

APPROVED 7-0



CITY OF HUNTINGTON BEACH REQUEST FOR CITY COUNCIL ACTION

MEETING DATE: 2/6/2017

SUBMITTED TO: Honorable Mayor and City Council Members

SUBMITTED BY: Fred A. Wilson, City Manager

PREPARED BY: Ken Domer, Assistant City Manager
Kellee Fritzal, Deputy Director of Business Development

SUBJECT: Approve a License Agreement between the City of Huntington Beach and PCH Beach Resort, LLC., for Operation of the former Beach Hut Beach Concession

Statement of Issue:

The City Council is asked to approve a License Agreement between the City and PCH Beach Resort, LLC. ("Licensee"), to operate the beach concession located at 21529 Pacific Coast Highway, Huntington Beach (former "Beach Hut").

Financial Impact:

The License Agreement will generate \$12,000 annually in base rent in addition to shared percentage of revenue based on low (5%), middle (10%), and peak (12%) seasons. Revenues will be deposited into the General Fund.

Recommended Action:

A) Approve License Agreement between the City of Huntington Beach and PCH Beach Resort, LLC., for operation of a beach concession located at 21529 Pacific Coast Highway; and

B) Authorize the Mayor, City Manager, and City Clerk to execute the License Agreement and other related documents.

Alternative Action(s):

Do not approve the License Agreement, and direct staff as necessary.

Analysis:

In 1998, the City, former Redevelopment Agency, and Mayer Financial L.P., ("Developer") entered into an Amended and Restated Disposition and Development Agreement ("DDA") and a separate Development Agreement ("DA") for the development of the Waterfront Project. As part of the DDA and DA, PCH Beach Resorts, LLC, had an option of first refusal to operate the concession stand upon the expiration of the previous lease.

The License Agreement has been prepared in accordance with the City's standard lease format. The terms are summarized below:

- 10-year term
- Options: Two (5 year) options at Licensee's option, with City's consent

- Monthly fee: \$1,000 with 2% annual increases
- Shared percentage of revenue based on low (5%), middle (10%), and peak (12%) seasons
- Remodel of the concession stand
- Indemnification of the City against claims and damages arising from losses.
- Minimum of 120 days open

The Economic Development Committee (EDC) will have reviewed the License Agreement at their February 1, 2017 meeting and City Council liaisons from the EDC can provide comments regarding that discussion as applicable.

Environmental Status:

Not applicable

Strategic Plan Goal:

Strengthen economic and financial sustainability

Attachment(s):

License Agreement between the City of Huntington Beach and PCH Beach Resort, LLC. for operation of a concession stand located at 21529 Pacific Coast Highway

CLEK'S
ORIGINAL

LICENSE AGREEMENT BETWEEN THE CITY OF HUNTINGTON BEACH
AND PCH BEACH RESORT LLC FOR
CONCESSION STAND AT 21529 PACIFIC COAST HIGHWAY

THIS LICENSE AGREEMENT (the "Agreement") is made and entered into effective FEBRUARY 06, 2017, by and between the CITY OF HUNTINGTON BEACH, a municipal corporation of the State of California ("City") and PCH BEACH RESORT, LLC, a California limited liability company ("Licensee").

WHEREAS, City wishes to enter into a license agreement with respect to certain real property (the "Property"), consisting of a concession stand at 21529 Pacific Coast Highway in the City of Huntington Beach, California, and other related improvements (collectively referred to as the "Improvements"). The term "Premises" as used in this Agreement shall mean both the Property and the Improvements. Licensee desires to license and use the Premises in the manner set forth below.

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

SECTION 1. GRANT OF CONCESSION ON THE PREMISES.

City, pursuant to the terms of this Agreement, grants to Licensee for the purposes stated herein, the right, privilege and duty to equip, operate and maintain a concession stand open to the public located on the Premises (hereinafter sometimes referred to as the "Concession"). Licensee shall not use the Premises for any other purpose or business. A map depicting the Premises is set forth in Exhibit "A", which is attached hereto and incorporated herein by this reference. This Agreement is not intended to confer third-party beneficiary status to anyone.

SECTION 2. RESERVATIONS. ENCUMBRANCES AND RIGHTS-OF-WAY.

(a) City expressly reserves all natural resources in, on, or two hundred fifty (250) feet under the Premises, including, without limitation, oil, coal, natural gas and other

hydrocarbons, minerals, aggregates, timber and other geothermal resources, as well as the right to grant Agreements or other contractual arrangements in and over the Premises for the extraction of such natural resources. However, such leasing or other arrangement shall be neither inconsistent nor incompatible with the rights or privileges of Licensee under this Agreement.

(b) City expressly reserves a right to enter upon the Premises with as much advance written, verbal or electronic notice as possible to Licensee 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 Licensee at least twenty-four (24) hours advance written, verbal or electronic notice. City shall have a right of reasonable access to the Premises across Licensee owned, controlled or occupied lands adjacent to the Premises, if any, for any purpose associated with this Agreement.

(c) City expressly reserves the right to convey or encumber City's fee interest in the Premises, in whole or in part, for any purpose not inconsistent or incompatible with the rights or privileges of Licensee under this Agreement. In addition. Licensee agrees to subordinate the Agreement to any existing or future City financing regarding the Premises or any portion thereof, provided that any financing does not interrupt Licensee's business or rights under this Agreement. Licensee also agrees to cooperate and provide any documentation necessary for City to obtain any such financing.

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

SECTION 3. TIME OF ESSENCE.

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

SECTION 4. TERM

This Agreement shall commence at 12:01 a.m. on FEBRUARY 6, 2017, for a ten (10) year term, which shall end at 11:59 p.m. on FEBRUARY 6, 2027 (herein, the "Term"). Licensee shall have the option to extend the Term of this Agreement for two additional consecutive five (5) year periods (each, an "Extension Period"), upon mutual written consent by the City and Licensee, in each case by Licensee delivering to City a written notice of exercise of Licensee's exercise of the extension option no later than ninety (90) days prior to expiration of the then-applicable Term.

SECTION 5. CONDITIONS OF PREMISES AS IS.

City represents and warrants that all water, sanitary sewer, electrical, gas, drainage facilities, and other utilities located outside the Premises and servicing the Premises are in good condition and adequate and suitable for Licensee's intended use of the Premises; provided that Licensee shall be responsible for installation of a grease trap or grease interceptor as provided in Section 24 of this Agreement.

