

---

**AGREEMENT OF LEASE**

BY AND BETWEEN

City of Myrtle Beach, South Carolina  
("Landlord")

AND

American Surf Parks, LLC  
a South Carolina limited liability company  
("Tenant")

---

## TABLE OF CONTENTS

<u>Article</u>	<u>Page</u>
<u>INTRODUCTION / RECITALS</u>	1
1. <u>DEFINITIONS</u>	1
2. <u>DEMISE</u>	
Demise .....	2
Exclusive Use .....	2
Uses .....	2
3. <u>TERM</u>	
Term.....	2
Renewal Term.....	2
Memorandum of Lease; Recording of Memorandum.....	3
4. <u>TENANT'S RENT</u>	
Tenant's Rent.....	3
5. <u>TAXES</u>	
Property Taxes.....	4
6. <u>RESPONSIBILITIES OF TENANT</u> .....	5
7. <u>INDEMNITY AND INSURANCE</u>	
Tenant's Indemnification.....	7
Tenant's Insurance.....	7
Subrogation.....	7
8. <u>DESTRUCTION BY FIRE OR OTHER CASUALTY</u>	
Partial or Total Damages or Destruction .....	7
Notification.....	7
9. <u>CONDEMNATION</u>	
Notice of Taking.....	8
Effect of Entire Taking .....	8
Effect of Partial Taking .....	8

10.	<u>RIGHT TO CURE</u>	
	Landlord's Performance .....	9
	Tenant's Performance.....	9
	Reimbursement.....	9
11.	<u>QUIET ENJOYMENT</u>	
	Quiet Enjoyment.....	9
12.	<u>ASSIGNMENT</u>	
	Assignment .....	9
	Effect of Assignment .....	9
	Encumbrance of Leasehold.....	9
13.	<u>TENANT'S EVENTS OF DEFAULT</u>	10
14.	<u>REMEDIES</u>	
	Landlord's Remedies .....	10
15.	<u>TENANT'S ESTOPPEL CERTIFICATE</u>	11
16.	<u>UNAVOIDABLE DELAYS</u>	11
17.	<u>NOTICES</u>	
	Notices .....	12
18.	<u>HOLDING OVER</u>	13
19.	<u>HAZARDOUS MATERIALS AND WASTE</u>	13
20.	<u>GENERAL PROVISIONS</u>	
	Brokers.....	14
	Counterparts.....	14
	Successors and Assigns .....	14
	Time.....	14
	Severability .....	14
	Approvals.....	15
	Applicable Law.....	15
	No Joint Venture.....	15
	Captions .....	15
	Survival.....	15
	Rehabilitation Guarantee .....	15
	True Triple Net.....	15

Contingency .....	16
-------------------	----

## **AGREEMENT OF LEASE**

THIS AGREEMENT (this "Agreement"), made and entered into effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2020, (the "Effective Date") by and between City of Myrtle Beach, South Carolina (hereinafter referred to as "Landlord"), and American Surf Parks, LLC, a South Carolina limited liability company (hereinafter referred to as "Tenant"), is as follows:

### **ARTICLE 1.** **DEFINITIONS**

In addition to the terms defined elsewhere in this Agreement, for purposes of this Agreement, the following terms shall have the meanings indicated:

1.1. **Capital Improvements.** The term "Capital Improvements" shall have the meaning set forth in Paragraph 6.1.8.

1.2. **Lease Commencement Date.** The term "Lease Commencement Date" shall have the same meaning as the Effective Date.

1.3. **Default.** The term "Default" shall have the meaning set forth in Article 13.

1.4. **Governmental Authorities.** The term "Governmental Authorities" shall have the meaning set forth in Section 5.1.

1.5. **Improvements.** The term "Improvements" shall mean (i) all improvements of any nature now or hereafter located on the Property pursuant to the terms and provisions of this Agreement, and all additions, replacements and repairs thereto.

1.6. **Lease Year.** The term "Lease Year" shall mean the period commencing with the Rent Commencement Date and ending twelve (12) calendar months thereafter, and each successive period of twelve (12) calendar months thereafter during the Term of this Agreement including any extension or renewal.

1.7. **Premises.** The term "Premises" shall mean the Property and any improvements now or hereafter located thereon.

1.8. **Property.** The term "Property" shall mean that certain parcel or parcels of land described in Exhibit A attached hereto and incorporated herein by this reference.

1.9. **Rent.** The term "Rent" shall have the meaning set forth in Section 4.1.

1.10. **Rent Commencement Date.** The term "Rent Commencement Date" shall mean the date that is six (6) months after the date that Tenant opens the business to be located on the Premises for business with the public.

1.11. Taxes. The term “Taxes” shall have the meaning set forth in Section 5.1.

1.12. Term. The term “Term” shall mean the period set forth in Section 3.1 as it may be extended as set forth in Section 3.2.

1.13. Unavoidable Delay. The term “Unavoidable Delay” shall have the meaning set forth in Article 17.

## **ARTICLE 2.**

### **DEMISE**

2.1. Demise. Landlord, for and in consideration of the Rent, covenants and agreements herein reserved, mentioned and contained on the part of Tenant to be paid, kept and performed, effective as of the Lease Commencement Date, has demised and leased and by these presents does demise and lease unto Tenant, and Tenant, for and in consideration of the covenants and agreements herein reserved, mentioned and contained on the part of Landlord to be kept and performed, does hereby take, lease and hire the Premises, upon and subject to the terms, provisions and conditions hereinafter expressed. Landlord will deliver possession of the Premises to Tenant on the Lease Commencement Date.

2.2. Exclusive Use. Landlord grants Tenant exclusive use of the Premises during the Term of this Agreement for the purposes set forth herein. During the Term of this Agreement, Landlord agrees and covenants that, as long as no Default exists hereunder which remains uncured, Landlord shall ensure Tenant’s quiet and peaceful enjoyment of the Premises from Landlord or any third party.

2.3. Uses. The Premises shall be used for the construction, maintenance and operation of a wave/surf park and any lawful ancillary use permitted for the Premises under the provisions of the City of Myrtle Beach zoning ordinance. These uses may include, but are not limited to, the operation of a full-service restaurant, a limited service restaurant, concessions, retail uses, lodging, surf academy, café, meeting space, adventure park, surf camps, sporting events and competitions.

## **ARTICLE 3.**

### **TERM**

3.1. Term. The initial term of this Agreement shall be for the period beginning on the Lease Commencement Date and expiring on the date that is fifteen (15) Lease Years after the Rent Commencement Date (the “Initial Term”), unless sooner terminated as herein provided.

