

**REQUEST FOR PROPOSALS (RFP) – APPENDIX C – SAMPLE CONTRACT
CONCESSION SERVICES AT COUNTY OPERATED WILL ROGERS STATE BEACH**



CONCESSION CONTRACT

FOR

Restaurant Operation

AT

Will Rogers State Beach

by and between

County of Los Angeles

and

Concessionaire

Effective Date_____ 2017

CONCESSION SAMPLE CONTRACT – RFP

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APPENDIX C SAMPLE CONTRACT STANDARD ATTACHMENTS AND EXHIBITS

Attachment No. 1 – Description of Premises

Attachment No. 2 – Facility Improvement Plan (NOT ATTACHED TO SAMPLE)

Attachment No. 3 – Operation Plan (NOT ATTACHED TO SAMPLE)

Exhibits A, B, C, D, E, F, G, H, I, M, N, O, P and Q are attached to and form a part of this Sample Contract. Exhibits J, K and L are INTENTIONALLY OMITTED. In the event of any conflict or inconsistency in the definition or interpretation of any word, responsibility, schedule, or the contents or description of any task, deliverable, goods, service, or other work, or otherwise between the base Contract and the Exhibits, or between Exhibits, such conflict or inconsistency shall be resolved by giving precedence first to the terms and conditions of the Contract and then to the Exhibits according to the following priority.

Appendix’s “C” Sample Contract Standard Exhibits:

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Appendix C Sample Contract-RFP (2017)-Concession Services at County-Operated Will Rogers State Beach

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EXHIBIT B - Pricing Schedule (NOT ATTACHED TO SAMPLE)

EXHIBIT C - Concessionaire’s Proposed Schedule (NOT ATTACHED TO SAMPLE)

EXHIBIT D - Contractor’s EEO Certification

EXHIBIT E - County’s Administration

EXHIBIT F - Contractor’s Administration

EXHIBIT G - Forms Required at the Time of Contract Execution

EXHIBIT H - Jury Service Ordinance

EXHIBIT I - Safely Surrendered Baby Law

Unique Exhibits J, K, L – INTENTIONALLY OMITTED:

**FORMS REQUIRED AT THE COMPLETION OF THE CONTRACT WHEN THE WORK
INVOLVED INTELLECTUAL PROPERTY DEVELOPED/DESIGNED BY
CONTRACTOR**

Exhibit M1 - Individual Assignment and Transfer of Copyright

Exhibit M2 - Contractor’s Assignment and Transfer of Copyright

Exhibit M3 - Notary Statement for Assignment and Transfer of Copyright

Exhibit N - Contractor’s Assignment and Transfer of Copyright

SB 1262 – NONPROFIT INTEGRITY ACT OF 2004

Exhibit O – Charitable Contributions Certifications

Exhibit P – Examples of Categories of Permitted Capital Expenditures

Exhibit Q – Local and Targeted Worker Hiring Policy

CONCESSION CONTRACT

For

Restaurant Operation

Located At

Will Rogers State Beach

THIS CONTRACT ("Contract") is made and entered into as of the Effective Date by and between the COUNTY OF LOS ANGELES, hereinafter referred to as "County," and **Concessionaire Name DBA FictitiousBusName** of CityState, hereinafter referred to as "Concessionaire";

RECITALS

WHEREAS, County is authorized to exercise the power conferred by California Government Code Section 25907 to contract for concessions and services that are consistent with public park and recreation purposes within Will Rogers State Beach pursuant to the provisions of the JOINT POWER AGREEMENT BETWEEN THE CITY OF LOS ANGELES AND THE COUNTY OF LOS ANGELES PROVIDING FOR LIFEGUARD AND MAINTENANCE SERVICES TO BE RENDERED BY THE COUNTY ON BEACHES LOCATED WITHIN THE CITY, dated May 20, 1975, and;

WHEREAS, in the exercise of such authority, County and Concessionaire have agreed, as more specifically provided herein, upon certain terms and conditions in connection with the Contract regarding the "Premises", as hereafter defined;

NOW, THEREFORE, in consideration of the foregoing recitals, which are hereby deemed a contractual part hereof, and of the mutual covenants, agreements and conditions set forth herein, and of other good and valuable consideration, the receipt

and sufficiency of which is hereby acknowledged, the parties hereto and each of them do agree as follows:

1. **BACKGROUND AND GENERAL**

1.1. **Definitions.** For ease of reference, the definitions of many terms contained within this Contract are set forth in the context in which the term is used. A listing of those defined terms and other definitions not defined in context appears below:

1.1.1. "ACCOUNTING YEAR" shall have the meaning set forth in Section 33.7.

1.1.2. "ACTUAL COST" shall mean (i) the reasonable out-of-pocket costs and expenses incurred by County with respect to a particular activity or procedure, including without limitation, expenditures to third party legal counsel, financial consultants and advisors, (ii) costs incurred in connection with appraisals, (iii) the reasonable value of services actually provided by County's in-house counsel, and (iv) the reasonable value of services actually provided by County's lead contract negotiator/administrator and any other contract auditors and other County administrative staff required by the lead contract negotiator/administrator for technical expertise or assistance. In those instances in which Concessionaire is obligated to reimburse County for its Actual Costs incurred in performing obligations required to be performed by Concessionaire under this Contract which Concessionaire fails to perform within the applicable cure period, if any, provided under this Contract, Actual Costs shall also include a reasonable allocation of County overhead and administrative costs to compensate County for performing such obligations on behalf of Concessionaire.

1.1.3. "ADA" shall have the meaning set forth in Sections 2 and 28.

1.1.4. "ADMINISTRATIVE CHARGE" shall have the meaning set forth in Section 4.7.

1.1.5. "AGGREGATE TRANSFER" shall have the meaning set forth in subsection 4.7.3

1.1.6. "ALTERATIONS" shall have the meaning set forth in subsection 5.2.

1.1.7. "ANNUAL MINIMUM RENT" shall have the meaning set forth in subsection 4.2.1.

1.1.8. "APPLICABLE LAWS" shall have the meaning set forth in Section 2.

1.1.9. "FINAL PLANS SPECIFICATIONS AND COSTS" shall have the meaning set forth in subsection 5.3

1.1.10. "APPROVED GOVERNMENTAL CHANGES" shall have the meaning set forth in subsection 5.3.1.

1.1.11. "AUDITOR CONTROLLER" shall mean the Auditor-Controller of the County of Los Angeles, California.

1.1.12. "AWARD" shall have the meaning set forth in subsection 7.1.3.

1.1.13. "BENEFICIAL INTEREST" shall have the meaning set forth in subsection 4.7.4.

1.1.14. "BOARD" means the Board of Supervisors for the County of Los Angeles.

1.1.15. "BONUS VALUE" shall have the meaning set forth in subsection 7.7.3.

1.1.16. "BUSINESS DAY" shall have the meaning set forth in Section 55.3.

1.1.17. "CALCULATION NOTICE" shall have the meaning set forth in subsection 4.8.

1.1.18. "CERTIFICATE OF OCCUPANCY (THE CO DATE)" shall have the meaning set forth in subsection 4.2.1

1.1.19. "CHANGE OF OWNERSHIP" shall have the meaning set forth in subsection 4.7.1.

1.1.20. "CHANGE OF CONTROL" shall have the meaning set forth in subsection 4.7.1.

1.1.21. "CITY" shall mean the City of Los Angeles, California.

1.1.22. "COMPLETION DATE" shall mean the date of issuance of a certificate or certificates of occupancy (whether temporary or permanent) or other applicable governmental permit(s), certificate(s) or approval(s) with respect to the Redevelopment Work (or any Alterations or

Improvements) that permits the legal occupancy, use or operation of the Premises.

1.1.23. "CONCESSIONAIRE" shall mean the meaning set forth in the first paragraph of this Contract.

1.1.24. "CONCESSIONAIRE SALE PRICE" shall have the meaning set forth in subsection 49.2.4.

1.1.25. "CONDEMNATION" shall have the meaning set forth in subsection 7.1.1.

1.1.26. "CONDEMNOR" shall have the meaning set forth in subsection 7.1.4.

1.1.27. "CONSUMER PRICE INDEX" shall mean the Consumer Price Index—All Urban Consumers for Los Angeles-Riverside-Orange County, as published from time to time by the United States Department of Labor or, in the event such index is no longer published or otherwise available, such replacement index as may be agreed upon County and Concessionaire.

1.1.28. "CONTRACT YEAR" shall have the meaning set forth in Section 3.1.

1.1.29. "CONSTRUCTION PERIOD" shall have the meaning set forth in Section 4.2.1.

1.1.30. "COUNTY" shall have the meaning set forth in the first paragraph of this Contract.

1.1.31. "COUNTY OFFER TO PURCHASE" shall have the meaning set forth in subsection 49.2.4.

1.1.32. "COUNTY REMOVAL NOTICE" shall have the meaning set forth in subsection 5.12.2.

1.1.33. "DATE OF TAKING" shall have the meaning set forth in subsection 7.1.2.

1.1.34. "DEMOLITION AND REMOVAL REPORT" shall have the meaning set forth in subsection 5.12.2.

1.1.35. "DEPARTMENT" means the Department of Beaches and Harbors of the County of Los Angeles.

1.1.36. "DIRECTOR" means the Director of the Department of Beaches and Harbors of the County of Los Angeles or any designated County officer responsible for the administration of this Contract.

1.1.37. "DISQUALIFICATION JUDGMENT" shall have the meaning set forth in subsection 25.14.1.

1.1.38. "DOCUMENTED TRANSACTION COSTS" shall have the meaning set forth in subsection 4.9.1.2.

1.1.39. "EFFECTIVE DATE" shall be November 1, 2017

1.1.40. "ENCUMBRANCE" shall have the meaning set forth in subsection 34.1.1

1.1.41. "ENCUMBRANCE HOLDER" shall have the meaning set forth in subsection 34.1.1.

1.1.42. "ESTIMATED COSTS" shall have the meaning set forth in subsection 5.12.2.

1.1.43. "EVENTS OF DEFAULT" shall have the meaning set forth in Section 36.1.

1.1.44. "EXCLUDED TRANSFERS" shall have the meaning set forth in subsection 4.7.2.

1.1.45. "EXTENDED TIME" shall have the meaning set forth in Section 56.

1.1.46. "FAIR MARKET RENTAL VALUE" shall have the meaning set forth in subsection 4.5.1.

1.1.47. "FINAL COMPLETION CERTIFICATE" shall have the meaning set forth in Section 5.7.8.

1.1.48. "FINAL PLANS AND SPECIFICATIONS" shall have the meaning set forth in Section 5.3.3.

1.1.49. "FINANCING EVENT" shall have the meaning set forth in Section 34.1.

1.1.50. "FORCE MAJEURE" shall mean any inability of a party to perform any non-monetary obligation under this Contract due to fire or

other casualty, earthquake, flood, tornado or other act of God, civil disturbance, war, organized labor dispute, freight embargo, governmental order or other unforeseeable event beyond the reasonable control of the party required to perform the subject obligation, including, in the case of a delay in the commencement or completion by Concessionaire of the Redevelopment Work or the Subsequent Renovation, a delay in such construction caused by a hidden condition, including without limitation environmental contamination, relating to the foundation, substructure or subsurface of the Premises which was not known to Concessionaire as of the commencement of such construction activity, although Concessionaire shall, to the extent possible, commence and complete the portions, if any, of the work, not impacted by such delay within the timeframes set forth in this Contract. In addition, in the case of the construction of the Redevelopment Work, Force Majeure shall also include an injunction or restraining order against the performance of the Redevelopment Work issued pursuant to a court action commenced by a plaintiff other than County or the California Coastal Commission acting in their governmental capacity, Concessionaire, or any person or entity affiliated with Concessionaire; provided, however, regardless of whether Concessionaire is a named party in the action, as a condition to this clause (b) Concessionaire shall diligently pursue the removal of any such restraining order or injunction and shall exhaust all commercially reasonable efforts to appeal such restraining order or injunction.

1.1.51. "GROSS ERROR" shall have the meaning set forth in subsection 25.14.2.

1.1.52. "GROSS RECEIPTS" shall have the meaning set forth in Section 4.3.

1.1.53. "HAZARDOUS SUBSTANCES" means the following:

(a) petroleum, any petroleum by-products, waste oil, crude oil or natural gas;

(b) any material, waste or substance that is or contains asbestos or polychlorinated biphenyls, or is radioactive, flammable, or explosive; and

(c) any substance, product, waste or other material of any nature whatsoever which is or becomes defined, listed or regulated as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," "solid waste" or similarly defined substance pursuant to any Applicable Laws or other substance or material regulated under Applicable Laws.

1.1.54. "IMPROVEMENTS" means all buildings, structures, fixtures, fences, fountains, walls, paving, parking areas, driveways, walkways, plazas, landscaping, permanently affixed utility systems, docks, slips, end-ties and other anchorage improvements, and other improvements now or hereafter located on the Premises.

1.1.55. "IMPROVEMENT COSTS" shall have the meaning set forth in subsection 4.9.1.1

1.1.56. "INCOME APPROACH" shall have the meaning set forth in Section 7.5.

1.1.57. "INITIATING PARTY" shall have the meaning set forth in Section 25.

1.1.58. "INSURANCE RENEGOTIATION DATE" shall have the meaning set forth in Section 23.6.

1.1.59. "LATE FEE" shall have the meaning set forth in subsection 4.6.

1.1.60. "MAJOR SUBLEASE" shall have the meaning set forth in subsection 49.1.1.

1.1.61. "MAJOR SUBLESSEE" shall have the meaning set forth in subsection 49.1.1.

1.1.62. "MATERIAL MODIFICATION" shall mean a modification to the Redevelopment Work (or other Alterations, as applicable) as to which any of the following applies: (1) the total cost of the modification exceeds one percent (1%) of the total estimated construction cost of the Redevelopment Work (or any other Alterations or Improvements that are then proposed to be constructed by Concessionaire); (2) the proposed modification is structural in nature; (3) the modification affects or is visible from the exterior of the Improvements; (4) the modification is not in compliance with the Approved Final Plans and Specifications; or (5) the modification is not in compliance with the Permitted Uses under this Contract.

1.1.63. "MONTHLY MINIMUM RENT" shall have the meaning set forth in subsection 4.2.1.

1.1.64. "NET AWARDS AND PAYMENTS" shall have the meaning set forth in Section 7.7.

1.1.65. "NET PROCEEDS SHARE" shall have the meaning set forth in subsection 4.9.

1.1.66. "NET REFINANCING PROCEEDS" shall have the meaning set forth in subsection 4.9.5.

1.1.67. "NET TRANSFER PROCEEDS" shall have the meaning set forth in subsection 4.9.1 and 4.9.2.

1.1.68. "NOTICE OF COMPLETION" shall have the meaning set forth in subsection 5.7.7.

1.1.69. "PARKING LOT PARCEL" shall mean that portion of the Premises described as the Parking Lot Parcel in Attachment No.1 (Description of Premises) hereto.

1.1.70. "PARTIAL TAKING" shall have the meaning set forth in Section 7.5.

1.1.71. "PAYMENT BOND" shall have the meaning set forth in subsection 5.4.3.2.

1.1.72. "PERCENTAGE RENT" shall have the meaning set forth in subsection 4.2.2.

1.1.73. "PERFORMANCE BOND" shall have the meaning set forth in 5.4.3.1.

1.1.74. "PERMITTED USES" shall have the meaning set forth in Section 6.1.

1.1.75. "PREMISES" shall have the meaning set forth in Section 1.2., as more particularly described in Attachment No. 1 (Description of Premises) hereto.

1.1.76. "PROPOSED TRANSFER" shall have the meaning set forth in subsection 49.2.4.

1.1.77. "PUBLIC WORKS DIRECTOR" shall mean the Director of the Department of Public Works of the County of Los Angeles.

1.1.78. "PURCHASE MONEY NOTE" shall have the meaning set forth in subsection 4.8.2.

1.1.79. "REDEVELOPMENT WORK" shall have the meaning set forth in Section 5.1.

1.1.80. "RENEGOTIATION DATE" shall have the meaning set forth in subsection 4.5.

1.1.81. "RENT REDUCTION AMOUNT" shall have the meaning set forth in subsection 4.2.2.3.

1.1.82. "RENT REDUCTION PERIOD" shall have the meaning set forth in subsection 4.2.2.3.

1.1.83. "REPLY" shall have the meaning set forth in subsection 25.5.(3).

1.1.84. "RESPONDING PARTY" shall have the meaning set forth in Section 25.

1.1.85. "RESTAURANT PARCEL" shall mean that portion of the Premises described as the Restaurant Parcel in Attachment No.1 (Description of Premises) hereto.

1.1.86. "REQUIRED CONSTRUCTION COMMENCEMENT DATE" shall have the meaning set forth in subsection 5.1.

1.1.87. "REQUIRED CONSTRUCTION COMPLETION DATE" shall have the meaning set forth in subsection 5.1.

1.1.88. "REQUIRED COST AMOUNT" shall have the meaning set forth in Section 5.1.

1.1.89. "SECTION" and "SUBSECTION" means any section of subsection of the Contract.

1.1.90. "SECURITY DEPOSIT" shall have the meaning set forth in Section 9.1.

1.1.91. "SHALL" and "WILL" are mandatory and the word "MAY" is permissive.

1.1.92. "STATE" shall mean the State of California.

1.1.93. "STATEMENT OF POSITION" shall have the meaning set forth in Section 25.6.

1.1.94. "SUBLEASE" shall have the meaning set forth in subsection 49.1.1.

1.1.95. "SUBLESSEE" shall have the meaning set forth in subsection 49.1.1.

1.1.96. "substantial completion" means the completion of the Redevelopment Work, subsequent renovation or other work of Improvement (as applicable), including without limitation, the receipt of a certificate of occupancy (whether temporary or permanent) or other applicable governmental certificate or approval for legal use and occupancy of the subject Improvements (if applicable with respect to the particular work), subject only to minor punch-list items that do not interfere with the use and occupancy of the subject Improvements, provided that any such minor punch-list items are completed in a diligent manner as soon as reasonably possible thereafter.

1.1.97. "TERM" shall have the meaning set forth in Section 3.

1.1.98. "UNINSURED LOSS" shall have the meaning set forth in Section 12.2.

1.1.99. "USABLE PREMISES" shall have the meaning set forth in Section 6.1.

1.1.100. "WRITTEN APPRAISAL EVIDENCE" shall have the meaning set forth in Section 25.7

1.2. Description of Premises; Concession Granted

The County for and in consideration of the agreements hereinafter stated, grants to Concessionaire for the purposes stated herein, the right, privilege, and duty to develop, equip, operate, and maintain a concession in Will Rogers State Beach at the

location as set forth in **Attachment No.1**, attached to and made a part of this Contract (the "**Premises**").

The interest herein given to the Concessionaire does not exclude the general public from the Premises; however, the use by the general public is limited by the terms and conditions of the interest conveyed to Concessionaire hereby. This Contract is not intended to confer third party beneficiary status to any member of the public who is benefited by the terms of this Contract. The interest granted to Concessionaire hereby is further subject to all valid and existing contracts, leases, licenses, encumbrances, and claims of title that may affect the Premises.

2. CONDITION OF PREMISES

The taking of possession of the Premises by the Concessionaire, in itself, shall constitute acknowledgment that the Premises are in good and sufficient condition for the purposes for which Concessionaire is entering into this Contract. Concessionaire accepts Premises in their presently existing condition, or an "AS IS WITH ALL FAULTS" basis, and that, except as expressly set forth in this Contract, *Concessionaire is not relying on any representation or warranty of any kind whatsoever, expressed or implied*, from County or any other governmental authority or public agency, or their respective agents, as to any matters concerning the Premises, including without limitation: (i) the quality, nature, adequacy and physical condition and aspects of the Premises, including, but not limited to , the structural elements, foundation, roof, protection against ocean damage or sand erosion, appurtenances, access, landscaping, parking facilities and the electrical, mechanical, HVAC, plumbing, sewage and utility systems, facilities and appliances, and the square footage of the land and within the improvements and within each space therein, (ii) the quality, nature, adequacy and physical condition of soils, geology and any groundwater, (iii) the existence, quality, nature, adequacy of utilities serving the Premises, (iv) the development potential of the Premises, and the Premises' use, habitability, merchantability or fitness, or the suitability, value or adequacy of the Premises for any particular purpose, (v) the zoning or other legal status or entitlement or lack thereof of the Premises or any other public or private restrictions on use of the

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Premises, (vi) the compliance of the Premises with any applicable codes, laws, rules, regulations, statutes, resolutions, ordinances, covenants, conditions and restrictions of County, City, State, the California Coastal Commission and/or any other governmental or quasi-governmental entity (“**Applicable Laws**”) or of any other person or entity (including, without limitation, relevant provisions of the Americans with Disabilities Act (“**ADA**”), (vii) the presence of any underground storage tank or hazardous materials on, under or about the Premises or the adjoining or neighboring property, (viii) the quality of any labor and materials used in any improvements, (ix) the condition of title to the Premises, and (x) the economics of the operation of the Premises. Notwithstanding the foregoing, County represents that it has no “actual knowledge” of the existence of Hazardous Substances existing in or on the Premises, with no duty to investigate the matter. Concessionaire agrees that County shall not be obligated to make any alterations, additions, or betterments to the Premises except as otherwise provided for in this Contract. Concessionaire acknowledges the County has provided the opportunity for personal inspection of the Premises by Concessionaire to fully evaluate the current condition of the Premises.

2.1. Title. Concessionaire hereby acknowledges the title of County and/or any other public entity or agency having jurisdiction thereover, in and to the Premises, and covenants and agrees never to contest or challenge the extent of said title, except as is necessary to ensure that Concessionaire may occupy the Premises pursuant to the terms and conditions of this Contract.

2.2. Reservations. Concessionaire expressly agrees that this Contract and all rights hereunder shall be subject to all encumbrances, reservations, licenses, easements and rights of way (a) existing as of the Effective Date, or (b) otherwise referenced in this Contract in, to, over or affecting the Premises for any purpose whatsoever, or (c) consented to by Concessionaire.

Without limiting the foregoing, Concessionaire expressly agrees that this Contract and all rights hereunder shall be subject to (i) all prior matters of record, and

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(ii) the right of County or any other governmental authority existing as of the Effective Date or otherwise disclosed to or known to Concessionaire, as their interests may appear, to install, construct, maintain, service and operate sanitary sewers, public roads and sidewalks, fire access and utility easements across, upon or under the Premises, together with the right of County or such other governmental authority to convey such easements and transfer such rights to others; provided, however, that no new facilities shall be constructed on the Premises by County after the Effective Date pursuant to this clause that unreasonably interfere with Concessionaire's business operations on the Premises, except for replacement facilities for facilities existing as of the Effective Date.

3. **TERM**

The term of this Contract shall be for a period of fifty (50) years, commencing November 1, 2017, and expiring at 11:59 p.m. on October 31, 2067 ("Term").

3.1. For purposes of this Contract, the term "**Contract Year**" shall mean each one-year period of time that commences on the commencement date identified above, extending twelve (12) months therefrom, and continuing from each anniversary throughout the term of the Contract.

3.2. Holdover. In the event that Concessionaire holds over beyond the Term with written consent of County, which may be withheld or granted in County's sole and absolute discretion, such holdover shall be from month to month only, shall not be deemed to be a renewal or extension of the Term and shall be on all of the terms and conditions set forth herein, including without limitation the monthly compensation provided for in this Contract as set forth in Section 39.2.

4. **PAYMENTS TO COUNTY**

4.1. Net Lease. The parties acknowledge that the rent to be paid by Concessionaire under this Contract is intended to be absolutely net to County. Except

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as expressly provided in subsection 4.2.2.3, the rent and other sums to be paid to County hereunder are not subject to any credit, demand, set-off or other withholding. Except as specifically set forth herein, Concessionaire shall be solely responsible for all capital costs (including, without limitation, all structural and roof repairs or replacements) and operating expenses attributable to the operation and maintenance of the Premises and Improvements, including without limitation the parking areas and outdoor public dining areas included within the Premises.

4.1.1. Utilities. In addition to the rental charges as herein provided, Concessionaire shall pay, or cause to be paid, all utility and service charges for furnishing water, power, sewage disposal, light, landscape/hardscape, telephone service, Internet service, garbage and trash collection and all other utilities and services, to the Premises. Concessionaire shall be responsible for all costs associated with the installation and provision of all utilities necessary to and used in connection with the Premises. When installing facilities, no trees shall be trimmed or cut without permission of County.

4.1.2. . Taxes and Assessments.

A. Concessionaire acknowledges that occupancy interest and rights to do business on state property being offered to Concessionaire by this Contract may create a possessory interest as that term is defined in Revenue and Taxation Code Section 107.6, and subject Concessionaire to the liability for payment of property taxes levied on such possessory interest.

B. Concessionaire agrees to pay before delinquency all lawful taxes, assessments, or charges that at any time may be levied by the State, County, City, or any tax or assessment levying body upon any interest in or created by this Contract, or any possessory right that Concessionaire may have in or to the premises covered hereby, or the improvements

thereon by reason of Concessionaire's use or occupancy thereof or otherwise, as well as all taxes, assessments, and charges on goods, merchandise, fixtures, appliances, equipment, and property owned by Concessionaire in or about the Premises.

C. Concessionaire shall have the right to contest the amount of any assessment imposed against the Premises or the possessory interest therein; provided, however, the entire expense of any such contest (including interest and penalties which may accrue in respect of such taxes) shall be the responsibility of Concessionaire.

4.2. Rental Payments. Throughout the Term, for the possession and use of the Premises granted herein, Concessionaire shall pay County: (a) the Annual Minimum Rent described in subsection 4.2.1 below, and (b) the Percentage Rent described in subsection 4.2.2 below. For purposes of this Lease “**Annual Rent**” shall mean the aggregate of the Annual Minimum Rent and annual Percentage Rent.

4.2.1. Annual Minimum Rent and Monthly Minimum Rent.

Concessionaire shall pay to County the minimum rent described in this Subsection 4.2.1 during each Lease Year during the Term (the “**Annual Minimum Rent**”). Annual Minimum Rent shall be payable by Concessionaire to County on a monthly basis in equal installments of one-twelfth (1/12th) of the Annual Minimum Rent (the “**Monthly Minimum Rent**”); provided, however, if any period during which the Annual Minimum Rent is calculated is shorter or longer than a calendar year, then the Annual Minimum Rent for such period shall be calculated on a pro rata basis based on the number of days in the applicable period as compared to 365, and Monthly Minimum Rent shall be payable in equal monthly installments of such pro rata Annual Minimum Rent.

During the period from November 1, 2017 through the last day of the month during which the earlier of: (a) the receipt of a **Certificate of**

Occupancy or (b) the Required Construction Completion Date (as defined in Section 5.1 of this Contract) occurs (collectively, the “**Construction Period**”), the Annual Minimum Rent shall be \$100,000.00. Concessionaire shall provide written notice to County of the date of issuance of a Certificate of Occupancy for the Improvements ("CO Date") promptly upon the occurrence thereof.

During the period from the first day of the month immediately following the Construction Period through October 31, 2027, the Annual Minimum Rent shall be \$400,000.00.

During the period from November 1, 2027 through October 31, 2032, the Annual Minimum Rent shall be \$960,000.00.

Starting November 1, 2032, and on every fifth (5th) anniversary thereafter, the Annual Minimum Rent shall be increased by 10% of then current Annual Minimum Rent through the end of the Term.

4.2.2. Percentage Rent. For the purposes of this Lease, “Percentage Rent” for any given month or year shall be defined as the sum of the amounts set forth in this Subsection 4.2.2, less the Annual Minimum Rent for such month or year. Gross Receipts (as defined herein) from each transaction, sale or activity of Concessionaire (or, subject to Subsection 4.2.2.5., of any Sublessee) on, from or within the Premises or Improvements shall be reported under one or more of the percentage categories set forth below, as applicable. Within fifteen (15) days after the close of each and every calendar month of the Term, Concessionaire shall file a report of Gross Receipts and pay to County a sum equal to the total of the following percentages of Gross Receipts for such previous month, less the amount of the installment of Monthly Minimum Rent paid for such previous month.

(a) Food. TEN PERCENT (10%) of Concessionaire's Gross Receipts derived from the sale of food and non-alcoholic beverages from the Premises;

(b) Alcoholic beverages. TWELVE PERCENT (12%) of Concessionaire's Gross Receipts derived from the sale of alcoholic beverages for the Premises;

(c) Parking. TWELVE PERCENT (12%) of Concessionaire's Gross Receipts derived from the parking of motor vehicles (including valet parking) on the Premises;

(d) Retail. TWELVE PERCENT (12%) of Concessionaire's Gross Receipts derived from the sale of miscellaneous items of merchandise, including souvenirs and beach equipment (1) from the Premises or (2) from outside the Premises if the Premises name or logos are used in conjunction with the Premises;

(e) Service Enterprise-Coin Operating Vending Machines. TWENTY FIVE PERCENT (25%) of Concessionaire's Gross Receipts derived from all fees, charges, commissions, money, cash receipts or other things of value received and retained by Concessionaire arising from sales from all vending machines, public telephones and the like located within or upon the Premises;

(f) INTENTIONALLY OMMITTED

(g) Miscellaneous. TWELVE PERCENT (12%) of Concessionaire's Gross Receipts derived from particular activities not otherwise provided for above, including but not limited to the sale of goods and services via television, mail order and/or the internet or similar electronic communications networks.

4.2.2.1. Other Activities. If Director or Concessionaire reasonably determine that a percentage of Gross Receipts is not suitable or applicable for a particular activity not described above,

although permitted hereunder, Director and Concessionaire shall mutually establish a minimum monthly payment to County as payment for the privilege of engaging in such activity, which shall remain effective until the next Renegotiation Date. Said minimum monthly amount shall be reasonable in view of the revenue generated by such activity and shall be included in Percentage Rent, as determined hereunder, in lieu of a percentage of Gross Receipts therefor.

4.2.2.2. Concessionaire agrees to and shall comply with the recordkeeping and accounting procedures, as well as the inspection and audit rights granted to County, set forth in Article 33 of this Contract.

4.2.2.3 Rent Deferral. In consideration of the costs incurred by Concessionaire for the construction of the Improvements for the Redevelopment Work, County grants Concessionaire the right to defer some or all the Annual Percentage Rent payable by Concessionaire under this Contract in an aggregate amount equal to the Required Cost Amount (as defined in Section 5.1 below) in accordance with the terms and provisions of this Subsection 4.2.2.3 (the “Rent Deferral Amount”). Commencing with the first month following the Construction Period and continuing each month thereafter until the Rent Deferral Amount is fully applied (the “Rent Deferral Period”), Concessionaire shall have the right to reduce the Percentage Rent payable for such month in an amount equal to the amount by which the Percentage Rent that would otherwise be payable for such month exceeds the Monthly Minimum Rent payable for such month. The Monthly Minimum Rent shall not be affected. Concessionaire

shall include with each monthly Gross Receipts report required to be delivered by Concessionaire pursuant to the first paragraph of Subsection 4.2.2 above, an accounting of all cumulative reductions in Percentage Rent applied to date under this Subsection 4.2.2.3 and the amount of any remaining unapplied Rent Reduction Amount.

Repayment of Deferred Rent. The Rent Deferral Amount shall accrue interest from the date such amounts would otherwise have been payable under the Contract but for subsection 4.2.2.3 above, until the date of payment as set forth below, at a five percent (5%) annual rate, compounded monthly. The Rent Deferral Amount shall be paid by Concessionaire as follows: commencing on the day following the tenth (10th) anniversary of the Outside Completion Date and continuing on the same day of each month thereafter, Concessionaire shall pay monthly payments of the Rent Deferral Amount in equal monthly installments of principal and interest over a ten (10) year period. The outstanding unpaid balance of the Rent Deferral Amount may be prepaid by Concessionaire, in whole or in part, at any time.

4.3 Gross Receipts. The term "Gross Receipts," wherever used in this Contract, is intended to and shall mean all moneys, property, or any other thing of value received by or owed to Concessionaire and any sub-concessionaire or operator, if other than Concessionaire, through or in connection with the operation of the concession, including any concession-related business carried on through the internet or catalog sales, or from any other business, use, occupation or any combination thereof, originating, transacted, performed in whole or in part, carried on or in connection with the Premises, or from any other use of the Premises, and/or of any business of any kind

that uses the names licensed by this Contract, or that associates with or implies an endorsement by County.

4.3.1. Gross Receipts are intended to be absolutely gross. Except as otherwise set forth herein, there shall be no deduction from Gross Receipts for any overhead or cost or expense of operation, such as, without limitation, salaries, wages, costs of goods, interest, debt amortization, rent credit, collection costs, discounts from credit card operations, insurance and taxes, management fee, general administrative costs or other costs or expenses incurred by Concessionaire, including without limitation, the costs and expenses reimbursed by Sublessees.

4.3.2. Gross Receipts **shall not include** direct taxes imposed upon the consumer and collected therefrom by Concessionaire such as, without limitation, retail sales taxes, excise taxes, or related direct taxes paid periodically by Concessionaire to any governmental agency accompanied by a tax return statement.

4.3.3. Gross Receipts reported by Concessionaire and its Sublessees, assignees, licensees, sub-concessionaires and permittees (collectively and individually referred to in this section 4.3.3 as "Sublessee") **must include** the usual charges for any services, goods, rentals or facilities provided by Concessionaire or its Sublessees, assignees, licensees, sub-concessionaires and permittees, including without limitation (i) all base or minimum rents, percentage rents and other rents payable by Sublessee to Concessionaire, (ii) all tax, insurance, operating expense, repair and maintenance, common area operation, management fee, or other cost or expense reimbursements or charges payable by Sublessee to Concessionaire, and (iii) all charges, fees, commissions, compensation of other amounts payable by Sublessees to

Concessionaire, whether payable in the form of money or other things of value, calculated in accordance with the accounting method described in Section 33.1.

Bona fide bad debts actually incurred by Concessionaire may be deducted from Gross Receipts; however, there shall be no deduction for bad debts based on past experience or transfer to a bad debt reserve. Subsequent collection of bad debts previously not reported as Gross Receipts shall be included in Gross Receipts as the time they are collected.

4.3.4. Gross Receipts shall not include any of the following items:

- a. security deposits paid by a Sublessee to Concessionaire to be held by Concessionaire as security for Sublessee's obligations under its Sublease, except to the extent Concessionaire allocates or applies any portion of such security deposit to unpaid rent or other amounts payable by such Sublessee to Concessionaire, in which event the sum so allocated or applied shall be included in Gross Receipts as of the date of such allocation or application.
- b. an amount equal to the cash or credit refunded or credit allowed on merchandise returned by customers and accepted by Concessionaire, or the amount of cash or credit refunded thereon in lieu of Concessionaire's acceptance thereof, but only to the extent that the sales relating to such merchandise were made in, about or from the Premises; provided that whenever Concessionaire accepts a credit slip as payment for goods or services, the amount of credit shall be included in Gross Receipts.
- c. sales of fixtures, equipment or property which are not Concessionaire's stock in trade;

- d.** the imputed value in excess of the amounts charged by Concessionaire to its employees for meals provided to such employees at no profit to Concessionaire, where such meals are part of the terms of employment;
- e.** the imputed value in excess of the amounts charged by Concessionaire for charitable meals at no profit to Concessionaire, not to exceed three percent (3%) of Gross Receipts in any particular month;
- f.** receipts from insurance claims other than rental interruption or business interruption insurance related to the replacement of Gross Receipts;
- g.** tips, gratuities or service charges given by restaurant patrons to Concessionaire's agents, employees or servants, whether automatically added to the customer's bill or given by the patron separate and apart from the bill.
- h.** interest earned by Concessionaire on funds arising from the Premises or the use thereof, deposited or maintained by Concessionaire in banks or similar financial institutions;
- i.** receipts from vending machines used solely by employees of the business operations
- j.** fees or charges paid to credit card companies in connection with customer purchases made by use of a credit card, provided, however, that the amounts excluded under this paragraph (j) in connection with a particular business operation shall not exceed the actual charges for such matters;

k. interest or other charges paid by customers of Sublessees for the extension of credit; and

l. the sale of promotional merchandise by Sublessee at cost.

