

RETAIL CONCESSION LEASE
PM 1121-0350-0007

JOHN WAYNE AIRPORT
ORANGE COUNTY



Dated _____

Between

County of Orange

and

HG JWA Concessionaires JV

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**JOHN WAYNE AIRPORT RETAIL
CONCESSION LEASE**

CONCESSION LEASE

PM 1121-0350-0007

THIS RETAIL CONCESSIONS LEASE ("Lease") is made and entered into this ___ day of _____, 2024, by and between the County of Orange, a political subdivision of the State of California ("County"), and HG JWA Concessionaires JV ("Tenant"). County and Tenant may sometimes hereinafter individually be referred to as "Party" or jointly as "Parties."

RECITALS

WHEREAS, County, through its Board of Supervisors, is the owner and proprietor of John Wayne Airport ("JWA" or "the Airport"), located in the County of Orange, 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 Concessions, and as a result of the proposal process, County selected Tenant to provide Retail Concessions at the Airport; and

WHEREAS, County and Tenant mutually desire to enter into this Lease in order to provide Retail Concessions 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 Retail Concessions Tenant 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

SECTION 1.01 DEFINITIONS

The following terms shall have the meanings set forth below:

Accounting Year: Shall mean (a) With respect to the first Accounting Year during the Term, the period commencing on Term Commencement Date continuing twelve full calendar months, and (b) with respect to each Accounting Year thereafter during the Term, each twelve-month period commencing on the first day of the month following the first full Accounting Year. Provided that if the Term expires or is terminated on a day other than the last day of an Accounting Year, the

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last Accounting Year will then end as of the date of such expiration or termination. Example: If the Term Commencement Date is on March 15, the first accounting year will include March 15 through March 30 of the following year. Thereafter, the accounting year would start on April 1 and end on March 30.

Agreement: Shall mean and refer to this Lease, including all exhibits, appendices, schedules, attachments, and subsequent amendments thereto, as the same may be amended from time-to-time.

Airport: Shall mean John Wayne Airport, Orange County, California located at 18601 Airport Way, Santa Ana, CA 92707.

Airport Concession Disadvantaged Business Enterprise (“ACDBE”): Shall mean a concession that is a for-profit small business concern (1) that is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation in which 51 percent of the stock is owned by one or more such individuals; and (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it. In order to become ACDBE certified, a firm must meet the eligibility criteria stated in 49 CFR Part 23. ACDBEs must be certified by a certifying agency under the California Unified Certification Program (“CUCP”) with the appropriate North American Industry Classification System (“NAICS”) code for their type of business.

Airport Director: Shall mean the Director of John Wayne Airport, County of Orange, as appointed by the Board of Supervisors, or his or her duly authorized designee.

Approved Project: Shall mean, as it applies to any portion of the Leased Premises, Tenant’s construction, furnishing, fixturing, and remodeling of such portion of the Leased Premises as reviewed and approved by County in accordance with the Tenant Design Guidelines.

As-Built Documents: Shall mean record documents of the construction, additions, and other modifications constructed by Tenant on the Leased Premises including but not limited to Tenant’s as built models and drawings in the format as required by County.

Audited Statement of Gross Receipts (“Financial Statement”): Shall mean an audit report prepared annually by an Independent Certified Public Accountant (“CPA”), in accordance with Generally Accepted Auditing Standards expressing an opinion from the Independent CPA on whether the Schedule of Gross Receipts, Rent and all other fees and charges payable under this Lease have been completely and accurately presented, calculated, reported and paid according to the terms of this Lease.

Auditor-Controller: Shall mean the Auditor-Controller, County of Orange, or designee.

Base Rent: Shall mean the rent paid to County by Tenant in accordance with Section 4.03.

Board of Supervisors: Shall mean the governing body of the County of Orange.

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Capital Investment: Shall mean those dollars spent by Tenant in the actual construction, remodeling, furnishing, fixturing, and equipping of any portion of the Leased Premises, in connection with an Approved Project for such portion of the Leased Premises. Capital Investment includes:

1. Architectural and Engineering Fees: All soft costs associated with designing the Approved Project.
2. Leasehold Improvements: All improvements and equipment that are structural in nature or are affixed to the Leased Premises and cannot be removed without material damage to the Leased Premises including, but not limited to, mechanical, electrical, and plumbing work, floors, ceilings, demising walls, store fronts, lighting fixtures, and built-in shelving.
3. Furniture, Trade Fixtures, and Equipment (“FF&E”): All furniture, fixtures and major equipment installed by Tenant within the Leased Premises for use in its performance of the Concession which may be removed from the Leased Premises without causing material damage to the Leased Premises.

Claim: Shall mean any demand, action, cause of action, suit, proceeding, arbitration, claim, judgment or settlement or compromise relating thereto which may give rise to a right to indemnification and defense pursuant to the terms of this Lease

Codes: Shall mean all current applicable federal, state, and local laws and regulations, including but not limited to, or ordinances, and building codes, and all Airport Rules and Regulations.

Concession: Shall mean the rights granted to Tenant by County to develop and operate a business to sell food & beverage, retail or passenger services products to the public, and related operations thereto, within the Leased Premises and in accordance with the terms and conditions of this Lease.

Concession Space Rent: Shall mean the amount payable by Tenant to County for the use and occupancy of the Leased Premises, as further described in Section 4.02.

Construction Costs: Shall mean those dollars spent by Tenant in the actual construction, remodeling, furnishing, fixturing, and equipping of any portion of the Leased Premises, as further defined in Section 11.12. Construction Costs include but are not limited to:

1. Architectural and Engineering Fees: All soft costs associated with designing the Approved Project.
2. Leasehold Improvements: All improvements and equipment that are structural in nature or are affixed to the Leased Premises and cannot be removed without material damage to the Leased Premises including, but not limited to, mechanical, electrical, and plumbing work, floors, ceilings, demising walls, store fronts, lighting fixtures, and built-in shelving.
3. Furniture, Trade Fixtures, and Equipment (“FF&E”): All furniture, fixtures and major equipment installed by Tenant within the Leased Premises for use in its performance of the

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concession which may be removed from the Leased Premises without causing material damage to the Leased Premises.

County: Shall mean the County of Orange, a political subdivision of the State of California.

Date of Beneficial Occupancy (“DBO”): Shall mean the date upon which Tenant completes any Approved Project and opens a Concession for business in any portion of the Leased Premises.

DOT: Shall mean the Department of Transportation.

Effective Date: Shall mean the date this Lease is fully executed by the Parties.

Enplanements or Enplaned Passengers: Shall mean all those passengers boarding flights at the Airport from scheduled or chartered flights, whether domestic or international, including non-revenue passengers (but excluding airline crew for the flight), and including those passengers connecting from arriving flights of same or another airline.

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, Substances, 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. Parts 173 and 175 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.*; (xvi) National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Industrial Activities, Order No. 2014-0057-DWQ (or most current); (xvii) National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ amended by 2010-0014-DWQ & 2012-0006-DWQ; (xviii) The County of Orange, Orange County Flood Control District and The Incorporated Cities of Orange County within the Santa Ana Region Areawide Urban Storm Water Runoff Orange County Municipal Separate Storm Sewer System (MS4) Permit Order No. R8-2009-0030 (National Pollutant Discharge Elimination System No. CAS618030) as amended by Order No. R8-2010-0062; (xix) South Coast Air Quality Management District Regulations and Rules; and (xx) all other federal, State, and local laws, rules, orders, directives, and codes, regulations, judgments, and

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orders relating to (a) emissions, discharges, releases, and/or threatened releases of Hazardous Materials, Substances 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, Substances, as such laws are amended, and the regulations and administrative codes applicable thereto.

Existing Concession Locations: Shall mean Concessions currently located in the Terminal pursuant to an existing agreement.

Expiration Date: Shall mean the date fifteen (15) years from the Term Commencement Date.

FAA: The Federal Aviation Administration or any successor thereto.

Gross Receipts: Shall mean all monies paid or payable to Tenant for sales made, services rendered, and customer orders fulfilled at or from the Leased Premise, as more fully described in Section 4.01.

Hazardous Materials or Hazardous Substances: 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, Substances" 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-containing materials; poly-chlorinated biphenyl compounds; mold spores or fractions thereof; and/or (vi) substances designated by any governmental entity to cause cancer and/or reproductive toxicity.

Initial Capital Investment: All costs related to the initial redevelopment of the Leased Premises are collectively referred to as "Initial Capital Investment." Initial Capital Investment excludes the cost of any and all refurbishments as described in 11.03.

Interim Concession Locations: Shall mean temporary locations Tenant may use during the build-out of permanent Concessions, as more fully described in Section 2.03.

Interim Phase: Shall mean the time period from the Effective Date to the Term Commencement Date.

John Wayne Airport Construction Standards: Shall mean the construction standards for Airport tenants, their consultants, and contractors for completing tenant improvements at the Airport and may contain requirements applicable to Tenant beyond those provided by this Lease, as may be amended from time to time.

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Leased Premises: Shall mean the areas of the Terminal which County has granted Tenant the right to use on an exclusive-use basis as described in Exhibit A.

Marketing Fund Fee: Shall mean 0.5% of total monthly gross receipts to be used for promotional purposes. 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.

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.

Notice to Proceed: Shall mean, as it applies to any portion of the Leased Premises, the written notice from County to Tenant delivering possession of such portion of the Leased Premises to Tenant to commence the Approved Project for any portion of the Leased Premises, and which establishes the Space Turnover Date and Required Completion Date for such portion of the Leased Premises.

NPDES Permit: Shall mean 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.

Percentage Rent: Shall mean the monthly rent paid by Tenant to County, in accordance with Section 4.04.

Pollutant: Shall mean 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,

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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, §78075.

Predecessor Tenant: The tenant immediately prior to Tenant that provided the same or essentially the same Concession services as awarded by this Lease.

Required Completion Date: Shall mean the date set forth in a Notice to Proceed by which Tenant must complete Approved Project, except as such date may be extended in accordance with the provisions herein.

Space Turnover Date: Shall mean the date provided in a Notice to Proceed which makes a portion of the Leased Premises available to Tenant to commence the Approved Project in such portion of the Leased Premises.

Store Hours: Shall mean a Concession's hours of operation as described in Section 7.04.

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

Storm Water Drainage System: Shall mean a 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.

Substantial Completion Date: Shall mean the date upon which Tenant completes Tenant improvements based upon the submitted and approved development plans and opens for business all Concessions within the Leased Premises.

Successor Tenant: A tenant immediately succeeding Tenant that will provide the same or essentially the same Concession services as are awarded by this Lease.

Support Space(s): Shall mean the non-selling locations which are intended for the support of Tenant's operation of the Concession including, but not limited to, offices, commissary, and storage spaces.

Tenant: Shall mean the legal entity that is Party and bound to the terms and conditions of this Lease. Notwithstanding Section 4.01, Tenant shall include all approved subtenants who are operating within the Leased Premises pursuant to subleases with Tenant. Any person representing Tenant, as required by the terms and conditions of this Lease, shall be an authorized official of Tenant.

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Tenant Design Guidelines: Shall mean the criteria established for design and construction of Tenant projects at the Airport and may contain requirements applicable to Tenant beyond those provided by this Lease, as may be amended from time to time.

Tenant's Response: Shall mean Tenant's proposal in response to RFP No. PM 1121-0345-0034, and any subsequent information submitted by Tenant during the evaluation process, as modified and accepted by County.

Term: The term of this Lease shall be fifteen (15) years from the Term Commencement Date.

Term Commencement Date: Shall mean the DBO of the final location constructed within the Leased Premises.

Terminal: Shall mean the Thomas F. Riley commercial passenger terminal at John Wayne Airport.

TSA: Shall mean the U.S. Department of Homeland Security Transportation Security Administration or any successor thereto.

SECTION 1.02 LEASE EXHIBITS

The following Exhibits are attached hereto and are hereby incorporated and made a part of this Lease:

Exhibit A – Leased Premises Description and Lease Outline Drawings (“LODs”)

Exhibit B – Permitted Uses

Exhibit C – Monthly Gross Receipts Reports

Exhibit D – Development Schedule

Exhibit E – Merchandise/Menu and Pricing

Exhibit F – Requirements for Digital Record Files

Exhibit G – Percentage Rent Rates

Exhibit H – Worker Retention

The documents referenced in this Lease and listed below may be found at the following web address:

<https://www.ocair.com/business/tenant-information/tenant-projects/>

You may copy and paste the link into your web browser, or type the URL in its entirety to reach the website.

1. Tenant Design Guidelines.

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2. John Wayne Airport Construction Standards
3. Computer Aided Design Data Standard
4. Building Information Modeling (BIM) Standards
5. Geographic Information System Data Standard

The Parties acknowledge and agree that certain content required to complete the above Exhibits and Appendices are, as of the Effective Date, unknown. The Parties further acknowledge and agree that other provisions stated in the above Exhibits are subject to change throughout the Term in accordance with the provisions of this Lease.

SECTION 1.03 TENANT'S RESPONSE

Tenant and County acknowledge that Tenant's Response was valuable consideration in the award of this Lease to Tenant and is an authoritative reference for understanding the intention of the Parties. Accordingly, Tenant shall be obligated to meet all specifications described in Tenant's Response; provided, however, that where an express provision of this Lease conflicts with any provision of Tenant's Response, this Lease shall control. Tenant's Response is incorporated herein by reference.

SECTION 1.04 INTERPRETATIONS

As used herein mean as follows:

- Day(s) shall mean calendar day(s).
- Month(s) shall mean calendar month(s).
- The use of any number(s) shall be construed as the singular or the plural, all as the context may require.
- Section heading(s) are for the convenience and reference of the Parties, and do not define or limit the scope of any section or provision.
- The language of this Lease shall be construed according to its fair meaning, and not strictly for or against either Party.

If any provision in this Lease is capable of two (2) constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

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ARTICLE II. LEASED PREMISES

SECTION 2.01 LEASED PREMISES DESCRIPTION

County hereby leases to Tenant and Tenant hereby agrees to lease from County the right to use that certain property hereinafter referred to as “Leased Premises,” within the Airport as listed and depicted in Exhibit A (Leased Premises Description and Lease Outline Drawings), including any improvements to be made or modifications to be made thereto. No other part of the Airport shall be part of the Leased Premises.

If the Leased Premises are not fully constructed at the time of Lease execution, then the actual square footage determined after completion of construction shall be adjusted and acknowledged by the Parties. Tenant shall adhere to County measurement standards of the Leased Premises when submitting final as-built square footage. In the event Tenant measurements differs from the County, County measurements shall prevail. The Parties agree to modify Exhibit A to incorporate such as-built areas into the Lease.

SECTION 2.02 ADDITIONS TO AND DELETIONS FROM THE LEASED PREMISES

County and Tenant may, during the Term and by mutual agreement, add additional space(s) or delete space(s) from the Leased Premises. All space(s) added to the Leased Premises pursuant to this Section shall be subject to all the terms, conditions, and other provisions of this Lease and Tenant shall pay to County all rents, fees, and charges applicable to the additional space(s) in accordance with this Lease. In the case of deletions of space(s) from the Leased Premises, rents, fees, and charges paid to County by Tenant shall be appropriately adjusted. The Parties may modify Exhibit A (Leased Premises Description), and Exhibit B (Permitted Uses) as necessary, to incorporate space additions to the Leased Premises and space deletions from the Leased Premises by amendment executed by the Airport Director and Tenant. In the event an adjustment of Tenant’s Leased Premises modifies the Concession Space Rent, the Airport Director may approve the adjustment, not to exceed twenty (20) percent of Concession Space Rent.

SECTION 2.03 ASSIGNING OF INTERIM CONCESSION LOCATIONS

County may grant to Tenant the right to temporarily use various individual locations, to be mutually agreed upon, as might become available from time to time as Interim Concession Locations. Assigned Interim Concession Locations shall become part of the Leased Premises and be subject to the same rent as defined in Section 4.04. All provisions of this Lease shall apply to the operation of the Interim Concession Locations. Tenant shall be permitted to operate such Interim Concession Locations 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 Concession Locations 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 Concession Locations to the County upon request.

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SECTION 2.04 RECLAIMING OF LEASED PREMISES FOR AIRPORT PURPOSES

County reserves the right to reclaim the Leased Premises when, in the sole discretion of County, such reclaiming is necessary for the development or operations of the Airport or is in the best interest of County.

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 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:

$$\text{COMPENSATION} = A \times (B/C)$$

A = Tenant's actual Leased Premises improvement construction costs submitted in accordance with the Section in this Lease entitled, "Section 11.12 Completion of Construction."

B = Number of full months remaining in the Agreement term.

C = Number of full months between the date Tenant completed construction of Leased Premises improvements and the date the Agreement 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 and "Record Documents" 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, as defined above, for such improvements.

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, or other amount because of partial or full termination of this Lease.

SECTION 2.05 EXCLUSIVE REMEDY

The Compensation provided pursuant to Section 2.04 shall be the 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.

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SECTION 2.06 MINOR MODIFICATIONS TO LEASED PREMISES

County shall have the right to make minor modifications to any portion of the Leased Premises at the sole discretion of the Airport Director or designee to accommodate Airport operations, security renovations, maintenance, or other work to be completed in the Airport. Minor modifications are subject to all provisions in Section 2.02.

SECTION 2.07 INGRESS AND EGRESS

Subject to all applicable rules, regulations, or County policies governing the use of the Airport, the County grants to Tenant the non-exclusive right to use, in common with others, certain areas of the Terminal designated by the County to be public or to be used in common, including, but not limited to, the walkways, streets, roadways, waiting rooms, hallways, restrooms and other passenger conveniences for Tenant's employees, customers, contractors, agents, invitees and suppliers for the uses for which those areas were designed ("Public Areas"). Tenant's rights under this section shall include the right of ingress and egress to and from the Leased Premises. The County reserves the right to modify the Public Areas at anytime and in any way, it deems appropriate, including, but not limited to, reconfiguration of the Public Areas, expansion or contraction of the Public Areas, or changing access points to and from the Public Areas. Access to some Public Areas may be restricted to Tenant's employees who display valid security access badges issued by County.

SECTION 2.08 LEASED PREMISES ACCEPTANCE IN AS-IS CONDITION

Tenant understands, acknowledges, and accepts the Leased Premises in its present "as-is" and "where-is" condition, with all faults and with absolutely no warranties as to condition or suitability for use being given by County. County shall have no obligation, liability, or responsibility to construct additional improvements or to modify existing conditions, nor to provide services of any type, character, or nature (including any obligation to maintain, repair, or replace utilities or telephone/data service) on or to the Leased Premises during the Term other than as explicitly stated in this Lease. Said Leased Premises include the Existing Concession Locations, which are to be demolished, remodeled, or relocated as provided herein.

SECTION 2.09 NO WARRANTY OF ECONOMIC VIABILITY

County makes no warranty, promises, or representations as to the economic viability of the Leased Premises or Tenant's business concept(s) or any other matter pertinent to the potential or likelihood for success or failure of Tenant business operations. Tenant acknowledges that airline gate usage and other aspects of Airport operations are subject to change during the Term without notice and that the County makes no warranty regarding the location of airline gate usage. Except as is specifically set forth herein, County shall not, by virtue of the existence of this Lease, be constrained in connection with its operation of the Airport.

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ARTICLE III. TERM

SECTION 3.01 TERM

This Lease shall be effective and binding upon the Parties as of the Effective Date. The Term of this Lease shall begin on the Term Commencement Date and continue 15 years through the Expiration Date.

SECTION 3.02 TERMINATION FOR CONVENIENCE

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

SECTION 3.03 CRITICAL DATES

The Effective Date, DBO, Substantial Completion Date, Term Commencement Date, and Expiration Date shall be considered critical dates ("Critical Dates"). The Parties agree to confirm Critical Dates no later than 30 days after the Term Commencement Date.

SECTION 3.04 HOLDOVER

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 until such time that County terminates the Lease. Notice of Lease Termination shall be provided no less than thirty (30) days prior to Tenant's anticipated surrender date of the Leased Premises.

SECTION 3.05 RIGHTS AND OBLIGATIONS UPON EXPIRATION OR TERMINATION

Tenant shall, upon termination of this Lease, with or without cause, surrender the Leased Premises to County peaceably, quietly, and in substantially the same order and condition as was delivered or may be hereafter improved by Tenant as approved by County. Reasonable use and wear thereof and damage by casualty, which damage Tenant did not cause and is not required to repair or restore, is excepted. Tenant shall remove all signage and provide temporary walls to seal all openings of Leased Premises that meet the guidelines outlined in the Tenant Design Guidelines and John Wayne Airport Construction Standards. Tenant shall also provide to County all keys to doors, window displays, or any area of controlled access within the footprint of the Leased Premises.

Tenant shall, upon expiration or termination of this Lease, remove all furniture, fixtures, and equipment installed by Tenant, as may be directed by Airport Director. Airport Director reserves the right to determine what furniture, fixtures, and equipment shall remain in the Leased Premises and become property of the Airport. Tenant shall remove any brand proprietary property, inventory, and other personal property and leave the Leased Premises in broom-clean condition. Any damage to the Leased Premises caused by Tenant's removal of such furniture, fixtures,

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equipment, or property shall be immediately repaired by Tenant at Tenant's expense and to the satisfaction of Airport Director. Notwithstanding the foregoing, if Tenant fails to remove such furniture, fixtures, equipment, or property within ten (10) days from the date of termination of this Lease, then Tenant shall be deemed to have abandoned same, and County shall have the right, at its option, and in its sole discretion, to take title to said furniture, fixtures, equipment and/or property and sell, salvage, or dispose of the same in any manner permitted by law. Tenant shall have no right, interest, or claim in or to any proceeds of the sale or other disposition of such items. Any net expense County incurs in disposing of such items shall be immediately reimbursed by Tenant. No act by County shall be deemed an acceptance of a surrender of the Leased Premises. No acceptance of a surrender of the Leased Premises shall be valid unless it is in writing and signed by County. In the event Tenant is unable to complete any necessary repairs, 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.

**ARTICLE IV. RENTALS, FEES, OTHER CHARGES,
REPORTING, AND ACCOUNTING RECORDS**

SECTION 4.01 DEFINITION OF GROSS RECEIPTS

As used in this section, the term "Tenant" shall include Tenant, its agents, subtenants, Tenants, licensees, or any person acting under contract with Tenant. The term "Gross Receipts" shall include all monies paid or payable to Tenant for sales made, services rendered, and customer orders fulfilled at or from the Leased Premises, regardless of when or where the customer order is placed (including outside the Leased Premises), and any other receipts, credits, rebates, allowances, internet sales, mobile app sales (owned or third-party), or revenues of any type arising out of or in connection with Tenant's operations at the Leased Premises, including, but not limited to, branding fees, marketing fees, merchandising fees, promotional allowances, performance allowances, retail display allowances ("RDAs"), and any other type of ancillary advertising or product placement fees, and other allowances and fees.

Under Section 5.01 in this Lease entitled, "PERMITTED USE," Tenant may be granted the option to provide certain additional services and uses subject to further approval. The term "Gross Receipts" as it applies to these business operations shall be determined by Airport Director, as well as the appropriate rent and percentage, at the time approval is granted.

Gross Receipts shall not include:

- A. Any taxes imposed by law that are separately stated to and paid by a customer and directly payable to the taxing authority by Tenant.
- B. Amounts and credits received from suppliers for products and merchandise returned by Tenant.
- C. Cash and credit card refunds to customers for merchandise returned.

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- D. Amounts and credits received in settlement of claims for loss of, or damage to, merchandise.
- E. Insurance proceeds received from the settlement of claims for the loss of or damages to Tenant's property at or on the Leased Premises other than the proceeds from business interruption insurance.
- F. Inter-company store transfers.
- G. United States Postal Service stamp sales.
- H. Uniforms or clothing purchased by employees where such uniforms or clothing are required to be worn by employees.
- I. Reimbursements from Tenant's subtenants for any taxes, fees, franchise or license fees, utilities, or other services paid or provided by Tenant for or on behalf of its subtenants; provided, however, that any reimbursement more than the actual cost of such taxes, fees, franchise or license fees, utilities or other services shall be included in Gross Receipts.
- J. Rental, fees, and charges paid to Tenant by its subtenants pursuant to the provisions of this Lease; provided, however, that any such payment more than the amounts required hereunder shall be included in Gross Receipts.
- K. Gift cards sold at the Leased Premises. When a gift card is redeemed or accepted as payment for a purchase at the Leased Premises, the transaction must be reported as part of Gross Receipts.
- L. Gratuities for services performed by employees paid by Tenant or by its customers except to the extent Tenant may be entitled to receive a portion of the gratuities.
- M. Amounts for coupons and other forms of discounts (including Airport but not limited to employee meals, complimentary customer meals, and the Airport employee discount described further below and in Section 7.03), such that only the amounts received are ultimately included in Gross Receipts.

