

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN
TO:

City Clerk
City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648

(SPACE ABOVE THIS LINE FOR RECORDER'S
USE) This Release of Covenant is recorded at the
request and for the benefit of the City of Huntington
Beach and is exempt from the payment of a recording
fee pursuant to Government Code Sections 6103 and
27383.

**LEASE BETWEEN THE CITY OF HUNTINGTON BEACH
AND SURF CITY PARTNERS, LLC
IN THE CITY OF HUNTINGTON BEACH**

THIS LEASE (the "Lease") is made and entered into effective _____, 2024 by and
between the CITY OF HUNTINGTON BEACH, a municipal corporation of the State of California
("City" and/or "Lessor") and Surf City Partners, LLC ("Lessee").

WHEREAS, City wishes to lease certain real property (the "Property"), for the remodel
and new construction of an eating and drinking establishment use with alcohol sales and outdoor
dining in an existing retail pad building (21 Main Street) with ancillary storage and bathroom uses
(22 Main Street) on the pier in the City of Huntington Beach, California, and other related
improvements as fully described in Conditional Use Permit No. 22-012, dated July 28, 2022,
attached as **Exhibit "A"** and subsequently updated in the California Coastal Commission Notice
of Intent to Issue Coastal Development Permit No. 5-22-0804 herein referenced as **Exhibit "B"**.
The term "Premises" as used in this Lease shall mean both the Property and the Improvements.
Lessee desires to lease the Premises in the manner set forth below.

NOW, THEREFORE, the parties covenant and agree as follows:

SECTION 1. APPROVAL REQUIRED BY OTHER AGENCIES

The Lessee is responsible for ensuring that they have obtained all necessary and required
permits from all local, state, and applicable federal agencies. The City has no responsibility
under this Lease to educate or inform the Lessee of any required state, local, or federal permits

required to operate the Premises. Any conditions of approval, imposed by the California Coastal Commission, State Lands Commission, or any other governmental agency that are more restrictive than those set forth in this lease shall be adhered to. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit: (1) a copy of a recorded lease agreement, in a form and content acceptable to the Executive Director, between the Surf City Partners LLC and the City of Huntington Beach, incorporating all of the above terms of subsection A of this condition, and (2) a written agreement by the City of Huntington Beach, in a form and content acceptable to the Executive Director, providing that upon termination of the applicant's sublease of the property that is the subject of this coastal development permit, the City of Huntington Beach agrees (i) to be bound by the Standard and Special Conditions referenced in subsection A of this condition if it becomes the owner of the possessory interest in such property, and (ii) to include a provision in any subsequent sublease of such property requiring the sublessee to submit a written agreement to the Commission, for the review and written approval of the Executive Director, incorporating all of the Standard and Special Conditions.

The City and the Lessee acknowledge and agree that, in approving CDP 5-22-0804, the California Coastal Commission authorized development on the Property subject to terms and conditions that restrict the use and enjoyment of the Property (the Standard and Special Conditions) and thereby imposed those Standard and Special Conditions as covenants, conditions and restrictions on the use and enjoyment of the Property. These covenants, conditions, and restrictions run with the land and will bind all future owners and possessors of the Property for as long as the development approved by CDP 5-22-0804 or any form thereof remains in place.

Any failure to abide by any condition of approval by any governmental agency or failure to obtain any necessary approvals or licenses may be seen as a material breach to this agreement.

SECTION 2. GRANT OF CONCESSION ON THE PREMISES

City, pursuant to the terms of this Lease, grants to Lessee for the purposes stated herein, the right, privilege and duty to equip, operate, and maintain an eating establishment with outdoor dining and full alcohol on-site service, a Walk Up Window Service and/or Walkable Foods Cart, an enclosed storage area, and a bait and tackle shop located on the Premises (hereinafter sometimes referred to as the "Concession"). Lessee will operate the eating establishment under the name of Huntington's on the Pier. Any change to this name will require approval by the City, in its sole

discretion. The bait and tackle shop must be named with prior City approval, in its sole discretion. Lessee shall not use the Premises for any other purpose or business. A map depicting the Premises is set forth in Exhibit "C", which is attached hereto and incorporated herein by this reference. Lessee shall not use any area beyond the Premises. Outside storage of any kind is not permitted. Furthermore, Lessee shall remove any merchandise from the Concession at the written request of the City Manager or his/her designee. This Lease is not intended to confer third-party beneficiary status to anyone.

SECTION 3. RESERVATIONS, ENCUMBRANCES AND RIGHTS-OF-WAY

- (a) City expressly reserves a right to enter upon the Premises with as much advance written, verbal or electronic notice as practical 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 Lease.
- (b) City expressly reserves the right to lease, convey, or encumber the Premises, in whole or in part, for any purpose not inconsistent or incompatible with the rights or privileges of Lessee under this Lease. In addition, Lessee agrees to subordinate the Lease to any existing or future City financing regarding the Premises or any portion thereof. Lessee also agrees to cooperate and provide any documentation necessary for City to obtain any such financing.
- (c) This Lease is subject to pre-existing contracts, leases, licenses, easements, encumbrances and claims affecting the Premises and it is made without warranty by City of title, condition or fitness of the land for the stated or intended use.
- (d) Within fifteen (15) days of delivery by the City to the Lessee, the Lessee will execute an SNDA (Subordination Non-Disturbance Attornment) Agreement in a form provided by the City. Failure by Lessee to approve the provided SNDA within 15 days will be deemed to be approved by the Lessee.



SECTION 4. TIME OF ESSENCE

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

SECTION 5. EVIDENCE OF FINANCING & COMPLETION BOND

Prior to the issuance of Building Permits, Lessee shall provide written evidence to City, in form and substance reasonably acceptable to City, that Lessee has obtained actual or committed funds (through actual contributions, pledges for contributions, debt financing or a combination thereof) equal to 100% of the Estimated Budget (**Exhibit "D"**) to complete construction of the Premises substantially in accordance with the Approved Plans, provided that committed funds may not constitute more than fifty percent (50%) of the Estimated Budget. For purposes of the foregoing, a "committed fund" shall mean a written pledge from a person or entity to contribute funds to Lessee over a period of not more than five (5) years for the purpose of funding the construction of the Premises.

Prior to the issuance of Building Permits, the Lessee will provide a Completion Bond in favor of the City in amount sufficient to build all of the "Improvements" contemplated in the **Exhibit "E"**. The amount of the Completion Bond will not be less than One Million Three Hundred Thousand Dollars (\$1,300,000.00) from the date of issuance of Building Permits. Such bond shall provide that in the event Lessee fails to complete construction of the Improvements, as required by the lease, within one year from the date of issuance of building permits, this failure shall be deemed a default under the lease and the City shall have the right, not the obligation, to remove the Lessee and Lessee's contractor from the premises and draw on the bond to complete the construction.

SECTION 6. TERM

The initial term of the Lease will co-terminate on June 20, 2043, with the City's Lease with the State Lands Commission.

SECTION 7. RENEWAL OPTION

Lessee is granted the option to extend the term of this Lease for **three (3)** extended terms of ten (10) years each, provided (a) Lessee is not in default at the time of exercise of the option, (b) Lessee gives written notice of its exercise of the option at least one hundred and eighty (180) days prior to the expiration of the current term, or the extended term, of the Lease, as applicable, and (c) the Lessor's "lease" with the State Lands Commission is renewed past June 20, 2043 and

allows for such extension. The second and third Lease option will be at the mutual agreement of the City and Lessee. Lessor shall, within forty-five (45) days of its receipt of Lessee's notice, notify Lessee in writing of its opinion concerning the proposed renewal rate, which shall be the fair market rental value described in the immediately succeeding paragraph, and the Lessee shall, within ninety (90) days of its receipt of Lessor's notice of the renewal rate, during which time Lessor and Lessee shall confer and attempt to reach an agreement regarding the proposed renewal rate, notify Lessor in writing of its acceptance or rejection of the proposed rental rate. If Lessor and Lessee are unable to mutually agree on the renewal rate within such ninety (90) day period, then the renewal options described in this paragraph shall automatically terminate without further notice. Each such extension term shall be upon the same terms, conditions, and rentals, except (i) Lessee shall have no further right of renewal after the last extension term prescribed above, and (ii) the Rent amount shall be increased to fair market rental value of the Premises at the time Lessee exercises its election.

Fair market rental value of the Premises for each extension term will be determined by the parties, in their reasonable discretion and upon their combined good faith efforts, considering the rental market for comparable land and improvements in substantially the same condition, in comparable locations. Lease options will not extend beyond the City's lease term with the state, and any extensions thereof. Under no circumstances will the rent of any option period be less than 10% greater than the Rent for the preceding period.

SECTION 8. CONDITIONS OF PREMISES AS IS

The taking of possession of the Premises by Lessee shall, in itself, constitute acknowledgment that the Premises are in good and tenantable condition. Upon taking possession of the Premises, 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.

SECTION 9. DURATION OF PUBLIC FACILITIES

By entering into this Lease, City makes no stipulation as to the type, size, location or duration of public facilities (excluding the Premises), including, without limitation, any City parking lots to be maintained on property owned, controlled or occupied by City.

SECTION 10. ADDITIONS, ALTERATIONS AND REMOVAL

- (a) City hereby approves Lessee making the improvements and alterations to the Premises described in **Exhibit "E"** 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 Manager. Additionally, Lessee must comply with the following conditions:

- i. Lessee must maintain no less than the same number of existing plumbing fixtures and restroom facilities in service or provide equivalent facilities during construction during peak season from May 15 through October 15. During the off season from October 16 through May 14 Lessee must maintain no less than four (4) restroom facilities (including sinks and restroom facilities for both genders as well as disabled access compliant) in service or provide equivalent facilities during construction.
 - ii. Features, facilities and equipment required by 2019 California Building Code, Chapter 11B to be accessible to and useable by persons with disabilities shall be maintained in operable working condition.
 - iii. Lessee is responsible for all fees in connection with proposed construction activity. Lessor is not responsible for any site improvements.
 - iv. The pier's 24 foot wide fire lane shall not be diminished or obstructed at any time. In addition, any surrounding fire hydrants must remain accessible at all times.
- (b) Except as provided under this Lease, no alteration or removal of existing "Improvements" on or natural features of the Premises, or the approved renovation **(Exhibit E)**, shall be undertaken without Lessee first obtaining the prior written approval of City Manager.
- (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.

SECTION 11. CITY'S CONTRACT ADMINISTRATOR

The City Manager, or his or her designee, shall be City's Contract Administrator for this Lease with the authority to act on behalf of City for the purposes of this Lease, and all City approvals and notices required to be given herein to City shall be so directed and addressed.

SECTION 12. RENT

Lessee agrees to pay to City as rent (the "Rent") for the use and occupancy of the Premises a minimum Base Rent of Five Thousand Five Hundred dollars (\$5,500) per month plus any applicable Percentage Rent. The Base Rent will escalate three percent (3%) each year on the anniversary of the date of the Lease execution. The Base Rent will continue to escalate at this same rate after the Base Rent has been determined for each Option Term unless otherwise agreed upon by the parties

The Percentage Rent is an amount equal to three percent (3%) of Lessee's Gross Revenue above Two Million Dollars (\$2,000,000.00) from all sources, during each calendar year throughout the Initial Term and any Option Terms unless otherwise agreed upon by the parties.

No later than the fifteenth (15th) day of each month, Percentage Rent, when applicable, will be paid to the City by the Lessee, along with a financial statement and calculations sufficient to support the validity of the amount remitted and, in a form acceptable to the City's representative. Within thirty days, from the end of each calendar year, the Lessee will provide a year-end financial statement to the City, in a form acceptable to the City's representative. The year-end financial statement will provide the basis for a true-up calculation reflective of the entire calendar year demonstrating any Rent or rebate owed by either party, and a payment of any Rent or Percentage Rent owed, or an invoice for a rebate from the City. The end of year true-up will be provided by the Lessee in a form acceptable to the City.

Upon request by the City, the Lessee will cooperate with an audit of the Lessee's financial records by the City. Should the City discover any underpayment of Base Rent or Percentage rent, or any other expense related to this Lease, this amount will become immediately due and payable to the City within fifteen days of notification to the Lessee by the City.

Base Rent is due on the first (1st) of each month. Lessee shall pay the Rent monthly 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 Rent, which must be received by the City Treasurer within fifteen calendar days after the end of the month for which the Rent is being paid, or on the next business day if the fifteenth day falls on a weekend or holiday.

