LEASE AGREEMENT BETWEEN THE TOWN OF NANTUCKET AND THE SURF FOR SURFSIDE BEACH CONCESSION SERVICES

THIS AGREEMENT made effective January 1st, 2020 by and between the **TOWN OF NANTUCKET, MASSACHUSETTS**, a municipal corporation, acting by and through its Town Manager, with offices at Town Hall, 16 Broad St., Nantucket, Massachusetts 02554 (hereinafter called the "TOWN"), and **THE SURF** whose principal office address and state of incorporation are as set forth on Lease agreement Exhibit A (hereinafter called the "Concessionaire").

I. SCOPE OF SERVICES

General: The Concessionaire is responsible for the Operation of a food and beverage Concession and optional retail and optional food truck sales exclusively along with a non-exclusive license to use the remainder of the Premises along with the public at Surfside Beach, 4 Western Avenue, Nantucket, MA. The Concessionaire is also responsible for custodial maintenance of the Premises Area daily, as indicated on *Exhibit C*. Note: The premises area is within a traditional habitat area for both State and Federally protected shorebirds.

Concession Premises: The Concession premises (hereinafter called the Premises) shall include the Concession Building, Restrooms, Picnic Area, and the area immediately surrounding the facility as shown in *Exhibit C*.

A. CONCESSION FEE AND OTHER CHARGES

1. **Concession Fee:** The Concessionaire shall pay an annual Fee in the amount set forth on the Bid Form attached to this Lease agreement as Lease agreement *Exhibit B* for each occupancy period during the term hereof. The Concession Fee shall be payable in two equal installments, the first due on or before August 1 and the second due on or before September 1 of each year. The Concessionaire's 10% bid deposit will be credited toward the first payment of the first year's Concession fee. Any additional payments, such as percentage of sales, as determined in *Exhibit B* shall be paid as indicated in the Exhibit.

3. **Security Deposit:** The Concessionaire shall file with the Town a $2,000.00 security deposit payable prior to the signing of the lease, refundable at the end of the term, without interest to the Concessionaire within sixty (60) days, after determination has been made that the Concessionaire has fulfilled all of the terms of the Lease agreement and left the premises in adequate condition according to the Town and after presenting proof that all utility payments have been made and no defaults are left outstanding.

4. **Utility Payments:** The Concessionaire shall pay all water, power, gas, sewer, landfill, oil and telephone costs incidental to its operation hereunder. This obligation includes but is not limited to payment of water and electric bills, Landfill and Sewer User Fees for both the Concession and the Bathroom facility portions of the premises. The Concessionaire is also responsible for scheduling the turning on and turning off all utilities with the Department of Public Works to ensure all are properly turned off and secured. The Concessionaire is also responsible for all utility

deposits required in turning on and off all utilities. The Concessionaire shall present proof of payment of all utilities to the Finance Department within thirty days of closing for the season (Columbus Day weekend). Should proof of payment not be presented the Concessionaire shall be considered in default and the Town has the right at its discretion to pay any outstanding amounts from the security deposit as stated in *Section A-3* above.

5. **Other Fees and Utilities:** The Concessionaire shall also be responsible of all licensing fees as determined by the Town, all utilities and all other costs associated with the operation of the premises; including any additional fees brought on by the presence of listed shorebirds and the protection plan implemented by the Town of Nantucket's Endangered Species Program, through the Beach Management Plan. Those items specifically provided herein are excluded.

B. TERM

1. **Lease Term**: Five years beginning January 1, 2020 and expiring on December 31, 2024.

2. **Operation Dates**: Successful bidder shall be permitted to occupy the Premises only during the Occupancy periods, which run from the Friday before Memorial Day through ten (10) days after Columbus Day each calendar year.

C. CONCESSIONAIRE'S OBLIGATIONS

OBLIGATIONS

1. **Concession Facility:** Concessionaire agrees to operate a Concession facility of a typical snack bar business in accordance with the applicable rules and regulations and to obtain appropriate licenses before operating the facility and presenting the Town with the same. Food menus may be limited. The Concessionaire shall operate the Premises so as to enhance the public's use and enjoyment of the adjacent public beach facility and in the best interest of the residents of and visitors of the Town of Nantucket. The Concessionaire is responsible for compliance with all laws and regulations applicable to the operation of the premises, including but not limited to compliance with applicable ADA regulations.

2. **Food Services:** The Concessionaire shall run a limited menu of a typical snack bar from 11:00 AM through 5:00 PM seven (7) days per week from the Friday prior to Memorial Day through Columbus Day Weekend each year. The Concessionaire may close the food service after Labor Day weekend, however, the bathroom facilities must be maintained through Columbus Day. Breakfast <u>may</u> be served at the discretion of the Concessionaire but is not required. Concessionaire shall limit service to the area immediately adjacent to the Concession facility. Small tables or picnic benches with/without umbrellas immediately in front of the Concession building (not the Parking Lot or Beach Area) may be allowed with <u>prior</u> <u>written</u> approval from the Town as long as it does not interfere with public access, buses, emergency vehicle or Town vehicle access to the Concession, Bathroom or Beach. Such table service is not permitted in the Parking Lot or Beach area. Such additional seating shall be counted towards the number of required bathroom facilities per Health Department regulations (Regulations for Toilet Facilities for Food Service Establishments).

