

29276

AMENDMENT AND RELEASE AGREEMENT

THIS AMENDMENT AND RELEASE AGREEMENT (this "Agreement") is entered into as of July 31, 2014 (the "Effective Date") between (i) SSP America, Inc., a California corporation (as successor-in-interest to Creative Host Services, Inc.) ("SSP"), and (ii) the City of Long Beach, a municipal corporation (the "City").

WHEREAS, the parties hereto are parties to that certain Long Beach Municipal Airport Food and Beverage Concession Agreement, dated October 7, 2005 (City Contract No. 29276) (the "Concession Agreement"); and

WHEREAS, the parties hereto mutually desire to amend the Concession Agreement to terminate all rights, duties and obligations of the parties under the Concession Agreement in accordance with the terms and conditions set forth herein; and

WHEREAS, on July 1, 2014 the Long Beach City Council approved such amendment and termination in accordance with the terms set forth in this Agreement ("Council Approval").

NOW, THEREFORE, the undersigned, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby agree as follows:

1. Recitals; Council Approval. The preamble hereto is incorporated herein and, by this reference, is made a substantive part hereof. SSP and the City hereby acknowledge and confirm that Council Approval was received on July 1, 2014.

2. Amendment and Termination. Effective retroactively to January 1, 2013, SSP shall not be required to pay the Minimum Annual Guarantee as described in Section 8.3 of the Concession Agreement. As of the Effective Date and except as otherwise set forth herein, each of SSP and the City hereby amend the Concession Agreement to terminate all of the rights, duties and obligations of both SSP and the City and terminate the Concession Agreement. In connection therewith, all SSP units in the Long Beach Municipal Airport (the "Airport") shall be closed and/or no longer operated as SSP units. For avoidance of doubt, SSP shall have no further responsibility under the Concession Agreement for such units after the Effective Date. SSP and the City agree that, as a result of the execution of this Agreement, all terms, agreements and conditions set forth in the Concession Agreement or related thereto shall be rendered null and void and without further legal force or effect, with each party being irrevocably relieved of all future rights and obligations thereunder, all without requiring any further action by SSP or the City; provided, however, that nothing in this Agreement shall effect each party's respective payment obligations to the other which arose prior to the Effective Date but have not yet been paid. The parties acknowledge and agree that this amount may be offset from the actual payment made pursuant to Section 3.

3. Mid-Term Refurbishment Obligation. The parties agree that SSP shall pay One Hundred Seventy-Five Thousand Dollars (\$175,000) to the City to satisfy any remaining amounts owed under Section 5.1.1 and Exhibit D of the Concession Agreement as a Mid-Term Refurbishment obligation. Upon such payment made by SSP, each of SSP and the City

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acknowledges and agrees that it shall not be entitled to any further payments or monetary consideration arising after the Effective Date under the Concession Agreement.

4. Transfer of Property. SSP hereby transfers, assigns, conveys and delivers to the City (or its designee), or shall cause to be transferred, the following:

a. All of SSP's right, title and interest in and to all kitchen, bar and restaurant hard assets relating to the units, such as equipment, plates, glassware, utensils, televisions, tables and seats. Any additional personal property not described above which is left on Airport property after termination of the Concession Agreement shall be considered abandoned by SSP and shall thereafter immediately become the property of the City.

b. SSP's ABC liquor (master) license number 47-432611 ("Liquor License") at no additional cost other than reasonable legal fees relating to the transfer. The parties acknowledge that applicable regulations may delay the transfer of the Liquor License, and/or may make it more efficient to transfer the Liquor License to a qualified designee of the City rather than the City itself. In such event and upon the satisfaction of the other conditions contained in this Agreement, the Concession Agreement shall terminate in accordance herewith and SSP's obligation to cooperate in the transfer of the Liquor License shall survive such termination.

