



AGENDA STAFF REPORT

ASR Control 22-000683

MEETING DATE: 09/13/22
LEGAL ENTITY TAKING ACTION: Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S): 5
SUBMITTING AGENCY/DEPARTMENT: John Wayne Airport (Approved)
DEPARTMENT CONTACT PERSON(S): Charlene Reynolds (949) 252-5183
 Evanna Barbic (949) 252-5232

SUBJECT: Approve Amendment Three to Concession Lease with Bambuza OC Ventures, LLC

CEO CONCUR Pending Review	COUNTY COUNSEL REVIEW Approved Agreement to Form	CLERK OF THE BOARD Discussion 4/5 Vote
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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: Fund 280: 100% **County Audit in last 3 years:** No

Prior Board Action: 1/11/2022 #18, 12/10/2019 #21, 8/27/2019 #20, 3/26/2019 #29

RECOMMENDED ACTION(S):

Approve and execute Amendment Number Three to the Specialty Concession Lease with Bambuza OC Ventures, LLC dba the Coffee Bean & Tea Leaf, to modify the Leased Premises locations and permitted use, modify the Minimum Annual Guarantee for coffee locations and authorize Percentage Rent for Sambazon Acai Bowl Kiosk in Terminal B.

SUMMARY:

Approval of the lease amendment will allow Bambuza OC Ventures, LLC dba the Coffee Bean & Tea Leaf to operate a Sambazon Acai Bowl concession in Terminal B on Percentage Rent. In addition, this Amendment will remove two of the four previously awarded coffee locations on the non-secure side of John Wayne Airport and reassign one of the remaining two coffee locations in Terminal C.

BACKGROUND INFORMATION:

On March 26, 2019, the Board of Supervisors (Board) authorized the release of a Request for Qualifications (RFQ) and the Request for Proposals (RFP) to qualified respondents and authorized John Wayne Airport (JWA) to empanel a qualified group of experts to review the responsive proposals for the Phase I

Concession Development Program. The Phase I Concession Development Program included two Casual Dining & Bar Lease locations, a Specialty Coffee Lease with four locations and one Quick Serve Lease location. The purpose of the program was to bring new local and regional businesses to JWA and improve the guest experience. On June 4, 2019, JWA received proposals from qualified respondents, and on August 27, 2019, the Board awarded four separate Leases for a 10-year term to Bambuza OC Ventures, LLC dba the Coffee Bean & Tea Leaf (Bambuza), California Coast Food & Beverage, LLC (Brodard), Mission Yogurt, Inc. (Taps Fish House) and Greenleaf JWA, LLC.

On December 10, 2019, the Board approved Amendment Number One to the Leases to update the Tenant Infrastructure Fee to accurately reflect the cost recovery and long-term amortization of airport concession infrastructure improvements.

On January 11, 2022, the Board approved Amendment Number Two to extend the term of the Lease to 13 years with two additional one-year lease extension options at the Airport Director's discretion.

Current Lease Space Locations

The current Bambuza Lease contains four coffee locations: A post-security location on the departure level in Terminal C between gates 19 and 20, a pre-security location in Terminal C baggage claim, a pre-security location on the departure level in Terminal C by the security checkpoint and another pre-security location in Terminal A baggage claim.

Proposed Lease Amendments

JWA seeks Board approval to amend the lease locations for Bambuza, modify the permitted use, modify the Minimum Annual Guarantee for the coffee locations, and authorize Percentage Rent for the Sambazon Acai Bowl (Sambazon) location. The proposed Lease Amendment recommends the elimination of two of the undeveloped pre-security sites in Terminal A and the Terminal C security checkpoint. The Terminal A location is in close proximity to the Terminal B baggage claim coffee site, and there is insufficient demand to support two coffee locations within this pre-security area. The Terminal C checkpoint location is in close proximity to the Transportation Security Administration security screening area, and passengers presently cannot take drinks through the security line.

Proposed Modified Leased Premises locations:

JWA requests that Bambuza be permitted to build out their current interim lease space in Terminal C as a permanent location. Bambuza is currently operating in the former Starbucks kiosk between gates 16 and 17, and will rebuild this location and provide the investment as stipulated in their proposal. Rebuilding in this location will reduce congestion in the formerly proposed area near gate 19.

