



CONCESSION LEASE

THIS IS A CONCESSION LEASE AGREEMENT (hereinafter referred to as “**Lease**”) made _____, 2022, (“**Effective Date**”) by and between COUNTY OF ORANGE, a political subdivision of the State of California (hereinafter referred to as “**County**”) and 10th HOLE ASSOCIATES, INC., a California corporation (hereinafter referred to as “**Tenant**”). The County and Tenant may individually be referred to herein as a “**Party**” or collectively as the “**Parties**.”

1. DEFINITIONS (1.0 SR)

The following words in this Lease shall have the significance attached to them in this Clause (DEFINITIONS), unless otherwise apparent from context:

“**ABC**” means the California Department of Alcoholic Beverage Control, which is a California state agency charged with the regulation of alcoholic beverages.

“**Auditor Controller**” means the Auditor Controller, County of Orange, or designee, or upon written notice to Tenant, such other person or entity acting in a similar capacity as shall be designated by the Board of Supervisors.

“**Board of Supervisors**” means the Board of Supervisors of the County of Orange, a political subdivision of the State of California.

“**CEO/Office of Risk Management**” means the Risk Manager, County Executive Office, Risk Management, County of Orange, or designee, or upon written notice to Tenant, such other person or entity as shall be designated by the County Executive Officer or the Board of Supervisors.

“**Chief Real Estate Officer**” means the Chief Real Estate Officer, County Executive Office, County of Orange, or upon written notice to Tenant, such other entity as shall be designated by the County Executive Officer.

“**County Executive Officer**” means the County Executive Officer, County Executive Office, County of Orange, or designee, or upon written notice to Tenant, such other person or entity as shall be designated by the Board of Supervisors.

“**Director of OC Parks**” or “**Director**” means the Director, Orange County Parks, OC Community Resources, County of Orange, or designee, or upon written notice to Tenant, such other person or entity acting in a similar capacity as shall be designated by the Board of Supervisors.

“**Treasurer-Tax Collector**” means the Treasurer-Tax Collector, County of Orange, or designee, or upon written notice to Tenant, such other person or entity as shall be designated by the Board of Supervisors.

2. PREMISES (1.1 N)

County leases to Tenant that certain property located at 33333 Pacific Coast Highway, Dana Point, CA (“**Premises**”) as described in Exhibit A and shown on Exhibit B, which exhibits are attached hereto and by reference made a part hereof. Said Premises consists of the following: a “**Concession Building**,” “**Patio Area**,” and “**Event Lawn**,” as shown on and further defined in Exhibit B. The Premises are accepted “as is” and “where is” by Tenant subject to any and all existing easements and encumbrances.

3. USE (1.2 N)

Tenant is authorized to use the Premises as follows:

Concession Building: Tenant’s use of the Concession Building within the Premises shall be limited to the operation and maintenance of a food concession, which includes, but is not limited to, the sale of food, beverage and alcohol (limited to beer and wine only), as stated below and per County Resolution No. ____ (“**County Resolution**”), which Resolution will go before the Board of Supervisors simultaneously with this Lease. Provided, however, that if Tenant is in good standing for the first twenty-four (24) months of the Term, Tenant shall have the option to apply for full liquor service in the Concession Building and Patio Area subject to prior County and ABC approval. The County Resolution is attached hereto and by this reference made a part hereof as Exhibit G. Additionally, Tenant may use the Concession Building to provide sundry items, rental of beach related equipment, beach chairs, beach umbrellas, as well as catering services for special events.

Concession Building and Patio Area: Beer and wine sales shall be limited to the Concession Building. Consumption of food, beer and wine shall be limited to the expanded Patio Area of the Premises, consistent with the County Resolution. No alcohol is allowed on the beach at any time. Tenant is authorized to sell and serve beer and wine from the Concession Building from 10:00 a.m. to 9:00 p.m. Monday - Sunday. All alcohol shall be served in non-glass containers. No glass bottles or glassware of any kind is allowed on the Premises or surrounding beach. Tenant shall provide training for alcohol service to all employees who will be working at the Premises. Tenant shall provide a staff person to manage the Premises to ensure compliance with the County’s policy of prohibiting alcohol on the beach. Tenant shall acquire and maintain all applicable licenses and permits for the lawful authorization to sell alcoholic beverages, including, but not limited to any ABC licenses or permits.

Event Lawn: During a Special Event (as defined below), Tenant is authorized to sell and serve beer, wine and liquor (as such sale and service may be allowed pursuant to this Lease and any applicable ABC licenses or permits) from 10:00 a.m. to 9:00 p.m. Monday – Sunday and consistent with any and all additional permitting requirements, including but not limited to OC Parks permitting. Said permits shall be acquired by Tenant prior to the Special Event at its sole cost and expense. Tenant is authorized to host “**Special Events**” within the Event Lawn, which are private events where alcohol may be sold, served and consumed, hosted by Tenant with the assistance and approval of Tenant contractors, lifeguards, security guards (as further explained below) and as approved by County through OC Parks permitting process, which approval shall not be unreasonably denied. During the peak season of the year, defined as Memorial Day through Labor Day, Tenant may host up to three (3) Special Events per week from Monday – Friday. During the off season, defined as Labor Day through Memorial Day, Tenant may host up to three Special Events per week from Monday – Sunday. On a quarterly basis (*i.e.*, by March 31st, June 30th, September 30th and December 31st of each year), Tenant shall provide Director of OC Parks a written schedule of Special Events, which shall include, but not be limited to: the projected dates,

times, description and size of the planned Special Events (“**Event Schedule**”). The Director of OC Parks shall review and approve, or provide comments, within fifteen (15) days; such review and approval shall not unreasonably withheld, conditioned or delayed. For any other Special Events not included on the Event Schedule, Tenant shall obtain the appropriate permits and approval from County through Director of OC Parks prior to the event. Tenant will be the exclusive event manager for the Event Lawn and will maintain the Event Schedule. Liquor services for Special Events shall remain exclusively with the Tenant. When the Event Lawn is not contracted by Tenant for a Special Event, the Event Lawn will remain fully accessible to the public.

During any Special Event, Tenant shall retain the services of a certified lifeguard organization such as, but not limited to, Orange County Lifeguards for lifeguards. The number of lifeguards required for the Special Event will be determined by the retained lifeguard organization. The Tenant shall notify County of the chosen lifeguard organization thirty (30) days prior to the Special Event.

Additionally, during any Special Event, Tenant shall retain the services of a certified security guard company to provide security services due to public beach access and the sale of alcohol associated with use of the Event Lawn. The Tenant shall notify County of the chosen security guard company secured by Tenant thirty (30) days prior to the Special Event.

Tenant agrees not to use the Premises for any purpose other than those uses authorized in this Lease, nor to engage in or authorize any other activity within or from the Premises, without prior written approval from the County through OC Parks. OC Park’s approval is subject to negotiation by the Parties and may result in an increase in Rent and/or Percentage Rent as those terms are defined and used in Clause 9 (RENT AND GROSS RECEIPTS) and/or Clause 13 (RENT ADJUSTMENT), below. Tenant shall not use the Premises or any portion thereof for any illegal or unlawful purpose and will not cause or permit a nuisance or waste to be created or maintained therein.

NO TOBACCO, OR MARIJUANA PRODUCTS SHALL BE SOLD FROM THE PREMISES. DRINKING ALCOHOLIC BEVERAGES AND SMOKING OF ANY KIND IS PROHIBITED INSIDE ANY BUILDING WITHIN THE PREMISES.

4. COUNTY’S USE RESERVATIONS AND RIGHT OF ENTRY (1.3 SR)

County reserves the right from time to time, without unreasonable interference and with a 72-hour courtesy notification in regards to the Concession Building, to access and use the Premises for County use as well as to confirm that Tenant is using the Premises consistent with those uses articulated in Clause 3 (USE). Tenant shall cooperate with County during County’s access and use of the Premises. County shall make best efforts to notify Tenant prior to accessing and using the Premises.

5. PARKING (1.4 N)

Throughout the Term of the Lease and including any Extension Term pursuant to Clause 8 (OPTION TO EXTEND TERM), Tenant shall have the exclusive right, without additional charge, to use eight (8) reserved parking spaces, with one (1) of the reserved parking spaces to be utilized for the three (3) County Containers, as defined in Section 18, below, on the Premises as shown on Exhibit D. Two (2) of the three County Containers are “mini-storage” containers. Tenant may relocate the two (2) mini-size storage containers currently located in the parking lot to the Event Lawn for storage of event equipment. Tenant accepts all liability for the relocation of the two (2) mini-size storage containers including, but not limited to, any violation notices from California

Coastal Commission and for compliance with any requirements imposed by the California Coastal Commission, if any. Tenant's use of said parking spaces shall be subject to all reasonable rules and regulations which are prescribed by County from time to time for the efficient operation of the parking areas for the Premises and provided to Tenant in writing. Tenant acknowledges receipt of said rules and regulations.

6. PRICING (N)

Tenant shall at all times maintain a complete list or schedule of the prices charged by Tenant for all goods or services, or combinations thereof, supplied to the public on or from the Premises, including a fee schedule for Special Events ("**Rate Schedule**"). Tenant shall provide the County such Rate Schedule prior to the Commencement Date for approval, which approval shall not be unreasonably withheld, conditioned or delayed, and shall update the Rate Schedule anytime prices or fees are changed.

7. TERM (1.6 SR)

The term of this Lease shall be ten (10) years ("**Term**"), commencing on May 1, 2022 ("**Commencement Date**") and any Extension Term that may be authorized pursuant to Clause 8 (OPTION TO EXTEND TERM) below. Tenant may take possession of the Premises on the Effective Date, but may not conduct business out of the Premises until the Commencement Date.

8. OPTION TO EXTEND TERM (1.7 N)

Provided Tenant is not in, and has not been in, during the Term of this Lease, "Tenant Default" as defined in Clause 33 (DEFAULTS AND REMEDIES) subject to a properly noticed and uncured breach (as set forth in Clause 33), Tenant may request an extension of the Lease Term for up to two (2), five (5)-year additional terms (each an "**Extension Term**"). Each option for an Extension Term is specific and personal only to Tenant and is not transferrable. Any request from the Tenant for an extension shall be in writing and must be made no earlier than one hundred and eighty (180) days prior to the expiration of this Lease, or the applicable Extension Term, and no later than one hundred and twenty (120) days prior to the expiration of this Lease or the applicable Extension Term. Tenant shall have the sole discretion to extend the Term of this Lease under such terms and conditions as the Parties mutually agree.

Mutual Agreement. Tenant and County shall have thirty (30) days after Tenant exercises any Option to extend in which to agree on the Fair Market Rental Value, as defined below, for the Extension Term. If Tenant and County are unable to agree on the Fair Market Rental Value for the option period within such thirty (30) days, the provisions of the Appraisal section below shall apply.

Factors for Determining Fair Market Rental Value. The "**Fair Market Rental Value**" of the Premises (or applicable portion thereof) shall be the amount that a willing, comparable, new (i.e., non-renewal), non-equity tenant would pay, and that a willing landlord of a comparable space in Orange County would accept at arms' length. Appropriate consideration shall be given to (A) the annual rental rate per rentable square foot of interior space (Tenant's architect shall provide on architect's letterhead, the total rentable square feet of Premises. Upon final plan check, Tenant's architect shall forward to Director of OC Parks, a final interior floor plan for County to verify total rentable square feet by County. County will provide disclosure signed by all Parties on the agreed upon total rentable square feet.; (B) the definition of rentable square feet for purposes of comparing the rate; (C) location, quality and age of the Premises; (D) the financial condition (e.g., creditworthiness) of Tenant; (E) escalation (including type, base year and stop) and abatement

provisions reflecting free rent and/or no rent during the period of construction; (F) brokerage commissions, if any; (G) length of the lease Term; (H) size and location (including floor level) of the Premises; (I) building standard work letter and/or tenant installed improvement allowance, if any (taking into consideration the cost of anticipated tenant installed improvements as compared to market tenant improvement allowances), provided, however, the Fair Market Rental Value shall not include any tenant installed improvements or any alterations made by Tenant; (J) condition of space; (K) lease takeover/assumptions; (L) moving expenses and other concessions; (M) extent of services to be provided; (N) distinctions between “gross” and “net” leases; (O) base year figures or expense stops for escalation purposes for both operating costs and ad valorem/real estate taxes; (P) the time the particular rental rate under consideration becomes or is to become effective; (Q) applicable caps on the amount of real estate taxes and assessments passed through to tenants; and (R) other generally applicable conditions of tenancy for the space in question. The Parties agree that the Fair Market Rental Value shall be no more than a twenty percent (20%) increase from the base year and no lower than a three percent (3%) increase.

