

Project: Arroyo Burro Restaurant
APN: 047-092-013
Folio No.: 003533
Agent: DG

CONCESSION AGREEMENT

ARROYO BURRO BEACH COUNTY PARK - RESTAURANT

THIS CONCESSION AGREEMENT (hereinafter "Agreement") is made by and between the

COUNTY OF SANTA BARBARA, a political subdivision of the State of California, hereinafter referred to as "COUNTY,"

and

SANTA BARBARA SHELLFISH CO., INC., a California Corporation, hereinafter referred to as "CONCESSIONER,"

with reference to the following:

WHEREAS, COUNTY is the owner of Arroyo Burro Beach County Park (hereinafter "Park"), located at 2981 ½ Cliff Drive, consisting of a portion of County Assessor Parcel Number 047-092-013, in the unincorporated area of Santa Barbara County (hereinafter "Property"), identified as the diagonally-slashed area of Exhibit "A", attached hereto and incorporated herein by reference; and

WHEREAS, COUNTY-owned improvements on the Property include a beachfront restaurant, snack bar, and patio area known as the Arroyo Burro Beach Restaurant (hereinafter "Premises"); and

WHEREAS, CONCESSIONER bid for and was awarded the right to operate, manage, maintain, and improve the Premises; and

WHEREAS, COUNTY wishes to grant CONCESSIONER the right to operate, manage, maintain, and improve the Premises identified as the cross-hatched area of Exhibit "B", attached hereto and incorporated herein by reference, subject to the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the promises, covenants, and conditions contained herein, the parties agree as follows:

1. ADMINISTRATION AND ENFORCEMENT: The provisions of this Agreement shall be administered and enforced for the COUNTY through the Director of

COUNTY'S Parks Department (hereinafter "Director"). The Director shall have authority to issue or deny any approvals required by this Agreement, to consent to any transfer of rights pursuant to Section 12, ASSIGNMENT/SUBLEASE, and to amend this Agreement on behalf of COUNTY so long as such amendments do not materially alter the purpose of this Agreement, as described in Section 3, PURPOSE AND USE, hereof.

2. **RIGHTS GRANTED**: COUNTY hereby leases to CONCESSIONER and CONCESSIONER hereby takes from COUNTY the Premises, as shown on Exhibit B hereof. CONCESSIONER shall have the obligation and the exclusive right to engage in the following activities:

a) Operation of an indoor dining facility with attached outdoor patio area selling food and beverages, including beer, wine, and other alcoholic beverages, which have been approved by the Director.

b) Operation of a walk-up snack bar selling food, snacks, and non-alcoholic beverages, which have been approved by the Director.

c) Rental of beach-related equipment and supplies, including surfboards, boogie boards, and kayaks, which have been approved by the Director.

All food and beverages sold on the Premises shall comply in all respects with all applicable County, State and Federal food and beverage laws, ordinances and regulations. CONCESSIONER agrees to make all facilities, as well as all products and services provided at the Premises available to the public without discrimination and at reasonable rates.

CONCESSIONER has examined the Premises and determined that the Premises are suitable for the needs and operations of CONCESSIONER. CONCESSIONER hereby accepts the Premises in its current condition and acknowledges that COUNTY makes no warranties or representations regarding the condition of the Premises or any of the improvements or fixtures attached thereto.

CONCESSIONER may change the name of the restaurant and patio area on the Premises, subject to approval by the Director.

3. **PURPOSE AND USE**: CONCESSIONER shall have the right to use the Premises to operate, manage, maintain, and improve the restaurant, snack bar, and patio area on the Premises. CONCESSIONER shall not use the Premises for any other purpose without the express written consent of COUNTY. CONCESSIONER shall not install or construct any improvements on the Premises until such has been approved by the Director, on behalf of COUNTY, in accordance with Section 11, IMPROVEMENTS/ALTERATIONS, hereof.

4. **TERM**: The term of this Agreement shall be for a period of approximately TEN (10) years, commencing February 1, 2008 (hereinafter "Commencement Date"), and terminating December 31, 2017, unless otherwise extended or terminated pursuant to the provisions hereof.

5. **OPTION(S) TO EXTEND THE AGREEMENT**: COUNTY hereby grants CONCESSIONER the option to extend this Agreement for ONE (1) additional term of TEN (10) years, followed by ONE (1) additional term of FIVE (5) years; each subject to all of the following conditions:

a) CONCESSIONER shall give COUNTY at least six (6) months but less than twelve (12) months written notice of its intent to exercise the option; and

b) Concurrently with the notice of intent to exercise the option, CONCESSIONER shall submit a revised Business Plan and Capital Improvements Plan for the requested option period; and

c) CONCESSIONER is not in monetary or non-monetary default nor has COUNTY issued more than three (3) notices of default pursuant to Section 30 hereof; and

d) The original CONCESSIONER has not assigned or otherwise transferred this Agreement or any rights granted herein without the express written consent of the Director, as required in Section 12, ASSIGNMENT/SUBLEASE, hereof; and

e) The Premises are in compliance with all Federal, State, and local ordinances, statutes, rules and regulations, including but not limited to all applicable health, safety, and building codes and regulations.

6. **HOURS OF OPERATION:** CONCESSIONER shall use its best efforts to maximize income at the Premises and shall comply, whenever possible, with the hours of operation described herein. The indoor dining facility shall be open for business daily from at least 7:00 a.m. until at least 10:00 p.m. CONCESSIONER shall open the gate to the Park each day no later than 6:00 a.m. The walk-up window service shall be open for business daily from at least 10:00 a.m. until sundown (Park closing). CONCESSIONER shall be open for business seven days per week, except Thanksgiving Day, Christmas Day, and New Year's Day.

The proposed hours of operation may be amended from time to time by CONCESSIONER and the Director.

7. **ACCESS TO THE PREMISES:** CONCESSIONER shall only access the Premises using the existing road and parking lot. COUNTY shall not be responsible for maintaining access to the Premises and shall not be liable to LESSEE for lack of such access, however, in the event that the Premises becomes inaccessible as a result of natural causes, COUNTY shall, to the extent reasonably necessary, cooperate with CONCESSIONER in restoring access in a timely fashion.

8. **PARKING:** CONCESSIONER'S patrons, guests, and invitees, shall have non-exclusive use of the parking lot on the Property, subject to any rules and regulations imposed by COUNTY. CONCESSIONER and its employees and contractors shall only park in the overflow portion of the parking lot at all times that the Park is open to the public. Notwithstanding, CONCESSIONER shall have exclusive use of one (1) parking stall, located immediately adjacent to the Premises, to be used for shuttling their guests and patrons, as well as guests and patrons of the Park, to and from the parking areas in and around the Park.

Upon approval by the Director, CONCESSIONER shall provide a monitor, at its sole cost and expense, for the purpose of providing its guests and patrons access to the parking lot on the Property before or after normal closing hours for the Park. CONCESSIONER shall indemnify COUNTY for any liability or cost arising from such extended use of the parking lot.

