

Agenda Item

2



AGENDA STAFF REPORT

ASR Control 19-000194

MEETING DATE:

03/26/19

LEGAL ENTITY TAKING ACTION:

Board of Supervisors

BOARD OF SUPERVISORS DISTRICT(S):

2

SUBMITTING AGENCY/DEPARTMENT:

John Wayne Airport (Approved)

DEPARTMENT CONTACT PERSON(S):

Barry A. Rondinella (949) 252-5183

David Pfeiffer (949) 252-5291

SUBJECT: Authorize Request for Qualifications and Request for Proposals for Concessions

CEO CONCUR

COUNTY COUNSEL REVIEW

CLERK OF THE BOARD

Concur

Approved Agreement to Form

Discussion
3 Votes Board Majority

Budgeted: N/A

Current Year Cost: N/A

Annual Cost: N/A

Staffing Impact: 1

No

of Positions:

Sole Source: N/A

Current Fiscal Year Revenue: N/A

Funding Source: N/A

County Audit in last 3 years: No

Prior Board Action: N/A

RECOMMENDED ACTION(S):

1. Find that the subject activity is not a project within the meaning of the California Environmental Quality Act (CEQA) Guidelines Section 15378 and is therefore not subject to review under CEQA.

- 2. Authorize the Airport Director or designee to issue a Request for Qualifications for the Airport Concession Development Program.
- 3. Authorize the Airport Director or designee to issue a Request for Proposal to qualified respondents for the Airport Concession Development Program.
- 4. Authorize the Airport Director or designee to empanel a qualified group of experts to score the responsive proposals and return to the Board of Supervisors with recommendations for award of concession leases.

SUMMARY:

Authorizing the Airport Director or designee to release a Request for Qualifications, issue the Request for Proposal to qualified respondents and to empanel a qualified group of experts to review the responsive proposals will assist John Wayne Airport staff in bringing a recommendation to the Board of Supervisors for the award of concession leases.

BACKGROUND INFORMATION:

John Wayne Airport (JWA) operates within a confined footprint and has a cap on passenger traffic of 10.8 MAP (million annual passengers) through December 31, 2020. The 2014 Amendment to the 1985 Settlement Agreement provides for an increase to 11.8 MAP through December 31, 2025 and 12.2 to 12.5 MAP through December 31, 2030, contingent upon levels of service. The confined footprint and the passenger cap limits the growth potential of JWA and commercial revenue business.

Currently, JWA has food and beverage concession agreements with Vino Volo and Subway, which expire in July and November 2019 respectively, Host International, which expires in 2020 and Carl's Jr., and McDonald's whose lease terms expire in 2022. JWA has news/gift and specialty retail concession agreements with XpressSpa, whose lease term expired in 2018 and is presently operating on a month-to-month holdover and Paradies and Hudson Group, whose lease terms expire in 2021 and 2022 respectively. JWA staff has identified several potential new concession sites in addition to the current food and beverage and specialty retail concession offerings.

The 2017 Phoenix Marketing International survey conducted at JWA identifies a decrease in guest satisfaction with the limited number of food and beverage and retail offerings. The 2017 passenger research study identified a 15% decrease in guest satisfaction attributed to the limited number and variety of food and beverage selections and a 14% decrease in guest satisfaction of specialty retail compared to the 2015 passenger study, attributable to a limited number of locations. In summary, the survey highlights the guests' desire for increased options for food and beverage and coffee and illustrates JWA's insufficient number of specialty retail locations.

The amount of concession space available to meet guest demand is a key factor of a successful airport concession program. The industry benchmark is to compare concession space per 1,000 enplaned passengers (EP). Currently, JWA concession space operates near capacity, specifically during peak hours when queuing is common in food and beverage operations and multiple outlets do not have sufficient seating to meet guest demand. As a result, the unavailability of concession seating capacity has contributed to a declining guest experience and a loss of potential sales.

This lack of capacity will be exacerbated with the authorized MAP increases in 2021 and 2026. JWA is at the midpoint for Gross Sales versus similarly sized, benchmarked airports; Houston at \$70.9M and Nashville at \$68.1M Gross Sales versus JWA at \$56.8M Gross Sales. This is highlighted in the Table below:

TABLE 1

	Sacramento SMF	Indianapolis IND	Houston HOU	Cleveland CLE	Nashville BNA	Calgary YYC	JWA SNA
EP	5,006,042	4,239,828	6,474,432	4,175,739	6,489,739	7,553,361	5,243,852
Gross Sales	\$52,175,391	\$47,237,427	\$70,938,576	\$43,884,970	\$68,101,231	\$87,064,945	\$56,827,825
Current Sq. Ft.	48,285	58,333	64,006	47,123	48,191	118,872	53,398
Sales EP	\$10.42	\$11.14	\$10.96	\$10.51	\$10.49	\$11.53	\$10.84
Food & Beverage	\$34,162,977	\$30,966,533	\$50,042,327	\$24,637,354	\$46,558,416	\$55,324,319	\$38,342,002
Specialty Retail	\$6,124,221	\$9,422,703	\$10,935,761	\$7,153,769	\$5,894,568	\$14,415,143	\$2,816,993
News &	\$11,888,193	\$6,848,191	\$9,960,488	\$12,093,847	\$15,648,247	\$17,325,483	\$15,668,830

Gifts							
Airport Totals	\$52,175,391	\$47,237,427	\$70,938,576	\$43,884,970	\$68,101,231	\$87,064,945	\$56,827,825

JWA Category Performance versus Benchmarked Airports 4M to 7.6M EP.

(Source: 2017 ARN Fact Book and ACI North America Concession Benchmarking Study.)

Table 1 highlights the opportunity in Specialty Retail, with all benchmarked airports exceeding JWA in this category. Table 1 also highlights the opportunity within Food and Beverage with an expected increase in MAP.

To close this gap and to provide an enhanced guest experience, JWA will need to develop optimal concession spaces. JWA is proposing a comprehensive four-phase Concession Development Program, which will encourage local concepts and brands in its quick serve and casual dining categories, with the Phase 1 Request for Qualifications (RFQ)/Request for Proposals (RFP) being issued in April 2019, a potential Phase 2 in late 2019, Phase 3 in 2020 and Phase 4 in 2021. The second phase, besides the existing wine bar, would be further developed contingent on overall concession performance.

Phase 1 (Completion May 2020)

Potential Phase 2 (Completion February 2021)

•2 - Casual Dining & Bar

•7 - Specialty Retail

•1 − Coffee (4 locations)

•1 – Quick Serve (currently Subway)

•1 – Quick Serve

•2 - Casual Dining & Bar

•1 – Wine Bar (currently Vino Volo)

Phase 3 (2020 RFP Package)

•HMS Host – 19 Locations

Paradies News/Gifts – 5 Locations

◆Paradies Specialty Retail – 1 Location

Phase 4 (2021 RFP Package)

•Carl's Jr. - 1 Location

McDonald's - 2 Locations

Hudson News/Gifts - 5 Locations

Hudson Specialty Retail - 2 Locations

JWA staff retained the services of airport planning and consulting firm Leigh Fisher Associates (LFA) to assist with the evaluation of the current commercial concessions program goals and the approach developed by JWA staff, including a refreshed focus on local and regional concepts. LFA reviewed the concession program proposed by JWA and concluded that all elements of the Concessions Development Program are viable and have validated the strategy, approach and detail of new concession locations within the pending RFP.

Public Outreach/Information Meeting

Over the past 18 months, JWA staff conducted numerous outreach meetings with the local Orange County business community to inform them about the Concessions Development Program and the upcoming opportunities at JWA. These outreach meetings consisted of onsite tours of JWA and participants included a diverse range of potential vendors from national brands to local operators. These vendors may respond to the RFQ/RFP process in any of the four phases described, dependent upon their particular business type. Additionally, JWA conducted two public information meetings on December 13, 2018, to better educate the Orange County business community about operating in an airport environment. These meetings included presentations from key JWA staff and regulatory agencies such as: Transportation Security Administration, Orange County Sheriff's Department, California Alcohol & Beverage Control, County Inspectors and the Orange County Health Department that regulates JWA.

<u>Issuance of Request for Qualifications</u>

JWA seeks Board of Supervisor (Board) authorization for the Airport Director or designee to issue a RFQ to receive Statements of Qualifications (SOQs) from qualified entities who want to be considered for the upcoming Concession Development Program. Respondents must state for which of the two concession categories (Food and Beverage and/or Specialty Retail) they want to be considered. As set forth in the RFQ, respondents will be required to meet all of the minimum qualifications. The RFQ for Phase 1 will be posted to BidSync and SOQs will be required to be submitted by April 11, 2019.

The RFQ will require respondents to be able to demonstrate experience, references, and key personnel in their organization. A review of the qualifications will determine if the respondent entity passed or failed. Entities that pass are qualified to participate in the following RFP process and will move on to the next phase of the selection process.

Request for Proposals

JWA seeks Board authorization for the Airport Director or designee to issue the RFP to qualified respondents and empanel a group of subject matter experts to review the responsive proposals. The RFP will provide for direct leasing with local and regional businesses to operate concessions that will enhance the guest experience. The RFQ will be posted on BidSync and Proposals will be required to be submitted by June 4, 2019.

The purpose and goals for this RFP are as follows:

- Provide a superior guest experience;
- Refresh the concession program with a focus on local and regional concepts;
- Provide new food and beverage options that reflect the evolving tastes and preferences of today's JWA traveler;
- Improve breakfast and grab-and-go offerings in all food and beverage locations;
- Attract quality and diverse tenants who promote excellence in guest services and provide a positive, equitable and inclusive working environment for their employees;
- Attract concessionaires that provide employees with continuous training opportunities, advancement, benefits and worker retention program; and
- Promote sustainability through design and operational improvements.

Phase 1 of the Concession Development Program consists of 11 leases for 14 locations, two casual dining bars, one coffee lease (four locations), one quick serve and seven specialty retail locations. Based on the evaluations and scoring by the RFP panel of subject matter experts, JWA will return to the Board with recommendations for the award of 11 concession leases.

Compliance with CEQA: This action is not a project within the meaning of CEQA Guidelines Section 15378 and is therefore not subject to CEQA, since it does not have the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. The approval of this agenda item does not commit the County to a definite course of action in regard to a project since it furthers an administrative process to secure bids for future projects and does not authorize or commit the County to award any bids received for such future projects. This proposed activity is therefore not subject to CEQA. Any future action connected to this approval that constitutes a project will be reviewed for compliance with CEQA.

FINANCIAL IMPACT:

N/A

STAFFING IMPACT:

N/A

ATTACHMENT(S):

Attachment A - Request for Qualifications

Attachment B - Request for Proposal/Concession Leases

Attachment C - Phase 1 Concession Development Plan

Attachment D - Phase 1 Concession Development Program Schedule

Attachment E – Leigh Fisher Concession JWA RFP Final Report

ATTACHMENT A

STATEMENT of QUALIFICATIONS

COVER SHEET CHECKLIST

The following items must be submitted and tabbed in the following order. It is required that you initial next to each item and sign below. This completed checklist is required to be submitted with your SOQ.

Initial	Item
	1. EXHIBIT A – General Instructions
	2. EXHIBIT B – Request for Qualifications
	3. ATTACHMENT A - SOQ Cover Sheet Checklist
	4. ATTACHMENT B – Minimum Qualifications Submittal Form
	5. Executive Summary
	6. Key Personnel. Organizational Chart of Existing Entity
I certify that I have su	bmitted all of the above items in my SOQ.
AUTHORIZED SIGNAT	ORY OF RESPONDENT ENTITY
BY:	
DATE:	

Concession RFQ PM 1121 0345 0007

EXHIBIT A

GENERAL INSTRUCTIONS: PREPARATION, SUBMITTAL AND EVALUATION OF SOQ

FOR

FOOD AND BEVERAGE and SPECIALTY RETAIL CONCESSIONS

It is requested that all Statements of Qualifications (SOQ) be submitted in compliance with the following format and that <u>all</u> sections be completed. Each SOQ must be submitted in the order outlined to facilitate evaluation.

1. Format and Contents

A. General Requirements

Each SOQ shall be presented in 1 inch, 3 ring binder with clear cover on the outside using 8-1/2" x 11" (portrait) size paper and limited to a maximum of twelve (12) two-sided pages. Font must be Times New Roman, size 12. All pages must be sequentially numbered and dividers for each section.

The contents of your Statement of Qualifications must be tabbed and in the following order:

- 1. SOQ Cover Sheet Checklist. Each SOQ must have a completed SOQ Cover Sheet Checklist attached. Initial each line item, sign and date at the bottom certifying all items are included in the SOQ.
- 2. Attachment B: Minimum Qualifications Submittal Form. Complete form in its entirety and in Section 4 select if Respondent entity is requesting qualification as a Food and Beverage Concession or a Specialty Retail Concession, or both. It is required to submit the Minimum Qualifications Submittal Form signed, and dated and initialed at the bottom of each page.

3. Executive Summary

- a. Identify if requesting qualification for Food and Beverage Concession or a Specialty Retail Concession, or both. A one (1) or two (2) page (maximum) overview that demonstrates Respondent entity's ability to operate one or both of the above identified two options.
- b. Name and address of Respondent entity (include primary contact person, email address and phone number).
- c. Description, including dates and locations, of respondent entities experience operating a Food and Beverage Concession or a Specialty Retail Concession.

- 4. Key Personnel: Include an organizational chart of the Respondents existing Entity. At minimum key officers with corresponding titles, date employment commenced, and brief description of position duties and responsibilities is required. Reference Attachment B, Section 3 for a list of key officers required to be identified.
- 5. Demonstrated Experience: List and describe all Food and Beverage Concession or Specialty Retail Concession operations, including types of foods, beverages, and specialty products, currently being operated by respondent entity. Include calendar year 2014 through 2018 revenue at each concession operation.
- 6. References: Provide a minimum of two (2) references (name, title, e-mail address and telephone number) for Food and Beverage Concession or a Specialty Retail Concession, where respondent entity currently operates.
- 7. Provide a summary of all litigation involving your entity that has not been fully resolved as of the date of your submittal.
- B. Confirmation of Receipt of All Addenda to this RFQ: respondent entities are required to confirm in their SOQ the receipt of all addenda issued to this RFQ (if any). Confirmation will be done in part by Respondent identifying the last addenda issued that they have received, in their written confirmation. Firms should check the County's procurement web site at www.bidsync.com regularly for the issuance of addenda to this RFQ.
- C. Questions: Questions concerning this RFQ shall be submitted **no later than April 2**, **2019 at or before 2:00 PM PDT on www.bidsync.** All questions must be submitted **on bidsync for review and response.** Questions and corresponding answers and/or addenda to RFQ documents, will be posted on the County's procurement website at www.bidsync.com in a timely manner, however, JWA will not be responsible for any delays resulting in respondent entity's inability to meet the deadline date of **April 11**, **2019 at or before 2:00 PM PDT** for submission of Statement of Qualifications (SOQ).
- D. Submittal Instructions: Entities wishing to be considered shall submit **one** (1) **original** and **twelve** (12) **hard copies** and **twelve** (12) **electronic copies** on flash drives of your firm's SOQ to address below. Submittals become the property of the County of Orange and will not be returned.

County of Orange/John Wayne Airport Eddie Martin Administration Building Attn: Gene Duenas – RFQ BidSync **PM 1121 0345 0007** 3160 Airway Avenue Costa Mesa, CA 92626

The package in which the SOQ is delivered must be clearly labeled: Indicate Respondent Entities name, including all required information for return mail on outside of submitted SOQ package, as shown below:

SEALED STATEMENT OF QUALIFICATIONS (SOQ)

County of Orange/John Wayne Airport Eddie Martin Administration Building Attn: Gene Duenas – RFQ BidSync **PM 1121 0345 0007** 3160 Airway Avenue Costa Mesa, CA 92626

- E. SOQs must be received at the John Wayne Airport Eddie Martin Administration Building, 3160 Airway Avenue, Costa Mesa, CA 92626 by **April 11, 2019 at or before 2:00 PM PDT**. Late SOQ submissions will not be accepted and will be returned to the entity unopened.
- F. Protest of Proposal Specifications: All protests related to proposal specifications must be submitted to the Deputy Purchasing Agent no later than five (5) business days <u>prior to the close</u> of the proposal. Protests received after the five (5) business day deadline will not be considered by the County.
- G. In the event the protest of specifications is denied and the protester wishes to continue in the solicitation process, they must still submit a proposal prior to the close of the solicitation in accordance with the proposal submittal procedures provided in the proposal.
- H. Errors in SOQs: Prior to the time and date set for the final receipt of SOQs, any Respondent entity may withdraw its SOQ and correct any errors in its previously submitted SOQ, and resubmit prior to the due date and time.
- I. Respondent Entities are not to contact any County personnel with questions or clarifications concerning this RFQ. Any such action could lead to disqualification from the RFQ process. Questions: Questions concerning this RFQ shall be submitted no later than April 2, 2019 at or before 2:00 PM PDT on www.bidsync. All questions must be submitted on bidsync for review and response.

2. General Conditions

- A. Limitation: This RFQ does not commit JWA to award a Lease or Agreement, pay costs incurred in the preparation of an SOQ and/or responding to this request, nor to procure or contract for services. JWA reserves the right to accept or reject any or all SOQs received as a result of this request.
- B. Confidentiality: SOQs are not to be marked as confidential or proprietary. SOQs submitted in response to this RFQ are subject to public disclosure as permitted by the

California Public Records Act. Additionally, all SOQs shall become the property of the County of Orange. JWA reserves the right to make use of any information or ideas in the SOQ submitted. JWA shall not in any way be liable or responsible for the disclosure of any information related to the SOQ.

EVALUATION PLAN OVERVIEW

The selection of Respondent Entities will be determined on a qualifications basis. It is the expressed intent of the County of Orange, and John Wayne Airport to identify those Respondents who meet the minimum qualifications. A review panel will review each submitted SOQ, to verify qualifications submitted. Information included within the SOQ packet materials will be evaluated and those qualified respondents will be invited to the RFP process.

3. Schedule of Events – Target Dates

A. SCHEDULE OF EVENTS

Event	Schedule
Outreach/Informational Meeting	December 13, 2018
RFQ Issued	March 27, 2019
RFQ Questions Cut-off	April 2, 2019 @ 2:00 p.m.
RFQ Submittal Cut-off	April 11, 2019 @ 2:00 p.m.
RFP Issued	April 17, 2019
RFP Site Walk (Not Mandatory)	April 23, 2019 @ 12 p.m.
Pre-Proposal Conference (Not Mandatory)	April 30, 2019 @ 2 p.m.
RFP Questions Cut-off	May 7, 2019 @ 2 p.m.
RFP Submittal Cut-off	June 4, 2019 @ 2 p.m.
Proposer Interviews	TBD
Airport Commission Meeting	July 17, 2019
Board of Supervisors Award of Leases	August 27, 2019
Design and Permitting	August - December 2019
Construction Period	January 2020-May 2020

Exhibit B

REQUEST FOR QUALIFICATIONS (RFQ) FOR FOOD AND BEVERAGE and SPECIALTY RETAIL CONCESSIONS

Background

John Wayne Airport, Orange County (SNA), owned and operated by the County of Orange, is the only commercial service airport in Orange County, California. It is located approximately 35 miles south of Los Angeles, between the cities of Costa Mesa, Irvine, and Newport Beach. In 2017, over 10 million passengers were served.

There are three terminals that make up the Thomas F. Riley Terminal totaling 730,505 square feet which includes ticket counters, security screening checkpoints and baggage claim areas. The Riley Terminal also boasts 20 bridged commercial passenger gates. Two smaller terminals, one at the north end (Gates 1A, 1B, and 1C) and one at the south end (Gates 22A, 22B and 22C) of the Riley Terminal are available for commuter passenger service.

American Airlines, Delta Air Lines and WestJet are located in Terminal A. Alaska Airlines and United Airlines are located in Terminal B, and Frontier and Southwest Airlines are located in Terminal C. The airport currently offers 23 food and beverage concessions and 15 retail concessions.

Request for Qualifications

JWA is requesting Statements of Qualifications ("SOQs") from qualified entities who want to be considered for the upcoming Food and Beverage and Specialty Retail Concessions Request for Proposals (RFP), which are being planned to include the following opportunities:

- 1.) Food and Beverage Concessions
- 2.) Specialty Retail Concessions

Minimum Qualifications

To be considered, a Respondent Entity, must state which of the two (2) concession categories they want to be considered for, and are required to meet all of the minimum qualifications, at the time of submission, as set forth below. Attachment B is the required Minimum Qualifications Submittal Form that must be submitted as your SOQ, along with supporting documentation.

Food and Beverage Concessions Qualifications

1. If Respondent Entity is submitting an SOQ for a Food and Beverage Concession, they are required to have three (3) of the last five (5) years' experience operating concessions in a high traffic environment and meet the following volume requirements (this can be individual unit or combined company sales):

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PM	1121	0345	0007

Casual Dining/Bar	\$1,500,000 Minimum per year
Quick Serve	\$500,000 Minimum per year
Specialty Coffee	\$750,000 Minimum per year

Specialty Retail Concessions Qualifications

2. If Respondent Entity is submitting an SOQ for a Specialty Retail Concession, they are required to have three (3) of the last five (5) years' continuous experience operating concessions in a high traffic environment and meet the following volume requirements (this can be individual unit or combined company sales):

_		
	Specialty Retail	\$500,000 Minimum per year

Initials_____ PM 1121 0345 0007

ATTACHMENT B

MINIMUM QUALIFICATIONS SUBMITTAL FORM

Directions: Complete the SUBMITTAL FORM in its entirety. In Section 4 identify if submitting an SOQ as a Food and Beverage Concession or Specialty Retail Concession, or both. If submitting for both a Food and Beverage Concession or Specialty Retail Concession, both checklists in Section 4 are required to be completed in their entirety. This form must be initialed and dated on each page and signed and dated at the bottom of Section 4.

SECTION 1:

1.	Name and cont	act detail	s of Proposer e	xactly as	it is to a _l	ppear in	the Lease:	
Name	<u></u>							
Addre	ss:				City		State	Zip
Phone	:		Ema	il:			Fax:	
SECT	ION 2:							
1. The	Respondent E	ntity, if q	ualified, intends	s to carry	on the b	usiness	as:	
	Individual		Partnership	D	Joint '	Venture		
	Limited Liab	ility Con	ipany 🗆	Corpe	oration	D	Other (atta	ach explanation)
			are, or Other, at			4 5	he Partnersh	ip agreement or Joint
a. Nan	ne, address, and	d share of	each partner of	f the Join	t Ventur	e or Part	nership	
Name			Address				S	hare
			-					
			-					
-					=			
			_					
			-					
			-					***
b. Date	e of Organization	on:			-			
c. Gen	eral or Limited	Partners	hip (if applicab	le):	175			
d. Who	ere Recorded: _							
e. Reg	istered in Calif	ornia?			_ If so,	when: _		
1)	Initial		Date

SECTION 3:				
1. If a Corporation, L	imited Liability Company,	or Other answer the follow	ing:	
a. When incorporated/	formed	b. In what state/countr	у	
c. Authorized to do bu	siness in California?	If so, when:		
following officers. If	erience in the business, and the officer titles presented ad include their actual title	below do not exist within y		
OFFICER	NAME	ADDRESS		AMOUNT of STOCK or INTEREST
President				
Vice President				
Secretary				
Treasurer				
Other				
members: (A "principa	shares of stock/membership al" stockholder or member ag stock or membership into	is defined as a stockholder	or member or Limited Lia	who holds 10% o
2		Initial	Da	ite

SECTION 4:

If submitting SOQ as a Food and Beverage Concession, complete part a. Food and Beverage
 Concession checklist below. If submitting as a Specialty Retail Concession, complete part b.
 Specialty Retail Concession checklist below. If submitting SOQ for both, each must be completed.

a. FOOD AND BEVERAGE CONCESSION

Casual Dining/Bar Properly licensed and in good standing in State 3 of the last 5 Years' experience operating as List revenue for last 5 years: 2014: 2017: 2018:	s a Casual Dining/Ba			N N
Ouick Serve Properly licensed and in good standing in State 3 of the last 5 Years' experience operating as		ession		N N
List revenue for last 5 years: 2014:	2015:	_2016:		
Specialty Coffee Properly licensed and in good standing in Sta 3 of the last 5 Years' experience operating as		concession	Y Y	27.249.00
List revenue for last 5 years: 2014: 2017: 2018:				
b. SPECIALTY RETAIL CONCESSION Properly Licensed & in Good Standing in Standard of the last 5 Years' Experience operating a	ate of California	concession		N N
List revenue for last 5 years: 2014:				- 1
2017:2018:				
3	Initial		Date	

The undersigned represent and warrant to the County of Orange that the undersigned person(s) are authorized signatories of the Respondent Entity and all information submitted by Respondent in the above Submittal Form and supporting documents to the SOQ is complete, accurate, and truthful. Failure to make full disclosure in responding to the above questions or making false representation may result in disqualification from participation in the RFP process.

. <u> </u>		Title	
Printed Name			
2		Title	
Printed Name			
3	_	Title	
Printed Name			

4



REQUEST FOR PROPOSALS PM 1121 0345 0007 FOOD AND BEVERAGE, RETAIL CONCESSIONS



PROPOSAL SUBMITTAL DUE DATE: June 4, 2019, by 2:00 p.m.

County of Orange / John Wayne Airport Eddie Martin Administration Building 3160 Airway Avenue, Costa Mesa, CA 92626



3160 Airway Avenue Costa Mesa, CA 92626 PROPOSALS MUST BE RECEIVED ON OR BEFORE

June 4, 2019

By

2:00 P.M. PST

RFP Number

PM 1121 0345 0007

Cover Page

The County of Orange, John Wayne Airport (JWA) hereinafter referred to as "County" is soliciting proposals under the Request for Proposal (RFP) from qualified firms, hereinafter referred to as "Proposers," to provide Food and Beverage and Specialty Retail Concessions.

Proposers who have met the minimum qualifications and requirements set forth within the Request for Qualifications (RFQ) and must be capable of providing all core services set forth in the Scope of Service, attached hereto as "Attachment A" and incorporated herein by this reference. The awarded Concessions Leases hereinafter referred to as "Lease" will be effective for a ten (10) year term for Food and Beverage Concessions and a seven (7) year term for Specialty Retail Concessions.

This RFP is set out in the following format:

SECTION I Introduction

SECTION II Proposal Requirements

SECTION III Concession Leases

SECTION IV Lease Outline Drawings

SECTION V Proposal Form

SECTION VI Proposal Cover Sheet Checklist

All questions related to this RFP must be submitted through BidSync at www.BidSync.com.

For BidSync assistance, please contact BidSync Vendor Support Team at 800-990-9339 Option 1. Offerors are not to contact other County personnel with any questions or clarifications concerning this RFP. Any such action could lead to disqualification from the RFP process.

The Deputy Purchasing Agent (DPA) will provide all official communication concerning this RFP. With respect to this RFP, any County response other than from the DPA and in writing will be unauthorized and the County shall bear no responsibility for any and all reliance upon the unauthorized communication.

I HAVE READ, UNDERSTOOD, AND AGREE TO ALL STATEMENTS IN THIS REQUEST FOR PROPOSAL (RFP) AND TO THE TERMS, CONDITIONS, ATTACHMENTS AND EXHIBITS REFERENCED HEREIN.						
Company Name (as it appears on your invoice and W9)		Fed ID#				
Address						
Authorized Signature (Sign all copies)	Title	Date				

Name of person to contact in reference to this proposal	Phone Number
Cover Page	2
I. INTRODUCTION	4
PROPOSALS REQUESTED	
CONCESSIONS PROGRAM GOALS	
AIRPORT DESCRIPTION	
SETTLEMENT AGREEMENT BACKGROUND	
TERMINALS A AND B IMPROVEMENTS PROJECT	
HOURS OF AIRPORT OPERATION	
CURRENT RETAIL CONCESSIONS	
REPORTED GROSS RECEIPTS FOR CURRENT RETAIL CONCESSIONS	
CURRENT FOOD AND BEVERAGE CONCESSIONS	_
REPORTED GROSS RECEIPTS FOR CURRENT FOOD AND BEVERAGE COI	
(FISCAL YEAR IS JULY THROUGH JUNE)	
PASSENGER TRAFFIC	
FIVE-YEAR PASSENGER COUNT HISTORY	
PASSENGER PROFILE	
PARKING FACILITIES DESCRIPTION	
CURRENT PASSENGER PARKING OPERATIONS	
II. PROPOSAL REQUIREMENTS	42
PROPOSAL REQUIREMENTS	
PRICING	
CONCESSION CONSTRUCTION REQUIREMENTS	
CONCESSION CONSTRUCTION REQUIREMENTS	
LEASE SUMMARY	
PROPOSERS' INSTRUCTIONS	
SCHEDULE OF EVENTS	
PROPOSAL PROCEDURE	
PRE-PROPOSAL SITE WALK	
PRE-PROPOSAL MEETING	
PROPOSAL ADDENDA	
PROPOSAL DEPOSIT	
FORMAT REQUIREMENTS	_
PROPOSAL REVIEW AND EVALUATION	
ITEMS TO BE PROPOSED AND SUBMITTED	
COUNTY OF ORANGE CHILD SUPPORT ENFORCEMENT	
AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACD	
AMERICANS WITH DISABILITIES ACT (ADA)	
POURING RIGHTS	
COMMENCEMENT OF OPERATIONS	
PROPOSAL SELECTION PROCEDURE	
PANEL RATING CRITERIA FOR PROPOSALS	
EXECUTION OF CONCESSION LEASE	
PROTESTS	32

I. INTRODUCTION



PROPOSALS REQUESTED

The County of Orange is requesting Proposals (Proposals) for the JWA Concession Program. The JWA Phase I Concession Program will consist of a total of eleven (11) leases for fourteen (14) locations. There will be seven (7) specialty retail locations, two (2) Casual Dining & Bar locations, four (4) specialty coffee locations, and one (1) quick serve location throughout the JWA Terminals. Selection will be made through the RFP process. Construction will require proposers to start immediately after lease execution date with a projected completion date of May 2020. This RFP provides the opportunity for all qualified Proposers to submit Proposals for concepts at the following locations:

+ ID	Location	Location Concept	Approx. Square Footage
		Food and Beverage: Coffee Kiosk (1	
	Terminal A (Baggage Claim)		
1, 7, 15,	Terminal B/C Connector (Pre- Security)	package)	3,200
16	Terminal C (Baggage Claim)		
	Terminal C (Gate 16-17)		
3	Terminal C (Gate 14-15)	Food and Beverage: Bar/Casual Dining	2,500
4	Terminal C (Gate 14)	Specialty Retail	1,000
5	Terminal C (Gate 14)	Specialty Retail	1,100
6	Terminal C (Gate 14)	Specialty Retail	850
9	Terminal B (Gate 10)	Specialty Retail	930
10	Terminal A (Gate 7)	Specialty Retail	930
11	Terminal A (Gate 7)	Specialty Retail	930
12	Terminal A (Gate 4-5)	Specialty Retail	930
13	Terminal A (Gate 6-7	Food and Beverage: Bar/Casual Dining	2400
17	Terminal B (Gate 12-13)	Food and Beverage: Quick Serve	800

Proposers may submit Proposals on one or more location concept identified in this RFP. However, each Proposer can only be awarded a maximum of two (2) retail locations and one (1) Food and Beverage location. If proposing one or more location, proposer is required to submit a separate and complete Proposal for each location. The BOS reserves the right to award locations based on the best fit for the overall concessions program. The Coffee Concession will require one (1) proposal that includes all four (4) locations. JWA reserves the right to phase construction.

CONCESSIONS PROGRAM GOALS

JWA has established the following goals for this RFP:

- a) Provide a superior guest experience;
- b) Refresh the concessions program with a focus on local and regional concepts;
- c) Provide new food and beverage options that reflect the evolving tastes and preferences of today's JWA traveler;
- d) Provide specialty retail concepts that highlight merchandise from Orange County and Southern California that is fair and reasonably priced;
- e) Improve breakfast and grab-and-go offerings in all food and beverage locations;
- f) Attract quality and diverse employers who promote excellence in guest services and provide a positive, equitable, and inclusive working environment for their employees;
- g) Provide its employees with continuous training opportunities, advancement, benefits and worker retention program; and
- h) Promote sustainability through design and operational improvements.

AIRPORT DESCRIPTION

JWA, owned and operated by the County of Orange, is the only commercial airport in Orange County, California. Located approximately 35 miles south of Los Angeles, between the cities of Costa Mesa, Newport Beach and Irvine.

JWA spans approximately 500 acres and its two runways serve commercial and private aircraft. The Airport is served by several major commercial airlines and is home to a vibrant business jet and piston engine general aviation community. In 2017, JWA served more than 10 million passengers from the Thomas F. Riley Terminal and handled nearly 20,000 tons of cargo.

JWA is proud to announce that J.D. Power selected and awarded JWA as the recipient of the Best Large Airport Award in the 2017 and 2018 North America Airport Satisfaction Studies. These studies were based on responses from 34,695 North American travelers and measures overall traveler satisfaction by examining six factors (in order of importance): terminal facilities; airport accessibility; security check; baggage claim; check-in/baggage check; food, beverage and retail.

SETTLEMENT AGREEMENT BACKGROUND

The 1985 "Settlement Agreement" formalized consensus reached between the County of Orange, the City of Newport Beach and two community groups on the nature and extent of facility and operational improvements that could be implemented at JWA through 2005. In 2003, the original four signatories approved a series of amendments to the Settlement Agreement that allowed for additional facilities and operational capacity and continued to provide environmental protections for the local community through 2015.

The Settlement agreement and its amendments allow the operational capacity at JWA to remain at the currently authorized 10.8 Million Annual Passengers (MAP) through December 31, 2020, and provides for an increase to 11.8 MAP through December 31, 2025, and to 12.2 MAP or 12.5 MAP through December 31, 2030 depending on the actual service level from 2021 to 2025. The amendment maintains JWA's curfew through December 31, 2035, provides for an increase in the number of regulated flights allocated to passenger commercial carriers at JWA, and eliminates the limit on permitted number of commercial passenger loading bridges beginning on January 1, 2021.

Please reference the following links for more information on the 1985 Settlement Agreement and associated documents:

 $\underline{\text{http://www.ocair.com/communityrelations/settlementagreement/docs/1985\%20Settlement\%20A}\\ greement.pdf$

9th Supplemental Stipulation -

 $\frac{http://www.ocair.com/communityrelations/settlementagreement/docs/9th\%20Stipulation.pdf}{10^{th}\ Supplemental\ Stipulation}\ -$

http://www.ocair.com/communityrelations/settlementagreement/docs/10th%20Stipulation.pdf

TERMINALS A AND B IMPROVEMENTS PROJECT

In 2016, JWA initiated the Terminals A and B Improvements Project, a phased endeavor with numerous safety, code compliance, comfort, convenience and aesthetic improvements. These improvements include, but are not limited to architectural improvements; seismic upgrade of Terminals A and B; electrical infrastructure; heating, ventilation and air-conditioning (HVAC); mechanical systems; plumbing systems; lighting systems; Americans with Disabilities Act (ADA) compliance; Information Technology (IT) systems; security and closed circuit television (CCTV) systems; and fire sprinkler and alarm systems. These improvements enhance the existing facilities' aesthetics and infrastructure, allowing guests of JWA and visitors to Orange County to experience a uniform level of quality throughout the Riley Terminal complex.

HOURS OF AIRPORT OPERATION

Commercial airlines operations at JWA begin at 7:00 a.m. (8:00 a.m. on Sundays) and continue until 11:00 p.m. Departures may occur no later than 10:00 p.m. daily.

CURRENT RETAIL CONCESSIONS

Hudson	News and Gift and Specialty Retail	CNN (Terminal A - Pre-Security) Hudson Newswall (Terminal A) Sunglass Hut/Rip Curl (Terminal A) Orange County Market (Terminal A) Hudson News (Terminal A) CNN (Terminal C)
Paradies	News and Gift and Specialty Retail	CNBC (Terminal B - Pre-Security) South Coast News (Terminal B) OC TravelMart (Terminal C - Pre-Security) Beach Front News (Terminal C) InMotion Entertainment (Terminal C) CNBC Newswall (Terminal C)
XpresSpa*	Specialty	Terminal B
Brookstone*	Specialty	Terminal B

REPORTED GROSS RECEIPTS FOR CURRENT RETAIL CONCESSIONS (Fiscal Year is July through June)

Fiscal Year	Hudson	Paradies	Brookstone	XpresSpa
2013 - 2014	\$7,638,658	\$5,052,531	\$484,464	\$331,086
2014 - 2015	\$8,838,315	\$4,813,919	\$646,706	\$547,104
2015 - 2016	\$9,339,324	\$5,781,439	\$659,832	\$539,689
2016 - 2017	\$9,779,679	\$6,007,013	\$648,501	\$569,091
2017 - 2018	\$9,565,720	\$6,102,761	\$554,312	\$600,908

^{*}Brookstone/XpresSpa Lease Effective 11/1/2013

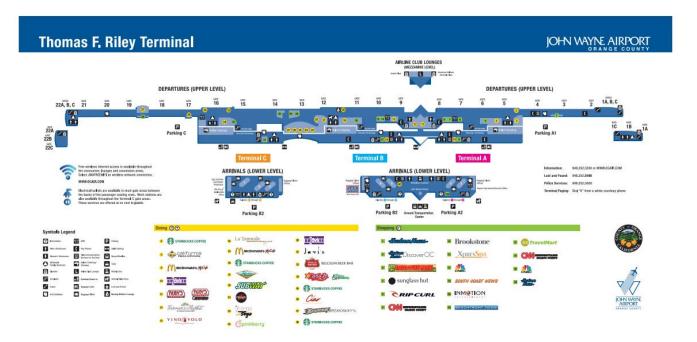
CURRENT FOOD AND BEVERAGE CONCESSIONS

Concessionaire	Concept	Location(s)
Host	Primary Food and Beverage	Zov's (Terminal A - Pre-Security) Starbucks (Terminal A) California Pizza Kitchen (Terminal A) Ruby's Diner (Rotated Square) Farmers Market (Rotated Square) La Tapenade (Terminal B - Pre - Security) Starbucks (Terminal B) Hobie Sand Bar (Terminal B) Starbucks (Terminal B - Baggage Claim) Zov's (Terminal C) Pei Wei (Terminal C) Javi's (Terminal C) Stella Bar (Terminal C) Starbucks (Terminal C) Ciao (Terminal C) Ducks Bar (Terminal C) Blaze Pizza – coming soon (Terminal C)
McDonald's	Fast Food	McDonald's (Terminal A) McDonald's (Terminal B)
Vino Volo	Specialty	Terminal B
Carl's Jr.	Fast Food	Terminal C
Subway	Specialty	Terminal B/C

REPORTED GROSS RECEIPTS FOR CURRENT FOOD AND BEVERAGE CONCESSIONS

(Fiscal Year is July through June)

Fiscal Year	Host	McDonald's	Vino Volo	Carl's Jr.	Subway
2013 - 2014	\$22,194,008	\$3,965,489	\$1,160,611	\$1,734,192	\$1,257,508
2014 - 2015	\$23,858,268	\$3,827,026	\$1,249,610	\$1,733,014	\$1,156,264
2015 - 2016	\$28,954,224	\$4,002,368	\$1,351,126	\$2,010,520	\$1,282,928
2016 - 2017	\$30,658,216	\$4,088,011	\$1,376,749	\$2,225,136	\$1,189,301
2017 - 2018	\$30,123,474	\$4,541,659	\$1,724,712	\$1,998,417	\$1,125,218



PASSENGER TRAFFIC

A monthly breakdown of passengers for the most recent 24 months is provided below. It may be assumed that passengers were split equally between enplaned and deplaned passengers.

Jan-17	793,774
Feb-17	711,010
Mar-17	856,025
Apr-17	851,169
May-17	878,901
Jun-17	902,059

Jul-17	919,223
Aug-17	934,515
Sep-17	853,545
Oct-17	930,911
Nov-17	892,995
Dec-17	899,451

Jan-18	817,258
Feb-18	763,505
Mar-18	893,668
Apr-18	893,668
May-18	915,833
Jun-18	950,834

Jul-18	991,003
Aug-18	991,112
Sep-18	856,688
Oct-18	907,191
Nov-18	850,458
Dec-18	828,070

FIVE-YEAR PASSENGER COUNT HISTORY

Passenger Count	2013	2014	2015	2016	2017	2018
Enplaned PAX	4,600,192	4,681,292	5,011,857	5,243,852	5,195,047	5,317,149

PASSENGER PROFILE

A passenger survey was completed by Phoenix Marketing International in November 2017. Of the 404 telephone surveys and 410 intercept surveys (passengers in the terminal), 22% of those surveyed described their travel as business-related. In addition, the most frequent means of getting to the Airport among intercept survey respondents were auto drop-offs (40%), rental cars (15%), and driving personal autos (9%). The use of ride-hailing services, Uber/Lyft/Wingz now accounts for twenty-two (22%) percent of all arrivals to JWA. The complete passenger survey is available online at

http://www.ocair.com/reportspublications/PassengerSurvey/2017JWAPassengerSurvey.pdf

PARKING FACILITIES DESCRIPTION

JWA parking facilities consist of the A1 Parking Structure (approximately 1,476 parking spaces) A2 and B2 Parking Structures (approximately 4,442 parking spaces, consisting of 3,033 public spaces, 756 rental car spaces, 588 valet parking spaces, and 65 employee spaces) and Parking Structure C (approximately 2,009 parking spaces). The A1 Parking Structure is located at the north end and Parking Structure C is located on the south end of the adjoining Thomas F. Riley Terminal. The Lower Level and Upper Level Terminal roadways run between the Easterly A2 and B2 Parking Structures, with the A1 and C Parking Structures and the Terminal on the west side.

JWA also has two remote lots, referred to as the Main Street Lot and the T-Lot (Employee Lot). The Main Street Lot consists of approximately 1,280 parking spaces. The T-Lot consists of approximately 833 parking spaces.

CURRENT PASSENGER PARKING OPERATIONS

The County of Orange currently has an operating agreement with LAZ Parking California, LLC (LAZ) for the operation of JWA public parking facilities, which include the parking structures and the Main Street Lot. The Courtesy passenger shuttle service between the Main Street and the Terminal and the Employee Shuttle service between the T-Lot and the Terminal is currently operated by LAZ shuttle services.

II. PROPOSAL REQUIREMENTS



PROPOSAL OVERVIEW

Proposers shall propose to sell the following items with a specific theme identified in an overall concept. County understands that there will be some product overlap at stores within the terminals, but desires to minimize this in order to maintain a healthy sales environment for all concessionaires while providing first-class shopping and dining to Airport guests. The items include but are not limited to the following:

Space/Site	Total Area	Category
Terminal C		Quick Serve Restaurant (QSR):
Post Security- Site 17		The offered location is intended for the sale of made-to-order food and non-alcoholic beverages in a counter-service setting. JWA prefers the quick service concept to be a recognized local or regional brand.
		The menu should focus on one specific cuisine or offer a variety of freshly prepared items that covers breakfast, lunch, and dinner. The QSR must offer premium quality products, fulfilled/provided quickly, efficiently and in durable environmentally conscious packaging.
		Examples of cuisines or themes include, but are not limited to:
		It is important to note that proposed concepts should not duplicate any existing concepts already offered in the terminal.
		Grab-and-go counters should be incorporated in the restaurant design so that guests are able to purchase freshly prepared foods and non-alcoholic beverages to go.
		Operator is required to collaborate with JWA interactive wayfinding signage with menus including calorie count, ordering, reservations, designated pickup locations and delivery system.
		A maximum of 10% of retail space can be used to sell their branded items.
		Seating will be permitted contingent upon proposed design. If approved design allows for a controlled seating area within the lease premises; operator will have the ability to sell beer and wine.
		The following items are not permitted: • Specialty Coffee and Specialty Tea Beverages • Pre-packaged snack items • Tobacco, e-cigarettes, cannabis products, and/or vaporizers

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Terminal A	Specialty Coffee Kiosks:
Pre-Security-Location 16 Terminal B Pre-Security-Location 15 Terminal B/C Pre-Security-Location 14 Terminal C Post Security-Location 1	This lease package of 4 locations is intended for a regional or locally known gournet coffee shop and should include seating for guests, as space permits. The coffee shop must offer a variety of quality, freshly prepared coffee, specialty coffee drinks, tea, and specialty tea drinks. In addition, the coffee shop should be used for the sale of a variety of freshly baked goods such as cookies, pastries, rolls, bagels, scones, breakfast sandwiches, paninis, parfaits, and muffins; bottled non-alcoholic beverages such as water and juices; branded bagged coffee, boxed teas; and a limited amount of related merchandise items such as coffee mugs, travel cups, and coffee and tea-making accessories. Grab-and-go counters should be incorporated in the restaurant design so that guests are able to purchase freshly prepared foods and non-alcoholic beverages to go. Operator is required to collaborate with JWA interactive wayfinding signage with menus including calorie count, ordering, reservations, designated pickup locations and delivery system. The following items are not permitted: • Alcoholic Drinks, Beer, and Wine • Carbonated drinks
	Tobacco, e-cigarettes, cannabis products, and/or vaporizers
Terminal A Post Security- Location 12 Location 13 Terminal B Post Security- Location 7 Terminal C Post Security- Location 3	Casual Dining Restaurant/Bar: These are locations with table service and a separate bar area. All locations should offer front window seating with a view of the airfield. JWA prefers restaurant concepts that focus on specific themes – such as a regional specialty cuisine or celebrity chef inspired – that is unique or presents a strong local or regional brand. Food must be made-to-order. Overall sales for alcohol cannot exceed 40%. Restaurants must offer a menu that covers breakfast, lunch, and dinner and are consistent with the proposed concept theme or brand. Drip coffee will be allowed. In addition, a separate bar area should be designated and offer a full variety of alcoholic beverages, including cocktails, beer, and wine. Exposition cooking and open design are strongly encouraged. Grab-and-go counters should be incorporated in the restaurant design so that guests are able to purchase freshly prepared foods and non-alcoholic beverages to go. Operator is required to collaborate with JWA interactive wayfinding signage with menus including calorie count, ordering, reservations, designated pickup locations and delivery system. It is important to note that proposed concepts must not duplicate any existing concepts already offered in the terminals.

	The following items are not permitted: • Specialty Coffee and Specialty Tea Beverages • Pre-packaged snack items • Tobacco, e-cigarettes, cannabis products, and/or vaporizers
Terminal A Post Security- Location 10 Location 11 Terminal B Post Security- Location 8 Location 9 Terminal C Post Security- Location 4 Location 5 Location 6	Specialty High End Retail: The categories suggested below, are provided as a guideline. JWA encourages creativity by Proposers for concept, design and layout. • Luxury Accessories • High End Prestige Cosmetics/Body Care • Designer Apparel • Theme Park merchandise • High End Jewelry/Watches • Leather Goods Operator is required to collaborate with JWA interactive wayfinding signage with menus, ordering, designated pickup locations and delivery system. The following items/services are not permitted: • News and Gift items • Tobacco, e-cigarettes, cannabis products, and/or vaporizers • Spa Services • Electronics • Food/Beverage products Candy and prepacked snacks

The Airport reserves the right to restrict or prohibit the sale of those items which, in the opinion of the Airport, are not in the public interest, or which might compete unfairly with other Terminal concessions. Tenant also agrees not to conduct or permit to be conducted any public or private nuisance (as defined in C.C. 3479) in, on or from the (Leased Premises), or to commit or permit to be committed any waste in, on or from the Leased Premises.

PRICING

JWA has a pricing policy that **PRICING MUST NOT EXCEED STREET PRICING PLUS 10%.** Prices of items provided for sale shall not exceed one hundred and ten percent (110%) of the prices found in approved comparable stores in the Orange County area.

Tenants are required to perform and submit price surveys every year from the effective date of the Lease or at the request of the Airport Director or designee. Price surveys shall include at a minimum, prices from three (3) local establishments approved in advance by JWA. Tenant will be required to submit, on an annual basis or upon request, a pricing survey of items comprising the Permitted Use showing the same or comparable prices found in Tenant's off-Airport locations, if any, or comparable locations approved by JWA, as determined by Airport Director or designee to be comparable. Should any variance in prices on specific items exceed the 110%, the Airport Director or designee will have the right to require a price adjustment on the specified items.

CONCESSION CONSTRUCTION REQUIREMENTS

It is the goal of John Wayne Airport to facilitate the highest concession standards by establishing an atmosphere that provides a superior guest experience, and increases the operational and economic performance of the concession.

Proposer shall construct, equip and complete the capital improvements for the concession locations included within this RFP in accordance with the Tenant Design Guidelines and Plans approved by County. Proposers can view or obtain a copy of John Wayne Airport's Tenant Design Guidelines at:

http://www.ocair.com/businessandemployment/RFPsRFQs/TenantDesignStandards.pdf

A minimum of **Three Hundred and Fifty Dollars** (\$350.00) per square foot in capital improvement costs must be used for the development of construction and installation of the capital improvements in each specialty retail concession location in proposers five-year pro-forma planning submittal.

A minimum of **Four Hundred and Fifty Dollars** (\$450.00) per square foot in capital improvement costs must be used for the development of construction and installation of the capital improvements in each food and beverage concession location in proposers five-year pro-forma planning submittal.

Proposer is responsible for all interior and exterior finish work inside the concession locations subject to the term of the Lease for the applicable concession, including but not limited to, shelving, counters, interior design and Tenant shall be responsible to install utility hook-ups from the point of connection into the Concession Leasehold.

CONCESSION MIDTERM REFURBISHMENT

After the commencement date of the Lease, tenant shall be required to make a reinvestment in the amount of up to 50% of its initial investment tenant stated in its proposal, subject to Airport Director approval, for the purpose of keeping concession and its technology contemporary and competitive with current concession trends and methods. Tenant shall complete the Concession Midterm Refurbishment, as approved by the Airport Director, within one hundred eighty (180) days from the midpoint of the Lease. For Specialty Retail Concession Leases, the midpoint is three and half years (42 months) from the Commencement date. For Food and Beverage Concession Leases, the midpoint is five years (60 months) from the Rent Commencement date. Failure to complete the refurbishment by said date shall be cause for termination of the Lease, and/or at the direction of the Airport Director, the sum of Two Thousand Dollars (\$2,000.00) per day until the Concession Midterm Refurbishment has been completed to the satisfaction of the COUNTY. This amount shall be in addition to all other sums due under this Lease.

TENANT shall be required to submit plans for the Concession Midterm Refurbishment at least one hundred eighty (180) days prior to lease term midpoint. The plans and specifications shall be certified by an architect or engineer and shall consist of (a) working drawings (b) technical

specifications and (c) proposed equipment upgrades or changes. Failure to submit the plans for refurbishment by said date shall be cause for termination of the Lease, and/or at the direction of the Airport Director or designee, the sum of Two Thousand Dollars (\$2,000.00) per day until the Concession Midterm plans have been submitted to the satisfaction of the COUNTY. This amount shall be in addition to all other sums due under the Lease.

Within sixty (60) calendar days following the completion of the Concession Midterm Refurbishment to the satisfaction of the Airport Director, tenant must provide certified documentation of all the capital investment actually expended in the design and installation of the Concession Midterm Refurbishment, together with "as-built" plans/records drawings as required elsewhere in this Lease. When documenting each refurbishment minimum investment required by this Lease, architectural and engineering charges not exceeding 15% of the total investment may be included. Construction costs shall not include indirect costs such as financing costs, holding costs, legal fees, interest, administrative and overhead expenses, internal design, review, management and oversight of construction on Leased Premises, tenant's licensing or franchising costs, bond premiums or developer fees.

In the event of a shortfall between said Concession Midterm Refurbishment amount and tenant's actual investment cost, TENANT shall pay to COUNTY an amount equal to the shortfall, as of one hundred eighty (180) days after the date of the completion of the Concession Midterm Refurbishment, and said payment shall be due and payable within thirty (30) days. The amount spent for refurbishment shall be exclusive of any amount spent for normal repair and maintenance as determined at the sole discretion of Airport Director.

PM 1121- 0345-0007 John Wayne Airport Concessions

LEASE SUMMARY (CONCESSIONS)

COUNTY

County of Orange

TENANT

To be determined

USE

Operation of a concession as proposed, for the sale of a particular type of food, beverages, products, including merchandise or services incidental to said concession.

LEASED PREMISES

Specialty Retail / Food and Beverage concession consisting of approximately _____ sq. ft. located in Terminal __ as proposed, and storage space in an amount and location to be determined in the storage area in the arrivals level in Terminal __ at John Wayne Airport.

TERM

Seven (7) years commencing upon the rent commencement date. (Specialty Retail) Ten Years (10) years commencing upon the rent commencement date. (Food and Beverage).

TERMINATION

County may terminate the Lease upon 60 days' written notice.

RENT

TENANT shall pay 1/12th of the Minimum Annual Guarantee (MAG) of \$100.00 per sq. ft. or percentage rent, whichever is higher. TENANT shall report their sales in arrears on the 15th of the month along with payment of MAG or percentage rent, whichever is higher.

Specialty Retail Tiered Rent			
\$ -	\$500,000.00	12%	
\$500,000.01	\$750,000.00	14%	
\$750,000.01		16%	

Casual Dining Tiered Rent			
\$ -	\$ 1,000,000.00	12%	
\$ 1,000,000.01	\$ 2,000,000.00	14%	
\$ 2,000,000.01		16%	

Quick Serve Tiered Rent			
\$	-	\$500,000.00	12%
\$500,000.	01	\$750,000.00	14%
\$750,000.	01		16%

Coffee Tiered Rent			
\$ -	\$ 1,000,000.00	14%	
\$ 1,000,000.01	\$ 2,000,000.00	16%	
\$ 2,000,000.01		18%	

INFRASTRUCTURE FEE

Tenant shall pay to the County an Infrastructure Fee. TENANT shall pay a monthly amount for the term of their lease on the 15th day of each month in arears. This Fee covers the amortized cost of utility infrastructure improvements that the Airport provides to each lease location. This rate is \$8.00 per month per square foot throughout the term of the lease. The fee is due upon beneficial occupancy of the premises.

RENT REVISION

The MAG shall be adjusted annually by the Consumer Price Index (CPI) or 85% of the annual rent paid for the preceding accounting year, whichever is greater. In no case shall the minimum annual rent be reduced by reason of such adjustment.

STORAGE SPACE

Storage space is available depending on Concessionaire needs. Cost of rent is per square foot based on the latest rates and charges schedule established by the County. Proposers are requested to identify storage space requirements as part of this Proposal and state the amount of square footage need anticipated on Exhibit D. The Airport will attempt to locate storage space as close to the proposed space as possible. The rate is subject to adjustments twice a year.

MARKETING FUND

Tenant shall be required to contribute an annual Marketing Fund Fee in the amount of ten thousand dollars (\$10,000.00) at the effective date of the Lease, and thereafter the beginning of each calendar year. COUNTY has established a Marketing Fund for the Airport to conduct sales promotions, Airport wide advertising and related activities intended to promote the Airport and its tenants. TENANT agrees to pay this amount to the Marketing Fund and annually thereafter. All monies received by COUNTY shall be used solely for the purpose of Airport tenants' promotions and related expenses.

