

1 5. WAIVER FORM. Permittee is required to have customers complete
2 and sign a waiver form before participating in lessons or renting equipment. Permittee
3 must disclose that wake boarding may be an activity not covered by the participant's life
4 insurance policy since it is considered an extreme sport. The waiver form(s) used by
5 Permittee is subject to review and approval by the City's Risk Manager and City Attorney.

6 5.1 FINANCIAL STATEMENT. Permittee shall, on or before the
7 fifteenth (15th) day of the month after Permittee commences operation, and on or before
8 the fifteenth (15th) day of each month thereafter throughout the term of this Permit or any
9 extension thereof, give to City's Director of Parks, Recreation and Marine (hereafter
10 "Director") at 2760 Studebaker Road, Long Beach, California 90815-1697, a financial
11 report showing Permittee's daily income from the concession for the preceding calendar
12 month. On or before the first (1st) day of March of each year throughout the term of the
13 Permit or any extension thereof, Permittee shall give the Director a signed statement
14 showing gross receipts of the preceding calendar year or partial calendar year. Such
15 statement shall be prepared and delivered to City in accordance with generally accepted
16 accounting practices containing a statement of gross receipts and a computation of
17 percentage of gross receipts.

18 If Permittee fails to prepare and deliver or cause to be prepared and
19 delivered, the statement, as when required above and such failure continues after thirty
20 (30) days notice thereof by City to Permittee, City may audit or cause an audit to be
21 made of all books, records and accounts of business operations conducted from the
22 Premises and may prepare the statement or statements which Permittee failed to prepare
23 and deliver. Said audit shall be in addition to any other audit authorized by this
24 agreement. Permittee shall pay on demand all expenses of such audit and the
25 preparation of any such statements and all sums as may be shown by such audit to be
26 due as payment together with interest thereon at the rate of ten percent (10%) per annum
27 from the date of City's demand.

28 Permittee shall keep or cause to be kept during the term, any extended

1 term and for two (2) years after the expiration or termination of this Permit complete
2 books of accounts and other records reflecting all business transactions conducted from
3 the Premises. Such books and records shall include a daily record of gross receipts.
4 Permittee shall maintain a method of accounting for the receipts and disbursements in
5 connection with all business transactions conducted from the Premises which correctly
6 reflects all gross receipts and disbursements. Permittee's books of account and records
7 shall include but not be limited to general ledgers, cash receipts, sales, purchases, and
8 journals including any supporting and underlying documents such as vouchers, checks,
9 tickets, and bank statements, state sales tax returns, checks and other documents
10 proving payment of the sums shown, and such other accounting records as City, in its
11 sole discretion, deems necessary. Permittee's records and books of account shall reflect
12 only those transactions conducted from the Premises and shall not be maintained on a
13 consolidated basis with other activities of Permittee or with any other entity including
14 without limitation any parent corporation or other wholly-owned subsidiary or affiliate of
15 Permittee. Said records and books of account shall be kept and maintained in
16 accordance with generally accepted accounting practices. City shall have access to said
17 records and books of account at all reasonable times for the purpose of examining and
18 auditing them.

19 The receipt by City of any financial information or the acceptance of
20 payment shall not bind City to the correctness of the information or amount of payment.

21 Once during each permit year and once within a period of nine (9) months
22 following the expiration or termination of this Permit City shall have the right to undertake
23 a special audit of Permittee's records and books of account. Permittee shall cooperate
24 fully with City or City's agents in the special audit. The audit shall be conducted during
25 usual business hours. If there is a deficiency in payments due to City, the deficiency
26 shall become immediately due and payable together with interest thereon at the rate of
27 ten percent (10%) per annum from the date of City's demand for payment of the
28 deficiency. If the amount of any deficiency for any permit year or partial permit year

1 exceeds three percent (3%) of the payment, Permittee shall pay the cost of this audit;
2 otherwise the cost shall be paid by City.

