

1 **BEACH CONCESSION AGREEMENT**

2 36178

3 THIS BEACH CONCESSION AGREEMENT ("Agreement") is made and  
4 entered in duplicate as of 11/3/22, 2022 pursuant to a minute order adopted by the  
5 City Council of the City of Long Beach, at its meeting on June 8, 2021, by and between the  
6 CITY OF LONG BEACH, a municipal corporation and trust grantee of the State of California  
7 of certain tide and submerged lands within the limits of said City ("City") and TWO DUDES,  
8 ONE TRUCK, LLC, a California limited liability company, dba GRILL 'EM ALL, with a  
9 business address of 19 E. Main Street, Alhambra, CA 91801 ("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 Bayshore 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 the Parks, Recreation and  
18 Marine Department ("City Manager"). No use not specifically permitted by this  
19 Section shall be allowed without the written permission of the City Manager.  
20 Concessionaire in the conduct of its business, shall not in any manner whatsoever  
21 interfere with regular use of the beach and/or park area by the general public.  
22 Notwithstanding the foregoing, Concessionaire may sporadically not offer services  
23 at the Premises, provided that in no event shall Concessionaire fail to offer services  
24 to the public for (i) more than forty-five (45) days total in any year-long period after  
25 Concessionaire's initial opening at the Premises, and/or (ii) more than thirty (30)  
26 consecutive days, in either case without the permission of the City Manager.  
27 Concessionaire shall notify 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 for the same or similar services and/or may use the  
5 public property 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 subsection 5.E. 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 subsection 5.E.  
16 Concessionaire shall submit on an annual basis, to the Director a list of proposed  
17 fees by December 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 subsection 5.E.  
28

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 7:00 a.m. until 10:00  
8 p.m.;

9 ii. Open weekdays through the Spring, Summer and Fall  
10 (Daylight Savings Time) months from 7:00 a.m. until 10:00 p.m.; and

11 iii. Open to the greatest extent feasible during weekdays  
12 through the winter (Standard Time) months. Concessionaire shall propose  
13 an hourly operation schedule for the winter and submit the same to City in  
14 advance for its review and comment.

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

25 I. Menu and Payment Options. All concession stands and/or  
26 cafés shall provide and maintain a take-out window, shall offer food items that can  
27 be easily carried out, and shall stock some relatively inexpensive snack items (\$5  
28

1 or less). Concessionaire shall accept multiple generally available payment options  
2 in addition to cash.

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

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

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

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

21 N. Subcontracts. Concessionaire shall be permitted to  
22 subcontract third party services and/or equipment providers, however all  
23 subcontractors shall be approved in advance by the City Manager at his or her sole  
24 discretion. All gross revenue collected from subcontractors shall be included as part  
25 of the gross receipts calculation under subsection 5.E.

26 3. NOISE ABATEMENT/CONDUCT. Concessionaire shall not use the  
27 Premises nor conduct its business in any manner that will create a nuisance, unreasonable  
28 annoyance, or waste. Concessionaire shall not make or permit any noise or odors that

1 constitute a nuisance within the meaning of California Civil Code Section 3479 or California  
2 Penal Code Section 370. Concessionaire shall permit no intoxicated person, profane or  
3 indecent language/behavior in or about the Premises, and shall call upon the aid of peace  
4 officers to assist in maintaining peaceful conditions. Under normal circumstances, decibel  
5 levels within a predominately residential area must be ambient or no more than 50 dB(A)  
6 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.  
7 throughout the year, weekdays and weekends inclusive. This requirement applies to all  
8 sound checks, "warm up" sessions and announcements. Unless permitted by the Office of  
9 Special Events and Filming, amplified and live music is not allowed.

10 4. TERM. The term of this Agreement shall commence at 12:01 a.m. on  
11 November 1, 2021 ("Commencement Date") and shall terminate at midnight on October  
12 31, 2026 (as may be extended, the "Term"). Upon termination of this Agreement (whether  
13 by lapse of time or otherwise), Concessionaire shall quit and surrender possession of the  
14 Premises and remove its personal property therefrom. Concessionaire shall have the  
15 option to extend the Term for one additional period of five (5) years, which such option shall  
16 be exercised by giving written notice of intent to extend to City not less than ninety (90)  
17 days before the end of the then-current Term.

18 5. COMPENSATION:

19 A. Base Rent. Beginning on the earlier of (i) first day of the month  
20 immediately after the month in which Concessionaire begins operations at the  
21 Premises, or (ii) February 1, 2022 ("Rent Commencement Date") and continuing  
22 monthly thereafter, Concessionaire shall pay to City a monthly base rent equal to  
23 Two Thousand Four Hundred Dollars (\$2,400) ("Base Rent"). Base Rent is due and  
24 payable in advance on the first day of each month, and is delinquent on or after the  
25 fifth day of each month. Concessionaire shall be entitled to a monthly rent credit  
26 equal to fifty percent (50%) of the rent otherwise due until the first day of the first  
27 month immediately after installation of an operable elevator providing access to the  
28 second floor of the Premises. Concessionaire shall not otherwise have any right of

1 abatement, deduction, set off, prior notice or demand. The Base Rent shall be  
2 adjusted annually, effective on each anniversary of the Rent Commencement Date,  
3 by the percent change in the CPI for All Urban Consumers, All Items, Base Period  
4 1982-1984=100, for the Los Angeles-Riverside-Orange County, CA area (August to  
5 August) as published by the United States Department of Labor, Bureau of Labor  
6 Statistics; provided, however, that the Base Rent shall never decrease and any  
7 increase shall not exceed a maximum of three percent (3%) in any year.

