

AMENDED AND RESTATED AGREEMENT BETWEEN THE CITY OF HUNTINGTON
BEACH AND WATERFRONT HOTEL, LLC, FOR THE CONCESSION STAND AT
21351 PACIFIC COAST HIGHWAY

THIS AMENDED AND RESTATED AGREEMENT (the "Agreement") is dated for reference purposes only as of the ___ day of _____, 2022 (the "Agreement Date"), and is being entered into by and between the CITY OF HUNTINGTON BEACH, a municipal corporation of the State of California ("City") and WATERFRONT HOTEL, LLC, a California limited liability company ("Lessee"). City and Lessee are sometimes hereinafter individually referred to as a "Party" and collectively as the "Parties".

R E C I T A L S:

A. On or about February 1, 2003, City and Lessee entered into an Agreement (herein, the "Original Agreement") for the lease by City to Lessee of that certain real property (the "Property") located at 21351 Pacific Coast Highway, in the City of Huntington Beach, California, and a concession building and other related improvements (collectively referred to as the "Improvements") situated thereon. The term "Premises" as used in this Agreement shall mean both the Property and the Improvements.

B. The Original Agreement had a term of ten (10) years and granted to Lessee an option to extend the term for an additional ten (10) years. Lessee timely exercised its option to extend the term. As of the Agreement Date of this Agreement, the term of the Original Agreement is scheduled to expire on January 31, 2023.

C. City and Lessee desire to enter into this Agreement to provide for Lessee to continue to lease the Premises for an additional ten (10) years, with an additional ten (10) year option to extend, all on the terms and subject to the conditions set forth herein.

A G R E E M E N T:

Based upon the foregoing Recitals, which are incorporated into this Agreement by reference, and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by both Parties, City and Lessee covenant and agree as follows:

1. Effective Date. This Agreement shall become effective as of 12:00 AM on February 1, 2023, immediately upon expiration of the Original Agreement (the "Commencement Date"). As of the Commencement Date, this Agreement shall supersede the Original Agreement, which at that time shall be deemed to be terminated and of no further force or effect; provided, that neither Party waives any of its rights under the Original Agreement or releases the other Party from any of such other Party's obligations under the Original Agreement that have not been fully performed as of the Commencement Date, including without limitation with respect to the payment of Rent.

2. Grant of Concession on the Premises. Commencing as of the Commencement Date and continuing through the entire Term of this Agreement (see Section 5 below), City hereby grants to Lessee, for the purposes stated herein, the right, privilege, and duty to equip, operate, and maintain a concession stand open to the public located on the Premises (hereinafter sometimes

referred to as the “Concession”). Lessee shall not use the Premises for any other purpose or business. A map depicting the Premises is set forth in **Exhibit “A”**, which is attached hereto and incorporated herein by this reference. This Agreement is not intended to confer third-party beneficiary status to anyone.

3. Reservations, Encumbrances and Rights-of-Way.

(a) City expressly reserves all natural resources in, on, or two hundred fifty (250) feet under the Premises, including, without limitation, oil, coal, natural gas, and other hydrocarbons, minerals, aggregates, timber, and other geothermal resources, as well as the right to grant agreements or other contractual arrangements in and over the Premises for the extraction of such natural resources. However, such leasing or other arrangement shall be neither inconsistent nor incompatible with the rights or privileges of Lessee under this Agreement.

(b) City expressly reserves a right to enter upon the Premises with as much advance written, verbal, or electronic notice as possible to Lessee for any reason associated with public health, safety, or welfare, or for the protection of life, limb, or property. In all other cases unless otherwise specifically set forth herein. City reserves the right for such entry but City shall give Lessee at least twenty-four (24) hours advance written, verbal, or electronic notice. City shall have a right of reasonable access to the Premises across Lessee owned, controlled, or occupied lands adjacent to the Premises, if any, for any purpose associated with this Agreement.

(c) City expressly reserves the right to convey, or encumber City’s interest in the Premises, in whole or in part, for any purpose not inconsistent or incompatible with the rights or privileges of Lessee under this Agreement. In addition. Lessee agrees to subordinate this Agreement to any existing or future City financing regarding the Premises or any portion thereof, provided that any financing does not interrupt Lessee’s business or rights under this Agreement. Lessee also agrees to cooperate and provide any documentation necessary for City to obtain any such financing at no cost to Lessee.

(d) This Agreement is made without warranty by City of the condition of its title, or the condition or fitness of the Premises for Lessee’s stated or intended use.

4. Time of Essence. Time shall be of the essence of this Agreement and each and all of its terms, covenants or conditions in which performance is a factor.

5. Term; Option to Extend. This Agreement shall commence at 12:00 a.m. on February 1, 2023, for a ten (10) year term, which shall end at 11:59 p.m. on January 31, 2033 (herein, the “Term”). Upon receipt of written approval from the City which shall not be unreasonably withheld, Lessee shall have the option to extend the Term of this Agreement for an additional ten (10) years. To exercise this option, Lessee must send City written notice specifically identifying its intent to exercise this option by July 31, 2032.

6. Conditions of Premises As Is. Lessee acknowledges that it has occupied the Premises since February 1, 2003, and that the Premises are in good condition. Lessee agrees to accept the Premises in their presently existing condition, “as is,” and agrees that City shall not be

obligated to make any alterations, additions or betterments thereto except as expressly set forth in this Section 6 and Sections 7 and 25 of this Agreement.

7. Public Facilities. During the Term of this Agreement, City shall maintain in good condition and promptly repair and replace or cause to be maintained, repaired, or replaced, as required, all water, sanitary sewer, electrical, gas, drainage facilities, and other utilities located off of the Premises and outside the building on the Premises that are required for Lessee's intended use of the Premises.

The existing 'grass area' directly adjacent to the Premise, to the south, is to be maintained by the City. If the City does not maintain the "grass area", the Lessee can, if needed and approved by the City, repair/maintain the grass area to bring it back to the quality required by Lessee at Lessee's expense.

Except as expressly set forth above, by entering into this Agreement, City makes no stipulation as to the type, size, location, or duration of public facilities, including, without limitation, any City parking lots to be maintained on property owned, controlled, or occupied by City.

8. Additions, Alterations, and Removal.

(a) City hereby approves Lessee making the improvements and alterations to the Premises described in Exhibit "D" hereto. No other modifications, alterations, or additions to the Premises, including, without limitation, construction of Improvements or changes to structural design or exterior furnishings, shall be constructed or made by Lessee without Lessee first obtaining the prior written approval of City, which will not be unreasonably withheld.

(b) Except as provided under this Agreement, no alteration or removal of existing Improvements on or natural features of the Premises shall be undertaken without Lessee first obtaining the prior written approval of City.

(c) Lessee's obligation to obtain City's prior written approval is separate and independent of Lessee's obligation to obtain any permits from City, such as, without limitation, a building permit.

9. City's Contract Administrator. City's Director of Community Development or designee shall be City's Contract Administrator for this Agreement with the authority to act on behalf of City for the purposes of this Agreement, and all City approvals and notices required to be given herein to City shall be so directed and addressed.

10. Rent. Lessee agrees to pay to City for the use and occupancy of the Premises the amounts itemized in Exhibit "B" (the "Rent"). The Rent consists of the Base Rent and the Percentage Rent.

Lessee shall pay the monthly Base Rent and Percentage Rent beginning on the Commencement Date of this Agreement.

Lessee shall pay the Rent to City at the City Treasurer's Office, P.O. Box 711, Huntington Beach, California, 92648, or at such other place or places as City may from time-to-time designate by written notice delivered to Lessee. Lessee shall pay the Base and Percentage Rent within thirty (30) calendar days after the end of the month for which Rent is due and owing, or on the next business day if the thirtieth (30th) day falls on a weekend or holiday.

11. Late Charge and Penalty. If any installment of the Base Rent or Percentage Rent is not received by the City Treasurer within ten (10) calendar days after the date such payment is due, or the next business day if the tenth (10th) day falls on a weekend or holiday, Lessee shall pay the following late charge and penalty: (1) a late charge of ten percent (10%) shall be applied to any outstanding balance after any payment hereunder is due but unpaid; and (2) a one and a half percent (1½%) penalty per month shall be added for each month the Base Rent or Percentage Rent, as applicable, is due but unpaid. With respect to any other payments required by Lessee, a one and a half percent (1½%) penalty per month shall be added for each month such payment hereunder is due but unpaid.

12. Gross Sales Defined. For the purpose of this Agreement, the term "Gross Sales" shall mean the total price of all sales processed on site (including internet sales), merchandise, services (including all food and beverage, alcohol or otherwise) sold or rendered, or equipment rented, in, on, or from the Premises by Lessee, or anyone contracting with Lessee, including, without limitation, its agents or sublessees (collectively or individually, "Lessee Party(ies)"), whether wholesale or retail, whether for cash or on credit, and if on credit whether or not paid, and whether in exchange for any other product, commodity, service, commercial paper, or forbearance, and shall include, without limitation, the following:

(a) All revenues, receipts, commissions, or proceeds from on-line sales by Lessee Party(ies), and/or from all public telephones, vending, weighing and all other machines owned or operated by Lessee Party(ies) in, on, or from the Premises;

(b) All revenues, receipts, commissions, or proceeds from sales based on orders solicited or taken, in, on, or from the Premises for merchandise, or services as described above, to be delivered or rendered off, or from sources outside, the Premises, including, without limitation, all orders taken in, on, or from the Premises although the orders may be filled elsewhere;

(c) All revenues, receipts, commissions, or proceeds from the renting of equipment of any kind in, on, or from the Premises;

(d) All revenues, receipts, commissions, or proceeds generated from offsite but delivered through the Concession; provided, however, that for purposes of this Agreement the term "Gross Sales" shall exclude all Hotel Sales. As used herein, the term "Hotel Sales" shall include all revenues, receipts, commissions, or proceeds generated from banquets, meetings, and any other group activities and events that are arranged or booked by or at the Hotel and delivered at the Premises. As used herein, the term "Hotel Sales" shall exclude any room charges for food, beverages, and services billed to guests of the Hotel but provided from the Premises (i.e., such sales shall be included in the definition of "Gross Sales" within the meaning of this Agreement). As used herein, the term "Hotel" shall mean

the Waterfront Hilton Beach Resort located at 21100 Pacific Coast Highway, Huntington Beach, California, that is owned and operated by Lessee;

(e) All revenues, receipts, commissions, or proceeds made by Lessee Party(ies) or their employees or others acting on their behalf for the rendition of services of any kind whatsoever, made in, on, or from the Premises;

(f) All other revenues, receipts, commissions, or proceeds generated by, or arising or derived whatsoever from the use of the Premises or derived whatsoever from any business conducted in, on, or from the Premises; and

(g) All revenues, receipts, commissions, or proceeds generated from all goods and services (including food and/or beverage sales, including without limitation alcohol sales) made in, on, or from the Premises.

