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**ii. Semi-Private Lessons**

In order to make surf instruction affordable to more people, Pacific Beach Surf School invites students to join a group lesson a reduced rate.

1 ½ -hour Semi-Private Lessons are available from June 1<sup>st</sup> to September 30<sup>th</sup>, at 10 a.m. and 2 p.m., seven days a week (except for the Fourth of July or any other blackout dates specified by the City). Maximum 1-to-5 instructor-to-student ratio.

Per-Student.....\$ 70

**iii. A Series of Lessons**

A Series of 3, 1 ½ hour Private Lessons following our advanced 3 Step Surf Instruction Curriculum are available year-round, seven days a week (except for the Fourth of July or any other blackout dates specified by the City).

1 Person, 3 Lesson, prepaid:.....\$195 (\$ 65 each)

Additional Lessons.....\$ 65

**iv. Summer Camps**

**a. Full-Day Week-Long Summer Camps** run 9:00 a.m. to 3:30 p.m., Monday-Friday (except for on the Fourth of July or any other blackout dates specified by the City).

1 Camper, per week.....\$ 470

Register 2 Campers, per week.....\$ 450

A \$20 discount is offered for each additional week of registration.

**b. Half-Day Week-Long Summer Surf Camps** run 9:00 a.m. to 12:00 noon or 1:00 p.m. to 4:00 p.m., Monday to Friday (except for on the Fourth of July or any other blackout dates specified by the City).

1 Camper, per week.....\$ 275

Register 2 Campers, per week.....\$ 255

A \$20 discount is offered for each additional week of registration.

**v. Year-Round Single-Day Camps**

**a. Full-Day Single-Day Surf Camps** run 9 am to 3:30 pm and are available year-round, seven days a week (except for the Fourth of July or any other blackout dates specified by the City).

1 Student.....\$ 155

A \$15 discount is offered, per student, for each additional student.

**b. Half-Day Single-Day Surf Camps** run 9:00 a.m. to 12:00 noon or 1:00 p.m. to 4:00 pm and are available year-round, seven days a week (except for the Fourth of July or any other blackout dates specified by the City).

1 Student.....\$ 100

A \$15 discount is offered, per student, for each additional student.

**vi. Group Rates**

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2-hour group lessons are available year-round, seven days a week (except for the Fourth of July or any other blackout dates specified by the City).

11-15 Students, per student.....	\$ 70
16-20 Students, per student.....	\$ 65
21- 25 Students, per student.....	\$ 60

The Operator reserves the rite to provide different lesson durations and thus, rates to best meet the needs of private groups.

**vii. Partnership Programs**

1 ½ private lessons are offered year-round, seven days a week (except for the Fourth of July or any other blackout dates specified by the City).

The Catamaran Resort and Spa, Private Lessons,per Student.....	\$ 60
The W. Hotel.....	\$ 60

**viii. Other Rates**

The Operator reserves the right to provide lessons at special rates to hotels, charitable organizations, and other groups.

**f. Marketing**

In 2007, the Pacific Beach Surf School and Surf Shop spent over \$29,000 on marketing the Pacific Beach Surf School. We estimate spending additional sums should this proposal be accepted. Our aggressive three-tier marketing program is focused on appealing to locals, tourists, and campers' families.

The marketing program includes outreach to area hotels, advertising, production and distribution of brochures to hotels and other tourist locations, as well as, a large website ([www.pacificbeachsurfschool.com](http://www.pacificbeachsurfschool.com))

Additional sums are spent to participate in local events, such as street fairs and school events. Participation in local events is not only an important connection with our community and the surf culture, but helps promote the surf school and shop.

Sample printed marketing materials are contained in Appendix 4.

**EXHIBIT C**  
**Surf Concession Requirements**

*The following requirements are subject to revision at any time by the CITY:*

1. **Maximum number of participants/boards on the beach and in the water**  
A maximum of 50 students per Site may be on the beach at any one time. Of those fifty students, a maximum of twenty-five students per group may be in the water at any one time.
2. **Identifying Markers**  
Instructors must wear red rashguards with CONCESSIONAIRE's name. Students must wear a color specific rashguard with CONCESSIONAIRE's name. Both student and instructor rashguards are to be worn at all times while in the water. The CITY-issued sign with the CONCESSIONAIRE's name must be clearly posted at each Site, whenever classes are in progress.
3. **Student to instructor ratios.**  
For every five students on the beach or in the water, one instructor must be present. Anytime students are in the water at least one American Red Cross certified instructor must be present and supervising the class.
4. **Beach Access**  
CONCESSIONAIRE shall not exclude the public from any Site. Beach access must be kept clear at all times. Surfboards must be kept in a position that does not obstruct beach access.
5. **Concession Site/Location**  
Surf CONCESSIONAIREs must operate from their assigned Site on the beach sand only. CONCESSIONAIREs may meet and escort participants from the parks facilities, parking lots and/or nearest street but may not set up any concession operations in the park.
6. **Equipment**  
All CONCESSIONAIREs that provide equipment to students must provide a soft foam surfboard with a leash; hardboards must have nose guard and tail guard protection.
7. **CPR and First Aid**  
All surf instructors must take and pass "American Red Cross Lifeguard Training and CPR for the Professional Rescuer. This is a 28.5 hour course that provides training in 'surveillance skills to help you recognize and prevent injuries, rescue skills – in the water and on land, first aid training and professional rescuer CPR...' Additionally, an American Red Cross first aid kit, approved by a City of San Diego Lifeguard, must be onsite at all times. Prior to the initial class, the operator must arrange with the lifeguard for an initial equipment and first aid safety inspection."

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8. **Waivers**

The CONCESSIONAIRE must have on file a signed waiver from each participant, or their legal guardian if under 18 years of age, which holds the CITY, its agents, officers and employees harmless and indemnifies the same from any claims relating to the participants' activities on the CITY beach which arise from or are in any manner connected with the services provided to the participants under this Agreement.

9. **Minimum Age Requirements**

The minimum age for an instructor is eighteen (18) years of age.

10. **EMERGENCY RESPONSE PLAN FOR SURF CONCESSIONS**

The following plan is the minimum level of response and readiness for Surf Concessions during emergency situations. CONCESSIONAIRES are required to read the plan and cover all aspects of the plan with each employee working on the beach under this Concession Agreement.

**Ocean Conditions**

Ensure that the ocean conditions are safe to conduct class based on the skill levels of the instructor and the students.

**General Rescue Procedures for Water Emergencies**

1. Survey the scene.
2. The rescuer should consider his/her level of rescue skill prior to attempting a rescue.
3. Ensure proper use of rescue equipment.
4. Safely approach and determine if the victim is distressed.
5. Perform and rescue based on American Red Cross training.
6. Move the victim to safety.
7. Remove the victim from the water.
8. Perform a primary survey.
9. If an emergency exists, ensure that someone activates 911 and requests San Diego Lifeguard assistance.
10. Provide first aid until emergency medical services (EMS) arrive.
11. If other instructors and students are in the water, they should be directed to the beach, until the emergency is clear. Other instructors should provide assistance as needed.

**General Rescue Procedures for Land Emergencies**

Survey the scene.

Approach victim when it is safe for the rescuer.

Perform a primary survey.

If an emergency exists requiring EMS, activate the 911 system and ensure paramedics and San Diego Lifeguard are responding.

Provide emergency care until EMS arrives.

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**Cellular Communications**

All surf concessions shall keep a fully charged and functioning cellular phone on the beach in a location where it can be immediately accessed in case of emergency.

**Emergency Signals**

Pre-designated signals will be used to communicate with instructors and other surf-camp personnel in the event emergency assistance is needed. **WHISTLES** will be immediately available to all instructors and surf camp personnel. One hand or any piece of equipment being waved overhead from side to side, or three short whistle blasts will indicate that an emergency exists and immediate assistance is needed. One hand placed on the top of the head will indicate that everything is all clear. Instructors and other surf camp personnel will be diligent to look for any signs and signals of distress when they are at the beach.

Any emergency signal observed by an instructor or any surf camp personnel will cause the immediate activation of the emergency response plan.

**Accidents, Injuries and Incident Slips**

In addition to the requirements under 16.G. of this Agreement, CONCESSIONAIRE shall notify the lifeguard supervisor on duty, as soon as feasible, of any accident or injury occurring in the operation of the Concession, regardless of severity. All rescues and medical aids involving surf camp students, instructors or other personnel will be documented on company incident slips.

**CITY OF SAN DIEGO  
CONCESSION PERMIT**

THIS CITY OF SAN DIEGO CONCESSION PERMIT ("Permit") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and PACIFIC SURF SCHOOL ("CONCESSIONAIRE"), to be effective upon execution by the parties and approval by the San Diego City Attorney (the "Effective Date"), as follows:

1. Incorporated Documents. This Permit is created pursuant to the Surf School/Camp REQUEST FOR PROPOSAL ("RFP") issued by the Real Estate Assets Department (December 11, 2007), CONCESSIONAIRE'S proposal in response to the RFP, dated January 29, 2008. The Operating Plan, submitted by CONCESSIONAIRE as part of its proposal, is attached hereto as Exhibit A and incorporated herein. Also attached and incorporated herein are the following documents: Exhibit A, Site Map; and Exhibit C, Surf Concession Requirements.
2. Right to Enter. Subject to the terms and conditions of this Permit, CITY hereby grants permission to CONCESSIONAIRE, its employees, agents and contractors to operate surf instruction concessions ("Concessions") within CITY beach sites ("Sites") designated by the City of San Diego ("CITY"). The locations of the Sites included under this Permit are referenced below and more specifically, designated on the attached Exhibit A. However, any of the Sites named below are subject to change at CITY'S discretion.

Area/Beach	Site
Mission Beach – Southern Area Site 2	Ostend Court

Any of the above Sites may be deleted at any time by CITY upon thirty (30) days written notice to CONCESSIONAIRE. If an alternate site is not available, a proportionate amount of the minimum fixed concession fee (as specified in Section 10.B.) shall be waived for the deleted Site.

3. Use of Sites. This Permit is granted to CONCESSIONAIRE for the sole purpose of allowing CONCESSIONAIRE to operate surf instruction concessions serving the general public under the terms and conditions of this Permit. No solicitation or marketing is permitted on City beaches. Renting or selling of beach equipment or other merchandise is not allowed under this Permit.
4. Maximum Days and Hours of Operation. Maximum hours of land-based operations are 8:30 a.m. - 5:00 p.m. Water instruction is permitted from 9:00 a.m. to 4:00 p.m. All Concessions must be vacated by 5:00 p.m. daily. The CITY reserves the right to change the days and/or hours of operation at its discretion. Operations are permitted seven days a week with the following exceptions:

- A. Under no circumstances are operations permitted on the 4<sup>th</sup> of July holiday.
- B. Special Events. Unless otherwise authorized by the CITY Manager, CONCESSIONAIRE shall have no rights within certain areas of its Concession Sites or designated portions thereof during days in which special events are scheduled by CITY in these areas. CITY shall give CONCESSIONAIRE advance written notice of any such special events.
5. Competent Management. Throughout the term of this Permit, CONCESSIONAIRE shall provide competent management of the Sites for the permitted uses to the satisfaction of the City Manager. CONCESSIONAIRE covenants to operate the Concession for the above-specified purposes and diligently conduct the operations to produce a reasonable and substantial gross income.
6. Term. The term of this Permit ("Term") shall be shall be 64 months commencing on June 1, 2008, and expiring on September 30, 2013. This Permit may be terminated at any time by either party upon ninety (90) days prior written notice to the other party.
7. Holding Over. Any use of the Concession Sites by CONCESSIONAIRE after the expiration of this Permit is not permitted. Any extension of the term of the Permit beyond 64 months shall require approval of CITY Council.
8. Revocable License. This Permit is not a lease. It is a license to use CITY-owned property, and may be revoked by CITY, in its sole discretion. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by CONCESSIONAIRE as a result of such termination of this Permit. CONCESSIONAIRE expressly waives any claim for expense or loss which CONCESSIONAIRE might incur as a result of CITY'S termination of this Permit.
9. Special Provisions
- A. Operating Plan. The Operating Plan(s) for June 2008 through May 2009 submitted with the CONCESSIONAIRE's response to the CITY'S Request for Proposal, shall be revised by CONCESSIONAIRE, if required by CITY to meet CITY'S approval, and the final CITY approved Plan(s) shall be incorporated into this Permit as Exhibit B. Beginning June 1, 2009, and for every 12 months thereafter, the CONCESSIONAIRE shall provide the CITY with an Operating Plan for the coming quarter for the CITY'S approval. All Operating Plans submitted to the CITY should be consistent with the format and content of the Plans included as Exhibit B. CITY shall have the right to approve or disapprove the proposed plan. Once approved, CONCESSIONAIRE shall not make any changes to the Plan without prior written approval of CITY. At all times, the CONCESSIONAIRE shall ensure that all operations permitted under this Permit comply with the Surf Instruction Requirements incorporated herein as Exhibit C.
- B. Exclusiveness of Permit and Unauthorized Vending. In addition to special events described in Section 4.B., CITY may, during the term of this Permit, enter into

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Permits with other CONCESSIONAIREs to provide surf instructions during times not scheduled for operations in the approved Operating Plan(s) at the Sites permitted in this Permit. However, CITY, by granting this Permit to CONCESSIONAIRE, makes no warranty that the Sites shall be free of unauthorized vending or that any specific level of police or lifeguard enforcement against such activities shall be maintained.

- C. Concession Sites. On each Site included in this Permit, CONCESSIONAIRE shall erect no improvements except one shade structure no greater than twenty (20) feet by twenty (20) feet or, no more than two shade structures no greater than ten (10) feet by ten (10) feet in size, or as shall, in the opinion of the CITY be needed to adequately serve the public. CITY reserves the right to request that the CONCESSIONAIRE modify the dimensions of the structure. The Sites must be designed and maintained so as to present a neat and attractive appearance to the satisfaction of the CITY. Any items or improvements brought on the Sites by the CONCESSIONAIRE must be approved by CITY and shall not remain on location after permitted hours of operation, unless prior approval of CITY is obtained. If in the opinion of CITY, the number of Sites within any Concession covered under this Permit at any time falls short of or exceeds the number of Sites needed to adequately serve the public, CONCESSIONAIRE shall, without liability to the CITY, upon receipt of notice from CITY, adjust the number of Sites to the number specified by CITY as adequate to serve the public. Until such time as CITY requires CONCESSIONAIRE, or agrees to a request from CONCESSIONAIRE, to increase or decrease the number of Sites CONCESSIONAIRE shall operate no more and no fewer than the Sites designated in this Permit. At each Site, CONCESSIONAIRE shall occupy no more than two and no less than one area of the dimensions specified herein.
- D. Improvements. Upon expiration or termination of this Permit, any and all improvements, trade fixtures, structures, and installations or additions to the Sites now existing or constructed on the Sites by CONCESSIONAIRE shall be deemed to be part of the Sites and shall become CITY'S property free of all liens and claims. All personal property remaining on the Sites after expiration or termination shall also become the property of CITY.
- E. Maintenance of Sites. CONCESSIONAIRE agrees not to commit or allow to be committed any waste or injury or any public or private nuisance, to keep the Sites clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in or about said spaces to the satisfaction of CITY and at CONCESSIONAIRE's sole cost. All Sites must be cleaned up nightly by CONCESSIONAIRE or more often, as required.
- F. Standard of Employees. CONCESSIONAIRE and its employees shall at all times conduct themselves and the operations of the Concession in a creditable manner. CONCESSIONAIRE shall thoroughly train its employees in their duties and shall regularly monitor them to ensure that they behave in a courteous manner, do not disturb the quiet enjoyment of other beach users, and otherwise comply with all of the Surf Instruction Requirements in Exhibit C of this Permit.

10. Fees.

- A. Percentage Fees. Percentage fees will be calculated on a calendar month basis and will consist of ten percent (10.00%) of the gross income resulting from the operations permitted under this Permit. The City Manager, in his sole discretion, may approve another percentage rate or minimum rate for each other incidental service or operation supplementary to the permitted uses stated in Section 3, Use of Sites, as may be approved in writing by the City Manager prior to the commencement of any additional service or operation. Provided however, any activity conducted on the Sites without the prior written approval of the City Manager shall be subject to the requirements of Section 10.E., Unauthorized Use Charge.
- B. Minimum Fees. The annual Minimum Fee established for the first year following the effective date of this Permit is eight thousand dollars (\$8,000), which is six-hundred and sixty-six dollars and sixty-seven cents (\$666.67) on a monthly installment basis.

If the Minimum Fee is greater than the percentage fee on a calendar month basis, one-twelfth (1/12) of the Minimum Fee is required to be paid for that month. Minimum Fees are to be paid in monthly installments on or before the day of the calendar month when percentage fees are due pursuant to Section 10.I., Time and Place of Payment. In the event that the combined total percentage fee payments and monthly installments of the Minimum Fee during any Permit year equal or exceed the required Minimum Fee for that year, for the balance of that year, CONCESSIONAIRE shall discontinue paying monthly installments of the Minimum Fee until the beginning of the next Permit Year. If in any Permit Year, Minimum Fees paid plus Percentage Fees paid exceed the annual Minimum Fee and also exceed the fee which would have been paid if the Percentage Fee had been paid on total gross income, the excess over the total fee owed shall be credited against the next payable fee as it becomes due. It is the intent of this provision that CONCESSIONAIRE shall pay monthly installments of the annual Minimum Fee as a guarantee against the Percentage Fee requirement and that the greater of the two requirements, minimum or percentage, whichever occurs throughout the term, shall prevail on an annual basis.

Minimum Fee Adjustment: Effective at the beginning of the first day of the 13<sup>th</sup>, 25<sup>th</sup>, 37<sup>th</sup>, 49<sup>th</sup> and 61<sup>st</sup> month of this Permit, the annual Minimum Fee shall be eighty percent (80.00%) of the annual average of actual rents paid in the Initial Term plus any option terms exercised under this Permit. The annual average shall then be divided by twelve (12) to establish the new monthly Minimum Fee. It is recognized that the adjustments shall be calculated by the CITY upon completion of payments due for the preceding year in order to determine the amount of the Minimum Fee for the option period. Until such calculations are completed, CONCESSIONAIRE shall continue paying monthly Minimum Fees at the prior rate. Any additional fees determined by the adjustment to be due for the months previously paid at the prior rate shall be paid to the CITY within thirty (30) days following written notice. In no event shall the Minimum Fee Adjustment result in a decrease in the Minimum Fee requirement in effect immediately prior to the adjustment date.

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- C. Annual Percentage Adjustment to Minimum Fee. If CONCESSIONAIRE has not paid percentage fees during the previous 12 month period, then the Minimum Fee shall increase to one-hundred five (105.00%) of the previous year's Minimum Fee.
- D. Delinquent Concession Fee. If CONCESSIONAIRE fails to pay any concession fees when due, CONCESSIONAIRE will pay, in addition to the unpaid concession fees, a fee of \$25.00. If the fees are still unpaid at the end of the fifteen (15) days, CONCESSIONAIRE shall pay a fee of \$50.00, which is mutually agreed by the parties to this Permit to be appropriate to compensate the CITY for loss resulting from concession fee delinquency, including lost interest opportunities, legal costs, and the cost of servicing the delinquent account.
- E. Unauthorized Use Charge. CONCESSIONAIRE shall pay CITY fifty percent (50.00%) of the gross receipts for any service or use that is not permitted by this Permit. This payment is subject to the due date provided in this Permit for minimum guaranteed fees payments and the provision for delinquent concession fees payments and the provision for delinquent concession fees. The existence of the fifty percent (50.00%) charge in this clause and the payment of this charge or any part of it, do not constitute an authorization for a particular service or use, and does not waive any CITY rights to terminate a service or use or to default CONCESSIONAIRE for participating in or allowing any unauthorized use.
- F. Gross Income. "Gross income" or "gross receipts", as used in this Permit shall include all income resulting from the Concession from whatever source derived whether received or to become due. Provided; however, gross income shall not include federal, state, or municipal taxes collected from the consumer (regardless of whether the amount is stated to the consumer as a separate charge) and paid over periodically by CONCESSIONAIRE to a governmental agency accompanied by a tax return or statement as required by law. Possessory interest taxes or other property taxes shall not be deducted by CONCESSIONAIRE in computing gross income. Gross income shall not include refund of deposits. The amount of taxes and refunds shall be clearly shown on the books and records of CONCESSIONAIRE. The percentage concession fees shall be calculated and paid by CONCESSIONAIRE on the basis of gross income whether the income is received by CONCESSIONAIRE or by any permittee or licensee, or their agents, and all gross income received by any permittee, licensee, or other party as a result of occupancy or operation of the Site(s) shall be regarded as gross income of CONCESSIONAIRE for the purpose of calculating the percentage concession fees required to be paid by CONCESSIONAIRE to CITY, except as may be otherwise specified by or pursuant to this Permit.
- G. Inspection Of Records.
- i. Records. CONCESSIONAIRE shall, at all times during the Permit term, keep or cause to be kept true and complete books, records, and accounts of all financial transactions in the operation of all business activities conducted upon and financial transactions resulting from the use of the Site(s). The records shall be supported by source documents such as sales slips, daily

cash register tapes, purchase invoices, class lists, or other documents as necessary to allow CITY to easily determine the gross income. Any retail sales or charges will be recorded by means of cash registers or other comparable devices which display to the customer the amount of the transaction and automatically issue a receipt. The registers will be equipped with devices that lock in sales totals and other transaction numbers and sales details that are not resettable. Totals registered shall be read and recorded at the beginning and end of each business day. In the event of admission charges or concession rents, CONCESSIONAIRE shall issue serially numbered tickets for such admission or concession fees and shall keep an adequate record of such tickets, as well as a record of unissued tickets. All retail sales and charges may be recorded by a system other than cash registers of other comparable devices provided such a system is approved by the CITY.

- ii. Financial Statements. Within sixty (60) days after the end of the Initial Term and any subsequent option terms, CONCESSIONAIRE will, at its expense, submit to CITY a statement in which the total gross receipts and the corresponding amounts of concession percentage fees paid CITY for the year are classified according to the categories of business established for any percentage concession fees and for any other business conducted on or from the Site(s). The statement shall be signed by CONCESSIONAIRE and Financial Representative of CONCESSIONAIRE attesting to the accuracy thereof, which shall be legally binding upon CONCESSIONAIRE.
- iii. Right to Inspect. All CONCESSIONAIRE's books of account, records, and supporting documentation, as described under Section 10.G.(i), will be kept for at least five (5) years and made available to CITY in one location within the City of San Diego. These books and records must be maintained separately from all other accounts not relating to the Site(s). The CITY, at its discretion, shall have the right to inspect and audit the business of CONCESSIONAIRE, its agents, permittees, and licensees operating on, and in connection with, the Site(s) as necessary and appropriate for CITY to determine the amounts of concession fees due CITY in compliance with the requirements of this Permit. At CITY'S request, CONCESSIONAIRE shall promptly provide, at CONCESSIONAIRE's expense, any necessary data to enable CITY to fully comply with all requirements of the state and federal government for Permit information or reports concerning the Concessions. Such data will include, if required, a detailed breakdown of CONCESSIONAIRE's receipts and expenses.
- 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):

The audit(s) reveal an underpayment of more than five percent (5.00%) or more than \$10,000.00, which ever is less, between the concession fees due as reported and paid by CONCESSIONAIRE,

pursuant to this Permit and concession fees determined by the audit(s).

