



REQUEST FOR PROPOSALS



PM 1121 0345 0014

FOOD AND BEVERAGE, RETAIL CONCESSIONS



PROPOSAL SUBMITTAL DUE DATE: March 12, 2020 by 2:00 p.m.

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

  <p>3160 Airway Avenue Costa Mesa, CA 92626</p>	<p>PROPOSALS MUST BE RECEIVED ON OR BEFORE</p> <p>March 12, 2020</p> <p>Before 2:00 P.M. PST</p> <p>RFP Number PM 1121 0345 0014</p>	
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Cover Page

John Wayne Airport (“JWA” or “Airport”), owned and operated by the County of Orange, California (“County”), is soliciting proposals under this Request for Proposals (“RFP”) from qualified firms (“Proposers”) to provide Food and Beverage and Specialty Retail Concessions at the Airport.

Proposers must have been determined by JWA to meet or exceed the minimum requirements set forth within the Request for Qualifications issued on January 16, 2020 (“RFQ”) based on a Statement of Qualifications submitted in response to that RFQ. Each awarded Concessions Lease (“Lease”) will be effective for a ten (10) year term for Food and Beverage Concessions and a seven (7) year term for Specialty Retail Concessions.

This RFP is set out in the following format:

SECTION I	Introduction
SECTION II	Proposal Requirements
ATTACHMENTS	Concession Leases
EXHIBITS	Lease Outline Drawings

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

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

JWA Business Development (BD) will provide all official communication concerning this RFP. With respect to this RFP, any County response other than from BD and in writing will be unauthorized and the County shall bear no responsibility for any and all reliance upon such communication.

I HAVE READ, UNDERSTOOD, AND AGREE TO ALL STATEMENTS IN THIS REQUEST FOR PROPOSAL (RFP) AND TO THE TERMS, CONDITIONS, ATTACHMENTS AND EXHIBITS REFERENCED HEREIN.

Company Name (as it appears on your invoice and W9)

Fed ID#

Address

Authorized Signature (Sign all copies)

Title

Date

Name of person to contact in reference to this proposal

Phone Number

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I. INTRODUCTION



PROPOSALS REQUESTED

The County is requesting proposals (“Proposals”) for the JWA Concession Development Program. Phase 2 of the Program will consist of a total of seven (7) Leases for nine (9) locations. There will be five (5) specialty retail locations (two stand-alone Leases and one Lease for three locations), two (2) casual dining & bar locations, one (1) wine bar location, and one (1) quick serve location within the JWA Terminals. A recommended slate of concessionaires will be developed through the RFP process described herein, and the County’s Board of Supervisors (“Board”) will select successful Proposers and award Leases in accordance with California Government Code Section 25536. Design and permitting will begin immediately after the Lease execution date, with a projected construction completion and opening date of November 2020.

This RFP provides the opportunity for all qualified Proposers to submit Proposals for concepts at the following locations:

Site ID	Location	Location Concept	Approx. Square Footage
4	Terminal C (Gate 14)	Specialty Retail	1,000
5 *	Terminal C (Gate 14)	Specialty Retail	1,100
9 *	Terminal B (Gate 10)	Specialty Retail	930
11	Terminal A (Gate 7)	Specialty Retail	930
12 *	Terminal A (Gate 7)	Specialty Retail	930
18	Terminal B (Gates 9-10)	Food and Beverage/Wine Bar	2,065
8	Terminal B (Gate 10-11)	Food and Beverage: Bar/Casual Dining	2,176
14	Terminal A (Gate 3-4)	Food and Beverage: Bar/Casual Dining	1,949
2	Terminal C (Gate 17-18)	Food and Beverage: Quick Serve	1,084

*Sites 5, 9, & 12: One Specialty Retail Lease

Proposers may submit Proposals on one or more location concepts identified in this RFP. However, each Proposer can only be awarded a maximum of one (1) Food and Beverage Lease package. Proposers can be awarded more than one Specialty Retail Package. If proposing on one or more lease package, the Proposer is required to submit a separate and complete Proposal for each lease package.

The County reserves the right to award locations based on the best fit for the overall concessions program. JWA reserves the right to phase construction as necessary to minimize impacts of site development on the Airport’s guests, as well as balance the needs of its tenants, including airlines, existing concessionaires, and new concessionaires. The timelines expressed in this RFP are merely estimates, subject to change, and JWA will not be liable to successful Proposers for any circumstances resulting in delayed construction completion.

CONCESSIONS PROGRAM GOALS

JWA has established the following goals for this RFP:

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

AIRPORT DESCRIPTION

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

JWA spans approximately 500 acres and its two runways serve commercial and private aircraft. The Airport is served by several major commercial airlines and is home to a vibrant business jet and piston engine general aviation community. In 2018, JWA served more than 10 million passengers from the Thomas F. Riley Terminal and handled nearly 20,000 tons of cargo.

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

SETTLEMENT AGREEMENT BACKGROUND

The 1985 "Settlement Agreement" formalized consensus reached between the County of Orange, the City of Newport Beach, and two community groups on the nature and extent of facility and

operational improvements that could be implemented at JWA through 2005. In 2003, the original four signatories approved a series of amendments to the Settlement Agreement that allowed for additional facilities and operational capacity and continued to provide environmental protections for the local community through 2015. This amendment allowed for additional facilities and operational capacity and continued to provide environmental protections for the local community. In 2014, the signatories approved amendments that increased operational capacity and extended the agreement through December 31, 2030. No facility improvements were included in this amendment.

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

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

<http://www.ocair.com/communityrelations/settlementagreement/docs/1985%20Settlement%20Agreement.pdf>

9th Supplemental Stipulation -

<http://www.ocair.com/communityrelations/settlementagreement/docs/9th%20Stipulation.pdf>

10th Supplemental Stipulation -

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

CONCESSION PROGRAM PHASE 1

JWA's Phase 1 Concession Program consisted of a total two (2) specialty retail locations, two (2) casual dining & bar locations, four (4) specialty coffee locations, and one (1) quick serve location throughout terminals A, B, and C. Selection was made through the RFP process and awarded by the Board of Supervisors on August 27, 2019. Construction of the newly awarded leases is expected to be completed by third quarter 2020.

HOURS OF AIRPORT OPERATION

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

CURRENT RETAIL CONCESSIONS

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

REPORTED GROSS RECEIPTS FOR CURRENT RETAIL CONCESSIONS

(Fiscal Year is July through June)

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

CURRENT FOOD AND BEVERAGE CONCESSIONS

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

REPORTED GROSS RECEIPTS FOR CURRENT FOOD AND BEVERAGE CONCESSIONS

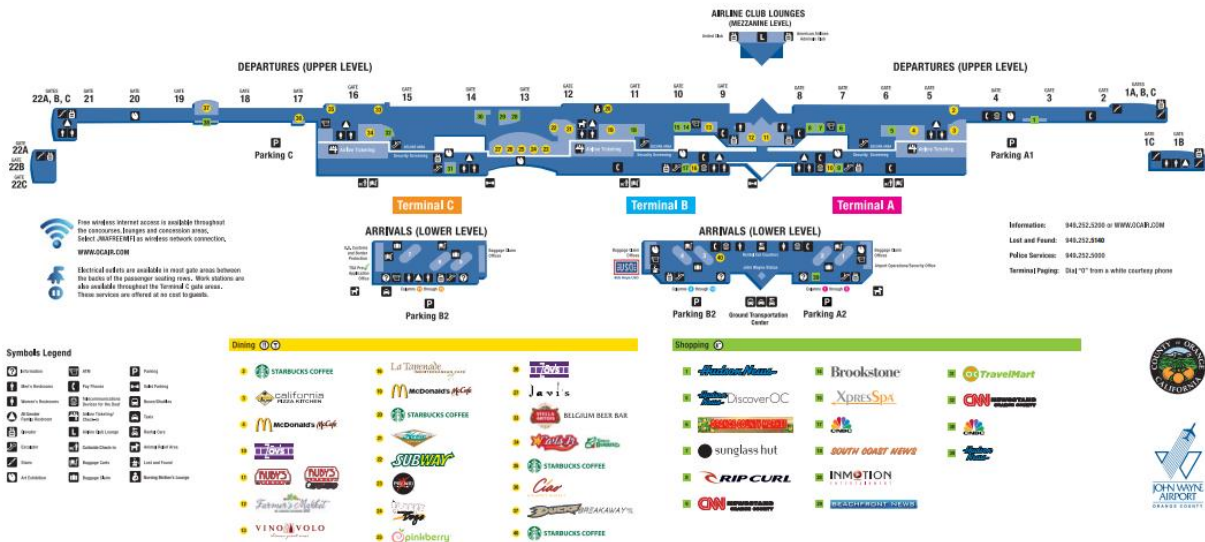
(Fiscal Year is July through June)

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

<https://www.ocair.com/investorrelations/financials/revenuereports/FY17-18.pdf>

Thomas F. Riley Terminal

JOHN WAYNE AIRPORT
ORANGE COUNTY



PASSENGER TRAFFIC

A breakdown of passengers is provided below. It may be assumed that passengers were split equally between enplaned and deplaned passengers.

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

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

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

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

Jan-19	819,392
Feb-19	789,557
Mar-19	923,469
Apr-19	899,276
May-19	942,872
Jun-19	918,913

Jul-19	946,111
Aug-19	942,541
Sep-19	859,174

FIVE-YEAR ENPLANED PASSENGER COUNT HISTORY

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

PASSENGER PROFILE

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

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

PARKING FACILITIES DESCRIPTION

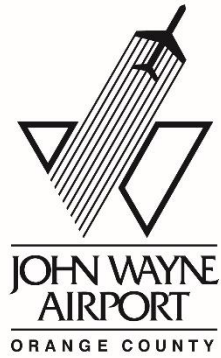
JWA parking facilities consist of the A1 Parking Structure (approximately 1,476 parking spaces) A2 and B2 Parking Structures (approximately 4,442 parking spaces, consisting of 3,033 public spaces, 756 rental car spaces, 588 valet parking spaces, and 65 employee spaces), and Parking Structure C (approximately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

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

CURRENT PASSENGER PARKING OPERATIONS

The County currently has an operating agreement with LAZ Parking California, LLC (LAZ) for the operation of JWA public parking facilities, which include the parking structures and the Main Street Lot. The courtesy passenger shuttle service between the Main Street long-term parking lot and the Terminal and the employee shuttle service between the employee parking lot on Main Street and the Terminal are currently operated by LAZ shuttle services.

II. PROPOSAL REQUIREMENTS



PROPOSAL OVERVIEW

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

Space/Site	Total Area	Category
Terminal A Post Security- Site 11 Site 12*	930 sf. 930 sf.	<u>Specialty High End Retail:</u> The categories suggested below, are provided as a guideline. JWA encourages creativity by Proposers for concept, design and layout. <ul style="list-style-type: none"> • Luxury Accessories • High End Prestige Cosmetics/Body Care • Designer Apparel • Theme Park merchandise • High End Jewelry/Watches • Leather Goods Successful Proposers will be required to comply with JWA interactive wayfinding signage with menus, ordering, designated pickup locations and delivery system. The following items/services are not permitted: <ul style="list-style-type: none"> • News and Gift items • Tobacco, e-cigarettes, cannabis products, and/or vaping products • Spa Services • Electronics • Food/Beverage products • Candy and pre-packaged snack items
Terminal B Post Security- Site 9*	930 sf.	
Terminal C Post Security- Site 4 Site 5*	1,000 sf. 1,100 sf.	
*One lease package		
Terminal A Post Security- Site 14	1,949 sf.	<u>Casual Dining Restaurant/Bar:</u> These are locations with table service and a separate bar area. All locations should offer front window seating with a view of the airfield. JWA prefers restaurant concepts that focus on specific themes – such as a regional specialty cuisine or celebrity chef inspired – that are unique or present a strong local or regional brand. Food must be made-to-order. Overall sales for alcohol should not exceed 40%. Restaurants must offer a menu that covers breakfast, lunch, and dinner consistent with the proposed concept theme or brand. Drip coffee will be allowed. In addition, a separate bar area should be designated and offer a full variety of alcoholic beverages, including cocktails, beer, and wine. Exposition cooking and open design are strongly encouraged.
Terminal B Post Security- Site 8	2,176 sf.	

		<p>Grab-and-go counters should be incorporated in the restaurant design so that guests are able to purchase freshly prepared foods and non-alcoholic beverages to go.</p> <p>Successful Proposers will be required to comply with JWA interactive wayfinding signage with menus including calorie count, ordering, reservations, designated pickup locations, and delivery system.</p> <p>It is important to note that proposed concepts must not duplicate any concepts currently offered in the terminals.</p> <p>The following items are not permitted:</p> <ul style="list-style-type: none"> • Specialty Coffee and Specialty Tea Beverages • Candy and pre-packaged snack items • Tobacco, e-cigarettes, cannabis products, and/or vaping products
Terminal C Post Security- Site 2	1,084 sf.	<p><u>Quick Serve Restaurant (QSR):</u></p> <p>The offered location is intended for the sale of made-to-order food and non-alcoholic beverages in a counter-service setting. JWA prefers the quick service concept to be a recognized local or regional brand.</p> <p>The menu should focus on one specific cuisine or offer a variety of freshly prepared items that covers breakfast, lunch, and dinner. The QSR must offer premium quality products, fulfilled/provided quickly, efficiently and in durable environmentally conscious packaging.</p> <p>Examples of cuisines or themes include, but are not limited to:</p> <ul style="list-style-type: none"> • American • Asian • Italian • Latin American • Mediterranean • Mexican <p>It is important to note that proposed concepts should not duplicate any existing concepts already offered in the terminal.</p> <p>Grab-and-go counters should be incorporated in the restaurant design so that guests are able to purchase freshly prepared foods and non-alcoholic beverages to go.</p> <p>The successful Proposer will be required to comply with JWA interactive wayfinding signage with menus including calorie count, ordering, reservations, designated pickup locations and delivery system.</p> <p>A maximum of 10% of retail space can be used to sell their branded non-food items.</p> <p>Seating will be permitted contingent upon proposed design. If approved design allows for a controlled seating area within the lease premises; the successful Proposer will have the ability to sell beer and wine.</p>

		<p>The following items are not permitted:</p> <ul style="list-style-type: none"> • Specialty Coffee and Specialty Tea Beverages • Pre-packaged snack items • Tobacco, e-cigarettes, cannabis products, and/or vaping products
Terminal B Post Security Site 18	2,065 sq ft	<p><u>Wine Bar</u> Wine bar concept must include a made to order menu.</p> <p>This is a location with table service and a separate bar area. All locations should offer seating with a view of the airfield. JWA prefers restaurant concepts that focus on specific themes – such as a regional specialty cuisine or celebrity chef inspired – that is unique or presents a strong local or regional brand.</p> <p>Food must include a made-to-order menu.</p> <p>Overall sales for alcohol consumption on site should not exceed 40%. Bottle sales are not included in this percentage.</p> <p>Restaurants must offer a menu that covers breakfast, lunch, and dinner and are consistent with the proposed concept theme or brand. Drip coffee will be allowed. In addition, a separate bar area should be designated and offer a full variety of local, regional and national wines. Exposition cooking and open design are strongly encouraged.</p> <p>Grab-and-go counters should be incorporated in the restaurant design so that guests are able to purchase freshly prepared foods and non-alcoholic beverages to go.</p> <p>Operator is required to comply with JWA interactive wayfinding signage with menus including calorie count, ordering, reservations, designated pickup locations and delivery system.</p> <p>It is important to note that proposed concepts must not duplicate any existing concepts already offered in the terminals.</p> <p>The following items are not permitted:</p> <ul style="list-style-type: none"> • Specialty Coffee and Specialty Tea Beverages • Candy and pre-packaged snack items • Tobacco, e-cigarettes, cannabis products, and/or vaping products

The Airport reserves the right to restrict or prohibit the sale of those items which, in the opinion of the Airport, are not in the public interest, or which might compete unfairly with other Terminal concessions. The Lease will require each tenant to agree not to conduct or permit to be conducted any public or private nuisance in, on, or from the leased premises, or to commit or permit to be committed any waste in, on, or from the leased premises.

PRICING

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

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

CONCESSION CONSTRUCTION REQUIREMENTS

JWA's goal is to facilitate the highest concession standards by establishing an atmosphere that provides a superior guest experience, and increases the operational and economic performance of each concession.

Proposer shall construct, equip, and complete the capital improvements for the concession locations included within this RFP in accordance with the Tenant Design Guidelines (TDG) and plans and specifications approved by County. Proposers can view or obtain a copy of JWA's TDG at:

https://www.ocair.com/businessandemployment/docs/tenants/JWA-Tenant-Guidelines_2019-10-28.pdf

A minimum of **Four Hundred Dollars (\$400.00)** per square foot in capital improvement costs must be used for the development of construction and installation of the capital improvements in each specialty retail concession location in Proposer's five-year pro-forma planning submittal.

A minimum of **Five Hundred Dollars (\$500.00)** per square foot in capital improvement costs must be used for the development of construction and installation of the capital improvements in each food and beverage concession location in Proposer's five-year pro-forma planning submittal.

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

CONCESSION MIDTERM REFURBISHMENT

At the midterm of the Lease, each tenant shall be required make a reinvestment, in an amount to be determined by Airport Director but not exceeding 50% of the total cost of its initial capital improvements, for the purpose of keeping the concession and its technology contemporary and competitive with current concession trends and methods. Each tenant shall complete the Concession midterm Refurbishment, as approved by the Airport Director or designee, within one hundred eighty (180) days from the midterm of the Lease. For Specialty Retail Concession Leases, the midterm is three-and-a-half years (42 months) from the Rent Commencement Date (as defined

in the Lease). For Food and Beverage Concession Leases, the midterm is five years (60 months) from the Rent Commencement date. Failure to complete the refurbishment by said date shall be cause for termination of the Lease, and/or at the direction of the Airport Director or designee, the sum of two thousand dollars (\$2,000) per day until the Concession Midterm Refurbishment has been completed to the satisfaction of the County. This amount shall be in addition to all other sums due under the Lease.

Each tenant shall be required to submit plans for the Concession Midterm Refurbishment at least one hundred eighty (180) days prior to midterm anniversary. The plans and specifications shall be certified by an architect or engineer and shall consist of (a) working drawings, (b) technical specifications, and (c) proposed equipment upgrades or changes. Failure to submit the plans for refurbishment by said date shall be cause for termination of the Lease, and/or at the direction of the Airport Director or designee, the sum of two thousand dollars (\$2,000) per day until the Concession Midterm plans have been submitted to the satisfaction of the County. This amount shall be in addition to all other sums due under the Lease.

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

LEASE SUMMARY – FOOD AND BEVERAGE CONCESSIONS

USE

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

LEASED PREMISES

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

TERM

Ten Years (10) years commencing upon the Rent Commencement Date.

TERMINATION

County may terminate the Lease upon 60 days' written notice, subject to the tenant reimbursement requirements of the Lease.

RENT

The tenant shall pay monthly 1/12th of the Minimum Annual Guarantee (MAG) of \$100.00 per sq. ft. or percentage rent, whichever is higher. The tenant shall report sales in arrears on the 15th of the month along with payment of MAG or percentage rent, whichever is higher. The percentage rent will be tiered based on gross revenues as follows:

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

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

Wine Bar Tiered Rent		
\$ -	\$1,000,000.00	12%
\$1,000,000.01	\$2,000,000.00	14%
\$2,000,000.01		16%

LEASE SUMMARY – SPECIALTY RETAIL CONCESSIONS**USE**

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

LEASED PREMISES

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

TERM

Seven (7) years commencing upon the Rent Commencement Date.