CONCESSIONER shall not provide valet service to park vehicles on behalf of its guests without obtaining prior written approval from the Director.

9. **RENT/CONCESSION FEES/CAPITAL IMPROVEMENTS:** In consideration of the rights granted herein, CONCESSIONER shall pay to COUNTY a monthly fee (hereinafter "Rent") based on a percentage of CONCESSIONER'S monthly income from the rights granted herein, or a minimum monthly rent, whichever is greater; and shall provide the capital improvements to the Premises described in Exhibit "C" hereof. Notwithstanding,

CONCESSIONER shall pay the minimum monthly rent for the first twelve (12) months of the term of this Agreement, and shall not be obligated to pay percentage rent, as defined herein, until the thirteenth month of the term.

Rent shall begin to accrue on the Commencement Date, and shall be paid on a monthly basis, on or before the tenth (10th) day of the following month, and shall be delivered to COUNTY at the address stated herein in Section 29, NOTICES. Concurrently with the payment of Rent, CONCESSIONER shall submit to COUNTY, a written report of all gross income derived from CONCESSIONER'S operations at the Premises for that month. In addition, CONCESSIONER shall submit, within thirty (30) days of the end of the fiscal year for each and every year of the term, including any extension thereof, an annual financial report that includes gross receipts and an accounting of all transactions, prepared by CONCESSIONER'S regularly employed accountant or bookkeeper and certified to be correct by an officer of CONCESSIONER.

PERCENTAGE RENT: CONCESSIONER shall pay to COUNTY a percentage of the gross income on all sales, income or receipts arising from CONCESSIONER'S operations at the Premises. Gross income shall not include any amount collected for State or Federal taxes. CONCESSIONER shall pay to COUNTY, TEN PERCENT (10%) of the gross income received in any calendar month received from all of CONCESSIONER'S operations at the Premises. In addition, CONCESSIONER shall pay to COUNTY, an additional ONE AND FOUR TENTHS PERCENT (1.4%) of all gross income that exceeds THREE MILLION, EIGHT-HUNDRED THOUSAND DOLLARS (\$3,800,000.00) in any calendar year.

MINIMUM MONTHLY RENT: Upon commencement of this Agreement, the minimum monthly rent shall be SIXTEEN THOUSAND DOLLARS (\$16,000.00) for each and every month during the term of this Agreement.

CAPITAL IMPROVEMENTS: As partial consideration for the rights granted herein, CONCESSIONER shall complete the proposed capital improvements described in Exhibit "C" hereof, and shall complete those improvements within a timely manner upon final execution of this Agreement. It is understood that completion of the capital improvements described in Exhibit C by CONCESSIONER represents a substantial portion of the consideration given by CONCESSIONER to COUNTY for the rights granted herein. Failure to complete said improvements in a timely manner shall be a material breach of this Agreement, and shall entitle COUNTY to terminate this Agreement on thirty (30) days written notice to CONCESSIONER.

All such capital improvements shall be subject to the provisions of Section 11, IMPROVEMENTS/ALTERATIONS, hereof, as well as the provisions contained in Exhibit C, attached hereto.

10. ACCOUNTING: CONCESSIONER shall keep and maintain good and sufficient books and records of any and all business conducted under the terms of this Agreement. Such books and records shall be available for inspection by officers, employees and agents of the COUNTY at all reasonable times. In addition to the annual financial report required in Section 9, above, COUNTY may, at its option, require CONCESSIONER to make and complete an annual audit of receipts of CONCESSIONER'S entire business affairs and records relating to CONCESSIONER'S operations at the Premises, prepared by a certified public accountant or licensed public accountant. When such an audit is required, CONCESSIONER shall provide to COUNTY a copy of the annual audit within ninety days of the close of their fiscal year.

COUNTY shall have the right, within twelve months after receipt of the annual audit, to inspect all of the books of account and supporting data relating to gross receipts, and CONCESSIONER, on fourteen days written notice, shall make all such matters available to COUNTY during regular business hours. In the event that any such audit discloses that

CONCESSIONER has not paid COUNTY the proper amount of Percentage Rent, CONCESSIONER shall promptly pay the additional rent due, together with interest computed from the date such Percentage Rent became due at the rate of TEN PERCENT (10%) per annum. Furthermore, in the event of such an audit, should the gross receipts shown by CONCESSIONER for the period covered by such audit be found to be understated by more than FIVE PERCENT (5%), CONCESSIONER shall pay to COUNTY any costs incurred by COUNTY as a result of such audit.

PERCENTAGE RENT: For the purpose of ascertaining the amount payable as percentage rent, CONCESSIONER agrees to prepare accurate records showing inventories and receipts of merchandise at the Premises, and to show daily receipts from all sales and other transactions conducted from the Premises by CONCESSIONER or any third party conducting business from the Premises. CONCESSIONER shall record at the time of the sale and in the presence of the customer, all receipts from sales or other transactions for cash in a cash register that continuously records a cumulative total.

11. IMPROVEMENTS/ALTERATIONS: CONCESSIONER agrees that any improvements, alterations, equipment or utilities constructed or placed on the Premises, either permanent or temporary in nature, or any alterations or additions made to the Property shall be subject to prior written approval by the Director, on behalf of COUNTY. In addition, if COUNTY approves any new proposed improvement plans, such approval shall be deemed conditioned upon CONCESSIONER acquiring permits or clearances from the appropriate governmental agencies, and the submission of such to COUNTY prior to commencement of work. CONCESSIONER shall comply with all conditions of said permits or clearances in a prompt and expeditious manner. Any and all permits or clearances required shall be granted only on the merits of the application thereof, and nothing in this Agreement shall be construed to require COUNTY, or any other governmental agency, to grant such permits or clearances.

CONCESSIONER shall pay when due all claims for labor or materials furnished or alleged to have been furnished to CONCESSIONER for use on the Property, which claims are or may be secured by any liens on the Premises or any interest therein. CONCESSIONER shall give COUNTY no less than ten days written notice prior to the commencement of any work on the Premises, and COUNTY shall have the right to post Notices of Non-responsibility in or on the Property as provided by law. If CONCESSIONER contests in good faith the validity of any such lien, claim or demand, CONCESSIONER shall, at its sole cost and expense, defend itself and COUNTY against the same, and shall pay and satisfy any such adverse judgment that may be rendered therefrom. Upon request by COUNTY, CONCESSIONER shall furnish COUNTY with a copy of a surety bond satisfactory to COUNTY in an amount equal to such contested lien claim or demand indemnifying COUNTY from liability for same, and holding the Property free and clear of the effect of such lien or claim.

Any improvements, alterations, equipment or utilities constructed or placed on the Premises pursuant to this Section, shall become subject to the terms and conditions of this Agreement.

COUNTY hereby approves the capital improvements described in Exhibit C hereof, subject to the provisions contained therein.