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, the amount of discount, and the discounted sales price.

SECTION 4.02 CONCESSION SPACE RENT

Concession Space Rent shall commence upon the Term Commencement Date. Tenant agrees for each Accounting Year to pay the greater of a) Base Rent or b) Percentage Rent, as Concession Space Rent payable monthly in arrears, on or before the fifteenth (15) day of each calendar month

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without prior demand or notice. Should the Term Commencement Date occur on a day other than the first (1st) day of a calendar month, or should this Lease expire or terminate on a day other than the last day of a calendar month, then Concession Space Rent due for such partial month shall be prorated on the basis of a thirty (30) day month. Should any Accounting Year contain less than twelve (12) calendar months, said Concession Space Rent shall be prorated based on a three hundred sixty (360) day year.

Interim Concession Locations: Tenant shall pay Percentage Rent for each Concession within the Leased Premises, including Interim Concession Locations, pursuant to Exhibit G. Upon the Term Commencement Date, Percentage Rent for Interim Concession Locations shall be adjusted based upon Total Annual Cumulative Gross Receipts pursuant to Exhibit G.

SECTION 4.03 BASE RENT

Base Rent shall commence upon the Term Commencement Date. The Base Rent shall be Seventy-Five (\$75.00) dollars per square foot annually. Upon the Term Commencement Date, Tenant shall pay either Base Rent or Percentage Rent, whichever is greater. Base Rent shall be payable monthly in arrears, on or before the fifteenth (15) day of each Calendar Month without prior demand or notice.

On _____, _____, and annually thereafter, the Base Rent shall be automatically adjusted to the following:

The Base Rent 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:

$$X = \frac{(\$75.00 \times \text{Total Square Feet as stated on Exhibit A}) \times A}{B}$$

X = Adjusted minimum Base Rent, If X > Prior Accounting Year Base Rent x 1.05%
Then X – Prior Accounting Year Base Rent x 1.05%

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

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

Effective on the first day of each Accounting Year after the initial Accounting Year or initial partial Accounting Year, Base Rent shall adjust based on the annual percentage change in the Consumer Price Index All Urban Consumers (“CPI-U”) Index. However, in no event will the annual adjustment result in Base Rent being reduced by any adjustment from the amount charged during the prior Accounting Year, and any increase to the annual adjustment will not be more than five percent (5%) above the amount charged during the prior Accounting Year.

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SECTION 4.04 PERCENTAGE RENT

Percentage Rent shall commence upon the DBO for each Concession within the Leased Premises. At all times while Gross Receipts are being generated from the Leased Premises, Tenant shall calculate Percentage Rent each calendar month, in accordance with the applicable Percentage Rent Rate(s) as set forth in the Exhibit G, in a form acceptable to the County. On or before the 15th day of each month, Tenant shall pay Percentage Rent in arrears to County without prior notice or demand after the expiration of each calendar month. All Percentage Rent payments shall be computed based on all Gross Receipts made during the previous Calendar Month, as all such Gross Receipts are indicated on Tenant's Gross Receipts Report.

Percentage Rent Total Annual Cumulative Gross Receipts shall reset at the Term Commencement Date and beginning of each Accounting Year thereafter based upon Total Annual Cumulative Gross Receipts pursuant to Exhibit G.

SECTION 4.05 SECURITY DEPOSIT

Tenant shall deposit with County a security deposit in the sum equal to four (4) times the monthly Base Rent as determined by Airport Director prior to execution of the Lease by the Board of Supervisors.

Concurrently with each revision of Base Rent pursuant to the Section 4.03, the security deposit to be provided by Tenant shall be adjusted to approximately four (4) times the average monthly Base Rent or Percentage Rent, whichever is greater for the prior year, or 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. A letter 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 letter(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

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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 a letter 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 Agreement 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 fifty (150) 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 4.06 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 upon the Term Commencement Date, Tenant shall pay to County an amount equal to one half of one percent (0.5%) of the previous month's Gross Receipts, which amount Tenant agrees to pay County concurrently with the Concessions Space Rent. All monies received by the Airport for the marketing fund shall be used solely for the purpose of Airport tenant promotions and directly related expenses. Tenant agrees to pay the Marketing Fund Fee payable monthly in arrears, on or before the fifteenth (15) day of each calendar month without prior notice or demand.

SECTION 4.07 SCREENING

If applicable as may be required by local, state or federal Law, including, but not limited to, the Federal Aviation Administration's ("FAA"), the Transportation Security Administration's ("TSA"), the County's or any other applicable rules and regulations now in effect or hereinafter enacted, costs incurred for the screening of Tenant's goods, merchandise, products, equipment, materials and supplies, shall be paid by Tenant directly to County.

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SECTION 4.08 ADDITIONAL RENT, FEES, AND MISCELLANEOUS CHARGES

In addition to Concession Space Rent, Tenant shall pay, as Additional Rent, all sums of money required to be paid by Tenant to County hereunder, including, but not limited to: Miscellaneous Charges, Violation Fines, Utilities, Tenant's share of Taxes assessed against County, Operating Costs and Expenses, Marketing Fund Fee and any other sums or charges which may be due from Tenant hereunder. If such amounts or charges are not paid at the time and in the manner as provided herein, they shall nevertheless be collectible as Additional Rent with the next payment of Concession Space Rent thereafter falling due, but nothing herein shall be deemed to suspend or delay the payment of any amount of money or charge at the time the same becomes due and payable hereunder or to limit any other remedy of County. All amounts of Rentals payable in each month shall be deemed to comprise a single rental obligation of Tenant.

SECTION 4.09 RECORD KEEPING, REPORTS, ANNUAL AUDIT, AND END OF YEAR ADJUSTMENT

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 Agreement.

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. Tenant's 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 beginning with the Term Commencement Date.

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C. Financial Reports

Daily Gross Receipts: Upon request of the County, Tenant agrees to report Gross Receipts for periods of less than one month in a format and frequency as requested by County.

Gross Receipts Report: No later than fifteen (15) days after the end of each month during operations, including any interim operations. Tenant shall deliver to County a Gross Receipts Report, in a form as set forth in Exhibit C attached hereto, as may be amended, stating Gross Receipts for said month for each Concession within the Leased Premises and the calculation of Percentage Rent payable for said month.

Financial Statement: 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 as defined in Section 4.01 for all Airport operations (“Financial Statement”). This Financial Statement shall include a breakdown schedule of total Gross Receipts for the Accounting Year by month and sales as classified according to the categories of business established for Percentage Rent and listed in Article IV (RENTALS, FEES, OTHER CHARGES, REPORTING, AND ACCOUNTING RECORDS) and for any other business conducted on or from the Leased Premises. This statement shall be prepared by a Certified Public Accountant (“CPA”) or CPA firm holding a current and valid license with their local state Board of Accountancy. The audit and audit report must be performed and presented, respectively, in the applicable standards promulgated by the AICPA.

The first Financial Statement must include all Gross Receipts from the Interim Concession Locations and the Gross Receipts of the first Accounting Year. All subsequent Financial Statements will be for the Accounting Year.

A reviewed statement of Gross Receipts performed in accordance with applicable AICPA standards may be requested by Tenant instead of a Financial Statement if there is undue hardship to obtain a Financial Statement. Tenant must request and obtain written approval for a reviewed statement from the Airport Director prior to the Financial Statement due date for the year to be audited. If the request is not made by the Tenant prior to the due date, the request will be denied. If a reviewed statement of Gross Receipts is approved by the Airport Director, the reviewed statement of Gross Receipts is only approved for the year requested. The Tenant is required to submit an audited statement of Gross Receipts for future years.

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 all 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 7920.000 et seq.

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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 Section “Annual Audit.” Airport Director, or designee may require Tenant to submit the following:

- \$5,000 fine and/or
- 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.

The assessed fine does not relieve Tenant from the responsibility to submit an Financial Statement or provide sufficient financial records for the Certified Public Accountant hired by the County to complete the required audit.

D. Findings

County reserves the right to challenge any findings or conclusions of the Financial Statement if it believes an error may have occurred. In such event, County may conduct its own audit under the provisions in this section or may require production of the supporting documentation used to reach the finding(s) or conclusion(s) in question. The resolution by County of any dispute will be final. Delivery of a Financial Statement containing a qualified opinion, or an adverse opinion, or a disclaimer of opinion as defined in the authoritative AICPA standards, as may from time to time be amended or superseded, issued by the Auditing Standards Board of the American Institute of Certified Public Accountants, or any successor board or agency thereto, will be deemed a material breach of this Lease and, in addition to all other remedies available to County, County may, in its sole discretion, terminate this Lease.

E. End of Year Adjustment

After reconciling the Financial Statement, if Tenant has paid to County an amount greater than Tenant is required to pay as Concession Space Rent or Additional Rent for an Accounting Year under the terms hereof, Tenant shall be entitled to a credit against Tenant’s Concession Space Rent or Additional Rent for the amount of the overpayment. If Tenant has paid less than the amount required to be paid as Concession Space Rent or Additional Rent for such Accounting Year, County will invoice the difference and will be due 30 days from the invoice date. Airport Director or designee may require a late fee may be charged if received after the due date.

F. Form, Frequency, and Method of Reporting

Acceptance of monthly reports and payments by County does not constitute agreement by County with the amounts reported and paid. County reserves the right to change the form and frequency of reports and statements, including, but not limited to, the Gross Receipts Report, and to require the submission by Tenant of other statistics and information pertaining to the Gross Receipts hereunder. Tenant agrees to change the form of the required reports and statements as requested by County and to provide any additional statistics and information County may request.

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County shall have the right at any time to require that reports be delivered electronically using technology and procedures designated by County. If County instructs Tenant to deliver any reports and statements required hereunder by computer, e-mail, internet website, or transmission, County shall not be obligated to furnish Tenant with the equipment or systems necessary to do so.

SECTION 4.10 PAYMENT PROCEDURE, PLACE OF PAYMENT, AND STATEMENT FILING

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 Accounting Year which ends with and includes the last day of the preceding calendar month. The statement shall be signed by Tenant or Tenant's responsible agent in a form prescribed by Auditor-Controller with the attestation "I declare under penalty of perjury under the laws of the State of California that the preceding is true and correct." Each statement shall indicate:

- 1) One-twelfth of the Annual Concession Space Rent payment;
- 2) The total gross receipts for said portion of the Accounting Year, itemized as to each of the business categories for which a separate percentage rent is established. A breakdown of the gross receipts of each business conducted on the Leased Premises must be attached to each statement where a reported business category is comprised of more than one business operation;
- 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 Accounting Year 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:

- a) Marketing Fund Fee which will be 0.5% of the preceding monthly gross receipts.
- b) The greater of: 1) the total Percentage Rent computed for that portion of the Accounting Year ending with and including the last day of the preceding month [Item 3, above] less total rents previously paid for the Accounting Year [Item 4, above], or 2) One twelfth of the annual Base 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].

Payments and statements required by Article IV in this Lease entitled, "RENTALS, FEES, OTHER CHARGES, REPORTING, AND ACCOUNTING RECORDS," shall be sent electronically or delivered to the County of Orange, Office of the Auditor-Controller, John Wayne

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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.

SECTION 4.11 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.

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 shall be liable for treble damages pursuant to California Civil Code Section 1719.

SECTION 4.12 FAILURE TO MAKE TIMELY PAYMENTS

Tenant hereby acknowledges that the late payment of Percentage Rent during the Interim Phase, Concession Space Rent and Marketing Fund Fee 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 Percentage Rent during Interim Phase, Concession Space Rent, and Marketing Fund Fee as specified in Section 4.06 in this Lease, 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 shall be added to any amount that remains unpaid after such amount was due and payable hereunder; provided, however, with regard to the first such failure in any twelve (12) month period beginning at DBO through Accounting Year and every Accounting Year thereafter, such late charge shall be waived to the extent tenant cures such failure. The unpaid 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

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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.

The failure of County to act in the event of a delinquent payment or series of payments shall in no way waive the right of County to act at a subsequent time. County expects all rents, fees, and charges to be paid on time and Tenant agrees to pay on time.

Notwithstanding other provisions of this Lease, and without limiting the other provisions of this Lease concerning, among other things, events deemed to constitute default of Tenant, County may, in County's reasonably exercised discretion, terminate this Lease upon written notice to Tenant if there are recurring instances in which Tenant's payments required hereunder are not timely or are insufficient to cover sums actually due and payable.

SECTION 4.13 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 4.14 COUNTY'S RIGHT TO PERFORM AUDITS, INSPECTIONS, OR ATTESTATION ENGAGEMENTS

Notwithstanding Tenant's requirement to submit the Annual Report set forth herein, County, or its representative, will have the right through the expiration of the third year after the expiration or termination of this Lease, through its representatives, and at all reasonable times, to review all books, records, and agreements of Tenant and where applicable, all individuals or other business entities who are party to this Lease, requested by County's representatives to substantiate the accuracy of reported Gross Receipts and Tenant's compliance with other provisions of this Lease. This includes, but is not limited to, Annual Reports, general ledgers, sales journals, daily or periodic summary reports, inventory and purchasing records, cash register or computer terminal tapes or reports, bank deposit slips, bank statements, cancelled checks, tax reports/returns filed with state or federal entities, discount or rebate/allowance agreements, records of refunds or voids, and joint venture or partnership agreements. Such right of examination shall include cooperation by Tenant personnel (including, but not limited to, cooperation in sending confirmations to Tenant's suppliers or others, assisting County in obtaining from governmental entities official copies of tax reports/returns, and disclosing all bank or other accounts into which Gross Receipts are deposited) as reasonably considered necessary by County, or its representative, to complete the engagement. There may be no limitation in the scope of the engagement that would hinder County in testing the accuracy and completeness of the reported Gross Receipts. All such books, records, and agreements shall be kept for a minimum period of five (5) years after the close of each Accounting Year.

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Engagements will be conducted at the Airport. However, if agreed to by County, the engagement can be conducted at another location, in which event Tenant shall reimburse County for reasonable transportation, food and lodging costs associated with the engagement, accrued in accordance with County's Policy and Standard Procedure relating to Travel Expenses. Tenant shall allow County's representatives to photocopy any records the representatives determine to be necessary to conduct and support the engagement. Tenant shall provide County's representatives with retrievals of computer-based record or transactions the representatives determine to be necessary to conduct the engagement. Tenant shall not charge County for reasonable use of Tenant's photocopy machine while conducting the engagement, nor for any cost of retrieving, downloading to storage media and/or printing any records or transactions stored in magnetic, optical microform or other media. Tenant shall provide all records and retrievals requested within seven (7) days of the request. The Parties recognize that County will incur additional costs if records requested are not provided in a timely manner and that the amount of those costs is difficult to determine with certainty. Consequently, the Parties agree that County may assess violation fines in the amount of \$100 per day for each record requested that is not received. Such damages may be assessed beginning on the eighth (8th) day following the date the request was made. Accrual of such damages will continue until specific performance is accomplished.

If, because of any engagement, it is established that Tenant owes additional rents, fees, or charges to County, Tenant will pay such additional rents, fees and charges and County may assess interest in accordance with Section 4.08. If it is established that Tenant underreported Gross Receipts or underpaid fees related to Gross Receipts by three percent (3%) or more for the period under consideration, the entire expense of the engagement may be billed to Tenant. Any additional payments due shall be paid, no later than Tenant's next payment of the Base Rent, by Tenant to County. If it is established that Tenant underreported Gross Receipts or underpaid fees related to Gross Receipts by five percent (5%) or more for the period under consideration, County shall be entitled to terminate this Lease for cause upon thirty (30) days' written notice, regardless of whether the deficiency is paid. If because of any engagement, it is established that Tenant has correctly reported or over reported Gross Receipts or has paid fees related to Gross Receipts equivalent to or greater than the sum due, County shall refund Tenant and the entire expense of the engagement shall be paid by County.

Tenant will include a provision providing County the same rights to initiate and perform audits, inspections, or attestation engagements in any Subtenant agreement that it enters and cause its Subtenants to similarly include the statements in further Subtenants agreements.

Section 4.15 Severe Decline in Enplanements

If at any time during the Term there is a severe decline in enplanements for three (3) consecutive months, as compared to same time period in the previous year, then Tenant shall provide notice to the Airport Director, and at the Airport Director's discretion and upon approval of the Board of Supervisors, Concession Space Rent may be temporarily suspended or reduced. The Airport Director shall have the sole discretion as to whether there exists a severe decline in enplanements.

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Section 4.16 Utilities

In addition to the rental charges as herein provided, Tenant shall pay or cause to be paid prior to delinquency, directly to County, a pro-rata share for utilities, i.e. electricity, water, gas, and gas to create electricity, established by the allocation of Airport's total costs and expenses associated with utilities and allocated based on square feet of Tenant space. Tenant's utility usage will be invoiced to the Tenant by County and payment is due within thirty (30) days of invoice to Tenant. Tenant may individually meter Leased Premises where feasible and pay for individual usage and will notify County prior to construction. 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. PERMITTED USES

SECTION 5.01 PERMITTED USE

A. Uses

Tenant shall have an exclusive right to develop, operate and manage the Leased Premises in accordance with the Permitted Uses set forth in Exhibit B. 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 B."

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.

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, CBD products, cannabis products and any products prohibited by federal, state, or local agencies, insurance policies, or as decided by the Airport Director.

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.

Exhibit B, Permitted Uses, which is attached hereto and made a part hereof, sets forth the trade name for each Concession within the Leased Premises and a listing, by general category, of goods

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and services that Tenant is allowed to sell from the Leased Premises. Such list of the Permitted Uses shall constitute a limitation of the goods and services which may be sold from the Leased Premises.

C. Permitted Products, Services, and Prices

No later than thirty (30) days prior to the opening of a Concession within the Leased Premises Tenant must submit to County, for its written approval, a listing, substantially consistent with Exhibit B and as requested by County, of the goods and services to be sold from the Leased Premises. Such listing (hereinafter referred to as the "Product Price List") must include the prices to be charged to the public for the goods and services.

Once approved by County, the Product Price List for each Concession within the Leased Premises shall remain in effect through the remainder of the Term. Tenant shall not add, delete, or sell any goods or services not included on the Product Price List, nor change the price of any good or service, without first receiving written approval from County, which approval shall not be unreasonably withheld or delayed.

County may, at its discretion, require Tenant to add goods or services that are in public demand to the Product Price List for any Concession within the Leased Premises.

Within ten (10) business days of a written request by County, Tenant shall provide a current Product Price List.

SECTION 5.02 NON-EXCLUSIVE RIGHTS

Tenant shall have a nonexclusive right to develop, operate and manage Concessions within designated locations at the Airport. The Concession rights granted herein shall be exclusive within the Leased Premises but non-exclusive at the Airport.

SECTION 5.03 RESTRICTIONS

Nothing in this Section will be construed as authorizing Tenant to conduct any business separate and apart from this Lease or in areas at the Airport other than the Leased Premises.

All rights and privileges not specifically granted to Tenant for its use of and operations at the Airport pursuant to this Lease are hereby reserved for and to County.

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 be subject to penalties as described in Section 8.01 for any service, goods, or use that is not permitted by any part of this Lease, or otherwise authorized in this Lease entitled. Said payment is subject to the "Due Date" provided in Section 4.10 (Payment Procedure, Place of Payment and Statement Filing) and Section 4.12 (Failure to Make Timely Payments). 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

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actual damages, in the event of such a breach by Tenant would be extremely difficult or impossible to determine; therefore, the amount prescribed in Section 8.01 is the 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 California Civil Code Section 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 5.04 PERMITS AND LICENSES

Tenant will obtain and maintain throughout the Term all permits, certificates, licenses, or other authorizations required in connection with the operation of the Concessions. Copies of all required permits, certificates, licenses, or other authorizations will be appropriately displayed within the Leased Premises and forwarded to County upon issuance and each renewal. 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.

In the event the County is required or has obtained any of the necessary permits, Tenant will reimburse the County for any permit fees and associated costs in obtaining said permits.

ARTICLE VI. ENVIRONMENTAL, SAFETY AND INDEMNIFICATION

SECTION 6.01 ENVIRONMENTAL STEWARDSHIP

Tenant shall support the County's Environmental Compliance and Stewardship program through participation in various efforts or implementation of Airport plans listed below as applicable, and through complying with Airport Tenant Guidelines. County shall provide Tenant advance notice of any proposed changes to the following plans that may affect Tenant operations:

- A. Air Quality Improvement Plan (AQIP) and Memorandum of Understanding (MOU) with the South Coast Air Quality Management District (SCAQMD).
- B. Climate Action Plan.
- C. Waste Management Plan.
- D. Storm Water Pollution Prevention Plan.

All Tenant facilities and improvements shall meet the Airport's Tenant Design Guide and John Wayne Airport Construction Standards as well as Architectural Guidelines, as may be amended from time to time. All improvements shall meet the California Green Building Code (Title 24) CALGreen Tier 1. In particular, the Tenant shall implement the following conservation measures and policies as applicable:

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- A. Use equipment and appliances that are ENERGY STAR rated or equivalent and EPA Water Sense or equivalent, as applicable when replacing existing equipment and appliances.
- B. Use high-efficiency light fixtures and bulbs (including compact fluorescents) when replacing or installing new fixtures and bulbs.
- C. Install sensors in office areas to turn off lights when unoccupied when these areas are being renovated or updated.
- D. Install energy-efficient heating and cooling equipment when replacing or upgrading.
- E. Use energy-efficient computers and servers when replacing this equipment.
- F. Select equipment with variable speed motors and fan drives, when possible.
- G. Use paperless receipt technology, when possible.

Tenant shall implement and support the following environmental policies:

- A. The Tenant has been provided a copy of the County's Environmentally Preferable Purchasing Policy (2012) and shall consider developing a similar policy that addresses the Tenant's procurement of goods and services as applicable.
- B. The Tenant shall affirm its commitment to Environmental Sustainability at the Airport. The Policy commitment shall be submitted to the JWA within 30 days of Lease execution.
- C. Upon request, the Tenant shall provide reports necessary for environmental compliance, regulatory requirements and airport mitigation measure obligations.

Tenant shall implement applicable elements of the County's Green Concession Program as described in the Tenant Design Guidelines. Elements include:

- A. Environmental Building Standards as described in Article 7 and detailed in the Tenant Design Guidelines
- B. Comply with Federal and State laws including SB1383, AB341, and SB32 for Waste management and diversion.
 - 1. Sort organic waste (food scraps), recyclables, cardboard, grease, and landfill waste and dispose or divert as directed by the County.
 - 2. Minimize packaging and creation of waste.
 - 3. Participate in a food recovery program.
- C. Implementation of the County's Environmentally Preferable Materials Use upon Agreement initiation, or if a continuing tenant, implement within six (6) months of lease execution.
 - 1. Only use recycling or compostable "to go" materials.
 - 2. Prohibit The use of polystyrene foam materials.
 - 3. Reduce or eliminate the use of single-use plastic products such as water bottles and straws.
 - 4. Prohibit the sale of beverages in non-returnable can, metal or glass containers.

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 waste and preserving the environment shall be sold. Receipts evidencing compliance with said programs shall be kept and made available for Airport review.

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SECTION 6.02 HAZARDOUS MATERIALS, HAZARDOUS SUBSTANCES, 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, and train employees in proper handling of all materials.

Tenant shall submit to the County’s Airport Environmental Resources Manager, annually on or before January 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.

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.

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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:

- A. 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.
- B. The Tenant's release or threatened release of Hazardous Materials at, on, under, and/or remaining from the Airport.
- C. 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.
- D. 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 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

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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 this Article shall apply.

SECTION 6.06 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.

