



Tiburon Lockers, Inc.
22 Paris Avenue
Rockleigh, NJ 07647

ELECTRONIC LOCKER LOCATION AGREEMENT

THIS LOCATION AGREEMENT made and entered into as of December 5, 2017, by and between TIBURON LOCKERS, INC., a New Jersey corporation ("Tiburon"), with offices at 22 Paris Avenue, Rockleigh, NJ 07647, and **NRH2O Family Water Park / City of North Richland Hills** ("Lessee").

Lessee operates a waterpark known as **NRH2O**. NRH2O is a waterpark located in North Richland Hills, Texas. It is owned by the city of North Richland Hills. Lessee desires to utilize Tiburon, and Tiburon desires to provide to Lessee certain Revenue Producing Storage Lockers.

In consideration of the foregoing, the parties agree as follows:

1. **EQUIPMENT:** Tiburon agrees to provide rental lockers to Lessee in the locations set forth on Exhibit A hereto. Lessee shall provide a secure and covered area for said lockers and shall shield the usage terminals from sun glare and the elements. The lockers will not be relocated without the written consent of both parties. The locker and usage terminal quantities and usage terminal specifications are also set forth on Exhibit A hereto. All such items are hereinafter referred to as the "Equipment".
2. **DELIVERY OF EQUIPMENT:** Tiburon shall deliver the Equipment to the premises of Lessee in conformance with a schedule mutually agreed upon. See Section 21 below.
3. **TERM:** This location Agreement shall commence on the date of the opening for the 2018 operating season and shall terminate six (6) years thereafter ("Initial Term"). Following the Initial Term, this Agreement shall renew automatically for renewal terms of two (2) years each, each a "Renewal Term," unless written notice of non-renewal is given sixty (60) days prior to the expiration of the renewal period.
4. **RENT:** The gross receipts from the Lockers shall be divided in the following manner:

As used, the term "**gross receipts**" shall be defined as all receipts derived from the Equipment, less all refunds, credit card service charges, and state and local taxes required to be remitted by Tiburon.

70% of the gross receipts, defined as above, shall be paid to Lessee.

Payment to Lessee shall be made by check on or about the 21ST day of the month following the month of collection.

Lessee shall be responsible for the collection of all cash from the lockers as frequently as necessary, but in no event less than monthly. Any such cash received by Lessee during a month shall be retained by Lessee as payment against the portion of gross receipts (as defined in this Section 4) to which Lessee is entitled hereunder. In the event Lessee's portion of gross receipts for a particular month is less than such month's cash collection, Lessee shall, by the 21st day after the month's end, send to Tiburon a check in the amount of such excess. Should Lessee fail to pay Tiburon any such amounts due in a timely fashion, in addition to the sums due Tiburon, Lessee shall pay Tiburon interest calculated at 1% per month on any past due sums starting 30 days after it was due.

Tiburon shall train designated responsible employees of Lessee in the proper and safe collection of cash receipts. The parties agree that the reported collections for each month pursuant to the built-in administrative report for each set of lockers covered hereby shall be binding on the parties.

5. **RENTAL RATES:** The parties agree that the amount to be charged to patrons for each use of the lockers is set forth in Exhibit A. Rental fees for lockers may be changed at any time with prior written approval of both parties.
6. **SITE SELECTION:** The location of the lockers mutually determined by Lessee and Tiburon as set forth on Exhibit A shall be in areas readily accessible to Lessee's patrons, and Tiburon's service representatives. No signage may be placed on the Equipment without the written approval of Tiburon.
7. **PERSONNEL RESPONSIBILITY:** Tiburon will be responsible for non-routine locker repair and locker maintenance and will conduct operational training for employees designated by Lessee. Lessee's staff (to be trained by Tiburon) will be responsible for handling of routine guest inquiries such as guest forgotten

PIN, receipt paper replacement, nightly cleaning and cleanout and saving of patron's items left in the lockers, as well as routine maintenance, routine repair, and keeping the lockers clean.

