

11/2/12-14

CONCESSION CONTRACT

FOR

Fitness Opportunities

AT

Carlsbad State Beach

STATE OF CALIFORNIA – NATURAL RESOURCES AGENCY

DEPARTMENT OF PARKS AND RECREATION

CONCESSIONS AND RESERVATIONS DIVISION

1416 NINTH STREET, 14<sup>TH</sup> FLOOR

SACRAMENTO, CA 95814



FITNESS OPPORTUNITIES  
CONCESSION CONTRACT  
INDEX

|     |   |    |
|-----|---|----|
| 1.  | DESCRIPTION OF PREMISES .....                         | 2  |
| 2.  | CONDITION OF PREMISES.....                            | 2  |
| 3.  | TERM.....   | 2  |
| 4.  | RENT .....  | 3  |
| 5.  | USE OF PREMISES .....                                 | 5  |
| 6.  | LIABILITY WAIVER.....                                 | 6  |
| 7.  | BONDS .....   | 7  |
| 8.  | INSURANCE .....                                       | 8  |
| 9.  | ALCOHOLIC BEVERAGES .....                             | 10 |
| 10. | CONTRACT NOTICE.....                                  | 10 |
| 11. | RECORDS AND REPORTS .....                             | 11 |
| 12. | GROSS RECEIPTS .....                                  | 12 |
| 13. | RATES, CHARGES AND QUALITY OF GOODS AND SERVICES..... | 12 |
| 14. | PERFORMANCE EVALUATIONS AND INSPECTION.....           | 13 |
| 15. | HOLD HARMLESS AGREEMENT.....                          | 13 |
| 16. | TAXES .....   | 14 |
| 17. | MODIFICATIONS, ADDITIONS, TITLE TO IMPROVEMENTS.....  | 14 |
| 18. | PERSONAL PROPERTY .....                               | 15 |
| 19. | HOUSEKEEPING, MAINTENANCE, REPAIR AND REMOVAL .....   | 16 |
| 20. | UTILITIES AND SERVICES.....                           | 17 |
| 21. | RESOURCE CONSERVATION .....                           | 17 |
| 22. | HAZARDOUS SUBSTANCES .....                            | 19 |
| 23. | EQUIPMENT.....  | 20 |
| 24. | SIGNS AND ADVERTISING .....                           | 20 |
| 25. | PHOTOGRAPHY .....                                     | 21 |
| 26. | INTELLECTUAL PROPERTY RIGHTS.....                     | 21 |
| 27. | GRANT OF STATE'S TRADEMARK LICENSE .....              | 22 |
| 28. | PARTICIPATION IN STATE PARK MARKETING PROGRAMS.....   | 23 |
| 29. | DEFAULT BY CONCESSIONAIRE.....                        | 24 |

30. STATE'S REMEDIES.....25

31. DEFAULT BY STATE .....29

32. SURRENDER OF THE PREMISES; HOLDING OVER .....30

33. NO RECORDATION; QUITCLAIM.....31

34. ATTORNEY FEES .....31

35. EXPATRIATE CORPORATIONS.....31

36. COMPLIANCE WITH LAWS, RULES, REGULATIONS AND POLICIES.....32

37. NONDISCRIMINATION .....32

38. DISABILITIES ACCESS LAWS.....33

39. DRUG-FREE WORKPLACE.....34

40. NATIONAL LABOR RELATIONS BOARD CERTIFICATION.....34

41. CHILD SUPPORT COMPLIANCE ACT .....34

42. EMPLOYEE TRAINING .....35

43. CONFLICT OF INTEREST .....35

44. WAIVER OF CLAIMS.....35

45. WAIVER OF CONTRACT TERMS.....36

46. INTERPRETATION OF CONTRACT .....36

47. DURATION OF PUBLIC FACILITIES .....36

48. TIME OF ESSENCE .....36

49. EMINENT DOMAIN.....36

50. TEMPORARY TENANCY .....37

51. SECTION TITLES .....37

52. CONTRACT IN COUNTERPARTS.....37

53. INDEPENDENT CONTRACTOR .....37

54. ASSIGNMENTS AND SUBCONCESSIONS.....37

55. MODIFICATION OF CONTRACT .....38

56. UNENFORCEABLE PROVISION .....38

57. APPROVAL OF CONTRACT .....38

58. STATE'S DISTRICT SUPERINTENDENT.....38

EXHIBIT A – PREMISES .....41

EXHIBIT B – DPR 54, CONCESSIONAIRE’S MONTHLY REPORT OF OPERATION .43

EXHIBIT C –OPERATIONS PLAN .....45  
EXHIBIT D – WAIVER OF LIABILITY AND RELEASE .....47  
EXHIBIT E – DPR 86, CONCESSIONAIRE FINANCIAL STATEMENT .....48  
EXHIBIT F – DPR 531, CONCESSION PERFORMANCE RATING .....52  
EXHIBIT G – DRUG FREE WORKPLACE CERTIFICATION .....54  
EXHIBIT H – LICENSE/PERMISSION FOR USE OF TRADEMARKS .....55

STATE OF CALIFORNIA  
DEPARTMENT OF PARKS AND RECREATION

**CONCESSION CONTRACT**

For

**FITNESS OPPORTUNITIES**

Located In

Carlsbad State Beach

San Diego County, California

THIS CONTRACT is made and entered into by and between the STATE OF CALIFORNIA, acting through its Department of Parks and Recreation, hereinafter referred to as "State," and **Dennis O. Shay dba Carlsbad Village Athletic Clubs** of Carlsbad, California, hereinafter referred to as "Concessionaire";

**RECITALS**

**WHEREAS**, California Public Resources Code Section 5080.03 et seq. authorizes the Department of Parks and Recreation to enter into concession contracts for the operation of state park system lands and facilities and;

**WHEREAS**, it is appropriate that the following contract be entered into for the safety and convenience of the general public in the use and enjoyment of, and the overall enhancement of recreational and educational experience at units of the state park system;

**NOW, THEREFORE, IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:**

### 1. DESCRIPTION OF PREMISES

The State for and in consideration of the agreements hereinafter stated, grants to Concessionaire for the purposes stated herein, the right, privilege, and duty to develop, equip, operate, and maintain a nonexclusive concession in Carlsbad State Beach at the locations as set forth in **Exhibit A**, attached to and made a part of this Contract (the "Premises").

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

### 2. CONDITION OF PREMISES

The taking of possession of the Premises by the Concessionaire, in itself, shall constitute acknowledgment that the Premises are in good and sufficient condition for the purposes for which Concessionaire is entering into this Contract. Concessionaire agrees to accept Premises in their presently existing condition, "AS IS," and that the State shall not be obligated to make any alterations, additions, or betterments to the Premises except as otherwise provided for in this Contract.

### 3. TERM

The term of this Contract shall be for a period of Two (2) years, commencing on the first day of the month following approval by the California Department of General Services. Should Concessionaire hold-over after the expiration of the term of this Contract with the express or implied consent of the State, such holding-over shall be deemed to be a tenancy from month-to-month at the herein stated prescribed rent as set forth in this Contract in Section 32, Surrender of Premises; Holding Over, of this Contract, subject otherwise to all the terms and conditions of this Contract.

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

#### 4. RENT

Upon commencement of sales or services to the public, Concessionaire shall pay, without offset, deduction, prior notice, or demand, as "Minimum Annual Rent" the sum of One Thousand Nine Hundred Twenty Dollars (\$1,920) annually or ten percentage (10%) of gross receipts, whichever sum is greater.

Concessionaire shall make payment of Minimum Annual Rent and other payments to State in lawful money of the United States. However, if any payment made by a check, draft, or money order is returned to State due to insufficient funds or otherwise, State shall have the right, at any time after the return, upon written notice to Concessionaire, to require Concessionaire to make all subsequent payments in cash or by cashier's or certified check.

Beginning with the fifteenth (15<sup>th</sup>) day of the month following the execution of the contract, and on or before the fifteenth (15<sup>th</sup>) day of each month thereafter, Concessionaire shall furnish to State a verified statement of the concession's gross receipts for the preceding month. Such statement shall be submitted on Form DPR 54, Concessionaire's Monthly Report of Operation, attached hereto as **Exhibit B**, or in a format previously approved by the State, and shall specify the current period and cumulative total of gross receipts for the concession through the end of the preceding month for the then current Contract Year. Concessionaire shall also provide such statement for periods of non-operation. Concurrent with such monthly statement, the Concessionaire shall pay to State the appropriate rental fee based on the gross receipts for the preceding calendar month as prescribed above. Payments to State shall be made to the order of the Department of Parks and Recreation and delivered to the District Office identified herein below or at such other location as may from time to time be designated by State. If, at the end of the Contract Year, the total of monthly percentage rental payments made (or due) during that Contract Year is less than the

Minimum Annual Rent required for that Contract Year, the difference shall be remitted to State with the last monthly sales statement for the Contract Year. Payments must be received by State on or before the fifteenth (15<sup>th</sup>) day of the month as described above.

Any late payment shall constitute a breach of contract, giving rise to State's remedies as set forth below. Further, any late payment will be subject to a late penalty consisting of an administrative charge on the late amount, calculated at the rate of five percent (5%) of the amount of the late payment or portion thereof. The parties agree that the late charge represents a fair and reasonable estimate of the costs State will incur because of late payment. Acceptance of the late charge by State shall not constitute a waiver of Concessionaire's default for the overdue amount, nor prevent State from exercising the other rights and remedies granted under this Contract. Concessionaire shall pay the late charge as additional rent with the next monthly rent payment.

DS [Initials of concessionaire(s)]

Any amount due to State, if not paid within five (5) days following the due date, will bear interest from the due date until paid at the rate of ten percent (10%) per year. However, interest shall not be payable on late charges incurred by Concessionaire, nor on any amounts on which late charges are paid by Concessionaire. Payment of interest shall not excuse or cure any default by Concessionaire.

Upon written request by the Concessionaire to State demonstrating unusual or extenuating circumstances causing the late payment, the State, in its sole discretion, may waive the late charge. Further, in the event Concessionaire is prevented from carrying on the operations contemplated herein by reason of an Act of Nature or other reasons beyond Concessionaire's control, and when requested in writing in advance by Concessionaire, Minimum Rent may be abated in proportion to the amount by which gross receipts are reduced by the occurrence for such period of reduced or non-operation, as determined in the sole discretion of State.

If this Contract is terminated by State because of Concessionaire's default, and if Concessionaire becomes liable for any deficiency in rent and/or fees by way of damages or otherwise, or if at any time during the Contract term Concessionaire ceases to conduct in the Premises the business referred to herein below, then from and after the time of the breach causing this termination, or from and after the time of the



cessation of business, all unpaid rent and/or fees prior to the breach causing termination or cessation of business shall become due and payable. The amount due shall be deemed to be the greater of: (a) the Minimum Rent provided herein, or (b) an amount based upon the average of the payments that have accrued to State as percentage rent during the twenty-four (24) months preceding the termination or cessation of business, unless the termination or cessation occurs within three (3) years of the beginning of the Contract term, in which event the previous twelve (12) (or fewer, if applicable) months shall be used as the basis of this average.

## 5. USE OF PREMISES

The Premises at Tamarack and South Ponto shall be used by the Concessionaire for the operation of public outdoor non-aquatic fitness opportunities including yoga, Pilates, core training, personal trainer sessions, calisthenics, or activities such as "boot camps", mixed martial arts, or other non-aquatic fitness activity approved in advance by the State in writing. The Premises at Frazee shall be used by the Concessionaire for the operation of public outdoor non-aquatic fitness opportunities as described above *plus* volleyball. Concessionaire may utilize the existing number of courts at Frazee while always ensuring that one court is open for free public use.

The concessionaire may also sell activity related goods such as fitness apparel, nutritious snacks, beverages, replacement gels, and other sundry items.