ARTICLE VII. OPERATIONS AND PERFORMANCE STANDARDS

SECTION 7.01 COUNTY'S RIGHT TO MONITOR PERFORMANCE

A. Performance Audits

Tenant shall conduct its business in a manner that meets the needs of Airport patrons and employees and in a manner that will reflect positively upon the Tenant and County. The Tenant shall equip, organize, and efficiently manage the Concessions to provide first-class service and products in a clean, safe, attractive, and pleasant atmosphere.

County in its sole discretion shall have the right to raise reasonable objections to the condition of the Leased Premises, the quality and quantity of merchandise, the character of the service, the hours of operation, and to require any such conditions or practices objectionable to County to be promptly remedied by Tenant.

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County reserves the right to conduct periodic performance audits of the Leased Premises to assure that all of the operational, safety and compliance standards of this Lease are consistently performed by Tenant. Tenant acknowledges that performance audits will be conducted by County, or its representative, and hereby agrees to cooperate with all performance audits.

1. Performance audits may include minimum objective standards in any or all the areas of (i) product quality; (ii) customer service; and (iii) cleanliness and maintenance. If Tenant fails to meet minimum standards in any of these areas, County may, at its discretion, assess fines as set forth in Section 8.01. County representatives may also take photographs as deemed necessary during inspection of Leased Premises. County representatives will make best efforts not to interfere with Tenant's business operation.
2. To assure consistent adherence to performance standards throughout the Term, the County will use a rolling 12-month cycle in the recording of incidents of failure to meet standards. County reserves the right to assess fines for violations of performance standards as set forth in Section 8.01.
3. Repeated violations and deficiencies in performance by Tenant may be cause, at County's sole discretion, to terminate this Contract.

B. Annual Review

No later than 90 days after the end of the first full Accounting Year after the Term Commencement Date, and the end of each Accounting Year thereafter, County reserves the right to request a meeting with Tenant to review and evaluate the financial, customer service, and operational performance of each Concession within the Leased Premises. During the review, County may determine, in its sole discretion, that the performance of one or more of the Concessions is unsatisfactory if one or more of the following occurred during the prior Accounting Year:

1. Sales per Enplaned Passenger were less than 80 percent (80%) of the Projected Sales per Enplaned Passenger for the Leased Premises, as set forth in Tenant's Response to Concession Request for Proposal PM **1121-0345-0034** (notwithstanding any incidence of Severe Decline in Enplanements within the Accounting Year).
2. Sales per Enplaned Passenger were less than 80 percent (80%) of Sales per Enplaned Passenger for the same Concession during each of the two (2) preceding Accounting Years (notwithstanding any incidence of Severe Decline in Enplanements within the Accounting Year).
3. Scores on any mystery shopper survey(s) conducted by County or its representative were less than 80 percent (80%) of the maximum achievable scores for the survey(s).
4. Scores on any operational survey(s) conducted by County or its representative were less than 80 percent (80%) of the maximum achievable scores for the survey(s).

C. Remediation Plan

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If County determines, based on the performance criteria specified in this section, that a Concession performed unsatisfactorily during the prior Accounting Year, County will provide written notice to Tenant. Within 30 days of receipt of such written notice, Tenant shall prepare and submit to County, for its approval, a Remediation Plan, as described below, to improve the performance of the Concession.

The Remediation Plan shall include, but not be limited to, proposed remedial activities such as employee training, staffing changes, merchandise and service modifications, facility refurbishment and repair, and/or replacement of concept or brand. Upon approval by County, Tenant agrees to diligently implement the approved Remediation Plan and further agrees to submit to County monthly reports on the progress of such implementation. If the approved Remediation Plan includes the replacement of a concept or brand, then County and Tenant will enter good faith negotiations concerning a concept or replacement brand.

In the event County determines, after six (6) months of implementation of a Remediation Plan, the subject Concession is still performing in an unsatisfactory manner, County reserves the right to require Tenant to replace the underperforming concept or brand, if not already replaced by the Remediation Plan. Within 90 days of receipt of written notice from County requiring a replacement, Tenant shall submit to County a proposal for a brand or concept replacement plan. Such replacement plan shall include, but not be limited to, a detailed description of the brand or concept, capital expense required to re-brand, sales projections, and the specific timetable to replace the brand or concept. County, in its sole discretion, reserves the right to approve or deny the replacement plan and require Tenant to submit another replacement plan.

SECTION 7.02 QUALITY OF PRODUCTS AND SERVICES

Tenant shall ensure that all customers are provided the optimum quality of food, products and services, and Tenant shall keep in stock and have ready for sale at all times of operation, a sufficient supply and variety of food, beverage, articles, and goods offered for sale at each Concession Location, consistent with the Product Price List, to meet the demand of customers at the Airport.

If County identifies any deficiencies with respect to the operations, including, without limitation, quality, variety, and quantity of goods or services offered, Tenant shall be notified in writing by County and shall correct, or cause to be corrected, such problem or problems within seven (7) days, unless County authorizes in writing a longer period. If Tenant fails to correct within seven (7) days after written notice is given by County, County may assess fines as described in Section 8.01.

Tenant shall develop and implement creative merchandising techniques and displays to optimize customer satisfaction and Gross Receipts, including without limitation, retail merchandise displays; display cases; promotional displays; attractive and durable packaging; and pictures of retail merchandise.

Prices for each item sold in each store shall be conspicuously displayed or printed to a menu to the satisfaction of Airport Director. Tenant's printed or digital price lists shall include the appropriate

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use of descriptive terminology that accurately and truthfully describes the services or products being offered. Prices displayed shall not exceed the approved prices for said items. Upon request by the County, Tenant shall produce menus in specified languages to assist persons who may have limited English proficiency.

All food, beverages, retail merchandise and other items sold or kept for sale shall be of high quality, wholesome, and conform to the fullest extent with all applicable food and drug laws, ordinances and regulations, as well as Airport Operating Directives. County reserves the right to approve all merchandising displays. Tenant hereby affirms that County, in its sole discretion, has the absolute right to require that Tenant discontinue the sale of any product County deems unsatisfactory, distasteful, or inappropriate for any reason and to require Tenant to modify merchandising displays for any reason. If Tenant fails to comply with any such County request within one (1) day after written notice from County, County may assess fines as described in Section 8.01.

All franchise and/or license standards applicable to a Concession shall be met or exceeded. Copies of the franchise/license standards and performance audit forms shall be sent to County prior to the first day of business of such Concession. Tenant shall submit to County copies of all inspections conducted by the franchisor, licensor or mystery shopper service hired by the franchisor or licensor within ten (10) days of receipt by Tenant.

All food and non-alcoholic beverages available for sale should be made available for customers to carry out if they so request. The containers and plasticware for carryout should be recyclable, made of sustainable materials, high quality, and substantial enough for the customer to take on an airplane.

SECTION 7.03 PRICING

Tenant acknowledges County's objective to provide Airport customers and employees high quality goods and services at reasonable prices. Accordingly, Tenant covenants that all goods and services sold by Tenant shall meet the County's Pricing standards as follows:

1. For merchandise with a pre-printed price affixed by the manufacturer or distributor, the selling price shall not exceed the pre-printed price.
2. For nationally and locally branded Concessions that are also represented off-Airport in the County of Orange, the selling price for goods and services at the Airport shall not exceed the selling price for the same goods and services at the closest off-Airport establishment in the County of Orange of the same brand name by more than fifteen percent (15%).
3. For all non-branded, proprietary, or branded Concessions not represented off-Airport in the County of Orange, the selling price for goods and services at the Airport shall not exceed the average selling price for similar or equivalent goods (of like size and quality) and services at three Price Benchmark Establishments, as described below, by more than fifteen percent (15%).

- A. Price Benchmark Establishment(s)

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No less than forty-five (45) days prior to the opening of a Concession, Tenant must submit to County for its approval the names and addresses of at least three businesses for each of the goods or services, or substantially similar items within the County of Orange that Tenant proposes to use as a Price Benchmark Establishment. The businesses must be comparable in concept, size, ambiance, service style and quality to the Concession and, to the extent practical, be the same businesses as identified in Tenant's Response. Venues specifically excluded from consideration as comparable businesses include entertainment or sports venues, other transportation terminals, amusement parks, zoos, resorts, and hotels.

Once approved by County, the Price Benchmark Establishment(s) will be used as the basis for price comparisons during the remainder of the Term. In the event any of the Price Benchmark Establishment(s) ceases operations or, in the sole discretion of County, alters its concept, branding, service style, merchandise selection or menu to no longer be a valid comparison, Tenant must propose a substitute Price Benchmark Establishment(s) for approval by County.

If Price Benchmark Establishment(s) cannot be determined by Tenant as described above, then County, in its sole discretion, will identify local area businesses like Tenant's business at the Airport to be deemed as Price Benchmark Establishment(s).

B. Price Surveys

No later than thirty (30) days prior to the opening of a Concession and prior to the beginning of each Lease Year, Tenant shall, at its own expense, prepare and submit to the Airport a goods and services price survey of the Price Benchmark Establishments that demonstrates, to the satisfaction of County, Tenant's compliance with the County's Pricing Standards.

C. Price Changes

Throughout the Term, Tenant may request changes to pricing once every six (6) months, when the comparable national or regional brand changes pricing or more frequently as agreed to by County. Requested price changes must be submitted in writing and include such information and data as reasonably requested by County including, but not limited to, the results of price surveys or other economic justification supporting the requested price changes(s). County shall, in its sole discretion, determine which, if any, price changes are consistent with the County's Pricing Standards and shall notify Tenant in writing of its approval or rejection of each requested price change. No later than ten (10) days after any adjustment to prices, the Parties agree to modify the Price List to incorporate said price adjustments. Modification will be confirmed by letter executed by the Airport Director, without need for formal amendment to this Lease.

D. Airport Employee Discount

Tenant may offer an employee discount on all food & beverage, retail, passenger services, and non-alcoholic beverages purchased by employees working at the Airport and employees of airlines operating at Airport who have been issued (and show at the time the discount is requested) appropriate identification badges. The discount shall be based on Tenant's normal non-sale or non-promotional prices. No discount shall be given on food and non-alcoholic beverages with a

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manufacturer pre-printed price. Tenant must provide the Airport Director, or designee with the Tenant's discount policy and that the discount is reflected on sales records. The sales records shall clearly state the public sales price, the amount of discount, and the discounted sales price.

E. Price Conformance

At any time during the Term, County may survey or cause to be surveyed, prices being charged for goods or services offered by Tenant. County shall have the right to monitor and test all of Tenant's goods and services prices by a shopping service or County personnel. If County concludes, based on the results of the survey, that any prices being charged by Tenant do not comply with the County's Pricing Standards, County will require Tenant to adjust prices to the amounts permitted herein.

Tenant will, within three (3) business days of written notice from County, adjust any prices that County determines, in its sole discretion, to be inconsistent with the County's Pricing Standards. Failure to rectify any pricing discrepancies within the aforementioned three (3) days shall constitute a material breach by Tenant of this Lease and, in addition to the collection of violation fines, as set forth in Section 8.01, and all other remedies available to County, County may, in its sole discretion, terminate this Lease.

SECTION 7.04 HOURS OF OPERATION

A. Store Hours

Tenant shall ensure that each Concession is open for business without interruption as determined by the Airport Director. Unless otherwise approved in writing by County, the Parties agree to the approved Store Hours.

County may, in its sole discretion, require Store Hours to change during the Term. Tenant hereby acknowledges and agrees to operate the Concessions as required which, if requested by County, may be twenty-four (24) hours per day seven (7) days per week, including all holidays. Tenant may request changes to Store Hours after six (6) full months of operations under this Lease. County may, in its sole discretion, approve or deny such requested changes.

B. Extension of Store Hours

Tenant agrees to remain open beyond Store Hours for certain events including, but not limited to, the following:

1. In the event of a delayed flight in the Terminal in which any Concession is located, Tenant shall remain continuously open and provide all goods and services as required by this Lease beyond the then current Store Hours for the Concession in the affected Terminal and until the delayed flight departs the gate or County otherwise instructs.

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2. In the event of an emergency, as determined by County, Tenant shall remain continuously open and provide all goods and services as required by this Lease for the Concession beyond the then current Store Hours as instructed by County.

C. Failure to Open

Failing to open for business within thirty (30) minutes of the required opening time or closing more than thirty (30) minutes early, shall constitute a violation of this Section for which County may collect violation fine as set forth in Section 8.01.

D. Posted Hours

The Tenant will prominently post Store Hours in a professional manner for each Concession and in a format approved by County.

SECTION 7.05 DELIVERY OF GOODS

Tenant shall make all deliveries of money, coin, supplies, goods, products, and food and beverage through routes and entrances items and in such manner, and at such times and locations as designated by the Airport Director. Emergency deliveries may be made at other times subject to prior arrangements with the County. Tenant shall not leave products, carts and inventory unattended in the concourses, hallways and other locations. 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. Tenant shall ensure staff transporting items in the Public Areas have clear visibility in all directions. Items must not be over stacked. Tenant shall ensure pallets used for delivery will be returned to the supplier or legally reused/recycled/disposed off of Airport property.

A. Central Receiving and Distribution

County may implement a Central Receiving and Distribution Center (hereinafter referred to as "CRDC") and may contract, at its discretion, with a third party to operate the CRDC and provide distribution and delivery services to Airport (hereinafter referred to as "Logistics Manager"). When established, Tenant agrees to use, at its own cost and expense, the CRDC and have all deliveries made to the CRDC, except where delivery to a third party is prohibited by law or as otherwise approved in writing by County. Tenant agrees to pay Tenant's share of the costs of the operation of the CRDC and said distribution and delivery services, as determined by County.

Tenant acknowledges that County will not be responsible for and will have no liability related to the operation of (or the failure to operate) the CRDC nor related distribution and delivery services. Tenant waives any and all claims against County for operation (or failure to operate) the CRDC, including but not limited to lost profits, consequential damages or any other losses or damages whatsoever.

Tenant acknowledges that the Logistics Manager may establish rules and procedures regarding the operations of the CRDC and the distribution and delivery services to Airport including, but not

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limited to, operating hours of CRDC, scheduling and acceptance of Tenant's deliveries to the CRDC, scheduling and place of deliveries to Airport, and transportation of goods and related equipment such as pallets, storage bins, and racks among the Airside Terminals, terminals, and CRDC. CRDC rules and procedures may be modified from time to time in accordance with this Lease. Tenant agrees to conform to said CRDC rules and procedures.

SECTION 7.06 PERSONNEL

A. Staffing

Tenant shall hire, train, supervise, and deploy a sufficient number of personnel to service customers in a timely and efficient manner and to properly meet Tenant's obligations herein. If replacing an Existing Concession Location, the Tenant shall make every effort to hire and train the previous concession employees subject to the Tenant hiring policies and procedures.

Tenant shall closely monitor personnel to ensure first class service to customers in compliance with this Lease. The satisfactory performance of the obligation hereunder shall be determined in the sole discretion of County. Tenant shall take all proper steps to discipline personnel who participate in acts of misconduct on or about the Leased Premises.

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.

B. General Manager

Tenant shall appoint a General Manager to oversee and manage the performance of the Concession and represent and act on behalf of Tenant. The General Manager shall have full authority to make day-to-day business decisions on behalf of Tenant with respect to the Concession including, but not limited to, authority to control the conduct and demeanor of Tenant's Personnel. The General Manager shall represent the Tenant in dealings with County and shall coordinate all concession activities with County. The General Manager shall be assigned to an office at or near the Airport and shall be available during County's regular business hours. The General Manager shall designate a qualified, competent, and experienced subordinate to be in charge and available during his/her absence during Tenant's regular operating hours.

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C. County's Right to Object

County shall have the right to object to the demeanor, conduct, and appearance of any personnel of Tenant or any of its invitees or those doing business with it. Immediately upon notice of objection by County, Tenant shall take all steps necessary to remedy the cause of the objection. If requested by Tenant, County shall present its objections in writing and provide Tenant the opportunity to reply to the objections and such reply will be given consideration by County.

D. Worker Retention

Tenant shall comply with the Worker Retention Policy as set forth in Exhibit H and attached hereto.

SECTION 7.07 EMPLOYEE PARKING

Tenant shall pay the monthly employee parking fee, subject to change, for employee vehicles parked in the employee parking lot.

Nothing in this Lease shall be deemed to require County to provide parking to Tenant's personnel. County may provide parking accommodations to Tenant's personnel in common with employees of other Tenants and users of the Airport subject to the payment of reasonable charges therefor as may be established from time to time by County. In such event, Tenant's Personnel shall be required to park within the designated areas. Tenants are encouraged to incentivize employees to utilize alternative, more environmentally friendly modes of transportation including mass transit, ride sharing, etc.

SECTION 7.08 POINT OF SALE TERMINALS

Tenant must install a Point of Sale (POS) Terminal(s) to accurately record all business transactions occurring in each Concession Location for accounting, reporting, and auditing purposes as set forth herein.

All POS Terminals used at the Airport must have at a minimum, the following features:

- Multiple segregated category addresses to allow for accurate and complete reporting of Gross Receipts/Revenues by various goods and services categories.
- The capability of recording transactions by sequential control number to an audit tape or computer file.
- Ability to produce continuous and consecutive transactions in sequential order. Gaps in transaction numbers may be subject to a violation fine as described in 8.01.
- Mobile POS payment capabilities or other similar electronic devices.
- The capability of recording any discounts that are applied to a transaction.
- The capability of printing a transaction history to tape or computer file by category of goods or services, time of day, day, month, and year by category.

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- The capability of printing customer receipts showing the transaction amount, the amount tendered, the amount of change due to the customer, and the time and date of the transaction. Additionally, the customer receipt must show Tenant's contact information including name, phone number and email address for any customer concerns, complaints, or questions.
- A fee display of sufficient size and legibility that is placed in a location visible to the customer during a transaction.
- A secure transaction audit tape or ASCII transaction file on a removable storage device.
- POS terminal will be non-re-settable.
- The capability to capture passenger data and flight scanning boarding card on every transaction. This passenger/flight data should be associated/added to a transaction record.
- The capability to capture basic survey information from passengers (i.e., measuring customer satisfaction from 1 to 5). This information should be associated/added to a transaction record.
- The capability to generate log file for audit purposes including transaction creation, delete or modification. This log entry should be controlled by a sequential control number.
- Tenant will ensure that POS terminals comply at all times with the requirements set forth within the Lease and, if necessary to allow for a customer experience that meets or exceeds Good Industry Practices and the customer service standards set forth in the CDMP. POS systems shall be refreshed and modernized whenever refurbishments are required under this Lease.
- Tenant has confirmed in the Tenant's Response that it will meet the criteria specified herein. Failure to comply will become apparent through the County not receiving all the required data and through the financial audits.

County shall have the right to: (a) examine during business hours the totals of any POS used on the Leased Premises and to inspect such POS for compliance with this Section; (b) implement an hourly or daily reporting system with which Tenant shall comply.

Notwithstanding the above, at County's request Tenant shall be required to submit daily Gross Receipts for each Concession. Daily reporting will be submitted no later than (24) hours after the end of each day, in a form acceptable to the County.

SECTION 7.09 CASH HANDLING AND CREDIT CARD REQUIREMENTS

Tenant shall always observe cash-handling and record-handling procedures in accordance with sound accounting and financial control practices and as necessary to provide timely and accurate reports to County. County may at any time during the Term request a copy of these procedures. County shall have the right to monitor and test all of Tenant's procedures and controls and require Tenant to make changes to its procedures.

Tenant must accept, but is not limited to, the following cash and non-cash payment options: US currency and at least four (4) major accepted credit cards: Visa, MasterCard, Discover and American Express. Tenant must also accept mobile wallet payment systems such as Apple Pay and/or Google Wallet.

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Tenant shall always comply with the most recent Payment Card Industry Data Security Standard requirements. No minimum credit card or debit card purchase amount or charge for credit card purchases shall be allowed. Tenant's Independent CPA must yearly certify Tenant's operations are compliant with Payment Card Industry Data Security Standards. County reserves the right to receive reports required by the Payment Card Industry Security Standards Council. Tenant must report any breach of its Payment Card Industry Data to the County within 24 hours of its finding of the breach.

SECTION 7.10 ADVERTISED SALES OR PROMOTIONS

Tenant is required to participate and submit to the Airport for prior approval all advertised sales or promotions applicable to Airport locations by whatever media outlet, conducted by its parent corporation, its franchisor, or its selected operating brands. Tenant is not permitted to (a) use or permit the use of the Leased Premises for the conduct of an outlet store or a second-hand store; or (b) advertise any distress, fire, bankruptcy, liquidation, relocation, closing, closeouts of goods or services or going-out-of-business sales.

Tenant must make every reasonable effort to ensure that all corporate advertisements that list multiple locations will list the Airport as a participating location of the promotion or sales. If participation in a sale or promotion harms Tenant, Tenant may request, in advance of the sale or promotion, in writing to County to be exempted from participation.

SECTION 7.11 COMPLAINTS

All customer complaints, written or oral, received directly or referred to Tenant by County must be responded to by Tenant within 24 hours of notice. Tenant shall make a good faith attempt to explain, resolve or rectify the cause of the complaint. A written copy of Tenant's Response shall be delivered to County within the 24-hour period.

Tenant shall be required to respond to complaints immediately. All other issues regarding the quality of service and/or prices raised on County's own initiative may be submitted to Tenant for response, which response shall be provided by Tenant to the Airport Director within 24-hours.

SECTION 7.12 CONCESSION MARKETING PROGRAM

County shall provide or cause to be provided a Marketing Fund to underwrite the Airport's Concession Marketing Program. Tenant shall pay, or cause to be paid, the Marketing Fee per Article IV. Rentals, Fees, Other Charges, Reporting, and Accounting Records for the Marketing Fund for every month during the Term. County shall not be obligated to expend more for promotions and advertising than is collected from Tenants. Any promotional services and personnel so provided shall be under the exclusive control and supervision of County. County reserves the right at any time to terminate the Joint Marketing Fund and thereafter, continue to provide marketing and promotional services until the balances remaining in the fund are exhausted.

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The Marketing Program may include, but is not limited to, activities with direct application to promoting and monitoring the concessions at the Airport such as food, services, and retail merchandise advertising, marketing, public relations, media production and placements, special events, brochures, videos, directories, catalogues, customer service training, mystery shopper programs, and concession surveys relating to consumer satisfaction and market research, as well as the costs of administration of the Marketing Program.

SECTION 7.13 OPERATING PROCEDURES AND STANDARDS

A. County Requirements

The occupancy and use by Tenant of the Leased Premises and the rights herein conferred upon Tenant shall be conditioned upon and subject to the Airport's Operational Directives as are now or may hereafter be prescribed by County through the lawful exercise of its powers. Tenant must operate the Concession in accordance with the Airport's Rules and Regulations.

B. Health and Safety Standards

Tenant shall comply with all health and sanitary regulations adopted by County, State of California, and any other governmental authority with jurisdiction. Tenant shall give access for inspection purposes to any duly authorized representatives of all such governing bodies. Tenant shall provide County with copies of all inspection reports by other health and sanitary governing bodies within 48 hours of receipt. This paragraph does not require Tenant to waive any applicable attorney-client or attorney work product privileges.

Tenant shall immediately notify the Airport Director of all citations received by Tenant from the County's Health Care Agency/Environmental Health Services regarding food safety violations. Failure by Tenant to comply with any cure requirements from said agency within 24 hours shall result in Violation Fine due the County per Section 8.01.

C. Additional Compliance

Tenant shall comply with all applicable governmental laws, ordinances, regulations, codes and permits in the conduct of its operations under this Lease including, but not limited to, TSA regulations regarding products or procedures.

D. Tenant's Standards

Tenant shall establish and submit a Standards of Quality Operating Manual to County for review and approval. Tenant must maintain the approved standards offering quality service and food.

SECTION 7.14 CLEANING AND ROUTINE MAINTENANCE

A. General Obligations

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Tenant shall ensure that the Concession is maintained and operated in an optimal manner and that the Leased Premises are kept in a safe, clean, orderly, and inviting condition always in a manner satisfactory to County. To comply with these requirements, Tenant must regularly review or cause to be reviewed the Leased Premises and its operations at the Airport.