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

Any underpayment of concession fees less than five percent (5.00%) revealed by the audit may be paid within thirty (30) days written notice from the CITY without penalty, otherwise, CONCESSIONAIRE shall incur interest charges on the delinquent amount as defined in Section 10.D., DELINQUENT CONCESSION FEES. CITY will credit any overpayment against incoming concession fees. Any overpayment determined after the end of this Permit will be refunded by CITY within thirty (30) days of confirmation by the City Manager of the audit(s) findings.

- H. Default. CONCESSIONAIRE's failure to keep complete and accurate records by means of double-entry bookkeeping and make them available for CITY inspection is, like all other failures to comply with covenants of this Permit, a breach of this Permit and cause for termination.
- I. Time and Place of Payment. Payments are due on or before the last day of the calendar month following the calendar month in which the Gross Income subject to percentage fees was earned. Checks shall be made payable to the City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P.O. Box 122289, San Diego, California 92112-4165, or delivered to the Office of the City Treasurer, Civic Center Plaza, 1200 Third Avenue, First Floor, San Diego, California. The place and time of payment may be changed by CITY upon thirty (30) days prior written notice to CONCESSIONAIRE. Mailed payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed paid upon actual receipt by the City Treasurer. CONCESSIONAIRE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.
- J. Security Deposit. The CONCESSIONAIRE shall deliver to CITY with the executed copies of this Permit, a good faith deposit in the amount of two thousand five hundred dollars (\$2,500.00). All or any portion of the principal sum shall be available unconditionally to CITY for payment of delinquent concession fees, for correcting any default or breach of this Permit by CONCESSIONAIRE, CONCESSIONAIRE's successors or assignees, or for payment of expenses incurred by CITY as a result of CONCESSIONAIRE's failure to faithfully perform all terms, covenants, and conditions of this Permit. If at the end of the term of this Permit, CONCESSIONAIRE has performed all of the provisions of the Permit, the deposit or any remaining balance shall be returned to the CONCESSIONAIRE without interest. The security deposit may be increased by CITY proportionate to any increase in Minimum Fees. CONCESSIONAIRE shall maintain the security deposit throughout the Term. **Notwithstanding any other provision of this Permit, if**

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CONCESSIONAIRE fails or refuses to deposit or maintain a security deposit as required by this Permit, CITY may terminate this Permit immediately upon such breach. Upon such termination, CONCESSIONAIRE shall immediately cease its use of the Sites and commence and diligently pursue the removal of its property from the Sites.

- i. Utilization. If CITY utilizes all or any portion of the security deposit, upon 10 days prior written notice, CONCESSIONAIRE shall reimburse the security deposit to the full required amount.
  - ii. Increase. Upon thirty (30) days prior written notice by CITY, CONCESSIONAIRE shall deliver to CITY additional funds as CITY may, in its sole determination, require to adequately secure CONCESSIONAIRE'S obligations under this Permit.
  - iii. Return. Provided CONCESSIONAIRE is not in breach or default of this Permit, CITY shall return the security deposit, or any balance thereof, to CONCESSIONAIRE within sixty (60) days after the expiration or termination of this Permit.
11. CITY'S Consent, Discretion. Whenever required under this Permit, CITY'S consent or approval shall mean the written consent or approval of the City Manager, unless otherwise expressly provided. CITY'S discretionary acts hereunder shall be made in the City Manager's sole and absolute discretion, unless otherwise expressly provided.
12. Acceptance of Sites. CONCESSIONAIRE represents and warrants that it has independently inspected the Sites and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Sites. CONCESSIONAIRE agrees it is relying solely on its independent inspection, tests, investigations, and observations in entering into this Permit. CONCESSIONAIRE further acknowledges that the Sites are in the condition called for by this Permit, that CITY has performed all work, if any, related to the Sites and required by this Permit, and that CONCESSIONAIRE shall hold CITY harmless for any defects, whether apparent or latent, in the Sites, including without limitation the presence of any hazardous substances.
13. Maintenance of the Sites. CONCESSIONAIRE shall, at CONCESSIONAIRE'S sole cost and expense and to CITY'S satisfaction, maintain the Sites in a decent, safe, healthy and sanitary condition at all times during the Term.
14. Standard of Conduct. CONCESSIONAIRE and its employees shall at all times conduct themselves and the operations on the Sites in a creditable manner.
15. Inspection. CITY may, at all times upon prior notice, enter and inspect the Sites.

16. Insurance. On or before the Effective Date, CONCESSIONAIRE shall deliver to CITY a current certificate of insurance for: (1) Commercial General Liability insurance providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least One Million Dollars (\$1,000,000) per occurrence, subject to an annual aggregate of Two Million Dollars (\$2,000,000).

- A. Additional Insureds. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in all policies.
- B. Primary & Non-Contributory. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by CITY. The policies shall be kept in force for the duration of the Term and any extended use. The certificate(s) of insurance shall be filed with CITY'S Real Estate Assets Department upon execution of this Permit.
- C. Qualified Insurer(s). All insurance required by the terms of this Permit must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to CITY. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements.
- D. Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of CONCESSIONAIRE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
- E. Continuity of Coverage. All policies shall be in effect on or before the first day of the Term of this Permit, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the Sites, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. At least thirty (30) days prior to the expiration of each insurance policy, CONCESSIONAIRE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Permit.
- F. Modification. To assure protection from and against the kind and extent of risk existing on the Sites, CITY, at its discretion, may require the revision of amounts and coverages at any time during the Term by giving CONCESSIONAIRE thirty (30) days prior written notice. CONCESSIONAIRE shall also obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this Permit.

- G. Accident Reports. CONCESSIONAIRE shall report to CITY any accident causing more than Five Thousand Dollars (\$5,000) worth of property damage or any serious injury to persons on the Sites. Such report shall be delivered to CITY within five (5) days of such accident and shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- H. Failure to Comply. If CONCESSIONAIRE fails or refuses to obtain and maintain the required insurance, or fails to provide proof of coverage, CITY may obtain the insurance. CONCESSIONAIRE shall reimburse CITY for the premiums paid, with interest at the maximum allowable legal rate then in effect in California. CITY shall notify CONCESSIONAIRE of such payment of premiums within thirty (30) days of payment stating the amount paid, the name(s) of the insurer(s), and rate of interest. CONCESSIONAIRE shall pay such reimbursement and interest on the first (1st) day of the month following CITY'S notice. **Notwithstanding any other provision of this Permit, if CONCESSIONAIRE fails or refuses to obtain or maintain insurance as required by this Permit, or fails to provide proof of insurance, CITY may terminate this Permit immediately upon such breach. Upon such termination, CONCESSIONAIRE shall immediately cease its use of the Sites and commence and diligently pursue the removal of its property from the Sites.**
17. Indemnification. CONCESSIONAIRE shall protect, defend, indemnify, and hold CITY, its elected officials, officers, representatives, agents and employees, harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to CONCESSIONAIRE'S officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with this Permit or CONCESSIONAIRE'S occupancy, use, development, or maintenance of the Sites, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that CONCESSIONAIRE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of CITY, its elected officials, officers, representatives, agents and employees. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, CONCESSIONAIRE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.
18. No Discrimination. CONCESSIONAIRE shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in CONCESSIONAIRE'S use of the Sites, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

000742

19. Local Business and Employment. CONCESSIONAIRE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. CONCESSIONAIRE will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this Permit from local residents and firms as opportunities occur. CONCESSIONAIRE agrees to hire qualified local residents and firms whenever feasible.
20. Drug-free Workplace. CONCESSIONAIRE shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:
  - A. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of controlled substances are prohibited on the Sites and specifying the actions that will be taken against employees for violations of the prohibition; and
  - B. Establish a drug-free awareness program to inform employees about all of the following:
    - i. The dangers of drug abuse in the workplace;
    - ii. CONCESSIONAIRE'S policy of maintaining a drug-free workplace;
    - iii. Any available drug counseling, rehabilitation, and employees assistance programs; and
    - iv. Penalties that may be imposed upon employees for drug abuse violations.
21. Disabled Access Compliance. CONCESSIONAIRE shall comply with the California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities.
22. CONCESSIONAIRE'S Risk. CONCESSIONAIRE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with CONCESSIONAIRE'S occupancy, use, development and maintenance of the Sites and any damages to the improvements on, under, or in the vicinity of the Sites resulting directly or indirectly thereby.
23. No Nuisance. CONCESSIONAIRE shall not use the Sites in any manner which, in CITY'S opinion, creates a nuisance or disturbs the quiet enjoyment of persons in and to the surrounding area.
24. No Assignment. CONCESSIONAIRE shall not assign any rights granted by this Permit or any interest herein without CITY'S prior written consent. Approval of any such proposed assignment may be withheld in CITY'S sole and absolute discretion. Any assignment by operation of law shall automatically terminate this Permit.

25. Signs. CONCESSIONAIRE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising without CITY'S prior written consent. If any such unauthorized item is found on the Sites, CONCESSIONAIRE shall remove the item at its expense within 24 hours notice by CITY, or CITY may thereafter remove the item at CONCESSIONAIRE'S cost.
26. Advertisement and Marketing. Any advertising or marketing which reference the City of San Diego may not be distributed by the CONCESSIONAIRE without the advanced written approval of the CITY. If CONCESSIONAIRE uses the City of San Diego in any context to promote its business operations without prior written approval by CITY, CONCESSIONAIRE will be considered to be in default. No advertising or marketing materials of any kind may be posted or distributed on any City beach without the advanced written approval of the CITY.
27. Encumbrances. CONCESSIONAIRE shall keep the Sites free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with this Permit or CONCESSIONAIRE'S occupancy, use, development, or maintenance of the Sites. CONCESSIONAIRE shall protect, defend, indemnify, and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense, including without limitation all attorney fees and costs, relating to or charged against the Sites, including without limitation CONCESSIONAIRE'S failure or the failure of any contractor or subcontractor hired by CONCESSIONAIRE to pay any person or persons referred to in Section 3181 of the California Civil Code or other applicable sections thereof.
28. Defaults and Remedies.
- A. Default by CONCESSIONAIRE. In the event that:
- i. CONCESSIONAIRE shall default in the performance or fulfillment of any covenant or condition required by this Permit to be performed or fulfilled by CONCESSIONAIRE and shall fail to cure the default within thirty (30) days following written notice from CITY; or if any default is not curable within thirty (30) days, and CONCESSIONAIRE shall fail to commence to cure the default(s) within said thirty (30) day period and diligently pursue cure to completion;
  - ii. CONCESSIONAIRE shall voluntarily file or have involuntarily filed against it any petition under bankruptcy or insolvency act or law; or
  - iii. CONCESSIONAIRE shall make a general assignment for the benefit of creditors;
- then CITY may, at its option, without further notice or demand upon CONCESSIONAIRE or upon any person claiming rights through CONCESSIONAIRE, immediately terminate this Permit and all rights of CONCESSIONAIRE and of all persons claiming rights through CONCESSIONAIRE to the Concession Sites or to possession thereof, and

CITY may then enter and take possession of the Sites and expel CONCESSIONAIRE and all persons so claiming rights thereto. Provided; however, in the event that any default described in Part (1)a. of this section is not curable within thirty (30) days after written notice to CONCESSIONAIRE, CITY shall not terminate this Permit pursuant to the default if CONCESSIONAIRE immediately commences to cure the default and diligently pursues cure to completion. In any event, either party may terminate this Permit without cause by giving ninety (90) days written notice of intent to terminate to the other party.

- B. Abandonment by CONCESSIONAIRE. Even though CONCESSIONAIRE has breached the Permit and abandoned the Concession Site(s), this Permit shall continue in full force and effect for so long as CITY does not terminate this Permit, and CITY may enforce all its rights and remedies under this Permit, including, but not limited to, the right to recover the concession fee as it becomes due, plus damages. For purposes of this section, the following do not constitute a termination of CONCESSIONAIRE's right to possession or operation:
- i. Acts by CITY of maintenance, preservation, or efforts to negotiate a new Permit.
  - ii. The appointment of a receiver upon initiative of CITY to protect CITY'S interest under this Permit.
29. Damages. Damages which CITY may recover in the event of default under this Permit include the worth, at the time of the award, of the amount by which the unpaid concession fee for the balance of the term after the date of award or for any shorter period of time specified in this Permit exceeds the amount of concession fee loss for the same period that the CONCESSIONAIRE proved could be reasonably avoided. The remedies provided by this section are not exclusive and shall be cumulative to all other rights and remedies possessed by CITY, and nothing contained herein shall be construed so as to defeat any other rights or remedies possessed by CITY, and nothing contained herein shall be construed so as to defeat any other rights or remedies to which CITY may be entitled.
30. Compliance with Laws. CONCESSIONAIRE shall, at its sole cost and expense, comply with all the requirements of all rules, regulations, ordinances, laws and direction of governing authorities now in effect or which may hereafter be in effect, which pertain to CONCESSIONAIRE'S occupancy, use, development, and maintenance of the Sites.
31. Taxes. CONCESSIONAIRE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon CONCESSIONAIRE by reason of the business or other CONCESSIONAIRE activities related to the Sites, including any licenses or permits. CONCESSIONAIRE acknowledges that this Permit may create a possessory interest subject to property taxation, and that CONCESSIONAIRE may be subject to the payment of taxes levied on that interest. CONCESSIONAIRE shall pay all such possessory interest taxes. CONCESSIONAIRE'S payment for taxes, fees, and assessments shall not reduce any payment due CITY under this Permit.

32. Hazardous Substances. CONCESSIONAIRE shall not allow the installation or release of hazardous substances in, on, under, or from the Sites. CONCESSIONAIRE and CONCESSIONAIRE'S agents and contractors shall not store, utilize, or sell any hazardous substance on the Sites without CITY'S prior written consent. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State of California's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated into this Permit.

- A. Remediation. If any release of a hazardous substance occurs, CONCESSIONAIRE shall pay all costs of remediation and removal of the hazardous substance in accordance with all applicable laws and rules and regulations of governmental authorities.
- B. Indemnity. CONCESSIONAIRE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from CONCESSIONAIRE'S occupancy, use, development, or maintenance of the Sites, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.
- C. Notice of Release. If CONCESSIONAIRE knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the Sites, CONCESSIONAIRE shall give written notice to CITY within three (3) days of receipt of the knowledge or cause for belief. If CONCESSIONAIRE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, CONCESSIONAIRE shall notify CITY immediately upon receipt of such knowledge or belief and shall take all actions necessary to alleviate the danger. CONCESSIONAIRE shall notify CITY immediately of any notice of violation received or initiation of environmental actions or private suits related to the Sites.
- D. Environmental Assessment. At CITY'S option upon expiration or termination of this Permit, an environmental assessment of the Sites shall be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at CONCESSIONAIRE'S sole cost and expense, and shall establish what, if any, hazardous substances exist on, in, or under the Sites, and in what quantities. If any hazardous substances exist in quantities greater than that allowed by CITY, county, state, or federal laws, statutes, ordinances, or regulations, then the environmental assessment shall include a discussion of these substances with

recommendations for remediation and removal necessary to effect compliance with those laws or statutes, and estimates of the cost of such remediation or removal. CONCESSIONAIRE shall cause the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved, and CONCESSIONAIRE shall pay all costs and expenses therefor.

33. Waiver. CITY'S failure to insist upon the strict performance of any of CONCESSIONAIRE'S obligations under this Permit, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. The property constituting the Sites is CITY-owned and held in trust for the benefit of CITY'S citizens. CITY'S failure to discover a breach of any obligation of this Permit or take prompt action to require the cure of any such breach shall not result in an equitable estoppel, but CITY may at any and all times require the cure of any such breach.
34. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.
35. Partial Invalidity. If any term, covenant, condition, or provision of this Permit is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
36. Number and Gender. Words of any gender used in this Permit shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
37. Captions. Section headings and captions shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this Permit. The numbers of the paragraphs and pages of this Permit may not be consecutive. Such lack of consecutive numbers shall have no effect on the enforceability of this Permit.
38. Entire Permit. This Permit constitutes the entire Permit between the parties and supersedes any and all prior understandings, representations, warranties and Permits between them and pertaining to this Permit and CONCESSIONAIRE'S occupancy, use, development, and maintenance of the Sites. Any modification, alteration, or amendment of this Permit shall be in writing and signed by all the parties hereto.
39. Legal Proceedings. If either party commences legal proceedings to enforce or interpret any right or obligation under this Permit, the prevailing party shall be entitled to an award of costs related thereto, including without limitation reasonable attorney fees and court costs.

40. Notices. Any notice required or permitted to be given under this Permit shall be in writing and may be served personally or delivered by United States mail, postage prepaid, and addressed to CITY or CONCESSIONAIRE, respectively, as follows:

THE CITY OF SAN DIEGO  
Real Estate Assets Department  
Attention: Director, Real Estate Assets Department  
1200 Third Avenue, Suite 1700 (MS 51A)  
San Diego, California 92101

PACIFIC SURF SCHOOL  
Emiliano Abate, Owner  
721 Ormond Ct.  
San Diego, CA 92109

41. Governmental Approvals. By entering into this Permit, neither CITY nor CITY'S City Council is obligating itself to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to CONCESSIONAIRE'S occupancy, use, development, or maintenance of the Sites. Discretionary action includes but is not limited to re-zonings, variances, environmental clearances, or any other governmental approvals which may be required for CONCESSIONAIRE'S occupancy, use, development, or maintenance of the Sites.
42. San Diego's Strong Mayor Form of Governance. All references to "City Manager" in this Permit shall be deemed to refer to "the Mayor or his/her designee." This section shall remain in effect for the duration CITY operates under the mayor-council (commonly referred to as "strong mayor") form of governance pursuant to Article XV of the San Diego City Charter.

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]*

43. Authority to Contract. Each individual executing this Permit on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Permit on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing Permit, and that this Permit is binding upon such person or entity in accordance with its terms. Each person executing this Permit on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to CITY, that such authority is valid.

IN WITNESS WHEREOF, this Permit is executed to be effective as of the Effective Date.

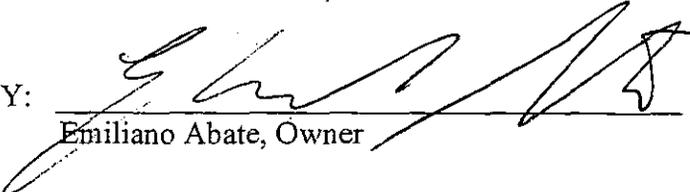
Date: \_\_\_\_\_

THE CITY OF SAN DIEGO, a California municipal corporation

BY: \_\_\_\_\_  
James Barwick, Director  
Real Estate Assets Department

Date: 04/05/08

PACIFIC SURF SCHOOL, CONCESSIONAIRE

BY:   
Emiliano Abate, Owner

*APPROVED AS TO FORM AND LEGALITY:*

Effective Date: \_\_\_\_\_

MICHAEL J. AGUIRRE, City Attorney

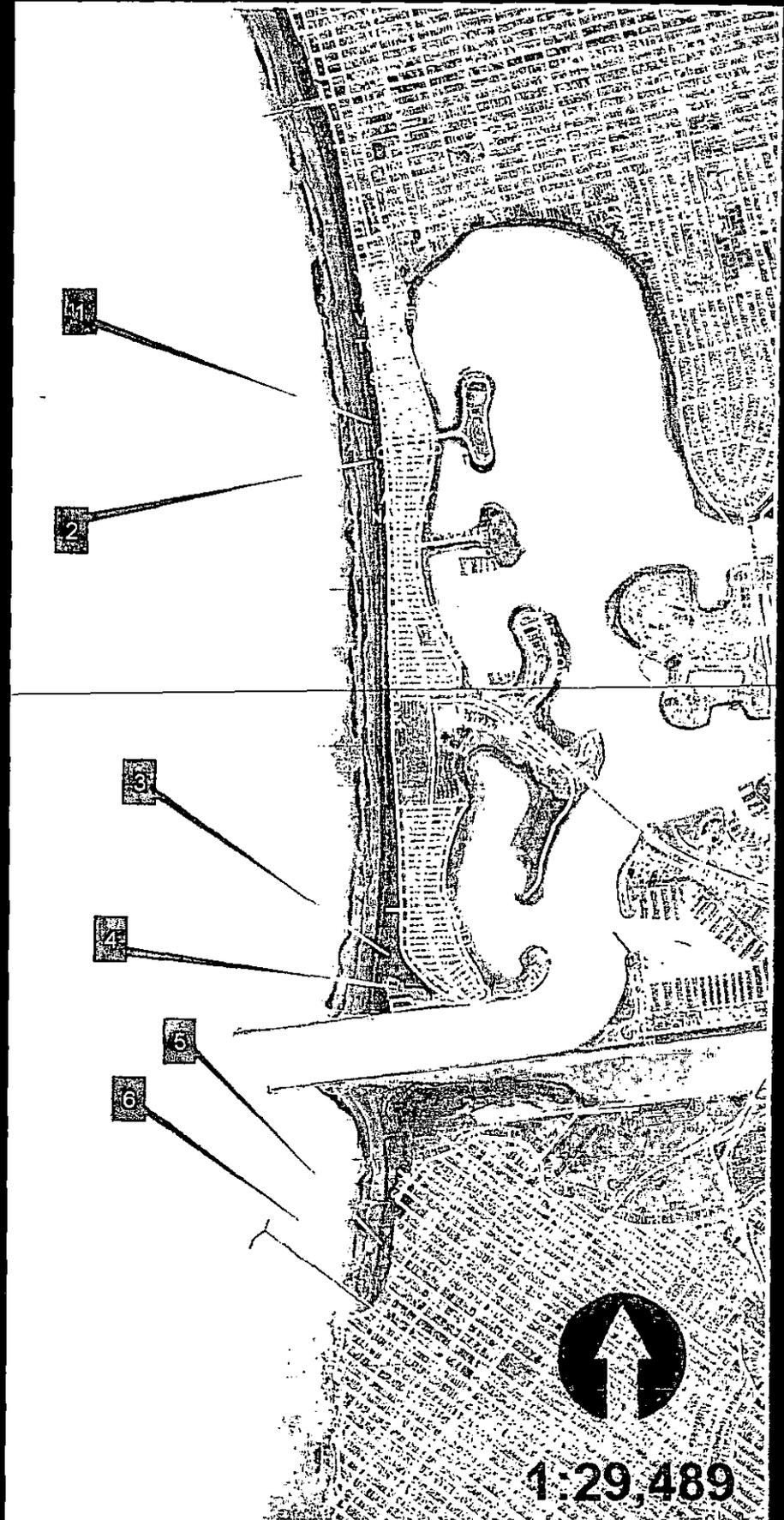
BY: \_\_\_\_\_  
\_\_\_\_\_, Deputy City Attorney

# EXHIBIT A

## Southern Area Sites (Mission and Ocean Beaches)

000749

- 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



Every reasonable effort has been made to assure the accuracy of this map. However, neither the SanGIS participants nor San Diego Data Processing Corporation assume any liability arising from its use.

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1:29,489

000750

# EXHIBIT B

## 3. DESCRIPTION OF PROPOSED OPERATIONS

JUNE 1, 2008 - SEPTEMBER 30, 2008

Pacific surf school business model has been honed and perfected over the past 10 years and since the first RFP and over the last 3 years has established a good solid business plan and foundation, with the opportunity to get a 5 year contract with the city it allows us to have passed the troubleshooting and uncertain phase OF THE RFP PROCESS and further invest in our business to grow even further over the next 5 years. (SEE EXHIBIT E)

- Firstly: The home office is located at 721 Ormond ct, at this location the business administrative and online aspect of the company is conducted.
- Second: The overnight surf camp base is located at 723 Ormond ct .At this location the Overnight surf camp accommodations are held during the summer where coed camps are held in the entire complex and participate in our day camps during the day.
- Third: The storefront located at 735 Santa Clara Place. This site is located in a convenient and busy section of Mission Beach just steps from Lifeguard tower 19

The site is strategically located for attracting potential clients and processing payments and telephone sales. Following the confirmation of the 5 year contract PSS is in accord with the former owner to overtake half of the site as the PSS surf store. It will be an extension of our operation and will be set up as our main sales and office department and storefront aimed at sales of surf lessons and rentals. Offering our customers a place to use public restrooms and changing rooms and safe storage for personal belongings.

