

## Agenda Item



## AGENDA STAFF REPORT

ASR Control 21-000593

**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:** Retroactive Approval of Interim Specialty Coffee Leases

**CEO CONCUR**  
Pending Review

**COUNTY COUNSEL REVIEW**  
Approved Agreement to Form

**CLERK OF THE BOARD**  
Discussion  
4/5 Vote

**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:** 8/27/2019 # 20, 1/08/2019 #23

### RECOMMENDED ACTION(S):

1. Retroactively approve and ratify execution of interim revenue lease with Bambuza OC Ventures LLC, dba The Coffee Bean & Tea Leaf, effective April 21, 2021, through April 12, 2022, for a location in Terminal C of John Wayne Airport.
2. Retroactively approve and ratify execution of two interim revenue leases with Bambuza OC Ventures LLC, dba The Coffee Bean & Tea Leaf, effective April 21, 2021 and March 23, 2021, through June 30, 2022, for locations in Terminal A and B of John Wayne Airport.

### SUMMARY:

Approval of these leases will allow Bambuza OC Ventures LLC, dba The Coffee Bean & Tea Leaf to provide guests' with specialty coffee services in the former Starbuck's coffee locations vacated by HMS Host on an interim basis until a Request for Proposals is developed to permanently fill the locations.

### BACKGROUND INFORMATION:

The COVID-19 pandemic has had a significant impact on John Wayne Airport's (JWA) operations, passenger travel, airport operating revenue and its 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. On March 23, 2021, the Board of Supervisors (Board) approved a request by JWA tenant HMS Host (Host) to relinquish specific locations at JWA for a reduction of Minimum Annual Guarantee (MAG). This relinquishment left a void in Terminals A, B and C for coffee service. In order to replace that service, JWA reached out to Bambuza OC Ventures LLC, dba The Coffee Bean & Tea Leaf (CBTL) to fill the former Starbucks locations on a one-year interim basis while a Request for Proposals (RFP) is developed to permanently fill the locations. On August 27, 2019, the Board awarded CBTL a 10-year lease for four new specialty coffee locations in JWA's Phase One RFP. However, due to the COVID-19 pandemic, the development of these locations was delayed. The site development is currently in the permitting process.

On February 5, 2021, pursuant to sub-delegated authority from the Chief Real Estate Officer to the Airport Director, the Airport Director executed three interim Specialty Coffee leases with CBTL. Resolution 19-002, dated January 8, 2019, delegates the Chief Real Estate Officer, or designee, the authority to execute revenue leases and licenses of County property when the term does not exceed 10 years, and the rental amount does not exceed \$15,000 per month. This authority has been sub-delegated from the Chief Real Estate Officer to the Airport Director. At the time, due to decreased passenger traffic, JWA estimated that the percentage rent to be paid under these leases would be less than \$15,000 per month and thus within the delegated authority under Resolution 19-002.

The three interim leases provide coffee services at the three vacated Starbucks locations: Terminal A post-security, Terminal B baggage claim pre-security and Terminal C post-security. The leases are for a one-year term and the tenant pays rent to JWA based on a percentage of the gross sales each month. The lease commencement date for the Terminal C location was April 13, 2021. The Terminal A and B locations started the rebranding process on June 21, 2021, and are expected to open on or about July 1, 2021. All three lease commencement dates are based upon beneficial occupancy. As such, the lease term for the Terminal C location will expire prior to the Terminal A and Terminal B locations.

In recent months, passenger traffic has increased substantially more than initially expected. Due to the uptake in passenger traffic, CBTL gross receipts have been higher than anticipated. In April 2021, the gross revenue to JWA was \$9,277 and in May 2021, the gross revenue to JWA was \$17,435, which exceeded the \$15,000 threshold for the delegated authority. As such, the interim leases are now being presented to the Board for approval and ratification pursuant to Government Code Section 25536.

#### Displaced Employees

CBTL has been given a displaced employee list which was received from Unite Here, the union that represents Host employees. CBTL is utilizing this list to fill the new positions for the interim coffee locations.

**Compliance with CEQA:** The proposed project was previously determined to be Categorical Exempt from the California Environmental Quality Act pursuant to Section 15301 (Class 1) of the CEQA Guidelines. This section provides for the exemption of equipment installation and maintenance of an existing facility involving negligible or no expansion of use beyond that already existed when it was originally approved.

#### **FINANCIAL IMPACT:**

Revenues related to the concession leases are included in the FY 2021-22 budget for Fund 280, JWA Operating Fund. Revenues generated by these interim leases will effectively replace the revenues from the vacated Starbucks locations.

**STAFFING IMPACT:**

N/A

**ATTACHMENT(S):**

Attachment A – Specialty Coffee Interim Concession Lease, Terminal A

Attachment B – Specialty Coffee Interim Concession Lease, Terminal B

Attachment C – Specialty Coffee Interim Concession Lease, Terminal C

**JOHN WAYNE AIRPORT  
ORANGE COUNTY**



**SPECIALTY COFFEE  
INTERIM CONCESSION LEASE**

**Dated 4/29/2021**

**Between**

**County of Orange**

**and**

**Bambuza OC Ventures LLC,  
dba The Coffee Bean & Tea Leaf  
[Terminal A]**

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**LIST OF EXHIBITS**

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**JOHN WAYNE AIRPORT  
SPECIALTY COFFEE CONCESSION INTERIM LEASE**

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THIS SPECIALTY COFFEE INTERIM CONCESSION LEASE ("LEASE") is made and entered into this 21 day of April, 2021, by and between the COUNTY OF ORANGE, a political subdivision of the State of California ("COUNTY"), and BAMBUZA OC VENTURES LLC, dba The Coffee Bean & Tea Leaf, ("TENANT"), with COUNTY and TENANT sometimes individually referred to as "Party" or collectively referred to as "Parties."

**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 desires the operation of a Specialty Coffee Concession services at the Airport within Terminal A, TENANT was selected; and

WHEREAS, TENANT desires to provide a Specialty Coffee Concession, in, at John Wayne Airport within Terminal A; and

WHEREAS, COUNTY and TENANT mutually desire to enter into a Specialty Coffee Concession Interim Lease to provide Specialty Coffee Concession services; 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 Specialty Coffee Concession services; and

WHEREAS, the Parties acknowledge 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 John Wayne Airport, Orange County, California.

