

CITY OF SAN DIEGO
PARASAILING CONCESSION AGREEMENT

THIS CITY OF SAN DIEGO CONCESSION AGREEMENT ("Agreement") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and San Diego Parasail Adventures Inc. ("CONCESSIONAIRE"), to be effective upon execution by the parties and approval by the San Diego City Attorney (the "Effective Date"), as follows:

1. **Incorporated Documents.** This Agreement is created pursuant to the City of San Diego REQUEST FOR PROPOSAL ("RFP") for Parasailing Concessions issued by the CITY on February 25, 2013, and CONCESSIONAIRE's proposal in response to the RFP, dated March 15, 2013. Attached and incorporated herein are the following documents: Map (Attachment A), and Parasailing Concession Requirements (Attachment C). The Operating Plan submitted by CONCESSIONAIRE as part of its RFP proposal is also attached hereto (Attachment D) and incorporated herein. In addition to the terms and conditions set forth in the Agreement, CONCESSIONAIRE agrees to fully abide by the Parasailing Concessions Requirements, the Operating Plan, and any additional requirements listed in the RFP.
2. **Right to Enter.** Subject to the terms and conditions of this Agreement, CITY hereby grants permission to CONCESSIONAIRE, its employees, and agents to operate a parasailing concession ("Concession") as defined in Section 3 below, offshore, on the waters of the Pacific Ocean between the North Channel Jetty of Mission Bay and Crystal Pier, not closer than 1,500 feet of the mean tide line as depicted on Attachment A hereinafter referred to as the "Site."
3. **Use of Site.** This Agreement is granted to CONCESSIONAIRE for the sole purpose of allowing CONCESSIONAIRE to operate Concession. Concession means an operation involving the conducting of parasailing tours serving the general public under the terms and conditions of this Agreement. No solicitation or marketing is permitted on any portion of any City beach. Renting or selling of beach equipment or any other merchandise is not allowed under this Agreement. Any use other than as a Concession as described herein shall constitute good cause for immediate termination of this Agreement. CONCESSIONAIRE must also only conduct business from an approved sublease in Mission Bay, as specified in the RFP.
4. **Competent Management.** Throughout the term of this Agreement, CONCESSIONAIRE shall provide competent management of the Concession and the Site for the permitted uses to the satisfaction of the City Manager.

CONCESSIONAIRE covenants at all times to operate the Concession for the above-specified purposes and diligently conduct the Concession to maximize gross revenue.

5. Term. This Agreement will have a three (3) year term ("Term"), as described in this section.

The "Commencement Date" is the date this Agreement is fully executed by the Parties.

An "Agreement Year" consists of each successive twelve (12) month period following the Commencement Date.

This Term will begin on the Commencement Date if the agreement is fully executed on the first day of any calendar month. If this Agreement is not fully executed on the first day of a calendar month, then the first Agreement Year will include the period from the Commencement Date to the next first day of a calendar month, in addition to the next (12) twelve calendar months. Therefore, no matter when the Commencement Date is, the Term and each Agreement Year will end on the last day of a month.

The term of this Agreement may be extended for two (2) one-year (1) periods. All extensions must be in writing and signed by both parties.

6. Termination. This Agreement may be terminated at any time by either party upon ninety (90) days prior written notice to the other party. Any written notice to this effect shall be served in accordance with Section 43 of this Agreement.
7. Revocable License. This Agreement is not a lease. It is a license to use CITY-owned property, and may be revoked by CITY, in its sole discretion. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by CONCESSIONAIRE as a result of termination or suspension of this Agreement. CONCESSIONAIRE expressly waives any claim for expense or loss which CONCESSIONAIRE might incur as a result of CITY'S termination or suspension of this Agreement or for the scheduling of any Special Events pursuant to Section 4.b that conflict with or prohibit CONCESSIONAIRE's use of the Site.
8. Special Provisions.
 - a. Operating Plan. The Operating Plan(s) for June 1, 2014 through May 31, 2015 submitted with the CONCESSIONAIRE's response to the CITY'S Request for Proposal shall be revised by CONCESSIONAIRE if required by CITY, and the final CITY approved Operating Plan(s) shall be incorporated into this Agreement as Attachment D. Beginning June 1, 2015, and for every twelve (12) months thereafter during the Term, the CONCESSIONAIRE shall provide the CITY with an Operating Plan for

the upcoming year for the CITY'S approval. CONCESSIONAIRE shall submit such Operating Plan by February 1, of each Agreement Year during the Term of the agreement. All Operating Plans submitted to the CITY should be consistent with the format and content of the Operating Plans included as Attachment D. CITY in its sole discretion shall have the right to approve or disapprove the proposed Operating Plan. Once approved, CONCESSIONAIRE shall not make any changes to the Operating Plan without prior written approval of CITY.

CONCESSIONAIRE shall not operate the Concession at any time during the Term without an Operating Plan fully approved by the City valid for the time period of operation.

- b. Operations. The CITY reserves the right to make changes at any time to the CONCESSIONAIRE's parasailing operations based on operational and safety considerations. **At all times, the CONCESSIONAIRE shall ensure that all of its operations comply with the Parasailing Concession Requirements incorporated herein as Attachment C.**
- c. Standard of Employees. CONCESSIONAIRE and its employees shall at all times conduct themselves and the operations of the Concession in a respectable and courteous manner. CONCESSIONAIRE shall thoroughly train its employees in their duties and shall regularly monitor them to ensure that they behave in a courteous manner, do not disturb the quiet enjoyment of other beach/bay/ocean users, and otherwise comply with all of the Parasailing Concession Requirements set forth as Attachment C to this Agreement.
- d. Exclusiveness of Agreement and Unauthorized Vending. CITY, by granting this Agreement to CONCESSIONAIRE, makes no warranty that the Site shall be free of unauthorized activity or that any specific level of police or lifeguard enforcement against such activities shall be maintained.
- e. Concession Site. CONCESSIONAIRE shall erect no improvements on the Site without prior written approval by the CITY. The Site must be maintained so as to present a neat and attractive appearance to the satisfaction of the CITY. Any items or improvements brought on the Site by the CONCESSIONAIRE must be approved in writing by CITY and shall not remain on location after permitted hours of operation, unless prior written approval of CITY is obtained.
- f. Improvements. Upon expiration or termination of this Agreement, any and all improvements, trade fixtures, structures, and installations or additions to the Site now existing or constructed on the Site by CONCESSIONAIRE shall be deemed to be part of the Site and shall become CITY's property free of all liens and claims. All personal property remaining on the Site after expiration or termination shall also

become the property of CITY. Alternatively, the CITY, at its option, may require CONCESSIONAIRE to immediately remove any and all improvements, trade fixtures, structures, installations and additions to the Site at CONCESSIONAIRE's sole cost and expense

- g. Maintenance of Site. CONCESSIONAIRE agrees not to commit or allow to be committed any waste or injury or any public or private nuisance, to keep the Site clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in or about said spaces to the satisfaction of CITY and at CONCESSIONAIRE's sole cost and expense.
- 9. Fees. CONCESSIONAIRE is required to pay to CITY, on a monthly basis, the greater of either the Percentage Fee or the Monthly Minimum Fee, as described below. In the event that the combined total amount of fees paid by CONCESSIONAIRE during any Agreement Year equals or exceeds the Annual Minimum Fee for that Agreement Year, then CONCESSIONAIRE shall only pay the Percentage Fee each subsequent month until either a new Agreement Year begins or this Agreement ends.
 - a. Percentage Fee. The Percentage Fee shall be calculated on a calendar month basis and shall consist of ten percent (10%) of the total Gross Revenue (as defined in Section 9.g of the Agreement) of CONCESSIONAIRE's Concession activities allowed under this Agreement.
 - b. Annual Minimum Fee and Monthly Minimum Fee. The Annual Minimum Fee established for the first two Agreement Years following the effective date of this Agreement is Fifteen Thousand Dollars (\$15,000), or Twelve Hundred Fifty Dollars (\$1,250) per month on a monthly installment basis ("Monthly Minimum Fee").
 - c. Minimum Fee Adjustment. Effective at the beginning of the first day of the third Agreement Year of this Agreement (known below as the "Adjustment Date"), the Annual Minimum Fee shall be set at eighty percent (80%) of the annual average of the Total Fees Paid or accrued under this Agreement for the two (2) Agreement Years immediately preceding the Adjustment Date. In the event that this adjusted amount is less than the past Annual Minimum Fee, the adjusted amount shall be discarded and the Annual Minimum Fee shall instead be increased by ten percent (10%) for the third Agreement Year of this Agreement.