9. RENT AND GROSS RECEIPTS (1.8 N)

Tenant agrees to pay to County as rent for the Premises the sum of seven thousand five hundred dollars (\$7,500.00) per month (“**Rent**”), with the first payment due on or before the Commencement Date and the first of the month thereafter throughout the Term, adjusted annually pursuant to the Rent Adjustment schedule in Clause 13 (RENT ADJUSTMENT) below.

In addition to the Rent, Tenant shall pay County, as “**Percentage Rent**,” six percent (6%) of all Gross Receipts (as defined below) above one million five hundred dollars (\$1,500,000.00) per calendar year (during the first partial year of the lease from May 1, 2022 to December 31, 2022, the amount shall be prorated to \$1,000,000), subject to annual adjustments on January 1st in accordance with Clause 13 (RENT ADJUSTMENT) below (“**Percentage Rent Annual Breakpoint**”). Said Percentage Rent shall be included in Tenant’s Rent payment for the month subsequent to the date on which the Percentage Rent Annual Breakpoint has been exceeded. Records regarding Percentage Rent shall be maintained and disclosed consistent with the obligations in Clause 18 (RECORDS AND ACCOUNTS). Percentage Rent shall be due by the 20th day of the next month following the month Gross Receipts are earned, for example Percentage Rent owed from the month of June shall be due by July 20th and shall be paid consistent with Clause 14 (RENT PAYMENT PROCEDURE). The obligation to pay any Percentage Rent owed during the Term of the Lease shall survive the termination of this Lease for any unpaid amounts.

Tenant shall receive a tenant improvement allowance of two hundred and fifty thousand dollars (\$250,000.00) (“**Tenant Improvement Allowance**”). County shall reimburse Tenant up to the amount of the Tenant Improvement Allowance via a rent credit in an amount not to exceed fifty thousand dollars (\$50,000.00) per year (“**Rent Credit**”) during the first five (5) years of the Term. The Rent Credit will be deducted monthly from Tenant’s Rent owed until the Tenant Improvement Allowance has been reimbursed or until the end of the first five (5) years of the Term, whichever is sooner. County will determine the Rent Credit amount after Tenant has provided County with the Improvement Invoice consistent with and as defined below in Clause 67 (COST OF TENANT IMPROVEMENTS).

The Parties agree that Rent shall be absolutely net to County and that, except as otherwise provided herein, Tenant will pay all costs, charges, insurance premiums, taxes, separately metered utilities including electrical and water, refill the propane tank for gas when empty, expenses and assessments of every kind and nature incurred for, against or in connection with the Premises which arise or become due during the Term or Extension Term as a result of Tenant’s use and occupancy of the Premises (not including possessory interest assessments which are addressed in

Clause 31 (TAXABLE POSSESSORY INTEREST ASSESSMENTS)). Under no circumstances is County obligated or required to make any payment of any kind whatsoever or be under any other obligation or liability under this Lease except as expressly provided herein.

10. DEFINITION OF GROSS RECEIPTS

The term “**Gross Receipts**” upon which Percentage Rent for the services and uses listed in this Lease are calculated shall include the following and shall also apply to all Special Events:

- A. The sale price of all goods, wares, merchandise, and products sold on or from the Premises by Tenant, whether for cash or credit, on-site or by mail order, telephone order, facsimile machine order or by other electronic means, whether payment is actually made or not, whether or not delivery of the items sold is made from the Premises and whether or not title to such items is transferred.
- B. The charges made by Tenant for the sale or rendition on or from the Premises of services of any nature or kind whatsoever, whether for cash or credit, whether payment is actually made or not and whether the services are actually performed or not;
- C. All admission, entry, rental, and other fees of any nature or kind charged by Tenant (including but not limited to deposits accepted by Tenant) relating to business conducted on or from the Premises, including but not limited to Special Events;
- 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 whether such sums are removed and counted by Tenant or others and regardless of what percentage thereof Tenant is entitled to receive.
- E. Charges for credit card transactions, including but not limited to debit cards and ATM cards and any other transaction cards that may be promulgated in the future, relating to matters within the definition of “Gross Receipts” shall be determined as follows:
 - (1) If card transaction charges are imposed by Tenant, Gross Receipts shall be the gross amount imposed or charged by Tenant.
 - (2) If card transaction charges are imposed by a third party, Gross Receipts shall be the commission or payment received by Tenant.

Tenant shall operate and manage the Premises as permitted or required under this Lease with such due diligence and efficiency so as to produce the maximum amount of Percentage Rent generated by Gross Receipts that may be produced by this manner of operation. Tenant shall at all times maintain adequate and trained personnel for the efficient service of the public.

County and Tenant agree that in the event of a dispute between County and Tenant with regard to inclusion and categorization of a transaction as Gross Receipts, the decision of the County as to inclusion and categorization shall be final and binding.

11. SPECIAL ITEMS INCLUDED IN GROSS RECEIPTS

Gross Receipts for the following items shall be determined as follows:

Discount Coupons/Promotional Activities. Gross Receipts shall be the actual sale price received by Tenant.

Food, Beverage and Merchandise Sales. Food, Beverage and Merchandise sales shall be included as Gross Receipts when sales are made on the Premises or related to an approved Special Event or similar event where the Premises are used in conjunction with the event.

Employee Sales and Discounts. Gross Receipts shall be the actual charge, if any, paid by employees for food and beverages on the Premises while on duty, purchase of tickets, merchandise, rental of equipment or other services or use of Tenant's facilities.

Complimentary/Discounted Tickets/Meals/Merchandise/Services. Gross Receipts shall include the actual amount received by Tenant for any food, merchandise, ticket, or other sales given by Tenant to unsatisfied customers, favored guests, business associates or others on a complimentary or discounted basis. Tickets, food, beverages other merchandise or services provided to charitable organizations and for fund raising events at no profit to Tenant shall be excluded from Gross Receipts. Exclusion from Gross Receipts of the imputed value of tickets, food, beverage or other merchandise or services on a complimentary basis, or the amount discounted from the full imputed value of tickets, food, beverage or other merchandise or service by Tenant shall be limited to three percent (3%) of total Gross Receipts for any particular month unless expressly approved in advance by the County. Free food, beverage, merchandise, tickets or other sales given to tour operators, hotel concierges or others as a "standard industry practice" and inducement to attract group reservations shall be excluded from Gross Receipts for rent calculation purposes, but shall be documented and reported in conjunction with rental payments as provided for in Clause 14 (RENT PAYMENT PROCEDURE) herein. All other free tickets/passage distributed for any other reason shall be subject to payment of percentage rent as set forth in this clause.

Security Deposits. Security Deposits, excepting where said deposit has been refunded to a party posting the deposit. Security deposits shall be Gross Receipts when applied by Tenant to the indebtedness of the parties posting such deposits.

Gift Certificates. Gift certificates shall be total face value of gift certificate and deemed Gross Receipts when sold by Tenant.

Off-site Catering. Charges for off-site catering and/or delivery of food and beverage prepared or served by using the Premises shall be included in Gross Receipts.

12. EXCLUSIONS FROM GROSS RECEIPTS

"Gross Receipts" does not include the following:

A. Gross Receipts shall exclude all sales and excise taxes payable by Tenant to Federal, State, and County, CPUC tax 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.

B. Gross Receipts derived from particular activities not otherwise provided for above, including but not limited to the sale of goods and services via television, mail order, and/or Internet or similar electronic communications networks, originating (1) from the Premises or (2) from outside the Premises, unless specifically identified with another site owned and operated by the Tenant and disclosed in writing and subject to the approval of the County.

C. Gratuities/Tips. Gratuities/tips accepted on behalf of employees or charged by Tenant for the benefit of employees and paid directly to employees (as a pass-through) are hereby excluded from Gross Receipts.

13. RENT ADJUSTMENT (1.9 N)

The Rent payable by Tenant to County for the Premises shall be automatically increased yearly by three percent (3%) as follows throughout the Term:

	Base Rent / month	Percentage Rent Annual Breakpoint
Year 2	\$ 7,725	\$1,545,000
Year 3	\$ 7,957	\$1,591,400
Year 4	\$ 8,195	\$1,639,000
Year 5	\$ 8,445	\$1,689,000
Year 6	\$ 8,695	\$1,739,000
Year 7	\$ 8,955	\$1,791,000
Year 8	\$ 9,225	\$1,845,000
Year 9	\$ 9,500	\$1,900,000
Year 10	\$ 9,785	\$1,957,000

14. RENT PAYMENT PROCEDURE (2.0 SR)

Rent payments shall be delivered to and filed with:

Orange County Treasurer-Tax Collector
 Revenue Recovery/Accounts Receivable Unit
 P.O. Box 4005
 Santa Ana, California 92702-4005

County may change the designated place of payment and filing at any time upon ten (10) calendar days' written notice to Tenant. Rent payments may be made by check payable to the County of Orange. Tenant assumes all risk of loss if payments are made by mail.

No payment by Tenant or receipt by County of a lesser amount than the payment due shall be deemed to be other than on account of the payment due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment 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 the amount due or pursue any other remedy in this Lease. Nor shall County's acceptance of a lesser amount due or delay in pursuing full payment act as a legal bar against County's recovery of any amount due under this Lease.

All sums due under this Lease shall be paid in lawful money of the United States of America, without offset or deduction or prior notice or demand.

15. CHARGE FOR LATE PAYMENT (2.1 SR)

Tenant hereby acknowledges that the late payment of Rent or any other sums due hereunder will cause County to incur costs not contemplated by this Lease, the exact amount of which 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.

Accordingly, if any payment of Rent as specified in Clause 9 (RENT) or of any other sum due County under this Lease is not received by County within five (5) days after the due date, a late charge of One Hundred Dollars (\$100) shall be added to the payment, and the total sum shall become immediately due and payable to County. An additional charge of one hundred dollars (\$100) shall be added for each additional month that said payment remains unpaid.

Tenant and County hereby agree that such late charges represent a fair and reasonable estimate of the costs that County will incur by reason of Tenant's late payment. Acceptance of such late charges (and/or any portion of the overdue payment) by County shall in no event constitute a waiver of Tenant's Default (as defined in Clause 33 (DEFAULTS AND REMEDIES)) with respect to such overdue payment, or prevent County from exercising any of the other rights and remedies granted hereunder.

16. LEASE ADMINISTRATIVE COST (2.2 SR) - *Intentionally Omitted*

17. SECURITY DEPOSIT (2.3 SR)

On the Effective Date, Tenant shall deposit with the Treasurer-Tax Collector (consistent with Clause 14 (RENT PAYMENT PROCEDURE)) the sum of ten thousand dollars (\$10,000) (the “**Security Deposit**”), to be held by County as security for the full and faithful performance of Tenant’s obligations under this Lease, to pay any rental sums, including without limitation such Percentage Rent as may be owing under any provision hereof, and to maintain the Premises as required by Clause 19 (MAINTENANCE OBLIGATIONS OF TENANT) or any other provision of this Lease.

Upon any breach of the foregoing obligations by Tenant or any Tenant Default, County may apply all or part of the Security Deposit as full or partial compensation. If any portion of the Security Deposit is so applied, Tenant shall within five (5) days after written demand by County deposit cash with County in an amount sufficient to restore the Security Deposit to its original amount.

County shall be required to keep this Security Deposit separate from its general funds, and Tenant shall not be entitled to interest on the Security Deposit. In no event may Tenant utilize all or any portion of the Security Deposit as a payment toward any Rent or Percentage Rent due under this Lease. Any unapplied balance of the Security Deposit shall be returned to Tenant or, at County’s option, to the last assignee of Tenant’s interest in this Lease within thirty (30) days following the termination of this Lease and Tenant's vacation of the Premises.