3 6. INDEMNIFICATION. Permittee shall defend, indemnify, and hold
4 harmless the City, their officials, agents, and employees from and against all loss,
5 damage, demand, claim, cause of action, liability cost, or expense (including reasonable
6 attorney's fees) of any kind whatsoever resulting or arising out of the operation,
7 maintenance, or condition of the concession by Permittee, Permittee's employees,
8 agents or other persons permitted by Permittee to be at the concession.

9 7. INSURANCE. Concurrent with the execution of this Permit,
10 Permittee shall procure and maintain, at Permittee's cost, during the term of this Permit
11 and any extension hereof from an insurer admitted in California or having a minimum
12 rating of or equivalent to A:VIII in Best's Insurance Guide:

13 (a) Commercial general liability insurance equivalent in scope to ISO form
14 CG 00 01 11 85 or CG 00 01 11 88 in an amount not less than One Million Dollars
15 (\$1,000,000.00) for each occurrence or Two Million Dollars (\$2,000,000.00) general
16 aggregate. Such coverage shall include but not be limited to broad form contractual
17 coverage, cross liability, and products and completed operations. City, its officials,
18 boards, commissions, employees, and agents shall be named as additional insureds by
19 endorsement on an endorsement equivalent in scope to ISO form CG 20 10 11 85 or CG
20 20 26 11 85 and this insurance shall contain no special limitations on the scope of
21 protection given to the City, its officials, boards, commissions, employees and agents.

22 (b) Workers' Compensation insurance as required by the California Labor
23 Code.

24 (c) "All Risk" property insurance in an amount sufficient to cover the full
25 replacement value of Permittee's personal property, improvements and equipment at the
26 Facilities.

27 (d) Accident insurance in the greater of (i) the amount required by the
28 sanctioning body of Permittee or (ii) One Hundred Thousand Dollars (\$100,000.00) per

1 accident. In either case, there shall be no deductible in coverage for minors and only a
2 Two Hundred Fifty Dollars (\$250.00) deductible in coverage for adults.

3 Any self-insurance program, self-insured retention, or deductible must be
4 separately approved in writing by City's Risk Manager or designee and shall protect City,
5 its officials, boards, commissions, employees and agents in the same manner and to the
6 same extent as they would have been protected had the policy or policies not contained
7 retention or deductible provisions. Each insurance policy shall be endorsed to state that
8 coverage shall not be reduced, non-renewed, or canceled except after thirty (30) days
9 prior written notice to City, and shall be primary and not contributing to any other
10 insurance or self-insurance maintained by City. Coverage for abuse and molestation
11 shall not be excluded. Permittee shall notify the City in writing within five (5) days after
12 any insurance required herein has been voided by the insurer or cancelled by the
13 insured.

14 Prior to commencement of this Permit, Permittee shall deliver to City
15 certificates of insurance and required endorsements for approval as to sufficiency and
16 form. The certificates and endorsements for each insurance policy shall contain the
17 original signature of a person authorized by that insurer to bind coverage on its behalf. In
18 addition, Permittee shall within thirty (30) days prior to expiration of the insurance furnish
19 to City certificates of insurance and endorsements evidencing renewal of such insurance.
20 City reserves the right to require complete certified copies of all policies of Permittee, at
21 any time. Permittee shall make available to City's Risk Manager or designee all books,
22 records, and other information relating to the insurance coverage required herein, during
23 normal business hours.

24 Any modification or waiver of the insurance requirements herein shall only
25 be made with the approval of City's Risk Manager or designee. Not more frequently than
26 once a year, the City's Risk Manager or designee may require that Permittee change the
27 amount, scope or types of coverages required herein if, in his or her sole opinion, the
28 amount, scope or types of coverages are not adequate.

1 The procuring or existence of insurance shall not be construed or deemed
2 as a limitation on Permittee's liability or as full performance on Permittee's part of the
3 indemnification provisions of this Permit.

4 8. LICENSES, PERMITS AND TAXES. Permittee shall obtain and pay
5 for all licenses and permits required for operation of the concession. In addition,
6 Permittee shall pay all taxes levied, including any possessory interest taxes.