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**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**

"Concession Support Space shall mean the space COUNTY may make available to TENANT 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,

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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 the 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.

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**SECTION 1.12      LEASED PREMISES**

"Leased Premises" shall mean the areas of the Terminals 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      RESERVED**

**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);

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- 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.

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**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" or "Terminals" shall mean the commercial passenger terminals 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 one (1) year 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,

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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 ADDITIONAL 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 premises 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.



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- 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:

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 to a service charge as defined in Section 4.05

- B. Payment of Rent. Rent payments shall be made in accordance with the provisions of the section in this Lease entitled "PAYMENT PROCEDURE."

**SECTION 4.02      RESERVED**

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**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 "PERMITTED 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.

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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:

- 1) 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.
- 2) The related itemized amounts of percentage rent computed as herein provided and the total thereof;
- 3) The total rent previously paid by TENANT for the lease year within which the preceding month falls; and
- 4) The rent due for the preceding month.

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

- 5) 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].

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

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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. Penalty for NSF Check. 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.

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**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. The Accounting Year. The accounting year shall be twelve full calendar months. The accounting year may be established by TENANT provided TENANT notifies Auditor-Controller in writing of the accounting year to be used. Said accounting year shall be deemed to be approved by Auditor-Controller unless Auditor-Controller has objected to TENANT's selection in writing within sixty (60) days of TENANT's writing notification. In the event TENANT fails to establish an accounting year of its choice, regardless of the cause, the accounting year shall be synonymous with the twelve-month period contained in the first one-year term of the Lease.

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 accounting year.

Once an accounting year 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.

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C. CPA-Audited Statement of Gross Receipts. 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. Failure to Submit CPA-Audited Statement of Gross Receipts. 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. Audits. 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.

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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



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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. Review Period. 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. Methodology. 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. Record Retention. 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. Sales Recording System. 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,



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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. Other Reports and Submissions. 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 Twenty Thousand Dollars (\$20,000.00) 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:

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- 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.

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**SECTION 4.09      MARKETING FUND FEE**

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. Commencing January 1 of each calendar year, TENANT shall be required to make an annual marketing fund payment in the amount of ten thousand dollars (\$10,000.00). TENANT agrees to pay this amount on or before January 1 of each year. All monies received by the Airport for the marketing fund shall be used solely for the purpose of Airport tenants' promotions and directly related expenses. In the event any year of the LEASE contains less than 12 months, TENANT shall pay a pro-rata portion of the annual amount corresponding to the number of months remaining in that calendar year.

**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      PERMITTED USE**

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

- A. Required Services and Uses. TENANT shall have a nonexclusive right to develop, operate and manage a Specialty Coffee 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 Permitted Use is attached hereto and entitled EXHIBIT C PERMITTED USE-SPECIALTY COFFEE CONCESSION.
- 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

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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.

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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 Coffee 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. Personnel. 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

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- 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. Noninterference. 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. Deliveries. 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. Utilities. 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. Pricing. TENANT's merchandise shall be consistent with all uses as provided under Section 5.01 (PERMITTED 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 Specialty Coffee 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. Employee Parking Fee. TENANT shall pay the monthly employee parking fee, subject to change, for employee vehicles parked in the employee parking lot.

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- I. Credit and Debit Cards. 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. Recycling. 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. Promotional Advertising. 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. Wireless Communications. 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. Interference with Systems. TENANT shall not interfere with the effectiveness of utility, heating, ventilating or air-conditioning systems or portions thereof on or adjoining the



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- 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. Smoking Prohibited. 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. Unauthorized Locks. 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. Standards of Quality 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 Specialty Coffee 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 Coffee 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.



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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

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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

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by Airport Director, or designee unless a longer period of time is approved by the Airport Director, or designee.

- B. Removal of Equipment or Improvements. 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. Access. 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. Release of Hazardous Substances. 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. Spills and Trash Disposal. 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. Trash Receptacles. 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

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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. Waiver of Claims. 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. Monthly Maintenance Reports. 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

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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	\$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

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**

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**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

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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 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



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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

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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. Design and Construction. 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 "PERMITTED 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 this 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

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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,

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repairs, replacement, removal and maintenance items shall be approved by the Board of Supervisors.

- D. Insurance Requirements. 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. Indemnification during Construction. 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. Noninterference. 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. Trailers and Modular Structures. 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. TENANT's Cost and Expense. 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

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TENANT's cost, to remove any or all improvements located within the Leased Premises at the expiration or termination hereof.

- J. Satellite Antenna Dish. 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      RESERVED**

**SECTION 7.04      RESERVED**

**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:

$$\text{COMPENSATION} = A \times \frac{B}{C}$$

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

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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 obligee.
- 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**

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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 stop-notice 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

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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        RESERVED**

**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. Transfers. 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



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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. Conditions of COUNTY Approval. 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.
- 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



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obtain Loan Proceeds necessary to construct new improvements on the Leased Premises.

C. Bankruptcy Transaction. 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
- 3) 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 Specialty Coffee 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;

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- 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 Specialty Coffee 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.

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**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

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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.

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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:

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<u>Coverages</u>	<u>Minimum Limits</u>
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 13 or 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."

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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.

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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 agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If TENANT transfers its obligation to another, the transferee is obligated in the same manner as TENANT.

This provision obligates TENANT for the period during which the property is owned, used or possessed by TENANT and the Airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

- B. TENANT, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as follows:
- 1) **Compliance with Regulations:** TENANT will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Lease.
  - 2) **Nondiscrimination:** TENANT, with regard to the work performed by it during the Lease, will not discriminate on the grounds of race, color, or national origin, in the selection and retention of subcontractors, including procurement of materials and leases of equipment. TENANT will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities,

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including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

- 3) **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by TENANT for work to be performed under a subcontract, including procurement of materials, or leases of equipment, each potential subcontractor or supplier will be notified by TENANT of the TENANT's obligations under this Lease and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
  
- 4) **Information and Reports:** TENANT will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the COUNTY or the FAA to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, TENANT will so certify to the COUNTY or the FAA, as appropriate, and will set forth what efforts it has made to obtain this information.
  
- 5) **Sanctions for Noncompliance:** In the event of the TENANT's noncompliance with the non-discrimination provisions of this Lease, the COUNTY will impose such sanctions as it or the FAA may determine to be appropriate, including, but not limited to: withholding payments under the contract until the TENANT complies, and/or cancelling, terminating, or suspending a contract, in whole or in part.
  