JWA further requests approval to allow Bambuza to operate a Sambazon kiosk on the post-security departure level in Terminal B between gates 10 and 11. This location was not programmed into the Phase I concession program. Sambazon, a local Newport Beach company, will fill the need for quick and healthy food options featuring acai bowls. This will be Sambazon's first airport location. Bambuza estimates \$218,981 in rent revenue to JWA in the first year of operation.

Concession Location	Current Lease Annual Rent Revenue*	Amendment Three Modification	Amendment Three Annual Rent Revenue*
Coffee - Terminal C Pre-Security (Baggage Claim)	\$169,400	No Change	\$169,400
Coffee - Terminal C Post-Security (Gate 19)	\$87,500	Eliminate	\$0
Coffee - Terminal C Pre-Security (Security Checkpoint)	\$35,200	Eliminate	\$0
Coffee - Terminal A Pre-Security (Baggage Claim)	\$61,500	Eliminate	\$0
Coffee - Terminal C Post-Security (Gate 16/17)	\$0	Add	\$87,500
Sambazon - Terminal B Post-Security (Gate 10/11)	\$0	Add	\$218,981**
Total	\$353,600		\$475,881

*Forecast based on Minimum Annual Guarantee (MAG) for all coffee locations and percentage rent for Sambazon.

**Sambazon's percentage rent forecast is based on Bambuza's pro-forma estimated gross receipts.

Proposed Leased Premises to remain:

Terminal C Baggage Claim, Pre-Security: JWA staff recommends moving forward with the development of this coffee location as there is high visibility and a strong passenger traffic flow. The tenant will build out this location in its entirety and provide the investment as stipulated in their proposal.

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 on August 27, 2019, when it was originally approved because the exemption provides for equipment installation and maintenance of an existing facility involving negligible or no expansion of existing use. The proposed project is still consistent with this determination.

FINANCIAL IMPACT:

Revenues related to the concession lease are included in Fund 280, Airport Operating Fund, FY 2022-23 Budget, and will be included in the budgeting process for future years.

STAFFING IMPACT:

N/A

ATTACHMENT(S):

Attachment A - Amendment Number Three to Bambuza OC Ventures, LLC Lease

AMENDMENT NUMBER THREE TO SPECIALTY COFFEE CONCESSION LEASE

THIS THIRD AMENDMENT TO SPECIALTY COFFEE CONCESSION LEASE (“Amendment”) is made and entered into as of _____, 2022, 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”). County and Tenant may sometimes hereinafter individually be referred to as “Party” or jointly as “Parties.”

RECITALS

WHEREAS, County and Bambuza South Waterfront, LLC dba Bambuza OC Ventures, LLC dba The Coffee Bean and Tea Leaf (“Bambuza South Waterfront”) entered into a Specialty Coffee Concession Lease, dated August 27, 2019 (“Existing Lease”); and

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

WHEREAS, County and Bambuza South Waterfront executed the First Amendment, dated December 10, 2019, to adjust the Tenant Infrastructure Fee; and

WHEREAS, County and Bambuza South Waterfront executed the Second Amendment, dated January 11, 2022, to extend the Lease term three (3) years and authorize the Airport Director to extend the Lease term up to two (2) additional one-year Lease extensions; and

WHEREAS, County entered into a Consent to Assignment Agreement on January 11, 2022 by and among Bambuza South Waterfront, LLC and Tenant, where Bambuza South Waterfront assigned and transferred all its rights, title and interest in the Existing Lease to Tenant; and

WHEREAS, County and Tenant now desires to further amend the Existing Lease, as amended by the First Amendment and Second Amendment, to modify the Leased Premises locations, modify the Minimum Annual Guarantee, and authorize Percentage Rent for Site 8 as depicted in Exhibits A and B.

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

AGREEMENTS

1. Exhibits A, B, C, and G shall be deleted and replaced in their entirety as attached hereto.
2. **Rent.** Section 4.01(A) shall be deleted and replaced in its entirety with the following:

“A. Annual Rent Payments – TENANT shall pay to COUNTY, for each annual period either the Minimum Annual Guarantee (“MAG”) or Percentage Rent, whichever is greater, for Site 1 and Site 15. TENANT shall pay to COUNTY, for each annual period, only Percentage Rent for Site 8.