Tenant hereby waives the provisions of Section 1950.7 of the California Civil Code, or any similar or successor laws now or hereafter in effect, in connection with County’s application of the Security Deposit to prospective rent that would have been payable by Tenant but for the early termination due to Tenant’s Default as defined in Clause 33 (DEFAULTS AND REMEDIES).

18. RECORDS AND ACCOUNTS (2.4 SR)

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

B. The Accounting Year. The accounting year shall be twelve (12) full calendar months commencing on January 1 and ending on December 31 each year. The accounting year may be established by Tenant, provided Tenant notifies Auditor-Controller in writing of the accounting year to be used. Said accounting year shall be deemed to be approved by Auditor-Controller unless Auditor-Controller has objected to Tenant's selection in writing within sixty (60) days of Tenant's written notification.

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

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

C. Financial Statements. Within one hundred twenty (120) days after the end of each accounting year, Tenant shall at its own expense submit to Auditor-Controller a Statement of Gross Receipts (certified by an officer of Tenant under penalty of perjury) reflecting business transacted on or from the Premises during the preceding accounting year. The reviewed Statement of Gross Receipts shall include total Gross Receipts for the accounting year as classified according to the categories of business established for percentage rent and listed in Clause 9 (RENT AND GROSS RECEIPTS) and for any other business conducted on or from the Premises. The certified statement of Gross Receipts shall include total Gross Receipts for the accounting year and prepared under Generally Accepted Accounting Principles (GAAP).

Tenant acknowledges its understanding that any and all of the Financial 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, including but not limited to those enumerated in Clause 33 (DEFAULTS AND REMEDIES), in the event that Tenant fails to submit the required financial statements within thirty (30) business days following the due date listed in this Clause 18, County may require Tenant 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. Audits. 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 reasonable times upon at least thirty (30) business days' written notice for the purpose of determining the accuracy thereof, financial statements which financial statements may include but are not limited to monthly Gross Receipts from which records shall be retained for a period not less than five (5) years from the date the required financial statements have been submitted to County by Tenant. County shall not exercise its right to audit such records more than once each accounting year.

County, upon written request of Tenant and at County's sole discretion, may authorize the above-referenced books and records and supporting source documents to be kept in a single location outside the limits of Orange County provided Tenant shall agree to pay all expenses including but not limited to transportation, food, and lodging necessary for the County to send a representative to audit said books and records.

The full cost of any audit described above, as determined by Director of OC Parks, shall be borne by Tenant if either of the following conditions exist: (1) The audit reveals an underpayment of more than four percent (4%) between the rent due as reported and paid by Tenant in accordance with this Lease and the rent due as determined by said audit; (2) Tenant has failed to maintain true and complete books, records, accounts and supporting source documents in the ordinary course of Tenant's business, consistent with past practices and in accordance with Section A, "Records", above. The adequacy of records shall be consistent with industry standards at the time of the audit. Otherwise, County shall bear the cost of that audit, excluding the aforementioned expenses related to audit of documents kept outside the limits of Orange County.

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

In addition to any other remedies available to County at law or in equity or under this Lease, in the event the Tenant fails, in the normal course of Tenant's business, 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, shall provide written notice to Tenant within thirty (30) business days following any of the above alleged failures in this paragraph 18.E, and at County's option, may:

- 1) Require the Tenant to pay a one-time fine of one thousand dollars (\$1,000) per occurrence; or
- 2) 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 Tenant under this Lease, and require TENANT to reimburse County for any and all reasonable costs and/or expenses incurred by County in connection therewith, which shall be reimbursed by Tenant to County within 15 (fifteen) business days upon receipt by Tenant of any such written demand from County; or
- 3) Require that Tenant pay percentage rents based on County's best good faith estimate of Tenant's Gross Receipts from business operations conducted on or from the Premises and any such determination made by County shall be conclusive and binding upon Tenant.

The above costs payable by Tenant shall include reimbursement to County of County-provided services at such rates as County may from time to time, in good faith, establish for such services. In the case of services provided by County's employees, such rates shall be sufficient to reimburse

County for employees' salaries, and County's reasonable expenses associated with any such audit or third party auditor.

19. MAINTENANCE OBLIGATIONS OF TENANT – CONDITIONS AND CARE OF PREMISES (2.5 N)

A. Tenant shall, to the reasonable satisfaction of County, keep and maintain, or cause to be kept and maintained, the Premises and all Tenant Improvements (as defined below in Clause 18) of any kind in place and used, occupied, or otherwise operated or maintained by the Tenant on the Premises prior to the Commencement Date, or which may be erected, installed, or made thereon by Tenant or its Licensee or Licensees (parties who enter into an agreement with Tenant), during the Term or Extension Term of this Lease, in good condition and in substantial repair, provided that in the event (i) of substantial damage to any such Tenant Improvements it shall be at Tenant's option whether to repair or replace such improvements (provided that if the improvements are not to be repaired or replaced, then they shall be placed into a safe condition or removed), as provided in Clause 23 (OPERATIONAL REQUIREMENTS OF TENANT) below or (ii) Tenant or its Licensee(s) ceases to use any improvements, it shall be at Tenant's option to not repair or replace any such improvement so long as the improvement is maintained in a safe condition or removed. Subject to the foregoing, it shall be Tenant's responsibility to take all steps necessary or appropriate to maintain such a standard of condition and repair.

Additionally, Tenant shall maintain the Event Area, surrounding landscaped areas and the existing improvements within the landscaped areas. Tenant may, at their own expense, modify and/or remove landscape and/or hardscape in the Event Area subject to County's reasonable approval.

Tenant shall remove and replace the existing above ground grease interceptor system at Tenant's sole cost and expense. Maintenance and cleaning of said grease interceptor system shall be Tenant's sole responsibility. County will not be liable for any cost or expense in relation to the grease interceptor system.

Tenant is solely responsible for daily removal of all trash from the immediate Premises and the cost and expense of such removal. Tenant shall not allow any trash to accumulate and pile up on the Premises before removing such trash. The County is not liable for any cost or expense in relation to trash removal. Tenant will work with the existing trash removal company and also, at their discretion, add an on-premises dumpster should it be operationally necessary.

B. Tenant shall keep the Premises clean and in good repair during any time which Tenant, its agents, or employees use the Premises at its sole cost and expense. Except as otherwise expressly set forth in this Lease, Tenant shall be responsible for all costs relating to the operation and maintenance of the Premises.

C. Tenant shall be solely responsible for all costs and expenses for any maintenance and repairs necessitated by the actions of Tenant, or Licensee(s), resulting in an extraordinary load imposed on underground utilities outside the Premises or contamination of Common Areas and Harbor waterways.

D. If Tenant fails to maintain or make repairs or replacements as required herein, County shall notify Tenant in writing of said failure. Should Tenant fail to correct the situation within five (5) days after receipt of written notice specifying the condition to be corrected (provided that such 5-day period may be extended accordingly if a longer time is reasonably necessary to correct the condition and Tenant promptly commences such cure and diligently prosecutes it to completion),

County 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 Tenant within ten (10) days of receipt of a statement, including reasonable supporting documentation, of said cost from County. County may, at its sole option, choose other remedies available herein, or by law.

E. If Tenant receives an inspection notice or a deficiency notice following an inspection by any public or regulatory agency having jurisdiction, Tenant agrees to make any and all corrections in the manner required immediately upon receipt of by such notice. Tenant's failure to comply with the provisions of this Clause 16 shall constitute a Tenant Default and the County may proceed with any and all County Remedies as defined in Clause 33 (DEFAULTS AND REMEDIES) and this Lease shall be subject to termination at County's option.

F. County shall have no obligation or responsibility to remove debris, or to maintain, repair, or replace improvements constructed within the Premises, except as otherwise provided by law. Tenant shall have no obligation to maintain, supervise, repair or replace any improvements installed by County or any other party (other than Tenant's Licensees) nor for debris or materials which are not deposited by Tenant or its Licensees and which comes onto or out of the Premises.

20. CONSTRUCTION AND/OR ALTERATIONS BY TENANT (2.6 N)

County's Consent. No structures, improvements, or facilities shall be constructed, erected, altered, by Tenant or made within the Premises without prior written consent of County, which approval shall not be unreasonably withheld. Any conditions relating to the manner, method, design, and construction of said structures, improvements, or facilities fixed by the County as a condition to granting such consent, shall be conditions hereof as though originally stated herein. Tenant may, at any time and at its sole expense, install and replace business fixtures and equipment constructed by Tenant, within the Premises.

Strict Compliance with Plans and Specifications. All improvements constructed by Tenant within the Premises shall be constructed in strict compliance with detailed plans and specifications approved by County and to the extent applicable, in compliance with the requirements of California Public Contract Code Section 22000 *et seq.*, and Labor Code Sections 1720-1824, which require those improvements to be constructed as if such improvements had been constructed under the direction and supervision, or under the authority, of County.

Permits. All County approved improvements to the Premises shall be constructed in accordance with valid permits (including but not limited to any applicable permits from the California Coastal Commission) and all applicable laws and in a good and workmanlike manner, including, but limited to, (a) Tenant shall be required to secure the faithful performance of construction and completion of construction of the improvement by appropriate contractor's bonds as required by the California Public Contracts Code and shall require its contractor or contractors to pay the prevailing rate of per diem wages for work of a similar character in the locality of the County and not less than the general prevailing rate of per diem wages for holiday and overtime work, as provided in Clause 34 (LABOR CODE COMPLIANCE) of this Lease; and (b) Tenant shall publicly advertise for bids for such improvements, as provided in Orange County Codified Ordinances 1-8-1 *et seq.*, and shall provide County a list of all bids received for the contract; and (c) thereafter, with the prior written approval of County as to the winning bid, Tenant shall award the contract or contracts for such improvements.

All preparation and processing for environmental clearance shall be at Tenant's sole cost and expense. In the event that the environmental process results in any required mitigation measures, performance of such mitigation measures, including all associated costs and expenses shall be the sole responsibility of Tenant.

County has no obligation to notify Tenant regarding requirements for permits, licenses, approvals or other consents from governmental agencies, including the County of Orange in its regulatory capacity, nor shall County have any obligation to obtain permits, licenses, approvals or other consents from governmental agencies on behalf of Tenant. County agrees to give its consent as property owner to any application made with regard to any such permits, licenses, approvals or other consents which may be required by any governmental agency or by the County of Orange in its regulatory capacity related to activities or design and construction of improvements approved by County in accordance with this Lease. Any such consent given by County as the property owner is not to be interpreted to obligate County to pay any fees related to the application or issuance of any such permit, license, approvals or other consents, nor shall such consent be deemed a waiver of any fee which may be charged by County's Property Permit department. Any conditions placed on Tenant's design and construction or operation of the Premises as a result of the issuance of permits, licenses, approvals or other consents shall be the sole obligation of Tenant with regard to performance responsibilities, cost and expense.

Any approvals or consents given by County under this Lease, as a party to this Lease, shall not be deemed approval as to compliance or conformance with applicable governmental codes, laws, rules and/or regulations or approval from the standpoint of structural safety, suitability for purpose or conformance with building or other codes or other governmental requirements nor shall County, as a party to this Lease be responsible for permitting of any construction and/or maintenance, design, assumptions or accuracy of Tenant's construction and/or maintenance plans.

All planning and architectural/design costs required to accomplish the construction shall be Tenant's responsibility and shall be approved by the Director of OC Parks. Such approvals will not be unreasonably withheld or delayed and shall not relieve Tenant of the responsibility for complying with all applicable codes and construction requirements, nor of obtaining necessary permits or approvals from the authorities of proper jurisdiction.

21. OWNERSHIP OF IMPROVEMENTS (2.7 SR)

The three (3) containers within the Premises upon the Commencement Date, are and shall remain County property ("**County Container(s)**"), though the Tenant may use them during the Term. Tenant shall provide all equipment necessary for use of the Premises consistent with this Lease. All buildings, improvements, containers, and facilities, exclusive of trade fixtures, constructed or placed within the Premises by Tenant ("**Tenant Improvements**") must, upon completion, be free and clear 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 Tenant, at Tenant's cost, to remove all Tenant Improvements located on the Premises the expiration or termination hereof. In the event that Tenant fails to remove said Tenant Improvements within fifteen (15) days following receipt of written notice from County to do so, such Tenant Improvements will be deemed abandoned and Tenant shall lose all right, title and interest in and thereto, and County may elect (i) at Tenant's cost, to remove, demolish, or otherwise dispose of some or all of such items or (ii) sell or make use of any or all such items.