The new Minimum Fee amount calculated after the Adjustment Day shall then be divided by twelve (12) to establish the new Monthly Minimum Fee. It is recognized that the adjustments shall be calculated by the CITY upon completion of payments due for the preceding years in order to determine the amount of the Minimum Fee for the remaining Term. Until

such calculations are completed, CONCESSIONAIRE shall continue paying the Monthly Minimum Fee at the past rate. Any additional fees determined by the adjustment to be due for the months previously paid at the past rate shall be paid to the CITY within thirty (30) days following written notice provided pursuant to Section 43 of this Agreement.

- d. Delinquent Concession Fee. If CONCESSIONAIRE fails to pay any Concession fees when due, CONCESSIONAIRE shall pay the delinquent fee plus a late fee equal to five percent (5%) of the delinquent fee. If fees remain unpaid more than fifteen (15) days past the due date, the late fee shall be increased to ten percent (10%) of the delinquent fee, which CONCESSIONAIRE shall pay in addition to the delinquent fee. The parties agree that such delinquent fees are appropriate to compensate the CITY for loss resulting from concession fee delinquency, including lost interest opportunities, legal costs, and the cost of servicing the delinquent account.
- e. Unauthorized Use Charge. CONCESSIONAIRE shall pay to CITY, as an additional fee, an unauthorized use charge equal to hundred percent (100%) of the Gross Revenue (as defined in Section 9.g) received from any service or use of the Site by CONCESSIONAIRE that is not allowed under this Agreement. Such payment is subject to the due date provided in the Agreement for fee payments and the provisions for delinquent or unpaid fees. Neither the existence of such an unauthorized use charge nor the payment of such charge, or any part of it, shall constitute an authorization of an unauthorized use, and shall not constitute the waiver of any of the CITY'S rights under the Agreement.
- f. Additional Fees. The CITY, in his sole discretion, may approve another percentage rate or minimum rate for each other incidental service or operation supplementary to the permitted uses stated in Section 3, Use of Site. All incidental services or operations must be approved in writing by the CITY prior to the commencement of any additional service or operation. However, any activity conducted on the Site without the prior written approval of the CITY, shall be subject to the requirements of Section 9.c. Unauthorized Use Charge.
- g. Gross Revenue. "Gross Revenue," as used in this Agreement shall include all income resulting from the Concession whether received or to become due; provided, however, that Gross Revenue shall not include federal, state, or municipal taxes collected from the CONCESSIONAIRE (regardless of whether the amount is stated to the consumer as a separate charge) and paid over periodically by CONCESSIONAIRE to a governmental agency accompanied by a tax return or statement as required by law. Possessory interest taxes or other property taxes shall not be deducted by CONCESSIONAIRE in computing Gross Revenue. Gross

Revenue shall not include refund of deposits. The amount of taxes and refunds shall be clearly shown on the books and records of CONCESSIONAIRE. The Percentage Fee shall be calculated and paid by CONCESSIONAIRE on the basis of Gross Revenue whether the income is received by CONCESSIONAIRE or by any of CONCESSIONAIRE's agents, employees, permittees, or representatives, and all Gross Revenue received by any of CONCESSIONAIRE's agents, employees, permittees, representatives, or other party as a result of occupancy or operation of the Site shall be regarded as Gross Revenue of CONCESSIONAIRE for the purpose of calculating the Percentage Fee required to be paid by CONCESSIONAIRE to CITY, except as may be otherwise specified by this Agreement.

h. Payment Procedure.

On or before the last day of the calendar month following the calendar month in which the Gross Revenue subject to the Percentage Fee was earned, CONCESSIONAIRE shall provide CITY with a correct income statement for the Site operated by CONCESSIONAIRE together with a payment of fees on all applicable Gross Receipts in a form selected by CITY. The statement shall be signed by CONCESSIONAIRE and its authorized agent attesting to the accuracy of the income statement. Each statement will include:

- i. Total Gross Receipts for the subject month itemized as to business categories for which the separate Percentage Fee is established.
- ii. The Percentage Fee due CITY and the manner in which such Percentage Fee was computed and totaled.
- iii. The accumulated total of all fees previously paid to CITY for the current year.
- iv. Payments in the greater of the two following amounts: The Monthly Minimum Fee or the total Percentage Fee due CITY computed as described in this Section.

h. Inspection of Records.

- i. Records. CONCESSIONAIRE shall at all times during the Agreement Term keep or cause to be kept true and complete books, records, and accounts of all financial transactions in the operation of all business activities conducted upon and financial transactions resulting from the use of the Site. The records shall be supported by

source documents such as sales slips, daily cash register tapes, purchase invoices, tour lists, or other documents as necessary to allow CITY to easily determine CONCESSIONAIRE's Gross Revenue. Any retail sales or charges will be recorded by means of cash registers or other comparable devices which display to the customer the amount of the transaction and automatically issue a receipt. The registers shall be equipped with devices that lock in sales totals and other transaction numbers and sales details that are not resettable. Totals registered shall be read and recorded at the beginning and end of each business day. In the event of admission charges or concession fees, CONCESSIONAIRE shall issue serially numbered tickets for such admission or concession fees and shall keep an adequate record of such tickets, as well as a record of unissued tickets. All retail sales and charges may be recorded by a system other than cash registers or other comparable devices provided such a system is approved by the CITY.

- ii. Financial Statements. Within sixty (60) days after the end of the each Agreement Year, CONCESSIONAIRE shall at its sole cost and expense, submit to CITY a statement in which the total Gross Receipts and the corresponding amounts of Percentage Fees paid CITY for the year are classified according to the categories of business established for any Percentage Fees and for any other business conducted on or from the Site. The statement shall be signed by CONCESSIONAIRE and a duly authorized financial representative of CONCESSIONAIRE attesting to the accuracy thereof, which shall be legally binding upon CONCESSIONAIRE.
- iii. Right to Inspect. All of CONCESSIONAIRE's books of account, records, and supporting documentation, as described under Section 9.h.i, shall be kept for at least five (5) years and made available throughout that five (5) year period to CITY in one location within the City of San Diego. These books and records must be maintained separately from all other accounts not relating to the Site. The CITY, at its discretion, shall have the right to inspect and audit the business of CONCESSIONAIRE, its agents, representatives and permittees operating on, and in connection with, the Site as necessary and appropriate for CITY to determine the amounts of concession fees due CITY in compliance with the requirements of this

Agreement. At CITY'S request, CONCESSIONAIRE shall promptly provide, at CONCESSIONAIRE's expense, any necessary data to enable CITY to fully comply with all requirements of the state and federal government for Agreement information or reports concerning the Concessions. Such data will include, if required, a detailed breakdown of CONCESSIONAIRE's receipts and expenses.

- iv. Audit Cost. The full cost of the CITY'S audit(s) will be borne by CITY unless one or both of the following conditions exists, in which case CONCESSIONAIRE agrees to pay CITY's cost of audit(s):
 - A. The audit(s) reveal an underpayment by CONCESSIONAIRE to the CITY of more than five percent (5.00%) on an annual basis for any Agreement Year or more than \$5,000, whichever is less, between the Total Fees Paid as reported and paid by CONCESSIONAIRE pursuant to this Agreement and Concession fees owed as determined by the audit(s).
 - B. CONCESSIONAIRE has failed to properly maintain complete and true books, records, accounts, and supporting documents in strict accordance with this section.

Any fee deficiency determined by the audit shall be considered a delinquent fee, subject to all penalties and remedies provided to CITY for delinquent Concession fees under this Agreement section 9.d. CITY shall credit any overpayment by CONCESSIONAIRE determined by the audit, without interest, against future fees due under this Agreement. If no future fees are due under this Agreement, CITY shall refund CONCESSIONAIRE any overpayment determined by the audit, without interest, within sixty (60) days after CITY's certification of the audit.

- i. Default. CONCESSIONAIRE's failure to keep complete and accurate records by means of double-entry bookkeeping and failure to make them available for CITY inspection is, like all other failures to comply with the covenants of this Agreement, a material breach of this Agreement and good cause for termination.

- j. **Time and Place of Payment.** Payments are due on or before the last day of the calendar month following the calendar month in which the Gross Revenue subject to the Percentage Fee was earned. Checks shall be made payable to the City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P.O. Box 129030, San Diego, California 92112-9030, or delivered to the Office of the City Treasurer, Civic Center Plaza, 1200 Third Avenue, First Floor, San Diego, California. The place and time of payment may be changed by CITY upon thirty (30) days prior written notice to CONCESSIONAIRE. Mailed payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. If any such postmark is illegible, the payment shall be deemed paid upon actual receipt by the City Treasurer. CONCESSIONAIRE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.
- k. **Security Deposit.** CONCESSIONAIRE shall deliver to CITY with the executed copies of this Agreement, a good faith deposit in the amount of two thousand five hundred dollars (\$2,500.00) in the form of a cashier's or certified check. All or any portion of the principal sum of the security deposit shall be available unconditionally to CITY for payment of delinquent concession fees, for correcting any default or breach of this Agreement by CONCESSIONAIRE, CONCESSIONAIRE's successors or assignees, or for payment of expenses incurred by CITY as a result of CONCESSIONAIRE's failure to faithfully perform all terms, covenants, and conditions of this Agreement. If at the end of the term of this Agreement, CONCESSIONAIRE has performed all of the provisions of the Agreement, the deposit or any remaining balance shall be returned to the CONCESSIONAIRE without interest. The security deposit may be increased by CITY proportionate to any increase in the Minimum Fee. CONCESSIONAIRE shall maintain this security deposit throughout the Term of this Agreement. **Notwithstanding any other provision of this Agreement, if CONCESSIONAIRE fails or refuses to deposit or maintain a security deposit as required by this Agreement, CITY may terminate this Agreement immediately. Upon such termination, CONCESSIONAIRE shall immediately cease its use of the Site and immediately remove its property from the Site.**
- i. **Utilization.** If CITY utilizes all or any portion of the security deposit, upon 10 days prior written notice from CITY, CONCESSIONAIRE shall reimburse the security deposit to the full required amount.
- ii. **Increase.** Upon thirty (30) days prior written notice by CITY, CONCESSIONAIRE shall deliver to CITY additional funds as CITY may, in its sole determination,

require to adequately secure CONCESSIONAIRE's obligations under this Agreement.

- iii. Return. Provided CONCESSIONAIRE is not in breach or default of this Agreement, CITY shall return the security deposit, or any balance thereof, to CONCESSIONAIRE within sixty (60) days after the expiration or termination of this Agreement.
- 12. CITY'S Consent, Discretion. Whenever required under this Agreement, CITY's consent or approval shall mean the written consent or approval of the Mayor or the Mayor's designee, unless otherwise expressly provided. CITY's discretionary acts hereunder shall be made in the Mayor or the Mayor's designee's sole and absolute discretion, unless otherwise expressly provided.
- 13. Acceptance of Site. CONCESSIONAIRE represents and warrants that it has independently inspected the Site and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Site. CONCESSIONAIRE agrees it is relying solely on its independent inspection, tests, investigations, and observations in entering into this Agreement. CONCESSIONAIRE further acknowledges that the Site is in the condition called for by this Agreement, that CITY has performed all work, if any, related to the Sites and required by this Agreement, and that CONCESSIONAIRE shall hold CITY harmless for any defects, whether apparent or latent, in the Site, including without limitation the presence of any hazardous substances.
- 14. Maintenance of the Site. CONCESSIONAIRE shall at its sole cost and expense and to CITY'S satisfaction, maintain the Site in a decent, safe, healthy and sanitary condition at all times during the Term.
- 15. Standard of Conduct. CONCESSIONAIRE and its employees shall at all times conduct themselves and the operations on the Site in a respectable and courteous manner.
- 16. Inspection. CITY may, at all times, enter and inspect the Site.
- 17. Insurance. On or before the Effective Date, CONCESSIONAIRE shall deliver to CITY a current certificate of insurance for:
 - a. Commercial General Liability insurance providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least Three Million Dollars (\$3,000,000) per occurrence, subject to an annual aggregate of Three Million Dollars (\$3,000,000).
 - i. Additional Insureds. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San

Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in all policies.

- ii. Primary & Non-Contributory. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by CITY. The policies shall be kept in force for the duration of the Term and any extended use. The certificate(s) of insurance shall be filed with CITY'S Real Estate Assets Department upon execution of this Agreement.
 - iii. SEVERABILITY OF INTEREST. The policy or policies must be endorsed to provide that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.
- b. CONCESSIONAIRE must maintain current workers compensation coverage which meets statutory requirements for all employees. One Million Dollars (\$1,000,000) of employers' liability coverage is also required.
- i. WAIVER OF SUBROGATION. The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against the City and its respective elected officials, officers, employees, agents and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for the City.
 - ii. For any of CONCESSIONAIRE's employees who are covered by the Jones Act, the City will accept Jones Act crew coverage of One Million Dollars (\$1,000,000.00). Employees not covered under the Jones Act must have appropriate workers compensation coverage as required by this section.
- c. Automobile Liability Insurance for all bodily injury and property damage, with a limit of at least One Million Dollars (\$1,000,000) per occurrence subject to an annual aggregate of Two Million Dollars (\$2,000,000). Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-hired vehicles) operated in performing any and all Concessions or other services pursuant to this Agreement. Coverage shall be written on ISO form CA 00 01 12 90, or a later version of this form, or an equivalent form providing equivalent liability coverage.

- i. ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of automobile owned, leased, hired or borrowed by or on behalf of the Contractor.
 - ii. SEVERABILITY OF INTEREST. The policy or policies must be endorsed to provide that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.
- d. Causes of Loss-Special Form Property Insurance. CONCESSIONAIRE shall obtain and maintain, at its own cause and expense, Causes of Loss-Special Form Property Insurance on all of CONCESSIONAIRE's insurable property related to the Site in an amount to recover one hundred percent (100%) of the replacement cost. CONCESSIONAIRE shall deliver to CITY a certificate of such insurance.
- e. CONCESSIONAIRE must maintain a marine protection and indemnity policy, with limits of not less than One Million Dollars (\$1,000,000) per occurrence subject to an annual aggregate of Two Million Dollars (\$2,000,000). UNLESS proof is submitted that CONCESSIONAIRE's parasailing operations are under the commercial general liability policy. A certified copy of the CGL policy will be sufficient to meet this requirement.
- f. Qualified Insurer(s). All insurance required by the terms of this Agreement must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to CITY. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements
- g. Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of CONCESSIONAIRE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
- h. Continuity of Coverage. All policies shall be in effect on or before the first day of the Term of this Agreement. At least thirty (30) days prior to

the expiration of each insurance policy, CONCESSIONAIRE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Agreement. CONCESSIONAIRE shall provide proof of continuing insurance on at least an annual basis during the Term. If CONCESSIONAIRE's insurance lapses or is discontinued for any reason, CONCESSIONAIRE shall immediately notify the CITY and immediately obtain replacement insurance.

- i. Modification. To assure protection from and against the kind and extent of risk existing on the Site, CITY, at its discretion, may require the revision of amounts and coverage at any time during the Term by giving CONCESSIONAIRE thirty (30) days prior written notice. CONCESSIONAIRE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY's reasonable re-evaluation of risk levels related to the Site in order to meet the requirements of this Agreement.
- j. Accident Reports. CONCESSIONAIRE shall immediately report to CITY any accident causing property damage or injury to persons on the Site or person engaged in the activities permitted under this Agreement. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- k. Failure to Comply. If CONCESSIONAIRE fails or refuses to obtain and maintain the required insurance, or fails to provide proof of coverage, CITY may obtain the insurance. CONCESSIONAIRE shall reimburse CITY for the premiums paid, with interest on the premium paid by the CITY at the maximum allowable legal rate then in effect in California. CITY shall notify CONCESSIONAIRE of such payment of premiums within thirty (30) days of payment stating the amount paid, the name(s) of the insurer(s), and rate of interest. CONCESSIONAIRE shall pay such reimbursement and interest on the first (1st) day of the month following CITY's notice. Notwithstanding any other provision of this Agreement, if CONCESSIONAIRE fails or refuses to obtain or maintain insurance as required by this Agreement, or fails to provide proof of insurance, CITY may terminate this Agreement immediately upon such breach. Upon such termination, CONCESSIONAIRE shall immediately cease its use of the Site and commence and diligently pursue the removal of any and all of its personal property from the Site.
- l. All insurers must be licensed to conduct business in the State of California and with exception of workers compensation, be rated "A-, VI" or better by AM Best. If coverage is provided by a surplus lines carrier, it must be listed on the current LESLI list. Any and all deductibles and/or self-

insured retentions must be disclosed to the City at the time proof of insurance is provided. All insurers must be acceptable to the City.

18. Indemnification. CONCESSIONAIRE shall protect, defend, indemnify, and hold CITY, its elected officials, officers, representatives, agents and employees, harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to CONCESSIONAIRE's officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with this Agreement or CONCESSIONAIRE's occupancy, use, development, or maintenance of the Site, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that CONCESSIONAIRE's duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of CITY, its elected officials, officers, representatives, agents and employees. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, CONCESSIONAIRE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.

19. No Discrimination. CONCESSIONAIRE shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in CONCESSIONAIRE's use of the Site, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment. CONCESSIONAIRE shall at all times abide by CITY's non-discrimination laws found in the San Diego Municipal Code section 22.3501 et. seq.

Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices. Prime contractors shall ensure their subcontractors comply with this program. Nothing in this section shall be interpreted to hold a prime contractor liable for any discriminatory practice of its subcontractors.