For purposes of computing the Gross Sales figure on which to calculate the Percentage Rent, the amount of Gross Sales shall start over at zero dollars on the first day of each month.

13. Gross Sales Exclusions. Gross Sales shall not include the following items, and Lessee may deduct such items from Gross Sales to the extent they have been included therein or have been included in a prior computation of Gross Sales on which the Percentage Rent has been paid under this Agreement to City:

(a) Any sales, excise, or other taxes otherwise includable in Gross Sales and which become part of the total price of merchandise, or goods or services sold or rendered, or equipment rented, in, on, or from the Premises where Lessee must account for and remit the taxes to the government entity or entities which impose them, but only if such taxes are added to the total price and collected from customers;

(b) Any transfer of trade inventory from the Premises to the manufacturer or supplier from whom it was obtained by Lessee;

(c) Sales of Trade Fixtures (as defined in Section 50 below);

(d) Sums and credits received in the settlement of claims for loss of or damage to trade inventory or Trade Fixtures;

(e) Any sales resulting in a cash or credit refund to a customer in the ordinary course of business;

(f) Any sales of merchandise to City employees which take place at City Hall; and

(g) Hotel Sales (as defined in Section 12(d) of this Agreement).

14. Books and Records. Lessee shall keep true and accurate books and records showing all of its business transactions (excluding Hotel Sales) in separate records of account for the Concession in a manner acceptable to City, and City and/or its designated representatives shall

have the right, at all reasonable times, to inspect such books and records including, without limitation. State of California sales or use tax returns or other State return records, and Lessee hereby agrees that all such records and instruments shall promptly be delivered and made available to City and/or its designated representatives within thirty (30) days of receiving written request therefor. Lessee shall furnish to City and/or its designated representatives copies of its quarterly California sales and use tax returns at the time each is filed with the State of California.

The books and records shall show the total amount of Gross Sales made each calendar month in, on, or from the Premises and any exclusions listed in Section 13 above (with the exception that Hotel Sales need not be included in said books and records). All hotel guest and non-guest charges that are processed as cash, credit card, or room charges at the Concession will flow through a point of sale system and shall be summarized on financial statements for purposes of City's audit. Furthermore, said sales shall be broken out as a separate food and beverage outlet. All summarized financial statements from the Concession shall support the Percentage Rent calculations that are remitted to City.

All sales and charges shall be recorded by means of cash registers which display the amount of the transaction certifying the amount recorded. The register shall be equipped with devices which log in daily sales totals and which shall record on tapes the transaction numbers and sales details. At the end of each day the tape shall record the total sales for that day. Lessee agrees to maintain on the Premises, or another location subject to the prior written approval of City, all records, books of account, and cash register tapes showing, or in any way pertaining to the Gross Sales made in, on, or from the Premises during such calendar month, including, without limitation, State of California sales or use tax returns or other State tax returns, for a period of five (5) years following the close of each calendar month.

15. Statement of Gross Sales/Audit. At the time specified in Section 10 of this Agreement for the payment of each installment of Percentage Rent, Lessee shall deliver to City a true and accurate statement signed by Lessee or by an authorized employee of Lessee showing the total Gross Sales and any exclusions listed in Section 13 above (again, with the exception that Hotel Sales need not be included) made during the preceding calendar month and the amount of the Percentage Rent then being paid calculated on such Gross Sales pursuant to this Agreement. The acceptance by City of any monies paid to City by Lessee as Percentage Rent, as shown by any statement furnished by Lessee, shall not be construed as an admission of the accuracy of the statement, or of the sufficiency of the amount of the Percentage Rent payment, and City shall be entitled to review the adequacy of such payment as set forth herein. By the end of each December, Lessee shall deliver to City a year-end statement showing the total amount of Gross Sales made in, on, or from the Premises in each month of the preceding year, the total of any exclusions, the total Percentage Rent paid to City for each of those months, all with year-end totals. City may at any time within three (3) years after receiving the year-end statement, at its sole cost and expense, cause all records, books of account and cash register tapes for the year purportedly covered by the statement, to be audited by City or an accountant selected by City. Lessee shall, within thirty (30) days of receiving written notice of City's desire for such an audit, deliver and make available all such records, books of account, and cash register tapes to City or its designated representative for City's use in the audit and/or for copying. If the audit discloses that Gross Sales were understated and/or exclusions overstated, Lessee shall immediately pay the additional Percentage Rent, together with a penalty thereon from the date it was due at the penalty rate set forth in Section 11

above. Furthermore, Lessee shall promptly on demand reimburse City for the cost and expense of the audit should the audit disclose that the questioned year-end statement understated Gross Sales (including an overstatement of exclusions) by an amount such that Percentage Rent has been underpaid by an amount greater than Two Hundred Fifty Dollars (\$250.00). City further reserves the right to examine and audit all such records, books of account, and cash register tapes at any time during the three (3) year period following the expiration or termination of this Agreement. In addition, City shall have the right to enter upon the Premises during business hours and with two (2) hours advance written, verbal, or electronic notice to Lessee to perform any audit or inspection function with respect to this Agreement.

Lessee, its bookkeeper, and/or its accountant shall respond to all questions and inquiries of City with respect to the books, records, statements, and other documentation being examined, and shall promptly provide other further documentation as may be required by City. City is entitled to take statements by deposition under oath of Lessee, its officers, bookkeepers, and/or accountants or any person who prepared the books, records, statements, and other documentation required to be provided by Lessee under this Agreement.

16. Security Deposit. As of the Agreement Date, City is holding a Two Thousand Five Hundred Dollar (\$2,500) Security Deposit advanced by Lessee pursuant to the Original Agreement. On or before the Effective Date of this Agreement, Lessee shall pay to City an additional Two Thousand Five Hundred Dollars (\$2,500), to bring the total Security Deposit to be held by City during the Term of this Agreement to Five Thousand Dollars (\$5,000) (collectively, the "Security Deposit"). The Security Deposit shall guarantee all of Lessee's obligations, liabilities, duties, and responsibilities under this Agreement, including, without limitation, the repair and maintenance of the Premises as provided herein. If paid other than in cash, the form of the Security Deposit shall be approved by the City Attorney and the City Treasurer. No interest shall accrue on cash deposits to the benefit of Lessee, but interest shall accrue on any CD or savings account and shall be paid to Lessee under the terms of the CD or savings account. Lessee shall send a copy of each renewal of the CD to the City Treasurer, if applicable, to ensure that City has the records of each active deposit account.

17. Quality of Sales, Rentals and Services. Lessee, at its sole cost and expense, shall equip, operate, manage, and maintain the Premises and Concession and shall keep the same equipped and maintained in a manner acceptable to City during the entire term of this Agreement or any renewals or extensions thereof or during any holdover period. It is the intent of City that the Concession's services be provided in a manner to meet the needs of the visiting public, and should City deem the Concession's hours of operation and/or food, merchandise, services, or rentals inadequate to meet such needs, City may require Lessee to make such changes requested by City. Lessee shall additionally have the right, but not the obligation, to utilize the Concession to stage banquets, meetings, and other group activities and events that are arranged or booked by or at the Hotel and delivered at the Premises (i.e., Hotel Sales), provided that Hotel Sales shall be excluded when determining whether Lessee has satisfied its minimum day/hour operational obligations set forth in the next paragraph below. Lessee shall not use or permit the Premises to be used, in whole or in part, during the entire term of this Agreement or any renewals or extensions thereof or during any holdover period for any purpose other than as herein set forth, without the prior written consent of City.

Lessee shall only sell concessions and related merchandise at the concession stand. The concession stand shall be in operation for a minimum of one hundred twenty (120) days during the calendar year and for a minimum of four (4) hours a day, plus any additional days to accommodate special events. The minimum number of operating days and hours may be modified due to weather conditions or unforeseen events. Any modification to this minimum number of days or requests for special events (other than Hotel Sales, which are a permitted use) must be approved in advance in writing by the Director of Community Development or his or her designee.

Except as permitted in advance in writing by City, all foods and beverages shall be sold in disposable containers. No pull-top cans or Styrofoam containers are to be vended or dispensed from the Premise. Lessee, wherever feasible, shall eliminate the use of non-recyclable containers and plastics. City may from time to time review the items sold and containers or utensils used or dispensed by Lessee. City reserves the right to prohibit the sale or use of non-recyclable containers or plastics, and Lessee shall comply with City's requirement regarding prohibition of non-recyclable items. With the exception of Hotel Sales, Lessee shall comply with any City exclusivity agreement the City may have with any food or beverage sponsor.

Subject to its obtaining all required permits and licenses from City, the California Coastal Commission (if applicable), the California Department of Alcoholic Beverage Control, and any other governmental agency with jurisdiction, and compliance with all applicable terms and conditions that may be set forth in such permit(s) and license(s), Lessee shall have the right to sell alcoholic beverages to customers at the Concession.

