

City of Pompano Beach

LICENSE AGREEMENT No. 1840

with

Living Water Surf School LLC

INDEX OF EXHIBITS

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THIS LICENSE AGREEMENT (“Agreement”), entered into on _____, by and between:

CITY OF POMPANO BEACH, a municipal corporation located in Broward County, Florida (hereinafter “CITY”),

and

LIVING WATER SURF SCHOOL LLC, a Florida Limited Liability Company (hereinafter “LICENSEE”).

WHEREAS, LICENSEE desires to utilize the City’s Public Beach, 10 N Pompano Beach Blvd, Pompano Beach, FL 33062 (the “Property”) to provide instruction in ocean awareness and surfing fundamentals (collectively the “Program” described in Exhibit A, Scope of Authorization);

WHEREAS, CITY has determined that entering into this Agreement with LICENSEE to provide Program at the Property is in the best interest of the public; and

WHEREAS, CITY and LICENSEE desire to enter into this Agreement setting forth the parties’ mutual understandings and undertakings.

NOW, THEREFORE, in consideration of the conditions, covenants and mutual promises herein contained, CITY and LICENSEE agree as follows.

**ARTICLE 1
REPRESENTATIONS**

A. **Representations of CITY.** CITY makes the following representations to LICENSEE, which CITY acknowledges LICENSEE has relied upon in entering into this Agreement.

1. This Agreement is a valid, binding and permissible activity within the power and authority of the CITY and does not violate any CITY Code, Charter provision, rule, resolution, ordinance, policy or agreement of the CITY or constitute a default of any agreement or contract to which the CITY is a party.

2. The individuals executing the Agreement on behalf of the CITY are duly authorized to take such action, which action shall be, and is, binding upon the CITY.

3. LICENSEE shall be entitled to rely upon the accuracy and completeness of any information supplied by CITY or by others authorized by the CITY’s Recreation Program Administrator.

B. ***Representations of LICENSEE.*** LICENSEE makes the following representations to CITY, which CITY relies upon in entering into this Agreement.

1. LICENSEE is a Florida Limited Liability Company duly organized, existing and in good standing under the laws of the State of Florida with the power and authority to enter into this Agreement.

2. LICENSEE's execution, delivery, consummation and performance under this Agreement will not violate or cause LICENSEE to be in default of any provisions of its governing documents, rules and regulations or any other agreement to which LICENSEE is a party or constitute a default thereunder or cause acceleration of any obligation of LICENSEE thereunder.

3. The individual executing this Agreement and related documents on behalf of LICENSEE is duly authorized to take such action which action shall be, and is, binding on LICENSEE.

4. There are no legal actions, suits or proceedings pending or threatened against or affecting LICENSEE or its principals that LICENSEE is aware of which would have any material effect on LICENSEE's ability to perform its obligations under this Agreement.

5. LICENSEE represents it has the ability, skill and resources to complete its requisite responsibilities under this Agreement.

6. CITY shall be entitled to rely upon the professional administrative, management and interpersonal skills of LICENSEE or others authorized by LICENSEE under this Agreement.

7. LICENSEE represents and warrants it has and will continue to maintain all licenses and approvals required to conduct business and provide services under this Agreement and that it will at all times conduct its activities in a professional, reputable manner.

8. LICENSEE agrees to be bound by all terms, conditions, duties, obligations and specifications set forth in this Agreement.

ARTICLE 2 NON-ASSIGNABILITY AND SUBCONTRACTING

A. This Agreement is not assignable and LICENSEE agrees it shall not sell, assign, transfer, merge or otherwise convey any of its interests, rights or obligations under this Agreement, in whole or in part, to any other person, corporation or entity without prior written approval from CITY.

B. Any attempt by LICENSEE to assign or transfer any of its rights or obligations under this Agreement without first obtaining CITY's written approval shall result in CITY's immediate cancellation of this Agreement. Specifically, no formal assignment of any right or

obligation under this Agreement shall be binding on CITY without the formal written approval of the City Commission of Pompano Beach.

