

BEACH CONCESSION AGREEMENT

35951

THIS BEACH CONCESSION AGREEMENT ("Agreement") is made and entered in duplicate as of July 12, 2021 pursuant to a minute order adopted by the City Council of the City of Long Beach, at its meeting on June 8, 2021, by and between the CITY OF LONG BEACH, a municipal corporation and trust grantee of the State of California of certain tide and submerged lands within the limits of said City ("City") and SALTWATER DECK LLC, with a business address of 10805 Artesia Blvd., Unit 107, Cerritos, CA 90703 ("Concessionaire").

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

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

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

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

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 Junipero 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 at such locations for the same or similar services as  
5 allowed under this Permit and/or may use such locations as a special event location.

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

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

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

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

18 F. Community Events. Concessionaire shall operate community  
19 events from time to time at its sole expense. A community event is defined as a  
20 public event held at the Premises, promoted by Concessionaire, funded by  
21 Concessionaire and executed by Concessionaire, its management and agents. For  
22 the purposes of organizing, operating, marketing, and sponsorship, it is understood  
23 that the ownership rights for a community event belongs solely to Concessionaire.  
24 Concessionaire shall provide a list to the Director by January 1<sup>st</sup> for final approval  
25 by the Director. On occasion, the Director will require Concessionaire to participate  
26 in various City events. All fees collected under this Section shall be included as part  
27 of the gross receipts calculation under Section 8.  
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. [Reserved].

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

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

19 I. Subcontracts. Concessionaire shall be permitted to  
20 subcontract third party services and/or equipment providers, however all  
21 subcontractors shall be approved in advance by the City Manager at his or her sole  
22 discretion. All gross revenue collected from subcontractors shall be included as part  
23 of the gross receipts calculation under Section 8.

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

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

8 4. TERM. The term of this Agreement shall commence at 12:01 a.m. on  
9 July 1, 2021 ("Commencement Date") and shall terminate at midnight on June 30, 2024  
10 (as may be extended, the "Term"). Upon termination of this Agreement (whether by lapse  
11 of time or otherwise), Concessionaire shall quit and surrender possession of the Premises  
12 and remove its personal property therefrom. Concessionaire shall have the option to  
13 extend the Term for one additional period of three (3) years, which such option shall be  
14 exercised by giving written notice of intent to extend to City not less than ninety (90) days  
15 before the end of the then-current Term.

16 5. COMPENSATION:

17 A. Base Rent. Beginning on the earlier of (i) first day of the month  
18 immediately after the month in which Concessionaire begins operations at the  
19 Premises, or (ii) October 1, 2021 ("Rent Commencement Date") and continuing  
20 monthly thereafter, Concessionaire shall pay to City a monthly base rent equal to  
21 Two Thousand Six Hundred Seventy-Three Dollars (\$2,673) ("Base Rent"). Base  
22 Rent is due and payable in advance on the first day of each month, and is delinquent  
23 on or after the fifth day of each month. Concessionaire shall not have any right of  
24 abatement, deduction, set off, prior notice or demand. The Base Rent shall be  
25 adjusted annually, effective on each anniversary of the Rent Commencement Date,  
26 by the percent change in the CPI for All Urban Consumers, All Items, Base Period  
27 1982-84=100, for the Los Angeles-Riverside-Orange County, CA area (August to  
28 August), as published by the United States Department of Labor, Bureau of Labor

1 Statistics; provided, however, that the Base Rent shall never decrease and any  
2 increase shall not exceed three percent (3%) in any year.

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

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

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

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

21 8. BOOKS OF ACCOUNT AND RECORDS.

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

27 B. Concessionaire shall install and maintain accurate receipt  
28 printing cash registers or computer systems and shall record on the cash registers



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

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

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

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

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

26 iv. Daily or weekly sales calculations;

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

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

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

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

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

26                              F.     Gross Receipts. "Gross receipts" as used herein shall include  
27                              the following:  
28

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

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

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

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

With a copy to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19. DAMAGE OR DESTRUCTION OF IMPROVEMENTS.

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



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

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

1 there are no mechanic's or similar liens for labor or materials supplied in connection  
2 therewith, the balance, if any, of such Insurance Proceeds shall be paid to  
3 Concessionaire or as Concessionaire may direct.

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

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

15 A. Commercial General Liability insurance equivalent in coverage  
16 scope to ISO form CG 00 01 10 93 in an amount not less than One Million Dollars  
17 (\$1,000,000) per occurrence and Two Million Dollar (\$2,000,000) in aggregate  
18 providing coverage from and against claims, demands, causes of action, expenses,  
19 costs, or liability for injury to or death of persons, or damage to or loss of property  
20 arising out activities performed by or on behalf of Concessionaire and for  
21 Concessionaire's operations or work under or in connection with this Agreement.  
22 Such insurance shall include, as may be applicable to Concessionaire's operations  
23 under or in connection with this Agreement, broad form contractual liability, and  
24 products and completed operations liability, shall include, as applicable to  
25 Concessionaire's and its subcontractors' operations under or in connection with this  
26 Agreement. The City of Long Beach, its officials, employees and agents shall be  
27 added as additional insureds by endorsement equivalent in coverage scope to ISO  
28 form CG 20 26 11 85. This insurance shall contain no special limitations on the

1 scope of protection afforded to City, its officials, employees and agents, and shall  
2 provide cross-liability protection.

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

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

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

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

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

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

26 C. "All Risk" property insurance in an amount sufficient to cover  
27 the full replacement value of the buildings and structural improvements on the  
28

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

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

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

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

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

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

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

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

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

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

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

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

19 21. INDEMNIFICATION.

