

CITY OF SAN DIEGO
CONSENT TO ASSIGNMENT AND ASSUMPTION OF CONCESSION PERMIT

This Consent to Assignment and Assumption Agreement ("Consent") is made as of April 28, 2010 by The City of San Diego ("CITY"), under agreements with

MENEHUNE SURF, INC
("CONCESSIONAIRE"/"ASSIGNOR")

and

HIKE BIKE KAYAK SPORTS, INC., A California Corporation
("ASSIGNEE")

This Consent to Assignment and Assumption of concession permit ("Concession") is made with regard to the following facts:

A. CITY owns that certain real property located in the City of San Diego, County of San Diego, California described on the attached Exhibit "A-1" and "A-2" ("Sites").

B. CITY and Menehune Surf, Inc. executed a Concession Permit dated June 6, 2008 for the operation of surf instruction concessions ("Concession") within Sites.

C. ASSIGNOR desires to assign to ASSIGNEE all of its rights, title, interest and obligations as CONCESSIONAIRE in and to the Concession pursuant to Assignment of Rights Under Concession Permit and Release Agreement ("Agreement"), dated March 24, 2010 and attached as Exhibit "B" to the Consent.

D. ASSIGNEE agrees to assume all rights and obligations of the Concession pursuant to Assignment.

E. ASSIGNOR and ASSIGNEE desire to obtain CITY's Consent to the Assignment and CITY is willing to consent to the Assignment on the following terms and conditions.

NOW THEREFORE, the parties agree as follows.

- 1 Assumption. ASSIGNEE additionally assumes and agrees for the benefit of the CITY to be bound by, and to conform and comply with, every obligation of CONCESSIONAIRE under the Concession.
- 2 Assignments; Recapture. This Consent does not constitute a consent to any subsequent subletting or assignment or any existing subletting or assignment not approved by CITY in writing under the terms of the Concession and does not relieve ASSIGNOR or ASSIGNEE or any person claiming under or through ASSIGNEE of the obligation to obtain the consent of the CITY under Section 24, No Assignment of the Concession.

- 3 Default Under the Agreements. In the event of any default of ASSIGNEE under the Concession, CITY may proceed directly against ASSIGNEE, ASSIGNOR any guarantors, or anyone else liable under the Concession without first exhausting CITY's remedies against any other person or entity liable under the Concession to CITY.
- 4 General Provisions.
- 4.1 Consideration for Assignment. ASSIGNOR and ASSIGNEE represent and warrant that there are no payments of Concession fee which has been paid or is payable by ASSIGNEE to ASSIGNOR in connection with the Assignment or the Concession.
- 4.2 Brokerage Commission. ASSIGNOR and ASSIGNEE agree that CITY will not be liable for any brokerage commission or finders fee in connection with the consummation of the Assignment or this Consent. ASSIGNOR and ASSIGNEE will protect, indemnify and hold CITY harmless from any brokerage commission or finders fee in connection with the consummation of the Assignment or this Consent, and from any cost or expense (including attorney's fees) incurred by CITY in resisting any claim for any such brokerage commission or finders fee. The provisions of this Section 4.2 shall survive the expiration or earliest termination of both the Assignment and this Consent.
- 4.3 Controlling Law. The terms and provisions of this Consent will be construed in accordance with and will be governed by the laws of the State of California.
- 4.4 Captions. Captions to the sections in this Consent are included for convenience only and do not modify any of the terms of this Consent.
- 4.5 Entire Agreement; Waiver. This Consent constitutes the final, complete and exclusive statement between the parties to this Consent pertaining to the terms of the CITY's Consent to the Assignment, supersedes all prior and contemporaneous understandings or agreements of the parties, and is binding on and inures to the benefit of their respective heirs, representatives, successors or assigns. No party has been induced to enter into this Consent by, nor is any party relying on, any representation or warranty outside those expressly set forth in this Consent. This Consent may be amended only in writing if mutually agreed to and signed by ASSIGNOR, ASSIGNEE and CITY.
- 4.6 Attorney Fees. If any party commences litigation against any other party for the specific performance of this Consent, for damages for the breach hereof or otherwise for enforcement of any remedy hereunder, the prevailing party shall be entitled to recover from the applicable party such costs and reasonable attorney fees as have been incurred.
- 4.7 Waiver. Except as explicitly stated in this Consent, nothing contained in this Consent will be deemed or construed to modify, waive, impair, or affect any of

the covenants, agreements, terms, provisions, or conditions contained in the Concession. In addition, the acceptance of Concession fee by CITY from ASSIGNEE or anyone else liable under the Concession will not be deemed a waiver by the CITY of any provisions of the Concession.