5. Releases. As of the Effective Date, for good and valuable consideration, the receipt and sufficiency of which SSP and the City hereby acknowledge, each of SSP and the City, for itself and on behalf of its successors and assigns, hereby fully, unconditionally and irrevocably releases and forever discharges the other, and each of the other's affiliates, officers, directors, members, employees, shareholders, representatives, attorneys, successors and assigns, of and from any and all manner of actions, causes of action, suits, debts, sums of money, accounts, bonds, bills, specialties, covenants, controversies, agreements, promises, variances, trespasses, damages, judgments, contracts, agreements, claims, demands, losses, obligations, liabilities, proceedings, fines, costs, expenses, fees (including, without limitation, attorneys' fees, experts fees and court fees) and penalties whatsoever, in law or in equity, which the releasing and discharging party or any successor or assignee of such party ever had, now has or hereafter can, shall or may have against the other party hereto or its successors and assigns for, upon or by reason of any matter, cause or thing whatsoever relating to or arising out of or in connection with the Concession Agreement and the units.

6. Representations and Warranties.

(a) Each of SSP and the City has all requisite power and authority to enter into this Agreement and has not assigned any of its rights or obligations under the Concession Agreement to any other party.

(b) The execution and delivery of this Agreement by each of SSP and the City have been duly authorized by all necessary action (corporate or otherwise) and no other proceeding is necessary to authorize the execution, delivery and performance of this Agreement and the transactions contemplated herein.

(c) This Agreement has been duly executed and delivered by each of SSP and

the City and constitutes the legal, valid and binding obligation of SSP and the City, respectively, enforceable against SSP and the City, respectively, in accordance with its terms.

7. Miscellaneous.

(a) Best Efforts and Further Assurances. Each of the parties to this Agreement shall use its best efforts to effectuate the transactions contemplated hereby and to fulfill and cause to be fulfilled the terms and conditions under this Agreement. Each party hereto, at the reasonable request of the other party hereto, shall execute and deliver such other instruments and perform such other acts and things as may be necessary or desirable for effecting completely the consummation of this Agreement and the transactions contemplated hereby.

(b) Governing Law. The construction, validity and interpretation of this Agreement shall be governed by the laws of the State of California without giving effect to any choice-of-law or conflict-of-laws provision or rule whether of the State of California or otherwise.

(c) Binding Effect; No Oral Modification. This Agreement shall be binding on and shall inure to the benefit of the parties and their respective successors and assigns. This Agreement may not be altered, modified, or amended unless such alteration, modification, or amendment is in writing and executed by the party or parties to be bound.

(d) Entire Agreement; Conflict. This Agreement and the Concession Agreement constitute the entire integrated agreement of the parties hereto with respect to the subject matter hereof and the transactions contemplated hereby, and supersede any other prior statements, negotiations, understandings, and agreements by and between the parties hereto, written or oral, with respect to the subject matter hereof. Further, to the extent, if any, that any provision of this Agreement conflicts with or differs from any provision of the Concession Agreement, such provision of this Agreement shall prevail and govern for all purposes and in all respects.

(e) Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original and all of which counterparts when taken together shall constitute but one and the same instrument. Any electronic or facsimile copy of an executed signature page hereto shall be deemed an original signature page hereto for all purposes.


(f) Survival; Enforceability. The agreements, representations, and warranties set forth in this Agreement shall survive the execution hereof. If any term or provision of this Agreement shall be held to be invalid or unenforceable for any reason, such term or provision shall be ineffective to the extent of such invalidity or unenforceability without invalidating the remaining terms and provisions hereof, and this Agreement shall be construed as if such invalid or unenforceable term or provision had not been contained herein, provided, however, that the foregoing shall in no way be interpreted or construed to affect the enforceability of the release provisions of this Agreement.

(g) Capitalized Terms. Terms capitalized herein and not otherwise defined herein are to be given the meaning ascribed to them in the Concession Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

SSP:

SSP AMERICA, INC.

By: 
Name: Les Cappetta
Title: CEO

THE CITY:

THE CITY OF LONG BEACH

By: _____
Name:
Title:

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.


SSP:

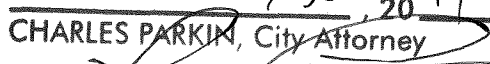

SSP AMERICA, INC.

By: _____
Name:
Title:

THE CITY:

THE CITY OF LONG BEACH

By: 
Name: Patrick H. West
Title: City Manager

APPROVED AS TO FORM
7-30-2014

CHARLES PARKIN, City Attorney
By: 
RICHARD ANTHONY
DEPUTY CITY ATTORNEY