SECURITY DEPOSIT

The initial security deposit shall be equal to four times the estimated monthly rent as determined by Airport Director. Concurrently with the annual revision of rent, the security deposit shall be subject to adjustment to an amount equal to approximately four (4) times the estimated monthly rent.

OPERATIONAL REQUIREMENTS

A. Personnel

- 1. Tenant is required to provide a qualified and experienced manager onsite to oversee operations.
- 2. Tenant is required to have employees to be properly dressed, clean, courteous and neat in appearance.
- 3. Tenant is required to comply with all Federal and State law regarding employee hiring.
- 4. Tenant is required to maintain a JWA approved employee plan staffing schedule.

B. Operation

- 1. Tenant's concession plan, products and pricing must be as Tenant has proposed and approved by County and Tenant shall not make any changes without first obtaining written approval of Airport Director or designee.
- 2. Prices for food and beverage items or services offered shall be conspicuously displayed in 36 font and/or printed on a menu or brochure. All retail items and grab and go food items are required to be displayed with visible signage in a 36 font reflecting prices. Prices must not exceed street pricing + 10% as approved by Airport Director or designee.
- 3. Promotional advertising displays are not permitted unless approved by Airport Director or designee in advance. Any displays that are considered objectionable must be removed at discretion of County.
- 4. Tenant is required to accept cash, major credit cards and debit cards for payment.
- 5. Tenant is required to use recyclable materials and participate in the Airport's recycling program.
- 6. Tenant is required to have supplies delivered only at times (currently 11:00 pm 6:00 am, seven (7) days a week), and through routes and entrances (non-peak hours), designated by Airport Director.
- 7. Tenant is required to utilize carts outfitted with pneumatic or gel tires. Metal or hard rubber wheels or tires are prohibited and subject to violation fees.
- 8. Tenant is responsible for charges for installation of dedicated phone lines and phone service charges, and for making all electrical, sewer, HVAC, gas and water connections to and within the Leased Premises.
- 9. Tenant is required to immediately notify Airport Director or designee of all citations concerning food safety or other inspection violations.
- 10. Tenant cannot place any unauthorized lock upon any window or door unless a key is

- maintained on the Leased Premises and a copy provided to Airport Director or designee.
- 11. Tenant shall establish and submit a Standards of Quality operating manual to JWA for review and approval. TENANT must maintain the approved standards offering quality service and food.

C. Terminal Communication Systems and Operations

- 1. County reserves the right to require Tenant to change over to any future Airport-wide network once installed.
- 2. Tenant is required not interfere with utility, heating, ventilating or air-conditioning systems.
- 3. Tenant is required abide by County ordinance prohibiting smoking in the terminal building.
- 4. Tenant is required not interfere with other tenants' use and operations at the Airport.

CONCESSION REFURBISHMENT

TENANT shall, within one hundred eighty (180) days after the commencement of three and half years (42 months) for Specialty Retail and 5 years (60 months) for Food and Beverage refurbish the store facilities. TENANT shall expend a minimum amount equal up to 50% of the initial investment, subject to the discretion of the Airport Director.

ASSIGNING AND TRANSFERRING

Assigning and transferring are permitted only upon prior written approval by the COUNTY after submitting required documents.

INSURANCE

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the TENANT shall provide the minimum limits and coverage as set forth below:

Coverages Minimum Limits

Commercial General Liability \$1,000,000 per occurrence \$2,000,000 aggregate

Coverages Minimum Limits

Automobile Liability including coverage for owned, non-owned \$1,000,000 limit per

and hired vehicles occurrence

Workers' Compensation Statutory

Employers' Liability Insurance \$1,000,000 per occurrence

Commercial Property Insurance on an "All Risk" or "Special Causes of Loss" basis covering all contents and any TENANT improvements including Business Interruption/Loss of Rents with a 12 month limit.

100% of the Replacement Cost Value and no coinsurance provision.

Liquor Liability (As Applicable) \$1,000,000 per occurrence

PROPOSERS' INSTRUCTIONS

Please read the following "Proposers' Instructions" and "Proposer's Checklist" carefully and check your proposal package immediately upon downloading from BidSync to ensure that you have in your possession all the necessary documents. The information presented in this RFP is provided solely for the convenience of Proposers and other interested parties. It is the responsibility of the Proposers and interested parties to assure themselves that the information contained in this package is accurate and complete. The County and its advisors provide no assurances pertaining to the accuracy of the data in the RFP.

All proposal documents and supplementary material or information submitted shall become the property of the County of Orange. All costs associated with the preparation and submission of any proposal shall be borne entirely by the Proposer. All documents submitted in connection with this RFP will remain confidential until award of the Concession Lease. Upon award, said documents will be subject to the California Public Records Act. (California Government Code Section 6250 et seq.)

The Proposer must identify, in writing, all copyrighted material, trade secrets or other proprietary information that Proposer claims are exempt from disclosure pursuant to the California Public Records Act. The Proposer who claims such an exemption must also state in the proposal that, "The Proposer agrees to indemnify and hold harmless the County and its officers, employees and agents from any claims, liability or damage against the County and to defend any actions brought against the County for its refusal to disclose such material, trade secrets or other proprietary information to any party."

The County reserves the right to award any of the Food and Beverage or Specialty Retail Concession Leases to respondents other than the evaluation committee's recommended proposer,

pursuant to Government Code Section 25536, to reject any or all Proposals, to cause re-soliciting of the Proposals, or to take such other course of action as the County deems appropriate at the County's sole and absolute discretion.

PROJECTED SCHEDULE OF EVENTS

Event	Schedule
Outreach/Informational Meeting	December 13, 2018
RFQ Issued	March 27, 2019
RFQ Questions Cut-off	April 2, 2019 @ 2:00 p.m.
RFQ Submittal Cut-off	April 11, 2019 @ 2:00 p.m.
RFP Issued	April 17, 2019
RFP Site Walk (Not Mandatory)	April 23, 2019 @ 12 p.m.
Pre-Proposal Conference (Not Mandatory)	April 30, 2019 @ 2 p.m.
RFP Questions Cut-off	May 7, 2019 @ 2 p.m.
RFP Submittal Cut-off	June 4, 2019 @ 2 p.m.
Proposer Interviews	TBD
Airport Commission Meeting	July 17, 2019
Board of Supervisors Award of Leases	August 27, 2019
Design and Permitting	August - December 2019
Construction Period	January 2020-May 2020
Opening	June 2020

PROPOSAL PROCEDURE

To be considered for the award of a Lease at JWA, Proposer must complete and submit a signed proposal including a proposer's deposit, a proposer's questionnaire, a signed Lease (Exhibit 3) with attachments, and all required documents as identified on the checklist. Proposer must review proposal submittal instructions to submit required sets of proposal documents for this RFP.

PRE-PROPOSAL SITE WALK

There will be an optional site walk for the upcoming RFP concession leasehold spaces. For participation on site visit walk, R.S.V.P is required. This opportunity will occur one time and the County will not schedule individual site visits/walks (this is not mandatory). Please register through Survey Monkey at https://www.surveymonkey.com/r/HR8525S

The meeting will be held at:

John Wayne Airport Administrative Offices 18601 Airport Way Santa Ana, CA 92707

Proposers shall initially assemble at the above location, Terminal Administration conference room, from there you will be escorted for a site tour of the terminal concession locations. Proposers who are late will not have the opportunity to participate in the tour.

PRE-PROPOSAL MEETING

Those planning to submit proposals are encouraged to attend a pre-proposal meeting. County staff will be available at that time to review the request for proposals process. This opportunity will occur one time and the County will not schedule individual meetings (this is not mandatory).

The meeting will be held at:

John Wayne Airport Administrative Offices 18601 Airport Way Santa Ana, CA 92707

All questions related to this RFP must be submitted through BidSync at www.BidSync.com. Responses to questions will also be posted on BidSync. **Proposers are not to contact other County personnel with any questions or clarifications concerning this RFP. Wiolations may result in disqualification.**

For BidSync assistance, please contact BidSync Vendor Support Team at 800-990-9339 Option 1.

PROPOSAL ADDENDA

Proposal Addenda, if necessary, will be posted on BidSync.com. Proposers are responsible to comply with all posted Addenda.

PROPOSAL DEPOSIT

Each proposal must be accompanied by a deposit in the amount of \$25,000 in the form of a cashier's check made payable to the County of Orange/John Wayne Airport submitted in a sealed envelope with the proposal.

Deposits submitted by the unsuccessful proposers will be returned within thirty (30) days after execution of the Concession Lease by the County and the successful Proposer, or after all proposals are rejected.

The deposit of the successful Proposer shall be refunded after submittal of the security deposit and insurance required by the Lease. Successful Proposer can apply towards their security deposit Should the successful Proposer fail to execute the Lease or submit the security deposit or insurance within thirty (30) days of County's execution of the Lease, the Proposer's deposit shall be retained by the County as liquidated damages.

FORMAT REQUIREMENTS

The proposal must be submitted on the Proposal Form contained in Section IV and must be tabbed and in white three-ring binders with clear covers with Proposer information inserted in cover.

<u>Non-Responsive or Late Proposals</u>: Proposals not submitted in the manner described herein may be considered non-responsive and subject to rejection. Late Proposals shall be rejected and returned to the Respondent. This deadline is absolute and Proposals received after the due date and time shall not be considered. Respondents must select a method of delivery that ensures Proposals will be delivered to the correct location by the due date and time.

<u>Page Limit</u>: Proposals shall not exceed **One Hundred (100) two-sided pages**, excluding front and back covers, section dividers, financial statements, and table of contents. Proposals should be prepared in a concise manner that clearly responds without embellishment to the information requested in this RFP. **Any additional pages will be discarded and will not be reviewed.**

<u>Format</u>: Proposals must be typewritten in Times New Roman 12-point font on white 8½" x 11" paper, in portrait format and must be unbound. 2" white three-ring binders with clear covers are required and must include Respondent information inserted in cover. All pages of the Proposal are to be numbered for ease of review by the evaluation panel.

Submission of Proposals via Sealed Package:

<u>Packaging and Identification</u>: Respondent shall submit its Proposal in a sealed package and shall write/type the following identification information on the outermost portion of the sealed package.

Number of Proposals: Twelve (12) full sets of your written Proposal, one (1) original, eleven (11) copies and twelve (12) flash drives in PDF file format along with your Respondent's deposit, must be delivered before the time and date shown below:

Proposal Due Date and Time: June 4, 2019 - 2:00 PM PDT

Respondents shall submit proposals to the following address:

County of Orange/John Wayne Airport

Eddie Martin Administration Building

Attn: Gene Duenas – Concession Proposal PM 1121- 0345-0007

3160 Airway Avenue Costa Mesa, CA 92626

The required Original Proposal must be submitted on County proposal forms including a signed copy of the completed Proposers Cover Sheet (attachment 1), enclosed in a sealed envelope and prominently marked **ORIGINAL PROPOSAL**. The original proposal and the required copies must be in a sealed box(s) and contain the above address information on the outside of the box(s).

PROPOSAL REVIEW AND EVALUATION

JWA will supervise analysis of all proposals received and return to the Board of Supervisors with the evaluation committee's slate of most qualified proposers with their corresponding scores for award of the Concession Leases.

The evaluation committee's recommendation will be advisory to the Board. It is the County's intent to award the Lease to the most qualified and responsible proposer that provides the best overall proposal.

The County reserves the right to award the Concession Leases to other than the evaluation committee's recommended proposer, to reject any or all Proposals, to cause resoliciting of the Proposals, or to take such other course of action as the County deems appropriate at the County's sole and absolute discretion.

Although not intended to be an exhaustive list of causes for disqualification, any one or more of the following may be considered sufficient for the disqualification of a Proposer and the rejection of the Proposal:

- 1. Evidence of collusion among Proposers.
- 2. Incomplete or late submittals of Proposals or other requested information.
- 3. Submittal of Proposal in a format or order other than required.
- 4. Non-submittal of Proposer's deposit, or submittal in a form other than Cashier's Check.

- 5. Insufficient evidence of business skills or financial resources necessary to successfully operate and manage a Concession as revealed by either financial statements or experience.
- 6. Insufficient evidence of responsibility as shown by past work, references, or other factors.
- 7. Default or termination of other contracts or agreements.
- 8. Omission, inaccuracy, misstatement, or failure to submit any portion of the Proposal and signed Concession Lease in the Proposal.
- 9. Omission, inaccuracy, misstatement, in the signed Statement of Qualifications previously submitted.
- 10. Other causes as the County deems appropriate at the County's sole and absolute discretion.

The County's determination as to whether the proposal is qualified and responsible will be based on the information furnished by the proposer in the aforementioned Proposer's Questionnaire as well as from other sources determined to be valid by the County. Award will not be made until after such investigations as are deemed necessary are made by the County regarding the experience and financial responsibility of the proposer, which investigation each proposer agrees to permit by submitting a proposal.

NOTE: Please notify your business references, in writing, that JWA staff will be contacting them concerning the financial and experience information furnished with your proposal.

ITEMS TO BE PROPOSED AND SUBMITTED

Details regarding submittal requirements can be found in Section IV, Proposal Form. The following items are required to be submitted. Failure to do so may result in disqualification.

- 1. Cover Sheet (Attachment 1)
- 2. Checklist of Requirements for Proposal Submittal (Attachment 2)
- 3. Proposal Form (Attachment 3)
 - Experience, References, and Qualifications
 - Financial Viability
- 4. Proposer's Questionnaire (Attachment 4)
- 5. Audited Financial Statements
- 6. Sales & Management Plans
- 7. County of Orange Child Support Enforcement (Attachment 6)

- 8. Proposal Deposit of \$25,000.00
- 9. 5 year Pro Forma Excel Template (Attachment 7)
- 10. Signed Concession Lease (2 originals) (Exhibit 1)

COUNTY OF ORANGE CHILD SUPPORT ENFORCEMENT

In order to comply with the child support enforcement requirements of the County of Orange, all bidders/proposers must furnish to the contract administrator, the Purchasing Agent, or the agency/department deputy purchasing agent with submission of the bid/proposal:

- A. In the case of an individual contractor, his/her name, date of birth, Social Security number, and residence address;
- B. In the case of a contractor doing business in a form other than as an individual, the name, date of birth, Social Security number, and residence address of each individual who owns an interest of 10 percent or more in the contracting entity;
- C. A certification that the contractor has fully complied with all applicable federal and state reporting requirements regarding its employees; and
- D. A certification that the contractor has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to comply.

Failure of the contractor to timely submit the data and/or certifications required may result in the bid/proposal being deemed non-responsive, and the bidder/proposer may be disqualified from consideration for award of the Lease. In the event the Lease is executed, failure of the contractor to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the contract. Failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the Lease.

AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) PARTICIPATION

Requirements of 49 CFR Part 23, Disadvantaged Business Enterprise Program

A. **Policy** - It is the policy of the John Wayne Airport under the direction of its governing body, the Orange County Board of Supervisors, to promote the objectives of the Department of Transportation with respect to the participation of Airport Concession Disadvantaged Business Enterprises (ACDBEs) in DOT-assisted contracts. This policy has been formulated to comply with 49 CFR Part 23. The objectives of the program are as follows:

- (a) To ensure nondiscrimination in the award and administration of contracts;
- (b) To create a level playing field on which ACDBEs can compete fairly for contracts;
- (c) To ensure that the ACDBE program is narrowly tailored in accordance with applicable law;
- (d) To ensure that only firms that fully meet DOT eligibility standards are permitted to participate as ACDBEs;
- (e) To help remove barriers to the participation of ACDBEs in contracts;
- (f) To assist the development of firms that can compete successfully in the marketplace outside the ACDBE program; and
- (g) To provide appropriate flexibility in establishing and providing opportunities for ACDBEs.
- B. **ACDBE Goal** John Wayne Airport has not established an ACDBE contract goal for this opportunity but has established a race-neutral goal of 13.3% for the airport's specialty retail concessions and for food and beverage concessions. This encourages participation by firms owned and controlled by socially and economically disadvantaged persons.

For purposes of the John Wayne Airport Small Business Concession Program, a small retail and/or food/beverage business is defined as a for-profit business, engaged in the sale of retail or food/beverage items to the public and whose gross receipts, including affiliates, averaged over the firm's previous three fiscal years, do not exceed \$52.47 million.

Affiliation has the same meaning the term has in the Small Business Administration (SBA) regulations. 13 CFR Part 121, except that the provisions of SBA regulations concerning affiliation in the context of joint ventures (13 CFR Section 121.103(f)) do not apply to this program.

Except as otherwise provided in 13 CFR Part 121, concerns are affiliates of each other when, either directly or indirectly:

- 1. One concern controls or has the power to control the other; or
- 2. A third party or parties controls or has the power to control both; or
- 3. An identity of interest between or among parties exists such that affiliation may be found.

To obtain additional information please visit the Federal Aviation Administration (FAA) website:

https://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/

- C. **Proposal Requirements** Proposers who include ACDBE participants are required to submit the following information regarding intended participation by ACDBEs:
 - 1. The names and addresses of ACDBE firms that will participate in the contract.
 - 2. A description of the work that each ACDBE will perform.
 - 3. The dollar amount of participation by each named ACDBE firm listed in the proposal must be certified by the California Unified Certification Program (CUCP). In order to be certified by the CUCP, DBE firms must meet eligibility criteria as established by 49 CFR Parts 23 and 26. Proposers are required to provide proof of certification for all DBE firms listed in the proposal at the time proposals are submitted.

Firms wishing to be certified as a DBE and who are not currently certified by the CUCP must complete a certification application. To obtain an application, please visit the CUCP website

http://dot.ca.gov/hq/bep/downloads/pdf/ACDBE_UCP_APPLICATION_PACKAGE_RE V_04.14.09.pdf

Please allow sufficient time for the processing of the Certification Application. Contact the local certifying agency as instructed by the website to determine the length of time required for processing.

D. **Reporting Requirements** – The successful Proposer shall provide all information and reports required by the Airport and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the Airport to be pertinent to ascertain compliance with the regulations or directives.

AMERICANS WITH DISABILITIES ACT (ADA)

Tenant must comply with all ADA requirements. It is the proposer's responsibility to be aware of and comply with the applicable ADA requirements.

POURING RIGHTS

JWA retains the sole right to have beverage marketing and product exclusivity agreements at the Airport, or portions thereof. These agreements may include provisions that limit the use of certain beverage products within the Airport. The Tenant agrees to comply with the terms of any such agreements into which the Authority enters.

COMMENCEMENT OF OPERATIONS

Target start date for the commencement of operation of the Concession Lease shall be the rent of commencement date.

PROPOSAL SELECTION PROCEDURE

PANEL RATING CRITERIA FOR PROPOSALS

Category	Points
Proposed Concept/Executive Summary Overall appeal of proposed concept Strength of brand(s) - local or regional concepts Conformance with concept sought in RFP Ability to maximize sales, revenue and guest satisfaction Proposed merchandise/menu/services list and prices Provide a staffing plan for a typical one week period	30
 Design Intention and Capital Investment A description of proposed design Overall appeal and quality of design Images depicting the front elevation, signage, floor plan and interior design intent. Photographs of existing similar facilities along with a discussion of the design intent for JWA are acceptable. One original set of three 11x17 foam boards depicting the design, materials and concept with colored copies in the RFP binder Design supports the proposed brand/concept, and a strong merchandising strategy is incorporated into design 	20
 Customer Service, Marketing and Operations Plan Customer service and corporate monitoring of the concession to ensure high standards are maintained and overall performance of the business is strong Customer service standards, approach to providing service during peak periods, customer feedback, complaint and resolution process, service monitoring, and quality control How your facilities will be maintained to ensure excellent repair, cleanliness and appealing product presentation Merchandising and pricing plan 	10
Sustainability • Employee retention program • Management plan, including on-site management, local hiring, training, development • Employee benefits (health care, vacation schedule, retirement) • Ties to the community • Environmental/Recycling programs	10
Business Plan – Financial Pro Forma (Submittal D) • 5 Year Financial Pro Forma showing projected sales, revenue to the Airport, expenses, and net income. Proposers are to use the format shown on Submittal D. The Financial Pro Forma should demonstrate an understanding of the proposed lease and will be considered for its reasonableness and viability of proposed operation and financial offer, and the ability to fund continuing operations from the cash flow generated by the operation • Last 3 years of Certified Public Accountant (CPA) Audited Financial Statements	10
Question and Answer Panel Review	20
• 5 pre-set questions on the above categories Total	20 100

Upon completion of the evaluation committee's review and development of a recommended list of successful proposers, the list will be submitted to the BOS on a date to be determined for their award of the concession leases.

JWA will <u>require</u> interviews as part of the rating criteria and interviews will be used for further clarification of the written proposals. The oral interview will include the same questions for each interviewee. The oral interview is 20 points of the total rating points.

EXECUTION OF CONCESSION LEASE

JWA requires that two (2) original copies of the Lease be signed and returned as part of the proposal. No changes are allowed. The format of the Lease is contained in Section III of this proposal package. Following award of the successful Proposer by the Board, the Lease will be executed by the County upon notification from JWA staff that the County has received all items required by the Lease, including evidence of insurance and the security deposit.

PROTESTS

Policy

Any actual or prospective proposer who alleges a grievance by the solicitation or award of a contract may submit a grievance or protest to the appropriate agency/department Deputy Purchasing Agent. All protests shall be typed under the protester's letterhead and submitted in accordance with the provisions stated herein. All protests shall include at a minimum the following information:

- The name, address and telephone number of the protester;
- The signature of the protester or the protester's representative;
- The solicitation or contract number;
- A detailed statement of the legal and/or factual grounds for the protest; and
- The form of relief requested.

Protest of Proposal Specifications:

All protests related to proposal specifications must be submitted to the Deputy Purchasing Agent no later than 5 business days after the close of the Questions and Answer period. Protests received after the 5 business day deadline will not be considered by the County.

In the event the protest of specifications is denied and the protester wishes to continue in the solicitation process, they must still submit a proposal prior to the close of the solicitation in accordance with the proposal submittal procedures provided in the proposal.

Protest of Award of Contract:

In protests related to the award of a contract, the protest must be submitted no later than 5 business days after the notice of the proposed award is provided by the Deputy Purchasing Agent. Protests relating to a proposed award which are received after the 5 business day deadline will not be considered by the County.

Protest Process

- In the event of a timely protest, the County shall not proceed with the solicitation or award of the contract until the Deputy Purchasing Agent, the County Purchasing Agent or the Procurement Appeals Board renders a decision on the protest.
- Upon receipt of a timely protest, the Deputy Purchasing Agent will within ten (10) business days of the receipt of the protest, issue a decision in writing which shall state the reasons for the actions taken.
- The County may after providing written justification to be included in the procurement file, make the determination that an immediate award of the contract is necessary to protect the substantial interests of the County. The award shall in no way compromise the protesters' right to the protest procedures outlined herein.
- If the protester disagrees with the decision of the Deputy Purchasing Agent, the protestor may submit a written notice to the Office of the County Purchasing Agent requesting an appeal to the Procurement Appeals Board, in accordance with the process stated below.

Appeal Process

- If the protester wishes to appeal the decision of the Deputy Purchasing Agent, the protester must submit, within three (3) business days from receipt of the Deputy Purchasing Agent's decision, a written appeal to the Office of the County Purchasing Agent.
- Within fifteen (15) business days, the County Purchasing Agent will review all materials in connection with the grievance, assess the merits of the protest and provide a written determination that shall contain his or her decision on whether the protest shall be forwarded to the Procurement Appeals Board.
- The decision of the County Purchasing Agent on whether to allow the appeal to go forward will be final and there shall be no right to any administrative appeals of this decision.

(Must Submit Attachment 1, 2, 3, 4, 5 and 6 with your Proposal) ATTACHMENT 1 PROPOSAL COVER SHEET

Name of Proposer	Name	of	Pro	posei
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Initial	Items						
3	All proposals must be su shown on RFP.	All proposals must be submitted in a sealed envelope on or before the time and date shown on RFP.					
	Ed De 310	: County of Orange/John Wayne Airport Eddie Martin Administration Building Deputy Purchasing Agent – Concessions Proposal 3160 Airway Avenue Costa Mesa, CA 92626					
	Co Ed De 310 Co	unty of Orange/John Wayne Airport die Martin Administration Building puty Purchasing Agent – Concessions Proposal 60 Airway Avenue sta Mesa, CA 92626 A 1121-0345-0007					
	Select Parcel Site this p	ackage is proposing on:					
	☐ Specialty Coffee Kiosk (Site: 1, 7, 15 and 16)						
	☐ Casual Dining Restau	rant/Bar -Site 3					
	☐ Casual Dining Restau	arant/Bar -Site 13					
	☐ Specialty High End R	letail - Site 4					
	☐ Specialty High End R	tetail - Site 5					
	☐ Specialty High End R	etail - Site 6					
	☐ Specialty High End R	etail - Site 9					
	☐ Specialty High End R	etail - Site 10					
	☐ Specialty High End R	etail - Site 11					
	☐ Specialty High End R	etail - Site 12					
	☐ Quick Serve Restaura						
	parcel Respondent is pr						
	and twelve (12) flash driv						
	Proposer Checklist (Exhi submitted and tabbed.	bit 1) for Proposal Submittal with all required items					

REQUEST FOR PROPOSALS PM 1121 0345 0007 CONCESSIONS

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Initial	Date	
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(Must Submit Attachment 1, 2, 3, 4, 5 and 6 with your Proposal) ATTACHMENT 1 PROPOSAL COVER SHEET

	Two (2) Original Signed Conce	ession Lease C	Copies	<u> </u>
	Proposal Deposit of \$25,000 P	er Proposal		
	Exhibits 1-4 (as applicable)	2		
	All pages 28-47 are initialed ar	d dated in bot	tom hand corner	
	must be complete, accurate, verifi- nent, or failure to comply may be o			ssion, inaccuracy,
Signature		Name	Title	Date

CHECKLIST OF REQUIREMENTS FOR PROPOSAL SUBMITTAL

The following items must be submitted and tabbed in the following order. The proposal submittal may not exceed a total of 100 pages (2-sided), not including financial statements. Proposal must be in Times New Roman in 12-point font size. It is required that you initial next to each item and sign below. This completed checklist is required to be submitted with your proposal.

Initial	Item
	1. Cover Sheet (Attachment 1)
	2. Checklist of Requirements for Proposal Submittal (Attachment 2)
	 3. Proposal Form (Attachment 3) Experience, References, and Qualifications Financial Viability
	4. Proposer's Questionnaire (Attachment 4)
	5. Audited Financial Statements
	6. Sales & Management Plans
	7. County of Orange Child Support Enforcement (Attachment 6)
	8. Proposal Deposit of \$25,000.00
	9. 5 year Pro Forma Excel Template (Attachment 7)
	10. Signed Concession Lease (2 originals) (Exhibit 1)
I certify th	at I have submitted all of the above items in my Proposal.
Proposer N	Vame
Ву:	
Date:	

REQUEST FOR PROPOSALS PM 1121 0345 0007 CONCESSIONS Page 1
Initial _____ Date ____

PROPOSAL FORM

Proposer:		
Contact Name:	 	
Address:	 	
Email Address:		
Telephone No:		
Fax No		

THIS IS A PROPOSAL FOR THE CONCESSION LEASE AT JOHN WAYNE AIRPORT. PLEASE NOTE THE ENTITY NAME LISTED ABOVE IS THE NAME THAT WILL BE USED ON THE FINAL LEASE AGREEMENT.

The undersigned, hereinafter referred to as "PROPOSER", hereby submits a proposal to COUNTY OF ORANGE, hereinafter referred to as "COUNTY", to operate the Specialty Retail Concession at John Wayne Airport as more fully described in the Lease attached hereto and made a part hereof.

PROPOSER shall pay to COUNTY as rent under the Lease the greater of the following:

RENT:

- a.) Minimum Annual Guarantee (MAG) in the amount of \$100/SF In words: One Hundred Dollars per Square Foot
- b.) Percentage of gross receipts tiered:

Sp	ecialty R	etail Tiered Rent	
\$	-	\$500,000.00	12%
\$500	,000.01	\$750,000.00	14%
\$750	,000.01		16%

	Quick Ser	ve Tiered Rent	
\$	-	\$500,000.00	12%
\$500	,000.01	\$750,000.00	14%
\$750	,000.01		16%

9	Casual Di	ning	Tiered Rent	
\$		\$	1,000,000.00	12%
\$ 1,000,	000.01	\$	2,000,000.00	14%
\$ 2,000,	000.01			16%

	Coffe	e Tie	ered Rent	
\$	-	\$	1,000,000.00	14%
\$ 1,000,000.01		\$	2,000,000.00	16%
\$ 2,000,000	0.01			18%

REQUEST FOR PROPOSALS	
PM 1121 0345 0007	
CONCESSIONS	

		Page 1
Initial	Date	

STORAGE SPACE:

Proposer must identify how much storage space they require and provide approximate square for					
	<u> </u>				

PROPOSER understands, agrees, and warrants that:

- 1. PROPOSER has carefully read and fully understands this proposal and the Lease both of which are attached hereto.
- 2. Said Lease is an integral part of this proposal and must be signed, attached hereto and submitted herewith.
- 3. PROPOSER has the capability and legal capacity to successfully undertake and complete the responsibilities and obligations of Proposer contained in said Lease.
- 4. A deposit in the sum of Twenty Five Thousand Dollars (\$25,000) in the form of a Cashier's Check made payable to County of Orange/John Wayne Airport or confirmation of a wire transfer of funds to County of Orange/John Wayne Airport must be submitted with this proposal and is attached hereto.

Said sum will be held by county as a proposal guarantee, and shall be refunded after submittal of the security deposit and insurance required by the lease. In the event the successful proposer fails to execute the lease or submit the security deposit or insurance within thirty (30) days of county's execution of the lease, proposer agrees that said deposit shall be retained by the county as liquidated damages. Deposits submitted by unsuccessful proposers will be returned within thirty (30) days after execution of the lease by the county and the successful proposer, or after all proposals are rejected.

- 5. Within five (5) business days after notification of the acceptance of this proposal by COUNTY, if requested by COUNTY, PROPOSER shall execute additional copies of said Lease and deliver to COUNTY the executed copies of said Lease.
- 6. PROPOSER has fully completed the PROPOSER'S Questionnaire, and attached the completed questionnaire hereto. The PROPOSER'S Questionnaire is made a part hereof together with all supplemental material required therein.
- 7. All information provided by PROPOSER herein becomes the property of the COUNTY of Orange and may be considered public information and, as such, may be available to the general public.
- 8. By submission of this Proposal, the PROPOSER acknowledges and agrees that the COUNTY has the right to make any inquiry or investigation it deems appropriate to substantiate or supplement information contained in this proposal form and questionnaire, and authorizes the release to COUNTY of any and all information, including credit data, sought in such inquiry or investigation.
- 9. All the information contained in or supplementing said questionnaire is true and correct to the best of PROPOSER's knowledge.

REQUEST FOR PROPOSALS PM 1121 0345 0007 CONCESSIONS

		Page	2
Initial	Date		
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COUNTY reserves the right to reject any or all proposals, to waive information in any proposal

PROPOSER			
KOF OSEK			
ignature	Name	Title	Date
ignature	Name	Title	Date
,			

REQUEST FOR PROPOSALS PM 1121 0345 0007 CONCESSIONS

10.

Page 3
Initial _____Date ____

PROPOSER'S QUESTIONNAIRE

CONCESSIONS

1.	Name of Proposer exactly as it will appear on the Lease:
2.	Address of Proposer for purposes of notice or other communication relating to the Lease:
_	
3	Telephone Number of Proposer:
4	Contact:
5	Title:
6	FAX number of Proposer:
7	E-mail Address:
8	Local Contact
	Address:
	Telephone number: FAX number
	E-mail Address:
Sc or	Proposer intends to operate the business with which this proposal is concerned as a ble Proprietorship []; Partnership []; Corporation []; Joint Venture []; LLC [];
Ex	plain:
	EQUEST FOR PROPOSALS 1 1121 0345 0007 Initial Date

SOLE PROPRIETORSHIP STATEMENT

lf a <u>Sol</u>	e Proprietorship, furnish the following:	
l. Nan	e in full	
2. Resi	dence Address:	
		Zip Code:
3. Busi	ness Address:	
		Zip Code:
PARTI	VERSHIP STATEMENT	
f a <u>Par</u>	nership, answer the following:	
	Date of Organization	
21.	[] General Partnership [] Limited Partnership	
•	Statement of Partnership recorded? Yes [] No []	
Date	Book Page County	
	Has the Partnership done business in Orange County? Yes [] No []	
Vhen?		
lame, a	ddress, and partnership share of each general partner:	
lame	Residence Address Share	
		%
i.		%
		%
) .		%
	Attach a complete copy of the Statement of Partnership and the Partnershi	

REQUEST FOR PROPOSALS PM 1121 0345 0007 CONCESSIONS

Page 2
Initial _____Date ___

LIMITED LIABILITY COMPANY STATEMENT

- 1. Provide an organizational chart for the LLC and a diagram showing its relationship to any other related corporations, limited liability companies or related organizations.
- 2. Furnish the information as shown below for the Corporation Statement as appropriate for a limited liability company including when and where formed, the number of voting units, non-voting units, and number of unit holders. Include the requested information regarding each manager, managing member and principal unit holder.

REQUEST FOR PROPOSALS PM 1121 0345 0007 CONCESSIONS

Initial _____ Date ____

CORPORATION STATEMENT

CONCESSIONS

If a Co	rporation, answer the	following:						
1.	When incorporated?	-		_m				
2.	Where incorporated	?						
3.	Is the Corporation as	uthorized to do b	business in	California? Yes [] No	[]		
If so, a	s of what date?			-				
4.	The Corporation is h	neld:Publicly[] Priva	tely[]				
5.	If publicly held, how	v and where is th	ne stock tra	aded?	,	_		
6.	List the following:		Authoriz	zed Issued Out	standing			
A. B. C. D.	Number of voting sh Number of nonvotin Number of sharehold Value per share of co	g shares: ders:				<u></u>		
Par	\$		-			-		
Book	\$							
Market	\$							
	Furnish the name, titeld by each officer, di	tle, residence addirector, and princ	dress, and cipal share	the number of voti cholder. Residence Addres		voting sl		Nigarantia
N	<u>ame</u>	<u>Title</u>		Residence Addres	<u>ss</u>		Voting Shares	Nonvotin Shares
A		:						<u>(a D</u> i
В.		8						
_			_		-			
C.		3				-0		
D.		(<u>-</u>						
		3						
	ST FOR PROPOSALS 1 0345 0007			Initia	al	Date		ge 4

CORPORATION STATEMENT (continued)

- 8. Furnish Corporate Resolution indicating parties authorized to contract on behalf of the Corporation. Corporate Resolution must contain corporate seal and be certified by the Secretary of the Corporation.
- 9. <u>Affiliation with Other Corporations</u>. Have the principals of the proposing corporation been part of any other corporations as corporate officers, holders of 51% or more of the stock or directors within the last 5 years? If so, furnish name of principal as listed with other corporations, name of the other corporation including any dba names, the date of incorporation, position and percentage of stocks held.

	Date of	Percentage of Stock	
	<u>Principal</u>	Name of Corporation	Incorporation and/or Position Held
	3 		
	(<u>0.00</u>)		- 7
	(c)		
	<u></u>		
JOINT	T VENTURE ST	ATEMENT	
If a <u>Joi</u>	nt Venture, answ	er the following:	
1.	Date of Organiz	ation	_
2.	Joint Venture A	greement recorded? Yes [] No []	
3.	Has the Joint Ve	enture done business in Orange County?	Yes [] No []
When?			
4.	Name and addre	ess of each Joint Venturer:	
Name		Address	
A.			
В.			
C.			
D.			
5.	Attach a comple	te copy of the Joint Venture Agreement.	

REQUEST FOR PROPOSALS PM 1121 0345 0007 CONCESSIONS

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	The second secon	

EXPERIENCE and QUALIFICATIONS

Proposers shall provide the following:

- a. A detailed description of the duration and extent of Proposer's business experience with the operation and management of a Food and Beverage or Specialty Retail Concession with special emphasis on an airport, shopping mall or other high guest traffic and high volume environment, including a list of current (and previous) airport locations where you operate a Food and Beverage or Specialty Retail Concession. Note that a minimum of 3 of the last 5 years' experience successfully operating and managing a Food and Beverage or Specialty Retail Concession is required.
- b. Provide the last fiscal year revenues for each airport location where you operate a Concession.
- c. Provide information, including resumes, of the background and relevant experience of the persons who will be directly involved in the management and oversight of the Concession at JWA.

Attach additional sheets if extra space is required.

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REFERENCES: Management

List four (4) persons or firms for whom you have managed a Specialty Retail Concession for the last ten (10) years. Attach additional sheets if necessary.

	Zip:
Fax: ()	
17	
	Zip:
Fax: ()	
	y y
	Fax: ()

REQUEST FOR PROPOSALS PM 1121 0345 0007 CONCESSIONS

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Reference No. 3		
Name:		
Title:		
Firm:		
Address:		
		Zip:
Telephone: ()	Fax: ()	
Email:		
Nature of Relationship:		
Reference No. 4		
Name:		
Title:		
Firm:		
Address:		
	Zip:	
Telephone: ()	Fax: ()	
Email:		
Nature and magnitude:		-
		<u> </u>
		2.6

REQUEST FOR PROPOSALS PM 1121 0345 0007 CONCESSIONS

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Initial _____Date ___

REFERENCES: Debt Payment History

List two (2) persons or firms who have knowledge of your debt payment history. Attach additional sheets if necessary.

Reference No. 1				
Name:				_
Title:	,			_
Firm:				_
Address:				arment.
	Zip:			
Telephone: ()	Fax: (_
Email:		<u> </u>		
Nature and magnitude:				
Reference No. 2				
Name:				
Title:				_
Firm:				
A .d.J				
	Zip:			
Telephone: ()	Fax: (<u>)</u>			_
Email:				_
Nature and magnitude:				
DEOLIEST FOR PROPOSALS				
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FINANCIAL VIABILITY

Financial Standing / Going Concern

Provide a summary page containing key financial data (e.g. cash/cash equivalent, accounts

receivables, current assets, etc.), and attach financial statements prepared in accordance with generally accepted accounting principles, reflecting your current financial condition. The statement must include a balance sheet, income statement, cash flow statements and notes to the audited financial statements for the last two fiscal years, prepared by an independent Certified Public Accountant (this is required). You must be prepared to substantiate all information shown. If you submit reviewed or compiled balance sheet and income statements, the information will be considered unverified and more weight will be given to an audited statement.
Surety Information
Has the company ever had a bond or surety canceled or forfeited? Yes [] No []
If yes, attach a statement naming the bonding company, date, amount of bond, and reason for such cancellation or forfeiture.
Bankruptcy Information
Has the company, any principal of the company, or any company with which a principal has been involved, ever filed bankruptcy proceedings? Yes [] No []
If yes, state date, chapter, jurisdiction, amount of liabilities, amount of assets, and disposition of the proceedings.
Felony Information
Has a principal of the company ever been convicted of a felony? Yes [] No []
If yes, state date, court jurisdiction, and details of the conviction.
Prior Litigation
Disclose all litigation, mediation or arbitration with public entities (including but not limited to cities, counties, municipalities and districts) in California since January 1, 2002.
Pending Litigation
Attach detailed information regarding any litigation, liens, or claims involving the company or its principals that could materially impact your ability to perform under the Specialty Retail Concession Lease.
NOTE: Failure to disclose all relevant information shall be grounds for disqualification of a

proposer.

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CON	NCESSIONS

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SPONDEN	NT ENTITY			
<i>r</i> .				

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County of Orange Child Support Enforcement Certification Requirements

This data shall be transmitted to governmental agencies charged with the establishment and enforcement of child support order and for no other purposes and shall be held confidential by those agencies.

Name:	
Residence Address:_	
In the case of a Vend	or doing business in a form other than as an individual, the name, date
Social Security num percent or more in th	ber, and residence address of each individual who owns an interest
Name:	
recorded radioss.	
residence / realess.	
Name:	
Name: D.O.B:	
Name: D.O.B: Social Security No:_	
Name: D.O.B: Social Security No:_	
Name:	
Name:	
Name:	
Name:	

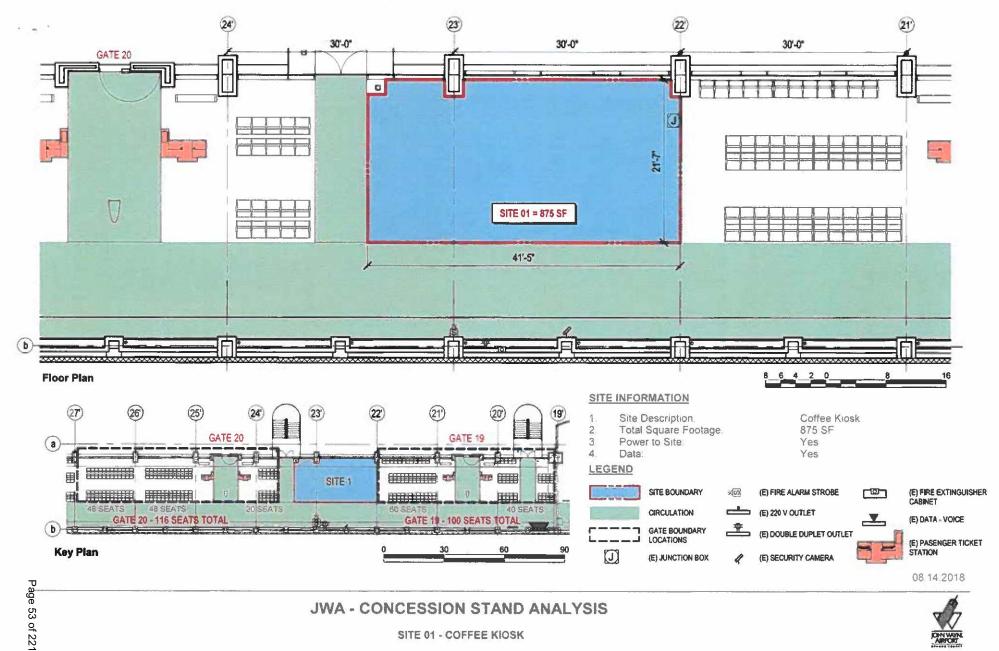
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PRO FORMA												
Proposer to complete one "Pro Forma" form fo	r its pro	posal packa	ige									
Proporting Entitle				000		· · · · ·	1					
Proposing Entity Lease Name		5-			-		-					
Terminal	100						ł					
Space Number		-		_			-					
Space Rumber Sq. Ft.		-8				-						
34.76	-	2019		2020		2021		2022		2023	_	
GROSS RECEIPTS (SALES)		2015	┝	2020		2021		2022		2023	<u> </u>	Total
Sales & by percentage rent category	(S)	% of Sale	163	% of Sale	161	W of Cale	763	M of Colo	161	W -4.5-1-	101	1, 10 1
a.	(3)	78 OF 301C	191	76 Ut Self	(3)	% of Sale	(5)	% of Sale	(2)	% of Sale	(2)	% of Sales
b.		+	_			_			_	11,000	-	
C.		1	\vdash		8	_	-229	-	_	_		
Total Gross Receipts		+	\vdash						\vdash			-
Total Gross Heceipts			\vdash				2.0		\vdash	(8)		
ENPLANEMENTS						-11						
OPERATING EXPENSES	(5)	% of Sale	151	% of Sale	15)	% of Sale	161	% of Sale	161	% of Sale	(6)	% of Sales
Cost of Goods Sold	(5)	IN US SAIR	127	W 01 30 C	(3)	A UI Sale	(2)	No OI SOILE	[2]	76 UI Sale	(3)	76 OF 58165
Payroll		1	<u> </u>									+-1
Payroll taxes and employee benefits		1			_					_		+
RENT: Minimum Annual Guarantee (MAG)	1000	7		_		-1				+		
RENT: Percentage		1	\vdash			_				+		
Franchise or license fees		- 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1	-							+		+
Repairs and Maintenance												+
Depreciation	72								-			+ 1
Office, storage, distribution expenses	- 10						_	1 1				
Utilities	10-											1
Insurance												+
Credit card fees									-			1 1
Licenses and permits												
Administrative & General									- 3344			
Other operating expenses												+-1
Total Operating Expenses	V2 33								55			
EBITDA	(S)	% of Sale	(5)	% of Sale	(S)	% of Sale	(\$)	% of Sale	(5)	% of Sale	(S)	% of Sales
Earnings before Interest, Taxes. Depreciation												
and Amortization									i .			
Annual Gross Sales per Enplanement	7.										,	
Annual percentage change in Gross Sales from												7
prior year												

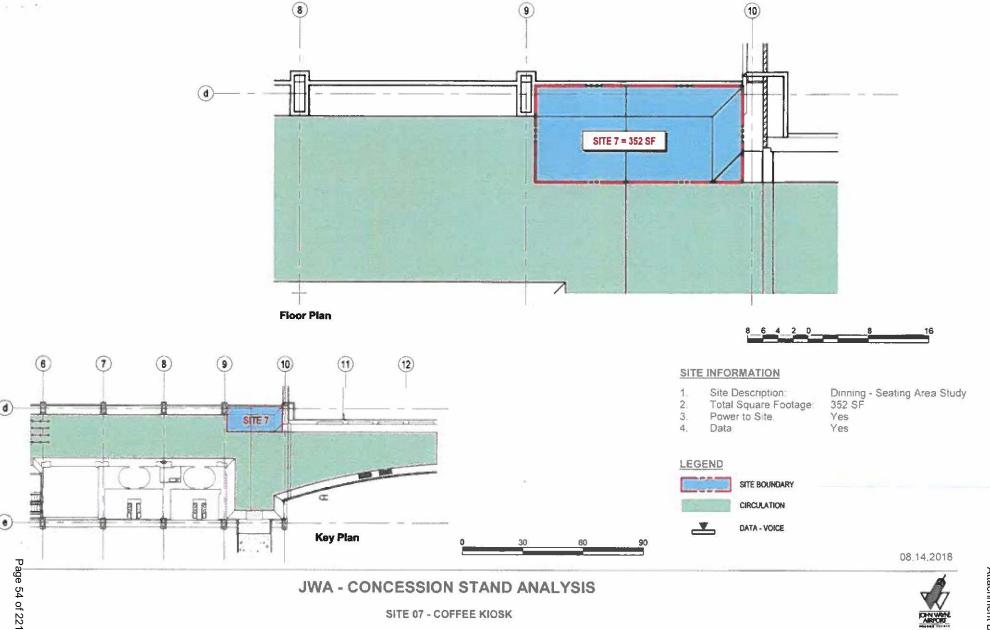
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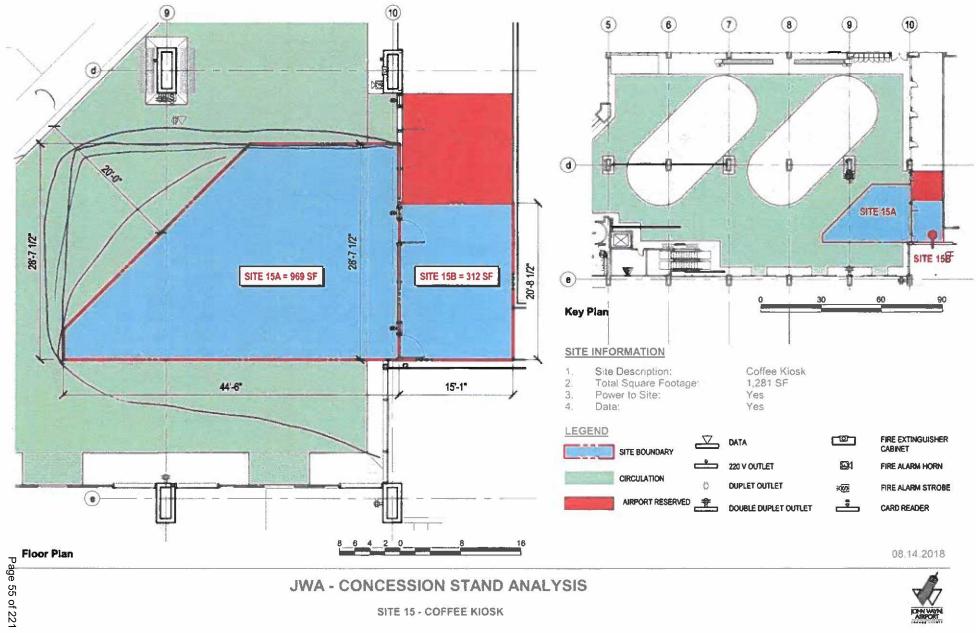
SITE 01 - COFFEE KIOSK

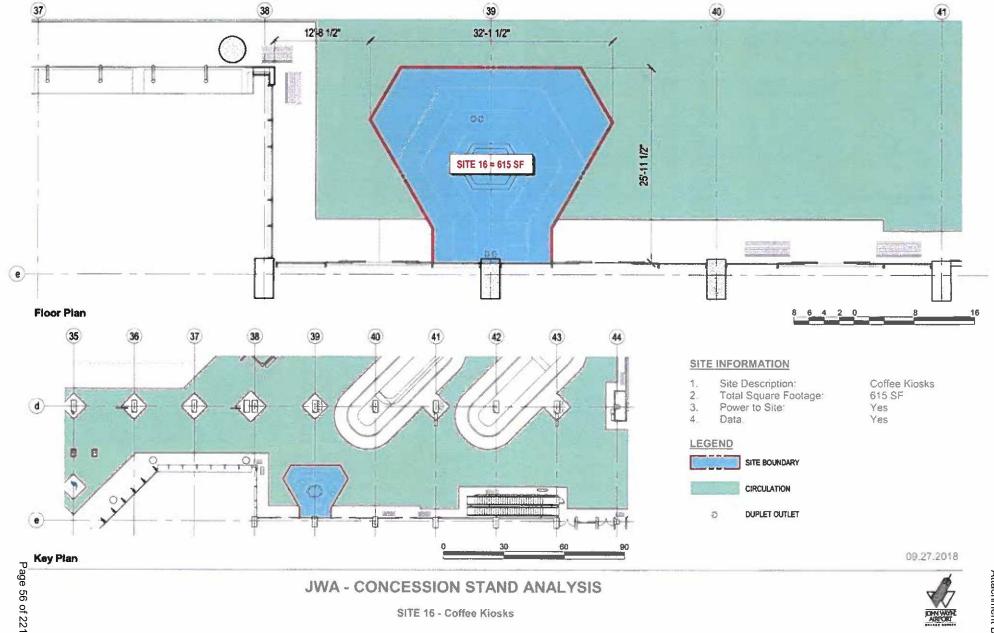




SITE 07 - COFFEE KIOSK

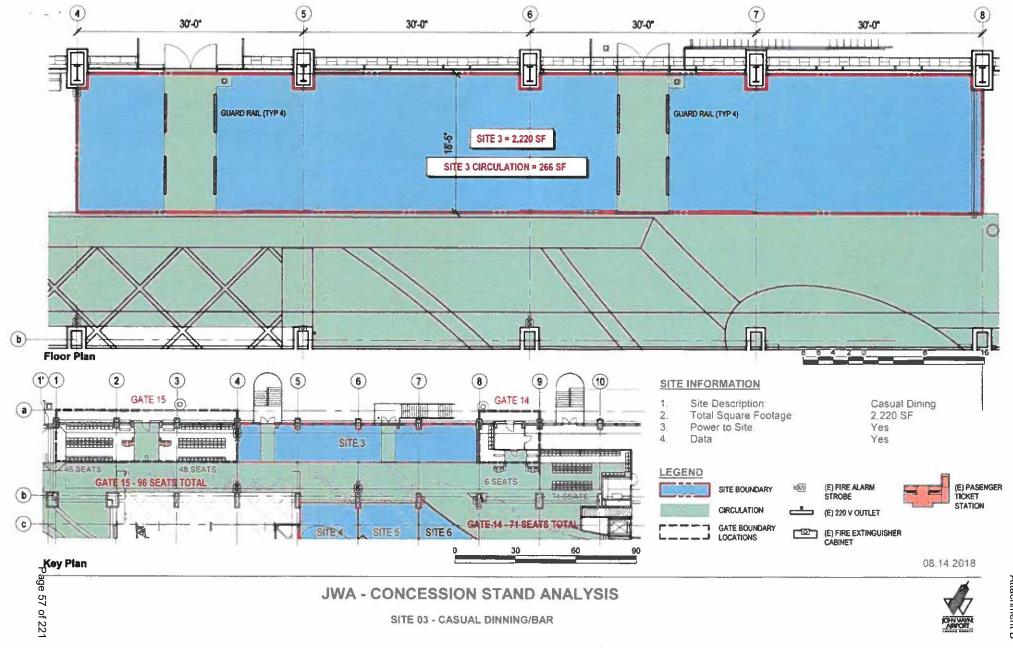




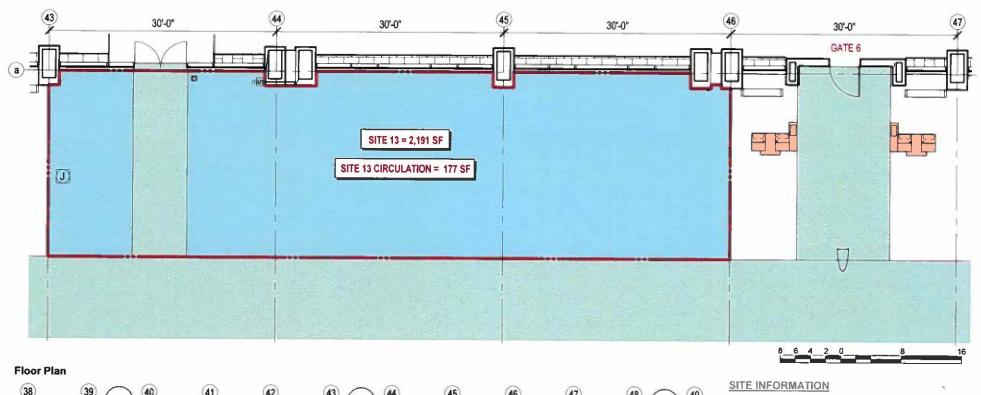


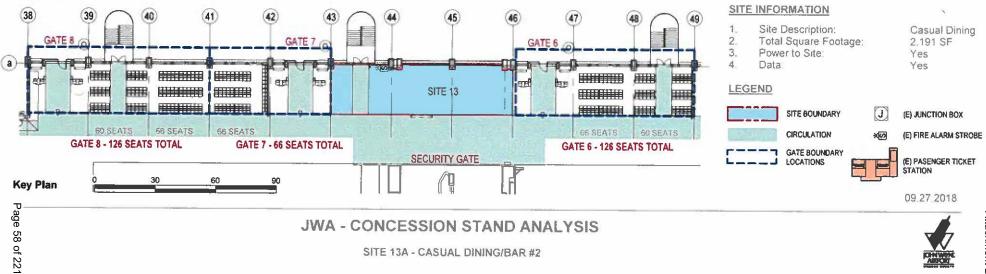
SITE 16 - Coffee Kiosks





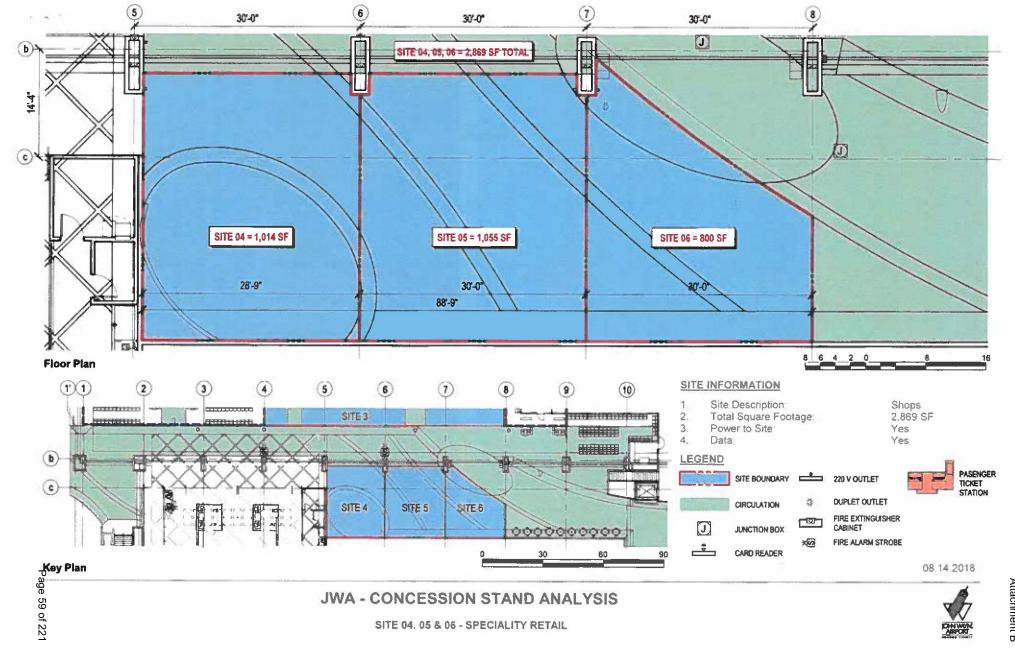
SITE 03 - CASUAL DINNING/BAR





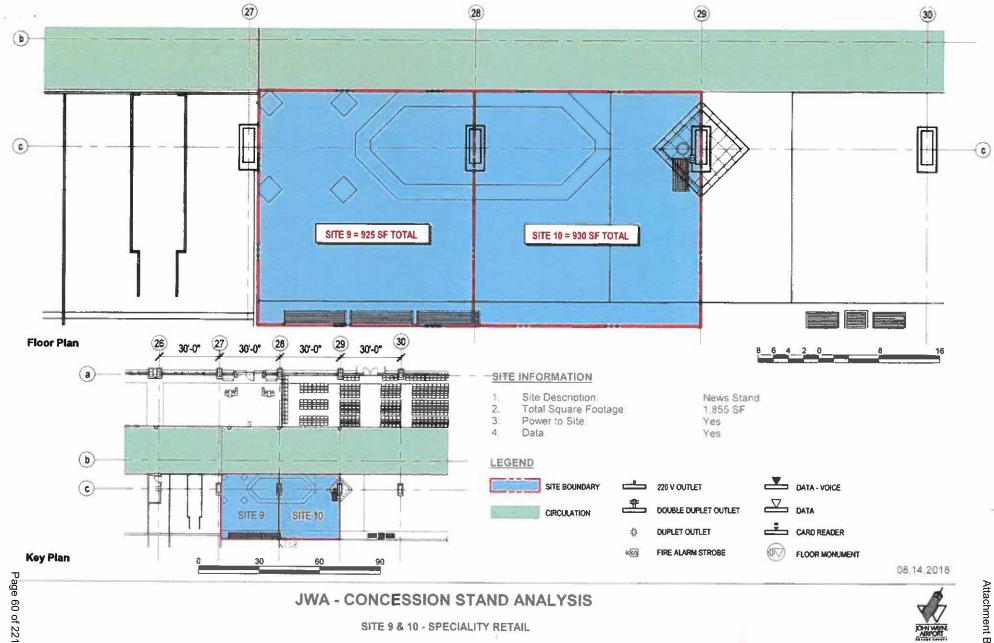
SITE 13A - CASUAL DINING/BAR #2





SITE 04, 05 & 06 - SPECIALITY RETAIL

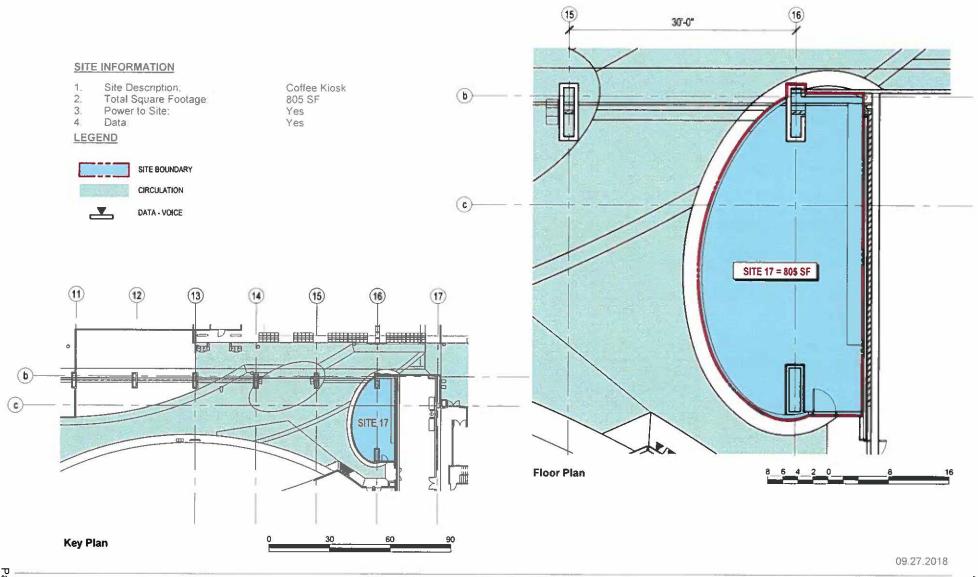




SITE 9 & 10 - SPECIALITY RETAIL











FOOD AND BEVERAGE CONCESSION LEASE

Dated	-
Between	
County of Orange	
and	

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EXHIBIT C	FOOD AND BEVERAGE USE (PERMITTED USE)
EXHIBIT D	CONCESSION IMPROVEMENT PLAN (TO BE PROPOSED)
EXHIBIT E	MERCHANDISE AND PRICING (TO BE PROPOSED)
EXHIBIT F	REQUIREMENTS FOR CAD COMPATIBLE PLANS
EXHIBIT G	PERCENTAGE RENT

THIS	FOOD AND	BEVERAGE CO	ONCESSION	LEASE	("LEASE")	is made	and enter	red into
this _	day of	, 20	_, by and bety	ween the	COUNTY	OF ORA	NGE, a p	olitical
subdiv	vision of the S	tate of California	("COUNTY"	'), and			<u>,</u> ("TEN	ANT").

RECITALS

WHEREAS, COUNTY, through its Board of Supervisors, is the owner and proprietor of John Wayne Airport ("JWA" or "the Airport"), located in the County of Orange, State of California, and operates and maintains the Airport as a governmental function for the primary purpose of providing air transportation to the public; and

WHEREAS, COUNTY requires services for the operation of a food and beverage Concession at the Airport and issued a Request for Proposals for Concession, and as a result of the proposal process, TENANT was selected as the concessionaire to provide this concession in the Airport; and

WHEREAS, TENANT desires to provide, as a convenience for passengers at John Wayne Airport, a food and beverage Concession; and

WHEREAS, COUNTY and TENANT mutually desire to enter into a Lease in order to provide a food and beverage Concession to the passengers at the Airport; and

WHEREAS, the COUNTY has the right to permit the use of its property at the Airport and to grant the use of the Airport to TENANT for the operation of TENANT's and Concession services: and

WHEREAS, TENANT acknowledges that this Lease is being entered into under the provisions of California Public Utilities Code §§21690.5, *et seq.*, and in particular, §21690.9.

NOW, THEREFORE, in consideration of the promises and the mutual covenants hereinafter contained to be observed and performed by the respective parties hereto,

THE PARTIES HERETO COVENANT, AGREE AND BIND THEMSELVES AS FOLLOWS:

ARTICLE I

DEFINITIONS

The following words, terms and phrases whenever used in this Lease shall have the meaning and significance attached to them in this Article, unless otherwise apparent from context.

SECTION 1.01 AIRPORT

"Airport" shall mean the John Wayne Airport, Orange County, California.

SECTION 1.02 AIRPORT DIRECTOR

"Airport Director" shall mean the Director of John Wayne Airport, County of Orange, as appointed by the Board of Supervisors.

SECTION 1.03 AUDITOR-CONTROLLER

"Auditor-Controller" shall mean the Auditor-Controller, County of Orange, or designee.

SECTION 1.04 BOARD OF SUPERVISORS

"Board of Supervisors" shall mean the elected (or duly appointed) members of the Board of Supervisors of the County of Orange, as governing body of the County and proprietor of the Airport through its Airport Director, or designees, as appropriate.

SECTION 1.05 CONCESSION SUPPORT SPACE

COUNTY may make available to TENANT space to support its concession operations, which may be used as office space, food preparation, and storage space.

SECTION 1.06 COUNTY

"COUNTY" shall mean the County of Orange, a political subdivision of the State of California.

SECTION 1.07 DOT

"DOT" shall mean the Department of Transportation.

SECTION 1.08 ENVIRONMENTAL LAWS

"Environmental Laws" shall mean any federal, state or local law, statute, ordinance, code, judgment, order, rule, or regulation pertaining to the environment and/or human health, Hazardous Materials, Pollutants, occupational safety and health, industrial hygiene or the environmental conditions on, at, under or about the Airport, and includes, without limitation the following: (i) the CLEAN AIR ACT, 42 USC §§ 7401, et seq.; (ii) CLEAN WATER ACT, 33 USC §§ 1251, et seq.; (iii) the COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980, as amended by the SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT OF 1986 ("CERCLA"), 42 U.S.C. §§9601 et seq.; (iv) 49 CFR Subchapter C (Transportation of Hazardous Materials); (v) the SOLID WASTE DISPOSAL ACT, as amended by the RESOURCE CONSERVATION AND RECOVERY ACT OF 1986 and HAZARDOUS and SOLID WASTE amendments of 1984

("RCRA"), 42 U.S.C. §§6901, et seq.; (vi) the OIL POLLUTION ACT of 1990, 33 USC §§ 2701, et seq.; (vii) the FEDERAL WATER POLLUTION CONTROL ACT, 33 U.S.C. §§1317, et seq.; (viii) the SAFE DRINKING WATER and TOXIC ENFORCEMENT ACT OF 1986, CALIFORNIA HEALTH AND SAFETY CODE §§25249,5 et seq.; (ix) the CALIFORNIA HEALTH AND SAFETY CODE §§25100, 25395.7, 25915, et seq.; (x) the PORTER-COLOGNE WATER QUALITY CONTROL ACT (CALIFORNIA WATER CODE) §§13000, et seq.; (xi) the CALIFORNIA CIVIL CODE §§3479, et seq.; (xii) Storm Water Discharge Rules, 40 C.F.R. §§ 122.26, 122.30-37; (xiii) the CARPENTER-PRESLEY-TANNER HAZARDOUS SUBSTANCES ACCOUNT ACT §§25300, et seq.; (xiv) TOXIC SUBSTANCES CONTROL ACT, 15 USC §§2601, et seq.; (xv) the SAFE DRINKING WATER ACT, 24 USC §§300f, et seq.; and (xvi) all other state laws, rules, orders, directives, and codes, regulations, judgments, and orders relating to (a) emissions, discharges, releases, and/or threatened releases of Hazardous Materials into the environment (including, but not limited to, ambient air, surface water, groundwater, land surface, or subsurface strata); and (b) the manufacture, processing, distribution, use, generation, treatment, storage, disposal, transport or handling of Hazardous Materials, as such laws are amended, and the regulations and administrative codes applicable thereto.

SECTION 1.09 EXISTING CONCESSION LOCATIONS

"Existing Concession Locations" shall mean concession locations currently existing in Terminals pursuant to an existing lease.

SECTION 1.10 FAA

"FAA" shall mean the Federal Aviation Administration created under the Federal Aviation Act of 1958, or such successor agency as may from time to time have similar jurisdiction over TENANT or its business, and the Airport.

SECTION 1.11 HAZARDOUS MATERIALS

"Hazardous Materials" shall mean any Pollutant, contaminant, chemical, compound, substance, hazardous or toxic substance, material, waste, and/or any other matter, which is or shall become regulated by any governmental entity, including, but not limited to COUNTY acting in its governmental capacity, the State of California, and/or the United States Government. The term "Hazardous Materials" includes, without limitation, any material or substance which is: (i) defined or listed as a "hazardous waste," "extremely hazardous waste," "restrictive hazardous waste" or "hazardous substance" or considered a waste, condition of pollution, nuisance, and/or is controlled or governed under any Environmental Law; (ii) petroleum or a petroleum product or fraction thereof; (iii) asbestos or asbestos-containing materials; (iv) flammable or explosive substances; (v) mold, mold spores or fractions thereof; and/or (vi) substances designated by any governmental entity to cause cancer and/or reproductive toxicity.

SECTION 1.12 LEASED PREMISES

"Leased Premises" shall mean the areas of the Terminal which COUNTY has granted TENANT the right to use on an exclusive use basis. TENANT's Leased Premises is described in Exhibit A and shown on Exhibit B.

SECTION 1.13 MINIMUM ANNUAL GUARANTEE

Annual Guaranteed Rent from TENANT to COUNTY ("MAG").

SECTION 1.14 NOTICE TO PROCEED

"Notice to Proceed" shall mean written notice provided by COUNTY to TENANT providing approval to commence construction of TENANT's improvements.

SECTION 1.15 NOTICE TO TAKE POSSESSION

"Notice to Take Possession" shall mean written notice provided by COUNTY to TENANT that the Leased Premises are available for occupancy and that TENANT must take possession of the Leased Premises by the date stated in the notice.

SECTION 1.16 NON STORM WATER DISCHARGE

"Non Storm Water Discharge" shall mean any discharge to storm sewer systems that is not entirely composed of storm water. "Non Storm Water Discharge" includes "Unauthorized Non Storm Water Discharges" and "Authorized Non Storm Water Discharges" as defined by the California Environmental Protection Agency State Water Resources Control Board National Pollutant Discharge Elimination System General Permit for Discharges of Storm Water Associated with Industrial Activities and Construction Activities.

SECTION 1.17 NPDES PERMIT

"National Pollutant Discharge Elimination System (NPDES) Permit" means the currently applicable discharge permit(s) issued by the Regional Water Quality Control Board, Santa Ana Region, which establish waste discharge requirements applicable to storm runoff within the County and Airport.

SECTION 1.19 POLLUTANT

"Pollutant" means any chemical, compound, substance, liquid, solid or semi-solid substances, or combination thereof, including but not limited to:

a. Artificial materials (such as floatable plastics, wood products or metal shavings);

- b. Household waste (such as trash, paper, and plastics; cleaning chemicals, yard wastes, animal fecal materials, used oil and fluids from vehicles, lawn mowers and other common household equipment);
- c. Metals and nonmetals, including compounds of metals and nonmetals (such as cadmium, lead, zinc, copper, silver, nickel, chromium, cyanide, phosphorus and arsenic) with characteristics which cause an adverse effect on living organisms;
- d. Petroleum and related hydrocarbons (such as fuels, lubricants, surfactants, waste oils, solvents, coolants and grease.);
- e. Substances having a pH less than 6.5 or greater than 8.6, or unusual coloration, turbidity or odor:
- f. Materials causing an increase in biochemical oxygen demand, chemical oxygen demand or total organic carbon;
- g. Materials which contain base/neutral or acid extractable organic compounds;
- h. Those pollutants defined in Section 1362(6) of the Federal Clean Water Act; and
- i. Any other constituent or material, including but not limited to pesticides, herbicides, fertilizers, fecal coliform, fecal streptococcus, or enterococcus, or eroded soils, sediment and particulate materials, in quantities that will interfere with or adversely affect the beneficial use of the receiving waters, flora or fauna of the State; and
- j. Any substance listed under Health and Safety Code, §25316.

SECTION 1.20 RENT COMMENCEMENT DATE

The Rent Commencement Date shall be the earlier of; (a) the Date of Beneficial Occupancy or (b) ninety (90) days after the date on the Airport issued Notice to Proceed to TENANT. The Date of Beneficial Occupancy or "DBO" shall mean the date upon which TENANT completes Initial Improvements and opens for business in any section of the Leased Premises

SECTION 1.21 STORM WATER

"Storm Water" shall mean storm water runoff, snowmelt runoff, and storm water surface runoff and drainage.

SECTION 1.22 STORM WATER DRAINAGE SYSTEM

"Storm Water Drainage System" means street gutter, channel, storm drain, constructed drain, lined diversion structure, wash area, inlet, outlet or other facility, which is a part of a tributary to the county-wide storm water runoff system and owned, operated, maintained or controlled by the county of Orange, the Orange County Flood Control District or any co-permittee city, and used for the purpose of collecting, storing, transporting, or disposing of storm water. The Airport storm drain system shall mean any gutter, channel, storm drain, constructed drain, wash area, inlet or outlet or other facility that flows into, onto, through or out of the Airport property.

SECTION 1.23 TENANT CONSTRUCTION MANUAL

The Tenant Construction Manual sets forth construction design standards for JWA tenants, their consultants and contractors for completing tenant improvements at JWA. The requirements contained therein are in addition other requirements contained in the Lease between the COUNTY and TENANT.

SECTION 1.24 TENANT DESIGN GUIDELINES

The Tenant Design Guidelines define the multi-step process for TENANT projects at the Airport, from concept development through construction as amended from time to time. The requirements contained therein are in addition to other requirements contained in the Lease between the COUNTY and TENANT.

SECTION 1.25 TERMINAL

"Terminal" shall mean the commercial passenger terminal and concourses at John Wayne Airport, as may be modified at any time during the term of this Lease.

SECTION 1.26 TSA

"TSA" shall mean the Transportation Security Administration of the United States Department of Homeland Security, the federal agency responsible for regulation of airport security, or any such successor agency.

SECTION 1.27 WAYFINDING

John Wayne Airport's information system that guide passengers to navigate the terminal and access services through digital solutions.

ARTICLE II

TERM OF LEASE

SECTION 2.01 TERM OF LEASE

This Lease shall be effective upon the signing of the Lease by the COUNTY, the "Effective Date". The term of this Lease shall be ten (10) years, from the Rent Commencement Date.

SECTION 2.02 HOLDING OVER

In the event TENANT shall continue in possession of the Leased Premises after the term of this Lease, such possession shall not be considered an extension or renewal of this Lease but a tenancy from month to month and shall be governed by the conditions and covenants contained in this Lease.

SECTION 2.03 TERMINATION FOR CONVENIENCE

This Lease may be terminated for convenience by COUNTY for any reason, and without cause, upon sixty days (60) written notice.

ARTICLE III

LEASED PREMISES

SECTION 3.01 LEASED PREMISES

COUNTY grants to TENANT the right to use that certain property hereinafter referred to as "Leased Premises", described in Exhibit A and shown on Exhibit B, which exhibits are attached hereto and by reference made a part hereof. TENANT accepts the Leased Premises "as is, where is, and with all faults" and conditions and acknowledges that such Leased Premises are in good and satisfactory condition for the use intended. Said Leased Premises include any Existing Concession Locations, which are to be demolished, remodeled or relocated as provided herein. TENANT must demolish existing location.

SECTION 3.02 DELIVERY OF EXISTING CONCESSION LOCATIONS

COUNTY's obligation to deliver the Existing Concession Locations, to TENANT is subject to and conditioned upon termination of the Lease with, and surrender of the Leased Premises by, the existing concessionaire. Except as otherwise set forth herein, TENANT's failure to accept possession of the Leased Premises within fourteen (14) days from COUNTY's written Notice to Take Possession to TENANT, pursuant to the terms of this Lease, shall be an event of default pursuant to Section 9.02 of this Lease.

SECTION 3.03 ASSIGNING OF INTERIM LEASED PREMISES

The COUNTY may grant to TENANT the right to use various individual locations, to be mutually agreed upon, as might become available from time to time as interim leased premises. Interim leased premised are subject to the same rent as defined in Section 4.01. All provisions of this Lease shall apply to the operation of the interim leased premises. TENANT shall be permitted to operate such interim leased premises only for the specified permitted use and the specific time period granted by the COUNTY. The intent of allowing TENANT the use of the interim leased premises is to allow TENANT the opportunity to operate permitted business activities, provide increased customer service levels and to generate revenue to the COUNTY. TENANT shall relinquish the interim leased premises to the COUNTY upon request.

SECTION 3.04 NATURE OF LEASE

TENANT acknowledges and agrees:

A. That COUNTY is granting to TENANT a leasehold interest in the Leased Premises only.

- B. That COUNTY retains a fee ownership for federal income tax purposes in and to the Leased Premises, as well as all other ownership burdens and benefits connected with such fee ownership.
- C. That TENANT has not been granted any direct or indirect right or option to purchase the Leased Premises from COUNTY at any time during or after the termination of this Lease.

SECTION 3.05 INSTALLATION OR STORAGE OF EQUIPMENT OUTSIDE THE LEASED PREMISES

TENANT shall not install or store equipment of any kind outside the Leased Premises unless authorized in writing by the Airport Director, or designee prior to installation. COUNTY may make available to TENANT space requested by TENANT in support of its concession operations "Concession Support Space" Such concession support areas will be approved by the Airport Director in writing. TENANT agrees to pay COUNTY the terminal rental rate based on the latest schedule established by the COUNTY's approved rates and charges, and as amended from time to time as part of the approved Airline Rates and Charges. Upon Thirty (30) days' written notice from the Airport Director or designee COUNTY may modify the fees described in this section. TENANT understands the COUNTY must receive fair and equitable fees for all uses of Airport and to ensure Airport is operated at no cost to the local taxpayer.

ARTICLE IV

RENT

SECTION 4.01 RENT

TENANT agrees to pay the following rent, payable monthly in arrears, on or before the fifteenth day of each month:

- A. <u>Annual Rent Payments</u> TENANT shall pay to COUNTY, for each annual period either the Minimum Annual Guarantee ("MAG") or percentage rent, whichever is greater. T
 - 1) The Minimum Annual Guarantee for the Leased Premises at the Airport shall be in accordance with the following schedule:

\$100 x Square Feet =	_ Minimum Annual Guarantee
Divided by 12 Months = Minimum	Monthly Rent
Annual Period	Minimum Annual Guarantee
Rent Commencement Date	



JOHN WAYNE AIRPORT FOOD AND BEVERAGE CONCESSION LEASE

		to	\$
		Each succeeding year to	as adjusted in accordance with "REVISION OF RENTS"
		num annual rent shall be adjust Lease entitled "REVISION C	on each thereafter, the sted in accordance with the provisions of the Section OF RENTS".
othe	r than a	Lease be terminated during a full calendar year, the applica three hundred sixty (360) day	n annual period, or should the first annual period be ble Minimum Annual Guarantee shall be prorated on year.
	2)	gross receipts from sales co	ge Rent shall be calculated using the percentage of inducted on or from the Leased Premises. Percentage g the percentage of gross receipts attached hereto and
		Any Rent not paid when d Section 4.05	ue shall be subject to a service charge as defined in
B.		at of Rent. Rent payments shin this Lease entitled "PAYM.	all be made in accordance with the provisions of the ENT PROCEDURE".
C .	payable the amo lease lo	monthly in arrears on or befortized cost of utility infrastrucation. This rate is eight doll	IT shall pay to the COUNTY an Infrastructure Fee, fore the fifteenth day of each month. This Fee covers cture improvements that the Airport provides to each ars (\$8.00) per month per square foot throughout the Rent Commencement Date and is additional rent.
SEC	TION 4	.02 REVISION OF RE	NT
On _ adju	sted to th	e greater of the following:	lly thereafter, the MAG rent shall be automatically
A.		five percent (85%) of the and the land	nnual rent paid by TENANT to COUNTY for the
В.	The MAG adjusted in proportion to changes in the Consumer Price Index for Los Angeles - Anaheim - Riverside (All Urban Consumers - All Items) promulgated by the Bureau of Labor Statistics of the U.S. Department of Labor. This adjustment shall be calculated by means of the following formula:		
			Page 9

$$X =$$
 $\qquad \qquad \underline{A} \qquad MAG \text{ as determined in A above.}$

- X = Adjusted minimum monthly rent
- A = Monthly index for the fourth month prior to the month in which each rent adjustment is to become effective.
- B = Monthly index for the month in which this Lease is signed by COUNTY

In the event that the CPI ceases to use 1982-84 = 100 as the basis of calculation, or if, in COUNTY's sole judgment, a substantial change is made in the method used by the federal government to determine the CPI or the items used to calculate the CPI, then the CPI shall be converted to the figure that would have been calculated at (or as close to such figure as shall be practical) had the manner of calculating the CPI in effect at the date of this Lease not been altered.

In the event that the Consumer Price Index is not issued or published for the period for which such minimum annual fee is to be adjusted and computed hereunder, or in the event that the Bureau of Labor Statistics of the United States Department of Labor should cease to publish said index figures, then any similar index published by any other branch or department of the United States Government selected by COUNTY shall be used and if none is so published, then another index generally recognized as authoritative shall be substituted by COUNTY.

Notwithstanding the foregoing, in no event shall the minimum rent be reduced by reason of any such adjustment.

SECTION 4.03 DEFINITION OF GROSS RECEIPTS

As used in this section, the term "TENANT" shall include TENANT, its agents, sub lessees, concessionaires, licensees, or any person acting under contract with TENANT. The term "Gross Receipts" shall include any and all charges invoiced or collected by TENANT monetary or non-monetary consideration received by TENANT, resulting from any and all services provided by TENANT or items sold, leased or rented by TENANT at, on or about the Airport, unless expressly excluded, including but not limited to the following:

- A. The sale price of all goods, wares, merchandise, and products sold on or from the Leased Premises by TENANT, whether for cash or credit, whether payment is actually made or not, whether delivery of the items sold is made from the Leased Premises and whether title to such items is transferred;
- B. The charges made by TENANT for the sale or rendition on or from the Leased Premises of services of any nature or kind whatsoever, whether for cash or credit, whether payment is actually made or not, and whether the services are actually performed or not;

- C. All sums deposited in any coin-operated vending machine or other device maintained on the Leased Premises, regardless of the ownership of the machine or device, or whether such sums are removed and counted by TENANT or others and regardless of what percentage thereof TENANT is entitled to receive;
- D. All rent and other fees of any nature or kind charged by TENANT (including but not limited to deposits accepted by TENANT);
- E. The fair rent value of facilities on the Leased Premises used by subTENANTs or others;
- F. The value of all consideration received by TENANT or its employees including, without limitation, non-monetary consideration for the items sold, leased, rented or services rendered.

Under Section 5.01 in this Lease entitled "USE", TENANT may be granted the option to provide certain additional services and uses subject to further approval. The term "gross receipts" as it applies to these business operations shall be determined by COUNTY's Auditor-Controller and Airport Director, or designee as well as the appropriate rent and percentage, at the time approval is granted.

Gross receipts shall exclude all sales and excise taxes, as defined by federal, state, county, or municipal governments tax codes, and that are paid by TENANT to as a direct result of operations under this Lease. Refunds for goods returned and deposits shall be deducted from current gross receipts upon return. Bad debt losses shall not be deducted from gross receipts.

Discounts, including but not limited to allowances, deductions, brand discounts, brand rewards discounts, brand loyalty program discounts, promotional program discounts, customer service resolution discounts, rebates, kickbacks, hidden credits, or any other reductions shall not be deducted from gross receipts with exception of employee discounts set forth below.

Employee discounts from the public sales price may be allowed to Airport-issued badged employees and/or TENANT's employees provided Airport Director, or designee is first provided with the TENANT's discount policy and that the discount is reflected on sales records. The sales records shall clearly state the public sales price, employee identification number or badge number the amount of discount, and the discounted sales price.

SECTION 4.04 PAYMENT PROCEDURE

A. Gross Receipts Report. On or before the fifteenth day of each month (the "due date") TENANT shall deliver to Auditor-Controller a correct statement of all applicable gross receipts for that portion of the lease year which ends with and includes the last day of the preceding calendar month. The statement shall be signed by TENANT or TENANT's responsible agent in a form prescribed by Auditor-Controller. Each statement shall indicate:



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- 1) One twelfth of the Minimum Annual Guarantee rent payment (MAG)
- 2) The total gross receipts for said portion of the lease year, itemized as to each of the business categories for which a separate percentage rent is established. A breakdown of the gross receipts of each business conducted on the Leased Premises must be attached to each statement where a reported business category is comprised of more than one business operation.
- 3) The related itemized amounts of percentage rent computed as herein provided and the total thereof:
- 4) The total rent previously paid by TENANT for the lease year within which the preceding month falls; and
- 5) The rent due for the preceding month.

Concurrently with the rendering of each monthly statement, TENANT shall pay to COUNTY the greater of the following two amounts:

- The total percentage rent computed for that portion of the Lease year ending with and including the last day of the preceding month [Item 3, above] less total rents previously paid for the Lease year [Item 4, above], or
- 7) One twelfth of the annual minimum rent, multiplied by the number of months from the beginning of the accounting year to and including the preceding month, less total rents previously paid for the accounting year [Item 4) above].
- B. Place of Payment and Filing. Payments and statements required by the Sections in this Lease entitled "RENTS" and shall be delivered to the County of Orange, Office of the Auditor-Controller, John Wayne Airport Accounting Services, 3160 Airway Avenue, Costa Mesa, California 92626. The designated place of payment and filing may be changed at any time by COUNTY upon ten (10) days' written notice to TENANT. Payments may be made by check payable to the County of Orange. TENANT assumes all risk of loss if payments are made by mail.
- C. Form of Payment. All sums due under this Lease shall be paid in lawful money of the United States of America without offset or deduction or prior notice or demand. No payment by TENANT or receipt by COUNTY of a lesser amount than the payment due shall be deemed to be other than on account of the payment due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and COUNTY shall accept such check or payment without prejudice to COUNTY's right to recover the balance of the amount due or pursue any other remedy in this Lease. All payments must be remitted by Automated Clearing House (ACH) / direct deposit to the County-Airport's designated bank account, or any future mode prescribed by the COUNTY. Any fees assessed to the COUNTY's bank account due

- to the use of other form of payment (e.g. wire transfer) not prescribed or approved by the COUNTY, shall be passed through to the TENANT plus \$25 processing fee.
- D. <u>Penalty for NSF Check.</u> In the event a check submitted by TENANT is returned for non-sufficient funds ("NSF"), TENANT agrees to pay COUNTY a service charge in the amount of twenty-five dollars (\$25) for the first check, and thirty-five dollars (\$35) for each subsequent check. TENANT liable for treble damages pursuant to California Civil Code Section 1719.

SECTION 4.05 CHARGE FOR LATE PAYMENT

TENANT hereby acknowledges that the late payment of rents or any other sums due hereunder will cause COUNTY to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, administrative processing of delinquent notices, increased accounting costs, lost interest income.

Accordingly, if any payment of rents as specified in the section in this Lease entitled "RENT" or of any other sum due COUNTY is not received by COUNTY by the due date, a late charge of one and one-half percent (1.5%) of the payment due and unpaid plus one hundred dollars (\$100) shall be added to the payment, and the total sum shall become immediately due and payable to COUNTY. An additional charge of one and one-half percent (1.5%) of said payment, excluding late charges, shall be added for each additional month that said payment remains unpaid.

TENANT and COUNTY hereby agree that such late charges represent a fair and reasonable estimate of the costs that COUNTY will incur by reason of TENANT's late payment. Acceptance of such late charges (and/or any portion of the overdue payment) by COUNTY shall in no event constitute a waiver of TENANT's default with respect to such overdue payment, or prevent COUNTY from exercising any of the other rights and remedies granted hereunder.

SECTION 4.06 RECORDS AND ACCOUNTS

- A. Records Defined. "TENANT's Records" as referred to in this Lease shall include any and all information, materials, and data of every kind and character in any format, including, but not limited to records, accounts, financial transactions, books, papers, documents, recordings, notes, receipts, vouchers, memoranda, sales invoices, accounts receivable records, commission payment records, tax remittance records, expenditures for improvements or refurbishments, any and all other agreements, sources of information and matters that may, at COUNTY's sole discretion, have any bearing on or pertain to any matters, rights, duties, or obligations under or covered by the Lease, and any other TENANT records which may have a bearing on matters of interest to COUNTY in connection with TENANT's dealings with COUNTY to the extent necessary to adequately permit evaluation and verification of any or all of the following:
 - 1) Accuracy of amounts owed to COUNTY resulting from TENANT's operation of the Leased Premises.

2) Compliance with any requirement in the Lease.

TENANT shall, at all times during the term of this Lease, keep or cause to be kept true and complete books, records, and accounts of all financial transactions in the operation of all business activities, of whatever nature, conducted in pursuance of the rights granted herein. The records must be supported by source documents such as sales slips, cash register tapes, purchase invoices, or other pertinent documents.

B. <u>Annual Certification of Sales and Adjustment</u>. Within ninety (90) days after the end of each Accounting Year, TENANT shall submit to Director at COUNTY's Deposit/Annual Report Notice Address a year-end compilation report prepared by an independent Certified Public Accountant showing Gross Revenues achieved with respect to the prior Lease Year ("Annual Report"). The Lease year shall be twelve full calendar months.

Any portion of a year that is not reconciled, should the accounting year and the anniversary year of the Lease commencement not be the same, shall be accounted for as if it were a complete Lease year.

Once an Annual Certification of Sales and Adjustment date is established, it shall be continued through the term of the Lease unless Auditor-Controller specifically approves in writing a different accounting year. Auditor-Controller shall only approve a change in accounting years in the event of undue hardship being placed on either the TENANT or COUNTY, and not because of mere convenience or inconvenience.

C. <u>CPA-Audited Statement of Gross Receipts</u>. Within ninety (90) days after the end of each accounting year, TENANT shall at its own expense submit to Auditor-Controller an audited statement of total gross receipts for all Airport operations. This statement shall include a breakdown schedule of total gross receipts for the accounting year by month and sales as classified according to the categories of business established for percentage rent and listed in Section 4.01 (RENT) and for any other business conducted on or from the Leased Premises. This statement must be prepared by an independent Certified Public Accountant (CPA) or CPA firm holding a current and valid license and completion of attest experience ("A") with the State Board of Accountancy. The audit must be performed in accordance with current Generally Accepted Auditing Standards (GAAS) authorized by the American Institute of Certified Public Accountants (AICPA).

TENANT shall provide COUNTY with copies of any Certified Public Accountant management letters and audited financial statements prepared in conjunction with their audit of TENANT's operations from the Leased Premises. Copies of management letters and/or financial statements shall be provided directly to COUNTY by the CPA at the same time TENANT's copy is provided to TENANT.

TENANT acknowledges that any and all of the "Financial Statements" submitted to COUNTY pursuant to this Lease become Public Records and are subject to public inspection pursuant to Sec. 6250 et seq. of the California Government Code.

- D. <u>Failure to Submit CPA-Audited Statement of Gross Receipts</u>. In addition to any other remedies available to COUNTY at law or in equity or under this Lease, in the event that TENANT fails to submit any financial statements by the due date listed in this Section, Subsection "C. CPA-Audited Statement of Gross Receipts.". Airport Director, or designee may require TENANT to submit the greater of:
 - 1) \$5,000 fine; or
 - 2) Any and all costs incurred by COUNTY for the Certified Public Accountant hired by the COUNTY to prepare the required financial statements, including an administrative fee equal to fifteen percent (15%) of those costs.
- E. <u>Audits.</u> All TENANT's books of account and records and supporting source documents related to this Lease or to business operations conducted within or from the Airport shall be kept and made available to COUNTY at one location within the limits of the County of Orange, or shall be made available at offices in the COUNTY within ten (10) business days after notice to produce said records and source documents. COUNTY shall, through its duly authorized agents or representatives, have the right to examine and audit said books of account and records and supporting source documents at any and all reasonable times for the purpose of determining the accuracy thereof, and of the monthly statements of transactions and the dollar amount of said transactions. The full cost of said audit shall be borne by COUNTY.

The COUNTY, upon request of TENANT and in the COUNTY's sole discretion, may authorize the above-referenced books and records and supporting source documents to be kept in a single location outside the limits of Orange COUNTY provided TENANT shall agree to pay all expenses including but not limited to transportation, food, and lodging necessary for the COUNTY to send a representative to audit said books and records. Said right shall not be exercised by the COUNTY more than once each accounting year.

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

The full cost of said audit, as determined by the COUNTY, shall be borne by TENANT if either or both of the following conditions exist:

- 1) The audit reveals an underpayment of more than one percent between the rent due as reported and paid by TENANT in accordance with this Lease and the rent due as determined by said audit;
- 2) TENANT has failed to maintain true and complete books, records, accounts and supporting source documents in accordance with this Section, Subsection "A.

<u>Records Defined</u>" above. The adequacy of records shall be determined at Auditor-Controller's reasonable sole discretion.

Otherwise, COUNTY shall bear the cost of said audit, excluding the aforementioned expenses related to audit of documents kept outside the limits of the COUNTY of Orange.

- F. Failure to Maintain Adequate Records. In addition to any other remedies available to COUNTY at law or in equity or under this Lease, in the event that TENANT fails to maintain and keep books, records and accounts of gross receipts from business operations conducted on or from the Leased Premises and/or source documents relating thereto, or to make the same available to the COUNTY for examination and audit, or to record sales and/or to maintain registers to record sales, or to provide financial statements and other information to the COUNTY regarding gross sales as required by this Lease, the COUNTY, at the COUNTY's option, may:
 - 1) Perform such examinations, audits and/or investigations itself or through agents or employees as COUNTY and/or its auditors may deem appropriate to confirm the amount of percentage rents payable by TENANT under this Lease and any and all costs and/or expenses incurred by COUNTY in connection therewith shall be promptly reimbursed to COUNTY by TENANT upon demand.
 - 2) Provide accounting services and/or a system for recording sales and charges, including without limitation, cash registers, for use by TENANT in business transactions upon or from the Leased Premises, and, at COUNTY's option, maintain personnel on the Leased Premises to observe and/or record such sales during TENANT's business hours, or from time to time, all at TENANT's sole cost and expense and, in such event, TENANT shall promptly reimburse COUNTY for any and all costs incurred by COUNTY in connection therewith; and/or
 - 3) Require that TENANT pay percentage rents based on COUNTY's best good faith estimate of TENANT's gross receipts from business operations conducted on or from the Leased Premises and Airport and any such determination made by COUNTY shall be conclusive and binding upon TENANT.

Costs payable by TENANT pursuant to this Section shall include reimbursement to COUNTY of COUNTY provided services at such rates as COUNTY may from time to time, in good faith, establish for such services. In the case of services provided by COUNTY's employees, such rates shall be sufficient to reimburse COUNTY for employees' salaries, including employee taxes and benefits and COUNTY's overhead or, at COUNTY's option, may be the rate for such services that would be charged by a qualified third party or parties, approved by COUNTY, if engaged by COUNTY to perform such services. Said costs payable by TENANT shall be included as rent for the first month following invoice to TENANT.

- G. <u>Review Period.</u> COUNTY or its designee may conduct such audits or inspections throughout the term of this Lease and for a period of three (3) years after final payment or longer if permitted by law.
- H. <u>Methodology.</u> COUNTY or designee may, without limitation by TENANT, conduct verifications including, but not limited to, inspection of TENANT's Records, observation of TENANT's employees in or about the Leased Premises, and verification of information and amounts through interview and/or written communications with TENANT's employees or subcontractors.
- I. <u>Record Retention.</u> All of TENANT's Records shall be retained by TENANT for a period of the balance of the fiscal year in which the Record was created, recorded, or otherwise prepared, plus five (5) years regardless of when this Lease expires or is terminated.
- J. <u>Sales Recording System.</u> TENANT shall prepare a description of its cash handling and sales recording systems and equipment which shall be submitted to Airport Director, or designee for approval. Following approval by Airport Director, or designee such systems and equipment shall be utilized by TENANT. TENANT shall accurately record each sale on a point of sale register. Such register shall be non-resettable and sufficient to supply an accurate record of all sales on tape or otherwise as approved by Airport Director, or designee
- K. Point of Sale Requirements. TENANT shall install in the Premises a Point of Sale (POS) system with at least one POS unit, which includes mobile POS or other similar electronic devices. All POS used on the Premises shall meet current industry standards for transmitting, capturing and recording transactions, approved discounts with badge numbers, and data in a secure fashion while protecting Card Holder Data, and shall register every transaction made in, on, about or from the Premises, including every type of Gross Revenue daily automated reporting. Said POS shall be accessible to and subject to inspection or audit by Director or designee upon request. All cash receipts must include TENANT's identification thereon. Each approved discount must have a badge number or identification number keyed in to the POS system for each transaction. Customer must be issued a receipt or sales slip for each transaction, which transaction must be recorded either on or serially numbered sales slip or digital record produced by POS. COUNTY should have the right during business hours to examine the totals of the POS (s) used in the Premises and to inspect for compliance with this section. COUNTY shall have the right to implement a revenue system that can provide daily reports to COUNTY. If COUNTY exercises such right, TENANT must, at its cost, purchase and install the necessary equipment, train its employees, and thereafter use, such equipment to take part in such system. TENANT shall ensure a capability within its mobile POS for the installation of Airport and Airport partner applications that can be integrated with TENANT's POS to exchange data and make possible for future opportunities to support passengers and airlines with vouchers coupons and other mutually beneficial Marketing Programs. Any sales captured from third party applications, TENANT branded applications, cell phone applications must be provided to the COUNTY as part of the monthly sales reporting.

L. <u>Other Reports and Submissions.</u> TENANT shall furnish to COUNTY such other financial or statistical reports as Director or designee from time to time or may reasonably require.

SECTION 4.07 PROVISION AGAINST SET-OFFS

It is the obligation of TENANT to pay all rents free of any set-offs or claims, in the amount and at the times specified in this Lease. In the event that TENANT desires to contest the validity or amount of any such rents and charges, TENANT shall first pay the same to COUNTY and may then seek a refund in any appropriate forum.

SECTION 4.08 SECURITY DEPOSIT

TENANT, no later than seven (7) days after Effective Date of this Lease, shall deposit with COUNTY a security deposit in the sum of four (4) times the estimated monthly rent as determined by Airport Director, or designee.

Concurrently with each revision of the rents pursuant to the Section in this Lease entitled "RENT", the security deposit to be provided by TENANT shall be adjusted to approximately four (4) times the estimated monthly rents as determined by Airport Director, or designee to guarantee the faithful performance by TENANT of its obligations under this Lease and the payment of all rents due hereunder.

The security deposit shall take one of the forms set out below and shall guarantee TENANT's full and faithful performance of all the terms, covenants, and conditions of this Lease:

- A. An instrument or instruments of credit from one or more financial institutions, subject to regulation by the State of California or Federal government, pledging that funds necessary to secure performance of the Lease terms, covenants, and conditions are on deposit and guaranteed for payment, and agreeing that said funds shall be trust funds securing TENANT's performance and that all or any part shall be paid to COUNTY, or order upon demand by Airport Director, or designee. Both the financial institution(s) and the form of the instrument(s) must be approved by Airport Director, or designee.
- B. A Faithful Performance Bond executed by a surety company or financial institution qualified and admitted to do business in the State of California and issued in a form, approved by the COUNTY. Under the bond, the surety company shall guarantee to COUNTY full and complete performance of all the terms, conditions and covenants herein to be performed on the part of the TENANT, including the payment of use fees as well as any and all other payments. Said bond shall be maintained at the cost of the TENANT throughout the existence of this Lease. Said Surety shall give Airport Director, or designee a minimum (30) days' prior written notice of cancellation or material change in said bond. Such cancellation or material change without Airport Director's, or designee prior written consent shall constitute a default under this Lease.

Regardless of the form in which TENANT elects to make said security deposit, all or any portion of the principal sum shall be available unconditionally to the COUNTY for correcting any default or breach of this Lease by TENANT, its successors or assigns, or for payment of expenses incurred by COUNTY as a result of the failure of TENANT, its successors or assigns, to faithfully perform all terms, covenants, and conditions of this Lease.

Should TENANT elect to provide either an Instrument of Credit or a Faithful Performance Bond to fulfill the security deposit requirements of this Lease, said instrument or bond shall have the effect of releasing depository or creditor therein from liability on account of the payment of any or all of the principal sum to COUNTY, or order upon demand by Airport Director, or designee.

In the event Airport Director, or designee withdraws all or any portion of the security deposit as provided herein, TENANT shall, within ten (10) days of any withdrawal by Airport Director, or designee, replenish the security deposit to maintain it at amounts herein required throughout the Lease term. Failure to do so shall be deemed a default and shall be grounds for immediate termination of this Lease.

TENANT shall be obligated to maintain the security deposit in effect until the Expiration Date of the Lease.

The security deposit, after deduction of all amounts due COUNTY, shall be rebated, reassigned, released or endorsed by the COUNTY to TENANT or order, as applicable, after one hundred twenty (120) days have elapsed following the expiration date of the Lease term, provided TENANT has fully and faithfully performed each and every term, covenant, and condition of this Lease.

SECTION 4.09 MARKETING FUND FEE

TENANT shall be required to contribute an annual Marketing Fund Fee in the amount of ten thousand dollars (\$10,000.00) on the Effective Date of the Lease, and thereafter the first (1st) of each succeeding calendar year. COUNTY has established a Marketing Fund for the Airport to conduct sales promotions, Airport wide advertising and related activities intended to promote the Airport and its TENANTs. TENANT agrees to pay this amount to the Marketing Fund and annually thereafter. All monies received by COUNTY under Section 4.09 shall be used solely for the purpose of Airport Tenant's promotions and related expenses.

SECTION 4.10 UTILITIES

TENANT shall pay the whole cost for all TENANT's utility usage. TENANT's utility usage will be invoiced to the TENANT by COUNTY. COUNTY shall make available in the Terminal the following utility services: reasonable amounts of water, electricity, telecom, sewage outlets, common area heating, ventilation, and air conditioning, stubbed out to leasehold. TENANT is responsible for all changes and alterations from and to the stubbed out location any such changes or alterations shall be at the sole cost of the TENANT.

ARTICLE V

USE, OPERATION, MAINTENANCE AND CONDITION OF LEASED PREMISES

SECTION 5.01 USE

TENANT's primary purpose for entering into this Lease is to promote the development of a Food and Beverage Concession on the Leased Premises.

- A. Required Services and Uses. TENANT shall have a nonexclusive right to develop, operate and manage a _______ concession within designated locations at the Airport. The concession rights granted herein shall be exclusive within the Leased Premises but non-exclusive at the Airport. TENANT agrees not to use the Leased Premises for any other purpose nor to engage in or permit any other activity by TENANT's employees, agents or contractors, within or from the Leased Premises. TENANT agrees not to conduct or permit its employees, agents or contractors to conduct any public or private nuisance in, on or from the Airport, or to commit or permit its employees, agents or contractors to commit any waste in, on or from the Airport. The Use is attached hereto and entitled EXHIBIT C.
- B. Optional Services and Uses. Subject to the prior written approval of the Airport Director, or designee, TENANT may be granted the option to provide those additional services and uses which are ancillary to and compatible with the required services and uses herein; subject to negotiation and approval of Airport Director, or designee.
- C. The above listed services and uses, are required and shall be the only services and uses permitted. TENANT agrees not to use the Leased Premises for any other purpose nor to engage in or permit any other activity within or from the Leased Premises. This prohibition includes, but is not limited to, sale or use of tobacco products, vending machines of any kind, stamps, insurance policies, or as decided by the Airport Director or designee.
- D. COUNTY reserves the right to engage in pouring rights agreement with a third party. TENANT shall be required to comply with any future agreements executed by Airport.
- E. Airport Director has the right to use TENANT's inventory of goods in an emergency situation to assist in maintaining the welfare of persons at or near the Airport. TENANT shall be reimbursed by COUNTY for the cost of goods as soon as practicable at a rate not to exceed prices immediately prior to the emergency.

In the event TENANT breaches this Lease by using or permitting the Leased Premises to be used in any manner other than as expressly permitted under this Lease, TENANT shall pay COUNTY a sum equal to 100% of the "gross receipts", as defined in the Section 4.03 (DEFINITION OF GROSS RECEIPTS) for any service or use that is not permitted by this Lease, or otherwise authorized in this Lease entitled. Said payment is subject to the "due date" provided in the

Section 4.04 (PAYMENT PROCEDURE) and the "charge for late payment" provided in the Section 4.05 (CHARGE FOR LATE PAYMENT). The existence of the 100% charge in this section, or the payment or receipt of money under this section, does not constitute an authorization for a particular service or use and does not constitute a waiver of COUNTY's right to require TENANT to terminate such service or use. The parties agree that COUNTY's actual damages, in the event of such a breach by TENANT would be extremely difficult or impossible to determine; therefore, an amount equal to the amount of 100% of such gross receipts has been agreed upon, after negotiation, as the parties' best estimate of COUNTY's reasonable damages.

COUNTY reserves the right to prohibit the sale of those items which, in the opinion of COUNTY, are not in the public interest; or which might compete unfairly with other Terminal concessions. TENANT also agrees not to conduct or permit to be conducted any public or private nuisance (as defined in C.C. 3479) in, on or from the Leased Premises, or to commit or permit to be committed any waste in, on or from the Leased Premises.

SECTION 5.02 RULES AND REGULATIONS

The COUNTY may adopt and enforce Rules and Regulations which TENANT agrees to observe and obey, with respect to the use of the Airport and its appurtenances, facilities, improvements, equipment and services; provided that such rules and regulations shall not be inconsistent with safety and with rules, regulations and orders of the FAA and TSA with respect to all operations of the Airport.

TENANT shall comply with all Airport Rules and Regulations and shall observe, obey, comply with and not otherwise hinder or obstruct any and all rules, regulations, laws, ordinances, statutes or orders of any governmental authority, whether Federal, State, or local, lawfully exercising authority over the Airport or the activities thereon, including compliance with FAA, TSA and Airport security rules, regulations and plans.

To the fullest extent authorized by law, TENANT shall be liable to COUNTY for any and all claims, demands, damages, fines or penalties of any nature whatsoever which may be imposed upon COUNTY due to TENANT's violation of any governmental rules, regulations or standards as now or may hereafter be promulgated or enacted, including, but not limited to, the payment of any fines or penalties for any breach of security, arising from the unauthorized entry of any person or vehicle onto Airport or from any other violations caused directly or indirectly by the act, omission, negligence, abuse or carelessness on the part of TENANT, its employees, subtenants, agents or suppliers.

COUNTY shall not be liable to TENANT for any diminution or deprivation of possession, or of its rights hereunder, on account of the exercise of such right or authority as in this section provided, nor shall TENANT be entitled to terminate the whole or any portion of the rights granted herein by reason of the exercise of such right or authority, unless the exercise thereof shall so interfere with TENANT's use and occupancy of the Leased Premises so as to constitute a termination in whole or in part of this Lease by operation of law in accordance with the laws of the State of California.

SECTION 5.03 OPERATIONAL REQUIREMENTS

TENANT shall operate the Food and Beverage concession in a competent and efficient manner in accordance with the terms of this Lease including the following:

- A. Manager. TENANT shall appoint a Manager to supervise TENANT's operations at the Airport. Such person must be an outstanding, highly qualified and experienced manager and be vested with full power and authority to accept service of all notices. They shall be vested with the authority to regulate the quality and prices of all menu items, and the appearance, conduct and demeanor of TENANT's employees. Said Manager shall be assigned to the Airport where he or she shall be available daily during peak travel periods and daily from 8:00 a.m. until 5:00 p.m., Monday through Friday, and where during their absence, a responsible subordinate shall be in charge and available during concession operating hours. Manager's subordinate shall be available by telephone and/or e-mail provided to the Airport Director, or designee, and should be available to arrive at the Airport within thirty minutes (30) of a being contacted to address any problems.
- B. <u>Personnel.</u> TENANT shall at all times maintain qualified and experienced personnel to supervise TENANT's concession and provide a high standard of service to passengers and other guests at the Airport. TENANT shall require its employees to be properly dressed, clean, courteous and neat in appearance at all times. TENANT's employees shall refrain from use of offensive language and/or act in an otherwise offensive manner.
- C. <u>Noninterference</u>. TENANT shall cooperate with and not interfere with COUNTY's and other TENANT's use of and operations at the Airport. TENANT shall not place any ropes, barricades and/or stanchions on the public or common use area without prior written approval of the Airport Director, or designee.
- D. <u>Deliveries</u>. TENANT shall have supplies of any nature or kind delivered only at times, and through routes and entrances, 11:00 pm to 6:00 am, seven (7) days a week, or as designated by Airport Director, or designee. TENANT shall not leave products, carts and inventory unattended in the concourses, hallways and other locations that will impede pedestrian traffic. TENANT shall utilize carts, shippers, hand trucks and dollies that were outfitted with pneumatic (air) or gel tires to move products or merchandise from storage to concession areas. Metal or hard rubber wheels or tires are prohibited.
- E. <u>Utilities</u>. TENANT shall be responsible for and pay, prior to the delinquency date, all charges for installation of dedicated phone lines and all charges for phone services to the Leased Premises. COUNTY shall only furnish an electrical supply line to the Leased Premises and water and a gas line to specified locations only as shown on Airport-approved construction drawings. TENANT shall be responsible for making all electrical, sewer, HVAC, gas and water connections to and within the Leased Premises, where applicable.

- F. Merchandise and Pricing. TENANT's merchandise plan and prices (Plan) shall be as TENANT has proposed and approved by COUNTY for each store location and is attached hereto as Exhibit E. During the Lease term, TENANT shall not make changes to the Plan without first obtaining the prior written approval of Airport Director, or designee. Price changes must be submitted at a minimum of two weeks in advance for Airport review.
- G. <u>Pricing.</u> TENANT's merchandise shall be consistent with all uses as provided under Section 5.01 (USE). Prices of said items shall not exceed one hundred ten percent (110%) of approved prices reasonably found in similar stores located in the Orange COUNTY Area. TENANT shall perform price surveys every year from the effective date of this Lease or at the request of the Airport Director, or designee. Price surveys shall include, prices from a minimum of three (3) local Food and Beverage establishments deemed similar to TENANT's operation, subject to Airport Director's or designee's review and approval. TENANT shall submit results to the COUNTY within thirty (30) of completion of the price survey. In the event that TENANT's prices have not been in compliance with the terms of this Lease, TENANT shall adjust prices accordingly within 48 hours of being notified by Airport Director, or designee.
- H. <u>Employee Parking Fee.</u> TENANT shall pay the monthly employee parking fee, subject to change, for employee vehicles parked in the employee parking lot.
- I. <u>Credit and Debit Cards.</u> Customers shall be permitted to utilize major credit and debit cards, and at a minimum, the following credit cards in payment for all sales: Visa, MasterCard, Discover and American Express.
- J. <u>Recycling</u>. TENANT agrees that when alternate forms of packaging are available, only items packaged in a manner most compatible with the Airport's goals of recycling, reducing litter and preserving the environment shall be sold. No Styrofoam packaging products will be sold. Sale of beverages in non-returnable cans, metal or glass containers are not permitted. TENANT shall participate in the Airport's waste reduction and recycling program as required and wherever possible. Receipts evidencing compliance with said programs shall be kept and made available for Airport review.
- K. Employee Hiring. TENANT warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Lease meet the citizenship or alien status requirement set forth in Federal statutes and regulations. TENANT shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. TENANT shall retain all such documentation for all covered employees for the period prescribed by the law. TENANT shall indemnify, defend with counsel approved in writing by COUNTY, and hold harmless, COUNTY, its agents, officers, and employees from

employer sanctions and any other liability which may be assessed against the TENANT or the COUNTY or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment or any persons performing work under this Lease.