3. **Mobile Food Unit(s):** The Concessionaire <u>may</u> be permitted to augment Concession facility services with a mobile food unit with the prior written permission of the Town and appropriate state and Town licenses. Such units must be maintained as required by the Health Department and related regulations. Exhibit C shows only location an approved mobile food unit can be sited. Sales associated with the mobile food unit shall be accounted for separately upon payments to the Town and shall be part of the gross sales calculation. The Concessionaire would have exclusive licensing over a mobile food unit at Surfside should this be permitted. The Concessionaire would still need

to maintain the Concession facility, the Restroom, Picnic Area, and the Premises area. Should the Concessionaire want to solely utilize Mobile Food Units for Food Services, a written request must be submitted for review of the Town. Any such request requires that the Concessionaire would still need to maintain the Concession facility, the Restroom and the Premises area.

4. **Retail Sales**. A small retail sales operation will be allowed and is exclusive to this lease. The sale of clothing, souvenirs and/or traditional beach-related goods from inside the Concession building or immediately outside or behind the Concession building (not blocking public access, the picnic area, the deck or the parking lot) is permitted. Display of beach chairs, umbrellas, windbreaks and other comparable equipment offered for sale or rent will not be permitted on the Concession deck, driveway in front of the Concession, and the walkway to the beach or in the Western Ave portion of the Parking Lot.

5. **Rental Equipment:** The Concessionaire is allowed to rent beach chairs, beach towels, boogie boards and other approved beach/surf equipment, specifically in the area behind the Concession building in the Concession area.

6. **Accessible Beach Wheel Chairs.** Concessionaire is also expected to assist in arranging (reserve, arrange delivery, loan out and collect) the "free rental" of beach wheel chairs as provided by the Department of Public Works. The Concessionaire is not required to repair or maintain these accessible beach wheel chairs; however, the Concessionaire is required to inform the Department of Public Works of needed repairs.

7. **Private Functions:** No private functions are allowed in the Premises area. Public Special Events may occur in the Premises Area or Beach Maintenance Area if properly permitted by the Town. Amplified music by the Concessionaire is not permitted anywhere in the leased area without the required permit through the Town. Tents are not permitted in the leased area.

8. **Public Restrooms:** At a minimum the Concessionaire shall operate the Bathroom facilities between the hours of 9:00 am and 5:30 pm seven (7) days per week from the Friday prior to Memorial Day through Columbus Day Weekend each year. The Concessionaire shall open the Bathroom facility at all times while the Concession is operating and if the Concessionaire chooses to close food service after Labor Day they must continue to operate the Bathroom facilities through Columbus Day. The Town of Nantucket reserves the right to open and staff the Bathroom facility only, at other hours for special events. Bathroom facilities must remain open even in inclement weather. The Concessionaire shall be responsible for the cleanliness of the Bathroom facility and area surrounding the Bathroom facility. A Maintenance Log of twice daily cleanings shall be provided and visually displayed in bathroom area for inspection. *Exhibit D.*

The Town of Nantucket is responsible for sewer and water lines, including the septic system. The Concessionaire shall inform the Department of Public Works of any issues related to the related septic system at the Bathroom facilities. In the event of issues or failure, the Town of Nantucket shall provide temporary bathroom facilities until septic system is restored.

9. **Kitchen Equipment:** The Concessionaire shall provide and install all kitchen and food and drink equipment not already provided by the Town of Nantucket. Within sixty (60) days of signing the lease, a walkthrough of the facility with the Concessionaire and Town of Nantucket (through the Department of Public Works) to confirm a List of Ownership, *Exhibit F*, of equipment on site. This List shall be updated, as required, and signed by both parties. Any purchase of equipment by the Concessionaire from previous Concessionaire would be a private agreement and not part of the Lease agreement for the facilities. Concessionaire is responsible for maintenance and replacement and removal of his/her own equipment. Any equipment affixed permanently to the premises shall immediately become the property of the Town of Nantucket subject only to the Concessionaire's right to use such equipment during the term hereof. It shall be the sole responsibility of the Concessionaire to remove one's own equipment installed in the

Premises prior to the expiration of this Lease agreement and to repair any damages resulting from such removal. Any such equipment remaining after the expiration of this Lease agreement shall, at the option of the Town, either become the property of the Town or be removed and disposed of by the Town at the expense of the Concessionaire. The Concessionaire is responsible for preventive maintenance for the equipment provided by the Town. In addition, the Concessionaire agrees to perform annual maintenance prior to closing the building each fall. A schedule of the minimum annual maintenance requirements is attached hereto and incorporated herein, marked Lease agreement *Exhibit G*.

10. Custodial Services: The Concessionaire shall clean the Bathrooms daily to maintain them in a condition satisfactory to the Town. The Concessionaire shall supply and maintain paper, soap and supplies as needed. The Town of Nantucket shall provide the Concessionaire with appropriately marked and an adequate numbers of trash receptacles in the Concession Stand area and the walkway to the Beach that will be maintained by the Concessionaire in addition to the receptacles supplied by the Town.