Except as expressly set forth above, the taking of possession of the Premises by Licensee shall, in itself, constitute acknowledgment that the Premises are in good condition. Upon taking possession of the Premises, Licensee agrees to accept the Premises in their presently existing condition, "as is," and agrees that City shall not be obligated to make any alterations, additions or betterments thereto except as expressly set forth in Sections 6 and 24 of this Agreement.

SECTION 6. PUBLIC FACILITIES.

During the Term of this Agreement, City shall maintain in good condition and promptly repair and replace or cause to be maintained, repaired, or replaced, as required, all water, sanitary sewer, electrical, gas, drainage facilities, and other utilities located off of the Premises and outside the building on the Premises that are required for Licensee's intended use of the Premises; provided that Licensee shall be responsible for maintenance, repair, and replacement of the grease trap or grease interceptor as provided in Section 24 of this Agreement. During the Term of this Agreement, City shall also be responsible for complying with all ADA access requirements off of the Premises to the extent the same relates to the Premises. Except as expressly set forth above, by entering into this Agreement, City makes no stipulation as to the type, size, location or duration of public facilities, including, without limitation, any City parking lots to be maintained on property owned, controlled or occupied by City.

SECTION 7. ADDITIONS, ALTERATIONS AND REMOVAL.

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

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

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

SECTION 8. CITY'S CONTRACT ADMINISTRATOR.

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

SECTION 9. LICENSE FEE.

Licensee agrees to pay to City a license fee (the "License Fee") for the use and occupancy of the Premises per Exhibit "B." The License Fee consists of the Base License Fee and the Percentage License Fee.

Licensee shall pay the monthly Base License Fee beginning on the commencement date of this Agreement. Licensee shall pay Percentage License Fee beginning on the first anniversary of the commencement date of this Agreement..

- Monthly Base License Fee
 - One thousand (\$1,000) per month plus two percent (2%) annual increases, commencing June 1, 2017.
- Percentage License Fee
 - Low Season (January, February, November, December): = 5.0% of Gross Sales.
 - Mid Season (March., April, October): = 10.0% of Gross Sales.

- Peak Season (May, June, July, August, September): = 12% of Gross Sales.

Licensee shall pay the License Fee 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 Licensee. Licensee shall pay the Base License Fee monthly, in advance. Licensee shall pay the Percentage License Fee within thirty (30) calendar days after the end of the month for which the Percentage License Fee is due and owing, or on the next business day if the thirtieth (30th) day falls on a weekend or holiday.

SECTION 10. LATE CHARGE AND PENALTY.

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

SECTION 11. GROSS SALES DEFINED.

For the purpose of this Agreement, the term "Gross Sales" shall mean the total price of all internet sales processed on site, merchandise, or services sold or rendered, or equipment rented, in, on, or from the Premises by Licensee, or anyone contracting with Licensee, including, without limitation, its agents or sub-licensees (collectively or individually, "Licensee

Party(ies)”), whether wholesale or retail, whether for cash or on credit, and if on credit whether or not paid, and whether in exchange for any other product, commodity, service, commercial paper or forbearance, and shall include, without limitation, the following:

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

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

term "Hotel" shall mean the Hyatt Regency Huntington Beach Resort and Spa located at 21500 Pacific Coast Highway, Huntington Beach, California, that is owned and operated by Licensee.

(e) All revenues, receipts, commissions or proceeds made by Licensee 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 derived whatsoever from any business conducted in, on, or from the Premises.

(g) All revenues, receipts, commissions or proceeds generated from food and/or beverage sales made in, on, or from the Premises.

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

SECTION 12. GROSS SALES EXCLUSIONS.

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

(a) Any sales, excise or other taxes otherwise includable in Gross Sales and which become part of the total price of merchandise or services sold or rendered, or equipment rented, in, on, or from the Premises where Licensee 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 Licensee;

(c) Sales of Trade Fixtures (as defined in Section 49 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) Hotel Sales (as defined in Section 11(d) of this Agreement).

SECTION 13. BOOKS AND RECORDS.

Licensee shall keep true and accurate books and records showing all of its business transactions (excluding Hotel Sales) in separate records of account for the Concession in a manner acceptable to City, and City and/or its designated representatives shall have the right, at all reasonable times, to inspect such books and records including, without limitation, State of California sales or use tax returns or other State return records, and Licensee 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. Licensee 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 12 above (with the exception that Hotel Sales need not be included in said books and records). All hotel guest and non-guest charges that are processed as cash, credit card, or room charges, at the Concession will flow through a point of sale system and shall be summarized on financial statements for purposes

of the City's audit. Furthermore, said sales will broken out as a separate food and beverage outlet. All summarized financial statements from the Concession shall support the percentage rent calculations that are remitted to the City."

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

SECTION 14. STATEMENT OF GROSS SALES/AUDIT.

At the time specified in Section 9 of this Agreement for the payment of each installment of the Percentage License Fee, Licensee shall deliver to City a true and accurate statement signed by Licensee or by an authorized employee of Licensee showing the total Gross Sales and any exclusions listed in Section 12 above (again, with the exception that Hotel Sales need not be included) made during the preceding calendar month and the amount of the Percentage License Fee then being paid calculated on such Gross Sales pursuant to this Agreement. The acceptance by City of any monies paid to City by Licensee as the Percentage License Fee, as shown by any statement furnished by Licensee, shall not be construed as an admission of the accuracy of the statement, or of the sufficiency of the amount of the Percentage License Fee payment, and City shall be entitled to review the adequacy of such payment as set forth herein. By the end of each December, Licensee 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 License Fee paid to City for each of those months, all with year-

end totals. City may at any time within three (3) years after receiving the year-end statement, at its sole cost and expense, cause all records, books of account and cash register tapes for the year purportedly covered by the statement, to be audited by City or an accountant selected by City. Licensee 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, Licensee shall immediately pay the additional Percentage License Fee, together with a penalty thereon from the date it was due at the penalty rate set forth in Section 11 above. Furthermore, Licensee shall promptly on demand reimburse City for the cost and expense of the audit should the audit disclose that the questioned year-end statement understated Gross Sales (including an overstatement of exclusions) by an amount such that the Percentage License Fee has been underpaid by an amount greater than Two Hundred Fifty Dollars (\$250.00). City further reserves the right to examine and audit all such records, books of account and cash register tapes at any time during the three (3) year period following the expiration or termination of this Agreement. In addition, City shall have the right to enter upon the Premises during business hours and with two (2) hours advance written, verbal or electronic notice to Licensee to perform any audit or inspection function with respect to this Agreement.

Licensee, 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 Licensee, its officers, bookkeepers and/or

accountants or any person who prepared the books, records, statements and other documentation required to be provided by Licensee under this Agreement.