3.2. Renewal Terms. Provided this Agreement has not been previously terminated and provided Tenant is not in default beyond any applicable grace period, Tenant shall have the right to extend this Agreement, subject to all terms, covenants, and conditions, for up to seven (7) additional five (5) years terms (each being referred to as a “Renewal Term”). Each Renewal Term, if exercised by Tenant, shall commence immediately upon the expiration of the prior term (whether same be the Initial Term or a Renewal Term). The first Renewal Term and each successive Renewal Term thereafter shall be deemed automatically exercised by Tenant unless

Tenant shall give Landlord written notice of its election to terminate this Agreement at the end of the then current term, which notice must be given on or before the date that is ninety (90) days prior to the expiration of the then current term.

3.3. Memorandum of Lease; Recording of Memorandum. Upon the execution of this Agreement, Landlord and Tenant shall each execute the Memorandum of Lease in the form of Exhibit B attached hereto. After execution, the Memorandum of Lease may be filed by Tenant in the real property records of Horry County, South Carolina, and the cost of such filing shall be paid by Tenant.

#### **ARTICLE 4.** **TENANT'S RENT**

4.1. Tenant's Rent. During the Term of this Agreement, Tenant shall pay to Landlord rent without abatement or set off (the "Rent") as follows:

4.1.1. Commencing on the Rent Commencement Date and continuing throughout the Term of this Agreement including any extensions or renewals, Tenant shall pay to Landlord an annual rental (the "Rent") in accordance with the following schedule, subject to adjustment as hereinafter provided:

<u>Initial Term</u>	<u>Annual Rent</u>
Lease Years 1 through 5 ("Initial Term 1")	\$180,000.00
Lease Years 6 through 10	198,000.00
Lease Years 11 through 15	217,800.00
<u>Option Terms</u>	<u>Annual Rent</u>
Lease Years 16-20	\$239,580.00
Lease Years 21-25	263,538.00
Lease Years 26-30	289,892.00
Lease Years 31-35	318,881.00
Lease Years 36-40	350,769.00
Lease Years 41-45	385,846.00
Lease Years 46-50	424,431.00

The Rent for each Lease Year shall be payable in equal monthly installments, in advance on the first day of each month during the Term and any renewals thereof that are exercised. Notwithstanding the foregoing, the parties hereto acknowledge and agree that the Rent, as set forth above, is based upon the Property containing twelve (12) acres of land. It is acknowledged that a new survey of the Property will be obtained and that the Rent will be adjusted based upon the actual acreage contained within the Property. The Annual Rent for Initial Term 1 shall be adjusted and calculated based upon the actual acreage, as determined by the new survey, using an annual rental rate of \$15,000.00 per acre. The Annual Rent for each period following Initial Term 1 shall be adjusted every five (5) years based upon the Rent for Initial Term 1, with such Rent increasing by ten percent (10%) above the Annual Rent for the prior five year period.

4.1.2 In addition to any other remedies set forth herein, in the event any payment of Rent remains unpaid for a period of fifteen (15) days after the due date, Tenant agrees to pay a late charge equal to five (5%) percent of the past due amount, which will be payable with the late payment.

## **ARTICLE 5.**

### **TAXES**

5.1. **Property Taxes.** Tenant shall, during the Term of this Agreement commencing upon the Rent Commencement Date, pay and discharge all taxes, assessments, excises, levies, and other charges upon or with respect to the Property by any public authority having jurisdiction, whether general or special, which shall or may during the Term be assessed, levied or imposed by any public authority upon the Property for the period attributable to the Term (the "Taxes"). Taxes shall not include (i) any income tax, capital levy, estate, succession, inheritance or transfer taxes, or similar tax of Landlord; or (ii) any income, profit or revenue tax, assessment, or other benefit received by Landlord under this Agreement by any municipality, county, state, the United States of America, or any other governmental body, subdivision, agency, or authority (collectively, "Governmental Authorities).

5.1.1. Tenant shall pay the Taxes on or before the past due date. Tenant shall also pay on or before the past due date all taxes imposed upon its furniture, fixtures, equipment, inventory and other personalty. Tenant agrees to promptly furnish Landlord copies of tax receipts reflecting payment of the Taxes.

5.1.2. Tenant shall have the right, at its sole cost, to request Landlord, by written notice to Landlord given not less than thirty (30) days before the last date for filing any necessary protest or petition or taking any other necessary action, to cooperate in the initiation and prosecuting of any proceeding for the purpose of reducing the assessed valuation of the Property for tax purposes. In the event that Tenant shall request Landlord, pursuant to the preceding sentence, to cooperate in the initiating and prosecuting of any proceeding, Landlord shall take all steps reasonably necessary to cooperate with Tenant in such proceeding. Tenant shall be responsible for the posting of any bond or other suitable collateral, and the payment of all other costs and expenses which may be required in connection with the protest or proceeding including any cost or expenses incurred by Landlord. Any refund of monies resulting from such proceeding shall, to the extent that the same represent refunds or reimbursements of monies previously spent by Tenant, be paid to Tenant, together with any accrued interest which may have been awarded; and

5.1.3. All taxes for the Lease Year in which the Term of this Agreement begins or terminates (whether or not at the expiration of the stated Term or earlier) shall be apportioned on a pro rata basis between Landlord and Tenant in accordance with the respective portions of such year during which the Term shall be in effect, with Tenant being responsible for the Taxes for the period beginning with the Lease Commencement Date.



Tenant and Landlord agree, in any event, to cooperate in order to obtain a division of taxes and assessments with all Governmental Authorities. Tenant and Landlord agree to provide each other with a copy of any notice of change of assessment which they may receive from any Governmental Authorities.

## **ARTICLE 6.**

### **RESPONSIBILITIES OF TENANT**

6.1. Current Condition of the Premises. The Property currently contains approximately 295,000 cubic yards of stockpiled spoil soil which must be removed from the Property in order to allow for structural development upon the Property. In order to remediate the stockpiled soil issue in the most cost effective manner to allow for Tenant's use of the Property for its intended use, Tenant shall cause a portion of the stockpiled soil to be pushed into the adjacent pond as to grade the bank, and shall be subject to review by the City of Myrtle Beach Public Works Department and pursuant to a plan to be developed by Tenant and approved by Landlord's engineers. Tenant shall cause another portion of the stockpiled soil to be pushed onto property owned by the Landlord which is located behind the Myrtle Beach Sports Center and formed into a natural style Amphitheater, as hereinafter more particularly set forth. Any remaining stockpiled spoil soil will be removed from the Property and disposed of at a location to be determined.

