

FOURTH AMENDMENT TO PERMIT NO. 28246

**28246**

THIS FOURTH AMENDMENT TO PERMIT NO. 28246 is made and entered, in duplicate, pursuant to an order of the PARKS AND RECREATION COMMISSION OF THE CITY OF LONG BEACH at its meeting on December 8, 2011, by and between the PARKS AND RECREATION COMMISSION OF THE CITY OF LONG BEACH, CALIFORNIA, through the Director of the Department of Parks, Recreation and Marine ("Director") of the City of Long Beach ("City") and FIRST SERVE TENNIS, INC., a California Corporation ("Permittee").

WHEREAS on April 9, 2003, the parties executed Permit No. 28246 wherein City granted Permittee a permit to conduct tennis instructions; and

WHEREAS in March of 2006, the parties executed the First Amendment to Permit No. 28246, wherein City granted Permittee a waiver of payment for March 2006 permit fees; and

WHEREAS in March of 2007, the parties executed the Second Amendment to Permit No. 28246 wherein the term of the permit was extended and the permit fees were increased; and

WHEREAS in April of 2009, the parties executed the Third Amendment to Permit No. 28246, wherein the parties agreed to exercise the final option extending the term until December 31, 2011; and

WHEREAS now the parties desire to extend the term of Permit No. 28246 for another four (4) year period and increase the permit fees;

NOW THEREFORE in consideration of the terms and conditions contained herein, it is mutually agreed by and between the parties hereto as follows:

1. Section 2 of the Permit is amended in its entirety to read as follows:

"2. TERM. The term of this Permit shall commence at midnight on January 1, 2012 and shall end at 11:59 p.m. on December 31, 2015, unless revoked as provided in the Permit. The Director may, at his option, renew this Permit for one (1)

1 period of three (3) years on the same terms and conditions in the Permit if Permittee  
2 provides sixty (60) days written notice to Director of Permittee's desire to extend the  
3 term."

4 2. Section 4 of the Permit is amended in its entirety to read as follows:

5 "4. PERMIT FEES.

6 In addition to the existing Permit fee of Seven Hundred-Fifty Dollars  
7 (\$750.00) or ten percent (10%) of Monthly Gross Receipts, whichever is greater, and as  
8 consideration for the collection and processing of online registration on behalf of First  
9 Serve by the City, an administration and promotion charge of One Dollar (\$1.00) per  
10 registered student shall be collected by the City from First Serve, quarterly in arrears,  
11 until the expiration of the Amended Term or until the City no longer administers and  
12 processes online registration on behalf of First Serve, whichever comes first. Beginning  
13 on January 1, 2016 the aforementioned fee would increase from One Dollar (\$1.00) to  
14 Two Dollars (\$2.00) per student.

15 A. "As Permit fees from January 1, 2012 through December 31, 2015,  
16 Permittee shall owe a minimum Permit fee of Nine Thousand Dollars (\$9,000.00)  
17 per year ("Annual Minimum"), or ten percent (10%) of monthly gross receipts  
18 received by Permittee from classes ("Percentage Fees"), whichever is greater.  
19 The percentage fees shall be settled following the end of the Permit year. On or  
20 before the end of the third month following the month during which the Permit year  
21 ends, Permittee shall pay to the City any Percentage Fees above the Nine  
22 Thousand Dollars (\$9,000.00) Annual Minimum.

23 Example: \$100,000 annual gross receipts x 10% = \$10,000  
24 \$10,000 - 9,000 annual minimum = \$1,000 Percentage Fees  
25 due.

26 Although Percentage Fees are not paid monthly, Permittee shall  
27 nevertheless submit to the City monthly statements of gross receipts on or before  
28 the 10th day of each month for receipts received during the preceding month."

1           “B. In consideration of an error in the calculation of Permit fees by the  
2 City during the first three (3) years of the Permit, Permittee is entitled to and the  
3 Director granted to Permittee beginning on April 10, 2006, a credit against Permit  
4 fees in the amount of Sixty Thousand Dollars (\$60,000.00) (“Credit”), which was to  
5 be amortized over eighty (80) months. Whereas Permittee has used Fifty-Two  
6 Thousand Five Hundred Dollars (\$52,500.00) of the Credit as of January 10, 2012  
7 and Permittee used Three Thousand Seven Hundred Ninety-Eight Dollars and  
8 Ninety-Seven Cents (\$3,798.97) of the Credit as a remedy to cure back owed  
9 permit fees on May 18, 2011. Permittee now has a remaining Credit of Three  
10 Thousand Seven Hundred-One Dollars and Three Cents (\$3,701.03), which shall  
11 be amortized over five (5) months beginning on January 10, 2012 and concluding  
12 on May 10, 2012.”

