STAFF REPORT

ITEM NO. 8

CITY OF OCEANSIDE

DATE: January 23, 2008

TO: Honorable Mayor and City Councilmembers

FROM: Economic and Community Development Department

SUBJECT: **APPROVAL OF A PROPERTY USE AGREEMENT WITH JITTERS EXPRESS COFFEE PUB FOR COFFEE CART SERVICE AT THE OCEANSIDE CIVIC CENTER**

SYNOPSIS

Staff recommends that the City Council approve a one-year Property Use Agreement with Jitters Express Coffee Pub in the amount of 5 percent of gross revenue (after a rent-free, three-month period), to provide coffee cart services at the Oceanside Civic Center; and authorize the City Manager to execute the agreement.

BACKGROUND

In response to suggestions from the public, staff issued a Request for Proposals (RFP) seeking parties interested in providing coffee cart service ("Coffee Service") at the Oceanside Civic Center (Civic Center). The scope of work described in the RFP included providing a freestanding coffee cart on the first floor in the South Building during normal business hours. The Coffee Service would include the sale of coffee, coffee-related drinks, and food items typically sold from coffee carts. In addition, Coffee Service could also include providing similar items to the general public before and during breaks at the regularly scheduled City Council and other civic meetings.

ANALYSIS:

In response to the RFP, staff received two proposals, one from 2Spoons Coffee Company and the other from Jitters Express Coffee Pub. Subsequent to the issuance of the RFP, staff had received comments from some of the downtown merchants indicating that they would rather not see such an operation at the Civic Center. They felt that such an operation could potentially compete with the downtown businesses.

In light of the concern from some of the downtown merchants, one of the major considerations in selecting a coffee cart service provider was an existing downtown presence. Accordingly, staff selected Jitters Express Pub ("Permittee"), who is a successful downtown merchant and is willing to take on this venture on a trial basis.

The term of the Property Use Agreement ("Agreement") is for a period of one-year. The Permittee shall also have an option to extend the term for three additional one-year periods, subject to City Council approval. Notwithstanding any other provision in the Agreement, either party shall have the right to terminate the Agreement upon 90 days written notice. The exact location of the Coffee Service at the Civic Center shall be subject to the sole discretion of the City.

FISCAL IMPACT

The Agreement calls for a percentage rent payment of 5 percent of the gross revenues, payable on a quarterly basis. In an attempt to make this a successful venture, with service to the general public as one of the main reasons for having such an operation, only a percentage rent payment was required. Inasmuch as this is an untested endeavor, the fiscal impact from the quarterly percentage rent payments is not known at this time.

INSURANCE REQUIREMENTS

The City's standard insurance requirements will be met.

COMMISSION OR COMMITTEE REPORT

Does Not Apply

CITY ATTORNEY'S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

Staff recommends that the City Council approve a one-year Property Use Agreement with Jitters Express Coffee Pub in the amount of 5 percent of gross revenue (after a rent-free, three-month period), to provide coffee cart services at the Oceanside Civic Center; and authorize the City Manager to execute the agreement.

PREPARED BY:

Douglas E. Eddow
Real Property Manager

SUBMITTED BY:

Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs-Lawrence, Deputy City Manager _____

Jane McVey, Economic & Community Development Director _____

PROPERTY USE AGREEMENT
WITH VALLIE GILLEY, JITTERS EXPRESS COFFEE PUB
FOR USE OF CITY OWNED PROPERTY AT
THE CIVIC CENTER, OCEANSIDE, CA

This PROPERTY USE AGREEMENT, hereinafter called "AGREEMENT", is executed between the CITY OF OCEANSIDE, a municipal corporation, hereinafter called "CITY", and VALLIE GILLEY, dba JITTERS EXPRESS COFFEE PUB, hereinafter called "PERMITTEE".

RECITALS

WHEREAS, CITY is owner of certain real property located in the City of Oceanside as more particularly described herein below; and

WHEREAS, CITY is interested in entering an agreement with a vendor to provide self contained coffee cart related services to the general public at said real property; and

WHEREAS, PERMITTEE is an entity capable of operating a self contained coffee cart and is interested in providing the related services required thereof with respect to providing coffee cart related services to the general public; and

WHEREAS, CITY and PERMITTEE are desirous of entering into an agreement to provide self contained coffee cart related services to the general public.