- L. <u>Promotional Advertising.</u> TENANT may hold in-store promotions and is encouraged to creatively merchandise and display its products. All promotional advertising needs to be submitted and approved by the Airport Director, or designee. All promotions must be submitted to JWA at a minimum of two weeks advance for review. Displays that are considered objectionable by COUNTY shall be removed or objectionable features altered as necessary to be rendered unobjectionable by COUNTY, upon written notice by Airport Director, or designee.
- M. <u>Wireless Communications</u>. In the interests of public safety and the efficient operation of the Airport, COUNTY reserves the sole right to resolve any conflicts between or among any wireless communication devices or systems of the Airport TENANT, and any third party users at the Airport, and to require TENANT to change over to any future Airport-wide network once installed.
- N. <u>Interference with Systems.</u> TENANT shall not interfere with the effectiveness of utility, heating, ventilating or air-conditioning systems or portions thereof on or adjoining the Leased Premises (including lines, pipes, wires, conduits and equipment connected with or appurtenant thereto) or interfere with effectiveness of elevators or escalators in or adjoining the concession premises, or overload any floor in the concession premises.
- O. <u>Smoking Prohibited.</u> TENANT shall not do anything contrary to COUNTY's ordinance, prohibiting smoking. Said ordinance prohibits smoking in the terminal building, including all food and beverage areas.
- P. <u>Unauthorized Locks.</u> TENANT shall not place any additional lock of any kind upon any window or interior or exterior door in the Leased Premises, or make any change in any existing door or window lock or the mechanism thereof, unless a key therefore is maintained on the Leased Premises, nor refuse, upon the expiration or sooner termination of this Lease, to surrender to Airport Director, or designee any and all keys to the interior or exterior doors on the Leased Premises, whether said keys were furnished to or otherwise procured by TENANT, and in the event of the loss of any keys furnished by Airport Director, or designee TENANT shall pay COUNTY, on demand, the cost for replacement thereof, and the cost of re-keying COUNTY's locks. TENANT may be required to comply with Airport security measures that consist of changing of key locks to badge controlled electronic locks and shall bare the cost associated with any change over.
- Q. <u>Standards of Quality</u> TENANT shall establish and submit a Standards of Quality Operating Manual to JWA for review and approval. TENANT must maintain the approved standards offering quality service and food.

R Standards of Service. The management, maintenance and operation of the Food and Beverage Concession shall be under the supervision and direction of a qualified, experienced person or persons who shall be authorized to act on behalf of TENANT. TENANT will assign a representative to service the Food and Beverage Concession location(s). Maintenance must be available seven (7) days per a week and repairs shall be made within two (2) hours of notification. TENANT agrees that the maintenance service thereto shall take place, whenever possible, during hours of minimum passenger activity, at such hours and using such entrances and routes as approved by the Airport Director, or designee TENANT shall cooperate with and not interfere with COUNTY's and other TENANTs' use of and operations at the Airport.

SECTION 5.04 AIRPORT SECURITY

In addition to FAA, TSA and Airport security rules, regulations and plans, shall comply with all security requirements of the United States Customs and Border Protection (USCBP), and all applicable federal, state and local regulations regarding airport security. TENANT is responsible for fines imposed by any regulatory agency as a result of TENANT's failure to comply with applicable rules and regulations regarding airport security.

TENANT shall be required to obtain airport security clearance in order to perform work under this License. TENANT, its employees and contractors must complete a background clearance Security Identification Display Area (SIDA) class in order to obtain an I.D. badge for access to secure areas and a driver's permit to drive on the airfield.

A. Badge Acquisition

Prior to issuance of a security badge(s), designated TENANT personnel who will be working onsite, and engaged in the performance of work under this License, must pass Airport's screening requirements, which includes an F.B.I. Criminal History Records Check and a Security Threat Assessment, and shall pay any applicable fees. Upon successful completion of the background checks, TENANT designated personnel will be required to attend a 3-hour SIDA class and pass a written test. Those personnel who may be permitted by the Airport to drive on the Airport Operations Area (AOA) perimeter road must also complete a Driver's Training class and written test. Airport identification badges are not issued until designated TENANT personnel have: appropriate application forms and submitted proof of identity and employment eligibility, 2) passed both background checks, 3) completed and passed appropriate classroom training and 4) paid an identification badge fee for each badged person. TENANT should anticipate a minimum of five (5) business days to complete the security badge process if all requirements listed above are fulfilled by individual badge applicants in a timely TENANT's designated personnel must successfully complete the badge acquisition process, unless other arrangements have been approved by the Airport. TENANT shall be responsible for all applicable fees and costs associated with the background checks and badging process. The amount of such fees is subject to change without notice.

B. Badge Holder Requirements and Responsibilities

The Airport Security Plan (ASP) requires that each person issued an Airport security badge be made aware of his responsibilities regarding the privilege of access to restricted areas of the Airport.

TENANT and all TENANT personnel within an access controlled area (AOA, SIDA, secured area or sterile area) area required to display on their person an Airport security badge, unless they are escorted by a properly badged individual. When working in a secure area, each badged person is responsible for challenging any individual who is not properly displaying an Airport issued or approved and valid I.D. badge. Any person who is not properly displaying or who cannot produce a valid Airport security badge must immediately be referred to the Sheriff's Department – Airport Police Services Office for proper handling.

The Airport security badge is the property of the COUNTY of Orange and must be returned upon termination of TENANT personnel employment and/or termination of the License. The loss of a badge shall be reported within 24 hours to the Sheriff's Department—Airport Police Services by calling (949) 252-5000. TENANT or TENANT personnel who lose their badges shall be required to pay a fee before receiving a replacement badge. The charge for lost badge replacement will be posted in the Airport Administration Office and is subject to change without notice. A report shall be made before a replacement badge will be issued.

The Airport security badge is nontransferable.

In the event that TENANT's badge is not returned to the Airport upon termination of TENANT personnel employment and/or termination of the License, the TENANT and/or TENANT personnel shall be liable to the COUNTY of Orange for a fine in the amount of \$250.00 per unreturned badge. The amount of the fine is subject to change without notice. TENANT's security deposit may be applied to cover the cost of the fine.

SECTION 5.05 ANTI-IDLING POLICY

Within six months of LEASE execution, LESSEE must develop, implement and submit to the Airport Director or designee for approval a fleet-wide anti-idling policy. At a minimum, the anti-idling policy shall include the requirement that vehicle engines shall be turned off when vehicles are not occupied, and that occupied vehicles be turned off after no more than a five-minute idling period. LESSEE's policy shall also include all subTENANT and third party vehicles that enter Airport property at the direction of the LESSEE.

SECTION 5.06 MAINTENANCE OF LEASED PREMISES

TENANT, at its own cost and expense, shall maintain and repair, replace or refinish all improvements and installations of any kind. TENANT agrees to maintain the Leased Premises in a safe, clean, wholesome, sanitary condition and in compliance with all applicable laws. It shall be the TENANT's responsibility to make all necessary repairs required to maintain the Leased Premises and improvements in good condition. All repairs and improvements made by the TENANT to the Leased Premises shall be in compliance with all current Federal, State, Local Ordinances and Building Codes and all Airport Regulations (Codes), TENANT shall be in compliance with the JWA TENANT Design Guidelines and JWA Construction Manual. The Codes encompass all fire, life and structural safety aspects and apply to the construction, alteration, moving, demolition, repair and use of the Leased Premises. Any additions, alterations, repairs and changes of use or occupancy in the Leased Premises shall comply with the provisions for new buildings and structures as set forth in the Codes. All devices or safeguards which are required by the Codes shall be maintained in conformance with the edition of the Codes under which it was installed.

- A. Equipment and Improvements. TENANT shall maintain all equipment and improvements located within the Leased Premises including but not limited to, trade fixtures, wiring, and software and communications equipment in good condition. TENANT agrees that all repairs will be conducted within two (2) hours of notification by Airport Director, or designee unless a longer period of time is approved by the Airport Director, or designee.
- B. <u>Removal of Equipment or Improvements.</u> During the term of this Lease, TENANT shall not remove any improvements and/or furnishings, trade fixtures, and equipment without the prior written consent of the Airport Director, or designee.
- C. <u>Access.</u> TENANT shall make key access available to Airport Director, or designee at all locations or within the Leased Premises for emergency access. Failure to provide key access to Airport Director or designee may result in unreimbursed door damage to TENANT resulting from measures used to enter the Leased Premises during an emergency.
- D. <u>Release of Hazardous Substances</u>. TENANT shall immediately notify the Airport Police Services Control Center of any fire, emergency, accident or reportable spill or release of fuel or Hazardous Substances. Reportable spills or releases are those that require notification to a government entity by any fire code or Environmental law as defined herein in Section 6.01.
- E. <u>Spills and Trash Disposal.</u> TENANT shall be responsible for cleaning and providing maintenance services on a regular basis to the Leased Premises. Cleaning by TENANT shall include collection of any concession-generated trash and cleanup of spills in the area immediately adjacent to the Leased Premises' entrances and exits. TENANT shall comply with any green waste or recycling programs implemented by the Airport.

TENANT shall not dispose of any concession-generated trash in trash receptacles provided for the traveling public's convenience in the Terminal and shall only use trash dumpster locations designated by the Airport. Airport Director, or designee shall have the right to enter upon and inspect the Leased Premises at any time for cleanliness, safety and maintenance inspections.

- F. <u>Trash Receptacles.</u> TENANT, whether within the Leased Premises or while moving through the terminal, shall use leak-proof containers. Any containers with wheels shall have wheels that are composed of non-skid materials that will not make noise nor leave marks on the terminal floors.
- G. Repairs. TENANT's on-site manager shall be responsible for the day-to-day operation and level of maintenance, cleanliness and general order. If TENANT fails to maintain or make repairs or replacements as required herein, Airport Director, or designee shall notify or attempt to notify the TENANT in writing of said failure. Should TENANT fail to correct the failure within the time specified in the notice, Airport Director, or designee may make the necessary correction or cause it to be made and the cost thereof, including but not limited to the cost of labor, materials and equipment shall be charged to TENANT. Thereafter, an administrative fee equal to fifteen percent (15%) of the sum of such items shall be paid by TENANT within thirty (30) days of receipt of a statement of said cost from Airport Director, or designee. Airport Director, or designee may, at Director's option, choose other remedies available herein, or as provided by law.
- H. Maintenance of Heating, Ventilation and Air Conditioning (HVAC) Systems. TENANT shall be responsible for maintaining TENANT-installed HVAC system from the Leased Premises to the point that the system connects to the Terminal's supply air duct. TENANT shall be responsible for providing its own space temperature controls within inline store locations within the Leased Premises.
- I. Pest Control. TENANT shall be solely responsible for a pest free environment within the Leased Premises area by maintaining its own pest control services, in accordance with the most modern and effective control procedures. All materials used in pest control shall conform to Federal, State and local laws and ordinances. All control substances utilized shall be used with all precautions to obviate the possibility of accidents to humans, domestic animals and pets. Pests referenced above include, but are not limited to, cockroaches, ants, rodents, silverfish, earwigs, spiders, weevils, and crickets. Whenever COUNTY deems that pest control services must be provided to a building or area that includes the Leased Premises under this Lease, TENANT shall pay for the costs of said services.
- J. <u>Waiver of Claims</u>. TENANT expressly waives any and all claims against the COUNTY for compensation for any and all loss or damage to TENANT's property sustained by reason of any defect, deficiency or impairment of any water supply system, drainage or sewer system, gas supply system, telephone system, electrical

- supply system or electrical apparatus or wires serving the Leased Premises, except to the extent caused by the COUNTY's negligence or willful misconduct.
- K. <u>Monthly Maintenance Reports.</u> All canopies, filters, hoods, grease interceptors, duct work, and signage must be cleaned on a regular monthly maintenance schedule and the monthly maintenance schedule must be provided to the Airport Director, or designee and approved by the Airport Director, or designee. All monthly maintenance reports must be maintained and submitted to Airport Director, or designee upon request.

SECTION 5.07 NONCOMPLIANCE FEES

COUNTY desires to provide the traveling public with courteous and professional service. The following requirements are among those that relate directly to the quality of the service that COUNTY expects to be provided to the public. TENANT agrees that less than full performance of the following requirements denigrates the quality of the service, is in violation of this Agreement, and that the following fees are a reasonable approximation of COUNTY's actual damages for such violation. COUNTY will notify TENANT within forty-five (45) days following the date of each violation if noncompliance fee for each violation will be imposed. Airport Director, or designee shall make the final determination as to the imposition of noncompliance fees. Failure to impose violation fees for a particular violation shall not bar COUNTY from imposing violation fees for subsequent violations of the same nature. The availability of violation fees shall not bar COUNTY from exercising other remedies, including termination. COUNTY will invoice TENANT for violation fees that are assessed and payment of the invoice is due upon receipt by TENANT. Violation fees will be in addition to rent.

If TENANT or its sub-TENANTs fail to keep, observe, or perform any of the covenants or terms and conditions required herein, the COUNTY shall impose Violation Fees as set forth below, as a result of such violation(s), accrued on a daily basis, in addition to any other fees permissible by law and/or pursuant to the provisions of this Agreement, until said violations are remedied:

Violation Fee

Violation of Permitted Use of a Location	\$250.00 per day/per location
Failure to Maintain Required Hours of Operation	\$100.00 per incident
Failure to Submit Required Documents and Reports	\$250.00 per day
Failure to comply with Reset Policy	\$250.00 per day
Failure to Submit Audited Financials	\$5,000.00 per incident
Unauthorized Discounts	\$250.00 per day
Failure to Maintain Clean Location(s)	\$100.00 per day/per location
Failure to Maintain Street Pricing plus 10%	\$250.00 per day/per location
Installation of unapproved Fixtures in Location(s)	\$250.00 per day/per location
Failure to keep less than 10 people in per register per line	\$100.00 per day/per location
Failure to utilize all point of sale units to process payment	\$100.00 per day/per location
Failure to comply with delivery schedule	\$100.00 each incident
Failure to provide documentation maintenance reports	\$100.00 per day/per location
Failure to timely submit required ACDBE reports	\$250.00 per day

Violation of audio music guidelines

Failure to keep product/merchandise as indicated on menu

Failure to deliver required post-construction documentation

Failure to provide service during operating hours

Failure to remove offensive material within 1 hour of notice

Failure to comply with Pricing Policy

Failure to complete pricing survey or submit approval on time

Failure to comply with JWA Wayfinding Program

Failure to open to public within 90 days from Notice to Proceed

Failure to submit mid-term refurbishment plans Failure to submit audited financial statements

Failure to comply with Wayfinding Program

\$100.00 per day/per location

\$100.00 per day/per location

\$1,000.00 per day

\$100.00 per day/per location

\$100.00 per incident \$100.00 per day

\$100.00 per day

\$250.00 per day/per location

\$2,000.00 per day \$2,000.00 per day

\$5,000.00

\$250.00 per day

Airport Director, or designee may notify the TENANT in writing of other violations and may determine a fee in writing to TENANT.

ARTICLE VI

ENVIRONMENTAL, SAFETY, AND INDEMNIFICATION

SECTION 6.01 ENVIRONMENTAL STEWARDSHIP

LESSEE shall support the LESSOR's Environmental Stewardship program by complying with Airport's TENANT Guidelines.

HAZARDOUS MATERIALS AND ENVIRONMENTAL SECTION 6.02 **COMPLIANCE**

LESSEE shall comply with all Environmental Laws, including laws regulating Hazardous Materials, and shall not engage in any activity on or about the Airport that violates any Environmental Law. In conducting its operations and maintenance on the Airport under this Lease, LESSEE shall comply with such regulations regarding the storage, distribution, processing, handling, release, removal, and/or disposal, including the storm water discharge requirements, of Hazardous Materials including, but not limited to, gasoline, aviation fuel, jet fuel, diesel fuel, lubricants and/or solvents, whether the obligation for such compliance is placed on the owner of the land, owner of the improvements or user of the improvements. Violation by LESSEE or any of its agents, assigns, successors, sublessees, subcontractors, or employees of any Environmental Law are grounds for immediate termination of this Lease and for immediate termination of all operations by LESSEE at or on the Airport.

Notwithstanding the liability of prior TENANTs of the Leased Premises, LESSEE shall at its sole cost and expense investigate, evaluate, assess, remove, and/or remediate any and all Hazardous Materials that may be required or ordered by any governmental agency or Environmental Law. In conducting a clean-up of a Hazardous Material release under this Lease,

LESSEE shall comply with all applicable Environmental Laws. LESSEE shall not use the COUNTY hazardous waste generator ID for waste disposal.

SECTION 6.03 GENERAL HEALTH AND SAFETY CONDITIONS

Precaution shall be exercised at all times by LESSEE for the health, safety, and welfare of persons, including employees and property. The safety provisions of applicable laws and building and construction codes shall be observed. Work, materials, and equipment used shall comply with the Occupational Safety & Health Administration (OSHA) requirements including but not limited to OSHA Hazard Communication Standard 29 CFR 1910.1200, and federal and state safety orders.

LESSEE shall comply with all material usage limitation, permit record keeping, and reporting requirements imposed by federal, state and local laws and regulations. LESSEE shall properly post Manufacturer's Safety Data Sheets as required by law and shall use and dispose of all materials in conformance with all applicable codes, rules, regulations and manufacturer's recommendations.

LESSEE shall submit to the COUNTY's Airport Environmental Resources Manager, annually on December 31, a report on compliance with and the status of all required permits including, but not limited to, Fire, OSHA, Air Quality Management, and Health Care Agency. The report must summarize all spills, leaks or permit violations for the previous year. The annual report must also contain copies of all reports and annual testing reports (such as fuel tank tightness testing) sent to any regulatory agency and documentation of required maintenance and inspection of fire and safety fixtures and equipment and an updated inventory of all Hazardous Materials used or stored on site.

LESSEE shall provide all notices required pursuant to the Environmental Laws. LESSEE shall provide prompt written notice to COUNTY within five (5) days of receipt of all written notices of violation of any Environmental Law received by LESSEE.

SECTION 6.04 ENVIRONMENTAL INDEMNIFICATION

To the fullest extent authorized by law, the TENANT shall indemnify, defend, and hold harmless the COUNTY, its officers, directors, agents, and employees, for compliance with all Environmental Laws, from and against any and all Environmental Law claims, judgments, damages, penalties, actions, fines, costs, liabilities, losses, orders, expenses, and lawsuits (including fees and costs for attorneys, experts, and expert consultants) arising from the Leased Premises, and/or out of or related to any actions or omissions of TENANT, the TENANT 's operations at the Airport or any action arising from and which involve the TENANT 's officers, agents, successors, assigns, sublessees, subcontractors, and employees (whether or not they are negligent, intentional, willful or unlawful), including defense expenses arising therefrom, including, but not limited to the following:

- (1) The LESS's placement, disposal, allowing, or releasing of Hazardous Materials upon or within the Airport including any such claims, demands, liabilities, cost, expenses, and/or obligations related to LESSEE's release or threatened release of Hazardous Materials on, at, and/or under the Airport.
- (2) The LESSEE's release or threatened release of Hazardous Materials at, on, under, and/or remaining from the Airport.
- (3) The LESSEE's compliance with any Environmental Law, except that LESSEE's obligations under this paragraph shall not extend to remediation conditions that arise from operations of third parties that are not affiliated with LESSEE that take place off of the Airport. A party shall be deemed to be affiliated with LESSEE if it is an employee, officer, director, agent, sublessee, assignee, contractor or subcontractor of LESSEE or if it is controlled by or under common control with LESSEE.
- (4) The LESSEE's causing or allowing any prohibited discharge into the Airport Drainage System.

This indemnification includes, without limitation, reasonable fees/costs/expenses for attorneys, experts, expert consultants, and all other costs incurred by COUNTY in connection with any investigation, evaluation, assessment, and/or monitoring of the environmental conditions at the Leased Premises or any cleanup, remedial, removal, and/or restoration work required by any federal, state or local governmental entity because of any Hazardous Materials being present in the soil, surface water, or groundwater at, on, under, or about the Airport. However, LESSEE's indemnity obligation shall not apply in the event of any claims for any loss, damage or expense arising from the sole or active negligence or willful misconduct of COUNTY or agents, servants or independent contractors who are directly responsible to COUNTY.

In the event the indemnitees as described herein are parties in any proceeding (legal, administrative, or otherwise), the LESSEE shall, at the request of the COUNTY, defend the indemnitees with qualified counsel that the COUNTY determines, in its sole and absolute discretion, is acceptable to the COUNTY, unless the COUNTY, in its sole and absolute discretion, undertakes legal representation, in which event the LESSEE shall reimburse the COUNTY for the expenses incurred by it in defending such proceeding, including reasonable attorneys' fees, expert and consultant's fees, and investigative and court costs.

In the event that any monetary sum is awarded against the COUNTY and the LESSEE because of the concurrent negligence of the COUNTY and the LESSEE or their respective officers, directors, successors, assigns, subcontractors, sublessees, or employees, an apportionment of liability to pay such award shall be made by a court of competent jurisdiction. Both the COUNTY and the LESSEE agree that neither party shall request a jury apportionment. Nothing stated in this Lease and in this indemnity obligation shall be construed as authorizing any award of attorney's fees in any action to enforce the terms of this Lease.

The rights and obligations set forth in this indemnification shall survive the termination and/or expiration of this Lease.

SECTION 6.05 CONFLICT WITH ENVIRONMENTAL LAW PROVISIONS

In the event that any of the terms of the environmental requirements codified in this Article conflict with any other terms of this Lease, the environmental requirements contained in Article VI shall apply.

ARTICLE VII

CONSTRUCTION AND IMPROVEMENTS

SECTION 7.01 CONSTRUCTION AND/OR ALTERATION BY COUNTY

The COUNTY may alter, repair, maintain, remodel, expand, remove or improve any of the facilities at the Airport or any of its appurtenances.

In addition, the COUNTY may reassign or relocate TENANT's Leased Premises. COUNTY shall provide TENANT advance notice of such action and shall attempt to provide alternative space that is reasonably comparable for TENANT's operations at the same rates and charges which TENANT would have paid for the space being surrendered. In the event no alternative space is available, TENANT shall surrender its space promptly to COUNTY, provided that TENANT shall be reimbursed for the reasonable cost of any such reassignment, reallocation or relocation and the cost of TENANT's unamortized investment, if any, as documented by TENANT to the satisfaction of the COUNTY and mutually agreed to by Airport Director, or designee and TENANT. All of such costs, as well as COUNTY's cost of providing the alternative space aforementioned, shall be included in the cost of the particular Capital Project requiring such reassignment, reallocation or relocation.

SECTION 7.02 CONSTRUCTION AND/OR ALTERATION BY TENANT

TENANT shall not perform any construction upon the Leased Premises nor shall TENANT modify, alter or remove any permanent improvements lying within the Leased Premises without prior written approval of COUNTY. Any construction, modifications, alterations or removal of any permanent improvements by TENANT shall be at the TENANT's expense.

A. <u>Design and Construction</u>. TENANT shall cause to be designed, constructed, and installed within the Leased Premises, at no cost to COUNTY, appropriate improvements to adequately accommodate those services and uses, both required and any other optional services and uses approved pursuant to the section in this Lease entitled "USE". TENANT must comply with the JWA TENANT Design Guidelines Manual and JWA TENANT Construction Manual as may be amended from time to time.

The improvement plans prepared by TENANT and approved by Airport Director, or designee prior to the execution of this Lease shall be a plan for development of the Leased Premises or portions thereof, and the working drawings prepared by TENANT and approved by Airport Director, or designee during the same period shall be the plan, specifications, and time schedule for TENANT's initial construction on the Leased Premises. Weekly scheduled meetings with TENANT representative, contractor, design team, and JWA staff must be held during any construction improvements or projects. Updated Microsoft Project schedule and safety meeting updates must be provided to JWA at each scheduled meeting or upon request of JWA staff. All design and construction shall conform with the plans approved by Airport Director, or designee and with the construction and architectural standards contained in Exhibit D which is attached hereto and by reference made a part hereof.

In the event TENANT fails to open the concession facility on its Leased Premises for business on or before the Rent Commencement Date, COUNTY will incur substantial damages, the exact amount of which are extremely difficult to fix. Accordingly, for each day after the Rent Commencement Date until the day on which TENANT opens the concession facility for business, TENANT shall pay County \$2,000.00 (in addition to Rent as provided below), as penalty fees. The parties have agreed that his amount represents a reasonable approximation of the damages likely to be suffered by the County in the event TENANT fails to open on or before the Rent Commencement Date. In the event TENANT fails to open after one-hundred twenty (120) days from the date issued on the Notice to Proceed from Airport Director, or designee County may have the option to terminate this Lease.

B. Compliance with Plans and Construction Standards. All improvements constructed by TENANT within the Leased Premises shall be constructed in strict compliance with detailed plans and specifications approved by Airport Director, or designee. All construction shall be conducted in a good and workmanlike manner and shall conform to applicable building codes, rules, regulations and Airport's architectural standards as contained in reference document "John Wayne Airport, Architect and Engineer Guide" and reference document "JWA TENANT Construction Manual" which can be provided by Airport upon request. TENANT is responsible to review and comply with the JWA TENANT Design Guidelines and JWA Construction manual. All work shall be done in conformity with Airport approved plans, valid building and other necessary permits and shall be acceptable to COUNTY and the appropriate governmental entity inspecting such work. TENANT shall be responsible for filing Form 7460 for any construction and/or height of construction equipment with the FAA, if required.

All improvements constructed by TENANT, including the plans and specifications therefor, shall conform in all respects to the Airport approved plans, applicable statutes, ordinances, building codes, JWA TENANT Design Guidelines, JWA Construction Manual, rules and regulations of the COUNTY and such other governmental authority as may have jurisdiction, and shall be acceptable to COUNTY and the appropriate governmental entity inspecting such work. Airport Director's or designee's approval

shall not constitute a representation or warranty as to such conformity, which shall remain TENANT's responsibility. TENANT shall have the responsibility to obtain all required permits and to investigate and pay for any and all fees, including but not limited to Transportation Corridor Agency fees, if applicable, necessary for such construction. Construction by TENANT, its contractors and subcontractors, shall be coordinated with and under the direct supervision of COUNTY and shall be completed within ninety (90) days from the issuance of JWA Notice to Proceed to TENANT. (In the event TENANT fails to complete installation of improvements in a timely manner, the parties agree that COUNTY's actual damages would be extremely difficult or impossible to determine; therefore, the parties agree that the best estimate of the COUNTY's actual damages assessed to the TENANT is sum of Two Thousand Dollars (\$2,000.00) per day until installation has been completed to the satisfaction of COUNTY.. This amount shall be in addition to all other sums due under this Lease.

- C. Consent Required From COUNTY. No structures, improvements, or facilities shall be constructed, erected, altered, removed or made within the Leased Premises without prior written consent of COUNTY, which consent may be withheld or conditioned in COUNTY's discretion. Minor repairs, replacement and maintenance proposed for the Leased Premises, the cost of which does not exceed one hundred twenty-five thousand dollars (\$125,000) annually, shall be approved by Airport Director, or designee. With the exception of mid-term refurbishments, all other structures, improvements, facilities, repairs, replacement, removal and maintenance items shall be approved by the Board of Supervisors.
- D. <u>Insurance Requirements</u>. TENANT shall obtain comprehensive public liability insurance during construction. If the construction is done by an independent contractor, insurance shall be procured by the contractor in the name of the TENANT and the COUNTY. All insurance shall be in the limits and coverages acceptable to COUNTY's Risk Management Services.
- E. <u>Indemnification during Construction</u>. To the fullest extent authorized by law, TENANT shall indemnify, defend, and hold harmless the COUNTY, its officers, and employees, from and against any and all claims, judgments, damages, penalties, fines, costs, orders, and lawsuits, arising out of the TENANT's construction or alteration of the Leased Premises at John Wayne Airport, including the cost of defense arising therefrom. The TENANT's indemnity obligations stated hereinabove also apply to those actions arising from and which involve the TENANT's officers, agents, subcontractors, and employees.
- F. <u>Noninterference</u>. TENANT warrants that it or its contractor shall in no way delay, cause delays to or interfere with any Airport operations or other contractors working in the terminal or on the Airport. TENANT agrees to hold COUNTY harmless from the cost of any time lost by COUNTY or any damages to COUNTY due to the actions or failure to act of TENANT or its contractor.

- G. <u>Trailers and Modular Structures</u>. All improvements constructed by TENANT shall be of a permanent nature. Trailers and modular buildings are prohibited on the Leased Premises. This provision shall not apply to the use of COUNTY approved temporary modular or trailers during construction. Upon completion of construction, all trailers or modular must be immediately removed from the Leased Premises.
- H. <u>TENANT's Cost and Expense</u>. All renovation or construction by TENANT pursuant to this Section shall be at TENANT's sole cost and expense. TENANT shall keep its existing or future Leased Premises and the improvements constructed thereon free and clear of all liens and shall pay all costs for labor and material arising out of such construction and shall hold COUNTY harmless from any liability in respect thereto. TENANT shall have the right to contest any and all liens filed against its existing or future exclusive use area. TENANT further agrees that COUNTY shall have the right to post notices of non-responsibility as provided by Sections 3094 and 3129 of the CIVIL CODE of the State of California.
- I. Ownership of Improvements. All improvements and facilities, exclusive of trade fixtures, constructed or placed within the Leased Premises by TENANT must, upon completion, be free and clear of all liens, claims, or liability for labor or material and at COUNTY's option shall become the property of COUNTY at the expiration of this Lease or upon earlier termination hereof. COUNTY retains the right to require TENANT, at TENANT's cost, to remove any or all improvements located within the Leased Premises at the expiration or termination hereof.
- K. <u>Satellite Antenna Dish.</u> For purposes of this Lease, satellite antenna dishes or antennae that may be installed by TENANT on the roof of the Terminal or any location outside the Leased Premises shall be considered a TENANT improvement. Type and design of antenna, location, TENANT identification, method of installation, and cable path shall be subject to review and approval by Airport Director. COUNTY retains the right to require TENANT, at TENANT's cost, to remove any antenna installed by TENANT. Airport Director shall have the right to use TENANT's security deposit to cover the cost of removal of said antenna should TENANT fail to do so at the expiration or termination of this Lease.

SECTION 7.03 MID-TERM REFURBISHMENT

Sixty (60) months after the Rent Commencement Date of the Lease, TENANT shall be required to make a reinvestment in the amount equal to 50% of its initial investment TENANT stated in its approved construction certification of costs, subject to Airport Director, or designee approval,

for the purpose of refurbishing the store facilities. Said refurbishing shall include, but shall not be limited to, refinishing, repair, replacement, redecorating and painting necessary to keep said facilities in first class condition.

TENANT shall complete the Concession Midterm Refurbishment, as approved by the Airport Director, or designee within one-hundred eighty (180) days from the sixty (60) month Rent Commencement Date. Failure to complete the refurbishment by said date shall be cause for termination of the Lease, and/or at the direction of the Airport Director, or designee the sum of Two Thousand Dollars (\$2,000.00) per day until the Concession Midterm Refurbishment has been completed to the satisfaction of the COUNTY. This amount shall be in addition to all other sums due under this Lease.

TENANT shall be required to submit plans for the Concession Midterm Refurbishment at least one hundred eighty (180) days prior to the sixty (60) month Rent Commencement Date. The plans and specifications shall be certified by an architect or engineer and shall consist of (a) working drawings (b) technical specifications and (c) proposed equipment upgrades or changes. If TENANT fails to submit plans for the Concession Midterm Refurbishment by said date TENANT shall pay \$2,000.00 per day until plans are received in addition to all other sums due under the lease.

Within sixty (60) calendar days following the completion of the Concession Midterm Refurbishment to the satisfaction of the Airport Director, or designee TENANT must provide certified documentation of all the capital investment actually expended in the design and installation of the Concession Midterm Refurbishment, together with "as-built" plans/records drawings as required elsewhere in this Lease. When documenting each refurbishment minimum investment required by this Lease, architectural and engineering charges not exceeding 15% of the total investment may be included. Construction costs shall not include indirect costs such as financing costs, holding costs, legal fees, interest, administrative and overhead expenses, internal design, review, management and oversight of construction on Leased Premises, TENANT's licensing or franchising costs, bond premiums or developer fees.

In the event of a shortfall between said Concession Midterm Refurbishment amount and TENANT's actual investment cost, TENANT shall pay to COUNTY an amount equal to the shortfall, as of one hundred eighty (180) days after the date of the completion of the Concession Midterm Refurbishment, and said payment shall be due and payable within thirty (30) days. The amount spent for refurbishment shall be exclusive of any amount spent for normal repair and maintenance as determined at the sole discretion of Airport Director, or designee.

SECTION 7.04 CERTIFICATION OF CONSTRUCTION EXPENDITURES

TENANT shall provide COUNTY with certified receipts and lien releases for the initial capital improvements and mid-term refurbishment to the Leased Premises required hereunder within ninety (90) days after the completion thereof in a form acceptable to the COUNTY to enable COUNTY to verify compliance with the terms of this Lease. In the event that such certified receipts indicate that costs incurred with respect to the initial capital improvements or mid-term

renovations required hereunder are less than required under the terms and provisions of this Lease, TENANT shall pay to COUNTY one hundred ten percent (110%) of the difference between the amount required to be spent and the costs actually incurred by TENANT as indicated by such certified receipts. If COUNTY disputes the amount of costs claimed by TENANT, COUNTY may utilize its own audit and accounting staff or, at its option and expense, hire a certified public accountant to audit the costs actually incurred by TENANT with respect to such Leased Premises. If it is determined that the costs actually incurred by TENANT with respect to SAID Leased Premises are less than the minimum required hereunder, then TENANT shall pay, in addition to the other amounts due hereunder, the cost of conducting such audit to COUNTY within thirty (30) days of the determination.

SECTION 7.05 TENANT REIMBURSEMENT

In the event COUNTY should require the Leased Premises, or any portion thereof, for any Airport purpose and removes any portion of TENANT's Leased Premises from this Lease or terminates the Lease under the provisions of this Section, COUNTY shall reimburse TENANT for improvements completed during the term of this Lease to the Leased Premises as follows:

Compensation for improvements located on the Leased Premises shall be calculated by means of the following formula:

COMPENSATION = A x
$$\frac{B}{C}$$

- A = TENANT's actual Leased Premises improvement construction costs submitted in accordance with the Section in this Lease entitled "'RECORD DRAWINGS' AND CONSTRUCTION COSTS".
- B = Number of full months remaining in the Lease term.
- C = Number of full months between the date TENANT completed construction of Leased Premises improvements and the date the Lease would expire by its terms if COUNTY did not exercise its right to early termination.

TENANT shall submit to COUNTY within sixty (60) days of completion of construction of any Leased Premises improvement, notifications of completion of construction and submit detailed supporting documentation of construction costs together with "as-built" plans as required elsewhere in this Lease. TENANT acknowledges and agrees if TENANT fails to submit notifications and supporting documentation for any such Leased Premises improvements in a timely manner, TENANT waives its right to compensation for such improvements.

SECTION 7.06 EXCLUSIVE REMEDY

The compensation provided pursuant to Section 7.05 "TENANT REIMBURSEMENT" shall be TENANT's sole and exclusive remedy and form of compensation, costs or damages, including but not limited to, the eminent domain law and inverse condemnation (CALIFORNIA CODE OF

CIVIL PROCEDURE §§1230.010, et seq.), and Relocation Assistance benefits (CALIFORNIA GOVERNMENT CODE §§7260, et seq.), due to termination, re-entry or acquisition of the Leased Premises by COUNTY.

TENANT agrees that exercise by COUNTY of its termination rights hereunder shall not be construed as a taking by COUNTY of any part of the Leased Premises, nor of TENANT's rights under this Lease, nor shall TENANT, except as provided herein, be entitled to payment for any loss of goodwill, income, moving expenses or other amount because of partial or full termination of this Lease.

SECTION 7.07 TENANT'S ASSURANCE OF CONSTRUCTION COMPLETION

Prior to commencement of construction of approved facilities TENANT shall furnish to COUNTY evidence that assures COUNTY that sufficient monies will be available to TENANT and COUNTY to complete the proposed construction. The amount of money available shall be at least the total estimated construction cost. Such evidence may take one of the following forms:

- A. Completion Bond issued to COUNTY/JWA as oblige.
- B. Irrevocable letter of credit issued to COUNTY/JWA that will remain in effect until COUNTY acknowledges satisfactory completion of construction.
- C. Cash
- D. Any combination of the above.

All bonds and letters of credit must be issued by a surety company, financial institution or advising bank qualified and admitted to do business in the State of California and issued in an approved form approved by the COUNTY. All bonds and letters of credit shall insure faithful and full observance and performance by TENANT of all terms, conditions, covenants and agreements relating to the construction of improvements within the Leased Premises. It is not the intent of the contracting parties herein to create a third party beneficiary, and nothing in this Section shall be construed to do so.

SECTION 7.08 MECHANICS LIENS OR STOP-NOTICES

TENANT shall at all times indemnify and hold COUNTY harmless from all Mechanics Liens, Stop-Notices, claims, losses, demands, damages, cost, expenses or liability costs for labor or materials in connection with construction, repair, alteration, or installation of structures, improvements, equipment, or facilities within the Leased Premises undertaken by TENANT, and from the cost of defending against such claims, including attorneys' fees and costs.

In the event a mechanics lien or stop-notice is imposed upon the Leased Premises, TENANT shall either:

- A. Record a valid Release of Lien, or
- B. Procure and record a bond in accordance with Section 3143 of the CALIFORNIA CIVIL CODE, which frees the Leased Premises from the claim of the lien or stopnotice and from any action brought to foreclose the lien.

Should TENANT fail to accomplish either of the two optional actions above within fifteen (15) days after the filing of such a lien or stop-notice, the Lease shall be in default and shall be subject to immediate termination.

SECTION 7.09 "RECORD DRAWINGS" AND CONSTRUCTION COSTS

Within sixty (60) days following completion of any improvement within the Leased Premises, TENANT shall furnish Airport Director, or designee a complete set of reproducible, two sets of prints of "Record Drawings" and a recordable compact disc (CD-ROM) containing the "Record Drawings" plans in a form usable by COUNTY, to COUNTY's satisfaction, on COUNTY's computer aided mapping and design (CAD) equipment. Basic specifications for CAD compatible plans are contained in Airport's reference document "John Wayne Airport, CAD Standards" which can be provided by Airport upon request.

In addition, TENANT shall furnish Airport Director, or designee an itemized statement of the actual, direct construction costs of such improvement. The construction costs may include actual, direct fees paid to contractors, architects, engineers, surveyors, laborers and suppliers, or permit fees required by governmental agencies to allow construction. Construction costs shall not include indirect costs such as financing costs, holding costs, legal fees, interest, administrative and overhead expenses, bond premiums or developer fees. The statement of cost shall be sworn to and signed by TENANT or its responsible agent under penalty of perjury. TENANT must obtain Airport Director, or designee's approval of "Record Drawings" and the form and content of the itemized statement.

SECTION 7.10 DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS

TENANT shall be responsible for any damage caused by TENANT, or TENANT's equipment, employees, agents, visitors or suppliers, to common use areas of the Terminal or Airport facilities, including but not limited to runways, taxiways, access roads, navigational aids, apron areas and loading bridges. Should such damage require immediate repairs or replacement and TENANT is unable to respond immediately to complete said repairs or replacement, Airport Director, or designee may cause to be made or make any necessary repairs or replacements and the cost thereof shall be paid by TENANT. Said cost shall include all labor, materials, equipment and an administrative fee equal to fifteen percent (15%) of the sum of those items. Said cost shall be paid by TENANT within fifteen (15) days of receipt of an invoice for costs from Airport Director, or designee.

In the event of damage to or destruction of TENANT-owned or constructed buildings, facilities or improvements located within the Leased Premises or in the event TENANT-owned or

constructed buildings, facilities, or improvements located within the Leased Premises are declared unsafe or unfit for use or occupancy by the COUNTY or any other public entity with jurisdiction to make and enforce such a declaration, TENANT shall, within thirty (30) days, commence and diligently pursue completion of the repair, replacement or reconstruction of improvements to the same size and floor area as they existed immediately prior to the event causing the damage or destruction, as necessary to permit full use and occupancy of the Leased Premises for the purposes required by the Lease.

Repair, replacement or reconstruction or improvements within the Leased Premises shall be accomplished in a manner and according to plans approved by Airport Director, or designee. Except as otherwise provided herein, termination of this Lease shall not reduce or nullify TENANT's obligation under this paragraph. With respect to damage or destruction to be repaired by COUNTY or which COUNTY elects to repair, TENANT waives and releases its rights under CALIFORNIA CIVIL CODE Sections 1932(2) and 1933(4).

SECTION 7.11 AMERICANS WITH DISABILITIES ACT

TENANT shall be solely and fully responsible for complying with the Americans with Disabilities Act of 1990 ("ADA") in connection with: (a) the Leased Premises or any portion thereof and its operations thereon, TENANT's furnishings, trade fixtures and equipment and the concession improvements; (b) removing physical barriers from the Concession Area; (c) providing auxiliary aids and services for use of the Concession Improvements and TENANT's furnishings, trade fixtures and equipment, where necessary or required; and (d) modifying its policies, practices and procedures to comply with the ADA. TENANT shall develop a work plan to correct or avoid any violations or non-compliance with the ADA. TENANT shall deliver to the COUNTY, upon COUNTY's request, a copy of each report and work plan. COUNTY's approval of or acceptance of any aspect of TENANT's activities under this Lease shall not be deemed or construed in any way as a representation that such item, activity of practice complies with the ADA. TENANT agrees to indemnify, defend, and hold the COUNTY harmless from and against any and all costs incurred by COUNTY with respect to TENANT's failure to comply with the ADA.

ARTICLE VIII

ASSIGNMENT

SECTION 8.01 ASSIGNING AND TRANSFERRING

The provisions of this Section are subject to, and subordinate to the limitations of Article V of this Lease entitled "USE, OPERATION, and MAINTENANCE AND CONDITION OF LEASED PREMISES".

A. <u>Transfers.</u> TENANT shall not transfer, assign, or hypothecate (hereinafter referred to as "Transfer") any interest of the TENANT in the Leased Premises without the prior written approval of the COUNTY. TENANT shall give COUNTY one hundred twenty (120)

days prior written notice of all proposed Transfers. TENANT shall not make any such Transfers for a period longer than the remaining term of the Lease.

If COUNTY approves such Transfers, such approval does not constitute a waiver of any of the terms of the Lease. All Transfer documents shall be consistent with the terms, covenants, and conditions of the Lease, and in the event of any inconsistency, the provisions of this Lease shall govern. TENANT must submit all required COUNTY forms with backup documentation, and include payment of a \$3,000.00 administrative charge, for COUNTY to process such request.

If TENANT is a corporation, an unincorporated association, or a partnership, Transfers include the acquisition by any person other than TENANT of any stock or interest in said corporation, unincorporated association, or partnership in the aggregate amount of fifty-one percent (51%) or more.

The failure by TENANT to obtain the prior written approval by COUNTY of any Transfer of the Lease or any interest in the Leased Premises shall constitute a material breach of this Lease by, and shall not confer any rights upon the transferee. Such failure shall be grounds for termination of this Lease for default per Article IX, Section 9.02.

- B. <u>Conditions of COUNTY Approval</u>. COUNTY agrees that it will not arbitrarily withhold consent to any Transfer, but COUNTY may withhold consent at its sole discretion if any of the following conditions exist:
 - 1) TENANT, its successors or assigns are in default of any term, covenant or condition of this Lease, whether notice of default has or has not been given by COUNTY.
 - 2) The prospective subTENANT, assignee or transferee has not agreed in writing to keep, perform and be bound by all the terms, covenants, and conditions of this Lease.
 - 3) The prospective subTENANT, assignee or transferee is not financially capable or not experienced in performing the obligations of this Lease, as determined by the Airport Director, or designee.
 - 4) SubTENANT's use is in conflict with the terms of this Lease.
 - 5) All the terms, covenants and conditions of Transfer, including the consideration therefore, of any and every kind, have not been revealed in writing to Airport Director, or designee.
 - Any construction required of TENANT as a condition of this Lease has not been completed to the satisfaction of COUNTY.

- 7) TENANT has not provided Airport Director, or designee with a copy of all documents relating to the Transfer, including, but not limited to, appraisals, notes, trust deeds, title reports, escrow instructions, *etc*.
- 8) TENANT attempts to hypothecate the rights granted by this Lease for an amount greater than the cost of new improvements to be constructed on the Leased Premises. Hypothecation shall not be permitted for any reason other than to obtain Loan Proceeds necessary to construct new improvements on the Leased Premises.
- C. <u>Bankruptcy Transaction</u>. If TENANT assumes this Lease and proposes to assign the same pursuant to the provisions of the UNITED STATES BANKRUPTCY CODE, 11 U.S.C. §§101, *et seq.*, then notice of such proposed assignment shall be given to COUNTY.
 - 1) The name and address of proposed assignee,
 - 2) All of the terms and conditions of such offer, and
 - Adequate assurance to COUNTY of the proposed assignee's future performance under the Lease, including, without limitation, the assurance referred to in the UNITED STATES BANKRUPTCY CODE, 11 U.S.C. §365(b)(3).

Any person or entity to which this Lease is assigned pursuant to the provisions of the UNITED STATES BANKRUPTCY CODE, 11 U.S.C. §§101, et seq., shall be deemed without further act or deed to have assumed all of the obligations arising under this Lease on and after the date of such assignment. Any such assignee shall upon demand execute and deliver to COUNTY an instrument confirming such assumption.

SECTION 8.02 SUCCESSORS IN INTEREST

Unless otherwise provided in this Lease, the terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of all parties hereto, all of whom shall be jointly and severally liable hereunder.

ARTICLE IX

TERMINATION AND DEFAULT

SECTION 9.01 TERMINATION OF PRIOR AGREEMENTS

It is mutually agreed that this Lease shall terminate and supersede any prior Leases or agreements between the parties hereto for the purpose of operating a Food and Beverage concession and all related activities of TENANT at the Airport.

SECTION 9.02 TERMINATION FOR DEFAULT

The COUNTY may terminate this Lease and all of its obligations hereunder, with or without prior notice to TENANT and may exercise all rights of entry for default and breach, if the TENANT fails to perform on any of its obligations under this Lease including but not limited to the following:

- A. Payment of Rents;
- B. A general assignment for the benefit of creditors and any Transfer without the prior written approval by the COUNTY;
- C. The issuance of any execution or attachment against TENANT at the Airport which is undischarged within sixty (60) days of levy or seizure or if the Leased Premises are occupied by someone other than TENANT;
- D. The voluntary vacation or abandonment by TENANT of the operation of a Food and Beverage concession at the Airport;
- E. The violation by TENANT of any of the terms of any insurance policy referred to in the Lease;
- F. If TENANT is found by the FAA, TSA, other government regulatory or successor agency to have violated specified safety standards in the conduct of TENANT's business;
- G. The violation of any written directions of the Airport Director, or designee;
- H. The appointment of a receiver to take possession of all, or substantially all, the assets of TENANT located in the Leased Premises or of TENANT's rights in the Leased Premises;
- I. TENANT discontinues operations for thirty (30) days or more where applicable, and unless otherwise stated in this Lease, or by written notice, TENANT shall have fifteen (15) calendar days to cure any notice of default prior to termination of this Lease.

SECTION 9.03 CONDITION OF LEASED PREMISES UPON TERMINATION OR DEFAULT

Except as otherwise agreed to herein, upon termination or default of this Lease, TENANT shall redeliver possession of said Leased Premises to COUNTY in substantially the same condition that existed immediately prior to TENANT's entry thereon, reasonable wear and tear, flood, earthquakes, war and any act of war, excepted. References to the termination of the Lease in this agreement shall include termination by reason of expiration.

SECTION 9.04 OWNERSHIP OF IMPROVEMENTS

All improvements constructed or placed within the Leased Premises by TENANT must, upon completion, be free and clear of all liens, claims, or liability for labor or material and at COUNTY's option shall become the property of COUNTY at the expiration of this Lease or upon earlier termination hereof. COUNTY retains the right to require TENANT, at TENANT's sole cost and expense, to remove any or all improvements located within the Leased Premises at the expiration or termination hereof.

SECTION 9.05 DISPOSITION OF ABANDONED PERSONAL PROPERTY

If TENANT abandons or quits the Leased Premises or is dispossessed thereof by process of law or otherwise, title to any personal property belonging to TENANT and left on the Leased Premises Areas thirty (30) days after such event shall be deemed to have been transferred to COUNTY. COUNTY shall have the right to remove and to dispose of such property without liability therefor to TENANT or to any person claiming under TENANT, and shall have no need to account therefor. Personal property left on the Leased Premises after termination, expiration, or abandonment of the Lease shall not be construed as giving TENANT possession of the Leased Premises during the thirty (30) days after termination, expiration or abandonment of the Lease.

SECTION 9.06 QUITCLAIM OF TENANT'S INTEREST UPON TERMINATION OR DEFAULT

Upon termination of this Lease for any reason, including, but not limited to, termination because of default by TENANT, TENANT shall execute, acknowledge, and deliver to COUNTY within thirty (30) days after receipt of written demand therefor, a good and sufficient deed whereby all right, title and interest of TENANT in the Leased Premises is quitclaimed to COUNTY. Should TENANT fail or refuse to deliver the required deed to COUNTY, COUNTY may prepare and record a notice reciting the failure of TENANT to execute, acknowledge and deliver such deed and said notice shall be conclusive evidence of the termination of this Lease and of all right of TENANT or those claiming under TENANT in and to the Leased Premises.

SECTION 9.07 COUNTY'S RIGHT TO RE-ENTER

TENANT agrees to yield and peaceably deliver possession of the Leased Premises to COUNTY on the date of termination or default of this Lease, whatsoever the reason for such termination or default.

Upon giving written notice of termination or default to TENANT, COUNTY shall have the right to re-enter and take possession of the Leased Premises on the date such termination or default becomes effective without further notice of any kind and without institution of summary or regular legal proceedings. Termination or default of the Lease and re-entry of the Leased Premises by COUNTY shall in no way alter or diminish any obligation of TENANT under the Lease terms and shall not constitute an acceptance or surrender.

TENANT waives any and all right of redemption under any existing or future law or statute in the event of eviction from or dispossession of the Leased Premises for any lawful reason or in the event COUNTY re-enters and takes possession of the Leased Premises in a lawful manner. Upon the expiration or early termination of this Lease, TENANT shall cooperate fully with the COUNTY and any successor to TENANT to ensure an effective and efficient transition of TENANT's operations within the Leased Premises to TENANT's successor. TENANT acknowledges its responsibility to help ensure continued operations within the Leased Premises in a first class manner during any transition to a successor. TENANT shall take no action that would impair the ability of any successor to commence and maintain such concession operations.

ARTICLE X

INSURANCE AND INDEMNITY

SECTION 10.01 INSURANCE

TENANT agrees to purchase all required insurance at TENANT's expense and to deposit with the COUNTY certificates of insurance, including all endorsements required herein, necessary to satisfy the COUNTY that the insurance provisions of this Lease have been complied with and to keep such insurance coverage and the certificates and endorsements therefore on deposit with the COUNTY during the entire term of this Lease.

TENANT agrees that TENANT shall not operate on the Premises at any time the required insurance is not in full force and effect as evidenced by a certificate of insurance and necessary endorsements or, in the interim, an official binder being in the possession of Airport Director, or designee. In no cases shall assurances by TENANT, its employees, agents, including any insurance agent, be construed as adequate evidence of insurance. Airport Director, or designee will only accept valid certificates of insurance and endorsements, or in the interim, an insurance binder as adequate evidence of insurance. TENANT also agrees that upon cancellation, termination, or expiration of TENANT's insurance, COUNTY may take whatever steps are necessary to interrupt any operation from or on the Premises until such time as the Airport Director, or designee reinstates the Lease.

If TENANT fails to provide Airport Director, or designee with a valid certificate of insurance and endorsements, or binder at any time during the term of the Lease, COUNTY and TENANT agree that this shall constitute a material breach of the Lease. Whether or not a notice of default has or has not been sent to TENANT, said material breach shall permit COUNTY to take whatever steps necessary to interrupt any operation from or on the Premises, and to prevent any persons, including, but not limited to, members of the general public, and TENANT's employees and agents, from entering the Premises until such time as Airport Director, or designee is provided with adequate evidence of insurance required herein. TENANT further agrees to hold COUNTY harmless for any damages resulting from such interruption of business and possession, including, but not limited to, damages resulting from any loss of income or business resulting from the COUNTY's action.

TENANT may occupy the Premises only upon providing to COUNTY the required insurance stated herein and maintain such insurance for the entire term of this Lease. COUNTY reserves the right to terminate this Lease at any time TENANT's insurance is canceled or terminated and not reinstated within ten (10) days of said cancellation or termination. TENANT shall pay COUNTY a fee of \$300.00 for processing the reinstatement of the Lease. TENANT shall provide to COUNTY immediate notice of said insurance cancellation or termination.

All contractors performing work on behalf of TENANT pursuant to this Lease shall obtain insurance subject to the same terms and conditions as set forth herein for TENANT. TENANT shall not allow contractors or subcontractors to work if contractors have less than the level of coverage required by the COUNTY from the TENANT under this Lease. It is the obligation of the TENANT to provide written notice of the insurance requirements to every contractor and to receive proof of insurance prior to allowing any contractor to begin work within the Premises. Such proof of insurance must be maintained by TENANT through the entirety of this Lease and be available for inspection by a COUNTY representative at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the COUNTY's Risk Manager, or designee, upon review of TENANT's current audited financial report. If TENANT's SIR is approved, TENANT, in addition to, and without limitation of, any other indemnity provision(s) in this Lease, agrees to all of the following:

- 1) In addition to the duty to indemnify and hold the COUNTY harmless against any and all liability, claim, demand or suit resulting from TENANT's, its agents, employee's or subcontractor's performance of this Agreement, TENANT shall defend the COUNTY at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- 2) TENANT's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- 3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the TENANT's SIR provision shall be interpreted as though the TENANT was an insurer and the COUNTY was the insured.

Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A-(Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com).** It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the TENANT shall provide the minimum limits and coverage as set forth below:

Coverages	Minimum Limits
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 limit per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Commercial Property Insurance on an "All Risk" or "Special Causes of Loss" basis covering all contents and any TENANT improvements including Business Interruption/Loss of Rents with a 12 month limit.	100% of the Replacement Cost Value and no coinsurance provision.
Liquor Liability (As Applicable)	\$1,000,000 per occurrence

Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing liability coverage as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of insurance:

- 1) An Additional Insured endorsement using ISO form CG 20 26 04 13or a form at least as broad naming the COUNTY of Orange, its elected and appointed officials, officers, employees, agents as Additional Insureds. Blanket coverage may also be provided which will state- As Required by Written Agreement.
- 2) A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad, evidencing that the TENANT's insurance is primary and any insurance or

self-insurance maintained by the COUNTY of Orange shall be excess and non-contributing.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the COUNTY of Orange, its elected and appointed officials, officers, agents and employees. Blanket coverage may also be provided which will state- As Required by Written Agreement.

All insurance policies required by this lease shall waive all rights of subrogation against the COUNTY of Orange, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

The Commercial Property policy shall contain a Loss Payee endorsement naming the COUNTY of Orange as respects the COUNTY's financial interest when applicable.

The Commercial General Liability policy shall contain a severability of interest clause, also known as a "separation of insureds" clause (standard in the ISO CG 001 policy).

Insurance certificates should be forwarded to the COUNTY address provided in the Clause (NOTICES) below or to an address provided by Airport Director, or designee TENANT has ten (10) business days to provide adequate evidence of insurance or this Lease may be cancelled.

COUNTY expressly retains the right to require TENANT to increase or decrease insurance of any of the above insurance types throughout the term of this Lease. Any increase or decrease in insurance will be as deemed by COUNTY of Orange Risk Manager as appropriate to adequately protect COUNTY.

COUNTY shall notify TENANT in writing of changes in the insurance requirements. If TENANT does not deposit copies of acceptable certificates of insurance and endorsements with COUNTY incorporating such changes within thirty (30) days of receipt of such notice, this Lease may be in breach without further notice to TENANT, and COUNTY shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit TENANT's liability hereunder nor to fulfill the indemnification provisions and requirements of this Lease, nor in any way to reduce the policy coverage and limits available from the insurer.

SECTION 10.02 INDEMNITY

To the fullest extent authorized by law, the TENANT shall indemnify, defend, and hold harmless the COUNTY, its officers, and employees, from and against any and all claims, judgments, damages, penalties, fines, costs, orders, and lawsuits, arising out of the TENANT's operations at John Wayne Airport, including the cost of defense arising therefrom. The TENANT's indemnity obligations stated hereinabove also apply to those actions arising from and which involve the

TENANT's officers, agents, subcontractors, and employees. The TENANT's indemnity obligations stated hereinabove shall not apply in the event of any loss, damage, or expense arising from the sole or active negligence and/or willful misconduct of the COUNTY or of the COUNTY's officers, employees, agents, servants, or independent contractors.

In the event the indemnitees described hereinabove are named as defendants or respondents in any lawsuit or administrative proceeding, the TENANT shall, at the request of the COUNTY, represent the indemnitee with qualified counsel that the COUNTY determines is acceptable. In the event that a monetary judgment is awarded against the COUNTY and the TENANT because of the concurrent negligence of the COUNTY and the TENANT or their respective officers, subcontractors, or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Both the COUNTY and the TENANT agree that neither party shall request a jury apportionment.

Nothing stated in this Lease and in this indemnity obligation shall be construed as authorizing any award of attorney's fees in any action to enforce the terms of this Lease. The rights and obligations set forth in this paragraph shall survive the termination of this Lease.

ARTICLE XI

FEDERAL GRANT ASSURANCES AND REQUIREMENTS

SECTION 11.01 NONDISCRIMINATION

- A. TENANT, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that:
 - No person on the grounds of race, creed, color, sex, national origin, sex, age, or disability shall be excluded from participation, denied the benefits of, or be otherwise subjected to discrimination in the use of the Leased Premises. TENANT will comply with all federal, state, and local laws relating to nondiscrimination.
 - This Lease is subject to the requirements of the U.S. Department of Transportation's regulations, 49 Code of Federal Regulations (C.F.R.) Part 23 TENANT agrees that it will not discriminate against any Airport Concession Disadvantaged Business Enterprise (ACDBE) in connection with the award or performance of any agreement covered by 49 C.F.R. Part 23.
 - In the construction of any improvements on, over or under the Leased Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, national origin, age, or disability shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination.

- 4) TENANT shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to Title 49, C.F.R. Part 21, Subtitle A, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the CIVIL RIGHTS ACT OF 1964, and as said Regulations may be amended.
- In the event facilities are constructed, maintained or otherwise operated on the Leased Premises for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, TENANT shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 C.F.R. Part 21, Subtitle A, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the CIVIL RIGHTS ACT OF 1964, and as said Regulations may be amended.
- B. In the event of breach of any of the above nondiscrimination covenants, COUNTY shall have the right to terminate the Lease and to re-enter and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued. This provision does not become effective until the procedures of 49 CODE OF FEDERAL REGULATIONS, Part 21, are followed and completed, including expiration of appeal rights.
- C. TENANT shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service.
- D. Noncompliance with paragraph C. above shall constitute a material breach thereof and in the event of such noncompliance COUNTY shall have the right to terminate this Lease and the estate hereby created without liability therefor; or at the election of COUNTY or the United States either or both said Governments shall have the right to judicially enforce paragraphs A., B., and C.
- E. TENANT agrees that it shall insert the above four paragraphs in any Lease, agreement (contract, *etc.*) by which said TENANT grants a right or privilege to any person, firm or corporation to render accommodations and/or service to the public in the Leased Premises.

SECTION 11.02 DEVELOPMENT/MAINTENANCE OF AIRPORT

COUNTY reserves the right to further develop or improve the Airport as it sees fit, regardless of the desires or view of TENANT, and without interference or hindrance.

COUNTY reserves the right, but shall not be obligated to TENANT, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of TENANT in this regard.

SECTION 11.03 LEASE SUBORDINATE TO AGREEMENT WITH U.S.A.

This Lease shall be subordinate to the provisions and requirements of any existing or future agreement between COUNTY and the United States or any lawful requirement of the United States relative to the development, operation or maintenance of the Airport.

SECTION 11.04 USE TO CONFORM WITH FEDERAL AVIATION REGULATIONS

TENANT agrees that TENANT's use of the Leased Premises, including all construction thereon, shall conform to applicable FEDERAL AVIATION REGULATIONS. TENANT shall also obey all local, State and Federal rules, regulations and laws, including compliance with Transportation Security Administration and Airport security rules and regulations.

TENANT agrees to comply with the notification and review requirements covered in Part 77 of the FEDERAL AVIATION REGULATIONS (as same may be amended from time to time or such other regulation replacing Part 77 as may be adopted by Federal authority) prior to the construction of the improvements described herein and prior to the construction of any future structure or building upon the Leased Premises or in the event of any planned modification or alteration of any present or future building or structure situated on the Leased Premises.

SECTION 11.05 NONEXCLUSIVE RIGHT

It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of §308a of the FEDERAL AVIATION ACT OF 1958 (49 U.S.C. §1349).

SECTION 11.06 RESERVATION OF AVIGATION EASEMENT

COUNTY hereby reserves for itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the air space above the surface of the Leased Premises, together with the right to cause in said air space such noise as may be inherent in the operation of aircraft now known or hereafter used for navigation of, or flight in the air, using said air space, or landing at, taking off from, or operating at the Airport.

SECTION 11.07 HEIGHT LIMITATION OF STRUCTURES

TENANT by accepting this Lease expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object nor permit the growth of any tree on the Leased Premises hereunder (if any) which would penetrate the imaginary surfaces as defined in Part 77 of the FEDERAL AVIATION REGULATIONS (as same may be amended from time to time or as such regulation replacing Part 77 may be adopted by Federal authority)

or such other lesser altitude as may be required by COUNTY. In the event the aforesaid covenants are breached, COUNTY reserves the right to enter upon the Leased Premises hereunder and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of TENANT. TENANT shall be responsible for filing Form 7460 for any construction and/or height of construction equipment with the FAA, if required.

SECTION 11.08 NONINTERFERENCE WITH AIRCRAFT

TENANT by accepting this Lease agrees for itself, its successors and assigns that it will not make use of the Leased Premises in any manner which might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, COUNTY reserves the right to enter upon the Leased Premises and hereby cause the abatement of such interference at the expense of TENANT.

SECTION 11.09 WAR OR NATIONAL EMERGENCY

This Lease and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of Airport or the exclusive or nonexclusive use of Airport by the United States during the time of war or national emergency.

SECTION 11.10 AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) PARTICIPATION

TENANT understands and acknowledges the following:

This Lease is subject to the requirements of the U.S. Department of Transportation's regulations 49 CFR Part 23. TENANT agrees that it will not discriminate against any business owner because of the owner's race, color, national origin or sex in connection with the award or performance of any concession agreement, management contract or subcontract, purchase or lease agreement covered by 49 CFR Part 23. TENANT agrees to include the above statements in any subsequent agreement or contract covered by 49 CFR part 23, that it enters and cause those businesses to similarly include such statements in further agreements.

TENANT shall provide a monthly report of ACDBE participation, if any, reported as a dollar amount and as a percent of total contract gross receipts. If no ACDBE participation is achieved during the month, TENANT shall provide a report so stating. In addition, TENANT shall provide all information and reports required by the Airport and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the Airport to be pertinent to ascertain compliance with the regulations or directives.

ARTICLE XII

MISCELLANEOUS PROVISIONS

SECTION 12.01 TIME

Time is of the essence in this Lease.

SECTION 12.02 LEASE ORGANIZATION

The various headings and numbers herein, the grouping of provisions of this Lease into separate Sections and paragraphs, and the organization hereof, are for the purpose of convenience only and shall not be considered otherwise.

SECTION 12.03 AMENDMENTS

This Lease sets forth all of the agreements and understandings of the parties with regard to its subject matter and any modification must be written and properly executed by both parties.

SECTION 12.04 SIGNS

TENANT agrees not to construct, maintain or allow any sign upon the Leased Premises except as approved by Airport Director, or designee. TENANT will comply with the JWA TENANT Design Guidelines and JWA Construction Manual. Unapproved signs, banners, flags, etc., may be removed by Airport Director, or designee without prior notice to TENANT.

SECTION 12.05 PERMITS AND LICENSES

TENANT shall be required to obtain any and all approvals, permits and/or licenses which may be required in connection with the operation of the Leased Premises as set out herein. No permit approval or consent given hereunder by COUNTY in its governmental capacity shall affect or limit TENANT's obligations hereunder, nor shall any approvals or consents given by COUNTY as a party to this Lease, be deemed approval as to compliance or conformance with applicable governmental codes, laws, ordinances, rules, or regulations.

SECTION 12.06 COUNTY OF ORANGE CHILD SUPPORT ENFORCEMENT

TENANT certifies it is in full compliance with all applicable federal and state reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of the Lease with the COUNTY of Orange. Failure to comply shall constitute a material breach of the Contract and failure to cure such breach within 60 calendar days of notice from the COUNTY shall constitute grounds for termination of the Lease.

SECTION 12.07 CONTROL OF HOURS AND PROCEDURES

TENANT shall at all times maintain the JWA provided hours of operation.

- A. <u>Hours of Operation</u>. In each location and on each day, TENANT shall operate during those hours as designated by the Airport Director, or designee. Airport Director, or designee, at his/her own discretion may provide approved hours of operation for certain holidays or events; TENANT must comply with these hours.
- B. <u>Airport Director May Alter Hours</u>. Airport Director, or designee may upon notice to TENANT require earlier opening times or later closing any location. TENANT shall comply with said hours. In the event of an emergency, the Airport Director, or designee may require concession to support emergency operations. Airport Director, or designee may, from time to time, authorize a later opening or earlier closing time for any location, provided he first finds that TENANT has submitted adequate justification.

SECTION 12.08 AMERICANS WITH DISABILITIES ACT

TENANT shall be solely and fully responsible for complying with the Americans with Disabilities Act of 1990 ("ADA") in connection with: (a) the Concession Area or any portion thereof and its operations thereon, the TENANT's Furnishings, Trade Fixtures and Equipment and the concession Improvements; (b) removing physical barriers from the Concession Area; (c) providing auxiliary aids and services for use of the Concession Improvements and TENANT's Furnishings, Trade Fixtures and Equipment, where necessary or required; and (d) modifying its policies, practices, and procedures to comply with the ADA. TENANT shall develop a work plan to correct or avoid any violations or non-compliance with the ADA. TENANT shall deliver to the COUNTY, upon COUNTY's request, a copy of each report and work plan. COUNTY's approval of or acceptance of any aspect of TENANT's activities under this Lease shall not be deemed or construed in any way as a representation that such item, activity or practice complies with the ADA. TENANT agrees to indemnify, defend, and hold the COUNTY harmless from and against any and all costs incurred by COUNTY with respect to TENANT's failure to comply with the ADA.

SECTION 12.09 TAXES AND ASSESSMENTS

This Lease may create a possessory interest which is subject to the payment of taxes levied on such interest. It is understood and agreed that all taxes and assessments (including but not limited to said possessory interest tax) which become due and payable upon the Leased Premises or upon fixtures, equipment or other property installed or constructed thereon, shall be the full responsibility of TENANT, and TENANT shall cause said taxes and assessments to be paid promptly.

SECTION 12.10 CIRCUMSTANCES WHICH EXCUSE PERFORMANCE

If either party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, restrictive governmental laws or regulations or other cause without fault and beyond the control of the party obligated (financial inability excepted), performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. However, nothing in this Section shall excuse TENANT from the prompt payment of any rents or other charge required of TENANT except as may be expressly provided elsewhere in this Lease.

SECTION 12.11 PARTIAL INVALIDITY

If any term, covenant, condition, or provision of this Lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

SECTION 12.12 WAIVER OF RIGHTS

The failure of COUNTY or TENANT to insist upon strict performance of any of the terms, covenants or conditions of this Lease shall not be deemed a waiver of any right or remedy that COUNTY or TENANT may have, and shall not be deemed a waiver of the right to require strict performance of all the terms, covenants and conditions of the Lease thereafter, nor a waiver of any remedy for the subsequent breach or default of any term, covenant or condition of this Lease. Any waiver, in order to be effective, must be signed by the party whose right or remedy is being waived.

SECTION 12.13 RESERVATIONS TO COUNTY

The Leased Premises are accepted as is and where is by TENANT subject to any and all existing easements and encumbrances. COUNTY reserves the right to install, lay, construct, maintain, repair and operate sanitary sewers, drains, storm water sewers, pipelines, manholes and connections; water, oil and gas pipelines; telephone and telegraph power lines; and the appliances and appurtenances necessary or convenient in connection therewith, in, over, upon, through, across, under and along the Leased Premises or any part thereof; and to enter the Leased Premises for any and all such purposes. COUNTY also reserves the right to grant franchises, easements, rights of way and permits in, over, upon, through, across, under and along any and all portions of the Leased Premises. No right reserved by COUNTY in this Section shall be so exercised as to interfere unreasonably with TENANT's operations hereunder or to impair the security of any secured creditor of TENANT.

COUNTY agrees that rights granted to third parties by reason of this Section shall contain provisions that the surface of the land shall be restored as nearly as practicable to its original condition upon the completion of any construction. COUNTY further agrees that should the exercise of these rights temporarily interfere with the use of any or all of the Leased Premises by

TENANT, TENANT shall only be entitled to a reduction in the rents payable to COUNTY during the period of interference, which shall be reduced in proportion to the interference with TENANT's use of the Leased Premises. TENANT shall not be entitled to any other form of compensation.

SECTION 12.14 AUTHORITY OF TENANT

If TENANT is a corporation, each individual executing this Lease on behalf of said corporation represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of said corporation, in accordance with the by-laws of said corporation, and that this Lease is binding upon said corporation.

SECTION 12.15 PUBLIC RECORDS

TENANT understands that written information submitted to and/or obtained by COUNTY from TENANT related to this Lease and/or the Leased Premises, either pursuant to this Lease or otherwise, may be open to inspection by the public pursuant to the California Records Act (GOVERNMENT CODE §§6250, et seq.) as now in force or hereafter amended, or any Act in substitution thereof, or otherwise made available to the public.

SECTION 12.16 RELATIONSHIP OF PARTIES

The relationship of the parties hereto is that of lessor and TENANT, and it is expressly understood and agreed that COUNTY does not in any way or for any purpose become a partner of TENANT in the conduct of TENANT's business or otherwise, or a joint venture with TENANT; and the provisions of this Lease and the agreements relating to rents payable hereunder are included solely for the purpose of providing a method by which fee payments are to be measured and ascertained. This Lease is intended for the sole benefit of the parties hereto and their successors, and, unless otherwise provided herein, or by law, no rights are created, or are intended to be created, for the benefit of, or enforceable by, any third parties.

SECTION 12.17 GOVERNING LAW AND VENUE

This Lease has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this Lease, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for trial to another county.

SECTION 12.18 ATTORNEY FEES

In any action or proceeding to enforce or interpret any provision of this Lease, or where any provision hereof is validly asserted as a defense, each party shall bear its own attorney's fees, costs and expenses.

SECTION 12.19 NOTICES

All notices pursuant to this Lease shall be addressed to either party as set forth below and shall be sent through the United States Mail, in the State of California, duly registered or certified, return receipt requested with postage prepaid or by an overnight carrier service. If any notice is sent by an overnight carrier service, as aforesaid, the same shall be deemed to have been served or delivered twenty-four (24) hours after mailing thereof as above provided. Notwithstanding the above COUNTY may also provide notices to TENANT by personal delivery or by regular mail postage prepaid and any such notice so given shall be deemed to have been given upon the date of personal delivery or three (3) days after the date of deposit in the United States Mail, respectively.

TO: <u>COUNTY</u> TO: <u>TENANT</u>

John Wayne Airport 3160 Airway Avenue Costa Mesa, CA 92626

Either party hereto may from time to time, by written notice to the other in the method described above, designate a different address which shall be substituted for the one above specified.

IN WITNESS WHEREOF, the parties have execuritten.	cuted this Lease the day and year first above
TENA	ANT:
Ву: _	
Ву: _	
APPROVED AS TO FORM:	
County Counsel	
By:	
APPROVED AS TO AUDIT AND ACCOUNTIN	G:
Auditor-Controller	
By:	
RECOMMENDED FOR APPROVAL:	
John Wayne Airport	
By: Barry A. Rondinella Airport Director	
Signed and certified that a copy of this document has been delivered to the Chair Of the Board per G.C. Sec. 25103, Reso 79-1535 Attest:	<u>COUNTY</u>
	COUNTY OF ORANGE
	By:
Robin Stieler	Chair, Board of Supervisors

Clerk of the Board of Supervisors Orange County, California

EXHIBIT A

LEASED PREMISES DESCRIPTION

Parcel Number:

PM 1121-0350-00

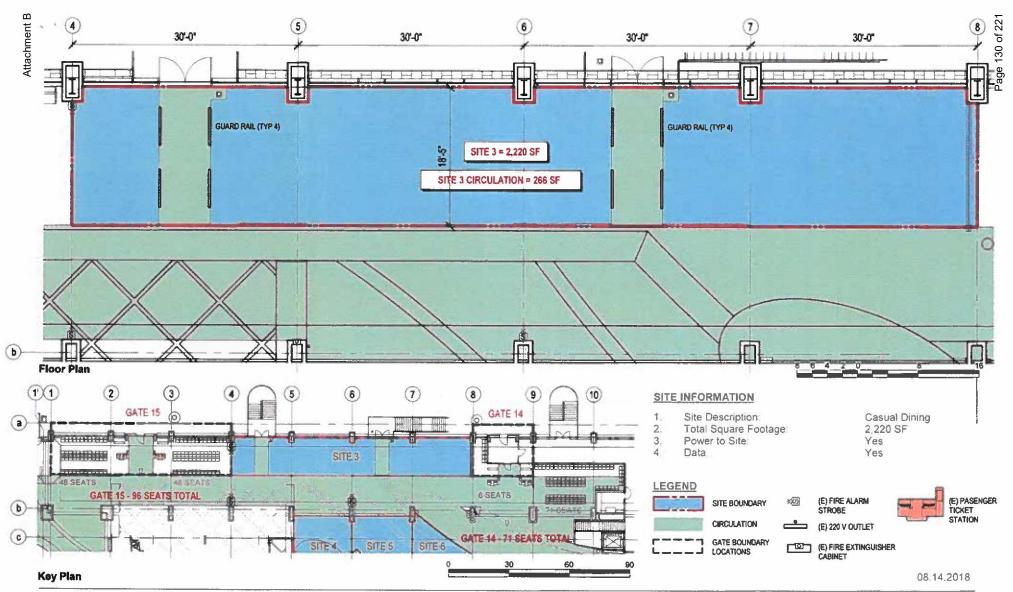
Project Name:

John Wayne Airport

The Leased Premises referred to in this Lease shall mean all the premises shown on floor plans shown on Exhibit B which exhibit is attached hereto and by reference made a part hereof.

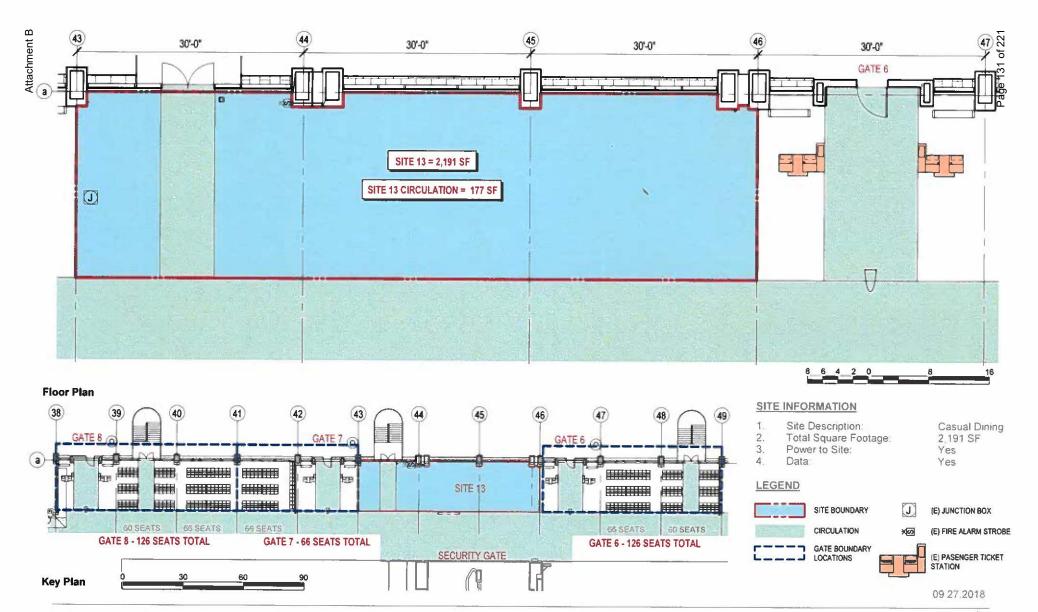
Leased Premises are those certain areas designated as concession locations as set forth below in the Leased Premises Summary Table below. The Leased Premises are located on the arrival and departure levels, and is situated within the John Wayne Airport, Thomas F. Riley Terminal Building at 18601 Airport Way, in the City of Santa Ana, County of Orange, State of California, and located on Lots 132 and 135 of Block 7 of the Irvine Subdivision, per map recorded in Book A, Page 88 of Miscellaneous Maps in the Office of the County Recorder of Orange County, together with the right of ingress and egress thereto.

EXHIBIT B MAP OF LEASED PREMISES LOCATIONS



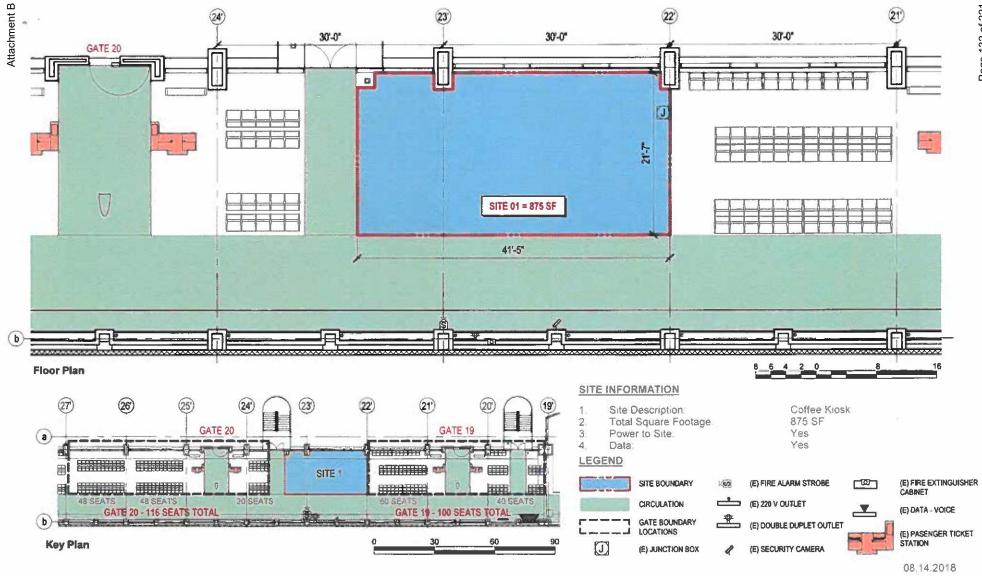
JWA - CONCESSION STAND ANALYSIS



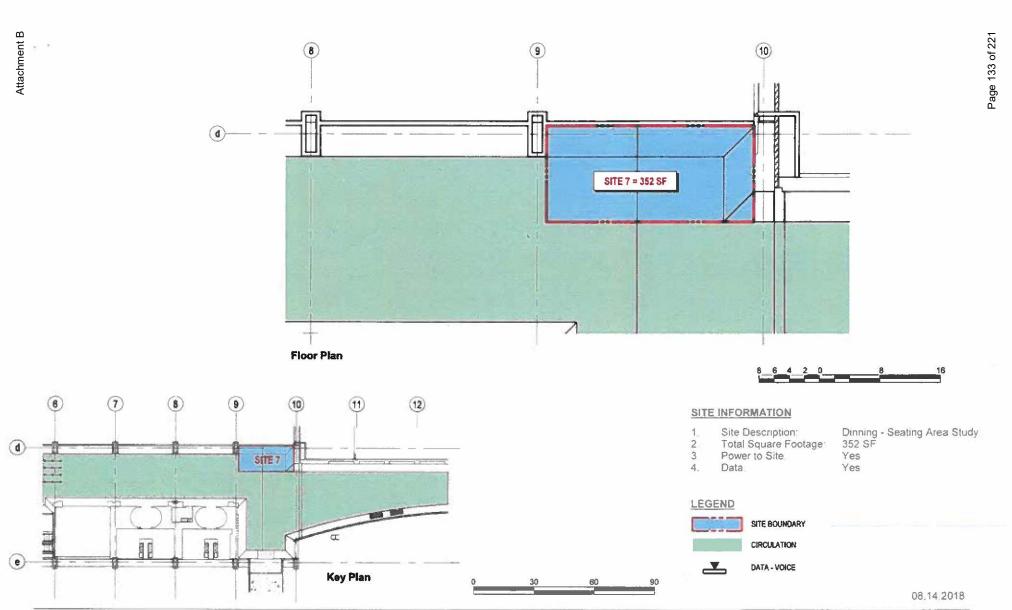


JWA - CONCESSION STAND ANALYSIS

CHANGE C



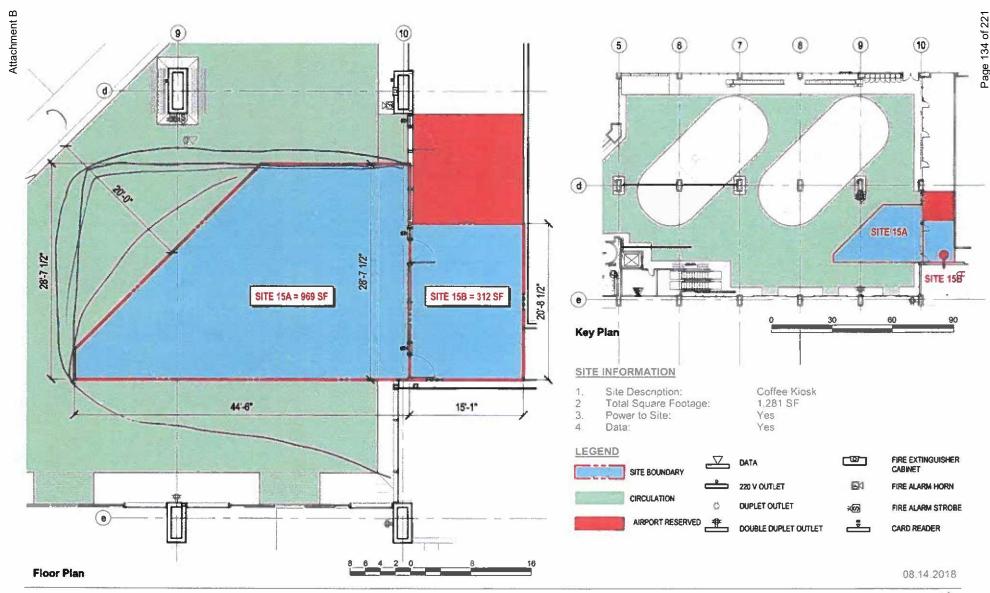




JWA - CONCESSION STAND ANALYSIS

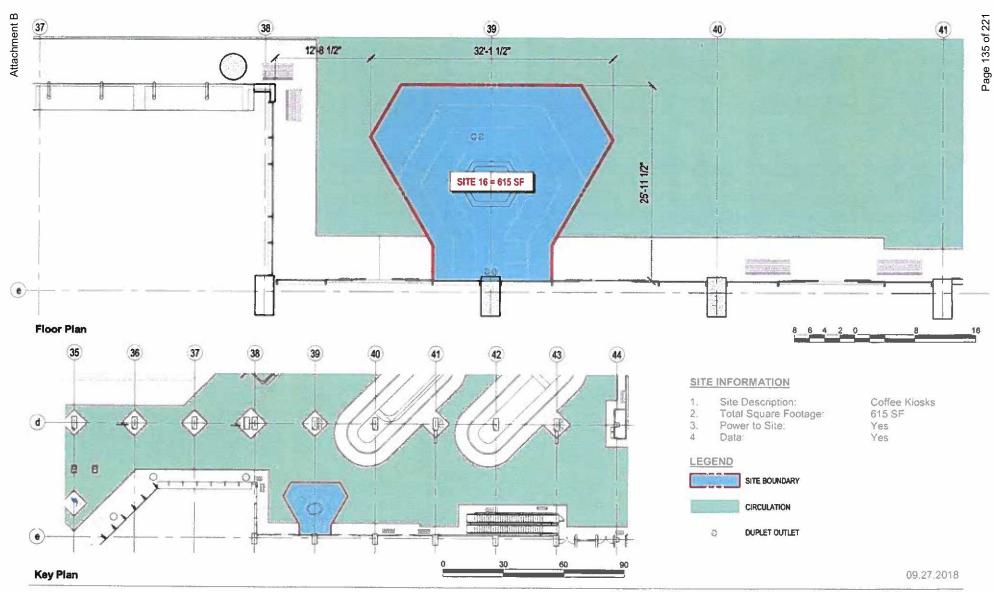
SITE 07 - COFFEE KIOSK





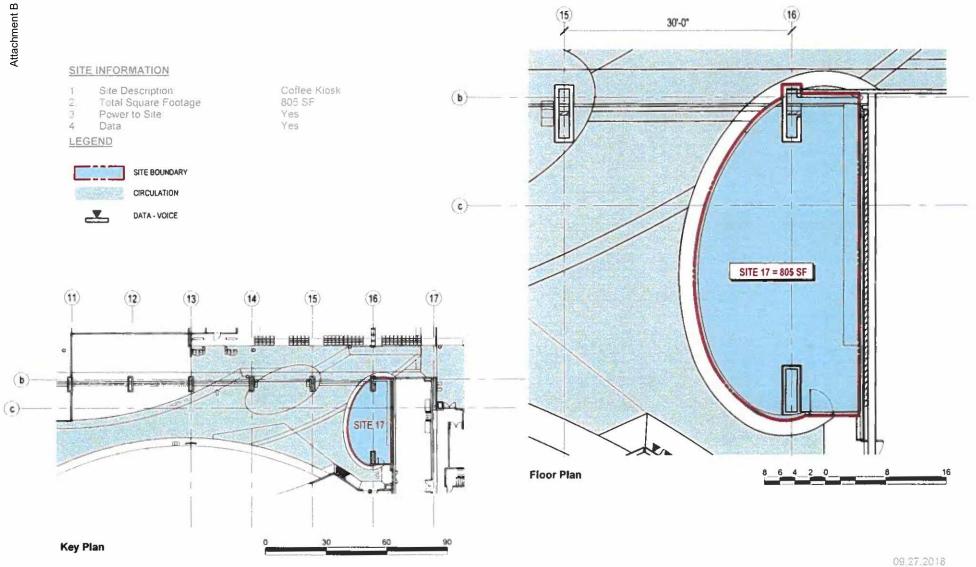


PRIN WASH



JWA - CONCESSION STAND ANALYSIS





JWA - CONCESSION STAND ANALYSIS



EXHIBIT C FOOD AND BEVERAGE USE (PERMITTED USE)

EXHIBIT C

Casual Dining and Bar Lease - TENANT shall provide for the preparation and sale of food, beverages, and merchandise related to a concession. Casual Dining and Bar Lease must have table service and a separate bar area, offer front window seating with a view of the airfield, must offer a menu that covers breakfast, lunch, and dinner and are consistent with the proposed concept theme or brand. Drip Coffee will be allowed, but no specialty coffee drinks. The bar area should be designated and offer a full variety of alcoholic beverage, including cocktails, beer, and wine. Exposition cooking is encouraged. Food must be made - to-order. Overall sales for alcohol cannot exceed 40% of total sales. TENANT must incorporate Grab-and-Go counters and must be part of the restaurant design so that guests are able to purchase freshly prepared foods and non-alcoholic beverages to go. TENANT is required to participate with JWA's interactive concession wayfinding program, with menus that have calorie counts, ordering, reservations, pick-up, and delivery system. Restaurant design must have designated pick-up locations for online mobile ordering. TENANT will be required to install and operate their own mobile application that interacts with JWA interactive wayfinding concession system. TENANT is required to have a delivery service that complies with JWA's interactive wayfinding program. TENANT shall deliver food/non alcoholic beverages to the gate at no charge to JWA passengers. TENANT is required to be on the JWA concession wayfinding system on or before the rental commencement date. Any breach to permitted uses will be subject to penalties up to and including termination of Lease.

EXHIBIT C

Specialty Coffee Kiosks - TENANT must promote the regional or locally known gourmet coffee and should include seating for guests, as space permits. TENANT must offer a variety of quality, freshly prepared coffee, specialty coffee drinks, tea, and specialty tea drinks. TENANT must provide a variety of freshly baked goods such as cookies, pastries, rolls, bagels, scones, breakfast sandwiches, paninis, parfaits, and muffins; bottled non-alcoholic beverages such as water and juices; branded bagged coffee, boxed teas; and a limited amount of related merchandise items such as coffee mugs, travel cups, and coffee and tea-making accessories. Grab-and-go counters must be incorporated in the restaurant design so that guests are able to purchase freshly prepared foods and non-alcoholic beverages to go. TENANT is required to participate with JWA's interactive concession wayfinding program, with menus that have calorie counts, ordering, reservation, pick-up, and delivery system. Restaurant design must have designated pick-up locations for online mobile ordering. TENANT will be required to install and operate their own mobile application that interacts with JWA interactive wayfinding concession system. TENANT is required to have a delivery service that complies with JWA's interactive wayfinding program. TENANT shall deliver food/non alcoholic beverages to the gate at no charge to JWA passengers. TENANT is required to be on the JWA concession wayfinding system on or before the rental commencement date. Any breach to permitted uses will be subject to penalties up to and including termination of Lease. TENANT is prohibited from serving, alcoholic drinks, beer, wine, carbonated drinks, tobacco, e-cigarettes, cannabis products, and/or vaporizers.

EXHIBIT C

Quick Serve Restaurant (QSR) Lease - TENANT shall provide for sale of made-to-order food and non-alcoholic beverages in a counter-service setting. If design allows for a controlled seating area within the leased premises; operator will have the ability to sell beer and wine. The quick service concept should be a recognized local or regional brand. Drip Coffee will be allowed, but no specialty coffee drinks. Tenant must provide menu should focus on one specific cuisine or offer a variety of freshly prepared items that covers breakfast, lunch, and dinner. The QSR must offer premium quality products, fulfilled/provided quickly, efficiently and in durable environmentally conscious packaging. Grab-and-go counters should be incorporated in the restaurant design so that guests are able to purchase freshly prepared foods and non-alcoholic beverages to go. TENANT is required to participate with JWA's interactive concession wayfinding program, with menus that have calorie counts, ordering, reservation, pick-up, and delivery system. Restaurant design must have designated pick-up locations for online mobile ordering. TENANT will be required to install and operate their own mobile application that interacts with JWA interactive wayfinding concession system. TENANT is required to have a delivery service that complies with JWA's interactive wayfinding program. TENANT shall deliver food/non alcoholic beverages to the gate at no charge to JWA passengers. TENANT is required to be on the JWA concession wayfinding system on or before the rental commencement date. Any breach to permitted uses will be subject to penalties up to and including termination of Lease.

EXHIBIT D

EXHIBIT D CONCESSION IMPROVEMENT PLAN (TO BE PROPOSED)

EXHIBIT E MERCHANDISE AND PRICING (TO BE PROPOSED)

EXHIBIT F

REQUIREMENTS FOR CAD COMPATIBLE PLANS

A complete set of as-built drawing files or Report's Exhibits and Figures will be required by the County of Orange, John Wayne Airport CAD Division. The CAD Division will only accept CAD files which are completed in the following manner:

- All architectural, engineering, and construction CAD drawing files will be done using MicroStation, or newer and/or Microstation-based design and drafting package.
- All geographic data, spatial analysis, GIS maps, exhibits, and figures will be done using Intergraph GeoMedia or ISRI Arc View or Bentley MicroStation Geographics.
- 3. All CAD files must conform to John Wayne Airport CAD Specifications.

Hardcopy requirements for the CAD Division are:

- 1. One complete set of full size and on 18" by 24" size set of as-built drawings.
- 2. One complete set of Reports.

EXHIBIT G PERCENTAGE RENT CASUAL DINING/BAR

Casu	al Dining Tiered Rent	***
\$ 0	\$ 1,000,000.00	12%
\$ 1,000,000.01	\$ 2,000,000.00	14%
\$ 2,000,000.01		16%

EXHIBIT G PERCENTAGE RENT COFFEE KIOSK

COFFEE Tiered Rent		
\$ 0	\$ 1,000,000.00	14%
\$ 1,000,000.01	\$ 2,000,000.00	16%
\$ 2,000,000.01		18%

EXHIBIT G PERCENTAGE RENT QUICKSERVE

Qu	ick Serve Tiered Rent	7.
\$ 0	\$ 500,000.00	12%
\$ 500,000.01	\$ 750,000.00	14%
\$ 750,000.01		16%



SPECIALTY RETAIL CONCESSION LEASE

Dated	-
Between	
County of Orange	
and	

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EXHIBIT D	CONCESSION IMPROVEMENT PLAN (TO BE PROPOSED)
EXHIBIT E	MERCHANDISE AND PRICING (TO BE PROPOSED)
EXHIBIT F	REQUIREMENTS FOR CAD COMPATIBLE PLANS
EXHIBIT G	PERCENTAGE RENT

THIS SPECIALTY RETAIL LEASE	("LEASE") is made and entered into this day of
, 20, by and between t	he COUNTY OF ORANGE, a political subdivision of the
State of California ("COUNTY"), and _	, ("TENANT").

RECITALS

WHEREAS, COUNTY, through its Board of Supervisors, is the owner and proprietor of John Wayne Airport ("JWA" or "the Airport"), located in the County of Orange, State of California, and operates and maintains the Airport as a governmental function for the primary purpose of providing air transportation to the public; and

WHEREAS, COUNTY requires services for the operation of a specialty retail Concession at the Airport and issued a Request for Proposals for Concession, and as a result of the proposal process, TENANT was selected as the concessionaire to provide this concession in the Airport; and

WHEREAS, TENANT desires to provide, as a convenience for passengers at John Wayne Airport, a specialty retail Concession; and

WHEREAS, COUNTY and TENANT mutually desire to enter into a Lease in order to provide a specialty retail Concession to the passengers at the Airport; and

WHEREAS, the COUNTY has the right to permit the use of its property at the Airport and to grant the use of the Airport to TENANT for the operation of TENANT's and Concession services; and

WHEREAS, TENANT acknowledges that this Lease is being entered into under the provisions of California Public Utilities Code §§21690.5, *et seq.*, and in particular, §21690.9.

NOW, THEREFORE, in consideration of the promises and the mutual covenants hereinafter contained to be observed and performed by the respective parties hereto,

THE PARTIES HERETO COVENANT, AGREE AND BIND THEMSELVES AS FOLLOWS:

ARTICLE I

DEFINITIONS

The following words, terms and phrases whenever used in this Lease shall have the meaning and significance attached to them in this Article, unless otherwise apparent from context.

SECTION 1.01 AIRPORT

"Airport" shall mean the John Wayne Airport, Orange County, California.

SECTION 1.02 AIRPORT DIRECTOR

"Airport Director" shall mean the Director of John Wayne Airport, County of Orange, as appointed by the County Executive Office or designee.

SECTION 1.03 AUDITOR-CONTROLLER

"Auditor-Controller" shall mean the Auditor-Controller, County of Orange, or designee.

SECTION 1.04 BOARD OF SUPERVISORS

"Board of Supervisors" shall mean the elected (or duly appointed) members of the Board of Supervisors of the County of Orange, as governing body of the County and proprietor of the Airport through its Airport Director, or designees, as appropriate.

SECTION 1.05 CONCESSION SUPPORT SPACE

COUNTY may make available to TENANT space to support its concession operations, which may be used as office space, food preparation, and storage space.

SECTION 1.06 COUNTY

"COUNTY" shall mean the County of Orange, a political subdivision of the State of California.

SECTION 1.07 DOT

"DOT" shall mean the Department of Transportation.

SECTION 1.08 ENVIRONMENTAL LAWS

"Environmental Laws" shall mean any federal, state or local law, statute, ordinance, code, judgment, order, rule, or regulation pertaining to the environment and/or human health, Hazardous Materials, Pollutants, occupational safety and health, industrial hygiene or the environmental conditions on, at, under or about the Airport, and includes, without limitation the following: (i) the CLEAN AIR ACT, 42 USC §§ 7401, et seq.; (ii) CLEAN WATER ACT, 33 USC §§ 1251, et seq.; (iii) the COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980, as amended by the SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT OF 1986 ("CERCLA"), 42 U.S.C. §§9601 et seq.; (iv) 49 CFR Subchapter C (Transportation of Hazardous Materials); (v) the SOLID WASTE DISPOSAL ACT, as amended by the RESOURCE CONSERVATION AND RECOVERY ACT OF 1986 and HAZARDOUS and SOLID WASTE amendments of 1984

("RCRA"), 42 U.S.C. §§6901, et seq.; (vi) the OIL POLLUTION ACT of 1990, 33 USC §§ 2701, et seq.; (vii) the FEDERAL WATER POLLUTION CONTROL ACT, 33 U.S.C. §§1317, et seq.; (viii) the SAFE DRINKING WATER and TOXIC ENFORCEMENT ACT OF 1986, CALIFORNIA HEALTH AND SAFETY CODE §§25249,5 et seq.; (ix) the CALIFORNIA HEALTH AND SAFETY CODE §§25100, 25395.7, 25915, et seq.; (x) the PORTER-COLOGNE WATER QUALITY CONTROL ACT (CALIFORNIA WATER CODE) §§13000, et seq.; (xi) the CALIFORNIA CIVIL CODE §§3479, et seq.; (xii) Storm Water Discharge Rules, 40 C.F.R. §§ 122.26, 122.30-37; (xiii) the CARPENTER-PRESLEY-TANNER HAZARDOUS SUBSTANCES ACCOUNT ACT §§25300, et seq.; (xiv) TOXIC SUBSTANCES CONTROL ACT, 15 USC §§2601, et seq.; (xv) the SAFE DRINKING WATER ACT, 24 USC §§300f, et seq.; and (xvi) all other state laws, rules, orders, directives, and codes, regulations, judgments, and orders relating to (a) emissions, discharges, releases, and/or threatened releases of Hazardous Materials into the environment (including, but not limited to, ambient air, surface water, groundwater, land surface, or subsurface strata); and (b) the manufacture, processing, distribution, use, generation, treatment, storage, disposal, transport or handling of Hazardous Materials, as such laws are amended, and the regulations and administrative codes applicable thereto.

SECTION 1.09 EXISTING CONCESSION LOCATIONS

"Existing Concession Locations" shall mean Concession locations currently existing in Terminals pursuant to an existing lease.

SECTION 1.10 FAA

"FAA" shall mean the Federal Aviation Administration created under the Federal Aviation Act of 1958, or such successor agency as may from time to time have similar jurisdiction over TENANT or its business, and the Airport.

SECTION 1.11 HAZARDOUS MATERIALS

"Hazardous Materials" shall mean any Pollutant, contaminant, chemical, compound, substance, hazardous or toxic substance, material, waste, and/or any other matter, which is or shall become regulated by any governmental entity, including, but not limited to COUNTY acting in its governmental capacity, the State of California, and/or the United States Government. The term "Hazardous Materials" includes, without limitation, any material or substance which is: (i)

defined or listed as a "hazardous waste," "extremely hazardous waste," "restrictive hazardous waste" or "hazardous substance" or considered a waste, condition of pollution, nuisance, and/or is controlled or governed under any Environmental Law; (ii) petroleum or a petroleum product or fraction thereof; (iii) asbestos or asbestos-containing materials; (iv) flammable or explosive substances; (v) mold, mold spores or fractions thereof; and/or (vi) substances designated by any governmental entity to cause cancer and/or reproductive toxicity.

SECTION 1.12 LEASED PREMISES

"Leased Premises" shall mean the areas of the Terminal which COUNTY has granted TENANT the right to use on an exclusive use basis. TENANT's Leased Premises is described in Exhibit A and shown on Exhibit B.

SECTION 1.13 MINIMUM ANNUAL GUARANTEE

Annual Guaranteed Rent from TENANT to COUNTY ("MAG").

SECTION 1.14 NOTICE TO PROCEED

"Notice to Proceed" shall mean written notice provided by COUNTY to TENANT providing approval to commence construction of TENANT's improvements.

SECTION 1.15 NOTICE TO TAKE POSSESSION

"Notice to Take Possession" shall mean written notice provided by COUNTY to TENANT that the Leased Premises are available for occupancy and that TENANT must take possession of the Leased Premises by the date stated in the notice.

SECTION 1.16 NON STORM WATER DISCHARGE

"Non Storm Water Discharge" shall mean any discharge to storm sewer systems that is not entirely composed of storm water. "Non Storm Water Discharge" includes "Unauthorized Non Storm Water Discharges" and "Authorized Non Storm Water Discharges" as defined by the California Environmental Protection Agency State Water Resources Control Board National Pollutant Discharge Elimination System General Permit for Discharges of Storm Water Associated with Industrial Activities and Construction Activities.

SECTION 1.17 NPDES PERMIT

"National Pollutant Discharge Elimination System (NPDES) Permit" means the currently applicable discharge permit(s) issued by the Regional Water Quality Control Board, Santa Ana Region, which establish waste discharge requirements applicable to storm runoff within the County and Airport.

SECTION 1.18 POLLUTANT

"Pollutant" means any chemical, compound, substance, liquid, solid or semi-solid substances, or combination thereof, including but not limited to:

a. Artificial materials (such as floatable plastics, wood products or metal shavings);

- b. Household waste (such as trash, paper, and plastics; cleaning chemicals, yard wastes, animal fecal materials, used oil and fluids from vehicles, lawn mowers and other common household equipment);
- c. Metals and nonmetals, including compounds of metals and nonmetals (such as cadmium, lead, zinc, copper, silver, nickel, chromium, cyanide, phosphorus and arsenic) with characteristics which cause an adverse effect on living organisms;
- d. Petroleum and related hydrocarbons (such as fuels, lubricants, surfactants, waste oils, solvents, coolants and grease.);
- e. Substances having a pH less than 6.5 or greater than 8.6, or unusual coloration, turbidity or odor:
- f. Materials causing an increase in biochemical oxygen demand, chemical oxygen demand or total organic carbon;
- g. Materials which contain base/neutral or acid extractable organic compounds;
- h. Those pollutants defined in Section 1362(6) of the Federal Clean Water Act; and
- i. Any other constituent or material, including but not limited to pesticides, herbicides, fertilizers, fecal coliform, fecal streptococcus, or enterococcus, or eroded soils, sediment and particulate materials, in quantities that will interfere with or adversely affect the beneficial use of the receiving waters, flora or fauna of the State; and
- j. Any substance listed under Health and Safety Code, §25316.

SECTION 1.19 RENT COMMENCEMENT DATE

The Rent Commencement Date shall be the earlier of; (a) the Date of Beneficial Occupancy or (b) ninety (90) days after the date on the Airport issued Notice to Proceed to TENANT. The Date of Beneficial Occupancy or "DBO" shall mean the date upon which TENANT completes Initial Improvements and opens for business in any section of the Leased Premises

SECTION 1.20 STORM WATER

"Storm Water" shall mean storm water runoff, snowmelt runoff, and storm water surface runoff and drainage.

SECTION 1.21 STORM WATER DRAINAGE SYSTEM

"Storm Water Drainage System" means street gutter, channel, storm drain, constructed drain, lined diversion structure, wash area, inlet, outlet or other facility, which is a part of a tributary to the county-wide storm water runoff system and owned, operated, maintained or controlled by the county of Orange, the Orange County Flood Control District or any co-permittee city, and used for the purpose of collecting, storing, transporting, or disposing of storm water. The Airport storm drain system shall mean any gutter, channel, storm drain, constructed drain, wash area, inlet or outlet or other facility that flows into, onto, through or out of the Airport property.

SECTION 1.22 TENANT CONSTRUCTION MANUAL

The Tenant Construction Manual sets forth construction design standards for John Wayne Airport tenants, their consultants and contractors for completing tenant improvements at John Wayne Airport. The requirements contained therein are in addition other requirements contained in the Lease between the COUNTY and TENANT.

SECTION 1.23 TENANT DESIGN GUIDELINES

The Tenant Design Guidelines define the multi-step process for TENANT projects at the Airport, from concept development through construction as amended from time to time. The requirements contained therein are in addition to other requirements contained in the Lease between the COUNTY and TENANT.

SECTION 1.24 TERMINAL

"Terminal" shall mean the commercial passenger terminal and concourses at John Wayne Airport, as may be modified at any time during the term of this Lease.

SECTION 1.25 TSA

"TSA" shall mean the Transportation Security Administration of the United States Department of Homeland Security, the federal agency responsible for regulation of airport security, or any such successor agency.

SECTION 1.26 WAYFINDING

John Wayne Airport's information system that guide passengers to navigate the terminal and access services through digital solutions.

ARTICLE II

TERM OF LEASE

SECTION 2.01 TERM OF LEASE

This Lease shall be effective upon the signing of the Lease by the COUNTY, the "Effective Date." The term of this Lease shall be seven (7) years, from the Rent Commencement Date.

SECTION 2.02 HOLDING OVER

In the event TENANT shall continue in possession of the Leased Premises after the term of this Lease, such possession shall not be considered an extension or renewal of this Lease but a tenancy from month to month and shall be governed by the conditions and covenants contained in this Lease.

SECTION 2.03 TERMINATION FOR CONVENIENCE

This Lease may be terminated for convenience by COUNTY for any reason, and without cause, upon sixty days (60) written notice.

ARTICLE III

LEASED PREMISES

SECTION 3.01 LEASED PREMISES

COUNTY grants to TENANT the right to use that certain property hereinafter referred to as "Leased Premises", described in Exhibit A and shown on Exhibit B, which exhibits are attached hereto and by reference made a part hereof. TENANT accepts the Leased Premises in an "as is, where is, and with all faults" and conditions and acknowledges that such Leased Premises are in good and satisfactory condition for the use intended. Said Leased Premises include the Existing Concession Locations, which are to be demolished, remodeled or relocated as provided herein. TENANT must demolish existing location.

SECTION 3.02 DELIVERY OF EXISTING CONCESSION LOCATIONS

COUNTY's obligation to deliver the Existing Concession Locations, to TENANT is subject to and conditioned upon termination of the Lease with, and surrender of the Leased Premises by, the current concessionaire. Except as otherwise set forth herein, TENANT's failure to accept possession of the Leased Premises within fourteen (14) days from COUNTY's written Notice to Take Possession to TENANT, pursuant to the terms of this Lease, shall be an event of default pursuant to Section 9.02 of this Lease.

SECTION 3.03 ASSIGNING OF INTERIM LEASED PREMISES

The COUNTY may grant to TENANT the right to use various individual locations, to be mutually agreed upon, as might become available from time to time as interim leased premises. Interim leased premised are subject to the same rent as defined in Section 4.01. All provisions of this Lease shall apply to the operation of the interim leased premises. TENANT shall be permitted to operate such interim leased premises only for the specified permitted use and the specific time period granted by the COUNTY. The intent of allowing TENANT the use of the interim leased premises is to allow TENANT the opportunity to operate permitted business

activities, provide increased customer service levels and to generate revenue to the COUNTY. TENANT shall relinquish the interim leased premises to the COUNTY upon request.

SECTION 3.04 NATURE OF LEASE

TENANT acknowledges and agrees:

- A. That COUNTY is granting to TENANT a leasehold interest in the Leased Premises only.
- B. That COUNTY retains a fee ownership for federal income tax purposes in and to the Leased Premises, as well as all other ownership burdens and benefits connected with such fee ownership.
- C. That TENANT has not been granted any direct or indirect right or option to purchase the Leased Premises from COUNTY at any time during or after the termination of this Lease.

SECTION 3.05 INSTALLATION OR STORAGE OF EQUIPMENT OUTSIDE THE LEASED PREMISES

TENANT shall not install or store equipment of any kind outside the Leased Premises unless authorized in writing by the Airport Director, or designee prior to installation. COUNTY may make available to TENANT space required by TENANT in support of its concession operations "Concession Support Space" Such concession support areas will be approved by the Airport Director in writing. TENANT agrees to pay COUNTY the terminal rental rate based on the latest schedule established by the COUNTY's approved rates and charges, and as amended from time to time as part of the approved Airline Rates and Charges. Upon Thirty (30) days' written notice from the Airport Director, or designee COUNTY may modify the fees described in this section. TENANT understands the COUNTY must receive fair and equitable fees for all uses of Airport and to insure Airport is operated at no cost to the local taxpayer. With regard to any dispute as to what may constitute reasonable fees, TENANT shall first exhaust all remedies provided by applicable federal law and FAA regulations.

