

## VALET PARKING AGREEMENT

THIS AGREEMENT is made this ~~31<sup>st</sup>~~ day of May, 2016 between the CITY OF MANHATTAN BEACH, a municipal corporation, ("City"), the DOWNTOWN MANHATTAN BEACH BUSINESS & PROFESSIONAL ASSOCIATION, a California corporation ("Association"), and DLS PARKING MANAGEMENT INC., a California corporation ("Operator").

### RECITALS

- A. City is a public entity and the owner of certain right of way property in the downtown district of Manhattan Beach;
- B. Association seeks to obtain a public valet parking service that would use the public right of way for pick-up, drop-off and movement of the vehicles to be parked;
- C. Operator is engaged in the business of providing valet parking services;
- D. Association has selected Operator to operate the valet parking service; and
- E. The parties mutually desire to enter into an agreement by which, for adequate consideration payable to City and Association, Operator is given a revocable license to use the public right of way to operate its valet parking business;

NOW, THEREFORE, City, Association and Operator agree as follows:

#### 1. License Granted

For the consideration provided for herein, and subject to the terms and conditions of this Agreement, City hereby grants to Operator a revocable, non-exclusive license as follows:

- (a) To use the public right of way to conduct a valet parking business which entails moving cars to and from pick-up/drop-off points and parking spaces (the "Downtown Valet Parking Program"); and
- (b) To establish valet stations to be operated in accordance with the Valet Parking Operation Plan attached hereto as Exhibit A and incorporated herein by this reference (the "Operation Plan").

#### 2. Operation of the Downtown Valet Parking Program

- (a) Operator shall operate the Downtown Valet Parking Program, including the valet stations, in accordance with Coastal Development Permit CA 99-17, approved by the City Council on May 4, 1999, and Coastal Permit CA-99-41, approved by the California Coastal Commission on April 13, 2000, as they now exist or may subsequently be amended, and in accordance with any successor coastal permits applicable to the Downtown Valet Parking Program.

(b) Operator shall comply with all terms and conditions set forth in the Valet Parking Operation Plan.

(c) Association hereby acknowledges that Operator has or will enter into agreements (the "Private Parking Agreements") with SKECHERS USA for the use of certain private parking facilities in connection with the Downtown Valet Parking Program. As a condition of this Agreement, Operator agrees to provide Association true and correct copies of the Private Parking Agreements. This provision shall also apply to any Private Parking Agreement into which Operator enters with a party other than SKECHERS USA.

(d) Operator, at its own cost and expense, will employ, train, and supervise all persons reasonably necessary to carry out all obligations, responsibilities and duties assumed by it pursuant to this Agreement. Operator further agrees that for all personnel who perform the services as a valet pursuant to this Agreement, such persons will be uniformed in a manner satisfactory to Association and shall refrain from smoking while on duty.

(e) Operator will maintain in good condition all valet stations identified in Exhibit A and keep such stations free of debris.

(f) Operator will place directional and informational valet parking signage at each of the stations identified in Exhibit A and will properly maintain such signage. All signage must first be pre-approved by Association before placement at the stations.

(g) Operator shall maintain all books and records in accordance with generally accepted accounting practices. Association and City shall have the right to inspect all books and records maintained by Operator as to the revenue it receives from the services it provides under this Agreement

(h) Operator will obtain all necessary City, state, and governmental licenses and approvals of any kind or character required for it to provide the services provided by this Agreement, and further agrees to provide copies of such licenses and approvals to Association within ten (10) days of Association's request for the same.

(i) Operator agrees to abide by any rules or conditions subsequently imposed by City, the California Coastal Commission and other authorized agencies as to the manner in which the Downtown Valet Parking Program is to be operated of which Operator has received written notice from Association or City. It is hereby agreed by Operator that any such rules or conditions that are subsequently imposed by City, the California Coastal Commission or other authorized agencies as to the operation of the Downtown Valet Parking Program shall become part of this Agreement.

(j) Operator shall be permitted to charge for valet services provided in accordance with the rate schedule mutually agreed upon by Association and Operator. The initial rate will be a flat fee of \$9.00 per vehicle. Any changes to the rate must first be approved by City in writing.

