

Agenda Item



AGENDA STAFF REPORT

ASR Control 21-000560

MEETING DATE: 07/27/21
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
 Dave Pfeiffer (949) 252-5291

SUBJECT: Approval of Amendment Four to Lease with Paradies-OC LLC

CEO CONCUR
Pending Review

COUNTY COUNSEL REVIEW
Approved Agreement to Form

CLERK OF THE BOARD
Discussion
3 Votes Board Majority

Budgeted: Yes

Current Year Cost: N/A

Annual Cost: N/A

Staffing Impact: No

of Positions:

Sole Source: No

Current Fiscal Year Revenue: See Financial Impact Section

Funding Source: N/A

County Audit in last 3 years: No

Prior Board Action: 1/11/2011 #25

RECOMMENDED ACTION(S):

1. Approve and execute Amendment Number Four to the News and Gift Specialty Retail Concession Lease with Paradies-OC, LLC and retroactive Minimum Annual Guarantee adjustment, effective March 1, 2021.
2. Approve partial relinquishment of the leasehold interest by Paradies-OC, LLC and approximately fifty percent of their corresponding storage space.

SUMMARY:

Approval of the lease amendment will allow Paradies-OC, LLC to reduce its Minimum Annual Guarantee obligations, retroactively effective March 1, 2021, and relinquish specific locations, allowing John Wayne Airport to repurpose those locations for future concession development.

BACKGROUND INFORMATION:

On January 11, 2011, the Board of Supervisors (Board) approved a ten-year News and Gift Specialty Retail Concession Lease agreement with Paradies-OC, LLC (Paradies) at John Wayne Airport (JWA).

The Lease will expire on September 30, 2022. Paradies currently operates six News and Gift Specialty Retail locations. Upon approval of this amendment, they will operate two locations. The four released sites have been closed for varied periods since March 2020. Under its existing Lease, Paradies is required to pay a Minimum Annual Guarantee (MAG) or percentage of gross receipts, whichever is greater. Paradies' current MAG is \$1,446,849. The MAG was established on a programmatic level based on gross sales productivity of all six locations.

In March 2020, the Governor of the State of California declared a State of Emergency due to the threat of COVID-19. The COVID-19 pandemic has had a significant impact on operations, passenger travel, airport operating revenue and JWA's tenants. In an effort to assist, JWA has worked with its tenants to provide relief measures such as rent deferrals and revised hours of operation. Paradies entered into the First and Second Lease Amendments for deferment of rent from March 1, 2020, through June 30, 2020, and from July 1, 2020, through September 30, 2020. The repayment period for the deferred rent commenced on October 1, 2020, and was scheduled to end on June 30, 2021. The Third Amendment extended the term of the Lease and provided a structured repayment of sixteen equal payments of the deferred MAG, ending September 30, 2022.

Proposed Lease Amendment Terms:

In March 2021, Paradies began discussions with JWA and indicated its desire for additional relief. After extensive negotiation, Paradies and JWA agreed to the proposed terms of this lease amendment.

Leased Premises & MAG Adjustment

Paradies will relinquish its leasehold interests in four locations in exchange for a pro-rata reduction in MAG. These locations are: OC Travel Mart (Terminal C pre-security), CNBC (Terminal B pre-security), Beachfront News and InMotion (Terminal C post-security). Paradies' current MAG is based on gross sales productivity of all six locations. Therefore, the MAG adjustment has been calculated based on a pro-rata share of 2019 Gross Sales as shown in Table 1 below. Additionally, Paradies will relinquish its leasehold interests in approximately fifty percent of their storage square footage.

Table 1:

PARADIES
2019 GROSS RECEIPTS

Gross Receipts:

Lessee	Description	Concession Type	Terminal	CY 2019	Sq Ft
Paradies	Airside Monthly Sales	News & Sundries		2,812,863.48	
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Paradies	Subtotal Gross Receipts	Specialty		556,044.59	
Paradies	Total Gross Receipts			6,463,747.88	5,076

	MAG Prorated Adjustment	2021 MAG	CY GR%	CY2019 Gr Rec	Sq. Ft.
Paradies	Return	386,159.89	26.7%	1,725,155.94	3,351
Paradies	Keep	1,060,689.11	73.3%	4,738,591.94	1,725
Paradies	Current MAG 2021	1,446,849.00	100.0%	6,463,747.88	5,076

Paradies will retain and operate the following two locations in the Leased Premises: South Coast News Terminal B and CNBC wall unit Terminal C, which account for approximately seventy-three percent of 2019 Gross Sales for Paradies' entire program.