12. ASSIGNMENT/SUBLEASE: CONCESSIONER shall not voluntarily assign, sublease or otherwise encumber any rights granted hereunder, or allow any other person or entity to occupy or use all or part of the Premises without the written consent of the DIRECTOR. Any attempt to assign, sublease, hypothecate or otherwise encumber the rights granted hereunder without

such consent shall be void and without legal effect, and render this Agreement terminable at the option of COUNTY.

In the event CONCESSIONER desires to assign, sublease or otherwise encumber this Agreement or any rights granted herein, CONCESSIONER shall submit a written request to the Director which shall include a financial statement regarding the proposed transferee, as well as a statement of the proposed transferee's experience and qualifications in regard to the transferee's ability to perform CONCESSIONER'S obligations under this Agreement and any amendments hereto. CONCESSIONER'S request to transfer shall include a written statement by the proposed transferee that it shall faithfully perform, and shall agree to be bound by, all of the terms, conditions and covenants of this Agreement, including any amendments; and that there shall be no further transfer without the written consent of COUNTY.

Should CONCESSIONER desire to assign the options described in Section 5, OPTION(S) TO EXTEND THE AGREEMENT, CONCESSIONER shall specifically include that request in the written request to the Director. The Director shall have the right, on behalf of COUNTY, to consent to the transfer of this Agreement, the option(s) to extend, or any other rights granted herein.

13. **NONINTERFERENCE**: CONCESSIONER agrees to not use, nor permit those under their control, including, but not limited to, their employees, tenants, licensees, invitees, agents and/or contractors, to use any portion of the Property in any way which interferes with public use of the Property or the Park. Such interference shall be deemed a material breach, and CONCESSIONER shall terminate said interference immediately upon notice from COUNTY. In the event CONCESSIONER fails to stop such interference promptly, this Agreement shall terminate at the option of COUNTY.

14. **FACILITIES**: CONCESSIONER shall pay all costs of construction and installation of any and all improvements to the Premises incidental to the activities contemplated herein; including but not limited to landscaping and maintenance.

15. **SIGNS**: CONCESSIONER shall not erect any signs on the Property without express written consent of COUNTY.

16. **UTILITY CHARGES**: Subject to COUNTY approval, CONCESSIONER shall have the right to install any and all additional utility installations required by the purposes contemplated herein. CONCESSIONER shall be responsible for maintaining any and all utilities to the Premises, and shall pay when due all charges for utilities now on the Premises, or constructed or placed on the Premises, for use by CONCESSIONER. Whenever possible, CONCESSIONER shall separately meter all CONCESSIONER'S utilities such that all utility charges for CONCESSIONER'S operations are independent of utility charges for the Property.

COUNTY reserves the right to use the Property and Premises for utility infrastructure or for any other purpose that does not unreasonably interfere with CONCESSIONER'S operations.

17. **TRASH DISPOSAL**: CONCESSIONER shall be responsible for the removal of all refuse, waste and rubbish from the Property resulting from CONCESSIONER'S operations and depositing such in proper receptacle which may be provided by COUNTY.

18. **WASTE**: No waste shall be committed on the Property, nor shall any nuisance or other acts be committed that disturb the enjoyment of the general public, the Property, its visitors, COUNTY, or any adjacent property owners.

19. **MAINTENANCE**: CONCESSIONER agrees to keep the Premises, including all buildings, improvements and landscaping, in good maintenance and repair, at CONCESSIONER'S sole cost and expense. The Premises shall be maintained in a sanitary, orderly, attractive and safe condition. CONCESSIONER shall coordinate all door and gate locks or combination codes with the COUNTY Park Ranger; keep the garbage area clean and all garbage containers closed to prevent birds and other animals from gaining access to the garbage; and clean all grease traps according to a schedule that has been approved by the Director.

The parties agree that this Agreement is intended to be at no cost to COUNTY and that COUNTY shall have no obligation to maintain the Premises nor any improvements or landscaping thereon. Notwithstanding, COUNTY reserves the right to enter the Premises at any time for emergency purposes or any other purpose related to the Property.

20. **TAXES AND ASSESSMENTS**: This Agreement may confer a POSSESSORY INTEREST TAX on CONCESSIONER and CONCESSIONER shall pay and discharge any and all property taxes and/or assessments, including special assessments and possessory interest taxes, if any, which, due to CONCESSIONER'S operations may be levied upon the Premises during the term of this Agreement.

21. **REIMBURSEMENT OF FEES**: In no event shall COUNTY be responsible for reimbursement of any fees paid by CONCESSIONER'S patrons, invitees or guests.

22. **INDEMNIFICATION**: CONCESSIONER shall defend, indemnify, and save harmless COUNTY, its officers, agents, and employees from any and all claims, demands, damages, costs, expenses (including attorney's fees), judgments, or liabilities arising out of this Agreement or occasioned by the performance or attempted performance of the provisions hereof; including, but not limited to, any act or omission to act on the part of CONCESSIONER or its agents, employees, or other independent contractors directly responsible to CONCESSIONER; except those claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities resulting solely from the negligence or willful misconduct of the COUNTY.

CONCESSIONER shall notify COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement.

23. **INSURANCE**: Without limiting CONCESSIONER'S indemnification of the COUNTY, CONCESSIONER shall procure the following required insurance coverages at its sole cost and expense. All insurance coverages are to be placed with insurers which (1) have a Best's rating of no less than A: VII, and (2) are admitted insurance companies in the State of California. All other insurers require the prior approval of the COUNTY. Such insurance coverage shall be maintained during the term of this Agreement. Failure to comply with the insurance requirements shall place CONCESSIONER in default. Upon request by the COUNTY, CONCESSIONER shall provide a certified copy of any insurance policy to the COUNTY within ten (10) working days.

1. **Workers' Compensation Insurance**: Statutory Workers' Compensation and Employers Liability Insurance shall cover all CONCESSIONER'S staff while performing any work incidental to the performance of this Agreement. The policy shall provide that no cancellation, or expiration or reduction of coverage shall be effective or occur until at least thirty (30) days after

receipt of such notice by the COUNTY. In the event CONCESSIONER is self-insured, it shall furnish a copy of Certificate of Consent to Self-Insure issued by the Department of Industrial Relations for the State of California. This provision does not apply if CONCESSIONER has no employees as defined in Labor Code Section 3350 et seq. during the entire period of this Agreement and CONCESSIONER submits a written statement to the COUNTY stating that fact.

2. General and Automobile Liability Insurance: The general liability insurance shall include liquor liability coverage, as well as bodily injury, property damage and personal injury liability coverage; shall afford coverage for all premises, operations, products and completed operations of CONCESSIONER; and shall include contractual liability coverage sufficiently broad so as to include the insurable liability assumed herein by CONCESSIONER, including, but not limited to Section 22, INDEMNIFICATION, hereof. The automobile liability insurance shall cover all owned, non-owned and hired motor vehicles that are operated on behalf of CONCESSIONER pursuant to CONCESSIONER'S activities hereunder. Prior to CONCESSIONER providing any valet parking service on the Property, CONCESSIONER shall provide COUNTY with evidence of insurance adequate to protect COUNTY from any liability arising therefrom. CONCESSIONER shall require all subcontractors to be included under its policies or furnish separate certificates and endorsements to meet the standards of these provisions by each subcontractor. COUNTY, its officers, agents, and employees shall be Additional Insured status on any policy. A cross liability clause, or equivalent wording, stating that coverage will apply separately to each named or additional insured as if separate policies had been issued to each shall be included in the policies. A copy of the endorsement evidencing that the policy has been changed to reflect the Additional Insured status must be attached to the certificate of insurance. The limit of liability of said policy or policies for general and automobile liability insurance shall not be less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Any deductible or Self-Insured Retention {SIR} over \$10,000 requires approval by the COUNTY.

