

# Exhibit E

## Model Option Agreement

1 BE74Q-150  
2 Salt Creek Beach Park  
3 (Beach Concessions)  
4

### OPTION AGREEMENT

6 THIS OPTION AGREEMENT ("Option Agreement") is made \_\_\_\_\_, 2010, by and  
7 between the County of Orange, a political subdivision of the State of California (hereinafter referred to as  
8 "COUNTY"), a political subdivision of the State of California, and \_\_\_\_\_, a  
9 \_\_\_\_\_ (hereinafter referred to as "OPTIONEE").

### R E C I T A L S

10 A. OPTIONEE desires to obtain an option to lease from the COUNTY certain real property  
11 described as the Premises in the Lease ("Lease"), attached hereto as ATTACHMENT I and made a part  
12 hereof, for the purposes and uses provided in the Lease.

13 B. COUNTY is willing to enter into this Option Agreement to allow the option for OPTIONEE to  
14 lease the Premises for the purposes and uses set forth in the Lease upon completion of the option  
15 requirements set forth herein by OPTIONEE.

16 NOW, THEREFORE, COUNTY AND OPTIONEE agree as follows:

#### 17 1. DEFINITIONS (PM02.1 S)

18 "Board of Supervisors" means the Board of Supervisors of the County of Orange, a political subdivision  
19 of the State of California.

20 "Director of OC Parks" means the Director of OC Parks, Orange County Parks, OC Community  
21 Resources, County of Orange, or designee, or upon written notice to OPTIONEE, such other person or  
22 entity as shall be designated by the Board of Supervisors.

#### 23 2. OPTION (PM03.1 S)

24 COUNTY grants OPTIONEE an option to lease said Premises for the term and in accordance with the  
25 covenants and conditions set forth in the Lease (the "Option").

#### 26 3. TERM (PM05.1 S)

The term of this Option Agreement shall be one-hundred eighty (180) days and shall commence upon  
the date first written above.

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1 4. CONSIDERATION (N)

2 As consideration for the Option granted herein, OPTIONEE shall assign any and all ownership interests  
3 of OPTIONEE in and to those plans, architectural and engineering drawings, specifications or models  
4 prepared during the option period. Additional copies of any surveys, environmental reports or research  
relating to the development of the Premises obtained by OPTIONEE during the option period shall be  
delivered to COUNTY.

5 5. OPTION EXTENSION (PM06.1 S)

6 If OPTIONEE is delayed in fulfilling the requirements of this Option Agreement through no fault of its  
7 own or through no fault of its agents or employees, this Option Agreement may be extended for up to  
ninety (90) days by the Director of OC Parks at the Director of OC Park's sole discretion. Neither the  
8 Director of OC Parks nor COUNTY, however, shall have any obligation to permit and/or approve any  
such extension.

9 6. CONDITIONS (PM07.1 S)

10 The Option may not be exercised until the following terms and conditions have been met:

11 A. Concession Improvement Plans

12 Within forty five (45) days after the execution of this Option Agreement, OPTIONEE shall submit  
13 to the Director of OC Parks "Concession Improvement Plans" for use of the Premises. The  
Concession Improvement Plans shall include:

- 14 (1) A detailed floor plan of the Premises showing proposed improvements for the Premises  
15 and patio area, including any signage, murals, tile work, architectural/color theme and  
material specifications.  
16 (2) A cost estimate of the improvements;  
(3) A construction schedule for completion of the improvements.

17 Within thirty (30) days of submittal, the Director of OC Parks shall approve, reject or comment as  
18 appropriate. If rejected, OPTIONEE will revise and re-submit the plans. The Director of OC  
Parks shall then have fifteen (15) days to approve, reject or comment on the revised plans.

19 B. Health Care Agency and Building Department Approvals

20 After approval of the Concession Improvement Plans in accordance with "A" above, OPTIONEE  
21 shall submit the Concession Improvement Plans to the County of Orange Health Care Agency  
(HCA) and to the appropriate building department for plan check and pay such fees as required.

22 C. Corrections to Concession Improvement Plans

23 After review of Concession Improvement Plans as called for in "A" and "B" above, OPTIONEE  
24 shall complete all corrections and adjustments in the Concession Improvements Plans as  
required by the Director of OC Parks, HCA, the appropriate building department, and other  
25 concerned agencies, and shall obtain the Director of OC Parks's approval of the corrections and  
then shall obtain the appropriate permits for construction.

# Exhibit E

## F. Other Requirements.

OPTIONEE shall submit the following to the Director of OC Parks:

- (1) Evidence satisfactory to COUNTY of OPTIONEE's ability to finance the cost of the improvements planned for said Premises in accordance with the requirements of the Lease.
- (2) Evidence of insurance coverage which fully complies with the Clause of the Lease entitled Insurance.
- (3) The security deposit as required by the Clause of the Lease entitled Security Deposit.

## 7. REVIEW BY COUNTY (PM08.1 S)

OPTIONEE hereby acknowledges that one of the purposes of this Option Agreement is to afford OPTIONEE and COUNTY the opportunity to determine whether or not OPTIONEE is able to meet the various conditions of this Option Agreement and obtain the required approvals as set forth in this Option Agreement. Several of those conditions involve obtaining review and approval from officers, employees or agents of COUNTY. Each of those reviews shall be conducted in an independent manner and nothing contained herein shall be deemed to limit the jurisdiction or authority otherwise possessed by said officers, employees or agents in the conduct of such review.

Nothing contained in this Option Agreement shall be deemed to imply that said approval will be forthcoming, and the failure to issue any such approval or permit by any officer, employee or agent of COUNTY shall not be deemed in any manner a breach of this Option Agreement, nor shall any such denial give rise to any claim, liability, obligation, or cause of action with respect to this Option Agreement or the attached Lease.

COUNTY agrees to consent to any application by OPTIONEE with respect to any permits or approvals related to activities or improvements approved by COUNTY in accordance with this Option Agreement which may be required by any governmental or regulatory agency.

No permit, approval, or consent given by COUNTY or its officers, employees, or agents, acting in its/their governmental capacity, shall affect or limit OPTIONEE's obligations under this Option Agreement or the Lease nor shall any approvals or consents given under this Option Agreement by COUNTY, as a party to this Option Agreement, be deemed approval as to compliance or conformance with applicable governmental codes, laws, rules, and/or regulations.

## 8. OPTIONEE'S RIGHT TO ENTER PREMISES (PM09.1 S)

Subject to prior written approval and conditions as may be specified by the Director of OC Parks, OPTIONEE and its authorized representatives shall have the right to enter upon, to pass and to repass over and along said Premises, and to do the inspections, surveying and testing necessary for OPTIONEE to prepare the herein above described plans and construction contract documents. OPTIONEE hereby agrees to indemnify COUNTY and hold COUNTY, its officers, and employees harmless from any loss, claims, liability, or costs arising out of or incurred by reason of such investigation. Whether or not this Option Agreement terminates or expires, OPTIONEE agrees to repair any and all damages caused by OPTIONEE, its officers, agents, employees or representatives to the Premises by reason of any such inspection or investigations.

# Exhibit E

1 Prior to the commencement of any installation or other work on the Premises, the OPTIONEE agrees to  
2 purchase all required insurance at OPTIONEE's expense and to deposit with COUNTY Certificates of  
3 Insurance, including all endorsements required herein, necessary to satisfy COUNTY that the insurance  
4 provisions of this Option Agreement have been complied with and to keep such insurance coverage and  
5 the certificates and endorsements therefore on deposit with COUNTY during the entire term of this  
6 Option Agreement. In addition, all contractors and subcontractors performing work on behalf of  
7 OPTIONEE pursuant to this Option Agreement shall obtain insurance subject to the same terms and  
8 conditions as set forth herein for OPTIONEE.

9 All insurance policies required by this Option Agreement shall declare any deductible or self-insured  
10 retention (SIR) in an amount in excess of \$25,000 (\$5,000 for automobile liability), which shall  
11 specifically be approved by COUNTY's Executive Office (CEO)/Office of Risk Management. OPTIONEE  
12 shall be responsible for reimbursement of any deductible to the insurer. Any self-insured retentions  
13 (SIRs) or deductibles shall be clearly stated on the Certificate of Insurance.

14 If the OPTIONEE fails to maintain insurance acceptable to COUNTY for the full term of this Option  
15 Agreement, COUNTY may terminate this Option Agreement.

## 16 Qualified Insurer

17 The policy or policies of insurance must be issued by an insurer licensed to do business in the state of  
18 California (California Admitted Carrier).

19 Minimum insurance company ratings as determined by the most current edition of the Best's Key Rating  
20 Guide/Property-Casualty/United States or ambest.com shall be A- (Secure Best's Rating) and VIII  
21 (Financial Size Category).

22 If the insurer is a non-admitted insurer in the state of California, CEO/Office of Risk Management retains  
23 the right to approve or reject insurer after a review of the company's performance and financial ratings.

24 The policy or policies of insurance maintained by the OPTIONEE shall provide the minimum limits and  
25 coverage as set forth below:

	<u>Coverages</u>	<u>Minimum Limits</u>
26	1. <u>Commercial General Liability</u> including broad form property damage, and contractual liability	\$1,000,000 combined single limit per occurrence
	2. <u>Automobile Liability</u> including coverage for all owned, non-owned and hired vehicles.	\$1,000,000 combined single limit per occurrence.
	3. <u>Workers' Compensation</u>	Statutory Limits
	4. <u>Employer's Liability</u>	\$1,000,000 per occurrence.

# Exhibit E

1 All liability insurance required by this Option Agreement shall be at least \$5,000,000 combined single  
2 limit per occurrence.

3 The County of Orange shall be added as an additional insured on all insurance policies required by this  
4 Option Agreement with respect to work done by the OPTIONEE under the terms of this Option  
5 Agreement (except Workers' Compensation/Employers' Liability). An additional insured endorsement  
6 evidencing that the County of Orange is an additional insured shall accompany the Certificate of  
7 Insurance.

8 All insurance policies required by this Option Agreement shall be primary insurance, and any insurance  
9 maintained by COUNTY shall be excess and non-contributing with insurance provided by these policies.  
10 An endorsement evidencing that the OPTIONEE's insurance is primary and non-contributing shall  
11 specifically accompany the Certificate of Insurance for the Commercial General Liability.

12 All insurance policies required by this Option Agreement shall give the County of Orange thirty (30) days  
13 notice in the event of cancellation. This shall be evidenced by an endorsement separate from the  
14 Certificate of Insurance. In addition, the cancellation clause must include language as follows, which  
15 edits the pre-printed ACORD certificate:

16  
17 SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE  
18 EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30  
19 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT. BUT  
20 FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY  
21 KIND UPON THE COMPANY, ITS AGENT OR REPRESENTATIVE.

22 All insurance policies required by this Option Agreement shall waive all rights of subrogation against the  
23 County of Orange and members of the Board of Supervisors, its elected and appointed officials, officers,  
24 agents and employees when acting within the scope of their appointment or employment.

25 The Commercial General Liability policy shall contain a severability of interests clause.

26 The OPTIONEE is aware of the provisions of Section 3700 of the California Labor Code which requires  
every employer to be insured against liability for Workers' Compensation or be self-insured in  
accordance with provisions of that code. The OPTIONEE will comply with such provisions and shall  
furnish COUNTY satisfactory evidence that the OPTIONEE has secured, for the period of this Option  
Agreement, statutory Workers' Compensation insurance and Employers' Liability insurance with  
minimum limits of \$1,000,000 per occurrence.

Insurance certificates and endorsements shall be forwarded to the County of Orange (OC Parks, 13042  
Old Myford Road, Irvine, CA 92602).

COUNTY expressly retains the right to require OPTIONEE to reasonably increase or decrease  
insurance of any of the above insurance types throughout the term of this Option Agreement. Any  
increase or decrease in insurance will be as deemed by COUNTY's Risk Manager as appropriate to  
adequately protect COUNTY.

COUNTY shall notify OPTIONEE in writing of changes in the insurance requirements. If OPTIONEE  
does not deposit copies of acceptable certificates of insurance and endorsements with COUNTY  
incorporating such changes within thirty (30) days of receipt of such notice, this Option Agreement may  
be in breach without further notice to OPTIONEE, and COUNTY shall be entitled to all legal remedies.

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1 The procuring of such required policy or policies of insurance shall not be construed to limit  
2 OPTIONEE's liability hereunder nor to fulfill the indemnification provisions and requirements of this  
3 Option Agreement.

4 The County of Orange Certificate of Insurance and the Special Endorsement for the County of Orange  
5 can be utilized to verify compliance with the above-mentioned insurance requirements in place of  
6 commercial insurance certificates and endorsements.

## 9. ASSIGNMENT (PM010.1 S)

7 This Option Agreement shall not be sold, assigned, or otherwise transferred without the prior written  
8 consent of COUNTY. Failure to obtain COUNTY's required written consent shall render said sale,  
9 assignment, or transfer void.

## 10. EXERCISE OF OPTION (PM011.1 S)

10 At any time during the term of this Option Agreement that OPTIONEE shall have performed all  
11 conditions as set forth in the Clause entitled CONDITIONS of this Option Agreement to the satisfaction  
12 of COUNTY, OPTIONEE may exercise the Option by giving COUNTY written notice of election do so,  
13 accompanied by properly executed copies of the Lease.

## 11. EXECUTION OF LEASE (PM012.1 S)

14 Upon proper exercise of the Option to Lease by OPTIONEE, as defined in this Option Agreement,  
15 COUNTY shall execute the Lease within ten (10) working days.

## 12. LEASE DATE (PM013.1 S)

16 It is understood and agreed that the date of the Lease shall be the date of execution of the Lease by  
17 COUNTY.

## 13. TERMINATION (PM014.1 S)

18 Failure of OPTIONEE to meet the terms and conditions of this Option Agreement fully and satisfactorily  
19 within the time limits stated herein, and any extension as applicable, shall absolutely and conclusively  
20 terminate OPTIONEE's rights hereunder, notwithstanding the fact that COUNTY may choose to  
21 negotiate a Lease with OPTIONEE within a reasonable time after the expiration of this Option  
22 Agreement.