Except as expressly set forth above and with the further exception of Hotel Sales, City in its sole discretion reserves the right to prohibit Lessee's sale, provision, or rental of any item or service rendered or performed which City deems objectionable or offensive, beyond the scope deemed necessary for proper service to the public, inappropriate for sale, provision, or rental by the Concession, or of inferior quality.

18. Indemnification, Defense and Hold Harmless Agreement. Lessee hereby agrees to protect, defend, indemnify, and hold harmless City, its officers, elected or appointed officials, employees, agents, and volunteers from and against any and all claims, damages, losses, expenses, judgments, demands, and defense costs (including, without limitation, costs and fees of litigation (including arbitration) of every nature or liability of any kind or nature) arising out of or in connection with (1) the use or occupancy of the Premises by Lessee, its officers, employees, or agents, or (2) the death or injury of any person or the damage to property caused by a condition of the Premises, or (3) the death or injury of any person or the damage to property caused by any act or omission of Lessee, its officers, employees, or agents, or (4) any failure by Lessee to keep the Premises in a safe condition, or (5) Lessee's (or Lessee's agents and/or sublessees, if any) performance of this Agreement or its failure to comply with any of its obligations contained in this Agreement by Lessee, its officers, agents, or employees, except such loss or damage which was caused by the sole negligence or willful misconduct of City. Lessee shall hold all Trade Fixtures, personal property, and trade inventory on the Premises at the sole risk of Lessee and hold City harmless from any loss or damage thereto by any cause whatsoever, except such loss or damage which was caused by the sole negligence or willful misconduct of City. Lessee will Lessee shall conduct all defense at its sole cost and expense and City shall approve selection of Lessee's counsel. This indemnity shall apply to all claims and liability regardless of whether any insurance

policies are applicable. The policy limits do not act as limitation upon the amount of indemnification to be provided by Lessee.

19. Workers' Compensation and Employers' Liability Insurance. Lessee acknowledges awareness of Section 3700 *et seq.* of the *California Labor Code*, which requires every employer to be insured against liability for workers' compensation. Lessee covenants that it shall comply with such provisions prior to the Commencement Date of this Agreement. Lessee shall obtain and furnish to City workers' compensation and employers' liability insurance in amounts not less than the State statutory limits. Lessee shall require all sub-lessees and contractors to provide such workers' compensation and employers' liability insurance for all of the sub-lessees' and contractors' employees. Lessee shall furnish to City a certificate of waiver of subrogation under the terms of the workers' compensation and employers' liability insurance and Lessee shall similarly require all sub-lessees and contractors to waive subrogation.

20. General Public Liability Insurance. In addition to the workers' compensation and employers' liability insurance and Lessee's covenant to defend, hold harmless, and indemnify City, Lessee shall obtain and furnish to City, a policy of general public liability insurance, including motor vehicle coverage against any and all claims arising out of or in connection with the Premises. This policy shall indemnify Lessee, its officers, employees and agents, while acting within the scope of their duties, against any and all claims arising out of or in connection with the Premises, and shall provide coverage in not less than the following amounts: combined single limit bodily injury and property damage, including products/completed operations liability and blanket contractual liability, of One Million Dollars (\$1,000,000.00) per occurrence. If coverage is provided under a form which includes a designated general aggregate limit, the aggregate limit must be no less than One Million Dollars (\$1,000,000.00) for the Premises. This policy shall name City, its officers, elected or appointed officials, employees, agents, and volunteers as Additional Insureds, and shall specifically provide that any other insurance coverage which may be applicable to the Agreement shall be deemed excess coverage and that Lessee's insurance shall be primary. Lessee shall require all sub-lessees to obtain and furnish to City a policy of general public liability insurance, including motor vehicle coverage, against any and all claims arising out of or in connection with the Premises in the same amounts required under this section.

Under no circumstances shall said above-mentioned insurance contain a self-insured retention, "deductible," or any other similar form of limitation on the required coverage in excess of One Thousand Dollars (\$1,000).

21. Property Insurance. Prior to the Commencement Date of this Agreement, Lessee shall obtain and furnish to City, at Lessee's sole cost and expense, property and fire insurance with extended coverage endorsements thereon, by a company acceptable to City authorized to conduct insurance business in California, in an amount insuring for the full insurable value of all Improvements, Trade Fixtures, personal property (whether or not owned or d by Lessee), and all trade inventory in or on the Premises against damage or destruction by fire, theft, or the elements. This policy shall contain a full replacement cost endorsement naming Lessee as the insured and shall not contain a coinsurance penalty provision. The policy shall also contain an endorsement naming City as an Additional Insured. The policy shall contain a special endorsement that such proceeds shall be used to repair, rebuild, or replace any such Improvements, Trade Fixtures, personal property (whether or not owned or d by Lessee), and all trade inventory so damaged or

destroyed; and if not so used, such proceeds (excluding any insurance proceeds for Trade Fixtures, personal property (whether or not owned or d by Lessee), and trade inventory, but only to the extent the insurance proceeds specifically cover those items, shall be paid to City. The policy shall also contain a special endorsement that if the Premises are so destroyed triggering the Parties' ability to terminate as set forth in Section 51 (Destruction) below, and either Party elects to terminate the Agreement, the entire amount of any insurance proceeds (excluding such proceeds for Trade Fixtures, personal property (whether or not owned or d by Lessee), and trade inventory, but only to the extent the insurance proceeds specifically cover those items, shall be paid to City. The proceeds of any such insurance payable to City may be used, in the sole discretion of City, for rebuilding or repair as necessary to restore the Premises or for any such other purpose(s) as City sees fit.

This policy shall also contain the following endorsements:

- (a) The insurer shall not cancel or reduce the insured's coverage without (30) days' prior written notice to City;
- (b) City shall not be responsible for premiums or assessments on the policy.

A complete and signed certificate of insurance with all endorsements required by this Section shall be filed with City prior to the Commencement Date of this Agreement. At least thirty (30) days prior to the expiration or termination of any such policy, a signed and complete certificate of insurance showing that coverage has been renewed shall be filed with City. Lessee shall require all sub-lessees and sub-licensees to obtain and furnish to City property and fire insurance with extended coverage endorsements thereon, by a company acceptable to City authorized to conduct insurance business in California, in compliance with the requirements and amounts set forth in this section.

22. Increase in Amount of General Public Liability and Property Insurance. Not more frequently than once every two (2) years, if, in the sole opinion of City, the amount and/or scope of general public liability insurance in Section 20 above and/or property insurance coverage in Section 21 above at that time is not adequate, Lessee shall increase the insurance coverage as reasonably required by City.

23. Certificates of Insurance; Additional Insured Endorsements. Prior to the Commencement Date of this Agreement, Lessee shall furnish to City certificates of insurance subject to approval of the City Attorney evidencing the foregoing insurance coverages as required by this Agreement; these certificates shall:

- (a) provide the name and policy number of each carrier and policy;
- (b) state that the policy is currently in force; and
- (c) provide that such policies shall not be canceled or modified without thirty (30) days' prior written notice of City; however ten (10) days' prior written notice shall be permitted in the event of cancellation for nonpayment of premium, which 10-day notice provision shall not apply to property insurance in Section 21 above.

Lessee shall maintain the foregoing insurance coverages in force during the entire Term of the Agreement, including any renewals or extensions thereof and during any holdover period.

The requirement for carrying the foregoing insurance coverages shall not derogate from Lessee's defense, hold harmless, and indemnification obligations as set forth in this Agreement. City or its representatives shall at all times have the right to demand the original or a copy of any or all the policies of insurance. Lessee shall pay, in a prompt and timely manner, the premiums on all insurance hereinabove required.

24. Insurance Hazards. Lessee shall not commit or permit the commission of any acts on the Premises nor use or permit the use of the Premises in any manner that will increase the existing rates for, or cause the cancellation of any liability, property, or other insurance policy for the Premises or required by this Agreement. Lessee shall, at its sole cost and expense, comply with all requirements of any insurance carrier providing any insurance policy for the Premises or required by this Agreement necessary for the continued maintenance of these policies at reasonable rates.

25. Maintenance of Premises. During the entire Term of this Agreement, City shall maintain, repair, and replace the Public Facilities outside the boundaries of the Premises which are City's responsibility as set forth in Section 7 of this Agreement. Lessee agrees to maintain the Premises in good order and repair, at Lessee's sole cost and expense, during the entire Term of this Agreement, including any renewals or extensions thereof, and during any holdover period, pursuant to the City's maintenance standards. A copy of the quarterly evaluation summary sheet setting forth City's maintenance checklist is attached as Exhibit "C", and incorporated herein by this reference.

Lessee's obligation includes, without limitation, maintaining and operating the Premises in a clean, safe, wholesome, and sanitary condition, free of trash, garbage, or obstructions of any kind, and in compliance with any and all present and future laws, general rules, or regulations of any governmental authority now, or at any time during the entire Term of this Agreement, including any renewals or extensions thereof and during any holdover period, in force, relating to sanitation or public health, safety, or welfare, or for the protection of life, limb, or property; and Lessee shall at all times faithfully obey and comply with all laws, rules, and regulations applicable thereto. Lessee shall be responsible for maintenance of the mechanical door unless the failure of the door is caused by environmental factors, the determination of which is to be made by the Director of Community Development or his or her designee. Lessee, at its sole cost and expense, shall remedy without delay any defective, dangerous, or unsanitary conditions caused by Lessee or anyone related thereto. Lessee shall maintain ADA access around the entire Concession building. Lessee shall maintain grease trap(s) or grease interceptor(s) in accordance with the City's requirements set forth in Chapter 14.56 of the Huntington Beach Municipal Code. On a bi-monthly basis Lessee shall inspect, service, and maintain any outdoor drains to keep them free and clear of sand.