C. This Agreement and the rights and obligations therein shall not be assignable or transferable by any process or proceeding in court, or by judgment, execution, proceedings in insolvency, bankruptcy or receivership. In the event of LICENSEE's insolvency or bankruptcy, CITY may, at its option, terminate and cancel this Agreement without any notice of any kind whatsoever, in which event all rights of LICENSEE hereunder shall immediately cease and terminate.

D. Nothing herein shall be construed to create any personal liability on the part of CITY, its agents, officers or employees nor shall it be construed as granting any rights or benefits hereunder to anyone other than CITY and LICENSEE.

ARTICLE 3 TERM AND RENEWAL

The term of this Agreement is for one (1) year and shall commence upon execution by both parties.

In the event City determines the LICENSEE to be in full compliance with this Agreement and LICENSEE's performance to be satisfactory, then City, with City Commission approval, shall have the option to renew this Agreement for an additional two (2) periods of one (1) year upon the written consent of both the City and the LICENSEE, and provided that City will provide notification within sixty (60) days of termination date of its intention.

ARTICLE 4 INSURANCE

LICENSEE shall maintain insurance in the amounts and subject to all conditions set forth in Exhibit B and shall not commence operations under this Agreement until proof of insurance detailing the terms and provisions of coverage has been received and approved in writing by the CITY's Risk Manager, which approval shall not be unreasonably withheld.

ARTICLE 5 PUBLIC RECORDS PROCEDURES

Public Records.

1. The CITY of Pompano Beach is a public agency subject to Chapter 119, Florida Statutes. The LICENSEE shall comply with Florida's Public Records Law, as amended. Specifically, the LICENSEE shall:

a. Keep and maintain public records required by the CITY in order to perform the service.

b. Upon request from the CITY's custodian of public records, provide the CITY with a copy of requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.

c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the LICENSEE does not transfer the records to the CITY.

d. Upon completion of the Agreement, transfer, at no cost to the CITY, all public records in possession of the LICENSEE, or keep and maintain public records required by the CITY to perform the service. If the LICENSEE transfers all public records to the CITY upon completion of the Agreement, the LICENSEE shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the LICENSEE keeps and maintains public records upon completion of the contract, the LICENSEE shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY's custodian of public records in a format that is compatible with the information technology systems of the CITY.

2. Failure of the LICENSEE to provide the above described public records to the CITY within a reasonable time may subject LICENSEE to penalties under 119.10, Florida Statutes, as amended.

PUBLIC RECORDS CUSTODIAN

IF THE LICENSEE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE LICENSEE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**CITY CLERK
100 W. Atlantic Blvd., Suite 253
Pompano Beach, Florida 33060
(954) 786-4611
RecordsCustodian@copbfl.com**

**ARTICLE 6
RECORDKEEPING, INSPECTION AND AUDIT**

LICENSEE shall use such accounting methods and procedures as may be prescribed by CITY, in accordance with generally accepted accounting principles, which shall include but not be limited to, those methods and procedures set forth in this Article and in Exhibit C.

**ARTICLE 7
RESPONSIBILITIES OF LICENSEE**

A. LICENSEE shall organize and conduct the Program described in Exhibit A consistent with CITY policies which specifically require that LICENSEE at all times perform its obligations hereunder in a professional manner and also develop and adhere to written protocols to ensure public resources are properly tracked and appropriated.

LICENSEE agrees to follow the policies of the CITY's Recreation Programs Administrator but in the absence thereof, LICENSEE shall exercise reasonable judgment in discharging its duties hereunder. LICENSEE understands and agrees that LICENSEE shall plan, administer, pay for and coordinate all aspects of the Program, including, but not limited to, all required staffing, tools and materials.

B. *LICENSEE's Responsibility for Damage or Loss of CITY Property.* A representative of the CITY and LICENSEE shall inspect and document by photographs the condition of the Property prior to set up and after cleanup of Program. CITY expects the Property to be restored to the same condition which existed prior to set up of the Program.