SECTION 15. SECURITY DEPOSIT.

Upon execution hereof, Licensee shall pay and maintain at all times during the entire term of this Agreement or any renewals or extensions thereof or during any holdover period, a security deposit with City in a sum of not less than Five Thousand Dollars (\$5,000.00) to guarantee all of Licensee's obligations, liabilities, duties and responsibilities under the Agreement, including, without limitation, the repair and maintenance of the Premises as provided herein. Such deposit shall be in the form of a cash bond or an assignment of certificate of deposit (the "CD") or savings account to City, and shall be provided to the City Treasurer. The form of any such security deposit shall be approved by the City Attorney and the City Treasurer. No interest shall accrue on cash deposits to the benefit of Licensee, but interest shall accrue on a CD or savings account and shall be paid to Licensee under the terms of the CD or savings account. Licensee shall send a copy of each renewal of the CD to the City Treasurer to ensure that City has the records of each active deposit account.

SECTION 16. QUALITY OF SALES. RENTALS AND SERVICES.

Licensee, at its sole cost and expense, shall equip, operate, manage and maintain the Premises and Concession and shall keep the same equipped and maintained in a manner acceptable to City during the entire term of this Agreement or any renewals or extensions thereof or during any holdover period. It is the intent of City that the Concession's services be provided in a manner to meet the needs of the visiting public, and should City deem the Concession's hours of operation and/or food, merchandise, services or rentals inadequate to meet such needs, City may require Licensee to make such changes requested by City. Licensee shall additionally

have the right, but not the obligation, to utilize the Concession to stage banquets, meetings, and other group activities and events that are arranged or booked by or at the Hotel and delivered at the Premises (*i.e.*, Hotel Sales), provided that Hotel Sales shall be excluded when determining whether Licensee has satisfied its minimum day/hour operational obligations set forth in the next paragraph below. Licensee shall not use or permit the Premises to be used, in whole or in part, during the entire term of this Agreement or any renewals or extensions thereof or during any holdover period for any purpose other than as herein set forth, without the prior written consent of City.

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

Except as permitted in advance in writing by City, all foods and beverages shall be sold in disposable containers. No pull-top cans or Styrofoam containers are to be vended or dispensed from the Premises. Licensee, 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 Licensee. City reserves the right to prohibit the sale or use of non-recyclable containers or plastics, and Licensee shall comply with City's requirement regarding prohibition of non-recyclable items. With the exception of Hotel Sales,

Licensee shall comply with any City exclusivity agreement the City may have with any food or beverage sponsor.

With the exception of Hotel Sales, City in its sole discretion reserves the right to prohibit Licensee'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.

SECTION 17. INDEMNIFICATION, DEFENSE AND HOLD HARMLESS AGREEMENT.

Licensee 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 Licensee, 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 Licensee, its officers, employees or agents, or (4) any failure by Licensee to keep the Premises in a safe condition, or (5) Licensee's (or Licensee's agents and/or sub-licensees, if any) performance of this Agreement or its failure to comply with any of its obligations contained in this Agreement by Licensee, its officers, agents or employees except such loss or damage which was caused by the sole negligence or willful misconduct of City. Licensee shall hold all Trade Fixtures, personal property and trade inventory on the Premises at the sole risk of Licensee 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. Licensee will conduct all defense at its sole cost and expense and City shall approve selection of Licensee'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 Licensee.

SECTION 18. WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE.

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

SECTION 19. GENERAL PUBLIC LIABILITY INSURANCE.

In addition to the workers' compensation and employers' liability insurance and Licensee's covenant to defend, hold harmless and indemnify City, Licensee 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 Licensee, 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 One Million Dollars (\$1,000,000.00) per occurrence. If coverage is provided under a form which includes a designated general aggregate limit, the aggregate limit must be no less than One Million Dollars (\$1,000,000.00) for the Premises. This policy shall name City, its officers, elected or appointed officials, employees, agents, and volunteers as Additional Insureds, and shall specifically provide that any other insurance coverage which may be applicable to the Agreement shall be deemed excess coverage and that Licensee's insurance shall be primary. Licensee shall require all sub-licensees to obtain and furnish to City, a policy of general public liability insurance, including motor vehicle coverage against any and all claims arising out of or in connection with the Premises in the same amounts required under this section.

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

SECTION 20. PROPERTY INSURANCE.

Licensee shall provide before commencement of this Agreement and shall obtain and furnish to City, at Licensee'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 Licensee, 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 Licensee 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 Licensee, 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 Licensee, 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 50 (Destruction) below, and either party elects to terminate the Agreement, the entire amount of any insurance proceeds (excluding such proceeds for Trade Fixtures, personal property whether or not owned or leased by Licensee and trade inventory, but only to the extent the insurance proceeds specifically cover those items) shall be paid to City. The proceeds of any such insurance payable to City may be used, in the sole discretion of City, for rebuilding or repair as necessary to restore the Premises or for any such other purpose(s) as City sees fit.

This policy shall also contain the following endorsements:

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

A complete and signed certificate of insurance with all endorsements required by this Section shall be filed with City prior to the execution of this Agreement. At least thirty (30) days prior to the expiration or termination of any such policy, a signed and complete certificate of insurance showing that coverage has been renewed shall be filed with City. Licensee shall require all sub-licensees to obtain and furnish to City, property and fire insurance with extended coverage endorsements thereon, by a company acceptable to City authorized to conduct

insurance business in California, in compliance with the requirements and amounts set forth in this section.

SECTION 21. INCREASE IN AMOUNT OF GENERAL PUBLIC LIABILITY AND
PROPERTY INSURANCE.

Not more frequently than once every two (2) years, if, in the sole opinion of City, the amount and/or scope of general public liability insurance in Section 19 above and/or property insurance coverage in Section 20 above at that time is not adequate. Licensee shall increase the insurance coverage as reasonably required by City.

SECTION 22. CERTIFICATES OF INSURANCE; ADDITIONAL INSURED
ENDORSEMENTS.

Prior to commencement of this Agreement, Licensee shall furnish to City certificates of insurance subject to approval of the City Attorney evidencing the foregoing insurance coverages as required by this Agreement; these certificates shall:

- (a) provide the name and policy number of each carrier and policy;
- (b) 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 20 above.

Licensee shall maintain the foregoing insurance coverages in force during the entire term of the Agreement or any renewals or extensions thereof or during any holdover period.

The requirement for carrying the foregoing insurance coverages shall not derogate from Licensee's defense, hold harmless and indemnification obligations as set forth in this Agreement.