TERMINATION

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

RENT

The tenant shall pay monthly 1/12th of the Minimum Annual Guarantee (MAG) of \$100.00 per sq. ft. or percentage rent, whichever is higher. The tenant shall report sales in arrears on the 15th of the month along with payment of MAG or percentage rent, whichever is higher. The percentage rent will be tiered based on gross revenues as follows:

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

LEASE SUMMARY – APPLICABLE TO ALL CONCESSIONS

INFRASTRUCTURE FEE

Each tenant shall pay to the County an Infrastructure Fee, payable monthly in arrears on or before the fifteenth day of each month. This charge covers the amortized cost of utility infrastructure improvements that the Airport provides to each concession lease location. This rate is eight dollars (\$8.00) per year per square foot, payable in monthly pro-rata installments throughout the term of the Lease. The fee is due upon Rent Commencement Date and is additional rent.

RENT REVISION

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

STORAGE SPACE

Storage space is available depending on Concessionaire needs and shall be made available under a separate agreement with the County. Cost of rent is per square foot based on the latest rates and charges schedule established by the County. The rate is subject to adjustments from time to time. Proposers are requested to identify storage space requirements as part of this Proposal and state the amount of square footage need anticipated on Attachment 3. The Airport will attempt to locate storage space as close to the proposed space as possible.

BADGING/PARKING FEES

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 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.

Each tenant shall pay the monthly employee parking fee, subject to change, for employee vehicles parked in the employee parking lot or other designated employee parking locations on the Airport.

MARKETING FUND

The 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, each tenant shall be required to make an annual marketing fund payment in the amount of ten thousand dollars (\$10,000.00) per location. The 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, the tenant shall pay a pro-rata portion of the annual amount corresponding to the number of months remaining in that calendar year.

For example, if the Lease commences on November 1, the tenant shall pay the monthly pro-rata portion (\$833.33 per month) of the annual marketing fund amount for November and December (totaling \$1,666.67). Then, commencing on January 1, the tenant shall make the full annual marketing fund payment of \$10,000.00. Should the Lease expire on September 15, the tenant shall pay a pro-rata portion of the annual amount for the months of January through September.

SECURITY DEPOSIT

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

OPERATIONAL REQUIREMENTS

Our customers, and yours, typically consist of passengers who have limited time to spend in restaurants and shops and must be served quickly and efficiently. Concessionaires should pay close attention to how their facilities will accommodate customers who may have rolling luggage and may be traveling with others including children. The Airport is open 365 days per year, and flight delays necessitate that tenants be prepared to extend hours to provide valuable customer service and capture this additional business. Each employee at the Airport is also an ambassador for the Airport. Training is essential to ensure that knowledge of the terminals, the basic functioning of the Airport, and general information about the region are known by all employees. It is very common for anyone wearing an Airport identification badge to be approached by passengers with general questions.

A. Personnel

1. Tenant is required to provide a qualified and experienced manager onsite to oversee operations.

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

B. Operation

1. Tenant's concession plan, products and pricing must be as the tenant has proposed and approved by County and the tenant shall not make any changes without first obtaining written approval of Airport Director or designee. All requests must be submitted thirty (30) days in advance for review.
2. Prices for food and beverage items or services offered shall be conspicuously displayed in 36 font and/or printed on a menu or brochure. All retail items and grab and go food items are required to be displayed with visible signage in a 36 font reflecting prices. Prices must not exceed street pricing + 10% as approved by Airport Director or designee.
3. Promotional advertising displays and signage are not permitted unless approved by Airport Director or designee in advance. All requests must be submitted thirty (30) days in advance for review. Any displays that are considered objectionable must be removed at discretion of County.
4. Tenant is required to accept cash, major credit cards and debit cards for payment.
5. Tenant is required to use recyclable materials and participate in the Airport's recycling program.
6. Tenant is required to have supplies delivered only at times (currently 11:00 pm - 6:00 am, seven (7) days a week), and through routes and entrances (non-peak hours), designated by Airport Director.
7. Tenant 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.
8. Tenant is responsible for charges for installation of dedicated phone lines and phone service charges, and for making all electrical, sewer, HVAC, gas and water connections to and within the leased premises.
9. Tenant is required to immediately notify Airport Director or designee of all citations concerning food safety or other inspection violations.
10. Tenant cannot place any unauthorized lock upon any window or door unless a key is

maintained on the leased premises and a copy provided to Airport Director or designee.

11. Tenant shall establish and submit a Standards of Quality operating manual to JWA for review and approval. Tenant must maintain the approved standards offering quality service and food.
12. County shall have the right to implement a revenue system that can provide daily reports to County. If County exercises such right, the 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.

C. Terminal Communication Systems and Operations

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

CONCESSION REFURBISHMENT

Tenant shall submit plans and specifications for JWA's approval of its refurbishment of the facilities at least one hundred eighty (180) days before midterm anniversary from the Rent Commencement Date:

- For Specialty Retail three-and-a-half years (42 months) for Specialty Retail
- For Food and Beverage and 5 years (60 months)

Tenant shall expend an amount to be determined by the Airport Director based on the condition of the leased premises but not exceeding 50% of the total cost of its initial capital improvements for the purpose of keeping the concession and its technology contemporary and competitive with current concession trends and methods.

ASSIGNING AND TRANSFERRING

Assigning and transferring are permitted only upon County's prior written approval after the tenant has submitted all required documents and fees.

INSURANCE

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

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

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

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

PROPOSERS' INSTRUCTIONS

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

All proposal documents and supplementary material or information submitted to JWA shall become the property of the County of Orange. All costs associated with the preparation and submission of any proposal shall be borne entirely by the Proposer. All documents submitted in connection with this RFP will remain confidential until selection of Proposers for recommendation to the County's Board of Supervisors. Upon selection of Proposers, said documents may be subject to public disclosure pursuant to the California Public Records Act ("PRA") at California Government Code Section 6250 *et seq.*

The Proposer must clearly mark as "confidential" all pages that Proposer claims are exempt from public disclosure pursuant to the PRA. If the County receives a PRA request for such records, the County will notify the affected Proposer of the request and the estimated time at which the County will publicly disclose such records, providing the Proposer with an opportunity to obtain a court order prohibiting such disclosure. The County shall in no way and under no circumstances become liable due to to the public disclosure of records submitted in response to this RFP.

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

PROJECTED SCHEDULE

Event	Schedule
Outreach/Informational Meeting	January 15, 2020
RFQ Issuance	January 16, 2020
RFQ Questions Cut-off	January 21, 2020 @ 2:00 p.m.
RFQ Submittal Cut-off	January 28, 2020 @ 2:00 p.m.
Memo to Board of Supervisors of Qualified Proposers	February 4, 2020
RFP Issuance	February 5, 2020
Pre-Proposal Meeting and Site Walk (Not Mandatory)	February 7, 2020 @ 12:00 p.m.
RFP Questions Cut-off	February 14, 2020 @ 2:00 p.m.
RFP Submittal Cut-off	March 12, 2020 @ 2:00 p.m.
Panel Review/Interviews	Week of April 6 th
Airport Commission Meeting	May 6, 2020
Board of Supervisors Award of Leases	May 19, 2020
Design and Permitting	May-September 2020
Construction Period	June-November 2020
Opening	October-December 2020

PROPOSAL PROCEDURE

To be considered for the award of a Lease at JWA, Proposer must complete and submit a signed Proposal including a Proposer's deposit, a Proposer's Questionnaire, a signed Lease with attachments (see Exhibit 3), and all required documents identified on the checklist as set forth below.

PRE-PROPOSAL MEETING AND SITE WALK

Proposers are encouraged to attend a pre-proposal meeting and site walk. JWA staff will be available at that time to summarize the RFP process. This opportunity will occur one time only, and the County will not schedule individual meetings. The pre-proposal meeting and site walk is not mandatory.

If you will be attending the pre-proposal meeting and site walk, you must register through Survey Monkey at <https://www.surveymonkey.com/r/TG3HZD2>.

The pre-proposal meeting and site walk will be held on February 7, 2020, at 12:00 P.M. at:

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

Participating Proposers will initially assemble at the above location, where the pre-proposal meeting will take place in the Terminal Administration conference room. From there, you will be escorted for a site tour of the terminal concession locations. Proposers who are late will not have the opportunity to participate in the tour.

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

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

PROPOSAL ADDENDA

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

PROPOSAL DEPOSIT

Each Proposal must be accompanied by a deposit in the amount of twenty-five thousand dollars (\$25,000) in the form of a cashier's check made payable to "County of Orange/John Wayne Airport" and submitted in a sealed envelope with the Proposal.

Deposits submitted by the unsuccessful Proposers will be returned within thirty (30) days after execution of the relevant Lease by the County and the successful Proposer, or after all Proposals have been rejected.

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

FORMAT REQUIREMENTS

The Proposal must be submitted on the Proposal Form and must be formatted and presented as set forth below.

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

Page Limit: Proposals shall not exceed **one hundred (100) two-sided sheets**, excluding front and back covers, section dividers, financial statements, and table of contents. Proposals should be prepared in a concise manner that clearly responds to the information requested in this RFP. **Any additional pages will be discarded and will not be reviewed.**

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

SUBMISSION OF PROPOSALS VIA SEALED PACKAGE

Packaging and Identification: Respondent shall submit its Proposal in a sealed package and shall write/type the submittal address information on the outermost portion of the sealed package.

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

Proposal Due Date and Time: March 12, 2020, at 2:00 PM

Proposals shall be submitted to the following address:

County of Orange/John Wayne Airport
Eddie Martin Administration Building
Attn: Deputy Airport Director, BD – Concession Proposal PM 1121- 0345-0014
3160 Airway Avenue
Costa Mesa, CA 92626

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

PROPOSAL REVIEW AND EVALUATION

JWA will supervise the analysis of all properly submitted Proposals and return to the Board of Supervisors with the evaluation committee's slate of recommended Proposers with their corresponding scores.

The evaluation committee's recommendation will be advisory to the Board. It is the County's intent to award the Leases pursuant to California Government Code Section 25536 to Proposers who provide Proposals that best meet the objectives of this process.

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

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

1. Evidence of collusion among Proposers.
2. Incomplete or late submittals of Proposals or other requested information.
3. Submittal of Proposal in a format or order other than required.
4. Non-submittal of Proposer's deposit, or submittal in a form other than Cashier's Check.
5. Insufficient evidence of business skills or financial resources necessary to successfully operate and manage a concession as revealed by either financial statements or experience.
6. Insufficient evidence of responsibility as shown by past work, references, or other factors.
7. Default or termination of other contracts or agreements.
8. Omission, inaccuracy, misstatement, or failure to submit any portion of the Proposal and signed Lease with the Proposal.
9. Any substantial omission, inaccuracy, or misstatement in the signed Statement of Qualifications previously submitted.

10. Contact with any JWA personnel with any questions or clarifications concerning this RFP other than through Bidsync.

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

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

ITEMS TO BE PROPOSED AND SUBMITTED

Details regarding submittal requirements can be found on Attachment 2, CHECKLIST OF REQUIREMENTS FOR PROPOSAL SUBMITTAL. The following items are required, and failure to submit any of the following may result in disqualification.

1. Cover Sheet (Attachment 1) (2 pages)
2. Checklist of Requirements for Proposal Submittal (Attachment 2) (1 page)
3. Proposal Form (Attachment 3) (3 pages)
 - Experience, References, and Qualifications
 - Financial Viability
 - Estimated Storage Space
4. Proposer's Questionnaire (Attachment 4) (11 pages)
 - Audited Financial Statements
5. Business Plan
6. Proposal Deposit of \$25,000.00
7. 5-year Pro Forma Excel Template (Attachment 5) (2 pages)
8. Signed Concession Lease (3 originals) (Exhibit 1)
9. 11x17 Foam Board Concept Design (3 boards)

AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) PARTICIPATION

Requirements of 49 CFR Part 23, Disadvantaged Business Enterprise Program

- A. **Policy** - It is the policy of the John Wayne Airport under the direction of its governing body, the Orange County Board of Supervisors, to promote the objectives of the Department of Transportation (“DOT”) with respect to the participation of Airport Concession Disadvantaged Business Enterprises (“ACDBEs”) in DOT-assisted contracts. This policy has been formulated to comply with 49 CFR Part 23. The objectives of the program are as follows:
- (a) To ensure nondiscrimination in the award and administration of contracts;
 - (b) To create a level playing field on which ACDBEs can compete fairly for contracts;
 - (c) To ensure that the ACDBE program is narrowly tailored in accordance with applicable law;
 - (d) To ensure that only firms that fully meet DOT eligibility standards are permitted to participate as ACDBEs;
 - (e) To help remove barriers to the participation of ACDBEs in contracts;
 - (f) To assist the development of firms that can compete successfully in the marketplace outside the ACDBE program; and
 - (g) To provide appropriate flexibility in establishing and providing opportunities for ACDBEs.
- B. **ACDBE Goal** - John Wayne Airport has not established an ACDBE contract goal for this opportunity but has established a race-neutral goal of 13.3% for the airport’s specialty retail and food and beverage concessions. This encourages participation by firms owned and controlled by socially and economically disadvantaged persons.

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

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

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

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

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

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

- C. Proposal Requirements - Proposers who include ACDBE participants are required to submit the following information regarding intended participation by ACDBEs:

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

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

http://dot.ca.gov/hq/bep/downloads/pdf/ACDBE_UCP_APPLICATION_PACKAGE_REV_04.14.09.pdf

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

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

AMERICANS WITH DISABILITIES ACT (ADA)

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

POURING RIGHTS

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

COMMENCEMENT OF OPERATIONS

The target start date for operation of each Concession shall be the Rent Commencement Date.

PROPOSAL SELECTION PROCEDURE

PANEL RATING CRITERIA FOR PROPOSALS

Category	Points
<u>Proposed Concept/Executive Summary</u> <ul style="list-style-type: none"> • Strength of brand(s) - local or regional concepts • Overall appeal of proposed concept • Conformance with concept sought in RFP • Ability to maximize sales, revenue and guest satisfaction • Proposed merchandise/menu/services list and prices • Provide a staffing plan for a typical one week period 	35
<u>Design Intention and Capital Investment</u> <ul style="list-style-type: none"> • A description of proposed design • Overall appeal and quality of design • Images depicting the front elevation, signage, floor plan and interior design intent. Photographs of existing similar facilities along with a discussion of the design intent for JWA are acceptable. One original set of three 11x17 foam boards depicting the design, materials and concept with colored copies in the RFP binder • Design supports the proposed brand/concept, and a strong merchandising strategy is incorporated into design 	20
<u>Customer Service, Marketing and Operations Plan</u> <ul style="list-style-type: none"> • Customer service and corporate monitoring of the concession to ensure high standards are maintained and overall performance of the business is strong • Customer service standards, approach to providing service during peak periods, customer feedback, complaint and resolution process, service monitoring, and quality control • How your facilities will be maintained to ensure excellent repair, cleanliness and appealing product presentation • Merchandising and pricing plan 	10
<u>Sustainability</u> <ul style="list-style-type: none"> • Employee retention program • Management plan, including on-site management, local hiring, training, development • Employee benefits (health care, vacation schedule, retirement) • Ties to the community • Environmental/Recycling programs 	15
<u>Business Plan – Financial Pro Forma (Attachment 5)</u> <ul style="list-style-type: none"> • 5 Year Financial Pro Forma showing projected sales, revenue to the Airport, expenses, and net income. Proposers are to use the format shown on Attachment 3. The Financial Pro Forma should demonstrate an understanding of the proposed lease and will be considered for its reasonableness and viability of proposed operation and financial offer, and the ability to fund continuing operations from the cash flow generated by the operation • Last 2 years of Certified Public Accountant (CPA) Audited Financial Statements 	10
<u>Question and Answer Panel Review</u> <ul style="list-style-type: none"> • 5 pre-set questions on the above categories 	10
Total	100

Upon completion of the evaluation committee's review and development of a recommended list of successful Proposers, the recommendation will be presented to the Board at a regularly scheduled public meeting for award of the Leases.

JWA will require interviews as part of the rating criteria. The oral interview will include the same questions for each Proposer. The oral interview is worth 10 points of the total rating score.

EXECUTION OF CONCESSION LEASE

JWA requires that three (3) original copies of the Lease be signed and returned as part of the proposal. No changes are permitted. A model Lease for each type of concession is attached to this RFP. Following award of a Lease to the successful Proposer by the Board, the Lease will be executed by the County after notification from JWA staff that the County has received all required submittals, including satisfactory evidence of insurance, the applicable marketing fund payment, and the security deposit.

PROTEST POLICY

Any actual or prospective proposer who alleges a grievance by the solicitation or award of a contract may submit a grievance or protest to the Airport Director. All protests shall be typed under the protester's letterhead and submitted in accordance with the following provisions. All protests shall include, at a minimum, the following information:

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

Protest of Proposal Specifications:

All protests related to specifications contained in this RFP must be submitted to the Airport Director no later than 5 business days after the close of the Questions and Answer period. Protests received after the 5 business day deadline will not be considered by the County.

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

Protest of Award of Contract:

In protests related to the award of a contract, the protest must be submitted to the Airport Director no later than 5 business days after the notice of the proposed award is provided by the

Airport. Protests relating to a proposed award which are received after the 5 business day deadline will not be considered by the County.

Protest Process

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

Appeal Process

- If the protester wishes to appeal the decision of the Airport Director, the protester must submit, within three (3) business days from receipt of the Airport Director's decision, a written appeal to the CREO.
- Within fifteen (15) business days, the CREO will review all materials in connection with the grievance, assess the merits of the protest and provide a written determination.
- The decision of the CREO will be final and there shall be no right to any further administrative appeals of this decision.

Name of Proposer

Initial	Items
	All Proposals must be submitted in a sealed envelope before the time and date shown on RFP.
	Deliver Proposals to: County of Orange/John Wayne Airport Eddie Martin Administration Building Deputy Airport Director, BD – Concession Proposal PM 1121-0345-0014 3160 Airway Avenue Costa Mesa, CA 92626
	Label Proposals: <u>SEALED PROPOSAL</u> County of Orange/John Wayne Airport Eddie Martin Administration Building Deputy Airport Director, BD – Concession Proposal 3160 Airway Avenue Costa Mesa, CA 92626 PM 1121-0345-0014
	<u>Select Parcel location this package is proposing on:</u> <input type="checkbox"/> Specialty High End Retail - Site 4 <input type="checkbox"/> Specialty High End Retail - Site 5, 9 and 12 <input type="checkbox"/> Specialty High End Retail - Site 11 <input type="checkbox"/> Quick Serve Restaurant (QSR) - Site 2 <input type="checkbox"/> Casual Dining Restaurant/Bar -Site 8 <input type="checkbox"/> Casual Dining Restaurant/Bar -Site 14 <input type="checkbox"/> Wine Bar – Site 18 <u>A separate package and cover sheet must be submitted for each parcel Proposer is proposing on.</u>
	Twelve (12) full sets of your written proposal, one (1) Original, eleven (11) copies and twelve (12) flash drives
	Proposer Checklist (Exhibit 1) for Proposal Submittal with all required items submitted and tabbed.
	Three (3) Original Signed Concession Lease Copies
	Proposal Deposit of \$25,000 Per Proposal
	Exhibits 1-4 (as applicable)

	(3) 11x17 Foam Board concept designs
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Proposals must be complete, accurate, verifiable, and in the form requested. Omission, inaccuracy, misstatement, or failure to comply may be cause for rejection of the proposal.