23 In the event of any such termination, within five (5) days of COUNTY's request, OPTIONEE shall  
24 execute, acknowledge, and deliver to COUNTY for recording, a quitclaim deed or other document  
25 reasonably requested to remove any cloud on title created by this Option Agreement.

## 14. DISCLAIMER OF REPRESENTATIONS OR WARRANTIES (PM015.1 S)

- 26 A. OPTIONEE agrees that COUNTY has made no representations, warranties, or agreements as to  
any matters concerning the Premises, including, but without being limited to, the land,  
marketability of title, topography, climate, air, water, water rights, utilities, present or future  
zoning, soil, subsoil, hazardous substances, waste or materials, the purposes for which the

# Exhibit E

1 property is suited, drainage, access to public roads, proposed routes of roads or extensions  
2 thereof or the availability of governmental permits or approvals of any kind. OPTIONEE  
3 represents and warrants to COUNTY that it and its representatives and employees have made or  
4 will make their own independent inspection and investigation of such property.

5 B. OPTIONEE acknowledges that COUNTY has made no representations or warranties regarding  
6 the nature of its interest in the Premises. Regardless of the nature of such interest, OPTIONEE  
7 agrees to accept, without warranty, only such right, title, and interest, if any, as COUNTY may  
8 have in and to such real property.

## 9 15. ENTIRE AGREEMENT (PM017.1 S)

10 This Option Agreement contains the entire agreement between the parties relating to the Option granted  
11 by this Option Agreement and all negotiations and agreements between the parties hereto or their  
12 agents with respect to this transaction are merged herein. Any oral representations, modifications, or  
13 waivers concerning this instrument shall be of no force and effect except in a subsequent instrument  
14 made in writing, and signed by both parties. Time is of the essence in the performance of the parties'  
15 respective obligations herein contained. Subject to the restrictions against sale, assignment, or other  
16 transfer above this Option Agreement shall inure to the benefit of and be binding upon the parties hereto  
17 and their respective heirs, successors, and assigns.

## 18 16. NOTICES (PM018.1 S)

19 All notices pursuant to this Option Agreement shall be addressed as set forth below or as either party  
20 may hereafter designate by written notice and shall be sent through the United States mail in the State  
21 of California, duly registered or certified, return receipt requested, with postage prepaid.

22 If any notice is sent by registered or certified mail, as aforesaid, the same shall be deemed to have been  
23 served or delivered twenty-four (24) hours after mailing thereof as above provided. Notwithstanding the  
24 above, COUNTY may also provide notices to OPTIONEE by personal delivery or by regular mail and  
25 any such notice so given shall be deemed to have been given upon receipt.

26 TO: COUNTY

TO: OPTIONEE

County of Orange  
OC Community Resources  
Orange County Parks  
13042 Old Myford Road  
Irvine, CA 92602

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: Director of OC Parks

Either party hereto may from time to time, by written notice to the other, designate a different address  
which shall be substituted for the one above specified.

## 17. ATTACHMENTS (PM019.1 S)

This Option Agreement includes the following which is attached hereto and made a part hereof:

# Exhibit E

1 ATTACHMENT I – LEASE

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# Exhibit E

1 IN WITNESS WHEREOF, the parties have executed this Option Agreement the day and year first above  
2 written.

3 APPROVED AS TO FORM:  
4 COUNTY COUNSEL

OPTIONEE

\_\_\_\_\_ , \_\_\_\_\_

5 By \_\_\_\_\_  
6

By \_\_\_\_\_

7 Date \_\_\_\_\_

By \_\_\_\_\_

8

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COUNTY

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County of Orange

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By \_\_\_\_\_  
Director, OC Parks, pursuant to Minute Order  
dated \_\_\_\_\_, 2010

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# Exhibit E

1 BE74Q-150  
2 Salt Creek Beach Park  
3 (Beach Concessions)

## ATTACHMENT I Model Lease

### SALT CREEK BEACH CONCESSION LEASE

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6 THIS SALT CREEK BEACH CONCESSION LEASE ("Lease") is made \_\_\_\_\_, 2010,  
7 by and between the County of Orange, a political subdivision of the State of California, (hereinafter  
8 referred to as "COUNTY"), and \_\_\_\_\_, a \_\_\_\_\_, (hereinafter referred  
9 to as "CONCESSIONAIRE"), without regard to number and gender.

#### 1. DEFINITIONS (PMA2.1 S)

10 The following words in this Lease have the significance attached to them in this clause unless otherwise  
11 apparent from context:

12 "Board of Supervisors" means the Board of Supervisors of the County of Orange, a political subdivision  
13 of the State of California.

14 "Director of OC Parks" means the Director, Orange County Parks, OC Community Resources, County of  
15 Orange, or designee, or upon written notice to CONCESSIONAIRE, such other person or entity as shall  
16 be designated by the Board of Supervisors.

17 "Salt Creek Beach or Salt Creel Beach Park" means all of the real property and improvements within the  
18 boundaries of the COUNTY's public park facility formally known as Salt Creek Beach Park.

#### 2. PREMISES (PMA3.1 S)

19 COUNTY hereby leases to CONCESSIONAIRE that certain area located within Salt Creek Beach Park  
20 identified and as shown on Exhibit "A" as Concession Premises, attached hereto and by reference made  
21 a part hereof (hereinafter referred to as "Premises").

22 COUNTY also grants CONCESSIONAIRE a non-exclusive license for use of the patio and beach dining  
23 areas as depicted on Exhibit "A". Use of these areas is subject to conditions as hereinafter stated.

#### 3. LIMITATION OF THE LEASEHOLD (PMA5.1 S)

24 This Lease and the rights and privileges granted CONCESSIONAIRE in and to the Premises are subject  
25 to all covenants, conditions, restrictions, and exceptions of record or apparent. Nothing contained in this  
26 Lease or in any document related hereto shall be construed to imply the conveyance to  
CONCESSIONAIRE of rights in the Premises which exceed those owned by COUNTY, or any  
representation or warranty, either expressed or implied, relating to the nature or condition of the  
Premises or COUNTY's interest therein. CONCESSIONAIRE acknowledges that CONCESSIONAIRE  
has conducted a complete and adequate investigation of the Premises and that CONCESSIONAIRE  
accepts the Premises in its "as is" condition.

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1 4. REQUIRED AND OPTIONAL SERVICES AND USES (PMB1.4 S)

2 A. Required Services and Uses. COUNTY's primary purpose for entering into this Lease is to  
3 promote the operation of the following activities and related facilities to serve the public visiting  
4 Salt Creek Beach Park. In furtherance of that purpose, CONCESSIONAIRE shall, during the  
5 entire Lease term provide the following services and uses to the public on the Premises:

- 6 (1) Sale of Concession Food and Beverages
- 7 (2) Sale of Associated Sundry Items
- 8 (3) Rental of Beach-Related Sport and Recreational Equipment
- 9 (4) Rental of Beach Chairs and Beach Umbrellas

10 B. Optional Services and Uses. Subject to the prior written approval of the Director of OC Parks,  
11 CONCESSIONAIRE is granted the option to provide those additional services and uses which  
12 are ancillary to and compatible with the required services and uses herein. Said optional services  
13 and uses, if approved, may include but are not limited to the following:

- 14 (1) Catered Beach Food Service for Special Events
- 15 (2) Off-Premises Food Service and Solicitation
- 16 (3) Off-Premises Mobile Food Vending
- 17 (4) Beach Cabanas
- 18 (5) Vending Machines (limited to drinks and snacks)
- 19 (6) Operation of a beach shuttle service between the public parking lot and beach
- 20 (7) Service area to accommodate guest services for the Ritz Carlton and other hotels in the  
21 vicinity of Salt Creek Beach Park

22 C. Prohibited Uses. The above listed services and uses, both required and optional, shall be the  
23 only services and uses permitted. CONCESSIONAIRE agrees not to use the Premises for any  
24 other purpose nor to engage in or permit any other activity within or from the Premises. This  
25 prohibition includes the sale of tobacco products and alcoholic beverages from the Premises or  
26 consumption of alcoholic beverages on the Premises or adjoining patio or beach dining areas.

CONCESSIONAIRE also agrees not to conduct or permit to be conducted any public or private  
nuisance in, on or from the Premises, or to commit or permit to be committed any waste in, on or  
from the Premises.

D. COUNTY Use Reservation. COUNTY reserves the right to permit or allow other vendors or  
providers of food/beverage and products for special events at Salt Creek Beach Park such as  
surfing events.

5. TERM (PMB2.1 S)

The term of this Lease shall be ten (10) years, commencing the first day of the first full calendar month  
following the execution of this Lease by County ("Effective Date").

6. RENT (PMCI.1 S)

A. Minimum Annual Rent. The Minimum Annual Rent for the Premises shall be \_\_\_\_\_ Thousand  
Dollars (\$\_\_\_\_,000).

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1 Should this Lease be terminated during an accounting year, or should the first accounting year  
2 be other than a full calendar year, the applicable Minimum Annual Rent shall be prorated on the  
basis of a three hundred and sixty-five (365) day year.

- 3 B. Percentage Rent. CONCESSIONAIRE shall pay to COUNTY, a percentage ("Percentage Rent")  
4 of gross receipts from business operations conducted on or from the Premises. The Percentage  
Rent shall be calculated using the following percentages:

<u>Business Activities/ Service or Use</u>	<u>Percentage Rents</u>
Food, Beverage and Merchandise Sales	___% up to \$150,000 ___% over \$150,000
Rental of Beach-Related Sport and Recreational Equipment	___%
Rental of Beach Chairs and Beach Umbrellas	___%
Vending Machines	___%
Shuttle Service	0%

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10 This clause does not authorize or allow any listed service or use. This clause merely establishes  
11 a percentage rent for services and uses that may be allowed by COUNTY. Percentage Rent for  
other approved optional services and uses shall be determined by the Director of OC Parks.

- 12 C. Gross Receipts. Gross receipts shall be defined in accordance with the provisions of the Clause  
13 in this Lease entitled DEFINITION OF GROSS RECEIPTS. The term "gross receipts" as it  
applies to individual activities (categories) or uses shall be determined by the Director of OC  
14 Parks.

- 15 D. Annual Rent. CONCESSIONAIRE shall pay to COUNTY for each accounting year either the  
Minimum Annual Rent or the Percentage Rent, whichever is greater.

- 16 E. Payment of Rent. Rent payments shall be made in accordance with the provisions of the Clause  
17 in this Lease entitled RENT PAYMENT PROCEDURE.

## 18 7. DEFINITION OF GROSS RECEIPTS (PMC6.3 S)

19 As used in this clause, the term "CONCESSIONAIRE" shall include CONCESSIONAIRE, its agents,  
20 concessionaires, or licensees, or any person acting under contract with CONCESSIONAIRE. The term  
"gross receipts" upon which percentage rents are to be based shall include:

- 21 A. The sale price of all goods, wares, merchandise, and products sold on or from the Premises by  
22 CONCESSIONAIRE, whether for cash or credit, whether or not payment is actually made at, in,  
or from the Premises, whether or not delivery of the items sold is made from the Premises and  
whether title to such items is transferred;
- 23 B. The charges made by CONCESSIONAIRE for the sale or rendition on or from the Premises of  
24 services of any nature or kind whatsoever, whether for cash or credit, whether payment is  
25 actually made or not, and whether the services are actually performed or not. If approved in  
writing by the Auditor-Controller, gross receipts may be reported on the cash basis method of  
26 accounting except for non-sufficient funds checks and bad debts. As stated below in Paragraph  
7.I, bad debt losses shall not be deducted from gross receipts;

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- 1  
2 C. All admission, entry, rental, and other fees of any nature or kind charged by CONCESSIONAIRE  
(including but not limited to security deposits accepted by CONCESSIONAIRE);
- 3  
4 D. All sums deposited in any coin-operated vending machine or other device maintained on the  
Premises, except as stated below, regardless of the ownership of the machine or device, or  
5 whether such sums are removed and counted by CONCESSIONAIRE or others and regardless  
6 of what percentage thereof CONCESSIONAIRE are entitled to receive.
- 7  
8 E. Charges for credit card transactions, including but not limited to debit cards and ATM card and  
any other transaction device that may be promulgated in the future shall be determined as  
9 follows:
- 10 (1) If card transaction charges are imposed or charged by CONCESSIONAIRE, gross  
11 receipts shall be the gross amount charged or imposed by CONCESSIONAIRE.
- 12 (2) If card transaction charges are imposed or charged by a third party, gross receipts shall  
13 be the commission or payment received by CONCESSIONAIRE.
- 14  
15 F. Gross receipts for the following items shall be determined as follows:
- 16 (1) Discount Coupons/Promotional Activities gross receipts shall be the actual sales price  
17 received by CONCESSIONAIRE.
- 18 (2) Officer and employee meals gross receipts shall be the actual charge, if any, paid by  
19 officers or employees for food and beverage while on duty.
- 20 (3) Gift Certificates shall be considered gross receipts when sold by CONCESSIONAIRE.
- 21 (4) Gratuities/Tips accepted on behalf of employees or charged by CONCESSIONAIRE for  
22 the benefit of employees and paid to employees are hereby excluded from gross  
23 receipts.
- 24 G. The term "gross receipts" also includes the fair rental value of facilities used by  
25 CONCESSIONAIRE or its employees for purposes other than the business purposes provided  
26 for under this Lease and the value of all consideration, including consideration other than cash,  
received by CONCESSIONAIRE or its employees in exchange for the items sold or services  
rendered.
- H. Under the Clause in this Lease entitled REQUIRED AND OPTIONAL SERVICES AND USES,  
CONCESSIONAIRE may provide certain additional services and uses subject to further  
approval. The term "gross receipts" as it applies to these business operations shall be  
determined by the Director of OC Parks at the time approval is granted.
- I. Gross receipts shall exclude all sales and excise taxes payable by CONCESSIONAIRE to  
federal, state, county, or municipal governments as a direct result of operations under this Lease.  
Refunds for goods returned and deposits shall be deducted from current gross receipts upon  
return. Bad debt losses shall not be deducted from gross receipts.

