

LICENSE AGREEMENT

This License Agreement ("Agreement") is made this 27 day of May, 2021, by and between the CITY OF LONG BEACH, a New York municipal corporation with offices located at 1 West Chester Street, Long Beach, New York 11561 ("Licensor") and EVOLUTIONS VOLLEYBALL, INC. a New York State domestic corporation, having an address of 330 West Chester Street, Long Beach, New York 11561 ("Licensee"). Licensor and Licensee may be referred to collectively as "Parties" and sometimes referenced individually as "Party".

RECITALS:

- A. Licensor is the owner of the beach along the south shore of the barrier island, within the City limits (the "Property").
- B. Licensee desires to use those portions of the Property adjacent to the endcaps of National Boulevard, Magnolia Boulevard, and Laurelton Boulevard (the "Licensed Space").
- C. Licensee desires to obtain the right to use Licensed Space to host volleyball tournaments and/or volleyball league matches (the "Licensed Use").
- D. Licensor is willing to permit Licensee to use the Licensed Space for the Licensed Use, *supra*, in accordance with the terms and conditions set forth herein.

ACCORDINGLY, the Parties agree as follows:

- 1. Recitals. The foregoing preamble and all other recitals set forth above, as well as the documents referenced therein, if any, are hereby incorporated into and made a part of this Agreement.
- 2. Grant of License. Licensor hereby grants to Licensee a license to use the Licensed Space to conduct the activities specified in Recital "C", pursuant to the terms and conditions set forth in this Agreement, for the 2021, 2022, and 2023 beach seasons ("Term"), unless terminated sooner as provided herein. For the sake of this Agreement, each beach season begins on May 15 and ends on Labor Day of the same year.
 - a. Licensee is permitted to use the Licensed Space for the Licensed Use according to the following schedule:
 - i. Licensee may access the Licensed Space located adjacent to the endcaps of National Boulevard, Magnolia Boulevard, and Laurelton Boulevard on Mondays through Thursdays, from 6:00 p.m. to 8:00 p.m.
 - ii. Licensee may access ONLY the Licensed Space located adjacent to the endcap of Laurelton Boulevard on Saturdays and Sundays, from 6:00 p.m. to 8:00 p.m.
 - iii. Licensor acknowledges and agrees that the Licensed Property may not be used on Fridays for the Licensed Use. However, Licensee may access

ONLY the Licensed Space located adjacent to the endcap of Laurelton Boulevard on Fridays from 6:00 p.m. to 7:00 p.m. to set up the courts in advance of the permitted Licensed Use on Saturdays and Sundays.

- iv. Licensee shall coordinate with the Licensor's Parks and Recreation Department and Lifeguards, and shall abide by their directions and instructions when attempting to access the Licensed Space to set up the volleyball courts.

3. License Fee. Licensee shall pay the Licensor in full, on or before June 30th of each year this Agreement is in effect, for each registered team according to the following fee schedule:

- a. 2021 Beach Season = \$300 per team;
- b. 2022 Beach Season = \$350 per team; and
- c. 2023 Beach Season = \$400 per team.

4. Use of the Licensed Space. During the Term, Licensee shall have the right to enter upon and use the Licensed Space for the purposes set forth in Paragraph 2 and Recital "C", above and in accordance with the following:

- a. Licensee shall comply with and use the Licensed Space in accordance with all local, state and federal laws, ordinances and regulations (the "Laws"), now or hereafter in effect, including any Laws relating to access for persons with disabilities and any Laws, guidance or emergency orders issued in response to a City, State or Federally declared disaster or emergency, including COVID-19, including any and all guidance, now or hereafter in effect, issued by the New York State Department of Health and the Centers for Disease Control and Prevention in response to COVID-19.
- b. Licensee shall be responsible for obtaining, at its sole cost and expense, any and all licenses, certifications, accreditations and/or approvals (collectively the "Approvals") necessary in order to operate its program in the Licensed Space, shall maintain the same in good standing for the Term of this Agreement, and shall comply with all requirements associated therewith. Licensee is responsible for creating/establishing a COVID-19 Safety Plan in accordance with Federal, State, and Local law. Licensee shall provide to Licensor a copy of all Approvals and its COVID-19 Safety Plan prior to commencement of the Term/Licensee's use of the Licensed Space.
- c. Licensee shall not hold the Licensor liable or seek reimbursement, abatement, or remuneration for any interruption in business, utilities, supplies, programming, or other operation resulting from any City, Local, State or Federally declared disaster or emergency, including any shutdowns required in response to COVID-19.