Concessionaires shall haul in, set up, take down, and haul away any necessary equipment to support fitness activities at the beginning and end of each day's session with the exception of Frazee volley ball nets which could be removed at the end of each session or day.

Concessionaire shall provide evidence and maintain current certificates in 1<sup>st</sup> aid, CPR, and have a mobile phone programmed to State Park Dispatch (SURCOM) in the event of an emergency.

Concessionaire shall ensure a class ratio of no more than one (1) 1<sup>st</sup> aid/CPR certified instructor to twenty (20) participants for 18 and older, and one (1) 1<sup>st</sup> aid/CPR certified instructor to ten (10) participants, for age groups under 18.

Security: Concessionaire will require all concession employees and volunteers in positions of special trust as determined at the sole discretion of the District Superintendent or designee to undergo a background check, including references and fingerprints, to ensure that the individual has an acceptable record as a law-abiding citizen. The background check may be similar to the California Department of Justice's Live-Scan Program. Concessionaire shall be responsible for covering all costs associated with said background checks. Any criminal offenses that have a nexus to said job should be considered as a basis for rejection from hire.

The Use of Premises will be consistent with the State approved Operations Plan, which is incorporated herein and made part of this Contract as **Exhibit C**, respectively.

Concession services may be provided between the hours of 7 a.m. and Noon, and again from 5 p.m. to 8 p.m. Memorial Day through Labor Day (summer), and between the hours of 7 a.m. to two hours after sunset the remainder of the year (winter). The State is not responsible for parking lot closures that may conflict with Concession operating hours.

In the event State deems the hours of operation inadequate for proper service to the public, State may request Concessionaire to adjust location, days and/or hours of operation to a schedule provided by State. In the event of adverse weather or other operating conditions, State may permit the concession to close at any time during the term of this Contract. Concessionaire shall not utilize beach access stairways for fitness activities and may not hold running clinics, only short sprints within the operation footprint will be permitted. Concessionaire shall not use or permit the Premises to be used in whole or in part during the term of this Contract for any purpose other than as herein set forth without the prior written consent of the State.

**6. LIABILITY WAIVER**

Concessionaire shall require that a liability waiver, equivalent to the waiver attached hereto as **Exhibit D**, Waiver of Liability and Release and incorporated herein by this reference, be executed between Concessionaire and each concession patron prior to the start of each rental or tour. Such waiver is subject to the State's approval and shall release State, its officers, employees, and agents from any liability resulting

from any claim associated with services, equipment, and activities provided. The liability waiver text shall be pre-printed, and must be signed by every person participating within the Premises as permitted in this Contract. Concessionaire shall make signed liability waivers available to State inspection and shall provide copies upon request. All required waivers shall comply with any and all conditions precedent to insurance coverage as required herein.

## 7. **BONDS**

A. All bonds required under this Contract must be in a form satisfactory to State, issued by a corporate surety licensed to transact surety business in the State of California.

B. Performance Bond: Concessionaire, at Concessionaire's own cost and expense, agrees to obtain and deliver to State, prior to the commencement date of this Contract and prior to entering the Premises, and shall maintain in force throughout the term of this Contract, a valid Performance Bond (which may be renewed annually) in the sum of Three Hundred Twenty Dollars (\$320) payable to the State. This bond shall insure faithful performance by Concessionaire of all the covenants, terms, and conditions of this Contract inclusive of, but not restricted to, the payment of all rentals, fees, and charges and prompt performance of and/or payment for all maintenance obligations. In lieu of a bond, the Concessionaire may substitute another financial instrument (such as an Irrevocable Standby Letter of Credit), which must be sufficiently secure and acceptable to State. At least thirty (30) days prior to the expiration or termination of said bond or acceptable financial instrument, a signed endorsement or certificate showing that said bond or financial instrument has been renewed or extended shall be filed with the State. Within 15 days of State's request, Concessionaire shall furnish State with a signed and complete copy of the valid bond or financial instrument.

C. Concessionaire acknowledges that allowing the Performance Bond or other security instrument(s) to expire or otherwise terminate and/or allowing the total secured amount to fall below the security required herein will cause State to

incur costs and significant risks not contemplated by this Contract, the exact amount of which will be difficult to ascertain. These costs include, but are not limited to, administrative costs and other expenses necessary to ensure continued performance of services for the public and protection of the Premises. Accordingly, if Concessionaire allows the Performance Bond or other security instrument to expire or otherwise terminate and/or allows the total secured amount to fall below the security required pursuant to this Contract, Concessionaire shall pay to State an amount equal to five percent (5%) of the required security or five hundred dollars (\$500), whichever is greater. The parties agree that this charge represents a fair and reasonable estimate of the costs State will incur. Acceptance of this charge by State shall not constitute a waiver of Concessionaire's default, nor prevent State from exercising the other rights and remedies available to it under this Contract or applicable law, including the right to terminate this Contract and seek the payment of damages.

DS [Initials of concessionaire(s)]

## 8. INSURANCE

A. Concessionaire shall provide before entering the Premises and shall maintain in force throughout the term of this Contract the following insurance:

- 1) Commercial General Liability Insurance: Concessionaire shall maintain general liability on an occurrence form with limits not less than \$1,000,000 per occurrence for bodily injury and property damage liability combined with \$2,000,000 annual policy aggregate. The policy shall include coverage for liabilities arising out of Premises, operations, independent contractors, products, completed operations, personal and advertising injury.
- 2) Workers' Compensation Insurance: Concessionaire shall maintain statutory worker's compensation and employer's liability coverage for all its employees who will be engaged in the performance of this Contract. Employer's liability limits of \$1,000,000 are required.

B. In the event of destruction, loss, or damage by fire or other cause of any of the State-owned buildings, improvements, or fixtures located on the Premises that the State determines (1) to be essential to the continued operation of the Contract and (2) cannot be repaired within one-hundred-eighty (180) days of the occurrence, the State may terminate this Contract. A decision by the State to terminate the Contract under this provision shall be communicated in writing to Concessionaire as soon as practicable. If the Contract is so terminated, State shall be entitled to the proceeds payable under any applicable insurance policies pertaining to the loss as its interest may appear. Receipt of such proceeds by State shall be in addition to the right of State to pursue whatever other remedies it may have to recover any losses due to the occurrence. If the State determines not to terminate the Contract, then, in State's discretion, any buildings, improvements, or fixtures built in replacement of any damaged or destroyed property shall be subject to the terms and provisions of this Contract as if they had existed at the onset. In no event shall the provisions of this Section be deemed or construed to relieve Concessionaire from the requirement to repair or replace any damaged or destroyed property except as specifically excepted by express terms of this Contract.

C. Each policy of liability insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the Concessionaire's limit of liability. The policy must include the State of California, Department of Parks and Recreation, its officers, agents, employees and servants as additional insured. This endorsement must be supplied under form acceptable to State. Any subcontractors shall be included under Concessionaire's policy or provide evidence of coverage equal to limits and policies required of Concessionaire

D. Concessionaire must provide State with 30 days written notice of changes to insurance policy, including cancellation. In the event Concessionaire fails to keep in effect at all times the specified insurance coverage, State may, in addition to other remedies it may have, terminate this Contract upon the occurrence of such event, subject to the provisions of this Contract.

E. Each policy shall be underwritten to the satisfaction of the State. Concessionaire shall submit to State a signed and complete certificate of insurance with all endorsements required by this Section, showing to the satisfaction of State that such insurance coverage has been renewed or extended. Within fifteen (15) days of State's request, Concessionaire shall furnish State with a signed and complete copy of the required policy.

9. **ALCOHOLIC BEVERAGES**

Notwithstanding anything to the contrary, the sale of liquor, beer, or other alcoholic beverages on the Premises is expressly prohibited. Exception to this restriction may be allowed through the special event permit process, as approved by State.

10. **CONTRACT NOTICE**

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

Concessionaire at: Dennis Shay  
300 Carlsbad Village Drive, Suite 108A, #260  
Carlsbad, California 92008  
(760) 720-1154

State at: Department of Parks and Recreation  
San Diego Coast District  
4477 Pacific Highway  
San Diego, California 92110  
(619) 688-3260

Copy to: Department of Parks and Recreation  
Concessions, Reservations & Fees Division  
P.O. Box 942896  
Sacramento, California 94296-0001  
916-653-7733

The address to which notices shall or may be mailed as aforesaid by either party shall or may be changed by written notice given by such party to the other, but nothing in this Section shall preclude the giving of any such notice by personal service.

#### **11. RECORDS AND REPORTS**

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

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

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

Concessionaire will submit to State, no later than May 1st of each year during the term of this Contract, a verified profit and loss statement for the previous calendar year. Such statement shall be submitted on Form DPR 86, Concessionaire's Financial Statement, attached hereto as **Exhibit E**, or in a format previously approved by the State, and shall contain an appropriate certification that all gross receipts during the yearly accounting period covered by said statement shall have been duly and properly reported to the State. Within forty-five (45) days of the expiration or termination of this Contract, Concessionaire shall submit to the State a profit and loss statement for the period of operation not previously reported prepared in the manner stated above.

Concessionaire shall record all gross receipts from the operation of the concession. Records shall supply an accurate recording of each sale as a paper receipt

for each transaction. Cash registers or pre-numbered receipt books shall be used to document all sales. Receipt books shall provide duplicate receipts in carbon copy for record purposes. Concessionaire shall record in receipt books the purchase amount and name and address of each purchaser. Concessionaire shall submit to State immediately upon receipt the manifest or other documentation of the purchase of all receipt books and the books' corresponding serial numbers. A report containing the serial number range (beginning number and ending number), missing numbers, duplicate numbers, any other number inconsistencies, or a statement that all sets are serial numbered as specified with NO inconsistencies shall be submitted to State upon request. Concessionaire shall make all accounting records available to the State upon State's request.

## **12. GROSS RECEIPTS**

The term "gross receipts," wherever used in this Contract, is intended to and shall mean all moneys, property, or any other thing of value received by or owed to Concessionaire and any sub-concessionaire or operator, if other than Concessionaire, through or in connection with the operation of the concession, including any concession related business carried on through the internet or catalog sales, or from any other business carried on or in connection with the Premises, or from any other use of the Premises, and/or of any business of any kind that uses the names licensed by this Contract, or that associates with or implies an endorsement by State, all without deduction. The term "gross receipts" shall not include any sales taxes imposed by any governmental entity and collected by Concessionaire.

## **13. RATES, CHARGES AND QUALITY OF GOODS AND SERVICES**

Concessionaire shall staff, operate, manage, and provide all goods, services, and facilities offered in a first-class manner and comparable to other high quality concessions providing similar facilities and services. State reserves the right to prohibit or modify the sale or rental of any item, accommodation, or service for public safety and/or to ensure that the public receives, in the State's view, fair pricing, proper service,



and appropriate quality. State reserves the right to prohibit the sale or use of non-recyclable containers or plastics.

Any increased rates or charges to park visitors proposed by Concessionaire following contract approval shall be submitted in writing for the State's approval. Rate increases may not be imposed retroactively.

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

#### **14. PERFORMANCE EVALUATIONS AND INSPECTION**

As part of its administration of this Contract, State will conduct periodic inspections of concession facilities, equipment, services, and programs and prepare written performance evaluations based upon its observations. A Concessionaire Performance Rating (DPR Form 531) attached hereto as **Exhibit F**, or other similar format(s) as may be adopted by the State will be utilized for evaluation purposes. State further reserves the right of ingress and egress without notice to inspect concession operations for the purposes of evaluating Concessionaire's performance of the terms and conditions of this Contract; to inspect, investigate, and/or survey the Premises; and to do any work thereon of any nature necessary for preservation, maintenance, and operation of the State Park System. Concessionaire agrees to cooperate with State in all respects related to the implementation of State's Concession Performance Evaluation program and with State's activities on the Premises. State shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of State's entry in the Premises as provided herein, except damage resulting from the active negligence or willful misconduct of State or its authorized representatives.

#### **15. HOLD HARMLESS AGREEMENT**

Concessionaire hereby waives all claims and recourse against the State, including the right to contribution for loss or damage to persons or property arising from, growing out of, or in any way connected with or incident to this Contract, except claims

arising from, and to the extent of, the sole gross negligence or willful misconduct of the State, its officers, agents, or employees. Concessionaire shall protect, indemnify, hold harmless, and defend State, its officers, agents, and employees against any and all claims, demands, damages, costs, expenses, attorney fees, expert costs and fees, or liability costs arising out of the development, construction, operation, or maintenance of the Premises property described herein and compliance with all laws, including but not limited to the Americans With Disabilities Act of 1990 as provided for herein, except for liability arising out of, and to the extent of, the sole gross negligence or willful misconduct of State, its officers, agents, or employees or other wrongful acts for which the State is found liable by a court of competent jurisdiction.

**16. TAXES**

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

B. Concessionaire agrees to pay all lawful taxes, assessments, or charges that at any time may be levied by the State, County, City, or any tax or assessment levying body upon any interest in or created by this Contract, or any possessory right that Concessionaire may have in or to the premises covered hereby, or the improvements thereon by reason of Concessionaire's use or occupancy thereof or otherwise, as well as all taxes, assessments, and charges on goods, merchandise, fixtures, appliances, equipment, and property owned by Concessionaire in or about the Premises.

**17. MODIFICATIONS, ADDITIONS, TITLE TO IMPROVEMENTS**

In the event that Concessionaire desires to make modifications, improvements, or additions to the Premises or any part of the Premises, including changes to structural design, required accessibility barrier removal work, landscape design, or interior or

exterior fixtures, design, and/or furnishings, (collectively Alteration(s)), the approval in writing of State shall be obtained prior to the commencement of any Alterations. State shall dictate the plan approval process.

Once any Alteration has been approved by State and the work has begun, Concessionaire shall, with reasonable diligence, prosecute to completion all approved Alterations. All work shall be performed in a good and workmanlike manner, shall substantially comply with plans and specifications submitted to State as required herein, and shall comply with all applicable governmental permits, laws, ordinances, and regulations. It shall be the responsibility of Concessionaire, at its own cost and expense, to obtain all licenses, permits, and other approvals necessary for the construction of approved Alterations.

Title to all Alterations and improvements existing or hereafter erected on the Premises, regardless of who constructs such improvements, shall immediately become State's property and, at the end of the Term, shall remain on the Premises without compensation to Concessionaire. Concessionaire agrees never to assail, contest, or resist title to the Alterations and improvements. The foregoing notwithstanding, State may elect, by notice to Concessionaire, that Concessionaire must remove any Alterations that are peculiar to Concessionaire's use of the Premises and are not normally required or used by State and/or future occupants of the Premises. In this event, Concessionaire shall bear the cost of restoring the Premises to its condition prior to the installment of the Alterations.

#### 18. **PERSONAL PROPERTY**

Except to the extent covered by Section 17, Modifications, Additions, Title to Improvements, title to all personal property provided by Concessionaire shall remain in Concessionaire. Concessionaire shall not attach any personal property to any building without first obtaining State's written approval. Unless approved in writing by State, all property attached to real property will be considered a real property improvement and shall become property of State at the time this Contract is terminated.

**19. HOUSEKEEPING, MAINTENANCE, REPAIR AND REMOVAL**

During the term of this Contract at Concessionaire's own cost and expense, Concessionaire shall maintain and operate the Premises and areas in, on, or adjacent to a distance of not less than fifty (50) feet, including personal property and equipment, in a clean, safe, wholesome, and sanitary condition free of trash, garbage, or obstructions of any kind. Concessionaire shall remedy without delay any defective, dangerous, or unsanitary conditions.

A. Housekeeping: Housekeeping activities are defined as all those activities concerned with keeping facilities clean, neat, and orderly, and includes, but is not limited to, mowing, raking, sweeping, vacuuming, mopping, stripping, waxing, dusting, wiping, washing, hosing, and other general care or cleaning of interior and exterior floors, walls, ceilings, doors, windows, facility fixtures, and all adjacent grounds and walks. Concession housekeeping shall conform to California State Park standards.

B. Maintenance and Repairs: Concessionaire shall maintain all concession facilities and personal property and equipment on the Premises in good condition and repair at Concessionaire's sole cost and expense at all times during the term of this Contract. Such maintenance shall conform to State Park standards. For the purposes of this Contract, the term "maintenance" is defined as all repair and preservation work necessary to maintain concession facilities and personal property and equipment in a good state of repair, as well as to preserve them for their intended purpose for an optimum useful life.

Should Concessionaire fail, neglect, or refuse to undertake and complete any required maintenance, State shall have the right to perform such maintenance or repairs for Concessionaire. In this event, Concessionaire shall promptly reimburse State for the cost thereof provided that State shall first give Concessionaire ten (10) days written notice of its intention to perform such maintenance or repairs. State shall not be obligated to make any repairs to or maintain any improvements on the Premises. Concessionaire hereby expressly waives the right to make repairs at the expense of State and the benefit of the

provisions of Sections 1941 and 1942 of the Civil Code of the State of California relating thereto if any there be. State has made no representations respecting the condition of the Premises, except as specifically set forth in this Contract.

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

## 20. UTILITIES AND SERVICES

Concessionaire shall be responsible for all costs associated with the installation and provision of all utilities necessary to and used in connection with the Premises, including but not limited to sewage disposal. When installing facilities, no trees shall be trimmed or cut without permission of State. Removal and disposal of all rubbish, refuse, and garbage resulting from concession's operations shall be the Concessionaire's responsibility and shall be disposed of outside the park unit and in accordance with applicable laws and local ordinances. All trash containers and/or trash bins shall be adequately screened to the satisfaction of State.

## 21. RESOURCE CONSERVATION

A. Environmental Conservation Program: Concessionaire shall set a positive example in waste management and environmental awareness that shall lead to preservation of the resources of the State. Accordingly, Concessionaire shall prepare and execute a program, subject to the prior written approval of the State, designed to reduce environmental impacts that result from concession operations. This program shall address, but not be limited to: solid waste management, including reduction, reuse and recycling; water and energy conservation, hazardous materials handling and storage, and air quality. Specifically, the program must include the following:

1) **Recycling and Beverage Container Programs:** The Concessionaire shall implement a source reduction and recycling program designed to minimize concession and patron use of disposable products, per Public Contract Codes Sections 12161 and 12200 et seq. Reusable and recyclable products are preferred over "throwaways." Where disposable products are needed, products that have the least impact on the environment will be selected. No Styrofoam containers or other non-biodegradable containers are to be used or sold by Concessionaire. The use of "post-consumer" recycled products is encouraged wherever possible.

The Concessionaire shall participate in the California beverage container redemption/recycling program. Products to be recycled include, but are not limited to, paper, newsprint, cardboard, bimetal, plastics, aluminum and glass. At the start of each Contract Year, Concessionaire and State shall review items sold, and containers or utensils used or dispensed by Concessionaire, and, whenever possible, eliminate the use of non-returnable or non-recyclable containers or plastics.

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

B. **Resource Management and Preservation:** Concessionaire shall comply with State's resource management and preservation mandates in the conduct of all activities that impact cultural, natural, or scenic resources. These mandates include the Public Resources Code Sections 5024 and 5097 et seq., the Department Operations Manual Chapter 300, Department's Cultural Resource Management Directives and Secretary of the Interior's Guidelines for Historic Preservation.

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

## 22. HAZARDOUS SUBSTANCES

A. Use of Premises: On the Premises, Concessionaire shall not:

- 1) Keep, store, or sell any goods, merchandise, or materials that are in any way explosive or hazardous;
- 2) Carry-on any offensive or dangerous trade, business, or occupation;
- 3) Use or operate any machinery or apparatus that shall injure the premises or adjacent buildings in any way; or
- 4) Do anything other than is provided for in this Contract.
- 5) Nothing in this Section shall preclude Concessionaire from bringing, keeping, or using on or about said premises such materials, supplies, equipment, and machinery as is appropriate or customary in carrying-on Concessionaire's business.
- 6) Gasoline, oil, and other materials considered under law or otherwise to be hazardous to public health and safety shall be stored, handled, and dispensed as required by present or future regulations and laws.

B. Storage of Hazardous Materials: Concessionaire shall comply with all applicable laws and best practices pertaining to the use, storage, transportation, and disposal of hazardous substances. Concessionaire shall protect, indemnify, defend, and hold harmless the State or any of its affiliates, successors, principals, employees, or agents against any liability, cost, or expense, including attorney's fees and court costs, arising from illegal use, storage, transportation,

or disposal of any hazardous substance, including any petroleum derivative, by Concessionaire. Where Concessionaire is found to be in breach of this provision due to the issuance of a government order directing Concessionaire to cease and desist any illegal action in connection with a hazardous substance, or to remediate a contaminated condition directly caused by Concessionaire or any person acting under Concessionaire's direct control or authority, Concessionaire shall be responsible for all cost and expense of complying with such order, including any and all expenses imposed on or incurred by the State in connection with or in response to such government order. Notwithstanding the foregoing, in the event a government order is issued naming Concessionaire, or Concessionaire incurs any liability during or after the term of the Contract in connection with contamination that preexisted the Concessionaire's obligations and occupancy under this Contract or prior contracts, or that were not directly caused by Concessionaire, the State shall be solely responsible as between Concessionaire and the State for all expenses and efforts in connection therewith, and State shall reimburse Concessionaire for all reasonable expenses actually incurred by Concessionaire therewith.

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

### **23. EQUIPMENT**

Concessionaire, at Concessionaire's own expense, shall completely equip the concession improvements described herein and shall keep the same equipped in a safe and first-class manner throughout the term of this Contract.

### **24. SIGNS AND ADVERTISING**

No signs, logos, names, placards, or advertising matter shall be inscribed, painted, or affixed upon Premises, circulated, or published, including electronically or on



the internet, without prior written consent of the State and only consistent with the purposes of the Contract.

**25. PHOTOGRAPHY**

State may grant permits to persons or corporations engaged in the production of still and motion pictures and related activities for the use of the Premises for such purposes when such permission shall not interfere with the primary business of Concessionaire. Such permits shall not be deemed to be a competitive activity with regard to Concessionaire's rights to possession and operation under this Contract.

**26. INTELLECTUAL PROPERTY RIGHTS**

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

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

During the course of this relationship, Concessionaire shall use the name, [Carlsbad Village Athletic Clubs or Dennis O. Shay]. Any additional and/or different names may be used only upon written agreement of State Parks.

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

Any names, logos, and/or trademarks developed during and/or pursuant to this Contract that in any way associate with, identify or implicate an affiliation with State Parks and/or are funded by State Parks shall be approved in writing by State Parks, shall belong to State Parks upon creation, subject to express written agreement otherwise, and shall continue in State Park's exclusive ownership

upon termination of the Contract. Further, all good will and other rights in said marks shall inure to the benefit of the State as the mark owner.

C. Ownership of new Copyrights, Developed by Concessionaire for State Parks, Absent a Separate Written Agreement: Any copyrighted materials developed and created by Concessionaire for State Parks during the term of this Contract shall be deemed to be "works for hire" under the United States Copyright Act 17 USC §101 et seq. and shall, unless otherwise agreed to in writing, belong to State Parks upon creation, and continue in State Park's exclusive ownership upon termination of this Contract. Unless otherwise agreed to in writing, Concessionaire intends and agrees to assign to State Parks all rights, title, and interest in and all works created pursuant to this Contract as well as all related intellectual property rights.

Concessionaire agrees to cooperate with State Parks and to execute any document reasonably necessary to give the foregoing provisions full force and effect including, but not limited to, an assignment of copyright.

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

## 27. GRANT OF STATE'S TRADEMARK LICENSE

State hereby grants Concessionaire, and Concessionaire hereby accepts a non-exclusive, non-assignable license to use the State Park Logo (sometimes referred to as the "Trademark" or "Mark"), created and owned by State, in accordance with the terms and conditions of the License/Permission for Use of Trademarks which is attached hereto as **Exhibit H** and is incorporated herein by this reference. After signature by

both Concessionaire and State Parks, this License shall authorize the use of the Trademark and associated goodwill, in connection with this Contract only.

A record of each authorized use by Concessionaire of the Trademark shall be maintained by Concessionaire and by State Parks.

Concessionaire and State Parks will use the State Park name, Trademark, and brand consistent with the State Park Brand Standards Handbook available at <http://isearch.parks.ca.gov/pages/321/files/BrandHandbookJanuary2007.pdf>.

The State Park name, Trademark and brand will not be used on Concessionaire social media pages.

## **28. PARTICIPATION IN STATE PARK MARKETING PROGRAMS**

Concessionaire acknowledges that the State has an established advertising and marketing program designed to promote additional revenue for the State and to deliver a consistent and positive image to the public, and Concessionaire agrees to participate in this program in the manner described below without compensation from the State for such cooperation. Any programs established following execution of the contract will be implemented upon mutual consent by Concessionaire and State.

A. Concessionaire agrees to honor all statewide graphic standards, licensing, and merchandising agreements entered into with corporate sponsors of the Department of Parks and Recreation.

B. Concessionaire agrees to place on the Premises any advertising that the State approves under this program. Any advertising approved by the State under this program will be placed at State's expense.

Concessionaire agrees to rent or sell, along with all other items of merchandise that are part of the Concessionaire's normal and customary inventory, any item of merchandise that the State approves under this program, provided that Concessionaire is authorized to sell or rent it under the terms of the Contract, and the Concessionaire receives reasonable compensation for its sale.

**29. DEFAULT BY CONCESSIONAIRE**

A. Defaults: The occurrence of any one of the following shall constitute a default and breach of this Contract by Concessionaire:

- 1) Failure to Pay Rent: Any failure of Concessionaire to timely pay any rent due or any other monetary sums required to be paid hereunder where such failure continues for a period of ten (10) consecutive days after such sums are due.
- 2) Absence from Premises: Any complete absence by Concessionaire or its agents and employees from the Premises for thirty (30) consecutive days or longer. The Premises shall be deemed abandoned after State has followed the procedures set forth in Civil Code Section 1951.3.
- 3) Nuisance: Should Concessionaire create or allow to be created a nuisance on the Premises, State may declare an immediate event of default and enter upon and take possession and/or demand an assignment of the right to operate the Premises without notice to Concessionaire. For the purpose of this paragraph, "nuisance" consists of an egregious activity that threatens the health, welfare, and safety of the public. Concessionaire shall immediately vacate the Premises and remove all personal property within thirty (30) days after State's declaration of default.
- 4) Failure to Observe Other Provisions: Any failure by Concessionaire to observe or perform another provision of this Contract where such failure continues for twenty (20) consecutive days after written notice thereof by State to Concessionaire; this notice shall be deemed to be the notice required under California Code of Civil Procedure Section 1161. However, if the nature of Concessionaire's default is such that it cannot reasonably be cured within the twenty (20) day period, Concessionaire shall not be deemed to be in default if it is determined at the sole discretion of State that Concessionaire has commenced such cure within the twenty (20) day period and thereafter continues to diligently prosecute such cure to completion to the satisfaction of State.

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

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

### 30. STATE'S REMEDIES

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

A. Collection of Rent: In any case where State has a cause of action for damages, State shall have the privilege of splitting the cause to permit the institution of a separate suit for rent due hereunder, and neither institution of any suit, nor the subsequent entry of judgment shall bar State from bringing another

suit for rent; it being the purpose of this provision to provide that the forbearance on the part of State in any suit or entry of judgment for any part of the rent reserved under this Contract, to sue for, or to include in, any suit and judgment the rent then due, shall not serve as defense against, nor prejudice a subsequent action for, rent or other obligations due under the Contract. The claims for rent may be regarded by State, if it so elects, as separate claims capable of being assigned separately.

B. Maintain Contract in Effect: The State has the remedy described in California Civil Code 1951.4 (lessor may continue lease in effect after lessee's breach or abandonment and recover rent as it becomes due, if lessee has right to sublet or assign, subject only to reasonable limitations). The following do not constitute a termination of the Concessionaire's right to possession: (1) Acts of maintenance or preservation or efforts to relet the Premises; (2) The appointment of a receiver upon initiative of the State to protect State's interests under the Contract; (3) Withholding consent to a subletting or assignment so long as such consent is not unreasonably withheld.

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

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

- 1) the worth, at the time of the award, of the unpaid rent that had been earned at the time of termination of this Contract;

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

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

- E. Assignment at State's Direction: In the event of a default by Concessionaire, when cure is not received and acknowledged by State after having provided notice of the breach as provided herein above, Concessionaire shall, in addition to the damages provided for herein, be obligated to assign all rights to occupy, possess, and operate on and in the Premises to State's designee within thirty (30) days of receipt of written demand by State. Concessionaire shall further remove itself and its personal property from the Premises within the same time frame. Concessionaire agrees to execute all

documents necessary to effectuate and implement this provision. Upon such assignment, all rights of Concessionaire under the Contract shall transfer to the assignee.

Any designated assignee, as provided for herein, shall take and operate the concession under the same terms and conditions as those set forth herein, except for requirements that have already been performed and are no longer applicable. However, Concessionaire shall not be relieved of obligations incurred. An assignment of the Contract pursuant to the terms hereof shall not cause the Contract to terminate and shall not work a merger.

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

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

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

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



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

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

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

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

### 31. DEFAULT BY STATE

State shall not be in default of the performance of any obligation required of it under this Contract unless and until it has failed to perform such obligation for more than thirty (30) days after written notice by Concessionaire to State specifying the alleged default and the applicable contract provision giving rise to the obligation. However, if the nature of State's obligation is such that more than thirty (30) days is required for its performance, then State shall not be deemed in default if it shall commence performance within such 30-day period and thereafter diligently prosecute the same to completion.

**32. SURRENDER OF THE PREMISES; HOLDING OVER**

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

1) Personal Property: All of Concessionaire's personal property remaining on the Premises beyond such time specified in this Section shall be dealt with in accordance with California Code of Civil Procedure Section 1174 and California Civil Code Sections 1980, or such other laws as may be enacted regarding the disposition of Concessionaires' property remaining at the Premises. Concessionaire waives all claims against State for any damage to Concessionaire resulting from State's retention or disposition of Concessionaire's personal property. Concessionaire shall be liable to State for State's costs in storing, removing, and disposing of Concessionaire's personal property or trade fixtures.

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

B. Holding Over: After the expiration or earlier termination of the term and if Concessionaire remains in possession of the Premises with State's express consent, such possession by Concessionaire shall be deemed to be a temporary tenancy terminable on thirty (30) days written notice given at any time by either party. Concessionaire shall pay such rent and all other sums required to be paid hereunder monthly on or before the fifteenth day of each month. All other provisions of this Contract except those pertaining to the term shall apply to the month-to-month tenancy.

**33. NO RECORDATION; QUITCLAIM**

- A. No Recordation: This Contract shall not be recorded.
- B. Quitclaim: Concessionaire shall execute and deliver to State on the expiration or termination of this Contract immediately on State's request, a quitclaim deed to the Premises and the rights arising hereunder, in recordable form or such other document as may be necessary, to remove any claim of interest of Concessionaire in and to all property belonging to the State. Should Concessionaire fail or refuse to deliver to State a quitclaim deed or other documents as aforesaid, a written notice by State reciting the failure of the Concessionaire to execute and deliver said quitclaim deed as herein provided, shall after ten (10) days from the date of recordation of said notice be conclusive evidence against the Concessionaire and all persons claiming under Concessionaire of the termination of this Contract.

**34. ATTORNEY FEES**

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

**35. EXPATRIATE CORPORATIONS**

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

**36. COMPLIANCE WITH LAWS, RULES, REGULATIONS AND POLICIES**

Concessionaire shall comply with all applicable laws, rules, regulations, and orders existing during the term of this Contract, including obtaining and maintaining all necessary permits and licenses. Concessionaire acknowledges and warrants that it is or will make itself through its responsible concession managers, knowledgeable of all pertinent laws, rules, ordinances, regulations, or other requirements having the force of law affecting the operation of the concession facilities, including but not limited to laws affecting health and safety, hazardous materials, pest control activities, historic preservation, environmental impacts, and State building codes and regulations.

**37. NONDISCRIMINATION**

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

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

Further, as part of compliance with the foregoing, Concessionaire and Concessionaire's employees shall not discriminate by refusing to furnish any person any accommodation, facility, service, or privilege offered to or enjoyed by the general public. Nor shall Concessionaire or Concessionaire's employees publicize the accommodation, facilities, services, or privileges in any manner that would directly or inferentially reflect upon or question the acceptability of the patronage of any such person.

Concessionaire shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.) and the applicable regulations

promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990 (a)-(f), are incorporated into this Contract by reference and made a part hereof as if set forth in full (California Code of Regulations, title 2, Section 7285.0 et seq.). Concessionaire shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. Concessionaire shall include the non-discrimination and compliance provisions of this clause in all contracts to perform work under and/or in connection with this Contract.

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

### **38. DISABILITIES ACCESS LAWS**

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

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

**39. DRUG-FREE WORKPLACE**

Concessionaire agrees to comply with Government Code Section 8355 in matters relating to the provision of a drug-free workplace. This compliance is evidenced by the executed Standard Form 21 entitled Drug-Free Workplace Certification, **Exhibit G**, attached hereto and made a part of the Contract.

**40. NATIONAL LABOR RELATIONS BOARD CERTIFICATION**

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

**41. CHILD SUPPORT COMPLIANCE ACT**

In the event the annual gross income generated as a result of this Contract shall exceed One Hundred Thousand Dollars (\$100,000.00), Concessionaire acknowledges that:

A. The Concessionaire recognizes the importance of child and family support relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as obligations and shall comply with all applicable state and federal laws provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and

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

**42. EMPLOYEE TRAINING**

All concession employees shall receive training to include an orientation on the State Park System, and local points of interest, provided by Concessionaire. Such orientation shall be sufficient to permit concession employees to reply adequately to inquiries from the visiting public. Training also shall include job or task-specific training necessary to ensure high-quality job performance in a manner consistent with the protection of the State Park System and its visitors. Concessionaire's Employee Training/Orientation Program is subject to approval by the State.

**43. CONFLICT OF INTEREST**

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

**44. WAIVER OF CLAIMS**

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

**45. WAIVER OF CONTRACT TERMS**

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

**46. INTERPRETATION OF CONTRACT**

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

**47. DURATION OF PUBLIC FACILITIES**

By entering into this Contract, State makes no stipulation as to the type, size, location, or duration of public facilities to be maintained at this unit, or the continuation of State ownership thereof, nor does the State guarantee the accuracy of any financial or other factual representation that may be made regarding this concession.

**48. TIME OF ESSENCE**

Time shall be of the essence in the performance of this Contract.

**49. EMINENT DOMAIN**

If, during the term of this Contract, any property described herein or hereinafter added hereto is taken in eminent domain, the entire award shall be paid to State.



**50. TEMPORARY TENANCY**

This tenancy is of a temporary nature and the parties to this Contract agree that no Relocation Payment or Relocation Advisory Assistance will be sought or provided in any form as a consequence of this tenancy.

**51. SECTION TITLES**

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

**52. CONTRACT IN COUNTERPARTS**

This Contract may be executed in counterparts, each of which shall be deemed an original.

**53. INDEPENDENT CONTRACTOR**

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

**54. ASSIGNMENTS AND SUBCONCESSIONS**

No transfer, assignment, or corporate sale or merger by the Concessionaire that affects this Contract or any part thereof or interest therein directly or indirectly, voluntarily or involuntarily, shall be made unless such transfer, assignment, or corporate merger or sale is first consented to in writing by State. Portions of this concession may be operated by others under a subconcession agreement with prior written consent of State under the following conditions:

- A. The subconcessionaire must be qualified.
- B. The subconcessionaire's interest shall be subordinate and in all ways subject to the terms of this contract.
- C. Concessionaire's gross receipts shall include all receipts of the subconcessionaire.

**55. MODIFICATION OF CONTRACT**

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

An amendment is required to change the Concessionaire's name as listed in this Contract upon receipt of legal documentation to support such change.

Notwithstanding any of the provisions of this Contract, the parties may hereafter, by mutual consent expressed in writing, agree to modifications thereof, additions thereto, or terminations thereof, which are not forbidden by law. Such written modifications or additions to this Contract shall not be effective until signed and acknowledged by the State and Concessionaire and approved in writing by the Department of General Services and the Attorney General of the State of California. The State shall have the right to grant reasonable extensions of time to Concessionaire for any purpose or for the performance of any obligation of Concessionaire hereunder.

**56. UNENFORCEABLE PROVISION**

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

**57. APPROVAL OF CONTRACT**

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

**58. STATE'S DISTRICT SUPERINTENDENT**

For the purposes of this Contract, the District Superintendent is the State representative responsible for the Premises. The District Superintendent is charged

with the day-to-day administration of this Contract and is the Concessionaire's initial contact with the State for information, contract performance, and other issues as might arise. The District Superintendent may delegate these responsibilities to a Sector or Park Superintendent or other individual.



IN WITNESS WHEREOF, the parties hereto warrant that they respectively have the requisite authority to enter this Contract, binding the named parties for which they sign, and have executed this concession contract at the respective times set forth below.

**CONCESSIONAIRE:  
CARLSBAD ATHLETIC CLUBS**

**STATE OF CALIFORNIA  
DEPARTMENT OF PARKS & RECREATION**

Signed: *Dennis Shay*

Signed: *Clayton Phillips*

Name: Dennis Shay

Name: Clayton Phillips

Title: Owner

Title: District Superintendent

Date: 10/1/2012

Date: 10/2/12

**APPROVED:**

**APPROVED:**

**ATTORNEY GENERAL:**

**DEPARTMENT OF GENERAL SERVICES:**

Approved as to legal sufficiency in accordance with the requirements of Sections 5080.02-5080.21 of the Public Resources Code.

*[Handwritten signature]*

**KAMALA D. HARRIS, Attorney General  
of the State of California**



By: *J. Blawie*  
Deputy Attorney General

Dated: 10/26/2012

*[Handwritten signature]*

## EXHIBIT A – PREMISES



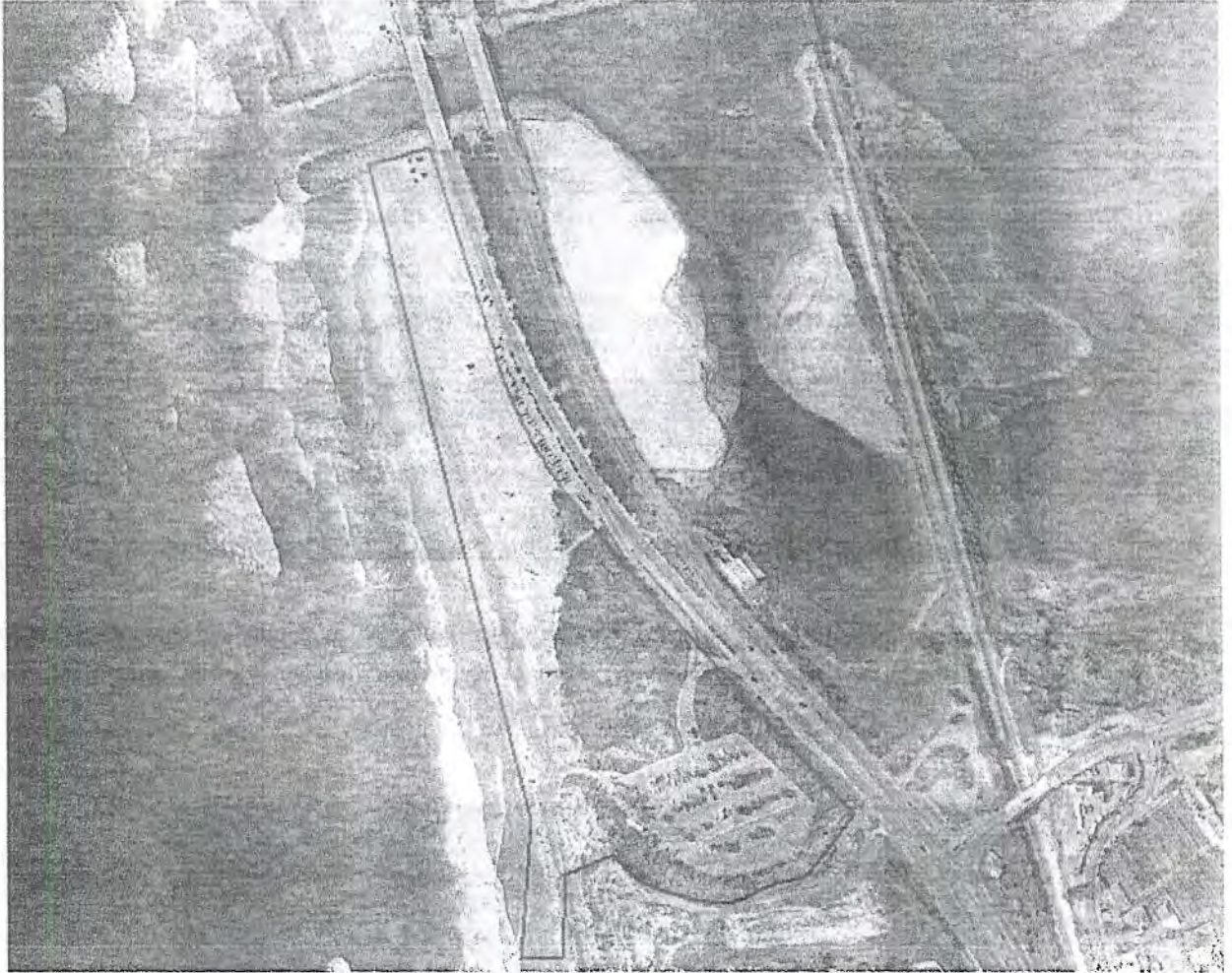
### Frazer

The Contract allows for the use of space not to exceed 100' by 100' of open beach space, in an area which does not displace the beach going public from 50 yards north of the Tower 37 lifeguard station and 10 yards south of the northern most boundary of the park unit.



### Tamarack

The Contract allows for the use of space not to exceed 100' by 100' of open beach space from the farthest southern boundary adjacent to the lagoon inlet, in an area which does not displace the beach going public, north to Tower 34 lifeguard station.



**South Ponto**

The Contract allows for the use of space not to exceed 100' by 100' of open beach space from the lagoon mouth opening south to the property line. Additionally, CVAC may utilize the lower portion of Compass Point and the stage with the compass in it for fitness activities as long as those activities do not conflict with any State approved Special Events. The State Park reserves the first right of use on this Compass Point area within the State Park boundary.

# EXHIBIT B – DPR 54, CONCESSIONAIRE'S MONTHLY REPORT OF OPERATION

State of California - The Resources Agency  
DEPARTMENT OF PARKS AND RECREATION

| FOR DEPARTMENT COMPLETION |               |
|---------------------------|---------------|
| DISTRICT NO.              | PARK UNIT NO. |
| ROC DOCUMENT NO.          |               |

## CONCESSIONAIRE'S MONTHLY REPORT OF OPERATION

FOR THE MONTH OF \_\_\_\_\_, YEAR \_\_\_\_\_

*(Instructions on reverse.)*

| NAME OF CONCESSIONAIRE   |                |  |  |   |                     |
|--|----------------|--|--|---|---------------------|
| ADDRESS  |                |  |  | CITY/STATE/ZIP CODE                       |                     |
| DISTRICT   |                |  |  | PARK UNIT                                 |                     |
| TYPE OF RECEIPT  | GROSS RECEIPTS | NUMBER OF UNITS<br><small>(WHERE APPLICABLE)</small> | CUMULATIVE GROSS TO DATE<br><small>(CONTRACT YEAR)</small>                                     | PERCENT RATE OR AMOUNT PER UNIT DUE STATE | AMOUNT DUE TO STATE |
| FOOD & NONALCOHOLIC BEVERAGES  |                |  |  |   |                     |
| ALCOHOLIC BEVERAGES  |                |  |  |   |                     |
| MERCHANDISE  |                |  |  |   |                     |
| EQUIPMENT RENTALS  |                |  |  |   |                     |
| PAY SHOWERS  |                |  |  |   |                     |
| VENDING MACHINES<br><small>(SEE REVERSE)</small>   |                |  |  |   |                     |
|  |                |  |  |   |                     |
|  |                |  |  |   |                     |
|  |                |  |  |   |                     |
|  |                |  |  |   |                     |
| <b>SUBTOTALS</b>   |                |  |  |   |                     |
| <b>ADJUSTMENTS</b><br><small>(EXPLAIN REASON ON REVERSE)</small>   |                |  |  |   |                     |
| <b>***TOTAL DUE***</b><br><small>(EXPLAIN REASON ON REVERSE)</small>   |                |  |  |   |                     |
| <b>MAINTENANCE FEES</b><br><small>(COMPLETE THIS SECTION IF APPLICABLE)</small>  |                |  |  |   |                     |
| THIS MONTH'S MAINTENANCE FEE ALLOCATION<br><b>% x Monthly Gross Revenue = \$</b>   |                |  | CUMULATIVE MAINTENANCE FEE ALLOCATION YEAR TO DATE<br><b>% x Cumulative Gross Revenue = \$</b> |   |                     |
| AMOUNT SPENT ON ELIGIBLE MAINTENANCE THIS MONTH<br><b>\$</b>   |                |  | CUMULATIVE AMOUNT EXPENDED ON ELIGIBLE MAINTENANCE YEAR TO DATE<br><b>\$</b>                   |   |                     |
| <b>SEASONAL CONCESSIONS</b><br><small>(COMPLETE THIS SECTION IF APPLICABLE)</small>  |                | EXACT DATE YOU CEASED OPERATIONS                     |  | DATE YOU EXPECT TO RESUME OPERATIONS      |                     |
| <b>DECLARATION</b>   |                |  |  |   |                     |
| I declare under penalty of perjury that the information on this form is accurate and complete to the best of my knowledge. |                |  |  |   |                     |
| CONCESSIONAIRE'S SIGNATURE   |                | PRINTED NAME   |  | DATE                                      |                     |
| TITLE/POSITION   |                |  |  | PHONE NO.                                 |                     |

**EXHIBIT B – continued**

**DPR 54 COMPLETION INSTRUCTIONS**

1. Provide the month and year of operation for which this report is being prepared.
2. Provide full name of the concession and the name and address of the concessionaire, including city, state and zip code.
3. Include all revenue for the month for each appropriate category. For "Vending Machine" revenue, please include the following sources:
  - Ice machines
  - Newspaper vending machines
  - Map and brochure vending machines
  - Grab boxes
  - Firewood dispensers
  - Air compressors
  - Washing machines and dryersDo not include the following sources as "Vending Machine" revenue:
  - Park UR Self machines
  - Pay showers
  - Iron rangers
4. Types of revenue that might be recorded on a "per unit" basis include:
  - Petroleum products (per gallon)
  - Group tours (per adult or children's ticket)
5. Complete the "Maintenance Fees" and "Seasonal Concessions" sections of the form if your concession contract requires a maintenance fee allocation and/or if your concession operates on a seasonal basis.
6. Sign and date the form and provide the preparer's title and telephone number.