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1 8. RENT PAYMENT PROCEDURE (PMC6.1 N)

2 A. Payment of Rent. On or before the twentieth (20th) day of each month, CONCESSIONAIRE  
3 shall deliver to Auditor-Controller a correct statement of all applicable gross receipts for that  
4 portion of the accounting year which ends with and includes the last day of the preceding  
5 calendar month. The statement shall be signed by CONCESSIONAIRE or CONCESSIONAIRE's  
6 responsible agent under penalty of perjury, and shall be in the form prescribed by Auditor-  
7 Controller. Each statement shall indicate:

- 8 (1) One-twelfth of the annual minimum rent payment;
- 9 (2) The total gross receipts for said portion of the accounting year, itemized as to each of  
10 the business categories for which a separate percentage rental is established. A  
11 breakdown of the gross receipts of each business conducted on the Premises must be  
12 attached to each statement where a reported business category is comprised of more  
13 than one business operation;
- 14 (3) The related itemized amounts of percentage rent computed as herein provided and the  
15 total thereof;
- 16 (4) The total rent previously paid by CONCESSIONAIRE for the accounting year within  
17 which the preceding month falls; and
- 18 (5) The rent due for the preceding month.

19 Concurrently with the rendering of each monthly statement, CONCESSIONAIRE shall pay to  
20 COUNTY the greater of the following two amounts:

- 21 (a) The total percentage rent computed for that portion of the accounting year ending with  
22 and including the last day of the preceding month [Item (3), above] less total rents  
23 previously paid for the accounting year [Item (4), above], or
- 24 (b) One-twelfth of the annual minimum rent, multiplied by the number of months from the  
25 beginning of the accounting year to and including the preceding month, less total rents  
26 previously paid for the accounting year [Item (4), above].

Notwithstanding the above, for the months January through November, there shall be no monthly  
minimum rent payment required; only the calculation for the Percentage Rent shall apply for the  
months January through November.

21 B. Place of Payment and Filing. Rent payments and statements required by this Clause and the  
22 Clauses of this Lease entitled RENT and RECORDS AND ACCOUNTS shall be delivered to the  
23 County of Orange, Office of the Auditor-Controller, P. O. Box 567, Santa Ana, California 92702.  
24 The designated place of payment and filing may be changed at any time by COUNTY upon ten  
25 (10) days written notice to CONCESSIONAIRE. Rent payments may be made by check made  
26 payable to the County of Orange. CONCESSIONAIRE assumes all risk of loss if payments are  
made by mail.

C. All rent shall be paid in lawful money of the United States of America, without offset or deduction  
or prior notice or demand. No payment by CONCESSIONAIRE or receipt by COUNTY of a

# Exhibit E

1 lesser amount than the rent due shall be deemed to be other than on account of the rent due, nor  
2 shall any endorsement or statement on any check or any letter accompanying any check or  
3 payment as rent be deemed an accord and satisfaction, and COUNTY shall accept such check  
or payment without prejudice to COUNTY's right to recover the balance of said rent or pursue  
any other remedy in this Lease.

## 4 9. CHARGE FOR LATE PAYMENT (PMC8.1 S)

5 CONCESSIONAIRE hereby acknowledges that the late payment of rent or any other sums due  
6 hereunder will cause COUNTY to incur costs not contemplated by this Lease, the exact amount of which  
7 will be extremely difficult to ascertain. Such costs include, but are not limited to, costs such as  
administrative processing of delinquent notices, increased accounting costs, etc.

8 Accordingly, if any payment of rent as specified in the Clause of this Lease entitled RENT or of any other  
9 sum due COUNTY is not received by COUNTY by the due date, a late charge of one and one-half  
10 percent (1.5%) of the payment due and unpaid plus \$100 shall be added to the payment, and the total  
sum shall become immediately due and payable to COUNTY. An additional charge of one and one-half  
percent (1.5%) of said payment, excluding late charges, shall be added for each additional month that  
said payment remains unpaid.

11 CONCESSIONAIRE and COUNTY hereby agree that such late charges represent a fair and reasonable  
12 estimate of the costs that COUNTY will incur by reason of CONCESSIONAIRE's late payment.  
13 Acceptance of such late charges (and/or any portion of the overdue payment) by COUNTY shall in no  
event constitute a waiver of CONCESSIONAIRE's default with respect to such overdue payment, or  
prevent COUNTY from exercising any of the other rights and remedies granted hereunder.

## 14 10. RECORDS AND ACCOUNTS (PMC8.3 S)

15 A. Records. CONCESSIONAIRE shall, at all times during the term of this Lease, keep or cause to  
16 be kept true and complete books, records, and accounts of all financial transactions in the  
17 operation of all business activities, of whatever nature, conducted in pursuance of the rights  
18 granted herein. The records must be supported by source documents such as sales slips, cash  
register tapes, purchase invoices, or other pertinent documents. All copies of voided documents  
should be retained, along with the reasons for voiding and signature of person approving the  
void.

19 Except as otherwise provided herein, all retail sales and charges shall be recorded by means of  
20 cash registers or other comparable devices which display to the customer the amount of the  
21 transaction and automatically issue a receipt. The registers shall be equipped with devices  
22 which lock in sales totals and other transaction records, or with counters which are not resettable  
and which record transaction numbers and sales details. Totals registered shall be read and  
recorded by CONCESSIONAIRE at the beginning and end of each business day.

23 In the event of admission charges or rentals, CONCESSIONAIRE shall issue serially numbered  
24 tickets for each such admission or rental and shall keep an adequate record of said tickets, both  
issued and unissued.

25 All retail sales and charges may be recorded by a system other than cash registers or other  
26 comparable devices provided said system is approved by Auditor-Controller in writing.

# Exhibit E

1 B. The Accounting Year. The accounting year shall be twelve (12) full calendar months. The  
2 accounting year may be established by CONCESSIONAIRE, provided CONCESSIONAIRE  
3 notifies Auditor-Controller in writing of the accounting year to be used. Said accounting year  
4 shall be deemed to be approved by Auditor-Controller unless Auditor-Controller has objected to  
5 CONCESSIONAIRE's selection in writing within sixty (60) days of CONCESSIONAIRE's written  
6 notification.

7 In the event CONCESSIONAIRE fails to establish an accounting year of its choice, regardless of  
8 the cause, the accounting year shall be synonymous with the twelve-month period contained in  
9 the first one-year term of the Lease.

10 Any portion of a year that is not reconciled, should the accounting year and the anniversary year  
11 of the Lease commencement not be the same, shall be accounted for as if it were a complete  
12 accounting year.

13 Once an accounting year is established, it shall be continued through the term of the Lease  
14 unless Auditor-Controller specifically approves in writing a different accounting year. Auditor-  
15 Controller shall only approve a change in accounting years in the event of undue hardship being  
16 placed on either the CONCESSIONAIRE or COUNTY, and not because of mere convenience or  
17 inconvenience.

18 C. Financial Statements. Within ninety (90) days after the end of each accounting year,  
19 CONCESSIONAIRE shall submit to Auditor-Controller a balance sheet and income statement  
20 prepared in accordance with generally accepted accounting principles reflecting business  
21 transacted on or from the Premises during the preceding accounting year. The  
22 CONCESSIONAIRE must attest under penalty of perjury that the balance sheet and income  
23 statement submitted are an accurate representation of CONCESSIONAIRE's records as  
24 reported to the United States of America for income tax purposes.

25 CONCESSIONAIRE acknowledges its understanding that any and all of the Financial  
26 Statements submitted to the COUNTY pursuant to this Lease become Public Records and are  
subject to public inspection pursuant to §§ 6250 et seq. of the California Government Code.

D. Failure to Submit Financial Statements. In addition to any other remedies available to COUNTY  
at law or in equity under this Lease, in the event that CONCESSIONAIRE fails to submit the  
required financial statements within thirty (30) business days following the due date listed in the  
Clause of this Lease entitled RECORDS AND ACCOUNTS, the Director of OC Parks may  
require CONCESSIONAIRE to submit the greater of:

(1) \$500 fine; or

(2) Any and all costs incurred by COUNTY for a Certified Public Accountant hired by the  
COUNTY to prepare the required financial statements, including an administrative fee  
equal to fifteen percent (15%) of those costs.

E. Audit. All CONCESSIONAIRE's books of account and records and supporting source  
documents related to this Lease or to business operations conducted within or from the Premises  
shall be kept and made available at one location within the limits of the County of Orange.  
COUNTY shall, through its duly authorized agents or representatives, have the right to examine  
and audit said books of account and records and supporting source documents at any and all



# Exhibit E

1 reasonable times for the purpose of determining the accuracy thereof, and of the monthly  
2 statements of sales made and monies received. Said books and records shall be retained by  
3 CONCESSIONAIRE for a period no less than five (5) years from the date the required Income  
4 Statement, Balance Sheet and Gross Receipts Statement have been submitted to COUNTY.

5 Director of Internal Audit, upon written request of CONCESSIONAIRE and at said Director of  
6 Internal Audit's sole discretion, may authorize the above-referenced books and records and  
7 supporting source documents to be kept in a single location outside the limits of Orange County  
8 provided CONCESSIONAIRE shall agree to pay all expenses including but not limited to  
9 transportation, food, and lodging necessary for the Director of Internal Audit to send a  
10 representative to audit said books and records. Said right shall not be exercised by Internal  
11 Audit Department more than once each accounting year.

12 The full cost of said audit, as determined by Director of Internal Audit, shall be borne by  
13 CONCESSIONAIRE if either or both of the following conditions exist:

- 14 (1) The audit reveals an underpayment of more than two percent (2%) between the rent due  
15 as reported and paid by CONCESSIONAIRE in accordance with this Lease and the rent  
16 due as determined by said audit;
- 17 (2) CONCESSIONAIRE has failed to maintain true and complete books, records, accounts  
18 and supporting source documents in accordance with Section A "Records" above. The  
19 adequacy of records shall be determined at the sole discretion of Director of Internal  
20 Audit.

21 Otherwise, COUNTY shall bear the cost of said audit, excluding the aforementioned expenses  
22 related to audit of documents kept outside the limits of Orange County.

23 Upon the request of Auditor-Controller, CONCESSIONAIRE shall promptly provide, at  
24 CONCESSIONAIRE's expense, necessary data to enable COUNTY to fully comply with any and  
25 every requirement of the State of California, the United States of America and Generally  
26 Accepted Accounting Principles for information or reports relating to this Lease and to  
CONCESSIONAIRE's use of the Premises. Such data shall include, if required, a detailed  
breakdown of CONCESSIONAIRE's gross receipts and expenses.

In addition to any other remedies available to COUNTY at law or in equity or under this Lease,  
including, but not limited to, the right to declare CONCESSIONAIRE to be in default under this  
Lease pursuant to Clause 16 of the General Conditions attached to the Lease, in the event the  
CONCESSIONAIRE fails to accurately and completely maintain and keep books, records, and  
accounts from the Premises and/or source documents relating thereto, or to make the same  
available to COUNTY for examination and audit, or to record accurately and completely sales  
and/or to maintain accurately and completely registers to record sales, or to provide accurate  
and complete financial statements and other information to COUNTY regarding gross sales as  
required by this Lease, COUNTY, at COUNTY's option, may:

- (I) Perform such examinations, audits, and/or investigations itself or through agents or  
employees as COUNTY and/or its auditors may deem appropriate to confirm the  
amount of percentage rents payable by CONCESSIONAIRE under this Lease and  
any and all costs and/or expenses incurred by COUNTY in connection therewith  
shall be promptly reimbursed to COUNTY by CONCESSIONAIRE upon demand.

# Exhibit E

1  
2 (II) Provide accounting services and/or a system for recording retail sales and charges,  
3 including without limitation, cash registers, for use by CONCESSIONAIRE in  
4 business transactions upon or from the Premises, and, at COUNTY's option,  
5 maintain personnel on the Premises to observe and/or record such sales during  
6 CONCESSIONAIRE's business hours, or from time to time, all at  
7 CONCESSIONAIRE's sole cost and expense and, in such event,  
8 CONCESSIONAIRE shall promptly reimburse COUNTY for any and all costs  
9 incurred by COUNTY in connection therewith; and/or

6 (III) Require that CONCESSIONAIRE pay percentage rents based on COUNTY's best  
7 good faith estimate of CONCESSIONAIRE's gross receipts from business operations  
8 conducted on or from the premises and any such determination made by COUNTY  
9 shall be conclusive and binding upon CONCESSIONAIRE.

8  
9 The above costs payable by CONCESSIONAIRE shall include reimbursement to COUNTY of  
10 COUNTY-provided services at such rates as COUNTY may from time to time, in good faith,  
11 establish for such services. In the case of services provided by COUNTY's employees, such  
12 rates shall be sufficient to reimburse COUNTY for employees' salaries, including employee taxes  
13 and benefits and COUNTY's overhead or, at COUNTY's option, may be the rate for such  
14 services that would be charged by a qualified third party or parties, approved by COUNTY, if  
15 engaged by COUNTY to perform such services.

## 11. SECURITY DEPOSIT (PMG10.2 S)

13 During the term of this Lease and subject to the provisions for adjustment as provided hereinafter,  
14 CONCESSIONAIRE shall provide COUNTY with a security deposit in the sum of Five Thousand Dollars  
15 (\$5,000).

16 The security deposit shall take one of the forms set out below and shall guarantee  
17 CONCESSIONAIRE's full and faithful performance of all the terms, covenants, and conditions of this  
18 Lease:

18 A. Cash

19 B. The assignment to County of Orange, OC Community Resources, a savings deposit held in a  
20 financial institution in Orange, Los Angeles, or San Diego Counties acceptable to Director of OC  
21 Parks. At the minimum, such assignment shall be evidenced by the delivery to Director of OC  
22 Parks of the original passbook reflecting said savings deposit and a written assignment of said  
23 deposit to County of Orange, OC Community Resources, in a form approved by Director of OC  
24 Parks.