### 3. Insurance

(a) Operator agrees to maintain the following types of insurance coverage and limits provided below:

(1) **Commercial General Liability Insurance:** A policy for occurrence coverage, including all coverage's provided by and to the extent afforded by insurance services office form CG0001 ed. 11/88 or 11/85, with no special limitations affecting Association. The limit for all coverage's under this policy shall be no less than \$2,000,000 per occurrence, and a general aggregate limit of Four Million Dollars (\$4,000,000). Association and City of Manhattan Beach, their employees, officials and agents, shall be added as additional insureds by endorsement to the policy. The insurer shall agree to provide Association and City with thirty (30) days prior written notice of any cancellation, non-renewal or material change in coverage. The policy shall 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 Association. In the event the policy contains such an "other insurance" clause, the policy shall be modified by endorsement to show that it is primary for any claim arising out of the work performed by Operator under this Agreement. Operator further agrees to submit to City an endorsement form executed by the applicable insurance underwriters and in a form approved by City's Risk Manager.

(2) **Commercial Auto Liability Insurance:** A policy including all coverage's provided by and to the extent afforded by Insurance Services Office Form CA0001, ed. 12/93, including Symbol 1 (any auto) no special limitations affecting Association, with a combined single limit of Two Million Dollars (\$2,000,000) per accident for bodily injury and property damage. Association and City of Manhattan Beach, their employees, officials and agents, shall be added as additional insured's by endorsement to the policy. The insurer shall agree to provide Association with thirty (30) days prior written notice of any cancellation, non-renewal or material change in coverage. The policy shall 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 Association. In the event the policy contains such an "other insurance" clause, the policy shall be modified by endorsement to show that it is primary for any claim arising out of the work performed by Operator under this Agreement. Operator further agrees to submit to City an endorsement form executed by the applicable insurance underwriters and in a form approved by City's Risk Manager.

(3) **Workers' Compensation:** A policy, which meets all statutory benefit requirements of the Labor Code, or other applicable law of the State of California. The minimum coverage limits for said insurance shall be no less than One Million Dollars (\$1,000,000) per claim. The policy shall contain, or be endorsed to include, a waiver of subrogation in favor of Association and the waiver of City of Manhattan Beach.

(4) **Garage Liability:** A policy with a limit not less than \$1,000,000 per incident insuring against loss from fire, theft, explosion or collision. This policy shall include Garage keeper's coverage.

(5) **Proof of Insurance:** Prior to the exercise of the license granted by this Agreement, Operator shall furnish City's Risk Manager with a certificate or certificates of

insurance and all original endorsements evidencing and effecting the coverages required under this Section 3. The endorsements are subject to City's approval. Operator may provide complete, certified copies of all required insurance policies to City. Operator shall maintain current endorsements on file with City's Risk Manager. Operator shall provide proof to City's Risk Manager that insurance policies expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Operator shall furnish such proof at least two (2) weeks prior to the expiration of the coverages.

(6) **Other:** The procuring of such required policies of insurance by Operator shall not be construed to limit Operator's liability hereunder, nor to fulfill the indemnification provisions and requirements of this Agreement. There shall be no recourse against Association or City for payments of premiums or other amounts with respect thereto. Any deductibles or self-insured retentions must be declared to and approved by City. Any deductible exceeding any amount acceptable to City shall be subject to the following changes:

(i) Either the insurer shall eliminate or reduce such deductibles or self-insured retentions with respect to Association and City, their employees, officials and agents (with additional premium, if any, to be paid by Operator); or

(ii) Operator shall provide satisfactory financial guaranty for payment of losses and relative investigations, claim administration, and defense expenses to City.

(b) Operator agrees to not engage in any act(s), which may result in a cancellation of the insurance coverage's provided above.

#### **4. Compensation**

In consideration for the rights granted to it under this Agreement, Operator agrees to pay to City the equivalent of the current metered charge for each public parking space occupied by valet operation at such times as the public would otherwise be charged for the same parking space. Operator agrees to pay the total equivalent metered charge amount of all occupied spaces at all valet stations on a monthly basis as calculated by City, based on actual parking meter rates and/or enforcement times. Operator shall maintain a minimum of three months advance deposit in equivalent metered charges from which City may deduct payment for overdue invoices or damage to City property. A ten percent (10%) penalty per month penalty will be charged for all invoices greater than thirty (30) days past due.