Signature

Name

Title

Date

CHECKLIST OF REQUIREMENTS FOR PROPOSAL SUBMITTAL

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

Initial	Item
_____	1. Cover Sheet (Attachment 1)
_____	2. Checklist of Requirements for Proposal Submittal (Attachment 2)
	3. Proposal Form (Attachment 3)
	<ul style="list-style-type: none"> • Experience, References, and Qualifications • Financial Viability • Estimated Storage Space
_____	4. Proposer's Questionnaire (Attachment 4)
	<ul style="list-style-type: none"> • Including Audited Financial Statements
_____	5. Business Plan
_____	6. Proposal Deposit of \$25,000.00
_____	7. 5-year Pro Forma Excel Template (Attachment 5)
_____	8. Signed Concession Lease (3 originals) (Exhibit 1)
_____	9. 11x17 Foam Board Concept Design (3 boards)

I certify that I have submitted all of the above items in my Proposal.

Proposer Name

By:_____

Date:_____

PROPOSAL FORM

Proposer: _____

Contact Name: _____

Address: _____

Email Address: _____

Telephone No: _____

Fax No _____

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

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

Proposer shall pay to County as rent under the Lease the greater of the following:

RENT:

a.) Minimum Annual Guarantee (MAG) in the amount of \$100/SF

In words: One Hundred Dollars per Square Foot

b.) Percentage of gross receipts tiered:

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

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

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

Wine Bar		
\$ -	\$ 1,000,000.00	12%
\$ 1,000,000.01	\$ 2,000,000.00	14%
\$ 2,000,000.01		16%

PROPOSER understands, agrees, and warrants that:

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

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

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

PROPOSER

Signature	Name	Title	Date
-----------	------	-------	------

Signature	Name	Title	Date
-----------	------	-------	------

PROPOSER'S QUESTIONNAIRE

1. Name of Proposer exactly as it will appear on the Lease:

2. Address of Proposer for purposes of notice or other communication relating to the Lease:

3. Telephone Number of Proposer:

4. Contact:

5. Title:

6. FAX number of Proposer:

7. E-mail Address:

8. Local Contact

Address:

Telephone number:

FAX number

E-mail Address:

9. Proposer intends to operate the business with which this proposal is concerned as a

Sole Proprietorship []; Partnership []; Corporation []; Joint Venture []; LLC [];
or:

Explain:

LIMITED LIABILITY COMPANY STATEMENT

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

CORPORATION STATEMENT

If a Corporation, answer the following:

1. When incorporated? _____
2. Where incorporated? _____
3. Is the Corporation authorized to do business in California? Yes [] No []

If so, as of what date? _____

4. The Corporation is held: Publicly [] Privately []
5. If publicly held, how and where is the stock traded?

6. List the following:

Authorized Issued Outstanding

- | | | | | |
|----|----------------------------------|-------|-------|-------|
| A. | Number of voting shares: | _____ | _____ | _____ |
| B. | Number of nonvoting shares: | _____ | _____ | _____ |
| C. | Number of shareholders: | _____ | _____ | _____ |
| D. | Value per share of common stock: | _____ | _____ | _____ |

Par \$ _____

Book \$ _____

Market \$ _____

7. Furnish the name, title, residence address, and the number of voting and nonvoting shares of stock held by each officer, director, and principal shareholder.

<u>Name</u>	<u>Title</u>	<u>Residence Address</u>	<u>Voting Shares</u>	<u>Nonvoting Shares</u>
A. _____	_____	_____	_____	_____
_____	_____	_____	_____	_____
B. _____	_____	_____	_____	_____
_____	_____	_____	_____	_____
C. _____	_____	_____	_____	_____
_____	_____	_____	_____	_____
D. _____	_____	_____	_____	_____
_____	_____	_____	_____	_____

CORPORATION STATEMENT (continued)

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

<u>Principal</u>	<u>Corporation</u>	<u>Date</u>	<u>Position</u>	<u>% shares</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

JOINT VENTURE STATEMENT

If a Joint Venture, answer the following:

1. Date of Organization _____
2. Joint Venture Agreement recorded? Yes [] No []
3. Has the Joint Venture done business in Orange County? Yes [] No []

When? _____

4. Name and address of each Joint Venturer:

<u>Name</u>	<u>Address</u>
A. _____	_____
B. _____	_____
C. _____	_____
D. _____	_____

5. Attach a complete copy of the Joint Venture Agreement.

EXPERIENCE and QUALIFICATIONS

Proposers shall provide the following:

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

REFERENCES: Management

List four (4) persons or firms for whom you have been associated with as a Specialty Retail or Food & Beverage Concession for the last five (5) years. Attach additional sheets if necessary.

Reference No. 1

Name: _____

Title: _____

Firm: _____

Address: _____

Zip: _____

Telephone: () _____ Fax: () _____

Email: _____

Nature of Relationship:

_____Reference No. 2

Name: _____

Title: _____

Firm: _____

Address: _____

Zip: _____

Telephone: () _____ Fax: () _____

Email: _____

Nature of Relationship:

Reference No. 3

Name: _____

Title: _____

Firm: _____

Address: _____

_____ Zip: _____

Telephone: () _____ Fax: () _____

Email: _____

Nature of Relationship:

_____Reference No. 4

Name: _____

Title: _____

Firm: _____

Address: _____

_____ Zip: _____

Telephone: () _____ Fax: () _____

Email: _____

Nature and magnitude:

REFERENCES: Payment History

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

Reference No. 1

Name: _____

Title: _____

Firm: _____

Address: _____

Zip: _____

Telephone: () _____ Fax: () _____

Email: _____

Nature and magnitude:

Reference No. 2

Name: _____

Title: _____

Firm: _____

Address: _____

Zip: _____

Telephone: () _____ Fax: () _____

Email: _____

Nature and magnitude:

FINANCIAL VIABILITY

Financial Standing / Going Concern

Provide a summary page containing key financial data (e.g. cash/cash equivalent, accounts receivables, current assets, etc.), and attach audited financial statements, prepared in accordance with generally accepted accounting principles, reflecting your current financial condition. **The statement must include a balance sheet, income statement, cash flow statements and notes to the audited financial statements for the last two fiscal years, prepared by an independent Certified Public Accountant (this is required).** You must be prepared to substantiate all information shown.

Surety Information

Has the company ever had a bond or surety canceled or forfeited? Yes [☐] No [☐]

If yes, attach a statement naming the bonding company, date, amount of bond, and reason for such cancellation or forfeiture.

Bankruptcy Information

Has the company, any principal of the company, or any company with which a principal has been involved, ever filed bankruptcy proceedings? Yes [☐] No [☐]

If yes, state date, chapter, jurisdiction, amount of liabilities, amount of assets, and disposition of the proceedings.

Felony Information

Has a principal of the company ever been convicted of a felony? Yes [☐] No [☐]

If yes, state date, court jurisdiction, and details of the conviction.

Prior Litigation

Disclose all litigation, mediation or arbitration with public entities (including but not limited to cities, counties, municipalities and districts) in California since January 1, 2002.

Pending Litigation

Attach detailed information regarding any litigation, liens, or claims involving the company or its principals that could materially impact your ability to perform under the Specialty Retail Concession Lease.

NOTE: Failure to disclose all relevant information shall be grounds for disqualification of a Proposer.

I certify that I have submitted all of the above items in my RFP.

RESPONDENT ENTITY

BY: _____

DATE: _____

5-Year Pro Forma Template

Pro Forma Income Statement:

Proposers are required to submit a detailed five-year pro forma income statement reflecting the revenue and expenses related to the Concession Lease. The statement will be evaluated with respect to its ability to support the proposed fee and the proposed capital investment. Attached Pro Forma form template is required.

Revenue must detail projected gross receipts for each proposed concession location.

Expenses must detail each item of expense and cost associated with acquisition, installation, maintenance and operation of each proposed concession location. Specific details must be given regarding what is included in the categories “general and administrative expenses” and “other expenses” including assumptions used on number of months’ depreciation.

Please provide any other financial information which you feel will be helpful in evaluating your ability to successfully develop and manage the Concession at JWA.

Attach additional sheets if extra space is required.

PRO FORMA Proposer to complete one "Pro Forma" form for its proposal package													
Proposing Entity													
Lease Name													
Terminal													
Space Number													
Sq. Ft.													
		2020		2021		2022		2023		2024		Total	
TOTAL ENPLANEMENTS													
GROSS RECEIPTS (SALES)													
Sales	(\$)	% of Sales	(\$)	% of Sales	(\$)	% of Sales	(\$)	% of Sales	(\$)	% of Sales	(\$)	% of Sales	
a.													
b.													
c.													
Total Gross Receipts													
OPERATING EXPENSES**		(\$)	% of Sales	(\$)	% of Sales	(\$)	% of Sales	(\$)	% of Sales	(\$)	% of Sales	(\$)	% of Sales
Cost of Goods Sold													
Payroll													
Payroll taxes and employee benefits													
RENT: Minimum Annual Guarantee (MAG)													
RENT: Percentage													
Franchise or license fee													
Repair and Maintenance													
Office, Storage, Distribution expenses													
Insurance													
Credit Card fees													
Licenses and permits													
Administrative & General													
Storage fees													
Infrastructure fees													
Other operating expenses													
Total Operating Expenses													
EBITDA		(\$)	% of Sales	(\$)	% of Sales	(\$)	% of Sales	(\$)	% of Sales	(\$)	% of Sales	(\$)	% of Sales
Earnings before Interest, Taxes, Depreciation and Amortization													
Projected Enplanement Capture													
Annual Gross Sales per Enplanement													
Annual percentage change in Gross Sales from prior year													



FOOD & BEVERAGE CONCESSION LEASE

Dated _____

Between

County of Orange

and

Food & Beverage Concession

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EXHIBIT G	PERCENTAGE RENT

THIS FOOD & BEVERAGE CONCESSION LEASE ("Lease") is made and entered into this ____ day of _____, 20__, by and between the County of Orange, a political subdivision of the State of California ("COUNTY"), and _____ ("TENANT").

RECITALS

WHEREAS, COUNTY, through its Board of Supervisors, is the owner and proprietor of John Wayne Airport ("JWA" or "the Airport"), located in the County of Orange, 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 issued a Request for Proposals for Food and Beverage and Retail Concessions, and as a result of the proposal process, TENANT was selected as the concessionaire to provide this concession in the Airport; and

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

WHEREAS, COUNTY has the right to grant the use of the Airport to TENANT for the operation of TENANT's concession services as provided by this Lease; and

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

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

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

ARTICLE I

DEFINITIONS

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

SECTION 1.01 AIRPORT

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

SECTION 1.02 AIRPORT DIRECTOR

"Airport Director" shall mean the Director of John Wayne Airport, or his or her designee.

SECTION 1.03 AUDITOR-CONTROLLER

“Auditor-Controller” shall mean the Auditor-Controller, County of Orange, or his or her designee.

SECTION 1.04 BOARD OF SUPERVISORS

“Board of Supervisors” shall mean the governing body of the County of Orange.

SECTION 1.05 CONCESSION SUPPORT SPACE

“Concession Support Space” may be offered to TENANT to support its concession operations, and may be used as office space and/or 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 laws, statutes, ordinances, codes, judgments, orders, rules, or regulations 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 U.S.C. § 7401 *et seq.*; (ii) Clean Water Act, 33 U.S.C. § 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 C.F.R. 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 U.S.C. § 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 (“Proposition 65”); (ix) California Health and Safety Code §§25100, 25395.7, 25915 *et seq.*; (x) the Porter-Cologne Water Quality Control Act (California Water Code); (xi) 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; (xiv) the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; (xv) the Safe Drinking Water Act, 24 U.S.C. § 300f, *et seq.*; and (xvi) all other federal, State, and local 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 located in the Terminal pursuant to an existing lease.

SECTION 1.10 FAA

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

SECTION 1.11 HAZARDOUS MATERIALS

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

SECTION 1.12 LEASED PREMISES

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

SECTION 1.13 MINIMUM ANNUAL GUARANTEE

Annual Guaranteed Rent from TENANT to COUNTY (“MAG”).

SECTION 1.14 NOTICE TO PROCEED

“Notice to Proceed” shall mean written notice provided by COUNTY to TENANT providing approval to commence construction of TENANT’s improvements.

SECTION 1.15 NOTICE TO TAKE POSSESSION

“Notice to Take Possession” shall mean written notice provided by COUNTY to TENANT that the Leased Premises are available for occupancy.

SECTION 1.16 NON STORM WATER DISCHARGE

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

SECTION 1.17 NPDES PERMIT

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

SECTION 1.18 POLLUTANT

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

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

and particulate materials, in quantities that will interfere with or adversely affect the beneficial use of the receiving waters, flora or fauna of the State; and

- j. Any substance listed under Health and Safety Code, §25316.

SECTION 1.19 RENT COMMENCEMENT DATE

The Rent Commencement Date shall be the earlier of: (a) the Date of Beneficial Occupancy; or (b) ninety (90) days after the date on which the Airport issued a 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 portion of the Leased Premises.

SECTION 1.20 STORM WATER

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

SECTION 1.21 STORM WATER DRAINAGE SYSTEM

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

SECTION 1.22 TENANT CONSTRUCTION MANUAL

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

SECTION 1.23 TENANT DESIGN GUIDELINES

The “Tenant Design Guidelines” define the multi-step process for design and construction of TENANT projects at the Airport, and may contain requirements applicable to TENANT beyond those provided by this Lease.

SECTION 1.24 TERMINAL

“Terminal” means the Thomas F. Riley commercial passenger terminal at John Wayne Airport.

SECTION 1.25 TSA

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

SECTION 1.26 WAYFINDING

“Wayfinding” shall refer to John Wayne Airport’s information system that assists passengers in navigating the Terminal and accessing services through digital solutions.

ARTICLE II**TERM OF LEASE****SECTION 2.01 TERM OF LEASE**

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

SECTION 2.02 HOLDING OVER

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

SECTION 2.03 TERMINATION FOR CONVENIENCE

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

ARTICLE III**LEASED PREMISES****SECTION 3.01 LEASED PREMISES**

COUNTY grants to TENANT the right to use that certain property hereinafter referred to as “Leased Premises”, described in Exhibit A and shown on Exhibit B, which exhibits are attached hereto and by reference made a part hereof. TENANT accepts the Leased Premises in an “as is, where is, and with all faults” and conditions and acknowledges that such Leased Premises are in good and satisfactory condition for the use intended. Said Leased Premises include the Existing

Concession Locations, which are to be demolished, remodeled or relocated as provided herein. TENANT must demolish existing location.

SECTION 3.02 DELIVERY OF EXISTING CONCESSION LOCATIONS

COUNTY's obligation to deliver the Existing Concession Locations, to TENANT is subject to and conditioned upon termination of the Lease with, and surrender of the Leased Premises by, the current concessionaire. Except as otherwise set forth herein, TENANT's failure to accept possession of the Leased Premises within fourteen (14) days from COUNTY's written Notice to Take Possession to TENANT, pursuant to the terms of this Lease, shall be an event of default pursuant to Section 9.02 of this Lease. TENANT accepts the Leased Premises in an "as is, where is, and with all faults" and conditions and acknowledges that such Leased Premises are in good and satisfactory condition for the use intended.

SECTION 3.03 ASSIGNING OF INTERIM LEASED PREMISES

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.
- 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 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, 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. With regard to any dispute as to what may constitute reasonable fees, TENANT shall first exhaust all remedies provided by applicable federal law and FAA regulations.

ARTICLE IV

RENT

SECTION 4.01 RENT

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

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

1) The Minimum Annual Guarantee for the Leased Premises at the Airport shall be in accordance with the following schedule:

$\$100 \times \text{Square Feet} = \text{Minimum Annual Guarantee}$

$\text{Divided by 12 Months} = \text{Minimum Monthly Rent}$

Annual Period

Minimum Annual Guarantee

Rent Commencement Date

to _____

\$ _____

Each succeeding year

_____ to _____

as adjusted in accordance
with “REVISION OF RENTS”

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 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".
- C. Tenant Infrastructure Fee TENANT shall pay to the COUNTY an Infrastructure Fee, payable monthly in arrears on or before the fifteenth day of each month. This charge covers the amortized cost of utility infrastructure improvements that the Airport provides to each concession lease location. This rate is eight dollars (\$8.00) per year per square foot, payable in monthly pro rata installments throughout the term of the Lease. The fee is due upon Rent Commencement Date and is additional rent.

SECTION 4.02 REVISION OF RENT

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

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

$$X = \$ \underline{\hspace{2cm}} \times \frac{A}{B} \text{ MAG as determined in A above.}$$

X = Adjusted minimum annual rent

A = Monthly index for the fourth month prior to the month in which each rent adjustment is to become effective.

B = Monthly index for the month in which this Lease is signed by COUNTY

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

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

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

SECTION 4.03 DEFINITION OF GROSS RECEIPTS

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

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

Under Section 5.01 in this Lease entitled “USE”, TENANT may be granted the option to provide certain additional services and uses subject to further approval. The term “gross receipts” as it

applies to these business operations shall be determined by COUNTY's Auditor-Controller and Airport Director, as well as the appropriate rent and percentage, at the time approval is granted.

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

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

Employee discounts from the public sales price may be allowed to Airport-issued badged employees and/or TENANT's employees provided Airport Director is first provided with the TENANT's discount policy, and Airport Director approves the 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 annual period which ends with and includes the last day of the preceding calendar month. The statement shall be signed by TENANT or TENANT's responsible agent in a form prescribed by Auditor-Controller. Each statement shall indicate:

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

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

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

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

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

SECTION 4.06 RECORDS AND ACCOUNTS

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

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

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

B. 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.

- C. CPA-Audited Statement of Gross Receipts Within ninety (90) days after the end of each accounting year, TENANT at its own expense shall submit to Auditor-Controller an audited statement of 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 rental 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 California Government Code Sections 6250 et seq.

- 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.

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

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

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

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

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

- F. Failure to Maintain Adequate Records In addition to any other remedies available to COUNTY at law or in equity or under this Lease, in the event that TENANT fails to maintain and keep books, records and accounts of gross receipts from business operations conducted on or from the Leased Premises and/or source documents relating thereto, or to make the same available to the COUNTY for examination and audit, or

to record sales and/or to maintain registers to record sales, or to provide financial statements and other information to the COUNTY regarding gross sales as required by this Lease, the COUNTY, at the COUNTY's option, may:

- 1) Perform such examinations, audits and/or investigations itself or through agents or employees as COUNTY and/or its auditors may deem appropriate to confirm the amount of percentage rents payable by TENANT under this Lease and any and all costs and/or expenses incurred by COUNTY in connection therewith shall be promptly reimbursed to COUNTY by TENANT upon demand.
- 2) Provide accounting services and/or a system for recording sales and charges, including without limitation, cash registers, for use by TENANT in business transactions upon or from the Leased Premises, and, at COUNTY's option, maintain personnel on the Leased Premises to observe and/or record such sales during TENANT's business hours, or from time to time, all at TENANT's sole cost and expense and, in such event, TENANT shall promptly reimburse COUNTY for any and all costs incurred by COUNTY in connection therewith; and/or
- 3) Require that TENANT pay percentage rents based on COUNTY's best good faith estimate of TENANT's gross receipts from business operations conducted on or from the Leased Premises and Airport and any such determination made by COUNTY shall be conclusive and binding upon TENANT.

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 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 for approval. Following approval by Airport Director 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.
- K. Point of Sale Requirements TENANT shall install in the Premises a Point of Sale (POS) system with at least one POS unit, which includes mobile POS or other similar electronic devices. All POS used on the Premises shall meet current industry standards for transmitting, capturing and recording transactions, approved discounts with badge numbers, and data in a secure fashion while protecting Card Holder Data, and shall register every transaction made in, on, about or from the Premises, including every type of Gross Revenue daily automated reporting. Said POS shall be accessible to and subject to inspection or audit by Airport Director 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 require a revenue system that TENANT 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 Airport Director may require.

SECTION 4.07 PROVISION AGAINST SET-OFFS

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

SECTION 4.08 SECURITY DEPOSIT

TENANT, shall deposit with COUNTY a security deposit in the sum of _____ four (4) times the estimated monthly rent as determined by Airport Director prior to execution of the Lease.

