

OFFICE OF THE CITY ATTORNEY  
CHARLES PARKIN, City Attorney  
411 West Ocean Boulevard, 9th Floor  
Long Beach, CA 90802-4664

1 **BEACH CONCESSION AGREEMENT**

2 **35971**

3 THIS BEACH CONCESSION AGREEMENT ("Agreement") is made and  
4 entered in duplicate as of July 30, 2021 pursuant to a minute order adopted by  
5 the City Council of the City of Long Beach, at its meeting on June 8, 2021, by and between  
6 the CITY OF LONG BEACH, a municipal corporation and trust grantee of the State of  
7 California of certain tide and submerged lands within the limits of said City ("City") and  
8 LOUISIANA CHARLIE'S LLC, a California limited liability company, with a business  
9 address of 429 Shoreline Village Drive, Long Beach, CA 90802 ("Concessionaire").

10 WHEREAS, City is the trust grantee of the State of California of certain tide  
11 and submerged lands upon which the premises are situated. The terms, conditions and  
12 restrictions of the trust are expressed in Chapter 676, Statutes of 1911; Chapter 102,  
13 Statutes of 1925; and Chapter 158, Statutes of 1935. Said trust conditions and grants were  
14 amended by Chapter 29, Statutes of 1956, First Extraordinary Session and Chapter 138,  
15 Statutes of 1964, First Extraordinary Session. Neither this Agreement nor the rights and  
16 privileges granted Concessionaire shall be construed to imply the conveyance to  
17 Concessionaire of any right or interest in the premises except which may be created  
18 pursuant to said statutory grants and the Constitution of the State of California. This  
19 Agreement shall be subject and subordinate to said statutory grants and limitations  
20 imposed by the Constitution of the State of California; and

21 WHEREAS, City engaged a broker to assist with the search for a  
22 concessionaire for the operation of food, beverage, retail and equipment rental  
23 concession(s) at various beach locations within the City of Long Beach; and

24 WHEREAS, subject to appropriate approvals, City desires Concessionaire to  
25 provide the above operations and services;

26 NOW, THEREFORE, in consideration of the mutual terms, covenants and  
27 conditions in this Agreement, the parties agree as follows:

28

1           1.     PREMISES. City grants to Concessionaire, subject to all of the terms,  
2 covenants and conditions of this Agreement, the right and privilege to operate a beach  
3 concession from certain existing improvements (the "Building") located at Mother's Beach,  
4 as more particularly described and depicted on Exhibit "A" (collectively, the "Premises").  
5 Concessionaire acknowledges that it has not received and City has not made any warranty,  
6 express or implied, as to the condition of the Premises. City shall provide the Premises in  
7 "AS IS" condition, without obligation to make improvements. Code compliance upgrades  
8 may be necessary at the Premises. Concessionaire shall make such improvements at its  
9 sole expense. Upon expiration of this Agreement, all such improvements and any other  
10 improvements made to the Building or the Premises shall become the property of City  
11 without payment therefor from City to Concessionaire.

12           2.     AUTHORIZED USE.

13           A.     Use. City's primary purpose for entering into this Agreement is  
14 to provide services needed by the public. In furtherance of that purpose,  
15 Concessionaire, during the term, shall use the Premises for the uses described  
16 below on a continuous basis during business hours agreed between Concessionaire  
17 and the City Manager or designee or the Director of Parks, Recreation and Marine  
18 Department ("City Manager"). No use not specifically permitted by this Section shall  
19 be allowed without the written permission of the City Manager. Concessionaire in  
20 the conduct of its business, shall not in any manner whatsoever interfere with regular  
21 use of the beach and/or park area by the general public. Notwithstanding the  
22 foregoing, Concessionaire may sporadically not offer services at the Premises,  
23 provided that in no event shall Concessionaire fail to offer services to the public for  
24 (i) more than forty-five (45) days total in any year-long period after Concessionaire's  
25 initial opening at the Premises, and/or (ii) more than thirty (30) consecutive days, in  
26 either case without the permission of the City Manager. Concessionaire shall notify  
27 the City Manager in writing before any closure.

28           B.     Exclusivity. Concessionaire and City agree that use of the

1 Premises shall be exclusive to Concessionaire, but that use of other premises or  
2 public property immediately adjacent to the Premises as a concession location is  
3 non-exclusive, and from time to time City may provide concession rights to other  
4 third-party concessionaires at such locations for the same or similar services as  
5 allowed under this Permit and/or may use such locations as a special event location.

6 C. Services. The Premises and the Building shall be used for the  
7 purpose of operating a food and beverage concession. The concession shall be  
8 operated in a safe and sanitary manner, and all products sold for consumption by  
9 Concessionaire shall comply with applicable state and local health and safety laws  
10 and regulations in regards to the safe storage, handling and preparation of any  
11 approved consumable food or beverage products. All food service and handling  
12 and alcoholic beverage licenses shall be acquired from the requisite state and local  
13 health agencies and they shall be maintained and remain in good standing  
14 throughout the duration of this Agreement. Stand(s), storage units and all  
15 Concessionaire equipment are subject to immediate removal by Concessionaire  
16 upon demand by City in the event of an imminent natural disaster or an urgent public  
17 safety need. Concessionaire agrees to ensure that its employees conduct  
18 themselves in a professional and courteous manner at all times when dealing with  
19 its patrons, City staff, other concessionaires, and the general public.

20 D. Special Events. Concessionaire shall be authorized to conduct  
21 event-planning services to include weddings and special events, outside the  
22 Premises listed on Exhibit "A", as coordinated through and approved by the Office  
23 of Special Events and Filming. All fees collected under this Section shall be included  
24 as part of the gross receipts calculation under Section 8. Concessionaire  
25 acknowledges that commencement of certain activities, services and operations  
26 described in this Section, may require specific approvals, permits and/or licenses.  
27 Concessionaire shall at all times comply with all laws, ordinances, rules and  
28 regulations of and obtain and maintain all necessary approvals, license and/or

1 permits from all federal, state, and local governmental authorities having jurisdiction  
2 over the Premises and Concessionaire’s activities thereon. As the event organizer,  
3 Concessionaire shall ensure that all event-related activities comply with local laws  
4 applicable to noise abatement. Concessionaire shall dispose of waste and garbage  
5 throughout the term of the event, and immediately following the event, the area must  
6 be returned to a clean and sanitary condition. Concessionaire shall submit to the  
7 Director of the Department of Parks, Recreation and Marine, or designee  
8 (“Director”), copies of all permits, licenses, and certificates within five (5) days after  
9 Concessionaire’s receipt of same.

10 E. Filming. Authorization for Concessionaire to engage in any  
11 filming, special event or activity provided for under this Agreement is given in City’s  
12 proprietary capacity as property owner only. Concessionaire shall be entitled to  
13 collect a filming fee from commercial filming organizations permitted through the  
14 Office of Special Events and Filming. All fees collected under this Section shall be  
15 included as part of the gross receipts calculation under Section 8. Concessionaire  
16 shall submit on an annual basis, to the Director a list of proposed fees by December  
17 1st. Final approval of the fees is at the sole discretion of the City.

18 F. Community Events. Concessionaire shall operate community  
19 events from time to time at its sole expense. A community event is defined as a  
20 public event held at the Premises, promoted by Concessionaire, funded by  
21 Concessionaire and executed by Concessionaire, its management and agents. For  
22 the purposes of organizing, operating, marketing, and sponsorship, it is understood  
23 that the ownership rights for a community event belongs solely to Concessionaire.  
24 Concessionaire shall provide a list to the Director by January 1<sup>st</sup> for final approval  
25 by the Director. On occasion, the Director will require Concessionaire to participate  
26 in various City events. All fees collected under this Section shall be included as part  
27 of the gross receipts calculation under Section 8.  
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1                   G.    Hours of Operation. Concessionaire shall be responsible for  
2 concession operations during the dates, times, and circumstances detailed below.  
3 Exceptions may be (i) requested by Concessionaire and granted by the City  
4 Manager or (ii) required by the City Manager to accommodate special events,  
5 unusual circumstances, or force majeure events. All dates and times are subject to  
6 change in City's sole discretion.

- 7                   i.    Open weekends year-round from Dawn until Dusk;  
8                   ii.   Open weekdays through the Spring, Summer and Fall  
9                   (Daylight Savings Time) months from Dawn until Dusk; and  
10                  iii.   Open to the greatest extent feasible during weekdays  
11 through the winter (Standard Time) months. Concessionaire shall propose  
12 an hourly operation schedule for the winter and submit the same to City in  
13 advance for its review and comment.