22. MECHANICS LIENS OR STOPNOTICES (2.8 SR)

Tenant shall at all times indemnify, defend with counsel approved in writing by County 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, Tenant shall either:

- A. Record a valid Release of Lien, or
- B. Procure and record a bond in accordance with Section 8424 or 9000 et seq. 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 Tenant 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 Tenant shall be in Tenant Default and shall be subject to immediate termination.

23. OPERATIONAL REQUIREMENTS OF TENANT (2.9 SR)

A. Quality and Service Standards. Tenant shall at all times operate the Premises in a manner consistent with Clause 3 (USE).

B. Standards of Operation. Tenant shall operate the Premises in a manner similar to other comparable facilities in Southern California which offer similar services and amenities. Tenant shall, at its sole expense, take reasonable steps to provide security measures for the protection of persons and property within the Premises.

C. Protection of Environment. Tenant shall not permit:

1. Littering within the Premises.
2. Excessive noise emanating from the Premises.
3. Excessive light and glare from light fixtures within the Premises that could impact the safe operation of automobiles, watercraft and aircraft in the area.
4. Discharge or runoff of pollutants, including petroleum products, waste and debris from any source on the Premises into the waters within or adjacent to the Premises or other activities that are harmful to water quality.
5. Tenant shall immediately report any spillage, leakage, or discharge of any toxic, hazardous or polluting materials to the proper authorities.

Failure by Tenant to comply with A, B and C of this Clause shall result in Tenant Default (as further defined in Clause 33 (DEFAULTS AND REMEDIES)) and County shall have the right to exercise any remedy available to it by virtue of such Tenant Default in addition to any County Remedies defined in Clause 33 (DEFAULTS AND REMEDIES).

D. On-Site Management

1. Tenant shall employ and designate to County a competent manager (“**Tenant Manager**”) who shall be responsible for the day-to-day operation and maintenance, cleanliness, and general order of the Premises. Tenant Manager shall be vested with

the authority of Tenant with respect to the supervision over the operation and maintenance of the Premises, including the authority to enforce compliance by Tenant's agents, employees, subtenants, concessionaires, or licensees with the terms and conditions of this Lease and any and all rules and regulations adopted hereunder. Tenant shall notify County in writing of the name of the manager currently so employed, as well as successor managers, in the manner as provided in the Clause 65 (NOTICES) below.

2. Tenant agrees to obey, abide by, and be in conformance with all applicable governmental codes, laws, rules and/or regulations, now or hereafter promulgated, concerning operations on the Premises.

24. INSURANCE (3.0 SR)

Tenant agrees to purchase all required insurance at Tenant'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.

Tenant agrees that Tenant shall not operate on the Premises at any time the required insurance is not in full force and effect as evidenced by a certificate of insurance and necessary endorsements or, in the interim, an official binder being in the possession of Director of OC Parks. In no cases shall assurances by Tenant, its employees, agents, including any insurance agent, be construed as adequate evidence of insurance. 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. Tenant also agrees that upon cancellation, termination, or expiration of Tenant'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.

If Tenant fails to provide Director of OC Parks with a valid certificate of insurance and endorsements, or binder at any time during the term of the Lease, County and Tenant agree that this shall constitute a material breach of the Lease. Whether or not a notice of default has or has not been sent to Tenant, said material breach shall permit County to take whatever steps necessary to interrupt any operation from or on the Premises, and to prevent any persons, including, but not limited to, members of the general public, and Tenant'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. Tenant 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.

Tenant may occupy the [Premises] only upon providing to County the required insurance stated herein and maintain such insurance for the entire term of this Lease. County reserves the right to terminate this Lease at any time Tenant's insurance is canceled or terminated and not reinstated within ten (10) days of said cancellation or termination. Tenant shall pay County a fee of two thousand dollars (\$2,000.00) for processing the reinstatement of the Lease. Tenant shall provide to County immediate notice of said insurance cancellation or termination.

All contractors performing work on behalf of Tenant pursuant to this Lease shall obtain insurance subject to the same terms and conditions as set forth herein for Tenant. Tenant shall not allow contractors or subcontractors to work if contractors have less than the level of coverage required by the County from the Tenant under this Lease. It is the obligation of the Tenant 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 Tenant through the entirety of this Lease and be available for inspection by a County representative at any reasonable time.

All self-insured retentions (“**SIR(s)**”) shall be clearly stated on the Certificate of Insurance. Any SIR in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County’s Risk Manager, or designee, upon review of Tenant’s current audited financial report. If Tenant’s SIR is approved, Tenant, in addition to, and without limitation of, any other indemnity provision(s) in this Lease, agrees to all of the following:

- 1) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Tenant’s, its agents, employee’s or subcontractor’s performance of this Agreement, Tenant shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- 2) Tenant’s duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- 3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Tenant’s SIR provision shall be interpreted as though the Tenant was an insurer and the County was the insured.

Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best’s Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best’s Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

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

<u>Coverages</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 limit per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Pollution Liability	\$1,000,000 per claims-made or

CoveragesMinimum Limits

per occurrence

Commercial Property Insurance on an “All Risk” or “Special Causes of Loss” basis covering all, contents and any tenant improvements including Business Interruption/Loss of Rents with a 12 month limit.

Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing liability coverage at least as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of insurance:

- 1) An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the ***County of Orange, its elected and appointed officials, officers, employees, agents*** as Additional Insureds. Blanket coverage may also be provided which will state- ***As Required By Written Agreement.***
- 2) A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad, evidencing that the Tenant’s insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Pollution Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

- 1) An Additional Insured endorsement naming the County of Orange, its elected and appointed officials, officers, employees and agents as Additional Insureds.
- 2) A primary and non-contributing endorsement evidencing that Tenant’s insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers’ Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the ***County of Orange, its elected and appointed officials, officers, agents and employees.*** Blanket coverage may also be provided which will state- ***As Required By Written Agreement.***

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

The Commercial Property policy shall contain a Loss Payee endorsement naming the County of Orange as respects the County's financial interest when applicable.

The Commercial General Liability policy shall contain a severability of interests clause, also known as a "separation of insureds" clause (standard in the ISO CG 001 policy).

If Tenant's Pollution Liability policy is a claims-made policy, Tenant shall agree to maintain coverage for two (2) years following termination of the Lease.

Insurance certificates should be forwarded to the County address provided in Clause 65 (NOTICES) below or to an address provided by Director of OC Parks. Tenant has ten (10) business days to provide adequate evidence of insurance or this Lease may be cancelled.

County expressly retains the right to require Tenant to increase or decrease insurance of any of the above insurance types throughout the term of this Lease. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Tenant in writing of changes in the insurance requirements. If Tenant 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 Lease may be in breach without further notice to Tenant, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Tenant's liability hereunder nor to fulfill the indemnification provisions and requirements of this Lease, nor in any way to reduce the policy coverage and limits available from the insurer.

Required Electronic Correspondence

Tenant agrees to deposit a certificate of insurance with CEO/Real Estate through electronic correspondence at the outset of the Lease/License, etc. and annually thereafter, or as necessary. The certificate of insurance shall be delivered to: insurance.ceore@ocgov.com.

25. INDEMNIFICATION (3.1 SR)

Tenant's Indemnity. Tenant hereby agrees to indemnify, hold harmless, and defend County, its elected and appointed officials, officers, agents, employees, and those special districts and agencies which the Board of Supervisors acts as the governing board, with counsel reasonably approved by County, against any and all claims, loss, demands, damages, costs, expenses or liability arising out of the ownership, maintenance, or use of the Premises, except for liability arising out of the negligence of County, its elected and appointed officials, officers, agents, or employees, including the cost of defense of any lawsuit arising therefrom.

In the event County is named as co-defendant, Tenant shall notify County of such fact and shall represent County, with counsel approved by County, in such legal action unless County undertakes to represent itself as co-defendant in such legal action, in which event Tenant shall pay to County its litigation costs, expenses and attorneys' fees. In the event judgment is entered against County

and Tenant because of the concurrent negligence of County and Tenant, their officers, agents, or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Neither Party shall request a jury apportionment.

County's Non-liability. County shall not be liable to Tenant and Tenant hereby waives all claims against County, its employees and agents for loss of or damage to any property, or any injury to any person, resulting from any condition including, but not limited to, acts or omissions (criminal or otherwise) of third parties, or their agents, employees or invitees, fire, explosion, falling plaster, steam, gas, electricity, water or rain which may leak or flow from or into any part of the Premises or from the breakage, leakage, obstruction or other defects of the pipes, sprinklers, wires, appliances, plumbing, air conditioning, electrical works or other fixtures in the Premises, regardless of the negligence of County, its agents or any and all affiliates of County in connection with the foregoing. It is understood that any such condition may require the temporary evacuation or closure of all or a portion of the Premises. Should Tenant elect to receive any service from a concessionaire, licensee or third party tenant of County, Tenant shall not seek recourse against County for any breach or liability of that service provider. Notwithstanding anything to the contrary contained in this Lease, in no event shall County be liable for Tenant's loss or interruption of business or income (including without limitation, Tenant's consequential damages, lost profits or opportunity costs), or for interference with light or other similar intangible interests. Tenant shall immediately notify County in case of fire or accident in the Premises and of defects in any improvements or equipment within the Premises.

Waiver of Subrogation. County and Tenant each hereby waives all rights of recovery against the other on account of loss and damage occasioned to the Premises of such waiving Party to the extent that the waiving Party is entitled to proceeds for such loss and damage under any property insurance policies carried or otherwise required to be carried by this Lease; provided however, that the foregoing waiver shall not apply to the extent of Tenant's obligation to pay deductibles under any such policies and this Lease. By this waiver it is the intent of the Parties that neither County nor Tenant shall be liable to any insurance company (by way of subrogation or otherwise) insuring the other Party for any loss or damage insured against under any property insurance policies, even though such loss or damage might be occasioned by the negligence of such Party, its agents, employees, contractors or invitees.

Tenant acknowledges that it is familiar with the language and provisions of California Civil Code Section 1542, which provides as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Tenant, being aware of and understanding the terms of Section 1542, hereby waives all benefit of its provisions to the extent described in this paragraph.

26. HAZARDOUS MATERIALS (3.2 SR)

A. Definition of Hazardous Materials. For purposes of this Lease, the term “**Hazardous Materials**” shall mean any hazardous or toxic substance, material, product, byproduct, or waste which is or shall become regulated by any governmental entity, including, without limitation, County, acting in its governmental capacity, the State of California or the United States government.

B. Use of Hazardous Materials. Tenant or Tenant’s employees, agents, independent contractors or invitees (collectively “**Tenant Parties**”) shall not cause or authorize 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 clause shall include the subsurface soil and ground water). Notwithstanding the foregoing, Tenant and Tenant Parties may keep on or about the Premises small quantities of Hazardous Materials 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 safe location and shall be disposed of in a manner provided by law.

C. Tenant Obligations. If the presence of any Hazardous Materials on, under or about the Premises caused or authorized by Tenant or Tenant Parties results in (i) injury to any person, (ii) injury to or contamination of the Premises (or a portion thereof), or (iii) injury to or contamination or any real or personal property wherever situated, Tenant, at its sole cost and expense, shall 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 any such injury or contamination. Without limiting any other rights or remedies of County under this Lease, Tenant shall pay the cost of any such cleanup or 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 such Hazardous Materials caused or authorized by Tenant or Tenant Parties to be introduced on, under or about the Premises. Notwithstanding the foregoing, Tenant shall not take any remedial action in response to the presence, discharge or release, of any Hazardous Materials on, under or about the Premises caused or authorized by Tenant or Tenant Parties, 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 Director, which consent shall not be unreasonably withheld, conditioned or delayed. All work performed or caused to be performed by Tenant as provided for above shall be done in good and workmanlike manner and in compliance with plans, specifications, permits and other requirements for such work approved by Director, which approval shall not be unreasonably withheld, conditioned or delayed.