#### **5. Ownership**

This Agreement conveys no ownership interest to Association or Operator. City shall retain ownership of the licensed property. City is free to license, assign, sell or otherwise dispose of its rights in said property.

#### **6. Association's Obligations**

Association shall serve as a liaison between Operator and City to ensure Operator's compliance with the provisions of this Agreement, including the Valet Parking Operations Plan.

## **7. Term and Termination**

This Agreement shall begin on the Agreement date and end at 12:00 midnight on October 31, 2016, unless sooner extended or terminated by City or Association in writing.

(a) Operator's failure to comply with any of the terms and conditions of this Agreement shall be cause for City to immediately terminate this Agreement. Upon the occurrence of such default by Operator, City may, at its option, grant to Operator a ten (10) day period within which to cure such default. Should this option to cure be granted to Operator by City, whether the default has been cured shall be left to the sole determination and discretion of City.

(b) Any of the parties may terminate this Agreement for any reason or no reason upon providing the other parties with thirty (30) days' written notice of the same.

## **8. Independent Contractor**

Operator agrees that it is an independent contractor and that it is solely responsible for any and all City, State and Federal tax withholdings for any and all monies it receives in its performance of its obligations under this Agreement and agrees to fully indemnify and hold harmless City and Association as to any claims made by any municipal, state and federal agencies concerning tax withholdings. It is further understood by Operator that this Agreement does not create a joint venture, partnership or similar relationship between it and City or Association.

## **9. Notice**

A notice, demand, request, consent, approval or communication that any party is required to give the other or to any other person or entity pursuant to this Agreement shall be in writing, and either served personally or sent by registered or certified U.S. Mail, Return Receipt Requested at the following addresses:

(a) As to Association, the notice shall be addressed to:

The Downtown Manhattan Beach Business & Professional Association  
Attn: Kelly Stroman, Executive Director  
P.O. Box 3298  
Manhattan Beach, CA 90266

(b) As to Operator, the notice shall be addressed to:

DLS Parking Management, Inc.  
Attn: Kyle Stiffarm  
150 Front Street, #113  
San Diego, CA 92101

(c) As to City, the notice shall be addressed to:

City of Manhattan Beach  
1400 Highland Avenue

Manhattan Beach, CA 90266  
Attn: City Manager

(With a copy to):

City Attorney  
City of Manhattan Beach  
1400 Highland Avenue  
Manhattan Beach, CA 90266

(d) Should the mailing address of one of the parties change, such party must notify the others of the same in writing within ten (10) days of the date of the address change.

(e) All required notices issued pursuant to this Agreement shall be presumed communicated within forty-eight (48) hours from the date of deposit in the U.S. Mail, except for those occurrences where notices have been personally served with a verified proof of service form evidencing such service.

#### **10. Authorization to Execute**

The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement.

#### **11. Indemnification**

(a) Operator agrees to indemnify, defend and hold harmless City and its elective or appointed boards, officers, agents, attorneys and employees from any and all claims, liabilities, expenses or damages of any nature, including, but not limited to, attorneys' fees arising out of, or in any way connected with Operator's, or its agents', officers', employees', subcontractors' or independent contractors' performance of this Agreement, except for such claim, liability or financial loss or damage arising from the sole negligence or willful misconduct of City, as determined by final arbitration or court decision or by the agreement of the Parties. Operator shall defend City, with counsel of City's choice, at Operator's own cost, expense, and risk, and shall pay and satisfy any judgment, award, or decree that may be rendered against City. Operator shall reimburse City for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits of any such insurance do not act as a limitation upon the amount of indemnification to be provided by Operator. All duties of Operator under this Section shall survive termination of this Agreement.

(b) Operator agrees to indemnify, defend and hold harmless Association and its appointed boards, officers, agents, attorneys and employees from any and all claims, liabilities, expenses or damages of any nature, including, but not limited to, attorneys' fees arising out of, or in any way connected with Operator's, or its agents', officers', employees', subcontractors' or independent contractors' performance of this Agreement, except for such claim, liability or financial loss or damage arising from the sole negligence or willful misconduct of Association, as determined by final arbitration or court decision or by the agreement of the Parties. Operator

shall defend Association, with counsel of Association's choice, at Operator's own cost, expense, and risk, and shall pay and satisfy any judgment, award, or decree that may be rendered against Association. Operator shall reimburse Association for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits of any such insurance do not act as a limitation upon the amount of indemnification to be provided by Operator. All duties of Operator under this Section shall survive termination of this Agreement.

## **12. Assignment**

This Agreement is personal to Operator and may not be assigned to any other person or party without City and Association's express written consent, which may be withheld for any reason.

## **13. California Law**

This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the appropriate branch of the Los Angeles County Superior Court.

## **14. Miscellaneous**

(a) Entire Agreement; Amendment. This Agreement constitutes the entire agreement and understanding between the parties hereto and supersedes any prior understanding or written or oral agreement(s) between the parties relating to the subject matter hereof. This Agreement may not be modified or any provision waived except by a written instrument signed by a duly authorized officer or representative of each of the parties hereto. No oral explanation or oral information by either of the parties hereto will alter the meaning or interpretation of this Agreement.

(b) City Not Obligated to Third Parties. City shall not be obligated or liable under this Agreement to any party other than Operator.

(c) No Waiver; Severability. Failure of either party to enforce at any time during the term of this Agreement any provision hereof shall in no way be construed to be a waiver of such provision nor in any way effect the validity of this Agreement. In the event that any provision of this Agreement shall be deemed to be unenforceable by any arbitrator or court of competent jurisdiction, the remaining provisions of this Agreement will remain in full force and effect.

(d) Exhibits. All documents referenced as exhibits in this Agreement are hereby incorporated in this Agreement. In the event of any discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail.

(e) Attorneys' Fees. If a party commences any legal, administrative, or other action against the other party arising out of or in connection with this Agreement, the prevailing party in such action shall be entitled to have and recover from the losing party all of its attorneys' fees

and other costs incurred in connection therewith, in addition to such other relief as may be sought and awarded.

(f) Headings. Headings to paragraphs of this Agreement are for convenience of reference only, and shall not be construed to alter or affect the meaning of any provision of this Agreement.


**[signatures begin on next page]**

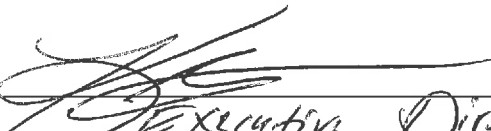


IN WITNESS THEREOF, parties hereto have executed this Agreement on the day and year first shown above.


City of Manhattan Beach ("City")

Downtown Manhattan Beach Business &  
Professional Association ("Association")

By:   
for Mark Danaj, City Manager

By:   
Its: Executive Director

ATTEST:

 6-14-16  
Liza Tamura, City Clerk

DLS Parking Management, Inc. ("Operator")

APPROVED AS TO FORM:

By:   
Its: President

  
Quinn M. Barrow, City Attorney

**EXHIBIT A**  
**DOWNTOWN MANHATTAN BEACH**  
**VALET PARKING OPERATIONS PLAN**

Valet service in Downtown Manhattan Beach shall be operated in accordance with the following terms and conditions:

**Valet Operator**

1. The valet operator shall obtain and maintain all necessary City, State and Governmental licenses and permits in conjunction with the services provided by this Agreement. Copies of such licenses and permits shall be provided to the Downtown Business and Professionals Association or City within three (3) days of request for the same.
2. Valet operator, at its own cost and expense, will employ, train, and supervise all persons reasonably necessary to carry out all obligations, responsibilities and duties assumed by it pursuant to this Agreement.
3. All valet attendants shall be uniformed in a manner satisfactory to the Downtown Business and Professionals Association and shall be prohibited from smoking within the City limits.
4. Valet operator shall maintain all insurance coverage and limits as specified in the Valet Parking Agreement.

