



Tiburon Lockers, Inc.
70 Hilltop Road
Ramsey, NJ 07446

ELECTRONIC LOCKER LOCATION AGREEMENT

THIS LOCATION AGREEMENT made and entered into as of January 29, 2024, by and between TIBURON LOCKERS, INC., a New Jersey corporation ("Tiburon"), a locker service provider, with offices at 70 Hilltop Road, Ramsey, NJ, 07446, and NRH2O Family Water Park / City of North Richland Hills, Texas ("Lessee").

Lessee operates a water park known as NRH2O Family Water Park. Lessee desires to utilize Tiburon, and Tiburon desires to provide Lessee certain Revenue Producing Storage Lockers.

Lessee and Tiburon acknowledge that their respective signatory of this Location Agreement has the authority and capacity to bind their respective party to the terms and conditions of this Location Agreement, to the extent permitted by law. If applicable, this Agreement replaces and supersedes any previously existing Location Agreement between the parties.

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

1. **EQUIPMENT:** Tiburon agrees to provide rental lockers to Lessee in the locations and quantities set forth on Exhibit A hereto. Lessee will provide a secure and covered area for said Lockers and will shield the usage terminals from sun glare and the elements. The Lockers will not be relocated without the written consent of both parties. All such items are hereinafter referred to as the "Equipment" or "Lockers". If in any given month, occupancy exceeds 70%, Tiburon will add additional lockers to get the occupancy under the threshold so long as Lessee desires additional lockers and has available space to accommodate them.
2. **DELIVERY OF EQUIPMENT:** Tiburon will deliver the additional Equipment to the premises of Lessee before the installation occurs. The Lessee agrees to receive the additional Equipment and to have it stored securely indoors on site until the installation occurs. See Section 20 below.
3. **TERM:** This Location Agreement will commence on the date of the opening for the 2024 operating season and will terminate six (6) years thereafter ("Initial Term"). Following the Initial Term, this Agreement shall renew automatically for renewal periods of two (2) years each, each considered 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 will be divided in the following manner:

As used, the term "**gross receipts**" will be defined as all receipts derived from the Equipment, less all refunds, credit card service charges, chargebacks, applicable convenience fees and surcharges, and any state and local taxes required to be remitted by Tiburon. Lessee is not subject to deductions for state and local taxes and therefore they will not be withheld.

Up to \$160,000 of gross receipts in any calendar year will be paid 70% to Lessee; and
Gross receipts in excess of \$160,001, 75% will be paid to Lessee.

If applicable, payment to Lessee will be made by check or wire on or about the 21ST day of the month following the month of collection. Any dollar amount under fifty dollars (\$50) due to either party will accrue until the balance reaches or exceeds fifty dollars (\$50).

Lessee will 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 will be retained by Lessee as payment against the portion of gross receipts (as defined in this Section) 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 will, by the 21st day after the month's end, send to Tiburon a check or wire in the amount of such excess. Lessee will also be responsible for putting cash in the bill breaker as needed.

Tiburon will retrain 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 will be binding upon 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 Rates for the Lockers may be changed at any time with written approval of both parties.

6. **REFUND POLICY:** All refunds by Lessee should be done on site by Lessee so long as there is a reasonable business basis to provide the refund. The location, amount, date, and reason for the refund must be logged. The refund log should be consolidated and submitted to Tiburon by the 10th day of the following month so that it can be reconciled with the monthly payments. Tiburon will have the right to deny any refund.
7. **SITE SELECTION:** The location of the new Lockers will be mutually determined by Lessee and Tiburon as set forth in Exhibit A and will be in areas readily accessible to Lessee's patrons and Tiburon's service representatives. No signage may be placed on the Equipment without prior written approval by Tiburon. The Lockers will not be relocated without mutual written approval of the parties.
8. **PERSONNEL RESPONSIBILITY:** Tiburon will perform locker repair pursuant to Section 10 and will conduct operational training for employees designated by Lessee. Lessee's staff will be responsible for cash collection, handling of routine guest inquiries such as forgotten access codes or accidental early rental termination, receipt paper replacement, cleaning and sanitizing the Lockers, nightly cleaning and cleanout and saving of patron's items left in the Lockers, replenishing the bill breaker as well as emptying the cash that patrons deposit. Lessee's personnel will do simple repairs that can be guided by Tiburon staff over the telephone whenever possible.