4.3.5. Gross Receipts **shall not** include payments reimbursed to Concessionaire for the Cost of each Sublessee's submetered electricity, water and gas for such Sublessee's space, provided that (A) each Sublessee's obligation to reimburse Concessionaire for such utility charges is separate and apart from such Sublessee's obligation to pay rent for its occupancy of the Premises; (B) the reimbursed sum is in an amount equal to the Cost of the Sublessee's usage of such utilities; and, (C) the receipt is actually credited against the cost of the Sublessee's usage of such utilities. For the purpose of the foregoing sentence, the "**Cost**" of the Sublessee's usage of utilities shall mean the actual costs incurred by Concessionaire, exclusive of overhead and general and administrative expenses, in paying the portion of the respective utility bill that is allocable to the Sublessee based on such Sublessee's submetered consumption of such utilities, and in paying the portion of any third party submeter reading and service charge to each submeter that is actually read and a direct allocation of the submetered service charge to each such submeter that is serviced. County shall have the right to approve all submeters and to challenge the legitimacy or amount of any Cost, and all disputes regarding such County approvals or challenges, if not resolved by the parties within thirty (30) days after notice to Concessionaire of such disapproval or challenge, shall be resolved by arbitration pursuant to Section 25 of this Contract.

4.4. Intentionally Omitted

4.5. Renegotiation of Annual Percentage Rents. Effective as of January 1, 2028, and on the January 1st of each tenth (10th) anniversary thereafter (each a “**Renegotiation Date**” and collectively, the “**Renegotiation Dates**”), the Percentage Rent shall be readjusted to the Fair Market Rental Value (as defined below) of the Premises.

4.5.1. Fair Market Rental Value. As used herein, “**Fair Market Rental Value**” shall mean, as of each Renegotiation Date, the fair market rent, including an annual minimum rent and percentage rent, with the percentage rent expressed as a percentage of Gross Receipts in accordance with Subsection 4.2.2, which the Premises would bring, on an absolute net basis, taking into account the Permitted Uses, all relevant terms, conditions and covenants contained in the Contract, if the Premises were marketed for a reasonable time on an open and competitive market to a concessionaire for the purpose of the Permitted Uses, where County and the respective concessionaire are dealing at arms length and neither is under abnormal pressure to consummate the transaction, together with all restrictions, franchise value, earning power and all other factors and data taken into account in accordance with California law applicable from time to time to eminent domain proceedings.

Notwithstanding any contrary provision of this Contract, in connection with the readjustment of Percentage Rent pursuant to this Section 4.4., ***in no event shall any individual Percentage Rent category (i.e., each of categories (a) through (g) in Subsection 4.2.2. above) ever be reduced below the percentage for such Percentage Rent category set forth in Subsection 4.2.2. above***, and the requirement set forth in this sentence that no individual Percentage Rent category percentage shall be reduced below that set forth in Subsection 4.2.2. shall have no effect on the determination of the Fair Market Rental Value for any other Percentage Rent category

in which the Fair Market Rental Value percentage might be greater than that set forth in Subsection 4.2.2.

4.5.2. Renegotiation Period. Not more than one (1) year nor less than nine (9) months prior to the Renegotiation Date, Concessionaire shall deliver to County written notice setting forth Concessionaire's determination of the Fair Market Rental Value of the Premises for the Gross Receipts percentage for Percentage Rent. Concessionaire's notice shall include a list of comparable properties and/or complete copies of any appraisals which it has utilized in its determination, together with such other information regarding such comparable properties or the Premises as Concessionaire deems relevant or as may be reasonably requested by County. Within one hundred twenty (120) days after receipt of Concessionaire's notice, if County disagrees with Concessionaire's determination, County shall deliver to Concessionaire written notice of such disagreement, together with County's determination of Fair Market Rental Value and a list of comparable properties and/or complete copies of any appraisals which it has utilized in its determination, together with such other information regarding such comparable properties or the Premises as County deems relevant or as may be reasonably requested by Concessionaire, to the extent available to County. If County fails to deliver to Concessionaire notice of its disagreement within the aforementioned period and such failure continues for fifteen (15) days after receipt of written notice from Concessionaire, then Concessionaire's determination of Fair Market Rental Value shall be binding on County as of the Renegotiation Date; provided, however, that Concessionaire's notice to County shall conspicuously state in bold faced type that such determination of Fair Market Rental Value shall be binding on County unless County delivers notice of its disagreement within such fifteen (15) day period.

If Concessionaire fails to deliver the notice described in the first sentence of this subsection, setting forth Concessionaire's determination of Fair Market Rental Value, and such failure continues for fifteen (15) days after receipt of written notice from County, then County shall submit its determination of Fair Market Rental Value to Concessionaire, and Concessionaire shall have fifteen (15) days after the submittal by County to Concessionaire of County's determination of Fair Market Rental Value to deliver to County written notice of Concessionaire's agreement or disagreement with County's determination. If Concessionaire fails to deliver notice of such disagreement within such fifteen (15) day period and County's notice to Concessionaire conspicuously stated in bold faced type that such determination of Fair Market Rental Value shall be binding on Concessionaire unless Concessionaire delivers notice of its disagreement within such fifteen (15) day period, then County's determination of Fair Market Rental Value shall be binding on Concessionaire as of the Renegotiation Date.

4.5.3. Negotiation of Fair Market Rental Value. If County (or Concessionaire, as the case may be) does so notify Concessionaire (or County, as the case may be) of its disagreement as provided in Subsection 4.4.2., County and Concessionaire shall have sixty (60) days from the end of the applicable response period in which to agree upon the Fair Market Rental Value for the Premises. County and Concessionaire shall negotiate in good faith during said sixty (60) day period. If the parties do so agree, they shall promptly execute an amendment to this Contract that documents the new Percentage Rent so jointly determined, to be effective upon the Renegotiation Date. Director shall be authorized to execute any such amendment on behalf of County. During the period of negotiation, Concessionaire shall abide by all of the terms and conditions of this Contract, including but not limited to the obligation to continue to

pay to County Annual Minimum Rent and Percentage Rent at the then-existing levels.

4.5.4. Arbitration. If County and Concessionaire fail to reach agreement during the sixty (60) day period set forth in Subsection 4.5.3, then, unless the parties agree otherwise, the Fair Market Rental Value of the Premises shall be determined by arbitration as set forth in Article 25 of this Lease and the parties shall execute an amendment to this Lease setting forth the Fair Market Rental Value as determined by arbitration. In order to determine the Fair Market Rental Value of the Premises, the arbitrator shall take into consideration the terms and provisions applicable to the calculation of the Fair Market Rental Value set forth in Subsection 4.4.1. During the period of arbitration, County and Concessionaire shall abide by all of the terms and conditions of this Contract, including but not limited to Concessionaire's obligation to pay to County Annual Minimum Rent and Percentage Rent at then existing levels.

4.5.5 Retroactivity. In the event that, pursuant to Subsections 4.4.3. or 4.4.4. hereof, the parties execute an amendment to this Lease setting forth the new Percentage Rent, such amendment, if executed prior to the Renegotiation Date, shall be effective as of the Renegotiation Date; if executed after the Renegotiation Date, such amendment shall be retroactive to the Renegotiation Date. In the event that such amendment is executed after the Renegotiation Date, then, within thirty (30) days after such execution, Concessionaire shall pay to County, or County shall pay or, at its election, credit to Concessionaire, the difference, if any, between (a) such Fair Market Rental Value for the Premises and (b) the actual Percentage Rent paid by Concessionaire to County, for the period of time from the Renegotiation Date until the date of such payment. Concessionaire (with respect to overpayments) or County (with respect to

underpayments) shall further be entitled to interest on each portion of such payment from each date on which the applicable rental payments were payable under this Contract to the date paid or credited, whichever is applicable, at the following rates: (i) the interest rate applicable to the first six (6) months following the Renegotiation Date shall be equal to the average daily rate for the non-restricted funds held and invested by the Treasurer and Tax Collector of Los Angeles County during that period, computed by the Auditor-Controller (“**County Pool Rate**”); and (ii) the interest rate applicable to any period of time in excess of six (6) months following the Renegotiation Date shall be the Prime Rate in effect as of the date that is six (6) months after the Renegotiation Date, and such interest shall accrue for the period from the date that is six (6) months after the Renegotiation Date until the date of payment.

No late fee shall be payable under Section 4.5. with respect to any underpayment of rent retroactively readjusted pursuant to this Subsection 4.5.5. as long as Concessionaire pays to County any such rent underpayment and accrued interest within the thirty (30) day period prescribed in this Subsection 4.5.5.

4.6 Payment and Late Fees. Monthly Minimum Rent shall be paid by Concessionaire in advance. Payments of Monthly Minimum Rent shall be received by County on or before the first day of each calendar month of the Term. Percentage Rent shall be paid by Concessionaire monthly in arrears. Percentage Rent due, if any, for a given month of the Term shall be received by County on or before the fifteenth (15th) day of the calendar month following each month of the Term, calculated in accordance with Section 4.2.2 Percentage Rent Payment may be made by check or draft issued and payable to The County of Los Angeles, and mailed or otherwise delivered to the Department of Beaches and Harbors, Los Angeles County, 13837 Fiji Way, Marina del Rey, California 90292, or such other address as may be provided to Concessionaire by County.

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Concessionaire acknowledges that County shall have no obligation to issue monthly rental statements, invoices or other demands for payment, and that the rental payments required herein shall be payable notwithstanding the fact that Concessionaire has received no such statement, invoice or demand. In the event any payment under this Contract is not received by County by the date due, Concessionaire acknowledges that County will experience additional management, administrative and other costs that are impracticable or extremely difficult to determine. Therefore, a fee (“**Late Fee**”) of six percent (6%) of the unpaid amount shall be added to any amount that remains unpaid five (5) days after such amount was due and payable; provided, however, that no Late Fee shall be assessed in the case of the first late payment by Concessionaire during any Lease Year as long as such late payment is cured within one (1) business day after Concessionaire receives written notice from County. In addition to any Late Fee, any unpaid rent due shall additionally bear interest at an annual rate equal to the Applicable Rate, computed from the date when such amounts were due and payable, compounded monthly, until paid. Concessionaire acknowledges that such Late Fee and interest shall be applicable to all identified monetary deficiencies under this Contract, whether identified by audit or otherwise, and that interest on such amounts shall accrue from and after the date when such amounts were due and payable as provided herein (as opposed to the date when such deficiencies are identified by County); provided, however, with respect to any obligation of an Encumbrance Holder in connection with the exercise of its cure rights under Article 34 below, interest accrual on any particular obligation for periods prior to the Encumbrance Holder’s acquisition of leasehold title to the Premises shall be limited to a maximum of three (3) years.

4.7. Changes of Ownership and Financing Events.

Except as otherwise provided in this Section 4.7, each time Concessionaire proposes either (a) a Change of Ownership (that is not an Excluded Transfer) or (b) a Financing Event, County shall be paid (1) an Administrative Charge equal to the Actual Cost incurred by County in connection with its review and processing of said Change of Ownership or Financing Event (“**Administrative Charge**”) and (2) subject to the

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remaining provisions of this Section 4.7, a Net Proceeds Share, in the event County approves such proposed Change of Ownership or Financing Event and such transaction is consummated. “**Net Proceeds Share**” shall mean the applicable amount determined pursuant to Section 4.9. of this Contract. Changes of Ownership and Financing Events are further subject to County approval as provided in Sections 50 (Assignments and Sublease) and 34 (Encumbrances) of this Contract.

4.7.1. Change of Ownership. “**Change of Ownership**” shall mean (a) any transfer by Concessionaire of a five percent (5%) or greater direct ownership interest in this Contract or in any Major Sublease, (b) Concessionaire’s granting of a Major Sublease or the transfer by the Major Sublessee under a Major Sublease of a five percent (5%) or greater direct ownership interest in such Major Sublease, (c) any transaction or series of related transactions not described in subsection 4.7.1.(a) or subsection 4.7.1.(b) which constitutes an Aggregate Transfer of fifty percent (50%) or more of the beneficial residual interests in Concessionaire or a Major Sublease, or (d) a Change of Control (as defined below) of Concessionaire or a Major Sublessee. For the purpose of this Agreement, “**Change of Control**” shall refer to a transaction whereby the transferee acquires a beneficial residual interest in Concessionaire or a Major Sublessee which brings its cumulative beneficial residual interest in Concessionaire or a Major Sublease, as appropriate, to over fifty percent (50%).

4.7.2. Excluded Transfers. Notwithstanding anything to the contrary contained in this Agreement, Changes of Ownership resulting from the following transfers shall not be deemed to create an obligation to pay County an Administrative Charge or a Net Proceed Share, nor shall County have any discretion under Articles 50 (Assignment & Sublease) and 34 (Encumbrances) of this Contract to disapprove such transfers:

4.7.2.1. a transfer to a spouse in connection with a property settlement agreement or decree of dissolution of marriage or legal separation;

4.7.2.2. a transfer of a beneficial interest resulting from public trading in the stock or securities of an entity, where such entity is a corporation whose stock is traded publicly on a national stock exchange or is traded in the over-the-counter market and whose price is regularly quoted in recognized national quotation services; provided, however, that this exclusion shall not apply to a single transaction or series of related transactions whereby fifty percent (50%) or more of the beneficial interest in such entity are transferred, or which otherwise effects a Change of Control in such entity;

4.7.2.3. a mere change in the form, method or status of ownership; it shall not include a transfer between or among individuals and/or entities controlled by such individuals, provided that this exclusion shall not apply to a single transaction or series of related transactions whereby an Aggregate Transfer of fifty percent (50%) or more of the beneficial interests in Concessionaire, this Contract or a Major Sublease has occurred; or

4.7.2.4. any transfer resulting from a Condemnation by County.

4.7.3. Aggregate Transfer. “Aggregate Transfer” shall refer to the total percentage of the shares of stock, partnership interests, membership interests or any other equity interests (which constitute beneficial interests in Concessionaire, this Contract or a Major Sublease, as appropriate) transferred in all transactions (other than those

enumerated in subsection 4.7.2.) occurring since the later of (a) the execution by Concessionaire of this Contract or a Major Sublease, as appropriate, or (b) the most recent Charge of Ownership upon which an Administrative Charge was paid to County.

4.7.4. Beneficial Interest. As used in this Contract, the “**beneficial interest,**” “**beneficial interest in this Contract,**” or “**beneficial interest in a Major Sublease**” shall refer to the interests of the natural persons who comprise the ultimate owner or owners of Concessionaire’s interest in this Contract or a Major Sublease, or a Major Sublessee’s interest in a Major Sublease, whichever is appropriate, regardless of the form of such ownership and regardless of whether such interests are owned through corporations, trusts, partnerships, limited liability companies or layers thereof; provided, however, that if an entity with an ownership interest in the Contract or a Major Sublease is a partnership, corporation or limited liability entity (a) whose beneficial interest in this Contract or a Major Sublease, whoever is appropriate, comprises less than fifteen percent (15%) of its total assets or (b) in which no ten (10) shareholders, partners or members together own more than thirty percent (30%) of the partnership interests, shares, membership interests or other equity interests in the entity, then for the purposes of Sections 4.7. through 4.9. hereof, the entity itself shall be deemed to be the ultimate owner of the beneficial interest in this Contract or a Major Sublease, as appropriate, and the owners of such entity shall not be treated as the ultimate owners of such beneficial interest.

4.7.4.1. Interest held by Entities. Except as otherwise provided herein, an interest in Concessionaire, this Contract or a Major Sublease held or owned by a partnership, limited liability company, corporation or other entity shall be treated as owned by

the partners, members, shareholders or other equity holders of such entity in proportion to their respective equity interests, determined by reference to the relative values of the interests of all partners, members, shareholders or other equity holders in such entity. Where more than one layer of entities exists between Concessionaire or a Major Sublessee, as appropriate, and the ultimate owners, then the foregoing sentence shall be applied successfully to each such entity in order to determine the ownership of the beneficial interests in Concessionaire, this Contract or a Major Sublease, as appropriate, and any transfers thereof.

4.7.4.2. Ownership of Multiple Assets. The proceeds of any event constituting or giving rise to a Change of Ownership shall be apportioned to this Contract or a Major Sublease, whichever is appropriate, and to any other assets transferred in the same transaction in proportion to relative fair market values of the respective assets transferred. The Net Proceeds Share shall be calculated only by reference to the amount of such proceeds apportioned to this Contract, a Major Sublease or the beneficial interests therein, whichever is appropriate.

4.8. Calculation and Payment. A deposit of Fifteen Thousand and 00/100 Dollars (\$15,000) toward the Administrative Charge shall be due and payable upon Concessionaire's notification to County of the proposed Change of Ownership or Financing Event and request for County's approval thereof. If the transaction is approved, the balance of the Administrative Charge, if any, and the Net Proceeds Share shall be due and payable concurrently with the Change of Ownership or Financing Event giving rise to the obligation to pay such fee. If County disapproves the proposed transaction, then, within thirty (30) days after notice of its disapproval, County shall

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deliver to Concessionaire a written notice setting forth the Administrative Charge, together with a refund of the amount, if any, of the deposit in excess of the Administrative Charge otherwise allowable under Section 4.7. In the event that the Administrative Charge exceeds the deposit, then Concessionaire shall pay County the balance of the Administrative Charge otherwise allowable under Section 4.7. within thirty (30) days after receipt of the notice from County setting forth the Administrative Charge and any supporting documentation reasonably requested by Concessionaire within five (5) days after its receipt of such notice. Together with its request for County approval of the proposed transaction, Concessionaire, a Major Sublessee or the holder of a beneficiary interest in this Contract, whichever is appropriate, shall present to County its calculation of the Net Proceeds Share (if any) to be derived therefrom, which shall include the adjustment to Improvement Costs, if any, which may result from the payment of such Net Proceeds Share ("**Calculation Notice**"). Each Calculation Notice shall contain such detail as may be reasonably requested by County to verify the calculation of the Net Proceeds Share. Within sixty (60) days after the receipt of the Calculation Notice, County shall notify the party giving the Calculation Notice as to County's agreement or disagreement with the amount of the Net Proceeds Share set forth therein or the related adjustment of Improvement Costs, if any. Failure of County to approve the Calculation Notice in writing within sixty (60) day period shall be deemed to constitute County's disapproval thereof. Failing mutual agreement within thirty (30) days after the expiration of said sixty (60) day period, the dispute shall be resolved by arbitration as set forth in Section 25 of this Contract in a manner similar to that prescribed herein for the resolution of disputes concerning Fair Market Rental Value. In the event County approves a change of Ownership or Financing Event but a dispute exists as to the Net Proceeds Share in respect thereof or the related adjustment, if any, in Improvement Costs, then the transaction may be consummated, provided, however, that (i) Concessionaire shall remit to County as otherwise required hereunder the undisputed portion of the Net Proceeds Share and (ii) Concessionaire shall deposit the disputed portion of the Net Proceeds Share into an escrow at the closing of the transaction, which portion shall be distributed in accordance with the arbitration of the

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dispute pursuant to Section 25 of this Contract, in a manner similar to that prescribed herein for the resolution of disputes concerning Fair Market Value.

4.8.1. Transfer of Less Than Entire Interest. Where a Change of Ownership has occurred by reason of the transfer of less than all of an owner's beneficial interest in Concessionaire, this Contract or a Major Sublease, the Net Proceeds Share shall be due and payable with respect to portions of such beneficial interest that have been acquired by the transferee since the later of (a) the date of the execution of this Contract (or a Major Sublease) by Concessionaire, (b) the most recent payment of an Administrative Charge with respect to this Contract (or a Major Sublease), or (c) the date which is twelve (12) months prior to the transfer which constitutes the Change of Ownership.

4.8.2. Purchase Money Notes. If the transferor of an interest accepts a note made by transferee of such interest in payment of all or a portion of the acquisition cost (a "Purchase Money Note"), such note shall be valued at its face amount.

4.8.3. Obligation to Pay Net Proceeds Share and Administrative Charge. With respect to a Change of Ownership giving rise to the Administrative Charge and Net Proceeds Share, the obligation to pay the Administrative Charge and Net Proceed Share shall be the joint and several obligation of the transferor and transferee. In the event that the Administrative Charge or Net Proceed Share is not paid when due with respect to the beneficial interest in this Contract, then County shall have the remedies set forth in Section 37 hereof.

4.9. Net Proceeds Share. In the event of a Change of Ownership, the Net Proceeds Share shall be a sum equal to the greater of (a) five percent (5%) of the gross

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sale or transfer proceeds or other consideration given for the interest transferred (but in the case of a transfer to a party affiliated with or otherwise related to the transferor, such consideration shall in no event be deemed to be less than the fair value of the interest transferred), and (b) twenty percent (20%) of the Net Transfer Proceeds from such transfer.

With respect to a Financing Event, the Net Proceeds Share (if any) shall be equal to twenty percent (20%) of the Net Refinancing Proceeds from such Financing Event.

4.9.1. Transaction by Original Concessionaire. In the case of a transfer by Concessionaire (but not a successor or assignee of Concessionaire) constituting a Change of Ownership, “**Net Transfer Proceeds**” shall mean the total cash and other consideration received (but in the case of transfer to a party affiliated with or otherwise related to the transferor, such consideration shall in no event be deemed to be less than the fair value of the interests transferred), less the following costs with respect to Concessionaire (but not its successors or assignees):

4.9.1.1. The lesser of (i) book value or (ii) fair market value of certain equipment installed and owned by Concessionaire and existing on the Premises as of the commencement of the Term, together with the final construction costs incurred by Concessionaire in connection with the construction of the Improvements as set forth in the Approved Final Plans, Specifications and Costs, which costs shall be submitted to County within thirty (30) days after the completion of the improvements described therein and which costs shall be approved in writing by County, together with any subsequent expenditure incurred, whether or not paid, by Concessionaire (but not a sublessee or other party), for physical addition to or improvement or renovation of the Premises (collectively, “**Improvement Costs**”), provided that:

(a) with respect to the book value or fair market value of such equipment installed and owned by Concessionaire on the Premises, such costs, which the parties agree shall in no event exceed _____ and 00/100 dollars (\$_____), shall have been submitted to County within ninety (90) days after the commencement of the Term and are thereafter approved by Director in writing within sixty (60) days after submission, (b) with respect to the construction of improvements costing in excess of twenty five thousand dollars (\$25,000), such costs have been submitted to County within thirty (30) days after the completion of such addition, improvement or renovation and approved by County in writing, and (c) with respect to the construction of improvements costing less than twenty five thousand dollars (\$25,000), such costs may be submitted in accordance with (b) above, or submitted to County as part of Concessionaire's Calculation Notice and thereafter documented to County's reasonable satisfaction, provided, however, that, if Concessionaire elects to submit such costs in its Calculation Notice, such costs, taken cumulatively, shall not exceed twenty five thousand dollars (\$25,000).

4.9.1.2. Commissions, title and escrow costs, and other bona fide closing costs actually paid to third parties and documented to the satisfaction of County, which costs were directly attributable to the consummation of the particular transaction giving rise to the obligation to pay County a Net Proceeds Share (collectively, "**Documented Transaction Costs**").

4.9.2. Transfer by Concessionaire's Successor. In the case of a transfer by a Concessionaire other than original Concessionaire, "**Net**

Transfer Proceeds” shall mean the total cash and other consideration received by that successor Concessionaire (but in the case of a transfer to a party affiliated with or otherwise related to the transferor, such consideration shall in no event be deemed to be less than the fair value of the interests transferred), minus the following costs with respect to such successor Concessionaire:

4.9.2.1. The purchase price such successor paid to Concessionaire or such successor’s seller for the interest acquired;

4.9.2.2. Improvement Costs actually paid by such successor Concessionaire, provided that such costs have been submitted to and approved by County to the extent provided in subsection 4.9.1.1. with respect to Concessionaire; and,

4.9.2.3. Documented Transaction Costs with respect to the transfer of the interest by the successor.

4.9.3. Transfers of Major Sublessee’s Interest. With respect to any Change of Ownership described in subsection 4.7.1(b), subsections 4.9.1. and 4.9.2. shall apply, except that any rents or other amounts received by Concessionaire from the Major Sublessee and passed through to County under any provision of this Contract (other than payment of Net Proceeds Share) shall be disregarded in the computation of Net Transfer Proceeds.

4.9.4. Other Transfers. With respect to any Change of Ownership not described in subsections 4.9.1. through 4.9.3. (i.e., a transfer of an interest in any entity holding a direct or indirect ownership interest in this Contract or in a Major Sublease), subsections 4.9.1. and 4.9.2. shall apply to such Change of Ownership, except that in lieu of deducting Improvement Costs in determining Net Transfer Proceeds, the cost to the transferor of the interest being transferred shall be deducted. Furthermore,

in the event that any such Change of Ownership produces a Net Proceeds Share, the then existing Improvement Costs shall be increased by an appropriate amount to reflect such Net Proceeds Share, as if it had been realized by Concessionaire upon a transfer of a comparable interest in this Contract or in a Major Sublease, as appropriate.

4.9.5. Net Refinancing Proceeds. “Net Refinancing Proceeds” shall mean the gross principal amount of any Financing Event after the date of this Contract, minus (i) the principal amount of Concessionaire’s existing financing, (ii) Improvement Costs incurred by Concessionaire and not paid for or repaid with the proceeds of any Financing Event and (iii) Documented Transaction Costs with respect to such Financing Event.

4.9.6. Effect of Refinancing on Improvement Costs. Upon payment to County of a Net Proceeds Share in connection with a Financing Event, then the Improvement Costs incurred by Concessionaire prior to such Financing Event shall be increased by the amount of Net Refinancing Proceeds derived from such Financing Event and the Documented Transaction Costs incurred with respect thereto and shall be in addition to Improvement Costs incurred by Concessionaire after such Financing Event.

4.9.7. Transfers to which Sections 4.7 through 4.9 Apply. The provisions of Sections 4.7. through 4.9. hereof shall apply to all transfers of beneficial interests in this Contract or a Major Sublease which constitute a Change of Ownership, unless such transfers are otherwise excluded pursuant to subsection 4.7.2. Furthermore, the provisions of Sections 4.7. through 4.9. of this Contract, and the principles set forth therein, shall apply to any transfer or series of transfers which County can demonstrate was primarily structured for the purpose of avoiding the

obligation to pay Net Proceeds Share set forth in Sections 4.7 through 4.9. of this Contract and which, viewed together, would otherwise constitute a Change of Ownership.

4.9.8. Payment. Net Proceeds Share shall be due and payable concurrently with the transfer giving rise to the obligation to pay such fees and shall be the joint and several obligation of the transferee and transferor. In the event that the proceeds of the transaction giving rise to the obligation to pay Net Proceeds Share are comprised, in whole or in part, of assets other than cash, then the cash payment of the Net Proceeds Share shall reflect the fair market value of such non-cash assets as of the date of the Change of Ownership, which shall be set forth in the Calculation Notice. Notwithstanding the foregoing, in the case of a Change of Ownership described in subsection 4.7.1.(b), the Net Proceeds Share shall be payable to County as and when the Net Transfer Proceeds are received, with the Net Proceeds Share being equitably apportioned to the payments derived by Concessionaire from said Change of Ownership (other than any payments passed through to County under this Contract).

4.9.9. Shareholder, Partner, Member, Trustee and Beneficiary List. Prior to the execution of this Contract by County, prior to each subsequent Change of Ownership or Financing Event and upon the request of County (which requests shall be no more frequent than once per year), Concessionaire shall permit County to review an updated schedule listing the names and mailing addresses of all shareholders, partners, members and other holders of equity interests in Concessionaire. In the event that such shareholder, partner, member or other interest holder is a trust, Concessionaire shall include in such schedule the name and mailing address of each trustee of said trust, together with the names and mailing addresses of each beneficiary of said

trust with greater than a five percent (5%) actuarial interest in distribution from, or the corpus of, said trust; provided, however, that to the extent that Concessionaire is prevented by Applicable Laws from obtaining such information regarding the beneficiaries of said trust(s), Concessionaire shall have complied with this provision if Concessionaire uses its best efforts to obtain such information voluntarily and provides County with the opportunity to review any such information so obtained. Concessionaire agrees to use its best efforts to provide County with any additional information reasonably requested by County in order to determine the identities of the holders of five percent (5%) or greater beneficial interests in Concessionaire or its constituent shareholders, partners, members or other interest holders in this Contract or a Major Sublease.

5. REDEVELOPMENT WORK; ALTERATIONS.

5.1. Redevelopment Work. Promptly following the Effective Date, Concessionaire shall perform certain redevelopment and renovation work with respect to the Premises set forth in the Facility Improvement Plan attached to this Contract as Attachment No. 2 (the “Facility Improvement Plan”), including without limitation, (a) [THE LANGUAGE FOR THE REDEVELOPMENT WORK TO BE INSERTED UPON RECEIPT FROM THE CONCESSIONAIRE] as a condition to the issuance of the entitlement approvals or building permits for the Redevelopment Work (collectively, the “**Redevelopment Work**”). Director shall have the authority to approve modifications to each of the above approximate square footages for various components of the Redevelopment Work. The Redevelopment Work shall be performed in accordance with the Facility Improvement Plan and the Final Plans and Specifications for the Redevelopment Work as established under Subsection 5.3.3 of this Contract to the extent that the Final Plans and Specifications for the Redevelopment Work are not approved by Director until after the Effective Date).

Concessionaire shall be responsible for the acquisition of and compliance with all required governmental (including, without limitation, County, California Coastal Commission and California Department of Parks and Recreation) planning and entitlement approvals required to perform the Redevelopment Work.

Concessionaire shall be solely responsible for all costs and expenses incurred in connection with the performance of the Redevelopment Work (including all design, engineering, entitlement and construction activities). Concessionaire shall expend on the Redevelopment Work not less than the Required Cost Amount (as defined below) for out-of-pocket costs paid to third parties for the performance of the Redevelopment Work that comply with the definition of Applicable Redevelopment Costs set forth below. The immediately preceding sentence shall not be construed as a maximum amount that Concessionaire is required to expend for Applicable Redevelopment Costs for the Redevelopment Work, but only as a minimum amount, and Concessionaire shall be required to perform the Redevelopment Work in accordance with the requirements and standards set forth in this Article 5 even if the Applicable Redevelopment Costs necessary to do so exceed the Required Cost Amount. Only Applicable Redevelopment Costs may be used to satisfy the Required Cost Amount. “**Applicable Redevelopment Costs**” shall mean all out-of-pocket hard construction costs paid to unaffiliated third parties for the construction of the Redevelopment Work, including the profit, overhead and conditions in reasonable market standard amounts paid to the non-Concessionaire affiliated general contractor that is responsible for the construction of the Redevelopment Work. Applicable Redevelopment Costs shall not include any soft costs, including without limitation: (a) architectural, design and engineering fees; (b) governmental permit fees; (c) project oversight and management fees; (d) costs for furniture, fixtures and equipment; (e) accounting, legal and insurance costs incurred in connection with the Redevelopment Work; (f) construction loan fees, costs or interest; or (g) environmental documents and CEQA compliance.

The “**Required Cost Amount**” for the Redevelopment Work means \$[TBD WITHIN THE SELECTED PROPOSAL’S FINAL NEGOTIATIONS] as adjusted in accordance with the terms and provisions of this paragraph; provided, however, that the Required Cost Amount shall not be adjusted to an amount that is less than \$[TBD WITHIN THE SELECTED PROPOSAL’S FINAL NEGOTIATIONS].

Concessionaire shall comply with all time deadlines and schedules set forth in this Article 5 relating to the completion of the design and construction of the Redevelopment Work (subject to any extension set forth in Section 5.6 for Force Majeure delay). Concessionaire’s failure to do so shall, if not cured within the applicable cure period set forth in Subsection 36.1(6), constitute an Event of Default. Except to the extent Concessionaire is prevented from so doing by Force Majeure delay as provided in Section 5.6, Concessionaire shall: (1) cause the commencement of construction of the Redevelopment Work to occur on or before the date (the “**Required Construction Commencement Date**”) which is twelve (12) months following the Effective Date; (2) following commencement of construction of the Redevelopment Work diligently continue performance of the Redevelopment Work through completion of the Redevelopment Work in accordance with the construction schedule submitted to and approved by Director pursuant to Section 5.4.6 below; and (3) substantially complete the Redevelopment Work not later than the third (3rd) anniversary of the Effective Date (the “**Required Construction Completion Date**”). Notwithstanding any contrary provision of this Article 5 in no event shall the Required Construction Commencement Date or Required Construction Completion Date be extended for more than one (1) year for any Force Majeure delay.

Concessionaire shall have the right to extend the Required Construction Commencement Date for up to two periods of six (6) months by written notice to Director not later than thirty (30) days prior to the then-existing Required Construction Commencement Date. **In the case of the second extension of the Required Construction Commencement Date**, a condition to the extension shall be the

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concurrent delivery to County with its extension notice of an extension fee equal to Twenty Thousand Dollars (\$20,000.00). No extension of the Required Construction Commencement Date shall extend the Required Construction Completion Date. Concessionaire shall have the separate right to extend the Required Construction Completion Date for up to two periods of six (6) months by written notice to Director not later than thirty (30) days prior to the then-existing Required Construction Completion Date. **In the case of the second extension of the Required Construction Completion Date**, a condition to the extension shall be the concurrent delivery to County with its extension notice of an extension fee equal to Twenty-Five Thousand Dollars (\$25,000.00). Neither the Required Construction Commencement Date nor the Required Construction Completion Date shall be extended for more than an aggregate of one (1) year each pursuant to this paragraph.

Concessionaire acknowledges that the principal inducement to County to enter into this Contract is the timely commencement, performance and completion by Concessionaire of the Redevelopment Work. Thus, failure of Concessionaire to timely commence, perform and complete of the Redevelopment Work shall be considered a material breach pursuant to section 36 of this Contract.

5.2. Application of Article 5 to Redevelopment Work. The remaining sections of this Article 5 after this Section 5.2 pertain to the construction of the Redevelopment Work and to any other Alterations (as defined below) which Concessionaire may be required or desire to make to the Premises during the Term. For purposes of this Lease, "**Alterations**" shall mean the construction of any alterations or modifications to the Improvements located on the Premises or the construction of any new Improvements. The Redevelopment Work shall be considered to be Alterations. Accordingly, except as expressly provided in this Article 5, all of the terms and provisions of Article 5 of this Lease after this Section 5.2 that are applicable to Alterations shall also be applicable to the Redevelopment Work.

5.3. Plans and Specifications for Alterations. Concessionaire shall make no Alterations without the prior written approval of the Director, which approval shall not be unreasonably withheld, conditioned or delayed. Prior and as a condition precedent to the construction of any Alterations, Concessionaire shall submit to Director, for Director's approval, the plans, specifications and other materials described in this Section 5.3 pertaining to such Alterations. All Alterations must be consistent with the Permitted Uses set forth in Article 6 of this Contract.

5.3.1. Schematics and Narrative. Concessionaire shall submit to Director six (6) sets of schematic plans together with a narrative description and construction cost estimate summary clearly delineating the nature, size, configuration and layout of the Alterations. Such plans shall, among other things, clearly delineate the architectural theme or motif of the Alterations and shall identify and illustrate all affected boundaries of the Premises and all affected rights-of-way or other areas reserved to County or third parties which are located thereon. After receipt of such plans, Director shall have sixty (60) days within which to approve or disapprove such submission in writing. Failure of Director to approve such submission in writing within said sixty (60) day period shall be deemed disapproval of said submission. Following any deemed disapproval of such submission by Director, Director shall, within thirty (30) days after receipt of a written request from Concessionaire, disclose to Concessionaire in writing Director's objections to the submission. After approval of schematic plans (or subsequent approval of preliminary plans or Final Plans and Specifications) by Director, if changes in such plans are required by conditions of approval of the Alterations imposed by the California Coastal Commission or other governmental agency with jurisdiction thereover ("Approved Governmental Changes"), Concessionaire shall promptly advise Director in writing of such changes

and Director shall not disapprove those changes that constitute **Approved Governmental Changes**.