14                  H.    Parking Requirements. All parking spaces within the public  
15 beach parking lots shall be reserved for the use of the general public and shall be  
16 available for use on a first-come, first-served basis. There shall be no exclusive use  
17 of parking spaces or reserved parking spaces within a public beach parking lot by  
18 any person or group other than the general public (handicapped and electric vehicle  
19 spaces excluded). This condition does not prohibit City from requiring a City-issued  
20 parking permit, available to the general public. No parking validations, or any other  
21 preferences not available to the general public, shall be granted to customers or  
22 employees of Concessionaire. Tenant is solely responsible for securing exclusive  
23 parking for its customers and/or employees.

24                  I.    Menu and Payment Options. All concession stands and/or  
25 cafés shall provide and maintain a take-out window, shall offer food items that can  
26 be easily carried out, and shall stock some relatively inexpensive snack items (\$5  
27 or less). Concessionaire shall accept multiple generally available payment options  
28 in addition to cash.

1 J. Seating. The general public shall be allowed to visit and picnic  
2 at all seating areas on the outdoor decks including both levels of the ground-level  
3 deck. There shall be no full-table service in these areas.

4 K. Security. Concessionaire staff (or third-party security, if any)  
5 shall not prevent the public from visiting the ground-level deck and shall not prevent  
6 the public from using the available games and amenities.

7 L. Coastal Development Permit. Concessionaire shall at all times  
8 comply with the terms and conditions of that certain Local Coast Development  
9 Permit applicable to the Premises and attached hereto as Exhibit "B" (the "LCDP")  
10 and applicable conditions of approval. In the event of a direct conflict between the  
11 terms of this Agreement and the LCDP and/or such conditions of approval such that  
12 Concessionaire cannot comply with the requirements of both, the terms of the LCDP  
13 and/or the conditions of approval shall control.

14 M. Other Permits. City shall have the right to grant additional  
15 permits for different purposes and additional permits for similar purposes in  
16 conjunction with food and beverage sales, commercial picnic services, weddings,  
17 and other special events. Concessionaire shall cooperate fully with any other  
18 permittees in the vicinity.

19 I. Subcontracts. Concessionaire shall be permitted to  
20 subcontract third party services and/or equipment providers, however all  
21 subcontractors shall be approved in advance by the City Manager at his or her sole  
22 discretion.

23 3. NOISE ABATEMENT/CONDUCT. Concessionaire shall not use the  
24 Premises nor conduct its business in any manner that will create a nuisance, unreasonable  
25 annoyance, or waste. Concessionaire shall not make or permit any noise or odors that  
26 constitute a nuisance within the meaning of California Civil Code Section 3479 or California  
27 Penal Code Section 370. Concessionaire shall permit no intoxicated person, profane or  
28 indecent language/behavior in or about the Premises, and shall call upon the aid of peace

1 officers to assist in maintaining peaceful conditions. Under normal circumstances, decibel  
2 levels within a predominately residential area must be ambient or no more than 50 dB(A)  
3 between 7:00 a.m. and 10:00 p.m., and less than 45 dB(A) from 10:00 p.m. until 7:00 a.m.  
4 throughout the year, weekdays and weekends inclusive. This requirement applies to all  
5 sound checks, "warm up" sessions and announcements. Unless permitted by the Office of  
6 Special Events and Filming, amplified and live music is not allowed.

7 4. TERM. The term of this Agreement shall commence at 12:01 a.m. on  
8 July 1, 2021 ("Commencement Date") and shall terminate at midnight on June 30, 2026  
9 (as may be extended, the "Term"). Upon termination of this Agreement (whether by lapse  
10 of time or otherwise), Concessionaire shall quit and surrender possession of the Premises  
11 and remove its personal property therefrom. Concessionaire shall have the option to  
12 extend the Term for one additional period of five (5) years, which such option shall be  
13 exercised by giving written notice of intent to extend to City not less than ninety (90) days  
14 before the end of the then-current Term.

15 5. COMPENSATION:

16 A. Base Rent. Beginning on the earlier of (i) first day of the month  
17 immediately after the month in which Concessionaire begins operations at the  
18 Premises, or (ii) October 1, 2021 ("Rent Commencement Date") and continuing  
19 monthly thereafter, Concessionaire shall pay to City a monthly base rent equal to  
20 Two Thousand Five Hundred Dollars (\$2,500) ("Base Rent"). Base Rent is due and  
21 payable in advance on the first day of each month, and is delinquent on or after the  
22 fifth day of each month. Concessionaire shall not have any right of abatement,  
23 deduction, set off, prior notice or demand. The Base Rent shall be adjusted  
24 annually, effective on each anniversary of the Rent Commencement Date, by the  
25 percent change in the CPI for All Urban Consumers, All Items, Base Period 1982-  
26 84=100, for the Los Angeles-Riverside-Orange County, CA area (August to August),  
27 as published by the United States Department of Labor, Bureau of Labor Statistics;  
28 provided, however, that the Base Rent shall never decrease and any increase shall

1 not exceed three percent (3%) in any year.

2 B. Late Fee. If Rent is not received when due, a late fee shall be  
3 assessed. The late fee shall be five percent (5%) of the amount of late payment or  
4 Fifty Dollars (\$50.00), whichever is greater.

5 C. Interest. In addition to the late fees above, interest shall accrue  
6 on all amounts owed from the due date, at a rate of ten percent (10%) per annum  
7 until paid.

8 6. FEES AND CHARGES: All fees and charges associated with the  
9 permitted concessions, operations and activities and any changes to fee schedules shall  
10 be subject to the prior written approval of the City Manager.

11 7. AUDIT. City shall be entitled during the Term and within five (5) years  
12 after the expiration or termination of this Agreement to inspect, examine, and audit all  
13 Concessionaire's books of account, records, cash receipts, and other pertinent data so City  
14 can ascertain Concessionaire's gross receipts. Concessionaire shall cooperate fully with  
15 City in making any such inspection, examination, and audit. The inspection, examination,  
16 or audit shall be conducted during usual business hours. The costs of the audit shall be  
17 paid by City unless the audit shows that Concessionaire understated gross receipts by  
18 more than three percent (3%), in which case Concessionaire shall pay all City's costs of  
19 the audit.

20 8. BOOKS OF ACCOUNT AND RECORDS.

21 A. Concessionaire shall keep complete and accurate books of  
22 account, records, cash receipts, and other pertinent data showing gross receipts, all  
23 in accordance with generally accepted accounting principles. Concessionaire shall  
24 provide such records to the Director within five (5) business days of a City request  
25 to review records.

26 B. Concessionaire shall install and maintain accurate receipt  
27 printing cash registers or computer systems and shall record on the cash registers  
28 or computer systems every sale of merchandise and services or other transactions



1 at the time of the transaction on either a cash register having a sealed, continuous  
2 cash register tape with cumulative totals that numbers, records and duplicates each  
3 transaction entered into the register, or serially numbered sales slips. If  
4 Concessionaire chooses to record each sale by using a cash register, the  
5 continuous cash register tape will be sealed or locked in such a manner that it is not  
6 accessible to the person operating the cash register. Concessionaire is required to  
7 close out both the x and z key daily. In addition, Concessionaire shall post a sign  
8 by each cash register that states: "If you do not receive a receipt please call (562)  
9 570-3103." If Concessionaire chooses to record each sale by using a computer  
10 system, the computer-generated receipts shall be retained in chronological order  
11 (including those canceled, voided or not used) for three (3) years. If Concessionaire  
12 chooses to record each sale on individual slips, the sales slips (including those  
13 canceled, voided, or not used) will be retained in numerical sequence for three (3)  
14 years.

15 C. Concessionaire, will prepare, preserve, and maintain, for a  
16 period of not less than three (3) years, the following books, accounts and records:

17 i. Daily cash register summary tapes and sealed,  
18 continuous cash register tapes or prenumbered sales slips or computer  
19 transaction receipts on transaction summary reports;

20 ii. Concessionaire will ensure that separate financial  
21 records are kept for the business or other revenue from operations on or from  
22 the Premises;

23 iii. All bank statements detailing transactions in or through  
24 any business bank account;

25 iv. Daily or weekly sales calculations;

26 v. A general ledger or a summary record of all cash  
27 receipts and disbursements from operations on or from the Premises;

28 vi. Copies of all tax returns filed with any governmental

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authority that reflect in any manner sales, income, or revenue generated in or from the Premises, including, but not limited to, federal income tax returns and state sales or use tax returns;

vii. Other records or accounts that City may reasonably require in order to ascertain, document, or substantiate gross receipts.