City or its representatives shall at all times have the right to demand the original or a copy of any or all the policies of insurance. Licensee shall pay, in a prompt and timely manner, the premiums on all insurance hereinabove required.

SECTION 23. INSURANCE HAZARDS.

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

SECTION 24. MAINTENANCE OF PREMISES; IMPROVEMENTS

During the entire Term of this Agreement City shall maintain, repair, and replace the Public Facilities outside the boundaries of the Premises which are City's responsibility as set forth in Section 6 of this Agreement. Licensee agrees to maintain the Premises in good order and repair, at Licensee's sole cost and expense, during the entire term of this Agreement or any renewals or extensions thereof or during any holdover period, pursuant to the City's maintenance standards. A copy of the quarterly evaluation summary sheet setting forth the City's maintenance checklist is attached as Exhibit "C", and incorporated herein by this reference.

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

Licensee shall paint, stain or seal the Premises' exterior surfaces a minimum of every three (3) years, unless City determines in its sole discretion that such work shall be done on a more frequent basis. All exterior metal surfaces, except the roof, shall be painted with rust resistant paint no less than once every other year. Any and all graffiti on the Premises shall be removed by Licensee, at its sole cost and expense, within forty-eight (48) hours of Licensee receiving notice thereof or of Licensee becoming aware of such graffiti. In addition, with or without notice from City, Licensee shall, at its sole cost and expense, repair and/or replace any broken glass within forty-eight (48) hours of its becoming broken, regardless of cause, except by fault of City. Except as provided above for graffiti and broken glass. Licensee, at its sole cost and expense and with or without notice from City, shall repair and/or replace all damage or destruction to the Premises caused by act(s) of vandalism as soon as possible but in no event later than fourteen days after the date such damage or destruction occurred. Licensee, 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.

Licensee shall comply with all written notices served by City with regard to the care and maintenance of the Premises. Any written notice hereunder shall specify the work to be done and the period of time deemed to be reasonably necessary for completion of such work. Should Licensee fail to commence making the necessary repairs within seven (7) days after receiving such notice, or within twenty-four (24) hours of the glass becoming broken in the case of broken glass, or fail to diligently proceed to complete the necessary repairs within the period of time reasonably specified in the City's notice, or within forty-eight (48) hours of the glass becoming broken in the case of broken glass, or within the forty-eight (48) hour time period for removing graffiti, or within fourteen (14) days of the date that the vandalism damage or destruction occurred, City shall proceed to cause the required work to be performed, and Licensee 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 10 above from the date the costs were incurred by City to the date they are reimbursed to City by Licensee.

Licensee 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.

Licensee shall complete all proposed and approved improvements referred to in Exhibit "D" to this Agreement to the satisfaction of City no later than twelve (12) calendar months from Agreement commencement date.

SECTION 25. LICENSE FEE CREDIT.

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

SECTION 26. DAMAGE. DESTRUCTION OR NUISANCE.

Licensee shall not commit or permit the commission by others of any damage or destruction of, on,, or to the Premises and/or Concession. Licensee 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 Licensee shall not use or permit the use of the Premises for any unlawful purpose.

SECTION 27. TAXES.

This Agreement may create a possessory interest in property, which is subject to taxation. In the event that such possessory interest is created, Licensee agrees to be subject to the payment of and to pay taxes levied on such interest, at its sole cost and expense. Licensee also agrees to pay, at its sole cost and expense, before they become delinquent all other lawful taxes, assessments or charges, which at any time may be levied by any governmental agency including, without limitation, the State, County, City or any tax or assessment levying body upon any interest in this Agreement, or any possessory right which Licensee may have in or to the

Premises, by reason of Licensee'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. Licensee shall promptly furnish to City satisfactory evidence establishing such payment. Licensee shall comply with all laws, regulations and ordinances regarding the collection of taxes due a government agency.

SECTION 28. PAYMENT OF OBLIGATIONS.

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

SECTION 29. UTILITIES AND SERVICES

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

SECTION 30. BUSINESS LICENSE.

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

SECTION 31. SIGNS, ADVERTISING AND APPROVAL OF NAME.

City shall have the right to approve in its sole discretion and at any time require Licensee to change or remove signs, names, placards, decorations or advertising placed on, or inscribed, painted or affixed upon the Premises. No outdoor sales are allowed by Licensee unless prior written approval is obtained from the Deputy Director of the Office of Business Development or his or her designee. All outdoor displays or banners must first be approved in writing by the Deputy Director of the Office of Business Development or his or her designee. Should City approve of any sign, name, placard, decoration or advertising. Licensee shall maintain the same at all times during the entire term of this Agreement or any renewals or extensions thereof 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 32. SECTION 32. NO ASSIGNING. SUBLEASING OR ENCUMBERING.

(a) Prohibition of Assignment. The parties acknowledge that City is entering into the Agreement in reliance upon the experience and abilities of Licensee and its principals. Consequently, Licensee shall not voluntarily assign, encumber or otherwise transfer its interest in the Agreement or in the Premises, or allow any other person or entity (except Licensee's authorized representatives) to occupy or use all or any part of the Premises without the prior written consent of City, which consent shall not be unreasonably withheld. Provided, however, that City's consent shall not relieve Licensee

from any and all of its obligations, liabilities, duties or responsibilities under this Agreement. Any assignment, encumbrance, occupation or use, or other transfer without such consent shall be voidable and, at City's sole discretion, shall constitute a Default of this Agreement.

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

(c) Voluntary assignment defined. Except as otherwise expressly provided herein, any dissolution, merger, consolidation or reorganization of Licensee, or the sale or other transfer resulting in a transfer of a controlling percentage of the capital stock of Licensee (other than a transfer by will, devise, bequest, intestate succession, a transfer to or between the family members of Licensee, or a transfer to or between one or more

trusts for the benefit of Licensee and/or Licensee's family members, where applicable) shall be deemed a voluntary assignment.

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

SECTION 33. TERMS BINDING ON SUCCESSORS.

All the terms, covenants and conditions of this Agreement shall inure to the benefit of and be binding upon the parties and their successors, including, without limitation, their assignees, encumbrancers, occupiers or users, or other transferees. The provisions of this Section shall not be deemed as a (1) waiver of any of the prohibitions and conditions against

assignments, encumbrances, occupations or uses, or other transfers hereinbefore set forth, or (2) City's consent thereto. If more than one Licensee is a party to this Agreement, the obligations of the Licensees shall be joint and several. Even if City's consent is not required, Licensee shall immediately provide City with written notice of any, assignment, encumbrance, occupation or use, or other transfer.

