

**SECOND AMENDMENT
TO
CONCESSION AGREEMENT
(Endless Surf Camp, LLC)**

This Second Amendment to Concession Agreement ("**Second Amendment**") is dated as of May 26, 2021, for reference purposes only, and is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("**City**"), and ENDLESS SURF CAMP, LLC, a California limited liability company ("**Concessionaire**"). City and Concessionaire are sometimes referred to in this Second Amendment, each individually, as a "**Party**" or, collectively, as the "**Parties**."

CITY AND CONCESSIONAIRE AGREE, AS FOLLOWS:

1. **Purpose.** The Parties entered into that certain Concession Agreement, effective May 14, 2019 ("**Original Agreement**"). The Parties later entered into that certain First Amendment to Concession Agreement, effective December 13, 2019 ("**First Amendment**"). The Original Agreement as amended by the First Amendment is referred to in this Second Amendment as the "**Agreement**". In the Agreement, Concessionaire's legal name was "Endless Summer Surf Academy, LLC." On January 6, 2021, Concessionaire filed an Amendment to Articles of Organization of a Limited Liability Company with the State of California Secretary of State changing its legal name from "Endless Summer Surf Academy, LLC" to "Endless Surf Camp, LLC". A copy of Concessionaire's Amendment to Articles of Organization of a Limited Liability Company filed with the State of California Secretary of State on January 6, 2021, is attached to this Second Amendment as Exhibit A, which is incorporated into this Second Amendment by this reference. The Parties now enter into this Second Amendment solely to change Concessionaire's name in the Agreement.
2. **Amendment.** The Agreement is amended to substitute "Endless Surf Camp, LLC" in place of "Endless Summer Surf Academy, LLC" wherever it appears in the Agreement.
3. **Concessionaire Acknowledgment.** Concessionaire acknowledges and agrees that nothing in this Second Amendment is intended to affect the liability of Concessionaire under the Agreement for any matter arising before or after this Second Amendment.
4. **Concessionaire Estoppels.** Concessionaire certifies the following to City as of the date of this Second Amendment:
 - 4.1. The Agreement is in full force and effect, there have been no amendments, modifications, changes, or additions to the Agreement since its execution, except as described in Section 1;
 - 4.2. Concessionaire is not in default under the Agreement and no event has occurred that would constitute a default under the Agreement by Concessionaire, without regard for any requirement to give notice or for the passage of time; and

4.3. There are no pending or threatened claims for personal injury, property damage, or otherwise against Concessionaire relating to the Agreement or the activities Concessionaire conducts pursuant to the Agreement.

5. **Confirmation of Agreement.** The Agreement, as amended by this Second Amendment, is in all respects confirmed and all the terms, provisions and conditions of the Agreement, as amended by this Second Amendment, shall be and remain in full force and effect.

6. **Entire Agreement.** The Agreement, as amended by this Second Amendment, represents the entire understanding between the Parties about the subject matter of the Agreement, as so amended.

7. **Counterparts.** This Second Amendment may be signed by the authorized representatives of the Parties in multiple counterpart originals (including electronic counterpart originals), each of which shall be deemed an original, and all such counterpart originals, when taken together, shall constitute one agreement.

8. **Principles of Interpretation.** No inference in favor of or against any Party shall be drawn from the fact that such Party drafted any part of this Second Amendment. The Parties participated substantially in the negotiation, drafting, and revision of this Second Amendment, with advice from legal and other counsel and advisers of their own selection. A word, term or phrase defined in this Second Amendment may be used in the singular, plural, past tense or future tense, regardless of how it is defined, all in accordance with ordinary principles of English grammar, which shall govern all language in this Second Amendment. The words "include" and "including" in this Second Amendment shall be construed to be followed by the words: "without limitation." Each collective noun in this Second Amendment shall be interpreted as if followed by the words "(or any part of it)," except where the context clearly requires otherwise. Every reference to any document, including the Agreement, refers to such document, as modified from time to time (excepting any modification violating the Agreement), and includes all exhibits, schedules, addenda and riders to such document. The word "or" in this Second Amendment includes the word "and," except where the context clearly requires otherwise. Every reference to a law, statute, regulation, order, form or similar governmental requirement in this Second Amendment refers to each such requirement as amended, modified, renumbered, superseded or succeeded, from time to time.