Subsequent to the Lease Commencement Date, Tenant shall develop plans for the work to be performed pursuant to this section and shall provide the same to Landlord for its review and approval. Upon approval thereof, Tenant shall cause such work to be commenced in accordance with such approved plans.

The cost of the site work provided for in this section is estimated to be approximately \$2,000,000.00 (the "Site Work Cost"). The parties will cooperate in seeking ways to reduce this cost. The Site Work Cost is intended to include all of the items on the attached Exhibit C, which Exhibit is made a part and parcel hereof. Although it shall be the responsibility of Tenant to pay the initial Site Work Cost, Tenant shall be reimbursed for such costs by Landlord by way of an offset against the Rent as it becomes due until such time as the Site Work Cost has been fully reimbursed to Tenant.

6.2 Amphitheater. As provided in Section 6.1, Tenant will create a natural style amphitheater (the "Amphitheater") with sloped grass seating on an approximately five (5) acre site owned by Landlord and located adjacent to the Property. The Amphitheater will be created in accordance with the plans therefor prepared by Tenant and approved by Landlord. The actual size of the Amphitheater shall be determined by the amount of suitable fill material available on the site of the Amphitheater as well as available on the Property from Tenant's construction and development of the Property. The term "fill material available", as used in the preceding sentence, shall not include any material that is intended to be used by Tenant in its construction and development of the Property. The entire area of the Amphitheater will be seeded with grass

seed using the "Hydro-seed" method. The costs involved with the movement of the soil to the Amphitheater site, the creation of the Amphitheater and any improvements thereon, including, but not limited to the items set forth on the attached Exhibit D, shall be reimbursed by Landlord to Tenant in the same manner as set forth in Section 6.1 above. The Amphitheater will be owned and operated by Landlord and Tenant will have no responsibility relative to the operation thereof. The Parties agree to work together collaboratively to facilitate large events that promote the community's cultural, physical, and/or economic best interests.

6.3 Parking. As part of its construction of its facilities upon the Premises, Tenant will construct and maintain parking which will comply with the applicable building codes. Although the parking shall be considered to be "public parking" and the same shall be maintained by Landlord, Tenant shall have an easement over and across such parking area for its use during the Term of this Lease. Landlord agrees that Tenant shall have the right to use same for its operations, without charge, and such parking may be used by Tenant for purposes of compliance with applicable laws, ordinances and regulations. In addition thereto, Tenant may maintain signage for its business at the corner of Grissom Parkway and Burroughs & Chapin Boulevard as well as at the entrances to the parking lot.

6.4 General Requirements of Tenant. Tenant will comply with the following general requirements:

6.4.1. Utilities and Services. Tenant agrees to pay all charges for utilities and services used by it on the Premises, which shall be separately metered, including, but not limited to, gas, electricity, telephone, internet, sanitary sewer, domestic water, fire protection, water and trash collection. Tenant shall be responsible for payment of any impact fees, tap fees and any other fees required by the applicable governing authority.

6.4.2. Compliance with Laws. Tenant shall comply with all legal requirements concerning Tenant's operation and use of the Premises.

6.4.3. Governmental Notices. Tenant and Landlord shall promptly provide each other with copies of all notices, requests, orders, demands or communications from any federal, state, or local governmental or quasi-governmental office, agency or board with respect to the Premises or Tenant's operations or use thereof.

6.4.4. Maintenance. Tenant shall, at its own cost and expense, maintain, repair, renovate, improve and replace, as necessary to keep, or cause to be kept, the Premises and all components thereof, including but not limited to, the wave lagoon, wave generating equipment, building structures and roofs, mechanical, electrical, plumbing, fire protection and security systems, awnings, landscaping, sidewalks, decking, loading areas, parking areas, thruways, methods of ingress and egress (excluding those off Premises), lighting facilities and equipment, and all parkways, fences and signs located on the Premises, in a neat, clean, safe and well maintained condition, and shall perform all repairs and improvements required by any governmental law, ordinance, rule or regulation.

6.4.5. Improvements and Alterations by Tenant. The parties hereto acknowledge and agree that tenant is entering into this Agreement for the purpose of constructing a wave/surf park upon the Property, together with such ancillary and complimentary improvements as Tenant may, in its discretion, determine. In that regard, Tenant, at Tenant's sole expense, may make and construct improvements on the Property (the "Capital Improvements"), for the purposes and uses provided for herein. All Improvements constructed by Tenant shall be made in compliance with all legal requirements and laws applicable thereto.

6.4.6. Mechanics Lien. If by reason of any improvements, alteration, repair, labor performed or materials furnished to the Premises for or on behalf of Tenant any mechanic's or other lien shall be filed, claimed, perfected or otherwise established as provided by law against the Leased Premises, Tenant shall discharge or remove the lien by bonding or otherwise, within thirty (30) days after notice from Landlord of the filing of same.

6.4.7. Trade Fixtures. Any personal property and trade fixtures placed upon the Premises by Tenant shall at all times be and remain the property of Tenant, and Tenant shall have the right to remove all or any part of the same from said Premises at any time so long as it is not in default of the terms and provisions of this Lease. Furthermore, upon termination for this Lease, except in the event of a default by Tenant, Tenant may remove any improvements, fixtures, plantings and other personal property placed upon the Premises by Tenant.

## **ARTICLE 7.**

### **INDEMNITY AND INSURANCE**

7.1. Tenant's Indemnification. Tenant covenants and agrees to indemnify and save Landlord and its employees harmless from any and all costs, expenses, penalties, claims, demands and liabilities resulting from (i) any act or omission of Tenant and (ii) any breach or default by Tenant under this Agreement, but this indemnity shall not extend to costs, expenses, penalties, claims, demands and liabilities resulting from grossly negligent, intentional, or willful acts of Landlord, its employees or agents.

7.2. Tenant's Insurance. Prior to commencing work upon the Premises and at all times thereafter during the Term of this Agreement, Tenant shall maintain, at its expense, liability insurance insuring Tenant and naming Landlord as an additional insured party against loss, damage, or liability for personal injury, death, or damage to property resulting from occurrences on the Premises, in an amount not less than One Million and no/100 (\$1,000,000.00) single-limit coverage for death, injury, and property damage in any single occurrence. Tenant shall also maintain special form all-risk property insurance, including, but not limited to, fire and vandalism, for at least eighty percent (80%) of the replacement value, if reasonably available, naming Landlord as an additional insured. Tenant shall provide to Landlord (and to Landlord's

mortgagees, if any), and shall keep current during the Term of this Agreement, certificates issued by the insurers evidencing the insurance in existence.