20 A. General Indemnity. Concessionaire shall defend and indemnify  
21 the City of Long Beach and its officers and employees while acting within the scope  
22 of their duties from and against any and all actions, suits, proceedings, claims and  
23 demands, costs (including attorneys' fees and court costs), expense and liability of  
24 any kind or nature whatsoever ("claims") for injury to or death of persons or damage  
25 to property (including property owned by or under the control of City) which may be  
26 brought, made, filed against, imposed upon or sustained by City, its officers or  
27 employees based upon or arising out of:  
28

i. An act or omission of Concessionaire, its officers, agents, employees, contractors, licensees or invitees or of any person entering upon the Premises with the express or implied invitation of Concessionaire;

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

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

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

B. Environmental Release and Indemnification.

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

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

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

23 i. Exclusions.

24 (a) Contamination on, beneath, or abutting the  
25 Premises which existed prior to the Commencement Date.

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

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

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

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

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

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

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

25 iv. The presence of which on the Premises causes or  
26 threatens to cause a nuisance upon the Premises or to adjacent properties  
27 or poses or threatens to pose a hazard to the health or safety of persons on  
28 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 further conditions in connection with the granting of consent as may be required to assure that public health, safety, welfare and convenience will be best served by the proposed tenant, license or concession. If Concessionaire shall be adjudicated a bankrupt or become insolvent or any interest in this Agreement be taken by virtue of attachment, execution, or

1 receivership, City may terminate this Agreement upon five (5) days written notice to  
2 Concessionaire.

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

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

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

25           27.   CITY SPONSORED SPECIAL EVENTS.

26           A.   City reserves the right to issue other permits for operations  
27 along the Premises, including but not limited to, retail vendor permits, and permits  
28 for special events and filming (special events include by way of example, but are

1 not limited to, the Long Beach Grand Prix, the 2028 Olympics, and/or filming  
2 activities).

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

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

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

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

20 29. GENERAL PROVISIONS.

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

22 Notices, demands, and communication between City and Concessionaire  
23 shall be in writing and shall be sufficiently given if personally served or if mailed by  
24 registered or certified mail, postage prepaid, return receipt requested addressed as  
25 follows:

26 TO CITY: City Manager  
27 10th Floor, City Hall  
28 411 West Ocean Boulevard  
Long Beach, California 90802

1 WITH A COPY TO: Director of Parks, Recreation & Marine  
2 2760 Studebaker Road  
3 Long Beach, California 90815-1697  
4 Attention: Contract Management

5 AND: Department of Parks, Recreation and Marine  
6 205 Marina Drive  
7 Long Beach, CA 90803  
8 Attention: Marine Bureau Manager

9 TO CONCESSIONAIRE:

10 10805 Artesia Blvd., Unit 107  
11 Cerritos, CA 90703

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

15 B. Conflict of Interest. No member, official or employee of City  
16 shall have any personal interest, direct or indirect, in this Agreement, nor shall any  
17 such member, official or employees participate in any decision relating to this  
18 Agreement which affects his personal interest or the interests of any corporation,  
19 partnership or association in which he is, directly or indirectly, interested. No  
20 member, official or employee of City shall be personally liable to Concessionaire, or  
21 any successor in interest, in the event of any default or breach by City or for any  
22 amount which may become due to Concessionaire or successor or on any  
23 obligations under the terms of this Agreement.

24 C. Defaults and Remedies.

25 i. Defaults – General. Failure by either party to perform  
26 any term or provision of this Agreement constitutes default under this  
27 Agreement, if not cured within (i) ten (10) days for a monetary default, or (ii)  
28 thirty (30) days for a non-monetary default, from the date of receipt of a  
written notice from the other party specifying the default; provided that if such  
non-monetary default cannot reasonably be cured within such thirty (30) day  
period, the party receiving such notice of such default shall not be in default

1 under this Agreement if such party commences the cure of such default within  
2 such thirty (30) day period and thereafter diligently prosecutes the steps to  
3 cure such default to completion; provided, however, in no event may such  
4 cure period exceed ninety (90) days.

5 ii. Institution of Legal Actions. In addition to any other  
6 rights or remedies, either party may institute a legal action to cure, correct,  
7 or remedy any default, to recover damages for any default, or to obtain any  
8 other remedy consistent with the purpose of this Agreement. Such legal  
9 actions must be instituted in the South Branch of the Superior Court of the  
10 County of Los Angeles, State of California, or in the Federal District court in  
11 the Central District of California.

12 iii. Applicable Law. The laws of the State of California shall  
13 govern the interpretation and enforcement of this Agreement.  
14 Concessionaire during its use of the Premises shall at all times comply with  
15 all laws, ordinances, rules, and regulations of and obtain permits from all  
16 federal, state, and local governmental authorities having jurisdiction over the  
17 Premises and Concessionaire's activities thereon.

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

24 v. Inaction Not a Waiver of Default. Any failures or delays  
25 by either party in asserting any of its rights and remedies as to any default  
26 shall not operate as a waiver of any default or of any such rights or remedies  
27 or deprive either such party of its right to institute and maintain any actions  
28

1 or proceedings which it may deem necessary to protect, assert or enforce  
2 any such rights or remedies.

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

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

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

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

25 G. Successors in Interest. The provisions of this Agreement shall  
26 be binding upon and shall inure to the benefit of the heirs, executors, assigns and  
27 successors in interest of the parties.  
28

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

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

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

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

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

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

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

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July 1<sup>st</sup>, 2021 SALTWATER DECK, LLC, a California limited liability company

By: [Signature]  
Name: Amy Kolb / Martin Vasseur  
Title: Members

"Concessionaire"

CITY OF LONG BEACH, a municipal corporation

July 12, 2021 By Linda F. Tatum  
City Manager

"City"

**EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER**

This Agreement is approved as to form on July 1, 2021.

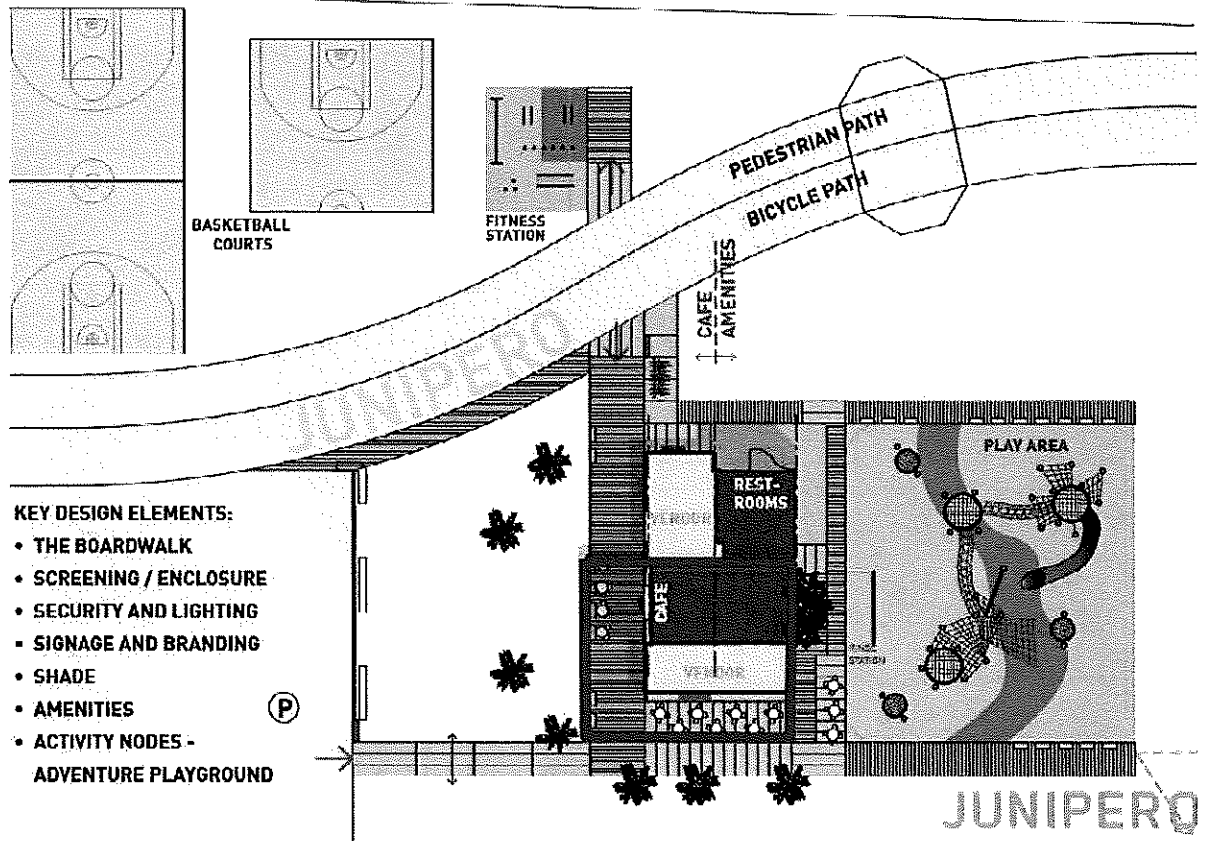
CHARLES PARKIN, City Attorney

By: [Signature]  
Deputy



# EXHIBIT "A"

## PREMISES DEPICTION / DESCRIPTION



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

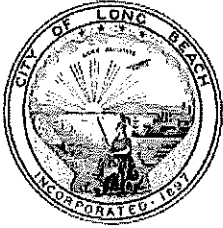


EXHIBIT B

# CITY OF LONG BEACH

DEPARTMENT OF DEVELOPMENT SERVICES

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

## NOTICE OF FINAL ACTION

**Application No.:** 1703-39 (LCDP17-023)

**Project Location:** 2630 E. Ocean Boulevard

**Applicant:** Tony Resendez, Public Works  
333 W. Ocean Blvd, 9<sup>th</sup> Floor  
Long Beach, CA 90802

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

**Project Description:** A Local Coastal Development Permit for construction of site improvements associated with Junipero/Coronado Concession building, which consists of the installation of exercise equipment with an accessible path, two (2) basketball courts, and wayfinding signage on an existing paved beach path.

**Action was taken by the:** Zoning Administrator:  
January 22, 2018


**Decision:** Conditionally Approved

**Action is final on:** February 2, 2018

This project is in the Coastal Zone and is in the Appealable Area.

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

  
Carrie Tai, AICP  
Current Planning Officer

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

District: 3

EXHIBIT B

**LOCAL COASTAL DEVELOPMENT PERMIT**  
**2630 E. Ocean Boulevard**  
**Case No. 1703-39 – LCDP17-023**  
**January 22, 2018**

1. This request is a Local Coastal Development Permit request to allow the construction of site improvements associated with the Junipero/Coronado concession building, which consists of the installation of exercise equipment with an accessible path, two (2) basketball courts, and wayfinding signage on an existing paved beach path in the Park (P) zoning district.
2. This permit and all development rights hereunder shall terminate two years from the effective date of this permit unless construction is commenced or a time extension is granted, based on a written and approved request submitted prior to the expiration of the two-year period as provided in Section 21.21.406 of the Long Beach Municipal Code.
3. This permit shall be invalid if the owner(s) and/or applicant(s) have failed to return written acknowledgment of their acceptance of the conditions of approval on the *Conditions of Approval Acknowledgement Form* supplied by the Planning Bureau. This acknowledgment must be submitted within 30 days from the effective date of approval (final action date or, if in the appealable area of the Coastal Zone, 21 days after the local final action date).