5. Indemnification. Licensee hereby agrees to defend, indemnify, and to hold harmless the Licensor and its agents, Council members, representatives, employees, contractors, and invitees from and against any claim, liability, cause of action, lawsuit, loss, damage, cost, or expense (including, without limitation, reasonable attorney's fees and court costs) (collectively the

“Losses”) including any Losses relating to damage to the Property or injury, sickness or death to any person arising out of or otherwise relating to the exercise of Licensee's rights under this Agreement and/or Licensee's use of the Licensed Space, and Licensee further agrees to pay all costs and expenses (including reasonable attorneys' fees and court costs) incurred by Licensor in enforcing this indemnity.

6. Insurance. During the Term, Licensee shall maintain in force, at its sole cost and expense:

- a. Commercial General Liability including contractual liability for bodily injury and property damage of at least \$1,000,000 per occurrence, \$2,000,000 aggregate;
- b. Personal Injury Liability Insurance in the amount of \$1,000,000;
- c. Personal Property Insurance in an amount sufficient to cover the replacement of Licensee's personal property used in connection with the Licensed Space;
- d. Workers' Compensation and Disability Benefits Insurance in the amounts required by statute; and
- e. Business Interruption Insurance.

The policy[ies] required by this paragraph shall name Licensor as an additional insured, where applicable. The Licensee shall provide Licensor certificates evidencing the required insurance prior to the commencement of the Term of its use of the Licensed Space. All such policies, where applicable, shall be written by a reputable insurance company licensed to do business in the State of New York and shall provide that Licensor will be given notice at least thirty (30) days prior to termination or cancellation of the same. Notwithstanding the foregoing, the Licensor reserves the right to require higher liability limits for the above insurance policies if, in the Licensor's opinion, Licensee's program warrants the same.

7. Termination. This Agreement may be terminated as set forth below.

- a. Licensor reserves the absolute right to terminate this Agreement at any time by service of written notice sent by certified mail to the Licensee's address set forth above. Upon termination of this Agreement, Licensee shall, at its sole cost and expense, promptly remove or cause to be removed from the Licensed Space(s) any and all of the machinery, equipment, supplies and other personal property, and Licensee shall restore any areas within the Licensed Space(s) affected by the entry of Licensee to the condition existing prior to the entry; or
- b. Licensee may terminate this Agreement upon fourteen (14) days' notice to the Licensor.

The exercise by Licensor of its rights of termination as provided in Subparagraph (a) above is a nonexclusive remedy and Licensor shall have the right to pursue any other remedies available to it under applicable law.

8. Maintenance. Licensee shall maintain the Licensed Space in a condition of good

order and cleanliness, and return the premises in the same condition as it existed prior to the Licensed Use. Licensee shall not make, or suffer to be made, any alterations of the improvements to or of the Licensed Space without the prior written consent of Licensor, which may be withheld or conditioned in Licensor's sole discretion. Licensor shall ensure all garbage and refuse is placed/deposited in the proper receptacles after each use of the Licensed Space.

9. Records. The Licensee shall, at its sole expense, maintain full, complete and accurate books and records, documents, accounts and other evidence of accounts, whether maintained electronically or manually ("Records") pertinent to its use and operation of the Licensed Space. Records shall be maintained in accordance with generally accepted accounting principles and, if the Licensee is a non-profit entity and receives any local, state or federal funds, must comply with the accounting guidelines set forth by the local, state and/or federal agency. The Licensee shall maintain the Records for a period of six (6) years following termination or expiration of this Agreement. Such Records shall at all times be available for audit and inspection by the City Comptroller, the City Manager, any other governmental authority with jurisdiction over the administration of the Licensed Space and the payment therefore, and any of their duly designated representatives. Licensee further agrees to provide a response to any request from the Licensor's Records Access/FOIL Officer.