- 4.8 Notice. Any notice required or permitted to be given shall be done so in accordance with Section 40 of the Concession, whereby notice shall be in writing and may be served personally or by United States mail, postage prepaid, addressed to ASSIGNEE or other address designated in writing by ASSIGNEE and to CITY as follows:

Real Estate Assets Director
City of San Diego
1200 Third Avenue, Suite 1700
San Diego, CA 92101

Any party entitled or required to receive notice under the Concession may designate a different address to which notice shall be sent.

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CITY, ASSIGNOR and ASSIGNEE have executed this Consent as of the date shown.

ASSIGNOR:

Menehune Surf, Inc., a California Corporation

Date: 4/20, 2010

By: 

Name: Darren Fulhorst

Title: CEO

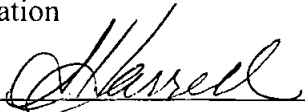
Address of ASSIGNOR:

7486 La Jolla Blvd #553
La Jolla, CA 92037

ASSIGNEE:

Hike Bike Kayak Sports, Inc., a California Corporation

Date: April 20, 2010

By: 

Name: Angela Harrell

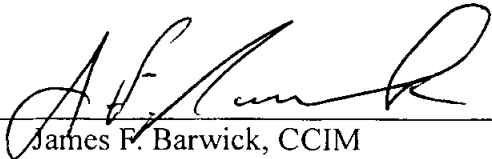
Title: President

Address of ASSIGNEE:

2246 Avenida de la Playa
La Jolla, CA 92037

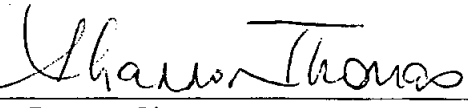
THE CITY OF SAN DIEGO, LESSOR:

Date: 4/28, 2010

By: 
James F. Barwick, CCIM
Real Estate Assets Director

APPROVED as to form and legality the 26th day of April, 2010.