- Fourth: The beach is where it all comes together for PSS, operating for the past 3 years at Ostend and formerly at Ormond ct for 7 years, one court south at Ostend ct, is where the community and our clientele refer to us as, "The colors of Mission beach," PSS Mounts there set up daily with two 10x10 white canopies and its colorful rash guards. Here PSS and its staff members have become our respected point of operations by our local community and is yearly greeted by return customers and tourists that recognize PSS for their dynamic and friendly attitudes and professionalism in the industry.

PACIFIC  
SURF SCHOOL

009751

**PACIFIC SURF SCHOOL**  
**MONTHLY OPERATING PLAN JULY 2008**

**PERIOD COVERED 7/1/2008-7/31/2008**

Program	Offered	Days	Beach Hours	Cost	Sessions/day	Students/Sessions	Total Students	Total Revenue
Private lesson Surfergirls	Daily	7	9:00-3:00	85	3	1	10	\$ 850
Private Lessons PS	Daily	7	9:00-3:00	75	4	1	45	\$ 3,375
Private w/voucher	Daily	7	9:00-3:00	65	4	1	14	\$ 910
Semi Private closed	Daily	7	9:00-3:00	70	3	2	15	\$ 1,050
Semi-Private Lessons	Daily	7	9:00-3:00	55	4	3	131	\$ 7,205
Group Lessons	Daily	7	9:00-3:00	50	4	5	135	\$ 6,750
Morning camp	M-F	5	9:00-1:00	300	1	1	8	\$ 2,400
Afternoon camp	M-F	5	1:00-4:00	225	1	1	2	\$ 450
All day camp	M-F	5	9:00-3:00	500	1	1	6	\$ 3,000
One day camp	M-F	5	9:00-1:00	100	1	1	23	\$ 2,300
Two day camp	M-F	5	9:00-1:00	150	1	1	8	\$ 1,200
One day Clinics	Daily	7	9:00-3:00	70	1	1	8	\$ 560
Two day clinic	Daily	7	9:00-1:00	140	1	1	5	\$ 700
Three day camp	Daily	7	9:00-1:00	225	1	1	10	\$ 2,250
<b>TOTALS</b>					<b>27</b>		<b>410</b>	<b>\$ 33,000</b>

EXHIBIT B

000752

PACIFIC SURF SCHOOL								
MONTHLY OPERATING PLAN SEPTEMBER 2008								
PERIOD COVERED 9/1/2008-9/30/2008								
Program	Offered	#Days	Beach Hours	Cost	#Sessions	#Students	Total#Students	Total Revenue
Private lesson Surfergirls	Daily	7	9:00-3:00	85	3	1	20	\$ 1,700
Private Lessons PS	Daily	7	9:00-3:00	75	4	1	24	\$ 1,800
Private w/voucher	Daily	7	9:00-3:00	65	4	1	20	\$ 1,300
Semi Private closed	Daily	7	9:00-3:00	70	3	2	2	\$ 140
Semi-Private Lessons	Daily	7	9:00-3:00	55	4	3	92	\$ 5,060
Group Lessons	Daily	7	9:00-3:00	50	4	5	58	\$ 2,900
Morning camp	M-F	5	9:00-1:00	300	1	1		\$ -
Afternoon camp	M-F	5	1:00-4:00	225	1	1		\$ -
All day camp	M-F	5	9:00-3:00	500	1	1		\$ -
One day camp	M-F	5	9:00-1:00	100	1	1		\$ -
Two day camp	M-F	5	9:00-1:00	150	1	1		\$ -
One day Clinics	Daily	7	9:00-3:00	70	1	1	12	\$ 840
Two day clinic	Daily	7	9:00-1:00	140	1	1	9	\$ 1,260
Three day camp	Daily	7	9:00-1:00	225	1	1		\$ -
<b>TOTALS</b>					<b>27</b>		<b>217</b>	<b>\$ 15,000</b>

EXHIBIT 1

**EXHIBIT C**  
**Surf Concession Requirements**

*The following requirements are subject to revision at any time by the CITY:*

1. **Maximum number of participants/boards on the beach and in the water**  
A maximum of 50 students per Site may be on the beach at any one time. Of those fifty students, a maximum of twenty-five students per group may be in the water at any one time.
2. **Identifying Markers**  
Instructors must wear red rashguards with CONCESSIONAIRE's name. Students must wear a color specific rashguard with CONCESSIONAIRE's name. Both student and instructor rashguards are to be worn at all times while in the water. The CITY-issued sign with the CONCESSIONAIRE's name must be clearly posted at each Site, whenever classes are in progress.
3. **Student to instructor ratios.**  
For every five students on the beach or in the water, one instructor must be present. Anytime students are in the water at least one American Red Cross certified instructor must be present and supervising the class.
4. **Beach Access**  
CONCESSIONAIRE shall not exclude the public from any Site. Beach access must be kept clear at all times. Surfboards must be kept in a position that does not obstruct beach access.
5. **Concession Site/Location**  
Surf CONCESSIONAIREs must operate from their assigned Site on the beach sand only. CONCESSIONAIREs may meet and escort participants from the parks facilities, parking lots and/or nearest street but may not set up any concession operations in the park.
6. **Equipment**  
All CONCESSIONAIREs that provide equipment to students must provide a soft foam surfboard with a leash; hardboards must have nose guard and tail guard protection.
7. **CPR and First Aid**  
All surf instructors must take and pass "American Red Cross Lifeguard Training and CPR for the Professional Rescuer. This is a 28.5 hour course that provides training in 'surveillance skills to help you recognize and prevent injuries, rescue skills – in the water and on land, first aid training and professional rescuer CPR...' Additionally, an American Red Cross first aid kit, approved by a City of San Diego Lifeguard, must be onsite at all times. Prior to the initial class, the operator must arrange with the lifeguard for an initial equipment and first aid safety inspection."

8. **Waivers**

The CONCESSIONAIRE must have on file a signed waiver from each participant, or their legal guardian if under 18 years of age, which holds the CITY, its agents, officers and employees harmless and indemnifies the same from any claims relating to the participants' activities on the CITY beach which arise from or are in any manner connected with the services provided to the participants under this Agreement.

9. **Minimum Age Requirements**

The minimum age for an instructor is eighteen (18) years of age.

10. **EMERGENCY RESPONSE PLAN FOR SURF CONCESSIONS**

The following plan is the **minimum** level of response and readiness for Surf Concessions during emergency situations. CONCESSIONAIREs are required to read the plan and cover all aspects of the plan with each employee working on the beach under this Concession Agreement.

**Ocean Conditions**

Ensure that the ocean conditions are safe to conduct class based on the skill levels of the instructor and the students.

**General Rescue Procedures for Water Emergencies**

1. Survey the scene.
2. The rescuer should consider his/her level of rescue skill prior to attempting a rescue.
3. Ensure proper use of rescue equipment.
4. Safely approach and determine if the victim is distressed.
5. Perform and rescue based on American Red Cross training.
6. Move the victim to safety.
7. Remove the victim from the water.
8. Perform a primary survey.
9. If an emergency exists, ensure that someone activates 911 and requests San Diego Lifeguard assistance.
10. Provide first aid until emergency medical services (EMS) arrive.
11. If other instructors and students are in the water, they should be directed to the beach until the emergency is clear. Other instructors should provide assistance as needed.

**General Rescue Procedures for Land Emergencies**

Survey the scene.

Approach victim when it is safe for the rescuer.

Perform a primary survey.

If an emergency exists requiring EMS, activate the 911 system and ensure paramedics and San Diego Lifeguard are responding.

Provide emergency care until EMS arrives.

**Cellular Communications**

All surf concessions shall keep a fully charged and functioning cellular phone on the beach in a location where it can be immediately accessed in case of emergency.

**Emergency Signals**

Pre-designated signals will be used to communicate with instructors and other surf-camp personnel in the event emergency assistance is needed. **WHISTLES** will be immediately available to all instructors and surf camp personnel. One hand or any piece of equipment being waved overhead from side to side, or three short whistle blasts will indicate that an emergency exists and immediate assistance is needed. One hand placed on the top of the head will indicate that everything is all clear. Instructors and other surf camp personnel will be diligent to look for any signs and signals of distress when they are at the beach.

Any emergency signal observed by an instructor or any surf camp personnel will cause the immediate activation of the emergency response plan.

**Accidents, Injuries and Incident Slips**

In addition to the requirements under 16.G. of this Agreement, CONCESSIONAIRE shall notify the lifeguard supervisor on duty, as soon as feasible, of any accident or injury occurring in the operation of the Concession, regardless of severity. All rescues and medical aids involving surf camp students, instructors or other personnel will be documented on company incident slips.

**CITY OF SAN DIEGO  
CONCESSION PERMIT**

THIS CITY OF SAN DIEGO CONCESSION PERMIT ("Permit") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and PASKOWITZ SURF CAMP ("CONCESSIONAIRE"), to be effective upon execution by the parties and approval by the San Diego City Attorney (the "Effective Date"), as follows:

1. Incorporated Documents. This Permit is created pursuant to the Surf School/Camp REQUEST FOR PROPOSAL ("RFP") issued by the Real Estate Assets Department (December 11, 2007), CONCESSIONAIRE'S proposal in response to the RFP, dated January 29, 2008. The Operating Plan, submitted by CONCESSIONAIRE as part of its proposal, is attached hereto as Exhibit B and incorporated herein. Also attached and incorporated herein are the following documents: Exhibit A, Site Map; and Exhibit C, Surf Concession Requirements.
2. Right to Enter. Subject to the terms and conditions of this Permit, CITY hereby grants permission to CONCESSIONAIRE, its employees, agents and contractors to operate surf instruction concessions ("Concessions") within CITY beach sites ("Sites") designated by the City of San Diego ("CITY"). The locations of the Sites included under this Permit are referenced below and more specifically, designated on the attached Exhibit A. However, any of the Sites named below are subject to change at CITY'S discretion.

Area/Beach	Site
Pacific Beach - Central Area Site 1	Wilbur Street

Any of the above Sites may be deleted at any time by CITY upon thirty (30) days written notice to CONCESSIONAIRE. If an alternate site is not available, a proportionate amount of the minimum fixed concession fee (as specified in Section 10.B.) shall be waived for the deleted Site.

3. Use of Sites. This Permit is granted to CONCESSIONAIRE for the sole purpose of allowing CONCESSIONAIRE to operate surf instruction concessions serving the general public under the terms and conditions of this Permit. No solicitation or marketing is permitted on City beaches. Renting or selling of beach equipment or other merchandise is not allowed under this Permit.
4. Maximum Days and Hours of Operation. Maximum hours of land-based operations are 8:30 a.m. - 5:00 p.m. Water instruction is permitted from 9:00 a.m. to 4:00 p.m. All Concessions must be vacated by 5:00 p.m. daily. The CITY reserves the right to change the days and/or hours of operation at its discretion. Operations are permitted seven days a week with the following exceptions:

- A. Under no circumstances are operations permitted on the 4<sup>th</sup> of July holiday.
- B. Special Events. Unless otherwise authorized by the CITY Manager, CONCESSIONAIRE shall have no rights within certain areas of its Concession Sites or designated portions thereof during days in which special events are scheduled by CITY in these areas. CITY shall give CONCESSIONAIRE advance written notice of any such special events.
5. Competent Management. Throughout the term of this Permit, CONCESSIONAIRE shall provide competent management of the Sites for the permitted uses to the satisfaction of the City Manager. CONCESSIONAIRE covenants to operate the Concession for the above-specified purposes and diligently conduct the operations to produce a reasonable and substantial gross income.
6. Term. The term of this Permit ("Term") shall be shall be 64 months commencing on June 1, 2008, and expiring on September 30, 2013. This Permit may be terminated at any time by either party upon ninety (90) days prior written notice to the other party.
7. Holding Over. Any use of the Concession Sites by CONCESSIONAIRE after the expiration of this Permit is not permitted. Any extension of the term of the Permit beyond 64 months shall require approval of CITY Council.
8. Revocable License. This Permit is not a lease. It is a license to use CITY-owned property, and may be revoked by CITY, in its sole discretion. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by CONCESSIONAIRE as a result of such termination of this Permit. CONCESSIONAIRE expressly waives any claim for expense or loss which CONCESSIONAIRE might incur as a result of CITY'S termination of this Permit.
9. Special Provisions
- A. Operating Plan. The Operating Plan(s) for June 2008 through May 2009 submitted with the CONCESSIONAIRE's response to the CITY'S Request for Proposal, shall be revised by CONCESSIONAIRE, if required by CITY to meet CITY'S approval, and the final CITY approved Plan(s) shall be incorporated into this Permit as Exhibit B. Beginning June 1, 2009, and for every 12 months thereafter, the CONCESSIONAIRE shall provide the CITY with an Operating Plan for the coming quarter for the CITY'S approval. All Operating Plans submitted to the CITY should be consistent with the format and content of the Plans included as Exhibit B. CITY shall have the right to approve or disapprove the proposed plan. Once approved, CONCESSIONAIRE shall not make any changes to the Plan without prior written approval of CITY. At all times, the CONCESSIONAIRE shall ensure that all operations permitted under this Permit comply with the Surf Instruction Requirements incorporated herein as Exhibit C.
- B. Exclusiveness of Permit and Unauthorized Vending. In addition to special events described in Section 4.B., CITY may, during the term of this Permit, enter into

Permits with other CONCESSIONAIREs to provide surf instructions during times not scheduled for operations in the approved Operating Plan(s) at the Sites permitted in this Permit. However, CITY, by granting this Permit to CONCESSIONAIRE, makes no warranty that the Sites shall be free of unauthorized vending or that any specific level of police or lifeguard enforcement against such activities shall be maintained.

- C. Concession Sites. On each Site included in this Permit, CONCESSIONAIRE shall erect no improvements except one shade structure no greater than twenty (20) feet by twenty (20) feet or, no more than two shade structures no greater than ten (10) feet by ten (10) feet in size, or as shall, in the opinion of the CITY be needed to adequately serve the public. CITY reserves the right to request that the CONCESSIONAIRE modify the dimensions of the structure. The Sites must be designed and maintained so as to present a neat and attractive appearance to the satisfaction of the CITY. Any items or improvements brought on the Sites by the CONCESSIONAIRE must be approved by CITY and shall not remain on location after permitted hours of operation, unless prior approval of CITY is obtained. If in the opinion of CITY, the number of Sites within any Concession covered under this Permit at any time falls short of or exceeds the number of Sites needed to adequately serve the public, CONCESSIONAIRE shall, without liability to the CITY, upon receipt of notice from CITY, adjust the number of Sites to the number specified by CITY as adequate to serve the public. Until such time as CITY requires CONCESSIONAIRE, or agrees to a request from CONCESSIONAIRE, to increase or decrease the number of Sites CONCESSIONAIRE shall operate no more and no fewer than the Sites designated in this Permit. At each Site, CONCESSIONAIRE shall occupy no more than two and no less than one area of the dimensions specified herein.
- D. Improvements. Upon expiration or termination of this Permit, any and all improvements, trade fixtures, structures, and installations or additions to the Sites now existing or constructed on the Sites by CONCESSIONAIRE shall be deemed to be part of the Sites and shall become CITY'S property free of all liens and claims. All personal property remaining on the Sites after expiration or termination shall also become the property of CITY.
- E. Maintenance of Sites. CONCESSIONAIRE agrees not to commit or allow to be committed any waste or injury or any public or private nuisance, to keep the Sites clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in or about said spaces to the satisfaction of CITY and at CONCESSIONAIRE's sole cost. All Sites must be cleaned up nightly by CONCESSIONAIRE or more often, as required.
- F. Standard of Employees. CONCESSIONAIRE and its employees shall at all times conduct themselves and the operations of the Concession in a creditable manner. CONCESSIONAIRE shall thoroughly train its employees in their duties and shall regularly monitor them to ensure that they behave in a courteous manner, do not disturb the quiet enjoyment of other beach users, and otherwise comply with all of the Surf Instruction Requirements in Exhibit C of this Permit.

10. Fees.

- A. Percentage Fees. Percentage fees will be calculated on a calendar month basis and will consist of ten percent (10.00%) of the gross income resulting from the operations permitted under this Permit. The City Manager, in his sole discretion, may approve another percentage rate or minimum rate for each other incidental service or operation supplementary to the permitted uses stated in Section 3, Use of Sites, as may be approved in writing by the City Manager prior to the commencement of any additional service or operation. Provided however, any activity conducted on the Sites without the prior written approval of the City Manager shall be subject to the requirements of Section 10.E., Unauthorized Use Charge.
- B. Minimum Fees. The annual Minimum Fee established for the first year following the effective date of this Permit is fifteen-thousand dollars (\$15,000) which is twelve-hundred and fifty dollars (\$1,250) on a monthly installment basis.
- C. If the Minimum Fee is greater than the percentage fee on a calendar month basis, one-twelfth (1/12) of the Minimum Fee is required to be paid for that month. Minimum Fees are to be paid in monthly installments on or before the day of the calendar month when percentage fees are due pursuant to Section 10.I., Time and Place of Payment. In the event that the combined total percentage fee payments and monthly installments of the Minimum Fee during any Permit year equal or exceed the required Minimum Fee for that year, for the balance of that year, CONCESSIONAIRE shall discontinue paying monthly installments of the Minimum Fee until the beginning of the next Permit Year. If in any Permit Year, Minimum Fees paid plus Percentage Fees paid exceed the annual Minimum Fee and also exceed the fee which would have been paid if the Percentage Fee had been paid on total gross income, the excess over the total fee owed shall be credited against the next payable fee as it becomes due. It is the intent of this provision that CONCESSIONAIRE shall pay monthly installments of the annual Minimum Fee as a guarantee against the Percentage Fee requirement and that the greater of the two requirements, minimum or percentage, whichever occurs throughout the term, shall prevail on an annual basis.

Minimum Fee Adjustment. Effective at the beginning of the first day of the 13<sup>th</sup>, 25<sup>th</sup>, 37<sup>th</sup>, 49<sup>th</sup>, and 61<sup>st</sup> month of this Permit, the annual Minimum Fee shall be eighty percent (80.00%) of the annual average of actual rents paid in the Initial Term plus any option terms exercised under this Permit. The annual average shall then be divided by twelve (12) to establish the new monthly Minimum Fee. It is recognized that the adjustments shall be calculated by the CITY upon completion of payments due for the preceding year in order to determine the amount of the Minimum Fee for the option period. Until such calculations are completed, CONCESSIONAIRE shall continue paying monthly Minimum Fees at the prior rate. Any additional fees determined by the adjustment to be due for the months previously paid at the prior rate shall be paid to the CITY within thirty (30) days following written notice. In no event shall the Minimum Fee Adjustment result in a decrease in the Minimum Fee requirement in effect immediately prior to the adjustment date.

- D. Annual Percentage Adjustment to Minimum Fee. If CONCESSIONAIRE has not paid percentage fees during the previous 12 month period, then the Minimum Fee shall increase to one-hundred five (105.00%) of the previous year's Minimum Fee.
- E. Delinquent Concession Fee. If CONCESSIONAIRE fails to pay any concession fees when due, CONCESSIONAIRE will pay, in addition to the unpaid concession fees, a fee of \$25.00. If the fees are still unpaid at the end of the fifteen (15) days, CONCESSIONAIRE shall pay a fee of \$50.00, which is mutually agreed by the parties to this Permit to be appropriate to compensate the CITY for loss resulting from concession fee delinquency, including lost interest opportunities, legal costs, and the cost of servicing the delinquent account.
- F. Unauthorized Use Charge. CONCESSIONAIRE shall pay CITY fifty percent (50.00%) of the gross receipts for any service or use that is not permitted by this Permit. This payment is subject to the due date provided in this Permit for minimum guaranteed fees payments and the provision for delinquent concession fees payments and the provision for delinquent concession fees. The existence of the fifty percent (50.00%) charge in this clause and the payment of this charge or any part of it, do not constitute an authorization for a particular service or use, and does not waive any CITY rights to terminate a service or use or to default CONCESSIONAIRE for participating in or allowing any unauthorized use.
- G. Gross Income. "Gross income" or "gross receipts", as used in this Permit shall include all income resulting from the Concession from whatever source derived whether received or to become due. Provided; however, gross income shall not include federal, state, or municipal taxes collected from the consumer (regardless of whether the amount is stated to the consumer as a separate charge) and paid over periodically by CONCESSIONAIRE to a governmental agency accompanied by a tax return or statement as required by law. Possessory interest taxes or other property taxes shall not be deducted by CONCESSIONAIRE in computing gross income. Gross income shall not include refund of deposits. The amount of taxes and refunds shall be clearly shown on the books and records of CONCESSIONAIRE. The percentage concession fees shall be calculated and paid by CONCESSIONAIRE on the basis of gross income whether the income is received by CONCESSIONAIRE or by any permittee or licensee, or their agents, and all gross income received by any permittee, licensee, or other party as a result of occupancy or operation of the Site(s) shall be regarded as gross income of CONCESSIONAIRE for the purpose of calculating the percentage concession fees required to be paid by CONCESSIONAIRE to CITY, except as may be otherwise specified by or pursuant to this Permit.
- H. Inspection Of Records.
- i. Records. CONCESSIONAIRE shall, at all times during the Permit term, keep or cause to be kept true and complete books, records, and accounts of all financial transactions in the operation of all business activities conducted upon and financial transactions resulting from the use of the Site(s). The records shall be supported by source documents such as sales slips, daily

cash register tapes, purchase invoices, class lists, or other documents as necessary to allow CITY to easily determine the gross income. Any retail sales or charges will be recorded by means of cash registers or other comparable devices which display to the customer the amount of the transaction and automatically issue a receipt. The registers will be equipped with devices that lock in sales totals and other transaction numbers and sales details that are not resettable. Totals registered shall be read and recorded at the beginning and end of each business day. In the event of admission charges or concession rents, CONCESSIONAIRE shall issue serially numbered tickets for such admission or concession fees and shall keep an adequate record of such tickets, as well as a record of unissued tickets. All retail sales and charges may be recorded by a system other than cash registers of other comparable devices provided such a system is approved by the CITY.

- ii. Financial Statements. Within sixty (60) days after the end of the Initial Term and any subsequent option terms, CONCESSIONAIRE will, at its expense, submit to CITY a statement in which the total gross receipts and the corresponding amounts of concession percentage fees paid CITY for the year are classified according to the categories of business established for any percentage concession fees and for any other business conducted on or from the Site(s). The statement shall be signed by CONCESSIONAIRE and Financial Representative of CONCESSIONAIRE attesting to the accuracy thereof, which shall be legally binding upon CONCESSIONAIRE.
- iii. Right to Inspect. All CONCESSIONAIRE's books of account, records, and supporting documentation, as described under Section 10.G.(i), will be kept for at least five (5) years and made available to CITY in one location within the City of San Diego. These books and records must be maintained separately from all other accounts not relating to the Site(s). The CITY, at its discretion, shall have the right to inspect and audit the business of CONCESSIONAIRE, its agents, permittees, and licensees operating on, and in connection with, the Site(s) as necessary and appropriate for CITY to determine the amounts of concession fees due CITY in compliance with the requirements of this Permit. At CITY'S request, CONCESSIONAIRE shall promptly provide, at CONCESSIONAIRE's expense, any necessary data to enable CITY to fully comply will all requirements of the state and federal government for Permit information or reports concerning the Concessions. Such data will include, if required, a detailed breakdown of CONCESSIONAIRE's receipts and expenses.
- 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):

The audit(s) reveal an underpayment of more than five percent (5.00%) or more than \$10,000.00, which ever is less, between the concession fees due as reported and paid by CONCESSIONAIRE,

pursuant to this Permit and concession fees determined by the audit(s).

