
2024-58 (1ST READING): AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO FRANCHISES FOR WATER SAFETY SERVICES AND BEACH CONCESSIONS.

Applicant/Purpose: Staff/ to approve award of franchise and franchise agreement.

Brief:

- Periodically the City enters into franchise agreements to provide lifeguard services on the beach.
- These franchises give the franchisee the right to provide rentals of beach equipment in specific areas of the beach in return for providing water safety services in the same areas.
- From April 15 to September 30, each franchisee is required to guard the beach within its territory from 9:00 a.m. to 6:00 p.m., seven days per week, including all City/State/Federal holidays.
- The franchise agreement requires each franchisee to meet lifeguard staffing requirements with fewer guards required early and late in the season and a full complement from June 1 through the third Sunday of August.
- Each beach service will place lifeguards within its designated territory with emphasis in areas with historically higher concentration of beach goers and swimmers and with consideration given to weather, water conditions, and other relevant factors.
- Additional mobile guards are required in certain areas.
- The franchise agreement separates the water safety and beach concession functions.

Issues:

- Commercial activity authorized by the franchises will be conducted by beach attendants who are in addition to, and operate independent of, personnel involved in water safety services.
- Franchisee pays \$20,000 annual franchise fee. Percentage of franchise fee may be refunded to Franchisee based on satisfaction of lifeguard staffing requirements.

Public Notification: Normal meeting notification.

Alternatives:

- Add, delete, or modify certain provisions.
- Deny proposed ordinance.

Financial Impact: Although Franchisee pays annual franchise fee, financial impact may be negligible because most of fee will be refunded if Franchisees meet lifeguard staffing requirements.

Manager's Recommendation:

- I recommend 1st reading (9.10.2024).

Attachment(s): Ordinance, Franchise Agreement for Lack's Beach Service, and Franchise Agreement for John's Beach Service.

ORDINANCE 2024-58

CITY OF MYRTLE BEACH
COUNTY OF HORRY
STATE OF SOUTH CAROLINA

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

WHEREAS, the City of Myrtle Beach finds it desirable to have a water safety program for the benefit of residents and visitors; 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 have the requisite skill and experience and that have provided water safety services to the City for decades; and

WHEREAS, in exchange for water safety services to be provided by the Franchisees, City of Myrtle Beach desires to award a franchise to Lack's Beach Service and to John's Beach Service allowing each the exclusive right to rent beach equipment within a designated area of the public beach; and

NOW, THEREFORE, IT IS HEREBY ORDAINED that the City Manager is authorized to enter into a franchise for water safety services and beach concessions with Lack's Beach Service in accordance with the franchise agreement attached hereto as Exhibit A and with John's Beach Service in accordance with the franchise agreement attached hereto as Exhibit B. The franchise agreements are to be in substantially the same form as attached to this Ordinance. The City Manager, in consultation with the 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.

This ordinance is effective upon second reading.

BRENDA BETHUNE, MAYOR

ATTEST:

JENNIFER ADKINS, CITY CLERK

1st Reading: 9-10-2024
2nd Reading:

WATER SAFETY AND BEACH CONCESSION FRANCHISE

The City of Myrtle Beach (hereinafter “City” or “Franchisor”) finds it desirable to have a water safety program for the benefit of residents and visitors using the public beach within the city limits.

The implementation of a water safety program can be accomplished through cooperation of the City and the beach services who have the requisite skill and experience and who have provided water safety services for decades to the City.

City Council, by Ordinance duly adopted, has authorized the City Manager to execute franchises with the beach services.

The City grants to Lack’s Beach Service a seven year franchise - beginning October 1, 2024 and ending September 30, 2031 – to provide water safety services and beach concessions on the public beach spanning from the south City limits to the center of the 14th Avenue Pier and from the center line of 82nd Avenue N. to the north city limits in accordance with the following terms and conditions:

SECTION 1. – PERIOD OF OPERATION AND SCOPE:

Franchisee shall provide water safety services each year of the franchise from April 15 to September 30. Franchisee’s designated territory shall extend from the south city limits to the center of the 14th Avenue Pier and from the center line of 82nd Avenue N. to the north city limits. Franchisee shall guard the beach within its designated territory with lifeguards between the hours of 9:00 a.m. and 6:00 p.m., seven (7) days per week, including all City/State/Federal holidays, according to the following schedule:

April 15 through 3 rd Sunday in May:	10 lifeguards
3 rd Monday in May through May 31:	19 lifeguards
June 1 through 3 rd Sunday of August:	34 lifeguards
3 rd Monday 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 lifeguard shall mean a lifeguard assigned to a tower or stand whose area of responsibility is centered around his/her tower or stand. Mobile lifeguard shall mean

lifeguard that covers multiple blocks of beach either on foot or by motorized cart, ATV/UTV or by vehicle.

From April 15 to September 30, Franchisee should employ a sufficient number of lifeguards to satisfy the applicable minimum staffing requirements from 9:00 a.m. to 6:00 p.m. which requirement shall also apply during lunch.

However, if a stationary lifeguard is absent, Franchisee shall fly a flag or banner from the stand indicating No Guard on Duty. Similar No Guard On Duty flags or banners shall also be set in front of the umbrella line on both sides of the stand at an approximate distance of 20 – 25 yards or at such distance where it can be seen from outside lateral boundary of the stand's area. If mobile lifeguard is absent, Franchisee shall fly a flag or banner indicating No Guard On Duty in front of the umbrella line at each public access point in the mobile lifeguard area. All No Guard On Duty flags shall be white in color with red lettering.

If Franchisee fails to meet the applicable staffing requirements, Franchisee shall be fined one hundred and fifty dollars (\$150.00) per day, for each lifeguard Franchisee fails to deploy. Upon discovery of a violation, the City will provide written notice to Franchisee of the violation and the location(s) of the missing lifeguard(s). Payment of fines are to be remitted to the City within thirty (30) calendar days of notice. Failure to meet staffing requirements may also result in loss of franchise or decreased franchise area.

Franchisee shall position lifeguards and stands throughout its assigned territory with emphasis in areas with historically higher concentration of beach goers and swimmers and with consideration given to weather, water conditions, and other relevant factors as determined by the Franchisee. However, City reserves the right to direct the Franchisee to relocate lifeguards, stands, or other beach equipment to address any safety concerns.

If Franchisee rents beach equipment (chairs/footrests/umbrellas) before April 15 or after September 30, Franchisee must deploy lifeguards in areas where beach equipment is rented for so long as the beach equipment is on the beach.

From April 15 to September 30, Franchisee shall deploy the following water safety personnel in addition to the minimum number of lifeguards addressed above:

1. A minimum of one mobile lifeguard equipped with a vehicle, ATV or other motorized cart between 82nd Ave. N. and North City limits,
2. A minimum of one mobile lifeguard equipped with a vehicle, ATV or other motorized cart between South City limits and Withers Swash, and
3. A minimum of one mobile lifeguard equipped with vehicle, ATV or other motorized cart between Withers Swash and the 14th Ave. N. pier.

1 Every day from April 15 to September 30, Franchisee shall provide City a daily roster
2 identifying the lifeguards and mobile lifeguards and the location of each. The daily roster
3 shall be emailed daily to beachsafety@cityofmyrtlebeach.com no later than 10:00 a.m.

4
5 It is not a violation of the Franchise to deploy more lifeguards than called for herein.

6
7 Franchisee shall be responsible for monitoring surf conditions and restricting entry to
8 ocean, if warranted. If circumstances warrant closure of all or part of the beach, Franchisee
9 shall immediately fly the appropriate flag(s), take steps to remove persons from the ocean,
10 and notify the Fire Department within 30 minutes.

11
12 To ensure a clear line of communication between the City and Franchisee, Franchisee will
13 identify a single point of contact (with a designated telephone number) and such person
14 shall be available to the City from 8:00 a.m. to 8:00 p.m. City will likewise identify a single
15 point of contact.