5.3.2. Preliminary Plans and Specifications. As soon as reasonably practicable after Director's approval of the materials submitted pursuant to Subsection 5.3.1, Concessionaire shall submit to Director six (6) sets of preliminary plans, outline specifications and construction cost estimates for the Alterations. The preliminary plans, outline specifications and construction cost estimate shall conform to, expand upon and reflect a natural evolution from the descriptions and estimates set forth in the approved schematic plans and narrative. **Any difference in the scope, size, configuration, arrangement or motif of the Improvements from those described in the approved schematics and narrative approved pursuant to Section 5.3.1 hereof shall be separately identified and described.** The preliminary plans shall be of a detail and scope that is typically associated with design development drawings. Director shall have twenty-one (21) days from receipt within which to approve or reasonably disapprove such submission, and Director may disapprove said preliminary plans only on the grounds that (i) they do not reflect a natural evolution from the schematic plans approved pursuant to Section 5.3.1 or that they materially differ from such approved schematic plans and narrative (exclusive of any Approved Governmental Changes), or (ii) that any new, different or additional specifications for the Improvements not expressly set forth in, and approved by Director as a part of, the schematic plans do not meet the requirements for the Improvements set forth in this Article 5. Failure of Director to disapprove said preliminary plans within twenty one (21) days after Director's receipt thereof shall be deemed Director's approval thereof; provided, however, that in the event that the preliminary plans, outline specifications and construction cost estimates contain substantial changes from the approved schematics and

narrative pursuant to Section 5.3.1 (other than Approved Governmental Changes), then Director shall have sixty (60) days in which to approve said submission, which approval shall be deemed withheld if not granted in writing within such sixty (60) day period; and provided further, that together with the submission of the preliminary plans, outline specifications and construction cost estimates, Concessionaire must deliver to Director a transmittal letter containing the following text prominently displayed in bold faced type:

“PURSUANT TO SUBSECTION 5.3.2. OF THIS CONTRACT, IF THESE MATERIALS CONTAIN NO SUBSTANTIAL CHANGES FROM THE MATERIALS PREVIOUSLY SUBMITTED TO YOU (OTHER THAN APPROVED GOVERNMENTAL CHANGES), YOU HAVE TWENTY ONE (21) DAYS AFTER RECEIPT OF THESE MATERIALS IN WHICH TO APPROVE OR DISAPPROVE THEM. FAILURE TO DISAPPROVE THESE MATERIALS IN WRITING WITHIN TWENTY-ONE (21) DAYS OF YOUR RECEIPT OF THESE MATERIALS SHALL CONSTITUTE YOUR APPROVAL OF THEM.”

Following any deemed disapproval of such submission by Director, Director shall, within thirty (30) days after receipt of a written request from Concessionaire, disclose to Concessionaire in writing Director’s objections to the submission.

5.3.3. Final Plans and Specifications. As soon as reasonably practicable after Director’s approval of the preliminary plans submitted pursuant to Section 5.3.2, outline specifications and construction cost estimates, Concessionaire shall submit for approval by Director six (6) complete sets of final plans, detailed specifications and a construction cost estimate for the Alterations, together with one (1) set of appropriate

structural computations, identical to those requested or required by the County Director of Public Works incident to the issuance of building permits under the relevant provisions of the Los Angeles County Building Code. Concessionaire shall file duplicate copies of the final plans, detailed specifications and construction cost statement required by this Section with the County Director of Public Works, together with the necessary and appropriate applications for building permits. Any difference in the scope, size, configuration, arrangement or motif of the Alterations from those described in the approved preliminary plans and specifications pursuant to Section 5.3.2 shall be separately identified and described. Director shall have twenty one (21) days after receipt within which to approve or disapprove such submission, and Director may disapprove such submission only on the grounds that (i) they do not reflect a natural evolution from or that they materially differ from the approved preliminary plans, outline specifications and construction cost estimates (exclusive of any Approved Governmental Changes), or (ii) that any new, different or additional specifications for the Improvements not expressly set forth in, and approved by Director as a part of, the preliminary plans pursuant to Section 5.3.2 do not meet the requirements for the Improvements set forth in this Article 5. Failure of Director to disapprove said final plans and related materials within twenty one (21) days after Director's receipt shall be deemed Director's approval thereof; provided, however, that in the event that the final plans, detailed specifications and construction cost estimate contain substantial changes from the approved preliminary plans and specifications (other than Approved Governmental Changes), then Director shall have sixty (60) days in which to approve said submission, which approval shall be deemed withheld if not granted in writing within such sixty (60) day period; and provided further, that together with the submission of the final plans, detailed specifications and construction cost estimate, Concessionaire must deliver to Director a

transmittal letter containing the following text prominently displayed in bold faced type:

“PURSUANT TO SUBSECTION 5.3.3. OF THIS CONTRACT, IF THESE MATERIALS CONTAIN NO SUBSTANTIAL CHANGES FROM THE MATERIALS PREVIOUSLY SUBMITTED TO YOU (OTHER THAN APPROVED GOVERNMENTAL CHANGES), YOU HAVE TWENTY-ONE (21) DAYS AFTER RECEIPT OF THESE MATERIALS IN WHICH TO APPROVE OR DISAPPROVE THEM. FAILURE TO DISAPPROVE THESE MATERIALS IN WRITING WITHIN TWENTY ONE (21) DAYS OF YOUR RECEIPT OF THESE MATERIALS SHALL CONSTITUTE YOUR APPROVAL OF THEM.”

Following any deemed disapproval of such submission by Director, Director shall, within thirty (30) days after receipt of a written request from Concessionaire, disclose to Concessionaire in writing Director’s objections to the submission. Director’s approval shall not be unreasonably withheld, conditioned or delayed; provided, however, that it shall be deemed reasonable to disapprove any submission not in substantial conformity with the approved preliminary plans and specifications (exclusive of any Approved Governmental Changes), or which contains new, different or additional specifications for the Improvements which were not expressly set forth in, and approved by Director as a part of, the preliminary plans and which do not meet the requirements for the Improvements set forth in this Article 5. No material modification shall be made to the Alterations described in the approved final plans, specifications and costs (the “**Final Plans and Specifications**”) without the prior written approval of Director, which shall not be unreasonably withheld, conditioned or delayed.

5.4. Conditions Precedent to the Commencement of Construction. No Redevelopment Work, or other Alterations shall be commenced until each and all of the following conditions have been satisfied:

5.4.1. Permits and Other Approvals. Concessionaire shall have received and furnished the Department with copies of all permits, licenses and other governmental approvals necessary for commencement of the Alterations.

5.4.2. Copies of Construction Contracts. Concessionaire shall have furnished County with copies of any contract(s) entered into between Concessionaire and any general contractor(s) employed for the purpose of constructing the Alterations.

5.4.3. Performance and Payment Bonds. Concessionaire shall, at its own cost and expense, have furnished County with the following separate corporate surety bonds (or with the substitute security set forth below) not less than ten (10) days prior to the commencement of construction, which bonds (or other security) must be in form and content reasonably satisfactory to County:

5.4.3.1. A corporate surety performance bond (“**Performance Bond**”) issued by a surety company licensed to transact business as such in the State of California, in an amount not less than one hundred percent (100%) of the amount of all hard construction costs approved by County in conjunction with the approved Alteration. The Performance Bond and its issuer shall be in all material respects reasonably satisfactory to County. It shall name Concessionaire as principal and said issuer as surety, and County as obligee (and which may include an Encumbrance Holder

as an additional obligee), assuring full and satisfactory performance by Concessionaire of Concessionaire's obligations herein to build, construct and otherwise complete the Improvements described in the approved final plans and specifications.

5.4.3.2. A corporate surety payment bond, issued by a surety company licensed to transact business as such in the State of California, with Concessionaire as principal, said company as surety and County as obligee (and which may include an Encumbrance Holder as an additional obligee), in a sum equal to one hundred percent (100%) of the total construction cost anticipated to be incurred in connection with the approved work, guaranteeing payment for all materials, provisions, supplies and equipment used in, upon, for or about the performance of said construction work or for labor done thereon of any kind whatsoever and protecting County from any and all liability, loss or damages arising out of or in connection with any failure to make such payment (the "**Payment Bond**"). The Payment Bond shall be in form and content reasonably satisfactory to County.

In the event that construction is performed by a licensed general contractor on behalf of Concessionaire, provided that such contractor provides County with a bond or bonds compliant with this Subsection, and in all material respects reasonably satisfactory to County and otherwise complying with this Subsection, County will accept such contractor's bonds in lieu of the Performance Bond and/or Payment Bond by Concessionaire required by this Subsection 5.4.3.

5.4.4. Alternative Security. In lieu of providing the Payment and Performance Bonds, Concessionaire may provide any of the following alternative security: (i) a completion guaranty, in form and substance reasonably acceptable to Director, made by an individual or entity with a sufficient net worth and liquidity, in the sole discretion of Director, to comply with the terms of such guaranty in view of the potential financial responsibility involved, (ii) a certificate of deposit, cash or United States governmental security, (iii) an Irrevocable Stand By Letter of Credit, or (iv) a set aside letter from Concessionaire's construction lender. The security described in clause (ii), (iii) and (iv) above shall be in an amount equal to one hundred percent (100%) of the construction contract price for hard costs, and shall permit County to draw thereon to complete the construction of the Improvements if same have not been completed by Concessionaire or if a material Event of Default has occurred under this Contract. In addition, Director also shall have the authority to accept in lieu of the Payment and Performance Bonds, so-called "**Subguard**" insurance in such amount, on such terms and issued by such carrier as approved by Director, in combination with such other security, such as a completion guaranty, as acceptable to Director. Any alternative security provided by Concessionaire pursuant to this subsection may name County and Concessionaire's construction lender as co-beneficiaries. A condition precedent to Concessionaire's right to provide the alternate security described in this Subsection 5.4.4. shall be delivery by Concessionaire to County of an opinion of legal counsel licensed to practice in the State of California and in a form acceptable to County to the effect that the construction work does not constitute a public work of improvement requiring the delivery of the bonds described in Subsection 5.4.3. above. Director shall have the authority, in his reasonable discretion, to modify, waive or reduce the amount of any bonds or alternate security required hereunder.

5.4.5. Evidence of Financing. Concessionaire shall have provided evidence reasonably satisfactory to County of its having sufficient financial resources, as reasonably determined by Director, to complete the Redevelopment Work or other Alterations, as applicable. Concessionaire shall furnish Director with copies of all final notes, guarantees, partnership, shareholder or limited liability company agreements, construction loan and/or permanent loan commitments, as applicable, evidence of equity, documents creating and/or perfecting security interests, and all documents and exhibits referred to in any of the foregoing, together with any and all recorded documents affecting an interest in the Premises.

5.4.6. Work Schedule. With respect to the Redevelopment Work, unless the construction schedule for the Redevelopment Work is submitted to and approved by Director prior to the Effective Date, Concessionaire shall submit to Director no later than thirty (30) days after the Effective Date a construction schedule for the performance of the Redevelopment Work. Director shall have the right to reasonably approve such construction schedule as being consistent and compatible with the Required Construction Commencement Date and Required Construction Completion Date set forth in Section 5.1. above; provided, however, that Director shall have no liability in connection with the approval of such construction schedule, nor shall Director's approval of such construction schedule in any manner relieve or otherwise affect Concessionaire's obligations under this Contract with respect to the commencement and completion of the Redevelopment Work on or before the respective required dates for such commencement and completion set forth in Section 5.1. above.

5.5. County Cooperation. In its proprietary capacity, the Department shall cooperate with and assist Concessionaire, to the extent reasonably requested by Concessionaire, in Concessionaire's efforts to obtain the appropriate governmental approvals, consents, permits or variances which may be required in connection with the performance by Concessionaire of the Redevelopment Work, as applicable. Such cooperative efforts may include the Department's joinder in any application for such approval, consent, permit or variance, where joinder therein by the Department is required or helpful; provided, however, that Concessionaire shall reimburse County for the **Actual Cost** incurred by the Department in connection with such joinder or cooperative efforts. Notwithstanding the foregoing, Concessionaire and County acknowledge that the approvals given by County under this Contract are approvals pursuant to its authority under Sections 25536 and 25907 of the California Government Code; that approvals given under this Contract in no way release Concessionaire from obtaining, at Concessionaire's expense, all permits, licenses and other approvals required by law for the construction of Improvements on the Premises and operation and other use of such Improvements on the Premises; and that the Department's duty to cooperate and County's approvals under this Contract do not in any way modify or limit the exercise of County's governmental or regulatory functions or decisions as distinct from its proprietary functions pursuant to this Contract.

5.6. Delays in Commencement and Completion of Redevelopment Work.

Upon commencement of construction of the Redevelopment Work, Concessionaire shall thereafter diligently pursue the completion of such construction by the Required Construction Completion Date, subject to Force Majeure as set forth below. If Concessionaire is delayed in the commencement of construction or completion of the Redevelopment Work due to Force Majeure, then the Required Construction Commencement Date and the Required Construction Completion Date, if and to the extent that the event actually causes a delay in the commencement and completion of construction (as applicable) shall be extended by the period of the delay caused by such Force Majeure. Notwithstanding the foregoing, (a) any extension due to Force

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Majeure shall be limited to the period of the delay caused by the Force Majeure event and no such delay shall be considered to have commenced unless Concessionaire notifies Director in writing of the commencement of such delay within ten (10) business days after Concessionaire's discovery of the delay; (b) in no event shall the Required Construction Commencement Date be extended for more than an aggregate of one year due to Force Majeure; and (c) in no event shall the Required Construction Completion Date be extended for more than an aggregate of one year due to Force Majeure. Concessionaire and Director shall discuss and attempt to agree on the length of time of any entitled delay due to Force Majeure pursuant to this Section 5.6. If they are unable to agree within thirty (30) days after written notice from Concessionaire of the event or occurrence giving rise to Concessionaire's claim to an entitlement to a delay under this Section 5.6, the matter shall be arbitrated as set forth in Article 25.

5.7. Manner of Construction.

5.7.1. General Construction Standards. All construction, alteration, modification or repairs permitted herein shall be accomplished by Concessionaire in a good and workmanlike manner and with due diligence. Concessionaire shall take all commercially reasonable steps to minimize any damage, disruption or inconvenience caused by such work and make adequate provisions for the safety and convenience of all persons affected thereby. Concessionaire shall repair, at its own cost and expense, any and all damage caused by such work, and shall restore the area upon which such work is performed to a condition which is at least equal to or better than the condition which existed before such work was commenced. Additionally, Concessionaire shall pay or cause to be paid all costs and expenses associated therewith and shall indemnify, defend and hold County, its Special Districts, Elected Officials, Officers, Agents, Employees and Volunteers (collectively, **County and its Agents**) and the State of California harmless from and against all liability, damages or

injury, costs, expenses, losses, demands, actions or claims (including attorney and expert witness fees) arising out of or in connection with the performance of such work, and other acts and omissions arising from and/or related to the Concessionaire's use of the Premises, except to the extent that such damages, costs, expenses, losses or claims are caused by County, its employees, contractors or agents. Dust, noise and other effects of such work shall be controlled using accepted measures customarily utilized in order to control materially adverse effects associated with construction projects in well populated and developed areas of Southern California.

5.7.2. Utility Work. Any work performed by or on behalf of Concessionaire or any occupant of the Premises to connect to, repair, relocate, maintain or install any storm drain, sanitary sewer, water line, gas line, telephone conduit, or any other utility service shall be performed in a manner that minimizes material interference with the provision of such services to the Premises and other persons.

5.7.3. Construction Safeguards. Concessionaire shall erect and properly maintain at all times, as required by the conditions and the progress of work performed by or on behalf of Concessionaire, all necessary safeguards for the protection of workers and the public.

5.7.4. Compliance with Construction Documents and Laws; Issuance of Permits. All Improvements on the Premises shall be completed in compliance with any construction documents approved by County and also in compliance with all Applicable Laws. Concessionaire shall have the sole responsibility for obtaining all necessary permits and shall make application for such permits directly to the person or governmental agency having jurisdiction thereover.

5.7.5. Notice to Director; Damage to County Improvements.

Concessionaire further agrees to keep Director apprised of the progress of the work to the end that Director may timely inspect the Premises to assure proper safeguarding of any County-owned or State-owned improvements existing on or around the Premises, including but not limited to seawalls, underground conduits and utility lines. If any such County-owned improvement is damaged in connection with said construction activity, Concessionaire agrees to repair such damage immediately at no cost or expense to County or, in the event that Concessionaire fails to effectuate such repair within five (5) business days after written notice from County (or such longer period as may be reasonably required to complete such repair so long as Concessionaire commences such repair within five (5) business days and thereafter diligently prosecutes same to completion), County may enter upon the Premises to make such repairs, the Actual Cost of which shall be paid by Concessionaire within two (2) business days after demand by County. In the case of damage to a County-owned improvement that does not involve risk of personal injury, risk of damage to other improvements, risk of curtailment or diminishment of service or access, or any other emergency situation, the references to “five (5) business days” in this Subsection 5.7.5. shall be changed to “thirty (30) days.”

5.7.6. Rights of Access. Representatives of the Department shall, upon reasonable notice and at reasonable times during normal business hours, have the right of reasonable access to the Premises and the Improvements thereon without charges or fees, but at no cost or expense to Concessionaire, for the purpose of ascertaining compliance with the terms and conditions of this Contract, including but not limited to the inspection of the construction work being performed. Such access

shall be reasonably calculated to minimize interference with Concessionaire's construction and/or operations, and County shall comply with industry safety standards in connection with any such access. Concessionaire shall have the right to have a representative present to accompany the representatives of the Department in connection with such access. In the event of any emergency which is life-threatening or which involves the threat of potential substantial damage, County shall have the right to enter the Premises immediately and without notice to or accompanied by Concessionaire.

5.7.7. Notice of Completion; As-Built Drawings. Upon completion of the Redevelopment Work or any other Alterations, Concessionaire shall file or cause to be filed in the Official Records of the County of Los Angeles a Notice of Completion (the "**Notice of Completion**") with respect to the Improvements and Concessionaire shall deliver to County, at no cost to County, two (2) sets of Conoflex or Mylar final as-built plans and specifications of the Improvements (or such portions thereof as affected by the work and as to which plans would customarily be prepared (e.g., excluding those components of interior renovations as to which plans are not applicable)).

5.7.8. Final Completion Certificate. Promptly after completion of the Redevelopment Work or any other Alterations, upon Concessionaire's request, County shall execute and deliver to Concessionaire a final completion certificate (the "**Final Completion Certificate**") as to the work which is the subject thereof, which shall conclusively evidence the completion of such work by Concessionaire in accordance with the terms of this Contract.

5.8. Use of Plans. Contracts between Concessionaire and any architect, design professional or licensed contractor in connection with Alterations shall provide, in form and content reasonably satisfactory to County, for the assignment thereof to County (and Concessionaire's Encumbrance Holder(s) if required by Concessionaire's Encumbrance Holder(s)) as security to County for Concessionaire's performance hereunder, and County shall be furnished with a copy of any such contract, together with the further agreement of the parties thereto, that if this Contract is terminated by County due to Concessionaire's default, County (or if County enters into a new contract with Concessionaire's Encumbrance Holder pursuant to Article 34, then Concessionaire's Encumbrance Holder) may, at its election, use any plans and specifications created by such architect, design professional or contractor in connection with the contract for such Alterations, upon the payment of any sums due to any party thereto. County's right to elect to use plans and specifications as described above shall not include the unauthorized right to use any trademarks, trade names or logos of Concessionaire or any such architect, design professional or contractor. The assignment to County and Concessionaire's Encumbrance Holder(s) described in this Section 5.8. shall be effective until the Final Completion Certificate for the subject work is issued, and shall be subordinate to the security interest, if any, of Concessionaire's construction lender in the assigned contract, which subordination shall be in a form reasonably acceptable to Concessionaire's construction lender.

5.9. Where Director Approval Not Required. Notwithstanding the foregoing, and notwithstanding anything to the contrary in this Article 5, Concessionaire shall not be required to seek or obtain the approvals of Director described in this Article 5 (including those set forth in Section 5.3. and 5.14.) for Alterations where all of the following conditions are satisfied: (i) the total cost of the project is less than Fifty Thousand Dollars (\$50,000), adjusted annually to reflect the increase or decrease in the ENR Index from and after the Effective Date; provided, however, that in no event shall such adjustment result in a reduction of the threshold for Director approval to less than Fifty Thousand Dollars (\$50,000); and provided, further that the cost threshold set forth

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in this clause (i) shall not be applicable to typical office, restaurant or retail interior leasehold improvements; (ii) none of the proposed construction activity is structural in nature; and (iii) none of the proposed construction, additions, modifications or changes materially affect or are visible from the exterior of the Premises; provided, however, that whenever Concessionaire makes or constructs or permits any improvements in or to the Premises, Concessionaire shall (a) give written notice thereof (including a description of the work to be done and the permits obtained for such work), and (b) furnish a copy of “as-built” plans upon completion of such work to County.

5.10. Protection of County. Nothing in this Contract shall be construed as constituting the consent of County, express or implied, to the performance of any labor or the furnishing of any materials or any specific Improvements, alterations or repairs to the Premises of any part thereof by any contractor, subcontractor, laborer or materialman, nor as giving Concessionaire or any other person any right, power or authority to act as agent of or to contract for, or permit the rendering of, any services, or the furnishing of any materials, in any such manner as would give rise to the filing of mechanics’ liens or other claims against the Premises or County.

5.10.1. Posting Notices. County shall have the right at all reasonable times and places to post and, as appropriate, keep posted, on the Premises any notices which County may deem necessary for the protection of County, the Premises and the Improvements thereon from mechanics’ liens or other claims. Concessionaire shall give County at least ten (10) business days prior written notice of the commencement of any work to be done on the Premises, in order to enable County timely to post such notices.

5.10.2. Prompt Payment. Concessionaire shall make, or cause to be made, prompt payment (subject to reasonable dispute) of all monies due and owing to all persons doing any work or furnishing any materials or

supplies to Concessionaire or any of its contractors or subcontractors in connection with the Premises and the Improvements thereon. Concessionaire shall have the right to contest any such amount; provided, however, the entire expense of any such contest (including interest and penalties which may accrue) shall be the responsibility of Concessionaire.

5.10.3. Liens; Indemnity. Subject to Concessionaire's rights to contest the same prior to payment, Concessionaire shall keep the Premises and any Improvements thereon free and clear of all mechanics' liens and other liens arising out of or in connection with work done for Concessionaire and/or any parties claiming through Concessionaire. Concessionaire agrees to and shall indemnify, defend and hold County and its Agents, and the State of California harmless from and against any claim, liability, loss, damages, costs, expenses, actions, attorneys' and expert witness' fees incurred in defending and all other expenses on account of claims of lien(s) of laborers or material men or others for work performed or materials or supplies or labor furnished to Concessionaire or persons claiming under it.

In the event any lien is recorded, Concessionaire shall, within twenty (20) days after demand, furnish any one of the following, as determined by Concessionaire: (i) a bond which in accordance with the provisions of applicable law results in the removal of such lien from the Premises, (ii) a Set Aside Letter from Concessionaire's construction lender, in form and substance reasonably satisfactory to County, setting aside sufficient funds from Concessionaire's construction loan for the satisfaction of such lien, or (iii) a title insurance policy or endorsement insuring County against any loss or liability arising out of such lien, together with any other evidence requested by County to evidence that

such claim will be paid, removed or discharged as a claim against the Premises and/or County.

5.11. Ownership of Improvements During Term. Concessionaire shall own all structures, buildings or improvements now existing or thereafter constructed by Concessionaire upon the Premises, and all alterations, additions, or betterments made thereto by Concessionaire, until the expiration of the Term or sooner termination of this Contract.

5.12. Reversion of Improvements. Upon the expiration of the Term or sooner termination of this Contract, whether by cancellation, forfeiture or otherwise:

5.12.1. County's Election to Receive Improvements. At the election of County, all structures, buildings, improvements and all alterations, additions, and betterments thereto, and all other improvements made to or upon the Premises shall remain upon and be surrendered with the Premises as part thereof and title thereto shall vest in County at the expiration of the Term or earlier termination of this Contract, without compensation therefor to Concessionaire. Nothing contained herein shall be construed to deny or abrogate the right of Concessionaire, prior to the expiration of the Term or termination of this Contract, to receive any and all proceeds which are attributable to the Condemnation of business installations, improvements, structures and buildings belonging to Concessionaire immediately prior to the taking of possession by the Condemnor as said rights are set forth in Article 7 of this Contract or to remove any furniture or equipment not intended to be permanently affixed, any signage, any personal property or any ornamental fixtures upon the expiration of the Term or earlier termination of this Contract or at any time during the Term, subject to Concessionaire's obligations under this Contract to use the Premises for the Permitted Uses.

5.12.2. Duty to Remove. The County may give written notice at any time, no later than five (5) years prior to the expiration of the Term or concurrently upon any earlier termination, of County's election to require Concessionaire to remove, at the sole cost and expense of Concessionaire, not later than ninety (90) days after the expiration of the Term or earlier termination of this Contract, all or substantially all (but in no event less than all or substantially all) of the structures, buildings and improvements of any kind whatsoever placed or maintained on the Premises, whether placed thereon or maintained by Concessionaire or others, including, but not limited to, concrete foundations, pilings, structures and buildings; and if such structures are removed by Concessionaire, then Concessionaire shall, upon the expiration or earlier termination of this Contract, immediately restore, and quit, and peacefully surrender possession of the Premises to County in good and usable condition, excepting ordinary wear and tear.

The ninety (90) day removal period in this subsection may be extended, in writing, by County to such longer time as is necessary under the circumstances if Concessionaire demonstrates to County such need.

If Concessionaire has received written notice of County's election to require Concessionaire to remove improvements hereunder (**the "County Removal Notice"**), Concessionaire shall, no later than five years prior to expiration of the Term hereof (i.e., December 31, 2062), deliver to County a report provided by a construction and demolition expert reasonably approved by County that details and estimates the cost and required time period for the removal of the Improvements on the Premises requested by County at the expiration of the Term (**the "Demolition and Removal Report"**).

Concurrently with the delivery of the Demolition and Removal Report, Concessionaire shall provide County with a letter of credit, bond or other security, in form and amount, and from an issuer satisfactory to County, to secure the discharge of Concessionaire's removal and restoration obligations pursuant to this subsection ("**Demolition Security**"). The amount of any Demolition Security shall be equal to the estimated costs to remove the Improvements as set forth in the Demolition and Removal Report (the "**Estimated Costs**"). Concessionaire shall increase the amount of the Demolition Security on each successive anniversary of the required date for Concessionaire's original delivery to County of the Demolition Security by the same percentage as the percentage increase (if any) in the ENR Index for the Los Angeles area over the preceding year.

Any uncured failure by Concessionaire to deliver the Demolition Security described in this Subsection 5.12.2. shall constitute an Event of Default.

County shall have the right to revoke County's election to require the removal of the Improvements at the end of the scheduled expiration of the Term by written notice to Concessionaire of such revocation at any time not later than ninety (90) days prior to the scheduled expiration date of this Contract. If County revokes its prior County Removal Notice, then any Demolition Security previously delivered by Concessionaire to County pursuant to this subsection shall be returned to Concessionaire within thirty (30) days following the date of such revocation.

Upon completion of all of Concessionaire's obligations under this Subsection 5.12.2. or Subsection 5.12.4., the remaining balance of any Demolition Security held by County (and not used by County pursuant to Subsection 5.12.2. or 5.12.4. below) shall be returned to Concessionaire.

5.12.3. County's Right to Remove Improvements. Should Concessionaire fail to remove said structures, buildings and improvements

and restore the Premises, County may sell, remove or demolish the same, in event of which sale, removal or demolition Concessionaire shall reimburse County for any cost or expense thereof in excess of any consideration received by County as a result of such sale, removal or demolition.

5.12.4. Duty to Remove Machinery, etc. Within thirty (30) days after the expiration of the Term or sooner termination of this Contract, Concessionaire shall in any event remove at its cost and expense such machinery, appliances or fixtures as are not firmly affixed to said structures, buildings and improvements. Should Concessionaire fail to so remove said appliances or fixtures within said period, and said failure continues for ten (10) days after written notice from County to Concessionaire, Concessionaire shall lose all right, title and interest in and thereto, and County may elect to keep the same upon the Premises or to sell, remove, or demolish the same, in event of which sale, removal or demolition Concessionaire shall reimburse County for its Actual Costs in excess of any consideration received by County as a result of said sale, removal or demolition.

5.12.5. Title to Certain Improvements Passes to County. Title to all utility lines, transformer vaults and all other utility facilities constructed or installed by Concessionaire upon the Premises shall vest in County upon construction or installation. Notwithstanding the foregoing sentence, such utility lines, transformer vaults and all other utility facilities, shall be maintained, repaired, and replaced, if and as needed, by Concessionaire during the Term.

5.13. Capital Improvement Fund and FF&E Fund.

5.13.1. Reserve Study. Commencing on the fifth (5th) anniversary date of the CO Date, and every five (5) years thereafter during the Term of this Contract, Concessionaire shall cause to have a reserve study prepared within one hundred twenty (120) days from such anniversary date, by a company, subject to County's approval (which shall not be unreasonably withheld), who has special expertise in preparing capital improvement reserve studies for similar projects (the "**Reserve Study**"). The Reserve Study shall contain, at a minimum, the following:

- (1) identification of all major components that constitute all capital improvements described under Permitted Capital Expenditures (as defined below) that have a useful life of less than twenty (20) years;
- (2) identification of the probable remaining useful life of the components identified in (1) hereinabove as of the date of the study;
- (3) an estimate of the cost of repair, replacement, restoration, or maintenance of the components identified in (1) hereinabove; and
- (4) an estimate of the total annual contribution required to the Capital Improvement Fund (as defined below) necessary to defray the cost to repair, replace, restore, or maintain the components identified in (1) hereinabove during and at the end of their useful life.

Concessionaire agrees to: (a) contribute to the Capital Improvement Fund, within thirty (30) days from receipt of the Reserve Study, and on the anniversary thereof if the Reserve Study recommends annual contributions for the following years, the amount of annual contribution as determined in (4) hereinabove in the Reserve Study after subtracting all funds then held in the Capital Improvement Fund, and (b) complete within six (6) months from receipt of the Reserve Study, or from the anniversary thereof if the Reserve Study recommends capital improvements for the following years, all capital improvements that the Reserve Study recommends be completed; provided, however, that where a capital improvement is not susceptible of completion within such six (6) month period and Concessionaire has in good faith commenced and is continuing to pursue its completion with reasonable due diligence, County will not

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exercise any remedy available to it hereunder. Concessionaire shall pay for all costs to produce the Reserve Study at its sole expense without any contribution from the County. Concessionaire's failure to timely cause the production of the Reserve Study or to complete the Capital Improvements as required in this Section 5.13. shall be considered a material breach of this Contract and could cause an Event of Default as described under Section 36 of this Contract.

5.13.2. Capital Improvement Fund. Concessionaire shall establish and maintain a reserve fund (the "**Capital Improvement Fund**") in accordance with the provisions of this Section 5.13. for the cost of Permitted Capital Expenditures (as defined below) for the Premises. All interest and earnings on deposits of the Capital Improvement Fund shall be added to such fund, but shall not be treated as a credit against the Capital Improvement Fund deposits required to be made by Concessionaire pursuant to this Section 5.13.

Commencing as of the fifteenth (15th) day of the month which is the third (3rd) month after the CO Date, and on the fifteenth (15th) day of each month thereafter until the completion of the first Reserve Study, Concessionaire shall make a monthly deposit to the Capital Improvement Fund in the amount of 3% of Gross Receipts derived from the Premises for the immediately preceding month.

Concessionaire and County agree and acknowledge that the purpose of the Capital Improvement Fund shall be to provide funds for the costs of additions, replacements, renovations or significant upgrades of or to the Improvements on the Premises, including building exteriors and major building systems (such as HVAC, mechanical, electrical, plumbing, vertical transportation, security, communications, structural or roof) that significantly increase the capacity, efficiency, useful life or economy of operation of the Improvements or their major systems, after the completion of the Redevelopment Work ("**Permitted Capital Expenditures**").

Notwithstanding any contrary provision of this Contract, the Capital Improvement Fund shall not be used to fund any portion of the cost of the Redevelopment Work. In addition, the Capital Improvement Fund shall not be used for building additions, new project amenities (e.g., barbeques or fitness equipment) or new common area furniture. Permitted Capital Expenditures shall not include the cost of periodic, recurring or ordinary expenditures, repairs or replacements that keep the Improvements or their major systems in a good, operating condition, but that do not significantly add to their value or appreciably prolong their useful life. Permitted Capital Expenditures must constitute capital replacements, improvements or equipment under generally accepted accounting principles consistently applied. Furthermore, Permitted Capital Expenditures shall not include costs for any necessary repairs to remedy any broken or damaged Improvements, all of which costs shall be separately funded by Concessionaire. By way of example, set forth on Exhibit P attached to this Contract are examples of categories of Permitted Capital Expenditures that qualify as proper costs to be funded from the Capital Improvement Fund. All specific purposes and costs for which Concessionaire desires to utilize amounts from the Capital Improvement Fund shall be subject to Director's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed.

The Capital Improvement Fund shall be held in a separate account established with a reputable financial institution (including Concessionaire's Encumbrance Holder) reasonably acceptable to Director into which deposits shall be made by Concessionaire (and/or into which Concessionaire's Encumbrance Holder shall provide funds) pursuant to this Section 5.13. The amounts to be added to the Capital Improvement Fund shall be inclusive of amounts required to be deposited with and held by an Encumbrance Holder, provided that the Encumbrance Holder acknowledges that such amounts are subject to, and administered in accordance with, the requirements of this Section 5.13. On or before January 15 and July 15 of each year (and at any other time within thirty (30) days prior written notice from Director to Concessionaire) Concessionaire shall deliver to Director evidence reasonably satisfactory to Director of the account in which

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the Capital Improvement Fund exists and a report that details all deposits to, earnings on, withdrawals from and the balance of the Capital Improvement Fund.

No disbursements shall be made from the Capital Improvement Fund until after the completion of the first Reserve Study. No disbursements shall be made from the Capital Improvement Fund to cure deficiencies arising from the failure of Concessionaire to maintain and repair the Improvements in accordance with the requirements of this Contract. Disbursements shall be made from the Capital Improvement Fund only for costs reasonably approved by Director and that satisfy the requirements of this Section 5.13. Capital Improvement Funds shall be used only after all other sources such as warranty proceeds and product insurance funds are exhausted (or determined to be unavailable). For the purpose of obtaining Director's prior approval of any Capital Improvement Fund disbursements, Concessionaire shall submit to Director on an annual calendar year basis a capital expenditure plan, which shall comply with the recommendations made in the Reserve Study, for the upcoming year that details the amount and purpose of anticipated Capital Improvement Fund expenditures for which Concessionaire requests Director's approval, which approval shall not be unreasonably withheld, conditioned or delayed. Any anticipated expenditure set forth in such capital expenditure plan which is approved by Director as an acceptable Capital Improvement Fund disbursement shall be considered pre-approved by Director (but only up to the amount of such expenditure set forth in the annual capital expenditure plan) for the duration of the upcoming year. Concessionaire shall have the right during the course of each year to submit to Director for Director's approval revisions to the then-current capital expenditure plan in effect for such year, or individual expenditures not noted on the previously submitted capital expenditure plan. Prior to the disbursement of any amounts from the Capital Improvement Fund, Concessionaire shall furnish to Director applicable invoices, evidence of payment and other back-up materials reasonably acceptable to Director concerning the use of amounts from the Capital Improvement Fund.

All amounts then existing in the Capital Improvement Fund shall be expended for Permitted Capital Expenditures not later than five (5) years prior to the expiration of the Term of the Contract. Capital Improvement Fund deposits made after such date shall continue to be used for Permitted Capital Expenditure purposes under this Section 5.13.; provided, however, if County elects to require Concessionaire to remove the Improvements at the end of the Term and requires Concessionaire to provide security to secure its obligation to perform such removal obligations in accordance with Subsections 5.12.2. and 5.12.4. of this Contract, then Concessionaire shall have the right to contribute the deposits thereafter required to be made by Concessionaire under this Section 5.13. towards Concessionaire's obligations to fund the security requirements in Subsection 5.12.2., but only if and to the extent that there are sufficient funds made available in the Capital Improvement Fund for any needed Permitted Capital Expenditures, as determined by Director in Director's reasonable discretion.