9. **PARTIES' OBLIGATIONS:**

- a. Lessee will provide convenient three-pronged grounded power outlets and terminated internet cabling (whether terminated as a jack or a standard RJ45 connector) to the new Lockers prior to installation. Lessee will be responsible for ensuring that the power outlets and internet cabling are operational and will also be responsible for the cost of power usage and internet access and will also provide adequate signage guiding patrons to the location of the Lockers.

If Lessee has its network behind a firewall, Lessee will make sure that prior to installation that outbound traffic port 443 and its responses are open for the Lockers, that traffic from the Lockers is allowed through any Intrusion Detection or Deep Packet Inspection rules, and that any and all networking or firewall changes that need to be made for the integral functioning of the Lockers will be able to be made during the installation at the latest.

At no point should Tiburon's Lockers be placed on the any network that also has a wireless connection available to the public whether through a password or not. It is highly recommended that the Lockers be placed on their own VLAN separated from the location's network.

- b. All other expenses, including installation, maintenance and repair of the Equipment, Tiburon's service representatives and insurance referred to below will be borne by Tiburon. Tiburon will also be responsible for the payment of credit card servicing fees and for the remitting of any sales or use tax arising from the rental of lockers.

10. **REPAIRS:**

- a. Tiburon will bear the cost of major repairs required in order to maintain the Equipment in good operating order. However, should it be determined that damage or misplacement of keys or other components of the Equipment are the result of intentional or negligent act or omission by Lessee's agents, employees, or customers, then Lessee will be responsible for the cost of such repairs. Lessee will also be responsible for repair of lockers caused by damages caused by inadequate protection of the Equipment from the elements, from pressure washing on or near the Lockers, or from failure to follow the user and operating manuals provided by Tiburon.
- b. Routine repairs will be made during weekly service visits during the season or will be scheduled sooner if a condition prevents the historical use of the lockers system. In the event that Lessee's business is seasonal, it is understood that Tiburon will make necessary repairs for which it is responsible during such season and, if notified of repair needs after the season, repairs will be made prior to Lessee's next season opening.

11. **INSURANCE:** Tiburon will obtain and maintain in full force Workers' Compensation Insurance for its employees as required and Comprehensive General Liability Insurance of One Million Dollars (\$1,000,000), 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 will be written by an insurance company reasonably acceptable to Lessee and will include a provision that it will not be canceled without thirty (30) days prior written notice to Lessee. Tiburon will provide evidence of such coverage to Lessee prior to the installation of the Equipment.
12. **OWNERSHIP:** The Equipment is at all times 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 from gross negligence beyond normal wear and tear.
13. **INDEMNIFICATION:** Tiburon will indemnify and hold Lessee harmless from, for and against any liability arising or occurring upon, or in connection with, the use of the Equipment, 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.
14. **USE OF NAME:** Lessee agrees that Tiburon may use Lessee's name and logo in its product information, on its website, and marketing material provided that all such use will be subject to the approval of Lessee. Tiburon will 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.
- ~~15. **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.~~
16. **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 proportion of the units of the Equipment are not generally functioning in such a way as to impede usage in such a way that a customer who could have rented otherwise could not and 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. In order for a breach to be deemed material, the opinion must come from a third-party arbitrator. The third-party arbitrator shall be selected from the American Arbitration Association in New Jersey. The demand for arbitration shall be made within thirty (30) days of the notice of a material breach by any party. Each party is to submit their proposed arbitrator. In the event the parties cannot agree to a mutually acceptable arbitrator, the arbitrator shall be selected by the American Arbitration Association. Each party shall contribute half (1/2) of the costs to submit to arbitration. The opinion of the arbitrator is binding in any subsequent litigation. In the event of litigation, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs resulting from the other party's breach. 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 if 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.)

