



Non-Binding Proposal

August 13, 2019

City of Myrtle Beach

Via Email: [Jpedersen@CityofMyrtleBeach.com](mailto:Jpedersen@CityofMyrtleBeach.com)

Re: NON-BINDING PROPOSAL for lease of an approximate 17-acre parcel located at the intersection of Grissom Pkwy and Burroughs & Chapin Blvd in Myrtle Beach, South Carolina.

Dear City of Myrtle Beach:

Pursuant to our recent discussions, I am pleased to submit the following non-binding proposal for the lease of an approximate 17-acre parcel located at the intersection of Grissom Pkwy and Burroughs & Chapin Blvd in Myrtle Beach, South Carolina (the "Proposal"). This Proposal is intended to outline the general business terms of the proposed transaction in order to assist Landlord and prospective Tenant in the negotiation of a mutually agreeable formal written lease agreement. **THIS PROPOSAL IS NOT INTENDED AS, AND DOES NOT CONSTITUTE, A BINDING AGREEMENT BY EITHER PARTY.** No rights or obligations of either party to the other shall exist unless and until each of the parties agrees to its own satisfaction to all terms, provisions and conditions in a formal written executed lease agreement, and neither party may reasonably rely on any promises inconsistent with this paragraph. Until such time, either party may terminate negotiations with or without cause and without any obligation whatsoever to the other, or any claim against the other for any reason, including but not limited to any claim based on "part performance", "detrimental reliance", "good faith", or other similar causes of action. The data in this Proposal is not intended to be duplicated, used or disclosed in whole or in part for any purpose other than to evaluate the Proposal. The parties have no obligation to negotiate in good faith. This paragraph supersedes all other conflicting language.

**Landlord:** City of Myrtle Beach

**Tenant:** Entity: American Surf Parks, LLC  
State of Incorporation/Formation: South Carolina  
Address: 5125 N Kings Hwy, Myrtle Beach, SC 29577  
Telephone Number: 843-861-0545

**Trade Name:** Trade name to be determined.

**Premises:** A parcel located at the intersection of Grissom Pkwy and Burroughs & Chapin Blvd in Myrtle Beach, South Carolina containing approximately 17 acres (TMS # 1730004170).

**Lease Term:** The term of the lease shall be approximately Fifteen (15) years.

**Renewal Option:** Tenant shall have Seven (7) options to extend the Term for Five (5) years on each option, provided that: (i) Tenant is open and operating as the Permitted Use; (ii) Tenant is not in material default of the lease; and (iii) Tenant exercises the option by written notification to Landlord no later than 90 days prior to the expiration of the then-current term.

**Lease Commencement Date:**

The date Landlord notifies Tenant that the Premises are ready for Tenant's occupancy.

**Rent Commencement Date:**

The earliest to occur is Six (6) months after the date Tenant opens the Premises for business with the public.

**Parking:**

Tenant will construct and maintain parking on the premises in compliance with building codes related to Surf Park construction. Parking areas will be considered public parking for the City of Myrtle Beach but shall not impact the tenant's ability to meet parking code requirements set forth by the City of Myrtle Beach. Parking area shall remain free to surf park visitors and the tenant will not be required to pay a lease for this space. The estimated parking area is approximately 250 spaces, but is subject to change per tenant's final site plan.

**Annual Rent:** Commencing on the Rent Commencement Date, Tenant shall pay to Landlord the following Annual Rent, in equal monthly installments, during the term of the lease.

- **Price Per Acre:** \$15,000
- **Total Estimated Acreage (not including parking):** 12 Acres
- **Actual total acreage:** Within 3 months of the lease commencement date, the tenant will obtain a survey of the premises at its expense. This survey will define actual total acreage.

**Initial Term:**

Years 1-5:	Annual Amount: \$180,000
Years 6-10:	Annual Amount: \$198,000
Years 11-15:	Annual Amount: \$217,800

**Option Terms:**

Years 16-20:	Annual Amount: \$239,580
Years 21-25:	Annual Amount: \$263,538
Years 26-30:	Annual Amount: \$289,892
Years 31-35:	Annual Amount: \$318,881
Years 36-40:	Annual Amount: \$350,769
Years 41-45:	Annual Amount: \$385,846
Years 45-50:	Annual Amount: \$424,431

**Permitted Use:** Wave/surf Park and any lawful ancillary use permitted in respect of the premises under the provisions of the City of Myrtle Beach current zoning map. These purposes may include, but are not limited to, the operation of a full-service restaurant, limited service restaurant, concessions, retail, lodging, surf academy, café, meeting space, adventure park, surf camps, sporting events, and competitions.

**Repairs and Maintenance:**

Tenant, at its sole expense, shall maintain all portions of the Premises in good condition and repair. Such maintenance shall include the wave lagoon, the 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.

**Real Estate Taxes:** Tenant shall reimburse Landlord for annual property taxes, commencing on the Rent Commencement Date.