22 C. A Time Certificate of Deposit from a financial institution in Orange, Los Angeles or San Diego  
23 Counties wherein the principal sum is made payable to County of Orange, OC Community  
24 Resources, or order. Both the financial institution and the form of the certificate must be  
25 approved by the Director of OC Parks.

24 D. An instrument or instruments of credit from one or more financial institutions in Orange, Los  
25 Angeles or San Diego Counties, subject to regulation by the state or federal government,  
26 pledging that funds necessary to secure performance of the Lease terms, covenants, and

# Exhibit E

1 conditions are on deposit and guaranteed for payment, and agreeing that said funds shall be  
2 trust funds securing CONCESSIONAIRE's performance and that all or any part shall be paid to  
3 County of Orange, OC Community Resources, or order upon demand by the Director of OC  
4 Parks. Both the financial institutions and the form of the instruments must be approved by the  
5 Director of OC Parks.

6 Regardless of the form in which CONCESSIONAIRE elects to make said security deposit, all or any  
7 portion of the principal sum shall be available unconditionally to Director of OC Parks for correcting any  
8 default or breach of this Lease by CONCESSIONAIRE, its successors or assigns, or for payment of  
9 expenses incurred by COUNTY as a result of the failure of CONCESSIONAIRE, its successors or  
10 assigns, to faithfully perform all terms, covenants and conditions of this Lease. COUNTY shall not be  
11 deemed a trustee of the security deposit, and COUNTY may use the security deposit in COUNTY'S  
12 ordinary business and shall not be required to segregate it from general accounts. CONCESSIONAIRE  
13 shall not be entitled to any interest on the security deposit.

14 In the event CONCESSIONAIRE elects to make said security deposit in cash, COUNTY shall not be  
15 required to keep this security deposit separate from its general or enterprise funds, and  
16 CONCESSIONAIRE shall not be entitled to any interest on such deposit.

17 Should CONCESSIONAIRE elect to assign a savings deposit, provide a Time Certificate of Deposit, an  
18 instrument of credit, or a Faithful Performance Bond to fulfill the security deposit requirements of this  
19 Lease, said assignment, certificate, bond, or instrument shall have the effect of releasing the depository  
20 or creditor therein from liability to CONCESSIONAIRE on account of the payment of any or all of the  
21 principal sum to County of Orange, OC Community Resources, or order upon demand by Director of OC  
22 Parks.

23 The agreement entered into by CONCESSIONAIRE with a financial institution to establish the deposit  
24 necessary to permit assignment or issuance of a certificate as provided above may allow the payment to  
25 CONCESSIONAIRE, or order, of interest accruing on account of said deposit.

26 In the event Director of OC Parks withdraws all or any portion of the security deposit as provided herein,  
CONCESSIONAIRE shall, within ten (10) days of notice of any withdrawal by Director of OC Parks,  
replenish the security deposit to maintain it at amounts as herein required throughout the Lease term.  
Failure to do so shall be deemed a default and shall be grounds for immediate termination of this Lease.

## 12. INITIAL IMPROVEMENTS AND CONSTRUCTION BY CONCESSIONAIRE (PMD1.1 S)

19 A. Minimum Construction and Timing. CONCESSIONAIRE shall cause to be designed,  
20 constructed, and installed within the Premises, at no cost to COUNTY, appropriate  
21 improvements to adequately accommodate those services, both required and any other optional  
22 service or use approved pursuant to the Clause in this Lease entitled REQUIRED AND  
23 OPTIONAL SERVICES AND USES. The improvement plans prepared by CONCESSIONAIRE  
24 and approved by the Director of OC Parks during the option period preceding execution of this  
25 Lease shall be the plans, specifications, and time schedule for constructing improvements.

26 B. Development Plan and Construction Standards. All construction on the Premises shall be  
conducted in a good and workmanlike manner and shall conform to applicable building codes,  
rules and regulations. All work shall be done in conformity with approved plans, valid building  
and other necessary permits and shall be acceptable to COUNTY and the appropriate  
government entity inspecting such work.

# Exhibit E

1 C. Minimum Cost of Improvements. The minimum cost of improvements shall be \_\_\_\_\_  
2 Thousand Dollars (\$\_\_\_\_\_).

3 13. FUTURE IMPROVEMENTS, CONSTRUCTION AND/OR ALTERATION BY CONCESSIONAIRE  
4 (PMD2.1 S)

5 CONCESSIONAIRE shall not perform any excavation or construction upon the Premises nor shall  
6 CONCESSIONAIRE modify, alter, or remove any permanent improvements lying within the Premises  
7 without prior written approval of COUNTY.

8 A. COUNTY's Consent. No structures, modifications, improvements, or facilities shall be  
9 constructed, erected, altered, removed or made within the Premises without prior written consent  
10 of the Director of OC Parks. All other structures, improvements, facilities, repairs, replacement,  
11 and removal shall be approved by COUNTY's Board of Supervisors. Any conditions relating to  
12 the manner, method, design, and construction of said structures, improvements, or facilities fixed  
13 by the Director of OC Parks as a condition to granting such consent, shall be conditions hereof  
14 as though originally stated herein. CONCESSIONAIRE may, at any time and at its sole  
15 expense, install and place business fixtures and equipment within any building constructed by  
16 CONCESSIONAIRE.

17 B. Compliance with Plans and Construction Standards. All modifications or improvements  
18 constructed by CONCESSIONAIRE within the Premises shall be constructed in strict compliance  
19 with detailed plans and specifications approved by Director of OC Parks. All construction shall  
20 be conducted in a professional and competent manner and shall conform to applicable building  
21 codes, rules, and regulations. All work shall be done in conformity with Director of OC Parks  
22 approved plans, valid building and other necessary permits and shall be acceptable to COUNTY  
23 and the appropriate governmental entity inspecting such work.

24 14. CONCESSIONAIRE'S ASSURANCE OF CONSTRUCTION COMPLETION (PMD3.2 S)

25 Prior to commencement of construction of approved facilities, or any phase thereof, within the Premises  
26 by CONCESSIONAIRE, CONCESSIONAIRE shall furnish to COUNTY evidence that assures COUNTY  
that sufficient monies will be available to complete the proposed construction. The amount of money  
available shall be at least the total estimated construction cost. Such evidence may take one of the  
following forms:

- 19 A. Performance and labor and material bonds issued to COUNTY as obligee.
- 20 B. Irrevocable letter of credit issued to COUNTY from a financial institution to be in effect until  
21 COUNTY acknowledges satisfactory completion of construction.
- 22 C. Cash.
- 23 D. Any combination of the above.

24 All bonds must be issued by a company qualified to do business in the State of California and  
25 acceptable to the Director of OC Parks. All bonds shall be in a form acceptable to the Director of OC  
26 Parks and shall insure faithful and full observance and performance by CONCESSIONAIRE of all terms,  
conditions, covenants, and agreements relating to the construction of improvements within the  
Premises.

# Exhibit E

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## 15. MECHANICS LIENS OR STOP-NOTICES (PMD4.1 S)

CONCESSIONAIRE shall at all times indemnify and save COUNTY harmless from all claims, losses, demands, damages, cost, expenses, or liability costs for labor or materials in connection with construction, repair, alteration, or installation of structures, improvements, equipment, or facilities within the Premises, and from the cost of defending against such claims, including attorney fees and costs.

In the event a lien or stop-notice is imposed upon the Premises as a result of such construction, repair, alteration, or installation, CONCESSIONAIRE shall either:

- A. Record a valid Release of Lien, or
- B. Procure and record a bond in accordance with Section 3143 of the Civil Code, which frees the Premises from the claim of the lien or stop-notice and from any action brought to foreclose the lien.

Should CONCESSIONAIRE fail to accomplish either of the two optional actions above within fifteen (15) days after the filing of such a lien or stop-notice, the Lease shall be in default and shall be subject to immediate termination.

## 16. "AS-BUILT" PLANS AND CONSTRUCTION COSTS (PMD5.1 S)

Within sixty (60) days following completion of any substantial improvement within the Premises, CONCESSIONAIRE shall furnish the Director of OC Parks a complete set of reproducibles and two sets of prints of "As-Built" plans and a magnetic tape, disk or other storage device containing the "As-Built" plans in a form usable by COUNTY, to COUNTY's satisfaction, on COUNTY's computer aided mapping and design (CAD) equipment. CAD files are also to be converted to Acrobat Reader (\*.pdf format), which shall be included on the disk or CD ROM. In addition, CONCESSIONAIRE shall furnish the Director of OC Parks an itemized statement of the actual construction cost of such improvement. The statement of cost shall be sworn to and signed by CONCESSIONAIRE or its responsible agent under penalty of perjury. CONCESSIONAIRE must obtain the Director of OC Parks' approval of "As-Built" plans, and the form and content of the itemized statement.

## 17. OWNERSHIP OF IMPROVEMENTS AND TRADE FIXTURES (PMD6.1 N)

COUNTY is the owner of the concession building identified on Exhibit "A". All other buildings, improvements, facilities and trade fixtures are subject to the following provisions.

All buildings, improvements, facilities and trade fixtures constructed or placed within the Premises by CONCESSIONAIRE must, upon completion, be free and clear of all liens, claims, or liability for labor or material and at COUNTY's option shall be the property of COUNTY at the expiration of this Lease or upon earlier termination hereof. COUNTY retains the right to require CONCESSIONAIRE, at CONCESSIONAIRE's cost, to remove any or all CONCESSIONAIRE's constructed improvements or trade fixtures located on the Premises at the expiration or termination hereof.

All improvements, fixtures and equipment present within the Premises upon commencement of this Lease are accepted by CONCESSIONAIRE in "as is" condition and shall remain the property of the COUNTY. CONCESSIONAIRE agrees to maintain said fixtures and equipment in good working order including replacement as necessary throughout the term of this Lease. If said improvements, fixtures or

# Exhibit E

1 equipment cannot be repaired, COUNTY will not replace the improvements, fixtures or equipment.  
2 Upon the Director of OC Parks' approval, CONCESSIONAIRE may remove the defective or inoperable  
3 improvements, fixtures or equipment from the Premises at no cost to the COUNTY and without damage  
4 to the Premises.

## 5 18. UTILITIES (PME 1.1 S)

6 CONCESSIONAIRE shall be responsible for and pay, prior to the delinquency date, all charges for  
7 utilities that are separately metered to the Premises. CONCESSIONAIRE is responsible for the cost of  
8 any and all phone service to the Premises.

9 CONCESSIONAIRE shall service and maintain the concession's grease interceptor and shall comply  
10 with all state, county and city requirements regarding disposal of the waste.

## 11 19. MAINTENANCE OBLIGATIONS OF CONCESSIONAIRE (PME2.1 N)

12 CONCESSIONAIRE shall perform maintenance to the Premises as follows:

- 13 A. General. CONCESSIONAIRE shall, to the satisfaction of the Director of OC Parks, keep and  
14 maintain the Premises and all improvements of any kind or improvements that may be erected,  
15 installed, or made thereon in good condition and in repair, making such replacements as  
16 appropriate or necessary. It shall be CONCESSIONAIRE's responsibility to take all steps  
17 necessary or appropriate to maintain such a standard of condition and repair. CONCESSIONAIRE expressly agrees, at its own expense, to keep the Premises in a safe, neat,  
18 clean, and orderly condition to the complete satisfaction of the Director of OC Parks and in  
19 compliance with applicable laws. COUNTY shall have the right to enter upon and inspect the  
20 Premises at anytime for cleanliness and safety.

21 CONCESSIONAIRE shall designate in writing to the Director of OC Parks an on-site  
22 representative who shall be responsible for the day-to-day operation and level of maintenance,  
23 cleanliness, and general order.

24 If CONCESSIONAIRE fails to maintain the Premises as required herein, the Director of OC  
25 Parks shall notify CONCESSIONAIRE in writing of said failure. Should CONCESSIONAIRE fail  
26 to correct or begin to correct such failure within thirty (30) business days after receipt of written  
notice, the Director of OC Parks may make the necessary correction or cause it to be made and  
the cost thereof, including but not limited to the cost of labor, materials, equipment, and an  
administrative fee equal to fifteen percent (15%) of the sum of such items, shall be paid by  
CONCESSIONAIRE within thirty (30) days of receipt of a statement of said cost from the Director  
of OC Parks. COUNTY may, at its option, choose other remedies available herein, or by law.

- 27 B. Concession Building. CONCESSIONAIRE shall to the satisfaction of Director of OC Parks, keep  
28 and maintain the interior of the concession building, including walls, windows, ceiling, lights, and  
29 all improvements, equipment including heating and air conditioning, and fixtures constructed, or  
30 made thereon in good condition and substantial repair. CONCESSIONAIRE shall also, to the  
reasonable satisfaction of the Director of OC Parks, keep and maintain the patio area and all  
interior utility lines that service the concession building or other CONCESSIONAIRE-installed  
improvements.

# Exhibit E

1 C. Regulations. CONCESSIONAIRE shall at all times comply with all applicable laws, ordinances,  
2 and regulations pertaining to health, building, safety and fire prevention. If CONCESSIONAIRE  
3 receives an inspection notice or deficiency notice following an inspection by any public or  
4 regulatory agency having jurisdiction, CONCESSIONAIRE agrees to make any and all  
5 corrections in the manner required upon receipt of such notice. CONCESSIONAIRE's failure to  
6 comply with the provisions of this Clause shall constitute a serious breach of this Lease, and  
7 upon such failure, this Lease shall be in default and shall be subject to immediate termination.

8 D. Trash, Garbage and Other Refuse. CONCESSIONAIRE shall provide complete and proper  
9 arrangements for the adequate, sanitary handling and disposal, acceptable to the Director of OC  
10 Parks, of all trash, garbage, and other refuse generated as a result of CONCESSIONAIRE's  
11 operations on the Premises. CONCESSIONAIRE shall provide and use suitable, covered  
12 receptacles for all garbage, trash, and other refuse on or in connection with the Premises. Piling  
13 of boxes, cartons, barrels, or other items in an unsightly or unsafe manner, on or about the  
14 Premises, is prohibited. CONCESSIONAIRE shall use and be responsible for the trash bin and  
15 enclosure as identified on Exhibit "A" as Concession Trash Enclosure. CONCESSIONAIRE is  
16 responsible for payment of all trash pick-up charges or fees for the Concession Trash Enclosure.

