NORMAN Y. MINETA SAN JOSE INTERNATIONAL AIRPORT

RETAIL MERCHANDISING UNIT CONCESSION AGREEMENT

BY AND BETWEEN

THE CITY OF SAN JOSE

AND

PRI-SAN JOSE, LLC

DATED: _____

(DOCUMENT NO. 10617-CA-17)

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RD:KF:CAG
10/20/17

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NORMAN Y. MINETA SAN JOSE INTERNATIONAL AIRPORT
CITY OF SAN JOSE
RETAIL MERCHANDISING UNIT CONCESSION AGREEMENT

THIS RETAIL MERCHANDISING UNIT CONCESSION AGREEMENT ("Agreement") is dated for convenience this ____ day of _____, 2017, by and between the City of San José, a municipal corporation of the State of California ("City") and PRI-SAN JOSE, LLC, a California limited liability company, ("Concessionaire"). All capitalized terms in this Agreement shall have the meanings set forth in **SECTION 1** unless otherwise specifically defined in this Agreement.

RECITALS

A. City is empowered to grant the right and privilege to operate certain concessions at the Norman Y. Mineta San José International Airport ("Airport"); and

B. Concessionaire has warranted to City that it possesses the necessary experience and qualifications to conduct a Concession Operation at the Airport; and

C. Concessionaire desires to receive the non-exclusive privilege of conducting a Concession Operation at the Airport, with exclusive rights to conduct such operation in the locations designated in **EXHIBIT B** (attached hereto) by entering into an Agreement with City, under mutually acceptable terms, conditions and covenants; and

D. The San José City Council has determined that the award of concession privileges to, and the execution of a concession agreement with, Concessionaire will enhance the quality of concession operations at the Airport;

Now, therefore, in consideration of the terms, conditions, covenants, and other provisions of this Agreement, the parties agree:

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AGREEMENT

SECTION 1 SUMMARY OF TERMS AND DEFINITIONS

Each reference in the body of this Agreement to specific terms or phrases set forth in this **SECTION 1** shall have the specific meanings and/or contain the respective express information set forth below. To the extent there is a conflict between the information in this **SECTION 1** and any more specific provision of this Agreement, such more specific provision shall control.

"Alcoholic Beverage" includes alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, wine, or beer, and which contains one-half of one percent (0.5%) or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances.

"Commencement Date" (SECTION 2.1 - Term) means the date July 1, 2018.

"Concession Area" (SECTION 3 - Authorized Activities) means those areas designated as Retail Merchandising Unit ("RMU") locations on **EXHIBIT B.**

"Concession Fee" (SECTION 6.1 - Concession Fee) means the Minimum Annual Guarantee ("MAG") or the Percentage Fee, whichever is greater.

"Concession Improvements" (SECTION 22 - Alterations and Improvements) means those fixtures and other permanent improvements, if any, as set forth in Concessionaire's final construction plans approved by the City based on Concessionaire's Proposal (**EXHIBIT P**), as well as areas that have been subsequently added or modified as described in **EXHIBIT B**, which Concessionaire is permitted to construct in, on or about the Concession Area, subject to the requirements of this Agreement, and such other fixtures and other improvements authorized by Director in writing.

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"Concession Location" means an individual retail merchandising unit of the concession program providing retail and food and beverage products and/or services to the general public, pursuant to the terms of this Agreement.

"Concession Operations" (SECTION 3 - Authorized Activities) means the non-exclusive privilege to finance, design, fabricate, install, construct/develop, maintain and manage and/or operate retail merchandising units as described in **SECTION 3,** at the locations designated on the attached **EXHIBIT B.**

"Concessionaire's Address" (SECTION 30 - Notices) means the following information for notice to Concessionaire:

Name:	Ross Provenzano
Title:	CEO
Mail Address:	6256 Mercer St., San Diego, CA 92122
Telephone:	858-488-2734
Email address: (email notices cannot be used in lieu of Notice required under SECTION 30 of this Agreement.)	ross@proresourceinc.com

"Concessionaire's Allowable Improvement Costs" are defined in **SECTION 22.7** of this Agreement.

"Concessionaire's Furnishings, Trade Fixtures and Equipment" (SECTION 22 - Alterations and Improvements) means all proprietary items of Concessionaire displaying distinctive features associated with Concessionaire's operations and all personal property (exclusive of "Concession Improvements") set forth in Concessionaire's Proposal (**EXHIBIT P**), which Concessionaire is permitted to install or locate within the Concession Area, subject to the requirements of this Agreement, and such other personal property or equipment authorized by Director in writing.

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"Concessionaire's Plans" (SECTION 22 - Alterations and Improvements) means those working drawings, plans, and specifications for the construction and/or fabrication of Concession Improvements.

"Concessionaire's Property" (SECTION 22 - Alterations and Improvements) means all Concession Improvements and Concessionaire's Furnishings, Trade Fixtures, and Equipment.

"Concessionaire's Proposal" means the proposal submitted by Concessionaire in response to City's REQUEST FOR PROPOSALS FOR RETAIL MERCHANDISING UNIT CONCESSION PROGRAM AT THE NORMAN Y. MINETA SAN JOSE INTERNATIONAL AIRPORT (SJC161728), and attached as **EXHIBIT P** to this Agreement. The Concessionaire's Proposal was submitted under the company name of Provenzano Resources Inc., and Concessionaire subsequently formed PRI-SAN JOSE, LLC, to operate as a separate legal entity for the purposes of this Agreement.

"Day" means any calendar day. For purposes of this Agreement, the number of days in which any act is to be performed shall be computed by excluding the first day and including the last.

"Director" means the person designated Director of Aviation by City, or such other person, division, department, bureau or agency, as may be designated by the City Council or the City Manager from time to time to exercise functions equivalent or similar to those now exercised by the Director of Aviation; the term also includes any person expressly designated by the Director of Aviation to exercise rights/and or obligations empowered in the "Director" under this Agreement.

"Effective Date" means the date this Agreement is executed by the City.

"Environmental Laws" (SECTION 4 - Restrictions on Operations; SECTION 28 - Hazardous Materials - Prohibitions and Restrictions) shall mean and include all

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federal, state, and local laws, statutes, ordinances, regulations, resolutions, decrees, and/or rules now or hereinafter in effect, as may be amended from time to time, and all implementing regulations, directives, orders, guidelines, and federal or state court decisions, interpreting, relating to, regulating or imposing liability (including, but not limited to, response, removal, remediation and damage costs) or standards of conduct or performance relating to industrial hygiene, occupational health, and/or safety conditions, environmental conditions, or exposure to, contamination by, or clean-up of, any and all Hazardous Materials, including without limitation, all federal or state superlien or environmental clean-up statutes.

"Expiration Date" (SECTION 2.1): shall mean June 30, 2023, subject to earlier termination as provided in this Agreement.

"FAA" (SECTION 19 - Grant Agreement Covenants; SECTION 20 - Modifications for Granting FAA Funds) means the Federal Aviation Administration, created by the United States Government under the Federal Aviation Act of 1958, as amended, or such other successor agency or agencies of the United States Government.

"Federal Inspection Building" or "FIS" means that certain airline terminal building and related parking facilities at 2065 Airport Boulevard, San José, California 95110.

"Gross Revenues" (SECTION 6.1- Concession Fee) includes, but is not limited to, all moneys and other consideration generated or received by Concessionaire (including all Gross Revenues generated or received by Concessionaires' subcontractors, subtenants, agents, employees, representatives, Subconcessionaires or other customers, subtenant(s), joint venturer(s), and/or equity partner(s), (if any)) for the conduct of its business pursuant to this Agreement or for any other use of the Concession Area or the Airport by any person or entity, unless specifically excluded below. Such moneys or other consideration shall include, without limitation:

(i) all transactions entered into or finalized at the Airport, whether or not the Concession Area was used at any point in the transaction; and

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(ii) transactions made at an off-Airport location, if the Concession Area was used for any aspect of such transaction.

Such moneys or other consideration are considered Gross Revenues even though payment and/or delivery of the food or merchandise/products or other items occur or the service is performed off-Airport. Gross Revenues shall include all such transactions, whether for cash or for credit, regardless of whether a final collection is made in credit transaction, and shall also include orders taken at the Concession Area by mail, telephone, facsimile transmission, electronic mail, or other methods of communication, regardless of whether actual delivery of the food or merchandise/products or other items is made or the service is performed at the Airport. Gross Revenues equal the total money or other consideration arising from the final transaction and are not limited to the value directly attributable to on-Airport operations. All money or other consideration shall be deemed received at the time of the transaction, whether for cash or credit. Rebates given after the close of the transaction shall not be subtracted from Gross Revenues. For the purposes of this definition of Gross Revenues, "Concessionaire" shall include Subconcessionaires and:

(i) Any entity or person that, directly or indirectly, controls, is controlled by or is under common control with Concessionaire; and

(ii) Any successor to Concessionaire's rights and obligations hereunder, whether through merger or consolidation or sale or purchase of stock; and

(iii) Any assignee or transferee of all or any portion of Concessionaire's rights and obligations under this Agreement.

For illustration purposes, Gross Revenues specifically shall include, without limitation: Amounts generated by the sale, rental, storage, delivery, shipping, preparation of or provision of merchandise, goods, products, services, food, beverages, dishware, glassware, utensils, and/or linens and/or all other personal property of any kind or provision of any service:

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(i) For any Airport passenger, customer, or user, whether or not the sale, storage, delivery, shipping, preparation of or provision of such items or services occurs on-Airport;

(ii) If any aspect of the sale, storage, delivery, shipping, preparation of or provision of such items or provision of such service occurs on-Airport;

(iii) If by vending machine or other mechanical device, where the vending machine or mechanical device is located on-Airport or, without regard to the location of the vending machine or other mechanical device, if any aspect of the sale, storage, delivery, shipping, preparation of or provision of such items or provision of such occurs on-Airport;

(iv) Amounts generated from pick-up and/or delivery of any item at the Airport, done directly by Concessionaire or its agents or indirectly through any third person or entity and from any services performed in relation to such pick-up or delivery, whether or not such items are prepared or made partially or entirely off-Airport;

(v) Amounts generated from any pick-up of any item at the Airport by any person or entity or delivery of any item from the Airport to any person or entity for the purpose of (directly or indirectly) delivering such item to any off-Airport location and from any services performed in relation to such pick-up or delivery, whether or not such items are prepared or made entirely on-Airport or are made or prepared partially on-Airport and receive further preparation elsewhere;

(vi) Amounts generated from other contracted services with other Airport tenants and users, or other third parties;

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(vii) Other amounts and rentals arising from the Concession Area or Concessionaire's rights under this Agreement, including, but not limited to, amounts generated by allowing use of space, fixtures, improvements or equipment on the Concession Area by any person or entity other than a Subconcessionaire;

(viii) With respect to any loss of Gross Revenues, the full amount of any and all insurance proceeds that are paid on any gross earnings or gross revenues business interruption insurance policy to Concessionaire or any Subconcessionaire; or

(ix) Amounts received by Concessionaire from Subconcessionaires as a markup, administration fee or any other premium on Subconcessionaire's portion of rent payable by Concessionaire to City for Concession Areas occupied by Subconcessionaire.

Such moneys or other consideration expressly shall not include:

(i) The amount of any federal, state, or local sales tax separately stated and collected from customers;

(ii) The sale of uniforms or clothing, at Concessionaire's cost, when such uniforms or clothing are required to be worn by Concessionaire's employees;

(iii) Amounts received by Concessionaire to provide meals to Concessionaire's employees;

(iv) Amounts which Concessionaire is entitled due to the sale or trade-in of any furniture, fixtures or equipment used on the Concession Area;

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(v) Amounts allocated to the value of furniture, fixtures or equipment transferred to or from the Concession Area;

(vi) Any and all gratuities given by any customer to any employee of Concessionaire or any Subconcessionaire for any services rendered at or from the Concession Area;

(vii) Any and all receipts of Concessionaire or any Subconcessionaire that arise solely from its or their operations under any other agreement with City at the Airport;

(viii) Amounts and credits received for Product returned to shippers, wholesalers or manufacturers;

(ix) Discounts on the retail price of Product not exceeding twenty percent (20%) of the approved retail price given by Concessionaire to Concessionaire's employees, travel industry personnel, volume purchasers and other special categories of customers, which have been previously approved, in writing, by the Director;

(x) Amounts received by Concessionaire from Subconcessionaires for: (i) Subconcessionaire's portion of rent payable by Concessionaire to City for Concession Areas occupied by Subconcessionaire; or (ii) participation in the Joint Marketing Fund (if any).

"Hazardous Materials" (SECTION 4 - Restrictions on Activities; SECTION 28 - Hazardous Materials- Prohibitions and Restrictions) shall mean any and all: (a) substances, products, by-products, waste or other materials of any nature or kind whatsoever which is or becomes listed, regulated or addressed under any Environmental Laws; and (b) any materials, substances, products, by-products, waste or other materials

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of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by-products or waste may give rise to liability under any Environmental Law or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of any state or federal court; and (c) any substance, product, by-product, waste or any other material which may be hazardous or harmful to the air, water, soil, environment or affect industrial hygiene, occupational health, safety and/or general welfare conditions, including without limitation, petroleum and/or asbestos materials, products, by-products or waste.

"Hours of Operation" are set out in **SECTION 4.20.1** of this Agreement.

"Laws" means all present and future applicable judicial decisions, statutes, laws, ordinances, regulations, building codes, Airport rules and regulations adopted from time to time, regulations, orders and requirements and policies of all governmental authorities, including without limitation, city, state, municipal, county, federal agencies or the federal government, the FAA or the TSA, and their departments, boards, bureaus, commissions and officials and such other authority as may have jurisdiction including, without limitation, any regulation or order of a quasi-official entity or body.

"Like New" means the condition of the Concessionaire's Property to appear in perfect condition, intact and pristine with no signs of wear on the Concession Property.

"MAG Commencement Date" means the date July 01, 2018.

"Minimum Annual Guarantee (MAG)" (SECTION 6- Fees and Deposits) means the dollar amount that the Concessionaire will guarantee to the City as a minimum Concession Fee each year during the Term of the Agreement.

"Municipal Code" means the San José Municipal Code, as amended from time to time.

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"Percentage Fee" is defined in **Section 6** of this Agreement.

"Person" means an individual, a corporation, a partnership, a joint venture or any other form of business association.

"Product" (SECTION 4.11.2 - Product Quality; SECTION 4.13 - Director's Approval of Product and Services) means any and all services, products, goods, food or beverages, required or permitted under this Agreement to be made available for sale or sold by Concessionaire or any Subconcessionaire in the regular course of Concessionaire's or Subconcessionaire' s business at or from the Concession Area.

"Reconcept" shall mean a new concept(s) and/or refresh of the merchandise sold at an RMU location with interesting and varied products which should frequently change to reflect local, new and exciting merchandise, as well as seasonal and branded items in each RMU location. The definition of Reconcept shall include merchandise currently being sold at another RMU location, but is new to a specific RMU location, or the closing of one Concessionaire or Subconcessionare RMU and the opening of a new Concessionaire or Subconcessionaire RMU in the same location, subject to approval by the Director.

"RMU's" means retail merchandising units.

"Security Deposit" means the initial amount of THIRTEEN THOUSAND FIVE HUNDRED DOLLARS ($13,500.00) which may be adjusted from time to time in accordance with **SECTION 6.3.**

"Subconcessionaire" means any person who operates a business in the Concession Area under an agreement with Concessionaire, including, but not limited to, any franchise, joint venture, management, sublease, license or sublicense agreements or subconcessionaire agreement, for which the Director has given prior written approval.

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"Summary" means **SECTION 1** of this Agreement.

"Tax" shall mean and include any assessment, license, charge, fee, imposition, or levy imposed by any governmental body.

"Term" is defined in **SECTION 2.1** of this Agreement.

"Terminal A" means that certain airline terminal building and related parking facilities at 2077 Airport Boulevard, San José, California, 95110.

"Terminal B" means that certain airline terminal building and related parking facilities at 1701 Airport Boulevard, San José, California, 95110, including the North Concourse.

"TSA" means the Transportation Security Administration, part of the Department of Homeland Security, created by the United States Government under the Aviation and Transportation Security Act ("ATSA") of 2001, as amended, or such other successor agency or agencies of the United States Government.

"Unavoidable Delay" (SECTION 29.6 - Force Majeure) means any strike, boycott, labor dispute, riot or embargo (any of which is directly related to Concession Operations as referenced in **SECTION 3.1**), shortage of building materials or other acceptable substitute not reasonably contemplated by the party responsible for procuring the same, Acts of God (such as earthquake, to the extent not insured against), act of a public enemy, act of a superior governmental authority, major weather disturbance, rebellion, sabotage and any other circumstance of a magnitude a reasonable person would believe is beyond the reasonable control of either party to this Agreement.

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SECTION 2 TERM OF AGREEMENT

2.1 Term

This Agreement shall be binding on both parties from the Effective Date set forth in the Summary and shall continue through the Expiration Date, unless and until sooner terminated in accordance with the terms of this Agreement.

2.1.1 Commencement of Operations.

2.1.1.1 Following the Effective Date, Concessionaire, if it has not already done so, shall prepare architectural plans and specifications for the Concession Improvements, as provided in **SECTION 22** of this Agreement. Provided Concessionaire has received a Notice to Proceed (NTP) in accordance with **SECTION 22** herein, Concessionaire shall be prepared to commence installation.

2.2 Holdover

It is not the intent of this Agreement to create any rights of Concessionaire beyond the Expiration Date or earlier termination of this Agreement. Any holding over after the Expiration Date or earlier termination of this Agreement shall be subject to and conditioned on the approval of the City Council and on terms and conditions approved by the City Council.

SECTION 3 AUTHORIZED ACTIVITIES

3.1 Concession Operations

The Concessionaire shall have the non-exclusive right, privilege, and obligation to finance, design, develop, construct, install, maintain and operate RMU's Concession Operations for the purpose of establishing a high quality concession operation as approved by the City. This Agreement is non-exclusive in character and in no way prevents the City from entering into an Agreement with any other parties for the sale or offering of competitive services, products or items by other concessionaires and/or concessionaires or others in other premises at the Airport during the Term of this Agreement. Concessionaire shall use the Concession Area for the Concession Operations and for no other purpose.

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3.2 General Approvals

3.2.1 Concessionaire shall provide primarily quality specialty retail concepts at the Airport to service Airport users that are complementary to the existing retail concessions in common areas of the Airport. Concessionaire shall create a mix of RMU's that consist of interesting and varied products that frequently change to reflect local, new and exciting merchandise, as well as seasonal and branded items. Concessionaire shall not permit the sale in the RMU's of any news and gift type items (e.g., candy, snacks, newspapers, trinkets) that are of similar quality or brand as those currently provided by other Concessionaires in the Airport, unless otherwise approved by the Director.

3.2.2 In consideration of Concessionaire's payment of the Concession Fee and all other fees and charges and the performance of all provisions of this Agreement and any amendment thereto, City grants to Concessionaire, and Concessionaire accepts from City, the right to install, operate and maintain the Concession Improvements and the Concessionaire's Furnishings, Trade Fixtures and Equipment and to conduct the Concession Operations in the Concession Area, as further described in Concessionaire's Proposal in **EXHIBIT P**.

3.2.3 Furthermore, the Concessionaire shall have the right, privilege and obligation to finance, design, develop, construct, install, maintain and operate and to cause Subconcessionaires to operate and maintain the Concession Locations depicted in **EXHIBIT B** ("Locations").

3.2.4 The Concession Operations shall be limited to the sale of retail products and goods at the Airport, in accordance with Concessionaire's Proposal, (**EXHIBIT P)**. Subject to Director's prior approval, Concessionaire may offer limited food and beverage products in its Concession Areas in a manner that is consistent with its retail Concession Operations. Concessionaire shall obtain Director's prior approval, as provided in **SECTION 4.13** of this Agreement, before offering for sale to the general public at the Airport any Product or merchandise other than retail products and goods or food and beverages products that have not been previously approved by the Director.

3.2.5 Intentionally Omitted

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3.2.6 Concessionaire shall develop, design, fund and construct, lease, operate, and manage RMU's at the Airport of the type and amount as detailed in **EXHIBIT B** and **EXHIBIT C,** consisting of a RMU concession program encompassing a total not to exceed **630** square feet with each individual RMU Concession Location encompassing a total not to exceed **70** square feet.

3.3 Ingress and Egress

Concessionaire and its Subconcessionaires, and their respective officers, employees, customers, patrons, invitees, contractors, subcontractors, suppliers of materials and furnishers of services shall have the right of ingress to and egress from the Concession Area, as reasonably required to carry on permitted activities as described herein, subject to City, governmental and regulatory (e.g., security) approval, and subject to conditions and restrictions pursuant to this Agreement. The manner and means of receipt of shipments of inventory and supplies shall also be subject to the approvals, conditions and restrictions described herein.

SECTION 4 RESTRICTIONS ON ACTIVITIES

The commercial activities authorized in **SECTION 3** shall be subject to the following conditions and restrictions:

4.1 Use

Concessionaire shall not be permitted any use of the Concession Area, the Terminals or the Airport except for the Concession Operations as provided in this Agreement. Notwithstanding Concessionaire's privilege and concession rights in the initially approved site, the City reserves the right to award agreements for additional concession operations similar to Concessionaire's to any other person for other areas of the Airport, including, without limitation, any expanded or new terminal areas. Further, the Airport shall not be restricted in any manner from granting exclusive or nonexclusive uses of Airport facilities to others, with the exception of the Concession Area.

4.2 Compliance with Laws

This Agreement is made subject and subordinate to all existing and future agreements between the City and the United States of America, and Concessionaire shall

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act in compliance therewith. Concessionaire shall comply with and conform to all Laws applicable to or affecting, directly or indirectly, the Concessionaire, the Concession Area, or Concessionaire's operations and activities under this Agreement. Further, Concessionaire shall not do or permit anything to be done in, on or about the Concession Area, the Terminals or the Airport, nor bring or keep, or permit to be brought or kept therein, anything which is prohibited by a standard form of fire insurance policy or in any way increase or affect the then existing rate of fire or other insurance required to be carried upon the Concession Area, the Airport or the Terminals or any part thereof, or any of their contents, or which will cause a cancellation of any insurance policy covering the Concession Area, the Airport or the Terminals or any part thereof or any of their contents.

4.3 Limitation on Operations

Concessionaire shall not conduct or permit operations in the Concession Area that in the reasonable judgment of the City would:

a. Interfere or might interfere with the reasonable use by others of common facilities at the Airport;

b. Hinders or might hinder police, firefighters or other emergency personnel in the discharge of their duties; or

c. Would or would be likely to constitute a hazardous condition at the Airport.

4.4 Limitation on Uses

Concessionaire shall not engage either directly or indirectly in any form of business on the Airport or the Concession Area except as expressly authorized pursuant to this Agreement. Concessionaire understands and agrees that the following products or services are not permitted to be sold under this Agreement in or from the Concessionaire Area:

a. Insurance of any kind;

b. Commercial advertising services, signage, and displays;

c. Lockers for immediate storage of baggage;

d. Ground transportation and parking services;

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e. Hotel accommodations;

f. Foreign currency exchange (although foreign currencies may be accepted for payment for items purchased in the Concessionaire's/Subconcessionaire' s Location, at Concessionaire/Subconcessionaire' s option);

g. Automatic Teller Machines;

h. In-flight catering;

i. Baggage carts;

j. Airline tickets;

k. Vending Machines of any kind;

l. Lottery tickets;

m. Travel agency activities;

n. Sale of bottled Alcoholic Beverages for consumption at the Airport;

o. Sale of newspapers, books, magazines, soda, water, juice, or trinkets;

p. Check-cashing services;

q. Prepaid telephone cards from vending machines (although such telephone cards may be sold within Concessionaire's/Subconcessionaire' s Location with Director's prior written approval);

r. Money orders; or

s. Other items that may conflict with the current products sold by Concessionaires at the Airport as determined by the Director.

4.5 Environmentally Preferable Procurement Policy

Concessionaire shall perform its obligations under this Agreement in conformance with City Council Policy 4-6, entitled "Environmentally Preferable Procurement Policy." Concessionaire shall procure environmentally preferable products and services that meet environmental product standards established by governmental or

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other widely recognized authorities. Examples include the Green Seal 37 standard for janitorial products (www.greenseal.org), EPEAT for IT equipment, and GreenGuard for furniture.

4.5.1 Recycling Requirements

Concessionaire shall integrate environmental factors into Concessionaire's buying decisions, when practicable. At a minimum:

a. Concessionaire shall replace disposable with re-usable, recyclable or compostable goods, i.e., cutlery, plates, cups etc.

b. Concessionaire shall appoint a liaison to participate in in-house coordination meetings for solid waste and recycling programs.

c. Concessionaire shall comply with all current and future City recycling programs and standards. The recycling program will include: recycling bins for paper (mixed or separate, depending on the existing stream); recycling bins for all beverage containers (glass, plastic, aluminum cans) that are being used by Concessionaire; and other materials that can be handled locally in the existing system, such as cardboard. Bins will be provided by City if not already provided by the Concessionaire. Concessionaire agrees to let City place containers and related signage in administrative, meeting, and public spaces.

d. Concessionaire shall instruct staff to use appropriate recycling containers.

e. Concessionaire shall use City solid waste and recyclables storage bins appropriately to avoid contamination.

f. Concessionaire shall provide sufficient solid waste and recyclables storage space in Concession Areas.

g. Concessionaire shall establish detailed environmental policies and a strategy to implement them. Concessionaire shall consistently communicate the policies in various ways to engage all employees, vendors and patrons.

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h. Concessionaire will encourage the use of low-impact transportation (i.e., walking, biking, mass transit) which reduces energy consumption and emissions.

i. When printing is required, Concessionaire will use double-sided copies and at minimum 30% post-consumer recycled content paper with soy-based ink.

j. Concessionaire will shift written communications to e-mail whenever possible.

k. Concessionaire will focus on cost-saving, energy-efficient efforts. These may include:

i. purchasing ENERGY STAR® products when replacing equipment.
ii. using laptops when possible (on average they use 10% less energy than desktop computers).
iii. using LCD rather than CRT monitors.
iv. Encouraging employees to turn off equipment and lighting, and turn down thermostats when leaving for extended periods of time.
v. using inkjet printers rather than laser printers as they use less energy.
vi. considering equipment that can print on both sides of paper.
vii. considering multi-purpose office equipment (i.e., all-in-one fax, printer, scanner, copier). These generally require less energy and space than their individual counterparts.

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4.6 Disposal, Use and Storage of Hazardous Materials

Disposal of Hazardous Materials on the Airport is strictly prohibited. Storage and use of Hazardous Materials on the Airport is prohibited, except:

4.6.1 Concessionaire may store and use Hazardous Materials in the Concession Area in a safe and prudent manner and in accordance with the requirements of all applicable Environmental Laws those kinds and quantities of Hazardous Materials that are normally used in conducting the activities permitted under this Agreement. Concessionaire shall provide Director with a copy of any application for a permit for use or storage of Hazardous Materials in the Concession Area from any regulatory agency responsible for enforcement of Environmental Laws, and shall also provide a copy of any permit received from such agency; and

4.6.2 Concessionaire may use Hazardous Materials on the Airport other than the Concession Area, only in a safe and prudent manner and in accordance with the requirements of all applicable Environmental Laws those kinds and quantities of Hazardous Materials which are commonly used in conducting the activities permitted under this Agreement, and for which no permit is required to be obtained from any regulatory agency under any Environmental Law.

4.7 Relocation, Expansion or Contraction of Operations

4.7.1 Modification of Concession Area

4.7.1.1 In the event that implementation of the City's requirements for the Airport, changes in airlines or flight schedules, or other changes in business conditions necessitate the relocation, expansion or contraction of the Concession Area, or any part thereof, Concessionaire shall, at its sole expense relocate all or part of its operations or the Concession Area, or any part thereof, or contract or expand the size of the Concession Area in an expeditious manner only as may be permitted, directed or required by the Director.

4.7.1.2 In the event that City requires Concessionaire to relocate all or part of the Concession Operations, City shall reimburse Concessionaire for Concessionaire's reasonable relocation costs as calculated in accordance with this Section (the "Relocation Reimbursement"). The following shall be considered guidelines for calculating the Relocation Reimbursement:

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4.7.1.3 For each Concession Area, Concessionaire's Allowable Improvement Costs for the Concession Improvements in that Concession Area shall be depreciated by Concessionaire on a straight line basis over the Term of the Agreement, with no residual value, starting from the date that Concessionaire commences Concession Operations in that concession Area. If Concessionaire is relocated solely at City's request and not due in whole or in part to any act or omission of Concessionaire, City agrees to pay Concessionaire for the unamortized portion of Concessionaire's Allowable Improvement Costs (calculated as of the time that Concessionaire is required to vacate the Concession Area).

4.7.1.4 City shall reimburse Concessionaire for the unamortized net book value of the Concession Improvements, provided that: (a) the Concessionaire has obtained all necessary written approvals for its construction, (b) the Concessionaire has reported each improvement and its costs, (c) architectural and design fees do not exceed ten percent (10%) of the costs of the improvement, and (d) all said costs are properly supported and made available for audit. All said costs must be direct costs paid by Concessionaire to independent contractors and suppliers for work actually performed on said Concession Area, materials furnished or professional services rendered. Costs associated with Concessionaire's employees shall not be included in the calculation of these costs. To become reimbursable, the Concessionaire shall, at its expense provide City with 'as-built' drawings and paid invoices, showing material and labor costs involved in the construction of the approved structural improvement within ninety (90) days of the date that the improvement was placed in service.

4.7.1.5 Notwithstanding the preceding section, City shall not be required to reimburse Concessionaire for Concessionaire's unamortized costs related to Concessionaire's Improvements to the Interim Concession Locations as defined in **SECTION 22.1.**

4.7.1.6 If the Director determines that the removal of Concessionaire's Property from the existing Concession Area and its installation at Concessionaire's new Concession Area is possible and not unreasonably burdensome to Concessionaire, Concessionaire shall be entitled to reimbursement only for its costs to relocate such Property.

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4.7.1.7 Concessionaire agrees to bear, at its sole cost and expense, the costs of relocation of any portion of the Concession Area that is not requested by Director or that is necessitated by Concessionaire's operations, and that is approved in writing by the Director.

4.7.2 New Airport Terminal Development

The City may identify space for future concession development in locations not part of this Agreement. The City may request a proposal from Concessionaire to develop and lease these spaces, subject to the City's approval of the proposed use and negotiation and execution of a written amendment to this Agreement. Concessionaire shall have no exclusive right to lease future concession space. In accordance with **SECTION 4.7.1** above, the City will also retain the right to reclaim, contract, expand or relocate the Concession Area during the Term of this Agreement as needed for Airport development, security issues or other City needs.

4.7.3 Director's Authority

4.7.3.1 Amendments to this Agreement that change or modify the description of the Concession Area set forth in **EXHIBIT B** to specify in writing increases, decreases, reconcepting, or relocation of space and which include only such Concession Fees as are specified or authorized in accordance with **SECTION 6**, may be executed on behalf of the City by the Director.

4.7.3.2 The relocation, expansion or contraction of the Concession Area conducted pursuant to this Section, or the relocation of any airlines or any airlines' gate or any other concession, shall not affect Concessionaire's obligation to pay the Concession Fee.

4.8 Intentionally Omitted

4.9 Covenant of Continuous Operation

As a material inducement to City to enter into this Agreement, Concessionaire covenants to continuously operate or cause the continuous operation of its Concession Operations during the Term. The failure of Concessionaire to continuously operate and market, or cause the operation and marketing of its Concession Operations, or any part thereof, for any period of time, except as may otherwise be permitted under this Agreement, shall constitute an Event of Default. City does not make, and has not

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made, any representation, warranty, assurance or guaranty that the uses to which Concessionaire will put its Concession Operation will generate any minimum, maximum or optimum volume of business, or that any minimum, maximum or optimum volume of business will occur. The failure to comply with this covenant of continuous operation shall not be excused or waived by reason of Concessionaire's failure to realize or achieve targeted revenue forecasts or goals for any period of time during the Term.

4.10 Standards of Operations

4.10.1 During the Term of this Agreement, Concessionaire covenants to maintain, operate and keep or cause the maintenance and operation of the Concession Operations and the Concession Area in accordance with the provisions of this Agreement in a first-class manner and in a safe, clean and sanitary, Like New condition at all times to the satisfaction of the Director. Concessionaire covenants to sell or cause the sale of Products of the highest quality as required by all applicable laws and to insure that every item, product or service offered to the public is available at all times of the day that such items, products or services are posted as available. Concessionaire covenants not to misrepresent the quality or quantity of any item, product or service offered through its Concession Operations, and covenants not to allow the use of any false, misleading or deceptive advertising in the promotion of the Concession Operations.

4.10.2 Concessionaire shall ensure that the Concession Locations are secured at night with a security cover. Such security covers shall be subject to the Director's approval.

4.11 Concession Management

4.11.1 Operating Procedures

Concessionaire covenants to provide, or cause the provision of, prompt, courteous, well stocked Products of the highest quality that address the current concession trends and allow for flexibility in order to quickly adapt to industry, seasonal and other changes on a nondiscriminatory basis. Concessionaire shall submit for City approval, at least thirty (30) days prior to the commencement of operations of the first RMU, written operating procedures for the day-to-day management of its operations as they pertain to customer service (the "Operating Procedures"). City shall have, at a

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minimum, fifteen (15) days to review and comment on the Operating Procedures. Within five (5) days of receipt of the written request of Director, Concessionaire shall meet with Director to discuss Product selection, the quantity offered, the quality of service rendered; and such other matters which are directly related to the Concession Operations.

4.11.2 Product Quality

Any Products sold or kept for sale shall be of high quality and comparable to first class facilities of similar type in the metropolitan San José area. No misbranded article shall be sold or kept for sale.

4.11.3 Intentionally Omitted

4.11.4 Trash Receptacles

Concessionaire, whether stationary or moving throughout the Airport, shall have leak-proof baskets and containers for carrying Product or trash. Such baskets and containers shall have wheels on them such that when they are moved through the Airport they do not make noise or leave marks on the Airport flooring. Such baskets and containers shall be subject to the Director's approval. Concessionaire shall use reasonable efforts to prevent the littering and scattering of cups, wrappers, napkins and other items by Concessionaire or Subconcessionaire' s employees or customers and shall direct its employees and Subconcessionaire' s employees to clean spills and dispose of any such litter from Concessionaire's or Subconcessionaire' s operations that is visible to any such employees, regardless of whether such spills or litter are in the Concession Area or other public areas of the Airport. Such baskets and containers shall not be overfilled and trash shall not be visible to the public.

4.11.5 Trash Disposal

Concessionaire shall maintain its Concession Area in a clean, neat, businesslike and orderly manner at all times, and provide for timely disposal of trash and debris.

4.11.6 Intentionally Omitted

4.11.7 Delivery of Supplies

4.11.7.1 Delivery of supplies to the Concession Area shall be made at such times, by such route/modes, as not to conflict with airport passenger traffic and patrons. Such routes/modes and times of delivery are subject to the approval of the

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Director. Current hours of checkpoint security coverage are 4:30 a.m. to closing, which is dependent upon flight schedule. Concessionaire shall, however, schedule deliveries through the checkpoints at times that are not disruptive to the general public. Checkpoint hours are subject to change and approval of deliveries and delivery times are subject to Director approval.

4.11.7.2 All tenants may be required at some point in the future, as the airport develops, to provide at least 24 hours advance notice to Director regarding any expected deliveries. Notice must include:

a. The name of the company or individual ordering the delivery, including a phone number;

b. The name of the company/individual making the delivery;

c. Location of delivery;

d. The date and time of delivery, whether a single event or a regular schedule to be followed;

e. Duration of time needed for delivery;

f. Content of delivery;

g. The delivery vehicle plate number and state; and

h. Description of delivery vehicle

4.11.7.3 All companies making deliveries are required to comply with all provisions set forth by Director. Director must be notified at least 24 hours in advance of all deliveries of physically large items. Airport staff will specify appropriate conditions and procedures for the delivery, including the time and route.

4.11.8 Intentionally Omitted

4.11.9 Plans

Concessionaire shall prepare all plans as required under this Agreement. These plans are subject to prior written approval by the City. Concessionaire is not under a specific obligation to provide any operator with a Concession Location if a mutually agreeable subconcession agreement cannot be reached.

4.11.10 Subconcession Agreements

4.11.10.1 If Concessionaire subcontracts, Concessionaire shall

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enter into Subconcession agreements for RMU operations as designated based on approval of the City. Concessionaire shall coordinate its subconcession activities with the Airport. All Subconcession agreements shall be subject and subordinate to the terms and conditions of this Agreement.

4.11.10.2 Any and all Subconcession agreements shall be for a term of no more than one (1) year, unless approved by the Director.

4.11.10.3 Any and all Subconcession agreements shall immediately terminate upon termination of this Agreement for any reason, without direct recourse of any kind against the City.

4.11.11 Subconcession Work Force

Subject to the City's "Airport Living Wage Regulations" and "Airport Living Wage Determination," as further described http://www.flysanjose.com/living-wage, Concessionaire shall cause each Subconcessionaire to maintain an adequate sales and work force at all times, including, without limitation, sales, cashiers, management and supervisory personnel, on-site to fully meet customer needs at all times. Concessionaire and Subconcessionaires shall use skill and diligence in the conduct of business and shall cause their respective employees to be courteous and helpful to the public at all times.

4.11.12 Concession Area Payments and Expenses

Concessionaire shall bill and collect all amounts payable by Subconcessionaires under Subconcession agreements, and pay all operating expenses required under this Agreement.

4.11.13 Vacant Concession Locations

The use, management and operation of any Concession Locations that become vacant during the Term of this Agreement must remain the same as defined in Concessionaire's Concession Plan, unless otherwise approved by the Director. If such vacant space is designated as a Subconcessionaire Concession Location, Concessionaire shall, within thirty (30) days after the Concession Location becomes vacant, market and enter into a Subconcession agreement for the vacant Concession Location to a new Subconcessionaire, for any cause of vacancy other than causes as stated in Section 4.11.13.1 below. If such vacant Concession Location is

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designated as a Concessionaire-operated Concession Location, Concessionaire shall within thirty (30) days after the Concession Location becomes vacant, reconcept the Concession Location. The vacant Concession Location must be operational and open to the traveling public within thirty (30) days of becoming vacant. Concessionaire shall be subject to Liquidated Damages as provided in **SECTION 24.3** for non-compliance with this provision. If the Concession Location remains vacant for longer than thirty (30) days, such vacant Concession Location will be subject to **$100 in liquidated damages** per day per vacant Concession Location, unless the Concession Location remains vacant as a direct result of of a cause beyond Concessionaire's control or during the reconcept transition not to exceed thirty (30) days.

4.11.13.1 Concession Vacation Locations When No Notice is Provided by the Subconcessionaire

The use, management and operation of any Concession Locations that become vacant during the Term of this Agreement must remain the same as defined in Concessionaire's Concession Plan, unless otherwise approved by the Director. If such vacant space is designated as a Subconcessionaire Concession Location, and the Sub concessionaire vacates the location prior to the termination date with less than thirty (30) days' notice to the Concessionaire, Concessionaire shall, within sixty (60) days after the Concession Location becomes vacant, market and enter into a Subconcession agreement for the vacant Concession Location to a new Subconcessionaire. The vacant Concession Location must be operational and open to the traveling public within sixty (60) days of becoming vacant. Concessionaire shall be subject to Liquidated Damages as provided in **SECTION 24.3** for non-compliance with this provision. If the Concession Location remains vacant for longer than sixty (60) days, such vacant Concession Location will be subject to **$100 in liquidated damages** per day per vacant Concession Location.

4.11.14 Concession Monitoring

Concessionaire shall monitor the sales activity, pricing, customer service, Hours of Operation, merchandise and sales reporting of all Subconcessionaires.

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4.11.15 Customer Surveys

Concessionaire shall monitor the Airport customer market through periodic consumer surveys, the content of which shall be approved by the City in advance.

4.11.16 Customer Complaints

Concessionaire shall answer, or cause Subconcessionaires to answer, all written customer complaints within seventy-two (72) hours after receipt of such complaints and resolve all issues within two (2) weeks. Concessionaire shall provide, or cause Subconcessionaires to provide, copies of the complaints and answers to Airport Customer Services by the last day of each calendar month.

4.11.17 Concession Area Signage

Concessionaire shall be responsible for ensuring that all Concession Area signage standards are enforced in accordance with **SECTION 4.22** below.

4.12 Specific Services Provided by Concessionaire

Concessionaire covenants to render the following services: (a) provide, without charge, change-making service at each cashier's location in the RMU Concession Area; (b) provide knowledgeable directions about locations at the Airport; and (c) provide such other reasonable assistance as requested by the general public. In addition, Concessionaire and its Subconcessionaires shall be responsible for ensuring the conduct, demeanor and appearance (properly attired and identified) of its officers, agents, employees and representatives as may be established and/or approved from time to time by Director. In effecting any sale, Concessionaire and all Subconcessionaires shall cause a receipt to be issued to each and every customer. Concessionaire and its Subconcessionaires shall assure that its officers, agents, employees and representatives do not engage in the solicitation or pressure sales tactics for Product offered on or about the Airport.

4.13 Director's Approval of Product and Services

No Product may be sold at the Airport without the prior written approval of the Director. Director reserves the right at all times to reasonably object to or approve Product offered for sale, the quality of Product offered for sale, the character of services offered

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to the general public, the methods of service of Product within the Concession Area, the prices charged, and the appearance and condition of the Concession Area. Upon receipt of notice, Concessionaire agrees to immediately discontinue the sale of any Product and remedy any such services found by the Director to be unsatisfactory. The failure of Concessionaire to promptly cease marketing any disapproved Product or service shall constitute a Performance Standards Breach pursuant to **SECTION 24.3.1** of this Agreement. The initial Products and Product Price List by Concession Location will be reviewed and approved by the Director no later than thirty (30) days prior to the opening of each Concession Location.

4.14 Consideration

Concessionaire shall accept payment from customers in the form of cash and a minimum of two nationally recognized debit/credit cards, which shall be subject to Director approval. Concessionaire shall display in a prominent manner the trademarks or servicemarks of the credit cards accepted at its designated points of sale, menu boards or menus.

4.15 Packaging

If Concessionaire sells loose or bulk product, Concessionaire shall make packaging/wrapping suitable for transport for travel available to its customers. Concessionaire shall provide the option to transport purchased items via shipping services such as UPS, FedEx and USPS.

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4.16 Pricing

4.16.1 Concessionaire shall adhere to the pricing methodology as presented in **Exhibit L,** entitled "**Pricing Policy**". Should any of the provisions in **Exhibit L** conflict with the pricing methodology as presented in the Concessionaire's Proposal, the provisions of **Exhibit L** shall prevail. Noncompliance with **Exhibit L** will subject Concessionaire to Liquidated Damages as stated in **SECTION 24.3.1.7.**

4.16.2 As a good-neighbor service to airline, Airport and support staff who work at the Airport, Concessionaire shall offer all of its Products, with the exception of reading material, tobacco products and phone cards, at a minimum 10% discount to any person who displays a valid Airport identification or security badge.

4.16.3 Prices shall be posted or displayed prominently at all locations where Product is sold. Concessionaire covenants and agrees to offer for sale items at prices in accordance with the Director's approved Product and/or menu and price list, as such list may be amended from time to time, with written approval of Director. Concessionaire is required to submit, prior to the opening of any concession, a complete list of items to be offered by each Concession Location, including Subconcession Locations, and the prices suggested to be charged. The Director shall have the right to request adjustments to these charges based on the pricing objectives outlined in this Agreement. No Concession Location shall open without a City approved price list.

4.16.4 Intentionally Omitted

4.16.5 Concessionaire may be permitted to sell Product not included in the approved price schedule or menu by first obtaining the written approval of the Director. The maximum price at which such Product may be offered for sale shall also be subject to the prior written approval of the Director. Concessionaire may be permitted to substitute other Product for Product listed in the schedules or lists, provided that the Director first approves such substitution and the quality, amount and maximum price of the substitute Product.

4.16.6 Concessionaire agrees to perform price surveys once each year, at the reasonable request of the Director. The Director may select three (3) local RMU concessions deemed similar to Concessionaire's Operations for comparison. Concessionaire shall survey all of Concessionaire's Products, excluding promotional

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items and shall provide a written report of the results of its pricing survey to the Director using the method for maximum price calculation described in **EXHIBIT L**, on a form provided by or in a manner prescribed by the Director.

4.16.7 Intentionally Omitted

4.17 Sanitary Condition of Concession Area and Equipment

Concessionaire covenants that the Concession Area, inclusive of five (5) feet surrounding each Concession Location, and every portion thereof shall be in a hygienic, sanitary and clean condition at all times during the Term of this Agreement. Upon receipt of notice of any violation of this Section from Director, or any health agency authorized or empowered to issue such notice, Concessionaire shall remedy or cause the remedy of the violation within the time prescribed in the notice, or, if none is stated, within three (3) days, and a failure by Concessionaire to do so shall constitute a Performance Standards Breach pursuant to **SECTION 24.3.1** of this Agreement.

4.18 Pest Control

Concessionaire shall be solely responsible for a pest free environment within the Concession 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 pest control substances utilized shall be used with precautions to obviate the possibility of accidents to humans and domestic animals. Pests referenced above include, but are not limited to, cockroaches, ants, rodents, silverfish, earwigs, spiders, weevils and crickets. Whenever the Airport deems that pest control services must be provided to a building or area that includes the Concession Area under this Agreement, Concessionaire shall pay for the costs of such services provided for the Concession Area under this Agreement.

4.19 Notification of Violations

Concessionaire shall immediately provide the Director with a copy of all citations received by Concessionaire related to Concessionaire's Operations at the Airport. Such citations include, but are not limited to, citations issued by the County Weights and Measures and the Health Department. Noncompliance with any cure requirements from the citing authority will subject Concessionaire to Liquidated Damages in accordance with **SECTION 24.3.1.4** of this Agreement.

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4.20 Hours of Operation

4.20.1 The Concessionaire must be open for business at the designated operating hours, unless otherwise authorized in writing by Director. The minimum Hours of Operation shall be 365 days a year, with Concession Areas open to the public during standard operating hours as directed by the Airport, subject to Director approval. Standard operating hours may require Concession Locations to be open at least one and a half (1 1/2) hours prior to the first scheduled flight departure of the day, with continuous operation until the last flight in the terminal has boarded. Concession Operations must be flexible enough to provide extended hours to accommodate the additional business and customer service opportunities generated as a direct result of flight delays or airline schedule changes. Concessionaire shall provide for full and complete service at all times during the Hours of Operation. Any reduced service shall be requested in writing to the Director, and must be approved in writing by the Director prior to such reduction.

4.20.2 Specific requests for exceptions to these operating hours for holidays and other reasons (e.g., refurbishments, reconcept) must be submitted to the Director at least sixty (60) days before the proposed change, and the Director shall provide his or her approval or disapproval of the request, in part or total, within thirty (30) days of receipt of such request. The Director reserves the right to modify Hours of Operation based on flight schedule and/or customer demand. Concessionaire and its Subconcessionaires shall not unilaterally modify operating hours. Due to unusual circumstances (e.g., delayed flights, weather), the Director reserves the right to direct the Concessionaire to direct select Concession Locations to remain open beyond the designated operating hours. The Concessionaire shall work with its Subconcessionaires to establish reasonable procedures for adjusting concession opening and closing times based on daily flight schedules, and incorporating those schedules into shift schedules for Subconcessionaires' staff, as well as for receiving and disseminating schedule changes, weather or maintenance delays or other flight information that will require adjustments in Subconcessionaires' operations. Such requirements for operating hours and flexibility shall be included in all Concessionaire subconcession agreements.

4.20.3 Concessionaire will work with its Subconcessionaires to ensure that they are aware of what the peak hours are for each location and that they will staff the

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facility appropriately to provide excellent customer service and avoid lengthy service lines. Concession staffing levels must reflect both the hourly and seasonal fluctuations in passenger traffic.

4.21 Personnel

Concessionaire shall select, engage, employ, pay, supervise, direct and discharge all employees or independent contractors reasonably necessary or appropriate for the proper and safe operation and maintenance of the Concession Area. Concessionaire shall comply with all Laws and regulations affecting such employment.

4.21.1 Manager

A qualified, competent, and experienced manager representing Concessionaire shall supervise, manage and maintain the Concession Operations and act for the Concessionaire in all matters pertaining to its operations at the Airport. At all times during regular business hours, the manager, who shall be subject at all times to the direction and control of Concessionaire, shall be assigned to a location of general availability on the Concession Area, and, during the manager's absence, a qualified subordinate shall be appointed to act in the Manager's absence. The Director reserves the right to approve any manager working in the Concession Operations. Should the Director deem that a manager is not providing high quality customer service or not performing in accordance with the terms and conditions of this Agreement, the Director shall notify Concessionaire in writing and Concessionaire shall replace the existing manager at the Airport within thirty (30) days of such notice.

4.21.2 Adequate and Competent Staff

4.21.2.1 Concessionaire shall employ a sufficient number of properly trained personnel to manage and operate the Concessionaire Area at its maximum capacity and efficiency at all times that the Concession Location is open for business. Sufficient number is a number, which consistently provides customers with no unreasonable delay or inconvenience, as determined by the City through the development of standards, in moving through point of sale or selecting products or service. All personnel shall be clean, neat in appearance and attired in proper uniform, with name tag clearly visible.

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4.21.2.2 Each of Concessionaire's RMU concepts at the Airport shall have a specific uniform that distinguishes the employees from Concessionaire's other Concession concepts at the Airport. If no specific uniform is required for a Concession Location, Concessionaire shall request an exemption from the Director. Any such exemption granted is valid for one year, or until the Concession Location is reconcepted.

4.21.2.3 Concessionaire shall ensure that all employees of Concessionaire conform to personal hygiene and food handling requirements established by the Airport Rules and Regulations and the applicable Laws, whichever is most stringent. Concessionaire must ensure that all employees can adequately communicate with customers and are professional and courteous in interactions with customers.

4.21.3 English Language

Concessionaire understands and agrees that its operation at the Airport necessitates contact with the public, both in the course of normal business operations and in rendering public services such as making reasonable change, giving directions, and providing general assistance to the public. Employees in positions that involve contact with the public must be capable of speaking and understanding the English language at a level consistent with the effective and efficient performance of the duties of the position.

4.21.4 City Not Liable for Employment Issues

This Agreement is not one of agency by Concessionaire for the City, but one with Concessionaire engaged independently in the business of managing the Concession Area on its own behalf. All employment arrangements and labor agreements are, therefore, solely Concessionaire's rights, obligations and liabilities, and the City shall have no obligations or liability with respect thereto.

4.22 Signs and Advertising

Except with the prior written approval of the Director, Concessionaire and Subconcessionaire shall not erect, maintain or display any signs or any advertising at or on the exterior parts of the Concession Area or in the interior of the Concession Area outside of Subconcessionaire's Locations. This prohibition specifically includes the placement of stanchion signs, floor-standing sandwich boards, or other such moveable

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signage. No handwritten signs shall be permitted. The Director may require the removal of any signs or advertising in the interior of the Location (whether or not in the interior of the space occupied by a Subconcessionaire or visible from any other portion of the Airport), which, in the City's reasonable judgment, is considered unacceptable or improper.

4.23 No Smoking Areas

The inside of the entire Airport is designated as a "No Smoking" area. Concessionaire shall post "NO SMOKING" signs in its Concession Area if requested and approved in writing by the Director.

4.24 Cash and Record Handling Requirements

Concessionaire shall prepare a description of its cash handling and sales recording systems and equipment which shall be submitted to the Director for approval. When approved by the Director, such systems and equipment, including any revisions approved by the Director, shall be utilized by the Concessionaire in its operations at the Airport.

4.25 Cash Registers

4.25.1 Concessionaire shall accurately record each sale on a point of sale register acceptable to the Director. Such register or computer system shall be non-resettable and sufficient to supply an accurate record of all sales on tape or otherwise as directed by the Director.

4.25.2 In order to provide an accurate record of concessions transactions and to provide a high level of service to the customers, all cash registers or other Point of Sale ("POS") terminal used in the Concessions must have, as a minimum, the features listed below.

a. A reasonable number of segregated category addresses to allow for the analysis of sales trends and sales by types of products.

b. The input devices may either be a keyboard, scanner, or both.

c. The patron fee display shall be of sufficient size and legibility to be readily observed by the patron during the processing of a transaction.

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d. The register or terminal device shall:

1. Record transactions by sequential control number to the audit tape or computer files.

2. Be capable of printing a transaction history to tape or file by hour (time of day), day, month and year.

3. Provide a customer receipt showing the amount due, amount tendered, and the change due to the customer together with the time and date, as well as the customer service phone number and website address for Concessionaire and/or the Subconcessionaire.

4.26 Gratuities

While Concessionaire's and Subconcessionaire's employees may accept gratuities, Concessionaire and Subconcessionaire shall not place or affix any gratuity-type containers, tip signs or "tip jars" in any part of the Concession Area or in the interior of any Concession Location.

4.27 Nondiscrimination

4.27.1 Concessionaire certifies that, in dealing with Subconcessionaires under this Agreement, it has not discriminated or given any preference to any firm based on race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin. Concessionaire shall fully comply with all Federal and State of California laws pertaining to nondiscrimination, and Chapter 4.08 of the San José Municipal Code, and shall not discriminate or grant preferential treatment on the basis of age, sex, race, religion, color, creed, disability, ethnicity, sexual orientation, actual or perceived gender identity or national origin in connection with or related to the performance of this Agreement. Concessionaire understands that any such discrimination or preference is in violation of Chapter 4.08 of the San José Municipal Code. Concessionaire shall make efforts to include participation from all segments of the community in connection with or related to the performance of this Agreement.

4.27.2 This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The Concessionaire or

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contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23.

4.27.3 The Concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

4.28 Airport Customer Service Training Program

In order to promote and maintain the highest standards of customer service and satisfaction at the Airport, the Airport will implement an Airport-wide customer service training program. This program will require that all Concessionaire and Subconcessionaire employees attend Airport orientation and customer service training classes. These classes will occur on an annual or bi-annual basis and be no more than eight (8) hours per year. Concessionaire and Subconcessionaires will be required to make their employees available, at their sole cost and expense, for such classes.

4.29 Concession Concept

4.29.1 Each Concession Location's concept shall be reconcepted annually, which means no later than one (1) year after each Concession Location opens for business ("Reconcept Date"). Concessionaire shall provide written request, subject to Director Approval, for any requests to extend the Reconcept Date.

4.29.2 On no less than thirty (30) days prior to the Reconcept Date for each Concession Location, Concessionaire shall submit to the Director for approval, a "RMU Reconcept Plan." This RMU Reconcept Plan shall :

a. Provide a list of the proposed reconcept and effective date.

b. Provide a list of proposed merchandise and product;

c. Ensure that passengers are provided with a variety of choices;

d. Identify the phasing schedule;

e. Provide proposed signage revealing the new concept or other marketing material that showcases RMU locations and/or

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merchandise at the Airport, to be displayed during the transition to reconcept or any other time when the Concession Location is vacant; and

f. Include any other information reasonably requested by the City.

The Director shall review and approve the RMU Reconcept Plan within fifteen (15) days of receipt of the RMU Reconcept Plan.

4.29.3 Subject to the provisions of **Section 22 (Alterations and Improvements)**, Concessionaire shall implement the RMU Reconcept Plan between the hours of 12:00am and 4:00am, unless otherwise approved by the Director.

4.30 Intentionally Omitted

4.31 Annual Business Fair

It is the intention of the City to ensure that all local and small businesses, vendors and artisans of the San José Bay Area are given the opportunity to be represented in the Concession Locations. Therefore, annually during the month of the MAG Commencement Date, Concessionaire shall conduct a workshop/fair for local and small businesses, vendors and artisans to present their products to Concessionaire. Concessionaire shall conduct outreach to encourage participation at an "Annual Business Fair." Concessionaire shall ensure that its senior merchandising management attends the Annual Business Fair in order to review and evaluate such products for sale in Concessionaire's RMU Concession Locations. Airport shall review and approve the Annual Business Fair plan prior to any outreach activity by the Concessionaire. Concessionaire shall be required to report back to City all action items resulting from the vendor workshops. City and Concessionaire agree and understand that information on ACDBE certification shall be provided at the Annual Business Fair.

SECTION 5 AIPORT LIVING WAGE ORDINANCE /JOBS CREATION AND REPORTING REQUIREMENT

5.1 Concessionaire acknowledges and agrees that the work performed pursuant to the Agreement is subject to all applicable provisions of the Airport Living Wage Ordinance set forth in the San José Municipal Code Chapter 25.11 Consistent with the Airport Living Wage Ordinance, Concessionaire's Labor Peace

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Assurances/Employee Work Environment Representations are attached to this Agreement and incorporated as **EXHIBIT H1**.

5.2 Jobs Creation and Reporting Requirement

5.2.1 The City is the recipient of a loan from the United States Department of Housing and Urban Development (HUD), the proceeds of which the City used to partially fund the acquisition of certain property located in the vicinity of the Airport (the "Airport West Property"). This HUD Loan is commonly referred to as a "Section 108 Loan," because these loans are administered through the HUD Section 108 Loan Guarantee Program The Section 108 Loan Guarantee Program is a source of financing allotted by HUD for the economic development activities that include benefit to low and moderate income persons. Regulations governing the Section 108 program may be found at 24 CFR §570, Subpart M, "Loan Guarantees." The City has identified the creation of new low and moderate-income jobs at the Airport as a benefit that will result from the acquisition and development of the Airport West Property.

5.2.2 Concessionaire shall make at least fifty-one percent (51%) of its jobs at the Airport available to low and moderate income persons. Concessionaire shall provide training for any of its jobs at the Airport available to low and moderate income persons that require special skills or education. Concessionaire's listing by job title of the permanent jobs to be created by Concessionaire at the Airport, indicating which jobs will be available to low and moderate income persons, which jobs require special skills or education, and which jobs are part-time, if any, (the "Jobs Listing"). The Jobs Listing is attached to this Agreement as **EXHIBIT N**.

5.2.3 Subject to the City's Employee Retention Requirements under San José Municipal Code Chapter 25.11, and as further described in the "Airport's Living Wage Regulations" (as further described http://www.flysanjose.com/living-wage), Concessionaire shall undertake the efforts set out in Concessionaire's Hiring Plan for Low and Moderate Income Jobs, which is attached to this Agreement as **EXHIBIT O,** to ensure that low and moderate income persons receive first consideration for the jobs listed by Concessionaire in the Jobs Listing.

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5.2.4 Concessionaire shall submit a Jobs Report to the City on a bi-annual basis due on January 15th and July 15th, in a form subject to the Director's approval, listing by job title the permanent jobs filled, which jobs of those were available to low and moderate income persons, and a description of how first consideration was given to such persons for those jobs. Each Jobs Report shall also include a description of the hiring process used, a listing of low and moderate income persons who were interviewed for a particular job, and a listing of the low and moderate income persons who were hired.

SECTION 6 FEES & DEPOSITS

6.1 Concession Fee

Commencing upon the Commencement Date, Concessionaire agrees to pay to City a monthly Concession Fee, as defined herein. The Concession Fee is an amount equal to the amount set forth in the Summary as the Concession Fee, for each month during the Term of this Agreement.

6.1.1 Monthly Fee.

6.1.1.1 Concession Fee Calculation.

a. From the start of operations of any RMU Concession Location until the MAG Commencement Date, Concessionaire shall pay City on a monthly basis solely an amount equal to the prorated portion of each active RMU Concession Location's share of the first year Percentage Fee of Concessionaire's Gross Revenues as follows:

First Year	2.25% of Gross Revenues
Second Year	2.25% of Gross Revenues
Third Year	2.25% of Gross Revenues
Fourth Year	2.25% of Gross Revenues
Fifth Year	2.25% of Gross Revenues

b. From the MAG Commencement Date, Concessionaire shall pay to the City on a monthly basis the Concession Fee consisting of the greater of: a) one-twelfth (1/12) of the MAG set out in **SECTION 6.1.2** below, or b) the Percentage Fee set out in subsection a above.

6.1.2 MAG Payment

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Commencing on the MAG Commencement Date, the first year MAG shall be: **FIFTY-FOUR THOUSAND DOLLARS ($54,000)**

6.1.2.1 Annual MAG Adjustment

6.1.2.1.1 The first Annual Adjustment Date for the MAG shall occur 12 months after the first day of the first full calendar month occurring after the MAG Commencement Date. Thereafter, this date shall serve as the Annual Adjustment Date. On each Annual Adjustment Date, the MAG shall be as follows:

Year 2	FIFTY-FIVE THOUSAND SIX HUNDRED TWENTY DOLLARS	$55,620
Year 3	FIFTY-SEVEN THOUSAND TWO HUNDRED EIGHTY-NINE DOLLARS	$57,289
Year 4	FIFTY-NINE THOUSAND EIGHT DOLLARS	$59,008
Year 5	SIXTY THOUSAND SEVEN HUNDRED SEVENTY-EIGHT DOLLARS	$60,778

6.1.2.2 MAG Adjustment Due to Changes in Concession Area

6.1.2.2.1 The MAG shall be adjusted if the number of Concessionaire's RMU's is increased as a result of City's acceptance of Concessionaire's proposal for additional RMU's for any new Terminal facilities that become operational during the Term of this Agreement, in accordance with **SECTION 4.7.2.** The amount of the adjusted MAG shall be in accordance with Concessionaire's proposal for such new RMU's.

6.1.2.2.2 The MAG shall be adjusted if the number of RMU's is decreased as a result of City's contraction of the Concession Area due to Airport Terminal Development, in accordance with **SECTION 4.7.1**. The MAG shall be reduced by the ratio of the number of RMU's removed. For example, if one of the nine RMU's is removed, the MAG shall be reduced by a factor of one-ninth.

6.1.2.3 MAG Abatement due to decline in Passenger Activity

6.1.2.3.1 Among other passenger related statistics, the City calculates the number of enplaned passengers at the Airport. If the number of enplaned passengers from January 1 through December 31 of any given year, as

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calculated by the Airport, falls below seventy-five percent (75%) of the number of enplaned passengers during the corresponding baseline period of January 1, 2016 through December 31, 2016 upon the next Annual MAG Adjustment Date, the MAG shall be reduced as described in this Section.

6.1.2.3.2 There shall be no reduction in the MAG pursuant to this provision unless the number of enplaned passengers decreases by more than twenty-five percent (25%) from the corresponding baseline period during the applicable year. If the MAG is reduced, the MAG reduction shall continue until the enplaned passenger levels increase to equal or exceed eighty percent (80%) of the number of enplaned passengers during the period January 1, 2016 through December 31, 2016.

6.1.2.3.3 The Airport shall calculate the number of enplaned passenger no later than sixty (60) days after the end of each applicable year during the Term of this Agreement.

6.1.2.3.4 The amount of the MAG reduction shall be determined by taking the number of enplaned passengers during the applicable year, divided by the number of enplaned passengers during January 1 through December 31, 2016. This fraction shall be multiplied by the MAG in effect immediately preceding the MAG reduction.

6.1.2.3.5 If the MAG is reduced pursuant to this Section, the City thereafter will calculate the number of enplaned passengers every year for the preceding year. On each Annual MAG Adjustment Date, the MAG shall be adjusted pursuant to the formula above.

6.1.2.3.6 Should the number of enplaned passengers thereafter increase so that the number of enplaned passengers exceeds eighty percent (80%) of enplaned passengers during January 1, 2016 through December 31, 2016, then effective on the next Annual MAG Adjustment Date, the MAG will no longer be subject to the reduction described in this Section. The MAG shall then be set pursuant to **SECTION 6.1.2.1** above.

6.1.2.3.7 Concessionaire shall not be entitled to any MAG reduction or other monetary compensation as a result of terminal evacuations ordered by

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the City or any other governmental authority.

6.1.3 MAG Payment Due Date

Beginning on the MAG Commencement Date, Concessionaire shall pay the MAG payments in advance, without notice from City, on or before the first day of each calendar month during the Term of this Agreement. Such payment shall be deemed delinquent if not received by City on or before the fifteenth (15th) day of the month. Concessionaire's obligation to pay each month's MAG shall be independent of any amounts paid in prior months.

6.1.3.1 Percentage Fee and Monthly Concession Report

6.1.3.1.1 No later than twenty (20) days after the end of each month, or portion thereof occurring after the MAG Commencement Date, Concessionaire shall deliver to the City as rent a sum of money which represents the amount by which the Percentage Fee in the preceding month exceeds the MAG and a Monthly Concession Report, in the form as attached as **EXHIBIT I**, for the preceding month's activity, even if no money is due. If fees are due for any period less than a full calendar month, Concessionaire shall deliver the amount by which the applicable Percentage Fee exceeds the prorated MAG for such period.

6.1.3.1.2 If the Percentage Fee applicable to any month does not exceed the MAG payment for any month, no additional percentage of Gross Revenues shall be due and payable for such month. The amount due and payable for such month shall be the applicable MAG. The Monthly Concession Report remains due no later than the twentieth (20th) day of each month for the preceding month's activity regardless of whether a percentage fee is due for any such month.

6.1.3.1.3 If the Monthly Concession Report is not provided on or before the twentieth (20th) day of each month as required herein, Concessionaire shall pay for administrative expenses incurred by City, a fee of Twenty-Five Dollars ($25.00) per day for each day that the Monthly Concession Report is late until such date as the Monthly Concession Report is submitted to the Director. This fee is established by City Council Resolution and may be adjusted from time to time in accordance with City Council Resolution.

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6.1.4 Annual Concession Fee Reconciliation (True Up)

An Annual Adjustment shall be made no later than sixty (60) days after the Annual Adjustment Date with respect to any underpayment or overpayment of the Concession Fee as a result of calculating the annual Percentage Fee due. If Concessionaire has overpaid the Concession Fee, City shall apply the overpayment to any monthly installment then due and payable to City.

6.1.5 Joint Marketing Fund Fee

In the event that Concessionaire elects to participate in the Joint Marketing Fund, Concessionaire shall pay City a concession marketing fee of one half of one percent (.05%) of Gross Revenues, which will be assessed monthly to be paid to the City monthly, on the twentieth (20th) of each month, beginning the month following the Concessionaire's notice of election to the Airport. Concessionaire shall deliver to the City the Joint Marketing Fund Fee in accordance with the payment schedule for payment of the Percentage Fee in **SECTION 6.1.3.1** above.

6.1.6 Payment of Rent, Fees or Charges

All rent, fees or charges required to be paid in advance on or before the first (1st) day of each month pursuant to the terms of this Agreement shall be paid on or before the first (1st) day of each month without any requirement of notice from City, deduction, credit or offset. Such fees shall be deemed delinquent if not received by City on or before the fifteenth (15th) day of the month. Any fees or charges which are payable by Concessionaire in arrears for the preceding month's activity are due and payable within thirty (30) days from the date of City's invoice. Concessionaire hereby acknowledges that late payment to City of any rent, fee, charge or other sum due hereunder will cause City to incur costs not contemplated by this Agreement, the exact amount of which will be extremely difficult to ascertain. If any such rent, fee, charge or other sum due from Concessionaire is not received by City on or before the due date, then Concessionaire shall pay to City a late payment fee equal to one and a half percent (1 1/2%) per month of the amount not paid, calculated for each day, from the due date until the date that payment is received by City. City reserves the right to require that any late payments be made only in the form to be specified by the Director, and City further reserves the right to reject any late payment that is not in a form approved by the Director. The parties

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hereby agree that such late fee represents a fair and reasonable estimate of the cost that City will incur by reason of Concessionaire's late payment. City's acceptance of such late fees shall not constitute a waiver of Concessionaire's default with respect to such overdue amount or stop City from exercising any of the other rights and remedies granted hereunder either at law or in equity.

6.1.7 Taxes and Assessments

Concessionaire shall pay, or cause the payment of, any and all other fees and charges, including, without limitation, all taxes, charges and assessments, interest payments, public agency fees and charges, insurance premiums and bond payments that are due and payable by Concessionaire under the provisions of this Agreement or under any laws.

6.1.8 Other Fees and Charges

In addition to any other fees, general charges or other amounts set forth elsewhere in this Agreement, Concessionaire shall pay any other general fees and charges as established by City when due.

6.2 Payment Location

The Concession Fee payable by Concessionaire shall be paid in lawful money of the United States, free from all credits, claims, demands, off-sets or counterclaims of any kind against City, to: City of San José – Finance, Payment Processing – Airport, 200 East Santa Clara Street, 13th Floor Tower, San José, CA 95113-1905, or to such person or at such place as City may designate from time to time in writing.

6.3 Security Deposit

6.3.1 Concessionaire shall deposit and maintain with City upon execution of this Agreement a sum equivalent to three (3) months of the current MAG. The Security Deposit shall be payable to the "City of San José" in the form of: an irrevocable standby letter of credit in substantially the same form as the sample attached to this Agreement as **EXHIBIT E**. On each Adjustment Date, Concessionaire shall adjust the Security Deposit to an amount equal to three (3) months of the then current MAG calculated as of that Adjustment Date.

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6.3.2 The Security Deposit shall be held by City and may be applied against any unpaid fees, rates or charges due and owing to City under this Agreement. If City makes such deduction, Concessionaire shall restore the Security Deposit to the full amount required by Director within thirty (30) days of a written demand by Director. A failure to do so shall entitle City to terminate this Agreement on thirty (30) days' notice. City shall not be required to keep the Security Deposit separate from its funds, and Concessionaire shall not be entitled to interest on the Security Deposit. Any amounts remaining from the Security Deposit (after deductions for delinquent or unpaid fees, costs, or charges as specified above) at the expiration or earlier termination of this Agreement shall be returned to Concessionaire, without interest, after a determination by the Director that all amounts owed to City under this Agreement have either been paid in full or have been deducted from the Security Deposit.

SECTION 7 BOOKS AND RECORDS

7.1 Audit of Books and Records

7.1.1 Concessionaire shall maintain and make available for City's inspection and/or audit at Concessionaire's address specified in the Summary, for a period of not less than four (4) years, separate and accurate daily, monthly and annual records of Gross Revenues using a form and method approved by Director, and in accordance with generally accepted accounting principles ("GAAP"), showing in detail all business done or transacted. Concessionaire shall furnish City with such other financial or statistical reports as Director from time to time may reasonably require.

7.1.2 Concessionaire shall also maintain, or cause to be maintained by Subconcessionaire, separate and accurate records of construction on Fixed Improvements and Refurbishments in the Concession Area in accordance with GAAP.

7.2 Records Available for Inspection

Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit at no cost to City at any time during regular business hours upon written request by the Director, City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided for inspection at a location designated by City when it

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is practical to do so. Unless an alternative location is mutually agreed upon, the records shall be available at Concessionaire's address indicated for receipt of notices in this Agreement.

7.3 Lost or Discarded Records

If City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Concessionaire's business, City may, by written request by any of the above-named officers, require that custody of records be given to City and that the records and documents be maintained at a location designated by the Director, City Attorney, City Auditor or City Manager. Access to such records and documents shall be granted to any party authorized by Concessionaire, its representatives or its successor-in-interest.

7.4 Underpayment by Concessionaire

If any examination, inspection, and/or audit of Concessionaire's books and records by City discloses an underpayment by Concessionaire, Concessionaire promptly shall pay City the amount of such underpayment and, if such underpayment is in excess of one percent (1%) of the fees and charges due, the Concessionaire promptly shall reimburse City for all costs incurred in the conduct of such examination, inspection or audit, including interest from the time such underpayment was due, at the rate of one and a half percent (1 1/2%) per month. Concessionaire shall furnish City with such other financial or statistical reports as Director, from time to time, may reasonably require.

7.5 Statement of Gross Receipts

No later than ninety (90) days after the Annual Adjustment Date (see **SECTION 6.1.2.1.2**), Concessionaire shall provide to the City an annual statement for the Concession Area showing, in reasonable detail, consolidated Gross Receipts and the amount of Concession Fees paid to the City for the preceding year ending June 30 (the "Annual Concession Report"). The Annual Concession Report shall be certified, at the Concessionaire's sole expense, by a Certified Public Accountant.

No later than ninety (90) days after the Annual Adjustment Date (see **SECTION 6.1.2.1.2.**), Concessionaire shall provide to the City for each Subconcessionaire a separate annual statement of Gross Receipts arising out of the operations of each Subconcessionaire for the preceding year ending June 30. Such

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statement shall be certified, at the Concessionaire's sole expense, by a Certified Public Accountant.

7.6 Preparation of Concession Reports

7.6.1 Each Monthly Concession Report (see **SECTION 6.1.3.1.1)** and Annual Concession Report shall be prepared on a cash accounting basis and certified by the chief financial officer or other principal accounting officer of Concessionaire as being true and correct in all material respects. Each Annual Concession Fee Statement shall also be certified by a Certified Public Accountant affiliated with an accounting firm selected by Concessionaire and approved by the City, with the City's approval not to be unreasonably withheld, conditioned, or delayed.

7.6.2 If the certified Monthly Concession Report or Annual Concession Report provided under this Section demonstrates a shortfall in comparison with the actual Concession Fee paid under **SECTION 6**, Concessionaire shall pay the amount of such shortfall with the next Concession Fee payment due, plus Interest calculated from the date full payment should have been received.

7.7 Delinquent Concession Reports

If Concessionaire is delinquent for fifteen (15) days or more in furnishing the City with any Annual Concession Report required to be delivered under this Agreement, Concessionaire shall pay the City Twenty-Five Dollars ($25) per day thereafter per delinquency as liquidated damages for the City's additional costs incurred in monitoring and enforcing Concessionaire's compliance with this reporting requirement..

7.8 Quality Control Reports

Concessionaire shall provide to the City quality control audits and reports covering cleanliness of the Concession Area, timeliness of service and quality of the Products. Also, Concessionaire shall furnish to the City such other financial or statistical reports as the City may reasonably require from time to time verifying compliance by Concessionaire with the terms of this Agreement.

7.9 Other Financial and Statistical Reports

No later than thirty (30) days after receipt of a request from the Director, Concessionaire shall furnish the City with such other financial or statistical reports as the Director, from time to time, may reasonably require, including but not limited to the

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purpose of determining the accuracy of the Gross Revenues, labor compliance, and FAA requirements. Unless Concessionaire has requested additional time to produce any such reports and the Director has approved any such request, a delinquent report fee in the amount of $25.00 will be assessed for each day any such additional records are not timely received by the City.

SECTION 8 INSURANCE

8.1 Required Insurance Coverage

8.1.1 Prior to commencing any work or operations under this Agreement, Concessionaire at its sole cost and expense and for the Term of this Agreement and all extensions thereof, shall obtain and maintain or shall cause to be obtained and maintained insurance against claims for injuries to persons or damages to property which may arise from or in connection with the activities of Concessionaire and its agents, employees and contractors, meeting at least the minimum insurance requirements set forth in **EXHIBIT F** on terms and conditions and in amounts as required by City from time to time and with insurers acceptable to City. City shall not be obligated to take out insurance on Concessionaire's property. Concessionaire shall provide City with certificates of insurance or copies of all policies and such endorsements as may be required by City. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager of the City of San José ("Risk Manager").

8.1.2 From time to time at the request of the Risk Manager, Concessionaire shall provide a written statement of the replacement cost of the Concession Improvements, with a copy to the Director.

8.2 Waiver of Subrogation

City and Concessionaire hereby mutually agree that so long as their respective insurance carriers concur, any fire and extended coverage insurance policies carried on properties which are the subject of this Agreement shall include a waiver of subrogation against the other party hereto, provided that such agreement applies only to subsequent loss.

SECTION 9 BAILEE DISCLAIMER

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The parties understand and agree that City in no way purports to be a bailee, and is therefore not responsible in any way for any damage to Concessionaire's property or the property of Concessionaire's contractors, agents, employees and invitees.

SECTION 10 INDEMNITY

10.1 Indemnification

Concessionaire, for and on behalf of its directors, officers, employees and agents, covenants and hereby agrees to indemnify, defend, protect and hold harmless City, its officers, employees, contractors and agents from and against any and all claims, demands, damages, obligations, liabilities, losses, costs, expenses, penalties, suits or judgments at any time received, incurred or accrued by City, its officers, agents, employees, contractors or members of the public using Airport facilities, arising out of or resulting in whole or in part from any act (or failure to act) of Concessionaire, its officers, employees, contractors, agents, permittees or invitees, or which results from their noncompliance with any Laws respecting the condition, use, occupation or safety of the Airport or the Terminals, or any part thereof, or which arises from the Concession Operations or which arises from Concessionaire's failure to do anything required under this Agreement, except as may arise from the sole active negligence or the willful misconduct of City, its officers, employees or agents. City's right to full indemnity hereunder shall arise notwithstanding that principles of joint, several or concurrent liability or comparative negligence, might otherwise impose liability on City pursuant to statutes, ordinances, regulations or other Laws. All of Concessionaire's obligations under this Section are intended to apply to the fullest extent permitted by law and shall survive the expiration or sooner termination of this Agreement. In an action or claim against City in which Concessionaire is defending City, City shall have the right to approve legal counsel providing City's defense. The provisions of **SECTION 16** regarding the Americans with Disabilities Act of 1990 ("ADA") shall not limit Concessionaire's indemnification under this provision.

10.2 Assumption of Risk

Concessionaire agrees to and covenants that it shall voluntarily assume any and all risk of loss, damage or injury to the person or property of Concessionaire, its directors,

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officers, employees, agents, and contractors which may occur in, on or about the Terminals or the Airport at any time and in any manner, except such loss, injury or damage as may be caused by the sole active negligence or the sole willful misconduct of City, its officers, employees or agents. The indemnification obligations of Concessionaire shall include the obligation of Concessionaire to defend, indemnify, protect and hold harmless City, its officers, agents or employees, from and against fines, costs, claims, damages, obligations, suits, judgments, penalties, proceedings, causes of action, losses, liabilities or costs arising under the ADA, which arise from Concessionaire's activities under this Agreement.

SECTION 11 WAIVER OF CLAIM

11.1 Concessionaire, as a material part of the consideration to be rendered to City under this Agreement, hereby waives all claims or causes of action which it may now or hereafter have against City, its officers, employees, contractors or agents for damages to its operations (including without limitation any interruption thereof), or to goods, wares, Product, equipment or other property on or about the Airport, and for injuries to or death of any persons on or about the Airport, from any cause or condition arising at any time, except as may arise from the sole active negligence or willful misconduct of City, its officers, employees or agents.

11.2 By way of example and not limitation, save and except as arises out of the sole active negligence or the willful misconduct of City, its officers, agents, contractors or employees, Concessionaire hereby waives any and all claims or causes of action which it may now or hereafter have against City, its officers, agents, contractors or employees (a) for loss, injury or damage sustained by reason of any deficiency, impairment and interruption of any water, electrical, gas, plumbing, air conditioning or sewer service or system serving any portion of the Airport; (b) for any loss, injury or damage arising or resulting from any negligent act or omission of any other tenant, subtenant, contractor, airline, concessionaire or occupant of the Airport, or any person who uses the Airport with or without the authorization or permission of City; (c) from the flight of any aircraft of any kind and all kinds in, through, across, or about any portion of the airspace above the Airport; (d) from noise, vibration, currents and other effects of air, illumination, and fuel

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consumption, or fear thereof, arising or occurring from or during the flight of any aircraft or from or during the use by aircraft of the Airport, including but not limited to, landing, storage, repair, maintenance, operation, run-up, and take-off of such aircraft and the approach and departure of aircraft to or from the Airport; and (e) for any loss or damage to the property of, or injury or damage to Concessionaire, its officers, agents, employees, contractors, Subconcessionaires or any other person whomsoever, from any cause or causes arising at any time because of Concessionaire's uses or occupancy of such building or of the Airport, or its operations thereon.

SECTION 12 SECURITY MEASURES

12.1 Concessionaire agrees to abide by all provisions of the Airport's Master Security Plan approved by the FAA and/or TSA, and agrees to institute and carry out all security measures as provided in the plan. Any violations of the security plan which result in fines to the City by the FAA and/or TSA, and which are caused by Concessionaire, its officers, agents, or employees, will be assessable to Concessionaire by City and will be deemed to be additional fees and charges payable by Concessionaire to City following invoice thereof by City to Concessionaire pursuant to **SECTION 6** of this Agreement.

12.2 Concessionaire shall be solely responsible for instituting and carrying out specific security measures in the areas where it is authorized to operate to prevent vandalism or damage to persons or property. City shall be responsible only for general security throughout the Airport and shall not be liable for any vandalism or damage to persons or property that may occur in the areas of Concessionaire's Operation.

12.3 Concessionaire understands and acknowledges that City reserves the right to implement or change security measures that may limit public access to the Airport or the Terminals. In such event, Concessionaire waives all rights against City for such limitation, and City shall not be liable to Concessionaire for any amount, including compensation, in the form of reduction of the Concession Fee.

12.4 Concessionaire recognizes that the Airport is required to comply with the security mandates of the Department of Transportation, the FAA, the TSA, the Department of Homeland Security, and with other governmental and administrative rules and regulations relating to airports. Any procedures determined by the City to be

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applicable to Concessionaire in order for the City to comply with the foregoing will be furnished to Concessionaire in writing and delivered by email and/or facsimile transmission, confirmed by mail, to Concessionaire at its notice address provided in this Agreement. Such procedures are subject to change without notice other than delivery thereof to Concessionaire, as provided in this **SECTION 12**.

12.5 Concessionaire further agrees that all or a portion of its operations hereunder may be temporarily or permanently reduced or terminated if the FAA and/or TSA requires that all or a portion of the Concession Improvements or Concessionaire's Furnishings, Trade Fixtures and Equipment must be removed from the Airport and that City may terminate this Agreement immediately to comply with the FAA's and/or TSA's directive. In such event, the Director is authorized, on behalf of City, to take all action necessary to comply with such requirement, including without limitation, terminating this Agreement.

12.6 The Concessionaire shall ensure that its employees participate in such safety, security and other training and instructional programs, as the City or appropriate Federal agencies may from time to time require.

12.7 To the extent any of Concession personnel require identification badges or security clearance for access at the Terminal, the Concessionaire is responsible at its expense for securing such badges or clearance. The Concessionaire will cause Subconcessionaires to be similarly responsible for their personnel under the Subconcession Agreement, and will monitor compliance by Subconcessionaires with required badging and security clearances and the screening of Subconcessionaires' goods, products, equipment, materials and supplies. Concessionaire will apply default remedies under Subconcession agreements as required to remedy violations or other deficiencies by Subconcessionaires.

SECTION 13 WASTE OR NUISANCE

13.1 Concessionaire shall not commit, cause, maintain, permit or suffer, or allow to be committed, caused, maintained or permitted, any legal waste upon the Concession Area, the Terminals or the Airport, or any public or private nuisance, or injury or any improper or unlawful use on the Airport or surrounding areas of the Airport, or any other

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act or thing, or omission to act, which may in any way disturb the quiet enjoyment of or obstruct or interfere with the rights of any other concessionaire, tenant, licensee, invitee or Subconcessionaire of any portion of the Concession Area, the Terminals or the Airport or any portion thereof. Concessionaire shall maintain in safe, good and clean condition all areas of the Airport where Concessionaire conducts its operations.

13.2 Without limitation of the foregoing, Concessionaire shall conduct its operations in accordance with all applicable United States Department of Transportation authorizations and Federal Aviation Administration Operating Certificates. Concessionaire shall obtain any and all permits and licenses required by City or other governmental entity as are necessary to conduct the activities authorized under this Agreement.

SECTION 14 SERVICES AND UTILITIES

14.1 City's Obligation

Concessionaire has inspected and accepts the utility hookups in the Concession Area. Unless and except to the extent otherwise specifically provided by other provisions of this Agreement, Concessionaire shall secure any electrical, gas, water, sewer and telephone services to the Concession Area utilized by the Concessionaire as it may require, upon prior approval of Director. Any additional utility connections beyond those in the Concession Area at the time of Concessionaire's inspection are Concessionaire's responsibility. Installation of such additional utility connections shall be at Concessionaire's sole cost and expense and are subject to the provisions of **SECTION 22** regarding Concession Improvements. Any utilities provided by City shall be paid by Concessionaire on a pro-rated basis as established by City. The location, relocation and coordination of all utilities and telephone facilities to service the Concessionaire Area shall be subject to the prior written approval of the Director. Concessionaire shall, upon request by the Director, cap off all utility connections installed by Concessionaire and restore the affected areas to their original condition upon expiration or earlier termination of this Agreement. Notwithstanding the foregoing, the pro-rata payment provisions of this paragraph shall not apply in the event Concessionaire directly pays utility providers for utility services.

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14.2 Concessionaire's Obligation

During the Term, Concessionaire shall pay or cause to be paid at its sole cost and expense to City, within thirty (30) days after Concessionaire receives an invoice therefor, and protect, defend, indemnify and hold harmless City and the property of City, including the Concession Area, the Terminals and the Airport, from and against any charge for the installation, connection, maintenance and furnishing of all necessary utility services to the Concession Area which are not expressly supplied by City. Concessionaire shall be required to provide at its sole cost and expense for the provision of service distribution lines or connections, or installation thereof for utility service, as may be required to serve the Concession Operations. Concessionaire shall comply with all City, county, state or federal government-mandated energy conservation programs in fulfilling its obligations hereunder.

14.2.1 Concessionaire agrees that it shall take reasonable steps and any such other action which it deems necessary to protect Concessionaire's Furnishings, Trade Fixtures and Equipment from any damage that may be caused to such equipment in the event of any deficiency, impairment and/or interruption of utility services. As more fully set forth in **SECTION 11**, Concessionaire waives any and all claims and/or causes of action against City for any such damages.

14.2.2 Concessionaire shall use the Airport's data/telecommunications network for Concessionaire's transfer of data, voice or video at the Airport pursuant to the terms of a separate agreement with City. City shall not be responsible for ensuring the security of Concessionaire's confidential and/or personal data transferred through the Airport's data/telecommunications network associated with Concessionaire's credit card processing or payment systems. Concessionaire shall be solely responsible for employing and installing measures to secure transfer of confidential and/or personal data associated with Concessionaire's credit card processing/payment systems, as Concessionaire deems appropriate.

SECTION 15 MAINTENANCE AND REPAIRS

15.1 Limitation on City's Liability

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Except as otherwise provided or permitted by Law, City shall not be liable for, and Concessionaire waives all claims or causes of action for, any injury or damage resulting in whole or in part, directly or indirectly, from, nor shall the Concession Fee or any other fee or charge reserved herein be abated by reason of, the installation of any City equipment, or the use or interruption of use of the Concession Operations in connection with the furnishing of any of the services to the Concession Area and/or the Terminals, or by the making of necessary repairs or improvements to the Concession Area and/or the Terminals.

15.2 Concessionaire's Obligations

15.2.1 During the Term of this Agreement, Concessionaire shall keep, at its sole cost and expense, the Concession Improvements and the Concessionaire's Furnishings, Trade Fixtures and Equipment, and every part thereof, in good and clean condition, perform all custodial services, make all necessary repairs, and make all repairs or modifications required by Law.

15.2.2 Concessionaire shall, at its cost and expense, keep or cause its Subconcessionaires to keep the Concessionaire Locations clean, neat, orderly, sanitary and presentable at all times.

15.2.3 Concessionaire shall be subject to Liquidated Damages as provided in **SECTION 24.3** for non-compliance with the above provisions.

15.2.4 Concessionaire shall maintain and repair or cause to be maintained and repaired the interiors and exterior storefronts of the Concession Locations, including but not limited to the ceiling, walls, floors, doors, windows, equipment, furnishings, fixtures and appurtenances. Such maintenance and repairs shall include, but not be limited to, painting, laminating doors, replacement of light fixtures (including bulbs, tubes, ballasts, transformers and diffusers), and the replacement of all broken glass, which repairs shall be in quality and class equal to or better than the original work to preserve the same in good order and condition. Maintenance for all equipment furnished by Concessionaire or its Subconcessionaires for their operation shall remain the obligation of the Concessionaire or its Subconcessionaires. Concessionaire shall repair or cause to be repaired, at or before the end of the Term or Extension, if applicable, of this Agreement, all injury or damage done by the installation or removal of furniture and personal property

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so as to restore the Concession Locations to the state they were in at the commencement of this Agreement, reasonable wear and tear excluded. When used in this Agreement, the Term "maintenance" shall include all repairs, alteration, maintenance and/or removals deemed necessary by Director.

15.2.5 The Director shall be the sole judge of the quality of the repairs or maintenance or custodial services required of Concessionaire under this Agreement. City's employees and agents may enter upon the Concession Area to determine if maintenance satisfactory to Director is being performed. If Concessionaire fails to perform the maintenance or the maintenance is not being performed in a manner satisfactory to Director, Director will notify Concessionaire in writing. If the maintenance is not so performed by Concessionaire within fifteen (15) calendar days after receipt of written notice, City shall have the right (but not the obligation) to enter upon the Concession Area and perform the necessary maintenance and, upon receipt of the notice of maintenance cost, Concessionaire agrees to promptly reimburse City for the maintenance cost incurred, plus an additional amount equal to ten percent (10%) thereof for administrative overhead. The demand for any payment by City shall be prima facie evidence that the expense incurred was necessary and reasonable and that such expense was incurred by City on behalf of Concessionaire.

15.2.6 Concessionaire shall arrange at Concessionaire's sole cost and expense for the adequate sanitary and safe handling of all trash and other refuse resulting from Concessionaire's operations. Concessionaire shall provide and use suitable covered fireproof receptacles for all trash and other refuse generated in connection with the Concession Operations in locations specified by Director. Piling of refuse or other similar items in view of a public area is prohibited. Concessionaire shall participate in or comply with City's recycling program(s), as requested by Director.

SECTION 16 AMERICANS WITH DISABILITIES ACT

16.1 Concessionaire shall be solely and fully responsible for complying with the Americans with Disabilities Act of 1990 ("ADA") in connection with: (a) the Concession Area or any portion thereof and its operations thereon, the Concessionaire's Furnishings, Trade Fixtures and Equipment and the Concession Improvements; (b) removing physical

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barriers from the Concession Area; (c) providing auxiliary aids and services for use of the Concession Improvements and Concessionaire's Furnishings, Trade Fixtures and Equipment, where necessary or required; and (d) modifying its policies, practices, and procedures to comply with the ADA. Concessionaire shall develop a work plan to correct or avoid any violations or non-compliance with the ADA. Concessionaire shall deliver to the City, upon City's request, a copy of each report and work plan. City's approval of or acceptance of any aspect of Concessionaire's activities under this Agreement shall not be deemed or construed in any way as a representation that such item, activity or practice complies with the ADA. Concessionaire agrees to indemnify, defend, and hold the City harmless from and against any and all costs incurred by City with respect to Concessionaire's failure to comply with the ADA.

16.2 Nothing herein shall relieve Concessionaire from the obligation to seek and obtain City's consent prior to commencing any construction, alteration or renovation pursuant to **SECTION 22** hereof.

SECTION 17 TAXES AND ASSESSMENTS

17.1 Payment by Concessionaire

Concessionaire shall pay before delinquency and without notice or demand, any and all taxes (including, without limitation, any gross receipts income tax or excise tax), assessments, licenses, fees, possessory interest taxes, other public charges or penalties which may be levied, imposed or assessed against any of Concessionaire's leasehold interest, upon Concessionaire's equipment, business, operation, Gross Revenue or upon Concessionaire for the privilege of conducting business within the Concession Area, or upon any other property of Concessionaire within the Airport. Any such payment made under this Section shall not reduce the amount of the Concession Fee or any other fee that is required to be paid by Concessionaire to City under the provisions of this Agreement.

17.2 Possessory Interest Subject to Taxation

Concessionaire recognizes and understands that this Agreement is not intended to, but may create a real property possessory interest in the Concession Area, and that such interest may give rise to a real estate or possessory interest tax. In that

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event, Concessionaire agrees to pay such tax if and when it is due without any credit or offset to the Concession Fee or such other Concession Fees, rentals, or charges that are due and payable to City hereunder. City shall have no obligation to pay any possessory interest tax.

17.3 No Liens or Encumbrances

Concessionaire shall not permit or suffer any liens or encumbrances to be imposed upon the Concession Area, the Airport, or any building or structure thereon as a result of its activities without promptly discharging the same; provided, however, that Concessionaire may, if it so desires, contest the legality of same following prior written notice to City. In the event of a contest, Concessionaire shall provide a bond in an amount and in a form reasonably acceptable to City immediately following request therefor by City.

17.4 Tax -- Hold Harmless

Concessionaire shall protect, defend, indemnify and hold City, including the Airport, and any improvements now or hereafter in the Concession Area, free and harmless from any liability, loss, or damage resulting from any taxes, assessments or other charges required by this Agreement to be paid by Concessionaire and from all interests, penalties and other sums imposed thereon and from any proceedings to enforce collection of any such taxes, assessments or other charges.

17.5 Payment by City

If Concessionaire fails to pay any tax or charge required by this Section to be paid by Concessionaire, City may, but is not obligated to, on thirty (30) days prior written notice to Concessionaire, pay, discharge or adjust such tax or charge for Concessionaire's benefit. In such event, Concessionaire, on receipt of written demand of City, shall reimburse City promptly for the full amount paid by City in paying, discharging, or adjusting such tax or charge together with interest thereon from its due date at the maximum interest rate then allowed by law until paid, plus pay any penalties.

17.6 Contest of Tax or Charge

17.6.1 Notice of Contest

In the event that Concessionaire desires, in good faith, to contest or review by appropriate legal or administrative proceedings any tax or charge specified

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hereunder, Concessionaire, at least ten (10) days prior to the delinquency of any such tax or charge or within the applicable period of time allowed by law, shall give City written notice of its intention to contest such tax or charge.

17.6.2 Procedure for Contest

Concessionaire may withhold payment of the tax or charge being contested if, but only if, nonpayment is permitted during the pendency of such proceedings without the foreclosure of any tax lien or the imposition of any fine or penalty. The contest shall be prosecuted to completion (whether or not this Agreement has expired or terminated) without delay at Concessionaire's sole cost and expense.

17.6.3 Payment upon Final Determination

Within the applicable period of time allowed by law after the final determination of the amount of tax due, Concessionaire shall pay the amount determined to be due, together with all costs, expenses and interest (whether or not this Agreement has then expired or terminated).

17.6.4 Failure to Pay Constitutes Event of Default

The failure to pay any tax or charge hereunder shall constitute an Event of Default, and the obligation to pay the same shall survive the termination of this Agreement.

SECTION 18 ASSIGNMENT

18.1 No Encumbrance

Concessionaire shall not mortgage, pledge, encumber, or otherwise hypothecate this Agreement, the Concession Operations or any interest of Concessionaire therein, voluntarily or involuntarily, or by operation of law.

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18.2 Prohibition on Assignments, Transfers or Sublease

18.2.1 Concessionaire shall not assign, sublease, transfer or convey the rights of Concessionaire under this Agreement, the Concession Improvements, Concessionaire's Furnishings, Trade Fixtures and Equipment or the Concession Operations without the prior written consent of City, which City will not unreasonably withhold.

18.2.2 A transfer within the meaning of this Section shall include, but is not limited to, the following: the incorporation of an individual Concessionaire and the transfer of Concessionaire's rights hereunder to the corporation which is not wholly owned by Concessionaire; in the event that Concessionaire is a partnership, incorporation of Concessionaire and transfer of Concessionaire's rights hereunder to the corporation, or the withdrawal or addition of any partner to Concessionaire's partnership; in the event that Concessionaire consists of co-Concessionaires, the incorporation of Concessionaire and transfer of its rights hereunder to the corporation, or the voluntary or involuntary transfer by any one or more co-Concessionaires of his, her or its rights hereunder to his, her or its co-Concessionaire or to a third person; in the event that Concessionaire is a corporation, the change in the ownership of fifty percent (50%) or more of the capital stock of Concessionaire; and, in the event that Concessionaire is an unincorporated association, the incorporation of Concessionaire and the transfer of its rights hereunder to the corporation, or the change in fifty percent (50%) or more of the membership of the association.

18.2.3 Reasonable grounds for denying consent shall include any of the following: (i) the proposed transferee's intended use of the premises is not for an aviation-related purpose or will materially and adversely affect the City's interests at the Airport; (ii) The proposed transferee's financial condition is or may be inadequate to support its obligations under the lease; or (iii) The proposed transferee has failed to meet any legal or contractual obligations to the City or is adverse to the City in any pending litigation; (iv) The proposed transferee has failed to meet the minimum qualifications set forth in City's RMU Concession Program Request For Proposal SJC161728.

18.2.4 In addition, City's consent to any proposed transfer under this Agreement may be conditioned upon, among other things, the express written

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assumption by the proposed transferee of Concessionaire's obligations under this Agreement and/or performance of required or necessary repairs or maintenance to the Concession Area.

18.2.5 City may require payment by Concessionaire of any processing fee established by City pursuant to a resolution or ordinance for reviewing the proposed transfer and for preparing any documents in connection therewith. Concessionaire's failure to provide City with full, complete and necessary information, or to pay the processing fee, shall be sufficient cause for City to deny consent to, or to refuse to review, the proposed transfer.

18.2.6 The consent of City to any transfer described in this Section shall not relieve Concessionaire of its obligation to obtain the further consent of City for any subsequent transfer. Any attempt to transfer without the consent of City shall be void, and shall constitute an Event of Default under this Agreement.

SECTION 19 GRANT AGREEMENT COVENANTS

19.1 Concessionaire acknowledges that City is subject to Federal Grant Agreement obligations as a condition precedent to the grant and receipt of federal funds for improvements to the Airport, and, accordingly, Concessionaire, for and on behalf of its representatives, successors and assigns, as part of the consideration hereof, covenants and agrees to be bound by the following covenants provided by the Federal Aviation Administration, as they may apply to Concessionaire:

19.2 Concessionaire for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on any areas occupied or utilized by Concessionaire and described in this Agreement for a purpose for which a Department of Transportation (DOT) program or activity is extended or for another purpose involving the provision of similar services or benefits, Concessionaire shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations (CFR), DOT, Subtitle A, Office of the Secretary, Part 21 Nondiscrimination in Federally Assisted

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Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

19.3 Concessionaire for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the facilities; (2) that in the construction of any improvements on, over, or under any areas occupied by Concessionaire and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and (3) that Concessionaire shall use any areas occupied by Concessionaire in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as the Regulations may be amended.

19.4 That in the event of breach of any of the above nondiscrimination covenants, City shall have the right to terminate this Agreement and to reenter and repossess any areas occupied or utilized by Concessionaire and the facilities thereon, and hold the same as if said Agreement had never been made or issued. This provision does not become effective until the procedures of 49 CFR Part 21 are followed and completed including expiration of appeal rights.

19.5 Concessionaire 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; provided that Concessionaire may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers.

19.6 Without limiting the generality of any other terms or provisions of this Agreement, non-compliance with **SECTION 19.5,** above, shall constitute a material breach thereof, and in the event of such non-compliance, City shall have the right to terminate this Agreement without liability therefor or, at the election of the City or the

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United States, either or both the Governments shall have the right to judicially enforce **SECTION 19.2, 19.3, 19.4** and **19.5** above.

19.7 Concessionaire agrees that it shall insert the above five (5) provisions of this Section in any agreement by which Concessionaire grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public in the Concession Area herein authorized.

19.8 Concessionaire assures that it will comply with pertinent statutes, executive orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from federal assistance. This **SECTION 19.8** obligates Concessionaire or its transferee for the period during which federal assistance is extended to the Airport, except where federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, this **SECTION 19.8** obligates Concessionaire or any transferee for the longer of the following periods: (a) the period during which the property is used by City or any transferee for a purpose for which federal assistance is extended, or for any purpose involving the provision of similar services or benefits; or (b) the period during which City or any transferee retains ownership or possession of the property. In the case of contractors, this **SECTION 19.8** binds the contractors from the bid solicitation period through the completion of the contract.

19.9 City reserves the right to further develop or improve the landing area of the Airport as it sees fit, regardless of the desires or view of Concessionaire, and without interference or hindrance.

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

19.11 This Agreement shall be subordinate to the provisions and requirements of any existing or future Agreement between City and the United States, relative to the development, operation or maintenance of the Airport.

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19.12 There is hereby reserved to City, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Airport. This public right of flight shall include the right to cause in the airspace any noise inherent in the operation of any aircraft used for navigation or flight through the airspace or landing at, taking off from, or operation on the Airport.

19.13 Concessionaire agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building is planned for the Airport, or in the event of any planned modification or alteration of any present or future building or structure situated at the Airport.

19.14 Concessionaire, by accepting this Agreement 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 any areas occupied or utilized by Concessionaire to a height above the mean sea level that would exceed FAR Part 77 standards or elevations affecting the Airport navigable airspace. In the event the aforesaid covenants are breached, City reserves the right to enter upon any area utilized by Concessionaire and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of Concessionaire.

19.15 Concessionaire, by accepting this Agreement, agrees for itself, its successors and assigns that it will not make use of the Airport in any manner which might interfere with the landing and taking off of aircraft from the Norman Y. Mineta San Jose International Airport or otherwise constitute a hazard. In the event this covenant is breached, City reserves the right to enter upon any areas used or occupied by Concessionaire and cause the abatement of such interference at the expense of Concessionaire.

19.16 It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308(a) of the Federal Aviation Act of 1958 (49 U.S.C. Section 1349[a]).

19.17 This Agreement and its provisions shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the

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control, operation, regulation and taking over of Airport or the exclusive or non-exclusive use of Airport by the United States during the time of war or national emergency.

SECTION 20 MODIFICATIONS FOR GRANTING FAA FUNDS

In the event that the Federal Aviation Administration requires, as a condition precedent to granting of funds for the improvement of the Airport, modifications or changes to this Agreement, Concessionaire agrees to consent in writing upon the request of City to such amendments, modifications, revisions, supplements or deletions of any of the terms, conditions or requirements of this Agreement as may be reasonably required to enable City to obtain FAA funds, provided that in no event shall such changes materially impair the rights of Concessionaire hereunder. A failure by Concessionaire to so consent shall constitute a breach of this Agreement.

20.1 ACDBE Participation Reporting Requirement

Concessionaire shall report the level of Airport Concession Disadvantaged Business Enterprise ("ACDBE") Program participation in the Concession as required pursuant to the City's ACDBE requirements, which are set out in **EXHIBIT K** to this Agreement.

SECTION 21 PROHIBITION ON GIFTS

21.1 Concessionaire is familiar with City's prohibition against the acceptance of any gift by a City officer or designated employee, which prohibition is found in Chapter 12.08 of the San José Municipal Code.

21.2 Concessionaire agrees not to offer any City officer or designated employee any gift prohibited by said Chapter.

21.3 The offer or giving of any gift prohibited by San José Municipal Code Chapter 12.08 shall constitute a material breach of this Agreement by Concessionaire. In addition to any other remedies City may have in law or equity, City may terminate this Agreement for breach as provided in **SECTION 24** of this Agreement.

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SECTION 22 ALTERATIONS AND IMPROVEMENTS

22.1 Intentionally Omitted

22.2 Concessionaire's Improvements

22.2.1 Concessionaire agrees to install the Concession Improvements and Concessionaire's Furnishings, Trade Fixtures and Equipment at its sole cost and expense without any reimbursement from City in accordance with the provisions of the Agreement.

22.2.2 Concessionaire shall be solely responsible for the proper installation of the Concession Improvements and Concessionaire's Furnishings, Trade Fixtures and Equipment, and shall be liable for any damage or loss to any portion of the Terminals which results from the installation or use of the Concession Improvements or any work related thereto.

22.2.3 Concessionaire shall serve as the project manager and will provide the management, administration and coordination of all design and construction associated with the maintenance, repair and/or subleasing of the Concession Area. This will include, without limitation, all fixed improvements and/or refurbishments to be constructed in the Concession Area, whether initial construction and alterations associated with any expansion, redevelopment or refurbishment of the Concession Area or future construction and alterations, including cleaning and maintenance of external design elements installed as directed within the Tenant Design and Construction Guidelines (see http://www.sjc.org/about/tenants.html).

22.2.4 Concessionaire shall be responsible for the supervision and coordination, subject to the prior written approval of the City, of the design of all Concession Improvements, including, without limitation, the design of storefronts and the specifications of equipment. Concessionaire shall ensure that all required permits are obtained prior to the commencement of any work or proposed modifications to the Concession Areas.

22.3 Schedule

22.3.1 No later than thirty (30) days after the Effective Date, Concessionaire shall deliver to City an overall construction program for the Concession Improvements, including a time schedule for the same, which shall be subject to approval by the Director. Such schedule shall, at a minimum, include the following

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milestones for each Concession Area site: (1) construction time plan, which provides for continuous service at the Airport; (2) submission of plans and specifications to City; (3) approval of plans by all required authorities; (4) contractor's bid; (5) construction; and (6) completion date.

22.3.2 Concessionaire, along with Concessionaire's architect/engineer, and others as necessary, shall attend meetings as required by the City, with City representatives for the purposes of review of plans and designs. Such meetings will discontinue upon approval of all Concession Locations.

22.4 Approval of Plans and Specifications

22.4.1 Concessionaire shall be required to follow the Retail Concession Design Guidelines, and CADD standards for all initial alterations or improvements. Submittals must meet all requirements before the Director shall issue a written approval. The Airport's Retail Concession Design Guidelines are available at: http://www.flysanjose.com/sites/default/files/tenant_guidelines/Concession_Guidelines.pdf

22.4.2 Concessionaire shall be required to follow the Airport's Tenant Design and Construction Guidelines and CADD standards (see http://www.sjc.org/about/tenants.html) for all future alterations or improvements, including but not limited to RMU Concession Location reconcepting. Submittals must meet all requirements before the Director issues a written approval.

