

AMENDMENT NUMBER TWO TO SPECIALTY COFFEE CONCESSION LEASE

THIS SECOND AMENDMENT TO SPECIALTY COFFEE CONCESSION LEASE (“Amendment”) is made and entered into as of _____, 2021, by and between the COUNTY OF ORANGE, a political subdivision of the State of California (“County”) and BAMBUZA SOUTH WATERFRONT, LLC DBA BAMBUZA OC VENTURES, LLC DBA THE COFFEE BEAN & TEA LEAF (“Tenant”). County and Tenant may sometimes hereinafter individually be referred to as “Party” or jointly as “Parties.”

RECITALS

WHEREAS, County and Tenant entered into a Specialty Coffee Concession Lease, dated August 27, 2019 (“Existing Lease”); and

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

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

WHEREAS, County and Tenant now desire to further amend the Existing Lease, as amended by the First Amendment, to extend the Lease term two (2) years, and authorize the Airport Director to extend the Lease term up to one (1) additional year.

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

AGREEMENTS

1. **Term of Lease.** Section 2.01 shall be deleted and replaced in its entirety with the following:

“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 twelve (12) years from the Rent Commencement Date.”

2. **Option to Extend Term.** Section 2.04 shall be added as follows:

“SECTION 2.04 OPTION TO EXEND TERM

Within the first six (6) months of the twelfth year of the Lease term, Tenant may request an additional one-year Lease extension. If Tenant requests a Lease

extension, Tenant shall furnish to Airport Director certified profit and loss/operating statements regarding its operation at the Airport. Airport Director, at his or her sole discretion, may authorize a Lease extension of up to one (1) additional year.”

3. **Federal Grant Assurances and Requirements.** Section 11.01 shall be deleted and replaced in its entirety with the following:

“SECTION 11.01 CIVIL RIGHTS AND NONDISCRIMINATION

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

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

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

- 1) **Compliance with Regulations:** Tenant will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Lease.
- 2) **Nondiscrimination:** Tenant, with regard to the work performed by it during the Lease, will not discriminate on the grounds of race, color, or national origin, in the selection and retention of subcontractors, including procurement of materials and leases of equipment. Tenant will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- 3) **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by Tenant for work to be performed under a subcontract, including procurement of materials, or leases of equipment, each potential subcontractor or supplier will be notified by Tenant of the Tenant’s obligations

under this Lease and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

- 4) **Information and Reports:** Tenant will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the County or the FAA to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, Tenant will so certify to the County or the FAA, as appropriate, and will set forth what efforts it has made to obtain this information.
 - 5) **Sanctions for Noncompliance:** In the event of the Tenant's noncompliance with the non-discrimination provisions of this Lease, the County will impose such sanctions as it or the FAA may determine to be appropriate, including, but not limited to: withholding payments under the contract until the Tenant complies, and/or cancelling, terminating, or suspending a contract, in whole or in part.
 - 6) **Incorporation of Provisions:** The Tenant will include the provisions of paragraphs one through six in every sublease or subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Tenant will take action with respect to any sublease, subcontract or procurement as the County or FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Tenant becomes involved in, or is threatened with litigation by a subtenant, subcontractor, or supplier because of such direction, the Tenant may request the County to enter into any litigation to protect the interests of the County. In addition, the Tenant may request the United States to enter into the litigation to protect the interests of the United States.
- C. Tenant, for itself, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:
- 1) In the event facilities are constructed, maintained or otherwise operated on the Leased Premises for a purpose for which a FAA activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Tenant will

maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

- 2) No person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
 - 3) In the construction of any improvements on, over or under the Leased Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, national origin, age, or disability shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination.
 - 4) Tenant will use the Leased Premises in compliance with all other requirements imposed by or pursuant to List of discrimination Acts and Authorities.
- D. Tenant shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service.
- E. Tenant, for itself, its assignees, and successors in interest agrees to comply with the following Nondiscrimination Acts and Authorities, including but not limited to:
- 1) Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
 - 2) 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
 - 3) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
 - 4) Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of

- disability); and 49 CFR part 27;
- 5) The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
 - 6) Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
 - 7) The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
 - 8) Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
 - 9) The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
 - 10) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
 - 11) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
 - 12) Title IX of the Education Amendments of 1972, as amended,

which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 *et seq*).

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

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

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

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

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

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

9. Contractual Obligations. Tenant shall be current on all contractual obligations, including but not limited to, MAG, Percentage Rent, Insurance, Security Deposit, late fees, penalties, and fines through September 30, 2021, except as otherwise provided for herein. Tenant shall maintain JWA-approved concession locations and hours of operation.

[Signatures appear on following pages]

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

Bambuza South Waterfront, LLC dba

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

By: [Signature]
Its: Managing Member
Name: Daniel Ngyela

By: _____
Its: _____
Name: _____

APPROVED AS TO FORM:

County Counsel

By: [Signature]

APPROVED AS TO AUDIT AND ACCOUNTING:

Auditor-Controller

By: Vivian S. A. Conte

RECOMMENDED FOR APPROVAL:

John Wayne Airport

By: [Signature]
~~Barry Rondinella~~ Richard Francis
Airport Director

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

COUNTY

COUNTY OF ORANGE

By: _____
Chairman, Board of Supervisors

Robin Stieler
Clerk of the Board of Supervisors