20. Local Business and Employment. CONCESSIONAIRE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. CONCESSIONAIRE will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this Agreement from local residents and firms as opportunities occur. CONCESSIONAIRE agrees to hire qualified local residents and firms whenever feasible.

21. Drug-free Workplace. CONCESSIONAIRE shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:
- a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of controlled substances are prohibited on the Sites and specifying the actions that will be taken against employees for violations of the prohibition; and
 - b. Establish a drug-free awareness program to inform employees about all of the following:
 - i. The dangers of drug abuse in the workplace;
 - ii. CONCESSIONAIRE'S policy of maintaining a drug-free workplace;
 - iii. Any available drug counseling, rehabilitation, and employees assistance programs; and
 - iv. Penalties that may be imposed upon employees for drug abuse violations.
22. Disabled Access Compliance. CONCESSIONAIRE shall comply with the California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities.
23. CONCESSIONAIRE's Risk. CONCESSIONAIRE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with CONCESSIONAIRE's occupancy or use of the Site and any damages to the improvements on, under, or in the vicinity of the Site resulting directly or indirectly thereby.
24. No Nuisance. CONCESSIONAIRE shall not use the Site in any manner which, in CITY'S opinion, creates a nuisance or disturbs the quiet enjoyment of persons in and to the surrounding area.
25. No Assignment. CONCESSIONAIRE shall not assign or sublicense any rights granted by this Agreement or any interest in this Agreement without CITY'S prior written consent, which may be withheld or delayed in CITY'S sole and absolute discretion. Any assignment by operation of law shall automatically terminate this Agreement.

26. Charter Section 225. Pursuant to San Diego City Charter Section 225, CONCESSIONAIRE and assignees shall make a full and complete disclosure of the name and identity of any and all persons directly or indirectly involved in this Agreement and the precise nature of all interests of all persons therein. CONCESSIONAIRE's failure to fully disclose all of the information required by Charter Section 225 or CONCESSIONAIRE's failure to require each of its assignees to fully disclose such information shall be a default of this Agreement. Pursuant to City Charter Section 225, every person or entity that will have an interest in this Agreement as an assignee must be reviewed and approved by CITY.
27. Signs. CONCESSIONAIRE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising without CITY's prior written consent. If any such unauthorized item is found on the Sites, CONCESSIONAIRE shall remove the item at its expense within 24 hours notice by CITY, or CITY may thereafter remove the item at CONCESSIONAIRE's cost.
28. Advertisement and Marketing. Any advertising or marketing which reference the City of San Diego may not be distributed by the CONCESSIONAIRE without the advanced written approval of the CITY. If CONCESSIONAIRE uses the City of San Diego in any context to promote its business operations without prior written approval by CITY, CONCESSIONAIRE shall be considered to be in default. No advertising or marketing materials of any kind may be posted or distributed on any City beach without the advanced written approval of the CITY.
29. Encumbrances. CONCESSIONAIRE shall keep the Site free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with this Agreement or CONCESSIONAIRE's occupancy or use of the Site. CONCESSIONAIRE shall protect, defend, indemnify, and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense, including without limitation all attorney fees and costs, relating to or charged against the Sites, including without limitation CONCESSIONAIRE's failure or the failure of any contractor or subcontractor hired by CONCESSIONAIRE to pay any person or persons referred to in Section 3181 of the California Civil Code or other applicable sections thereof.
30. Defaults and Remedies.
- a. Default by CONCESSIONAIRE. Except for Safety Violations (as defined under subsection b below) which are grounds for immediate termination, in the event that:
 - i. CONCESSIONAIRE shall default in the performance or fulfillment of any covenant or condition required by this Agreement to be performed or fulfilled by

CONCESSIONAIRE, including any covenant or condition in CONCESSIONAIRE's Operating Plan and shall fail to cure the default within thirty (30) days following written notice from CITY; or if any default is not curable within thirty (30) days, and CONCESSIONAIRE shall fail to commence to cure the default(s) within said thirty (30) day period and diligently pursue cure to completion;

- ii. CONCESSIONAIRE shall voluntarily file or have involuntarily filed against it any petition under bankruptcy or insolvency act or law; or
- iii. CONCESSIONAIRE shall make a general assignment for the benefit of creditors;

then CITY may, at its option, without further notice or demand upon CONCESSIONAIRE or upon any person claiming rights through CONCESSIONAIRE, immediately terminate this Agreement and all rights of CONCESSIONAIRE and of all persons claiming rights through CONCESSIONAIRE and expel CONCESSIONAIRE and all persons so claiming rights thereto. Provided however, in the event that any default described in Part 30.a.i of this section is not curable within thirty (30) days after written notice to CONCESSIONAIRE, CITY shall not terminate this Agreement pursuant to the default if CONCESSIONAIRE immediately commences to cure the default and diligently pursues cure to completion. In any event, either party may terminate this Agreement without cause by giving ninety (90) days written notice of intent to terminate to the other party.

- b. Safety Violations by CONCESSIONAIRE. Notwithstanding subsection (a) above, in the event CONCESSIONAIRE shall default in the performance or fulfillment of any covenant or condition required by this Agreement to be performed or fulfilled by CONCESSIONAIRE, including any covenant or condition in CONCESSIONAIRE's Operating Plan, and said default by CONCESSIONAIRE consists of any violation of municipal, state or federal law, or any covenants or conditions in CONCESSIONAIRE's Operating Plan or Attachment C that, in the CITY's sole discretion, relate to public safety ["Safety Violations"], CITY may, at its option, require CONCESSIONAIRE to immediately cure said default, or, without further notice or demand upon CONCESSIONAIRE or upon any person claiming rights through CONCESSIONAIRE, suspend or revoke this Agreement.
- c. Abandonment by CONCESSIONAIRE. In the case that CONCESSIONAIRE breaches this Agreement and abandons the Site, this Agreement shall continue in full force and effect for so long as CITY does

not terminate this Agreement, and CITY may enforce all its rights and remedies under this Agreement, including, but not limited to, the right to recover the month fees as they become due, plus damages. For purposes of this section, the following do not constitute a termination of CONCESSIONAIRE's right to possession or operation:

- i. Acts by CITY of maintenance, preservation, or efforts to negotiate a new Agreement.
- ii. The appointment of a receiver upon initiative of CITY to protect CITY's interest under this Agreement.

31. Damages. CITY, in the event of CONCESSIONAIRE's default under this Agreement, may recover the outstanding annual Minimum Fees due for the remaining term of the Agreement, less any mitigation measures taken by CITY. The remedies provided by this section are not exclusive and shall be cumulative to all other rights and remedies possessed by CITY, and nothing contained herein shall be construed so as to defeat any other rights or remedies possessed by CITY, and nothing contained herein shall be construed so as to defeat any other rights or remedies to which CITY may be entitled.
32. Compliance with Laws. CONCESSIONAIRE shall, at its sole cost and expense, comply with all the requirements of all rules, regulations, ordinances, laws and direction of governing authorities now in effect or which may hereafter be in effect, which pertain to CONCESSIONAIRE'S occupancy or use of the Site.
33. Taxes. CONCESSIONAIRE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon CONCESSIONAIRE by reason of the business or other CONCESSIONAIRE activities related to the Sites, including any licenses or permits. CONCESSIONAIRE acknowledges that this Agreement may create a possessory interest subject to property taxation, and that CONCESSIONAIRE may be subject to the payment of taxes levied on that interest. CONCESSIONAIRE shall be fully and solely responsible for payment of all such possessory interest taxes. CONCESSIONAIRE'S payment for taxes, fees, and assessments shall not reduce any payment due CITY under this Agreement.
34. Water Quality Assurances. The CITY and CONCESSIONAIRE are committed to the implementation of control (best management practices, or BMPs) to manage activities on the Premises in a manner which aids in the protection of the City of San Diego's precious water resources. It is the CONCESSIONAIRE's responsibility to identify and implement an effective combination of BMPs so as not to cause pollutant discharges to the storm drain system in violation of Section 43.03, Stormwater Ordinance.

Therefore, CONCESSIONAIRE shall, at a minimum, implement and comply as applicable with the BMPs for industrial and commercial facilities adopted under the San Diego Municipal Code Section 43.0307 (a).

It is ultimately CONCESSIONAIRE's responsibility to prevent pollutant discharges to the storm drain system. Therefore, CONCESSIONAIRE shall identify and implement any additional BMPs that may be required to avoid the discharge of pollutants to the storm drain system.