Lessee shall paint, stain or seal the Premises' exterior surfaces a minimum of every three (3) years, unless City determines in its sole discretion that such work shall be done on a more frequent basis. All exterior metal surfaces, except the roof, shall be painted with rust resistant paint no less than once every other year. Any and all graffiti on the Premises shall be removed by

Lessee, at its sole cost and expense, within forty-eight (48) hours of Lessee receiving notice thereof or of Lessee becoming aware of such graffiti. In addition, with or without notice from City, Lessee shall, at its sole cost and expense, repair and/or replace any broken glass within forty-eight (48) hours of its becoming broken, regardless of cause, except by fault of City. Except as provided above for graffiti and broken glass, Lessee, at its sole cost and expense and with or without notice from City, shall repair and/or replace all damage or destruction to the Premises caused by act(s) of vandalism as soon as possible but in no event later than fourteen days after the date such damage or destruction occurred. Lessee, at its sole cost and expense, shall repair and/or replace all other damage or destruction to the Premises, regardless of cause, except by fault of City.

Lessee shall comply with all written notices served by City with regard to the care and maintenance of the Premises. Any written notice hereunder shall specify the work to be done and the period of time deemed to be reasonably necessary for completion of such work. Should Lessee fail to commence making the necessary repairs within seven (7) days after receiving such notice, or within twenty-four (24) hours of the glass becoming broken in the case of broken glass, or fail to diligently proceed to complete the necessary repairs within the period of time reasonably specified in the City's notice, or within forty-eight (48) hours of the glass becoming broken in the case of broken glass, or within the forty-eight (48) hour time period for removing graffiti, or within fourteen (14) days of the date that the vandalism damage or destruction occurred, City shall proceed to cause the required work to be performed, and Lessee shall promptly reimburse City for the cost of labor and materials thereof and pay City a penalty on such costs at the penalty rate set forth in Section 11 above from the date the costs were incurred by City to the date they are reimbursed to City by Lessee.

Lessee hereby expressly waives the right to make repairs at the expense of City and the benefit, if any, of the provisions of Sections 1941 and 1942 of the *California Civil Code* relating thereto.

Subject to Force Majeure delays, Lessee shall complete all proposed and approved improvements referred to in **Exhibit "D"** to this Agreement to the satisfaction of City no later than twelve (12) calendar months from the Commencement Date.

26. Rent Credit. A Rent credit may be available for some or all of any improvements, repairs, or maintenance performed by Lessee upon prior written approval by the Director of Community Development or his or her designee. The terms of payment of any Rent credit will be determined by the Director of Community Development. City in its sole discretion may decide to give Lessee a Rent credit if Lessee undertakes (1) any improvement, repair, or maintenance obligation of City under this Agreement, or (2) any work City in its sole discretion deems necessary and appropriate. Prior to Lessee undertaking any such work, City must agree in writing to the amount of and procedures for the Rent credit, the work to be done by Lessee, and the cost of such work.

27. Damage, Destruction or Nuisance. Lessee shall not commit or permit the commission by others of any damage or destruction of, on, or to the Premises and/or Concession. Lessee shall not maintain, commit, or permit the maintenance or commission of any nuisance, as defined in Section 3479 and/or Section 3480 of the *California Civil Code* on the Premises; and Lessee shall not use or permit the use of the Premises for any unlawful purpose.

28. Taxes. This Agreement may create a possessory interest in property, which is subject to taxation. In the event that such possessory interest is created, Lessee agrees to be subject to the payment of and to pay taxes levied on such interest, at its sole cost and expense. Lessee also agrees to pay, at its sole cost and expense, before they become delinquent, all other lawful taxes, assessments, or charges, which at any time may be levied by any governmental agency including, without limitation, the State, County, City, or any tax or assessment levying body upon any interest in this Agreement, or any possessory right which Lessee may have in or to the Premises, by reason of Lessee's use or occupancy thereof or otherwise, as well as all taxes, assessments, and charges on Trade Fixtures, personal property, and trade inventory in, on, or about the Premises. Upon request, Lessee shall promptly furnish to City satisfactory evidence establishing such payment. Lessee shall comply with all laws, regulations and ordinances regarding the collection of taxes due a government agency.

29. Payment of Obligations. Lessee shall promptly pay, at its sole cost and expense, before they become delinquent, any and all bills, debts, liabilities, and obligations incurred by Lessee in connection with Lessee's occupation and use of the Premises and/or operation of the Concession. Upon request, Lessee shall promptly furnish to City satisfactory evidence establishing such payment.

30. Utilities and Services. Lessee shall be responsible for the payment of all utility charges, including, without limitation, gas, electricity, water, telephone service, cable TV service, and the furnishing of all necessary refuse and garbage containers, and the removal and disposal of all rubbish, refuse, and garbage resulting from the operation of the Premises and/or the Concession. All such rubbish, refuse, and garbage removed shall be disposed of in accordance with applicable laws and local ordinances. All trash containers and/or trash bins shall be adequately screened and located to the satisfaction of City. For the purposes of this Section, sewage disposal shall be construed as a utility. All such charges shall be paid by Lessee directly to the provider of the service and shall be paid as they become due and payable. Upon request, Lessee shall promptly furnish to City satisfactory evidence establishing such payment. Lessee shall use good energy practices as described in the State of California Flex Your Power Best Practice Guide.

31. Business License. Lessee shall maintain a business license from City during the entire term of this Agreement or any renewals or extensions thereof or during any holdover period.

32. Signs, Advertising, and Approval of Name. City shall have the right to approve in its sole discretion and at any time require Lessee to change or remove signs, names, placards, decorations, or advertising placed on, or inscribed, painted, or affixed upon the Premises. No outdoor sales are allowed by Lessee unless prior written approval is obtained from the Director of Community Development or his or her designee. All outdoor displays or banners must first be approved in writing by the Director of Community Development or his or her designee. Should City approve of any sign, name, placard, decoration, or advertising, Lessee shall maintain the same at all times in good condition and repair during the entire Term of this Agreement, including any renewals or extensions thereof and during any holdover period. All signs, names, placards, decorations, and advertising must comply with all requirements of any governmental authority with jurisdiction.

33. No Assigning, Subleasing or Encumbering.

(a) Prohibition of Assignment. The parties acknowledge that City is entering into the Agreement in reliance upon the experience and abilities of Lessee and its principals. Consequently, Lessee shall not voluntarily assign, encumber, or otherwise transfer its interest in the Agreement or in the Premises, or allow any other person or entity (except Lessee's authorized representatives) to occupy or use all or any part of the Premises without the prior written consent of City, which consent shall not be unreasonably withheld. Provided, however, that City's consent shall not relieve Lessee from any and all of its obligations, liabilities, duties, or responsibilities under this Agreement. Any assignment, encumbrance, occupation or use, or other transfer without such consent shall be voidable and, at City's sole discretion, shall constitute a Default of this Agreement.

(b) Consent to Transfer. City's consent to any assignment, encumbrance, occupation or use, or other transfer is subject to Lessee providing City with evidence satisfactory to City that the proposed, assignee, encumbrancer, occupier or user, or other transferee has suitable financial strength, experience, and character for operation and control of the Premises and the Concession and that the use of the Premises by the proposed assignee, encumbrancer, occupier, or user, or other transferee is consistent with that specified herein, and is commercially reasonable. Any proposed assignee, encumbrancer, occupier or user, or other transferee shall agree to abide by the terms and conditions of the Agreement including, without limitation, all the obligations, liabilities, duties, and responsibilities of Lessee, and other conditions imposed upon it pursuant to law. An approval by City to one assignment, encumbrance, occupation or use, or other transfer shall not be deemed to be an approval to any other assignment, encumbrance, occupation or use, or other transfer.

(c) Voluntary Assignment Defined. Except as otherwise expressly provided herein, any dissolution, merger, consolidation, or reorganization of Lessee, or the sale or other transfer resulting in a transfer of a controlling percentage of the capital stock of Lessee (other than a transfer by will, devise, bequest, intestate succession, a transfer to or between the family members of Licensee, or a transfer to or between one or more trusts for the benefit of Lessee and/or Lessee's family members, where applicable) shall be deemed a voluntary assignment.

(d) Exceptions. Notwithstanding the foregoing paragraphs or anything to the contrary contained herein, City's consent shall not be required for an assignment or subleasing to an Affiliate, Subsidiary, or Successor of Lessee (for purposes hereof, an "Affiliate," a "Subsidiary" and a "Successor" of Lessee are defined as follows: (a) an "Affiliate" is any corporation which directly or indirectly controls or is controlled or is under common control with Lessee (for this purpose, "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such corporation, whether through the ownership of voting securities or by contract or otherwise), (b) a "Subsidiary" shall mean any corporation or partnership not less than twenty- five percent (25%) of whose outstanding stock shall, at the time, be owned directly or indirectly by Lessee and which is at least as creditworthy as Lessee, and (c) a "Successor" shall mean a corporation or partnership in which or with which Lessee is

merged or consolidated, in accordance with applicable statutory provisions for merger or consolidation of corporations, or a corporation or partnership acquiring a substantial portion of the property and assets of Lessee.

34. Terms Binding on Successors. All the terms, covenants, and conditions of this Agreement shall inure to the benefit of and be binding upon the Parties and their successors, including, without limitation, their assignees, encumbrancers, occupiers or users, or other transferees. The provisions of this Section shall not be deemed as a (1) waiver of any of the prohibitions and conditions against assignments, encumbrances, occupations or uses, or other transfers hereinbefore set forth, or (2) City's consent thereto. If more than one Lessee is a Party to this Agreement, the obligations of the Lessees shall be joint and several. Even if City's consent is not required, Lessee shall immediately provide City with written notice of any assignment, encumbrance, occupation or use, or other transfer.

35. Default. The occurrence of any one or more of the following events shall constitute a material default and breach ("Default") of this Agreement by Lessee:

(a) Lessee's failure to make any payment of the Rent or other payment required to be made by Lessee at the time required for payment under this Agreement.

(b) Lessee's failure to obtain or maintain the insurances and/or the security deposit as required under this Agreement.

(c) Lessee's vacating or abandonment of the Premises during the entire Term of this Agreement, including any renewals or extensions thereof and during any holdover period with the understanding that Lessee's failure to operate the Concession for the minimum periods referred to in Section 17 shall be deemed an abandonment of the Premises for purposes of this Section 35.