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

- 19 • Vehicle,
- 20 • First Aid kit,
- 21 • Rescue buoy.

22
23 Lifeguards are prohibited from participating in rental activities from 9:00 a.m. to 6:00 p.m.
24 It is not a violation of the franchise for lifeguards to assist with equipment setup before
25 9:00 a.m. or breakdown of equipment after 6:00 p.m.

26 27 **SECTION 2. – STANDARDS OF PERFORMANCE & LIFEGUARD CERTIFICATION**

28
29 All lifeguards shall be at least seventeen (17) years of age, be of good moral character and
30 abide by the highest standards of cleanliness and physical appearance. Prior to
31 commencing work as a lifeguard, Franchisee will test each candidate to ensure that the
32 individual can demonstrate an ability to swim 500 meters over a measured course in a
33 twelve (12) minute period. Thereafter, each lifeguard shall be required, upon demand from
34 the Police Department or Fire Department, to demonstrate an ongoing and current ability to
35 swim 500 meters over a measured course in a twelve (12) minute period. Failure results in
36 an immediate removal from duty until the test is retaken and passed. Successive tests shall
37 not be administered within a 24 hour period. After the third failure, the lifeguard is
38 permanently removed from duty that season, and may not test again until the next season.

39
40 All lifeguards shall:

- 41 • Possess adequate vision, hearing acuity, physical ability and stamina to perform the
42 duties of open water lifeguard;

- 1 • Possess valid, current lifeguard certification bearing lifeguard name (copy to be
- 2 provided to Fire Department);
- 3 • Possess valid, current Community First Aid Certification or its equivalent bearing
- 4 lifeguard name (copy to be provided to Fire Department);
- 5 • Possess valid, current CPR Certification or equivalent for professional rescue
- 6 bearing lifeguard name (copy to be provided to Fire Department); and
- 7 • First year lifeguards must successfully complete rookie surf school with open water
- 8 life saving training meeting nationally recognized training criteria.

9
10 All first year and returning lifeguards must attend regular in-service training throughout the

11 season. By the fifth day of each month from May to October, Franchisee shall provide to the

12 Fire Department representative the rosters of all training given the previous month. Each

13 roster shall identify the topic(s) addressed in the training.

14
15 Franchisee shall prepare a training curriculum for rookie surf school and for in-service

16 training classes consistent with nationally recognized open water lifesaving training criteria

17 as well as a training schedule, including dates, locations, and times, and shall present it to

18 the Fire Department representative before placing lifeguards on the beach and, in no event,

19 later than April 15. Franchisee shall insure all lifeguards reasonably comply with the training

20 schedule and provide opportunity in the schedule for makeup classes. Failure to comply

21 with in-service training requirements shall result in suspension of lifeguard from service

22 until requirement(s) is met. In-service training may be attended by Fire Department

23 personnel.

24
25 Franchisee, lifeguards, beach attendants and other Franchisee employees shall be

26 committed to maintaining a safe and productive work environment. Alcohol or other

27 controlled substances in the workplace are dangerous because they lead to physical

28 impairment, loss of judgment, and risk of injury and death. Therefore, Franchisee

29 lifeguards, beach attendants and other Franchisee employees are prohibited from

30 consuming alcoholic beverages while on duty or from reporting to work under the influence

31 of alcohol or other controlled substances not prescribed for the employee's use.

32 Franchisee will adopt a policy consistent with the policy of the City of Myrtle Beach on

33 maintaining a drug-free workplace.

34
35 Franchisee lifeguards, beach attendants and other Franchisee employees are prohibited

36 from:

- 37 1. Using a cell phone for activities unrelated to their duties;
- 38 2. Reporting to work while under the influence of alcoholic beverages or controlled
- 39 substances not prescribed for the employee's use;
- 40 3. Using or possessing alcoholic beverages or controlled substances not prescribed for
- 41 the employee's use on City premises or during work hours; and
- 42 4. Using, possessing, swallowing, inhaling, injecting, dealing in, controlled substances
- 43 (including but not limited to: marijuana, cocaine, LSD, opiates, amphetamines,
- 44 barbiturates and phencyclidine), and prescription drugs which are not prescribed for

1 the employee's use. THIS PROHIBITION APPLIES TO USE AT ANY TIME BOTH ON THE
2 JOB AND OFF THE JOB.

3
4 Franchisee shall not employ any individual as a lifeguard or beach concession employee
5 who has been convicted of or pled guilty or nolo contendere to a felony or who is on parole
6 or probation for a criminal offense, including any sex-related crimes. Franchisee will be
7 responsible for the background checks for all its employees. Employment of any person
8 with a criminal history described above will be considered a violation of the franchise
9 agreement.

10
11 All Franchisee lifeguards, beach attendants, and other Franchisee employees who operate
12 a motor vehicle in the performance of this franchise agreement shall possess a valid motor
13 vehicle operator's license, and successfully complete a Police Department offered training
14 course for the type of vehicle driven. Franchisee employee operating a motor vehicle in the
15 performance of franchise responsibilities shall not have been convicted of driving under the
16 influence within twelve (12) months.

17
18 Franchisee shall promulgate an employee handbook addressing the following:

- 19 • Professional attitude, conduct and appearance, to include courteous interaction
- 20 with the public;
- 21 • Health and safety;
- 22 • Lifeguard daily checklist;
- 23 • Beach rules and regulations;
- 24 • Interactions with Beach Patrol and Fire/Rescue;
- 25 • Placement of chairs and placement and anchoring of umbrellas; and
- 26 • Other such administrative or employment subjects as deemed necessary.

27
28 Franchisee's employee handbook will be completed and a copy will be delivered to both the
29 Fire Chief (or designee) and the Police Chief (or designee) before Franchisee places
30 lifeguards on the beach and, in no event, later than April 15. Any handbook updates
31 implemented after April 15 must be delivered to both the Fire Chief (or designee) and the
32 Police Chief (or designee) within three (3) calendar days.

33
34 Franchisee shall be solely responsible for any required disciplinary action of its employees.
35 Failure to provide prompt disciplinary/corrective action, especially for matters involving
36 public safety, may constitute a material breach of the franchise agreement.

37 38 **SECTION 3. – LIFEGUARD UNIFORMS & EQUIPMENT**

39
40 All lifeguard uniforms shall be of the same color and combination. All lifeguard tee shirts
41 shall be gold with navy blue lettering. "Life Guard" shall be printed on the front. The name
42 of the Franchisee shall be printed on the back. The company or non-commercial logo may
43 be printed on the left sleeve.

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

4
5 Female lifeguard personnel shall wear a navy blue swimsuit. "Life Guard" shall be printed in
6 gold letters on the front.

7
8 Franchisee is prohibited from printing the City logo on any part of any uniform.

9
10 Lifeguards shall wear shirts from 10:00 a.m. to 2:00 p.m. each day.

11
12 Lifeguards must carry City-issued lifeguard identification with them at all times throughout
13 the day. Identification will be issued by the City at no initial cost to Franchisee or Franchisee
14 employee; however, a ten dollar (\$10.00) replacement fee will be charged to replace any
15 card that is lost or misplaced outside the normal scope of duty.

16
17 Franchisee must provide all stands/towers. Franchisee is responsible for placing stands on
18 the beach in its assigned franchise area and for removing stands at the end of the season
19 and, if necessary, prior to a hurricane. All lifeguard stands and towers shall be painted
20 orange or white with orange accents and be built so that lifeguards, while standing or sitting,
21 are positioned at least five (5) feet above ground level, thus enhancing the lifeguard's ability
22 to scan the water and beach and increasing the lifeguard's visibility to the public. Each
23 stand shall have painted or posted on all four (4) sides the name of the nearest avenue or
24 street for easy identification. Each stand shall be maintained in good condition and be
25 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. Lifeguard Umbrella with "Life Guard" in navy blue letters unless stand has a fixed roof
31 5. City Ordinance/Emergency Phone Number Sign

32
33 At least every other stand shall have a two-way radio. Each Franchisee shall have and
34 monitor 800 megahertz radios which will be supplied by the Fire Department and equipped
35 with fire frequency. Franchisee is financially responsible for any damage or loss to 800
36 megahertz radios including accessories supplied by Fire Department.