13           “C. Permittee is entitled to up to two (2) pages of advertising in the  
14 quarterly class schedule published by the City of Long Beach. If Permittee’s  
15 advertising exceeds two pages, then Permittee shall pay to the City the then-  
16 current rates for the advertising that exceeds the two pages.

17           “D. If Permittee fails to pay any sum due under this Permit within ten (10)  
18 days after its due date or fails to provide the annual in-kind contributions, then the  
19 Director may, at his option, immediately revoke this Permit.

20           “E. If Permittee fails to submit a monthly payment that is due or a  
21 monthly report on gross receipts by the due date, then Permittee shall pay to the  
22 City a late charge of ten percent (10%) on the outstanding unpaid balance, or  
23 Twenty-Five Dollars (\$25.00), whichever is greater. If a due date falls on a  
24 weekend or holiday, the late charge will not apply until the end of the next  
25 business day. If Permittee offers unusual or extenuating circumstances for not  
26 making the payment when due, then the Director may, at his discretion, waive the  
27 late charge. If Permittee pays with a check, which is returned for insufficient  
28 funds, Permittee shall also pay a service charge in the sum of Fifteen Dollars

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

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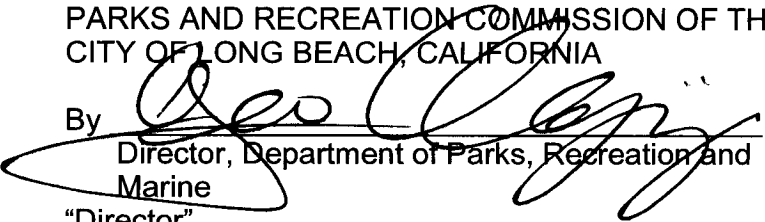
(\$15.00) in addition to applicable late charges, and Permittee shall thereafter make all payments in cash or by money order.

"F. Permittee shall submit with the payment of the Permit fees or, if no Permit fees are due, then by the tenth (10th) of the month, a monthly report showing gross receipts for the immediately preceding month."

3. Except as expressly amended in this FOURTH Amendment to Permit No. 28246, all of the terms and conditions in Permit No. 28246 are ratified and confirmed and shall remain in full force and effect.

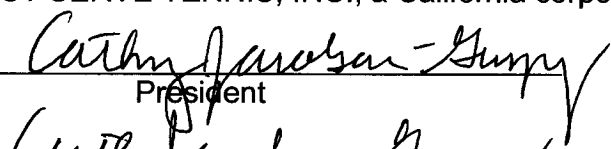
Dated this 29<sup>th</sup> day of December, 2011.

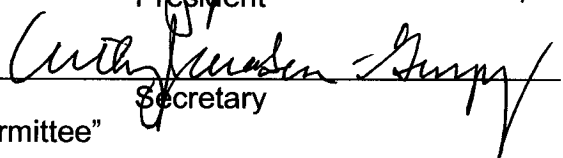
PARKS AND RECREATION COMMISSION OF THE  
CITY OF LONG BEACH, CALIFORNIA

By   
Director, Department of Parks, Recreation and  
Marine  
"Director"

Permittee hereby accepts and agrees to the terms of this FOURTH  
Amendment to Permit No. 28246.

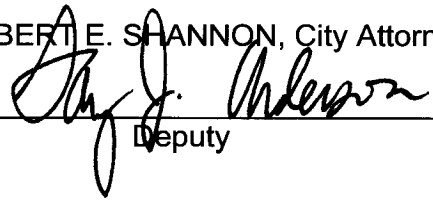
FIRST SERVE TENNIS, INC., a California corporation

By   
President

By   
Secretary

"Permittee"

This FOURTH Amendment to Permit No. 28246 is approved as to form on  
December 29, 2011.

ROBERT E. SHANNON, City Attorney  
By   
Deputy