The Concessionaire shall provide for daily trash pick-up throughout the Premises (Concession area and Parking Lot) twice daily. The Town (through the Department of Public Works) shall provide trash removal for the trash receptacles placed near the Premises but not for the Concessionaire operations. The Concessionaire shall coordinate with the Town (through the Department of Public Works and the Marine Department, Beach Manager) to provide for at least weekly beach-cleaning assistance to ensure the walkway and beach area are tidy without trash or hazardous materials.

11. Maintenance: The Concessionaire shall provide all custodial maintenance inside the buildings and outside the buildings in the Premises Area indicated on *Exhibit C*, policing the Premises area at least twice daily to keep it free of all litter and other trash generated by the patrons of the beach. Any custodial maintenance must be recorded and made available to the Town of Nantucket upon End of Season Inspection, see *C-17* below. All rubbish/trash collected by the Concessionaire or generated from the Concession's operation will be secured, removed from the Premise Area and disposed of at the Concessionaire's expense including landfill fees. The Concessionaire is responsible for repairing and maintaining any and all windows and door screens and informing the Department of Public Works immediately of any and all repairs so made. The Picnic Area shall be maintained and kept accessible, landscaped as needed, free from debris and litter. The Concessionaire will be required to provide a work order for all exterior and structural repair work to be performed by the Department of Public Works.

The Town is responsible for beach raking. Concessionaire may request to coordinate beach-cleaning as needed with the Town through the Department of Public Works. Once a pair of potentially nesting listed shorebirds has been recognized, all cleaning of the beach's litter must be done by hand. NO beach raking will be permitted until the status of the State and Federally listed shorebirds has been examined by the Natural Resources Department and has been deemed permissible. Removal of the wrack line by hand or machine is prohibited. All repairs, maintenance construction, power washing, or any other action that may involve amplified music or excessive noise must be completed prior to April 15th.

12. Signs and Structures: Before any temporary or permanent signs or structures are erected the Concessionaire shall first obtain such written approvals as may be required under existing Town regulations including but not limited to a Certificate of Appropriateness from the Historic District Commission. The Concessionaire shall then obtain the written permission of the Town.

13. State and Federally Protected Species: The Concessionaire must be aware that the beach may become a habitat area for State and federally listed species, such as the Piping Plover. Such listed species are protected under the Endangered Species Act and are monitored and protected by the Town of Nantucket's Endangered Species Program, via the Natural Resources Department. The Town of Nantucket Endangered Species Program is based off

of the set State and Federal Guidelines. Failure to follow the rules, regulations and guidelines created by the State and Federal Government and implemented by the Town of Nantucket's Endangered Species Program may result in the potential closing of the Beach. The Concessionaire is required to abide by all rules and regulations set forth regarding the "State and Federally listed species" and therefore must notify the Town of any public event activities as soon as they are scheduled and no later than forty-five days in advance of the event.

14. Alcoholic Beverages: No Alcoholic Beverages are to be served or consumed anywhere on the premises at any time.

15. Use of Automobiles: The Concessionaire may use a maximum of two (2) parking spaces adjacent to the Concession stand and must keep parked vehicles out of all traveled roadways in the parking area. This includes but is not limited to any delivery, trash or pick-up vehicle or any vehicle owned or operated by the Concessionaire or any employee of the Concessionaire. Shall the Concessionaire utilize a mobile food truck(s) on the premises, each mobile food truck shall be counted as one (1) in regard to the maximum allowed parking spaces.

16. No Pets: The Concessionaire and/or its employees are prohibited from bringing his/her pet(s) to work.

17. End of Season Inspection: The Concessionaire shall schedule with the Department of Public Works a date and time for the end of season inspection, no later than November 1 of each year. The purpose of the inspection is;

a. To ascertain any and all repairs necessary prior to opening for the upcoming season.
b. To make sure the Premises are clean and all items are secured prior to closing for the season.
c. To ensure utilities are properly turned off and winterized.
d. To confirm the Asset List (*Exhibit F*) annually.

D. IMPROVEMENTS

1. Consent: The Concessionaire shall not undertake any improvements to the premises, except minor custodial repairs indicated in *C-11* above, without the written consent of the Town of Nantucket in advance. The Concessionaire will be required to provide a work order for all exterior and structural repair work to be performed by the Department of Public Works. Should the Concessionaire want to undertake any improvements at their own cost, a written request of such improvements shall be submitted to the Town of Nantucket for review and written consent. The Concessionaire shall obtain all required permits and present copies of all permits to the Town of Nantucket prior to starting work. In the event the Beach area becomes a habitat area for any State and Federally listed species then any improvements to the premises shall be completed before April 15th. Should there be an emergency need for improvements after April 15th the Concessionaire shall contact the Town of Nantucket (through the Department of Public Works) for work to be performed. Before any work begins an assessment may be made by the Town of Nantucket (through the Natural Resource Department) based on the current status of the State and Federally listed species and the effect the work may have on their habitat/productivity.

2. Ownership: Any improvements made by the Concessionaire to the premises during the term of the Lease agreement including any structure, fixture or equipment affixed permanently to the premises shall become the property of the Town of Nantucket except as agreed upon in writing prior to installation and reflected in the Asset List (*Exhibit F*).