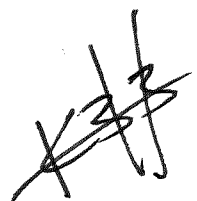
SECTION 13. LATE CHARGE AND PENALTY

If the Rent is not received by the City Treasurer within five (5) calendar days after the end of the month for which the Rent is being paid, or the next business day if the fifth day falls on a weekend or holiday, Lessee shall pay the following late charge and penalty: (1) a late charge of five percent (5%) shall be applied to any outstanding balance after any payment hereunder is due but unpaid; and (2) one and a half percent (1 ½%) penalty per month shall be added to the rent, late fee, or other charges for each month the Rent is due but unpaid. With respect to any other payments required by Lessee, a five percent (5%) penalty per month shall be added for each month such payment hereunder is due but unpaid.

SECTION 14. GROSS SALES DEFINED

For the purpose of this Lease, the term "Gross Sales" shall mean the total price of all sales processed on site, merchandise, or services 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 sales by Lessee Party(ies), and/or from all public telephones, vending, weighing and all other machines owned, operated, or leased to or 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, including kiosks and carts associate with this lease, for merchandise, or services 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; and
- (d) All revenues, receipts, commissions or proceeds generated from offsite but delivered through the Concession.



- (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, arising or derived whatsoever from the use of the Premises or associated kiosks and carts or derived whatsoever from any business conducted in, on, or from the Premises.

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

SECTION 15. 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 Rent has been paid under this Lease 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 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 50-1 below);
- (d) Sums and credits received in the settlement of claims for loss of or damage to trade inventory or Trade Fixtures; and
- (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.
- (g) Any sales of merchandise to City employees during special events as approved in advance by the City Manager or his or her designee.

SECTION 16. BOOKS AND RECORDS

Lessee shall keep true and accurate books and records showing all of its business transactions 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. 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 seven (7) years following the close of each calendar month.

SECTION 17. STATEMENT OF GROSS SALES/AUDIT

At the time specified in Section 12 of this Lease for the payment of the 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 15 above made during the preceding calendar month and the amount of the Percentage Rent then being paid calculated on such Gross Sales pursuant to this Lease. The acceptance by City of any monies paid to City by Lessee as the 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 January, 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

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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 Rent, together with a penalty thereon from the date it was due at the penalty rate set forth in Section 13 above. Furthermore, Lessee shall promptly on demand reimburse City for the full cost and expense of the audit should the audit disclose that the questioned year-end statement purposely understated Gross Sales (including an overstatement of exclusions) or the Rent by any 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 Lease. In addition, City shall have the right to enter upon the Premises during business hours and with twenty-four (24) hours advance written, verbal or electronic notice to Lessee to perform any audit or inspection function with respect to this Lease.

Lessee, its bookkeeper and/or 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 Lease.

SECTION 18. ABATEMENT OF RENT DURING CONSTRUCTION

Upon lease execution, the Base Rent will be abated for a period which will end the earlier of fifteen (15) months from the date of Lease execution, or the Lessee opening for business. The City Manager may approve up to an additional 3 months at his sole discretion. Lessee must obtain all approvals required by the City, County, State, and Federal agencies to receive abatement of rent and construct the "Improvements" as described in **Exhibit "E"**. In the event the Lessee fails to complete the construction of the Improvements, as described in Exhibit E, within fifteen (15) months for the date of lease execution, all abated rent will become due and payable without prior written approval for any construction extension by the City Manager at his or her discretion.

Interim use rent payments per Section 76 are excluded from abatement of rent. The payment of rent during the interim use shall in no way extend the abatement of rent beyond the

earlier of fifteen (15) months from the date of Lease execution, or the Lessee opening for business beyond the uses outlined in Section 76.

SECTION 19. 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 Lease 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 not use or permit the Premises to be used, in whole or in part, during the entire term of this Lease 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.

In addition to providing a food and drinking establishment, walk up window and/or walkable foods cart, Lessee shall sell or rent fishing rods, tackle, bait, sporting goods/equipment and related merchandise on the Premises approved by the City Manager or his or her designee.

The walkable foods cart must not be visible to the public if not in operation for three days or more. The restaurant must be open for a minimum three-hundred and thirty days (330) per year for a minimum of seven (7) hours a day. The Bait Shop must be open for the equivalent amount of days for a minimum of six (6) hours a day. 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 hours must be approved in advance in writing by the City Manager or his or her designee. Lessee shall require all of its employees working on the Premises to wear identification tags displaying their first name.

Except as permitted in advance in writing by City, all to-go foods and beverages shall be sold in disposable paper or plastic containers. No pull-top cans or Styrofoam containers are to be vended or dispensed from the Premises unless pre-approved in writing by City. 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 must follow all provisions of the Huntington Beach Municipal Code. The Lessee shall be required to comply

with any conditions placed on it by CDP 5-22-0408 or any future CDP issued by the Coastal Commission.

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 it 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. Furthermore, Lessee shall remove any merchandise from the Concession at the written request of the City Manager or his/her designee. Sale of nonapproved goods may be seen as a material breach of this lease.

**SECTION 20. 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 Lease or its failure to comply with any of its obligations contained in this Lease 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 save 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 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.

**SECTION 21. 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 of this Lease. 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 sublessees and contractors to provide such workers' compensation and employers' liability insurance for all of the sublessees' 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 sublessees and contractors to waive subrogation.

SECTION 22. 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 amount: combined single limit bodily injury and property damage, including products/completed operations liability and blanket contractual liability, of Two Million Dollars (\$2,000,000.00) per occurrence. If coverage is provided under a form which includes a designated general aggregate limit, the aggregate limit must be no less than Two Million Dollars (\$2,000,000.00) 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 Lease shall be deemed excess coverage and that Lessee's insurance shall be primary.

Under no circumstances shall said above-mentioned insurance contain a self-insured retention, or a "deductible" or any other similar form of limitation on the required coverage.

SECTION 23. PROPERTY INSURANCE

Lessee shall provide, after commencement of this Lease, but prior to taking possession, and 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 leased 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 leased 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 leased 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 53 (Destruction) below, and either party elects to terminate the Lease, the entire amount of any insurance proceeds (excluding such proceeds for Trade Fixtures, personal property whether or not owned or leased 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, after execution of this lease, but before taking possession of the Premises. 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.

**SECTION 24. INCREASE IN AMOUNT OF GENERAL PUBLIC LIABILITY
AND PROPERTY INSURANCE**

Reserved.

**SECTION 25. CERTIFICATES OF INSURANCE; ADDITIONAL INSURED
ENDORSEMENTS**

After commencement of this Lease, but prior to taking possession, Lessee shall furnish to City certificates of insurance subject to approval of the City Attorney evidencing the foregoing insurance coverages as required by this Lease; these certificates shall:

- (a) provide the name and policy number of each carrier and policy; and
- (b) shall state that the policy is currently in force; and
- (c) shall promise to 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 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 Lease or any renewals or extensions thereof or 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 Lease. 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.

SECTION 26. 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 Lease. 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 Lease necessary for the continued maintenance of these policies at reasonable rates.

SECTION 27. MAINTENANCE OF PREMISES; TENANT IMPROVEMENTS

City's maintenance responsibilities of the Premises shall be limited to maintaining all sewers, water, and drain lines beyond the limits of the Premises. The City will repair the structural elements of the Public restroom facility. Additionally, City agrees to twice daily routine cleanings of the public restroom facility. Except as set forth in the preceding sentences, Lessee agrees to regularly clean and maintain the Premises, which includes all improvements at 21 Main Street and 22 Main Street in good order and repair, at Lessee's sole cost and expense, during the entire term of this Lease or any renewals or extensions thereof or during any holdover period, pursuant to the City's maintenance standards, and the standards set forth in the Conditions of Approval from the California Coastal Commission Notice of Intent to Issue Coastal Development Permit No. 5-22-0804 herein referenced as **Exhibit "B"**. These improvements and duties include but are not limited to maintenance, including assuring cleanliness and usability of the entire, remodeled public restroom facility, shall be the responsibility of the restaurant operator for the life of the approved restaurant. The restaurant operator shall maintain the public restrooms, at a minimum, every thirty minutes as proposed by the applicant. However, nothing in this permit shall require the permittee to be responsible for plumbing, electricity, roof or structural elements of the restroom building the City maintains control of, which shall remain the responsibility of the City. A copy of the inspection form setting forth the City's maintenance checklist is attached as Exhibit "F", and incorporated herein by this reference. Except as provided above, Lessee, at its sole cost and expense, shall perform any maintenance and repairs including, without limitation, facility maintenance on the Premises.

Lessee's obligation includes, without limitation, maintaining and operating the Premises in a clean, safe, wholesome and sanitary condition free of trash, foul odors, 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 Lease or any renewals or extensions thereof or 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, at its sole cost and expense, shall remedy without delay any defective, dangerous or unsanitary condition(s) caused by Lessee or anyone related thereto. Lessee shall maintain ADA access around the entire building.

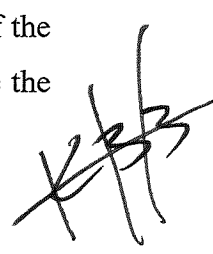
Lessee will maintain three trash receptacles on the exterior of the premises to serve the outdoor dining area and the walkable foods cart. At the request of the City, the Lessee will add additional trash receptacles.

Any and all graffiti on the Premises may be removed by Lessee, at its sole cost and expense. If the graffiti cannot be removed, it must be painted over with a paint matching the damaged area. All graffiti removal or repainting will be performed in a manner satisfactory to the City's agents, representatives, or employees. Lessor shall provide Lessee notice of the graffiti and within forty-eight (48) hours, Lessee shall remove such graffiti. In addition, with or without notice from City, Lessee shall, at its sole cost.

Should the City determine, in its sole discretion, that additional cleaning, maintenance, or repair of the Premises is required, and that the additional cleaning, maintenance, or repair has not been performed to the City's satisfaction, then the City has the right to perform such cleaning, maintenance, repair and charge this same cost with an administration fee to the Lessee.

Any and all graffiti on the Premises may be removed by Lessee, at its sole cost and expense. Lessor shall provide Lessee notice of the graffiti and within forty-eight (48) hours, Lessee shall remove 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 it becoming broken, regardless of cause, except by fault of City. Except as provided above for 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 (14) 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 or State with regard to the care and maintenance of the Premises. All repairs will be performed with the same quality and with the same or similar materials as those damaged, and to the satisfaction of the City. 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

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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 13 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.

SECTION 28. RENT CREDIT

Upon the Lessee opening for business or fifteen months from the date of lease execution, Lessee will receive credit for Base Rent each month until the Rent Credit equals the amount of Three Hundred Thousand Dollars (\$300,000.00) subject to documentation of such costs as provided by Lessee. The documented reasonable cost of the bathroom renovation shall be reviewed by the City and the Rent Credit will be adjusted in the event that the verified reasonable costs are less than the current projection . The Rent credit will be applied per the schedule shown in "**Exhibit G**". Percentage Rent will be due and payable to the City and will not be applied to the Rent Credit. Rent Credit is contingent on Lessee undertaking public restroom improvements and ancillary uses at 22 Main Street which must be approved by the City Manager or his/her designee at all of the following stages: conceptual plan, construction documents, construction and final inspection.

City in its sole discretion may decide to give Lessee a future rent credit if Lessee undertakes (1) any repair or maintenance obligation of City under this Lease, 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. The terms of payment of any rent credit will be determined by the City Manager or his or her designee.

SECTION 29. 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.

SECTION 30. TAXES

This Lease 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 Lease, 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.

SECTION 31. 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.

SECTION 32. UTILITIES AND SERVICES

Lessee shall be responsible for the payment of all utility charges using separate meters where applicable, 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 aside from water supplied to the public restrooms. The burden of showing to the City's satisfaction what water is used for public restrooms is on the Lessee at their sole expense. 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, maintained, 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.

SECTION 33. BUSINESS LICENSE

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

SECTION 34. 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 within a reasonable time of being directed by the City. Lessee may install a sign on Pacific Coast Highway if allowed by local law, with separate review and approval by the City. Banners/advertising of businesses outside the City of Huntington Beach is not allowed. Outdoor sales is a permitted use under District 6 of the Downtown Specific Plan and must be "beach related" with all proper approvals to be allowed. All outdoor displays or banners must first be approved in writing by the City Manager or his or her designee before display. Should City approve of any sign, name, placard, decoration or advertising, Lessee shall maintain the same at all times during the entire term of this Lease or during any holdover period in good appearance and repair. All signs, names, placards, decorations or advertising must comply with all requirements of any governmental authority with jurisdiction.