22.4.3 Concessionaire shall not construct any Concession Improvements or make any subsequent alterations or additions to the Concession Improvements, without the prior written approval of the Director. The Director's approval shall be in the form of a Notice to Proceed ("NTP"). Full and complete plans and specifications for all work, facilities and Concession Improvements, and the time required to complete same, shall be submitted to, and must receive the written approval of Director before work or construction is commenced. First-class standards of design and construction will be required in connection with all such work, facilities and improvements. All construction must conform to the plans and specifications as approved by Director and the established architectural design scheme for the Airport.

22.4.4 Concessionaire may enter the Concession Area to conduct pre-

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construction planning and preparation work that does not interfere with the Airport operations. Concessionaire must be escorted by proper Airport security or by designated Airport personnel.

22.4.5 Original CADD files, eight (8) hard copies and one (1) soft copy in PDF format of plans for all improvements or subsequent changes or alterations shall be given to Director for review prior to commencement of construction. Submittals must meet all requirements before the Director issues a written approval. Director, after giving his final approval, shall return to Concessionaire one (1) approved copy for its records.

22.4.6 Upon completion of all work, Concessionaire shall provide to Director accurate drawings that reflect the "as-built" conditions, if applicable or as required by the Director. Final submittal shall include the original CADD files, two (2) hard copies and one (1) soft copy in PDF format of plans. All final submittals must meet all Airport requirements. Concessionaire agrees that, upon the request of Director, Concessionaire will inspect the Concession Area jointly with Director to verify the "as-built" drawings. Concessionaire further agrees that all discrepancies will be corrected and Concessionaire shall resubmit the entire final submittal.

22.5 Minimum Capital Improvement Expenditure

22.5.1 Concessionaire shall invest a minimum of THIRTY FIVE THOUSAND DOLLARS ($35,000) for each of the nine (9) RMU Concession Locations for a minimum total of THREE HUNDRED FIFTEEN THOUSAND DOLLARS ($315,000) for all the RMU Concession Locations in the development of concessions. The minimum capital investment rate was calculated based on Concessionaire's Proposal (**EXHIBIT P)** less any contingency provided in Concessionaire's Proposal and working capital that was part of the original proposed capital investment.

22.5.2 There is no maximum limit to the level of investment permitted of the Concessionaire.

22.5.3 The Minimum Capital Improvement Expenditure shall be expended on the Concession Improvements constructed by Concessionaire. If the stated minimum is not expended, Concessionaire shall pay to City an amount equal to the difference, if any, between the Minimum Capital Improvement Expenditure and its actual

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investment within ninety (90) days after opening of the Location for which the expenditure was required.

22.6 Intentionally Omitted

22.7 Allowable Improvement Costs

The following Concession Improvement Costs (collectively referred to as "Concessionaire's Allowable Improvement Costs") may be counted toward Concessionaire's Minimum Capital Improvement Expenditures.

22.7.1 Costs incurred by Concessionaire for: improvements; furnishings; fixtures (both removable and non-removable); interior walls and doors; plumbing, electrical and mechanical improvements; lighting; wall finishes; ceiling finishes; flooring; removable and non-removable counters; and removable and non-removable equipment that is necessary to the operation of the Concession Area.

22.7.2 Design and engineering costs not to exceed ten percent (10%) of the total approved cost of Concessionaire's Improvements as defined above.

22.7.3 City's Planning, Building and Code Enforcement Department fees (as provided in **SECTION 22.10.2**).

22.7.4 Costs and expenses which are payable by Concessionaire for City engineering and inspection fees ("E&I Fees").

22.7.5 Directly contracted construction costs.

22.8 Unallowable Improvement Costs

The following capital improvement costs shall ***not*** be counted as part of Concessionaire's Minimum Concession Improvement Expenditure:

22.8.1 Concessionaire's costs for internal design, review, management and oversight of Concession Area construction.

22.8.2 Concessionaire's licensing or franchising costs.

22.8.3 Any other future renovation and remodeling of Concession Improvements which Concessionaire, at its option, elects to make during the Term.

22.9 City's Rights

22.9.1 City shall have the right to renovate or remodel any portion of the Airport Terminal which is contiguous with the perimeter of the Concession Area. The provisions of **SECTION 4.7** shall govern any relocation of Concessionaire's operation due

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to City's renovation or remodeling of the Terminal. If possible, City shall exercise such right with a minimum amount of inconvenience to Concessionaire, and Concessionaire shall not be entitled to any payment or credit from City if City exercised such right in accordance with this Section.

22.9.2 If Concessionaire is required to temporarily cease operations in any Concession Location pursuant to the provisions of **SECTION 4.7** to enable City to perform and complete the intended renovation or remodeling, City agrees to pay for or reimburse Concessionaire for any reasonable costs incurred by Concessionaire in accordance with the provisions of **SECTION 4.7**. Such right of reimbursement shall not exist in the event that Concessionaire initiated the relocation of its Concession Operations.

22.10 Contracting Requirements and Approvals.

22.10.1 All Concession Improvements, Concessionaire's Furnishings, Trade Fixtures and Equipment, including the plans and specifications therefor, constructed or installed by Concessionaire, its agents or contractors shall conform in all respects to the most current and applicable statutes, ordinances, building codes and rules and regulations adopted by the City of San José.

22.10.2 Concessionaire shall obtain at its sole cost and expense all governmental reviews and approvals (including any approvals of the Director or any other City official), licenses and permits which are, or may be, required and are necessary to install the Concession Improvements and/or Concessionaire's Furnishings, Trade Fixtures and Equipment and to operate the Concession Operations, including, but not limited to, all plans and specification approvals, site development reviews, development permits and building permits. The costs and expenses which are payable by Concessionaire to secure these reviews and approvals may include City Planning, Building and Code Enforcement Department fees. Concessionaire shall comply with all conditions, restrictions or contingencies imposed upon, or attached to, the governmental approvals, licenses and permits described herein.

22.10.3 For any Concession Improvement construction work in excess of One Thousand Dollars ($1,000), Concessionaire shall require each contractor or subcontractor to pay Prevailing Wages as stipulated in the City's Prevailing and Living

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Wage Policies. A copy of the City's Prevailing and Living Wage Policy is available at http://www.sanjoseca.gov/index.aspx?NID=768.

22.10.4 Prior to contracting with a third party for the construction of the Concession Improvements, Concessionaire shall notify the City of San José's Office of Equality Assurance and provide a detailed scope of work to be performed. The City of San José's Office of Equality Assurance will issue a Classification Determination for the work to be performed.

22.10.5 All work shall be performed only by competent contractors who have proven, to the satisfaction of the Director, as: (1) having satisfactory experience in construction at an airport, or more specifically at Mineta San José International Airport, of a construction project equal to or greater than the construction project contemplated by this Agreement; and (2) being duly licensed under the laws of the State of California. All such work shall be performed pursuant to written contracts with such contractors.

22.10.6 The Director's approval shall ***not*** be deemed to include the approval of any other City department or governmental or public entity which Concessionaire may be required to obtain.

22.10.7 Since the Concession Area is located on the secure side (sterile area) of the Terminals A and B, Concessionaire shall, at Concessionaire's sole cost and expense, provide an Airport-approved security guard at the construction site during construction as required by the Airport.

22.10.8 All work including installation and reconcepting shall be performed between the hours of 12:00am to 4:00am, Concessionaire shall obtain Director's prior approval, for all work outside of the hours stated in Section 22.10.8.

22.11 Removal

22.11.1 During the Term, Concessionaire shall not remove the Concession Improvements and/or Concessionaire's Furnishings, Trade Fixtures and Equipment, in whole or in part, without the Director's prior written consent. The Director may exercise his absolute discretion and condition such consent upon the obligation of Concessionaire to replace the same with other improvements or equipment specified in such consent.

22.11.2 Upon installation, the Concessionaire's Furnishings, Trade Fixtures and Equipment shall remain the property of Concessionaire and shall be

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removed from the Airport upon termination or expiration of this Agreement unless Concessionaire obtains Director's written consent to leave Concessionaire's Furnishings, Trade Fixtures, and Equipment. Concessionaire shall ascertain from the Director, at least three (3) months prior to the Expiration Date, or as soon as possible if this Agreement is terminated earlier, whether City will require Concessionaire to remove any Concession Improvements or, if Concessionaire desires to leave Concessionaire's Furnishings, Trade Fixtures and Equipment at the Airport, whether the City will accept such Concessionaire's Furnishings, Trade Fixtures and Equipment. If the Director determines that any or all Concession Improvements shall be removed, Concessionaire shall, by no later than thirty (30) days prior to the Expiration Date, or as soon as possible if this Agreement is terminated earlier, provide a plan to the Director, which plan shall include a timeline for removal of the Concession Improvements.

22.11.3 Any Concession Improvements or Concessionaire's Furnishings, Trade Fixtures and Equipment left by Concessionaire at the Airport shall be free and clear of any liens, and Concessionaire shall execute documents conveying title to City, at City's request.

22.11.4 Removal of Concession Improvements and Concessionaire's Furnishings, Trade Fixtures and Equipment shall be at Concessionaire's sole cost and expense. In the event of an early termination of this Agreement by City for cause, the Director shall give notice of removal of Concession Improvements, if removal is required by City. Removal shall occur within thirty (30) days following Concessionaire's receipt of such notice, but in no event later than the Expiration Date or the date of earlier termination of this Agreement.

22.11.5 In the event Concessionaire fails to remove, or expresses an intention not to remove, any Concession Improvements and/or Concessionaire's Furnishings, Trade Fixtures and Equipment required by the Director to be removed pursuant to this Section, City may enter upon the Concession Area and remove such Concession Improvements and/or Concessionaire's Furnishings, Trade Fixtures and Equipment at the sole cost and expense of Concessionaire. Concessionaire agrees to promptly reimburse City for all costs and expenses of removal, plus ten percent (10%) thereof for administrative overhead, or such percentage as approved and established

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from time to time by the City Council. The obligation to reimburse City for such expenditures shall survive the termination of this Agreement. Any receipt showing payment by City of expenditures associated with the removal of Concession Improvements and/or Concessionaire's Furnishings, Trade Fixtures and Equipment shall be prima facie evidence that the amount of such payment was necessary and reasonable and made by City on Concessionaire's behalf.

22.11.6 Concessionaire shall repair at its sole cost and expense any and all damage to the Concession Area, the Terminals or any part of the Airport occasioned by the removal of the Concession Improvements and/or Concessionaire's Furnishings, Trade Fixtures and Equipment, or Concessionaire's property from the Concession Area or any other area of the Airport. City may also require Concessionaire to remove any and all special equipment and any installations that are unique to Concessionaire, and Concessionaire shall comply with such requirement.

22.12 Liens.

Concessionaire shall keep the Concession Area, the Terminals and the Airport free of any liens arising out of the work performed, materials furnished or obligations incurred by Concessionaire in the performance of installation of Concession Improvements or Concessionaire's Furnishings, Trade Fixtures and Equipment. Concessionaire shall notify City at least ten (10) days prior to the commencement of any work to be performed or materials to be furnished on the Concession Area which could give rise to any such lien. City shall have the right to post and keep on the Concession Area any notices that may be required by law or which City may deem proper for the protection of City, the Terminals or the Concession Area from such liens.

22.13 Payment Bond.

Prior to the commencement of any construction, betterment, improvement, alteration, addition, repair, demolition or reconstruction of the Concession Improvements or the Concession Area by Concessionaire or its contractor(s), Concessionaire or its contractor(s) shall furnish to City, and without expense to City, a payment bond pursuant to California Civil Code Sections 3247, 3248 et. seq. Such bond shall name Concessionaire or Concessionaire's contractor(s) as principals and the City as obligee. Concessionaire shall provide a payment bond equal to one hundred percent (100%) of

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the total amount of the contract or contracts for the construction, alteration, demolition or repair of the improvements and facilities. The bond shall guarantee the prompt payment to all persons named in California Civil Code Section 3181, amounts due under the Unemployment Insurance Code and amounts required to be deducted, withheld or paid over to the Employment Development Department from the wage of employees of the contractor and subcontractors pursuant to Section 13020 of the Unemployment Insurance Code, and reasonable attorneys' fees. Prior to commencement of any work requiring a bond, the bond must be approved by the City Attorney and filed with the City Clerk. Immediately upon completion of any work or improvements, Concessionaire shall record in the office of the Santa Clara County Recorder a notice of completion complying with the requirement of California Civil Code Section 3093.

SECTION 23 DEFAULT BY CONCESSIONAIRE

In addition to the other defaults specified in this Agreement, the Director may determine in the Director's sole discretion that Concessionaire is in default under this Agreement if:

23.1 Concessionaire fails duly and punctually to pay the Concession Fee, or to make any other payment required hereunder, when due to City; or

23.2 Concessionaire fails to maintain any insurance required under **SECTION 8**; or

23.3 A court makes or enters any decree or order: (i) adjudging Concessionaire to be bankrupt or insolvent; (ii) approving as properly filed a petition seeking reorganization of Concessionaire under the bankruptcy laws or any other applicable debtor's relief law or statute of the United States or any state thereof; (iii) appointing a receiver, trustee or assignee of Concessionaire in bankruptcy or insolvency or for its property; (iv) directing the winding up or liquidation of Concessionaire and such decree or order has continued for a period of thirty (30) days; or (v) Concessionaire voluntarily submits to or filed a petition seeking any such decree or order; or

23.4 A petition under any part of the Federal bankruptcy Laws, or an action under any present or future insolvency law or statute, is filed against Concessionaire and is not or shall not be dismissed within thirty (30) days after the filing thereof; or

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23.5 Concessionaire assigns or otherwise transfers its interest in this Agreement in violation of the provisions contained in this Agreement whether voluntarily or by operation of law; or

23.6 Concessionaire makes a general assignment of its assets for the benefit of its creditors; or

23.7 The sequestration or attachment of, or execution or other levy on, Concessionaire's interest in this Agreement or the Concessionaire's Furnishings, Trade Fixtures and Equipment or any improvements located thereon occurs and Concessionaire fails to obtain a return or release of such property within thirty (30) days thereafter, or prior to sale pursuant to such levy, whichever first occurs; or

23.8 Concessionaire fails to install the Concessionaire's Furnishings, Trade Fixtures and Equipment and Concession Improvements in compliance with the Schedule as provided above; or

23.9 The Concession Operations are repeatedly unavailable for use by the public, as more specifically provided in **SECTION 4**; or

23.10 Concessionaire fails to keep, perform and observe each and every other promise, covenant and agreement set forth in this Agreement, and such failure continues for a period of more than ten (10) days after delivery by Director of a written notice of such breach or default, except where fulfillment of its obligation requires activity over a period of time, in excess of ten (10) days, and Concessionaire commences in good faith to perform whatever may be required for fulfillment within ten (10) days after receipt of notice and continues such performance without interruption, except for causes beyond its control.

23.11 Any representation or warranty made by Concessionaire hereunder is false or misleading in any material respect as of the date on which such representation or warranty is made; or

23.12 The occurrence of any act or omission on the part of Concessionaire which operates to suspend, revoke or terminate any certificate, permit, franchise, approval, authorization or power necessary for Concessionaire to lawfully conduct the Operations which Concessionaire is required or permitted to conduct on the Concession Area or on the Airport; or

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23.13 Any lien is filed against the Concession Area and/or Concessionaire's Furnishings, Trade Fixtures and Equipment because of any act or omission of Concessionaire, and is not discharged or contested by Concessionaire in good faith by proper legal proceedings within twenty (20) calendar days after receipt of notice thereof.

SECTION 24 CITY'S REMEDIES

24.1 Termination.

Upon any default, City shall have the right at City's election to terminate this Agreement by giving Concessionaire written notice of termination in which event this Agreement shall terminate on the date set forth for termination in such notice. Any termination under this paragraph shall not relieve Concessionaire from the payment of any sums then due to City or from any claim for damages or fees previously accrued or then accruing against Concessionaire. In no event shall City have any obligation to Concessionaire, financial or otherwise, as a result of the termination of this Agreement following a default.

24.2 Damages

In the event City elects to terminate this Agreement, Concessionaire shall pay to City all amounts owing at the time of termination on account of Concessionaire's breach of any term, covenant or condition of this Agreement including, but not limited to, unpaid fees plus interest thereon on all such amounts from the date due until paid at the rate of one and a half percent (1 1/2%) per month; and any other amount to compensate City fully for all detriment proximately caused by Concessionaire's failure to perform its obligations hereunder or which in the ordinary course would likely result therefrom.

24.3 Liquidated Damages

Concessionaire understands and agrees that one of City's primary goals in granting the concession is to ensure that customer service provided to the traveling public using the concession services at the Airport is of the highest caliber and is consistent with the image that the City and the Airport want to project to its users and visitors. Concessionaire further agrees that City will suffer damage if Concessionaire fails to meet these standards and that, due to the nature of certain breaches, the actual damage to the City would be impractical or very difficult to remedy.

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CONCESSIONAIRE AND CITY AGREE THAT THE AMOUNTS SET FORTH IN **SECTION 24.3.1** BELOW, SHALL BE PAID TO CITY AS LIQUIDATED DAMAGES IF CONCESSIONAIRE BREACHES THE PERFORMANCE STANDARDS SPECIFIED IN SUCH **SECTION 24.3.1**. CONCESSIONAIRE AND CITY ACKNOWLEDGE THAT CITY'S ACTUAL DAMAGES IN THE EVENT OF A BREACH OF SUCH PERFORMANCE STANDARDS WOULD BE IMPRACTICAL OR VERY DIFFICULT TO DETERMINE. THEREFORE, BY PLACING THEIR SIGNATURES BELOW, CITY AND CONCESSIONAIRE ACKNOWLEDGE THAT THE AMOUNTS SET FORTH IN **SECTION 24.3.1** BELOW HAVE BEEN AGREED UPON AS THE PARTIES' REASONABLE ESTIMATE OF CITY'S DAMAGES IN THE EVENT OF SUCH BREACH. CITY'S ACCEPTANCE OF ANY LIQUIDATED DAMAGES AS A RESULT OF A PERFORMANCE STANDARD BREACH SHALL NOT PREVENT CITY FROM EXERCISING ANY OTHER RIGHT OR REMEDY FOR DEFAULT AVAILABLE TO CITY UNDER THIS AGREEMENT.

CITY: _____ CONCESSIONAIRE: _____

24.3.1 Performance Standard Breaches.

The following specified breaches shall be referred to as "Performance Standard Breaches". Concessionaire agrees to pay to City the amount specified below as liquidated damages for the applicable breach.

24.3.1.1 Concession Locations not open during approved scheduled Hours of Operation or during such times of flight delays, as referenced in **SECTION 4.20.1**: $100.00 per occurrence.

24.3.1.2 The number of written complaints from different individuals exceeds two (2) for any given location in any thirty (30) day period, provided Concessionaire has not provided an explanation or response concerning the complaint which is satisfactory to the Director: $50.00 per complaint beginning with the 3rd complaint for that month.

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24.3.1.3 Concession Locations improperly or poorly stocked as specified by the Director: $100.00 per occurrence.

24.3.1.4 Health code citations: $200.00 for each citation not cleared during the cure period stipulated by the Health Department; an additional $100.00 per day past the cure period for each cited violation not corrected.

24.3.1.5 Any reports requested by Director not received by the required date: $25.00 per day per report, until any such reports are received by City.

24.3.1.6 Concessionaire or Subconcessionaire personnel are not in 'designated' uniform/attire as required, when working at RMU Concession Locations: $50.00 per person per day.

24.3.1.7 Product price adjustments or Product removals not accomplished within the time frame prescribed by the Director or his designee: $100.00 per occurrence per day.

24.3.1.8 Concession Area not kept in a Like New, safe, clean, sanitary and good physical condition: $200.00 per occurrence per day.

24.3.1.9 Lack of employee attendance at Airport-sponsored orientation and customer service training classes: $100.00 per employee who has not attended class within the first thirty (30) days of hire date or the first date that a class is offered, whichever is later.

24.3.1.10 Failure to comply with Section 4.31 Annual Business Fair: $20,000.00 per occurrence.

24.3.1.11 Intentionally left blank.

24.3.1.12 Delivery of supplies by other than approved routes/modes/times: $200.00 per occurrence.

24.3.1.13 The continuous and uninterrupted operation of the Concession Operations is an important customer service aspect to the Airport. Concessionaire understands and agrees that City will suffer damage if Concessionaire fails to maintain continuous and uninterrupted operation of the Concession Operations and that, due to the nature of any such failure, the actual damage to the City would be impractical or very difficult to remedy. Therefore, the Concessionaire will be assessed liquidated damages in the amount of **$100.00** per Concession Location for each day the

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Concession Location is not fully available after the Commencement Date for customer use for a continuous period or periods totaling in excess of four (4) hours on that day, unless the unavailability of the Concession Location is the result of a cause beyond Concessionaire's control or during the reconcept transition not to exceed thirty (30) or sixty (60) days as provided in Section 4.11.13. For the purpose of calculating downtime charges, one day shall be the period from 12:00 a.m. to 11:59 p.m. Assessment of this fee shall not limit City's remedies with respect to any other default of this Agreement. If the Concessionaire's Furnishings, Trade Fixtures and Equipment or Concession Improvements do not function or the Concession Operations are otherwise unavailable for more than four (4) hours in any day: (a) more than two (2) times in any calendar month during the Term of this Agreement; or (b) more than ten (10) times in any calendar year during the Term of this Agreement, any such event shall be a separate Event of Default under this Agreement.

24.3.1.14 Failure to have an on-site qualified, competent, and experienced manager representing Concessionaire onsite within thirty (30) days at any time during the term of the Agreement: $50.00 per day, per occurrence.

24.3.2 Procedure for Declaring Performance Standard Breaches

The determination as to whether Performance Standards have been met is at the reasonable discretion of the Director or his designee.

24.3.2.1 Upon determining the existence of a Performance Standard Breach, the Director shall issue a written notice to Concessionaire of the occurrence of such breach and the City's claim for liquidated damages.

24.3.2.2 The Performance Standard Breach shall become final ten (10) calendar days after the date the notice of Performance Standard Breach is sent to Concessionaire, unless the Director receives a written statement from Concessionaire, with Concessionaire's evidence that the breach did not occur. Director shall review such evidence and determine, in his reasonable discretion, whether Concessionaire has demonstrated that the breach did not occur.

24.3.2.3 The Director shall review the Concessionaire's evidence as soon as reasonably possible after timely receipt of such evidence.

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24.3.2.4 The Director shall render a decision sustaining or reversing the determination that a breach occurred and the claim for liquidated damages. A written notice of decision shall be delivered to the Concessionaire.

24.3.2.5 If such written evidence is not received by the Director within ten (10) calendar days of the date of the notice of Performance Standard Breach, the Director's determination shall be final and the applicable liquidated damages shall be immediately due and payable.

24.3.2.6 Upon expiration of the period for Concessionaire to deliver its written evidence or upon Director's determination that a breach occurred after reviewing Concessionaire's written evidence as provided above, Concessionaire agrees to immediately pay City the liquidated damages amount. Concessionaire further agrees that the Director may, at his option, deduct the amount of such liquidated damages from any deposit or performance guarantee provided by Concessionaire, without further notice to Concessionaire.

24.4 No Waiver by City

The waiver by City of any breach of any term, condition or provision herein contained shall not be deemed to be a waiver of any subsequent breach of such term, covenant or condition. The consent or approval by City to any act of Concessionaire requiring City's approval shall not be deemed to waive or render unnecessary the need for City's consent or approval to or of any subsequent similar act of Concessionaire. The subsequent acceptance of any fees or charges hereunder by City shall not be deemed to be a waiver of any preceding breach by Concessionaire of any term, covenant or condition of this Agreement other than the failure of Concessionaire to pay the particular fee or charge so accepted, regardless of City's knowledge of such preceding breach at the time of the accepting of such fee or charge. No waiver, consent or approval by City shall be effective unless made by a duly authorized representative of City.

24.5 City's Right to Cure

Upon any default of Concessionaire, City may, at City's election, after first giving Concessionaire written notice, cure any default in the payment of money or performance of any act required under this Agreement, but without any obligation of City to make such payment or perform such act and without waiving any rights of City or relieving

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Concessionaire from any obligation under this Agreement. All amounts incurred by City, plus ten percent (10%) thereof for administrative overhead as such percentage is approved, established or modified from time to time by the City Council, and all penalties, interest, and costs in connection therewith shall be due and payable by Concessionaire to City on demand together with interest thereon at the rate of one and a half percent (1 1/2%) per month from the date paid by City, plus any collection costs. The receipt for any payment by City on behalf of Concessionaire shall be prima facie evidence that the expense incurred was necessary and reasonable and that such expense was incurred by City on behalf of Concessionaire.

SECTION 25 ACCEPTANCE OF CONCESSION AREA

25.1 Concessionaire has carefully examined the Concession Area and is satisfied with the current condition, Concessionaire acknowledges that no representation or warranty has been made by City concerning the nature, quality or suitability for Concessionaire's business of the Concession Area or the Airport, or the existence of any Hazardous Materials in, on, upon, under or about the Concession Area or the Airport, and Concessionaire acknowledges that it shall have no rights against City by reason of such matters or any claimed deficiencies therein. Concessionaire accepts the Concession Area "as is", and as being in good, safe and sanitary condition satisfactory for Concessionaire's use.

25.2 Concessionaire acknowledges that City has made no representations or warranties with respect to the Concession Area, the Airport or this Agreement except as expressly set forth in this Agreement, and no rights, easements or licenses, implied or otherwise, are or shall be acquired by Concessionaire unless expressly set forth in this Agreement.

SECTION 26 RIGHT TO ENTER

City reserves the right to enter the Concession Area at any and all times for any purpose and the right to inspect the Concession Improvements and Concessionaire's Furnishings, Trade Fixtures and Equipment.

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SECTION 27 REPRESENTATIONS AND WARRANTIES

Concessionaire represents, warrants and covenants with respect to this Agreement and any amendment hereto as follows:

27.1 If Concessionaire executes this Agreement as a corporation, then Concessionaire and the persons executing this Agreement on behalf of Concessionaire represent and warrant that the individuals executing this Agreement on Concessionaire's behalf are duly authorized to do so in accordance with a duly-adopted resolution of the Board of Directors of Concessionaire, a copy of which is delivered to Director on execution hereof, and in accordance with the bylaws of Concessionaire, and that this Agreement is binding upon Concessionaire.

27.2 Concessionaire is a partnership or joint venture, at least two (2) partners or each of the joint ventures, as the case may be, shall execute this Agreement on behalf of Concessionaire.

27.3 That there are no unresolved claims or disputes between Concessionaire and City.

27.4 That Concessionaire shall furnish true and accurate financial statements, records, reports, resolutions, certifications, and other information as may be requested of Concessionaire by City from time to time during the Term of this Agreement.

27.5 That Concessionaire is in compliance with all local, state, and federal laws related to the Concession Operations.

27.6 That Concessionaire possesses the necessary experience and qualifications to conduct the Concession Operations at the Airport.

27.7 That all information provided to City in connection with award of the Concession is true and correct in all material respects.

SECTION 28 HAZARDOUS MATERIALS - PROHIBITIONS AND RESTRICTIONS

Concessionaire shall at all times comply with the provisions of this Agreement, including those provisions of **EXHIBIT G**, regarding Hazardous Materials.

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SECTION 29 MISCELLANEOUS

29.1 Consent

Whenever in this Agreement the approval or consent of a party is required, such approval or consent shall be in writing and shall be executed by a person having the express authority to grant such approval or consent.

29.2 Director's Consent

The Director shall act reasonably and in good faith in exercising any power to approve, disapprove or consent to any action of Concessionaire pursuant to this Agreement, and the Director shall not arbitrarily or capriciously exercise any such power granted to the Director under this Agreement.

29.3 Controlling Law

Except as federal law may apply, the parties agree that this Agreement shall be governed and construed by and according to the laws of the State of California.

29.4 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

29.5 Entire Agreement/Order of Precedence

This instrument contains all of the agreements and conditions entered into and made by and between the parties and may not be modified orally, or in any manner, other than by an agreement in writing signed by all the parties hereto or their respective successors-in-interest. If any provision of Concessionaire's Proposal (**EXHIBIT P**) conflicts with or is inconsistent with the provisions of this Agreement, the terms of this Agreement will govern.

29.6 Force Majeure

Neither party shall be deemed to be in default on account of any Unavoidable Delay or failure to perform its obligations under this Agreement which results from an act of God, acts of superior governmental authority, a strike, a boycott, a shortage of items, or any other cause beyond the reasonable control of such party. Concessionaire shall not be entitled to any reduction in the MAG or other monetary compensation as a result of terminal evacuations ordered by the Airport or any other governmental authority.

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29.7 Gender

Any reference to the masculine gender shall be deemed to include references to the feminine or neuter gender.

29.8 Headings

The paragraph headings are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part of the Agreement.

29.9 Resolutions

If requested by City, Concessionaire shall submit a copy of any corporate resolution that authorizes any director or officer to act on behalf of Concessionaire or that authorizes Concessionaire to enter into this Agreement.

29.10 Severability

If a court of competent jurisdiction finds or rules that any provision of this Agreement is void or unenforceable, the remaining provisions of this Agreement shall remain in effect.

29.11 Successors and Assigns

The provisions of this Agreement concerning transfer shall apply to and bind the successors and assigns of the parties hereto.

29.12 Time of Essence

Time is of the essence of this Agreement and each of its provisions.

29.13 Venue

In the event that suit shall be brought by either party hereunder, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara or, if federal jurisdiction is appropriate, exclusively in the United States District Court of the Northern District of California.

29.14 Concessionaire not an Agent of City

Concessionaire is not an agent, contractor or employee of City and nothing in this Agreement or any action of Concessionaire shall be construed in any way to constitute Concessionaire as an agent, contractor or employee of City for any purpose.

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29.15 Joint and Several

If there be more than one Concessionaire designated in or signatory to this Agreement, the obligations hereunder imposed upon Concessionaire shall be joint and several; and the term Concessionaire as used in this Agreement shall refer to each and every of said signatory parties, severally as well as jointly.

29.16 Material Considerations

Each and every term, condition, covenant and provision of this Agreement is and shall be deemed to be a material part of the consideration for City's entry into this Agreement, and any breach hereof by Concessionaire shall be deemed to be a material breach. Each term and provision of this Agreement performable by Concessionaire shall be construed to be both a covenant and a condition.

29.17 Exhibits and Addenda

All exhibits and addenda referred to herein, and any exhibits or schedules which may from time to time be referred to in any duly executed amendment thereto, are by such reference incorporated herein and shall be deemed a part of this Agreement as if set forth fully herein.

29.18 No Assumption

The review, approval, inspection, examination or consent of City of or to any item to be reviewed, approved, inspected, examined or consented to by City shall not constitute the assumption of any responsibility by City for either accuracy or sufficiency of any item or the quality or suitability of such item for its intended use, but rather be for the sole purpose of protecting City's interests. Neither Concessionaire nor third parties, including persons claiming under Concessionaire, shall have any rights hereunder resulting therefrom or otherwise.

29.19 Hold Harmless

Concessionaire shall defend, indemnify and hold City harmless from and against claims for any broker's commissions, finder's fee or other commission or fee relating to the leasing of the Concession Area by anyone claiming by or through Concessionaire.

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SECTION 30 NOTICES

All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments or designations hereunder by either party to the other, shall be in writing and shall be addressed as follows:

If to City, the same shall be addressed to:

Norman Y. Mineta San José International Airport
Director of Aviation
1701 Airport Blvd, Suite B-1130
San José, CA 95110

or to such other places as City may designate in writing. If to Concessionaire, the same shall be addressed to the address set forth in **SECTION 1**, or to such other place as Director or Concessionaire, respectively, may notify the other in writing, except as provided below. All notices shall be sufficiently given and served upon the other party if sent by first-class U.S. mail, postage prepaid, or by facsimile to the facsimile numbers indicated herein for either party. All termination notices shall be served in accordance with California Code of Civil Procedure Section 1162, as it may be amended or modified.

SECTION 31 TITLE VI CLAUSES FOR COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS

(Source: Appendix A of Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration)

Compliance with Nondiscrimination Requirements. During the performance of the Agreement, the Concessionaire, for itself, its assignees, and successors in interest (hereinafter referred to in this **Section 31** as the "Concessionaire") agrees as follows:

1. **Compliance with Regulations:** The Concessionaire (hereinafter includes consultants) will comply with the **Title VI List of Pertinent Nondiscrimination Statutes and Authorities**, as they may be amended from time to time, which are herein incorporated by reference, set forth in **Section 32** of this Agreement, and made a part of the Agreement.

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2. **Non-discrimination:** The Concessionaire, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Concessionaire will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the Agreement 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 the Concessionaire for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Concessionaire of the Concessionaire's obligations under the Agreement and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.

4. **Information and Reports:** The Concessionaire 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 City or the Federal Aviation Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of the Concessionaire is in the exclusive possession of another who fails or refuses to furnish the information, the Concessionaire will so certify to the City or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of Concessionaire noncompliance with the Non-discrimination provisions of the Agreement, the City will impose such

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Agreement sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

a. Withholding payments to the Concessionaire under the Agreement until the Concessionaire complies; and/or

b. Cancelling, terminating, or suspending the Agreement, in whole or in part.

6. **Incorporation of Provisions:** The Concessionaire will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Concessionaire will take action with respect to any subcontract or procurement as the City or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Concessionaire becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Concessionaire may request the City to enter into any litigation to protect the interests of the City. In addition, the Concessionaire may request the United States to enter into the litigation to protect the interests of the United States

SECTION 32 TITLE VI LIST OF PERTINENT NONDISCRIMINATION AUTHORITIES

(Source: Appendix E of Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration)

During the performance of the Agreement, the Concessionaire, for itself, its assignees, and successors in interest (hereinafter referred to in this **Section 32** as the "Concessionaire]") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

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- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);

- 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);

- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;

- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);

- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);

- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

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- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;

- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

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SECTION 33 FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

This Agreement incorporates by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.

The Concessionaire has full responsibility to monitor compliance to the referenced statute or regulation. The Concessionaire must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

SECTION 34 OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

This Agreement incorporates by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Concessionaire must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Concessionaire retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Concessionaire must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

SECTION 35 GENERAL CIVIL RIGHTS PROVISIONS

The tenant/concessionaire/lessee and its transferee agree to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

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This provision obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport through the Airport Improvement Program.

In cases where Federal assistance provides, or is in the form of personal property; real property or interest therein; structures or improvements thereon, this provision obligates the party or any transferee for the longer of the following periods:

(a) The period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or

(b) The period during which the airport sponsor or any transferee retains ownership or possession of the property.

SECTION 36 CONCESSIONAIRE'S PROPOSAL

In the event of any conflict between Concessionaire's Proposal (**EXHIBIT P)** and this Agreement, the terms and conditions of this Agreement shall apply and prevail.

[remainder of page intentionally left blank]

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their authorized officers on the dates set forth below.

APPROVED AS TO FORM:

By: _____

KEVIN FISHER
Chief Deputy City Attorney

"CITY"

CITY OF SAN JOSE, a municipal corporation of the State of California

By: _____

Name: TONI J. TABER, CMC

Title: City Clerk

Dated: _____

"CONCESSIONAIRE"

PRI-SAN JOSE, LLC,
a California limited liability company

_____
Signature

ROSS V. PROVENZANO
Print Name

CEO of PROVENZANO RESOURCES INC.; MANAGING PARTNER
Title

OCTOBER 23, 2017
Date

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

RD:KF:CAG
10/20/2017

CERTIFICATE OF LLC AUTHORITY

This Certificate of LLC Authority shall be executed by the manager of the limited liability company.

I, PROVENZANO RESOURCES, INC, certify that I am the manager of the
Name of Manager

limited liability company named in the attached agreement;

that ROSS V. PROVENZANO signed the agreement on behalf of the limited
Name of Person that Signed Agreement

liability company as the MANAGING PARTNER of the limited liability
Title of Person that Signed Agreement

company; and that the agreement was duly signed for and on behalf of the limited liability company by authority of its members, and is within the scope of its limited liability company powers.

By: _____

Name: ROSS V. PROVENZANO

Its: Manager

Date: October 03, 2017

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RD:KF:CAG
10/20/2017

EXHIBIT A - AIRPORT SITE PLAN

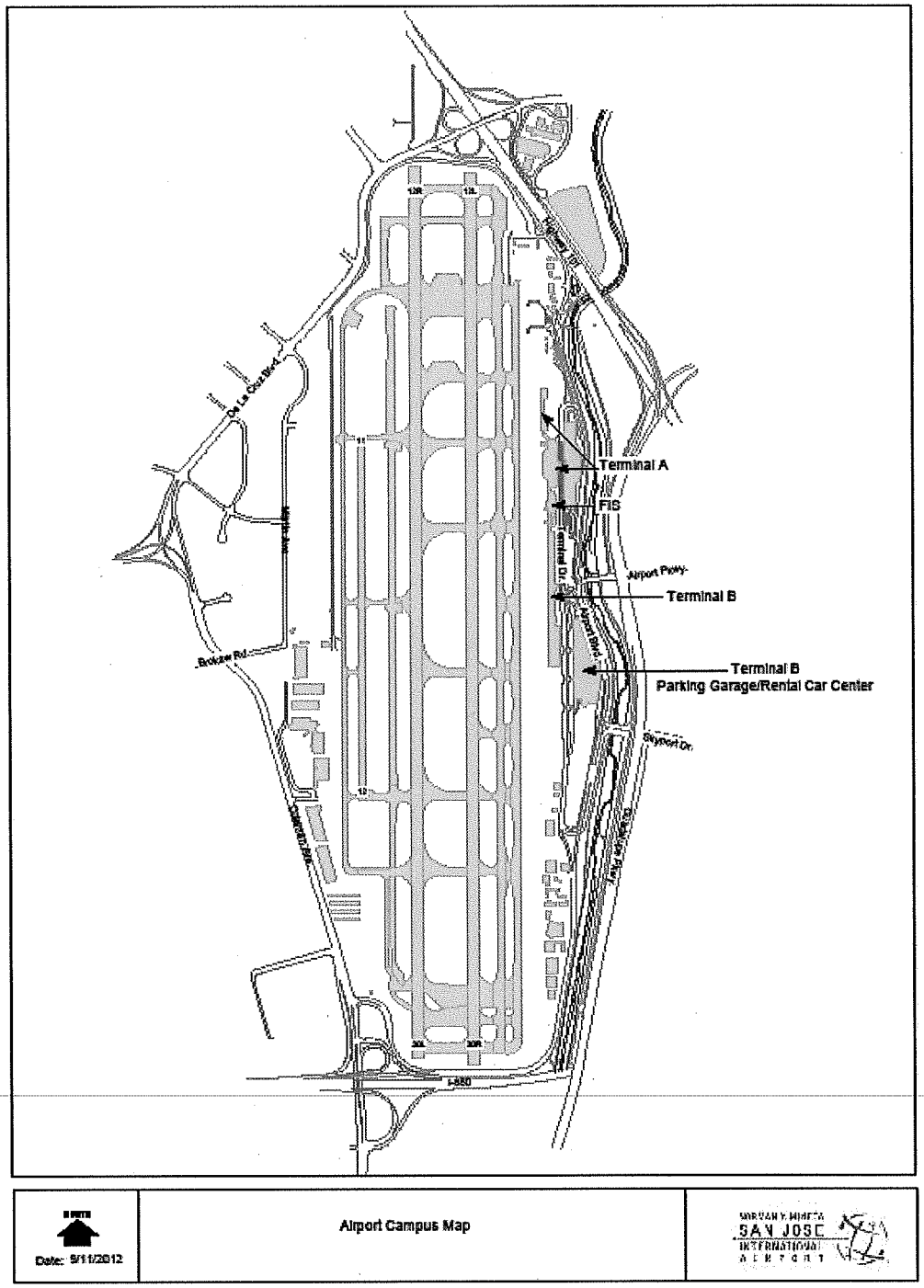

EXHIBIT A
Airport Site Plan

PRI-SAN JOSE, LLC

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EXHIBIT B – CONCESSION AREA

(See Attached)

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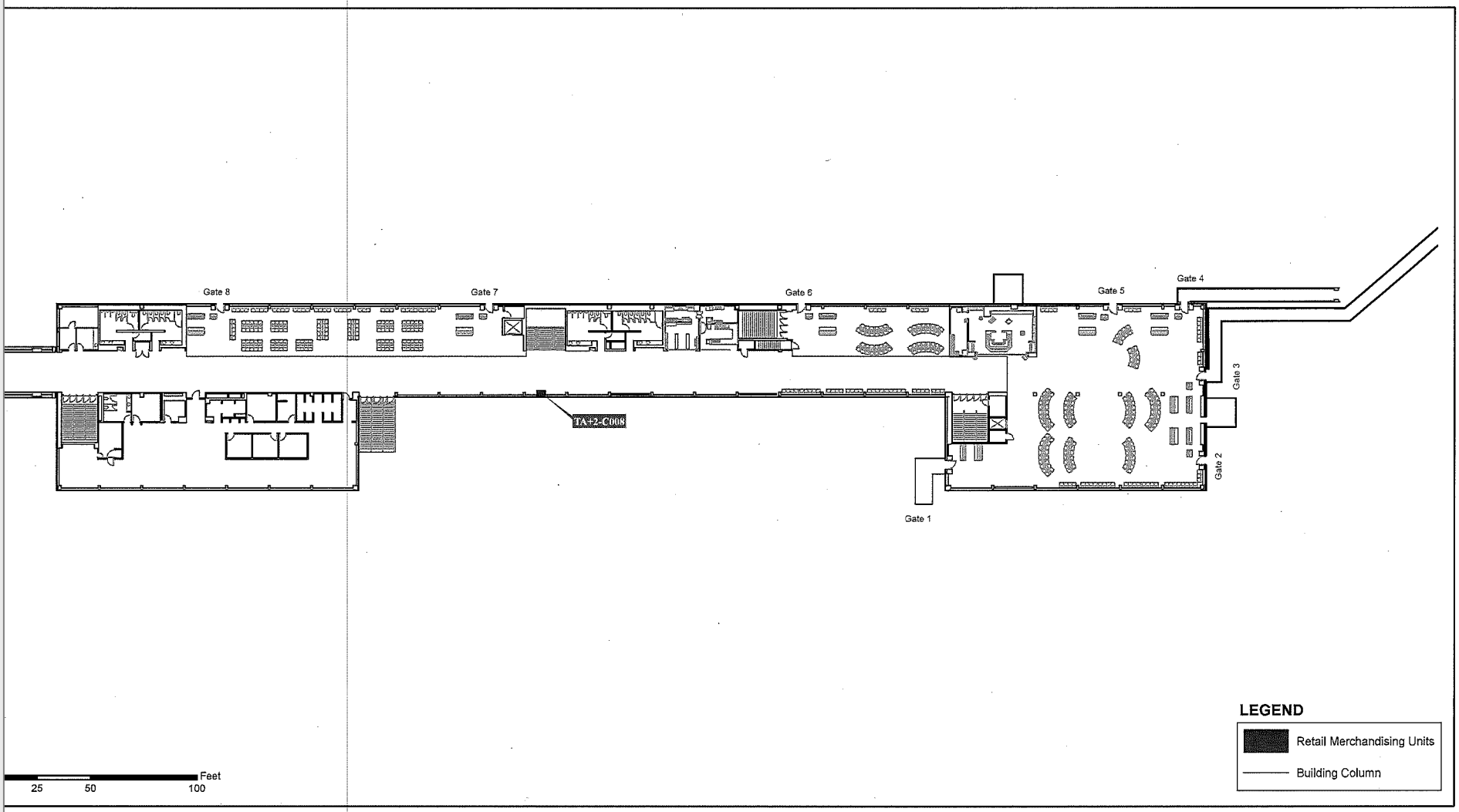

Exhibit B-1
Terminal A (Gates 1-9)
Retail Merchandising Units Concession Area

Map Created On: 9/28/2017

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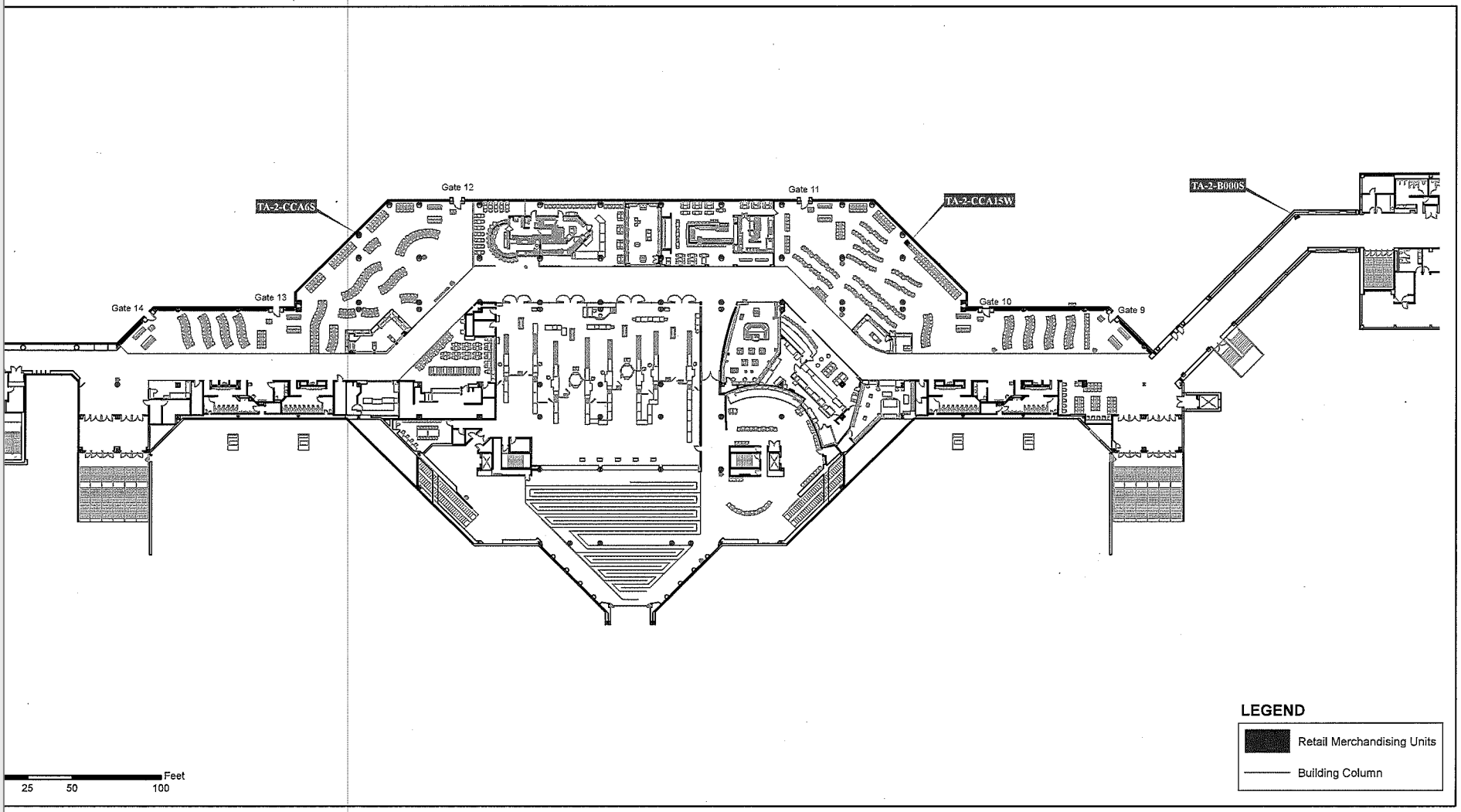

Exhibit B-2
Terminal A (Gates 9-16)
Retail Merchandising Units Concession Area

Map Created On: 9/25/2017

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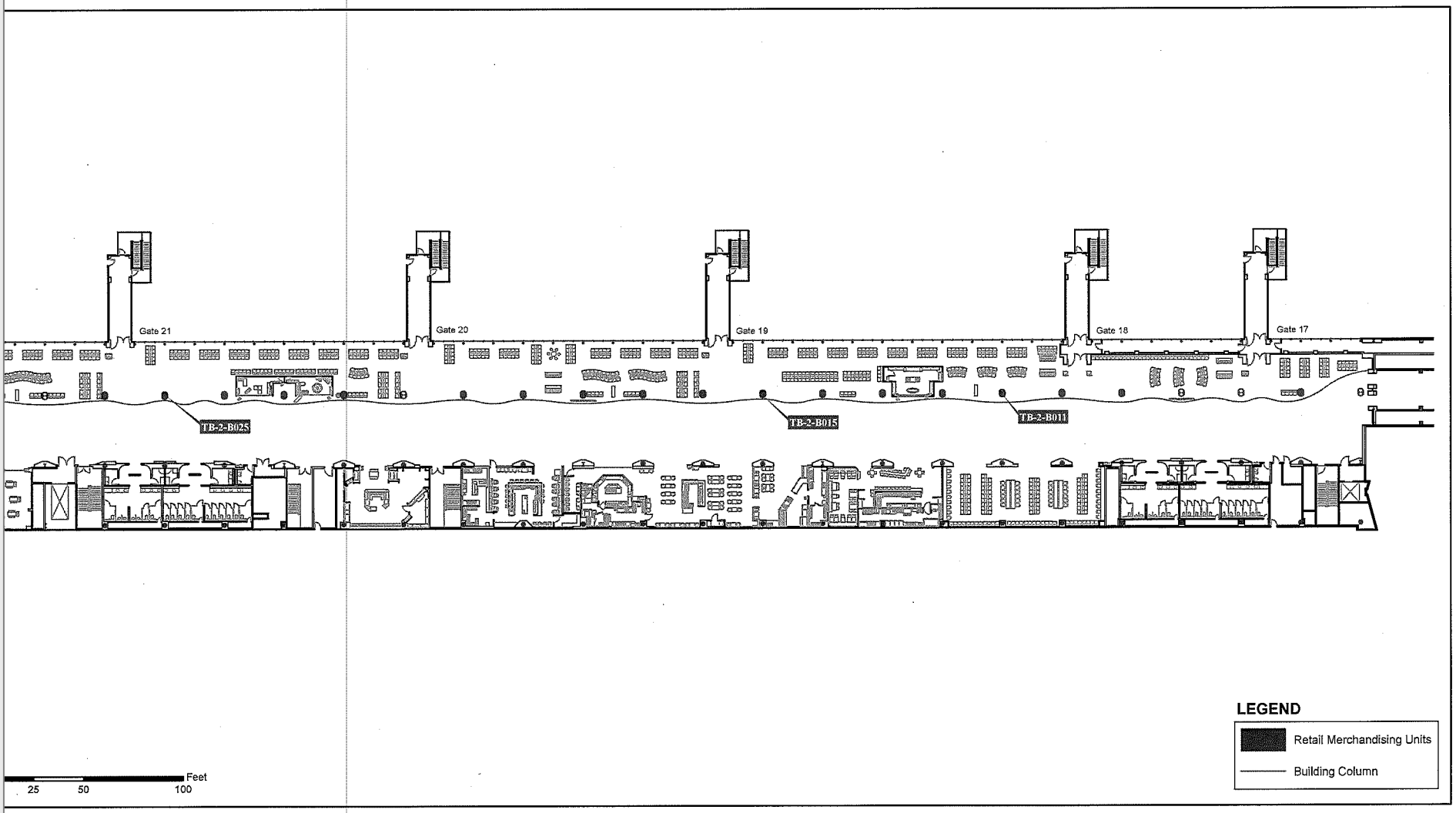

Exhibit B-3
Terminal B (Gates 17-21)
Retail Merchandising Units Concession Area

Map Created On: 9/26/2017

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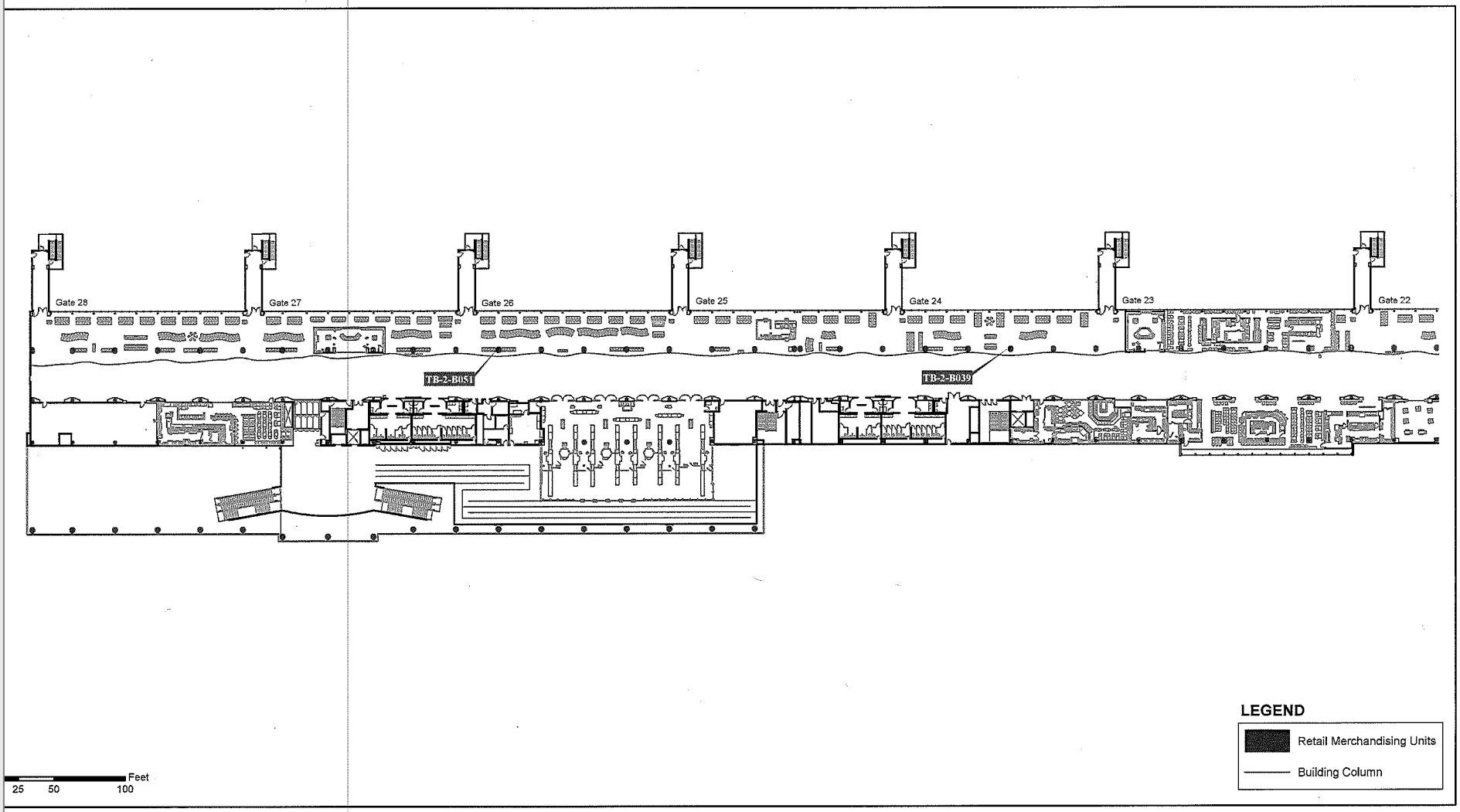

Exhibit B-4
Terminal B (Gates 21-28)
Retail Merchandising Units Concession Area

Map Created On: 9/26/2017

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EXHIBIT C – RMU LOCATION AND SQUARE FOOTAGE

Number	Space #	Location	Square Feet
1	TA+2-C008	Terminal A	Not to exceed 70 sq. ft
2	TA-2-CCA6S	Terminal A	Not to exceed 70 sq. ft
3	TA-2-CCA15W	Terminal A	Not to exceed 70 sq. ft
4	TA-2-B000S	Terminal A	Not to exceed 70 sq. ft.
5	TB-2-B025	Terminal B	Not to exceed 70 sq. ft.
6	TB-2-B015	Terminal B	Not to exceed 70 sq. ft.
7	TB-2-B011	Terminal B	Not to exceed 70 sq. ft.
8	TB-2-B051	Terminal B	Not to exceed 70 sq. ft.
9	TB-2-B039	Terminal B	Not to exceed 70 sq. ft.
		TOTAL	**Not to Exceed 630 sq.**

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EXHIBIT D
INTENTIONALLY OMMITTED

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

EXHIBIT E

SAMPLE LETTER OF CREDIT

___(Bank Name)_____[1]
_____(Bank Address)_____
_____
_____

IRREVOCABLE STANDBY LETTER OF [Date] CREDIT[2] NO. _____

BENEFICIARY:

CITY OF SAN JOSE, CALIFORNIA
1701 AIRPORT BLVD, SUITE B-1170
SAN JOSE, CALIFORNIA 95110

APPLICANT:

_____(Concessionaire Name)_____
_____(Concessionaire Address)_____
_____

Sir or Madam OR To Whom it May Concern:

We hereby open our irrevocable standby letter of credit no. _____ in your favor for account of the applicant for an amount not to exceed in the aggregate U.S. dollars _____AND 00/100 U.S. $_____.00 [3] available by your draft(s) drawn at sight [4]on us accompanied by:

Your written statement purportedly signed by an authorized representative of City of San Jose, California showing the name and title of the signer and reading as follows:

"The undersigned, a duly authorized representative of City of San Jose, California does hereby certify that_____(Concessionaire Name)_____ has been in default of contractual obligations with respect to its agreement(s) with the City of San Jose, California, entitled [5] _____.