If the Property or any portion thereof, or any structure attached thereto, or any equipment, fixture, or other item located thereon, including the grass or asphalt, shall be destroyed, damaged, marred, altered, or physically changed during the term in any manner whatsoever, then CITY will take the necessary remedial action to cause such repair or replacement to occur and LICENSEE shall pay CITY for any such expenditures within two (2) weeks after receipt of CITY's written invoice for same.

C. *LICENSEE Responsible for all Contracts.* LICENSEE agrees to be solely responsible for all contracts or agreements of any nature for the Program. All contracts shall be negotiated by LICENSEE and secured at LICENSEE's sole expense. CITY shall not be named as a party in any contract and CITY shall have no obligation to ensure payment to any individual or entity for goods and/or services provided in conjunction with the Program.

D. *Required Licenses, Permits and Authorizations.* LICENSEE, at its sole expense, shall obtain all required federal, state, local and other governmental approvals, as well as all necessary private authorizations and permits required attendant to LICENSEE's performance hereunder and provide CITY a copy of same a minimum of three (3) business days prior to set up of the Program on the Property. Ignorance on LICENSEE's part of any applicable laws, regulations or required authorizations shall not relieve LICENSEE from this responsibility.

LICENSEE represents and warrants that prior to the start of the Program, LICENSEE shall have secured all necessary licenses for conducting the Program. LICENSEE shall be responsible for any fees or dues for said licenses, and shall ensure that all payments are made directly and appropriately to the licensing organizations. CITY shall have no responsibilities to any licensing organization for the conduct of the Program.

If applicable LICENSEE shall provide sanitary and food facilities in accordance with applicable laws and regulations of the Florida Department of Environmental Protection and the Broward County Health Department. If LICENSEE is unable to obtain all necessary licenses, permits or other authorizations in a timely manner, either party may elect to terminate this Agreement and CITY shall be reimbursed for any in-kind services it has incurred to date.

E. *Compliance With all Laws.* In the conduct of its activities under this License Agreement, LICENSEE shall comply with all applicable federal and state laws and regulations and all applicable county and city ordinances and regulations, including, but not limited to, compliance with the Americans with Disabilities Act. Ignorance on LICENSEE's part of any applicable laws and regulations shall in no way relieve LICENSEE from this responsibility.

F. *Emergency Access.* LICENSEE agrees to provide any and all emergency access required by the CITY and its employees for the safety and welfare of the community and those attending the activities. If, in the course of LICENSEE's operations, CITY or its officers, agents and employees become aware of any condition on the Property which may be dangerous, upon being notified, LICENSEE shall immediately correct such condition or cease operations so as not to endanger persons or property.

G. LICENSEE, its subcontractors, vendor and other agents shall be responsible to pay any and all sales taxes and other charges of any nature or kind, which may be assessed against their provision of goods and services under this Agreement. Proof of such sales tax payments shall be submitted to the CITY's Recreation Program Administrator upon request.

H. LICENSEE is responsible for hiring and managing its own staff, subcontractor and other agents, all of which shall be a minimum of eighteen (18) years old, under LICENSEE's exclusive direction and control and not deemed agents or employees of the CITY. At its sole discretion, and upon request by LICENSEE, the CITY reserves the right to approve LICENSEE's hiring of staff under eighteen (18) years old. LICENSEE shall be responsible for any and all work authorization(s) for its staff under eighteen (18).

I. LICENSEE shall be solely responsible for compensating its employees, representative and other agents and complying with all federal, state and local laws, ordinances and regulations pertaining to employment of such persons, including, but not limited to, provision of workers' compensation insurance and any other benefits required by law.

J. LICENSEE shall be responsible to ensure that all its employees, staff or other agents are suitable for employment in a municipal facility in terms of general character, knowledge, ability, manner and conduct.

K. LICENSEE shall maintain, and be required to verify, that it operates a “Drug Free Workplace” as set forth in § 287.087, Florida Statutes.