27. BEST MANAGEMENT PRACTICES (3.3 SR)

A. Tenant shall conduct operations under this Lease so as to assure that pollutants do not enter municipal storm drain systems which systems are comprised of, but are not limited to curbs and gutters that are part of the street systems (“**Stormwater Drainage System**”), and to ensure that pollutants do not directly impact Receiving Waters (as used herein, “**Receiving Waters**” include, but are not limited to, rivers, creeks, streams, estuaries, lakes, harbors, bays and oceans).

B. The Santa Ana and San Diego Regional Water Quality Control Boards have issued National Pollutant Discharge Elimination System (“**NPDES**”) permits (“**Stormwater Permits**”) to the County, and to the Orange County Flood Control District and cities within Orange County, as permittees (hereinafter collectively referred to as “**County Parties**”) which regulate the discharge

of urban runoff from areas within the County, including the Premises leased under this Lease. The County Parties have enacted water quality ordinances that prohibit conditions and activities that may result in polluted runoff being discharged into the Stormwater Drainage System.

C. To assure compliance with the Stormwater Permits and water quality ordinances, the County have developed a Drainage Area Management Plan (“**DAMP**”) which includes a Local Implementation Plan (“**LIP**”) for each jurisdiction that contains Best Management Practices (“**BMP(s)**”) as provided in Exhibit E, and which may change from time to time, that tenants using properties within Orange County must adhere to. As used herein, a BMP is defined as a technique, measure, or structural control that is used for a given set of conditions to manage the quantity and improve the quality of stormwater runoff in a cost effective manner. These BMPs are found within County’s LIP in the form of Model Maintenance Procedures and BMP Fact Sheets (the Model Maintenance Procedures and BMP Fact Sheets contained in the DAMP/LIP shall be referred to hereinafter collectively as “**BMP Fact Sheets**”) and contain pollution prevention and source control techniques to eliminate non-stormwater discharges and minimize the impact of pollutants on stormwater runoff.

D. BMP Fact Sheets that apply to uses authorized under this Lease include the BMP Fact Sheets that are attached hereto as Exhibit E. These BMP Fact Sheets may be modified during the term of the Lease; and County shall provide Tenant with any such modified BMP Fact Sheets. Tenant, its subtenants, agents, contractors, representatives and employees and all persons authorized by Tenant to conduct activities on the Premises shall, throughout the term of this Lease, comply with the BMP Fact Sheets as they exist now or are modified, and shall comply with all other requirements of the Stormwater Permits, as they exist at the time this Lease commences or as the Stormwater Permits may be modified. Tenant agrees to maintain current copies of the BMP Fact Sheets on the Premises 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.

E. Tenant may propose alternative BMPs that meet or exceed the pollution prevention performance of the BMP Fact Sheets. Any such alternative BMPs shall be submitted to County for review and approval prior to implementation.

F. County may enter the Premises and/or review Tenant’s records at any time to assure that activities conducted on the Premises comply with the requirements of this clause. Tenant may be required to implement a self-evaluation program to demonstrate compliance with the requirements of this clause.

G. Among other requirements, the industrial NPDES permit requires periodic stormwater inspections by the State and/or County OC Watersheds staff to ensure facility compliance, which may include annual inspections of the Premises, with follow up inspections as a result of observed violations requiring corrective actions.

H. Dependent upon the reuse of the Premises, the Premises shall have a clarifier drain that captures low flow runoff from throughout the site, which ensures all flows are properly drained without any unacceptable runoff. Tenant shall conduct their work throughout the site and any resultant low flow discharges shall work their way to the clarifier. In regards to Tenant Improvements, Tenant shall designate operational zones minimally affected by storm flows that allow drainage to the clarifier, and the non-operational portions of the site are to have normal storm discharges going through the storm drain system. As the site undergoes a new NPDES Industrial Permit application process, these conditions may get re-examined.

I. The BMP's shall stipulate the process for the Tenant to take corrective actions, and state the consequences of non-compliance or County options under the Lease to self-remedy the matter. The Santa Ana and San Diego Regional Water Quality Control Boards have established penalties/consequences for non-compliance and those are to be included in this Lease. County to have the option to terminate the Lease if the Tenant does not correct a non-compliance situation in a timely manner and that the security deposit reflects this circumstance.

J. Environmental Indemnification language may be added or amended from time to time.

K. Work activities are to be conducted in a controlled area where pollutants shall be contained and any heavy metals detected at significantly higher levels than the benchmarks set by the Regional Board shall be addressed. All applicable BMPs are to be properly implemented, including any and all future modifications, updates, or replacement BMPs that may be issued from time to time, shall be used by Tenant.

L. Site modifications, such as distinctly designated work areas with controls to prevent pollutants from escaping and wastewater drain, will be required to be segregated from stormwater drain.

M. In the event Tenant fails to comply with all applicable BMPs, County, in addition to any and all remedies available in Clause 33 (DEFAULTS AND REMEDIES), shall have the right to self-help remedies or terminate the Lease as follows:

1. Terminate the Lease due to non-compliance with the BMPs incorporated in the Lease and as BMPs may change from time to time, or;
2. Remedy a non-compliance situation with a chargeback to the Tenant for the cost. The details regarding notification, timeline, and procedure are to be drafted and mutually agreed upon by both Parties to ensure all water quality issues are addressed within the Lease. In the event the Tenant's BMP implementation is lacking or if the Tenant allows a prohibitive discharge to occur, then the Regional Board will only take enforcement action against County. Therefore, this Lease must establish a BMP compliance partnership with the Tenant and the Lease must ensure the protection of water quality is inherent in the Tenant's day-to-day operations.

28. BUILDING AND SAFETY REQUIREMENTS (3.4 SR)

During the Term and any Extension Term(s) of this Lease, Tenant, at Tenant's sole cost, agrees to maintain the Premises in compliance with all applicable laws, rules, regulations, building codes, statutes, and orders as they are applicable as of the Effective Date, and as they may be subsequently amended, including but not limited to the California Building Code, Title 24, Seismic Code, Fire and Life Safety requirements and, if applicable, California Green Building Standard Code.

Included in this provision is compliance with the Americans with Disabilities Act ("ADA") and all other federal, state, and local codes, statutes, and orders relating to disabled access as they are applicable on the dates of this Lease, and as they may be subsequently amended and all regulations issued by the U. S. Attorney General or other agencies under the authorization of the ADA. However, Tenant shall not be responsible for any ADA violations resulting from alterations made by County or the placement of fixtures or equipment by County.

Tenant shall use commercially reasonable efforts to repair and maintain the Premises as a “safe place of employment,” as defined in the California Occupational Safety and Health Act (California Labor Code, Division 5, Part 1, Chapter 3, beginning with Section 6400) and the Federal Occupational Safety and Health Act, where the provisions of such Act exceed, or supersede, the California Act, as the provisions of such Act are applicable on the date of this Lease, and as they may be subsequently amended. County agrees to notify Tenant of any repair or maintenance necessary within the Premises to comply with such Act and Tenant agrees to diligently act to repair or maintain appropriately.

In the event Tenant neglects, fails, or refuses to maintain said Premises as aforesaid, following thirty (30) days after written notice from County to Tenant providing notice of such neglect, failure or refusal, County may, notwithstanding any other termination provisions contained herein:

- A. Thirty (30) days following a second written notice of such neglect or failure or refusal, County may terminate this Lease with written notice to the Tenant; or
- B. At County’s sole option, cure any such Tenant Default by performance of any act, including payment of money, and add the cost thereof plus reasonable administrative costs (ten percent (10%)) to the Rent.

Tenant agrees to reimburse and indemnify, and defend County for any expenses incurred because of the failure of the Premises to conform with any and all applicable laws, rules, regulations, building codes, statutes, and orders, including the costs of making any alterations, renovations, or accommodations required by the ADA, or any governmental enforcement agency, or any court, any and all fines, civil penalties, and damages awarded against County resulting from a violation or violations of the above-cited laws, rules, regulations, building codes, statutes, and orders and regulations, and all reasonable legal expenses incurred in defending claims made under the above-referenced laws, rules, regulations, building codes, statutes, and orders, including reasonable attorneys’ fees. Should Tenant fail to comply with the provisions of this Clause 28 Tenant may be found in Tenant Default and the County may exercise those remedies set forth in Clause 33 (DEFAULTS AND REMEDIES).

29. DAMAGE TO OR DESTRUCTION OF PREMISES AND/OR TENANT IMPROVEMENTS (3.5 SR)

Premises. In the event of any damage to our destruction of the Premises or in the event the Premises or improvements located within the Premises are declared unsafe or unfit for use or occupancy by a public entity with the authority to make and enforce such declaration, County shall have the immediate right to terminate this Lease effective upon providing written notice to Tenant. In the event of said termination, County shall be entitled to receive and retain any and all insurance proceeds resulting from or attributable to such casualty, except for those proceeds payable under any separate policy maintained by Tenant which specifically insures Tenant’s personal property and trade fixtures. In the event that County does not elect to terminate this Lease following said casualty, County, at County’s expense, may rebuild, reconstruct and restore the Premises, excluding Tenant’s personal property and trade fixtures, which shall be the responsibility of Tenant. Tenant understands and acknowledges that County shall be free to make such changes and modifications to the Premises as County deems appropriate in the exercise of its good faith discretion. During any period when County determines that there is substantial interference with Tenant’s use of the Premises by reason of such casualty, the monthly Rent payable hereunder shall be temporarily abated in proportion to the degree of such substantial interference. With respect to damage or destruction which County

elects to repair, Tenant waives and releases its rights under California Civil Code Sections 1932 (2) and 1933 (4).

Tenant Improvements. In the event of damage to or destruction of Tenant Improvements located within the Premises or in the event Tenant Improvements located within the Premises are declared unsafe or unfit for use or occupancy by a public entity with the authority to make and enforce such declaration, Tenant shall, within thirty (30) days, commence and diligently pursue to completion the repair, replacement, or reconstruction of Tenant Improvements to the same size 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 Tenant 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 Tenant's obligation under this paragraph.

County shall not be liable for any damage to Tenant Improvements or Tenant personal property or of others located on the Premises, nor for the loss of or damage to any property of Tenant or others by theft or otherwise. All property of Tenant kept or stored on the Premises shall be so kept or stored at the risk of Tenant, unless such damage is caused by County willful misconduct or gross negligence.

30. ASSIGNMENT AND SUBLETTING (3.6 SR)

Subject to prior review and approval by County, Tenant may allow for the rental, licensing, permitting, or subletting, etc. of the Premises when doing so results in providing for the uses permitted in Clause 3 (USE) above. Any mortgage, pledge, hypothecation, encumbrance, transfer, sublease, license, permit, or assignment (hereinafter in this clause referred to collectively as “**Encumbrance**”) of Tenant’s interest in the Premises, or any part or portion thereof without the prior written approval of County is prohibited. All Encumbrances are subject to County’s review and approval, including those Encumbrances that result in providing for the uses permitted in Clause 3 (USE) above. County approval is subject to negotiation by the Parties and may result in additional charges for Rent and/or Percentage Rent as those terms are defined and used in Clause 9 (RENT AND GROSS RECEIPTS) and/or Clause 13 (RENT ADJUSTMENT), above. County may reasonably withhold such approval.

Should County consent to any Encumbrance, such consent shall not constitute a waiver of any of the terms, covenants, or conditions of this Lease or be construed as County's consent to any further Encumbrance. Such terms, covenants or conditions shall apply to each and every Encumbrance hereunder and shall be severally binding upon each and every party thereto. Any document to mortgage, pledge, hypothecate, encumber, transfer, sublet, or assign the Premises or any part thereof shall not be inconsistent with the provisions of this Lease and in the event of any such inconsistency, the provisions of this Lease shall control.

Tenant may, with prior notice, engage the services of a professional management company and such employment shall not be construed to be an assignment or transfer of the Lease. Any license, sublease, permit, etc. issued by Tenant shall be consistent with and subject to the terms and conditions of this Lease and shall be subject to review and approval by the County, whose approval shall not be unreasonably withheld. Each license, sublease, permit, etc. issued by Tenant shall require adequate insurance, as determined by the County, with the County of Orange named as additional insured, and shall indemnify the County of Orange, its elected officials, agents, officers, and employees.