SECTION 35. NO ASSIGNING, SUBLEASING OR ENCUMBERING

- (a) Prohibition of Assignment. The parties acknowledge that City is entering into the Lease 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 Lease or in the Premises, or sublease all or any part of 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 be granted at the City's discretion. The City's consent however shall be reached after a meet and confer with current lessee regarding the proposed assignment. The City's consent may not be unreasonably withheld. Provided, however, that City's consent shall not relieve Lessee from any and all of its obligations, guarantees, liabilities, duties or responsibilities under this

Lease until after the City's discharge and release of the Lessee from all of the same in writing after the determination that the assignment to the proposed new lessee has been perfected and made final. Any assignment, encumbrance, occupation or use, sublease or other transfer without such consent shall be voidable and, at City's sole discretion, shall constitute a Default of this Lease.

- (b) Consent to Transfer. City's consent to any assignment, encumbrance, occupation or use, sublease or other transfer is subject to Lessee providing City with evidence satisfactory to City that the proposed, assignee, encumbrancer, occupier or user, sublessee 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, sublessee or other transferee is consistent with that specified herein, and is commercially reasonable. Any proposed assignee, encumbrancer, occupier or user, sublessee or other transferee shall agree to abide by the terms and conditions of the Lease including, without limitation, all the obligations, liabilities, duties and responsibilities of Lessee, and other conditions imposed upon it pursuant to law. Any assignment, transfer, sub-lease, encumbrance, or occupation shall not occur without the Lessor's prior approval which shall be granted at the Lessor's sole discretion. An approval by City to one assignment, encumbrance, occupation or use, sublease or other transfer shall not be deemed to be an approval to any other assignment, encumbrance, occupation or use, sublease 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 Lessee, 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.

SECTION 36. TERMS BINDING ON SUCCESSORS

All the terms, covenants and conditions of this Lease shall inure to the benefit of and be binding upon the parties and their successors, including, without limitation, their assignees,

encumbrancers, occupiers or users, sublessees 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, subleases or other transfers herein before set forth, or (2) City's consent thereto. If more than one lessee is a party to this Lease, 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, sublease or other transfer.

SECTION 37. DEFAULT

The occurrence of any one or more of the following events shall constitute a material default and breach ("Default") of this Lease 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 Lease. Failure to make payment by the Lessee for more than 31 days without other written agreement signed by the City will be considered a breach of this agreement.
- (b) Lessee's failure to obtain or maintain the insurances and/or the security deposit as required under this Lease.
- (c) Lessee's vacating or abandonment of the Premises during the entire term of this Lease or any renewals or extensions thereof or during any holdover period. Closure of the Concession for more than a combined total of (65) days in a calendar year, minus any days of closure of the Concession caused by City, shall be deemed an abandonment of the Premises.
- (d) Lessee's violation of Section 20 (Indemnification, Defense and Hold Harmless Agreement), Section 35 (No Assigning, Subleasing or Encumbering), Section 47 (Hazardous Substances), Section 49 (Nondiscrimination), Section 50 (Sale of Alcoholic Beverages and Entertainment), Section 63 (Conflict of Interest) or Section 65 (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 Lease, 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 Lease.

- (f) Lessee's failure to observe or perform any other term, covenant, obligation, duty, responsibility or condition of this Lease 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 Lease unless otherwise stated 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.
- (g) Lessee's failure to adequately maintain the asset to the reasonable satisfaction of the City shall be a breach of this agreement.
- (h) Lessee's failure to complete the construction of the Improvements (Exhibit E) and open for business within 15 months of the execution of the Lease or other time approved by the City.

SECTION 38. 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:
 - (1) Reentry without Termination. City may at City's sole discretion reenter the Premises, and, without terminating the Lease, at any time and from time to time relet the Premises or any part or parts of them for the account and in the name of Lessee or otherwise. Any reletting 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 reletting 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 reletting; second, to the reasonable expense of securing new subtenants; third, to the fulfillment of Lessee's covenants to the end of the term. City may execute any leases or subleases made under this provision either in City's name or in Lessee's name and City shall be entitled to all rents from the use, operation or occupancy of the Premises. Lessee shall nevertheless pay to City on the dates specified in this Lease the equivalent of all sums required of Lessee under this Lease, plus City's expenses, less the proceeds of any reletting or attornment.

- (2) Termination. In the event of a Default by Lessee, City may at City's sole discretion terminate this Lease by giving Lessee written notice of termination under the terms of this agreement. In the event City terminates this Lease, 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 57 and 58 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 (Base Rent will be the actual Base Rent required under the lease plus each month's Percentage Rent, if any, which would be calculated as the average Percentage 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 Percentage 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 rental 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 rental 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 Lease; 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 38(a)(2)(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 38(a)(2)(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 38(a)(2)(D) above shall include, without limitation, any costs or expenses incurred by City in maintaining or preserving the Premises after such Default.

- (3) Use of Personal Property. City may at City's sole discretion use the Trade Fixtures, personal 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 13 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 relet the Premises, or maintenance of the Premises, shall be construed as an election to terminate this Lease 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 Lease in full force and effect after a Default by Lessee and to relet the Premises, City may at any time after such reletting elect to terminate this Lease for any such Default.



SECTION 39. CUMULATIVE REMEDIES

The remedies given to City in this Lease 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 Lease. 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.

SECTION 40. WAIVER OF DEFAULT

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

SECTION 41. CITY'S DEFAULTS/LESSEE'S REMEDY

In the event City fails to perform any material obligation of City under the Lease within ninety (90) 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 ninety (90) days are required for its performance, if City fails to commence such performance within such ninety (90) 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 the Lease by giving City at least ninety (90) days' written notice of its intent to terminate or earlier with the mutual written agreement of both parties. In such a situation, Lessee must still comply with all of its obligations, liabilities, duties and responsibilities under the Lessee Agreement, including, without limitation, paying any Rent due up to the time of termination and surrendering the Premises pursuant to Sections 51 and 52 below.

Lessee's Right to Cure City's Default. Upon continuance of any Default, Lessee may with the written approval of the City Manager or their designee, but is not obligated to, cure such Default at the Lessee's sole cost and expense unless otherwise agreed to in writing by the parties. Lessee must obtain all necessary permissions, permits, and approvals from any State or Federal agency, if necessary, before curing any default. These remedies of termination is Lessee's sole and exclusive remedy for a default by City.

SECTION 42. CONSENT

When City's consent/approval is required under this Lease, 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.

SECTION 43. HOLDOVER

Should Lessee hold over and continue in possession of the Premises after expiration or termination of this Lease, 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 Lease, 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 Lease term. Percentage Rent will be calculated at six percent (6%) of the gross income above Two Million Dollars (\$2,000,000.)

SECTION 44. 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 Lease, or any part thereof, or caused by any judgment or award in any suit or proceeding declaring this Lease null, void or voidable, or delaying the Lease or any part thereof from being carried out.

SECTION 45. 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 Lease 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 Lease. City shall make quarterly physical inspections of the Leased 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.

SECTION 46. SURF CAMERA FEED

Lessee may install up to 4 cameras under the pier to play live surf feed, subject to a separate license agreement to be approved by the City Manager. A detailed plan showing the location, method of mounting and powering the cameras will be provided by the Lessee prior to installation and subject to approval by the City, in the City's sole discretion. Any income earned from the use of the cameras will be included in the Lessee's Gross Revenue. The cameras will be immediately removed or relocated upon request by the City and at no cost or expense to the City.

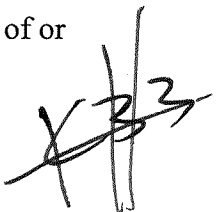
SECTION 47. PHOTOGRAPHY

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, without providing Lessee with notice or requiring consent by Lessee.

Prior to the issuance of any photography or filming permit, the film permit applicant or producer must acknowledge that it has full responsibility for obtaining all necessary approvals for the use of any private property or noncity public property. This requirement includes without limitation that the film permittee or producer is responsible for obtaining any and all permissions, licenses or other required authorizations for use of intellectual property, including intellectual property which is on City property but is not owned by the City.

SECTION 48. 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 Lease 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 release into the environment will or may reasonably be anticipated to cause sickness, death or disease.

SECTION 49. NONDISCRIMINATION

Lessee and its employees shall not discriminate because of race, religion, color, ancestry, sex, gender, gender identity or expression, age, religion, medical condition, genetic information, marital status, military or veteran status, national origin or physical or mental 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 Lease, 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.

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 Lease, 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.

SECTION 50. SALE OF ALCOHOLIC BEVERAGES AND ENTERTAINMENT

The proposed sale or provision of alcoholic beverages is hereby authorized as long as the Lessee maintains all required City (C.U.P. No.22-012) and State (Alcohol Beverage Control) approvals and abides by all their conditions of approval. 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 a material breach of this Agreement at the City's sole discretion and the City may terminate this Agreement per the provisions contained herein.

- a. The daily hours of operation shall be limited to 6:00 a.m. to 11:30 p.m.
- b. Lessee is required to have all elements of their business open to the public and operating a minimum of Three Hundred and Thirty (330) days per calendar year.
The restaurant and bar must remain open to the public and provide service a minimum of seven (7) hours per day. The Bait and Tackle Shop must remain open to the public and provide service a minimum of six (6) hours per day.
- c. No new customers shall be permitted to enter the alcohol business 30 minutes before closing.
- d. A minimum of 70 percent of the net floor area of the alcohol business shall be

- designated for dining. The dining area excludes areas used for cooking, kitchen preparation, office, storage, and restrooms and also excluding outdoor dining areas.
- e. 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.
 - f. Food service from the regular menu must be available to patrons up to one (1) hour before the scheduled closing time, including a cook and food servers shall be on duty.
 - g. In addition to any ABC requirements, the following alcohol related conditions shall be required:
 - i. An employee of the alcohol business must monitor areas where alcohol is served.
 - ii. Alcoholic drinks shall not be included in the price of admission to any alcohol business.
 - iii. All alcohol shall remain within the alcohol business premises, including outdoor dining area.
 - iv. Service of alcoholic beverages for consumption off-site shall not be permitted.
 - v. There shall be no requirement for patrons to purchase a minimum number of alcoholic drinks.
 - vi. Games or contests requiring or involving consumption of alcoholic beverages shall be prohibited.
 - vii. No reduced price or promotions of alcoholic beverages shall be allowed after 7:00 p.m.
 - viii. Final announcements that inform patrons the kitchen and/or bar will stop accepting order of alcoholic beverages (i.e. last call for alcohol) shall be at least 15 minutes prior to closing.
 - ix. Consumption of alcoholic beverages by on-duty employees; including servers, bartenders, kitchen staff, management and supervisory personnel is not permitted.
 - x. Mandatory Responsible Beverage Service (RBS) training and certification shall be require 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.

- h. All owners, employees, representatives, and agents must obey all federal, state, and local laws. In addition, all conditions of the Condition 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.
- i. No patrons shall be permitted to loiter within the vicinity of any entrances and exits at any time.
- j. Alcohol businesses shall install and maintain a video surveillance system to monitor all doors, eating areas, parking areas, and public area of premises and shall make the video available to the Police Department. 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 a Police Officer. The business shall retain video surveillance for one-month. All video surveillance cameras must record in color, with digital recording to DVR and able to record in low light.
- k. In addition to the Downtown Specific Plan and Huntington Beach Zoning and Subdivision ordinance, all signs shall comply with the following:
 - i. 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. No interior displays of alcoholic beverages or signs which are clearly visible to the exterior.
 - ii. There shall be no window coverings or advertisements that reduce the visibility inside of the business.
 - iii. Signage, posters, and advertising with "Do Not Drink and Drive" shall be posted in the business.
 - iv. Signs shall be posted in a conspicuous space at the entrance/exit of the restaurant and outdoor dining areas which shall state, "NO ALCOHOLIC BEVERAGES BEYOND THIS POINT."

- l. Dancing and/or dance floor and/or live entertainment is prohibited. A new or amended Conditional Use Permit and Entertainment Permit, issued by the City, shall be required for these additional activities.
- m. The patio shall have a physical barrier measuring a minimum 36 inches in height, surrounding the outdoor dining area and designed in a manner that will prohibit passing of alcohol through the barrier.

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. Should the Lessee face disciplinary action before the ABC that results in the ABC recommending revocation of the Lessee's license, the Lessee is required to notify the City in writing within forty-eight (48) hours of becoming aware of the recommendation.

SECTION 51. 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 nonresponsibility, on behalf of the City, to be posted and recorded pursuant to California Civil Code Section 3094.

SECTION 52. INSTALLATION AND REMOVAL OF TRADE FIXTURES

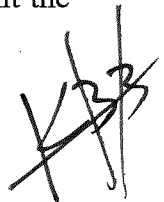
Lessee shall have the right during the entire term of this Lease or any renewals or extensions thereof, at Lessee's sole cost and expense, to install or affix in, to, or on the Premises any machinery, equipment and other objects (the "Trade Fixtures"), for use in Lessee's trade or business as Lessee 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 Lease, provided Lessee repairs any damage caused by the removal. Upon execution of this Lease and every anniversary, Lessee shall provide City with a list of all Trade Fixtures on the Premises.