8. **INDEMNIFICATION:** Tiburon shall indemnify and hold Lessee harmless from, for and against any liability arising or occurring upon, or in connection with, the use of the Lockers, other than those arising from Lessee's or its agents, employees' or customers' vandalism, negligence or intentional act. Each party will give prompt written notice to the other of any claim made or suit instituted in connection with the ownership or operation of the Equipment.
9. **INSURANCE:** Tiburon shall obtain and maintain in full force Workmen's Compensation Insurance for its employees as required and Comprehensive General Liability Insurance of One Million Dollars (\$1,000,000.00), insuring Tiburon and Lessee, their officers, agents, servants and employees, indemnifying and holding them harmless from, for and against any loss or liability arising or occurring upon, or in connection with, the operation of the Lockers other than as may be caused by Lessee's employees, agents or customers. This insurance shall be written by an insurance company reasonably acceptable to Lessee, and shall include a provision that it shall not be canceled without thirty (30) days prior written notice to Lessee. Tiburon shall provide evidence of such coverage to Lessee prior to the installation of the Equipment.
10. **EQUIPMENT SPECIFICATIONS:** The Equipment installed shall be Tiburon's Platinum Line of lockers which includes the newest version of its electronic locker system, including its most up to date software package.
11. **OWNERSHIP:** This Equipment is personal property and the property of Tiburon. Lessee agrees to provide reasonable security to protect the lockers against vandalism or theft. Upon termination or expiration without renewal of this contract, Lessee agrees to pay Tiburon the value of the Equipment, should Lessee fail to allow the recovery of the lockers or if they are damaged as to render them unusable.
12. **LESSEE'S OBLIGATIONS:** Lessee shall provide convenient three-pronged grounded power outlets and internet cabling to the Equipment prior to installation and shall be responsible for power usage and internet access and shall also provide adequate signage guiding patrons to the location of the lockers. All other expenses, including installation, maintenance and repair of the Equipment, Tiburon's service representatives and insurance referred to above shall be borne by Tiburon. Tiburon shall also be responsible for the payment of credit card servicing fees and sales or use tax arising from the rental of lockers.
13. **REPAIRS:** Tiburon shall bear the expense of repairs and maintenance required in order to maintain the Lockers in good operating order; however, should it be determined that damage or misplacement of locks, keys and/or other parts provided by Tiburon are the result of the intentional or negligent act or omission caused by Lessee and/or any of Lessee's agents, employees or other representatives or any customer of Lessee, then, in that case, Lessee shall be responsible for the cost of such repairs. Repairs shall be made during service visits or will be scheduled sooner if a condition prevents the historical use of locker system. In the event Lessee's business is seasonal, it is understood that Tiburon will make all necessary repairs for which it is responsible hereunder during such season and, if notified of repair needs after the season, repairs shall be made prior to Lessee's next season opening.
14. **ADVERTISING:** Lessee agrees that Tiburon may install advertising on or in the lockers covered by this Agreement and that any advertising revenues received by it relating to Lessee's location hereunder shall be allocated 70% to Lessee. Lessee shall have the right to approval of advertising content.
15. **USE OF NAME:** Lessee agrees that Tiburon may use Lessee's name and logo in its product information and on its website; provided that all such use shall be subject to the approval of Lessee and Tiburon shall acquire no rights of any kind in Lessee's trademarks other than a revocable license during the term of this Agreement. Upon expiration or termination of this Agreement, Tiburon will cease all use of Lessee's trademarks.
16. **CONFIDENTIALITY:** ~~Each of the parties agrees not to disclose the substance of this Agreement to any third party without the written consent of the other.~~

17. **TERMINATION**: This Agreement may not be terminated by either party without giving the other party sixty (60) days written notice thereof, which notice shall be given only for cause as a result of a material breach of any of the terms herein (a "Material Breach"). The parties shall have thirty (30) days from the receipt of written notice in which to correct the Material Breach. In addition to termination for a Material Breach, Lessee shall have the right to terminate this Agreement, upon thirty (30) days written notice to Tiburon, in the event that a material proportion of the units of the Equipment are not generally functioning in a manner that allows the intended use by Lessee's customers in an efficient or effective fashion during Lessee's normal operating season ("In Season Functionality Breach"). Tiburon shall have thirty (30) days from the receipt of written notice in which to correct and cure the In Season Functionality Breach. Notwithstanding any of the foregoing, Lessee shall have the right to terminate this Agreement at any time in the event no funds are appropriated during the Initial Term of this Agreement, or during any Renewal Term, at no expense or penalty to Lessee. Tiburon shall have thirty (30) days from the sending of written notice in which to correct said breach. Such termination shall not relieve Tiburon of any prior obligations hereunder. Tiburon may terminate this Agreement or reduce the number of doors if, in any 12-month period, the revenues per door are less than \$200. If it is mutually agreed that more doors are needed the new installation will be covered under the terms of this Agreement. (All Changes to this agreement must be executed as an addendum to this agreement and attached to said agreement.)
18. **DEFAULT**: If Lessee shall fail or refuse to carry out the material terms hereof, or if Lessee files for voluntary or involuntary bankruptcy or insolvency, Tiburon may cancel this Agreement upon sixty (60) days written notice (however no notice shall be required in the event of the aforementioned bankruptcy or insolvency), where upon Tiburon shall remove the Lockers from the facility. Furthermore, Tiburon will be entitled to recoup expenses for locker removal resulting from default from the final collection. Each party shall also be entitled to reimbursement for reasonable legal fees and costs resulting from the other party's default.
19. **SOFTWARE**: Tiburon represents and warrants that it is the sole owner of the software and technology used in connection with the Equipment and shall be the owner at all times during the term of this Agreement so as to guarantee Lessee continual free utilization of Tiburon's systems during the term of this Agreement.
20. **EXCLUSIVITY/NON-COMPETE**: Lessee shall not offer any other storage for its customers other than the Equipment for the duration of the agreement, unless agreed to by Lessee and Tiburon in writing as an Addendum to this contract. Lessee's existing cabana lockers will not be deemed as competing storage.
21. **INSTALLATION PROCEDURE**: The parties understand that coordination of delivery and installation of the Equipment is critical for timely and efficient commencement of locker operations. The procedure for installation shall be as follows:
- a. The parties shall arrange for a mutually convenient time (within 20 days of the date hereof) for Tiburon's representative to visit the venue with Lessee's representative to measure and determine the specific location of Equipment and agree on where the power and internet connections will be installed by Lessee.
 - b. The installation site shall be deemed "Site Ready" when (a) power and internet lines and connections are installed and service is on; (b) the site is clean; (c) there is a solid floor and wall or other structure on which the lockers can be securely anchored; and (d) the location is adequately covered to protect the lockers from weather and other park activities.
 - c. Prior to shipment of the Equipment, Tiburon shall contact Lessee to confirm that the installation sites are Site Ready. Lessee agrees that they will have the venue Site Ready within 40 days after the contract is signed. In the event it is not accomplished in this time frame, Tiburon shall have the right to complete the work and charge Lessee for all out of pocket expenses and Lessee will be deemed to have given Tiburon the right to do such work.