**Special Conditions:**

4. The letter "J" shown on the northeast elevation of the conceptual plans, shall be incorporated on the south building wall.
5. No fences shall be installed around the basketball courts or exercise areas.
6. New directional signage shall be installed along the pedestrian pathway to identify the entrances to the basketball courts and play areas, to the satisfaction of the Zoning Administrator.
7. No publicly accessible telephones shall be maintained on the exterior of the premises, and any existing publicly accessible telephones shall be removed.
8. The changes to the concession stands shall be as shown on the plans on file, dated March 20, 2017.

**Standard Conditions:**

9. 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.

EXHIBIT B

LCDP  
Conditions of Approval  
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10. This approval is required to comply with these conditions of approval as long as the use is on the subject site. As such, the site shall allow periodic re-inspections, at the discretion of city officials, to verify compliance. The property owner shall reimburse the City for the inspection cost as per the special building inspection specifications established by City Council (Sec. 21.25.412, 21.25.212).
11. All conditions of approval must be printed verbatim on all plans submitted for plan review to the Department of Development Services. These conditions must be printed on the site plan or a subsequent reference page.
12. The Director of Development Services is authorized to make minor modifications to the approval design plans or the any of the conditions of approval if such modifications shall not significantly change/alter the approved design/project. Any major modifications shall be reviewed by the Zoning Administrator or Planning Commission, respectively.
13. The property shall be developed and maintained in a neat, quiet, and orderly condition and operated in a manner so as not to be detrimental to adjacent properties and occupants. This shall encompass the maintenance of exterior facades of the building, designated parking areas serving the use, fences and the perimeter of the site (including all public parkways).
14. Any graffiti found on site must be removed within 24 hours of its appearance.
15. As a condition of any City approval, the applicant shall defend, indemnify, and hold harmless the City and its agents, officers, and employees from any claim, action, or proceeding against the City or its agents, officers, or employees to attack, set aside, void, or annul the approval of the City concerning the processing of the proposal/entitlement or any action relating to, or arising out of, such approval. At the discretion of the City and with the approval of the City Attorney, a deposit of funds by the applicant may be required in an amount sufficient to cover the anticipated litigation costs.

**LOCAL COASTAL DEVELOPMENT PERMIT  
FINDINGS**

**App. No. 1703-39 -LCDP17-023**

**Date: January 22, 2018**

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

The site is located in Area B (Bixby Park /Bluff Park Neighborhood), of the Local Coastal Plan, which extends from Cherry Avenue on the west to Redondo Avenue on the east and from Broadway south to the waterline. Area B also borders on several major regional recreational resources: Bixby Park, Bluff Park, and the beach. Area B was divided into three sub-areas – the project site is in Sub-Area 3, which encompasses Bixby Park, Bluff Park, and the Beaches. This request is for construction of site improvements associated with the Junipero/Coronado Concession building, which consists of the installation of exercise equipment with an accessible path, two (2) basketball courts, and wayfinding signage on a existing paved beach path. The LCP specifically allows for the placement of basketball courts between the easter arm of he parkin glot and the bluff. The applicant is proposing to place the basketball courts and fitness areas between this area, which is conforms to the Certified Coastal Program. This request includes approval of a Categorical Exemption. No low and moderate-income housing will be removed as a result of the development.

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

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

The development proposed will not impede public access to the coast, given that the proposed changes will lead to improvements to existing recreational facilities located at on the beach. The improvements being proposed were specifically proposed as part of the plan, therefore, the proposed development conforms to the public access and recreation policies of Chapter 3 of the Coastal Act.

**LOCAL COASTAL DEVELOPMENT PERMIT  
FINDINGS**

**App. No. 1703-39 -LCDP17-023**

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**CALIFORNIA COASTAL COMMISSION**

SOUTH COAST DISTRICT OFFICE  
200 OCEANGATE, 10TH FLOOR  
LONG BEACH, CALIFORNIA 90802-4416  
PH (562) 590-5071 FAX (562) 590-5084  
[WWW.COASTAL.CA.GOV](http://WWW.COASTAL.CA.GOV)



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October 12, 2018

Permit Application No.: 5-17-0796

**NOTICE OF INTENT TO ISSUE PERMIT**

(Upon satisfaction of special conditions)

THE SOLE PURPOSE OF THIS NOTICE IS TO INFORM THE APPLICANT OF THE STEPS NECESSARY TO OBTAIN A VALID AND EFFECTIVE COASTAL DEVELOPMENT PERMIT ("CDP"). A Coastal Development Permit for the development described below has been approved but is not yet effective. Development on the site cannot commence until the CDP is effective. In order for the CDP to be effective, Commission staff must issue the CDP to the applicant, and the applicant must sign and return the CDP. **Commission staff cannot issue the CDP until the applicant has fulfilled each of the "prior to issuance" Special Conditions.** A list of all the Special Conditions for this permit is attached.

The Commission's approval of the CDP is valid for two years from the date of approval. To prevent expiration of the CDP, you must fulfill the "prior to issuance" Special Conditions, obtain and sign the CDP, and commence development within two years of the approval date specified below. You may apply for an extension of the permit pursuant to the Commission's regulations at Cal. Code Regs. title 14, section 13169.