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

Any underpayment of concession fees less than five percent (5.00%) revealed by the audit may be paid within thirty (30) days written notice from the CITY without penalty, otherwise, CONCESSIONAIRE shall incur interest charges on the delinquent amount as defined in Section 10.D., DELINQUENT CONCESSION FEES. CITY will credit any overpayment against incoming concession fees. Any overpayment determined after the end of this Permit will be refunded by CITY within thirty (30) days of confirmation by the City Manager of the audit(s) findings.

- I. Default. CONCESSIONAIRE's failure to keep complete and accurate records by means of double-entry bookkeeping and make them available for CITY inspection is, like all other failures to comply with covenants of this Permit, a breach of this Permit and cause for termination.
- J. Time and Place of Payment. Payments are due on or before the last day of the calendar month following the calendar month in which the Gross Income subject to percentage fees was earned. Checks shall be made payable to the City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P.O. Box 122289, San Diego, California 92112-4165, or delivered to the Office of the City Treasurer, Civic Center Plaza, 1200 Third Avenue, First Floor, San Diego, California. The place and time of payment may be changed by CITY upon thirty (30) days prior written notice to CONCESSIONAIRE. Mailed payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed paid upon actual receipt by the City Treasurer. CONCESSIONAIRE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.
- K. Security Deposit. The CONCESSIONAIRE shall deliver to CITY with the executed copies of this Permit, a good faith deposit in the amount of two thousand five hundred dollars (\$2,500.00). All or any portion of the principal sum shall be available unconditionally to CITY for payment of delinquent concession fees, for correcting any default or breach of this Permit by CONCESSIONAIRE, CONCESSIONAIRE's successors or assignees, or for payment of expenses incurred by CITY as a result of CONCESSIONAIRE's failure to faithfully perform all terms, covenants, and conditions of this Permit. If at the end of the term of this Permit, CONCESSIONAIRE has performed all of the provisions of the Permit, the deposit or any remaining balance shall be returned to the CONCESSIONAIRE without interest. The security deposit may be increased by CITY proportionate to any increase in Minimum Fees. CONCESSIONAIRE shall maintain the security deposit throughout the Term. **Notwithstanding any other provision of this Permit, if**

**CONCESSIONAIRE fails or refuses to deposit or maintain a security deposit as required by this Permit, CITY may terminate this Permit immediately upon such breach. Upon such termination, CONCESSIONAIRE shall immediately cease its use of the Sites and commence and diligently pursue the removal of its property from the Sites.**

- i. Utilization. If CITY utilizes all or any portion of the security deposit, upon 10 days prior written notice, CONCESSIONAIRE shall reimburse the security deposit to the full required amount.
  - ii. Increase. Upon thirty (30) days prior written notice by CITY, CONCESSIONAIRE shall deliver to CITY additional funds as CITY may, in its sole determination, require to adequately secure CONCESSIONAIRE'S obligations under this Permit.
  - iii. Return. Provided CONCESSIONAIRE is not in breach or default of this Permit, CITY shall return the security deposit, or any balance thereof, to CONCESSIONAIRE within sixty (60) days after the expiration or termination of this Permit.
11. CITY'S Consent, Discretion. Whenever required under this Permit, CITY'S consent or approval shall mean the written consent or approval of the City Manager, unless otherwise expressly provided. CITY'S discretionary acts hereunder shall be made in the City Manager's sole and absolute discretion, unless otherwise expressly provided.
12. Acceptance of Sites. CONCESSIONAIRE represents and warrants that it has independently inspected the Sites and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Sites. CONCESSIONAIRE agrees it is relying solely on its independent inspection, tests, investigations, and observations in entering into this Permit. CONCESSIONAIRE further acknowledges that the Sites are in the condition called for by this Permit, that CITY has performed all work, if any, related to the Sites and required by this Permit, and that CONCESSIONAIRE shall hold CITY harmless for any defects, whether apparent or latent, in the Sites, including without limitation the presence of any hazardous substances.
13. Maintenance of the Sites. CONCESSIONAIRE shall, at CONCESSIONAIRE'S sole cost and expense and to CITY'S satisfaction, maintain the Sites in a decent, safe, healthy and sanitary condition at all times during the Term.
14. Standard of Conduct. CONCESSIONAIRE and its employees shall at all times conduct themselves and the operations on the Sites in a creditable manner.
15. Inspection. CITY may, at all times upon prior notice, enter and inspect the Sites.

16. Insurance. On or before the Effective Date, CONCESSIONAIRE shall deliver to CITY a current certificate of insurance for: (1) Commercial General Liability insurance providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least One Million Dollars (\$1,000,000) per occurrence, subject to an annual aggregate of Two Million Dollars (\$2,000,000).
- A. Additional Insureds. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in all policies.
  - B. Primary & Non-Contributory. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by CITY. The policies shall be kept in force for the duration of the Term and any extended use. The certificate(s) of insurance shall be filed with CITY'S Real Estate Assets Department upon execution of this Permit.
  - C. Qualified Insurer(s). All insurance required by the terms of this Permit must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to CITY. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements.
  - D. Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of CONCESSIONAIRE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
  - E. Continuity of Coverage. All policies shall be in effect on or before the first day of the Term of this Permit, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the Sites, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. At least thirty (30) days prior to the expiration of each insurance policy, CONCESSIONAIRE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Permit.
  - F. Modification. To assure protection from and against the kind and extent of risk existing on the Sites, CITY, at its discretion, may require the revision of amounts and coverages at any time during the Term by giving CONCESSIONAIRE thirty (30) days prior written notice. CONCESSIONAIRE shall also obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this Permit.
  - G. Accident Reports. CONCESSIONAIRE shall report to CITY any accident causing more than Five Thousand Dollars (\$5,000) worth of property damage or any serious injury to persons on the Sites. Such report shall be delivered to CITY within five (5) days of such accident and shall contain the names and addresses of

the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.

- H. Failure to Comply. If CONCESSIONAIRE fails or refuses to obtain and maintain the required insurance, or fails to provide proof of coverage, CITY may obtain the insurance. CONCESSIONAIRE shall reimburse CITY for the premiums paid, with interest at the maximum allowable legal rate then in effect in California. CITY shall notify CONCESSIONAIRE of such payment of premiums within thirty (30) days of payment stating the amount paid, the name(s) of the insurer(s), and rate of interest. CONCESSIONAIRE shall pay such reimbursement and interest on the first (1st) day of the month following CITY'S notice.

**Notwithstanding any other provision of this Permit, if CONCESSIONAIRE fails or refuses to obtain or maintain insurance as required by this Permit, or fails to provide proof of insurance, CITY may terminate this Permit immediately upon such breach. Upon such termination, CONCESSIONAIRE shall immediately cease its use of the Sites and commence and diligently pursue the removal of its property from the Sites.**

17. Indemnification. CONCESSIONAIRE shall protect, defend, indemnify, and hold CITY, its elected officials, officers, representatives, agents and employees, harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to CONCESSIONAIRE'S officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with this Permit or CONCESSIONAIRE'S occupancy, use, development, or maintenance of the Sites, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that CONCESSIONAIRE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of CITY, its elected officials, officers, representatives, agents and employees. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, CONCESSIONAIRE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.
18. No Discrimination. CONCESSIONAIRE shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in CONCESSIONAIRE'S use of the Sites, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
19. Local Business and Employment. CONCESSIONAIRE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. CONCESSIONAIRE will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work

associated with this Permit from local residents and firms as opportunities occur. CONCESSIONAIRE agrees to hire qualified local residents and firms whenever feasible.

20. Drug-free Workplace. CONCESSIONAIRE shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:
- A. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of controlled substances are prohibited on the Sites and specifying the actions that will be taken against employees for violations of the prohibition; and
  - B. Establish a drug-free awareness program to inform employees about all of the following:
    - i. The dangers of drug abuse in the workplace;
    - ii. CONCESSIONAIRE'S policy of maintaining a drug-free workplace;
    - iii. Any available drug counseling, rehabilitation, and employees assistance programs; and
    - iv. Penalties that may be imposed upon employees for drug abuse violations.
21. Disabled Access Compliance. CONCESSIONAIRE shall comply with the California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities.
22. CONCESSIONAIRE'S Risk. CONCESSIONAIRE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with CONCESSIONAIRE'S occupancy, use, development and maintenance of the Sites and any damages to the improvements on, under, or in the vicinity of the Sites resulting directly or indirectly thereby.
23. No Nuisance. CONCESSIONAIRE shall not use the Sites in any manner which, in CITY'S opinion, creates a nuisance or disturbs the quiet enjoyment of persons in and to the surrounding area.
24. No Assignment. CONCESSIONAIRE shall not assign any rights granted by this Permit or any interest herein without CITY'S prior written consent. Approval of any such proposed assignment may be withheld in CITY'S sole and absolute discretion. Any assignment by operation of law shall automatically terminate this Permit.
25. Signs. CONCESSIONAIRE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising without CITY'S prior written consent. If any such unauthorized item is found on the Sites, CONCESSIONAIRE shall remove the item at its expense within 24 hours notice by CITY, or CITY may thereafter remove the item at CONCESSIONAIRE'S cost.

26. Advertisement and Marketing. Any advertising or marketing which reference the City of San Diego may not be distributed by the CONCESSIONAIRE without the advanced written approval of the CITY. If CONCESSIONAIRE uses the City of San Diego in any context to promote its business operations without prior written approval by CITY, CONCESSIONAIRE will be considered to be in default. No advertising or marketing materials of any kind may be posted or distributed on any City beach without the advanced written approval of the CITY.
27. Encumbrances. CONCESSIONAIRE shall keep the Sites free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with this Permit or CONCESSIONAIRE'S occupancy, use, development, or maintenance of the Sites. CONCESSIONAIRE shall protect, defend, indemnify, and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense, including without limitation all attorney fees and costs, relating to or charged against the Sites, including without limitation CONCESSIONAIRE'S failure or the failure of any contractor or subcontractor hired by CONCESSIONAIRE to pay any person or persons referred to in Section 3181 of the California Civil Code or other applicable sections thereof.
28. Defaults and Remedies.

A. Default by CONCESSIONAIRE. In the event that:

- i. CONCESSIONAIRE shall default in the performance or fulfillment of any covenant or condition required by this Permit to be performed or fulfilled by CONCESSIONAIRE and shall fail to cure the default within thirty (30) days following written notice from CITY; or if any default is not curable within thirty (30) days, and CONCESSIONAIRE shall fail to commence to cure the default(s) within said thirty (30) day period and diligently pursue cure to completion;
- ii. CONCESSIONAIRE shall voluntarily file or have involuntarily filed against it any petition under bankruptcy or insolvency act or law; or
- iii. CONCESSIONAIRE shall make a general assignment for the benefit of creditors;

then CITY may, at its option, without further notice or demand upon CONCESSIONAIRE or upon any person claiming rights through CONCESSIONAIRE, immediately terminate this Permit and all rights of CONCESSIONAIRE and of all persons claiming rights through CONCESSIONAIRE to the Concession Sites or to possession thereof, and CITY may then enter and take possession of the Sites and expel CONCESSIONAIRE and all persons so claiming rights thereto. Provided; however, in the event that any default described in Part (1)a. of this section is not curable within thirty (30) days after written notice to CONCESSIONAIRE, CITY shall not terminate this Permit pursuant to the default if CONCESSIONAIRE immediately commences to cure the

default and diligently pursues cure to completion. In any event, either party may terminate this Permit without cause by giving ninety (90) days written notice of intent to terminate to the other party.

- B. Abandonment by CONCESSIONAIRE. Even though CONCESSIONAIRE has breached the Permit and abandoned the Concession Site(s), this Permit shall continue in full force and effect for so long as CITY does not terminate this Permit, and CITY may enforce all its rights and remedies under this Permit, including, but not limited to, the right to recover the concession fee as it becomes due, plus damages. For purposes of this section, the following do not constitute a termination of CONCESSIONAIRE's right to possession or operation:
- i. Acts by CITY of maintenance, preservation, or efforts to negotiate a new Permit.
  - ii. The appointment of a receiver upon initiative of CITY to protect CITY'S interest under this Permit.
29. Damages. Damages which CITY may recover in the event of default under this Permit include the worth, at the time of the award, of the amount by which the unpaid concession fee for the balance of the term after the date of award or for any shorter period of time specified in this Permit exceeds the amount of concession fee loss for the same period that the CONCESSIONAIRE proved could be reasonably avoided. The remedies provided by this section are not exclusive and shall be cumulative to all other rights and remedies possessed by CITY, and nothing contained herein shall be construed so as to defeat any other rights or remedies possessed by CITY, and nothing contained herein shall be construed so as to defeat any other rights or remedies to which CITY may be entitled.
30. Compliance with Laws. CONCESSIONAIRE shall, at its sole cost and expense, comply with all the requirements of all rules, regulations, ordinances, laws and direction of governing authorities now in effect or which may hereafter be in effect, which pertain to CONCESSIONAIRE'S occupancy, use, development, and maintenance of the Sites.
31. Taxes. CONCESSIONAIRE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon CONCESSIONAIRE by reason of the business or other CONCESSIONAIRE activities related to the Sites, including any licenses or permits. CONCESSIONAIRE acknowledges that this Permit may create a possessory interest subject to property taxation, and that CONCESSIONAIRE may be subject to the payment of taxes levied on that interest. CONCESSIONAIRE shall pay all such possessory interest taxes. CONCESSIONAIRE'S payment for taxes, fees, and assessments shall not reduce any payment due CITY under this Permit.
32. Hazardous Substances. CONCESSIONAIRE shall not allow the installation or release of hazardous substances in, on, under, or from the Sites. CONCESSIONAIRE and CONCESSIONAIRE'S agents and contractors shall not store, utilize, or sell any hazardous substance on the Sites without CITY'S prior written consent. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking,

pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State of California's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated into this Permit.

- A. Remediation. If any release of a hazardous substance occurs, CONCESSIONAIRE shall pay all costs of remediation and removal of the hazardous substance in accordance with all applicable laws and rules and regulations of governmental authorities.
- B. Indemnity. CONCESSIONAIRE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from CONCESSIONAIRE'S occupancy, use, development, or maintenance of the Sites, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.
- C. Notice of Release. If CONCESSIONAIRE knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the Sites, CONCESSIONAIRE shall give written notice to CITY within three (3) days of receipt of the knowledge or cause for belief. If CONCESSIONAIRE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, CONCESSIONAIRE shall notify CITY immediately upon receipt of such knowledge or belief and shall take all actions necessary to alleviate the danger. CONCESSIONAIRE shall notify CITY immediately of any notice of violation received or initiation of environmental actions or private suits related to the Sites.
- D. Environmental Assessment. At CITY'S option upon expiration or termination of this Permit, an environmental assessment of the Sites shall be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at CONCESSIONAIRE'S sole cost and expense, and shall establish what, if any, hazardous substances exist on, in, or under the Sites, and in what quantities. If any hazardous substances exist in quantities greater than that allowed by CITY, county, state, or federal laws, statutes, ordinances, or regulations, then the environmental assessment shall include a discussion of these substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes, and estimates of the cost of such remediation or removal. CONCESSIONAIRE shall cause the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved, and CONCESSIONAIRE shall pay all costs and expenses therefor.

33. Waiver. CITY'S failure to insist upon the strict performance of any of CONCESSIONAIRE'S obligations under this Permit, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. The property constituting the Sites is CITY-owned and held in trust for the benefit of CITY'S citizens. CITY'S failure to discover a breach of any obligation of this Permit or take prompt action to require the cure of any such breach shall not result in an equitable estoppel, but CITY may at any and all times require the cure of any such breach.
34. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.
35. Partial Invalidity. If any term, covenant, condition, or provision of this Permit is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
36. Number and Gender. Words of any gender used in this Permit shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
37. Captions. Section headings and captions shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this Permit. The numbers of the paragraphs and pages of this Permit may not be consecutive. Such lack of consecutive numbers shall have no effect on the enforceability of this Permit.
38. Entire Permit. This Permit constitutes the entire Permit between the parties and supersedes any and all prior understandings, representations, warranties and Permits between them and pertaining to this Permit and CONCESSIONAIRE'S occupancy, use, development, and maintenance of the Sites. Any modification, alteration, or amendment of this Permit shall be in writing and signed by all the parties hereto.
39. Legal Proceedings. If either party commences legal proceedings to enforce or interpret any right or obligation under this Permit, the prevailing party shall be entitled to an award of costs related thereto, including without limitation reasonable attorney fees and court costs.
40. Notices. Any notice required or permitted to be given under this Permit shall be in writing and may be served personally or delivered by United States mail, postage prepaid, and addressed to CITY or CONCESSIONAIRE, respectively, as follows:

THE CITY OF SAN DIEGO  
 Real Estate Assets Department  
 Attention: Director, Real Estate Assets Department  
 1200 Third Avenue, Suite 1700 (MS 51A)  
 San Diego, California 92101

PASKOWITZ SURF CAMP  
 Israel Paskowitz  
 Daniel Paskowitz  
 PO Box 522  
 San Clemente, CA 92674

41. Governmental Approvals. By entering into this Permit, neither CITY nor CITY'S City Council is obligating itself to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to CONCESSIONAIRE'S occupancy, use, development, or maintenance of the Sites. Discretionary action includes but is not limited to re-zonings, variances, environmental clearances, or any other governmental approvals which may be required for CONCESSIONAIRE'S occupancy, use, development, or maintenance of the Sites.
42. San Diego's Strong Mayor Form of Governance. All references to "City Manager" in this Permit shall be deemed to refer to "the Mayor or his/her designee." This section shall remain in effect for the duration CITY operates under the mayor-council (commonly referred to as "strong mayor") form of governance pursuant to Article XV of the San Diego City Charter.

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]*

43. Authority to Contract. Each individual executing this Permit on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Permit on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing Permit, and that this Permit is binding upon such person or entity in accordance with its terms. Each person executing this Permit on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to CITY, that such authority is valid.

IN WITNESS WHEREOF, this Permit is executed to be effective as of the Effective Date.

Date: \_\_\_\_\_

THE CITY OF SAN DIEGO, a California municipal corporation

BY: \_\_\_\_\_  
James Barwick, Director  
Real Estate Assets Department

Date: 4/2nd/08

PASKOWITZ SURF CAMP, CONCESSIONAIRE

BY: \_\_\_\_\_  
Israel Paskowitz, Owner  
\_\_\_\_\_  
Danielle Paskowitz, Owner

*APPROVED AS TO FORM AND LEGALITY:*

Effective Date: \_\_\_\_\_

MICHAEL J. AGUIRRE, City Attorney

BY: \_\_\_\_\_  
\_\_\_\_\_, Deputy City Attorney

# EXHIBIT A

## Central Area Sites (Pacific Beach)

0001773

- Site 1 Wilbur Street
- Site 2 Beryl Street
- Site 3 South of Pacific Beach Drive
- Site 4 North of Santa Rita Place



Every reasonable effort has been made to assure the accuracy of this map. However, neither the SanGIS participants nor San Diego Data Processing Corporation assume any liability arising from its use.

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## Description of Operations

### Mission Statement

The Paskowitz Surf Camp strives to provide the best surfing instruction experience for all campers, beginners and experts alike.

PSC will employ the most qualified surf and camping counselors, who take great pride in their work.

PSC will promote the safest possible instruction environment by practicing and teaching water safety and respect for the power of the ocean.

PSC will provide a fun and safe beach and camping environment where our guests feel confident that we place their safety and satisfaction above all else.

### Company History

Paskowitz Surf Camp has been a vital influence in the surf camp industry since Dr. Dorian "Doc" Paskowitz founded it in 1972. His motive in founding PSC was to create a camp filled with nonstop action and pure fun for adults and children of all ages. The Paskowitz family is in many respects, 'The First Family of Surfing.' Doc has been involved in surfing in San Diego since he was a lifeguard in 1941. Doc had the good fortune of both rearing eight sons and one daughter, and teaching them all to surf. Doc, his wife Juliette, and most of the Paskowitz children continue to actively participate in PSC.

PSC's first venture in 1972 was a children's camp at Tourmaline Canyon in Pacific Beach, San Diego. The two-week surf camp sold out almost immediately. Paskowitz Surf Camp was born out of this early experiment and soon became a summer-long surf camp. Since those early days in San Diego, PSC has predominantly operated out of San Onofre State Beach in San Onofre. A few years ago, PSC decided to expand its operation by establishing a camp targeted to adults in Cabo San Lucas, Mexico. The Cabo operation has proven to be extremely popular. In 2002, PSC celebrated its 30-year anniversary. Recently the camp felt the pull to get back to its roots and has spent the past few years in San Diego.

The company has been, and always will be, family owned and operated. Israel Paskowitz, his wife, Danielle are the current owner/principals. They have three teenage children. They are proud to have a camp that emphasizes traditional values. Israel, who is of

Along with the surf instructors, Director Izzy Paskowitz is on-site at all times. PSC founder Dr. Dorian Paskowitz M.D. is also present at camp, and conducts beach lectures on San Diego surfing History, ocean knowledge and environmental education.

### Camp Program

Surfing is something many people dream of, but few actually get the opportunity to experience. Whether it's fear of the ocean, a lack of knowledge or simply not having the necessary equipment, most people never get to experience the joy of catching a wave, standing up and riding it in to shore. PSC's instruction program is designed to turn camper's dreams into reality.

Orientation sessions are held Monday morning on the beach and covers basic ocean awareness, equipment knowledge, surfing fundamentals, and most importantly, safety. Campers are then taught how to position themselves on the board, paddle and then pop up and stand on the board with the correct stance. We call it the 1-2-3 technique. The head surf counselor assigns each camper to an instructor and makes sure each camper is outfitted with a proper fitting wetsuit and surfboard. Campers are assigned to a single instructor for the entire week, though changes can be made to better match campers with similar abilities and needs. The instructors then take their campers out into the ocean and work with them in gentler 'white-water' or broken waves. The goal is to get the camper comfortable on the board while in the ocean.

Once the student is comfortable on the board, the instructor will push the camper into the white-water waves and have the camper work on standing up on the board. Once the student has mastered standing up, the instructor will push them into 'blue-water' waves that are still small and easy to ride. Once this is mastered, it's on to teaching the camper how to catch a wave and stand up by himself. The remainder of the week will be spent teaching campers about wave selection, 'trimming' the board on a wave, and other more advanced maneuvers if warranted.