5.13.3. FF&E Fund. Commencing with the month following the month during which the earlier of the CO Date or the Required Construction Completion Date occurs, and continuing during the Term of this Contract, Concessionaire shall establish and maintain a reserve fund (the "**FF&E Fund**") in accordance with the provisions of this Section 5.13. to fund the cost of the purchase and installment of replacements, additions or upgrades of or to the furniture, fixtures and equipment used in the Improvements throughout the Term. The FF&E Fund shall not be used for: (a) maintenance or repair purposes, (b) the cost of the Redevelopment Work or the initial furniture, fixtures and equipment to be installed in or upon the Improvements in connection with the Redevelopment Work, or (c) the cost of Permitted Capital Expenditures to be funded by the Capital Improvement Fund. All specific purposes and costs for which Concessionaire desires to utilize amounts from the FF&E Fund shall be subject to Director's prior written approval, which approval shall not be unreasonably withheld.

The FF&E Fund shall be held in an account established with a reputable financial institution (including Concessionaire's Encumbrance Holder) acceptable to Director into which deposits shall be made by Concessionaire (and/or into which Concessionaire's Encumbrance Holder shall provide funds) pursuant to this Section 5.13. The amounts to be added to the FF&E Fund shall be inclusive of amounts required to be deposited with and held by an Encumbrance Holder for the purposes described in this Section 5.13, provided that the Encumbrance Holder acknowledges that such amounts are subject to the requirements and shall be made available only for the purposes of this Section 5.13.

On or before the fifteenth (15th) day of each month during the period which the FF&E Fund deposits are required to be made pursuant to the first paragraph of this Section 5.13, Concessionaire shall make a monthly deposit to the FF&E Fund in the amount equal to one and one-half percent (1.5%) of total Gross Receipts for the previous month from the operation of the Premises and Improvements.

All interest and earnings on the FF&E Fund shall be added to the FF&E Fund, but shall not be treated as a credit against the FF&E Fund deposits required to be made by Concessionaire pursuant to this Section 5.13.

Disbursements shall be made from the FF&E Fund only for costs which have been approved by Director and which satisfy the requirements of this Section 5.13. For the purpose of obtaining Director's prior approval of any FF&E Fund disbursements, Concessionaire shall submit to Director on an annual calendar year basis a furniture, fixtures and equipment expenditure plan for the upcoming year which details the amount and purpose of anticipated FF&E Fund expenditures for which Concessionaire requests Director's approval, which approval shall not be unreasonably withheld. Any anticipated expenditure set forth in such furniture, fixtures and equipment expenditure plan which is

approved by Director as an acceptable FF&E Fund disbursement shall be considered pre-approved by Director (but only up to the amount of such expenditure set forth in the annual furniture, fixtures and equipment expenditure plan) for the duration of the upcoming year. Concessionaire shall have the right during the course of each year to submit to Director for approval of revisions to the then current furniture, fixtures and equipment expenditure plan in effect for such year, or individual expenditures not noted on the previously submitted plan. Prior to the disbursement of any amounts from the FF&E Fund, Concessionaire shall furnish to Director applicable invoices, evidence of payment and other back-up materials reasonably acceptable to Director concerning the use of amounts from the FF&E Fund.

Amounts in the FF&E Fund shall be expended periodically as necessary for Concessionaire to comply with the standard of operation for the Premises applicable under this Contract, as described in Section 8.1 of this Contract. If County elects to require Concessionaire to remove the Improvements at the end of the Term and requires Concessionaire to provide security to secure its obligation to perform such removal obligations in accordance with subsection 5.13. of this Contract, then Concessionaire shall have the right to contribute to such security requirements any amounts in the FF&E Fund that are not (and will not be) required for the purposes of this Section 5.13., as determined by Director in Director's reasonable judgment. If County does not require the removal of the Improvements, and at the end of the Term there are amounts remaining in the FF&E Fund that in Director's reasonable judgment were not required for the purposes of this Section 5.13, then Concessionaire shall be entitled to the return of such funds.

6. USE OF PREMISES

6.1. Primary Use: The Premises, excluding any sand portion thereof not paved or otherwise covered with improvements (use of which sand area is subject to Concessionaire obtaining a separate permit in each instance), (the Premises as so limited, the “**Usable Premises**”) shall be used primarily by Concessionaire for the operation of a first class restaurant (including banquet facilities), snack bar, outdoor public dining area and parking lot, each conforming to the Quality Standards set forth in Section 8.1. of this Contract, as well as other facilities directly related thereto, and for the sale within the Premises of food and beverages, beach equipment and other miscellaneous items of merchandise that are appropriate to recreational use at the beach or for use as souvenirs, provided prior written approval for the sale of anything other than food, beverages and the items listed within the last two paragraphs of Section 1 of RFP Appendix A Statement of Work has been obtained from the Director. Such approval shall not be unreasonably withheld or delayed and such approval shall be deemed withheld if Director fails to grant or deny his or her approval within sixty (60) days after Director’s receipt of a written request from Concessionaire (collectively, the foregoing shall be referred to herein as “**Permitted Uses**”).

Concessionaire shall not use or permit the Premises to be used in whole or in part during the term of this Contract for any purpose other than the Permitted Uses without the prior written consent of the County.

Concessionaire shall comply with all Applicable Laws and shall pay for and maintain any and all licenses, liquor license and permits related to, required for, or affecting the use, operation, maintenance, repair or improvement of the Premises.

6.2. Prohibited Uses.

1) Concessionaire shall not conduct or permit to be conducted any private or public nuisance on or about the Premises, nor commit any waste thereon.

2) No rubbish, trash, waste, residue, brush, weeds or undergrowth or debris of any kind or character shall ever be placed or permitted to accumulate upon any portion of the Premises, except in appropriate receptacles intended for such purposes, nor shall any portion of the Premises be maintained so as to

render said Premises a fire hazard or unsanitary, unsightly, offensive, or detrimental nor shall any similar activity be permitted on any other portion of the Premises or on any public street or adjacent property.

3) The Premises shall not be used or developed in any way which is inconsistent with any applicable governmental or public agency requirements.

4) The Premises shall not be used or developed in any way in a manner inconsistent with the operation of a first class restaurant and snack bar concession, and parking incidental thereto, conforming to the Quality Standards. Without limiting the foregoing, the Premises **may not** be used by Concessionaire or any licensee, invitee or customer thereof, for any adult entertainment purposes, as such term refers to graphic, explicit and/or obscene depictions of sexual activity.

5) No improvement on the Premises shall be permitted to fall into disrepair and all improvements shall at all times be kept in working and wholesome condition and repair consistent with the restaurant on the Premises and its theme (including, without limitation, substantially free of the presence of wood-destroying pests and organisms) and adequately painted or otherwise finished.

6) Except as inherent and common to normal and customary restaurant operations of the quality required hereby, no condition shall be permitted to exist upon the Premises which shall include, breed or harbor infectious plant diseases, rodents, or noxious insects and Concessionaire shall take such measures as are appropriate to prevent any conditions from existing on the Premises which create a danger to the health or safety of any person residing or working at, or persons patronizing the Premises and/or that portion of Will Rogers State Beach adjacent to the Premises.

7) Without the prior written approval of Director, no antennae or other device for the transmission or reception of television signals or any other form of electromagnetic radiation shall be erected, used or maintained by Concessionaire outdoors above ground on any portion of the Premises, whether attached to an improvement or otherwise; provided that the foregoing

requirement to obtain Director's approval as to any antennae or other transmission or reception devices shall be inapplicable to the extent that such requirement violates Applicable Law.

8) No tools, equipment, or other structure designed for use in boring for water, oil, gas or other subterranean minerals or other substances, or designed for use in any mining operation or exploration, shall hereafter be erected or placed upon or adjacent to the Premises, except as is necessary to allow Concessionaire to perform its maintenance and repair obligations pursuant to this Contract.

9) No adverse environmental condition in violation in Applicable Laws shall be permitted or exist on any portion of the Premises, nor shall any toxic or Hazardous Substances be permitted to be generated, treated, stored, disposed of, or otherwise deposited in or on or allowed to emanate from the Premises or any other portion thereof, including, without limitation, into the surface waters and subsurface waters thereof; provided, however, that toxic or Hazardous Substances may be stored or used, so long as such storage and use is (a) ancillary to the ordinary course of business of an otherwise Permitted Use with the intent that such Hazardous Substances will be used in the ordinary course of business, and (b) conducted in compliance with all applicable laws, statutes, ordinances, rules and regulations of any local, state or federal governmental body.

6.3. Storage of the Hazardous Substances.

Concessionaire shall comply with all applicable laws and best practices pertaining to the use, storage, transportation, and disposal of Hazardous Substances. Gasoline, oil and other materials considered under law or otherwise to be hazardous to public health and safety shall be stored, handled, and dispensed as required by present or future regulations and laws.

Concessionaire shall protect, indemnify, defend, and hold harmless the County and its Special Districts, elected and appointed officers, affiliates, successors, principals, employees, volunteers or agents against any liability, cost, or expense, including attorney fees and court costs, arising from illegal use, storage, transportation, or disposal of any Hazardous Substance, including any petroleum derivative, by Concessionaire. Where Concessionaire is found to be in breach of this provision due to the issuance of a government order directing Concessionaire to cease and desist any illegal action in connection with a Hazardous Substance, or to remediate a contaminated condition directly caused by Concessionaire or any person acting under Concessionaire's direct control or authority, Concessionaire shall be responsible for all cost and expense of complying with such order, including any and all expenses imposed on or incurred by the County in connection with or in response to such government order. Notwithstanding the foregoing, in the event a government order is issued naming Concessionaire, or Concessionaire incurs any liability during or after the term of the Contract in connection with contamination that preexisted the Concessionaire's obligations and occupancy under this Contract or prior contracts, or that were not directly caused by Concessionaire, the County shall be solely responsible as between Concessionaire and the County for all expenses and efforts in connection therewith.

Certification: Upon termination of this Contract, when requested by County, Concessionaire shall provide written certification prepared by a Certified Industrial Hygienist that there is no hazardous waste contamination and/or damage to the Premises.

6.4. Active Public Use.

The parties acknowledge that the ultimate objective of this Contract is the complete and continuous use of the Premises by and for the benefit of the public, without discrimination as to race, gender or religion, along with generation and realization of revenue therefrom. Accordingly, Concessionaire agrees and covenants

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that it will operate the Premises fully and continuously toward the end that the public may enjoy maximum benefits from the Premises and it will use commercially reasonable efforts so that County may obtain maximum revenue therefrom as contemplated by this Contract. In the event of any dispute or controversy relating hereto, this Contract shall be construed with due regard to the abovementioned objectives.

6.5. Non-Interference and Parking.

Concessionaire shall not interfere with the public use of or access to Will Rogers State Beach. Concessionaire shall permit both Premises patrons and general public to park motor vehicles on the Premises Parking Lot Parcel. Such parking shall at all times be permitted on an unreserved, "first come, first served" basis. Parking charges for the general beach going public for any given period shall not exceed those charged by County for the same period in its other lots serving Will Rogers State Beach but Concessionaire may, notwithstanding the foregoing, charge restaurant patrons whatever parking charges it may deem appropriate from time to time.

6.6. Rules and Regulations.

Concessionaire shall comply with all Applicable Laws and shall pay for and maintain any and all licenses and permits related to or affecting the use, operation, maintenance, repair or improvement of the Premises.

Concessionaire agrees to comply with all local, state and federal applicable laws, rules, regulations and ordinances governing the use and occupancy of the Premises and any rules and regulations as may be promulgated by County from time to time. Concessionaire acknowledges and warrants that it is (or will make itself through its responsible concession managers) knowledgeable of all pertinent laws, rules, ordinances, regulations, or other requirements having the force of law affecting the operation of the Premises, including but not limited to laws affecting health and safety, hazardous materials, pest control activities, historic preservation, environmental impacts, and County building codes and regulations.

6.7. Quiet Enjoyment. Concessionaire, upon performing its obligations hereunder, shall have the quiet and undisturbed possession of the Premises throughout the Term of this Contract, subject, however, to the terms and conditions of this Contract.

6.8. Hours of Operations

Concessionaire shall provide County with an operation schedule (“**Operation Schedule**”) before the commencement of any businesses or service on the Premises. The Operation Schedule shall provide the regular daily business hours and the dates on which the business will be closed during a calendar year, which shall not be more than four (4) days in a calendar year. With a prior written notice to the County, the Concessionaire may revise the Operation Schedule from time to time as it deems appropriate.

In the event County deems the hours of operation inadequate for proper service to the public, County may require Concessionaire to adjust the days and/or hours of operation to a schedule provided by County. Concessionaire may remain open on other dates, observing same (or longer) hours, at Concessionaire's discretion with the concurrence of County. In the event of adverse weather or other operating conditions, County may permit the concession to close at any time during the term of this Contract with written or telephonic notice to the County.

A competent person shall be on the Premises at all times while the concession is in operation. If the on-site manager is other than the Concessionaire, County reserves the right to approve such manager.

7. CONDEMNATION

7.1. Definitions.

7.1.1. Condemnation. “Condemnation” means (1) the exercise by any government entity of the power of eminent domain, whether by legal

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proceedings or otherwise, and (2) a voluntary sale or transfer to any Condemnor (as hereafter defined), either under threat of Condemnation or while legal proceedings for Condemnation are pending.

7.1.2. Date of Taking. “Date of Taking” means the date the Condemnor has the right to possession of the Premises being condemned.

7.1.3. Award. “Award” means all compensation, sums or anything of value awarded, paid or received from a total or partial Condemnation.

7.1.4. Condemnor. “Condemnor” means any public or quasi-public authority, or private corporation or individual having the power of eminent domain.

7.2. Parties’ Rights and Obligations to be Governed by Agreement.

If, during the Term of this Contract, there is any taking of all or any part of the Premises, any improvements on the Premises or any interest in this Contract by Condemnation, the rights and obligations of the parties shall be determined pursuant to the provisions of this Section 7.

7.3. Total Taking. If the Premises are totally taken by Condemnation, this Contract shall terminate on the Date of Taking.

7.4. Effect of Partial Taking. If a portion of the Premises or the improvements thereon are taken by Condemnation, this Contract shall remain in effect, except that Concessionaire may elect to terminate this Contract if the remaining portion of the Premises are rendered unsuitable (as defined herein) for Concessionaire’s continued use if, following a reasonable amount of reconstruction, Concessionaire’s business on the Premises could not be operated at an economically feasible level. Concessionaire

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must exercise its right to terminate by giving County written notice of its election within ninety (90) days after the nature and extent of the taking have been finally determined, Such notice shall also specify the date of termination, which shall not be prior to the Date of Taking. Failure to properly exercise the election provided for in this Section 7.4. will result in this Contract's continuing in full force and effect, except that Annual Minimum Rent shall be abated pursuant to Section 7.5. below.

In the event that Concessionaire does not elect to terminate this Contract as provided above, then Concessionaire, whether or not the Awards or payments, if any, on account of such taking shall be sufficient for the purpose, shall, at its sole cost and expense, within a reasonable period of time, commence and complete restoration of the remainder of the Premises as nearly as possible to its value, condition and character immediately prior to such taking, considering into account, however, any necessary reduction in size resulting from the taking; provided, however, that in case of a taking for temporary use, Concessionaire shall not be required to effect restoration until such taking is terminated.

7.5. Effect of Partial Taking on Rent. If any portion of the Premises is taken by Condemnation and this Contract remains in full force and effect as to the portion of the Premises not so taken (a "**Partial Taking**"), the Annual Minimum Rent shall be reduced as of the date of the Partial taking to an amount equal to the Annual Minimum Rent multiplied by the ratio of the fair market value of the portion of the Premises not so taken to the fair market value of the entire Premises immediately prior to the Partial taking. Any determination of fair market value made pursuant to this Section 7.5. shall be predicated upon the "**Income Approach**" or "income capitalization approach" to property valuation, as defined in The Dictionary of Real Estate Appraisal and/or The Appraisal of Real Estate, published by the Appraisal Institute or any successor organization (the "Income Approach"). All other obligations of Concessionaire under this Contract, including but limited to the obligation to pay Percentage Rent, shall remain in full force and effect.

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7.6. Waiver of Code of Civil Procedure Section 1265.130. Each party waives the provisions of Code of Civil Procedure Section 1265.130 allowing either party to petition the Superior Court to terminate this Contract in the event of a Partial Taking of the Premises.

7.7. Payment of Award. Awards and other payments on account of a taking, less costs, fees and expenses incurred in the collection thereof ("**Net Awards and Payments**"), shall be applied as follows:

7.7.1. Partial Taking Without Termination. Net Awards and Payments received on account of a Taking other than a total Taking or a Partial Taking which results in termination thereof or a taking for a temporary use shall be held by County and shall be paid out to Concessionaire or Concessionaire's designee(s), in progress payments, to pay the cost of restoration of the Premises. The balance, if any, shall be divided between County and Concessionaire pro-rata, as nearly as practicable, based upon (1) the then value of County's interest in the Premises (including its interest hereunder) and (2) the then value of Concessionaire's interest in the remainder of the Term of this Contract including Bonus Value (for such purposes, the Term of this Contract shall not be deemed to have terminated even if Concessionaire so elects under Section 7.4.). Any determination of fair market value made pursuant to Section 7.5. shall be predicated upon the Income Approach.

Notwithstanding the foregoing, if County is the condemning authority and the taking pertains only to Concessionaire's interest, then Concessionaire shall be entitled to the entire amount of the Net Awards and Payments.

In case of a taking other than a total taking or a taking for a temporary use, Concessionaire shall furnish to county evidence

satisfactory to County of the total cost of the restoration required by Section 7.4.

7.7.2. Taking for Temporary Use. Net Awards and Payments received on account of taking for temporary use shall be paid to Concessionaire; provided, however, that if any portion of any such award or payment is paid by the Condemnor by reason of any damage to or destruction of the improvements, such portion shall be held and applied as provided in in the first sentence of Section 7.7.1., above.

7.7.3. Total Taking and Partial Taking with Termination. Net Awards and payments received on account of a total taking or a Partial Taking which results in the termination of this Agreement shall be allocated as follows:

First: There shall be paid to County an amount equal to the greater of (a) the sum of (1) the present value of all Annual Minimum Rent, Percentage Rent (estimated based on historical and reasonable projections of future levels of Percentage Rent) and other sums which would become due through the expiration of the Term of this Contract if it were not for the taking less, in the event of a Partial Taking, an amount equal to the present value of the fair market rental value of the portion of the Premises (with the Improvements thereon) not subject to the Partial Taking, from the date of the Partial Taking through the expiration of the Term of this Contract and (2) the present value of the portion Premises (with the Improvements hereon) subject to the taking from and after the expiration of the Term of this Contract, or (b) in the event of a Partial Taking, the present value of the fair market rental value of the portion of the Premises (with the Improvements thereon) subject to the Partial Taking, from and after the expiration of the Term of this Contract.

Second: There shall be paid to the Encumbrance Holder, if any, and amount equal to the sum of any unpaid principal amount of any Encumbrance secured by the Premises plus costs, expenses, and other sums due under the loan documents, if any, and any interest occurred thereon, all as of the date on which such payment is made; and then

Third: There shall be paid to Concessionaire an amount equal to the value of Concessionaire's interest in the remainder of the Term of this Contract, including the value of the ownership interest in and use of the improvements constructed on the Premises, determined as of the date of such taking, less payments made under paragraph Second above. For such purposes, the Term of this Contract shall not be deemed to have terminated even if Concessionaire so elects under Section 7.4. Concessionaire may also be entitled to compensation based upon the difference, if any, between the then fair market rent of the Premises and the rent actually being paid pursuant to this Contract ("**Bonus Value**").

Fourth: The balance shall be paid to County.

7.7.4. Disputes. Any dispute under Section 7 concerning the fair market value of the Premises or any portion thereof, computation of present value or the determination of the amount of Annual Minimum Rent or Percentage Rent or other sums which would have become due over the Term of this Contract which are not resolved by the parties, shall be submitted to arbitration pursuant to Section 25 of this Contract. Such valuations, computations and determinations of value shall be made utilizing the Income Approach.

8. RATES, CHARGES AND QUALITY OF GOODS AND SERVICES

8.1. Quality of Restaurant Operations. Service to the public, with goods and merchandise of the best quality and at reasonable charges, is of prime concern to County and is considered a part of the consideration for this Contract. Therefore, Concessionaire agrees to operate, manage, and provide all goods, services, and facilities offered in a first-class manner and comparable to other high quality concessions providing similar facilities and services during the entire Term of this Contract. Concessionaire shall and will furnish and dispense food and beverage of the best quality and shall and will maintain a high standard of service at least equal to those prevailing in the Westside communities of Los Angeles County with Three-Diamond or above rating of AAA Restaurant Diamond Rating Guidelines for similar products and services, and without discrimination. Concessionaire shall provide food and services in accordance with its “Response to Evaluation Committee” dated _____, (collectively, the foregoing quality and first class operation requirements of this Section 8.1. shall be referred as to herein as the “**Quality Standards**”). Concessionaire’s performance in meeting the Quality Standards shall be evaluated by a standard of commercial reasonableness with reference to the operation of a high revenue-generating facility at a distinctive coastal landmark destination. The parties shall apply a common sense and commercially reasonable standard to the test of a first class operation, fresh and high quality food.

8.2. Director’s Right to Review/Approve Quality. At all times during the Term of this Contract, Director shall have the right to review and approve the quality of Concessionaire’s restaurant operations and Concessionaire’s compliance with the Quality Standards. Concessionaire agrees to provide access to the Premises and such other information as may be reasonably requested by Director in order to conduct such review. In the event that Director determines, in its reasonable judgment, that the restaurant operations, including without limitation, food quality and value, service, other amenities, maintenance and cleanliness are not being conducted in compliance with the Quality Standards, or are otherwise not consistent with the operation of a first class restaurant facility, then Director shall provide written notice of such determination to

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Concessionaire with a general description of the reasons for such determination. Within thirty (30) days after receipt of such notice, Concessionaire shall provide County with evidence satisfactory to County that the items identified in County's notice have been remedied and the restaurant operations are otherwise in compliance with the Quality Standards. Any failure by Concessionaire to provide such evidence shall constitute a breach of Concessionaire's obligations hereunder. Any disagreement regarding this Section 8.2. not resolved by the parties within thirty (30) days after written notice from either party that such disagreement exists shall be submitted to arbitration as set forth in Section 25 of this Contract.

8.3. Limitation on Prices to be Charged. Concessionaire shall at all times maintain a complete list of the prices charged for all goods or services, or combinations thereof, supplied to the public on or from the Premises hereby demised, whether the same are supplied by Concessionaire or its Sublessees, assignees, concessionaires, permittees or licensees.

Said prices shall be fair and reasonable for a facility complying with the Quality Standards, based upon the following considerations: that the Premises herein demised is intended to serve a public use and to provide needed facilities to the public at fair and reasonable cost; and, that Concessionaire is entitled to a fair and reasonable return upon its investment pursuant to this Agreement.

Concessionaire shall charge the general public no more for parking than County charges for the same period in its other lots serving Will Rogers State but Concessionaire may, notwithstanding the foregoing, charge restaurant patrons whatever parking charges it may deem appropriate from time to time.

8.4. Director's Right to Review/Modify Price. In the event that Director notifies Concessionaire that any of said prices are not fair and reasonable, Concessionaire shall have the right to confer with Director and to justify said prices. If,

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after reasonable conference and consultation, Director shall determine that any of said prices are not fair and reasonable, the same shall be modified by Concessionaire or its Sublessees, assignees, concessionaires, permittees or licensees, as directed. If Concessionaire disagrees with Director's determination, Concessionaire may submit the issue to arbitration pursuant to Section 25 hereof (as modified by this Section 8.4); if the arbitrator's determination of the fair and reasonable price for the item(s) in dispute is a price lower than the amount then charged by Concessionaire, then within fifteen (15) days after the arbitrator issues his or her decision, Concessionaire shall pay County an amount equal to the difference between (i) the Gross Receipts collected by Concessionaire in connection with the sale of the item in dispute, during the period beginning upon the date of Director's determination that said price was not fair and reasonable and expiring upon the date that the price was reduced based on the arbitrator's decision, and (ii) the Gross Receipts that Concessionaire would have collected in connection with the sale of said item if, during the period described above, it had charged the price that the arbitrator determined was fair and reasonable for said item. In addition, Concessionaire shall reimburse County for any costs incurred by County in connection with its retention of expert witnesses for the arbitration proceeding. The prevailing party in such arbitration shall be entitled to recover reasonable attorneys' fees from the other party. Following the issuance of the arbitrator's decision, Concessionaire shall not raise the price (as determined by arbitrator) for said item for a period of no less than six (6) months.

9. SECURITY DEPOSIT

9.1. Amount and Use. Concessionaire shall deliver to and maintain with County a security deposit (the "**Security Deposit**") in the amount equal to three (3) times the Monthly Minimum Rent in effect from time to time during the Term of this Contract (i.e., adjusted on each Renegotiation Date to reflect any change in the Monthly Minimum Rent during the Term of this Contract).

The Security Deposit shall secure Concessionaire's obligation pursuant to this Contract, and may be drawn on by County, in whole or in part, to cover (a) delinquent rent not paid by Concessionaire within any applicable notice and cure period, (b) Concessionaire's failure to comply with the provisions of subsections 5.12.2 and 5.12.4 (Duty to Remove), and (c) any Events of Default of Concessionaire under this Contract.

The Security Deposit shall be applied at the discretion of County. Concessionaire shall have the right to maintain the Security Deposit in form of cash or in the form of a Certificate of Deposit, Irrevocable Standby Letter of Credit or other approved investment instrument acceptable to County with respect to form, content and issuer. As long as no Event of Default by Concessionaire exists under this Contract, Concessionaire shall be entitled to any interest or other earnings which are actually earned on any unapplied portions of the Security Deposit delivered to County in the form of a certificate of deposit or other approved by County investment instrument (as opposed to cash, on which Concessionaire shall not be entitled to interest). After the Expiration Date of this Contract, provided that no event of Holding Over exists by Concessionaire, and upon Concessionaire's fulfillment of all its obligations under this Contract, any unapplied portions of the Security Deposit shall be returned to Concessionaire, along with the County's written notice fully releasing Concessionaire from any and all obligations under this Contract (the "**County Release of Obligations Notice**"). Provided that Concessionaire then fulfilled all its obligation under this Contract, County Release of Obligations Notice shall be issued within two (2) weeks after (a) both County and Concessionaire confirm the end of the Term of this Contract in writing, and (b) County confirms its satisfaction, in writing, with Concessionaire's completion of all Concessionaire's obligations under this Contract.

9.2. Replacement. In the event that some or all of the Security Deposit is drawn against by County and applied against any delinquent rent not paid by Concessionaire within any applicable notice or cure period, or against any other Events of Default by Concessionaire hereunder, Concessionaire shall, within five (5) days after receipt of written notice of the amount so applied and the reasons for such applications, deposit

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sufficient additional funds with County, or cause the issuer of any Irrevocable Standby Letter of Credit to reissue the Irrevocable Standby Letter of Credit, such that Concessionaire once again maintains a Security Deposit equal to three (3) times the then effective Monthly Minimum Rent. Failure to maintain and replenish the Security Deposit, if not cured within the time period set forth in this subsection 9.2., shall constitute an Event of Default hereunder.

10. ALCOHOLIC BEVERAGES

Concessionaire may sell beer, wine, distilled spirits, cocktails, mocktails, and mixed drinks in the restaurant/bar/lounge of the Premises for on-premises consumption only. No other alcoholic beverages shall be sold. The sale of alcoholic beverages shall be subject to any local, state and federal regulations, and the regulations established by the Department of Alcoholic Beverage Control.

11. HEALTHY FOODS INITIATIVE

In accordance with County's mission to provide for the health of Californians, Concessionaire shall promote the importance of healthy, locally and sustainably grown, organic foods, and shall use sustainable practices, organic ingredients, and recycled products whenever possible. These practices shall include the following:

- A. To the extent possible, Concessionaire shall develop a network of local farmers and ranchers who are dedicated to sustainable agriculture and can assure a steady supply of pure and fresh ingredients.
- B. Concessionaire shall offer a selection of food and beverage items that conform to the definition of healthy foods as defined by the U.S. Department of Agriculture and the Food and Drug Administration in the Code of Federal Regulations, Title 9, Section 317 and Title 21, Section 101.
 - 1) Concessionaire shall offer a selection of beverages with no sugar added, such as bottled water, natural fruit juices, and tomato juice.

- 2) To the extent possible, Concessionaire shall provide food products that are as pure and natural as possible, without synthetic additives, pollutants, or unnecessary packaging and marketing.

11.1. HEALTHY FOOD AND BEVERAGE CHOICES

Concessionaire shall plan and implement menus for restaurant operations. Menus shall provide for healthy food and beverage choices. Concessionaire, in consultation with the Department of Public Health (DPH) is required to submit the following records: food production records, itemized monthly sales and complete recipes and/or nutrition analysis of all menu products/items offered on a quarterly basis to the Contract Manager to confirm compliance with all nutrition standards outlined below and in this Agreement.

Beverages

- Concessionaire shall provide access to fresh, cold drinking water at no cost to customers.
- Require all juice offered is 100% fruit juice with no added sweeteners and vegetable juice is no more than 230 mg of sodium per serving.
- Require at least 50% of beverage choices contain ≤ 25 calories per 8 ounces (excluding alcoholic beverages).

Fruits and Vegetables

- Require at least one vegetable option be offered per meal service to be a steamed, baked, or grilled non-starchy vegetable¹.
- At least two plant-based main dishes at each meal service.²
- Unprocessed seasonal fruits and vegetables shall be sourced and locally grown³ foods shall be purchased (when feasible).
- 30% of annual average of total cost of produce purchases will be locally grown (within a 200 miles radius of Los Angeles).

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- To the greatest extent possible, purchase unprocessed whole fresh fruits. When whole and unprocessed fruit cannot be purchased, due to cost or availability, purchase unsweetened frozen fruit. If frozen products are unavailable, fruit should be canned in water or its own juice with no sugars added.
- To the greatest extent possible, purchase unprocessed whole vegetables. When whole and unprocessed vegetables cannot be purchased, due to cost or availability, purchase frozen vegetables with no more than 290 mg of sodium per serving. If frozen products are unavailable, canned vegetables should also have no more than 290 mg of sodium per serving.

Grains

- Require at least 25% of food entrées and side items, when applicable, shall be made or served with whole grains.⁴

Protein

- If meat is offered on the menu, minimize the purchase of processed meats.⁵

¹ Vegetables may be included as part of the main dish and/or as a side item.

² Recommend plant-based dishes to include fruits, vegetable, beans, and legumes.

³ Locally grown is defined by the Los Angeles Food Policy Council as within a 200 mile radius of Los Angeles.

⁴ Grain-based foods are considered whole grain when the first ingredient listed on the ingredient list is a whole grain. Whole grain ingredients include brown rice, buckwheat, bulgar, millet, oatmeal, quinoa, rolled oats, whole-grain barley, whole-grain corn, whole-grain sorghum, whole-grain triticale, whole oats, whole rye, whole wheat and wild rice.

⁵ Examples of processed meats include bacon, sausage, hotdogs, salami, corned beef, jerky, ham or other meats that have been smoked, cured, or had salt or preservatives added.

Dairy

- If milk is offered include soy, rice, and/or other similar non-dairy milk alternatives without added sweeteners.

- Recommend purchasing low-fat or non-fat yogurt and cheese.
- Recommend purchasing yogurt with no added caloric sweeteners or yogurts labeled as “reduced sugar” or “less sugar.”

Condiments

- Require at least two healthy salad dressing options, including one low-sodium, low-calorie, low-fat, cholesterol-free creamy salad dressing and one vinaigrette salad dressing.
- Recommend low-sodium, low-calorie, low-fat, cholesterol-free, and low-sugar condiment options.⁶

Reduced Portion Sizes

- At least two food entrées per meal service shall be offered in a reduced-size portion⁷ at a reduced price.

Food Preparation

- Utilize low fat food preparation methods.⁸
- Hydrogenated fats and oils shall not be used in food preparation.

Children’s Menu

If the Concessionaire has a children’s menu, it must adhere to the following standards:

- Beverages included in the price of a kids’ meal may only be plain milk (2%, 1% or non-fat), a plain non-dairy milk alternative (such as soy milk), or water. Kids’ meals may not offer soda or juice included in the price of a kids’ meal.
- Every children’s meal must include at least one serving of non-fried fruit/and or vegetable. A serving is defined as a minimum of ½ cup. Fruits and/or vegetables may be included as part of the main dish and/or side item.
- At least ½ of all kids’ meals do not contain any deep fried items.⁹

Sodium Reduction Plan

- Concessionaire shall commit to implementing County Department of Public Health’s (DPH) Sodium Reduction Plan within 12 months of Agreement commencement (see Exhibit 14 of Appendix D). The Concessionaire should work with DPH staff, as well as the Contracts Manager to comply with the sodium standards for purchased food categories as defined in the Sodium Reduction Plan.

⁶ A condiment is a food that requires no additional preparation and that is used on a food item, such as relishes, spices, sauces, confections or seasonings.

⁷ Reduced-size portions are at least 1/3 smaller than the full-size item and are offered in addition to the full-size versions.

⁸ Low fat food preparation methods include broiling, grilling, baking, poaching, roasting and steaming.

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⁹ Deep frying is defined as cooking food by submerging in hot oil.

MENU AND NUTRITIONAL INFORMATION

- It is recommended that symbols are added to the menu to identify items that are vegetarian, gluten-free and/or vegan (when applicable).
- Recommend establishing prices for healthier food and beverage items equal to or less than prices of other menu options.

CONTRACT MONITORING: NUTRITIONAL GUIDELINES

Concessionaire shall comply with all nutrition guidelines outlined in this Contract, as well as any future Board of Supervisors' policies concerning nutrition guidelines. DPH may periodically monitor the Contract to ensure the Concessionaire's compliance with the nutrition standards. Contractor is required to submit upon request to the County Contract Manager the following records: food production records, itemized monthly sales and complete recipes and/or nutrition analysis of all menu products/items offered on a quarterly basis. DPH shall review records and communicate its findings to the Director. Failure to comply with the nutrition standards may, in the County's sole discretion, constitute a breach of this Contract. You may contact the Los Angeles County Department of Public Health, Division of Chronic Disease and Injury Prevention at (213) 351-7825 or email: chronic_disease@ph.lacounty.gov if you have questions on the nutrition standards and compliance.

12. HOUSEKEEPING, MAINTENANCE, REPAIR AND REMOVAL

During the term of this Contract at Concessionaire's own cost and expense, Concessionaire shall maintain the Premises, the outdoor public dining area, parking areas, and other areas in, on, or adjacent to a distance of not less than fifty (50) feet, including personal property and equipment, in a clean, safe, wholesome, and sanitary condition free of trash, garbage, or obstructions of any kind. Removal and disposal of all rubbish, refuse, and garbage resulting from Concessionaire's operations shall be the Concessionaire's responsibility and in accordance with Applicable Laws and local ordinances. All trash containers and/or trash bins shall be adequately screened to the

satisfaction of County. Concessionaire shall remedy without delay any defective, dangerous, or unsanitary conditions.

Concessionaire shall at all times maintain a letter grade rating of “B” or higher as determined by DPH. Concessionaire shall at all times meet County health standards, subject to the California Health and Safety Code, and State and Federal health regulations including, but not limited to, those for cleanliness.

If the facility receives a letter grade rating of “C” or below, or would be closed for the health violations caused by the Concessionaire, Concessionaire’s Sub-Contractors, or any party acting for Concessionaire, County will exercise its right to seek all remedies, including but not limited to the losses of rent, available under all Applicable Laws.