17. **BANKRUPTCY/INSOLVENCY:** If Lessee files for voluntary or involuntary bankruptcy or insolvency, Tiburon may cancel this Agreement whereupon Tiburon will 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 will also be entitled to reimbursement for reasonable legal fees and costs resulting from the other party's default.
18. **SOFTWARE:** Tiburon represents and warrants that it is the sole owner of the software and technology used in connection with the Equipment and will 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 such term. Tiburon hereby grants to Lessee a non-exclusive right to use the software in conjunction with the use of the Equipment. Lessee may not assign such license, nor may it copy or use such software other than in conjunction with Equipment operations under this Agreement. Upon expiration or termination of this Agreement, this license will terminate immediately without further notice or action.
19. **EXCLUSIVITY/NON-COMPETE:** Lessee will not offer any competing 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. Competing storage means any other lockers or storage equipment. This includes free or paid storage as well as locked or open storage.
20. **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 will be as follows:
- a. If requested by Tiburon, the parties will arrange for a mutually convenient time 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 will 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. Adequate protection for outdoor installations should extend out from the lockers on all exposed sides by a minimum of five (5) feet.
 - c. Prior to shipment of the Equipment, Tiburon will contact Lessee to confirm that the installation sites are Site Ready. Lessee agrees that they will be Site Ready sixty (60) days prior to season opening. In the event it is not accomplished in this time frame, Tiburon will have the right to complete the work and charge Lessee for all out-of-pocket expenses.
 - d. 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 clients' sites. Additionally, the cost of delivery and installation of the Equipment is significant and requires customization and scheduling of skilled technicians employed by Tiburon.
21. **NOTICES:** All notices required under this Agreement must be in writing by using either certified or registered mail to either party as follows:
- If to Tiburon, to: Tiburon Lockers, Inc., 70 Hilltop Road, Suite 2400, Ramsey, NJ, 07446, Attn: Jared Lowenthal.
- If to Lessee, to: NRH2O Family Water Park, 9001 Boulevard 26, North Richland Hills, TX 76180. Attn: Bryon Bustamante. Phone 817-427-6505. Email: bbustamante@nrh2o.com.

22. **CUSTOMER SERVICE:** In order to maintain a high level of Customer Satisfaction Tiburon Lockers provides both e-mail, as well as a service number for. The contact information is as follows:

Toll Free Number: 1-877-592-0985 or email at customerservice@tiburonlockers.com.

23. **SALE OR 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.

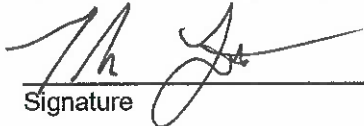
24. **MISCELLANEOUS PROVISIONS:** This Agreement constitutes the entire understanding between the parties. Any modification, alteration or change hereof may only be made by signed, written Addendum(s) to this Agreement. This Agreement will be interpreted in accordance with the laws of the State of Texas. The parties agree that any dispute arising from this Agreement will be subject to the exclusive jurisdiction of Tarrant County, Texas. Any provisions hereof found to be prohibited by law will be ineffective to the extent to such prohibition without invalidating the rest of the Agreement.

IN WITNESS WHEREOF, the parties have executed this Location Agreement in triplicate on the date first written above. All signing parties swear there have authority to duly bind their respective organization to this Agreement.

TIBURON:

Tiburon Lockers, Inc.

By: THOMAS LITTLE _____


Signature

VICE PRESIDENT
Name and title – please print

2/21/2024
Date

LESSEE:

The City of North Richland Hills, Texas

By: _____

Signature

Name and title - please print

Date

ATTEST:

By (Name and Title): _____

Signature: _____

APPROVED AS TO FORM AND LEGALITY:

By: (Name and Title): _____

Signature: _____

NRH Council Action Y/N

Date Approved: _____

Agenda No.: _____

Ord / Res No.: _____

EXHIBIT A

Venue Name: NRH2O Family Waterpark

Equipment: Electronic Lockers (Existing)

Cabinet Type	Color	Doors/Cabinet	Cabinets	Total Doors	Terminals
3 Tier	Blue	3	17	51	
4 Tier	Blue	4	19	76	
6 Tier	Blue	6	33	198	
TSS	Grey			303 TOTAL	5
Mini-TSS	Grey				1

**** 7 cabinets of the Existing 6 Tiers will need to be removed to make room for the New Equipment.**

All payment terminals will have a new card reader with Touch to pay, Apple Pay, and Google pay added onto them as well as new access door decals. **

Equipment: Electronic Lockers (New)

Cabinet Type	Color	Doors/Cabinet	Cabinets	Total Doors	Terminals
3 Tier	Blue	3	2	6	
4 Tier	Blue	4	4	16	

Tiburon will also provide Lessee with a Standard Change Makers BX1010-G for the term of this Agreement.

Rental Fees:

3T - Extra Large: Off-Peak Pricing: \$20 all day unlimited access/ Peak Pricing: \$22 all day
4T - Large: Off-Peak Pricing: \$15 all day unlimited access/ Peak Pricing: \$17 all day
6T - Medium: Off-Peak Pricing: \$12 all day unlimited access/ Peak Pricing: \$14 all day

Peak Pricing will be every Friday through Sunday and Memorial Day, Independence Day, Juneteenth, and Labor Day

Mobile:

All mobile rentals will include a \$1.00 processing fee.

Season Pass Holders:

All season pass holders can receive a \$1.00 discount at the kiosk per day.

Each such price will increase by \$1 per rental period every other year of the agreement upon mutual agreement.