B. Preventive and Routine Cleaning and Maintenance Program

Tenant shall be responsible for preventive and routine cleaning and maintenance of all assets within the Leased Premises, whether built by Tenant or County through the expiration of the Term. No less than thirty (30) days prior to the opening of any portion of the Leased Premises, Tenant shall establish a preventive and routine cleaning and maintenance program for the Leased Premises, including but not limited to the list of items below. This maintenance program must meet or exceed the cleaning and maintenance requirements of the manufacturer's equipment manuals, a copy of which shall be provided at the request of the airport within ten (10) business days of the request. The provisions of the program shall be subject to the initial written approval of and periodic review by County. Upon request by County, Tenant shall provide County a written schedule of Tenant's cleaning and maintenance program.

C. Janitorial Service.

Tenant, at its own cost and expense, shall provide all janitorial services for the Leased Premises. Tenant shall ensure that the Leased Premises and the Public Areas adjacent to the Leased Premises are kept clean and free from all rubbish and refuse.

D. 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.

County, in its sole discretion, may elect to provide or contract for pest control services on Tenant's behalf. If County elects to provide or contract for pest control services on Tenant's behalf, Tenant covenants to pay its share of the cost of such services, in an amount determined by County. In such cases, Tenant must cooperate with County's chosen pest control Contractor.

E. Plumbing.

Tenant, at its own cost and expense, shall provide routine plumbing services for the Leased Premises. Tenant shall ensure that activities within the Leased Premises do not damage or harm

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the central water, plumbing, and sewer infrastructure at the Airport. Tenant shall properly maintain all water hook-ups within the Leased Premises. Tenant must furnish County a copy of its plumbing contract, monthly service schedule, and monthly service reports, as directed by County. Tenant agrees to coordinate with County and other Tenants to provide the most effective plumbing services for the Airport. Tenant shall coordinate and comply with the cleaning and routine maintenance recommendations of County.

County, in its sole discretion, may elect to provide or contract for plumbing services on Tenant's behalf. If County elects to provide or contract for plumbing services on Tenant's behalf, Tenant covenants to pay its share of the cost of such services, in an amount determined by County. In such cases, Tenant must cooperate with County's chosen plumbing Contractor.

The plumbing facilities within the Leased Premises and elsewhere in the Airport shall not be used for any purpose other than for the purposes for which they were constructed, and no foreign substance of any kind shall be thrown therein. The expense to repair any breakage, stoppage, or damage resulting from a violation of this paragraph, wherever the breakage, stoppage or damage occurs, shall be charged by County to Tenant, regardless of the cause.

F. Electricity.

Tenant, at its own cost and expense, shall install and maintain an electric meter and a gas meter for each Concession in accordance with the Tenant Design Guidelines and John Wayne Airport Construction Standards. Tenant, at its own cost and expense, shall install and maintain all power circuits and connections required for equipment and mechanical systems used within the Leased Premises. Tenant shall ensure that activities within the Leased Premises do not damage or harm the central Electricity or Natural Gas infrastructure at the Airport. Tenant shall coordinate and comply with the cleaning and routine maintenance recommendations of County.

G. HVAC.

Tenant, at its own cost and expense, shall install and maintain any ductwork and other HVAC connections for the Leased Premises in accordance with the Tenant Design Guidelines and John Wayne Airport Construction Standards. Tenant agrees to properly maintain the ductwork and other connections within the Leased Premises. Tenant shall ensure that activities within the Leased Premises do not damage or harm the central HVAC infrastructure at the Airport. Subject to conditions beyond its control, the County shall maintain under normal conditions a temperature adequate for comfortable occupancy according to the season; provided, that Tenant properly maintains the ductwork and other connections within or leading into the Leased Premises and complies with the recommendations of the County regarding reasonable occupancy and use of the Leased Premises. Tenant shall coordinate and comply with the cleaning and routine maintenance recommendations of County.

H. Grease Removal Systems.

Tenant shall comply with Orange County Sanitation District Ordinance No. OCSD-25 (OCSD-25 for management of Fats, Oil, and Grease (FOG)). All restaurants shall install grease trap in kitchens,

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as applicable. If Tenant is required to install a grease removal system per OCSD-25, they shall not rely solely on the County's grease interceptor but shall install a grease trap in their facility. Tenant shall, at its own expense, regularly, as required by OCSD-25, check and clean its grease removal systems, whether located within the Leased Premises or elsewhere in the Airport. Tenant agrees to properly maintain all installed grease removal systems within the Leased Premises. Tenant must maintain the grease traps in accordance with the manufacturer's specifications to allow for the optimal efficiency in removing fats, oils, and grease from the waste stream before it enters the systems provided by the County. Tenant must also maintain its used cooking oil/liquefied grease collection systems in accordance with the manufacturer's specifications to allow for optimum efficiency in the recovery, transfer, containment, and collection of used cooking oil/liquefied grease suitable for reclaim. Tenant shall maintain cleanliness around the cooking oil/liquid grease containers. Tenant shall contract for regular and efficient removal of cooking oil/liquid grease or coordinate with other Tenants or County if a cooking oil program is developed. Tenant shall ensure that activities within the Leased Premises do not damage or harm the central grease removal infrastructure at the Airport. Tenant shall coordinate and comply with the cleaning and routine maintenance recommendations of County.

I. Trash, Waste, and Refuse.

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 including separating liquid waste, food waste, recyclables, and trash and depositing those items in the appropriate drains or bins located in the loading dock area. 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. County shall have the right to enter upon and inspect the Leased Premises at any time for cleanliness, safety and maintenance inspections. Tenant, whether within the Leased Premises or while moving through the terminal, shall use leak-proof containers. Any containers with wheels shall have wheels with pneumatic (air) or gel tires. Metal or hard rubber wheels or tires are prohibited.

J. Lighting.

Tenant, at its own costs and expense, shall install and maintain all lighting fixtures and wiring for general illumination of the Leased Premises in accordance with Tenant Design Guidelines and John Wayne Airport Construction Standards. Tenant agrees to properly maintain the lighting fixtures wiring used for general illumination within the Leased Premises. Tenant shall ensure that activities within the Leased Premises do not damage or harm the central Electricity infrastructure at the Airport. Tenant shall coordinate and comply with the cleaning and routine maintenance recommendations of County.

K. Routine Refurbishment

On or about the commencement of each Accounting Year, representatives of County and Tenant shall tour the Leased Premises and jointly agree upon what, if any, routine refurbishment is

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required to maintain the Leased Premises in optimal condition. Tenant shall promptly undertake such refurbishment at its sole cost and expense. If Tenant and County cannot jointly agree upon the type and extent of routine refurbishment, County may determine, in its sole discretion, the routine refurbishment required for that Accounting Year. For purposes of this Section only, "routine refurbishment" shall mean the routine repainting or redecoration within the Leased Premises, including, but not limited to, the replacement or repair of worn carpet, tile, furniture, furnishings, fixtures, or finishes. All Trade Fixtures, Leasehold Improvements, and furnishings that become worn, chipped, dented, or gouged, shall be repaired, or replaced by Tenant at Tenant's sole expense. The failure to timely undertake required refurbishment shall be grounds for the imposition of violation fines as provided in Section 8.01.

L. Maintenance Personnel and Program

Tenant covenants to employ or contract with sufficient personnel and provide necessary equipment to keep the Leased Premises and all furniture, furnishings, fixtures, and equipment clean, neat, safe, sanitary, and in good working order and condition always pursuant to the maintenance requirements of this Lease.

M. County Sole Judge of Maintenance

County shall be the sole and absolute judge of the quality of Tenant's maintenance of the Leased Premises. County or its representative may at any time, without notice, enter the Leased Premises to determine if maintenance satisfactory to County is being performed. Performance by Tenant of maintenance pursuant to a written maintenance plan previously approved by County shall be conclusive evidence of satisfactory maintenance unless County determines that there is a present danger or safety hazard within the Leased Premises. If County determines that maintenance is not satisfactory, County shall notify Tenant in writing. Tenant will perform the required maintenance, to County's satisfaction, within fifteen (15) days after receipt of written notice or County or its representative shall have the right to enter upon the Leased Premises and perform the maintenance. However, where unsatisfactory maintenance threatens the safety, health, or welfare of the traveling public and/or Airport's facilities, Tenant shall immediately perform the maintenance. Where County or its representative performs maintenance, Tenant agrees to promptly reimburse County for the cost thereof, plus an administrative fee of fifteen percent (15%) of the maintenance costs without prior quote.

N. Emergency Repairs

In the event an emergency repair is required, Tenant shall notify County of the repair situation as soon as possible. Following such notice, County may inspect the repair work and require alterations if the repair is not satisfactory to County. In the event of an after-hours emergency repair, Tenant agrees County shall have the right to enter any affected portion of the Leased Premises and preform the emergency repair. Tenant covenants to promptly pay to County the costs associated with any after-hours emergency repair. All emergency repairs requiring shutdown of any Airport system or utility require prior written approval of County. If any emergency repair affects other tenants at Airport, County may, at in its sole discretion, fix the problem immediately

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and invoice Tenant. Tenant covenants to promptly pay to County any proportional costs of emergency repairs completed by County, plus 15% administrative fee, which Tenant may have contributed to the cause of the incident.

SECTION 7.15 COUNTY MAINTENANCE RESPONSIBILITIES

County shall be responsible for maintenance of the following central systems located throughout Airport, except for assets, connections, or systems located within the Leased Premises. Tenant waives all claims against County for performance of maintenance at Airport.

A. Electricity Systems

County will furnish normal and reasonable quantities of electricity and gas, if applicable, to the Leased Premises. Tenant covenants to pay to County Tenant's share of the costs of such cleaning, maintenance, and repair, in an amount determined by County. County will clean, maintain, and repair, for the benefit of Tenant, central Electricity and Natural Gas systems at Airport.

B. HVAC Systems

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.

C. Sanitary Sewer System

County will furnish water from the central water source to the Leased Premises in reasonable quantities; provided that Tenant must comply with all water conservation programs in effect or as adopted. County will clean, maintain, and repair, for the benefit of Tenant, central water, plumbing, and sewer infrastructure and systems at Airport. Tenant covenants to pay to County Tenant's share of the costs of such cleaning, maintenance, and repair, in an amount determined by County.

D. Trash, Waste and Refuse

County reserves the right, if deemed to be in its best interests, to provide trash, waste and other refuse removal, disposal, and recycling services. Tenant covenants and agrees to participate in any Airport-wide trash, waste, and other refuse removal, disposal, or recycling program for any type of trash, waste, and refuse at its own cost. In the event County elects to provide these services on behalf of Tenant, Tenant covenants to pay its share of the cost of such trash, waste and other refuse removal, disposal, and recycling services, in an amount determined by County.

E. Exterior Windows and Structures

County will clean, maintain, and repair, for the benefit of Tenant, exterior windows, and all structural parts of the Airport. County's maintenance shall include exterior glass, walls, and roof

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but specifically excludes Leased Premises Improvements and Trade Fixtures. Tenant covenants to pay to Tenant's share of the costs of such cleaning, maintenance, and repair, in an amount determined by County.

SECTION 7.16 PAGING, AUDIO, VIDEO SYSTEMS AND FREQUENCY PROTECTION

Tenant shall not install any technology that may interfere, circumvent, or impede Airport systems or operations. County reserves the right to request from Tenant a detailed inventory and diagrams of all information technology systems that Tenant might employ within the leased space. If Tenant installs, in accordance with the Tenant Design Guidelines and John Wayne Airport Construction Standards and with County's approval, any type of radio transceiver or other wireless communications equipment, Tenant will provide frequency protection within the aviation air/ground VHF frequency band and the UHF frequency band in accordance with restrictions promulgated by the FAA for the vicinity of FAA Transmitter or Receiver facilities. Frequency protection will also be provided for all other frequency bands operating in the vicinity of Tenant's equipment. If frequency interference occurs because of Tenant's installation, County reserves the right to shut down Tenant's installation until appropriate remedies to the frequency interference are made by Tenant. Remedies may include relocation of Tenant's equipment to another site. The cost to remedy the frequency interference will be solely at Tenant's expense.

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.

SECTION 7.17 PROHIBITED ACTS

Tenant will not place excessive loads on the walls, ceilings, and floor or pavement areas of Airport and will repair any area damaged by excessive loading to the satisfaction of County.

Unless approved in writing in advance by County, in its sole discretion, Tenant will not permit the active display or operation on the Leased Premises of any display that flies, flashes, or emits a noise or odor.

Unless approved in writing in advance by County, in its sole discretion, Tenant will not keep or display any merchandise on or within, or otherwise obstruct, any part of the Airport outside of the Leased Premises. Tenant shall keep all service corridors, hallways, stairways, doorways, or loading docks leading to and from the Leased Premises free and clear of all obstructions.

Tenant will not interfere or permit interference with the use, operation, or maintenance of the Airport, including but not limited to, the effectiveness or accessibility of the drainage, sewerage, water, communications, fire protection, utility, electrical or other systems installed or located from time to time at the Airport. Tenant will not do or permit to be done anything that may interfere with free access and passage on the Leased Premises or the Public Areas adjacent thereto, or hinder police, firefighters, or other emergency personnel in the discharge of their duties. Further, Tenant

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shall not do or permit to be done anything that might interfere with the effectiveness or accessibility of elevators or escalators in or adjacent to the Leased Premises, including lines, pipes, wires, conduits, and equipment connected with or appurtenant thereto.

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 or access codes 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 measures that consist of changing of key locks to Airport issued ID Badge controlled electronic locks and shall bear the cost associated with any change over.

Tenant will not engage in any activity prohibited by the Airport. In the event Tenant fails to adhere to the Airport's Rules and Regulations and Operating Directives or fails to prevent any other of the prohibited acts set forth in this section, County may collect violation fines as set forth in Section 8.01 until such prohibited act is ended. Payment of violation fines will be due within fifteen (15) days from the date of invoice. Moreover, if the prohibited act is not corrected as directed by County, County or its representative shall have the right to enter upon the Leased Premises and take corrective action, and Tenant agrees to promptly reimburse County for any related costs, plus an administrative fee equal to fifteen percent (15%) of the corrective action costs.

**ARTICLE VIII. FAILURE TO COMPLY WITH
PERFORMANCE/OPERATING STANDARDS**

SECTION 8.01 VIOLATIONS

Tenant acknowledges County's objective to provide the public and air travelers with the level and quality of service as described herein. Accordingly, County has established a series of violation fines, as set forth in the table below, that it may assess, in its sole discretion, as violation fines for various violations of the provisions of this Lease, the Tenant Design Guidelines and John Wayne Airport Construction Standards and/or County's Rules and Regulations. Tenant and County agree that the damages set forth herein are reasonable estimates of the significant but difficult to predict harm, and Tenant further agrees to pay to County such violation fines in accordance with the rates or in the amounts specified herein upon each occurrence of the specified violation or written demand by County. County will, in its sole discretion, determine the classification of each violation as per day or per occurrence. Tenant further acknowledges that the violation fines are not exclusive remedies and County may pursue other additional remedies as allowed for in this Lease and/or at law, in County's sole discretion. County's waiver of any payment provided for in this Section shall not be construed as a waiver of the violation or Tenant's obligation to remedy the violation.

Violation	Section	Administrative Charge
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Violation of Leased Premises Clause	Article II	\$250.00 per day/per location
Failure to submit CPA audited Annual Reports on time	4.09	\$5,000.00
Failure to submit Required Documents and Reports	4.09	\$250.00 per day
Check returned for non-sufficient funds (“NSF”)	4.11	\$25.00
Second returned check for non-sufficient funds	4.11	\$35.00
Other form of payment not prescribed or approved by County	4.11	\$25.00 per occurrence
Failure to make complete and timely payment of Percentage Rent during Interim Phase, Concession Space Rent and Marketing Fund Fee	4.12	1.5% of payment due
Unpaid balance carried forward from prior month	4.12	1.5% of remaining unpaid balance
Failure to provide requested records for an audit within seven days	4.14	\$100.00 per day
Violation of Permitted Uses	5.01	\$250.00 per day/per location
Failure to comply with Alcohol and Beverage Control regulations.	5.01	\$250.00 per day
Failure to provide a product price list in proper form 30 days prior to opening the Leased Premises.	5.01	\$100.00 per day
Failure to obtain and maintain permits and licenses	5.04	\$500.00 per day
Failure to comply with Environmental Regulations such as OCSD-25.	6.01	\$250.00 per day
Violation of General Health and Safety Conditions	6.03, 7.14	\$250.00 per incident
Failure to keep less than 10 people per register per line	7.01	\$250.00 per incident
Failure to comply with Performance Audits	7.01	\$250.00 per incident
Failure to provide a remediation plan in proper form and on time	7.01	\$250.00 per day
Failure to keep product/merchandise as indicated on menu	7.02	\$100.00 per day/per location
Failure to Maintain Pricing Policy and Surveys	7.03	\$250.00 per day
Unauthorized Item(s) for sale	7.03	50% of gross receipts from sales
Failure to maintain required Hours of Operation	7.04	\$200.00 per incident/per location
Failure to abide by Delivery of Goods	7.05	\$200.00 per incident
Failure to staff a General Manager or a qualified, competent, and experienced subordinate in-charge during regular business hours.	7.06	\$150.00 per day

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Failure to produce continuous and consecutive transactions in sequential order	7.08	\$100.00 per each missing transaction number
Failure to cure Health Care Agency Violations within 24 hours	7.13	\$200.00 per day
Failure to Fulfill Maintenance Obligations	7.14, 7.15	\$100.00 per day/per location
Failure to adhere to Airport Rules and Regulations and Operating Directives	7.17	\$200.00 per day
Failure to comply with ACDBE Program compliance review findings or information requests	Article X	\$100.00 per day
Failure to submit Development Plan within six (6) months of lease effective date	Article XI	\$500.00/day
Failure to Submit and Seek Approval for Construction Plans and respond to Plan Review Comments on time	11.05	\$250.00 per day
Failure to open to public within 180 days from Notice to Proceed	11.06	\$150.00 per day
Failure to deliver required post-construction documentation	11.12	\$500.00 per day
Failure to submit midterm refurbishment plans	11.15	\$500.00 per day
Failure to Obtain or Maintain Insurance	16.01	\$300.00 per day
Failure to Obtain or Maintain Deposit	17.01	\$300.00 per day
Failure to abide by any other term in this Lease		\$100.00 per incident/per location
Failure to return Airport ID/Security Credential upon termination of employment	Article XXI	\$250.00
Failure to timely respond to or remediate an Americans with Disabilities Act related complaint, code violation, or accommodation request as applicable	Article XXII	\$250.00 per day
Failure to complete employee training in accordance with FAA or other regulatory guidelines per County direction	Article XXII; 10.01	\$100.00 per day

SECTION 8.02 MULTIPLE VIOLATIONS

Except for violations of requirements regarding construction, health and safety, delivery and vendor access infractions, violation fines for which shall accrue and be assessed immediately and without notice upon violation, all other violation fines shall accrue immediately and assessed as follows:

- A. For the first and second violation of a requirement during any twelve (12) month rolling year, County will provide notice to Tenant to correct the violation within thirty (30) days

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or other the time specified in the notice. After the time specified by County for cure, violation fines shall be assessed until the violation is corrected by Tenant. In the event, the violation is not corrected within thirty (30) days of the time specified by County for cure, then such violation will be treated as a breach of this Lease entitling County the right to seek any other remedies available under this Lease including, but not limited to, termination.

- B. For the third and subsequent violations of the same requirement during any twelve (12) month rolling year commencing upon the first notice of violation, the liquidated damage shall be immediately assessed with no grace period.
- C. Further, after two (2) violations of the same requirement within any twelve (12) month rolling year, County reserves the right, in its sole discretion, to deem the repeated violations a material breach of this Lease and to seek any other remedies available to it under this Lease including, but not limited to, termination of this Lease.
- D. For those violations where a plan is required to correct the violation, then Tenant and County shall develop such plan, including a time schedule under which resolution can be achieved.

SECTION 8.03 PAYMENT OF VIOLATION FINES

Payment of violation fines will be due within fifteen (15) days from the date of invoice.

ARTICLE IX. NONDISCRIMINATION

SECTION 9.01 GENERAL CIVIL RIGHTS PROVISION

In all its activities within the scope of its airport program, Tenant agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

If the Tenant transfers its obligation to another, the transferee is obligated in the same manner as the Tenant.

The above provision obligates the Tenant for the period during which the property is owned, used or possessed by the Tenant and the airport remains obligated to the Federal Aviation Administration.

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SECTION 9.02 COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS

During the performance of this lease, 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 Agreement, will not discriminate on the grounds of race, color, or national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability, 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.

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6. Incorporation of Provisions

The Tenant will include the provisions of paragraphs one through six (6) in every 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.

Tenant is required to insert the above paragraphs one through six in every sublease or subcontract at any tier. Upon request by the County, Tenant will provide a copy of each sublease or subcontract to demonstrate that the above language has been inserted.

**SECTION 9.03 TITLE VI CLAUSES FOR TRANSFER OF REAL PROPERTY AND FOR
CONSTRUCTION/USE/ACCESS TO REAL PROPERTY**

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:

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 Title VI List of Pertinent Nondiscrimination Acts and 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.

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.

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.

Tenant will use the Leased Premises in compliance with all other requirements imposed by or pursuant to the Title VI List of Pertinent Nondiscrimination Acts and Authorities.

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.

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**SECTION 9.04 TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS AND
AUTHORITIES**

During the performance of this contract, Tenant, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- A. 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);
- B. 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);
- C. 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);
- D. 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 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- E. The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
- F. Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- G. The Civil Rights Restoration Act of 1987 (PL 100-259) (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);
- H. Titles II and III of the Americans with Disabilities Act of 1990 (42 USC § 12101, et seq) (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) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- I. The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- J. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high

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and adverse human health or environmental effects on minority and low-income populations);

- K. 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. 74087 (2005)];
- L. 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).

Tenant is required to insert the above Title VI List of Pertinent Nondiscrimination Acts and Authorities into every sublease or subcontract at any tier. Upon request by the County, Tenant will provide a copy of each sublease or subcontract to demonstrate that the above language has been inserted.

SECTION 9.05 CIVIL RIGHTS TRAINING

Upon request by the County, Tenant is required to disseminate and provide training materials and other information related to Title VI Civil Rights to its staff as specified by the County.

SECTION 9.06 BREACH OF NONDISCRIMINATION COVENANTS

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 Agreement had never been made or issued.

**ARTICLE X. AIRPORT CONCESSIONS DISADVANTAGED
BUSINESS ENTERPRISE (“ACDBE”)
PARTICIPATION**

SECTION 10.01 ACDBE PROGRAM ASSURANCES

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.

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SECTION 10.02 ACDBE TERMINATION OR SUBSTITUTION

If Tenant proposes to terminate, substitute, or modify the participation of an ACDBE Joint Venture partner, team member, subcontractor, or sub-concessionaire in the Lease before or after Lease award, prior to such change, the Tenant shall immediately submit for review to the Airport's ACDBE Liaison Officer an explanation and reasonable documentation regarding the proposed change in ACDBE participation. Tenant shall include the specific reasons for the change in ACDBE participation and must produce any requested documents and information regarding the proposed change.

SECTION 10.03 MONITORING AND REPORTING REQUIREMENTS

No later than fifteen (15) days after the end of each calendar month during the Term, when requested, Tenant will submit to Airport, in Airport's online system or on Airport's monthly ACDBE Utilization Report form, a report of Tenant's total Gross Receipts during the month and the total dollar value of Gross Receipts earned by an ACDBE under this Lease and the total dollar value of goods and services purchased or leased from each ACDBE during the month, in each case calculated in accordance with the requirements of 49 CFR Part 23.

Whenever a Joint Venture is used to meet ACDBE goals, Tenant shall submit to Airport an annual financial statement for the preceding year indicating compensation, profit sharing, capital contributions of ACDBE partners, or any other financial information as requested by Airport relevant to determining ACDBE compliance. Tenant shall also report annually the ACDBE partner's management involvement and its role in decision making. The annual financial statement, and all other information requested pursuant to this paragraph, shall be on a form satisfactory to Airport and delivered to Airport no later than sixty (60) days following the close of the federal fiscal year ending on September 30th.

Tenant further agrees to submit any other report(s) or information that County is required by law or regulation to obtain from Tenant, or which the Airport's ACDBE Liaison Officer or designee may request relating to Tenant's operations. 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.