12.1. Housekeeping: Housekeeping activities are defined as all those activities concerned with keeping the Premises and its facilities clean, neat, and orderly, and includes, but is not limited to, mowing, raking, sweeping, vacuuming, mopping, stripping, waxing, dusting, wiping, washing, hosing, and other general care or cleaning of interior and exterior floors, walls, ceilings, doors, windows, facility fixtures, and all adjacent grounds and walks, including but not limited to the outdoor public dining areas and the parking areas.

Maintenance and Repairs: Concessionaire shall maintain all concession facilities and personal property and equipment on the Premises in good condition and repair at Concessionaire's sole cost and expense at all times during the Term of this Contract. For the purposes of this Contract, the term “maintenance” is defined as all repair and preservation work necessary to maintain concession facilities and personal property and equipment in a good state of repair, as well as to preserve them for their intended purpose for an optimum useful life. Concessionaire shall keep and maintain all equipment, structures, improvements or physical structures of any kind which may exist or be erected, installed or made on the Premises (including the asphalt portion of the

ramp from the parking lot to the beach and excepting any bike path or any cellular antenna referred to in Section 12.8.) in good and substantial repair and condition, including without limitations capital improvements and structural and roof repairs and replacement, and shall make all necessary repairs, alterations and replacements thereto, except is otherwise provided in this Section 12. Concessionaire shall undertake such repairs, alterations or replacement in compliance with any and all regulations, laws or ordinances of the State of California, County of Los Angeles, City of Los Angeles, California Coastal Commission or other governmental body, which may be applicable, or as reasonably required in writing by Director to Concessionaire concerning incident to the provisions of this Section 12. Concessionaire shall maintain all improvements on the Premises (including the asphalt portion of the ramp from the parking lot to the beach and excepting any bike path or any cellular antenna referred to in Section 12.8.) in a safe, clean, wholesome and sanitary condition, to the reasonable satisfaction of Director and in compliance with all applicable laws or ordinances of the State of California, County of Los Angeles, City of Los Angeles, California Coastal Commission or other applicable governmental bodies. Concessionaire specifically agrees to provide proper containers for trash and garbage which are screened from public view, to keep the Usable Premises free and clear of rubbish and litter and to keep the entire Premises, both land and water areas thereof, free and clear of rubbish and litter originating from the Usable Premises. County in its proprietary capacity shall have the right to enter upon and inspect the Premises at any reasonable time for cleanliness, safety and compliance with this Section 12.1., as long as such entrance is not done in a manner which would unreasonably interfere with the operation of the restaurant.

Concessionaire's obligation to maintain and restore is absolute, and is not in any way dependent upon the existence or availability of insurance proceeds, except as otherwise provided in this Section 12. Restoration shall take place in accordance with the provisions of subsections 5.12.2 and 5.12.4.

Facility improvements beyond routine maintenance should require State Park written approval and take place in accordance with the provisions of the Article 5 of this Contract.

12.2. Option to Terminate for Uninsured Casualty. Concessionaire shall have the option to terminate this Contract and be relieved of the obligation to restore the improvements on the Premises where the damage or destruction resulted from a cause not required to be insured against by this Contract (an “**Uninsured Loss**”), and where **all** of the following occur:

12.2.1. No more than fifty days following the Uninsured Loss, Concessionaire shall notify County of its election to terminate this Contract; to be effective, this written notice must include both a copy of Concessionaire’s notification to the Encumbrance Holder, if any, of Concessionaire’s intention to exercise this option to terminate and Concessionaire’s certification under penalty of perjury that Concessionaire has delivered or mailed such notification to the Encumbrance Holder in accordance with this subsection 12.2.1. County shall be entitled to rely upon the foregoing notice and certification as conclusive evidence that Concessionaire has notified the Encumbrance Holder regarding Concessionaire’s desire to terminate this Contract.

12.2.2. No more than thirty (30) days following the giving of the notice required by subsection 12.2.1. or such longer time as may be reasonable under the circumstances, Concessionaire shall, at Concessionaire’s expense: remove all debris and other rubble from the Premises; secure the Premises against trespassers; and, at County’s election, remove any remaining improvements on the Premises.

12.2.3. No more than sixty (60) days following the loss, Concessionaire delivers to County a quitclaim deed to the Premises in recordable form, or such other documentation as may be reasonably requested by County or any title company on behalf of County, terminating Concessionaire's interest in the Premises and reconveying such interest to County free and clear of any and all Encumbrances and Subleases.

12.2.4. Within ten (10) days following the County's receipt of the notice referred to in subsection 12.2.1., County has not received written notice from the Encumbrance Holder, if any, objecting to such termination, and County has received an agreement containing an effective assignment of Concessionaire's interest in this Contract to such Encumbrance Holder whereby such Encumbrance Holder expressly assumes and agrees to be bound by and perform all of Concessionaire's obligations under this Contract.

12.3. No Option to Terminate for Insured Casualty. Concessionaire shall have no option to terminate this Agreement or otherwise be relieved of its obligation to restore the improvements on the Premises where the damage or destruction results from a cause required to be insured against by this Contract.

12.4. No County Obligation to Make Repairs. Except as specifically provided in this Contract, County shall have no obligation whatsoever to make any repairs or perform any maintenance on the Premises. Without limiting the foregoing:

12.4.1. Sand Replenishment. County shall have no obligation to replenish any sand on or about the Premises or the nearby or adjacent beaches.

12.4.2. Jetty. County shall have no responsibility to build or maintain any jetty or similar device on, or in the vicinity of, the Premises.

12.4.3. Rip/Rap. County shall have no responsibility to construct a seawall or rip-rap to protect the Premises from ocean action, wind, storm or wave damage. Concessionaire specifically acknowledges that it has agreed to accept the Premises “as-is” and bears the risk, among others, of damage or wear and tear to the foundation of the Premises; provided, however, and notwithstanding the foregoing, County shall maintain and repair the existing rip-rap that protects the Parking Lot Parcel, as defined in Attachment No. 1 hereto; provided further that County shall have sole discretion to determine the adequacy of such maintenance and repair.

12.5. Repairs Not Performed by Concessionaire. If Concessionaire fails to make any repairs or replacement as required, Director may notify Concessionaire of said failure in writing, and should Concessionaire fail to cure said failure and make repairs or replacements within a reasonable time as established by Director, County may make such repairs or replacements and the cost thereof, including, but not limited to, the cost of labor, overhead, materials and equipment, shall be charged against Concessionaire and shall be paid to County by Concessionaire immediately upon demand. Any failure to make such payment by Concessionaire within two (2) business days after County’s demand thereof shall constitute a default hereunder.

12.6. Other Repairs. Although having no obligation to do so, County may, at its own cost and at its sole discretion, perform or permit others to perform any necessary dredging, filling, grading, slope protecting, construction of seawalls, or repair of water systems, sewer facilities, roads, or other County facilities on or about the Premises. Such work may include but not be limited to the construction, repair and maintenance of an emergency sewage storage tank and related improvements affecting a portion of the Premises by the City of Los Angeles. Concessionaire hereby waives any claim against

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County arising out of the temporary disruption caused by the installation, maintenance and/or repair of such emergency sewage storage tank and related improvements.

12.7. Bicycle Path. Concessionaire shall comply with all Applicable Laws, including Coastal Development Permit 5-91-141, as amended as of January 30, 1995, which provides as follows: “The applicant shall agree to work jointly with the City of Los Angeles to develop a feasible route and design for the Pacific Coast Beach Bike Path for that portion of the path which passes by or through the site.” Concessionaire acknowledges that it has received from County a copy of the aerial image for the existing bicycle path extension. Concessionaire shall bear the risk that such bicycle path may affect Concessionaire’s business and Concessionaire undertakes any financial risk therefrom.

12.8. Cellular Antenna. Concessionaire acknowledges the existing cellular telephone antenna and related improvements on a portion of the Premises. Concessionaire shall permit County’s designee access to the Premises as is reasonably necessary to perform reasonable maintenance and repairs thereto, subject to Concessionaire’s reasonable approval as to the times for periodic non-emergency maintenance and repairs. Concessionaire hereby waives any claim against County arising out of the temporary disruption, if any, caused by maintenance and/or repair of such antenna and related improvements, as well as any claim of Concessionaire to participate in or share any consideration payable to County or any other governmental authority or agency in regard to this antenna.

13. RESOURCE CONSERVATION

13.1. Environmental Conservation Program: Concessionaire shall set a positive example in waste management and environmental awareness that shall lead to preservation of the resources of the State and County. Accordingly, Concessionaire shall prepare and execute a

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program, subject to the prior written approval of the County, designed to reduce environmental impacts that result from concession operations. This program shall address, but not be limited to: solid waste management, including reduction, reuse and recycling; water and energy conservation, pest management, grease removal and disposal, hazardous materials handling and storage, and air quality. Specifically, the program must include the following:

13.1.1. Recycling and Beverage Container Programs: The Concessionaire shall implement a source reduction and recycling program designed to minimize concession and patron use of disposable products, per Public Contract Codes Sections 12164.5 et seq. and 12200 et seq. Reusable and recyclable products are preferred over "throwaways." Where disposable products are needed, products that have the least impact on the environment will be selected. No Styrofoam containers or other non-biodegradable containers are to be used or sold by Concessionaire. The use of "post-consumer" recycled products is encouraged wherever possible.

Recycled Bond Paper

Consistent with the County's Board of Supervisors' policy to reduce the amount of solid waste deposited at the County landfills, the Concessionaire agrees to use recycled-content paper to the maximum extent possible on this Contract.

The Concessionaire shall participate in the California beverage container redemption/recycling program. Products to be recycled include, but are not limited to, paper, newsprint, cardboard, bimetal, plastics, aluminum and glass. At the start of each Contract Year, Concessionaire and County shall review items sold, and containers or utensils used or

dispensed by Concessionaire, and, whenever possible, eliminate the use of non-returnable or non-recyclable containers or plastics.

13.1.2. Water and Energy Conservation: The Concessionaire shall implement water and energy conservation measures. As new technologies are developed, Concessionaire shall explore the possibility of integrating them into existing operations where there is potential for increased efficiency, reduced water or energy consumption, and/or reduced impacts on the environment.

13.1.3. Erosion Control/Water Quality/Environmental Sensitivity: The Concessionaire shall comply with all requirements set forth by various oversight agencies that have jurisdiction and oversight authority relating to the Premises and surrounding properties, including, but not limited to, erosion control, water quality and environmental sensitivity standards.

13.2. Air and Water Pollution Violation: Under State laws, Concessionaire shall not be (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

14. PEST CONTROL ACTIVITIES

Pest inspections shall be performed regularly. Concessionaire will remedy all pest infestations in a timely manner. Concessionaire shall provide to County copies of all pest inspection reports or other professional assessments of the condition of the facilities.

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All pest control activities, chemical and non-chemical, shall be approved by the County prior to action by the Concessionaire. Concessionaire, or the pest control business acting on behalf of Concessionaire, shall submit a **Pest Control Recommendation Form** to the County for approval. The Pest Control Recommendation Form shall be created and completed by Concessionaire, or the pest control business acting on behalf of Concessionaire, in compliance with the provisions of Exhibit 23 of Appendix D. The County has fourteen (14) days to approve or deny the request. Such approval shall be solely for compliance with County's policies and in no way shall relieve Concessionaire or its contractors, employees, agents or representatives from compliance with all laws and regulations concerning such activities and from carrying out the work in a workmanlike manner.

Concessionaire, or the pest control business acting on behalf of Concessionaire, shall submit a report of completed work for each pest management action to the County no later than seven (7) days after performance of the work. The report may be submitted on a Pest Control Recommendation Form (or other form containing equivalent information).

15. EQUIPMENT

Concessionaire, at Concessionaire's own expense, shall completely equip the concession improvements for the operation of a first class restaurant (including banquet facilities), snack bar, and parking lot, each conforming to the Quality Standards set forth in Section 8.1 of this Contract, as well as other facilities directly related thereto, and for the sale within the Premises of food and beverages, beach equipment and other miscellaneous items of merchandise that are appropriate to recreational use at the beach or for use as souvenirs as defined in Section 6 of this Contract, and shall keep the same equipped in a safe and first-class manner throughout the term of this Contract.

16. PERSONAL PROPERTY

Except to the extent covered by subsections 5.11. and 5.12., title to all personal property provided by Concessionaire shall remain in Concessionaire. **Concessionaire shall not attach any personal property to any building without first obtaining County's written approval.** *Unless approved in writing by County, all property attached to real property will be considered a real property improvement and shall become property of County at the time this Contract is terminated.*

Removal and Restoration. At the expiration or sooner termination of this Contract, Concessionaire at its own expense shall remove all personal property brought onto the Premises by Concessionaire. Concessionaire, at Concessionaire's expense, shall restore and repair the Premises, and any of Concessionaire's improvements or fixtures remaining thereon, to a good, clean, safe, and fit condition, reasonable wear and tear excepted, and shall completely remedy all injuries to the Premises.

17. SIGNS AND ADVERTISING

No signs, logos, names, placards, or advertising matter shall be inscribed, painted, or affixed upon Premises, circulated, or published, including electronically or on the internet, without prior written consent of the County and only consistent with the purposes of the Contract. Any and all art, displays, identifications, monuments, awnings and advertising signs which are placed on, or are visible from, the exterior of the Premises shall be only of such size, design, wording of permanent signs and color as shall have been specifically submitted to and approved by County, whether pursuant to Article 5 of this Agreement or otherwise, in writing, prior to the erection or installation of said art, sign, display, identification, monument, awning or advertising sign. Such art, sign, display, identification, monument, awning or advertising sign shall be limited to those which advertise either the on-site concession or the public access to the Premises.

18. PHOTOGRAPHY

County may grant permits to persons or corporations engaged in the production of still and motion pictures and related activities for the use of the Premises for such

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purposes when such permission shall not interfere with the business of Concessionaire. Such permits shall not be deemed to be a competitive activity with regard to Concessionaire's rights to possession and operation under this Contract.

19. INTELLECTUAL PROPERTY RIGHTS

19.1. Ownership of Pre-existing Intellectual Property Rights: Other than as specifically identified and authorized in this Contract, no names, logos, trademarks or copyrighted materials belonging to and/or associated with this Contract shall be used, circulated, or published without the express written consent of County. Further, no such use, even if permitted herein, or otherwise, shall be deemed to instill in Concessionaire any rights of ownership on such names, logos, trademarks, copyrights or other materials, and any rights to such use shall not, under any circumstances, continue beyond the term of the Contract.

Any trademarks and/or copyrights belonging to Concessionaire prior to the commencement of the Contract shall remain in Concessionaire's sole ownership upon termination of the Contract.

During the course of this relationship, Concessionaire shall use the name, [Name]. Any additional and/or different names may be used only upon written agreement of County.

19.2. Ownership of New Logos and Trademarks Developed During Contract:

Any names, logos, and/or trademarks developed during and/or pursuant to this Contract that in any way associate with, identify or implicate an affiliation with County shall be approved in writing by County, shall belong to County upon creation, subject to express written agreement otherwise, and shall continue in County's exclusive ownership upon termination of the Contract. Further, all goodwill and other rights in said marks shall inure to the benefit of the County as the mark owner.

19.3. Concessionaire Rights in Separately Created Works: Any copyrighted materials and/or trademarks developed and created by Concessionaire separate and apart from this Contract, shall belong to Concessionaire, and shall continue in Concessionaire's exclusive ownership upon termination of this Contract. In the event that any trademarks and/or copyrights are created by Concessionaire during the term of this Contract and same are proposed for use in connection with Concessionaire's performance under the Contract, Concessionaire shall promptly notify County in writing of its intention to retain ownership in the specific trademarks and/or copyrights.

19.4. Ownership of Copyrights: Any works developed by Concessionaire pursuant to this Contract, including all related copyrights and other proprietary rights therein, shall be deemed to be "works for hire" under the United States Copyright Act, 17 USC §101 et seq., and shall belong to County upon creation, and continue in County's exclusive ownership upon termination of this Contract. These works shall include, but are not limited to, all drawings, designs, reports, specifications, notes, and other works developed in the performance of this Contract. Upon request, Concessionaire shall deliver to County the disk or tape that contains the design files of any work that is performed with the assistance of Computer Aided Design and Drafting (CADD) technology, and shall specify the supplier of the software and hardware necessary to use said design files. Operator intends and agrees to assign to County all rights, title, and interest in and to such materials as well as all related copyrights and other proprietary rights therein, unless otherwise agreed to in writing.

Concessionaire warrants that it is the sole exclusive owner and has the full right, power, and authority over all tangible and intangible property deliverable to County in connection with this Contract, and that title to such materials conveyed to County shall be delivered free and clear of all claims, liens, charges, judgments, settlements, encumbrances, or security interests.

Concessionaire agrees not to incorporate into or make any deliverables dependent upon any original works of authorship or Intellectual Property Rights of third parties without: (1) obtaining County's prior written permission, and (2) granting to or

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obtaining for County a nonexclusive, royalty-free, paid-up, irrevocable, perpetual, world-wide license to use, reproduce, sell, modify, publicly and privately perform, publicly and privately display, and distribute, for any purpose whatsoever, any such prior works.

Concessionaire further warrants that all deliverables do not infringe or violate any patent, copyright, trademark, trade secret, or any other intellectual property rights of any person, entity, or organization. Concessionaire agrees to execute any documents reasonably requested by County in connection with securing County' registration of patent and/or copyrights or any other statutory protection in such work product including an assignment of copyright in all deliverables. Operator further agrees to incorporate these provisions into all of its contracts with architects, engineers, and other consultants or contractors.

20. INTENTIONALLY OMITTED

21. PATENT, COPYRIGHT AND TRADE SECRET INDEMNIFICATION

21.1. The Concessionaire shall indemnify, hold harmless and defend County from and against any and all liability, damages, costs, and expenses, including, but not limited to, defense costs and attorneys' fees, for or by reason of any actual or alleged infringement of any third party's patent or copyright, or any actual or alleged unauthorized trade secret disclosure, arising from or related to the operation and utilization of the Concessionaire's work under this Contract. County shall inform the Concessionaire as soon as practicable of any claim or action alleging such infringement or unauthorized disclosure, and shall support the Concessionaire's defense and settlement thereof.

21.2. In the event any equipment, part thereof, or software product becomes the subject of any complaint, claim, or proceeding alleging infringement or unauthorized disclosure, such that County's continued use of such item is formally restrained, enjoined, or subjected to a risk of damages, the Concessionaire, at its sole expense, and providing that County's continued use of the system is not materially impeded, shall either:

- Procure for County all rights to continued use of the questioned equipment, part, or software product; or

- Replace the questioned equipment, part, or software product with a non-questioned item; or
- Modify the questioned equipment, part, or software so that it is free of claims.

21.3. The Concessionaire shall have no liability if the alleged infringement or unauthorized disclosure is based upon a use of the questioned product, either alone or in combination with other items not supplied by the Concessionaire, in a manner for which the questioned product was not designed nor intended.

22. UNIQUE TERMS AND CONDITIONS

22.1. Local Small Business Enterprise (LSBE) Preference Program

22.1.1. This Contract is subject to the provisions of the County's ordinance entitled LSBE Preference Program, as codified in Chapter 2.204 of the Los Angeles County Code.

22.1.2. The Concessionaire shall not knowingly and with the intent to defraud, fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain certification as a LSBE.

22.1.3. The Concessionaire shall not willfully and knowingly make a false statement with the intent to defraud, whether by affidavit, report, or other representation, to a County official or employee for the purpose of influencing the certification or denial of certification of any entity as a LLSBE.

22.1.4. If the Concessionaire has obtained certification as a Local Small Business Enterprise by reason of having furnished incorrect

supporting information or by reason of having withheld information, and which knew, or should have known, the information furnished was incorrect or the information withheld was relevant to its request for certification, and which by reason of such certification has been awarded this contract to which it would not otherwise have been entitled, Concessionaire shall:

1. Pay to the County any difference between the contract amount and what the County's costs would have been if the contract had been properly awarded;
2. In addition to the amount described in subdivision (1), be assessed a penalty in an amount of not more than ten (10) percent of the amount of the contract; and
3. Be subject to the provisions of Chapter 2.202 of the Los Angeles County Code (Determinations of Contractor Non-responsibility and Contractor Debarment).

The above penalties shall also apply to any business that has previously obtained proper certification, however, as a result of a change in their status would no longer be eligible for certification, and fails to notify the State, the Department of Consumer and Business Affairs and Internal Services Department (ISD) of this information prior to responding to a solicitation or accepting a contract award.

22.2 Social Enterprise (SE) Preference Program

22.2.1. This Contract is subject to the provisions of the County's ordinance entitled SE Preference Program, as codified in Chapter 2.205 of the Los Angeles County Code.

22.2.2. Concessionaire shall not knowingly and with the intent to defraud, fraudulently obtain, retain, attempt to obtain or retain, or aid

another in fraudulently obtaining or retaining or attempting to obtain or retain certification as a SE.

22.2.3. Concessionaire shall not willfully and knowingly make a false statement with the intent to defraud, whether by affidavit, report, or other representation, to a County official or employee for the purpose of influencing the certification or denial of certification of any entity as a SE.

22.2.4. If Concessionaire has obtained County certification as a SE by reason of having furnished incorrect supporting information or by reason of having withheld information, and which knew, or should have known, the information furnished was incorrect or the information withheld was relevant to its request for certification, and which by reason of such certification has been awarded this contract to which it would not otherwise have been entitled, Concessionaire shall:

1. Pay to the County any difference between the contract amount and what the County's costs would have been if the contract had been properly awarded;
2. In addition to the amount described in subdivision (1), be assessed a penalty in an amount of not more than ten percent (10%) of the amount of the contract; and
3. Be subject to the provisions of Chapter 2.202 of the Los Angeles County Code (Determinations of Contractor Non-responsibility and Contractor Debarment).

The above penalties shall also apply to any entity that has previously obtained proper certification, however, as a result of a change in their status would no longer be eligible for certification, and fails to notify the certifying department of this information prior to responding to a solicitation or accepting a contract award.

22.3. Disabled Veteran Business Enterprise (DBVE) Preference Program

22.3.1. This Contract is subject to the provisions of the County's ordinance entitled DBVE Preference Program, as codified in Chapter 2.211 of the Los Angeles County Code.

22.3.2. Concessionaire shall not knowingly and with the intent to defraud, fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain certification as a DBVE.

22.3.3. Concessionaire shall not willfully and knowingly make a false statement with the intent to defraud, whether by affidavit, report, or other representation, to a County official or employee for the purpose of influencing the certification or denial of certification of any entity as a DBVE.

22.3.4. If Concessionaire has obtained certification as a DBVE by reason of having furnished incorrect supporting information or by reason of having withheld information, and which knew, or should have known, the information furnished was incorrect or the information withheld was relevant to its request for certification, and which by reason of such certification has been awarded this contract to which it would not otherwise have been entitled, Concessionaire shall:

1. Pay to the County any difference between the contract amount and what the County's costs would have been if the contract had been properly awarded;
2. In addition to the amount described in subdivision (1), be assessed a penalty in an amount of not more than 10 percent of the amount of the contract; and

3. Be subject to the provisions of Chapter 2.202 of the Los Angeles County Code (Determinations of Contractor Non-responsibility and Contractor Debarment).

Notwithstanding any other remedies in this Contract, the above penalties shall also apply to any business that has previously obtained proper certification, however, as a result of a change in their status would no longer be eligible for certification, and fails to notify the State and the Department of Consumer and Business Affairs of this information prior to responding to a solicitation or accepting a contract award.

22.4. Consideration of Hiring County Employees Targeted for Layoff or Re-Employment List

Should the Concessionaire require additional or replacement personnel after the effective date of this Contract to perform the services set forth herein, the Concessionaire shall give first consideration for such employment openings to qualified, permanent County employees who are targeted for layoff or qualified, former County employees who are on a re-employment list during the life of this Contract.

22.5. Consideration of Hiring GAIN-GROW Participants

22.5.1. Should the Concessionaire require additional or replacement personnel after the effective date of this Contract, the Concessionaire shall give consideration for any such employment openings to participants in the County's Department of Public Social Services Greater Avenues for Independence (GAIN) Program or General Relief Opportunity for Work (GROW) Program who meet the Concessionaire's minimum qualifications for the open position. For this purpose, consideration shall mean that the Concessionaire will interview qualified candidates. The County will refer GAIN-GROW participants by job category to the Concessionaire. Concessionaires shall report all job

openings with job requirements to: GAINGROW@dpss.lacounty.gov to obtain a list of qualified GAIN-GROW job candidates.

22.5.2. In the event that both laid-off County employees and GAIN-GROW participants are available for hiring, County employees shall be given first priority.

22.6. Countywide Local and Targeted Worker Hiring Policy

The County of Los Angeles has implemented a Local and Targeted Worker Hire Policy (LTWHP) to facilitate the hiring of Local and Targeted workers. Pursuant to this policy, this project has a mandatory goal of at least 30 percent of total California Construction Labor Hours worked be performed by a qualified Local Resident. In addition, at least 10 percent of total California Construction Labor Hours worked on this project shall be performed by County residents classified as a Targeted Worker. Hours worked by a Targeted Worker who is also a Local Resident may be applied towards both the mandatory 30 percent Local Hire and 10 percent Targeted Worker Hire goals.

22.6.1. Definitions

Terms used in the implementation of the LTWHP shall be defined as follows:

- A. California Construction Labor Hours – Includes all craft worker hours performed on the project by California residents, excluding the hours performed by off-site material fabricators, designers, project office staff, or vendors.

- B. Certified Payroll Reports – The Contractor shall comply with the requirements of Section 1776 of the Labor Code, State of California for the submission of Certified Payroll Reports (CPR). The Contractor and Contractor's subcontractors shall submit a copy of all CPR's to the County on a monthly basis, no later than on the first Monday of the subsequent month. General contractor and all its subcontractors shall submit all CPR's to the County electronically if an online system is designated by the County.

- C. Community Service Providers – A network of public and private partners working to support workers and businesses by serving their employment and training needs. These providers include local one-stop job/career centers funded by the Federal Workforce Innovation and Opportunities Act (WIOA). These centers help businesses find skilled workers and connect customers to work related training and education; most services are available at no cost. Examples of Community Service Providers are listed in Section 2.02.
- D. Craft Employee Request Form – The form used by the contractor and its subcontractors to request dispatch of craft workers (including, but not limited to, apprentices and journeymen), who are Local Residents or Targeted Workers, from a Community Service Provider or union hiring hall in the event that assistance in obtaining such workers is needed. The request form is submitted by the contractor/subcontractor, completed and executed by the Community Service Provider or union hiring hall, and a copy retained by the General Contractor for auditing purposes.
- E. Local and Targeted Worker Hire Status Report – A monthly report required to be submitted to the County as listed on Form 00 19 12-4.
- F. Local Resident – A Local Resident is defined as an individual whose primary place of residence is within the Tier 1 or Tier 2 ZIP Codes of the County, as listed in Forms 00 19 12-1 and 00 19 12-3.
- G. Targeted Worker - A Targeted Worker is an individual who is a County resident and faces at least one or more of the following barriers to employment:
1. Has a documented annual income at or below 100 percent of the Federal Poverty Level;
 2. No high school diploma or GED;
 3. A history of involvement with the criminal justice system;
 4. Protracted unemployment (receiving unemployment benefits for at least 6 months);
 5. Is a current recipient of government cash or food assistance benefits;
 6. Is homeless or has been homeless within the last year;
 7. Is a custodial single parent;
 8. Is a former foster youth; or

9. Is a veteran, or is the eligible spouse of a veteran of the United States armed forces, under Section 2(a) of the Jobs for Veterans Act (38 U.S.C.4215[a]).

- H. Tier 1 Zip Codes – Tier 1 ZIP Codes are those Zip codes listed in Form 00 19 12-1.

- I. Tier 2 Zip Codes – Tier 2 ZIP Codes are those Zip codes listed in Form 00 19 12-3.

- J. Utilization Plan – The form submitted by the general contractor on behalf of itself and its subcontractors prior to commencing work, specifying a Manpower Utilization Plan, which contains the manpower plan and schedule for the hiring of qualified Local Residents and Targeted Workers, including the use of the subcontractors' workforce to meet the LTWHP hiring goal. The general contractor shall submit updates of the Utilization Plan to reflect changes in project conditions, schedules, or subcontractors.

22.6.2. LOCAL and TARGETED WORKER HIRE PROGRAM

- A. The Contractor and its Subcontractors shall meet the following minimum mandatory Local Resident and Target Worker hiring requirements:
 1. At least 30 percent of total California Construction Labor Hours worked on the project must be performed by a qualified Local Resident.
 2. Additionally, at least 10 percent of total California Construction Labor Hours worked on the project shall be performed by a Targeted Worker. The hours worked by a Targeted Worker who is also a Local Resident may also be applied towards the 30 percent Local Resident hiring goal.

- B. The available pool of Local Residents whose primary place of residence is within Tier 1 ZIP Codes (listed under Form 00 19 12-1), must first be exhausted in the manner specified in Section 2.01E before employing worker(s) from Tier 2 ZIP Codes (listed under Form 00 19 12-3).

- C. All California Construction Labor Hours shall be included in the calculation for the percentage requirements set forth in Section 1.03 A.

- D. The General Contractor and its Subcontractors shall not discriminate against or give preference to any particular individual or group based on race, color, gender, sexual orientation, age or disability.

22.6.3. Administration & Compliance

- A. The Concessionaire and its Subcontractors shall use the Craft Employee Request Form (Form 00 19 12-1) for all requests for dispatch of qualified Local Residents and Targeted Workers craft workers (including apprentices and journeymen) in the event that assistance in obtaining such workers is needed from a Community Service Provider, union hiring hall, or other source.
- B. Prior to commencing work, the Concessionaire, on behalf of itself and its Subcontractors, shall submit a Manpower Utilization Plan (Form 00 19 12-2) to the County Project Manager that contains the manpower plan and schedule for the hiring of qualified Local and Targeted Workers and the assignment and use of the subcontractors' workforce to meet the Local Worker Hiring requirement. The Concessionaire, thereafter, shall submit updates of the Manpower Utilization Plan to reflect changes in project conditions, schedule, or subcontractors.
- C. No later than the first Monday of each month, the Concessionaire shall submit to the designated County representative a completed Local and Targeted Hire Status Report containing the relevant information for the preceding month. The Local and Targeted Hire Status Report shall contain, at a minimum, the information specified below for general contractor and each subcontractor:
1. For each California Project Craft Worker (apprentices and journeymen): (a) the total labor hours, total number of all workers (apprentices and journeymen), hours worked on the project; and (b) the wages earned on the project.
 2. Total number of Local Residents (apprentices and journeymen), hours worked (apprentices and journeymen), segregated by Tier 1 and Tier 2 Residency Preference Areas, and wages earned by each Local Resident.
 3. Total number of Targeted Worker hours worked (apprentices and journeymen).(by Tier 1 and Tier 2 Residency Preference Areas)
 4. Total number of hours worked by Local Residents by subcontractor.
- C. On the first Monday of each month, the Concessionaire and all its Subcontractors shall submit the Local and Targeted Hire Status Report to the designated County representative (or submit the data online if the County

elects to provide an online system), to demonstrate progress in meeting the Manpower Utilization Plan. Failure to submit the Local and Targeted Worker Hire Status Report to the designated County representative shall be deemed to constitute zero percent local hire participation for the month and the County may retain the Monthly Local Hire Participation Contract Compliance Value of \$1,000 for that month.

- D. The County may, in its sole discretion, elect to provide an online system for the Concessionaire and all of its subcontractors to input the data required in the Local and Targeted Worker Hire Status Report. If the County so elects, the Concessionaire and its Subcontractors shall utilize that online system in lieu of completing and submitting the Local and Targeted Worker Hire Status Report.
- E. The Concessionaire and its Subcontractors shall first meet the Local and Targeted Worker Hire participation requirement by employing qualified workers from the Tier 1 Preference Area. If the Concessionaire is unable to meet their entire Local and Targeted Worker Hire need from this area, it must submit to the Project Manager a statement on company letterhead certifying that it has exhausted all available qualified Local and Targeted Workers from this area during a 48 hour period before pursuing manpower from the Tier 2 Preference Area.
- F. The Concessionaire's compliance with the approved Manpower Utilization Plan will be evaluated monthly using the Local and Targeted Hire Status Report. The Local and Targeted Worker Hire Participation Compliance Rectification Amount will be determined by multiplying the Monthly Local Hire Participation Contract Compliance Value of \$1,000 by the number of months since the issuance of the Notice to Proceed multiplied by the fraction (percentage) generated by dividing the Cumulative Actual Local Hire Participation (numerator) by the Cumulative Forecast Local Hire Participation (denominator). To this end, the County will release the Local and Targeted Worker Hire Participation Compliance Rectification Amount in direct proportion to the actual Local and Targeted Worker Hire participation levels achieved by the Concessionaire and as forecasted in the Manpower Utilization Plan.

Monthly		Cumulative	
Local Hire	Number of	Actual Local Hire	Local Hire
Participation	Months Since Notice to	Participation	Participation Compliance
Contract	Proceed (NTP)	-----	Rectification Amount
Compliance Value	(-----	
		Cumulative	
		Forecast Local Hire	
		Participation	

G. OG. On a monthly basis, the County will release the Local and Targeted Worker Hire Participation Compliance Rectification Amount, minus the total value of previous releases, in direct proportion to the actual Local and Targeted Worker Hire participation levels achieved by the Contractor consistent with the Manpower Utilization Plan. If the Cumulative Actual Local Hire Participation exceeds the Cumulative Forecast Local Hire Participation, the County will release the Local Hire Participation Compliance Rectification Amount based on a value not to exceed 100percent. The total aggregate amount to be withheld, or released, for the Local Worker Hiring Requirement shall not exceed \$_____ (based on \$1,000 / month for ___ months).

Local		
Hire Participation	Cumulative	Current Month's
Compliance	Value of Previous	Release
Rectification	Monthly Releases	
Amount		

H. At the conclusion of the project, the County will conduct a final evaluation of the Concessionaire's compliance with the Manpower Utilization Plan as described in Section 2.01.B and execute a final release of funds, if applicable, as described in Section 2.01.F. The Concessionaire's failure to meet the Local and Targeted Worker Hiring Requirement in Section 1.01 by the conclusion of the project shall result in the County imposing liquidated damages and deducting such amount otherwise owed to the Concessionaire in its final payment. The County will not be required to pay interest on any amounts withheld during the Term of the Contract.

I. The County and Concessionaire specifically agree that the Local and Targeted Hire Participation Compliance Rectification Amount, minus the total value of previous releases, in direct proportion to the actual Local and Targeted hire participation levels achieved by the Concessionaire consistent with the Manpower Utilization Plan, shall be imposed as liquidated damages, and not as a forfeiture or penalty. It is further specifically agreed that the aforesaid amount is presumed to be the amount of damages sustained due to the

Concessionaire's inability to achieve the Local and Targeted Worker Hiring Requirement in Section 1.01.

- J. For construction contracts where the work is performed for a private County lessee or concessionaire, the lessee or concessionaire shall be responsible for administration of all aspects of this Section 2.01, including the calculation and collection of the Local Hire Participation Compliance Rectification Amount. At the conclusion of the project, the lessee or concessionaire shall pay over the designated County representative any such amounts collected, and shall provide a full report to the designated County Representative of all monthly information required to be collected in this Section 2.01.

22.6.4. COMMUNITY SERVICE PROVIDERS

Examples of Community Service Providers that may be used by Contractors and Subcontractors to identify Local Residents and Targeted Workers include:

Los Angeles County Community and Senior Services:

<http://css.lacounty.gov/>

Los Angeles County America's Job Centers of California:

<http://workforce.lacounty.gov/>

Cal Jobs: <http://www.caljobs.ca.gov/vosnet/Default.aspx>

LA Jobs: <https://www.jobsla.org/vosnet/Default.aspx>

Helmets to Hardhats: <https://www.helmetstohardhats.org>

America's Job Center of California: <http://www.americasjobcenter.ca.gov/>

part 3 – forms

Form 00 19 12-1: LTWHP Craft Employee Request Form

Form 00 19 12-2: LTWHP Utilization Plan for **PROJECT NAME**

Form 00 19 12-3: FPL List of Zip Codes

Form 00 19 12-4: Local and Targeted Worker Hire Status Report

22.7. Compliance with County’s Zero Tolerance Human Trafficking

Concessionaire acknowledges that the County has established a Zero Tolerance Human Trafficking Policy prohibiting contractors from engaging in human trafficking.

