

## CITY OF CAPITOLA

### LEASE AGREEMENT

THIS LEASE AGREEMENT (“**Lease**”) is entered into on \_\_\_\_\_, 2025, by and between the City of Capitola, a municipal corporation (“**Lessor**”), and MRA Sales, Inc., dba Capitola Beach Company (“**Lessee**”). As used herein, the term “**Parties**” shall refer to both Lessee and Lessor and the term “**Party**” shall sometimes refer to either Lessee or Lessor.

1. Property. Lessor hereby leases to Lessee and Lessee hereby leases from Lessor certain real property comprised of a 16 foot x 16 foot, 256 square foot portion of the Esplanade Park, as specifically designated by the City of Capitola (“**City**”), located in the City (“**Property**”), more particularly described in Exhibit A, attached hereto and incorporated herein by reference, on the terms and conditions hereinafter set forth.

2. Term of Lease. The term of this Lease shall be three (3) years commencing on the day next following the date on which the approval of this Lease by City Council becomes final and terminating on November 30, 2027 (“**Term**”). During the Term, Lessee may only use the Property during the following periods of time (“**Permitted Operating Hours**”):

- April and May: Weekends only from the first weekend in April or Easter weekend (whichever comes first) through Memorial Day weekend.
- June, July, and August: 7 days a week.
- September, October, and November: Weekends only, but not including the Art and Wine Festival weekend (as such weekend is determined by the City in its sole discretion).

3. Termination of Lease. Lessee may terminate this Lease upon written notice to Lessor on or before March 1 of each calendar year of the Term. If such notice is not received by Lessor in a timely manner, then the Lease shall continue for the Term.

4. Surrender. Upon termination of this Lease, Lessee shall surrender the Property to Lessor free and clear of all encumbrances, personal property and improvements, if elected by City. Lessee shall offer in writing any improvements to City, and City may, in its sole discretion, accept in writing the improvements. Should the City require the surrender of the Property in the original condition at the time the Lease commenced, Lessee shall surrender the Property in such condition to Lessor, and shall defend (with counsel acceptable to Lessor), hold harmless and indemnify Lessor from all liability and expense resulting from any delay or failure to so surrender in such conditon, including without limitation, claims made by any succeeding lessee.

5. Rent.

a. During the Term and subject to Section 5b, rent for the Property shall be in the amounts described below:

- Easter – Memorial Day; weekends only; \$2 per square foot; \$199.68 per month.
- June, July, August;– 7 days per week; \$2 per square foot; \$512 per month.
- September, October, November; weekends only; \$2 per square foot; \$199.68 per month.

b. All rent shall be due and payable on the first day of each month, and is deemed late if not received by Lessor by the 15<sup>th</sup> day of each month. Rent not paid when due shall bear interest from the date due until paid at the rate of 8/10ths of one percent per month.

6. Rent – Annual Consumer Price Index Adjustment. Commencing January 1, 2026 and each subsequent calendar year thereafter, rent shall be adjusted to reflect costs of living increases that have occurred over the preceding twelve (12) month period. However, no downward rent adjustments shall be made. That cost of living adjustment shall be determined in accordance with the U.S. Department of Labor, Bureau of Labor Statistics, figures in accordance with the United States Consumers All Items Price Index in the San Francisco-Oakland-San Jose Area, All Urban Consumers Index. The percent change figure for the one-year period ending in December 2025 shall be used. If the described index shall no longer be published, another generally recognized as authoritative shall be substituted by agreement of Parties or as selected by Lessor, if the Parties are unable to agree within thirty (30) days.

7. Taxes, Assessments and Public Utility Charges.

a. As additional rent, Lessee shall pay when due all water (excluding water for irrigation purposes), light, power, gas, heat, Wi-Fi, phone and other utility and service charges and Lessor shall have no responsibility therefore. Lessee shall also pay directly before delinquency the amount of all property taxes, possessory interest taxes, and assessments, licenses, fees, or other charges applicable or allocable to the Property and personal property on the Property allocable to all periods the Term of this Lease.

b. Lessee shall furnish to Lessor evidence of timely payment of all such taxes, assessments and charges as and when they come due.

c. If at any time during the Term of this Lease the laws concerning the methods of real property taxation prevailing at the commencement of the Term are changed so that a tax or excise on rents or any other such tax, however described, is levied or assessed against Lessor relative to the leased premises, Lessee shall pay before delinquency such tax or excise on rent. Nothing herein shall be construed to limit Lessee's legitimate rights to timely protest or litigate the imposition of any such tax or charge.