E. INSURANCE

Insurance: The Concessionaire will maintain insurance as listed below and will deliver certificates to the Town of Nantucket, on or before March 1st of each year during the term, stating this insurance is in force, in any calendar year for the duration of this Agreement before he enters the premises:

1. **Worker's Compensation**: Worker's Compensation insurance in accordance with Massachusetts General Laws Chapter 152, as amended.

2. **Liability:** Comprehensive General Liability insurance including products liability for a combined single amount of $1,000,000. This policy must have as one of its terms a provision that the Town and County of Nantucket and its Town of Nantucket are additional insured parties. A copy of this policy is to be provided to the Town of Nantucket yearly on or before March 1. Such policy must also contain a provision that the Town of Nantucket will be provided with ten (10) days written notice by the insurer of any intent to cancel or a determination that such insurance will not be renewed.
3. Concessionaire shall obtain Property Insurance up to an amount that shall adequately cover any equipment or property brought into or used at the facility by the Concessionaire and not provided by the Town.

F. OPERATING HOURS

1. **Concession Facility:** At a minimum the Concessionaire shall operate the Concession between the hours of 11:00 am and 5:00 pm seven (7) days per week from the Friday prior to Memorial Day through the Sunday following Labor Day each year. The Concessionaire is encouraged to extend the hours of operation in from May 1 through Columbus Day. In the event of the beach being unoccupied and closed due to inclement weather the Concessionaire may close after notifying the Town of Nantucket.

2. **Public Bathroom Facilities:** See *C-8*.

G. INDEMNIFICATION

1. **Indemnification:** The Concessionaire agrees at all times during the term of this Lease agreement to indemnify and hold and save harmless the Town of Nantucket and the Town of Nantucket and its officials, employees and agents from and against any and all action or causes of actions, claims, demands, liabilities, losses, damages or expense of whatsoever kind and nature including all legal costs arising out of or in connection with the operation and rental by Concessionaire of the premises or its performance or failure to perform or any provision of this Lease agreement.

2. **Waiver of Rights of Recovery:** The Concessionaire also agrees to waive all rights of recovery it may have against the Town of Nantucket and the Town and County of Nantucket for any loss to property or person for which the Concessionaire is insured.

H. TOWN OF NANTUCKET OBLIGATIONS

The Town of Nantucket agrees to the following:

1. **Repairs**: To make exterior and structural repairs to the premises subject to funding by Town Meeting or annual budget appropriations. This would include parking lot maintenance, bike rack maintenance, beach fencing, and safety inspections (with 24-hour notice to the Concessionaire). The Town of Nantucket is also responsible for sewer (including septic system) and water lines, repair of plumbing and wiring faults due to normal use, recreational equipment and providing trash barrels during occupancy period.

2. **Special Events:** To inform the Concessionaire of any and all special events taking place on the Premises.

3. **Improvements:** Any improvements or replacement of equipment made to the premises at the Town of Nantucket expense will become the property of the Town of Nantucket.

Waiver of Liability:

1. **Town of Nantucket's Obligation:** Except as a result of its failure to perform the obligations specifically provided herein within a reasonable period after receipt of written notice thereof, the Town of Nantucket shall not be liable to the Concessionaire for any injury or damage to the Premises or to any property of the Concessionaire or to any property of any third person, firm, association or corporation on or about the Premises.

2. **Beach Use:** Operation of the Premises by the Concessionaire is independent of the operation of the beach. The Town of Nantucket may from time to time close the beach, acting in the public's interest or in the interest of the State and Federal regulations and guidelines set in place for the protection of listed species. The Town of Nantucket shall not be financially or otherwise liable to the Concessionaire or to the Concessionaire or its agents for any such closure, and such closure shall not change the Concessionaire's obligations as detailed elsewhere in this lease.

I.DEFAULT, DETERMINATION & REMEDIES

1. **Events of Default.** The occurrence of any of the following shall constitute an Event of Default by the Concessionaire hereunder:

    1. **Failure to Make Payment.** The Concessionaire shall default in the payment of any installment of rent, utility, fee, or other sum herein specified on or before the date such payment is due; or

    2. **Failure to Operate in the Public Interest or to Fulfill Other Non-Monetary Terms.** The Town of Nantucket determines that the Concessionaire has failed to operate the Premises in the best interest of the Town of Nantucket and/or has failed to operate in accordance to the guidelines set for the management/protection of the State and Federally listed species or the Concessionaire shall default in the observance or performance of the Concessionaire's non-financial covenants, agreements or obligations hereunder, and such default shall not be corrected within twenty (20) days after written notice thereof; or

    3. **Failure to comply with the Commission's Regulations:** The Concessionaire agrees to comply with the current Town of Nantucket Guidelines.

    4. **Bankruptcy.** The Concessionaire shall be declared bankrupt or insolvent according to the law, or, if any assignment be made of the Concessionaire's property for the benefit of creditors.

2. **Termination.** Upon the occurrence of any Event of Default hereunder, the Town of Nantucket shall have the right thereafter, in its discretion, to re-enter and take complete possession of the Premises, to declare the term of this Agreement ended, and to remove the Concessionaire's effects, without prejudice to any remedies which might otherwise be used for arrears of rent or other default.