- 1) The Minimum Annual Guarantee for the Leased Premises at the Airport shall be accordance with the following schedule. Airport has the right to modify the square footage and MAG amounts to reflect actual square footage based upon final as-built plans:

\$100 x 2,569 S.F. = \$256,900.00 Minimum Annual Guarantee

Divided by 12 Months = Minimum Monthly Rent

<u>Annual Period</u> Rent Commencement Date to _____ Each succeeding year _____ to _____	<u>Minimum Annual Guarantee</u> \$ _____ as adjusted in accordance with “REVISION OF RENTS”
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On _____, and on each _____ thereafter, the minimum annual rent shall be adjusted in accordance with the provisions of the Section in this Lease entitled “REVISION OF RENTS”

Should this Lease be terminated during an annual period, or should the first annual period be other than a full calendar year, the applicable Minimum Annual Guarantee shall be prorated on the basis of a three hundred sixty (360) day year.

- 2) Percentage Rent. Percentage Rent shall be calculated using the percentage of Gross Receipts from sales conducted on or from the Leased Premises. Percentage Rent shall be calculated using the percentage of Gross Receipts as 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

3. Use. Section 5.01(A) shall be deleted and replaced in its entirety with the following:

“A. Required Services and Uses. TENANT shall have a nonexclusive right to develop, operate and manage a Specialty concession within designated locations at the Airport. The concession rights granted herein shall be exclusive within the Leased Premises but non-exclusive at the Airport. TENANT agrees not to use the Leased Premises for any other purpose nor to engage in or permit any other activity by TENANT's employees, agents or contractors, within or from the Leased Premises. TENANT agrees not to conduct or permit its employees, agents or contractors to conduct any public or private nuisance in, on or from the

Airport, or to commit or permit its employees, agents or contractors to commit any waste in, on or from the Airport. The Use is attached hereto and entitled EXHIBIT C.”

4. No Other Amendments; This Third Amendment Governs and Controls.

Except as expressly modified by this Third Amendment, the Existing Lease, as amended by the First Amendment and Second Amendment, shall remain unmodified and in full force and effect and is hereby reinstated, ratified, and affirmed. To the extent any of the provisions of this Third Amendment are inconsistent with any of the provisions set forth in the Existing Lease, First Amendment, and Second Amendment, the provisions of this Third Amendment shall govern and control. Any reference to the “Agreement,” “hereunder,” “hereof,” “herein,” or words of like import in the Existing Lease, First Amendment, Second Amendment and this Third Amendment shall mean and be a reference to the Existing Lease as hereby amended, and the Existing Lease, First Amendment, Second Amendment and this Third Amendment shall be read and interpreted as if it was one agreement.

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

6. Governing Law. This Third Amendment shall be governed by and construed in accordance with the laws of the State of California.

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

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

9. Contractual Obligations. Tenant shall be current on all contractual obligations, including but not limited to, MAG, Percentage Rent, Insurance, Security Deposit, late fees, penalties, and fines through July 31, 2022 except as otherwise provided for herein. Tenant shall maintain JWA-approved concession locations and hours of operation.

[Signatures appear on following pages]

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

TENANT: Bambuza OC Ventures, LLC dba The Coffee Bean & Tea Leaf

By: [Signature]
Its: CEO
Name: Daniel Nguyen

By: _____
Its: _____
Name: _____

APPROVED AS TO FORM:

County Counsel
By: [Signature]

APPROVED AS TO AUDIT AND ACCOUNTING:

Auditor-Controller
By: Vivian By A. Conner

RECOMMENDED FOR APPROVAL:

John Wayne Airport
By: [Signature]
Charlene Reynolds
Airport Director

Signed and certified that a copy of this document has been delivered to the Chair of the Board per G.C. Sec. 25103, Reso 79-1535
Attest:

COUNTY

COUNTY OF ORANGE

By: _____
Chairman, Board of Supervisors

Robin Stieler
Clerk of the Board of Supervisors

**EXHIBIT A
LEASED PREMISES DESCRIPTION**

Parcel Number: PM 1121-0345-0006

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 888 of Miscellaneous Maps in the Office of the County Recorder of Orange County, together with the right of ingress and egress thereto.