This letter of credit sets forth in full the terms of our undertaking and such undertaking shall not in any way be modified, amended or amplified by reason of our reference to any agreement or instrument referred to herein or in which this letter of credit is referred to. Any such agreement or instrument shall not be deemed incorporated herein by reference.

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Draft(s) must be marked "drawn under _____(Bank Name)_____ Letter Of Credit No. _____"

Draft(s) must be presented to _____(Bank Name)_____ and Address)_____located at _____Attn: _____not later than [date] (the "expiration date") or any such automatically extended expiration date as provided herein below. Partial draws are allowed.[6]

It is a condition of this standby letter of credit that the expiration date shall be automatically extended, without amendment, for periods of one year from each successive expiration date, unless, no less than thirty (30) days before the then current expiration date, we notify you in writing by registered mail (return receipt) that this letter of credit will not be extended beyond the then current expiration date[7], in which event the City of San Jose may draw the full amount of the letter of credit. Any such notice shall be deemed received by you on the date such notice is deposited in the U.S. mails, registered (return receipt), postage prepaid.

We hereby agree with you that draft(s) drawn under and in compliance with the terms and conditions of this letter of credit shall be duly honored on due presentation to _____(Bank Name)_____.[8]

Except as otherwise expressly stated herein, this credit is issued subject to [*either of the following is acceptable:* (a) the Uniform Customs And Practice For Documentary Credits (2007 Revision), International Chamber Of Commerce Publication No. 600; or (b) the International Standby Practices ISP98, as published by the International Chamber of Commerce Publication No. 590].[9]

Communications to us with respect to this letter of credit must be in writing and shall be addressed to us at ___(Bank Name) _____ and Address)_____Attn: _____, specifically referring thereon to this letter of credit by number.

Authorized signature[10]

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EXHIBIT F - INSURANCE

CONCESSIONAIRE'S REQUIRED INSURANCE COVERAGE

CONCESSIONAIRE's Insurance Coverage

At all times during this Lease CONCESSIONAIRE, at CONCESSIONAIRE 'S sole cost and expense, shall procure and maintain insurance against claims for injuries to persons or damages to property which may arise from, or in connection with the CONCESSIONAIRE'S operation in and use of the Premises.

A. <u>Minimum Scope and Limits of Insurance</u>

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001) with a minimum limit of not less than $5,000,000 combined single limit for bodily injury and property damage and coverage including premises operations, products and completed operations, personal injury (coverage for A, B, & C), blanket contractual liability, Fire Legal Liability, and liquor legal liability (if the sale of alcohol).

2. Workers' Compensation insurance as required by the California Labor Code and $1,000,000 Employers Liability insurance.

3. The coverage provided by Commercial Automobile Insurance coverage described in Insurance Services Office Form Number CA 0001. Coverage shall be included for all owned, non-owned and hired automobiles with $1,000,000 combined single limit per accident for bodily injury and property damage.

4. Property and casualty insurance against all risks of loss to any betterments, Concessionaire's furniture, fixtures, stock and equipment, including fixtures, improvements and betterments installed by

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Concessionaire, in the leased premises for a limit of full replacement cost with no coinsurance penalty provision.

5. Business Interruption and Extra Expense insurance in an amount covering the City only for loss of income and extra expense for a period up to twelve months with a minimum limit of $1,000,000 per occurrence.

6. On or before 90 days commencement of any construction activities: CONCESSIONAIRE shall ensure its contractors, subcontractors and consultants have the same required insurance, of the same scope, limits and endorsements, as CONCESSIONAIRE is required to have as well as Builders Risk during course of construction, build outs, remodels or CONCESSIONAIRE improvements and betterments. City shall be named as a loss payee on the policy

B. <u>Deductibles and Self-Insured Retentions</u>

Any deductibles or self-insured retentions must be declared to, and approved by CITY's Risk Manager. At the option of CITY, either; the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officer, employees, agents and Concessionaires; or Concessionaire shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the CITY's Risk Manager.

C. <u>Other Insurance Provisions</u>

The general liability policy is to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability:

   a. The City of San José, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, Concessionaire; products and completed operations of Concessionaire; premises owned, leased or used by Concessionaire; and automobiles owned, leased, hired or borrowed by Concessionaire. The coverage shall

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contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents and Concessionaires.

b. Concessionaire's insurance coverage shall be primary insurance as respects CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or contractors shall be excess of Concessionaire's insurance and shall not contribute with it.

c. Any failure to comply with reporting provisions of the policies by Concessionaire shall not affect coverage provided CITY, its officers, employees, agents, or contractors.

d. Coverage shall state that Concessionaire's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

e. Coverage shall contain a waiver of subrogation in favor of the City, its officials, employees, agents and contractors

2. Workers' Compensation and Employers' Liability
Coverage shall be endorsed to state carrier waives its rights of subrogation against the City, its officials, employees, agents and contractors.

3. All Coverages
Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to CITY, except for that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium.

D. <u>Acceptability of Insurers</u>

Insurance is to be placed with insurers acceptable to CITY's Risk Manager.

E. <u>Verification of Coverage</u>

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

Concessionaire shall furnish CITY with certificates of insurance and with original endorsements affecting coverage required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be mailed to the following address or any subsequent address as may be directed in writing by the Risk Manager:

City of San José
Risk Management
200 East Santa Clara Street, 14th Floor Tower
San José, CA 95113-1905

F. Subconcessionaires

Concessionaire shall include all subconcessionaires as insured under its policies or shall obtain separate certificates and endorsements for each subconcessionaire with a minimum limit of not less than $1,000,000 combined single limit or bodily injury and property damage for the commercial general liability policy.

G. Review of Coverage

These insurance requirements shall be subject to periodic review by City's Risk Manager. Should the Risk Manager require any change in any coverage such change shall be communicated in writing to Concessionaire and Concessionaire shall comply with the said change within thirty (30) days of the date of receipt of the notice.

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CONCESSIONAIRE's Contractor's Insurance Coverage

Concessionaire shall require any or its contractors engaging in the construction of Concession Improvements or performing work on premises to provide all the required insurance listed herein. On or before commencement of construction, Concessionaire shall provide City's Risk Manager with written proof of such insurance and with notice of the name of each contractor providing it, and the work to be performed.

B. <u>Minimum Scope and Limits of Insurance</u>

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001) with a minimum limit of not less than $5,000,000 combined single limit for bodily injury and property damage and coverage including premises operations, products and completed operations, personal injury (coverage for A, B, & C), blanket contractual liability, Fire Legal Liability, and liquor legal liability (if the sale of alcohol).

2. Workers' Compensation insurance as required by the California Labor Code and $1,000,000 Employers Liability insurance.

3. The coverage provided by Commercial Automobile Insurance coverage described in Insurance Services Office Form Number CA 0001. Coverage shall be included for all owned, non-owned and hired automobiles with $1,000,000 combined single limit per accident for bodily injury and property damage.

4. Property and casualty insurance against all risks of loss to any betterments, Concessionaire's furniture, fixtures, stock and equipment, including fixtures, improvements and betterments installed by Concessionaire, in the leased premises for a limit of full replacement cost with no coinsurance penalty provision.

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5. On or before 90 days commencement of any construction activities: CONCESSIONAIRE shall ensure its contractors, subcontractors and consultants have the same required insurance, of the same scope, limits and endorsements, as CONCESSIONAIRE is required to have as well as Builders Risk during course of construction, build outs, remodels or CONCESSIONAIRE improvements and betterments. City shall be named as a loss payee on the policy.

6. Professional Liability Errors and Omissions as is appropriate to consultants profession; Architects' and engineers' coverage is to be endorsed to include contractual liability. *(For Contractors or Subcontractors performing any type of* design *or engineering services or other professional services including but not limited to, surveying, sampling, testing and similar activities)*

B. <u>Deductibles and Self-Insured Retentions</u>

Any deductibles or self-insured retentions must be declared to, and approved by CITY's Risk Manager. At the option of CITY, either; the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officer, employees, agents and Concessionaires; or Concessionaire shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the CITY's Risk Manager.

C. <u>Other Insurance Provisions</u>

The general liability policy is to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability:
   a. The City of San José, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, Concessionaire; products and completed operations of Concessionaire; premises owned, leased or used by Concessionaire; and automobiles owned,

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leased, hired or borrowed by Concessionaire. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents and Concessionaires.

b. Concessionaire's insurance coverage shall be primary insurance as respects CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or contractors shall be excess of Concessionaire's insurance and shall not contribute with it.

c. Any failure to comply with reporting provisions of the policies by Concessionaire shall not affect coverage provided CITY, its officers, employees, agents, or contractors.

d. Coverage shall state that Concessionaire's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

e. Coverage shall contain a waiver of subrogation in favor of the City, its officials, employees, agents and contractors

2. Workers' Compensation and Employers' Liability
Coverage shall be endorsed to state carrier waives its rights of subrogation against the City, its officials, employees, agents and contractors.

3. All Coverages
Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to CITY, except for that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium.

D. <u>Acceptability of Insurers</u>

Insurance is to be placed with insurers acceptable to CITY's Risk Manager.

E. <u>Verification of Coverage</u>

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Concessionaire shall furnish CITY with certificates of insurance and with original endorsements affecting coverage required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be mailed to the following address or any subsequent address as may be directed in writing by the Risk Manager:

City of San José
Risk Management
200 East Santa Clara Street, 14th Floor Tower
San José, CA 95113-1905

F. Subcontractors

Concessionaire or contractor shall include all subcontractors as insured under its policies or shall obtain separate certificates and endorsements for each subcontractor.

G. Review of Coverage

These insurance requirements shall be subject to periodic review by City's Risk Manager. Should the Risk Manager require any change in any coverage such change shall be communicated in writing to Concessionaire and Concessionaire shall comply with the said change within thirty (30) days of the date of receipt of the notice.

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EXHIBIT G - HAZARDOUS MATERIALS

In addition to complying with the provisions set forth earlier in this Agreement, Concessionaire agrees to the following provisions:

1. Notification of Release. Concessionaire shall be solely and fully responsible for notifying the appropriate public agencies of any Hazardous Material release which occurs on the Concession Area, or is caused by or results from the activities of Concessionaire, Concessionaire's officers, agents, employees, contractors, permittees or invitees on the Airport other than the Concession Area. Concessionaire shall immediately notify City of any Hazardous Material release which occurs on the Concession Area, regardless of whether the release was caused by or results from Concessionaire's activities or is in a quantity that would otherwise be reportable to a public agency, or which occurs on the Airport other than the Concession Area and is caused by or results from the activities of Concessionaire, Concessionaire's officers, agents, employees, contractors, permittees or invitees, regardless of whether the release is in a quantity that would otherwise be reportable to a public agency.

2. Liability. Concessionaire shall be solely and fully responsible and liable for:

(a) storage, use or disposal of Hazardous Materials on the Airport, by Concessionaire, Concessionaire's officers, agents, employees, contractors, permittees or invitees;

(b) any Hazardous Material release which is caused by or results from the activities of Concessionaire, Concessionaire's officers, agents, employees, contractors, permittees or invitees on the Airport;

(c) any Hazardous Material release that commences during the term of the Agreement on the Concession Area, unless the release was caused by the sole negligence or willful misconduct of City, City's officers, agents, employees, contractors or permittees or solely by migration of Hazardous Materials onto the Concession Area.

3. Prevention of Release. Concessionaire shall take all necessary precautions to prevent its activities from causing any Hazardous Material release to occur on the Airport, including, but not limited to any release into soil, groundwater, or the City's sewage or storm drainage system.

4. Obligation to Investigate and Remediate. Concessionaire, at Concessionaire's sole cost and expense, shall promptly investigate and remediate, in accordance with requirements of all applicable Environmental Laws:

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(a) any release or danger of release of Hazardous Material on the Airport other than the Concession Area, including, but not limited to, into soil or groundwater, or the City's sewage or storm drainage system, which, was caused, or results, in whole or in part from the activities of Concessionaire, Concessionaire's officers, agents, employees, contractors, permittees or invitees;

(b) any release or danger of release of Hazardous Material which commenced during the term of this Agreement and which is discovered on the Concession Area, unless the release was caused by the sole negligence or willful misconduct of City, City's officers, agents, employees, contractors or permittees or solely by migration of Hazardous Materials onto the Concession Area.

In addition to all other rights and remedies of City hereunder, if Concessionaire does not promptly commence, and diligently pursue remediation of any such release, or danger of release, of Hazardous Materials, City, in its discretion, may pay, to have same remediated and Concessionaire shall reimburse City within fifteen (15) business days of City's demand for payment. The failure to commence remediation and provide City with a schedule for diligent completion of the remediation within thirty (30) days after discovery of such release, or danger of release, of Hazardous Material shall constitute prima facie evidence of failure to promptly commence remediation. The demand for payment by City shall be prima facie evidence that the expense incurred was necessary and reasonable and that such expense was incurred by City on behalf of Concessionaire.

5. Indemnification. Concessionaire shall defend, indemnify and hold City harmless from and against all loss, damage, liability (including all foreseeable and unforeseeable consequential damages) and expense (including, without limitation, the cost of any required cleanup and remediation of the Hazardous Materials) which City may sustain as a result of:

(a) storage, use or disposal of Hazardous Materials on the Airport by Concessionaire, Concessionaire's officers, agents, employees, contractors, permittees or invitees

(b) any Hazardous Material release on the Airport other than the Concession Area, including, but not limited to any release into soil or groundwater, or the City's sewage or storm drainage system, which is caused by or results from the activities of Concessionaire, Concessionaire's officers, agents, employees, contractors, permittees or invitees; or

(c) any Hazardous Material release which commenced during the term of this Agreement on the Concession Area, including, but not limited to any release into soil or groundwater, except a release caused by the sole negligence or willful

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misconduct of City, City's officers, agents, employees, contractors or permittees or by migration of Hazardous Materials onto the Concession Area.

6. Release of Claims Against City. Concessionaire releases, acquits and forever discharges City from any and all claims, actions, causes of action, demands, rights, damages, costs, including but not limited to loss of use, lost profits, or expenses, which Concessionaire may now have, or which may hereafter accrue on account of or in any way growing out of all known and unknown, foreseen and unforeseen bodily and personal injuries and property damage, and the consequences thereof resulting or arising out of the presence or cleanup of any Hazardous Material on the Airport. This release shall not apply to any claims for contribution that Concessionaire may have against City in the event that Concessionaire incurs any cost in undertaking any cleanup of Hazardous Material from the Airport ordered by a governmental agency, to the extent that the cleanup order and costs result from a release of Hazardous Material for which Concessionaire is not responsible and liable under this Agreement. Concessionaire understands and agrees that Concessionaire is hereby waiving all such rights under Section 1542 of the Civil Code of California and any similar law of any state or territory of the United States. Said section reads as follows:

> "1542. Certain claims not affected by general release. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

7. (a) Cessation of Activities. Concessionaire shall cease its activities on the Concession Area and the Airport, to the extent requested by City, if City determines, in its sole discretion, that such cessation is necessary to investigate, cure or remediate any release of Hazardous Materials. Concessionaire shall not recommence its activities on the Concession Area or the Airport, as appropriate, until notified by City that such release or danger of release of Hazardous Material has been investigated, cured and remediated in a manner satisfactory to the City.

(b) Abatement of Fees and Charges on Concession Area. Concessionaire shall not be entitled to an abatement of any fees or charges due under this Agreement after Concessionaire has been requested to cease activities for investigation, cure or remediation of Hazardous Materials on the Concession Area, except if the presence of Hazardous Materials on the Concession Area was due to the sole negligence or willful misconduct of City, City's officers, agents, employees, contractors or permittees or by migration of Hazardous Materials onto the Concession Area.

(c) Abatement of Fees and Charges on Airport other than Concession Area. Concessionaire shall not be charged fees or charges for use of the Airport other than the Concession Area, to the extent that City requests Concessionaire to cease activities on that portion of the Airport due to City's efforts to investigate, cure or remediate

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contamination, unless the release is one for which Concessionaire is responsible under this Agreement.

8. Records and Inspections.

(a) Concessionaire shall maintain, during the term of this Agreement and for a period of not less than four (4) years after the expiration or termination of this Agreement, or for any longer period of time required by any applicable law, regulation, policy, order or decree, separate and accurate daily records pertaining to the use, handling and disposal of any Hazardous Material(s) by Concessionaire, Concessionaire's officers, agents, employees, contractors, permittees or invitees on or from the Airport.

(b) Upon request by City, Concessionaire shall furnish City with such daily records, and such other documentation or reports as Director, from time to time, and at any time during the term of this Agreement, may reasonably require pertaining to the use, handling and disposal of any Hazardous Material(s) by Concessionaire, Concessionaire's officers, agents, employees, contractors, permittees or invitees on or from the Airport.

(c) After the expiration of four (4) years following the termination of this Agreement, Concessionaire may destroy the records pertaining to the use, handling and disposal of any Hazardous Material(s) by Concessionaire, Concessionaire's officers, agents, employees, contractors, permittees or invitees on or from the Airport, provided, however, that Concessionaire shall notify City no later than sixty (60) days prior to any proposed destruction of any of said records and shall upon request by City within thirty days (30) days after such notice is received, deliver copies of said records to City.

9. No Third Party Beneficiaries.

Nothing contained in this Exhibit shall be construed as conferring any benefit on any person not a party to this Agreement, nor as creating any right in any person not a party to this Agreement to enforcement of any obligation created under this Agreement.

10. Survival of Obligations.

Concessionaire's obligations under this Agreement shall survive the expiration or earlier revocation or suspension of this Agreement.

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EXHIBIT H

INTENTIONALLY OMITTED

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

EXHIBIT H1

LABOR PEACE ASSURANCE/EMPLOYEE WORK ENVIRONMENT

(see attached)

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City of San José
Airport Living Wage Ordinance
Labor Peace Assurance/
Employee Work Environment

I, Ross V. Provenzano, an authorized representative of PRI-San Jose, LLC (Airport Business), attach a copy of the following existing or planned programs that demonstrate a good work environment that prevents the disruption in services due to disputes with employees.

X Copy of Company Employee Handbook that includes information such as: terms of employment; performance appraisals; employee responsibilities; non-discrimination and anti-harassment policy; complaint resolution procedures; working hours and conditions; breaks; assignment of responsibilities; general rules of conduct; prohibited activities; disciplinary procedure; leaves of absence; drug and alcohol use; appearance, grooming and uniform policy; health and safety.

___ Joint Labor-Management Committee

___ Collective Bargaining Agreement

___ Labor Neutrality Provision

___ Card Check Provision

___ Any other information, plan, benefits or programs undertaken by Airport Business to attract and retain qualified employees and assist in providing uninterrupted service through the Airport Business's workplace conditions and practices.

The above listed benefits and complaint procedure(s) will be maintained during the period of time work is performed at the Norman Y. Mineta San Jose Municipal Airport. It is PRI-San Jose, LLC (name of Airport Business) intent to ensure that essential services and labor for which it has been contracted will be provided efficiently and without interruption.

Signature

CEO of Provenzano Resources, Inc., Managing Partner
Title

PRI-San Jose, LLC
Name of Airport Business

10.23.19
Date

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EMPLOYEE BASIC BENEFITS

1. Indicate the basic benefits your workers receive.

Years of Service	# of Vacation Days	# of Sick Days	# of Personal Days
After 1 year	10		
After 5 years	15		
After 10 years	20		

Other: (Explain.)

2. Indicate the paid holidays your workers receive by placing check mark to the left of each.

X	New Year's Day		Independence Day	X	Christmas
	Martin Luther King Jr. Day		Labor Day		Floating Holiday
	Washington's Birthday		Veterans' Day		Other:
	Memorial Day	X	Thanksgiving Day		Other:

3. Do you allow for unpaid leave? _X_ Yes, please briefly explain policy. _____No

Evaluated on a case by case basis; See manual for details

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COMPLIANCE WITH STATE AND FEDERAL WORKPLACE STANDARDS

Have any of the following State or Federal Regulatory agencies obtained final orders or final judgments finding a violation by your company of State or Federal law relating to the treatment of your employees?

1. California Department of Fair Employment and Housing (DFEH).

   X **NO,** our company has not had any final judgment or administrative order.

   ____**YES**, our company has had final judgment(s) or administrative order(s).

   Date of entry of final judgment or order: _____

   Agency that obtained the order: _____

   _____Attach a description of the nature of violation.

2. California Department of Industrial Relations (Cal OSHA).

   X **NO**, our company has not had any final judgment(s) or administrative order(s)

   ____**YES**, our company has had final judgment(s) or administrative order(s).

   Date of entry of final judgment or order: _____

   Agency that obtained the order: _____

   _____Attach a description of the nature of violation.

3. California Department of Industrial Relations (Minimum Wage, hours or working conditions) Labor Board

   X **NO**, our company has not had any final judgment(s) or administrative order(s).

   ____**YES**, our company has had final judgment(s) or administrative order(s).

   Date of entry of final judgment or order: _____

   Agency that obtained the order: _____

   _____Attach a description of the nature of violation.

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

EXHIBIT I
MONTHLY ACTIVITY REPORT

(see attached)

RD:KF:CAG
10/20/2017

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

San Jose Airport
Statement of Sales
For the Month Ended
April 30, 2017

	Current Period Sales	Rate	Amount Due
ATEGORY A-1	$30,000.00	8.00%	$2,400.00
ATEGORY A-2	$77,500.00	12.00%	$9,300.00
ATEGORY A-3	$27,000.00	18.00%	$4,860.00
ATEGORY B	$85,000.00	12.00%	$10,200.00
ATEGORY C	$60,000.00	10.00%	$6,000.00
otal	$279,500.00		$32,760.00
ayment			
ercentage			$32,760.00
AG			$20,000.00
reater Liability (MAG or %)			$32,760.00
otal Amount Due			$32,760.00
ess: Prior Pymts			$0.00
ess: Current Period MAG			$20,000.00
alance Due and Remitted erewith			$12,760.00

SAMPLE
RETAIL PAGE 1

he foregoing is certified to be true and correct to the best of our knowledge and belief

BY: _____

Name:
Title:

Exhibit I - 2
Monthly Concession Report

RD:KF:CAG
10/20/2017

San Jose Airport
Analysis of Gross Receipts
For the Month Ended
April 30, 2017

NAME	Category A-1	Category A-2	Category A-3	Category B	Category C	TOTAL
3C Jewelry	$10,000.00		$2,000.00			$12,000.00
/Z Specialty		$40,000.00			$50,000.00	$90,000.00
3 Bookstore	$20,000.00	$4,500.00			$10,000.00	$34,500.00
6 News & Gifts		$33,000.00	$25,000.00	$85,000.00		$143,000.00
tal	$30,000.00	$77,500.00	$27,000.00	$85,000.00	$60,000.00	$279,500.00

SAMPLE
RETAIL PAGE 2

Exhibit I - 3
Monthly Concession Report

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EXHIBIT J

INTENTIONALLY OMITTED

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EXHIBIT K

AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PROGRAM REQUIREMENTS

POLICY STATEMENT

The City of San José has established an Airport Concession Disadvantaged Business Enterprise (ACDBE) Program in accordance with regulations of the U. S. Department of Transportation (DOT), 49 CFR Part 23. A copy of the ACDBE Program is available from the Office of Equality Assurance, 200 East Santa Clara Street, Fifth Floor, San José, CA 95113, 408-535-8455 and on the San José Airport website. The City receives federal financial assistance from the DOT, and as a condition of receiving this assistance, the City assures that it will comply with 49 CFR Part 23.

It is the policy of the City of San José to ensure that Disadvantaged Business Enterprises (ACDBEs), as defined in Part 23, have an equal opportunity to receive and participate in Airport Concessions. It is also our Policy to:

- Ensure nondiscrimination in the award and administration of Airport Concessions;
- Create a level playing field on which ACDBEs can compete fairly for Airport Concessions;
- Ensure that the ACDBE Program is narrowly tailored in accordance with applicable law;
- Ensure that only firms that fully meet 49 CFR Part 23 eligibility standards are permitted to participate as ACDBEs;
- Help remove barriers to the participation of ACDBEs in Airport Concessions; and
- Assist the development of firms that can compete successfully in the marketplace outside the ACDBE Program.

The City's Director of the Office of Equality Assurance has been delegated as the ACDBE Liaison Officer. In that capacity, the Director is responsible for implementing all aspects of the ACDBE Program. Implementation of the ACDBE Program is accorded the same priority as compliance with all other legal obligations incurred by the City in its financial assistance agreements with the Department of Transportation.

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DEFINITION OF TERMS

The terms used in the Program have the meanings defined in 49 CFR Section 23.3 and Section 26.5 and are as follows:

Disadvantaged Business Enterprise

Means a for-profit small business concern that is:

1) 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; and

3) Whose personal net worth does not exceed $1.32 million.

Small Business Concern

In order to qualify as an ACDBE, a firm must qualify as a small business concern. As a general rule, the ACDBE regulations treat a firm as a small business concern eligible to be certified as an ACDBE if its gross receipts, averaged over the firm's previous three fiscal years, do not exceed $356.42 million.[1]

Socially and Economically Disadvantaged Individual

Means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who meets one or more of the following conditions:

- Any individual determined to be a socially and economically disadvantaged individual on a case-by-case basis;
- Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

[1] The following types of businesses have size standards that differ from the standard set forth above:

- Banks and financial institutions: $1 billion in assets
- Car rental companies: $75.23 million average annual gross receipts over the firm's three previous fiscal years
- Pay telephones: 1,500 employees.
- Automobile dealers: 350 employees.

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- "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
- "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
- "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
- Women;
- Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration (SBA), at such time as the SBA designation becomes effective.

Personal Net Worth

Means the net value of the assets of an individual remaining after total liabilities are deducted.

An individual's personal net worth does not include:

1) The individual's ownership interest in an applicant or participating ACDBE firm; or

2) The individual's equity in his or her primary place of residence.

An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

The imposition of a personal net worth cap of $1.32 million means that regardless of race, gender or size of their business, any individual whose personal net worth exceeds $1.32 million is not considered economically disadvantaged and is not eligible for the ACDBE Program.

A. NON-DISCRIMINATION

As a recipient of DOT financial assistance, the City will meet the non-discrimination requirements provided in Part 26, §26.7, with respect to the award and performance of

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any concession agreement, management contract or subcontract, purchase or lease agreement, or other agreement covered by part 23.

The City will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any concession agreement, management contract or other agreement covered by 49 CFR Part 23 on the basis of race, color, sex or national origin.

In administering its ACDBE Program, the City will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the ACDBE Program with respect to individuals of a particular race, color, sex or national origin.

The City acknowledges these representations are also in accordance with obligations contained in its Civil Rights, ACDBE and ACDBE Airport grant assurances.

QUOTAS

The City will not use quotas in any way in the administration of its ACDBE Program.

ACDBE LIAISON OFFICER (ACDBELO)

The City has designated the following individual as its ACDBE Liaison Officer:

Christopher Hickey
Director, Office of Equality Assurance
City of San José
200 East Santa Clara Street, 5th Floor
San José, CA 95113

Telephone: 408.535.8455
Fax: 408.292.6270
E-Mail: christopher.hickey@sanjoseca.gov

In this capacity, the Director is responsible for implementing all aspects of the ACDBE Program and ensuring that the City complies with all provisions of 49 CFR Part 23.

The DBELO is responsible for developing, implementing and monitoring the ACDBE Program in coordination with other appropriate officials. Duties and responsibilities include the following:

- Gathers and reports statistical data and other information as required by FAA or DOT.
- Reviews third party contracts and purchase requisitions for compliance with this program.
- Works with all departments to set overall annual goals.

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- Ensures that bid notices and requests for proposals are available to ACDBEs in a timely manner.
- Identifies contracts and procurements so that ACDBE goals are included in solicitations (both race-neutral methods and contract specific goals)
- Analyzes the City's progress toward attainment and identifies ways to improve progress.
- Participates in pre-bid meetings.
- Advises the CEO/governing body on ACDBE matters and achievement.
- Provides ACDBEs with information and assistance in preparing bids, obtaining bonding, financing, and insurance; acts as a liaison to the OSDBU-Minority Resource Center (MRC).
- Plans and participates in ACDBE training seminars.
- Acts as liaison to the Uniform Certification Process in the State of California.
- Provides outreach to ACDBEs and community organizations to advise them of opportunities.

DIRECTORY

The directory identifying all firms eligible to participate as ACDBEs is available at www.dot.ca.gov or by contacting the California Department of Transportation/Unified Certification Program at 1-916-324-1700.

REQUIRED CONTRACT CLAUSES

Contract Assurance

The City will ensure that the following paragraphs are placed in every Airport Concession contract and subcontract:

> This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The Concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23.

> The Concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

REPORTING, COMPLIANCE AND ENFORCEMENT PROCEDURES

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The City will retain sufficient basic information about its ACDBE Program implementation, ACDBE certification, and the award and performance of agreements and contracts to enable the FAA to determine our compliance with Part 23. This data will be retained for a minimum of three years following the end of the concession agreement or other covered contract.

It is the Concessionaire's or contractor's responsibility to maintain records and documents for three (3) years following the performance of the contract. These records must be made available for inspection upon request by any authorized representative of the City or DOT. This reporting requirement is also extended to any certified ACDBE.

Beginning March 1, 2006 we will submit to the FAA Regional Civil Rights Office, an annual ACDBE participation report on the form in Appendix A of Part 23.

Confidentiality: The City will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal law and the California Public Records Act, Government Code §§6250-6276.48. The California Public Records Act provides for disclosure of public documents when a request is made unless they fall within specified exceptions. There are numerous exceptions which may or may not apply depending on the type of documents.

Except as otherwise required pursuant to federal, state or local law, we will not release personal financial information submitted by an ACDBE in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

The City will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 23.

At the Norman Y. Mineta San José International Airport, the Airport Property Section monitors ACDBE sales. ACDBE sales are tracked as a percentage of overall concession revenue. The Airport maintains these statistics and graphs the results on a monthly basis to ensure that work committed to ACDBEs at contract award is actually performed by the ACDBEs.

On a daily basis, Airport staff monitors the ongoing operation of the concession related contracts consistent with the requirements of Part 23 and this Program. The City may impose such contract remedies as are available under the contract and under federal, state and local law and regulations for non-compliance. Failure to carry out the City's ACDBE Policy and goals and obligations set forth above shall constitute a breach of contract that may result in termination of the Concession Agreement, or such other remedy as deemed appropriate by the City.

The following monitoring and enforcement provisions are included in the City's concession agreements and management contracts:

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Compliance. Failure to carry out the ACDBE Policy and obligations set forth above shall constitute a breach of contract that may result in termination of the Agreement, or such other remedy as deemed appropriate by the City.

Audits. The City may also perform interim audits of contract payments to ACDBE management firms or subcontractors. The audit will review payments to ACDBE subcontractors and gross receipts earned by or payments for goods and services and management agreements to ACDBEs to ensure that the actual amount equals or exceeds the dollar amounts stated in the report of proposed ACDBE participation.

Replacement/Substitutions of ACDBEs. For concession contracts that include concession-specific ACDBE goals, Concessionaire will be required to have a valid arrangement with the ACDBE(s) designated by Concessionaire to fulfill the contract goal. For any such concession contracts that include concession-specific ACDBE goals, Concessionaire will be allowed to substitute the originally designated ACDBE(s) only if it is demonstrated to the City that the ACDBE(s) is unwilling or unable to perform. For any such concession contracts that include concession-specific ACDBE goals, Concessionaire's ability to negotiate a more advantageous contract with another ACDBE firm will not be considered a valid basis for substitution. For any such concession contracts that include concession-specific ACDBE goals, if an ACDBE is unwilling or unable to perform, Concessionaire shall inform the City in writing and include documentation to justify the substitution, including a statement from the ACDBE to be replaced acknowledging the substitution. In any such instance, Concessionaire will identify a replacement ACDBE or document good faith efforts to replace the ACDBE with another ACDBE. For any such concession contracts that include concession-specific ACDBE goals, if Concessionaire or a non-ACDBE firm performs the work originally committed to an ACDBE, the Concessionaire shall submit a revised ACDBE plan to the City detailing how the ACDBE goal will be met or will supply documentation detailing good faith efforts which have been made to meet the goal.

ACDBE Reports. Concessionaire shall submit, in the format required by the City, a monthly report of ACDBE utilization. The City reviews the monthly reports that are required to be submitted to the City by concessionaires to ensure that the ACDBE participation levels remain in compliance with any contract requirements and to verify that the work committed to ACDBEs is actually performed by ACDBEs. This information will also be used to provide the statistical data for the achievement reports to the FAA. If the City determines that any concessionaire is not complying

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with any contract requirements regarding this Program, the City will implement the contract remedies specified above.

Notices to DOT. The City will also notify the U.S. Department of Transportation of any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 49 CFR Section 26.107.

CONTRACT GOALS

The City will use concession specific goals to meet any portion of the overall goals the City does not project being able to meet using race-neutral means. Concession specific goals are established so that, over the period to which the overall goals apply, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

The City has not established an ACDBE goal for the RMU Concession Program.

GOOD FAITH EFFORTS

To be eligible to be awarded a concession that has a concession specific goal; competitors must make good faith efforts to meet the goal. A competitor may do so either by obtaining enough ACDBE participation to meet the goal or by documenting that it made sufficient good faith efforts to do so. (23.25(e)(1)(iv)). Examples of good faith efforts are found in Appendix A to 49 CFR Part 26. The procedures applicable to 49 CFR Part 26.51-3, regarding contract goals apply to the City's concession specific goals. Specifically,

Demonstration of good faith efforts (26.53(a) & (c))

The Airport Managers are responsible for determining whether a concessionaire who has not met the concession specific goal has documented sufficient good faith efforts to be regarded as responsive.

We will ensure that all information is complete and accurate and adequately documents the concessionaire's good faith efforts before we commit to the concession agreement with the bidder/offeror.

Information to be submitted (26.53(b))

For concessions that have a concession specific goal, the City treats concessionaire's compliance with good faith efforts' requirements as a matter of responsiveness.

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Each solicitation for which a concession specific goal has been established will require the concessionaires to submit the following information:

1. The names and addresses of ACDBE firms or ACDBE suppliers of goods and services that will participate in the concession;
2. A description of the work that each ACDBE will perform;
3. The dollar amount of the participation of each ACDBE firm/supplier participating;
4. Written and signed documentation of commitment to use a ACDBE whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the ACDBE that it is participating in the concession as provided in the prime concessionaire's commitment and
6. If the contract goal is not met, evidence of good faith efforts.

Administrative reconsideration (26.53(d))

Within three (3) days of being informed by the City that it is not responsible because it has not documented sufficient good faith efforts, a Concessionaire may request administrative reconsideration. Concessionaires should make this request in writing to the City Manager, 200 East Santa Clara Street, San José, California 95113. The reconsideration official will not have played any role in the original determination that the Concessionaire did not document sufficient good faith efforts.

As part of this reconsideration, the Concessionaire will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Concessionaire will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. We will send the Concessionaire a written decision on reconsideration, explaining the basis for finding that the Concessionaire did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the DOT.

For concessions that have a concession specific goal, any business that fails to demonstrate that it achieved the concession-specific ACDBE participation goal and fails to demonstrate that it made sufficient good faith efforts to do so shall be deemed "non-responsive" and, therefore, shall be ineligible for award of the concession contract.

Good Faith Efforts when an ACDBE is replaced on a concession (26.53(f))

For concessions that have a concession specific goal, the City will require a concessionaire to make good faith efforts to replace an ACDBE that is terminated or has otherwise failed to complete its concession agreement, lease, or subcontract with another certified ACDBE, to the extent needed to meet the concession specific goal. We will require the concessionaire to notify the ACDBE Liaison officer immediately of the ACDBEs inability or unwillingness to perform and provide reasonable documentation.

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In this situation, we will require the concessionaire to obtain our prior approval of the substitute ACDBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

If the concessionaire fails or refuses to comply in the time specified, our contracting office will give notice and opportunity to cure until satisfactory action has been taken. If the concessionaire still fails to comply, the contracting officer may issue a termination for default proceeding.

When a concession specific goal is established pursuant to the City's ACDBE Program, the following specification will be used to notify concession firms of the requirements to make good faith efforts:

> The requirements of 49 CFR Part 23, regulations of the U.S. Department of Transportation, applies to this concession. It is the policy of the City of San José to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this concession will be conditioned upon satisfying the requirements of this proposal/bid specification. These requirements apply to all concessions firms and suppliers, including those who qualify as an ACDBE. An ACDBE concession specific goal of **0 percent (0%)** of annual gross receipts; value of leases and/or purchases of goods and services) has been established for this concession. The concession firm shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 to meet the concession specific goal for ACDBE participation in the performance of this concession.

The concession firm will be required to submit the following information: (1) the names and addresses of ACDBE firms and suppliers that will participate in the concession, (2) A description of the work that each ACDBE will perform; (3) The dollar amount of the participation of each ACDBE firm participating; (4) Written and signed documentation of commitment to use a ACDBE whose participation it submits to meet a contract goal; (5) Written and signed confirmation from the ACDBE that it is participating in the concession as provided in the prime concessionaire's commitment, and (6) If the contract goal is not met, evidence of good faith efforts.

COUNTING ACDBE PARTICIPATION FOR CAR RENTALS

The City will count ACDBE participation toward overall and contract goals for car rentals as provided in 49 CFR Part 23.5e.

COUNTING ACDBE PARTICIPATION FOR CONCESSIONS OTHER THAN CAR RENTALS

The City will count ACDBE participation toward overall and contract goals for concessions other than car rentals as provided in 49 CFR Part 23.55.

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ACDBE CERTIFICATION

The City will use the procedures and standards of 49 CFR Part 26, except as provided in 49 CFR Section 23.31, for certification of ACDBEs to participate in our concessions program and such standards are incorporated herein.

For information about the certification process or to apply for certification firms should contact:

California Department of Transportation
Civil Rights – MS 79
1823 14th Street
Sacramento, CA 95814
Phone: 916-324-1700
Fax: 916-324-1862

Website: www.dot.ca.gov

The City is a member of the California UCP, which has established four Regional DBE Certification Clusters throughout the State to effectively facilitate statewide DBE certification activities. Completed certification packets are to be mailed to one of the agencies serving the county where the firm has its principal place of business.

The California UCP will not process a new application for DBE certification from a firm having its principal place of business in another state, unless the firm has already been certified in that state.

Certification decisions for ACDBEs to participate in the City's concession program are made by the California Unified Certification Program (CUCP).

All firms certified by the CUCP on behalf of the City and included in the CUCP directory will be reviewed and recertified by the CUCP based on the submittal of the information required for certification to determine their ACDBE eligibility. These reviews will be completed as soon as possible, but not later than April 21, 2006 or three years from the anniversary date of each firm's most recent certification, whichever is later. The City will insure that only firms certified as eligible ACDBEs participate as ACDBEs in its concession program.

All owners of all certified ACDBEs will be required to submit, on the anniversary date of their certification, a "no change" affidavit meeting the requirements of 26.83(i), including any change in their circumstances affecting their ability to meet size, disadvantaged status, personal net worth, ownership or control criteria or of any material changes in the information provided with the application for certification.. A copy of the renewal serves as the City's and CUCP's no change affidavit.

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The California UCP handles all decertification decisions on behalf of the City with respect to the Airport's concession program.

We will treat a firm as a small business eligible to be certified as an ACDBE if its gross receipts, averaged over the firm's previous three fiscal years do not exceed $56.42 million. The maximum size standard for banks and other financial institutions is $1 billion in assets, for car rental companies it is $475.23 million, 350 employees for automobile dealers, and for pay telephone companies the standard is 1,500 employees. (23.33) The personal net worth standard used in determining eligibility for purposes of part 23 is $1.32 million and any person who has a personal net worth exceeding this amount is not a socially and economically disadvantaged individual, even if a member of a group is otherwise presumed to be disadvantaged. (23.35).

We will presume that a firm that is certified as a DBE under part 26 is eligible to participate as an ACDBE. However, before certifying such a firm, we will ensure that the disadvantaged owners of a DBE certified under part 26 are able to control the firm with respect to its activity in our concessions program. We are not obligated to certify a part 26 DBE as an ACDBE if the firm does not do work relevant to our concessions program. (23.37).

We recognize that the provisions of part 26, sections 26.83(c) (2-6) do not apply to certifications for purposes of part 23. We will obtain resumes or work histories of the principal owners of the firm and personally interview these individuals. We will analyze the ownership of stock of the firm, if it is a corporation. We will analyze the bonding and financial capacity of the firm. We will determine the work history of the firm, including any concession contracts or other contracts it may have received. We will compile a list of the licenses of the firm and its key personnel to perform the concession contracts or other contracts it wishes to receive. We will obtain a statement from the firm of the types of concessions it prefers to operate or the type of other contracts it prefers to perform. We will ensure that the ACDBE firm meets the applicable size standard. (23.39(a)(b)).

We acknowledge that a prime contractor includes a firm holding a prime contract with an airport concessionaire to provide goods or services to the concessionaire or a firm holding a prime concession agreement with a recipient. We recognize that the eligibility of Alaska Native Corporations (ANC) owned firms for purposes of part 23 is governed by part 26 section 26.73(h). (23.39(c)(d)).

We will use the certification standards of part 23 to determine the ACDBE eligibility of firms that provide goods and services to concessionaires. (23.39(i)).

In instances when the eligibility of a concessionaire is removed after the concessionaire has entered into a concession agreement because the firm exceeded the size standard or the owner has exceeded the PNW standard, and the firm in all other respects remains an eligible DBE, we may continue to count the concessionaire's participation toward ACDBE goals during the remainder of the current concession agreement. We will not

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count the concessionaire's participation toward ACDBE goals beyond the termination date for the concession agreement in effect at the time of the decertification. (23.39(e)). Attachment 7 to the ACDBE Program recites the Part 26.87 procedures for removal of an ACDBE's eligibility.

We will use the Uniform Application Form found in appendix F to part 26 with additional instruction as stated in 23.39(g). A copy of this form is included as Attachment 6 of the ACDBE Program.

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EXHIBIT L

PRICING POLICY

The intent of the Pricing Policy is for prices and quality of products and services at the Airport to be comparable to off-Airport (street) locations within Santa Clara County, California. Multiple concessionaires operate at the Airport and it is expected that competition for customers will ensure that prices and quality of products and services remain at a level that closely matches street comparables.

Pricing Requirements and Comparables

Concessionaire is responsible for establishing comparable locations for the purpose of instituting a pricing structure for their concessions under the following guidelines:

1. Name brand stores
    a. If a concession has a street location within Santa Clara County, that location will be designated as a comparable store. Concessionaire may submit comparable pricing from a minimum of one (1) street location and no more than three (3) street locations.

2. Alternate comparable locations
    a. If a concession does not have a street location in Santa Clara County, the Concessionaire and Airport will identify no more than three (3) street locations in Santa Clara County similar in concept, size, and quality.
    b. If a product or service is not available at the selected street locations, the Concessionaire and Airport will identify no more than three (3) alternate street locations in Santa Clara County for that product or service.
    c. If Concessionaire is unable to find a reasonable comparable location within Santa Clara County, Concessionaire shall have the right to request in writing an exemption from the local comparable requirement for approval by the Director. Such request must include reason for requested exemption and provide a detailed explanation of how Concessionaire intends to establish pricing for its products or services.

3. Pricing
    a. Affordable pricing is an essential aspect of the passenger experience at the Airport and Concessionaire is strongly encouraged to charge prices that are no more than ten percent (10%) higher than the same product or service offered at the approved street location(s).
    b. Concessionaire must provide a price justification, to be approved by the Airport, for any product that is different in size or quality for purposes of establishing a reasonable comparable price.

4. Protection from competition

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a. Stores that are partially or fully protected from competition, such as hotels, amusement parks or sports arenas, and locations that operate using off-price or discount pricing structures, shall not be included as comparable locations.
b. If a branded concession has a location at either Oakland International Airport or San Francisco International Airport, that airport location can be used as a comparable location. However, prices cannot exceed the prices at the comparable airport location.

5. Product and price submittal
   a. Concessionaire is required to submit a complete product and price list to the Director for approval at least thirty (30) days prior to the initial concession opening. Such product and price list shall detail all products and services available for sale and the requested price. Differences in size or quality of a product or service shall, all other things being equal, be considered by Airport during its review.

6. Approval of comparables and pricing
   a. If the Airport and Concessionaire are unable to agree on the comparable street locations or prices, the Director will select the comparable street locations for the purpose of establishing prices.

Pricing Display

1. Display of pricing
   a. Concessionaire is required to prominently display pricing for all products and services offered at any location(s) at the Airport.

2. Pre-marked or pre-printed price
   a. Where prices are pre-printed on the item by the distributor or manufacturer, the price charged for the item shall not exceed the pre-printed price.

Price Adjustments and New Products

1. Written approvals
   a. Concessionaire must obtain Airport's written approval prior to adjusting prices and offering new products and services. Any request for price adjustments or new products and services must be submitted to the Director at least fourteen (14) days prior to the price increase effective date. Price increases shall be based on increases in prices for the same items at the comparable street locations in Santa Clara County.

2. Price adjustments
   a. Concessionaire will be allowed to submit pricing adjustments two (2) times per year unless otherwise requested by Concessionaire due to market conditions, and approved by the Director.

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Remedies for Exorbitant Prices and/or Inadequate Quality

1. Review of pricing and quality
    a. At any time, the Director may survey prices and the quality of products and services then in effect at comparable street locations in Santa Clara County. If the Director determines that any prices being charged by Concessionaire at the Airport are not in compliance with the Pricing Policy, are exorbitant, or that any product or service being offered by Concessionaire is of too low quality, the Concessionaire is required to submit, within seven (7) days, a product and price list with comparables as required in the Pricing Policy. Prices must be adjusted within seven (7) days of the Director's approval.

2. Remedies
    a. Should the Director determine that the Concessionaire has not complied with the conditions above, or that prices are exorbitant, or that the quality of products or services is insufficient, or that the Concessionaire has acted in bad faith, the Director will strictly enforce street pricing plus ten percent (10%). Should the Airport and Concessionaire not agree to a maximum price for a product or service within seven (7) days, the Concessionaire may charge the Airport determined price or remove the product or service from its concession location.
    b. Should Concessionaire not comply with these requirements, liquidated damages will be assessed as identified in the Concession Agreement.

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EXHIBIT M

INTENTIONALLY OMITTED

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EXHIBIT N

JOBS LIST

The following jobs require special skills, education or previous work experience:

- Program Manager (1)

The following jobs are available to low and moderate income persons:

- Operations/Maintenance (2)

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EXHIBIT O

HIRING PLAN FOR LOW AND MODERATE INCOME JOBS

Concessionaire is an equal opportunity employer. Concessionaire embraces diversity and responsibility to make employment and management decisions without regard to race, color, gender, religion, national origin, physical disability, veteran status, marital status, life-style orientation, or other classifications protected by applicable federal, state, and local laws related to employment placement, retention, compensation, training, promotion, and terminations. Concessionaire shall make reasonable accommodations for individuals with disabilities as required by law. Concessionaire's criteria for employment and advancement are based solely on individual abilities and job related qualifications.

Equal opportunity and valuing diversity are fundamental to Concessionaire's core values. Because Concessionaire's employees mirror the community they serve, Concessionaire is sensitive to the cultural and language needs of their clients and the community at large.

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EXHIBIT P

CONCESSIONAIRE'S PROPOSAL, DATED JUNE 2, 2017

(see attached)

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PROPOSAL FORM CHECKLIST
Attachment A-1

Please initial and submit this checklist with your proposal.

Proposer must include the following required forms/written documents. Proposer must initial in the box marked Proposer Checklist. An equivalent form conveying the same information in the same format may be substituted; however, Proposer accepts responsibility for any errors, omissions or incomplete submittal, which may be cause for rejection of this Proposal.