3. **Remedies.** The Concessionaire shall indemnify the Town of Nantucket against all loss of rent and other payments which the Town of Nantucket may incur by reason of such termination during the residue of the term. If the Concessionaire shall default (after reasonable notice thereof in the case of non-monetary default) in the observance or performance of any conditions or covenants on Concessionaire's part to be observed or performed under or by virtue of any of the provisions in any article of this lease, the Town of Nantucket, without being under any obligation to

do so and without thereby waiving such default, may remedy such default for the account and at the expense of the Concessionaire. If the Town of Nantucket makes any expenditures or incurs any obligations for the payment of money in connection therewith, including but not limited to reasonable attorney's fees in instituting, prosecuting or defending any action or proceeding, such sums paid or obligations incurred, with interest at the rate of the Prime Rate plus two percent (2%) per annum and costs, shall be paid to the Town of Nantucket by the Concessionaire as additional rent. "Prime Rate" shall be the interest rate published from time to time in the Wall Street Journal as the prime rate charged by the US money center commercial banks.

J. GENERAL PROVISIONS

1. **Late Charges.** A late charge of three percent (3%) of any amount due and unpaid fifteen (15) days after due date shall be added to the amount due from Concessionaire and a finance charge of one point five percent (1½%) per month will be added to all amounts remaining unpaid thirty (30) days after the date the amount was originally due, such charge constituting a charge equal to eighteen percent (18%) per annum.

2. **Compliance with M.G.L. Ch. 7.** The Concessionaire covenants and agrees that it will comply with the requirements of M.G.L. Ch. 7, § 40J, including but not limited to, the filing with the Massachusetts Executive Office for Administration and Finance, Division of Capital Asset Management of a disclosure statement in connection with the disposition of an interest in real property by the Town of Nantucket. A copy of the Disclosure Statement is attached hereto.

3. **Independent Concessionaire Relationship.** There is no relationship of joint venture, partnership, employment or agency between the Town of Nantucket, on the one hand, and the Concessionaire on the other, and neither party shall have nor exercise any control or direction over the method by which the other performs its work or functions, aside from such control or direction as provided in this Agreement, which the parties view as consistent with their independent Concessionaire relationship.

4. **Binding Obligations, Related Obligors.** It is further intended by the Concessionaire and its principals as a condition to this Agreement, that any corporations or other entities which control or are under direct or indirect common control of or with the Concessionaire or which may otherwise be reasonably considered to be a part of its operating business, shall be jointly and severally liable with the Concessionaire for its liabilities as a party to the Town of Nantucket hereunder.

5. **Successors and Assigns; No Right to Assign.** Concessionaire shall have no right to assign this Agreement or the rights granted hereby with respect to the Premises, or otherwise delegate any of its duties hereunder without the prior written consent of the Town of Nantucket, which may be withheld at the sole discretion of the Town of Nantucket. Any such attempted disposition without the consent of the Town of Nantucket in writing shall be null and void and of no force and effect. The terms, covenants and agreements herein contained shall be binding upon and shall insure to the benefit of the permitted successors and assigns of the respective parties hereto.

6. **Decisions by the Town of Nantucket.** Except as otherwise expressly provided in this Agreement, any decision or action taken by the Town of Nantucket relating to this Agreement or its operation or its termination shall be made by a majority vote of the Select Board. Responsibilities to monitor obligations shall be undertaken by the Town Manager or designee.

7. **Notices.** All notices required or permitted to be given to Town of Nantucket or Concessionaire shall be in writing and shall be given personally, or sent by certified mail, return receipt requested, addressed to such party at its latest address of record. Notices to and payments to the Town of Nantucket shall be addressed to the Town of Nantucket at its offices, 16 Broad Street, Nantucket, MA 02554 and notices to the Concessionaire addressed to it at

its principal business address, which Concessionaire represents as appearing on the first page of this Agreement, or to such other addresses as the parties may designate to each other by such notice from time to time.

8. **Governing Law.** This Agreement is governed by the laws of the Commonwealth of Massachusetts. In any controversy, litigation or action arising hereunder, each party, including successors and assigns, irrevocable consents to the jurisdiction of the courts of Massachusetts, agrees that venue shall be proper only there; and waives personal service of any summons, complaint or other process and agrees that service thereof may be made in the manner of other notice given hereunder.

9. **Entire Agreement; Amendment Interpretation.** This Agreement and the specifications advertised by the Town of Nantucket constitute the entire agreement between the parties superseding all prior or contemporaneous oral or written understandings. No amendment or other modification of the terms of the Agreement shall be binding unless in writing, and duly executed by the parties hereto. No waiver of default by either party of any of the terms, covenants, and conditions of this Agreement shall be deemed continuing or extending beyond the terms specifically waived in writing. If any provision of this Agreement shall be held unlawful, invalid, or unenforceable, the remainder of the Agreement shall not be affected thereby. Paragraph headings contained herein are for reference only and are not intended to define or limit the scope of any provisions of this Agreement.

K. OTHER CONCESSIONAIRE'S OBLIGATIONS

1. **Keys.** Provide keys to the Town of Nantucket for all locked areas within the Premises.