8. Use of Property.

a. The Property shall be used for the following: operation of beach equipment rentals; surf lessons with no more than two (2) instructors teaching at any one time and class sizes limited to no more than four (4) clients per instructor; and sale of sunscreen, logo t-shirts and/or hats, surf accessories consisting of only surf wear and surf leashes. Lessee agrees that no other use of the Property will be made, except upon prior written consent of the City Council of the City.

b. Lessee's trailer may be delivered to the Property no earlier than 7:00 a.m. during Permitted Operating Hours, and shall be removed no later than thirty (30) minutes following the close of business during Permitted Operating Hours. All portions of the business shall be located and operated within the 16' x 16' area comprising the Property.

c. During Permitted Operating Hours, all property shall be stored within the enclosed trailer, except for sample products and merchandise available for display.

d. No permanent signage shall be permitted. All signs shall be attached to or incorporated as part of the portable trailer.

e. Lessee agrees to coordinate operations so as not interfere with scheduled park uses, including, without limitation, other uses by or for the City, Capitola Chamber of Commerce, Capitola Foundation, Wharf- to-Wharf running event, and Capitola Beach Festival. Specifically, Lessee agrees to remove the trailer or delay its delivery to avoid conflicts with the following community activities:

1. Wednesday night twilight concerts sponsored by the City;
2. Capitola Foundation Car Show;
3. Art and Wine Festival sponsored by the Capitola Chamber of Commerce;
4. The activities of the Capitola Beach Festival; and
5. The Wharf-to-Wharf running event.

Lessor reserves the right to notify Lessee of any other event for which Lessee will be required to modify its hours of operation and Permitted Operating Hours. Such notice shall be provided by the event operator to Lessee in writing fourteen (14) days prior to the additional event.

9. Licenses and Permits. Lessee acknowledges that nothing contained herein shall be deemed as a waiver by the City of its permit authority over the proposed use contemplated by this Lease. It shall be Lessee's responsibility, at Lessee's sole cost and expense, to obtain all necessary licenses and permits to construct any improvements and operate a business on the Property including, but not limited to a business license, conditional use permit and coastal development permit from the City. However, if Lessee applies during the five (5) year Lease period for a permit from the City authorizing use of the Property as an outdoor eating area and such permit is denied by the City, either Party may, upon thirty (30) days notice to the other, terminate this Lease.

10. Representations and Condition of Premises.

a. Lessor agrees that, in the event Lessee's leasehold interest in the Property is condemned by the City before expiration of entire five (5) year Term, this Lease shall terminate and Lessor agrees to reimburse Lessee for the reasonable costs expended by Lessee in improving the Property up to a maximum of \$5,000.

b. Lessee warrants and represents that Lessor has made no representation or warranties to Lessee of any kind whatsoever concerning the Property, this Lease or any related matter. Lessee hereby waives any claim of any kind against Lessor for any matter arising out of or related to the misrepresentation, if any, of any fact or failure to disclose any fact concerning the Property, this Lease or any related matter. Lessee covenants and agrees that it has examined the Property and accepts it in its present, as-is condition.

11. Alterations, Improvements and Additions. Lessee shall not make any alterations, improvements or additions to the Property without the prior written consent of the Public Works Director of the City.

12. Landscaping. No landscaping is permitted to be made by Lessee at or about the Property.

13. Maintenance. Lessee shall be fully responsible for the operation and maintenance of the Property at its sole expense throughout the Term of this Lease. Lessee agrees to perform all repairs and replacements and construct any improvements necessary to maintain and preserve the Property in a decent, safe, healthy and sanitary condition in a

manner satisfactory to Lessor and in compliance with all applicable laws, regulations and requirements of any governmental entity and insurance company insuring all or any part of the Property. Lessee agrees that Lessor shall not be required to perform any maintenance, repairs or services or to assume any expense not specifically assumed herein in connection with the Property and Lessee hereby waives all rights to make repairs or to cause any work to be performed at the expense of Lessor as provided for in Section 1941 et seq. of the California Civil Code.

