

**CITY OF SAN DIEGO
CONSENT TO ASSIGNMENT**

THIS CITY OF SAN DIEGO CONSENT TO ASSIGNMENT (Consent) is made by the City of San Diego, a California municipal corporation (CITY), Hike Bike Kayak Sports, Inc., a California Corporation (CONCESSIONAIRE/ASSIGNOR), and –Hike Bike Kayak Adventures, LLC, a California limited liability company (ASSIGNEE)(collectively, CITY, CONCESSIONAIRE/ASSIGNOR, and ASSIGNEE shall be known as the “Parties”), to be effective as of 10 Aug 2015, 2015 (Effective Date), as follows:

RECITALS

This Consent is made with regard to the following facts:

- A. CITY and CONCESSIONAIRE/ASSIGNOR entered into a City of San Diego Concession Agreement dated March 26, 2015 (the “Concession”). The Concession allows CONCESSIONAIRE/ASSIGNOR to conduct certain kayak operations at La Jolla Shores beach.
- B. CONCESSIONAIRE/ASSIGNOR desires to assign its interest in and to the Concession to ASSIGNEE, pursuant to that certain Asset Purchase Agreement dated _____, 2015, for which CONCESSIONAIRE/ASSIGNOR now seeks CITY’s Consent. A copy of the Asset Purchase Agreement is attached hereto as Exhibit “A.” In order for the CITY to consent to such an assignment, ASSIGNEE must agree to assume all rights and obligations of CONCESSIONAIRE/ASSIGNOR under the Concession.
- C. CONCESSIONAIRE/ASSIGNOR and ASSIGNEE acknowledge that the City’s act of consenting to the requested assignment will not, except as may be expressly provide herein, relieve CONCESSIONAIRE/ASSIGNOR or ASSIGNEE from any requirements under the Concession, including but not limited to concession fees.

NOW, THEREFORE, in consideration of the following terms and conditions, CITY, CONCESSIONAIRE/ASSIGNOR, and ASSIGNEE respectfully agree as follows:

1. CONSENT BY CITY: Upon the effective date of this Consent, CITY consents to CONCESSIONAIRE/ASSIGNOR’s request to assign its interests in and to the Concession to ASSIGNEE. The Parties agree that (a) LESSEE/ASSIGNOR will be relieved and released from the payment of all concession fees and for the performance of all obligations of LESSEE/ASSIGNOR under the Concession arising on and after the effective date of the assignment of the Concession to ASSIGNEE and (b) ASSIGNEE will assume and agree for the benefit of CITY to be bound by, and to conform and comply with, every obligation of LESSEE/ASSIGNOR under the Concession. Further, LESSEE/ASSIGNOR agrees for the benefit of CITY that it shall remain liable for, the payment of all concession fees and for the performance of all obligations of under the

Concession arising prior to and after the effective date of this Consent should ASSIGNEE fail to perform under the Concession.

2. ASSUMPTION BY ASSIGNEE: Pursuant to the terms of the Concession, ASSIGNEE agrees that it will assume the rights and obligations assigned to it by CONCESSIONAIRE/ASSIGNOR and that it will keep and perform all covenants, conditions, and provisions of the Concession, including, without limitation, Concession provisions pertaining to indemnification of the CITY and insurance requirements.
3. USE: The Premises shall be used solely and exclusively for the uses set forth in the Concession.
4. SUBSEQUENT ASSIGNMENTS; RECAPTURE: This Consent does not constitute consent to any other subsequent subletting or assignment of the Concession and does not relieve ASSIGNEE or any persons claiming under or through ASSIGNEE of the obligation to obtain the prior written consent of CITY prior to subletting and/or assigning the Concession.
5. INSURANCE: Prior to the Effective Date of this Consent, ASSIGNEE shall provide CITY with all Certificates of Insurance required under the Concession. Such certificate(s) and binder(s) shall name as additional insureds the CITY, its employees, officers, elected officials, its representatives and agents.
6. MASTER CONCESSION CONTROLS: The Concession shall control with regard to the rights of CITY and obligations of CONCESSIONAIRE/ASSIGNOR and ASSIGNEE. CITY shall not be bound by any term or condition in the Asset Purchase Agreement.
7. CONTROLLING LAW: The terms and conditions of this Consent will be construed in accordance with and will be governed by the laws of the State of California.
8. CAPTIONS: Captions in this Consent are included for convenience only and do not modify any of the terms of this Consent.
9. ENTIRE AGREEMENT: This Consent constitutes the final, complete, and exclusive statement between the parties pertaining to the terms of CITY's Consent. This Consent supersedes all prior and contemporaneous understandings or agreements of the parties pertaining to this Consent, whether oral or written, 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 set forth in this Consent. Any agreement made after the date of this Consent is ineffective to modify, waive, or terminate this Consent, in whole or in part, unless that agreement is in writing, is signed by the parties to this Consent, and states that said agreement modifies this Consent.
10. 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 fees by CITY from ASSIGNEE or anyone else liable under the Concession will not be deemed a waiver by CITY of any provisions of the Concession.

11. **NOTICE**: Any notice that may or must be given by any party under this Consent and/or the Concession will be delivered (i) personally, (ii) by certified mail, return receipt requested, or (iii) by a nationally recognized overnight courier, addressed to the party to whom it is intended. Any notice given to CITY, LESSEE/ASSIGNOR, or ASSIGNEE shall be sent to the respective address set forth below, or such other address as the party may designate for service of notice by a notice given in accordance with the provisions of this section. A notice sent pursuant to the terms of this section shall be deemed delivered (a) when delivery is completed, if delivered personally, (b) three (3) business days after deposit into the United States mail, or (c) the day following deposit with a nationally recognized overnight courier if overnight delivery is requested by that courier.

Address for CITY:

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

Address for CONCESSIONAIRE/ASSIGNOR:

Hike Bike Kayak Sports, Inc.
2222 Avenida de la Playa
San Diego, California 92037
Attn: Angela Harrell

Address for ASSIGNEE:

Hike Bike Kayak Adventures, LLC
5778 Beaumont Avenue
San Diego, California 92037

12. **CAPITALIZED TERMS**: All terms spelled with initial-capital letters in this Consent that are not expressly defined in this Consent will have the respective meanings given such terms in the Concession.
13. **AUTHORITY**: Each individual executing this Consent on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Consent on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this

Consent is binding upon such person or entity in accordance with its terms. Each person executing this Consent on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to CITY, that such authority is valid, and such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

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IN WITNESS WHEREOF, this Consent is executed by CITY acting by and through its Mayor, or his designee, and by CONCESSIONAIRE/ASSIGNOR and ASSIGNEE through their legal representatives.

CITY:

THE CITY OF SAN DIEGO, a California
Municipal Corporation

By: [Signature]

Real Estate Assets Director

Date: 8/10/15

ASSIGNOR:

HIKE BIKE KAYAK SPORTS, INC., a California
Corporation

By: [Signature]
Name: Angela Harrell
Title: CEO
Date: 8/10/15

ASSIGNEE:

HIKE BUKE KAYAK ADVENTURES, LLC,
a California limited liability company

By: [Signature]
Name: Sharon Luscomb
Title: Co-owner
Date: 8/10/15

APPROVED as to form this 10 day of Aug, 2015

JAN I. GOLDSMITH, City Attorney

By: [Signature]
Name: NOAH J BRAZIER
Title: Dep City Atty

EXHIBIT "A"
TO
CONSENT TO ASSIGNMENT
ASSET PURCHASE AGREEMENT

[to follow behind this page]