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

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

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

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

26 8. BOOKS OF ACCOUNT AND RECORDS.

27 A. Concessionaire shall keep complete and accurate books of  
28 account, records, cash receipts, and other pertinent data showing gross receipts, all



1 in accordance with generally accepted accounting principles. Concessionaire shall  
2 provide such records to the Director within five (5) business days of a City request  
3 to review records.

4 B. Concessionaire shall install and maintain accurate receipt  
5 printing cash registers or computer systems and shall record on the cash registers  
6 or computer systems every sale of merchandise and services or other transactions  
7 at the time of the transaction on either a cash register having a sealed, continuous  
8 cash register tape with cumulative totals that numbers, records and duplicates each  
9 transaction entered into the register, or serially numbered sales slips. If  
10 Concessionaire chooses to record each sale by using a cash register, the  
11 continuous cash register tape will be sealed or locked in such a manner that it is not  
12 accessible to the person operating the cash register. Concessionaire is required to  
13 close out both the x and z key daily. In addition, Concessionaire shall post a sign  
14 by each cash register that states: "If you do not receive a receipt please call (562)  
15 570-3103." If Concessionaire chooses to record each sale by using a computer  
16 system, the computer-generated receipts shall be retained in chronological order  
17 (including those canceled, voided or not used) for three (3) years. If Concessionaire  
18 chooses to record each sale on individual slips, the sales slips (including those  
19 canceled, voided, or not used) will be retained in numerical sequence for three (3)  
20 years.

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

23 i. Daily cash register summary tapes and sealed,  
24 continuous cash register tapes or prenumbered sales slips or computer  
25 transaction receipts on transaction summary reports;

26 ii. Concessionaire will ensure that separate financial  
27 records are kept for the business or other revenue from operations on or from  
28 the Premises;

1                               iii.     All bank statements detailing transactions in or through  
2                               any business bank account;

3                               iv.     Daily or weekly sales calculations;

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

6                               vi.     Copies of all tax returns filed with any governmental  
7                               authority that reflect in any manner sales, income, or revenue generated in  
8                               or from the Premises, including, but not limited to, federal income tax returns  
9                               and state sales or use tax returns;

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

12                              D.     Concessionaire shall keep all of the books, records, and other  
13                              documents in the manner recited in this Section, and will make said books, records  
14                              and documents available for inspection, examination, or audit by City or City's  
15                              designated representative upon giving Concessionaire five (5) days prior notice of  
16                              City's intention to exercise its rights under this Section. In connection with an  
17                              examination of audit, City will have the right to inspect the records of sales from any  
18                              other store operated by Concessionaire, but only if the examination is reasonably  
19                              necessary to ascertain gross sales from the Premises. If upon inspection or  
20                              examination of Concessionaire's available books and records of account, City  
21                              determines that Concessionaire has failed to maintain, preserve, or retain the  
22                              documents, books, and records that this Agreement requires Concessionaire to  
23                              maintain in the manner set forth in this Section, City will give Concessionaire sixty  
24                              (60) days to cure the deficiencies. Further, if Concessionaire is found to be deficient  
25                              in maintaining any of documents, books, or records, Concessionaire will reimburse  
26                              City for all reasonable expenses incurred by City in determining the deficiencies,  
27                              including without limitation any audit or examination fees.  
28

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

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

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

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

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

19 Department of Parks, Recreation and Marine  
20 2760 Studebaker Road  
21 Long Beach, CA 90815-1697  
22 Attention: Contract Management

23 With a copy to:

24 Department of Parks, Recreation and Marine  
25 205 Marina Drive  
26 Long Beach, CA 90803  
27 Attention: Marine Bureau Manager  
28

1 within twenty (20) days after the end of each month during the Term, a financial  
2 statement showing in reasonable detail Concessionaire's gross receipts for the  
3 preceding calendar month or partial calendar month. Concessionaire shall within  
4 thirty (30) days of each calendar year deliver to City, at the address set forth in this  
5 subsection E, a statement showing gross receipts of the preceding calendar year or  
6 partial calendar year. Such statement shall be prepared and delivered to City in  
7 accordance with generally accepted accounting practices containing a statement of  
8 gross receipts and a computation of percentage of gross receipts. Each statement  
9 shall be signed and certified to be correct by an officer of Concessionaire.

10  
11 9. CONCESSION BUILD-OUT: Concessionaire shall be responsible for  
12 the build-out of all concession interior front-of-house and back-of-house, including kitchens  
13 and food preparation areas. Concessionaire shall design and build out the interior of the  
14 concessions/café as well as provide the necessary equipment, fixtures, materials, and  
15 furniture necessary to operate. All aspects of design, including, but not limited to, signage,  
16 fixtures, and furnishings are subject to City approval. Concessionaire and City  
17 acknowledge and agree that there is no elevator at the Premises providing access to the  
18 second floor of the Premises, and that City, at its own expense, plans to install an elevator  
19 during the Term and Concessionaire shall reasonably cooperate with such installation.