Paradies' MAG will be reduced to \$1,060,689 from the current MAG of \$1,446,849. Paradies will still be required to pay the County either MAG or Percentage Rent, whichever is greater.

Approval of this amendment will allow JWA to actively market the returned locations to new operators as passenger numbers continue to increase.

Term

Paradies' Lease will expire on September 30, 2022.

Effective Date

The MAG adjustment contained in the lease amendment is intended to be retroactive to March 1, 2021, when lease renegotiations began in earnest. The remaining terms will become effective upon Board approval.

Brand Licensing Agreements

Paradies will relinquish its rights under the applicable agreements and/or exclusive licenses with InMotion Entertainment Group, LLC (InMotion) to allow the County to directly contract with InMotion for the purpose of possibly continuing InMotion's operation at the Airport.

Displaced Employee Pool

Paradies will provide JWA with a contact list for all displaced employees in order to connect them with existing and new operators for potential employment opportunities.

Compliance with CEQA:

This project is a necessarily included element of the project considered in Final EIR No. 617, certified by the BOS on September 30, 2014, which adequately addressed the effects of the proposed project. No substantial changes have been made in the project, no substantial changes have occurred in the circumstances under which the project is being undertaken, and no new information of substantial importance to the project which was not known or could not have been known when the Final EIR No. 617 was certified and the Mitigation Monitoring and Reporting Program was adopted; therefore no further environmental review is required.

FINANCIAL IMPACT:

Revenues related to the concession leases are included in the FY 20/21 budget for Fund 280 JWA's Operating Fund and will be included in the budgeting process for future years. The financial impact is a revenue reduction of \$386,150, which is acceptable to JWA when weighed against the complete closure of all Paradies locations and allows JWA to redevelop new concepts in the relinquished locations.

STAFFING IMPACT:

N/A

ATTACHMENT(S):

Attachment A – Amendment Number Four to News and Gift and Specialty Retail Concession Lease with
Paradies-OC, LLC

AMENDMENT NUMBER FOUR TO NEWS AND GIFT AND SPECIALTY RETAIL CONCESSION LEASE

THIS FOURTH AMENDMENT TO SPECIALTY RETAIL CONCESSION LEASE (“Fourth Amendment”) is made and entered into as of _____, 2021, by and between the COUNTY OF ORANGE, a political subdivision of the State of California (“County”) and PARADIES-OC, LLC (“Tenant”). County and Tenant may sometimes hereinafter individually be referred to as “Party” or jointly as “Parties.”

RECITALS

WHEREAS, County and Tenant entered into a News and Gift and Specialty Retail Concession Lease dated January 11, 2011 (“Existing Lease or Lease”); and

WHEREAS, County, through its Board of Supervisors, is the owner and proprietor of John Wayne Airport (“JWA” or “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, due to the COVID-19 pandemic, COUNTY and Tenant executed the First Amendment, dated May 7, 2020, for deferment of rent from March 1, 2020 through June 30, 2020 (“First Amendment”); and

WHEREAS, due to the COVID-19 pandemic, COUNTY and Tenant executed the Second Amendment, dated July 1, 2020, extending deferment of rent from July 1, 2020 through September 30, 2020 (“Second Amendment”); and

WHEREAS due to the COVID-19 pandemic , County and Tenant executed the Third Amendment dated June 14, 2021, to extend the Existing Lease term and deferment of rent to September 30, 2022, and require a structured repayment of sixteen (16) equal payments (“Third Amendment”); and

WHEREAS, County and Tenant mutually desire to further amend the Existing Lease to provide for an adjustment the Minimum Annual Guarantee (“MAG”) on a proportional basis based on Tenant’s relinquishment of concession locations upon the terms and conditions contained herein and certain other amendments as more fully set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County and Tenant hereby agree as follows:

AGREEMENTS

1. Leased Premises. Section 3.01 shall be amended to add the following paragraphs:

“A. Tenant shall vacate and relinquish to County its leasehold interests in the following

four (4) locations in the Leased Premises within fourteen (14) calendar days following Board of Supervisors' approval of this Fourth Amendment.