SECTION 53. DESTRUCTION

Should the Premises be partially destroyed, this Lease 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 ninety (90) days or the remaining life of the lease, whichever is less. Should the Premises be so far destroyed that in the parties' reasonable judgment they cannot be repaired or restored to their former condition within ninety (90) days or the remaining life of this lease, whichever is less, then a party shall give the other party notice of such determination in writing and each party may, in that party's sole discretion:

- (a) Continue this Lease in full force and effect in which case Lessee shall repair and restore, at Lessee's sole cost and expense, the Premises to their former condition; or,
- (b) Terminate this Lease by giving the other party thirty (30) days' written notice of such termination within sixty (60) days after the date that a party gives the other party notice that the Premises cannot be repaired or restored to their former condition within ninety (90) days or the remaining life of the lease, whichever is less. In the event that either party elects to terminate this Lease, the entire amount of any insurance proceeds (excluding such proceeds for Trade Fixtures, personal property, whether or not owned or leased 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 a party elects to terminate the Lease, all parties must still comply with all of its obligations, liabilities, duties and responsibilities under the Lease, including, without limitation, paying any Rent due up to the time of termination and surrendering the Premises, pursuant to Sections 55 and 56 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 Lease, 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, unless such damage or destruction is caused by the City.

SECTION 54. 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, unless such loss of time is caused by City negligence or willful misconduct unless otherwise specified in this agreement. 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, unless such loss is caused by City or its subcontractors and/or permittees. City retains the right to close the or the Premises or pier for emergencies without any notice to Lessee, for any extent of time and without compensation or credit except Lessee may be provided rent credit equivalent to the period the Lessee was prevented from occupancy, at the discretion of the City Manager or his or her designee.

SECTION 55. EMINENT DOMAIN

If, during the term of this Lease or any renewals or extensions thereof or 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 by an entity other than City, 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 profits, 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 Lease, 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 Lease 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.

**SECTION 56. RELOCATION AND ASSISTANCE, BUSINESS GOODWILL AND
LEASEHOLD BONUS VALUE**

Upon expiration or termination of this Lease 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 Lease, and Lessee expressly waives any claim to the same.

SECTION 57. QUITCLAIM DEED

Upon expiration or termination of this Lease 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 Lease. 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 Lessee of the expiration or termination of this Lease and any rights or interests of Lessee in the Premises and/or the Lease. 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.

**SECTION 58. RESTORATION AND SURRENDER OF PREMISES/TITLE TO
IMPROVEMENTS TO THE BUILDING**

On expiration or termination of this Lease, 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 Lease, 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

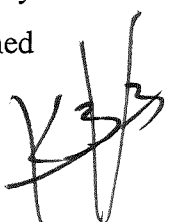
shall be to the satisfaction of City and shall be completed within thirty (30) days of the expiration or termination of this Lease; provided, however, that Lessee shall be considered a holdover tenant (pursuant to Section 43 above) after expiration or termination of the Lease until the time Lessee completes 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 Lease shall apply to such Trade Fixtures, personal property and/or trade inventory, and to City's actions with respect thereto.

SECTION 59. FORCE MAJEURE - UNAVOIDABLE DELAYS

Should the performance of any act required by this Lease 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 unforeseeable at the time this agreement was signed 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 Lease 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.

SECTION 60. CITY'S OPTION TO CLOSE THE PREMISES

City may close the Premises without liability and without advance notice to Lessee therefor at any time as City in its sole discretion deems necessary for the protection of life, limb or property, or for public health, safety or welfare purposes. The City may close the Premises without liability for other City activities or special events, or to effect any repair, remodeling or rebuilding deemed



necessary by the City Manager or his or her designee or the Director of Community and Library Services or his or her designee. The City will attempt to give reasonable notice if possible to the Lessee. City retains the right to close the or the Premises or pier for emergencies without any notice to Lessee, for any extent of time and without compensation or credit except Lessee may be provided rent credit equivalent to the period the Lessee was prevented from occupancy, at the discretion of the City Manager or his or her designee.

SECTION 61. DELIVERIES OF SUPPLIES, REMOVAL OF TRASH & GREASE

The City Manager or his or her designee of City may establish the days and times deliveries of supplies, and removal of trash and grease may be made and advise Lessee in writing thereof. In most cases, deliveries will be allowed daily with a delivery window of four (4) hours between 7am and 11am daily. Delivery supplies, removal of trash and grease days and times may be prohibited or changed due to, but not limited to, specific events, emergencies, repairs to the pier, impossibility, protests, public safety concerns, and severe weather events at the discretion of the City Manager or his or her designee.

SECTION 62. EMPLOYEE PARKING

All employee parking shall comply with Huntington Beach Municipal Code Section 13.08.290(d) and (g).

SECTION 63. 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 Lease; or (2) shall be employed by Lessee in the performance of this Lease 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 Lease 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 Lease in violation of the applicable provisions of the California Government Code.

SECTION 64. 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: City Manager
2000 Main Street, 4th Floor
Huntington Beach, CA 92648

LESSEE:
Surf City Partners, LLC
221 Main Street, Suite "S"
Huntington Beach, CA 92648

SECTION 65. 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 Lease 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 Lease, 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 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 Lease by City.

SECTION 66. INTERPRETATION OF THIS LEASE

The language of all parts of this Lease 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 Lease 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 Lease. No covenant or provision shall be deemed dependent upon any other unless so expressly

provided here. As used in this Lease, 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 Lease which is hereby affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law.

SECTION 67. SURVIVAL

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

SECTION 68. MODIFICATION

No waiver or modification of any language in this Lease shall be valid unless in writing and duly executed by both parties.

SECTION 69. SECTION HEADINGS

The titles, captions, section, paragraph and subject headings, and descriptive phrases at the beginning of the various sections in this Lease 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 or describe, or construe the intent of the parties or affect the construction or interpretation of any provision of this Lease.

SECTION 70. 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 Lease. No brokerage commissions or fees will be paid.

SECTION 71. 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 Lease and/or any services to be performed hereunder.

SECTION 72. 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 Lease 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.

SECTION 73. 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.

SECTION 74. GOVERNING LAW

This Lease shall be governed and construed in accordance with the laws of the State of California.

SECTION 75. DUPLICATE ORIGINAL

The original of this Lease 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 any party who signed it.

SECTION 76. INTERIM USE

From lease execution, and after providing all insurance required under this lease, the Lessee will be permitted, with approval by the City Manager or his/her designee, to operate a kiosk/cart with limited product approved by the City Manager during plan check and/or construction. This may be extended by written approval of the parties. Any operation must comply with all rules, regulations, and conditions of approvals by any other government agency with jurisdiction over the premises.

Rent shall be 10% of gross sales per Section 14 of this agreement titled GROSS SALES DEFINED. No later than the fifteenth (15th) day of each month, Rent will be paid to the City by the Lessee, along with a financial statement and calculations sufficient to support the validity of the amount remitted, per Sections 15, 16, and 17 and, in a form acceptable to the City's representative.

SECTION 77. LESSEE'S CONSTRUCTION OF IMPROVEMENTS

As an inducement for the City to enter into this Lease with the Lessee, the Lessee agrees and covenants that Lessee will construct the restaurant/retail buildings and will renovate the public restrooms to the satisfaction of the City and in a manner consistent with all approved plans. Prior to submitting for permits, City Manager or his/her designee must approve all plan submittals. Lessee is responsible for complying with the agreed upon construction schedule per Exhibit D. The Exhibit and schedule may be modified at the written joint agreement of both parties. Lessee is responsible for complying with any changes or modifications required by any governing body as required by Federal, state, and local law. Lessee will commence the construction of the improvements no later than sixty (60) days from the issuance of building permits.

During the course of construction, the Lessee will provide sufficient pedestrian and vehicular access to the end of the pier, as determined by the City. As part of the permitting process, the City may reasonably condition any construction to ensure maximum pier access to the public, safety of the construction site, and security of the other Pier tenants. Lessee may not limit access or visibility to any of the businesses on the pier. Lessee will indemnify and hold the City harmless for any damage, loss of business or loss of business goodwill arising from tenant's construction activities or operations.

Lessee is required to pay and must require any contractor or subcontractor to pay the prevailing wage rate set forth by the Labor Code for any and all improvements set forth in Exhibit E for which time Lessee is receiving rent abatement.

SECTION 78. WAIVER OF LIMITED FEES

The City agrees to waive plan check fees but not any associated impact fees, capital facility fees or utility connection fees associated with the construction of the restaurant / retail facility and the renovation of the public restrooms. This waiver will not apply to any plan check fees but not any associated impact fees, capital facility fees or utility connection fees beyond fifteen months from the date of Lease execution.

SECTION 79. ENTIRETY

The parties acknowledge and agree that they are entering into this Lease 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 Lease. 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 Lease, and that that party has not executed this Lease in reliance on any representation, inducement, promise, agreement, warranty, fact or circumstance not expressly set forth in this Lease. The Lease, and the attached exhibits, contain the entire agreement between the parties respecting the subject matter of this Lease, the Premises, the leasing of the Premises to Lessee, or the lease term created under this Lease and supersede all prior understandings and agreements, whether oral or in writing between the parties respecting the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by and through their authorized officers the day, month and year first above written. Each undersigned represents and warrants that its signature hereinbelow has the power, authority and right to bind their respective parties to each of the terms of this Agreement and shall indemnify CITY fully for any injuries or damages to CITY in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.

SURF CITY PARTNERS, LLC

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

By: Jeff Benasman
print name
ITS: [Signature]
(circle one) Chairman/President/Vice
President M. [Signature]

Mayor

City Clerk

AND

By: Keith Bohr
print name
ITS: [Signature]
(circle one) Secretary/Chief Financial
Officer/Asst.
Secretary - Treasurer

INITIATED AND APPROVED:

[Signature]
City Manager

[Signature]
Director of Community Development

REVIEWED AND APPROVED:

City Manager

APPROVED AS TO FORM:

[Signature]
City Attorney

[Signature]

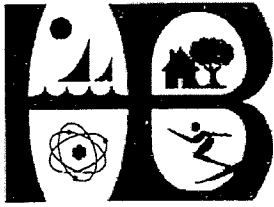
EXHIBITS

- A. Exhibit "A" - CUP No. 22-012 dated July 28, 2022
- B. Exhibit "B" - California Coastal Commission Notice of Intent to Issue Coastal Development Permit No. 5-22-0804
- C. Exhibit "C" - Map of Leased Premises, Existing Photos, & Proposed Conceptual
- D. Exhibit "D" - Estimated Budget & Construction Schedule
- E. Exhibit "E" - Description of City-Approved Improvements/Alterations to Premises
- F. Exhibit "F" - Inspection Form
- G. Exhibit "G" - Rent Credit Schedule