If a Concessionaire or member of Concessionaire’s staff is convicted of a human trafficking offense, the County shall require that the Concessionaire or member of Concessionaire’s staff be removed immediately from performing services under the Contract. County will not be under any obligation to disclose confidential information regarding the offenses other than those required by law.

Disqualification of any member of Concessionaire’s staff pursuant to this paragraph shall not relieve Concessionaire of its obligation to complete all work in accordance with the terms and conditions of this Contract.

22.8. County’s Right to Erect Public Monument

After Contract award, the County or its agent shall retain the right, at any time during the Term hereof, to erect a public monument at the Premises commemorating the Gladstone's restaurant as a distinctly Californian destination that attracted visitors and locals alike.

22.9. Labor Peace Agreement

The Proposer shall secure and retain a labor peace agreement with a labor union as a condition of doing business at the Premises.

23. INSURANCE

The County reserves the right to review and adjust the Required Insurance provisions from time to time during the Term hereof, conditioned upon County's determination of changes in risk exposures.

23.1. Concessionaire's Insurance. The policy of property insurance shall provide fire insurance with extended coverage, insuring against loss or damage by fire, lightening and the additional perils included in the standard extended coverage endorsement, as well as those included in the "all risk" policy, as well as burglary and theft insurance, on the structures, improvements, inventory, trade fixtures, furnishing and equipment to be used by Concessionaire on the Premises. Such insurance shall be in an amount sufficiently adequate to enable the resumption of the concession operation by Concessionaire following the occurrence of any of the risks covered by said insurance. The policy shall provide standard fire and extended coverage insurance, and shall cover vandalism, malicious mischief, and those risks ordinary defined in "All-Risk coverage." The policy shall also contain "business interruption", "rental interruption" and/or continuous operation coverage payable to County equal to one (1) year's Annual Rent.

Without limiting Concessionaire's indemnification of Indemnitees described in Section 24. of this Contract, prior entering the Premises and during the Term of this Contract, Concessionaire, on its own expense, shall provide and maintain the following insurance issued by companies authorized to transact business in the State of California by the Insurance Commissioner and having a "general policyholders rating" of at least A-VII (or such higher rating as may be required by Concessionaire's Encumbrance Holder) as set forth in the most current issue of "A.M. Best's Key Rating Guide" or an equivalent rating from another industry-accepted rating agency.

23.1.1. General Liability insurance (written on ISO policy form CG 00 01 or similar then-current form reasonably acceptable to County) and endorsed to name County, State and their respective Boards, officers, agents, employees and volunteers as an additional insured, with limits of not less than the following:

General Aggregate:	\$10,000,000
Products/Completed Operations Aggregate:	\$10,000,000
Personal and Advertising Injury:	\$5,000,000
Each Occurrence:	\$5,000,000

Concessionaire may satisfy the above coverage limits with a combination of primary coverage (“**Primary Coverage**”) and excess liability coverage (“**Umbrella Coverage**”) (as long as (a) Concessionaire’s Primary Coverage is at least One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars (\$2,000,000) annual aggregate, and (b) the combination of such Primary Coverage and Umbrella Coverage provides County with the same protection as if Concessionaire had carried primary coverage for the entire limits and coverages required under this Section 23.1.1.

23.1.2. Automobile Liability insurance (written on ISO policy form CG 00 01 or similar then-current form reasonably acceptable to County) with a limit of liability of not less than One Million Dollars (\$1,000,000) of Primary Coverage and One Million Dollars (\$1,000,000) of Umbrella Coverage, for each accident and providing coverage for all “owned”, “hired” and “non-owned” vehicles, or coverage for “any auto.” During any period of operation of valet parking facilities, Concessionaire also shall provide Garage Keeper’s Legal Liability coverage, (written on ISO form CA 99 37 or similar then-current form reasonably acceptable to

County) with limits not less than Two Million Dollars (\$2,000,000) for this location.

23.1.3. Workers Compensation and Employer's Liability

insurance providing workers compensation benefits, as required by the Labor Code of the State of California and for which Concessionaire is responsible, and including Employers' Liability coverage with limits of not less than the following:

Each Accident:	\$1,000,000
Disease – policy limit:	\$1,000,000
Disease – each employee:	\$1,000,000

23.1.4. Commercial Property insurance covering damage to the Premises and Improvements (excluding the Seawall), from perils covered by the Causes-of-Loss Special Form (ISO form CP 10 30), excluding earthquake, and including Ordinance or Law Coverage, written for the full replacement value of the Improvements, with a deductible no greater than \$250,000 or 5% of the property value, whichever is less, and also including business interruption, including loss of rent equal to eighteen (18) months of rent, with proceeds payable to Concessionaire and County as their interests may appear and utilized for repair and restoration of the Premises and Improvements. Notwithstanding the foregoing, during any period during which no Improvements exist on the Premises or all of the existing Improvements are being demolished in connection with the construction of Improvements/Redevelopment Work, the obligation to provide insurance under this subsection 23.1.4. shall not be applicable so long as the insurance coverage described in subsection 23.1.5. below is carried.

23.1.5. For construction projects, including any Alterations or restoration, on the Premises, Concessionaire or Concessionaire's contractor or subcontractors will provide the following insurance (County reserves the right to determine the coverage and coverage limit required on a project by project basis):

23.1.5.1. Builder's Risk Course of Construction to insure against damage from perils covered by the Causes-of-Loss Special Form (ISO form CP 10 30 or similar then-current form reasonably acceptable to County). This insurance shall be endorsed to include ordinance or law coverage, coverage for temporary offsite storage, debris removal, pollutant clean-up and removal, testing, monitoring, preservation of property, excavation cost, landscaping, shrubs and plants and full collapse coverage during construction (without restricting collapse coverage to specified perils. This insurance shall be written on a completed-value basis and cover the entire value of the construction project, including County furnished materials and equipment, against loss or damage until completion and acceptance by Concessionaire and County.

23.1.5.2. General Liability. Such insurance shall be written on ISO policy form CG 00 01 (or similar then-current form reasonably acceptable by County) with limits as reasonably required by the County for the Alterations and Improvements. The products/completed operations coverage shall continue to be maintained for the following periods: (a) in the case of the Redevelopment Work, three (3) years after the date the Redevelopment Work is completed and accepted by Concessionaire and County, or (b) in the case of Alterations after the completion of the Redevelopment Work, such period after the

date such Alterations are completed and accepted by Concessionaire and County as reasonably determined by County, but not to exceed three (3) years after such completion and acceptance.

23.1.5.3. Automobile Liability. Such coverage shall be written on ISO policy form CA 00 01 (or similar then-current form reasonably acceptable by County) with a limit of liability as reasonably requested by the County for the Alterations. Such insurance shall include coverage for all “owned”, “hired” and “non-owned” vehicles, or coverage for “any auto.”

23.1.5.4. Professional Liability. Such insurance shall cover liability arising from any error, omission, negligent or wrongful act of the contractor and/or licensed professional (i.e., architects, engineers, surveyors, etc.). This coverage shall also provide an extended two-year reporting period commencing upon termination or cancellation of the construction project. The limits of the coverage required under this subsection 23.1.5.4. shall be (a) One Million Dollars (\$1,000,000) with respect to the prime architect for the Redevelopment Work (or such lesser amount is required by Director for the prime architect in connection with any subsequent Alterations), and (b) One Million Dollars (\$1,000,000) with respect to each other contractor, subcontractor, architect, engineer, electrician, surveyor or other licensed professional rendering services in connection with the design or construction of the Redevelopment Work or subsequent Alterations, provided that Director shall have the discretion to reduce the coverage limits under this clause (b) if appropriate in the judgment of Director based on the nature and scope of the services being provided.

23.1.5.5. Asbestos Liability or Contractors Pollution

Liability insurance, if construction requires remediation of asbestos or pollutants, and if such insurance is available. Such insurance shall cover liability for personal injury and property damage arising from the release, discharge, escape, dispersal or emission of asbestos or pollutants, whether gradual or sudden, and include coverage for the costs and expenses associated with voluntary clean-up, testing, monitoring and treatment of asbestos and/or pollutant in compliance with governmental mandate or order. If the asbestos or pollutant will be removed from the construction site, asbestos or pollution liability is also required under the contractor's or subcontractor's Automobile Liability Insurance. Concessionaire shall maintain limits as reasonably required by the County for the Alterations.

23.1.6. Liquor Liability insurance is required if the use of the Premises or Improvements involves any manufacture, distribution or service of alcoholic beverages. Liquor Liability insurance (written on ISO policy form CG 00 33 or 34 or similar the-current form reasonably acceptable to County) shall have a liability limit of not less than Five Million Dollars (\$5,000,000) per occurrence and an annual aggregate of Ten Million Dollars (\$10,000,000), which limits may be covered by a combination of Primary Coverage and Umbrella Coverage. If written on a claims made form, the coverage shall also provide an extended two-year reporting period commencing upon the termination or cancellation of this Contract.

23.2. Provisions Pertaining to Property Insurance. The insurance coverage required in Sections 23.1.4. and 23.1.5.1. shall name the County, State, and their respective Boards and members thereof, officers, agents, employees and volunteers, as

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additional insureds and any Encumbrance Holder as loss payee. Upon the occurrence of any loss, the proceeds of such insurance shall be held by County in trust for the named insureds as their interests appear, and shall be disbursed by County on a monthly basis to pay for work completed in accordance with then-prevailing industry custom and practice. In the event of such loss, Concessionaire shall be obligated to rebuild or replace the destroyed or damaged buildings, structures, equipment, and improvements, in accordance with the procedures set forth hereinabove for the initial construction, except as otherwise provided in Section 12.1. (Maintenance and Repair) hereof. Any surplus or proceeds after said rebuilding or replacement shall be distributed to Concessionaire.

23.3. General Insurance Requirements. Subject to the immediately following grammatical paragraph, a duplicate policy or policies (or certificates of Insurance) evidencing the insurance coverage under this Article 23, in such form as shall be reasonably acceptable to County, shall be filed with Director no later than the Effective Date, provided that the evidence of the insurance coverage required under Section 23.1.5. shall be required to be delivered by Concessionaire prior to the commencement of any Alterations. All certificates of insurance shall:

- (a) specifically identify this Contract;
- (b) clearly evidence all coverages required under this Contract;
- (c) identify any deductibles or self-insured retentions exceeding \$25,000 or such other commercially reasonable amount as provided by Director; and
- (d) evidence all other requirements under this Article 23.

Concessionaire shall provide County with, or Concessionaire's insurance policies shall contain a provision that County shall receive, written notice of cancellation or any change in Required Insurance, including insurer, limits of coverage, term of coverage or policy period. The written notice shall be provided to County at least ten (10) days in advance of cancellation for non-payment of premium and thirty (30) days in advance for any other cancellation or policy change. Failure to provide written notice of cancellation

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or any change in Required Insurance may constitute a material breach of the Contract, in the sole discretion of the County, upon which the County may suspend or terminate this Contract.

In lieu of submitting a copy of the policy or policies evidencing the above insurance, Concessionaire may submit a certificate of insurance in a form reasonably acceptable to County.

Any insurance coverage may be issued in a form of a blanket policy insuring other properties, in form, amount and context of which is reasonably satisfactory to County that such coverage provides the same protection as required under this Article 23 as if the insurance had been procured on an individual property basis.

23.4. Additional Required Provisions. Concessionaire's insurance policies required by this Article 23 shall be for a term of not less than one (1) year and shall additionally provide:

(a) that County, State and their respective Boards and members thereof, officers, agents, employees and volunteers, shall be named as **additional insureds** under any liability insurance policy or policies;

(b) that the full amount of any losses to the extend property insurance proceeds are available shall be payable to additional insureds notwithstanding any act, omission or negligence of Concessionaire, or any party acting through Concessionaire, which might otherwise result in forfeiture of such insurance;

(c) in any property insurance policy, a **waiver of all right of subrogation** against State, County and its respective Board of Supervisors and members thereof, and County's, State's and its respective officers, agents, employees and volunteers with respect to losses payable under such policies; The Concessionaire shall require its insurers to execute any waiver of subrogation endorsements which may be necessary to effect such waiver;

(d) in any property insurance policy, that such policies shall not be invalidated should the insured waive, prior to a loss, any or all right of recovery against any party for losses covered by such policies;

(e) to the extent of the indemnification obligations of Concessionaire in favor of any additional insureds, the property and commercial general liability insurance policies **shall provide coverage on a primary and non-contributory basis** with respect to such additional insureds, regardless of any other insurance or self-insurance that such additional insureds may elect to purchase or maintain;

(f) that losses, if any, shall be adjusted with and payable to Concessionaire, County and Encumbrance Holders, if any, pursuant to a standard mortgagee clause;

(g) that such policies shall not be suspended, voided, canceled, reduced in coverage or in limits or materially changed without at least thirty (30) days prior written notice to County and all Encumbrances Holders or ten (10) business days in case of cancellation for failure to pay the premium;

(h) that the commercial general liability insurance shall apply separately to each insured against whom a claim is made, except with respect to the overall limits of said insurer's liability;

(i) that the property and commercial general liability insurance policies shall contain no special limitations on the scope of protection afforded to the additional insureds, and no failure to comply with the reporting provisions of such policies shall affect the coverage afforded to such additional insureds;

(j) Concessionaire shall include all Sub-Contractors as insureds under Concessionaire's own policies, or shall provide County with each Sub-Contractor's separate evidence of insurance coverage, reasonably acceptable to County.

Concessionaire shall be responsible for verifying each Sub-Contractor complies with the Required Insurance provisions herein, and shall require that each Sub-Contractor name the County, State and Concessionaire as additional insureds on the Sub-Contractor's General Liability policy;

(k) if any part of the Required Insurance is written on a claims made basis, any policy retroactive date shall precede the effective date of this Contract. Concessionaire

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understands and agrees it shall maintain such coverage for a period of not less than three (3) years following Contract expiration, termination or cancellation.

23.5. Failure to Procure Insurance. Failure of Concessionaire to procure or renew the herein required insurance shall, if not cured within two (2) days after written notice from County, constitutes a default hereunder. In the event of such failure, in addition to the other rights and remedies provided hereunder, County may, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, and all monies so paid by County shall be repaid by Concessionaire, with interest thereon at ten percent (10%) per annum, to County upon demand.

23.6. Adjustment to Amount of Liability Coverage. The amounts of liability insurance required under Sections 23.1.1., 23.1.2. and 23.1.3. shall be subject to renegotiation as of each fifth (5th) anniversary of the Effective Date (each, an “**Insurance Renegotiation Date**”). If County and Concessionaire cannot agree upon the amount of insurance by the sixtieth (60th) day preceding an Insurance Renegotiation Date, the matter shall be resolved by binding arbitration in accordance with Section 25. In no event shall the amounts of liability insurance be decreased as a result of such renegotiation or arbitration. Following such renegotiation or arbitration, the parties shall execute an amendment to this Contract setting forth the renegotiated insurance provisions or the arbitration judgment, as appropriate.

23.7. Notification of Incidents, Claims or Suits. Concessionaire shall notify County of any accident or incident on or about the Premises which involves injury or property damage over Fifty Thousand Dollars (\$50,000) in the aggregate and pursuant to which a claim against Concessionaire and/or County is made or threatened in writing. Such notification shall be made in writing within 72 hours after Concessionaire first becomes aware of the claim or threatened claim.

24. INDEMNITY; HOLD HARMLESS AGREEMENT

Except to the extent caused by the gross negligence or willful misconduct of any such Indemnitees, Concessionaire shall at all times waive any claims, defend, indemnify, protect and hold harmless County, State, and their respective Boards, officers, agents, consultants, counsel, employees and volunteers (the “**Indemnitees**”) from any and all claims, costs, losses, expenses or liability (including reasonable attorney’s and expert witness’ fees), arising from and/or any matter relating to this Contract, including but not limited to the death of or injury to the persons or damage to property, including property owned or controlled by or in possession of Indemnitees, to the extent that such arises from or is caused by **a)** the operation, maintenance, use or occupation of the Premises or the Improvements by Concessionaire or its agents, officers, employees, licensees, concessionaires, permittees or Sublessees, including any occurrence in or on the Premises or Improvements; **b)** the acts, omissions, or negligence of Concessionaire, its agents, officers, employees, volunteers, licensees, concessionaires, permittees or Sublessees; **c)** the failure of Concessionaire to observe and abide by any of the terms or conditions of this Contract or any Applicable Laws, ordinance, rule or regulation, or **d)** the performance of the Redevelopment Work or any Alterations.

The obligation of Concessionaire to so relieve, indemnify, protect and hold harmless the Indemnitees shall continue during any periods of occupancy or of holding over by Concessionaire, its agents, officers, employees, licensees, concessionaires, permittees or Sublessees, including such periods that extend beyond the expiration of the Term or other termination of this Contract.

25. ARBITRATION

Disputed matters which may be arbitrated pursuant to this Contract shall be settled by **binding** arbitration in accordance with the then existing provisions of the California Arbitration Act, which as of the date hereof is contained in Title 9 of Part III of the California Code of Civil Procedure, commencing with Section 1280, except as otherwise provided by this

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Section 25. Either party (the “**Initiating Party**”) may initiate the arbitration process by sending written notice (“**Request for Arbitration**”) to the other party (the “**Responding Party**”) requesting initiation of the arbitration process.

Notwithstanding anything to the contrary which may now or thereafter be contained in the California Arbitration Act, the parties agree that the following provisions shall apply to any and all arbitration proceedings conducted pursuant to this Contract:

25.1. Selection of Arbitrator. The parties shall attempt to agree upon an arbitrator who shall decide the matter. If, for any reason, the parties are unable to agree upon the arbitrator within twenty five (25) days of the date the Initiating Party serves a request for arbitration on the Responding Party, then at any time on or after such date either party may petition for the appointment of the arbitrator as provided in California Code of Civil procedure Section 1281.6.

25.2. Arbitrator. The arbitrator shall be a retired judge of the California Superior Court, Court of Appeal or Supreme Court, or any United States District Court or Court of Appeals located within the State, who has agreed to resolve civil disputes.

25.3. Scope of Arbitration. County and Concessionaire affirm that the mutual objective of such arbitration is to resolve the dispute as expeditiously as possible. The arbitration process shall not apply or be used to determine issues other than (i) those presented to the arbitrator by the Initiating Party provided those disputes are arbitrable disputes pursuant to this Contract, (ii) cross claims presented to the arbitrator by the Responding Party, provided that any such cross claims constitute arbitrable disputes pursuant to this Contract, and (iii) such related preliminary or procedural issues as are necessary to resolve (i) and/or (ii) above. The arbitrator shall render an award or decision. Either party may, at its sole cost and expense, request a statement of decision

explaining the arbitrator's reasoning which shall be in such detail as the arbitrator may determine. The award shall be made by the arbitrator no later than the sooner of six (6) months after the date on which the arbitrator is selected by mutual agreement or court order, whichever is applicable, or five (5) months after all conflicts or potential conflicts regarding such arbitrator have been resolved. County and Concessionaire hereby instruct the arbitrator to take any and all actions deemed reasonably necessary, appropriate or prudent to ensure the issuance of an award or decision within such period. Notwithstanding the foregoing, failure to complete the arbitration process within such period shall not render such arbitration or any determination made therein void or voidable. However, at any time after the expiration of the foregoing five (5) or six (6) month periods, as applicable, either party may deliver written notice to the arbitrator and the other party declaring such party's intent to terminate the arbitration if the award is not issued within a specified number of days after delivery of such notice. If the arbitrator's award is not issued prior to the expiration of said specified period, the arbitration shall be terminated and the parties shall recommence arbitration proceedings pursuant to this Article 25.

25.4. Immunity. The parties hereto agree that the arbitrator shall have the immunity of a judicial officer from civil liability when acting in the capacity of arbitrator pursuant to this Contract.

25.5. Section 1282.2. The provisions of Code of Civil Procedure § 1282.2 shall apply to the arbitration proceedings except as follows:

(1) Unless the parties otherwise agree, the arbitrator shall appoint a time and place for the hearing and shall cause notice thereof to be served as provided in said § 1282.2 not less than ninety (90) days before the hearing, regardless of the aggregate amount in controversy.

(2) No later than sixty (60) days prior to the date first set for the hearing, in lieu of the exchange and inspection authorized by Code of Civil Procedure

§ 1282.2(a)(2)(A), (B) and (C), the parties shall simultaneously exchange the following documents by personal delivery to each other and to the arbitrator:

(a) a written Statement of Position, as further defined below, setting forth in detail that party's final position regarding the matter in dispute;

(b) a list of witnesses each party intends to call at the hearing, designating which witnesses will be called as expert witnesses and a summary of each witness's testimony;

(c) a list of the documents each intends to introduce at the hearing, together with complete and correct copies of all of such documents; and,

(d) if the issue involves Fair Market Rental Value or a valuation matter, a list of all Written Appraisal Evidence (as defined below) each intends to introduce at the hearing, together with complete and correct copies of all of such Written Appraisal Evidence.

(3) No later than twenty (20) days prior to the date first set for the hearing, each party may file a reply to the other party's Statement of Position ("**Reply**"). The Reply shall contain the following information:

(a) a written statement, to be limited to that party's rebuttal to the matters set forth in the other party's Statement of Position;

(b) a list of witnesses each party intends to call at the hearing to rebut the evidence to be presented by the other party, designating which witnesses will be called as expert witnesses;

(c) a list of the documents each intends to introduce at the hearing to rebut the evidence to be presented by the other party, or impeach the witnesses identified by the other party, together with complete and correct copies of all of such documents; and

(d) if the issue involves Fair Market Rental Value or a valuation matter, a list of all Written Appraisal Evidence, or written critiques of the other party's Written Appraisal Evidence, if any, each intends to introduce at the hearing to rebut the evidence presented by the other party, together with complete and correct copies of all of such Written Appraisal Evidence.

25.6. Statement of Position. The Statement of Position to be delivered by Section 25.5. shall comply with the following requirements:

(1) Where the dispute involves rent to be charged or other monetary amounts, the Statements of Position shall numerically set forth all relevant existing and proposed rents and/or monetary amounts.

(2) If the dispute relates to Improvement Costs, the Statements of Position shall set forth the facts supporting such party's position and the amount of each cost which the party believes should be allowed or disallowed.

25.7. Written Appraisal Evidence. Neither party may, at any time during the proceedings, introduce any written report which expresses an opinion regarding Fair Market Rental Value or the fair market value of the Premises, or any portion thereof, ("**Written Appraisal Evidence**") unless such Written Appraisal Evidence complies with the following standards: it shall describe the Premises; identify the uses permitted thereon; describe or take into consideration the terms, conditions and restrictions of this Contract; correlate the appraisal method(s); discuss the relevant factors and data considered; review rentals paid by Concessionaires within Southern California who are authorized to conduct similar activities on comparable leaseholds; and, describe the technique of analysis, limiting conditions and computations that were used in the formulation of the valuation opinion expressed. With respect to disputes regarding Fair Market Rental Value, such Written Appraisal Evidence shall express an opinion

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regarding the fair market rental value of the Premises as prescribed by subsection 4.5.1. Written Appraisal Evidence in connection with disputes arising out of Section 7 of this Contract shall predicate any valuation conclusions contained therein on the Income Approach. Written Appraisal Evidence shall in all other respects be in material conformity and subject to the requirements of the Code of Professional Ethics and the Standards of Professional Practice of The Appraisal Institute or any successor entity.

25.8. Evidence. The provisions of Code of Civil Procedure § 1282.2(a)(2)(E) shall not apply to the arbitration proceeding. The arbitrator shall have no discretion to allow a party to introduce witnesses, documents or Written Appraisal Evidence (other than impeachment testimony) unless such information was previously delivered to the other party in accordance with Section 25.5. and, in the case of Written Appraisal Evidence, complies with the requirements of Section 25.7, or such evidence consists of a transcript of a deposition of an expert witness conducted pursuant to Section 25.9. Notwithstanding the foregoing, the arbitrator may allow a party to introduce evidence which, in the exercise of reasonable diligence, could not have been delivered to the other party in accordance with Section 25.5., provided such evidence is otherwise permissible hereunder.

25.9. Discovery. The provisions of Code of Civil Procedure § 1283.05 shall not apply to the arbitration proceedings except to the extent incorporated by other sections of the California Arbitration Act which apply to the arbitration proceedings. There shall be no pre-arbitration discovery except as provided in Section 25.5.; provided, however, each party shall have the right, no later than seven (7) days prior to the date first set for the hearing, to conduct a deposition, not to exceed three (3) hours in duration unless the arbitrator otherwise determines that good cause exists to justify a longer period, of any person identified by the other party as an expert witness pursuant to Sections 25.5. (2)(b) or 25.5. (3)(b).

25.10. Decisions of Arbitrators.

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25.10.1. Monetary Issues. With respect to monetary disputes (including without limitation disputes regarding Percentage Rent, Fair Market Rental Value and the amount of coverage under the policies of insurance required pursuant to Section 23 of this Contract, but excluding disputes under Sections 8.2. and 8.3. regarding Concessionaire's prices for goods and services), the arbitrator shall have no right to propose a middle ground or any proposed modification of either Statement of Position. The arbitrator shall instead select whichever of the two Statements of Position is the closest to the monetary or numerical amount that the arbitrator determines to be the appropriate determination of the rent, expense, claim, cost, delay, coverage or other matter in dispute and shall render a decision or an award consistent with such Statement of Position. The Statement of Position so chosen and the award or decision rendered by the arbitrator thereon shall be final and binding upon the parties, absent Gross error on the part of the arbitrator.

25.10.2. Nonmonetary Issues. With respect to nonmonetary issues and disputes, the arbitrator shall determine the most appropriate resolution of the issue or dispute, taking into account the Statement of Position submitted by the parties, and shall render a decision accordingly. Such decision shall be final and binding upon the parties, absent Gross Error on the part of the arbitrator.

25.11. Powers of Arbitrators. In rendering the award, the arbitrator shall have no power to consult or examine experts or authorities not disclosed by a party pursuant to Section 25.5.(2) hereof regardless of whether such proposed consultation or examination is to be undertaken in the presence of both parties or is to include any right of cross-examination .

25.12. Cost of Arbitration. Concessionaire and County shall equally share the expenses and fees of the arbitrator, together with other expenses of arbitration incurred

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or approved by the arbitrator excluding counsel fees and witness fees or other fees incurred by a party for its own benefit, which expenses shall be paid by that party, except as provided by Section 8.4. Failure of either party to pay its share of expenses and fees constitutes a material breach of such party's obligations hereunder.

25.13. Amendment to Implement Judgment. Within fifteen (15) days after the issuance of any award, decision or judgment by the arbitrator becomes final, the County will draft a proposed amendment to the Contract setting forth the relevant terms of such determination. Within seven (7) days after delivery of a copy of the amendment to Concessionaire, Concessionaire shall sign the amendment (with any revisions to the proposed amendment necessary to accurately reflect the arbitration decision) and return the executed copy to the County, which shall thereafter be executed by County as soon as reasonably practicable.

25.14. Impact of Gross Error Allegations. Where either party has charged the arbitrator with Gross Error:

25.14.1. The decision shall not be implemented if the party alleging Gross Error obtains a judgment of a court of competent jurisdiction stating that the arbitrator was guilty of Gross Error and vacating the arbitration award ("**Disqualification Judgment**"). In the event of the Disqualification Judgment, the arbitration process shall begin over immediately in accordance with this Section 25., which arbitration shall be conducted (with a new arbitrator) as expeditiously as reasonably possible. The party alleging Gross Error shall have burden of proof.

25.14.2. For the purposes of this Section 25.14., the term "**Gross Error**" shall mean that the arbitrator award is subject to vacation pursuant to California Code of Civil Procedure § 1286.2 or any successor provision.

25.15. Appeal. The parties waive any right to appeal from a judgment confirming an arbitration award, from an order dismissing a petition to correct or vacate an award, from an order vacating an award in which a rehearing in arbitration is ordered, or from a special order after final judgment. The provisions of Code of Civil Procedure § 1294(d) and (e) shall not apply.

25.16. Notice.

NOTICE: BY INITIALIZING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALIZING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

YOU HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE ARBITRATION OF DISPUTES PROVISION TO NEUTRAL ARBITRATION.

Initials of Concessionaire

Initials of County

26. DISABILITIES ACCESS LAWS

Without limiting Concessionaire's responsibility under this Contract for compliance with all laws, with regard to all operations and activities that are the responsibility of Concessionaire under this Contract, Concessionaire shall be solely responsible for complying with the requirements of the Americans With Disabilities Act of 1990 (ADA) [Public Law 101-336, commencing at Section 12101 of Title 42, United States Code (and including Titles I, II, and III of that law)], the Rehabilitation Act of 1973, and all related regulations, guidelines, and amendments to both laws.

Concessionaire shall be solely responsible to complete necessary modifications to Premises to meet ADA requirements within the first Contract Year.

With regard to facilities for which Concessionaire is responsible for operation, maintenance, construction, restoration, or renovation under this Contract, Concessionaire also shall be responsible for compliance with Government Code Section 4450, et seq., Access to Public Buildings by Physically Handicapped Persons, and Government Code Section 7250, et seq., Facilities for Handicapped Persons, and any other applicable laws. Written approval from State is required prior to implementation of any plans to comply with accessibility requirements.

These facilities must be compliant with the 2010 ADA Standards for Accessible Design, California Building Code, Title 24 Chapter 11B (latest edition), Accessibility to Public Accommodations, and the Final Accessibility Guidelines for Outdoor Developed Areas put forth by the United States Access Board.

27. NONDISCRIMINATION AND AFFIRMATIVE ACTION

During the performance of this Contract, Concessionaire and its employees shall not unlawfully discriminate, harass, or allow harassment against any employee, applicant for employment, or any member of the public because of sex, sexual orientation, race, color, religious creed, marital status, need for family and medical care leave, ancestry, national origin, medical condition (cancer/genetic characteristics), age (40 and above), disability (mental and physical) including HIV and AIDS, need for pregnancy disability leave, or need for reasonable accommodation. Concessionaire

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shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

For contracts over \$100,000 executed or amended after January 1, 2007, the Concessionaire certifies compliance with Public Contract Code Section 10295.3 concerning domestic partners.

Further, as part of compliance with the foregoing, Concessionaire shall comply with The Americans With Disabilities Act Title II Regulations Part 35, Subpart B – §35.130 General Prohibitions Against Discrimination, and Subpart D - Program Accessibility § 35.149 Discrimination Prohibited.

Concessionaire shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Division 4, Chapter 5). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4.1 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if set forth in full. Concessionaire and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements.

27.1. The Concessionaire certifies and agrees that all persons employed by it, its affiliates, subsidiaries, or holding companies are and shall be treated equally without regard to or because of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations.

27.2. The Concessionaire shall certify to, and comply with, the provisions of this Sample Contract Exhibit D - Contractor's EEO Certification.

27.3. The Concessionaire shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to

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race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations. Such action shall include, but is not limited to: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

27.4. The Concessionaire certifies and agrees that it will deal with its Sublessees, Licensees, permittees, or vendors without regard to or because of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation.

27.5. The Concessionaire certifies and agrees that it, its affiliates, subsidiaries, or holding companies shall comply with all applicable Federal and State laws and regulations to the end that no person shall, on the grounds of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Contract or under any project, program, or activity supported by this Contract.

27.6. The Concessionaire shall allow County representatives access to the Concessionaire's employment records during regular business hours to verify compliance with the provisions of this subsection 27.6. when so requested by the County.

27.7. If the County finds that any provisions of this subsection 27.7. have been violated, such violation shall constitute a material breach of this Contract upon which the County may terminate or suspend this Contract. While the County reserves the right to determine independently that the anti-discrimination provisions of this Contract have been violated, in addition, a determination by the California Fair Employment and

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Housing Commission or the Federal Equal Employment Opportunity Commission that the Concessionaire has violated Federal or State anti-discrimination laws or regulations shall constitute a finding by the County that the Concessionaire has violated the anti-discrimination provisions of this Contract.

27.8. The parties agree that in the event the Concessionaire violates any of the anti-discrimination provisions of this Contract, the County shall, at its sole option, be entitled to the sum of five hundred dollars (\$500) for each such violation pursuant to California Civil Code Section 1671 as liquidated damages in lieu of terminating or suspending this Contract.

27.9. Compliance with Civil Rights Laws

The Concessionaire hereby assures that it will comply with Subchapter VI of the Civil Rights Act of 1964, 42 USC Sections 2000 (e) (1) through 2000 (e) (17), to the end that no person shall, on the grounds of race, creed, color, sex, religion, ancestry, age, condition of physical handicap, marital status, political affiliation, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Contract or under any project, program, or activity supported by this Contract. The Concessionaire shall comply with this Sample Contract Exhibit D - Contractor's EEO Certification.

Concessionaire shall include the non-discrimination and compliance provisions of this Section in all agreements to perform work under and/or in connection with this Contract.

In the event of violation of this Section, the County will have the right to terminate this Contract, and any loss of revenue sustained by the County by reason thereof shall be borne and paid for by the Concessionaire.

28. DRUG-FREE WORKPLACE

Concessionaire agrees to comply with Government Code Section 8355 in matters relating to the provision of a drug-free workplace. This compliance is evidenced by the executed Drug-Free Workplace Certification, **Exhibit 23**, attached hereto and made a part of the Contract.

29. CONFLICT OF INTEREST

Concessionaire warrants and covenants that no official, employee in the County civil service, other appointed County official, or any person associated with same by blood, adoption, marriage, cohabitation, and/or business relationship: (a) has been employed or retained to solicit or aid in the procuring of this Contract; (b) will be employed in the performance of this Contract without the immediate divulgence of such fact to County. In the event County determines that the employment of any such official, employee, associated person, or business entity is not compatible, Concessionaire shall terminate such employment immediately. For breaches or violation of this Section, County shall have the right both to annul this Contract without liability and, in its discretion, recover from the Concessionaire the full amount of any compensation paid to such official, employee, or business entity.

29.1. No County employee whose position with the County enables such employee to influence the award of this Contract or any competing Contract, and no spouse or economic dependent of such employee, shall be employed in any capacity by the Concessionaire or have any other direct or indirect financial interest in this Contract. No officer or employee of the Concessionaire who may financially benefit from the performance of work hereunder shall in any way participate in the County's approval, or ongoing evaluation, of such work, or in any way attempt to unlawfully influence the County's approval or ongoing evaluation of such work.

29.2. The Concessionaire shall comply with all conflict of interest laws, ordinances, and regulations now in effect or hereafter to be enacted during the term of

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this Contract. The Concessionaire warrants that it is not now aware of any facts that create a conflict of interest. If the Concessionaire hereafter becomes aware of any facts that might reasonably be expected to create a conflict of interest, it shall immediately make full written disclosure of such facts to the County. Full written disclosure shall include, but is not limited to, identification of all persons implicated and a complete description of all relevant circumstances. Failure to comply with the provisions of this subparagraph shall be a material breach of this Contract.

29.3. Termination for Improper Consideration

County may, by written notice to Concessionaire, immediately terminate the right of Concessionaire to proceed under this Contract if it is found that consideration, in any form, was offered or given by Concessionaire, either directly or through an intermediary, to any County officer, employee or agent with the intent of securing the Contract or securing favorable treatment with respect to the award, amendment or extension of the Contract or the making of any determinations with respect to the Concessionaire's performance pursuant to the Contract. In the event of such termination, County shall be entitled to pursue the same remedies against Concessionaire as it could pursuant to an event of default by Concessionaire.

Concessionaire shall immediately report any attempt by a County officer or employee to solicit such improper consideration. The report shall be made either to the County manager charged with the supervision of the employee or to the County Auditor-Controller's Employee Fraud Hotline at (800) 544-6861 or www.lacountyfraud.org. You may remain anonymous.