35. Hazardous Substances. CONCESSIONAIRE shall not discharge or release of any hazardous substances in, on, under, or from the Site. CONCESSIONAIRE and CONCESSIONAIRE's agents and contractors shall not store, utilize, or sell any hazardous substance on the Site. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State of California's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated into this Agreement.
- c. Remediation. If any release of a hazardous substance occurs, CONCESSIONAIRE shall pay all costs of remediation and removal of the hazardous substance in accordance with all applicable laws and rules and regulations of governmental authorities.
 - d. Indemnity. CONCESSIONAIRE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from CONCESSIONAIRE's occupancy or use of the Sites, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.
 - e. Notice of Release. If CONCESSIONAIRE knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the Site, CONCESSIONAIRE shall give written notice to CITY within three (3) days of receipt of the knowledge or cause for belief. If CONCESSIONAIRE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, CONCESSIONAIRE shall notify CITY immediately upon receipt of such knowledge or belief and shall take all actions necessary to alleviate the danger. CONCESSIONAIRE shall notify CITY immediately of any notice of violation received or initiation of environmental actions or private suits related to the Site.

- f. Environmental Assessment. At CITY's option upon expiration or termination of this Agreement, an environmental assessment of the Site shall be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at CONCESSIONAIRE's sole cost and expense, and shall establish what, if any, hazardous substances exist on, in, or under the Site, and in what quantities. If any hazardous substances exist in quantities greater than that allowed by CITY, county, state, or federal laws, statutes, ordinances, or regulations, then the environmental assessment shall include a discussion of these substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes, and estimates of the cost of such remediation or removal. CONCESSIONAIRE shall cause the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved, and CONCESSIONAIRE shall pay all costs and expenses therefore.
36. Waiver. CITY's failure to insist upon the strict performance of any of CONCESSIONAIRE's obligations under this Agreement, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. The property constituting the Site is CITY-owned and held in trust for the benefit of CITY'S citizens. CITY'S failure to discover a breach of any obligation of this Agreement or take prompt action to require the cure of any such breach shall not result in an equitable estoppel, but CITY may at any and all times require the cure of any such breach.
37. Survival. Any obligation which accrues under this Agreement prior to its expiration or termination shall survive such expiration or termination.
38. Joint and Several Liability and Responsibility. If CONCESSIONAIRE includes more than one person or legal entity, each such person and legal entity shall be jointly and severally liable and responsible for the performance of each and every obligation of CONCESSIONAIRE under this Agreement.
39. Partial Invalidity. If any term, covenant, condition, or provision of this Agreement is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
40. Number and Gender. Words of any gender used in this Agreement shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
41. Captions. Section headings and captions shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this Agreement. The

numbers of the paragraphs and pages of this Agreement may not be consecutive. Such lack of consecutive numbers shall have no effect on the enforceability of this Agreement.

42. Entire Agreement. This Agreement, along with the RFP documents related to this Concession, constitute the entire Agreement between the parties and supersedes any and all prior understandings, representations, warranties, agreements and permits between them and pertaining to this Agreement and CONCESSIONAIRE'S occupancy or use of the Sites. Any modification, alteration, or amendment of this Agreement shall be in writing and signed by all the parties hereto.
43. Notices. Any notice required or permitted to be given under this Agreement shall be in writing and may be served personally or delivered by United States mail, postage prepaid, and addressed to CITY or CONCESSIONAIRE, respectively, as follows:

THE CITY OF SAN DIEGO
Real Estate Assets Department
Attention: Director, Real Estate Assets Department
1200 Third Avenue, Ste. 1700 MS 51A
San Diego, CA 92101

THE CITY OF SAN DIEGO
Lifeguard Division
Attention: Lifeguard Chief
2581 Quivira Court
San Diego, CA 92109

CONCESSIONAIRE:
San Diego Parasail Adventures Inc
Attention: Arrit McPherson
844 W. Mission Bay Drive
San Diego, CA 92109

44. Governmental Approvals. By entering into this Agreement, neither CITY nor CITY's City Council is obligating itself to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to CONCESSIONAIRE's occupancy or use of the Sites. Discretionary action includes but is not limited to re-zonings, variances, environmental clearances, or any other governmental approvals which may be required for CONCESSIONAIRE's occupancy or use of the Sites.
45. San Diego's Strong Mayor Form of Governance. All references to "City Manager" in this Agreement shall be deemed to refer to "the Mayor or his/her designee."

This section shall remain in effect for the duration CITY operates under the mayor-council (commonly referred to as "Strong mayor") form of governance pursuant to Article XV of the San Diego City Charter.

46. City's Not-Liability. CITY shall not be liable to CONCESSIONAIRE, its employees, agents, or representatives for any loss of revenue, business, or otherwise as a result of any weather conditions, beach closures, surf alerts, floods, fire, or any other acts of God, strikes, lockouts, labor disputes, unusual governmental delays, epidemics, freight embargoes, causes beyond the reasonable control of CITY, or in the CITY's performance of any act related to protecting the public health and safety.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

47. Authority to Contract. Each individual executing this Agreement on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Agreement on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing Agreement, and that this Agreement is binding upon such person or entity in accordance with its terms. Each person executing this Agreement on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to CITY, that such authority is valid.

IN WITNESS WHEREOF, this Agreement is executed to be effective as of the Effective Date.

Date: 1 OCT 14

THE CITY OF SAN DIEGO, a California
municipal corporation

BY: [Signature]
Scott Chadwick, COO
City of San Diego

Date: 10/01/14

BY: [Signature]
Rick Wurts, Chief
San Diego Fire-Rescue Lifeguards

Date: 10/17/14

San Diego Pacesetter Apartments, LLC
CONCESSIONAIRE

BY: [Signature]
[Signature]

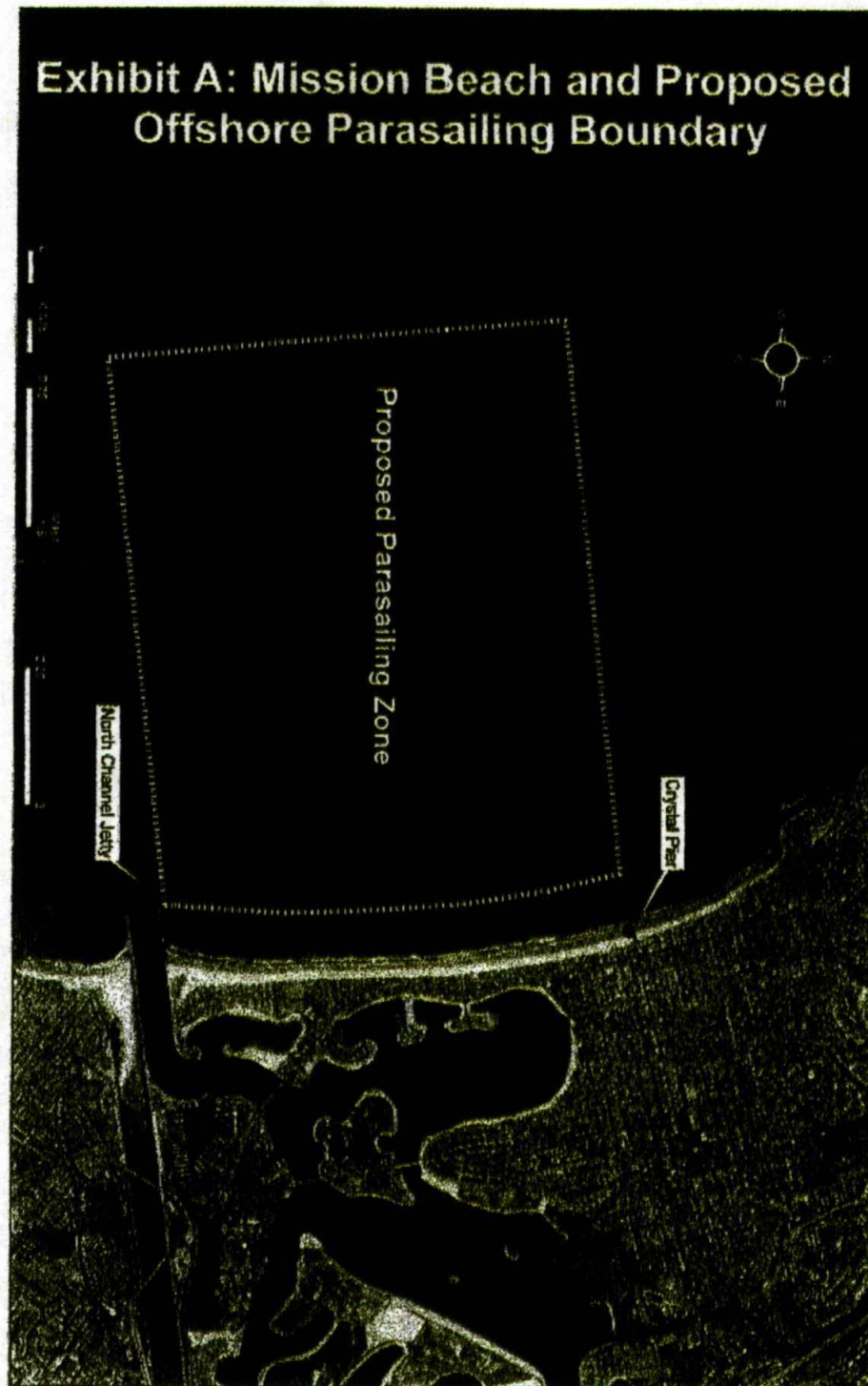
APPROVED AS TO FORM AND LEGALITY:

Effective Date: 10/20/2014

JAN I. GOLDSMITH, City Attorney

BY: [Signature]
Deputy City Attorney

Attachment A - Site Map



Attachment B – Intentionally Left Blank

Attachment C - Parasailing Concession Requirements

The following requirements are subject to revision at any time by the CITY:

1. Identifying Markers

CONCESSIONAIRE's vessel shall be readily identifiable. The vessel Captain and crew shall wear attire containing the company logo, making them readily identifiable to clients, first responders and law enforcement.