NOW THEREFORE, in consideration of the mutual covenants, conditions and provisions contained herein below, the parties hereto, agree as follows:

AGREEMENT

SECTION 1: USES

1.01 **Premises.** CITY hereby authorizes PERMITTEE, in accordance with the terms, covenants, conditions and provisions of this Agreement, the non-exclusive use of that certain real property situated at 300 North Coast Highway in the City of Oceanside, County of San Diego, State of California, commonly known as the "Civic Center". The City reserves the right, at its sole discretion, to determine the exact location within the Civic Center upon which PERMITTEE shall conduct its operation, which exact location may change from time to time depending on other City of Oceanside approved uses and activities within the Civic Center. Said exact location within the Civic Center is hereinafter called the "Premises". In return for this permission, PERMITTEE hereby agrees to act in accordance with and abide by the terms, covenants, conditions and provisions of this Agreement.

1.02 **Uses.** It is expressly agreed that the Premises shall be used by PERMITTEE solely and exclusively for the purpose of operating a self contained coffee cart (including one small umbrella table with four chairs in a location to be determined by the City), offering the items set forth below, to serve the general public at the Premises and on the terms and

conditions set forth herein and for such other related or incidental purposes as may be first approved in writing by the City Manager and for no other purpose whatsoever.

PERMITTEE shall offer the highest quality of coffee, coffee related drinks and other coffee cart related food items (e.g. pre-made and individually packaged sandwiches, pastries, etc.) Cooking of food items on the Premises is not allowed. At all times food and beverage items offered and sold must be in compliance with any applicable government regulations as to cleanliness, health, and safety.

PERMITTEE covenants and agrees to use the Premises for the above specified purposes and to diligently pursue said purposes throughout the term hereof. In the event that PERMITTEE fails to continuously use the Premises for said purposes, or uses the Premises for purposes not expressly authorized herein, the PERMITTEE shall be deemed in default under this Agreement.

SECTION 2: TERM

2.01 **Commencement.** The term of this Agreement shall be for a period of one (1) year commencing on March 1, 2008 and terminating on February 28, 2009.

2.02 **Extension Option.** The PERMITTEE shall have the option to extend the term of this Agreement for **three (3) additional one (1)-year periods** under the terms and conditions of this Agreement at the CITY'S calculated fair market property use payment rate of similar businesses, provided that the PERMITTEE is not in default of this Agreement.
The PERMITTEE may request an extension of the term by providing the City Manager with its written request no later than **ninety (90) days** prior to the expiration of the term of this Agreement or extended term, as applicable. The City Manager or City Manager's designee shall notify the PERMITTEE not later than **thirty (30) days** after receipt of such request whether such request will be recommended to the City Council for approval. Upon notification that the request will be recommended for approval, the City Manager shall provide PERMITTEE with CITY'S calculated fair market payment rate amount which the CITY is willing to accept for PERMITTEE'S use and occupation of the Premises during the extension term. City Manager's failure to provide the new payment rate amount within said timeframe shall not defeat CITY'S ability to make adjustments to the payment rate. Recommendation by the City Manager does not constitute CITY approval of the extension request. The City Manager in his capacity as the CITY'S authorized representative, shall, in his sole discretion, have the authority to deny any such request. Any such denial shall be sent to PERMITTEE not later than **thirty (30) days** from receipt of the request for extension.

The City Council, at its sole discretion, may approve or deny the extension of the term of this Agreement. In the event the City Council is unable to consider the renewal request in sufficient time as to provide PERMITTEE with **thirty (30) days** notice of termination in the case of denial, the Agreement shall be extended for a period not to exceed **thirty (30) days**, to allow for such **thirty (30) day** notice of termination.

2.03 **Termination Provisions.** Notwithstanding any other provisions contained in this Agreement, either party may terminate this Agreement by giving the other party at least **ninety (90) days** prior written notice of such termination.

2.04 **Business License.** PERMITTEE agrees to obtain and maintain, at its sole cost and expense, a current Business License issued from the City of Oceanside during the full term of this Agreement, provided such a license is required for PERMITTEE'S operations under this Agreement.

SECTION 3: Property Use Payment

3.01 **Time and Place of Payment.** Percentage rent payments shall be due to CITY and payable by PERMITTEE in arrears on or before the **tenth (10th) day** of the month following the quarter for which the percentage rent is calculated. In addition PERMITTEE shall provide CITY with a percentage rent statement showing how the percentage rents were calculated. Also, if applicable, PERMITTEE shall, concurrently with the filing of its quarterly State Board of Equalization tax statement, provide CITY with a copy of said statement. The requirements of this section shall survive the expiration or sooner termination of this Agreement.

Checks should be made payable to the City of Oceanside and delivered to the CITY at the address set forth in Section 6.04 of this Agreement. The CITY may change the place and time of payment at any time upon thirty (30) days written notice to PERMITTEE. PERMITTEE assumes all risk of loss and responsibility for late payment charges.

3.02 **Percentage Rent Payment.** PERMITTEE agrees to pay CITY, as set forth above, for its use and occupation of the Premises in accordance with the terms, covenants, conditions and provisions of this Agreement, a quarterly percentage rent payment, which shall be five percent (5%) of the gross revenue (as defined in Subsection 3.03 below). Provided, however, PERMITTEE shall not be required to pay any percentage rent payment for the initial three (3) months of the term of this Agreement.

3.03 **Definition of Gross Revenue.** Gross revenue as used herein shall mean all income received by PERMITTEE as a result of occupancy or use of the Premises arising from the sale of goods or services on or from the Premises or any other income received by PERMITTEE as a result of the occupancy or use of the Premises. Gross revenue shall include the amount of any manufacturer's or importer's excise tax included in the price of any property or material sold, even though the manufacturer or importer is also the retailer thereof, and it is immaterial whether the amount of such excise tax is stated as a separate charge, Provided, however, gross revenue shall not include federal, state or municipal taxes collected from the consumer regardless of whether the amount thereof is stated to the consumer as a separate charge and paid over periodically by PERMITTEE to a governmental agency accompanied by a tax return or statement as required by law or revenue received by PERMITTEE from providing services directly to the general public. Possessory interest taxes or other property taxes shall not be deducted by PERMITTEE in computing gross revenue. Gross revenue shall not include refunds for goods returned for resale on the Premises or refunds of deposits. The amount of such taxes and refunds shall be clearly shown on the books and records of PERMITTEE. The quarterly gross revenue shall be calculated at the end of each quarter of the term of this

Agreement. The first quarterly gross revenue calculation shall be made one quarter after the commencement date of this Agreement.

3.04 **Delinquent Rent.** If PERMITTEE fails to pay the rent when due, PERMITTEE will pay in addition to the unpaid rents, **five percent (5%)** of the delinquent rent. If the rent is still unpaid at the end of fifteen (15) days, PERMITTEE shall pay an additional **five percent (5%)** [being a total of **ten percent (10%)**] which is hereby mutually agreed by the parties to be appropriate to compensate CITY for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account.

In the event that the CITY audit, if applicable, discloses that the rent for the audited period has been underpaid in excess of **five percent (5%)** of the total required rent, then PERMITTEE shall pay CITY the cost of the audit plus **ten percent (10%)** per year on the amount by which said rent was underpaid in addition to the unpaid rents as shown to be due CITY as compensation to CITY for administrative costs and loss of interest as previously described herein. PERMITTEE agrees to pay such amount and further agrees that the specific late charges represent a fair and reasonable estimate of the costs that CITY will incur from PERMITTEE'S late payment. Acceptance of late charges and any portion of the late payment by CITY shall in no event constitute a waiver by CITY of PERMITTEE'S default with respect to late payment, nor prevent CITY from exercising any of the other rights and remedies granted in this Agreement.

3.05 **Utilities.** City agrees to order, obtain, and pay for all water, utilities, and service installation charges in connection with the occupation, operation and/or use of the Premises by PERMITTEE. Portable outdoor electric heater is authorized as needed for Jitter's employees. PERMITTEE is authorized to have access to the City's drain for waste-water in the event of an emergency.

SECTION 4: RECORDS AND REPORTS

4.01 **Annual Program Report.** PERMITTEE shall be required to provide CITY with a written annual financial and operations report regarding all phases of PERMITTEE use and occupation of the Premises. PERMITTEE shall submit said report to CITY within sixty (60) days of each anniversary date of this Agreement.

4.02 **Inspection of Records.** PERMITTEE shall maintain accurate financial books and records for the operation at, or from, the Premises. Said books and records shall be maintained on an accrual basis in accordance with good accounting practice and standards within the industry. The records must be supported by source documents of original entry such as sales invoices, cash register tapes, purchase invoices, or other pertinent documents.