14. Right to Sell, Assign, Sublet, Refinance or Otherwise Transfer the Lease.

a. Lessee may not sell, assign, or otherwise transfer this Lease or sublet any part of its interest hereunder in the Property without the prior written consent of Lessor, which shall not be unreasonably withheld. Consent to any sale, assignment, refinance or sublease shall not constitute consent to any other sale, assignment, refinance or sublease. No sale, subletting or assignment even with the consent of Lessor shall relieve Lessee of its obligation to pay the rent and perform all other obligations described in this Lease. Any of the foregoing acts without such consent of Lessor shall be void, and, at the option of Lessor, shall terminate this Lease.

b. Approval of any sale, assignment or sublease shall be conditioned upon the purchaser, assignee or sublessee agreeing in writing that they will assume the rights and obligations thereby sold, assigned or subleased and that they will keep and perform all covenants, conditions and provisions of this Lease which are applicable to the rights acquired.

15. Lessee Indemnification.

a. Lessee shall indemnify, defend and hold Lessor and its officials, directors, employees, contractors and agents ("**Lessor Related Parties**") harmless against and from all liabilities, obligations, damages, penalties, claims, actions, costs, charges, judgment and expenses (including reasonable attorneys' fees, costs and disbursements) (collectively, "**Losses**"), arising from (a) the use of, or any activity done, permitted or suffered in or about the Property, (b) any activity done, permitted or suffered by Lessee or Lessee's agents, contractors, invitees or licensees in or about the Property, (c) any act, neglect, fault, willful misconduct of Lessee or Lessee's agents, or (d) from any breach or default in the terms of this Lease by Lessee or Lessee's agents, except to the extent such claims arise out of or relate to the gross negligence or willful misconduct of Lessor. If any action or proceeding is brought against Lessor by reason of any such claim, upon notice from Lessor, Lessee shall defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor. As a material part of the consideration to Lessor, Lessee hereby releases Lessor and the Lessor Related Parties from responsibility for, waives its entire claim of recovery for and assumes all risks of (i) damage to property or injury to person in or about the Property from any cause whatsoever except to the extent caused by the gross negligence or willful misconduct of Lessor or any Lessor Related Parties, or (ii) loss resulting from business interruption or loss of income at the Property.

b. The obligations of Lessee under this Section 15 shall survive any termination of this Lease. The foregoing indemnity obligations shall not relieve any insurance carrier of its obligations under any policies required to be carried by either Party pursuant to this Lease, to the extent that such policies cover the peril or currents that results in the claims that is subject to the foregoing indemnity.

16. Insurance. Throughout the Term, Lessee shall provide the coverages described and comply in all respects with the insurance requirements set forth on Exhibit B.

17. Entry and Inspection. Lessor reserves the right to enter the Property for the purpose of ascertaining its condition, or to protect Lessor's interests or to inspect the operations conducted on the Property. In the event that such entry or inspection by Lessor discloses that the Property is not in a decent, safe, healthy and sanitary condition, Lessor shall have the right, after ten (10) days written notice to Lessee, to have any necessary maintenance work done at Lessee's expense and Lessee hereby agrees to pay promptly any and all costs incurred by Lessor in having such maintenance work done.

18. Lessee's Default. The occurrence of any of the following shall constitute a default by Lessee:

(a) Failure to pay rent (including additional rent) when due and upon Lessor's written demand;

(b) Failure to operate and manage the Property in a manner consistent with the general public interest and use of Lessor's adjoining property;

(c) Failure to perform any other provision of this Lease if the failure to perform is not cured within fifteen (15) days, or such additional time as maybe authorized by Lessor, after notice has been given to Lessee;

(d) Voluntary filing or having involuntarily filed against Lessee any petition under any bankruptcy or insolvency act or law;

(e) Adjudication as a bankrupt;

(f) General assignment for the benefit of creditors;

(g) Allowing any of its rights or interests to be subjected to attachment, execution, or other levy, or to seizure under legal process, if not released within thirty (30) days.

(h) Failure to comply with any condition of any use permit, coastal development permit, or any other land use approval given by the City in connection with the use contemplated by this Lease.