JAN I. GOLDSMITH, CITY ATTORNEY

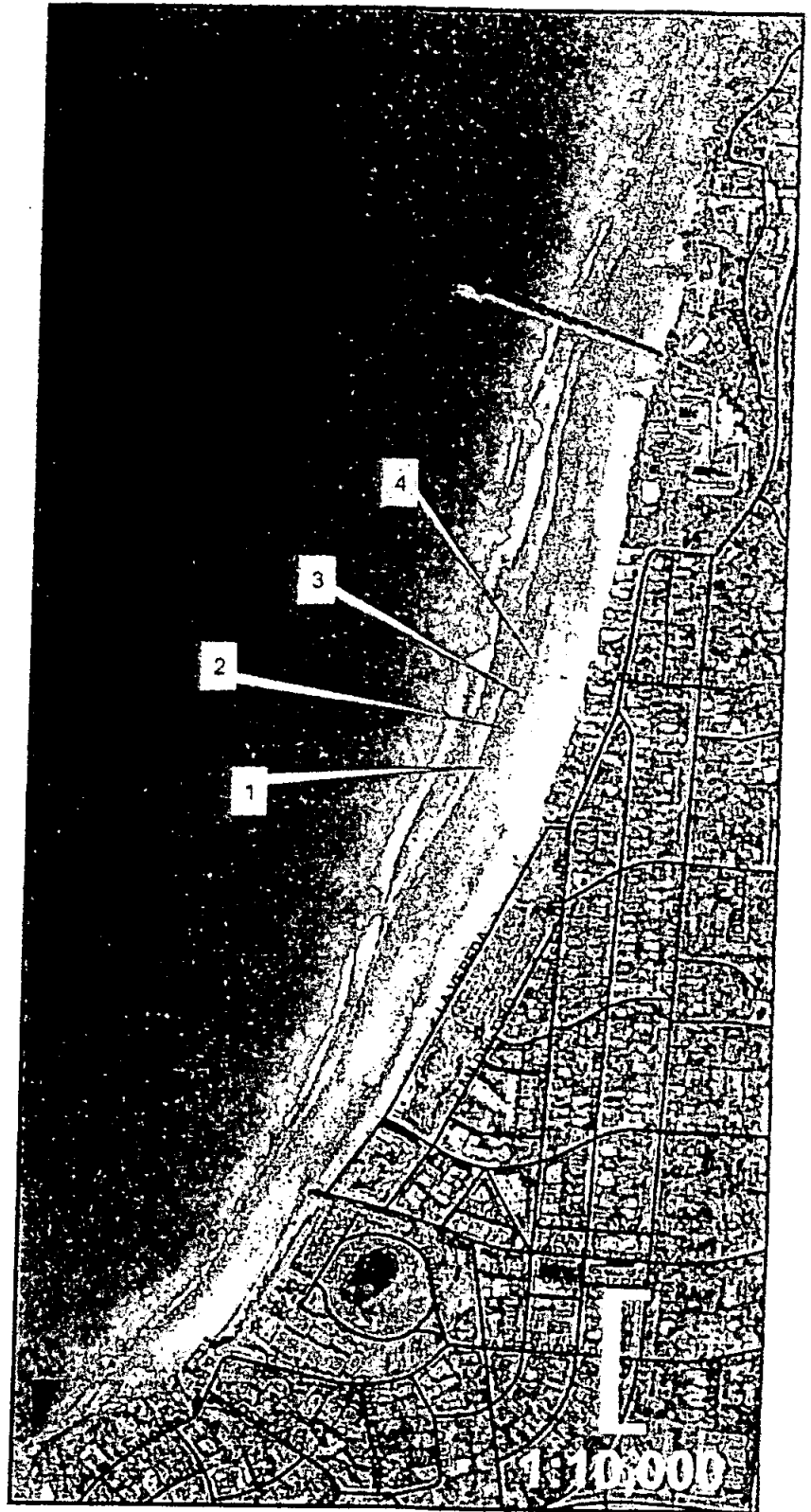
By: 
Deputy City Attorney

VEB/cb
03-22-10

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EXHIBIT A-1

Northern Area Sites (La Jolla Shores)



This map was prepared by the U.S. Navy, Hydrographic Office, and is published under the authority of the U.S. Navy. It is not to be used for any purpose other than that for which it was prepared. It is not to be used for any purpose other than that for which it was prepared.

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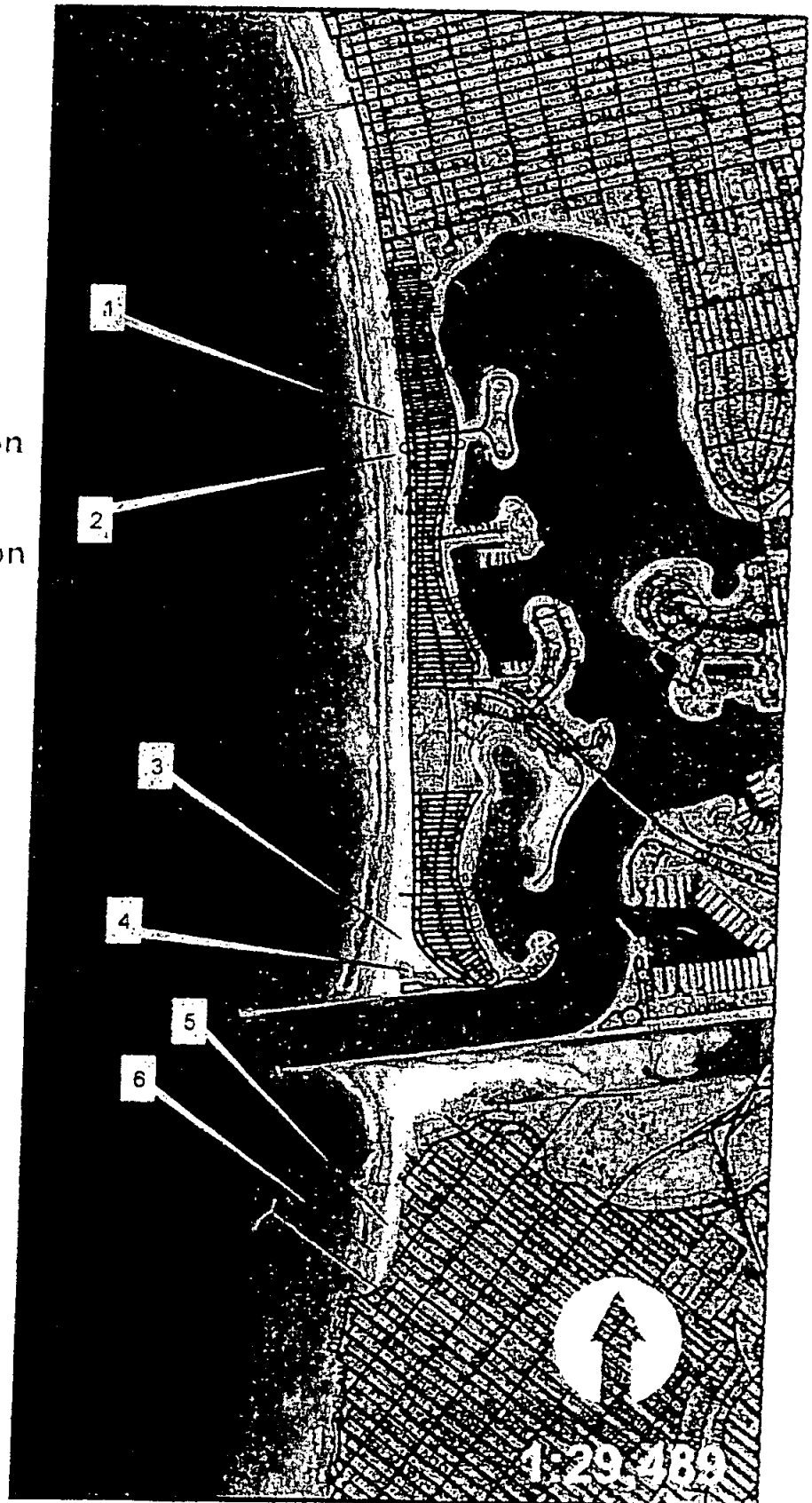
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EXHIBIT A-2