20 10. PREVAILING WAGES: Any improvements made to the Building,  
21 Premises or otherwise authorized hereunder constitute a "public work" subject to the  
22 provisions of Labor Code Sections 1720 *et seq.* and the requirements of Title 8 of the  
23 California Code of Regulations Sections 16000 *et seq.* Concessionaire, its contractors and  
24 subcontractors of any tier shall be governed by and required to comply with these statutes  
25 and regulations in connection with the work. Pursuant to Labor Code Section 1771,  
26 Concessionaire, all contractors and subcontractors of any tier shall pay not less than the  
27 prevailing wage rates to all workers employed in execution of the work. Concessionaire, its  
28 contractors and subcontractors shall comply with applicable statutes and regulations,

1 including but not limited to Labor Code Section 1771, 1775, 1777.5, 1813 and 1815. No  
2 contractor or subcontractor may be listed on a bid proposal for a public works project unless  
3 registered with the Department of Industrial Relations pursuant to Labor Code Section  
4 1725.5 with limited exceptions from this requirement for bid purposes only under Labor  
5 Code Section 1771.1(a). No contractor or subcontractor may be awarded a contract for  
6 public work on a public works project unless registered with the Department of Industrial  
7 Relations pursuant to Labor Code Section 1725.5. This work is subject to compliance  
8 monitoring and enforcement by the Department of Industrial Relations.

9 11. IMPROVEMENTS: Concessionaire shall not install, erect, or  
10 construct any building, improvement, or structure on the Premises nor alter the same  
11 without the prior written approval of the City Manager and work so approved shall comply  
12 with the following.

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

20 B. No Liens. Concessionaire shall keep the Premises free from  
21 all liens for any work done, labor performed or material furnished by or for  
22 Concessionaire. Concessionaire shall defend, indemnify and hold City, its officials  
23 and employees harmless from and against all claims, liens, demands, causes of  
24 action, liability, loss, costs and expenses, including reasonable attorney's fees, for  
25 any such work done, labor performed, or materials furnished on the Premises or to  
26 Concessionaire for construction or repair. If a lien is imposed on the Premises as a  
27 result of construction or repair, Concessionaire shall (i) record a valid release of lien,  
28 (ii) deposit with City cash in an amount equal to 125% of the amount of the lien and

1 authorize payment to the extent of said deposit to any subsequent judgment holder  
2 with regard to the lien, or (iii) procure and record a lien release bond in accordance  
3 with California Civil Code Section 3143 issued by a surety authorized to do business  
4 in California.

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

10 D. Notice of Completion. On completion of Concessionaire's  
11 work, Concessionaire shall file a Notice of Completion in the Official Records of the  
12 Los Angeles County Recorder.

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

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

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

26 12. ADVERTISING. Concessionaire, at its cost, may place or erect and  
27 maintain signs on the Premises, provided that Concessionaire obtains prior written  
28 approval from the Director, which shall not be unreasonably withheld. Further,

1 Concessionaire's signs shall be in compliance with City's sign ordinance and any  
2 applicable regulations imposed by the California Coastal Commission.

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

6 14. TRASH REMOVAL AND DISPOSAL. Concessionaire shall keep the  
7 Premises in a neat and sanitary condition, as determined by the City Manager in his/her  
8 sole discretion, including but not limited to removing and cleaning any graffiti, waste,  
9 refuse, trash or debris from the Premises. No offensive or refuse matter constituting a fire  
10 hazard or nuisance shall be deposited or remain on the Premises. All refuse, trash, debris  
11 and/or waste material shall be removed from the Premises, at Concessionaire's sole cost,  
12 in plastic bags of ten (10) mils or thicker. City shall have the right to modify or change the  
13 trash removal operation of Concessionaire and Concessionaire agrees to accept and  
14 comply with such modifications or changes.

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

23 16. MAINTENANCE AND REPAIR. Concessionaire shall maintain, at its  
24 sole cost and to the satisfaction of the City Manager, the Premises and all non-structural  
25 improvements thereon, including but not limited to restaurant and food concession areas,  
26 in a safe, clean, good condition, in substantial repair, and in compliance with all applicable  
27 laws, rules and regulations. Concessionaire shall furnish adequate containers for the  
28 disposal of trash and garbage and shall pay any trash disposal charges incurred therefore.

Concessionaire shall not allow refuse matter or any substance constituting a fire hazard, material detrimental to the public health or any hazardous material at the concession on the property where the concession is located. Concessionaire shall remove graffiti within twenty-four (24) hours after it appears. Concessionaire's duty to maintain shall include but not be limited to the duty to repair and replace the improvements, as needed. If Concessionaire fails to maintain the Premises, City may notify Concessionaire of said failure. If Concessionaire fails to correct the situation within thirty (30) days after notice or such longer period as may be established by City, then City may make the necessary correction and the cost thereof, including but not limited to the cost of labor, materials, equipment and administration, shall be paid by Concessionaire as additional Rent, within ten (10) days after receipt of a statement of said costs from City. City may at its option, choose other remedies available herein or by law. Concessionaire hereby waives the extent permitted by law any right to make repairs at the expense of City or to vacate the Premises in lieu thereof as may be provided by law. City shall have no obligation to perform any maintenance on the Premises.