On October 10, 2018, the California Coastal Commission approved Coastal Development Permit No. 5-17-0796 requested by Joshua Hickman, City Of Long Beach subject to the attached conditions, for development consisting of: **Remodel of concession/restroom building on Junipero Beach adjacent to bike/pedestrian path, consisting of a new screen wall separating restrooms from concession area, lockable storage space for vendors, shade structure, new concrete boardwalk connecting concession with bike path, children's playground, and other ADA improvements, more specifically described in the application filed in the Commission offices. Commission staff will not issue the CDP until the "prior to issuance" special conditions have been satisfied.**

The development is within the coastal zone at: 2630 E. Ocean Blvd., Junipero Beach, City of Long Beach, Los Angeles County (APN: 7264018902)



October 12, 2018

Permit Application No.: 5-17-0796

**NOTICE OF INTENT TO ISSUE PERMIT**  
(Upon satisfaction of special conditions)

If you have any questions regarding how to fulfill the "prior to issuance" Special Conditions for CDP No. 5-17-0796, please contact the Coastal Program Analyst identified below.

Sincerely,

John Ainsworth  
Executive Director



Mandy Revell  
Coastal Program Analyst

**ACKNOWLEDGMENT**

The undersigned permittee acknowledges receipt of this Notice and fully understands its contents, including all conditions imposed.

Date	Permittee
------	-----------

Please sign and return one copy of this form to the Commission office at the above address.

**STANDARD CONDITIONS**

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, then permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.

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Permit Application No.: 5-17-0796

**NOTICE OF INTENT TO ISSUE PERMIT**

(Upon satisfaction of special conditions)

4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission and affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

**SPECIAL CONDITIONS:**

This permit is granted subject to the following special conditions:

1. **Permit Compliance.** All development must occur in strict compliance with the proposal as set forth in the permit application, subject to any special conditions. Any deviation from the approved project must be submitted for review by the Executive Director to determine whether an amendment to this coastal development permit is required.
2. **Future Development.** This permit is only for the development described in coastal development permit (CDP) 5-17-0796. Pursuant to Title 14 California Code of Regulations (CCR) Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code (PRC) Section 30610(b) shall not apply to the development governed by CDP 5-17-0796. Accordingly, any future improvements to this development authorized by this permit, including any changes to the approved plans that result from alcohol service requirements, shall require an amendment to CDP 5-17-0796 from the Commission or shall require an additional CDP from the Commission unless the Executive Director provides a written determination that no amendment is legally required for any proposed minor deviations.
3. **Conditions Imposed by Local Government.** This action has no effect on conditions imposed by the City of Long Beach (**Exhibit 3**) pursuant to an authority other than the Coastal Act. The permittee shall be responsible for satisfying all terms and conditions of this coastal development permit in addition to any other requirements imposed by other local government permit conditions. In the event of a conflict between terms and conditions imposed by the local government and those of this coastal development permit, the terms and conditions of this coastal development permit shall prevail.
4. **Submittal of Final Revised Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT the applicant shall submit, for the review and written approval of the Executive Director, two full-size sets of revised final plans that conform with the plans submitted to the Commission and received in the South Coast District offices on September 13, 2018. The permittee shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director provides a written determination that no amendment is legally required for any proposed minor deviations.

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(Upon satisfaction of special conditions)

5. **Timing of Construction and Public Access.** By acceptance of this permit, the applicant agrees to minimize adverse impacts to public use of the public beach or public parking lot resulting from construction activities as required below:
- A. No construction shall occur during the "peak use" beach season, defined as the period starting the day before the Memorial Day weekend and ending the day after the Labor Day weekend of any year.
  - B. The majority of construction work will take place between the hours of 7am and 5pm. The beach will be open to the public between sunrise and 10pm except in construction zones for public safety purposes.
6. **Public Areas Management Program.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT the applicant shall submit a public areas management program, subject to the review and approval of the Executive Director, that protects the rights of the public to enter and use the concession area and associated amenities. That program shall incorporate the following:
- A. **Public Access Signage Plan.** The signage plan shall clearly describe, at a minimum, the dimensions, material(s), text, and font of each sign and/or stencil and a site plan depicting the location of each sign and/or stencil consistent with **Special Condition 4**. The signs shall facilitate, manage, and provide public access to the approved project, including identification of all public features that will be provided on the site (public tables, play area, etc.) and allowable uses of the public areas. The signs shall be conspicuously sited to maximize visibility from the regional bicycle and pedestrian route, and the Junipero public beach parking lot and be designed to provide clear information to beach goers, park visitors, and bike path and pedestrian path users without adversely impacting public views and visual resources.
- The final plans shall provide a mechanism for the Executive Director to review and approve minor sign changes. Changes may only be granted if such changes will not adversely impact, and/or will enhance coastal resources, including coastal access (e.g., modifying the signage to be clearer to the public and/or more aesthetically pleasing).
- B. **Concession hours.** The concession stand shall be:
    - i. Open weekends year-round from morning until evening (exact timing guided by peak use hours)
    - ii. Open weekdays through the summer months
    - iii. Open to the greatest extent feasible during weekdays through the winter and spring months
  - C. **Parking Requirements.**
    - i. All parking spaces within the public beach parking lots shall be reserved for the use of the general public and shall be available for use on a first-come,

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first-served basis. There shall be no exclusive use of parking spaces or reserved parking spaces within a public beach parking lot by any person or group other than the general public (handicapped and electric vehicle spaces excluded). This condition does not prohibit the City from requiring a City-issued parking permit, available to the general public.

- ii. No parking validations, or any other preferences not available to the general public, shall be granted to customers or employees of the commercial uses.