- 6) **Incorporation of Provisions:** The TENANT will include the provisions of paragraphs one through six in every sublease or subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The TENANT will take action with respect to any sublease, subcontract or procurement as the COUNTY or FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if TENANT becomes involved in, or is threatened with litigation by a subtenant, subcontractor, or supplier because of such direction, the TENANT may request the COUNTY to enter into any litigation to protect the interests of the COUNTY. In addition, the TENANT may request the United States to enter into the litigation to protect the interests of the United States.

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- C. TENANT, for itself, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:
- 1) In the event facilities are constructed, maintained or otherwise operated on the Leased Premises for a purpose for which a FAA activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, TENANT will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
  - 2) No person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
  - 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 will use the Leased Premises in compliance with all other requirements imposed by or pursuant to List of discrimination Acts and Authorities.
- D. 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.
- E. TENANT, for itself, its assignees, and successors in interest agrees to comply with the following Nondiscrimination Acts and Authorities, including but not limited to:
- 1) Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
  - 2) 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of

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1964);

- 3) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- 4) Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- 5) The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- 6) Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- 7) The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- 8) Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- 9) The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- 10) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or

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environmental effects on minority and low-income populations;

- 11) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- 12) Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).

F. In the event of breach of any of the above nondiscrimination covenants, the COUNTY shall have the right to terminate the Lease and to enter, re-enter, and repossess said lands and the facilities thereon, and hold the same as if said Lease had never been made or issued.

**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.

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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**

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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, or other agreement covered by 49 CFR Part 23. TENANT agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR part 23, that it enters and cause those businesses to similarly include such the 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.

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**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      RESERVED**

**SECTION 12.07      CONTROL OF HOURS AND PROCEDURES**

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

- A. Hours of Operation. 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. Airport Director May Alter Hours. 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

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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 and to address the processing of disability complaints. 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.



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**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

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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

John Wayne Airport  
3160 Airway Avenue  
Costa Mesa, CA 92626

TO: TENANT

Bambuza OC Ventures, LLC  
5921 NE 80<sup>th</sup> Avenue  
Portland, OR 97218


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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, County and Tenant have executed this Lease as of the day and year first above written.

**\*Tenant:**  
Bambuza OC Ventures, LLC

By:   
Name: Daniel Nguyen  
Title: CEO

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*\*If Tenant is a corporation, signatures of two specific corporate officers are required as further set forth:  
The first signature must be one of the following: a) the Chairman of the Board; b) President; or c) any Vice President  
The second signature must be one of the following: a) Secretary; b) the Chief Financial Officer; c) any Assistant Secretary; or d) any Assistant Treasurer.  
In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signature to bind the company.*

APPROVED AS TO FORM:

County Counsel

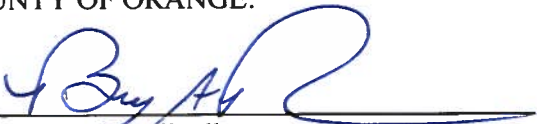
By: 

APPROVED AS TO AUDIT AND ACCOUNTING:

Auditor-Controller

By: Verian Luz A. Corbin

COUNTY OF ORANGE:

By:   
Barry A. Rondinella  
Airport Director  
Pursuant to Resolution No. 19-002 dated  
January 8, 2019

## **EXHIBIT A**

### **LEASED PREMISES DESCRIPTION**

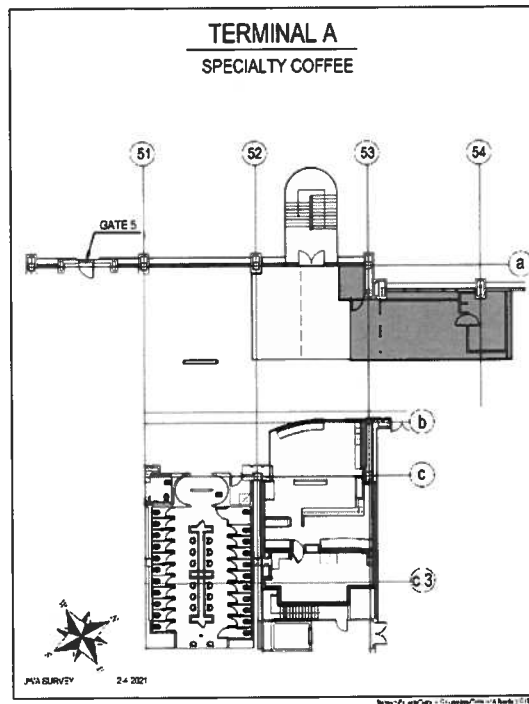
Parcel Number: PM 1121-0350-0023-001

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 LOCATION**



**EXHIBIT C**  
**PERMITTED USE – SPECIALTY COFFEE CONCESSION**

Specialty Coffee Kiosks - TENANT shall promote the regional or locally known gourmet coffee and should include seating for guests, as space permits. TENANT shall offer a variety of quality, freshly prepared coffee, specialty coffee drinks, tea, and specialty tea drinks. TENANT shall 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 shall be incorporated in the restaurant design so that guests are able to purchase freshly prepared foods and non-alcoholic beverages to go. TENANT shall participate with JWA's interactive concession wayfinding program, with menus that have calorie counts, ordering, reservation, pick-up, and delivery system. TENANT's restaurant designs shall have designated pick-up locations for online mobile ordering. TENANT shall be required to install and operate their own mobile application that interacts with JWA interactive wayfinding concession system. TENANT shall have a delivery service that complies with JWA's interactive wayfinding program. TENANT shall deliver food and/or non-alcoholic beverages to the gate at no charge to JWA passengers. TENANT shall be on the JWA concession wayfinding system on or before the rental commencement date. Any breach to permitted uses may be subject to penalties up to and including termination of Lease. TENANT shall be prohibited from serving, alcoholic drinks, beer, wine, carbonated drinks, tobacco, e-cigarettes, cannabis products, and or vaporizers

**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:


1. All architectural, engineering, and construction CAD drawing files will be done using MicroStation, or newer and/or Microstation-based design and drafting package.
2. 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**  
**SPECIALTY COFFEE CONCESSION**

Specialty Coffee Concession Tiered Rent	
Total Annual Cumulative Gross Receipts	Percentage Applied to Month's Gross Receipts to Calculate Rent
\$0 to \$1,000,000.00	14%
\$1,000,000.01 to \$2,000,000.00	16%
\$2,000,000.01 and greater	18%