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

18. NO CITY LIABILITY. City, its boards, commissions, officials and employees shall not be liable for and Concessionaire hereby waives all claims against them



1 for loss, theft, or damage to equipment, furniture, trade fixtures, furnishings, records, and  
2 other personal property in, on or at the Premises, for loss or damage to Concessionaire's  
3 business, or injury to or death of persons in, on or at the Premises from any cause except  
4 to the extent caused by the gross negligence or willful misconduct of City, its Board,  
5 commissions, officials and employees.

6 19. DAMAGE OR DESTRUCTION OF IMPROVEMENTS.

7 A. Responsibility for Repair. If structural components (including  
8 without limitation load-bearing walls, roof or foundation) of the Building at the  
9 Premises shall be damaged or destroyed by any cause whatsoever during the  
10 Agreement term or extension thereof, Concessionaire shall, with reasonable  
11 promptness, report the damage to City. City shall have responsibility to make  
12 repairs to replace the same, to at least the condition existing immediately prior to  
13 such damage or destruction. Concessionaire shall be responsible for reimbursing  
14 City for the pro rata share of expenses incurred to repair or replace the damage or  
15 destruction to the Building or the Premises to the extent contributed to by the act or  
16 omission of Concessionaire, its employees or agents. Concessionaire shall be  
17 responsible for reimbursing City even though the proceeds of any insurance policies  
18 covering the loss ("Insurance Proceeds") may be insufficient to reimburse  
19 Concessionaire therefor, provided, however, that if such proceeds of insurance are  
20 more than sufficient to pay the cost of any such rebuilding, then Concessionaire  
21 shall be entitled to receive any surplus. City at its discretion may authorize  
22 Concessionaire in writing to make repairs to replace the same to at least the  
23 condition existing immediately prior to such damage or destruction.

24 B. Abatement. In the event the Premises are partially damaged,  
25 totally destroyed, or subject to environmental contamination for which  
26 Concessionaire is not responsible under this Agreement, the Rent payable by  
27 Concessionaire for the period required for the repair, remediation or restoration of  
28 such damage shall be abated in proportion to the degree to which Concessionaire's

1 use of the Premises is impaired. All other obligations of Concessionaire hereunder  
2 shall be performed by Concessionaire, and City shall have no liability for any such  
3 damage, destruction, remediation, repair or restoration except as provided herein.

4 C. Remedies. If City is obligated to repair or restore the Premises  
5 and does not commence, in a substantial and meaningful way, such repair or  
6 restoration within 90 days after such obligation shall accrue, Concessionaire may,  
7 at any time prior to the commencement of such repair or restoration, give written  
8 notice to City of Concessionaire's election to terminate this Agreement on a date not  
9 less than 60 days following the giving of such notice. If Concessionaire gives such  
10 notice and such repair or restoration is not commenced within 30 days thereafter,  
11 this Agreement shall terminate as of the date specified in said notice. If the repair or  
12 restoration is commenced within such 30 days, this Agreement shall continue in full  
13 force and effect. "Commence" shall mean either the unconditional authorization of  
14 the preparation of the required plans, or the beginning of the actual work on the  
15 Premises, whichever first occurs.

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

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

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

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

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

1 added as additional insureds by endorsement equivalent in coverage scope to ISO  
2 form CG 20 26 11 85. This insurance shall contain no special limitations on the  
3 scope of protection afforded to City, its officials, employees and agents, and shall  
4 provide cross-liability protection.

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

8 i. If alcohol is sold or served, liquor liability with limits of  
9 One Million Dollars (\$1,000,000) per occurrence,

10 ii. If instruction of minors or other services wherein adults  
11 might be alone with unrelated minors are included, general liability limits are  
12 increased to \$2,000,000/\$4,000,000 and the general liability shall not  
13 exclude coverage for abuse and molestation (this insurance shall name the  
14 City of Long Beach, its officials, employees and agents additional insureds),

15 iii. If pyrotechnics are permitted, pyrotechnic liability with  
16 limits of Five Million Dollars (\$5,000,000) per occurrence (this insurance shall  
17 name the City of Long Beach, its officials, employees and agents additional  
18 insureds),

19 iv. If use of unmanned aerial systems (UASs or drones) are  
20 permitted, drone aircraft liability with limits of Five Million Dollars (\$5,000,000)  
21 per occurrence (this insurance shall name the City of Long Beach, its officials,  
22 employees and agents additional insureds), and

23 v. If use of any boats or rental of boats exceeding 25 feet  
24 in length is allowed under or in connection with this Agreement, marine  
25 liability with limits of One Million Dollars (\$1,000,000) per occurrence (this  
26 insurance shall name the City of Long Beach, its officials, employees and  
27 agents additional insureds).  
28

1 C. "All Risk" property insurance in an amount sufficient to cover  
2 the full replacement value of the buildings and structural improvements on the  
3 Premises. City shall be named as an insured under a standard loss payable  
4 endorsement.

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

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

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

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

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

25 Any subcontractors which Concessionaire may use in the  
26 performance of this Agreement shall be required to indemnify City to the same extent as  
27 Concessionaire and to maintain insurance in compliance with the provisions of this Section.  
28

Concessionaire shall deliver to City certificates of insurance and the required endorsements for approval as to sufficiency and form prior to commencement of this Agreement. The certificates and endorsements for each insurance policy shall contain the original signature of a person authorized by that insurer to bind coverage on its behalf. Concessionaire shall, at least thirty (30) days prior to expiration of such policies, furnish City with evidence of renewals. City reserves the right to require complete certified copies of all said policies at any time.