D. Concessionaire shall keep all of the books, records, and other documents in the manner recited in this Section, and will make said books, records and documents available for inspection, examination, or audit by City or City's designated representative upon giving Concessionaire five (5) days prior notice of City's intention to exercise its rights under this Section. In connection with an examination of audit, City will have the right to inspect the records of sales from any other store operated by Concessionaire, but only if the examination is reasonably necessary to ascertain gross sales from the Premises. If upon inspection or examination of Concessionaire's available books and records of account, City determines that Concessionaire has failed to maintain, preserve, or retain the documents, books, and records that this Agreement requires Concessionaire to maintain in the manner set forth in this Section, City will give Concessionaire sixty (60) days to cure the deficiencies. Further, if Concessionaire is found to be deficient in maintaining any of documents, books, or records, Concessionaire will reimburse City for all reasonable expenses incurred by City in determining the deficiencies, including without limitation any audit or examination fees.

E. The receipt and acceptance by City of any statement or any payment of compensation for any period shall not bind City as to the correctness of the statement or payment.

F. Gross Receipts. "Gross receipts" as used herein shall include the following:

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i. The gross selling price of all merchandise sold or services provided at the Premises or pursuant to this Agreement by Concessionaire or any of its subcontractors or agents.

ii. Gross receipts shall include sales for cash, credit, or services whether collected or not. Gross receipts shall not include, or if included shall be deducted (but only to the extent they have been included), any sales and use taxes, transportation taxes, excise taxes, franchise taxes, and other similar taxes now or in the future imposed on the sale of food, beverages, merchandise, or services, but only if such taxes are added to the selling price, separately stated, collected separately from the selling price and collected from customers.

G. Statement of Gross Receipts: Concessionaire shall prepare and deliver or cause to be prepared and delivered to City at:

Department of Parks, Recreation and Marine  
2760 Studebaker Road  
Long Beach, CA 90815-1697  
Attention: Contract Management

With a copy to:

Department of Parks, Recreation and Marine  
205 Marina Drive  
Long Beach, CA 90803  
Attention: Marine Bureau Manager

within twenty (20) days after the end of each month during the Term, a financial statement showing in reasonable detail Concessionaire's gross receipts for the preceding calendar month or partial calendar month. Concessionaire shall within thirty (30) days of each calendar year deliver to City, at the address set forth in this subsection E, a statement showing gross receipts of the preceding calendar year or partial calendar year. Such statement shall be prepared and delivered to City in

1 accordance with generally accepted accounting practices containing a statement of  
2 gross receipts and a computation of percentage of gross receipts. Each statement  
3 shall be signed and certified to be correct by an officer of Concessionaire.

4 9. CONCESSION BUILD-OUT: Concessionaire shall be responsible for  
5 the build-out of all concession interior front-of-house and back-of-house, including kitchens  
6 and food preparation areas. Concessionaire shall design and build out the interior of the  
7 concessions/café as well as provide the necessary equipment, fixtures, materials, and  
8 furniture necessary to operate. All aspects of design, including, but not limited to, signage,  
9 fixtures, and furnishings are subject to City approval.

10 10. PREVAILING WAGES: Any improvements made to the Building,  
11 Premises or otherwise authorized hereunder constitute a “public work” subject to the  
12 provisions of Labor Code Sections 1720 *et seq.* and the requirements of Title 8 of the  
13 California Code of Regulations Sections 16000 *et seq.* Concessionaire, its contractors and  
14 subcontractors of any tier shall be governed by and required to comply with these statutes  
15 and regulations in connection with the work. Pursuant to Labor Code Section 1771,  
16 Concessionaire, all contractors and subcontractors of any tier shall pay not less than the  
17 prevailing wage rates to all workers employed in execution of the work. Concessionaire, its  
18 contractors and subcontractors shall comply with applicable statutes and regulations,  
19 including but not limited to Labor Code Section 1771, 1775, 1777.5, 1813 and 1815. No  
20 contractor or subcontractor may be listed on a bid proposal for a public works project unless  
21 registered with the Department of Industrial Relations pursuant to Labor Code Section  
22 1725.5 with limited exceptions from this requirement for bid purposes only under Labor  
23 Code Section 1771.1(a). No contractor or subcontractor may be awarded a contract for  
24 public work on a public works project unless registered with the Department of Industrial  
25 Relations pursuant to Labor Code Section 1725.5. This work is subject to compliance  
26 monitoring and enforcement by the Department of Industrial Relations.

27 11. IMPROVEMENTS: Concessionaire shall not install, erect, or  
28 construct any building, improvement, or structure on the Premises nor alter the same

1 without the prior written approval of the City Manager and work so approved shall comply  
2 with the following.

3           A.    Compliance with Law. Concessionaire's work shall comply with  
4 all applicable governmental laws, rules, regulations and orders. Prior to  
5 commencement of construction, Concessionaire shall procure, at its sole expense,  
6 all necessary building, fire, safety and other permits. City will cooperate with  
7 Concessionaire in obtaining such permits provided, however, City's cooperation  
8 shall not be deemed or construed as a waiver of any right or obligation of City acting  
9 in its regulatory capacity.

10           B.    No Liens. Concessionaire shall keep the Premises free from  
11 all liens for any work done, labor performed or material furnished by or for  
12 Concessionaire. Concessionaire shall defend, indemnify and hold City, its officials  
13 and employees harmless from and against all claims, liens, demands, causes of  
14 action, liability, loss, costs and expenses, including reasonable attorney's fees, for  
15 any such work done, labor performed, or materials furnished on the Premises or to  
16 Concessionaire for construction or repair. If a lien is imposed on the Premises as a  
17 result of construction or repair, Concessionaire shall (i) record a valid release of lien,  
18 (ii) deposit with City cash in an amount equal to 125% of the amount of the lien and  
19 authorize payment to the extent of said deposit to any subsequent judgment holder  
20 with regard to the lien, or (iii) procure and record a lien release bond in accordance  
21 with California Civil Code Section 3143 issued by a surety authorized to do business  
22 in California.

23           C.    Notice of Non-responsibility. Concessionaire shall give notice  
24 to City twenty (20) days prior to the commencement of Concessionaire's work or  
25 other work of improvements for the purpose of enabling City to post and record  
26 notices of non-responsibility under the provisions of Section 3094 of the California  
27 Civil Code, or any other similar notices which may be allowed by law.

28           D.    Notice of Completion. On completion of Concessionaire's

1 work, Concessionaire shall file a Notice of Completion in the Official Records of the  
2 Los Angeles County Recorder.

3 E. Contracts for Work. All contracts entered by Concessionaire  
4 relating to the Premises shall contain the following statement: "This contract shall in  
5 no way bind the City of Long Beach nor obligate it for any costs or expenses  
6 whatsoever under this contract."

7 F. Completion of Work. Concessionaire's work shall be deemed  
8 to have been completed upon execution and delivery to City of notice certifying  
9 completion thereof and further certifying that all costs and expenses thereof have  
10 been paid and that there are no unpaid costs or expenses of any nature related  
11 thereto.

12 G. Ownership of Improvements. Any building, structure or other  
13 improvement constructed or placed on the Premises by Concessionaire, at  
14 Concessionaire's cost, shall become the property of City without the payment of any  
15 compensation therefor.

16 12. ADVERTISING. Concessionaire, at its cost, may place or erect and  
17 maintain signs on the Premises, provided that Concessionaire obtains prior written  
18 approval from the Director, which shall not be unreasonably withheld. Further,  
19 Concessionaire's signs shall be in compliance with City's sign ordinance and any  
20 applicable regulations imposed by the California Coastal Commission.

21 13. UTILITIES. Concessionaire, at its cost, shall promptly pay or cause  
22 to be paid all utility fees, costs and charges resulting from such use or assessments for  
23 utilities levied against the Premises for any period during the Term.

24 14. TRASH REMOVAL AND DISPOSAL. Concessionaire shall keep the  
25 Premises in a neat and sanitary condition, as determined by the City Manager in his/her  
26 sole discretion, including but not limited to removing and cleaning any graffiti, waste,  
27 refuse, trash or debris from the Premises. No offensive or refuse matter constituting a fire  
28 hazard or nuisance shall be deposited or remain on the Premises. All refuse, trash, debris

1 and/or waste material shall be removed from the Premises, at Concessionaire's sole cost,  
2 in plastic bags of ten (10) mils or thicker. City shall have the right to modify or change the  
3 trash removal operation of Concessionaire and Concessionaire agrees to accept and  
4 comply with such modifications or changes.

5           15. PEST CONTROL. Concessionaire shall be solely responsible for a  
6 pest free environment within the Premises and shall maintain its own pest control services  
7 in accordance with best practices. All materials used in pest control shall conform to  
8 applicable federal, state and local laws, rules and regulations. All control substances  
9 utilized shall be used with all precautions to obviate the possibility of accidents to humans,  
10 domestic animals and pets. Whenever City deems that pest control services must be  
11 provided to the Building, Concessionaire shall pay for the costs of services provided for the  
12 Premises.

13           16. MAINTENANCE AND REPAIR. Concessionaire shall maintain, at its  
14 sole cost and to the satisfaction of the City Manager, the Premises and all non-structural  
15 improvements therein, including but not limited to restaurant and food concession areas,  
16 in a safe, clean, good condition, in substantial repair, and in compliance with all applicable  
17 laws, rules and regulations. Concessionaire shall furnish adequate containers for the  
18 disposal of trash and garbage and shall pay any trash disposal charges incurred therefore.  
19 Concessionaire shall not allow refuse matter or any substance constituting a fire hazard,  
20 material detrimental to the public health or any hazardous material at the concession on  
21 the property where the concession is located. Concessionaire shall remove graffiti within  
22 twenty-four (24) hours after it appears. Concessionaire's duty to maintain shall include but  
23 not be limited to the duty to repair and replace the improvements, as needed. If  
24 Concessionaire fails to maintain the Premises, City may notify Concessionaire of said  
25 failure. If Concessionaire fails to correct the situation within thirty (30) days after notice or  
26 such longer period as may be established by City, then City may make the necessary  
27 correction and the cost thereof, including but not limited to the cost of labor, materials,  
28 equipment and administration, shall be paid by Concessionaire as additional Rent, within

1 ten (10) days after receipt of a statement of said costs from City. City may at its option,  
2 choose other remedies available herein or by law. Concessionaire hereby waives the  
3 extent permitted by law any right to make repairs at the expense of City or to vacate the  
4 Premises in lieu thereof as may be provided by law. City shall have no obligation to perform  
5 any maintenance on the Premises.

6 17. ABANDONMENT: Abandonment shall mean the failure of  
7 Concessionaire to conduct or operate the specified Concession at the Premises for the  
8 timeframes specified in subsection 2.A. Concessionaire understands and agrees that in  
9 the event that the stand(s)/storage unit(s)/equipment remain abandoned, after notice by  
10 City, Concessionaire fails to relocate or remove these items within a reasonable timeframe,  
11 City reserves the right to relocate or remove the items at Concessionaire's expense to a  
12 secure storage facility and terminate this Agreement. Both parties further agree that failure  
13 of Concessionaire to reimburse City for the reasonable costs to relocate and store  
14 Concessionaire's property described herein within sixty (60) days of incurring said  
15 expenses shall constitute forfeiture of said property and City shall dispose of the items for  
16 the purpose of recouping expenses.

17 18. NO CITY LIABILITY. City, its boards, commissions, officials and  
18 employees shall not be liable for and Concessionaire hereby waives all claims against them  
19 for loss, theft, or damage to equipment, furniture, trade fixtures, furnishings, records, and  
20 other personal property in, on or at the Premises, for loss or damage to Concessionaire's  
21 business, or injury to or death of persons in, on or at the Premises from any cause except  
22 to the extent caused by the gross negligence or willful misconduct of City, its Board,  
23 commissions, officials and employees.

24 19. DAMAGE OR DESTRUCTION OF IMPROVEMENTS.

25 A. Responsibility for Repair. If structural components (including  
26 without limitation load-bearing walls, roof or foundation) of the Building or any  
27 improvement at the Premises shall be damaged or destroyed by any cause  
28 whatsoever during the Agreement term or extension thereof, Concessionaire shall,



1 with reasonable promptness, report the damage to City. City shall have  
2 responsibility to make repairs to replace the same, to at least the condition existing  
3 immediately prior to such damage or destruction. Concessionaire shall be  
4 responsible for reimbursing City for the pro rata share of expenses incurred to repair  
5 or replace the damage or destruction to the Building or the Premises to the extent  
6 contributed to by the act or omission of Concessionaire, its employees or agents.  
7 Concessionaire shall be responsible for reimbursing City even though the proceeds  
8 of any insurance policies covering the loss ("Insurance Proceeds") may be  
9 insufficient to reimburse Concessionaire therefor, provided, however, that if such  
10 proceeds of insurance are more than sufficient to pay the cost of any such  
11 rebuilding, then Concessionaire shall be entitled to receive any surplus. City at its  
12 discretion may authorize Concessionaire in writing to make repairs to replace the  
13 same to at least the condition existing immediately prior to such damage or  
14 destruction.

15 B. Insurance Proceeds. Insurance Proceeds shall be held by an  
16 Insurance Trustee mutually agreed to by the parties, and shall be paid to  
17 Concessionaire or as Concessionaire may direct from time to time as the restoration  
18 of the Premises progresses, to pay or reimburse City for the cost of such restoration  
19 upon the written request of City accompanied by evidence satisfactory to the  
20 Insurance Trustee that (i) an amount equal to the amount requested is then due and  
21 payable or has been paid and is properly a part of such cost of restoration and (ii)  
22 the net Insurance Proceeds not yet advanced will be sufficient for the completion of  
23 the restoration. If at any time during the period of restoration and/or reconstruction  
24 City shall determine that the Insurance Proceeds are insufficient to cause such  
25 restoration, then upon delivery of written notice thereof and specifying the deficit  
26 Concessionaire shall deposit in trust with the Insurance Trustee such additional  
27 sums as may be required to complete the restoration of the Premises. Upon receipt  
28 by the Insurance Trustee of evidence satisfactory to it that (i) the restoration of the

1 Premises has been completed, (ii) the cost thereof has been paid in full, and (iii)  
2 there are no mechanic's or similar liens for labor or materials supplied in connection  
3 therewith, the balance, if any, of such Insurance Proceeds shall be paid to  
4 Concessionaire or as Concessionaire may direct.

5 C. Procedure for Restoration of Improvements. Following  
6 damage to all or any portion of the Building or the Premises, Concessionaire shall  
7 reimburse City for restoration of the Building, the Premises and/or the improvements  
8 thereon, whether or not insurance proceeds are sufficient to do so.

9 20. INSURANCE. Concurrent with the execution of this Agreement and  
10 in partial performance of Concessionaire's obligations hereunder, Concessionaire shall  
11 procure and maintain at Concessionaire's expense for the duration of this Agreement,  
12 including any extensions, renewals, or holding over thereof, the following insurance  
13 coverages from insurance companies that are admitted to write insurance in the State of  
14 California or from authorized non-admitted insurers that have ratings of or equivalent to an  
15 A:VIII by A.M. Best and Company:

16 A. Commercial General Liability insurance equivalent in coverage  
17 scope to ISO form CG 00 01 10 93 in an amount not less than One Million Dollars  
18 (\$1,000,000) per occurrence and Two Million Dollar (\$2,000,000) in aggregate  
19 providing coverage from and against claims, demands, causes of action, expenses,  
20 costs, or liability for injury to or death of persons, or damage to or loss of property  
21 arising out activities performed by or on behalf of Concessionaire and for  
22 Concessionaire's operations or work under or in connection with this Agreement.  
23 Such insurance shall include, as may be applicable to Concessionaire's operations  
24 under or in connection with this Agreement, broad form contractual liability, and  
25 products and completed operations liability, shall include, as applicable to  
26 Concessionaire's and its subcontractors' operations under or in connection with this  
27 Agreement. The City of Long Beach, its officials, employees and agents shall be  
28 added as additional insureds by endorsement equivalent in coverage scope to ISO

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form CG 20 26 11 85. This insurance shall contain no special limitations on the scope of protection afforded to City, its officials, employees and agents, and shall provide cross-liability protection.

B. Only if applicable to Concessionaire or for Concessionaire's operations or work under on in connection with this Agreement, the following insurance coverages shall apply:

- i. If alcohol is sold or served, liquor liability with limits of One Million Dollars (\$1,000,000) per occurrence,
- ii. If instruction of minors or other services wherein adults might be alone with unrelated minors are included, general liability limits are increased to \$2,000,000/\$4,000,000 and the general liability shall not exclude coverage for abuse and molestation (this insurance shall name the City of Long Beach, its officials, employees and agents additional insureds),
- iii. If pyrotechnics are permitted, pyrotechnic liability with limits of Five Million Dollars (\$5,000,000) per occurrence (this insurance shall name the City of Long Beach, its officials, employees and agents additional insureds),
- iv. If use of unmanned aerial systems (UASs or drones) are permitted, drone aircraft liability with limits of Five Million Dollars (\$5,000,000) per occurrence (this insurance shall name the City of Long Beach, its officials, employees and agents additional insureds), and
- v. If use of any boats or rental of boats exceeding 25 feet in length is allowed under or in connection with this Agreement, marine liability with limits of One Million Dollars (\$1,000,000) per occurrence (this insurance shall name the City of Long Beach, its officials, employees and agents additional insureds).

C. "All Risk" property insurance in an amount sufficient to cover the full replacement value of the buildings and structural improvements on the

1 Premises. City shall be named as an insured under a standard loss payable  
2 endorsement.

3 D. "All Risk" property insurance in an amount sufficient to cover  
4 the full replacement value of Concessionaire's personal property and equipment on  
5 the Premises.

6 E. Business interruption insurance insuring that the rent and fees  
7 due to City shall be paid for a period of up to twelve (12) months if the Premises are  
8 destroyed or rendered inaccessible.

9 F. Workers' Compensation as required by the State of California  
10 endorsed, as applicable, to include, only as applicable, United States  
11 Longshoremen and Harbor Workers' Compensation Act coverage and Jones' Act  
12 coverage and Employer's Liability insurance with minimum limits of One Million  
13 Dollars (\$1,000,000.

14 Any self-insurance program or self-insured retention must be  
15 approved separately in writing by City and shall protect the City of Long Beach, its officials,  
16 employees, and agents in the same manner and to the same extent as they would have  
17 been protected had the policy or policies not contained retention provisions.

18 Each insurance policy shall be endorsed to state that coverage shall  
19 not be suspended, voided, materially changed, or canceled by either party except after  
20 thirty (30) days prior written notice to City, and shall be primary to City. Any insurance or  
21 self-insurance maintained by City shall be excess to and shall not contribute to insurance  
22 or self-insurance maintained by Concessionaire.

23 Any subcontractors which Concessionaire may use in the  
24 performance of this Agreement shall be required to indemnify City to the same extent as  
25 Concessionaire and to maintain insurance in compliance with the provisions of this Section.

26 Concessionaire shall deliver to City certificates of insurance and the  
27 required endorsements for approval as to sufficiency and form prior to commencement of  
28 this Agreement. The certificates and endorsements for each insurance policy shall contain

1 the original signature of a person authorized by that insurer to bind coverage on its behalf.  
2 Concessionaire shall, at least thirty (30) days prior to expiration of such policies, furnish  
3 City with evidence of renewals. City reserves the right to require complete certified copies  
4 of all said policies at any time.

5           Such insurance as required herein shall not be deemed to limit  
6 Concessionaire's liability relating to performance under this Agreement. The procuring of  
7 insurance shall not be construed as a limitation on liability or as full performance of the  
8 indemnification and hold harmless provisions of this Agreement. Concessionaire  
9 understands and agrees that, notwithstanding any insurance, Concessionaire's obligation  
10 to defend, indemnify, and hold City, its officials, agents, and employees harmless  
11 hereunder is for the full and total amount of any damage, injuries, loss, expense, costs, or  
12 liabilities caused by or in any manner connected with the operations of Concessionaire.

13           Not more frequently than every three (3) years, if in the opinion of City,  
14 the amount of the foregoing insurance coverages is not adequate, Concessionaire shall  
15 amend the insurance coverage as required by City's Risk Manager or designee ("Risk  
16 Manager").

17           Any modification or waiver of the insurance requirements herein shall  
18 be made only with the written approval of the City's Risk Manager.

19           21. INDEMNIFICATION.

20           A. General Indemnity. Concessionaire shall defend and indemnify  
21 the City of Long Beach and its officers and employees while acting within the scope  
22 of their duties from and against any and all actions, suits, proceedings, claims and  
23 demands, costs (including attorneys' fees and court costs), expense and liability of  
24 any kind or nature whatsoever ("claims") for injury to or death of persons or damage  
25 to property (including property owned by or under the control of City) which may be  
26 brought, made, filed against, imposed upon or sustained by City, its officers or  
27 employees based upon or arising out of:  
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i. An act or omission of Concessionaire, its officers, agents, employees, contractors, licensees or invitees or of any person entering upon the Premises with the express or implied invitation of Concessionaire;

ii. A violation by Concessionaire, its officers, agents, employees, contractors, licensees or invitees or of any other person entering upon the Premises with the express or implied invitation of Concessionaire of any law ordinance or governmental order of any kind;

iii. The use or occupancy of the Premises by Concessionaire, its officers, agents, employees, contractors, licensees or invitees or of any other person entering upon the Premises with the express or implied invitation of Concessionaire.

This indemnity shall not include claims based upon or arising out of the sole negligence, gross negligence, or willful misconduct of City, its officers and employees. Further, this indemnity shall not require payment of a claim by City or its officers or employees as a condition precedent to the recovery under the same. This indemnification provision supplements and in no way, limits the scope of the indemnifications set out in subsection 21.B. The indemnity obligation of Concessionaire under this Section shall survive the expiration or termination, for any reason, of this Agreement.

B. Environmental Release and Indemnification.

Concessionaire hereby agrees to hold harmless, defend and indemnify City and its employees, members and officials from and against all liability, loss, damage, costs, penalties, fines and/or expenses (including attorneys' fees and court costs) arising out of or in any way connected with or the activities, acts or omissions of Concessionaire, its tenants, employees, contractors or agents on or affecting the Premises without regard to fault or negligence including but not limited to the release of any hazardous materials into the air, soil, groundwater or

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surface water on, in, under or from the Premises whether such condition, liability, loss, damage, cost, penalty, fine and/or expense shall accrue or be discovered before or after termination of this Agreement. This indemnification supplements and in no way, limits the scope of the indemnification set forth in subsection 21.A.

In addition, Concessionaire waives, releases, acquits and forever discharges City, its employees, members and officials or any other person acting on behalf of City, of and from any and all claims, actions, causes of action, demands, rights, damages, costs, expenses, or compensation (collectively "claims") whatsoever (including, but not limited to, all claims at common law and/or under any federal, state or local environmental, health and/or safety-related law, rule, regulation or order, currently existing and as amended or enacted in the future ("Environmental Law"), whether direct or indirect, known or unknown, foreseen or unforeseen, which Concessionaire now has or may have or which may arise in the future on account of or in any way growing out of or in connection with any hazardous materials on, under, from, or affecting the Premises, or any law or regulation applicable thereto. Concessionaire acknowledges that it is familiar with Section 1542 of the California Civil Code which reads: "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."; and hereby releases Concessionaire from any unknown claims and waives all rights it may have under Section 1542 of the Civil Code or under any other statute or common law principle of similar effect.

- i. Exclusions.
  - (a) Contamination on, beneath, or abutting the Premises which existed prior to the initial commencement date of the Agreement.

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(b) Contamination which has emanated or emanates from a location other than the Premises and which has trespassed onto, underneath or across the Premises.

(c) Contamination which is unrelated to Concessionaire's use, occupancy of Concessionaire's tenants, invitees, or guests, on the Premises.

(d) Concessionaire need not indemnify City for activities carried on or around the Premises by City as part of occasional use of the Premises by City or its other Concessionaires, licensees, or the like or actions of the public who have not been Permitted or solicited by Concessionaire.

C. Definition. "Hazardous material" means any substance:

i. The presence of which requires investigation or remediation under any federal, state or local statute, regulation, ordinance, order, action, policy or common law; or

ii. Which is or becomes defined as a "hazardous waste," "hazardous substance," pollutant or contaminant under any federal, state or local statute, regulation, rule or ordinance or amendments thereto including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601 et seq.) and/or the Resource Conservation and Recovery Act (42 U.S. C. Section 6901 et seq.); or

iii. Which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by governmental authority, agency, department, commission, board, agency or instrumentality of the United States, the State of California or any political subdivision thereof; or



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iv. The presence of which on the Premises causes or threatens to cause a nuisance upon the Premises or to adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Premises; or

v. The presence of which on adjacent properties could constitute a trespass by Concessionaire; or polychlorinated bipheynols (PCBs), asbestos or urea formaldehyde foam insulation.

22. FORCE MAJEURE. City and Concessionaire shall not be deemed to be in default in the performance of the terms, covenants or conditions of this Agreement if either party is prevented from performing said terms, covenants or conditions by causes beyond its control, including, without limitation, acts of God or the public enemy; failures due to nonperformance or delay of performance by suppliers or contractors; any order, directive or other interference by municipal, state, federal or other governmental official or agency; any catastrophe resulting from the elements, flood, fire, explosion, or any other cause reasonably beyond the control of a party, but excluding strikes or other labor disputes, lockouts, work stoppages or financial inability.

