
1 **2023-18 (1ST READING): AN ORDINANCE TO AUTHORIZE THE CITY**
2 **MANAGER TO ENTER INTO AMENDED FRANCHISES FOR WATER**
3 **SAFETY SERVICES AND BEACH CONCESSIONS.**

4 **Applicant/Purpose:** Staff/ to amend the current franchise agreement.
5

6 **Brief:**

- 7 • Periodically the City enters into franchise agreements to provide lifeguard
8 services on the beach.
- 9 • These franchises give the franchisees the right to provide rentals of beach
10 equipment in specific areas of the beach in return for providing water safety
11 services in those same areas.
- 12 • The amended franchise separates the water safety and beach concession
13 functions. Lifeguards will no longer have involvement in beach concessions.
- 14 • Each beach service will place lifeguards within its designated territory with
15 emphasis in areas with historically higher concentration of beach goers and
16 swimmers and with consideration given to weather, water conditions, and other
17 relevant factors.
- 18 • Additional mobile guards are required in certain areas.
- 19 • For every 1 - 10 guards employed, each franchisee is required to provide a
20 minimum of 1 off-stand supervisor.
- 21 • Guarded hours will shift from 8:00 a.m. – 5:00 p.m. to 9:00 a.m. – 6:00 p.m.
- 22 • From 6:00 p.m. to 7:00 p.m., each franchisee will patrol its territory with two man
23 Emergency Response Teams.

24
25 **Issues:**

- 26 • The ordinance authorizes the City Manager to enter into amended franchise
27 agreements for the remainder of the current franchise term (expiring September
28 2024).
- 29 • The amended franchises are designed to be consistent with standards of the
30 United States Lifesaving Association.

31
32 **Public Notification:** Normal meeting notification.
33

34 **Alternatives:**

- 35 • Modify proposed ordinance.
- 36 • Deny ordinance

37
38 **Financial Impact:**

- 39 • City is waiving the franchise fee for the remainder of the franchise term. The
40 financial impact is negligible because the fee under the current (2018) franchise
41 was being retained by franchisees to offset the cost of additional lifeguards.

42
43 **Manager's Recommendation:**

- 44 • I recommend 1st reading (3/14/2023). I recommend 2nd reading & adoption
45 (3/28/2023).

46
47 **Attachment(s):** Ordinance, Amended Water Safety Franchise Agreements
48

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50

**CITY OF MYRTLE BEACH
STATE OF SOUTH CAROLINA
COUNTY OF HORRY**

**AN ORDINANCE TO AUTHORIZE THE CITY
MANAGER TO ENTER INTO AMEDNED
FRANCHISES FOR WATER SAFETY SERVICES
AND BEACH CONCESSIONS.**

WHEREAS, City of Myrtle Beach finds it desirable to have a water safety program for the benefit of residents and tourists; and

WHEREAS, the implementation of a water safety program can be accomplished through cooperation of the City of Myrtle Beach and the beach services that currently possess a franchise and have provided water safety services for decades to the City and to surrounding jurisdictions; and

WHEREAS, City Council previously extended a franchise to Lack’s Beach Service and to John’s Beach Service thereby granting each the exclusive right to rent beach equipment within a designated area of the public beach and, in exchange, Lack’s Beach Service and John’s Beach Service agreed to provide water safety services in accordance with agreed terms and conditions; and

WHEREAS, City Council now desires to more clearly define and clearly distinguish the separate functions of beach concessions and water safety and to include additional provisions to enhance beach safety;

NOW, THEREFORE, City Council desires to amend the current franchise to separate the water safety services function from the concessions component and further desires to require additional measures designed to enhance public safety;

NOW, THEREFORE, the City Manager is hereby directed and is authorized to negotiate with Lack’s Beach Service and John’s Beach Service to amend the current franchise to achieve these objectives.

IT IS HEREBY ORDAINED THAT THE CITY MANAGER IS AUTHORIZED TO ENTER INTO AMENDED FRANCHISES FOR WATER SAFETY SERVICES AND BEACH CONCESSIONS WITH LACK’S BEACH SERVICE AND JOHN’S BEACH SERVICE IN ACCORDANCE WITH THE AMENDED FRANCHISE AGREEMENTS ATTACHED HERETO AS EXHIBITS A AND B, RESPECTIVELY. THE AMENDED FRANCHISE AGREEMENTS ARE TO BE IN SUBSTANTIALLY THE SAME FORM AS ATTACHED TO THIS ORDINANCE. THE CITY MANAGER, IN CONSULTATION WITH CITY ATTORNEY, MAY MAKE OR ACCEPT MINOR MODIFICATIONS TO THE ATTACHED AGREEMENTS AS MAY BE NECESSARY OR APPROPRIATE, PROVIDED THERE IS NO COMPROMISE OF THE SUBSTANTIVE PURPOSES OF THIS CITY COUNCIL ACTION.

FRANCHISE AWARD:

Lack’s Beach Service	South city limits to the center of the 14th Avenue N. Pier and the center line of 82nd Avenue N. to the north city limits.
-----------------------------	---

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

John's Beach Service

**Center of the 14th Avenue N. Pier to the
center line of 82nd Avenue N.**

This ordinance shall become effective upon second reading.

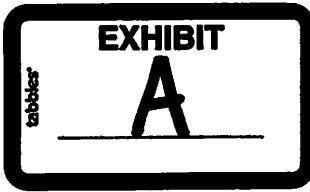
BRENDA BETHUNE, MAYOR

ATTEST:

JENNIFER ADKINS, CITY CLERK

1ST Reading: 3-14-2023

2nd Reading:



AMENDED WATER SAFETY FRANCHISE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46

The City of Myrtle Beach (hereinafter “City” or “Franchisor”) by ordinance duly adopted by the Myrtle Beach City Council, granted to Lack’s Beach Service (hereinafter “Lack’s” or “Franchisee”) a seven year franchise in 2018.

The City Manager, as authorized by City Council, executed a franchise with Lack’s in May 2018 which granted to Lack’s a designated territory within which Lack’s enjoyed the exclusive right to rent beach equipment and, in exchange, Lack’s agreed to provide water safety services in accordance with agreed terms and conditions.

The City of Myrtle Beach and Lack’s Beach Service hereby agree to amend the current water safety franchise to enhance public safety by, among other things, separating the concessions component of the franchise from the water safety services.

Within the territory of the franchise granted to Lack’s, which includes the public beach from the south city limits to the center of the 14th Avenue N. Pier and the public beach from the center line of 82nd Avenue N. to the north city limits, Lack’s agrees to perform for the remainder of the franchise term, expiring September 30, 2024, in accordance with the following terms and conditions:

SECTION 1. - PERIOD OF OPERATION:

Franchisee shall provide water safety services each year during the period beginning April 15 and ending September 30. Franchisee shall guard the beach within its designated territory between the hours of 9:00 a.m. and 6:00 p.m., Monday through Sunday, using the following schedule as a minimum:

April 15 through 3 rd Monday in May:	10 lifeguards
3 rd Tuesday in May through June 1:	19 lifeguards
June 2 through 3 rd Monday of August:	33 lifeguards
3 rd Tuesday of August through Labor Day:	22 lifeguards
Labor Day through September 30:	10 lifeguards

Franchisee may utilize any combination of stationary lifeguards and mobile lifeguards.

Stationary lifeguards shall mean lifeguards assigned to a tower or stand whose area of responsibility is centered around his/her assigned tower or stand. Mobile lifeguards shall mean lifeguards that cover multiple blocks of beach either on foot or by motorized cart, ATV/UTV or vehicle.