*Acknowledged:*  


**JOHN WAYNE AIRPORT  
ORANGE COUNTY**



**SPECIALTY COFFEE  
INTERIM CONCESSION LEASE**

**Dated** 4/29/2021

**Between**

**County of Orange**

**and**

**Bambuza OC Ventures LLC,  
dba The Coffee Bean & Tea Leaf  
[Terminal B]**

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**JOHN WAYNE AIRPORT  
SPECIALTY COFFEE CONCESSION INTERIM LEASE**

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THIS SPECIALTY COFFEE INTERIM CONCESSION LEASE ("LEASE") is made and entered into this 21 day of April, 2021, by and between the COUNTY OF ORANGE, a political subdivision of the State of California ("COUNTY"), and BAMBUZA OC VENTURES LLC, dba The Coffee Bean & Tea Leaf, ("TENANT"), with COUNTY and TENANT sometimes individually referred to as "Party" or collectively referred to as "Parties."

**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 desires the operation of a Specialty Coffee Concession services at the Airport within Terminal B, TENANT was selected; and

WHEREAS, TENANT desires to provide a Specialty Coffee Concession, in, at John Wayne Airport within Terminal B; and

WHEREAS, COUNTY and TENANT mutually desire to enter into a Specialty Coffee Concession Interim Lease to provide Specialty Coffee Concession services; 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 Specialty Coffee Concession services; and

WHEREAS, the Parties acknowledge 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 John Wayne Airport, Orange County, California.

**JOHN WAYNE AIRPORT  
SPECIALTY COFFEE CONCESSION INTERIM LEASE**

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**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**

"Concession Support Space shall mean the space COUNTY may make available to TENANT 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,

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SPECIALTY COFFEE CONCESSION INTERIM LEASE**

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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 the 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.

**JOHN WAYNE AIRPORT  
SPECIALTY COFFEE CONCESSION INTERIM LEASE**

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**SECTION 1.12      LEASED PREMISES**

"Leased Premises" shall mean the areas of the Terminals 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      RESERVED**

**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);

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SPECIALTY COFFEE CONCESSION INTERIM LEASE**

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- 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.

**JOHN WAYNE AIRPORT  
SPECIALTY COFFEE CONCESSION INTERIM LEASE**

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**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" or "Terminals" shall mean the commercial passenger terminals 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 one (1) year 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,

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**JOHN WAYNE AIRPORT  
SPECIALTY COFFEE CONCESSION INTERIM LEASE**

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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 ADDITIONAL 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 premises 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.



**JOHN WAYNE AIRPORT  
SPECIALTY COFFEE CONCESSION INTERIM LEASE**

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- 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:

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 to a service charge as defined in Section 4.05

- B. Payment of Rent. Rent payments shall be made in accordance with the provisions of the section in this Lease entitled "PAYMENT PROCEDURE."

**SECTION 4.02      RESERVED**

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**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 "PERMITTED 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.

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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:

- 1) 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.
- 2) The related itemized amounts of percentage rent computed as herein provided and the total thereof;
- 3) The total rent previously paid by TENANT for the lease year within which the preceding month falls; and
- 4) The rent due for the preceding month.

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

- 5) 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].

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

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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. Penalty for NSF Check. 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.

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**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. The Accounting Year. The accounting year shall be twelve full calendar months. The accounting year may be established by TENANT provided TENANT notifies Auditor-Controller in writing of the accounting year to be used. Said accounting year shall be deemed to be approved by Auditor-Controller unless Auditor-Controller has objected to TENANT's selection in writing within sixty (60) days of TENANT's writing notification. In the event TENANT fails to establish an accounting year of its choice, regardless of the cause, the accounting year shall be synonymous with the twelve-month period contained in the first one-year term of the Lease.

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 accounting year.

Once an accounting year 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.

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C. CPA-Audited Statement of Gross Receipts. 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. Failure to Submit CPA-Audited Statement of Gross Receipts. 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. Audits. 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.

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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

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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. Review Period. 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. Methodology. 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. Record Retention. 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. Sales Recording System. 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,



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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. Other Reports and Submissions. 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 Twenty Thousand Dollars (\$20,000.00) 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:

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- 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.

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**SECTION 4.09      MARKETING FUND FEE**

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. Commencing January 1 of each calendar year, TENANT shall be required to make an annual marketing fund payment in the amount of ten thousand dollars (\$10,000.00). TENANT agrees to pay this amount on or before January 1 of each year. All monies received by the Airport for the marketing fund shall be used solely for the purpose of Airport tenants' promotions and directly related expenses. In the event any year of the LEASE contains less than 12 months, TENANT shall pay a pro-rata portion of the annual amount corresponding to the number of months remaining in that calendar year.

**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      PERMITTED USE**

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

A. Required Services and Uses. TENANT shall have a nonexclusive right to develop, operate and manage a Specialty Coffee 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 Permitted Use is attached hereto and entitled EXHIBIT C PERMITTED USE-SPECIALTY COFFEE CONCESSION.

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

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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.

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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 Coffee 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. Personnel. 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

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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. Noninterference. 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. Deliveries. 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. Utilities. 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. Pricing. TENANT's merchandise shall be consistent with all uses as provided under Section 5.01 (PERMITTED 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 Specialty Coffee 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. Employee Parking Fee. TENANT shall pay the monthly employee parking fee, subject to change, for employee vehicles parked in the employee parking lot.

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- I. Credit and Debit Cards. 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. Recycling. 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. Promotional Advertising. 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. Wireless Communications. 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. Interference with Systems. TENANT shall not interfere with the effectiveness of utility, heating, ventilating or air-conditioning systems or portions thereof on or adjoining the



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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. Smoking Prohibited. 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. Unauthorized Locks. 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. Standards of Quality. 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 Specialty Coffee 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 Coffee 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.



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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

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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

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by Airport Director, or designee unless a longer period of time is approved by the Airport Director, or designee.

- B. Removal of Equipment or Improvements. 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. Access. 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. Release of Hazardous Substances. 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. Spills and Trash Disposal. 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. Trash Receptacles. 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

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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. Waiver of Claims. 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. Monthly Maintenance Reports. 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

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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	\$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

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**

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**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

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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 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



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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

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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. Design and Construction. 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 "PERMITTED 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 this 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

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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,

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repairs, replacement, removal and maintenance items shall be approved by the Board of Supervisors.