SECTION 34. DEFAULT

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

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

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

(c) Licensee's vacating or abandonment of the Premises during the entire term of this Agreement or any renewals or extensions thereof or during any holdover period, with the understanding that Licensee's failure to operate the Concession for the minimum periods referred to in Section 16 shall be deemed an abandonment of the Premises for purposes of this Section 34.

(d) Licensee's violation of Section 17 (Indemnification, Defense and Hold Harmless Agreement), Section 32 (No Assigning, Subleasing or Encumbering), Section 45 (Hazardous Substances), Section 46 (Nondiscrimination), Section 47 (Sale of Alcoholic Beverages and Entertainment Prohibited), Section 60 (Conflict of Interest) or Section 62 (Compliance with Laws).

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

(f) Licensee's failure to observe or perform any other term, covenant, obligation, duty, responsibility or condition of this Agreement to be observed or performed by Licensee when such failure shall continue for a period of thirty (30) days after City's giving written notice to Licensee, or such earlier period if specifically set forth in this Agreement; however, if the nature of such failure is such that more than thirty (30) days are reasonably required for its cure, then Licensee shall not be deemed to be in Default if Licensee 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.

SECTION 35. REMEDIES.

(a) Cumulative Nature of Remedies. In the event of any Default by Licensee, 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 Agreement, at any time and from time to time re-let the Premises or any part or parts of them for the account and in the name of Licensee or otherwise. Any re-letting may be for the remainder of the term or for a longer or shorter period. City may in City's sole discretion eject all persons or eject some and not others or eject none. In addition, City may in its sole discretion remove some or all of the Trade Fixtures, personal property and trade inventory from the Premises. City may store such removed Trade Fixtures, personal property and trade inventory in a public warehouse or other location at the sole cost, expense and risk of Licensee, and for the account of and in the name of Licensee. City shall apply all rents from re-letting as follows: first, to the payment of reasonable expenses (including brokers' commissions) paid or incurred by or on behalf of City in recovering possession, placing the Premises in good condition, and preparing or altering the Premises for re-letting; second, to the reasonable expense of securing new subtenants; third, to the fulfillment of Licensee's covenants to the end of the term. City may execute any Agreements or subleases made under this provision either in City's name or in Licensee's name and City shall be entitled to all license fees and rents from the use, operation or occupancy of the Premises. Licensee shall nevertheless pay to City on the dates specified in this Agreement the equivalent of all sums required of Licensee under this Agreement, plus City's expenses, less the proceeds of any re-letting or attornment.

(2) Termination. In the event of a Default by Licensee, City may at City's sole discretion terminate this Agreement by giving Licensee written notice of termination. In the event City terminates this Agreement, City may recover possession of the Premises (which Licensee shall immediately surrender and vacate upon demand) and remove all persons therefrom, and Licensee shall comply with, without limitation. Sections 54 and 55 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 License Fees 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 License Fees (each month's License Fee would be calculated as the average License Fee for that same month in the preceding years, or if Licensee did own/operate the Concession in the preceding years, then each month's License Fee would be calculated as the average of all months Licensee 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 License Fee and other charges that Licensee proves could have been reasonably avoided;

(C) The worth at the time of the award of the amount by which the unpaid License Fee (each month's License Fee would be calculated as the average License Fee for that same month in the preceding years, or if Licensee did not own/operate the Concession in the preceding years, then each month's License Fee would be calculated as the average of all

months Licensee 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 License Fee and other charges that Licensee proves could have been reasonably avoided;

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

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

As used in Sections 35(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 35(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 35(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, personnel property and/or trade inventory located on, about or appurtenant to the Premises without compensation and without liability for use or damage, or store them in a public warehouse or other location at the sole cost, expense and risk of Licensee, and for the account of and in the name of Licensee.

(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 Licensee's Default. Upon continuance of any Default, City may in its sole discretion, but is not obligated to, cure such Default at Licensee's sole cost and expense. If City at any time, by reason of such Default by Licensee, 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 10 above from the date the costs were incurred or the act performed by City to the date they are reimbursed to City by Licensee, shall be due as an additional License Fee not later than five (5) days after service of a written demand therefor on Licensee, 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. Licensee 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 Licensee is evicted or City takes possession of the Premises by reason of any Default by Licensee hereunder.

(e) Other Rights of City. No act of City, including, without limitation. City's entry on the Premises, efforts to re-let the Premises, or maintenance of the Premises, shall be construed as an election to terminate this Agreement unless a written notice of such intention is given to Licensee by City or unless the termination thereof is decreed by a

court of competent jurisdiction. Notwithstanding if City elects to continue the Agreement in full force and effect after a Default by Licensee and to re-let the Premises, City may at any time after such re-letting elect to terminate this Agreement for any such Default.

SECTION 36. CUMULATIVE REMEDIES.

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

SECTION 37. WAIVER OF DEFAULT.

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

SECTION 38. CITY'S DEFAULTS/LICENSEE'S REMEDY.

In the event City fails to perform any material obligation of City under this Agreement within sixty (60) days after receiving written notice from Licensee specifying the nature of such default, or, if the nature of City's obligation is such that more than sixty (60) days are required for its performance, if City fails to commence such performance within such sixty (60) day period and thereafter diligently prosecute the same to completion, then City shall be in default of this obligation. If City's default materially interferes with Licensee's use of the Premises for its intended purpose, Licensee shall have the option to terminate this Agreement by giving City at least sixty (60) days' written notice of its intent to terminate. In such a situation. Licensee must

still comply with all of its obligations, liabilities, duties and responsibilities under this Agreement, including, without limitation, paying any Rent due up to the time of termination and surrendering the Premises pursuant to Sections 54 and 55 below.

SECTION 39. CONSENT.

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

SECTION 40. HOLDOVER.

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

SECTION 41. WAIVER OF CLAIMS.

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

SECTION 42. INSPECTION OF PREMISES.

Upon at least twenty-four (24) hours advance written, verbal or electronic notice given by City to Licensee, Licensee 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 Licensee is complying with the terms of this Agreement and for the purpose of doing other lawful acts that may be necessary to protect City's interest in the Premises or to perform City's duties under this Agreement. City shall make quarterly physical inspections of the Premises and may direct that interior maintenance or outdoor painting repairs are to be performed where such work is necessary to protect the Premises or to provide a clean, attractive and well-maintained premise. Licensee 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. Licensee shall be given reasonable notice when such work becomes necessary, and Licensee shall adjust the operation of the Concession in such a manner that City may proceed expeditiously.