2. Ocean Conditions and Safety

Parasailing shall only be conducted in the area identified in Exhibit A.

CONCESSIONAIRE must **check the Beach and Weather Report** maintained by the San Diego Fire-Rescue Lifeguards (available by calling (619) 221-8824) each day before beginning operations. CONCESSIONAIRE must continuously monitor weather reports throughout each day of operations to monitor wind and water conditions on Mission Bay and the Pacific Ocean.

CONCESSIONAIRE must provide safety information/briefing to clients containing the following:

1. Parasailing safety lecture and/or video. Additionally, a written handout will be provided to all clients containing the same information.
2. A pre-flight evaluation of conditions and/or hazards and the dangers inherent to Parasailing operations in open exposed bodies of water. Possible hazards include, but are not limited to, wind speed and direction, small craft warnings, cold water, extreme heat, contaminated water, low flying aircraft, other vessel traffic in the area, and/or hazards to navigation, etc.

CONCESSIONAIRE and its employees, agents and/or affiliates must adhere to all directions provided by Lifeguards, Park Rangers, other representatives of the CITY, or any other officer with authority to enforce local, state or federal law. In the case of disputes, supervisory personnel may be summoned, but the decision of Lifeguards regarding any particular matter on a given day is final and should be brought to the attention of the area Lifeguard Lieutenant as necessary at a later time.

Lifeguards and Park Rangers reserve the right to terminate any Parasailing operation based on safety considerations or violations of Concession Requirements.

3. Equipment

In addition to necessary Parasailing equipment, CONCESSIONAIRE will ensure that all carriage requirements are on board the vessel. In addition, the vessel shall have a properly functioning VHF marine band radio, as

well as a properly functioning cellular phone. Each vessel will maintain a first aid kit, drinkable water, and emergency blankets.

4. CPR and First Aid

CONCESSIONAIRE's vessel Captain and crew must each possess any one (1) of the following CPR certifications:

1. American Red Cross
2. American Heart Association
3. Any other nationally recognized basic CPR training with certification

Additionally, the Captain and crew must each possess any one (1) of the following certifications:

1. Emergency Medical Technician (EMT)
2. American Red Cross Emergency Response
3. American Red Cross First Aid Basic
4. Any other nationally recognized first aid course with certification.

5. Waivers

The CONCESSIONAIRE must have on file a signed waiver from each participant, or their legal guardian if under 18 years of age, which holds the CITY, its agents, officers and employees harmless and indemnifies the same from any claims relating to the participants' activities on the CITY beach or waterway which arise from or are in any manner connected with the services provided to the participants under this Agreement. These waivers must be approved by CITY in writing before CONCESSIONAIRE operates this Concession.

6. Minimum Age Requirements

CONCESSIONAIRE's vessel Captain and crew must be at least eighteen (18) years of age.

7. EMERGENCY RESPONSE PLAN FOR PARASAILING CONCESSIONS

The following plan is the minimum level of response and readiness required from CONCESSIONAIRE during emergency situations. CONCESSIONAIRE is required to read the "General Rescue Procedures for Water Emergencies" listed below and cover all aspects of the plan with each employee working under this Agreement on a regular basis.

General Rescue Procedures for Water Emergencies

1. Survey the scene.
2. The rescuer should consider his/her level of rescue skill prior to attempting a rescue.

3. Ensure proper use of rescue equipment.
4. Safely approach and determine if the victim is distressed.
5. Perform rescue based on training.
6. Move the victim to safety.
7. Remove the victim from the water.
8. Assess the victim for injuries.
9. If an emergency exists, immediately report via marine band radio (VHF channel 16) or call 911.
10. Provide first aid until lifeguards and/or emergency medical services (EMS) arrive.

Accidents, Injuries and Reports

In the event of any accident or injury, regardless of severity, the CONCESSIONAIRE shall notify the lifeguard supervisor on duty as soon as possible. All rescues and medical aids involving customers or other personnel must be documented on CONCESSIONAIRE company reports.

Attachment D - Operating Plan

[To follow behind this page]

Parasailing Adventures Operating Plan

A. Description of Operations

Parasailing Adventurers LLC herein after referred to as (PALLC) and/or (Operator). In addition to the operating plan outlined below, the operator will observe the Professional Association of Parasail Operators, (PAPO) Operating Standards and Guidelines (OSAGs). Please see attached.

Term of operating plan: September 1st, 2014 through May 31st, 2015.

- a. PALLC will only conduct operations during the operating term.
- b. PALLC will only utilize vessels with state of the art winch direct parasail launch and recovery systems. Whereas flight participants take off and land from an integrated flight-deck located onboard the vessel.
- c. PALLC will only conduct parasail operations between the Mission Bay Channel North Jetty Entrance and Crystal Pier as defined by the City.
- d. While engaged in Parasailing neither the vessel nor parasailor will pass closer than 1,500 feet from the mean tide-line and will not exceed a distance of three (3) miles from shore. In addition, the operator will maintain a safe operating distance from Crystal Pier and Mission Bay Channel North Jetty.
- e. The vessels crewmembers will at all-time strive to conduct themselves as professional and courteous mariners.
- f. The operators will observe all applicable local, state and federal laws pertaining to commercial vessel operations.
- g. The operator will permit the Lifeguard Division to inspect the vessel(s) at any time including during operation and agree to cease operating for a reasonable period of time to facilitate inspection when directed by supervising Lifeguard personnel.
- h. The operator shall operate no more than two parasail vessels at one time, and agrees to at all-time keep a safe minimum distance from one another.
- i. PALLC understands the City reserves the right to make changes to Parasailing operational and safety requirements at any time and will adhere to any/all changes made by the City. In addition, operator

recognizes the City will provide continuous and ongoing quality control oversight and will review operators operations annually during the term of each Agreement and will review it with operator. PALLC will submit an annual operating plan to be reviewed by the Lifeguard Division. The operator acknowledges that based on the results of any such review, the City may in its sole discretion make any changes to Concession-related operations it deems necessary. PALLC will adhere to any/all Concession-related operations changes deemed necessary by the City.

- j. PALLC has carefully and comprehensively reviewed the Parasailing Concession Requirements attached and recognizes the importance of the additional operational requirements contained in the Parasailing Concession Requirements. PALLC's submission of proposal in response to the RFP will deem a complete understanding and agreement on the part of operator to all of the terms and conditions of the Parasailing Concession Requirements. Any requests for exceptions to the Parasailing Concession Requirements shall be submitted by PALLC to the City and must be approved by the City in writing.

2. Hours of Operation

Hours of operation will be subject to weather conditions, USCG requirements. All operating dates and times are subject to change without notice. In addition, operator will not conduct parasail operations prior to 9:00am and will conclude operations prior to sunset.

Projected hours of operation:

a. High-peak Season (July and August)

b. Peak Season (Memorial Day to Labor Day)

- 9:00am until prior to sunset seven (7) days per week

c. Off -peak Season (Spring and Fall) Optional

- *(Spring) Easter Weekend, March 30th, 2014 until Memorial Day weekend

11:00am until prior to sunset. Weekends and by appointment. (continued next page)

- *(Fall) Day after Memorial Day through December 31st 2014

11:00 until prior to sunset. Weekends and by appointment.

d. **Off-season (Winter) January 1st, 2014 until March 1st, 2014.

- Restricted

*Note, Off-peak Season hours of operation are subject to weather and tourist/visitor demand. Hours of operation may vary. Subject to on-line calendar availability.

**Note: USCG regulations prohibit operator from operating in the waters off our coast between the months of January 1st and March 1st. Therefore, all parasailing operations will cease in accordance with 46 CFR Subchapter T as indicated on vessels (COI).

3. Number and Type of Vessels

- a. PALLC will operate no more than two parasail vessels.
- b. PALLC intends to operate one (1) CWS 31' Ocean Pro parasail winch-boat certified to carry up to fourteen (14) passengers. Operator may however elect to place a second vessel into service at any-time.