Said policy or policies shall include a severability of interest or cross liability clause or equivalent wording. Said policy or policies shall contain a provision of the following form:

"Such insurance as is afforded by this policy shall be primary and if the COUNTY has other valid and collectible insurance, that other insurance shall be excess and non-contributory."

If the policy providing liability coverage is on a 'claims-made' form, CONCESSIONER is required to maintain such coverage for a minimum of three years following completion of the performance or attempted performance of the provisions of this Agreement. Said policy or policies shall provide that the COUNTY shall be given thirty (30) days written notice prior to cancellation or expiration of the policy or reduction in coverage.

3. Property Insurance. The Property Insurance shall provide all risk property coverage on a replacement cost basis for the Property. COUNTY shall be included as a loss payee on any Property Insurance policy. Said Property Insurance shall contain an agreement under which the insurance company or companies supplying said policy shall notify COUNTY in writing at least thirty (30) days prior to cancellation of all or any part of such policy.

In the event of any loss to any property that is subject to this Agreement which is caused by any occurrence that is covered by such all risk property insurance, CONCESSIONER shall be responsible for any payment of any deductible. All property insurance carried by CONCESSIONER shall include provisions denying to the insurer, acquisition by subrogation of rights of recovery against the other party to the extent the rights have been waived by the insured prior to occurrence of loss or injury.

The above insurance requirements are subject to periodic review by the COUNTY. The COUNTY'S Risk Program Administrator is authorized to change the above

insurance requirements, with the concurrence of County Counsel, to include additional types of insurance coverage or higher coverage limits, provided that such change is reasonable based on changed risk of loss or in light of past claims against the COUNTY or inflation. This option may be exercised during any amendment of this Agreement that results in an increase in the nature of COUNTY'S risk and such change of provisions will be in effect for the term of the amended Agreement. Such change pertaining to types of insurance coverage or higher coverage limits must be made by written amendment to this Agreement. CONCESSIONER agrees to execute any such amendment within thirty (30) days of acceptance of the amendment or modification.

24. **NONDISCRIMINATION:** CONCESSIONER shall comply with COUNTY laws, rules and regulations regarding nondiscrimination as such are found in the Santa Barbara Code and as such may from time to time be amended. These provisions are incorporated herein as if they were fully set forth.

Noncompliance with provisions of this section shall constitute a material breach of this Agreement and in addition to any other remedies provided by law, COUNTY shall have the right to terminate this Agreement and the interest hereby created without liability therefor.

25. **ENVIRONMENTAL IMPAIRMENT:** CONCESSIONER shall comply with all applicable laws, regulations, rules, and orders regardless of when they become or became effective, including without limitation those relating to construction, grading, signing, health, safety, noise, environmental protection, waste disposal, water and air quality, and shall furnish satisfactory evidence of compliance upon request of COUNTY.

Should any discharge, leakage, spillage, emission, or pollution of any type occur upon the property due to CONCESSIONER'S use and occupancy, CONCESSIONER shall clean all property affected to the satisfaction of COUNTY and any governmental body having jurisdiction thereover. CONCESSIONER shall indemnify, hold harmless, and defend COUNTY from and against all liability, claim, cost, and expense (including without limitation any fines, penalties, judgments, litigation costs, attorney's fees, and consulting engineering and construction costs) incurred by COUNTY as a result of CONCESSIONER'S breach of this section, or as a result of any such discharge, leakage, spillage, emission or pollution due to CONCESSIONER'S use and occupancy, regardless of whether such liability, cost or expense arises during or after the term of this Agreement, and regardless of negligence, active or passive, of COUNTY.

26. **TOXICS:** CONCESSIONER shall not manufacture or generate hazardous wastes on or in the leased area unless specifically authorized by this Agreement. CONCESSIONER shall be fully responsible for any hazardous wastes, substances or materials as defined under federal, state or local law, regulation, or ordinance that are manufactured, generated, used, placed, disposed, stored, or transported by CONCESSIONER, its agents, employees, or designees on the leased area during the term of this Agreement and shall comply with and be bound by all applicable provisions of such federal, state, or local law, regulation, or ordinance dealing with such wastes, substances, or materials. CONCESSIONER shall notify COUNTY and the appropriate governmental emergency response agency(ies) immediately in the event of any release or threatened release of any such wastes, substances or materials.

COUNTY shall not manufacture or generate, nor allow others under its control to manufacture or generate hazardous wastes on the property. COUNTY shall notify CONCESSIONER immediately in the event of any release or threatened release of any such wastes, substances or materials. In the event that such wastes, substances, or materials are released upon the property by COUNTY or others under its control, CONCESSIONER may terminate this

Agreement. Upon termination of this Agreement by CONCESSIONER, all rights of CONCESSIONER shall cease and CONCESSIONER shall quietly and peacefully deliver to COUNTY, possession and interest in the property.

27. **COMPLIANCE WITH THE LAW:** CONCESSIONER and CONCESSIONER'S tenants, licensees, invitees or guests shall comply with all local, County, State, and Federal laws, rules, and regulations affecting the property, now or hereafter in effect. In particular, CONCESSIONER'S occupancy shall at all times be subject to County Park rules, regulations, and restrictions per Santa Barbara County Code, Chapter 26. Upon request, CONCESSIONER shall provide each tenant, licensee, invitee or guest with a copy of the County Park Rules including any subsequent amendments thereto.

28. **ANNUAL REPORT:** On January 1 of each and every year, CONCESSIONER shall provide COUNTY with an annual report describing CONCESSIONER'S current officers and general operations on the Premises.

29. **NOTICES:** Any notice to be given to the parties, by another, shall be in writing and shall be served, either personally or by mail to the following:

COUNTY: County of Santa Barbara Parks Department
610 Mission Canyon Rd.
Santa Barbara, CA 93105
(805) 568-2461

CONCESSIONER: Santa Barbara Shellfish Co., Inc.
Attn: Thomas or Adam White
101 East Cabrillo Blvd.
Santa Barbara, CA 93101
(805) 966-2112

or to the parties at such other place as may be designated in writing. Such notices shall be served by depositing them addressed as set out above, postage prepaid, in the U.S. mail or by personal delivery. The date of mailing, or in the event of personal delivery, the date of delivery shall constitute the date of service.

