

FIFTH AMENDMENT TO CONCESSION AGREEMENT
FOR WILL ROGERS STATE BEACH PARK RESTAURANT
(Gladstone's Restaurant)

THIS FIFTH AMENDMENT TO CONCESSION AGREEMENT FOR WILL ROGERS STATE BEACH PARK RESTAURANT (this "**Amendment**") is made and entered into as of September 1, 2020 by and between the COUNTY OF LOS ANGELES ("**County**") and SEA VIEW RESTAURANTS, INC., a California corporation ("**Concessionaire**").

RECITALS

A. County and Concessionaire are parties to that certain Concession Agreement for Will Rogers State Beach Park Restaurant dated as of November 1, 1997 ("**Original Concession Agreement**"), as amended by that certain: (1) First Amendment to Concession Agreement for Will Rogers State Beach Park Restaurant dated as of February 9, 1999 ("**First Amendment**"), (2) Second Amendment to Concession Agreement for Will Rogers State Beach Park Restaurant dated as of March 29, 2005 ("**Second Amendment**"), (3) Third Amendment to Concession Agreement for Will Rogers State Beach Park Restaurant dated as of June 7, 2016 ("**Third Amendment**"), and Fourth Amendment to Concession Agreement for Will Rogers State Beach Park Restaurant dated as of January 31, 2018 ("**Fourth Amendment**"), pursuant to which Concessionaire operates a restaurant known as "Gladstone's" on certain real property located in the County of Los Angeles, State of California and more particularly described therein. The Original Concession Agreement, as amended by the First Amendment, Second Amendment, Third Amendment, and Fourth Amendment, is referred to herein collectively as the "Concession Agreement."

B. As required by the Second Amendment, California Beach Restaurants, Inc. ("**Parent**") executed a Guaranty dated March 29, 2005 in favor of County (the "**Parent Guaranty**"), pursuant to which Parent guaranteed the full payment and performance of all of Concessionaire's obligations under the Concession Agreement. The Parent Guaranty remains in full force and effect.

C. Also as required by the Second Amendment, Parent entered into a Security Agreement dated March 29, 2005 with County (the "**Security Agreement**") pursuant to which Parent granted to County a security interest in all of Parent's right, title and interest in and to the Name Rights and the Royalties (as such terms are defined in the Security Agreement) to secure its obligations under the Parent Guaranty.

D. As required by the Third Amendment, Richard J. Riordan, in his individual capacity and as Trustee of the Richard J. Riordan Trust DTD August 30, 1996 ("**Principal**"), executed a Guaranty dated June 7, 2016 in favor of the County (the "**Principal Guaranty**") pursuant to which Principal guaranteed the full payment and performance of all Concessionaire's obligations under the Concession Agreement. The Principal Guaranty remains in full force and effect.

E. Concessionaire has requested County to amend the Concession Agreement pursuant to the terms and conditions contained in this Amendment, and the County is willing to agree to such revisions subject to the terms and provisions set forth in this Amendment, and conditioned upon: (a) the continuing effectiveness of the Parent Guaranty executed by Parent in

connection with the Second Amendment, (b) the continuing effectiveness of the Principal Guaranty executed by Principal in connection with the Third Amendment, and (c) certain other conditions set forth herein.

F. County is willing to adjust the Monthly Minimum Rent, and the Percentage Rent, and days of operation in accordance with and subject to the terms and provisions set forth in this Amendment, and conditioned upon: (a) the continuing effectiveness of the Parent Guaranty executed by Parent in connection with the Second Amendment, (b) the continuing effectiveness of the Principal Guaranty executed by Principal in connection with the Third Amendment, and (c) certain other conditions set forth herein.

G. County and Concessionaire desire to modify the Concession Agreement in certain additional respects set forth herein.

NOW, THEREFORE, with reference to the foregoing Recitals and the covenants contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, County and Concessionaire hereby agree as follows:

1. Definitions. All initially-capitalized terms used but not defined in this Amendment have the meanings given to such terms in the Concession Agreement.

