

**COUNTY OF VENTURA
DEPARTMENT OF AIRPORTS
SIXTH AMENDMENT TO LEASE
FRESH CONCEPTS, LLC**

This Sixth Amendment ("Amendment") is made and entered into by and between COUNTY OF VENTURA ("County"), and Fresh Concepts, LLC ("Tenant").

On September 14, 1993, County and McCarthy's Food Shops Inc. entered into a five-year lease with two optional five-year extension periods ("Primary Lease") for certain property at the Camarillo Airport (the "Premises"), more particularly described in the Primary Lease.

The Primary Lease was first amended on October 3, 1995, to add two five-year option periods to the Primary Lease, for a total of four five-year option periods ("First Amendment").

The Primary Lease was again amended on November 6, 2002, to adjust the parcel size and to add a three-year option period to the four five-year option periods ("Second Amendment").

Tenant assumed the Lease from McCarthy's Food Shops Inc. on May 29, 2008.

The Primary Lease was again amended on November 5, 2010, to add two five-year option periods (for a total of six five-year option periods and one three-year option period) and maintenance responsibilities ("Third Amendment").

The Primary Lease was again amended on December 6, 2017 to add two additional options for five years and remove the three year option for a total of eight five-year option periods ("Fourth Amendment")

The Primary Lease was again amended on September 30, 2020 to modify the size of the exterior patio area ("Fifth Amendment").

The Primary Lease, the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment and the Fifth Amendment constitute the "Lease",

County and Tenant wish to amend the Lease to 1) restore to County certain area granted Tenant in the Fifth Amendment and reestablish a new Premises description; 2) provide one additional five-year extension option; 3) modify the percentage rent thresholds for food and alcohol, and 4) require additional capital improvements to be made by Tenant.

In consideration of the mutual promises herein contained and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, County and Tenant agree as follows:

1. **AMENDMENT CONTROLLING.** County and Tenant hereby acknowledge and reaffirm all their respective rights, duties and obligations under the Lease, and the Lease continues in full force and effect except as explicitly modified by this Amendment. Should anything in this Amendment conflict with anything in the Lease, the terms of this Amendment shall control.

**COUNTY OF VENTURA
DEPARTMENT OF AIRPORTS
SIXTH AMENDMENT TO LEASE
FRESH CONCEPTS, LLC**

- 1 **2. Paragraph I. Property Leased** is deleted in its entirety and replaced with the
2 following:
3

4 County hereby leases to Tenant and Tenant hereby rents from County the
5 property, (Premises), located on the Camarillo Airport (Airport). The Premises are
6 described as follows:
7

8 Approximately 2,400 square feet of building area, approximately 1,350 square
9 feet of patio area, and approximately 3,540 square feet of lawn/improved area
10 located at 325 Durley Ave., Camarillo, California.
11

12 The Premises are more particularly shown on Exhibit "A" which is attached
13 hereto and made a part hereof by reference.
14

- 15 **3. Paragraph II. Term and Option:** The subparagraph labeled "B. Option" is
16 modified to add the following: Tenant has exercised five options to renew the
17 lease and the current term is due to expire April 30, 2024, with three options
18 remaining, each for five years.
19

20 One additional five-year option is hereby added. If all options (as modified
21 herein) are hereafter exercised, the lease term will expire on April 30, 2044.
22

- 23 **4. Paragraph VI. B. Percentage Rent.:** This Section is deleted and replaced with
24 *the following:*
25

26 **Paragraph VI. B. Percentage Rent.**
27

28 **B. PERCENTAGE RENT.**

- 29 1. In addition to the Minimum Rent, Tenant shall report its Gross Receipts and
30 pay monthly in arrears by the last day of the following month a Percentage
31 Rent, calculated as the amount by which the total of the below percentages of
32 the previous month's Gross Receipts exceed the Minimum Rent, as described
33 herein.
34

35 Percentage of Gross Receipts:

36 4% of Gross Receipts from sale of all food and non-alcoholic beverages

37 6% of Gross Receipts from sale of alcoholic beverages

38 6% of all other Gross Receipts.
39

- 40 2. Gross Receipts are the gross income derived, received, or charged by Tenant
41 for sales, charges for services, for the use of space made in or on the
42 Premises, or from any and all sources of income derived in whole or in part
43 from any business transacted in, at, or from the Premises, whether from
44 customers or otherwise, whether for cash, on credit, or for other consideration,
45 and in cases of sales or charges on credit, whether or not payment is actually
46 made. Gross Receipts shall include without limitation all:
47