2. **Non Emergency Repairs.** Concessionaire shall request non-emergency repairs through a work order with the Town Department of Public Works. The Concessionaire shall provide all custodial maintenance inside the buildings, window and door screen maintenance, and outside the buildings in the Premises Area indicated on *Exhibit C* and provide information of such repairs to the Town upon End of Season Inspection (*See C-17*). In the event the Beach area becomes a habitat area for any State and Federally listed species then any improvements and/or work to the premises is scheduled between April 15th and August 31st the Town of Nantucket must also sign off on any non-emergency repairs. Pending the status of the State and Federally listed species and the description of the non-emergency repairs, the Concessionaire may be required to hire monitor(s) through the Endangered Species Program to be present during the said repairs.

3. **Emergency Repairs.** Any emergency repairs the Concessionaire shall contact the Town of Nantucket (through the Department of Public Works) in writing for work to be performed. Responsibility for payment of such repairs will be determined in accordance with the terms herein. In the event the Beach area becomes a habitat area for any State and Federally listed species and if the work is needed or scheduled between April 15th and August 31st the Town of Nantucket (through the Department of Public Works and Natural Resource Department) shall be contacted for work to be performed and assessment made on the work required and current status of the State and Federally listed species and the effect the work may have on their habitat/productivity. Pending the status of the State and Federally listed species and the description of the emergency repairs, the Concessionaire may be required to hire monitor (s) through the Endangered Species Program to be present during the said repairs.

4. **Accidents.** Concessionaire shall report any emergencies, accidents or incidents that occur within the Premises to the Town of Nantucket in a timely manner in Lease agreement *Exhibit E*.

5. **Agreement.** The Concessionaire shall be responsible for adhering to all of the provisions stated in the Lease agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first written above.

CONTRACTOR:

Abigail Shaw

Stacey McEachern

The Surf

TOWN OF NANTUCKET,
MASSACHUSETTS:

C. Elizabeth Gibson

C. Elizabeth Gibson
Town Manager

Approved as to Funds Available:

Brian E. Turbitt, Director of Municipal Finance or
Bob Dickinson, Assistant Town Accountant

FEIN: _____

EXHIBIT A
SURFSIDE CONCESSION LEASE AGREEMENT

1. **Name of Concessionaire**: The Surf

2. **State of Incorporation**: Massachusetts

3. **Principal Office Address**: 300 Surfside Road, Nantucket, MA 02554

4. **Description of Services** (§2.1):

The Concessionaire is responsible for the operation of a food and beverage Concession and optional retail sales exclusively in a leased Premises area with a non-exclusive license to use the remainder of the Premises along with the public at Surfside Beach, 4 Western Avenue, Nantucket, MA. The Concessionaire is also responsible for custodial maintenance of the Premises Area on a daily basis as well as to support the clean-up of the Beach Management Area on a weekly basis, as indicated on Exhibit D. Note: the Premises area is within a traditional habitat for both State and Federally protected shorebirds.

5. **Person, Department, or Committee, if any, to whom Concessionaire reports** (§ 2.2):

For Lease Terms and General Oversight:

Name:	Gregg Tivnan, Assistant Town Manager
Contact:	gtivnan@nantucket-ma.gov (508-228-7200 ext. 7307

For Facility Matters (and beach raking): DPW Facilities Manager

Name:	Mark Voight
Contact:	mvoight@nantucket-ma.gov (508) 228-7200 ext. 7504

Endangered Species Matters: Natural Resources Coordinator

Name:	Jeff Carlson
Contact:	jcarlson@nantucket-ma.gov (508) 228-7230 ext 7601

Beach Manager: Marine Department

Name:	Sheila Lucy
Contact:	marine@police.nantucket-ma.gov (508) 325-4100

6. **Term of Agreement** (§3.1):

Five-year lease (January 1, 2020 through December 31, 2024)

7. **Completion Date** (§3.2):

December 31, 2024

8. **Additional Insurance Coverage** (§6.2(e)):

EXHIBIT B
LEASE AGREEMENT
PAYMENTS

SURFSIDE BEACH CONCESSION

The undersigned proposes to the Town of Nantucket the lease price specified below for the specifications contained herein. Proposal Price must include all costs and all other expenses. There will be no reimbursable expenses allowed in the lease.

CONTRACT YEAR	ANNUAL RENTAL FEE (MINIMUM $15,000 RENTAL FEE AND 3.0% INCREASE ANNUALLY) PAID IN TWO INSTALLMENTS: AUGUST 1 AND SEPTEMBER 1 OF EACH YEAR	PERCENTAGE SALES (MINIUMUM 3.0% OVER $100,000 GROSS ANNUALLY) PAID BY THE END OF EACH CLOSING YEAR (DECEMBER 1)
Year 1: Jan. 1, 2020 – Dec. 31, 2020	$37,500	4% above $100,000 gross sales.
Year 2: Jan. 1, 2021 – Dec. 31, 2021	$39,500	4% above $100,000 gross sales.
Year 3: Jan. 1, 2022 – Dec. 31, 2022	$41,500	4% above $100,000 gross sales.
Year 4: Jan. 1, 2023 – Dec. 31, 2023	$44,500	4% above $100,000 gross sales.
Year 5: Jan. 1, 2024 – Dec. 31, 2024	$47,000	4% above $100,000 gross sales.
TOTAL PROPOSAL AMOUNT FOR 5 YEAR LEASE:	$210,000	Average %: 4%