Franchisee shall place lifeguards and stands throughout its assigned territory with emphasis in

1 areas with historically higher concentration of beach goers and swimmers and with
2 consideration given to weather, water conditions, and other relevant factors as determined by
3 the Franchisee.
4

5 Franchisee may rent beach equipment through the use of concessionaires (also known as
6 beach attendants), outside said period of operation, provided however, that lifeguards must
7 be on duty at all times that beach equipment is on the beach. The Franchisee shall provide
8 lifeguards as deemed necessary in consultation with the City.
9

10 From the third Tuesday in May to Labor Day of each year, Franchisee shall, in addition,
11 utilize Emergency Response Teams (“ERT”) to patrol its designated territory between the
12 hours of 6:00 p.m. and 7:00 p.m. Each ERT shall consist of two lifeguards working in
13 tandem. Lifeguards discharging Franchisee’s ERT responsibility, may not engage in
14 any commercial or retail activity.
15

16 In addition to lifeguards, the Franchisee shall provide the following equipment sufficient for
17 each area of responsibility:

- 18 1. vehicle, jet ski or similar device,
- 19 2. first aid kit,
- 20 3. rescue buoy,
- 21 4. two-way radio and two-way radio with fire frequency provided by the police
22 department.
23

24 In addition to the minimum number of lifeguards addressed above, Franchisee shall also deploy
25 additional water safety personnel as follows:
26

- 27 1. A minimum of one mobile lifeguard equipped with a vehicle, ATV or other motorized cart
28 between 82nd Ave. N. and North City limits,
- 29 2. A minimum of one mobile lifeguard equipped with a vehicle, ATV or other motorized cart
30 between South City limits and the 2nd Ave. N. pier, and
- 31 3. A minimum of one mobile guard equipped with a vehicle, ATV or other motorized cart
32 between the 2nd Ave. N. pier and the 14th Ave. N. pier.
33

34 Every day from April 15 to September 30, Franchisee shall provide City a daily roster
35 identifying the lifeguards and mobile lifeguards and the location of each. The daily roster shall
36 be emailed daily to beachsafety@cityofmyrtlebeach.com no later than 10:00 a.m. or,
37 alternatively, give the City access to software or app containing the lifeguard schedule and
38 location.
39

40 Additionally, during the hours of operation for the remaining term of the franchise agreement,
41 for every one (1) to ten (10) lifeguards that the Franchisee employs, a minimum of one off-
42 stand supervisor shall be provided. The off-stand supervisor(s) shall be in addition to the
43 minimum number of guards addressed above.
44

45 It is not a violation of the Franchise to deploy more lifeguards, mobile guards, and off-stand
46 supervisors than called for herein.

1 **SECTION 2. - STANDARDS OF PERFORMANCE & LIFEGUARD**
2 **CERTIFICATION**
3

4 All lifeguards shall be at least sixteen (16) years of age, be of good moral character and
5 abide by the highest standards of cleanliness and physical appearance. Prior to commencing
6 work as a lifeguard, Franchisee will test each candidate to ensure that the individual can
7 demonstrate an ability to swim 500 meters over a measured course in a twelve (12) minute
8 period. Thereafter, each lifeguard shall be required, upon demand from the Police
9 Department or Fire Department, to demonstrate an ongoing and current ability to swim
10 500 meters over a measured course in a twelve (12) minute period. Failure results in an
11 immediate removal from duty until the test is taken and passed. Successive tests shall not
12 be administered within a 24 hour period. After the third failure, the lifeguard is permanently
13 removed from duty that season, and may not test again until the next season.
14

15 All lifeguards shall:

- 16 1. Possess adequate vision, hearing acuity, physical ability and stamina to perform the
17 duties of open water lifeguard;
- 18 2. Must possess a valid lifeguard card;
- 19 3. Be in good health and demonstrate an ability to swim 500 meters over a measured
20 course in a twelve (12) minute period;
- 21 4. Possess a Community First Aid Certification or its equivalent;
- 22 5. Possess a CPR Certification or equivalent for professional rescue; and
- 23 6. Successfully complete a course consisting of a total of not less than 40 hours in
24 open water life saving meeting nationally recognized training criteria.
25

26 At the beginning of each season, the Franchisee shall prepare a training schedule for
27 lifeguards and shall present it to the appropriate City authority. Franchisee shall insure that
28 all lifeguards reasonably comply with that schedule. All lifeguards shall possess a valid
29 lifeguard card, a community first aid certification, or its equivalent, CPR certification or
30 equivalent for professional rescue and be in good health and demonstrate the ability to swim
31 500 meters over a measured course within twelve (12) minutes, and possess adequate vision,
32 hearing acuity, physical ability and stamina to perform the duties of open water lifeguard
33 before beginning work on the beach.
34

35 Franchisee shall prepare a lifeguard training curriculum meeting City requirements and
36 ensure that all lifeguard personnel qualify thereunder prior to beginning work and meet
37 all in-service training requirements. Franchisee or designated representative and all franchise
38 lifeguards shall attend all pre-certification and in-service training sessions. Failure to attend
39 shall result in suspension from service until requirement is met.
40

41 Franchisee, all lifeguards and other franchise employees are prohibited from consuming
42 alcoholic beverages while on duty or from reporting to work under the influence of alcohol or
43 other controlled substances.
44

45 Franchisee, employees and all lifeguards shall be committed to maintaining a safe and
46 productive work environment. Alcohol or controlled substances in the workplace are

1 dangerous because they lead to physical impairment, loss of judgment, and the risk of injury
2 and death. Franchisee shall adopt a policy consistent with the policy of the City of Myrtle
3 Beach on drug free workplace.
4

5 Franchisee, employees and lifeguards are prohibited from:

- 6 1. Using a cell phone for activities unrelated to their duties;
- 7 2. Reporting to work while under the influence of alcoholic beverages or controlled
8 substances;
- 9 3. Using or possessing alcoholic beverages or controlled substances on City Premises or
10 Franchisee's time;
- 11 4. Using, possessing, swallowing, inhaling, injecting, dealing in, controlled substances
12 (including but not limited to: marijuana, cocaine, LSD, opiates, amphetamines,
13 barbiturates and phencyclidine), and prescription drugs which
14 are not prescribed for the employee's use. THIS PROHIBITION APPLIES TO USE
15 AT ANY TIME BOTH ON THE JOB AND OFF THE JOB.
16

17 Franchisee shall not employ any individual as a lifeguard or beach concession employee
18 who has been convicted of or plead guilty or nolo contendere to a felony or which is on
19 parole or probation for a criminal offense.
20

21 Franchisee and any franchise employee who operates a motor vehicle in the performance of
22 this franchise agreement shall possess a valid motor vehicle operator's license, and
23 successfully complete a Police Department offered training course for the type of vehicle
24 driven on the beach.
25

26 Franchisee shall determine an appropriate schedule for lunch breaks, which should be
27 staggered or alternated, to ensure adequate coverage and to promote public safety. A copy of
28 this schedule or schedules, and any changes thereto, shall be provided to the City when put
29 into effect. The off-stand supervisors and mobile lifeguards shall remain on the beach
30 between the hours of 11:30 a.m. and 2:00 p.m. to augment the provision of water safety
31 services during those hours.
32

33 If a stand controlled by a Franchisee does not have a lifeguard on duty at any time from 9:00
34 a.m. to 6:00 p.m., Franchisee shall fly a flag or banner from the stand indicating No Guard On
35 Duty. Similar No Guard On Duty flags or banners shall also be set in front of the umbrella
36 line on both sides of the stand at an approximate distance of 20 - 25 yards. The No Guard On
37 Duty flags shall be white in color with red lettering.
38

39 Franchisee shall promulgate an Employee Handbook that shall address the
40 requirements of:

- 41 1. Professional attitude, conduct and appearance;
- 42 2. Health and Safety;
- 43 3. Lifeguard Daily Checklist;
- 44 4. Beach Rules and Regulations;
- 45 5. Interactions with Beach Patrol and Fire and Rescue; and
- 46 6. Other such administrative or employment subjects as deemed necessary.