## 17 20. MAINTENANCE OBLIGATIONS OF COUNTY (N)

18 Maintenance obligations of COUNTY are as follows:

19 A. Concession Building. COUNTY shall be responsible for exterior surfaces including roof  
20 repairs/replacement of the concession building and the adjacent patio areas. For purposes of this  
21 paragraph, exterior surfaces shall not include exterior portions of the counter and window areas.  
22 COUNTY shall be responsible for termite damage. COUNTY shall be responsible for  
23 maintenance of all utility lines leading up to the exterior of the concession building.

24 B. Restrooms. COUNTY shall be responsible for maintenance, repair and cleaning of the public  
25 restrooms. CONCESSIONAIRE shall be responsible for maintenance, repair and cleaning of the  
26 employee restroom located within the Premises.

## 27 21. OPERATIONAL REQUIREMENTS OF CONCESSIONAIRE (PME3.1 N)

28 CONCESSIONAIRE agrees to abide by the following operational conditions and requirements:

### 29 A. General Operating Requirements.

30 (1) CONCESSIONAIRE shall be responsible for removal of trash and litter from the  
31 Premises each day including the patio area immediately in front of the counter and take-  
32 out window areas.

33 (2) CONCESSIONAIRE shall post a current schedule of operating hours and prices in a  
34 conspicuous place on the Premises.

35 (3) CONCESSIONAIRE shall not operate in any manner that would unreasonably interfere  
36 with or disturb the quiet enjoyment of park attendees or visitors participating in other  
37 activities.

# Exhibit E

1 B. Concession Equipment. During the entire term of this Lease, CONCESSIONAIRE shall furnish,  
2 at CONCESSIONAIRE's own expense, fixtures, food and beverage equipment, and supplies  
3 necessary for efficient operation of the Premises. These shall include but not be limited to  
4 freezers, pots, pans, microwave ovens, ice machines, beverage dispensers, kitchen utensils,  
5 including glassware, eating utensils, trays, carts, and cash registers or point of sale computers.

6 CONCESSIONAIRE acknowledges that said fixtures, equipment, and supplies will be maintained  
7 and kept in good condition, intact by repair and/or replacement by CONCESSIONAIRE at  
8 CONCESSIONAIRE's own expense. At anytime during the term of this Lease or upon  
9 termination or expiration of this Lease, CONCESSIONAIRE shall repair the Premises to its  
10 original condition should placement or removals of CONCESSIONAIRE's equipment cause any  
11 damage to the Premises.

12 C. Food Packaging. CONCESSIONAIRE shall use food packaging consistent with good  
13 environmental practices, including prohibiting polystyrene (also known as Styrofoam) from the  
14 Premises, and minimizing the use of PVC plastics (especially plastic bags for carrying food).

15 D. Patio Area. CONCESSIONAIRE shall be permitted to place tables, chairs and umbrellas on the  
16 patio area as identified on Exhibit "A" for use by concession patrons. The type, location and  
17 number of tables, chairs and umbrellas shall be subject to approval by the Director of OC Parks.  
18 Unless such equipment is securely fastened to the patio, all such equipment shall be removed  
19 and securely stored at the end of each business day.

20 E. Hours of Operations. Salt Creek Beach Park is opened daily to the public from 6:00 AM to 12:00  
21 PM. CONCESSIONAIRE may operate on any day that Salt Creek Beach Park is open to the  
22 public between the hours of 7:00 AM to 9:00 PM. However, CONCESSIONAIRE agrees that  
23 CONCESSIONAIRE will be present and open for business daily between Memorial Day  
24 weekend through Labor Day weekend (Summer Season) each year of this Lease between the  
25 hours of 10:00 AM and 4:00 PM.

26 F. Employees. CONCESSIONAIRE shall at all times retain qualified, competent and experienced  
personnel in sufficient numbers as necessary to conveniently serve the public at all times.  
CONCESSIONAIRE shall provide a list of all employees with photo and cell phones numbers, if  
applicable, to Director of OC Parks and keep the list updated and current. CONCESSIONAIRE  
shall require all of CONCESSIONAIRE's employees, except management employees, to wear  
clean and neat "uniforms" identifying themselves as employees of the facility. All employees  
shall also wear ID badges with their name clearly visible at all times.

G. Parking. CONCESSIONAIRE acknowledges that the public parking at Salt Creek Beach Park is  
paid Pay and Display parking or by an OC Parks Annual Pass (with beach decal) and with  
parking enforcement performed by the City of Dana Point Police Department, OC Parks staff or  
other entities as designated by COUNTY. COUNTY shall provide three (3) free parking passes  
to CONCESSIONAIRE. CONCESSIONAIRE shall be responsible for all other costs of parking  
for CONCESSIONAIRE or its employees. COUNTY retains the right to increase or decrease the  
number of public parking spaces and to periodically revise the fees charged to the public for  
parking at Salt Creek Beach Park.

H. Park Rules and Regulations. CONCESSIONAIRE agrees to comply with all rules, regulations  
and ordinances adopted by COUNTY for Salt Creek Beach Park. CONCESSIONAIRE shall  
cooperate and not interfere with COUNTY and COUNTY's other uses and operations at Salt



# Exhibit E

1 Creek Beach Park. CONCESSIONAIRE acknowledges that COUNTY reserves the right to close  
2 Salt Creek Beach Park without recourse or compensation to CONCESSIONAIRE due to  
unfavorable weather conditions, high surf, tsunamis, natural disasters or other emergencies.

3 I. Emergency Services Staging Events. CONCESSIONAIRE acknowledges that Salt Creek Beach  
4 Park may be used as an evacuation site or staging area for disasters or other emergencies  
5 originating outside the Park and serves as a resource to assist the community at-large. In the  
event of this type of occurrence, CONCESSIONAIRE's operations may be impacted and/or  
temporarily suspended without recourse to COUNTY.

6 J. National Pollutant Discharge Elimination System ("NPDES") Requirements.

7 CONCESSIONAIRE and all of CONCESSIONAIRE's subtenants, agents, employees and  
8 contractors shall conduct operations under this Lease so as to assure that pollutants do not enter  
9 the municipal storm drain system (including but not limited to curbs and gutters that are part of  
the street systems), or directly impact receiving waters (including but not limited to rivers, creeks,  
streams, estuaries, lakes, harbors, bays and the ocean).

10 The Santa Ana and San Diego Regional Water Quality Control Boards (RWQCB) have issued  
11 permits which regulate stormwater and non-stormwater discharges (Stormwater permits)  
12 resulting from areas owned and operated by the County of Orange and Orange County Flood  
Control District (collectively referred to as the COUNTY) including activities conducted under this  
13 Lease. The COUNTY and cities within Orange County have enacted water quality ordinances  
that prohibit activities that result in pollutants being discharged into the Stormwater drainage  
system.

14 To assure compliance with Stormwater Permits and water quality ordinances, the COUNTY has  
15 developed a Drainage Area Management Plan including a Local Implementation Plan  
16 (DAMP/LIP) that contains Best Management Practices (BMPs) that parties using COUNTY  
17 owned properties must adhere to. These BMPs are found within the DAMP/LIP in Model  
Maintenance Procedures and BMP Fact Sheets (the Model Maintenance Procedures and BMP  
18 Fact Sheets contained in the DAMP/LIP shall be referred to hereinafter collectively as "BMP Fact  
19 Sheets") and contain pollution prevention and source control techniques to minimize the impact  
20 of those activities upon dry-weather urban runoff, stormwater runoff, and receiving water quality.

21 CONCESSIONAIRE shall review the applicable BMP Fact Sheets contained in the DAMP/LIP.  
22 These BMP Fact Sheets may be modified during the term of the Lease and COUNTY will supply  
23 CONCESSIONAIRE with the replacement exhibits. CONCESSIONAIRE, its subtenants, agents,  
24 contractors, and employees and all persons authorized by CONCESSIONAIRE to conduct  
25 activities on Premises shall comply with these BMP Fact Sheets as they exist now or are  
26 modified during the term of the Lease, as well as all other requirements of the Stormwater  
Permits, the DAMP/LIP, and the BMP Fact Sheets, as they exist at the time this Lease  
commences and as Stormwater Permits, the DAMP/LIP, and/or the BMP Fact Sheets are  
modified throughout the term of this Lease. The BMPs applicable to uses authorized under this  
Lease must be performed as described within all applicable BMP Fact Sheets.  
CONCESSIONAIRE shall fully understand the BMP Fact Sheets applicable to operations  
conducted on the Premises prior to conducting them and maintain copies of the BMP Fact  
Sheets at the Premises throughout the term of the Lease.

# Exhibit E

1 BMP Fact Sheets that apply to uses authorized under this Lease include the BMP Fact Sheets  
2 that are attached hereto as Exhibit "B" and by reference made a part hereof. These BMP Fact  
3 Sheets may be modified during the term of the Lease; and COUNTY's representative\* shall  
4 provide CONCESSIONAIRE with any such modified BMP Fact Sheets. CONCESSIONAIRE, its  
5 subtenants, agents, contractors, representatives and employees and all persons authorized by  
6 CONCESSIONAIRE to conduct activities on the Premises shall, throughout the term of this  
7 Lease, comply with the BMP Fact Sheets as they exist now or are modified, and shall comply  
8 with all other requirements of the Stormwater Permits, as they exist at the time this Lease  
9 commences or as the Stormwater Permits may be modified. CONCESSIONAIRE agrees to  
10 maintain current copies of the BMP Fact Sheets on the Premises throughout the term of this  
11 Lease. The BMPs applicable to uses authorized under this Lease must be performed as  
12 described within all applicable BMP Fact Sheets.

13 The CONCESSIONAIRE may propose alternative BMPs that meet or exceed the pollution  
14 prevention performance of the BMP Fact Sheets. Any such alternative BMPs shall be submitted  
15 to the COUNTY for its review and approval prior to implementation.

16 The COUNTY may enter the Premises and/or review CONCESSIONAIRE records at any time to  
17 assure that activities conducted on the Premises comply with the requirements of this section.  
18 CONCESSIONAIRE may also be required to implement a self-evaluation program to  
19 demonstrate compliance with the requirements of this section.

20 CONCESSIONAIRE's failure to comply with the provisions of this Clause shall constitute a material  
21 breach of this Lease and may result in termination of this Lease by COUNTY. CONCESSIONAIRE shall  
22 have thirty (30) days following written notice of Lease non-compliance to correct or cure to the  
23 satisfaction of the Director of OC Parks.

## 24 22. DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS (PME4.1 S)

25 As a result of use by CONCESSIONAIRE and in the event of damage to or destruction of  
26 CONCESSIONAIRE-constructed buildings, facilities, or improvements located within the Premises or in  
the event the same are declared unsafe or unfit for use or occupancy by a public entity with the authority to  
make and enforce such declaration, CONCESSIONAIRE shall, within thirty (30) days, commence and  
diligently pursue to complete the repair, replacement, or reconstruction of improvements to the same size,  
condition and floor area as they existed immediately prior to the event causing the damage or destruction,  
as necessary to permit full use and occupancy of the Premises for the purposes required by the Lease.  
Repair, replacement, or reconstruction of improvements within the Premises shall be accomplished in a  
manner and according to plans approved by the Director of OC Parks. Except as otherwise provided  
herein, termination of this Lease shall not reduce or nullify CONCESSIONAIRE's obligation under this  
paragraph. With respect to damage or destruction to be repaired by CONCESSIONAIRE or which  
CONCESSIONAIRE elects to repair, CONCESSIONAIRE waives and releases its rights under California  
Civil Code Sections 1932 (2) and 1933 (4).

## 23. INSURANCE (PME5.1 S)

CONCESSIONAIRE agrees to purchase all required insurance at CONCESSIONAIRE's expense and to  
deposit with the COUNTY certificates of insurance, including all endorsements required herein,  
necessary to satisfy the COUNTY that the insurance provisions of this Lease have been complied with  
and to keep such insurance coverage and the certificates and endorsements therefore on deposit with  
the COUNTY during the entire term of this Lease. This Lease shall automatically terminate at the same

# Exhibit E

1 time CONCESSIONAIRE's insurance coverage is terminated. If within ten (10) business days after  
2 termination under this Clause CONCESSIONAIRE obtains and provides evidence of the required  
3 insurance coverage acceptable to Director of OC Parks, this Lease will be reinstated.  
CONCESSIONAIRE shall pay COUNTY Two Hundred and Fifty Dollars (\$250) for processing the  
reinstatement of this Lease.

4 CONCESSIONAIRE agrees that CONCESSIONAIRE shall not operate on the Premises at any time the  
5 required insurance is not in full force and effect as evidenced by a certificate of insurance and necessary  
6 endorsements or, in the interim, an official binder being in the possession of the Director of OC Parks.  
7 In no cases shall assurances by CONCESSIONAIRE, its employees, agents, including any insurance  
8 agent, be construed as adequate evidence of insurance. The Director of OC Parks will only accept valid  
certificates of insurance and endorsements, or in the interim, an insurance binder as adequate evidence  
of insurance. CONCESSIONAIRE also agrees that upon cancellation, termination, or expiration of  
CONCESSIONAIRE's insurance, COUNTY may take whatever steps are necessary to interrupt any  
operation from or on the Premises until such time as the Director of OC Parks reinstates the Lease.

9 If CONCESSIONAIRE fails to provide Director of OC Parks with a valid certificate of insurance and  
10 endorsements, or binder at any time during the term of the Lease, COUNTY and CONCESSIONAIRE  
11 agree that this shall constitute a material breach of the Lease. Whether or not a notice of default has or  
12 has not been sent to CONCESSIONAIRE, said material breach shall permit COUNTY to take whatever  
13 steps necessary to interrupt any operation from or on the Premises, and to prevent any persons,  
14 including, but not limited to, members of the general public, and CONCESSIONAIRE's employees and  
agents, from entering the Premises until such time as Director of OC Parks is provided with adequate  
evidence of insurance required herein. CONCESSIONAIRE further agrees to hold COUNTY harmless  
for any damages resulting from such interruption of business and possession, including, but not limited  
to, damages resulting from any loss of income or business resulting from the COUNTY's action.