(d) Lessee's violation of Section 18 (Indemnification, Defense and Hold Harmless Agreement), Section 33 (No Assigning, Subleasing or Encumbering), Section 46 (Hazardous Substances), Section 47 (Nondiscrimination), Section 48 (Sale of Alcoholic Beverages and Entertainment Prohibited), Section 61 (Conflict of Interest), or Section 63 (Compliance with Laws).

(e) The insolvency of Lessee as evidenced by a receiver being appointed to take possession of all or substantially all of Lessee's assets located at or on the Premises or of Lessee's interest in this Agreement, or the making by Lessee of a general arrangement or assignment for the benefit of creditors, or Lessee's filing a petition in bankruptcy, whether voluntary or involuntary, or the attachment, execution or the judicial seizure of substantially all of Lessee's assets located at or on the Premises or of Lessee's interest in the Agreement.

(f) Lessee's failure to observe or perform any other term, covenant, obligation, duty, responsibility, or condition of this Agreement to be observed or performed by Lessee when such failure shall continue for a period of thirty (30) days after City's giving written notice to Lessee, or such earlier period if specifically set forth in this Agreement; however, if the nature of such failure is such that more than thirty (30) days are reasonably required

for its cure, then Lessee shall not be deemed to be in Default if Lessee notifies City of the length of the additional time required to cure and receives City's written approval of the additional time required, which approval will not be unreasonably withheld, and commences such cure within such thirty (30) day period and diligently proceeds with such cure to completion during such additional time period approved by City.

36. Remedies.

(a) Cumulative Nature of Remedies. In the event of any Default by Lessee, City shall have the remedies described in this Section in addition to all other rights and remedies provided by law or equity, to which City may resort cumulatively or in the alternative:

(i) Reentry without Termination. City may at City's sole discretion reenter the Premises, and, without terminating the Agreement, at any time and from time to time re-let the Premises or any part or parts of them for the account and in the name of Lessee or otherwise. Any re-letting may be for the remainder of the term or for a longer or shorter period. City may in City's sole discretion eject all persons or eject some and not others or eject none. In addition, City may in its sole discretion remove some or all of the Trade Fixtures, personal property, and trade inventory from the Premises. City may store such removed Trade Fixtures, personal property, and trade inventory in a public warehouse or other location at the sole cost, expense and risk of Lessee, and for the account of and in the name of Lessee. City shall apply all rents from re-letting as follows: first, to the payment of reasonable expenses (including brokers' commissions) paid or incurred by or on behalf of City in recovering possession, placing the Premises in good condition, and preparing or altering the Premises for re-letting; second, to the reasonable expense of securing new subtenants; and third, to the fulfillment of Lessee's covenants to the end of the term. City may execute any Agreements or subs made under this provision either in City's name or in Lessee's name and City shall be entitled to all license fees and rents from the use, operation, or occupancy of the Premises. Lessee shall nevertheless pay to City on the dates specified in this Agreement the equivalent of all sums required of Lessee under this Agreement, plus City's expenses, less the proceeds of any re-letting or attornment.

(ii) Termination. In the event of a Default by Lessee, City may at City's sole discretion terminate this Agreement by giving Lessee written notice of termination. In the event City terminates this Agreement, City may recover possession of the Premises (which Lessee shall immediately surrender and vacate upon demand) and remove all persons therefrom, and Lessee shall comply with, without limitation. Sections 55 and 56 below. City also shall be entitled to recover as damages all of the following:

(A) The worth at the time of the award of any unpaid Rent or other charges which have been earned at the time of termination;

(B) The worth at the time of the award of the amount by which the unpaid Rent (each month's Rent would be calculated as the average Rent for that same month in the preceding years, or if Lessee did own/operate the Concession in the preceding years, then each month's Rent would be calculated as the average of all months Lessee owned/operated the Concession) and other charges which would have been earned after termination until the time of the award exceeds the amount of the loss of such Rent and other charges that Lessee proves could have been reasonably avoided;

(C) The worth at the time of the award of the amount by which the unpaid Rent (each month's Rent would be calculated as the average Rent for that same month in the preceding years, or if Lessee did not own/operate the Concession in the preceding years, then each month's Rent would be calculated as the average of all months Lessee owned/operated the Concession) and other charges for the balance of the term after the time of the award exceeds the amount of the loss of such Rent and other charges that Lessee proves could have been reasonably avoided;

(D) Any other amount necessary to compensate City for the detriment proximately caused by Lessee's failure to perform its obligations, liabilities, duties, or responsibilities under this Agreement; and

(E) At City's sole discretion, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable California law.

As used in Sections 36(a) (ii) (A) and (B) above, the "worth at the time of the award" shall be computed by allowing interest at the rate of twelve percent (12%) per annum. As used in Section 36(a) (ii) (C) above, the "worth at the time of the award" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%). The amount recoverable by City pursuant to Section 36(a) (ii) (D) above shall include, without limitation, any costs or expenses incurred by City in maintaining or preserving the Premises after such Default.

(iii) Use of Personal Property. City may at City's sole discretion use the Trade Fixtures, personnel property, and/or trade inventory located on, about, or appurtenant to the Premises without compensation and without liability for use or damage, or store them in a public warehouse or other location at the sole cost, expense and risk of Lessee, and for the account of and in the name of Lessee.

(b) Election of Remedy. The election of one remedy for any one item shall not foreclose an election of any other remedy for another item or for the same item at a later time.

(c) City's Right to Cure Lessee's Default. Upon continuance of any Default, City may in its sole discretion, but is not obligated to, cure such Default at Lessee's sole

cost and expense. If City at any time, by reason of such Default by Lessee, pays any sum or does any act, the sum paid by City plus the reasonable cost of performing such act, together with a penalty thereon at the penalty rate set forth in Section 11 above from the date the costs were incurred or the act performed by City to the date they are reimbursed to City by Lessee, shall be due as additional Rent not later than five (5) days after service of a written demand therefor on Lessee, including reasonably detailed documentation of the amount owed. No such payment or act shall constitute a waiver of Default or of any remedy for Default or render City liable for any loss or damage resulting from any such act.

(d) Waiver of Rights. Lessee hereby waives any right of redemption or relief from forfeiture under California Code of Civil Procedure Sections 1174 or 1179, or under any other present or future law, in the event Lessee is evicted or City takes possession of the Premises by reason of any Default by Lessee hereunder.

(e) Other Rights of City. No act of City, including, without limitation, City's entry on the Premises, efforts to re-let the Premises, or maintenance of the Premises, shall be construed as an election to terminate this Agreement unless a written notice of such intention is given to Lessee by City or unless the termination thereof is decreed by a court of competent jurisdiction. Notwithstanding if City elects to continue the Agreement in full force and effect after a Default by Lessee and to re-let the Premises, City may at any time after such re-letting elect to terminate this Agreement for any such Default.

37. Cumulative Remedies. The remedies given to City in this Agreement shall not be exclusive but shall be cumulative and in addition to all remedies now or hereafter allowed by law or elsewhere provided in this Agreement, City shall have the right to exercise any other right or remedy which City may have at law or in equity including, without limitation, City's rights under the unlawful detainer laws, if applicable.

38. Waiver of Default. The waiver by City of any Default by Lessee of any of the provisions of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent Default by Lessee either of the same or another provision of this Agreement.

39. City's Defaults/Lessee's Remedy. In the event City fails to perform any material obligation of City under this Agreement within sixty (60) days after receiving written notice from Lessee specifying the nature of such default, or, if the nature of City's obligation is such that more than sixty (60) days are required for its performance, if City fails to commence such performance within such sixty (60) day period and thereafter diligently prosecute the same to completion, then City shall be in default of this obligation. If City's default materially interferes with Lessee's use of the Premises for its intended purpose, Lessee shall have the option to terminate this Agreement by giving City at least sixty (60) days' written notice of its intent to terminate. In such a situation, Lessee must still comply with all of its obligations, liabilities, duties, and responsibilities under this Agreement, including, without limitation, paying any Rent due up to the time of termination and surrendering the Premises pursuant to Sections 55 and 56 below.

40. Consent. When City's consent/approval is required under this Agreement, its consent/approval for one transaction or event shall not be deemed to be a consent/approval to any subsequent occurrence of the same or any other transaction or event.

41. Holdover. Should Lessee hold over and continue in possession of the Premises after expiration or termination of this Agreement, with or without the express prior written consent of City, Lessee's continued occupancy of the Premises shall constitute a month-to-month tenancy, subject to all the terms and conditions of this Agreement, at a monthly Rent of one hundred ten percent (110%) of the previous calendar year's annual Rent divided by twelve (12) (or the average monthly Rent for all months Lessee owned/operated the Concession if Lessee has owned/operated the Concession for less than one (1) year) or that month's actual Rent, whichever is greater, and shall not constitute a renewal or extension of the Agreement term.

42. Waiver of Claims. Lessee hereby waives any claim against City, its officers, elected or appointed officials, employees, agents, or volunteers for damage or loss caused by any suit or proceeding directly or indirectly attacking the validity of this Agreement, or any part thereof, or caused by any judgment or award in any suit or proceeding declaring this Agreement null, void, or voidable, or delaying the Agreement or any part thereof from being carried out.

43. Inspection of Premises. Upon at least twenty-four (24) hours advance written, verbal, or electronic notice given by City to Lessee, Lessee shall permit City or City's agents, representatives, or employees to enter the Premises at all reasonable times for the purpose of inspecting, investigating, and surveying the Premises to determine whether Lessee is complying with the terms of this Agreement and for the purpose of doing other lawful acts that may be necessary to protect City's interest in the Premises or to perform City's duties under this Agreement. City shall make quarterly physical inspections of the Premises and may direct that interior maintenance or outdoor painting repairs are to be performed where such work is necessary to protect the Premises or to provide a clean, attractive, and well-maintained premise. Lessee shall perform those maintenance and repairs which they are responsible for within thirty (30) calendar days. City also shall have the right in its sole discretion to do any and all work of any nature necessary for the preservation, maintenance, and operation of property owned, controlled, or occupied by City. Lessee shall be given reasonable notice when such work becomes necessary, and Lessee shall adjust the operation of the Concession in such a manner that City may proceed expeditiously.