D. Menu. The concession stand shall provide and maintain a take-out window, shall offer food items that can be easily carried out, and shall stock relatively inexpensive snack items as proposed by the applicants.

E. Seating. The general public shall be allowed to visit and picnic at all seating areas on site. There shall be no full-table service in these areas.

- 1. PRIOR TO COMMENCEMENT OF CONSTRUCTION the applicant and its contractor(s) shall provide for the review and approval of the Executive Director final plans and plan notes that conform with the requirements of item A above. No work shall take place until the Executive Director approves the plans in writing.
- 2. Conformance with plans. All work shall take place consistent with the plans submitted in compliance with A above.

7. **Landscape Requirements.** Landscaping of the site shall be consistent with the following:

- A. Vegetated landscaped areas shall consist of native plants or non-native drought tolerant plants, which are non-invasive. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a "noxious weed" by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be low water use plants as identified by California Department of Water Resources (See: <http://www.water.ca.gov/wateruseefficiency/docs/wucols00.pdf>).
- B. Use of reclaimed water for irrigation is encouraged. If using potable water for irrigation, only drip or microspray irrigation systems may be used. Other water conservation measures shall be considered, such as weather based irrigation controllers.

8. **Construction and Pollution Prevention Plan**

- A. PRIOR TO CONSTRUCTION, the applicant shall submit, for the review and written approval of the Executive Director, a final Construction and Pollution Prevention Plan prepared and certified by a qualified licensed professional, that demonstrates that all construction, including, but not limited to, clearing, grading, staging, storage of equipment and materials, or other activities that involve ground disturbance; building,

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(Upon satisfaction of special conditions)

reconstructing, or demolishing a structure; and creation or replacement of impervious surfaces, complies with the following requirements:

1. **Construction Site Map and Narrative Description.** The Construction and Pollution Prevention Plan shall include a construction site map and a narrative description addressing, at a minimum, the following required components:
  - i. A map delineating the construction site, construction phasing boundaries, and the location of all temporary construction-phase BMPs (such as silt fences, inlet protection, and sediment basins).
  - ii. A description of the measures that will be implemented to ensure that bike and pedestrian access along the east-west regional bicycle and pedestrian route is maintained during construction activities. If temporary closure of the bicycle and pedestrian path is necessary during construction, a 5-minute interruption of traffic on the pedestrian and bicycle route is authorized with a flag-person to stop bicycle and pedestrian traffic.
  - iii. A description of the BMPs that will be implemented to minimize land disturbance activities, minimize the project footprint, minimize soil compaction, and minimize damage or removal of non-invasive vegetation. Include a construction phasing schedule, if applicable to the project, with a description and timeline of significant land disturbance activities.
  - iv. A description of the BMPs that will be implemented to minimize erosion and sedimentation, control runoff and minimize the discharge of other pollutants resulting from construction activities. Include calculations that demonstrate proper sizing of BMPs.
  - v. A description of the BMPs that will be implemented to minimize energy use and minimize light spillage onto adjacent areas resulting from construction activities.
  - vi. A description and schedule for the management of all construction-phase BMPs (including installation and removal, ongoing operation, inspection, maintenance, and training). Identify any temporary BMPs that will be converted to permanent post-development BMPs.
2. **Minimize Erosion and Sediment Discharge.** During construction, erosion and the discharge of sediment off-site or to coastal waters shall be minimized through the use of appropriate Best Management Practices (BMPs), including:
  - i. Land disturbance during construction (e.g., clearing, grading, and cut-and-fill) shall be minimized, and grading activities shall be phased, to avoid increased erosion and sedimentation.

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- ii. Erosion control BMPs (such as mulch, soil binders, geotextile blankets or mats, or temporary seeding) shall be installed as needed to prevent soil from being transported by water or wind. Temporary BMPs shall be implemented to stabilize soil on graded or disturbed areas as soon as feasible during construction, where there is a potential for soil erosion to lead to discharge of sediment off-site or to coastal waters.
  - iii. Sediment control BMPs (such as silt fences, fiber rolls, sediment basins, inlet protection, sand bag barriers, or straw bale barriers) shall be installed as needed to trap and remove eroded sediment from runoff, to prevent sedimentation of coastal waters.
  - iv. Tracking control BMPs (such as a stabilized construction entrance/exit, and street sweeping) shall be installed or implemented as needed to prevent tracking sediment off-site by vehicles leaving the construction area.
  - v. Runoff control BMPs (such as a concrete washout facility, dewatering tank, or dedicated vehicle wash area) that will be implemented during construction to retain, infiltrate, or treat stormwater and non-stormwater runoff.
3. Minimize Discharge of Construction Pollutants. The discharge of other pollutants resulting from construction activities (such as chemicals, paints, vehicle fluids, petroleum products, asphalt and cement compounds, debris, and trash) into runoff or coastal waters shall be minimized through the use of appropriate BMPs, including:
- i. Covering stockpiled construction materials, soil, and other excavated materials to prevent contact with rain, and protecting all stockpiles from stormwater runoff using temporary perimeter barriers.
  - ii. Cleaning up all leaks, drips, and spills immediately; having a written plan for the clean-up of spills and leaks; and maintaining an inventory of products and chemicals used on site.
  - iii. Proper disposal of all wastes; providing trash receptacles on site; and covering open trash receptacles during wet weather.
  - iv. Prompt removal of all construction debris from the beach.
  - v. Detaining, infiltrating, or treating runoff, if needed, prior to conveyance off-site during construction.
4. Fueling and maintenance of construction equipment and vehicles shall be conducted off site if feasible. Any fueling and maintenance of mobile equipment conducted on site shall not take place on the beach, and shall take place at a designated area located at least 50 feet from coastal waters, drainage courses, and storm drain inlets, if

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feasible (unless those inlets are blocked to protect against fuel spills). The fueling and maintenance area shall be designed to fully contain any spills of fuel, oil, or other contaminants. Equipment that cannot be feasibly relocated to a designated fueling and maintenance area (such as cranes) may be fueled and maintained in other areas of the site, provided that procedures are implemented to fully contain any potential spills.