1 Franchisee shall be solely responsible for any required disciplinary action of its lifeguards.
2

3 **SECTION 3. - LIFEGUARD UNIFORMS & EQUIPMENT** 4

5 All lifeguard uniforms shall be of the same color and combination. All lifeguard tee shirts
6 shall be gold with navy blue lettering. "Life Guard" shall be printed on the front. The name
7 of the franchisee shall be printed on the back. The City of Myrtle Beach Seal shall be on the
8 right sleeve. The company or non-commercial logo may be printed on the left sleeve.
9

10 All lifeguard swim trunks shall be navy blue. "Life Guard" shall be printed in gold letters
11 on the right front leg. Company or non-commercial logo may be applied to left front leg.
12 Pattern may be repeated on the rear of the garment.
13

14 Female lifeguard personnel shall wear a navy blue swimsuit. "Life Guard" shall be printed
15 in gold letters on the front.
16

17 Outerwear shall be gold, with printing as described above. Lifeguards shall wear shirts from
18 10:00 am. until 2:00 p.m.
19

20 All lifeguard stands and towers shall be painted orange or white with orange accents and be
21 built so that lifeguards, while standing or sitting, are positioned at least five (5) feet above
22 ground level thus enhancing the lifeguard's ability to scan the water and beach and increasing
23 the lifeguard's visibility to the public. Each stand shall have painted or posted on all four sides
24 the name of the nearest avenue or street for easy identification. Each stand shall be maintained
25 in good condition and be provided with the following minimum equipment:

- 26 1. Torpedo Buoy
- 27 2. Water Safety Flags (yellow, red, double red, blue, and no guard on duty)
- 28 3. First Aid Kit (including CPR mask and gloves as well as sting treatment per American
29 Red Cross)
- 30 4. Orange Lifeguard Umbrella with "Life Guard" in navy blue letters unless stand has a
31 fixed roof
- 32 5. City Ordinance/Emergency Phone Number Sign
33

34 At least every other stand shall have a two-way radio.
35

36 From April 15 through September 30, Franchisee shall position its lifeguards and stands at
37 such locations and at such distances as determined by the Franchisee with consideration given
38 to the volume of beach goers and swimmers, water conditions and other relevant factors as
39 determined by the Franchisee.
40

41 Each Franchisee shall have an attended two-way radio with fire frequency provided by the
42 Police Department.
43

44 **SECTION 4. - BEACH ATTENDANTS AND BEACH SERVICE EQUIPMENT** 45

46 No commercial or retail activity except as authorized herein shall be permitted on the public

1 beach.

2
3 In return for the provision of water safety services, the Franchisee is hereby authorized to rent
4 the following beach equipment separate and apart from its provision of water safety services:

- 5 1. Chairs & footrests
- 6 2. Umbrella Windbreaks
- 7 3. Floats
- 8 4. Soft Boogie Boards

9
10 Franchisee may not rent any “hard” equipment including but not limited to:

- 11 1. Surfboards
- 12 2. Skim Boards
- 13 3. Sailboats

14
15 Franchisee’s commercial activity authorized herein shall be conducted exclusively by
16 concessionaires or beach attendants of Franchisee who are in addition to, and operate
17 independent of, personnel involved in the provision of water safety services, and who shall at
18 all times wear uniforms different in color and lettering than those worn by lifeguards and other
19 water safety service personnel, clearly identifying such employees as “Beach Attendant,”
20 “Concessionaire” or similar designation not to be confused with lifeguard.

21
22 All Franchisee employees involved in the rental program shall be CPR certified.

23
24 Lifeguards are prohibited from participating in rental activities from 9:00 a.m. to 6:00 p.m.
25 Lifeguards are permitted to assist with equipment set up prior to 9:00 a.m. and break down of
26 equipment after 6:00 p.m. so long as the lifeguard is not discharging Franchisee’s ERT
27 responsibilities between 6:00 p.m. and 7:00 p.m. Franchisee employees involved in rental
28 program are prohibited from performing water safety functions while on duty and cannot
29 assume the duties of a lifeguard; however, if beach attendants are properly trained and certified
30 to render water safety or medical aid to others, they may assist the lifeguard(s), together and
31 in conjunction with the lifeguard(s), with the rendering of water safety or medical aid, if
32 necessary.

33
34 In areas in which two franchises join, Franchisee shall not place beach equipment closer than
35 twenty (20) feet to the point of junction. In addition, a twenty (20) foot opening shall be
36 maintained at each street-end and a ten (10) foot opening at each public walkover. In all cases,
37 Franchisee, in setting up beach equipment, shall endeavor to provide the highest degree of
38 public access possible. Franchisee agrees to remove fifty percent of any un-rented chairs and
39 umbrellas after 2:30 p.m.

40
41 Franchisee shall not display any signage other than specifically authorized herein as well as its
42 company logo on its beach service equipment.

43 Franchisee is authorized to operate, in a safe and prudent manner, various types of motor
44 vehicles in support of its water safety and beach concession operations. All such vehicles shall
45 be maintained in excellent mechanical condition, be neat in appearance and be properly
46 licensed and insured as required by law, and operated by a properly licensed operator.

1 Except in the case of emergency, Franchisee is prohibited from bringing any chemicals,
2 including but not limited to gasoline, oil and hydraulic fluid onto the public beach and shall
3 be solely responsible for any release from its motor vehicles used on the public beach. In the
4 event of spillage, Franchisee shall contain said spillage and contact Ocean Rescue and/or
5 Beach Patrol.
6

7 The City shall have the right to inspect and approve or disapprove the use of any motor
8 vehicle or equipment to be used by Franchisee.
9

10 **SECTION 5. - BEACH CLEANLINESS**

11

12 Each Franchisee will be responsible for the removal of hazardous trash and debris within its
13 designated territory from the water line to the primary dune line. This responsibility shall
14 be discharged by beach attendants; however, it is not a violation for lifeguards to remove trash
15 between the umbrella line and the water line which the lifeguard encounters as part of his/her
16 ordinary routine. Each Franchisee will be held accountable to the City for removing
17 hazardous trash and debris in its franchise territory. At the beginning of each season, the
18 City will provide trashcans as needed for each stand. The City shall be responsible for the
19 trashcans pick-up on the beach.
20

21 **SECTION 6. - FINANCIAL REPORTING AND FRANCHISE FEES**

22

23 Franchisee shall provide the City a sales tax report no later than December 1 of each year
24 during the term of this Franchise. The City may require additional financial information
25 in its discretion.
26

27 In consideration of the Franchisee's willingness to separate water safety and commercial
28 functions of the franchise, the City waives the franchise fee for the remainder of the franchise
29 term.
30

31 **SECTION 7. - INSURANCE**

32

33 Franchisee shall provide and pay for the following insurance coverage during the term hereof:
34

35 Public Liability - A general liability policy protecting Franchisee against liability or loss due
36 to bodily injury, property damage or personal injury arising out of the performance of its
37 franchise responsibilities and more specifically the provision of water safety service. Policy
38 shall be written on an occurrence form and provide a combined single limit of liability of One
39 Million Dollars (\$1,000,000) per occurrence. Coverage shall be included for:
40 Premises/Operation; Products/Completed Operation; Contractual Liability; Independent
41 Contractors and shall include a broad form property damage endorsement. In the event this
42 policy shall exclude coverage for Lifeguard Liability as a professional service, Franchisee shall
43 be required to provide and pay for professional service coverage protecting Franchisee against
44 liability for the acts, errors and omissions of its water safety personnel.
45

46 Automobile Liability - A Business Automobile Liability policy protecting Franchisee against

1 liability or loss due to bodily injury and property damage arising out of the operation of a motor
2 vehicle in the performance of this Franchise. Policy shall be written on an occurrence basis
3 and provide coverage for “any auto” with a combined single limit of liability of One Million
4 Dollars (\$1,000,000) per occurrence.