ARTICLE IV

RENT

SECTION 4.01 RENT

TENANT agrees to pay the following rent, payable monthly in arrears, on or before the fifteenth day of each month:

A. <u>Annual Rent Payments</u> - TENANT shall pay to COUNTY, for each annual period either the Minimum Annual Guarantee ("MAG") or percentage rent, whichever is greater:



B.

C.

JOHN WAYNE AIRPORT SPECIALTY RETAIL **CONCESSION LEASE**

	1)	The Minimum Annual Guarantee for the Leased Premises at the Airport shall be in accordance with the following schedule:	
		\$100 x Square Feet =	_ Minimum Annual Guarantee
		Divided by 12 Months = Minimum Monthly Rent	
		Annual Period Minimum Annual Guara	
		Rent Commencement Date	
		to	\$
		Each succeeding year	as adjusted in accordance with "REVISION OF RENTS"
		On, and on each thereafter, the minimum annual rent shall be provisions of the Section in this Lease entitled "	adjusted in accordance with the
other t	than a fi	ease be terminated during an annual period, or all calendar year, the applicable Minimum Annuthree hundred sixty (360) day year.	
	2)	Percentage Rent. Percentage Rent shall be calculated using the percentage of gross receipts from sales conducted on or from the Leased Premises. Percentage rent shall be calculated using the percentage of gross receipts attached hereto and entitled Exhibit G.	
		Any Rent not paid when due shall be subject Section 4.05	to a service charge as defined in
B.		nt of Rent. Rent payments shall be made in acc in this Lease entitled "PAYMENT PROCEDUR	

Tenant Infrastructure Fee. TENANT shall pay to the COUNTY an Infrastructure Fee,

payable monthly in arrears on or before the fifteenth day of each month. This Fee covers the amortized cost of utility infrastructure improvements that the Airport provides to each lease location. This rate is eight dollars (\$8.00) per month per square foot throughout the term of the lease. The fee is due upon Rent Commencement Date and is additional rent.

SECTION 4.02 REVISION OF RENT

On ______, ____, and annually thereafter, the MAG rent shall be automatically adjusted to the greater of the following:

- A. Eighty-five percent (85%) of the annual rent paid by TENANT to COUNTY for the preceding Lease Year, or
- B. The MAG adjusted in proportion to changes in the Consumer Price Index for Los Angeles Anaheim Riverside (All Urban Consumers All Items) promulgated by the Bureau of Labor Statistics of the U.S. Department of Labor. This adjustment shall be calculated by means of the following formula:

$$X =$$
 $\qquad \qquad \underline{A} \qquad MAG \text{ as determined in A above.}$

- X = Adjusted minimum annual rent
- A = Monthly index for the fourth month prior to the month in which each rent adjustment is to become effective.
- B = Monthly index for the month in which this Lease is signed by COUNTY

In the event that the CPI ceases to use 1982-84 = 100 as the basis of calculation, or if, in COUNTY's sole judgment, a substantial change is made in the method used by the federal government to determine the CPI or the items used to calculate the CPI, then the CPI shall be converted to the figure that would have been calculated at (or as close to such figure as shall be practical) had the manner of calculating the CPI in effect at the date of this Lease not been altered.

In the event that the Consumer Price Index is not issued or published for the period for which such minimum annual fee is to be adjusted and computed hereunder, or in the event that the Bureau of Labor Statistics of the United States Department of Labor should cease to publish said index figures, then any similar index published by any other branch or department of the United States Government selected by COUNTY shall be used and if none is so published, then another index generally recognized as authoritative shall be substituted by COUNTY.

Notwithstanding the foregoing, in no event shall the minimum rent be reduced by reason of any such adjustment.

SECTION 4.03 DEFINITION OF GROSS RECEIPTS

As used in this section, the term "TENANT" shall include TENANT, its agents, sub lessees, concessionaires, licensees, or any person acting under contract with TENANT. The term "Gross Receipts" shall include any and all charges invoiced or collected by TENANT monetary or non-monetary consideration received by TENANT, resulting from any and all services provided by

TENANT or items sold, leased or rented by TENANT at, on or about the Airport, unless expressly excluded, including but not limited to the following:

- A. The sale price of all goods, wares, merchandise, and products sold on or from the Leased Premises by TENANT, whether for cash or credit, whether payment is actually made or not, whether delivery of the items sold is made from the Leased Premises and whether title to such items is transferred:
- B. The charges made by TENANT for the sale or rendition on or from the Leased Premises of services of any nature or kind whatsoever, whether for cash or credit, whether payment is actually made or not, and whether the services are actually performed or not;
- C. All sums deposited in any coin-operated vending machine or other device maintained on the Leased Premises, regardless of the ownership of the machine or device, or whether such sums are removed and counted by TENANT or others and regardless of what percentage thereof TENANT is entitled to receive;
- D. All rent and other fees of any nature or kind charged by TENANT (including but not limited to deposits accepted by TENANT);
- E. The fair rental value of facilities on the Leased Premises used by subTENANTs or others;
- F. The value of all consideration received by TENANT or its employees including, without limitation, non-monetary consideration for the items sold, leased, rented or services rendered.

Under Section 5.01 in this Lease entitled "USE", TENANT may be granted the option to provide certain additional services and uses subject to further approval. The term "gross receipts" as it applies to these business operations shall be determined by COUNTY's Auditor-Controller and Airport Director, or designee as well as the appropriate rent and percentage, at the time approval is granted.

Gross receipts shall exclude all sales and excise taxes, as defined by federal, state, county, or municipal governments tax codes, and that are paid by TENANT to as a direct result of operations under this Lease. Refunds for goods returned and deposits shall be deducted from current gross receipts upon return. Bad debt losses shall not be deducted from gross receipts.

Discounts, including but not limited to allowances, deductions, brand discounts, brand rewards discounts, brand loyalty program discounts, promotional program discounts, customer service resolution discounts, rebates, kickbacks, hidden credits, or any other reductions shall not be deducted from gross receipts with exception of employee discounts set forth below.

Employee discounts from the public sales price may be allowed to Airport-issued badged employees and/or TENANT's employees provided Airport Director, or designee is first provided with the TENANT's discount policy and that the discount is reflected on sales records. The sales



JOHN WAYNE AIRPORT SPECIALTY RETAIL CONCESSION LEASE

records shall clearly state the public sales price, employee identification number or badge number the amount of discount, and the discounted sales price.

SECTION 4.04 PAYMENT PROCEDURE

- A. Gross Receipts Report. On or before the fifteenth day of each month (the "due date") TENANT shall deliver to Auditor-Controller a correct statement of all applicable gross receipts for that portion of the lease year which ends with and includes the last day of the preceding calendar month. The statement shall be signed by TENANT or TENANT's responsible agent in a form prescribed by Auditor-Controller. Each statement shall indicate:
 - 1) One twelfth of the Minimum Annual Guarantee rent payment (MAG)
 - The total gross receipts for said portion of the lease year, itemized as to each of the business categories for which a separate percentage rent is established. A breakdown of the gross receipts of each business conducted on the Leased Premises must be attached to each statement where a reported business category is comprised of more than one business operation.
 - 3) The related itemized amounts of percentage rent computed as herein provided and the total thereof;
 - 4) The total rent previously paid by TENANT for the lease year within which the preceding month falls; and
 - 5) The rent due for the preceding month.

Concurrently with the rendering of each monthly statement, TENANT shall pay to COUNTY the greater of the following two amounts:

- 6) The total percentage rent computed for that portion of the Lease year ending with and including the last day of the preceding month [Item 3, above] less total rents previously paid for the Lease year [Item 4, above], or
- 7) One twelfth of the annual minimum rent, multiplied by the number of months from the beginning of the accounting year to and including the preceding month, less total rents previously paid for the accounting year [Item 4) above].
- B. Place of Payment and Filing. Payments and statements required by the Sections in this Lease entitled "RENTS" and shall be delivered to the County of Orange, Office of the Auditor-Controller, John Wayne Airport Accounting Services, 3160 Airway Avenue, Costa Mesa, California 92626. The designated place of payment and filing may be changed at any time by COUNTY upon ten (10) days' written notice to TENANT. Payments may be made by check payable to the County of Orange. TENANT assumes all risk of loss if payments are made by mail.

- C. Form of Payment. All sums due under this Lease shall be paid in lawful money of the United States of America without offset or deduction or prior notice or demand. No payment by TENANT or receipt by COUNTY of a lesser amount than the payment due shall be deemed to be other than on account of the payment due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and COUNTY shall accept such check or payment without prejudice to COUNTY's right to recover the balance of the amount due or pursue any other remedy in this Lease. All payments must be remitted by Automated Clearing House (ACH) / direct deposit to the County-Airport's designated bank account, or any future mode prescribed by the County. Any fees assessed to the County's bank account due to the use of other form of payment (e.g. wire transfer) not prescribed or approved by the COUNTY, shall be passed through to the TENANT plus \$25 processing fee.
- D. <u>Penalty for NSF Check.</u> In the event a check submitted by TENANT is returned for non-sufficient funds ("NSF"), TENANT agrees to pay COUNTY a service charge in the amount of twenty-five dollars (\$25) for the first check, and thirty-five dollars (\$35) for each subsequent check. TENANT liable for treble damages pursuant to California Civil Code Section 1719.

SECTION 4.05 CHARGE FOR LATE PAYMENT

TENANT hereby acknowledges that the late payment of rents or any other sums due hereunder will cause COUNTY to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, administrative processing of delinquent notices, increased accounting costs, lost interest income.

Accordingly, if any payment of rents as specified in the section in this Lease entitled "RENT" or of any other sum due COUNTY is not received by COUNTY by the due date, a late charge of one and one-half percent (1.5%) of the payment due and unpaid plus one hundred dollars (\$100) shall be added to the payment, and the total sum shall become immediately due and payable to COUNTY. An additional charge of one and one-half percent (1.5%) of said payment, excluding late charges, shall be added for each additional month that said payment remains unpaid.

TENANT and COUNTY hereby agree that such late charges represent a fair and reasonable estimate of the costs that COUNTY will incur by reason of TENANT's late payment. Acceptance of such late charges (and/or any portion of the overdue payment) by COUNTY shall in no event constitute a waiver of TENANT's default with respect to such overdue payment, or prevent COUNTY from exercising any of the other rights and remedies granted hereunder.

SECTION 4.06 RECORDS AND ACCOUNTS

A. <u>Records Defined.</u> "TENANT's Records" as referred to in this Lease shall include any and all information, materials, and data of every kind and character in any format, including, but not limited to records, accounts, financial transactions, books, papers,

documents, recordings, notes, receipts, vouchers, memoranda, sales invoices, accounts receivable records, commission payment records, tax remittance records, expenditures for improvements or refurbishments, any and all other agreements, sources of information and matters that may, at COUNTY's sole discretion, have any bearing on or pertain to any matters, rights, duties, or obligations under or covered by the Lease, and any other TENANT records which may have a bearing on matters of interest to COUNTY in connection with TENANT's dealings with COUNTY to the extent necessary to adequately permit evaluation and verification of any or all of the following:

- 1) Accuracy of amounts owed to COUNTY resulting from TENANT's operation of the Leased Premises.
- 2) Compliance with any requirement in the Lease.

TENANT shall, at all times during the term of this Lease, keep or cause to be kept true and complete books, records, and accounts of all financial transactions in the operation of all business activities, of whatever nature, conducted in pursuance of the rights granted herein. The records must be supported by source documents such as sales slips, cash register tapes, purchase invoices, or other pertinent documents.

B. <u>Annual Certification of Sales and Adjustment</u>. Within ninety (90) days after the end of each Accounting Year, TENANT shall submit to Director at County's Deposit/Annual Report Notice Address a year-end compilation report prepared by an independent Certified Public Accountant showing Gross Revenues achieved with respect to the prior Lease Year ("Annual Report"). The Lease year shall be twelve full calendar months.

Any portion of a year that is not reconciled, should the accounting year and the anniversary year of the Lease commencement not be the same, shall be accounted for as if it were a complete Lease year.

Once an Annual Certification of Sales and Adjustment date is established, it shall be continued through the term of the Lease unless Auditor-Controller specifically approves in writing a different accounting year. Auditor-Controller shall only approve a change in accounting years in the event of undue hardship being placed on either the TENANT or COUNTY, and not because of mere convenience or inconvenience.

C. <u>CPA-Audited Statement of Gross Receipts</u>. Within ninety (90) days after the end of each accounting year, TENANT shall at its own expense submit to Auditor-Controller an audited statement of total gross receipts for all Airport operations. This statement shall include a breakdown schedule of total gross receipts for the accounting year by month and sales as classified according to the categories of business established for percentage rent and listed in Section 4.01 (RENT) and for any other business conducted on or from the Leased Premises. This statement must be prepared by an independent Certified Public Accountant (CPA) or CPA firm holding a current and valid license and completion of attest experience ("A") with the State Board of Accountancy. The audit

must be performed in accordance with current Generally Accepted Auditing Standards (GAAS) authorized by the American Institute of Certified Public Accountants (AICPA).

TENANT shall provide COUNTY with copies of any Certified Public Accountant management letters and audited financial statements prepared in conjunction with their audit of TENANT's operations from the Leased Premises. Copies of management letters and/or financial statements shall be provided directly to COUNTY by the CPA at the same time TENANT's copy is provided to TENANT.

TENANT acknowledges that any and all of the "Financial Statements" submitted to COUNTY pursuant to this Lease become Public Records and are subject to public inspection pursuant to Sec. 6250 et seq. of the California Government Code.

- D. <u>Failure to Submit CPA-Audited Statement of Gross Receipts</u>. In addition to any other remedies available to COUNTY at law or in equity or under this Lease, in the event that TENANT fails to submit any financial statements by the due date listed in this Section, Subsection "C. CPA-Audited Statement of Gross Receipts.". Airport Director, or designee may require TENANT to submit the greater of:
 - 1) \$5,000 fine; or
 - 2) Any and all costs incurred by COUNTY for the Certified Public Accountant hired by the COUNTY to prepare the required financial statements, including an administrative fee equal to fifteen percent (15%) of those costs.
- E. <u>Audits.</u> All TENANT's books of account and records and supporting source documents related to this Lease or to business operations conducted within or from the Airport shall be kept and made available to COUNTY at one location within the limits of the County of Orange, or shall be made available at offices in the COUNTY within ten (10) business days after notice to produce said records and source documents. COUNTY shall, through its duly authorized agents or representatives, have the right to examine and audit said books of account and records and supporting source documents at any and all reasonable times for the purpose of determining the accuracy thereof, and of the monthly statements of transactions and the dollar amount of said transactions. The full cost of said audit shall be borne by COUNTY.

The COUNTY, upon request of TENANT and in the COUNTY's sole discretion, may authorize the above-referenced books and records and supporting source documents to be kept in a single location outside the limits of Orange County provided TENANT shall agree to pay all expenses including but not limited to transportation, food, and lodging necessary for the COUNTY to send a representative to audit said books and records. Said right shall not be exercised by the COUNTY more than once each accounting year.

Upon the request of the COUNTY, TENANT shall promptly provide, at TENANT's expense, necessary data to enable COUNTY to fully comply with any and every

requirement of the State of California or the United States of America for information or reports relating to this Lease and to TENANT's use of the Airport. Such data shall include, if required, a detailed breakdown of TENANT's receipts and expenses.

The full cost of said audit, as determined by the COUNTY, shall be borne by TENANT if either or both of the following conditions exist:

- 1) The audit reveals an underpayment of more than one percent between the rent due as reported and paid by TENANT in accordance with this Lease and the rent due as determined by said audit;
- 2) TENANT has failed to maintain true and complete books, records, accounts and supporting source documents in accordance with this Section, Subsection "A. Records Defined" above. The adequacy of records shall be determined at Auditor-Controller's reasonable sole discretion.

Otherwise, COUNTY shall bear the cost of said audit, excluding the aforementioned expenses related to audit of documents kept outside the limits of the County of Orange.

- F. Failure to Maintain Adequate Records. In addition to any other remedies available to COUNTY at law or in equity or under this Lease, in the event that TENANT fails to maintain and keep books, records and accounts of gross receipts from business operations conducted on or from the Leased Premises and/or source documents relating thereto, or to make the same available to the COUNTY for examination and audit, or to record sales and/or to maintain registers to record sales, or to provide financial statements and other information to the COUNTY regarding gross sales as required by this Lease, the COUNTY, at the COUNTY's option, may:
 - 1) Perform such examinations, audits and/or investigations itself or through agents or employees as COUNTY and/or its auditors may deem appropriate to confirm the amount of percentage rents payable by TENANT under this Lease and any and all costs and/or expenses incurred by COUNTY in connection therewith shall be promptly reimbursed to COUNTY by TENANT upon demand.
 - 2) Provide accounting services and/or a system for recording sales and charges, including without limitation, cash registers, for use by TENANT in business transactions upon or from the Leased Premises, and, at COUNTY's option, maintain personnel on the Leased Premises to observe and/or record such sales during TENANT's business hours, or from time to time, all at TENANT's sole cost and expense and, in such event, TENANT shall promptly reimburse COUNTY for any and all costs incurred by COUNTY in connection therewith; and/or
 - 3) Require that TENANT pay percentage rents based on COUNTY's best good faith estimate of TENANT's gross receipts from business operations conducted on or

from the Leased Premises and Airport and any such determination made by COUNTY shall be conclusive and binding upon TENANT.

County of County provided services at such rates as County may from time to time, in good faith, establish for such services. In the case of services provided by County's employees, such rates shall be sufficient to reimburse County for employees' salaries, including employee taxes and benefits and County's overhead or, at County's option, may be the rate for such services that would be charged by a qualified third party or parties, approved by County, if engaged by County to perform such services. Said costs payable by Tenant shall be included as rent for the first month following invoice to Tenant.

- G. <u>Review Period</u>. COUNTY or its designee may conduct such audits or inspections throughout the term of this Lease and for a period of three (3) years after final payment or longer if permitted by law.
- H. <u>Methodology.</u> COUNTY or designee may, without limitation by TENANT, conduct verifications including, but not limited to, inspection of TENANT's Records, observation of TENANT's employees in or about the Leased Premises, and verification of information and amounts through interview and/or written communications with TENANT's employees or sub-contractors.
- I. <u>Record Retention.</u> All of TENANT's Records shall be retained by TENANT for a period of the balance of the fiscal year in which the Record was created, recorded, or otherwise prepared, plus five (5) years regardless of when this Lease expires or is terminated.
- J. <u>Sales Recording System.</u> TENANT shall prepare a description of its cash handling and sales recording systems and equipment which shall be submitted to Airport Director, or designee for approval. Following approval by Airport Director, or designee such systems and equipment shall be utilized by TENANT. TENANT shall accurately record each sale on a point of sale register. Such register shall be non-resettable and sufficient to supply an accurate record of all sales on tape or otherwise as approved by Airport Director, or designee
- K. Point of Sale Requirements. TENANT shall install in the Premises a Point of Sale (POS) system with at least one POS unit, which includes mobile POS or other similar electronic devices. All POS used on the Premises shall meet current industry standards for transmitting, capturing and recording transactions, approved discounts with badge numbers, and data in a secure fashion while protecting Card Holder Data, and shall register every transaction made in, on, about or from the Premises, including every type of Gross Revenue daily automated reporting. Said POS shall be accessible to and subject to inspection or audit by Airport Director, or designee upon request. All cash receipts must include TENANT's identification thereon. Each approved discount must have a badge number or identification number keyed in to the POS system for each transaction.

Customer must be issued a receipt or sales slip for each transaction, which transaction must be recorded either on or serially numbered sales slip or digital record produced by POS. COUNTY should have the right during business hours to examine the totals of the POS (s) used in the Premises and to inspect for compliance with this section. COUNTY shall have the right to implement a revenue system that can provide daily reports to COUNTY. If COUNTY exercises such right, TENANT must, at its cost, purchase and install the necessary equipment, train its employees, and thereafter use, such equipment to take part in such system. TENANT shall ensure a capability within its mobile POS for the installation of Airport and Airport partner applications that can be integrated with TENANT's POS to exchange data and make possible for future opportunities to support passengers and airlines with vouchers coupons and other mutually beneficial Marketing Programs. Any sales captured from third party applications, TENANT branded applications, cell phone applications must be provided to the COUNTY as part of the monthly sales reporting.

L. <u>Other Reports and Submissions.</u> TENANT shall furnish to COUNTY such other financial or statistical reports as Airport Director, or designee may require.

SECTION 4.07 PROVISION AGAINST SET-OFFS

It is the obligation of TENANT to pay all rents free of any set-offs or claims, in the amount and at the times specified in this Lease. In the event that TENANT desires to contest the validity or amount of any such rents and charges, TENANT shall first pay the same to COUNTY and may then seek a refund in any appropriate forum.

SECTION 4.08 SECURITY DEPOSIT

TENANT, no later than seven (7) days after the Effective Date of this Lease, shall deposit with COUNTY a security deposit in the sum of four (4) times the estimated monthly rent as determined by Airport Director, or designee.

Concurrently with each revision of the rents pursuant to the Section in this Lease entitled "RENT", the security deposit to be provided by TENANT shall be adjusted to approximately four (4) times the estimated monthly rent as determined by Airport Director, or designee to guarantee the faithful performance by TENANT of its obligations under this Lease and the payment of all rents due hereunder.

The security deposit shall take one of the forms set out below and shall guarantee TENANT's full and faithful performance of all the terms, covenants, and conditions of this Lease:

A. An instrument or instruments of credit from one or more financial institutions, subject to regulation by the State of California or Federal government, pledging that funds necessary to secure performance of the Lease terms, covenants, and conditions are on deposit and guaranteed for payment, and agreeing that said funds shall be trust funds securing TENANT's performance and that all or any part shall be paid to COUNTY, or

order upon demand by Airport Director, or designee. Both the financial institution(s) and the form of the instrument(s) must be approved by Airport Director, or designee.

B. A Faithful Performance Bond executed by a surety company or financial institution qualified and admitted to do business in the State of California and issued in a form, approved by the COUNTY. Under the bond, the surety company shall guarantee to COUNTY full and complete performance of all the terms, conditions and covenants herein to be performed on the part of the TENANT, including the payment of use fees as well as any and all other payments. Said bond shall be maintained at the cost of the TENANT throughout the existence of this Lease. Said Surety shall give Airport Director, or designee a minimum (30) days' prior written notice of cancellation or material change in said bond. Such cancellation or material change without Airport Director's, or designee prior written consent shall constitute a default under this Lease.

Regardless of the form in which TENANT elects to make said security deposit, all or any portion of the principal sum shall be available unconditionally to the COUNTY for correcting any default or breach of this Lease by TENANT, its successors or assigns, or for payment of expenses incurred by COUNTY as a result of the failure of TENANT, its successors or assigns, to faithfully perform all terms, covenants, and conditions of this Lease.

Should TENANT elect to provide either an Instrument of Credit or a Faithful Performance Bond to fulfill the security deposit requirements of this Lease, said instrument or bond shall have the effect of releasing depository or creditor therein from liability on account of the payment of any or all of the principal sum to COUNTY, or order upon demand by Airport Director, or designee.

In the event Airport Director, or designee withdraws all or any portion of the security deposit as provided herein, TENANT shall, within ten (10) days of any withdrawal by Airport Director, or designee, replenish the security deposit to maintain it at amounts herein required throughout the Lease term. Failure to do so shall be deemed a default and shall be grounds for immediate termination of this Lease.

TENANT shall be obligated to maintain the security deposit in effect until the Expiration Date of the Lease.

The security deposit, after deduction of all amounts due COUNTY, shall be rebated, reassigned, released or endorsed by the COUNTY to TENANT or order, as applicable, after one hundred twenty (120) days have elapsed following the expiration date of the Lease term, provided TENANT has fully and faithfully performed each and every term, covenant, and condition of this Lease.

SECTION 4.09 MARKETING FUND FEE

TENANT shall be required to contribute an annual Marketing Fund Fee in the amount of ten thousand dollars (\$10,000.00) on the Effective Date of the Lease, and thereafter the first (1st) of each succeeding calendar year. COUNTY has established a Marketing Fund for the Airport to

conduct sales promotions, Airport wide advertising, and related activities intended to promote the Airport and its TENANTs. TENANT agrees to pay this amount to the Marketing Fund and annually thereafter. All monies received by COUNTY under Section 4.09 shall be used solely for the purpose of Airport TENANT's promotions and related expenses.

SECTION 4.10 UTILITIES

TENANT shall pay the whole cost for all TENANT's utility usage. TENANT's utility usage will be invoiced to the TENANT by COUNTY. COUNTY shall make available in the Terminal the following utility services: reasonable amounts of water, electricity, telecom, sewage outlets, common area heating, ventilation, and air conditioning, stubbed out to leasehold. TENANT is responsible for all changes and alterations from and to the stubbed out location any such changes or alterations shall be at the sole cost of the TENANT.

ARTICLE V

USE, OPERATION, MAINTENANCE AND CONDITION OF LEASED PREMISES

SECTION 5.01 USE

TENANT's primary purpose for entering into this Lease is to promote the development of a Specialty Retail Concession on the Leased Premises.

- A. Required Services and Uses. TENANT shall have a nonexclusive right to develop, operate and manage a ______ concession within designated locations at the Airport. The concession rights granted herein shall be exclusive within the Leased Premises but non-exclusive at the Airport. TENANT agrees not to use the Leased Premises for any other purpose nor to engage in or permit any other activity by TENANT's employees, agents or contractors, within or from the Leased Premises. TENANT agrees not to conduct or permit its employees, agents or contractors to conduct any public or private nuisance in, on or from the Airport, or to commit or permit its employees, agents or contractors to commit any waste in, on or from the Airport. The Use is attached hereto and entitled EXHIBIT C.
- B. Optional Services and Uses. Subject to the prior written approval of the Airport Director, or designee, TENANT may be granted the option to provide those additional services and uses which are ancillary to and compatible with the required services and uses herein; subject to negotiation and approval of Airport Director, or designee.
- C. The above listed services and uses, are required and shall be the only services and uses permitted. TENANT agrees not to use the Leased Premises for any other purpose nor to engage in or permit any other activity within or from the Leased Premises. This prohibition includes, but is not limited to, sale or use of tobacco products, vending machines of any kind, stamps, insurance policies, or as decided by the Airport Director or designee.

- D. COUNTY reserves the right to engage in pouring rights agreement with a third party. TENANT shall be required to comply with any future agreements executed by Airport.
- E. Airport Director has the right to use TENANT's inventory of goods in an emergency situation to assist in maintaining the welfare of persons at or near the Airport. TENANT shall be reimbursed by COUNTY for the cost of goods as soon as practicable at a rate not to exceed prices immediately prior to the emergency.

In the event TENANT breaches this Lease by using or permitting the Leased Premises to be used in any manner other than as expressly permitted under this Lease, TENANT shall pay COUNTY a sum equal to 100% of the "gross receipts", as defined in the Section 4.03 (DEFINITION OF GROSS RECEIPTS) for any service or use that is not permitted by this Lease, or otherwise authorized in this Lease entitled. Said payment is subject to the "due date" provided in the Section 4.04 (PAYMENT PROCEDURE) and the "charge for late payment" provided in the Section 4.05 (CHARGE FOR LATE PAYMENT). The existence of the 100% charge in this section, or the payment or receipt of money under this section, does not constitute an authorization for a particular service or use and does not constitute a waiver of COUNTY's right to require TENANT to terminate such service or use. The parties agree that COUNTY's actual damages, in the event of such a breach by TENANT would be extremely difficult or impossible to determine; therefore, an amount equal to the amount of 100% of such gross receipts has been agreed upon, after negotiation, as the parties' best estimate of COUNTY's reasonable damages.

COUNTY reserves the right to prohibit the sale of those items which, in the opinion of COUNTY, are not in the public interest; or which might compete unfairly with other Terminal concessions. TENANT also agrees not to conduct or permit to be conducted any public or private nuisance (as defined in C.C. 3479) in, on or from the Leased Premises, or to commit or permit to be committed any waste in, on or from the Leased Premises.

SECTION 5.02 RULES AND REGULATIONS

The COUNTY may adopt and enforce Rules and Regulations which TENANT agrees to observe and obey, with respect to the use of the Airport and its appurtenances, facilities, improvements, equipment and services; provided that such rules and regulations shall not be inconsistent with safety and with rules, regulations and orders of the FAA and TSA with respect to all operations of the Airport.

TENANT shall comply with all Airport Rules and Regulations and shall observe, obey, comply with and not otherwise hinder or obstruct any and all rules, regulations, laws, ordinances, statutes or orders of any governmental authority, whether Federal, State, or local, lawfully exercising authority over the Airport or the activities thereon, including compliance with FAA, TSA and Airport security rules, regulations and plans.

To the fullest extent authorized by law, TENANT shall be liable to COUNTY for any and all claims, demands, damages, fines or penalties of any nature whatsoever which may be imposed upon COUNTY due to TENANT's violation of any governmental rules, regulations or standards

as now or may hereafter be promulgated or enacted, including, but not limited to, the payment of any fines or penalties for any breach of security, arising from the unauthorized entry of any person or vehicle onto Airport or from any other violations caused directly or indirectly by the act, omission, negligence, abuse or carelessness on the part of TENANT, its employees, subTENANTs, agents or suppliers.

COUNTY shall not be liable to TENANT for any diminution or deprivation of possession, or of its rights hereunder, on account of the exercise of such right or authority as in this section provided, nor shall TENANT be entitled to terminate the whole or any portion of the rights granted herein by reason of the exercise of such right or authority, unless the exercise thereof shall so interfere with TENANT's use and occupancy of the Leased Premises so as to constitute a termination in whole or in part of this Lease by operation of law in accordance with the laws of the State of California.

SECTION 5.03 OPERATIONAL REQUIREMENTS

TENANT shall operate the specialty retail concession in a competent and efficient manner in accordance with the terms of this Lease including the following:

- A. Manager. TENANT shall appoint a Manager to supervise TENANT's operations at the Airport. Such person must be an outstanding, highly qualified and experienced manager and be vested with full power and authority to accept service of all notices. They shall be vested with the authority to regulate the quality and prices of all menu items, and the appearance, conduct and demeanor of TENANT's employees. Said Manager shall be assigned to the Airport where he or she shall be available daily during peak travel periods and daily from 8:00 a.m. until 5:00 p.m., Monday through Friday, and where during their absence, a responsible subordinate shall be in charge and available during concession operating hours. Manager's subordinate shall be available by telephone and/or e-mail provided to the Airport Director, or designee, and should be available to arrive at the Airport within thirty minutes (30) of a being contacted to address any problems.
- B. <u>Personnel.</u> TENANT shall at all times maintain qualified and experienced personnel to supervise TENANT's concession and provide a high standard of service to passengers and other guests at the Airport. TENANT shall require its employees to be properly dressed, clean, courteous and neat in appearance at all times. TENANT's employees shall refrain from use of offensive language and/or act in an otherwise offensive manner.
- C. <u>Noninterference.</u> TENANT shall cooperate with and not interfere with COUNTY's and other TENANT's use of and operations at the Airport. TENANT shall not place any ropes, barricades and/or stanchions on the public or common use area without prior written approval of the Airport Director, or designee.
- D. <u>Deliveries.</u> TENANT shall have supplies of any nature or kind delivered only at times, and through routes and entrances, 11:00 pm to 6:00 am, seven (7) days a week, or as designated by Airport Director, or designee. TENANT shall not leave products, carts

and inventory unattended in the concourses, hallways and other locations that will impede pedestrian traffic. TENANT shall utilize carts, shippers, hand trucks and dollies that were outfitted with pneumatic (air) or gel tires to move products or merchandise from storage to concession areas. Metal or hard rubber wheels or tires are prohibited.

- E. <u>Utilities.</u> TENANT shall be responsible for and pay, prior to the delinquency date, all charges for installation of dedicated phone lines and all charges for phone services to the Leased Premises. COUNTY shall only furnish an electrical supply line to the Leased Premises and water and a gas line to specified locations only as shown on Airport-approved construction drawings. TENANT shall be responsible for making all electrical, sewer, HVAC, gas, and water connections to and within the Leased Premises, where applicable.
- F. <u>Merchandise and Pricing.</u> TENANT's merchandise plan and prices (Plan) shall be as TENANT has proposed and approved by COUNTY for each store location and is attached hereto as Exhibit E. During the Lease term, TENANT shall not make changes to the Plan without first obtaining the prior written approval of Airport Director, or designee. Price changes must be submitted at a minimum of two weeks in advance for Airport review.
- G. Pricing. TENANT's merchandise shall be consistent with all uses as provided under Section 5.01 (USE). Prices of said items shall not exceed one hundred ten percent (110%) of approved prices reasonably found in similar stores located in the Orange County Area. TENANT shall perform price surveys every year from the effective date of this Lease or at the request of the Airport Director, or designee. Price surveys shall include, prices from a minimum of three (3) specialty retail establishments deemed similar to TENANT's operation, subject to Airport Director's or designee's review and approval. TENANT shall submit results to the COUNTY within thirty (30) of completion of the price survey. In the event that TENANT's prices have not been in compliance with the terms of this Lease, TENANT shall adjust prices accordingly within 48 hours of being notified by Airport Director, or designee.
- H. <u>Employee Parking Fee.</u> TENANT shall pay the monthly employee parking fee, subject to change, for employee vehicles parked in the employee parking lot.
- I. <u>Credit and Debit Cards.</u> Customers shall be permitted to utilize major credit and debit cards, and at a minimum, the following credit cards in payment for all sales: Visa, MasterCard, Discover and American Express.
- J. <u>Recycling</u>. TENANT agrees that when alternate forms of packaging are available, only items packaged in a manner most compatible with the Airport's goals of recycling, reducing litter and preserving the environment shall be sold. No Styrofoam packaging products will be sold. Sale of beverages in non-returnable cans, metal or glass containers are not permitted. TENANT shall participate in the Airport's waste reduction and

- recycling program as required and wherever possible. Receipts evidencing compliance with said programs shall be kept and made available for Airport review.
- K. Employee Hiring. TENANT warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Lease meet the citizenship or alien status requirement set forth in Federal statutes and regulations. TENANT shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seg., as they currently exist and as they may be hereafter amended. TENANT shall retain all such documentation for all covered employees for the period prescribed by TENANT shall indemnify, defend with counsel approved in writing by COUNTY, and hold harmless, COUNTY, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the TENANT or the COUNTY or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment or any persons performing work under this Lease.
- L. <u>Promotional Advertising.</u> TENANT may hold in-store promotions and is encouraged to creatively merchandise and display its products. All promotional advertising needs to be submitted and approved by the Airport Director, or designee. All promotions must be submitted to JWA at a minimum of two weeks advance for review. Displays that are considered objectionable by COUNTY shall be removed or objectionable features altered as necessary to be rendered unobjectionable by COUNTY, upon written notice by Airport Director, or designee.
- M. <u>Wireless Communications.</u> In the interests of public safety and the efficient operation of the Airport, COUNTY reserves the sole right to resolve any conflicts between or among any wireless communication devices or systems of the Airport TENANT, and any third party users at the Airport, and to require TENANT to change over to any future Airport-wide network once installed.
- N. <u>Interference with Systems.</u> TENANT shall not interfere with the effectiveness of utility, heating, ventilating or air-conditioning systems or portions thereof on or adjoining the Leased Premises (including lines, pipes, wires, conduits and equipment connected with or appurtenant thereto) or interfere with effectiveness of elevators or escalators in or adjoining the concession premises, or overload any floor in the concession premises.
- O. <u>Smoking Prohibited.</u> TENANT shall not do anything contrary to COUNTY's ordinance, prohibiting smoking. Said ordinance prohibits smoking in the terminal building, including all food and beverage areas.
- P. <u>Unauthorized Locks.</u> TENANT shall not place any additional lock of any kind upon any window or interior or exterior door in the Leased Premises, or make any change in any

existing door or window lock or the mechanism thereof, unless a key therefore is maintained on the Leased Premises, nor refuse, upon the expiration or sooner termination of this Lease, to surrender to Airport Director, or designee any and all keys to the interior or exterior doors on the Leased Premises, whether said keys were furnished to or otherwise procured by TENANT, and in the event of the loss of any keys furnished by Airport Director, or designee TENANT shall pay COUNTY, on demand, the cost for replacement thereof, and the cost of re-keying COUNTY's locks. TENANT may be required to comply with Airport security measures that consist of changing of key locks to badge controlled electronic locks and shall bare the cost associated with any change over.

- Q. <u>Standards of Quality</u> TENANT shall establish and submit a Standards of Quality Operating Manual to JWA for review and approval. TENANT must maintain the approved standards offering quality service and retail operations.
- R Standards of Service. The management, maintenance and operation of the specialty retail concession shall be under the supervision and direction of a qualified, experienced person or persons who shall be authorized to act on behalf of TENANT. TENANT will assign a representative to service the specialty retail concession location(s). Maintenance must be available seven (7) days per a week and repairs shall be made within two (2) hours of notification. TENANT agrees that the maintenance service thereto shall take place, whenever possible, during hours of minimum passenger activity, at such hours and using such entrances and routes as approved by the Airport Director, or designee TENANT shall cooperate with and not interfere with COUNTY's and other TENANT's use of and operations at the Airport.

SECTION 5.04 AIRPORT SECURITY

In addition to FAA, TSA and Airport security rules, regulations and plans, shall comply with all security requirements of the United States Customs and Border Protection (USCBP), and all applicable federal, state and local regulations regarding airport security. TENANT is responsible for fines imposed by any regulatory agency as a result of TENANT's failure to comply with applicable rules and regulations regarding airport security.

TENANT shall be required to obtain airport security clearance in order to perform work under this License. TENANT, its employees and contractors must complete a background clearance Security Identification Display Area (SIDA) class in order to obtain an I.D. badge for access to secure areas and a driver's permit to drive on the airfield.

A. Badge Acquisition

Prior to issuance of a security badge(s), designated TENANT personnel who will be working onsite, and engaged in the performance of work under this License, must pass Airport's screening requirements, which includes an F.B.I. Criminal History Records Check and a Security Threat Assessment, and shall pay any applicable fees. Upon

successful completion of the background checks, TENANT designated personnel will be required to attend a 3-hour SIDA class and pass a written test. Those personnel who may be permitted by the Airport to drive on the Airport Operations Area (AOA) perimeter road must also complete a Driver's Training class and written test. Airport identification badges are not issued until designated TENANT personnel have: 1) completed appropriate application forms and submitted proof of identity and employment eligibility, 2) passed both background checks, 3) completed and passed appropriate classroom training and 4) paid an identification badge fee for each badged person. TENANT should anticipate a minimum of five (5) business days to complete the security badge process if all requirements listed above are fulfilled by individual badge applicants in a timely manner. TENANT's designated personnel must successfully complete the badge acquisition process, unless other arrangements have been approved by the Airport. TENANT shall be responsible for all applicable fees and costs associated with the background checks and badging process. The amount of such fees is subject to change without notice.

B. Badge Holder Requirements and Responsibilities

The Airport Security Plan (ASP) requires that each person issued an Airport security badge be made aware of his responsibilities regarding the privilege of access to restricted areas of the Airport.

TENANT and all TENANT personnel within an access controlled area (AOA, SIDA, secured area or sterile area) area required to display on their person an Airport security badge, unless they are escorted by a properly badged individual. When working in a secure area, each badged person is responsible for challenging any individual who is not properly displaying an Airport issued or approved and valid I.D. badge. Any person who is not properly displaying or who cannot produce a valid Airport security badge must immediately be referred to the Sheriff's Department – Airport Police Services Office for proper handling.

The Airport security badge is the property of the County of Orange and must be returned upon termination of TENANT personnel employment and/or termination of the License. The loss of a badge shall be reported within 24 hours to the Sheriff's Department–Airport Police Services by calling (949) 252-5000. TENANT or TENANT personnel who lose their badges shall be required to pay a fee before receiving a replacement badge. The charge for lost badge replacement will be posted in the Airport Administration Office and is subject to change without notice. A report shall be made before a replacement badge will be issued.

The Airport security badge is nontransferable.

In the event that TENANT's badge is not returned to the Airport upon termination of TENANT personnel employment and/or termination of the License, the TENANT and/or TENANT personnel shall be liable to the County of Orange for a fine in the amount of

\$250.00 per unreturned badge. The amount of the fine is subject to change without notice. TENANT's security deposit may be applied to cover the cost of the fine.

SECTION 5.05 ANTI-IDLING POLICY

Within six months of LEASE execution, LESSEE must develop, implement and submit to the Airport Director or designee for approval a fleet-wide anti-idling policy. At a minimum, the anti-idling policy shall include the requirement that vehicle engines shall be turned off when vehicles are not occupied, and that occupied vehicles be turned off after no more than a five-minute idling period. LESSEE's policy shall also include all subTENANT and third party vehicles that enter Airport property at the direction of the LESSEE.

SECTION 5.06 MAINTENANCE OF LEASED PREMISES

General. TENANT, at its own cost and expense, shall maintain and repair, replace or refinish all improvements and installations of any kind. TENANT agrees to maintain the Leased Premises in a safe, clean, wholesome, sanitary condition and in compliance with all applicable laws. It shall be the TENANT's responsibility to make all necessary repairs required to maintain the Leased Premises and improvements in good condition. All repairs and improvements made by the TENANT to the Leased Premises shall be in compliance with all current Federal, State, Local Ordinances and Building Codes and all Airport Regulations (Codes), TENANT shall be in compliance with the JWA TENANT Design Guidelines and JWA Construction Manual. The Codes encompass all fire, life and structural safety aspects and apply to the construction, alteration, moving, demolition, repair and use of the Leased Premises. Any additions, alterations, repairs and changes of use or occupancy in the Leased Premises shall comply with the provisions for new buildings and structures as set forth in the Codes. All devices or safeguards which are required by the Codes shall be maintained in conformance with the edition of the Codes under which it was installed.

- A. <u>Equipment and Improvements.</u> TENANT shall maintain all equipment and improvements located within the Leased Premises including but not limited to, trade fixtures, wiring, and software and communications equipment in good condition. TENANT agrees that all repairs will be conducted within two (2) hours of notification by Airport Director, or designee unless a longer period of time is approved by the Airport Director, or designee.
- B. <u>Removal of Equipment or Improvements.</u> During the term of this Lease, TENANT shall not remove any improvements and/or furnishings, trade fixtures, and equipment without the prior written consent of the Airport Director, or designee.
- C. <u>Access.</u> TENANT shall make key access available to Airport Director, or designee at all locations or within the Leased Premises for emergency access. Failure to provide key access to Airport Director or designee may result in unreimbursed door damage to TENANT resulting from measures used to enter the Leased Premises during an emergency.

- D. <u>Release of Hazardous Substances.</u> TENANT shall immediately notify the Airport Police Services Control Center of any fire, emergency, accident or reportable spill or release of fuel or Hazardous Substances. Reportable spills or releases are those that require notification to a government entity by any fire code or Environmental law as defined herein in Section 6.01.
- E. <u>Spills and Trash Disposal.</u> TENANT shall be responsible for cleaning and providing maintenance services on a regular basis to the Leased Premises. Cleaning by TENANT shall include collection of any concession-generated trash and cleanup of spills in the area immediately adjacent to the Leased Premises' entrances and exits. TENANT shall comply with any green waste or recycling programs implemented by the Airport. TENANT shall not dispose of any concession-generated trash in trash receptacles provided for the traveling public's convenience in the Terminal and shall only use trash dumpster locations designated by the Airport. Airport Director, or designee shall have the right to enter upon and inspect the Leased Premises at any time for cleanliness, safety and maintenance inspections.
- F. <u>Trash Receptacles.</u> TENANT, whether within the Leased Premises or while moving through the terminal, shall use leak-proof containers. Any containers with wheels shall have wheels that are composed of non-skid materials that will not make noise nor leave marks on the terminal floors.
- G. Repairs. TENANT's on-site manager shall be responsible for the day-to-day operation and level of maintenance, cleanliness and general order. If TENANT fails to maintain or make repairs or replacements as required herein, Airport Director, or designee shall notify or attempt to notify the TENANT in writing of said failure. Should TENANT fail to correct the failure within the time specified in the notice, Airport Director, or designee may make the necessary correction or cause it to be made and the cost thereof, including but not limited to the cost of labor, materials and equipment shall be charged to TENANT. Thereafter, an administrative fee equal to fifteen percent (15%) of the sum of such items shall be paid by TENANT within thirty (30) days of receipt of a statement of said cost from Airport Director, or designee. Airport Director, or designee may, at Director's option, choose other remedies available herein, or as provided by law.
- H. <u>Maintenance of Heating, Ventilation and Air Conditioning (HVAC) Systems.</u> TENANT shall be responsible for maintaining TENANT-installed HVAC system from the Leased Premises to the point that the system connects to the Terminal's supply air duct. TENANT shall be responsible for providing its own space temperature controls within inline store locations within the Leased Premises.
- I. <u>Pest Control.</u> TENANT shall be solely responsible for a pest free environment within the Leased Premises area by maintaining its own pest control services, in accordance with the most modern and effective control procedures. All materials used in pest control shall conform to Federal, State and local laws and ordinances. All control substances utilized shall be used with all precautions to obviate the possibility of accidents to humans,

domestic animals and pets. Pests referenced above include, but are not limited to, cockroaches, ants, rodents, silverfish, earwigs, spiders, weevils, and crickets. Whenever COUNTY deems that pest control services must be provided to a building or area that includes the Leased Premises under this Lease, TENANT shall pay for the costs of said services.

- J. <u>Waiver of Claims.</u> TENANT expressly waives any and all claims against the COUNTY for compensation for any and all loss or damage to TENANT's property sustained by reason of any defect, deficiency or impairment of any water supply system, drainage or sewer system, gas supply system, telephone system, electrical supply system or electrical apparatus or wires serving the Leased Premises, except to the extent caused by the COUNTY's negligence or willful misconduct.
- K. <u>Monthly Maintenance Reports.</u> All canopies, filters, hoods, duct work, and signage must be cleaned on a regular monthly maintenance schedule and the monthly maintenance schedule must be provided to the Airport Director, or designee and approved by the Airport Director, or designee. All monthly maintenance reports must be maintained and submitted to Airport Director, or designee upon request.

SECTION 5.07 NONCOMPLIANCE FEES

COUNTY desires to provide the traveling public with courteous and professional service. The following requirements are among those that relate directly to the quality of the service that COUNTY expects to be provided to the public. TENANT agrees that less than full performance of the following requirements denigrates the quality of the service, is in violation of this Agreement, and that the following fees are a reasonable approximation of COUNTY's actual damages for such violation. COUNTY will notify TENANT within forty-five (45) days following the date of each violation if noncompliance fee for each violation will be imposed. Airport Director, or designee shall make the final determination as to the imposition of noncompliance fees. Failure to impose violation fees for a particular violation shall not bar COUNTY from imposing violation fees for subsequent violations of the same nature. The availability of violation fees shall not bar COUNTY from exercising other remedies, including termination. COUNTY will invoice TENANT for violation fees that are assessed and payment of the invoice is due upon receipt by TENANT. Violation fees will be in addition to rent.

If TENANT or its sub-TENANTs fail to keep, observe, or perform any of the covenants or terms and conditions required herein, the COUNTY shall impose violation fees as set forth below, as a result of such violation(s), accrued on a daily basis, in addition to any other fees permissible by law and/or pursuant to the provisions of this Agreement, until said violations are remedied:

Violation Fee

Violation of Permitted Use of a Location \$250.00 per day/per location

Failure to Maintain Required Hours of Operation

Failure to Submit Required Documents and Reports

Failure to comply with Reset Policy

Failure to Submit Audited Financials

\$100.00 per incident

\$250.00 per day

\$250.00 per day

\$5,000.00 per incident

Unauthorized Discounts \$250.00 per day

Failure to Maintain Clean Location(s) \$100.00 per day/per location

Failure to Maintain Street Pricing plus 10% \$250.00 per day/per location Installation of unapproved Fixtures in Location(s) \$250.00 per day/per location Failure to keep less than 10 people in per register per line \$100.00 per day/per location

Failure to keep less than 10 people in per register per line \$100.00 per day/per location Failure to utilize all point of sale units to process payment \$100.00 per day/per location

Failure to comply with delivery schedule \$100.00 each incident

Failure to provide documentation maintenance reports \$100.00 per day/per location

Failure to timely submit required ACDBE reports \$250.00 per day

Violation of audio music guidelines \$100.00 per day/per location Failure to keep product/merchandise as indicated on menu \$100.00 per day/per location

Failure to deliver required post-construction documentation \$1,000.00 per day

Failure to provide service during operating hours \$100.00 per day/per location

Failure to remove offensive material within 1 hour of notice \$100.00 per incident Failure to comply with pricing Policy \$100.00 per day

Failure to complete pricing survey or submit approval on time \$100.00 per day

Failure to comply with JWA Wayfinding Program \$250.00 per day/per location

Failure to open to public within 90 days from Notice to Proceed \$2,000.00 per day

Failure to submit mid-term refurbishment plans \$2,000.00 per day
Failure to submit audited financial statements \$5.000.00

Failure to submit audited financial statements \$5,000.00 Failure to comply with Wayfinding Program \$250.00 per day

Airport Director, or designee may notify the TENANT in writing of other violations and may determine a fee in writing to TENANT.

ARTICLE VI

ENVIRONMENTAL, SAFETY, AND INDEMNIFICATION

SECTION 6.01 ENVIRONMENTAL STEWARDSHIP

LESSEE shall support the LESSOR's Environmental Stewardship program by complying with Airport's TENANT Guidelines.

SECTION 6.02 HAZARDOUS MATERIALS AND ENVIRONMENTAL COMPLIANCE

LESSEE shall comply with all Environmental Laws, including laws regulating Hazardous Materials, and shall not engage in any activity on or about the Airport that violates any Environmental Law. In conducting its operations and maintenance on the Airport under this Lease, LESSEE shall comply with such regulations regarding the storage, distribution, processing, handling, release, removal, and/or disposal, including the storm water discharge requirements, of Hazardous Materials including, but not limited to, gasoline, aviation fuel, jet fuel, diesel fuel, lubricants and/or solvents, whether the obligation for such compliance is placed on the owner of the land, owner of the improvements or user of the improvements. Violation by LESSEE or any of its agents, assigns, successors, sublessees, subcontractors, or employees of any Environmental Law are grounds for immediate termination of this Lease and for immediate termination of all operations by LESSEE at or on the Airport.

Notwithstanding the liability of prior TENANTs of the Leased Premises, LESSEE shall at its sole cost and expense investigate, evaluate, assess, remove, and/or remediate any and all Hazardous Materials that may be required or ordered by any governmental agency or Environmental Law. In conducting a clean-up of a Hazardous Material release under this Lease, LESSEE shall comply with all applicable Environmental Laws. LESSEE shall not use the COUNTY hazardous waste generator ID for waste disposal.

SECTION 6.03 GENERAL HEALTH AND SAFETY CONDITIONS

Precaution shall be exercised at all times by LESSEE for the health, safety, and welfare of persons, including employees and property. The safety provisions of applicable laws and building and construction codes shall be observed. Work, materials, and equipment used shall comply with the Occupational Safety & Health Administration (OSHA) requirements including but not limited to OSHA Hazard Communication Standard 29 CFR 1910.1200, and federal and state safety orders.

LESSEE shall comply with all material usage limitation, permit record keeping, and reporting requirements imposed by federal, state and local laws and regulations. LESSEE shall properly post Manufacturer's Safety Data Sheets as required by law and shall use and dispose of all materials in conformance with all applicable codes, rules, regulations and manufacturer's recommendations.

LESSEE shall submit to the COUNTY's Airport Environmental Resources Manager, annually on December 31, a report on compliance with and the status of all required permits including, but not limited to, Fire, OSHA, Air Quality Management, and Health Care Agency. The report must summarize all spills, leaks or permit violations for the previous year. The annual report must also contain copies of all reports and annual testing reports (such as fuel tank tightness testing) sent to any regulatory agency and documentation of required maintenance and inspection of fire and safety fixtures and equipment and an updated inventory of all Hazardous Materials used or stored on site.

LESSEE shall provide all notices required pursuant to the Environmental Laws. LESSEE shall provide prompt written notice to COUNTY within five (5) days of receipt of all written notices of violation of any Environmental Law received by LESSEE.

SECTION 6.04 ENVIRONMENTAL INDEMNIFICATION

To the fullest extent authorized by law, the LESSEE shall indemnify, defend, and hold harmless the COUNTY, its officers, directors, agents, and employees, for compliance with all Environmental Laws, from and against any and all Environmental Law claims, judgments, damages, penalties, actions, fines, costs, liabilities, losses, orders, expenses, and lawsuits (including fees and costs for attorneys, experts, and expert consultants) arising from the Leased Premises, and/or out of or related to any actions or omissions of LESSEE, the LESSEE's operations at the Airport or any action arising from and which involve the LESSEE's officers, agents, successors, assigns, sublessees, subcontractors, and employees (whether or not they are negligent, intentional, willful or unlawful), including defense expenses arising therefrom, including, but not limited to the following:

- (1) The LESSEE's placement, disposal, allowing, or releasing of Hazardous Materials upon or within the Airport including any such claims, demands, liabilities, cost, expenses, and/or obligations related to LESSEE's release or threatened release of Hazardous Materials on, at, and/or under the Airport.
- (2) The LESSEE's release or threatened release of Hazardous Materials at, on, under, and/or remaining from the Airport.
- (3) The LESSEE's compliance with any Environmental Law, except that LESSEE's obligations under this paragraph shall not extend to remediation conditions that arise from operations of third parties that are not affiliated with LESSEE that take place off of the Airport. A party shall be deemed to be affiliated with LESSEE if it is an employee, officer, director, agent, sublessee, assignee, contractor or subcontractor of LESSEE or if it is controlled by or under common control with LESSEE.
- (4) The LESSEE's causing or allowing any prohibited discharge into the Airport Drainage System.

This indemnification includes, without limitation, reasonable fees/costs/expenses for attorneys, experts, expert consultants, and all other costs incurred by COUNTY in connection with any investigation, evaluation, assessment, and/or monitoring of the environmental conditions at the Leased Premises or any cleanup, remedial, removal, and/or restoration work required by any federal, state or local governmental entity because of any Hazardous Materials being present in the soil, surface water, or groundwater at, on, under, or about the Airport. However, LESSEE's indemnity obligation shall not apply in the event of any claims for any loss, damage or expense arising from the sole or active negligence or willful misconduct of COUNTY or agents, servants or independent contractors who are directly responsible to COUNTY.

In the event the indemnitees as described herein are parties in any proceeding (legal, administrative, or otherwise), the LESSEE shall, at the request of the COUNTY, defend the indemnitees with qualified counsel that the COUNTY determines, in its sole and absolute discretion, is acceptable to the COUNTY, unless the COUNTY, in its sole and absolute discretion, undertakes legal representation, in which event the LESSEE shall reimburse the COUNTY for the expenses incurred by it in defending such proceeding, including reasonable attorneys' fees, expert and consultant's fees, and investigative and court costs.

In the event that any monetary sum is awarded against the COUNTY and the LESSEE because of the concurrent negligence of the COUNTY and the LESSEE or their respective officers, directors, successors, assigns, subcontractors, sublessees, or employees, an apportionment of liability to pay such award shall be made by a court of competent jurisdiction. Both the COUNTY and the LESSEE agree that neither party shall request a jury apportionment. Nothing stated in this Lease and in this indemnity obligation shall be construed as authorizing any award of attorney's fees in any action to enforce the terms of this Lease.