48 a. Deposits not refunded;

49 b. Orders taken on or from the leased Premises to be filled or paid for

**COUNTY OF VENTURA
DEPARTMENT OF AIRPORTS
SIXTH AMENDMENT TO LEASE
FRESH CONCEPTS, LLC**

elsewhere;

- c. Sales or charges for all services performed, whether such sales are made or such services are rendered at or arranged through the occupied space at the Premises by long distance communication and whether initiated, performed, or completed at another location;
- d. Consideration received by tenant directly from customers, and any other payment or reimbursement relative to occupancy or use of the Premises. Each sale or charge for service or use of space on credit or in installments shall be treated as a sale or charge for the whole price in the month for which the sale or charge is made, regardless of whether any payments are made within that calendar quarter.

- 3. For purposes of reporting and of calculating Percentage Rent, Tenant may exclude or deduct from Gross Receipts the following matters only, at the time they are ascertained, and where not ascertainable during the calendar quarter period covered by a statement of Gross Receipts, then from the time of a subsequent statement when they are known:

- a. Gratuities such as "tips" retained by employees of Tenant for their personal benefit;
- b. All sums collected and paid out for sales taxes, luxury taxes, excise taxes, and similar taxes required by law to be added to the total purchase price, whether now or hereafter in force, to be collected from customers and paid by Tenant;
- c. Merchandise transferred or exchanged between other stores or warehouses owned by or affiliated with Tenant if such transfers or exchanges were made solely for the convenient operation of Tenant's business and not for the purpose of consummating a sale previously made at, on, or from the leased Premises or for the purpose of depriving the County of the percentage of Gross Receipts of a sale that otherwise would be made at, on, or from the leased Premises;
- d. Merchandise returned to shippers or manufacturers;
- e. All refunds made on any sale or charge for service or use of space previously included as Gross Receipts;
- f. All cash or credit received in settlement of any claims for loss or damage;
- h. Gift certificates or like vouchers, if not issued for value, until the time they have been converted into a sale by redemption;
- i. Bulk sales made by Tenant not in the ordinary course of business and subject to prior written approval of the County; and
- j. Any income or receipts, under generally acceptable accounting principles, which are derived from the sale or disposal of any capital assets (excluding any assets normally sold in the course of business conducted on the Premises) or from the retirement of any indebtedness, or from Tenant's investments of any funds not invested in the Premises or the operation of Tenant's business on the Premises.

None of the above exclusions or deductions from Gross Receipts may be excluded or deducted if the transaction in question is in substance a typical sale, charge for service, or other source of gross income which would otherwise be

**COUNTY OF VENTURA
DEPARTMENT OF AIRPORTS
SIXTH AMENDMENT TO LEASE
FRESH CONCEPTS, LLC**

subject to Percentage Rent, but which Tenant has structured with the purpose to avoid such Percentage Rent, or if the transaction in question was conducted for the benefit of the business operated on the Premises, even though actually conducted elsewhere, if the transaction would have been the subject of Percentage Rent if conducted in, at, or from the Premises.

The acceptance by County of any statement of Gross Receipts made by Tenant as herein provided shall not preclude County from thereafter questioning the accuracy or completeness thereof. If County finds that any such statement is inaccurate or incomplete, County will make adjustments in accordance with the true Gross Receipts for that month, and, upon notice of such adjustments, Tenant must forthwith pay any additional Percentage Rent due based on such adjustments.

4. **FINANCIAL REPORTS.** To insure complete and timely receipts of rents (Minimum and Percentage Rent, unadjusted and adjusted) by County from Tenant during the term of this Agreement, Tenant shall install and maintain a system of accounts and records for the business conducted at, on, and from the leased Premises and shall keep true accurate and complete accounts and records and shall require its concessionaires and licensees to do the same as is required to be done by Tenant.