37
38 Failure by the Franchisee to maintain any required equipment in good and safe condition
39 may constitute a material breach of the franchise agreement.

40
41 **SECTION 4. – BEACH ATTENDANTS AND BEACH SERVICE EQUIPMENT**

42
43 No commercial or retail activity except as authorized herein shall be permitted on the public
44 beach.

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

- 4 1. Chairs & footrests
- 5 2. Umbrellas

6
7 Before Memorial Day and after Labor Day, Franchisee may also rent "clam shell" style
8 cabanas that are no taller than seven (7) feet at the apex. All rental equipment must be
9 broken down and secured by the dune line no later than 6:30 p.m. each day. Franchisee
10 may not rent any "hard" equipment, including but not limited to: surfboards, skim boards,
11 boogie boards, sailboats, banana boats, jet skis, parasailing.

12
13 Franchisee's commercial activity authorized herein shall be conducted exclusively by
14 concessionaires or beach attendants of Franchisee who are in addition to, and operate
15 independent of, personnel involved in the provision of water safety services, and who shall
16 at all times wear uniforms different in color and lettering than those worn by lifeguards and
17 other water safety service personnel, clearly identifying such employees as "Beach
18 Attendant," "Concessionaire" or similar designation not to be confused with lifeguard.
19 Beach attendants' uniforms shall consist of shirts and shorts that are of a different color
20 scheme than lifeguards and must be visibly distinguishable from lifeguard uniforms.
21 Franchisee is prohibited from printing the City logo on any part of any uniform.

22
23 Beach attendants are required to display a City-issued "Attendant" identification card on
24 their person at all times while on duty. Identification will be issued by the City at no initial
25 cost to Franchisee or Franchisee employees; however, a ten dollar (\$10.00) replacement fee
26 will be charged to replace any card that is lost or misplaced outside the normal scope of
27 duty.

28
29 Lifeguards are prohibited from participating in rental or commercial activity from 9:00 a.m.
30 to 6:00 p.m.

31
32 Franchisee employees involved in rental program are prohibited from performing water
33 safety functions while on duty and cannot assume the duties of a lifeguard; however, if
34 beach attendants are properly trained and certified to render water safety or medical aid to
35 others, they may assist the lifeguard(s), together and in conjunction with the lifeguard(s),
36 with the rendering of water safety or medical aid, if necessary.

37
38 Where two franchise areas join, Franchisee shall not place beach equipment closer than
39 twenty (20) feet from the point of junction. In addition, a twenty (20) foot opening shall be
40 maintained at each street-end and a ten (10) foot opening at each public walkover. In all
41 cases, Franchisee, in setting up beach equipment, shall endeavor to provide the highest
42 degree of public access possible. For every twenty-five (25) umbrellas installed by
43 Franchisee on either side of a stand, Franchisee shall, where feasible, leave an opening of
44 forty (40) feet which shall be available for public use so long as the public use does not

1 interfere with public safety or violate the Municipal Code of Ordinances. However,
2 whenever the area dimensions, including restrictions related to street ends and public
3 walkovers, do not accommodate an opening of forty (40) feet, Franchisee may deviate from
4 this requirement while affording as much public use as possible. In any area where
5 Franchisee has not established an umbrella line by 9:30 a.m., the public may install
6 umbrellas in such area so long as it does not interfere with public safety or violate the
7 Municipal Code of Ordinances. Franchisee agrees to remove fifty percent (50%) of any
8 unrented chairs and umbrellas after 2:30 p.m. each day.

9
10 Franchisee shall not display any signage other than what is specifically authorized herein as
11 well as its company logo on its beach service equipment.

12
13 Franchisee is authorized to operate various types of motor vehicles in support of its water
14 safety and beach concessions operations, in a safe and prudent manner. Any Franchisee
15 employee who operates any type of motor vehicle in the performance of franchise
16 responsibilities shall possess a valid motor vehicle operator's license and successfully
17 complete a Police Department offered training course for the type of vehicle driven.
18 Franchisee employee must present a current, valid operator's license at time of training.
19 Franchisee employee operating a motor vehicle in the performance of franchise
20 responsibilities shall not have been convicted of driving under the influence within twelve
21 (12) months. All Franchisee vehicles shall be maintained in excellent mechanical condition,
22 be neat in appearance, be properly licensed and insured as required by law, and operated
23 by a properly licensed operator. The City shall have the right to inspect and
24 approve/disapprove the use of any motor vehicle or equipment to be used by the
25 Franchisee.

26
27 Except in the event of emergencies, Franchisee trucks shall only be operated within fifteen
28 (15) feet of the dune line and speed of any Franchisee vehicle on the public beach shall not
29 exceed 8 miles per hour, except in the event of an emergency.

30
31 Franchisee is prohibited from bringing any chemicals, including but not limited to gasoline,
32 oil, and/or hydraulic fluid onto the public beach, and shall be solely responsible for any
33 release from its motor vehicles. In the event of spillage of any kind, Franchisee shall contain
34 said spillage and contact Ocean Rescue and/or Beach Patrol. Franchisee shall be solely
35 responsible for the removal and clean-up of any chemical contaminant occasioned or
36 caused by its lifeguards, beach attendant and/or other employees or its equipment, and
37 shall fully comply with all applicable federal, state, and local laws in doing so.

38 39 **SECTION 5. – BEACH CLEANLINESS**

40
41 Franchisee will be responsible for the removal of hazardous trash and debris within its
42 designated territory from the water line to the primary dune line. This responsibility will be
43 discharged by beach attendants; however, it is not a violation for lifeguards to remove
44 trash/debris in front of the umbrella line which the lifeguard encounters while patrolling

1 his/her assigned area. At the beginning of each season, the City will provide trashcans as
2 needed for each stand. The City shall be responsible for the trashcan pick-up on the beach.

3
4 Franchisee will have a secondary responsibility for attempting to achieve voluntary
5 compliance with City Ordinances within Chapter 5 (Beach and Boating Regulations) with a
6 particular emphasis on Ordinances involving personal safety and those relating to
7 structures on the beach and lifeguard line of sight. Behind the umbrella line, this
8 responsibility will be discharged by beach attendants. In front of the umbrella line, this
9 responsibility will be shared by beach attendants and lifeguards. Franchisee will educate
10 violators in an effort to gain voluntary compliance. In the event voluntary compliance
11 cannot be gained, a Franchisee supervisor shall notify the Police Department.

12 13 **SECTION 6. – FRANCHISE FEE, FINANCIAL REPORTING AND BUSINESS LICENSE**

14
15 Beginning in 2025, Franchisee shall pay an annual franchise fee of \$20,000 each year the
16 franchise is in existence. Franchisee fee shall be mailed to the Director of Financial
17 Management and Reporting (P.O. Box 2468, Myrtle Beach, SC 29578) or hand-delivered to
18 the Director of Financial Management and Reporting (921 North Oak Street, Myrtle Beach,
19 SC 29577) and must be received no later than December 31 of each year. Franchisee shall
20 be afforded a ten (10) day grace period for payment of the Franchise fee, after which time a
21 ten percent (10%) late fee will be assessed. The failure to pay the franchise fee and any
22 assessed late fees within thirty (30) calendar days of the due date shall be grounds for
23 revocation of the Franchise.