**Insurance:** Tenant shall insure the Premises, and all improvements thereon, at limits and deductibles reasonably satisfactory to Landlord. Tenant's insurance requirements will include, but not be limited to, property, commercial general liability, personal property, worker compensation, and liquor liability.

**Utilities:** Commencing on the Lease Commencement Date, Tenant shall pay all charges for gas, water, sewer, electricity, telecom and other utility services used at the Premises. Tenant will be solely responsible for the payment of any impact fees, tap fees, and any other fees required by the governing municipality for Tenant's operation.

**Assignment/Subletting:**

Tenant shall not transfer, or consent to a transfer of, Tenant's interest in the lease by way of assignment, subletting, mortgage, or any other encumbrance nor permit a change of control of Tenant without written consent of Landlord that shall not be unreasonably withheld.

**Lease Form:** The parties shall use Landlord's form of Lease.

**Radius Restriction:** Tenant shall not operate another similar use within One Hundred and Twenty-Five (125) miles of the Premises, including Wilmington, NC and Charleston, SC.

**Condition of Premises:**

The premises contain approximately 295,000 yards of stockpiled spoil dirt of which requires removal for structural development. In order to remediate this land of the spoil dirt in the most cost effective manner, a portion of the dirt shall be pushed into the adjacent pond as allowed by the City of Myrtle Beach Engineers. Another portion will be pushed onto the City's property behind the Myrtle Beach Sports Center and formed into a natural style amphitheater. Any remaining spoil dirt will be removed from the site and disposed at a location to be determined.

The cost of the site work is estimated at \$2,000,000. American Surf Parks will work with City Engineers to further reduce this cost. At lease commencement, the tenant will be responsible for the initial site work expenses. The Tenant will then be reimbursed each year at an amount equal to the annual lease payments which would be \$180,000 for years 1-5 and \$198,000 for years 6-10, or until the Tenant's initial site work investment is paid back.

**Amphitheater:**

Landlord owns approximately 5-acres next to the Tenant's proposed lease premises. Tenant will create a natural style amphitheater with sloped grass seating on this approximate 5-acre property. Tenant will use the stockpiled dirt that is currently on this site and on the Tenant's proposed lease premises to create the Amphitheater. The entire area will be Hydro-seeded. The costs associated with the movement of this dirt is included in the estimated \$2,000,000 remediation costs noted in "Condition of Premises" section. The amphitheater will be owned by the City of Myrtle Beach and Tenant will have no responsibility to operate the amphitheater venue. Any request by the City to build structures on the Amphitheater property will be included in the repayment plan referenced in "Condition of Premises".

**Confidentiality:** The material contained herein or submitted with this letter is confidential and intended solely for the use of the parties and their agents in determining whether they desire to enter into a lease. Without the prior written consent of the other party, neither party shall, and each shall direct its representatives not to, disclose to any person or entity any of the terms, conditions, or other facts with respect to the potential transaction contemplated hereby (including the status thereof) except in each case as required by law, and then, only with prompt prior written notice to the other party. The confidentiality provisions above shall not apply to any information which is (i) publicly available through no fault of any party hereto, (ii) known to the recipient prior to the date hereof, (iii) independently developed by the recipient after the date hereof, or (iv) acquired by the recipient from a third party who has no obligation known to the disclosing party to keep such information confidential. Notwithstanding the non-binding nature of all other provisions in this Proposal, the parties hereby acknowledge and agree that this section regarding confidentiality shall be binding on the parties and shall survive the termination or expiration of this Proposal.

**Rehabilitation Guarantee:**

American Surf Parks, LLC agrees to return the site to clear and level ground upon termination of the lease, with exception to any dirt that was already on the property prior to site work commencement. An appointed expert will review and estimate the rehabilitation cost once every five years. Developers agrees to establish a fund and/or bank guarantee for the estimated rehabilitation cost.

**Contingency:** The lease is contingent on American Surf Parks, LLC sourcing 100 percent of the required financing, as well as obtaining all relevant building permits and required regulatory approvals by the end of December 31, 2020.

In the event the property fails to meet pre-construction technical requirements for the proposed construction, the lease agreement will immediately become null and void.

**LANDLORD AND PROSPECTIVE TENANT ACKNOWLEDGE AND AGREE THIS PROPOSAL IS NOT INTENDED AS, AND DOES NOT CONSTITUTE, A BINDING AGREEMENT BY EITHER PARTY.**

If you are willing to proceed on the basis as outlined above, please sign and return one copy of this Proposal to tenant not later than ten (21) days after the date of this Proposal. If we do not receive from you a fully-executed copy of this Proposal within such time, this Proposal will automatically expire and be deemed withdrawn.

Sincerely,

**Phil Dixon  
Co-Founder  
American Surf Parks, LLC**

---

**Acknowledged and Accepted this: \_\_\_\_\_ day of \_\_\_\_\_, 2019.**

**Landlord:**

**By: \_\_\_\_\_ Title: \_\_\_\_\_ Print Name: \_\_\_\_\_**