23. ASSIGNMENT OR TRANSFER. Concessionaire shall not assign or transfer this Agreement nor shall any interest herein be assignable or transferable by operation of law or by any process or proceedings of any court or otherwise. Any attempted transfer or assignment shall be void and confer no rights whatsoever upon a transferee or assignee. Notwithstanding the foregoing, Concessionaire may grant subleases, licenses or concessions to others provided Concessionaire shall first obtain the written consent of the City Manager. The City Manager shall not be required to give any consent to a proposed tenant, licensing or grant of concession rights, unless and until Concessionaire has submitted to the City Manager such additional information regarding the identity of the proposed tenant, licensee or concessionaire and the terms and conditions of the proposed transaction as may be required by the City Manager to make a determination to grant or withhold such consent. Further, the City Manager shall have the right to impose such

1 further conditions in connection with the granting of consent as may be required to assure  
2 that public health, safety, welfare and convenience will be best served by the proposed  
3 tenant, license or concession. If Concessionaire shall be adjudicated a bankrupt or become  
4 insolvent or any interest in this Agreement be taken by virtue of attachment, execution, or  
5 receivership, City may terminate this Agreement upon five (5) days written notice to  
6 Concessionaire.

7           24.    HOLDING OVER. This Agreement shall terminate without any further  
8 notice as of the Agreement expiration date set forth in Section 4. Any holding over by  
9 Concessionaire after the Agreement expiration date shall not constitute a renewal or  
10 extension or give Concessionaire any rights in or to the Premises except as expressly  
11 provided in this Agreement. Any holding over after the expiration date with the consent of  
12 City shall be construed to be month-to-month (terminable upon thirty (30) days advance  
13 notice), at fees no less than the fees due for the last year of the Term, and shall otherwise  
14 be on the terms and conditions herein specified.

15           25.    INSPECTION AND ACCESS. City's authorized representatives shall  
16 have access to and across the Premises during business hours and, in the event of an  
17 emergency, at any other time for inspection, repair of publicly-owned utilities and  
18 structures, and for fire and police purposes. Concessionaire to provide the City with a  
19 keycode and/or access for emergency access to the Premises. During any inspection, City  
20 shall have the right to use photographic devices, equipment or other instruments for  
21 recording conditions and events on the Premises.

22           26.    TAXES. This Agreement may create a possessory interest subject to  
23 property taxation and Concessionaire may be liable for the payment of property taxes  
24 levied on such possessory interest. Concessionaire shall pay or cause to be paid, prior to  
25 delinquency, all taxes, assessments and other governmental and district charges that may  
26 be levied or assessed for buildings, improvements or property located on the Premises and  
27 upon possessory interests created by this Agreement. Satisfactory evidence of such  
28 payments shall be delivered by Concessionaire upon demand therefor.

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27. CITY SPONSORED SPECIAL EVENTS.

A. City reserves the right to issue other permits for operations along the Premises, including but not limited to, retail vendor permits, and permits for special events and filming (special events include by way of example, but are not limited to, the Long Beach Grand Prix, the 2028 Olympics, and/or filming activities).

B. City and Concessionaire agree to cooperate with each other to accommodate all such events and to limit adverse impacts to the Premises as much as reasonably possible.

C. Concessionaire acknowledges that the Premises are within an area which hosts special events throughout the year. The Office of Special Events & Filming and Concessionaire will need to work cooperatively to ensure maximum benefit to each operation.

D. Concessionaire acknowledges that during special events, Concessionaire may be prohibited from operating at designated locations or in the sole discretion of City, may be temporarily moved to an alternative location. In such event, Concessionaire agrees its operations may be temporarily suspended or relocated pursuant to instructions issued by the City Manager.

28. BUSINESS INTERRUPTION. City shall not be liable to

Concessionaire for any damages arising out of the temporary prohibition of concession operations resulting from any environmental protection, public safety, maintenance or governmental activities which requires prohibition of the concession from being present on the Premises and/or engaging in its business activities.

29. GENERAL PROVISIONS.

A. Notices, Demands and Communication Between the Parties.

Notices, demands, and communication between City and Concessionaire shall be in writing and shall be sufficiently given if personally served or if mailed by

OFFICE OF THE CITY ATTORNEY  
CHARLES PARKIN, City Attorney  
411 West Ocean Boulevard, 9th Floor  
Lona Beach, CA 90802-4664

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registered or certified mail, postage prepaid, return receipt requested addressed as follows:

TO CITY:                   City Manager  
                                  10th Floor, City Hall  
                                  411 West Ocean Boulevard  
                                  Long Beach, California 90802

WITH A COPY TO: Director of Parks, Recreation & Marine  
                                  2760 Studebaker Road  
                                  Long Beach, California 90815-1697  
                                  Attention: Contract Management

AND:  
                                  Department of Parks, Recreation and Marine  
                                  205 Marina Drive  
                                  Long Beach, CA 90803  
                                  Attention: Marine Bureau Manager

TO CONCESSIONAIRE:  
                                  429 Shoreline Village Drive  
                                  Long Beach, CA 90802

Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within forty-eight (48) hours from the time of mailing if mailed as provided in this subsection.

B. Conflict of Interest. No member, official or employee of City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employees participate in any decision relating to this Agreement which affects his personal interest or the interests of any corporation,

1 partnership or association in which he is, directly or indirectly, interested. No  
2 member, official or employee of City shall be personally liable to Concessionaire, or  
3 any successor in interest, in the event of any default or breach by City or for any  
4 amount which may become due to Concessionaire or successor or on any  
5 obligations under the terms of this Agreement.

6 C. Defaults and Remedies.

7 i. Defaults – General. Failure by either party to perform  
8 any term or provision of this Agreement constitutes default under this  
9 Agreement, if not cured within (i) ten (10) days for a monetary default, or (ii)  
10 thirty (30) days for a non-monetary default, from the date of receipt of a  
11 written notice from the other party specifying the default; provided that if such  
12 non-monetary default cannot reasonably be cured within such thirty (30) day  
13 period, the party receiving such notice of such default shall not be in default  
14 under this Agreement if such party commences the cure of such default within  
15 such thirty (30) day period and thereafter diligently prosecutes the steps to  
16 cure such default to completion; provided, however, in no event may such  
17 cure period exceed ninety (90) days.

18 ii. Institution of Legal Actions. In addition to any other  
19 rights or remedies, either party may institute a legal action to cure, correct,  
20 or remedy any default, to recover damages for any default, or to obtain any  
21 other remedy consistent with the purpose of this Agreement. Such legal  
22 actions must be instituted in the South Branch of the Superior Court of the  
23 County of Los Angeles, State of California, or in the Federal District court in  
24 the Central District of California.

25 iii. Applicable Law. The laws of the State of California shall  
26 govern the interpretation and enforcement of this Agreement.  
27 Concessionaire during its use of the Premises shall at all times comply with  
28 all laws, ordinances, rules, and regulations of and obtain permits from all

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federal, state, and local governmental authorities having jurisdiction over the Premises and Concessionaire’s activities thereon.

iv. Rights and Remedies Are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

v. Inaction Not a Waiver of Default. Any failures or delays by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

vi. Remedies. In the event of a default by Concessionaire, which is not cured by Concessionaire within the times specified in this Agreement, City without further notice to Concessionaire, may declare this Agreement and/or Concessionaire’s right of possession at an end and may reenter the Premises by process of law, and shall be entitled to whatever additional rights and remedies it may have under applicable law.

D. Partial Invalidity. If any term or provision of this Agreement or the application thereof to any party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term or provisions, to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

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E. Entire Agreement, Waivers and Amendments. This Agreement constitutes the entire understanding and agreement of the parties. This Agreement integrates all the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations between the parties with respect to all or any part of the subject matter hereof.

F. Waivers. All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of City or Concessionaire and all amendments hereto must be in writing by the appropriate authorities of City and Concessionaire.

G. Successors in Interest. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the heirs, executors, assigns and successors in interest of the parties.

H. Nondiscrimination. In connection with performance of this Agreement and subject to applicable laws, rules and regulations, Concessionaire shall not discriminate in rendering services hereunder on the basis of race, color, religion, national origin, sex, sexual orientation, AIDS, HIV status, age, disability, handicap or veteran status.

I. No Joint Venture or Partnership. Nothing in this Agreement shall be construed as creating either a partnership or joint venture between the parties.

J. Jointly Drafted. This Agreement is jointly drafted by the parties and it is not to be construed against either party as the drafter.

K. Municipal Powers. Nothing contained herein shall be construed as a limitation upon powers of City as a chartered city of the State of California. This Agreement is entered into by City in its proprietary capacity and nothing contained herein shall relieve Concessionaire from complying with all requirements, rules, regulations or ordinances of the City of Long Beach.

OFFICE OF THE CITY ATTORNEY  
CHARLES PARKIN, City Attorney  
411 West Ocean Boulevard, 9th Floor  
Long Beach, CA 90802-4664


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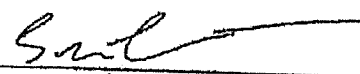
L. No Mineral Rights. This Agreement creates no rights in Concessionaire to minerals, or proceeds from mineral production, which may lie below the Premises including but not limited to any unitized oil.