OC Travel Mart (Terminal C, pre-security), CNBC (Terminal B, pre-security), Beachfront News (Terminal C, post security) and InMotion (Terminal C, post security) ("relinquished locations").

- B. Notwithstanding the foregoing, Tenant shall remove its furniture, fixtures, equipment ("FF&E"), from each of the relinquished locations herein no less than fourteen (14) days after Board of Supervisors' approval of this Fourth Amendment.
- C. Tenant shall retain and operate the following two (2) locations in the Leased Premises:

South Coast News (Terminal B, post security) and CNBC News Wall (Terminal C, post security),

- D. Tenant shall relinquish and County shall reclaim 712 square feet of storage space from Leased Premises. Tenant shall be reallocated an 868 square foot area and a 91 square foot area of total storage space as described in Exhibit A and Exhibit B ("reallocated storage space").
- E. Exhibit A and Exhibit B are hereby amended to reflect the foregoing changes to the Leased Premises and are attached hereto."

2. Annual Rent. Section 4.01 (C) shall be added to read as follows:

"As consideration for the relinquished locations and reallocated storage space described in Section 3.01, the MAG amount shall be reduced to \$1,060,689.11, as described in Exhibit H and attached hereto. For the period which commenced on March 1, 2021 and terminates on November 30, 2021, Tenant shall pay to the County for each annual period either MAG or the Percentage Rent, whichever is greater."

3. Brand Licensing Agreements. Tenant shall relinquish its rights under the applicable agreements and/or exclusive licenses with InMotion Entertainment Group, LLC ("InMotion") to allow the County to directly contract with InMotion for the purpose of continuing InMotion's operation at the Airport.

Tenant represents and warrants that it has the authority to relinquish its rights as stated herein and consents to the County negotiating and contracting with InMotion for the purpose of continuing InMotion's operation at the Airport.

Nothing stated herein shall obligate the County to negotiate or contract with InMotion.

4. Displaced Employee Pool. Tenant shall provide County the contact information of all Tenant's displaced employees.

5. Conditions of Relinquished Locations and Storage Space Returned County. Notwithstanding anything to the contrary in the Existing Lease as amended by the First Amendment, Second Amendment, Third Amendment, and this Fourth Amendment, all relinquished locations and storage space will be delivered by Tenant to County in as-is condition. Tenant shall be permitted to remove all proprietary and brand property, signage, and equipment with the exception of coolers, (collectively, "Brand Property") from the relinquished locations and storage space, including Brand Property specific to the brands hereunder or otherwise, and all non-affixed improvements including FF&E. Brand Property includes but is not limited to all Point of Sale ("POS") systems and equipment. County may require Tenant to remove additional FF&E at its sole discretion.

6. No Other Amendments; This Fourth Amendment Governs and Controls. Except as expressly modified by this Fourth Amendment, the Existing Lease, as amended by the First Amendment, Second Amendment, Third Amendment, and Fourth Amendment shall remain unmodified and in full force and effect and is hereby reinstated, ratified, and affirmed. To the extent any of the provisions of this Fourth Amendment are inconsistent with any of the provisions set forth in the Existing Lease and the First Amendment, Second Amendment, Third Amendment, and Fourth Amendment., the provisions of this Fourth Amendment shall govern and control. Any reference to the "Agreement," "hereunder," "hereof," "herein," or words of like import in the Existing Lease, First Amendment, Second Amendment, Third Amendment, Fourth Amendment, and this Fourth Amendment shall mean and be a reference to the Existing Lease as hereby amended, and the Existing Lease, First Amendment, Second Amendment, Third Amendment, Fourth Amendment, and this Fourth Amendment shall be read and interpreted as if it was one agreement.

7. Authority. Each Party represents to the other Party or Parties that the individual executing this Fourth Amendment on behalf of such Party has the capacity and authority to execute and deliver this Fourth Amendment on behalf of such Party, and that this Fourth Amendment, once executed and delivered, is the legal, valid and binding obligation of such Party.

8. Governing Law. This Fourth Amendment and the Existing Lease, as previously amended, shall be governed by and construed in accordance with the laws of the State of California.

