## OFFICE OF THE CITY ATTORNEY ROBERT E. SHANNON, City Attorney 333 West Ocean Boulevard, 11th Floor Long Beach, CA 90802-4664

## FIRST AMENDMENT TO PERMIT NO. 30510 30510

THIS FIRST AMENDMENT TO PERMIT NO. 30510 is made and entered, in duplicate, as of April 25, 2011, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on November 20, 2007, by and between THE CITY OF LONG BEACH, a Municipal corporation ("Lessor") and OWS HOLDINGS, LLC, dba OFFSHORE WATER SPORTS ("Permittee"), a California corporation.

WHEREAS, Lessor granted Permittee permission to use and occupy portions of the docks, the slips and end ties of the Rainbow Harbor and Rainbow Marina in the City of Long Beach; and

WHEREAS, the parties desire to amend this permit by extending the term and modifying the annual Minimum Payment;

NOW, THEREFORE, in consideration of the mutual terms and conditions in Permit No. 30510, the parties agree as follows:

- 1. Section 5 of Permit No. 30510 is hereby amended in its entirety to read as follows:
  - "5. <u>TERM</u>: The term of this Permit shall commence on January 1, 2008 and shall terminate on December 31, 2012. Notwithstanding the foregoing, either party may terminate this Permit at any time for any or no reason upon ninety (90) days written notice to the other party. Upon termination of this Permit (whether by lapse of time or otherwise), Permittee shall quit and surrender possession of the Permit Area and remove its personal property therefrom."
- 2. Section 6.2 of Permit No. 30510 is hereby amended in its entirety to read as follows:

## "6.2. Permit Fee.

A. Permittee shall pay to the City, percentage fees in the amount of eight percent (8%) of Permittee's "gross receipts" (as that term is defined in subparagraph 4.5 below) derived from Permittee's Long Beach Operations or an

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annual minimum of four thousand five hundred eighty-four dollars (\$4,584.00), whichever is greater.

- B. The annual minimum shall be paid in 1/12<sup>th</sup> increments on the first day of each month, with percentage rent over and above the minimum due on the 20<sup>th</sup> of the following month. For example, an annual minimum of \$4,584.00, results in a monthly payment of three hundred eighty-two dollars (\$382.00), due on the 1<sup>st</sup> of each month.
- C. A statement of gross sales receipts must be submitted along with the monthly annual minimum payment for each and every month in which gross receipts are received whether received by Permittee, its subpermittees, concessionaires or other person or entity operating under a contract with Permittee from all permitted concessions, operations and activities. Permittee shall not have any right of abatement, deduction, set off, prior notice or demand.
- D. In the event that the annual percent of gross receipts derived from Permittee's Long Beach Operations exceeds the annual minimum paid by Permittee to City, the Permittee shall pay the difference between the gross receipts and the annual minimum to the City on or before January 31<sup>st</sup>."
- Except as expressly stated herein, all of the terms, covenants, and conditions of Permit No. 30510 are ratified and confirmed and shall remain in full force and effect.

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