

STATE OF INDIANA
DEPARTMENT OF NATURAL RESOURCES
AMENDMENT # 3
LEASE AGREEMENT
WITH
PAVILION PARTNERS, LLC
EDS # E3-5-ME240

This is an Amendment to the Lease Agreement ("Lease") entered into by and between the State of Indiana, through its Department of Natural Resources ("Lessor") and Pavilion Partners, LLC ("Lessee"), collectively referred to as "the Parties", approved by the last State signatory on February 26, 2015, and amended on December 12, 2016 and October 30, 2017.

Pursuant to the Lease which Lessor leased to Lessee the real property situated in Porter County, Indiana, as described on Exhibit A, which is attached hereto and made a part hereof (the "Leased Real Estate"). Lessor and Lessee hereby amend the Lease, effective as of the Amendment Date, as provided in this Amendment. All capitalized terms in this Amendment not otherwise defined herein are defined as provided in the Lease. In consideration of the mutual undertakings and covenants hereinafter set forth, the parties agree as follows:

A3-1. Leasehold Surrender Interest Value.

(a) **Current Leasehold Surrender Interest Value.** Lessor and Lessee acknowledge and agree that the current Leasehold Surrender Interest Value for purposes of the Lease, for the eligible direct costs for the completed construction of the restroom building to the southwest of the existing pavilion building, is \$679,707.20. The foregoing relates to the eligible direct costs for said restroom building only, and neither party is making any acknowledgments or agreements regarding the Leasehold Surrender Interest Value with respect to the eligible indirect costs for the completed restroom building or with respect to any other improvements as of the date of this Amendment.

(b) **Depreciation and Consumer Price Index Adjustments.** In determining the Leasehold Surrender Interest Value pursuant to the Lease, the Parties hereby agree that, for the period between the date of any applicable leasehold mortgage pursuant to Section 13.06 of the Lease (each a "Mortgage") and the date of full and final payment by Lessee of all principal, interest and other amounts payable under or with respect to the obligations secured by such Mortgage (the "Loan Period"), the amount of the reduction for depreciation for purposes of Section 5.08(i)(3) of the Lease for all capital improvements still in service will not exceed the amount of the increase in the Leasehold Surrender Interest Value for purposes of Section 5.08(i)(2) of the Lease resulting from an increase in the Consumer Price Index. The Lease is hereby amended accordingly.

A3-2. Assumption of Lease. Prior to any termination of the Lease taking effect during the Loan Term for any reason, including but not limited to any termination of the Lease pursuant to Section 13.01 or Section 13.02 thereof, or any termination at the instance of Lessee, but excluding any termination pursuant to Section 14.17(h) of the Lease, Lessor will give notice to the

mortgagee with respect to any then-applicable Mortgage (each a "Mortgagee") of the proposed termination date (which will not be less than 60 days after the date Lessor gives such notice to each then-applicable Mortgagee) and of the total of all amounts then due and payable by Lessee under and with respect to the Lease. The Lease will not be terminated for any reason (other than pursuant to Section 14.17(h) of the Lease or the conclusion of the Lease term) unless such prior notice is so given to each then-applicable Mortgagee. Upon receipt of such notice, each then-applicable Mortgagee will have the right (but not the obligation) to pay to Lessor the amount then due and payable by Lessee to Lessor and to designate a successor entity to succeed to all rights and all obligations of Lessee under and with respect to the Lease. If any then-applicable Mortgagee, so elects, such Mortgagee will make such payment to Lessor within 60 days after such notice is given by Lessor to such Mortgagee, and such Mortgagee will give notice to Lessor of the proposed successor entity as soon as reasonably possible, subject to the completion of any foreclosure proceedings if applicable. Such successor entity will give to Lessor all such information as Lessor may request. If such successor entity is not acceptable to Lessor, Lessor will give notice thereof to such Mortgagee within 30 days after the date of the notice by such Mortgagee to Lessor, and such Mortgagee may designate another successor entity; such process will be repeated until a successor entity that is acceptable to Lessor is approved by Lessor. Upon such approval by Lessor, such successor entity will execute such documents as Lessor may reasonably designate, and such successor entity will thereupon succeed to all rights and all obligations of Lessee under and with respect to the Lease. If applicable, compliance with the provisions of this Section A3-2 will be deemed to constitute full compliance with the provisions of Section 13.09 of the Lease.