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

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

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

## 21. INDEMNIFICATION.

A. General Indemnity. Concessionaire shall defend and indemnify the City of Long Beach and its officers and employees while acting within the scope of their duties from and against any and all actions, suits, proceedings, claims and demands, costs (including attorneys' fees and court costs), expense and liability of any kind or nature whatsoever ("claims") for injury to or death of persons or damage to property (including property owned by or under the control of City) which may be

brought, made, filed against, imposed upon or sustained by City, its officers or employees based upon or arising out of:

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

1 on or affecting the Premises without regard to fault or negligence including but not  
2 limited to the release of any hazardous materials into the air, soil, groundwater or  
3 surface water on, in, under or from the Premises whether such condition, liability,  
4 loss, damage, cost, penalty, fine and/or expense shall accrue or be discovered  
5 before or after termination of this Agreement. This indemnification supplements and  
6 in no way, limits the scope of the indemnification set forth in subsection 21.A.

7 In addition, Concessionaire waives, releases, acquits and forever  
8 discharges City, its employees, members and officials or any other person acting on  
9 behalf of City, of and from any and all claims, actions, causes of action, demands,  
10 rights, damages, costs, expenses, or compensation (collectively "claims")  
11 whatsoever (including, but not limited to, all claims at common law and/or under any  
12 federal, state or local environmental, health and/or safety-related law, rule,  
13 regulation or order, currently existing and as amended or enacted in the future  
14 ("Environmental Law"), whether direct or indirect, known or unknown, foreseen or  
15 unforeseen, which Concessionaire now has or may have or which may arise in the  
16 future on account of or in any way growing out of or in connection with any  
17 hazardous materials on, under, from, or affecting the Premises, or any law or  
18 regulation applicable thereto. Concessionaire acknowledges that it is familiar with  
19 Section 1542 of the California Civil Code which reads: "A general release does not  
20 extend to claims which the creditor does not know or suspect to exist in his favor at  
21 the time of executing the release, which if known by him must have materially  
22 affected his settlement with the debtor."; and hereby releases Concessionaire from  
23 any unknown claims and waives all rights it may have under Section 1542 of the  
24 Civil Code or under any other statute or common law principle of similar effect.

25 i. Exclusions.

26 (a) Contamination on, beneath, or abutting the  
27 Premises which existed prior to the initial commencement date of the  
28 Agreement.



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

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

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

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

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

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

23 iii. Which is toxic, explosive, corrosive, flammable,  
24 infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and  
25 is or becomes regulated by governmental authority, agency, department,  
26 commission, board, agency or instrumentality of the United States, the State  
27 of California or any political subdivision thereof; or  
28

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.

1                   27.    CITY SPONSORED SPECIAL EVENTS.

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

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

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

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

19                  28.    BUSINESS INTERRUPTION.    City shall not be liable to  
20                  Concessionaire for any damages arising out of the temporary prohibition of concession  
21                  operations resulting from any environmental protection, public safety, maintenance or  
22                  governmental activities which requires prohibition of the concession from being present on  
23                  the Premises and/or engaging in its business activities.

24                  29.    GENERAL PROVISIONS.

25                  A.     Notices, Demands and Communication Between the Parties.

26                  Notices, demands, and communication between City and Concessionaire  
27                  shall be in writing and shall be sufficiently given if personally served or if mailed by  
28

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

3 TO CITY: City Manager  
4 10th Floor, City Hall  
5 411 West Ocean Boulevard  
6 Long Beach, California 90802

7 WITH A COPY TO: Director of Parks, Recreation & Marine  
8 2760 Studebaker Road  
9 Long Beach, California 90815-1697  
10 Attention: Contract Management

11 AND:

12 Department of Parks, Recreation and Marine  
13 205 Marina Drive  
14 Long Beach, CA 90803  
15 Attention: Marine Bureau Manager

16 TO CONCESSIONAIRE:

17 19 E. Main Street  
18 Alhambra, CA 91801

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

22 B. Conflict of Interest. No member, official or employee of City  
23 shall have any personal interest, direct or indirect, in this Agreement, nor shall any  
24 such member, official or employees participate in any decision relating to this  
25 Agreement which affects his personal interest or the interests of any corporation,  
26 partnership or association in which he is, directly or indirectly, interested. No  
27 member, official or employee of City shall be personally liable to Concessionaire, or  
28 any successor in interest, in the event of any default or breach by City or for any

1 amount which may become due to Concessionaire or successor or on any  
2 obligations under the terms of this Agreement.

3 C. Defaults and Remedies.

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

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

22 iii. Applicable Law. The laws of the State of California shall  
23 govern the interpretation and enforcement of this Agreement.  
24 Concessionaire during its use of the Premises shall at all times comply with  
25 all laws, ordinances, rules, and regulations of and obtain permits from all  
26 federal, state, and local governmental authorities having jurisdiction over the  
27 Premises and Concessionaire's activities thereon.  
28

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

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

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

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

26                                  E.     Entire Agreement, Waivers and Amendments. This Agreement  
27 constitutes the entire understanding and agreement of the parties. This Agreement  
28 integrates all the terms and conditions mentioned herein or incidental hereto, and

1 supersedes all negotiations between the parties with respect to all or any part of the  
2 subject matter hereof.