In addition to 4% of sales, Concessionaire will give 1% to local charity organizations

EXHIBIT C
SURFSIDE CONCESSION PREMISES

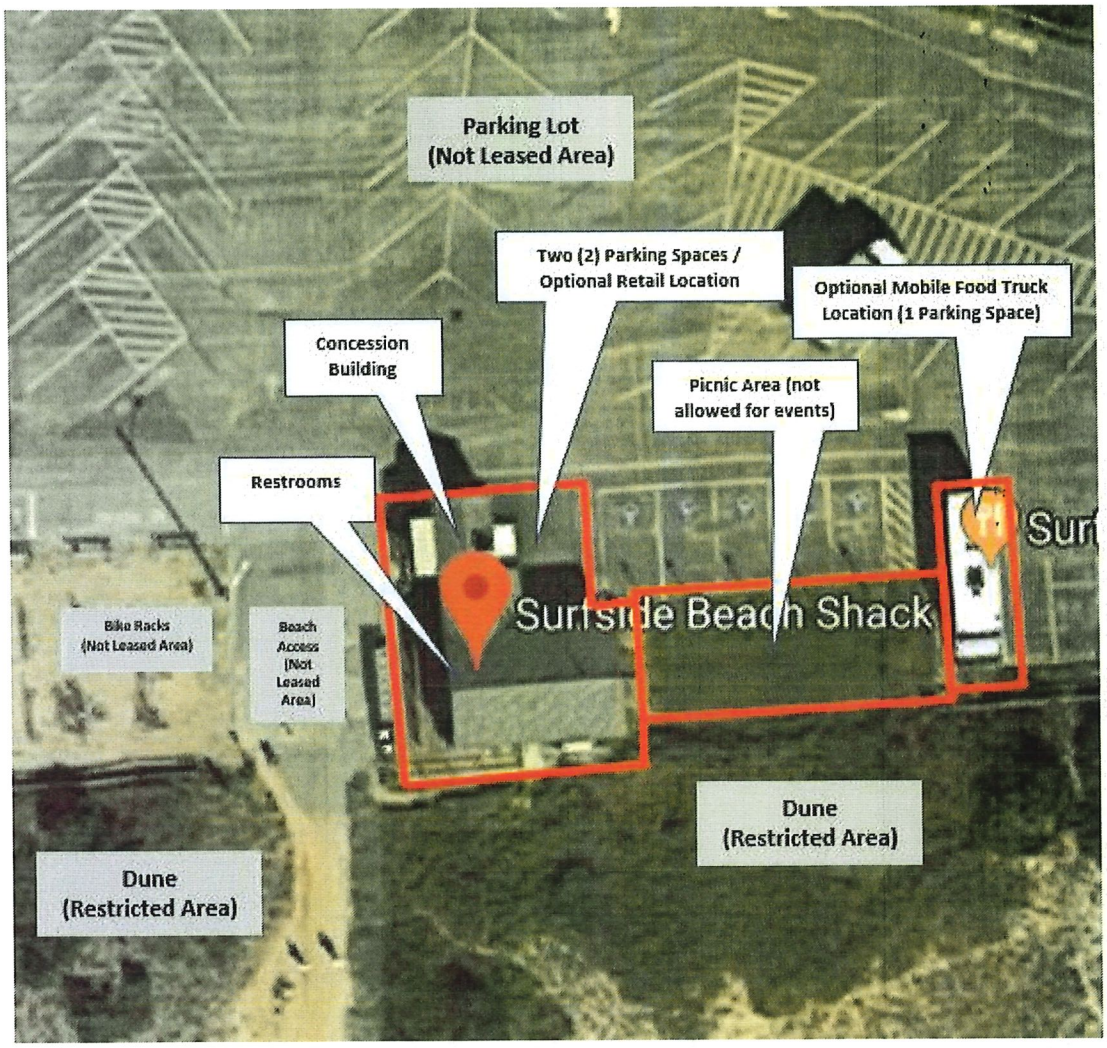

EXHIBIT D

Children's Beach Restroom Facility Weekly Maintenance Log

Must be displayed on the wall in each restroom facility

			Toilets & Sinks		Mirrors		Paper Towels, Toilet Paper, Soap		Floors		Trash Cans		
	Date	Time	Checked	Cleaned	Checked	Cleaned	Checked	Filled	Checked	Cleaned	Checked	Emptied	Initials
Sunday AM													
Sunday PM													
Monday AM													
Monday PM													
Tuesday AM													
Tuesday PM													
Wednesday AM													
Wednesday PM													
Thursday AM													
Thursday PM													
Friday AM													
Friday PM													
Saturday AM													
Saturday PM													

Reviewed and approved by: _____ Date: _____

Signed Maintenance Logs must but be retained by Concessionaire for records and submitted to the Town upon demand

EXHIBIT E

SURFSIDE BEACH & PAVILION - INCIDENT REPORT FORM

INSTRUCTIONS:

1. This form should be completed by the Concessionaire, Town of Nantucket and Town of Nantucket when they or their employees are involved with an incident in the vicinity of Surfside Beach.
2. Keep a copy for your records and submit a completed form to the Park & Recreations Department office on Bathing Beach Rd.