TAB	PROPOSAL CHECKLIST	PROPOSERS CHECKLIST (Proposer Use)	AIRPORT CHECKLIST (Airport Use)
TAB 1.	Cover Letter Proposal Form Checklist **(Use Form A-1)** Proposers Questionnaire **(Use Form A-4)** Proposers Representation **(Use Form A-7)**	X	
TAB 2.	Proposal Surety	X	
TAB 3.	Executive Summary Proposal	X	
TAB 4.	Business Qualifications and Experience **(Includes Form A-2)**	X	
TAB 5.	Financial Ability **(Include Form A-3)**	X	
TAB 6.	Revenue **(Use Form A-5)**	X	
TAB 7.	Operation Plan	X	
TAB 8.	Merchandising	X	
TAB 9.	Design & Capital Investment **(Includes Form A-6)**	X	

FORMS PROVIDED IN ATTACHMENT A All forms must be completed and submitted as part of the RFP.	
A-1 Proposal Form Checklist	A-5 Proposal Bid Form
A-2 Experience and Qualification Statement	A-6 RMU Concession Capital Investment
A-3 Business and Financial References	A-7 Proposers Representation
A-4 Proposers Questionnaire	

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PROVENZANO RESOURCES

3.2.1 TAB 1: Cover Letter, Proposal Form Checklist, and Supplemental Forms

June 2, 2017

Cover Letter *Subject:* RFP for Retail Merchandising Concessions Program at SJC

CONTACT Information: **PROVENZANO RESOURCES, INC.**

Ross V Provenzano, CEO **ross@proresourcesinc.com** **858-488-2734**
Deborah S Kravitz, President **deborah@proresourcesinc.com** **310-734-7843**

1211 Sunset Plaza Drive Suite 307 Los Angeles, CA 90069

Provenzano Resources, Inc. (PRI) is pleased to participate in the RFP for Retail Merchandising Concessions Program at SJC. PRI, which has been in business as a specialty retail leasing firm for over twenty five years has managed some of the nation's highest profile specialty leasing programs, including the Denver International Airport, The Third Street Promenade, Santa Monica, California; Union Station, Los Angeles, California; Santana Row, San Jose, California; La Palmera, Corpus Christi, Texas; The Royal Hawaiian Shopping Center, Waikiki, Hawaii; The Grove, Los Angeles, California and many others. The principals of PRI, Ross V. Provenzano and Deborah S. Kravitz have collectively over fifty years of retail, development, RMU management, product development and training experience.

PRI will be working with the premier common area design and fabrication company, Bella Group, in bringing to SJC the best of the best RMU's for their specialty retail program. Bella Group has a reputation of excellence in utilizing materials, concepts and its superior production facility to bring large scale RMU programs in on time, and on budget. The quality control and the fabrication process will also be overseen by PRI owners directly, resulting in units that will not only add a sense of place to the program at SJC, but will have the elements needed to look as good in year one, as in year seven.

With an understanding of airport retail and concessions, combined with its' deep experience in creating, leasing, managing and merchandising high quality and dynamic specialty retail programs believes it will be the asset to SJC.

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PROVENZANO RESOURCES

Minimum Qualifications

PRI CEO, Ross V Provenzano attended the mandatory pre-proposal conference and site tour. (see highlighted attendance sheets)

1. **Minimum Years of Experience Required.**

   PRI has over twenty five years of experience with large scale specialty retail programs. PRI has managed the following programs in accordance with the requirements:

Denver International Airport	38 Units RMU's/Kiosks	5.5 years
Third Street Promenade	26 RMU's/Kiosks	12 years
La Palmera	35 RMU's/Kiosks	8 years
Baldwin Hills Plaza	18 RMU's/Kiosks	11 years
SkyView Center	17 RMU's/Kiosks	2 years
Sunrise Mall	25 RMU's/Kiosks	4 years

   All of the above units have been retail concessions, no wet food of any kind.

2. **Minimum Gross Revenues Required.**

   PRI has generated at least $800,000 in RMU/Kiosk rent revenue per year for each of the qualifying years. PRI owns and manages the Denver International Airport RMU/Kiosk program which generated over $2.9 million dollars in revenue in 2016 (increases annually since 2011 start); the Third Street Promenade program which generates approximately $700,000 per year, and has had client properties that generate from $300,000 in revenue to over $1.5 million dollars in RMU/Kiosk short term revenue per location.

3. **ACDBE Requirements.**

   PRI is currently an ACBDE in the state of California and has been a DBE/WBE in California since 2000. PRI is ACDBE in New York, New Jersey, Chicago, Nevada, Phoenix, North Texas, and Colorado. PRI knows that a strong ACDBE component is critical to the success of the SJC common area unit program, and will follow all guidelines to ensure compliance with the goals and objectives of the ACDBE program. PRI has conducted ACDBE outreach as part of its' consulting services for LAWA/LAX in 2004 and 2008; and does ongoing small business outreach in the communities where it manages or owns RMU/Kiosk programs.

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PRIME/ SUBCONCESSIONAIRE CONNECTION MEETING SIGN-IN SHEET

RFP:	Retail Merchandising Unit SJC161728	**Meeting Date:**	My 02, 2017
Facilitator:	Irv Tosk	**Place/Room:**	McEnery Convention Center

Name	Title	Company	Phone	E-Mail
Michael E. Washington	President	Palazzo Concessions.com	310-486-4925	Michael@palazzoconcessions.com
Drew Levy	CEO	TLG Management LLC	305-345 7356	drewlevy@mindspring.net
Erin Chaek	Dir. of Operations	Aquarium of the Bay	415-623-5310	erinc@aqua.org
Holly Lamkin	Retail Manager	Aquarium of the Bay	415-623-5328	hollyl@aqua.org
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Melissa Jones	AVP	Zoom System	415-503 7298	melissa.jones@zoomsystems.com
Scott Nguyen	GM	SSA	408-758-8823	Scottnguyen@bussga.com
Greta Pander			LAB 59 DLSD	
Sherrill Meeks	Dir. Marketing	San Jose Airport of Art	408-271-6872	sherrill@sjmuseum.org
Pat Donomard	Dir of Retail Ops	" " "	408-521-4021	pdonomard@sjmuseum.org
Ann Ferragusto	Principal	Air Projects	703 6835507	annf@airprojects.net

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PRE-PROPOSAL CONFERENCE AND SITE TOUR SIGN-IN SHEET – Proposing Primes

RFP:	Retail Merchandising Unit SJC161728	**Meeting Date:**	May 03, 2017
Facilitator:	Irv Tosk	**Place/Room:**	San Jose Airport

Name	Title	Company	Phone	E-Mail
Dror Levy	CEO	TLE Management	805-345-7356	drorlevy@marcodesin.net
Melissa Jores	Account VP	Zoom Systems	415-503-7288	melissa.jores@zoomsystems.com
~~Matthew Kazmierczak~~		~~SJC~~		signed in error. Not a Prime MK
~~Ross Porcizano~~	~~AZD~~	~~Protection Plans~~	~~[illegible]~~	~~[illegible]~~
Greta Rowden	Owner		408 590 1553	Grandev76@gmail.com

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PROPOSER'S QUESTIONAIRE
Attachment A-4

1. **NAME**

Name of Proposer exactly as it is to appear on the Concession Agreement and address which Proposer would designate under the Notice provision of the Agreement:

Company Name: Provenzano Resources, Inc.

Name of Proposer: Deborah S. Kravitz

Title: President

Phone: 310-734-7843 | Fax: | E-mail: deborah@proresourcesinc.com

Company address: 1211 Sunset Plaza Dr. Suite #307

City: Los Angeles | State: CA | ZIP Code: 90069

Billing address (if different):

City: | State: | ZIP Code:

Contact for Billing: Deborah S. Kravitz

Phone: 310-734-7843 | Fax: | E-mail: deborah@proresourcesinc.com

2. ***PROPOSER DOING BUISNESS AS***

Proposer, if selected, intends to carry on business as a:

Sole proprietorship: ☐ Partnership: ☐ Corporation: ☑ Joint Venture: ☐

Limited Liability Company(LLC): ☐ Other: ☐ f Other, Attach Explanation

COMPLETE APPLICABLE FORM PROVIDED.

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PROPOSER'S REPRESENTATION
Attachment A-7

AGREEMENT

Proposer understands, agrees, and warrants that:

1. Proposer has carefully read and fully understands the information that was provided by the City to serve as a basis for submission of this proposal to operate a Retail Merchandising Unit Concession at Norman Y. Mineta San José International Airport;

2. Proposer has the capability to successfully undertake and complete the responsibilities and obligation of the proposal being submitted;

3. Proposal Bond is submitted with the proposal and attached hereto;

4. Proposal Bond will be held by the City to secure the obligations that the Proposer agrees to assume under this RFP;

5. Proposal may be withdrawn by requesting such withdrawal in writing prior to the time and date that the proposal is due, but may not be withdrawn after the time and date for a period of one hundred eighty (180) calendar days without forfeiture of Proposal Bond;

6. All information contained in the proposal is true and correct to the best of the Proposer's knowledge;

7. Proposer did not, in any way, collude, conspire or agree, directly or indirectly, with any person, firm, corporation or other Proposer in regard to the amount, terms, or conditions of this proposal;

8. Proposer did not receive unauthorized information from any member of the City, Proposal Panel, Airport staff, or any Airport Consultant during the proposal period;

9. Proposer acknowledges that the City has the right to make any inquiry it deems appropriate to substantiate or supplement information supplied by Proposer, and Proposer hereby grants the City permission to make said inquiries, and to provide any and all requested documentation in a timely manner.

This form must be returned with Proposal and attached to the Representation Signature Page.

4/18/2 DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document. 56

No proposal shall be accepted which has not been signed in ink in the appropriate space below:

CORPORATION REPRESENTATION SIGNATURE

If Proposer is a CORPORATION, the duly authorized officer(s) shall sign as follows:

The undersigned certify that they are respectively:

CEO
Title

and

President
Title

of the corporation named below; that they are designated to sign this proposal form by resolution (attach a certified copy, with corporate seal, if applicable, notarized as to its authenticity or secretary's certificate of authorization) for and on behalf of the below named CORPORATION, and that they are authorized to execute same for and on behalf of said CORPORATION.

Provenzano Resources, Inc.
Corporation Name (type or print)

By: Ross V. Provenzano
Name
CEO
Title

Date: 5/17/2017

By: Deborah S. Kravitz
Name
President
Title

Date: 5/17/2017

Deborah S. Kravitz
Name of Proposer

By: Deborah S. K
(Principal/Owner/Authorized Officer)

SUPPLEMENTAL A-4-CS9

ACTION BY UNANIMOUS WRITTEN CONSENT
OF THE BOARD OF DIRECTORS
OF
PROVENZANO RESOURCES, INC.,
a California Corporation

Effective Date: May 25, 2017

The undersigned, constituting all of the members of the Board of Directors (the "Board") of. PROVENZANO RESOURCES, INC. ,a California Corporation (the "Corporation") acting in accordance with Article III, Section 7 of the bylaws of the Corporation and California Corporation Code Section 307(b), consent to the following action without a meeting:

Resolved, that the Corporation submit the RFP for Retail Merchandising Unit Concession Program at SJC also known as Bid SJC 161728 and that the Secretary of the Corporation affix the Corporate seal to the resolution and that the officers take all necessary and required action to implement the Request For Bid.

OMNIBUS RESOLUTIONS

RESOLVED FURTHER, that the officers of this Corporation be, and each individually is, hereby authorized to do and perform any and all such acts, including execution of any and all documents and certificates, as said officers shall deem necessary or advisable, to carry out the purposes of the foregoing resolutions.

IN WITNESS WHEREOF, the undersigned have executed this Unanimous Written Consent of the Board of Directors in lieu of meeting to be effective as of the date first written above.

DEBORAH S. KRAVITZ, Director

ROSS V. PROVENZANO, Director

I certify the above Consent is a true and correct Action by the Board of Directors of the Corporation.

DEBORAH S. KRAVITZ, Secretary

CORP2185.03.11.- Action Consent of BOD

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3.2.2 TAB 2

Proposal Security

In Original #1 Binder only.

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PROVENZANO RESOURCES

3.2.3 TAB 3: RMU Executive Summary Proposal:

Provenzano Resources, Inc.(PRI) proposes to own, manage, lease, merchandise and maintain the nine unit (9) unit RMU/Kiosk program at the San Jose International Airport. At this time, it is our intention to sublicense all of the units to merchants to own and operate individual or multiple units in this Specialty Leasing Program. This creates an opportunity for local, regional and national merchants to become involved in the SCJ Airport, and for small businesses and ACDBE's to participate in this unique program.

PRI has over 25 years of operating RMU/Kiosks nationwide, with a great deal of experience in the Northern California area developing specialty leasing programs. We have owned and managed the award winning RMU/Kiosk program at the Denver International Airport since 2011, and the largest privately owned pedestrian area program at the Third Street Promenade in Santa Monica since 2005. We have created, leased, managed or merchandised over one hundred RMU/Kiosk and Pop Up Store programs since 1994 as a consulting firm including locations as diverse as Anchorage, Alaska; Corpus Christi, Texas; Martinique; Bozeman, Montana; Huntington Beach, California; and Dubai in the United Arab Emirates. The President of PRI has conducted training seminars on RMU/Kiosk programs for the Westfield Company; Ivanhoe Cambridge, General Growth Properties, the Middle East Council of Shopping Centers; Retail Asia Omni Channel Conference, and over twenty- five years of International Council of Shopping Center seminars.

PRI has been engaged in the airport retail world since 1997, when we were awarded an RFP by the San Diego International Airport to create a concessions plan for the planned redevelopment. We were then further engaged to evaluate the mid-term requirements for the HMS Host Food & Beverage concessions at SAN. We were consultants for Leigh Fisher in an RFP for concessions planning for Los Angeles World Airports, and were involved in the International Terminal design charrette. We were further involved in the LAX outreach and recruitment for small retailers over the next two years; and then with the Center for Airport Management RFP, awarded in 2000 for the same. We did a trade area analysis and trend report for CAM on the Miami International Airport, and independently designed a gift shop and signage for the Oakland Airport.

With our long experience in airports combined with our RMU/Kiosk programs, designing, fabricating and installing a program at SJC shall be a culmination of that record. The RMU/Kiosk units that will be designed, fabricated and installed at SJC by Bella Group from Dallas, Texas, will be aesthetically matched to the environment, while robust enough to withstand the day to day activity of a highly- trafficked airport. The units will be designed to have both capacity to display and sell product and storage. A focus will be lighting, signage and security, as we know those are the key elements to success for a merchant. There will be optional display elements for ease of turnover and lower costs to the incoming merchants. SJC airport will review designs as they are finalized, allowing for design, engineering and pricing before a Notice to Proceed, the units will require a minimum of one hundred and twenty days for construction and delivery. Bella Group will likely build a prototype of one or more components, so we can inspect to insure that the units delivered are fully operational and tested.

As the units are being built, the focus will be on leasing and visual merchandising preparations. PRI has deep ties to merchants in the Northern California area, and will begin canvassing immediately. As soon as each

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PROVENZANO RESOURCES

merchant is finalized, and their sublicense is executed, they can begin the hiring, training and badging process. That will be a minimum of 30-45 days to hire and train staff and then up to 30 days for badging. Simultaneously, we will begin to work on the visual designs for each merchant, so that when Grand Opened, the SJC program presents the best-of-the-best in RMU design, merchant concepts, and visual display.

PRI has looked at potential for sales and therefore rental rates for the RMU/Kiosk program, and will have a fifteen (15%) rent to sales burden planned. Therefore rents shall be planned with that ratio in mind, excluding ancillary charges as needed. The merchants in an airport have a high payroll percent of sales, and typically other high operational expenses. There will be an average of fifteen percent (15%) as a natural breakpoint, although this may vary based on location, the concept, and the merchant's margins. PRI will have a capital expense of approximately thirty-five thousand dollars ($35,000) per unit, start up expenses, and high payroll expenses for this nine unit program based on the need for onsite staff, maintenance and other day to day leasing and management needs, including badging oversight. Therefore, PRI is offering as part of this RFP, a fifteen percent (15%) MAG to the airport of the collected rent revenue. This will include any and all overage rents. This will allow for a strong, best in class operation of the RMU/Kiosk Program at SJC.

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EXPERIENCE AND QUALIFICATION STATEMENT
Attachment A-2

Provide the following information for the Proposer and any Operators. Use additional sheets if necessary.

1. Furnish the name of all current RMU concessions developed and operated in the United States, up to a maximum of ten (10) locations, including the concession name and annual gross sales for the last 3 years. If the location has been in operation for less than 3 years, provide gross sales for each year in operation.

LOCATION	NUMBER OF UNITS	ANNUAL GROSS SALES FOR ALL LOCATIONS (YEAR 1)	ANNUAL GROSS SALES FOR ALL LOCATIONS (YEAR 2)	ANNUAL GROSS SALES FOR ALL LOCATIONS (YEAR 3)
Denver International Airport	43	3,084,311	3,149,200	2,772,670
Third St. Promenade	26	694,031	698,961	679,352
La Palmera	35	1,371,475	1,490,581	1,510,256
Baldwin Hills Plaza	18	429,443	477,159	630,177
Skyview Center	17			448,800
Sunrise Mall	28	330,200	375,600	381,000
Hamilton Mall	23			1,000,070
Boston Downtown Improvement	4		127,000	
Shoppes at Chino Hills	6	86,400	97,200	93,100
City of Walnut Creek	6	125,000		

2. From the list provided above, identify and briefly describe the three (3) RMU Concession Programs that are most comparable to this opportunity. Attach up to three (3) photos that best showcase your unit design and features.

(Attach information and label as A-2-2, Attach photos and label as Supplemental A-2-2)

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PROVENZANO RESOURCES

3.2.4 TAB 4: Business Qualifications and Experience:

a. 2. Identify and Describe three (3) programs that are comparable. Include a description of the kiosk merchandise mix and which unit concepts generate the most revenue.

1. **Denver International Airport, Denver, CO**

This program has 39 units, plus 4 additional locations for Pop Up Shops and other income enhancement. This is most comparable to SJC as it is also an international airport. The merchandise mix is electronics, skin care; packaged foods, gift items, local Colorado themed items, and traveler needs such as sunglasses. The concepts that generate the most revenue are branded electronics (Bose, Bluewire); packaged foods (Fruity & Nutty, See's, Popcorn); Colorado and Team store products (state logo, local Denver teams in season); and Skin Care. This program has seen success in jewelry, however it must remain fresh and new to keep the traveler coming back. This program has been open since September 2011.

2. **Third Street Promenade, Santa Monica, CA**

This program has 26 units, and is in a high traffic pedestrian area. It has a lot of travelers and tourists. The merchandise mix is hats, jewelry, sunglasses, electronics, gift items and souvenirs. The strongest revenue is from interesting and new ideas, interactive product and local artisans. Hats have consistently been the highest revenue generator, however seasonal concepts are usually as strong. This has included silk wrap skirts and dresses; hanging outdoor garden mobiles. This program has been open since November 2005.

3. **Union Station, Los Angeles, CA**

This is a small, test program of 4 custom units, in a historic train station. It is all travelers, but with less dwell time than DEN Airport. The merchandise mix is jewelry, custom Los Angeles accessories, hats and other easily carried and packed items. The highest revenue is gifts and jewelry. This program opened in February 2017.

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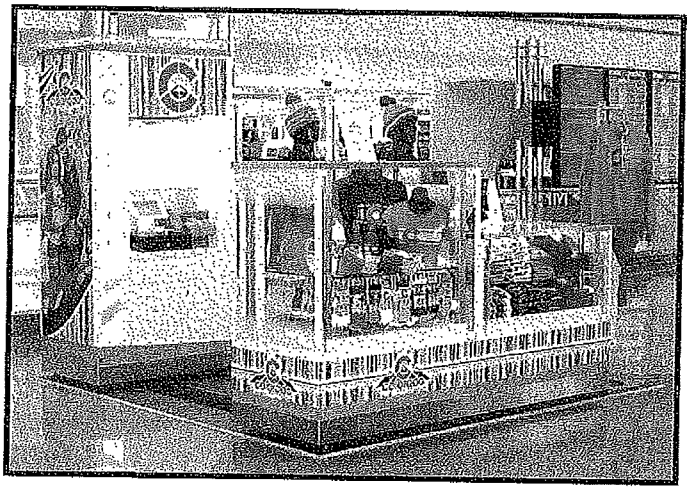
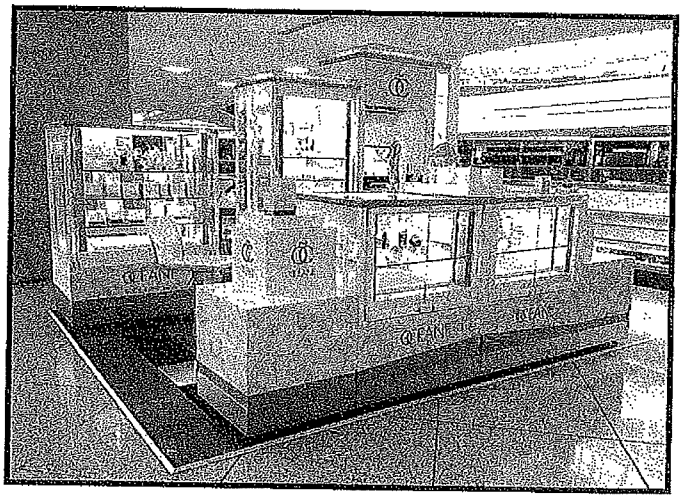
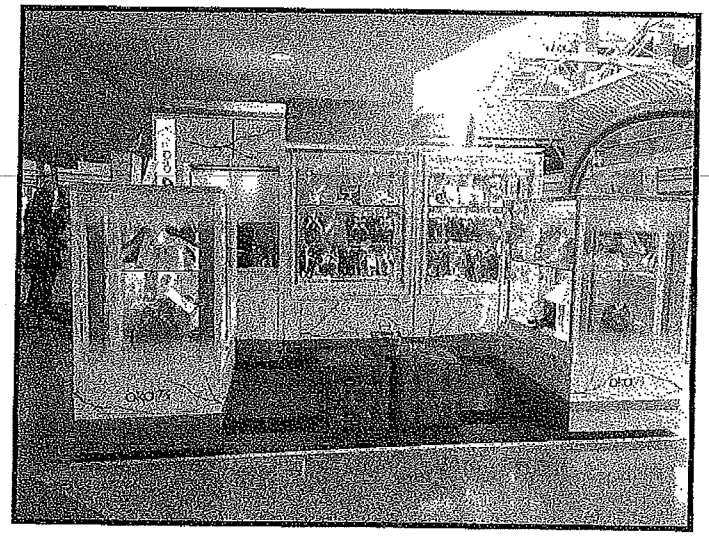
PROVENZANO RESOURCES

TAB 4: Pictures of Kiosks -Denver International Airport







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PROVENZANO RESOURCES

TAB 4 Business Qualifications and Experience

Provenzano Resources, Inc. (PRI) is a full service retail real estate consulting firm specializing in creating, managing, leasing and merchandising common area (RMU) and short term retail programs for clients. PRI is a California based company, with offices in California, Denver, and Wisconsin that has been in business for over twenty years. PRI is an ACDBE in California.

The managing partners and principals, Ross V. Provenzano and Deborah S. Kravitz, have over fifty years of retail, real estate, specialty retail, manufacturing, real estate development and general management experience between them. They have a network of over twenty superbly qualified and highly motivated specialists to utilize on their projects, ranging from visual merchandising experts, to key accounting personnel and strong operations staff.

Provenzano Resources, Inc. is proud to have some of the premier specialty retail programs in their portfolio of current and previous clients. These include, but are not limited to: Fashion Island and Irvine Spectrum Center in Orange County, California (Irvine Retail Properties); The Grove in Los Angeles (Caruso Affiliated); Paseo Colorado; Diamond Center, Anchorage, Alaska; Dubai Festival City, Dubai UAE; Santana Row, San Jose (Federal Realty); South Street Seaport, New York City (The Rouse Company). PRI worked with CityWalk Universal Studios on its' RMU program, training and acclimating the retail management team. PRI has produced specialty retail program business evaluations for Westfield properties; retail seminars for General Growth Properties and Westfield; and full day specialty leasing management training for Ivanhoe Cambridge.

Current specialty retail program development clients include La Palmera, Corpus Christi, Texas; Baldwin Hills Crenshaw Plaza, Los Angeles, California; The Shoppes at Chino Hills, Chino Hills, California; Village at Orange in Orange, California; Tivoli Village in Las Vegas, Nevada; Hamilton Mall in Mays Landing, New Jersey, SkyView Center in Flushing, New York; The Bloc in Downtown Los Angeles; Headquarters in San Diego, California; Denver International Airport; the Third Street Promenade in Santa Monica, California. Most specialty retail RMU programs that involve Provenzano Resources, Inc. are unique high profile locations, or properties that require special levels of program development assistance.

PRI is the direct owner/manager of the RMU/Kiosk and Pop Up store program at the Denver International Airport. This program was awarded through a competitive RFP in 2010, and PRI was chosen by the City Council of Denver, Colorado for a seven year contract. This program includes 28 RMU's and 14 Kiosks, as well as other income enhancements including two Pop Up stores. The program requires the delivery of all merchandise to the PRI retailers, and there is an on airport distribution center that PRI created, staffs and manages for this purpose. PRI is responsible for the badging process and oversight for all employees in the program and this includes over 350 current badge holders. There is an onsite office include a visual merchandiser and lease administrator. The program has a 25% of sales ACDBE goal, and PRI has always exceeded that percent.

PRI is a direct owner/manager of the specialty retail program at the Third Street Promenade located in Santa Monica, California. This program was awarded through a competitive RFP in 2005, and PRI was unanimously chosen by the City Council of the City of Santa Monica for a fifteen (15) year exclusive contract for a program of twenty retail units, three food units, and three weekend only artisan units. This program has exceptional

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challenges, as each unit must be removed to storage daily, being towed over a three block pedestrian walkway morning and night. PRI staff is responsible for the day to day management of this visible program on a city street, and working closely with both the City of Santa Monica and Downtown Santa Monica Corporation, a management entity for the city.

PRI creates unique programs in every environment. With a focus on custom designed units, specifically engineered for aesthetic and functional needs of each locale. Merchant development through ongoing assistance and training, and local outreach programs that encourage entrepreneurs to participate are the hallmarks of our programs. PRI specialty retail programs have visual display continuity, with a merchandiser assigned to each program. They have clear and concise direction to merchants, with very exact use clause and ongoing monitoring of compliance. We specialize in finding unique uses, the 'best' of each category of product. We canvass and prospect extensively and on an ongoing basis to offer these opportunities to small business, manufacturers, artisans and local and regional retailer.

In addition to creating and managing specialty retail programs for shopping center developers, PRI has also been engaged by retailers to assist them in their entry into specialty retail. PRI developed a prototype retail unit for Dillon Rogers, and upscale manufacturer of leather personalized jewelry, which won a Silver MAXI award for visual merchandising excellence. PRI has trained owner operators for Santa's Pen (Joseph K & Company), a national seasonal RMU use for over five years. NYS Collection, an international sunglass company with over 1,000 RMU locations has utilized the company for a Mystery Shopping project to evaluate the operations and visual displays of its' operators. Three Dog Bakery, a small shop concept retained PRI to review their potential as RMU operators, and ultimately retained the company to serve as real estate advisors on expansion locations.

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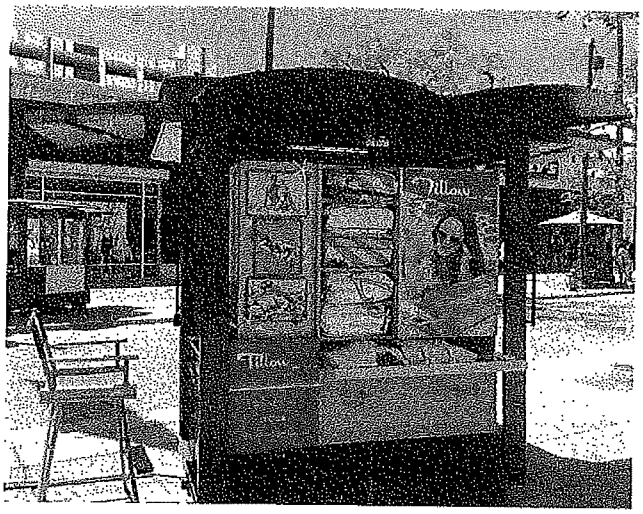
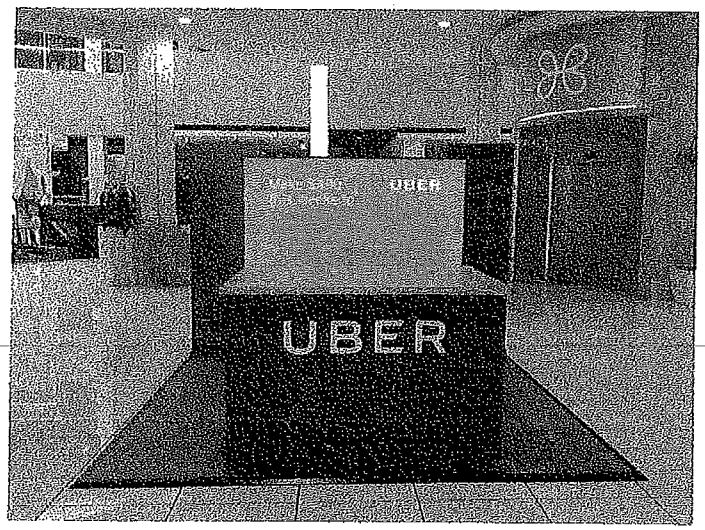
PROVENZANO RESOURCES

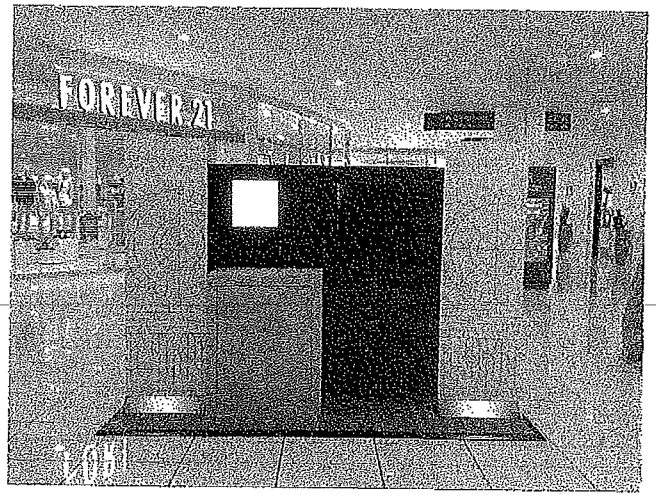
TAB 4: Pictures of Unit Design and Features

SKYVIEW CENTER



THIRD STREET PROMENADE





BALDWIN HILLS PLAZA

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PROVENZANO RESOURCES

TAB 4: Business Qualifications and Experience

b. Project Organization and Key Personnel:

BIOGRAPHY: DEBORAH S. KRAVITZ, CRX, CLS

Deborah is President of the retail real estate consulting firm of Provenzano Resources, Inc. based in Los Angeles and San Diego, California, conducting business worldwide since 1996. She has over 40 years of experience in the retail and shopping center industry with positions that have included: director of stores for Claire's' Boutiques, ACA Joe, Inc., national merchandise coordinator for Bernard Chaus, and buyer for Bonwit Teller. Deborah began her career in the shopping center industry as a regional specialty leasing director in the New York/New Jersey area for Simon Property Group, the nation's largest developer. As vice president of specialty retail for Lava Enterprises, Inc., she was responsible for the largest independent dealer (owner-operator) temporary leasing program in the United States. In this position she negotiated national licenses and site selections with mall developers, designed display programs and conducted national training seminars in retail operations and visual merchandising.

Deborah was the review chair for the International Council of Shopping Centers Handbook on Specialty Leasing and was responsible for overseeing the content and accuracy of this published book. She also wrote the 'Best Practices in Specialty Leasing' chapter of the ICSC Best Practices in Shopping Centers book in 2015. She received the Lifetime Achievement in Specialty Leasing Award from the ICSC Specialty Retail Report.

Deborah is an active member of the International Council of Shopping Centers (ICSC) and served for five years as a member of the Temporary Tenant Conference Committee, and is currently serving on the FUSION Committee 2010, the MAXI Awards Committee 2010, and the CLS Governing Committee. She has spoken for fifteen years at these conferences. She has been a workshop presenter at the ICSC Travel, Leisure and Lifestyle Conferences in 2000 and 2001; a seminar leader at two Fall ICSC Conventions and at the ICSC 2001 Spring Leasing and Trade Show she was the chair of a session on Airport Retail. She is on the advisory committee to the Specialty Retail Report Trade Show (SPREE) and has conducted workshops at SPREE for eight years. She conducted a three day seminar on specialty leasing for the Middle Eastern Council of Shopping Centers in Dubai in 2006; and conducted a one day specialty leasing seminar at the 2010 RECON MENA, the Middle East North Africa ICSC Convention. She is an ICSC Certified Property Management Executive (CRX) and a Certified Leasing Specialist (CLS).

BIOGRAPHY: ROSS V. PROVENZANO, PRINCIPAL

Ross is a graduate of the University of San Diego and has been a resident of Southern California for over 55 years. He is the chief executive officer of Provenzano Resources, Inc., a retail-consulting firm serving shopping center developers and managers, airports and retailers. Ross holds a current California Real Estate brokers license, a California general contractors license and has an extensive background in commercial and residential property construction and development.

Ross spent over fifteen years as the owner of Provenzano Inc., a commercial and residential development and construction firm. In this capacity he constructed, managed and sold apartment complexes and developed and constructed luxury homes. He developed, built and managed hotels in Rancho Bernardo and Sacramento, California.

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In 1992, Ross joined The Glowing Candle Factory, a home based manufacturer of specialty candles as president. Under his direction the company grew to over a $15 million dollar business in under four years and became Lava Enterprises, a full service marketing and distribution business. He created and implemented the nation's first direct owner/operator program through the use of a unique marketing program utilizing RMU and seasonal stores. He also established manufacturing facilities in Mexico and China, a wholesale division and a mass-market distribution channel. He created business opportunities with other companies such as Hershey's Chocolate World, a division of Hershey's Foods International.

Ross is a member 'emeritus' of the International Council of Shopping Centers (ICSC) Short Term Retail Conference Committee, on which he served for eight years.

BIOGRAPHY: LEE ECKHOLM, Vice President

Lee is the current National Retail Director for Provenzano Resources, Inc. She has been with the company in this capacity for four years, but had done special projects for PRI for over twelve years, and was a direct report to the president in her capacity as consultant to the Irvine Company.

Lee Eckholm has over 20 years of Specialty Retail experience as a consultant and manager for retail, entertainment and lifestyle centers in strategic business planning, lease negotiations with local and national tenants, merchandise presentation and visual display. In this capacity she has created and implemented standards and criteria for visual merchandise presentation and display requirements. Lee has designed new specialty retail units including unique, custom RMU's and was involved in the design and tenant coordination of new in-line retail. She is experienced in creating budgets, financial data, merchant manuals, operating handbooks and marketing collateral. Prior to joining Provenzano Resources, Inc., Lee was a specialty leasing manager for The Irvine Company overseeing Irvine Spectrum Centers' specialty retail program as the project grew from a 250,000 square foot entertainment center to over 1 million square feet of retail and entertainment with over one hundred RMUs/Weekend tenants.

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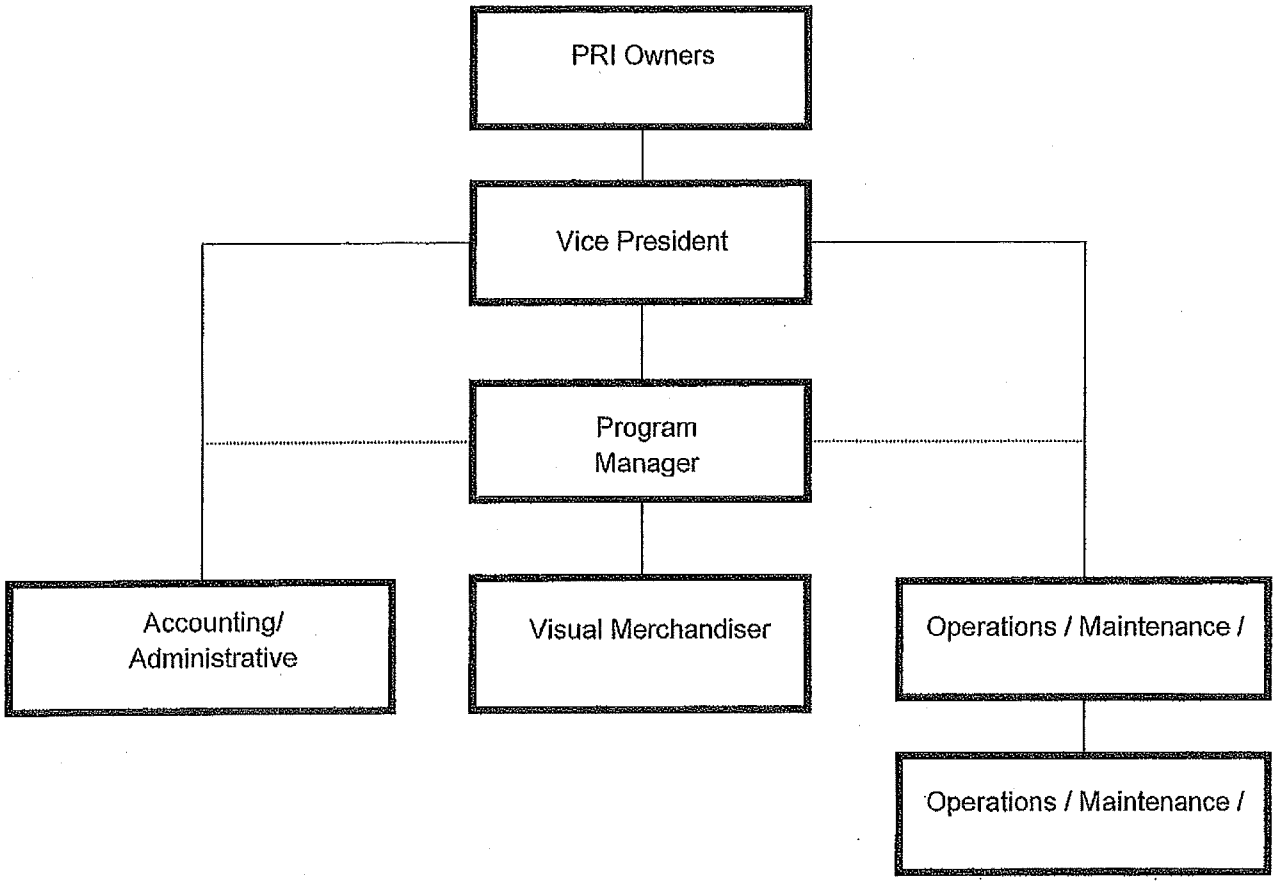
PROVENZANO RESOURCES

TAB 4 b. Project Organization & Key Personnel

Project Organization Structure



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PROVENZANO RESOURCES

TAB 4 b.1 Sub-consultants:

Danielle S. Hopper HOPPER STUDIO
Visual Display and Design Consultantancy

Danielle is the owner of Hopper Studios, a national visual merchandising firm that is focused on RMU's, Kiosks and Pop Up stores. She is a graduate of the Fashion Institute of Design and Merchandising and has over twenty years of experience in visual display for the retail industry. She was with the Harris Company department stores for nine years as a regional display manager.

In 1995 Danielle began her visual freelancing and consulting business. She specializes in the design and fabrication of fixtures and props, product merchandising, signage and window display for shopping centers and retailers. Her business is focused in RMUs, in line temporary stores, specialty stores and marketing packages. Danielle has given training sessions at the International Council of Shopping Centers Specialty Retail Conference on visual merchandising for RMUs, and at the annual Joseph K & Co. convention she was a guest speaker. She has given merchant seminars on displays, signage and has conducted 'how-to' display demonstrations.

Danielle has worked with Provenzano Resources, Inc. for over thirteen years as their in-house visual merchandising consultant, specializing in outdoor RMUs and temporary inline stores. For PRI she has been solely responsible for the visual merchandising of programs such as: The Avenue of the Peninsula re-opening, Bond Company's Shops at Schwab's in Hollywood, Federal Realty's Santana Row and many others. Other PRI projects have included The River at Rancho Mirage, Shoreline Village, Metro Pointe at South Coast; Baldwin Hills Crenshaw Plaza, Los Angeles, and San Diego International Airport (review of concession program); re-merchandising the RMU program for Caruso Affiliated's The Grove in Los Angeles. She is solely responsible for the Third Street Promenade in Santa Monica, California visual merchandising. She remerchandised the rebranded Miracle Mile Shops in Las Vegas, Nevada.

Hopper Studios is responsible for the Grand Opening of the MAXI Award winning Denver International Airport RMU/Kiosk program, the MAXI Finalist for the Grand Opening of the Pacific City, Huntington Beach, California Pop Up store program, the MAXI Award winning Dillon Rogers RMU display.

Danielle has a team of over five experienced assistants, ranging from carpenters, painters, other merchandisers, and as needed, metal workers and sign makers. Her team is dedicated to completing their projects on time and on budget, and has made Provenzano Resources, Inc. client relationships grow.

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TAB 4 b.2 Unique Qualifications

PRI is dedicated to the highest levels of quality control with every specialty leasing program it creates, leases, manages and merchandises. PRI has an organized and methodical approach to its programs that allow for everything from grand openings of programs through to the day to day management of the programs to be planned in advance and executed with precision. PRI staff is experienced in the specialty leasing industry, each with an average of at least ten years of direct responsibility for the management, merchandising or operations of a program.

PRI merchants are prepared, well informed and aware that their operations must function at high capacity at all times. PRI merchants go through a vigorous and thorough process of application, interview(s) and appropriate levels of training if needed prior to participating in a program. PRI has taught retail, product development, and visual merchandising in varying formats throughout the last twenty- five years, and implements that training directly with prospective merchants.

PRI believes that quality control should start at the onset of any communication with a merchant. It therefore provides for professional presentation of all paperwork, starting with the application package that can be filled in online through the website, mailed or e-mailed directly to the prospect. It is clear from the presentation of these documents that this program will operated professionally, and in an organized yet streamlined manner. The first step is that all PRI merchants must fill out application forms completely, submit with all required documents, and then are carefully vetted for their operations and veracity. All references a merchant submits are checked, and any discrepancies discussed with the prospect. All PRI merchants receive a Merchant Handbook/Rules and Regulations, as Exhibit B of their license agreement. However, during the first meeting with each prospective tenant, this handbook is reviewed and then given to them, before they decide if they are interested in participating in the program. PRI believes in the 'no surprises' method of managing these large scale and complex programs. Merchants are fully informed as to their obligations and rights as part of a PRI managed program.

PRI has a complete and detailed license agreement developed for each location it manages. The license agreement is the key to quality control of a program, as it spells out clearly and in understandable language the responsibility of the merchant. From location, term of the agreement, financial terms and payments, through to the process of signing the document, the merchant is indoctrinated into the PRI method of operation. Two key elements are the use clause and the visual merchandising sections of the license agreement. The use clause starts with step one, as each merchant must submit their requested product/concept with the initial application. PRI does not accept samples to its' office or staff, only detailed pictures, lists of product and price points will suffice.

The merchant is given to understand from the onset that their concept must be clear, understandable, and concise, as PRI does not permit deviation from use clauses at any time without written permission from management. This is adhered to strictly, with all PRI program personnel aware of each use clause at all times, with the authority to immediately address any alteration to a concept that is unapproved.

Visual display and merchandising is always under constant quality control from all PRI staff. Each merchant will work with the designated visual merchandiser prior to opening to develop a visual display and planogram.

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The merchant then gets hands on assistance during their set up and installation of display and product. Pictures are taken of the unit, and provided to the merchant so their staff can be diligent in maintaining the display. PRI staff is also provided the visual plans and pictures so that they can monitor, on a day in and day out basis, the merchant's display. All merchants in each PRI program are required to refresh their displays annually, whether that requires a complete overhaul due to change in concept, season, or wear and tear or the display. All signage must be professional at all time, and in some programs PRI requires merchants to utilize a PRI sign package for uniformity, which might be an additional quality control for SJC.

PRI merchants understand that the license agreement allows fines for issues with rent, sales reports, signage, visual display, opening and closing irregularities and other such items as from time to time are needed to guarantee the smooth operation of the program. There are no inconsistencies, as all merchants are fined as allowed by the agreement, and monthly notices are released prior to the fifteenth of the preceding month of the incident. Continued infractions of any of the rules and regulations are considered grounds for termination of the license agreement, however PRI will work hard to keep a merchant and get them to understand the value of compliance. PRI clients, the City, or Airport are also well informed as part of the day to day management of the program. A group of reports are provided monthly, including but not limited to: Merchant lists; Merchant sales reports; location maps; monthly updates including space by space prospect reports. Annual reports as to the 'state of program' are held after the end of each year. It is anticipated to have monthly meetings with SJC as the program is launched, and then bi-annual meetings for updates and communication.

The owners of PRI, Deborah S. Kravitz, Ross V. Provenzano and Sally Provenzano are committed to making the SJC program an exemplary example of a RMU program worldwide. Their involvement will be daily on an ongoing basis, initially in the launch of the program and then hiring and training staff, approval of all merchants, locations and deal terms. Deborah and Ross will work with Bella Group principals to insure the highest level of design and detail of engineering for the common area units. Deborah has over thirty years of experience in the design and functionality of RMU's, with some unique custom units to her credit. She was involved in design of the Irvine Spectrum units (copied throughout the world, including at Disney); the cutting edge creation of the 'stair step' RMU idea; the design of the vitrine concept, whereby a unit has some glass sides for nighttime used in the Denver International Airport; and the highly publicized Tempe Marketplace units, which includes three styles of custom designed RMU's, including an airstream trailer replica.

Ross will be on hand at Bella Group in Dallas during critical engineering and fabrication points, and will approve the units prior to their shipment to SJC. Deborah and Ross will be at SJC throughout the entire delivery, installation and merchandising process of the common area units at SJC. Ross will be responsible for the logistics of the move-in, including the delivery, placement, set-up and coordination of the various parties involved, including the merchants, manufacturers, security, etc. Ross' knowledge, experience and involvement in this is an important component is crucial to the smooth opening of the program.

After Grand Opening, Deborah and Ross will continue their oversight of the SJC program, as they do with all PRI programs. PRI team members supply weekly schedules, and objectives, and participate in biweekly company conference calls. Both Deborah and Ross will continue to spend all necessary time at SJC to guarantee the high levels of standards for service and performance that are the hallmark of any PRI program.

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BUSINESS AND FINANCIAL REFERENCES

Attachment A-3

List three (3) credit references with whom the proposing entity has conducted financial transactions related to your operation of units within the United States in the past three (3) years, including at least one banking reference.

BUSINESS REFERENCES

BUSINESS REFERENCE NO. 1

Name	ARCODEV Architects PC
Person/Firm	Norm Herman
Mailing address	2100 West Littleton Blvd Suite #200
City, State, Zip Code	Littleton, CO 80120
Phone	303-385-1203
Email	normherman@arcodev.com
Nature of Business	Architecture / Engineering Services

BUSINESS REFERENCE NO. 2

Name	Masek, Inc.
Person/Firm	
Mailing address	5345 Newport St.
City, State, Zip Code	Commerce City, CO 80022
Phone	303-952-7400
Email	
Nature of Business	Cart purchase and maintenances used for delivery

FINANCIAL REFERENCE

Name	City National Bank
Person/Firm	Lisa Walker
Mailing address	8889 Rio San Diego Dr. Suite #101
City, State, Zip Code	San Diego, CA 92108
Phone	858-875-2073
Email	lisa.walker@cnb.com
Nature & Magnitude of Purchase, Sale, Loan	Business Banking

For each reference listed above, provide written authorizations in a form acceptable to each reference, authorizing the listed reference to provide business, financial, credit and bank information regarding your company, as requested by the City.

Label as Supplemental A-3.

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1. Has an airport, terminal operator or developer/manager ever terminated the proposing entity or any partner comprising the proposing entity?

   No ☑ Yes ☐ If yes, give details in an attached statement. **(Attach and label as Supplemental A-3-1)**

2. Has the proposing entity or the owner ever declared or been declared bankrupt?

   No ☑ Yes ☐ If yes, state date, court jurisdiction, docket number, amount of liabilities and amount of assets. **(Attach and label as Supplemental A-3-2)**

3. Are you, or any of the principals in your organization, holding more than a ten percent (10%) interest, presently party to any pending or outstanding litigation, lien or claims?

   No ☑ Yes ☐ If yes, give details in an attached statement. **(Attach and label as Supplemental A-3-3)**

4. Are you now engaged in any litigation which does now or could in the future affect your ability to pay fees or perform under the Agreement?

   No ☑ Yes ☐ If yes, give details in an attached statement. **(Attach and label as Supplemental A-3-4)**

5. Owners of closely-held (non-publicly traded stock) corporations whose percentage ownership is twenty percent (20%) or greater shall submit a personal financial statement current within three (3) months from date of submittal and describe percentage ownership in proposing entity. **(Attach and label as Supplemental A-3-5)**

6. Have you ever had a bond or surety denied, canceled or forfeited?

   No ☑ Yes ☐ If yes, state name of bonding company, date, amount of bond and reason for such cancellation or forfeiture in an attached statement. **(Attach and label as Supplemental A-3-6)**

7. Provide the name, location and date of any of the Proposer's operations that have been terminated, either voluntarily or involuntarily, within the past five (5) years. For the same period of time, list any judgments terminating, or any pending lawsuits for the termination of, any concessions operated by the Proposer, any corporation which has directly or indirectly a controlling interest in the Proposer, any subsidiary corporation in which the Proposer has a controlling interest, or any affiliate. **(Attach and label as Supplemental A-3-7)**

8. Have you ever been sued by an airport or other lessor?

   No ☑ Yes ☐ If yes, give details in an attached statement. **(Attach and label as Supplemental A-3-8)**

9. Are you currently engaged in merger or acquisition negotiations, or do you anticipate entering into merger or acquisition negotiations within the time period of this Request for Proposals (180 days from proposal due date)?

   No ☑ Yes ☐ If yes, give details in an attached statement including a copy of such Agreement(s). **(Attach and label as Supplemental A-3-9)**

10. *If a guarantee is deemed necessary by the City, please identify who or what entity would guarantee the Agreement(s).*

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Provenzano Resources Inc.

BALANCE SHEET

As of December 31, 2016

	TOTAL
ASSETS	
Current Assets	
Bank Accounts	
CNB Checking 1764	-12,202.78
CNB Deposit Holding Acct 2771	6,009.95
Petty Cash 1	523.37
Total Bank Accounts	$ -5,669.46
Other Current Assets	
Undeposited Funds	0.00
Total Other Current Assets	$0.00
Total Current Assets	$ -5,669.46
Other Assets	
Prepaid Expenses	-4,195.28
Total Other Assets	$ -4,195.28
TOTAL ASSETS	$ -9,864.74
LIABILITIES AND EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	
Accounts Payable (A/P)	0.00
Total Accounts Payable	$0.00
Credit Cards	
US Bank	1,672.72
Total Credit Cards	$1,672.72
Other Current Liabilities	
Security Deposits	78,600.00
Total Other Current Liabilities	$78,600.00
Total Current Liabilities	$80,272.72
Long-Term Liabilities	
Bond	0.00
Notes Payable- M. Kravitz	130,000.00
Total Long-Term Liabilities	$130,000.00
Total Liabilities	$210,272.72
Equity	
Opening Balance Equity {3}	-168,500.00
Retained Earnings	201,731.20
Shareholder Distributions	-432,677.00
Net Income	179,308.34
Total Equity	$ -220,137.46
TOTAL LIABILITIES AND EQUITY	$ -9,864.74

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Provenzano Resources Inc.

BALANCE SHEET

As of December 31, 2015

	TOTAL
ASSETS	
Current Assets	
Bank Accounts	
CNB Checking 1764	5,007.30
CNB Deposit Holding Acct 2771	9.95
Petty Cash 1	523.37
Total Bank Accounts	$5,540.62
Other Current Assets	
Undeposited Funds	0.00
Total Other Current Assets	$0.00
Total Current Assets	$5,540.62
Other Assets	
Prepaid Expenses	0.00
Total Other Assets	$0.00
TOTAL ASSETS	$5,540.62
LIABILITIES AND EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	
Accounts Payable (A/P)	0.00
Total Accounts Payable	$0.00
Credit Cards	
US Bank	5,046.42
Total Credit Cards	$5,046.42
Other Current Liabilities	
Security Deposits	74,750.00
Total Other Current Liabilities	$74,750.00
Total Current Liabilities	$79,796.42
Long-Term Liabilities	
Bond	0.00
Notes Payable- M. Kravitz	130,000.00
Total Long-Term Liabilities	$130,000.00
Total Liabilities	$209,796.42
Equity	
Opening Balance Equity {3}	-168,500.00
Retained Earnings	86,508.32
Shareholder Distributions	-237,487.00
Net Income	115,222.88
Total Equity	$ -204,255.80
TOTAL LIABILITIES AND EQUITY	$5,540.62

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Provenzano Resources Inc.

BALANCE SHEET

As of December 31, 2014

	TOTAL
ASSETS	
Current Assets	
Bank Accounts	
CNB Checking 1764	8,170.28
CNB Deposit Holding Acct 2771	6,005.40
Petty Cash 1	523.37
Total Bank Accounts	**$14,699.05**
Total Current Assets	**$14,699.05**
Other Assets	
Prepaid Expenses	0.00
Total Other Assets	**$0.00**
TOTAL ASSETS	**$14,699.05**
LIABILITIES AND EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	
Accounts Payable (A/P)	0.00
Total Accounts Payable	**$0.00**
Credit Cards	
US Bank	7,502.73
Total Credit Cards	**$7,502.73**
Other Current Liabilities	
Security Deposits	70,550.00
Total Other Current Liabilities	**$70,550.00**
Total Current Liabilities	**$78,052.73**
Long-Term Liabilities	
Bond	0.00
Notes Payable- M. Kravitz	130,000.00
Total Long-Term Liabilities	**$130,000.00**
Total Liabilities	**$208,052.73**
Equity	
Opening Balance Equity (3)	-168,500.00
Retained Earnings	-8,552.71
Shareholder Distributions	-111,362.00
Net Income	95,061.03
Total Equity	**$ -193,353.68**
TOTAL LIABILITIES AND EQUITY	**$14,699.05**

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Provenzano Resources Inc.