31. TAXABLE POSSESSORY INTEREST ASSESSMENTS (3.7 SR)

Should this Lease create any possessory interest, which is subject to the payment of taxes levied on such interest, it is understood and agreed that all assessments associated with said taxable possessory interest shall be the full responsibility of the Tenant, and Tenant shall cause said assessments to be paid promptly.

32. ESTOPPEL CERTIFICATE (3.8 SR)

Tenant shall furnish upon receipt of a written request from County an estoppel certificate on County's standard form *Estoppel Certificate* containing information as to the current status of the Lease. Said standard form *Estoppel Certificate* shall be completed by Tenant in a timely manner. The *Estoppel Certificate* shall be approved by Chief Real Estate Officer and County Counsel.

33. DEFAULTS AND REMEDIES (3.9 SR)

Tenant Default: Tenant shall be deemed in default of this Lease if: a) in the event of any monetary breach of this Lease by Tenant, County shall notify Tenant in writing of such breach, and Tenant shall have five (5) days from confirmation of receipt of such notice in which to cure said breach (confirmation may be sent electronically) Note, if Tenant fixes said monetary breach via USPS or other "snail mail" process, said cure will be accepted on the date that money is sent, not received; or b) in the event of any non-monetary breach of this Lease, Tenant fails within twenty (20) days after Tenant confirms receipt of said written default notice (which confirmation may be sent electronically) specifying wherein such obligation of Tenant has not been performed; provided however, that if the nature of Tenant's obligation is such that more than twenty (20) days after such notice are reasonably required for its performance, then Tenant shall not be in breach of this Lease if performance is commenced as soon as reasonably possible within such fifteen (15) day period and thereafter diligently pursued to completion (each, a "**Tenant Default**").

County Default: County shall be deemed in breach of this Lease if: a) in the event of any monetary breach of this Lease by County, Tenant shall notify County in writing of such breach, and County shall have ten (10) days from such notice in which to cure said breach or b) in the event of any non-monetary breach of this Lease, County fails within twenty (20) days after receipt by County of written notice specifying wherein such obligation of County has not been performed; provided however, that if the nature of County's obligation is such that more than twenty (20) days after such notice are reasonably required for its performance, then County shall not be in breach of this Lease if performance is commenced as soon as reasonably possible within such fifteen (15) day period and thereafter diligently pursued to completion (each, a "**County Default**").

Tenant Remedies: Tenant's sole remedy for a County Default shall be against the County's interest in the Premises (including, without limitation, proceeds from the sale of the Premises, condemnation awards to which County is entitled under the terms of the Lease and proceeds from insurance policies that County maintains under the Lease) and includes only the right to damages and/or injunctive relief (collectively, "**Tenant Remedies**"), and in no event shall Tenant have the right to terminate this Lease or to rent abatement hereunder.

County Remedies: If the Tenant Default is a result of a monetary breach by Tenant in the payment of the Rent or Percentage Rent, pursuant to Clause 9 (RENT AND GROSS RECEIPTS), County may, at the County's sole discretion, a) declare all Rent payments to the end of Tenant's current fiscal year to be due, including any delinquent rent from prior budget years or b) terminate the Lease. County's remedies as the result of Tenant Default for monetary or non-monetary breach

shall be the right to damages, injunctive relief, and/or any other rights at law or in equity. No delay or omission of County to exercise any right or remedy shall be construed as a waiver of such right or remedy or of any Tenant Default hereunder.

34. LABOR CODE COMPLIANCE (4.0 SR)

Tenant acknowledges and agrees that any and all improvements or modifications required to be performed by Tenant at the request of County shall be governed by, and performed in accordance with, the provisions of Article 2 of Chapter 1, Part 7, Division 2 of the Labor Code of the State of California (Sections 1770, et seq.), as applicable. These provisions may be applicable to improvements or modifications costing more than \$1,000, unless an exception applies, including but not limited to the exception to the definition of public works under § 1720.2.

Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the Orange County Board of Supervisors has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality applicable to this Lease for each craft, classification, or type of workman needed to execute the aforesaid improvements or modifications from the Director of the State Department of Industrial Relations. Copies of said prevailing wage rates may be obtained from the State of California, Department of Industrial Relations or Chief Real Estate Officer.

Tenant hereby agrees to pay or cause its contractors and/or subcontractors to pay said prevailing wage rates at all times for all improvements or modifications to be completed for Tenant within the Premises, and Tenant herein agrees that Tenant shall post, or cause to be posted, a copy of the most current, applicable prevailing wage rates at the site where the improvements or modifications are performed.

Prior to commencement of any improvements or modifications, Tenant shall provide Director of OC Parks with the applicable certified payroll records for all workers that will be assigned to the improvements or modifications. Said payroll records shall contain, but not be limited to, the complete name, address, telephone number, social security number, job classification, and prevailing wage rate for each worker. Tenant shall provide Director of OC Parks, bi-weekly updated, certified payroll records for all workers that include, but not be limited to, the weekly hours worked, prevailing hourly wage rates, and total wages paid.

If Tenant fails to comply with this clause, such occurrence may constitute an event of default of this Lease and County may, notwithstanding any other termination provisions contained herein:

- A. Terminate this Lease upon written notice to Tenant; or
- B. At County's sole option, County may deduct from Tenant's Security Deposit, as a penalty for such non-compliance of paying prevailing wage, which Security Deposit deduction would be County's estimate, in its sole discretion, of such prevailing wage rates not paid by Tenant.

Except as expressly set forth in this Lease, nothing herein is intended to grant authority for Tenant to perform improvements or modifications on space currently leased by County or for which County has entered into a lease or lease amendment.

35. RIGHT TO WORK AND MINIMUM WAGE LAWS (4.1 SR)

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

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

Tenant shall comply and verify that its contractors comply with all other Federal and State of California laws for minimum wage, overtime pay, record keeping, and child labor standards pursuant to the servicing of the Premises or terms and conditions of this Lease.

Notwithstanding the minimum wage requirements provided for in this clause, Tenant, where applicable, shall comply with the prevailing wage and related requirements, as provided for in Clause 34 (LABOR CODE COMPLIANCE) of this Lease.

36. SIGNAGE (4.2 SR)

Subject to prior review and approval by County, Tenant may install and maintain signs or displays on the Premises. Such signage must comply with all applicable laws and zoning and site plan requirements. Unapproved signs, awnings, banners, flags, etc., may be removed by County without prior notice to Tenant.

37. AUTHORITY (4.3 SR)

The persons executing this Lease on behalf of County or Tenant warrant that they have the power and authority to bind County or Tenant to this Lease.

38. LEASE ORGANIZATION (4.4 SR)

The various headings in this Lease, the numbers thereof, and the organization of the Lease into separate sections and paragraphs are for purposes of convenience only and shall not be considered otherwise.

39. SUCCESSORS IN INTEREST (4.5 SR)

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

40. AMENDMENTS (4.6 SR)

This Lease sets forth the entire agreement between Tenant and County and any modification must be in the form of a written amendment.

41. PARTIAL INVALIDITY (4.7 SR)

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

42. WAIVER OF RIGHTS (4.8 SR)

The failure of Tenant or County to insist upon strict performance of any of the terms, conditions, and covenants in this Lease shall not be deemed a waiver of any right or remedy that Tenant or County may have, and shall not be deemed a waiver of any right or remedy for a subsequent breach or default of the terms, conditions, and covenants herein contained. Any waiver, in order to be effective, must be signed by the Party whose right or remedy is being waived.

43. HOLDING OVER (4.9 SR)

In the event Tenant shall continue in possession of the Premises after the term of this Lease, such possession shall not be considered a renewal of this Lease but a tenancy from month to month and shall be governed by the conditions and covenants contained in this Lease, EXCEPT that monthly Rent shall be equal to one hundred and fifty percent (150%) of the Rent due during the last month of the Term or Extension Term.

44. EARTHQUAKE SAFETY (5.0 SR)

Tenant accepts the Premises “as is” and “where is” and County offers no warranties or representations whatsoever that the Premises is or has been in compliance with applicable seismic safety regulations and building codes at the time of construction. All such seismic, safety and building regulation compliance is the responsibility of the Tenant.

45. QUIET ENJOYMENT (5.1 SR)

County agrees that, subject to the terms, covenants and conditions of this Lease, Tenant may, upon observing and complying with all terms, covenants and conditions of this Lease, peaceably and quietly occupy the Premises.

46. GOVERNING LAW AND VENUE (5.2 SR)

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 to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure section 394.

47. ATTORNEYS' FEES (5.3 SA)

In the event of a dispute between Tenant and County concerning claims arising out of this Lease,

or in any action or proceeding brought to enforce or interpret any provision of this Lease or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorneys' fees and costs.

48. TIME OF ESSENCE (5.4 SR)

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

49. INSPECTION OF PREMISES BY A CERTIFIED ACCESS SPECIALIST (5.5 SR)

A Certified Access Specialist (“CASp”) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The Parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises.

Pursuant to California Civil Code 1938, County hereby represents that the Premises has not undergone an inspection by a certified access specialist and no representations are made with respect to compliance with accessibility standards. If it is determined during this tenancy that a violation of handicapped access laws (including the Americans with Disabilities Act) exists at the Premises, Tenant shall correct such non-compliance at Tenant's cost.

50. FORCE MAJEURE (5.6 SR)

For purposes of this Lease, the term “**Force Majeure**” means any of the following events which are beyond the control of either Party: act of God, unavailability of equipment or materials (but only if such equipment and materials were ordered in a timely fashion), enemy or terrorist act, act of war, riot or civil commotion, strike, lockout or other labor disturbance, fire, earthquake, explosion, governmental delays (including nonstandard delays in issuance of any permit or other necessary governmental approval or the scheduling of any inspections or tests), nonstandard delays by third party utility providers, or any other matter of any kind or character beyond the reasonable control of the Party delayed or failing to perform under this Lease despite such Party's best efforts to fulfill the obligation. “**Best Efforts**” includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. Force Majeure shall not include inability to obtain financing or other lack of funds. Tenant and County shall be excused for the period of any delay in the performance of any obligation hereunder when such delay is occasioned by causes beyond its control.

51. CONDEMNATION (5.7 SR)

If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively, “**Condemnation**”), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If all or a material portion of the rentable area of the Premises are taken by Condemnation, Tenant may, at Tenant's option, to be exercised in writing within ten (10) days

after County shall have given Tenant written notice of such taking (or in the absence of such notice, within ten (10) days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. County shall also have the right to terminate this Lease if there is a taking by Condemnation of any portion of the building or property which would have a material adverse effect on County's ability to profitably operate the remainder of the building. If neither Party terminates this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of County, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken or for severance damages. Tenant hereby waives any and all rights it might otherwise have pursuant to Section 1265.130 of the California Code of Civil Procedure, or any similar or successor Laws.

52. CONSENT OR APPROVAL (5.8 SR)

Unless expressly stated otherwise, where the consent or approval of a Party is required, such consent or approval will not be unreasonably withheld, conditioned or delayed.

53. UNENFORCEABLE PROVISIONS (5.9 SR)

If any paragraph or clause hereof shall be determined illegal, invalid or unenforceable, it is the express intention of the Parties hereto that the remainder of the Lease shall not be affected thereby, and it is also the express intentions of the Parties hereto that in lieu of each paragraph or clause of this Lease which may be determined to be illegal, invalid or unenforceable, there may be added as a part of this Lease a paragraph or clause as similar in terms to such illegal or invalid or unenforceable paragraph or clause as may be possible and may be legal, valid and enforceable.

54. CONTROL OF HOURS, PROCEDURES, AND PRICES (6.0 SR)

Tenant 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.

Tenant agrees that when alternate forms of packaging are available, only items packaged in a manner most compatible with the goals of reducing litter and preserving the environment shall be sold. Sale of beverages in pop-top cans or in non-returnable metal or glass containers shall not be permitted. Recyclable, push-top type beverage containers may be permitted subject to approval by the Director of OC Parks.

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

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.

Tenant agrees that he will operate and manage the services and facilities offered in a competent and efficient manner at least comparable to other well managed operations of similar type.