7 9. TRANSFER OR ASSIGNMENT. This permit only grants Permittee
8 the privilege to operate the concession. Permittee by this Permit acquires hereunder no
9 right, title, or interest of any kind in the concession or the property on which the
10 concession is located. Permittee shall not sublet the concession or the property on which
11 the concession is located, or any part thereof, or allow the same to be used or occupied
12 by any other person or for any other purpose than that herein specified, nor assign this
13 Permit or in any manner convey or transfer any privilege herein granted. This Permit
14 shall not be transferred by attachment, execution, proceedings, insolvency or bankruptcy,
15 either voluntary or involuntary, or receivership proceedings (collectively "transfer"). In the
16 event of such subletting, assignment, or transfer said act or acts shall be null and void
17 and have no force or effect and the City may revoke this Permit.

18 10. STANDARDS OF SERVICE. Permittee shall conduct business in a
19 manner acceptable to the City and shall have a sufficient number of employees
20 necessary to furnish the best service possible. All personnel used in serving the public
21 shall be clean, neat and orderly in appearance, and shall be uniformed and identified in a
22 manner acceptable to the Director.

23 The Director shall have the right to approve the level of service rendered
24 and to order such service improved, discontinued or remedied. If the quality of service or
25 equipment supplied or the cleanliness of the concession is not at a level satisfactory to
26 the Director or does not adequately meet the needs of the public, or if the Permittee
27 violates any of the terms or conditions of this Permit, then the Director shall have the right
28 to revoke this Permit by giving prior notice of revocation to Permittee.

1 11. ATTENTION. Permittee shall devote time and attention to the
2 concession and shall promote, increase and develop the concession and render every
3 possible service and convenience to the public or shall appoint a manager to do so who
4 shall remain subject to the direction and control of Permittee. Any manager appointed by
5 Permittee shall have full authority to the concession and Permittee shall encourage his
6 manager to utilize sound business methods.

7 12. LAWS AND ORDINANCES. Permittee shall comply with all
8 applicable municipal, state and federal laws, rules, regulations, and ordinances which
9 govern charter (vessel for hire) operations, as well as any additional directives or
10 instructions of the City Manager or his Designee relating to the concession, including but
11 not limited to, California Boating Laws, City Municipal Codes and City Marina Rules and
12 Regulations. Failure to do so may result in the immediate revocation of this Permit.
13 Permittee shall obtain and display, as required, all other permits or licenses, including but
14 not limited to those from the United States Coast Guard, Transportation Security
15 Administration, California Coastal Commission, City's Department of Health and Human
16 Services, and Financial Management Business License Section.

17 13. LICENSE AND CERTIFICATION. Permittee shall not permit any
18 person charged with the responsibility of operating any of its vessels to do so unless and
19 until that person is qualified and duly licensed to operate such vessels in compliance with
20 United States Coast Guard regulations, and all other state and federal required licenses
21 for the vessel and vessels to which that person is assigned. Permittee shall deliver to the
22 City Manager or his designee copies of all such licenses for all vessel operators.

23 Permittee's vessels shall at all times be certified, licensed and inspected as
24 required by those governmental agencies having jurisdiction over Permittee's activities.

25 14. CONDUCT. Permittee shall at all times conduct the concession in a
26 quiet and orderly manner to the satisfaction of the Director, and in a manner that will not
27 create a nuisance. Permittee shall not provide service to any intoxicated person, allow
28 profane or indecent language, or boisterous or loud conduct in or about the concession,

1 and shall call upon the aid of peace officers to assist in maintaining peaceful conditions.

2 15. BURGLARY, THEFT, FIRE AND VANDALISM. Permittee may, at
3 the discretion of the Director, be held responsible for any damage or loss which may
4 occur to the premises, equipment, merchandise or receipts, because of Permittee's
5 failure to properly take precautions to secure and protect said premises, equipment,
6 merchandise and receipts including, but not limited to, that damage or loss resulting from
7 burglary, fire, theft or vandalism.