5
6 Worker's Compensation & Employers' Liability - A Worker's Compensation policy
7 protecting Franchisee against liability or loss arising out of occupational injury or illness of its
8 employees. This policy shall provide minimum limits of liability of: \$500,000 each
9 accident; \$500,000 disease– each employee; and \$500,000 disease-policy limit.

10
11 **Policy Endorsements:**

12 Both the general liability and automobile liability policies, as well as any professional
13 services policy shall be endorsed to name the City of Myrtle Beach as an “additional
14 insured.”

15
16 All policies shall be endorsed to provide the City of Myrtle Beach sixty (60) days prior
17 written notice of non-renewal, reduction or exhaustion of limits or cancellation.

18
19 All policies shall include a "waiver of subrogation" endorsement in favor of the
20 City of Myrtle Beach.

21
22 **Conditions:**

23 The clause “other Insurance” in a policy in which the City of Myrtle Beach is named as
24 an “additional insured” shall not apply to the City of Myrtle Beach. The insuring company
25 shall have no recourse against the City of Myrtle Beach for the payment of any premiums,
26 deductibles or assessments.

27
28 In the event Franchisee should fail to comply with the "loss reporting" requirements of
29 any policy, that failure shall not adversely affect the coverage afforded the City, nor
30 shall the City be responsible for complying with the reporting requirements of any policy.

31
32 **SECTION 8. - INDEMNIFICATION**

33
34 With respect to the parties, and their officials, agents, employees, volunteers, contractors,
35 or those who act on the Franchisor's or Franchisee's behalf in any authorized capacity:

36
37 The Franchisee is informed of risks and obligations in performance of the franchise, and
38 for valuable consideration received in the form of the granted franchise, the Franchisee
39 agrees to assume and fully to take on to itself all of the risks and responsibilities in any
40 way arising from, or associated with its participation in the Franchise, and

41
42 The Franchisee does release the City from any and all claims, demands, suits, judgments,
43 damages, actions and liabilities of every name and nature whatsoever, including attorney's
44 fees and costs, whenever occurring, whether known or unknown, contingent or fixed, at
45 law or in equity, that the Franchisee may suffer at any time arising from or in connection
46 with participation in the franchise, including any personal injury, commercial injury or

1 harm or damage to any property or person.
2

3 Further, as to non-parties to this agreement, Franchisee further agrees to protect, defend,
4 indemnify and hold the City free and harmless from and against any and all losses, fines,
5 penalties, damages, settlements, costs, charges, professional fees or other expenses and
6 liabilities of every kind and character arising out of or relating to any and all claims, liens,
7 demands, obligations, actions, proceedings, or causes of action of every kind in connection
8 with or arising out of this Franchise and the performance hereof, that are due to acts, errors,
9 omissions or negligence of Franchisee, its officers, agents, employees or subcontractors.
10

11 Franchisee further agrees to investigate, handle, respond to, provide defense for and defend
12 the same at its sole expense and agrees to bear all other costs and expenses related thereto. In
13 specific reference to the above, the Franchisee agrees to assume the legal defense, and
14 vigorously defend upon actual notice of claim or suit, and, in doing so, completely indemnify
15 the Franchisor from any loss including any damage model or attorneys' fees and cost, and hold
16 harmless the Franchisor from and against any and all liabilities.
17

18 In the event a claim or suit is made against the City or those who act on its behalf, arising from
19 the Franchisee's operation of the franchise, the same shall be transmitted by City immediately,
20 and the Franchisee has the immediate and absolute duty to defend the claim or suit, even if it
21 is groundless, false or fraudulent, so that the Franchisor may not incur attorneys' fees and
22 costs arising from the claim or suit of non-parties. Should the Franchisor incur attorneys' fees
23 or costs, the Franchisee shall make the Franchisor whole upon demand.
24

25 This promise binds heirs, executors, administrators, legal representatives and assigns of the
26 Franchisee and survives this agreement for the length of time necessary under the applicable
27 statute of limitations relating to any claim, suit or cause of action. This hold harmless,
28 indemnification, and duty to defend shall be governed for all purposes by South Carolina law,
29 without regard to such law on choice of law.
30

31 Within the time as may be provided by law for the answer or defense of any filed claim or
32 proceeding, but no later than thirty (30) days after the City receives notice of the
33 commencement of any action or other proceeding in respect of which indemnification or
34 reimbursement may be sought hereunder, the City shall notify the Franchisee. If any such
35 action or other proceeding shall be brought against the City and be transmitted to the
36 Franchisee, the Franchisee shall, within thirty (30) days acknowledge in writing its receipt of
37 such notice from the City, and shall acknowledge and confirm the Franchisee's obligation to
38 hold harmless, indemnify, and assume the defense, and it shall be obligated to assume the
39 defense of such action or proceeding with counsel chosen by the Franchisee.
40

41 Notwithstanding the foregoing, the City shall have the right to employ separate counsel at the
42 City's sole cost and expense and to control its own defense of such action or proceeding if in
43 the reasonable opinion of counsel to the City, (a) there are or may be legal defenses available
44 to the City that are different from or additional to those available to the Franchisee and which
45 could not be adequately advanced by counsel chosen by the Franchisee, or (b) a conflict or
46 potential conflict exists between Franchisee and the City that would make such separate

1 representation advisable.
2

3 The Franchisee shall not, without the prior written consent of the City, settle or compromise
4 or consent to the entry of any judgment in any pending or threatened claim, action or
5 proceeding to which the City is a party unless such settlement, compromise or consent includes
6 an unconditional release of the City from all liability arising or potentially arising from or by
7 reason of such claim, action or proceeding.
8

9 Notwithstanding any other provision contained herein, the franchise may be terminated upon
10 Franchisee's failure to honor this, or other indemnification, hold harmless or duty to defend
11 obligations due and owing to the Franchisor, arising from the operation of Franchisor's beach
12 safety franchise.
13

14 **SECTION 9. - TRANSFER OF FRANCHISE**

15
16 A Franchisee may transfer his/her franchise to another franchise holder subject to a sixty (60)
17 day notice to and upon approval of the City Manager. City Council must approve by
18 Resolution any franchise transfer. All such approvals shall not be unreasonably withheld.
19

20 Violation of any provision of this Franchise Agreement shall result in the suspension of the
21 Franchise Agreement or in the permanent revocation of the Franchise by City Council.
22

23 **SECTION 10. - ASSIGNMENT**

24
25 This Franchise may not be assigned in whole or in part except upon the written consent of
26 the City of Myrtle Beach.
27