- D. Insurance Requirements. 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. Indemnification during Construction. 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. Noninterference. 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. Trailers and Modular Structures. 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. TENANT's Cost and Expense. 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

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TENANT's cost, to remove any or all improvements located within the Leased Premises at the expiration or termination hereof.

- J. Satellite Antenna Dish. 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      RESERVED**

**SECTION 7.04      RESERVED**

**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:

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

$$\text{COMPENSATION} = A \times \frac{B}{C}$$

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:

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- A. Completion Bond issued to COUNTY/JWA as obligee.
- 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 stop-notice 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

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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      RESERVED**

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**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. Transfers. 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. Conditions of COUNTY Approval. 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.



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- 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.
  - 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. Bankruptcy Transaction. 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
  - 3) 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**

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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 Specialty Coffee 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 Specialty Coffee 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;

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- 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

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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

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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

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- 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:

<u>Coverages</u>	<u>Minimum Limits</u>
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.

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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 13 or 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

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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 agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity



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conducted with or benefiting from Federal assistance. If TENANT transfers its obligation to another, the transferee is obligated in the same manner as TENANT.

This provision obligates TENANT for the period during which the property is owned, used or possessed by TENANT and the Airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

- B. TENANT, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as follows:
- 1) **Compliance with Regulations:** TENANT will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Lease.
  - 2) **Nondiscrimination:** TENANT, with regard to the work performed by it during the Lease, will not discriminate on the grounds of race, color, or national origin, in the selection and retention of subcontractors, including procurement of materials and leases of equipment. TENANT will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
  - 3) **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by TENANT for work to be performed under a subcontract, including procurement of materials, or leases of equipment, each potential subcontractor or supplier will be notified by TENANT of the TENANT's obligations under this Lease and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
  - 4) **Information and Reports:** TENANT will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the COUNTY or the FAA to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information,

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TENANT will so certify to the COUNTY or the FAA, as appropriate, and will set forth what efforts it has made to obtain this information.

- 5) **Sanctions for Noncompliance:** In the event of the TENANT's noncompliance with the non-discrimination provisions of this Lease, the COUNTY will impose such sanctions as it or the FAA may determine to be appropriate, including, but not limited to: withholding payments under the contract until the TENANT complies, and/or cancelling, terminating, or suspending a contract, in whole or in part.
  
- 6) **Incorporation of Provisions:** The TENANT will include the provisions of paragraphs one through six in every sublease or subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The TENANT will take action with respect to any sublease, subcontract or procurement as the COUNTY or FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if TENANT becomes involved in, or is threatened with litigation by a subtenant, subcontractor, or supplier because of such direction, the TENANT may request the COUNTY to enter into any litigation to protect the interests of the COUNTY. In addition, the TENANT may request the United States to enter into the litigation to protect the interests of the United States.

C. TENANT, for itself, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

- 1) In the event facilities are constructed, maintained or otherwise operated on the Leased Premises for a purpose for which a FAA activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, TENANT will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
  
- 2) No person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

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- 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 will use the Leased Premises in compliance with all other requirements imposed by or pursuant to List of discrimination Acts and Authorities.
- D. 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.
- E. TENANT, for itself, its assignees, and successors in interest agrees to comply with the following Nondiscrimination Acts and Authorities, including but not limited to:
- 1) Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
  - 2) 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
  - 3) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
  - 4) Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
  - 5) The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
  - 6) Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);

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- 7) The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
  - 8) Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
  - 9) The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
  - 10) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
  - 11) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
  - 12) Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).
- F. In the event of breach of any of the above nondiscrimination covenants, the COUNTY shall have the right to terminate the Lease and to enter, re-enter, and repossess said lands and the facilities thereon, and hold the same as if said Lease had never been made or issued.

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**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).

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**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

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lease agreement, or other agreement covered by 49 CFR Part 23. TENANT agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR part 23, that it enters and cause those businesses to similarly include such the 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

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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      RESERVED**

**SECTION 12.07      CONTROL OF HOURS AND PROCEDURES**

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

- A. Hours of Operation. 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. Airport Director May Alter Hours. 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 and to address the processing of disability complaints. 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



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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.

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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,

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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

John Wayne Airport  
3160 Airway Avenue  
Costa Mesa, CA 92626


TO: TENANT

Bambuza OC Ventures, LLC  
5921 NE 80<sup>th</sup> Avenue  
Portland, OR 97218

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, County and Tenant have executed this Lease as of the day and year first above written.

**\*Tenant:**  
Bambuza OC Ventures, LLC

By:   
Name: Daniel Nguyen  
Title: CEO

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*\*If Tenant is a corporation, signatures of two specific corporate officers are required as further set forth:  
The first signature must be one of the following: a) the Chairman of the Board; b) President; or c) any Vice President  
The second signature must be one of the following: a) Secretary; b) the Chief Financial Officer; c) any Assistant Secretary; or d) any Assistant Treasurer.  
In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signature to bind the company.*

APPROVED AS TO FORM:

County Counsel


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

APPROVED AS TO AUDIT AND ACCOUNTING:

Auditor-Controller

By: Vivian Ly A. Castro John Wayne Airport

COUNTY OF ORANGE:

By:  \_\_\_\_\_  
Barry A. Kondinella  
Airport Director  
Pursuant to Resolution No. 19-002 dated  
January 8, 2019