EXHIBIT A

**CONDITIONAL
USE PERMIT
NO. 22-012**

EXHIBIT A



OFFICE of the ZONING ADMINISTRATOR
CITY OF HUNTINGTON BEACH • CALIFORNIA

~~~~~  
P.O. BOX 190

CALIFORNIA 92648

(714) 536-5271

NOTICE OF ACTION

July 28, 2022

Jeff Bergsma  
TEAM Design  
221 Main Street, Suite S  
Huntington Beach CA 92648

**SUBJECT:** CONDITIONAL USE PERMIT NO. 22-012 (HUNTINGTON'S  
ON THE PIER)

**APPLICANT:** Jeff Bergsma, TEAM Design, 221 Main Street, Suite S,  
Huntington Beach CA 92648

**REQUEST:** To permit the construction of a 250 sq. ft. kitchen addition and two outdoor dining patios totaling 620 sq. ft. for the establishment of an eating and drinking use including the sales, service, and consumption of alcohol (ABC Type 47 license) in an existing retail pad building (21 Main Street), and the construction of a 450 sq. ft. enclosed dry/cold storage room, two new ADA compliant restrooms, and a trash enclosure to an existing public restrooms building (22 Main Street). The request includes the operation of up to three freestanding retail kiosks, including one year-round bait and tackle kiosk, adjacent and ancillary to the proposed restaurant. The project is located within the Coastal Commission area of original jurisdiction and includes a review via an "approval in concept" process for construction.

**PROPERTY OWNER:** City of Huntington Beach

**LOCATION:** 21 and 22 Main Street, 92648 (Platform 3 of the Municipal Pier)

**CITY CONTACT:** Hayden Beckman

**DATE OF ACTION:** July 27, 2022

On Wednesday, July 27, 2022, the Huntington Beach Zoning Administrator took action on your application, and your application was conditionally approved. Attached to this letter are the findings and conditions of approval.



Please be advised that the Zoning Administrator reviews the conceptual plan as a basic request for entitlement of the use applied for and there may be additional requirements prior to commencement of the project. It is recommended that you immediately pursue completion of the conditions of approval and address all requirements of the Huntington Beach Zoning and Subdivision Ordinance in order to expedite the processing/completion of your total application. The conceptual plan should not be construed as a precise plan, reflecting conformance to all Zoning and Subdivision Ordinance requirements.

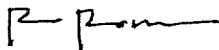
Under the provisions of the Huntington Beach Zoning and Subdivision Ordinance, the action taken by the Zoning Administrator becomes final at the expiration of the appeal period. A person desiring to appeal the decision shall file a written notice of appeal to the Secretary of the Planning Commission within ten (10) calendar days of the date of the Zoning Administrator's action. The notice of appeal shall include the name and address of the appellant, the decision being appealed, and the grounds for the appeal. Said appeal must be accompanied by a filing fee of Three Thousand One Hundred Two Dollars (\$3,102.00) if the appeal is filed by a single family dwelling property owner appealing the decision on his own property and Four Thousand Two Hundred Eighty-One Dollars (\$4,281.00) if the appeal is filed by any other party. In your case, the last day for filing an appeal and paying the filing fee is **August 8, 2022, at 5:00 PM.**

Provisions of the Huntington Beach Zoning and Subdivision Ordinance are such that any application becomes null and void one (1) year after final approval, unless actual construction has begun, or as modified by condition of approval.

Excepting those actions commenced pursuant the California Environmental Quality Act, you are hereby notified that you have 90 days to protest the imposition of the fees described in this Notice of Action. If you fail to file a written protest regarding any of the fees contained in this Notice, you will be legally barred from later challenging such action pursuant to Government Code §66020.

If you have any questions regarding this Notice of Action letter or the processing of your application, please contact Hayden Beckman, the project planner, at (714) 536-5561 or via email at [hayden.beckman@surfcity-hb.org](mailto:hayden.beckman@surfcity-hb.org) or the Department of Community Development Zoning Counter at (714) 536-5271.

Sincerely,



Ricky Ramos  
Zoning Administrator

RR:HB:kdc  
Attachment

c: Honorable Mayor and City Council  
Chair and Planning Commission  
Al Zelinka, City Manager  
Travis Hopkins, Assistant City Manager  
Ursula Luna-Reynosa, Director of Community Development  
Matthew Schneider, Planning Manager

Tim Andre, Fire Division Chief  
Bob Milani, Principal Civil Engineer  
Steve Eros, Fire Protection Analyst  
Jacob Worthy, Fire Protection Analyst  
Property Owner  
Project File

## **ATTACHMENT NO. 1**

### **FINDINGS AND CONDITIONS OF APPROVAL**

#### **CONDITIONAL USE PERMIT NO. 22-012**

#### **FINDINGS FOR PROJECTS EXEMPT FROM CEQA:**

The Zoning Administrator finds that the project will not have any significant effect on the environment and is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to section 15301 of the CEQA Guidelines because the project permit the addition of not more than 50% of the floor areas of two existing structures before either addition, which is considered a negligible expansion of the use.

#### **FINDINGS FOR APPROVAL- CONDITIONAL USE PERMIT NO. 22-012**

1. Conditional Use Permit No. 22-015 to permit the construction of a 250 sq. ft. kitchen addition and two outdoor dining patios totaling 620 sq. ft. for the establishment of an eating and drinking use including the sales, service, and consumption of alcohol (ABC Type 47 license) in an existing retail pad building (21 Main Street), and the construction of a 450 sq. ft. enclosed dry/cold storage room, two new ADA compliant restrooms, and a trash enclosure to an existing public restrooms building (22 Main Street) will not be detrimental to the general welfare of persons working or residing in the vicinity or detrimental to the value of the property and improvements in the neighborhood because the project is located within an existing City-operated commercial pad building and will accommodate a new restaurant with ancillary alcohol sales, and the operation of a maximum of three (3) freestanding commercial carts/kiosks to serve the wide variety of needs of both regular and seasonal pedestrian visitors of the pier. The proposed structural addition, architectural features, and establishment of a restaurant including the service of alcohol, will benefit and serve the other commercial uses on the pier and provide a wider range of commercial visitor recreational amenities on the pier. The sale, service, and consumption of alcohol within the restaurant interior and outdoor dining patios is not anticipated to generate additional noise, traffic, or impacts above existing conditions. The project request does not include live entertainment, and the site is located on the Municipal Pier, surrounded by the ocean, and no impacts to neither adjacent commercial uses nor residential uses would occur. The proposed project has been reviewed by other departments, including Police, Fire, and Public Works, who have provided suggested conditions of approval that will limit the use and manner in which the restaurant and outdoor dining patio operate to ensure that operations will be compatible with the pedestrian oriented pier environment.
2. The granting of Conditional Use Permit No. 22-012 to permit the construction of a 250 sq. ft. kitchen addition and two outdoor dining patios totaling 620 sq. ft. for the establishment of an eating and drinking use including the sales, service, and consumption of alcohol (ABC Type 47 license) in an existing retail pad building (21 Main Street), the construction of a 450 sq. ft. enclosed dry/cold storage room, two

new ADA compliant restrooms, and a trash enclosure to an existing public restrooms building (22 Main Street), and operation of maximum of three (3) freestanding commercial carts/kiosks will not adversely affect the General Plan because it is consistent with the Land Use Element designation of CV (Commercial Visitor) on the subject property. In addition, it is consistent with the following goals and policies of the General Plan:

Land Use Element

Goal LU-1: New commercial, industrial, and residential development is coordinated to ensure that the land use pattern is consistent with the overall goals and needs of the community.

Policy LU-1 (C): Support infill development, consolidation of parcels, and adaptive reuse of existing buildings.

Policy LU-1(D): Ensure that new development projects are of compatible proportion, scale, and character to complement adjoining uses.

Goal LU-2: New development preserves and enhances a distinct Surf City identity, culture, and character in neighborhoods, corridors, and centers.

Policy LU-2(B): Ensure that new and renovated structures and building architecture and site design are context-sensitive, creative, complimentary of the city's beach culture, and compatible with surrounding development and public spaces.

Coastal Element

Policy C 1.1.4: Where feasible, locate visitor-serving commercial uses in existing developed areas or at selected points of attraction for visitors.

Objective C 2.2: Encourage use of City and State beaches as a destination point for bicyclists, pedestrians, shuttle systems and other non-auto oriented transport.

Goal C 3: Provide a variety of recreational and visitor commercial serving uses for a range of cost and market preferences.

Objective C 3.1: Preserve, protect, and enhance, where feasible, existing public recreation sites in the Coastal Zone.

Policy C 3.2.4: Encourage the provision of a variety of visitor-serving commercial establishments within the Coastal Zone, including, but not limited to, shops, restaurants, hotels and motels, and day spas.

The request will expand and enhance the range of goods and services provided to visitors of the pier by providing additional visitor serving commercial opportunities that aid in developing a stronger linkage to coastal recreational resources in the area. The proposed restaurant with ancillary alcohol sales, service, and consumption

provides expanded goods and services to meet the needs of the area and will add to the capture of sales tax revenue. The proposed project will repurpose an existing commercial retail building on the pier that currently provides adequate accessibility for year-round visitors, and will maintain sufficient access along the perimeter of the pier for the public, as well as access for emergency and service vehicles. The proposed carts/kiosks create an appropriately scaled retail experience oriented towards the pedestrian activity on the pier, and year-round sales of bait and tackle ensures a continuous public recreational benefit. Further, the proposed project's overall design, colors, and materials are conditionally recommended by the Design Review Board and incorporate Art Deco and signage elements that are evocative of past restaurant operations on the pier, and the project compliments the city's beach culture and identity in a way that is compatible with surrounding uses.

3. The granting of Conditional Use Permit No. 22-012 to permit the construction of a 250 sq. ft. kitchen addition and two outdoor dining patios totaling 620 sq. ft. for the establishment of an eating and drinking use including the sales, service, and consumption of alcohol (ABC Type 47 license) in an existing retail pad building (21 Main Street), the construction of a 450 sq. ft. enclosed dry/cold storage room, two new ADA compliant restrooms, and a trash enclosure to an existing public restrooms building (22 Main Street), and operation of maximum of three (3) freestanding commercial carts/kiosks will comply with the provisions of the base district and other applicable provisions in Titles 20-25 of the Huntington Beach Zoning and Subdivision Ordinance (HBZSO) because the establishment of an eating a drinking use with alcohol sales and the operation of commercial carts/kiosks are permitted subject to a Conditional Use Permit within District 6 of the Downtown Specific Plan. The proposed restaurant, outdoor dining, and commercial carts/kiosks will result in the reuse an existing commercial building in a manner which conforms to applicable site development standards, including setbacks, height, and access. The applicant will maintain a 10 ft. pedestrian access way along the perimeter of the pier, and will provide a long term lease for nine (9) off-site parking spaces for the proposed project in excess of any parking requirement applied to commercial uses located on the pier.

#### **CONDITIONS OF APPROVAL- CONDITIONAL USE PERMIT NO. 22-012**

1. The site plan, floor plans, elevations, colors, and materials received and dated June 16, 2022 shall be the conceptually approved design with the following modifications:
  - a. The applicant shall incorporate a tile with heightened geometrics to strengthen the Art Deco design. **(DRB)**
  - b. The applicant shall include vinyl or polycarbonate materials to ensure the longevity of the awnings and/or shade coverings. **(DRB)**
  - c. All trim and flashing shall be stainless steel. **(DRB)**

- d. The applicant shall incorporate a flat glazed roof tile of clay or similar material for the roof(s). **(DRB)**
  - e. The applicant shall incorporate an architectural accent of black colors or materials in addition to the proposed color palette. **(DRB)**