COMMENTS/EXPLANATIONS:

DPR 54 (Back)



## **EXHIBIT C –OPERATIONS PLAN**

### **Vision and Mission**

"Partnered with CA. State Parks to provide residents and guests of this community with options of fun, healthy, social activities on the beach"

### **The CVAC Organization today.....**

CVAC provides the visitors to our local State Beaches an enhanced beach experience by offering organized beach activities. The Club allows social and competitive activities in addition to various structured camps for those desiring to participate. Our mission foremost is providing this experience for the community of residents and visitors. CVAC also provides a reasonable level of economic and support to our local State Park Beaches. Although we are not yet a significant profit center CVAC is currently financially self-sustaining. We look at ourselves as an ambassador of the State and are building solid relationships in the community with local Chamber, City and Community associations. Our vision of sustainable growth while providing the best example of good stewardship on our community beaches is critical to us.

You can find more information on upcoming Clubs at [CVACLUBS.com](http://CVACLUBS.com)

### **Organizational Structure**

CVAC has two primary facilitators:

Dennis Shay – Company President - Overall company responsibility and direct responsibility for all Volleyball activities & Self Defense Camps

Amy Chung – CVAC Athletic Director – Direct responsibility for all Yoga, Pilates, Zumba, Fitness Camps and related activities - including scheduling

As a small business most of our leadership and management of activities is provided by group activity leaders; such as yoga instructors, etc. It's our vision to use existing community businesses that want to bring their activity to the beach in addition to allowing organic growth from within the CVAC membership.

### **Transition/Business Start-up**

CVAC has been in business since January 2010 – records on file

### **Customer Service**

Both Dennis and Amy participate in providing good communications and are available through the main CVAC office number or by cell phone and CVAC e-mail.

Dennis Shay – Office Phone 760.720.1154 / Cell 760.419.3637

Amy Chung – Cell 760.889.0975

### **Employee Staffing and Training**

CVAC holds regular meetings for required certifications for all beach activities and trains and communicates Park Permit & Concession guidelines to all group leaders.

### **Marketing & Advertising**

CVAC's best marketing has been 'word of mouth' and the 'visual' activities on the beach. If CVAC is awarded the concession agreement there are plans to expand our marketing efforts through the Chamber, local hotels and a portable CVAC flag/banner at each location.

### **Community**

CVAC is a current member of Carlsbad Chamber of Commerce and in good standing with City Council and Mayors office. In addition, we are involved with many Village Merchants as we drive business into their facilities. CVAC was involved with Carlsbad Beach Fest 2011 & 2012 and plans to remain on the committee to assure the original mission of 'good stewardship' is kept intact.

CVAC also is partnered with Wahine '18 and under' girls volleyball on the beach – they have proven to be good partners on the beach and we will continue to help them grow. They have strong leadership and are doing the right thing. We are supportive of their mission of participating in the 2016 Olympics for Beach Volleyball. CVAC also provides scholarship funding for this group.

#### **Products, Merchandise & Services**

Products & Services – Beach recreational and fitness activities, camps, clinics, tournaments  
Merchandise – Some limited CVAC apparel such as T-shirts or Sun Guards could be offered in addition to related nutritional products used at most athletic venues such as water, hydrating drinks, snacks, gels, and also sundry items such as sunscreen.

#### **Pricing and Pricing Policies**

Currently we have pricing for volleyball and yoga and are establishing pricing for camps and other activities. All CVAC pricing is subject to change depending on the activity.

Beach Volleyball – Allows a reserved schedule of play for \$30 per quarter (3 months).

Beach Volleyball Tournaments - \$10 to \$20 per person depending on the team size

Beach Yoga - \$8 to \$10 per class

Camps - \$100 to \$175 (Final pricing TBD)

#### **Conservation and Recycling**

CVAC has published guidelines consistent with our mission of good stewardship. If you 'pack-it-in' you must 'pack-it-out'. We use appropriately placed containers for recycling and provide daily inspection and clean ups of all CVAC areas.

#### **Accessibility**

Since CVAC uses the State Beach area – we abide by all posted State guidelines for accessibility and publish these guidelines to our members and participants.

#### **Worker Retention**

CVAC is fortunate to have many activity leaders that have been with us for the 2 years we've been in business. We communicate clearly on expectations.

#### **Safety and Security**

Both Amy Chung and Dennis Shay hold current CPR certifications. First aid kits are positioned at each activity location. In addition we are connected with Parks by cell phone to report any Security issues.

#### **Maintenance and Housekeeping**

All assigned CVAC areas will be maintained daily. When required, repairs to damaged equipment within 48 hours. Painting and routine maintenance performed as needed to maintain good visual and working order.

**EXHIBIT D – WAIVER OF LIABILITY AND RELEASE**

**Waiver of Liability and Release, Express Assumption of Risk and Indemnity Agreement**

I understand and acknowledge that there are risks of personal injury, death, and property damage while participating in the activities that are the subject of this rental agreement. The risks are inherent in these concession activities; still other risks may arise from conditions, situations, or activities of which I am presently unaware. My participation is voluntary and based on my independent assessment of the risks, without reliance on representations or advice by employees or representatives of the Concessionaire, the State of California, or any other person.

*In consideration of being granted this rental agreement and the use of concession equipment,*

**I HEREBY RELEASE, WAIVE, AND RELINQUISH ALL CLAIMS AND LEGAL ACTIONS FOR PERSONAL INJURY, WRONGFUL DEATH, OR PROPERTY DAMAGE AGAINST CONCESSIONAIRE, AND AGAINST THE STATE OF CALIFORNIA, DEPARTMENT OF PARKS AND RECREATION (STATE), ARISING AS A RESULT OF MY PARTICIPATION IN THESE CONCESSION ACTIVITIES, OR ANY ACTIVITIES INCIDENTAL THERETO INCLUDING RESCUE ACTIVITIES; THIS RELEASE APPLIES EVEN IF CONCESSIONAIRE AND/OR STATE IS NEGLIGENT OR OTHERWISE AT FAULT. I ALSO AGREE TO PROTECT, HOLD HARMLESS, DEFEND AND INDEMNIFY CONCESSIONAIRE AND STATE FROM ALL CLAIMS AND LEGAL ACTIONS FOR PERSONAL INJURY, DEATH OR PROPERTY DAMAGE ARISING FROM MY CONDUCT; THESE INDEMNITIES APPLY EVEN IF CONCESSIONAIRE AND/OR STATE IS NEGLIGENT OR OTHERWISE AT FAULT.**

I understand the effect of my signing this document is that I (1) acknowledge and assume all risk of injury, death, or property damage I might suffer while participating in these concession activities, even if it occurs as a result of the negligence of Concessionaire and/or State or defects in equipment, (2) absolve and release Concessionaire and State from the consequences of their negligence, including without limit, rescue efforts, and defects in equipment, and (3) will protect, hold harmless, indemnify and defend Concessionaire and State against any legal actions or other claims for damages arising from my actions. **I UNDERSTAND THAT I AM FORFEITING IMPORTANT LEGAL RIGHTS AND INCURRING IMPORTANT LEGAL RESPONSIBILITIES.**

I understand that certain minimum skills, capabilities, physical and mental health, and fitness are required in order to participate in dangerous activities such as these concession activities; I warrant that I possess these. I understand and agree that should emergency rescue services or evacuation become necessary, the expenses are my sole responsibility and not those of Concessionaire and/or State or any other public or private entity.

I warrant that I am executing this agreement voluntarily and that neither Concessionaire nor the State has made any representations to induce or coerce me to sign this document. I agree that the terms of this document bind me, my heirs, assigns, executors, and administrators, and expressly and specifically protect Concessionaire and State including, as applicable, their agents, employees, officers, directors, and shareholders.

Printed Name & Address: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Signature of parent or guardian for participant under age 18: \_\_\_\_\_

Name & Telephone of person to contact for emergencies: \_\_\_\_\_

# EXHIBIT E – DPR 86, CONCESSIONAIRE FINANCIAL STATEMENT

State of California - The Resources Agency  
DEPARTMENT OF PARKS AND RECREATION

## CONCESSIONAIRE FINANCIAL STATEMENT

|                     |   |
|---------------------|---|
| CONCESSIONAIRE NAME | CONCESSION NAME                           |
| PARK UNIT NAME      | REPORTING PERIOD<br>From: _____ To: _____ |

### A. CASH FLOW STATEMENT

|  |                                   |                 |  |
|--|-----------------------------------|-----------------|--|
| <b><u>GROSS SALES/RECEIPTS</u></b>                               |                                   | \$ _____        |  |
| Less Returned Sales and Allowances                               | \$ _____                          |                 |  |
| Less Sales Taxes   | _____                             |                 |  |
| Net Sales for Period   |                                   | \$ _____        |  |
| Cost of Goods Sold:  |                                   |                 |  |
| Inventory at Beginning of Period                                 | \$ _____                          |                 |  |
| Add Purchases During Period                                      | _____                             |                 |  |
| Merchandise Available for Sale                                   | _____                             |                 |  |
| Less Inventory at Close of Period                                | _____                             |                 |  |
| Less Cost of Goods Sold  |                                   | \$ _____        |  |
|  | <b>GROSS PROFIT</b>               | <b>\$ _____</b> |  |
| <br>   |                                   |                 |  |
| <b><u>LESS EXPENSES</u></b>                                      |                                   |                 |  |
| Salaries & Wages <i>(do not include Concessionaire salaries)</i> | \$ _____                          |                 |  |
| Rent to State  | _____                             |                 |  |
| Insurance  | _____                             |                 |  |
| Materials & Supplies   | _____                             |                 |  |
| Maintenance & Repairs  | _____                             |                 |  |
| Utilities <i>(including telephone)</i>                           | _____                             |                 |  |
| Advertising  | _____                             |                 |  |
| Taxes & Licenses <i>(other than income &amp; sales)</i>          | _____                             |                 |  |
| Legal & Accounting   | _____                             |                 |  |
| Travel & Transportation  | _____                             |                 |  |
| Interest   | _____                             |                 |  |
| Security   | _____                             |                 |  |
| Administrative Overhead  | _____                             |                 |  |
| Depreciation <i>(equipment)</i>                                  | _____                             |                 |  |
| Amortization <i>(improvements)</i>                               | _____                             |                 |  |
| Other: _____   | _____                             |                 |  |
| Other: _____   | _____                             |                 |  |
| Other: _____   | _____                             |                 |  |
| Other: _____   | _____                             |                 |  |
|  | <b>TOTAL EXPENSES</b>             | <b>\$ _____</b> |  |
|  | <b>NET PROFIT FROM OPERATIONS</b> | <b>\$ _____</b> |  |
|  | <i>(before income taxes)</i>      |                 |  |

# CONCESSIONAIRE FINANCIAL STATEMENT

|                     |   |
|---------------------|---|
| CONCESSIONAIRE NAME | CONCESSION NAME                           |
| PARK UNIT NAME      | REPORTING PERIOD<br>From: _____ To: _____ |

**B. SCHEDULE OF DEPRECIATION**  
*Columns 5, 8, and 9 must add to the total shown in Column 4. If you need more space to list all equipment, use additional pages and number B-2, B-3, etc. Use reverse side for remarks.*

| DESCRIPTION OF EQUIPMENT<br>(1) | DATE ACQUIRED<br>(2) | CONDITION (X)<br>(3) |      | ACQUISITION COST<br>(4) | PRIOR YEARS' DEPRECIATION<br>(5) | RATE (%)<br>(6) | LIFE YEARS<br>(7) | DEPRECIATION THIS PERIOD<br>(8) | BALANCE TO BE DEPRECIATED<br>(9) |
|---------------------------------|----------------------|----------------------|------|-------------------------|----------------------------------|-----------------|-------------------|---------------------------------|----------------------------------|
|                                 |                      | New                  | Used |                         |                                  |                 |                   |                                 |                                  |
|                                 |                      |                      |      |                         |                                  |                 |                   |                                 |                                  |
|                                 |                      |                      |      |                         |                                  |                 |                   |                                 |                                  |
|                                 |                      |                      |      |                         |                                  |                 |                   |                                 |                                  |
|                                 |                      |                      |      |                         |                                  |                 |                   |                                 |                                  |
|                                 |                      |                      |      |                         |                                  |                 |                   |                                 |                                  |
|                                 |                      |                      |      |                         |                                  |                 |                   |                                 |                                  |
|                                 |                      |                      |      |                         |                                  |                 |                   |                                 |                                  |
|                                 |                      |                      |      |                         |                                  |                 |                   |                                 |                                  |
|                                 |                      |                      |      |                         |                                  |                 |                   |                                 |                                  |
|                                 |                      |                      |      |                         |                                  |                 |                   |                                 |                                  |
|                                 |                      |                      |      |                         |                                  |                 |                   |                                 |                                  |
|                                 |                      |                      |      |                         |                                  |                 |                   |                                 |                                  |
|                                 |                      |                      |      |                         |                                  |                 |                   |                                 |                                  |
|                                 |                      |                      |      |                         |                                  |                 |                   |                                 |                                  |
|                                 |                      |                      |      |                         |                                  |                 |                   |                                 |                                  |
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|                                 |                      |                      |      |                         |                                  |                 |                   |                                 |                                  |
|                                 |                      |                      |      |                         |                                  |                 |                   |                                 |                                  |
|                                 |                      |                      |      |                         |                                  |                 |                   |                                 |                                  |
|                                 |                      |                      |      |                         |                                  |                 |                   |                                 |                                  |
|                                 |                      |                      |      |                         |                                  |                 |                   |                                 |                                  |
|                                 |                      |                      |      |                         |                                  |                 |                   |                                 |                                  |
|                                 |                      |                      |      |                         |                                  |                 |                   |                                 |                                  |
|                                 |                      |                      |      |                         |                                  |                 |                   |                                 |                                  |
| TOTALS                          |                      |                      |      |                         |                                  |                 |                   |                                 |                                  |

# CONCESSIONAIRE FINANCIAL STATEMENT

|                     |   |
|---------------------|---|
| CONCESSIONAIRE NAME | CONCESSION NAME                           |
| PARK UNIT NAME      | REPORTING PERIOD<br>From: _____ To: _____ |

## C. BALANCE SHEET

### ASSETS

#### CURRENT ASSETS

|                                     |          |
|-------------------------------------|----------|
| Cash                                | \$ _____ |
| Accounts Receivable                 | _____    |
| Merchandise Inventory               | _____    |
| Notes Receivable (Less than 1 year) | _____    |

**TOTAL CURRENT ASSETS**      \$ \_\_\_\_\_

#### NONCURRENT ASSETS

|                             |          |
|-----------------------------|----------|
| Equipment/Property          | \$ _____ |
| Less Depreciation Reserve   | _____    |
| Net Equipment/Property Cost | _____    |
| Prepaid Expenses            | _____    |
| Other: _____                | _____    |
| Other: _____                | _____    |

**TOTAL NONCURRENT ASSETS**      \$ \_\_\_\_\_

**TOTAL ASSETS**      \$ \_\_\_\_\_

### LIABILITIES

#### CURRENT LIABILITIES

|                          |          |
|--------------------------|----------|
| Accounts Payable         | \$ _____ |
| S & W Payable            | _____    |
| Short-Term Notes Payable | _____    |
| Interest Payable         | _____    |
| Short-Term Loan Payable  | _____    |
| Other: _____             | _____    |
| Other: _____             | _____    |

**TOTAL CURRENT LIABILITIES**      \$ \_\_\_\_\_

#### OTHER LIABILITIES

|              |          |
|--------------|----------|
| Other: _____ | \$ _____ |
| Other: _____ | _____    |

**TOTAL OTHER LIABILITIES**      \$ \_\_\_\_\_

**TOTAL LIABILITIES**      \$ \_\_\_\_\_

### CAPTIAL

#### OWNER'S EQUITY

|                       |          |
|-----------------------|----------|
| Capital               | \$ _____ |
| Less Personal Drawing | \$ _____ |
| Net Addition          | \$ _____ |
| Stockholder's Equity  | \$ _____ |
| Other: _____          | \$ _____ |

**TOTAL CAPITAL**      \$ \_\_\_\_\_

**TOTAL LIABILITIES AND CAPITAL**      \$ \_\_\_\_\_

# CONCESSIONAIRE FINANCIAL STATEMENT

|                     |   |
|---------------------|---|
| CONCESSIONAIRE NAME | CONCESSION NAME                           |
| PARK UNIT NAME      | REPORTING PERIOD<br>From: _____ To: _____ |

**D. STATEMENT OF MONTHLY GROSS SALES/RECEIPTS**

|  |                       |                      |                     |
|--|-----------------------|----------------------|---------------------|
| Jan 20 ___ \$ _____                                | April 20 ___ \$ _____ | July 20 ___ \$ _____ | Oct 20 ___ \$ _____ |
| Feb 20 ___ \$ _____                                | May 20 ___ \$ _____   | Aug 20 ___ \$ _____  | Nov 20 ___ \$ _____ |
| Mar 20 ___ \$ _____                                | June 20 ___ \$ _____  | Sept 20 ___ \$ _____ | Dec 20 ___ \$ _____ |
| <b>TOTAL MONTHLY GROSS SALES/RECEIPTS \$ _____</b> |                       |                      |                     |

If the "Total Monthly Gross Sales/Receipts" above does not match the Cash Flow Statement "Gross Sales/Receipts," please explain below.

***The undersigned declares and certifies that the above statement and the attached Cash Flow Statement, Schedule of Depreciation, and Balance Sheet are correct.***

|                          |      |
|--------------------------|------|
| AUTHORIZED SIGNATURE     | DATE |
|                          |      |
| PRINTED NAME OF PREPARER |      |

**EXHIBIT F – DPR 531, CONCESSION PERFORMANCE RATING**

**CONCESSION PERFORMANCE RATING**

State of California - The Resources Agency  
CALIFORNIA STATE PARKS

| DISTRICT  |                                     | PARK UNIT          |                  | DATE                   |                                   |                  |          |
|---|-------------------------------------|--------------------|------------------|------------------------|-----------------------------------|------------------|----------|
| CONCESSIONAIRE  |                                     | TYPE OF CONCESSION |                  |                        |                                   |                  |          |
| CATEGORIES  |                                     |                    |                  |                        |                                   |                  | COMMENTS |
| Circle the appropriate points in each category. If category is not applicable, check not applicable (NA) box. |                                     | EXCELLENT (E)      | SATISFACTORY (S) | NEEDS IMPROVEMENT (NI) | NONCOMPLIANCE/ UNACCEPTABLE (NON) | COMPLIANCE (COM) |          |
| ACCOUNTING  | RENTAL PAYMENT                      | 8                  | 6                | 2                      | 0                                 |                  |          |
|   | MONTHLY DPR 54 SUBMITTAL            | 4                  | 3                | 1                      | 0                                 |                  |          |
|   | ANNUAL DPR 86 SUBMITTAL             | 4                  | 3                | 1                      | 0                                 |                  |          |
|   | MAINTAINS REGISTER JOURNAL/\$ TRAIL |                    |                  |                        | 0                                 | 4                |          |
|   | OTHER:                              |                    |                  |                        | 0                                 | 4                |          |
| BONDS/INSURANCE   | PERFORMANCE BOND                    |                    |                  |                        | 0                                 | 4                |          |
|   | LIABILITY INSURANCE                 |                    |                  |                        | 0                                 | 4                |          |
|   | FIRE INSURANCE                      |                    |                  |                        | 0                                 | 4                |          |
|   | AUTOMOBILE INSURANCE                |                    |                  |                        | 0                                 | 4                |          |
|   | OTHER:                              |                    |                  |                        | 0                                 | 4                |          |
| CONSTRUCTION  | REQUIRED IMPROVEMENTS               |                    |                  |                        | 0                                 | 4                |          |
|   | TIME SCHEDULE                       |                    |                  |                        | 0                                 | 4                |          |
|   | PAYMENT BOND                        |                    |                  |                        | 0                                 | 4                |          |
|   | OTHER:                              |                    |                  |                        | 0                                 | 4                |          |
| USE OF PREMISES   | OPERATING DAYS/HOURS                | 4                  | 3                | 1                      | 0                                 |                  |          |
|   | AUTHORIZED GOODS/SERVICES           | 4                  | 3                | 1                      | 0                                 |                  |          |
|   | APPROPRIATE SIGNAGE/ADVERTISING     | 4                  | 3                | 1                      | 0                                 |                  |          |
|   | OTHER:                              | 4                  | 3                | 1                      | 0                                 |                  |          |
| QUALITY ASSURANCE   | GOODS                               | 8                  | 6                | 2                      | 0                                 |                  |          |
|   | SERVICES                            | 8                  | 6                | 2                      | 0                                 |                  |          |
|   | PRICES (COMPETITIVE/POSTED)         | 4                  | 3                | 1                      | 0                                 |                  |          |
|   | CUSTOMER SERVICE                    | 8                  | 6                | 2                      | 0                                 |                  |          |
|   | OTHER:                              | 4                  | 3                | 1                      | 0                                 |                  |          |
| TOTAL POINTS PER COLUMN   |                                     |                    |                  |                        | 0                                 |                  |          |
| PAGE 1 ONLY   |                                     |                    |                  |                        |                                   |                  |          |