**EXHIBIT A**

**LEASED PREMISES DESCRIPTION**

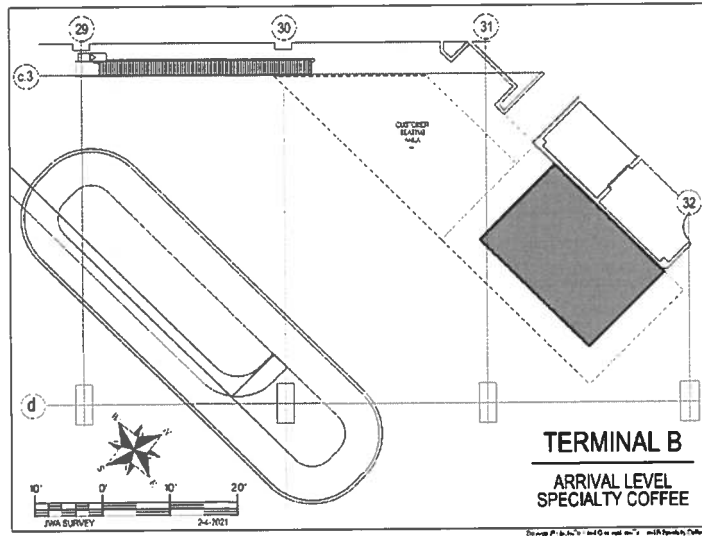
Parcel Number: PM 1121-0350-0023-002

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 LOCATION**



**EXHIBIT C**  
**PERMITTED USE – SPECIALTY COFFEE CONCESSION**

Specialty Coffee Kiosks - TENANT shall promote the regional or locally known gourmet coffee and should include seating for guests, as space permits. TENANT shall offer a variety of quality, freshly prepared coffee, specialty coffee drinks, tea, and specialty tea drinks. TENANT shall 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 shall be incorporated in the restaurant design so that guests are able to purchase freshly prepared foods and non-alcoholic beverages to go. TENANT shall participate with JWA's interactive concession wayfinding program, with menus that have calorie counts, ordering, reservation, pick-up, and delivery system. TENANT's restaurant designs shall have designated pick-up locations for online mobile ordering. TENANT shall be required to install and operate their own mobile application that interacts with JWA interactive wayfinding concession system. TENANT shall have a delivery service that complies with JWA's interactive wayfinding program. TENANT shall deliver food and/or non-alcoholic beverages to the gate at no charge to JWA passengers. TENANT shall be on the JWA concession wayfinding system on or before the rental commencement date. Any breach to permitted uses may be subject to penalties up to and including termination of Lease. TENANT shall be prohibited from serving, alcoholic drinks, beer, wine, carbonated drinks, tobacco, e-cigarettes, cannabis products, and or vaporizers

**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:

1. All architectural, engineering, and construction CAD drawing files will be done using MicroStation, or newer and/or Microstation-based design and drafting package.
2. 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**  
**SPECIALTY COFFEE CONCESSION**

<b>Specialty Coffee Concession Tiered Rent</b>	
<b>Total Annual Cumulative Gross Receipts</b>	<b>Percentage Applied to Month's Gross Receipts to Calculate Rent</b>
\$0 to \$1,000,000.00	14%
\$1,000,000.01 to \$2,000,000.00	16%
\$2,000,000.01 and greater	18%

*Acknowledged:*  


**JOHN WAYNE AIRPORT  
ORANGE COUNTY**

**MEMORANDUM**



**SPECIALTY COFFEE  
INTERIM CONCESSION LEASE**

**Dated 03/23/2021**

**Between**

**County of Orange**

**and**

**Bambuza OC Ventures LLC,  
dba The Coffee Bean & Tea Leaf  
[Terminal C]**

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**JOHN WAYNE AIRPORT  
SPECIALTY COFFEE CONCESSION INTERIM LEASE**

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THIS SPECIALTY COFFEE INTERIM CONCESSION LEASE ("LEASE") is made and entered into this 23 day of March, 2021, by and between the COUNTY OF ORANGE, a political subdivision of the State of California ("COUNTY"), and BAMBUZA OC VENTURES LLC, dba The Coffee Bean & Tea Leaf ("TENANT"), with COUNTY and TENANT sometimes individually referred to as "Party" or collectively referred to as "Parties."

**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 desires the operation of a Specialty Coffee Concession services at the Airport within Terminal C, TENANT was selected; and

WHEREAS, TENANT desires to provide a Specialty Coffee Concession, in, at John Wayne Airport within Terminal C; and

WHEREAS, COUNTY and TENANT mutually desire to enter into a Specialty Coffee Concession Interim Lease to provide Specialty Coffee Concession services; 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 Specialty Coffee Concession services; and

WHEREAS, the Parties acknowledge 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 John Wayne Airport, Orange County, California.

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SPECIALTY COFFEE CONCESSION INTERIM LEASE**

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**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**

"Concession Support Space shall mean the space COUNTY may make available to TENANT 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,

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SPECIALTY COFFEE CONCESSION INTERIM LEASE**

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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 the 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.

**JOHN WAYNE AIRPORT  
SPECIALTY COFFEE CONCESSION INTERIM LEASE**

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**SECTION 1.12      LEASED PREMISES**

"Leased Premises" shall mean the areas of the Terminals 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      RESERVED**

**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);

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SPECIALTY COFFEE CONCESSION INTERIM LEASE**

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- 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.

**JOHN WAYNE AIRPORT  
SPECIALTY COFFEE CONCESSION INTERIM LEASE**

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**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" or "Terminals" shall mean the commercial passenger terminals 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 one (1) year 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,

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**JOHN WAYNE AIRPORT  
SPECIALTY COFFEE CONCESSION INTERIM LEASE**

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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 ADDITIONAL 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 premises 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.



**JOHN WAYNE AIRPORT  
SPECIALTY COFFEE CONCESSION INTERIM LEASE**

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- 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:

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 to a service charge as defined in Section 4.05

- B. Payment of Rent. Rent payments shall be made in accordance with the provisions of the section in this Lease entitled "PAYMENT PROCEDURE."

**SECTION 4.02      RESERVED**

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**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 "PERMITTED 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.

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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:

- 1) 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.
- 2) The related itemized amounts of percentage rent computed as herein provided and the total thereof;
- 3) The total rent previously paid by TENANT for the lease year within which the preceding month falls; and
- 4) The rent due for the preceding month.

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

- 5) 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].

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

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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. Penalty for NSF Check. 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.

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**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.    The Accounting Year. The accounting year shall be twelve full calendar months. The accounting year may be established by TENANT provided TENANT notifies Auditor-Controller in writing of the accounting year to be used. Said accounting year shall be deemed to be approved by Auditor-Controller unless Auditor-Controller has objected to TENANT’s selection in writing within sixty (60) days of TENANT’s writing notification. In the event TENANT fails to establish an accounting year of its choice, regardless of the cause, the accounting year shall be synonymous with the twelve-month period contained in the first one-year term of the Lease.

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 accounting year.

Once an accounting year 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.

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C. CPA-Audited Statement of Gross Receipts. 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. Failure to Submit CPA-Audited Statement of Gross Receipts. 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. Audits. 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.

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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

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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. Review Period. 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. Methodology. 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. Record Retention. 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. Sales Recording System. 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,



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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. Other Reports and Submissions. 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 Twenty Thousand Dollars (\$20,000.00) 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:

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- 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.