SECTION 43. RESERVED.

SECTION 44. PHOTOGRAPHY.

Licensee 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 Licensee, all without providing Licensee with notice or requiring consent by Licensee.

SECTION 45. HAZARDOUS SUBSTANCES.

Licensee represents and warrants that its use or occupation of the Premises shall not generate any Hazardous Substance (as defined below in this Section), and it shall not store or dispose on the Premises nor transport to or over the Premises any Hazardous Substance during the entire Term of this Agreement or any renewals or extensions thereof or during any holdover period. The foregoing restrictions shall not be deemed to restrict or prohibit the use by Licensee of ordinary cleaning products as customarily used in Licensee's ordinary course of business at the Concession, provided that Licensee complies with all provisions of law as to the use, storage and disposal of such products. Licensee 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. Licensee will conduct all defense at its sole cost and expense and City shall approve selection of Licensee'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 Licensee. "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 46. NONDISCRIMINATION.

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

In the performance of this Agreement, Licensee shall not discriminate against any employee or applicant for employment, because of race, religion, color, ancestry, sex, age, national origin or physical handicap. Licensee 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. Licensee shall post in conspicuous places, available to all employees and applicants for employment, notices setting forth the provisions of this Section.

Subject to the privacy rights of its employees and applicable provisions of law, Licensee 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 Licensee 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 Licensee has violated the Fair Employment Practices Act or other applicable discrimination law and has issued an order which has become final, or obtained an injunction. In the event of violation of this Section, City shall have the right to terminate this Agreement, and any loss of revenue sustained by City by reason thereof shall be borne and paid for by Licensee, at its sole cost and expense.

SECTION 47. SALE OF ALCOHOLIC BEVERAGES AND ENTERTAINMENT PROHIBITED.

Notwithstanding anything to the contrary, the sale or provision of alcoholic beverages and/or live entertainment in, on, or from the Premises is expressly forbidden, unless expressly permitted in writing by City in advance. For any proposed sale or provision of alcoholic beverages. Licensee must first obtain written City approval prior to submitting any request for approval to the Alcohol Beverage Commission.

SECTION 48. LIENS.

Licensee shall keep the Premises free and clear from any and all liens, including, without limitation, mechanics' or materialmens' 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 Licensee, or any person claiming under Licensee. When applicable, Licensee shall cause a notice of non-responsibility to be posted and recorded pursuant to California Civil Code Section 3094.

SECTION 49. INSTALLATION AND REMOVAL OF TRADE FIXTURES.

Licensee shall have the right during the entire term of this Agreement or any renewals or extensions thereof, at Licensee'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 Licensee's trade or business as Licensee may deem advisable. Any and all such Trade Fixtures that can be removed without structural damage to the Premises shall, subject to Section 55 below, remain the property of Licensee and may be removed by Licensee at any time prior to the expiration or termination of this Agreement, provided Licensee repairs any damage caused by the removal. Upon execution of this Agreement and every anniversary, Licensee shall provide City with a list of all Trade Fixtures on the Premises.

SECTION 50. DESTRUCTION.

Should the Premises be partially destroyed, this Agreement shall continue in full force and effect, and Licensee, at Licensee's sole cost and expense, shall complete the work of repairing and restoring the Premises to their prior condition providing such work can be accomplished under all applicable governmental laws and regulations within one hundred eighty (180) days. Notwithstanding the foregoing, should the damage to the Premises be substantial enough such that Licensee determines, in its reasonable discretion, that it will be unable to feasibly and economically repair and restore the Premises and still realize a reasonable return on its investment over the remaining portion of the Term, Licensee shall have the right, within ninety (90) days of the occurrence of the casualty loss, to terminate this Agreement by delivery

of written notice of termination to the City, together with an assignment to City of Licensee's rights with respect to the disposition and use of any property insurance proceeds (excluding such proceeds for Trade Fixtures, personal property whether or not owned or leased by Licensee and trade inventory, but only to the extent that the insurance proceeds specifically cover those items). In addition, should the Premises be so far destroyed that in City's reasonable judgment they cannot be repaired or restored to their former condition within one hundred eighty (180) days, City shall have the right to give Licensee notice of such determination in writing and each party may, in that party's sole discretion:

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

(b) Terminate this Agreement by giving the other party thirty (30) days' written notice of such termination within sixty (60) days after the date that City gives Licensee notice that the Premises cannot be repaired or restored to their former condition within one hundred eighty (180) days. In the event that either party elects to terminate this Agreement, the entire amount of any insurance proceeds (excluding such proceeds for Trade Fixtures, personal property whether or not owned or leased by Licensee 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 Licensee elects to terminate the Agreement, Licensee must still comply with all of its obligations, liabilities, duties and responsibilities under the Agreement, including, without limitation,

paying any Rent due up to the time of termination and surrendering the Premises, pursuant to Sections 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 Agreement, Licensee shall, at its sole cost and expense, replace and repair the same as soon as reasonably possible to permit the prompt continuation of Licensee's business at the Premises.

SECTION 51. NO ABATEMENT OF LICENSE FEE DURING REPAIR WORK.

The License Fee shall not be abated for the time Licensee is prevented from using the whole or a portion of the Premises. In addition. Licensee shall not be excused from the payment of taxes, insurance or any other obligations for the time Licensee is prevented from using the whole or a portion of the Premises.

SECTION 52. EMINENT DOMAIN.

If, during the term of this Agreement 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, 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. Licensee shall be entitled to an award of only the following forms of compensation, if any, from the condemning authority: compensation for loss of business goodwill; compensation for the value of any of Licensee's Trade Fixtures; compensation for the value of any of Licensee's personal property; compensation for the value of any of Licensee'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 Licensee's interest in this Agreement, shall belong to and be paid to City. In the event of

condemnation, unless Licensee is allowed by the condemning authority to continue its operations on the Premises, the Agreement shall terminate on the earliest of the following dates: the date the condemning authority obtains a prejudgment order for possession; the date title to the Premises vests in the condemning authority; or the date when Licensee is required by the condemning authority to cease its operations.

SECTION 53. RELOCATION AND ASSISTANCE. BUSINESS GOODWILL AND BONUS VALUE.

Upon expiration or termination of this Agreement for any reason, but excluding eminent domain, Licensee shall not be entitled to any relocation rights or benefits, business goodwill or bonus value attributable to this Agreement, and Licensee expressly waives any claim to the same.

SECTION 54. QUITCLAIM DEED.

Upon expiration or termination of this Agreement as provided for herein. Licensee shall execute and deliver to City within thirty (30) days thereof, a good and sufficient quitclaim deed to the rights and interests of Licensee in the Premises and the Agreement. Should Licensee 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 Licensee to execute and deliver this quitclaim deed. The date of recordation of this notice by City shall be conclusive evidence against Licensee and all persons claiming under Licensee of the expiration or termination of this Agreement and any rights or interests of Licensee in the Premises and/or the Agreement. Licensee 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 55. RESTORATION AND SURRENDER OF PREMISES/TITLE TO
IMPROVEMENTS TO THE BUILDING.

On expiration or termination of this Agreement, Licensee shall, without compensation to Licensee, promptly surrender and deliver the Premises to City in as good condition as such were at the commencement date of this Agreement, reasonable wear and tear excepted. Licensee also shall, without compensation to Licensee, 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. Licensee 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 Licensee or any other person; or City may require Licensee to remove all or any portion of such Improvements to the building, at Licensee'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 Licensee's own risk and cost and expense. If required by City to do so, in removing any such Improvements to the building, Licensee shall restore the Premises as nearly as possible to the conditions existing prior to their installation or construction. All such removal and restoration shall be to the satisfaction of City and shall be completed within thirty (30) days of the expiration or termination of this Agreement; provided, however, that Licensee shall be considered a holdover occupant (pursuant to Section 40 above) after expiration or termination of the Agreement until the time Licensee 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 Licensee. 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 Licensee, and for the account and in the name of Licensee; or (3) dispose of any or all of such Trade Fixtures, personal property and trade inventory without any liability to Licensee. In addition, Licensee's indemnification, hold harmless and defense obligations set forth in this Agreement shall apply to such Trade Fixtures, personal property and/or trade inventory, and to City's actions with respect thereto.

SECTION 56. FORCE MAJEURE - UNAVOIDABLE DELAYS.

Should the performance of any act required by this Agreement to be performed by either City or Licensee be prevented or delayed by reason of an act of God, strike, lockout, labor troubles, inability to secure materials, restrictive governmental laws or regulations, or any other cause except financial inability not the fault of the party required to perform the act, the time for performance of the act shall be extended for a period equivalent to the period of delay and performance of the act during the period of delay shall be excused. Provided, however, that nothing contained in this Section shall excuse the prompt payment of the License Fee or other consideration by Licensee as required by this Agreement or the performance of any act rendered difficult solely because of the financial condition of the party, City or Licensee, required to perform the act.

SECTION 57. CITY'S OPTION TO CLOSE THE PREMISES.

City may close the Premises without liability to Licensee therefor at any time that City in its reasonable discretion deems such action necessary for the protection of life, limb or property, or for imminent and serious public health or safety reasons; provided, that if the reason for such a

closure is a City default of its obligations under this Agreement nothing in this Section 57 is intended to release City from liability therefor or constitute a waiver of Licensee's rights with respect thereto. Except in the event of an unanticipated emergency, City shall the maximum amount of prior notice to Licensee of any such closure that is reasonably practicable under the circumstances.

SECTION 58. DELIVERIES OF SUPPLIES.

The Deputy Director of the Office of Business Development of City may establish the days and times deliveries of supplies may be made and advise Licensee in writing thereof.

SECTION 59. EMPLOYEE PARKING.

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

SECTION 60. CONFLICT OF INTEREST.

Licensee 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 Licensee to solicit or aid in the procuring of this Agreement; or (2) shall be employed by Licensee in the performance of this Agreement without the immediate written divulgence of such fact to City. In the event City determines that the employment of any such official, employee or business entity is not compatible with such official's or employee's duties as an official or employee of City, Licensee, upon request of City, shall terminate such employment immediately. For breaches or violation of this Section, City shall have the right both to terminate this Agreement without liability and, in its discretion, recover the MI amount of any such compensation paid to such official, employee or business entity. No official or employee of City

shall have any financial interest in this Agreement in violation of the applicable provisions of the California Government Code.

SECTION 61. 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

(a) one (1) business day after being sent by reputable overnight courier, in each, case to the addresses specified below; provided that City and Licensee, 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: Deputy Director of the
Office of Business Development
P.O. Box 190
Huntington Beach, CA 92648

LICENSEE:
PCH Beach Resort LLC
c/o Hyatt Regency Huntington Beach Resort
and Spa
21500 Pacific Coast Highway
Huntington Beach, CA 92648
Attention: General Manager

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

SECTION 62. COMPLIANCE WITH LAWS.

Licensee, 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 Licensee's use and occupancy of the Premises and/or

operation of the Concession whether such statutes, ordinances, regulations and requirements be now in force or hereinafter enacted. This Agreement is expressly subject to the laws, regulations and policies of City. Licensee shall deliver to City a copy of any notice from any governmental entity received by Licensee regarding any alleged violation of law regarding the Agreement, Premises or the Concession or from any person allegedly entitled to give notice under any conditions, covenants, or restrictions binding or affecting the Premises. The final non-appealable judgment of any court of competent jurisdiction, or the admission by Licensee in a proceeding brought against Licensee by any government entity, that Licensee has violated any such statute, ordinance, regulation or requirement shall be conclusive as between City and Licensee and shall be grounds for termination of this Agreement by City.

SECTION 63. INTERPRETATION OF THIS AGREEMENT.

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

Agreement which is hereby affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law.

SECTION 64. SURVIVAL.

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

SECTION 65. MODIFICATION.

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

SECTION 66. SECTION HEADINGS.

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

SECTION 67. BROKERS.

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

SECTION 68. INDEPENDENT CONTRACTOR.

Licensee 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. Licensee 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 Licensee and its officers, agents and employees and all business licenses, if any, in connection with the Agreement and/or any services to be performed hereunder.

SECTION 69. ATTORNEY'S FEES.

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

SECTION 70. LEGAL SERVICES SUBCONTRACTING PROHIBITED.

Licensee 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. Licensee 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 Licensee.

SECTION 71. GOVERNING LAW.

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

SECTION 72. DUPLICATE ORIGINAL.

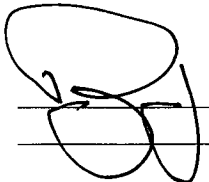
The original of this Agreement and one or more copies hereto have been prepared and signed in counterparts as duplicate originals, each of which so executed shall, irrespective of the date of its execution and delivery, be deemed an original. Each duplicate original shall be deemed an original instrument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

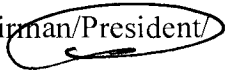
SECTION 73. ENTIRETY.