15 All contractors performing work on behalf of CONCESSIONAIRE pursuant to this Lease shall obtain  
16 insurance subject to the same terms and conditions as set forth herein for CONCESSIONAIRE.  
17 CONCESSIONAIRE shall not allow contractors or subcontractors to work if contractors have less than  
18 the level of coverage required by the COUNTY from the CONCESSIONAIRE under this Lease. It is the  
obligation of the CONCESSIONAIRE to provide written notice of the insurance requirements to every  
contractor and to receive proof of insurance prior to allowing any contractor to begin work within the  
Premises. Such proof of insurance must be maintained by CONCESSIONAIRE through the entirety of  
this Lease and be available for inspection by a COUNTY representative at any reasonable time.

19 All insurance policies required by this Lease shall declare any deductible or self-insured retention (SIR)  
20 in an amount in excess of \$25,000 (\$5,000 for automobile liability), which shall specifically be approved  
21 by the COUNTY's County Executive Office (CEO)/Office of Risk Management. CONCESSIONAIRE  
shall be responsible for reimbursement of any deductible to the insurer. Any self-insured retentions  
(SIRs) or deductibles shall be clearly stated on the certificate of insurance.

22 If the CONCESSIONAIRE fails to maintain insurance acceptable to the COUNTY for the full term of this  
23 Lease, the COUNTY may terminate this Lease.

## Qualified Insurer

24 The policy or policies of insurance must be issued by an insurer licensed to do business in the state of  
25 California (California Admitted Carrier).

# Exhibit E

1 Minimum insurance company ratings as determined by the most current edition of the Best's Key Rating  
2 Guide/Property-Casualty/United States or ambest.com shall be A- (Secure Best's Rating) and VIII  
(Financial Size Category).

3 If the carrier is a non-admitted carrier in the state of California, CEO/Office of Risk Management retains  
4 the right to approve or reject carrier after a review of the company's performance and financial ratings.

5 The policy or policies of insurance maintained by the CONCESSIONAIRE shall provide the minimum  
limits and coverage as set forth below:

<u>Coverages</u>	<u>Minimum Limits</u>
<u>Commercial General Liability</u> including broad form property damage, contractual liability and products liability.	\$1,000,000 combined single limit per occurrence, \$2,000,000 aggregate.
<u>Fire and Extended Coverage</u> including contents and business income (applicable to CONCESSIONAIRE only).	CONCESSIONAIRE shall insure any CONCESSIONAIRE-occupied buildings, facilities, and improvements to at least 90% of their replacement cost, using a standard form fire insurance policy containing the "extended coverage" endorsement.
<u>Automobile Liability</u> including coverage of all owned, non-owned and hired vehicles.	\$1,000,000 combined single limit per occurrence.
<u>Workers' Compensation (if applicable)</u>	Statutory
<u>Employer's Liability (if applicable)</u>	\$1,000,000 per occurrence.

6 All liability insurance required by this Lease shall be at least \$1,000,000 combined single limit per  
7 occurrence. The minimum aggregate limit for the Commercial General Liability policy shall be  
8 \$2,000,000.

9 The County of Orange shall be added as an additional insured on all insurance policies required by this  
10 Lease with respect to work done by the CONCESSIONAIRE under the terms of this Lease (except  
11 Workers' Compensation/Employers' Liability, Fire and Extended Coverage, Professional Liability (if  
12 required) and Employee Dishonesty Coverage (if required). An additional insured endorsement  
13 evidencing that the County of Orange is an additional insured shall accompany the certificate of  
14 insurance.

15 The County of Orange shall be a loss payee on the Fire policy, to the extent of COUNTY's financial  
16 interest in any covered property, and a Loss Payee/Obligee on the Employee Dishonesty Coverage (if  
17 required).

18 All insurance policies required by this Lease shall be primary insurance, and any insurance maintained  
19 by the County of Orange shall be excess and non-contributing with insurance provided by these policies.  
20 An endorsement evidencing that the CONCESSIONAIRE's insurance is primary and non-contributing  
21 shall specifically accompany the certificate of insurance for the Commercial General Liability and Sexual  
22 Misconduct Liability (if required).

# Exhibit E

1 All insurance policies required by this Lease shall give the County of Orange thirty (30) days notice in  
2 the event of cancellation. This shall be evidenced by an endorsement separate from the certificate of  
3 insurance. In addition, the cancellation clause must include language as follows, which edits the pre-  
printed ACORD certificate:

4 SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE  
5 EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30  
6 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT. ~~BUT  
FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY  
KIND UPON THE COMPANY, ITS AGENT OR REPRESENTATIVE.~~

7 All insurance policies required by this Lease shall waive all rights of subrogation against the County of  
8 Orange and members of the Board of Supervisors, its elected and appointed officials, officers, agents  
and employees when acting within the scope of their appointment or employment.

9 The Commercial General Liability policy shall contain a severability of interests clause.

10 The CONCESSIONAIRE is aware of the provisions of Section 3700 of the California Labor Code which  
11 requires every employer to be insured against liability for Workers' Compensation or be self-insured in  
12 accordance with provisions of that code. The CONCESSIONAIRE will comply with such provisions and  
13 shall furnish the COUNTY satisfactory evidence that the CONCESSIONAIRE has secured, for the  
14 period of this Lease, statutory Workers' Compensation insurance and Employers' Liability insurance with  
15 minimum limits of \$1,000,000 per occurrence.

16 Insurance certificates and endorsements shall be forwarded to the County of Orange (OC Community  
17 Resources, Orange County Parks, 13042 Old Myford Road, Irvine, CA 92602). CONCESSIONAIRE  
18 has ten (10) business days to provide adequate evidence of insurance or this Lease may be cancelled.

19 COUNTY expressly retains the right to require CONCESSIONAIRE to increase or decrease insurance of  
20 any of the above insurance types throughout the term of this Lease. Any increase or decrease in  
21 insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect  
22 COUNTY. COUNTY shall notify CONCESSIONAIRE in writing of changes in the insurance  
23 requirements. If CONCESSIONAIRE does not deposit copies of acceptable certificates of insurance  
24 and endorsements with COUNTY incorporating such changes within thirty (30) days of receipt of such  
25 notice, this Lease may be in breach without further notice to CONCESSIONAIRE, and COUNTY shall be  
26 entitled to all legal remedies.

27 The procuring of such required policy or policies of insurance shall not be construed to limit  
28 CONCESSIONAIRE's liability hereunder nor to fulfill the indemnification provisions and requirements of  
29 this Lease.

30 The County of Orange Certificate of Insurance and the Special Endorsement for the County of Orange  
31 can be utilized to verify compliance with the above-mentioned insurance requirements in place of  
32 commercial insurance certificates and endorsements.

## 33 24. ASSIGNING, SUBLETTING, AND ENCUMBERING (PME7.1 S)

34 Any mortgage, pledge, hypothecation, encumbrance, transfer, sublease, sublease amendment, or  
35 assignment (hereinafter in this clause referred to collectively as "Encumbrance") of  
36

# Exhibit E

1 CONCESSIONAIRE's interest in the Premises, or any part or portion thereof, shall first be approved in  
2 writing by COUNTY, unless otherwise provided herein. Failure to obtain COUNTY's required written  
3 approval of an Encumbrance will render such Encumbrance void. Occupancy of the Premises by a  
prospective transferee, sublessee, or assignee before approval of the transfer, sublease, or assignment  
by COUNTY shall constitute a breach of this Lease.

4 If the CONCESSIONAIRE hereunder is a corporation, an unincorporated association, partnership, or  
5 limited liability company, the Encumbrance of any stock or interest in said corporation, association,  
6 partnership or limited liability company in the aggregate exceeding twenty-five percent (25%) shall be  
deemed an assignment within the meaning of this Lease.

## 25. HAZARDOUS MATERIALS (PMF9.1 S)

7  
8 A. Definition of Hazardous Materials. For purposes of this Lease, the term "Hazardous Material" or  
"Hazardous Materials" shall mean any hazardous or toxic substance, material, product,  
9 byproduct, or waste which is or shall become regulated by any governmental entity, including,  
without limitation, the COUNTY acting in its governmental capacity, the State of California or the  
10 United States government.

11 B. Use of Hazardous Materials. CONCESSIONAIRE or CONCESSIONAIRE's employees, agents,  
independent contractors or invitees (collectively "CONCESSIONAIRE Parties") shall not cause or  
12 permit any Hazardous Materials to be brought upon, stored, kept, used, generated, released into  
the environment or disposed of on, under, from or about the Premises (which for purposes of this  
13 clause shall include the subsurface soil and ground water). Notwithstanding the foregoing,  
CONCESSIONAIRE may keep on or about the Premises small quantities of Hazardous Materials  
14 that are used in the ordinary, customary, and lawful cleaning of and business operations on the  
Premises. Said permitted Hazardous Materials shall be stored in a suitable, safe location and  
15 shall be disposed of in a manner provided by law.

16 C. CONCESSIONAIRE Obligations. If the presence of any Hazardous Materials on, under or about  
the Premises caused or permitted by CONCESSIONAIRE or CONCESSIONAIRE Parties results  
17 in (i) injury to any person, (ii) damage to or contamination of the Premises (or a portion thereof),  
or (iii) to or contamination of any real or personal property wherever situated,  
18 CONCESSIONAIRE shall immediately notify the Director of OC Parks of said damages, and/or  
contamination and/or injuries, and CONCESSIONAIRE, at its sole cost and expense, shall  
19 promptly take all actions necessary or appropriate to return the Premises to the condition existing  
prior to the introduction of such Hazardous Materials to the Premises and to remedy or repair  
20 any such injury, damage, or contamination. Without limiting any other rights or remedies of  
COUNTY under this Lease, CONCESSIONAIRE shall pay the cost of any cleanup, repair, or  
21 remedial work performed on, under or about the Premises as required by this Lease or by  
applicable laws in connection with the removal, disposal, neutralization or other treatment of  
22 such Hazardous Materials caused or permitted by CONCESSIONAIRE or CONCESSIONAIRE  
Parties. Notwithstanding the foregoing, CONCESSIONAIRE shall not take any remedial action  
23 in response to the presence, discharge or release, of any Hazardous Materials on, under or  
about the Premises caused or permitted by CONCESSIONAIRE or CONCESSIONAIRE Parties,  
24 or enter into any settlement agreement, consent decree or other compromise with any  
governmental or quasi-governmental entity without first obtaining the prior written consent of the  
25 COUNTY. All work performed or caused to be performed by CONCESSIONAIRE as provided  
for above shall be done in a professional and workmanlike manner and in compliance with plans,  
26 specifications, permits and other requirements for such work approved by COUNTY.

# Exhibit E

1  
2 D. Indemnification for Hazardous Materials. To the fullest extent permitted by law,  
3 CONCESSIONAIRE hereby agrees to indemnify, hold harmless, protect and defend (with  
4 attorneys acceptable to COUNTY) COUNTY, its elected officials, officers, employees, agents  
5 and independent contractors from and against any and all liabilities, losses, damages (including,  
6 but not limited to, damages for the loss or restriction on use of rentable or usable space or any  
7 amenity of the Premises or damages arising from any adverse impact on marketing of the  
8 Premises), diminution in the value of the Premises, judgments, fines, demands, claims,  
9 recoveries, deficiencies, costs and expenses (including, but not limited to, reasonable attorneys'  
10 fees, disbursements and court costs and all other professional or consultant's expenses),  
11 whether foreseeable or unforeseeable, arising directly or indirectly out of the presence, use,  
12 generation, storage, treatment, on or off-site disposal or transportation of Hazardous Materials  
13 on, into, from, under or about the Premises by CONCESSIONAIRE or CONCESSIONAIRE's  
14 Agents. The foregoing indemnity shall also specifically include the cost of any required or  
15 necessary repair, restoration, clean-up or detoxification of the Premises and the preparation of  
16 any closure or other required plans.

## 26. CHILD SUPPORT ENFORCEMENT REQUIREMENTS (PMF6.12 S)

17 In order to comply with child support enforcement requirements of the County of Orange,  
18 CONCESSIONAIRE agrees to furnish Director of OC Parks, COUNTY's standard form District Attorney  
19 Child Support Enforcement Certification Requirements, which includes the following information.

- 20 a) In the case where CONCESSIONAIRE is doing business as an individual, CONCESSIONAIRE's  
21 name, date of birth, Social Security Number, and residence address;
- 22 b) In the case where CONCESSIONAIRE is doing business in a form other than as an individual,  
23 the name, date of birth, Social Security Number, and residence address of each individual who  
24 owns an interest of ten percent (10%) or more in the contracting entity;
- 25 c) A certification that the CONCESSIONAIRE has fully complied with all applicable federal and  
26 state reporting requirements regarding its employees; and
- 27 d) A certification that the CONCESSIONAIRE has fully complied with all lawfully served Wage and  
28 Earnings Assignment Orders and Notices of Assignment and will continue to so comply.

29 Failure of CONCESSIONAIRE to timely submit data and/or certifications required above or to comply  
30 with all federal and state reporting requirements for child support enforcement or to comply with all  
31 lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a  
32 material a material breach of this Lease. Failure to cure such breach within sixty (60) days of notice  
33 from the Director of OC Parks shall constitute grounds for termination of this Lease.

34 It is expressly understood that this data will be transmitted to governmental agencies charged with the  
35 establishment and enforcement of child support orders and will not be used for any other purpose.

## 36 27. NOTICES (PMF10.1 S)

37 All notices pursuant to this Lease shall be addressed as set forth below or as either party may hereafter  
38 designate by written notice and shall be sent through the United States mail in the State of California,  
39 duly registered or certified, return receipt requested, with postage prepaid. If any notice is sent by  
40

# Exhibit E

1 registered or certified mail, as aforesaid, the same shall be deemed to have been served or delivered  
2 twenty-four (24) hours after mailing thereof as above provided. Notwithstanding the above, COUNTY  
3 may also provide notices to CONCESSIONAIRE by personal delivery or by regular mail and any such  
4 notice so given shall be deemed to have been given upon receipt.