L. LICENSEE shall utilize the Property exclusively for the activities described herein. In addition, LICENSEE shall not allow any part thereof to be used for any immoral or illegal purposes, nor allow, suffer or permit the Property to be used for any unlawful purpose, business, activity, use or function to which the CITY objects, including gambling.

M. LICENSEE shall immediately inform the CITY's Recreation Program Administrator of any repairs or maintenance necessary to keep the PROPERTY in good and safe condition.

N. LICENSEE shall promptly respond to concerns raised by Program patrons and the CITY's agents hereunder and timely take appropriate action as warranted by the circumstances.

O. LICENSEE is responsible for any fees, taxes or levies imposed as a result of this Agreement.

P. LICENSEE shall verify that its employees are authorized to work in the U.S. and certifies that a good faith effort has been made to properly identify employees by timely reviewing and completing appropriate documentation, including but not limited to the Department of Homeland Security, U.S. Citizenship, and Immigration Services Form I-9. Answers to questions regarding E-Verify as well as instructions on enrollment may be found at the E-Verify website: www.uscis.gov/e-verify.

Q. LICENSEE shall provide sufficient background information and releases to CITY should CITY, in its sole discretion and at its sole cost, desire to perform a background check on any employee or other agent of LICENSEE hereunder. CITY, in its sole discretion, reserves the right to refuse to permit any employee or agent of LICENSEE, or any of its employees, volunteers, or other agents to provide services under this Agreement. LICENSEE's failure to comply with the obligations of this paragraph shall be deemed a material breach of this Agreement. Furthermore, because this program interacts with minors, LICENSEE, its employees, volunteers; subcontractors and all other agents providing services under this Agreement shall comply with the CITY's Youth Programs Background Screening Policy as set forth in Exhibit D, attached hereto and made a part hereof. At least one week prior to LICENSEE or any of its agents providing services under this Agreement, LICENSEE shall provide the CITY's Contract Administrator a completed and fully-executed Release on all such persons so that CITY, at the cost of LICENSEE, can conduct the background checks required hereunder. CITY reserves the right to refuse to permit LICENSEE or any of its agents to provide services under this Agreement based upon the grounds for disqualification as stated in the Youth Programs Background Screening Policy.

R. By entering into this Agreement, the LICENSEE becomes obligated to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility." This includes but is not limited to utilization of the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit attesting

that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Failure to comply will lead to termination of this Contract, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit or County Court no later than 20 calendar days after the date of termination. If this contract is terminated for a violation of the statute by the LICENSEE, the LICENSEE may not be awarded a public contract for a period of 1 year after the date of termination.

ARTICLE 8 RESPONSIBILITIES OF CITY

CITY is responsible to maintain the Property and surrounding outdoor areas, including the building systems (E.g. plumbing, electrical, painting, ceilings, walls, floors, roof, public restrooms, etc.) and general maintenance (E.g. shrubbery and lawn care, garbage pickup, etc.); however, the foregoing provisions are in no way intended to absolve LICENSEE from the responsibilities set forth in Article 7.

ARTICLE 9 MISCELLANEOUS TERMS AND CONDITIONS

A. *Articles Left on Premises.* LICENSEE understands and agrees that the CITY shall not in any way be responsible for any personal property of patrons of the Program or LICENSEE, its sub-contractors or other agents left on the Property and that LICENSEE bears any and all risk of loss. Any article(s) remaining on the Property at the conclusion of the Program shall become the property of the CITY.

B. *CITY's Right to Make Improvements, Modify the Property and the Number and Manner of Streets Closures.* Throughout the term of this license and notwithstanding any other term or condition herein, CITY retains the right, in its sole discretion, to modify and reconfigure the Property, including, but not limited to, attendant green and open space areas and the public right-of-way. Specifically, both parties agree that the public right-of-way and open and green space areas may be temporarily or permanently relocated, reconfigured, modified or closed at CITY's sole discretion. LICENSEE agrees to make adjustment to any such changes implemented by CITY.