Tenant shall timely submit reports and verifications requested by the County and shall provide such financial information or other information deemed necessary by it to support and document the ACDBE participation for this Lease. County shall have the right until six (6) years after the expiration or termination of this Lease, through its representatives, and at all reasonable times, to review books, records, and financial information of the Tenant (and where applicable, all individuals, Joint Venture partners or team members or other business entities that are a party or engaged in concession activity under this Lease) requested by representatives of the County to substantiate compliance with 49 CFR Parts 23 and 26 as amended, and any guidance issued by FAA regarding the interpretation of the federal regulations.

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SECTION 10.04 OTHER REQUIREMENTS

Tenant shall comply with the requirements of 49 CFR Part 23 and 26, the Airport's ACDBE Program, and guidance issued by the FAA, regarding the interpretation of the regulations, including but not limited to the Joint Venture Guidance in the administration of this Lease. Tenant shall comply with any future amendments to the aforementioned authorities.

If Tenant is a Joint Venture as defined in 49 CFR part 23, section 23.3, Tenant agrees that its Joint Venture operating agreement must be reviewed and approved by the Airport, in accordance with FAA guidance, prior to the execution of this Lease. Tenant further agrees that any amendments to its Joint Venture agreement must be reviewed and approved by the Airport, in accordance with FAA guidance, prior to the amendment's execution. A copy of any loan agreement from the non-ACDBE partner to the ACDBE partner that has or will be used in connection with this opportunity must also be provided.

SECTION 10.05 NON-COMPLIANCE

In the event of Tenant's non-compliance with the ACDBE Program, County may, in addition to pursuing any other available legal remedy, terminate, suspend or cancel this Lease in whole or in part; and/or suspend or debar Tenant from eligibility to contract with County in the future or to receive bid packages or request for proposal packages or other solicitations, unless Tenant demonstrates, within a reasonable time as determined by County, its compliance with the terms of the ACDBE Program or this Article.

ARTICLE XI. CONSTRUCTION AND CAPITAL INVESTMENT

SECTION 11.01 CONSTRUCTION BY TENANT

Tenant shall not make any improvements or modifications, do any construction work on the Leased Premises, or alter, modify, or make additions, improvements, replacements, or repairs, except emergency repairs, to any structure now existing or built without prior written approval of County. Tenant shall not install any fixtures, other than Trade Fixtures, without the prior written approval of County. In the event that any construction, improvement, alteration, modification, addition, repair, excluding emergency repairs, or replacement is made without County approval, or done in a manner other than as approved, County may, at its discretion, (i) terminate this Lease in accordance with the provisions herein; or (ii) require Tenant to remove the same; or (iii) require Tenant to change the same to the satisfaction of County. In case of any failure on the part of Tenant to comply, County may, in addition to any other remedies available to it at law or in equity, effect the removal or change referenced above in this Section and Tenant shall pay the cost thereof to County plus fifteen percent (15%) of the costs for administration.

SECTION 11.02 DESIGN 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 County. Tenant is responsible to

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review and comply with the Tenant Design Guidelines and John Wayne Airport Construction Standards. All construction shall conform to applicable building codes, rules, regulations and Airport's architectural standards as contained in reference document "Architect-Engineer Guide OC Public Works" and reference document "John Wayne Airport Construction Standards" which can be provided by Airport upon request. 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 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. 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 be responsible for filing Form 7460 for any construction and/or height of construction equipment with the FAA, if required.

SECTION 11.03 INITIAL CAPITAL INVESTMENT

As a valuable consideration for County entering into this Lease, but not as a payment of rent or a form of consideration for the right to occupy space at the Airport, but rather to relieve County from making expenditures for Leased Premises occupied by Tenant for the Term of this Lease, Tenant's Capital Investment expended in the initial construction, furnishing and equipping of the Leased Premises shall not be less than the Minimum Capital Investment set forth in the Proposal submitted by Tenant and approved by the Board of Supervisors. If the actual Capital Investment, as certified by the Tenant, is less than the Minimum Capital Investment, Tenant agrees to pay to County, within thirty (30) days of such determination, the difference between the actual Capital Investment and the Minimum Capital Investment. However, if the actual Capital Investment, as certified by Tenant, is less than the Minimum Capital Investment and Tenant delivers to County the initial construction, furnishings, and equipment of the Leased Premises, as reflected in the Approved Project, County agrees to waive its right to the difference between the actual Capital Investment and Minimum Capital Investment. Any amounts paid to County because of this provision shall not be deemed a Capital Investment for any purpose under this Lease nor shall it be deemed payment of any rent or other fees due under this Lease.

SECTION 11.04 DEVELOPMENT SCHEDULE

No later than seven (7) days after the Effective Date, or at such later date as County may designate, Tenant must submit to County, for its approval, a proposed Development Schedule that sets forth for the following for each of the Concessions within the Leased Premises:

- The anticipated date(s) of design submittals and reviews for each Concession.
- The anticipated Space Turnover Date(s) for each Concession.
- The anticipated Required Opening Date(s) for each Concession.
- The expected Substantial Completion Date for the entire Leased Premises.

Upon approval by County, the Development Schedule will be attached hereto as Exhibit D, Development Schedule, and will be confirmed by letter executed by the Airport Director, without need for formal amendment to this Lease.

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If for any reason County does not deliver possession of a Concession to Tenant on or after the approved Space Turnover Date, County shall not be subject to any liability therefor. Such failure to deliver possession of a Concession by the time provided in the Development Schedule will not give rise to any claim for damages by Tenant against County or against County's Contractor; nor shall such failure affect the validity of this Lease or Tenant's obligations hereunder. Additionally, the Required Opening Date(s) and expected Substantial Completion Date, as stated in the Development Schedule, shall be adjusted as appropriate, in County's sole discretion.

SECTION 11.05 SUBMITTAL AND APPROVAL OF PLANS

A. Submittal of Plans

Tenant shall cause to be designed, constructed, and installed within the Leased Premises, at no cost to County, appropriate improvements to adequately accommodate those services and uses, both required and any other optional services and uses approved pursuant to the section in this Lease entitled, "PERMITTED USE." Tenant must comply with the Tenant Design Guidelines and JWA Construction Standards 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.

No construction work shall commence until County has approved the plans and specifications and has issued a Notice to Proceed.

County will review and respond to submittals of plans and specifications within thirty (30) days or provide notice to Tenant that the review time has been extended. In the event of disapproval by County of any portion of any submittal of plans and specifications, Tenant shall promptly make modifications and revisions and re-submit for approval by County.

Tenant must comply with the submission deadlines and review schedules developed by County for construction plans, designs and drawings as further outlined in the Tenant Design Guidelines and John Wayne Airport Construction Standards. Weekly scheduled meetings with Tenant representative, contractor, design team, and JWA staff must be held during any construction improvements or projects. Updated Microsoft Project (or equivalent software), 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 County and with County construction and architectural standards, as can be amended from time to time.

B. Disclaimer of Compliance with Laws or Codes

The approval by County of any plans and specifications refers to the conformity of such plans and specifications to County standards. Approval of any plans and specifications by County does not constitute its representation or warranty as to their conformity with applicable laws, statutes, codes,

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or permits and responsibility therefore always remains with Tenant. Tenant has sole responsibility for and will ensure that construction plans and specifications are in full compliance with any and all applicable federal or state laws, statutes and codes.

C. Approvals Extend to Architectural and Aesthetic Matters

Required approval of County shall extend to and include architectural and aesthetic matters. County reserves the right to reject any designs submitted by Tenant and to require Tenant, at Tenant's expense, to make modifications and revisions and to resubmit designs until designs are deemed acceptable and subsequently approved in writing by County.

D. Design and Permitting

Tenant shall be responsible, at its sole cost and expense, for the costs of design and permitting of all improvements within the Leased Premises and shall not commence any work with respect to an Approved Project until all governmental permits and approvals with respect to the Approved Project have been obtained. At no cost or liability to County, County shall cooperate in all reasonable respects with Tenant's efforts to obtain such permits and approvals, which cooperation shall include, without limitation, the execution of such instruments as may be required by governmental authorities for Tenant to apply for and obtain such permits and approvals.

SECTION 11.06 CONSTRUCTION

Tenant shall, at its own cost and expense, commence construction of an Approved Project within ten (10) days of the later to occur of: (i) the Space Turnover Date stated in the Notice to Proceed for such Approved Project; or (ii) receipt of Building or Demolition Permit. Tenant agrees that all construction work to be performed, including all workmanship and materials, shall be of optimal quality and in accordance with the Approved Project and the Development Schedule. All construction shall be performed in accordance with the requirements of this Lease, the Tenant Design Guidelines, and all applicable laws, regulations, ordinances, codes and permits. County and its designees shall have the right from time to time to inspect each Approved Project.

Construction by Tenant, its contractors and subcontractors, shall be coordinated with and under the direct supervision of County and shall be completed within one hundred eighty (180) days from the Notice to Proceed for each Concession as described in Tenant's Development Schedule attached hereto as Exhibit D, unless such dated is extended in writing by Airport Director. 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 listed in Section 8.01 and shall continue until installation has been completed to the satisfaction of County. This amount shall be in addition to all other sums due under this Lease.

If the Concession is not open for business within thirty (30) days after the Required Completion Date, the failure shall be an Event of Default and County shall have the right to exercise all remedies herein, at law or in equity, including but not limited to, the option to terminate this Lease or to remove the applicable Concession from the Leased Premises. Notwithstanding the foregoing,

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the Parties agree that any delay in construction of any improvements due to force majeure or acts solely attributable to County shall extend the Required Opening Date and/or Required Completion Date for an Approved Project. Additionally, the initial Substantial Completion Date, as stated in the Development Schedule, shall be extended if affected by such event, in County's sole discretion. County shall have no liability to Tenant for compensation or damages for any such delay.

SECTION 11.07 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:

- Completion Bond issued to County/JWA as obligee
- 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 Section 11.12 entitled, "Completion of Construction," to be eligible for return or refund of Completion Bond and/or its letter of credit.

It is not the intent of the Parties herein to create a third-party beneficiary, and nothing in this Section shall be construed to do so.

SECTION 11.08 CONSTRUCTION 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.

SECTION 11.09 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 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.

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SECTION 11.10 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.

SECTION 11.11 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. Trailers and Modular Structures used during construction must be permitted and approved by County if desired to be utilized on County property. Upon completion of construction, all trailers or modular structures must be immediately removed from the Leased Premises.

SECTION 11.12 COMPLETION OF CONSTRUCTION

Within ninety (90) days following completion of any improvement within the Leased Premises, the Tenant shall furnish the Airport Director a complete package of "As-Built Documents" and "Record Documents", which include but are not limited to construction documents, specifications, cost estimates, engineering studies, signed OCPW Building Inspection Cards, and calculations. The aforementioned information shall be submitted on two (2) thumb drives containing digital copies of the "As-Built Documents" and "Record Documents", organized in a detailed, logical, and comprehensible folder structure, which is in a form that is usable and accepted by the County, to the County's satisfaction, as described below, unless otherwise allowed by the Airport Director. See Exhibit F for additional details.

Drawings and Models:

- All 2-D and 3-D architectural, engineering, design, and/or construction drawing and/or modeling files for the project shall be completed using AutoCAD 2019 and REVIT 2019 or a newer version of either software if approved by John Wayne Airport.
- All geographic data, spatial analysis, geographic information system (GIS) mappings, drawings, exhibits, and/or figures for the project shall be completed using Environmental Systems Research Institute (ESRI) ArcGIS.
- All 2-D and 3-D drawing and/or modeling files created via computer aided design and drafting (CADD), building information modeling (BIM), and/or GIS for the project shall conform to the John Wayne Airport CADD/BIM/GIS standards and specifications.
- In addition to the 2-D and 3-D drawing and/or modeling files indicated above, a PDF format (scaled to ARCH E1 format where applicable) of those drawings, exhibits, figures, etc. shall be generated and submitted digitally.

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Documents and Reports:

- All specifications, reports and/or studies (e.g. geotechnical report, etc.), calculations, and other project information (e.g. construction submittals, operations and maintenance (O&M) manuals, warranties, etc.) for the project shall be completed using MS Office suite applications and also generated and submitted digitally in a PDF format.

Note: "Record Documents", e.g. record drawings, specifications, calculations, etc., shall be prepared, stamped, signed by the Architect and/or Engineer of Record for the project and shall reflect all updates and/or modifications that were approved during design and construction, i.e. separate from the as-built documents, which include contractor redlines, contract changes, etc. Refer to the "John Wayne Airport Construction Standards" for additional information.

In addition, two (2) sets of hard prints of the stamped and signed record drawings for the project, as described above, must be furnished by the Tenant with the thumb drives containing the "As-Built Documents" and "Record Documents". Basic specifications, standards, and requirements for BIM, CAD, and/or GIS produced information at the Airport can be located on the www.ocair.com website or provided by the Airport upon request.

Furthermore, the Tenant shall furnish the Airport Director with 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 the Tenant or its responsible agent under penalty of perjury. The Tenant must obtain County approval of acceptance of the "As-Built Documents" and "Record Documents" and the form and content of the itemized statement.

SECTION 11.13 TITLE TO IMPROVEMENTS

All Improvements made to the Leased Premises by Tenant, and any additions and alterations thereto made by Tenant, including approved changes and renovations that are affixed to the Leased Premises, 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. Tenant shall not remove any improvements and/or furnishings, trade fixtures, and equipment without the prior written consent of the Airport Director. 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. County shall notify Tenant of its intent to claim or have Tenant remove any or all improvements not less than 60 days prior to the expiration of this Lease.

For purposes of this Lease, satellite antenna dishes or antennae that may be installed by Tenant and properly identified on the roof of the Terminal or any location outside the Leased Premises shall be considered a Tenant improvement. County retains the right to require Tenant, at Tenant's

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cost, to remove any antenna installed by Tenant. County 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 11.14 SIGNAGE

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 Tenant Design Guidelines and JWA Construction Standards. Unapproved signs, banners, flags, etc., may be removed by Airport Director without prior notice to Tenant.

The Tenant will not place any promotional signs or advertising materials in any location within the Leased Premises or within any common use area of the Terminal without the prior consent of the County. All requests for the approval of temporary promotional signs for the Tenant shall be accompanied by illustrative drawings and design dimensions along with information about the type of signs proposed, and proposed locations. All approved promotional signs shall be allowed to remain in the terminal for ninety (90) days. At the end of ninety (90) days, all temporary signage must be removed, or the Tenant may resubmit a request to County to extend past the ninety (90) days.

The County may without notice remove any unauthorized signs or advertising materials, and may store them at the Tenant's expense; the County may dispose of items if they are not promptly claimed by the Tenant after notice from the County.

SECTION 11.15 MIDTERM REFURBISHMENT

In addition to the ongoing, routine maintenance described in Section 7.14, Tenant shall, at its sole cost and expense, commence Midterm Refurbishment. The Midterm Refurbishment shall include without limitation all modernizing, refinishing, repair, replacement, redecorating, repainting, and re-flooring necessary for the purpose of keeping concession and its technology contemporary and competitive with current concession trends and methods and keeping the Leased Premises in optimal condition. The scope and extent of the Midterm Refurbishment for each Concession shall be jointly determined by County and Tenant, but shall not exceed the cost of \$100 per square foot. If Tenant and County cannot jointly agree upon the necessary scope and extent of the Midterm Refurbishment for any Concession, County may, at its sole discretion, determine the refurbishment required and Tenant agrees to be bound by County's determination.

Tenant's plans, specifications, and schedule for refurbishment must be in accordance with Airport John Wayne Airport Construction Standards and Tenant Design Guidelines. Tenant shall submit its plan specifications for refurbishment to County for review and approval no later than 80 months from the Term Commencement Date. Tenant shall complete the Midterm Refurbishment, as approved by the Airport Director within one-hundred eighty (180) days from the midterm of the Agreement. The midterm of the Agreement is ninety (90) months from the Term Commencement Date. Failure to complete the refurbishment by said date shall be cause for termination of the Agreement, and/or at the direction of the Airport Director the sum of five hundred dollars

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(\$500.00) per day until the 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.

The plans and specifications shall be certified by an architect or engineer licensed by the State of California and shall consist of (a) working drawings, (b) technical specifications, and (c) proposed equipment upgrades or changes. 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.

SECTION 11.16 HEALTH AND SAFETY

The Tenant shall comply with all applicable California Occupational Safety & Health Administration (Cal/OSHA) requirements, and all federal, state or local safety orders. The Tenant shall post on the Leased Premises and at all construction sites a copy of "Construction Safety Orders" and "General Industry Safety Orders" issued by the California State Division of Industrial Safety.

The Tenant shall, within thirty (30) days after the execution of this Lease, submit to the County a comprehensive Safety Plan outlining the code of safe work practices and procedures. The plan must include emergency response procedures, notification procedures, and personnel training procedures. The Tenant shall convene safety meetings at regularly scheduled times as described in its Safety Plan and as required by Cal/OSHA. The Tenant and/or Tenant's contractor shall submit, prior to the start of any tenant improvements, the Tenant or Tenant's contractor required Cal/OSHA Safety Plan for approval by the Airport.

The Tenant shall submit to the County an annual report detailing the status of all permits required and issued to the Tenant by CAL OSHA or any other federal, state or local government agency. Said report shall be due on or before January 31 of each calendar year.

SECTION 11.17 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:

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

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- A = Tenant's actual Leased Premises improvement construction costs submitted in accordance with the Section 11.12 Completion of Construction.
- 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 ninety (90) 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.

ARTICLE XII. DISCLAIMER OF LIENS

The interest of County in the Leased Premises will not be subject to liens for any work, labor, materials, or improvements made by or for Tenant to the Leased Premises, whether the same is made or done in accordance with an agreement between County and Tenant. It is specifically understood and agreed by Tenant that in no event will County or the interest of County in the Leased Premises be liable for or subject to any mechanic's, laborers or materialmen's liens for materials furnished, improvements, labor or work made by or for Tenant to the Leased Premises. Tenant is specifically prohibited from pledging, liening, or otherwise encumbering any assets located at the Airport or any interest in this Lease without prior, written approval by County. Tenant is specifically prohibited from subjecting County's interest in the Leased Premises to any mechanic's, materialmen's, or laborers' liens for improvements made by or for Tenant or for any materials, improvements or work for which Tenant is responsible for payment. Tenant will indemnify, defend, and hold County harmless for any expense or cost associated with any lien or claim of lien that may be filed against the Leased Premises or County, including attorney fees incurred by County. Tenant will provide notice of this disclaimer of liens to all Contractors or subcontractors providing any materials or making any improvements to the Leased Premises.

In the event a mechanics lien or stop-notice is imposed upon the Leased Premises, Tenant shall either:

- Record a valid Release of Lien, or
- Procure and record a bond in accordance with Section 8424 or 9364 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.

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Should Tenant fail to accomplish either of the two 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.

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 Section 8444 of the Civil Code of the State of California.

ARTICLE XIII. MAINTENANCE UTILITES AND REPAIRS

SECTION 13.01 TENANT’S MAINTENANCE OBLIGATIONS

Tenant, at its own cost and expense, shall maintain and repair, replace or refinish all 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 in good condition. All repairs 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 all County standards, including but not limited to, the Tenant Design Guidelines and John Wayne Airport Construction Standards. 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, required upgrades, 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.

Tenant shall maintain, repair, replace, paint, or otherwise finish all installations within the lease lines of the Leased Premises, including, without limitation, walls, partitions, floors, ceilings, windows, doors, glass and all furnishings, fixtures, and equipment therein, including wiring, and software and communications equipment, whether installed by Tenant or by County. All the maintenance, repairs, finishing and replacements shall be of quality equal to or better than the original in materials and workmanship. All work, including finishing colors, shall be subject to the prior written approval of County.

Tenant’s compliance obligations shall include, without limitation, the obligation to make substantial or structural repairs and alterations to the Leased Premises (including any initial capital improvements), regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term hereof, the relative benefit of the repairs to Tenant or County, the degree to which curative action may interfere with Tenant’s use or enjoyment of the Leased Premises, the likelihood that the Parties contemplated the requirement involved, or the relationship between the requirement involved and Tenant’s particular use of the Leased Premises.

If it is determined that the maintenance is not in compliance with this Lease, County shall so notify Tenant in writing. If the maintenance required to be performed as provided in County’s notice to

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Tenant is not commenced by Tenant within five (5) days after receipt of notice, or is thereafter not diligently executed to completion, County or its representative shall have the right to enter upon the Leased Premises and perform the maintenance, and Tenant agrees to promptly reimburse County for the cost thereof, plus an administrative fee equal to fifteen percent (15%) of the maintenance costs.

Tenant covenants and agrees that nothing shall be done or kept in the Leased Premises that might impair the value of County's property or that would constitute waste. Any hazardous or potentially hazardous condition on the Leased Premises shall be corrected immediately upon receipt of a verbal or written notice from County. At the sole discretion of County, Tenant shall close the Leased Premises or affected portion thereof until the hazardous or potentially hazardous condition is corrected. Tenant shall immediately notify the Airport Operations Center ("AOC") Control Center of any fire, emergency, accident or spill or release of fuel or hazardous substances. The AOC can be reached by calling (949) 252-5000 or picking up any white telephone located in the terminal buildings.

Tenant covenants to comply with all present and future laws, orders, and regulations, including any rules, regulations and procedures promulgated by County regarding County provided maintenance within the Airport. When any system for County provided maintenance is put in place that can allocate to Tenant its proportional share of the cost, Tenant must pay its proportional share of the actual costs.

SECTION 13.02 COUNTY'S MAINTENANCE AND UTILITY OBLIGATIONS

County shall provide structural maintenance of the Airport and, except as provided below, maintain, and repair the exterior windows and walls of the Leased Premises in the Airport. However, maintenance of all interior and exterior walls constructed or remodeled by Tenant shall be Tenant's responsibility.

County provides utility mains and lines throughout the Airport. Tenant, at its sole cost, shall tie into the utility mains and lines at the locations as specified by County. Supplemental heated or cooled air, electrical or other utilities required by Tenant more than what is customarily available in the Airport will be, if approved by County, at the expense of Tenant. County may, at County's sole discretion, maintain the utilities within the Leased Premises and in doing so shall be permitted to enter upon the Leased Premises at all times to make any repairs, replacements and alterations when and as may, in the opinion of County, be deemed necessary. Furthermore, Tenant will permit County or its representatives' access to construct or install over, on, in, or under the Leased Premises, new systems, pipes, lines, mains, wires, conduits, ducts and equipment; provided, however, that County shall exercise such right in a manner that minimizes interference with Tenant's operations. Moreover, during an emergency, County, or its agents, may enter the Leased Premises forcibly, if necessary. No such reasonable entry by or on behalf of County shall constitute or cause a termination of this Lease by Tenant.

County agrees that it will always maintain and keep utility mains and lines in good repair in the Airport and all appurtenances, facilities, and services now or hereafter connected therewith. Tenant

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understands, accepts, and agrees that County shall not be liable for Tenant's loss for failure to supply any utility services. County reserves the right to temporarily discontinue utility services at such time as may be necessary by reason of accident, unavailability of employees, repairs, alterations, or improvements or whenever by reason of strikes, lockouts, riots, acts of God, or any other happenings beyond the control of County and causes County to be unable to furnish such utility services. County shall not be liable for damages to persons or property for any such discontinuance due to causes beyond the control of County, nor shall such discontinuance in any way be construed as cause for abatement of Concession Space Rent or to release Tenant from any of its obligations hereunder.

**ARTICLE XIV. DEFAULT, REMEDIES, AND TERMINATION
RIGHTS**

SECTION 14.01 EVENTS OF DEFAULT

Tenant will be deemed to be in default of this Lease upon the occurrence of any of the following:

- A. The failure or omission by Tenant to perform its obligations under this Lease or the breach of any terms, conditions and covenants required herein.
- B. The failure to pay, in full, to County within five (5) days of when due any fees, costs, expenses damages, or other charges applicable hereunder except where such failure is cured within ten (10) days after written notice by County of Tenant's failure to pay.
- C. Tenant's default under any other agreement with County at the Airport.
- D. The appointment of a Trustee, custodian, or receiver of all or a substantial portion of Tenant's assets.
- E. The divestiture of Tenant's estate herein by operation of law, by dissolution, or by liquidation, not including a merger or sale of assets.
- F. The insolvency of Tenant; or if Tenant will take the benefit of any present or future insolvency statute, will make a general assignment for the benefit of creditors, or will seek a reorganization or the readjustment of its indebtedness under any law or statute of the United States or of any state thereof including the filing by Tenant of a voluntary petition of bankruptcy or the institution of proceedings against Tenant for the adjudication of Tenant as bankrupt pursuant thereto.
- G. Tenant's cancellation of its Surety without County's prior written consent and does not reestablish it promptly after written notice by County.
- H. An assignment, sublease, or transfers of Tenant's interest under this Lease by reason of death, operation of law, assignment, sublease, sale in bulk of any of its assets, or otherwise

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to any other person or business entity other than in compliance with the provisions of this Lease.