5 TO: COUNTY

TO: CONCESSIONAIRE

6 County of Orange  
7 OC Community Resources  
8 Orange County Parks  
9 13042 Old Myford Road  
10 Irvine, CA 92602

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

11 Attn: Director, Orange County Parks

## 12 29. ATTACHMENTS TO LEASE (PMF11.1 S)

13 This Lease includes the following, which are attached hereto and made a part hereof:

- 14 I. General Conditions
- 15 II. Exhibit "A" – Premises
- 16 III. Exhibit "B" – Best Management Practices Sheets



# Exhibit E

1 IN WITNESS WHEREOF, the parties have executed this Lease the day and year first above written.

2 APPROVED AS TO FORM  
3 County Counsel  
4 Orange County, California

CONCESSIONAIRE

\_\_\_\_\_, a \_\_\_\_\_

4 By \_\_\_\_\_

By \_\_\_\_\_

5 Dated \_\_\_\_\_

6 By \_\_\_\_\_

7

8

9

COUNTY

10

County of Orange

11

By \_\_\_\_\_

12

Director, OC Parks, pursuant to Minute Order  
dated \_\_\_\_\_, 2010

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# Exhibit E

## I. GENERAL CONDITIONS

### 1. TIME (PMG1.3 S)

Time is of the essence of this Lease. Failure to comply with any time requirement of this Lease shall constitute a breach of this Lease.

### 2. SIGNS (PMG2.3 S)

CONCESSIONAIRE agrees not to construct, maintain, or allow any signs, banners, flags, etc., upon the Premises except as approved by the Director of OC Parks. Unapproved signs, banners, flags, etc., may be removed by Director of OC Parks without prior notice to CONCESSIONAIRE.

### 3. PERMITS AND LICENSES (PMG3.3 S)

CONCESSIONAIRE shall be required to obtain any and all approvals, permits and/or licenses which may be required in connection with the operation of the Premises as set out herein. No permit, approval, or consent given hereunder by COUNTY, in its governmental capacity, shall affect or limit CONCESSIONAIRE's obligations hereunder, nor shall any approvals or consents given by COUNTY, as a party to this Lease, be deemed approval as to compliance or conformance with applicable governmental codes, laws, rules, or regulations.

### 4. CONTROL OF HOURS AND PROCEDURES (PMG4.2 S)

CONCESSIONAIRE shall at all times maintain a written schedule delineating the operating hours and operating procedures for each business operation on or from the Premises. A schedule of prices charged for all goods and/or services supplied to the public on or from the Premises shall also be maintained.

Upon written request, CONCESSIONAIRE shall furnish Director of OC Parks a copy of said schedules and procedures. Should Director of OC Parks, upon review and conference with CONCESSIONAIRE, decide any part of said schedules or procedures is not justified with regard to fairly satisfying the needs of the public, CONCESSIONAIRE, upon written notice from Director of OC Parks, shall modify said schedules or procedures to the satisfaction of the Director of OC Parks.

Primary consideration shall be given to the public's benefit in implementing this clause. All prices charged for goods and/or services supplied to the public on or from the Premises shall be fair and reasonable, based upon the market prices charged by other competing and/or comparable businesses.

CONCESSIONAIRE agrees that it will operate and manage the services and facilities offered in a competent and efficient manner at least comparable to other well-managed park concessions operations in Southern California.

CONCESSIONAIRE shall retain at all times active, qualified, competent, and experienced personnel to supervise CONCESSIONAIRE's operation and to represent and act for CONCESSIONAIRE.

CONCESSIONAIRE shall require its attendants and employees to be properly dressed, clean, courteous, efficient, and neat in appearance at all times. CONCESSIONAIRE shall not employ any

# Exhibit E

1 person(s) in or about the Premises who shall use offensive language or act in a loud, boisterous, or  
2 otherwise improper manner.

3 CONCESSIONAIRE shall maintain a close check over attendants and employees to ensure the  
4 maintenance of a high standard of service to the public. CONCESSIONAIRE shall replace any  
5 employee whose conduct is detrimental to the best interests of the public.

## 6 5. LEASE ORGANIZATION (PMG5.3 S)

7 The various headings and numbers herein, the grouping of provisions of this Lease into separate  
8 clauses and paragraphs, and the organization hereof, are for the purpose of convenience only and shall  
9 not be considered otherwise.

## 10 6. AMENDMENTS (PMG6.3 S)

11 This Lease is the sole and only agreement between the parties regarding the subject matter hereof;  
12 other agreements, either oral or written, are void. Any changes to this Lease shall be in writing and shall  
13 be properly executed by both parties.

## 14 7. UNLAWFUL USE (PMG7.3 S)

15 CONCESSIONAIRE agrees no improvements shall be erected, placed upon, operated, nor maintained  
16 within the Premises, nor any business conducted or carried on therein or there from, in violation of the  
17 terms of this Lease, or of any regulation, order of law, statute, bylaw, or ordinance of a governmental  
18 agency having jurisdiction.

## 19 8. NONDISCRIMINATION (PMG8.3 S)

20 CONCESSIONAIRE agrees not to discriminate against any person or class of persons by reason of sex,  
21 age, race, color, creed, disability, or national origin in employment practices and in the activities  
22 conducted pursuant to this Lease. CONCESSIONAIRE shall make its accommodations and services  
23 available to the public on fair and reasonable terms.

## 24 9. INSPECTION (PMG9.3 S)

25 COUNTY or its authorized representative shall have the right at all reasonable times to inspect the  
26 Premises to determine if the provisions of this Lease are being complied with.

## 10. HOLD HARMLESS (PMG10.2 S)

CONCESSIONAIRE hereby waives all claims and recourse against COUNTY including the right of  
contribution for loss or damage of persons or property arising from, growing out of or in any way  
connected with or related to this agreement except claims arising from the concurrent active or sole  
negligence of COUNTY, its officers, agents, and employees. CONCESSIONAIRE hereby agrees to  
indemnify, hold harmless, and defend COUNTY, its officers, agents, and employees against any and all  
claims, loss, demands, damages, cost, expenses or liability arising out of the operation or maintenance  
of the property described herein, and/or CONCESSIONAIRE's exercise of the rights under this Lease,  
except for liability arising out of the concurrent active or sole negligence of COUNTY, its officers, agents,  
or employees, including the cost of defense of any lawsuit arising therefrom. In the event COUNTY is  
named as co-defendant, CONCESSIONAIRE shall notify COUNTY of such fact and shall represent  
COUNTY in such legal action unless COUNTY undertakes to represent itself as co-defendant in such

# Exhibit E

1 legal action, in which event CONCESSIONAIRE shall pay to COUNTY its litigation costs, expenses and  
2 attorney's fees. In the event judgment is entered against COUNTY and CONCESSIONAIRE because of  
3 the concurrent active negligence of COUNTY and CONCESSIONAIRE, their officers, agents, or  
4 employees, an apportionment of liability to pay such judgment shall be made by a court of competent  
5 jurisdiction. Neither party shall request a jury apportionment.

## 4 11. TAXES AND ASSESSMENTS (PMG11.2 S)

5 This Lease may create a possessory interest that is subject to the payment of taxes levied on such  
6 interest. It is understood and agreed that all taxes and assessments (including but not limited to said  
7 possessory interest tax) which become due and payable upon the Premises or upon fixtures, equipment,  
8 or other property installed or constructed thereon, shall be the full responsibility of CONCESSIONAIRE,  
9 and CONCESSIONAIRE shall cause said taxes and assessments to be paid promptly.

## 8 12. SUCCESSORS IN INTEREST (PMG12.3 S)

9 Unless otherwise provided in this Lease, the terms, covenants, and conditions contained herein shall  
10 apply to and bind the heirs, successors, executors, administrators, and assigns of all the parties hereto,  
11 all of whom shall be jointly and severally liable hereunder.

## 11 13. CIRCUMSTANCES WHICH EXCUSE PERFORMANCE (PMG13.3 S)

12 If either party hereto shall be delayed or prevented from the performance of any act required hereunder  
13 by reason of Acts of God, restrictive governmental laws or regulations, or other cause without fault and  
14 beyond the control of the party obligated (financial inability excepted), performance of such act shall be  
15 excused for the period of the delay and the period for the performance of any such act shall be extended  
16 for a period equivalent to the period of such delay.

## 15 14. PARTIAL INVALIDITY (PMG14.3 S)

16 If any term, covenant, condition, or provision of this Lease is held by a court of competent jurisdiction to  
17 be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and  
18 effect and shall in no way be affected, impaired, or invalidated thereby.

## 18 15. WAIVER OF RIGHTS (PMG15.3 S)

19 The failure of COUNTY or CONCESSIONAIRE to insist upon strict performance of any of the terms,  
20 covenants, or conditions of this Lease shall not be deemed a waiver of any right or remedy that  
21 COUNTY or CONCESSIONAIRE may have, and shall not be deemed a waiver of the right to require  
22 strict performance of all the terms, covenants, and conditions of the Lease thereafter, nor a waiver of  
23 any remedy for the subsequent breach or default of any term, covenant, or condition of the Lease. Any  
24 waiver, in order to be effective, must be signed by the party whose right or remedy is being waived.

## 22 16. DEFAULT IN TERMS OF THE LEASE BY CONCESSIONAIRE (PMG16.2 S)

23 The occurrence of any one or more of the following events shall constitute a default hereunder by  
24 CONCESSIONAIRE:

25 A. The abandonment or vacation of the Premises by CONCESSIONAIRE.

# Exhibit E

1 B. The failure by CONCESSIONAIRE to make any payment of rent or any other sum payable  
2 hereunder by CONCESSIONAIRE, as and when due, where such failure shall continue for a  
3 period of thirty (30) days after written notice thereof from COUNTY to CONCESSIONAIRE;  
provided, however, that any such notice shall be in lieu of, and not in addition to, any notice  
required under California Code of Civil Procedure Section 1161 et seq.

4 C. The failure or inability by CONCESSIONAIRE to observe or perform any of the provisions of this  
5 Lease to be observed or performed by CONCESSIONAIRE, other than specified in A or B  
6 above, where such failure shall continue for a period of thirty (30) days after written notice  
7 thereof from COUNTY to CONCESSIONAIRE; provided, however, that any such notice shall be  
8 in lieu of, and not in addition to, any notice required under California Code of Civil Procedure  
Section 1161 et seq.; provided, further, that if the nature of such failure is such that it can be  
cured by CONCESSIONAIRE but that more than thirty (30) days are reasonably required for its  
cure (for any reason other than financial inability), then CONCESSIONAIRE shall not be deemed  
to be in default if CONCESSIONAIRE shall commence such cure within said thirty (30) days, and  
thereafter diligently prosecutes such cure to completion.

9 D. In case of or in anticipation of bankruptcy, insolvency or financial difficulties:

10 (1) The making by CONCESSIONAIRE of any general assignment for the benefit of  
11 creditors;

12 (2) A case is commenced by or against CONCESSIONAIRE under Chapters 7, 11 or 13 of  
13 the Bankruptcy Code, Title 11 of the United States Code as now in force or hereafter  
amended and if so commenced against CONCESSIONAIRE, the same is not dismissed  
14 within sixty (60) days;

15 (3) The appointment of a trustee or receiver to take possession of substantially all of  
16 CONCESSIONAIRE's assets located at the Premises or of CONCESSIONAIRE's  
interest in this Lease, where such seizure is not discharged within thirty (30) days; or

17 (4) CONCESSIONAIRE's convening of a meeting of its creditors or any class thereof for the  
purpose of affecting a moratorium upon or composition of its debts.

18 In the event of any such default, neither this Lease nor any interests of CONCESSIONAIRE in and to  
19 the Premises shall become an asset in any of such proceedings and, in any such event and in addition  
20 to any and all rights or remedies of the COUNTY hereunder or by law; provided, it shall be lawful for the  
COUNTY to declare the term hereof ended and to re-enter the Premises and take possession thereof  
and remove all persons therefrom, and CONCESSIONAIRE and its creditors (other than COUNTY) shall  
21 have no further claim thereon or hereunder.

22 In the event of any default by CONCESSIONAIRE, then, in addition to any other remedies available to  
COUNTY at law or in equity, COUNTY may exercise the following remedies:

23 A. COUNTY may terminate this Lease and all rights of CONCESSIONAIRE hereunder by giving  
24 written notice of such termination to CONCESSIONAIRE. In the event that COUNTY shall so  
elect to terminate this Lease, then COUNTY may recover from CONCESSIONAIRE:

25 (1) The worth at the time of termination of the unpaid rent and other charges, which had  
26 been earned as of the date of the termination hereof;

# Exhibit E

- 1 (2) The worth at the time of termination of the amount by which the unpaid rent and other  
2 charges which would have been earned after the date of the termination hereof until the  
3 time of award exceeds the amount of such rental loss that CONCESSIONAIRE proves  
4 could have been reasonably avoided;
- 5 (3) The worth at the time of termination of the amount by which the unpaid rent and other  
6 charges for the balance of the term hereof after the time of award exceeds the amount of  
7 such rental loss that CONCESSIONAIRE proves could be reasonably avoided;
- 8 (4) Any other amount necessary to compensate COUNTY for all the detriment proximately  
9 caused by CONCESSIONAIRE's failure to perform its obligations under this Lease or  
10 which in the ordinary course of things would be likely to result therefrom, including, but  
11 not limited to, the cost of recovering possession of the Premises, expenses of re-letting,  
12 including necessary repair, renovation and alteration of the Premises, reasonable  
13 attorneys' fees, expert witness costs, and any other reasonable costs; and
- 14 (5) Any other amount that COUNTY may by law hereafter be permitted to recover from  
15 CONCESSIONAIRE to compensate COUNTY for the detriment caused by  
16 CONCESSIONAIRE's default.