5. **Minimize Other Impacts of Construction Activities.** Other impacts of construction activities shall be minimized through the use of appropriate BMPs, including:
    - i. Soil compaction due to construction activities shall be minimized, to retain the natural stormwater infiltration capacity of the soil.
    - ii. The use of temporary erosion and sediment control products (such as fiber rolls, erosion control blankets, mulch control netting, and silt fences) that incorporate plastic netting (such as polypropylene, nylon, polyethylene, polyester, or other synthetic fibers) shall be avoided, to minimize wildlife entanglement and plastic debris pollution.
  6. A delineation of the areas to be disturbed by grading or construction activities including any temporary trenches, staging, and stockpile areas. No construction equipment or materials (including debris) shall be allowed at any time on the sandy beach.
  7. The plan shall include source control Best Management Practices as part of a written plan designed to control dust, concrete, demolition pavement, or pipe removed during construction, and/or construction materials, and standards for interim control and for clean-up. Tarps or other devices shall be used to capture debris, dust, oil, grease, rust, dirt, fine particles, and spills to protect the quality of coastal waters. All sediment waste and debris should be retained on-site unless removed to an appropriate approved dumping location. If the disposal site is located within the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place. Contractors shall monitor and contain oil or fuel leaks from vehicles and equipment.
  8. The plan shall also include temporary erosion control measures should grading or site preparation cease for a period of more than 30 days, including but not limited to: filling or covering all holes in roadways such that traffic can continue to pass over disturbed areas, disturbed soils and trenches with shoring, sand bag barriers, silt fencing, temporary drains and swales, and sediment basins and stabilization of all stockpiled fill. These temporary erosion control measures shall be monitored and maintained at least on a weekly basis until grading or construction operations resume.
- B. **PRIOR TO COMMENCEMENT OF CONSTRUCTION** the applicant and its contractor(s) shall provide for the review and approval of the Executive Director final

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plans and plan notes that conform with the requirements of item A above. No work shall take place until the Executive Director approves the plans in writing.

- C. Conformance with plans. All work shall take place consistent with the plans submitted in compliance with A above.
9. **Post-Development Runoff Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the permittee shall submit, for the review and written approval of the Executive Director, a final Post-Development Runoff Plan that demonstrates that the project complies with the following requirements:
- A. **Low Impact Development Strategies.** The project shall comply with the following Low Impact Development standards:
1. Maintain or enhance appropriate on-site infiltration of runoff to the greatest extent feasible. Use strategies such as amending soil if needed to enhance infiltration and installing an infiltration Best Management Practice (BMP) (e.g., a vegetated swale, rain garden, or bio retention system).
  2. Where feasible, increase the area of pervious surfaces in re-development. Use strategies such as minimizing the footprint of impervious pavement; and installing a permeable pavement system where pavement is required.
- B. Disconnect impervious surface areas from the storm drain system, by interposing permeable areas between impervious surfaces and the storm drain system. Design curbs, berms, and similar structures to avoid isolation of vegetative landscaping and other permeable areas, and allow runoff to flow from impervious pavement to permeable areas for infiltration. Use strategies such as directing roof-top runoff into permeable landscaped areas; directing runoff from impervious pavement into distributed permeable areas (e.g., turf, medians, or parking islands); installing a vegetated swale or filter strip to intercept runoff sheet flow from impervious surfaces; and installing a rain barrel or cistern to capture and store roof-top runoff for later use in on-site irrigation.
- C. Where on-site infiltration is not appropriate or feasible, use alternative BMPs to minimize post-development changes in runoff flows, such as installing an evapotranspiration BMP that does not infiltrate into the ground but uses evapotranspiration to reduce runoff (e.g., a vegetated "green roof," flow-through planter, or retention pond); directing runoff to an off-site infiltration facility; or implementing BMPs to reduce runoff volume, velocity, and flow rate before directing runoff to the storm drain system.
- D. **Implement Source Control BMPs.** Appropriate and feasible long-term Source Control BMPs, which may be structural features or operational practices, shall be implemented to minimize the transport of pollutants in runoff from the development by controlling pollutant sources and keeping pollutants segregated from runoff. Use strategies such as



**NOTICE OF INTENT TO ISSUE PERMIT**

(Upon satisfaction of special conditions)

covering outdoor storage areas; using efficient irrigation; proper application and clean-up of potentially harmful chemicals and fertilizers; and proper disposal of waste.

E. **Avoid Adverse Impacts from Stormwater and Dry Weather Runoff.** The adverse impacts of discharging stormwater or dry weather runoff flows to coastal waters, intertidal areas, beaches, bluffs, or stream banks shall be avoided, to the greatest extent feasible. The project shall comply with the following requirements:

1. Runoff shall be conveyed off-site or to drainage systems in a non-erosive manner.
2. The discharge of dry weather runoff to coastal waters shall be minimized, to the greatest extent feasible. Use strategies such as efficient irrigation techniques that minimize off-site runoff.

F. **Manage BMPs for the Life of the Development.** Appropriate protocols shall be implemented to manage BMPs (including ongoing operation, maintenance, inspection, and training) to keep the water quality provisions effective for the life of the development.