24
25 A portion of the franchise fee will be reimbursed to the Franchisee based on compliance
26 with lifeguard staffing requirements. Franchisee meeting staffing requirements at a rate
27 exceeding 85 percent will be refunded a like percentage of the franchise fee. Franchisee
28 meeting staffing requirements at a rate between 75 and 85 percent will be reimbursed 50
29 percent of the franchise fee. Any franchise fee not reimbursed to Franchisee will be
30 reinvested by the City into water safety.

31
32 Franchisee shall provide the City with a review of the gross receipts prepared by a Certified
33 Public Accountant (CPA) no later than December 1 of each year during the term of this
34 franchise. The City may require an audited financial statement in its discretion.

35
36 Franchisee shall be required to obtain and keep in good standing a business license from
37 the City of Myrtle Beach for so long as the franchise remains in effect.

38 39 **SECTION 7. – INSURANCE**

40
41 Franchisee shall provide and pay for the following insurance coverage during the term
42 hereof:
43

1 Public Liability – A general liability policy protecting Franchisee against liability or loss due
2 to bodily injury, property damage or personal injury arising out of the performance of its
3 franchise responsibilities and more specifically the provision of water safety service. Policy
4 shall be written on an occurrence form and provide a combined single limit of liability of One
5 Million Dollars (\$1,000,000) per occurrence. Coverage shall be included for:
6 Premises/Operation; Products/Completed Operation; Contractual Liability; Independent
7 Contractors and shall include a broad form property damage endorsement. In the event this
8 policy shall exclude coverage for Lifeguard Liability as a professional service, Franchisee
9 shall be required to provide and pay for professional service coverage protecting Franchisee
10 against liability for the acts, errors and omissions of its water safety personnel.
11

12 Automobile Liability – A Business Automobile Liability policy protecting Franchisee against
13 liability or loss due to bodily injury and property damage arising out of the operation of a
14 motor vehicle in the performance of this Franchise. Policy shall be written on an occurrence
15 basis and provide coverage for “any auto” with a combined single limit of liability of One
16 Million Dollars (\$1,000,000) per occurrence.
17

18 Worker’s Compensation & Employers’ Liability – A Worker’s Compensation policy
19 protecting Franchisee against liability or loss arising out of occupational injury or illness of
20 its employees. This policy shall provide minimum limits of liability of: \$500,000 each
21 accident; \$500,000 disease- each employee; and \$500,000 disease-policy limit.
22

23 Policy Endorsements:

24 Both the general liability and automobile liability policies, as well as any professional
25 services policy shall be endorsed to name the City of Myrtle Beach as an “additional
26 insured.”
27

28 All policies shall be endorsed to provided the City of Myrtle Beach sixty (60) day prior written
29 notice of non-renewal, reduction or exhaustion of limits or cancellation.
30

31 All policies shall include a “waiver of subrogation” endorsement in favor of the City of Myrtle
32 Beach.
33

34 Conditions:

35 The clause “other Insurance” in a policy in which the City of Myrtle Beach is named as an
36 “additional insured” shall not apply to the City of Myrtle Beach. The insuring company shall
37 have no recourse against the City of Myrtle Beach for the payment of any premiums,
38 deductibles or assessments.
39

40 In the event Franchisee should fail to comply with the “loss reporting” requirements of any
41 policy, that failure shall not adversely affect the coverage afforded the City of Myrtle Beach,
42 nor shall the City be responsible for complying with the reporting requirements of any policy.
43
44

SECTION 8. – INDEMNIFICATION

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

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

The Franchisee does release the City from any and all claims, demands, suits, judgments, damages, action and liabilities of every name and nature whatsoever, including attorney's fees and costs, whenever occurring, whether known or unknown, contingent or fixed, at law or in equity, that the Franchisee may suffer at any time arising from or in connection with participation in the franchise, including any personal injury, commercial injury, or harm or damage to any property or person.

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

Franchisee further agrees to investigate, handle, respond to, provide defense for and defend the same at its sole expense and agrees to bear all other costs and expenses related hereto. In specific reference to the above, the Franchisee agrees to assume the legal defense, and vigorously defend upon actual claim or suit, and, in doing so, completely indemnify the City, its employees, agents, contractors, and elected officials from any loss including any damage model or attorneys' fees and cost, and hold harmless the City, its employees, agents, contractors, and elected officials from and against any and all liabilities.

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

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

1 Within the time as may be provided by law for the answer or defense of any filed claim or
2 proceeding, but no later than thirty (30) days after the City receives notice of the
3 commencement of any action or other proceeding in respect of which indemnification or
4 reimbursement may be sought hereunder, the City shall notify the Franchisee. If any such
5 action or other proceeding shall be brought against the City and be transmitted to the
6 Franchisee, the Franchisee shall, within thirty (30) days acknowledge in writing its receipt of
7 such notice from the City, and shall acknowledge and confirm the Franchisee's obligation
8 to hold harmless, indemnify, and assume the defense, and it shall be obligated to assume
9 the defense of such action or proceeding with counsel chosen by the Franchisee.

10
11 Notwithstanding the foregoing, the City shall have the right to employ separate counsel at
12 the City's sole cost and expense and to control its own defense of such action or proceeding
13 if in the reasonable opinion of counsel to the City, (a) there are or may be legal defense
14 available to the City that are different from or additional to those available to the Franchisee,
15 or (b) a conflict or potential conflict exists between Franchisee and the City that would make
16 such separate representation advisable.

17
18 The Franchisee shall not, without the prior written consent of the City, settle or compromise
19 or consent to the entry of any judgement in any pending or threatened claim, action or
20 proceeding to which the City is a party unless such settlement, compromise or consent
21 include an unconditional release to the City from all liability arising or potentially arising
22 from or by reason of such claim, action or proceeding.

23
24 Notwithstanding any other provision contained herein, the franchise may be terminated
25 upon Franchisee's failure to honor this, or other indemnification, hold harmless or duty to
26 defend obligations due and owing to the Franchisor, arising from the operation of
27 Franchisor's beach safety franchise.

28 29 **SECTION 9 . – TRANSFER OF FRANCHISE**

30
31 A Franchisee may transfer his/her franchise to another franchise holder subject to a sixty
32 (60) day notice to and upon approval of the City Manager, City Council must approve by
33 Resolution any franchise transfer.

34
35 Violation of any provision of this Franchise Agreement shall result in the suspension of the
36 Franchise Agreement or in the permanent revocation of the franchise by City Council.

37 38 **SECTION 10.- ASSIGNMENT**

39 This franchise may not be assigned in whole or in part except upon the written consent of
40 the City of Myrtle Beach.

1 **SECTION 11.- TERMINATION**

2
3 In the event the Franchisee is determined to be in default under the terms of this franchise,
4 the City shall provide Franchisee written notice of default and afford the Franchisee ten (10)
5 days in which to cure the default. Upon failure of the Franchisee to cure or show reasonable
6 progress toward curing the default, the City shall provide written notice of termination to
7 Franchisee and this franchise shall be revoked by City Council.
8

9 **Section 12.- NOTICE AND CONTACT**

10 Any papers, request, demand, authorization, direction, notice, consent or waiver provided,
11 required or permitted to be made upon, given by, or furnished to the either party with
12 respect to this franchise shall be sufficient for every purpose hereunder if in writing and
13 mailed by United States Mail, and addressed as follows:
14

15 **TO THE CITY:**

16 **ATTENTION: JONATHAN "FOX" SIMONS JR.**
17 **CITY MANAGER**
18 **P. O. BOX 2468**
19 **MYRTLE BEACH, SC 29578**
20

21 **WITH A COPY TO:**

22 **WILLIAM A. BRYAN, JR.**
23 **CITY ATTORNEY**
24 **P.O. BOX 2468**
25 **MYRTLE BEACH, SC 29578**
26

27 **TO THE FRANCHISEE**

28 _____
29 _____
30 _____
31 _____
32

33 **SECTION 13.- FORCE MAJEURE**

34
35 No party will be liable to the other for any failure or delay in the performance of its obligations
36 under this franchise agreement to the extent such failure or delay is caused by hurricane,
37 flood, fire, earthquake, other elements of nature, acts of war, terrorism, civil disorder,
38 rebellion or revolution, quarantine, pandemic, a declared state of emergency, or other
39 conditions beyond its reasonable control following the execution of this franchise. The party
40 claiming to be affected by a force majeure event and identify the manner in which its
41 performance will be delayed or prevented. The party claiming a force majeure event
42 prevents or delays the performance of all or part of its franchise obligations shall also use
43 all reasonable efforts to eliminate or mitigate the impacts of the force majeure event on
44 performance of its obligations and use all reasonable efforts to recommence performance

1 as soon as the force majeure conditions subside. If the force majeure event lasts more than
2 60 days and the parties fail to reach a resolution to continue to perform under the franchise,
3 the City has the right to terminate the franchise by giving written notice to Franchisee.
4
5

6 **WITNESS THE DUE EXECUTION HEREOF ON THE DATE LAST SIGNED;**
7

8 **CITY OF MYRTLE BEACH**
9

10 **BY:** _____
11

12 **ITS CITY MANAGER**
13

14 **PRINT NAME:** _____
15

16 **WITNESS SIGNATURE AND PRINTED NAME:**
17

18 _____
19

20 _____
21

22 **DATE:** _____
23
24
25

26
27 **FRANCHISEE**
28

29 **BY:** _____
30

31 **ITS:** _____
32

33 **PRINT NAME:** _____
34

35 **WITNESS SIGNATURE AND PRINTED NAME:**
36

37 _____
38

39 _____
40

41 **DATE:** _____

WATER SAFETY AND BEACH CONCESSION FRANCHISE

The City of Myrtle Beach (hereinafter "City" or "Franchisor") finds it desirable to have a water safety program for the benefit of residents and visitors using the public beach within the city limits.

The implementation of a water safety program can be accomplished through cooperation of the City and the beach services who have the requisite skill and experience and who have provided water safety services for decades to the City.

City Council, by Ordinance duly adopted, has authorized the City Manager to execute franchises with the beach services.

The City grants to John's Beach Service a seven year franchise - beginning October 1, 2024 and ending September 30, 2031 – to provide water safety services and beach concessions on the public beach spanning from the center of the 14th Avenue Pier to the center line of 82nd Avenue N. in accordance with the following terms and conditions:

SECTION 1. – PERIOD OF OPERATION AND SCOPE:

Franchisee shall provide water safety services each year of the franchise from April 15 to September 30. Franchisee's designated territory shall extend from the center of the 14th Avenue Pier to the center line of 82nd Avenue N. Franchisee shall guard the beach within its designated territory with lifeguards between the hours of 9:00 a.m. and 6:00 p.m., seven (7) days per week, including all City/State/Federal holidays, according to the following schedule:

April 15 through 3 rd Sunday in May:	6 lifeguards
3 rd Monday in May through May 31:	15 lifeguards
June 1 through 3 rd Sunday of August:	32 lifeguards
3 rd Monday 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 lifeguard shall mean a lifeguard assigned to a tower or stand whose area of responsibility is centered around his/her tower or stand. Mobile lifeguard shall mean

lifeguard that covers multiple blocks of beach either on foot or by motorized cart, ATV/UTV or by vehicle.

From April 15 to September 30, Franchisee should employ a sufficient number of lifeguards to satisfy the applicable minimum staffing requirements from 9:00 a.m. to 6:00 p.m. which requirement shall also apply during lunch.

However, if a stationary lifeguard is absent, Franchisee shall fly a flag or banner from the stand indicating No Guard on Duty. Similar No Guard On Duty flags or banners shall also be set in front of the umbrella line on both sides of the stand at an approximate distance of 20 – 25 yards or at such distance where it can be seen from outside lateral boundary of the stand's area. If mobile lifeguard is absent, Franchisee shall fly a flag or banner indicating No Guard On Duty in front of the umbrella line at each public access point in the mobile lifeguard area. All No Guard On Duty flags shall be white in color with red lettering.

If Franchisee fails to meet the applicable staffing requirements, Franchisee shall be fined one hundred and fifty dollars (\$150.00) per day, for each lifeguard Franchisee fails to deploy. Upon discovery of a violation, the City will provide written notice to Franchisee of the violation and the location(s) of the missing lifeguard(s). Payment of fines are to be remitted to the City within thirty (30) calendar days of notice. Failure to meet staffing requirements may also result in loss of franchise or decreased franchise area.

Franchisee shall position lifeguards and stands throughout its assigned territory with emphasis in areas with historically higher concentration of beach goers and swimmers and with consideration given to weather, water conditions, and other relevant factors as determined by the Franchisee. However, City reserves the right to direct the Franchisee to relocate lifeguards, stands, or other beach equipment to address any safety concerns.

If Franchisee rents beach equipment (chairs/footrests/umbrellas) before April 15 or after September 30, Franchisee must deploy lifeguards in areas where beach equipment is rented for so long as the beach equipment is on the beach.

From April 15 to September 30, Franchisee shall deploy the following water safety personnel in addition to the minimum number of lifeguards addressed above:

1. A minimum of one mobile lifeguard equipped with a vehicle, ATV or other motorized cart between 14th Avenue N. Pier and 31st Avenue N.,
2. A minimum of two mobile lifeguards equipped with a vehicle, ATV or other motorized cart between 31st Avenue N. and 52nd Avenue N., and
3. A minimum of one mobile lifeguard equipped with vehicle, ATV or other motorized cart between 52nd Avenue N. and 82nd Avenue N.

1 Every day from April 15 to September 30, Franchisee shall provide City a daily roster
2 identifying the lifeguards and mobile lifeguards and the location of each. The daily roster
3 shall be emailed daily to beachsafety@cityofmyrtlebeach.com no later than 10:00 a.m.

4
5 It is not a violation of the Franchise to deploy more lifeguards than called for herein.

6
7 Franchisee shall be responsible for monitoring surf conditions and restricting entry to
8 ocean, if warranted. If circumstances warrant closure of all or part of the beach, Franchisee
9 shall immediately fly the appropriate flag(s), take steps to remove persons from the ocean,
10 and notify the Fire Department within 30 minutes.

11
12 To ensure a clear line of communication between the City and Franchisee, Franchisee will
13 identify a single point of contact (with a designated telephone number) and such person
14 shall be available to the City from 8:00 a.m. to 8:00 p.m. City will likewise identify a single
15 point of contact.

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

- 19 • Vehicle,
- 20 • First Aid kit,
- 21 • Rescue buoy.

22
23 Lifeguards are prohibited from participating in rental activities from 9:00 a.m. to 6:00 p.m.
24 It is not a violation of the franchise for lifeguards to assist with equipment setup before
25 9:00 a.m. or breakdown of equipment after 6:00 p.m.

26 27 **SECTION 2. – STANDARDS OF PERFORMANCE & LIFEGUARD CERTIFICATION**

28
29 All lifeguards shall be at least seventeen (17) years of age, be of good moral character and
30 abide by the highest standards of cleanliness and physical appearance. Prior to
31 commencing work as a lifeguard, Franchisee will test each candidate to ensure that the
32 individual can demonstrate an ability to swim 500 meters over a measured course in a
33 twelve (12) minute period. Thereafter, each lifeguard shall be required, upon demand from
34 the Police Department or Fire Department, to demonstrate an ongoing and current ability to
35 swim 500 meters over a measured course in a twelve (12) minute period. Failure results in
36 an immediate removal from duty until the test is retaken and passed. Successive tests shall
37 not be administered within a 24 hour period. After the third failure, the lifeguard is
38 permanently removed from duty that season, and may not test again until the next season.