7.3. Subrogation. Notwithstanding anything to the contrary contained herein, Landlord and Tenant each hereby waive any and all rights of recovery, claims, actions or causes of action against the other, its agents, officers and employees for any loss or damage that may occur to the Premises, any personal property therein, or any improvements made thereto, or any part thereof, or any other real or personal property of either party by reason of fire, the elements, or any other cause which is insured against under the term of the policies of casualty insurance that Tenant or Landlord are required to provide hereunder or may otherwise carry, regardless of cause or origin, including negligence of either party hereto, its agents, officers or employees, and each party covenants that no insurer shall hold any right of subrogation against the other.

## **ARTICLE 8.**

### **DESTRUCTION BY FIRE OR OTHER CASUALTY**

8.1. Partial or Total Damages or Destruction. If all or any portion of any Improvements shall be partially or totally damaged or destroyed, rent shall not abate and this Agreement will not terminate. In such event, Tenant shall promptly, with all diligence, repair or replace the damaged or destroyed Improvements and shall be entitled to use the insurance proceeds from the insurance required to be kept and maintained by Tenant pursuant to the terms of this Agreement.

8.2. Notification. Tenant hereby agrees to notify Landlord of any such events of damage or destruction, within ten (10) days of occurrence.

## **ARTICLE 9.**

### **CONDEMNATION**

9.1. Notice of Taking. Landlord shall, within ten (10) days of Landlord's receipt of notice of a proposed and/or actual taking of the Property under any governmental law, ordinance or regulation, or by right of eminent domain, provide Tenant (i) written notice of such proposed or actual taking, and (ii) a copy of the documents and/or pleadings received from the governmental authorities.

9.2. Effect of Entire Taking. If during the Term of this Agreement the entire Premises shall be appropriated or taken for any public or quasi-public use under any governmental law, ordinance or regulation, or under the power of eminent domain by any public or quasi-public authority ("Entire Taking"), then this Agreement shall terminate. In the event of termination of this Agreement pursuant to this Section, then this Agreement shall cease and come to an end as of the date of such termination as though such date were the date originally fixed for the expiration of the Term of this Agreement, and neither party shall have any obligation to the other arising out of or in any way connected with this Agreement by virtue of such termination other than those obligations which expressly survive termination.

9.3. Effect of Partial Taking. If during the Term of this Agreement a portion of the Premises shall be appropriated or taken for any public or quasi-public use under any governmental

law, ordinance or regulation, or under the power of eminent domain by any public or quasi-public authority, within sixty days (60) after Tenant's receives notification of the taking, Tenant shall have the option by written notice to Landlord to either: (i) terminate the Lease if Tenant determines in its reasonable discretion that the remainder of the Premises is substantially unusable for the purposes and in the manner contemplated herein, or (ii) notify Landlord that remainder of the Premises is usable for the purposes and in the manner contemplated herein but that the taking warrants an adjustment to the Rent to be paid hereunder, in which event Landlord and Tenant will negotiate in good faith to agree upon an adjustment in Rent. In the event Landlord and Tenant are unable to agree upon an adjustment in Rent within thirty (30) days after Landlord received Tenant's Notice, the Lease will be deemed terminated at the expiration of such thirty (30) day period. In the event of termination of this Agreement pursuant to this Section, then this Agreement shall cease and come to an end as of the date of surrender of possession by Tenant as though such date were the date originally fixed for the expiration of the Term of this Agreement, and neither party shall have any obligation to the other arising out of or in any way connected with this Agreement by virtue of such termination. In the event Tenant fails to exercise either of the options set forth in (i) or (ii) above within the sixty (60) day period, Tenant shall be deemed to have waived such options and the Lease will continue in full force and effect for the remainder of the Term but with the portion of the Premises so taken deleted from Premises which is the subject to the Lease.

9.4. For any taking, each party shall make its own separate claim for a damage award and be entitled to the proceeds related to such claim.

## **ARTICLE 10.**

### **RIGHT TO CURE**

10.1. Landlord's Performance. After the giving of notice and the expiration of any permitted grace period in this Agreement, if Tenant shall have failed to cure any default in the performance of any covenant or promise on its part to be performed, Landlord may, immediately, or at any time thereafter, without further notice, perform the same for the account and at the expense of Tenant.

10.2. Tenant's Performance. After the giving of notice and the expiration of any permitted grace period, if Landlord shall have failed to cure any default in the performance of any covenant or promise on its part to be performed, Tenant may, immediately, or at any time thereafter, without further notice, perform the same for the account and at the expense of Landlord.

10.3. Reimbursement. If, pursuant to this Article, Landlord or Tenant at any time is compelled or permitted to (i) pay any sum of money, (ii) do any act which will require the payment of any sum of money, or (iii) incur any expense (including reasonable attorneys' fees) in instituting, prosecuting and/or defending any action or proceeding instituted by reason of Tenant's or Landlord's failure to reimburse, as herein provided, the sum or sums so paid or payable by Landlord or Tenant, as the case may be, with all interest, costs and damages, shall be due on or before thirty (30) days from the other upon receipt of a statement therefor.

**ARTICLE 11.**  
**QUIET ENJOYMENT**

11.1. Quiet Enjoyment. Landlord, for itself, its successors and assigns, agrees that upon the due performance and observance by Tenant of the terms, covenants and conditions contained herein, Tenant shall, and may, at all times during the Term of this Agreement, peaceably and quietly have, hold and enjoy the Premises.

**ARTICLE 12.**  
**ASSIGNMENT/ENCUMBRANCE**

12.1. Assignment. Except as provided in this section, Tenant shall not assign this Lease or sublease all of the Premises without the prior written consent of Landlord, which consent may not be unreasonably withheld, conditioned or delayed. Concessions, subleases or similar arrangements for shops, food and beverage, and other related business activities shall not be considered an assignment or sublease for purposes of this provision and are permitted. Further, Tenant shall have the right to assign this Lease to an entity that is controlled by Tenant, under common control with Tenant or otherwise managed by the principals of Tenant.

12.2. Effect of Assignment. Any person who shall by operation of law or otherwise become an assignee of this Agreement shall be bound by and liable upon all covenants and provisions contained in this Agreement.