2. Existing Concession Agreement. To induce County to enter into this Amendment, Concessionaire hereby represents, warrants, certifies and stipulates that each of the following statements is true and correct:

2.1 Enforceability. The Concession Agreement is valid, binding and enforceable against Concessionaire, subject to the effect of bankruptcy and similar laws affecting the enforcement of creditors' rights generally and to the discretion of a court of equity to enforce equitable remedies.

2.2 No Defenses. Except as provided in Sections 3.1, 3.2 and 3.3 hereof, Concessionaire does not have any defenses, counterclaims or offsets to the payment of any amounts payable under the Concession Agreement, and, to Concessionaire's current actual knowledge, no event, circumstance or condition has occurred or currently exists, that constitutes, or with notice and/or the expiration of any applicable grace or cure period would constitute, a breach or default by County under the Concession Agreement.

3. Adjustments to Rent.

3.1 Reduction in Monthly Minimum Rent for April and May 2020. Subject to the terms and conditions of this Amendment, the Monthly Minimum Rent of \$36,458.33 under Section 4.2.1 of the Concession Agreement due for April and May 2020 shall be amortized for a period of twenty-nine (29) months, commencing on June 1, 2020, and such sum shall be due and payable in monthly installments of \$2,514.37 per month (the "Amortized Rent") commencing on June 1, 2020 and on the first day of each calendar month thereafter, provided, however, that if County terminates the Concession Agreement prior to its expiration, any remaining Amortized Rent payments then due and payable shall be forgiven. County hereby waives any default arising out of Concessionaire's failure

to pay Monthly Minimum Rent for April and May 2020 at the time such payments were due and payable and any late charges, interest and penalties that the County could have charged Concessionaire at such time; provided, however, that the County does not waive any default that may arise from Concessionaire's failure to pay Amortized Rent when due as provided above, and any late charges, interest and penalties arising out of such failure.

3.2 Monthly Minimum Rent for March 2020. Concurrently with the execution of this Amendment by Concessionaire, the Concessionaire shall pay to the County the March, 2020 Monthly Minimum Rent in the sum of \$36,458.33 and upon receipt of such amount, the County hereby waives any default arising out of Concessionaire's failure to pay Monthly Minimum Rent for March, 2020 and any late charges, interest and penalties accrued thereon.

3.3 Elimination of Monthly Minimum Rent. Subject to the terms and conditions of this Amendment (including, without limitation, Section 4 below), effective as of June 1, 2020, the Monthly Minimum Rent under Section 4.2.1 of the Concession Agreement is hereby eliminated, commencing on June 1, 2020 and continuing until the later of: i) October 31, 2021, or ii) the effective date set forth in a Directive/Order issued by the County that allows restaurants to operate at 100% capacity (an "Opening Directive"), such that the Premises can be operated so that all 707 currently permitted seats can be occupied and food can be served. If an Opening Directive becomes effective after the first day of any calendar month and Monthly Minimum Rent is due for such calendar month, then the Monthly Minimum Rent due and payable for such calendar month shall be prorated accordingly. If, in accordance with this Amendment, Concessionaire is obligated to pay Monthly Minimum Rent for any month, then Concessionaire shall be obligated to pay on the greater of (a) Monthly Minimum Rent or (b) Percentage Rent (as amended herein) for such month. The parties acknowledge and agree that as of the date of this Amendment, (1) the County has not issued an Opening Directive and (2) Concessionaire is only obligated to pay Percentage Rent (and not Monthly Minimum Rent) for the months of June and July, 2020.