28 **SECTION 11. - TERMINATION**

29
30 In the event the Franchisee is determined to be in default under the terms of this Franchise,
31 the City shall provide Franchisee written notice of default and afford the Franchisee ten
32 (10) days in which to cure the default. Upon failure of the Franchisee to cure or show
33 reasonable progress towards curing the default, the City shall provide written notice of
34 termination to Franchisee and this Franchise shall be revoked by City Council.
35

36 **SECTION 12. - NOTICE AND CONTACT**

37
38 Any papers, request, demand, authorization, direction, notice, consent or waiver provided,
39 required or permitted to be made upon, given by, or furnished to the either party with
40 respect to this franchise shall be sufficient for every purpose hereunder if in writing and
41 mailed by United States Mail, certified or registered mail, postage prepaid and addressed as
42 follows:
43
44

45 **TO THE CITY:**
46 **ATTENTION: JONATHAN "FOX" SIMONS JR.**

1 **CITY MANAGER**
2 **P. O. BOX 2468**
3 **MYRTLE BEACH, SC 29578**
4

5
6 **TO THE FRANCHISEE**
7 _____
8 _____
9 _____
10 _____
11

12 **SECTION 13. – FORCE MAJEURE**
13

14 No party will be liable to the other for any failure or delay in the performance of its obligations
15 under this franchise agreement to the extent such failure or delay is caused by hurricane, flood,
16 fire, earthquake, other elements of nature, acts of war, terrorism, civil disorder, rebellion or
17 revolution, quarantine, pandemic, a declared state of emergency, or other conditions beyond
18 its reasonable control following execution of this franchise. The party claiming to be effected
19 by a force majeure event shall notify the other party no later than 15 days after the occurrence
20 of the force majeure event and identify the manner in which its performance will be delayed
21 or prevented. The party claiming a force majeure event prevents or delays the performance of
22 all or part of its franchise obligations shall also use all reasonable efforts to eliminate or
23 mitigate the impacts of the force majeure event on performance of its obligations and use all
24 reasonable efforts to recommence performance as soon as the force majeure conditions
25 subside. If the force majeure event lasts more than 60 days and the parties fail to reach a
26 resolution to continue to perform under the franchise, the City has the right to terminate the
27 franchise by giving written notice to Franchisee.
28
29

30 **WITNESS THE DUE EXECUTION HEREOF ON THE DATE LAST SIGNED;**

31
32 **CITY OF MYRTLE BEACH**
33

34 **BY:** _____
35

36 **ITS CITY MANAGER**
37

38 **PRINT NAME:** _____
39

40 **WITNESS SIGNATURE AND PRINTED NAME:**
41 _____
42 _____
43 _____
44 _____
45 _____

46 **DATE:** _____

AMENDED WATER SAFETY FRANCHISE
LACK'S BEACH SERVICE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16

FRANCHISEE

BY: _____

ITS _____

PRINT NAME: _____

WITNESS SIGNATURE AND PRINTED NAME:

DATE: _____

AMENDED WATER SAFETY FRANCHISE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46

The City of Myrtle Beach (hereinafter “City” or “Franchisor”), by ordinance duly adopted by the Myrtle Beach City Council, granted to John’s Beach Service (hereinafter “John’s” or “Franchisee”) a seven year franchise in 2018.

The City Manager, as authorized by City Council, executed a franchise with John’s in May 2018 which granted to John’s a designated territory within which John’s enjoyed the exclusive right to rent beach equipment and, in exchange, John’s agreed to provide water safety services in accordance with agreed terms and conditions.

The City of Myrtle Beach and John’s Beach Service hereby agree to amend the current water safety franchise to enhance public safety by, among other things, separating the concessions component of the franchise from the water safety services.

Within the territory of the franchise granted to John’s, which includes the public beach from the center of the 14th Avenue N. Pier to the center line of 82nd Avenue N., John’s agrees to perform for the remainder of the franchise term, expiring September 30, 2024, in accordance with the following terms and conditions:

SECTION 1. - PERIOD OF OPERATION:

Franchisee shall provide water safety each year during the period beginning April 15 and ending September 30. Franchisee shall guard the beach within its designated territory, between the hours of 9:00 a.m. and 6:00 p.m., Monday through Sunday, using the following schedule as a minimum:

April 15 through 3 rd Monday in May:	6 lifeguards
3 rd Tuesday in May through June 1:	15 lifeguards
June 2 through 3 rd Monday of August:	30 lifeguards
3 rd Tuesday of August through Labor Day:	15 lifeguards
Labor Day through September 30:	6 lifeguards

Franchisee may utilize any combination of stationary lifeguards and mobile lifeguards.

Stationary lifeguards shall mean lifeguards assigned to a tower or stand whose area of responsibility is centered around his/her assigned tower or stand. Mobile lifeguards shall mean lifeguards that cover multiple blocks of beach either on foot or by motorized cart, ATV/UTV or vehicle.

Franchisee shall place lifeguards and stands throughout its assigned territory with emphasis in areas with historically higher concentrations of beach goers and swimmers and with

1 consideration given to weather, water conditions, and other relevant factors as determined by
2 the Franchisee.

3
4 Franchisee may rent beach equipment through the use of concessionaires(also known as beach
5 attendants), outside said period of operation, provided however, that lifeguards must be on
6 duty at all times that beach equipment is on the beach. The Franchisee shall provide
7 lifeguards as deemed necessary in consultation with the City.

8
9 From the third Tuesday in May through Labor Day of each year, Franchisee shall, in
10 addition, utilize Emergency Response Teams (“ERT”) to patrol its designated territory
11 between the hours of 6:00 p.m. and 7:00 p.m. Each ERT shall consist of two lifeguards
12 working in tandem. Lifeguards discharging Franchisee’s ERT responsibility may not
13 engage in any commercial or retail activity.

14
15 In addition to lifeguards, the Franchisee shall provide the following equipment sufficient for
16 each area of responsibility:

- 17 1. vehicle, jet ski or similar device,
- 18 2. first aid kit,
- 19 3. rescue buoy,
- 20 4. two-way radio and two-way radio with fire frequency provided by the police
21 department.

22
23 In addition to the minimum number of lifeguards addressed above, Franchisee shall also deploy
24 additional water safety personnel as follows:

- 25
26 1. Two mobile guards equipped with vehicle, ATV or other motorized cart between 31st Ave.
27 N. and 52nd Ave. N.
- 28 2. One mobile guard equipped with vehicle, ATV or other motorized cart between 61st. Ave.
29 N. and 67th Ave. N.
- 30 3. One mobile guard equipped with vehicle, ATV or other motorized cart between 77th Ave.
31 N. and 82nd Ave. N.

32
33 Every day from April 15 to September 30, Franchisee shall provide City a daily roster
34 identifying the lifeguards and mobile lifeguards and the location of each. The daily roster shall
35 be e-mailed daily to beachsafety@cityofmyrtlebeach.com no later than 10:00 a.m. or,
36 alternatively, give the City access to software or app containing the lifeguard schedule and
37 location.

38
39 Additionally, during the hours of operation for the remaining term of the franchise agreement,
40 for every one (1) to ten (10) lifeguards that the Franchisee employs, a minimum of one off-
41 stand supervisor shall be provided. The off-stand supervisor(s) shall be in addition to the
42 minimum number of guards addressed above.

43
44 It is not a violation of the Franchise to deploy more lifeguards, mobile guards, and off-stand
45 supervisors than called for herein.

