

1 PERMIT TO OPERATE AND MAINTAIN A FOOD BEVERAGE  
2 CONCESSION IN EL DORADO EAST REGIONAL PARK

3 **30673**

4 Upon the terms and conditions and for the consideration hereinafter set  
Parks and Recreation Commission  
5 forth, permission is hereby granted by the ~~Recreation Commission~~<sup>AK</sup> of the City of Long  
6 Beach, California ("Commission"), acting through the Director ("Director") of the  
7 Department of Parks, Recreation and Marine of the City of Long Beach ("City") to  
8 THEODORE JOHN SNELLEN, an individual, doing business as SNACK ATTACK, whose  
9 address is 18320 Almond Tree Path, Riverside, California 92504 ("Permittee") as follows:

10 1. PERMISSION. Permittee shall at its sole cost and expense operate and  
11 maintain a food concession and beverage and boat rental concession in El Dorado East  
12 Regional Park, Areas II and III, in the City of Long Beach, at a level satisfactory to the  
13 Director. Permittee may sell food, beverages (excluding alcoholic beverages), sundries,  
14 and other such items as approved in writing by the Director. Specifically, the Permittee  
15 shall have permission to sell hot and cold food; hot and cold beverages; fish bait, fishing  
16 tackle and fishing licenses; picnic supplies; to rent boats; and to sell other items not listed  
17 which are approved in writing by the Director. Permittee may, at the option of the  
18 Director, be granted permission to operate such mobile concession services from each  
19 food and beverage concession location as may be required to meet the needs of the  
20 public. Such mobile concession services shall be provided only at the dates, times, and  
21 locations which are approved in writing by the Director.

22 In addition, Permittee shall have permission to provide, operate and  
23 maintain such other related activities as may be approved by the Director.

24 2. TERM. The term of this Permit shall commence at midnight on March 1,  
25 2008, and shall terminate at 11:59 p.m. on February 28, 2011, unless revoked prior to  
26 said termination as provided herein.

27 The Director may extend the term of this Permit for two (2) additional  
28 periods of three (3) years each on the same terms and conditions stated herein if the

1 Permittee, sixty (60) days prior to the expiration of the term, files with the Director a  
2 written request for the extension of this Permit and said Director agrees to said extension  
3 by written reply to that effect.

4           3. FACILITIES FURNISHED BY DEPARTMENT. The City will provide one  
5 (1) permanent structure in Area II and one (1) permanent structure with outside public  
6 restrooms in Area III of El Dorado East Regional Park for the food and beverage  
7 concession (the "Structures"). Permittee hereby accepts the Structures in their present  
8 condition, with no additional improvements or equipment to be furnished by the City.  
9 Permittee has inspected the Structures and agrees that they are being accepted in a  
10 good and clean condition and in a proper state of repair. The Commission hereby grant  
11 to Permittee temporary use of the Structures while this Permit is in effect.

12           4. EQUIPMENT AND FACILITIES FURNISHED BY PERMITTEE. Except  
13 as described in Section 3 above, Permittee shall provide and install all structures,  
14 furnishings, fixed and operating equipment, fixtures and appurtenances necessary for  
15 Permittee's operations, at Permittee's sole cost and expense. All such structures,  
16 furnishings, equipment, fixtures and appurtenances and the plans and specifications for  
17 installation of same shall be subject to prior written approval of the Director. In addition,  
18 Permittee shall provide the following equipment and perform the following obligations at  
19 the locations stated.

20           El Dorado East Regional Park, Area II

21           Permittee shall maintain the interior of the structures and furnish equipment  
22 necessary to serve food and beverages, and make available a limited inventory of bait,  
23 tackle, fishing licenses, and picnic supplies. No boat rental is allowed in Area II.

24           Permittee shall sell State of California Fish and Game licenses, license  
25 stamps and permits in accordance with all necessary requirements and authorization of  
26 the State of California.

27           El Dorado East Regional Park, Area III

28           Permittee shall maintain the interior of the structures and furnish equipment

1 necessary to serve food and beverages, and make available a limited inventory of bait,  
2 tackle, licenses, and picnic supplies.

3           Permittee shall sell State of California Fish and Game licenses, license  
4 stamps and permits in accordance with all necessary requirements and authorization of  
5 the State of California.

6           Permittee shall maintain a boat house with cement pad foundation,  
7 sufficient boat docks, for a minimum of ten (10) Aqua-Cycles, and equipment at the dock  
8 site for the purpose of renting boats, and selling food and beverages at Permittee's sole  
9 cost and expense, as approved in writing by the Director.