All students are escorted by an instructor at all times. No student is allowed to surf unaccompanied. During the first two to three days, PSC instructors, wearing swim fins, will accompany their students into the water. This helps them maintain a measure of safety while they are teaching and helps reduce fatigue. PSC also takes local surfers into consideration--by keeping our students out of the main breaks, we not only keep them out of harms way, but also prevent the main peaks from becoming too congested. PSC maintains a policy of extended 'surf courtesy' during the morning and evening hours when most of the local crowd is trying to get a surf in before or after work/school. PSC maintains a 3-1 student-teacher ratio, which allows for proper instruction and supervision and helps to ensure the safety of the student. PSC uses video instruction at Base Camp as well as individual evaluation to help accelerate learning curve. PSC brings

**EXHIBIT C**  
**Surf Concession Requirements**

*The following requirements are subject to revision at any time by the CITY:*

- 1. Maximum number of participants/boards on the beach and in the water**  
A maximum of 50 students per Site may be on the beach at any one time. Of those fifty students, a maximum of twenty-five students per group may be in the water at any one time.
- 2. Identifying Markers**  
Instructors must wear red rashguards with CONCESSIONAIRE's name. Students must wear a color specific rashguard with CONCESSIONAIRE's name. Both student and instructor rashguards are to be worn at all times while in the water. The CITY-issued sign with the CONCESSIONAIRE's name must be clearly posted at each Site, whenever classes are in progress.
- 3. Student to instructor ratios.**  
For every five students on the beach or in the water, one instructor must be present. Anytime students are in the water at least one American Red Cross certified instructor must be present and supervising the class.
- 4. Beach Access**  
CONCESSIONAIRE shall not exclude the public from any Site. Beach access must be kept clear at all times. Surfboards must be kept in a position that does not obstruct beach access.
- 5. Concession Site/Location**  
Surf CONCESSIONAIREs must operate from their assigned Site on the beach sand only. CONCESSIONAIREs may meet and escort participants from the parks facilities, parking lots and/or nearest street but may not set up any concession operations in the park.
- 6. Equipment**  
All CONCESSIONAIREs that provide equipment to students must provide a soft foam surfboard with a leash; hardboards must have nose guard and tail guard protection.
- 7. CPR and First Aid**  
All surf instructors must take and pass "American Red Cross Lifeguard Training and CPR for the Professional Rescuer. This is a 28.5 hour course that provides training in 'surveillance skills to help you recognize and prevent injuries, rescue skills – in the water and on land, first aid training and professional rescuer CPR...' Additionally, an American Red Cross first aid kit, approved by a City of San Diego Lifeguard, must be onsite at

all times. Prior to the initial class, the operator must arrange with the lifeguard for an initial equipment and first aid safety inspection.”

**8. Waivers**

The CONCESSIONAIRE must have on file a signed waiver from each participant, or their legal guardian if under 18 years of age, which holds the CITY, its agents, officers and employees harmless and indemnifies the same from any claims relating to the participants' activities on the CITY beach which arise from or are in any manner connected with the services provided to the participants under this Agreement.

**9. Minimum Age Requirements**

The minimum age for an instructor is eighteen (18) years of age.

**10. EMERGENCY RESPONSE PLAN FOR SURF CONCESSIONS**

The following plan is the minimum level of response and readiness for Surf Concessions during emergency situations. CONCESSIONAIREs are required to read the plan and cover all aspects of the plan with each employee working on the beach under this Concession Agreement.

**Ocean Conditions**

Ensure that the ocean conditions are safe to conduct class based on the skill levels of the instructor and the students.

**General Rescue Procedures for Water Emergencies**

1. Survey the scene.
2. The rescuer should consider his/her level of rescue skill prior to attempting a rescue.
3. Ensure proper use of rescue equipment.
4. Safely approach and determine if the victim is distressed.
5. Perform and rescue based on American Red Cross training.
6. Move the victim to safety.
7. Remove the victim from the water.
8. Perform a primary survey.
9. If an emergency exists, ensure that someone activates 911 and requests San Diego Lifeguard assistance.
10. Provide first aid until emergency medical services (EMS) arrive.
11. If other instructors and students are in the water, they should be directed to the beach until the emergency is clear. Other instructors should provide assistance as needed.

**General Rescue Procedures for Land Emergencies**

Survey the scene.

Approach victim when it is safe for the rescuer.

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Perform a primary survey.

If an emergency exists requiring EMS, activate the 911 system and ensure paramedics and San Diego Lifeguard are responding.

Provide emergency care until EMS arrives.

### **Cellular Communications**

All surf concessions shall keep a fully charged and functioning cellular phone on the beach in a location where it can be immediately accessed in case of emergency.

### **Emergency Signals**

Pre-designated signals will be used to communicate with instructors and other surf-camp personnel in the event emergency assistance is needed. **WHISTLES** will be immediately available to all instructors and surf camp personnel. One hand or any piece of equipment being waved overhead from side to side, or three short whistle blasts will indicate that an emergency exists and immediate assistance is needed. One hand placed on the top of the head will indicate that everything is all clear. Instructors and other surf camp personnel will be diligent to look for any signs and signals of distress when they are at the beach.

Any emergency signal observed by an instructor or any surf camp personnel will cause the immediate activation of the emergency response plan.

### **Accidents, Injuries and Incident Slips**

In addition to the requirements under 16.G. of this Agreement, CONCESSIONAIRE shall notify the lifeguard supervisor on duty, as soon as feasible, of any accident or injury occurring in the operation of the Concession, regardless of severity. All rescues and medical aids involving surf camp students, instructors or other personnel will be documented on company incident slips.

**CITY OF SAN DIEGO**  
**CONCESSION PERMIT**

THIS CITY OF SAN DIEGO CONCESSION PERMIT ("Permit") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and SURFARI SURF SCHOOL ("CONCESSIONAIRE"), to be effective upon execution by the parties and approval by the San Diego City Attorney (the "Effective Date"), as follows:

1. Incorporated Documents. This Permit is created pursuant to the Surf School/Camp REQUEST FOR PROPOSAL ("RFP") issued by the Real Estate Assets Department (December 11, 2007), CONCESSIONAIRE'S proposal in response to the RFP, dated January 29, 2008. The Operating Plan, submitted by CONCESSIONAIRE as part of its proposal, is attached hereto as Exhibit A and incorporated herein. Also attached and incorporated herein are the following documents: Exhibit A, Site Map; and Exhibit C, Surf Concession Requirements.
2. Right to Enter. Subject to the terms and conditions of this Permit, CITY hereby grants permission to CONCESSIONAIRE, its employees, agents and contractors to operate surf instruction concessions ("Concessions") within CITY beach sites ("Sites") designated by the City of San Diego ("CITY"). The locations of the Sites included under this Permit are referenced below and more specifically, designated on the attached Exhibit A. However, any of the Sites named below are subject to change at CITY'S discretion.

Area/Beach	Site
Mission Beach	Pismo Court

Any of the above Sites may be deleted at any time by CITY upon thirty (30) days written notice to CONCESSIONAIRE. If an alternate site is not available, a proportionate amount of the *minimum* fixed concession fee (as specified in Section 10.B.) shall be waived for the deleted Site.

3. Use of Sites. This Permit is granted to CONCESSIONAIRE for the sole purpose of allowing CONCESSIONAIRE to operate surf instruction concessions serving the general public under the terms and conditions of this Permit. No solicitation or marketing is permitted on City beaches. Renting or selling of beach equipment or other merchandise is not allowed under this Permit.
4. Maximum Days and Hours of Operation. Maximum hours of land-based operations are 8:30 a.m. - 5:00 p.m. Water instruction is permitted from 9:00 a.m. to 4:00 p.m. All Concessions must be vacated by 5:00 p.m. daily. The CITY reserves the right to change the days and/or hours of operation at its discretion. Operations are permitted seven days a week with the following exceptions:

- A. Under no circumstances are operations permitted on the 4<sup>th</sup> of July holiday.
- B. Special Events. Unless otherwise authorized by the CITY Manager, CONCESSIONAIRE shall have no rights within certain areas of its Concession Sites or designated portions thereof during days in which special events are scheduled by CITY in these areas. CITY shall give CONCESSIONAIRE advance written notice of any such special events.
5. Competent Management. Throughout the term of this Permit, CONCESSIONAIRE shall provide competent management of the Sites for the permitted uses to the satisfaction of the City Manager. CONCESSIONAIRE covenants to operate the Concession for the above-specified purposes and diligently conduct the operations to produce a reasonable and substantial gross income.
6. Term. The term of this Permit ("Term") shall be shall be 64 months commencing on June 1, 2008, and expiring on September 30, 2013. This Permit may be terminated at any time by either party upon ninety (90) days prior written notice to the other party.
7. Holding Over. Any use of the Concession Sites by CONCESSIONAIRE after the expiration of this Permit is not permitted. Any extension of the term of the Permit beyond 64 months shall require approval of CITY Council.
8. Revocable License. This Permit is not a lease. It is a license to use CITY-owned property, and may be revoked by CITY, in its sole discretion. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by CONCESSIONAIRE as a result of such termination of this Permit. CONCESSIONAIRE expressly waives any claim for expense or loss which CONCESSIONAIRE might incur as a result of CITY'S termination of this Permit.
9. Special Provisions
- A. Operating Plan. The Operating Plan(s) for June 2008 through May 2009 submitted with the CONCESSIONAIRE's response to the CITY'S Request for Proposal, shall be revised by CONCESSIONAIRE, if required by CITY to meet CITY'S approval, and the final CITY approved Plan(s) shall be incorporated into this Permit as Exhibit B.
- B. Beginning June 1, 2009, and for every 12 months thereafter, the CONCESSIONAIRE shall provide the CITY with an Operating Plan for the coming quarter for the CITY'S approval. All Operating Plans submitted to the CITY should be consistent with the format and content of the Plans included as Exhibit B. CITY shall have the right to approve or disapprove the proposed plan. Once approved, CONCESSIONAIRE shall not make any changes to the Plan without prior written approval of CITY. At all times, the CONCESSIONAIRE shall ensure that all operations permitted under this Permit comply with the Surf Instruction Requirements incorporated herein as Exhibit C.

- B. Exclusiveness of Permit and Unauthorized Vending. In addition to special events described in Section 4.B., CITY may, during the term of this Permit, enter into Permits with other CONCESSIONAIRES to provide surf instructions during times not scheduled for operations in the approved Operating Plan(s) at the Sites permitted in this Permit. However, CITY, by granting this Permit to CONCESSIONAIRE, makes no warranty that the Sites shall be free of unauthorized vending or that any specific level of police or lifeguard enforcement against such activities shall be maintained.
- C. Concession Sites. On each Site included in this Permit, CONCESSIONAIRE shall erect no improvements except one shade structure no greater than twenty (20) feet by twenty (20) feet or, no more than two shade structures no greater than ten (10) feet by ten (10) feet in size, or as shall, in the opinion of the CITY be needed to adequately serve the public. CITY reserves the right to request that the CONCESSIONAIRE modify the dimensions of the structure. The Sites must be designed and maintained so as to present a neat and attractive appearance to the satisfaction of the CITY. Any items or improvements brought on the Sites by the CONCESSIONAIRE must be approved by CITY and shall not remain on location after permitted hours of operation, unless prior approval of CITY is obtained. If in the opinion of CITY, the number of Sites within any Concession covered under this Permit at any time falls short of or exceeds the number of Sites needed to adequately serve the public, CONCESSIONAIRE shall, without liability to the CITY, upon receipt of notice from CITY, adjust the number of Sites to the number specified by CITY as adequate to serve the public. Until such time as CITY requires CONCESSIONAIRE, or agrees to a request from CONCESSIONAIRE, to increase or decrease the number of Sites CONCESSIONAIRE shall operate no more and no fewer than the Sites designated in this Permit. At each Site, CONCESSIONAIRE shall occupy no more than two and no less than one area of the dimensions specified herein.
- D. Improvements. Upon expiration or termination of this Permit, any and all improvements, trade fixtures, structures, and installations or additions to the Sites now existing or constructed on the Sites by CONCESSIONAIRE shall be deemed to be part of the Sites and shall become CITY'S property free of all liens and claims. All personal property remaining on the Sites after expiration or termination shall also become the property of CITY.
- E. Maintenance of Sites. CONCESSIONAIRE agrees not to commit or allow to be committed any waste or injury or any public or private nuisance, to keep the Sites clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in or about said spaces to the satisfaction of CITY and at CONCESSIONAIRE'S sole cost. All Sites must be cleaned up nightly by CONCESSIONAIRE or more often, as required.
- F. Standard of Employees. CONCESSIONAIRE and its employees shall at all times conduct themselves and the operations of the Concession in a creditable manner. CONCESSIONAIRE shall thoroughly train its employees in their duties and shall regularly monitor them to ensure that they behave in a courteous manner, do not disturb the quiet enjoyment of other beach users, and otherwise comply with all of the Surf Instruction Requirements in Exhibit C of this Permit.

10. Fees.

- A. Percentage Fees. Percentage fees will be calculated on a calendar month basis and will consist of ten percent (10.00%) of the gross income resulting from the operations permitted under this Permit. The City Manager, in his sole discretion, may approve another percentage rate or minimum rate for each other incidental service or operation supplementary to the permitted uses stated in Section 3, Use of Sites, as may be approved in writing by the City Manager prior to the commencement of any additional service or operation. Provided however, any activity conducted on the Sites without the prior written approval of the City Manager shall be subject to the requirements of Section 10.E., Unauthorized Use Charge.
- B. Minimum Fees. The annual Minimum Fee established for the first year following the effective date of this Permit is thirteen-thousand and six-hundred dollars (\$13,600), which is one-thousand one-hundred and thirty three dollars and thirty three cents (\$1,133.33) on a monthly installment basis.

If the Minimum Fee is greater than the percentage fee on a calendar month basis, one-twelfth (1/12) of the Minimum Fee is required to be paid for that month. Minimum Fees are to be paid in monthly installments on or before the day of the calendar month when percentage fees are due pursuant to Section 10.I., Time and Place of Payment. In the event that the combined total percentage fee payments and monthly installments of the Minimum Fee during any Permit year equal or exceed the required Minimum Fee for that year, for the balance of that year, CONCESSIONAIRE shall discontinue paying monthly installments of the Minimum Fee until the beginning of the next Permit Year. If in any Permit Year, Minimum Fees paid plus Percentage Fees paid exceed the annual Minimum Fee and also exceed the fee which would have been paid if the Percentage Fee had been paid on total gross income, the excess over the total fee owed shall be credited against the next payable fee as it becomes due. It is the intent of this provision that CONCESSIONAIRE shall pay monthly installments of the annual Minimum Fee as a guarantee against the Percentage Fee requirement and that the greater of the two requirements, minimum or percentage, whichever occurs throughout the term, shall prevail on an annual basis.

Minimum Fee Adjustment. Effective at the beginning of the first day of the 13<sup>th</sup>, 25<sup>th</sup>, 37<sup>th</sup>, 49<sup>th</sup> and 61<sup>st</sup> month of this Permit, the annual Minimum Fee shall be eighty percent (80.00%) of the annual average of actual rents paid in the Initial Term plus any option terms exercised under this Permit. The annual average shall then be divided by twelve (12) to establish the new monthly Minimum Fee. It is recognized that the adjustments shall be calculated by the CITY upon completion of payments due for the preceding year in order to determine the amount of the Minimum Fee for the option period. Until such calculations are completed, CONCESSIONAIRE shall continue paying monthly Minimum Fees at the prior rate. Any additional fees determined by the adjustment to be due for the months previously paid at the prior rate shall be paid to the CITY within thirty (30) days following written notice. In no event shall the Minimum Fee Adjustment result in a decrease in the Minimum Fee requirement in effect immediately prior to the adjustment date.

- C. Annual Percentage Adjustment to Minimum Fee. If CONCESSIONAIRE has not paid percentage fees during the previous 12 month period, then the Minimum Fee shall increase to one-hundred five (105.00%) of the previous year's Minimum Fee.
- D. Delinquent Concession Fee. If CONCESSIONAIRE fails to pay any concession fees when due, CONCESSIONAIRE will pay, in addition to the unpaid concession fees, a fee of \$25.00. If the fees are still unpaid at the end of the fifteen (15) days, CONCESSIONAIRE shall pay a fee of \$50.00, which is mutually agreed by the parties to this Permit to be appropriate to compensate the CITY for loss resulting from concession fee delinquency, including lost interest opportunities, legal costs, and the cost of servicing the delinquent account.
- E. Unauthorized Use Charge. CONCESSIONAIRE shall pay CITY fifty percent (50.00%) of the gross receipts for any service or use that is not permitted by this Permit. This payment is subject to the due date provided in this Permit for minimum guaranteed fees payments and the provision for delinquent concession fees payments and the provision for delinquent concession fees. The existence of the fifty percent (50.00%) charge in this clause and the payment of this charge or any part of it, do not constitute an authorization for a particular service or use, and does not waive any CITY rights to terminate a service or use or to default CONCESSIONAIRE for participating in or allowing any unauthorized use.
- F. Gross Income. "Gross income" or "gross receipts", as used in this Permit shall include all income resulting from the Concession from whatever source derived whether received or to become due. Provided; however, gross income shall not include federal, state, or municipal taxes collected from the consumer (regardless of whether the amount is stated to the consumer as a separate charge) and paid over periodically by CONCESSIONAIRE to a governmental agency accompanied by a tax return or statement as required by law. Possessory interest taxes or other property taxes shall not be deducted by CONCESSIONAIRE in computing gross income. Gross income shall not include refund of deposits. The amount of taxes and refunds shall be clearly shown on the books and records of CONCESSIONAIRE. The percentage concession fees shall be calculated and paid by CONCESSIONAIRE on the basis of gross income whether the income is received by CONCESSIONAIRE or by any permittee or licensee, or their agents, and all gross income received by any permittee, licensee, or other party as a result of occupancy or operation of the Site(s) shall be regarded as gross income of CONCESSIONAIRE for the purpose of calculating the percentage concession fees required to be paid by CONCESSIONAIRE to CITY, except as may be otherwise specified by or pursuant to this Permit.
- G. Inspection Of Records.
- i. Records. CONCESSIONAIRE shall, at all times during the Permit term, keep or cause to be kept true and complete books, records, and accounts of all financial transactions in the operation of all business activities conducted upon and financial transactions resulting from the use of the Site(s). The

records shall be supported by source documents such as sales slips, daily cash register tapes, purchase invoices, class lists, or other documents as necessary to allow CITY to easily determine the gross income. Any retail sales or charges will be recorded by means of cash registers or other comparable devices which display to the customer the amount of the transaction and automatically issue a receipt. The registers will be equipped with devices that lock in sales totals and other transaction numbers and sales details that are not resettable. Totals registered shall be read and recorded at the beginning and end of each business day. In the event of admission charges or concession rents, CONCESSIONAIRE shall issue serially numbered tickets for such admission or concession fees and shall keep an adequate record of such tickets, as well as a record of unissued tickets. All retail sales and charges may be recorded by a system other than cash registers of other comparable devices provided such a system is approved by the CITY.

- ii. Financial Statements. Within sixty (60) days after the end of the Initial Term and any subsequent option terms, CONCESSIONAIRE will, at its expense, submit to CITY a statement in which the total gross receipts and the corresponding amounts of concession percentage fees paid CITY for the year are classified according to the categories of business established for any percentage concession fees and for any other business conducted on or from the Site(s). The statement shall be signed by CONCESSIONAIRE and Financial Representative of CONCESSIONAIRE attesting to the accuracy thereof, which shall be legally binding upon CONCESSIONAIRE.
- iii. Right to Inspect. All CONCESSIONAIRE's books of account, records, and supporting documentation, as described under Section 10.G.(i), will be kept for at least five (5) years and made available to CITY in one location within the City of San Diego. These books and records must be maintained separately from all other accounts not relating to the Site(s). The CITY, at its discretion, shall have the right to inspect and audit the business of CONCESSIONAIRE, its agents, permittees, and licensees operating on, and in connection with, the Site(s) as necessary and appropriate for CITY to determine the amounts of concession fees due CITY in compliance with the requirements of this Permit. At CITY'S request, CONCESSIONAIRE shall promptly provide, at CONCESSIONAIRE's expense, any necessary data to enable CITY to fully comply will all requirements of the state and federal government for Permit information or reports concerning the Concessions. Such data will include, if required, a detailed breakdown of CONCESSIONAIRE's receipts and expenses.
- 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):

The audit(s) reveal an underpayment of more than five percent (5.00%) or more than \$10,000.00, which ever is less, between the

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concession fees due as reported and paid by CONCESSIONAIRE, pursuant to this Permit and concession fees determined by the audit(s).

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

Any underpayment of concession fees less than five percent (5.00%) revealed by the audit may be paid within thirty (30) days written notice from the CITY without penalty, otherwise, CONCESSIONAIRE shall incur interest charges on the delinquent amount as defined in Section 10.D., DELINQUENT CONCESSION FEES. CITY will credit any overpayment against incoming concession fees. Any overpayment determined after the end of this Permit will be refunded by CITY within thirty (30) days of confirmation by the City Manager of the audit(s) findings.

- H. Default. CONCESSIONAIRE's failure to keep complete and accurate records by means of double-entry bookkeeping and make them available for CITY inspection is, like all other failures to comply with covenants of this Permit, a breach of this Permit and cause for termination.
- I. Time and Place of Payment. Payments are due on or before the last day of the calendar month following the calendar month in which the Gross Income subject to percentage fees was earned. Checks shall be made payable to the City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P.O. Box 122289, San Diego, California 92112-4165, or delivered to the Office of the City Treasurer, Civic Center Plaza, 1200 Third Avenue, First Floor, San Diego, California. The place and time of payment may be changed by CITY upon thirty (30) days prior written notice to CONCESSIONAIRE. Mailed payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed paid upon actual receipt by the City Treasurer. CONCESSIONAIRE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.
- J. Security Deposit. The CONCESSIONAIRE shall deliver to CITY with the executed copies of this Permit, a good faith deposit in the amount of two thousand five hundred dollars (\$2,500.00). All or any portion of the principal sum shall be available unconditionally to CITY for payment of delinquent concession fees, for correcting any default or breach of this Permit by CONCESSIONAIRE, CONCESSIONAIRE's successors or assignees, or for payment of expenses incurred by CITY as a result of CONCESSIONAIRE's failure to faithfully perform all terms, covenants, and conditions of this Permit. If at the end of the term of this Permit, CONCESSIONAIRE has performed all of the provisions of the Permit, the deposit or any remaining balance shall be returned to the CONCESSIONAIRE without interest. The security deposit may be increased by CITY proportionate to any increase in Minimum Fees. CONCESSIONAIRE shall maintain the security deposit throughout

the Term. **Notwithstanding any other provision of this Permit, if CONCESSIONAIRE fails or refuses to deposit or maintain a security deposit as required by this Permit, CITY may terminate this Permit immediately upon such breach. Upon such termination, CONCESSIONAIRE shall immediately cease its use of the Sites and commence and diligently pursue the removal of its property from the Sites.**

- i. Utilization. If CITY utilizes all or any portion of the security deposit, upon 10 days prior written notice, CONCESSIONAIRE shall reimburse the security deposit to the full required amount.
  - ii. Increase. Upon thirty (30) days prior written notice by CITY, CONCESSIONAIRE shall deliver to CITY additional funds as CITY may, in its sole determination, require to adequately secure CONCESSIONAIRE'S obligations under this Permit.
  - iii. Return. Provided CONCESSIONAIRE is not in breach or default of this Permit, CITY shall return the security deposit, or any balance thereof, to CONCESSIONAIRE within sixty (60) days after the expiration or termination of this Permit.
11. CITY'S Consent, Discretion. Whenever required under this Permit, CITY'S consent or approval shall mean the written consent or approval of the City Manager, unless otherwise expressly provided. CITY'S discretionary acts hereunder shall be made in the City Manager's sole and absolute discretion, unless otherwise expressly provided.
  12. Acceptance of Sites. CONCESSIONAIRE represents and warrants that it has independently inspected the Sites and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Sites. CONCESSIONAIRE agrees it is relying solely on its independent inspection, tests, investigations, and observations in entering into this Permit. CONCESSIONAIRE further acknowledges that the Sites are in the condition called for by this Permit, that CITY has performed all work, if any, related to the Sites and required by this Permit, and that CONCESSIONAIRE shall hold CITY harmless for any defects, whether apparent or latent, in the Sites, including without limitation the presence of any hazardous substances.
  13. Maintenance of the Sites. CONCESSIONAIRE shall, at CONCESSIONAIRE'S sole cost and expense and to CITY'S satisfaction, maintain the Sites in a decent, safe, healthy and sanitary condition at all times during the Term.
  14. Standard of Conduct. CONCESSIONAIRE and its employees shall at all times conduct themselves and the operations on the Sites in a creditable manner.
  15. Inspection. CITY may, at all times upon prior notice, enter and inspect the Sites.