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

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

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

- 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 a minimum (30) days' prior written notice of cancellation or material change in said bond. Such cancellation or material change without Airport Director's 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.

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

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

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

SECTION 4.09 MARKETING FUND FEE

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) per location. 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.

For example, if the LEASE commences on November 1, TENANT shall pay the monthly pro-rata portion (\$833.33 per month) of the annual marketing fund amount for November and December (totaling \$1,666.66). Then, commencing on January 1, TENANT shall make the full annual marketing fund payment of \$10,000.00. Should the LEASE expire on September 15, TENANT shall pay a pro-rata portion of the annual amount for the months of January through September.

SECTION 4.10 UTILITIES

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

ARTICLE V

USE, OPERATION, MAINTENANCE AND CONDITION OF LEASED PREMISES

SECTION 5.01 USE

TENANT's primary purpose for entering into this Lease is to promote the development of a food & beverage concession on the Leased Premises.

- A. Required Services and Uses. TENANT shall have a nonexclusive right to develop, operate and manage a food & beverage concession within designated locations at the Airport. The concession rights granted herein shall be exclusive within the Leased Premises but non-exclusive at the Airport. TENANT agrees not to use the Leased Premises for any other purpose nor to engage in or permit any other activity by TENANT's employees, agents or contractors, within or from the Leased Premises. TENANT agrees not to conduct or permit its employees, agents or contractors to conduct any public or private nuisance in, on or from the Airport, or to commit or permit its employees, agents or contractors to commit any waste in, on or from the Airport. The Use is attached hereto and entitled EXHIBIT C.
- B. Optional Services and Uses. Subject to the prior written approval of the Airport Director, TENANT may be granted the option to provide those additional services and uses which are ancillary to and compatible with the required services and uses herein; subject to negotiation and approval of Airport Director.
- 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.
- 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, goods, or use that is not permitted by this Lease, or otherwise authorized in this Lease entitled. Said payment is subject to the "due date" provided in the Section 4.04 (PAYMENT PROCEDURE) and the "charge for late payment" provided in the Section 4.05 (CHARGE FOR LATE PAYMENT). The existence of the 100% charge in this section, or the

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

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

SECTION 5.02 RULES AND REGULATIONS

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

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

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

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

SECTION 5.03 OPERATIONAL REQUIREMENTS

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

- A. Manager TENANT shall appoint a Manager to supervise TENANT's operations at the Airport. Such person must be an outstanding, highly qualified and experienced manager and be vested with full power and authority to accept service of all notices. They shall be vested with the authority to regulate the quality and prices of all menu items, and the appearance, conduct and demeanor of TENANT's employees. Said Manager shall be assigned to the Airport where he or she shall be available daily during peak travel periods and daily from 8:00 a.m. until 5:00 p.m., Monday through Friday, and where during their absence, a responsible subordinate shall be in charge and available during concession operating hours. Manager's subordinate shall be available by telephone and/or e-mail provided to the Airport Director, 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 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.
- D. Deliveries TENANT shall have supplies of any nature or kind delivered only at times, and through approved routes and entrances, between the hours of 11:00 pm to 6:00 am, seven (7) days a week, or as designated by Airport Director. TENANT shall not leave products, carts and inventory unattended in the concourses, hallways and other locations. TENANT shall only make deliveries on the concourse during non-peak hours. No deliveries between 6:00 am to 10:00 am, 12:00 pm to 2:30 pm, and 4:00 pm to 6:30 pm. TENANT shall only 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 approved by Airport Director 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. Price changes must be submitted at a minimum of thirty days (30) in advance for Airport review.
- G. Pricing TENANT's merchandise shall be consistent with all uses as provided under Section 5.01 (USE). Prices of said items shall not exceed one hundred ten percent (110%) of approved prices reasonably found in similar stores located in the Orange County Area. TENANT shall perform price surveys every year from the effective date of this Lease or at the request of the Airport Director. Price surveys shall include, prices from a minimum of three (3) local food & beverage establishments deemed similar to TENANT's operation, subject to Airport Director's or designee's review and approval. TENANT shall submit results to the COUNTY within thirty (30) of completion of the price survey. In the event that TENANT's prices have not been in compliance with the terms of this Lease, TENANT shall adjust prices accordingly within 48 hours of being notified by Airport Director.
- H. Employee Parking Fee TENANT shall pay the monthly employee parking fee, subject to change, for employee vehicles parked in the employee parking lot.
- 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. All promotions must be submitted to JWA at a minimum of thirty days (30) in 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.
- 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 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 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, 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 food & beverage concession shall be under the supervision and direction of a qualified, experienced person or persons who shall be authorized to act on behalf of TENANT. TENANT will assign a

representative to service the food & beverage 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. TENANT shall cooperate with and not interfere with COUNTY's and other TENANT's use of and operations at the Airport.

SECTION 5.04 AIRPORT SECURITY

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

TENANT shall be required to obtain airport security clearance in order to perform work under this Lease. 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 Lease, 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 Lease. The loss of a badge shall be reported within 24 hours to the Sheriff's Department–Airport Police Services by calling (949) 252-5000. TENANT or TENANT personnel who lose their badges shall be required to pay a fee before receiving a replacement badge. The charge for lost badge replacement will be posted in the Airport Administration Office and is subject to change without notice. A report shall be made before a replacement badge will be issued.

The Airport security badge is nontransferable.

In the event that TENANT's badge is not returned to the Airport upon termination of TENANT personnel employment and/or termination of the Lease, 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, TENANT 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. TENANT's policy shall also include all subtenant and third party vehicles that enter Airport property at the direction of the TENANT.

SECTION 5.06 MAINTENANCE OF LEASED PREMISES

TENANT, at its own cost and expense, shall maintain and repair, replace or refinish all improvements and installations of any kind. TENANT agrees to maintain the Leased Premises in a safe, clean, wholesome, sanitary condition and in compliance with all applicable laws. It shall be the TENANT's responsibility to make all necessary repairs required to maintain the Leased Premises and improvements in good condition. All repairs and improvements made by the

TENANT to the Leased Premises shall be in compliance with all current Federal, State, Local Ordinances and Building Codes and all Airport Regulations (Codes), TENANT shall be in compliance with the JWA TENANT Design Guidelines and JWA Construction Manual. The Codes encompass all fire, life and structural safety aspects and apply to the construction, alteration, moving, demolition, repair and use of the Leased Premises. Any additions, alterations, repairs and changes of use or occupancy in the Leased Premises shall comply with the provisions for new buildings and structures as set forth in the Codes. All devices or safeguards which are required by the Codes shall be maintained in conformance with the edition of the Codes under which it was installed.

- A. Equipment and Improvements TENANT shall maintain all equipment and improvements located within the Leased Premises including but not limited to, trade fixtures, wiring, and software and communications equipment in good condition. TENANT agrees that all repairs will be conducted within two (2) hours of notification by Airport Director unless a longer period of time is approved by the Airport Director.
- 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.
- C. Access TENANT shall make key access available to Airport Director 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 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 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 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. Airport Director 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 and approved by the Airport Director. All monthly maintenance reports must be maintained and submitted to Airport Director 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 shall make the final determination as to the imposition of noncompliance fees. Failure to impose violation fees for a particular violation shall not bar COUNTY from imposing violation fees for subsequent violations of the same nature. The availability of violation fees shall not bar COUNTY from exercising other remedies, including termination. COUNTY will invoice TENANT for violation fees that are assessed and payment of the invoice is due upon receipt by TENANT. Violation fees will be in addition to rent.

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

Violation Fee

Violation of Permitted Use of a Location	\$250.00 per day/per location
Failure to Maintain Required Hours of Operation	\$100.00 per incident
Failure to Submit Required Documents and Reports	\$250.00 per day
Failure to comply with Reset Policy	\$250.00 per day
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 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 midterm refurbishment plans	\$2,000.00 per day
Failure to submit CPA audited financial statements on time	\$5,000.00
Failure to use pneumatic or gel tires for deliveries	\$100.00 per incident
Incurring a health code violation or serving adulterated food	\$250.00 per incident

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

ARTICLE VI
ENVIRONMENTAL, SAFETY, AND INDEMNIFICATION

SECTION 6.01 ENVIRONMENTAL STEWARDSHIP

TENANT shall support the COUNTY's Environmental Stewardship program by complying with Airport's Tenant Guidelines.

SECTION 6.02 HAZARDOUS MATERIALS AND ENVIRONMENTAL COMPLIANCE

TENANT 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, TENANT 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 TENANT 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 TENANT at or on the Airport.

Notwithstanding the liability of prior tenants of the Leased Premises, TENANT 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, TENANT shall comply with all applicable Environmental Laws. TENANT 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 TENANT 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.

TENANT shall comply with all material usage limitation, permit record keeping, and reporting requirements imposed by federal, state and local laws and regulations. TENANT 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.

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

TENANT shall provide all notices required pursuant to the Environmental Laws. TENANT 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 TENANT.

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 TENANT'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 TENANT's release or threatened release of Hazardous Materials on, at, and/or under the Airport.
- (2) The TENANT's release or threatened release of Hazardous Materials at, on, under, and/or remaining from the Airport.
- (3) The TENANT's compliance with any Environmental Law, except that TENANT's obligations under this paragraph shall not extend to remediation conditions that arise from operations of third parties that are not affiliated with TENANT that take place off of the Airport. A party shall be deemed to be affiliated with TENANT if it is an employee, officer, director, agent, sublessee, assignee, contractor or

subcontractor of TENANT or if it is controlled by or under common control with TENANT.

- (4) The TENANT's causing or allowing any prohibited discharge into the Airport Drainage System.

This indemnification includes, without limitation, reasonable fees/costs/expenses for attorneys, experts, expert consultants, and all other costs incurred by COUNTY in connection with any investigation, evaluation, assessment, and/or monitoring of the environmental conditions at the Leased Premises or any cleanup, remedial, removal, and/or restoration work required by any federal, state or local governmental entity because of any Hazardous Materials being present in the soil, surface water, or groundwater at, on, under, or about the Airport. However, TENANT'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 TENANT 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 TENANT 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 TENANT because of the concurrent negligence of the COUNTY and the TENANT 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 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 indemnification shall survive the termination and/or expiration of this Lease.

SECTION 6.05 CONFLICT WITH ENVIRONMENTAL LAW PROVISIONS

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

ARTICLE VII

CONSTRUCTION AND IMPROVEMENTS

SECTION 7.01 CONSTRUCTION AND/OR ALTERATION BY COUNTY

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

In addition, the COUNTY may reassign or relocate TENANT's Leased Premises. COUNTY shall provide TENANT advance notice of such action and shall attempt to provide alternative space that is reasonably comparable for TENANT's operations at the same rates and charges which TENANT would have paid for the space being surrendered. In the event no alternative space is available, TENANT shall surrender its space promptly to COUNTY, provided that TENANT shall be reimbursed for the reasonable cost of any such reassignment, reallocation or relocation and the cost of TENANT's unamortized investment, if any, as documented by TENANT to the satisfaction of the COUNTY and mutually agreed to by Airport Director 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 "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 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 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 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 two thousand dollars (\$2,000.00) per day in addition to Rent as provided below. 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 on the Notice to Proceed from Airport Director, 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. 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 at COUNTY's discretion. Minor repairs, replacement and facility maintenance proposed for the Leased Premises, the cost of which does not exceed two hundred thousand dollars (\$200,000), must be approved by Airport Director. All other structures, improvements, facilities, repairs, replacement, removal and maintenance items must 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 TENANT's cost, to remove any or all improvements located within the Leased Premises at the expiration or termination hereof.
- J. Minimum Cost of Improvements. "Initial Improvements" the minimum cost of improvements shall be five-hundred (\$500.00) per square foot. The term "construction costs" shall mean direct construction costs, as set forth in Section 7.09 ("RECORD DRAWINGS AND CONSTRUCTION COSTS").
- K. 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 MIDTERM REFURBISHMENT

At the midterm of the Lease, TENANT shall be required to make a reinvestment, in an amount to be determined by Airport Director but not exceeding 50% of the total cost of its Capital Improvements, for the purpose of keeping concession and its technology contemporary and competitive with current concession trends and methods. Said refurbishing shall include, but not be limited to, refinishing, repair, replacement, redecorating, and painting necessary to keep said facilities in first class condition.

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

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

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

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

SECTION 7.04 CERTIFICATION OF CONSTRUCTION EXPENDITURES

TENANT shall provide COUNTY with certified receipts and lien releases for the initial capital improvements and midterm refurbishment to the Leased Premises required hereunder within ninety (90) days after the completion thereof in a form acceptable to the COUNTY to enable COUNTY to verify compliance with the terms of this Lease. In the event that such certified receipts indicate that costs incurred with respect to the initial capital improvements or midterm renovations required hereunder are less than required under the terms and provisions of this Lease, and TENANT has used and complied with the approved plans and materials and submitted all closeout documents including “as built” CAD files, TENANT shall not be required to pay to COUNTY the difference between the amount required to be spent and the costs actually incurred by TENANT as indicated by such certified receipts. If TENANT fails to adhere to approved plans

and specifications, resulting in actual costs less than those approved by COUNTY, TENANT will be required to pay 110% of the difference to the COUNTY. If COUNTY disputes the amount of costs claimed by TENANT, COUNTY may utilize its own audit and accounting staff or, at its option and expense, hire a certified public accountant to audit the costs actually incurred by TENANT with respect to such Leased Premises. If it is determined that the costs actually incurred by TENANT with respect to said Leased Premises are less than the minimum required hereunder, then TENANT shall pay, in addition to the other amounts due hereunder, the cost of conducting such audit to COUNTY within thirty (30) days of the determination.

SECTION 7.05 TENANT REIMBURSEMENT

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

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

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

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.
- B. Irrevocable letter of credit issued to COUNTY/JWA that will remain in effect until COUNTY acknowledges satisfactory completion of construction.

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 a 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. TENANT must comply with the Section entitled "Record Drawings and Construction Costs" to be eligible for return or refund of Completion Bond and/or its letter of credit.

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 a complete set of reproducible, two sets of prints of as-built plans ("Record Drawings") and a compact disc (CD-ROM) containing the Record Drawings in a form usable by COUNTY, to COUNTY's satisfaction, on COUNTY's computer aided mapping and design (CAD) software. 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 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'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 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.

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

SECTION 7.11 AMERICANS WITH DISABILITIES ACT

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

ARTICLE VIII

ASSIGNMENT

SECTION 8.01 ASSIGNING AND TRANSFERRING

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

- A. 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 tenant, assignee or transferee has not agreed in writing to keep, perform and be bound by all the terms, covenants, and conditions of this Lease.
- 3) The prospective tenant, assignee or transferee is not financially capable or not experienced in performing the obligations of this Lease, as determined by the Airport Director.
- 4) The TENANT's or assignee'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.
- 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 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

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

ARTICLE IX

TERMINATION AND DEFAULT

SECTION 9.01 TERMINATION OF PRIOR AGREEMENTS

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

SECTION 9.02 TERMINATION FOR DEFAULT

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

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

SECTION 9.03 CONDITION OF LEASED PREMISES UPON TERMINATION OR DEFAULT

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

SECTION 9.04 OWNERSHIP OF IMPROVEMENTS

All improvements constructed or placed within the Leased Premises by TENANT must, upon

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

SECTION 9.05 DISPOSITION OF ABANDONED PERSONAL PROPERTY

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

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

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

SECTION 9.07 COUNTY'S RIGHT TO RE-ENTER

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

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

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

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

ARTICLE X

INSURANCE AND INDEMNITY

SECTION 10.01 INSURANCE

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

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

If TENANT fails to provide Airport Director 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 is provided with adequate evidence of insurance required herein. TENANT further agrees to hold COUNTY harmless for any damages resulting from such interruption of business and possession, including, but not limited to, damages resulting from any loss of income or business resulting from the COUNTY's action.

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

a fee of \$300.00 for processing the reinstatement of the Lease. TENANT shall provide to COUNTY immediate notice of said insurance cancellation or termination.

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

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

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

Qualified Insurer

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

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

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

<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.

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

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

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

Insurance certificates should be forwarded to the COUNTY address provided in the Clause (NOTICES) below or to an address provided by Airport Director 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 the COUNTY, its officers, and employees, harmless 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 herein also apply to those actions arising from and which involve the TENANT's officers, agents, subcontractors, and employees. The TENANT's indemnity obligations 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 herein are named as defendants or respondents in any lawsuit or administrative proceeding, the TENANT shall, at the request of the COUNTY, represent the indemnitee with qualified counsel that the COUNTY determines is acceptable. In the event that a monetary judgment is awarded against the COUNTY and the TENANT because of the concurrent negligence of the COUNTY and the TENANT or their respective officers, subcontractors, or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Both the COUNTY and the TENANT agree that neither party shall request a jury apportionment.

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

ARTICLE XI

FEDERAL GRANT ASSURANCES AND REQUIREMENTS

SECTION 11.01 NONDISCRIMINATION

- A. TENANT, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that:
- 1) No person on the grounds of race, creed, color, sex, national origin, sex, age, or disability shall be excluded from participation, denied the benefits of, or be otherwise subjected to discrimination in the use of the Leased Premises. TENANT will comply with all federal, state, and local laws relating to nondiscrimination.
 - 2) This Lease is subject to the requirements of the U.S. Department of Transportation's regulations, 49 Code of Federal Regulations (C.F.R.) Part 23 TENANT agrees that it will not discriminate against any Airport Concession Disadvantaged Business Enterprise (ACDBE) in connection with the award or performance of any agreement covered by 49 C.F.R. Part 23.
 - 3) In the construction of any improvements on, over or under the Leased Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, national origin, age, or disability shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination.
 - 4) TENANT shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to Title 49, C.F.R. Part 21, Subtitle A, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the CIVIL RIGHTS ACT OF 1964, and as said Regulations may be amended.

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

SECTION 11.02 DEVELOPMENT/MAINTENANCE OF AIRPORT

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

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

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

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

SECTION 11.04 USE TO CONFORM WITH FEDERAL AVIATION REGULATIONS

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

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

SECTION 11.05 NONEXCLUSIVE RIGHT

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

SECTION 11.06 RESERVATION OF AVIGATION EASEMENT

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

SECTION 11.07 HEIGHT LIMITATION OF STRUCTURES

TENANT by accepting this Lease expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object nor permit the growth of any tree on the Leased Premises hereunder (if any) which would penetrate the imaginary surfaces as defined in Part 77 of the FEDERAL AVIATION REGULATIONS (as same may be amended from time to time or as such regulation replacing Part 77 may be adopted by Federal authority) or such other lesser altitude as may be required by COUNTY. In the event the aforesaid covenants are breached, COUNTY reserves the right to enter upon the Leased Premises hereunder and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of TENANT. TENANT shall be responsible for filing Form 7460 for any construction and/or height of construction equipment with the FAA, if required.

SECTION 11.08 NON-INTERFERENCE WITH AIRCRAFT

TENANT by accepting this Lease agrees for itself, its successors and assigns that it will not make use of the Leased Premises in any manner which might interfere with the landing and taking off

of aircraft from the Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, COUNTY reserves the right to enter upon the Leased Premises and hereby cause the abatement of such interference at the expense of TENANT.

SECTION 11.09 WAR OR NATIONAL EMERGENCY

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

SECTION 11.10 AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) PARTICIPATION

TENANT understands and acknowledges the following:

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

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

ARTICLE XII

MISCELLANEOUS PROVISIONS

SECTION 12.01 TIME

Time is of the essence in this Lease.