10           Permittee shall provide ten (10) Aqua Cycles of first class quality and  
11 condition, which first class condition shall be maintained at all times. Additional Aqua-  
12 Cycles or paddle boats may be added as approved in writing by the Director. Permittee  
13 shall not rent or provide gas powered boats, with the exception of one (1) chase boat to  
14 be used in emergencies only. The Aqua Cycles and boats shall be securely stored to  
15 prevent theft and vandalism (1) by anchor in the center of the lake, or (2) in another  
16 manner as approved in writing by the Director.

17           Permittee shall provide and require that all children under the age of 12  
18 wear Coast Guard flotation devices while riding or operating Aqua-Cycles. Permittee  
19 shall require that all participants (whether operators or riders) sign a waiver of liability  
20 before operating or riding the Aqua-Cycles. Permittee shall submit a copy of its waiver  
21 form to the Director.

22           5. MAINTENANCE PROVIDED BY THE CITY. The City shall maintain, at  
23 its sole cost and expense, the Structures which shall include the exterior foundation and  
24 roof insofar as such maintenance is necessitated by normal wear and tear. The City shall  
25 also provide janitorial service, supplies, and maintenance of the public restrooms on the  
26 outside of the Structure in Area III. The City shall not be responsible for any loss suffered  
27 by Permittee as a result of the malfunctioning of any equipment or facility of services  
28 provided by the City. The City reserves the right to do any and all work of any nature,

1 necessary for preservation, maintenance, and operation of the Structures, Area II and  
2 Area II. The City shall give reasonable notice to Permittee such work is necessary and  
3 Permittee shall adjust its operations in such a manner that the City may proceed  
4 expeditiously.

5 6. MAINTENANCE PROVIDED BY PERMITTEE. Permittee shall maintain,  
6 repair and service of all structures and equipment provided by Permittee, including the  
7 interior of the Structures. Such structures and equipment shall be maintained by  
8 Permittee in first class condition and working order. Evaluation of this standard shall be  
9 at the sole discretion of the Director. With respect to sanitation and the appearance of  
10 Permittee's operations, the Director shall have the right to direct the Permittee to perform  
11 necessary repairs and maintenance to equipment, facilities and structures owned and  
12 provided by Permittee. If Permittee uses City-owned equipment, then the Director shall  
13 have the right to prescribe in detail the type and frequency of maintenance and repair to  
14 be performed by the Permittee.

15 Because the City is interested in preserving its equipment and providing  
16 clean and sanitary conditions, if Permittee fails to perform the maintenance, repair, or  
17 service required above, then the Director shall have the right, after giving ten (10) days  
18 notice to correct, to cause the required work to be performed and to charge Permittee for  
19 the cost thereof. Cost shall be equal to the sum of the cost of the direct labor and  
20 materials necessary to perform the work plus overhead.

21 Permittee shall not remove or replace any equipment provided by the City  
22 without the prior written consent of the Director and, if Permittee obtains such consent,  
23 then removal and replacement shall be at the sole cost and expense of the Permittee.

24 7. UTILITIES. City shall provide to the Structures water and trash  
25 collection and shall pay all charges associated therewith. Permittee shall pay all costs  
26 associated with the installation and usage of telephone, gas, and electricity for its  
27 operations. The installation of telephone, gas, and electrical energy shall be approved in  
28 advance, in writing, by the Director.

1                   8. PAYMENT BY PERMITTEE. On or before the 10th day of the calendar  
2 month next following the month during which the term hereof begins and on or before the  
3 10th day of each succeeding calendar month thereafter during the term of this Permit and  
4 any extension hereof, Permittee shall pay to the City as a monthly Permit fee twelve  
5 percent (12%) of gross receipts derived by the Permittee from the sale of food,  
6 beverages and other items and fifteen percent (15%) of gross receipts from boat rental  
7 operations for gross receipts received in the immediately preceding calendar month  
8 provided, however, that if the sum of the monthly Permit fees during any Permit year  
9 (January 1 through December 31, inclusive) is less than Forty-eight Thousand Dollars  
10 (\$48,000.00), ("Minimum Annual Guaranteed Permit Fee"), then Permittee shall pay to  
11 the City ,on or be before the 20th day of January next following such Permit year, such  
12 amount as, when added to said sum of monthly Permit fees will equal Seven Thousand  
13 Dollars (\$7,000.00). All income produced by the sale of the State of California of State of  
14 California Fish and Game licenses, license stamps, and permits shall not be included in  
15 the calculation of gross receipts.

16                   The Director, for good cause, may grant to Permittee additional time to pay  
17 the monthly Permit fees provided, however, that if Permittee becomes ten (10) days in  
18 arrears on any payment of a monthly Permit fee, then the Director immediately revoke  
19 this Permit and the use of the Structures. Permittee shall, within twenty (20) days  
20 following the expiration or sooner revocation of this Permit, pay to the City all sums due  
21 to the City.