1 **SECTION 2. - STANDARDS OF PERFORMANCE & LIFEGUARD**
2 **CERTIFICATION**
3

4 All lifeguards shall be at least sixteen (16) years of age, be of good moral character and
5 abide by the highest standards of cleanliness and physical appearance. Prior to commencing
6 work as a lifeguard, Franchisee will test each candidate to ensure that the individual can
7 demonstrate an ability to swim 500 meters over a measured course in a twelve (12) minute
8 period. Thereafter, each lifeguard shall be required, upon demand from the Police
9 Department or Fire Department, to demonstrate an ongoing and current ability to swim
10 500 meters over a measured course in a twelve (12) minute period. Failure results in an
11 immediate removal from duty until the test is taken and passed. Successive tests shall not
12 be administered within a 24 hour period. After the third failure, the lifeguard is permanently
13 removed from duty that season, and may not test again until the next season.
14

15 All lifeguards shall:

- 16 1. Possess adequate vision, hearing acuity, physical ability and stamina to perform the
17 duties of open water lifeguard;
- 18 2. Must possess a valid lifeguard card;
- 19 3. Be in good health and demonstrate an ability to swim 500 meters over a measured
20 course in a twelve (12) minute period;
- 21 4. Possess a Community First Aid Certification or its equivalent;
- 22 5. Possess a CPR Certification or equivalent for professional rescue; and
- 23 6. Successfully complete a course consisting of a total of not less than 40 hours in
24 open water life saving meeting nationally recognized training criteria.
25

26 At the beginning of each season, the Franchisee shall prepare a training schedule for
27 lifeguards and shall present it to the appropriate City authority. Franchisee shall insure that
28 all lifeguards reasonably comply with that schedule. All lifeguards shall possess a valid
29 lifeguard card, a community first aid certification, or its equivalent, CPR certification or
30 equivalent for professional rescue and be in good health and demonstrate the ability to swim
31 500 meters over a measured course within twelve (12) minutes, and possess adequate vision,
32 hearing acuity, physical ability and stamina to perform the duties of open water lifeguard
33 before beginning work on the beach.
34

35 Franchisee shall prepare a lifeguard training curriculum meeting City requirements and
36 ensure that all lifeguard personnel qualify thereunder prior to beginning work and meet
37 all in-service training requirements. Franchisee or designated representative and all franchise
38 lifeguards shall attend all pre-certification and in-service training sessions. Failure to attend
39 shall result in suspension from service until requirement is met.
40

41 Franchisee, all lifeguards and other franchise employees are prohibited from consuming
42 alcoholic beverages while on duty or from reporting to work under the influence of alcohol or
43 other controlled substances.
44

45 Franchisee, employees and all lifeguards shall be committed to maintaining a safe and
46 productive work environment. Alcohol or controlled substances in the workplace are

1 dangerous because they lead to physical impairment, loss of judgment, and the risk of injury
2 and death. Franchisee shall adopt a policy consistent with the policy of the City of Myrtle
3 Beach on drug free workplace.
4

5 Franchisee, employees and lifeguards are prohibited from:

- 6 1. Using a cell phone for activities unrelated to their duties;
- 7 2. Reporting to work while under the influence of alcoholic beverages or controlled
8 substances;
- 9 3. Using or possessing alcoholic beverages or controlled substances on City Premises or
10 Franchisee's time;
- 11 4. Using, possessing, swallowing, inhaling, injecting, dealing in, controlled substances
12 (including but not limited to: marijuana, cocaine, LSD, opiates, amphetamines,
13 barbiturates and phencyclidine), and prescription drugs which
14 are not prescribed for the employee's use. THIS PROHIBITION APPLIES TO USE
15 AT ANY TIME BOTH ON THE JOB AND OFF THE JOB.
16

17 Franchisee shall not employ any individual as a lifeguard or beach concession employee
18 who has been convicted of or plead guilty or nolo contendere to a felony or which is on
19 parole or probation for a criminal offense.
20

21 Franchisee and any franchise employee who operates a motor vehicle in the performance of
22 this franchise agreement shall possess a valid motor vehicle operator's license, and
23 successfully complete a Police Department offered training course for the type of vehicle
24 driven on the beach.
25

26 Franchisee shall determine an appropriate schedule for lunch breaks, which should be
27 staggered or alternated, to ensure adequate coverage and to promote public safety. A copy of
28 this schedule or schedules, and any changes thereto, shall be provided to the City when put
29 into effect. The off-stand supervisors and mobile lifeguards shall remain on the beach between
30 the hours of 11:30 a.m. and 2:00 p.m. to augment the provision of water safety services during
31 those hours.
32

33 If a stand controlled by a Franchisee does not have a lifeguard on duty at any time from 9:00
34 a.m. to 6:00 p.m., Franchisee shall fly a flag or banner from the stand indicating No Guard On
35 Duty. Similar No Guard On Duty flags or banners shall also be set in front of the umbrella
36 line on both sides of the stand at an approximate distance of 20 - 25 yards. The No Guard On
37 Duty flags shall be white in color with red lettering.
38

39 Franchisee shall promulgate an Employee Handbook that shall address the requirements of:

- 40 1. Professional attitude, conduct and appearance;
- 41 2. Health and Safety;
- 42 3. Lifeguard Daily Checklist;
- 43 4. Beach Rules and Regulations;
- 44 5. Interactions with Beach Patrol and Fire and Rescue; and
- 45 6. Other such administrative or employment subjects as deemed necessary.
46

1 Franchisee shall be solely responsible for any required disciplinary action of its lifeguards.
2

3 **SECTION 3. - LIFEGUARD UNIFORMS & EQUIPMENT**
4

5 All lifeguard uniforms shall be of the same color and combination. All lifeguard tee shirts
6 shall be gold with navy blue lettering. "Life Guard" shall be printed on the front. The name
7 of the franchisee shall be printed on the back. The City of Myrtle Beach Seal shall be on the
8 right sleeve. The company or non-commercial logo may be printed on the left sleeve.
9

10 All lifeguard swim trunks shall be navy blue. "Life Guard" shall be printed in gold letters
11 on the right front leg. Company or non-commercial logo may be applied to left front leg.
12 Pattern may be repeated on the rear of the garment.
13

14 Female lifeguard personnel shall wear a navy blue swimsuit. "Life Guard" shall be printed
15 in gold letters on the front.
16

17 Outerwear shall be gold, with printing as described above. Lifeguards shall wear shirts from
18 10:00 am. until 2:00 p.m.
19

20 All lifeguard stands and towers shall be painted orange or white with orange accents and be
21 built so that lifeguards, while standing or sitting, are positioned at least five (5) feet above
22 ground level thus enhancing the lifeguard's ability to scan the water and beach and increasing
23 the lifeguard's visibility to the public. Each stand shall have painted or posted on all four
24 sides the name of the nearest avenue or street for easy identification. Each stand shall be
25 maintained in good condition and be provided with the following minimum equipment:

- 26 1. Torpedo Buoy
- 27 2. Water Safety Flags (yellow, red, double red, blue, and no guard on duty)
- 28 3. First Aid Kit (including CPR mask and gloves as well as sting treatment per American
29 Red Cross)
- 30 4. Orange Lifeguard Umbrella with "Life Guard" in navy blue letters unless a stand has
31 a fixed roof
- 32 5. City Ordinance/Emergency Phone Number Sign
33

34 At least every other stand shall have a two-way radio.
35

36 From April 15 through September 30, Franchisee shall position its lifeguards and stands at
37 such locations and at such distances as determined by the Franchisee with consideration given
38 to the volume of beach goers and swimmers, water conditions and other relevant factors as
39 determined by Franchisee.
40

41 Each Franchisee shall have an attended two-way radio with fire frequency provided by the
42 Police Department.
43

44 **SECTION 4. - BEACH ATTENDANTS AND BEACH SERVICE EQUIPMENT**
45

46 No commercial or retail activity except as authorized herein shall be permitted on the public

1 beach.