SECTION 12.02 LEASE ORGANIZATION

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

SECTION 12.03 AMENDMENTS

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

SECTION 12.04 SIGNS

TENANT agrees not to construct, maintain or allow any sign upon the Leased Premises except as approved by Airport Director. TENANT will comply with the JWA TENANT Design Guidelines and JWA Construction Manual. Unapproved signs, banners, flags, etc., may be removed by Airport Director 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 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. Airport Director, 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 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 may require concession to support emergency operations. Airport Director 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 12.07 RESERVED

SECTION 12.08 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 12.9 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 12.10 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 12.11 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 12.12 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 12.13 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 12.14 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 12.15 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 12.16 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 12.17 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 12.18 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

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.

(SIGNATURE PAGE FOLLOWS.)

IN WITNESS WHEREOF, the parties have executed this Lease the day and year first above written.

TENANT:

By: _____

By: _____

APPROVED AS TO FORM:

County Counsel

By: _____

APPROVED AS TO AUDIT AND ACCOUNTING:

Auditor-Controller

By: _____

RECOMMENDED FOR APPROVAL:

John Wayne Airport

By: _____

Barry A. Rondinella
Airport Director

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

COUNTY

COUNTY OF ORANGE

By: _____
Chairwoman, Board of Supervisors

Clerk of the Board of Supervisors
Orange County, California

EXHIBIT A

LEASED PREMISES DESCRIPTION

Parcel Number: PM 1121-0350-

Project Name: John Wayne Airport

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

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

EXHIBIT B
MAP OF LEASED PREMISES LOCATIONS

EXHIBIT B

MAP OF LEASED PREMISES LOCATIONS (CONT.)

EXHIBIT C**CASUAL DINING & BAR USE (PERMITTED USE)
(APPLICABLE ONLY TO CASUAL DINING & BAR PROPOSERS)****Casual Dining Restaurant/Bar:**

These are locations with table service and a separate bar area. All locations should offer front window seating with a view of the airfield. JWA prefers restaurant concepts that focus on specific themes – such as a regional specialty cuisine or celebrity chef inspired – that is unique or presents a strong local or regional brand.

Examples of cuisines or themes include, but are not limited to:

- American
- Asian
- Italian
- Latin American
- Mediterranean

Food must be made-to-order.

Overall sales for alcohol should not exceed 40%.

Restaurants must offer a menu that covers breakfast, lunch, and dinner and are consistent with the proposed concept theme or brand. Drip coffee will be allowed. In addition, a separate bar area should be designated and offer a full variety of alcoholic beverages, including cocktails, beer, and wine. Exposition cooking and open design are strongly encouraged.

Grab-and-go counters should be incorporated in the restaurant design so that guests are able to purchase freshly prepared foods and non-alcoholic beverages to go.

Operator is required to comply with JWA interactive wayfinding signage with menus including calorie count, ordering, reservations, designated pickup locations and delivery system.

It is important to note that proposed concepts must not duplicate any existing concepts already offered in the terminals.

The following items are not permitted:

- Specialty Coffee and Specialty Tea Beverages
 - Pre-packaged snack items
- Tobacco, e-cigarettes, cannabis products, and/or vaping products

EXHIBIT C

QUICKSERVE RESTAURANT (PERMITTED USE) (*APPLICABLE ONLY TO QUICKSERVE RESTAURANT PROPOSERS*)

Quick Serve Restaurant (QSR):

The offered location is intended for the sale of made-to-order food and non-alcoholic beverages in a counter-service setting. JWA prefers the quick service concept to be a recognized local or regional brand.

The menu should focus on one specific cuisine or offer a variety of freshly prepared items that covers breakfast, lunch, and dinner. The QSR must offer premium quality products, fulfilled/provided quickly, efficiently and in durable environmentally conscious packaging.

Examples of cuisines or themes include, but are not limited to:

- American
- Asian
- Italian
- Latin American
- Mediterranean
- Mexican

It is important to note that proposed concepts should not duplicate any existing concepts already offered in the terminal.

Grab-and-go counters should be incorporated in the restaurant design so that guests are able to purchase freshly prepared foods and non-alcoholic beverages to go.

Operator is required to comply with JWA interactive wayfinding signage with menus including calorie count, ordering, reservations, designated pickup locations and delivery system.

A maximum of 10% of retail space can be used to sell their branded non-food items.

Seating will be permitted contingent upon proposed design. If approved design allows for a controlled seating area within the lease premises; operator will have the ability to sell beer and wine.

The following items are not permitted:

- Specialty Coffee and Specialty Tea Beverages
- Pre-packaged snack items
- Tobacco, e-cigarettes, cannabis products, and/or vaping products

EXHIBIT C

WINE BAR (PERMITTED USE) (*APPLICABLE ONLY TO WINE BAR PROPOSERS*)

Wine Bar:

Wine bar concept must include a made to order menu.

This location with table service and a separate bar area. The location should offer seating with a view of the airfield.

Food must include a made-to-order menu that focuses on specific themes – such as a regional specialty cuisine that is chef inspired – that is unique or presents a strong local or regional brand.

Overall sales for alcohol consumption on site should not exceed 40%. Bottle sales are not included in this percentage.

Restaurants must offer a menu that covers breakfast, lunch, and dinner and are consistent with the proposed concept theme or brand. Drip coffee will be allowed. In addition, a separate bar area should be designated and offer a full variety of local, regional and national wines. Exposition cooking and open design are strongly encouraged.

Grab-and-go counters should be incorporated in the restaurant design so that guests are able to purchase freshly prepared foods and non-alcoholic beverages to go.

Operator is required to comply with JWA interactive wayfinding signage with menus including calorie count, ordering, reservations, designated pickup locations and delivery system.

It is important to note that proposed concepts must not duplicate any existing concepts already offered in the terminals.

The following items are not permitted:

- Specialty Coffee and Specialty Tea Beverages
 - Pre-packaged snack items
- Tobacco, e-cigarettes, cannabis products, and/or vaping products

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
CASUAL DINING/BAR**

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

**EXHIBIT G
PERCENTAGE RENT
QUICKSERVICE RESTAURANT**

Quick Serve Tiered Rent by Gross Revenue		
\$ -	\$500,000.00	12%
\$500,000.01	\$750,000.00	14%
\$750,000.01		16%

**EXHIBIT G
PERCENTAGE RENT
WINE BAR**

Wine Bar Tiered Rent by Gross Revenue		
\$ -	\$ 1,000,000.00	12%
\$ 1,000,000.01	\$ 2,000,000.00	14%
\$ 2,000,000.01		16%



SPECIALTY RETAIL CONCESSION LEASE

Dated _____

Between

County of Orange

and

Specialty Retail Concession

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

THIS SPECIALTY RETAIL LEASE (“Lease”) is made and entered into this ____ day of _____, 20____, by and between the County of Orange, a political subdivision of the State of California (“COUNTY”), and _____ (“TENANT”).

RECITALS

WHEREAS, COUNTY, through its Board of Supervisors, is the owner and proprietor of John Wayne Airport (“JWA” or “the Airport”), located in the County of Orange, 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 issued a Request for Proposals for Food and Beverage and Retail Concessions, and as a result of the proposal process, TENANT was selected as the concessionaire to provide this concession in the Airport; and

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

WHEREAS, COUNTY has the right to grant the use of the Airport to TENANT for the operation of TENANT’s concession services as provided by this Lease; and

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

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

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

ARTICLE I

DEFINITIONS

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

SECTION 1.01 AIRPORT

“Airport” shall mean the John Wayne Airport, Orange County, California.

SECTION 1.02 AIRPORT DIRECTOR

“Airport Director” shall mean the Director of John Wayne Airport, or his or her designee.

SECTION 1.03 AUDITOR-CONTROLLER

“Auditor-Controller” shall mean the Auditor-Controller, County of Orange, or his or her designee.

SECTION 1.04 BOARD OF SUPERVISORS

“Board of Supervisors” shall mean the governing body of the County of Orange.

SECTION 1.05 CONCESSION SUPPORT SPACE

“Concession Support Space” may be offered to TENANT to support its concession operations, and may be used as office space and/or 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 laws, statutes, ordinances, codes, judgments, orders, rules, or regulations 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 U.S.C. § 7401 *et seq.*; (ii) Clean Water Act, 33 U.S.C. § 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 C.F.R. 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 U.S.C. § 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 (“Proposition 65”); (ix) California Health and Safety Code §§25100, 25395.7, 25915 *et seq.*; (x) the Porter-Cologne Water Quality Control Act (California Water Code); (xi) 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; (xiv) the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; (xv) the Safe Drinking Water Act, 24 U.S.C. § 300f, *et seq.*; and (xvi) all other federal, State, and local 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 located in the Terminal pursuant to an existing lease.

SECTION 1.10 FAA

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

SECTION 1.11 HAZARDOUS MATERIALS

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

SECTION 1.12 LEASED PREMISES

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

SECTION 1.13 MINIMUM ANNUAL GUARANTEE

Annual Guaranteed Rent from TENANT to COUNTY (“MAG”).

SECTION 1.14 NOTICE TO PROCEED

“Notice to Proceed” shall mean written notice provided by COUNTY to TENANT providing approval to commence construction of TENANT’s improvements.

SECTION 1.15 NOTICE TO TAKE POSSESSION

“Notice to Take Possession” shall mean written notice provided by COUNTY to TENANT that the Leased Premises are available for occupancy.

SECTION 1.16 NON STORM WATER DISCHARGE

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

SECTION 1.17 NPDES PERMIT

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

SECTION 1.18 POLLUTANT

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

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

and particulate materials, in quantities that will interfere with or adversely affect the beneficial use of the receiving waters, flora or fauna of the State; and

- j. Any substance listed under Health and Safety Code, §25316.

SECTION 1.19 RENT COMMENCEMENT DATE

The Rent Commencement Date shall be the earlier of: (a) the Date of Beneficial Occupancy; or (b) ninety (90) days after the date on which the Airport issued a 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 portion of the Leased Premises.

SECTION 1.20 STORM WATER

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

SECTION 1.21 STORM WATER DRAINAGE SYSTEM

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

SECTION 1.22 TENANT CONSTRUCTION MANUAL

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

SECTION 1.23 TENANT DESIGN GUIDELINES

The “Tenant Design Guidelines” define the multi-step process for design and construction of TENANT projects at the Airport, and may contain requirements applicable to TENANT beyond those provided by this Lease.

SECTION 1.24 TERMINAL

“Terminal” means the Thomas F. Riley commercial passenger terminal at John Wayne Airport.

SECTION 1.25 TSA

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

SECTION 1.26 WAYFINDING

“Wayfinding” shall refer to John Wayne Airport’s information system that assists passengers in navigating the Terminal and accessing services through digital solutions.

ARTICLE II**TERM OF LEASE****SECTION 2.01 TERM OF LEASE**

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

SECTION 2.02 HOLDING OVER

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

SECTION 2.03 TERMINATION FOR CONVENIENCE

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

ARTICLE III**LEASED PREMISES****SECTION 3.01 LEASED PREMISES**

COUNTY grants to TENANT the right to use that certain property hereinafter referred to as “Leased Premises”, described in Exhibit A and shown on Exhibit B, which exhibits are attached hereto and by reference made a part hereof. TENANT accepts the Leased Premises in an “as is, where is, and with all faults” and conditions and acknowledges that such Leased Premises are in good and satisfactory condition for the use intended. Said Leased Premises include the Existing

Concession Locations, which are to be demolished, remodeled or relocated as provided herein. TENANT must demolish existing location.

SECTION 3.02 DELIVERY OF EXISTING CONCESSION LOCATIONS

COUNTY's obligation to deliver the Existing Concession Locations, to TENANT is subject to and conditioned upon termination of the Lease with, and surrender of the Leased Premises by, the current concessionaire. Except as otherwise set forth herein, TENANT's failure to accept possession of the Leased Premises within fourteen (14) days from COUNTY's written Notice to Take Possession to TENANT, pursuant to the terms of this Lease, shall be an event of default pursuant to Section 9.02 of this Lease. TENANT accepts the Leased Premises in an "as is, where is, and with all faults" and conditions and acknowledges that such Leased Premises are in good and satisfactory condition for the use intended.

SECTION 3.03 ASSIGNING OF INTERIM LEASED PREMISES

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.
- 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 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, 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. With regard to any dispute as to what may constitute reasonable fees, TENANT shall first exhaust all remedies provided by applicable federal law and FAA regulations.

ARTICLE IV

RENT

SECTION 4.01 RENT

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

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

- 1) The Minimum Annual Guarantee for the Leased Premises at the Airport shall be in accordance with the following schedule:

$\$100 \times \text{Square Feet} = \text{Minimum Annual Guarantee}$

$\text{Divided by 12 Months} = \text{Minimum Monthly Rent}$

Annual Period

Minimum Annual Guarantee

Rent Commencement Date

to _____

\$ _____

Each succeeding year

as adjusted in accordance with
“REVISION OF RENTS”

On _____, and on each _____
thereafter, the minimum annual rent shall be 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 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".
- C. Tenant Infrastructure Fee TENANT shall pay to the COUNTY an Infrastructure Fee, payable monthly in arrears on or before the fifteenth day of each month. This charge covers the amortized cost of utility infrastructure improvements that the Airport provides to each concession lease location. This rate is eight dollars (\$8.00) per year per square foot, payable in monthly pro rata installments throughout the term of the Lease. The fee is due upon Rent Commencement Date and is additional rent.

SECTION 4.02 REVISION OF RENT

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

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

$$X = \$ \underline{\hspace{2cm}} \times \frac{A}{B} \quad \text{MAG as determined in A above.}$$

X = Adjusted minimum annual rent

A = Monthly index for the fourth month prior to the month in which each rent adjustment is to become effective.

B = Monthly index for the month in which this Lease is signed by COUNTY

In the event that the CPI ceases to use 1982-84 = 100 as the basis of calculation, or if, in COUNTY's sole judgment, a substantial change is made in the method used by the federal

government to determine the CPI or the items used to calculate the CPI, then the CPI shall be converted to the figure that would have been calculated at (or as close to such figure as shall be practical) had the manner of calculating the CPI in effect at the date of this Lease not been altered.

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

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

SECTION 4.03 DEFINITION OF GROSS RECEIPTS

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

- A. The sale price of all goods, wares, merchandise, and products sold on or from the Leased Premises by TENANT, whether for cash or credit, whether payment is actually made or not, whether delivery of the items sold is made from the Leased Premises, and whether title to such items is transferred;
- B. The charges made by TENANT for the sale or rendition on or from the Leased Premises of services of any nature or kind whatsoever, whether for cash or credit, whether payment is actually made or not, and whether the services are actually performed or not;
- C. All sums deposited in any vending machine or other device maintained on the Leased Premises, regardless of the ownership of the machine or device, or whether such sums are removed and counted by TENANT or others and regardless of what percentage thereof TENANT is entitled to receive;
- D. All rent and other fees of any nature or kind charged by TENANT (including but not limited to deposits accepted by TENANT);
- E. The fair rental value of facilities on the Leased Premises used by subtenants or others;

- F. The value of all consideration received by TENANT or its employees including, without limitation, non-monetary consideration for the items sold, leased, rented or services rendered.

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

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

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

Employee discounts from the public sales price may be allowed to Airport-issued badged employees and/or TENANT's employees provided Airport Director is first provided with the TENANT's discount policy, and Airport Director approves the 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 annual period which ends with and includes the last day of the preceding calendar month. The statement shall be signed by TENANT or TENANT's responsible agent in a form prescribed by Auditor-Controller. Each statement shall indicate:
- 1) One twelfth of the Minimum Annual Guarantee rent payment (MAG);
 - 2) The total gross receipts for said portion of the annual period, itemized as to each of the business categories for which a separate percentage rent is established. A breakdown of the gross receipts of each business conducted on the Leased Premises must be attached to each statement where a reported business category is comprised of more than one business operation;
 - 3) The related itemized amounts of percentage rent computed as herein provided and the total thereof;

- 4) The total rent previously paid by TENANT for the annual period within which the preceding month falls; and
- 5) The rent due for the preceding month.

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

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

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

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

SECTION 4.06 RECORDS AND ACCOUNTS

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

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

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

- B. 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.

- C. CPA-Audited Statement of Gross Receipts Within ninety (90) days after the end of each accounting year, TENANT at its own expense shall submit to Auditor-Controller an audited statement of 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 rental 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 California Government Code Sections 6250 et seq.

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.

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

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

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

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

Records Defined” above. The adequacy of records shall be determined at Auditor-Controller’s reasonable sole discretion.

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

F. Failure to Maintain Adequate Records In addition to any other remedies available to COUNTY at law or in equity or under this Lease, in the event that TENANT fails to maintain and keep books, records and accounts of gross receipts from business operations conducted on or from the Leased Premises and/or source documents relating thereto, or to make the same available to the COUNTY for examination and audit, or to record sales and/or to maintain registers to record sales, or to provide financial statements and other information to the COUNTY regarding gross sales as required by this Lease, the COUNTY, at the COUNTY’s option, may:

- 1) Perform such examinations, audits and/or investigations itself or through agents or employees as COUNTY and/or its auditors may deem appropriate to confirm the amount of percentage rents payable by TENANT under this Lease and any and all costs and/or expenses incurred by COUNTY in connection therewith shall be promptly reimbursed to COUNTY by TENANT upon demand.
- 2) Provide accounting services and/or a system for recording sales and charges, including without limitation, cash registers, for use by TENANT in business transactions upon or from the Leased Premises, and, at COUNTY’s option, maintain personnel on the Leased Premises to observe and/or record such sales during TENANT’s business hours, or from time to time, all at TENANT’s sole cost and expense and, in such event, TENANT shall promptly reimburse COUNTY for any and all costs incurred by COUNTY in connection therewith; and/or
- 3) Require that TENANT pay percentage rents based on COUNTY’s best good faith estimate of TENANT’s gross receipts from business operations conducted on or from the Leased Premises and Airport and any such determination made by COUNTY shall be conclusive and binding upon TENANT.

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 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 for approval. Following approval by Airport Director 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.
- K. Point of Sale Requirements TENANT shall install in the Premises a Point of Sale (POS) system with at least one POS unit, which includes mobile POS or other similar electronic devices. All POS used on the Premises shall meet current industry standards for transmitting, capturing and recording transactions, approved discounts with badge numbers, and data in a secure fashion while protecting Card Holder Data, and shall register every transaction made in, on, about or from the Premises, including every type of Gross Revenue daily automated reporting. Said POS shall be accessible to and subject to inspection or audit by Airport Director 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 require a revenue system that TENANT 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 Airport Director may require.

SECTION 4.07 PROVISION AGAINST SET-OFFS

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

SECTION 4.08 SECURITY DEPOSIT

TENANT, shall deposit with COUNTY a security deposit in the sum of _____ four (4) times the estimated monthly rent as determined by Airport Director prior to execution of the Lease.

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

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

- A. An instrument or instruments of credit from one or more financial institutions, subject to regulation by the State of California or Federal government, pledging that funds necessary to secure performance of the Lease terms, covenants, and conditions are on deposit and guaranteed for payment, and agreeing that said funds shall be trust funds securing TENANT's performance and that all or any part shall be paid to COUNTY, or order upon demand by Airport Director. Both the financial institution(s) and the form of the instrument(s) must be approved by Airport Director.
- 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 a minimum (30) days' prior written notice of cancellation or material change in said bond. Such cancellation or material change without Airport Director's 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.

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

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

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

SECTION 4.09 MARKETING FUND FEE

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) per location. 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.

For example, if the LEASE commences on November 1, TENANT shall pay the monthly pro-rata portion (\$833.33 per month) of the annual marketing fund amount for November and December (totaling \$1,666.66). Then, commencing on January 1, TENANT shall make the full annual marketing fund payment of \$10,000.00. Should the LEASE expire on September 15, TENANT shall pay a pro-rata portion of the annual amount for the months of January through September.