16. Insurance. On or before the Effective Date, CONCESSIONAIRE shall deliver to CITY a current certificate of insurance for: (1) Commercial General Liability insurance providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least One Million Dollars (\$1,000,000) per occurrence, subject to an annual aggregate of Two Million Dollars (\$2,000,000).
- A. Additional Insureds. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in all policies.
- B. Primary & Non-Contributory. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by CITY. The policies shall be kept in force for the duration of the Term and any extended use. The certificate(s) of insurance shall be filed with CITY'S Real Estate Assets Department upon execution of this Permit.
- C. Qualified Insurer(s). All insurance required by the terms of this Permit must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to CITY. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements.
- D. Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of CONCESSIONAIRE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
- E. Continuity of Coverage. All policies shall be in effect on or before the first day of the Term of this Permit, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the Sites, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. At least thirty (30) days prior to the expiration of each insurance policy, CONCESSIONAIRE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Permit.
- F. Modification. To assure protection from and against the kind and extent of risk existing on the Sites, CITY, at its discretion, may require the revision of amounts and coverages at any time during the Term by giving CONCESSIONAIRE thirty (30) days prior written notice. CONCESSIONAIRE shall also obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this Permit.

- G. Accident Reports. CONCESSIONAIRE shall report to CITY any accident causing more than Five Thousand Dollars (\$5,000) worth of property damage or any serious injury to persons on the Sites. Such report shall be delivered to CITY within five (5) days of such accident and shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- H. Failure to Comply. If CONCESSIONAIRE fails or refuses to obtain and maintain the required insurance, or fails to provide proof of coverage, CITY may obtain the insurance. CONCESSIONAIRE shall reimburse CITY for the premiums paid, with interest at the maximum allowable legal rate then in effect in California. CITY shall notify CONCESSIONAIRE of such payment of premiums within thirty (30) days of payment stating the amount paid, the name(s) of the insurer(s), and rate of interest. CONCESSIONAIRE shall pay such reimbursement and interest on the first (1st) day of the month following CITY'S notice. **Notwithstanding any other provision of this Permit, if CONCESSIONAIRE fails or refuses to obtain or maintain insurance as required by this Permit, or fails to provide proof of insurance, CITY may terminate this Permit immediately upon such breach. Upon such termination, CONCESSIONAIRE shall immediately cease its use of the Sites and commence and diligently pursue the removal of its property from the Sites.**
17. Indemnification. CONCESSIONAIRE shall protect, defend, indemnify, and hold CITY, its elected officials, officers, representatives, agents and employees, harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to CONCESSIONAIRE'S officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with this Permit or CONCESSIONAIRE'S occupancy, use, development, or maintenance of the Sites, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that CONCESSIONAIRE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of CITY, its elected officials, officers, representatives, agents and employees. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, CONCESSIONAIRE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.
18. No Discrimination. CONCESSIONAIRE shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in CONCESSIONAIRE'S use of the Sites, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

19. Local Business and Employment. CONCESSIONAIRE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. CONCESSIONAIRE will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this Permit from local residents and firms as opportunities occur. CONCESSIONAIRE agrees to hire qualified local residents and firms whenever feasible.
20. Drug-free Workplace. CONCESSIONAIRE shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:
- A. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of controlled substances are prohibited on the Sites and specifying the actions that will be taken against employees for violations of the prohibition; and
  - B. Establish a drug-free awareness program to inform employees about all of the following:
    - i. The dangers of drug abuse in the workplace;
    - ii. CONCESSIONAIRE'S policy of maintaining a drug-free workplace;
    - iii. Any available drug counseling, rehabilitation, and employees assistance programs; and
    - iv. Penalties that may be imposed upon employees for drug abuse violations.
21. Disabled Access Compliance. CONCESSIONAIRE shall comply with the California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities.
22. CONCESSIONAIRE'S Risk. CONCESSIONAIRE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with CONCESSIONAIRE'S occupancy, use, development and maintenance of the Sites and any damages to the improvements on, under, or in the vicinity of the Sites resulting directly or indirectly thereby.
23. No Nuisance. CONCESSIONAIRE shall not use the Sites in any manner which, in CITY'S opinion, creates a nuisance or disturbs the quiet enjoyment of persons in and to the surrounding area.
24. No Assignment. CONCESSIONAIRE shall not assign any rights granted by this Permit or any interest herein without CITY'S prior written consent. Approval of any such proposed assignment may be withheld in CITY'S sole and absolute discretion. Any assignment by operation of law shall automatically terminate this Permit.

25. Signs. CONCESSIONAIRE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising without CITY'S prior written consent. If any such unauthorized item is found on the Sites, CONCESSIONAIRE shall remove the item at its expense within 24 hours notice by CITY, or CITY may thereafter remove the item at CONCESSIONAIRE'S cost.
26. Advertisement and Marketing. Any advertising or marketing which reference the City of San Diego may not be distributed by the CONCESSIONAIRE without the advanced written approval of the CITY. If CONCESSIONAIRE uses the City of San Diego in any context to promote its business operations without prior written approval by CITY, CONCESSIONAIRE will be considered to be in default. No advertising or marketing materials of any kind may be posted or distributed on any City beach without the advanced written approval of the CITY.
27. Encumbrances. CONCESSIONAIRE shall keep the Sites free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with this Permit or CONCESSIONAIRE'S occupancy, use, development, or maintenance of the Sites. CONCESSIONAIRE shall protect, defend, indemnify, and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense, including without limitation all attorney fees and costs, relating to or charged against the Sites, including without limitation CONCESSIONAIRE'S failure or the failure of any contractor or subcontractor hired by CONCESSIONAIRE to pay any person or persons referred to in Section 3181 of the California Civil Code or other applicable sections thereof.
28. Defaults and Remedies.
- A. Default by CONCESSIONAIRE. In the event that:
- i. CONCESSIONAIRE shall default in the performance or fulfillment of any covenant or condition required by this Permit to be performed or fulfilled by CONCESSIONAIRE and shall fail to cure the default within thirty (30) days following written notice from CITY; or if any default is not curable within thirty (30) days, and CONCESSIONAIRE shall fail to commence to cure the default(s) within said thirty (30) day period and diligently pursue cure to completion;
  - ii. CONCESSIONAIRE shall voluntarily file or have involuntarily filed against it any petition under bankruptcy or insolvency act or law; or
  - iii. CONCESSIONAIRE shall make a general assignment for the benefit of creditors;
- then CITY may, at its option, without further notice or demand upon CONCESSIONAIRE or upon any person claiming rights through CONCESSIONAIRE, immediately terminate this Permit and all rights of CONCESSIONAIRE and of all persons claiming rights through CONCESSIONAIRE to the Concession Sites or to possession thereof, and

CITY may then enter and take possession of the Sites and expel CONCESSIONAIRE and all persons so claiming rights thereto. Provided; however, in the event that any default described in Part (1)a. of this section is not curable within thirty (30) days after written notice to CONCESSIONAIRE, CITY shall not terminate this Permit pursuant to the default if CONCESSIONAIRE immediately commences to cure the default and diligently pursues cure to completion. In any event, either party may terminate this Permit without cause by giving ninety (90) days written notice of intent to terminate to the other party.

B. Abandonment by CONCESSIONAIRE. Even though CONCESSIONAIRE has breached the Permit and abandoned the Concession Site(s), this Permit shall continue in full force and effect for so long as CITY does not terminate this Permit, and CITY may enforce all its rights and remedies under this Permit, including, but not limited to, the right to recover the concession fee as it becomes due, plus damages. For purposes of this section, the following do not constitute a termination of CONCESSIONAIRE's right to possession or operation:

- i. Acts by CITY of maintenance, preservation, or efforts to negotiate a new Permit.
- ii. The appointment of a receiver upon initiative of CITY to protect CITY'S interest under this Permit.

29. Damages. Damages which CITY may recover in the event of default under this Permit include the worth, at the time of the award, of the amount by which the unpaid concession fee for the balance of the term after the date of award or for any shorter period of time specified in this Permit exceeds the amount of concession fee loss for the same period that the CONCESSIONAIRE proved could be reasonably avoided. The remedies provided by this section are not exclusive and shall be cumulative to all other rights and remedies possessed by CITY, and nothing contained herein shall be construed so as to defeat any other rights or remedies possessed by CITY, and nothing contained herein shall be construed so as to defeat any other rights or remedies to which CITY may be entitled.

30. Compliance with Laws. CONCESSIONAIRE shall, at its sole cost and expense, comply with all the requirements of all rules, regulations, ordinances, laws and direction of governing authorities now in effect or which may hereafter be in effect, which pertain to CONCESSIONAIRE'S occupancy, use, development, and maintenance of the Sites.

31. Taxes. CONCESSIONAIRE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon CONCESSIONAIRE by reason of the business or other CONCESSIONAIRE activities related to the Sites, including any licenses or permits. CONCESSIONAIRE acknowledges that this Permit may create a possessory interest subject to property taxation, and that CONCESSIONAIRE may be subject to the payment of taxes levied on that interest. CONCESSIONAIRE shall pay all such possessory interest taxes. CONCESSIONAIRE'S payment for taxes, fees, and assessments shall not reduce any payment due CITY under this Permit.

32. Hazardous Substances. CONCESSIONAIRE shall not allow the installation or release of hazardous substances in, on, under, or from the Sites. CONCESSIONAIRE and CONCESSIONAIRE'S agents and contractors shall not store, utilize, or sell any hazardous substance on the Sites without CITY'S prior written consent. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State of California's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated into this Permit.

- A. Remediation. If any release of a hazardous substance occurs, CONCESSIONAIRE shall pay all costs of remediation and removal of the hazardous substance in accordance with all applicable laws and rules and regulations of governmental authorities.
- B. Indemnity. CONCESSIONAIRE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from CONCESSIONAIRE'S occupancy, use, development, or maintenance of the Sites, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.
- C. Notice of Release. If CONCESSIONAIRE knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the Sites, CONCESSIONAIRE shall give written notice to CITY within three (3) days of receipt of the knowledge or cause for belief. If CONCESSIONAIRE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, CONCESSIONAIRE shall notify CITY immediately upon receipt of such knowledge or belief and shall take all actions necessary to alleviate the danger. CONCESSIONAIRE shall notify CITY immediately of any notice of violation received or initiation of environmental actions or private suits related to the Sites.
- D. Environmental Assessment. At CITY'S option upon expiration or termination of this Permit, an environmental assessment of the Sites shall be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at CONCESSIONAIRE'S sole cost and expense, and shall establish what, if any, hazardous substances exist on, in, or under the Sites, and in what quantities. If any hazardous substances exist in quantities greater than that allowed by CITY, county, state, or federal laws, statutes, ordinances, or regulations, then the environmental assessment shall include a discussion of these substances with

recommendations for remediation and removal necessary to effect compliance with those laws or statutes, and estimates of the cost of such remediation or removal. CONCESSIONAIRE shall cause the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved, and CONCESSIONAIRE shall pay all costs and expenses therefor.

33. Waiver. CITY'S failure to insist upon the strict performance of any of CONCESSIONAIRE'S obligations under this Permit, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. The property constituting the Sites is CITY-owned and held in trust for the benefit of CITY'S citizens. CITY'S failure to discover a breach of any obligation of this Permit or take prompt action to require the cure of any such breach shall not result in an equitable estoppel, but CITY may at any and all times require the cure of any such breach.
34. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.
35. Partial Invalidity. If any term, covenant, condition, or provision of this Permit is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
36. Number and Gender. Words of any gender used in this Permit shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
37. Captions. Section headings and captions shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this Permit. The numbers of the paragraphs and pages of this Permit may not be consecutive. Such lack of consecutive numbers shall have no effect on the enforceability of this Permit.
38. Entire Permit. This Permit constitutes the entire Permit between the parties and supersedes any and all prior understandings, representations, warranties and Permits between them and pertaining to this Permit and CONCESSIONAIRE'S occupancy, use, development, and maintenance of the Sites. Any modification, alteration, or amendment of this Permit shall be in writing and signed by all the parties hereto.
39. Legal Proceedings. If either party commences legal proceedings to enforce or interpret any right or obligation under this Permit, the prevailing party shall be entitled to an award of costs related thereto, including without limitation reasonable attorney fees and court costs.

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40. Notices. Any notice required or permitted to be given under this Permit shall be in writing and may be served personally or delivered by United States mail, postage prepaid, and addressed to CITY or CONCESSIONAIRE, respectively, as follows:

THE CITY OF SAN DIEGO  
Real Estate Assets Department  
Attention: Director, Real Estate Assets Department  
1200 Third Avenue, Suite 1700 (MS 51A)  
San Diego, California 92101

SURFARI SURF SCHOOL  
Arthur Gehris, Owner  
3740 Mission Blvd.  
San Diego, CA 92109

41. Governmental Approvals. By entering into this Permit, neither CITY nor CITY'S City Council is obligating itself to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to CONCESSIONAIRE'S occupancy, use, development, or maintenance of the Sites. Discretionary action includes but is not limited to re-zonings, variances, environmental clearances, or any other governmental approvals which may be required for CONCESSIONAIRE'S occupancy, use, development, or maintenance of the Sites.
42. San Diego's Strong Mayor Form of Governance. All references to "City Manager" in this Permit shall be deemed to refer to "the Mayor or his/her designee." This section shall remain in effect for the duration CITY operates under the mayor-council (commonly referred to as "strong mayor") form of governance pursuant to Article XV of the San Diego City Charter.

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]*

43. Authority to Contract. Each individual executing this Permit on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Permit on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing Permit, and that this Permit is binding upon such person or entity in accordance with its terms. Each person executing this Permit on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to CITY, that such authority is valid.

IN WITNESS WHEREOF, this Permit is executed to be effective as of the Effective Date.

Date: \_\_\_\_\_

THE CITY OF SAN DIEGO, a California municipal corporation

BY: \_\_\_\_\_

James Barwick, Director  
Real Estate Assets Department

Date: \_\_\_\_\_

SURFARI SURF SCHOOL, CONCESSIONAIRE

BY: Arthur "Rick" Gehris

Arthur "Rick" Gehris, Owner

*APPROVED AS TO FORM AND LEGALITY:*

**Effective Date:** \_\_\_\_\_

MICHAEL J. AGUIRRE, City Attorney

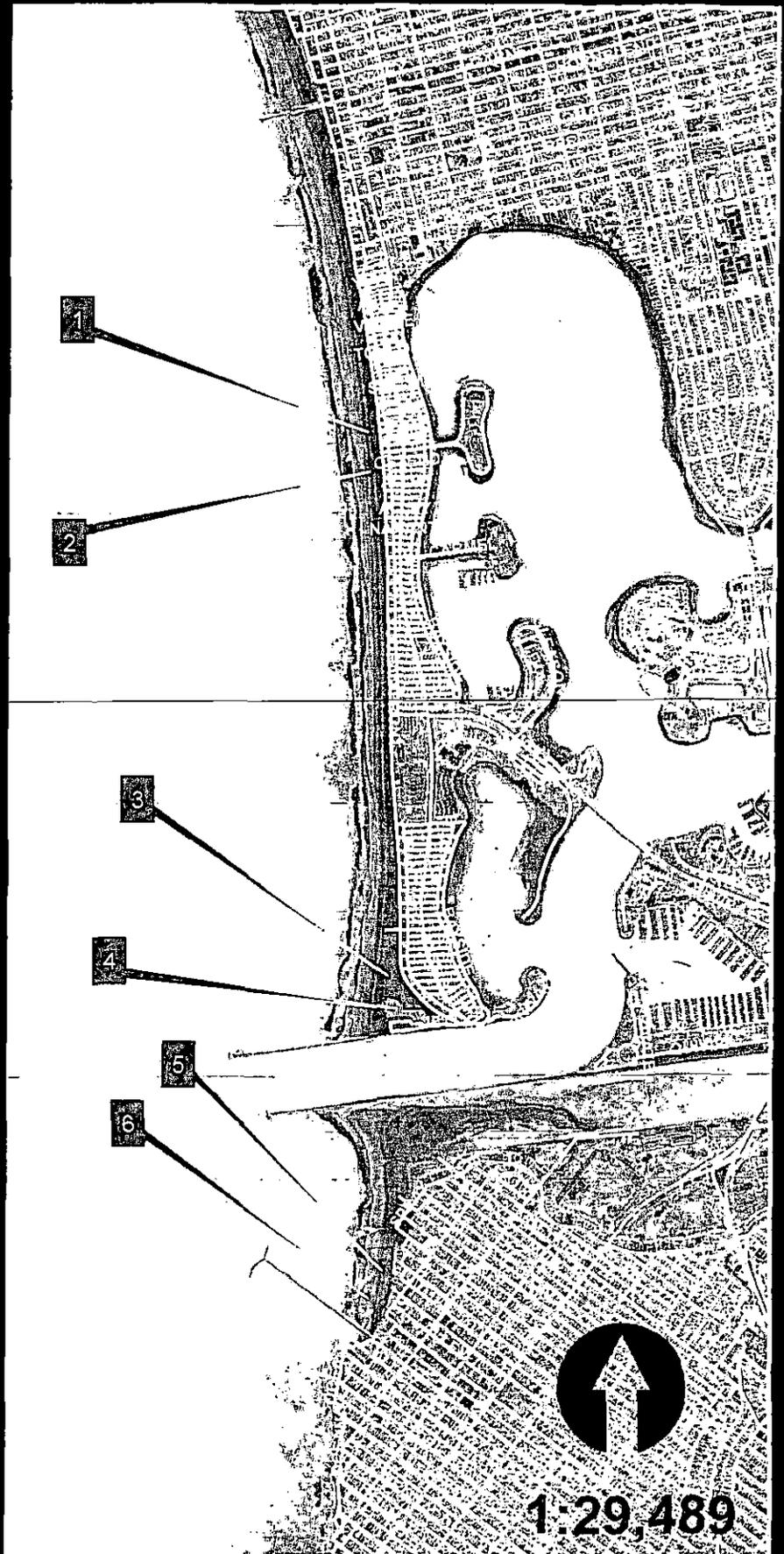
BY: \_\_\_\_\_  
\_\_\_\_\_, Deputy City Attorney

# EXHIBIT A

## Southern Area Sites (Mission and Ocean Beaches)

000706

- 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



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# EXHIBIT B

## DESCRIPTION OF PROPOSED OPERATIONS

### **Surfing Lessons:**

Surfari offers surf lessons 7 days per week out of our surf shop in Mission Beach.

Lessons are designed for all ages and abilities

### **Type of Lesson and Costs:**

**Private**-One on one instruction=\$75

**Semi-Private Lesson**- Two students working with one instructor=\$55 per person

**Group Lesson**-You provide a group of 3-5 students working with one of our instructors=\$50 per person.

### **Lesson times:**

Everyday at 9AM, 11AM, 1PM and 3PM

**Equipment included:** Lessons include use of a surfboard, wetsuit, rash guard, and leash.

**Duration:** All lessons last for 2.5 hours and include the following three part lesson plan:

**Part 1-Land Lesson/ 30 minutes:** Lessons start on the beach with thirty minutes of instruction and practice. Students learn techniques for paddling, standing, falling, dodging and selecting waves along with surfer's etiquette, stretching and ocean safety.

**Part 2-Water Lesson/1 hour:** After students have learned the techniques on land, we move into the ocean for one hour of guided surf instruction. During this time the instructor will push and coach students into waves, tell students what they are doing right, or wrong so they are surfing on their own by the end of the lesson.

### **Part 3-Independent Practice/ 1hour:**

After 1.5 hours of guided instruction, students have the option of keeping the surfboard and practicing what they learned for one hour in front of the lifeguard or returning the equipment back to the shop.

## DESCRIPTION OF PROPOSED OPERATIONS CONTINUED

### Surf Camps:

Surf Camp is a fun way to learn surfing in a group environment with friends or new friends. Our primary concern is safety, which is ensured by a professional staff/student ratio of 1:3 for the youth camps and 1:4 in the teen and adult camps.

Each week students can expect to spend their days in small peer groups that are age and skill appropriate. Each day, students will learn new surfing techniques. They also learn about ocean safety, ocean rescue, wave timing, and exercising judgment skills while having a blast surfing with their instructors.

Surfari Camps include the use of a soft surfboard, wetsuit and leash. On Fridays, we have a BBQ on the beach and we talk about conservation and doing our part to keep the beach and ocean clean. All students receive a "Certificate of Completion", a T-shirt and a Billabong bag of goodies.

#### Kids Camps

Ages: 8 - 12

Times: 9:30AM - 1:30PM

5 days/San Diego: M-F/\$300

3 days/San Diego: M-W/\$225

#### Teen/Adult Camps

Ages: 13 - up

Times: 1:30PM - 4:30PM

5 days/San Diego: M-F/\$250

3 days/San Diego: M-W/\$200

#### Surfari Girls Camp

Girls Ages: 10 - up

Times: 10AM - 2PM

5 days/San Diego: M-F/\$300

3 days/San Diego: M-W/\$225

Surfari offers ten weekly sessions of surf camp that start in June and finish the last week in August. Enrollment is limited to ten participants per camp session and participants are encouraged to pre-register in our shop, on-line or over the phone.

**EXHIBIT C**  
**Surf Concession Requirements**

*The following requirements are subject to revision at any time by the CITY:*

1. **Maximum number of participants/boards on the beach and in the water**  
A maximum of 50 students per Site may be on the beach at any one time. Of those fifty students, a maximum of twenty-five students per group may be in the water at any one time.
2. **Identifying Markers**  
Instructors must wear red rashguards with CONCESSIONAIRE's name. Students must wear a color specific rashguard with CONCESSIONAIRE's name. Both student and instructor rashguards are to be worn at all times while in the water. The CITY-issued sign with the CONCESSIONAIRE's name must be clearly posted at each Site, whenever classes are in progress.
3. **Student to instructor ratios.**  
For every five students on the beach or in the water, one instructor must be present. Anytime students are in the water at least one American Red Cross certified instructor must be present and supervising the class.
4. **Beach Access**  
CONCESSIONAIRE shall not exclude the public from any Site. Beach access must be kept clear at all times. Surfboards must be kept in a position that does not obstruct beach access.
5. **Concession Site/Location**  
Surf CONCESSIONAIREs must operate from their assigned Site on the beach sand only. CONCESSIONAIREs may meet and escort participants from the parks facilities, parking lots and/or nearest street but may not set up any concession operations in the park.
6. **Equipment**  
All CONCESSIONAIREs that provide equipment to students must provide a soft foam surfboard with a leash; hardboards must have nose guard and tail guard protection.
7. **CPR and First Aid**  
All surf instructors must take and pass "American Red Cross Lifeguard Training and CPR for the Professional Rescuer. This is a 28.5 hour course that provides training in 'surveillance skills to help you recognize and prevent injuries, rescue skills – in the water and on land, first aid training and professional rescuer CPR...' Additionally, an American Red Cross first aid kit, approved by a City of San Diego Lifeguard, must be onsite at all times. Prior to the initial class, the operator must arrange with the lifeguard for an initial equipment and first aid safety inspection."