30. **DEFAULT:** Except as otherwise required herein, should CONCESSIONER at any time be in material default hereunder with respect to any covenant contained herein, COUNTY shall give notice to CONCESSIONER specifying the particulars of the default and CONCESSIONER shall promptly commence remedial action to cure the default. Should such default continue uncured for a period of thirty (30) calendar days from such notice, then the rights of CONCESSIONER granted in this Agreement shall terminate at the option of the COUNTY unless the cure of such default shall reasonably take more than thirty (30) calendar days in which case CONCESSIONER shall proceed with all due speed to cure the default and shall have a reasonable time to effectuate its cure.

31. **BREACH:** In the event CONCESSIONER violates any of the provisions herein and fails to remedy such violation within thirty (30) days after written notice thereof, in addition to

any other rights COUNTY may be entitled to at law, COUNTY may terminate this Agreement and all rights of CONCESSIONER hereunder and remove CONCESSIONER from the Premises.

32. **WAIVER**: It is understood and agreed that any waiver, express or implied of any term of this Agreement shall not be, nor construed to be a waiver of any subsequent breach of a like kind or of any other provision of this Agreement.

33. **TERMINATION**: This Agreement shall terminate and all rights of CONCESSIONER shall cease and CONCESSIONER shall quietly and peacefully deliver to COUNTY, possession and interest in the Premises:

- a) Upon expiration of the term, or any extensions thereof; or
- b) As provided in Section 34, **DESTRUCTION**; or
- c) Upon abandonment of the Property as provided for in Section 37, **ABANDONMENT**; or
- d) In the event CONCESSIONER is found to be in non-compliance with any permits associated with this Agreement and such non-compliance is not resolved in a timely fashion; or
- e) The failure of CONCESSIONER to satisfy, observe or perform any of the covenants, conditions or reservations set forth in this Agreement, including but not limited to CONCESSIONER'S failure to complete the capital improvements according to Exhibit C, and COUNTY'S exercise of its right to terminate.

34. **DESTRUCTION**: If the Premises are partially or totally destroyed by fire or other casualty, this Agreement, at the option of COUNTY shall terminate.

35. **AGENCY DISCLOSURE**: CONCESSIONER acknowledges that the General Services Department, Facilities Services Division, of the COUNTY is the agent for the COUNTY exclusively, and is neither the agent for CONCESSIONER nor a dual agent in this transaction.

36. **REMOVAL OF PROPERTY UPON TERMINATION**: Upon termination of this Agreement, CONCESSIONER shall vacate and return possession of the Premises to COUNTY. COUNTY may require CONCESSIONER to remove any and all CONCESSIONER constructed improvements, alterations and equipment. However, any improvements to the Premises that have been approved by COUNTY pursuant to Section 11 hereof, including utilities, shall remain property of the COUNTY. Any removal of property by CONCESSIONER shall be completed within sixty (60) days of written request by COUNTY and shall be done at CONCESSIONER'S sole cost and expense. CONCESSIONER shall restore the Property and Premises as nearly as possible to its original condition. Alternatively, COUNTY and CONCESSIONER may negotiate for COUNTY'S purchase of any or all of CONCESSIONER'S personal property upon such terms as deemed reasonable.

37. **ABANDONMENT**: If CONCESSIONER abandons the Premises, this Agreement shall terminate. In the event of such abandonment, COUNTY may, but shall not be obligated to, remove the personal property of CONCESSIONER and store same, at CONCESSIONER'S expense. Alternatively, COUNTY may dispose of said property and shall have no liability therefor.

38. **AMENDMENTS**: This Agreement may only be amended by written consent of the parties and such changes shall be binding upon the heirs or successors of the parties. Notwithstanding, the Director shall have authority to amend this Agreement on behalf of COUNTY so long as such amendments do not materially alter the purpose of this Agreement, as such is described in Section 3, **PURPOSE AND USE**, hereof.

39. **CAPTIONS**: The title or headings to the sections of this Agreement are not a part of this Agreement, and shall have no effect upon the construction or interpretation of any part hereof.

40. **SEVERABILITY**: If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal, or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

41. **CERTIFICATION OF SIGNATORY**: The signatories of this Agreement and each of them represent and warrant that they are authorized to execute this Agreement and that no additional signatures are required to bind COUNTY and CONCESSIONER to its terms and conditions or to carry out duties contemplated herein.

42. **ENTIRE AGREEMENT**: The parties to this Agreement intend that their negotiations, conversations and statements made prior to execution of this Agreement are fully integrated and expressed herein, and no such negotiations, conversations, and statements shall be deemed to create rights or obligations other than those stated herein.

43. **CONSTRUCTION**: The parties to this Agreement agree that each party and its respective counsel have reviewed and approved this Agreement to the extent that each party in its sole discretion has desired, and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement. The terms and conditions of this Agreement embody the parties' mutual intent, and this Agreement shall not be construed more liberally in favor of, nor more strictly against any party hereto.

44. **SUCCESSORS IN INTEREST**: This Agreement and the covenants contained herein shall be binding upon and inure to the benefit of the respective parties, its successors and assigns, and to any organization into which CONCESSIONER may be merged.

Project: Arroyo Burro Restaurant
APN: 047-092-013
Folio No.: 003533
Agent: DG

IN WITNESS WHEREOF, COUNTY and CONCESSIONER have signed this Concession Agreement by the respective authorized officers as set forth below to be effective on the date executed by COUNTY.

“COUNTY”
COUNTY OF SANTA BARBARA

ATTEST:
MICHAEL F. BROWN
CLERK OF THE BOARD

By: _____
Chair, Board of Supervisors

By: _____

Date: _____

APPROVED:

SANTA BARBARA SHELLFISH CO., INC.

Daniel Hernandez
Director of Parks

Thomas White, President and Secretary

SANTA BARBARA SHELLFISH CO., INC

Adam White, Vice President and Treasurer

APPROVED AS TO FORM:
STEPHEN SHANE STARK
COUNTY COUNSEL

APPROVED AS TO FORM:
ROBERT GEIS, C.P.A.
AUDITOR-CONTROLLER

By: _____
Deputy

By: _____
Deputy

APPROVED:

Ronn Carlentine, SR/WA
Real Property Manager

APPROVED:

Ray Aromatorío, ARM, AIC
Risk Program Administrator

Project: Arroyo Burro Restaurant
APN: 047-092-013
Folio No.: 003533
Agent: DG

IN WITNESS WHEREOF, COUNTY and CONCESSIONER have signed this Concession Agreement by the respective authorized officers as set forth below to be effective on the date executed by COUNTY.

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ATTEST:
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CLERK OF THE BOARD

By: _____
Chair, Board of Supervisors

By: _____

Date: _____

APPROVED:

SANTA BARBARA SHELLFISH CO., INC.