39
40 All lifeguards shall:

- 41 • Possess adequate vision, hearing acuity, physical ability and stamina to perform the
42 duties of open water lifeguard;

- 1 • Possess valid, current lifeguard certification bearing lifeguard name (copy to be
- 2 provided to Fire Department);
- 3 • Possess valid, current Community First Aid Certification or its equivalent bearing
- 4 lifeguard name (copy to be provided to Fire Department);
- 5 • Possess valid, current CPR Certification or equivalent for professional rescue
- 6 bearing lifeguard name (copy to be provided to Fire Department); and
- 7 • First year lifeguards must successfully complete rookie surf school with open water
- 8 life saving training meeting nationally recognized training criteria.

9
10 All first year and returning lifeguards must attend regular in-service training throughout the

11 season. By the fifth day of each month from May to October, Franchisee shall provide to the

12 Fire Department representative the rosters of all training given the previous month. Each

13 roster shall identify the topic(s) addressed in the training.

14
15 Franchisee shall prepare a training curriculum for rookie surf school and for in-service

16 training classes consistent with nationally recognized open water lifesaving training criteria

17 as well as a training schedule, including dates, locations, and times, and shall present it to

18 the Fire Department representative before placing lifeguards on the beach and, in no event,

19 later than April 15. Franchisee shall insure all lifeguards reasonably comply with the training

20 schedule and provide opportunity in the schedule for makeup classes. Failure to comply

21 with in-service training requirements shall result in suspension of lifeguard from service

22 until requirement(s) is met. In-service training may be attended by Fire Department

23 personnel.

24
25 Franchisee, lifeguards, beach attendants and other Franchisee employees shall be

26 committed to maintaining a safe and productive work environment. Alcohol or other

27 controlled substances in the workplace are dangerous because they lead to physical

28 impairment, loss of judgment, and risk of injury and death. Therefore, Franchisee

29 lifeguards, beach attendants and other Franchisee employees are prohibited from

30 consuming alcoholic beverages while on duty or from reporting to work under the influence

31 of alcohol or other controlled substances not prescribed for the employee's use.

32 Franchisee will adopt a policy consistent with the policy of the City of Myrtle Beach on

33 maintaining a drug-free workplace.

34
35 Franchisee lifeguards, beach attendants and other Franchisee employees are prohibited

36 from:

- 37 1. Using a cell phone for activities unrelated to their duties;
- 38 2. Reporting to work while under the influence of alcoholic beverages or controlled
- 39 substances not prescribed for the employee's use;
- 40 3. Using or possessing alcoholic beverages or controlled substances not prescribed for
- 41 the employee's use on City premises or during work hours; and
- 42 4. Using, possessing, swallowing, inhaling, injecting, dealing in, controlled substances
- 43 (including but not limited to: marijuana, cocaine, LSD, opiates, amphetamines,
- 44 barbiturates and phencyclidine), and prescription drugs which are not prescribed for

1 the employee's use. THIS PROHIBITION APPLIES TO USE AT ANY TIME BOTH ON THE
2 JOB AND OFF THE JOB.

3
4 Franchisee shall not employ any individual as a lifeguard or beach concession employee
5 who has been convicted of or pled guilty or nolo contendere to a felony or who is on parole
6 or probation for a criminal offense, including any sex-related crimes. Franchisee will be
7 responsible for the background checks for all its employees. Employment of any person
8 with a criminal history described above will be considered a violation of the franchise
9 agreement.

10
11 All Franchisee lifeguards, beach attendants, and other Franchisee employees who operate
12 a motor vehicle in the performance of this franchise agreement shall possess a valid motor
13 vehicle operator's license, and successfully complete a Police Department offered training
14 course for the type of vehicle driven. Franchisee employee operating a motor vehicle in the
15 performance of franchise responsibilities shall not have been convicted of driving under the
16 influence within twelve (12) months.

17
18 Franchisee shall promulgate an employee handbook addressing the following:

- 19 • Professional attitude, conduct and appearance, to include courteous interaction
- 20 with the public;
- 21 • Health and safety;
- 22 • Lifeguard daily checklist;
- 23 • Beach rules and regulations;
- 24 • Interactions with Beach Patrol and Fire/Rescue;
- 25 • Placement of chairs and placement and anchoring of umbrellas; and
- 26 • Other such administrative or employment subjects as deemed necessary.

27
28 Franchisee's employee handbook will be completed and a copy will be delivered to both the
29 Fire Chief (or designee) and the Police Chief (or designee) before Franchisee places
30 lifeguards on the beach and, in no event, later than April 15. Any handbook updates
31 implemented after April 15 must be delivered to both the Fire Chief (or designee) and the
32 Police Chief (or designee) within three (3) calendar days.

33
34 Franchisee shall be solely responsible for any required disciplinary action of its employees.
35 Failure to provide prompt disciplinary/corrective action, especially for matters involving
36 public safety, may constitute a material breach of the franchise agreement.

37 38 **SECTION 3. – LIFEGUARD UNIFORMS & EQUIPMENT**

39
40 All lifeguard uniforms shall be of the same color and combination. All lifeguard tee shirts
41 shall be gold with navy blue lettering. "Life Guard" shall be printed on the front. The name
42 of the Franchisee shall be printed on the back. The company or non-commercial logo may
43 be printed on the left sleeve.

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

4
5 Female lifeguard personnel shall wear a navy blue swimsuit. "Life Guard" shall be printed in
6 gold letters on the front.

7
8 Franchisee is prohibited from printing the City logo on any part of any uniform.

9
10 Lifeguards shall wear shirts from 10:00 a.m. to 2:00 p.m. each day.

11
12 Lifeguards must carry City-issued lifeguard identification with them at all times throughout
13 the day. Identification will be issued by the City at no initial cost to Franchisee or Franchisee
14 employee; however, a ten dollar (\$10.00) replacement fee will be charged to replace any
15 card that is lost or misplaced outside the normal scope of duty.

16
17 Franchisee must provide all stands/towers. Franchisee is responsible for placing stands on
18 the beach in its assigned franchise area and for removing stands at the end of the season
19 and, if necessary, prior to a hurricane. All lifeguard stands and towers shall be painted
20 orange or white with orange accents and be built so that lifeguards, while standing or sitting,
21 are positioned at least five (5) feet above ground level, thus enhancing the lifeguard's ability
22 to scan the water and beach and increasing the lifeguard's visibility to the public. Each
23 stand shall have painted or posted on all four (4) sides the name of the nearest avenue or
24 street for easy identification. Each stand shall be maintained in good condition and be
25 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. Lifeguard Umbrella with "Life Guard" in navy blue letters unless stand has a fixed roof
31 5. City Ordinance/Emergency Phone Number Sign

32
33 At least every other stand shall have a two-way radio. Each Franchisee shall have and
34 monitor 800 megahertz radios which will be supplied by the Fire Department and equipped
35 with fire frequency. Franchisee is financially responsible for any damage or loss to 800
36 megahertz radios including accessories supplied by Fire Department.

37
38 Failure by the Franchisee to maintain any required equipment in good and safe condition
39 may constitute a material breach of the franchise agreement.

40
41 **SECTION 4. – BEACH ATTENDANTS AND BEACH SERVICE EQUIPMENT**

42
43 No commercial or retail activity except as authorized herein shall be permitted on the public
44 beach.

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

- 4 1. Chairs & footrests
- 5 2. Umbrellas

6
7 Before Memorial Day and after Labor Day, Franchisee may also rent "clam shell" style
8 cabanas that are no taller than seven (7) feet at the apex. All rental equipment must be
9 broken down and secured by the dune line no later than 6:30 p.m. each day. Franchisee
10 may not rent any "hard" equipment, including but not limited to: surfboards, skim boards,
11 boogie boards, sailboats, banana boats, jet skis, parasailing.