22                   Permittee shall transmit with the payment of each monthly Permit fee a  
23 monthly concessionaire report showing daily and monthly gross receipts from the  
24 operations permitted herein, for the month for which said payment is being submitted.

25                   If Permittee fails to pay the monthly Permit fee or submit the monthly  
26 concessionaire report by the date it is due, then Permittee shall pay to City a late charge  
27 of Twenty-five Dollars (\$25.00) for failure to pay the monthly Permit fee and a late charge  
28 of Twenty-five Dollars (\$25.00) for failure to submit the monthly concessionaire report. If

1 a due date is not a business day, the late charge will not apply until the end of the next  
2 business day. If Permittee requests in writing an extension of the due date due to  
3 unusual or extenuating circumstances the Director, at his discretion, may waive the late  
4 charge on the unpaid amount.

5 Permittee shall submit to the Director, on or before the 10th day of January  
6 of each year throughout the term of this Permit or any extension hereof, profit and loss  
7 statements prepared by a certified public accountant or public accountant licensed by the  
8 State of California. On expiration or sooner revocation of this Permit, Permittee shall  
9 submit profit and loss statements for the period of operations not previously reported,  
10 prepared in the manner stated above, within ten (10) days after such expiration or sooner  
11 revocation.

12 Permittee shall not be allowed to negotiate park entry fees with potential  
13 customers nor be allowed to authorize any park fees for persons or groups to which he is  
14 catering or providing services.

15 9. ADJUSTMENT AND/OR WAIVER OF PAYMENT. In the event any  
16 portion of El Dorado East Regional Park or the lake area therein is required by the City  
17 for other use at any time, including the making of minor or major improvements or  
18 repairs, Permittee agrees to and shall surrender use thereof on demand by the City for  
19 whatever period of time is required in consideration of a reduction in the Minimum Annual  
20 Guaranteed Permit Fee.

21 10. BOOKKEEPING AND AUDITING. Permittee shall maintain a method  
22 of accounting for receipts and disbursements in connection with the operations permitted  
23 which shall correctly and accurately reflect the gross receipts and disbursements  
24 received or made by Permittee from the operations hereunder. The method of  
25 accounting, including bank accounts, established for the operations permitted hereunder,  
26 shall be separate from the accounting system used for any other business operated by  
27 Permittee or for recording Permittee's personal financial affairs.

28 Such method shall include, but not be limited to, the keeping of the

1 following documents: regular books of accounting such as general ledgers; journals,  
2 including any supporting and underlying documents such as vouchers, checks, tickets,  
3 bank statements, and the like, State and Federal income tax returns and sales tax returns  
4 and checks, and other documents proving payment of sums shown.

5           Permittee further agrees that the Director shall have the right to stipulate in  
6 writing any other accounting records that the Director deems necessary for the proper  
7 reporting of receipts. Said documents, books and accounting records shall be open for  
8 inspection and reinspection by any authorized representative of the City at any  
9 reasonable time during the term of this Permit and for a reasonable period, not to exceed  
10 one (1) year, thereafter. Failure to keep any records required to be maintained above, or  
11 failure to allow full inspection or reinspection of said records shall be considered a  
12 violation of this Permit entitling the Director to revoke this Permit.

13           In addition to the right of inspection, the Director shall have the right from  
14 time to time to conduct an audit and reaudit of the books and business conducted by  
15 Permittee and to observe operations of Permittee so that accuracy of the above records  
16 can be confirmed. If the monthly concessionaire report shows less than the amount of  
17 gross receipts disclosed by such audit, Permittee shall within ten (10) days after receipt  
18 of an invoice from the City, pay to the City the amount disclosed by said audit and the  
19 costs of such audit.

20           Permittee may, at Permittee's sole cost and expense, be required to install  
21 and maintain such cash register equipment as may be deemed necessary and  
22 acceptable by the Director.

23           11. BOND FOR FAITHFUL PERFORMANCE. Prior to the execution of this  
24 Permit by the Director, Permittee shall provide a faithful performance bond from a surety  
25 company satisfactory to the Director, or a certified check, or a certificate of deposit  
26 payable to the City of Long Beach in an amount equal to the Minimum Annual  
27 Guaranteed Permit Fee. If Permittee fails to perform any of the terms of this Permit, then  
28 the sum stated in the faithful performance bond, the proceeds of the certified check, or

1 the proceeds of the certificate of deposit shall be used reimburse the City for any cost or  
2 loss occurred by reason of such failure. Said bond, check or deposit shall be held by the  
3 City during the term of the Permit, including any extension. The faithful performance  
4 bond and certificate of deposit shall provide that the City be given thirty (30) days prior  
5 written notification of cancellation.

6 12. INDEMNIFICATION AND HOLD HARMLESS. Permittee shall pay and  
7 discharge all claims of any nature whatsoever arising out of the operations permitted  
8 herein. Permittee shall indemnify, defend and hold harmless the City of Long Beach, its  
9 boards, commissions, officials, agents, and employees from and against all claims,  
10 demands, loss, damage, causes of action, liability, cost and expense (including attorney's  
11 fees) arising from the condition of the structures, equipment, facilities, and from the  
12 operations, activities or undertakings of Permittee or Permittee's employees, or agents  
13 hereunder.

14 13. INSURANCE. As a condition precedent to the effectiveness of this  
15 Permit, Permittee shall procure and maintain, at Permittee's sole cost, during the term of  
16 this Permit and any extension hereof from an insurance company that is admitted to write  
17 insurance in California or from authorized non-admitted insurance companies that have  
18 ratings of or equivalent to A:VIII by A.M. Best Company:

19 (a) Commercial general liability insurance (equivalent in scope to ISO form  
20 CG 00 01 11 85 or CG 00 01 11 88) in an amount not less than \$1,000,000 per  
21 occurrence and \$2,000,000 general aggregate. Such coverage shall include but  
22 not be limited to broad form contractual liability, cross liability, independent  
23 contractor's liability, products and completed operations liability, and water craft  
24 liability. The City, its officials, employees and agents shall be named as additional  
25 insureds by endorsement (on the City's endorsement form or on an endorsement  
26 equivalent in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85), and this  
27 insurance shall contain no special limitations on the scope of protection given to  
28 the City, its officials, employees and agents.

1 (b) Workers' compensation insurance as required by the California Labor  
2 Code and employer's liability insurance in an amount not less than \$1,000,000 per  
3 accident.

4 (c) Commercial automobile liability insurance (equivalent in scope to ISO  
5 form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto), in an amount not less  
6 than \$500,000 combined single limit per accident.

7 Any self-insurance program, self-insured retention, or deductible must be  
8 separately approved in writing by City's Risk Manager or designee and shall protect the  
9 City, its officials, employees and agents in the same manner and to the same extent as  
10 they would have been protected had the policy or policies not contained retention  
11 provisions. Each insurance policy shall be endorsed to state that coverage shall not be  
12 suspended, voided or canceled by either party except after thirty (30) days prior written  
13 notice to the City, and shall be primary and not contributing to any other insurance or self-  
14 insurance maintained by the City.

15 Permittee shall require that all contractors Permittee uses for work under  
16 this Permit maintain insurance in compliance with this Section unless otherwise agreed in  
17 writing by City's Risk Manager or designee.

18 Prior to the start of this Permit, Permittee shall deliver to the Director  
19 certificates of insurance and required endorsements, including any insurance required  
20 from Permittee's contractors, for approval as to sufficiency and form. The certificates and  
21 endorsements shall contain the original signature of a person authorized by that insurer  
22 to bind coverage on its behalf. In addition, Permittee, shall, at least thirty (30) days prior  
23 to expiration of the insurance required hereunder, furnish to the Director certificates of  
24 insurance and endorsements evidencing renewal of such insurance. The City reserves  
25 the right to require complete certified copies of all policies of Permittee or Permittee's  
26 contractors, at any time. Permittee shall make available to the City all books, records  
27 and other information relating to the insurance coverage required herein, during normal  
28 business hours.

1 Any modification or waiver of the insurance requirements herein shall only  
2 be made at the request of the Director and with the written approval of the City's Risk  
3 Manager or designee. Not more frequently than once a year, the City's Risk Manager or  
4 designee may require that Permittee change the amount, scope or types of coverages  
5 required herein if, in his or her sole opinion, the amount, scope, or types of coverages  
6 herein are not adequate.

7 The procuring of insurance shall not be construed to be a limitation on  
8 Permittee's liability or as a full performance on its part of the indemnification provisions of  
9 this Permit.

10 14. WORKERS' COMPENSATION INSURANCE. Before the Permittee  
11 shall employ any person or persons to aid or assist Permittee in the conducting or  
12 managing of the business contemplated to be carried on hereunder the Permittee shall  
13 comply with the provisions of the Labor Code of the State of California pertaining to  
14 workers' compensation and shall furnish to the Director proof of such compliance. The  
15 City, its boards, commissions, officers, agents or employees, will not be responsible for  
16 any claim in law or equity occasioned by the failure of the Permittee to comply. A  
17 certificate of insurance executed by an authorized agent of an insurance carrier licensed  
18 to do business in the State of California and reciting that the policy will not be canceled  
19 until the City has been notified, by certified mail at least thirty (30) days prior to the  
20 effective date of cancellation, shall constitute compliance with this requirement.

21 15. PROPERTY INSURANCE. Permittee may further be required, at  
22 Permittee's sole cost and expense, to obtain and keep in full force and effect during the  
23 term hereof a standard fire insurance policy, including extended coverage, insuring the  
24 furnishings, equipment and facilities from loss or damage by fire or other uses commonly  
25 described in extended coverage provisions of fire insurance policies. Said policy shall be  
26 issued by an insurance company authorized to do business in the State of California and  
27 shall provide replacement cost of the building/structure and equipment in an amount  
28 acceptable to the Director.

1                   16. LICENSES, PERMITS AND TAXES. Permittee shall obtain and pay for  
2 all licenses and permits required for its operations hereunder, including but not limited to  
3 approval by the Coastal Commission.

4                   In addition, Permittee shall promptly pay, prior to delinquency, all taxes,  
5 assessments and other governmental fees and charges that may be levied, including any  
6 possessory interest taxes on this Permit, on any structure, equipment or facility used by  
7 Permittee in its operations hereunder or on Permittee's business hereunder. Permittee  
8 shall provide proof of payment thereof to City upon request.

9                   17. TRANSFER OR ASSIGNMENT. It is understood and agreed that this  
10 Permit only grants Permittee permission to perform the services permitted hereunder in  
11 El Dorado East Regional Park, Area II and Area III, as further described herein, and that  
12 Permittee by this Permit acquires no right, title, or interest of any kind in the El Dorado  
13 East Regional Park or in the Structures. Permittee shall not attempt to or transfer,  
14 assign, sublet, rent, lease, offer or grant rights to use El Dorado East Regional Park, the  
15 Structures, the concession facilities, or any part of any of these areas, or allow the same  
16 to be used or occupied by any other person or for any other use than that herein  
17 specified, nor attempt to nor assign this permit or in any manner convey any of the  
18 privileges herein granted without the written consent of the Director. Neither this Permit  
19 nor the permission herein granted shall be assigned by attachment, execution,  
20 proceedings in insolvency or bankruptcy, either voluntary or involuntary, of Permittee.  
21 Director may, at his option, revoke this Permit, in which event the permission granted  
22 hereunder shall end immediately and Permittee shall immediately stop its use of El  
23 Dorado East Regional Park, Area II and Area III, and the Structures and leave same, and  
24 shall immediately stop its operations hereunder.

25                   18. PERSONAL ATTENTION. Permittee shall devote the greater part of  
26 Permittee's personal time and attention to the operations permitted hereunder and shall  
27 promote, increase and develop the business and render every possible service and  
28 convenience to the public or shall appoint a manager to do so who shall remain subject to

1 the direction and control of Permittee.

2           19. STANDARDS OF SERVICE. Permittee shall conduct business in a  
3 manner acceptable to the Director and shall, at all times, have a sufficient number of  
4 employees necessary to furnish the best service possible. All personnel used in serving  
5 the public shall be clean, neat and orderly in appearance, and shall wear uniforms and be  
6 identified in a manner acceptable to the Director. Vending or selling shall be done in an  
7 orderly, courteous and well-conducted manner.

8           The Director shall have the right to approve the level of service rendered  
9 and order such service improved, discontinued or remedied. If the quality of service or  
10 products supplied or the cleanliness of the facility is not at a level satisfactory to the  
11 Director or does not adequately meet the needs of the public, or in case Permittee  
12 violates any conditions of this Permit, then the Director shall have the right to suspend or  
13 revoke this Permit by giving prior notice to Permittee or suspension or revocation to  
14 Permittee.

15           Permittee or Permittee's authorized manager shall supervise the operations  
16 conducted hereunder when they are open for business. Any notice or order given to the  
17 Permittee's manager shall be binding as though delivered and served on said Permittee.  
18 If, at any time, the Director makes a determination that the manager or any employee of  
19 Permittee is unsatisfactory because of personal appearance, conduct, or failure to  
20 service the public properly, and the Director notifies Permittee in writing of such  
21 deficiencies, then Permittee shall replace the manager with a satisfactory manger within  
22 ten (10) days after receipt of such notice. Any employee found to be unsatisfactory shall  
23 be removed and replaced immediately after Permittee receives notice of same.

24           20. CONTROL OF PREMISES. The Director shall have absolute and full  
25 control of the facility and all improvements thereto and appurtenances thereon during the  
26 term of this Permit, and any extension. If it is necessary for the health, welfare or safety  
27 of the public or, as a result of the suspension or revocation of this Permit, the right is  
28 reserved for the Director to enter the Structures and take possession thereof

1 immediately. In addition, if the City so enters, it shall have the right to remove, relocate  
2 or use the Permittee's property, equipment, furnishings and appurtenances at  
3 Permittee's full cost and expense until arrangements can be made by the City for other  
4 necessary equipment, furnishings and appurtenances to replace those of Permittee.