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

Tenant shall require its attendants and employees to be properly dressed, clean, courteous, efficient, and neat in appearance at all times. Tenant shall not employ any person(s) in or about the Premises who shall use offensive language or act in a loud, boisterous, or otherwise improper manner.

Tenant shall maintain a close check over attendants and employees to insure the maintenance of a high standard of service to the public. Tenant shall replace any employee whose conduct is detrimental to the best interests of the public.

Tenant's failure to comply with the provisions of this clause shall constitute a Tenant Default of this Lease and County may immediately terminate this Lease.

55. LIMITATION OF THE LEASEHOLD (6.1 SR)

This Lease and the rights and privileges granted Tenant in and to the Premises are subject to all covenants, conditions, restrictions, and exceptions of record or apparent. Nothing contained in this Lease or in any document related hereto shall be construed to imply the conveyance to Tenant of rights in the Premises which exceed those owned by County, or any representation or warranty, either express or implied, relating to the nature or condition of the Premises or County's interest therein. Tenant has accepted the Premises in its "as is" / "where is" condition.

56. PERMITS AND LICENSES (6.2 SR)

Tenant 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, including those otherwise required by the County. No permit, approval, or consent given hereunder by County, in its governmental capacity, shall affect or limit Tenant'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.

57. PAYMENT CARD COMPLIANCE (6.3 SR)

Should Tenant conduct credit/debit card transactions in conjunction with their business with the County, on behalf of the County, or as part of the business that they conduct, Tenant covenants and warrants that it is currently Payment Card Industry Data Security Standard ("PCI DSS") and Payment Application Data Security Standard ("PA DSS") compliant and will remain compliant during the entire duration of this Lease. Tenant agrees to immediately notify County in the event Tenant should ever become non-compliant, and will take all necessary steps to return to compliance and shall be compliant within ten (10) days of the commencement of any such interruption.

58. NONDISCRIMINATION (6.4 SR)

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

59. CONDITION OF PREMISES UPON TERMINATION (6.5 SR)

Except as otherwise agreed to herein or in subsequent approval in writing by County, upon termination of this Lease, Tenant shall re-deliver possession of said Premises to County in substantially the same condition that existed immediately prior to Tenant's entry thereon, reasonable wear and tear, flood, earthquakes, war, and any act of war, excepted. It is agreed that any Tenant Improvement on the Premises may be considered the personal property of County at County's sole discretion. Upon termination, County will notify Tenant if any such Tenant Improvements need to be removed at Tenant's sole cost and expense, including but not limited to any containers placed within the Premises for Tenant's use. References to the "termination of the Lease" in this Lease shall include termination by reason of the expiration of the lease term.

60. DISPOSITION OF ABANDONED PERSONAL PROPERTY (6.6 SR)

If Tenant abandons or quits the Premises or is dispossessed thereof by process of law or otherwise, title to any personal property belonging to and left on the Premises fifteen (15) days after such event shall, at County's option, be deemed to have been transferred to County. County shall have the right to remove and to dispose of such property without liability therefor to Tenant or to any person claiming under Tenant, and shall have no need to account therefor.

61. QUITCLAIM OF TENANT'S INTEREST UPON TERMINATION (6.7 SR)

Upon termination of this Lease for any reason, including but not limited to termination because of Tenant Default, Tenant shall execute, acknowledge, and deliver to County, within thirty (30) days after receipt of written demand therefor, a good and sufficient deed whereby all right, title, and interest of Tenant in the Premises is quitclaimed to County. Should Tenant fail or refuse to deliver the required deed to County, County may prepare and record a notice reciting the failure of Tenant to execute, acknowledge, and deliver such deed and said notice shall be conclusive evidence of the termination of this Lease and of all rights of Tenant or those claiming under Tenant in and to the Premises.

62. PUBLIC RECORDS (6.8 SR)

Any and all written information submitted to and/or obtained by County from Tenant or any other person or entity having to do with or related to this Lease and/or the Premises, either pursuant to this Lease or otherwise, at the option of County, may be treated as a public record open to inspection by the public pursuant to the California Records Act (Government Code Section 6250, et seq.) as now in force or hereafter amended, or any Act in substitution thereof, or otherwise made available to the public and Tenant hereby waives, for itself, its agents, employees, subtenants, and any person claiming by, through or under Tenant, any right or claim that any such information is not a public record or that the same is a trade secret or confidential information and hereby agrees to indemnify and hold County harmless from any and all claims, demands, liabilities, and/or obligations arising out of or resulting from a claim by Tenant or any third party that such

information is a trade secret, or confidential, or not subject to inspection by the public, including without limitation reasonable attorneys' fees and costs.

63. RELATIONSHIP OF PARTIES (6.9 SR)

The relationship of the Parties hereto is that of County as lessor and Tenant, and it is expressly understood and agreed that County does not in any way or for any purpose become a partner of or a joint venturer with Tenant in the conduct of Tenant's business or otherwise, and the provisions of this Lease and the agreements relating to rent payable hereunder are included solely for the purpose of providing a method by which rental payments are to be measured and ascertained.

64. NO BROKERS USED (7.0 SR)

Neither Party has employed any broker or finder or incurred any liability for any brokerage fee, commission, finder's fee, or reimbursement expenses in connection with the transactions contemplated by this Lease.

65. NOTICES (7.1 SR)

All written notices pursuant to this Lease shall be addressed as set forth below or as either Party may hereafter designate by written notice and shall be deemed received upon personal delivery, delivery by facsimile machine, electronic mail, or seventy-two (72) hours after deposit in the United States Mail.

To: Tenant

10th Hole Associates, Inc.
c/o Laguna Beach Golf and Bungalow
Village, LLC
31106 Coast Highway
Laguna Beach, CA 92651
Attn: Kurt Bjorkman

To: County

County of Orange
OC Parks
13042 Old Myford Road
Irvine, CA 92602
Attn: Director

With a copy to:

County Executive Office
333 W. Santa Ana Boulevard, 3rd Floor
Santa Ana, CA 92701
Attention: Thomas A. Miller, Chief Real
Estate Officer

Certificate of Insurance/Other Insurance:
Certificate of Insurance or other insurance
related correspondence shall be mailed or
emailed as below:

Project: BE74Q-151
Location: Salt Creek Concession Lease

Email: insurance.ceore@ocgov.com

Mail: County of Orange
 CEO/Real Estate
 601 N. Ross St., 2nd Floor
 Santa Ana, CA 92701

66. ATTACHMENTS TO LEASE (7.2 SR)

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

I. EXHIBITS

- Exhibit A - Description of Premises
- Exhibit B - Depiction of Premises
- Exhibit C - Event Lawn
- Exhibit D - Reserved Parking Space Location Map
- Exhibit E - Best Management Practices
- Exhibit F – Intentionally Omitted
- Exhibit G - County Resolution for Beer, Wine & Liquor
- Exhibit H - City of Dana Point Codified Ordinance

67. COST OF TENANT IMPROVEMENTS (N)

Tenant shall provide County with invoices for the Tenant Improvement costs (“**Improvement Invoices**”). Said Improvement Invoices shall include materials, labor and contractor profit as well as all interior, exterior, FF&E, and landscape costs. The Improvement Invoices shall be signed by the Tenant and the contractor and submitted to County within thirty (30) days of Tenant obtaining a Certificate of Occupancy or project completion letter, whichever is applicable, from the City of Dana Point.

68. SOUND PERMEATED FROM PREMISES (N)

Tenant is allowed to play recorded and/or live music on and within the Concession Building, Patio Area, and Event Lawn and shall maintain sound from the Premises within City of Dana Point Codified Ordinances, attached hereto and by this reference made a part hereof as Exhibit H, as well as any applicable City regulations. Tenant shall ensure that any and all amplified sound and/or music from the Premises will end no later than 10:00 p.m. daily. Tenant shall assume all responsibility whatsoever for live or recorded music, including but not limited to copyright or licensing requirements associated with said music.

If there is a conflict between the City of Dana Point Codified Ordinances and this Lease agreement, regarding permitted sound levels, the City of Dana Point Codified Ordinance shall prevail.

Tenant is required to hire a third-party sound engineer as approved by County, and at Tenant’s sole cost and expense to monitor and adjust sound levels during Special Events that include two hundred (200) or more people with music, as required to prevent sound from disturbing adjacent

communities. Tenant will provide sound engineer contact information to County at least forty-eight (48) hours prior to concert events.

Additionally, Prior to only those Special Event which will produce amplified sound, Tenant will submit for review to County through its Director of OC Parks, a generic stage layout plan indicating stage positioning and speaker location and placement of all sound equipment. Said plan and actual site layout must be in accordance with County Permit conditions.

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

APPROVED AS TO FORM:

OFFICE OF COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA

By:  _____
Deputy

Digitally signed by Michael A. Haubert
DN: cn=Michael A. Haubert, o=County
of Orange, ou=County Counsel,
email=michael.haubert@coco.ocgov.c
om, c=US
Date: 2022.02.15 14:46:53 -08'00'

TENANT

10th Hole Associates, Inc.
A California corporation

By:  _____
Mark Chrissy, President

Date: 2-8-22

By:  _____
Secretary

Date: 2-8-22

COUNTY

COUNTY OF ORANGE

Thomas A. Miller, Chief Real Estate Officer
Orange County, California

EXHIBIT A**LEGAL DESCRIPTION**

SALT CREEK BEACH PARK
Facility No.: BE74Q

Parcel No.: 159

That certain portion of land in the City of Dana Point, County of Orange, State of California, over Lot 47 of Tract No. 12674 per map filed in Book 581, Pages 41 through 46 of Miscellaneous Maps and over Parcel No. GA 1018-8.03 described in Grant Deed recorded March 27, 1972 per Book 10052, Page 738, both of Official Records in the office of the County Recorder of said County, described as follows:

COMMENCING at the most northerly corner of Parcel No. 4, per map filed in Book 40, Pages 19 through 24 of Parcel Maps in said Office of the County Recorder, thence southeasterly along the northeasterly boundary of said Parcel South 43°05'32" East 157.24 feet to the **TRUE POINT OF BEGINNING**; thence leaving said boundary South 51°06'06" West 83.38 feet; thence South 48°00'00" East 150.00 feet; thence North 45°00'00" East 23.00 feet; thence North 25°00'00" West 55.00 feet; thence North 38°00'00" East 43.00 feet; thence North 45°00'00" West 83.00 feet; thence South 51°06'06" West 9.49 feet to the **TRUE POINT OF BEGINNING**.

Containing 0.229 Acres, more or less.

Parcel No.: 160

That certain portion of land in the City of Dana Point, County of Orange, State of California, over Parcels No. GA 1018-6.01 and GA 1018-10.02 described in Grant Deed recorded March 27, 1972 in Book 10052, Page 738 of Official Records in the office of the County Recorder of said County, described as follows:

Beginning at the northerly terminus of that line shown as "N38°56'33"W 300.15' " along the generally easterly boundary of Parcel No. 5, per map filed in Book 40, Pages 19 through 24 of Parcel Maps in said Office of the County Recorder, thence southeasterly along said boundary the following two courses -

- 1) South 38°56'33" East 300.15 feet, and
- 2) South 19°28'53" East 35.00 feet;

thence leaving said boundary South 62°00'36" West 22.02 feet; thence South 05°00'00" East 50.00 feet; thence South 82°00'00" West 18.00 feet; thence North 05°00'00" West 49.00 feet; thence South 84°00'00" West 29.00 feet; thence South 06°00'00" East 70.00 feet; thence South 70°56'36" West 105.81 feet; thence North 19°28'53" West 379.93 feet; thence North 71°00'00" East 90.00 feet to the point of beginning.

Containing 1.243 Acres, more or less.

See EXHIBIT B attached hereto and by this reference made a part hereof.

APPROVED
Kevin Hills, County Surveyor, L. S. 6617


By: Raymond J. Rivera, L. S. 8324

Date: November 19, 2021



EXHIBIT B

DEPICTION OF PREMISES



EXHIBIT C
EVENT LAWN



EXHIBIT D

RESERVED PARKING SPACE LOCATION MAP



EXHIBIT E

Best Management Practices ("BMPs" Fact Sheets)

Tenant shall be responsible for implementing and complying with all BMP Fact Sheet requirements that apply to this Tenant's operations. Tenant is to be aware that the BMP clause within this Lease, along with all related BMP Exhibits, may be revised, and may incorporate more than what is initially being presented in this Lease.