12.3. Encumbrance of Leasehold. Tenant shall have the right to mortgage, collaterally assign or otherwise encumber its leasehold interest or otherwise encumber any of its rights hereunder. However, Tenant shall not have the right to encumber in any manner Landlord's fee simple interest in the Property. In that regard, the parties agree as follows:

(a) Subject to the terms of this Article, Landlord agrees that Tenant shall have the right to encumber or hypothecate Tenant's interest in the leasehold estate created by this Lease. As used in this Article, "Leasehold Mortgage" means any leasehold deed of trust, mortgage, assignment of leases and rents, assignment, security agreement, or other security document securing the applicable financing from Tenant's lender ("Tenant's Lender"). Landlord shall not be obligated to subordinate any or all of Landlord's right, title or interest in and to the Premises and this Lease to the lien of any Leasehold Mortgage. A Leasehold Mortgage shall encumber only Tenant's leasehold interest in the Premises, and shall not encumber Landlord's right, title or interest in the Premises. Landlord shall have no liability whatsoever for the payment of any obligation secured by any Leasehold Mortgage or any other provisions of such note or the Leasehold Mortgage or related obligations. A Leasehold Mortgage shall be, and hereafter shall continue at all times to be, subject to each and all of the covenants, conditions and restrictions set forth in the Lease.

(b) In connection with any Leasehold Mortgage, Landlord agrees as follows:

(i) If Tenant or Tenant's Lender shall have delivered to Landlord prior written notice of the address of Tenant's Lender, Landlord shall mail to Tenant's Lender a copy of any notice of termination and/or Default to Tenant given under this Lease, concurrently with

giving such notice to Tenant.

(ii) In the event of any Default by Tenant under the provisions of this Lease, Tenant's Lender shall have the same periods as are given Tenant for remedying such Default, and in such event Tenant's Lender, without prejudice to its rights against Tenant, shall have the right to cure such Default within the applicable grace periods provided for herein whether such Default consists of the failure to pay the Rent or the failure to perform any other obligation of Tenant hereunder, and Landlord shall accept such performance by Tenant's Lender as though the same had been done or performed by Tenant. If this Lease provides no cure period or the default by its nature cannot be cured, the Landlord agrees not to terminate the Lease until 30 days after the Lender's receipt of such notice, so long as the Landlord continues to receive rent and other amounts due under the Lease.

(iii) In the event of any Default by Tenant hereunder, and if prior to the expiration of any applicable cure period, Tenant's Lender shall give Landlord written notice that it intends to undertake the curing of such Default, or to cause the same to be cured, or to exercise its rights to acquire the leasehold interest of Tenant by foreclosure or otherwise, and shall immediately commence and then proceed with all due diligence to do so, whether by performance on behalf of Tenant of its obligations under this Lease, or by entry on the Premises by foreclosure or otherwise, then Landlord shall not terminate or take any action to effect a termination of this Lease or reenter, take possession of or relet the Premises or similarly enforce performance of this Lease so long as Tenant's Lender is with all due diligence and in good faith engaged in the curing of such Default, provided, no extension beyond expiration of the applicable grace period specified in this Lease shall be granted where Default consists of failure to make timely payment of the Rent or other monetary sums due hereunder.

(iv) This Lease may be assigned, without the consent of Landlord, to Tenant's Lender, or its assigns, pursuant to foreclosure or similar proceedings, or pursuant to an assignment or other transfer of this Lease to Tenant's Lender in lieu thereof, provided that Tenant's Lender shall assume all obligations herein imposed on Tenant under the Lease for the period preceding or during the period it is in possession of the Premises, but not after any assignment of such Lease by Tenant's lender.

(v) If Tenant's Lender has previously delivered to Landlord written notice of the address of Tenant's Lender, no surrender (except a surrender upon the expiration of the Term) by Tenant to Landlord of this Lease, or of the Premises, or any part thereof, or of any interest therein, and no termination of this Lease by Tenant shall be valid or effective, and neither this Lease nor any of the terms hereof may be amended, modified, changed or canceled and no consent of Tenant to any of the foregoing shall be valid or effective without the prior written consent of Tenant's Lender (which consent shall not be unreasonably withheld or delayed).

**ARTICLE 13.**  
**TENANT'S EVENTS OF DEFAULT**

The occurrence of one of the following events, which is not cured in the time permitted herein, shall constitute a default under this Agreement (hereinafter referred to as a "Default") that shall allow Landlord, in addition to Landlord's right to proceed with other remedies hereunder (including, but not limited to, the remedies set forth in Article 10 and Article 14), the right to terminate this Agreement. The Defaults are as follows:

13.1. If Tenant fails to pay any Rent or other sums due hereunder when and as the same shall become due and payable, and said failure shall continue for a period of fifteen (15) days after written notice thereof from Landlord to Tenant to cure any payment failure; or

13.2. If Tenant shall fail in the performance of or compliance with any other provision, covenant or agreement to be kept and performed hereunder, and such failure shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant specifying in detail the nature of such failure, or, in the case such failure cannot be cured with due diligence within thirty (30) days, Tenant fails to proceed promptly and with all due diligence to cure the same and thereafter to prosecute the curing of such failure with all due diligence [it being intended that in connection with a failure not susceptible of being cured with due diligence within thirty (30) days, that the time within which to cure the same shall be extended for such period as may be reasonably necessary to complete the same with all due diligence].

**ARTICLE 14.**  
**REMEDIES**

14.1. Landlord's Remedies. Upon the occurrence of a Default by Tenant, which is not cured within the time permitted, Landlord shall be entitled to proceed with any one or more of the following remedies:

14.1.1. Perform or fulfill the obligation for the account and at the expense of Tenant, and in connection with such remedy, Landlord may pay all expenses and employ counsel, and all sums so expended or obligations incurred by Landlord in connection therewith shall be paid by Tenant to Landlord, upon demand by Landlord;

14.1.2. Enforce its rights and remedies by suit, action at law, or other appropriate proceeding, whether one or more, and/or bring an action for enforcement or specific performance of any covenant, promise or agreement or condition contained in this Agreement; and/or

14.1.3. Terminate this Agreement, in which event, all obligations of Landlord to Tenant under this Agreement shall forthwith terminate;

14.1.4. No remedy herein conferred upon or reserved to Landlord is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this



Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

## **ARTICLE 15.**

### **ESTOPPEL CERTIFICATE**

15.1. Within twenty (20) business days after request by either party, the other party shall deliver an Estoppel Certificate to the requesting party. The Estoppel Certificate shall be in writing, and shall be executed by persons having appropriate authority. Each Estoppel Certificate shall be made in favor of the requesting party, any mortgagee, any assignee, any Purchaser or any other person specified by the requesting party. Each Estoppel Certificate shall contain information required by the requesting party, and satisfactory to any mortgagee, assignee, purchaser or other person specified by the requesting party including, but not limited to the following:

- A. Ratifying this Lease;
- B. Specifying the Commencement and Termination Dates of this Lease Term;
- C. Certifying that this Lease is in full force and effect and has not been assigned, modified, supplemented or amended (except by such writings as shall be so stated);
- D. That all conditions and obligations under this Lease to be performed have been satisfied or stating those not performed;
- E. That there are no defenses or offsets against the enforcement of this Lease or specifying any such defenses;
- F. The amount of current Rent and the date to which all Rent has been paid;
- G. Any contractual Rent modification beyond the date of estoppel; and
- H. That no Rent has been paid in advance or specifying any such advance Rent.