A3-3. Collateral Assignment of Leasehold Surrender Interest. If Lessee grants to a Mortgagee a collateral interest in and to all amounts receivable by Lessee pursuant to Section 5.19 of the Lease, as and when such amounts are payable to Lessee pursuant to Section 5.19 of the Lease, this Amendment will serve as a direction by Lessee to Lessor to pay all amounts receivable by Lessee pursuant to Section 5.19 of the Lease, up to the total of all principal, interest and other amounts then payable by Lessee to such Mortgagee, as designated by such Mortgagee, to such Mortgagee, with any excess to be paid to Lessee. The collateral interest in and to all amounts receivable by Lessee may only be assigned, at any one time, to one mortgagee, and Lessee shall provide the Lessor with notice of such assignment. All amounts so paid by Lessor to Lessee will be deemed for all purposes to have been paid by Lessor to Lessee in full or partial payment of the amounts payable under Section 5.19 of the Lease, and subsequently immediately paid by Lessee to such Mortgagee.

A3-4. Rights of Mortgagees. Lessor and Lessee agree that the provisions of Section A3-2 of this Amendment are in addition to, and not in limitation of, the provisions of Sections 13.07, 13.08 and 13.09 of the Lease, and that upon the occurrence of any default with respect to financing provided by any Mortgagee to Lessee, such Mortgagee may, at its election, proceed under Section A3-2 of this Amendment or Sections 13.07, 13.08 and 13.09 of the Lease.

A3-5. Construction Schedule. Lessee shall complete construction on the Pavilion in accordance with the following dates:

May 25, 2019: Lessee shall obtain substantial completion of the "Beach Offerings" (Lifeguard Area, Concessions and General Store) in the Pavilion. If Lessee is unable to obtain substantial

completion of the construction for the Beach Offerings, it shall provide mobile food services in a manner that is acceptable to the Indiana State Department of Health, as well as provide a lifeguard trailer. The failure to provide the Beach Offerings by May 25, 2019 shall not be deemed to be a default under the Lease, so long as the Lessee provides mobile food services in a manner that is acceptable to the Indiana State Department of Health, and a lifeguard trailer every day until the earlier of: (1) the date the Beach Offerings are available for use by the general public; or (2) September 3, 2019.

May 18, 2020: Lessee shall complete construction on the Pavilion, obtain final occupancy permit(s), and provide Beach Offerings and restaurant services to the general public inside the Pavilion, and in accordance with the Minimum Days and Hours of Operation set forth in Section 3.03 of the Lease; If Lessee fails to complete construction, obtain final occupancy permit(s), and provide Beach Offerings and restaurant services to the general public inside the Pavilion on, or before May 18, 2020, Lessor may impose upon Lessee a "Penalty Fee" for each day thereafter that construction remains incomplete; which Penalty Fee, if imposed by Lessor, shall be paid within 30 days of the date of occupancy of the Pavilion. Any such Penalty Fee shall be assessed in an amount not to exceed the amount set forth in following schedule:

- a. \$2,000/day for up to 31 days,
- b. \$3000/day for 32-75 days.

August 1, 2020: If Lessee fails to complete construction on the Pavilion, obtain final occupancy permit(s), and provide Beach Offerings and restaurant services to the general public inside the Pavilion, Lessor may terminate the Lease, subject to Section A3-2 of this Amendment, and Section 14.17(c) of the Lease.

A3-7. **Parking.** Lessee shall ensure that its contractors do not park in the two rows of parking spaces in closest proximity to the Pavilion for the duration of the construction period.

A3-8. **Property Damage.** Lessor shall report to Lessee any property damage incurred as a direct result of construction within 120 days of such time construction is substantially complete. The parties agree that time is of the essence when addressing and repairing property damage caused as a direct result of construction. Lessee shall promptly undertake all repairs required as a direct result of damage caused by construction, and timely reported by Lessor. In the event that Lessee disputes property damage reported by the Lessor was caused as a direct result of construction, such dispute will be subject to Section 14.14 of this Lease.