Daniel Hernandez
Director of Parks

Thomas White, President and Secretary

SANTA BARBARA SHELLFISH CO., INC

Adam White, Vice President and Treasurer

APPROVED AS TO FORM:
STEPHEN SHANE STARK
COUNTY COUNSEL

APPROVED AS TO FORM:
ROBERT GEIS, C.P.A.
AUDITOR-CONTROLLER

By: _____
Deputy

By: _____
Deputy

APPROVED:

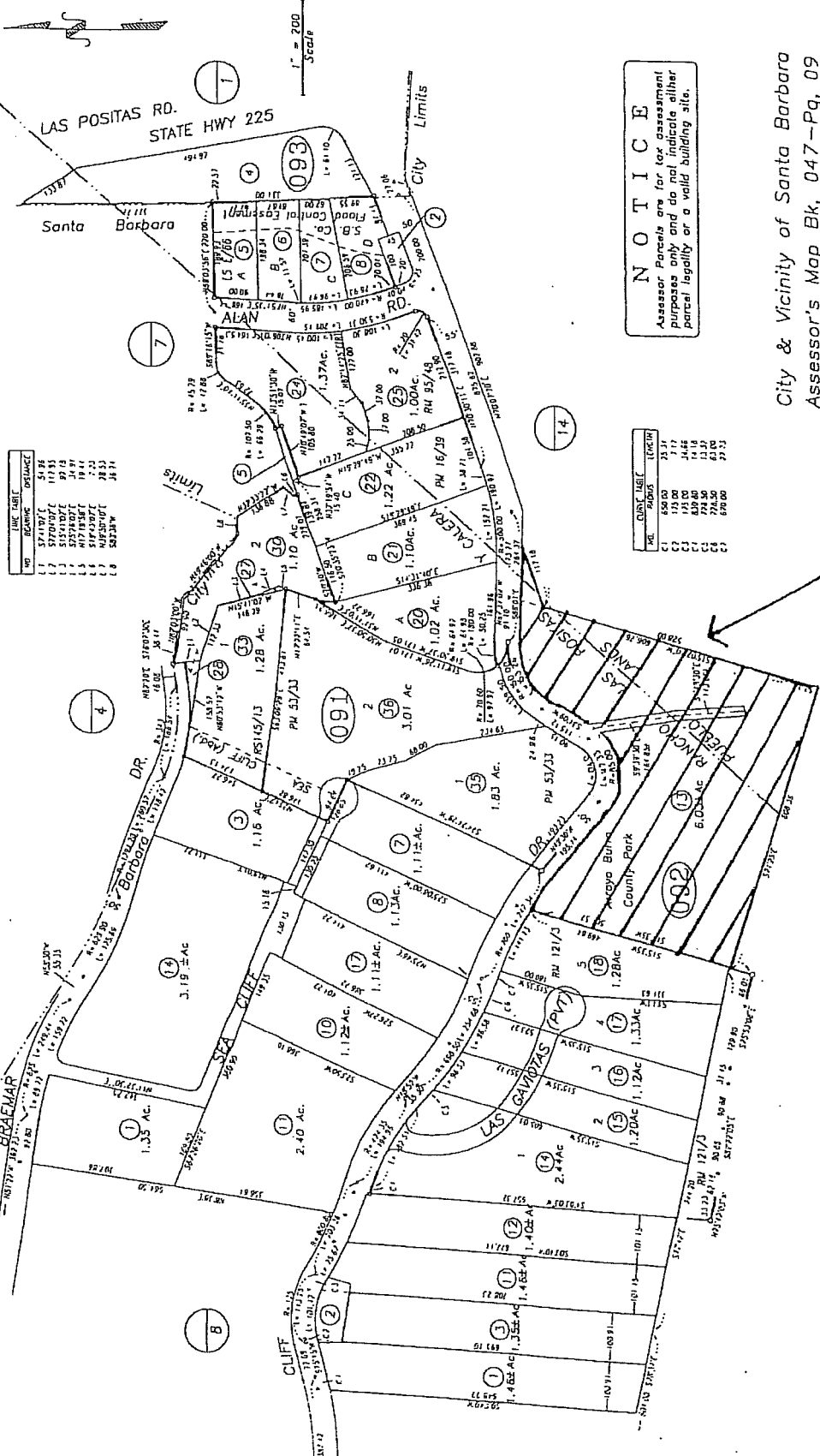
APPROVED:

Rom Carlentine, SR/WA
Real Property Manager

Ray Aromatorfo, ARM, AIC
Risk Program Administrator

047-09

POR. RANCHO LAS POSITAS Y LA CALERA
& POR. PUEBLO LANDS



NO.	OWNER	DETAILED
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NOTICE
Assessor's Parcels are for tax assessment purposes only and do not indicate either parcel legality or a valid building site.

NO.	OWNER	DETAILED
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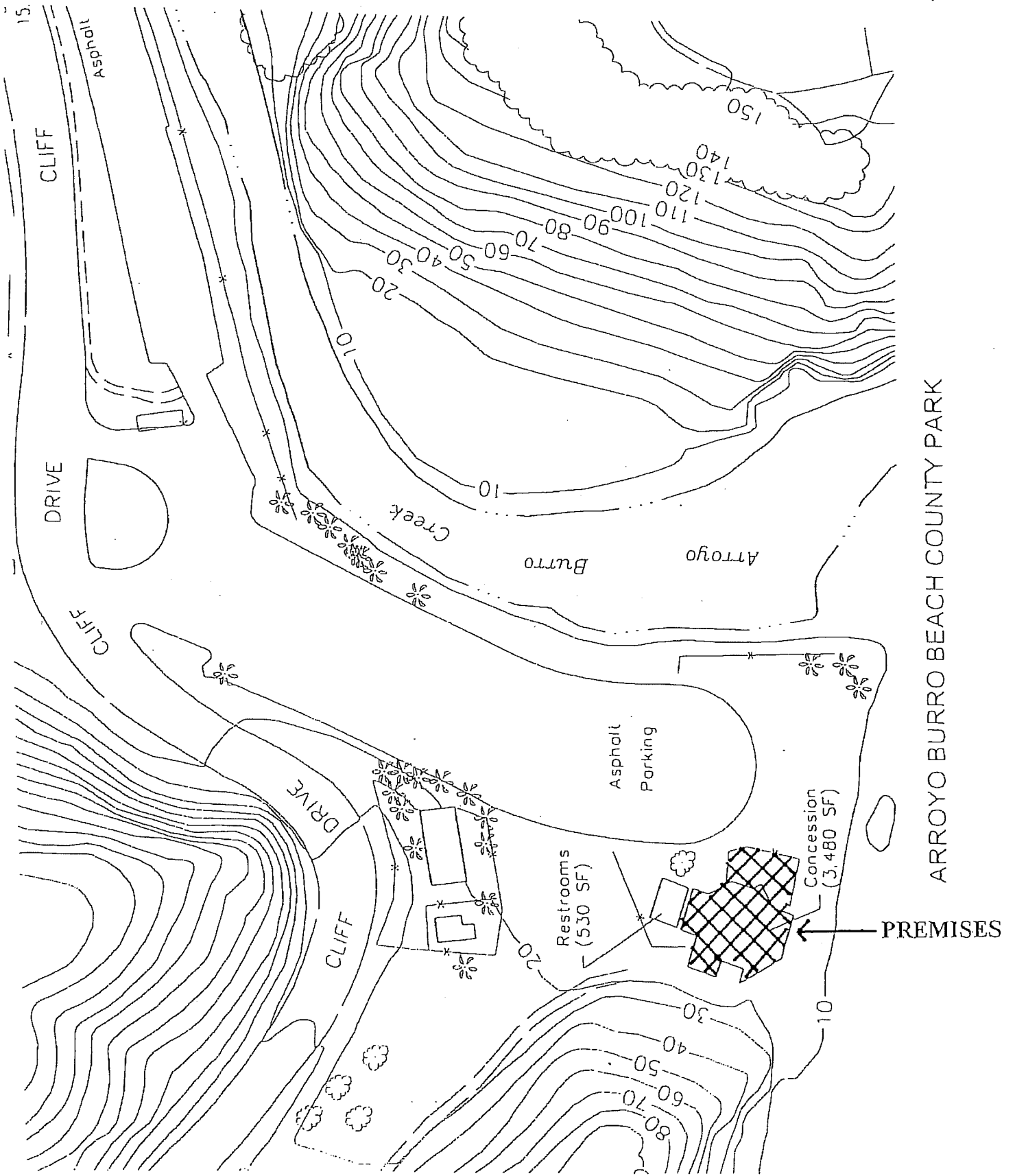
City & Vicinity of Santa Barbara
Assessor's Map Bk, 047-Pg, 09
County of Santa Barbara, Calif.