- I. If Tenant abandons, deserts, vacates, or ceases operations under this Lease for five (5) consecutive business days, unless undergoing repairs or renovations which have first been approved by County.
- J. Tenant's failure to maintain any type of insurance or level of insurance coverage required hereunder (and in the event Tenant has failed to remedy such failure within ten (10) days after notice thereof from County, County may affect such coverage and recover the cost thereof immediately from the Surety or from Tenant).
- K. Any lien or attachment to be filed against the Leased Premises, the Airport, or other County property because of any act or omission of Tenant, and such lien or attachment is not discharged or contested by Tenant in good faith by proper legal proceedings within fifteen (15) days after receipt of notice thereof by Tenant.
- L. Tenant use, permission to use, or failure to promptly prevent use of any portion of the Airport made available to Tenant for its use under this Lease for any illegal purpose.
- M. Tenant's license or franchise agreement related to the Concession it is authorized to operate at the Airport is terminated, expires, or is amended so that compliance with the amended provisions will cause Tenant to be in breach of its obligations under this Lease.
- N. Tenant's failure to timely pay any fees or charges required hereunder after the expiration of the ten (10) day cure period as described hereunder.
- O. The conduct of any business or performance of any acts at the Airport not specifically authorized in this Lease or by any other agreement between County and Tenant, and Tenant's failure to discontinue that business or those acts within thirty (30) days of receipt by Tenant of County's written notice to cease said business or acts (which thirty [30] day notice and remedy period shall also satisfy the notice requirement of Section 14.02 below). Nothing in this Section shall be construed to grant a right to Tenant to cure a default, which by its nature is not capable of being cured.
- P. 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;
- Q. Tenant fails to maintain adequate records and accounts reflecting its business operations at the Airport and calculation of Gross Receipts under this Lease;
- R. Tenant fails or refuses to submit the formal supporting paperwork as required herein.

County reserves the right, in its sole discretion, to treat each Concession individually for the purpose of declaring defaults and exercising remedies under this Lease.

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SECTION 14.02 COUNTY'S REMEDIES

In the event of any of the foregoing Events of Default of Tenant and following thirty (30) days' notice by County and Tenant's failure to remedy, County, at its election, may exercise any one or more of the following options or remedies, the exercise of any of which will not be deemed to preclude the exercise of any other remedy herein listed or otherwise provided by statute or general law. County's remedies are as follows:

1. Allow this Lease to continue in full force and effect and enforce County's right to collect Concession Space Rent and/or Additional Rent as it becomes due together with past due interest and draw upon the Surety in any amount necessary to satisfy the damages sustained or reasonably expected from Tenant's default.
2. Upon thirty (30) days' notice terminate Tenant's rights under this Lease. This notice shall be final and shall at the option of County terminate all the rights hereunder of Tenant, and County may upon the date in the notice take possession of the Leased Premises, and expel Tenant with or without process of law, without liability for trespass, and using such force as may be necessary, and without prejudice to any remedies for damages or breach. In doing so, County will not be deemed to have thereby accepted a surrender of the Leased Premises, and Tenant will remain liable for all payments or other sums due under this Lease up to and including the date of termination, and for all damages suffered by County because of Tenant's breach of any of the covenants of this Lease, including but not limited to, all cost of reletting, reasonable attorney's fees, repairs, and improvements.

No delay, failure, or omission of County to re-enter the Leased Premises or to exercise any right, power, privilege, or option arising from any default nor subsequent acceptance of fees or charges then or thereafter accrued will impair any such right, power, privilege, or option, or be construed to be a waiver of any such default or relinquishment, or acquiescence of the Leased Premises. No option, right, power, remedy, or privilege of County will be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of the rights, powers, options, or remedies given to County by this Lease are cumulative and that the exercise of one right, power, option, or remedy by County will not impair its rights to any other right, power, option, or remedy available under this Lease or provided by law. In the event County terminates this Lease or reclaims the Leased Premises under this section, County has no liability to Tenant for any Unamortized Investment.

SECTION 14.03 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 Agreement shall

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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 14.04 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 are 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 14.05 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 Agreement and re-entry of the Leased Premises by County shall in no way alter or diminish any obligation of Tenant under the Agreement 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 shall take no action that would impair the ability of any successor to commence and maintain such concession operations.

ARTICLE XV. INDEMNIFICATION

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

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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 XVI. INSURANCE

SECTION 16.01 INSURANCE TERMS, CONDITIONS AND REQUIRED COVERAGES

Tenant agrees to carry all required insurance at Tenant's expense and provide to the County current Certificates of Insurance, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Lease have been complied with. Tenant shall keep such insurance coverage current and provide Certificates of Insurance and endorsements to the County during the entire term of this Lease.

Tenant agrees that Tenant shall not operate on the Leased 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 Leased Premises until such time as the Airport Director reinstates the Agreement.

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 Agreement, County and Tenant agree that this shall constitute a material breach of the Agreement. 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 Leased 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 Leased 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

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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 Leased 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 Agreement. 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 Leased 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 (SIR)'s shall be clearly stated on the Certificate of Insurance. Any SIR in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee. The County reserves the right to require current audited financial reports from Tenant. If Tenant is self-insured, Tenant will indemnify and defend County for any and all claims resulting or arising from Tenant's use of the premises, services or other performance in accordance with the indemnity provision stated in this Lease.

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**).

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 combined single limit each accident

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Coverages	Minimum Limits
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per accident or disease
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 (Optional coverage required when liquor is sold and served)	\$1,000,000 per occurrence

Increased insurance limits may be satisfied with Excess/Umbrella policies. Excess/Umbrella policies when required must provide Follow Form coverage.

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, and 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, employees and agents. Blanket coverage may also be provided which it will state as Required by Written Agreement.

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All insurance policies required by this Lease shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, employees, and agents 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.

Tenant shall provide thirty (30) days prior written notice of any policy cancellation or non-renewal and ten (10) days prior written notice where cancellation is due to non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Lease, upon which the County may suspend or terminate this Lease.

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 provide 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.

ARTICLE XVII. PROPERTY DAMAGE

SECTION 17.01 COMPLETE DESTRUCTION

If Leased Premises, the Terminal in which the Leased Premises are located, or any portion thereof is destroyed or damaged to an extent that renders it unusable, County may rebuild or repair any portions of the building structure destroyed or damaged, and if the cause was beyond the control of Tenant, Tenant's obligation to pay the Concession Space Rent hereunder shall abate as to such damaged or destroyed portions during the time they are unusable. If County elects not to proceed with the rebuilding or repair of the building structure, it shall give notice of its intent within ninety (90) days after the destruction or damage. At its option, Tenant may then terminate this Lease effective as of the date of such event.

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If County elects to rebuild, Tenant must replace all Leased Premises Improvements at its sole cost and in accordance with the Capital Investment, subject to increase for inflation. Such replacements must be in accordance with the performance standards set forth herein. County and Tenant shall cooperate with each other in the collection of any insurance proceeds that may be payable in the event of any loss or damage.

If during the last year of the Term the improvements on the Leased Premises are partially destroyed or damaged, County may at County's option terminate this Lease as of the date of occurrence of such damage by giving written notice to Tenant of County's election to do so within thirty (30) days after the date of occurrence of such damage. In the event County elects to terminate this Lease pursuant hereto, Tenant shall have the right within ten (10) days after receipt of the required notice to notify County in writing of Tenant's intention to repair such damage at Tenant's expense, without reimbursement from County, in which event this Lease shall continue in full force and effect and Tenant shall proceed to make such repairs as soon as reasonably possible.

SECTION 17.02 LIMITS OF COUNTY'S OBLIGATIONS DEFINED

County shall not be liable for the following: (i) any damage to property of Tenant or others located on the Leased Premises or in the Airport; (ii) the loss of or damage to any property of Tenant or of others by theft or otherwise; (iii) any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain, or snow; (iv) leaks from any part of the Leased Premises or the Airport; from the pipes, appliances, or plumbing works; from the roof, street, subsurface, or from any other place; or from dampness or by any other cause of whatsoever nature; (v) any such damage caused by other Tenants, persons in the Leased Premises, occupants of adjacent property, of the Airport, or of the public; (vi) damages caused by operations in construction of any private, public, or quasi-public work; (vii) any latent defect in the Leased Premises or in the building of which they form a part; and (viii) all property of Tenant kept or stored on the Leased Premises are at the risk of Tenant only.

Further, Tenant shall defend and hold County harmless from and hereby waives any claims arising out of damage to the same or damage to Tenant's business, including subrogation claims by Tenant's insurance carrier. Tenant shall give immediate telephone notice to County in case of fire, casualty, or accidents in the Leased Premises or in the building of which the Leased Premises are a part, of defects therein, or in any fixtures or equipment. Tenant shall promptly thereafter confirm such notice in writing.

Redecoration, replacement, and refurbishment of furniture, fixtures, equipment, and supplies will be the responsibility of and paid for by Tenant and will be of equivalent quality to that originally installed hereunder. County will not be responsible to Tenant for any claims related to loss of use, loss of profits, or loss of business resulting from any partial, extensive, or complete destruction of the Leased Premises regardless of the cause of damage.

Repair, replacement, reconstruction, or construction of improvements within the Leased Premises shall be accomplished in a manner and according to plans approved by County. Except as otherwise provided herein, termination of this Lease shall not reduce or nullify Tenant's obligation

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under this Section. 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 17.03 WAIVER OF SUBROGATION

To the extent insurance permits, and then only to the extent collected or collectable by Tenant under its property insurance coverage, Tenant waives all claims against County and its directors, officers, agents, servants and employees for loss or damage to property.

ARTICLE XVIII. DAMAGING ACTIVITIES

No goods or materials will be kept, stored, or used in or on the Leased Premises that are flammable, explosive, hazardous (as defined below) or that may be offensive or cause harm to the public or cause damage to the Leased Premises. Tenant is responsible for compliance and shall require its Contractors to comply with all federal, state, and local environmental rules, regulations, and requirements. Tenant shall obtain all necessary federal, state, local, and Airport permits and comply with all permit requirements. Nothing will be done on the Leased Premises other than as provided in this Lease that will increase the rate of or suspend the insurance on the Leased Premises or on any structure of County. No machinery or apparatus will be used or operated on the Leased Premises that will damage the Leased Premises or adjacent areas; provided, however, that nothing in this Article will preclude Tenant from bringing or using on or about the Leased Premises, with approval by County, such materials, supplies, equipment, and machinery as are appropriate or customary in the operation of Tenant's business under this Lease. Tenant agrees that nothing shall be done or kept on the Leased Premises that might impair the value of County's property or that would constitute waste.

“Hazardous” shall mean:

- Any substance the presence of which requires or may later require notification, investigation, or remediation under any environmental law.
- Any substance that is or becomes defined as a “hazardous waste”, “hazardous material”, “hazardous substance”, “pollutant” or “contaminant” under any federal, state, or local environmental law, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 et seq.), the Resources Conservation and Recovery Act (42 U.S.C. §6901 et seq.) and the associated regulations.
- Any substance that is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise harmful and is or becomes regulated by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States, any state of the United States, or any political subdivision within any state.

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- Any substance that contains gasoline, diesel fuel or other petroleum hydrocarbons or volatile organic compounds.
- Any substance that contains polychlorinated biphenyls, asbestos, or urea formaldehyde foam insulation.
- Any substance that contains or emits radioactive particles, waves, or materials, including, without limitation, radon gas.

Tenant agrees that nothing shall be done or kept on the Leased Premises and no improvements, changes, alterations, additions, maintenance, or repairs made that might impair the structural soundness of the building; result in an overload of utility, plumbing, or HVAC systems serving the Terminal; or interfere with electric, electronic, or other equipment at the Airport. In the event of violations hereof, Tenant agrees immediately to remedy the violation at Tenant's own cost and expense.

Tenant shall be responsible for any damage caused by Tenant to the Leased Premises, Airport, any County property or operations, or the property of any other Tenant, person, or entity, either by act, omission, or because of the operations of Tenant. In the event of such damage, Tenant will give County immediate notice thereof, and Tenant will immediately make the necessary repairs at its own cost and expense. Tenant shall be required to comply with the obligations set forth in Article XI with respect to all work required to be performed in accordance with this Section. County reserves the right, if in the best interest of County, to perform the necessary repairs immediately itself. Tenant covenants to reimburse County, for the costs and expenses associated with necessary repairs plus an administrative fee of fifteen percent (15%). If the same type of damage is caused by Tenant more than once in a twelve (12) month period, such as a water leakage, electrical service interruption, or other damage, Tenant shall submit a Remediation Plan, as set forth in Section 7.01.

ARTICLE XIX. COMPLIANCE WITH LAWS, REGULATIONS, ORDINANCES, AND RULES

Tenant, its officers, authorized officials, employees, agents, subcontractors, subtenants or those under its control, will at all times comply with applicable federal, state, and local laws and regulations, Airport Rules and Regulations, Policies, Procedures and Operating Directives as are now or may hereinafter be prescribed by County, all applicable health rules and regulations and other mandates whether existing or as promulgated from time to time by the federal, state, or local government, or County including, but not limited to, permitted and restricted activities, security matters, parking, ingress and egress, environmental and storm water regulations and any other operational matters related to the operation of the Airport. Tenant's failure to keep and observe said laws, regulations, ordinances, and rules shall constitute a material breach of the terms of this Lease in the manner as if the same were contained herein as covenants.

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

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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.

ARTICLE XX. AIRPORT SECURITY

Tenant shall comply with all current and applicable Airport, FAA, TSA, CBP, security related rules, regulations, plans, and procedures. Tenant is responsible for fines imposed by any regulatory agency as a result of Tenant's failure to comply with applicable rules, regulations, orders, plans, and procedures regarding airport security.

Tenant employees, subtenants/contractors shall be required to obtain airport security clearance in order to perform work under this Lease. Tenant must maintain a current, updated list of Authorized Signatories responsible for the Airport-Issued Identification Credential ("Airport ID/Security Credential") process, a list of current Airport ID/Security Credentialed Tenant employees and subtenants/contractors, and respond to scheduled and unscheduled audits at the request of the Airport. Tenant employees and subtenants/contractors applying for an Airport ID/Security Credential must successfully complete a Criminal History Records Check ("CHRC") and a Security Threat Assessment ("STA") in accordance with current regulations. Tenant should anticipate up to thirty (30) days to receive an Airport-Issued ID badge from the date of their fingerprinting. All organizations must have two, trained Authorized Signatories at all times. Tenant employees and subtenants/contractors must also attend and successfully pass all related Security Identification Display Area ("SIDA") classes and tests for access to secure areas and a driver's permit with an appropriate and valid California Driver's License to drive on the airfield. Tenant must attend all mandatory security related exercises, and monthly security consortium meetings hosted by the Airport.

A. Local Security

Tenant shall be responsible for the security of gates or doors that are located on the Leased Premises. Said gates and/or doors on the Leased Premises permitting entry to the restricted areas of the Airport shall be locked when not in use and/or under Tenant's constant surveillance. Tenant shall install such security equipment, including, but not limited to, video monitoring equipment, as may be required by the Airport Director to ensure compliance with all regulations of the FAA, TSA or other governmental agencies having jurisdiction over Airport security. All archive video may be subject to request by County. Tenant shall exercise control over any person or vehicle escorted by Tenant onto restricted or secure areas of the Airport, or to whom an Airport ID/Security Credential was issued by or at the request of Tenant, and ensure that such person or vehicle shall comply with all Airport security regulations.

B. Federal Security

Tenant may be required to provide assistance to TSA in their efforts to carry out its federal mandates. At some point during the term of this Lease, the Airport or another entity may be authorized to provide these security services in lieu of the TSA.

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C. Penalties and Fines

Tenant shall promptly pay any penalties for which Tenant is responsible. These penalties include but are not limited to, civil penalties or fines assessed against the Airport or Tenant, by the FAA, TSA or any other governmental agency for the violation of any security related laws, rules, policies or regulations at the Airport.

D. Airport ID/Security Credential Application and Lifecycle

Prior to issuance of an Airport ID/Security Credential(s), designated Authorized Signatories who will be working onsite, and engaged in the performance of work under this Lease, must pass the Airport's background check requirements, which includes an F.B.I. Criminal History Records Check ("CHRC") and a TSA Security Threat Assessment ("STA"), and Tenant shall pay the applicable fees. Upon successful completion of the background checks, Tenant's designated personnel will be required to attend a 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 ID/Security Credentials 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 training and 4) paid an Airport ID/Security credential fee for each applicant. Tenant should anticipate a minimum of fourteen (14) business days to complete the Airport ID/Security Credential process if all requirements listed above are fulfilled by individual Airport ID/Security Credential applicants in a timely manner, but factors outside the Airport's control can contribute to longer durations. Authorized Signatories must be in constant contact with the Airport's ID/Access Control Office. Tenant's designated personnel must successfully complete the Airport ID/Security Credential 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.

E. Airport ID/Security Credential Applicant Requirements and Responsibilities

The Airport Security Plan (ASP) requires that each person issued an Airport ID/Security Credential be made aware of his/her responsibilities regarding the privilege of access to restricted areas of the Airport.

Tenant personnel within an access-controlled area (AOA, SIDA, secured area or sterile area) are required to display on their person an Airport ID/Security Credential, unless they are escorted by a properly Airport credentialed individual with escort privileges. When working in the SIDA, each Airport credentialed person is responsible for challenging any individual who is not properly displaying an Airport issued or approved and valid Airport ID/Security Credential. Tenant personnel and their subtenants/contractors must also validate Airport ID/Security Credential employees as described in security training. Any person who is not properly displaying or who cannot produce a valid Airport ID/Security Credential, unless they are being escorted, must

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immediately be referred to the Sheriff's Department – Airport Police Services Office for proper handling.

The Airport ID/Security Credential is the property of the County of Orange and must be returned upon termination of Tenant personnel employment and/or termination of the Agreement. The loss of an Airport ID/Security Credential shall be reported within twenty-four (24) hours to the Sheriff's Department–Airport Police Services by calling (949) 252-5000. Tenant personnel who lose their Airport ID/Security Credential shall be required to pay a fee before receiving a replacement Airport ID/Security Credential. The charge for lost Airport ID/Security Credential replacement will be posted in the Airport Administration Office and is subject to change without notice. A report shall be made before a replacement Airport ID/Security Credential will be issued.

F. The Airport ID/Security Credential Is Nontransferable.

In the event that Tenant's employee's or contractor's Airport ID/Security Credential is not returned within three (3) business days to the Airport upon: 1) termination of Tenant personnel or contractor, 2) Airport ID badge expiration, or 3) upon termination of the Agreement, Tenant shall be liable to the County of Orange for a fine in the amount of \$250.00 per unreturned Airport ID/Security Credential. 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.

ARTICLE XXI. 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, and to address the processing of disability complaints. Tenant shall deliver to the County, upon County's request, a copy of each report and work plan. County's approval of or acceptance of any aspect of Tenant's activities under this Lease shall not be deemed or construed in any way as a representation that such item, activity 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.

Upon request by the County, Tenant is required to disseminate and provide training materials and other information related to ADA compliance to its staff as specified by the County.

In the event of breach of any of the above ADA requirements, 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 Agreement had never been made or issued.

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ARTICLE XXII. FAA APPROVAL

This Lease may be subject to approval of the FAA. If the FAA disapproves this Lease, it will become null and void, and both Parties will bear their own expenses relative to this Lease, up to the date of disapproval.

ARTICLE XXIII. RIGHT OF FLIGHT

Tenant's right to use the Leased Premises for the purposes set forth in this Lease shall be secondary and subordinate to the operation of Airport. Tenant acknowledges that because of the location of the Leased Premises at Airport, noise, vibrations, fumes, debris, and other interference with the Permitted Use(s) will be caused by Airport operations. Tenant hereby waives all rights or remedies against County arising out of any noise, vibration, fumes, debris, and/or interference that is caused by the operation of Airport. County specifically reserves for itself and for the public a right of flight for the passage of aircraft in the airspace above the surface of Airport. Additionally, County reserves for itself the right to cause in said airspace such noise, vibration, fumes, debris, and other interference as may be inherent in the present and future operation of aircraft. Tenant expressly agrees for itself, its successors and assigns, to prevent any use of the Leased Premises which would interfere with or adversely affect the operation or maintenance of Airport, or otherwise constitute an Airport hazard.

ARTICLE XXIV. FEDERAL RIGHT TO RECLAIM

In the event a United States governmental agency demands and takes over the entire facilities of the Airport or the portion thereof wherein the Leased Premises are located, for public purposes, for a period more than ninety (90) consecutive days, then this Lease will terminate and County will be released and fully discharged from all liability hereunder. In the event of such termination, Tenant's obligation to pay rent will cease; however, nothing herein will be construed as relieving either Party from any of its liabilities relating to events or claims of any kind whatsoever prior to this termination.

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.

ARTICLE XXV. PROPERTY RIGHTS RESERVED

This Lease is subject and subordinate to the terms, reservations, restrictions, and conditions of any existing or future agreements between County and the United States, when the execution of such agreements has been or may be required as a condition precedent to the transfer of federal rights or property to County for Airport purposes and the expenditure of federal funds for the extension, expansion, or development of the Airport. Tenant understands, accepts, and agrees to consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms,

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conditions, or requirements of this Lease as may be reasonably required to satisfy the FAA requirements.

ARTICLE XXVI. HEIGHT LIMITATIONS 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.

ARTICLE XXVII. ASSIGNMENT AND SUBCONTRACT

The provisions of this Section are subject to and subordinate to the limitations of Article V of this Lease entitled, "PERMITTED USES."

SECTION 27.01 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 approval of the County Board of Supervisors. Tenant shall give County one hundred fifty (150) 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 Agreement.

Tenant shall not grant any license or concession hereunder, or permit any other person or persons, company, or corporation to occupy the Leased Premises without first obtaining written consent of County in County's sole and absolute discretion.

If County approves such Transfers, such approval does not constitute a waiver of any of the terms of the Agreement. All Transfer documents shall be consistent with the terms, covenants, and conditions of the Agreement, and in the event of any inconsistency, the provisions of this Lease shall govern. Tenant must submit all required County forms with backup documentation. Tenant may incur a \$3,000.00 administrative charge, for County to process request.

If Tenant is a corporation, an unincorporated association, limited partnership, limited liability partnership, limited liability company, or a partnership, Transfers include the acquisition by any person other than Tenant of any stock or interest in said corporation, an unincorporated association, limited partnership, limited liability partnership, limited liability company, or a partnership in the aggregate amount of fifty-one percent (51%) or more.

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The failure by Tenant to obtain the prior written approval by County of any Transfer of the Agreement or any interest in the Leased Premises shall constitute a material breach of this Lease and shall not confer any rights upon the transferee. Such failure shall be grounds for termination of this Lease for default per this section.

Subject to the terms and conditions set forth in this Section, and only after it has received County's written approval and consent, Tenant shall be permitted to Transfer with respect to all or any portions of the Leased Premises. County's consent to one Transfer shall not be deemed a consent to subsequent Transfers.

SECTION 27.02 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:

- A. 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.
- B. 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.
- C. 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.
- D. The Tenant's or assignee's use is in conflict with the terms of this Lease.
- E. 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.
- F. Any construction required of Tenant as a condition of this Lease has not been completed to the satisfaction of County.
- G. 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.
- H. 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.

SECTION 27.03 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.