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**SECTION 4.09      MARKETING FUND FEE**

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. Commencing January 1 of each calendar year, TENANT shall be required to make an annual marketing fund payment in the amount of ten thousand dollars (\$10,000.00). TENANT agrees to pay this amount on or before January 1 of each year. All monies received by the Airport for the marketing fund shall be used solely for the purpose of Airport tenants' promotions and directly related expenses. In the event any year of the LEASE contains less than 12 months, TENANT shall pay a pro-rata portion of the annual amount corresponding to the number of months remaining in that calendar year.

**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      PERMITTED USE**

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

- A. Required Services and Uses. TENANT shall have a nonexclusive right to develop, operate and manage a Specialty Coffee 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 Permitted Use is attached hereto and entitled EXHIBIT C PERMITTED USE-SPECIALTY COFFEE CONCESSION.
- 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

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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.

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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 Coffee 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. Personnel. 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

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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. Noninterference. 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. Deliveries. 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. Utilities. 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. Pricing. TENANT's merchandise shall be consistent with all uses as provided under Section 5.01 (PERMITTED 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 Specialty Coffee 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. Employee Parking Fee. TENANT shall pay the monthly employee parking fee, subject to change, for employee vehicles parked in the employee parking lot.

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- I. Credit and Debit Cards. 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. Recycling. 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. Promotional Advertising. 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. Wireless Communications. 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. Interference with Systems. TENANT shall not interfere with the effectiveness of utility, heating, ventilating or air-conditioning systems or portions thereof on or adjoining the



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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. Smoking Prohibited. 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. Unauthorized Locks. 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. Standards of Quality 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 Specialty Coffee 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 Coffee 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.



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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

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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

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by Airport Director, or designee unless a longer period of time is approved by the Airport Director, or designee.

- B. Removal of Equipment or Improvements. 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. Access. 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. Release of Hazardous Substances. 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. Spills and Trash Disposal. 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. Trash Receptacles. 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

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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. Waiver of Claims. 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. Monthly Maintenance Reports. 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

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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	\$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

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**

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**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

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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 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



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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

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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. Design and Construction. 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 "PERMITTED 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 this 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

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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,

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repairs, replacement, removal and maintenance items shall be approved by the Board of Supervisors.

- D. Insurance Requirements. 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. Indemnification during Construction. 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. Noninterference. 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. Trailers and Modular Structures. 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. TENANT's Cost and Expense. 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

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TENANT's cost, to remove any or all improvements located within the Leased Premises at the expiration or termination hereof.

- J. Satellite Antenna Dish. 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      RESERVED**

**SECTION 7.04      RESERVED**

**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:

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

$$\text{COMPENSATION} = A \times \frac{B}{C}$$

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 obligee.

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- 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 stop-notice 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

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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     RESERVED**

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**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. Transfers. 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. Conditions of COUNTY Approval. 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.



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- 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.
  - 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. Bankruptcy Transaction. 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
  - 3) 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**

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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 Specialty Coffee 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 Specialty Coffee 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;

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- 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

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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

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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

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- 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:

<u>Coverages</u>	<u>Minimum Limits</u>
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.

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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 13 or 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

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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 agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity



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conducted with or benefiting from Federal assistance. If TENANT transfers its obligation to another, the transferee is obligated in the same manner as TENANT.

This provision obligates TENANT for the period during which the property is owned, used or possessed by TENANT and the Airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

- B. TENANT, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as follows:
- 1) **Compliance with Regulations:** TENANT will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Lease.
  - 2) **Nondiscrimination:** TENANT, with regard to the work performed by it during the Lease, will not discriminate on the grounds of race, color, or national origin, in the selection and retention of subcontractors, including procurement of materials and leases of equipment. TENANT will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
  - 3) **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by TENANT for work to be performed under a subcontract, including procurement of materials, or leases of equipment, each potential subcontractor or supplier will be notified by TENANT of the TENANT's obligations under this Lease and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
  - 4) **Information and Reports:** TENANT will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the COUNTY or the FAA to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information,

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TENANT will so certify to the COUNTY or the FAA, as appropriate, and will set forth what efforts it has made to obtain this information.

- 5) **Sanctions for Noncompliance:** In the event of the TENANT's noncompliance with the non-discrimination provisions of this Lease, the COUNTY will impose such sanctions as it or the FAA may determine to be appropriate, including, but not limited to: withholding payments under the contract until the TENANT complies, and/or cancelling, terminating, or suspending a contract, in whole or in part.
  
  - 6) **Incorporation of Provisions:** The TENANT will include the provisions of paragraphs one through six in every sublease or subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The TENANT will take action with respect to any sublease, subcontract or procurement as the COUNTY or FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if TENANT becomes involved in, or is threatened with litigation by a subtenant, subcontractor, or supplier because of such direction, the TENANT may request the COUNTY to enter into any litigation to protect the interests of the COUNTY. In addition, the TENANT may request the United States to enter into the litigation to protect the interests of the United States.
- C. TENANT, for itself, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:
- 1) In the event facilities are constructed, maintained or otherwise operated on the Leased Premises for a purpose for which a FAA activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, TENANT will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
  
  - 2) No person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

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- 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 will use the Leased Premises in compliance with all other requirements imposed by or pursuant to List of discrimination Acts and Authorities.
- D. 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.
- E. TENANT, for itself, its assignees, and successors in interest agrees to comply with the following Nondiscrimination Acts and Authorities, including but not limited to:
- 1) Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
  - 2) 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
  - 3) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
  - 4) Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
  - 5) The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
  - 6) Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);

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- 7) The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
  - 8) Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
  - 9) The Federal Aviation Administration's Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
  - 10) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
  - 11) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
  - 12) Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).
- F. In the event of breach of any of the above nondiscrimination covenants, the COUNTY shall have the right to terminate the Lease and to enter, re-enter, and repossess said lands and the facilities thereon, and hold the same as if said Lease had never been made or issued.

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**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).

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SPECIALTY COFFEE CONCESSION INTERIM LEASE**

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**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

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lease agreement, or other agreement covered by 49 CFR Part 23. TENANT agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR part 23, that it enters and cause those businesses to similarly include such the 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

**JOHN WAYNE AIRPORT  
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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      RESERVED**

**SECTION 12.07      CONTROL OF HOURS AND PROCEDURES**

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

- A. Hours of Operation. 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. Airport Director May Alter Hours. 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 and to address the processing of disability complaints. 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



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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.