17 The term "rent" as used herein shall be deemed to be and to mean the monthly rent and all other  
18 sums required to be paid by CONCESSIONAIRE pursuant to the terms of this Lease. All such  
19 sums, other than the monthly rent, shall be computed on the basis of the average monthly  
20 amount thereof accruing during the 24-month period immediately prior to default, except that if it  
21 becomes necessary to compute such rental before such 24-month period has occurred, then  
22 such sums shall be computed on the basis of the average monthly amount during such shorter  
23 period. As used in subparagraphs (1) and (2) above, the "worth at the time of termination" shall  
24 be computed by allowing interest at the maximum rate permitted by law. As used in  
25 subparagraph (3) above, the "worth at the time of award" shall be computed by discounting such  
26 amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award  
plus one percent (1%), but not in excess of ten percent (10%) per annum.

- 17 B. Continue this Lease in effect without terminating CONCESSIONAIRE's right to possession even  
18 though CONCESSIONAIRE has breached this Lease and abandoned the Premises and to  
19 enforce all of COUNTY's rights and remedies under this Lease, at law or in equity, including the  
20 right to recover the rent as it becomes due under this Lease; provided, however, that COUNTY  
21 may at any time thereafter elect to terminate this Lease for such previous breach by notifying  
22 CONCESSIONAIRE in writing that CONCESSIONAIRE's right to possession of the Premises  
23 has been terminated.
- 24 C. Nothing in this Section shall be deemed to affect CONCESSIONAIRE's indemnity of COUNTY  
25 liability or liabilities based upon occurrences prior to the termination of this Lease for personal  
26 injuries or property damage under the indemnification clause or clauses contained in this Lease.

23 No delay or omission of COUNTY to exercise any right or remedy shall be construed as a waiver of such  
24 right or remedy or any default by CONCESSIONAIRE hereunder. The acceptance of COUNTY of rent  
25 or any other sums hereunder shall not be:

- 25 A. A waiver of any preceding breach or default by CONCESSIONAIRE of any provision thereof,  
26 other than the failure of CONCESSIONAIRE to pay the particular rent or sum accepted,

# Exhibit E

1 regardless of COUNTY's knowledge of such preceding breach or default at the time of  
2 acceptance of such rent or sum, or

3 B. Waiver of COUNTY's right to exercise any remedy available to COUNTY by virtue of such  
4 breach or default. No act or thing done by COUNTY or COUNTY's agents during the term of this  
5 Lease shall be deemed an acceptance of a surrender of the Premises, and no agreement to  
6 accept a surrender shall be valid unless in writing and signed by COUNTY.

7 Any installment or rent due under this Lease or any other sums not paid to COUNTY when due (other  
8 than interest) shall bear interest at the maximum rate allowed by law from the date such payment is due  
9 until paid, provided, however, that the payment of such interest shall not excuse or cure the default.

10 All covenants and agreements to be performed by CONCESSIONAIRE under any of the terms of this  
11 Lease shall be performed by CONCESSIONAIRE at CONCESSIONAIRE's sole cost and expenses and  
12 without any abatement of rent. If CONCESSIONAIRE shall fail to pay any sum of money, other than  
13 rent required to be paid by it hereunder or shall fail to perform any other act on its part to be performed  
14 hereunder, or to provide any insurance or evidence of insurance to be provided by CONCESSIONAIRE,  
15 then in addition to any other remedies provided herein, COUNTY may, but shall not be obligated to do  
16 so, and without waiving or releasing CONCESSIONAIRE from any obligations of CONCESSIONAIRE,  
17 make any such payment or perform any such act on CONCESSIONAIRE's part to be made or  
18 performed as provided in this Lease or to provide such insurance. Any payment or performance of any  
19 act or the provision of any such insurance by COUNTY on CONCESSIONAIRE's behalf shall not give  
20 rise to any responsibility of COUNTY to continue making the same or similar payments or performing the  
21 same or similar acts. All costs, expenses, and other sums incurred or paid by COUNTY in connection  
22 therewith, together with interest at the maximum rate permitted by law from the date incurred or paid by  
23 COUNTY shall be deemed to be additional rent hereunder and shall be paid by CONCESSIONAIRE  
24 with and at the same time as the next monthly installment of rent hereunder, and any default therein  
25 shall constitute a breach of the covenants and conditions of this Lease.

## 16 17. RESERVATIONS TO COUNTY (PMG17.3 S)

17 The Premises are accepted as is and where is by CONCESSIONAIRE subject to any and all existing  
18 easements and Encumbrances. COUNTY reserves the right to install, lay, construct, maintain, repair,  
19 and operate such sanitary sewers, drains, storm water sewers, pipelines, manholes, and connections;  
20 water, oil, and gas pipelines; telephone and telegraph power lines; and the appliances and  
21 appurtenances necessary or convenient in connection therewith, in, over, upon, through, across, and  
22 along the Premises or any part thereof, and to enter the Premises for any and all such purposes.  
23 COUNTY also reserves the right to grant franchises, easements, rights of way, and permits in, over,  
24 upon, through, across, and along any and all portions of the Premises. No right reserved by COUNTY in  
25 this clause shall be so exercised as to interfere unreasonably with CONCESSIONAIRE's operations  
26 hereunder or to impair the security of any secured creditor of CONCESSIONAIRE.

22 COUNTY reserves for the benefit of the public an easement for access and enjoyment across the public  
23 walkways, paths, patio areas, and public spaces of the Premises.

24 COUNTY agrees that rights granted to third parties by reason of this clause shall contain provisions that  
25 the surface of the land shall be restored as nearly as practicable to its original condition upon the  
26 completion of any construction. COUNTY further agrees that should the exercise of these rights  
temporarily interfere with the use of any or all of the Premises by CONCESSIONAIRE, the rental shall  
be reduced in proportion to the interference with CONCESSIONAIRE's use of the Premises.

# Exhibit E

1 18. HOLDING OVER (PMG18.3 S)

2 In the event CONCESSIONAIRE shall continue in possession of the Premises after the term of this  
3 Lease, such possession shall not be considered a renewal of this Lease but a tenancy from month to  
4 month and shall be governed by the conditions and covenants contained in this Lease.

4 19. CONDITION OF PREMISES UPON TERMINATION (PMG19.3 S)

5 Except as otherwise agreed to herein, upon termination of this Lease, CONCESSIONAIRE shall  
6 re-deliver possession of said Premises to COUNTY in substantially the same condition that existed  
7 immediately prior to CONCESSIONAIRE's entry thereon, reasonable wear and tear, flood, earthquakes,  
8 war, and any act of war, excepted. References to the "Termination of the Lease" in this Lease shall  
9 include termination by reason of the expiration of the Lease term.

8 20. DISPOSITION OF PERSONAL PROPERTY (PMG20.3 S)

9 If CONCESSIONAIRE abandons or quits the Premises or is dispossessed thereof by process of law or  
10 otherwise, title to any personal property belonging to and left on the Premises thirty (30) days after such  
11 event shall, at COUNTY's option, be deemed to have been transferred to COUNTY. COUNTY shall  
12 have the right to remove and to dispose of such property without liability therefore to  
13 CONCESSIONAIRE or to any person claiming under CONCESSIONAIRE, and shall have no need to  
14 account therefor.

13 21. QUITCLAIM OF CONCESSIONAIRE'S INTEREST UPON TERMINATION (PMG21.3 S)

14 Upon termination of this Lease for any reason, including but not limited to termination because of default  
15 by CONCESSIONAIRE, CONCESSIONAIRE shall execute, acknowledge, and deliver to COUNTY,  
16 within sixty (60) days after receipt of written demand therefore, a good and sufficient deed whereby all  
17 right, title, and interest of CONCESSIONAIRE in the Premises, including the COUNTY's personal  
18 property, is quitclaimed to COUNTY. Should CONCESSIONAIRE fail or refuse to deliver the required  
19 deed to COUNTY, COUNTY may prepare and record a notice reciting the failure of CONCESSIONAIRE  
20 to execute, acknowledge, and deliver such deed and said notice shall be conclusive evidence of the  
21 termination of this Lease and of all rights of CONCESSIONAIRE or those claiming under  
22 CONCESSIONAIRE in and to the Premises.

18 22. COUNTY'S RIGHT TO RE-ENTER (PMG22.3 S)

19 CONCESSIONAIRE agrees to yield and peaceably deliver possession of the Premises to COUNTY on  
20 the date of termination of this Lease, whatsoever the reason for such termination.

21 Upon giving written notice of termination to CONCESSIONAIRE, COUNTY shall have the right to  
22 re-enter and take possession of the Premises on the date such termination becomes effective without  
23 further notice of any kind and without institution of summary or regular legal proceedings. Termination  
24 of the Lease and re-entry of the Premises by COUNTY shall in no way alter or diminish any obligation of  
25 CONCESSIONAIRE under the Lease terms for periods before re-entry by COUNTY.

24 CONCESSIONAIRE waives any and all right of redemption under any existing law or statute, or  
25 amendment thereto or any new law enacted in regard to this issue, in the event of eviction from or  
26 dispossession of the Premises for any lawful reason or in the event COUNTY re-enters and takes  
possession of the Premises in a lawful manner.



# Exhibit E

1 23. AUTHORITY OF CONCESSIONAIRE (PMG23.3 S)

2 If CONCESSIONAIRE is a corporation, each individual executing this Lease on behalf of said  
3 corporation represents and warrants that he is duly authorized to execute and deliver this Lease on  
4 behalf of said corporation, in accordance with the by-laws of said corporation, and that this Lease is  
5 binding upon said corporation.

6 24. PUBLIC RECORDS (PMG24.3 S)

7 Any and all written information submitted to and/or obtained by COUNTY from CONCESSIONAIRE or  
8 any other person or entity having to do with or related to this Lease and/or the Premises, either pursuant  
9 to this Lease or otherwise, at the option of COUNTY, may be treated as a public record open to  
10 inspection by the public pursuant to the California Records Act (Government Code Section 6250, et  
11 seq.) as now in force or hereafter amended, or any Act in substitution thereof, or otherwise made  
12 available to the public and CONCESSIONAIRE hereby waives, for itself, its agents, employees,  
13 sublessees, and any person claiming by, through or under CONCESSIONAIRE, any right or claim that  
14 any such information is not a public record or that the same is a trade secret or confidential information  
15 and hereby agrees to indemnify and hold COUNTY harmless from any and all claims, demands,  
16 liabilities, and/or obligations arising out of or resulting from a claim by CONCESSIONAIRE or any third  
17 party that such information is a trade secret, or confidential, or not subject to inspection by the public,  
18 including without limitation reasonable attorneys' fees and costs.

19 25. RELATIONSHIP OF PARTIES (PMG25.3 S)

20 The relationship of the parties hereto is that of lessor and lessee, and it is expressly understood and  
21 agreed that COUNTY does not in any way or for any purpose become a partner of CONCESSIONAIRE  
22 in the conduct of CONCESSIONAIRE's business or otherwise, or a joint venture with  
23 CONCESSIONAIRE, and the provisions of this Lease and the agreements relating to rent payable  
24 hereunder are included solely for the purpose of providing a method by which rental payments are to be  
25 measured and ascertained.

26 26. WAIVER OF JURY TRIAL (PMG26.3 S)

Each party acknowledges that it is aware of and has had the advice of Counsel of its choice with respect  
to its rights to trial by jury, and each party, for itself and its successors and assigns, does hereby  
expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or  
counterclaim brought by any party hereto against the other (and/or against its officers, directors,  
employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever  
arising out of or in any way connected with this agreement and/or any claim of injury or damage.

27. GOVERNING LAW AND VENUE (PMG27.3 S)

This agreement has been negotiated and executed in the State of California and shall be governed by  
and construed under the laws of the State of California. In the event of any legal action to enforce or  
interpret this agreement, the sole and exclusive venue shall be a court of competent jurisdiction located  
in Orange County, California, and the parties hereto agree and do hereby submit to the jurisdiction of  
such court, notwithstanding Code of Civil Procedure Section 394.

# Exhibit E

1 28. RIGHT TO WORK AND MINIMUM WAGE LAWS (PMG28.1 S)

2 In accordance with the United States Immigration Reform and Control Act of 1986, CONCESSIONAIRE  
3 shall require its employees that directly or indirectly service the Premises, pursuant to the terms and  
4 conditions of this Lease, in any manner whatsoever, to verify their identity and eligibility for employment  
5 in the United States. CONCESSIONAIRE shall also require and verify that its contractors or any other  
6 persons servicing the Premises, pursuant to the terms and conditions of this Lease, in any manner  
7 whatsoever, verify the identity of their employees and their eligibility for employment in the United  
8 States.

9 Pursuant to the United States of America Fair Labor Standard Act of 1938, as amended, and State of  
10 California Labor Code, Section 1178.5, CONCESSIONAIRE shall pay no less than the greater of the  
11 Federal or California Minimum Wage to all its employees that directly or indirectly service the Premises,  
12 in any manner whatsoever. CONCESSIONAIRE shall require and verify that all its contractors or other  
13 persons servicing the Premises on behalf of the CONCESSIONAIRE also pay their employees no less  
14 than the greater of the Federal or California Minimum Wage.

15 CONCESSIONAIRE shall comply and verify that its contractors comply with all other Federal and State  
16 of California laws for minimum wage, overtime pay, record keeping, and child labor standards pursuant  
17 to the servicing of the Premises or terms and conditions of this Lease same is a trade secret or  
18 confidential information and hereby agrees to indemnify and hold COUNTY harmless from any and all  
19 claims, demands, liabilities, and/or obligations arising out of or resulting from a claim by  
20 CONCESSIONAIRE or any third party that such information is a trade secret, or confidential, or not  
21 subject to inspection by the public, including without limitation reasonable attorneys' fees and costs.

22 //  
23 //  
24 //

# Exhibit E

## **Exhibit A**

### Premises Map

# Exhibit E

## **EXHIBIT B**

### BEST MANAGEMENT PRACTICES SHEETS

1. HOUSEHOLD WASTE
2. WASTE HANDLING AND DISPOSAL
3. EATING AND DRINKING ESTABLISHMENTS