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- A. The name and address of proposed assignee,
- B. All of the terms and conditions of such offer, and
- C. Adequate assurance to County of the proposed assignee's future performance under the Agreement, 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 27.04 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 XXVIII. CORPORATE TENANCY

If Tenant is a corporation, unincorporated association, partnership, limited partnership, limited liability partnership, or limited liability business entity, the undersigned officer of Tenant hereby warrants and certifies to County that Tenant is a business entity in good standing, is authorized to do business in the State of California, and the undersigned officer is authorized and empowered to bind the corporation to the terms of this Lease by his or her signature thereto.

No director, officer, or employee of County shall be held personally liable under this Lease.

ARTICLE XXIX. NON-EXCLUSIVE RIGHTS

This Lease will not be construed to grant or authorize the granting of an exclusive right within the meaning of 49 USC 40103(e) or 49 USC 47107(a), as may be amended from time to time, and related regulations.

ARTICLE XXX. RIGHT TO DEVELOP AIRPORT

Tenant recognizes that from time to time during the Term, it may be necessary for County to commence or complete extensive programs of construction, expansion, relocation, maintenance, and repair for the Airport and its facilities to be maintained, improved, completed, and operated in accordance with any present or future master layout plan. Further, Tenant acknowledges that such construction, expansion, relocation, maintenance, and repair may inconvenience Tenant in its operation at the Airport. Tenant agrees that no liability shall attach to County, its officers, agents,

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employees, Contractors, subcontractors, and representatives by way of such inconveniences. Tenant agrees to waive any right to claim damages or other consideration therefrom.

It is covenanted and agreed that County reserves the right to further develop or improve the Airport and all landing areas and taxiways as it may see fit, regardless of the desires or views of Tenant or its subcontractors and without interference or hindrance.

Such right shall include the right of the County to terminate this Lease early if Tenant's possession of the Leased Premises conflicts with, limits or interferes with proposed County development, renewal, replacement, or expansion of County properties or operation of the Airport, subject to the notice requirements contained in Section 3.02.

Further, Tenant agrees that no liability shall attach to County, its officers, agents, and employees by reason of any efforts or action toward implementation of any present or future master layout plan for the Airport. Tenant agrees that no liability shall attach to County, its officers, agents, and employees by reason of any efforts or action toward implementation of any present or future concessions master plan for the Airport. Tenant waives any right to claim damages or other consideration arising therefrom.

ARTICLE XXXI. ATTORNEY'S FEES AND COSTS

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.

ARTICLE XXXII. RIGHT TO AMEND

If the FAA or its successors requires amendments, modifications, revisions, supplements, or deletions in this Lease as a condition precedent to the granting of funds for the improvement of the Airport, Tenant agrees to consent to such amendments, modifications, revisions, supplements, or deletions to this Lease as may be required to obtain such funds.

ARTICLE XXXIII. BOND ORDINANCES

This Lease is in all respects subject and subordinate to any County bond ordinances, including bond indenture and bond resolution, applicable to the Airport, and to any other bond ordinances, which should amend, supplement, or replace such bond ordinances. The Parties to this Lease acknowledge and agree that all property subject to this Lease that was or may be financed by the net proceeds of tax-exempt bonds is and will be owned by County. Tenant agrees not to take any action that would impair or omit to take any action required to confirm the treatment of such property as owned by County for purposes of §142(b) of the Internal Revenue Code of 1986, as amended. Tenant agrees to make and hereby makes an irrevocable election (binding on itself and all successors in interest under this Lease) not to claim depreciation or an investment credit with respect to any property subject to this Lease that was or may be financed by the net proceeds of

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tax-exempt bonds. Tenant shall execute such forms and take such other action as County may request to implement such election.

At County's sole discretion, through its Airport Director, County may from time to time reestablish the schedule of rentals, fees, and charges provided for herein at intervals of not more than five (5) years and be subject to the requirements of any outstanding bond ordinance pertaining to Airport. County agrees that such reestablished schedule of rentals, fees, and charges shall be reasonable in relation to the cost of providing, operating, and maintaining property, services, and facilities of Airport. If County proposes any changes in the schedule of rentals, fees, and charges, County will give notice thereof to Tenant no less than ninety (90) days before the same is to become effective. Tenant may decline to pay Concession Space Rent at the new rate(s) if such proposed schedule of rentals, fees, and charges result in an increase of more than five percent (5%) in the dollar amount of Concession Space Rent paid by Tenant under Article IV of this Lease for the previous calendar year. In such a case, Tenant shall promptly advise County of its intention to cancel and terminate this Lease at least sixty (60) days prior to the proposed effective date of such schedule of rentals, fees, and charges. Upon such notice of intent to cancel and terminate, Tenant shall surrender the Leased Premises upon a date specified by County within at least one hundred fifty (150) days after Tenant advised County. Should Tenant fail to give such notice of cancellation and termination, then Tenant shall be deemed to have accepted the new schedule of rentals, fees, and charges as promulgated by County. Failure by County to reestablish the rentals, fees, and charges at a five (5) year interval date shall not waive County's right to reestablish the schedule of rentals, fees, and charges at any time thereafter.

ARTICLE XXXIV. FORCE MAJEURE

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.

ARTICLE XXXV. RELATIONSHIP OF THE PARTIES

The relationship of the Parties hereto is that of landlord 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.

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ARTICLE XXXVI. COUNTY APPROVALS

Except as otherwise indicated elsewhere in this Lease, wherever in this Lease approvals are required to be given or received by County, it is understood that the Airport Director, or a designee, is hereby empowered to act on behalf of County. Further, except as otherwise indicated elsewhere in this Lease, wherever in this Lease approvals are required to be given by the Airport Director, it is understood that the Airport Director may further delegate such authority, as appropriate.

ARTICLE XXXVII. RESERVATIONS TO COUNTY

The Leased Premises are accepted in their “as-is” and “where-is” conditions 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.

ARTICLE XXXVIII. INVALIDITY OF CLAUSES

The invalidity of any part, portion, article, paragraph, provision, or clause of this Lease will not have the effect of invalidating any other part, portion, article, paragraph, provision, or clause thereof, and the remainder of this Lease will be valid and enforced to the fullest extent permitted by law, provided that such invalidity does not materially prejudice either Tenant or the County in their respective rights and obligations contained in the valid terms, covenants, or conditions hereof.

ARTICLE XXXIX. TIME IS OF THE ESSENCE

Time is of the essence of this Lease.

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ARTICLE XL. TAXES

Tenant will bear, at its own expense, all costs of operating its business including all applicable sales, use, intangible and possessory interest taxes of any kind, against Tenant's Leased Premises, the real property and any improvements thereto, Trade Fixtures and other personal property used in the performance of the Concessions or estate which are created herein, or which result from Tenant's occupancy or use of the Leased Premises or assessed on any payments made by Tenant hereunder, whether levied against Tenant or County. Tenant will also pay any other taxes, fees, or assessments against the Leased Premises or estate created herein. Tenant will pay the taxes, fees, or assessments reflected in a notice Tenant receives from County within thirty (30) days after Tenant's receipt of that notice or within the time period prescribed in the tax bill. County will attempt to cause the taxing authority to send the applicable tax bills directly to Tenant and Tenant will remit payment directly to the taxing authority, in such instance. Tenant may reserve the right to contest such taxes, fees, or assessments and withhold payment upon written notice to County of its intent to do so, so long as the nonpayment does not result in a lien against the real property or any improvements thereon or a direct liability on the part of County. Tenant shall pay to County, with each payment of Concession Space Rent, Support Space Rent, and other fees to County, all sales or other taxes which may be due with respect to such payments, and upon receipt, County shall remit such taxes to the applicable taxing authorities.

ARTICLE XLI. PATENTS AND TRADEMARKS

Tenant covenants, warrants, and represents that it is the owner of or fully authorized to use any services, processes, machines, articles, marks, names, or slogans used by it in its operations under this Lease. Tenant will not utilize any protected patent, trademark, or copyright, including any patents, trademarks, or copyrights owned by County, in its operations under this Lease, unless it has obtained prior proper permission, all releases, and other necessary documents. Tenant agrees to indemnify, defend, and hold harmless County, its officers, employees, agents, and representatives from any loss, liability, expense, suit, or claim for damages in connection with any actual or alleged infringement of any patent, trademark, or copyright arising from any alleged or actual unfair competition or other similar claim arising out of the operations of Tenant under this Lease.

ARTICLE XLII. AGENT FOR SERVICE OF PROCESS

It is expressly agreed and understood that if Tenant is not a resident of the State of California, or is an association or partnership without a member or partner resident of said State, or is a foreign corporation, then in any such event Tenant does designate the Secretary of State, State of California, as its agent for the purpose of service of process in any court action between it and County arising out of or based upon this Lease, and the service will be made as provided by the laws of the State of California for service upon a non-resident. It is further expressly agreed, covenanted, and stipulated that if for any reason service of such process is not possible, and Tenant does not have a duly noted resident agent for service of process, as an alternative method of service of process, Tenant may be personally served with such process out of this State, by the registered

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mailing of such complaint and process to Tenant at the address set out in this Lease. Such service will constitute valid service upon Tenant as of the date of mailing. Tenant will have thirty (30) days from date of mailing to respond thereto. It is further expressly understood that Tenant hereby agrees to the process so served, submits to the jurisdiction of the court, and waives all obligation and protest thereto, any laws to the contrary notwithstanding.

**ARTICLE XLIII. COMPLIANCE WITH PUBLIC RECORDS
LAW**

SECTION 43.01 AGREEMENT SUBJECT TO CALIFORNIA PUBLIC RECORDS ACT

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 Public Records Act (GOVERNMENT CODE §§7920.000, *et seq.*) as now in force or hereafter amended, or any Act in substitution thereof, or otherwise made available to the public.

SECTION 43.02 INDEMNIFICATION IN EVENT OF INTERVENTION

In the event of a request to County for disclosure of such information, time, and circumstances permitting, County will make a good faith effort to advise Tenant of such request to give Tenant the opportunity to object to the disclosure of any material Tenant has conspicuously marked as confidential, proprietary, or otherwise exempt from disclosure. In the event of the filing of a lawsuit to compel disclosure, County will tender all such material to the court for judicial determination of the issue of disclosure. Tenant agrees it will either waive any claim of privilege or confidentiality or intervene in such lawsuit to protect materials Tenant does not wish disclosed. If Tenant chooses to intervene in such a lawsuit and oppose disclosure of any materials, Tenant agrees to defend, indemnify, and hold harmless County, its officers, agents, and employees from any claim, damages, expense, loss, or costs arising out of Tenant's intervention including prompt reimbursement to County of all reasonable attorney fees, costs, and damages that County may incur directly or may be ordered to pay by such court. Nothing in this Article shall prevent County from, nor shall County be liable for, disclosing any material pursuant to a California Public Records Act request.

ARTICLE XLIV. 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.

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ARTICLE XLV. DATA SECURITY

Tenant will establish and maintain safeguards against the destruction, loss, or alteration of County data or third-party data that Tenant may gain access to or be in possession of in the performance of this Lease. Tenant will not attempt to access, and will not allow its personnel access to, County data or third-party data that is not require for the performance of the services of this Lease by such personnel.

Tenant will adhere to and abide by the security measures and procedures established by County. In the event Tenant or Tenant's subcontractor (if any) discovers or is notified of a breach or potential breach of security relating to County data or third party data, Tenant will promptly: (i) notify County of such breach or potential breach; and ii) if the applicable County data or third party data was in the possession of Tenant at the time of such breach or potential breach, Tenant will investigate and cure the breach or potential breach.

ARTICLE XLVI. USE, POSSESSION, OR SALE OF ALCOHOL OR DRUGS

Tenant, its officers, agents, and employees shall cooperate and comply with the provisions of the Federal Drug-Free Workplace Act of 1988 and California Drug-Free Workplace Act of 1990, or any successor thereto, concerning the use, possession, or sale of alcohol or drugs. Except as may be otherwise authorized by this Lease, Tenant shall also prohibit consumption of alcohol within the Leased Premises. Violation of these provisions or refusal to cooperate with implementing this alcohol and drug policy can result in County barring Tenant from County facilities or participating in County operations.

ARTICLE XLVII. HAZARDOUS SUBSTANCES AND OSHA COMPLIANCE

No goods, merchandise or material will be kept or stored by Tenant at Airport which are explosive or hazardous; and no offensive or dangerous trade, business or occupation will be carried on therein or thereon. Nothing will be done in the performance of this Lease which will increase the rate of or suspend any insurance policy or coverage of County.

Tenant covenants that all materials, equipment, and all other items used in the performance of this Lease are in compliance with Occupational Safety and Health Administration (OSHA).

ARTICLE XLVIII. COUNTY'S SMOKING POLICY

Tenant agrees that it will prohibit smoking by its employees and the public in the Leased Premises. Tenant further agrees to not sell or advertise tobacco products. Tenant shall not do anything contrary to County's ordinance on prohibiting smoking. Said ordinance prohibits smoking in the terminal building, including all food and beverage areas.

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ARTICLE XLIX. WAIVERS

No waiver by County at any time of any of the terms, conditions, covenants, or agreements of this Lease, or noncompliance therewith, will be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant, or agreement herein contained, nor of the strict and prompt performance thereof by Tenant. No delay, failure, or omission of County to exercise any right, power, privilege or option arising from any default nor subsequent payment of charges then or thereafter accrued, will impair any such right, power, privilege, or option, or be construed to be a waiver of any such default or relinquishment thereof or acquiescence therein. No notice by County will be required to restore or revive time as being of the essence hereof after waiver by County or default in one or more instances. No option, right, power, remedy, or privilege of County will be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all the rights, powers, options, or remedies given to County by this Lease are cumulative and no one of them will be exclusive of the other or exclusive of any remedies provided by law, and that the exercise of one right, power, option, or remedy by County will not impair its rights to any other right, power, option or remedy.

ARTICLE L. COMPLETE AGREEMENT

This Lease represents the complete understanding between the Parties, and any prior agreements or representations, whether written or verbal, are hereby superseded. This Lease may subsequently be amended only by written instrument signed by the Parties hereto, unless provided otherwise within the terms and conditions of this Lease.

ARTICLE LI. ORDER PRECEDENCE

The documents listed below are a part of this Lease and are hereby incorporated by reference. In the event of inconsistency between the documents, unless otherwise provided herein, the terms of the following documents will govern in the following order of precedence:

- Terms and Conditions as contained in this Lease.
- RFP No. PM 1121-0345-0034
- Tenant's Response to RFP No. PM 1121-0345-0034, and any subsequent information submitted by Tenant during the evaluation process, as modified and accepted by County.

ARTICLE LII. BROKER'S COMMISSION

Tenant represents and warrants that it has not caused nor incurred any claims for brokerage commissions or finder's fees in connection with the execution of this Lease. Tenant shall defend, indemnify, and hold County harmless against all liabilities arising from any such claims caused or incurred by it (including the cost of attorney fees in connection therewith).

This Lease does not, and shall not be deemed or construed to, confer upon or grant to any third party or parties (except parties to whom the Tenant may assign this Lease in accordance with the

**JOHN WAYNE AIRPORT RETAIL
CONCESSION LEASE**

terms hereof, and except any successor to County) any right to claim damages or to bring any suit, action or other proceeding against either County or the Tenant because of any breach hereof or because of any of the terms, covenants, agreements and conditions herein.

ARTICLE LIII. NO LIMIT ON COUNTY'S POWERS

Nothing in this Lease shall limit in any way the power and right of County to exercise its governmental rights and powers, including its powers of eminent domain.

ARTICLE LIV. NOTICES AND COMMUNICATIONS

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
HG JWA Concessionaires JV
1 Meadowlands Plaza
East Rutherford, NJ 07073

Either party hereto may from time to time, by written notice to the other in the method described above, designate a different address which shall be substituted for the one above specified.

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

Tenant: HG IWA Concessionaires JV
DocuSigned by:
By: Jordi Martin Consuegra
A791AD301E3B4A8...
By: CEO

APPROVED AS TO FORM:

County: Cerritos
DocuSigned by:
By: Mark Sanchez
5EE68EC8DA7B48F...

APPROVED AS TO AUDIT AND ACCOUNTING:

Auditor-Controller
DocuSigned by:
By: Katherine Buranday
998FC039E3774ED...

RECOMMENDED FOR APPROVAL:

John Wayne Airport
DocuSigned by:
By: Charlene Reynolds
A1A528A921AF49F...
Charlene V. Reynolds
Airport Director

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

County

COUNTY OF ORANGE

By: _____
Chairman, Board of Supervisors

Clerk of the Board of Supervisors
Orange County, California

EXHIBIT A
LEASED PREMISES DESCRIPTION

Parcel Number: PM 1121-0350-0007

Project Name: John Wayne Airport

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

Leased Premises are those certain areas designated as concession locations as set forth below in the Leased Premises Summary Table below. The Leased Premises are located on the arrival and departure levels, and is situated within the John Wayne Airport, Thomas F. Riley Terminal Building at 18601 Airport Way, in the City of Santa Ana, County of Orange, State of California, and located on Lots 132 and 135 of Block 7 of the Irvine Subdivision, per map recorded in Book A, Page 888 of Miscellaneous Maps in the Office of the County Recorder of Orange County, together with the right of ingress and egress thereto.

Leased Premises Summary Table:

CONCEPT	SPACE ID	TERMINAL	GATE	SF
PCH Provisions by Hudson	A2	A	4 & 5	750
MAC/Jo Malone/Sunglass Hut	A6	A	7	930
Brookstone	A7	A	7	930
Boutique Del Mar	B3	B	10	920
Orange Coast Magazine by Hudson	B4	B	11 & 12	1,145
TOTAL	5			4,675