SECTION 4.10 UTILITIES

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

ARTICLE V

USE, OPERATION, MAINTENANCE AND CONDITION OF LEASED PREMISES

SECTION 5.01 USE

TENANT's primary purpose for entering into this Lease is to promote the development of a specialty retail concession on the Leased Premises.

- A. Required Services and Uses. TENANT shall have a nonexclusive right to develop, operate and manage a specialty retail concession within designated locations at the Airport. The concession rights granted herein shall be exclusive within the Leased Premises but non-exclusive at the Airport. TENANT agrees not to use the Leased Premises for any other purpose nor to engage in or permit any other activity by TENANT's employees, agents or contractors, within or from the Leased Premises. TENANT agrees not to conduct or permit its employees, agents or contractors to conduct any public or private nuisance in, on or from the Airport, or to commit or permit its employees, agents or contractors to commit any waste in, on or from the Airport. The Use is attached hereto and entitled EXHIBIT C.
- B. Optional Services and Uses. Subject to the prior written approval of the Airport Director, TENANT may be granted the option to provide those additional services and uses which are ancillary to and compatible with the required services and uses herein; subject to negotiation and approval of Airport Director.
- 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.
- 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, goods or use that is not permitted by this Lease, or otherwise authorized in this Lease entitled. Said payment is subject to the "due date" provided in the Section 4.04 (PAYMENT PROCEDURE) and the "charge for late payment" provided in the Section 4.05 (CHARGE FOR LATE PAYMENT). The existence of the 100% charge in this section, or the payment or receipt of money under this section, does not constitute an authorization for a particular service or use and does not constitute a waiver of COUNTY's right to require TENANT to terminate such service or use. The parties agree that COUNTY's actual damages, in the event of such a breach by TENANT would be extremely difficult or impossible to determine; therefore, an amount equal to the amount of 100% of such gross receipts has been agreed upon, after negotiation, as the parties' best estimate of COUNTY's reasonable damages.

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

SECTION 5.02 RULES AND REGULATIONS

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

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

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

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

SECTION 5.03 OPERATIONAL REQUIREMENTS

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

- A. Manager TENANT shall appoint a Manager to supervise TENANT's operations at the Airport. Such person must be an outstanding, highly qualified and experienced manager and be vested with full power and authority to accept service of all notices. They shall be vested with the authority to regulate the quality and prices of all menu items, and the appearance, conduct and demeanor of TENANT's employees. Said Manager shall be assigned to the Airport where he or she shall be available daily during peak travel periods and daily from 8:00 a.m. until 5:00 p.m., Monday through Friday, and where during their absence, a responsible subordinate shall be in charge and available during concession operating hours. Manager's subordinate shall be available by telephone and/or e-mail provided to the Airport Director, 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 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.
- D. Deliveries TENANT shall have supplies of any nature or kind delivered only at times, and through approved routes and entrances, between the hours of 11:00 pm to 6:00 am, seven (7) days a week, or as designated by Airport Director. TENANT shall not leave products, carts and inventory unattended in the concourses, hallways and other locations. TENANT shall only make deliveries on the concourse during non-peak hours. No deliveries between 6:00 am to 10:00 am, 12:00 pm to 2:30 pm, and 4:00 pm to 6:30 pm. TENANT shall only 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 approved by Airport Director 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. Price changes must be submitted at a minimum of thirty days (30) in advance for Airport review.
- G. Pricing TENANT's merchandise shall be consistent with all uses as provided under Section 5.01 (USE). Prices of said items shall not exceed one hundred ten percent (110%) of approved prices reasonably found in similar stores located in the Orange County Area. TENANT shall perform price surveys every year from the effective date of this Lease or at the request of the Airport Director. Price surveys shall include, prices from a minimum of three (3) specialty retail establishments deemed similar to TENANT's operation, subject to Airport Director's or designee's review and approval. TENANT shall submit results to the COUNTY within thirty (30) of completion of the price survey. In the event that TENANT's prices have not been in compliance with the terms of this Lease, TENANT shall adjust prices accordingly within 48 hours of being notified by Airport Director.
- H. Employee Parking Fee TENANT shall pay the monthly employee parking fee, subject to change, for employee vehicles parked in the employee parking lot.
- 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. All promotions must be submitted to JWA at a minimum of thirty days (30) in 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.
- 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 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.
- 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 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, 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 retail operations.
- R Standards of Service The management, maintenance and operation of the specialty retail concession shall be under the supervision and direction of a qualified, experienced person or persons who shall be authorized to act on behalf of TENANT. TENANT will assign a representative to service the specialty retail concession location(s). Maintenance must be available seven (7) days per a week and repairs shall be made within two (2) hours of notification. TENANT agrees that the maintenance service thereto shall take place, whenever possible, during hours of minimum passenger activity, at such hours and using such entrances and routes as approved by the Airport Director. TENANT shall cooperate with and not interfere with COUNTY's and other TENANT's use of and operations at the Airport.

SECTION 5.04 AIRPORT SECURITY

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

TENANT shall be required to obtain airport security clearance in order to perform work under this LEASE. 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 LEASE, 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 LEASE. The loss of a badge shall be reported within 24 hours to the Sheriff's Department–Airport Police Services by calling (949) 252-5000. TENANT or TENANT personnel who lose their badges shall be required to pay a fee before receiving a replacement badge. The charge for lost badge replacement will be posted in the Airport Administration Office and is subject to change without notice. A report shall be made before a replacement badge will be issued.

The Airport security badge is nontransferable.

In the event that TENANT's badge is not returned to the Airport upon termination of TENANT personnel employment and/or termination of the LEASE, 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, TENANT 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. TENANT's policy shall also include all subtenant and third party vehicles that enter Airport property at the direction of the TENANT.

SECTION 5.06 MAINTENANCE OF LEASED PREMISES

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

- A. Equipment and Improvements TENANT shall maintain all equipment and improvements located within the Leased Premises including but not limited to, trade fixtures, wiring, and software and communications equipment in good condition. TENANT agrees that all repairs will be conducted within two (2) hours of notification by Airport Director unless a longer period of time is approved by the Airport Director.
- 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.
- C. Access TENANT shall make key access available to Airport Director 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 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 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 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. Airport Director 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, 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 and approved by the Airport Director. All monthly maintenance reports must be maintained and submitted to Airport Director 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 shall make the final determination as to the imposition of noncompliance fees. Failure to impose violation fees for a particular violation shall not bar COUNTY from imposing violation fees for subsequent violations of the same nature. The availability of violation fees shall not bar COUNTY from exercising other remedies, including termination. COUNTY will invoice TENANT for violation fees that are assessed and payment of the invoice is due upon receipt by TENANT. Violation fees will be in addition to rent.

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

Violation Fee

Violation of Permitted Use of a Location	\$250.00 per day/per location
Failure to Maintain Required Hours of Operation	\$100.00 per incident
Failure to Submit Required Documents and Reports	\$250.00 per day
Failure to comply with Reset Policy	\$250.00 per day
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 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 midterm refurbishment plans	\$2,000.00 per day
Failure to submit CPA audited financial statements on time	\$5,000.00
Failure to use pneumatic/gel tires for deliveries	\$100.00 per incident

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

ARTICLE VI
ENVIRONMENTAL, SAFETY, AND INDEMNIFICATION

SECTION 6.01 ENVIRONMENTAL STEWARDSHIP

TENANT shall support the COUNTY's Environmental Stewardship program by complying with Airport's Tenant Guidelines.

SECTION 6.02 HAZARDOUS MATERIALS AND ENVIRONMENTAL COMPLIANCE

TENANT 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, TENANT 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 TENANT 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 TENANT at or on the Airport.

Notwithstanding the liability of prior tenants of the Leased Premises, TENANT 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, TENANT shall comply with all applicable Environmental Laws. TENANT 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 TENANT 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.

TENANT shall comply with all material usage limitation, permit record keeping, and reporting requirements imposed by federal, state and local laws and regulations. TENANT 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.

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

TENANT shall provide all notices required pursuant to the Environmental Laws. TENANT 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 TENANT.

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

This indemnification includes, without limitation, reasonable fees/costs/expenses for attorneys, experts, expert consultants, and all other costs incurred by COUNTY in connection with any investigation, evaluation, assessment, and/or monitoring of the environmental conditions at the Leased Premises or any cleanup, remedial, removal, and/or restoration work required by any federal, state or local governmental entity because of any Hazardous Materials being present in the soil, surface water, or groundwater at, on, under, or about the Airport. However, TENANT'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 TENANT 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 TENANT 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 TENANT because of the concurrent negligence of the COUNTY and the TENANT 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 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 indemnification shall survive the termination and/or expiration of this Lease.

SECTION 6.05 CONFLICT WITH ENVIRONMENTAL LAW PROVISIONS

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

ARTICLE VII

CONSTRUCTION AND IMPROVEMENTS

SECTION 7.01 CONSTRUCTION AND/OR ALTERATION BY COUNTY

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

In addition, the COUNTY may reassign or relocate TENANT's Leased Premises. COUNTY shall provide TENANT advance notice of such action and shall attempt to provide alternative space that is reasonably comparable for TENANT's operations at the same rates and charges which TENANT would have paid for the space being surrendered. In the event no alternative space is available, TENANT shall surrender its space promptly to COUNTY, provided that TENANT shall be reimbursed for the reasonable cost of any such reassignment, reallocation or relocation and the cost of TENANT's unamortized investment, if any, as documented by TENANT to the satisfaction of the COUNTY and mutually agreed to by Airport Director 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 "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 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 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 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 two thousand dollars (\$2,000.00) per day in addition to Rent as provided below. 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 on the Notice to Proceed from Airport Director, 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. 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 at COUNTY's discretion. Minor repairs, replacement and facility maintenance proposed for the Leased Premises, the cost of which does not exceed two hundred thousand dollars (\$200,000), must be approved by Airport Director. All other structures, improvements,

facilities, repairs, replacement, removal and maintenance items must 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

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

- J. Minimum Cost of Improvements “Initial Improvements” the minimum cost of improvements shall be four hundred dollars (\$400.00) per square foot. The term “construction costs” shall mean direct construction costs, as set forth in Section 7.09 (“RECORD DRAWINGS AND CONSTRUCTION COSTS”).
- K. 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 MIDTERM REFURBISHMENT

At the midterm of the Lease, TENANT shall be required to make a reinvestment, in an amount to be determined by Airport Director but not exceeding 50% of the total cost of its Capital Improvements, for the purpose of keeping concession and its technology contemporary and competitive with current concession trends and methods. Said refurbishing shall include, but not be limited to, refinishing, repair, replacement, redecorating, and painting necessary to keep said facilities in first class condition.

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

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

Within sixty (60) calendar days following the completion of the Concession Midterm Refurbishment to the satisfaction of the Airport Director, TENANT must provide certified

documentation of all the capital investment actually expended in the design and installation of the Concession Midterm Refurbishment, together with “as-built” plans/records drawings as required elsewhere in this Lease. When documenting each refurbishment minimum investment required by this Lease, architectural and engineering charges not exceeding 15% of the total investment may be included. Construction costs shall not include indirect costs such as financing costs, holding costs, legal fees, interest, administrative and overhead expenses, internal design, review, management and oversight of construction on Leased Premises, TENANT’s licensing or franchising costs, bond premiums or developer fees.

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

SECTION 7.04 CERTIFICATION OF CONSTRUCTION EXPENDITURES

TENANT shall provide COUNTY with certified receipts and lien releases for the initial capital improvements and midterm refurbishment to the Leased Premises required hereunder within ninety (90) days after the completion thereof in a form acceptable to the COUNTY to enable COUNTY to verify compliance with the terms of this Lease. In the event that such certified receipts indicate that costs incurred with respect to the initial capital improvements or midterm renovations required hereunder are less than required under the terms and provisions of this Lease, and TENANT has used and complied with the approved plans and materials and submitted all closeout documents including “as built” CAD files, TENANT shall not be required to pay to COUNTY the difference between the amount required to be spent and the costs actually incurred by TENANT as indicated by such certified receipts. If TENANT fails to adhere to approved plans and specifications, resulting in actual costs less than those approved by COUNTY, TENANT will be required to pay 110% of the difference to the COUNTY. If COUNTY disputes the amount of costs claimed by TENANT, COUNTY may utilize its own audit and accounting staff or, at its option and expense, hire a certified public accountant to audit the costs actually incurred by TENANT with respect to such Leased Premises. If it is determined that the costs actually incurred by TENANT with respect to said Leased Premises are less than the minimum required hereunder, then TENANT shall pay, in addition to the other amounts due hereunder, the cost of conducting such audit to COUNTY within thirty (30) days of the determination.

SECTION 7.05 TENANT REIMBURSEMENT

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

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

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

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.
- B. Irrevocable letter of credit issued to COUNTY/JWA that will remain in effect until COUNTY acknowledges satisfactory completion of construction.

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 a 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. TENANT must comply with the Section entitled "Record Drawings and Construction Costs" to be eligible for return or refund of Completion Bond and/or its letter of credit.

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 a complete set of reproducible, two sets of prints of as-built plans ("Record Drawings") and a compact disc (CD-ROM) containing the Record Drawings in a form usable by COUNTY, to COUNTY's satisfaction, on COUNTY's computer aided mapping and design (CAD) software. 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 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'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 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.

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

SECTION 7.11 AMERICANS WITH DISABILITIES ACT

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

ARTICLE VIII

ASSIGNMENT

SECTION 8.01 ASSIGNING AND TRANSFERRING

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

- A. 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 tenant, assignee or transferee has not agreed in writing to keep, perform and be bound by all the terms, covenants, and conditions of this Lease.
- 3) The prospective tenant, assignee or transferee is not financially capable or not experienced in performing the obligations of this Lease, as determined by the Airport Director.
- 4) The TENANT's or assignee'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.
- 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 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

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

SECTION 9.03 CONDITION OF LEASED PREMISES UPON TERMINATION OR DEFAULT

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

SECTION 9.04 OWNERSHIP OF IMPROVEMENTS

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

SECTION 9.05 DISPOSITION OF ABANDONED PERSONAL PROPERTY

If TENANT abandons or quits the Leased Premises or is dispossessed thereof by process of law or otherwise, title to any personal property belonging to TENANT and left on the Leased Premises Areas thirty (30) days after such event shall be deemed to have been transferred to COUNTY. COUNTY shall have the right to remove and to dispose of such property without liability therefor to TENANT or to any person claiming under TENANT, and shall have no need to account therefor. Personal property left on the Leased Premises after termination, expiration,

or abandonment of the Lease shall not be construed as giving TENANT possession of the Leased Premises during the thirty (30) days after termination, expiration or abandonment of the Lease.

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

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

SECTION 9.07 COUNTY'S RIGHT TO RE-ENTER

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

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

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

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

ARTICLE X

INSURANCE AND INDEMNITY

SECTION 10.01 INSURANCE

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

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

If TENANT fails to provide Airport Director 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 is provided with adequate evidence of insurance required herein. TENANT further agrees to hold COUNTY harmless for any damages resulting from such interruption of business and possession, including, but not limited to, damages resulting from any loss of income or business resulting from the COUNTY's action.

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

All contractors performing work on behalf of TENANT pursuant to this Lease shall obtain insurance subject to the same terms and conditions as set forth herein for TENANT. TENANT shall not allow contractors or subcontractors to work if contractors have less than the level of coverage required by the COUNTY from the TENANT under this Lease. It is the obligation of

the TENANT to provide written notice of the insurance requirements to every contractor and to receive proof of insurance prior to allowing any contractor to begin work within the Premises. Such proof of insurance must be maintained by TENANT through the entirety of this Lease and be available for inspection by a COUNTY representative at any reasonable time.

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

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

Qualified Insurer

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

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

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

Coverages

Commercial General Liability

Minimum Limits

\$1,000,000 per occurrence
\$2,000,000 aggregate

Coverages**Minimum Limits**

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.

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

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

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

Insurance certificates should be forwarded to the COUNTY address provided in the Clause (NOTICES) below or to an address provided by Airport Director 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 the COUNTY, its officers, and employees, harmless 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 herein also apply to those actions arising from and which involve the TENANT's officers, agents, subcontractors, and employees. The TENANT's indemnity obligations 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 herein are named as defendants or respondents in any lawsuit or administrative proceeding, the TENANT shall, at the request of the COUNTY, represent the indemnitee with qualified counsel that the COUNTY determines is acceptable. In the event that a monetary judgment is awarded against the COUNTY and the TENANT because of the concurrent negligence of the COUNTY and the TENANT or their respective officers, subcontractors, or employees, an apportionment of liability to pay such judgment shall be made

by a court of competent jurisdiction. Both the COUNTY and the TENANT agree that neither party shall request a jury apportionment.

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

ARTICLE XI

FEDERAL GRANT ASSURANCES AND REQUIREMENTS

SECTION 11.01 NONDISCRIMINATION

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

- 1) No person on the grounds of race, creed, color, sex, national origin, sex, age, or disability shall be excluded from participation, denied the benefits of, or be otherwise subjected to discrimination in the use of the Leased Premises. TENANT will comply with all federal, state, and local laws relating to nondiscrimination.
- 2) This Lease is subject to the requirements of the U.S. Department of Transportation's regulations, 49 Code of Federal Regulations (C.F.R.) Part 23. TENANT agrees that it will not discriminate against any Airport Concession Disadvantaged Business Enterprise (ACDBE) in connection with the award or performance of any agreement covered by 49 C.F.R. Part 23.
- 3) In the construction of any improvements on, over or under the Leased Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, national origin, age, or disability shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination.
- 4) TENANT shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to Title 49, C.F.R. Part 21, Subtitle A, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the CIVIL RIGHTS ACT OF 1964, and as said Regulations may be amended.
- 5) In the event facilities are constructed, maintained or otherwise operated on the Leased Premises for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, TENANT shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 C.F.R. Part 21, Subtitle A, Nondiscrimination in Federally-Assisted Programs of the Department of

Transportation-Effectuation of Title VI of the CIVIL RIGHTS ACT OF 1964, and as said Regulations may be amended.

- B. In the event of breach of any of the above nondiscrimination covenants, COUNTY shall have the right to terminate the Lease and to re-enter and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued. This provision does not become effective until the procedures of 49 CODE OF FEDERAL REGULATIONS, Part 21, are followed and completed, including expiration of appeal rights.
- C. TENANT shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service.
- D. Noncompliance with paragraph C. above shall constitute a material breach thereof and in the event of such noncompliance COUNTY shall have the right to terminate this Lease and the estate hereby created without liability therefor; or at the election of COUNTY or the United States either or both said Governments shall have the right to judicially enforce paragraphs A., B., and C.
- E. TENANT agrees that it shall insert the above four paragraphs in any Lease, agreement (contract, *etc.*) by which said TENANT grants a right or privilege to any person, firm or corporation to render accommodations and/or service to the public in the Leased Premises.

SECTION 11.02 DEVELOPMENT/MAINTENANCE OF AIRPORT

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

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

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

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

SECTION 11.04 USE TO CONFORM WITH FEDERAL AVIATION REGULATIONS

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

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

SECTION 11.05 NONEXCLUSIVE RIGHT

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

SECTION 11.06 RESERVATION OF AVIGATION EASEMENT

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

SECTION 11.07 HEIGHT LIMITATION OF STRUCTURES

TENANT by accepting this Lease expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object nor permit the growth of any tree on the Leased Premises hereunder (if any) which would penetrate the imaginary surfaces as defined in Part 77 of the FEDERAL AVIATION REGULATIONS (as same may be amended from time to time or as such regulation replacing Part 77 may be adopted by Federal authority) or such other lesser altitude as may be required by COUNTY. In the event the aforesaid covenants are breached, COUNTY reserves the right to enter upon the Leased Premises hereunder and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of TENANT. TENANT shall be responsible for filing Form 7460 for any construction and/or height of construction equipment with the FAA, if required.