9. Counterparts and Execution. This Fourth Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same document. The delivery of an executed counterpart of this Fourth Amendment by facsimile or as a Portable Document Format ("PDF") or similar attachment to an e-mail shall constitute effective delivery of such counterpart for all purposes with the same force and effect as the delivery of an original, executed counterpart.


10. Severability. If any provision of this Fourth Amendment is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Fourth Amendment shall nonetheless remain in full force and effect.

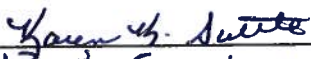
11. Contractual Obligations. Tenant shall be current on all contractual obligations, including but not limited to, MAG, Percentage Rent, Insurance, and Security Deposit, as of the date of this Fourth Amendment, except as otherwise provided for herein. Lessee shall maintain County-approved concession locations and hours of operation.

[Signatures appear on following pages]

IN WITNESS WHEREOF, County and Tenant have executed this Fourth Amendment as of the day and year first above written.

TENANT: Paradies-OC, LLC.

By: 
 Its: President & CEO
 Name: Gregg S. Paradies

By: 
 Its: SVP & Secretary
 Name: Karen K. Suttie

APPROVED AS TO FORM:

County Counsel

By: 

APPROVED AS TO AUDIT AND ACCOUNTING:

Auditor-Controller

By: 

RECOMMENDED FOR APPROVAL:

John Wayne Airport

By: 
 Barry 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:

COUNTY

COUNTY OF ORANGE

By: _____
 Chairman, Board of Supervisors

 Robin Stieler
 Clerk of the Board of Supervisors

Exhibit A

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.

Leased Premises Summary Table:

PROJECT & PARCEL NO.	LOCATION : Departure Level, Post-Security	APPROXIMATE SQUARE FEET
PM 1121-0350-0006.3	Terminal B	1530
PM 1121-0350-0006.2	Terminal C	333
STORAGE FACILITIES	LOCATION: Arrival Level Pre-Security	APPROXIMATE SQUARE FEET
PM 1121-0350-0006.5	Terminal B	868
PM 1121-0350-0006.6	Terminal C	91