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

EXHIBIT A LEASED PREMISES DESCRIPTION

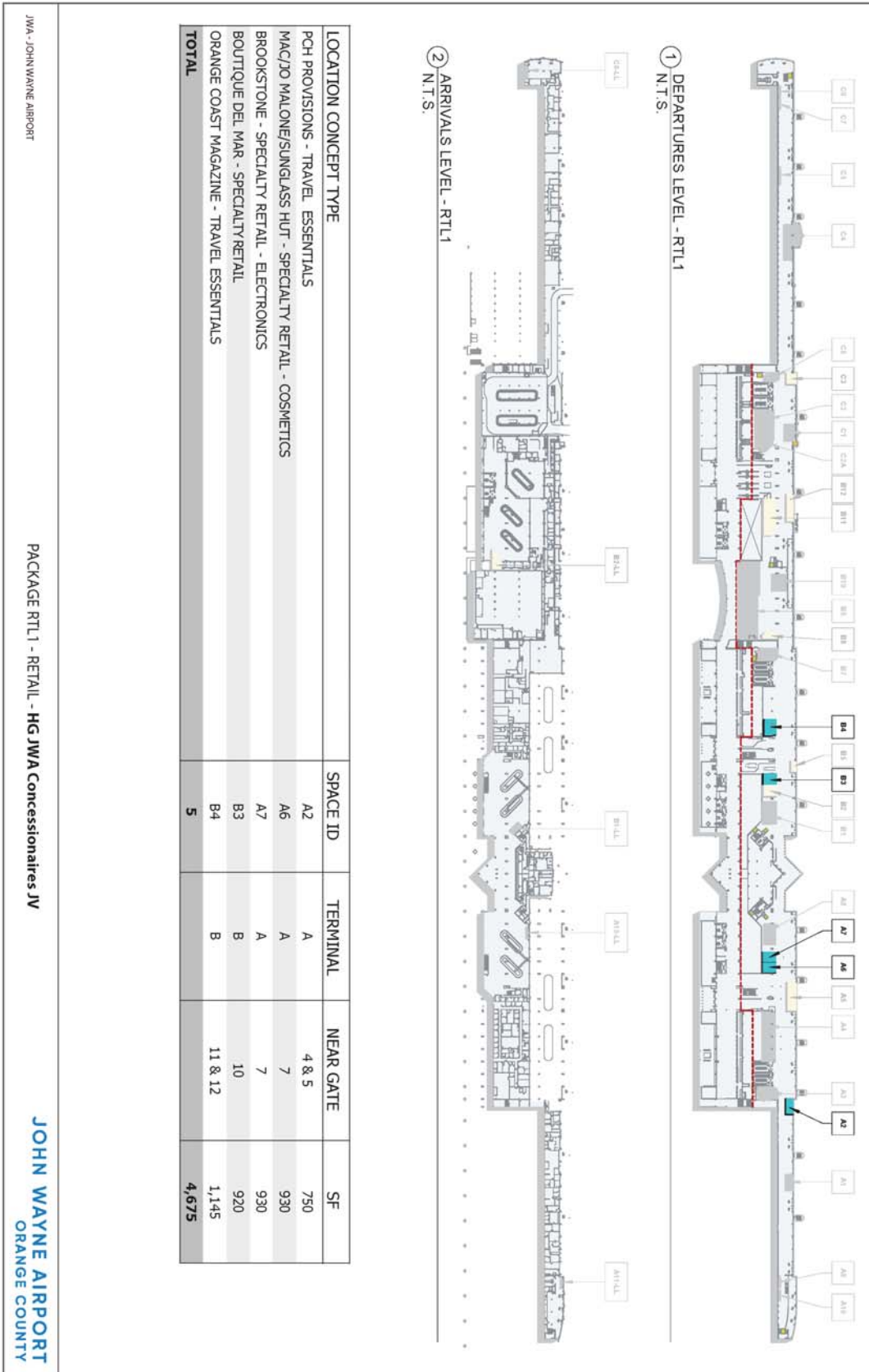


EXHIBIT A LEASED PREMISES DESCRIPTION

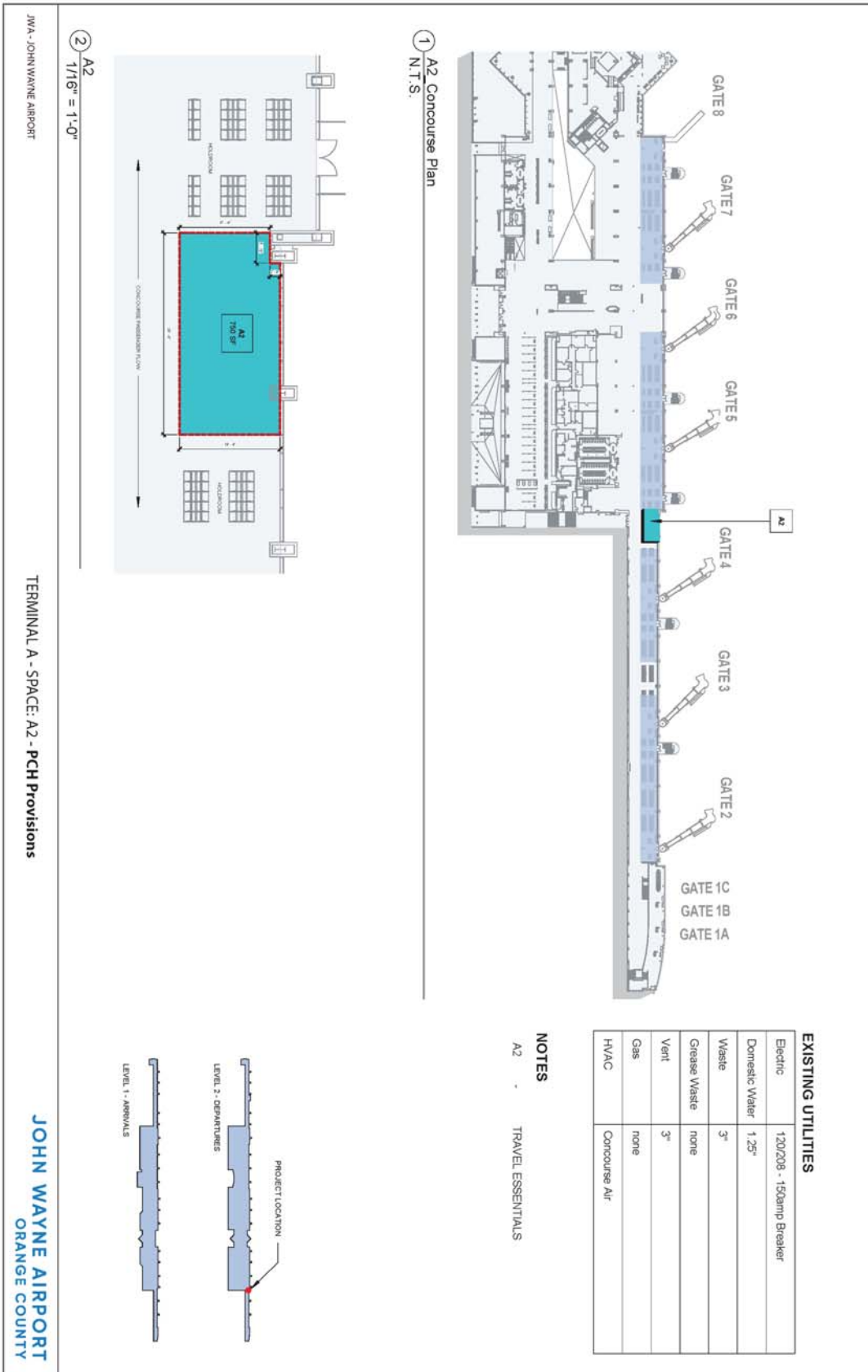


EXHIBIT A LEASED PREMISES DESCRIPTION

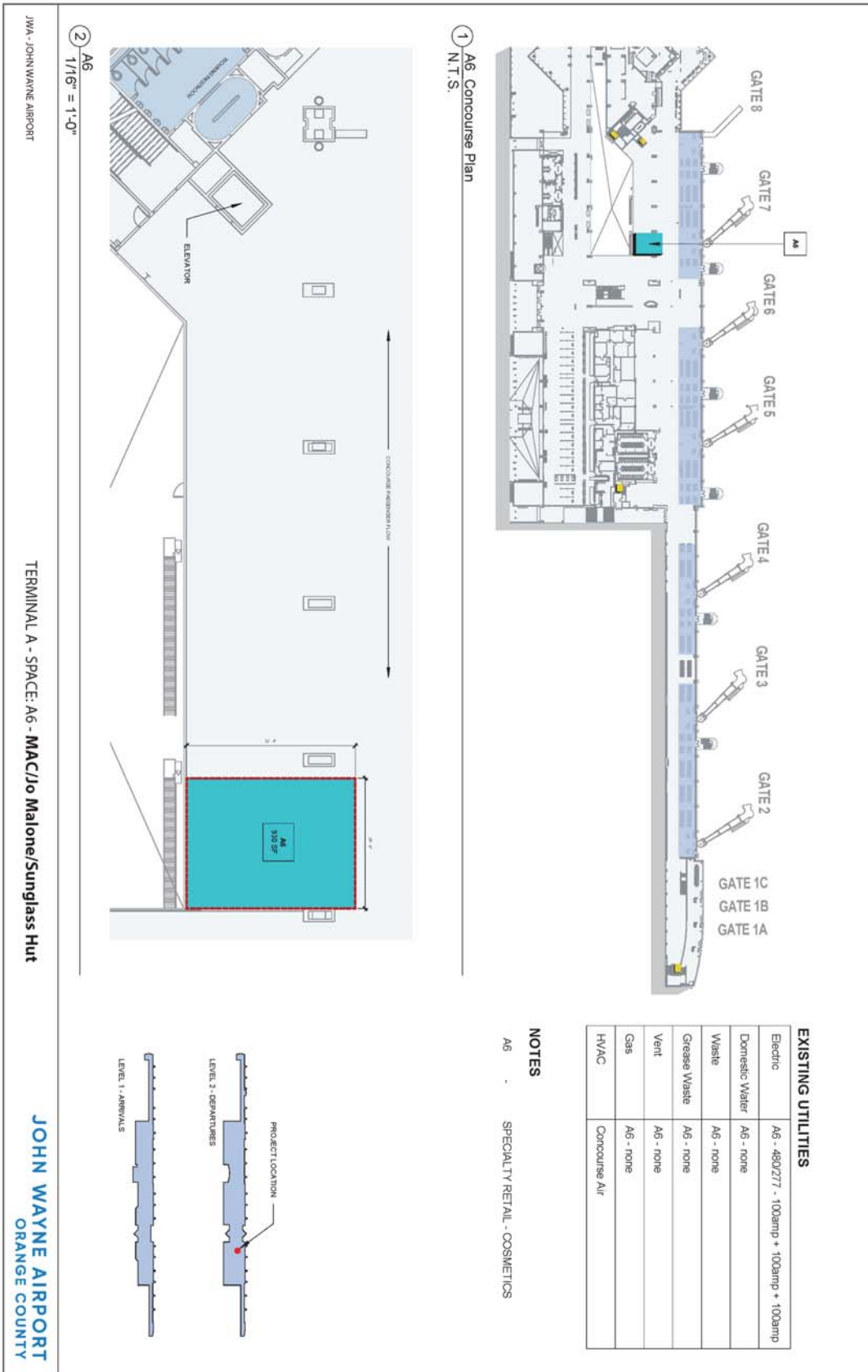


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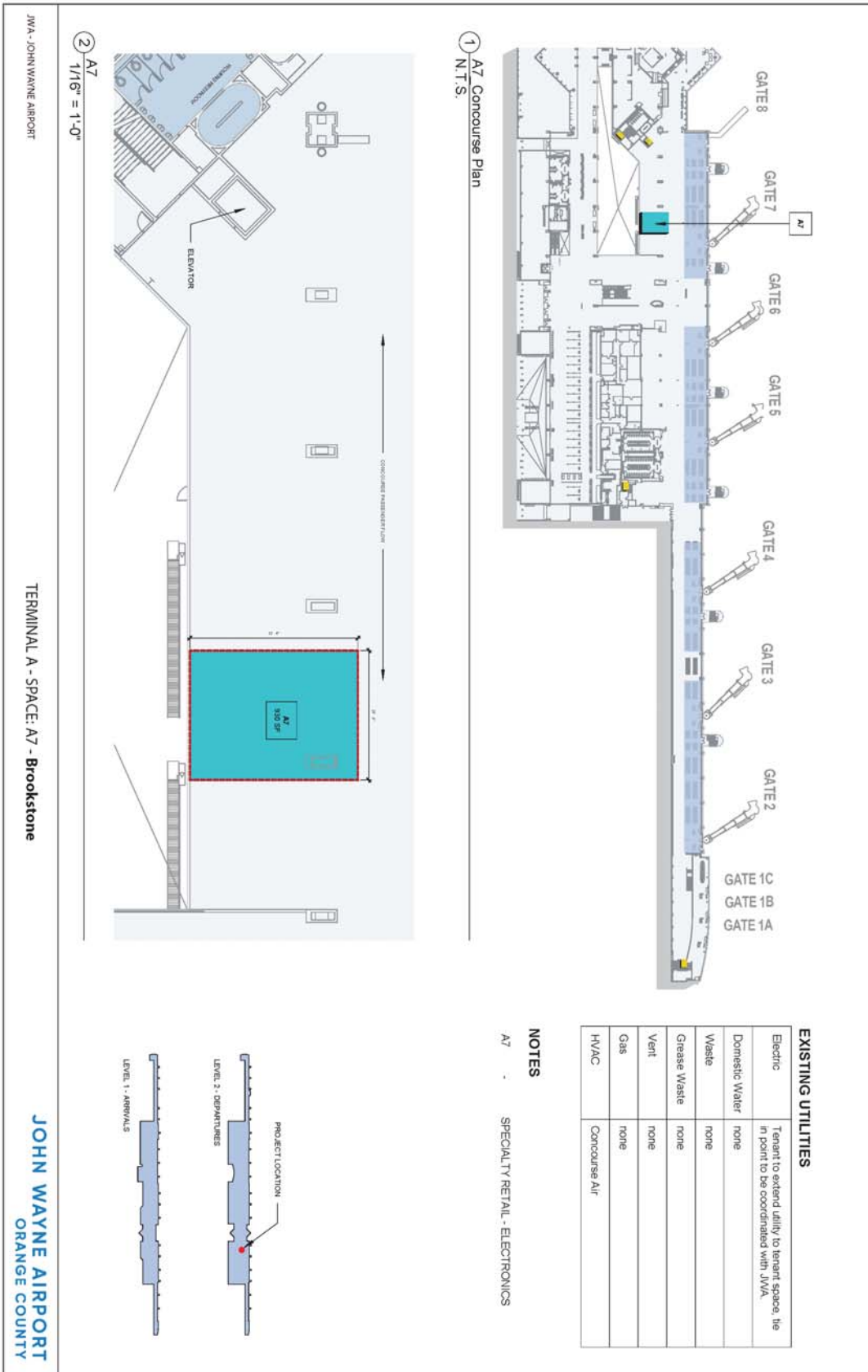


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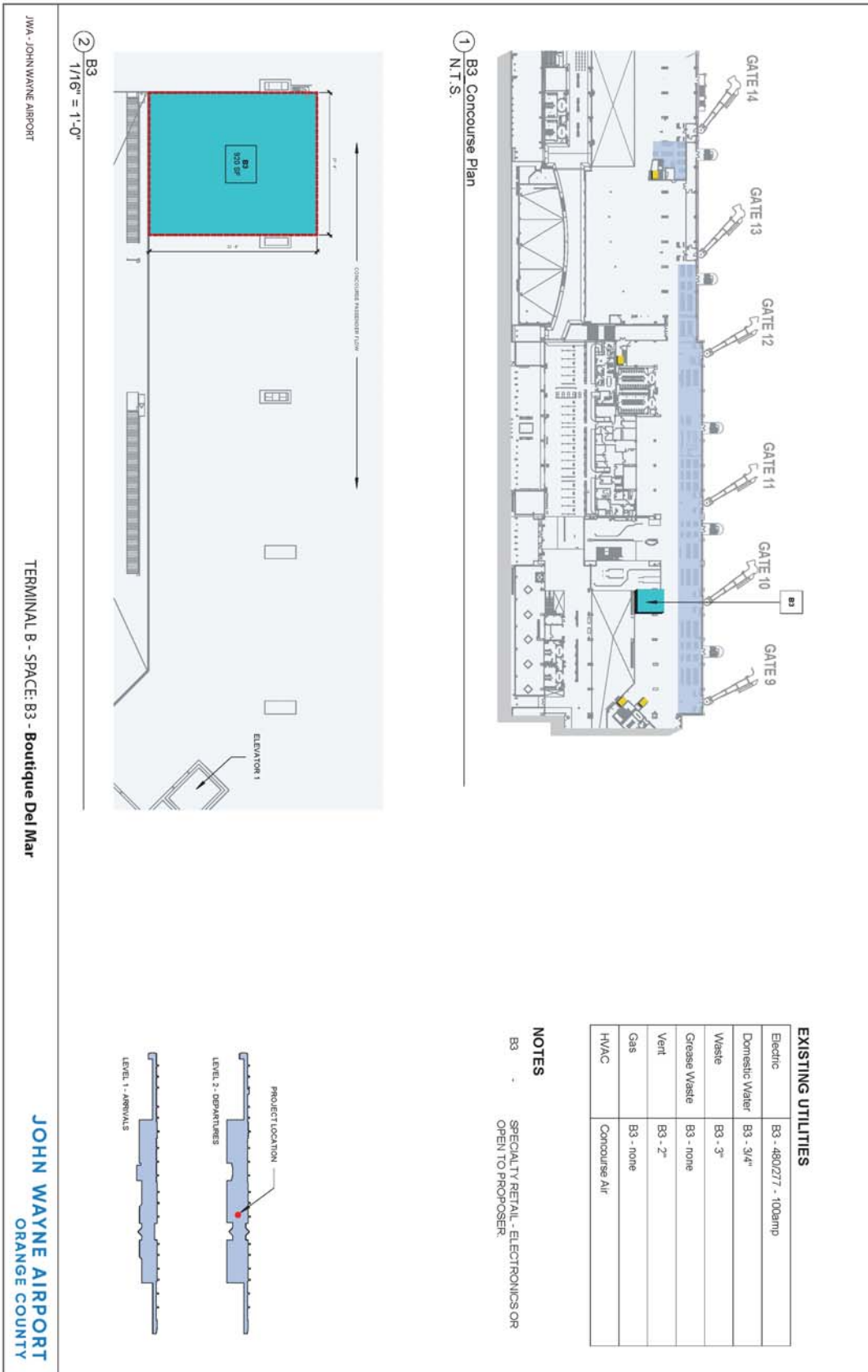


EXHIBIT A LEASED PREMISES DESCRIPTION

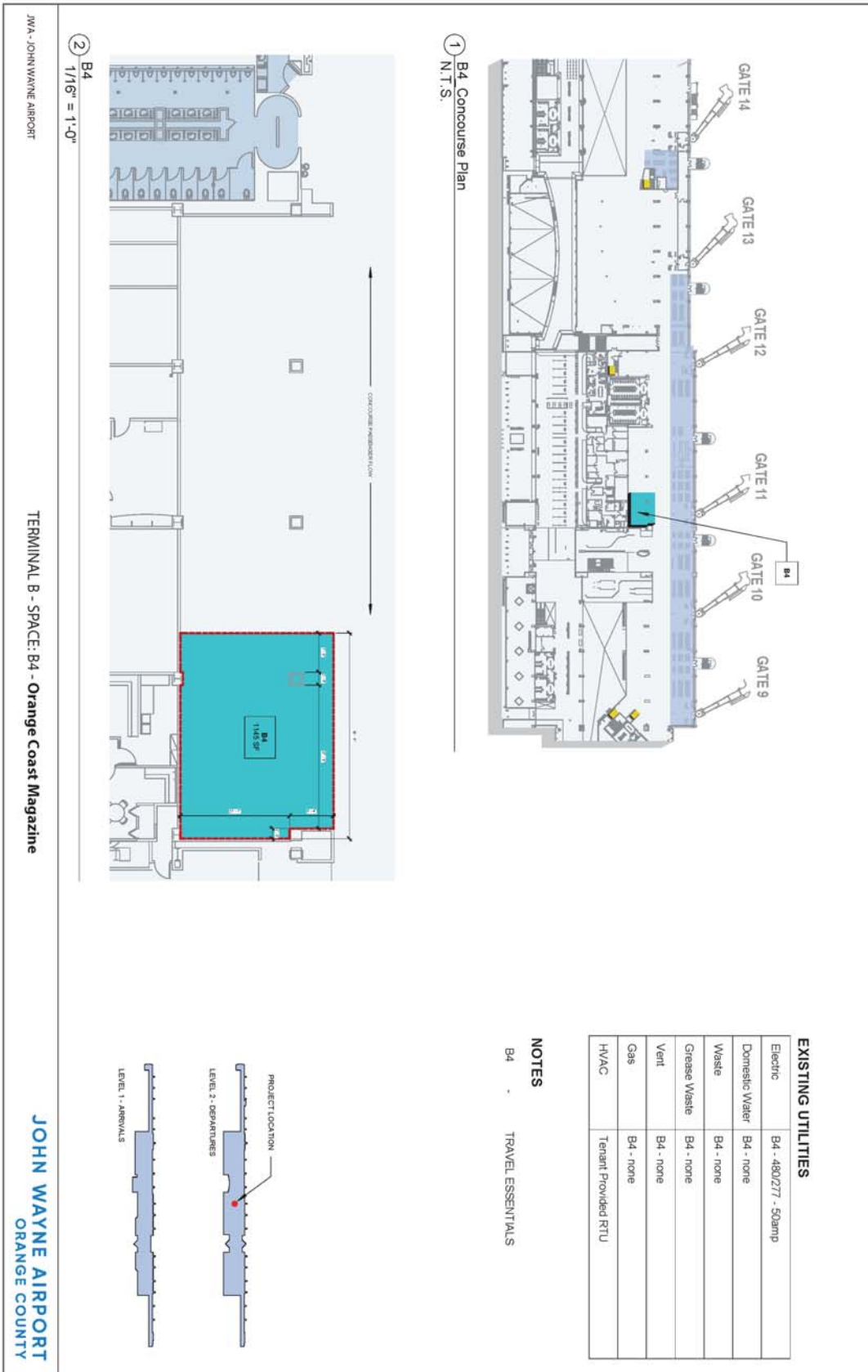


EXHIBIT B PERMITTED USES

A2 – PCH Provisions by Hudson (Travel Essentials) – 750 SF

Permitted Use

The offered location is intended for the operation of a Travel Essentials Store. The offer should include:

- A wide variety of reading material – including newspapers, periodicals, and books that will cater to the varied interests of a diverse passenger base.
- Additional traditional newsstand items, food products, travel accessories, sundries, and locally themed gifts and souvenirs should be offered including, but not limited to:
 - o Personal electronics accessories including rechargeable batteries, battery chargers, headphones and ear buds, wall and car chargers, cell phone cases, and cables.
 - o Travel accessories such as travel pillows, wheeled luggage carts, luggage accessories, small personal care products, and health/PPE products including, but not limited to, disinfecting wipes and disposable masks.
 - o Pre-packaged snacks and candy. A representative sample of the overall snack and candy selection must be offered in single-serving and other sizes, as appropriate.
 - o A selection of fresh, pre-packaged, single serving “grab-n-go” food items such as sandwiches, salads, produce, cereal, and yogurt will be considered.
 - o Chilled bottled beverages such as water, juices, and soft drinks.

A6 – MAC/Jo Malone/Sunglass Hut (Specialty Retail) – Cosmetics - 930 SF

Permitted Use

The offered location is intended for the operation of a specialty retail cosmetics, Fragrance and accessories store. This store shall offer cosmetics and related accessories from multiple internationally known premium brands, including but not limited to MAC, Jo Malone, and Sunglass Hut on the Go.

A7 – Brookstone (Electronics) – 930 SF

Permitted Use

The offered location is intended for the operation of a specialty retail electronics store. This store shall offer branded personal electronic devices such as tablets, computers, and smart watches, luggage, travel accessories, wellness and personal care, STEM toys, games & accessories. Additionally, the store shall carry a wide assortment of electronics-related accessories including, but not limited to, headphones, charging cables, device protective cases, storage devices, A/V connection cables, Bluetooth keyboards and mice.

B3 – Boutique Del Mar (Specialty Retail) - 920 SF

Permitted Use

The offered location is intended for the operation of a specialty store curated around the Southern California lifestyle, including but not limited to gifts, apparel, accessories, souvenirs, jewelry, sunglasses, travel essentials, homewares, candles, collectables and novelty items.

EXHIBIT B
PERMITTED USES

B4 – Orange Coast Magazine by Hudson (Travel Essentials) – 1,145 SF

Permitted Use

The offered location is intended for the operation of a travel essentials store. The store should offer:

- A wide variety of reading material including newspapers, periodicals, and books that will cater to the varied interests of a diverse passenger base.
- Additional traditional newsstand items, food products, travel accessories, sundries, and locally themed gifts and souvenirs should be offered including, but not limited to:
 - o Personal electronics accessories including rechargeable batteries, battery chargers, headphones and ear buds, wall and car chargers, cell phone cases, and cables.
 - o Travel accessories such as travel pillows, wheeled luggage carts, luggage accessories, small personal care products, and health/PPE products including, but not limited to, disinfecting wipes and disposable masks.
 - o Pre-packaged snacks and candy. A representative sample of the overall snack and candy selection must be offered in single-serving and other sizes, as appropriate.
 - o A selection of fresh, pre-packaged, single serving “grab-n-go” food items including, but not limited to, sandwiches, salads, produce, cereal, and yogurt will be considered.
 - o Chilled bottled beverages such as water, juices, and soft drinks.

EXHIBIT C GROSS RECEIPTS REPORT

HG JWA Concessionaires JV	
Orange Coast	
GROSS RECEIPTS REPORT	
For the Month of	PM #
Agreement effective XX/XX/XXXX (Date of Beneficial Occupancy (DBO))	
GROSS RECEIPTS REPORTABLE TO AIRPORT	MONTHLY GROSS RECEIPTS
TOTAL TRANSACTIONS	TOTAL CUMULATIVE ANNUAL GROSS RECEIPTS <i>(12/04/2023 - 12/31/2024)</i>

CALCULATE MONTHLY PERCENT RENT

(A) Percent Due From Total Cumulative Annual Gross Receipts Reportable To Airport (Starting **xx/xx/xx)**

14%	for the portion of Cumulative Annual Gross Receipts up to	\$1,000,000.00	
16%	on the portion of Cumulative Annual Gross Receipts from	\$1,000,000.01	to \$2,000,000
18%	on the portion of Cumulative Annual Gross Receipts from	\$2,000,000.01	and greater

TOTAL YEAR-TO-DATE PERCENT DUE

\$	(A)
----	-----

(B) Portion of Space Rent Due Year-to-Date

Space Rent (\$75/SF Annually)	\$85,875.00
Monthly Minimum	\$7,156.25

x	12.90 (# months this year)
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SAMPLE FORM

(C) Enter the larger of (A) or (B)

\$	(B)
\$	92,338.71
\$	(C)
\$	92,338.71
\$	(D)
\$	85,182.46
\$	(C) - (D)
\$	7,156.25

I, (NAME), do hereby certify that I am (Position Title) of HG JWA Concessionaires JV and that in terms of our agreement the amounts included on this form are true statement of our revenue received from operations.

Signature _____ Date _____

Mail check and monthly report to:
 County of Orange
 John Wayne Airport
 Attn: Accounting Services
 3160 Airway Ave
 Costa Mesa, CA 92626-4608

EXHIBIT D
DEVELOPMENT SCHEDULE
(TO BE SUBMITTED BY TENANT)

EXHIBIT E
MENU & PRICING

(TO BE SUBMITTED BY TENANT)

EXHIBIT F

REQUIREMENTS FOR DIGITAL RECORD FILES

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 RATES**

Category	Total Annual Cumulative Gross Receipts		Percentage Applied to Gross Receipts to Calculate Percentage Rent
	From	To	
News & Gift Travel Essentials	\$0	\$1,000,000	14.0%
	\$1,000,001	\$2,000,000	16.0%
	\$2,000,001 and greater		18.0%

Category	Total Annual Cumulative Gross Receipts		Percentage Applied to Gross Receipts to Calculate Percentage Rent
	From	To	
Specialty Retail	\$0	\$1,000,000	11.0%
	\$1,000,001	\$2,000,000	13.0%
	\$2,000,001 and greater		15.0%

Category	Total Annual Cumulative Gross Receipts		Percentage Applied to Gross Receipts to Calculate Percentage Rent
	From	To	
Electronics/Jewelry	\$0	\$1,000,000	11.0%
	\$1,000,001	\$2,000,000	13.0%
	\$2,000,001 and greater		15.0%

EXHIBIT H
WORKER RETENTION POLICY

- A. Tenant shall fill its non-managerial Concessions positions at JWA by first hiring from the workforce which has been or is being displaced by the departure or reduction in force of a Predecessor Tenant or its subtenants. For an initial 90-day period, Tenant shall retain, and shall not discharge without just cause, employees for whom it has received information demonstrating that they were employed by a Predecessor Tenant or its subtenants in their Concessions operations at JWA for the preceding two months or longer.
- B. Within ten days of receiving the contact information for the employees of the Predecessor Tenant or its subtenants, Tenant shall make written offers of employment for the 90-day period referred to above to eligible workers by the following means: (a) letters sent by certified mail; and either (b) e-mail or (c) text message sent to a worker's cellular phone. If Tenant is not able to make an employment offer by e-mail or text message, Tenant must call the worker to provide information regarding such offer.
- C. Tenant shall offer employment to any workers eligible for retention to whom it has not yet offered employment by seniority within each employment classification by the same means described above during the first year as Successor Tenant.
- D. Tenant may offer continued employment in its JWA Concessions operations to each retained worker who receives a satisfactory performance evaluation at the end of the initial ninety (90) day period of employment under the terms and conditions established by Tenant for comparable employees.
- E. Tenant shall provide to any Successor Tenant a list that includes the name, address, telephone number, cellular phone number if known, personal e-mail address if known, date of hire, and employment occupation classification of each current worker in the Tenant's JWA Concessions operations, including the employees of the Tenant's subtenants.
- F. Tenant shall cause the worker retention requirements under this Article to be posted at its place of business at JWA, to be conspicuous to the workers employed at such facilities. Additionally, Tenant is required to post in a public view during construction period.
- G. Tenant shall maintain records for two (2) years showing (a) the reasons for not hiring or for discharging eligible or retained workers during the initial ninety (90) day period and (b) documentation of the employment offers described above. Each eligible or retained worker and their designees, with signed affidavit, are authorized to review relevant records upon reasonable request to ascertain compliance with this Article, and Tenant shall provide such information within fourteen (14) days of a written request for such information.