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

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their authorized officers the day, month and year first above written. Each undersigned represents and warrants that 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.

LICENSEE

By: 

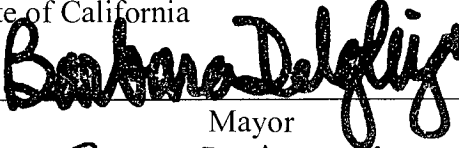
ITS: (circle one) Chairman/President/
Vice President 

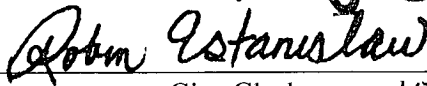
By: AND
RS. Mayer

(print name)

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

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



Mayor


City Clerk 2/8/17

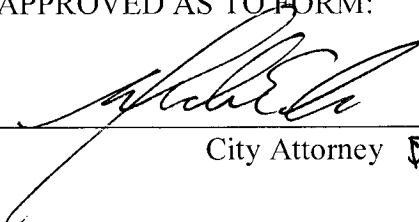
INITIATED AND APPROVED



Deputy Director of the Office of
Business Development


Assistant City Manager

APPROVED AS TO FORM:



City Attorney DKO 1130117 m

REVIEWED AND APPROVED:



City Manager

EXHIBIT "A"

DEPICTION OF THE PREMISES

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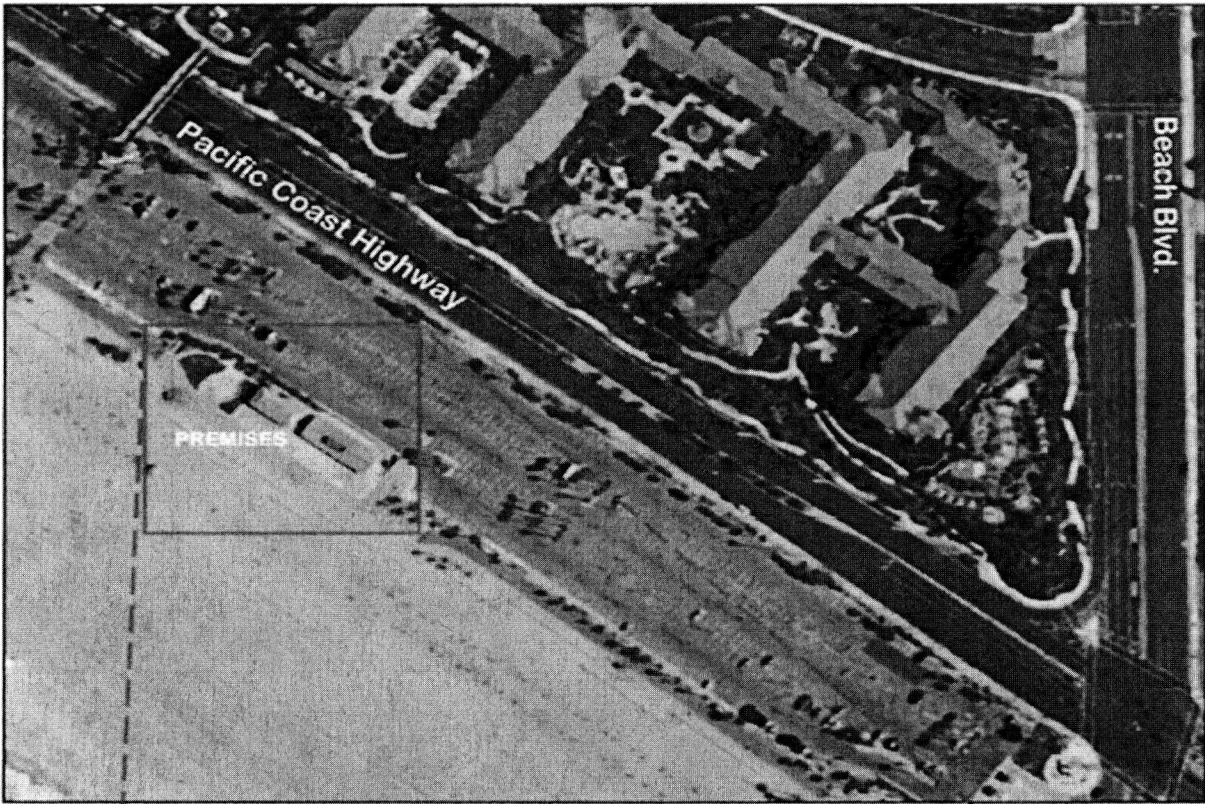


EXHIBIT "B"

MONTHLY LICENSE FEE SCHEDULE:

Monthly Base License Fee: Begins at June 1 2017	
Description	Amount
Monthly Base License Fee*	\$1,000.00

* Subject to fixed 2% annual increase.

Percentage License Fee: Begins 12 Months from commencement date of Agreement	
Season	Percentage of Gross Sales
Low Season: (Jan., Feb., Nov., Dec.)	5%
Mid Season: (Mar., Apr., Oct.)	10%
Peak Season: (May, June, July, Aug., Sept.)	12%

MONTHLY LICENSE FEE CALCULATION EXAMPLE:

Assumptions: Minimum Base License Fee of \$1,000 per month; Gross Sales of \$5,500

<u>Monthly License Fee – Nov. (Low Season)</u>	
MONTHLY BASE LICENSE FEE	\$ 1,000.00

Percentage License Fee – Nov. (Low Season)	
5% x \$5,500.00	\$ 275.00
PERCENTAGE LICENSE FEE	\$ 275.00

MONTHLY BASE LICENSE FEE	\$ 1,000.00
PERCENTAGE LICENSE FEE	\$ 275.00
MONTHLY LICENSE FEE	\$ 1,275.00

EXHIBIT "C"

QUARTERLY EVALUATION

Month _____ Year _____ Today's Date _____

Inspected By: _____

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

COMMENTS:

ACTION REQUIRED:

AGREED TO: _____

EXHIBIT "D"

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

- Remove and replace all exterior doors and windows
- Repair and paint exterior stucco
- Repair Roof (credit to be provided by City – amount TBD)
- Replace and improve AC/Vent housing area on roof (credit to be provided by City – amount TBD)
- Replace/ upgrade electrical panel
- Construct a secure exterior storage facility behind existing building
- Remove and replace existing wood countertops with stainless
- Modify existing kitchen cook/prep line and install new equipment
- ADA bathroom modifications
- Remove and replace existing service counters
- Install water heater
- Improve exterior appearance of building, signage and public seating
- Install Grease Trap