PROFIT AND LOSS

January - December 2016

	TOTAL
INCOME	
DIA	195,190.00
Overage in Rent	149.00
Program Income	708,856.00
Start Up Fee	10,250.00
Total Income	**$914,445.00**
GROSS PROFIT	**$914,445.00**
EXPENSES	
Admin Expense	
Admin Creations	11,000.00
Total Admin Expense	**11,000.00**
Advertising and Promotion	90.00
Automobile Expense	
Gas	325.81
Parking	321.00
Total Automobile Expense	**646.81**
Bank Service Charges	709.50
Computer and Internet Expenses	549.75
Creations Cart Payment	168,903.59
Dues and Subscriptions	1,113.07
Insurance Expense	
Dental Insurance	1,839.30
Gen Liability	8,236.97
Medical Ins.	13,155.17
Workers Compensation	
Assment	314.00
Deposit	1,046.40
Workers Comp. Annual Policy	10,911.50
Total Workers Compensation	**12,271.90**
Total Insurance Expense	**35,503.34**
Interest Expense	
Creations Interest Paid	22,596.41
Interest Fees Charged	214.11
Total Interest Expense	**22,810.52**
License and Permits	
Business License	50.00
Total License and Permits	**50.00**
Meals and Entertainment	
Business Meals	521.41
Total Meals and Entertainment	**521.41**
Misc. Expense	1,721.00
Office Supplies	2,905.76

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	TOTAL
Operations	
Repairs & Maintenance	37,527.92
Shop Supplies	9,122.80
Total Operations	**46,650.72**
Outside Serivces	
Bookkeeping	1,862.50
Total Outside Serivces	**1,862.50**
Payroll Expenses	
Employees- Admin	58,149.14
Employees- Technicians/ Field	137,161.48
Payroll Taxes-Employer	18,725.94
Processing Fee	1,475.84
Total Payroll Expenses	**215,512.40**
Postage and Delivery	1,188.39
Rent to the City of Santa Monia	199,477.45
Taxes	
Taxes-Local	13,793.25
Total Taxes	**13,793.25**
Telephone Expense	6,740.10
Travel	
Transportation	629.34
Total Travel	**629.34**
Uniforms	874.60
Visual Merchandising	92.60
Total Expenses	**$733,346.10**
NET OPERATING INCOME	**$181,098.90**
NET INCOME	**$181,098.90**

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Provenzano Resources Inc.

PROFIT AND LOSS

January - December 2015

	TOTAL
INCOME	
DIA	126,125.00
Interest Income	4.55
Misc. Fines	2,850.00
Other Primary Income	200.00
Overage in Rent	283.25
Program Income	727,211.00
Start Up Fee	9,750.00
Total Income	**$866,423.80**
GROSS PROFIT	$866,423.80
EXPENSES	
Admin Expense	
Admin Creations	12,000.00
Total Admin Expense	**12,000.00**
Advertising and Promotion	3,047.24
Automobile Expense	
Accident Repair	700.00
Gas	421.58
Parking	305.00
Total Automobile Expense	**1,426.58**
Bank Service Charges	839.00
Computer and Internet Expenses	811.93
Convention	
ICSC	60.50
Total Convention	**60.50**
Creations Cart Payment	190,569.67
Dues and Subscriptions	1,180.40
Insurance Expense	
Dental Insurance	807.84
Gen Liability	8,539.19
Medical Ins.	6,458.15
Workers Compensation	
Workers Comp. Annual Policy	11,521.00
Total Workers Compensation	**11,521.00**
Total Insurance Expense	**27,326.18**
Interest Expense	
Creations Interest Paid	29,730.33
Interest Fees Charged	370.54
Total Interest Expense	**30,100.87**
License and Permits	
Business License	1,993.00
Total License and Permits	**1,993.00**

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	TOTAL
Meals and Entertainment	
Business Meals	467.84
Total Meals and Entertainment	**467.84**
Office Supplies	2,614.51
Operations	
Repairs & Maintenance	38,172.73
Shop Supplies	4,997.73
Total Operations	**43,170.46**
Outside Serivces	
Bookkeeping	1,957.50
Total Outside Serivces	**1,957.50**
Payroll Expenses	
Employees- Admin	52,483.95
Employees- Technicians/ Field	123,987.81
Payroll Taxes-Employer	24,742.71
Processing Fee	1,398.02
Total Payroll Expenses	**202,612.49**
Postage and Delivery	862.04
Printing and Reproduction	
Chair Covers	4,969.97
Total Printing and Reproduction	**4,969.97**
Professional Fees	
Accounting	652.50
Total Professional Fees	**652.50**
Rent to the City of Santa Monia	208,557.80
Taxes	
Taxes-Local	8,262.74
Total Taxes	**8,262.74**
Telephone Expense	6,630.58
Visual Merchandising	191.84
Total Expenses	**$750,305.64**
NET OPERATING INCOME	**$116,118.16**
NET INCOME	**$116,118.16**

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Provenzano Resources Inc.

PROFIT AND LOSS

January - December 2014

	TOTAL
INCOME	
DIA	111,362.00
Misc. Fines	3,230.00
Overage in Rent	522.58
Program Income	734,414.00
Start Up Fee	7,000.00
Total Income	**$856,528.58**
GROSS PROFIT	$856,528.58
EXPENSES	
Admin Expense	
Admin Creations	12,000.00
Total Admin Expense	**12,000.00**
Advertising and Promotion	3,050.00
Automobile Expense	
Gas	1,371.89
Parking	488.93
Total Automobile Expense	**1,860.82**
Bank Service Charges	755.00
Convention	
SPREE	
Booth	749.46
Hotel 2	78.76
Meals 2	93.34
Office Supplies 2	92.98
Transportation 2	46.40
Total SPREE	**1,060.94**
Total Convention	**1,060.94**
Creations Cart Payment	204,505.02
Dues and Subscriptions	578.40
Insurance Expense	
Dental Insurance	1,105.94
Gen Liability	7,330.32
Medical Ins.	8,504.01
Workers Compensation	
Workers Comp. Annual Policy	9,970.00
Total Workers Compensation	**9,970.00**
Total Insurance Expense	**26,910.27**
Interest Expense	
Creations Interest Paid	39,794.98
Interest Fees Charged	21.62
Total Interest Expense	**39,816.60**
License and Permits	

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	TOTAL
Business License	2,694.50
Health Permit	567.00
Total License and Permits	**3,261.50**
Meals and Entertainment	
Business Meals	1,542.99
Total Meals and Entertainment	**1,542.99**
Office Supplies	2,414.52
Operations	
Repairs & Maintenance	40,874.80
Shop Supplies	5,464.60
Total Operations	**46,339.40**
Outside Serivces	
Bookkeeping	2,348.32
Total Outside Serivces	**2,348.32**
Payroll Expenses	
Employees- Admin	50,253.50
Employees- Technicians/ Field	103,383.44
Payroll Taxes-Employer	27,072.80
Processing Fee	1,305.41
Total Payroll Expenses	**182,015.15**
Postage and Delivery	982.45
Printing and Reproduction	
Chair Covers	4,953.12
Total Printing and Reproduction	**4,953.12**
Professional Fees	
Accounting	1,095.00
Total Professional Fees	**1,095.00**
Rent to the City of Santa Monia	206,316.39
Taxes	
Taxes-Local	12,176.83
Total Taxes	**12,176.83**
Telephone Expense	6,416.90
Travel	
Airfare	344.20
Total Travel	**344.20**
Uniforms	978.37
Visual Merchandising	19.46
Total Expenses	**$761,741.65**
NET OPERATING INCOME	**$94,786.93**
OTHER EXPENSES	
Reconciliation Discrepancies	-274.11
Total Other Expenses	**$ -274.11**
NET OTHER INCOME	**$274.11**
NET INCOME	**$95,061.04**

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PROVENZANO RESOURCES INC 33-0775027

STATEMENT 1
FORM 1120S, LINE 5
OTHER INCOME

OTHER DEPOSITS DIA ACCT	$ 808.
REIMBURSEMENTS RECEIVED DIA ACCT	1,495.
TOTAL	$ 2,303.

STATEMENT 2
FORM 1120S, LINE 12
TAXES AND LICENSES

LICENSES AND PERMITS	$ 6,846.
PAYROLL TAXES	27,073.
REAL ESTATE TAXES	8,592.
STATE TAX	800.
TOTAL	$ 43,311.

STATEMENT 3
FORM 1120S, LINE 19
OTHER DEDUCTIONS

ACCOUNTING	$ 2,348.
AUTO AND TRUCK EXPENSE	1,861.
BANK CHARGES	775.
CONVENTION EXPENSE	968.
COURT ORDERED SETTLEMENT	191,753.
DUES AND SUBSCRIPTIONS	578.
INSURANCE	17,300.
LEGAL AND PROFESSIONAL	2,095.
MEALS AND ENTERTAINMENT EXPENSE	818.
MISCELLANEOUS	-3,011.
OFFICE EXPENSE	2,415.
OUTSIDE SERVICES	36,000.
PAYROLL SERVICE	1,305.
POSTAGE	982.
PRINTING	4,953.
SUPPLIES	5,465.
TELEPHONE	6,417.
TRAVEL	344.
UNIFORMS	978.
TOTAL	$ 274,344.

STATEMENT 4
FORM 1120S, SCHEDULE L, LINE 6
OTHER CURRENT ASSETS

	BEGINNING	ENDING
ADVANCE RECEIVABLE DK	$ 475.	$ 0.
TOTAL	$ 475.	$ 0.

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PROVENZANO RESOURCES INC 33-0775027

STATEMENT 5
FORM 1120S, SCHEDULE L, LINE 9
OTHER INVESTMENTS

	BEGINNING	ENDING
PROVENZANO RESOURCES LLC	$ -80,632.	$ -65,395.
TOTAL	$ -80,632.	$ -65,395.

STATEMENT 6
FORM 1120S, SCHEDULE L, LINE 18
OTHER CURRENT LIABILITIES

	BEGINNING	ENDING
CREDIT CARD PAYABLE	$ 1,716.	$ 7,463.
SECURITY DEPOSITS	54,050.	63,350.
TOTAL	$ 55,766.	$ 70,813.

STATEMENT 7
FORM 1120S, SCHEDULE L, LINE 21
OTHER LIABILITIES

	BEGINNING	ENDING
NOTE PAYABLE BOND	$ 130,000.	$ 130,000.
TOTAL	$ 130,000.	$ 130,000.

STATEMENT 8
FORM 1120S, SCHEDULE M-2, COLUMN A, LINE 3
OTHER ADDITIONS

OTHER NET RENTAL INCOME	$ 111,362.
TOTAL	$ 111,362.

STATEMENT 9
FORM 1120S, SCHEDULE M-2, COLUMN A, LINE 5
OTHER REDUCTIONS

DISALLOWED MEALS AND ENTERTAINMENT	$ 818.
SECTION 179 EXPENSE	37.
TOTAL	$ 855.

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Form **1120S**

Department of the Treasury
Internal Revenue Service

U.S. Income Tax Return for an S Corporation

▶ Do not file this form unless the corporation has filed or is attaching Form 2553 to elect to be an S corporation.
▶ Information about Form 1120S and its separate instructions is at *www.irs.gov/form1120s.*

OMB No. 1545-0123

2014

For calendar year 2014 or tax year beginning , 2014, ending ,

A S election effective date: 11/17/1997

B Business activity code number (see instrs): 541990

C Check if Schedule M-3 attached ☐

TYPE OR PRINT
PROVENZANO RESOURCES INC
6256 MERCER STREET
SAN DIEGO, CA 92122

D Employer identification number: 33-0775027

E Date incorporated: 10/01/1997

F Total assets (see instructions): $ -49,856.

G Is the corporation electing to be an S corporation beginning with this tax year? ☐ Yes ☒ No If 'Yes,' attach Form 2553 if not already filed

H Check if: (1) ☐ Final return (2) ☐ Name change (3) ☐ Address change
(4) ☐ Amended return (5) ☐ S election termination or revocation

I Enter the number of shareholders who were shareholders during any part of the tax year ▶ 3

Caution. Include **only** trade or business income and expenses on lines 1a through 21. See the instructions for more information.

INCOME	1a	Gross receipts or sales	1a	741,267.	
	b	Returns and allowances	1b		
	c	Balance. Subtract line 1b from line 1a			1c 741,267.
	2	Cost of goods sold (attach Form 1125-A)			2
	3	Gross profit. Subtract line 2 from line 1c			3 741,267.
	4	Net gain (loss) from Form 4797, line 17 (attach Form 4797)			4
	5	Other income (loss) *(see instrs — att statement)* SEE STATEMENT 1			5 2,303.
	6	**Total income (loss).** Add lines 3 through 5 ▶			6 743,570.
DEDUCTIONS SEE INSTRS	7	Compensation of officers (see instructions - attach Form 1125-E)			7
	8	Salaries and wages (less employment credits)			8 153,637.
	9	Repairs and maintenance			9 17,075.
	10	Bad debts			10
	11	Rents			11 206,316.
	12	Taxes and licenses SEE STATEMENT 2			12 43,311.
	13	Interest			13 39,817.
	14	Depreciation not claimed on Form 1125-A or elsewhere on return (attach Form 4562)			14 745.
	15	Depletion **(Do not deduct oil and gas depletion.)**			15
	16	Advertising			16 3,070.
	17	Pension, profit-sharing, etc, plans			17
	18	Employee benefit programs			18 9,610.
	19	Other deductions (attach statement) SEE STATEMENT 3			19 274,344.
	20	**Total deductions.** Add lines 7 through 19 ▶			20 747,925.
	21	**Ordinary business income (loss).** Subtract line 20 from line 6			21 -4,355.
TAX AND PAYMENTS	22a	Excess net passive income or LIFO recapture tax *(see instructions)*	22a		
	b	Tax from Schedule D (Form 1120S)	22b		
	c	Add lines 22a and 22b (see instructions for additional taxes)			22c
	23a	2014 estimated tax payments and 2013 overpayment credited to 2014	23a		
	b	Tax deposited with Form 7004	23b		
	c	Credit for federal tax paid on fuels (attach Form 4136)	23c		
	d	Add lines 23a through 23c			23d
	24	Estimated tax penalty (see instructions). Check if Form 2220 is attached ▶ ☐			24
	25	Amount owed. If line 23d is smaller than the total of lines 22c and 24, enter amount owed			25 0.
	26	**Overpayment.** If line 23d is larger than the total of lines 22c and 24, enter amount overpaid			26
	27	Enter amount from line 26 **Credited to 2015 estimated tax** ▶		**Refunded** ▶	27

Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

▶ Signature of officer | Date | ▶ PRESIDENT Title

May the IRS discuss this return with the preparer shown below (see instructions)? ☒ Yes ☐ No

Paid Preparer Use Only

Print/Type preparer's name	Preparer's signature	Date	Check ☒ if self-employed	PTIN
CHARLES F ROBERTS CPA				P00252040

Firm's name ▶ CHARLES F ROBERTS JR, AN ACCOUNTANCY CORP — Firm's EIN ▶ 46-0464047

Firm's address ▶ 2650 CAMINO DEL RIO NORTH STE 108
SAN DIEGO, CA 92108-1631 — Phone no. (619) 297-8477

BAA For Paperwork Reduction Act Notice, see separate instructions.

SPSA0105L 08/05/14 Form **1120S** (2014)

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Schedule B Other Information (see instructions)

	Yes	No
1 Check accounting method: a [X] Cash b [ ] Accrual c [ ] Other (specify) ►		
2 See the instructions and enter the: a Business activity ► SALES & SVCS b Product or service ► RETAIL CART RNTL/MGT		
3 At any time during the tax year, was any shareholder of the corporation a disregarded entity, a trust, an estate, or a nominee or similar person? If "Yes," attach Schedule B-1, Information on Certain Shareholders of an S Corporation		X
4 At the end of the tax year, did the corporation: a Own directly 20% or more, or own, directly or indirectly, 50% or more of the total stock issued and outstanding of any foreign or domestic corporation? For rules of constructive ownership, see instructions. If 'Yes,' complete (i) through (v) below		X

(i) Name of Corporation	(ii) Employer Identification Number (if any)	(iii) Country of Incorporation	(iv) Percentage of Stock Owned	(v) If Percentage in (iv) is 100%, Enter the Date (if any) a Qualified Subchapter S Subsidiary Election Was Made

b Own directly an interest of 20% or more, or own, directly or indirectly, an interest of 50% or more in the profit, loss, or capital in any foreign or domestic partnership (including an entity treated as a partnership) or in the beneficial interest of a trust? For rules of constructive ownership, see instructions. If 'Yes,' complete (i) through (v) below		X

(i) Name of Entity	(ii) Employer Identification Number (if any)	(iii) Type of Entity	(iv) Country of Organization	(v) Maximum % Owned in Profit, Loss, or Capital

5a At the end of the tax year, did the corporation have any outstanding shares of restricted stock? If 'Yes,' complete lines (i) and (ii) below.		X
(i) Total shares of restricted stock ►		
(ii) Total shares of non-restricted stock ►		
b At the end of the tax year, did the corporation have any outstanding stock options, warrants, or similar instruments? If 'Yes,' complete lines (i) and (ii) below.		X
(i) Total shares of stock outstanding at the end of the tax year ►		
(ii) Total shares of stock outstanding if all instruments were executed ►		
6 Has this corporation filed, or is it required to file, **Form 8918,** Material Advisor Disclosure Statement, to provide information on any reportable transaction?		X
7 Check this box if the corporation issued publicly offered debt instruments with original issue discount ► [ ] If checked, the corporation may have to file **Form 8281,** Information Return for Publicly Offered Original Issue Discount Instruments.		
8 If the corporation: **(a)** was a C corporation before it elected to be an S corporation **or** the corporation acquired an asset with a basis determined by reference to the basis of the asset (or the basis of any other property) in the hands of a C corporation **and (b)** has net unrealized built-in gain in excess of the net recognized built-in gain from prior years, enter the net unrealized built-in gain reduced by net recognized built-in gain from prior years (see instructions) ► $		
9 Enter the accumulated earnings and profits of the corporation at the end of the tax year $		
10 Does the corporation satisfy **both** of the following conditions?		
a The corporation's total receipts (see instructions) for the tax year were less than $250,000		
b The corporation's total assets at the end of the tax year were less than $250,000		X
If 'Yes,' the corporation is not required to complete Schedules L and M-1.		
11 During the tax year, did the corporation have any non-shareholder debt that was canceled, was forgiven, or had the terms modified so as to reduce the principal amount of the debt?		X
If 'Yes,' enter the amount of principal reduction $		
12 During the tax year, was a qualified subchapter S subsidiary election terminated or revoked? If 'Yes', see instructions		X
13a Did the corporation make any payments in 2014 that would require it to file Form(s) 1099?	X	
b If 'Yes,' did the corporation file or will it file required Forms 1099?	X	

SPSA0112) 12/22/14

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Schedule K	Shareholders' Pro Rata Share Items			Total amount
Income (Loss)	1 Ordinary business income (loss) (page 1, line 21)		1	-4,355.
	2 Net rental real estate income (loss) (attach Form 8825)		2	
	3a Other gross rental income (loss)	3a 111,362.		
	b Expenses from other rental activities (attach statement)	3b		
	c Other net rental income (loss). Subtract line 3b from line 3a		3c	111,362.
	4 Interest income		4	
	5 Dividends: a Ordinary dividends		5a	
	b Qualified dividends	5b		
	6 Royalties		6	
	7 Net short-term capital gain (loss) (attach Schedule D (Form 1120S))		7	
	8a Net long-term capital gain (loss) (attach Schedule D (Form 1120S))		8a	
	b Collectibles (28%) gain (loss)	8b		
	c Unrecaptured section 1250 gain (attach statement)	8c		
	9 Net section 1231 gain (loss) (attach Form 4797)		9	
	10 Other income (loss) (see instructions) Type ►		10	
Deductions	11 Section 179 deduction (attach Form 4562)		11	37.
	12a Charitable contributions		12a	
	b Investment interest expense		12b	
	c Section 59(e)(2) expenditures (1) Type ► (2) Amount ►		12c (2)	
	d Other deductions (see instructions) Type ►		12d	
Credits	13a Low-income housing credit (section 42(j)(5))		13a	
	b Low-income housing credit (other)		13b	
	c Qualified rehabilitation expenditures (rental real estate) (attach Form 3468, if applicable)		13c	
	d Other rental real estate credits (see instrs) Type ►		13d	
	e Other rental credits (see instrs) Type ►		13e	
	f Biofuel producer credit (attach Form 6478)		13f	
	g Other credits (see instructions) Type ►		13g	
Foreign Transactions	14a Name of country or U.S. possession ►			
	b Gross income from all sources		14b	
	c Gross income sourced at shareholder level		14c	
	Foreign gross income sourced at corporate level			
	d Passive category		14d	
	e General category		14e	
	f Other (attach statement)		14f	
	Deductions allocated and apportioned at shareholder level			
	g Interest expense		14g	
	h Other		14h	
	Deductions allocated and apportioned at corporate level to foreign source income			
	i Passive category		14i	
	j General category		14j	
	k Other (attach statement)		14k	
	Other information			
	l Total foreign taxes (check one): ► ☐ Paid ☐ Accrued		14l	
	m Reduction in taxes available for credit (attach statement)		14m	
	n Other foreign tax information (attach statement)			
Alternative Minimum Tax (AMT) Items	15a Post-1986 depreciation adjustment		15a	-282.
	b Adjusted gain or loss		15b	
	c Depletion (other than oil and gas)		15c	
	d Oil, gas, and geothermal properties – gross income		15d	
	e Oil, gas, and geothermal properties – deductions		15e	
	f Other AMT items (attach statement)		15f	
Items Affecting Shareholder Basis	16a Tax-exempt interest income		16a	
	b Other tax-exempt income		16b	
	c Nondeductible expenses		16c	818.
	d Distributions (attach stmt if required) (see instrs)		16d	96,422.
	e Repayment of loans from shareholders		16e	

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Schedule K	Shareholders' Pro Rata Share Items (continued)		Total amount
Other Information	17a Investment income	17a	
	b Investment expenses	17b	
	c Dividend distributions paid from accumulated earnings and profits	17c	
	d Other items and amounts (attach statement)		
Reconciliation	18 **Income/loss reconciliation.** Combine the amounts on lines 1 through 10 in the far right column. From the result, subtract the sum of the amounts on lines 11 through 12d and 14l	18	106,970.

Schedule L Balance Sheets per Books	Beginning of tax year		End of tax year	
Assets	(a)	(b)	(c)	(d)
1 Cash		17,531.		15,539.
2a Trade notes and accounts receivable				
b Less allowance for bad debts				
3 Inventories				
4 U.S. government obligations				
5 Tax-exempt securities (see instructions)				
6 Other current assets (attach stmt) SEE ST 4		475.		
7 Loans to shareholders				
8 Mortgage and real estate loans				
9 Other investments (attach statement) SEE ST 5		-80,632.		-65,395.
10a Buildings and other depreciable assets	794,382.		794,382.	
b Less accumulated depreciation	793,637.	745.	794,382.	
11a Depletable assets				
b Less accumulated depletion				
12 Land (net of any amortization)				
13a Intangible assets (amortizable only)				
b Less accumulated amortization				
14 Other assets (attach stmt)				
15 Total assets		-61,881.		-49,856.
Liabilities and Shareholders' Equity				
16 Accounts payable				
17 Mortgages, notes, bonds payable in less than 1 year				
18 Other current liabilities (attach stmt) SEE ST 6		55,766.		70,813.
19 Loans from shareholders		1,200.		1,200.
20 Mortgages, notes, bonds payable in 1 year or more		56,416.		43,664.
21 Other liabilities (attach statement) SEE ST 7		130,000.		130,000.
22 Capital stock		2,000.		2,000.
23 Additional paid-in capital		26,420.		26,420.
24 Retained earnings		-333,683.		-323,953.
25 Adjustments to shareholders' equity (att stmt)				
26 Less cost of treasury stock				
27 Total liabilities and shareholders' equity		-61,881.		-49,856.

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Schedule M-1 Reconciliation of Income (Loss) per Books With Income (Loss) per Return

Note. The corporation may be required to file Schedule M-3 (see instructions)

1 Net income (loss) per books	106,152.	5 Income recorded on books this year not included on Schedule K, lines 1 through 10 (itemize): a Tax-exempt interest. $	
2 Income included on Schedule K, lines 1, 2, 3c, 4, 5a, 6, 7, 8a, 9, and 10, not recorded on books this year (itemize):			
3 Expenses recorded on books this year not included on Schedule K, lines 1 through 12, and 14l (itemize): a Depreciation $ b Travel and entertainment. $ 818.	818.	6 Deductions included on Schedule K, lines 1 through 12 and 14l, not charged against book income this year (itemize): a Depreciation $	
		7 Add lines 5 and 6	0.
4 Add lines 1 through 3	106,970.	8 Income (loss) (Schedule K, ln 18). Ln 4 less ln 7	106,970.

Schedule M-2 Analysis of Accumulated Adjustments Account, Other Adjustments Account, and Shareholders' Undistributed Taxable Income Previously Taxed (see instructions)

	(a) Accumulated adjustments account	(b) Other adjustments account	(c) Shareholders' undistributed taxable income previously taxed
1 Balance at beginning of tax year	-237,113.		
2 Ordinary income from page 1, line 21			
3 Other additions SEE STATEMENT 8	111,362.		
4 Loss from page 1, line 21	(4,355.)		
5 Other reductions SEE STATEMENT 9	(855.)		
6 Combine lines 1 through 5	-130,961.		
7 Distributions other than dividend distributions			
8 Balance at end of tax year. Subtract line 7 from line 6	-130,961.		

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Federal Income Tax Summary

PROVENZANO RESOURCES INC

33-0775027

	2015	2014	Diff
ORDINARY INCOME			
Gross receipts less returns/allowance	740,299	741,267	-968
Gross Profit	740,299	0	740,299
Other income	0	2,303	-2,303
Total income (loss)	740,299	0	740,299
ORDINARY DEDUCTIONS			
Salaries/wages (less employment cr.)	176,472	153,637	22,835
Repairs and maintenance	38,173	17,075	21,098
Rents	208,558	206,316	2,242
Taxes and licenses	34,999	43,311	-8,312
Interest	30,101	39,817	-9,716
Depreciation	0	745	-745
Advertising	3,239	3,070	169
Employee benefit programs	0	9,610	-9,610
Other deductions	261,076	274,344	-13,268
Total deductions	752,618	747,925	4,693
Ordinary business income (loss)	-12,319	-4,355	-7,964
REFUND OR AMOUNT DUE			
Balance due	0	0	0
SCHEDULE K - INCOME			
Ordinary business income (loss)	-12,319	-4,355	-7,964
Other net rental income (loss)	126,125	111,362	14,763
SCHEDULE K - DEDUCTIONS			
Section 179 deduction	0	37	-37
SCHEDULE K - ALTERNATIVE MINIMUM TAX ITEMS			
Post-1986 depreciation adjustment	0	-282	282
SCHEDULE K - ITEMS AFFECTING BASIS			
Nondeductible expenses	399	818	-419
Property distributions	0	96,422	-96,422
SCHEDULE K - OTHER INFORMATION			
Income (loss) reconciliation	113,806	106,970	6,836
SCHEDULE L - BALANCE SHEET			
Beginning Assets	-49,856	-61,881	12,025
Beginning Liabilities & Equity	-49,856	-61,881	12,025
Ending Assets	5,685	-49,856	55,541
Ending Liabilities & Equity	5,685	-49,856	55,541

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Federal Balance Sheet Summary

PROVENZANO RESOURCES INC

33-0775027

ENDING ASSETS	
Cash	4,790
Other assets	895
Total Assets	5,685
ENDING LIABILITIES & EQUITY	
Other current liabilities	79,796
Loans from shareholders	1,200
Long-term notes payable	43,664
Other liabilities	130,000
Capital stock	2,000
Additional paid-in capital	26,420
Retained earnings	-277,395
Total Liabilities and Equity	5,685

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

Form **1120S**

Department of the Treasury
Internal Revenue Service

U.S. Income Tax Return for an S Corporation

► Do not file this form unless the corporation has filed or is attaching Form 2553 to elect to be an S corporation.
► Information about Form 1120S and its separate instructions is at *www.irs.gov/form1120s.*

OMB No. 1545-0123

2015

For calendar year 2015 or tax year beginning , 2015, ending ,

A S election effective date 11/17/1997	TYPE OR PRINT PROVENZANO RESOURCES INC 6256 MERCER STREET SAN DIEGO, CA 92122	D Employer identification number 33-0775027
B Business activity code number (see instrs) 541990		E Date incorporated 10/01/1997
C Check if Schedule M-3 attached ☐		F Total assets (see instructions) $ 5,685.

G Is the corporation electing to be an S corporation beginning with this tax year? ☐ Yes ☒ No If 'Yes,' attach Form 2553 if not already filed

H Check if: (1) ☐ Final return (2) ☐ Name change (3) ☐ Address change
(4) ☐ Amended return (5) ☐ S election termination or revocation

I Enter the number of shareholders who were shareholders during any part of the tax year ► 3

Caution. Include **only** trade or business income and expenses on lines 1a through 21. See the instructions for more information.

INCOME	1a	Gross receipts or sales	1a	740,299.	
	b	Returns and allowances	1b		
	c	Balance. Subtract line 1b from line 1a			1c 740,299.
	2	Cost of goods sold (attach Form 1125-A)			2
	3	Gross profit. Subtract line 2 from line 1c			3 740,299.
	4	Net gain (loss) from Form 4797, line 17 (attach Form 4797)			4
	5	Other income (loss) *(see instrs — att statement)*			5
	6	**Total income (loss).** Add lines 3 through 5 ►			6 740,299.
DEDUCTIONS SEE INSTRS	7	Compensation of officers (see instructions - attach Form 1125-E)			7
	8	Salaries and wages (less employment credits)			8 176,472.
	9	Repairs and maintenance			9 38,173.
	10	Bad debts			10
	11	Rents			11 208,558.
	12	Taxes and licenses			12 34,999.
	13	Interest			13 30,101.
	14	Depreciation not claimed on Form 1125-A or elsewhere on return (attach Form 4562)			14
	15	Depletion **(Do not deduct oil and gas depletion.)**			15
	16	Advertising			16 3,239.
	17	Pension, profit-sharing, etc, plans			17
	18	Employee benefit programs			18
	19	Other deductions (attach statement) See Statement 1			19 261,076.
	20	**Total deductions.** Add lines 7 through 19 ►			20 752,618.
	21	**Ordinary business income (loss).** Subtract line 20 from line 6			21 -12,319.
TAX AND PAYMENTS	22a	Excess net passive income or LIFO recapture tax *(see instructions)*	22a		
	b	Tax from Schedule D (Form 1120S)	22b		
	c	Add lines 22a and 22b (see instructions for additional taxes)			22c
	23a	2015 estimated tax payments and 2014 overpayment credited to 2015	23a		
	b	Tax deposited with Form 7004	23b		
	c	Credit for federal tax paid on fuels (attach Form 4136)	23c		
	d	Add lines 23a through 23c			23d
	24	Estimated tax penalty (see instructions). Check if Form 2220 is attached ► ☐			24
	25	Amount owed. If line 23d is smaller than the total of lines 22c and 24, enter amount owed			25 0.
	26	**Overpayment.** If line 23d is larger than the total of lines 22c and 24, enter amount overpaid			26
	27	Enter amount from line 26 **Credited to 2015 estimated tax** ►		**Refunded** ►	27

Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

► Signature of officer | Date | ► CEO Title

May the IRS discuss this return with the preparer shown below (see instructions)? ☒ Yes ☐ No

Paid Preparer Use Only

Print/Type preparer's name	Preparer's signature	Date	Check ☐ if self-employed	PTIN
Erica R Martinez	Erica R Martinez			P00449534

Firm's name ► Paragon Accounting Group Inc. Firm's EIN ► 46-2341769

Firm's address ► 2121 5th Avenue Ste. 207
SAN DIEGO, CA 92101 Phone no. (619) 358-9799

BAA For Paperwork Reduction Act Notice, see separate instructions.

SPSA0105L 08/13/15 Form 1120S (2015)

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Schedule B Other Information (see instructions)

	Yes	No
1 Check accounting method: a [X] Cash b [ ] Accrual c [ ] Other (specify) ►		
2 See the instructions and enter the: a Business activity ► SALES & SVCS b Product or service ► RETAIL CART RNTL/MGT		
3 At any time during the tax year, was any shareholder of the corporation a disregarded entity, a trust, an estate, or a nominee or similar person? If "Yes," attach Schedule B-1, Information on Certain Shareholders of an S Corporation		X
4 At the end of the tax year, did the corporation: a Own directly 20% or more, or own, directly or indirectly, 50% or more of the total stock issued and outstanding of any foreign or domestic corporation? For rules of constructive ownership, see instructions. If 'Yes,' complete (i) through (v) below		X

(i) Name of Corporation	(ii) Employer Identification Number (if any)	(iii) Country of Incorporation	(iv) Percentage of Stock Owned	(v) If Percentage in (iv) is 100%, Enter the Date (if any) a Qualified Subchapter S Subsidiary Election Was Made

b Own directly an interest of 20% or more, or own, directly or indirectly, an interest of 50% or more in the profit, loss, or capital in any foreign or domestic partnership (including an entity treated as a partnership) or in the beneficial interest of a trust? For rules of constructive ownership, see instructions. If 'Yes,' complete (i) through (v) below		X

(i) Name of Entity	(ii) Employer Identification Number (if any)	(iii) Type of Entity	(iv) Country of Organization	(v) Maximum % Owned in Profit, Loss, or Capital

5a At the end of the tax year, did the corporation have any outstanding shares of restricted stock? If 'Yes,' complete lines (i) and (ii) below.		X
(i) Total shares of restricted stock ►		
(ii) Total shares of non-restricted stock ►		
b At the end of the tax year, did the corporation have any outstanding stock options, warrants, or similar instruments? If 'Yes,' complete lines (i) and (ii) below.		X
(i) Total shares of stock outstanding at the end of the tax year ►		
(ii) Total shares of stock outstanding if all instruments were executed ►		
6 Has this corporation filed, or is it required to file, **Form 8918**, Material Advisor Disclosure Statement, to provide information on any reportable transaction?		X
7 Check this box if the corporation issued publicly offered debt instruments with original issue discount ► [ ] If checked, the corporation may have to file **Form 8281**, Information Return for Publicly Offered Original Issue Discount Instruments.		
8 If the corporation: **(a)** was a C corporation before it elected to be an S corporation or the corporation acquired an asset with a basis determined by reference to the basis of the asset (or the basis of any other property) in the hands of a C corporation **and (b)** has net unrealized built-in gain in excess of the net recognized built-in gain from prior years, enter the net unrealized built-in gain reduced by net recognized built-in gain from prior years (see instructions) ► $		
9 Enter the accumulated earnings and profits of the corporation at the end of the tax year $		
10 Does the corporation satisfy both of the following conditions?		
a The corporation's total receipts (see instructions) for the tax year were less than $250,000		
b The corporation's total assets at the end of the tax year were less than $250,000		X
If 'Yes,' the corporation is not required to complete Schedules L and M-1.		
11 During the tax year, did the corporation have any non-shareholder debt that was canceled, was forgiven, or had the terms modified so as to reduce the principal amount of the debt?		X
If 'Yes,' enter the amount of principal reduction $		
12 During the tax year, was a qualified subchapter S subsidiary election terminated or revoked? If 'Yes', see instructions		X
13a Did the corporation make any payments in 2015 that would require it to file Form(s) 1099?	X	
b If 'Yes,' did the corporation file or will it file required Forms 1099?	X	

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Schedule K Shareholders' Pro Rata Share Items			Total amount
Income (Loss)	1 Ordinary business income (loss) (page 1, line 21)	1	-12,319.
	2 Net rental real estate income (loss) (attach Form 8825)	2	
	3a Other gross rental income (loss) — 3a: 126,125.		
	b Expenses from other rental activities (attach statement) — 3b		
	c Other net rental income (loss). Subtract line 3b from line 3a	3c	126,125.
	4 Interest income	4	
	5 Dividends: a Ordinary dividends	5a	
	b Qualified dividends — 5b		
	6 Royalties	6	
	7 Net short-term capital gain (loss) (attach Schedule D (Form 1120S))	7	
	8a Net long-term capital gain (loss) (attach Schedule D (Form 1120S))	8a	
	b Collectibles (28%) gain (loss) — 8b		
	c Unrecaptured section 1250 gain (attach statement) — 8c		
	9 Net section 1231 gain (loss) (attach Form 4797)	9	
	10 Other income (loss) (see instructions) Type ►	10	
Deductions	11 Section 179 deduction (attach Form 4562)	11	
	12a Charitable contributions	12a	
	b Investment interest expense	12b	
	c Section 59(e)(2) expenditures (1) Type ► (2) Amount ►	12c (2)	
	d Other deductions (see instructions) Type ►	12d	
Credits	13a Low-income housing credit (section 42(j)(5))	13a	
	b Low-income housing credit (other)	13b	
	c Qualified rehabilitation expenditures (rental real estate) (attach Form 3468, if applicable)	13c	
	d Other rental real estate credits (see instrs) Type ►	13d	
	e Other rental credits (see instrs) Type ►	13e	
	f Biofuel producer credit (attach Form 6478)	13f	
	g Other credits (see instructions) Type ►	13g	
Foreign Transactions	14a Name of country or U.S. possession ►		
	b Gross income from all sources	14b	
	c Gross income sourced at shareholder level	14c	
	Foreign gross income sourced at corporate level		
	d Passive category	14d	
	e General category	14e	
	f Other (attach statement)	14f	
	Deductions allocated and apportioned at shareholder level		
	g Interest expense	14g	
	h Other	14h	
	Deductions allocated and apportioned at corporate level to foreign source income		
	i Passive category	14i	
	j General category	14j	
	k Other (attach statement)	14k	
	Other information		
	l Total foreign taxes (check one): ► ☐ Paid ☐ Accrued	14l	
	m Reduction in taxes available for credit (attach statement)	14m	
	n Other foreign tax information (attach statement)		
Alternative Minimum Tax (AMT) Items	15a Post-1986 depreciation adjustment	15a	
	b Adjusted gain or loss	15b	
	c Depletion (other than oil and gas)	15c	
	d Oil, gas, and geothermal properties – gross income	15d	
	e Oil, gas, and geothermal properties – deductions	15e	
	f Other AMT items (attach statement)	15f	
Items Affecting Shareholder Basis	16a Tax-exempt interest income	16a	
	b Other tax-exempt income	16b	
	c Nondeductible expenses	16c	399.
	d Distributions (attach stmt if required) (see instrs)	16d	
	e Repayment of loans from shareholders	16e	

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Schedule K	Shareholders' Pro Rata Share Items (continued)		Total amount
Other Information	17a Investment income	17a	
	b Investment expenses	17b	
	c Dividend distributions paid from accumulated earnings and profits	17c	
	d Other items and amounts (attach statement)		
Reconciliation	18 **Income/loss reconciliation.** Combine the amounts on lines 1 through 10 in the far right column. From the result, subtract the sum of the amounts on lines 11 through 12d and 14l	18	113,806.

Schedule L Balance Sheets per Books	Beginning of tax year		End of tax year	
Assets	(a)	(b)	(c)	(d)
1 Cash		15,539.		4,790.
2a Trade notes and accounts receivable				
b Less allowance for bad debts				
3 Inventories				
4 U.S. government obligations				
5 Tax-exempt securities (see instructions)				
6 Other current assets (attach stmt)				
7 Loans to shareholders				
8 Mortgage and real estate loans				
9 Other investments (attach statement) See St 2		-65,395.		
10a Buildings and other depreciable assets				
b Less accumulated depreciation				
11a Depletable assets				
b Less accumulated depletion				
12 Land (net of any amortization)				
13a Intangible assets (amortizable only)				
b Less accumulated amortization				
14 Other assets (attach stmt) See St 3				895.
15 Total assets		-49,856.		5,685.
Liabilities and Shareholders' Equity				
16 Accounts payable				
17 Mortgages, notes, bonds payable in less than 1 year				
18 Other current liabilities (attach stmt) See St 4		70,813.		79,796.
19 Loans from shareholders		1,200.		1,200.
20 Mortgages, notes, bonds payable in 1 year or more		43,664.		43,664.
21 Other liabilities (attach statement) See St 5		130,000.		130,000.
22 Capital stock		2,000.		2,000.
23 Additional paid-in capital		26,420.		26,420.
24 Retained earnings		-323,953.		-277,395.
25 Adjustments to shareholders' equity (att stmt)				
26 Less cost of treasury stock				
27 Total liabilities and shareholders' equity		-49,856.		5,685.

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Schedule M-1 Reconciliation of Income (Loss) per Books With Income (Loss) per Return

Note. The corporation may be required to file Schedule M-3 (see instructions)

1 Net income (loss) per books	113,407.	5 Income recorded on books this year not included on Schedule K, lines 1 through 10 (itemize): a Tax-exempt interest. $	
2 Income included on Schedule K, lines 1, 2, 3c, 4, 5a, 6, 7, 8a, 9, and 10, not recorded on books this year (itemize):			
3 Expenses recorded on books this year not included on Schedule K, lines 1 through 12, and 14l (itemize): a Depreciation $		6 Deductions included on Schedule K, lines 1 through 12 and 14l, not charged against book income this year (itemize): a Depreciation $	
b Travel and entertainment. $ 234.			
See Statement 6 165.	399.	7 Add lines 5 and 6	0.
4 Add lines 1 through 3	113,806.	8 Income (loss) (Schedule K, ln 18). Ln 4 less ln 7	113,806.

Schedule M-2 Analysis of Accumulated Adjustments Account, Other Adjustments Account, and Shareholders' Undistributed Taxable Income Previously Taxed (see instructions)

	(a) Accumulated adjustments account	(b) Other adjustments account	(c) Shareholders' undistributed taxable income previously taxed
1 Balance at beginning of tax year	-130,961.		
2 Ordinary income from page 1, line 21			
3 Other additions See Statement 7	126,125.		
4 Loss from page 1, line 21	(12,319.)		
5 Other reductions See Statement 8	(399.)		
6 Combine lines 1 through 5	-17,554.		
7 Distributions other than dividend distributions			
8 Balance at end of tax year. Subtract line 7 from line 6	-17,554.		

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PROVENZANO RESOURCES INC 33-0775027

	2016	2015	Diff
ORDINARY INCOME			
Gross receipts less returns/allowance	721,475	740,299	-18,824
Gross Profit	721,475	740,299	-18,824
Total income (loss)	721,475	740,299	-18,824
ORDINARY DEDUCTIONS			
Salaries/wages (less employment cr.)	195,310	176,472	18,838
Repairs and maintenance	37,528	38,173	-645
Rents	199,477	208,558	-9,081
Taxes and licenses	34,363	34,999	-636
Interest	22,811	30,101	-7,290
Advertising	90	3,239	-3,149
Other deductions	357,803	261,076	96,727
Total deductions	847,382	752,618	94,764
Ordinary business income (loss)	-125,907	-12,319	-113,588
REFUND OR AMOUNT DUE			
Balance due	0	0	0
SCHEDULE K - INCOME			
Ordinary business income (loss)	-125,907	-12,319	-113,588
Other net rental income (loss)	195,191	126,125	69,066
SCHEDULE K - ITEMS AFFECTING BASIS			
Nondeductible expenses	216	399	-183
Property distributions	189,411	0	189,411
SCHEDULE K - OTHER INFORMATION			
Income (loss) reconciliation	69,284	113,806	-44,522
SCHEDULE L - BALANCE SHEET			
Beginning Assets	5,685	-49,856	55,541
Beginning Liabilities & Equity	5,685	-49,856	55,541
Ending Assets	-6,165	5,685	-11,850
Ending Liabilities & Equity	-6,165	5,685	-11,850

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Federal Balance Sheet Summary

PROVENZANO RESOURCES INC

33-0775027

ENDING ASSETS		
Cash		-4,656
Accounts receivable	-1,509	
Less: Allowance for bad debts	(0)	-1,509
Total Assets		-6,165
ENDING LIABILITIES & EQUITY		
Other current liabilities		80,108
Long-term notes payable		130,000
Capital stock		2,000
Retained earnings		-218,273
Total Liabilities and Equity		-6,165

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Form **1120S**

Department of the Treasury
Internal Revenue Service

U.S. Income Tax Return for an S Corporation

► Do not file this form unless the corporation has filed or is attaching Form 2553 to elect to be an S corporation.
► Information about Form 1120S and its separate instructions is at *www.irs.gov/form1120s.*

OMB No. 1545-0123

2016

For calendar year 2016 or tax year beginning , 2016, ending ,

A S election effective date: 11/17/1997

B Business activity code number (see instrs): 541990

C Check if Schedule M-3 attached ☐

TYPE OR PRINT

PROVENZANO RESOURCES INC
6256 MERCER STREET
SAN DIEGO, CA 92122

D Employer identification number: 33-0775027

E Date incorporated: 10/01/1997

F Total assets (see instructions): $ -6,165.

G Is the corporation electing to be an S corporation beginning with this tax year? ☐ Yes ☒ No If 'Yes,' attach Form 2553 if not already filed

H Check if: (1) ☐ Final return (2) ☐ Name change (3) ☐ Address change
(4) ☐ Amended return (5) ☐ S election termination or revocation

I Enter the number of shareholders who were shareholders during any part of the tax year ► 3

Caution. Include **only** trade or business income and expenses on lines 1a through 21. See the instructions for more information.

INCOME	1a	Gross receipts or sales	1a	721,475.	
	b	Returns and allowances	1b		
	c	Balance. Subtract line 1b from line 1a			1c 721,475.
	2	Cost of goods sold (attach Form 1125-A)			2
	3	Gross profit. Subtract line 2 from line 1c			3 721,475.
	4	Net gain (loss) from Form 4797, line 17 (attach Form 4797)			4
	5	Other income (loss) *(see instrs — att statement)*			5
	6	**Total income (loss).** Add lines 3 through 5 ►			6 721,475.
DEDUCTIONS SEE INSTRS	7	Compensation of officers (see instructions - attach Form 1125-E)			7
	8	Salaries and wages (less employment credits)			8 195,310.
	9	Repairs and maintenance			9 37,528.
	10	Bad debts			10
	11	Rents			11 199,477.
	12	Taxes and licenses			12 34,363.
	13	Interest			13 22,811.
	14	Depreciation not claimed on Form 1125-A or elsewhere on return (attach Form 4562)			14
	15	Depletion **(Do not deduct oil and gas depletion.)**			15
	16	Advertising			16 90.
	17	Pension, profit-sharing, etc, plans			17
	18	Employee benefit programs			18
	19	Other deductions (attach statement) See Statement 1			19 357,803.
	20	**Total deductions.** Add lines 7 through 19 ►			20 847,382.
	21	**Ordinary business income (loss).** Subtract line 20 from line 6			21 -125,907.
TAX AND PAYMENTS	22a	Excess net passive income or LIFO recapture tax *(see instructions)*	22a		
	b	Tax from Schedule D (Form 1120S)	22b		
	c	Add lines 22a and 22b (see instructions for additional taxes)			22c
	23a	2016 estimated tax payments and 2015 overpayment credited to 2016	23a		
	b	Tax deposited with Form 7004	23b		
	c	Credit for federal tax paid on fuels (attach Form 4136)	23c		
	d	Add lines 23a through 23c			23d
	24	Estimated tax penalty (see instructions). Check if Form 2220 is attached ► ☐			24
	25	**Amount owed.** If line 23d is smaller than the total of lines 22c and 24, enter amount owed			25 0.
	26	**Overpayment.** If line 23d is larger than the total of lines 22c and 24, enter amount overpaid			26
	27	Enter amount from line 26 **Credited to 2017 estimated tax** ►		**Refunded** ►	27

Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

► Signature of officer | Date | ► CEO Title

May the IRS discuss this return with the preparer shown below (see instructions)? ☒ Yes ☐ No

Paid Preparer Use Only

Print/Type preparer's name	Preparer's signature	Date	Check ☐ if self-employed	PTIN
Erica R Martinez	Erica R Martinez			P00449534

Firm's name ► Paragon Accounting Group Inc. — Firm's EIN ► 46-2341769

Firm's address ► 2121 5th Avenue Ste. 207, SAN DIEGO, CA 92101 — Phone no. (619) 358-9799

BAA For Paperwork Reduction Act Notice, see separate instructions.

SPSA0105L 08/17/16 Form 1120S (2016)

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Schedule B Other Information (see instructions)

	Yes	No
1 Check accounting method: a [X] Cash b [ ] Accrual c [ ] Other (specify) ►		
2 See the instructions and enter the: a Business activity ► SALES & SVCS b Product or service ► RETAIL CART RNTL/MGT		
3 At any time during the tax year, was any shareholder of the corporation a disregarded entity, a trust, an estate, or a nominee or similar person? If "Yes," attach Schedule B-1, Information on Certain Shareholders of an S Corporation		X
4 At the end of the tax year, did the corporation: a Own directly 20% or more, or own, directly or indirectly, 50% or more of the total stock issued and outstanding of any foreign or domestic corporation? For rules of constructive ownership, see instructions. If 'Yes,' complete (i) through (v) below		X

(i) Name of Corporation	(ii) Employer Identification Number (if any)	(iii) Country of Incorporation	(iv) Percentage of Stock Owned	(v) If Percentage in (iv) is 100%, Enter the Date (if any) a Qualified Subchapter S Subsidiary Election Was Made

b Own directly an interest of 20% or more, or own, directly or indirectly, an interest of 50% or more in the profit, loss, or capital in any foreign or domestic partnership (including an entity treated as a partnership) or in the beneficial interest of a trust? For rules of constructive ownership, see instructions. If 'Yes,' complete (i) through (v) below		X

(i) Name of Entity	(ii) Employer Identification Number (if any)	(iii) Type of Entity	(iv) Country of Organization	(v) Maximum % Owned in Profit, Loss, or Capital

5a At the end of the tax year, did the corporation have any outstanding shares of restricted stock? If 'Yes,' complete lines (i) and (ii) below.		X
(i) Total shares of restricted stock ►		
(ii) Total shares of non-restricted stock ►		
b At the end of the tax year, did the corporation have any outstanding stock options, warrants, or similar instruments? If 'Yes,' complete lines (i) and (ii) below.		X
(i) Total shares of stock outstanding at the end of the tax year ►		
(ii) Total shares of stock outstanding if all instruments were executed ►		
6 Has this corporation filed, or is it required to file, **Form 8918**, Material Advisor Disclosure Statement, to provide information on any reportable transaction?		X
7 Check this box if the corporation issued publicly offered debt instruments with original issue discount ► [ ] If checked, the corporation may have to file **Form 8281**, Information Return for Publicly Offered Original Issue Discount Instruments.		
8 If the corporation: **(a)** was a C corporation before it elected to be an S corporation **or** the corporation acquired an asset with a basis determined by reference to the basis of the asset (or the basis of any other property) in the hands of a C corporation **and (b)** has net unrealized built-in gain in excess of the net recognized built-in gain from prior years, enter the net unrealized built-in gain reduced by net recognized built-in gain from prior years (see instructions) ► $		
9 Enter the accumulated earnings and profits of the corporation at the end of the tax year $		
10 Does the corporation satisfy **both** of the following conditions?		
a The corporation's total receipts (see instructions) for the tax year were less than $250,000		
b The corporation's total assets at the end of the tax year were less than $250,000		X
If 'Yes,' the corporation is not required to complete Schedules L and M-1.		
11 During the tax year, did the corporation have any non-shareholder debt that was canceled, was forgiven, or had the terms modified so as to reduce the principal amount of the debt?		X
If 'Yes,' enter the amount of principal reduction $		
12 During the tax year, was a qualified subchapter S subsidiary election terminated or revoked? If 'Yes', see instructions		X
13a Did the corporation make any payments in 2016 that would require it to file Form(s) 1099?	X	
b If 'Yes,' did the corporation file or will it file required Forms 1099?	X	

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Schedule K	Shareholders' Pro Rata Share Items			Total amount
Income (Loss)	1 Ordinary business income (loss) (page 1, line 21)		1	-125,907.
	2 Net rental real estate income (loss) (attach Form 8825)		2	
	3a Other gross rental income (loss)	3a 195,191.		
	b Expenses from other rental activities (attach statement)	3b		
	c Other net rental income (loss). Subtract line 3b from line 3a		3c	195,191.
	4 Interest income		4	
	5 Dividends: a Ordinary dividends		5a	
	b Qualified dividends	5b		
	6 Royalties		6	
	7 Net short-term capital gain (loss) (attach Schedule D (Form 1120S))		7	
	8a Net long-term capital gain (loss) (attach Schedule D (Form 1120S))		8a	
	b Collectibles (28%) gain (loss)	8b		
	c Unrecaptured section 1250 gain (attach statement)	8c		
	9 Net section 1231 gain (loss) (attach Form 4797)		9	
	10 Other income (loss) (see instructions) Type ►		10	
Deductions	11 Section 179 deduction (attach Form 4562)		11	
	12a Charitable contributions		12a	
	b Investment interest expense		12b	
	c Section 59(e)(2) expenditures (1) Type ► (2) Amount ►		12c (2)	
	d Other deductions (see instructions) Type ►		12d	
Credits	13a Low-income housing credit (section 42(j)(5))		13a	
	b Low-income housing credit (other)		13b	
	c Qualified rehabilitation expenditures (rental real estate) (attach Form 3468, if applicable)		13c	
	d Other rental real estate credits (see instrs) Type ►		13d	
	e Other rental credits (see instrs) Type ►		13e	
	f Biofuel producer credit (attach Form 6478)		13f	
	g Other credits (see instructions) Type ►		13g	
Foreign Transactions	14a Name of country or U.S. possession ►			
	b Gross income from all sources		14b	
	c Gross income sourced at shareholder level		14c	
	Foreign gross income sourced at corporate level			
	d Passive category		14d	
	e General category		14e	
	f Other (attach statement)		14f	
	Deductions allocated and apportioned at shareholder level			
	g Interest expense		14g	
	h Other		14h	
	Deductions allocated and apportioned at corporate level to foreign source income			
	i Passive category		14i	
	j General category		14j	
	k Other (attach statement)		14k	
	Other information			
	l Total foreign taxes (check one): ► ☐ Paid ☐ Accrued		14l	
	m Reduction in taxes available for credit (attach statement)		14m	
	n Other foreign tax information (attach statement)			
Alternative Minimum Tax (AMT) Items	15a Post-1986 depreciation adjustment		15a	
	b Adjusted gain or loss		15b	
	c Depletion (other than oil and gas)		15c	
	d Oil, gas, and geothermal properties – gross income		15d	
	e Oil, gas, and geothermal properties – deductions		15e	
	f Other AMT items (attach statement)		15f	
Items Affecting Shareholder Basis	16a Tax-exempt interest income		16a	
	b Other tax-exempt income		16b	
	c Nondeductible expenses		16c	216.
	d Distributions (attach stmt if required) (see instrs)		16d	189,411.
	e Repayment of loans from shareholders		16e	

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Schedule K Shareholders' Pro Rata Share Items (continued)			Total amount
Other Information	17a Investment income	17a	
	b Investment expenses	17b	
	c Dividend distributions paid from accumulated earnings and profits	17c	
	d Other items and amounts (attach statement)		
Reconciliation	18 Income/loss reconciliation. Combine the amounts on lines 1 through 10 in the far right column. From the result, subtract the sum of the amounts on lines 11 through 12d and 14l	18	69,284.