2
3 In return for the provision of water safety services and other consideration in Section 6, the
4 Franchisee is hereby authorized to rent the following beach equipment separate and apart from
5 its provision of water safety services:

- 6 1. Chairs & footrests
- 7 2. Umbrella Windbreaks
- 8 3. Floats
- 9 4. Soft Boogie Boards

10
11 Franchisee may not rent any “hard” equipment including but not limited to:

- 12 1. Surfboards
- 13 2. Skim Boards
- 14 3. Sailboats

15
16 Franchisee’s commercial activity authorized herein shall be conducted exclusively by
17 concessionaires or beach attendants of Franchisee who are in addition to, and operate
18 independent of, personnel involved in the provision of water safety services, and who shall at
19 all times wear uniforms different in color and lettering than those worn by lifeguards and other
20 water safety service personnel, clearly identifying such employees as “Beach Attendant” or
21 “Concessionaire” or similar designation not to be confused with lifeguard.

22
23 All Franchisee employees involved in the rental program shall be CPR certified.

24
25 Lifeguards are prohibited from participating in rental activities from 9:00 a.m. to 6:00 p.m.
26 Lifeguards are permitted to assist with equipment set up prior to 9:00 a.m. and break down of
27 equipment after 6:00 p.m. so long as the lifeguard is not discharging the Franchisee’s ERT
28 responsibilities between 6:00 p.m. and 7:00 p.m. Franchisee employees involved in rental
29 program are prohibited from performing water safety functions while on duty and cannot
30 assume the duties of a lifeguard; however, if beach attendants are properly trained and certified
31 to render water safety or medical aid to others, they may assist the lifeguard(s), together and
32 in conjunction with the lifeguard(s), with the rendering of water safety or medical aid, if
33 necessary.

34
35 In areas in which two franchises join, Franchisee shall not place beach equipment closer than
36 twenty (20) feet to the point of junction. In addition, a twenty (20) foot opening shall be
37 maintained at each street-end and a ten (10) foot opening at each public walkover . In all cases,
38 Franchisee, in setting up beach equipment, shall endeavor to provide the highest degree of
39 public access possible. Franchisee agrees to remove fifty percent of any un-rented chairs and
40 umbrellas after 2:30 p.m.

41 Franchisee shall not display any signage other than specifically authorized herein as well as its
42 company logo on its beach service equipment.

43
44 Franchisee is authorized to operate, in a safe and prudent manner, various types of motor
45 vehicles in support of its water safety and beach concession operations. All such vehicles shall
46 be maintained in excellent mechanical condition, be neat in appearance and be properly

1 licensed and insured as required by law, and operated by a properly licensed operator.
2

3 Except in the case of emergency, Franchisee is prohibited from bringing any chemicals,
4 including but not limited to gasoline, oil and hydraulic fluid onto the public beach and shall
5 be solely responsible for any release from its motor vehicles used on the public beach. In the
6 event of spillage, Franchisee shall contain said spillage and contact Ocean Rescue and/or
7 Beach Patrol.
8

9 The City shall have the right to inspect and approve or disapprove the use of any motor
10 vehicle or equipment to be used by Franchisee.
11

12 **SECTION 5. - BEACH CLEANLINESS**

13

14 Each Franchisee will be responsible for the removal of hazardous trash and debris within
15 its designated territory from the water line to the primary dune line. This responsibility shall
16 be discharged by beach attendants; however, it is not a violation for lifeguards to remove trash
17 between the umbrella line and the water line which the lifeguard encounters as part of his/her
18 ordinary routine. Each Franchisee will be held accountable to the City for the removal of
19 hazardous trash or debris of the beach in its franchise territory. Re-occurring legitimate
20 complaints about beach the presence of hazardous trash or debris within the Franchisee's
21 territory shall be grounds for franchise termination. At the beginning of each season, the
22 City will provide trashcans as needed for each stand. The City shall be responsible for the
23 trashcans pick-up on the beach.
24

25 **SECTION 6. - FINANCIAL REPORTING AND FRANCHISE FEES**

26

27 Franchisee shall provide the City a sales tax report no later than December 1 of each year
28 during the term of this Franchise. The City may require additional financial information
29 in its discretion.
30

31 In consideration of the Franchisee's willingness to separate water safety and commercial
32 functions of the franchise, the City waives the franchise fee for the remainder of the franchise
33 term.
34

35 **SECTION 7. - INSURANCE**

36

37 Franchisee shall provide and pay for the following insurance coverage during the term hereof:
38

39 Public Liability - A general liability policy protecting Franchisee against liability or loss due
40 to bodily injury, property damage or personal injury arising out of the performance of its
41 franchise responsibilities and more specifically the provision of water safety service. Policy
42 shall be written on an occurrence form and provide a combined single limit of liability of One
43 Million Dollars (\$1,000,000) per occurrence. Coverage shall be included for:
44 Premises/Operation; Products/Completed Operation; Contractual Liability; Independent
45 Contractors and shall include a broad form property damage endorsement. In the event this
46 policy shall exclude coverage for Lifeguard Liability as a professional service, Franchisee shall

1 be required to provide and pay for professional service coverage protecting Franchisee against
2 liability for the acts, errors and omissions of its water safety personnel.

3 Automobile Liability - A Business Automobile Liability policy protecting Franchisee against
4 liability or loss due to bodily injury and property damage arising out of the operation of a motor
5 vehicle in the performance of this Franchise. Policy shall be written on an occurrence basis
6 and provide coverage for "any auto" with a combined single limit of liability of One Million
7 Dollars (\$1,000,000) per occurrence.

8
9 Worker's Compensation & Employers' Liability - A Worker's Compensation policy
10 protecting Franchisee against liability or loss arising out of occupational injury or illness of its
11 employees. This policy shall provide minimum limits of liability of: \$500,000 each
12 accident; \$500,000 disease- each employee; and \$500,000 disease-policy limit.

13
14 **Policy Endorsements:**

15 Both the general liability and automobile liability policies, as well as any professional
16 services policy shall be endorsed to name the City of Myrtle Beach as an "additional
17 insured."

18
19 All policies shall be endorsed to provide the City of Myrtle Beach sixty (60) days prior
20 written notice of non-renewal, reduction or exhaustion of limits or cancellation.

21
22 All policies shall include a "waiver of subrogation" endorsement in favor of the
23 City of Myrtle Beach.

24
25 **Conditions:**

26 The clause "other Insurance" in a policy in which the City of Myrtle Beach is named as
27 an "additional insured" shall not apply to the City of Myrtle Beach. The insuring company
28 shall have no recourse against the City of Myrtle Beach for the payment of any premiums,
29 deductibles or assessments.

30
31 In the event Franchisee should fail to comply with the "loss reporting" requirements of
32 any policy, that failure shall not adversely affect the coverage afforded the City, nor
33 shall the City be responsible for complying with the reporting requirements of any policy.

34
35 **SECTION 8. - INDEMNIFICATION**

36
37 With respect to the parties, and their officials, agents, employees, volunteers, contractors,
38 or those who act on the Franchisor's or Franchisee's behalf in any authorized capacity:

39
40 The Franchisee is informed of risks and obligations in performance of the franchise, and
41 for valuable consideration received in the form of the granted franchise, the Franchisee
42 agrees to assume and fully to take on to itself all of the risks and responsibilities in any
43 way arising from, or associated with its participation in the Franchise, and

44
45 The Franchisee does release the City from any and all claims, demands, suits, judgments,
46 damages, actions and liabilities of every name and nature whatsoever, including attorney's

1 fees and costs, whenever occurring, whether known or unknown, contingent or fixed, at
2 law or in equity, that the Franchisee may suffer at any time arising from or in connection
3 with participation in the franchise, including any personal injury, commercial injury or
4 harm or damage to any property or person.
5

6 Further, as to non-parties to this agreement, Franchisee further agrees to protect, defend,
7 indemnify and hold the City free and harmless from and against any and all losses, fines,
8 penalties, damages, settlements, costs, charges, professional fees or other expenses and
9 liabilities of every kind and character arising out of or relating to any and all claims, liens,
10 demands, obligations, actions, proceedings, or causes of action of every kind in connection
11 with or arising out of this Franchise and the performance hereof, that are due to acts, errors,
12 omissions or negligence of Franchisee, its officers, agents, employees or subcontractors.
13

14 Franchisee further agrees to investigate, handle, respond to, provide defense for and defend
15 the same at its sole expense and agrees to bear all other costs and expenses related thereto. In
16 specific reference to the above, the Franchisee agrees to assume the legal defense, and
17 vigorously defend upon actual notice of claim or suit, and, in doing so, completely indemnify
18 the Franchisor from any loss including any damage model or attorneys' fees and cost, and hold
19 harmless the Franchisor from and against any and all liabilities.
20

21 In the event a claim or suit is made against the City or those who act on its behalf, arising from
22 the Franchisee's operation of the franchise, the same shall be transmitted by City immediately,
23 and the Franchisee has the immediate and absolute duty to defend the claim or suit, even if it
24 is groundless, false or fraudulent, so that the Franchisor may not incur attorneys' fees and
25 costs arising from the claim or suit of non-parties. Should the Franchisor incur attorneys' fees
26 or costs, the Franchisee shall make the Franchisor whole upon demand.
27

28 This promise binds heirs, executors, administrators, legal representatives and assigns of the
29 Franchisee and survives this agreement for the length of time necessary under the applicable
30 statute of limitations relating to any claim, suit or cause of action. This hold harmless,
31 indemnification, and duty to defend shall be governed for all purposes by South Carolina law,
32 without regard to such law on choice of law.
33

34 Within the time as may be provided by law for the answer or defense of any filed claim or
35 proceeding, but no later than thirty (30) days after the City receives notice of the
36 commencement of any action or other proceeding in respect of which indemnification or
37 reimbursement may be sought hereunder, the City shall notify the Franchisee. If any such
38 action or other proceeding shall be brought against the City and be transmitted to the
39 Franchisee, the Franchisee shall, within thirty (30) days acknowledge in writing its receipt of
40 such notice from the City, and shall acknowledge and confirm the Franchisee's obligation to
41 hold harmless, indemnify, and assume the defense, and it shall be obligated to assume the
42 defense of such action or proceeding with counsel chosen by the Franchisee.
43

44 Notwithstanding the foregoing, the City shall have the right to employ separate counsel at the
45 City's sole cost and expense and to control its own defense of such action or proceeding if in
46 the reasonable opinion of counsel to the City, (a) there are or may be legal defenses available

1 to the City that are different from or additional to those available to the Franchisee and which
2 could not be adequately advanced by counsel chosen by the Franchisee, or (b) a conflict or
3 potential conflict exists between Franchisee and the City that would make such separate
4 representation advisable.

5
6 The Franchisee shall not, without the prior written consent of the City, settle or compromise
7 or consent to the entry of any judgment in any pending or threatened claim, action or
8 proceeding to which the City is a party unless such settlement, compromise or consent includes
9 an unconditional release of the City from all liability arising or potentially arising from or by
10 reason of such claim, action or proceeding.

11
12 Notwithstanding any other provision contained herein, the franchise may be terminated upon
13 Franchisee's failure to honor this, or other indemnification, hold harmless or duty to defend
14 obligations due and owing to the Franchisor, arising from the operation of Franchisor's beach
15 safety franchise.

16
17 **SECTION 9. - TRANSFER OF FRANCHISE**

18
19 A Franchisee may transfer his/her franchise to another franchise holder subject to a sixty (60)
20 day notice to and upon approval of the City Manager. City Council must approve by
21 Resolution any franchise transfer. All such approvals shall not be unreasonably withheld.

22
23 Violation of any provision of this Franchise Agreement shall result in the suspension of the
24 Franchise Agreement or in the permanent revocation of the Franchise by City Council.

25
26 **SECTION 10. - ASSIGNMENT**

27
28 This Franchise may not be assigned in whole or in part except upon the written consent of
29 the City of Myrtle Beach.

30
31 **SECTION 11. - TERMINATION**

32
33 In the event the Franchisee is determined to be in default under the terms of this Franchise,
34 the City shall provide Franchisee written notice of default and afford the Franchisee ten
35 (10) days in which to cure the default. Upon failure of the Franchisee to cure or show
36 reasonable progress towards curing the default, the City shall provide written notice of
37 termination to Franchisee and this Franchise shall be revoked by City Council.

38
39 **SECTION 12. - NOTICE AND CONTACT**

40
41 Any papers, request, demand, authorization, direction, notice, consent or waiver provided,
42 required or permitted to be made upon, given by, or furnished to the either party with
43 respect to this franchise shall be sufficient for every purpose hereunder if in writing and
44 mailed by United States Mail, certified or registered mail, postage prepaid and addressed as
45 follows:
46

1 **TO THE CITY:**
2 **ATTENTION: JONATHAN "FOX" SIMONS JR.**
3 **CITY MANAGER**
4 **P. O. BOX 2468**
5 **MYRTLE BEACH, SC 29578**

6
7 **TO THE FRANCHISEE**

8 _____
9 _____
10 _____
11 _____

12
13 **SECTION 13. – FORCE MAJEURE**

14
15 No party will be liable to the other for any failure or delay in the performance of its obligations
16 to the extent such failure or delay is caused by hurricane, flood, fire, earthquake, other elements
17 of nature, acts of war, terrorism, civil disorder, rebellion or revolution, quarantine, pandemic,
18 a declared state of emergency, or other conditions beyond its reasonable control following
19 execution of this franchise. The party claiming to be effected by a force majeure event shall
20 notify the other party no later than 15 days after the occurrence of the force majeure event and
21 identify the manner in which its performance will be delayed or prevented. The party claiming
22 a force majeure event prevents or delays the performance of all or part of its franchise
23 obligations shall also use all reasonable efforts to eliminate or mitigate the impacts of the force
24 majeure event on performance of its obligations and use all reasonable efforts to recommence
25 performance as soon as the force majeure conditions subside. If the force majeure event lasts
26 more than 60 days and the parties fail to reach a resolution to continue to perform under the
27 franchise, the City has the right to terminate the franchise by giving written notice to
28 Franchisee.

29
30 **WITNESS THE DUE EXECUTION HEREOF ON THE DATE LAST SIGNED;**

31
32 **CITY OF MYRTLE BEACH**

33
34 **BY:** _____

35
36 **ITS CITY MANAGER**

37
38 **PRINT NAME:** _____

39
40 **WITNESS SIGNATURE AND PRINTED NAME:**

41 _____
42 _____
43 _____

44
45 **DATE:** _____
46

AMENDED WATER SAFETY FRANCHISE
JOHN'S BEACH SERVICE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16

FRANCHISEE

BY: _____

ITS _____

PRINT NAME: _____

WITNESS SIGNATURE AND PRINTED NAME:

DATE: _____