Exhibit B

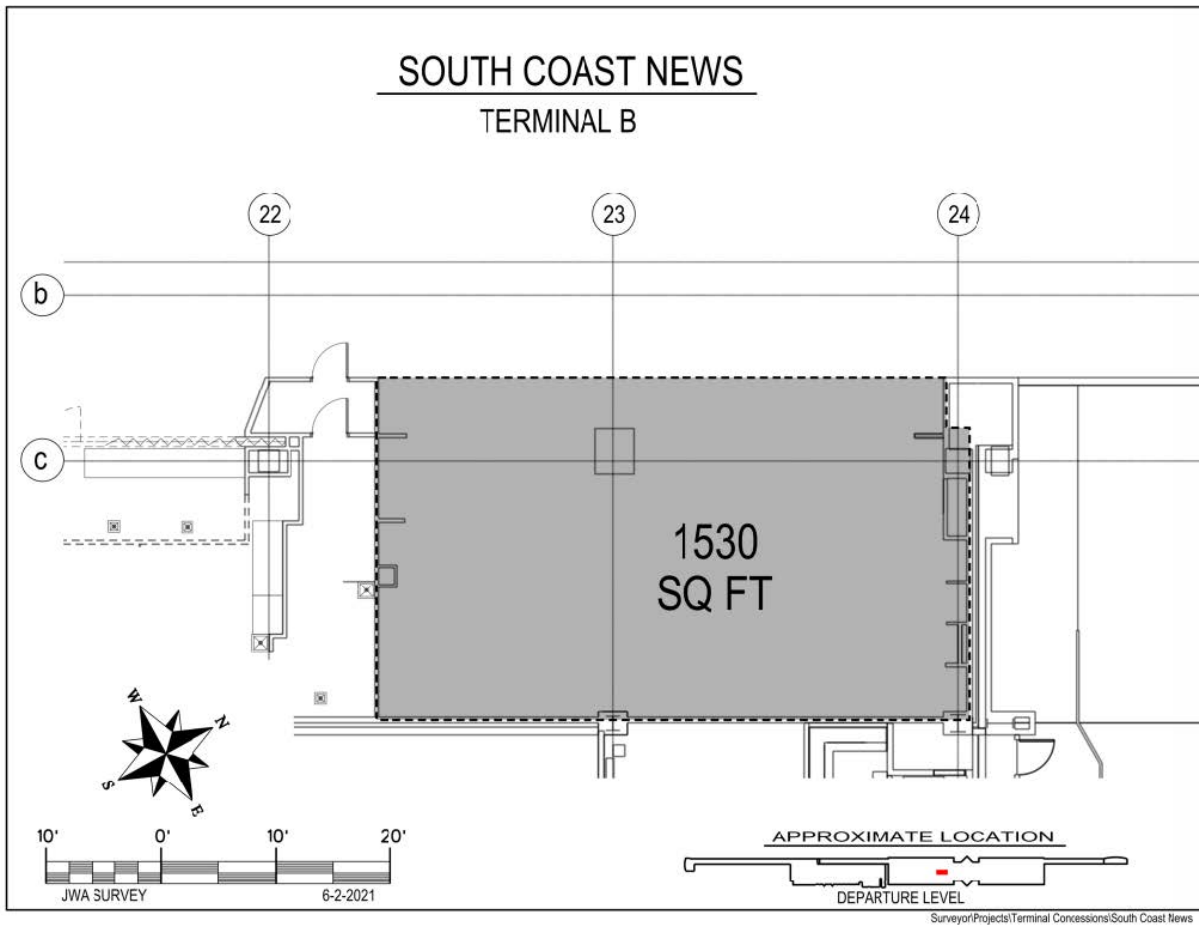


Exhibit B

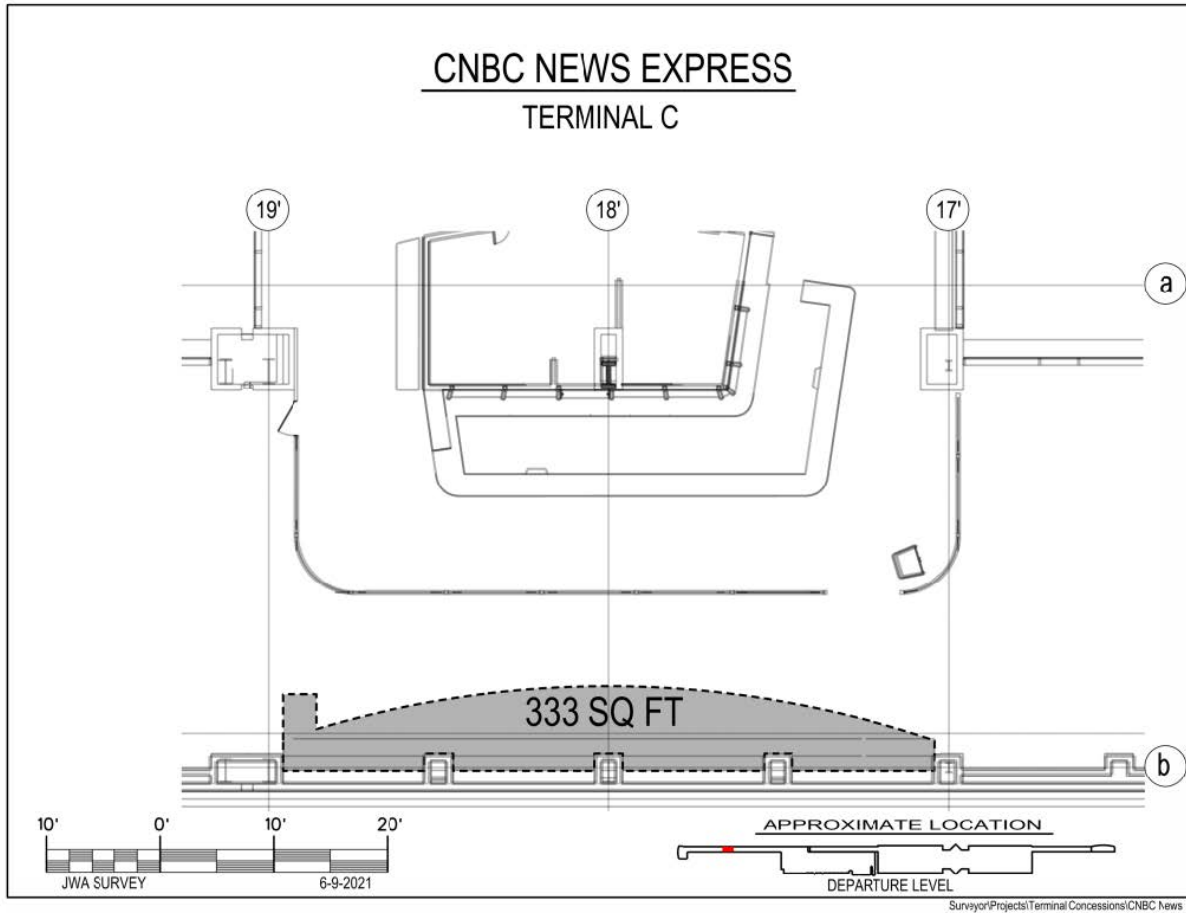