## **ARTICLE 16.**

### **UNAVOIDABLE DELAYS**

16.1. The provisions of this Section shall be applicable if there shall occur during the Term of this Agreement or prior to the Commencement Date any (i) acts of God, governmental restrictions, regulations or controls, enemy or hostile governmental action, civil commotion, fire, or other casualty; (ii) conditions discovered during the course of construction; (iii) plague, epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including

quarantine or other employee restrictions; (iv) shortage or inability to obtain material or supplies; or (iv) other conditions substantially similar to those enumerated in this Section beyond the reasonable control of the party obligated to perform ("Unavoidable Delay"). As the result of any Unavoidable Delay, if Landlord or Tenant shall fail punctually to perform any obligation on its part to be performed under this Agreement, then, upon written notice to the other, within fifteen (15) days of such event, such failure shall be excused and not be a breach of this Agreement by the party claiming an Unavoidable Delay, but only for the period of time and only to the extent occasioned by such event. If any right or option of either party to take any action under or with respect to the Term of this Agreement is conditioned upon the same being exercised within any prescribed period of time or at or before a named date, then such prescribed period of time or such named date shall be deemed to be extended or delayed, as the case may be, upon written notice, as provided above, for a time equal to the period of the Unavoidable Delay. Notwithstanding anything contained herein to the contrary, the provisions of this Article shall not be deemed or construed to excuse, or to permit any delay in, the timely performance of Tenant's or Landlord's obligation to pay any sums, monies, costs, charges or expenses required to be paid pursuant to the terms of this Agreement.

## **ARTICLE 17.**

### **NOTICES**

17.1. Notices. Any notices or other communications required or permitted hereunder shall be sufficiently given if in writing and (i) delivered by recognized national overnight delivery service with proof of delivery, (ii) sent by facsimile, (iii) sent electronically by email to the email address set forth below, or (iv) sent by certified mail, return receipt requested, postage prepaid, addressed as shown below, or to such other address as the party concerned may substitute by written notice to the other. If the notice is sent by facsimile, it must be properly addressed, reflecting the facsimile phone number of the addressee(s), and must be transmitted by a facsimile which produces a dated message completed confirmation. If the notice is sent by email, the sender must receive a written acknowledgment of receipt by the recipient and the notice shall be deemed given the date such written acknowledgment is received. All notices sent by recognized national overnight delivery service for next day delivery shall be deemed received on the day following deposit with such service. All notices hand delivered shall be deemed received on the date of delivery. All notices forwarded by mail shall be deemed received on a date three (3) days (excluding Sundays and legal holidays when the U.S. mail is not delivered) immediately following date of deposit in the U.S. mail. Provided, however, the return receipt indicating the date upon which all notices were received shall be *prima facie* evidence that such notices were received on the date on the return receipt.

If to Landlord:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Tenant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

With a copy to:

The addresses and addressees may be changed by giving notice of such change in the manner provided herein for giving notice. Unless and until such written notice is received, the last address and addressee given shall be deemed to continue in effect for all purposes.

### **ARTICLE 18.** **HOLDING OVER**

18.1. If Tenant remains in possession of the Premises after the termination or expiration of this Lease and without the execution of a new lease, Tenant shall be deemed to be occupying the Leased Premises as a tenant at sufferance at a rent equal to the Rent that Tenant paid for the Lease Year immediately preceding the termination or expiration of this lease and all other terms and conditions of this Lease shall apply.

### **ARTICLE 19.** **HAZARDOUS MATERIALS AND WASTE**

19.1. Tenant shall not cause or permit any waste, damage or injury to the Property; nor shall Tenant permit the installation at the Property of any underground storage tank or any asbestos; nor shall Tenant use, maintain, sell, manufacture, process or store any Hazardous Material (as defined hereinafter) at the Property. Further, except as set forth below, Tenant represents and warrants that Tenant does not and will not engage in any activity which would involve the use of the Property for the storage, use, treatment, transportation or disposal of any chemical, material or substance which is regulated as toxic or hazardous or exposure to which is prohibited, limited or regulated by any Federal, state, county, regional, local, or other governmental authority. Tenant shall give to Landlord prompt notice of Tenant's discovery of any Hazardous Material in, on, at or otherwise affecting the Property, and Tenant shall cooperate fully with all governmental agencies and persons and entities designated by Landlord to investigate and/or remediate any such Hazardous Material. For purposes of this Lease, "Hazardous Material" includes all materials now or hereafter defined as hazardous wastes or substances under any local, state, federal environmental laws, rules or regulations, and petroleum, petroleum products, oil, asbestos, and any other products which may be transported, stored, or disposed of lawfully only pursuant to a special permit or by or at a governmental-approved facility. Notwithstanding Tenant's compliance with all such laws, regulations, ordinances, orders and decrees, Tenant shall indemnify, defend and hold harmless the Property, Landlord, and all Mortgagees from all claims, damages, losses, assessments, costs, penalties, and expenses including other claim based, in whole or in part, on Tenant's maintenance, storage or use of any Hazardous Material at the Premises. Such indemnification obligation shall survive the Termination of this Lease. Notwithstanding

anything herein to the contrary, but without affecting the indemnity set forth above, Tenant is authorized to use, store, and release materials that might otherwise be classified as Hazardous Substances, so long as such use, storage and release is done in compliance with all laws, rules and regulations governing the same. Notwithstanding the foregoing, it is acknowledged that stockpiled dirt is currently located upon the Property which was not generated by Tenant. A portion of the stockpiled dirt may be used for construction of the Amphitheater, with the remainder being disposed of, which may include offsite disposal.