All retail sales shall be recorded by means of cash registers, which displays to the customer the amount of the transaction and automatically issue a receipt. All cash registers shall be equipped with sales totalizer counters for all sales categories, as herein provided, and a sequential transaction counter, which counters are locked in, constantly accumulating, and which cannot be reset. Said registers shall further contain tapes upon which sales details and sequential transaction numbers are imprinted. Beginning and ending sales totalizer readings shall be made a matter of daily record. Retail sales may be recorded by a system other than

cash registers provided such system is approved in writing by the City Manager. In addition to the above, in the event of admission, cover charges, rentals, and any other fares or charges, whatsoever, PERMITTEE shall also issue serially numbered tickets for each such charge and keep an adequate record of said tickets, both issued and unissued.

PERMITTEE agrees to make any and all records and accounts available to CITY for inspection at all reasonable times, so that CITY can determine PERMITTEE'S compliance with this Agreement. These records and accounts will be made available by PERMITTEE at the Premises or CITY'S offices, at CITY'S sole discretion, and will be complete and accurate showing all income and receipts from PERMITTEE'S use of the Premises. PERMITTEE'S failure to keep and maintain such records and make them available for inspection by CITY shall be deemed a default of this Agreement. These records shall include, but are not limited to, federal quarterly and annual income tax statements, the California State Board of Equalization income statements, sales statements, cash register tapes, purchase invoices, or other pertinent documentation, and all other generally accepted business books, documents, and records. CITY shall have the discretion to require the installation of any additional accounting methods or controls it may deem necessary.

PERMITTEE shall maintain all such books, records and accounts for the term of this Agreement, and a minimum period of five (5) years thereafter. This provision shall survive the expiration or sooner termination of this Agreement.

SECTION 5: INSURANCE RISKS/SECURITY

5.01 **Indemnity.** PERMITTEE shall indemnify and hold harmless the CITY and its officers, agents and employees against all claims for damages to persons or property arising out of the conduct of the PERMITTEE or its employees, agents, contractors, vendors, concessionaires, permittees and/or licensees or others in connection with its use and occupation of the Premises under this Agreement, except only for those claims arising from the sole negligence or sole willful conduct of the CITY, its officers, agents, or employees. PERMITTEE'S indemnification shall include any and all costs, expenses, attorneys' fees and liability incurred by the CITY, its officers, agents, or employees in defending against such claims, whether the same proceed to judgment or not. Further, PERMITTEE at its own expense shall, upon written request by the CITY, defend any such suit or action brought against the CITY, its officers, agents, or employees.

5.02 **Insurance.** PERMITTEE shall take out and maintain at all times during the term of this Agreement the following insurance at its sole expense:

a. PERMITTEE shall maintain the following minimum limits:

General Liability

Combined Single Limit Per Occurrence	$1,000,000
General Aggregate	$2,000,000

b. All insurance companies affording coverage to the PERMITTEE shall be required to add the City of Oceanside as "additional insured" under the insurance policy(s) required in accordance with this Agreement.

c. All insurance companies affording coverage to the PERMITTEE shall be insurance organizations acceptable to the CITY, and authorized by the Insurance Commissioner of the State Department of Insurance to transact business of insurance in the State of California.

d. All insurance companies affording coverage shall provide thirty (30) days written notice to the City of Oceanside should the policy be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.

e. PERMITTEE shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance and applicable endorsements, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement and applicable endorsements.

f. PERMITTEE shall provide a substitute certificate of insurance no later than thirty (30) days prior to the policy expiration date. Failure by the PERMITTEE to provide such a substitution and extend the policy expiration date shall be considered a default by PERMITTEE and may subject the PERMITTEE to a termination of this Agreement.

g. Maintenance of insurance by the PERMITTEE as specified in this Agreement shall in no way be interpreted as relieving the PERMITTEE of any responsibility whatever and the PERMITTEE may carry, at its own expense, such additional insurance as it deems necessary.

h. If PERMITTEE fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, CITY has the right to obtain the insurance. PERMITTEE shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer(s) and rate of interest. Said reimbursement and interest shall be paid by PERMITTEE on the first (1st) day of the month following the notice of payment by CITY.

Notwithstanding the preceding provisions of this Subsection, any failure or refusal by PERMITTEE to take out or maintain insurance as required in this Agreement, or failure to provide the proof of insurance, shall be deemed a default under this Agreement.

i. CITY, at its discretion, may require the revision of amounts and coverage at any time during the term of this Agreement by giving PERMITTEE sixty (60) days prior written notice. CITY'S requirements shall be designed to assure protection from and against the kind and extent of risk existing on the Premises. PERMITTEE also agrees to obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this Agreement.