5. **BUSINESS RECORDS.** Tenant shall install and maintain a system of accounts and records that conforms to generally accepted accounting principles ("GAAP").

a. Source Documents. The business records must be supported by source documents such as sales slips, unbilled accounting documents, ledgers, bank deposit receipts, sales tax returns, cash register tapes, sales books, bank books, purchase invoices, and other records and documents reasonably necessary to verify the Gross Receipts reported by Tenant. All retail sales and charges shall be properly documented and recorded promptly by means of cash registers or other comparable devices which display to the customer the amount of the transaction and automatically issue a receipt, or by an alternate method acceptable to County. The registers shall be equipped with devices which lock in the sales totals and other transaction records, or with counters which are not resettable and which record transaction numbers and sales details. Totals registered shall be read and recorded at the beginning of each business day. For transactions not recorded by means of cash registers or other comparable devices, Tenant shall issue serially numbered tickets or invoices for each such transaction and shall keep adequate records of such tickets or invoices both issued and unissued.

b. Location of Records. All records required to be kept by this Lease shall be kept and maintained within seventy-five (75) miles of the County Government Center, County of Ventura, and all such records shall be kept and maintained for not less than three years after delivery of the required annual reports for such year unless the written approval of the Auditor be first obtained, provided, however, that Tenant may at reasonable times

**COUNTY OF VENTURA
DEPARTMENT OF AIRPORTS
SIXTH AMENDMENT TO LEASE
FRESH CONCEPTS, LLC**

remove any or all the records for legal or accounting purposes or for other purposes promotive of and consistent with these provisions and this Lease.

- c. County's Access to Records. County and its officers, agents, and employees, shall have the right, at any reasonable time and from time to time after giving reasonable notice to do any or all of the following:
- to audit the records;
 - to cause an audit of the records to be made;
 - to make abstracts from the records;
 - to make copies of any or all of the records;
 - to examine any or all licenses, and concession agreements;
 - to make copies of any or all licenses, concession agreements, and other appropriate documents;
 - to examine and make copies of Tenant's articles of incorporation, bylaws, partnership agreement, list of shareholders and any other documents pertinent to determining the form of an ownership in Tenant and any amendments to any of such documents; and
 - to examine and make copies of sales tax reports.

Tenant shall make all records specified in the notice available at the time specified in the notice, if reasonable, and at the place where the records are to be kept, provided, however, that County may remove any or all records to a place or places reasonable for the purpose.

6. Understatement of Gross Receipts. If the examination and audit of the records of Tenant by County discloses that the Gross Receipts were understated by more than five percent (5%) for the period covered by such audit, the full cost of the audit, as determined by the Auditor, shall be paid by Tenant within thirty (30) days after written demand and Tenant shall immediately pay the additional Percentage Rent due, of any, plus interest any, plus interest at the then legal rate in the State of California from the date when such percentage rent was due. Otherwise, County shall bear the cost of such audits. Such payment by Tenant shall be without prejudice to the right of Tenant to recover back the amounts of such payments to the extent that the same are unwarranted and were not due from Tenant to County. Tenant must provide County notice of any such claim within 60 days after such payment in the manner provided in this Agreement for default or breach of the Agreement.

5. **Paragraph VI. C. Payment of Rent** shall be deleted in its entirety and replaced with the following:

C. Minimum Monthly Rent shall be payable, in advance, on the first day of each month. Percentage Rent shall be due and payable as outlined in Section B.1, above.

6. **Paragraph VIII. Alterations by Tenant:** *Insert the following, after subparagraph A1:*

A.2. As consideration for the additional extension option period provided by the Sixth Amendment to this Agreement, within twenty four (24) months from the date of that Sixth Amendment, Tenant shall invest a minimum amount of

**COUNTY OF VENTURA
DEPARTMENT OF AIRPORTS
SIXTH AMENDMENT TO LEASE
FRESH CONCEPTS, LLC**

\$200,000 dollars to improve the leased Premises. Tenant improvements must include but are not limited to: construction of a pergola for outdoor seating area and removal of any temporary tent structures.

7. ENTIRE AGREEMENT. This Amendment, together with the Lease, contains the entire agreement between County and Tenant with respect to the matters herein and both parties acknowledge that neither relies upon any statements or representations by the other not contained herein.

This Amendment may be modified only in a writing signed by both parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed the Amendment on:

COUNTY OF VENTURA

Dated: _____
Director of Airports

FRESH CONCEPTS, LLC

Dated: _____
"Tenant"

Dated: _____
"Tenant"

EXHIBIT "A"