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

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

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

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

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

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

25 L. No Mineral Rights. This Agreement creates no rights in  
26 Concessionaire to minerals, or proceeds from mineral production, which may lie  
27 below the Premises including but not limited to any unitized oil.  
28



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

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

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

9 TWO DUDES ONE TRUCK, LLC, a California  
10 limited liability company

11 12.6, 2021

By [Signature]  
12 Name Matthew Chernus  
13 Title Member

14 12.6, 2021

By [Signature]  
15 Name Ryan Haskins  
16 Title member

17 "Concessionaire"

18 CITY OF LONG BEACH, a municipal  
19 corporation

20  
21 \_\_\_\_\_, 2021

By \_\_\_\_\_  
City Manager

22 "City"

23  
24 This Agreement is approved as to form on \_\_\_\_\_, 2021.

25 CHARLES PARKIN, City Attorney

26  
27 By: \_\_\_\_\_  
28 Deputy

1 M. No Relocation Benefits. Concessionaire shall have no rights to  
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9 TWO DUDES, ONE TRUCK, LLC, a California  
10 limited liability company

11 \_\_\_\_\_, 2021 By \_\_\_\_\_  
12 Name \_\_\_\_\_  
13 Title \_\_\_\_\_

14 \_\_\_\_\_, 2021 By \_\_\_\_\_  
15 Name \_\_\_\_\_  
16 Title \_\_\_\_\_

17 "Concessionaire"

18 CITY OF LONG BEACH, a municipal  
19 corporation

20 1/13/2022, 2021 By Linda J. Jakum  
21 \_\_\_\_\_

22 City Manager  
23 EXECUTED PURSUANT  
24 TO SECTION 301 OF  
25 THE CITY CHARTER.

26 "City"

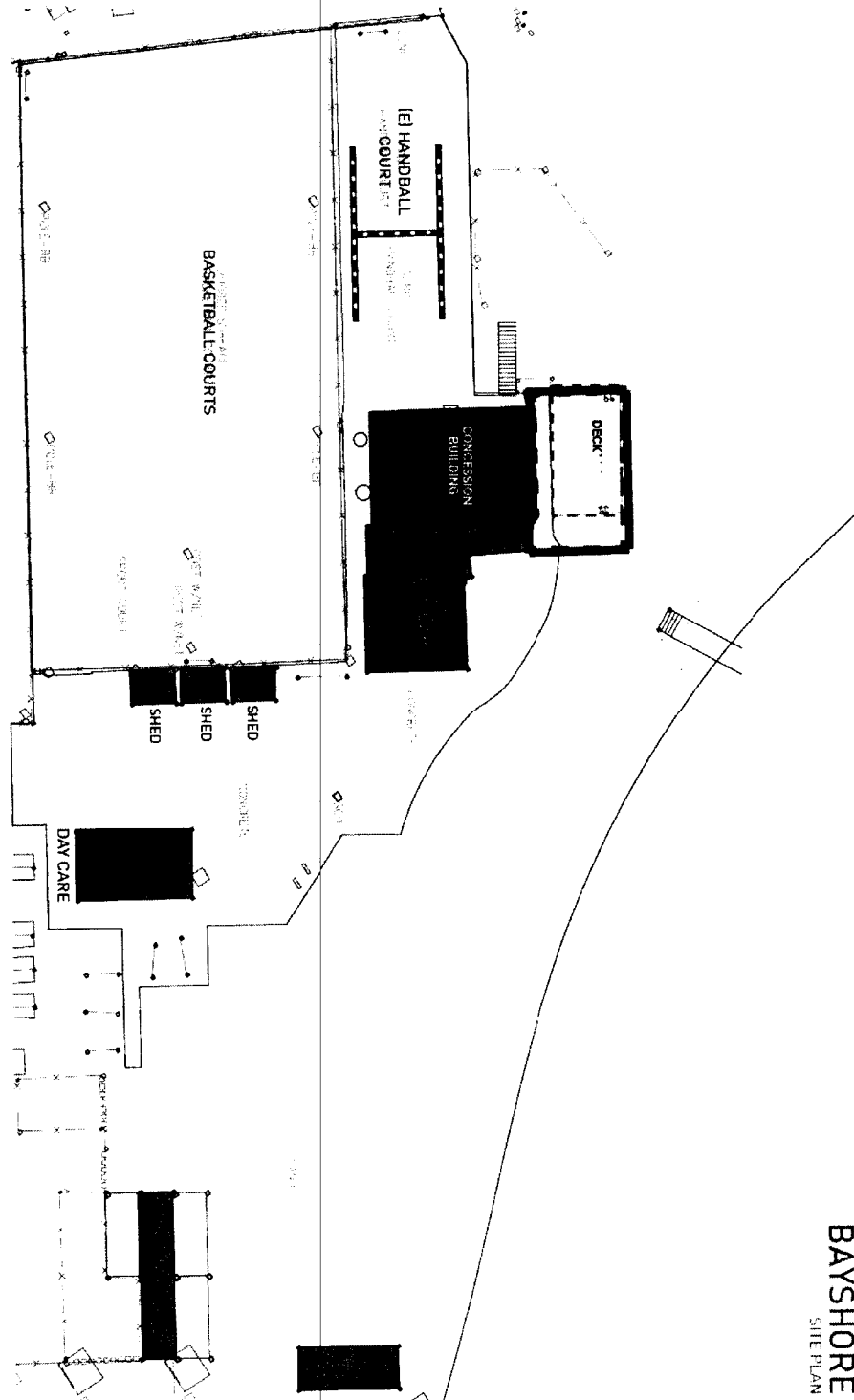
27 This Agreement is approved as to form on December 6, 2021.