ARTICLE 10 INDEMNIFICATION OF CITY

A. LICENSEE shall at all times indemnify, hold harmless and defend the CITY its officials, officers, its authorized agents and employees hereunder from and against any and all claims, demands, suit, damages, attorneys' fees, fines, penalties, defense costs or liabilities arising directly, indirectly or in connection with this agreement and with LICENSEE's officers, staff or other agents' actions, negligence or misconduct under this Agreement whether same occurs or the cause arises on or away from the Property except that LICENSEE shall not be liable under this Article for damages arising out of injury or damage to persons or Property arising from the negligence, gross negligence or willful misconduct of the CITY, any of its officers, agents or

employees. LICENSEE agrees to investigate, handle, respond to, provide defense for, and defend any such claims at its sole expense and to bear all costs and expenses related thereto, even if the claim(s) is/are groundless, false or fraudulent. The foregoing indemnification shall not be operative as to any claims by LICENSEE for any causes of action LICENSEE has or may have for breaches or defaults by the CITY under this Agreement.

B. The parties agree that the value of the benefits received by LICENSEE under this agreement shall constitute specific consideration by LICENSEE for the indemnification to be provided herein. LICENSEE acknowledges and agrees that neither party would enter into this Agreement without this indemnification of CITY by LICENSEE.

C. LICENSEE shall be solely responsible for insuring all stock, inventory, monies or other personal Property at the Property against damage or loss of any nature or kind. LICENSEE acknowledges and agrees that CITY assumes no responsibility whatsoever for any personal property placed at the Property and, with the exception of damages or loss suffered as a result of CITY's negligence, CITY is hereby expressly released and forever discharged from any and all liability for any loss, injury or damage to persons or property which may be sustained by reason of LICENSEE's presence and occupancy at the Property.

D. The indemnification provisions of this Article shall survive the expiration or early termination of this Agreement.

ARTICLE 11 USE OF PREMISES

Both CITY and LICENSEE agree that LICENSEE is authorized to utilize the designated city facilities for operation of its Program or Event(s) as described herein. CITY shall not be liable for any wages, salaries, debts, liabilities or other obligations for LICENSEE's employees, agents or other representatives performing obligations of LICENSEE hereunder. Except as otherwise provided hereunder, neither party is the agent of the other nor is authorized to act on behalf of the other in any matter.

ARTICLE 12 NO DISCRIMINATION

During the performance of this Agreement, LICENSEE agrees not to discriminate against any person on the basis of race, color, religion, sex, age, national origin, ancestry, marital status, physical or mental disability. However, with justifiable cause, LICENSEE maintains the right to refuse patrons or its agents hereunder from participation in the Program.

ARTICLE 13 PUBLIC ENTITY CRIMES ACT

Through execution of this Agreement and in accordance with Section 287.133, Florida Statutes, LICENSEE certifies that it is not listed on the convicted vendors list maintained by the State of Florida, Department of General Services.

**ARTICLE 14
NOTICES AND DEMANDS**

Whenever it is provided herein that notice, demand, request, or other communication shall or may be given to, or served upon, either of the parties by the other, it must be in writing, sent by certified United States mail with return receipt requested, addressed to the party to whom it is intended at the places designated below until changed by written notice in compliance with the provisions of this Article. For the present, the parties designate the following respective places for giving of notice, to-wit:

For CITY:

CITY Manager
P.O. Drawer 1300
Pompano Beach, Florida 33061
greg.harrison@copbfl.com
(954) 786-4601 office
(954) 786-4504 fax

With a copy to:

Recreation Program Administrator
1801 NE 6th Street
Pompano Beach, Florida 33060
mark.beaudreau@copbfl.com
(954) 786-4191 office
(954) 786-4113 fax

FOR LICENSEE:

Living Water Surf School LLC
Addr P.O. Box 8525
City Deerfield Beach, FL 33443
Email livingwatersurf@gmail.com
Ph 954-673-8933

**ARTICLE 15
GOVERNING LAW, VENUE AND WAIVER**

A. The Agreement shall be governed by the laws of the State of Florida, both as to interpretation and performance. CITY and LICENSEE submit to the jurisdiction of Florida courts and federal courts located in Florida. The parties agree that proper venue for any suit at law or in equity attendant to this Agreement shall be instituted and maintained only in courts of competent jurisdiction in Broward County, Florida.

B. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and in addition to every other remedy given herein, now or hereafter existing at law or in equity or by statute or otherwise.

C. Both Parties agree to waive trial by jury for any litigation between the Parties that may commence as a result of this Agreement.

**ARTICLE 16
CONTRACT ADMINISTRATOR**

A. The CITY's Recreation Program Administrator or his designee shall serve as the CITY's Contract Administrator during the performance of services under this Agreement.

B. William Zimmerman shall serve as LICENSEE's Contract Administrator during the performance of services under this Agreement.

**ARTICLE 17
NO CONTINGENT FEE**

LICENSEE warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for LICENSEE, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for LICENSEE any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

In the event of LICENSEE's breach or violation of this provision, the CITY shall have the right to terminate this Agreement without liability and, at CITY's sole discretion, to recover the full amount of such fee, commission, percentage, gift or consideration.

**ARTICLE 18
ATTORNEY'S FEES**

In the event of litigation between the parties, the prevailing party shall be entitled to recover all costs of collection, including a reasonable attorney's fees and court costs. The provisions of this paragraph shall survive termination of this Agreement.

**ARTICLE 19
FORCE MAJEURE**

Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented, delayed or stopped by fire, hurricane, earthquake, explosion, war, civil disorder, sabotage, accident, flood, acts of God, or act or order of a governmental instrumentality, failure of technical facilities, interruption or delay of transportation service, epidemic, pandemic, or public health emergencies (including any resurgence or re-occurrence) or by any reason of any other matter or condition beyond the control of either party which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall economic hardship or lack of funds be considered an event of force Majeure.

If either party is unable to perform or is prevented, delayed or stopped in performing any obligations under this Agreement because of any event of force majeure including an event that prevents the use or ability to use the Property for its intended purpose to the benefit of the public,

such inability to perform or delay shall be excused and any associated charges or payment suspended until such time as the event of force majeure ends or as long as may be reasonably necessary for either party to correct the adverse effect of such event of force majeure, to the extent and in the form as mutually agreed by the Parties.

In order to be entitled to the benefit of this Paragraph, a party claiming an event of Force Majeure shall be required to give prompt written notice to the other party after commencement or discovery of the event of force majeure, specifying in detail the event of force majeure, the estimated length of the event of force majeure, diligently proceed to correct the adverse effect of any force majeure, where possible, and, upon request from the non-claiming party, provide an update until the event of force majeure ends. The parties agree that, as to this Paragraph, time is of the essence.

ARTICLE 20 WAIVER AND MODIFICATION

A. Failure to insist upon strict compliance with any terms, covenants or conditions of this Agreement shall not be deemed a waiver of such, nor shall any waiver or relinquishment of such right or power at any time be taken to be a waiver of any other breach.

B. CITY and LICENSEE may request changes to modify certain provisions of this Agreement, including increasing or decreasing the scope of services to be provided. However, unless otherwise provided for herein, any such changes must be contained in a written amendment executed by both parties with the same formality of this Agreement.

ARTICLE 21 SEVERABILITY

Should any provision of this Agreement or the application of such provisions be rendered or declared invalid by a court action or by reason of any existing or subsequently enacted legislation, the remaining parts or provisions of this Agreement shall remain in full force and effect.

ARTICLE 22 APPROVALS

Whenever CITY approval(s) shall be required for any action under this Agreement, said approval(s) shall not be unreasonably withheld.

ARTICLE 23 ABSENCE OF CONFLICTS OF INTEREST

Both parties represent they presently have no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with their performance under this Agreement and that no person having any conflicting interest shall be employed or engaged by either party in their performance hereunder.

**ARTICLE 24
BINDING EFFECT**

The benefits and obligations imposed pursuant to this Agreement shall be binding and enforceable by and against the parties hereto.