## **ARTICLE 20.**

### **GENERAL PROVISIONS**

20.1. Brokers. No broker has been retained by Landlord or Tenant in connection with this Agreement. Landlord shall indemnify and hold harmless Tenant against and from all loss, cost, damage, or expense, including attorneys' fees, incurred by Tenant in any action based upon a claim by a broker that Landlord has employed or otherwise engaged such broker in connection with the transaction contemplated by this Agreement; and Tenant shall indemnify and hold harmless Landlord against and from all loss, cost, damage, or expense, including attorneys' fees, incurred by Landlord in any action based upon the claim of a broker that Tenant has employed or otherwise engaged such broker in connection with the transaction contemplated by this Agreement.

20.2. Counterparts. This Agreement may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

20.3. Successors and Assigns. This Agreement and the terms and provisions hereof shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

20.4. Time. Time is of the essence in this Agreement and each and all of its provisions. Any extension of time granted for the performance of any duty or obligation under this Agreement shall not be considered an extension of time for the performance of any other duty or obligation under this Agreement.

20.5. Severability. Except as expressly provided to the contrary herein, each section, part, term or provision of this Agreement shall be considered severable, and if for any reason any section, part, term or provision herein is determined to be invalid and contrary to or in conflict with any existing or future law or regulation by a court or agency having valid jurisdiction, such determination shall not impair (provided that the essential and practical purposes of this Agreement are not thereby frustrated or rendered incapable of performance) the operation of or have any other effect on other sections, parts, terms or provisions of this Agreement as may remain otherwise intelligible, and the latter shall continue to be given full force and effect and bind the parties hereto, and said invalid sections, parts, terms or provisions shall be deemed not to be a part of this Agreement.

20.6. Approvals. Any consent or approval referred to herein (by whatever words used) of either party shall not be unreasonably withheld or delayed, and (except as may otherwise be expressly provided) neither party shall seek or obtain any payment in connection therewith as a condition therefor.

20.7. Applicable Law. THIS AGREEMENT HAS BEEN EXECUTED AND DELIVERED IN THE STATE OF SOUTH CAROLINA AND SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF SOUTH CAROLINA. Any action brought to enforce or interpret this Agreement shall be brought in the court of appropriate jurisdiction in the jurisdiction in which the Property is located. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or considering same shall not apply the presumption that the terms hereof shall be more strictly construed against a party by reason of the rule or conclusion that a document should be construed more strictly against the party who itself or through its agent prepared the same; it being agreed that all parties hereto have participated in the preparation of this Agreement and that legal counsel was consulted by each responsible party before the execution of this Agreement.

20.8. No Joint Venture. Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of (i) principal and agent, (ii) a partnership, or (iii) a joint venture between the parties hereto; it being understood and agreed that neither any provisions contained herein nor any acts of the parties hereto shall be deemed to create any relationship between the parties hereto other than the relationship of Landlord and Tenant.

20.9. Captions. Captions, titles to sections and paragraph headings used herein are for convenience or reference and shall not be deemed to limit or alter any provision hereof.

20.10. Survival. All covenants, agreements, representations and warranties made herein shall survive the execution and delivery of this Agreement. All other documents and instruments to be executed and delivered in accordance herewith shall continue in full force and effect.

20.11. True Triple Net. This Agreement is intended to be a true "Triple Net" lease, obligating Tenant to pay all cost of taxes, insurance, and maintenance as more particularly set forth herein, it being the intention hereof that this Agreement will be without cost or expense to the Landlord.

20.12. Site Rehabilitation. Upon termination of this Agreement, Tenant shall promptly cause the Property to be cleared of any improvements and the ground levelled, with the exception of any soil that was on the Property at the inception of this Lease ( the "Site Restoration Work").

20.13. Contingency. The obligations of Tenant pursuant to this Agreement are expressly contingent upon Tenant obtaining financing for one hundred percent of its costs of the project on terms and conditions satisfactory to Tenant in its sole and absolute discretion, on or before December 31, 2021. Tenant's obligations are further expressly contingent upon the Property meeting all pre-construction technical and engineering requirements for the proposed construction. In the event that either of the aforesaid contingencies is not met, Tenant may terminate this

Agreement by notice to Landlord in which case neither party shall have any further liability or obligation pursuant to this Agreement.

**[Signatures on Following Page]**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper, duly authorized corporate officers, all as of the day and year first above set forth.