8 16. PRICES. All prices charged at the rental concession shall be subject
9 to the prior written approval of the Director. The Permittee is required to submit to the
10 Director all prices for equipment rental at the premises before commencement of
11 business and before September 1st of each year of the term or any extension. The
12 standards used to approve or disapprove prices shall be the prevailing market price for
13 the same service or grade of merchandise.

14 17. EXCLUSIVITY. During the term of this Permit, no exclusivity shall be
15 granted.

16 18. SIGNS AND ADVERTISEMENTS. Any signs, advertisements or
17 promotional material provided by Permittee shall have the prior approval of the Director.
18 The City shall have the right to require removal or order refurbishment of any sign or
19 advertisement previously approved. Permittee shall not permit vendors to display wares
20 inside or outside the concession or on the property where the concession is located
21 without the prior approval of the Director. Permittee shall also prominently display any
22 signs provided by the City in a location determined by the Director. The repair,
23 maintenance and replacement of signs provided by the City shall be the City's
24 responsibility.

25 19. NONDISCRIMINATION. Subject to applicable laws and regulations,
26 Permittee and Permittee's employees shall not discriminate on the basis of race, religion,
27 color, ancestry, sex, sexual orientation, gender identity, AIDS, HIV status, age, national
28 origin, handicap, disability or Vietnam Era veteran status in the operation of the

1 concession. Permittee or Permittee's employees shall not publicize the concession in
2 any manner that would reflect upon or question the acceptability of the patronage of any
3 person on any basis stated above. However, for safety reasons, Permittee shall refuse
4 service to individuals who appear intoxicated.

5 In the performance of this Permit, Permittee shall not discriminate against
6 any employee or applicant for employment and Permittee shall take affirmative action to
7 ensure that applicants are employed and that employees are treated without
8 discrimination. Such action shall include but not be limited to the following: employment,
9 upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or
10 termination; rates of pay or other forms of compensation; and selection for training,
11 including apparent apprenticeship.

12 20. COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT.

13 Permittee agrees that Compliance with the Americans with Disabilities Act of 1990
14 ("ADA") shall be their sole responsibility and shall defend, indemnify and hold harmless
15 City for any liability arising from failure to comply therewith.

16 21. HEALTH AND SAFETY. Permittee shall correct safety deficiencies

17 and violations of safety practices immediately and shall cooperate fully with the City in the
18 investigation of accidents occurring at or near the concession. In the event of injury to a
19 customer, Permittee shall ensure that the injured person receives prompt and qualified
20 medical attention. If Permittee fails to correct hazardous conditions which have led or, in
21 the opinion of the Director could lead to injury, the Director may immediately revoke this
22 Permit.

23 22. USE OF AREA. Permittee, in the conduct of the concession, shall

24 not in any manner whatsoever interfere with regular use of the beach for its intended
25 purpose, i.e., the enjoyment thereof by the public.

26 23. APPROVAL. Any approval, consent, or permission to be obtained

27 by Permittee from the City or the Director shall be in writing and Permittee's failure to
28 obtain same shall not relieve Permittee or Permittee's obligations to faithfully perform the

1 provisions of this Permit. Permittee shall immediately comply with any written request or
2 order submitted to Permittee by the Director or the City.

3 24. DEFAULT. If Permittee fails, neglects or refuses to improve or
4 change the service rendered or to conform to the rules, regulations, directions or
5 instructions from the City, or the Director, or fails, neglects or refuses to pay any Permit
6 fee or any part thereof after the same shall become due, or defaults in the performance of
7 any of the other provision herein, and said failure, neglect, refusal, or default continues
8 for a period of thirty (30) days after notice thereof to Permittee, then the City may
9 immediately revoke this Permit and enter and take possession of the concession at
10 Permittee's cost and expense. Revocation of this Permit shall not impair any other right
11 or remedy of the City.

12 The occurrence of any of the following shall constitute a default by the
13 Permittee:

14 24.1 Failure to pay percentage payment when due, if the failure
15 continues for five (5) days after written notice has been given to the Permittee.