4. Multiple Vessel Operations

- a. PALLC will at all times maintain close and constant radio communications between its vessel operators and when necessary and/or possible with all other vessels and/or traffic in the area. At all-time operator will maintain a minimum safe distance between sister vessel. At all times, PALLC will maintain a minimum 1500' parameter/distance between second/sister vessels. In Addition, whenever possible, a safe operating distance will be maintained from all other traffic, including air traffic operating in the area.
- b. PALLC may from time to time conduct operations and safety training in the area, such training may include incident simulation and/or rescue drills involving one or more vessels. Careful consideration shall be given to surrounding conditions and lifeguard services will be notified prior to conducting such training.

5. Shuttle-craft Operations

PALLC may elect to implement a passenger shuttle-craft. The shuttle-craft vessel capacity shall be limited to 12 passengers and 2 crewmembers and shall be operated in strict accordance with all applicable USCG regulations. The vessel will be well-marked and

specifically outfitted to facilitate the safe transfer of passengers to and from the parasail vessel and/or to and from a dock or shore-side location. Prior to implementing any shuttle-craft operations, operator agrees to notify lifeguard services. The following operational guidelines shall also apply.

- All passengers shall be thoroughly briefed and provided a life jacket prior to being allowed to transfer to or from the vessel.
- Transfer operations shall take place well clear of traffic lanes.
- Transfer operations shall take place within the five-mile-per-hour-zone.
- Shuttle vessel shall be adequately anchored to the sea bottom and/or affixed to the transfer vessel, dock and/or shore-side prior to transfer operations being conducted.
- Transfer operations shall only take place when the surrounding area is adequately clear of traffic and excessive wake activity.
- Shuttle vessels captain shall whenever necessary, attempt to establish communications by VHF with surrounding vessel traffic to announce his/her operational intent.
- Extreme caution shall be exercised and strict individual attention given to each and every passenger during each and every transfer conducted.
- Transfer operations shall be immediately terminated whenever poor weather or other dangerous circumstances arise including but not limited to; excessively high wind, rough sea states, or if excessive traffic is present.

5. Safety briefing

Written Safety Briefing

Prior to boarding the parasail vessel, ALL participants are provided with a laminated copy of the pre-board safety briefing. ALL passengers are

required by PALLC to read the safety briefing. PALLC staff and crew are available at all time for participant.

- Please see attached, "Passenger Safety Briefing."

Verbal Safety Briefing

Once the participants are aboard the vessel, the crew will provide a second safety briefing (verbal version of the written safety briefing). Once the captain has confirmed that all passengers understand all aspects of the safety briefing, any passenger questions will be addressed by the crew. Before any parasailing activities commence passengers are given the opportunity to terminate their participation.

6. "Parasailing Concession Requirements" Please see attached
 - a. PALLC will follow all aspects of the Parasailing Concession Requirements.

7. Passenger Specifications

- a. PALLC currently utilizes USCG certified passenger vessels currently certified to carry twelve (12) passengers and two (2) crewmembers.
- b. PALLC currently allows a minimum of one (1) and maximum of three (3) person(s) in the parasail canopy at one time. PALLC strictly enforces parasail canopy weight limitations and will not deploy a combined flight payload of less than 90 pounds or greater than 450 pounds. It may at times be necessary for the captain to increase or decrease payloads depending on wind and sea conditions.
- c. Passenger age limitations
 - i. PALLC will not allow anyone under the age of six (6) years to participate in flight operations. The age of very young participants must be verified by a parent or guardian. All participants between the ages of six (6) and twelve (12) must wear a USCG approved and properly fitted life jacket at all-times while on-board the vessel and while in-flight. In addition, a maximum line length of 300 feet will be deployed while conducting flight operations involving participants between the ages of (6) and (12) unless accompanied by a licensed driver, adult, parent or guardian.

9. Maximum Operating Conditions/Specifications

a. Maximum vessel speed while under tow

- i. The maximum vessel speed is dictated by wind speed and passenger payload. PALLC always considers safety first. It generally limits its vessels operations to less than 2900 RPMs or approximately 30 MPH. However, safe operating speed is also influenced by the sea state and the additional weight of the passengers being carried on board.

b. Minimum Water and Air Temperatures

- i. PALLC will not conduct parasail operations when water or air temperature is below 50 degrees Fahrenheit.

c. Maximum Wind Speed and Direction

- i. Wind speed and direction will be a determining factor in how PALLC conducts its flight operations. The stronger the wind, when onshore winds are present, the further offshore our operations will be conducted. PALLC will not operate when sustained wind is in excess of 20 mph/17.5 kts.

d. Maximum Sea State Conditions

- i. PALLC will not operate in actual sea state conditions in excess of six (6) feet or any other condition deemed by the vessels captain as unsuitable or unsafe to conduct parasail operations.

e. Maximum Canopy Loads

- i. PALLC currently allows a minimum of one (1) and a maximum of three (3) person(s) in the parasail canopy at one time. PALLC strictly enforces parasail canopy weight limitations and will not deploy a combined flight payload of less than 90 pounds or greater than 450 pounds. It may at times be necessary for the captain to increase or decrease payload capacities depending on wind and sea state conditions.

f. Maximum Tow Length and Height

- i. PALLC will at no time exceed 800' of towline from boat to canopy yoke while conducting parasail flight operations.
- ii. PALLC will at no time exceed a maximum AGL (Above Ground Level) of 500' or as may be otherwise required by FAA.

10. Minimum Captain and Crew Qualifications

i. Minimum Captain Qualifications

- Must be USCG Licensed for the appropriate operating area waters and vessel type, size, tonnage and passenger limitations as required by USCG. (or applicable equivalent outside U.S.)
- Must undergo a thorough flight skills evaluation by PALLC management or an appointed and qualified representative.
- Must be current in certification of CPR and First Aid.
- Must be proficient in all aspects of flight operations, emergency techniques, proper use of safety equipment and procedures.
- Must be currently enrolled in an approved random Drug testing program.

ii. Minimum Flight Technician Requirements

- Must undergo a thorough flight skills evaluation by PALLC management or an appointed and qualified representative.
- Must be proficient in all aspects of flight operations, emergency techniques, proper use of safety equipment and procedures.
- Must be currently enrolled in an approved random Drug testing program.
- Must be CPR and First Aid trained and/or certified.
- Must successfully complete an 800' (245 meters) swim in in open water in less than 6 minutes.

11. Community Partnership

Over the past 25 years, under Arrit McPherson's leadership, San Diego Parasail Adventures Inc. has established a stellar reputation and has developed a vast community partnership. This long standing tradition will continue to expand as he leads Parasailing Adventures LLC.

PALLC will continue to partner with the local community to minimize its impact on residents and other businesses by implementing Best Management Practices (BMPs). Such BMPs will be focused on but not limited to safe boating practices, water pollution prevention and preserving the quiet enjoyment of persons in and around the area.

PALLC will also remain active in local beach clean-ups, its support of the Jr. Lifeguard program and other positive youth programs as it continues to grow its community outreach program.

PALLC will also;

- While operating on the water, obey all no wake, speed limit and other traffic scheme buoys. In addition, USCG "Rules Of The Road" guidelines will be observed.
- Employ a zero tolerance pollution policy. All trash, whether on land or on the vessel, will be placed in a properly secured receptacle and disposed of in a dumpster at the end of each business day. No polluted liquid will be dumped into the water at any time.
- At all-time respect the quiet enjoyment of those located around us.

Emergency Response Plan

Although each emergency situation is unique in nature, the following minimum Emergency Response Plan will be followed in any occurrence:

1. Survey the scene.
2. Safely approach and determine if the victim is distressed.
3. If an emergency exists, immediately report incident on (VHF channel 16) or call 911 for assistance.
4. Evaluate level of skill required before attempting rescue and determine whether or not the rescuer possesses the training/knowledge to safely attempt the rescue.

- a. Attempt rescue if deemed safe by the rescuer and is within rescuers level of training/knowledge or
 - b. Rescuer deems the situation unsafe and/or not within his or her training/knowledge in which case rescuer would immediately report incident on (VHF channel 16) or call 911 for assistance. Rescuer would closely monitor the situation and standby for instructions from Lifeguards and/or Emergency Medical Services (EMS) and/or USCG.
- 5. Ensure proper use of rescue equipment.
 - 6. Move victim to safety when possible.
 - 7. Remove victim from water when possible.
 - 8. Assess the victim for injuries.
 - 9. Provide First Aid and/or CPR until Lifeguards and/or EMS and/or USCG arrive.

EXHIBIT C
Parasailing Concession Requirements

The following requirements are subject to revision at any time by the CITY:

1. Identifying Markers

CONCESSIONAIRE's vessel shall be readily identifiable. The vessel Captain and crew shall wear attire containing the company logo, making them readily identifiable to clients, first responders and law enforcement.