SECTION 11.08 NON-INTERFERENCE WITH AIRCRAFT

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

SECTION 11.09 WAR OR NATIONAL EMERGENCY

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

SECTION 11.10 AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) PARTICIPATION

TENANT understands and acknowledges the following:

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

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

ARTICLE XII

MISCELLANEOUS PROVISIONS

SECTION 12.01 TIME

Time is of the essence in this Lease.

SECTION 12.02 LEASE ORGANIZATION

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

SECTION 12.03 AMENDMENTS

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

SECTION 12.04 SIGNS

TENANT agrees not to construct, maintain or allow any sign upon the Leased Premises except as approved by Airport Director. TENANT will comply with the JWA TENANT Design Guidelines and JWA Construction Manual. Unapproved signs, banners, flags, etc., may be removed by Airport Director 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 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. Airport Director, 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 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 may require concession to support emergency operations. Airport Director 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 12.07 RESERVED**SECTION 12.08 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 12.09 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 12.10 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 12.11 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 12.12 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 12.13 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 12.14 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 12.15 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 12.16 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 12.17 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 12.18 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

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.

(SIGNATURE PAGE FOLLOWS.)

IN WITNESS WHEREOF, the parties have executed this Lease the day and year first above written.

TENANT:

By: _____

By: _____

APPROVED AS TO FORM:

County Counsel

By: _____

APPROVED AS TO AUDIT AND ACCOUNTING:

Auditor-Controller

By: _____

RECOMMENDED FOR APPROVAL:

John Wayne Airport

By: _____

Barry A. Rondinella
Airport Director

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

COUNTY

COUNTY OF ORANGE

By: _____
Chairwoman, Board of Supervisors

Clerk of the Board of Supervisors
Orange County, California

EXHIBIT A

LEASED PREMISES DESCRIPTION

Parcel Number: PM 1121-0350-

Project Name: John Wayne Airport

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

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

EXHIBIT B
MAP OF LEASED PREMISES LOCATIONS

EXHIBIT C**SPECIALTY RETAIL (PERMITTED USE)****Specialty High End Retail:**

The non-exclusive sale of merchandise reflective of the proposed concept(s). The categories suggested below, are provided as a guideline. JWA encourages creativity regarding concept, design and layout.

Luxury Accessories

- High End Prestige Cosmetics/Body Care
- Designer Apparel
- Theme Park merchandise
- High End Jewelry/Watches
- Leather Goods

Operator is required to comply with JWA interactive Wayfinding signage with menus, ordering, designated pickup locations and delivery system.

The following items/services are not permitted:

- News and Gift items
- Tobacco, e-cigarettes, cannabis products, and/or vaporizers
- Spa Services
- Electronics
- Food/Beverage products
- Candy and prepacked snacks

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:

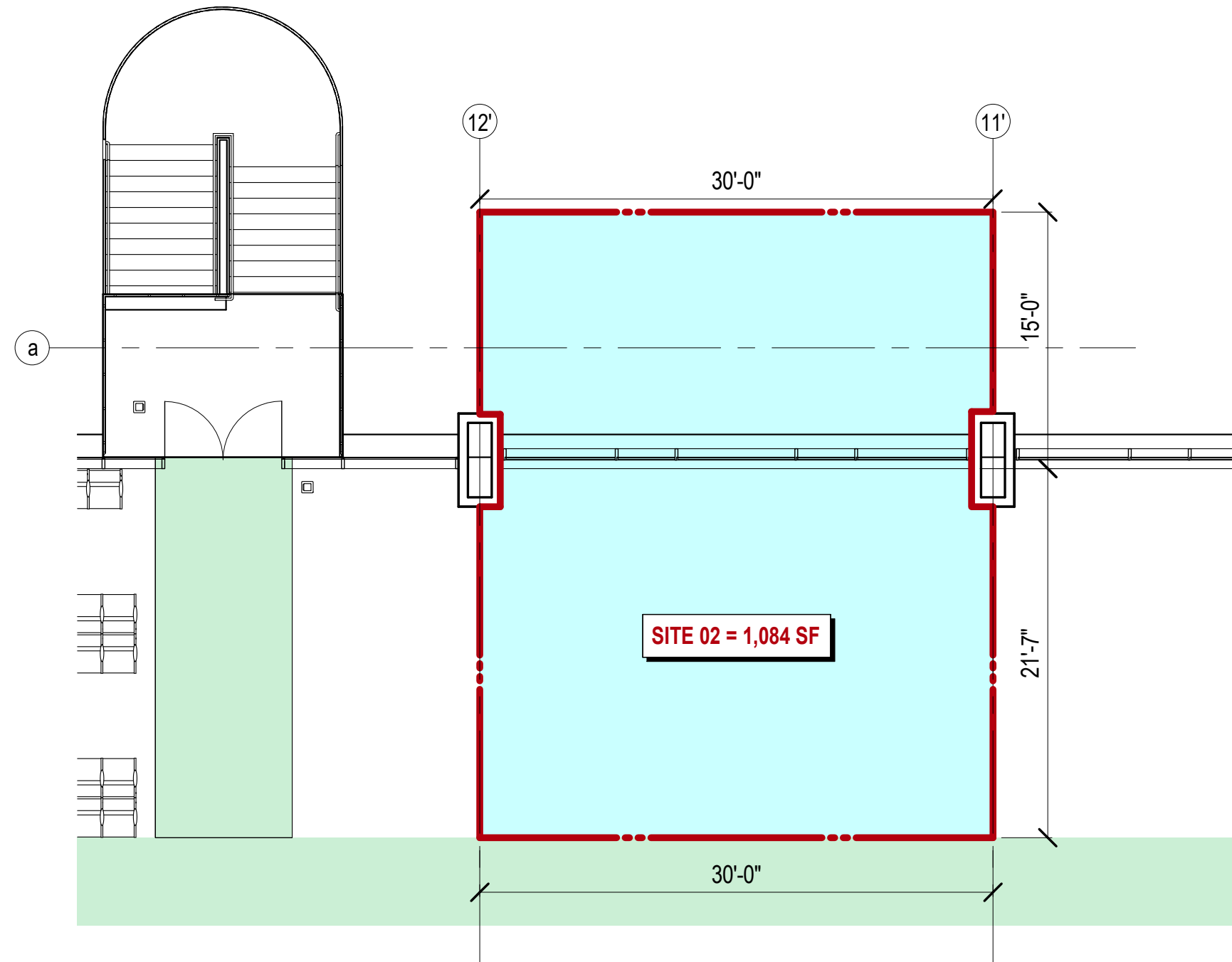
1. All architectural, engineering, and construction CAD drawing files will be done using MicroStation, or newer and/or Microstation-based design and drafting package.
2. All geographic data, spatial analysis, GIS maps, exhibits, and figures will be done using Intergraph GeoMedia or ISRI Arc View or Bentley 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 Retail Tiered Rent by Gross Revenue		
\$ -	\$500,000.00	12%
\$500,000.01	\$750,000.00	14%
\$750,000.01		16%



SITE INFORMATION

1. Site Description:
2. Total Square Footage:
3. Power to Site:
4. Data:

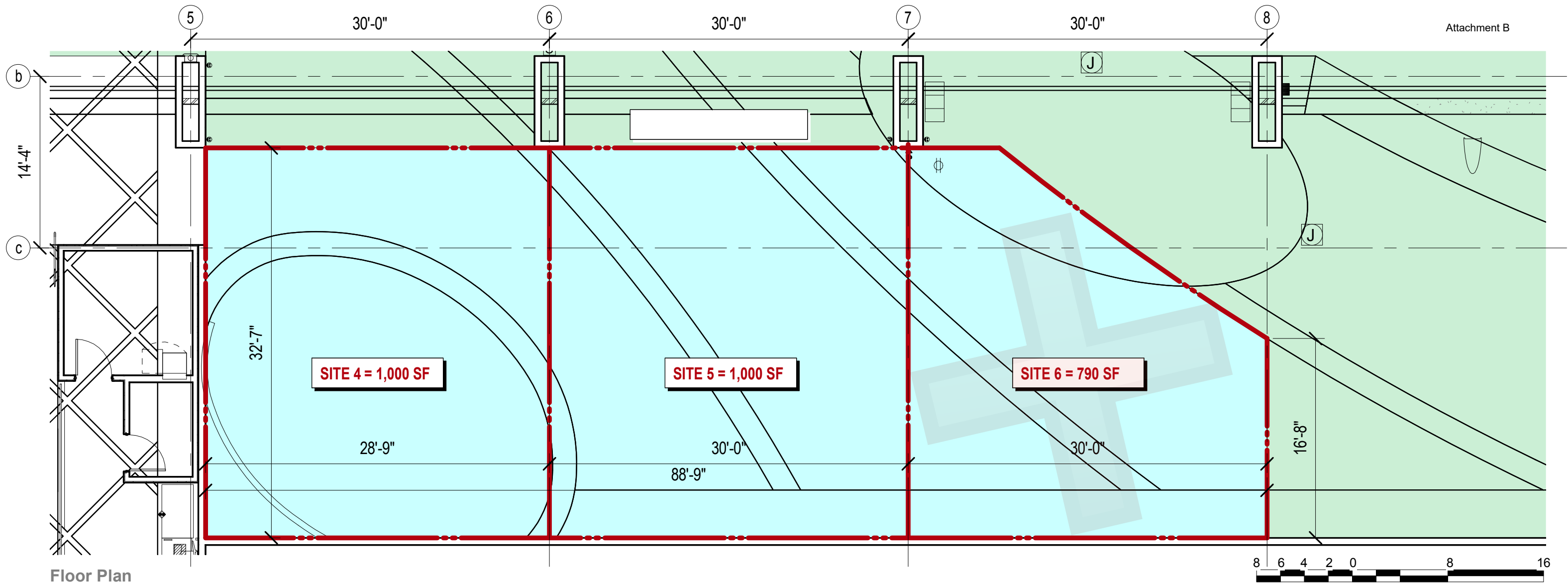
Quick Serve
1,084 SF
Yes
Yes

 SITE BOUNDARY
 CIRCULATION

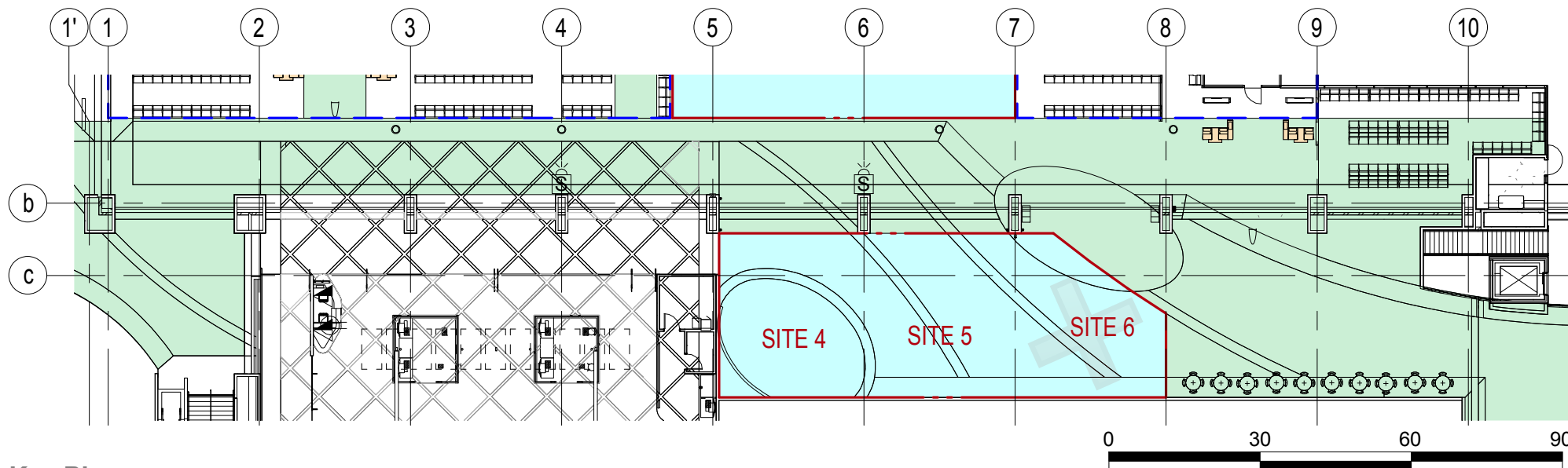
12.06.2019

JWA - CONCESSION LEASE BOUNDARY

Site 2- Quick Serve



Floor Plan



Key Plan

SITE INFORMATION

1. Site Description:
2. Total Square Footage:
3. Power to Site:
4. Data:

Shops
2,700 SF
Yes
Yes

LEGEND

	SITE BOUNDARY		220 V OUTLET		PASSENGER TICKET STATION
	CIRCULATION		DUPLET OUTLET		
	JUNCTION BOX		FIRE EXTINGUISHER CABINET		
	CARD READER		FIRE ALARM STROBE		

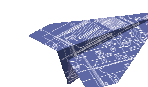
DRAFT - 08.31.2017



JWA - CONCESSION STAND ANALYSIS

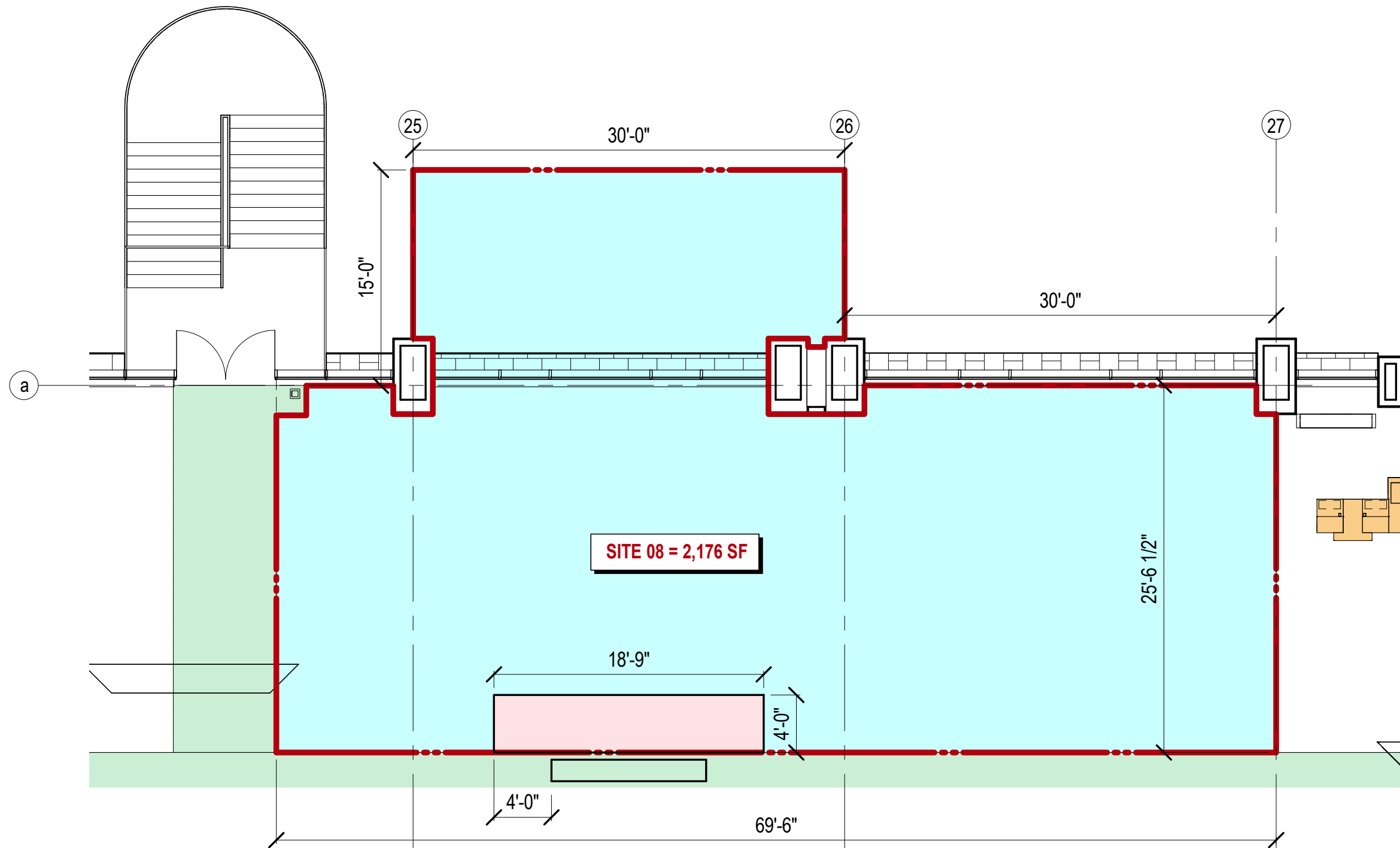
SITE 4 & 5 - SHOPS

*lease outline drawings are estimates and are subject to change



DEVELOPMENT ONE, INC.