30. EXPATRIATE CORPORATIONS

Concessionaire hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1 and is eligible to contract with the County.

31. NATIONAL LABOR RELATIONS BOARD CERTIFICATION

The Concessionaire, by signing this Contract, does hereby swear, under penalty of perjury, that no more than one final, unappealable finding of contempt of court by a Federal Court has been issued against Concessionaire within the two-year period immediately preceding the date of this Contract because of Concessionaire's failure to comply with a Federal Court order that Concessionaire shall comply with an order of the National Labor Relations Board.

Fair Labor Standards Act

The Concessionaire shall comply with all applicable provisions of the Federal Fair Labor Standards Act and shall indemnify, defend, and hold harmless the County and its agents, officers, and employees from any and all liability, including, but not limited to, wages, overtime pay, liquidated damages, penalties, court costs, and attorneys' fees arising under any wage and hour law, including, but not limited to, the Federal Fair Labor Standards Act, for work performed by the Concessionaire's employees for which the County may be found jointly or solely liable.

Employment Eligibility Verification

The Concessionaire warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirements set forth in Federal and State statutes and regulations. The Concessionaire shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal and State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, (P.L. 99-603), or as they currently exist and as they may be hereafter amended. The Concessionaire shall retain all such documentation for all covered employees for the period prescribed by law.

The Concessionaire shall indemnify, defend, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Concessionaire or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

Notice to Employees Regarding the Federal Earned Income Credit

The Concessionaire shall notify its employees, and shall require each Sublessee to notify its employees, that they may be eligible for the Federal Earned Income Credit under the federal income tax laws. Such notice shall be provided in accordance with the requirements set forth in Internal Revenue Service Notice No. 1015.

32. CHILD SUPPORT COMPLIANCE ACT

32.1. Concessionaire's Warranty of Adherence to County's Child Support Compliance Program:

32.1.1. The Concessionaire recognizes the importance of child and family support relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as obligations and shall comply with all applicable state and federal laws (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and

32.1.2. The Concessionaire to the best of its knowledge is complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

32.1.3. The Concessionaire acknowledges that the County has established a goal of ensuring that all individuals who benefit financially

from the County through contracts are in compliance with their court-ordered child, family and spousal support obligations in order to mitigate the economic burden otherwise imposed upon the County and its taxpayers.

32.1.4. As required by the County's Child Support Compliance Program (County Code Chapter 2.200) and without limiting the Concessionaire's duty under this Contract to comply with all applicable provisions of law, the Concessionaire warrants that it is now in compliance and shall during the term of this Contract maintain in compliance with employment and wage reporting requirements as required by the Federal Social Security Act (42 USC Section 653a) and California Unemployment Insurance Code Section 1088.5, and shall implement all lawfully served Wage and Earnings Withholding Orders or Child Support Services Department Notices of Wage and Earnings Assignment for Child, Family or Spousal Support, pursuant to Code of Civil Procedure Section 706.031 and Family Code Section 5246(b).

32.2. Concessionaire's Acknowledgement of County's Commitment to Safely Surrendered Baby Law

The Concessionaire acknowledges that the County places a high priority on the implementation of the Safely Surrendered Baby Law. The Concessionaire understands that it is the County's policy to encourage all County contractors to voluntarily post the County's "Safely Surrendered Baby Law" poster in a prominent position at the contractor's place of business. The Concessionaire will also encourage its sub-contractors, if any, to post this poster in a prominent position in the sub-contractor's place of business. The County's Department of Children and Family Services will supply the Concessionaire with the poster to be used. Information on how to receive the poster can be found on the Internet at www.babysafela.org.

33. RECORDS AND REPORTS. ACCOUNTING

Concessionaire shall keep separate true and accurate books and records showing all of Concessionaire's business transactions under this Contract in a manner that conforms to industry standards and practices and in a manner acceptable to County. Concessionaire shall keep all records for a period of at least four (4) years.

Copies of all sales and use tax returns submitted by Concessionaire in accordance with Public Resources Code Section 5080.18(b) to the California State Board of Equalization, the Employment Development Department, the Franchise Tax Board, or any other governmental agency shall be concurrently submitted to County.

In accordance with Public Resources Code Section 5080.18(c), County shall have the right through its representative and at all reasonable times to conduct such audits as it deems necessary and to examine and copy Concessionaire's books and records including all tax records and returns. Concessionaire hereby agrees to make all such records, books, and tax returns available to County upon County's request therefor. Concessionaire further agrees to allow interviews of any employees who might reasonably have information related to such records.

33.1. Maintenance of Records. In order to determine the amount of and provide for the payment of the rent, Administrative Charge, Net Proceeds Share, Net Refinancing proceeds and other sums due under this Contract, Concessionaire and all Sublessees, if any, shall at all times during the Term of this Contract, and for the forty eight (48) months thereafter, keep, or cause to be kept, locally, to the reasonable satisfaction of Director, true, accurate, and complete records and double-entry books of account for the current and five (5) prior Accounting Years, such records to show all transactions relative to the conduct of operations, and to be supported by data of original entry. Such records shall detail transactions conducted on or from the Premises separate and apart from those in connection with Concessionaire's (or sublessee's, or licensee's, or permittee's, as appropriate) other business operations, if any.

With respect to the calculation of Gross Receipts , and the preparation of the reports and maintenance of records required herein, Concessionaire shall utilize either:

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(i) the accrual method of accounting, or (ii) a modified accrual method of accounting, modified in that (A) expenses are accrued on an approximate basis each month during the fiscal year with full accrual treatment for the full fiscal year financial statements, and (B) depreciation is calculated on a tax basis rather than a GAAP basis.

33.2. Cash Registers. All sales shall be recorded by means of cash registers or computers which automatically issue a customer's receipt or certify the amount recorded in a sale slip. Said cash registers shall in all cases have locked-in sales totals and transaction counters which are constantly accumulating and which cannot, in either case, be reset, and in addition thereto, a tape (or another equivalent security mechanism) located within the register on which transaction numbers and sales details are imprinted. Beginning and ending cash register readings shall be made a matter of daily record.

Concessionaire shall cause to be implemented point of sale systems which can accurately verify all sales for audit purposes and customer review purposes, which system shall be submitted to the Director in advance of installation for his approval, which approval will not be unreasonably withheld.

Concessionaire's obligations set forth in this Section 33.2. include Concessionaire's obligation to insure that Concessionaire's sublessees, licensees, permittees and any other occupants of any portion of the Premises keep records sufficient to permit County and County's auditors to determine the proper levels of Annual Minimum Rent, Percentage Rent, Administrative Charge, Net Proceeds Share, Net Refinancing Proceeds and other sums due under this Contract.

33.3. Statement; Payment. No later than fifteenth (15th) day of each calendar month, Concessionaire shall submit to County a detailed statement showing Gross Receipts during the preceding calendar month, together with its calculation of the

amount payable to County under Sections 4.2. through 4.3. inclusive, and shall accompany same with remittance of amount so shown to be due.

33.4. Availability of Records for Inspector's Audit. Books of account and records for the then current and five (5) prior Accounting Years as hereinabove required shall be kept or made available at the Premises or at another location within Los Angeles County, and County and other governmental authorities shall have the right at any reasonable times and on reasonable prior notice to examine and audit said books and records, without restrictions, for the purpose of determining the accuracy thereof and of the monthly statements of Gross Receipts and Gross Revenues derived from occupancy of the Premises and the compliance of Concessionaire with the terms of this Contract and other governmental requirements. This Section 33.4. shall survive the expiration of the Term or other termination of this Contract for 48 months after such expiration or termination.

33.4.1. Entry by County. County and its duly authorized representatives or agents may enter upon the Premises at any and all reasonable times during the Term of this Contract for the purpose of determining whether or not Concessionaire is complying with the terms and conditions hereof, or for any other purpose incidental to the rights of County.

33.5. Cost of Audit. In the event Concessionaire does not make available its original records and books of account at the Premises or at a location within Los Angeles County, Concessionaire agrees to pay all expenses incurred by County in conducting any audit at the location where said records and books of account are maintained. In the event that any audit discloses a discrepancy in County's favor of greater than two percent (2%) of the revenue due County for the period audited, then Concessionaire shall pay County audit contract costs, together with the amount of any identified deficiency, with interest thereon and Late Fee provided by Section 4.6.

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33.6. Additional Accounting Methods. County may require the installation of any additional accounting methods or machines which are typically used by operators of comparable facilities and which County reasonably deems necessary if the system then being used by Concessionaire does not adequately verify sales for audit or customer receipt purposes.

33.7. Accounting Year. The term “**Accounting Year**” as used herein shall mean each calendar year during the Term of this Contract.

33.8. Annual Financial Statements. Within six (6) months after the end of each Accounting Year, or at Concessionaire’s election, after the completion of Concessionaire’s fiscal year, Concessionaire shall furnish to County a set of audited and certified financial statements prepared by a Certified Public Accountant who is a member of the American Institute of Certified Public Accountants and is satisfactory to County, setting forth Concessionaire’s financial condition and the result of Concessionaire’s operations for such Accounting Year and shall include a certification of and unqualified opinion concerning Gross Receipts. All financial statements prepared by or on behalf of Concessionaire shall be prepared in a manner that permits County to determine the financial results of operations in connection with Concessionaire’s activities at, from or relating to the Premises, notwithstanding that Concessionaire may have income and expenses from other activities unrelated to its activities on the Premises.

Within forty-five (45) days of the expiration or termination of this Contract, Concessionaire shall submit to the County a profit and loss statement for the period of operation not previously reported prepared in the manner stated above.

33.9. Accounting Obligations of Sublessees. Concessionaire shall cause all sublessees, licensees, permittees and other entity or person conducting business operations on or from the Premises to comply with all terms of this Article 33 with respect to the maintenance, form, availability and methodology of accounting records.

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County shall provide written notice to Concessionaire of the failure of any sublessee, licensee, permittee and other entity or person conducting business operations on or from the Premises, to comply with this Article 33 after County's discover of such failure, and provide Concessionaire with the right to cure any such failure by payment to County of amounts which may be owing to County, as shown on an audit conducted by County, or on an audit supplied by Concessionaire or such sublessee, licensee, permittee and other entity or person accepted by County, or as otherwise determined pursuant to Section 33.10. below. In such event, County shall permit Concessionaire to subrogate to any right of County to enforce this provision against such sublessee, licensee, permittee, or other person or entity, to the extent Concessionaire does not have a direct right of enforcement against such sublessee, licensee, permittee, or other person or entity.

33.10. Inadequacy of Records. In the event that Concessionaire or its sublessee, licensee, permittee, or other person or entity, as appropriate, fails to keep the records required by this Article 33 such that a Certified Public Accountant is unable to issue an unqualified opinion as to Gross Receipts, such failure shall be deemed a breach of this Contract by Concessionaire. In addition to the other remedies available to County at law or equity as a result of such breach, County may prepare a calculation of the Percentage Rent payable by Concessionaire during the period in which the accounting records were inadequately maintained. Such calculation may be based on the past Gross Receipts levels on or from the Premises, the past or present level of Gross Receipts experienced by comparable business operations in the area around the Premises or any other method(s) as reasonably determined by Director and shall utilize such methodology as Director deems reasonable. Within five (5) days after receipt from County's determination of Percentage Rent due, if any, Concessionaire shall pay such Percentage Rent, together with a late fee of six percent (6%) and interest to the date of payment at the Applicable Rate from the date upon which each unpaid installment of Percentage Rent was due, together with County's Actual Cost in connection with the

attempted audit of the inadequate records and the reconstruction and estimation of Gross Receipts and the calculation of Percentage Rent due.

34. **ENCUMBRANCES**

34.1. Financing Events. Concessionaire may, with the prior written consent of Director, which shall not be unreasonably withheld, and subject to any specific conditions which may be imposed by Director, consummate one or more Financing Event(s) (as described below). Concessionaire shall submit to Director a complete set of all proposed transaction documents in connection with each proposed Financing Event. Director shall have ninety (90) days in which to grant or withhold approval of the Financing Even. If not approved in writing within ninety (90) day period, the proposed Financing Event shall be deemed disapproved by Director. Concessionaire shall further reimburse County for County's Actual Costs incurred in connection with its review of the proposed Financing Event, including without limitation the costs of in-house counsel, outside counsel and third party consultants. For the purposes of this Contract, including without limitation the provisions of Sections 4.7. (Change of Ownership, Financing Events) through 4.9. (Net Proceeds Share) thereof, a "**Financing Event**" shall mean any financing or refinancing consummated by Concessionaire, whether with private or institutional investors or lenders, where such financing or refinancing is (a) an Encumbrance (as defined below) or (b) has been underwritten based upon, or is intended to be repaid from, the proceeds of Concessionaire's operation of the Premises or the sale, assignment or transfer of Concessionaire's interest as provided herein.

34.1.1. Encumbrances. As used in this Contract, an "**Encumbrance**" shall be defined as any grant, assignment, transfer, mortgage, hypothecation, grant of control over, or encumbrance of all or any portion of Concessionaire's interest under this Contract and the estate so created to a lender (the "**Encumbrance Holder**") on the security of Concessionaire's interest in the Contract and the Premises. One (1) copy

of any and all security devices or instruments as finally executed or recorded by the parties in connection with any approved Encumbrance shall be filed with Director not later than seven (7) days after the effective date thereof. These same limitations and approval requirements shall apply with respect to the financing and the Encumbrance Holder of any Major Sublessee's interest pursuant to a Major Sublease.

34.1.2. Consent Not Required to Transfer Resulting from Foreclosure. The written consent of County shall not be required in the case of:

34.1.2.1. A transfer of this Contract or a Major Sublease at a foreclosure sale or at a judicial foreclosure or voluntary conveyance to the Encumbrance Holder in lieu thereof; or

34.1.2.2. A single subsequent transfer of the Contract or a Major Sublease by an Encumbrance Holder who was a purchaser at such foreclosure sale or transfer in lieu thereof, provided the transfer expressly agrees in writing to assume and to perform all of the obligations under this Contract or a Major Sublease.

34.1.3. Effect of Foreclosure. In the event of a transfer under subsection 34.1.2., the Encumbrance Holder shall forthwith give notice to County in writing of any such transfer setting forth the name and address of the transferee and the effective date of such transfer, together with a copy of the document by which such transfer was made.

34.1.3.1. Any transferee under the provisions of subsection 34.1.2.1. shall be liable to perform the full obligations of Concessionaire under this Contract until a subsequent transfer of the Contract approved by County.

34.1.3.2. Any subsequent transferee under the provision of subsection 34.1.2.2. shall be liable to perform the full obligations of Concessionaire under this Contract, and, as a condition to the completion of such transfer, must cure, remedy or correct any Event of Default existing at the time of such transfer.

34.1.3.3. Neither an Administrative Charge nor any Net Proceeds Share shall be payable in respect of or charged against any amount payable under the Encumbrance to or for the benefit of the Encumbrance Holder in a foreclosure proceeding.

34.2. Right to Notice and Cure Defaults. All Encumbrance Holders and Major Sublessees shall have the right, at any time during the Term of this Contract and during the term of its encumbrance, to do any act or thing required of Concessionaire in order to prevent termination of Concessionaire's rights hereunder, and all such acts or things so done hereunder shall be treated by County the same as if performed by Concessionaire.

34.3. No Subordination. County's rights in the Premises and this Contract, including without limitation County's right to receive Annual Minimum Rent and Percentage Rent, shall not be subordinated to the rights of any Encumbrance Holder. Notwithstanding the foregoing, and Encumbrance Holder shall have all of the rights set forth in the security instrument creating the Encumbrance, as approved by County in accordance with Section 34.1., to the extent that such rights are not inconsistent with the terms of this Contract, including the right to commence an action against Concessionaire for the appointment of a receiver and to obtain possession of the Premises under and in accordance with the terms of said Encumbrance, provided that all obligations of Concessionaire hereunder shall be kept current, including but not limited to the payment of rent and curing of all defaults of Events of Default hereunder.

34.4. Delay in Exercising Termination Remedy. County shall not exercise any remedy available to it upon the occurrence of an Event of Default (other than pursuant to Section 37.7.), unless it first shall have given written notice of such default to each and every Major Sublessee and Encumbrance Holder, where the Event of Default is one where notice is required to be given to Concessionaire pursuant to the terms of this Contract and the Encumbrance Holder and/or Major Sublessee have notified Director in writing of its interest in the Premises or this Contract and the addresses to which such notice should be delivered. Such notice shall be sent simultaneously with the notice or notices to Concessionaire. An Encumbrance Holder or Major Sublessee shall have the right and the power to cure the Event of Default specified in such notice in the manner prescribed below. If such Event or Events of Default are so cured, this Contract shall remain in full force and effect.

34.4.1. Manner of Curing Default. Events of Default may be cured by an Encumbrance Holder or Major Sublessee in the following manner:

(1) If the Event of Default is in the payment of rental, taxes, insurance premiums, utility charges or any other sum of money, an Encumbrance Holder or the Major Sublessee may pay the same, together with any Late Fee or interest payable thereon, to County or other payee within thirty five (35) days after *mailing* of the aforesaid notice of default to the Encumbrance Holder or the Major Sublessee. If, after such payment to County, Concessionaire pays the same or any part thereof to County, County shall refund said payment (or portion thereof) to such Encumbrance Holder or Major Sublessee.

(2) If the Event of Default cannot be cured by the payment of money, but is otherwise curable, the default may be cured by an Encumbrance Holder or Major Sublessee as follows:

(a) If an Encumbrance Holder or Major Sublessee cures, remedies and corrects the default within ten (10) days after the end of Concessionaire's cure period as provided in Section 36.1. (Events of Default) hereof; provided, however, if curing of such default requires activity over a period of time, such default may be cured if within said ten (10) day period, such Encumbrance Holder or Major Sublessee commences and thereafter continues to use due diligence to perform whatever acts may be required to cure the particular default; in the event Concessionaire commences to cure the default within Concessionaire's applicable cure period and thereafter fails or ceases to pursue the cure with due diligence, the Encumbrance Holder's and Major Sublessee's ten (10) day period shall commence upon the later of the end of Concessionaire's cure period or the date upon which County notifies the Encumbrance Holder and/or Major Sublessee that Concessionaire has failed or ceases to cure the default with due diligence.

(b) With respect to an Encumbrance Holder, but not a Major Sublessee, if before the expiration of said ten (10) day period, said Encumbrance Holder notify County of its intent to commence foreclosure of its interest, and within sixty (60) days after the mailing of said notice, said Encumbrance Holder (i) actually commences foreclosure proceedings and prosecutes the same thereafter with due diligence, said sixty (60) day period shall be extended by the time necessary to complete such foreclosure proceedings, or (ii) if said Encumbrance Holder is prevented from commencing foreclosure proceedings by any order, judgment or decree of any court or regulatory body of competent jurisdiction, and said Encumbrance Holder diligently seeks release from or reversal of such order, judgment or decree, said sixty (60) day

period shall be extended by the time necessary to obtain such release or reversal and thereafter to complete such foreclosure proceedings. Within thirty (30) days after such foreclosure sale and the vesting of title in the purchaser thereat (whether or not such purchaser is the Encumbrance Holder), said purchaser shall, as a condition to the completion of such transfer, cure, remedy or correct the default, or commence and thereafter pursue with due diligence, the performance of the thing or acts required to be done to cure, correct and remedy said default.

35. PERFORMANCE EVALUATIONS AND INSPECTION

As part of its administration of this Contract, County will conduct periodic inspections of concession facilities, equipment, services, and programs and prepare written performance evaluations based upon its observations. County further reserves the right of ingress and egress without notice to inspect concession operations for the purposes of evaluating Concessionaire's performance of the terms and conditions of this Contract; to inspect, investigate, and/or survey the Premises; and to do any work thereon of any nature necessary for preservation, maintenance, and operation of the Premises. Concessionaire agrees to cooperate with County and its authorized representatives in all respects related to the implementation of County's Concession Performance Evaluation program on the Premises. County shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of County's entry in the Premises as provided herein, except damage resulting from the active negligence or willful misconduct of County or its authorized representatives.

36. DEFAULT BY CONCESSIONAIRE

36.1. Events of Default: The occurrence of any one of the following shall constitute a default and breach of this Contract by Concessionaire:

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- 1) Monetary Defaults: Any failure of Concessionaire to timely pay any rent due or any other monetary sums required to be paid hereunder where such failure continues for a period of five (5) consecutive days after such sums are due.
- 2) Failure to Substantially Commence Construction. The failure of Concessionaire to comply with the obligations and timeframes set forth in Section 5 of this Contract if not cured within ten (10) days after written notice of such failure.
- 3) Maintenance of Security Deposit. The failure of Concessionaire to maintain and/or replenish the Security Deposit required pursuant to Section 9 of this Contract if not cured within five (5) days after receipt of written County's notice of such failure.
- 4) Absence from Premises: Any abandonment, vacation, or discontinuance of use of the Premises, or any substantial portion thereof, by Concessionaire or its agents and employees from the Premises for thirty (30) consecutive days or longer, except when prevented by Force Majeure or when closed for renovations or repairs required to be made under this Contract. The Premises shall be deemed abandoned after County has followed the procedures set forth in Civil Code Section 1951.3.
- 5) Nuisance: Should Concessionaire create or allow to be created a nuisance on the Premises, County may declare an immediate event of default and enter upon and take possession and/or demand an assignment of the right to operate the Premises without notice to Concessionaire. For the purpose of this paragraph, "nuisance" consists of an egregious activity that threatens the health, welfare, and safety of the public. Concessionaire shall immediately vacate the Premises and remove all personal property within thirty (30) days after County's declaration of default pursuant to this subsection.
- 6) Failure to Perform Other Obligations: Any failure by Concessionaire to keep, observe or perform any other promises,

covenants, conditions, provisions and agreements set forth in this Contract, including without limitation the obligation to maintain adequate accounting and financial records, where such failure continues for twenty (20) consecutive days after receipt of written notice thereof by County to Concessionaire. However, if the nature of Concessionaire's default is such that it cannot reasonably be cured within the twenty (20) day period, Concessionaire shall not be deemed to be in default if it is determined at the sole discretion of County that Concessionaire has commenced such cure within the twenty (20) day period and thereafter continues to diligently prosecute such cure to completion to the satisfaction of County.

7) Involuntary Assignments, Bankruptcy: County and Concessionaire agree that neither this Contract nor any interest of Concessionaire hereunder in the Premises shall be subject to involuntary assignment or transfer by operation of law in any manner whatsoever, including, without limitation, the following: (a) transfer by testacy or intestacy; (b) assignments or arrangements for the benefit of creditors; (c) levy of a writ of attachment or execution on this Contract; (d) the appointment of a receiver with the authority to take possession of the Premises in any proceeding or action in which Concessionaire is a party; or (e) the filing by or against Concessionaire of a petition to have Concessionaire adjudged a bankrupt, or of a petition for reorganization or arrangement under any law relating to bankruptcy. Any such involuntary assignment or transfer by operation of law shall constitute a default by Concessionaire and County shall have the right to elect to take immediate possession of the Premises, to terminate this Contract and/or invoke other appropriate remedies as set forth below, in which case this Contract shall not be treated as an asset of Concessionaire.

8) Non-Adherence of County Lobbyist Ordinance

The Concessionaire, and each County Lobbyist or County Lobbying firm as defined in County Code Section 2.160.010 retained by the

Concessionaire, shall fully comply with the County's Lobbyist Ordinance, County Code Chapter 2.160. Failure on the part of the Concessionaire or any County Lobbyist or County Lobbying firm retained by the Concessionaire to fully comply with the County's Lobbyist Ordinance shall constitute a material breach of this Contract, upon which the County may in its sole discretion, immediately terminate or suspend this Contract.

9) Breach of Warranty to Maintain Compliance with County's Defaulted Property Tax Reduction Program

Failure of Concessionaire to maintain compliance with the requirements set forth in Section 54.4. "Warranty of Compliance with County's Defaulted Property Tax Reduction Program" shall constitute default under this Contract. Without limiting the rights and remedies available to County under any other provision of this contract, failure of Concessionaire to cure such default within ten (10) days of receipt of County's written notice shall be grounds upon which County may terminate this contract and/or pursue debarment of Concessionaire, pursuant to County Code Chapter 2.206.

36.2. Notices of Default: Notices of default shall specify the alleged default and the applicable Contract provision and shall demand that Concessionaire perform the provisions of this Contract within the applicable time period or quit the Premises. No such notice shall be deemed a forfeiture or a termination of this Contract unless County specifically so states in the notice.

36.3. Limitations on Events of Default. Concessionaire shall not be considered in default as to any provision of this Contract when such default is the result of or pursuant to, any process, order, or decree of any court or regulatory body of competent jurisdiction, or any other circumstances which are physically impossible to cure provided Concessionaire uses due diligence in pursuing whatever is required to obtain release from or reversal of such process, order, or decree or is attempting to remedy such other circumstances preventing its performance.

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37. COUNTY'S REMEDIES

In the event of default by Concessionaire, County shall have the following remedies. These remedies are not exclusive; they are cumulative and are in addition to any other right or remedy of County at law or in equity.

37.1. Collection of Rent: In any case where County has a cause of action for damages, County shall have the privilege of splitting the cause to permit the institution of a separate suit for rent due hereunder, and neither institution of any suit, nor the subsequent entry of judgment shall bar County from bringing another suit for rent; it being the purpose of this provision to provide that the forbearance on the part of County in any suit or entry of judgment for any part of the rent reserved under this Contract, to sue for, or to include in, any suit and judgment the rent then due, shall not serve as defense against, nor prejudice a subsequent action for, rent or other obligations due under the Contract. The claims for rent may be regarded by County, if it so elects, as separate claims capable of being assigned separately.

37.2. Maintain Contract in Effect: The following do not constitute a termination of the Concessionaire's right to possession: (1) Acts of maintenance or preservation or efforts to relet the Premises; (2) The appointment of a receiver upon initiative of the County to protect County's interests under the Contract; (3) Withholding consent to a subletting or assignment so long as such consent is not unreasonably withheld. No act by or on behalf of County under this provision shall constitute a termination of this Contract unless County gives Concessionaire written notice of termination.

37.3. Continued Performance: At County's option, Concessionaire shall continue with its responsibilities under this Contract during any dispute.

37.4. Termination Following Continuance: Even though it may have kept this Contract in effect pursuant to subsection 37.2 thereafter County may elect to terminate this Contract and all of Concessionaire's rights in or to the Premises unless prior to such

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termination Concessionaire shall have cured the Event of Default or have satisfied the provisions of Section 36.3. hereof.

37.5. Termination of Concessionaire's Right to Possession: Upon an event of default, County may terminate Concessionaire's right to possession of the Premises at any time by written notice to Concessionaire. In the absence of such written notice from County, no act by County, including, but not limited to, acts of maintenance, efforts to relet and/or assign rights to possession of the Premises, or the appointment of a receiver on County's initiative to protect County's interest under this Contract shall constitute an acceptance of Concessionaire's surrender of the Premises, or constitute a termination of this Contract or of Concessionaire's right to possession of the Premises. Upon such termination, County has the right to recover from Concessionaire:

- 1) the worth, at the time of the award, of the unpaid rent that had been earned at the time of termination of this Contract;
- 2) the worth, at the time of the award, of the amount by which the unpaid rent that would have been earned after the date of termination of this Contract until the time of the award exceeds the amount of loss of rent that Concessionaire proves could have reasonably been avoided;
- 3) the worth, at the time of the award, of the amount by which the unpaid rent for the balance of the term after the time of the award exceeds the amount of the loss of rent that Concessionaire proves could have been reasonably avoided; and
- 4) any other amount necessary to compensate County for all the detriment proximately caused by Concessionaire's failure to perform its obligations under this Contract, which, without limiting the generality of the foregoing, includes any cost and expenses incurred by the County in recovering possession of the Premises, in maintaining or preserving the Premises after such default, in preparing the Premises for a new concessionaire, in making any repairs or alterations to the Premises necessary for a new concessionaire, in making any repairs or alterations

to the Premises, and costs of clearing and County's title of any interest of Concessionaire, commissions, attorneys' fees, architects' fees, and any other costs necessary or appropriate to make the Premises operational by a new concessionaire.

5) The amounts necessary to compensate County for the sums and other obligations which under the terms of this Contract become due prior to, upon or as a result of the expiration of the Term or sooner termination of this Contract, including, without limitations, those amounts of unpaid taxes, insurance premiums and utilities for the time preceding surrender of possession, the cost of removal of rubble, debris and other above-ground, in-ground, or under-ground improvements, attorney's fees, court costs, and unpaid Administrative Charges, Net Proceeds Share and Net Refinancing Proceeds.

"The worth, at the time of the award," as used herein above shall be computed by allowing interest at the lesser of a rate of ten percent (10%) per annum or the maximum legal rate.

37.6. Assignment at County's Direction: In the event of a default by Concessionaire, when cure is not received and acknowledged by County after having provided notice of the breach as provided herein above, Concessionaire shall, in addition to the damages provided for herein, be obligated to assign all rights to occupy, possess, and operate on and in the Premises to County's designee within thirty (30) days of receipt of written demand by County. Concessionaire shall further remove itself and its personal property from the Premises within the same time frame. Concessionaire agrees to execute all documents necessary to effectuate and implement this provision. Upon such assignment, all rights of Concessionaire under the Contract shall transfer to the assignee.

Any designated assignee, as provided for herein, shall take and operate the concession under the same terms and conditions as those set forth herein, except for requirements that have already been performed and are no longer applicable.

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However, Concessionaire shall not be relieved of obligations incurred. An assignment of the Contract pursuant to the terms hereof shall not cause the Contract to terminate and shall not work a merger.

37.7. Receiver: If Concessionaire is in default of this Contract, County shall have the right to have a receiver appointed to collect rent and conduct Concessionaire's business or to avail itself of any other pre-judgment remedy. Neither the filing of a petition for the appointment of a receiver nor the appointment itself shall constitute an election by County to terminate this Contract.

37.8. Others' Right to Cure Concessionaire's Default: At any time after Concessionaire commits a default, County can cure the default at Concessionaire's cost. If County, at any time by reason of Concessionaire's default, pays any sum or does any act that requires the payment of any sum, the sum paid by County shall be due immediately from Concessionaire to County, and if paid at a later date shall bear interest at the rate of ten percent (10%) per annum from the date the sum is paid by County until County is reimbursed by Concessionaire. Any such sum shall be due as additional rent. To the extent practicable, County shall give any Encumbrance Holders the reasonable opportunity to cure Concessionaire's default prior to County's cure herein.

37.9. Personal Property of Concessionaire: In the event any personal property or trade fixtures of Concessionaire remain at the Premises after County has regained possession or after an assignment is accomplished, that property or those fixtures shall be dealt with in accordance with the provisions for Surrender of the Premises provided below.

- 1) County's Obligations After Default:** County shall be under no obligation to observe or perform any covenant of this Contract on its part to be observed or performed that accrues after the date of any default by Concessionaire. Such nonperformance by County shall not constitute a

termination of Concessionaire's right to possession nor a constructive eviction.

2) No Right of Redemption: Concessionaire hereby waives its rights under California Code of Civil Procedure Sections 1174 and 1179 or any present or future law that allows Concessionaire any right of redemption or relief from forfeiture in the event County takes possession of the Premises by reason of any default by Concessionaire.

3) Other Relief: All monetary obligations of the Concessionaire of any kind shall be considered rent. County shall have such rights and remedies for failure to pay such monetary obligations as County would have if Concessionaire failed to pay rent due. The remedies provided in this Contract are in addition to any other remedies available to County at law, in equity, by statute, or otherwise.

4) No Buy-out: In accordance with Public Resources Code Section 5080.18 (h), where the Contract has been terminated due to a breach on the part of the Concessionaire under any terms of this Contract the County shall not be obligated to purchase any improvements made by Concessionaire or to pay the Concessionaire for said improvements before or after taking possession of the Premises.

38. DEFAULT BY COUNTY

County shall not be in default of the performance of any obligation required of it under this Contract unless and until it has failed to perform such obligation for more than thirty (30) days after receipt of written notice by Concessionaire to County specifying the alleged default and the applicable contract provision giving rise to the obligation. However, if the nature of County's obligation is such that more than thirty (30) days is required for its performance, then County shall not be deemed in default if it shall commence performance within such 30-day period and thereafter diligently prosecute the same to completion. Concessionaire shall have no rights as a result of any default by County until Concessionaire gives thirty (30) days notice to the State Of

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California Department of Parks and Recreation pertaining to County interest in this Contract or the Premises. Such person then have the right to cure such default, and County shall not be deemed in default if such person cures such default within thirty (30) days after receipt of notice of the default, or such longer time as may be necessary to cure the default. Notwithstanding anything to the contrary in this Contract, County's liability to Concessionaire for damages arising out of or in connection with County's breach of any provision or provisions of this Contract shall not exceed the value of County's equity interest in the Premises and its right to insurance proceeds.

39. SURRENDER OF THE PREMISES; HOLDING OVER

39.1. Surrender: On expiration or within thirty (30) days after earlier termination of the Contract, Concessionaire shall surrender the Premises to County in accordance with Section 5.12 hereof and with all fixtures, improvements, and Alterations in good condition, except for fixtures, improvements, and Alterations that Concessionaire is obligated to remove. Concessionaire shall remove all of its personal property and shall perform all restoration required by the terms of this Contract within the above stated time unless otherwise agreed to in writing.

1) **Personal Property:** All of Concessionaire's personal property remaining on the Premises beyond such time specified in this Section shall be dealt with in accordance with California Code of Civil Procedure Section 1174 as it pertains to the disposal of personal property and California Civil Code Sections 1980 et seq., notwithstanding the statutory language regarding their inapplicability to commercial real estate, or such other laws as may be enacted regarding the disposition of Concessionaire's property remaining at the Premises. Concessionaire waives all claims against County for any damage to Concessionaire resulting from County's retention or disposition of Concessionaire's personal property. Concessionaire shall be liable to County for County's costs in storing, removing, and disposing of Concessionaire's personal property or trade fixtures.

2) Failure to Surrender. If Concessionaire fails to surrender the Premises to County on the expiration, assignment, or within thirty (30) days after earlier termination of the term as required by this Section, Concessionaire shall hold County harmless for all damages resulting from Concessionaire's failure to surrender the Premises.

39.2. Holding Over: After the expiration or earlier termination of the Term and if Concessionaire remains in possession of the Premises with County's express written consent, which may be withheld or granted in County's sole and absolute discretion, such holdover by Concessionaire shall be deemed to be a temporary month-to-month tenancy terminable on thirty (30) days written notice given at any time by either party. During such temporary tenancy, the Minimum Rent shall be increased by Consumer Price Index adjustments, every six (6) months after the expiration or earlier termination of the Term, unless otherwise agreed to in writing by County. Concessionaire shall pay such rent and all other sums required to be paid hereunder monthly on or before the fifteenth day of each month. All other provisions of this Contract except those pertaining to the Term shall apply to the month-to-month tenancy.

40. NO RECORDATION

No Recordation: This Contract shall not be recorded.

41. ATTORNEY FEES

Concessionaire shall reimburse the County on demand for all reasonable attorney fees (including attorney fees incurred in any bankruptcy or administrative proceeding or in any appeal) and expenses incurred by County as a result of a breach or default under this Contract. If Concessionaire becomes the prevailing party in any legal action brought by County, Concessionaire shall be entitled to recover reasonable attorney fees and expenses incurred by Concessionaire and need not reimburse the County for any attorney fees and expenses incurred by the County.