Southern Area Sites (Mission and Ocean Beaches)

- Site 1 Pismo Court
- Site 2 Ostend Court
- Site 3 North of the South Mission Beach Lifeguard Tower
- Site 4 South of the South Mission Beach Lifeguard Tower
- Site 5 Santa Monica Avenue
- Site 6 Newport Avenue



THE INFORMATION CONTAINED HEREIN IS UNCLASSIFIED AND IS NOT TO BE RELEASED TO THE PUBLIC WITHOUT THE WRITTEN PERMISSION OF THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION. THE INFORMATION CONTAINED HEREIN IS UNCLASSIFIED AND IS NOT TO BE RELEASED TO THE PUBLIC WITHOUT THE WRITTEN PERMISSION OF THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION.

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**ASSIGNMENT OF RIGHTS UNDER CONCESSION PERMIT AND RELEASE
AGREEMENT**

THIS ASSIGNMENT OF RIGHTS UNDER CONCESSION PERMIT AND RELEASE AGREEMENT (this "Assignment"), by and between MENEHUNE SURF Inc., a California Corporation ("ASSIGNOR"), HIKE BIKE KAYAK SPORTS, INC., a California Corporation and ("ASSIGNEE") and CITY of San DIEGO, a municipal corporation ("CITY") is made effective upon the approval by the CITY. This agreement is contingent upon approval by CITY.

RECITALS

A. ASSIGNOR, as "Concessionaire", and "CITY" are parties to that certain Concession Permit with an effective date of June 4, 2008.

B. ASSIGNOR desires to assign to ASSIGNEE, and ASSIGNEE desires to accept and assume from ASSIGNOR, all of ASSIGNOR's rights and obligations under the Concession Permit, and release ASSIGNOR from any continuing obligations under the Concession Permit.

AGREEMENTS

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

Incorporation of Recitals. All of the recitals set forth above are hereby made an integral part of this Assignment.

Definitions. All capitalized terms not otherwise defined in this Assignment shall have the meaning ascribed to them in the Lease.

Assignment. Effective as of the date this agreement is approved by the CITY, ("Effective Date"), ASSIGNOR hereby assigns, sets over and transfers to ASSIGNEE all of ASSIGNOR's rights, duties and obligations under the existing Concession agreement.

1. **Acceptance and Assumption.** CITY agrees to accept ASSIGNOR as a Concessionaire under the same terms as the existing Concession Permit with ASSIGNOR. ASSIGNEE hereby accepts the foregoing assignment of the Concession Permit and hereby assumes and agrees to perform all of ASSIGNOR's obligations under or with respect to the Concession Permit arising from and after the Effective Date. ASSIGNOR hereby agrees to indemnify, defend and hold ASSIGNEE harmless from and against any and all loss, liability, damage or claim related to ASSIGNOR's failure to comply with its obligations under the Concession Permit arising prior to the Effective Date. ASSIGNEE hereby agrees to indemnify, defend and hold ASSIGNOR harmless from and against any and all loss, liability, damage or claim related to ASSIGNEE's failure to comply with its obligations under the terms of ASSIGNOR's Concession Permit arising after the Effective Date, or any Concession Permit between ASSIGNEE and CITY.

2. **Release of ASSIGNOR.** ASSIGNOR shall be released from any and all liability under the Concession Permit effective as of the Effective Date of this agreement, but shall remain

fully liable for all obligations of "Concessionaire" under the Concession Permit through and including such date.

3. **Consent.** Subject to the terms and conditions of the Concession Permit, CITY hereby consents to the foregoing assignment of the Concession Permit by ASSIGNOR and assumption of the Concession Permit by ASSIGNEE.

4. **Severability.** If any term or provision of this Assignment or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Assignment or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Assignment shall be valid and enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, the undersigned have executed this Assignment as of the date first set forth hereinabove.

ASSIGNOR:

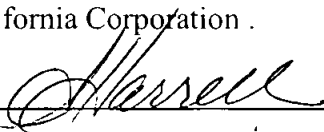
MENEHUNE SURF Inc. , a California corp.

By: 

Darren Fulhorst
March 24, 2010

ASSIGNEE:

HIKE BIKE KAYAK SPORTS, INC., a
California Corporation .

By: 

Angela Harrell, President
March 24, 2010