A3-9. **Execution of Amendment.** This Amendment may be executed in several counterparts, each of which will be deemed an original, but all of which will constitute one and the same instrument. The signatures of the parties hereto indicate their mutual intention and agreement that this Amendment will be effective upon delivery of signed copies hereof to each other by facsimile transmission or by e-mail of scanned copies, and that no delivery of copies of this Amendment with original signatures will be necessary for this Amendment to become or remain effective. All matters set forth in the Lease and not affected by this Amendment #3 shall remain in full force and effect.

Non-Collusion and Acceptance

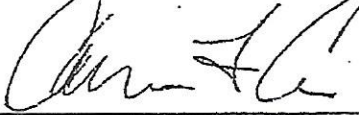
The undersigned attests, subject to the penalties for perjury, that the undersigned is the Leasing Party, or that the undersigned is the properly authorized representative, agent, member or officer of the Leasing Party. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the Lessee, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Amendment other than that which appears upon the face hereof. **Furthermore, if the undersigned has knowledge that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Amendment, the Lessee attests to compliance with the disclosure requirements in IC 4-2-6-10.5.**

In Witness Whereof, Lessee and the Lessor have, through their duly authorized representatives, entered into this Amendment. The parties, having read and understood the foregoing terms of this Amendment, do by their respective signatures dated below agree to the terms thereof.

[Signatures appear on the following pages.]

Lessor:

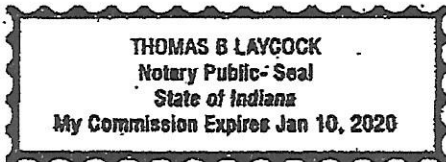
STATE OF INDIANA, BY ITS
DEPARTMENT OF NATURAL RESOURCES

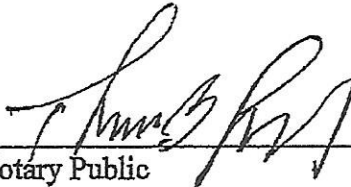
By 
Cameron F. Clark, Director

STATE OF INDIANA }
 } SS:
COUNTY OF MARION }

Before the undersigned, a Notary Public in and for said County and State, on this 13th day of March, 2018, personally appeared Cameron F. Clark, Director of the Department of Natural Resources of the State of Indiana, and on behalf of the Lessor acknowledged its execution of the foregoing Amendment to the Lease Agreement to be his voluntary act and deed.

Witness my hand and Notarial Seal:




Notary Public

Printed Name

County of residence:
Marion

My commission expires:

Lessee:

PAVILION PARTNERS, LLC

By *[Signature]*
Charles L. Williams, Manager

STATE OF INDIANA }
 } SS:
COUNTY OF PORTER }

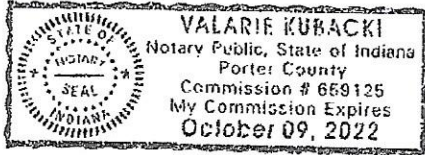
Before the undersigned, a Notary Public in and for said County and State, on this 11 day of MARCH, 2019, personally appeared Charles L. Williams, who is a Manager of the Lessee, and on behalf of the Lessee acknowledged its execution of the foregoing Amendment to the Lease Agreement to be his voluntary act and deed.

Witness my hand and Notarial Seal:

[Signature]
Notary Public

VALARIE KUBACKI
Printed Name

County of residence:
Porter



My commission expires:
10/9/2022

Approved by:
Indiana Department of Administration

By: Lesley A. Crane (for)
Lesley A. Crane, Commissioner

Date: 3.27.2019

Approved by:
State Budget Agency

By: Jason D. Dudich (for)
Jason D. Dudich, Director

Date: 4/21/19

APPROVED as to Form and Legality:
Office of the Attorney General

By: Curtis T. Hill, Jr. (for)
Curtis T. Hill, Jr., Attorney General

Date: 4/4/2019

Approved by:
Indiana Office of Technology

By: Deward Neely (for)
Deward Neely, Chief Information Officer

Date: 3/14/19

State Land Office:

Return recorded instrument to:
Indiana Department of Natural Resources
Division of Land Acquisition
402 W. Washington Street, Room W261
Indianapolis, Indiana 46204

This instrument was prepared by Samantha E. Dewester, General Counsel with the Indiana Department of Natural Resources, who affirms, under the penalties for perjury, that she has taken reasonable care to redact each Social Security number in this document unless required by law. Samantha E. DeWester, Indiana Department of Natural Resources.