5 21. LAWS AND ORDINANCES. Permittee shall comply with all applicable  
6 laws, rules and regulations, and the directives or instructions issued by the Director  
7 relating to the operations permitted herein. Failure to do so may result in the immediate  
8 revocation of this Permit.

9 22. CONDUCT. Permittee shall at all times conduct the operations  
10 permitted hereunder in a quiet and orderly manner and to the satisfaction of the Director.  
11 Permittee shall permit no intoxicated person, profane or indecent language, or boisterous  
12 or loud conduct in or about the operations or the Structures, and shall call upon the aid of  
13 peace officers to assist in maintaining peaceful conditions.

14 23. BURGLARY, THEFT AND VANDALISM. Permittee may, at the  
15 discretion of the Director, be held liable for any damage or loss which may occur to the  
16 Structures, equipment, facilities, merchandise or receipts, including but not limited to  
17 damage or loss resulting from burglary, theft, or vandalism.

18 24. PRICES. All rates for services and prices charged for items by the  
19 Permittee shall be subject to the prior written approval of the Director. The standards  
20 used to approve or disapprove prices shall be the prevailing market price for the same  
21 service or grade of merchandise.

22 The Director may require Permittee to provide written justification of price  
23 increases, including but not limited to a listing of similar operations charging comparable  
24 prices or notification from suppliers or operators regarding price increases. Before  
25 commencing operation each year Permittee shall submit to the Director a written list of all  
26 food prices and the prices of any other items and services to be offered or sold. The  
27 Director will notify Permittee of the approval or disapproval of the items listed and  
28 Permittee shall not alter the list of approved prices without the prior written approval of

1 the Director. The Director reserves the right to revoke his approval of any listed price  
2 when it appears that the price is above the prevailing market price for the same grade or  
3 quality of merchandise or services.

4           25. RIGHT OF INSPECTION. The Director shall have the right to enter the  
5 Structures or any other part of Permittee's operations at all reasonable times for the  
6 purpose of inspection and observation of the Permittee's operations, including but not  
7 limited to whether or not Permittee is complying with the conditions of this Permit, to  
8 observe transactions between the Permittee and patrons in order to valueate the quality  
9 and quantities of food or drinks or other items sold or dispensed, to observe the courtesy  
10 extended to and method of dealing with the public, the performance and caliber of the  
11 Permittee's employees, and the methods of recording receipts. During these inspections  
12 and observations, the Director shall have the right to utilize photographic devices and  
13 other recording devices. Permittee agrees that the inspections and observations may be  
14 made by City employees or may by independent contractors engaged by the Director.

15           26. SIGNS AND ADVERTISEMENTS. Permittee shall provide and  
16 prominently display in a location approved in writing by the Director signs identifying the  
17 type of service and merchandise available at the site as well as Permittee's name as  
18 operator, the hours of operation, the items and prices of all products and services  
19 available at the site, and all safety rules and regulations that must be followed while  
20 operating the Aqua-Cycles.

21           Any signs, advertisements or promotional material provided by Permittee  
22 shall be approved in advance, in writing, by the Director. The Director shall have the right  
23 to require removal or to order refurbishment of any sign, advertisement, or promotional  
24 material previously approved. Permittee shall not permit vendors to display wares inside  
25 or outside the concessions or at the Structures, without the prior written approval of the  
26 Director.

27           Permittee shall prominently display any sign, advertisement or promotional  
28 material provided to Permittee by the City, in a location to be determined by the Director.

1 The repair, maintenance and replacement of signs, advertisements or promotional  
2 material provided by the City shall be the responsibility of the City.

3 27. COMMENCEMENT OF OPERATION. Permittee shall place the  
4 concessions in full operation and be ready to serve the public as provided herein no later  
5 than thirty (30) days following the execution of this Permit by the Director; provided,  
6 however, that the Director may grant the Permittee in writing, an additional period of time  
7 in which to place the concessions in full operation.

8 28. SCHEDULE OF OPERATION. Permittee shall keep the concessions  
9 open during such days and hours as approved in writing by the Director to adequately  
10 serve public demand.

11 Before commencing operation each year Permittee shall submit a written  
12 schedule of operation including days and hours to the Director for approval.

13 Permittee shall not deviate from the approved schedule of operation without  
14 the prior approval of the Director. The Director reserves the right to revoke his approval  
15 of any previously approved schedule of operation.

16 29. CLEANLINESS. Permittee shall comply with all health and building  
17 regulations and keep the area within fifty (50) feet surrounding the operations in a clean  
18 and sanitary condition satisfactory to the Director at all times. No offensive or refuse  
19 matter, nor any substance constituting an unnecessary, unreasonable or unlawful fire  
20 hazard or material detrimental to the public health shall be permitted, and Permittee shall  
21 prevent any such matter, substance or material from being or accumulating at the  
22 concession areas.