Suggested BMPs Fact Sheets may include, but may not be limited to, the following list shown below and can be found at: <http://ocwatersheds.com/documents/bmp> (website may change from time to time):

- IC3 Building Maintenance IC4 Carpet Cleaning
- IC5 Concrete & Asphalt Production, Application, & Cutting IC6 Contaminated or Erodible Surface Areas
- IC7 Landscape Maintenance
- IC9 Outdoor Drainage from Indoor Areas IC10 Outdoor Loading/Unloading of Materials
- IC11 Outdoor Process Equipment Operations & Maintenance IC12 Outdoor Storage of Raw Materials, Products, & Containers IC13 Over Water Activities
- IC14 Painting, Finishing, & Coatings of Vehicles, Boats, Buildings, & Equipment IC15 Parking & Storage Area Maintenance
- IC17 Spill Prevention & Cleanup IC21 Waste Handling & Disposal
- IC22 Eating & Drinking Establishments IC23 Fire Sprinkler Testing/Maintenance IC24 Wastewater Disposal Guidelines

EXHIBIT F

OMITTED

EXHIBIT G

County Resolution for Beer, Wine & Liquor

RESOLUTION OF THE BOARD OF SUPERVISORS OF ORANGE COUNTY, CALIFORNIA

Date: _____

WHEREAS, Orange County Codified Ordinance 2-5-35 prohibits possession or consumption of alcoholic beverages at County recreational facilities unless authorized by Board of Supervisors (“Board”) Resolution or at County-implemented events approved by the OC Parks Director; and

WHEREAS, a Concession Lease Agreement (“Lease”) has been negotiated with 10th HOLE ASSOCIATES, INC. to operate and maintain the concession building (“Concession”) at Salt Creek Beach; and

“WHEREAS, the proposed Lease includes the sale and consumption of alcoholic beverages, including beer, wine and liquor in those areas and during those times designated within the Lease; and
WHEREAS, the proposed Lease limits the sale of alcohol to certain operating hours; and

WHEREAS, Salt Creek Beach is not a location currently authorized by the Board for alcoholic beverage service; and

WHEREAS, the Board has authorized alcoholic beverage service at County recreational facilities in conjunction with approved leases.

NOW, THEREFORE, BE IT RESOLVED that this Board does hereby:

Authorize alcoholic beverage service at the Salt Creek Beach Concession pursuant to the terms of the Concession Lease Agreement with 10th HOLE ASSOCIATES, INC.

Resolution No.____, Item No.____ (to be assigned by Clerk of the Board)

EXHIBIT H

City of Dana Point Codified Ordinance

Chapter 11.10 NOISE CONTROL

11.10.002 Declaration of Policy.

In order to control unnecessary, excessive and annoying sounds in residential areas within the City, it is hereby declared to be the policy of the City to prohibit such sounds generated from all sources as specified in this Chapter.

It is determined that certain sound levels are detrimental to the public health, welfare and safety, and contrary to public interest. (Added by Ord. 92-11, 11/24/92)

11.10.004 Definitions.

The following words, phrases and terms as used in this chapter shall have the meaning as indicated below:

“Ambient noise level” means the all encompassing noise level associated with a given environment, being a composite of sounds from all sources, excluding the alleged offensive noise, at the location and approximate time at which a comparison with the alleged offensive noise is to be made.

“Cumulative period” means an additive period of time composed of individual time segments which may be continuous or interrupted.

“Decibel (dB)” means a unit which denotes the ratio between two (2) quantities which are proportional to power: the number of decibels corresponding to the ratio of two (2) amounts of power is ten (10) times the logarithm to the base ten (10) of this ratio.

“Dwelling unit” means a single unit providing complete, independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation.

“Emergency machinery, vehicle or work” means any machinery, vehicle or work used, employed or performed in an effort to protect, provide or restore safe conditions in the community or for the citizenry, or work by private or public utilities when resorting utility service.

“Fixed noise source” means a stationary device which creates sounds while fixed or motionless, including but not limited to industrial and commercial machinery and equipment, pumps, fans, compressors, generators, air conditioners and refrigeration equipment.

“Grading” means any excavating or filling of earth, material, or any combination thereof, conducted at a site to prepare said site for construction or other improvements thereon.

“Impact noise” means the noise produced by the collision of one mass in motion with a second mass which may be either in motion or at rest.

“Mobile noise source” means any noise source other than a fixed noise source.

“Noise level” means the “A” weighted sound pressure level in decibels obtained by using a sound level meter at slow response with a reference pressure of twenty (20) microNewtons per square meter. The unit of measure shall be designated as dB(A).

“Person” means a person, firm, association, copartnership, joint venture, corporation or any entity, public or private in nature.

“Residential property” means a parcel of real property which is developed and used either in part or in whole for residential purposes, other than transient uses such as hotels and motels.

“Simple tone noise” means a noise characterized by a predominant frequency or frequencies so that other frequencies cannot be readily distinguished.

“Sound level meter” means an instrument meeting American National Standard Institute’s Standard S.4-1971 for Type 1 or Type 2 sound level meters or an instrument and the associated recording and analyzing equipment which will provide equivalent data.

“Sound pressure level” of a sound, in decibels, means twenty (20) times the logarithm to the base ten (10) of the ratio of the pressure of the sound to a reference pressure, which reference pressure shall be explicitly stated. (Added by Ord. 92-11, 11/24/92)

11.10.006 Noise Level Measurement Criteria.

Any noise level measurements made pursuant to the provisions of this Chapter shall be performed using a sound level meter as defined in Section 11.10.004. (Added by Ord. 92-11, 11/24/92)

11.10.008 Designated Noise Zone.

The entire City is hereby designated as “Noise Zone 1.” (Added by Ord. 92-11, 11/24/92)

11.10.010 Exterior Noise Standards.

(a) The following noise standards, unless otherwise specifically indicated, shall apply to all or any sound or noise which is received on residential property occupied by another person within a designated noise zone:

NOISE STANDARDS

Noise Zone	Noise Level	Time Period
1	55 dB(A)	7:00 a.m.—10:00 p.m.
	50 dB(A)	10:00 p.m.—7:00 a.m.

In the event the alleged offensive noise consists entirely of impact noise, simple tone noise, speech, music, or any combination thereof, each of the above noise levels shall be reduced by five (5) dB(A).

(b) It is unlawful for any person at any location within the City to create any noise, or to allow the creation of any noise on property owned, leased, occupied, or otherwise controlled by such person, when the foregoing causes the noise level, when measured on any residential property, to exceed:

- (1) The noise standard for a cumulative period of more than thirty (30) minutes in any hour; or
- (2) The noise standard plus five (5) dB(A) for a cumulative period of more than fifteen (15) minutes in any hour; or
- (3) The noise standard plus ten (10) dB(A) for a cumulative period of more than five (5) minutes in any hour; or
- (4) The noise standard plus fifteen (15) dB(A) for a cumulative period of more than one minute in any hour; or
- (5) The noise standard plus twenty (20) dB(A) for any period of time.

(c) In the event the ambient noise level exceeds any of the first four (4) noise limit categories above, the cumulative period applicable to said category shall be increased to reflect said ambient noise level. In the event the ambient noise level exceeds the fifth noise limit category, the maximum allowable noise level under said category shall be increased to reflect the maximum ambient noise level. (Added by Ord. 92-11, 11/24/92)

11.10.012 Interior Noise Standards.

(a) The following interior noise standards, unless otherwise specifically indicated, shall apply to any sound or noise which is received on residential property occupied by another person within a designated noise zone:

INTERIOR NOISE LEVEL

Noise Zone	Noise Level	Time Period
1	55 dB(A)	7:00 a.m.—10:00 p.m.
	45 dB(A)	10:00 p.m.—7:00 a.m.

In the event the alleged offensive noise consists entirely of impact noise, simple tone noise, speech, music, or any combination thereof, each of the above noise levels shall be reduced by five (5) dB(A).

(b) It is unlawful for any person at any location within the City to create any noise, or to allow the creation of any noise on property owned, leased, occupied, or otherwise controlled by such person, when the foregoing causes the noise level, when measured within any dwelling unit on any residential property, to exceed:

- (1) The interior noise standard for a cumulative period of more than five (5) minutes in any hour; or
- (2) The interior noise standard plus five (5) dB(A) for a cumulative period of more than one minute in any hour;

or

- (3) The interior noise standard plus ten (10) dB(A) for any period of time.

(c) In the event the ambient noise level exceeds either of the first two (2) noise limit categories above, the cumulative period applicable to said category shall be increased to reflect said ambient noise level. In the event the ambient noise level exceeds the third noise limit category, the maximum allowable noise level under said category shall be increased to reflect the maximum ambient noise level. (Added by Ord. 92-11, 11/24/92)

11.10.014 Special Provisions.

The following activities shall be exempted from the provisions of this Chapter:

- (a) Activities conducted on the grounds of any public or private nursery, elementary, intermediate or secondary school or college;
- (b) Outdoor gatherings, public dances and shows; provided said events are conducted pursuant to a license or permit duly issued by the City;
- (c) Activities conducted on any park or playground, provided such park or playground is owned and operated by a public entity;
- (d) Any mechanical device, apparatus or equipment used, related to or connected with emergency machinery, vehicle or work;
- (e) Noise sources associated with construction, repair, remodeling, or grading of any real property, provided said activities do not take place between the hours of 8:00 p.m. and 7:00 a.m. on weekdays, including Saturday, or at any time on Sunday or a Federal holiday, with the exception of work on Pacific Coast Highway between the San Juan Creek Bridge and Crystal Lantern which is defined in Subsection (k) of this Section;
- (f) All mechanical devices, apparatus or equipment which are utilized for the protection or salvage of agricultural crops during periods of potential or actual frost damage or other adverse weather conditions;
- (g) Mobile noise sources associated with agricultural operations, provided such operations do not take place between the hours of 8:00 p.m. and 7:00 a.m. on weekdays, including Saturday, or at any time on Sunday or a Federal holiday;
- (h) Mobile noise sources associated with agricultural pest control through pesticide application; provided, that the application is made in accordance with restricted material permits issued by or regulations enforced by the Agricultural Commissioner;
- (i) Noise sources associated with the maintenance of real property, provided said activities take place between 7:00 a.m. and 8:00 p.m. on any day except Sunday or a Federal holiday, or between the hours of 9:00 a.m. and 8:00 p.m. on Sunday or a Federal holiday;
- (j) Any activity to the extent regulation thereof has been preempted by State or Federal law;
- (k) Noise sources associated with the construction, street repairs, utility work, striping work, signal work, maintenance work including, but not limited to, landscape and tree maintenance, and any other noise generating activity related to construction or maintenance of Pacific Coast Highway between the San Juan Creek Bridge and Crystal Lantern, at any time. (Added by Ord. 92-11, 11/24/92; amended by Ord. 06-06, 8/23/06)

11.10.016 Schools, Hospitals and Churches—Special Provisions.

It is unlawful for any person to create any noise which causes the noise level at any school, hospital or church while the same is in use to exceed the noise limits as specified in Section 11.10.010 prescribed for the assigned noise zone in which the school, hospital or church is located, or which noise level unreasonably interferes with the use of such institutions or which unreasonably disturbs or annoys patients in the hospital, provided conspicuous signs are displayed in three (3) separate locations within one-tenth (1/10) of a mile of the institution indicating the presence of a school, church or hospital. (Added by Ord. 92-11, 11/24/92)

11.10.018 Violations—Misdemeanors.

Any person violating any of the provisions of this Chapter shall be deemed guilty of a misdemeanor in accordance with Section 1.01.200 of the Municipal Code. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such. In addition, a violation of this chapter is hereby declared to constitute a public nuisance, in accordance with Municipal Code Section 1.01.240. The provisions of this Chapter shall not be construed as permitting conduct not prescribed herein and shall not affect the enforceability of any other applicable provisions of law. (Added by Ord. 92-11, 11/24/92).