

**FIRST AMENDMENT
TO
CONCESSION AGREEMENT
(Endless Summer Surf Academy, LLC)**

This First Amendment to Concession Agreement ("**First Amendment**") is dated as of _____, 2019, for reference purposes only, and is entered into by and between the CITY OF SAN DIEGO, a California municipal corporation ("**City**"), and ENDLESS SUMMER SURF ACADEMY, LLC ("**Concessionaire**"). City and Concessionaire are sometimes referred to in this First Amendment, each individually, as a "**Party**" or, collectively, as the "**Parties.**" This First Amendment is entered into by City and Concessionaire with reference to the following recited facts ("**Recitals**"):

RECITALS

A. The Parties entered into that certain Concession Agreement, effective May 14, 2019 ("**Agreement**");

B. City and Concessionaire desire to amend the Agreement to add certain defined terms and modify the audit cost provisions of Section 10.H.iv. of the Agreement;

NOW, THEREFORE, CITY AND CONCESSIONAIRE AGREE, AS FOLLOWS:

1. **Incorporation of Recitals.** The Recitals set forth above are true and correct and are incorporated into this First Amendment by this reference, as though fully set forth in this First Amendment.

2. **Amendment of Section 10.H.iv. of Agreement.** Section 10.H.iv. of the Agreement is amended to read in its entirety as follows:

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 of the total fees owed to the CITY pursuant to this Section 10 by more than five percent (5.00%) or more than \$5,000, whichever is less, during the audited time period.

b. CONCESSIONAIRE has failed to properly maintain complete and true books, records, accounts, and supporting documents in strict accordance with this Section 10.

3. **Addition of Defined Terms.** A new Section 10.F.i. is added to the Agreement to read in its entirety as follows:

i. **Defined Terms.** The following terms are defined for use in this Agreement:

a. **Total Fees Paid.** The total of all fees paid by CONCESSIONAIRE to CITY pursuant to this Section 10 during the specified time period.

b. **Gross Receipts.** Refers to Gross Revenues.

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

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

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

7. **Principles of Interpretation.** No inference in favor of or against any Party shall be drawn from the fact that such Party has drafted any part of this First Amendment. The Parties participated substantially in the negotiation, drafting, and revision of this First Amendment, with advice from legal and other counsel and advisers of their own selection. A word, term or phrase defined in this First 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 First Amendment. The words "include" and "including" in this First Amendment shall be construed to be followed by the words: "without limitation." Each collective noun in this First 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 that violates the Agreement), and includes all exhibits, schedules, addenda and riders to such document. The word "or" in this First 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 First Amendment refers to each such requirement as amended, modified, renumbered, superseded or succeeded, from time to time.

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

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

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

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

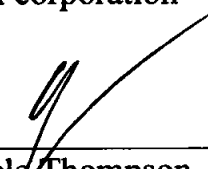
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**SIGNATURE PAGE
TO
FIRST AMENDMENT
TO
CONCESSION AGREEMENT
(Endless Summer Surf Academy, LLC)**

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

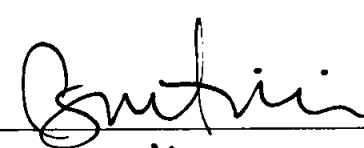
CITY:

The City of San Diego, a California
municipal corporation

By: 
Cybele Thompson
Director
Real Estate Assets Department

Concessionaire:

Endless Summer Surf Academy, LLC

By: 
Name: Cecile Santini
Title: Owner

APPROVED AS TO FORM ON
December 13, 2019 :

MARA W. ELLIOTT
City Attorney

By: 
Delmar G. Williams
Deputy City Attorney