  - f. The applicant shall consider incorporating the same colors and materials for the additions to the public restrooms building as those for the proposed restaurant. **(DRB)**
  - g. The proposed trash enclosure(s) shall be located to allow for a minimum of 3 bins, for organics, recyclables, and landfill trash. **(PW)**
  - h. Proposed materials for the exterior portions of the buildings shall be comparable and compatible with materials utilized by the City elsewhere on the Pier to ensure durability **(PW)**.
2. The use shall comply with the following conditions:
- a. The daily hours of operation shall be limited to 6:00 a.m. to 11:30 p.m.
  - b. No new customers shall be permitted to enter the alcohol business 30 minutes before closing. **(PD)**
  - c. A minimum of 70 percent of the net floor area of the alcohol business shall be designated for dining. The dining area excludes areas used for cooking, kitchen preparation, office, storage, and restrooms and also excluding outdoor dining areas. **(PD)**
  - d. 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. **(PD)**
  - e. Food service from the regular menu must be available to patrons up to one (1) hour before the scheduled closing time, including a cook and food servers shall be on duty. **(PD)**
  - f. In addition to any ABC requirements, the following alcohol related conditions shall be required:
    - i. An employee of the alcohol business must monitor areas where alcohol is served.
    - ii. Alcoholic drinks shall not be included in the price of admission to any alcohol business.

- iii. All alcohol shall remain within the alcohol business premises, including outdoor dining area.
  - iv. Service of alcoholic beverages for consumption off-site shall not be permitted.
  - v. There shall be no requirement for patrons to purchase a minimum number of alcoholic drinks.
  - vi. Games or contests requiring or involving consumption of alcoholic beverages shall be prohibited.
  - vii. No reduced price or promotions of alcoholic beverages shall be allowed after 7:00 p.m.
  - viii. Final announcements that inform patrons the kitchen and/or bar will stop accepting order of alcoholic beverages (i.e. last call for alcohol) shall be at least 15 minutes prior to closing.
  - ix. Consumption of alcoholic beverages by on-duty employees; including servers, bartenders, kitchen staff, management and supervisory personnel is not permitted.
  - x. 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. **(PD)**
- g. All owners, employees, representatives, and agents must obey all federal, state, and local laws. In addition, all conditions of the Condition 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. **(PD)**
- h. No patrons shall be permitted to loiter within the vicinity of any entrances and exits at any time. **(PD)**
- i. Alcohol businesses shall install and maintain a video surveillance system to monitor all doors, eating areas, parking areas, and public area of premises and shall make the video available to the Police Department. 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 a Police Officer. The business shall retain video surveillance for one-month. All video surveillance cameras must record in color, with digital recording to DVR and able to record in low light. **(PD)**

- j. In addition to the Downtown Specific Plan and Huntington Beach Zoning and Subdivision ordinance, all signs shall comply with the following:
    - i. 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. No interior displays of alcoholic beverages or signs which are clearly visible to the exterior.
    - ii. There shall be no window coverings or advertisements that reduce the visibility inside of the business.
    - iii. Signage, posters, and advertising with "Do Not Drink and Drive" shall be posted in the business.
    - iv. Signs shall be posted in a conspicuous space at the entrance/exit of the restaurant and outdoor dining areas which shall state, "NO ALCOHOLIC BEVERAGES BEYOND THIS POINT." **(PD)**
  - k. Dancing and/or dance floor and/or live entertainment is prohibited. A new or amended Conditional Use Permit and Entertainment Permit, issued by the City, shall be required for these additional activities. **(PD)**
  - l. The patio shall have a physical barrier measuring a minimum 36 inches in height, surrounding the outdoor dining area and designed in a manner that will prohibit passing of alcohol through the barrier. **(PD)**
- 3. Any conditions of approval, imposed by the California Coastal Commission that are more restrictive than those set forth in this approval shall be adhered to.
  - 4. This CUP is a conceptual approval only, and shall not be in effect nor any property interest vested, until the applicant has obtained all required approvals from the California Coastal Commission (CCC) and State Lands Commission (SLC). A copy of the written notice of approval from the CCC and SLC shall be submitted to the Community Development Department for inclusion in the entitlement file prior to submittal of building permits. In the event that either approval is not obtained, the subject CUP approval shall be null and void.
  - 5. Prior to the issuance of building permits, the applicant shall provide a parking plan that includes an executed Lease Agreement approved to form by the City Attorney for nine (9) off-site parking spaces located on the property located at 300 Pacific Coast Highway.



6. Prior to the installation or operation of the three (3) permitted carts/kiosks, the applicant shall submit to the Director of Community Development, for review and approval, detailed specifications of the dimensions and appearance of each cart/kiosk that demonstrates compliance with the requirements contained in Section 230.94 of the Huntington Beach Zoning and Subdivision Ordinance (HBZSO) and this CUP. **(HBZSO 230.94)**
7. Prior to occupancy of the restaurant, one of the three permitted carts/kiosks shall be reviewed, approved, and in operation for the sale of bait, tackle, and fishing-related goods on a year-round basis.
8. One of the three permitted carts/kiosks shall include the sale of bait, tackle, and fishing-related goods on a year-round basis.
9. The proposed building additions and the new loads imposed on the existing pier shall be analyzed by a state-licensed Structural Engineer and a report shall be submitted to the City, for review and approval, to justify the new loads are within allowable design capacity for the existing pier structure. The report shall also include recommendations for anchoring new/additional structures into the existing pier deck, including parameters on how to avoid anchors interfering with existing reinforcing steel within the existing pier deck. **(PW)**
10. The final building permit(s) cannot be approved until the following have been completed:
  - a. All improvements must be completed in accordance with approved plans.
  - b. Compliance with all conditions of approval specified herein shall be verified by the Community Development Department.
  - c. All building spoils, such as unusable lumber, wire, pipe, and other surplus or unusable material, shall be disposed of at an off-site facility equipped to handle them.
11. Prior to submittal of building permits, zoning entitlement conditions of approval and code requirements identified in separately transmitted memorandum from the Departments of Fire, Community Development, and Public Works shall be printed verbatim on one of the first three pages of all the working drawing sets used for issuance of building permits (architectural, structural, electrical, mechanical, and plumbing) and shall be referenced in the sheet index. The minimum font size utilized for printed text shall be 12 point.
12. The applicant and/or applicant's representative shall be responsible for ensuring the accuracy of all plans and information submitted to the City for review and approval.

13. CUP No. 22-012 shall become null and void unless exercised within two years of the date of final Coastal Development Permit approval or by the Coastal Commission if the Coastal Development Permit is appealed, or such extension of time as may be granted by the Director pursuant to a written request submitted to the Community Development Department a minimum 30 days prior to the expiration date.
14. The Development Services Departments and divisions (Building & Safety, Fire, Planning and Public Works) shall be responsible for ensuring compliance with all applicable code requirements and conditions of approval. The Director of Community Development may approve minor amendments to plans and/or conditions of approval as appropriate based on changed circumstances, new information or other relevant factors. Any proposed plan/project revisions shall be called out on the plan sets submitted for building permits. Permits shall not be issued until the Development Services Departments have reviewed and approved the proposed changes for conformance with the intent of the Zoning Administrator's action. If the proposed changes are of a substantial nature, an amendment to the original entitlement reviewed by the Zoning Administrator may be required pursuant to the provisions of HBZSO Section 241.18.

#### **INDEMNIFICATION AND HOLD HARMLESS CONDITION**

The owner of the property which is the subject of this project and the project applicant if different from the property owner, and each of their heirs, successors and assigns, shall defend, indemnify and hold harmless the City of Huntington Beach and its agents, officers, and employees from any claim, action or proceedings, liability cost, including attorney's fees and costs against the City or its agents, officers or employees, to attack, set aside, void or annul any approval of the City, including but not limited to any approval granted by the City Council, Planning Commission, or Design Review Board concerning this project. The City shall promptly notify the applicant of any claim, action or proceeding and should cooperate fully in the defense thereof.

# **EXHIBIT B**

## **NOTICE OF INTENT TO ISSUE COASTAL DEVELOPMENT PERMIT CDP No. 5-22-0804**

**CALIFORNIA COASTAL COMMISSION**

SOUTH COAST DISTRICT OFFICE  
301 E. OCEAN BLVD., SUITE 300  
LONG BEACH, CALIFORNIA 90802-4830  
PH (562) 590-5071 FAX (562) 590-5084  
WWW.COASTAL.CA.GOV



May 28, 2024

Permit Application Number: **5-22-0804**

## **CORRECTED NOTICE OF INTENT TO ISSUE PERMIT**

(Upon satisfaction of special conditions)

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

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

On November 16, 2023, the California Coastal Commission approved Coastal Development Permit No. **5-22-0804** requested by Surf City Partners, LLC subject to the attached conditions, for development consisting of:

**At 21 Main St.** (former fishing supply building) – interior modifications and addition of a 220 square foot kitchen and a 310 square foot outdoor restaurant dining area to an existing single story, 17 feet high, 820 square foot building to convert a former bait and tackle shop to a new restaurant/bar; and five, 4-seat tables for general public use to the northeast of the restaurant building. No change in height to the existing building.

**At 22 Main St.** (existing public restroom building) – modifications to the existing single story, 17 feet high, 409 square foot public restroom building, including addition of one separate 68 square foot public unisex ADA restroom, 60 square foot restaurant employee changing room/restroom/locker area, 220 sq. ft enclosed restaurant storage area with cooler, and addition of a new 53 square foot restaurant trash enclosure area. The existing public restroom layout would be remodeled into separate men's (two stalls

## NOTICE OF INTENT TO ISSUE PERMIT

(Upon satisfaction of special conditions)

and two urinals) and women's public restroom spaces (four stalls) with interior sinks, including an addition of 108 square feet. And, addition of an 87 square foot bait shop. No change in height to the existing building.


The development will include a walk-up, to-go window at the restaurant and/or one 8 feet by 4 feet commercial "walkable" food and beverage cart located on the interior of the pier between the two structures, all more specifically described in the application filed in the Commission offices. **Commission staff will not issue the CDP until the "prior to issuance" special conditions have been satisfied.**

The development is within the coastal zone at: 21 and 22 Main Street, on the Huntington Beach Pier, Huntington Beach, Orange County. (APN: 178-533-11)

If you have any questions regarding how to fulfill the "prior to issuance" Special Conditions for CDP No. 5-22-0804, please contact the Coastal Program Analyst identified below.

Sincerely,

Kate Huckelbridge  
Executive Director

DocuSigned by:  
  
309E47D79B334EE...

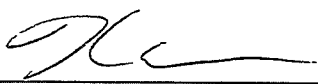
Meg Vaughn  
Coastal Program Analyst

cc: Commissioners/File

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

**ACKNOWLEDGMENT**

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

8/1/24                        
Date                                      Permittee (Keith Bohn)

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

**STANDARD CONDITIONS**

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, then permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission and affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

## NOTICE OF INTENT TO ISSUE PERMIT

(Upon satisfaction of special conditions)