28 CHARLES PARKIN, City Attorney

By: [Signature]  
Deputy

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

EXHIBIT "A"  
PREMISES DEPICTION



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

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EXHIBIT "B"  
COASTAL DEVELOPMENT PERMIT



# CITY OF LONG BEACH

DEPARTMENT OF PLANNING & BUILDING

333 WEST OCEAN BOULEVARD • LONG BEACH, CALIFORNIA 90802 • FAX (562)570-6088

## NOTICE OF FINAL ACTION

**Case No.:** 9810-13

**Project Location:** 5411 East Ocean Boulevard

**Applicant:** Department of Parks, Recreation and Marine  
c/o Dennis Eschen  
2760 Studebaker Road  
Long Beach, CA 90815

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

**Project Description:** A request for the construction of a patio cover/roof deck adjacent to beach concession buildings.

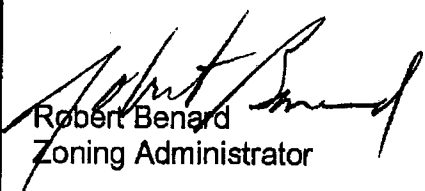
**Action was taken by the:** Zoning Administrator on:  
January 11, 1999

**Decision:** Conditionally Approved

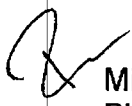
**Action is final on:** January 21, 1999

This project is in the coastal zone, therefore, this action IS appealable to the Coastal Commission.

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

  
Robert Benard  
Zoning Administrator

Attachments

  
Miguel Madrigal, Planner II  
Phone No.: (562)570-6952

Council District: 3

## **APPEALS TO THE CITY PLANNING COMMISSION AND/OR TO THE CITY COUNCIL**

- A. Any aggrieved person may appeal a decision on a project that required a public hearing.
- B. An appeal must be filed within ten (10) calendar days after decision.
- C. An appeal shall be filed with the Department of Planning and Building on a form provided by that Department.
- D. A public hearing on an appeal shall be held within thirty (30) calendar days after the Department of Planning and Building receives a completed appeal form.
- E. A notice of the public hearing on the appeal shall be mailed by the Department of Planning and Building to the applicant and any known aggrieved person not less than ten (10) calendar days prior to the hearing.
- F. The Planning Commission shall have jurisdiction on appeals from decisions of the Zoning Administrator and the City Council shall have jurisdiction on appeals from the Planning Commission.
- G. Except for appeals to the Coastal Commission for projects located seaward of the appealable area boundary and appeals to the City Council of local coastal development permits on developments regulated under the City's Oil Code, there shall be no further appeals after a decision on an appeal.
- H. You are hereby provided notice that the time within which judicial review of the herein reported decision must be sought is governed by Section 1094.6 of the California Code of Civil Procedure.

## **APPEALS TO THE COASTAL COMMISSION**

All actions on local coastal development permits seaward of the appealable area boundary may be appealed by any aggrieved person to the Coastal Commission according to the procedures of the Coastal Commission, provided that all local appeals have been exhausted and no fee was charged the appellant for such appeal, by filing such appeal at the Coastal Commission offices, 200 Oceangate, 10th Floor, Long Beach, CA 90802-4302

**DEPARTMENT OF PLANNING AND BUILDING**  
**333 W. Ocean Blvd., Fifth Floor**  
**Long Beach, CA 90802**

**Local Coastal Permit**  
**CONDITIONS OF APPROVAL**

**Case No. 9810-13**

**January 11, 1999**

1. This permit and all rights hereunder shall terminate within one year of the effective date of the permit unless construction is commenced or a written time extension is granted, based on a written request submitted prior to the expiration of the one year period as provided in Section 21.21.406 of the Long Beach Municipal Code.
2. This approval shall be invalid if the owner(s) and applicant have failed to return the **written acknowledgment of their acceptance** of the conditions of approval on forms supplied by the Planning Bureau. This includes a revised set of plans reflecting all of the design changes set forth in the conditions of approval within 90 days from the date of approval or the Site Plan Review.
3. In the event of transfer of ownership of the property involved in this application, the new owner shall be fully informed of the use and development of said property as set forth by this permit together with all conditions which are a part thereof.
4. 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.
5. The Director of Planning and Building is authorized to make minor modifications to the approved preliminary plans or any of the conditions if such modifications shall achieve substantially the same results as would strict compliance with said plans and conditions.
6. 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.
7. Site development shall conform to plans approved and on file in the Department of Planning and Building.
8. Demolition, site preparation, and construction activities are limited to the hours between 7:30 a.m. and 7:00 p.m., except for the pouring of concrete, which may occur as needed.