**ARTICLE 25
LICENSE NOT LEASE**

Both parties acknowledge and agree this Agreement shall not be deemed a lease of the Property but rather a license granted to LICENSEE by CITY to provide the Program activities under the conditions and purposes expressed herein and shall not be construed to be a license to engage in any other business upon the licensed premises. LICENSEE understands and agrees that it takes the Property in "as is" condition.

**ARTICLE 26
TERMINATION**

A. *Termination for Cause.* Breach or default of any of the covenants, duties, or terms of this Agreement shall be cause for termination, in whole or in part, of this Agreement. In the event of a breach or default, the defaulting party shall be given written notice in accordance with Article 14 herein which describes in reasonable detail the alleged breach or default and ten (10) calendar days to cure same.

B. *Termination for Convenience of City.* Upon thirty (30) calendar days written notice in accordance with Article 14 herein delivered by certified mail, return receipt requested, to LICENSEE, CITY may without cause and without prejudice to any other right or remedy, terminate this Agreement for convenience whenever it determines that such termination is in the best interest of the CITY. If the Agreement is terminated for the CITY's convenience, the notice of termination to LICENSEE shall state so and also define the extent of the termination. Upon receipt of such notice, LICENSEE shall use commercially reasonable efforts to discontinue all services hereunder to the extent indicated on the notice of termination and CITY shall not be responsible for any costs LICENSEE incurs as a result of said termination for convenience.

C. *Termination for Safety.* CITY may terminate any activity of program held pursuant to this agreement upon the occurrence of any riot, violent disturbance or similar conduct, or hazardous weather condition, any of which threaten the immediate health or safety of the public or participants.

D. *Dispute Resolution.* If either party claims the other is in default of this Agreement, the parties may, but are not required to, timely schedule a conference or meeting and make every reasonable effort to reach an amicable resolution. Both parties shall be entitled to have representatives present at any such meeting or conference. In case of a failure to cure a breach or default, the defaulting party may appeal in writing to the CITY Manager for the CITY in accordance with this Article.

Upon receipt of said written appeal or demand, the CITY Manager for the CITY may request additional information relating to the dispute from either or both parties, which shall be provided within a reasonable time. Upon the CITY Manager's receipt and timely review of the disputed matter, the CITY Manager may make a decision regarding the alleged default, as he/she deems appropriate under the circumstances. If the CITY Manager's decision is not implemented within the deadline set forth therein, the forty-five (45) day advance written notice provision set forth in Article 14 herein shall not apply and it shall be lawful for either party to immediately terminate this Agreement in addition to any other remedies provided by law.

The default and dispute resolution process described in this Article is non-exclusive and without prejudice to the right of either party to pursue other remedies available at law.

**ARTICLE 27
NO WAIVER OF SOVEREIGN IMMUNITY**

Nothing in this Agreement shall constitute a waiver by the City of its sovereign immunity limits as set forth in section 768.28, Florida Statutes. Nothing herein shall be construed as consent from either party to be sued by third parties.

**ARTICLE 28
CITY'S RIGHT TO AUTHORIZE USE OF THE CITY PROPERTY**

The CITY, through its Recreation Programs Administrator, reserves the right to authorize use of the CITY Property for special group and /or City functions upon reasonable written notice to LICENSEE.

**ARTICLE 29
COUNTERPARTS**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A photocopy, email or facsimile copy of this Agreement and any signatory hereon shall be considered for all purposes as original.

**ARTICLE 30
NON-EXCLUSIVE LICENSE**

Licensee acknowledges and agrees that it is not acquiring any rights other than the non-exclusive right to use the Facility in accordance with the terms of this Agreement.

**ARTICLE 31
ENTIRE AGREEMENT AND INTERPRETATION**

This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and both parties agree there are no commitments, agreements or understandings concerning the subject

matter herein that are not contained in this Agreement. Accordingly, both parties agree no deviation from the terms herein shall be predicated upon any prior representations or agreements, whether oral or written.