2. Ocean Conditions and Safety

Parasailing shall only be conducted in the area identified in Exhibit A.

CONCESSIONAIRE must **check the Beach and Weather Report** maintained by the San Diego Fire-Rescue Lifeguards (available by calling (619) 221-8824) each day before beginning operations. CONCESSIONAIRE must continuously monitor weather reports throughout each day of operations to monitor wind and water conditions on Mission Bay and the Pacific Ocean.

CONCESSIONAIRE must provide safety information/briefing to clients containing the following:

1. Parasailing safety lecture and/or video. Additionally, a written handout will be provided to all clients containing the same information.
2. A pre-flight evaluation of conditions and/or hazards and the dangers inherent to Parasailing operations in open exposed bodies of water. Possible hazards include, but are not limited to, wind speed and direction, small craft warnings, cold water, extreme heat, contaminated water, low flying aircraft, other vessel traffic in the area, and/or hazards to navigation, etc.

CONCESSIONAIRE and its employees, agents and/or affiliates must adhere to all directions provided by Lifeguards, Park Rangers, other representatives of the CITY, or any other officer with authority to enforce local, state or federal law. In the case of disputes, supervisory personnel may be summoned, but the decision of Lifeguards regarding any particular matter on a given day is final and should be brought to the attention of the area Lifeguard Lieutenant as necessary at a later time.

Lifeguards and Park Rangers reserve the right to terminate any Parasailing operation based on safety considerations or violations of Concession Requirements.

3. Equipment

In addition to necessary Parasailing equipment, CONCESSIONAIRE will ensure that all carriage requirements are on board the vessel. In addition, the vessel shall have a properly functioning VHF marine band radio, as

well as a properly functioning cellular phone. Each vessel will maintain a first aid kit, drinkable water, and emergency blankets.

4. CPR and First Aid

CONCESSIONAIRE's vessel Captain and crew must each possess any one (1) of the following CPR certifications:

1. American Red Cross
2. American Heart Association
3. Any other nationally recognized basic CPR training with certification

Additionally, the Captain and crew must each possess any one (1) of the following certifications:

1. Emergency Medical Technician (EMT)
2. American Red Cross Emergency Response
3. American Red Cross First Aid Basic
4. Any other nationally recognized first aid course with certification.

5. Waivers

The CONCESSIONAIRE must have on file a signed waiver from each participant, or their legal guardian if under 18 years of age, which holds the CITY, its agents, officers and employees harmless and indemnifies the same from any claims relating to the participants' activities on the CITY beach or waterway which arise from or are in any manner connected with the services provided to the participants under this Agreement. These waivers must be approved by CITY in writing before CONCESSIONAIRE operates this Concession.

6. Minimum Age Requirements

CONCESSIONAIRE's vessel Captain and crew must be at least eighteen (18) years of age.

7. EMERGENCY RESPONSE PLAN FOR PARASAILING CONCESSIONS

The following plan is the minimum level of response and readiness required from CONCESSIONAIRE during emergency situations. CONCESSIONAIRE is required to read the "General Rescue Procedures for Water Emergencies" listed below and cover all aspects of the plan with each employee working under this Agreement on a regular basis.

General Rescue Procedures for Water Emergencies

1. Survey the scene.
2. The rescuer should consider his/her level of rescue skill prior to attempting a rescue.
3. Ensure proper use of rescue equipment.

4. Safely approach and determine if the victim is distressed.
5. Perform rescue based on training.
6. Move the victim to safety.
7. Remove the victim from the water.
8. Assess the victim for injuries.
9. If an emergency exists, immediately report via marine band radio (VHF channel 16) or call 911.
10. Provide first aid until lifeguards and/or emergency medical services (EMS) arrive.

Accidents, Injuries and Reports

In the event of any accident or injury, regardless of severity, the CONCESSIONAIRE shall notify the lifeguard supervisor on duty as soon as possible. All rescues and medical aids involving customers or other personnel must be documented on CONCESSIONAIRE company reports.



Pre-Board Safety Briefing
IMPORTANT SAFETY INFORMATION
(Please read carefully and then return to parasail staff)

Welcome!

The following pre-boarding flight information and safety briefing is designed to familiarize you with parasailing activities and the procedures you will be following while on-board the vessel. It is required that all passengers carefully read and fully understand this information prior to boarding the vessel or participating in parasailing activities. A verbal safety briefing and/or additional information may also be provided while onboard the vessel. The crew is available to answer any questions you may have after your complete review of this information. In addition, all passengers will be required to complete and sign a parasailing release of liability waiver and declaration of fitness to parasail form before participating.

Use Caution and Always Watch Your Step!

While boarding and de-boarding the vessel, always use handrails and allow the flight crew to assist you. Your safety is our top priority!

For Your Safety Always Remain Seated!

While on-board the vessel you must remain seated at all times. Please do not leave your seat for any reason, even for an instant unless otherwise instructed. The crew may ask you to move from one seat to another for weight distribution purposes, if necessary, the crew will assist you.

Seating Arrangement!

Please remember that the bow or the front of the boat is generally bumpier than the rear of the boat, so if it gets a little rough please slide in your seat toward the captain, this may be more comfortable.

Safety Equipment Locations and Procedures!

In the event of an onboard emergency for example: Passenger injury or fire, located onboard the vessel is a first aid kit, firefighting equipment and a sufficient number of life jackets, the crew will advise you of the equipments location and downing procedures once onboard the vessel.

Flight Preparation!

While on the boat you will be harnessed up and fitted with a lifejacket, it is important for you to check for snug and proper fit of both. Once in the operating area or flight zone, once the canopy is fully inflated the crew will then call the first flyer or flyers one at a time to the flight deck. (Please remain seated until you are called to the flight deck). Passengers who wish to fly tandem must calculate their combined weight and relay the information to the crew for a decision. Please watch your step and remember to always use the handrails on your way to and from the flight deck and until you are seated on the deck.

Take-Off (Seated Position)

Once you are on the flight deck, duck under the lines and face the bow or front of the vessel and quickly have a seat, the crew will then show you where to hold on during take-off and landing, you will then be clipped into the canopy, sit your buttocks right down on the deck, legs bent, straight out in front of you, once ready, you will be slowly lifted skyward.

Continued on Reverse

While in Flight

It is necessary to hold on during take-off and landing, however, you may let go once you are airborne. Please **DO NOT** attempt to steer the parasail, hang upside down or twist in the harness at any time this is dangerous and your flight will be immediately terminated without refund.

Harness Adjustment (After you are clipped into the canopy)

This is an important comfort issue; after you have been clipped into the canopy and you are seated on the deck, please adjust your harness. Position it like a park swing on your hamstring, not on your buttocks as this may result in extreme discomfort.

Landing (Seated position)

When landing, (On approach to the flight deck) Remember to hold on to the straps above your shoulders and listen for instructions from the flight crew; Bend your knees and lift your legs until you are over the flight deck. You will land on your feet, with your knees bent, ready for action! Upon landing on your feet immediately return to a seated position on the flight deck and remain seated, until you are unclipped and instructed to return to your seat. Please remember to watch your step and use the handrails at all time.

Water Landings

This does not happen often, but it does happen and it may happen to you today! In the event of engine, mechanical or systems failure or if the line should break we will have to land you in the water. There are three primary things to remember:

1. **Remain calm!** Remember you are buoyant, you have a lifejacket on!
1. **As soon as you land in the water- Calmly un-clip yourself from the canopy.**
You have two clips to deal with, one clip on your right and one clip on your left, use both hands one to hold the D-ring the other to un-clip. Your crewmember will demo this.
1. **Calmly move a few feet away from and stay clear of the canopy and towline**
and remain there until we arrive to assist you. We will then give you instructions for re-boarding the boat; always stay clear of the rear of the vessel while in the water.

Passenger Overboard: (always hold on or remain seated)

In order to reduce the possibility of falling overboard it is very important while not seated, to always hold on and use hand rails and follow all crew instructions. In the event of an overboard occurrence; immediately and loudly alert the crew to the situation, once in the water quickly move away from and remain clear of the rear and/or sides of the vessel and the propellers, remain calm, waive your hands and arms in the air until the crew responds and returns to assist you. Stay clear of the vessel and follow the crews instructions while re-boarding.

Signal to Come Down

If for any reason you would like end your flight and return to the boat:

Simply spread and then cross your legs several times and we will immediately begin your decent back to the boat.

Dock Approach (for your safety)

Please remain seated until the boat has come to a complete stop and is securely fastened to the dock, at that time the crew will assist each of you, one at a time off the vessel. Please watch your step!

Questions & Answers Please address any questions or concerns you may have with a crewmember prior to boarding the vessel or participating in parasailing activities.