9. **Governing Law.** The procedural and substantive laws of the State of California shall govern the interpretation and enforcement of this Second Amendment, without application of conflicts of laws principles or statutes.

10. **Binding on Successors and Assigns.** This Second Amendment shall be binding upon and inure to the benefit of the Parties and their respective legal representatives, successors and assigns.

11. **No Other Representations or Warranties.** Except as expressly set forth in this Second Amendment, no Party makes any representation or warranty material to this Second Amendment to any other Party.

12. **Incorporation of Defined Terms.** All terms, phrases and words indicated to be defined terms by initial capitalization in this Second Amendment that are not specifically defined in this Second Amendment (if any) shall have the meaning ascribed to the same term, phrase or word in the Agreement.

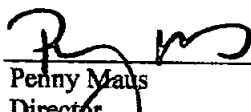
[Remainder of page intentionally blank. Signatures appear on the following page.]

**SIGNATURE PAGE
TO
SECOND AMENDMENT
TO
CONCESSION AGREEMENT
(Endless Surf Camp, LLC)**

IN WITNESS WHEREOF, City and Concessionaire sign and enter into this Second Amendment, by and through the signatures of their respective authorized representatives, as follows:

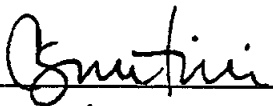
CITY:

The City of San Diego, a California
municipal corporation

By: 
Penny Maus
Director
Real Estate Assets Department

CONCESSIONAIRE:

Endless Surf Camp, LLC, a California
limited liability company

By: 
Name: Cecile Santini
Title: owner

APPROVED AS TO FORM ON
August 11, 2021 :

MARA W. ELLIOTT
City Attorney

By: 
Delmar G. Williams
Deputy City Attorney

**EXHIBIT A
TO
SECOND AMENDMENT
TO
CONCESSION AGREEMENT
(Endless Surf Camp, LLC)**

Concessionaire Amendment to Articles of Organization of Limited Liability Company

LLC-2-NA Secretary of State Amendment to Articles of Organization of a Limited Liability Company (LLC) Name Change Only IMPORTANT - Read instructions before completing this form. Filing Fee - \$30.00 Copy Fees - First page \$1.00; each attachment page \$0.50; Certification Fee - \$5.00 Note: You must file a Statement of Information (Form LLC-12), to change the business address(es) of the LLC or to change the name or address of the LLC's manager(s) and/or agent for service of process, which can be filed online at icbizfile.sos.ca.gov/SI.	FILED Secretary of State State of California JAN 06 2021 llc This Space For Office Use Only
1. LLC Exact Name (Enter the exact name on file with the California Secretary of State.) Endless Summer Surf Academy, LLC	
2. LLC 12-Digit Entity (File) Number (Enter the exact 12-digit Entity (File) Number issued by the California Secretary of State.) 2 0 1 3 1 4 5 1 0 0 4 7	
3. New LLC Name (See instructions - List the proposed LLC name exactly as it is to appear on the records of the California Secretary of State. The name must contain an LLC identifier such as LLC or L.L.C. "LLC" will be added, if not included.) Endless Surf Camp, LLC	
Signature By signing, I affirm under penalty of perjury that the information herein is true and correct and that I am authorized by California law to sign. Additional signatures set forth on attached pages, if any, are incorporated herein by reference and made part of this Form LLC-2-NA. (All attachments should be 8 1/2 x 11, one-sided, legible and clearly marked as an attachment to Form LLC-2-NA.) _____ Sign here Cecile Santini _____ Print your name here LLC-2-NA (08/11/2009)2020 California Secretary of State icbizfile.sos.ca.gov	

Exhibit A