44. Reserved.

45. Photography. Lessee acknowledges and agrees that City may grant permits to third parties engaged in the production of still and motion pictures and related activities to take photographs or videos of or on the Premises when such permission shall not interfere with the primary business of Lessee, all without providing Lessee notice or requiring consent by Lessee.

46. Hazardous Substances. Lessee represents and warrants that its use or occupation of the Premises shall not generate any Hazardous Substance (as defined below in this Section), and it shall not store or dispose on the Premises nor transport to or over the Premises any Hazardous Substance during the entire Term of this Agreement or any renewals or extensions thereof or during any holdover period. The foregoing restrictions shall not be deemed to restrict or prohibit

the use by Lessee of ordinary cleaning products as customarily used in Lessee's ordinary course of business at the Concession, provided that Lessee complies with all provisions of law as to the use, storage, and disposal of such products. Lessee further agrees to clean up and remediate any such Hazardous Substance on the Premises, and agrees to protect, defend, indemnify, and hold harmless City, its officers, elected or appointed officials, employees, agents, and volunteers from and against any and all claims, damages, losses, expenses, judgments, demands, and defense costs (including, without limitation, costs and fees of litigation (including arbitration) of every nature or liability of any kind or nature) arising out of or in connection with any such Hazardous Substance and any damage, loss, or expense or liability resulting from any such Hazardous Substance including, without limitation, all attorney's fees, costs, and penalties incurred as a result thereof except any release caused by the sole negligence or willful misconduct of City. Lessee will conduct all defense at its sole cost and expense and City shall approve selection of Lessee's counsel. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as limitation upon the amount of indemnification to be provided by Lessee. "Hazardous Substance" shall be interpreted broadly to mean any substance or material defined or designated as a hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term, by any Federal, State, or local environmental law, regulation, or rule presently in effect or promulgated in the future, as such law, regulation, or rule may be amended from time to time; and it shall be interpreted to include, without limitation, any substance which after re into the environment will or may reasonably be anticipated to cause sickness, death, or disease.

47. Nondiscrimination. Lessee and its employees shall not discriminate because of race, religion, color, ancestry, sex, age, national origin, or physical handicap against any person by refusing to furnish such person any accommodation, facility, rental, service, or privilege offered to or enjoyed by the general public. Nor shall Lessee or its employees publicize the accommodation, facilities, rentals, services, or privileges in any manner that would directly or inferentially reflect upon or question the acceptability of the patronage of any person because of race, religion, color, ancestry, sex, age, national origin, or physical handicap.

In the performance of this Agreement, Lessee shall not discriminate against any employee or applicant for employment, because of race, religion, color, ancestry, sex, age, national origin, or physical handicap. Lessee shall take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, religion, color, ancestry, sex, age, national origin, or physical handicap. Such action shall include, without limitation, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including, without limitation, apprenticeship. Lessee shall post in conspicuous places, available to all employees and applicants for employment, notices setting forth the provisions of this Section.

Subject to the privacy rights of its employees and applicable provisions of law, Lessee shall permit access to its records of employment, employment advertisements, application forms, and other pertinent data and records by City, the State Fair Employment Practices Commission or any other agency with jurisdiction over these matters, for the purpose of investigation to ascertain compliance with this Section.

City may determine a violation of this Section to have occurred upon receipt of a final judgment having that effect from a court in an action to which Lessee was a party, or upon receipt of a written notice from the State Fair Employment Practices Commission or other government agency with jurisdiction over these matters that it has investigated and determined that Lessee has violated the Fair Employment Practices Act or other applicable discrimination law and has issued an order which has become final, or obtained an injunction. In the event of violation of this Section, City shall have the right to terminate this Agreement, and any loss of revenue sustained by City by reason thereof shall be borne and paid for by Lessee, at its sole cost and expense.

48. Sale of Alcoholic Beverages and Entertainment Prohibited. Notwithstanding anything to the contrary, the sale or provision of alcoholic beverages and/or live entertainment in, on, or from the Premises is expressly forbidden, unless expressly permitted in writing by City in advance. For any proposed sale or provision of alcoholic beverages, Lessee must first obtain written City approval prior to submitting any request for approval to the California Department of Alcohol Beverage Control. In addition, Lessee shall abide by the following conditions which are a substantive and material condition of this Agreement. Failure to abide by any of the following conditions may be considered material breach of this Agreement at the City's sole and absolute discretion and the City may immediately terminate this Agreement thereto.

1. The business shall obtain an Alcohol Beverage Control (ABC) license authorizing alcohol use in the business and outdoor patio. All ABC requirements shall be met prior to sales, service, or consumption of alcoholic beverages.
2. All areas of the alcohol business that are accessible to patrons shall be illuminated such that the appearance and conduct of all people in the alcohol business are visible from inside the alcohol business.
3. Food service from the regular menu must be available to patrons up to one hour before the scheduled closing time, including a cook and food servers shall be on duty.
4. An employee of the alcohol business must monitor all areas where alcohol is served.
5. Alcoholic drinks shall not be included in the price of admission.
6. All alcohol shall remain within alcohol business premises, including outdoor dining area.
7. Service of alcoholic beverages for consumption off-site shall not be permitted.
8. There shall be no requirement for patrons to purchase a minimum number of alcoholic drinks.
9. Games or contests requiring or involving consumption of alcoholic beverages shall be prohibited.
10. No reduced price or promotions of alcoholic beverages shall be allowed after 7:00 p.m.
11. Last call for drinks shall be no later than 15 minutes before closing.

12. Consumption of alcoholic beverages by on-duty employees; including servers, bartenders, kitchen staff, management and supervisory personnel is not permitted, except when training for knowledge of food pairing, if applicable.
13. Mandatory Responsible Beverage Service (RBS) training and certification shall be required for new employees within 60 days of being hired and for existing employees every 12 months. Training shall be provided by ABC or an ABC approved RBS trainer and records of the training must be maintained on-site for review.
14. All owners, employees, representatives, and agents must obey all federal, state, and local laws. In addition, all conditions of the Conditional Use Permit, Alcoholic Beverage Control License and any other regulations, provisions, or restrictions prescribed by an agency with jurisdiction over the premise are required as part of the CUP to be followed.
15. No patrons shall be permitted to loiter within the vicinity of any entrances and exits at any time.
16. The establishment shall employ a video surveillance security system with a minimum of one-month video library recorded to a DVR or Cloud based system. The cameras minimum requirements will be: clear, color, digital and able to record in low light. The business shall ensure all public areas, entrances, and exits to the front and adjacent to the business are covered by video surveillance. Electronic copies of video must be made available to the Huntington Beach Police Department within 48 hours of request. Digital recordings shall be made available for viewing on-scene upon request by police personnel conducting investigations. An employee able to operate the system shall be on duty during all business hours.
17. There shall be no exterior advertising or sign of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Exclusion: Itemized alcohol beverage items listed on menu boards which are permanently affixed to the interior or exterior of the building are allowed.
18. There shall be no window coverings or advertisements that reduce the visibility inside of the business.
19. Signage, posters, and advertising with "Do Not Drink and Drive" shall be posted in the business.
20. Signs shall be posted in conspicuous locations at the entrance/exit points of the patio which shall state, "NO ALCOHOLIC BEVERAGES BEYOND THIS POINT."
21. Dancing and/or dance floor and/or live entertainment is prohibited. (Note: a new or amended Conditional Use Permit and an Entertainment Permit issued by the City is required for these additional activities).
22. No alcoholic beverages shall be consumed on any property adjacent to the Premises under the control of Lessee.

23. The patio shall have a physical barrier minimum 36 inches in height surrounding the outdoor dining area and designed in a manner that will prohibit passing of alcohol through the barrier.
24. No dining or consumption of alcoholic beverages shall be permitted in the outdoor patio areas between the hours of 10:00 PM and 7:00 AM.

The ability to sell alcoholic beverages is conditioned upon Lessee's maintenance of an active license with the California Department of Alcoholic Beverage Control ("ABC"). In the event Lessee faces disciplinary action before the ABC that results in the ABC recommending revocation of Lessee's license, the City may suspend or terminate Lessee's right to sell alcoholic beverages by providing written notice to Lessee and Lessee expressly agrees that the City will not be subject to damages in law or equity if the City exercises such right.

49. Liens. Lessee shall keep the Premises free and clear from any and all liens, including, without limitation, mechanics' or materialmen's liens, claims and demands for work performed, materials furnished, or operations conducted on or about the Premises or by reason of any use or occupancy by Lessee, or any person claiming under Lessee. When applicable, Lessee shall cause a notice of non-responsibility to be posted and recorded pursuant to California Civil Code Section 3094.

50. Installation and Removal of Trade Fixtures. Lessee shall have the right during the entire Term of this Agreement, including any renewals or extensions thereof, at Lessee's sole cost and expense, to install or affix in, to, or on the Premises any machinery, equipment, and other objects (the "Trade Fixtures"), for use in Lessee's trade or business as Lessee may deem advisable. Any and all such Trade Fixtures that can be removed without structural damage to the Premises shall, subject to Section 56 below, remain the property of Lessee and may be removed by Lessee at any time prior to the expiration or termination of this Agreement, provided Lessee repairs any damage caused by the removal. Upon execution of this Agreement and every anniversary, Lessee shall provide City with a list of all Trade Fixtures on the Premises.