19. Remedies for Lessee's Default.

a. Lessor shall have the following remedies for Lessee's default. These remedies are not exclusive; they are cumulative and in addition to any remedies now or later allowed by law, or otherwise provided by this Lease. No delay or omission of Lessor to exercise any right or remedy shall be construed as a waiver of any such right or remedy or of any default by Lessor hereunder.

b. Lessor may terminate the Lease and recover from Lessee:

(1) The worth, at the time of the award, of the unpaid rent which had been earned at the time of the termination;

(a) The worth, at the time of the award, of the amount by which the unpaid rent which would have been earned after the date of termination until the time of award exceeds the amount of such rental loss that Lessee proves could have been reasonably avoided;

(b) 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 such rental loss for such period that Lessee proves could have been reasonably avoided; and

(c) Any other amount, including court costs, necessary to compensate Lessor for all the detriment proximately caused by Lessee's failure to perform its obligations under this Lease, or which in the ordinary course of things would be likely to result therefrom.

"The worth at the time of the award," as referred to above, is to be computed by allowing interest or discounting present value employing the maximum interest rate the Lessor is permitted by law to charge."

c. Lessee hereby waives any right of redemption or relief from forfeiture under California Code of Civil Procedure Sections 1174 or 1179, or under any other present or future law, in the event Lessee is evicted or Lessor takes possession of the Property because of Lessee's default.

d. Lessor may relet the Property prior to the time of any award for breach of this Lease and such reletting does not waive Lessor's right to recover damages.

20. Limitations. Lessee agrees that any claim or defense based upon or arising out of this Lease shall be barred unless Lessee commences an action or alleges such a defense within three (3) months of the occurrence of the conduct or condition giving rise to the claim or defense. Lessee agrees that Lessor shall not in any event be liable to Lessee for lost profits or special, consequential, or exemplary damages under any circumstances arising from this Lease.

21. Attorney's Fees. Should either Party to this Lease institute any action or proceeding in court to enforce any provision hereof or for damages by reason of any alleged breach of this Lease or for a declaration of such Party's rights or obligations hereunder, or for any other judicial remedy, the prevailing Party shall be entitled to receive from the losing Party such amount as the court may adjudge to be reasonable attorney's fees for the services rendered to the Party finally prevailing in such action or proceeding.

22. Notices.

All notices given under this Lease shall be given by registered letter deposited in the United States mail, postage prepaid to the following addresses:

To Lessor: City of Capitola City Manager Department  
420 Capitola Avenue  
Capitola, California 95010  
Fax: 831-479-8879  
Attn: City Manager

and

To Lessee: MRA Sales, Inc.  
1360 49th Ave  
Capitola, CA 95010  
Fax: 831-479-1576  
Attn: Matt Arthur

Either Party may change the above address by notifying the other Party, as provided above. Notices shall be deemed delivered either when delivered in person or by facsimile transmission or five (5) days from the deposit in the U.S. mail as provided above.

23. Holding Over. Occupancy of the Property after the expiration of the Term of this Lease shall be construed to be a tenancy from month to month, and all other terms and conditions of this Lease shall continue in full force and effect. During any such holdover period, rent shall be fair rental value as determined by Lessor.

24. Waiver of Breach. Any waiver of or consent to any breach or breaches of any of the terms of this Lease which may be given to Lessee shall not extinguish any covenant or condition of this Lease nor constitute a waiver of any subsequent breach or breaches thereof.

25. Successor. All of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the Parties hereto.

26. Interpretation.

a. Whenever the singular number is used in this Lease, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and the word "person" shall include corporation, firm or association, when required by the context.

b. The headings or titles to the paragraphs of this Lease are for convenience and do not in any way define, limit or construe the contents of such paragraphs.

c. This Lease contains all agreements of the Parties with respect to any matter mentioned herein. No prior agreement or understanding pertaining to any such matter shall be effective. This Lease may be modified in writing only, signed by the Parties in interest at the time of the modification. Except as otherwise stated in this Lease, Lessee hereby acknowledges that neither Lessor nor any of its representatives, employees or agents has made any oral or written warranties or representations to Lessee relative to the condition or use by Lessee of the Property. Lessee assumes all responsibility for operating and maintaining the Property in compliance with all applicable laws and regulations during the Term of this Lease, except as otherwise specifically stated in this Lease.

d. The laws of the State of California shall govern the validity, performance and enforcement of this Lease.

e. If any provision of this Lease is determined to be void by any court of competent jurisdiction, such determination shall not affect any other provision of this Lease which shall remain in full force and effect. If any provision of this Lease is capable of two constructions, one which would render the provision void and one which would render the provision valid, the provision shall be interpreted in the manner which would render it valid.