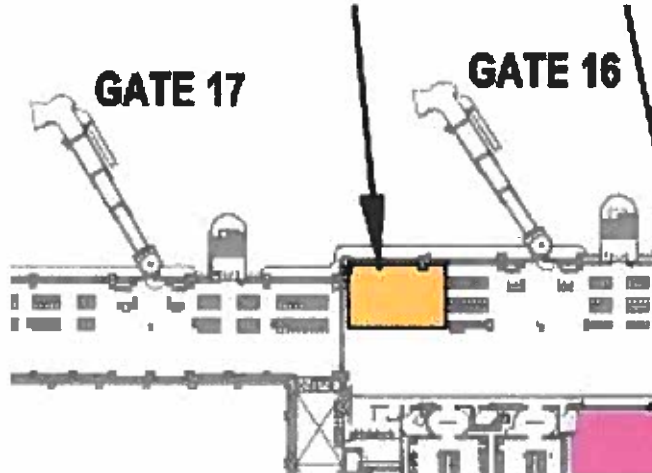
Leased Premises Summary Table:

Site	LOCATION:	APPROXIMATE SQUARE FEET
1	Terminal C, Departure Level, Post-Security	875 S.F.
15	Terminal C, Arrival Level, Baggage Claim	1,694 S.F.
8	Terminal B, Departure Level, Post-Security	500 S.F.

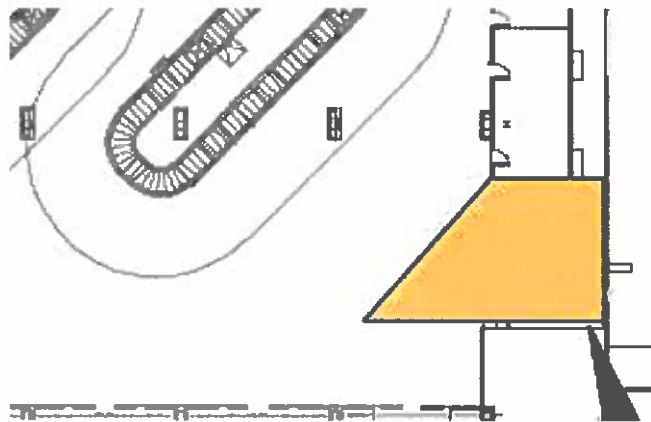
The Leased Premises description may be modified to reflect actual square footage based upon final as-built plans for concession areas.

EXHIBIT B
MAP OF LEASED PREMISES LOCATIONS

SITE 1



SITE 15



SITE 8

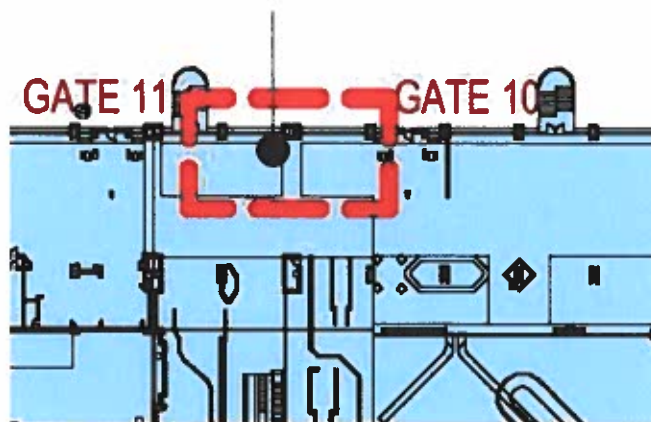


EXHIBIT C PERMITTED USE

Sites 1 and 15

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

Site 8

Specialty Sambazon Acai Bowl Kiosk - TENANT must offer Acai bowls, smoothies, steel cut oats, cheese bread, nitro cold brew coffee, Kombucha, and juice. TENANT must provide bottled non-alcoholic beverages such as water and juices; Grab-and-go counters must be incorporated in the restaurant design so that guests are able to purchase freshly prepared foods and non-alcoholic beverages to go. TENANT is required to participate with JWA's interactive concession wayfinding program, with menus that have calorie counts, ordering, reservation, pick-up, and delivery system. Restaurant design must have designated pick-up locations for online mobile ordering. TENANT will be required to install and operate their own mobile application that interacts with JWA interactive wayfinding concession system. TENANT is required to have a delivery service that complies with JWA's interactive wayfinding program. TENANT shall deliver food/non alcoholic beverages to the gate at no charge to JWA passengers. TENANT is required to be on the JWA concession wayfinding system on or before the rental commencement date. Any breach to permitted uses will be subject to penalties up to and including termination of Lease. TENANT is prohibited from serving, alcoholic drinks, beer, wine, carbonated drinks, hot coffee, hot tea, tobacco, e-cigarettes, cannabis products, and/or vaporizers.

EXHIBIT G
PERCENTAGE RENT

Tiered Rent - All Sites	
Total Annual Cumulative Gross Receipts	Percentage Applied to Month's Gross Receipts to Calculate Percentage 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%