**Landlord:**

CITY OF MYRTLE BEACH

By: \_\_\_\_\_

Title: \_\_\_\_\_

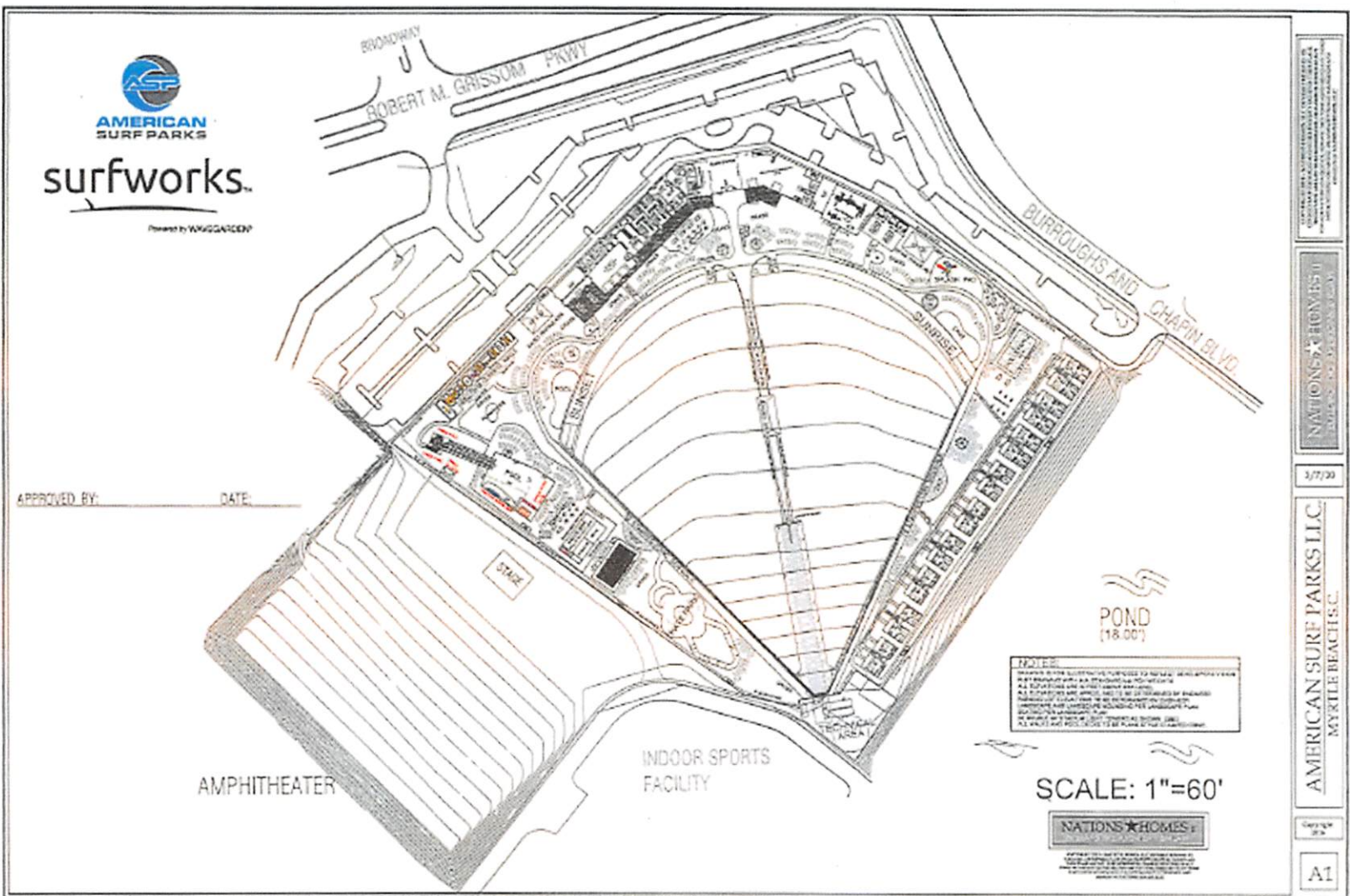
**Tenant:**

AMERICAN SURF PARKS, LLC  
A South Carolina limited Liability Company

By: \_\_\_\_\_

Title: \_\_\_\_\_

# EXHIBIT A





**Exhibit B**

# EXHIBIT C

## *C.L. Benton & Sons, Inc.*

706 38th Avenue North  
Myrtle Beach, SC 29577  
tel: (843)-448-3116  
fax: (843)-626-0170

ATTN: PHIL DIXON  
COMPANY: WAVE GARDEN  
JOB NAME: WAVE GARDEN MYRTLE BEACH  
DATE: MAY 5, 2020

### WAVE GARDEN MYRTLE BEACH EARTHWORK BUDGET PROPOSAL

DESCRIPTION	QNTY	UNIT	UNIT PRICE	PRICE EXTENSION
EXCAVATION (DISPOSE OFF SITE)	216,038	CY	\$ 7.75	\$ 1,674,294.50
EXCAVATION (USE ON SITE)	63,382	CY	\$ 4.50	\$ 285,219.00
GRADING	105,745	SY	\$ 0.75	\$ 79,308.75
TOTAL: \$				2,038,822.25

#### NOTES:

1. PROJECT CONSIST OF REMOVING AND/OR GRADING STOCKPILED SOILS ON CITY OF MYRTLE BEACH OWNED PROPERTY ADJACENT TO BURROUGHS AND CHAPIN BOULEVARD.
2. THIS IS A BUDGET ONLY! ALL QUANTITIES WERE ESTIMATED BY DRG OVERALL GRADING SCHEME DATED FEBRUARY 28, 2020.

Authorized Signature



5/5/2020

Kevin Ward  
Estimator

# EXHIBIT D-1

## *C.L. Benton & Sons, Inc.*

706 38th Avenue North  
Myrtle Beach, SC 29577  
tel: (843)-448-3116  
fax: (843)-626-0170

ATTN: PHIL DIXON  
COMPANY: WAVE GARDEN  
JOB NAME: WAVE GARDEN MYRTLE BEACH  
DATE: MAY 5, 2020

### AMPHITHEATER BUDGET PROPOSAL

DESCRIPTION	QNTY	UNIT	UNIT PRICE	PRICE EXTENSION
GENERAL CONDITIONS	1	LS	\$ 42,100.00	\$ 42,100.00
EROSION CONTROL	1	LS	\$ 38,000.00	\$ 38,000.00
ROADWAY/ EARTHWORK	1	LS	\$ 117,000.00	\$ 117,000.00
STORM DRAINAGE	1	LS	\$ 125,000.00	\$ 125,000.00
LANDSCAPING & IRRIGATION	1	LS	\$ 65,000.00	\$ 65,000.00
SUBTOTAL: \$				387,100.00

#### NOTES:

1. PROJECT CONSIST OF REMOVING AND/OR GRADING STOCKPILED SOILS ON CITY OF MYRTLE BEACH OWNED PROPERTY ADJACENT TO BURROUGHS AND CHAPIN BOULEVARD.
2. THIS IS A BUDGET ONLY! ALL QUANTITIES WERE ESTIMATED BY DRG OVERALL GRADING SCHEME DATED FEBRUARY 28, 2020.

Authorized Signature



Kevin Ward  
Estimator

5/5/2020

# EXHIBIT D-2

## AMPHITHEATER STAGE & PRODUCTION BOOTH BUDGET PROPOSAL

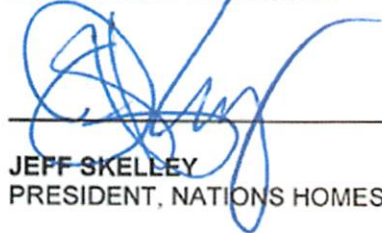


DESCRIPTION	QNTY	UNIT	UNIT PRICE	PRICE
Stage Floor System	1.00	/LSUM	\$ 38,750.00	\$ 38,750.00
Pre-cast concrete stairs with handrail	2.00	/EACH	\$ 1,800.00	\$ 3,600.00
60' X 40' Stage Roof	1.00	/LSUM	\$ 162,000.00	\$ 162,000.00
Handicap Ramp	1.00	/LSUM	\$ 8,500.00	\$ 8,500.00
25' x 25' Concrete Pad for Sound Booth	1.00	/LSUM	\$ 4,200.00	\$ 4,200.00
Sound Booth Roof	1.00	/LSUM	\$ 9,400.00	\$ 9,400.00
Dumpster/Site Cleaning	1.00	/EACH	\$ 4,950.00	\$ 4,950.00
SUB TOTAL			\$	231,400.00

### Notes:

1. THIS IS AN ESTIMATED BUDGET ONLY.
2. NO SOUND OR LIGHTING EQUIPMENT INCLUDED.

AUTHORIZED SIGNATURE



JEFF SKELLEY  
PRESIDENT, NATIONS HOMES

5/7/2020