PROPERTY

09/27/1978 R.M. Bk. 95, Pg. 48-49 ; Tract 20191 "La Sombra Subdivision"
03/26/1981 R.M. Bk. 121, Pg. 3-6 ; Tract 20224 "Las Gaviotas"

ARROYO BURRO BEACH COUNTY PARK

EXHIBIT A



ARROYO BURRO BEACH COUNTY PARK

PREMISES

PREMISES

EXHIBIT B

CAPITAL IMPROVEMENTS

1. **PROJECT APPROVAL:** The COUNTY hereby approves the capital improvements described herein (hereinafter "Project") according to the plans and specifications dated _____, _____, which shall be kept on file at the Park Administrative Office of the County. This approval is conditioned upon CONCESSIONER: (a) obtaining all applicable permits required by governmental authorities for the proposed work, (b) providing the Director, or designee, with a copy of all required permits and a copy of the most current plans and specifications prior to the commencement of such work, and (c) complying with all conditions of such permits in a prompt and expeditious manner.

Both parties recognize that deviations from the approved plans may occur due to unique and unforeseeable site conditions. Any deviations from the approved plans shall be reflected on revised plan drawings subject to prior written approval from the Director, or designee.

2. **PROJECT COSTS:** CONCESSIONER shall bear the sole cost of the Project, and shall pay when due all claims for labor or materials furnished or alleged to have been furnished to or for CONCESSIONER in connection with the Project. COUNTY shall have the right to post notices of non-responsibility in or on the Property as provided by law. If CONCESSIONER contests any lien, claim, or demand, then CONCESSIONER shall, at its sole expense, defend and protect itself and the COUNTY against the same and shall pay and satisfy any adverse judgment that may be rendered thereon before enforcement thereof against the COUNTY.

3. **PAYMENT AND PERFORMANCE BONDS:** CONCESSIONER shall furnish and deliver to COUNTY any Payment Bond required under the provisions of California Civil Code Section 3247 through 3252 and Performance Bond as required under the provisions of the California Government Code and/or California Public Contract Code.

Before any performance under this Agreement, CONCESSIONER shall provide the security required by statute for the payment of all workers and suppliers, and security for faithful performance of all terms and conditions of this Agreement, in an amount and form approved by the COUNTY. Both securities shall contain provisions which automatically increase amounts thereof and/or time of completion or both for all change orders, extensions and additions to the work provided pursuant to this Agreement.

4. **WARRANTY OF CONSTRUCTION:** The Performance Bond shall remain in effect for a 12 month warranty period after the date of substantial completion, as determined by the COUNTY. Extended warranty periods shall be provided under manufacturer warranties, as required by project specifications. In the event that CONCESSIONER or its designated representative fails to commence and diligently pursue all work within a reasonable time after receipt of written notification pursuant to the requirements thereof, the Director, or designee shall have the right to demand that said work be performed under the Performance Bond by making written notice on the surety. If the surety fails or refuses to perform the obligation it assumed under the Performance Bond, COUNTY shall have the work performed by others, and after completion of the work, shall make demand for reimbursement of any or all expenses incurred by COUNTY while performing the work, including, but not limited to, administrative personnel.

EXHIBIT C

5. **CONSTRUCTION ESTIMATE:** The Project currently has an estimated cost of \$824,312.97, excluding the cost of checking and inspection.

6. **PROJECT DEADLINE:** CONCESSIONER agrees to complete the Project in accordance with the approved plans and all applicable laws, rules and regulations, within a reasonable time upon execution of this Agreement. CONCESSIONER shall notify the Director or designee in writing one (1) week in advance of commencement of construction, and shall provide a timeline for completion of the Project. The time for completion may be extended by the Director, or designee, for good cause shown by CONCESSIONER. In the event CONCESSIONER fails to complete the Project within the time specified and there has been no good cause for delay, the COUNTY may complete said work and CONCESSIONER promises to pay COUNTY the full costs and expenses thereof or COUNTY may recover the same from CONCESSIONER.

7. **PROJECT PERFORMANCE:** Notwithstanding the fact that CONCESSIONER'S plans and specifications, completion of the work and other acts are subject to approval by the COUNTY; it is understood and agreed that any approval of the plans and specifications by COUNTY shall not relieve CONCESSIONER from satisfactorily performing said work or its obligations hereunder. The sufficiency and the compliance of the plans and specifications with the approved plans and all applicable laws, rules and regulations shall be the sole responsibility of CONCESSIONER. CONCESSIONER hereby warrants that its plans and specifications will comply with all applicable laws, rules and regulations and that the work done pursuant thereto shall be in conformity with such laws, rules and regulations and performed in a good workmanlike manner and in accordance with sound construction practices. This warranty shall survive any review, inspection or approval by the Director or designee and any other COUNTY officers, employees or agents.

CONCESSIONER is responsible for all design, bidding, contracting, construction management and completion of the Project in accordance with the approved plans and specifications. If necessary, CONCESSIONER shall provide perimeter fencing and lighting to secure the construction site as specified in the approved plans.

CONCESSIONER shall repair any damage to the existing structures on the Property or caused by the performance of the Project. Furthermore, the Project alterations and improvements shall be constructed in such a manner as to conform to the existing improvements on the Property, in accordance with sound construction practices.

8. **SUPPLYING "RECORD DRAWING" PLANS:** Upon completion of construction, CONCESSIONER shall supply the Director or designee, at no cost to COUNTY, one mylar (4 mils) set of "record" drawings. These drawings shall be certified as being "record drawings" and shall reflect the improvements as actually constructed, with all changes incorporated therein.