The rights and obligations set forth in this indemnification shall survive the termination and/or expiration of this Lease.

SECTION 6.05 CONFLICT WITH ENVIRONMENTAL LAW PROVISIONS

In the event that any of the terms of the environmental requirements codified in this Article conflict with any other terms of this Lease, the environmental requirements contained in Article VI shall apply.

ARTICLE VII

CONSTRUCTION AND IMPROVEMENTS

SECTION 7.01 CONSTRUCTION AND/OR ALTERATION BY COUNTY

The COUNTY may alter, repair, maintain, remodel, expand, remove or improve any of the facilities at the Airport or any of its appurtenances.

In addition, the COUNTY may reassign or relocate TENANT's Leased Premises. COUNTY shall provide TENANT advance notice of such action and shall attempt to provide alternative space that is reasonably comparable for TENANT's operations at the same rates and charges which TENANT would have paid for the space being surrendered. In the event no alternative space is available, TENANT shall surrender its space promptly to COUNTY, provided that TENANT shall be reimbursed for the reasonable cost of any such reassignment, reallocation or relocation and the cost of TENANT's unamortized investment, if any, as documented by TENANT to the satisfaction of the COUNTY and mutually agreed to by Airport Director, or designee and TENANT. All of such costs, as well as COUNTY's cost of providing the alternative space aforementioned, shall be included in the cost of the particular Capital Project requiring such reassignment, reallocation or relocation.

SECTION 7.02 CONSTRUCTION AND/OR ALTERATION BY TENANT

TENANT shall not perform any construction upon the Leased Premises nor shall TENANT modify, alter or remove any permanent improvements lying within the Leased Premises without prior written approval of COUNTY. Any construction, modifications, alterations or removal of any permanent improvements by TENANT shall be at the TENANT's expense.

A. <u>Design and Construction</u>. TENANT shall cause to be designed, constructed, and installed within the Leased Premises, at no cost to COUNTY, appropriate improvements to adequately accommodate those services and uses, both required and any other optional services and uses approved pursuant to the section in this Lease entitled "USE". TENANT must comply with the JWA TENANT Design Guidelines Manual and JWA TENANT Construction Manual as may be amended from time to time.

The improvement plans prepared by TENANT and approved by Airport Director, or designee prior to the execution of this Lease shall be a plan for development of the Leased Premises or portions thereof, and the working drawings prepared by TENANT and approved by Airport Director, or designee during the same period shall be the plan, specifications, and time schedule for TENANT's initial construction on the Leased Premises. Weekly scheduled meetings with TENANT representative, contractor, design team, and JWA staff must be held during any construction improvements or projects. Updated Microsoft Project schedule and safety meeting updates must be provided to JWA at each scheduled meeting or upon request of JWA staff. All design and construction shall conform with the plans approved by Airport Director, or designee and with the construction and architectural standards contained in Exhibit D which is attached hereto and by reference made a part hereof.

In the event TENANT fails to open the concession facility on its Leased Premises for business on or before the Rent Commencement Date, COUNTY will incur substantial damages, the exact amount of which are extremely difficult to fix. Accordingly, for each day after the Rent Commencement Date until the day on which TENANT opens the concession facility for business, TENANT shall pay County \$2,000.00 (in addition to Rent as provided below), as penalty fees. The parties have agreed that his amount represents a reasonable approximation of the damages likely to be suffered by the County in the event TENANT fails to open on or before the Rent Commencement Date. In the event TENANT fails to open after one-hundred twenty (120) days from the date issued on the Notice to Proceed from Airport Director, or designee County may have the option to terminate this Lease.

B. <u>Compliance with Plans and Construction Standards</u>. All improvements constructed by TENANT within the Leased Premises shall be constructed in strict compliance with detailed plans and specifications approved by Airport Director, or designee. All construction shall be conducted in a good and workmanlike manner and shall conform to applicable building codes, rules, regulations and Airport's architectural standards as contained in reference document "John Wayne Airport, Architect and Engineer Guide"

and reference document "JWA TENANT Construction Manual" which can be provided by Airport upon request. TENANT is responsible to review and comply with the JWA TENANT Design Guidelines and JWA Construction manual. All work shall be done in conformity with Airport approved plans, valid building and other necessary permits and shall be acceptable to COUNTY and the appropriate governmental entity inspecting such work. TENANT shall be responsible for filing Form 7460 for any construction and/or height of construction equipment with the FAA, if required.

All improvements constructed by TENANT, including the plans and specifications therefor, shall conform in all respects to the Airport approved plans, applicable statutes, ordinances, building codes, JWA TENANT Design Guidelines, JWA Construction Manual, rules and regulations of the COUNTY and such other governmental authority as may have jurisdiction, and shall be acceptable to COUNTY and the appropriate governmental entity inspecting such work. Airport Director's or designee's approval shall not constitute a representation or warranty as to such conformity, which shall remain TENANT's responsibility. TENANT shall have the responsibility to obtain all required permits and to investigate and pay for any and all fees, including but not limited to Transportation Corridor Agency fees, if applicable, necessary for such construction. Construction by TENANT, its contractors and subcontractors, shall be coordinated with and under the direct supervision of COUNTY and shall be completed within ninety (90) days from the issuance of JWA Notice to Proceed to TENANT. (In the event TENANT fails to complete installation of improvements in a timely manner, the parties agree that COUNTY's actual damages would be extremely difficult or impossible to determine; therefore, the parties agree that the best estimate of the COUNTY's actual damages assessed to the TENANT is sum of Two Thousand Dollars (\$2,000.00) per day until installation has been completed to the satisfaction of COUNTY.. This amount shall be in addition to all other sums due under this Lease.

- C. <u>Consent Required From COUNTY</u>. No structures, improvements, or facilities shall be constructed, erected, altered, removed or made within the Leased Premises without prior written consent of COUNTY, which consent may be withheld or conditioned in COUNTY's discretion. Minor repairs, replacement and maintenance proposed for the Leased Premises, the cost of which does not exceed one hundred twenty-five thousand dollars (\$125,000) annually, shall be approved by Airport Director, or designee. With the exception of mid-term refurbishments, all other structures, improvements, facilities, repairs, replacement, removal and maintenance items shall be approved by the Board of Supervisors.
- D. <u>Insurance Requirements</u>. TENANT shall obtain comprehensive public liability insurance during construction. If the construction is done by an independent contractor, insurance shall be procured by the contractor in the name of the TENANT and the COUNTY. All insurance shall be in the limits and coverages acceptable to COUNTY's Risk Management Services.

- E. <u>Indemnification during Construction</u>. To the fullest extent authorized by law, TENANT shall indemnify, defend, and hold harmless the COUNTY, its officers, and employees, from and against any and all claims, judgments, damages, penalties, fines, costs, orders, and lawsuits, arising out of the TENANT's construction or alteration of the Leased Premises at John Wayne Airport, including the cost of defense arising therefrom. The TENANT's indemnity obligations stated hereinabove also apply to those actions arising from and which involve the TENANT's officers, agents, subcontractors, and employees.
- F. <u>Noninterference</u>. TENANT warrants that it or its contractor shall in no way delay, cause delays to or interfere with any Airport operations or other contractors working in the terminal or on the Airport. TENANT agrees to hold COUNTY harmless from the cost of any time lost by COUNTY or any damages to COUNTY due to the actions or failure to act of TENANT or its contractor.
- G. <u>Trailers and Modular Structures</u>. All improvements constructed by TENANT shall be of a permanent nature. Trailers and modular buildings are prohibited on the Leased Premises. This provision shall not apply to the use of COUNTY approved temporary modular or trailers during construction. Upon completion of construction, all trailers or modular must be immediately removed from the Leased Premises.
- H. <u>TENANT's Cost and Expense</u>. All renovation or construction by TENANT pursuant to this Section shall be at TENANT's sole cost and expense. TENANT shall keep its existing or future Leased Premises and the improvements constructed thereon free and clear of all liens and shall pay all costs for labor and material arising out of such construction and shall hold COUNTY harmless from any liability in respect thereto. TENANT shall have the right to contest any and all liens filed against its existing or future exclusive use area. TENANT further agrees that COUNTY shall have the right to post notices of non-responsibility as provided by Sections 3094 and 3129 of the CIVIL CODE of the State of California.
- I. Ownership of Improvements. All improvements and facilities, exclusive of trade fixtures, constructed or placed within the Leased Premises by TENANT must, upon completion, be free and clear of all liens, claims, or liability for labor or material and at COUNTY's option shall become the property of COUNTY at the expiration of this Lease or upon earlier termination hereof. COUNTY retains the right to require TENANT, at TENANT's cost, to remove any or all improvements located within the Leased Premises at the expiration or termination hereof.
- K. <u>Satellite Antenna Dish.</u> For purposes of this Lease, satellite antenna dishes or antennae that may be installed by TENANT on the roof of the Terminal or any location outside the

Leased Premises shall be considered a TENANT improvement. Type and design of antenna, location, TENANT identification, method of installation, and cable path shall be subject to review and approval by Airport Director. COUNTY retains the right to require TENANT, at TENANT's cost, to remove any antenna installed by TENANT. Airport Director shall have the right to use TENANT's security deposit to cover the cost of removal of said antenna should TENANT fail to do so at the expiration or termination of this Lease.

SECTION 7.03 MID-TERM REFURBISHMENT

Forty-two (42) months after the Rent Commencement Date of the Lease, TENANT shall be required to make a reinvestment in the amount equal to 50% of its initial investment TENANT stated in its approved construction certification of costs, subject to Airport Director, or designee approval, for the purpose of refurbishing the store facilities. Said refurbishing shall include, but shall not be limited to, refinishing, repair, replacement, redecorating and painting necessary to keep said facilities in first class condition.

TENANT shall complete the Concession Midterm Refurbishment, as approved by the Airport Director, or designee within one-hundred eighty (180) days from the forty-two (42) month Rent Commencement Date. Failure to complete the refurbishment by said date shall be cause for termination of the Lease, and/or at the direction of the Airport Director, or designee the sum of Two Thousand Dollars (\$2,000.00) per day until the Concession Midterm Refurbishment has been completed to the satisfaction of the COUNTY. This amount shall be in addition to all other sums due under this Lease.

TENANT shall be required to submit plans for the Concession Midterm Refurbishment at least one-hundred eighty (180) days prior to the forty-two (42) month Rent Commencement Date. The plans and specifications shall be certified by an architect or engineer and shall consist of (a) working drawings (b) technical specifications and (c) proposed equipment upgrades or changes. If TENANT fails to submit plans for the Concession Midterm Refurbishment TENANT shall pay two-thousand dollars (\$2,000.00) per day until plans are received in addition to all other sums due under the lease.

Within sixty (60) calendar days following the completion of the Concession Midterm Refurbishment to the satisfaction of the Airport Director, or designee TENANT must provide certified documentation of all the capital investment actually expended in the design and installation of the Concession Midterm Refurbishment, together with "as-built" plans/records drawings as required elsewhere in this Lease. When documenting each refurbishment minimum investment required by this Lease, architectural and engineering charges not exceeding 15% of the total investment may be included. Construction costs shall not include indirect costs such as financing costs, holding costs, legal fees, interest, administrative and overhead expenses, internal design, review, management and oversight of construction on Leased Premises, TENANT's licensing or franchising costs, bond premiums or developer fees.

In the event of a shortfall between said Concession Midterm Refurbishment amount and TENANT's actual investment cost, TENANT shall pay to COUNTY an amount equal to the shortfall, as of one hundred eighty (180) days after the date of the completion of the Concession Midterm Refurbishment, and said payment shall be due and payable within thirty (30) days. The amount spent for refurbishment shall be exclusive of any amount spent for normal repair and maintenance as determined at the sole discretion of Airport Director, or designee.

SECTION 7.04 CERTIFICATION OF CONSTRUCTION EXPENDITURES

TENANT shall provide COUNTY with certified receipts and lien releases for the initial capital improvements and mid-term refurbishment to the Leased Premises required hereunder within ninety (90) days after the completion thereof in a form acceptable to the COUNTY to enable COUNTY to verify compliance with the terms of this Lease. In the event that such certified receipts indicate that costs incurred with respect to the initial capital improvements or mid-term renovations required hereunder are less than required under the terms and provisions of this Lease, TENANT shall pay to COUNTY one hundred ten percent (110%) of the difference between the amount required to be spent and the costs actually incurred by TENANT as indicated by such certified receipts. If COUNTY disputes the amount of costs claimed by TENANT, COUNTY may utilize its own audit and accounting staff or, at its option and expense, hire a certified public accountant to audit the costs actually incurred by TENANT with respect to such Leased Premises. If it is determined that the costs actually incurred by TENANT with respect to SAID Leased Premises are less than the minimum required hereunder, then TENANT shall pay, in addition to the other amounts due hereunder, the cost of conducting such audit to COUNTY within thirty (30) days of the determination.

SECTION 7.05 TENANT REIMBURSEMENT

In the event COUNTY should require the Leased Premises, or any portion thereof, for any Airport purpose and removes any portion of TENANT's Leased Premises from this Lease or terminates the Lease under the provisions of this Section, COUNTY shall reimburse TENANT for improvements completed during the term of this Lease to the Leased Premises as follows:

Compensation for improvements located on the Leased Premises shall be calculated by means of the following formula:

COMPENSATION = A x
$$\frac{B}{C}$$

- A = TENANT's actual Leased Premises improvement construction costs submitted in accordance with the Section in this Lease entitled "'RECORD DRAWINGS' AND CONSTRUCTION COSTS".
- B = Number of full months remaining in the Lease term.

C = Number of full months between the date TENANT completed construction of Leased Premises improvements and the date the Lease would expire by its terms if COUNTY did not exercise its right to early termination.

TENANT shall submit to COUNTY within sixty (60) days of completion of construction of any Leased Premises improvement, notifications of completion of construction and submit detailed supporting documentation of construction costs together with "as-built" plans as required elsewhere in this Lease. TENANT acknowledges and agrees if TENANT fails to submit notifications and supporting documentation for any such Leased Premises improvements in a timely manner, TENANT waives its right to compensation for such improvements.

SECTION 7.06 EXCLUSIVE REMEDY

The compensation provided pursuant to Section 7.05 "TENANT REIMBURSEMENT" shall be TENANT's sole and exclusive remedy and form of compensation, costs or damages, including but not limited to, the eminent domain law and inverse condemnation (California Code of Civil Procedure §§1230.010, et seq.), and Relocation Assistance benefits (California Government Code §§7260, et seq.), due to termination, re-entry or acquisition of the Leased Premises by COUNTY.

TENANT agrees that exercise by COUNTY of its termination rights hereunder shall not be construed as a taking by COUNTY of any part of the Leased Premises, nor of TENANT's rights under this Lease, nor shall TENANT, except as provided herein, be entitled to payment for any loss of goodwill, income, moving expenses or other amount because of partial or full termination of this Lease.

SECTION 7.07 TENANT'S ASSURANCE OF CONSTRUCTION COMPLETION

Prior to commencement of construction of approved facilities TENANT shall furnish to COUNTY evidence that assures COUNTY that sufficient monies will be available to TENANT and COUNTY to complete the proposed construction. The amount of money available shall be at least the total estimated construction cost. Such evidence may take one of the following forms:

- A. Completion Bond issued to COUNTY/JWA as oblige.
- B. Irrevocable letter of credit issued to COUNTY/JWA that will remain in effect until COUNTY acknowledges satisfactory completion of construction.
- C. Cash
- D. Any combination of the above.

All bonds and letters of credit must be issued by a surety company, financial institution or advising bank qualified and admitted to do business in the State of California and issued in an

approved form approved by the COUNTY. All bonds and letters of credit shall insure faithful and full observance and performance by TENANT of all terms, conditions, covenants and agreements relating to the construction of improvements within the Leased Premises. It is not the intent of the contracting parties herein to create a third party beneficiary, and nothing in this Section shall be construed to do so.

SECTION 7.08 MECHANICS LIENS OR STOP-NOTICES

TENANT shall at all times indemnify and hold COUNTY harmless from all Mechanics Liens, Stop-Notices, claims, losses, demands, damages, cost, expenses or liability costs for labor or materials in connection with construction, repair, alteration, or installation of structures, improvements, equipment, or facilities within the Leased Premises undertaken by TENANT, and from the cost of defending against such claims, including attorneys' fees and costs.

In the event a mechanics lien or stop-notice is imposed upon the Leased Premises, TENANT shall either:

- A. Record a valid Release of Lien, or
- B. Procure and record a bond in accordance with Section 3143 of the CALIFORNIA CIVIL CODE, which frees the Leased Premises from the claim of the lien or stopnotice and from any action brought to foreclose the lien.

Should TENANT fail to accomplish either of the two optional actions above within fifteen (15) days after the filing of such a lien or stop-notice, the Lease shall be in default and shall be subject to immediate termination.

SECTION 7.09 "RECORD DRAWINGS" AND CONSTRUCTION COSTS

Within sixty (60) days following completion of any improvement within the Leased Premises, TENANT shall furnish Airport Director, or designee a complete set of reproducible, two sets of prints of "Record Drawings" and a recordable compact disc (CD-ROM) containing the "Record Drawings" plans in a form usable by COUNTY, to COUNTY's satisfaction, on COUNTY's computer aided mapping and design (CAD) equipment. Basic specifications for CAD compatible plans are contained in Airport's reference document "John Wayne Airport, CAD Standards" which can be provided by Airport upon request.

In addition, TENANT shall furnish Airport Director, or designee an itemized statement of the actual, direct construction costs of such improvement. The construction costs may include actual, direct fees paid to contractors, architects, engineers, surveyors, laborers and suppliers, or permit fees required by governmental agencies to allow construction. Construction costs shall not include indirect costs such as financing costs, holding costs, legal fees, interest, administrative and overhead expenses, bond premiums or developer fees. The statement of cost shall be sworn to and signed by TENANT or its responsible agent under penalty of perjury.

TENANT must obtain Airport Director, or designee's approval of "Record Drawings" and the form and content of the itemized statement.

SECTION 7.10 DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS

TENANT shall be responsible for any damage caused by TENANT, or TENANT's equipment, employees, agents, visitors or suppliers, to common use areas of the Terminal or Airport facilities, including but not limited to runways, taxiways, access roads, navigational aids, apron areas and loading bridges. Should such damage require immediate repairs or replacement and TENANT is unable to respond immediately to complete said repairs or replacement, Airport Director, or designee may cause to be made or make any necessary repairs or replacements and the cost thereof shall be paid by TENANT. Said cost shall include all labor, materials, equipment and an administrative fee equal to fifteen percent (15%) of the sum of those items. Said cost shall be paid by TENANT within fifteen (15) days of receipt of an invoice for costs from Airport Director, or designee.

In the event of damage to or destruction of TENANT-owned or constructed buildings, facilities or improvements located within the Leased Premises or in the event TENANT-owned or constructed buildings, facilities, or improvements located within the Leased Premises are declared unsafe or unfit for use or occupancy by the COUNTY or any other public entity with jurisdiction to make and enforce such a declaration, TENANT shall, within thirty (30) days, commence and diligently pursue completion of the repair, replacement or reconstruction of improvements to the same size and floor area as they existed immediately prior to the event causing the damage or destruction, as necessary to permit full use and occupancy of the Leased Premises for the purposes required by the Lease.

Repair, replacement or reconstruction or improvements within the Leased Premises shall be accomplished in a manner and according to plans approved by Airport Director, or designee. Except as otherwise provided herein, termination of this Lease shall not reduce or nullify TENANT's obligation under this paragraph. With respect to damage or destruction to be repaired by COUNTY or which COUNTY elects to repair, TENANT waives and releases its rights under CALIFORNIA CIVIL CODE Sections 1932(2) and 1933(4).

SECTION 7.11 AMERICANS WITH DISABILITIES ACT

TENANT shall be solely and fully responsible for complying with the Americans with Disabilities Act of 1990 ("ADA") in connection with: (a) the Leased Premises or any portion thereof and its operations thereon, TENANT's furnishings, trade fixtures and equipment and the concession improvements; (b) removing physical barriers from the Concession Area; (c) providing auxiliary aids and services for use of the Concession Improvements and TENANT's furnishings, trade fixtures and equipment, where necessary or required; and (d) modifying its policies, practices and procedures to comply with the ADA. TENANT shall develop a work plan to correct or avoid any violations or non-compliance with the ADA. TENANT shall deliver to the COUNTY, upon COUNTY's request, a copy of each report and work plan. COUNTY's approval of or acceptance of any aspect of TENANT's activities under this Lease shall not be

deemed or construed in any way as a representation that such item, activity of practice complies with the ADA. TENANT agrees to indemnify, defend, and hold the COUNTY harmless from and against any and all costs incurred by COUNTY with respect to TENANT's failure to comply with the ADA.

ARTICLE VIII

ASSIGNMENT

SECTION 8.01 ASSIGNING AND TRANSFERRING

The provisions of this Section are subject to, and subordinate to the limitations of Article V of this Lease entitled "USE, OPERATION, and MAINTENANCE AND CONDITION OF LEASED PREMISES".

A. <u>Transfers.</u> TENANT shall not transfer, assign, or hypothecate (hereinafter referred to as "Transfer") any interest of the TENANT in the Leased Premises without the prior written approval of the COUNTY. TENANT shall give COUNTY one hundred twenty (120) days prior written notice of all proposed Transfers. TENANT shall not make any such Transfers for a period longer than the remaining term of the Lease.

If COUNTY approves such Transfers, such approval does not constitute a waiver of any of the terms of the Lease. All Transfer documents shall be consistent with the terms, covenants, and conditions of the Lease, and in the event of any inconsistency, the provisions of this Lease shall govern. TENANT must submit all required COUNTY forms with backup documentation, and include payment of a \$3,000.00 administrative charge, for COUNTY to process such request.

If TENANT is a corporation, an unincorporated association, or a partnership, Transfers include the acquisition by any person other than TENANT of any stock or interest in said corporation, unincorporated association, or partnership in the aggregate amount of fifty-one percent (51%) or more.

The failure by TENANT to obtain the prior written approval by COUNTY of any Transfer of the Lease or any interest in the Leased Premises shall constitute a material breach of this Lease by, and shall not confer any rights upon the transferee. Such failure shall be grounds for termination of this Lease for default per Article IX, Section 9.02.

- B. <u>Conditions of COUNTY Approval</u>. COUNTY agrees that it will not arbitrarily withhold consent to any Transfer, but COUNTY may withhold consent at its sole discretion if any of the following conditions exist:
 - 1) TENANT, its successors or assigns are in default of any term, covenant or condition of this Lease, whether notice of default has or has not been given by COUNTY.

- 2) The prospective sub TENANT, assignee or transferee has not agreed in writing to keep, perform and be bound by all the terms, covenants, and conditions of this Lease.
- 3) The prospective sub TENANT, assignee or transferee is not financially capable or not experienced in performing the obligations of this Lease, as determined by the Airport Director, or designee.
- 4) Sub TENANT's use is in conflict with the terms of this Lease.
- 5) All the terms, covenants and conditions of Transfer, including the consideration therefore, of any and every kind, have not been revealed in writing to Airport Director, or designee.
- 6) Any construction required of TENANT as a condition of this Lease has not been completed to the satisfaction of COUNTY.
- 7) TENANT has not provided Airport Director, or designee with a copy of all documents relating to the Transfer, including, but not limited to, appraisals, notes, trust deeds, title reports, escrow instructions, *etc*.
- 8) TENANT attempts to hypothecate the rights granted by this Lease for an amount greater than the cost of new improvements to be constructed on the Leased Premises. Hypothecation shall not be permitted for any reason other than to obtain Loan Proceeds necessary to construct new improvements on the Leased Premises.
- C. <u>Bankruptcy Transaction</u>. If TENANT assumes this Lease and proposes to assign the same pursuant to the provisions of the UNITED STATES BANKRUPTCY CODE, 11 U.S.C. §§101, *et seq.*, then notice of such proposed assignment shall be given to COUNTY.
 - 1) The name and address of proposed assignee,
 - 2) All of the terms and conditions of such offer, and
 - Adequate assurance to COUNTY of the proposed assignee's future performance under the Lease, including, without limitation, the assurance referred to in the UNITED STATES BANKRUPTCY CODE, 11 U.S.C. §365(b)(3).

Any person or entity to which this Lease is assigned pursuant to the provisions of the UNITED STATES BANKRUPTCY CODE, 11 U.S.C. §§101, et seq., shall be deemed without further act or deed to have assumed all of the obligations arising under this Lease on and after the date of such assignment. Any such assignee shall upon demand execute and deliver to COUNTY an instrument confirming such assumption.

SECTION 8.02 SUCCESSORS IN INTEREST

Unless otherwise provided in this Lease, the terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of all parties hereto, all of whom shall be jointly and severally liable hereunder.

ARTICLE IX

TERMINATION AND DEFAULT

SECTION 9.01 TERMINATION OF PRIOR AGREEMENTS

It is mutually agreed that this Lease shall terminate and supersede any prior Leases or agreements between the parties hereto for the purpose of operating a Food and Beverage concession and all related activities of TENANT at the Airport.

SECTION 9.02 TERMINATION FOR DEFAULT

The COUNTY may terminate this Lease and all of its obligations hereunder, with or without prior notice to TENANT and may exercise all rights of entry for default and breach, if the TENANT fails to perform on any of its obligations under this Lease including but not limited to the following:

- A. Payment of Rents;
- B. A general assignment for the benefit of creditors and any Transfer without the prior written approval by the COUNTY;
- C. The issuance of any execution or attachment against TENANT at the Airport which is undischarged within sixty (60) days of levy or seizure or if the Leased Premises are occupied by someone other than TENANT;
- D. The voluntary vacation or abandonment by TENANT of the operation of a Food and Beverage concession at the Airport;
- E. The violation by TENANT of any of the terms of any insurance policy referred to in the Lease;
- F. If TENANT is found by the FAA, TSA, other government regulatory or successor agency to have violated specified safety standards in the conduct of TENANT's business;
- G. The violation of any written directions of the Airport Director, or designee;

- H. The appointment of a receiver to take possession of all, or substantially all, the assets of TENANT located in the Leased Premises or of TENANT's rights in the Leased Premises;
- I. TENANT discontinues operations for thirty (30) days or more where applicable, and unless otherwise stated in this Lease, or by written notice, TENANT shall have fifteen (15) calendar days to cure any notice of default prior to termination of this Lease.

SECTION 9.03 CONDITION OF LEASED PREMISES UPON TERMINATION OR DEFAULT

Except as otherwise agreed to herein, upon termination or default of this Lease, TENANT shall redeliver possession of said Leased Premises to COUNTY in substantially the same condition that existed immediately prior to TENANT's entry thereon, reasonable wear and tear, flood, earthquakes, war and any act of war, excepted. References to the termination of the Lease in this agreement shall include termination by reason of expiration.

SECTION 9.04 OWNERSHIP OF IMPROVEMENTS

All improvements constructed or placed within the Leased Premises by TENANT must, upon completion, be free and clear of all liens, claims, or liability for labor or material and at COUNTY's option shall become the property of COUNTY at the expiration of this Lease or upon earlier termination hereof. COUNTY retains the right to require TENANT, at TENANT's sole cost and expense, to remove any or all improvements located within the Leased Premises at the expiration or termination hereof.

SECTION 9.05 DISPOSITION OF ABANDONED PERSONAL PROPERTY

If TENANT abandons or quits the Leased Premises or is dispossessed thereof by process of law or otherwise, title to any personal property belonging to TENANT and left on the Leased Premises Areas thirty (30) days after such event shall be deemed to have been transferred to COUNTY. COUNTY shall have the right to remove and to dispose of such property without liability therefor to TENANT or to any person claiming under TENANT, and shall have no need to account therefor. Personal property left on the Leased Premises after termination, expiration, or abandonment of the Lease shall not be construed as giving TENANT possession of the Leased Premises during the thirty (30) days after termination, expiration or abandonment of the Lease.

SECTION 9.06 QUITCLAIM OF TENANT'S INTEREST UPON TERMINATION OR DEFAULT

Upon termination of this Lease for any reason, including, but not limited to, termination because of default by TENANT, TENANT shall execute, acknowledge, and deliver to COUNTY within thirty (30) days after receipt of written demand therefor, a good and sufficient deed whereby all right, title and interest of TENANT in the Leased Premises is quitclaimed to COUNTY. Should TENANT fail or refuse to deliver the required deed to COUNTY, COUNTY may prepare and record a notice reciting the failure of TENANT to execute, acknowledge and deliver such deed

and said notice shall be conclusive evidence of the termination of this Lease and of all right of TENANT or those claiming under TENANT in and to the Leased Premises.

SECTION 9.07 COUNTY'S RIGHT TO RE-ENTER

TENANT agrees to yield and peaceably deliver possession of the Leased Premises to COUNTY on the date of termination or default of this Lease, whatsoever the reason for such termination or default.

Upon giving written notice of termination or default to TENANT, COUNTY shall have the right to re-enter and take possession of the Leased Premises on the date such termination or default becomes effective without further notice of any kind and without institution of summary or regular legal proceedings. Termination or default of the Lease and re-entry of the Leased Premises by COUNTY shall in no way alter or diminish any obligation of TENANT under the Lease terms and shall not constitute an acceptance or surrender.

TENANT waives any and all right of redemption under any existing or future law or statute in the event of eviction from or dispossession of the Leased Premises for any lawful reason or in the event COUNTY re-enters and takes possession of the Leased Premises in a lawful manner.

Upon the expiration or early termination of this Lease, TENANT shall cooperate fully with the COUNTY and any successor to TENANT to ensure an effective and efficient transition of TENANT's operations within the Leased Premises to TENANT's successor. TENANT acknowledges its responsibility to help ensure continued operations within the Leased Premises in a first class manner during any transition to a successor. TENANT shall take no action that would impair the ability of any successor to commence and maintain such concession operations.

ARTICLE X

INSURANCE AND INDEMNITY

SECTION 10.01 INSURANCE

TENANT agrees to purchase all required insurance at TENANT's expense and to deposit with the COUNTY certificates of insurance, including all endorsements required herein, necessary to satisfy the COUNTY that the insurance provisions of this Lease have been complied with and to keep such insurance coverage and the certificates and endorsements therefore on deposit with the COUNTY during the entire term of this Lease.

TENANT agrees that TENANT shall not operate on the Premises at any time the required insurance is not in full force and effect as evidenced by a certificate of insurance and necessary endorsements or, in the interim, an official binder being in the possession of Airport Director, or designee. In no cases shall assurances by TENANT, its employees, agents, including any insurance agent, be construed as adequate evidence of insurance. Airport Director, or designee will only accept valid certificates of insurance and endorsements, or in the interim, an insurance

binder as adequate evidence of insurance. TENANT also agrees that upon cancellation, termination, or expiration of TENANT's insurance, COUNTY may take whatever steps are necessary to interrupt any operation from or on the Premises until such time as the Airport Director, or designee reinstates the Lease.

If TENANT fails to provide Airport Director, or designee with a valid certificate of insurance and endorsements, or binder at any time during the term of the Lease, COUNTY and TENANT agree that this shall constitute a material breach of the Lease. Whether or not a notice of default has or has not been sent to TENANT, said material breach shall permit COUNTY to take whatever steps necessary to interrupt any operation from or on the Premises, and to prevent any persons, including, but not limited to, members of the general public, and TENANT's employees and agents, from entering the Premises until such time as Airport Director, or designee is provided with adequate evidence of insurance required herein. TENANT further agrees to hold COUNTY harmless for any damages resulting from such interruption of business and possession, including, but not limited to, damages resulting from any loss of income or business resulting from the COUNTY's action.

TENANT may occupy the Premises only upon providing to COUNTY the required insurance stated herein and maintain such insurance for the entire term of this Lease. COUNTY reserves the right to terminate this Lease at any time TENANT's insurance is canceled or terminated and not reinstated within ten (10) days of said cancellation or termination. TENANT shall pay COUNTY a fee of \$300.00 for processing the reinstatement of the Lease. TENANT shall provide to COUNTY immediate notice of said insurance cancellation or termination.

All contractors performing work on behalf of TENANT pursuant to this Lease shall obtain insurance subject to the same terms and conditions as set forth herein for TENANT. TENANT shall not allow contractors or subcontractors to work if contractors have less than the level of coverage required by the COUNTY from the TENANT under this Lease. It is the obligation of the TENANT to provide written notice of the insurance requirements to every contractor and to receive proof of insurance prior to allowing any contractor to begin work within the Premises. Such proof of insurance must be maintained by TENANT through the entirety of this Lease and be available for inspection by a COUNTY representative at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the COUNTY's Risk Manager, or designee, upon review of TENANT's current audited financial report. If TENANT's SIR is approved, TENANT, in addition to, and without limitation of, any other indemnity provision(s) in this Lease, agrees to all of the following:

In addition to the duty to indemnify and hold the COUNTY harmless against any and all liability, claim, demand or suit resulting from TENANT's, its agents, employee's or subcontractor's performance of this Agreement, TENANT shall defend the COUNTY at its sole cost and expense with counsel approved by Board of Supervisors against same; and

- 2) TENANT's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- 3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the TENANT's SIR provision shall be interpreted as though the TENANT was an insurer and the COUNTY was the insured.

Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A-(Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com).** It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the TENANT shall provide the minimum limits and coverage as set forth below:

Coverages	Minimum Limits
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 limit per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Commercial Property Insurance on an "All Risk" or "Special Causes of Loss" basis covering all contents and any TENANT improvements including Business Interruption/Loss of Rents with a 12 month limit.	100% of the Replacement Cost Value and no coinsurance provision.
Liquor Liability (As Applicable)	\$1,000,000 per occurrence

Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing liability coverage as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of insurance:

- 1) An Additional Insured endorsement using ISO form CG 20 26 04 13or a form at least as broad naming the COUNTY of Orange, its elected and appointed officials, officers, employees, agents as Additional Insureds. Blanket coverage may also be provided which will state- As Required by Written Agreement.
- 2) A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad, evidencing that the TENANT's insurance is primary and any insurance or self-insurance maintained by the COUNTY of Orange shall be excess and non-contributing.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the COUNTY of Orange, its elected and appointed officials, officers, agents and employees. Blanket coverage may also be provided which will state- As Required by Written Agreement.

All insurance policies required by this lease shall waive all rights of subrogation against the COUNTY of Orange, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

The Commercial Property policy shall contain a Loss Payee endorsement naming the COUNTY of Orange as respects the COUNTY's financial interest when applicable.

The Commercial General Liability policy shall contain a severability of interests clause, also known as a "separation of insureds" clause (standard in the ISO CG 001 policy).

Insurance certificates should be forwarded to the COUNTY address provided in the Clause (NOTICES) below or to an address provided by Airport Director, or designee TENANT has ten (10) business days to provide adequate evidence of insurance or this Lease may be cancelled.

COUNTY expressly retains the right to require TENANT to increase or decrease insurance of any of the above insurance types throughout the term of this Lease. Any increase or decrease in insurance will be as deemed by COUNTY of Orange Risk Manager as appropriate to adequately protect COUNTY.

COUNTY shall notify TENANT in writing of changes in the insurance requirements. If TENANT does not deposit copies of acceptable certificates of insurance and endorsements with COUNTY incorporating such changes within thirty (30) days of receipt of such notice,

this Lease may be in breach without further notice to TENANT, and COUNTY shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit TENANT's liability hereunder nor to fulfill the indemnification provisions and requirements of this Lease, nor in any way to reduce the policy coverage and limits available from the insurer.

SECTION 10.02 INDEMNITY

To the fullest extent authorized by law, the TENANT shall indemnify, defend, and hold harmless the COUNTY, its officers, and employees, from and against any and all claims, judgments, damages, penalties, fines, costs, orders, and lawsuits, arising out of the TENANT's operations at John Wayne Airport, including the cost of defense arising therefrom. The TENANT's indemnity obligations stated hereinabove also apply to those actions arising from and which involve the TENANT's officers, agents, subcontractors, and employees. The TENANT's indemnity obligations stated hereinabove shall not apply in the event of any loss, damage, or expense arising from the sole or active negligence and/or willful misconduct of the COUNTY or of the COUNTY's officers, employees, agents, servants, or independent contractors.

In the event the indemnitees described hereinabove are named as defendants or respondents in any lawsuit or administrative proceeding, the TENANT shall, at the request of the COUNTY, represent the indemnitee with qualified counsel that the COUNTY determines is acceptable. In the event that a monetary judgment is awarded against the COUNTY and the TENANT because of the concurrent negligence of the COUNTY and the TENANT or their respective officers, subcontractors, or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Both the COUNTY and the TENANT agree that neither party shall request a jury apportionment.

Nothing stated in this Lease and in this indemnity obligation shall be construed as authorizing any award of attorney's fees in any action to enforce the terms of this Lease. The rights and obligations set forth in this paragraph shall survive the termination of this Lease.

ARTICLE XI

FEDERAL GRANT ASSURANCES AND REQUIREMENTS

SECTION 11.01 NONDISCRIMINATION

- A. TENANT, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that:
 - 1) No person on the grounds of race, creed, color, sex, national origin, sex, age, or disability shall be excluded from participation, denied the benefits of, or be otherwise subjected to discrimination in the use of the Leased Premises.

- TENANT will comply with all federal, state, and local laws relating to nondiscrimination.
- This Lease is subject to the requirements of the U.S. Department of Transportation's regulations, 49 Code of Federal Regulations (C.F.R.) Part 23 TENANT agrees that it will not discriminate against any Airport Concession Disadvantaged Business Enterprise (ACDBE) in connection with the award or performance of any agreement covered by 49 C.F.R. Part 23.
- 3) In the construction of any improvements on, over or under the Leased Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, national origin, age, or disability shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination.
- 4) TENANT shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to Title 49, C.F.R. Part 21, Subtitle A, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the CIVIL RIGHTS ACT OF 1964, and as said Regulations may be amended.
- In the event facilities are constructed, maintained or otherwise operated on the Leased Premises for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, TENANT shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 C.F.R. Part 21, Subtitle A, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the CIVIL RIGHTS ACT OF 1964, and as said Regulations may be amended.
- B. In the event of breach of any of the above nondiscrimination covenants, COUNTY shall have the right to terminate the Lease and to re-enter and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued. This provision does not become effective until the procedures of 49 CODE OF FEDERAL REGULATIONS, Part 21, are followed and completed, including expiration of appeal rights.
- C. TENANT shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service.
- D. Noncompliance with paragraph C. above shall constitute a material breach thereof and in the event of such noncompliance COUNTY shall have the right to terminate this Lease and the estate hereby created without liability therefor; or at the election of COUNTY or the United States either or both said Governments shall have the right to judicially enforce paragraphs A., B., and C.

E. TENANT agrees that it shall insert the above four paragraphs in any Lease, agreement (contract, *etc.*) by which said TENANT grants a right or privilege to any person, firm or corporation to render accommodations and/or service to the public in the Leased Premises.

SECTION 11.02 DEVELOPMENT/MAINTENANCE OF AIRPORT

COUNTY reserves the right to further develop or improve the Airport as it sees fit, regardless of the desires or view of TENANT, and without interference or hindrance.

COUNTY reserves the right, but shall not be obligated to TENANT, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of TENANT in this regard.

SECTION 11.03 LEASE SUBORDINATE TO AGREEMENT WITH U.S.A.

This Lease shall be subordinate to the provisions and requirements of any existing or future agreement between COUNTY and the United States or any lawful requirement of the United States relative to the development, operation or maintenance of the Airport.

SECTION 11.04 USE TO CONFORM WITH FEDERAL AVIATION REGULATIONS

TENANT agrees that TENANT's use of the Leased Premises, including all construction thereon, shall conform to applicable FEDERAL AVIATION REGULATIONS. TENANT shall also obey all local, State and Federal rules, regulations and laws, including compliance with Transportation Security Administration and Airport security rules and regulations.

TENANT agrees to comply with the notification and review requirements covered in Part 77 of the FEDERAL AVIATION REGULATIONS (as same may be amended from time to time or such other regulation replacing Part 77 as may be adopted by Federal authority) prior to the construction of the improvements described herein and prior to the construction of any future structure or building upon the Leased Premises or in the event of any planned modification or alteration of any present or future building or structure situated on the Leased Premises.

SECTION 11.05 NONEXCLUSIVE RIGHT

It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of §308a of the FEDERAL AVIATION ACT OF 1958 (49 U.S.C. §1349).

SECTION 11.06 RESERVATION OF AVIGATION EASEMENT

COUNTY hereby reserves for itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the air space above the surface of the Leased Premises, together with the right to cause in said air space such noise as may be inherent in the

operation of aircraft now known or hereafter used for navigation of, or flight in the air, using said air space, or landing at, taking off from, or operating at the Airport.

SECTION 11.07 HEIGHT LIMITATION OF STRUCTURES

TENANT by accepting this Lease expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object nor permit the growth of any tree on the Leased Premises hereunder (if any) which would penetrate the imaginary surfaces as defined in Part 77 of the FEDERAL AVIATION REGULATIONS (as same may be amended from time to time or as such regulation replacing Part 77 may be adopted by Federal authority) or such other lesser altitude as may be required by COUNTY. In the event the aforesaid covenants are breached, COUNTY reserves the right to enter upon the Leased Premises hereunder and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of TENANT. TENANT shall be responsible for filing Form 7460 for any construction and/or height of construction equipment with the FAA, if required.

SECTION 11.08 NON-INTERFERENCE WITH AIRCRAFT

TENANT by accepting this Lease agrees for itself, its successors and assigns that it will not make use of the Leased Premises in any manner which might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, COUNTY reserves the right to enter upon the Leased Premises and hereby cause the abatement of such interference at the expense of TENANT.

SECTION 11.09 WAR OR NATIONAL EMERGENCY

This Lease and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of Airport or the exclusive or nonexclusive use of Airport by the United States during the time of war or national emergency.

SECTION 11.10 AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) PARTICIPATION

TENANT understands and acknowledges the following:

This Lease is subject to the requirements of the U.S. Department of Transportation's regulations 49 CFR Part 23. TENANT agrees that it will not discriminate against any business owner because of the owner's race, color, national origin or sex in connection with the award or performance of any concession agreement, management contract or subcontract, purchase or lease agreement covered by 49 CFR Part 23. TENANT agrees to include the above statements in any subsequent agreement or contract covered by 49 CFR part 23, that it enters and cause those businesses to similarly include such statements in further agreements.

TENANT shall provide a monthly report of ACDBE participation, if any, reported as a dollar amount and as a percent of total contract gross receipts. If no ACDBE participation is achieved during the month, TENANT shall provide a report so stating. In addition, TENANT shall provide all information and reports required by the Airport and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the Airport to be pertinent to ascertain compliance with the regulations or directives.

ARTICLE XII

MISCELLANEOUS PROVISIONS

SECTION 12.01 TIME

Time is of the essence in this Lease.

SECTION 12.02 LEASE ORGANIZATION

The various headings and numbers herein, the grouping of provisions of this Lease into separate Sections and paragraphs, and the organization hereof, are for the purpose of convenience only and shall not be considered otherwise.

SECTION 12.03 AMENDMENTS

This Lease sets forth all of the agreements and understandings of the parties with regard to its subject matter and any modification must be written and properly executed by both parties.

SECTION 12.04 SIGNS

TENANT agrees not to construct, maintain or allow any sign upon the Leased Premises except as approved by Airport Director, or designee. TENANT will comply with the JWA TENANT Design Guidelines and JWA Construction Manual. Unapproved signs, banners, flags, etc., may be removed by Airport Director, or designee without prior notice to TENANT.

SECTION 12.05 PERMITS AND LICENSES

TENANT shall be required to obtain any and all approvals, permits and/or licenses which may be required in connection with the operation of the Leased Premises as set out herein. No permit approval or consent given hereunder by COUNTY in its governmental capacity shall affect or limit TENANT's obligations hereunder, nor shall any approvals or consents given by COUNTY as a party to this Lease, be deemed approval as to compliance or conformance with applicable governmental codes, laws, ordinances, rules, or regulations.

SECTION 12.06 COUNTY OF ORANGE CHILD SUPPORT ENFORCEMENT

TENANT certifies it is in full compliance with all applicable federal and state reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of the Lease with the County of Orange. Failure to comply shall constitute a material breach of the Contract and failure to cure such breach within 60 calendar days of notice from the COUNTY shall constitute grounds for termination of the Lease.

SECTION 12.07 CONTROL OF HOURS AND PROCEDURES

TENANT shall at all times maintain the JWA provided hours of operation.

- A. <u>Hours of Operation</u>. In each location and on each day, TENANT shall operate during those hours as designated by the Airport Director, or designee. Airport Director, or designee, at his/her own discretion may provide approved hours of operation for certain holidays or events; TENANT must comply with these hours.
- B. <u>Airport Director May Alter Hours</u>. Airport Director, or designee may upon notice to TENANT require earlier opening times or later closing any location. TENANT shall comply with said hours. In the event of an emergency, the Airport Director, or designee may require concession to support emergency operations. Airport Director, or designee may, from time to time, authorize a later opening or earlier closing time for any location, provided he first finds that TENANT has submitted adequate justification.

SECTION 12.08 AMERICANS WITH DISABILITIES ACT

TENANT shall be solely and fully responsible for complying with the Americans with Disabilities Act of 1990 ("ADA") in connection with: (a) the Concession Area or any portion thereof and its operations thereon, the TENANT's Furnishings, Trade Fixtures and Equipment and the concession Improvements; (b) removing physical barriers from the Concession Area; (c) providing auxiliary aids and services for use of the Concession Improvements and TENANT's Furnishings, Trade Fixtures and Equipment, where necessary or required; and (d) modifying its policies, practices, and procedures to comply with the ADA. TENANT shall develop a work plan to correct or avoid any violations or non-compliance with the ADA. TENANT shall deliver to the COUNTY, upon COUNTY's request, a copy of each report and work plan. COUNTY's approval of or acceptance of any aspect of TENANT's activities under this Lease shall not be deemed or construed in any way as a representation that such item, activity or practice complies with the ADA. TENANT agrees to indemnify, defend, and hold the COUNTY harmless from and against any and all costs incurred by COUNTY with respect to TENANT's failure to comply with the ADA.

SECTION 12.09 TAXES AND ASSESSMENTS

This Lease may create a possessory interest which is subject to the payment of taxes levied on such interest. It is understood and agreed that all taxes and assessments (including but not limited to said possessory interest tax) which become due and payable upon the Leased Premises or upon fixtures, equipment or other property installed or constructed thereon, shall be the full responsibility of TENANT, and TENANT shall cause said taxes and assessments to be paid promptly.

SECTION 12.10 CIRCUMSTANCES WHICH EXCUSE PERFORMANCE

If either party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, restrictive governmental laws or regulations or other cause without fault and beyond the control of the party obligated (financial inability excepted), performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. However, nothing in this Section shall excuse TENANT from the prompt payment of any rents or other charge required of TENANT except as may be expressly provided elsewhere in this Lease.

SECTION 12.11 PARTIAL INVALIDITY

If any term, covenant, condition, or provision of this Lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

SECTION 12.12 WAIVER OF RIGHTS

The failure of COUNTY or TENANT to insist upon strict performance of any of the terms, covenants or conditions of this Lease shall not be deemed a waiver of any right or remedy that COUNTY or TENANT may have, and shall not be deemed a waiver of the right to require strict performance of all the terms, covenants and conditions of the Lease thereafter, nor a waiver of any remedy for the subsequent breach or default of any term, covenant or condition of this Lease. Any waiver, in order to be effective, must be signed by the party whose right or remedy is being waived.

SECTION 12.13 RESERVATIONS TO COUNTY

The Leased Premises are accepted as is and where is by TENANT subject to any and all existing easements and encumbrances. COUNTY reserves the right to install, lay, construct, maintain, repair and operate sanitary sewers, drains, storm water sewers, pipelines, manholes and connections; water, oil and gas pipelines; telephone and telegraph power lines; and the appliances and appurtenances necessary or convenient in connection therewith, in, over, upon, through, across, under and along the Leased Premises or any part thereof; and to enter the Leased Premises for any and all such purposes. COUNTY also reserves the right to grant franchises,

easements, rights of way and permits in, over, upon, through, across, under and along any and all portions of the Leased Premises. No right reserved by COUNTY in this Section shall be so exercised as to interfere unreasonably with TENANT's operations hereunder or to impair the security of any secured creditor of TENANT.

COUNTY agrees that rights granted to third parties by reason of this Section shall contain provisions that the surface of the land shall be restored as nearly as practicable to its original condition upon the completion of any construction. COUNTY further agrees that should the exercise of these rights temporarily interfere with the use of any or all of the Leased Premises by TENANT, TENANT shall only be entitled to a reduction in the rents payable to COUNTY during the period of interference, which shall be reduced in proportion to the interference with TENANT's use of the Leased Premises. TENANT shall not be entitled to any other form of compensation.

SECTION 12.14 AUTHORITY OF TENANT

If TENANT is a corporation, each individual executing this Lease on behalf of said corporation represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of said corporation, in accordance with the by-laws of said corporation, and that this Lease is binding upon said corporation.

SECTION 12.15 PUBLIC RECORDS

TENANT understands that written information submitted to and/or obtained by COUNTY from TENANT related to this Lease and/or the Leased Premises, either pursuant to this Lease or otherwise, may be open to inspection by the public pursuant to the California Records Act (GOVERNMENT CODE §§6250, et seq.) as now in force or hereafter amended, or any Act in substitution thereof, or otherwise made available to the public.

SECTION 12.16 RELATIONSHIP OF PARTIES

The relationship of the parties hereto is that of lessor and TENANT, and it is expressly understood and agreed that COUNTY does not in any way or for any purpose become a partner of TENANT in the conduct of TENANT's business or otherwise, or a joint venture with TENANT; and the provisions of this Lease and the agreements relating to rents payable hereunder are included solely for the purpose of providing a method by which fee payments are to be measured and ascertained. This Lease is intended for the sole benefit of the parties hereto and their successors, and, unless otherwise provided herein, or by law, no rights are created, or are intended to be created, for the benefit of, or enforceable by, any third parties.

SECTION 12.17 GOVERNING LAW AND VENUE

This Lease has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this Lease, the sole and exclusive venue shall be a court of competent jurisdiction

located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for trial to another county.

SECTION 12.18 ATTORNEY FEES

In any action or proceeding to enforce or interpret any provision of this Lease, or where any provision hereof is validly asserted as a defense, each party shall bear its own attorney's fees, costs and expenses.

SECTION 12.19 NOTICES

All notices pursuant to this Lease shall be addressed to either party as set forth below and shall be sent through the United States Mail, in the State of California, duly registered or certified, return receipt requested with postage prepaid or by an overnight carrier service. If any notice is sent by an overnight carrier service, as aforesaid, the same shall be deemed to have been served or delivered twenty-four (24) hours after mailing thereof as above provided. Notwithstanding the above COUNTY may also provide notices to TENANT by personal delivery or by regular mail postage prepaid and any such notice so given shall be deemed to have been given upon the date of personal delivery or three (3) days after the date of deposit in the United States Mail, respectively.

TO: COUNTY TO: TENANT

John Wayne Airport 3160 Airway Avenue Costa Mesa, CA 92626

Either party hereto may from time to time, by written notice to the other in the method described above, designate a different address which shall be substituted for the one above specified.

IN WITNESS WHEREOF, the parties have ex written.	ecuted this Lease the day and year first above
TEN	NANT:
Ву:	
Ву:	
APPROVED AS TO FORM:	
County Counsel	
By:	
APPROVED AS TO AUDIT AND ACCOUNTI	NG:
Auditor-Controller	
By:	
RECOMMENDED FOR APPROVAL:	
John Wayne Airport	
By:Barry A. Rondinella Airport Director	
Signed and certified that a copy of this document has been delivered to the Chair Of the Board per G.C. Sec. 25103, Reso 79-1535 Attest:	<u>COUNTY</u>
	COUNTY OF ORANGE
	Ву:
Robin Stieler	Chair, Board of Supervisors

Clerk of the Board of Supervisors Orange County, California

EXHIBIT A

LEASED PREMISES DESCRIPTION

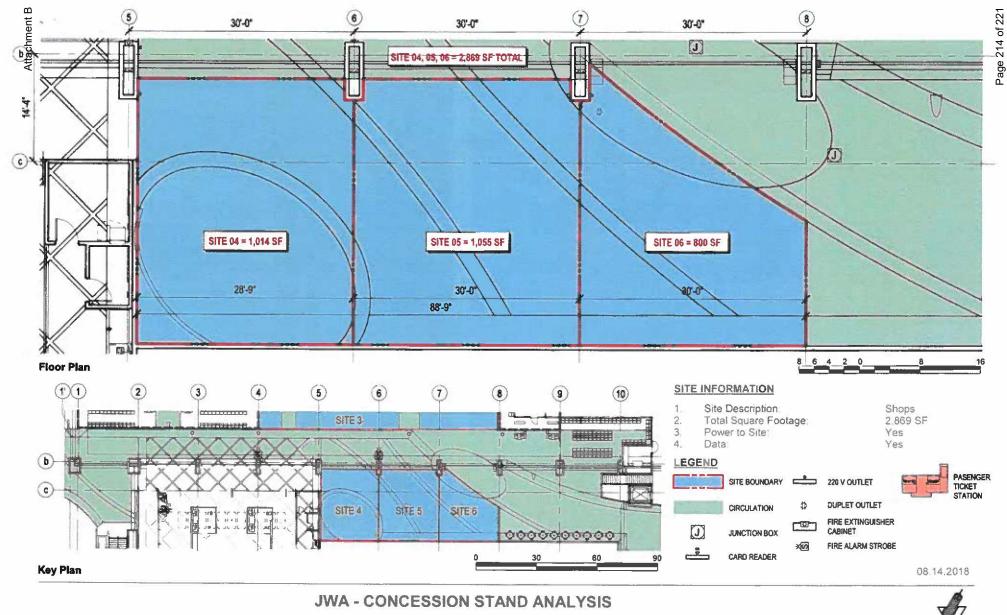
Parcel Number: PM 1121-0350-00

Project Name: John Wayne Airport

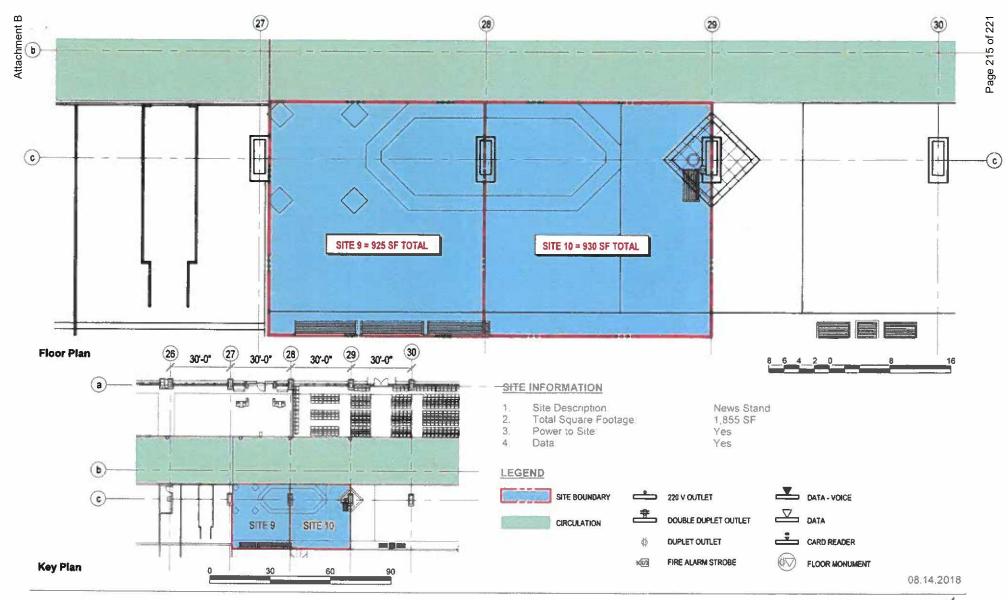
The Leased Premises referred to in this Lease shall mean all the premises shown on floor plans shown on Exhibit B which exhibit is attached hereto and by reference made a part hereof.