Schedule L Balance Sheets per Books	Beginning of tax year		End of tax year	
Assets	(a)	(b)	(c)	(d)
1 Cash		4,790.		-4,656.
2a Trade notes and accounts receivable			-1,509.	
b Less allowance for bad debts				-1,509.
3 Inventories				
4 U.S. government obligations				
5 Tax-exempt securities (see instructions)				
6 Other current assets (attach stmt)				
7 Loans to shareholders				
8 Mortgage and real estate loans				
9 Other investments (attach statement)				
10a Buildings and other depreciable assets				
b Less accumulated depreciation				
11a Depletable assets				
b Less accumulated depletion				
12 Land (net of any amortization)				
13a Intangible assets (amortizable only)				
b Less accumulated amortization				
14 Other assets (attach stmt) See St 2		895.		
15 Total assets		5,685.		-6,165.
Liabilities and Shareholders' Equity				
16 Accounts payable				
17 Mortgages, notes, bonds payable in less than 1 year				
18 Other current liabilities (attach stmt) See St 3		79,796.		80,108.
19 Loans from shareholders		1,200.		
20 Mortgages, notes, bonds payable in 1 year or more		43,664.		130,000.
21 Other liabilities (attach statement) See St 4		130,000.		
22 Capital stock		2,000.		2,000.
23 Additional paid-in capital		26,420.		
24 Retained earnings		-277,395.		-218,273.
25 Adjustments to shareholders' equity (att stmt)				
26 Less cost of treasury stock				
27 Total liabilities and shareholders' equity		5,685.		-6,165.

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Schedule M-1 Reconciliation of Income (Loss) per Books With Income (Loss) per Return

Note: The corporation may be required to file Schedule M-3 (see instructions)

1 Net income (loss) per books	69,068.	5 Income recorded on books this year not included on Schedule K, lines 1 through 10 (itemize): a Tax-exempt interest. $	
2 Income included on Schedule K, lines 1, 2, 3c, 4, 5a, 6, 7, 8a, 9, and 10, not recorded on books this year (itemize):			
3 Expenses recorded on books this year not included on Schedule K, lines 1 through 12, and 14l (itemize): a Depreciation $		6 Deductions included on Schedule K, lines 1 through 12 and 14l, not charged against book income this year (itemize): a Depreciation $	
b Travel and entertainment. $ 178.			
See Statement 5 38.	216.	7 Add lines 5 and 6	0.
4 Add lines 1 through 3	69,284.	8 Income (loss) (Schedule K, ln 18). Ln 4 less ln 7	69,284.

Schedule M-2 Analysis of Accumulated Adjustments Account, Other Adjustments Account, and Shareholders' Undistributed Taxable Income Previously Taxed (see instructions)

	(a) Accumulated adjustments account	(b) Other adjustments account	(c) Shareholders' undistributed taxable income previously taxed
1 Balance at beginning of tax year	-17,554.		
2 Ordinary income from page 1, line 21			
3 Other additions See Statement 6	195,191.		
4 Loss from page 1, line 21	(125,907.)		
5 Other reductions See Statement 7	(216.)		
6 Combine lines 1 through 5	51,514.		
7 Distributions other than dividend distributions	189,411.		
8 Balance at end of tax year. Subtract line 7 from line 6	-137,897.		

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PROVENZANO RESOURCES

TAB 6: Revenue (Biddable Item)

c. Sales and Revenue Projections

YEAR	Projected Annual Gross Sales	15% of Sales in Rent to PRI	Proposed Annual Percentage Fee	Proposed MAG
YEAR 1	$3,000,000	$450,000	15%	$54,000
YEAR 2	$3,300,000	$495,000	15%	$64,800
YEAR 3	$3,400,000	$510,000	15%	$68,000
YEAR 4	$3,638,250	$545,738	15%	$71,400
YEAR 5	$3,820,160	$573,024	15%	$75,000

PRI has completed a market survey of area mall rents, and therefore projections of sales in the San Jose area. The following shopping centers rents are below:

	RMU Rents Annually	Kiosk Rents Annually*
Valley Fair	$48,000	$125,000
Oakridge	$40,000	$75,000
Eastridge	$24,000	$45,000

** Please note that kiosk rents include WET and prepared foods and that is typically 50% higher than retail or packaged foods in rent and sales.*

Shopping centers typically have 15% natural breakpoints, however, reality is that rent to sales ratios are 20-22% on average with all rent factored in (trash, electric).

PRI has based the projected rent to start at $3,750 so as to attract local, small and ACDBE businesses to the program. Airport payroll is typically much higher than the 14% average of a 'street' or mall retailer, closer to 20% or higher than that. PRI reviewed sales in the A Concourse of Denver International Airport since enplanements are close and the distances from gates and other retail are similar, and used that information for estimated sales.

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PROPOSAL BID FORM
Attachment A-5

This form must be completed in full and submitted as part of the Proposal. Indicate "none" where applicable.

PROPOSER'S BID

The financial evaluation of proposals will consider the proposed Minimum Annual Guarantee, Percentage Fee and Projected Annual Sales. Proposers are required to propose their blended percentage fee for the RMU Concessions on which they are proposing.

Projected Annual Gross Sales

Proposers should provide a good faith estimate of the expected annual gross receipts to be derived from the proposed Operations. Major assumptions and verifiable, comparable sales used in developing should be clearly stated and labeled **Attachment A-5.**

Proposed Annual Percentage Fee

As stated in **Section 1.13** of the RFP, a Percentage Fee will be assessed on all Gross Revenues throughout the term of the Agreement. Proposers shall propose a Percentage Fee to the City for each year, and each subsequent year. The proposed Percentage Fee following the initial year, may be equivalent, but shall not be less than the previous year.

Proposed Minimum Annual Guarantee

As stated in **Section 1.13** of the RFP, Proposers shall propose a guaranteed MAG to the City for each year, and each subsequent year. The proposed MAG following the initial year, may be equivalent, but shall not be less than the previous year. The MAG shall be comprised of a percentage of the Gross Revenues for all RMU Locations.

YEAR	PROJECTED ANNUAL GROSS SALES	PROPOSED ANNUAL PERCENTAGE FEE	PROPOSED MINIMUM ANNUAL GUARANTEE
YEAR 1	$ 2,400,000.	% 2.25	$ 54,000.-
YEAR 2	$ 2,472,000.	% 2.25	$ 55,620.-
YEAR 3	$ 2,546,178.	% 2.25	$ 57,289.-
YEAR 4	$ 2,622,578.	% 2.25	$ 59,008.-
YEAR 5	$ 2,701,244.	% 2.25	$ 60,778.-

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PROVENZANO RESOURCES

3.2.7. TAB 7: OPERATIONS PLANS

a. Proposed Staffing Plan and Schedule

PRI anticipates that there will be a Program Manager based in the San Jose area responsible for the management, leasing, administration and interaction with SJC staff. The program will also likely have two additional full time staff members responsible for the day to day maintenance and ongoing oversight of the program. Below are general job descriptions:

Program Manager

To oversee and direct Airport Specialty Retail Program meeting the goals and objectives of PRI and SJC, maintaining superior operational standards, maximum occupancy, first rate and most appropriate merchandising standards, and achieving the highest return on investment.

Job Responsibilities:

1. Ensure superior revenue generation and first class merchandise mix through merchant recruitment efforts, maintaining maximum occupancy, seeking out fresh retail and product ideas, following up on all leads, negotiating license agreement and diligently pursuing rent and fee collection.
2. Working with the Visual Merchandiser ensure high quality, appropriate and up to date visual merchandising standards are implemented and maintained consistently through-out the program.
3. Through proper direction of staff, ensure that operations of the Specialty Retail Program, including RMU/Kiosk physical appearance and maintenance, stocking procedures and adherence to Airport Rules and Regulations are carried out in a professional and high quality manner.
4. Ensure positive public, client and merchant relationships, through implementation of customer service and satisfaction programs, clear and consistent communication, timely follow-up on all customer comments and issues, operator and employee training, open and regular dialog with Airport Management and staff.
5. Through staff direction effectively administer program meeting all terms of the Airport Agreement and PRI policies and procedures including but not limited to timely reporting, complete and organized program filing system, thorough operator license documentation, emergency contact list and operational logs.
6. Plan and implement annual budget and strategic business plan ensuring highest ROI, establishing program goals and objectives, conduct regular financial assessment to include monthly budget variance reports and quarterly business plan updates.

Key Relationships and Associations

- Reports to the owners of PRI
- Manage, develop and direct on-site staff
- Oversee and maintains solid relationship with Program Operators / Licensees
- Acts as Liaison between PRI, and Airport Management
- Represents PRI and SJC Specialty Retail Program to the public

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PROVENZANO RESOURCES

Operations / Maintenance (Full or Part Time Positions)

Operations Leads are responsible for providing operational support associated with day to day activities of the SJC Specialty Retail Program including enforcing all company policies and procedures, RMU repair and maintenance, trash removal, storage and stock oversight and distributing PRI approved correspondence to Operators.

Job Responsibilities

Oversight of daily operations of the specialty retail program for PRI. This will include, but is not limited to:

1. Monitoring and processing all merchant work orders and related issues
2. Maintaining the RMUs and kiosks in working order at all times
3. Assisting in enforcing the use clauses of the license agreements
4. Overseeing the monthly cleaning of Units
5. Maintaining proper levels of inventory of spare parts, tools, chairs, and all other items related to RMU maintenance and operations
6. Preparing RMUs for new incoming operators
7. Monitoring visual merchandising per PRI rules and regulations
8. Maintaining Open/Close log
9. Notifying PRI of any and all issues concerning SJC property
10. Other responsibilities and/or special projects may be assigned from time to time that are directly related to the operations and success of the Specialty Retail Program

16. All maintenance staff is required to wear PRI uniform at all times while on duty at SJC

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PROVENZANO RESOURCES

3.2.7 TAB 7: OPERATION PLAN:

Labor and Training Practices

PRI will place the highest priority on hiring, training and maintaining an experienced on-site staff to assure that the SJC Specialty Retail RMU program is managed at the highest level as is to be expected of a first class operation. PRI has hired and trained local specialty leasing personnel and operations personnel in over forty locations nationwide, and in fact, train specialty leasing personnel for national shopping center developers as consultants. The training seminars and documentation, which is proprietary to PRI, will be utilized at the onset of the RFP award to insure that the local personnel will have the experience and tools to manage, lease and operate the program. PRI will hire a specialty leasing program manager at least three months prior to opening, so that individual will be trained and integrated into the PRI program management methodology. PRI will have the specialty leasing program manager inculcated with all that is necessary to operate a PRI level program. Their training will be directly with the owners and the Vice President for PRI.

All PRI policies will be followed in the administration of this program, and training will center on the leasing, tenant retention, prospecting, and day to day management of this program. This staff person will be fully functional in all PRI administrative tools and reports prior to the opening of this program.

The operations team will be brought on board within fifteen to thirty days of opening and will be integral in preparing the SJC locations for the new RMUs/Kiosks. The operations team will be trained by the PRI Operations Manager, and likely brought to the PRI facility in Denver, Colorado to understand all of the maintenance needs that they might encounter. They will also be trained by Bella Group personnel in the care and maintenance of the new RMUs. All operations personnel will be provided a uniform to them by PRI that will consist of black pants or long shorts, long sleeved logo polo shirt or polo shirt, and steel toed boots to keep with the consistency, continuity and level of professionalism every PRI program provides. Led by the Specialty Retail Program Manager, this staff will have the responsibility and authority to preside over the daily operations of the RMU program and make decisions regarding but not limited to:

- *Recruiting and Leasing to Specialty Retail Operators*
- *Customer Service issues*
- *Operators' employee conduct*
- *RMU/Kiosk merchandising and upkeep*
- *Storage and stocking procedures*
- *Monitoring all RM/Kiosk Operators' products, quality and pricing*
- *License administration including license approval process, rent collection and sales reporting*
- *Adherence to SJC security and operational procedures*

A Manager / Emergency Duty schedule will be implemented to assure that there is always someone on-site or on-call and immediately accessible 24 hours per day. PRI official job descriptions detail each position's responsibilities, regular duties, key relationships and associations, minimum experience and educational requirements and employer expectations of on-call duty, vacation coverage etc. Employees will all participate

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In job orientation and on-going training will be personalized to their experience and area of expertise. All employees receive an initial ninety (90) day review, and then annual or more frequent performance reviews as a way to clearly communicate and measure their professional growth, results and areas in need of improvement. Through the Specialty Retail Program Manager the local staff will report to the PRI owners who will assure SJC that the program is run in a manner that meets or exceeds expectations. The owners will make scheduled and unscheduled visits to SJC to monitor program operations, strategic and financial planning, and overall results.

Merchant Training / Customer Service Program

PRI has extensive experience and brings a wealth of resources to the training of specialty retail (RMU) merchants including over 25 years of developing and conducting seminars at the International Council of Shopping Centers conferences worldwide. PRI will incorporate into bi-monthly merchant meetings such pertinent topics as improving retail sales, providing quality customer service, visual merchandising and displays, inventory management and product planning to list a few. PRI produces a quarterly company newsletter for all of its' programs, and included in that are customer service tools, visual merchandising tips and trade shows and events for new product ideas. PRI subscribes to the Specialty Retail Report, and obtains enough copies to distribute for free to all PRI merchants on a quarterly basis. PRI encourages the merchants to attend local gift shows, merchandise shows, health and beauty shows, as well as sending staff to bring back new and interesting concepts to distribute to merchants.

Less experienced retailers including ACDBE qualified merchants will benefit from the sound and proven retailer training programs PRI can offer. For example *Retail 101- The Nuts and Bolts of Starting a Business* is a very successful seminar and is a staple at SPREE the Specialty Retail Entrepreneur Expo and Conference held each year in Las Vegas, and is always taught by PRI.

It is PRI company philosophy that great customer service is the key to a successful specialty retail program. We start with operating policies and procedures that make customers the priority. This includes but is not limited to expectations regarding customer relations, retailer credibility, reasonable return policies, and courteous employee behavior. We inform and TRAIN service employees as to what the expectations are and how to succeed. The PRI Merchant Manual clearly informs operators of service expectations and our on-going training programs will develop and reinforce employees' customer service skills. PRI has a proprietary customer service training program that it shares with merchants on an annual basis at the merchant meetings. PRI has produced this training program for large owner/operator programs, including Santa's Pen annual training program.

Consistently achieving great customer service requires that the program is monitored; policies enforced and timely follow up on all customer feedback or complaints. Our on-site Program Manager and staff are the primary advocates of the customer service program, communicating daily with merchants, providing feedback and assuring compliance. Follow up will be timely and thorough. Other tools to be implemented include PRI's Mystery Shopper and Retailer Evaluation programs

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PROVENZANO RESOURCES

TAB 8: Marketing and Merchandising Plans (Leasing):

a.

PRI will utilize over thirty five years of experience and contacts with our extensive local, regional and national networks, industry resources, and local canvassing efforts to recruit quality retailers and negotiate deals that maximize the return on investment of SJC Specialty Retail Program.

To meet SJC revenue and merchandising goals a multifaceted lease up plan is proposed that focuses on the following objectives:

- *To recruit experienced and financially qualified specialty / short term retailers*
- *Enhance the merchandise mix and product offerings at the SJC*
- *Incorporate local brands and merchants into the program*
- *Locate, enlist and cultivate ACDBE qualified operators*
- *Negotiate the highest and best use possible for each location ensuring the maximum program ROI*

Specialty retail programs are dynamic requiring constant review and refreshment. The initial lease up phase will be completed during the design and fabrication of RMUs/Kiosks timeframe. When the program is up and running it will be constantly evaluated and improved through regular merchant reviews, canvassing, and leasing efforts of local and regional PRI staff. Every effort will be made to develop waiting lists of new retailers and concepts ensuring the shortest possible turn-around time for RMUs' as well as any in-line locations made available by SJC.

A general overview of lease up efforts includes but is not limited to the following action steps:

- *Review and follow up on all available local inquiries made through the SJC Business Web-site*
- *Canvass San Jose, Bay Area, San Francisco and other regional shopping districts, regional malls and business districts*
- *Research and contact interesting San Jose and Silicon Valley internet based retail businesses and brands*
- *Participate in ICSC National and Regional retail leasing and deal making conventions*
- *Work with the SBA on entrepreneur development programs*
- *Approach interesting and qualified retailers on the extensive PRI merchant contact list*
- *Canvass San Jose and Silicon Valley area resorts, seasonal festivals and other tourist attractions for unique or brand merchandise*

The SJC Specialty Retail Program will focus on merchandise diversification, local brands, novelty and impulse items, traveler convenience and San Jose and Silicon Valley centric products. Prospective operators and retail concepts will be qualified based on viability, financial strength, experience and program need. PRI has worked with the following Bay Area and Northern California shopping locations over the past fifteen years, and with this extensive experience can canvass, recruit and bring to SJC interesting and productive local retailers.

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PROVENZANO RESOURCES

The following are locations where PRI was involved in RMU/Kiosk and Pop Up Shop development, leasing and merchandising:

- Santana Row, San Jose
- Bay Street at Emeryville
- Anchorage Square, San Francisco
- Alameda South Shore Center, Alameda
- Sunrise Mall, Sacramento
- Bayfair Mall, San Leandro
- City of Walnut Creek
- Nut Tree Village
- Yuba Sutter Mall, Yuba City
- Sherwood Mall, Stockton
- Oakland Airport (Design and Implementation of name change for gift store)

Product concepts may, but are not guaranteed to be part of the SJC Kiosk Program:

- Electronics
- Local Team concepts
- Bay area packaged foods
- Leather goods
- Stationery and General Store
- Watches
- Jewelry
- Local Artists
- Skin Care
- Make up
- Men's Grooming
- Jewelry
- Watches
- Scarves and seasonal concept

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PROVENZANO RESOURCES

TAB 8

b. Pricing Management Plan

All merchants without exception are required to follow the Airport's pricing policy and shall charge prices no higher than 110% of "street prices" charged in comparable non-airport facilities in the SJC metropolitan area. Before the License Agreement Use Clause is finalized merchants will be asked to complete a Pricing Comparison sheet for the list of products to be sold. The SJC pricing policy is reinforced in the Merchant Manual and to assure compliance. PRI will from time to time audit product pricing, and violations may result in fines or termination of Operator license agreement. PRI believes that fair pricing to the traveling customer is critical to representing the airport as a place to shop and dine. The consumer must feel confident that their purchases are as if they were shopping in local shopping centers or Main Street location.

Sample Pricing Submission

Concessionaire: _____ Date: _____

Location: _____

Item No.	Concessionaire's Product	Comparable Product	Comparable Pricing	10%	Proposed Market Pricing
	Proposed Product/Service Description (Description of item, product, or service, portion/product size, accoutrements, quantity, time etc.)				
1	Low cost trendy sunglasses	Low cost trendy sunglasses	$12.00	$1.20	$12.99
2	T-Shirts - 3 color silk screen	T-Shirts - 2-4 color silk screen	$10.00 - $15.00	$1.00 - $1.50	$11.00 - $16.50
3					
4			$	$	$
5			$	$	$
6			$	$	$
7			$	$	$
8			$	$	$

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PROVENZANO RESOURCES

3.2.8 TAB 8: Marketing and Merchandising Plan

c. Marketing Capabilities, Plans & Strategies

Several approaches will be used to promote and market the new specialty retail program at SJC including extensive canvassing efforts, marketing materials, public relations plan and advertising. Experience confirms that the most successful method of informing, recruiting and engaging prospective operators is through networking and canvassing efforts. This is an on-going and continuous process. Here at PRI we do more than scout for the next "hot concept". As Specialty Retail professionals we keep up with consumer trends, new innovative products on the market and qualified retailers looking to for the "right" opportunity to grow their business. Our database of specialty retail merchants will provide a solid base to start. From there we will customize the program by going out and seeking those Northern California merchants who will provide the uniquely local core of SJC, potential ACDBE operators, and concepts specific to the area.

Immediately upon approval of our proposal a national and local PRI team of specialty retail leasing experts will begin to systematically canvass San Jose and the surrounding metropolitan trade area. Informative marketing materials and thorough merchant application packets will provide prospective operators with the information they need to take part in the SJC program. Marketing materials will be distributed during canvassing trips, and upon request of prospective operators. Requests for information may be made through our web-site www.ProResourcesInc.com, phoning the PRI office, and, if permitted, through SJC website and made available at Airport information booths.

Limited yet effective print advertising for prospective operators may be purchased in industry magazines and local business news letters and journals. Public relations and word of mouth will also be employed as a way to get the message out to prospective merchants. This will begin with the initial press release announcing the awarding of the RFP, and continues on with releases as new RMU and Kiosks open. Human interest stories concerning ACDBE operators and local entrepreneurs provide another outlet for recruiting new retailers as will sponsorship of Business Opportunity Fairs and SJC Business Outreach forums (if permitted). Examples of past ads and articles on PRI Specialty Retail Programs may be found on the following pages.

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RMU CONCESSION CAPITAL INVESTMENT

Attachment A-6

Per the RFP, the selected Proposer(s) will be required to make a capital investment in the terminal for the installation of RMU Concession. The Minimum capital investment is $20,000 per RMU for a total of $180,000. Propose the capital investment for the RMU Concession.

CAPITAL INVESTMENT

CAPITAL INVESTMENT PER RMU.: $ 35,000 (AMOUNT IN NUMBERS) X 9 RMU LOCATIONS = $ 315,000 (AMOUNT IN NUMBERS)

TOTAL CAPITAL INVESTMENT FOR ALL RMUs.: three hundred and fifteen thousand dollars (AMOUNT IN WORDS)

PROVENZANO RESOURCES

3.2.9 TAB 9: DESIGN AND CAPITAL INVESTMENT:

b. Plan and Description for Design, Fabrication and Installation

PRI has engaged Bella Groups as its' exclusive design, engineering, fabrication, delivery and installation team member for the SJC RMU/Kiosk program. In the following pages there are examples, both actual and conceptual of the direction for the designs for the program from Bella Group. PRI has worked with Bella Group on the design, fabrication and installation of many RMU/Kiosk programs including the high profile custom units at the Royal Hawaiian Shopping Center in Honolulu; the custom outdoor units at The Shoppes at Chino Hills, California; and most recently the units at the high traffic urban indoor centers SkyView Center in Flushing, NY and Baldwin Hills Crenshaw Plaza, in Los Angeles, California. The PRI team and the Bella Group team have designed and installed over 80 units together.

PRI would propose that all of the RMU's/Kiosks in both terminals be of like aesthetic design, however the units may not be identical due to the locations and space considerations. The units may have three variations, and allow for modular design and build. The first style is a typical 'barrier' unit, with the merchant standing in the middle, and cases surrounding them. This is what many merchants, such as jewelry and high end sunglasses still prefer, and are comfortable operating with, and PRI knows that their level of operations require such designs. In the pictures this is visible, with the backlit lighting panel adding height, signage and graphics to these ordinarily flat top units. The second kiosk will be a 'floating' design; this gives the layout of the unit flexibility within their space, but also gives a more direct consumer approach. Many merchants are finding that these types of units are conducive to strong sales, including makeup, skin care and electronics. These are typically for high end product and are seen overseas in Europe and the Middle East. The final unit, a wall shop, which allows a use of space where no larger floor area is available, and can create a more intimate relationship with the consumer. Each kiosk will have its' own security system, but there will be no tarp closures of any kind.

This will continue the overall sense of light from the units, as each unit will have a nightlight system, on timers, so that if indeed, there are still travelers after the units are closed, will not encounter the 'jail cell' sense that closed gates impart. The units will turn into vitrines, as both advertising for the merchant, and lit display areas for the airport.

The advantage of that system is that merchants will not be required to have an initial capital outlay for their displays. PRI will know that all displays will work with the units, fit into the units, and be of the quality that PRI expects from display fixtures. The fixture system designed for SJC will be unique, in that it will be modular and interchangeable, and therefore suit many possible merchandising needs. The visual merchandising piece of each new merchant's set up will be merely ticking boxes in a list, meeting with the team to make sure that the display pieces work, and installing their product. The display elements to add uniqueness to each unit will be the inside parts of the display, for example the bust forms and tray liners for the jewelry merchant, along with props and specialty elements for each display. For example, the perfume merchant will have available to them cases to hold their product and samples, but will want to

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add the elements to give their theme (i.e. Eiffel towers for a French theme; chandeliers for a boutique feel).

The overall sense of place for the common area units are timeless, with elegant and clean lines, combined with materials that are bold, substantial and durable. The units will be sympathetic to the indoor terminal environments, with the highest level of transparency and visibility. The duratrans panels, and perhaps even some of the materials will vary by terminal, and that will give a bit of interest to each unit, and each terminal. The units will be engineered for the 24/7 rigor of a transit location, with robust materials and engineering focus on all moving parts.

The units will allow for a sense of place that keeps design consistency yet varies just enough on a terminal by terminal basis to give a clear identity. The units will have flexible backlit panels to give vendor identification, advertising and marketing. These duratrans panels will give a value add to each merchant, as they want to create their own brand identity in the consumers' minds. This will also be a leasing value add, as we look to bring regional and local merchants to SJC that already have their own brand, and want to maintain that as part of their image.

Another Bella Group focus is on the sustainability of the common area units, with a high content of recycled, reclaimed and recyclable material used in the fabrications. There will be low energy lighting to reduce energy consumption, without sacrificing the merchants' needs and product sales. PRI is pleased to present the following designs to SJC, with the understanding that the process of design will include a charrette with the architectural team for SJC, and a complete indoctrination into the ambiance of SJC for both PRI and Bella Group.

During the fabrication process both owners of PRI will be in Dallas, Texas, the fabrication facility of Bella Group to insure that the units are being constructed as agreed, and that the materials and engineering create a best-in-class unit.

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3.2.9 tab 9: Design Capital Investment

c. PROJECT SCHEDULE

	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6
RMU/Kiosk Design/Fabrication/installation						
Design Review by SJC						
Engineering and Pricing from Bella Group to PRI						
Notice to Proceed from SJC to PRI						
Final Design Given to Manufacturer to Begin Production						
RMU/Kiosk Production Begins						
RMUs under construction						
PRI Submits Chair Designs						
Chair Designs (if needed) selected						
PRI Site Progress Visit to RMU/Kiosk Manufacturer						
RMU Deilvery Date From Manufacturer Set						
PRI Site Visit to Review Outstanding issues (electrical, locations, staging area, storage)						
RMU/Kiosks delivered and installed						
PRI & SJC RMU/Kiosk Initial Inspection on Site						
PRI Creates Punch list for RMU Manufacturer Detailing Outstanding Items Addressed Prior to Grand Opening						
Electrical Checked, Tested and RMU/Kiosks Burned in						
Administrative						
Develop Documentation						
PRI Program Documentation Finalized						
Required Documents Collected from Merchants (insurance, business license, resellers permit, copy of drivers license)						
Operations						
Site Preparation as needed						
Determination of Power Supply and ongoing needs						
Visual Merchandising Plans Finalized and Approved for Merchants						
Cleaning Supplies Purchased for Merchants						
Units Cleaned						
Signs Installed						
Install Unit Numbers						
Meetings						
PRI & SJC Review Exact Placement						
Grand Opening						
Visual Merchandising of Units						
Merchant Product Load In Begins						
All Merchandising and Product Placement Complete						
Merchant Meeting for Grand Opening						
Grand Opening of RMU/Kiosk Program at SJC						

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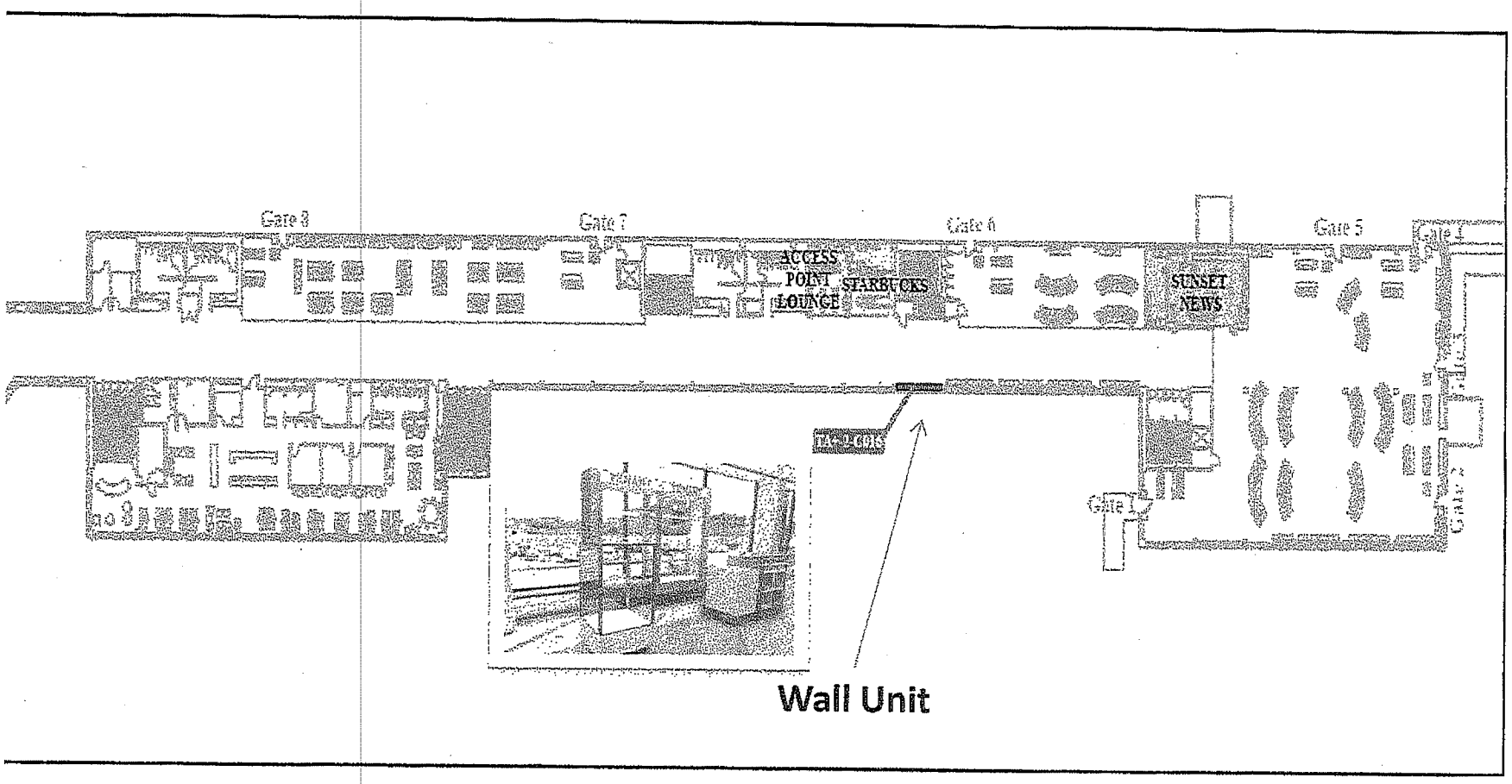

Legend

Retail Merchandising Units
*Unit number subject to change

0 50 100 Feet

Figure 1 -Terminal A+ Gates 1-9
Proposed Retail Merchandising Units Location Map

N

SAN JOSE INTERNATIONAL AIRPORT

EXHIBIT A-2

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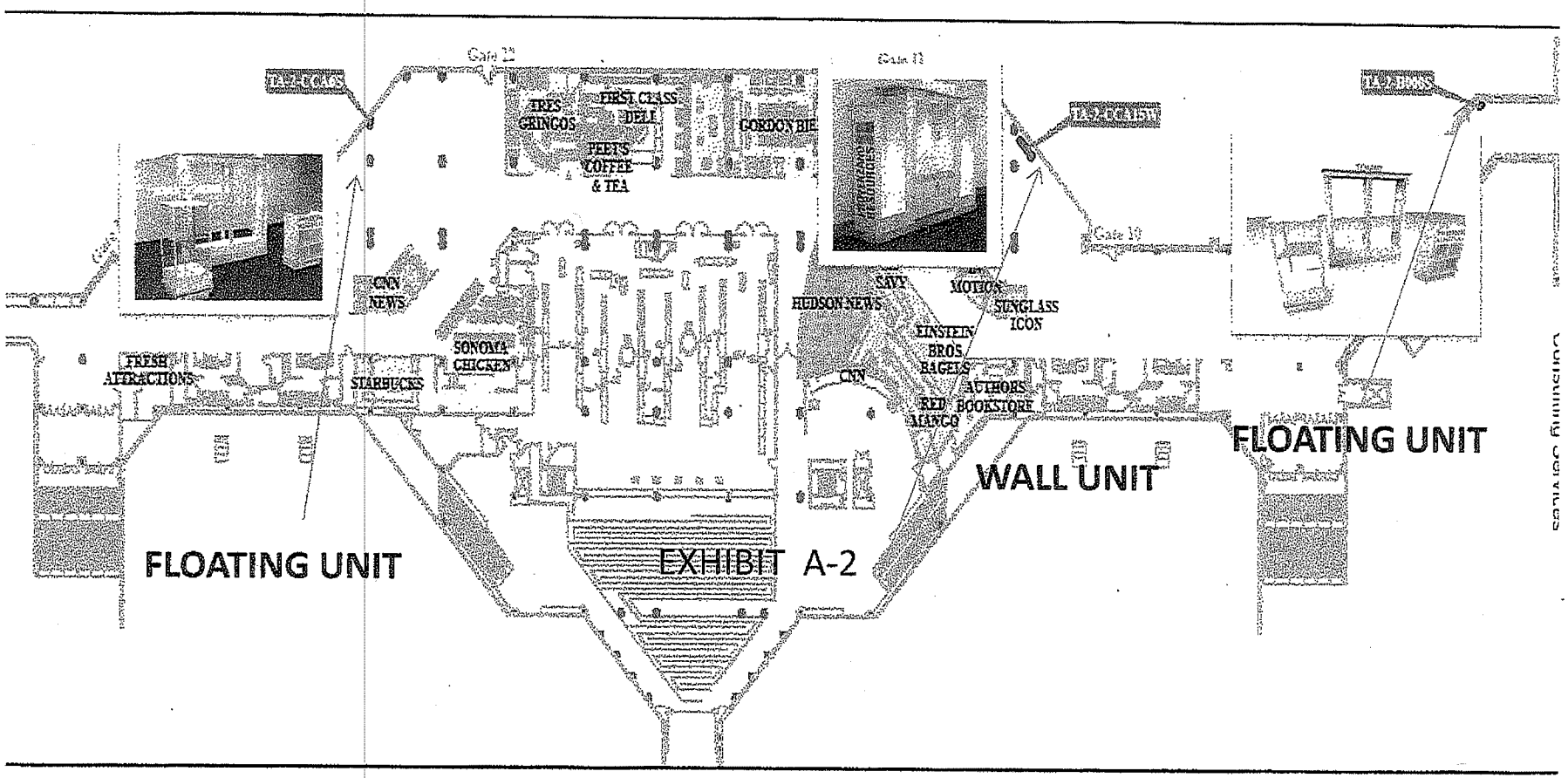

Legend

Retail Merchandising Units
*Unit numbers subject to change

0 50 100 Feet

Figure 2 -Terminal A Gates 9-16
Proposed Retail Merchandising Units Location Map

N

SAN JOSE INTERNATIONAL AIRPORT

EXHIBIT A-3

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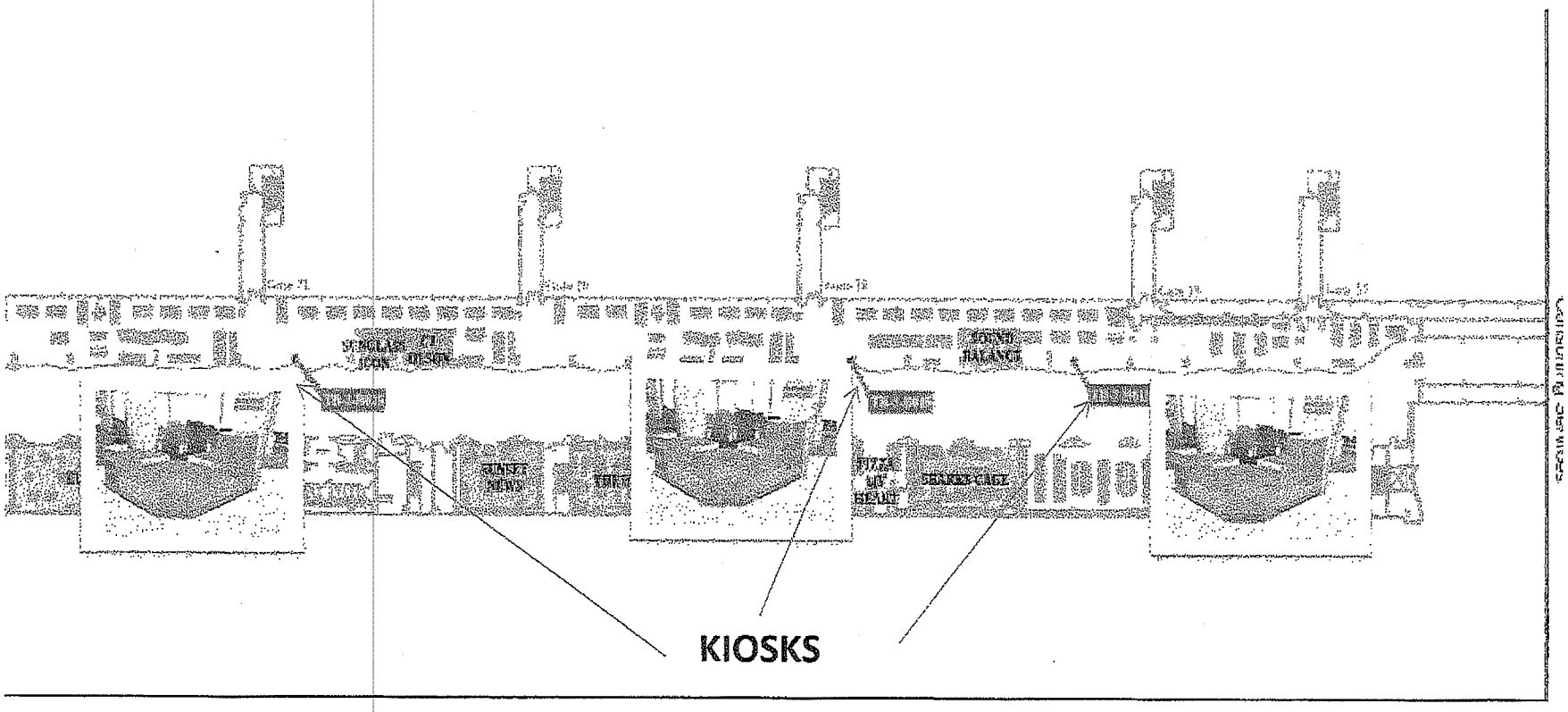

Legend

Retail Merchandising Units

0 50 100 Feet

Figure 3A - Terminal B Gates 21-17
Proposed Retail Merchandising Units Location Map

EXHIBIT A-4

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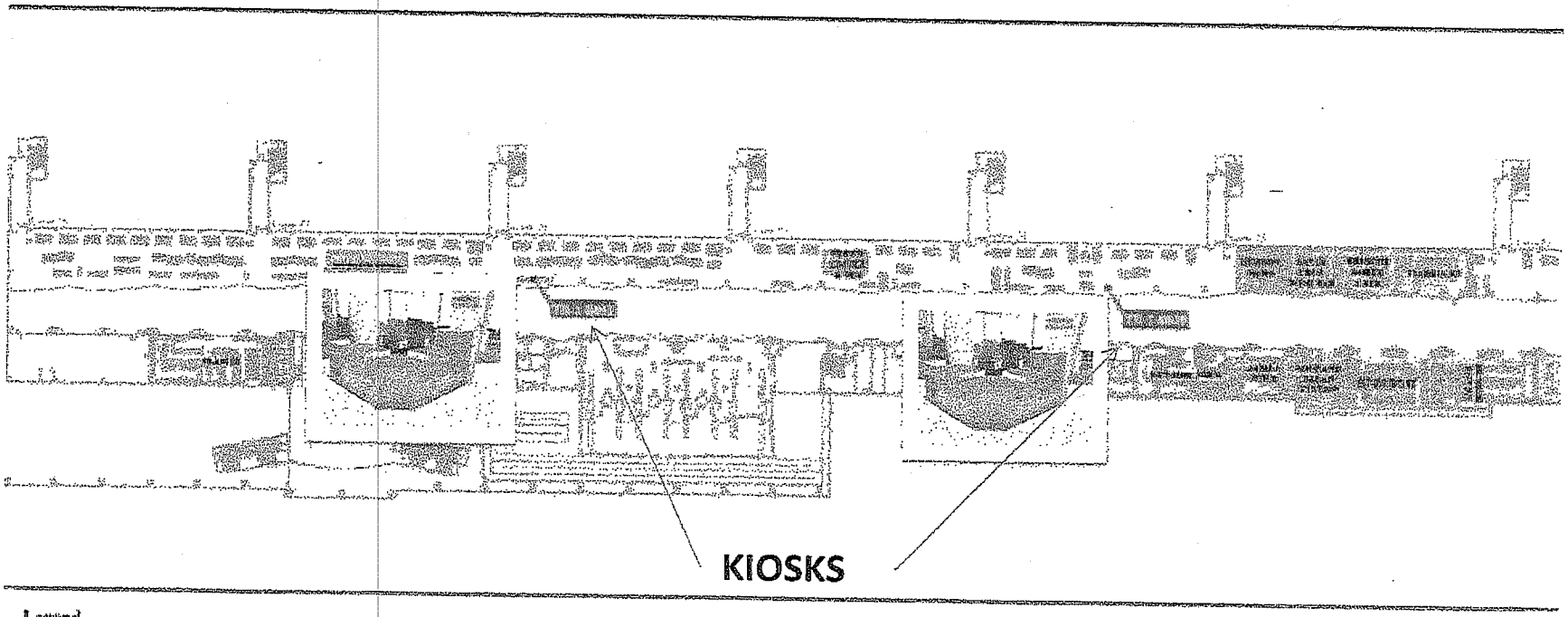

Legend

Retail Merchandising Units

0 50 100 Feet

Figure 3B -Terminal B Gates 22-28
Proposed Retail Merchandising Units Location Map

EXHIBIT A-5

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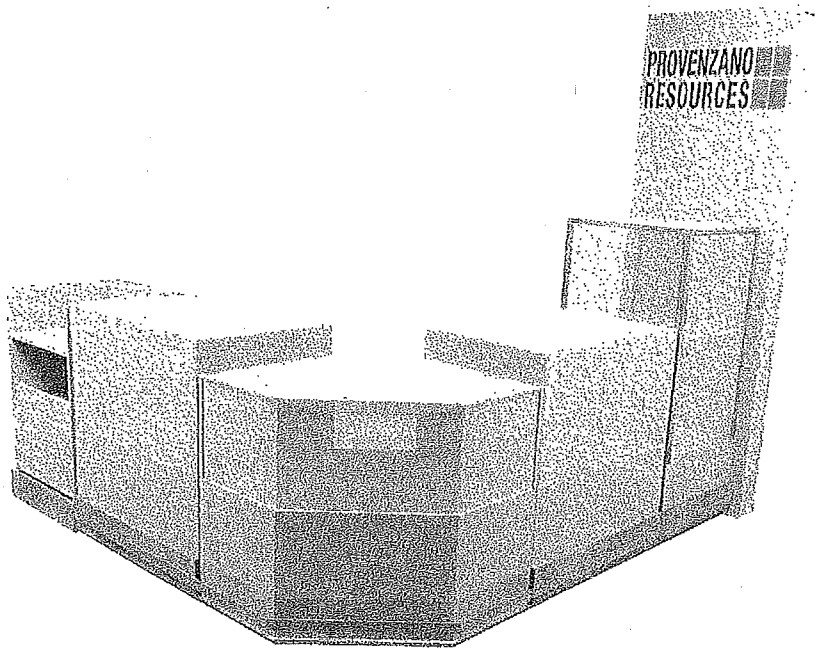
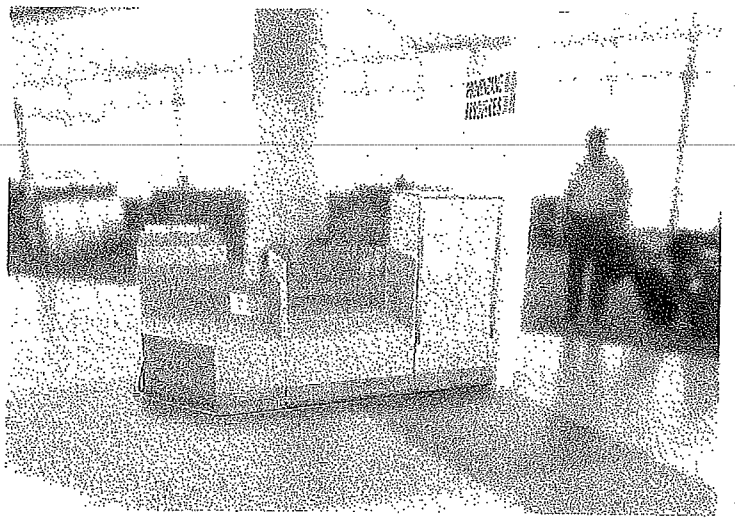
PROVENZANO RESOURCES

TAB 9 EXHIBITS



KIOSK

Column Adjacent Locations



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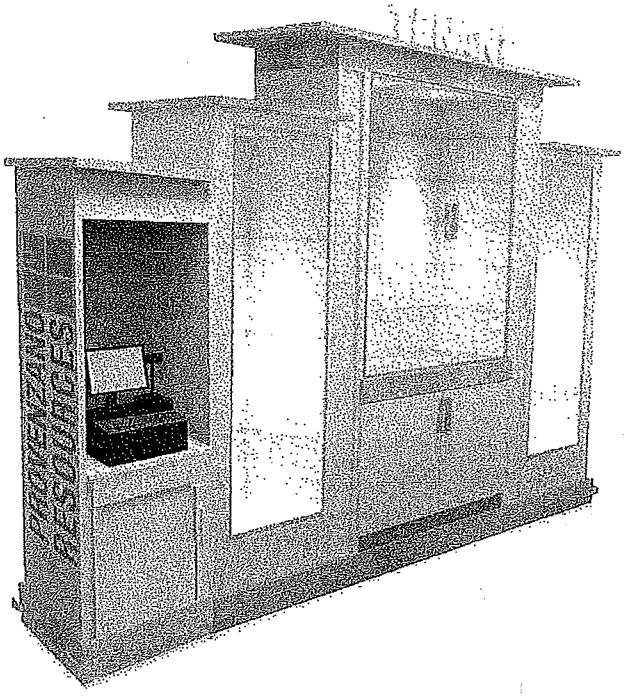
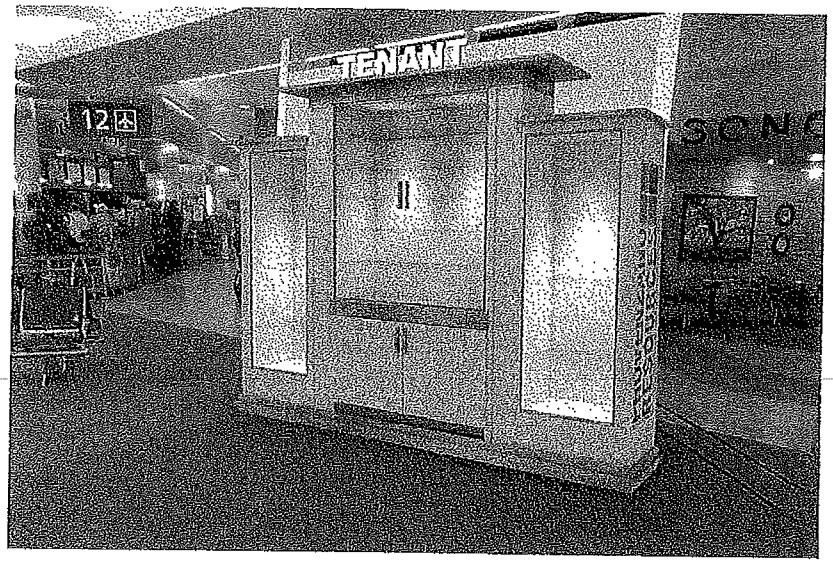
PROVENZANO RESOURCES



WALL UNIT



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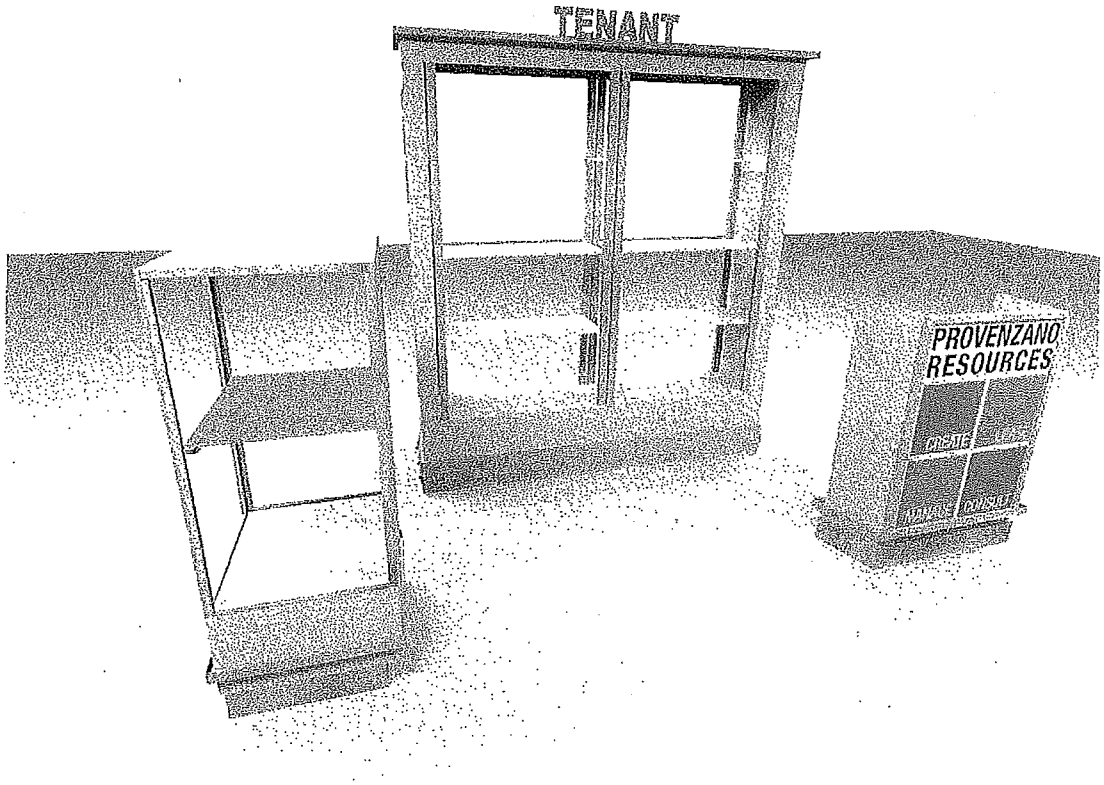
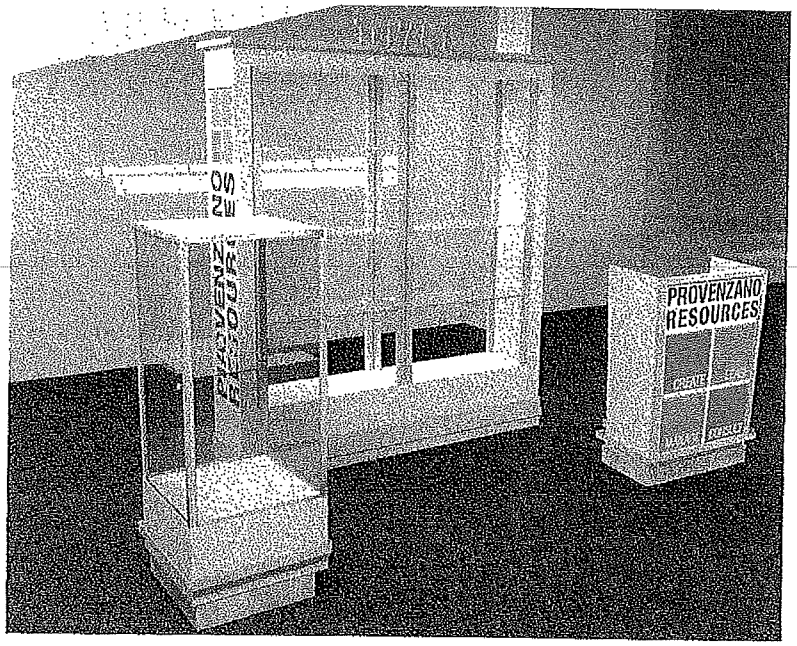


FLOATING UNIT



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bella group
DESIGN SOLUTIONS

Company Background

Bella Group is a custom design and manufacturing firm focused on servicing the specialty retail market with RMU's, kiosks and trade show exhibits for the shopping center industry. The owners of Bella Group have been involved in the exhibit industry for over 20 years accumulating a wealth of experience that we use to service our customers in the best possible way. Our designs are considered the best in the industry, with premier projects and custom RMU/Kiosks a specialty. We are known for on time delivery, hands on installation with a partner at all projects.