9. **ACCESSIBILITY REQUIREMENTS:** The COUNTY and CONCESSIONER acknowledge that certain aspects of the Project may require compliance with the California Building Code in regard to accessibility requirements. Such requirements may include, but are not limited to: ADA compliant accessibility to public restrooms, installation of an ADA approved access ramp, and installation of an ADA compliant water fountain. The Project is deemed to include such accessibility elements as shown on the approved plans and required by the Chief Building Official of the COUNTY in order to comply with the accessibility requirements of the California Building Code.

10. **CONSTRUCTION COST ACCOUNTING:** CONCESSIONER shall ensure that all construction work is performed in accordance with the California State law in regard to prevailing wage.

11. **CONSTRUCTION STAGING AREA:** CONCESSIONER may use the exiting Premises, as well as that portion of the Property identified on the attached plans and specifications as a construction staging area for vehicles, equipment and materials. No other construction or contractor parking shall occur outside of the staging area, except for the overflow parking area. Requests for other construction staging and parking shall be subject to the prior written approval of the Director or designee. CONCESSIONER shall remove all vehicles, equipment and materials within two weeks of receipt of a Certificate of Occupancy for the Project or the lapsing or invalidity of the building permit for the Project, whichever occurs first. Upon the removal of the vehicles, equipment and materials, CONCESSIONER shall return the staging area landscaping and hardscaping to its prior condition.

12. **TIME IS OF THE ESSENCE:** Time limits in this Agreement are to be strictly observed. Time is of the essence in the performance of each and every obligation and covenant of the parties thereon.

13. **NON-AGENCY:** It is hereby mutually covenanted and agreed by the parties hereto that the CONCESSIONER'S contractors are not agents or employees of the COUNTY.

14. **INSURANCE AND INDEMNIFICATION:** The Insurance and Indemnification provisions of this Agreement shall apply to all aspects of planning, construction and maintenance of all capital improvements constructed by CONCESSIONER, and upon completion, all such improvements shall be subject to the terms of this Agreement.

15. **PROJECT DESCRIPTION:** (see Attachment 1)

CAPITAL IMPROVEMENTS

I. Capital improvements to the building:

In all cases, low energy options, water and power will be used.

- Relocation of the cook-line and opening up the entrance will make the space seem larger and infinitely more inviting. Completely upgrade all kitchen equipment, improve all floor drains and floor sinks, new dishwasher line and dish rack storage; new efficient grease trap, and disposal units will be used.
- Efficient energy gas grille, and top of the line kitchen equipment, including efficient convection ovens, salamanders, and grille tops.
- Refrigeration package to include all new energy efficient prep-tables, holding trays, and refer units.
- The "back-of-the-house" improvements, including structural changes, and equipment will cost \$200,000.00
- Changes to the "front of the house", specifically the dining area will include:
 - Removal of the existing bar, thereby increasing the floor space allowing more than the existing 15 tables. Relocation of the bar is essential to gain valuable indoor seating space. The Bar will become a all-weather service bar, with a dramatic outside patio component. Opening up more space in the dining room is key to an all-weather destination facility and it would be essential to have more than the existing fifteen tables inside the building. We will be working on this architectural assignment to capture as much more space as possible. Our initial plans yield twenty inside tables.
 - Redesigning the entrance, will include a friendly waiting area, where one might enjoy a glass of wine or cocktail while waiting for a table. The new entry will tie together the interior with the patio.
 - Wooden floors, functional "plantation windows" plantation overhead fans, copper topped bar, authentic old lifeguard photos and artifacts, lifeboat oars on the ceiling beams and more.
- The front of the house remodel and structural changes will cost \$75,000.00.
- Outside patios will be glassed in and natural gas patio heaters installed, new patio tables and chairs. Boat oar tripods will be used for bus trays and menu holders. Going forward we would like to explore the opportunity to add decking around the perimeter of the building and add, "for public use" picnic tables.

The cost for the patio improvements will be \$75,000.00.

Allen Associates
835 North Milpas St.
Santa Barbara Ca. 93103
Phone # 884-8777
Fax # 884-0029

CAPITAL IMPROVEMENTS COST ESTIMATE 1/16/08

Project: The Boathouse
2981 1/2 Cliff Dr.
Santa Barbara Ca.

Client:
Thomas and Adam White
Santa Barbara Shellfish Company Inc.
101 E. Cabrillo Boulevard
Santa Barbara , Ca. 93101
Phone 966-2112
Fax 963-1802

Architect: David Van Hoy
729-3184

Budget Estimate on 1/5/08	Amount
Temporary construction facilities:	
Fencing	\$ 5,000.00
Dumpsters	\$ 3,200.00
Power	incl.
Construction Trailer	\$ 800.00
Storage bins	\$ 500.00
Demolition:	
Walls, equipment, fixtures	\$ 7,500.00
Concrete cutting and slabs	\$ 4,100.00
Framing materials and labor:	
New walls, openings, and wall backing	\$ 12,000.00
Concrete:	
Slab repair, float slabs to level, equipment curbs	\$ 2,100.00
Plumbing:	\$ 119,000.00
Electrical:	\$ 165,000.00
Mechanical, refrigeration, sheelmetal:	\$ 60,000.00
Alarm system	\$ 1,250.00
Insulation:	\$ 1,650.00
Exterior doors and windows and hardware:	\$ 15,000.00

Alternate for replacement of remaining windows (mat. and labor)		
Interior doors and hardware:	\$	3,000.00
Drywall:	\$	16,000.00
Floorings;		
Interior tile 1264 sq. ft. @ \$30/sq. ft.	\$	37,920.00
Interior wood 1100 sq. ft. @ \$ 15/ sq. ft.	\$	16,500.00
Wall coverings;		
F.R.P. 3500 sq. ft. @ \$ 5/ sq.ft. (M & L)	\$	17,500.00
Bath walls tile (public) 300 sq. ft. @ \$20/sq.ft. (M & L)	\$	6,000.00
Decorative	\$	12,000.00
Painting interior and exterior:	\$	25,000.00
Finish carpentry materials and labor:	\$	15,000.00
Bath accessories and A.D.A. (3 bathrooms)	\$	3,500.00
Glass wall interior 4ft. High above framed wall	\$	3,400.00
Glass walls exterior 6 ft. high above deck	\$	22,000.00
Outdoor decking 2,200 sq. ft. over existing slab:		
Sleepers materials and labor:	\$	6,660.00
Decking materials and labor:	\$	33,000.00
Landscaping	\$	10,000.00
General labor	\$	19,300.00
Supervision	\$	62,500.00
General Liability Insurance @ 1%	\$	7,063.80
Subtotal:	\$	713,443.80
Overhead @ 9%	\$	64,209.94
Profit @ 6%	\$	46,659.22
Total:	\$	824,312.97

EXHIBIT C
ATTACHMENT I