Exhibit B Storage Space

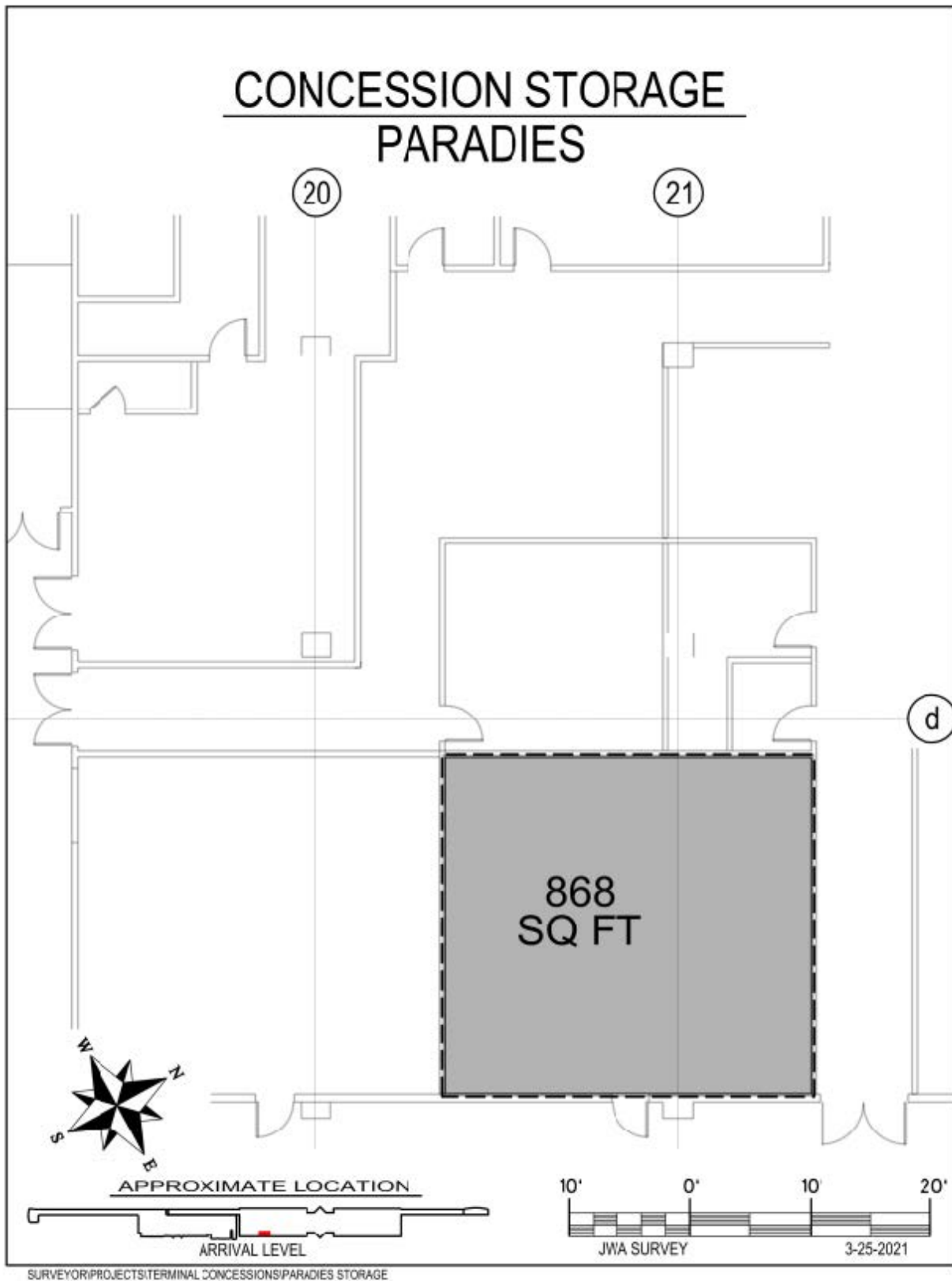


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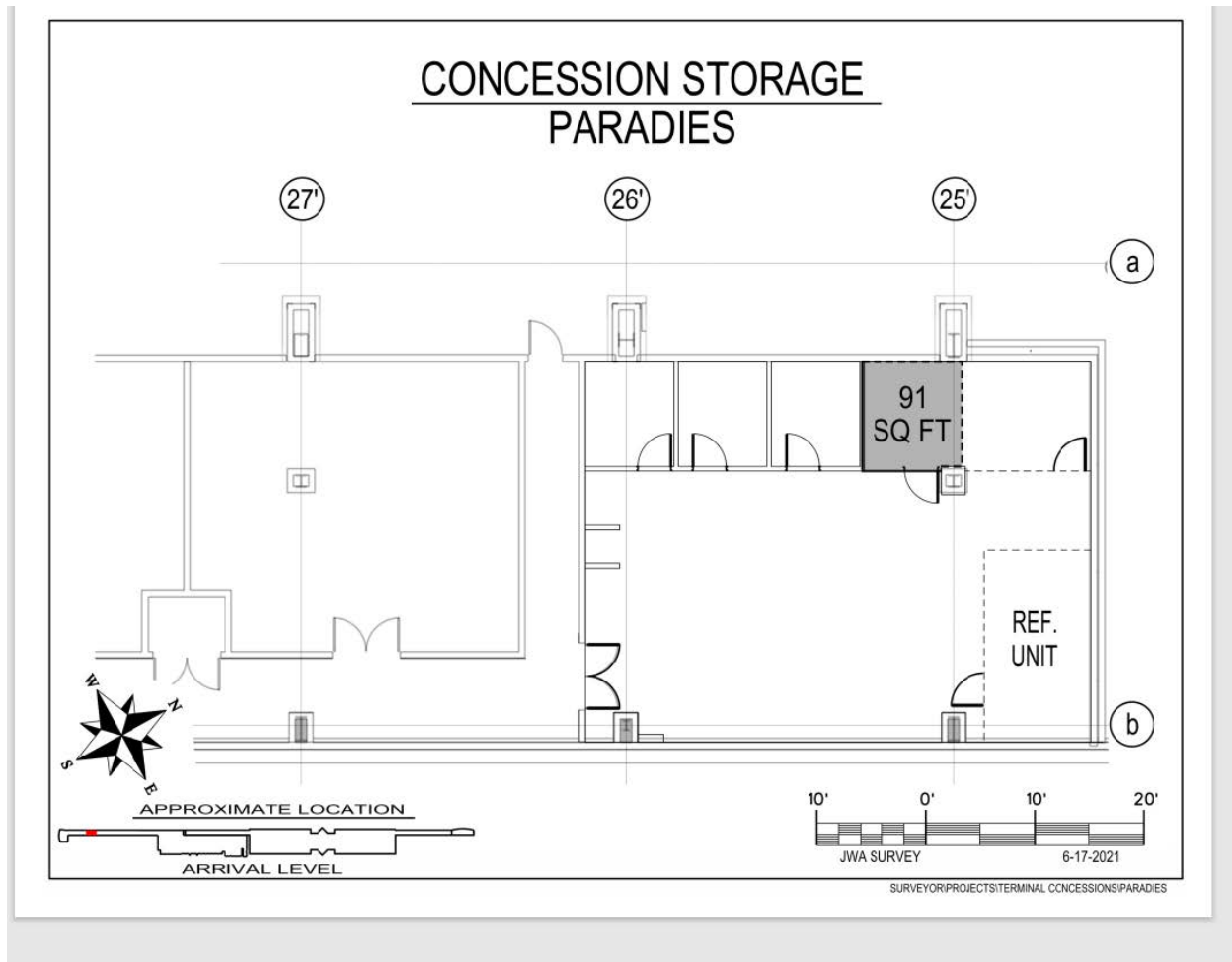


Exhibit H

Table 1:

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