**8. Waivers**

The CONCESSIONAIRE must have on file a signed waiver from each participant, or their legal guardian if under 18 years of age, which holds the CITY, its agents, officers and employees harmless and indemnifies the same from any claims relating to the participants' activities on the CITY beach which arise from or are in any manner connected with the services provided to the participants under this Agreement.

**9. Minimum Age Requirements**

The minimum age for an instructor is eighteen (18) years of age.

**10. EMERGENCY RESPONSE PLAN FOR SURF CONCESSIONS**

The following plan is the minimum level of response and readiness for Surf Concessions during emergency situations. CONCESSIONAIRES are required to read the plan and cover all aspects of the plan with each employee working on the beach under this Concession Agreement.

**Ocean Conditions**

Ensure that the ocean conditions are safe to conduct class based on the skill levels of the instructor and the students.

**General Rescue Procedures for Water Emergencies**

1. Survey the scene.
2. The rescuer should consider his/her level of rescue skill prior to attempting a rescue.
3. Ensure proper use of rescue equipment.
4. Safely approach and determine if the victim is distressed.
5. Perform and rescue based on American Red Cross training.
6. Move the victim to safety.
7. Remove the victim from the water.
8. Perform a primary survey.
9. If an emergency exists, ensure that someone activates 911 and requests San Diego Lifeguard assistance.
10. Provide first aid until emergency medical services (EMS) arrive.
11. If other instructors and students are in the water, they should be directed to the beach until the emergency is clear. Other instructors should provide assistance as needed.

**General Rescue Procedures for Land Emergencies**

Survey the scene.

Approach victim when it is safe for the rescuer.

Perform a primary survey.

If an emergency exists requiring EMS, activate the 911 system and ensure paramedics and San Diego Lifeguard are responding.

Provide emergency care until EMS arrives.

**Cellular Communications**

All surf concessions shall keep a fully charged and functioning cellular phone on the beach in a location where it can be immediately accessed in case of emergency.

**Emergency Signals**

Pre-designated signals will be used to communicate with instructors and other surf-camp personnel in the event emergency assistance is needed. **WHISTLES** will be immediately available to all instructors and surf camp personnel. One hand or any piece of equipment being waved overhead from side to side, or three short whistle blasts will indicate that an emergency exists and immediate assistance is needed. One hand placed on the top of the head will indicate that everything is all clear. Instructors and other surf camp personnel will be diligent to look for any signs and signals of distress when they are at the beach.

Any emergency signal observed by an instructor or any surf camp personnel will cause the immediate activation of the emergency response plan.

**Accidents, Injuries and Incident Slips**

In addition to the requirements under 16.G. of this Agreement, CONCESSIONAIRE shall notify the lifeguard supervisor on duty, as soon as feasible, of any accident or injury occurring in the operation of the Concession, regardless of severity. All rescues and medical aids involving surf camp students, instructors or other personnel will be documented on company incident slips.

**CITY OF SAN DIEGO  
CONCESSION PERMIT**

THIS CITY OF SAN DIEGO CONCESSION PERMIT ("Permit") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and SAN DIEGO SURF SCHOOL ("CONCESSIONAIRE"), to be effective upon execution by the parties and approval by the San Diego City Attorney (the "Effective Date"), as follows:

1. Incorporated Documents. This Permit is created pursuant to the Surf School/Camp REQUEST FOR PROPOSAL ("RFP") issued by the Real Estate Assets Department (December 11, 2007), CONCESSIONAIRE'S proposal in response to the RFP, dated January 29, 2008. The Operating Plan, submitted by CONCESSIONAIRE as part of its proposal, is attached hereto as Exhibit A and incorporated herein. Also attached and incorporated herein are the following documents: Exhibit A, Site Map; and Exhibit C, Surf Concession Requirements.
2. Right to Enter. Subject to the terms and conditions of this Permit, CITY hereby grants permission to CONCESSIONAIRE, its employees, agents and contractors to operate surf instruction concessions ("Concessions") within CITY beach sites ("Sites") designated by the City of San Diego ("CITY"). The locations of the Sites included under this Permit are referenced below and more specifically, designated on the attached Exhibit A. However, any of the Sites named below are subject to change at CITY'S discretion.

Area/Beach	Site
Pacific Beach - Central Area Site 2	Beryl Street

Any of the above Sites may be deleted at any time by CITY upon thirty (30) days written notice to CONCESSIONAIRE. If an alternate site is not available, a proportionate amount of the minimum fixed concession fee (as specified in Section 10.B.) shall be waived for the deleted Site.

3. Use of Sites. This Permit is granted to CONCESSIONAIRE for the sole purpose of allowing CONCESSIONAIRE to operate surf instruction concessions serving the general public under the terms and conditions of this Permit. No solicitation or marketing is permitted on City beaches. Renting or selling of beach equipment or other merchandise is not allowed under this Permit.
4. Maximum Days and Hours of Operation. Maximum hours of land-based operations are 8:30 a.m. - 5:00 p.m. Water instruction is permitted from 9:00 a.m. to 4:00 p.m. All Concessions must be vacated by 5:00 p.m. daily. The CITY reserves the right to change the days and/or hours of operation at its discretion. Operations are permitted seven days a week with the following exceptions:

- A. Under no circumstances are operations permitted on the 4<sup>th</sup> of July holiday.
- B. Special Events. Unless otherwise authorized by the CITY Manager, CONCESSIONAIRE shall have no rights within certain areas of its Concession Sites or designated portions thereof during days in which special events are scheduled by CITY in these areas. CITY shall give CONCESSIONAIRE advance written notice of any such special events.
5. Competent Management. Throughout the term of this Permit, CONCESSIONAIRE shall provide competent management of the Sites for the permitted uses to the satisfaction of the City Manager. CONCESSIONAIRE covenants to operate the Concession for the above-specified purposes and diligently conduct the operations to produce a reasonable and substantial gross income.
6. Term. The term of this Permit ("Term") shall be shall be 64 months commencing on June 1, 2008, and expiring on September 30, 2013. This Permit may be terminated at any time by either party upon ninety (90) days prior written notice to the other party.
7. Holding Over. Any use of the Concession Sites by CONCESSIONAIRE after the expiration of this Permit is not permitted. Any extension of the term of the Permit beyond 64 months shall require approval of CITY Council.
8. Revocable License. This Permit is not a lease. It is a license to use CITY-owned property, and may be revoked by CITY, in its sole discretion. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by CONCESSIONAIRE as a result of such termination of this Permit. CONCESSIONAIRE expressly waives any claim for expense or loss which CONCESSIONAIRE might incur as a result of CITY'S termination of this Permit.
9. Special Provisions
- A. Operating Plan. The Operating Plan(s) for June 2008 through May 2009 submitted with the CONCESSIONAIRE's response to the CITY'S Request for Proposal, shall be revised by CONCESSIONAIRE, if required by CITY to meet CITY'S approval, and the final CITY approved Plan(s) shall be incorporated into this Permit as Exhibit B. Beginning June 1, 2009, and for every 12 months thereafter, the CONCESSIONAIRE shall provide the CITY with an Operating Plan for the coming quarter for the CITY'S approval. All Operating Plans submitted to the CITY should be consistent with the format and content of the Plans included as Exhibit B. CITY shall have the right to approve or disapprove the proposed plan. Once approved, CONCESSIONAIRE shall not make any changes to the Plan without prior written approval of CITY. At all times, the CONCESSIONAIRE shall ensure that all operations permitted under this Permit comply with the Surf Instruction Requirements incorporated herein as Exhibit C.
- B. Exclusiveness of Permit and Unauthorized Vending. In addition to special events described in Section 4.B., CITY may, during the term of this Permit, enter into

- Permits with other CONCESSIONAIRES to provide surf instructions during times not scheduled for operations in the approved Operating Plan(s) at the Sites permitted in this Permit. However, CITY, by granting this Permit to CONCESSIONAIRE, makes no warranty that the Sites shall be free of unauthorized vending or that any specific level of police or lifeguard enforcement against such activities shall be maintained.
- C. Concession Sites. On each Site included in this Permit, CONCESSIONAIRE shall erect no improvements except one shade structure no greater than twenty (20) feet by twenty (20) feet or, no more than two shade structures no greater than ten (10) feet by ten (10) feet in size, or as shall, in the opinion of the CITY be needed to adequately serve the public. CITY reserves the right to request that the CONCESSIONAIRE modify the dimensions of the structure. The Sites must be designed and maintained so as to present a neat and attractive appearance to the satisfaction of the CITY. Any items or improvements brought on the Sites by the CONCESSIONAIRE must be approved by CITY and shall not remain on location after permitted hours of operation, unless prior approval of CITY is obtained. If in the opinion of CITY, the number of Sites within any Concession covered under this Permit at any time falls short of or exceeds the number of Sites needed to adequately serve the public, CONCESSIONAIRE shall, without liability to the CITY, upon receipt of notice from CITY, adjust the number of Sites to the number specified by CITY as adequate to serve the public. Until such time as CITY requires CONCESSIONAIRE, or agrees to a request from CONCESSIONAIRE, to increase or decrease the number of Sites CONCESSIONAIRE shall operate no more and no fewer than the Sites designated in this Permit. At each Site, CONCESSIONAIRE shall occupy no more than two and no less than one area of the dimensions specified herein.
- D. Improvements. Upon expiration or termination of this Permit, any and all improvements, trade fixtures, structures, and installations or additions to the Sites now existing or constructed on the Sites by CONCESSIONAIRE shall be deemed to be part of the Sites and shall become CITY'S property free of all liens and claims. All personal property remaining on the Sites after expiration or termination shall also become the property of CITY.
- E. Maintenance of Sites. CONCESSIONAIRE agrees not to commit or allow to be committed any waste or injury or any public or private nuisance, to keep the Sites clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in or about said spaces to the satisfaction of CITY and at CONCESSIONAIRE'S sole cost. All Sites must be cleaned up nightly by CONCESSIONAIRE or more often, as required.
- F. Standard of Employees. CONCESSIONAIRE and its employees shall at all times conduct themselves and the operations of the Concession in a creditable manner. CONCESSIONAIRE shall thoroughly train its employees in their duties and shall regularly monitor them to ensure that they behave in a courteous manner, do not disturb the quiet enjoyment of other beach users, and otherwise comply with all of the Surf Instruction Requirements in Exhibit C of this Permit.

10. Fees.

- A. Percentage Fees. Percentage fees will be calculated on a calendar month basis and will consist of ten percent (10.00%) of the gross income resulting from the operations permitted under this Permit. The City Manager, in his sole discretion, may approve another percentage rate or minimum rate for each other incidental service or operation supplementary to the permitted uses stated in Section 3, Use of Sites, as may be approved in writing by the City Manager prior to the commencement of any additional service or operation. Provided however, any activity conducted on the Sites without the prior written approval of the City Manager shall be subject to the requirements of Section 10.E., Unauthorized Use Charge.
- B. Minimum Fees. The annual Minimum Fee established for the first year following the effective date of this Permit is six-thousand dollars (\$6,000), which is five-hundred dollars (\$500) on a monthly installment basis.

If the Minimum Fee is greater than the percentage fee on a calendar month basis, one-twelfth (1/12) of the Minimum Fee is required to be paid for that month. Minimum Fees are to be paid in monthly installments on or before the day of the calendar month when percentage fees are due pursuant to Section 10.I., Time and Place of Payment. In the event that the combined total percentage fee payments and monthly installments of the Minimum Fee during any Permit year equal or exceed the required Minimum Fee for that year, for the balance of that year, CONCESSIONAIRE shall discontinue paying monthly installments of the Minimum Fee until the beginning of the next Permit Year. If in any Permit Year, Minimum Fees paid plus Percentage Fees paid exceed the annual Minimum Fee and also exceed the fee which would have been paid if the Percentage Fee had been paid on total gross income, the excess over the total fee owed shall be credited against the next payable fee as it becomes due. It is the intent of this provision that CONCESSIONAIRE shall pay monthly installments of the annual Minimum Fee as a guarantee against the Percentage Fee requirement and that the greater of the two requirements, minimum or percentage, whichever occurs throughout the term, shall prevail on an annual basis.

Minimum Fee Adjustment. Effective at the beginning of the first day of the 13<sup>th</sup>, 25<sup>th</sup>, 37<sup>th</sup>, 49<sup>th</sup> and 61<sup>st</sup> month of this Permit, the annual Minimum Fee shall be eighty percent (80.00%) of the annual average of actual rents paid in the Initial Term plus any option terms exercised under this Permit. The annual average shall then be divided by twelve (12) to establish the new monthly Minimum Fee. It is recognized that the adjustments shall be calculated by the CITY upon completion of payments due for the preceding year in order to determine the amount of the Minimum Fee for the option period. Until such calculations are completed, CONCESSIONAIRE shall continue paying monthly Minimum Fees at the prior rate. Any additional fees determined by the adjustment to be due for the months previously paid at the prior rate shall be paid to the CITY within thirty (30) days following written notice. In no event shall the Minimum Fee Adjustment result in a decrease in the Minimum Fee requirement in effect immediately prior to the adjustment date.

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- C. Annual Percentage Adjustment to Minimum Fee. If CONCESSIONAIRE has not paid percentage fees during the previous 12 month period, then the Minimum Fee shall increase to one-hundred five (105.00%) of the previous year's Minimum Fee.
- D. Delinquent Concession Fee. If CONCESSIONAIRE fails to pay any concession fees when due, CONCESSIONAIRE will pay, in addition to the unpaid concession fees, a fee of \$25.00. If the fees are still unpaid at the end of the fifteen (15) days, CONCESSIONAIRE shall pay a fee of \$50.00, which is mutually agreed by the parties to this Permit to be appropriate to compensate the CITY for loss resulting from concession fee delinquency, including lost interest opportunities, legal costs, and the cost of servicing the delinquent account.
- E. Unauthorized Use Charge. CONCESSIONAIRE shall pay CITY fifty percent (50.00%) of the gross receipts for any service or use that is not permitted by this Permit. This payment is subject to the due date provided in this Permit for minimum guaranteed fees payments and the provision for delinquent concession fees payments and the provision for delinquent concession fees. The existence of the fifty percent (50.00%) charge in this clause and the payment of this charge or any part of it, do not constitute an authorization for a particular service or use, and does not waive any CITY rights to terminate a service or use or to default CONCESSIONAIRE for participating in or allowing any unauthorized use.
- F. Gross Income. "Gross income" or "gross receipts", as used in this Permit shall include all income resulting from the Concession from whatever source derived whether received or to become due. Provided; however, gross income shall not include federal, state, or municipal taxes collected from the consumer (regardless of whether the amount is stated to the consumer as a separate charge) and paid over periodically by CONCESSIONAIRE to a governmental agency accompanied by a tax return or statement as required by law. Possessory interest taxes or other property taxes shall not be deducted by CONCESSIONAIRE in computing gross income. Gross income shall not include refund of deposits. The amount of taxes and refunds shall be clearly shown on the books and records of CONCESSIONAIRE. The percentage concession fees shall be calculated and paid by CONCESSIONAIRE on the basis of gross income whether the income is received by CONCESSIONAIRE or by any permittee or licensee, or their agents, and all gross income received by any permittee, licensee, or other party as a result of occupancy or operation of the Site(s) shall be regarded as gross income of CONCESSIONAIRE for the purpose of calculating the percentage concession fees required to be paid by CONCESSIONAIRE to CITY, except as may be otherwise specified by or pursuant to this Permit.
- G. Inspection Of Records.
- i. Records. CONCESSIONAIRE shall, at all times during the Permit term, keep or cause to be kept true and complete books, records, and accounts of all financial transactions in the operation of all business activities conducted upon and financial transactions resulting from the use of the Site(s). The records shall be supported by source documents such as sales slips, daily

cash register tapes, purchase invoices, class lists, or other documents as necessary to allow CITY to easily determine the gross income. Any retail sales or charges will be recorded by means of cash registers or other comparable devices which display to the customer the amount of the transaction and automatically issue a receipt. The registers will be equipped with devices that lock in sales totals and other transaction numbers and sales details that are not resettable. Totals registered shall be read and recorded at the beginning and end of each business day. In the event of admission charges or concession rents, CONCESSIONAIRE shall issue serially numbered tickets for such admission or concession fees and shall keep an adequate record of such tickets, as well as a record of unissued tickets. All retail sales and charges may be recorded by a system other than cash registers of other comparable devices provided such a system is approved by the CITY.

- ii. Financial Statements. Within sixty (60) days after the end of the Initial Term and any subsequent option terms, CONCESSIONAIRE will, at its expense, submit to CITY a statement in which the total gross receipts and the corresponding amounts of concession percentage fees paid CITY for the year are classified according to the categories of business established for any percentage concession fees and for any other business conducted on or from the Site(s). The statement shall be signed by CONCESSIONAIRE and Financial Representative of CONCESSIONAIRE attesting to the accuracy thereof, which shall be legally binding upon CONCESSIONAIRE.
- iii. Right to Inspect. All CONCESSIONAIRE's books of account, records, and supporting documentation, as described under Section 10.G.(i), will be kept for at least five (5) years and made available to CITY in one location within the City of San Diego. These books and records must be maintained separately from all other accounts not relating to the Site(s). The CITY, at its discretion, shall have the right to inspect and audit the business of CONCESSIONAIRE, its agents, permittees, and licensees operating on, and in connection with, the Site(s) as necessary and appropriate for CITY to determine the amounts of concession fees due CITY in compliance with the requirements of this Permit. At CITY'S request, CONCESSIONAIRE shall promptly provide, at CONCESSIONAIRE's expense, any necessary data to enable CITY to fully comply with all requirements of the state and federal government for Permit information or reports concerning the Concessions. Such data will include, if required, a detailed breakdown of CONCESSIONAIRE's receipts and expenses.
- 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):

The audit(s) reveal an underpayment of more than five percent (5.00%) or more than \$10,000.00, which ever is less, between the concession fees due as reported and paid by CONCESSIONAIRE,

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pursuant to this Permit and concession fees determined by the audit(s).

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

Any underpayment of concession fees less than five percent (5.00%) revealed by the audit may be paid within thirty (30) days written notice from the CITY without penalty, otherwise, CONCESSIONAIRE shall incur interest charges on the delinquent amount as defined in Section 10.D., DELINQUENT CONCESSION FEES. CITY will credit any overpayment against incoming concession fees. Any overpayment determined after the end of this Permit will be refunded by CITY within thirty (30) days of confirmation by the City Manager of the audit(s) findings.

- H. Default. CONCESSIONAIRE's failure to keep complete and accurate records by means of double-entry bookkeeping and make them available for CITY inspection is, like all other failures to comply with covenants of this Permit, a breach of this Permit and cause for termination.
- I. Time and Place of Payment. Payments are due on or before the last day of the calendar month following the calendar month in which the Gross Income subject to percentage fees was earned. Checks shall be made payable to the City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P.O. Box 122289, San Diego, California 92112-4165, or delivered to the Office of the City Treasurer, Civic Center Plaza, 1200 Third Avenue, First Floor, San Diego, California. The place and time of payment may be changed by CITY upon thirty (30) days prior written notice to CONCESSIONAIRE. Mailed payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed paid upon actual receipt by the City Treasurer. CONCESSIONAIRE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.
- J. Security Deposit. The CONCESSIONAIRE shall deliver to CITY with the executed copies of this Permit, a good faith deposit in the amount of two thousand five hundred dollars (\$2,500.00). All or any portion of the principal sum shall be available unconditionally to CITY for payment of delinquent concession fees, for correcting any default or breach of this Permit by CONCESSIONAIRE, CONCESSIONAIRE's successors or assignees, or for payment of expenses incurred by CITY as a result of CONCESSIONAIRE's failure to faithfully perform all terms, covenants, and conditions of this Permit. If at the end of the term of this Permit, CONCESSIONAIRE has performed all of the provisions of the Permit, the deposit or any remaining balance shall be returned to the CONCESSIONAIRE without interest. The security deposit may be increased by CITY proportionate to any increase in Minimum Fees. CONCESSIONAIRE shall maintain the security deposit throughout the Term. **Notwithstanding any other provision of this Permit, if**

CONCESSIONAIRE fails or refuses to deposit or maintain a security deposit as required by this Permit, CITY may terminate this Permit immediately upon such breach. Upon such termination, CONCESSIONAIRE shall immediately cease its use of the Sites and commence and diligently pursue the removal of its property from the Sites.

- i. Utilization. If CITY utilizes all or any portion of the security deposit, upon 10 days prior written notice, CONCESSIONAIRE shall reimburse the security deposit to the full required amount.
  - ii. Increase. Upon thirty (30) days prior written notice by CITY, CONCESSIONAIRE shall deliver to CITY additional funds as CITY may, in its sole determination, require to adequately secure CONCESSIONAIRE'S obligations under this Permit.
  - iii. Return. Provided CONCESSIONAIRE is not in breach or default of this Permit, CITY shall return the security deposit, or any balance thereof, to CONCESSIONAIRE within sixty (60) days after the expiration or termination of this Permit.
11. CITY'S Consent, Discretion. Whenever required under this Permit, CITY'S consent or approval shall mean the written consent or approval of the City Manager, unless otherwise expressly provided. CITY'S discretionary acts hereunder shall be made in the City Manager's sole and absolute discretion, unless otherwise expressly provided.
12. Acceptance of Sites. CONCESSIONAIRE represents and warrants that it has independently inspected the Sites and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Sites. CONCESSIONAIRE agrees it is relying solely on its independent inspection, tests, investigations, and observations in entering into this Permit. CONCESSIONAIRE further acknowledges that the Sites are in the condition called for by this Permit, that CITY has performed all work, if any, related to the Sites and required by this Permit, and that CONCESSIONAIRE shall hold CITY harmless for any defects, whether apparent or latent, in the Sites, including without limitation the presence of any hazardous substances.
13. Maintenance of the Sites. CONCESSIONAIRE shall, at CONCESSIONAIRE'S sole cost and expense and to CITY'S satisfaction, maintain the Sites in a decent, safe, healthy and sanitary condition at all times during the Term.
14. Standard of Conduct. CONCESSIONAIRE and its employees shall at all times conduct themselves and the operations on the Sites in a creditable manner.
15. Inspection. CITY may, at all times upon prior notice, enter and inspect the Sites.

16. Insurance. On or before the Effective Date, CONCESSIONAIRE shall deliver to CITY a current certificate of insurance for: (1) Commercial General Liability insurance providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least One Million Dollars (\$1,000,000) per occurrence, subject to an annual aggregate of Two Million Dollars (\$2,000,000).
- A. Additional Insureds. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in all policies.
- B. Primary & Non-Contributory. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by CITY. The policies shall be kept in force for the duration of the Term and any extended use. The certificate(s) of insurance shall be filed with CITY'S Real Estate Assets Department upon execution of this Permit.
- C. Qualified Insurer(s). All insurance required by the terms of this Permit must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to CITY. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements.
- D. Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of CONCESSIONAIRE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
- E. Continuity of Coverage. All policies shall be in effect on or before the first day of the Term of this Permit, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the Sites, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. At least thirty (30) days prior to the expiration of each insurance policy, CONCESSIONAIRE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Permit.
- F. Modification. To assure protection from and against the kind and extent of risk existing on the Sites, CITY, at its discretion, may require the revision of amounts and coverages at any time during the Term by giving CONCESSIONAIRE thirty (30) days prior written notice. CONCESSIONAIRE shall also obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this Permit.