23 30. ALTERATIONS OR ADDITIONS. No alterations, changes, or additions  
24 of any character shall be made by Permittee to the Structures or concession areas  
25 without the prior written approval of the Director. Any alterations, changes or additions  
26 approved by the Director shall be made at the sole cost and expense of Permittee.

27 Any improvements made to the concession areas may, at the option of the  
28 Director, become the property of the City. All concession facilities must be compatible

1 with planned or existing improvements and facilities in El Dorado East Regional Park,  
2 Area II and Area III.

3 Permittee shall confine their operations strictly to the areas which have  
4 been set aside for that purpose.

5 31. NONDISCRIMINATION. Permittee and Permittee's employees shall  
6 not discriminate against any employee or applicant for employment or refuse to furnish  
7 service to any person because of race, religion, color, sex, sexual orientation, age,  
8 national origin, HIV status, handicap, disability, or Vietnam Era status. Permittee and  
9 Permittee's employees shall not publicize the facilities or services permitted hereunder in  
10 any manner that would directly or inferentially reflect on the acceptability of the patronage  
11 of any person because of such enumerated bases.

12 Permittee shall take affirmative action to ensure that applicants are  
13 employed, and that employees are treated without regard to the enumerated bases.  
14 Such action shall include, but not be limited to, the follows: employment, upgrading,  
15 demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of  
16 pay or other forms of compensation; and selection for training, including apprenticeship.

17 32. HEALTH AND SAFETY. Permittee shall correct safety deficiencies  
18 and violations of safety practices immediately and shall cooperate fully with the City in the  
19 investigation of accidents occurring at the Structures or other concession areas permitted  
20 hereunder. Permittee and Permittee's staff may, at the option of the Director, be required  
21 to be certified in first aid procedures. Permittee shall provide emergency assistance such  
22 as lifesaving, righting capsized boats, towing stranded boaters, and administering first  
23 aid. In the event of injury to a patron, Permittee shall ensure that the injured person  
24 receives prompt and qualified medical attention. Any and all necessary first aid  
25 procedures shall be performed by Permittee's staff who are certified in first aid  
26 procedures. If Permittee fails to correct hazardous conditions which have led or, in the  
27 opinion of the Director, could lead to injury, the Director may immediately revoke in this  
28 Permit.

1                   33. USE OF AREA. Permittee, in operating the concessions permitted  
2 hereunder, shall not in any manner whatsoever interfere with regular use of El Dorado  
3 East Regional Park for the enjoyment thereof by the public.

4                   34. APPROVALS. Any approval to be obtained by Permittee from the  
5 Director shall be obtained in writing and any errors or omissions therefrom shall not  
6 relieve Permittee of Permittee's obligations to faithfully perform the conditions herein.  
7 Permittee shall immediately comply with any written request or order submitted to  
8 Permittee in writing by the Director.

9                   35. VENDING, AMUSEMENT OR GAME MACHINES. Permittee shall first  
10 receive written approval from the Director before installing or permitting the installation of  
11 any vending, amusement or game machines. The Director reserves the right to order  
12 removal of any and all vending, amusement or game machines previously approved,  
13 within ten (10) days after notice to do so given to Permittee.

14                   36. OTHER PERMITS AND PERMITTEES. The City shall have the right to  
15 grant additional permits for different purposes and/or additional permits for similar  
16 purposes in conjunction with food and beverage sales, commercial picnic services and/or  
17 special events within El Dorado East Regional Park, and Permittee shall cooperate fully  
18 with any other permittees in the vicinity.

19                   37. LABOR AND MATERIAL BOND. Permittee shall keep the Structures  
20 and the concession facilities free from all liens for any work done, labor performed or  
21 material furnished by or for Permittee. Permittee defend, indemnify and hold the City, its  
22 officials and employees harmless from all claims, liens, demands, causes of action,  
23 liability, loss, costs and expenses (including attorney's fees) of whatever kind for any  
24 such work done, labor performed, or materials furnished on the Structures or concession  
25 facilities or to Permittee for construction or repair. If a lien is imposed on the Structures or  
26 concession facilities as a result of construction or repair, Permittee shall: (1) record a  
27 valid release of lien; or (2) deposit with the City cash in an amount equal to 125% of the  
28 amount of the lien and authorize release and payment of said deposit to the extent of any

1 subsequent judgment to the holder of the judgment relating to said lien; or (3) procure  
2 and record a lien release bond in accordance with California Civil Code Section 3143  
3 issued by a surety authorized to do business in California.