51. Destruction. Should the Premises be partially destroyed, this Agreement shall continue in full force and effect, and Lessee, at Lessee's sole cost and expense, shall complete the work of repairing and restoring the Premises to their prior condition providing such work can be accomplished under all applicable governmental laws and regulations within one hundred eighty (180) days. Notwithstanding the foregoing, should the damage to the Premises be substantial enough such that Lessee determines, in its reasonable discretion, that it will be unable to feasibly and economically repair and restore the Premises and still realize a reasonable return on its investment over the remaining portion of the Term, Lessee shall have the right, within ninety (90) days of the occurrence of the casualty loss, to terminate this Agreement by delivery of written notice of termination to City, together with an assignment to City of Lessee's rights with respect to the disposition and use of any property insurance proceeds (excluding such proceeds for Trade Fixtures, personal property whether or not owned or d by Lessee and trade inventory, but only to the extent that the insurance proceeds specifically cover those items). In addition, should the Premises be so far destroyed that in City's reasonable judgment they cannot be repaired or restored to their former condition within one hundred eighty (180) days, City shall have the right to give Lessee notice of such determination in writing and each Party may, in that Party's sole discretion:

(a) Continue this Agreement in full force and effect in which case, subject to its termination rights set forth above, Lessee shall repair and restore, at Lessee's sole cost and expense, the Premises to their former condition; or

(b) Terminate this Agreement by giving the other Party thirty (30) days' written notice of such termination within sixty (60) days after the date that City gives Lessee notice that the Premises cannot be repaired or restored to their former condition within one hundred eighty (180) days. In the event that either Party elects to terminate this Agreement, the entire amount of any insurance proceeds (excluding such proceeds for Trade Fixtures, personal property whether or not owned or d by Lessee and trade inventory, but only to the extent that the insurance proceeds specifically cover those items) shall be paid to City. The proceeds of any such insurance payable to City may be used, in the sole discretion of City, for rebuilding or repair as necessary to restore the Premises or for any other such purpose(s) as City sees fit. In addition, if Lessee elects to terminate the Agreement, Lessee must still comply with all of its obligations, liabilities, duties, and responsibilities under the Agreement, including, without limitation, paying any Rent due up to the time of termination and surrendering the Premises, pursuant to Sections 56 and 57 below.

In the event of the damage or destruction of Improvements, Trade Fixtures and/or personal property located on the Premises not giving rise to a termination of this Agreement, Lessee shall, at its sole cost and expense, replace and repair the same as soon as reasonably possible to permit the prompt continuation of Lessee's business at the Premises.

52. No Abatement of Rent During Repair Work. The Rent shall not be abated for the time Lessee is prevented from using the whole or a portion of the Premises. In addition, Lessee shall not be excused from the payment of taxes, insurance, or any other obligations for the time Lessee is prevented from using the whole or a portion of the Premises.

53. Eminent Domain. If, during the Term of this Agreement, including any renewals or extensions thereof and during any holdover period, City's real property (whether held by City in fee simple, an easement interest or otherwise) and/or the Premises is taken in eminent domain, the entire award (that is, all forms) of compensation, other than as provided herein, shall belong to and be paid to City. In the event of condemnation, Lessee shall be entitled to an award of only the following forms of compensation, if any, from the condemning authority: compensation for loss of business goodwill; compensation for the value of any of Lessee's Trade Fixtures; compensation for the value of any of Lessee's personal property; compensation for the value of any of Lessee's trade inventory; and compensation for relocation benefits as authorized by law. All other forms of compensation, such as, for example, but not by way of limitation, any bonus value of Lessee's interest in this Agreement, shall belong to and be paid to City. In the event of condemnation, unless Lessee is allowed by the condemning authority to continue its operations on the Premises, the Agreement shall terminate on the earliest of the following dates: the date the condemning authority obtains a prejudgment order for possession; the date title to the Premises vests in the condemning authority; or the date when Lessee is required by the condemning authority to cease its operations.

54. Relocation and Assistance, Business Goodwill and Bonus Value. Upon expiration or termination of this Agreement for any reason, but excluding eminent domain, Lessee shall not

be entitled to any relocation rights or benefits, business goodwill, or bonus value attributable to this Agreement, and Lessee expressly waives any claim to the same.

55. Quitclaim Deed. Upon expiration or termination of this Agreement as provided for herein, Lessee shall execute and deliver to City within thirty (30) days thereof, a good and sufficient quitclaim deed to the rights and interests of Lessee in the Premises and the Agreement. Should Lessee fail or refuse to deliver to City this quitclaim deed, City may record in the Orange County Recorder's Office a written notice reciting the failure of Lessee to execute and deliver this quitclaim deed. The date of recordation of this notice by City shall be conclusive evidence against Lessee and all persons claiming under this Agreement of the expiration or termination of this Agreement and any rights or interests of Lessee in the Premises and/or this Agreement. Lessee also agrees to execute, acknowledge, and deliver to City any other instrument requested by City as necessary to perfect City's right, title, and interest to the Premises.

56. Restoration and Surrender of Premises/Title to Improvements to the Building. On expiration or termination of this Agreement, Lessee shall, without compensation to Lessee, promptly surrender and deliver the Premises to City in as good condition as such were at the commencement date of this Agreement, reasonable wear and tear excepted. Lessee also shall, without compensation to Lessee, surrender all Improvements to the building to City in good condition and repair, ordinary wear and tear excepted, free and clear of all liens and encumbrances. Lessee also shall remove all Trade Fixtures, personal property, and trade inventory. City may in its sole discretion accept all or any portion of the Premises, as then improved with Improvements and no sum whatsoever shall be paid to Lessee or any other person; or City may require Lessee to remove all or any portion of such Improvements to the building, at Lessee's own risk and cost and expense; or City may itself remove or have removed all or any portion of such Improvements to the building, at Lessee's own risk and cost and expense. If required by City to do so, in removing any such Improvements to the building, Lessee shall restore the Premises as nearly as possible to the conditions existing prior to their installation or construction. All such removal and restoration shall be to the satisfaction of City and shall be completed within thirty (30) days of the expiration or termination of this Agreement; provided, however, that Lessee shall be considered a holdover occupant (pursuant to Section 41 above) after expiration or termination of the Agreement until the time Lessee completes this removal and restoration work, including, without limitation, the removal of any Trade Fixtures, personal property, and trade inventory left on the Premises. In addition, any Trade Fixtures, personal property, or trade inventory left on the Premises after the expiration of this 30-day period, regardless of cause, shall be deemed abandoned by Lessee. In City's sole discretion, it may choose to do one or more of the following: (1) take any or all of such Trade Fixtures, personal property, and trade inventory as City property; (2) store any or all of such Trade Fixtures, personal property, and trade inventory in a public warehouse or other location at the sole cost, expense and risk of Lessee, and for the account and in the name of Lessee; or (3) dispose of any or all of such Trade Fixtures, personal property, and trade inventory without any liability to Lessee. In addition, Lessee's indemnification, hold harmless, and defense obligations set forth in this Agreement shall apply to such Trade Fixtures, personal property, and/or trade inventory, and to City's actions with respect thereto.

57. Force Majeure – Unavoidable Delays. Should the performance of any act required by this Agreement to be performed by either City or Lessee be prevented or delayed by reason of an act of God, strike, lockout, labor troubles, inability to secure materials, restrictive governmental

laws or regulations, or any other cause except financial inability not the fault of the Party required to perform the act, the time for performance of the act shall be extended for a period equivalent to the period of delay and performance of the act during the period of delay shall be excused. Provided, however, that nothing contained in this Section shall excuse the prompt payment of the Rent or other consideration by Lessee as required by this Agreement or the performance of any act rendered difficult solely because of the financial condition of the Party, City or Lessee, required to perform the act.

58. City's Option to Close the Premises. City may close the Premises without liability to Lessee therefor at any time that City in its reasonable discretion deems such action necessary for the protection of life, limb, or property, or for imminent and serious public health or safety reasons; provided, that if the reason for such a closure is a City default of its obligations under this Agreement nothing in this Section 58 is intended to release City from liability therefor or constitute a waiver of Lessee's rights with respect thereto. Except in the event of an unanticipated emergency, City shall the maximum amount of prior notice to Lessee of any such closure that is reasonably practicable under the circumstances.

59. Deliveries of Supplies. The Director of Community Development of City may establish the days and times deliveries of supplies may be made and advise Lessee in writing thereof.

60. Employee Parking. All employee parking shall comply with Huntington Beach Municipal Code Section 13.08.290(d) and (g). City shall provide up to two (2) annual parking passes to Lessee.

61. Conflict of Interest. Lessee warrants and covenants that no official or employee of City, nor any business entity in which an official or employee of City is interested, (1) has been employed or retained by Lessee to solicit or aid in the procuring of this Agreement; or (2) shall be employed by Lessee in the performance of this Agreement without the immediate written divulgence of such fact to City. In the event City determines that the employment of any such official, employee, or business entity is not compatible with such official's or employee's duties as an official or employee of City, Lessee, upon request of City, shall terminate such employment immediately. For breaches or violation of this Section, City shall have the right both to terminate this Agreement without liability and, in its discretion, recover the full amount of any such compensation paid to such official, employee, or business entity. No official or employee of City shall have any financial interest in this Agreement in violation of the applicable provisions of the California Government Code.