5.03 **Accident Reports.** PERMITTEE shall, within seventy-two (72) hours after occurrence, report to CITY any accident causing property damage or any serious injury to

persons on the Premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses and other pertinent information.

SECTION 6: GENERAL PROVISIONS

6.01 Maintenance. With respects to PERMITTEE'S operations at or on the Premises, PERMITTEE shall make all repairs and replacements necessary to maintain and preserve the Premises in a decent, safe, healthy, and sanitary condition satisfactory to CITY and in compliance with all applicable laws.

PERMITEE further agrees to keep the area occupied by the coffee cart clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in or about said area to the satisfaction of City and at PERMITTEE's sole cost. Said areas shall be cleaned up nightly by PERMITTEE or more often as required. PERMITTEE shall provide and maintain adequate trash and recycling receptacles for the use of its customers. Said receptacles and their contents shall be removed from the concession area each day at the end of business.

In the event that the Premises are not in a decent, safe, healthy, and sanitary condition, as a result of PERMITTEE'S operation at or on the Premises, CITY shall have the right, upon written notice to PERMITTEE, to have any necessary maintenance work done at the expense of PERMITTEE, and PERMITTEE shall promptly pay any and all costs incurred by CITY in having such necessary maintenance work done, in order to keep said Premises in a decent, safe, healthy and sanitary condition. PERMITTEE shall make payment no later than thirty (30) days after written notice from the CITY. Further, if at any time CITY determines that said Premises are not in a decent, safe, healthy, and sanitary condition, CITY may at its sole option, upon written notice, require PERMITTEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. Said bond shall be in an amount adequate in the opinion of CITY to correct the said unsatisfactory condition. PERMITTEE shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this Agreement imposed on CITY.

6.02 Signs. PERMITTEE shall not erect or display any sandwich boards, banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of CITY. If any such unauthorized item is found on the Premises, PERMITTEE shall remove the item at its expense within twenty-four (24) hours of written notice thereof by CITY, or CITY may thereupon remove the item at PERMITTEE'S cost.

6.03 Taxes. PERMITTEE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon PERMITTEE or the Premises, including, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by PERMITTEE or levied by reason of the business or other PERMITTEE activities related to the Premises, including any licenses or permits.

PERMITTEE recognizes and agrees that this Agreement may create a possessory interest subject to property taxation, and that PERMITTEE may be subject to the payment of

taxes levied on such interest, and that PERMITTEE shall pay all such possessory interest taxes.

6.04 **Notices.** All notices, demands, requests, consents or other communications which this Agreement contemplates or authorizes, or requires or permits either party to give to the other, shall be in writing and shall be personally delivered or mailed to the respective party as follows:

To CITY:

City of Oceanside
Property Management
300 North Coast Highway
Oceanside, CA 92054

To PERMITTEE:

Jitters Express Coffee Pub
510 North Coast Highway
Oceanside, CA 92054
Attention: Vallie Gilley

Either party may change its address by notice to the other party as provided herein.

Communications shall be deemed to have been given and received on the first to occur of (i) actual receipt at the offices of the party to whom the communication is to be sent, as designated above, or (ii) three working days following the deposit in the United States Mail of registered or certified mail, postage prepaid, return receipt requested, addressed to the offices of the party to whom the communication is to be sent, as designated above.

6.05 **City Approval.** The City Manager shall be the CITY'S authorized representative in the interpretation and enforcement of all services performed in connection with this Agreement. The City Manager may delegate authority in connection with this Agreement to the City Manager's designee(s). For the purposes of directing PERMITTEE in accordance with this Agreement, which does not result in a change to this Agreement, the City Manager delegates authority to the Real Property Manager of the Public Works Department.

6.06 **Entire Agreement.** This Agreement comprises the entire integrated understanding between CITY and PERMITTEE concerning the use and occupation of the Premises and supersedes all prior negotiations, representations, or agreements. Each party has relied on its own examination of the Premises, advice from its own attorneys, and the warranties, representations, and covenants of the Agreement.

The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. The Agreement does not limit any other rights or remedies available to CITY.

The PERMITTEE shall be responsible for complying with all local, state, and federal laws whether or not said laws are expressly stated or referred to herein.

Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision, and all other provisions, which are otherwise lawful shall remain in full force and effect, and to this end the provisions of this Agreement are severable.

This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

6.07 Agreement Modification. This Agreement may not be modified orally or in any manner other than by an Agreement in writing signed by the parties hereto.

6.08 Assignment and Subletting-No Encumbrance. This Agreement and any portion thereof shall not be assigned, transferred, or sublet, nor shall any of the PERMITTEE'S duties be delegated, except as to the contractors, vendors, concessionaires, permittees and/or licensees or other such parties providing beach-related services to the general public of which PERMITTEE is required to manage and supervise as contemplated in Section 1.02 of this Agreement, without the express written consent of CITY. Any attempt to assign or delegate this Agreement without the express written consent of CITY shall be void and of no force or effect. Consent by CITY to one assignment, transfer, sublease, or delegation shall not be deemed to be consent to any subsequent assignment, transfer, sublease, or delegation.

6.09 Defaults and Termination. If either party ("demanding party") has a good faith belief that the other party ("defaulting party") is not complying with the terms of this Agreement, the demanding party shall give written notice of the default (with reasonable specificity) to the defaulting party and demand the default to be cured within thirty (30) days of the notice.

If the defaulting party is actually in default of this Agreement and fails to cure the default within thirty (30) days of the notice, or, if more than thirty (30) days are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within ten (10) days of the notice, the demanding party may terminate this Agreement upon written notice to the defaulting party.

CITY may also terminate this Agreement upon written notice to PERMITTEE in the event that:

- PERMITTEE has previously been notified by CITY of PERMITTEE'S default under this Agreement and PERMITTEE, after beginning to cure the default, fails to diligently pursue the cure of the default to completion, or

- PERMITTEE shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law, or

- PERMITTEE shall be adjudicated a bankruptcy, or

- PERMITTEE shall make a general assignment for the benefit of creditors.

Upon termination, CITY may immediately enter and take possession of the Premises.

6.10 Other Regulations. All use of the Premises under this Agreement shall be in accordance with the laws of the United States of America, the State of California and in accordance with all applicable rules and regulations and ordinances of the County of San Diego and the City of Oceanside now in force, or hereinafter prescribed or promulgated by resolution or ordinance or by state or federal law.

SECTION 7: SPECIAL PROVISIONS

7.01 Ancillary Uses and Services. No additional uses or services, other than those provided for under Section 1.02 of this Agreement shall be provided by PERMITTEE from or at the demised Premises.

7.02 Standards of Operation. PERMITTEE agrees that it shall operate and manage the services and facilities offered upon or from the Premises in a first class manner and comparable to other similar facilities within the San Diego County and Southern California areas which provide like products and services.

7.03 Permittee's Employees. PERMITTEE shall provide an experienced and well-qualified "on-site" supervisor to oversee all operations conducted by PERMITTEE on the Premises. PERMITTEE shall ensure that its employees shall at all times conduct themselves in a creditable manner, and they shall conform to all rules, regulations and requirements, as well as all rules and regulations as hereafter may be promulgated, or put into operation by the CITY, provided that such rules, regulations and requirements are not in conflict with the terms of this Agreement. PERMITTEE shall maintain a staff in adequate size and number, to CITY'S reasonable satisfaction, to effectively operate, maintain and administer all services offered and facilities located on the Premises.

7.04 Hazardous Substances. No goods, merchandise or material shall be kept, stored or sold in or on the Premises which are in any way explosive or hazardous, except that ordinary business materials that may be classified as hazardous may be kept in or on the Premises if such materials are stored and disposed of in accordance with all applicable laws; and no offensive or dangerous trade, business or occupation shall be carried on therein or thereon, and nothing shall be done on said Premises, which will cause an increase in the rate of or cause a suspension or cancellation of the insurance upon the demised Premises or other premises and the improvements thereon; provided, however, that if anything done by PERMITTEE causes an increase in the rate of insurance on the Premises, PERMITTEE may, at its option, pay such increase and PERMITTEE shall not thereafter be considered in default under this Agreement.

No machinery or apparatus shall be used or operated on or about the Premises, which will in any way injure the Premises or improvements thereon, or adjacent or other Premises, or improvements thereon, or to persons; provided, however, that nothing contained in this section shall preclude PERMITTEE from bringing, keeping or using on or about the Premises such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its said business, or from carrying on its business in all usual respects.