10. Assignment and Subletting. Licensee shall not assign this Agreement or any interest in it, nor sublicense the Licensed Space or any part of it or any right or privilege, nor permit the occupancy or use of any part of it by any other person or entity, without the prior written consent of Licensor, which may be withheld or conditioned in Licensor's sole discretion. In the event of any permitted assignment or sublicense, Licensee shall remain liable to Licensor for performance of all of the terms and conditions of this Agreement. Consent by the Licensor to an assignment or sublicense shall not be a consent to subsequent assignment or sublicense.

11. Taxes. The Property is exempt from real property taxes. Licensee shall be responsible for the payment of all taxes applicable to the operation of its program conducted in the Licensed Space.

12. Rules and Regulations. Licensor reserves the right to adopt rules and regulations with respect to the Licensed Space. Said rules and regulations as may be adopted shall apply to Licensee and Licensee hereby agrees to be bound thereby and to cooperate as to their enforcement by Licensor and to disseminate or communicate them to its employees, instructors, agents, representatives, invitees and volunteers. Smoking and drinking alcohol is not permitted at, near or on the Property. Licensee shall take all reasonable steps to enforce said policies.

13. Notices. All notices hereunder shall be in writing and shall be delivered in person or sent by registered or certified mail, postage prepaid, or by nationally-recognized overnight courier to the address of the other party as set in the preamble to this Agreement or to such other address as such party shall have designated. Any notice shall be deemed received upon delivery, if delivered in person, three (3) days after deposit with the United States Postal Service, if sent by registered or certified mail, postage prepaid, and the next day after deposit with the nationally-recognized overnight courier, if sent by nationally-recognized overnight courier.

14. Independent Contractor. In performing, directing, or otherwise managing its

respective duties and obligations hereunder, Licensee shall be deemed to be acting as an independent contractor and nothing herein shall be considered or deemed to establish or otherwise create a relationship of employer and employee, principal and agent, partnership, agency, or joint venture as between the parties, or between either party and any employee or subcontractor of the other party. Each party shall at all times maintain complete control over its employees and operations, including the activities of its instructors, agents, representatives, invitees and volunteers and shall be responsible for all payments to and claims by any of its employees, instructors, agents, representatives, invitees and volunteers in connection with the program(s) operated by Licensee in the Licensed Space.

15. Entry and Inspection. Licensor and its agents may enter upon the Licensed Space at any time and for any purpose, including to assess Licensee's compliance with the terms of this Agreement. In the event Licensor or its agents find violations damages may be assessed to the Licensee and/or its participants for each violation.

16. Limitations of Licensor's Liability. The Licensor shall not be liable for any damage or injury to the Licensed Space, or any person therein, or to goods, wares, merchandise or property of the Licensee, or of any other person contained therein, done or occasioned by or from, unless the aforesaid occurs as a result of the negligence of the Licensor.

17. Expiration of Term. Upon expiration or earlier termination of this Agreement, Licensee shall immediately vacate the Licensed Space and leave the Licensed Space in the same condition as it existed upon execution of this Agreement, excepting reasonable wear and tear.

18. Miscellaneous.

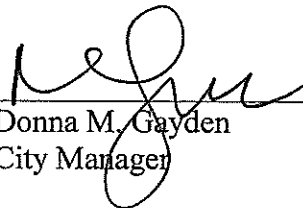
- a. *Entire Agreement.* This Agreement sets forth all the promises, agreements and understandings between the parties with respect to the subject matter hereof. It is further agreed that any amendment or modification to this Agreement shall not be binding unless such amendment or modification is reduced to writing and signed by all of the parties hereto.
- b. *Governing Law.* Any controversy or claim arising from or relating in any way to this Agreement shall be governed and controlled by the laws of the State of New York.
- c. *Invalidity of Particular Provision.* If any term or provision of this Agreement or the application hereto to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- d. *Paragraph Headings.* The paragraph headings in this Agreement are for convenience only and shall not limit or be deemed to construe or interpret the terms and provisions of this Agreement.

- e. *Counterparts*. This Agreement may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. PDF signatures shall be treated as original signatures for all purposes hereunder.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the date first set forth above.

LICENSOR:

CITY OF LONG BEACH

By:  _____
Donna M. Gayden
City Manager

LICENSEE:

EVOLUTIONS VOLLEYBALL, INC.

By:  _____

Name: Sean Villanueva

Title: Owner