62. Notice. Unless specifically providing for verbal or electronic notice, all notices, certificates, or other communications required to be given hereunder shall be in writing and made in the following manner, and shall be sufficiently given and deemed received when (a) personally delivered; or (b) three (3) business days after being sent via United States certified mail, return receipt requested; or (c) one (1) business day after being sent by reputable overnight courier, in each case to the addresses specified below; provided that City and Lessee, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent:

CITY:
City of Huntington Beach
ATTN: Director of Community
Development
2000 Main Street
Huntington Beach, CA 92648

LESSEE:
Waterfront Hotel, LLC
c/o Waterfront Hotel Beach Resort
21351 Pacific Coast Highway
Huntington Beach, CA 92648
Attention: General Manager

With a Copy to:
The Mayer Corporation
8951 Research Drive
Irvine, CA 92618
Attention: Bob Mayer, President

63. Compliance With Laws. Lessee, at its sole cost and expense, shall comply with all statutes, ordinances, regulations, and requirements of all governmental entities, including, without limitation. Federal, State, county, or municipal, relating to Lessee's use and occupancy of the Premises and/or operation of the Concession, whether such statutes, ordinances, regulations, and requirements be now in force or hereinafter enacted. This Agreement is expressly subject to the laws, regulations, and policies of City. Lessee shall deliver to City a copy of any notice from any governmental entity received by Lessee regarding any alleged violation of law regarding the Agreement, Premises, or the Concession or from any person allegedly entitled to give notice under any conditions, covenants, or restrictions binding or affecting the Premises. The final non-appealable judgment of any court of competent jurisdiction, or the admission by Lessee in a proceeding brought against Lessee by any government entity, that Lessee has violated any such statute, ordinance, regulation, or requirement shall be conclusive as between City and Lessee and shall be grounds for termination of this Agreement by City.

64. Interpretation of This Agreement. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the Parties. If any provision of this Agreement is held by an arbitrator or court of competent jurisdiction to be unenforceable, void, illegal, or invalid, such holding shall not invalidate or affect the remaining covenants and provisions of this Agreement. No covenant or provision shall be deemed dependent upon any other unless so expressly provided here. As used in this Agreement, the masculine or neuter gender and singular or plural number shall be deemed to include the other whenever the context so indicates or requires. Nothing contained herein shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present or future statute, law, ordinance, or regulation contrary to which the Parties have no right to contract, then the latter shall prevail, and the provision of this Agreement which is hereby affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law.

65. Survival. Terms and conditions of this Agreement, which by their sense and context survive the expiration or termination of this Agreement, shall so survive.

66. Modification. No waiver or modification of any language in this Agreement shall be valid unless in writing and duly executed by both Parties.

67. Section Headings. The titles, captions, section, paragraph, and subject headings, and descriptive phrases at the beginning of the various sections in this Agreement are merely descriptive and are included solely for convenience of reference only and are not representative of matters included or excluded from such provisions, and do not interpret, define, limit, describe, or construe the intent of the Parties or affect the construction or interpretation of any provision of this Agreement.

68. Brokers. Each Party warrants to and for the benefit of the other that it has had no dealings with any real estate broker or other agent (attorneys excepted) in connection with the negotiation or making of this Agreement.

69. Independent Contractor. Lessee is, and shall be, acting at all times in the performance of this Agreement as an independent contractor herein and not as an employee of City. Lessee shall secure at its own cost and expense, and be responsible for any and all payment of all taxes, social security, state disability insurance compensation, unemployment compensation, and other payroll deductions for Lessee and its officers, agents, and employees, and all business licenses, if any, in connection with the Agreement and/or any services to be performed hereunder.

70. Attorney's Fees. In the event suit is brought by either Party to construe, interpret, and/or enforce the terms and/or provisions of this Agreement or to secure the performance hereof, each Party shall bear its own attorney's fees, such that the prevailing party shall not be entitled to recover its attorney's fees from the non-prevailing party.

71. Legal Services Subcontracting Prohibited. Lessee and City agree that City is not liable for payment of any subcontractor work involving legal services, and that such legal services are expressly outside the scope of services contemplated hereunder. Lessee understands that pursuant to Huntington Beach City Charter Section 309, the City Attorney is the exclusive legal counsel for City; and City shall not be liable for payment of any legal services expenses incurred by Lessee.

72. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of California.

73. Duplicate Original. The original of this Agreement and one or more copies hereto have been prepared and signed in counterparts as duplicate originals, each of which so executed shall, irrespective of the date of its execution and delivery, be deemed an original. Each duplicate original shall be deemed an original instrument as against each Party who signed it.

74. Entirety. The Parties acknowledge and agree that they are entering into this Agreement freely and voluntarily following extensive arm's length negotiations, and that each has had the opportunity to consult with legal counsel prior to executing this Agreement. The Parties also acknowledge and agree that no representations, inducements, promises, agreements, or warranties, oral or otherwise, have been made by that Party, or anyone acting on that Party's behalf, which are not embodied in this Agreement, and that that Party has not executed this Agreement in reliance on any representation, inducement, promise, agreement, warranty, fact, or circumstance not expressly set forth in this Agreement. This Agreement, and the attached exhibits, contain the entire agreement between the Parties respecting the subject matter of this Agreement, the Premises,

the leasing of the Premises to Lessee, and the Agreement Term created under this Agreement, and supersede all prior understandings and agreements, whether oral or in writing between the Parties respecting the subject matter hereof.

[signature page follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by and through their authorized officers the day, month, and year first above written. Each undersigned represents and warrants that he/she has the power, authority, and right to bind his/her respective principal to each of the terms of this Agreement, and each person signing on behalf of Lessee agrees to indemnify CITY fully for any injuries or damages to CITY in the event that such authority or power is not, in fact, held by such person or is withdrawn.

WATERFRONT HOTEL, LLC
(LESSEE)

CITY OF HUNTINGTON BEACH,
a municipal corporation of the State of
California

By: Robert L. Mayer Jr.
print name

Mayor

ITS: 
(circle one) Chairman President Vice President

City Clerk

AND

INITIATED AND APPROVED:

By: Robert L. Mayer III
print name

City Manager

ITS: 
(circle one) Secretary Chief Financial Officer/Asst.
Secretary Treasurer


Director of Community Development

REVIEWED AND APPROVED:

APPROVED AS TO FORM:

City Manager

City Attorney 

EXHIBIT "A"

DEPICTION OF THE PREMISES

[On following page]

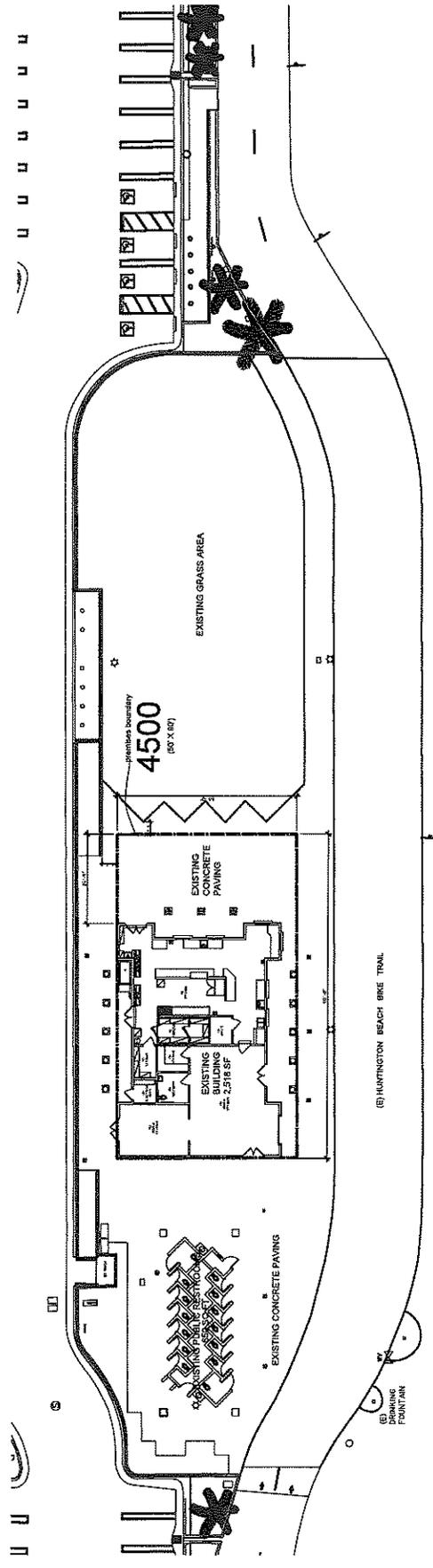


EXHIBIT A: PREMISES BOUNDARY

EXHIBIT "B"

MONTHLY RENT SCHEDULE:

Monthly Base Rent: Begins February 1, 2023	
Description	Amount
Monthly Base Rent*	\$1,100.00

* Subject to fixed 2% annual increase.

Percentage Rent: Begins February 1, 2023	
Season	Percentage of Gross Sales
Low Season: (Jan., Feb., Nov., Dec.)	5%
Mid Season: (Mar., Apr., Oct.)	10%
Peak Season: (May, June, July, Aug., Sept.)	12%

MONTHLY RENT CALCULATION EXAMPLE:

Assumptions: Minimum Base Rent of \$1,100 per month; Gross Sales of \$5,500

Monthly Rent - Nov. (Low Season)	
MONTHLY BASE RENT	\$ 1,100.00

Percentage Rent- Nov. (Low Season)	
5% x \$5,500.00	\$ 275.00
PERCENTAGE RENT	\$ 275.00

MONTHLY BASE RENT	\$ 1,100.00
PERCENTAGE RENT	\$ 275.00
MONTHLY RENT	\$ 1,375.00

EXHIBIT "C"

QUARTERLY EVALUATION

Month _____ Year _____ Today's Date _____

Inspected By: _____

<u>Area</u>	<u>O.K.</u>	<u>Needs Attention:</u>
Doors & Locks	_____	_____
Exterior Walls	_____	_____
Exterior Area	_____	_____
Graffiti Removal	_____	_____
Grease Trap	_____	_____
Hood Grease Filters	_____	_____
Interior Walls	_____	_____
Removal of Bird Droppings	_____	_____
Rest Room	_____	_____
Roof	_____	_____
Rust	_____	_____
Signage	_____	_____
Trash	_____	_____
Trim	_____	_____
Windows	_____	_____

COMMENTS:

ACTION REQUIRED:

EXHIBIT "D"

DESCRIPTION OF CITY-APPROVED IMPROVEMENTS/ALTERATIONS
TO PREMISES

- New outdoor trellis per plans to be approved by City
- New fencing/gates per plans to be approved by City
- New outdoor lighting per plans to be approved by City
- New signage per plans to be approved by City