The company is headquartered in Coppell, Texas, and although Bella Group has been in business for five years, the senior management of the company brings many years of experience from large competitors in the industry. This experience combined with strategic business partnerships has allowed the company to rapidly grow in its short history and provide products and services in the United States, Canada, Mexico, South America, and throughout Europe.

The company has over 130,000 sq. ft. of production/warehouse space and utilizes over 30 carpenters and assemblers at our headquarters in Texas. Additionally, we have warehouse space in Las Vegas where we provide storage and perform minor repair of trade show exhibits. We are a non-union company; however, we can provide union labor for installations when required. We have worked diligently to understand our client's needs and have created efficient processes that make Bella Group an easy company to do business with. Bella Group is committed to innovation and strives to provide the best design, quality, and service in the industry.

We are confident that if given this opportunity, PRI will find that Bella Group is a professional company that provides state of the art design and industry leading service, at an affordable price. This combination has enabled Bella Group to be known as the value leader in our industry.

Please feel free to contact Jeff Gern or Mark Lieberenz at Bella Group with any questions.

www.bellagroupdesign.com
204 Airline Drive, Suite 200 Coppell TX 75019
972-304-4100

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PROVENZANO RESOURCES, INC

SUB-LICENSE AGREEMENT

Control #: _____ Date Prepared: Click or tap to enter a date. Prepared By: _____

LICENSEE DATA

Licensee: Enter

DBA or Trade Name: Enter

Contact Name:

Address: Enter
Enter

Business Telephone No.:
Fax No.:
Mobile Telephone No.:
Home Telephone No.:

License Area: Choose an item.-Choose an item.

SUB-LICENSE AGREEMENT

This Sub-License Agreement ("Agreement") is made as Click or tap to enter a date. (the "Effective Date"), by and between Provenzano Resources, Inc., a California Corporation, as licensor ("Licensor"), and Enter, as licensee ("Licensee").

RECITALS

WHEREAS, Licensor and the City and County of ----------(the "City"), have entered into that certain Master RMU Agreement dated-------, by and between the City and Provenzano Resources, Inc., Licensor'. a copy of which has been provided to Licensee, whereby City has granted Licensor certain rights to operate a retail merchandising program in the Norman Y. Mineta San Jose International Airport, located in the City of San Jose, CA. consistent with the terms of the Master RMU Agreement ; and

WHEREAS, Licensee desires to enter that certain area located within the Airport and consisting of approximately ----------square feet known as ---------- and depicted on **Exhibit A** attached hereto and incorporated herein by this reference, and that certain retail merchandising unit or kiosk (as applicable, an "RMU") situated thereon and owned by Licensor (collectively, the "License Area"); and

WHEREAS, Licensor is willing to grant Licensee a non-exclusive, revocable privilege to operate the License Area subject to the terms and provisions of this Agreement and the Master RMU Agreement.

NOW, THEREFORE, Licensor hereby grants and Licensee hereby accepts a non-exclusive, revocable sub-license to operate the License Area, subject to the terms and provisions hereinafter set forth.

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WITNESSETH

License Area: In consideration of the payment of the License Fees (as defined below) and the performance by Licensee of the covenants, terms and conditions herein on the part of Licensee to be kept and performed, Licensor hereby grants to Licensee a non-exclusive, revocable sub-license to use the License Area for the operation of the Permitted Use (as defined below) during the Term (as defined below). Licensee expressly acknowledges and agrees that it shall have the right only to use the License Area, subject to the terms and conditions of this Agreement and the Master RMU Agreement, and nothing contained herein shall be construed as granting the Licensee any other rights to any particular location within the Terminal Complex or Airport.

NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, LICENSEE SHALL AT ALL TIMES COMPLY WITH ALL TERMS AND CONDITIONS APPLICABLE TO "OPERATORS" UNDER THE MASTER RMU AGREEMENT, INCLUDING, WITHOUT LIMITATION, THE OPERATORS HANDBOOK REFERENCED THEREIN AND ATTACHED HERETO AS **EXHIBIT B** AND INCORPORATED HEREIN BY THIS REFERENCE (AS MAY BE AMENDED FROM TIME TO TIME, THE "OPERATORS HANDBOOK"). FOR LICENSEE'S CONVENIENCE, A REDACTED COPY OF THE MASTER RMU AGREEMENT IS ON FILE WITH LICENSOR AND MAY BE REVIEWED BY LICENSEE AT LICENSOR'S OFFICES UPON REASONABLE ADVANCE WRITTEN NOTICE TO LICENSOR. IN THE EVENT LICENSEE FAILS TO ADHERE TO THE TERMS AND CONDITIONS OF THE MASTER RMU AGREEMENT, SUCH FAILURE SHALL BE AN IMMEDIATE EVENT OF DEFAULT UNDER THIS AGREEMENT WITHOUT THE REQUIREMENT FOR ANY NOTICE OR ANY OPPORTUNITY TO CURE. IN THE EVENT OF ANY CONFLICT OR INCONSISTENCY BETWEEN THE OBLIGATIONS OF LICENSEE UNDER THIS AGREEMENT AND AS OPERATOR UNDER THE MASTER RMU AGREEMENT, THE MASTER RMU AGREEMENT SHALL CONTROL IN ALL RESPECTS. LICENSEE HEREBY ACKNOWLEDGES AND AGREES THAT NOTWITHSTANDING ANYTHING CONTAINED HEREIN OR IN THE MASTER RMU AGREEMENT TO THE CONTRARY, LICENSEE HAS NO RIGHTS UNDER THE MASTER RMU AGREEMENT AND NOTHING CONTAINED HEREIN OR IN THE MASTER RMU AGREEMENT SHALL BE CONSTRUED AS CONFERRING ANY BENEFIT OR RIGHTS UPON LICENSEE UNDER THE MASTER RMU AGREEMENT.

1. **Permitted Use; Continuous Operation.** Licensee shall use the License Area for the operation of a RMU for the display and the retail sale of_____**[use clause to contain items to be sold by vendor]** in compliance with the Master RMU Agreement, the Operators Handbook, the laws of the United States or the State of Colorado, the ordinances or Charter of the City and County of San Jose and any and all other applicable federal, state and local laws and regulations and all general rules and regulations adopted by the City, Manager (as defined in the Master RMU Agreement) or Licensor for the management, operation and control of the Airport, either promulgated by Licensor and/or the City on its own initiative or in compliance with regulations or actions of the

Federal Aviation Administration or other authorized federal agency (collectively, "Applicable Laws") and for no other purpose whatsoever (the "Permitted Use"). Licensee shall operate the Permitted Use under the trade name _____ (the "Trade Name"). The License Area will be used and occupied solely for the Permitted Use, and in such a manner so as not to violate the provisions of this Agreement or the Master RMU Agreement, and for no other use or purpose whatsoever. Licensee will use its Trade Name in the transaction of business in the License Area. Licensee shall at all times keep and maintain within and upon the License Area an adequate stock of merchandise to service and supply the usual and ordinary demands and requirements of Licensee's customers. Subject to Applicable Laws and except as otherwise designated or required by the City in writing, Licensee shall maintain the following minimum hours of operation:------- a.m. to ------p.m., seven (7) days per week, and in no event shall Licensee operate the License Area for less than ------ hours per day (the "Designated Hours"). Licensee shall diligently carry on the business of the Permitted Use in the License Area during all Designated Hours (except during Suspension Periods (as defined below)). Licensor hereby reserves the right to allow others to conduct operations and/or sell goods and services in other locations at the Airport that are the similar or even identical to services provided and the merchandise authorized to be sold by Licensee under this Agreement. Licensee understands and agrees that Licensee's sub-license hereunder is not exclusive.

INITIAL HERE

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2. Term; Cancellation; Relocation.

(a) Term. The Term ("Term") of this Agreement shall commence on Click or tap to enter a date. (the "Commencement Date"), and end, unless terminated earlier as provided herein on Click or tap to enter a date. (the "Expiration Date"); provided, however, that in no event shall the Term of this Agreement exceed the term under the Master RMU Agreement or three hundred sixty-five (365) days, whichever is the first to occur.

(b) Cancellation. Notwithstanding anything contained herein to the contrary, Licensor shall have the right to terminate this Agreement (a) upon five (5) days' advance written notice in the event the City terminates the Master RMU Agreement or removes the License Area from the Master RMU Agreement without providing an alternate location; (b) upon less than five (5) days' advance written notice in the event the City terminates the Master RMU Agreement or removes the License Area from the Master RMU Agreement without providing an alternate location and provides Licensor with less than five (5) days' notice; (c) upon twenty-four (24) hours' advance written notice in the event of any failure of Licensee to comply with the terms and provisions of this Agreement; (d) at any time for any reason if determined by the City in its sole discretion to be in the best interests and convenience of the City and/or the operational necessity of the City, for security or emergency reasons or any other operational requirement of the City; and (e) upon thirty (30) days' advance written notice for any or no reason whatsoever. In any event, this Agreement will automatically terminate upon any termination of the Master RMU Agreement.

(c) Relocation. The exact location of the License Area, may, in Licensor's sole discretion, be changed at any time for any reason. In addition, Licensee's use of the License Area may be periodically eliminated or suspended on a temporary basis, upon two (2) hours' advance oral notice to Licensee due to special events, maintenance or construction activities, or the City's exercise of its rights under the Master RMU Agreement (each a "Suspension Period"). Licensee hereby acknowledges that in the event of any such relocation of the License Area, suspension of the use of the License Area or cancellation of this Agreement, such relocation, suspension or cancellation may cause disruption to Licensee's operations and/or annoyance to Licensee's employees and customers. Licensee hereby waives and releases any claim (including, without limitation, any claim for damages, lost profits, general, special, consequential or punitive damages) Licensee may have, and indemnifies and defends Licensor and the City for and holds Licensor and the City harmless from any claims Licensee's officers, employees, representatives, suppliers, invitees, contractors, subcontractors, agents and customers may have against Licensor or the City as a result of any disruption to Licensee's operation and/or annoyances caused by such relocation, suspension or cancellation.

3. Security Deposit. Prior to or upon execution of this Agreement, Licensee shall pay to Licensor $0.00 a security deposit (the "Security Deposit"), to secure the performance by Licensee of its obligations under this Agreement, including, without limitation, Licensee's obligations (i) to pay License Fees and any other charges or expenses due hereunder, (ii) to repair damages to the License Area and/or the Terminal Complex and/or the Airport caused by Licensee or Licensee's agents, employees, contractors, licensees, and invitees (collectively, "Licensee's Invitees"), (iii) to clean and/or repair the License Area or the Terminal Complex upon the termination of this Agreement, and (iv) to remedy any other defaults by Licensee in the performance of any of its obligations under this Agreement including, but, not limited to, fines assessed pursuant to this Agreement. If Licensee commits any default under this Agreement, Licensor may, at its election, use the Security Deposit to cure such defaults, and to compensate Licensor for all damage suffered by Licensor from such defaults, including, without limitation, attorneys' fees and costs incurred by Licensor. Upon demand by Licensor, Licensee shall promptly pay to Licensor a sum equal to any portion of the Security Deposit so used by Licensor in order to maintain the Security Deposit in the amount set forth above. Licensee shall not be permitted to use the deposit as a setoff against the last months License Fee. Following the Expiration Date or earlier termination of this Agreement, and within six y (60) days, Licensor shall deliver to Licensee, at Licensee's last known address, any portion of the Security Deposit not used by Licensor, as provided in this Paragraph. Licensor may commingle the Security Deposit with Licensor's other funds and Licensor shall not pay interest on such Security Deposit to Licensee.

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4. License Fees.

A. Minimum License Fee. A minimum fee ("Minimum License Fee") shall be payable by Licensee to Licensor for each period, month, or portion thereof, during the Term in the following amounts:

Term	Minimum License Fee
	$0.00
	$0.00
	$0.00
	$0.00
	$0.00
	$0.00
	$0.00
	$0.00
	$0.00

The Minimum License Fee shall be paid in advance on the first day of each and every month of the Term, without notice, set-off or counter-claim, as consideration for one month's use of the License Area. Any partial license periods shall be prorated on a daily basis and shall be indicated in this Agreement. The Minimum License Fee each month shall be sent to the address set forth herein or such other addresses as Licensor may specify by written notice to Licensee. All payments shall be paid in certified funds that comply with all Applicable Laws. Notwithstanding the provisions of Paragraph 3 hereof, a failure to make a timely payment as required hereunder, shall, in the sole discretion of the Licensor, result in the termination of this Agreement without any notice being required. Should the License Area be unusable for the purposes of selling merchandise or any other product during any Suspension Period, there shall be a prorated credit towards the following month's Minimum License Fee for each full day of the Suspension Period. Should the License Area be inoperable due to damage or neglect on the part of the Licensee or its employees, Licensee's obligation to pay the full amount of the Minimum Licensee Fee shall be in full force and effect without any credit towards the following month's Minimum Licensee Fee.

B. Percentage License Fee. In addition to the Minimum License Fee, Licensee covenants and agrees to pay to Licensor in each calendar month (or portion thereof) an amount equal to **fifteen** percent (**15**%) multiplied by the amount of Gross Revenues (defined below) for the calendar month that exceed the Monthly Breakpoint as set forth in the table below (the "Percentage License Fee"). If payable, the Percentage License Fee shall be calculated and payable in monthly installments, in arrears within ten (10) days of the last day of each calendar month during the Term.

Term	Monthly Breakpoint
	$0.00
	$0.00
	$0.00
	$0.00
	$0.00
	$0.00
	$0.00
	$0.00
	$0.00

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Licensee shall (i) furnish to Licensor and the City for each calendar month, concurrent with the payment of the Percentage License Fee for such calendar month, a detailed statement of Licensee's Gross Revenues for such calendar month in form and substance acceptable to Licensor and any other information required by the City and/or Licensor, which such statement shall include a certification by the chief financial officer, chief executive officer or other officer charged with such responsibility of Licensee that the Gross Revenues set forth therein, are true, complete, accurate and calculated in accordance with the terms of this Agreement and the Master RMU Agreement to the best of Licensee's knowledge, along with itemized records of each sale from Licensee's register; (ii) record at the time of sale, in the presence of the customer, all receipts from transactions whether for in a cash register which has a cumulative total and which numbers consecutive purchases; (iii) keep, within a location within the City and County of Denver (the "Records Location"), or otherwise make immediately available within five (5) days after written request by Licensor or the City in connection with the audit and review rights set forth herein, full and accurate books of account and records and all such cash register receipts with regard to gross receipts generated in connection with the operation of Licensee's business from or upon the License Area; and (iv) permit Licensor and/or the City, or any of such parties' officers or agents, to enter upon the License Area and the Records Location at all times during the Designated Hours to examine and audit the cash register, or registers, and all books of account, tax returns and other records kept by Licensee and any and all facts and figures from which the Percentage License Fee is to be determined (the "Books and Records"). The Books and Records shall be maintained in a manner satisfactory to the City's auditor and its designated representatives. Such Gross Revenues statements shall be reported on sales report forms provided by Licensor and shall be submitted no later than the tenth (10th) day of each and every calendar month, together with the Percentage License Fee. In the event Licensor's audit of Licensee's Gross Revenues indicates an under -reporting of two percent (2%) or more by Licensee, Licensee shall pay the cost of the audit to Licensor upon demand. In addition to the foregoing, Licensee will be subject to certain audit provisions and shall submit such additional information and statements, including, without limitation, submitting annual statements not later than February 28 of each and every year during the Term hereof, as set forth in the Operators Handbook. Without limiting the foregoing, Licensee acknowledges and agrees that the City and its authorized representatives shall have the right to inspect all documents, data, returns, reports, and information pertinent to this Agreement and further waives any claim of confidentiality that it may have in connection with such inspection of documents, data, returns, reports and information, including documents, returns, data or reports filed by Operator pursuant to Chapter 53 of the Denver Revised Municipal Code.

As used herein, the term "Gross Revenues" shall mean all revenue generated by Licensee from doing business under this Agreement. It shall include, without limitation, (a) all transactions - regardless of place or time of actual payment, whether for cash, credit or otherwise, regardless of collection in the case of credit and without reservation or deduction for uncollected amounts and regardless of whether any party other than Licensee is: (i) providing or operating equipment or services involved in the transaction, (ii) billing or receiving revenue from such transaction; or (iii) receiving any income resulting from transactions originating in, at, or from the License Area subject to this Agreement or within the Airport including but not limited to promotional or advertising income received by or paid to Licensee in exchange for displays, promotions, sponsorships, advertising or other business transacted at License Area subject to this Agreement; and (b) insurance proceeds received due to loss of gross earnings under business interruption coverage. There shall not be allowed from Gross Revenues any reduction for bad debts, loss from theft or any deduction or other exclusions except as described herein. To record all sales generated in, at or from License Area subject to this Agreement, Licensee shall use a cash register and/or point of sale system (collectively, "POS") reasonably acceptable to the City, which is capable of producing duplicate sales slips, or printouts on which each sale is identified, itemized and recorded. Licensee shall adhere to a "Cash and Record Handling" policy set forth in the Operators' Handbook (as defined in the Master RMU Agreement).

C. Initial Set-Up Fee; Visual Merchandising Fee. Prior to or upon execution of this Agreement, Licensee will pay to Licensor a one-time non-refundable start-up fee in the amount of Choose an item.(the "Initial Set-Up Fee") to compensate Licensor for Licensor's coordination of the initial set-up, operator training and opening stocking fee. In addition, Licensee will pay to Licensor a one-time visual merchandising fee in the amount of Choose an item. for the visual merchandising of the License Area by Licensor and/or Licensor's visual merchandising consultant (the "Visual Merchandising Fee").

D. Delivery; Handling and Temporary Storage . (TO BE ESTABLISHED)

E. Additional Costs. Licensee will pay, before delinquency, all taxes assessed or levied upon its use of the License Area or upon the trade fixtures, furnishings, equipment or other personal property located in the License Area, and any other taxes (including, without limitation, sales taxes and employee withholding taxes) which, if unpaid, could become a lien or charge against any such property. Licensee will obtain, at Licensee's expense, all permits and approvals required for the operation of the Permitted Use.

F. License Fees. The Minimum License Fee, the Percentage License Fee, the Initial Set-Up Fee, the

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Visual Merchandising Fee, and any other amounts due or payable hereunder or as set forth in the Operators Handbook, are hereinafter collectively referred to as the "License Fees." Notwithstanding anything contained herein to the contrary, in the event the City increases any rentals, rates, fees or charges under the Master RMU Agreement, Licensor shall have the right to increase the License Fees to account for such increases. All License Fees will be paid to Licensor in lawful money of the United States of America, at Licensor's notice address or to such other person or at such other place as Licensor may from time to time designate in writing, without notice or demand and without right of deduction, abatement or setoff, except as otherwise expressly provided in this Agreement. Licensee's covenants to pay the License Fees are independent of any other covenant, condition, provision or agreement herein or elsewhere contained. No breach of this Agreement by Licensor shall relieve Licensee of its obligation and duty to pay all such License Fees when due under the terms of this Agreement. Immediately upon Licensee's receipt of monies from doing business under the terms of this Agreement, the percentages of said monies belonging to Licensor shall immediately vest in and become the property of Licensor. Licensee shall be responsible as trustee for said monies until the same are delivered to Licensor.

5. Late Charges; Recovery of Expenses. If Licensee fails to pay Licensor any fee, charge or license fees when such payment is due, at Licensor's election, Licensee shall be obligated to pay, in addition to the amount past due, a late payment charge of the greater of $500.00 or one and a half percent (1.5%) of the outstanding amount. The parties agree that said sum is a fair and reasonable approximation of the additional costs and administrative burden to Licensor caused by the failure to make timely payment. In addition to any late charges, all sums payable to the Licensor hereunder shall accrue interest at the lesser of 18% per annum or the maximum amount required by law (the "Interest Rate") commencing on the fifth (5th) business day after such amount is due and owing until paid by Licensee to Licensor. If Licensor has paid any sum or sums or has incurred any obligations or expense for which the Licensee has agreed to pay or reimburse Licensor, or if Licensor is required or elects to pay any sum or sums or insure any obligations or expense (a) by reason of failure, neglect, or refusal of the Licensee to perform or fulfill any one or more of the conditions, covenants, or agreements contained in this Agreement beyond any applicable notice or cure period; or (b) as a result of an act of omission of the Licensee contrary to the conditions, covenants, and agreements contained in this Agreement for which Licensor has provided Licensee written notice and an opportunity to cure as provided herein, then, within five (5) days after written notice thereof by Licensor, the Licensee agrees to pay to Licensor the sum or sums so paid or the expenses so incurred, including all interest, costs, damages, and penalties, plus a twenty percent (20%) administrative fee, and each and every part of the same shall be and become License Fees, recoverable by Licensor in the same manner and with like remedies as if it were originally a part of the License Fees as set forth herein. For all purposes under this Section, and in any suit, action, or proceeding of any kind between the parties hereto, any receipt showing the payment of any sum or sums by Licensor for any work done or material furnished shall be evidence against the Licensee that the amount of such payment was necessary and reasonable.

6. Fines. If Licensee fails to comply with any term or condition this Agreement or the Operating Handbook as the same may be modified from time to time, as set forth herein, Licensor, in its sole and absolute discretion, can fine up to **$150.00** per occurrence or until compliance has occurred or such other amount as is expressly set forth herein. The parties agree that said sum is a fair and reasonable approximation of the additional costs and administrative burden to Licensor caused Licensee's failure to comply with any term or condition of this Agreement or the Operating Handbook.

7. Condition; No Alterations; Liens. Licensee has inspected the License Area, acknowledges that the License Area is in a good, clean and safe condition and repair and accepts the License Area in its "AS-IS" "WHERE-IS" condition with absolutely no warranties as to condition or suitability for use being given by Licensor. Licensor makes no warranty, written or implied, that the License Area is fit for any purpose or that it meets any law, ordinance or regulation applying to the Airport. Licensee shall not have the right at any time to make any alterations, modifications or additions to the License Area, without Licensor's consent, which such consent may be withheld in Licensor's sole and absolute discretion. Licensee also shall not permit, create, or suffer to be created or to remain, any mechanic's, materialman's or any other lien to become attached or be foreclosed upon the License Area or improvements thereto, or any part or parcel thereof, by reason of any construction, services, work or labor performed or materials furnished by any mechanic or materialman. If any such lien shall at any time be filed, Licensee shall, within fifteen (15) calendar days after the filing thereof, cause such lien to be released of record by payment, bond, or order of a court of competent jurisdiction. In the event Licensee fails to clear the record of any such lien within the aforesaid period, for which Licensor has provided Licensee written notice and an opportunity to cure, Licensor may remove said lien by paying the full amount thereof, or by bonding, or in any other manner Licensor deems appropriate, without investigating the validity thereof, and irrespective of the fact that Licensee may contest the propriety or the amount thereof. Within five (5) business days after written notice thereof by Licensor, Licensee agrees to pay to Licensor the sum or sums so paid or the expenses so incurred, including all interest, costs, damages, and penalties, and all reasonable expenses incurred in connection therewith, including reasonable attorneys' fees, plus a twenty percent (20%) administrative fee, and each and every part of the same shall be and become License Fees, recoverable by Licensor in the same manner and with like remedies as if it were originally a part of the License Fees as set forth herein.

8. Conduct of Business.

(a) During the Term of this Agreement, Licensee shall continuously and uninterruptedly, except for during

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Suspension Periods, operate its business during the Designated Hours in the License Area. Licensee will operate its business with a complete line of full selection and sufficient stock of first - class merchandise of current style and type, attractive displays and in an efficient, high class and reputable manner so as to produce the maximum amount of sales from the License Area.

(b) The Designated Hours may be limited or extended by Licensor from time to time. If Licensee fails to operate the License Area during the Designated Hours, Licensor may charge Licensee a fine of **$150.00** for each period that Licensee fails to comply, each day of violation constituting a separate period, or this Agreement shall be subject to immediate termination, at the sole discretion of Licensor. The parties agree that said charge is a fair and reasonable approximation of the additional costs and administrative burden to Licensor caused by Licensee's failure to operate the License Area during the Designated Hours.

(c) Licensee shall only be entitled to sell merchandise specified in Section 1 of this Agreement. Notwithstanding anything contained herein to the contrary, all merchandise and signage will be of a wholesome nature and shall comply with the terms and conditions of the Master RMU Agreement. Notwithstanding anything contained herein to the contrary, in no event may Licensee use the License Area as or for the sale of (i) second hand merchandise, (ii) a flea market, (iii) a so -called "head shop" or facility for the sale of drug paraphernalia, (iv) a facility for the sale or display of pornographic material, (v) off-track betting, (vi) a carnival, (viii) a fair, (ix) auctions, (x) shows, (xi) of fireworks, (xii) conducting games of chance, (xiii) a pawn shop, (xiv) a bingo hall, (xv) a business which creates strong, unusual or offensive odors, fumes, dusts or vapors, a public nuisance, emits noise or sounds which are objectionable due to intermittence, beat, frequency, shrillness or loudness, or creates a hazardous condition, (xvi) any merchandise that is illegal under state or federal law; (xvii) animals; or (xviii) faux designer merchandise, counterfeit merchandise or any replica of a branded product.

(d) Licensee agrees to abide by all Applicable Laws and all terms and conditions of the Master RMU Agreement, including, without limitation, the Operators Handbook, and all rules and regulations established by the City and/or Licensor, as determined by the sole discretion of the City and/or Licensor, as the same may be amended from time to time, including, but not limited to the following:

(i) Neither Licensee nor its agents, employees or representatives shall solicit or distribute any materials from the License Area unless such activity is performed in accordance with Licensor's procedure for the same and has been approved in advance by Licensor;

(ii) Licensee shall secure all necessary permits, authorizations and approvals which may be required, and shall at all times comply with all Applicable Laws now or hereinafter in force pertaining to the License Area or the operation of the Permitted Use, and shall provide Licensor with copies of same;

(iii) Licensee shall not use the name of the City or Licensor on any merchandise or in any advertisement without first procuring the specific written approval of same from Licensor's which may grant or deny said approval in its sole discretion;

(iv) Licensee shall, at its sole cost and expense, maintain the License Area in a first -class condition, in good repair, ordinary wear and tear excepted, and as conditions and Licensor's authorized representative may reasonably require, including, but not limited to, redecoration, painting and repair and replacement of damaged or worn furnishings and equipment. Licensor shall be the sole judge of the quality of such maintenance. Licensee shall keep the area in the immediate vicinity of the License Area clean and free of rubbish and debris and shall deposit rash and rubbish only within the receptacles approved or provided by Licensor; and

(v) Conduct activities at the License Area in a lawful and tasteful manner, consistent with a first-class shopping location in accordance with the Master RMU Agreement.

9. Utilities; Trash Removal. (TO BE ESTABLISHED)

10. Signs and Décor. All signage and décor to be placed on or about the License Area or used by Licensee shall be manufactured, installed and displayed in accordance with the Master RMU Agreement, including the Operators Handbook. No sign shall be installed or displayed without prior written approval of Licensor and the City.

11. Insurance. Licensee will, from and after the Commencement Date and until the expiration or earlier termination of the Term, at Licensee's expense, keep any all of Licensee's machinery, equipment, furniture, fixtures, personal property (including also property under the care, custody, or control of Licensee) and business interests which may be located in, upon or about the License Area insured for the benefit of Licensee in an amount equivalent to the full replacement value or insurable value thereof (with deductibles satisfactory to Licensor) against: (a) loss or damage by fire; and (b) such other risk or risks of a similar or dissimilar nature as are now, or may in the future be, customarily covered with respect to a Licensee's machinery, equipment,

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furniture, fixtures, personal property and business located in a building similar in connection, general location, use, occupancy and design to the Airport, including, but without limiting the generality of the foregoing, windstorms, hail, explosions, vandalism, theft, malicious mischief, civil commotion and such other coverage as Licensee may deem appropriate or necessary. In addition, Licensee will, from and after the Commencement Date and until the expiration or earlier termination of the Term, at Licensee's expense, carry and maintain the following insurance, in the amounts specified below or such other amounts as Licensor and/or the City may from time to time specify, with insurance companies and on forms and with deductibles satisfactory to Licensor and the City:

(a) bodily injury and property damage liability insurance with a combined single occurrence limit of not less than $1,000,000.00 and $2,000,000.00 in the aggregate; all such insurance will be on a commercial general liability form including, without limitation, personal injury and contractual liability for the performance by Licensee of the indemnity agreements set forth herein;

(b) worker's compensation insurance insuring against and satisfying Licensee's obligations and liabilities under the worker's compensation laws of the State of Colorado, including employers' liability insurance in the limit of $100,000/500,000/100,000; and

(c) if Licensee operates owned, hired or non-owned vehicles on the Airport, comprehensive automobile liability will be carried at a limit of liability not less than $1,000,000.00 combined bodily injury and property damage.

The amounts listed indicate only the minimum amounts of insurance coverage that the Licensor is willing to accept to help insure full performance of all terms and conditions of this Agreement. Insurance must be maintained without any lapse in coverage during the entire Term of this Agreement. Insurance canceled without the Licensor's consent or failure by Licensee to provide evidence of renewal within 48 hours after written notice by Licensee is a material breach of this Agreement. Licensee shall furnish Licensor with certificates of insurance (ACORD form or equivalent approved by Licensor) as required by this Agreement. The certificate of insurance for each policy is to be signed by a person authorized by the insurer to bind coverage on its behalf. All certificates required by this Agreement (including renewal certificates) shall be sent directly to Licensor at the address provided herein. Any renewal certificate shall be delivered to Licensor at least ten (10) days prior to a policy's expiration date, except for any policy expiring after the Expiration Date of this Agreement or any extension thereof. Licensor reserves the right to require and Licensee agrees to deliver upon request at any time, complete, certified copies of all insurance policies required by this Agreement. Licensee is not relieved of any liability or other obligations assumed or pursuant to the Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration or types. In no event shall Licensor be liable for any: (1) business interruption or other consequential damages sustained by Licensee; (2) damage, theft or destruction of Licensee's inventory, Improvements, or property of any kind; or (3) damage, theft or destruction of an automobile, whether or not insured. If at any time any of the insurance policies shall be or become unsatisfactory to Licensor as to form or substance, or if any of the carriers issuing such policies shall be or become unsatisfactory to Licensor, Licensee shall promptly obtain a new and satisfactory replacement policy and give Licensor an updated certificate of insurance that complies with the new insurance requirements of Licensor.

When delivering certificates of insurance with respect to the insurance required to be maintained by Licensee under this Section, Licensee shall also deliver copies of the endorsements when applicable naming Licensor and any others specified by Licensor as additional insureds. All commercial general liability policies maintained by Licensee will be on "occurrence" (and not "claims made") forms and will name as additional insureds Licensor, Licensor's managing agent, Licensor's mortgagee, Licensor's employees, agents and officers, the City and its officers, officials and employees and such other persons as Licensor specifies from time to time, and such additional named insure ds will be entitled to recover under such policies for any loss sustained by them, their agents and employees as a result of the negligent acts or omissions of Licensee. In the event Licensor establishes and maintains a master insurance program for operators within the RMU program in the Terminal Complex, Licensee shall participate in the program in lieu of, or in addition to, some or all of the insurance required hereunder and shall pay Licensor a monthly fee, all as further provided in the Operators Handbook from time to time.

12. Security Clearance. Licensee shall comply with all rules, regulations, written policies and authorized directives from Licensor (including, without limitation, those set forth in the Operators Handbook), the City and/or the Transportation Security Administration with respect to Airport security. Licensee shall cause its officers, contractors, agents and employees to comply with any and all existing and future security regulations adopted by Licensor, the City or the Transportation Security Administration (TSA), including 49 CFR Subtitle B, Chapter XII, as amended from time to time. Licensee understands and acknowledges that its ability to operate for the Permitted Use under this Agreement is subject to changes in alert status as determined by TSA. Any violation by the Licensee or any of its agents, contractors, suppliers or employees of any rule, regulation, or authorized directive from Licensor, the City or the Transportation Security Administration with respect to Airport Security shall be grounds for immediate termination of this Agreement for cause and any person who violates such rules may be subject to revocation of his/her access authorization. Licensee will reimburse Licensor, in full, for any fines or penalties levied against Licensor for security violations as a result of any actions on the part of Licensee, its agents, contractors, suppliers or employees and for any attorney fees or related costs paid by Licensor as a result of any such violation. Prior to or promptly after the Effective Date, Licensee agrees to meet with the Airport's Assistant Security Manager to assist Licensee with obtaining the

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proper access authorizations for Licensee and its employees. Licensee shall return to the City and/or Licensor at the expiration or termination of this Agreement, or upon demand, all security cards and materials. If Licensee fails to do so, Licensee shall be liable to reimburse Licensor for all Licensor's costs for work required to prevent compromise of the Airport security system. Licensee acknowledges and agrees that the security status of the Airport is subject to change without notice. If the security status of the Airport changes at any time during the Term of this Agreement, Licensee shall take immediate steps to comply with security modifications which occur as a result of the changed status. Licensee hereby agrees to release, indemnify, defend and save harmless Licensor and the City, and such parties respective officers, agents and employees from and against any and a l loss of or damage to any property, or injuries to or death of any person or persons, including property and employees or agents of Licensor and the City, and shall defend, indemnify and save harmless Licensor and the City, and such parties respective officers, agents and employees from any and all claims, damages, suits, costs, expense, liability, actions, penalties or proceedings of any kind or nature whatsoever, including worker's compensation claims, of or by anyone whomsoever, in any way resulting from, or arising out of directly or indirectly, Licensee's failure to comply with the foregoing security provisions.

13. Licensee's Waiver. Licensee hereby waives any and all rights to recover against Licensor and/or the City, and against Licensor's and/or the City's officers, directors, members, managers, stockholders, partners, employees, agents, representatives, customers or business visitors, for damage to Licensee or loss of its property or the property of others under its control arising from any cause covered by any property insurance required to be carried by Licensee hereunder or, if such coverage is greater or broader than that required hereunder, the property insurance actually carried by or for the benefit of Licensee, to the extent of the limits of any such property insurance. In addition, all property insurance policies maintained by Licensee will expressly permit the foregoing waiver and will contain provisions waiving the insurer's claims or rights of subrogation against Licensor for loss or damage to the property so insured. Licensee hereby waives on behalf of the insurers of Licensee's property any and all claims or rights of subrogation of any such insurer against Licensor for loss of or damage to the property so insured.

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14. Licensee's Property. At all times during the Term, including during Suspension Periods, Licensee is solely responsible for securing all property, merchandise, display and other items in the License Area. Licensor and the City shall not be liable for any damage whatsoever (including, without, limitation, damage arising from any relocation of the License Area) to any property, merchandise, display or other items in the License Area. Licensor will not be liable for damage, theft, misappropriation or loss thereof, nor will Licensor be liable in any manner in respect to Licensee's property.

15. Indemnity by Licensee. Licensee hereby agrees to release, indemnify, defend and save harmless Licensor and the City, and such parties respective officers, agents and employees from and against any and all loss of or damage to any property, or injuries to or death of any person or persons, including property and employees or agents of Licensor and the City, and shall defend, indemnify and save harmless Licensor and the City, and such parties respective officers, agents and employees from any and all claims, damages, suits, costs, expense, liability, actions, penalties or proceedings of any kind or nature whatsoever, including worker's compensation claims, of or by anyone whomsoever, in any way resulting from, or arising out of directly or indirectly, (a) Licensee's operations in connection with this Agreement, (b) Licensee's use or occupancy of any portion of the Airport including acts and omissions of officers, employees, representatives, suppliers, invitees, contractors, subcontractors and agents of Licensee, (c) any default by Licensee of its obligations under this Agreement; (d) any and all damages to the License Area and/or Terminal Complex caused by Licensee, its employees, agents and/or customers including any damages caused by or arising from the installation or removal of property in or from the License Area.

16. Release. Licensee agrees that neither Licensor nor the City shall be liable to Licensee for any injury to or death of any of Licensee's agents, representatives or employees or of any other person or for any damage to any of Licensee's property, merchandise, displays or other items or loss of revenue caused by Licensor, City or any third party in the maintenance, construction or operation of facilities at the Airport, or caused by any third person using the Airport, or caused by such third person navigating an aircraft on or over the Airport, whether such injury, death or damage is due to negligence or otherwise. Licensee represents, warrants and covenants that Licensee is not claiming, and in the future will not claim, any interest in any right belonging to Licensor under the Master RMU Agreement

17. Subordination. This Agreement and the rights of the Licensee hereunder shall be subject and subordinate to any lien or charge which are now or at any time hereafter may be placed as a lien upon the any of Licensor's property located in the Terminal Complex or the License Area (such lien being hereinafter referred to as "mortgage") and any replacement, renewal or extension of any such lien. Any such lien shall, for the full amount of principal at any time advanced thereon or secured thereby, with interest, be prior and paramount to this Agreement and to the right of Licensee hereunder and all persons claiming through or under Licensee or otherwise in the License Area. Licensee, on Licensee's behalf and on behalf of all persons claiming through and under Licensee, covenants and agrees the Licensee will from time to time, at the request of Licensor, execute and deliver any necessary or proper instruments or certificates acknowledging the priority of the lien or charge of such lien to this Agreement and the subordination of this Agreement thereto.

18. License Personal. This Agreement and the license granted hereby is personal to Licensee and shall not be assignable, in whole or in part, nor shall Licensee's right to use of the License Area or any part thereof be sublicensed, mortgaged, assigned, hypothecated or transferred, in whole or in part, whether voluntarily or by operation of law. Any attempt to sublicense, assign, mortgage, hypothecate or transfer this Agreement or the license granted hereby or any interest or any right there under shall be void and wholly without effect and shall constitute an incurable default hereunder. In addition to and notwithstanding anything contained herein or in the Master RMU Agreement to the contrary, nothing contained in either this Agreement or the Master RMU Agreement shall be construed as creating an obligation on the party of the City to Licensee.

19. Eminent Domain; Casualty. In the event the whole or any portion of the License Area shall be taken under the power of eminent domain, all damages awarded for any such taking, whether for the whole or part of the License Area, shall belong to and be the property of Licensor, provided, however, that Licensor shall not be entitled to any award made to Licensee for loss of or damage to Licensee's trade fixtures or Licensee's merchandise. Except as otherwise expressly agreed to herein, Licensee hereby waives the full amount of any portion of any award and further waives any and all rights to claim any such damages or award of damages from Licensor based on the loss of any goodwill by Licensee. A voluntary sale by Licensor to any public or quasi-public body, agency or person, corporate or otherwise, having the power of eminent domain either under threat of condemnation or while condemnation

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proceedings are pending, shall be deemed to be a taking by eminent domain for the purposes of this Section. If the License Area, or any portion thereof, is destroyed or damaged by fire, the elements or otherwise, Licensor at Licensor's election, may either (a) terminate this Agreement; or (b) repair and/or reconstruct the License Area, in which event this Agreement shall remain in full force and effect.

20. Hazardous Materials; Hazardous Use. Licensee, in conducting any activity upon the License Area, shall comply with all Environmental Requirements (as defined in the Master RMU Agreement). Licensee agrees that nothing shall be done or kept in License Area and no improvements, changes, alterations, additions, maintenance or repairs shall be made to License Area which might be unsafe or hazardous to any person or property.

21. Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been given on (i) the date of service if served personally on the party to whom notice is to be given, (ii) the date of actual or attempted delivery provided such attempted delivery is made on a business day, if served by Federal Express, Express Mail or another like overnight delivery service, or (iii) the date of actual delivery as shown by the addressee's registry or certification of receipt on the third (3rd) business day after the date of mailing, whichever is earlier, if mailed to the person to whom notice is to be given, by first class U.S. mail, registered or certified, postage prepaid, return receipt requested and properly addressed as follows (or to such other address as either party may from time to time direct by written notice given in the manner herein prescribed):

If to Licensor:	**Provenzano Resources, Inc.** 6256 Mercer St. San Diego, CA 92122
And, if to Licensee:	Enter Enter Enter

22. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and may be altered or amended only by a written instrument executed by each of the parties hereto. This Agreement supersedes all prior agreements (including any prior license agreement with respect to the Terminal Complex or any part thereof), negotiations and communications of whatever type, whether written or oral, between the parties hereto with respect to the subject matter hereof.

23. Attorneys' Fees. In the event any action, cross-claim or counterclaim is brought to recover any license fees or other amounts due hereunder or for any breach of any of the terms, covenants, conditions or agreements herein contained, or to recover possession of the License Area, Licensor shall recover from the other party all costs and expenses in connection therewith, including attorneys' fees and costs.

24. Default. Time is of the essence of each and every provision of this Agreement. In the event Licensee shall (a) fail to pay any License Fees or any portion thereof, or any other sum which Licensee is obligated to pay to Licensor hereunder, when due, (b) shall voluntarily or involuntarily violate or be in default in the performance of any of the terms, covenants, conditions or agreements hereof to be kept and performed by Licensee; Licensor shall have the right (without limitation on any other right of Licensor) then or any time thereafter and while said default continues, and without any demand or notice to Licensee, or to any other person, of any kind whatsoever, to (i) at Licensor's option but without obligation to do so, and without releasing Licensee from any obligations under this Agreement, make any payment or take any action as Licensor deems necessary or desirable to cure any default in such manner and to such extent as Licensor deems necessary or desirable; (ii) terminate this Agreement and enter upon the License Area and exclude Licensee and all persons from the License Area, either with or without process of law; and/or (iii) immediately demand payment in the amount equal to the remaining Minimum License Fees due and payable for the remainder of the stated Term of this Agreement, plus any fines due and owing by Licensee (collectively, the "Termination Fee") as liquidated damages. The parties agree that Licensor will suffer damages in the event of Licensee's default on its obligations. Although the amount of such damages at this time is difficult or impossible to determine, the parties agree that the amount of the Termination Fee is a fair and reasonable estimate of the total detriment that Licensor would suffer in the event of Licensee's default and failure to comply with all terms and provisions of this Agreement. Thus, Licensor shall accept the Termination Fee as liquidated damages but not as a penalty. Licensee acknowledges

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that the Security Deposit may be applied in whole or in part in satisfaction of the Termination Fee. If Licensor elects to cure such default on behalf of Licensee, Licensee agrees to pay to Licensor, within ten (10) days, the sum or sums so paid or the expenses so incurred, including all interest, costs, damages, and penalties, plus a twenty percent (20%) administrative fee, and each and every part of the same shall be and become License Fees, recoverable by Licensor in the same manner and with like remedies as if it were originally a part of the License Fees as set forth herein.

25. End of Term; Holdover. On the last day of the Term, or on the sooner termination thereof, Licensee will peaceably surrender the License Area in good and broom clean condition and repair (ordinary wear and tear and damage by casualty excepted). Ordinary wear and tear shall not include deterioration that could have been prevented by proper maintenance practices, or by Licensee performing all of Licensee's obligations under this Agreement. All property not removed by Licensee from the License Area will be deemed abandoned. Licensor will not be liable for damage, theft, misappropriation or loss thereof, nor will Licensor be liable in any manner in respect to Licensee's property. Licensee understands that it does not have the right to hold over at any time after the expiration or earlier termination of the Term, and Licensor may exercise any and all remedies at law or in equity to recover possession of the License Area, as well as any damages incurred by Licensor, including, without limitation, any consequential damages, due to Licensee's failure to vacate the License Area and deliver possession to Licensor as required by this Agreement. If Licensee holds over after the Expiration Date, Licensee will be deemed a Licensee at sufferance, at a daily Minimum License Fee, payable in advance, equal to 200% of the Minimum License Fee per day payable during the last month of the Term, and Licensee will be bound by all of the other terms, covenants and agreements of this Agreement. Any improvements, trade fixtures, equipment and merchandise placed on the License Area by Licensee and not removed upon the expiration or earlier termination of this Agreement shall be deemed abandoned and may thereafter be removed and stored or disposed of by Licensor in accordance with applicable law.

26. No Offer. THE SUBMISSION OF THIS DOCUMENT FOR EXAMINATION DOES NOT CONSTITUTE AN OFFER TO USE THE LICENSE AREA, OR A RESERVATION OF, OR OPTION FOR, THE LICENSE AREA. THIS DOCUMENT BECOMES EFFECTIVE AND BINDING ONLY UPON THE EXECUTION AND DELIVERY HEREOF BY THE PROPER REPRESENTATIVE OF LICENSOR AND BY LICENSEE.

27. Limitation on Licensor's Liability. If Licensor is a partnership, its partners whether general or limited, and if Licensor is a corporation, its directors, officers or shareholders, and if Licensor is a limit ed liability company, its managers or members, will never be personally liable for any such judgment. In no event will Licensor be liable to Licensee or any other person for consequential, special or punitive damages, including, without limitation, lost profits.

28. Waiver of Jury Trial. LICENSOR AND LICENSEE WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY LICENSOR OR LICENSEE AGAINST THE OTHER WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, LICENSEE'S USE AND OCCUPANCY OF THE LICENSE AREA, OR THE RELATIONSHIP OF LICENSOR AND LICENSEE.

29. Licensee's Authority. Licensee represents and covenants that it is and throughout the term of this Agreement will be authorized to do business in the State of Colorado. The person or persons executing this Agreement covenant and warrant that such person or persons are duly appointed and currently serve in the offices indicated below their signatures and have the full power and authority to execute this Agreement on behalf of Licensee, and that when so executed, this Agreement will be binding and enforceable against Licensee.

30. No Partnership; No Lease. This Agreement will not be deemed or construed to create or establish any relationship or partnership or joint venture or similar relationship, landlord/tenant relationship or arrangement between Licensor and Licensee hereunder.

31. Patriot Act Certification. Licensee certifies that neither Licensee, nor any of its constituent partners, managers, members or shareholders, nor any beneficial owner of Licensee or any such partner, manager, member or shareholder, nor any other representative or affiliate of Licensee is a "Prohibited Person," defined as (a) a person, entity or nation named as a terrorist, "Specially Designated National or Blocked Person," or other banned or blocked person pursuant to any law, order, rule or regulation that is enforced or administered by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"), including, but not limited to, Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the "Executive Order"), and the Uniting and Strengthening

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America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56, the "Patriot Act"); (b) a person, entity or nation owned or controlled by, or acting on behalf of, any person, entity or nation named as a terrorist, "Specially Designated National or Blocked Person," or other banned or blocked person pursuant to any law, order, rule or regulation that is enforced or administered by OFAC, including, but not limited to, the Executive Order and the Patriot Act; (c) a person, entity or nation engaged directly or indirectly in any activity prohibited by any law, order, rule or regulation that is enforced or administered by OFAC, including, but not limited to, the Executive Order and the Patriot Act; (d) a person, entity or nation with whom the Licensor is prohibited from dealing or otherwise engaging in any transaction pursuant to any terrorism or money laundering law, including, but not limited to, the Executive Order and the Patriot Act; (e) a person, entity or nation that has been convicted, pleaded nolo contendere, indicted, arraigned or custodially detained on charges involving money laundering or predicate crimes to money laundering; or (f) a person, entity or nation who is affiliated with any person, entity or nation who is described above in subsections (a) through (e) above. Licensee agrees to indemnify and save Licensor, Licensor's Representative and Licensor's managing agent and mortgagee harmless against and from any and all claims, damages, losses, risks, liabilities and expenses, including reasonable attorneys' fees and costs, arising from or related to any breach of the foregoing certification.

32. Reserved Rights; Right of Entry. Licensee acknowledges and agrees that Licensor, the City and each of its agents and employees, retain at all times during the Term, the right to enter the License Area for any purpose consistent with this Agreement and the Master RMU Agreement with or without advance notice, without liability, without the use of force (except in the event of an emergency), and without in any manner affecting Licensee's obligations under this Agreement. Nothing herein contained, however, shall be deemed to impose upon Licensor and/or the City any obligation, responsibility, or liability whatsoever, for any care, maintenance, or repair, except as otherwise expressly provided for in this Agreement. In addition, no such entry upon License Area shall constitute or cause a termination of this Agreement nor shall such entry be deemed to constitute an interference with the use thereof by the Licensee.

33. Recording; Confidentiality. Licensee will not record this Agreement or a short form memorandum of this Agreement. Licensee agrees to keep the Agreement terms, provisions and conditions confidential and, unless otherwise required by the Colorado Open Records Act or other Applicable Law, will not disclose them to any other person without Licensor's prior written consent. However, Licensee may disclose terms, provisions and conditions of this Agreement to Licensee's accountants, attorneys, managing employees and others in contractual privity with Licensee ("Permitted Recipients"), as reasonably necessary for Licensee's business purposes, without such prior consent; provided, that Licensee agrees to inform such Permitted Recipients of the confidential nature of this Agreement and the confidentiality agreements of Licensee set forth herein will apply to and bind such parties. Licensee acknowledges that any breach by Licensee or any Permitted Recipient of the agreements set forth in this Section will constitute a default under this Agreement, will cause Licensor irreparable harm and Licensor will have the right to seek any and all remedy available at law and / or equity, including equitable remedies such as injunctive relief to stop any breach of this section. The terms and provisions of this section will survive the expiration or earlier termination of this Agreement and shall apply only to the extent not inconsistent with Applicable Laws.

34. Miscellaneous.

(a) Governing Law: This Agreement shall be construed in accordance with and governed by the laws of the State of Colorado. In the event of a dispute arising out of this Agreement, the prevailing party shall be entitled to recover its actual attorney's fees and costs.

(b) Severability: The provisions of this Agreement are severable, and if any provision, or the application thereof is held to be invalid or unenforceable, the invalidity or unenforceability thereof shall not be constructed to affect any other provision or application.

(c) Transfer of Licensor's Interest: Licensor shall have the right to assign this Agreement without Licensee's consent. The term "Licensor" as used in this Agreement, insofar as the covenants or agreements on the part of the Licensor are concerned, shall be limited to mean and include only the owner or owners of Licensor's interest in this Agreement at the time in question. Upon any transfer or transfers of such interest, the Licensor herein named (and in the case of any subsequent transfer,

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