M. No Relocation Benefits. Concessionaire shall have no rights to relocation benefits mandated by the laws of the State of California as to the Premises.

N. Americans with Disabilities Act: Concessionaire shall have and be allocated the sole responsibility to comply with the Americans with Disabilities Act of 1990 ("ADA"), as amended, with respect to the Premises and Concessionaire shall defend, indemnify and hold City, its officials and employees harmless from and against all claims of failure to comply with or violation of the ADA.

LOUISIANA CHARLIE'S LLC, a California limited liability company

7/9/21, 2021 By Owner   
Name Shanda Laurent  
Title Owner

7/9/21, 2021 By Owner   
Name Eric Laurent  
Title Owner

"Concessionaire"  
CITY OF LONG BEACH, a municipal corporation

July 30, 2021 By Linda J. Jaton  
City Manager

"City"  
**EXECUTED PURSUANT  
TO SECTION 301 OF  
THE CITY CHARTER  
APPROVED AS TO FORM**  
July 29, 20 21

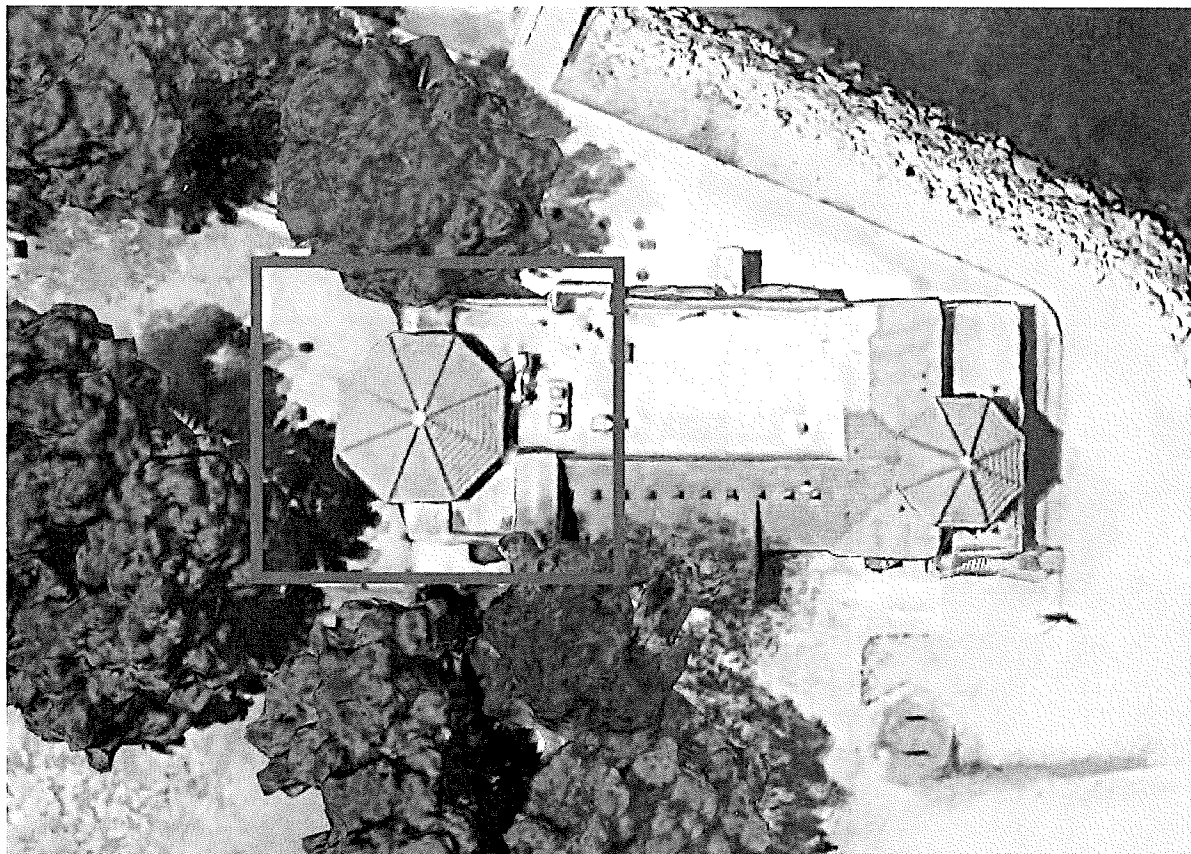
CHARLES PARKIN, City Attorney  
By Gary J. Anderson  
GARY J. ANDERSON  
PRINCIPAL DEPUTY CITY ATTORNEY



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EXHIBIT "A"

PREMISES DEPICTION / DESCRIPTION



OFFICE OF THE CITY ATTORNEY  
CHARLES PARKIN, City Attorney  
411 West Ocean Boulevard, 9th Floor  
Lond Beach, CA 90802-4664

OFFICE OF THE CITY ATTORNEY  
CHARLES PARKIN, City Attorney  
411 West Ocean Boulevard, 9th Floor  
Lona Beach, CA 90802-4664

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EXHIBIT "B"  
COASTAL DEVELOPMENT PERMIT

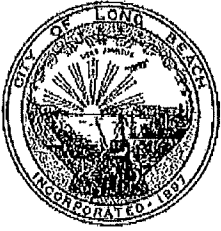


EXHIBIT B

# CITY OF LONG BEACH

DEPARTMENT OF DEVELOPMENT SERVICES

333 WEST OCEAN BOULEVARD • LONG BEACH, CALIFORNIA 90802 • FAX (562)570-6068

## REVISED NOTICE OF FINAL LOCAL ACTION

**Application No.:** 0911-12

**Project Location:** 5839 E. Appian Way

**Applicant:** City of Long Beach  
c/o Sandra Gonzalez  
2760 Studebaker Road  
Long Beach, CA 90815

**Permit(s) Requested:** Local Coastal Development Permit

**Project Description:** A Local Coastal Development Permit to demolish two restrooms and construct a 1,083-square-foot kitchen and concession stand, a 1,025-square-foot lifeguard storage room, and 10 single occupancy restrooms to an existing 1,438-square-foot storage facility at 5839 E. Appian Way located within the Coastal Zone.

**Local action was taken by the:** Zoning Administrator on:  
December 21, 2009

**Decision:** Conditionally Approved

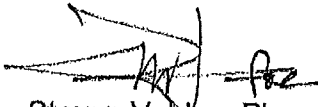
**Local action is final on:** December 22, 2009

This project is in the Coastal Zone and IS appealable to the Coastal Commission.

*"If you challenge the action in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or issues raised via written correspondence delivered to the (public entity conducting the hearing) at or prior to the public hearing."*

**See other side for City of Long Beach and California Coastal Commission appeal procedures and time limits.**

  
Derek Burnham  
Current Planning Officer

  
Steven Valdez, Planner  
Phone No.: (562)570-6571

Attachments

District: 3



EXHIBIT B

# CITY OF LONG BEACH

DEPARTMENT OF DEVELOPMENT SERVICES

333 WEST OCEAN BOULEVARD • LONG BEACH, CALIFORNIA 90802 • FAX (562)570-6068

SV

M. Beach RR

## Conditions of Approval Acknowledgement

December 22, 2009

Application No.: 0911-12

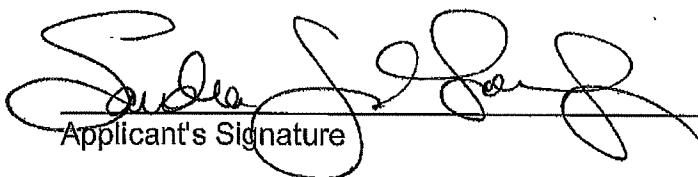
City of Long Beach  
2760 Studebaker Road  
Long Beach, CA 90815

Project address: 5839 E. Appian Way

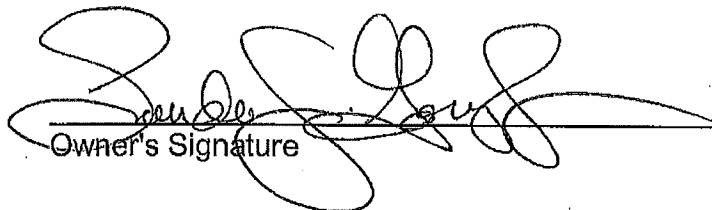
Dear Applicant:

Please have the owner(s) of the property sign this document. It is vital to your project that this form be returned promptly to the project planner so that it can be placed in the case file and you can initiate the plan review process. Please feel free to make a copy for your files.