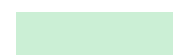
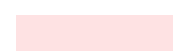
Architecture | Project Management



SITE INFORMATION

- | | | |
|----|-----------------------|---------------|
| 1. | Site Description: | Casual Dining |
| 2. | Total Square Footage: | 2,176 SF |
| 3. | Power to Site: | Yes |
| 4. | Data: | Yes |

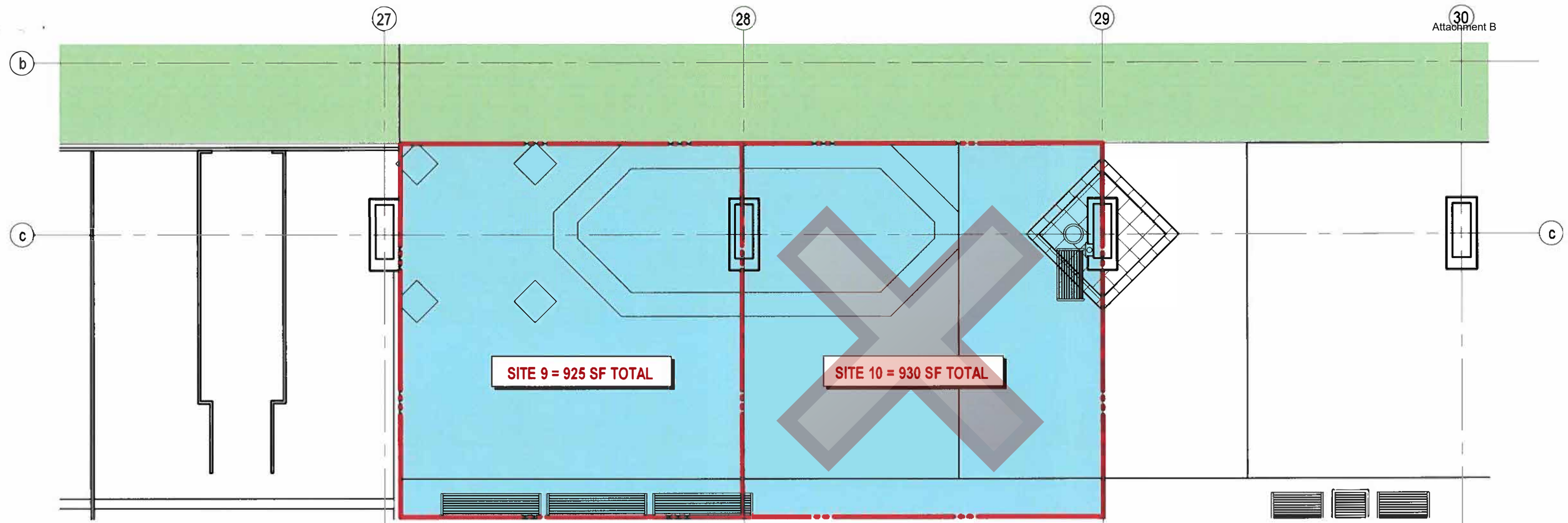
LEGEND

- | | |
|---|-----------------|
|  | SITE BOUNDARY |
|  | CIRCULATION |
|  | MAINTAIN ACCESS |

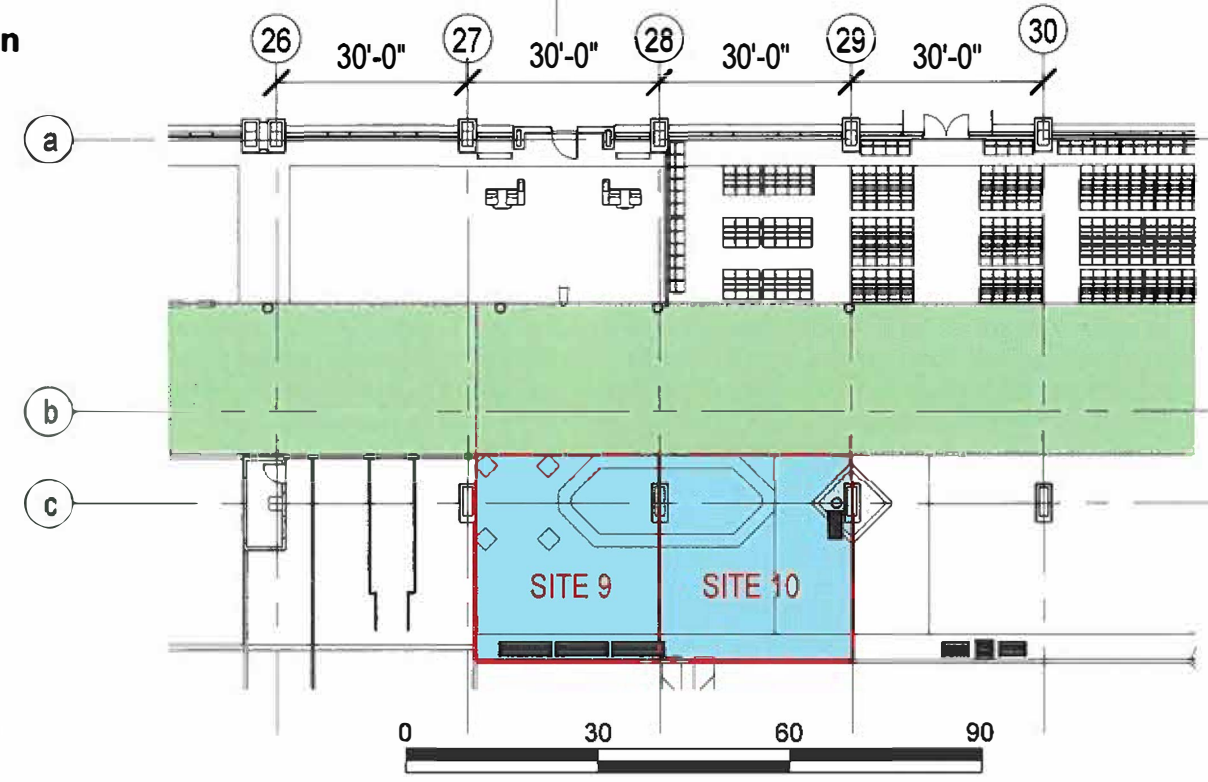
12.06.2019

JWA - CONCESSION LEASE BOUNDARY

Site 8- Casual Dining



Floor Plan



Key Plan

SITE INFORMATION

- | | |
|--------------------------|------------|
| 1. Site Description: | News Stand |
| 2. Total Square Footage: | 1,855 SF |
| 3. Power to Site: | Yes |
| 4. Data: | Yes |

LEGEND

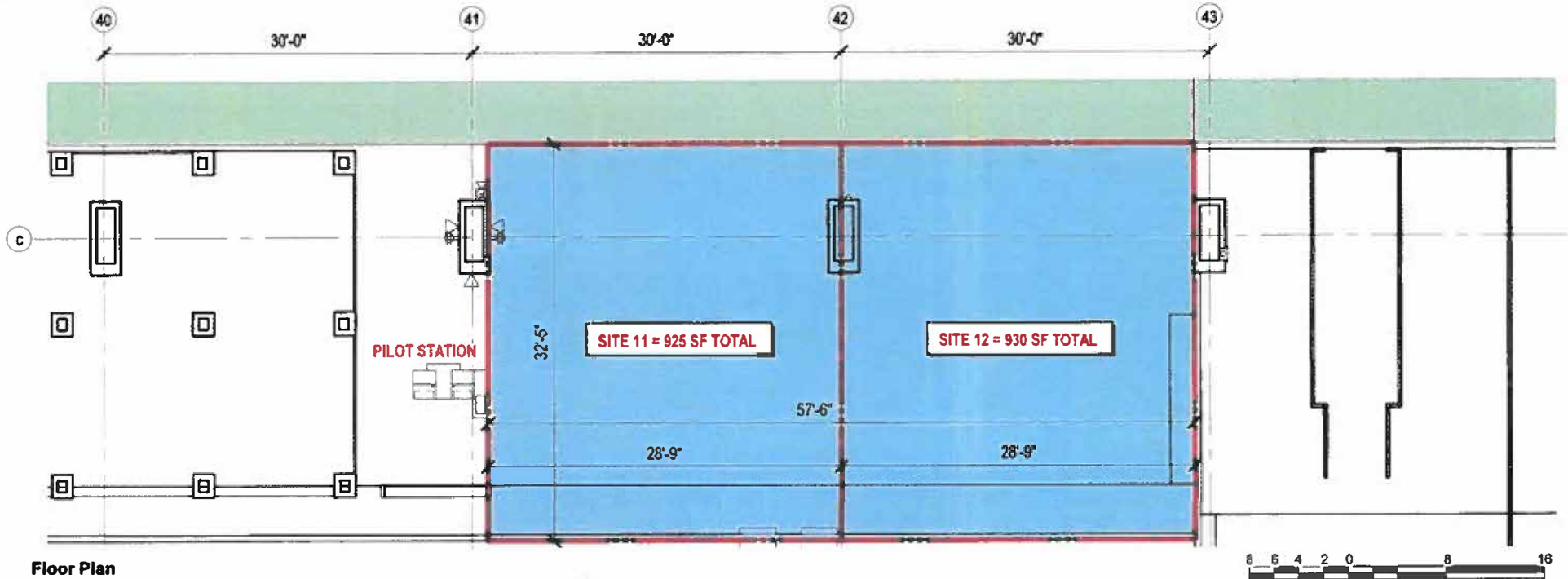
- | | | |
|---------------|----------------------|----------------|
| SITE BOUNDARY | 220 V OUTLET | DATA - VOICE |
| CIRCULATION | DOUBLE DUPLET OUTLET | DATA |
| | DUPLET OUTLET | CARD READER |
| | FIRE ALARM STROBE | FLOOR MONUMENT |

08.14.2018

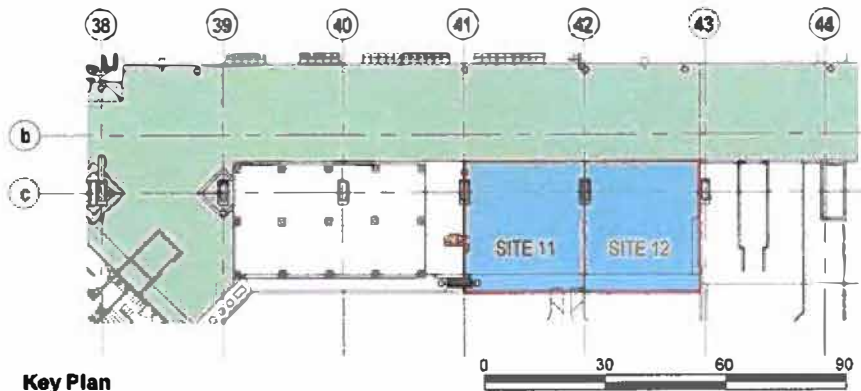
JWA - CONCESSION STAND ANALYSIS

SITE 9 - SPECIALITY RETAIL

*lease outline drawings are estimates and are subject to change



Floor Plan



Key Plan

SITE INFORMATION

- 1. Site Description
- 2. Total Square Footage
- 3. Power to Site
- 4. Data

- 2 Shopping Spaces
- 1 855 SF
- Yes
- Yes

LEGEND

- SITE BOUNDARY
- CIRCULATION

- DATA
- DOUBLE OUTLET
- FIRE ALARM HORN

- WALL MOUNTED SECURITY CAMERA
- FIRE EXTINGUISHER CABINET
- PASSENGER TICKET STATION

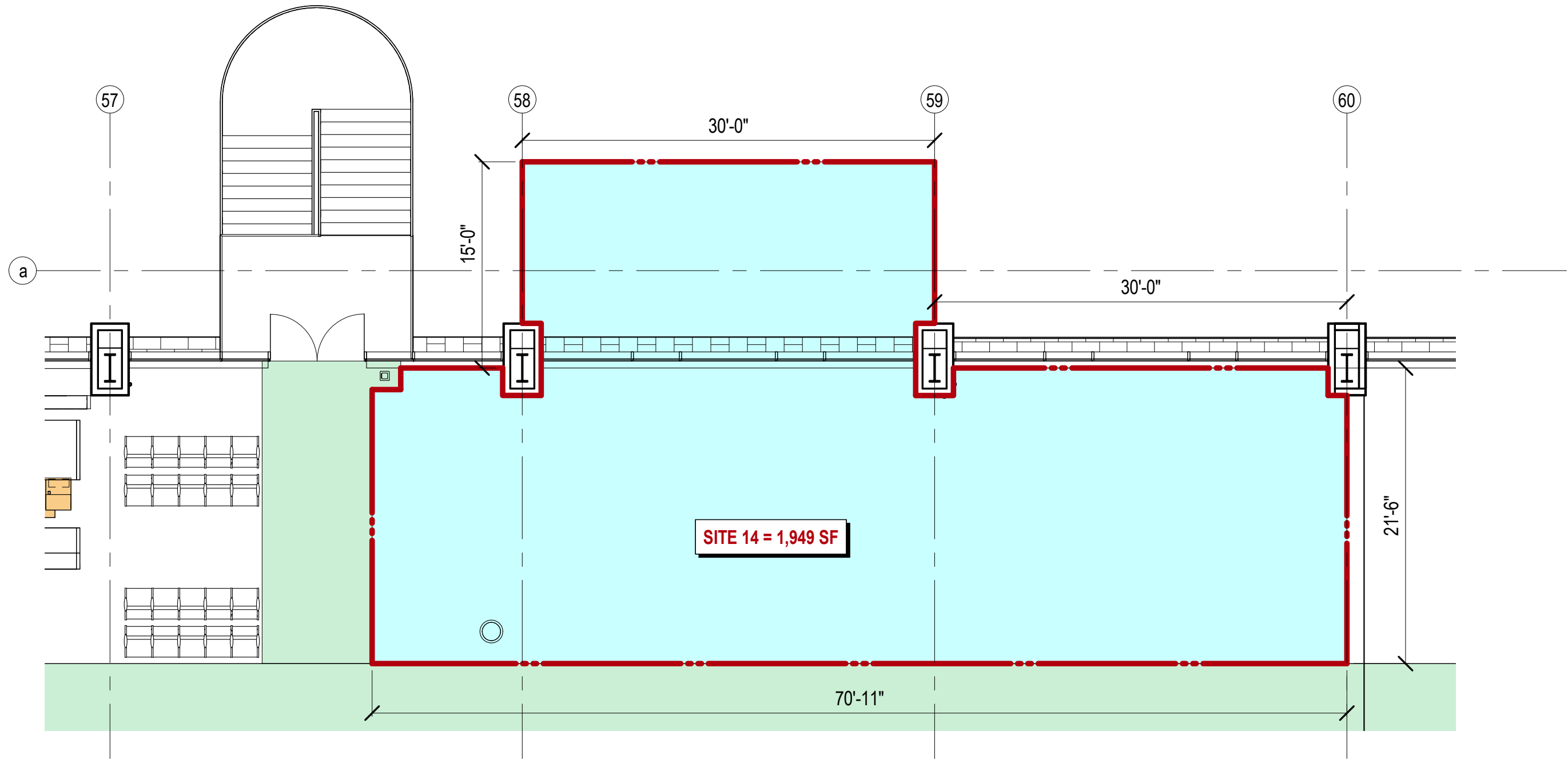
JWA - CONCESSION STAND ANALYSIS

SITE 11 & 12 - 2 SPACES

*lease outline drawings are estimates and are subject to change

08.14.2018






SITE INFORMATION

1. Site Description:
2. Total Square Footage:
3. Power to Site:
4. Data:

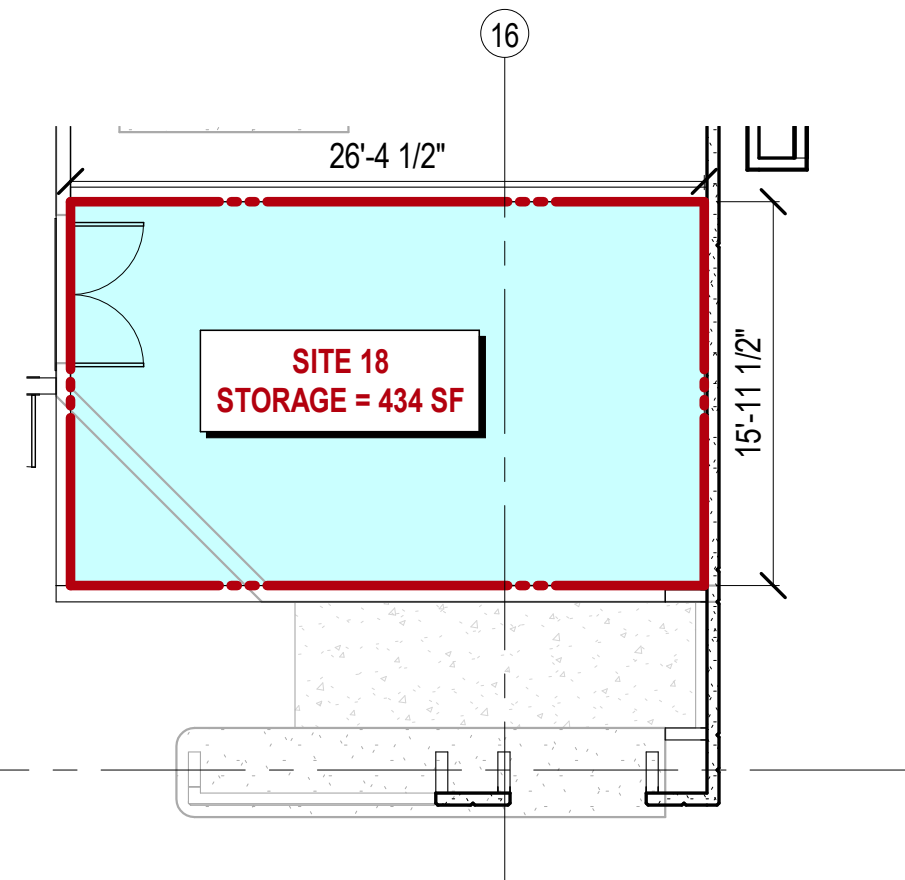
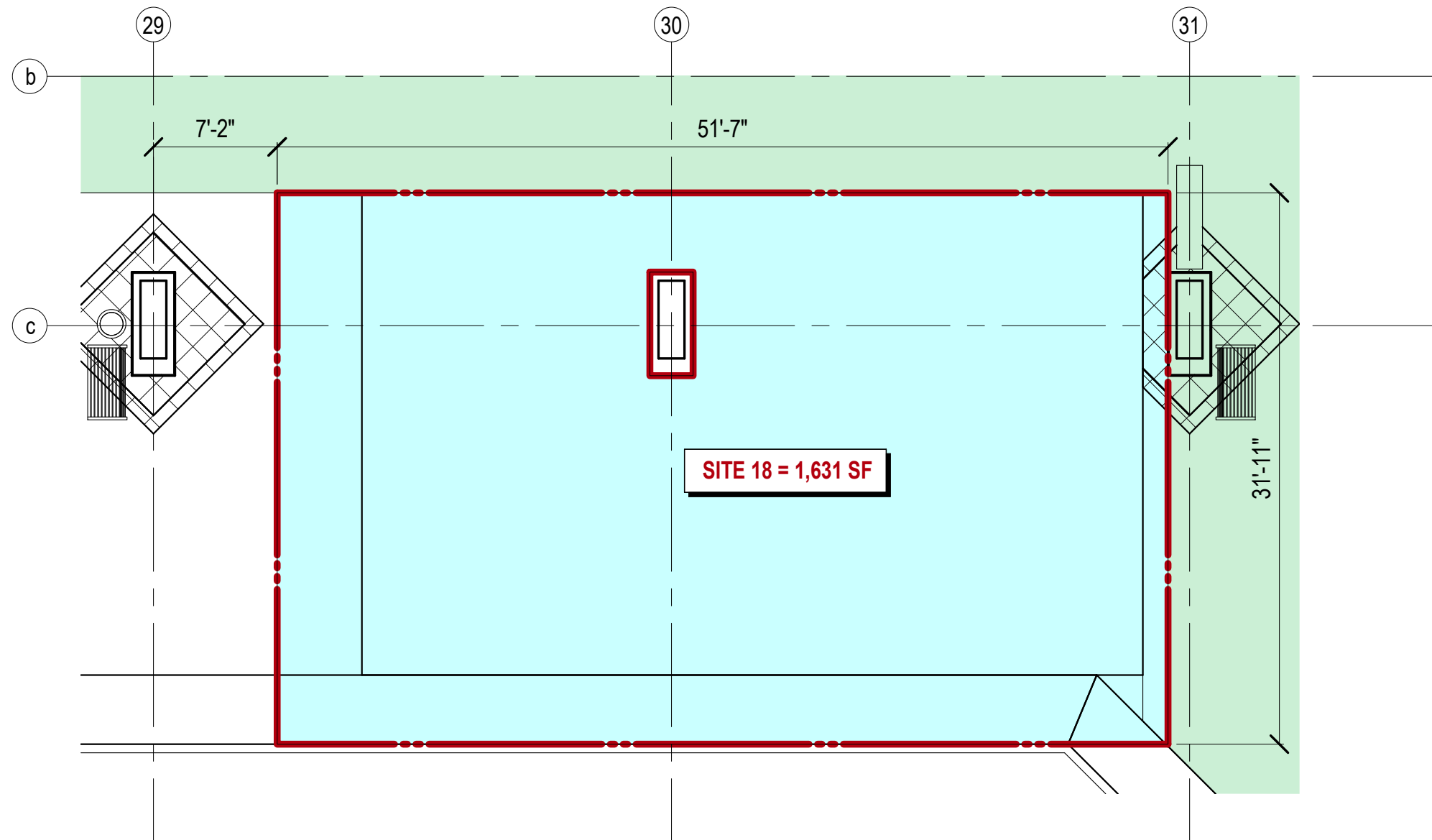
Casual Dining
1,949 SF
Yes
Yes

 SITE BOUNDARY
 CIRCULATION

12.06.2019

JWA - CONCESSION LEASE BOUNDARY

Site 14- Casual Dining



SITE INFORMATION

1.	Site Description:	Specialty Gift/Bar
2.	Total Square Footage:	1,631 SF
3.	Power to Site:	Yes
4.	Data:	Yes
5.	Storage Square Footage:	434 SF

LEGEND

	SITE BOUNDARY
	CIRCULATION

JWA - CONCESSION LEASE BOUNDARY

SITE 18- SPECIALTY GIFT/BAR

12.06.2019