**Valet Stations**

5. Valet stations are permitted at the following locations and hours:

LOCATION	# SPACES	DAYS	HOURS
East side of Manhattan Avenue between Center Place and 12th Street	5	Thursday-Friday	6pm – Midnight
		Saturday	11am – Midnight
		Sunday	11am – Midnight
West Side of Manhattan Avenue between 10th Place and 11th Street	5	Tuesday-Friday	6pm – Midnight
		Saturday	11am – Midnight
		Sunday	11 am – Midnight

6. Vehicle drop-off operation shall be parallel to the curb.
7. Passenger loading and unloading shall not occur in travel lanes.
8. Valet operator shall post City-approved signs at least one hour prior to beginning of valet service at each valet station to inform vehicle owners of pending valet parking restrictions.
9. City shall install parking signs and/or electronic notification on parking meters at valet locations for enforcement of valet parking restrictions.
10. Valet service is permitted to operate all year during the approved days and times, except when prohibited by City in writing.
11. Valet stations shall be maintained in good condition and free of debris or trash during valet operation.

**Valet Parking**

12. Valet parking shall be available and offered to the public without bias towards any user or business.
13. The valet operator shall maintain private parking agreements with owners of all private parking facilities used by the valet service. Copies of said agreements shall be provided to the Downtown Business and Professionals Association.
14. Vehicles shall be parked in private parking facilities serving businesses that are not open during the valet operating hours including, but not limited to Sketchers Office Building, located at 228 Manhattan Beach Boulevard, and Chase Bank, located at 201 Manhattan Avenue.

15. A minimum of 120 private parking spaces shall be available during valet service hours. The City may require valet operator to acquire additional private parking spaces if parking capacity is exceeded on a recurring basis.
16. Vehicles must be taken to one of the vehicle storage locations immediately after drop-off.
17. Valeted cars shall not be parked or stored in any public parking spaces or within the valet stations.
18. Vehicles cannot be parked, cued or stopped where prohibited by law, such as in red zones.
19. Vehicles shall not be double parked within the valet station at any time.
20. Any 24-Minute parking space in a valet station must remain available to the general public during valet operations during business hours of the adjacent business.
21. Valet attendants shall not make U-turns on City streets when transporting vehicles.
22. When private parking facilities are full, "Lot Full" signs shall be used, and customers directed to public parking facilities.
23. Valeted vehicles remaining at private parking facilities after midnight shall be moved to Public Parking Lot 3 (Top Level), with keys being left at The Kettle (1138 Highland Ave) for pickup.

#### Valet Service Charge and Parking Meter Reimbursement

24. The valet service charge shall be a flat fee of \$9 per vehicle. Any changes to the rate shall be approved by the City and Downtown Business and Professionals Association in writing.
25. Operator shall pay the City the equivalent of the current metered charge for each public parking space occupied by the valet stations at such times as the public would otherwise be charged for the same parking space.
26. Operator shall pay the total equivalent metered charge amount of all parking spaces occupied by all valet stations on a monthly basis as calculated by the City, based on actual parking meter rates and enforcement times.
27. Operator shall maintain a minimum of three months advance deposit in equivalent metered charges from which the City may deduct payment for overdue invoices or damage to City property. A ten percent (10%) penalty per month penalty will be charged for all invoices greater than 30 days past due.
28. Reimbursement of meter charges shall not be applicable on those days that the City prohibits valet operation, including special events in which the streets adjacent to a valet station are closed.
29. Reimbursement of meter charges shall not be applicable when meters are covered (free parking) during the holiday season.

#### Additional Terms and Conditions

30. Operator agrees to abide by any subsequent rules imposed by City or Downtown Business and Professionals Association in writing. Said rules shall become part of this Agreement and subject to all other terms and conditions provided herein.
31. The Manhattan Beach Police Department and Parking Enforcement Officers reserve the right to suspend the valet parking service at any time for public safety and traffic congestion. Re-opening of a station will be at the sole discretion of the officer.
32. Any request for valet service on days or times not specified above shall be made in writing at least two (2) working days prior to the proposed valet service to the City. Failure to obtain approval may result in immediate termination of the valet service during those times and other penalties as deemed appropriate by the City.