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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,

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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

John Wayne Airport  
3160 Airway Avenue  
Costa Mesa, CA 92626

TO: TENANT

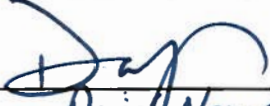
Bambuza OC Ventures, LLC  
5921 NE 80<sup>th</sup> Avenue  
Portland, OR 97218

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, County and Tenant have executed this Lease as of the day and year first above written.

**\*Tenant:**

Bambuza OC Ventures, LLC

By:   
 Name: Daniel Nguyen  
 Title: CEO

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

*\*If Tenant is a corporation, signatures of two specific corporate officers are required as further set forth:  
 The first signature must be one of the following: a) the Chairman of the Board; b) President; or c) any Vice President  
 The second signature must be one of the following: a) Secretary; b) the Chief Financial Officer; c) any Assistant Secretary; or d) any Assistant Treasurer.  
 In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signature to bind the company.*

**APPROVED AS TO FORM:**

County Counsel


By: 

**APPROVED AS TO AUDIT AND ACCOUNTING:**

Auditor-Controller

By: Vivian Luz A. Cantor

**COUNTY OF ORANGE:**

By:   
 Barry A. Rondinella  
 Airport Director  
 Pursuant to Resolution No. 19-002 dated

January 8, 2019

**EXHIBIT A**

**LEASED PREMISES DESCRIPTION**

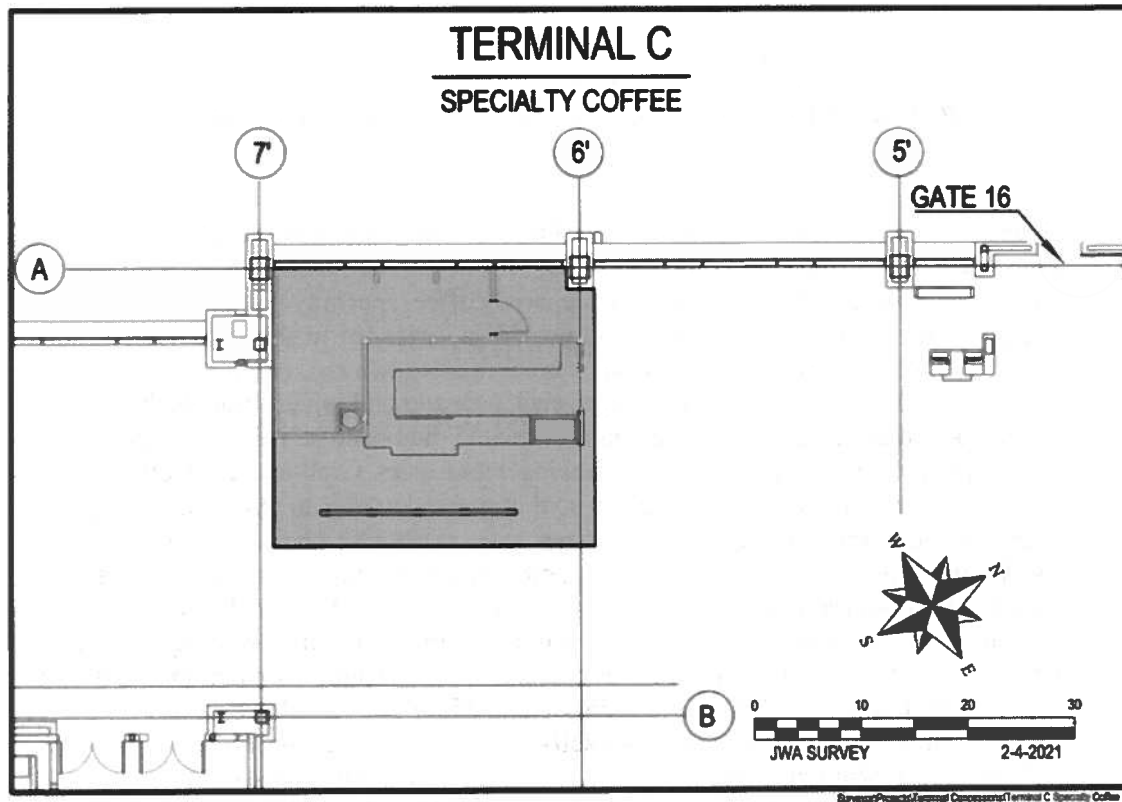
Parcel Number: PM 1121-0350-0023-003

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 LOCATION**



**EXHIBIT C**  
**PERMITTED USE – SPECIALTY COFFEE CONCESSION**

Specialty Coffee Kiosks - TENANT shall promote the regional or locally known gourmet coffee and should include seating for guests, as space permits. TENANT shall offer a variety of quality, freshly prepared coffee, specialty coffee drinks, tea, and specialty tea drinks. TENANT shall 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 shall be incorporated in the restaurant design so that guests are able to purchase freshly prepared foods and non-alcoholic beverages to go. TENANT shall participate with JWA's interactive concession wayfinding program, with menus that have calorie counts, ordering, reservation, pick-up, and delivery system. TENANT's restaurant designs shall have designated pick-up locations for online mobile ordering. TENANT shall be required to install and operate their own mobile application that interacts with JWA interactive wayfinding concession system. TENANT shall have a delivery service that complies with JWA's interactive wayfinding program. TENANT shall deliver food and/or non-alcoholic beverages to the gate at no charge to JWA passengers. TENANT shall be on the JWA concession wayfinding system on or before the rental commencement date. Any breach to permitted uses may be subject to penalties up to and including termination of Lease. TENANT shall be prohibited from serving, alcoholic drinks, beer, wine, carbonated drinks, tobacco, e-cigarettes, cannabis products, and or vaporizers

**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:

1. All architectural, engineering, and construction CAD drawing files will be done using MicroStation, or newer and/or Microstation-based design and drafting package.
2. 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**  
**SPECIALTY COFFEE CONCESSION**

Specialty Coffee Concession Tiered Rent	
Total Annual Cumulative Gross Receipts	Percentage Applied to Month's Gross Receipts to Calculate Rent
\$0 to \$1,000,000.00	14%
\$1,000,000.01 to \$2,000,000.00	16%
\$2,000,000.01 and greater	18%

*Acknowledged*  