Coastal Permit Conditions of Approval  
Case No. 9810-13  
January 21, 1999  
Page 2

9. Where feasible, incorporate energy conservation features, such as the following:
  - a. Lighting, air conditioning, and other electrical equipment, which is energy conserving;
  - b. Energy efficient construction equipment and devices; and,
  - c. Use of solar energy.
10. Any off-site improvements found damaged shall be replaced to the satisfaction of the Director of Public Works.
11. All required utility easements shall be provided for to the satisfaction of the concerned department or agency.
12. All structures shall conform to Building Code requirements. Notwithstanding this review, all required permits from the Building and Safety Bureau must be secured.
13. Site preparation and construction activities shall be conducted in a manner which minimizes dust.
14. 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. The amount of such fees shall be the amount applicable when the fee is paid.
15. All new roof top equipment shall be screened from public view by a solid parapet or equipment well.
16. This approval is required to comply with these Conditions of Approval as long as this use is on this site. As such the site shall allow periodic re-inspection is carried out, the property owner shall reimburse the city for the cost according to the special building inspection established by City Council.
17. The existing food concession stand shall remain as an accessory use to the public beach; it shall not convert to a typical fast food or dinner restaurant. Any change in the nature of the concession stand to a fast food or dinner restaurant shall necessitate the approval of a Conditional Use Permit.



Coastal Permit Conditions of Approval  
Case No. 9810-13  
January 21, 1999  
Page 3

18. The applicant shall remove the existing nonconforming roof sign and replace it with a conforming sign as per Chapter 21.44 of the Zoning Ordinance.
19. The applicant shall provide adequate trash receptacles for its patrons.
20. Security lighting shall be provided underneath the proposed cover. Security lighting shall also be provided atop the roof deck in the form of low level lighting no higher than 3'0" above the roof deck flooring.
21. The applicant shall provide seating and tables as part of the improvements.
22. The applicant shall submit plans for the review and approval of the Long Beach Fire Department prior to the issuance of a building permit.

**LOCAL COASTAL DEVELOPMENT**  
**PERMIT FINDINGS**

**Case No. 9810-13**

**Date: January 11, 1999**

**1. THE PROPOSED DEVELOPMENT CONFORMS TO THE CERTIFIED LOCAL COASTAL PLAN.**

The subject site is located in "Area E" of the Coastal zone. More specifically, it is on the land side of Ocean Boulevard at the start of the Peninsula, on public beach fronting Alamitos Bay, just east of 54th Place. The subject property is zoned P (Park) and is improved with roller hockey, handball, and basketball courts, a concession building, a kayak rental facility, and a boat dock serving as a gondola rental facility.

It is the applicant's intent to build a patio cover/roof deck over an existing slab adjacent to the concession building. The intent is to provide an improved seating area for patrons of the existing concession stand while providing shelter from the elements and an enhanced view of the bay from atop the roof deck. This proposed project is consistent with the Certified Local Coastal Plan in that the project will not change the character or usage of this portion of the public beach. Because of the existing improvements, mentioned above, this portion of the beach serves as an activity node for residents and the public. The proposed project will further encourage access to the beach by creating another unique opportunity for an enhanced view of Alamitos Bay to the public.

**2. FOR THE DEVELOPMENT SEAWARD OF THE NEAREST PUBLIC HIGHWAY TO THE SHORELINE: THE PROPOSED DEVELOPMENT CONFORMS TO THE PUBLIC ACCESS AND RECREATION POLICIES OF CHAPTER 3 OF THE COASTAL ACT.**

The proposed project is consistent with the public access and recreation policies of Chapter 3 of the Coastal Act. The proposed patio cover/deck will positively improve the subject site by enhancing the beach experience. Access to the site is not impeded in any way. In fact, access is encouraged by the proposed project in that it will provide a covered area for beach users. Additionally, it will provide a unique view opportunity of Alamitos Bays from atop the deck.

## CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA  
PO Box 1450  
200 Oceangate, 10th Floor  
LONG BEACH, CA 90802-4416  
(562) 590-5071



### NOTIFICATION OF APPEAL PERIOD

DATE: February 2, 1999

TO: Department Of Parks, Recreation And Marine  
Attn: Dennis Eschen  
2760 Studebaker Road  
Long Beach, CA

FROM: Chuck Posner, Coastal Program Analyst

RE: **Application No. 5-LOB-99-026**

Please be advised that on January 28, 1999 our office received notice of local action on the coastal development permit described below:

Local Permit #: 9810-13

Applicant(s): Department Of Parks, Recreation And Marine, Attn: Dennis Eschen

Description: Construction of a patio cover/roof deck adjacent to beach concession buildings

Location: 5411 East Ocean Blvd, Long Beach (Los Angeles County)

Unless an appeal is filed with the Coastal Commission, the action will become final at the end of the Commission appeal period. The appeal period will end at 5:00 PM on February 11, 1999.

Our office will notify you if an appeal is filed.

If you have any questions, please contact me at the address and telephone number shown above.



**City of Long Beach**  
*Working Together to Serve*

**Memorandum**

**Date:** March 29, 1999  
**To:** File  
**From:** R. Miguel Madrigal, Planner II  
**Subject:** **Building modifications to the kayak rental/restaurant facility patio/deck addition. CASE NO. 9810-13.**

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As per a phone conversation with Dennis Eschen, the applicant - Jeff Williams, is modifying the building color to a Ralph Lauren Pale Yellow within the color family of the existing blue used by the Parks and Recreation Department on their buildings. The trim color of the building will remain white as originally proposed. The applicant will be adding a few decorative features to the columns of the deck such as false sea grass and bamboo wrapped around the columns and secured with rope. These changes will add atmosphere to the project. Dennis was not adverse to the changes and were approved.

RMM