### SPECIAL CONDITIONS:

#### 1. Public Table Seating Required.

A. Public Table Seating Required. By acceptance of this permit, the permittee agrees it shall provide the five, 4-seat public tables and four, 2-seat public tables as proposed by the applicant and shown on the 10/27/2023 project plans (Exhibit 2 of this staff report) for the life of the proposed restaurant. One of the five, 4-seat tables closest to the restaurant and one of the four 2-seat tables shall be ADA compliant. All of these public table seating areas shall remain open and available for the general public use with no requirement for restaurant purchase or other restriction and shall be signed consistent with the requirements of **Special Condition 2**, below.

B. Table Seating Locations. Both seating areas nearest the restaurant shall not encroach onto the pier beyond a line extending from and parallel to the kitchen wall at the interior of the pier and its intersection with lines extending from and parallel to the nearest diagonal wall at the pier edge of the restaurant building. The public table seating proposed adjacent to the restroom building (four, 2-seat tables) shall be placed immediately adjacent to the wall of the restroom building as shown on the project plans received on 10/27/2023 (Exhibit 2 of this staff report).

C. Table Seating Public Availability. The permittee shall not impede or discourage the public from using the public outdoor seating areas authorized by this permit in any manner. Placement of posts, dividers, fence, ropes, or similar devices around any part of the public seating areas or placement of any seating area on an elevated platform or foundation shall not occur. Further, any reference to the private restaurant, including logos, shall not be printed on flags, tables, chairs, umbrellas, or any other feature located in the public seating area. In addition, no restaurant table service shall occur at the public outdoor seating areas.

D. The public outdoor seating areas authorized by this permit shall be limited to the five, 4-seat tables required by this special condition and the four 2-seat tables proposed by the applicant, and required by this permit, and shown on the project plans received on 10/27/2023 (Exhibit 2 of this staff report).

E. All public seating table areas shall be maintained by the permittee in good condition for the life of the restaurant that is the subject of this CDP.

## **NOTICE OF INTENT TO ISSUE PERMIT**

(Upon satisfaction of special conditions)

**F.** The approved public table seating, including the ADA compliant table seating, shall be reflected on the revised project plans required by **Special Condition No. 7.**

**G.** The applicant shall undertake development in accordance with the above requirements. Any proposed changes to the above requirements shall be reported to the Executive Director. No changes to the above requirements shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

### **2. Signage Plan Announcing Public Availability of Table Seating.**

**A.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, a signage plan for the placement of signs near and on the tables in the approved public outdoor table seating areas, identifying the following:

- 1) clearly stating that the outdoor seating area is available for general public use;
- 2) the location of each sign on a site plan;
- 3) the size (with dimensions clearly labeled) of each sign;
- 4) the wording of each sign;
- 5) the size (with dimensions clearly labeled) of lettering for each sign;
- 6) the materials to be used for each sign. These materials shall be weather resistant and durable for the expected conditions;
- 7) methods for securing the signs;
- 8) the applicant's affirmative agreement that if signs are lost, damaged, removed or otherwise no longer able to serve their intended purpose, the sign(s) shall be replaced by the permittee.

**B.** The signs shall be large enough and located in conspicuous places to ensure that the pier pedestrian traffic within the vicinity of the project is clearly aware of the location and public nature of the outdoor table seating areas.

**C.** All signage in the proposed project area subject to this coastal development permit shall be, at a minimum, printed in English and Spanish, as well as in another non-English language commonly spoken in Orange County.

**D.** The signage shall be installed and maintained by the permittee for the life of the project.



## NOTICE OF INTENT TO ISSUE PERMIT

(Upon satisfaction of special conditions)

E. The applicant shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

### 3. Walk Up Window Service and/or Walkable Foods Cart.

A. By acceptance of this permit, the permittee agrees that the restaurant shall incorporate a walk-up, to-go window, offering lower cost "walkable" foods and/or a "walkable" foods cart. "Walkable" foods are lower cost foods such as, but not limited to, coffee, hot chocolate, corndog on a stick, big soft pretzels, hot dog/sausage on a bun, snow cones, ice cream bars and cold soft drinks.

B. The walk-up window and/or cart shall be available to the general public for to-go service. Walk-up window and/or cart patrons may use the public table seating areas, but no restaurant service of any kind may occur.

C. The window and/or cart shall be located as depicted on the project plans received on 10/27/2023 (at plan note 15 "pick-up window" for the window) on Plan Sheet A2 and shall be depicted on the revised project plans required by **Special Condition No. 7** below.

D. Walk-up, to-go window and/or cart service shall be available at a minimum during all hours of restaurant operation for the life of the approved restaurant.

E. The applicant shall undertake development consistent with the above requirements. Any proposed changes to the above requirements shall be reported to the Executive Director. No changes to the above requirements shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

### 4. Public Restroom Alterations.

A. PRIOR TO ISSUANCE OF THE CDP, the applicant shall submit for the review and approval of the Executive Director, evidence of written approval by the City of Huntington Beach of the restroom remodel plan (identified as Alt. [Alternative] B on the plans received on 10/27/2023, Plan Sheet A3.2 **Exhibit 2**). Such approval shall be in writing and may use Appendix B of the CDP application form or may be in the form of a letter written on City letterhead, and shall also include an Approval in Concept stamp signed by appropriate City staff on the revised project plans required by **Special Condition No. 7** below.

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

**B.** Proposed restroom remodel plan (identified as Alt. [Alternative] B on the project plans (received on 10/27/2023, Plan Sheet A3.2 **Exhibit 2**) shall be the approved restroom plan.

- 1) As proposed, the stand-alone, separately accessed restroom stall labeled "Public Unisex ADA Restroom" (plan note 1 on plan sheet A3.2) shall remain available to the public as proposed by the applicant, for the life of the restroom facility.
- 2) As proposed by the applicant, no fewer than seven public restroom stalls shall be provided. All seven public restroom stalls shall be open to the general public and shall not be restricted in use. Sole use by restaurant employees and/or patrons only of the seven public restroom stalls is prohibited.
- 3) All square footage areas described on all project plans shall be accurate.
- 4) Dimensions shall be correctly labeled on all project plans.

**D.** As proposed by the applicant, maintenance, including assuring cleanliness and usability of the entire, remodeled public restroom facility, shall be the responsibility of the restaurant operator for the life of the approved restaurant. The restaurant operator shall maintain the restrooms, at a minimum, every thirty minutes as proposed by the applicant. However, nothing in this permit shall require the permittee to be responsible for plumbing, electricity, roof or structural elements of the restroom building, which shall remain the responsibility of the City of Huntington Beach.

**E. PRIOR TO ISSUANCE OF THE CDP,** the applicant shall submit for the review and approval of the Executive Director, a formal written agreement between the applicant and the City of Huntington Beach identifying the division of responsibility for on-going maintenance of the public restroom building. Such agreement shall identify the restaurant operator as responsible for maintenance, including cleanliness and usability of the entire public restroom facility, for the life of the approved restaurant. Responsibilities other than and in addition to maintaining cleanliness and usability, shall be assigned in this agreement. This required agreement may be a stand-alone document and/or included in the permittee's lease with the City of Huntington Beach.

**F.** The public restroom facility maintenance shall be carried out in conformance with the approved agreement. Any proposed changes to the above requirements shall be reported to the Executive Director. No changes to the above requirements shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

## **NOTICE OF INTENT TO ISSUE PERMIT**

(Upon satisfaction of special conditions)

### **5. Bait Shop Management Plan.**

**A. PRIOR TO ISSUANCE OF THE CDP**, the applicant shall submit, for the review and approval of the Executive Director, a Bait Shop Management Plan that identifies the following:

- 1) minimum hours the bait shop will be open. At a minimum the bait shop shall be open six hours a day between dawn and dusk, the specific hours of operation shall be at the discretion of the restaurant/bait shop operator.
- 2) floor plans in sufficient detail to provide a reasonable understanding of how the bait shop will operate;
- 3) the expected bait shop offerings for sale and/or rent;
- 4) written acknowledgement that the primary focus of the bait shop shall always be provision fishing supplies, including bait, at affordable cost; and that sale of live bait is preferred; however, limited merchandise promoting the subject restaurant may be offered in a subordinate role;
- 5) the bait shop shall offer fishing supplies for sale and rent to the general public. Fishing supplies offered shall include, but are not limited to, fishing poles (rod and reel), fishing line, a range of types of fishing hooks, fishing lures, sinkers, and bait, including live bait daily. The fishing supplies offered shall be useful to catching the types of fish typical in the Huntington Beach pier area and to pier fishing generally;
- 6) written acknowledgement that the bait shop shall be open and operated by the restaurant operator for the life of the restaurant approved by this permit;

**B.** The applicant shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

### **6. Biannual Fishing Derby**

**A. PRIOR TO ISSUANCE OF THE CDP**, the applicant shall submit, for the review and approval of the Executive Director, a written plan describing the proposed biannual fishing derby. The required plan shall provide the following details describing how the derby will be carried out, including, but not limited to the following information:

- 1) methods of outreach to environmental justice communities. Consideration should be given to outreach to schools, parks, and after-school organizations

## **NOTICE OF INTENT TO ISSUE PERMIT**

(Upon satisfaction of special conditions)

serving youth of color, LGBTQIA youth, neurodivergent youth, and individuals with disabilities, with culturally appropriate messaging;

2) consideration should also be given to how participants would travel to the pier for the derby and what types of travel assistance may be offered;

3) outreach shall be conducted in English and Spanish, as well as in other non-English languages spoken in Orange County;

4) measures to assure the fishing derby will be carried out biannually for the life of the approved restaurant;

5) expected/potential funding sources and/or partnerships;

6) a preliminary draft schedule for the day of the event;

7) identification of specific responsibilities, how they will be carried out, and by whom;

8) a requirement for submittal of an annual report, which shall provide details including, but not limited to, i) the outreach methods employed; ii) sample outreach materials; iii) a list of organizations contacted for support of the derby, with the results stemming from that contact; iv) organizations and partnerships who participated in the derby, and their contributions; and iv) the number of participants in the derby. The annual report shall be submitted to the Executive Director no later than January 30<sup>th</sup>, for the preceding calendar year.

9) any other information that demonstrates the event can reasonably be expected to occur twice annually in the future for the life of the restaurant, and that it will continue to serve its intended purpose. The intended purpose identified by the applicant, and required by this permit, is to promote and make accessible pier fishing on the Huntington Beach pier to members of environmental justice communities, especially youth.

**B.** The applicant shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

## NOTICE OF INTENT TO ISSUE PERMIT

(Upon satisfaction of special conditions)

### 7. Revised Project Plans.

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for review and approval of the Executive Director, two (2) full sized paper sets of revised project plans as well as electronic copies (including, but not necessarily limited to, site plans, floor plans, roof plans, and elevations), in substantial conformance with the plans received 10/27/2023, **Exhibit 2**), but which shall incorporate the following revisions:

#### 1. Public Seating

- a) All of the public table seating areas shall be located as described in **Special Condition No. 1** above and shall be shown on the revised project plans.
- b) A plan note shall state that the public table seating areas authorized by this permit shall not be converted to the exclusive use of restaurant patrons or restaurant service and shall remain available for general public use without any requirement for restaurant purchase, for the life of the restaurant approved by this permit.

#### 2. Walk-Up Window and/or Cart Providing To-Go Service

A walk-up window and/or cart offering to-go food and beverage service as described in **Special Condition No. 3** above shall be identified on the revised project plans.

#### 3. Public Restroom

- a) the public restroom remodel shall be as described in **Special Condition No. 4** above and shall be shown on the revised project plans;
- b) a plan note shall be included on the revised project plans stating that all restrooms, except the restaurant employee changing/storage room, are available to the general public;
- c) two public drinking fountains, as depicted on the project plans, shall continue to be depicted on the revised project plans.

#### 4. Bait Shop

The revised project plans shall include floor plans for the proposed bait shop. These plans shall provide sufficient detail to convey a reasonable understanding of how the bait shop will operate.

#### 5. Fishing Pole Holders & Fishing Line Recycling Receptacles

The types and locations of the proposed (minimum of four each) fishing pole holders and fishing line recycling receptacles on the pier railings shall be identified on the revised project plans.

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

6. Delete Proposed Merchandise and Fishing Supply Carts.  
The two proposed 8-foot by 4-foot carts proposed to sell restaurant merchandise and fishing supplies shall be deleted from the revised project plans.
7. All square footage areas described on all project plans shall be accurate.
8. Dimensions shall be correctly labeled on all project plans.

**B.** The applicant shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

**8. Ocean Friendly Restaurant Program.**

By acceptance of this permit, the applicant agrees on behalf of itself and assigns, to remain in annual good standing in Surfrider's Ocean Friendly Restaurants Program (or similar program acceptable to the Executive Director) for the life of the approved restaurant. Evidence of current good standing in the program shall be posted in a location in the restaurant visible to restaurant patrons. The permittees shall operate the restaurant in accordance with Surfrider's Ocean Friendly Restaurants Program (or accepted similar program), for the life of the approved restaurant.

**9. Future Permit Requirement.**

This permit is only for the development described in coastal development permit (CDP) 5-22-0804. Pursuant to Title 14 California Code of Regulations (CCR) Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code (PRC) Section 30610(b) shall not apply to the development governed by the CDP 5-22-0804. Accordingly, any future improvements to the structures authorized by this permit shall require an amendment to CDP 5-22-0804 from the Commission or shall require an additional CDP from the Commission or from the applicable certified local government. In addition thereto, an amendment to CDP 5-22-0804 from the Commission or an additional CDP from the Commission or from the applicable certified local government shall be required for any repair or maintenance identified as requiring a permit in PRC Section 30610(d) and Title 14 CCR Sections 13252(a)-(b).

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

**10. Lease Restriction**

**A.** By acceptance of this permit, the permittee acknowledges and agrees that, pursuant to this permit, (1) the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property (hereinafter referred to as the "Standard and Special Conditions"); and (2) imposing the Standard and Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property.

**B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit: (1) a copy of a recorded lease agreement, in a form and content acceptable to the Executive Director, between the Surf City Partners LLC and the City of Huntington Beach, incorporating all of the above terms of subsection A of this condition, and (2) a written agreement by the City of Huntington Beach, in a form and content acceptable to the Executive Director, providing that upon termination of the applicant's sublease of the property that is the subject of this coastal development permit, the City of Huntington Beach agrees (i) to be bound by the Standard and Special Conditions referenced in subsection A of this condition if it becomes the owner of the possessory interest in such property, and (ii) to include a provision in any subsequent sublease of such property requiring the sublessee to submit a written agreement to the Commission, for the review and written approval of the Executive Director, incorporating all of the Standard and Special Conditions.

**11. Project's Pier Sublease**

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and approval, and prior to finalizing the lease between the City of Huntington Beach and the applicant for use of the two subject buildings at 21 and 22 Main Street, the lease shall be submitted for the review and approval of the Executive Director for confirmation that the requirements of approved CDP No. **5-22-0804** have been incorporated into the lease and confirmation that nothing in the lease conflicts with approved CDP **5-22-0804**.

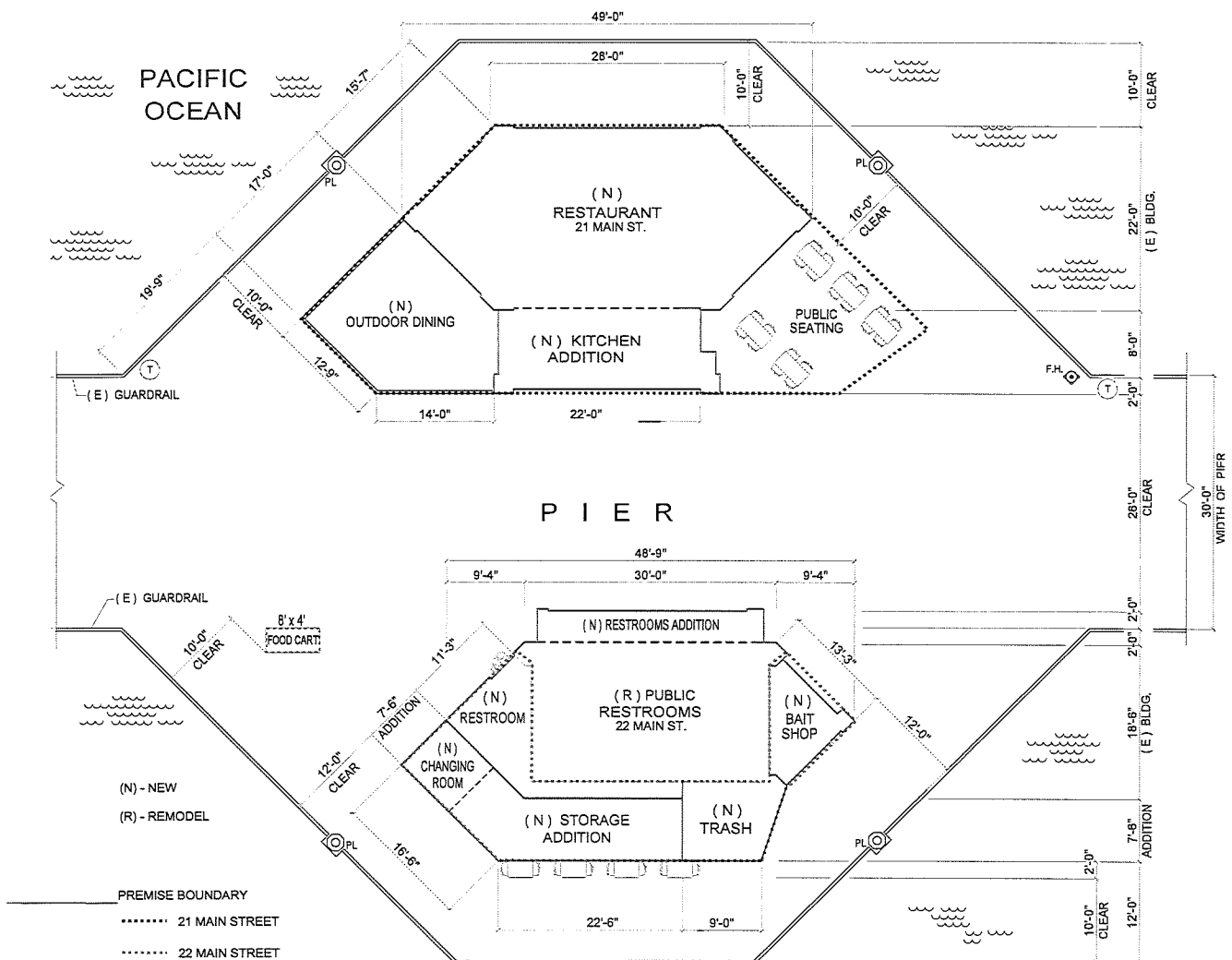
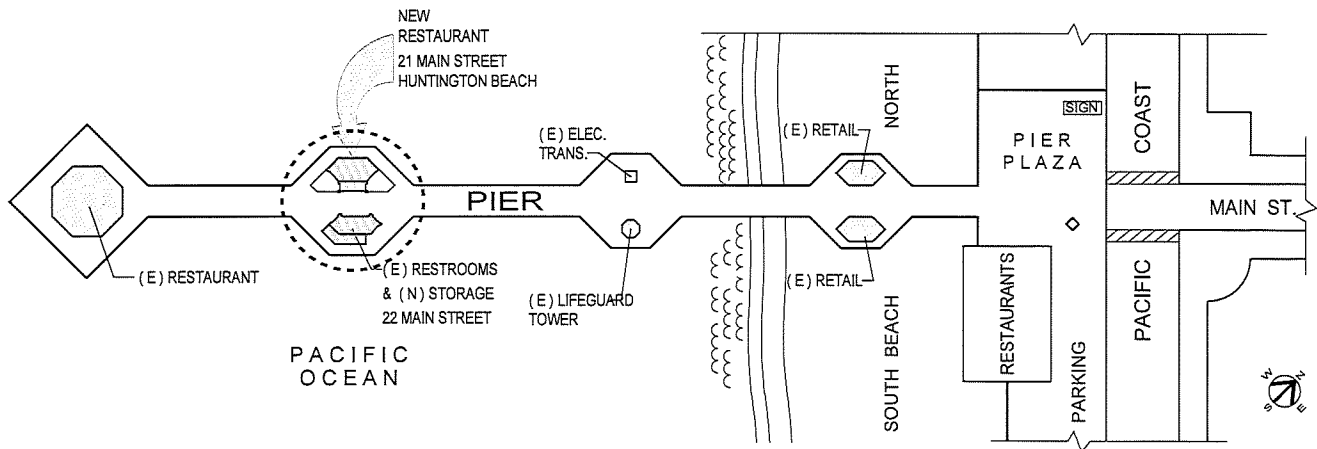
**NOTE: IF THE SPECIAL CONDITIONS REQUIRE THAT DOCUMENT(S) BE RECORDED WITH THE COUNTY RECORDER, YOU WILL RECEIVE THE LEGAL FORMS TO COMPLETE (WITH INSTRUCTIONS). IF YOU HAVE ANY QUESTIONS, PLEASE CALL THE DISTRICT OFFICE.**

# **EXHIBIT C**

## **MAP OF LEASED PREMISES, EXISTING PHOTOS, & PROPOSED CONCEPTUAL**



## MAP OF LEASED PREMISES



# EXISTING CONCESSION PHOTOS



# PROPOSED CONCEPTUAL



**EXHIBIT D**

**ESTIMATED  
BUDGET  
&  
CONSTRUCTION  
SCHEDULE**

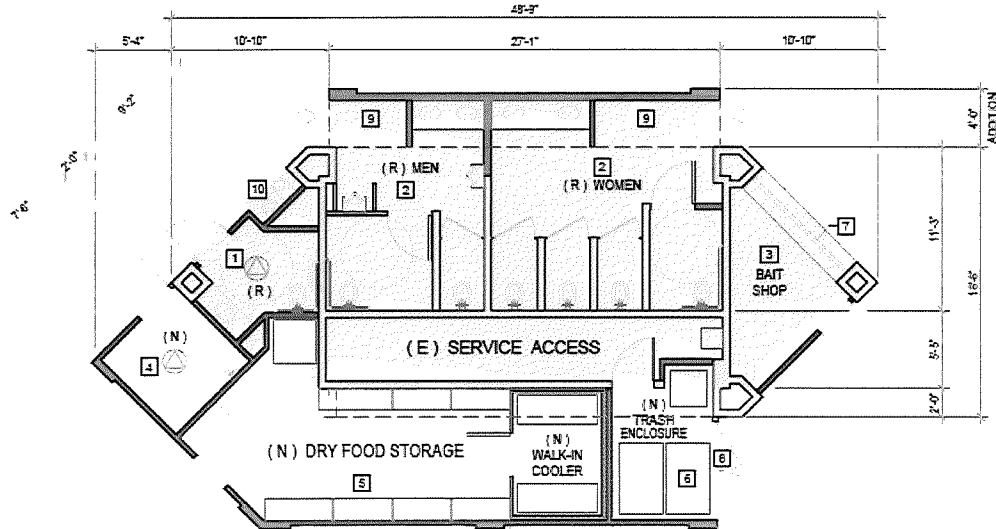
## EXHIBIT ' D '

Huntington's Pier Buildings  
21 & 22 Main Street  
Huntington Beach, CA 92648

### Total Cost Breakdown

|                                                  |                           |
|--------------------------------------------------|---------------------------|
| A. Demolition                                    | \$69,000                  |
| B. Struct. Steel & Concrete                      | \$93,000                  |
| C. Framing & Lumber                              | \$98,000                  |
| D. Patio Screen Wall                             | \$79,000                  |
| E. Doors & Windows                               | \$98,000                  |
| F. Electrical & Lighting                         | \$87,000                  |
| G. Plumbing                                      | \$68,000                  |
| H. Hood and Exhaust                              | \$52,000                  |
| I. Roofing                                       | \$33,000                  |
| J. Finishes                                      | \$91,000                  |
| K. Accessories - Fire Pit, Gas Heater & Lanterns | \$40,000                  |
| L. Gen.Cond., Gen.Contract. & Contingency        | <u>\$482,000</u>          |
| <b>Construction Sub Total</b>                    | <b>\$1,290,000</b>        |
| M. Kitchen & Bar Equipment                       | \$140,000                 |
| N. Furnishings                                   | \$60,000                  |
| O. Inventory & Reserve                           | \$80,000                  |
| P. Fees                                          | \$60,000                  |
| Q. Contingency                                   | \$120,000                 |
| <b>Grand Total</b>                               | <b><u>\$1,750,000</u></b> |

## Breakdown of Costs related to the Public Restroom Remodel & Construction of the Bait Shop



### Cost Breakdown

|                                   |                  |
|-----------------------------------|------------------|
| A. Demolition                     | \$23,000         |
| B. Struct. Steel & Concrete       | \$17,000         |
| C. Framing & Lumber               | \$48,000         |
| D. Doors                          | \$15,000         |
| E. Skylights & Solar              | \$19,000         |
| F. Electrical & Lighting          | \$14,000         |
| G. Plumbing                       | \$39,000         |
| H. HVAC                           | \$11,000         |
| I. Roofing                        | \$16,000         |
| J. Finishes                       | \$27,000         |
| K. Accessories                    | \$16,000         |
| L. Design, Gen.Cond., & Gen.Cont. | \$60,000         |
| <b>Total</b>                      | <b>\$305,000</b> |

## Huntington's Construction Schedule

[illegible]

# **EXHIBIT E**

## **DESCRIPTION OF CITY- APPROVED IMPROVEMENTS/ ALTERATIONS TO PREMISES**



## Exhibit 'E'

### Description of City-Approved Improvements / Alteration to Premises

The City approved development of two buildings located on the Municipal Pier addresses 21 and 22 Main Street per entitlements CUP 22-012 with Findings and Conditions and amended by CDP 22-0804.

#### Description of Improvements and Alterations:

1. Demolish existing retail building at 21 Main Street.
2. Remove roof and fixtures at Restroom Building 22 Main Street.
3. Construct Restaurant Building (1400 sf) including outdoor dining at 21 Main St.
4. Remodel Public Restroom Building (630 sf), construct addition for Food Storage (266 sf), Employee Restroom (60 sf), Unisex Restroom (72 sf) Bait Shop (87 sf) and Trash Enclosure (88 sf)
5. Allow one Food Cart Southeast of 22 Main Street.

**EXHIBIT F**

**INSPECTION**

**FORM**

Inspection Form

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:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

AGREED TO: \_\_\_\_\_

## DEFINITIONS

### Doors and Locks

Clean and in operable position and condition. All locks shall be regularly checked and maintained. Absolutely no chain locks are allowed. Locks shall only be used on authorized locations.

### Exterior Walls

Clean and smooth, void of rust, graffiti, stickers, etching, or other materials or marks that were not originally placed on the walls.

### Exterior Area

Outside area around concession building that is utilized by the concessionaire.

### Graffiti Removal

All graffiti shall be removed within forty-eight hours including painted or sprayed graffiti, magic markers, stickers, etching, and surf wax. The building shall be kept free of graffiti. Interior rest room graffiti shall be removed on a regular basis not to exceed forty-eight hours.

### Grease Trap

Free and clear flowing with regularly scheduled maintenance to prevent buildup or clogging.

### Hood Grease Filter

Removed and cleaned a minimum of every three months, and checked regularly and cleaned more often if necessary. Filters shall be replaced at such time as required where volumes are no longer maintained.

### Interior Walls

Clean and smooth, void of dirt or corrosion. All fire-rated walls shall be solid and unpenetrated.

### Removal of Bird Dropping

The building in its entirety shall be cleaned a minimum of every three months to remove all bird droppings. If bird droppings present a health problem, they shall be removed prior to the minimum three month periods.

### Rest Rooms (Plumbing)

Entry mats, floors and carpets shall be kept clean. Walls shall be kept fingermark free. Tile and wall surfaces shall be kept clean. Toilet bowls, rims, tank tops, and bodies shall be kept clean. Mirrors shall be kept clean and streak free. Soap dispensers clean and full. Paper towel dispenses clean and full. Toilet paper dispensers clean and full. All sink and faucet fixtures clean and rust free. Light fixtures clean and functioning. Air fresheners functioning. Trash receptacles clean, lined and emptied regularly.

### Roof

Free of debris and cleaned regularly as needed to remove bird droppings, graffiti or vandalism. Roof leaks shall be reported immediately to the Community Services Department.

### Rust

No accumulation or degeneration to interior or exterior surfaces. Rusted areas shall be cleaned and painted on a regular basis to avoid long term damage.

### Signage

Clean, readable and in good condition. Bulbs in lighted signs shall be replaced as needed within twenty-four hours. No unauthorized signs shall be posted.

### Trash

Deposited in designated containers. There shall be no buildup of cardboard boxes, unused equipment, unwanted decorator items, etc. within the trash areas. Trash areas shall be secured from public use to avoid deposit of fish remains.

### Trim

Clean and smooth, void of corrosion and rust.

### Windows

Clean and void of cracks. No commercial stickers shall be used on windows.

# **EXHIBIT G**

## **RENT CREDIT SCHEDULE**

|                                   |            |
|-----------------------------------|------------|
| Bathroom Rehabilitation Allowance | \$ 300,000 |
| Annual Rent Escalation            | 3%         |

[illegible]