GENERAL INFORMATION

1. Individual(s) Involved in the Incident:		
2. Address:		
3. Home Phone:	4. Work Phone:	5. Concessionaire Beach Management Park & Recreation Other:_____
6. Date and Time of Incident:		
7. Exact Location of Incident:		
8. Witness Name:	9. Phone Number:	10. Other Contact Information:

INCIDENT

11. How did the Incident occur? Describe fully the events that took place; give details on all facts that led to the incident/accidents. Identify the individuals involved in the incident/accident and what their roles were.	
12.Describe the immediate action taken and state by whom:	
13. Was an Officials Agency Contacted? No Yes	14. If yes, which Officials were Contacted? NPD USF&W EPO Other:_____
15. Contact person at the Official Agency:	16. Phone Number:

DAMAGE OR THEFT

17. Exact Description of Damage or Loss:		
18. Describe the property/location in detail:		
19. Was an Official Agency Contacted? No Yes	20. If yes, which Officials were Contacted? NPD USF&W EPO Other:_____	21. Was there a case number and if yes, what was it? No Yes, _____
22. First Noticed by Whom?	23. Phone Number:	

ADDITIONAL INFORMATION

24. Person Completing Report:	25.Concessionaire Beach Management Park & Recreation
26. Phone Number:	27. E-mail Address:
28. Additional Information:	
29. I attest that the information given here is accurate to the best of my knowledge.	
30. Person receiving the Incident Report Form:	31. Date Received:

EXHIBIT F

SURFSIDE BEACH
CONCESSION ASSET LIST
STATEMENT

The Surfside Beach Concession consists of the following Town owned assets:

- **Griddle with Chef's drawer and with power ventilated hood system**
- **Upright refrigerator**
- **Toppings chiller**
- **Grease trap**

Of note: currently there exits items in the Concession building that belonged to a prior lessee. These items may be for purchase, but such arrangement will need to be done independent of the Town.

EXHIBIT G

MAINTENANCE REQUIREMENTS

All Concessions:

General Maintenance: All equipment is cleaned and oiled as needed. Concessionaire responsible for maintaining screen doors and windows

End of Each Season:

Hoods and fan are cleaned; Hood fan wrapped for winter, Grease traps emptied walls and floors scrubbed to remove any and all grease; all equipment shall be cleaned and oiled, i.e. fryolator and/or grill.

Concessionaire meets with the Department of Public Works (Facilities) to go over premises and repairs needed prior to next season

Specific to

Jetties: Nothing is to be stored under buildings; Ice Machine and bin are to be moved inside.

Children's: Nothing is to be stored under building

Surfside: Nothing is to be left outside.

DISCLOSURE STATEMENT
DISPOSITION OF REAL PROPERTY

This form contains a disclosure of the names and addresses of all persons with a direct or indirect beneficial interest in the real estate transaction described below. This form must be filed with the Massachusetts Division of Capital Planning and Operations, as required by M.G.L. c. 7 §40J, prior to the conveyance of or execution of a lease for the real property described below. Attach additional sheets if necessary.

1. Public agency involved in this transaction: Town of Nantucket, Massachusetts

2. Complete Legal Description of Real Property: Concession Facilities
Western Avenue
Nantucket, Massachusetts

3. Type of Transaction: ❍ Sale ● Lease or rental for Five years: (term)

4. Seller(s) or Lessor(s):

Purchaser(s) or Lessee(s):

5. Names and addresses of all persons who have or will have a direct or indirect beneficial interest in the real property described above. *Note: if a corporation has, or will have a direct or indirect beneficial interest in the real property, the names of all stockholders must also be listed except that, if the stock or corporation is listed for sale to the general public, the name of any person holding less than ten percent of the outstanding voting shares need* ***not*** *be disclosed.*

Name		Address
Stacey McEachern		2 Sciknnow Pl, Nantucket
Abigail Shaw		124 Surfside, Nantucket

None of the person(s) is an official elected to public office in the Commonwealth of Massachusetts, except as listed below"

Name		Title or Position

6. This section must be signed by the individual(s) or organization(s) entering into this real property transaction with the public agency named in item 1. If this form is signed on behalf of a corporation, it must be signed by a duly authorized officer of that corporation.

The undersigned acknowledges that any changes or additions to item 4 of this form during the term of any lease or rental will require filing a new disclosure with the Division of Capital Planning and Operations within 30 days following the change or addition.

The undersigned swears under the pains of penalties of perjury that this form is complete and accurate in all respects.

Signature Stacey McEachern Date: 1/22/20
Abigail Shaw 1/22/20

Printed Name Stacey McEachern
Title Abigail Shaw

Owners

TAX COMPLIANCE CERTIFICATION
EXHIBIT H

Pursuant to M.G.L. 62C, Sec.49A, the undersigned certifies under the penalties of perjury that it, to the best knowledge and belief of management, has filed all state tax returns and paid all state taxes required under law (if any, are so required).

By:
Stacey McEachern and Abby Shaw
Name

1/22/20
Date

84-4010774
FEIN:

CERTIFICATE OF NON-COLLUSION

The undersigned certifies under penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

Abigail Shaw

Stacey McEachin

Signature of person signing contract

The Surf

Name of Business