4           38. DEFAULT AND REVOCATION. If Permittee fails or refuses to conform  
5 to the rules and regulations of any governmental authority or to any of the directions  
6 given Director, or fails or refuses to pay all or any part of any Permit fee when due, or  
7 fails or refuse to perform any of the other conditions of this Permit and said failure or  
8 refusal continues thirty (30) days after notice thereof to Permittee, then the Director may  
9 immediately revoke this Permit and Permittee's permission to use the Structures and to  
10 operate concessions shall cease. Revocation of this Permit shall not impair any other  
11 rights or remedies of the City.

12           The acceptance of all or part of the monthly Permit fee by the City after a  
13 failure or refusal by Permittee to perform the conditions of this Permit shall not be  
14 deemed a waiver of the City's right to revoke this Permit as a result of such failure or  
15 refusal. Any waiver by the City of such failure or refusal shall not be construed as or  
16 constitute a waiver of any subsequent failure or refusal to perform the same or any other  
17 condition of this Permit.

18           39. RESTORATION OF CONCESSION FACILITIES. On the expiration or  
19 sooner revocation of this Permit, Permittee shall remove Permittee's equipment and  
20 furnishings from the Structures and concession facilities within thirty (30) days after such  
21 expiration or revocation and, within that same thirty-day period, shall restore the  
22 Structures and concession facilities to the condition existing at the time Permittee's use  
23 thereof commenced, to the satisfaction of the Director; if Permittee's equipment and  
24 furnishings are not removed within that period, they shall become the property of the City;  
25 or at the option of the Director, Director may cause the removal and restoration to be  
26 performed and to charge Permittee for the actual costs required to remove and restore  
27 the Structures and concession facilities plus City's overhead costs.

28           40. CANCELLATION OF PERMIT. This Permit may be revoked by the

1 Director for any reason or no reason by giving thirty (30) days prior notice of such  
2 revocation to Permittee.

3 41. NOTICE. Notices shall be in writing and personally delivered or  
4 deposited in the U.S. Postal Service, first class, postage prepaid, to Permittee at the  
5 address first stated above and to the Director at 2760 Studebaker Road, Long Beach,  
6 California 90815-1697. Such notice shall be effective on the date that personal delivery  
7 is made or on the date of deposit in the mail, whichever first occurs.

8 42. DEFINITIONS. Whenever in this Permit, the following words and  
9 phrases are used, the intent and meaning thereof shall be interpreted as follows, unless it  
10 shall be apparent from the context that a different meaning is intended:

11 A. "Gross Receipts" shall mean all monies received by or due to Permittee  
12 as a result of the operations permitted herein without deduction whatsoever,  
13 except that sales tax payable to the state or governmental agency may be  
14 excluded.

15 B. "El Dorado East Regional Park Area II" means that portion of El Dorado  
16 East Regional Park bordered on the north by Waywardly Road, on the east by the  
17 San Gabriel River Freeway, on the south by Spring Street, and on the west by the  
18 San Gabriel River Flood Control Channel.

19 C. "El Dorado East Regional Park Area III" means that portion of El Dorado  
20 East Regional Park bordered on the north by the Long Beach Towne Center and  
21 Long Beach Police Pistol Range property lines, on the east by the San Gabriel  
22 River Freeway, on the south by Waywardly Road, and on the west by the San  
23 Gabriel River Flood Control Channel.

24 42. EXHIBITS PERMIT. Permittee's proposal on file with the City is  
25 incorporated herein and made a part hereof by reference. Exhibit "A", a map of El  
26 Dorado East Regional Park, is attached to this Permit.

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By signing below, Permittee acknowledges, consents to and agrees to

perform the conditions of this Permit.

Dated: 4/18/08, 2008

<sup>SNELLEN AK</sup>  
THEODORE JOHN ~~SMELLEN~~, an individual

By: *Theodore John Snellen*  
Theodore John ~~Smellen~~ Snellen <sup>AK</sup>

"Permittee"  
PARKS AND RECREATION COMMISSION <sup>AK</sup>  
~~RECREATION COMMISSION OF THE~~  
CITY OF LONG BEACH, CALIFORNIA

Dated: 5-22, 2008

By: *The Director*  
Director of Department of Parks,  
Recreation and Marine

"Director"

This Permit is approved as to form on May 19, 2008.

Dated: May 19, 2008

ROBERT E. SHANNON, City Attorney

By: *Darryl J. Anderson*  
Deputy

OFFICE OF THE CITY ATTORNEY  
ROBERT E. SHANNON, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

# EXHIBIT A



El Dorado East Area II



EXHIBIT A (Continued)



El Dorado East Area III

0 100 200 300 400 Feet

A horizontal scale bar with markings at 0, 100, 200, 300, and 400 feet.