- G. Accident Reports. CONCESSIONAIRE shall report to CITY any accident causing more than Five Thousand Dollars (\$5,000) worth of property damage or any serious injury to persons on the Sites. Such report shall be delivered to CITY within five (5) days of such accident and shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- H. Failure to Comply. If CONCESSIONAIRE fails or refuses to obtain and maintain the required insurance, or fails to provide proof of coverage, CITY may obtain the insurance. CONCESSIONAIRE shall reimburse CITY for the premiums paid, with interest at the maximum allowable legal rate then in effect in California. CITY shall notify CONCESSIONAIRE of such payment of premiums within thirty (30) days of payment stating the amount paid, the name(s) of the insurer(s), and rate of interest. CONCESSIONAIRE shall pay such reimbursement and interest on the first (1st) day of the month following CITY'S notice. **Notwithstanding any other provision of this Permit, if CONCESSIONAIRE fails or refuses to obtain or maintain insurance as required by this Permit, or fails to provide proof of insurance, CITY may terminate this Permit immediately upon such breach. Upon such termination, CONCESSIONAIRE shall immediately cease its use of the Sites and commence and diligently pursue the removal of its property from the Sites.**
17. Indemnification. CONCESSIONAIRE shall protect, defend, indemnify, and hold CITY, its elected officials, officers, representatives, agents and employees, harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to CONCESSIONAIRE'S officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with this Permit or CONCESSIONAIRE'S occupancy, use, development, or maintenance of the Sites, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that CONCESSIONAIRE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of CITY, its elected officials, officers, representatives, agents and employees. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, CONCESSIONAIRE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.
18. No Discrimination. CONCESSIONAIRE shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in CONCESSIONAIRE'S use of the Sites, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

19. Local Business and Employment. CONCESSIONAIRE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. CONCESSIONAIRE will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this Permit from local residents and firms as opportunities occur. CONCESSIONAIRE agrees to hire qualified local residents and firms whenever feasible.
20. Drug-free Workplace. CONCESSIONAIRE shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:
- A. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of controlled substances are prohibited on the Sites and specifying the actions that will be taken against employees for violations of the prohibition; and
  - B. Establish a drug-free awareness program to inform employees about all of the following:
    - i. The dangers of drug abuse in the workplace;
    - ii. CONCESSIONAIRE'S policy of maintaining a drug-free workplace;
    - iii. Any available drug counseling, rehabilitation, and employees assistance programs; and
    - iv. Penalties that may be imposed upon employees for drug abuse violations.
21. Disabled Access Compliance. CONCESSIONAIRE shall comply with the California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities.
22. CONCESSIONAIRE'S Risk. CONCESSIONAIRE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with CONCESSIONAIRE'S occupancy, use, development and maintenance of the Sites and any damages to the improvements on, under, or in the vicinity of the Sites resulting directly or indirectly thereby.
23. No Nuisance. CONCESSIONAIRE shall not use the Sites in any manner which, in CITY'S opinion, creates a nuisance or disturbs the quiet enjoyment of persons in and to the surrounding area.
24. No Assignment. CONCESSIONAIRE shall not assign any rights granted by this Permit or any interest herein without CITY'S prior written consent. Approval of any such proposed assignment may be withheld in CITY'S sole and absolute discretion. Any assignment by operation of law shall automatically terminate this Permit.

25. Signs. CONCESSIONAIRE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising without CITY'S prior written consent. If any such unauthorized item is found on the Sites, CONCESSIONAIRE shall remove the item at its expense within 24 hours notice by CITY, or CITY may thereafter remove the item at CONCESSIONAIRE'S cost.
26. Advertisement and Marketing. Any advertising or marketing which reference the City of San Diego may not be distributed by the CONCESSIONAIRE without the advanced written approval of the CITY. If CONCESSIONAIRE uses the City of San Diego in any context to promote its business operations without prior written approval by CITY, CONCESSIONAIRE will be considered to be in default. No advertising or marketing materials of any kind may be posted or distributed on any City beach without the *advanced written approval of the CITY*.
27. Encumbrances. CONCESSIONAIRE shall keep the Sites free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with this Permit or CONCESSIONAIRE'S occupancy, use, development, or maintenance of the Sites. CONCESSIONAIRE shall protect, defend, indemnify, and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense, including without limitation all attorney fees and costs, relating to or charged against the Sites, including without limitation CONCESSIONAIRE'S failure or the failure of any contractor or subcontractor hired by CONCESSIONAIRE to pay any person or persons referred to in Section 3181 of the California Civil Code or other applicable sections thereof.
28. Defaults and Remedies.
- A. Default by CONCESSIONAIRE. In the event that:
- i. CONCESSIONAIRE shall default in the performance or fulfillment of any covenant or condition required by this Permit to be performed or fulfilled by CONCESSIONAIRE and shall fail to cure the default within thirty (30) days following written notice from CITY; or if any default is not curable within thirty (30) days, and CONCESSIONAIRE shall fail to commence to cure the default(s) within said thirty (30) day period and diligently pursue cure to completion;
  - ii. CONCESSIONAIRE shall voluntarily file or have involuntarily filed against it any petition under bankruptcy or insolvency act or law; or
  - iii. CONCESSIONAIRE shall make a general assignment for the benefit of creditors;
- then CITY may, at its option, without further notice or demand upon CONCESSIONAIRE or upon any person claiming rights through CONCESSIONAIRE, immediately terminate this Permit and all rights of CONCESSIONAIRE and of all persons claiming rights through CONCESSIONAIRE to the Concession Sites or to possession thereof, and

CITY may then enter and take possession of the Sites and expel CONCESSIONAIRE and all persons so claiming rights thereto. Provided; however, in the event that any default described in Part (1)a. of this section is not curable within thirty (30) days after written notice to CONCESSIONAIRE, CITY shall not terminate this Permit pursuant to the default if CONCESSIONAIRE immediately commences to cure the default and diligently pursues cure to completion. In any event, either party may terminate this Permit without cause by giving ninety (90) days written notice of intent to terminate to the other party.

B. Abandonment by CONCESSIONAIRE. Even though CONCESSIONAIRE has breached the Permit and abandoned the Concession Site(s), this Permit shall continue in full force and effect for so long as CITY does not terminate this Permit, and CITY may enforce all its rights and remedies under this Permit, including, but not limited to, the right to recover the concession fee as it becomes due, plus damages. For purposes of this section, the following do not constitute a termination of CONCESSIONAIRE's right to possession or operation:

- i. Acts by CITY of maintenance, preservation, or efforts to negotiate a new Permit.
- ii. The appointment of a receiver upon initiative of CITY to protect CITY'S interest under this Permit.

29. Damages. Damages which CITY may recover in the event of default under this Permit include the worth, at the time of the award, of the amount by which the unpaid concession fee for the balance of the term after the date of award or for any shorter period of time specified in this Permit exceeds the amount of concession fee loss for the same period that the CONCESSIONAIRE proved could be reasonably avoided. The remedies provided by this section are not exclusive and shall be cumulative to all other rights and remedies possessed by CITY, and nothing contained herein shall be construed so as to defeat any other rights or remedies possessed by CITY, and nothing contained herein shall be construed so as to defeat any other rights or remedies to which CITY may be entitled.

30. Compliance with Laws. CONCESSIONAIRE shall, at its sole cost and expense, comply with all the requirements of all rules, regulations, ordinances, laws and direction of governing authorities now in effect or which may hereafter be in effect, which pertain to CONCESSIONAIRE'S occupancy, use, development, and maintenance of the Sites.

31. Taxes. CONCESSIONAIRE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon CONCESSIONAIRE by reason of the business or other CONCESSIONAIRE activities related to the Sites, including any licenses or permits. CONCESSIONAIRE acknowledges that this Permit may create a possessory interest subject to property taxation, and that CONCESSIONAIRE may be subject to the payment of taxes levied on that interest. CONCESSIONAIRE shall pay all such possessory interest taxes. CONCESSIONAIRE'S payment for taxes, fees, and assessments shall not reduce any payment due CITY under this Permit.

32. Hazardous Substances. CONCESSIONAIRE shall not allow the installation or release of hazardous substances in, on, under, or from the Sites. CONCESSIONAIRE and CONCESSIONAIRE'S agents and contractors shall not store, utilize, or sell any hazardous substance on the Sites without CITY'S prior written consent. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State of California's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated into this Permit.
- A. Remediation. If any release of a hazardous substance occurs, CONCESSIONAIRE shall pay all costs of remediation and removal of the hazardous substance in accordance with all applicable laws and rules and regulations of governmental authorities.
- B. Indemnity. CONCESSIONAIRE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from CONCESSIONAIRE'S occupancy, use, development, or maintenance of the Sites, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.
- C. Notice of Release. If CONCESSIONAIRE knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the Sites, CONCESSIONAIRE shall give written notice to CITY within three (3) days of receipt of the knowledge or cause for belief. If CONCESSIONAIRE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, CONCESSIONAIRE shall notify CITY immediately upon receipt of such knowledge or belief and shall take all actions necessary to alleviate the danger. CONCESSIONAIRE shall notify CITY immediately of any notice of violation received or initiation of environmental actions or private suits related to the Sites.
- D. Environmental Assessment. At CITY'S option upon expiration or termination of this Permit, an environmental assessment of the Sites shall be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at CONCESSIONAIRE'S sole cost and expense, and shall establish what, if any, hazardous substances exist on, in, or under the Sites, and in what quantities. If any hazardous substances exist in quantities greater than that allowed by CITY, county, state, or federal laws, statutes, ordinances, or regulations, then the environmental assessment shall include a discussion of these substances with

recommendations for remediation and removal necessary to effect compliance with those laws or statutes, and estimates of the cost of such remediation or removal. CONCESSIONAIRE shall cause the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved, and CONCESSIONAIRE shall pay all costs and expenses therefor.

33. Waiver. CITY'S failure to insist upon the strict performance of any of CONCESSIONAIRE'S obligations under this Permit, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. The property constituting the Sites is CITY-owned and held in trust for the benefit of CITY'S citizens. CITY'S failure to discover a breach of any obligation of this Permit or take prompt action to require the cure of any such breach shall not result in an equitable estoppel, but CITY may at any and all times require the cure of any such breach.
34. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.
35. Partial Invalidity. If any term, covenant, condition, or provision of this Permit is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
36. Number and Gender. Words of any gender used in this Permit shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
37. Captions. Section headings and captions shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this Permit. The numbers of the paragraphs and pages of this Permit may not be consecutive. Such lack of consecutive numbers shall have no effect on the enforceability of this Permit.
38. Entire Permit. This Permit constitutes the entire Permit between the parties and supersedes any and all prior understandings, representations, warranties and Permits between them and pertaining to this Permit and CONCESSIONAIRE'S occupancy, use, development, and maintenance of the Sites. Any modification, alteration, or amendment of this Permit shall be in writing and signed by all the parties hereto.
39. Legal Proceedings. If either party commences legal proceedings to enforce or interpret any right or obligation under this Permit, the prevailing party shall be entitled to an award of costs related thereto, including without limitation reasonable attorney fees and court costs.

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40. Notices. Any notice required or permitted to be given under this Permit shall be in writing and may be served personally or delivered by United States mail, postage prepaid, and addressed to CITY or CONCESSIONAIRE, respectively, as follows:

THE CITY OF SAN DIEGO  
Real Estate Assets Department  
Attention: Director, Real Estate Assets Department  
1200 Third Avenue, Suite 1700 (MS 51A)  
San Diego, California 92101

SAN DIEGO SURF SCHOOL  
Soufiane Tihhi & Nicole Kranzberg  
877 Stevens Ave. Apt 4201  
Solana Beach, CA 92075

41. Governmental Approvals. By entering into this Permit, neither CITY nor CITY'S City Council is obligating itself to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to CONCESSIONAIRE'S occupancy, use, development, or maintenance of the Sites. Discretionary action includes but is not limited to re-zonings, variances, environmental clearances, or any other governmental approvals which may be required for CONCESSIONAIRE'S occupancy, use, development, or maintenance of the Sites.

42. San Diego's Strong Mayor Form of Governance. All references to "City Manager" in this Permit shall be deemed to refer to "the Mayor or his/her designee." This section shall remain in effect for the duration CITY operates under the mayor-council (commonly referred to as "strong mayor") form of governance pursuant to Article XV of the San Diego City Charter.

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]*

43. Authority to Contract. Each individual executing this Permit on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Permit on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing Permit, and that this Permit is binding upon such person or entity in accordance with its terms. Each person executing this Permit on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to CITY, that such authority is valid.

IN WITNESS WHEREOF, this Permit is executed to be effective as of the Effective Date.

Date: \_\_\_\_\_

THE CITY OF SAN DIEGO, a California municipal corporation

BY: \_\_\_\_\_  
James Barwick, Director  
Real Estate Assets Department

Date: 7/7/08

SAN DIEGO SURF SCHOOL, CONCESSIONAIRE

BY: \_\_\_\_\_  
Soufiane Akhi, Owner  
\_\_\_\_\_  
Nicole Kranzberg, Owner

*APPROVED AS TO FORM AND LEGALITY:*

Effective Date: \_\_\_\_\_

MICHAEL J. AGUIRRE, City Attorney

BY: \_\_\_\_\_  
\_\_\_\_\_, Deputy City Attorney

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# EXHIBIT A

## Central Area Sites (Pacific Beach)

- Site 1 Wilbur Street
- Site 2 Beryl Street
- Site 3 South of Pacific Beach Drive
- Site 4 North of Santa Rita Place



Every reasonable effort has been made to assure the accuracy of this map. However, neither the SanGIS participants nor San Diego Data Processing Corporation assume any liability arising from its use.

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**III. Description of Proposed Operations**

- The following is the Operating Plan for Beryl Street site in Pacific Beach.

**SCHEDULE OF CLASSES****San Diego Surf School Summer Classes (JUNE 1, 2008-SEPTEMBER 30<sup>TH</sup>, 2008)*****KIKI'S****Ages 5-8 (5 Kids Max Per Session).**Schedule: Monday - Friday (3.5 Hrs / Day)**Choose 9:00 - 12:30 or 1:00 - 4:30**Price: \$270 (All equipment included)**Offered all summer long*

If you have a little guy between the ages of 5-7 that's ready for big fun, you're in the right place. Small class sizes and constant supervision make for a supportive environment to learn a great sport. Our instructors are conscientious and experienced at making it fun for young kids to learn surfing. Kids will have a blast riding the whitewash in shallow water while our instructors encourage them. We focus on making it a memorable and positive experience because that's what surfing is all about.

***YOUTH:****Boys and Girls, Ages 9-13 (10 Kids Max Per Session).**Schedule: Monday - Friday (3.5 Hrs / Day)**Choose 9:00 - 12:30 or 1:00 - 4:30**Price: \$270 (All equipment included)**Offered all summer long*

Participants learn the basics of surfing, ocean safety, and water etiquette. All levels are welcomed and accommodated with small class sizes taught by our experienced and energetic staff. Have fun with a group of your friends or meet other surfers who are learning too. Participants will get to meet and surf with professional and amateur visiting surfers. It's a low pressure, fun environment to pick up surfing and a great experience; many kids return two or three times! Soft surfboards and wetsuits are provided. Sign up soon, the youth sessions fill up quickly.

***TEENS:****(Guys and Girls, 14-17) (10 Kids Max Per Session).**Schedule: Monday - Friday (3.5 Hrs / Day)**Choose from 9:00 - 12:30 or 1:00 - 4:30**Price: \$270 (All equipment included)**Offered all summer long*

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EXHIBIT B

Session 10: 4-8  
Session 11: 11-15  
Session 12: 18-22  
Session 13: 25-29

**Winter Season Classes**

After School Session: (Boys and Girls, 8-14)

Schedule: Choose any day after-school

Mon-Fri for 2 hours

Price: \$160 (All equipment included)

Come surf with us after school. Sessions are once a week (2 hrs/day) for 4 weeks. Our after-school surf sessions feature small class sizes and a low instructor to participant ratio. Our enthusiastic staff will ensure that you have a great time developing skills and building confidence. This is a great way to extend the fun you had this summer and continue surfing throughout the year.

---

**Brief Summary of Material to be Covered in Class**

Monday to Friday:

**Monday- Water Safety**

Participants will be taught of potential water hazards which may include any of the following: head diving, sting rays, appropriate way to carry a board, distractions, paddling out, bailing board, rip tides, and covering up

**Tuesday-Ocean Knowledge**

The following will be taught in order to determine safe ocean conditions are present to conduct surf instruction: ocean currents; tides, ocean bottoms, swells, wave types and winds.

**Wednesday-Tricks**

The following tricks will be taught floater, pumping, white wash, off the lip, cutback, roundhouse cutback,

**Thursday-Surfing Techniques**

The following surfing techniques will be taught paddling, pop-ups, positioning, catching a wave, speed control, sitting, turtle roll, turning around, and tube riding.

**Friday-Surfing Etiquette**

The following surfing etiquette will be taught wave priority, a challenge, surroundings, paddling out, being in the way, dropping in on someone.

# EXHIBIT B

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- #1 Supervising kids, and making sure they are paying attention. Helping correct form of those in need.
- #2 Supervising kids and making sure they are paying attention. Making corrections if needed
- 940am **SURF #1**
  - D On the beach, lifeguarding, giving directions to other instructors
  - HI In the water at the middle post unless there is a strong-shore current then will be at the dangerous side.
  - #1 In water-at south boundary post
  - #2 In water-at the north boundary post
- 1040am **CHANGE OVER-WATER TO LUNCH**
  - D Maintaining the kids on the beach in one group
  - HI Last one out of water
  - #1 Helping kids stack boards
  - #2 Helping with wetsuits as needed
- 1045am **LUNCH**
- 1115am **RE-GROUP FOR SECOND SURF**
  - D On the beach, lifeguarding, giving directions to other instructors
  - HI In the water at the middle post unless there is a strong-shore current then will be at the dangerous side.
  - #1 In water-at south boundary post
  - #2 In water-at the north boundary post
- 1215pm **RE-GROUP**
  - D Maintaining the kids on the beach in one group
  - HI Direction kids out of water. Last one out of water
  - #1 Helping kids stack boards
  - #2 Helping with wetsuits as needed
- 1225pm **PREPARING KIDS FOR PICKUP**
  - D Making sure kids stay together and are ready for pickup
  - HI Getting kids together and keeping them entertained
  - #1 Begins cleaning up
  - #2 Responsible for organizing equipment
- 1230pm **CHECKOUT**
  - D Talk to every kid, parent, and checkout and call parents if they are late.
  - HI Keeping kids in one small group and escorting kids to director when parents arrive
  - #1 Leaves at 1230pm
  - #2 Cleans area, loads car, and checks equipment

**EXHIBIT C**  
**Surf Concession Requirements**

*The following requirements are subject to revision at any time by the CITY:*

1. **Maximum number of participants/boards on the beach and in the water**  
A maximum of 50 students per Site may be on the beach at any one time. Of those fifty students, a maximum of twenty-five students per group may be in the water at any one time.
2. **Identifying Markers**  
Instructors must wear red rashguards with CONCESSIONAIRE's name. Students must wear a color specific rashguard with CONCESSIONAIRE's name. Both student and instructor rashguards are to be worn at all times while in the water. The CITY-issued sign with the CONCESSIONAIRE's name must be clearly posted at each Site, whenever classes are in progress.
3. **Student to instructor ratios.**  
For every five students on the beach or in the water, one instructor must be present. Anytime students are in the water at least one American Red Cross certified instructor must be present and supervising the class.
4. **Beach Access**  
CONCESSIONAIRE shall not exclude the public from any Site. Beach access must be kept clear at all times. Surfboards must be kept in a position that does not obstruct beach access.
5. **Concession Site/Location**  
Surf CONCESSIONAIREs must operate from their assigned Site on the beach sand only. CONCESSIONAIREs may meet and escort participants from the parks facilities, parking lots and/or nearest street but may not set up any concession operations in the park.
6. **Equipment**  
All CONCESSIONAIREs that provide equipment to students must provide a soft foam surfboard with a leash; hardboards must have nose guard and tail guard protection.
7. **CPR and First Aid**  
All surf instructors must take and pass "American Red Cross Lifeguard Training and CPR for the Professional Rescuer. This is a 28.5 hour course that provides training in 'surveillance skills to help you recognize and prevent injuries, rescue skills – in the water and on land, first aid training and professional rescuer CPR...' Additionally, an American Red Cross first aid kit, approved by a City of San Diego Lifeguard, must be onsite at all times. Prior to the initial class, the operator must arrange with the lifeguard for an initial equipment and first aid safety inspection."

**8. Waivers**

The CONCESSIONAIRE must have on file a signed waiver from each participant, or their legal guardian if under 18 years of age, which holds the CITY, its agents, officers and employees harmless and indemnifies the same from any claims relating to the participants' activities on the CITY beach which arise from or are in any manner connected with the services provided to the participants under this Agreement.

**9. Minimum Age Requirements**

The minimum age for an instructor is eighteen (18) years of age.

**10. EMERGENCY RESPONSE PLAN FOR SURF CONCESSIONS**

The following plan is the minimum level of response and readiness for Surf Concessions during emergency situations. CONCESSIONAIREs are required to read the plan and cover all aspects of the plan with each employee working on the beach under this Concession Agreement.

**Ocean Conditions**

Ensure that the ocean conditions are safe to conduct class based on the skill levels of the instructor and the students.

**General Rescue Procedures for Water Emergencies**

1. Survey the scene.
2. The rescuer should consider his/her level of rescue skill prior to attempting a rescue.
3. Ensure proper use of rescue equipment.
4. Safely approach and determine if the victim is distressed.
5. Perform and rescue based on American Red Cross training.
6. Move the victim to safety.
7. Remove the victim from the water.
8. Perform a primary survey.
9. If an emergency exists, ensure that someone activates 911 and requests San Diego Lifeguard assistance.
10. Provide first aid until emergency medical services (EMS) arrive.
11. If other instructors and students are in the water, they should be directed to the beach until the emergency is clear. Other instructors should provide assistance as needed.

**General Rescue Procedures for Land Emergencies**

Survey the scene.

Approach victim when it is safe for the rescuer.

Perform a primary survey.

If an emergency exists requiring EMS, activate the 911 system and ensure paramedics and San Diego Lifeguard are responding.

Provide emergency care until EMS arrives.

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**Cellular Communications**

All surf concessions shall keep a fully charged and functioning cellular phone on the beach in a location where it can be immediately accessed in case of emergency.

**Emergency Signals**

Pre-designated signals will be used to communicate with instructors and other surf-camp personnel in the event emergency assistance is needed. **WHISTLES** will be immediately available to all instructors and surf camp personnel. One hand or any piece of equipment being waved overhead from side to side, or three short whistle blasts will indicate that an emergency exists and immediate assistance is needed. One hand placed on the top of the head will indicate that everything is all clear. Instructors and other surf camp personnel will be diligent to look for any signs and signals of distress when they are at the beach.

Any emergency signal observed by an instructor or any surf camp personnel will cause the immediate activation of the emergency response plan.

**Accidents, Injuries and Incident Slips**

In addition to the requirements under 16.G. of this Agreement, CONCESSIONAIRE shall notify the lifeguard supervisor on duty, as soon as feasible, of any accident or injury occurring in the operation of the Concession, regardless of severity. All rescues and medical aids involving surf camp students, instructors or other personnel will be documented on company incident slips.