G. **Use the following kitchen BMPs.**

1. **Control Outdoor Washing Activities.** All equipment, including floor mats, shall be washed indoors to ensure the wastewater is collected via floor drains or sinks and disposed of in the sanitary sewer. On a weekly basis, the applicant shall, sweep impervious surfaces to remove litter, sediment, and other debris.
2. **Sweep Sidewalks and Parking Lots.** Restaurant parking lots and sidewalks should be swept regularly. Hose or pressure wash water shall be collected and discharged into the sanitary sewer.
3. **Kitchen Grease.** Kitchen Grease shall be handled using a grease trap or interceptor. Grease traps and interceptors shall be cleaned and inspected regularly for leaks and replaced, if necessary. Tallow bins, grease traps and interceptors shall be pumped by a grease hauler on a regular schedule.
4. **Seal and Maintain Trash/Recycling Containers.** Lids shall be provided for trash, recycling cans, and other outdoor containers. Outdoor trash and recycling containers shall be inspected before it rains to make sure the lids are closed, and dumpsters shall be inspected regularly for leaks and for trash piling up around the dumpsters. The amount of liquids disposed of in dumpsters shall be minimized.
5. **Oversee All Cleaning Service Contractors.** Contractors shall be prohibited from disposing of cleaning solvents or waste into a storm drain. Contractors shall be tasked with cleaning floor mats, exhaust filters, garbage cans, carts, and/or tray racks.

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6. **Prevent Spills.** Spill containment kits shall be kept in convenient locations, such as near dumpsters and unloading areas in case of a spill. Rags or absorbents shall be disposed of in the trash, and spills shall not be hosed into the storm drain. Employees shall be trained in the proper use of spill clean-up materials. Any spills that could enter a storm drain shall be reported to the City's Stormwater Pollution Prevention Service at (562) 570-3867.
- H. **Site Plan and Narrative Description.** The Post-Development Runoff Plan shall include a site plan and a narrative description addressing, at a minimum, the following required components:
  1. A site plan, drawn to scale, showing the property boundaries, building footprint, runoff flow directions, relevant drainage features, structural BMPs, impervious surfaces, permeable pavements, and landscaped areas.
  2. Identification of pollutants potentially generated by the proposed development that could be transported off the site by runoff.
  3. An estimate of the proposed changes in (1) impervious surface areas on the site, including pre-project and post-project impervious coverage area and the percentage of the property covered by impervious surfaces; (2) the amount of impervious areas that drain directly into the storm drain system without first flowing across permeable areas; and (3) site coverage with permeable or semi-permeable pavements.
  4. A description of the BMPs that will be implemented, and the Low Impact Development approach to stormwater management that will be used. Include a schedule for installation or implementation of all post-development BMPs.
  5. A description and schedule for the ongoing management of all post-development BMPs (including operation, maintenance, inspection, and training) that will be performed for the life of the development, if required for the BMPs to function properly.

The permittee shall undertake development in accordance with the approved Post-Development Runoff Plan, unless the Commission amends this permit or the Executive Director determines issues a written determination that no amendment is legally required for any proposed minor deviations.

10. **Assumption of Risk, Waiver of Liability and Indemnity.** BY ACCEPTANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant acknowledges and agrees: (i) that the site may be subject to hazards, including but not limited to storms, flooding, landslide, erosion, and earth movement, many of which will worsen with future sea level rise; (ii) to assume the risks to the permittee and the property that is the subject of this permit of injury and damage

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from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

**11. No Future Shoreline Protection Device**

- A. By acceptance of this Permit, the applicant agrees, on behalf of itself and all successors and assigns, that no bluff or shoreline protective device(s) shall be constructed to protect the development approved pursuant to Coastal Development Permit No. CDP 5-17-0796 including, but not limited to remodel of concession/restroom adjacent to bike/pedestrian path, consisting of a new screen wall separating restrooms from concession area, lockable storage space for vendors, shade structures, new concrete boardwalk connecting concession with bike path, children's playground, and other ADA improvements, including in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, liquefaction, bluff retreat, landslides, or other coastal hazards in the future, and as may be exacerbated by sea level rise. By acceptance of this Permit, the applicant acknowledges that the project is new development for which there is no right to construct shoreline protective devices and hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices that may exist under applicable law.
- B. By acceptance of this Permit, the applicant further agrees, on behalf of itself and all successors and assigns, that the landowner(s) shall remove the development authorized by this Permit if: (a) any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above, or if any public agency requires the structures to be removed; (b) essential services to the site can no longer feasibly be maintained (e.g., utilities, roads); (c) removal is required pursuant to Local Coastal Program policies regarding sea level rise adaptation planning; (d) the development would require a shoreline protective device to prevent (a)-(c) above. The approved project may be constructed and used consistent with the terms and conditions of this permit for only as long as it remains safe for occupancy. The permittee shall obtain a coastal development permit for removal of approved development unless the Executive Director provides a written determination that no coastal development permit is legally required.
- C. Prior to removal/relocation, the permittee shall submit two copies of a Removal/Relocation Plan to the Executive Director for the review and written approval. The Removal/Relocation Plan shall clearly describe the manner in which such development is to be removed/relocated and the affected area restored so as to best protect coastal resources, including the Pacific Ocean.

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NOTE: IF THE **SPECIAL CONDITIONS** REQUIRE THAT DOCUMENT(S) BE RECORDED WITH THE COUNTY RECORDER, YOU WILL RECEIVE THE LEGAL FORMS TO COMPLETE (WITH INSTRUCTIONS). IF YOU HAVE ANY QUESTIONS, PLEASE CALL THE DISTRICT OFFICE.