16 24.2 Failure to perform any of the provisions of this Permit if the
17 failure to perform is not cured within thirty (30) days after written notice has been given to
18 Permittee. If the default cannot be reasonably cured within thirty (30) days, Permittee
19 shall not be in default if Permittee begins to cure within the thirty (30) day period and
20 diligently and in good faith continues to cure the default.

21 Notices given under this paragraph shall specify the alleged default
22 and the applicable permit provisions, and shall demand that Permittee perform the
23 provisions of this Permit or pay the percentage payment that is in arrears, as the
24 case may be, within the applicable period of time, or quit the premises. No such
25 notice shall be deemed a forfeiture or a termination of this Permit unless City so
26 elects in the notice.

27 25. NO WAIVER. The acceptance of all or part of any Permit fee by the
28 City after the failure, neglect, refusal, or default of Permittee shall not be deemed a

1 waiver of any provision of this Permit or any right to indemnity or to any right to revoke
2 this Permit. Any waiver by the City of the failure, neglect, refusal, or default of Permittee
3 shall be in writing and shall not constitute a waiver of any other or subsequent failure,
4 neglect, refusal, or default.

5 26. REVOCAION. Notwithstanding anything herein to the contrary and
6 except for provisions allowing immediate revocation, this Permit may be revoked by the
7 City for any reason whatsoever on thirty (30) days prior notice of such revocation to
8 Permittee.

9 27. SPECIAL EVENTS. Permittee must receive written authorization
10 from the Director for special events. A written request for authorization must be received
11 no later than two (2) weeks before the event. Approval of the request is subject to receipt
12 of the written request. Subagreements are also subject to the conditions noted.

13 28. HOLDING OVER. In the event Permittee shall continue in
14 possession of the premises after the expiration of the permit term, such possession shall
15 not be considered a renewal of this Permit. A month to month tenancy shall arise and be
16 governed by the conditions and covenants contained in this Permit.

17 29. PARTIAL TAKING. If a portion of the premises or other
18 improvements shall be taken for any public or quasi-public use, and the remaining portion
19 of the premises and improvements can be restored by Permittee to an economically
20 operable facility of comparable kind and quality to the facility existing prior to the taking,
21 then this permit shall not be affected and Permittee shall retain the remaining portion or
22 portions of the premises.

23 30. CALIFORNIA LAW. This Permit shall be construed and interpreted
24 in accordance with the laws of the State of California.

25 31. NOTICES. All notices shall be in writing or personally served or
26 deposited in the U.S. Postal Service, first class, postage prepaid, to Permittee at 3628
27 Mountain View Avenue, Los Angeles, California 90066, and the City at 2760 Studebaker
28 Road, Long Beach, California 90815-1697, Attention: Director. Notice of change of

1 address shall be given in the same manner as stated for other notices. Notices shall be
2 deemed given on the date deposited in the mail or on the date personal service is
3 obtained, whichever first occurs.

4 Accepted this _____ day of 5/26, 2011.

5 WAKE EXPERIENCE, LLC, a California limited
6 liability company

7 5/26, 2011

8 By  _____
9 Managing Member

10 NICK HEANEY
11 Type or Print Name

12 "Permittee"

13 CITY OF LONG BEACH, a municipal
14 corporation

15 June 16, 2011

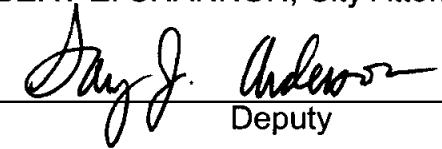
16 By  _____
17 Assistant City Manager
18 EXECUTED PURSUANT
19 TO SECTION 301 OF
20 THE CITY CHARTER.
21 City Manager

22 "City"

23 This Permit is hereby approved as to form this 13th day of

24 June, 2011.

25 ROBERT E. SHANNON, City Attorney

26 By:  _____
27 Deputy

ATTACHMENT A



Marine Stadium Premises

0 250 500 750 1,000 Feet