**"We have read the attached Conditions of Approval and will comply with all such conditions. I realize that violation of any of the conditions is cause for revocation of the approval. I also realize that the approval is based on specific building plans, as indicated in the Conditions of Approval, and that any deviation from these plans without prior written approval from the Site Plan Review Committee will result in denial of final construction approval until such time that the construction is restored to the approved design. Finally, I will notify all architects, designers, contractors, sub-contractors employed by me, and I will notify any successors in interest of all these conditions and of this acknowledgement."**

  
Applicant's Signature

12.23.09  
Date

  
Owner's Signature

12/23/09  
Date

\_\_\_\_\_  
Owner's Signature

\_\_\_\_\_  
Date

**LOCAL COASTAL DEVELOPMENT PERMIT  
SITE PLAN REVIEW  
CONDITIONS OF APPROVAL**

**App. No. 0911-12**

**Date: December 21, 2009**

1. The use permitted on the subject site, in addition to other uses permitted in the P zoning district, shall be a request to demolish two restrooms and construct a 1,083-square-foot kitchen and concession stand, a 1,025-square-foot lifeguard storage room, and 10 single occupancy restrooms to an existing 1,438-square-foot storage facility at 5839 E. Appian Way in the Coastal Zone.
2. This permit and all development rights hereunder shall terminate two years from the effective date (final action date or, if in the appealable area of the Coastal Zone, 21 days after the local final action date) of this permit unless construction is commenced, a business license establishing the use is obtained or a time extension is granted, based on a written and approved request submitted prior to the expiration of the one year period as provided in Section 21.21.406 of the Long Beach Municipal Code.
3. This approval is required to comply with these conditions of approval as long as the use is on the subject site. As such, the site shall allow periodic re-inspections, at the discretion of city officials, to verify compliance. The property owner shall reimburse the City for the inspection cost as per the special building inspection specifications established by City Council (Sec. 21.25.412, 21.25.212).

**Special Conditions of Approval**

4. The developer will be responsible for the following site improvements, prior to the issuance of building permits and to the satisfaction of the Director of Development Services:
  - A. The applicant shall obtain approval for lighting and security requirements to the satisfaction of the Long Beach Chief of Police.
  - B. No payphones shall be installed on site.
  - C. Post "park hours" sign on site, with Long Beach Municipal Code Section.
  - D. The proposed concession stand shall be closed from dusk to dawn.
  - E. No alcohol sales are allowed onsite.
  - F. Landscaping shall not exceed 2 feet from the ground and 6 feet overhang from any tree.
  - G. All parking areas serving the site shall provide appropriate security lighting with light and glare shields to avoid any light intrusion onto

adjacent or abutting residential buildings or neighborhoods pursuant to Section 21.41.259. Other security measures may be required to be provided to the satisfaction of the Chief of Police.

- H. Any graffiti found on site must be removed within 24 hours of its appearance.

### Standard Conditions

5. If, for any reason, there is a violation of any of the conditions of this permit or if the use/operation is found to be detrimental to the surrounding community, including public health, safety or general welfare, environmental quality or quality of life, such shall cause the City to initiate revocation and termination procedures of all rights granted herewith.
6. This permit shall be invalid if the owner(s) and applicant(s) have failed to return written acknowledgment of their acceptance of the conditions of approval on the *Conditions of Approval Acknowledgment Form* supplied by the Planning Bureau. This acknowledgment must be submitted within 30 days from the effective date of approval (final action date or, if in the appealable area of the Coastal Zone, 21 days after the local final action date). Prior to the issuance of a building permit, the applicant shall submit a revised set of plans reflecting all of the design changes set forth in the conditions of approval to the satisfaction of the Zoning Administrator.
7. In the event of transfer of ownership of the property involved in this application, the new owner shall be fully informed of the permitted use and development of said property as set forth by this permit together with all conditions, which are a part thereof. These specific requirements must be recorded with all title conveyance documents at time of closing escrow.
8. All conditions of approval must be printed verbatim on all plans submitted for plan review to the Planning and Building Department. These conditions must be printed on the site plan or a subsequent reference page.
9. The Director of Long Beach Development Services is authorized to make minor modifications to the approved design plans or to any of the conditions of approval if such modifications shall not significantly change/alter the approved design/project and if no detrimental effects to neighboring properties are caused by said modifications. The Zoning Administrator or Planning Commission shall review any major modifications, respectively.
10. Site development, including landscaping, shall conform to the approved plans on file in the Department of Long Beach Development Services. At least one set of approved plans containing Planning, Building, Fire, and, if applicable, Redevelopment and Health Department stamps shall be

- maintained at the job site, at all times for reference purposes during construction and final inspection.
11. All landscaped areas must be maintained in a neat and healthy condition, including public parkways and street trees. Any dying or dead plant materials must be replaced with the minimum size and height plant(s) required by Chapter 21.42 (Landscaping) of the Zoning Regulations.
  12. The property shall be developed and maintained in a neat, quiet, and orderly condition and operated in a manner so as not to be detrimental to adjacent properties and occupants. This shall encompass the maintenance of exterior facades of the building, designated parking areas serving the use, fences and the perimeter of the site (including all public parkways).
  13. All structures shall conform to the Long Beach Building Code requirements. Notwithstanding this subject permit, all other required permits from the Building Bureau must be secured.
  14. Separate building permits are required for signs, fences, retaining walls, trash enclosures, flagpoles, pole-mounted yard lighting foundations and planters.
  15. Approval of this development project is expressly conditioned upon payment (prior to building permit issuance or prior to Certificate of Occupancy, as specified in the applicable Ordinance or Resolution for the specific fee) of impact fees, connection fees and other similar fees based upon additional facilities needed to accommodate new development at established City service level standards, including, but not limited to, sewer capacity charges, Park Fees and Transportation Impact Fees.
  16. All conditions of approval must be printed verbatim on all plans submitted for plan review to the Director of Development Services. These conditions must be printed on the site plan or a subsequent reference page.
  17. Demolition, site preparation, and construction activities are limited to the following (except for the pouring of concrete which may occur as needed):
    - a. Weekdays and federal holidays: 7:00 a.m. to 7:00 p.m.;
    - b. Saturday: 9:00 a.m. - 6:00 p.m.; and
    - c. Sundays: not allowed
  18. The applicant shall defend, indemnify, and hold harmless the City of Long Beach, its agents, officers, and employees from any claim, action, or proceeding against the City of Long Beach or its agents, officers, or employees brought to attack, set aside, void, or annul an approval of the City

of Long Beach, its advisory agencies, commissions, or legislative body concerning this project. The City of Long Beach will promptly notify the applicant of any such claim, action, or proceeding against the City of Long Beach and will cooperate fully in the defense. If the City of Long Beach fails to promptly notify the applicant of any such claim, action or proceeding or fails to cooperate fully in the defense, the applicant shall not, thereafter, be responsible to defend, indemnify, or hold harmless the City of Long Beach.



**LOCAL COASTAL DEVELOPMENT PERMIT  
FINDINGS**

**5839 Appian Way**

**App. No. 0911-12**

**Date: December 21, 2009**

**1. THE PROPOSED DEVELOPMENT CONFORMS TO THE CERTIFIED LOCAL COASTAL PROGRAM, INCLUDING BUT NOT LIMITED TO ALL REQUIREMENTS FOR REPLACEMENT OF LOW AND MODERATE-INCOME HOUSING**

The site is located in Area E, Naples Island and The Peninsula of the Local Coastal Plan. The area is also located in the Park zoning district. The portion of Area E is mainly residential, with most of the units being single-family homes and duplexes. The plan recommends no additional visitor serving facilities in the Peninsula and Naples. The proposed expansion and remodel of an existing recreation serving facility (lifeguard storage) would not be considered additional visitor serving facility because the facility would be improved and more suitable restrooms and concessions added to serve visitors and guests. The proposed replacement of the existing restroom facility and expansion of existing lifeguard storage will not impede public access to the coast and would enhance recreational amenities to users of the Mothers Beach. Therefore the proposed development conforms to the certified local coastal program. No low and moderate-income housing will be removed as a result of the development.

**2. THE PROPOSED DEVELOPMENT CONFORMS TO THE PUBLIC ACCESS AND RECREATION POLICIES OF CHAPTER 3 OF THE COASTAL ACT.**

Chapter 3 of the Coastal Act deals with the public's right to use the beach and water resources for recreational purposes. The chapter provides the basis for state and local governments to require beach access dedications and prohibit development, which restricts public access to the beach and water resources.

The development will not impede public access to the coast, as all development will be a expansion and remodel of structures at the same location on the lot, which will not further impede public access to the beach. Therefore, the proposed development conforms to the public access and recreation policies of Chapter 3 of the Coastal Act.