27. Time is of the Essence. Time is of the essence in the performance of all terms and conditions of this Lease.

IN WITNESS WHEREOF this Lease is executed by Lessor, acting by and through its lawfully authorized officers, and by Lessee, acting by and through its lawfully authorized officers.

DATED:

**“LESSOR”**

CITY OF CAPITOLA, a municipal corporation

By: \_\_\_\_\_  
Jame Goldstein, City Manager

**“LESSEE”**

By: \_\_\_\_\_  
Matt Arthur  
Its: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Samantha Zutler, City Attorney

Exhibit A: Property  
Exhibit B: Insurance Requirements



Exhibit A

Property

## Exhibit B

### Insurance Requirements

Lessee shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with Lessee's operation and use of the leased premises. The cost of such insurance shall be borne by Lessee.

#### **MINIMUM SCOPE AND LIMIT OF INSURANCE**

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits of no less than **\$1,000,000** per accident for bodily injury or disease. (This applies to lessees with employees).
3. **Property insurance** against all risks of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision.

If Lessee maintains broader coverage and/or higher limits than the minimums shown above, Lessor requires and shall be entitled to the broader coverage and/or the higher limits maintained by Lessee. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to Lessor.

#### **Other Insurance Provisions**

The insurance policies are to contain, or be endorsed to contain, the following provisions:

##### ***Additional Insured Status***

Lessor, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of any contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 if a later edition is used).

##### ***Primary Coverage***

For any claims related to this contract, **Lessee's insurance coverage shall be primary and non-contributory** and at least as broad as ISO CG 20 01 04 13 as respects Lessor, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by Lessor, its officers, officials, employees, or volunteers shall be excess of the Lessee's insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies.

##### ***Umbrella or Excess Policy***

Lessee may use Umbrella or Excess Policies to provide the liability limits as required in this agreement. This form of insurance will be acceptable provided that all of the Primary and Umbrella or Excess Policies shall provide all of the insurance coverages herein required,

including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements. The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Contractor's primary and excess liability policies are exhausted.

#### ***Legal Liability Coverage***

The property insurance is to be endorsed to include Legal Liability Coverage (ISO Form CP 00 40 04 02 or equivalent) with a limit equal to the replacement cost of the leased property.

#### ***Liquor Liability***

If Lessee will be supplying alcoholic beverages, the general liability insurance shall include host liquor liability coverage. If Lessee is using a caterer or other vendor to supply alcohol that vendor must have liquor liability coverage. If Lessee intends to sell alcohol either Lessee or vendor providing the alcohol for sale must have a valid liquor sales license and liquor liability insurance covering the sale of alcohol.

#### ***Notice of Cancellation***

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to Lessor.

#### ***Waiver of Subrogation***

Lessee hereby grants to Lessor a waiver of any right to subrogation which any insurer of said Lessee may acquire against Lessor by virtue of the payment of any loss under such insurance. Lessee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not Lessor has received a waiver of subrogation endorsement from the insurer.

#### ***Self-Insured Retentions***

Self-insured retentions must be declared to and approved by Lessor. Lessor may require Lessee to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Lessor. The CGL and any policies, including Excess liability policies, may not be subject to a self-insured retention (SIR) or deductible that exceeds \$25,000 unless approved in writing by Lessor. Any and all deductibles and SIRs shall be the sole responsibility of Lessee who procured such insurance and shall not apply to the Indemnified Additional Insured Parties. Lessor may deduct from any amounts otherwise due Lessee to fund the SIR/deductible. Policies shall NOT contain any self-insured retention (SIR) provision that limits the satisfaction of the SIR to the Named. The policy must also provide that Defense costs, including the Allocated Loss Adjustment Expenses, will satisfy the SIR or deductible. Lessor reserves the right to obtain a copy of any policies and endorsements for verification.

#### ***Acceptability of Insurers***

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to Lessor.

#### ***Verification of Coverage***

Lessee shall furnish Lessor with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause **and a copy of the Declarations and Endorsements Pages of the CGL and any Excess policies listing all**

**policy endorsements.** All certificates and endorsements and copies of the Declarations & Endorsements pages are to be received and approved by Lessor before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Lessee's obligation to provide them. Lessor reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. Lessor reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

***Special Risks or Circumstances***

Lessor reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.