12
13 Franchisee's commercial activity authorized herein shall be conducted exclusively by
14 concessionaires or beach attendants of Franchisee who are in addition to, and operate
15 independent of, personnel involved in the provision of water safety services, and who shall
16 at all times wear uniforms different in color and lettering than those worn by lifeguards and
17 other water safety service personnel, clearly identifying such employees as "Beach
18 Attendant," "Concessionaire" or similar designation not to be confused with lifeguard.
19 Beach attendants' uniforms shall consist of shirts and shorts that are of a different color
20 scheme than lifeguards and must be visibly distinguishable from lifeguard uniforms.
21 Franchisee is prohibited from printing the City logo on any part of any uniform.

22
23 Beach attendants are required to display a City-issued "Attendant" identification card on
24 their person at all times while on duty. Identification will be issued by the City at no initial
25 cost to Franchisee or Franchisee employees; however, a ten dollar (\$10.00) replacement fee
26 will be charged to replace any card that is lost or misplaced outside the normal scope of
27 duty.

28
29 Lifeguards are prohibited from participating in rental or commercial activity from 9:00 a.m.
30 to 6:00 p.m.

31
32 Franchisee employees involved in rental program are prohibited from performing water
33 safety functions while on duty and cannot assume the duties of a lifeguard; however, if
34 beach attendants are properly trained and certified to render water safety or medical aid to
35 others, they may assist the lifeguard(s), together and in conjunction with the lifeguard(s),
36 with the rendering of water safety or medical aid, if necessary.

37
38 Where two franchise areas join, Franchisee shall not place beach equipment closer than
39 twenty (20) feet from the point of junction. In addition, a twenty (20) foot opening shall be
40 maintained at each street-end and a ten (10) foot opening at each public walkover. In all
41 cases, Franchisee, in setting up beach equipment, shall endeavor to provide the highest
42 degree of public access possible. For every twenty-five (25) umbrellas installed by
43 Franchisee on either side of a stand, Franchisee shall, where feasible, leave an opening of
44 forty (40) feet which shall be available for public use so long as the public use does not

1 interfere with public safety or violate the Municipal Code of Ordinances. However,
2 whenever the area dimensions, including restrictions related to street ends and public
3 walkovers, do not accommodate an opening of forty (40) feet, Franchisee may deviate from
4 this requirement while affording as much public use as possible. In any area where
5 Franchisee has not established an umbrella line by 9:30 a.m., the public may install
6 umbrellas in such area so long as it does not interfere with public safety or violate the
7 Municipal Code of Ordinances. Franchisee agrees to remove fifty percent (50%) of any
8 unrented chairs and umbrellas after 2:30 p.m. each day.

9
10 Franchisee shall not display any signage other than what is specifically authorized herein as
11 well as its company logo on its beach service equipment.

12
13 Franchisee is authorized to operate various types of motor vehicles in support of its water
14 safety and beach concessions operations, in a safe and prudent manner. Any Franchisee
15 employee who operates any type of motor vehicle in the performance of franchise
16 responsibilities shall possess a valid motor vehicle operator's license and successfully
17 complete a Police Department offered training course for the type of vehicle driven.
18 Franchisee employee must present a current, valid operator's license at time of training.
19 Franchisee employee operating a motor vehicle in the performance of franchise
20 responsibilities shall not have been convicted of driving under the influence within twelve
21 (12) months. All Franchisee vehicles shall be maintained in excellent mechanical condition,
22 be neat in appearance, be properly licensed and insured as required by law, and operated
23 by a properly licensed operator. The City shall have the right to inspect and
24 approve/disapprove the use of any motor vehicle or equipment to be used by the
25 Franchisee.

26
27 Except in the event of emergencies, Franchisee trucks shall only be operated within fifteen
28 (15) feet of the dune line and speed of any Franchisee vehicle on the public beach shall not
29 exceed 8 miles per hour, except in the event of an emergency.

30
31 Franchisee is prohibited from bringing any chemicals, including but not limited to gasoline,
32 oil, and/or hydraulic fluid onto the public beach, and shall be solely responsible for any
33 release from its motor vehicles. In the event of spillage of any kind, Franchisee shall contain
34 said spillage and contact Ocean Rescue and/or Beach Patrol. Franchisee shall be solely
35 responsible for the removal and clean-up of any chemical contaminant occasioned or
36 caused by its lifeguards, beach attendant and/or other employees or its equipment, and
37 shall fully comply with all applicable federal, state, and local laws in doing so.

38 39 **SECTION 5. – BEACH CLEANLINESS**

40
41 Franchisee will be responsible for the removal of hazardous trash and debris within its
42 designated territory from the water line to the primary dune line. This responsibility will be
43 discharged by beach attendants; however, it is not a violation for lifeguards to remove
44 trash/debris in front of the umbrella line which the lifeguard encounters while patrolling

1 his/her assigned area. At the beginning of each season, the City will provide trashcans as
2 needed for each stand. The City shall be responsible for the trashcan pick-up on the beach.

3
4 Franchisee will have a secondary responsibility for attempting to achieve voluntary
5 compliance with City Ordinances within Chapter 5 (Beach and Boating Regulations) with a
6 particular emphasis on Ordinances involving personal safety and those relating to
7 structures on the beach and lifeguard line of sight. Behind the umbrella line, this
8 responsibility will be discharged by beach attendants. In front of the umbrella line, this
9 responsibility will be shared by beach attendants and lifeguards. Franchisee will educate
10 violators in an effort to gain voluntary compliance. In the event voluntary compliance
11 cannot be gained, a Franchisee supervisor shall notify the Police Department.

12 13 **SECTION 6. – FRANCHISE FEE, FINANCIAL REPORTING AND BUSINESS LICENSE**

14
15 Beginning in 2025, Franchisee shall pay an annual franchise fee of \$20,000 each year the
16 franchise is in existence. Franchise fee shall be mailed to the Director of Financial
17 Management and Reporting (P.O. Box 2468, Myrtle Beach, SC 29578) or hand-delivered to
18 the Director of Financial Management and Reporting (921 North Oak Street, Myrtle Beach,
19 SC 29577) and must be received no later than December 31 of each year. Franchisee shall
20 be afforded a ten (10) day grace period for payment of the Franchise fee, after which time a
21 ten percent (10%) late fee will be assessed. The failure to pay the franchise fee and any
22 assessed late fees within thirty (30) calendar days of the due date shall be grounds for
23 revocation of the Franchise.

24
25 A portion of the franchise fee will be reimbursed to the Franchisee based on compliance
26 with lifeguard staffing requirements. Franchisee meeting staffing requirements at a rate
27 exceeding 85 percent will be refunded a like percentage of the franchise fee. Franchisee
28 meeting staffing requirements at a rate between 75 and 85 percent will be reimbursed 50
29 percent of the franchise fee. Any franchise fee not reimbursed to Franchisee will be
30 reinvested by the City into water safety.

31
32 Franchisee shall provide the City with a review of the gross receipts prepared by a Certified
33 Public Accountant (CPA) no later than December 1 of each year during the term of this
34 franchise. The City may require an audited financial statement in its discretion.

35
36 Franchisee shall be required to obtain and keep in good standing a business license from
37 the City of Myrtle Beach for so long as the franchise remains in effect.

38 39 **SECTION 7. – INSURANCE**

40
41 Franchisee shall provide and pay for the following insurance coverage during the term
42 hereof:
43

1 Public Liability – A general liability policy protecting Franchisee against liability or loss due
2 to bodily injury, property damage or personal injury arising out of the performance of its
3 franchise responsibilities and more specifically the provision of water safety service. Policy
4 shall be written on an occurrence form and provide a combined single limit of liability of One
5 Million Dollars (\$1,000,000) per occurrence. Coverage shall be included for:
6 Premises/Operation; Products/Completed Operation; Contractual Liability; Independent
7 Contractors and shall include a broad form property damage endorsement. In the event this
8 policy shall exclude coverage for Lifeguard Liability as a professional service, Franchisee
9 shall be required to provide and pay for professional service coverage protecting Franchisee
10 against liability for the acts, errors and omissions of its water safety personnel.
11

12 Automobile Liability – A Business Automobile Liability policy protecting Franchisee against
13 liability or loss due to bodily injury and property damage arising out of the operation of a
14 motor vehicle in the performance of this Franchise. Policy shall be written on an occurrence
15 basis and provide coverage for “any auto” with a combined single limit of liability of One
16 Million Dollars (\$1,000,000) per occurrence.
17

18 Worker’s Compensation & Employers’ Liability – A Worker’s Compensation policy
19 protecting Franchisee against liability or loss arising out of occupational injury or illness of
20 its employees. This policy shall provide minimum limits of liability of: \$500,000 each
21 accident; \$500,000 disease- each employee; and \$500,000 disease-policy limit.
22

23 Policy Endorsements:

24 Both the general liability and automobile liability policies, as well as any professional
25 services policy shall be endorsed to name the City of Myrtle Beach as an “additional
26 insured.”
27

28 All policies shall be endorsed to provided the City of Myrtle Beach sixty (60) day prior written
29 notice of non-renewal, reduction or exhaustion of limits or cancellation.
30

31 All policies shall include a “waiver of subrogation” endorsement in favor of the City of Myrtle
32 Beach.
33

34 Conditions:

35 The clause “other Insurance” in a policy in which the City of Myrtle Beach is named as an
36 “additional insured” shall not apply to the City of Myrtle Beach. The insuring company shall
37 have no recourse against the City of Myrtle Beach for the payment of any premiums,
38 deductibles or assessments.
39

40 In the event Franchisee should fail to comply with the “loss reporting” requirements of any
41 policy, that failure shall not adversely affect the coverage afforded the City of Myrtle Beach,
42 nor shall the City be responsible for complying with the reporting requirements of any policy.
43
44

SECTION 8. – INDEMNIFICATION

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

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

The Franchisee does release the City from any and all claims, demands, suits, judgments, damages, action and liabilities of every name and nature whatsoever, including attorney's fees and costs, whenever occurring, whether known or unknown, contingent or fixed, at law or in equity, that the Franchisee may suffer at any time arising from or in connection with participation in the franchise, including any personal injury, commercial injury, or harm or damage to any property or person.

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

Franchisee further agrees to investigate, handle, respond to, provide defense for and defend the same at its sole expense and agrees to bear all other costs and expenses related hereto. In specific reference to the above, the Franchisee agrees to assume the legal defense, and vigorously defend upon actual claim or suit, and, in doing so, completely indemnify the City, its employees, agents, contractors, and elected officials from any loss including any damage model or attorneys' fees and cost, and hold harmless the City, its employees, agents, contractors, and elected officials from and against any and all liabilities.

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

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

1 Within the time as may be provided by law for the answer or defense of any filed claim or
2 proceeding, but no later than thirty (30) days after the City receives notice of the
3 commencement of any action or other proceeding in respect of which indemnification or
4 reimbursement may be sought hereunder, the City shall notify the Franchisee. If any such
5 action or other proceeding shall be brought against the City and be transmitted to the
6 Franchisee, the Franchisee shall, within thirty (30) days acknowledge in writing its receipt of
7 such notice from the City, and shall acknowledge and confirm the Franchisee's obligation
8 to hold harmless, indemnify, and assume the defense, and it shall be obligated to assume
9 the defense of such action or proceeding with counsel chosen by the Franchisee.

10
11 Notwithstanding the foregoing, the City shall have the right to employ separate counsel at
12 the City's sole cost and expense and to control its own defense of such action or proceeding
13 if in the reasonable opinion of counsel to the City, (a) there are or may be legal defense
14 available to the City that are different from or additional to those available to the Franchisee,
15 or (b) a conflict or potential conflict exists between Franchisee and the City that would make
16 such separate representation advisable.

17
18 The Franchisee shall not, without the prior written consent of the City, settle or compromise
19 or consent to the entry of any judgement in any pending or threatened claim, action or
20 proceeding to which the City is a party unless such settlement, compromise or consent
21 include an unconditional release to the City from all liability arising or potentially arising
22 from or by reason of such claim, action or proceeding.

23
24 Notwithstanding any other provision contained herein, the franchise may be terminated
25 upon Franchisee's failure to honor this, or other indemnification, hold harmless or duty to
26 defend obligations due and owing to the Franchisor, arising from the operation of
27 Franchisor's beach safety franchise.

28 29 **SECTION 9 . – TRANSFER OF FRANCHISE**

30
31 A Franchisee may transfer his/her franchise to another franchise holder subject to a sixty
32 (60) day notice to and upon approval of the City Manager, City Council must approve by
33 Resolution any franchise transfer.

34
35 Violation of any provision of this Franchise Agreement shall result in the suspension of the
36 Franchise Agreement or in the permanent revocation of the franchise by City Council.

37 38 **SECTION 10.- ASSIGNMENT**

39
40 This franchise may not be assigned in whole or in part except upon the written consent of
41 the City of Myrtle Beach.

1 **SECTION 11.- TERMINATION**

2
3 In the event the Franchisee is determined to be in default under the terms of this franchise,
4 the City shall provide Franchisee written notice of default and afford the Franchisee ten (10)
5 days in which to cure the default. Upon failure of the Franchisee to cure or show reasonable
6 progress toward curing the default, the City shall provide written notice of termination to
7 Franchisee and this franchise shall be revoked by City Council.
8

9 **Section 12.- NOTICE AND CONTACT**

10 Any papers, request, demand, authorization, direction, notice, consent or waiver provided,
11 required or permitted to be made upon, given by, or furnished to the either party with
12 respect to this franchise shall be sufficient for every purpose hereunder if in writing and
13 mailed by United States Mail, and addressed as follows:
14

15 **TO THE CITY:**

16 **ATTENTION: JONATHAN "FOX" SIMONS JR.**
17 **CITY MANAGER**
18 **P. O. BOX 2468**
19 **MYRTLE BEACH, SC 29578**
20

21 **WITH A COPY TO:**

22 **WILLIAM A. BRYAN, JR.**
23 **CITY ATTORNEY**
24 **P.O. BOX 2468**
25 **MYRTLE BEACH, SC 29578**
26

27 **TO THE FRANCHISEE**

28 _____
29 _____
30 _____
31 _____
32

33 **SECTION 13.- FORCE MAJEURE**

34
35 No party will be liable to the other for any failure or delay in the performance of its obligations
36 under this franchise agreement to the extent such failure or delay is caused by hurricane,
37 flood, fire, earthquake, other elements of nature, acts of war, terrorism, civil disorder,
38 rebellion or revolution, quarantine, pandemic, a declared state of emergency, or other
39 conditions beyond its reasonable control following the execution of this franchise. The party
40 claiming to be affected by a force majeure event and identify the manner in which its
41 performance will be delayed or prevented. The party claiming a force majeure event
42 prevents or delays the performance of all or part of its franchise obligations shall also use
43 all reasonable efforts to eliminate or mitigate the impacts of the force majeure event on
44 performance of its obligations and use all reasonable efforts to recommence performance

as soon as the force majeure conditions subside. If the force majeure event lasts more than 60 days and the parties fail to reach a resolution to continue to perform under the franchise, the City has the right to terminate the franchise by giving written notice to Franchisee.

WITNESS THE DUE EXECUTION HEREOF ON THE DATE LAST SIGNED;

CITY OF MYRTLE BEACH

BY: _____

ITS CITY MANAGER

PRINT NAME: _____

WITNESS SIGNATURE AND PRINTED NAME:

DATE: _____

FRANCHISEE

BY: _____

ITS: _____

PRINT NAME: _____

WITNESS SIGNATURE AND PRINTED NAME:

DATE: _____