| CATEGORIES  |   | E  | S     | NI | NON            | COM  | NA  | COMMENTS |
|---|---|--|-------|----|----------------|--|---|----------|
| SAFETY  | FIRE SAFETY/PREVENTION                        | 4  | 3     | 1  | 0              |  |   |          |
|   | GAS/ELECTRIC                                  | 4  | 3     | 1  | 0              |  |   |          |
|   | GENERAL SAFETY                                | 4  | 3     | 1  | 0              |  |   |          |
|   | OTHER:  | 4  | 3     | 1  | 0              |  |   |          |
| FACILITY MAINTENANCE  | INTERIOR - HOUSEKEEPING/CLEANLINESS           | 4  | 3     | 1  | 0              |  |   |          |
|   | INTERIOR - FACILITY MAINTENANCE               | 4  | 3     | 1  | 0              |  |   |          |
|   | EXTERIOR - HOUSEKEEPING/CLEANLINESS           | 4  | 3     | 1  | 0              |  |   |          |
|   | EXTERIOR - FACILITY MAINTENANCE               | 4  | 3     | 1  | 0              |  |   |          |
|   | GROUNDS - HOUSEKEEPING/CLEANLINESS            | 4  | 3     | 1  | 0              |  |   |          |
|   | GROUNDS - FACILITY MAINTENANCE                | 4  | 3     | 1  | 0              |  |   |          |
|   | MAINTENANCE PLAN                              | 4  | 3     | 1  | 0              |  |   |          |
|   | OTHER:  | 4  | 3     | 1  | 0              |  |   |          |
| INTERPRETIVE PROGRAM<br><i>(When Applicable)</i>  | COSTUMES                                      | 4  | 3     | 1  | 0              |  |   |          |
|   | MERCHANDISE AND INTERPRETIVE PLAN             | 4  | 3     | 1  | 0              |  |   |          |
|   | FURNISHINGS AND INTERPRETIVE PLAN             | 4  | 3     | 1  | 0              |  |   |          |
|   | EVENTS/ACTIVITIES AND INTERPRETIVE PLAN       | 4  | 3     | 1  | 0              |  |   |          |
|   | IMPLEMENTATION OF INTERPRETIVE PLAN           | 4  | 3     | 1  | 0              |  |   |          |
|   | OTHER:  | 4  | 3     | 1  | 0              |  |   |          |
|   | TOTAL POINTS PER COLUMN<br><i>PAGE 2 ONLY</i> |  |       |    |                | 0  | 0   |          |
| TOTAL POINTS PER COLUMN<br><i>PAGE 1 + PAGE 2</i>   |   |  |       |    | 0              |  |   |          |
| TOTAL POINTS RECEIVED FROM ALL CATEGORIES   |   | MAXIMUM POINTS POSSIBLE FOR RATED CATEGORIES |       |    | PERCENT RATING |  | ARE THERE ANY NONCOMPLIANCE OR UNACCEPTABLE RATINGS IN ANY CATEGORY?* |          |
| $\left( \frac{\quad}{\quad} \right) \times 100 = \#DIV/0!$  |   |  |       |    |                | <input type="checkbox"/> Yes <input type="checkbox"/> No |   |          |
| OVERALL RATING <i>(Based on percent rating)</i>   |   |  |       |    |                |  |   |          |
| <input type="checkbox"/> EXCELLENT (90% to 100%) <input type="checkbox"/> SATISFACTORY (70% to 89%) <input type="checkbox"/> NEEDS IMPROVEMENT (60% to 69%) <input type="checkbox"/> UNACCEPTABLE (less than 60%) |   |  |       |    |                |  |   |          |
| RATER'S SIGNATURE   |   |  | TITLE |    | DATE           |  | RATER DISCUSSED REPORT WITH CONCESSIONAIRE?                           |          |
|   |   |  |       |    |                |  | <input type="checkbox"/> Yes. Date: _____ <input type="checkbox"/> No |          |
| <i>In signing this report I do not necessarily agree with the conclusion of the rater.</i>  |   |  |       |    |                |  |   |          |
| CONCESSIONAIRE'S SIGNATURE  |   |  | TITLE |    | DATE           |  |   |          |
|   |   |  |       |    |                |  |   |          |

\*NOTE: A rating of UNACCEPTABLE or NONCOMPLIANCE in any category will result in an overall rating of no higher than NEEDS IMPROVEMENT.

# EXHIBIT G – DRUG FREE WORKPLACE CERTIFICATION

STATE OF CALIFORNIA

## DRUG-FREE WORKPLACE CERTIFICATION

STD. 21 (Rev. 12/53)(CA, ST PKG, EXCEL 4/9/1999)

### CERTIFICATION

I, the official named below, hereby swear that I am duly authorized to legally to bind the contractor or grant recipient to the certification described below. I am fully aware that this certification, executed on the date below, is made under penalty of perjury under the laws of the State of California.

|   |  |   |
|---|--|---|
| CONTRACTOR/BIDDER FIRM NAME<br><i>Carlsbad Village Athletic Clubs</i>   |  | FEDERAL ID NUMBER                           |
| BY (Authorized Signature)<br><i>Dennis O. Shoyf</i>   |  | DATE EXECUTED                               |
| PRINTED NAME AND TITLE OF PERSON SIGNING<br><i>Dennis O. Shoyf Owner</i>  |  | TELEPHONE NUMBER (include Area Code)<br>( ) |
| TITLE<br><i>Sole Owner</i>  |  |   |
| CONTRACTOR/BIDDER FIRM'S MAILING ADDRESS<br><i>300 Carlsbad Village Dr.<br/>Suite 108A #200, Carlsbad, CA 92008</i> |  |   |

The contractor or grant recipient named above hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace. The above named contractor or grant recipient will:

1. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
2. Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b), to inform employees about all of the following:
  - (a) The dangers of drug abuse in the workplace,
  - (b) The person's or organization's policy in maintaining a drug-free workplace,
  - (c) Any available counseling, rehabilitation and employee assistance programs, and
  - (d) Penalties that may be imposed upon employees for drug abuse violations.
- ✓3. Provide as required by Government Code Section 8355(c), that everyone who works on the proposed contract or grant:
  - (a) Will receive a copy of the company's drug-free workplace policy statement, and
  - (b) Will agree to abide by the terms of the company's statement as a condition of employment on the contract or grant.
4. At the election of the contractor or grantee, from and after the "Date Executed" and until *OCTOBER 1, 2015* (NOT TO EXCEED 36 MONTHS), the state will regard this certificate as valid for all contracts or grants entered into between the contractor or grantee and this state agency without requiring the contractor or grantee to provide a new and individual certificate for each contract or grant. If the contractor or grantee elects to fill in the blank date, then the terms and conditions of this certificate shall have the same force, meaning, effect and enforceability as if a certificate were separately, specifically, and individually provided for each contract or grant between the contractor or grantee and this state agency.

# EXHIBIT H – LICENSE/PERMISSION FOR USE OF TRADEMARKS

## LICENSE/PERMISSION FOR USE OF TRADEMARKS

State of California - The Resource Agency  
DEPARTMENT OF PARKS AND RECREATION

INDIVIDUAL NAME \_\_\_\_\_ hereafter called the "Licensee."

Subject to the terms and conditions of this Agreement, the California Department of Parks and Recreation ("State Parks") grants permission to use certain trademarks (the "Mark(s)"), created and owned by State Parks in accordance with the terms and conditions of this License, identified as follows:

The State Park Logo Registration No. 2433061

See <http://ipolice.search.parks.ca.gov/pages/0011/files/BrandHandbookJanuary2007.pdf>, incorporated herein, for additional provisions regarding use of the Mark, including specifications, registration, and logo usage guidelines.

State Parks hereby grants to the Licensee the non-exclusive, non-transferable, non-sublicensable right and license to use the Mark pursuant to the terms and conditions of this license form and including through \_\_\_\_\_, intended to match and run concurrent with Licensee's Concession Contract with State Parks.

This license shall authorize the use of the Mark and associated goodwill, in connection with only the following:

Any additional use shall require written permission and/or the payment of fees. This permission is non-transferable and non-sublicensable. This is not an exclusive privilege to the user, and State Parks reserves the right to make the Mark available to others.

Licensee shall not modify or alter the Mark in any way without prior written approval from State Parks.

All uses of the Mark must be accompanied by the trademark registration symbol (®) unless it is infeasible from a design standpoint.

IN NO EVENT SHALL STATE PARKS BE LIABLE FOR ANY DAMAGES ARISING FROM OR RELATED TO THIS AGREEMENT. STATE PARKS EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. PERMISSION TO USE THE MARK IS GRANTED "AS IS."

Licensee agrees to indemnify, protect, hold harmless, and defend State Parks from and against any liability that might arise from any and all use of the Mark by Licensee, its licensees, successors or assigns.

**Goodwill and Quality Control**

A. Licensee recognizes the great value and goodwill associated with the Mark and acknowledges that such goodwill belongs to State Parks. Licensee further acknowledges that the Mark has acquired a secondary meaning among the public. Licensee agrees not to take any action that could be detrimental to the goodwill associated with the Mark or to State Parks.

B. Before Licensee uses the Mark on any materials, it shall send a copy of each representative item showing the proposed use to, and obtain written approval from, State Parks. State Parks shall not unreasonably withhold or delay such approval.

**Third Party Infringement**

State Parks, at its sole discretion, shall take whatever action it deems advisable in connection with any unauthorized use of the Mark(s) by a third party. State Parks shall bear the entire cost and expense associated with any such action, and any recovery or compensation that may be awarded or otherwise obtained as a result of any such action shall belong to State Parks.

The provisions above constitute page 1 of 2 of this agreement. Page 2 must be initiated by both parties for this agreement to be valid.

**AGREED AND ACCEPTED**

|   |                  |  |       |
|---|------------------|--|-------|
| State of California<br>Department of Parks and Recreation |                  | LICENSEE                                 |       |
| BY  | DATE             | BY                                       | DATE  |
| D>  |                  | D>                                       |       |
|   |                  | PRINTED NAME AND TITLE OF PERSON SIGNING |       |
| TITLE   | BUSINESS ADDRESS | ADDRESS                                  |       |
| PHONE NO.   | EMAIL            | PHONE NO.                                | EMAIL |

**LICENSE/PERMISSION FOR USE OF TRADEMARKS**

State of California - The Recreation Agency  
DEPARTMENT OF PARKS AND RECREATION

The provisions below constitute page 2 of 2 of this agreement. This page must be initialed by both parties for this agreement to be valid.

**Ownership Rights**

Licensee acknowledges State Park's exclusive right, title and interest in and to the Mark. Licensee further covenants that it shall not at any time challenge or contest the validity, ownership, title and registration of State Parks in and to the intellectual property or the validity of this License. Licensee's use of the Mark shall inure to the benefit of State Parks. If Licensee acquires any trade rights, trademarks, equities, titles, or other rights in and to the Mark, by operation of law, usage, or otherwise, Licensee shall, upon the expiration of this License, assign and transfer the same to State Parks without any consideration other than the consideration of the License. All rights not specifically transferred by this License are reserved to State Parks.

**Termination**

A. State Parks shall have the right to terminate the License without cause upon sixty (60) days notice if the Licensee's Concession Contract with State Parks is terminated, whereupon all rights granted herein shall revert immediately to State Parks.  
B. Upon early termination by State Parks or by expiration of the License, the License shall terminate, Licensee's rights shall cease immediately and Licensee shall discontinue all use of the Mark(s) and/or other licensed property at once. Licensee shall dispose of all goods, works and materials bearing or relating to the Mark in accordance with State Parks' instructions and consistent with the terms and conditions of the Concession Contract.

**No Partnership or Agency Created**

Nothing herein shall be construed to constitute the parties hereto as partners or joint venturers, nor shall any similar relationship be deemed to exist between them. Further, nothing in this License shall make one party the agent of the other, and neither party has power or authority to bind the other.

**Applicable Law**

This License shall be construed in accordance with the laws of the State of California; Licensee consents to jurisdiction of the courts of Sacramento, California.

**Integration**

This License, the Brand Standards Handbook, and the Concession Contract referenced herein, constitute the entire agreement between the parties hereto and shall not be modified, amended, or changed in any way except by written agreement signed by both parties hereto. This License shall be binding upon and shall inure to the benefit of the parties, their successors, and assigns.

**Notices**

All notices and reports to be sent to State Parks shall be in writing and shall be mailed or delivered to California Department of Parks and Recreation, Concessions Division, PO Box 942896, Sacramento CA 94296-0301. All notices to be sent to Licensee shall be mailed or delivered to the address specified on the first page of the License form. All notices and reports shall be deemed delivered immediately upon personal delivery, or, if mailed, three (3) days after being deposited in the United States mail system, postage prepaid, first class mail, and properly addressed. State Parks and Licensee shall provide notice to the other of any change in address.

**ASSIGNMENT**

This License may not be modified except by a written instrument, signed by both parties, making specific reference to this License by date, parties and subject matter.

**Severability**

The invalidity or unenforceability of any provision of this License, or the invalidity or unenforceability of any provision of this License as applied to a particular occurrence or circumstance, shall not affect the validity or enforceability of any of the other provisions of this License or any other applications of such provisions, as the case may be.

**Attorney's Fees**

If litigation becomes necessary to secure compliance with the terms and conditions of this License, to recover damages and/or to terminate the License, the prevailing party in any legal action shall be entitled to recover reasonable attorney fees and expenses incurred.

**AGREED AND ACCEPTED**

|                          |      |                          |      |
|--------------------------|------|--------------------------|------|
| LICENSOR'S INITIALS<br>D | DATE | LICENSEE'S INITIALS<br>D | DATE |
|--------------------------|------|--------------------------|------|

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