

## ASSIGNMENT OF CONCESSION AGREEMENT AND CONSENT OF CITY

THIS ASSIGNMENT (this "Assignment") is made this 17 day of May, 2023, by and between Sunset Watersports, Inc. ("Assignor") and Sunset Watersports Adventures, LLC ("Assignee").

The Assignor, as concessionee ("Concessionee") and City of Key West, as city ("City") have previously entered into that certain Concession Agreement dated June 19, 2018 per Resolution 18-200, the ("Concession Agreement"), The Concession Agreement pertains to real property located at two locations on Smather's Beach, in Monroe County, Florida, and more particularly described in Exhibit A, which is attached hereto and incorporated by reference.

Assignor desires to assign all of its right, title and interest in the Concession Agreement to Assignee, Assignee desires to accept and assume the same, and City is willing to consent to the proposed Assignment, all on the terms and conditions hereof.

**NOW THEREFORE**, in consideration of the mutual terms and conditions herein contained, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereby agree as follows:

1. Assignor hereby assigns and transfers unto Assignee all of its right, title, and interest in and to the Concession Agreement, subject to all the conditions and terms contained therein.

2. Assignor herein expressly agrees and covenants that it is the lawful and sole owner of the Concessionee's interest assigned herein, that Assignor's interest in the Concession Agreement is free from all encumbrances, and Assignor has not received any written notice from City that Assignor has failed to perform all the duties and obligations or failed to make any payments required under the Concession Agreement.

3. Assignor herein expressly acknowledges, that this Assignment shall not relieve Assignor from liability for payment of rent or from the obligation to keep and be bound by the terms, conditions, and covenants contained in the Concession Agreement, provided, however, no such liability shall extend beyond the expiration of the current Concession Agreement Term (as defined in the Concession Agreement).

4. Assignee herein expressly agrees to assume, perform and be liable for all of the duties and obligations of "Concessionee" required by and under the terms of the Concession Agreement, including but not limited to, the obligation to pay all rent due thereunder from and after the effective date of this Assignment.

5. In the event of a default of any of the terms, conditions and covenants of the Concession Agreement by the Assignee the Assignor shall have the right to re-enter and assume the Lease.

6. This Assignment is contingent upon the completion of the sale between Assignor and Assignee of the business conducted on and from the Premises. References herein to the "effective date" shall mean the date of the closing of the aforementioned sale transaction.

7. No later than the effective date of this Assignment, Assignee herein expressly agrees to execute a personal guaranty and to provide to Landlord a letter of credit from a federally insured bank or a bond in favor of City as security for the faithful performance by Assignee of the terms, conditions, and covenants of the Concession Agreement. The amount of the letter of credit or bond shall be \$17,676.00.

8. In the event Assignee files any form of bankruptcy, Landlord shall be entitled to immediate termination of the automatic stay provisions of 11 U.S.C. §362, granting City complete relief and allowing City to exercise all of its legal and equitable rights and remedies, including, without limitation, the right to terminate the Concession Agreement and dispossess Assignee from the Premises in accordance with Florida law. Additionally, Assignee agrees not to directly or indirectly oppose or otherwise defend against City's effort to gain relief from any automatic stay. City shall be entitled as aforesaid to the lifting of the automatic stay without the necessity of an evidentiary hearing and without the necessity or requirement of City to establish or prove the value of the leasehold, the lack of adequate protection of his interest in the leasehold, or the lack of equity in the same. Assignee specifically agrees and acknowledges that the

lifting of the automatic stay hereunder by the appropriate bankruptcy court shall be deemed to be "for cause" pursuant to section 362(d)(1).

9. The Guarantor does hereby absolutely, unconditionally and irrevocably guarantee to the City the full and complete performance of all of Assignee's covenants and other charges and amounts required to be paid hereunder during the entire term. Guarantor's obligations hereunder shall be primary and not secondary and are independent of the obligations of the Assignee.


**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;  
SIGNATURES ON FOLLOWING PAGE]**


**IN WITNESS WHEREOF**, the parties have executed this Assignment as of the date first above written.

  
\_\_\_\_\_  
Witness to Assignor


**ASSIGNOR:**  
**SUNSET WATERSPORTS, INC.**

  
\_\_\_\_\_  
Witness to Assignor

By:   
\_\_\_\_\_  
Name: Richard C. Welter  
Title:

  
\_\_\_\_\_  
Witness to Assignor

**ASSIGNEE:**  
**SUNSET WATERSPORTS ADVENTURES,  
LLC**

  
\_\_\_\_\_  
Witness to Assignor

By:   
\_\_\_\_\_  
Name: Rich Welter II  
Title:

**ASSIGNOR ACKNOWLEDGMENT**

State of Florida     }  
County of Monroe   }

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgements, Personal to me personally known or who provided NA as photo identification, and who executed the foregoing instrument and he acknowledged before me that he executed the same individually and for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal and State last aforesaid, this 17<sup>th</sup> day of MAY, 2023.

  
\_\_\_\_\_



Notary Public, State of Florida  
My Commission Expires:

**ASSIGNEE ACKNOWLEDGMENT**

State of Florida }  
County of Monroe }

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgements, PERSONAL to me personally known or who provided NA as photo identification, and who executed the foregoing instrument and he/she acknowledged before me that he executed the same individually and for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State last aforesaid, this 17 day of MAY, 2023.

  
\_\_\_\_\_  
Notary Public, State of Florida  
My Commission Expires:



**CONSENT OF LANDLORD**

I, \_\_\_\_\_, City Manager of City of Key West, the City named in that certain Concession Agreement dated \_\_\_\_\_ per Resolution \_\_\_\_\_, herein expressly consent to the Assignment so long as the sale between Assignor and Assignee of the business which is conducted on and from the Premises is completed on or before the date of this assignment failing which this Consent shall be deemed null and void, of no force or effect and withdrawn.

I also consent to the agreement by Assignee to assume, after the effective date of the Assignment, the payment of rent and the performance of all duties and obligations as set forth in the Concession Agreement and accept Assignee as concessionee in the place of \_\_\_\_\_ alone.

**LANDLORD:**

City of Key West

\_\_\_\_\_  
Witness as to Landlord \_\_\_\_\_, City Manager

State of Florida }  
County of Monroe }

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgements, \_\_\_\_\_ to me personally known or who provided \_\_\_\_\_ as photo identification, and who executed the foregoing instrument and he acknowledged before me that he executed the same for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State last aforesaid, this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Notary Public, State of Florida  
My Commission Expires: