

2014 MAY -8 PM 2:21

AGREEMENT

THIS AGREEMENT (the "Agreement") is made as of this 9 day of APRIL, 2014, by and among the CITY OF MANHATTAN BEACH ("City"), a municipal corporation organized under the laws of the State of California with its principal offices at 1400 Highland Avenue, Manhattan Beach, California 90266, and INTERNATIONAL MERCHANDISING COMPANY, LLC, an Ohio company, having its principal place of business at IMG Center, Suite 100, 1360 East 9th Street, Cleveland, Ohio 44114-1782, a wholly-owned subsidiary of IMG Worldwide, Inc. ("IMC" or "Organizer") (collectively referred to herein as the "Parties").

RECITALS

WHEREAS, since 1960, City has conducted an annual amateur and professional beach volleyball event entitled "The Manhattan Beach Open" (the "MBO") and is the owner of the title "Manhattan Beach Open";

WHEREAS, Organizer manages an annual schedule of volleyball events showcasing elite pro volleyball players; and

WHEREAS, City and Organizer wish to work together on the MBO in accordance with the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the promises and mutual covenants and conditions hereinafter set forth, and intending to be legally bound, the Parties agree as follows:

I. THE MANHATTAN BEACH OPEN

During the Term of this Agreement, City authorizes the Organizer to conduct the annual MBO, the dates of which will be selected by Organizer in consultation with City. This year's MBO will be held during the period August 15-17, 2014, with the possible Qualifier being held on Thursday, August 14, 2014. For each year hereafter (in 2015 and 2016), the Parties will agree to the dates in writing.

A) The agreed upon format for the MBO will be a Pro-Amateur format including both Men's and Women's Divisions with amateur qualifying rounds being played for entry into the professional rounds of the MBO. The playing rules for the MBO will be Federation International de Volleyball ("FIVB") international rules. The MBO will be a 32 team draw, and the Organizer will have the right to save 24 seeded spots for men and 24 seeded spots for women for Organizer entries.

B) The title of the MBO is "The Manhattan Beach Open"; however, permission has been granted to the Organizer (if it elects) to insert a sponsor into the title naming it "The Manhattan Beach Open presented by (SPONSOR)." All public identification of or reference to the MBO will be made in the following manner: "The Manhattan Beach Open" presented by (SPONSOR)." In addition, the reference to the domestic pro beach volleyball tour, Association of Volleyball Professionals (AVP Tour) may be referenced as part of the Manhattan Beach Open. Organizer specifically acknowledges and agrees that it will not release any information about the MBO to the public which refers to the MBO solely as "The [Primary Sponsor Name] Open." Notwithstanding the foregoing, Organizer will have the right to include one or more "Presented By" sponsors as part of the official title of the MBO so long as the "Presented By" title(s) appear after the words "Manhattan Beach Open" (e.g., "The Manhattan Beach Open Presented by [Presented By Sponsor] and [Primary Sponsor]").

C) The City will not sponsor any other men's or women's volleyball event(s) paying more than \$30,000 in prize money (or other benefits equaling more than \$30,000 in value) within 90 days before or after the MBO, unless approved in writing by Organizer.

D) Subject to obtaining required permits, the Organizer may use beachers for the center court, outside courts and seating on the pier and the pier head provided that the aggregate of beachers in

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connection with the MBO will not exceed a total of 4,500 seats, of which the center court bleachers will not exceed 3,500 seats. Subject to the approval of the Department of Public Works, additional seating, not to exceed 1,000 seats, may be placed around the outside courts. In addition, subject to the approval of the Department of Public Works, Organizer will have the right to have additional bleacher seating (which will not be included in the 4,500 seats on the beach): (i) on the pier behind the center court end zone bleachers up to 90'; and (ii) on the pier head adjacent to the lifeguard tower (provided that access ways to and from the pier and beach are not obstructed) in connection with the preceding two sentences.

- E) All amplified sound speakers will be placed facing to the west.
- F) All food vendors must be local businesses having a business license to operate in the City of Manhattan Beach.
- G) No admission may be charged for more than 25% of the center court bleachers. At least 75 percent of the total seating capacity at each court shall be reserved for the general public on a first-come, first-served basis.
- H) Suite tents and VIP seating will be provided by the Organizer as follows: (i) center sideline and/or end zone court elevated Suite tents; (ii) VIP reserved seating along one sideline for VIP's, corporate sponsors, etc. All other seating will be available to the public. Any additional center court Suite VIP tents and/or seating will be subject to City approval.
- I) Organizer shall reserve 30 front row seats for the City to use at its discretion.
- J) The Parties agree that all decisions of the City-appointed MBO event director will be final with respect to any issues that involve compliance with the Agreement as well as any issues that directly or adversely impact the community. Said event director will consult with a designated representative of Organizer and it will be the goal of the parties to reach mutual agreement on matters of event operation.

ii. **CITY RESPONSIBILITIES**

- A) The City will permit the Organizer to conduct a Pro-Am Men's and Women's Two Person Volleyball Tournament.
- B) The City will provide an event director to oversee and monitor the total operation of the MBO especially in all matters pertaining to event liability and public safety.
- C) The City will retain the right to conduct, if it desires, a pre-tournament qualifying round including non-Organizer players and retain the proceeds. However, the City will grant the Organizer permission to run these qualifying rounds and retain all the qualifying entry fees the Organizer will operate the qualifiers and take a minimum of eight (8) Men's teams and eight (8) Women's teams to play into the professional rounds of the MBO.
- D) The City will provide to the Organizer any City services required for the MBO such as police, fire, etc. Expenses incurred by the City for these services will be billed to the Organizer by the City at the City's fully-burdened rates.
- E) The City will coordinate all necessary City, Los Angeles County and California Coastal Commission permits, including but not limited to permits for merchandise sales, as approved by City Council, television cameras, and volleyball competition.
- F) The City will provide on-site parking spaces for television coverage equipment, Organizer equipment trucks and personnel. The number of spaces will be 71, consisting of all of the north and south lower parking lot, except for 10 spaces in the north lower parking lot (excluding the handicap spaces). The City will also provide street parking on both sides on Manhattan Beach Boulevard below Ocean Drive. In addition, the City will close Manhattan Beach Boulevard west of Ocean Drive to bike and vehicular traffic as

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deemed necessary by public safety personnel, and the City will cause all bike riders to walk their bikes on Manhattan Beach Boulevard, west of Manhattan Avenue.

G) The City will allow sponsors' display booths and will allow distribution of samples of their products during the MBO as long as such sampling does not include: (1) water (subject to agreement between City and LA County regarding approval of sales and sampling on the beach at the MBO) or (2) alcoholic and tobacco products and (3) as long as such sampling is not in conflict with the restrictions detailed under Section IV hereof. The City will not prohibit display booths, sampling or sales of non-restricted products at the base of the pier and on the sand at the MBO.

H) The City will grant the right to the Organizer to set up a Food Court and Merchandise Fair (which will include the right to sample or sell merchandise and/or other items or services, subject to the restrictions set forth above) made up of City and other merchants in compliance with the Los Angeles County Health Department codes and obtain permits as required.

I) The City will allow the use of portable bleachers and the placement of a video board on the base of the pier.

III. ORGANIZER RESPONSIBILITIES

A) Organizer will not organize, sponsor, promote or lend its name to any additional beach volleyball events with a prize purse of more than \$50,000 to be played on the same dates as the MBO.

B) Organizer will make its best efforts to guarantee the appearance of 15 of the top 20 available professional volleyball teams (barring injury) to participate in the MBO.

C) Bleacher load-in may occur only on the Thursday one week prior to the tournament. Bleachers and bleacher materials shall be stored and secured under the Manhattan Beach Pier with green screen and fencing. Set up for the MBO will begin on the Monday before the tournament. The MBO, including the Qualifier, will take place on Thursday, Friday, Saturday and Sunday of the agreed upon dates and breakdown will be completed by 6:00 p.m. on the Wednesday following the tournament.

D) The Organizer will provide, at its own expense, all event production, including but not limited to, nets, sound equipment, volleyballs, scoreboards, announcer's platform, court siding, court lines, tents, booths, possible bleacher seating for up to 4,500 (not to exceed 3,500 in bleacher seating on center court), and no more than 6 Inflatables. Bleacher set-up must adhere to the 41.5 ft. limit set by the Coastal Development Permit. The Organizer will transport the equipment to the site, set up said equipment in a cooperative and timely fashion, and at the close of the MBO take down and remove the equipment. A designated representative of Organizer must remain on-site during the entire tear-down process. Said equipment is to be totally removed from the site by 6:00 p.m. on the Wednesday following the MBO. City reserves the right to determine limits on the use of said equipment as it pertains to City ordinances and will enforce all such ordinances for the protection of public health and safety. To ensure compliance with the date and time of removal, the Organizer will provide the City a \$10,000 security/clean-up deposit. The Parties will meet "on site" on the Wednesday after the MBO at approximately 4:00 p.m. to determine if the site, to include the beach and parking lots, has been reinstated to its original condition. The Parties agree that based on reasonable expectations, the Organizer will henceforth rectify any outstanding "clean-up" deficiency. Site clean-up must include sifting, cleaning and leveling of beach sand to remove debris beneath the surface. If such deficiency is not rectified by the days set forth below which immediately follow the Wednesday deadline, the Organizer will forfeit the amount shown.

Thursday	2:00 PM	\$3,000 plus City costs
Friday	2:00 PM	\$3,000 additional (\$6,000 total) plus City costs
Saturday	5:00 PM	Balance of \$10,000 (\$10,000 maximum)

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City will return the \$10,000 security/clean-up deposit, or the remaining amount thereof if the Organizer did not complete the clean-up by the deadlines above, by Thursday, September 30, 2014. Equivalent deadline dates for future year's events shall be set by the Parties in writing prior to each year's MBO.

E) The Organizer will provide all necessary funds, staff, equipment, and materials necessary to adequately promote and seek sponsorship for the MBO at no expense to City. Also, the Organizer will provide a designated representative to consult as necessary with the City event director regarding all facets of event operation.

F) The Organizer will provide on-site tournament staff to handle sponsor relations, television liaison, and player mediations.

G) The Organizer will reimburse the City for all its direct "in-house" services for the event. An estimate of these costs, which are projected to be \$40,000 for the 2014 MBO, will be paid to City 30 days in advance of the MBO. Actual City departmental costs will be itemized and billed to the Organizer upon completion of the MBO. An additional \$10,000 cleaning deposit is required (see Section III.D) and is fully refundable upon event clean-up, except as stated in Section III.D.

H) The Organizer will pay for any permits required from the County of Los Angeles and any direct cost of required permits, other than processing fees for City permits.

I) The Organizer will provide for a traffic control plan consistent with the Coastal Commission regulations for the MBO.

J) The Organizer, at its expense, will provide for adequate trash removal. The Organizer shall make arrangements with the proper City of Manhattan Beach waste contractor for trash containers to be placed at the proper beach location at least one day prior to the MBO and removed by the morning following the completion of the MBO.

K) Unless otherwise expressly specified herein, the foregoing responsibilities of the Organizer will be discharged at the expense of Organizer.

L) Organizer shall pay the expenses incurred by the City for City services at the City's fully-burdened rates. All parking expenses will be paid by the Organizer.

M) The Organizer shall provide adequate access to the MBO location in a manner satisfactory to the City, including access to designated parking spaces for people with disabilities. In addition, the Organizer shall provide, at its sole cost, a free shuttle on the Saturday and Sunday of the tournament to transport spectators and other beachgoers from the remote parking lot (Northrop Grumman parking lot) to the downtown drop-off point (Von's supermarket). Up to two shuttle buses, each holding at least fifty persons, shall run continuously between the drop-off point and the remote parking lot each day between the hours of 7 a.m. and 7 p.m. One or both of the shuttle buses shall accommodate wheelchairs and handicapped persons. The "headway" time between shuttle service pick-ups shall be not more than 15 minutes.

N) Organizer shall pay City \$2,000 for City-appointed MBO event director's services in connection with the MBO.

IV. MERCHANDISING, SPONSORSHIP AND LICENSING RIGHTS

A) City grants to the Organizer a temporary exclusive license to the MBO consistent with the term of this Agreement which will include, without limitation, all merchandising of the MBO plus the right to obtain sponsors and advertisers, to produce and sell television, digital and new media programming, as well as to produce and sell MBO merchandise.

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B) Organizer will be allowed to solicit potential sponsors and contract with sponsors for sponsor exposure at the MBO so long as the following guidelines are observed:

- 1) No sponsor will be solicited or accepted who manufactures, markets or are identified in any way with a feminine hygiene product, any disease control products or any product or service considered illegal under the laws of the United States or the State of California.
- 2) No sponsor will be solicited or accepted who produces any form of sexually related film or product or any and all products not deemed by the City to be acceptable to public sensibilities or morals.
- 3) No sponsor will be solicited or accepted who produces any form of tobacco products.
- 4) These guidelines are not intended to exclude as sponsors those that are manufacturers of or distributors of distilled spirits, wines, wine products, beer or fast foods.

C) City will allow sign exposure areas at the MBO for sponsors, including but not limited to customary court banners, booths, hospitality areas and bleacher banners. In addition, Organizer will have the right to have signage on the railings on the south side of the pier and on the railings along the bike path in the area of the MBO. Further, City will allow vehicles (e.g., official sponsor vehicles, watercraft, etc.) on the sand in connection with the MBO, as permitted by the Local Coastal Program.

V. PROMOTION OF THE MBO

A) Organizer will provide all funds, staff, equipment, and materials necessary to adequately promote and advertise the MBO. City will assume no advertising obligation except as specifically provided herein; however, it will promote the MBO as in the past years by cooperating with the press and agreeing to place posters in City-approved locations and assisting in the placement of street and pole banners. Organizer will provide all publicity and promotional materials.

B) The City will permit the Organizer to advertise and promote the MBO within the City for a minimum of four weeks prior to the tournament. This commitment will include the following:

- 1) Organizer will be entitled to have exclusive access to specific locations subject to approval by City for street banners commencing 30 days prior to the MBO. A list of specific locations will be submitted to City at least 90 days prior to the MBO.
- 2) Organizer will have the exclusive right to hang pole banners in specific locations subject to approval by (two weeks prior to the MBO). A list of specific locations will be submitted to City at least 90 days prior to the MBO.
- 3) All street and pole banner designs must be approved by the City. Organizer will be responsible for the costs of hanging and removing all such banners; provided, however, that City will not charge any permit fees in connection with such banners.
- 4) Organizer will have the right to distribute storefront posters for the downtown businesses. The Organizer will be prohibited from placing any posters on any City property. In addition, the Organizer will be prohibited from handing out fliers, posters, index cards, and any other promotional material in the downtown area. In return, to the full extent allowed by law, the City will prohibit other non-event sponsors of the Organizer from distributing product or promotional literature in the downtown area. In addition, Organizer will have the right to issue local newspaper releases.

C) All support and point-of-purchase materials will list the MBO and all event posters, counter cards and schedules will mention the City.

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D) City will acknowledge Organizer in any local television programming that highlights upcoming events.

E) City will give the MBO preferred placement on its web site, if possible.

VI. MEDIA AND DISTRIBUTION

Organizer will have the exclusive right to solicit and negotiate all radio, film, digital, and television broadcast agreements.

A) A live broadcast by the sponsor radio station and filming of the MBO will be allowed at the MBO. All radio broadcast and/or filming set-ups are to be approved and licensed by the proper City representatives who will be available and on hand at the time of set-up. Approval will take into account the desire of the Parties to allow a first quality broadcast and the technical needs of the broadcasters.

B) Organizer will provide City with a DVD and digital "line cut" of the finished content and edit of the MBO broadcast and web cast, within one (1) month after the end of the tournament (or as soon as available).

C) City and Organizer will own all rights to all radio, photo, digital content, and television product of the MBO. City will be afforded the right to use said digital, photo and television productions as long as they are used for non-commercial purposes such as historical documentation and promotion of the MBO. Organizer agrees that all such usage of content from the MBO will be complimentary and positive to the City, the MBO and the citizens of City. In all cases, City has the right to review and approve all such usage of content generated by the MBO (approval of such usage not to be unreasonably withheld).

VII. MBO MERCHANDISE

A) City will not prohibit the sale of domestic series or MBO-related or event merchandise, sponsor apparel, or volleyballs at the base of the pier or on the sand.

B) The MBO-specific apparel and non-consumable souvenir merchandise will be developed by Organizer. The Organizer will have the exclusive right to create, market and license said MBO-specific merchandise. All MBO-specific merchandise will comply with the title requirements set forth herein and as follows:

- 1) Sales and distribution of the MBO-specific merchandise plan shall be subject to approval by the City.
- 2) City shall have input and approval of all designs and products Stock Keeping Units (SKUs).
- 3) Organizer to provide a list of product SKUs for approval by City, including but not limited to t-shirts, sweatshirts, hats, shorts, volleyballs, toys, equipment, etc.

C) No other consumables or non-consumables will be sold or given away at the site except as specified in this Agreement or as approved in writing by the City prior to the MBO.

VIII. PRIZE MONEY

Organizer shall provide for a minimum \$75,000 in prize money for each of the Men's and Women's Open Divisions, for a total of \$150,000. Organizer shall make its best commercial efforts to increase prize money in 2015 and 2016 pending the success of sponsorship sales and television right fees (if any). Organizer shall present the prize money levels to the City 120 days prior to the commencement of the tournament in any given year. The prize money levels for each year of the MBO shall not be less than \$150,000 (i.e., \$75,000 for each gender).

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IX. TERM

This Agreement will be effective for a period of 3 years commencing with the 2014 Manhattan Beach Open and extending through the 2016 Manhattan Beach Open.

X. RENEWAL

Provided Organizer is not in default of its obligations hereunder, City agrees that before granting any rights to a third party for the exclusive license to the MBO consistent with the terms of this Agreement which will include, without limitation, the production of a pro beach volleyball tournament entitled the "The Manhattan Beach Open," all merchandising of the MBO plus the right to obtain sponsors and advertisers, to produce and sell television, digital and new media programming, as well as to produce and sell MBO merchandise in 2017 - 2019, if held, City will first negotiate in good faith with Organizer during a 30-day period as designated in writing by City. If City and Organizer fail to reach an agreement during said 30-day period, Organizer will have the right within 14 days thereafter to submit to City in writing the terms and conditions (the "Final Offer") Organizer is willing to offer or accept for such rights as the Organizer of the 2017 - 2019 Manhattan Beach Open.

XI. FORCE MAJEURE

If in any year during the Term hereof an entire MBO cannot take place as planned due to inclement weather or other force majeure outside the Parties' reasonable control, such failure to hold the affected MBO on its originally scheduled date will not be treated as a breach of this Agreement by either party and each party will use their commercially reasonable efforts to reschedule the MBO on a mutually agreeable date. If no substitute date is set within 90 days of the force majeure event: (i) each party will be responsible for its own expenses with respect to the affected MBO; and (ii) both parties will have no further obligations to each other with regard to the affected MBO.

XII. DEFAULT

A) The following events will constitute an event of default ("Event of Default") under this Agreement regardless of whether any such event is voluntary or involuntary or results from the operation of applicable laws, rules or regulations or is pursuant to or in compliance with any judgment, decree or order of any court of competent jurisdiction:

- (i) either party makes any material misrepresentation or materially breaches any warranty made herein and fails to cure such breach within 14 days of its receipt of the written notice of such breach provided such breach is curable;
- (ii) either party commences a voluntary case or other proceeding seeking liquidation, reorganization or other relief under any bankruptcy, insolvency or similar law, or will make a general assignment for the benefit of creditors, or will have an involuntary case or other proceeding instituted against it seeking similar relief; or
- (iii) either party otherwise fails to perform or observe any other material covenant or material condition set forth herein and such failure continues unremedied for a period of 14 days after the receipt of written notice thereof from the non-defaulting party outlining the default and method of cure.

B) Upon the occurrence of an Event of Default, and at any time thereafter so long as the same is continuing, the non-defaulting party may declare, at its option, this Agreement to be in default and: (i) may immediately terminate this Agreement without any liability whatsoever other than liabilities accrued to such date by giving the defaulting party written notice of termination; (ii) may seek enforcement by appropriate court action of the terms hereof and recover damages for the breach hereof; (iii) may exercise

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any other right or remedy available to it under law or in equity; or (iv) may seek any permitted combination of such remedies. No remedy is intended to be exclusive, but each will be cumulative and the exercise of any such remedy will not preclude the simultaneous or later exercise of any other remedy.

XIII. REPRESENTATIONS AND WARRANTIES

A) City represents and warrants to IMC that: (i) City has the full right and authority to enter into and perform its obligations under this Agreement; (ii) the naming, media and licensing rights of the "Manhattan Beach Open" granted to IMC are owned by City and it is City's good faith belief that the use of such rights by Organizer will not violate the rights of any third party and the full right to exercise the same have in no way been limited, diminished, or impaired, notwithstanding the AVP Pro Volleyball Tour Inc.'s purported registration of the trademark in January 13, 2009; and (iii) the execution, delivery and performance of this Agreement will not violate the provision of any agreement to which City is a party or by which it is bound.

B) IMC represents and warrants to City that: (i) they have the full right and authority to enter into and perform their obligations under this Agreement; (ii) the rights granted to City hereunder will not violate the rights of any third party and the full right to exercise the same have in no way been limited, diminished, or impaired; (iii) the execution, delivery and performance of this Agreement will not violate the provision of any agreement to which either is a party or by which they may be bound; and (iv) they are fully aware of the AVP Pro Volleyball Tour Inc.'s purported registration of the Manhattan Beach Open trademark. Should any purported registration of the MBO trademark affect either party's ability to fulfill its duties and deliverables as outlined in this Agreement, both parties agree that such inability to fulfill such duties and deliverables will not be considered a material breach of this Agreement and will be remedied by mutual agreement reached through the on-going discussions between the Organizers and the City.

XIV. USE OF TRADEMARKS OR SERVICE MARKS

City hereby grants a limited license to IMC, for the 2014 through 2016 MBOs only, to use the name "Manhattan Beach Open." City expressly reserves to itself all other rights to use the name "Manhattan Beach Open" which the parties hereto acknowledge is the sole property of City. Except as expressly provided herein, no party will have the right to use in any way the corporate or trade name, trademark(s), service mark(s), logo(s), or other identification of the other party without its prior written consent.

XV. CONTINGENCIES

This Agreement is contingent upon issuance by City of all necessary governmental approvals, including but not limited to, all required City of Manhattan Beach and Los Angeles County, or Coastal Commission (if any) approvals and environmental review (if any) required under the California Environmental Quality Act ("CEQA").

XVI. INSURANCE

A) Commencement. Organizer will not commence activities under this Agreement until it has obtained insurance as approved by City. Before beginning any activities hereunder, during the entire period of this Agreement, for any extensions hereto, and for periods after the end of this Agreement as indicated below, IMC will have and maintain in place, all of the insurance coverages required by this Section XVI. IMC's insurance will comply with all items specified by this Agreement. Any subcontractors of IMC will be subject to all of the requirements of this Section XVI and IMC will be responsible for obtaining evidence of insurance from each subcontractor and provide it to City before the subcontractor commences work.

All insurance policies used to satisfy the requirements imposed hereunder will be issued by insurers authorized to do business in the State of California.

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B) Coverages: Limits and Policy Requirements. IMC will maintain the types of coverages and limits indicated below:

- 1) **COMMERCIAL GENERAL LIABILITY INSURANCE** - a policy for occurrence coverage, including all coverages provided by and to the extent afforded by Insurance Services Office Form CG 0001 ed. 11/88 or 11/85, with no special limitations affecting City. The limit for all coverages under this policy will be no less than Two Million Dollars (\$2,000,000.00) per occurrence. City, its employees, officials and agents, will be added as additional insureds by endorsement to the policy. The insurer will provide the City with a certificate evidencing such insurance and such certificate will state that the insurer will not cancel or materially modify such insurance policies with notice to be delivered in accordance with the policy provisions for any cancellation, non-renewal or material change in coverage. The policy will contain no provision that would make this policy excess over, contributory with, or invalidated by the existence of any insurance, self-insurance or other risk financing program maintained by City. In the event the policy contains such an "other insurance" clause, the policy will be modified by endorsement to show that it is primary for any claim arising out of the work performed under this Agreement. The City of Manhattan Beach Insurance Endorsement Form No. 1 (General Liability) must be executed by the applicable Insurance underwriters.

- 2) **COMMERCIAL AUTO LIABILITY INSURANCE** - a policy including all coverages provided by and to the extent afforded by Insurance Services Office form CA 0001, ed. 12/93, Including Symbol I (any auto) with no special limitations affecting the City. The limit for bodily injury and property damage liability will be no less than one million dollars (\$1,000,000) per accident. City, its employees, officials and agents, will be added as additional insureds by endorsement to the policy. The insurer will provide the City with a certificate evidencing such insurance and such certificate will state that the insurer will not cancel or materially modify such insurance policies with notice to be delivered in accordance with the policy provisions of any cancellation, non-renewal or material change in coverage. The policy will contain no provision that would make this policy excess over, contributory with, or invalidated by the existence of any insurance, self-insurance or other risk financing program maintained by City. In the event the policy contains such an "other insurance" clause, the policy will be modified by endorsement to show that it is primary for any claim arising out of the work performed under this Agreement. The City of Manhattan Beach Insurance Endorsement Form No. 2 (Auto), or other form approved by the City's Risk Manager, must be executed by the applicable Insurance underwriters.

- 3) **WORKERS' COMPENSATION INSURANCE** - a policy which meets all statutory benefit requirements of the Labor Code, or other applicable law, of the State of California. Employer's Liability Insurance with a minimum limit of not less than one million dollars (\$1,000,000) per claim. The policy will contain, or be endorsed to include, a waiver of subrogation in favor of City.

C) Additional Requirements. The procuring of such required policies of insurance will not be construed to limit the liability of IMC hereunder, or to fulfill the indemnification provisions and requirements of this Agreement. There will be no recourse against City for payment of premiums or other amounts with respect thereto. City will notify IMC in writing of changes in the insurance requirements. If IMC does not deposit certificates evidencing acceptable insurance coverage policies with City incorporating such

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changes within 60 days of receipt of such notice, IMC will be deemed to be in default hereunder. Any deductibles or self-insured retentions must be declared to and approved by City.

D) Verification of Compliance. IMC will furnish City with a certificate evidencing coverage required by this Agreement.

XVII. INDEMNIFICATION

IMC agrees to indemnify, defend, and hold harmless City and its boards, officers, agents, attorneys and employees from any and all claims, liabilities, losses, expenses, or damages of any nature (including attorneys' fees and costs) arising out of, or in any way connected with performance of this Agreement by IMC, its agents, officers, employees, subcontractors or independent contractor(s) hired by IMC, except such loss or damage which is caused by the sole active negligence or willful misconduct of the City. This indemnity will apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of Indemnification to be provided by IMC.

City agrees to indemnify, defend, and hold harmless IMC and its boards, officers, agents, attorneys and employees from any and all claims, liabilities, losses, expenses, or damages of any nature (including attorneys' fees and costs) arising out of the performance of this Agreement by City, City's agents, officers, employees, subcontractors, or independent contractor(s) hired by City. This indemnity will apply to all claims and liability regardless of whether any Insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by City.

XVIII. INDEPENDENT CONTRACTOR/POLICE POWER

City and IMC will each be and act as independent contractors. Each party acknowledges and agrees that it neither has nor will give the appearance or impression of having any legal authority to bind or commit the other party in any way other than as authorized by this Agreement. Nothing in this Agreement will be construed to create a joint venture between the Parties or to obligate any other party for debts or obligations incurred by the other party in the performance of this Agreement.

Nothing in this Agreement shall be construed as a limitation on the City's exercise of its police power, including, but not limited to, the exercise of its discretion in consideration of any permit application required for the event contemplated by this Agreement.

XIX. FAILURE TO OBJECT NOT A WAIVER


The failure of any party to this Agreement to object to or to take affirmative action with respect to any conduct of the other party which is in violation of the terms hereof will not be construed as a waiver thereof, nor of any future breach of subsequent wrongful conduct.

XX. NOTICES

All notices required or permitted hereunder will be deemed duly given on the date sent by certified mail, postage prepaid, addressed to the Parties as follows:

If to IMC: International Merchandising Corporation
12400 Wilshire Boulevard, Suite 800
Los Angeles, CA 90025
Attn.: James Leitz

Telephone: 424-653-1873
Facsimile: 310 909-5901


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If to City: City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, California 90266
ATTN: Director of Parks & Recreation

cc: City Attorney

XXI. LIMITATION ON ASSIGNMENT

A) The rights and obligations under this Agreement may be assigned or delegated by the Parties only with the prior written consent of the other party. Any attempted assignment or delegation, without the prior written consent of the other party will be voidable at the discretion of the non-assigning party.

B) This Agreement and all of the terms and provisions hereof will be binding upon and will insure to the benefit of the parties hereto and their respective successors and assigns.

XXII. APPROVAL

Whenever approval, consent, information, or data is herein required of either or both Parties, the same will not be unreasonably or arbitrarily delayed or withheld.

XXIII. COMPLIANCE WITH THE LAW

Should it be determined that this Agreement or any provision hereof violates any federal, state, or local law or regulation, then the parties will promptly modify this Agreement to the extent necessary to bring about compliance with such law and/or regulation; provided, however, that if such modification would cause this Agreement to fall in its essential purpose or purposes, it will be deemed cancelled by mutual agreement of the parties and neither party will have any further obligations or liabilities with respect to this Agreement.

XXIV. SURVIVAL

In the event that this Agreement is terminated for any reason during the term, Sections VI, VII, VIII, XVI, and XVII will survive the termination of this Agreement in perpetuity.

XXV. ENTIRE AGREEMENT

This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof and supersedes any and all prior understandings or agreements in regard hereto. This Agreement cannot be altered or modified except by an agreement in writing signed by both Parties.


XXVI. GOVERNING LAW/VENUE

The interpretation and implementation of this Agreement shall be governed by the domestic law of the State of California. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with geographic jurisdiction over the City of Manhattan Beach.

XXVII. CORPORATE AUTHORITY

The persons executing this Agreement on behalf of the Parties warrant that they are duly authorized to execute this Agreement on behalf of said Parties and that by their execution, the Parties are formally bound to the provision of this Agreement.


[SIGNATURES BEGIN NEXT PAGE]


4/9/14

EXECUTED on the date first written above at Manhattan Beach, California.

CITY OF MANHATTAN BEACH

IMC




JOHN JALILI
Interim City Manager



JAMES LEITZ - SVP

ATTEST:

4/9/14



LIZA TAMURA
City Clerk

APPROVED AS TO FORM:



QUINN M. BARROW
City Attorney