3.4 Adjustment to Percentage Rent. The Percentage Rent for Gross Receipts from: (i) food set forth in Section 4.2.2.1 of the Concession Agreement, and as amended by the Fourth Amendment, is hereby adjusted from 7% to 4%; (ii) alcoholic beverages set forth in Section 4.2.2.2 of the Concession Agreement is hereby adjusted from 12% to 10%; (iii) merchandise set forth in Section 4.2.2.3 of the Concession Agreement is hereby adjusted from 12% to 5%; and (iv) other activities set forth in Section 4.2.2.5 of the Concession Agreement is hereby adjusted from 12% to 5%; such adjustments set forth in (i) through (iv) above to be calculated in accordance with Section 4.2.2 of the Concession Agreement and to be effective as of June 1, 2020 and continue through the expiration of the term of the Concession Agreement. All other Percentage Rents are unchanged, including without limitation the percentage rent category applicable to parking set forth in Section 4.2.2.4 of the Concession Agreement.

4. **Operating Covenant.** Except in connection with periods of inoperation due to (a) remodeling (provided that such remodeling shall not be for a period in excess of seven (7) days in the aggregate in any one (1) year period), (b) Force Majeure, (c) Christmas Day, (d) a cause or

event pursuant to Sections 7 or 11.2 of the Original Concession Agreement, or (e) any statute, regulation, rule, injunction, judgment, order, proclamation, decree, declaration, activation, situation, ruling, charge, public-health recommendations or guidelines or other restriction related to COVID-19 issued, ordered or declared by a governmental department or agency, including, without limitation, so-called shelter-in-place (or similar) orders or business or commerce shut-down orders (including, without limitation, any reinstatements thereof that may have expired or otherwise been previously lifted, suspended or removed) which prevents Concessionaire from conducting its normal business operations in the Premises, Concessionaire hereby agrees that: (i) during the period from October 1 of each calendar year through April 30 of each succeeding calendar year, Concessionaire shall operate the Premises a minimum of three (3) days per week; provided, however, that such three (3) days must include Saturdays and Sundays, and (ii) during the period from May 1 of each calendar year through September 30 of such calendar year, Concessionaire shall operate the Premises a minimum of five (5) days per week; provided, however, that such five (5) days must include Saturdays and Sundays. If Concessionaire fails to remain open as specified above, then Minimum Monthly Rent (as set forth above in the sum of \$36,458.33) or Percentage Rent for such month, if higher, would be due for the month during which Concessionaire failed to remain open.

5. Principal Guaranty. The Principal Guaranty executed in connection with the Third Amendment (and attached as Exhibit A thereto) remains in effect (including, without limitation, all waivers of rights in favor of County) and has not been terminated.

6. Termination Notice. Section 2.1 of the Concession Agreement (as amended by the Fourth Amendment) provides that County has the right to terminate the Concession Agreement at any time after November 1, 2019 upon ninety (90) days' prior notice to Concessionaire. Section 2.1 is hereby modified to provide that the County's may terminate the Concession Agreement by providing to Concessionaire ninety (90) days' prior written notice; provided, however, the County may not give said notice on or before October 31, 2021. In the event the County's exercise of the foregoing early termination right would result in a termination date between June 15 and September 15 of any calendar year, the effective date of the termination will automatically be extended to September 15 of that year, regardless of the actual date which is ninety (90) days from the date of such termination notice.

7. Costs and Expenses. Concessionaire agrees to pay or reimburse County for all reasonable costs and expenses actually incurred by County in connection with this Amendment and the related transactions and documentation described herein, including, without limitation, the reasonable attorneys' fees and costs of County's counsel in connection with the negotiation and preparation of this Amendment and the documents referred to herein.

8. Right of First Refusal. Concessionaire acknowledges that the County is in the process of negotiating a new concession agreement with respect to the Premises to a third party upon the expiration of the Concession Agreement. In the event that the County does not enter into an agreement with said party or any other party (in the County's sole and absolute discretion) prior to the expiration of the Concession Agreement, then Concessionaire shall have the right of first refusal to extend the term of the Concession Agreement for an additional three (3) years, commencing November 1, 2022, provided that: (i) the Minimum Rent and the Percentage Rent shall be not less than the amounts provided in the Fourth Amendment, and (ii) the County

shall have the right to terminate the extended period upon giving ninety (90) days prior written notice to Concessionaire. Concessionaire shall exercise its right of first refusal on or before sixty (60) days from receipt of written notice from the County that the County did not enter into a new agreement with respect to the Premises.