Open flame burning, gasoline, or other fuel storage is expressly prohibited without prior written consent of the CITY.

7.05 Merchandise and Equipment. CITY retains the right to require the PERMITTEE to discontinue the sale or use of those items that are of a quality unacceptable to the CITY.

7.06 Continued Occupancy. PERMITTEE covenants and agrees to, and it is the intent of this Agreement that the PERMITTEE shall, continuously and uninterruptedly during the term of the Agreement, occupy and use the Premises for the purposes hereinabove specified, except while Premises are un-tenantable by reason of fire, flood, or other unavoidable casualty, and, in that event, CITY shall be promptly notified by PERMITTEE.

7.07 Controlled Prices. PERMITTEE shall at all times maintain a complete list or schedule of the prices and charges for all goods or services, or combinations thereof, supplied to the public on or from the Premises whether the same are supplied by PERMITTEE or by PERMITTEE'S contractors, vendors, concessionaires, permittees or licensees.

7.08 Community Use of the Premises. PERMITTEE acknowledges that the paramount use of Premises is for public services and civic activities. The CITY reserves the right to schedule and use the Premises for community gatherings and other CITY sponsored activities. CITY agrees to coordinate such use of the Premises with PERMITTEE so as not to conflict with PERMITTEE'S programs and activities.

SECTION 8: SIGNATURES

8.01 **Signature Page.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the PERMITTEE and the CITY.

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Property Use Agreement to be executed by setting hereunto their signatures on the day and year respectively written herein below.

CITY

THE CITY OF OCEANSIDE
a municipal corporation

Date _____

By _____
City Manager

APPROVED AS TO FORM

By [signature], ASST.
City Attorney

PERMITTEE

Vallie Gilley, dba
Jitters Express Coffee Pub

Date 1/10/08

By [signature]
Name Vallie Gilley
Title owner

By _____
Name _____
Title _____

NOTARY ACKNOWLEDGMENTS OF PERMITTEE'S SIGNATURE(S) MUST BE ATTACHED

State of California

County of San Diego

On 1/10/08 (DATE) before me, Curtis Jackson, Notary Public (NAME/TITLE OF OFFICER-i.e. "JANE DOE, ~~NOTARY~~ PUBLIC")

personally appeared Vallie Gillen (NAME(S) OF ~~SIGNER(S)~~)

☐ personally known to me -OR- ☒ proved to me on the basis of satisfactory evidence to be the person(~~s~~) whose name(~~s~~) is/~~are~~ subscribed to the within instrument and acknowledged to me that ~~he~~/she/~~they~~ executed the same in ~~his~~/her/~~their~~ authorized capacity(~~ies~~), and that by his/her/~~their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

CURTIS JACKSON
Commission # 1522933
Notary Public - California
San Diego County
My Comm. Expires Oct 29, 2008

Witness my hand and official seal.

(SEAL)

(SIGNATURE OF NOTARY)

RIGHT THUMBPRINT (Optional)

TOP OF THUMB HERE

CAPACITY CLAIMED BY SIGNER(S)
☐INDIVIDUAL(S)
☐CORPORATE _____

OFFICER(S) _____ (TITLES)

☐PARTNER(S) ☐LIMITED ☐GENERAL
☐ATTORNEY IN FACT
☐TRUSTEE(S)
☐GUARDIAN/CONSERVATOR
☐OTHER: _____

SIGNER IS REPRESENTING:
(Name of Person(s) or Entity(ies))

RIGHT THUMBPRINT (Optional)

TOP OF THUMB HERE

CAPACITY CLAIMED BY SIGNER(S)
☐INDIVIDUAL(S)
☐CORPORATE _____

OFFICER(S) _____ (TITLES)

☐PARTNER(S) ☐LIMITED ☐GENERAL
☐ATTORNEY IN FACT
☐TRUSTEE(S)
☐GUARDIAN/CONSERVATOR
☐OTHER: _____

SIGNER IS REPRESENTING:
(Name of Person(s) or Entity(ies))

ATTENTION NOTARY

The information requested below and in the column to the right is **OPTIONAL**. Recording of this document is not required by law and is also optional. It could, however, prevent fraudulent attachment of this certificate to any unauthorized document.

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AT RIGHT:

Title or Type of Document Property Use Agreement

Number of Pages 12 Date of Document 1/10/07

Signer(s) Other Than Named Above NA

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