA 93940

and if to Asset Seller: 4 Locals, Inc
[[[ADDRESS NEEDED]]]

8.2 Construction. This Agreement constitutes the entire understanding of the parties and may be amended only by a writing executed by all of the parties to be bound. The section and subsection headings of this Agreement have been inserted solely for convenience of reference, and shall not control or affect the meaning or construction of any of the provisions of this Agreement. No provision of this Agreement will be interpreted in favor of, or against, any of the parties hereto by reason of the extent to which any such party or its legal counsel participated in the drafting thereof or by reason of the extent to which any such provision is inconsistent with any prior draft hereof or thereof. The parties agree that they have had the opportunity to read this Agreement and obtain the advice of legal counsel, and further agree that the provisions set forth herein are fair and reasonable. The recitals form an integral part of this Agreement and are hereby incorporated herein. Any ambiguity or uncertainty existing herein shall not be interpreted or construed against any party hereto.

8.3 Invalidity. In the event any provision or portion of any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction as applied to any fact or circumstance, the remaining provisions and portions of this Agreement and the same provision as applied to any other fact or circumstance shall not be affected or impaired thereby and shall remain valid and enforceable.

8.4 Waiver. No failure of any party to exercise any right or remedy given such party under this Agreement or otherwise available to such party or to insist upon strict compliance by any other party with its obligations hereunder, and no custom or practice of the parties in variance with the terms hereof, shall constitute a waiver of any party's right to demand exact compliance with the terms hereof, unless such waiver is set forth in writing and executed by such party.

8.5 Assignment; Binding Effect. No party may assign its rights or delegate its obligations hereunder without the consent of the other party; except that Restaurant Asset Buyer may assign its rights under this Agreement to a corporation, limited liability company or other similar entity. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

8.6 Electronic Transmission and Counterparts. This Agreement may be executed by electronic transmission and/or simultaneously in one or more counterparts, each of which shall be deemed an original, but any of which together shall constitute one and the same instrument.

8.7 Risk of Loss. In the event there is a material loss regarding the Business or the Location between the Effective Date and the Closing Date, Restaurant Asset Buyer, may terminate this Agreement, and the parties hereto shall have no further obligations hereunder or thereunder; or (b) close the transaction described herein, together with any insurance proceeds payable by virtue of such loss or damage provided that Restaurant Asset Buyer shall be entitled to a credit for any deductible under any such insurance policy if said deductible is to be paid by Restaurant Asset Seller.

8.8 Further Assurances. Consistent with the terms and conditions hereof each party shall execute and deliver all instruments, certificates and other documents and shall perform all other acts which the other party reasonably requests in order to carry out this Agreement and the transactions contemplated hereby.

8.9 Survival. The provisions of Section 2, Section 5, Section 6 and Section 7 shall survive the Closing.

8.10 Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

8.11 Fees and Expenses. Each of the parties hereto shall pay its own fees, costs and expenses incurred in connection with the negotiation, preparation, execution and delivery of this Agreement and the consummation of the transactions contemplated hereby. In any action brought to enforce the terms of this Agreement or any guarantee of obligations hereunder, the prevailing party shall be entitled to recover all costs of enforcement and litigation, including but not limited to reasonable attorney's fees. As used in this Agreement the term "prevailing party" means that party whose position is substantially upheld in a final judgment rendered in any litigation or proceeding, or, if the final judgment is appealed, that party whose position is substantially upheld by the decision of the final appellate body that considers the appeal.

8.12 Covenant to Not Compete. Restaurant Asset Seller agrees that for a period of one year following closing, at no time will Restaurant Asset Seller nor any of its principals engage in any business activity which is competitive with the Restaurant within 15 miles of the Location.

IN WITNESS WHEREOF, the parties have caused this Restaurant Asset Purchase Agreement to be executed the day and year noted below.

IT IS SO AGREED:

4 LOCALS, INC.

Dated: May __, 2019

By: _____

Name:
Its:

Dated: May ____, 2019

MONTEREY PENINSULA AIRPORT
DISTRICT

By: _____
MICHAEL LA PIER, AAE
Executive Director

APPROVED AS TO FORM:

COLE HUBER LLP

By: _____
Scott E. Huber
Attorneys for Monterey Peninsula
Airport District