Kopert E. Mannon City Attorney of Long Beach 333 West Ocean Boulevard ong Beach, California 90802-4664 Telephone (562) 570-2200

SECOND AMENDMENT TO PERMIT NO. 28246

THIS SECOND AMENDMENT TO PERMIT NO. 28246 is made and entered pursuant to an order of the PARKS AND RECREATION COMMISSION OF THE CITY OF LONG BEACH at its meeting on October 19, 2006. City and Permittee agree as follows:

- 1. The name of Permittee shall be FIRST SERVE TENNIS, INC.
- 2. Section 2 of the Permit is amended in its entirety to read as follows:
- "2. <u>TERM</u>. The term of this Permit shall commence at midnight on January 1, 2003 and shall end at 11:59 p.m. on December 31, 2008, unless revoked as provided in the Permit. The Director may, at his option, renew this Permit for one (1) period of three (3) years on the same terms and conditions in the Permit if Permittee, prior to January 1, 2009 files with the Director a written request for the renewal and the Director approves the renewal in writing."
 - 3. Section 4 of the Permit is amended in its entirety to read as follows:
- "4. PERMIT FEES. A. As Permit fees from January 1, 2003 through September 30, 2005, and for the period from October 1, 2005 through February 28, 2006, Permittee shall on or before the 10th day of the calendar month next following the month during which the term of the Permit begins and on or before the 10th day of each succeeding month after that during the term pay a minimum Permit fee of \$1,666.67 per month, or ten percent (10%) of gross receipts received by Permittee from classes for the immediately preceding month, whichever is greater.

"For the month of March, 2006 Permit fees were waived by the City pursuant to the First Amendment to the Permit.

"As Permit fees from April 1, 2006 through December 31, 2008, Permittee shall owe a minimum Permit fee of \$750 per month. The percentage fees shall be settled following the end of the Permit year (April 1, 2006 through December 31, 2006 and thereafter, January 1, through December 31 of each year). On or before the end of

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the third month following the month during which the Permit year ends, Permittee shall pay to the City any percentage fees above the \$9,000 annual minimum fee.

\$100,000 annual gross receipts x 10% = \$10,000Example:

\$10,000 - 9,000 annual minimum = \$1,000 percentage fees due Although percentage fees are not paid monthly, Permittee shall nevertheless submit to the City monthly statements of gross receipts on or before the 10th day of each month for receipts received during the preceding month."

- "B. In consideration of an error in the calculation of Permit fees during the first three (3) years of the Permit, Permittee is entitled to and the Director grants to Permittee a credit against Permit fees in the amount of \$60,000 to be amortized over eighty (80) months beginning on April 1, 2006.
- "C. In lieu of additional Permit fees, Permittee shall contribute in-kind contributions to the City having an annual value not less than \$10,000.
- "D. Permittee is entitled to up to two (2) pages of advertising in the quarterly class schedule published by the City of Long Beach. If Permittee's advertising exceeds two pages, then Permittee shall pay to the City the then-current rates for the advertising that exceeds the two pages.
- "E. If Permittee fails to pay any sum due under this Permit within ten (10) days after its due date or fails to provide the annual in-kind contributions, then the Director may, at his option, immediately revoke this Permit.
- "F. If Permittee fails to submit a monthly payment that is due or a monthly report on gross receipts by the due date, then Permittee shall pay to the City a late charge of ten percent (10%) on the outstanding unpaid balance, or Twenty-five Dollars 24 (\$25.00), whichever is greater. If a due date falls on a weekend or holiday, the late charge will not apply until the end of the next business day. If Permitee offers unusual or extenuating circumstances for not making the payment when due, then the Director at his discretion may waive the late charge. If Permittee pays with a check returned for insufficient funds, Permittee shall also pay a service charge in the sum of Fifteen

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Dollars (\$15.00) in addition to applicable late charges, and Permittee shall thereafter make all payments in cash or by money order. "G. 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." 4. Except as expressly amended in this Second 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 1st day of JANUARY, 2007. PARKS AND RECREATION COMMISSION OF THE CITY OF LONG BEACH, CALIFORNIA

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

> FIRST SERVE, INC., a California corporation "Permittee"

This Second Amendment to Permit No. 28246 is approved as to form on March . 2007.

E. SHANNON, City Attorney

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