42. WAIVER OF CLAIMS

The Concessionaire hereby waives any claim against the County, its Board of Supervisors, Special Districts, officers, agents, or employees for damage or loss caused by any suit or proceeding directly or indirectly attacking the validity of this Contract or any part thereof, or by any judgment or award in any suit or proceeding declaring this Contract null, void, or voidable, or delaying the same or any part thereof from being carried out

43. WAIVER OF CONTRACT TERMS

Unless otherwise provided by this Contract, no waiver by either party at any time of any of the terms, conditions, or covenants of this Contract shall be deemed as a waiver at any time thereafter of the same or of any other term, condition, or covenant herein contained, nor of the strict and prompt performance thereof. No delay, failure, or omission of the County to re-enter the Premises or to exercise any right, power, privilege, or option arising from any breach, nor any subsequent acceptance of rent then or thereafter accrued shall impair any such right, power, privilege, or option or be construed as a waiver of such breach or a relinquishment of any right or acquiescence therein. No notice to the Concessionaire shall be required to restore or revive time as of the essence after the waiver by the County of any breach. No option, right, power, remedy, or privilege of the County shall be construed as being exhausted by the exercise thereof in one or more instances. The rights, powers, options, and remedies given to the County by this Contract shall be deemed cumulative.

44. INTERPRETATION OF CONTRACT

This Contract is made under and is subject to the internal laws of the State of California in all respects as to interpretation, construction, operation, effect, and performance.

45. BACKGROUND AND SECURITY INVESTIGATIONS

45.1. Each of Concessionaire's staff performing services under this Contract, who is in a designated sensitive position, as determined by County in County's sole discretion, shall undergo and pass a background investigation to the satisfaction of County as a condition of beginning and continuing to perform services under this Contract. Such background investigation must be obtained through fingerprints submitted to the California Department of Justice to include State, local, and federal-level review, which may include, but shall not be limited to, criminal conviction information. The fees associated with the background investigation shall be at the expense of the Concessionaire, regardless of whether the member of Concessionaire's staff passes or fails the background investigation.

45.2. If a member of Concessionaire's staff does not pass the background investigation, County may request that the member of Concessionaire's staff be removed immediately from performing services under the Contract. Concessionaire shall comply with County's request at any time during the term of the Contract. County will not provide to Concessionaire or to Concessionaire's staff any information obtained through the County's background investigation

45.3. County, in its sole discretion, may immediately deny or terminate facility access to any member of Concessionaire's staff that does not pass such investigation to the satisfaction of the County or whose background or conduct is incompatible with County facility access.

45.4. Disqualification of any member of Concessionaire's staff pursuant to this Paragraph 45.4 shall not relieve Concessionaire of its obligation to complete all work in accordance with the terms and conditions of this Contract.

46. COMPLIANCE WITH THE COUNTY'S JURY SERVICE PROGRAM

46.1. Jury Service Program:

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This Contract is subject to the provisions of the County's ordinance entitled Concessionaire's Employee Jury Service ("Jury Service Program") as codified in Sections 2.203.010 through 2.203.090 of the Los Angeles County Code, a copy of which is attached as Exhibit H and incorporated by reference into and made a part of this Contract.

46.2. Written Employee Jury Service Policy.

Unless the Concessionaire has demonstrated to the County's satisfaction either that the Concessionaire is not a "Contractor" as defined under the Jury Service Program (Section 2.203.020 of the County Code) or that the Concessionaire qualifies for an exception to the Jury Service Program (Section 2.203.070 of the County Code), the Concessionaire shall have and adhere to a written policy that provides that its Employees shall receive from the Concessionaire, on an annual basis, no fewer than five days of regular pay for actual jury service. The policy may provide that Employees deposit any fees received for such jury service with the Concessionaire or that the Concessionaire deducts from the Employee's regular pay the fees received for jury service.

For purposes of this subparagraph, "Concessionaire" means a person, partnership, corporation or other entity which has a contract with the County or a subcontract with a County Concessionaire and has received or will receive an aggregate sum of fifty thousand dollars (\$50,000) or more in any twelve (12) month period under one or more County contracts or subcontracts. "Employee" means any California resident who is a full-time employee of the Concessionaire. "Full-time" means forty (40) hours or more worked per week, or a lesser number of hours if: 1) the lesser number is a recognized industry standard as determined by the County, or 2) Concessionaire has a long-standing practice that defines the lesser number of hours as full-time. Full-time employees providing short-term, temporary services of 90 days or less within a twelve (12) month period are not considered full-time for purposes of the Jury Service Program. If the Concessionaire uses any Sub-Contractor to perform services for the County under the Contract, the Sub-Contractor shall also be subject to

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the provisions of this subparagraph. The provisions of this subparagraph shall be inserted into any such subcontract agreement and a copy of the Jury Service Program shall be attached to the agreement.

If the Concessionaire is not required to comply with the Jury Service Program when the Contract commences, the Concessionaire shall have a continuing obligation to review the applicability of its "exception status" from the Jury Service Program, and the Concessionaire shall immediately notify the County if the Concessionaire at any time either comes within the Jury Service Program's definition of "Contractor" or if the Concessionaire no longer qualifies for an exception to the Jury Service Program. In either event, the Concessionaire shall immediately implement a written policy consistent with the Jury Service Program. The County may also require, at any time during the Contract and at its sole discretion, that the Concessionaire demonstrate, to the County's satisfaction that the Concessionaire either continues to remain outside of the Jury Service Program's definition of "Concessionaire" and/or that the Concessionaire continues to qualify for an exception to the Program.

Concessionaire's violation of this subparagraph of the Contract may constitute a material breach of the Contract. In the event of such material breach, County may, in its sole discretion, terminate the Contract and/or bar the Concessionaire from the award of future County contracts for a period of time consistent with the seriousness of the breach.

47. SECTION TITLES

The Section titles in this Contract are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope or intent of this Contract, or in any way affect this Contract.

48. INDEPENDENT CONTRACTOR

In the performance of this Contract, Concessionaire and the agents and employees of Concessionaire shall act in an independent capacity and not as officers or employees or agents of or joint venturers with the County.

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Independent Contractor Status

This Contract is by and between the County and the Concessionaire and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between the County and the Concessionaire. The employees and agents of one party shall not be, or be construed to be, the employees or agents of the other party for any purpose whatsoever.

The Concessionaire shall be solely liable and responsible for providing to, or on behalf of, all persons performing work pursuant to this Contract all compensation and benefits. The County shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, Federal, State, or local taxes, or other compensation, benefits, or taxes for any personnel provided by or on behalf of the Concessionaire.

The Concessionaire understands and agrees that all persons performing work pursuant to this Contract are, for purposes of Workers' Compensation liability, solely employees of the Concessionaire and not employees of the County. The Concessionaire shall be solely liable and responsible for furnishing any and all Workers' Compensation benefits to any person as a result of any injuries arising from or connected with any work performed by or on behalf of the Concessionaire pursuant to this Contract.

49. ASSIGNMENTS AND SUBLEASE

No transfer, assignment, or corporate sale or merger by the Concessionaire that affects this Contract or any part thereof or interest therein directly or indirectly, voluntarily or involuntarily, shall be made unless such transfer, assignment, or corporate merger or sale is first consented to in writing by County.

49.1. Subleases.

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49.1.1. Definition. The term “**Sublease**” shall mean any lease, license, permit, concession or other interest in the Premises, a right to use the Premises or a portion thereof, which is conveyed or granted by Concessionaire to a third party, and which constitutes less than the unrestricted conveyance of the entire Concessionaire’s interest under this Contract. “**Sublessee**” shall be the person or entity to whom such right to use is conveyed by a Sublease. A Sublease which grants or conveys to the Sublessee the right to possess or use all or substantially all of the Premises is sometimes referred to in this Contract as a “**Major Sublease**” and the Sublessee under such agreement is sometimes referred to in this Contract as a “Major Sublessee”.

49.1.2. Approval Required. At least thirty (30) days prior to the proposed effective date of any Sublease that is not a Major Sublease or of any amendment or assignment of such Sublease, Concessionaire shall submit a copy of such Sublease, amendment or assignment to Director for approval, which approval shall be given or withheld at Director’s sole and absolute discretion. To the extent practical, Director shall approve or disapprove said proposed Sublease, amendment or assignment within thirty (30) days after receipt thereof.

In no event, however, shall any such Sublease, amendment or assignment be made or become effective without the prior approval of Director. Each such Sublease shall specifically provide that the Sublessee shall comply with and be subject to all the terms, covenants, and conditions of this Contract.

49.1.3. Major Sublease. The Premises shall be subleased to and operated by only a first-class restaurant operator meeting or exceeding the Quality Standards. In light of the inherently detailed nature of a restaurant sublease, Concessionaire shall deliver to County a copy of any

proposed Major Sublease, or any sublease or any other document pursuant to which an interest is proposed to be transferred in all or substantially all of the Premises, not less than sixty (60) days prior to the proposed effective date of such proposed Major Sublease or other document, for County's review and approval pursuant to Section 49.2.

49.2. Assignments. Except as specifically hereinbefore provided in this Article 49, Concessionaire shall not, without the prior written consent of County, which shall be based upon the factors described in subsection 49.2.1. hereof, either directly or indirectly give, assign, hypothecate, encumber, transfer, or grant control of this Contract or any interest, right, or privilege therein, or enter into a Major Sublease affecting the Premises, or license the use of the same in whole or in part. Any Change of Ownership shall constitute an assignment of Concessionaire's interest under this Contract; notwithstanding the foregoing, County shall have no discretion to disapprove those events identified in subsection 4.7.2. (Excluded Transfers) of this Contract. In addition, for purposes of this provision, the following acts of Concessionaire shall require the prior written consent of County to be effective:

(1) the change in one or more general partners or managing members in a Concessionaire which is a limited partnership or limited liability entity, except (a) by death, insolvency, incapacity, resignation or removal of a general partner or managing member and his replacement by a vote of the limited partners, the remaining general partners or remaining members, or (b) if any general partner or managing member owning more than fifty percent (50%) of the interest of the partnership, or limited liability entity acquires the interest of another general partner or managing manager owning fifteen percent (15%) or less of the interests in the partnership or limited liability entity;

(2) the sale, assignment, or transfer of fifty percent (50%) or more of the stock in a corporation which owns or is a general partner in a partnership owning an interest in Contract. Concessionaire shall provide County with any information reasonably requested by County in order to determine whether or not to grant approval of the

assignment as provided herein. These same limitations and approval requirements shall apply with respect to the Sublessee's interest under a Major Sublease.

49.2.1. County's Use of Discretion and Limitation on Permissible Assignees. In exercising its discretion to approve assignments as provided in Section 49.2, but without limiting the scope of such discretion, County may take into account any or all factors relevant to the continued operation of the Premises in accordance with the terms of this Contract and County's derivation of maximum revenue therefrom. Such factors may include but shall not be limited to the following: (a) the entity type and financial condition of the proposed assignee; (b) the identity, nature and reputation of the entity and the holders of the beneficial interests in the proposed assignee; (c) the identity and experience of the proposed manager or operator of the proposed assignee's other restaurant operations; (d) the number, quality, reputation and sales volume of the proposed assignee's other restaurant operations; (e) County's financial analysis of the proposed assignee's operation of the Premises; (f) County's assessment of the proposed assignee's ability to comply with all terms and conditions of this Contract; (g) any improvements to the Premises to be constructed by the proposed assignee; (h) the proposed price levels of such proposed assignee's restaurant operations of the Premises; and, (i) the compatibility of such proposed assignee's use of the Premises with maximum public use of and benefits from the Premises. Notwithstanding anything to the contrary contained in this Contract, this Contract can be assigned only to a first-class restaurant operator satisfactory to County.

49.2.2. Involuntary Transfer Prohibited. Except as otherwise specifically provided in this Contract, neither this Contract nor any interest therein shall be assignable or transferable in proceedings in attachment,

garnishment, or execution against Concessionaire, or in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against Concessionaire, or by any process of law including proceedings under the Bankruptcy Act.

49.2.3. Procedure. Request for approval of any proposed assignment shall be processed in accordance with the following procedures:

49.2.3.1. Prior to entering into any agreement requiring the approval of County pursuant to the Section 49.2, Concessionaire (or the entity seeking approval of such assignment) must contact County and deliver to County all information relevant to the proposed assignment, including without limitation any term sheets, letters of intent, draft Subleases, or other documents which set forth any proposed agreement regarding the Premises. County will evaluate the information provided to it, and County may request additional information as may be reasonably necessary to act on the request. Under no circumstances will County formally discuss an assignment with any proposed assignee prior to reviewing the proposal with Concessionaire.

49.2.3.2. In completing its review of the proposal and granting or withholding its consent thereto, County will not be bound by any deadline contained in any proposed assignments, Subleases, escrow instructions or other agreements to which County is not a party.

49.2.3.3. Concessionaire acknowledges that the time needed for County to review a proposed assignment depends on many factors, including, without limitation, the complexity of the

proposed transaction, the financial and other information submitted for review, and the workload of County's personnel.

Notwithstanding the foregoing, County shall act as promptly as governmental processes permit in processing and acting upon a requested approval of an assignment of Concessionaire's interest under this Article 49.

49.2.3.4. If County finds it necessary to incur any costs for legal, financial or other analyses, Concessionaire shall be required to reimburse County for such costs, as well as in-house staff costs, whether or not County ultimately grants its approval to the proposed assignment. However, in the event that County approves the proposed assignment, Concessionaire shall receive a credit toward those costs to the extent that an Administrative Charge is paid in connection with the assignment.

49.2.3.5. Concessionaire or the proposed assignee shall provide County with sufficient information for County to determine if the public interest will be served by approving the proposed transaction. The information that must be provided includes, but shall not be limited to the following:

(a) Nature of the Proposed Assignee. Full disclosure is required in accordance with this Contract and County's applicant disclosure policy then in effect. Additionally, a flowchart identifying the chain of ownership of the proposed assignee and its decision making authority shall be provided to County. County shall be advised if the proposed assignee, or any other person or entity for whom disclosure is required pursuant to County's disclosure policy, has had any lease or concession agreement cancelled or

terminated by the landlord due to the tenant or concessionaire breach or default thereunder;

(b) Financial Condition of Proposed Assignee. County shall be provided with current, audited financial statements, including balance sheets and profit and loss statements, demonstrating the proposed assignee's financial condition for the preceding five (5) years, or such shorter period that proposed assignee has been in existence. This requirement shall also apply to any related person or entity which will be responsible for or guarantee the obligations of the proposed assignee or provide any funds or credit to such proposed assignee.

(c) Financial Analysis. County shall be provided with the proposed assignee's financing plan for the operation of the Premises and for any contemplated improvement thereof, demonstrating such proposed assignee's financial capability to so operate the Premises and construct such improvements. Such financing plan shall include, but not be limited to, information detailing (1) equity capital; (2) sources and uses of funds; (3) terms of financing; (4) debt service coverage and ratio; and (5) loan to value ratio. The proposed assignee shall also provide County with documentation demonstrating such proposed assignee's financial viability, such as letters of commitment from financial institutions which demonstrate the availability of sufficient funds to complete any proposed construction or improvements on the Premises. Further, such proposed assignee shall authorize the release of financial information to County from financial institutions relating to the proposed assignee or other information supplied in support of the proposed assignment.

(d) Business Plan. County shall be provided with the proposed assignee's business plan for the Premises, including pro forma financial projections for the Premises for the five (5) year period beginning upon the commencement of the proposed assignment. Such pro forma projections will include capital costs, income and expenses, as well as debt service and all other payments to providers of debt and equity, and will be accompanied by a statement of basic assumptions and an identification of the sources of the data used in the production of such projections.

(e) Cure of Defaults. County shall be provided with the proposed assignee's specific plans to cure any and all delinquencies under this Contract which may be identified by County.

(f) Prospectus Materials. County shall be provided with any materials distributed to third parties relating to the business of the proposed assignee to be conducted on, from or related to the Premises.

(g) Other Information. County shall be provided with a clear description of the terms and conditions of the proposed agreement, including a description of the proposed use of the Premises and any proposed alterations or improvements to the Premises. Additionally, County shall be provided with any and all other materials pertinent to the issues noted in this subsection to the extent that they exist, including, without limitation, escrow instructions, security agreements, personal property schedules, appraisals, market reports, lien releases, UCC Statements, preliminary title reports, management agreements affecting the

Premises, contracts on excess of \$25,000 affecting the Premises, schedules of pending or threatened litigation, and attorneys' closing opinions relating to Concessionaire, the proposed assignee to the Premises. County shall endeavor to keep the foregoing materials confidential, to the extent they are clearly labeled as such and subject to the Public Records Act and other Applicable Laws.

49.2.3.6. Final Documents. Prior to granting its approval over any proposed assignment, County shall be provided with executed assignment and Acceptance of Assignment forms prepared in accordance with the standard forms available from County. Five (5) copies of each must be submitted to County, of which three (3) shall be signed originals and properly acknowledged.

49.2.4. County Right of First Negotiation. If Concessionaire proposes to assign its interest in this Contract or enter into any Major Sublease affecting the Premises ("**Proposed Transfer**"), it shall provide County with written notice of such desire and the sale price ("**Concessionaire Sale Price**") at which it is willing to consummate the Proposed Transfer. Within thirty (30) days after receipt of such notice, the County shall provide Concessionaire written notification as to whether County is interested in purchasing the interest subject to the Proposed Transfer. In the event County has responded in the affirmative, it shall deliver to Concessionaire, within sixty (60) days, a written offer to purchase ("**County Offer to Purchase**") at the price deemed suitable by County. Such County Offer to Purchase shall provide for the closing of the transaction within one hundred eighty (180) days. County and Concessionaire shall have sixty (60) days to negotiate a final sale price for the interest subject to the Proposed Transfer. In the event that County

declines to seek to purchase the interest subject to the Proposed Transfer, or the parties are unable to agree on a final purchase price following the sixty (60) days negotiation period described in the immediately preceding sentence, Concessionaire shall be entitled to consummate the Proposed Transfer with a third party (subject to County's approval rights as otherwise set forth in this Contract) during the ensuing nine (9) months period so long as the Proposed Transfer price is equal to or greater than the sale price last offered to County. In the event of a proposed Sublease or other permitted assignment of less than all the Premises, County's election shall pertain to such portion of the Premises subject to the proposed Sublease or assignment and, in the event that County elects to acquire such portion of the Premises, Concessionaire's Annual Minimum Rent shall be proportionally reduced and Concessionaire's obligation to pay Percentage Rent shall pertain only to the amounts derived from the portion of the Premises retained by Concessionaire. In the event that County elects to recapture all or any portion of the Premises as provided herein, Concessionaire agrees to execute promptly a termination agreement and such other documentation as may be necessary to evidence the termination of this Contract, to set a termination date and to prorate rent and other charges with respect to the termination. County's right pursuant to this subsection 49.2.4 shall not apply to Financing Events or those events identified in subsection 4.7.2 (Excluded Transfers) of this Contract.

49.3. Terms Binding Upon Successors, Assigns and Sublessees. Except as otherwise specifically provided for herein, each and all of the provisions, agreements, terms, covenants, and conditions herein contained to be performed, fulfilled, observed, and kept by Concessionaire hereunder shall be binding upon its heirs, executors, administrators, successors, and assigns of Concessionaire, and all rights, privileges and benefits arising under this Contract in favor of Concessionaire shall be available in favor

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of its heirs, executors, administrators, successors, and assigns. Notwithstanding the foregoing, no assignment or subletting by or through Concessionaire in violation of the provisions of this Contract shall vest any rights in any such assignee or Sublessee. Any approved assignment of this Contract shall release the assignor of all liability arising on or after the effective date of such assignment, provided the assignee assumes all of such liability. Provided, further, the assignor shall not be released of any liability for the payment of the Administrative Charge or the required portion of any Net Proceeds Share or Net Refinancing Proceeds which arise upon such assignment as provided herein.

49.4. Estoppel Certificates. Each party agrees to execute, within ten (10) business days after the receipt of a written request therefor from the other party, a certificate stating: that this Contract is in full force and effect and is unmodified (or stating otherwise, if true); that, to the best knowledge of such party, the other party is not then in default under the terms of this Contract (or stating the grounds for default if such be the case); and prospective purchasers and lenders may rely on such statements.

50. MODIFICATION OF CONTRACT; AMENDMENTS.

This Contract contains and embraces the entire agreement between the parties hereto and neither it, nor any part of it, may be changed, altered, modified, limited, or extended orally or by any agreement between the parties unless such agreement is in writing, signed, and acknowledged by the County and the Concessionaire or their respective successors in interest.

Notwithstanding any of the provisions of this Contract, the parties may hereafter, by mutual written agreement, amend this Contract in any manner not forbidden by law.

Notwithstanding the foregoing, Director shall have the power to execute such amendments to this Contract as are necessary to implement any arbitration judgment issued pursuant to Article 25 of this Contract.

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The Director shall have the right to grant reasonable extensions of time to Concessionaire for any purpose or for the performance of any obligation of Concessionaire hereunder.

51. UNENFORCEABLE PROVISION

In the event that any provision of this Contract is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Contract have force and effect and shall not be affected thereby.

52. APPROVAL OF CONTRACT

This Contract, amendments, or modifications thereof shall not be effective until approved by the County's Board of Supervisors, the State's Department of General Services and the Attorney General of the State of California.

53. CONTRACT NOTICE

Any notices required to be given or that may be given by either party to the other shall be deemed to have been given when made in writing and deposited in the United States mail, postage prepaid, and addressed as follows:

Concessionaire at:	CT-ConcessionaireName CT-ConcessionContactAddress CT-ConcessionCityState CT-ConcessionZip CT-ConcessionairePhone
County at:	Director Department of Beaches and Harbors County of Los Angeles 13837 Fiji Way Marina del Rey, California 90292 Phone: (424) 526-7726

Copy to: Office of County Counsel
County of Los Angeles
500 West Temple Street, 6th Floor
Los Angeles, California 90012
Phone: (213) 974-1932

The address to which notices shall or may be mailed as aforesaid by either party shall or may be changed by written notice given by such party to the other, but nothing in this Section shall preclude the giving of any such notice by personal service.

If Concessionaire is not a resident of the State of California, or is an association or partnership without a member or partner resident of said State, or is a foreign corporation, Concessionaire shall file with Director a designation of a natural person residing in the County of Los Angeles, State of California, or a service company, such as CT Corporation, which is authorized to accept service, giving his or its name, residence, and business address, as the agent of Concessionaire for the service of process in any court action between Concessionaire and County, arising out of or based upon this Contract, and the delivery to such agent of written notice or a copy of any process in such action shall constitute a valid service upon Concessionaire.

If for any reason service of such process upon such agent is not possible, then any officer of Concessionaire may be personally served with such process outside of the State of California and such service shall constitute valid service upon Concessionaire; and it is further expressly agreed that Concessionaire is amenable to such process and submits to the jurisdiction of the court so acquired and waives any and all objection and protest hereto.

Written notice addressed to Concessionaire at the addresses above-described, or to such addresses that Concessionaire may in writing file with Director, shall be

deemed sufficient if said notice is delivered personally, by e-mail or other electronic transmission

54. MISCELLANEOUS

54.1. Contractor Responsibility and Debarment

54.1.1. Responsible Contractor

A responsible Concessionaire/Contractor is a Contractor who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform the contract. It is the County's policy to conduct business only with responsible Contractors.

54.1.2. Chapter 2.202 of the County Code

The Contractor is hereby notified that, in accordance with Chapter 2.202 of the County Code, if the County acquires information concerning the performance of the Contractor on this or other contracts which indicates that the Contractor is not responsible, the County may, in addition to other remedies provided in the Contract, debar the Contractor from bidding or proposing on, or being awarded, and/or performing work on County contracts for a specified period of time, which generally will not exceed five (5) years but may exceed five (5) years or be permanent if warranted by the circumstances, and terminate any or all existing contracts the Contractor may have with the County.

54.1.3. Non-responsible Contractor

The County may debar a Contractor if the Board of Supervisors finds, in its discretion, that the Contractor has done any of the following: 1) violated a term of a contract with the County or a

nonprofit corporation created by the County, 2) committed an act or omission which negatively reflects on the Contractor's quality, fitness or capacity to perform a contract with the County, any other public entity, or a nonprofit corporation created by the County, or engaged in a pattern or practice which negatively reflects on same, 3) committed an act or offense which indicates a lack of business integrity or business honesty, or 4) made or submitted a false claim against the County or any other public entity.

54.1.4. Contractor Hearing Board

- A. If there is evidence that the Contractor may be subject to debarment, the Department will notify the Contractor in writing of the evidence which is the basis for the proposed debarment and will advise the Contractor of the scheduled date for a debarment hearing before the Contractor Hearing Board.
- B. The Contractor Hearing Board will conduct a hearing where evidence on the proposed debarment is presented. The Contractor and/or the Contractor's representative shall be given an opportunity to submit evidence at that hearing. After the hearing, the Contractor Hearing Board shall prepare a tentative proposed decision, which shall contain a recommendation regarding whether the Contractor should be debarred, and, if so, the appropriate length of time of the debarment. The Contractor and the Department shall be provided an opportunity to object to the tentative proposed decision prior to its presentation to the Board of Supervisors.
- C. After consideration of any objections, or if no objections are submitted, a record of the hearing, the proposed decision, and any other recommendation of the Contractor Hearing Board shall be presented to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.
- D. If a Contractor has been debarred for a period longer than five (5) years, that Contractor may after the debarment has been in effect for at least five (5) years, submit a written

request for review of the debarment determination to reduce the period of debarment or terminate the debarment. The County may, in its discretion, reduce the period of debarment or terminate the debarment if it finds that the Contractor has adequately demonstrated one or more of the following: 1) elimination of the grounds for which the debarment was imposed; 2) a bona fide change in ownership or management; 3) material evidence discovered after debarment was imposed; or 4) any other reason that is in the best interests of the County.

- E. The Contractor Hearing Board will consider a request for review of a debarment determination only where 1) the Contractor has been debarred for a period longer than five (5) years; 2) the debarment has been in effect for at least five (5) years; and 3) the request is in writing, states one or more of the grounds for reduction of the debarment period or termination of the debarment, and includes supporting documentation. Upon receiving an appropriate request, the Contractor Hearing Board will provide notice of the hearing on the request. At the hearing, the Contractor Hearing Board shall conduct a hearing where evidence on the proposed reduction of debarment period or termination of debarment is presented. This hearing shall be conducted and the request for review decided by the Contractor Hearing Board pursuant to the same procedures as for a debarment hearing.
- F. The Contractor Hearing Board's proposed decision shall contain a recommendation on the request to reduce the period of debarment or terminate the debarment. The Contractor Hearing Board shall present its proposed decision and recommendation to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.

54.1.5. Sub-Contractors of Contractor

These terms shall also apply to Sub-Contractors of County Contractors.

54.2. Public Records Act

54.2.1. Any documents submitted by the Concessionaire; all information obtained in connection with the County's right to audit and inspect the Concessionaire's documents, books, and accounting records pursuant to subparagraph 33 – Records and Reports; as well as those documents which were required to be submitted in response to the Request for Proposals (RFP) used in the solicitation process for this Contract, become the exclusive property of the County. All such documents become a matter of public record and shall be regarded as public records. Exceptions will be those elements in the California Government Code Section 6250 et seq. (Public Records Act) and which are marked "trade secret", "confidential", or "proprietary". The County shall not in any way be liable or responsible for the disclosure of any such records including, without limitation, those so marked, if disclosure is required by law, or by an order issued by a court of competent jurisdiction.

54.2.2. In the event the County is required to defend an action on a Public Records Act request for any of the aforementioned documents, information, books, records, and/or contents of a proposal marked "trade secret", "confidential", or "proprietary", the Concessionaire agrees to defend and indemnify the County from all costs and expenses, including reasonable attorney's fees, in action or liability arising under the Public Records Act.

54.3. Publicity

54.3.1. The Concessionaire shall not disclose any details in connection with this Contract to any person or entity except as may be otherwise provided hereunder or required by law. However, in recognizing the Concessionaire's need to identify its services and related clients to

sustain itself, the County shall not inhibit the Concessionaire from publishing its role under this Contract within the following conditions:

- a) The Concessionaire shall develop all publicity material in a professional manner; and
- b) During the term of this Contract, the Concessionaire shall not, and shall not authorize another to, publish or disseminate any commercial advertisements, press releases, feature articles, or other materials using the name of the County without the prior written consent of the County. The County shall not unreasonably withhold written consent.

54.3.2. The Concessionaire may, without the prior written consent of County, indicate in its proposals and sales materials that it has been awarded this Contract with the County of Los Angeles, provided that the requirements of this subparagraph 54.3. shall apply.

54.4. Warranty of Compliance with County’s Defaulted Property Tax Reduction Program

Concessionaire acknowledges that County has established a goal of ensuring that all individuals and businesses that benefit financially from County through contract are current in paying their property tax obligations (secured and unsecured roll) in order to mitigate the economic burden otherwise imposed upon County and its taxpayers.

54.5. Time Off for Voting

The Concessionaire shall notify its employees, and shall require each Sublessee to notify and provide to its employees, information regarding the time off for voting law (Elections Code Section 14000). Not less than ten (10) days before every statewide election, every Concessionaire and Sublessee shall keep posted conspicuously at the

place of work, if practicable, or elsewhere where it can be seen as employees come or go to their place of work, a notice setting forth the provisions of Section 14000.

Unless Concessionaire qualifies for an exemption or exclusion, Concessionaire warrants and certifies that to the best of its knowledge it is now in compliance, and during the term of this contract will maintain compliance, with Los Angeles County Code Chapter 2.206.

54.6. Time is of the Essence.

Except as specifically otherwise provided for in this Contract, time is of the essence of this Contract and applies to all terms, times, conditions, restrictions and limitations contained herein.

55. DEFINITIONS OF TERMS; INTERPRETATION.

55.1. Meanings of Words Not Specifically Defined.

Words and phrases contained herein shall be construed according to the context and the approved usage of the English language, but technical words and phrases, and such other as have acquired a peculiar and appropriate meaning by law, or are defined in Section 1.1, are to be construed according to such technical, peculiar, and appropriate meaning or definition.

55.2. Tense; Gender; Number; Person.

Words used in this Contract in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter, and the neuter includes the masculine and feminine; the singular number includes the plural and the plural the singular; the word "person" includes a corporation, partnership, limited liability company or similar entity, as well as a natural person; and "includes" or "including" are not limiting.

55.3. Business Days.

For the purposes of this Contract, “**business day**” shall mean a business day as set forth in Section 9 of the California Civil Code.

55.4. Parties Represented by Consultants, Counsel.

Both County and Concessionaire have entered this Contract following advice from independent financial consultants and legal counsel or their own choosing. This document is the result of combined efforts of both parties and their consultants and attorneys. Thus, any rule of law or construction which provides that ambiguity in a term or provision shall be construed against the draftsman shall not apply to this Contract.

55.5. Governing Laws.

This Contract shall be governed by and interpreted in accordance with the laws of the State of California.

55.6. Reasonableness Standard.

Except where a different standard is specifically provided otherwise herein, whenever the consent of County or Concessionaire is required under this Contract, such consent shall not be unreasonably withheld and whenever this Contract grants County or Concessionaire the right to take action, exercise discretion, establish rules and regulations or make allocations or other determinations, County and Concessionaire shall act reasonably and in good faith.

These provisions shall only apply to County acting in its proprietary capacity.

56. TIME FOR DIRECTOR APPROVALS.

Except as otherwise provided for in this Contract, whenever in this Contract the approval of Director is required, approval shall be deemed not given unless within thirty (30) days after the date of the receipt of the written request for approval from Concessionaire, Director either (a) approves such request in writing, or (b) notifies

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Concessionaire that it is not reasonably possible to complete such review within the thirty (30)-day period, provides a final date for approval or disapproval by Director (the “**Extended Time**”) and approves such request in writing prior to such Extended Time. If Director does not approve such request in writing within such Extended Time, the request shall be deemed to be disapproved. If Director disapproves a matter that requires its approval under this Contract, then Director shall notify Concessionaire in writing of the reason or reasons for such disapproval.

57. TIME FOR COUNTY ACTION.

Notwithstanding anything to the contrary contained in this Contract, wherever Director determines that a County action required hereunder necessitates approval from or a vote of one or more of County’s boards or commissions or County’s Board of Supervisors, the time period for County performance of such action shall be extended as is reasonably necessary in order to secure such approval or vote, and County shall not be deemed to be in default hereunder in the event that it fails to perform such action within the time periods otherwise set forth herein.

58. ATTORNEYS’ FEES.

In the event of any action, proceeding or arbitration arising out of or in connection with this Contract, whether or not pursued to judgment, the prevailing party shall be entitled, in addition to all other relief, to recover its costs and reasonable attorneys’ fees. In the event County is represented by County Counsel, the court shall award reasonable attorneys’ fees to County Counsel’s services.

59. CAPTIONS.

The captions contained in this Contract are for informational purposes only, and are not to be used to interpret or explain the particular provisions of this Contract.

60. WAIVER OF CONDITIONS OR COVENANTS.

Except as stated in writing by the waiving party, any waiver by either party of any breach of any one or more covenants, conditions, terms, and agreements of this Contract shall not be construed to be a waiver of any subsequent or other breach of the same or any other covenant, condition, term, or agreement of this Contract, nor shall failure on the part of either party to require exact full and complete compliance with any of the covenants, conditions, terms, or agreements of this Contract be construed as in any manner changing the terms hereof or estopping that party from enforcing the full provisions hereof, nor shall the terms of this Contract be changed or altered in any manner whatsoever other than by written agreement of County and Concessionaire. No delay, failure, or omission of County to re-enter the Premises or of either party to exercise any right, power, privilege, or option, arising from any default, nor any subsequent acceptance of rent then or thereafter accrued shall impair any such right, power, privilege, or option or to be construed as a waiver or acquiescence in such default or as a relinquishment of any right. No notice to Concessionaire shall be required to restore or revive "time of the essence" after the waiver by County of any default. Except as specially provided in this Contract, no option, right, power, remedy, or privilege of either party shall be construed as being exhausted by the exercise thereof in one or more instances.

61. REMEDIES CUMULATIVE.

The rights, powers, options, and remedies given County by this Contract shall be cumulative except as otherwise specifically provided in this Contract.

62. AUTHORIZED RIGHT OF ENTRY.

In any and all cases in which provision is made herein for termination of this Contract, or for exercise by County of right of entry or re-entry upon the Premises, or in case of abandonment or vacation of the Premises by Concessionaire, Concessionaire hereby irrevocably authorizes County to enter upon the Premises and remove any and all persons and property whatsoever situated upon the Premises and place all or any

portion of said property, except such property as may be forfeited to County, in storage for the account of and at the expense of Concessionaire.

Concessionaire hereby exempts and agrees to hold harmless County from any cost, loss or damage arising out or caused by any such entry or re-entry upon the Premises and the removal or persons and property and storage of such property by County and its agents.

63. PLACE OF PAYMENT AND FILING.

All rentals shall be paid to and all statements and reports herein required shall be filed with the Department. Checks, drafts, and money orders shall be made payable to the County of Los Angeles and mailed to the following address:

County of Los Angeles
Department of Beaches and Harbors
Fiscal and Financial Division
13575 Mindanao Way, Marina del Rey, CA 90292

64. INDEMNITY OBLIGATIONS.

Whenever in this Contract there is an obligation to indemnify, hold harmless and/or defend, irrespectively of whether or not the obligation so specifies, it shall include the obligation to defend and pay reasonable attorney's fees, reasonable expert fees and court costs.

IN WITNESS WHEREOF, the parties hereto warrant that they respectively have the requisite authority to enter this Contract, binding the named parties for which they sign, and have executed this concession contract at the respective times set forth below.

(Signature page follows)

/

CONCESSIONAIRE:

Signed: _____

Name: _____

Title: _____

THE COUNTY OF LOS ANGELES

By: _____
Chair, Board of Supervisors

ATTEST:

LORI GLASGOW,
Executive Officer - Clerk of the Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM:

MARY C. WICKHAM,
County Counsel

By: _____
Deputy

**STATE OF CALIFORNIA
DEPARTMENT OF PARKS & RECREATION**

Signed: _____

Signed: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPROVED:

APPROVED:

ATTORNEY GENERAL:

DEPARTMENT OF GENERAL SERVICES:

Approved as to legal sufficiency
in accordance with the requirements
of Sections 5080.02-5080.21 of the
Public Resources Code.

Signed: _____

Name/Title: _____

Date: _____

**XAVIER BECERRA, Attorney General
of the State of California**

By: _____
Deputy Attorney General

Dated: _____