

## AGENDA REPORT

**Resolution:** Consent to Change in Control in Ownership of Taste, Inc. Operating as Vino Volo and Assignment of a *Space/Use Permit for Specialty Retail/Wine Bar Concession* in Terminals 1 and 2 at Oakland International Airport, from the Current Shareholders to Hojeij Branded Foods, LLC **(Aviation)**

**MEETING DATE:** 6/22/2017

**AMOUNT:** \$2,950 One Time Processing Fee – Revenue

**PARTIES INVOLVED:** Taste, Inc. d/b/a Vino Volo, Oakland, California  
Doug Tomlinson, President & CEO  
Hojeij Branded Foods, LLC, Atlanta, Georgia  
Regynald Washington, CEO

**SUBMITTED BY:** Bryant L. Francis C.M., Director of Aviation

**APPROVED BY:** J. Christopher Lytle, Executive Director

**ACTION TYPE:** Resolution

### **EXECUTIVE SUMMARY**

This action (i) consents to the change in control of ownership and assignment of a *Space/Use Permit for Specialty Retail/Wine Concession* from Taste, Inc. doing business as Vino Volo, to Hojeij Branded Foods, LLC; (ii) waives the requirement of payment of Bonus Value contractually obligated for such consent; and, (iii) authorizes the Executive Director to execute appropriate documentation to effect the transaction.

### **BACKGROUND**

At its meeting of July 7, 2009, the Board of Port Commissioners approved a *Space/Use Permit for Specialty Retail/Wine Bar Concession (SUP)* with Taste Inc. dba Vino Volo (“Vino Volo”) to operate a Vino Volo branded wine bar in Terminal 2 at the Oakland International Airport (OAK). Vino Volo opened for business in December 2007 and has been a very successful and popular concept at OAK. During calendar year 2016, Vino Volo generated \$1.93 million in gross receipts and paid the Port \$250,444 in percentage of gross revenues and fixed rentals.

Subsequently, in September 2016, the Board approved amending the *SUP* to add a satellite location at the end of Terminal 1. This second unit opened in late April 2017.

Also in April 2017, Vino Volo announced the sale of all outstanding shares to Hojeij Branded Foods, LLC (“HBF”), and is requesting the Board’s consent to this change in control of

ownership and assignment of the *SUP*. Such consent is a requirement to the completion of the transaction.

## **ANALYSIS**

HBF owns and operates over 70 restaurants in thirteen (13) major airports across the United States. Vino Volo operates 45 locations in the U.S. and Canada, with OAK's Terminal 1 satellite the newest opening. Provided the Board provides its consent, the parties plan to close the transaction prior to end of Fiscal Year 2016-17.

Pursuant to the Term Sheet reviewed by Port staff, the basic terms and conditions of the transaction are as follows:



*Vino Volo's Recently Opened Terminal 1 Satellite Location*

- Taste, Inc. will remain the operating entity under the *SUP* with all senior management and local staffing to remain.
- The stock in Taste, Inc. is being transferred from the current shareholders to HFB.
- HBF will purchase all of the outstanding capital stock of Taste, Inc., pay off outstanding loan obligations and deferred cumulative dividends to preferred shareholders.

Section 18 of the *SUP* covers "Assignment and Subletting" and details the information and documents that must be provided by Vino Volo to the Port when an assignment is contemplated, including a payment of a processing fee of not less than \$2,500 (increased by CPI from the August 2009 effective date of the *SUP* to an amount now equal to \$2,950). Vino Volo has provided substantially all of the required documents and paid the processing fee.

Section 18 also requires Vino Volo to pay the Port 50% of any "Bonus Value" for its consent to an assignment. As defined in the *SUP*:

"Bonus Value means all consideration payable by or on behalf of an assignee to [Vino Volo] (including key money, bonus money and any payment in excess of market value for (i) services rendered by [Vino Volo] to or on behalf of assignee or (ii) for assets, fixtures, inventory, equipment, furniture or improvements transferred by [Vino Volo] to or on behalf of an assignee in connection with an assignment)."