9. Miscellaneous.

9.1 No Modification. Except as referenced herein, the Concession Agreement has not been modified, amended or supplemented, and the Concession Agreement is and remains in full force and effect.

9.2 Counterparts. This Amendment may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall constitute but one and the same instrument.

9.3 Time of the Essence. Time is of the essence with respect to this Amendment.

9.4 Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of California without giving effect to the conflict of law principles of said state.

9.5 No Waiver. Except as expressly provided herein, County shall not be deemed by reason of its execution of this Amendment to have waived any terms or provisions of the Concession Agreement, including, without limitation, any default or Event of Default or any rights and remedies that County may have under the Concession Agreement, at law or in equity.

9.6 Controlling Provisions. In the event of any inconsistencies between the provisions of this Amendment and the provisions of the Concession Agreement, the provisions of this Amendment shall govern and prevail.

9.7 Integration and Merger. This Amendment, the Exhibits attached hereto, and all documents referenced in the Amendment to be executed by Parent or Principal in connection herewith, contain the entire agreement of County and Concessionaire regarding the modification of the Concession Agreement and supersede all prior agreements, term sheets and understandings between County and Concessionaire, whether written or oral, with respect to the modification of the Concession Agreement.

9.8 Survival. All representations and warranties contained in this Amendment shall be deemed to be material and shall survive the effectiveness of the modifications to the Concession Agreement contemplated by this Amendment.

9.9 Further Assurances. At County's request, Concessionaire shall promptly execute any other document or instrument and/or seek any consent or agreement from any third party that County determines is necessary to evidence or carryout the intent of the parties, as set forth in this Amendment.

9.10 Captions; Use of Certain Terms. The Section titles and captions in this Amendment are for convenience only and shall not be deemed to be part of this Amendment. All pronouns and any variation or pronouns shall be deemed to refer to the masculine, feminine or neuter, as the identity of the parties may require. Whenever the terms referred to herein are singular, the same shall be deemed to mean the plural, as the context indicates, and vice versa.

9.11 Incorporation of Exhibits. All of the Exhibits referred to in and attached to this Amendment are incorporated herein by this reference.


9.12 Signature in Counterparts. This Amendment may be signed in any number of counterparts. Each counterpart shall represent an original of this Amendment, and all such counterparts shall collectively constitute one fully-executed document.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first above written.

THE COUNTY OF LOS ANGELES

By: _____


Gary Jones, Director of Department
of Beaches and Harbors

SEA VIEW RESTAURANTS, INC.,
a California corporation

By: _____


Name: Richard Riordan
Title: _____

The undersigned hereby agrees to the
within Amendment, acknowledges and
hereby confirms that the Principal
Guaranty shall remain in full force and
effect.


Richard J. Riordan

APPROVED AS TO FORM:

MARY C. WICKHAM

By: _____

Deputy

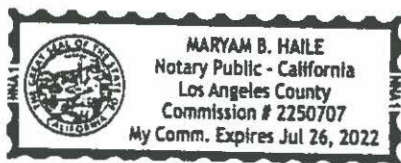
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

On July 29, 2020, before me, Maryam B. Haile, Notary Public, personally appeared Richard J. Riordan, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Maryam B. Haile
Notary Public

ACKNOWLEDGMENT FORM
(FOR COUNTY USE ONLY)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On September 1, 2020, before me, Mindy K. Sherwood, Deputy County Clerk, personally appeared Gay Jones who proved to me on the basis of satisfactory evidence to be the person(~~s~~) whose name(~~s~~) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(~~ies~~), and that by his/~~her~~/their signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

DEAN C. LOGAN, Registrar-Recorder/
County Clerk of the County of Los Angeles
State of California

By Mindy K. Sherwood
Deputy County Clerk



(Seal)