Leased Premises are those certain areas designated as concession locations as set forth below in the Leased Premises Summary Table below. The Leased Premises are located on the arrival and departure levels, and is situated within the John Wayne Airport, Thomas F. Riley Terminal Building at 18601 Airport Way, in the City of Santa Ana, County of Orange, State of California, and located on Lots 132 and 135 of Block 7 of the Irvine Subdivision, per map recorded in Book A, Page 88 of Miscellaneous Maps in the Office of the County Recorder of Orange County, together with the right of ingress and egress thereto.

EXHIBIT B MAP OF LEASED PREMISES LOCATIONS

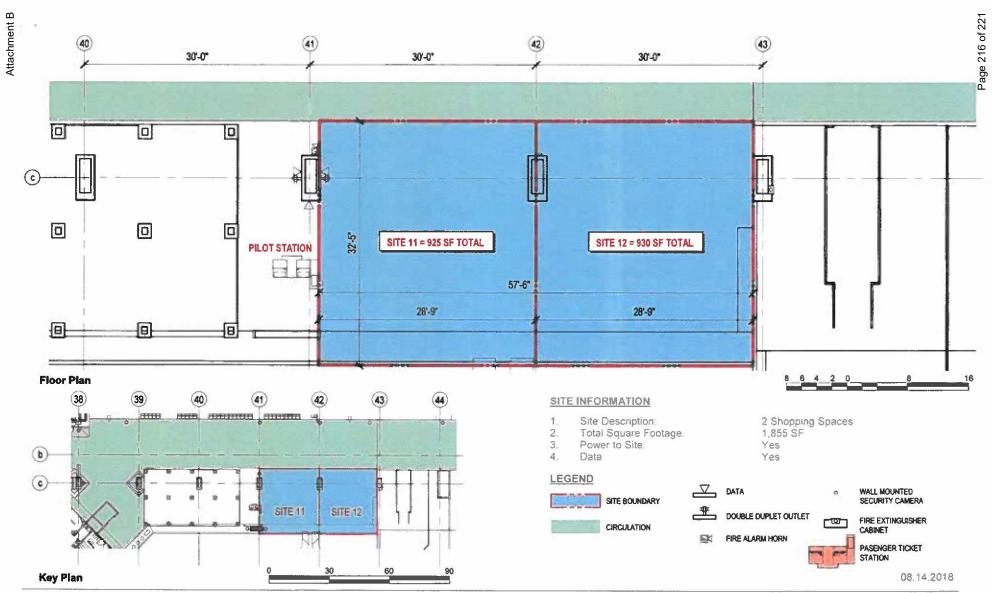


ARRO ARRO



JWA - CONCESSION STAND ANALYSIS

DHI WAYE



JWA - CONCESSION STAND ANALYSIS



EXHIBIT C

SPECIALTY RETAIL (PERMITTED USE)

Specialty High End Retail:

The non-exclusive sale of merchandise reflective of the proposed concept(s), The categories suggested below, are provided as a guideline. JWA encourages creativity by Proposers for concept, design and layout.

Luxury Accessories

- High End Prestige Cosmetics/Body Care
- Designer Apparel
- Theme Park merchandise
- High End Jewelry/Watches
- · Leather Goods

Operator is required to collaborate with JWA interactive wayfinding signage with menus, ordering, and delivery system.

The following items/services are not permitted:

- News and Gift items
- Tobacco, e-cigarettes, cannabis products, and/or vaporizers
- Spa Services
- Electronics
- Food/Beverage products

EXHIBIT D

EXHIBIT D CONCESSION IMPROVEMENT PLAN (TO BE PROPOSED)

EXHIBIT E MERCHANDISE AND PRICING (TO BE PROPOSED)

EXHIBIT F

REQUIREMENTS FOR CAD COMPATIBLE PLANS

A complete set of as-built drawing files or Report's Exhibits and Figures will be required by the County of Orange, John Wayne Airport CAD Division. The CAD Division will only accept CAD files which are completed in the following manner:

- All architectural, engineering, and construction CAD drawing files will be done using MicroStation, or newer and/or Microstation-based design and drafting package.
- All geographic data, spatial analysis, GIS maps, exhibits, and figures will be done using Intergraph GeoMedia or ISRI Arc View or Bentley MicroStation Geographics.
- 3. All CAD files must conform to John Wayne Airport CAD Specifications.

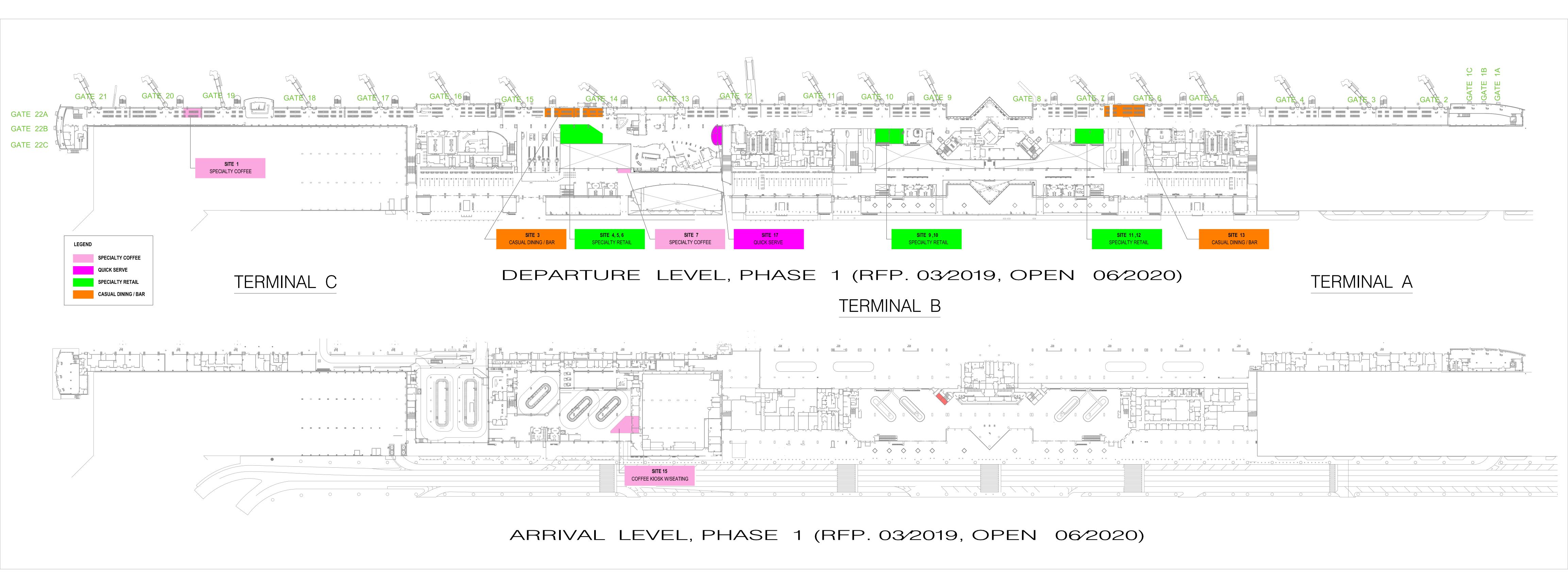
Hardcopy requirements for the CAD Division are:

- 1. One complete set of full size and on 18" by 24" size set of as-built drawings.
- 2. One complete set of Reports.

EXHIBIT G

PERCENTAGE RENT

Spec	ialty Retail Tiered Rent	
\$ -	\$500,000.00	12%
\$500,000.01	\$750,000.00	14%
\$750,000.01		16%



2019 CONCESSION DEVELOPMENT PROGRAM SCHEDULE PHASE 1

DATE	TASK
January 1, 2018 – June, 2020	Concession Development Program
January 4, 2018 – January, 2019	Concession Outreach
December 13, 2018	Outreach Meeting
February 4, 2019	Agenda Staff Report (ASR) to AAD
March 6, 2019	Airport Commission
March 26, 2019	Board of Supervisors (BOS)
March 27, 2019 - April 11, 2019	Request for Qualifications (RFQ) Issue & Due Date
April 12, 2019 – April 16, 2019	RFQ Committee Review – Pass or Fail
April 17, 2019 – June 4, 2019	Request for Proposal (RFP)
June 7, 2019 – July 1, 2019	RFP Committee Review
July 2, 2019	ASR for recommendation to AAD
July 17, 2019	Airport Commission
August 27, 2019	BOS Award Meeting
August 2019 – December 2019	Plan Review
January 2, 2020 – May 2020	Tenant Construction
June 2020	Open for Business

Leigh|Fisher



Executive Summary

COMMERCIAL PROGRAM Concessions Program Report

John Wayne Airport

Prepared for Orange County, California

September 17, 2018.



COMMERCIAL PROGRAM PROFESSIONAL CONSULTING SERVICES CONCESSIONS PROGRAM REPORT

Orange County, John Wayne Airport

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COMMERCIAL PROGRAM PROFESSIONAL CONSULTING SERVICES CONCESSIONS PROGRAM REPORT

County of Orange, John Wayne Airport

LeighFisher was engaged by John Wayne Airport, Orange County ("JWA or the Airport") to provide professional consulting services to assist with the validation of the current commercial concessions Program (Concession Program) goals and the approach developed by airport staff, in anticipation of presenting the next steps of the desired RFP launch for the Concession Program to the Board. LeighFisher has developed this report (Report) outlining the issues discussed and the results of the validation process.

LeighFisher's findings are summarized in a matrix provided in Table 1 on page 2.

Executive Summary

The business strategy for the Concession Program is aligned with the JWA Mission Statement of "Providing a Superior Guest Experience". The structure of the RFP addresses the specific shortfalls within the existing concession mix and enhancements to the guest experience namely:

- Decrease in the 2017 passenger research study on the guest satisfaction on the quality of the food and beverage offer within the Airport from 83% to 68% (a 15% decrease). (Source: Phoenix Marketing International 2017 passenger research page 50.)
- Decrease in the 2017 passenger research study on the retail offer from 82% to 68% (a 14% decrease). (Source: Phoenix Marketing International 2017 passenger research page 50.)
- Addresses the guest's desire for increased food and beverage, coffee, and specialty retail. (Source: Phoenix Marketing International 2017 passenger research pages 41-42.)
- The Introduction of interactive way finding and food and beverage integration within the system.
- Maximizes the use of available locations and space to meet guest demand and expectations, which in turn, will increase penetration, conversion and spending.
- Introduction of business plans, financial forecasts to be incorporated within submissions and KPI's added to the contracts.

The RFP is well structured, clearly details what is required from each submission and provides all relevant information in order that the Proposers can prepare a detailed business and financial plan and concept offer. These recommendations reflect best practice within the industry and a view that they should be incorporated within the RFP.

Table 1 **Executive Summary**

Consideration	Finding			
RFP Space allocation and Category Mix	Agree with RFP criteria			
Pricing Policy	Recommend parity with Street Pricing			
Capital Investment and Tenure of Contracts	Agree with Capital Investment Criteria, recommend changes in Tenure of Contracts			
Concession refurbishment requirements	Agree with RFP criteria			
Rent Criteria	Recommend increasing concession rent scales			
Rent Revision Policy	Agree with RFP criteria			
Other Costs	Recommend increasing marketing fee and recovery of all utility charges			
Scoring Matrix	Agree with RFP criteria			
Operational Requirements	Recommend additions to the RFP			
Other findings	As detailed in the report			

BACKGROUND FOR CONCESSIONS PROGRAM

John Wayne Airport, (Airport or JWA) is owned and operated by Orange County and has a five-member Board of Supervisors (Board) who is responsible for setting policy and the Airport management team (Airport Staff) operate and manage the Airport. The Airport is the only commercial airport in Orange County, California and is located approximately 35 miles south of Los Angeles, between the cities of Costa Mesa, Newport Beach, and Irvine. The Airport spans approximately 500 acres and operates two runways and three terminals with limited opportunities for airfield expansion. As of today there is no intent for further development within the near future. The existing footprint of the terminals and surrounding infrastructure also provides very limited scope for Terminal expansion. The Airport operates daily between 7.00 a.m. (8.00 a.m. on Sunday) to 11.00 p.m. daily. Departures are scheduled no later than 10.00 p.m. daily. The Airport operates within a confined footprint and has a cap on passenger traffic MAP (million annual passengers) set forth in the 1985 Settlement Agreement as amended between Orange County, the City of Newport Beach, the Airport Working Group (AWG), and Stop Polluting Our Newport (SPON) (the Settlement Agreement). The 2014 amendments to the Settlement Agreement allows the operational capacity at John Wayne Airport to remain at the current authorized 10.8 MAP, through December 31st, 2020 and provides for an increase to 11.8 MAP through December 31st, 2025, and 12.2 to 12.5 MAP through December 31st, 2030, pending levels of service. (Current 2018 forecast is 10.6 / 10.7 MAP, which is right at the cusp of the 10.8 MAP cap allowed in 2018). The confined footprint and the passenger cap limits the growth potential of the Airport and commercial revenue business. The Airport has three terminals A, B and C, they are all interconnected (it takes 10 to 15 minutes to walk from A to the end of C.)

CONCESSIONS PROGRAM GOALS

John Wayne Airport has developed a Concession Program initiative that includes the development of New Concessions at the Airport and intends to issue a Request for Proposals (RFP) for new retail, food and beverage operations at specific locations at the Airport Terminal in Quarter 4 2018. The heart of the RFP focuses on the Concession Program Goals.

JWA has established the following goals for this RFP:

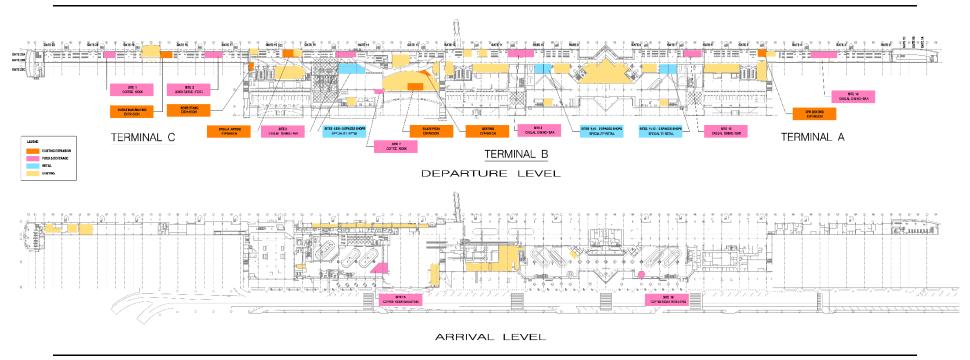
- a) Provide a superior guest experience;
- b) Refresh the concession program with a focus on local and regional concepts;
- c) Provide new food and beverage options that reflect the evolving tastes and preferences of today's JWA traveler;
- d) Improve breakfast and grab-and-go offerings in all food and beverage locations;
- e) Attract quality and diverse tenants who promote excellence in guest services and provide a positive, equitable, and inclusive working environment for their employees;
- f) Concessionaires that provide employees with continuous training opportunities, advancement, benefits and worker retention program; and
- g) Promote sustainability through design and operational improvements.

TASK 1 DUE DILIGENCE AND DATA GATHERING

1.1 Physical Observations and Findings on Site

The Airport Staff gave a detailed overview of the existing concession program business, the proposed layouts with New Locations / relocation and or expansion of existing outlets, the imminent RFP and the superior guest strategy behind the concession program. LeighFisher and the Airport Staff walked the terminals to visualize in real time the locations and the development program. The Airport Staff highlighted the consumer research program, reviewed existing concessionaire performance, detailing both positive and negative trends, and presented the strategy that has been used to encourage local business operators to register formally on Bidsync to participate in the RFP program.





TASK 2 REVIEW AND VALIDATION OF NEW LOCATIONS

2.1 RFP Space Allocation and Category Mix / Breakdown

As noted in table 2 below, the amount of concession space available to meet guest demand is a key success factor of the Airport Concessions Program. The industry benchmark is to compare concession space per 1,000 enplaned passengers (EP.)

This quantitative measure does not take into account the quality or location of the concession space. For example, many airports have a surplus of landside (pre-security) space and a shortage of airside (post security) space.

Table 2 highlights that John Wayne Airport is at the mid-point for Gross Sales versus the benchmarked airports. Houston at \$70.9M and Nashville at \$68.1M Gross Sales versus JWA at \$56.8M Gross Sales. This highlights the opportunity going forward when the additional one million PAX per annum comes into operation, linked to the additional space and increased offer across food and beverage and specialty retail post the RFP.

Table 2
JWA Square Foot per 1,000 Enplaned Passengers Benchmarking Analysis

	Sacramento SMF	Indianapolis IND	Houston HOU	Cleveland CLE	Nashville BNA	Calgary YYC	JWA SNA
EP Domestic	4,953,721	4,211,557	6,067,497	4,077,843	6,489,739	5,289,510	5,073,031
Gross Sales	\$52,175,391	\$47,237,427	\$70,938,576	\$43,884,970	\$68,101,231	\$87,064,945	\$56,827,825
Current Sq. Foot	48,285	58,333	64,006	47,123	48,191	118,872	53,398
Sq. Foot by EP	9.75	13.85	10.55	11.56	7.43	22.40	10.53
Sales per EP	\$10.30	\$11.14	\$10.96	\$10.51	\$10.49	\$11.53	\$10.84

(Source: 2016 ARN Airport concessions performance report.)

Currently JWA's commercial space operates at capacity, specifically during peak hours, queuing is common, especially for food and beverage, and multiple outlets do not have sufficient seating to meet guest demand. This results in lost sales opportunities, as guests are not prepared to queue and wait for seating. More importantly the unavailability of seating capacity can have a negative impact on the guest experience. Table 5: page 8 highlights the purchase ratios of food and beverage and retail. Forty-Eight percent (48%) of all guests do not purchase food and beverage and eighty-seven percent (87%) of all guests do not purchase specialty retail. (Source: Phoenix Marketing International 2017 Passenger Research Study pages 31,36.)

When benchmarking space, the industry benchmark is to compare concession space per 1,000 enplaned passengers (EP). Table: 2 shows JWA is under-spaced by square foot per enplaned passenger (EP,) against similar enplaned passenger benchmarked airports. Four of the six benchmarked airports Calgary,

Nashville, Cleveland and Houston benefit from a higher square foot by enplaned passenger (EP) than JWA. (Source: 2016 ARN Airport concessions performance report.)

Table 2 also highlights that John Wayne Airport is at the mid-point for Gross Sales versus the benchmarked airports. Houston at \$70.9M and Nashville at \$68.1M Gross Sales versus JWA at \$56.8M Gross Sales. This highlights the opportunity going forward when the additional one million PAX per annum comes into operation, linked to the additional space and increased offer across food and beverage and specialty retail post the RFP.

Post RFP, JWA will increase the square foot per enplaned passenger (EP) to 13.97 square foot per (EP). This increase will then rank JWA number two (2) against the benchmarked Medium Hub airports (in Table 2) square foot by enplaned passenger (EP). As importantly, this will address the capacity issues detailed earlier, in addition to enhancing the guest experience and demand, with a broader offer for food and beverage and specialty retail (as highlighted on page 7 commentary on Table 3: Satisfaction with airport services among all passengers).

The additional space incorporates a clever use of F&B seating replacing hold room seating, which in turn addresses the limited facilities i.e. Food and Beverage by Gates 20, 22 and 17; Blaze Pizza expansion plus additional seating opposite Gate 13 and California Pizza Kitchen seating expansion by Gate 5. It is not believed that the loss of hold room seating will significantly impact the guest experience. The adjacencies of food and beverage concessions to the gates will provide guest's options for seating and meet the demand for enhanced food and beverage offers.

JWA benefits from a premium demographic guest profile, with a high median household income \$ 125,000 up from \$118,900 in 2015 (Table 8 Household income for JWA passengers.) Consumer research has highlighted guest desire for a broader food and beverage offering and increased specialty retail offerings. This in turn requires additional space and the proposed RFP addresses all these issues. (Source: Phoenix Marketing International 2017 Passenger Research Study pages 37.) The addition of specialty retail locations near Gates 14, 10 and 7 will allow the specialty retail to be significantly enhanced to reflect guest demographics and demand. John Wayne Airport also has a significant volume of meet and greet guests. The RFP addresses this and includes additional Coffee Kiosks within the landside arrivals area in order to provide a better guest experience and service, but also drive revenue and spending.

In summary, the existing space is under severe pressure and is at the lower end of Medium Hub benchmarked airports square foot by enplaned passenger (EP). LeighFisher believes that the proposed RFP optimizes the use of the existing space, cleverly incorporates new space, as best as it can be within the confines that the terminal operates in today. The floor template post the RFP will provide an opportunity to significantly enhance the guest experience, drive revenue growth and spending. LeighFisher do not believe that any changes should be made as of today to the proposed RFP plans.

The review by LeighFisher also highlights that the major opportunities to redesign, expand and fully utilize the overall lease template space within the terminals, will present itself in Phase 2 when the existing concession contracts are up for renewal. LeighFisher recommends that work starts on Phase 2 in the imminent future, in order that the necessary work can be completed to present a lease template for the RFP that will fully optimize the floor template and mix of commercial offerings.

Category Mix Breakdown

Planning revisions or additions to the concession mix should start first and foremost based on guest research, in addition to taking into account general guest feedback, having a detailed understanding of what is and is not working within the existing concession mix and balancing this against the available space. The Proposed RFP mix and breakdown for JWA is based on the results and findings of consumer research conducted between December 2013 to 2017 (Sources: 2013, 2015 research reports by Redhill Group, and 2017 report by Phoenix Marketing International.)

The research highlighted the following:

Table 3
2017 Satisfaction with Airport Services Among all Passengers

Finding	2015	2017
A decrease in satisfaction among all passengers in the quality of food and beverage services at JWA.	(A+B) 83%	(5+4) 68%
A decrease in satisfaction among all passengers in the quality of News, Gift & Other Retail services at JWA.	82%	68%

(Source: Phoenix Marketing International 2017 Passenger Research Study Page 50.)

Note: the question changed to 5-point scale in 2017; A-F grade scale was used in 2015. Use caution when making direct comparisons. Significant differences are indicated by green (significantly higher) or red (significantly lower)

In addition, the research study highlighted that local residents were least satisfied with the quality of food and beverage services; the quality of news, gift, and other retail services; and the airport art exhibits. (Page 50 of the survey.)

The 2017 passenger research program conducted by Phoenix Marketing International asked passengers what types of food and beverage and retail they would like to see added to the JWA offer. The results detailed on page 40 - 42 are summarized below.

- Passengers were asked what type of food venues they would like to see in added to John Wayne Airport. The top desired venue is Ice Cream (19%), followed by Mexican (15%), Thai (14%), Chinese (14%), Italian (13%), Vegan (11%), Mediterranean (10%), and Vietnamese (8%).
- Passengers were also asked what brands of coffee they would like to see added to John Wayne
 Airport (they could select multiple responses). The coffee preferences are Starbucks (+33%),
 Peet's (17%), and Seattle's Best (12%).
- Passengers were also asked what types of retail options they would like to see added to John Wayne Airport (they could select multiple responses). The retail options suggested included sports theme (13%), theme park (11%), travel products/luggage (10%), cosmetics (8%), and designer (7%), and office supplies (3%).

When guests were asked what additional services they would like to see at JWA, the most mentioned item is charging stations/power outlets for electronic devices, followed by more/better/healthier food options.

Verbatim responses included healthier food options, better food options, Frozen Yogurt, Ice Cream, and Vegan food. (Source: Phoenix Marketing International 2017 Passenger Research Study Page 37.)

Based on the consumer research and findings and knowledge of the current concessionaire performance, the RFP addresses the shortfall of desired categories in Food and Beverage as identified, ranging from American, Asian, Hispanic, Italian, Latin American, Mediterranean and Mexican food offerings and an increase in the width and breadth of Coffee Grab-and-Go and Quick Serve offers.

The RFP also includes the specialty retail guest-preferred options, including sports themed merchandise, theme park stores (e.g. Disney), travel products/luggage, cosmetics and skin care, designer apparel and accessories, luxury watches and jewelry.

The RFP clearly details non-duplication; a must comply interface with the JWA interactive way-finding system; variety of menu covers i.e. breakfast, lunch and dinner and encourages operators to include special features in their concepts such as exposition kitchens.

Based on the detailed research findings and benchmarking against the Industry (i.e. comparing concession space per 1,000 enplaned passengers) the recommendation is as follows:

Recommendations

- Issue the RFP as is, in respect of space allocation, space locations, and category mix breakdown for the new locations.
- Commence work imminently on Phase 2. This will ensure that the use of the space, in
 conjunction with lease outline drawings and tenant design guidelines, maximizes the exposure
 and presentation of the commercial concessions area. For example, the wall surrounding and
 access routes to Ruby's Diner to Go is a barrier for entry and does not maximize the lease
 footprint. This is just one example, but all instances can be resolved in Phase 2.

2.2 Pricing Policy

As per Airport Council International North America 2017 Concessions Benchmarking Study, the majority of Airports use street plus pricing or street pricing methodologies.

These two pricing methodologies are used by 91% of responding airports. 31% of airports in the study adopt street pricing and 61% adopt street plus pricing.

The North American standard for Street plus pricing is Street pricing plus 10%. (Source: LeighFisher's survey conducted for ACRP Report 54 Resource Manual for Airport in Terminal Concessions.)

Figure 2 **Pricing Methodologies** Comparable to other airports No Comparison Steet Pricing Methodolgy Street-Plus a percentage 0 10 20 30 40 50 60 70 Pricing Methodologies

Source: ACI North America 2017 Concession Benchmarking Study.

The 2017 passenger research program conducted by Phoenix Marketing International asked all passengers and then local residents separately if they purchased food and beverage and retail; the results are detailed below in Table 5.

Table 5
Purchase Ratios of Food and Beverage and Retail

Item	Purchases among all guests		Purchase	residents	
	Yes No		Yes	Yes No	
Food & Beverage	52%	48%	82%	16%	2%
Retail	13%	87%	47%	51%	2%

(Source: Phoenix Marketing International 2017 Passenger Research Study Pages 31, 61.)

JWA currently operates street plus 10% and the proposed RFP is based on maintaining street plus 10%. Further analysis of the passenger survey highlight key findings namely:

- 48% of total passengers surveyed do not buy food and beverage and a significant 87% do not buy retail or other services. This improves when local residents were asked, whereby 16% do not buy food and beverage and 51% do not buy Retail or other services (Source: 2017 passenger research program conducted by Phoenix Marketing International.)
- The 2016 ARN Airport concessions performance report, Airport sales per enplanement (EP)
 highlights the "gap" in spend per enplanement at JWA. More importantly it highlights the
 opportunity to improve with an increased food and beverage offer and specialty retail mix.

Table 6

North American Airports Sales per Enplanement SEP

			F&B	Specialty Retail	N&G	Total Sales	Sales
Top 50 Airports	IATA	Enplanements	Total Sales	Total Sales	Total Sales	*(Excluding DF)	E/P
New York	JFK	28,313,827	\$230,629,918	\$74,524,324	\$106,160,357	\$411,314,599	\$14.53
Pittsburgh	PIT	4,053,880	\$25,459,923	\$24,228,439	\$7,953,459	\$57,641,821	\$14.22
Anchorage	ANC	2,747,279	\$23,393,397	\$7,712,266	\$7,861,414	\$38,967,077	\$14.18
Miami	MIA	21,365,231	\$161,335,046	\$87,053,390	\$48,055,968	\$296,444,404	\$13.88
San Francisco	SFO	24,955,019	\$217,511,024	\$69,010,757	\$51,605,311	\$338,127,092	\$13.55
Las Vegas	LAS	22,054,456	\$166,382,954	\$56,882,067	\$59,191,292	\$282,456,313	\$12.81
Portland	PDX	8,414,996	\$59,334,246	\$26,382,776	\$21,032,911	\$106,749,933	\$12.69
Enfield	YHZ	1,852,449	\$13,917,500	\$4,398,801	\$4,424,571	\$22,740,872	\$12.28
Newark	EWR	18,789,673	\$146,291,604	\$27,707,265	\$53,379,759	\$227,378,628	\$12.10
Edmonton	YEG	3,618,443	\$28,162,377	\$6,473,243	\$9,051,265	\$43,686,885	\$12.07
Los Angeles	LAX	36,376,977	\$270,033,927	\$58,520,095	\$107,174,612	\$435,728,634	\$11.98
Orlando	мсо	18,827,098	\$138,987,065	\$52,914,178	\$32,465,301	\$224,366,544	\$11.92
Boston	BOS	16,628,336	\$125,787,975	\$25,979,607	\$42,132,515	\$193,900,097	\$11.66
Tampa	TPA	9,427,445	\$76,902,765	\$9,000,821	\$19,859,474	\$105,763,060	\$11.22
Denver	DEN	27,018,929	\$213,714,120	\$47,038,700	\$37,823,599	\$298,576,419	\$11.05
Savannah	SAV	1,017,065	\$5,484,209	\$1,691,780	\$3,919,225	\$11,095,214	\$10.91
Philadelphia	PHL	15,734,513	\$113,456,816	\$30,850,383	\$26,630,915	\$170,938,114	\$10.86
Chicago	ORD	38,372,260	\$300,828,144	\$42,807,722	\$68,360,524	\$411,996,390	\$10.74
Calgary	YYC	7,415,993	\$48,435,487	\$15,812,083	\$15,373,731	\$79,621,301	\$10.74
Reno	RNO	1,717,638	\$9,490,401	\$4,527,207	\$4,202,049	\$18,219,657	\$10.61
Toronto	YYZ	20,516,500	\$161,657,686	\$20,697,293	\$34,544,000	\$216,898,979	\$10.57
Washington	IAD	10,674,211	\$74,863,053	\$17,767,917	\$20,093,087	\$112,724,057	\$10.56
Jacksonville	JAX	2,808,000	\$18,274,776	\$4,457,096	\$6,822,313	\$29,554,185	\$10.52
Albuquerque	ABQ	2,382,046	\$14,665,456	\$6,082,742	\$4,286,320	\$25,034,518	\$10.51
San Diego	SAN	10,053,201	\$66,949,218	\$13,884,570	\$24,427,937	\$105,261,725	\$10.47
Indianapolis	IND	4,008,256	\$27,782,287	\$9,060,674	\$5,025,954	\$41,868,915	\$10.45
Seattle Minneapolis St	SEA	21,108,756	\$134,859,114	\$35,711,272	\$49,788,227	\$220,358,613	\$10.44
Paul	MSP	18,273,449	\$133,741,587	\$37,471,748	\$18,569,898	\$189,783,233	\$10.39
New Orleans	MSY	5,333,549	\$33,680,031	\$3,563,588	\$18,097,124	\$55,340,743	\$10.38
New York	LGA	14,237,784	\$95,247,443	\$14,152,806	\$37,838,824	\$147,239,073	\$10.34
Nashville	BNA	5,831,513	\$37,575,267	\$9,124,142	\$13,493,821	\$60,193,230	\$10.32
Fort Myers	RSW	4,155,189	\$24,333,636	\$0	\$17,159,744	\$41,493,380	\$9.99
Cleveland	CLE	4,046,634	\$21,844,395	\$8,235,977	\$10,206,672	\$40,287,044	\$9.96
Baltimore	BWI	11,923,487	\$81,776,482	\$14,898,395	\$21,341,323	\$118,016,200	\$9.90
Phoenix	PHX	22,001,885	\$150,452,612	\$27,921,397	\$39,072,438	\$217,446,447	\$9.88
Milwaukee	MKE	3,273,619	\$21,777,620	\$1,551,866	\$8,913,002	\$32,242,488	\$9.85
Washington	DCA	11,492,539	\$77,550,007	\$9,377,692	\$25,747,005	\$112,674,704	\$9.80
Santa Ana	SNA	5,082,461	\$33,134,865	\$2,906,411	\$13,818,414	\$49,859,690	\$9.81

(Source: 2016 ARN Airport Concessions Performance Report.)

Pricing policies are one of the most contentious issues among customers, Airport operators, and concessionaires. The traditional justification for retail prices being higher than the domestic market is that the cost of doing business is significantly higher at an Airport than on the street. Generally, guests do accept a small premium on food and beverage, but expect parity as a minimum on specialty retail, and in respect of duty free, will be looking at the savings against domestic market.

Getting the pricing policy wrong can have a severe impact on overall spend levels and guest satisfaction. Coffee, Bottled Water, and a Big Mac are key price indicators that will create either a value for money perception or a "rip off" in the customer's mind.

Since the market supports both pricing policies, it therefore becomes more of a strategic decision as opposed to a benchmarking validation. The recommendation is to change the RFP strategy and implement street pricing methodology, meaning parity with the prices found in comparable stores in Orange County.

The rationale behind this recommendation is:

- Street pricing is one of two core pricing policies within the North American Market, 31 of the 100 participating airports adopt this methodology. (Source: ACI North America benchmarking study 2017.) The 2015 ACI North America concession benchmarking study detailed 32 out of the 80 Airports participating implemented street pricing, with 41 Airports implementing street plus a percentage.
- 48% of total passengers surveyed do not buy food and beverage and a significant 87% do not buy retail or other services. (Source: 2017 Phoenix Marketing International passenger study.)
- 21% of all passengers chose other airports due to ticket cost and affordability and 36% of local residents chose other airports for the same reason, indicating that ticket costs are something guests take seriously. (Source: 2017 Phoenix Marketing International passenger study.)
- Parity with street pricing provides guests the confidence that they are getting a value for money proposition.
- If marketed and promoted to the guests in the correct manner, this policy could increase average spend and transaction values because the "rip off" mindset will not exist.

Table 7 on page 12 highlights JWA benchmarking against similar 4M to 6M enplanement airports by category and gross spend per enplanement based on today's pricing policies.

(Source: ARN Fact Book and ACI North America 2017 Concessions Benchmarking Study.)

Table 7

JWA Category Performance versus Benchmarked Airports 4M to 6M EP

	Sacramento SMF	Indianapolis IND	Houston HOU	Cleveland CLE	Nashville BNA	Calgary YYC	JWA SNA
EP Domestic	4,953,721	4,211,557	6,067,497	4,077,843	6,489,739	5,289,510	5,073,031
Gross Sales	\$52,175,391	\$47,237,427	\$70,938,576	\$43,884,970	\$68,101,231	\$87,064,945	\$56,827,825
Gross Rentals	\$6,720,589	\$6,532,049	\$11,827,199	\$5,040,894	\$8,077,018	\$0	\$10,157,209
Current Sq. Ft.	48,285	58,333	64,006	47,123	48,191	118,872	53,398
Sales EP	\$10.30	\$11.14	\$10.96	\$10.51	\$10.49	\$11.53	\$10.84
Food & Beverage	\$34,162,977	\$30,966,533	\$50,042,327	\$24,637,354	\$46,558,416	\$55,324,319	\$38,342,002
<mark>Specialty</mark> Retail	<mark>\$6,124,221</mark>	\$9,422,703	<mark>\$10,935,761</mark>	\$7,153,769	\$5,894,56 <mark>8</mark>	<mark>\$14,415,143</mark>	<mark>\$2,816,993</mark>
News & Gifts	\$11,888,193	\$6,848,191	\$9,960,488	\$12,093,847	\$15,648,247	\$17,325,483	\$15,668,830
Duty Free	\$0.00	\$0.00	\$1,485,395	\$0.00	\$0.00	\$7,550,605	\$0.00
Airport Totals	\$52,175,391	\$47,237,427	\$70,938,576	\$43,884,970	\$68,101,231	\$87,064,945	\$56,827,825

Table 7 highlights the "opportunity" in Specialty Retail, with all benchmarked airport exceeding JWA turnover in this category.

(Source: 2016 ARN Fact Book and ACI North America Concession Benchmarking Study.)

Table 8
Household Income for JWA Passengers

Household Income	2015	2017
Average (Mean)	\$118.9K	\$125k

The Airport benefits from a premium A, B demographic consumer profile. Table 8 details the average household income. Having a pricing policy at parity with comparable Orange County stores, linked to the increase in the width and breadth of the food and beverage offer, plus the introduction of a higher premium specialty retail offer, will all drive all key revenue parameters, namely, Gross Revenue, spend per enplaned passenger (EP).

(Source: Phoenix Marketing International 2017 Passenger Research Study Page 66.)

Table 9

JWA Category Performance versus Benchmarked Airports 4M to 6M EP

	Sacramento SMF	Indianapolis IND	Houston HOU	Cleveland CLE	Nashville BNA	Calgary YYC	JWA SNA
EP Domestic	4,953,721	4,211,557	6,067,497	4,077,843	6,489,739	5,289,510	5,073,031
Sales EP	\$10.30	\$11.14	\$10.96	\$10.51	\$10.49	\$11.53	\$10.84
Gross Sales							
Food & Beverage	\$34,162,977	\$30,966,533	\$50,042,327	\$24,637,354	\$46,558,416	\$55,324,319	\$38,342,002
<mark>Specialty</mark> Retail	<mark>\$6,124,221</mark>	\$9,422,70 <mark>3</mark>	<mark>\$10,935,761</mark>	<mark>\$7,153,769</mark>	<mark>\$5,894,568</mark>	<mark>\$14,415,143</mark>	\$2,816,993
News & Gifts	\$11,888,193	\$6,848,191	\$9,960,488	\$12,093,847	\$15,648,247	\$17,325,383	\$15,668,830
Duty Free	\$0.00	\$0.00	\$1,485,395	\$0.00	\$0.00	\$7,550,605	\$0.00
Airport Totals	\$52,175,391	\$47,237,427	\$70,938,576	\$43,884,970	\$68,101,231	\$87,064,945	\$56,827,825

(Source: ARN Fact Book.)

Table 9 highlights JWA's category performance versus benchmarked airports at 4M to 6M EP. This clearly highlights the opportunity in Specialty Retail, the strength of the News and Gifts category, the increased opportunity to further develop food and beverage with broader offerings, including new outlets and increased space.

The addition of a higher premium retail offering, linked to a fair pricing policy, will have a positive impact on both food and beverage and specialty retail spend per enplanement.

This subject matter is becoming more business critical with the rapid expansion of online sales, whereby exactly the same items are being sold up to 20% lower than on the street. The millennial generation also conducts detailed research on what is available and compares pricing across all sources of product availability.

Recommendation

Revise the pricing policy to be at parity in comparable stores in Orange County.

2.3 Capital Investment Requirements and Tenure of Contracts

The contract tenure within the RFP for food and beverage is 10 years and specialty retail is 7 years. When benchmarked on a global basis, both these terms are generous, especially in respect of Specialty Retail, Grab-and-Go and Coffee Kiosk offers within food and beverage.

There is a global trend for major food and beverage outlets, food courts, and core duty free to have 10-year contracts; this obviously allows the capital investment to be amortized over a 10-year period in return for a world class build out and premium guest offer and experience. On a global basis, Grab-and-Go, Quick

Serve, and Coffee Kiosks would generally be 5-year contracts, and in the extreme 3 + 2 option. Globally, specialty retail, other service concessions (e.g. bag wrap, foreign exchange and car parking) would also be 5-year terms. Food trends are consistently evolving and changing; 5-year contracts allow for more flexibility to meet market changes going forward, especially in Quick Serve, Grab-and-Go, and Coffee Kiosk concepts.

Depending on the Specialty Retail brand and/or service and the cost of build out, the average tenure of contracts is 5-years, with exceptions being made for a 7-year contract, e.g. Hermes Boutique. (Source: https://www.moodiedavittreport.com.) The Moodie Davitt report publishes results and tenure of contract for 90% of all global Airport RFP's for specialty retail, food and beverage RFPs.)

The RFP clearly details the concession construction requirements. A minimum \$350 per square foot in capital improvement costs must be expected for the development of construction and installation of the capital improvement in each specialty retail concession. A minimum of \$450 per square foot in capital improvements costs must be expected for the development of construction and installation of the capital improvements in each food and beverage concession. These are mid-range costs per square foot and minimum entry levels. What is critical in this aspect of the RFP is driving the concessionaires to submit world-class concept designs that are aligned to the tenant design guidelines and raise the bar in the concept design and execution for outlets at John Wayne Airport. An example today is Vino Volo. The outlet is bright, open, and airy, has great sight lines, and has used quality materials, as compared against California Pizza Kitchen, which is a bland box in comparison. (Source: LeighFisher client database.)

February 24th 2017 Moodie Davitt report. "Dufry joint venture set to operate Phoenix Sky Harbor's Terminal 4 duty free concessions" (Source: ©The Moodie Davitt Report.)

"USA, Dufry Phoenix Retailers joint venture (JV) has been recommended as the successful bidder to operate two duty free concessions at Phoenix Sky Harbor International's Terminal 4. An evaluation panel scored the Dufry JV bid higher than those from Duty Free Americas and SFS PHX. The duty free/duty paid spaces span 1,069 sq. foot and 1,050 sq. foot respectively. The lease term is seven years with one three-year option. Rent will be whichever is greater of the minimum annual guarantee or percentage rent. The contract requires a minimum capital investment of US\$350 per square ft."

Depending on the specialty retail brand, the brand will dictate the build out, for example if MAC Cosmetics reaches an agreement with John Wayne Airport, Estee Lauder will deliver the MAC Cosmetics brand execution as they do in every MAC Cosmetics location throughout the country (likewise with Tommy Bahama). In the vast majority of specialty retail outlets, the brand build out will exceed the minimum investment per square foot criteria.

Table 10

Concessions Tenure Benchmarking Study

Concession type	Minimum Years	Median Years
Fast Food / Quick Service	5	10
Sit Down/ Casual / Bar	5	10
Specialty Coffee	5	10
News and Gift	5	7
Specialty Retail	5	7

(Source: Airport Council International -North America 2018 Concessions Benchmarking Survey.)

Recommendations

While the tenure of contract within the RFP is in line with the North American Market, the recommendation is to maintain the capital investment requirements as planned for in the RFP, but realign the tenure of contract as detailed and for the new locations, as follows:

- Food and Beverage, Premium and Casual Dining = 10 years.
- Quick Serve and Grab-and-Go = 5 years.
- Coffee Kiosks = 5 years.
- Specialty Retail = from 5 to 7 years depending on brand, concept, and capital investment.

LeighFisher believes that the tenure of contracts listed above is reasonable for the Concessions Program at JWA. This recommendation is based upon market benchmarks and LeighFisher's experience in developing multiple concession programs for both large, medium, and smaller sized airports on a global scale, including but not limited to Denver International Airport, Los Angeles International Airport, Portland International Airport, San Francisco International Airport, Sacramento International Airport, Wichita Mid-Continent Airport, Amsterdam Airport Schiphol, Bangkok Suvarnabhumi Airport, Qatar International Airport and Seoul Incheon International Airport

LeighFisher also led the team that developed the federally funded Airport Cooperative Research Program (ACRP) resource manual for Airport in Terminal Concessions.

2.4 Concession Refurbishment Requirements

It is industry best practice to include concession refurbishments during the tenure of the contract. The RFP stipulates up to 50% of the initial investment, subject to the discretion of the Airport Director at the midpoint in the contract. The stipulations are in line with global best practice. 48% of airports participating in the 2017 ACI North American concession benchmarking study have a refurbishment clause at the midpoint for both retail and food and beverage. As important as the refurbishment clause is, the very specific criteria in respect to ensuring that all concession locations leased to the Proposer are open and operating in a first-class manner required under the lease during concession refurbishments and that the Tenants shall within a stipulated time after 50% of the concession lease term (pending tenure of contracts)

commence and complete the refurbishment plan within agreed dates, whereby penalties will exist if there is a failure to do so, is also aligned with best industry practice. (Source: LeighFisher client data base, proposed RFP details, ACI North America Concessions benchmarking study).

Recommendation

No Change - maintain the refurbishment requirements as detailed.

2.5 Rent Criteria and Revision Policy

The proposed RFP rent terms and conditions and revision policy are based on the following criteria:

Tenant shall pay the greater of the Minimum Annual Guarantee (MAG) \$100.00 per square foot or the percentage of gross receipts. Rent is payable monthly in arrears, on or before the fifteenth day of each month. The table below (Table 11) highlights the average percentage rents in North American Airports.

Table 11
Rent as a Percentage of Sales in North American Airports

	Rent as a percentage of Sales for Food & Beverage	Rent as a percentage of Sales for News, Gifts & Specialty Retails		
Overall	10.9%	14.7%		
Medium	11%	14.1%		

(Source: ACI-North American 2017 Concession Benchmarking survey.)

The table below (Table 12) details the JWA concession rent scale linked to gross sales, and a range of concessions rents bid for subsequent airport concession contract awards. The average airport concession rents by category are significantly higher and are dependent, relative to the size of airport, number of passengers, demographic mix, etc.

Table 12
JWA, RFP Concession Rent Tiers and Comparable Airport Ranges

RFP Specialty Retail Tiered Rent Range	RFP % Rent Tiers	International Ranges	RFP Casual Dining Tiered Rent Range	RFP % Rent Tiers	International Ranges
\$ - \$500,000	12%	18% to 26%	\$ - \$1,000,000	12%	28% to 32%
\$500,000 - \$750,000	14%		\$1,000,000 - \$2,000,000	14%	
\$750,000 and up	16%		\$2,000,000 and up	16%	
RFP Quick Serve Tiered Rent Range			RFP Coffee Tiered Rent Range		
\$ - \$500,000	12%	20% to 32%	\$ - \$1,000,000	14%	20% to 32%
\$500,000 - \$750,000	14%		\$1,000,000 \$2,000,000	16%	

LeighFisher believes there is an opportunity to increase the proposed rent tiers and still be within airport averages. Concession Contract awards financial terms and conditions are not publicized due to the competitive nature of bidding. There is no official airport industry benchmarking data base for the North American Market.

This recommendation in table 13 is based upon LeighFisher's experience in developing multiple concession programs for both large, medium, and small sized airports on a global scale, including but not limited to Denver International Airport, Los Angeles International Airport, Portland International Airport, San Francisco International Airport, Sacramento International Airport, Wichita Mid-Continent Airport, Amsterdam Airport Schiphol, Bangkok Suvarnabhumi Airport, Qatar International Airport and Seoul Incheon International Airport.

Table 13
Proposed Concession Rent Tiers

Specialty Retail Tiered Rent Range	RFP % Rent Tiers	Proposal	Casual Dining Tiered Rent Range	RFP % Rent Tiers	Proposal
\$ - \$500,000	12%	14%	\$ - \$1,000,000	12%	14%
\$500,000 -\$750,000	14%	16%	\$1,000,000 - \$2,000,000	14%	16%
\$750,000 and up	16%	18%	\$2,000,000 and up	16%	18%
Quick Serve Tiered Rent Range			Coffee Tiered Rent Range		
\$ - \$500,000	12%	14%	\$ - \$1,000,000	14%	16%
\$500,000 - \$750,000	14%	16%	\$1,000,000 - \$2,000,000	16%	18%
\$750,000 and up	16%	18%	\$2,000,000 and up	18%	20%

Rent Revision: The MAG shall be adjusted annually by the consumer price index (CPI) or 85% of the annual rent paid for the preceding accounting year, whichever is the greater. In no case shall the minimum annual rent be reduced by reason of adjustment.

The formula JWA has detailed is an industry benchmark for rent revision, albeit the percentage change +/- 5%. No change is proposed.

Recommendations

- Increase the financial tiered concession percentages as set forth in Table 13.
- Maintain the rent revision policy as is.

(Source: LeighFisher client database.)

2.6 Other Costs Identified in the RFP

It is anticipated that the RFP will delineate other costs that will be the responsibility of the successful bidder for the Concessions Program. Some of these other costs are as follows:

- **Storage Costs.** There is a very clear policy on storage costs; the rent per square foot is based on the latest schedule established by the County subject to revision twice a year.
- Marketing Fund. The introduction of a marketing fund is a new initiative for JWA and an excellent one. While the value of a \$10,000 contributions is low in respect of global benchmarks, it is a great starting point. Forty-Six (46%) of participating airports have a marketing program for airport concessions; Eighty-Two (82%) of these airports collect a concession marketing fee. The majority of airports calculate their concession marketing fee by a percent of gross revenue to the airport and reflects the current best industry best practice. (Sources: Airport Council International North America 2017 Concessions Benchmarking survey.)
- Infrastructure cost recovery. The RFP is clear the Tenant/Concessionaire will reimburse JWA monthly in arrears on or before the fifteenth day of each month for the costs to install utility infrastructure to the point of connection.
 - The infrastructure cost recovery shall include hard and soft costs associated with the installation of electricity, water, gas, sewer, telecommunications, drains, related pipe and conduit. The cost is estimated at \$8 per square foot per year for the term of the lease. This calculation is a straight forward cost recovery per square foot.
- **Utility Charges.** There is no reference within the RFP as to payment for the utility bills; best industry practice is to install meters to ensure that each lease was responsible for paying their share of the charges. The recommendation would be to install meters and add a section referencing utility charges within the RFP.
- **Security Deposit.** The initial security deposit shall be equal to four times the estimated monthly rent as determined by Airport Director. Concurrent with the annual revision of rent, the security deposit shall be subject to adjustment to an amount equal approximately four (4) times the estimated new monthly rent. This is slightly below the industry average of 6 months (the extreme is 12 months) but it is in line and does not raise any key concerns.

Recommendations

- Install meters and recover utility usage costs.
- Plan to increase the marketing fee in year 2 or 3 to either a higher dollar value or a percentage of turnover. Forty-six percent (46%) of participating airports in the ACI North American 2017 concession benchmarking study have a marketing program for airport concessions, Eighty-two percent (82%) of these airports collect a concession marketing fee. The majority of airports calculate their concession marketing fee by a percent of gross revenue to the airport and we believe this method reflects the current best industry best practice.

(Sources: Internal LeighFisher benchmark studies developed for multiple North American and International Clients; and Airport Council International North America 2017 Concessions Benchmarking survey.)

2.7 Operational Requirements

The RFP should clearly stipulate the operational requirements of the Tenant or Concessionaire that are consistent with the Concession Program goals.

The RFP Concession Program goals specify two key criteria in relation to personnel that are not included within the operational requirement section of the RFP namely:

- Provide its employees with continuous training opportunities, advancement, benefits, and worker retention program and;
- Attract quality and diverse employees who promote excellence in guest service and provide a
 positive, equitable, and inclusive working environment for their employees

Recommendations

Add the following two points within the RFP:

- Provide employees with continuous training opportunities, advancement, benefits, and worker retention program and;
- Attract quality and diverse tenants who promote excellence in guest services and provide a
 positive, equitable, and inclusive working environment for their employees.

2.8 Scoring Matrix

The scoring matrix provides the Proposers very clear criteria on which their submission will be evaluated. 50% of the score focuses on the proposed concept / executive summary and the design intent and capital investment plan. The criteria within these sections are aligned to the RFP Concession Program goals. The inclusion of a question-and-answer panel is in line with industry best practice, specifically if the shortlist candidates are close in scores.

Recommendation

Maintain the Scoring Matrix as proposed.

2.9 Other Relevant Points Following Site Visit and Client Meeting

The Airport Staff prepared a briefing document and have conducted outreach to Orange County food and beverage and retail businesses to present the concession opportunities at JWA. This is aligned to JWA's plan on encouraging a wider inclusion of local businesses operating concessions at the airport. Companies were provided with a detailed information package and the Bidsync online registration details.

To ensure that there is a minimum standard for entry, the following minimum turnover requirements are specified by category:

- Casual Dining \$ 1,500,000 per annum.
- Quick Serve \$ 500,000 per annum.
- Specialty Coffee -\$ 750,000 per annum.
- Specialty Retail \$ 500,000 per annum.

Concerning specialty retail brand opportunities, the Airport Staff have already been in discussion with Estee Lauder for a MAC Cosmetics boutique, and Tommy Bahama who is interested in both retail and a food and beverage area, and Disney for a Disney store. These are the type of brands that have been identified in consumer research. (Source: 2017 Phoenix Marketing International Consumer research study.) The inclusion of these types of brands will drive penetration, conversion, and average spend levels, and meet JWA guest's desire for higher end specialty retail concessions.

The best business practices related to the concessionaire's business operations and IT systems integration require that all concessionaires POS is integrated with the Airports IT infrastructure, for live (or as a minimum daily) sales download by transaction. This has multiple benefits, ranging from audit activity by transaction to daily sales information and comparison to prior years. The Airport Staff has identified this and are in the process of implementing a program that will provide daily sales to the business. This will be of great value to the Airport Staff and again aligns itself with global best practice. These reviews are supported by Mystery Shopper surveys and ensure that the concessionaires are meeting their contractual commitments and delivering on their commitment to the Airport.

The RFP evolves this into submitting business plans and financial forecasts for the term and inclusion of KPIs.

All of these initiatives are in line with global best practices and supported by Leigh Fisher.

SUMMARY

In summary, throughout this report, LeighFisher has addressed the various elements for the Concession Program as it relates to the RFP for the new locations. We have concluded that all elements for the RFP are in order and have validated the strategy, approach, and detail within the RFP for the New Locations.

LeighFisher believes that the proposed RFP optimizes the use of the existing space, cleverly incorporates new space, as best as it can be within the confines that the terminal operates in today. The floor template post the RFP will provide an opportunity to significantly enhance the guest experience, drive revenue

growth and spending. LeighFisher does not believe that any changes should be made as of today to the proposed RFP plans. The review by LeighFisher also highlights that the major opportunities to redesign, expand and fully utilize the overall lease template space within the terminals, will present itself in Phase 2 when the existing concession contracts are up for renewal. LeighFisher recommends that work starts on Phase 2 in the imminent future, in order that the necessary work can be completed to present a lease template for the RFP that will fully optimize the floor template and mix of commercial offerings.

Our single most important consideration for the Airport Staff is to consider the tenure of contract and concession rent tiers to be added as an element in the RFP, and in the alternative, recommend that such recommendations be included for consideration in the future JWA Concession program planning.

John Wayne Airport will be a benchmark for airports with 10M to 11M MAP. The addition of the New Locations providing wider food and beverage and specialty retail choices, in conjunction with the ongoing improvements in guest experience and levels of service, linked to the ease of parking and valet service, to fast efficient check in, and quick security clearance will enhance the overall level of guest service and experience at the Airport.