

CITY OF SAN DIEGO

CONSENT TO ASSIGNMENT OF CONCESSION AGREEMENT

[La Jolla Shores Site #4, La Jolla, CA 92037]

THIS CONSENT TO ASSIGNMENT OF CONCESSION AGREEMENT ("Consent") is provided by THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), to be effective upon execution by CITY and approval by the San Diego City Attorney ("Effective Date").

RECITALS

- A. WHEREAS, CITY, as the licensor, and MENEHUNE SURF SCHOOL, LLC, a California limited liability company, as the Concessionaire ("CONCESSIONAIRE"), are parties to that certain CONCESSION AGREEMENT ("Agreement") having an effective date of May 14, 2014, filed in the Office of the San Diego City Clerk as Document No. RR-308437, and concerning that right to enter and use certain CITY-owned real property located at La Jolla Shores beach Site #4, La Jolla, CA 92037 ("Subject Property"), as more particularly described and depicted in the Agreement; and
- B. WHEREAS, CONCESSIONAIRE and SURF DIVA, INC. d.b.a. Menehune Surf Camps ("ASSIGNEE") entered into an Assignment of Concession Agreement ("Assignment"), dated April 30, 2017, which assigns all of CONCESSIONAIRE's rights, title and interest in and to the Agreement to the ASSIGNEE.
- C. WHEREAS, Section 24 of the Agreement requires that CONCESSIONAIRE obtain CITY's prior written consent to the assignment of any portion of CONCESSIONAIRE's right, title and/or interest in the Agreement.

NOW, THEREFORE, based on the foregoing Recitals, which are incorporated into this Consent by this reference, CITY provides its consent subject to the following:

- 1. Consent; Assumption of Obligations; and Lease Controls. In reliance upon ASSIGNEE's assumption of all obligations as "Concessionaire" under the Agreement, CITY hereby consents to CONCESSIONAIRE's request to assign all of its right, title and interest in and to the Agreement to ASSIGNEE. This Consent is merely the CITY's consent to CONCESSIONAIRE's assignment of the Agreement. CITY is not bound by any term or condition in any asset purchase agreement, or other assignment agreement, between CONCESSIONAIRE and ASSIGNEE. All terms and conditions of the Agreement shall control and supersede any inconsistent or contrary provisions in any agreement executed between CONCESSIONAIRE and ASSIGNEE.
- 2. CONCESSIONAIRE's Obligations. CITY does not release, discharge or modify CONCESSIONAIRE's obligations to City under the Agreement. As set forth in applicable

law, CONCESSIONAIRE's obligations under the Agreement shall survive said Assignment and shall continue through the termination dates of the Agreement, as set forth therein.

3. No Subsequent Assignment. This Consent does not constitute consent to any subsequent assignment of any right, title and/or interest in and to the Agreement.
4. Notices. ASSIGNEE's contact information for notices after the Effective Date will be:

Menehune Surf Camps, LLC
Attn: Isabelle Tihanyi
2160 Avenida de la Playa, Suite B
La Jolla, CA 92037
858-531-3025
Email: izzy@surfdiva.com

5. Fees. Prior to the Effective Date of this Consent, CONCESSIONAIRE shall pay CITY a processing and administrative fee of \$670.00 (Six Hundred and Seventy Dollars) for processing this Consent, which CITY has received.
6. Brokerage Commission. CITY shall not be liable for any brokerage commission or finder's fee in connection with the granting of this Consent or the consummation of the Assignment, which is the subject of this Consent. CONCESSIONAIRE and ASSIGNEE, and each of them, jointly and severally, shall protect, defend, indemnify and hold CITY harmless from and against any claim for any such brokerage commission or finder's fee, and from any cost or expense, including without limitation attorney fees, incurred by CITY as a direct or indirect result of any such claim for a brokerage commission or finder's fee.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, this Consent to Assignment is executed by City acting by and through its Mayor, or his designee.

THE CITY OF SAN DIEGO,
a California municipal corporation

Date: 5/9/17

BY: [Signature]
Cybele L. Thompson
Director, Real Estate Assets Department

Environmental Analysis Section Environmental Clearance:

This activity has been determined to be exempt from CEQA pursuant to CEQA Section 15301 (Existing Facilities).

Date: 5-8-17

BY: [Signature]
Name: Alessa Mateo
Title: Deputy Director Planning Department

Approved as to form this
9th day of May, 2017

MARA W. ELLIOTT, City Attorney

BY: [Signature]
Name: Marco A. Verdugo
Title: Deputy City Attorney

Assignment of Concession Agreement

This Assignment of Concession Agreement dated the 3rd day of May, 2017 (the Effective Date") by and between Menehune Surf School, LLC ("Assignor") and Surf Diva, Inc., d.b.a. Menehune Surf Camps ("Assignee") sets forth the parties' agreement as follows:

Recitals:

- A. Whereas, the Assignor is the "Concessionaire" in that certain Concession Agreement (the "Agreement") by and between Assignor and the City of San Diego (the "City"), with an effective date of May 14, 2014, Document No. 308437;
- B. The Agreement provides for the Assignor's right as Concessionaire, its employees, agents and contractors to operate Surf School/Camp Concessions within the City at the area beach identified as La Jolla Shores, Site 4 (the "Sites") as set forth in the Agreement;
- C. Assignee desires to obtain from Assignor all rights and benefits granted to, and assume the obligations of the Concessionaire under the Agreement; and,
- D. Assignor desires to transfer and assign all right granted it as Concessionaire under the Agreement to Assignee.

Assignment:

- 1. For value received, Assignor, hereby assigns all of Assignor's right, title, and interest in and to the Concession Agreement by and between Assignor and the City of San Diego (the "City"), with an effective date of May 14, 2014, Document No. 308437 setting forth the Assignor/Concessionaire's rights and obligations associated with the use by the Concessionaire of the City beach Sites.
- 2. A copy of the Contract is attached to this Assignment.
- 3. By this Assignment, Assignor delegates to Assignee all of Assignor's duties and obligations of performance of the Agreement.
- 4. By accepting this Assignment, Assignee, for itself, its successor and assigns, does hereby assume the rights, obligations and responsibilities thereby assigned and will keep and perform all covenants, conditions, and provisions from the Agreement which are applicable to the rights acquired.
- 5. This Assignment shall be binding on and shall inure to the benefit of the respective heirs, devisees, legatees, executors, administrators, trustees, successors, and assigns of the parties to this Assignment.

6. Assignee further agrees to indemnify and hold Assignor harmless from any liability for performance or nonperformance of the Agreement from the Effective Date, except as otherwise set forth in the Agreement for the Purchase and Sale of Menehune Surf Camp, LLC.
7. This Assignment shall be governed by and construed in accordance with California law.

IN WITNESS WHEREOF, THIS AGREEMENT is executed to be effective as of the Effective Date.

Date: 4-30-17

MENEHUNE SURF SCHOOL, LLC

BY: 
Angela Harrell, CEO

Date: 4-30-17

SURF DIVA, INC., D.B.A. MENEHUNE SURF CAMP

BY: 
Isabelle Tihanyi, CEO