- d. The Equipment will be installed by Tiburon at its cost and expense in accordance with the schedule agreed upon by the parties but no later than 15 days after confirmation by Lessee to Tiburon under paragraph b, above.
- e. Lessee understands that delay in preparing its site for installation of the Equipment will impact Tiburon's scheduling of installation at Lessee's and other client's sites. Additionally, the cost of delivery and installation of the Equipment is significant and requires customization and scheduling of skilled technicians employed by Tiburon. Therefore, in the event that, upon delivery of the Equipment to the venue, that the power or internet lines are not installed as agreed or not operational and that Tiburon is required to make a second visit to the venue to complete installation and testing of the Equipment, Lessee's share of Revenue shall be reduced by 8.5% over the term of this Agreement to compensate for such additional costs.

22. **NOTICES:** All notices required under this Agreement shall be in writing unless otherwise stated and shall be forwarded by certified or registered mail to either party as follows:

If to Tiburon, to: **Tiburon Lockers, Inc.**, 22 Paris Avenue, Rockleigh, NJ, NJ 07647, Attn: Jared Lowenthal.

If to Lessee, to: **NRH2O Family Waterpark**, 9001 Boulevard 26, North Richland Hills, TX 76180. Attn: Bryon Bustamante. Phone: 817-427-6505. Email: bbustamante@nrh2o.com.

23. **CUSTOMER SERVICE:** In order to maintain a high level of Customer Satisfaction Tiburon Lockers provides both e-mail, and a toll free service number for the use of our venues in order to communicate, needs, questions, and concerns. Normal Hours of Operation are from 8:00 AM EST – 8:00 PM EST and your request will be handled in a timely and orderly fashion.

The contact information is as follows: Toll Free Number: 1-877-592-0985 or email at customerservice@tiburonlockers.com.

24. **ASSIGNMENT:** This Agreement shall be binding upon and shall inure to the benefit of all parties hereto, their respective successors, assigns and legal representatives in interest. By executing this Agreement, Lessee's signatory represents that she/he is authorized to sign on its behalf. Neither party shall assign this agreement without the express written consent of the other party.


25. **MISCELLANEOUS PROVISIONS:** This Agreement constitutes the entire understanding between the parties. Any modification, alteration or change hereof may only be made by signed, written amendment to this Agreement. This Agreement shall be interpreted in accordance with the laws of the State of Texas. The parties agree that any dispute arising from this Agreement will be subject to the exclusive jurisdiction of the state and federal courts of Tarrant County, Texas. Any provisions hereof found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the rest of the Agreement. In order to assure timely production and installation of the Equipment, we request that you sign and return a copy of this Agreement to us within 14 days.

Tiburon Lockers will purchase Lessee's (NRH2O) existing mechanical lockers. The locker specifications are: 414 Standard 1' x 1' x 1' and 117 Family 1' x 2' x 1' total of 531 lockers. The agreed upon amount for purchase is \$14,640, however for any missing keys there will be a deduction of \$20.00 per key and for any missing lock mechanisms there will be a deduction of \$70.00 per missing mechanism. Tiburon will furnish a Purchase Order (PO) for the purchase once the information on the amount of total keys and missing locks is provided.

IN WITNESS WHEREOF, the parties have executed this Location Agreement in triplicate on the date first above written.

TIBURON:

Tiburon Lockers, Inc.

By:  _____
Signature

Jared Lowenthal CEO
Name and title – please print

1/26/18
Date

LESSEE:

NRH2O Family Waterpark / City of North Richland Hills

By: _____
Signature

Name and title - please print

Date

EXHIBIT A

Venue Name: NRH2O Family Waterpark

Location and Layout:

Equipment:

Cabinet Type	Color	Doors/Cabinet	Cabinets	Total Doors	Terminals
3 Tier	Blue	3	15	45	
4 Tier	Blue	4	15	60	
6 Tier	Blue	6	33	198	
TSS	Grey				5

Rental Fees:

3T - Extra Large: \$15 all day unlimited access
4T - Large: \$12 all day unlimited access
6T – Medium: \$10 all day unlimited access

***Discount pricing for season pass holders, \$1.00 off rental fee discount.**

Each such price shall increase by \$1.00 per rental period every other year of the agreement.