Staff has reviewed Vino Volo's calculation of Bonus Value for the entire transaction covering all 45 locations, which results in an average Bonus Value per store of \$51,577.78. OAK has two locations resulting in the following Bonus Value applicable to the Port:

$$\text{\$51,577.78 Bonus Value per Store} \times 2 \text{ OAK Stores} = \text{\$103,155.56} \times 50\% = \text{\$51,577.78}$$

As noted above, VINO Volo opened its second unit in late April 2017 after investing more than \$600,000 in improvements; this satellite location is in the center of hold rooms for multiple gates; all electrical, plumbing, drain lines, etc. had to be constructed to the leased area to operate a wine bar. Port staff believes the Bonus Value applicable to the OAK locations is offset by the substantial capital investment made with just four years remaining on the term of the SUP. Staff is recommending a waiver of VINO Volo's obligation to pay the \$51,577.78 Bonus Value.

### **BUDGET & STAFFING**

The proposed action constitutes a change in control and an assignment of the SUP, but does not change any of the financial terms of the SUP. Except for the payment of the \$2,950 processing fee, there is no budget impact should the Board provide its consent.

There is no staffing impact.

### **MARITIME AVIATION PROJECT LABOR AGREEMENT (MAPLA)**

The matters contained in this agenda report do not fall within the scope of the Port of Oakland Maritime and Aviation Project Labor Agreement (MAPLA) and the provisions of the MAPLA do not apply.

### **STRATEGIC PLAN**

The action described herein would help the Port achieve the following goals and objectives in the Port's Strategic Plan

(<http://www.portofoakland.com/pdf/about/strategicPlan2011-2015.pdf>)

- Goal A: Objective 1: Maximize the use of existing assets.
- Goal B: Objective 1: Retain existing customers and tenants.

### **LIVING WAGE**

Living wage requirements, in accordance with the Port's Rules and Regulations for the Implementation and Enforcement of the Port of Oakland Living Wage Requirements (the "Living Wage Regulations"), do not apply to this agreement as the tenants do not employ 21 or more employees working on Port-related work. However, the tenants will be required to certify that should living wage obligations become applicable, the tenants shall comply with the Living Wage Regulations.

### **ENVIRONMENTAL**

CEQA Determination: This project has been determined to be categorically exempt from the California Environmental Quality Act (CEQA) Guidelines pursuant to Section 15301, Existing Facilities, which exempts the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination.

## **GENERAL PLAN**

This action does not change the use of any existing facility, make alterations to an existing facility, or create a new facility; therefore, a General Plan conformity determination pursuant to Section 727 of the City of Oakland Charter is not required.

## **OWNER-CONTROLLED INSURANCE PROGRAM (OCIP)**

The Owner Controlled Insurance Program (OCIP) does not apply to the matters addressed by this Agenda Report as they are not capital improvement construction projects.

## **OPTIONS**

1. Pass a resolution to (i) consent to the change in control of ownership and assignment of a *Space/Use Permit for Specialty Retail/Wine Concession* from Taste, Inc. doing business as Vino Volo, to Hojeij Branded Foods, LLC; (ii) waive the requirement of payment of Bonus Value contractually obligated for such consent; and, (iii) authorize the Executive Director to execute the appropriate documentation to effect the transaction;
2. Pass a resolution to (i) consent to the change in control of ownership and assignment of a *Space/Use Permit for Specialty Retail/Wine Concession* from Taste, Inc. doing business as Vino Volo, to Hojeij Branded Foods, LLC and (ii) authorize the Executive Director to execute the appropriate documentation to effect the transaction, but (iii) do not waive the requirement of payment of Bonus Value contractually obligated for such consent; or,
3. Do not consent to the change in control of ownership and assignment of a *Space/Use Permit for Specialty Retail/Wine Concession* from Taste, Inc. doing business as Vino Volo, to Hojeij Branded Foods, LLC, which would preclude the parties from closing the proposed sale.

## **RECOMMENDATION**

Staff recommends the Board's passage of a resolution to (i) consent to the change in control of ownership and assignment of a *Space/Use Permit for Specialty Retail/Wine Concession* from Taste, Inc. doing business as Vino Volo, to Hojeij Branded Foods, LLC; (ii) waive the requirement of payment of Bonus Value contractually obligated for such consent; and, (iii) authorize the Executive Director to execute the appropriate documentation to effect the transaction, subject to the Port Attorney's approval as to form and legality.