Regardless of which party or party's counsel prepared the original draft and subsequent revisions of this Agreement, both CITY and LICENSEE and their respective counsel have had equal opportunity to contribute to and have contributed to its contents, and this Agreement shall not be deemed to be the product of, and therefore construed against either party.

It is further agreed the omission of a term or provision contained in an earlier draft of this Agreement shall have no evidentiary significance regarding the contractual intent of the parties and that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document agreed to and executed by authorized representatives of both parties with the same formality of this Agreement.

THE REMAINDER OF THE PAGE IS INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year hereinabove written.

Attest:

CITY OF POMPANO BEACH

KERVIN ALFRED, CITY CLERK

By: _____
REX HARDIN, MAYOR

APPROVED AS TO FORM:

By: _____
GREGORY P. HARRISON, CITY MANAGER

MARK E. BERMAN, CITY ATTORNEY

(SEAL)

"LICENSEE":

Witnesses:

Living Water Surf School LLC

[Signature]

[Signature]

Print Name

[Signature]

[Signature]

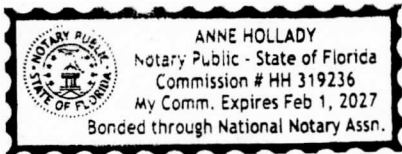
Print Name

By: [Signature]
William R. Zimmerman, Manager

STATE OF FLORIDA
COUNTY OF Broward

The foregoing instrument was acknowledged before me, by means of physical presence or online notarization, this 22 day of February, 2023 by William R. Zimmerman as Manager of Living Water Surf School LLC, a Florida limited liability company, on behalf of the company. He is personally known to me or who has produced _____ (type of identification) as identification.

NOTARY'S SEAL:



[Signature]
NOTARY PUBLIC, STATE OF FLORIDA

Anne Hollady
(Name of Acknowledger Typed, Printed or Stamped)

HH 319236
Commission Number

Exhibit A – Second Amendment Agreement
Scope of Authorization
Living Water Surf School LLC

A. Introduction/Background

The Living Water Surf School, LLC (“Licensee”) was founded in 2004 and is owned and operated by professional surfer William “Skeeter” Zimmerman. Skeeter and his staff of CPR/First Aid certified instructors offer a wide variety of programs to suit anyone’s surfing needs. Licensee instructs how to surf safely and with confidence, as well as valuable lessons about ocean awareness and ocean safety. Licensee is one of a select group of camps throughout the entire United States to receive the high honor of bearing the Quiksilver and Roxy names and the only one in Florida. Licensee looks forward to sharing their passion with new surfers of all ages as well as experienced surfers wishing to fine tune their skills.

B. Objectives

This program’s purpose is to support, promote and assist youth ages 5-16 individuals become confident in the ocean, build self-esteem and share the joy of surfing in the City of Pompano Beach (“City”).

C. Scope of Work

This program shall utilize North Ocean Park, 3424 NE 16th Street and the main public beach in City to operate the program. Beach pavilions four (4) and pavilion five (5) will be available for use by this program. This program provides instruction in ocean awareness and surfing fundamentals to include such topics as waves, tides, marine biology, coastal ecology, and beach profiles. Licensee shall provide:

- A safe environment for all campers
- Maintain a 1:5 ratio of instructors to Students
- All Instructors shall be certified in CPR and First Aid Certified and shall maintain that certification throughout the program duration
- Provide one (1) certified Lifeguard onsite during the duration of the program

D. Work Breakdown Structure

The term of this agreement shall be for one (1) year from the execution of the agreement by both parties. The summer program set up time shall begin no earlier than 7:00am and conclude no later than 5:00pm Monday through Friday beginning May 30, 2023 – August 25, 2023, and if additional days throughout the agreement year are requested, Licensee must provide a written request to be approved by the Recreation Programs Administrator or designee.

Exhibit A – Second Amendment Agreement
Scope of Authorization
Living Water Surf School LLC



E. Summary Schedule of Tasks and Deliverables

Compensation - Licensee shall pay the City a fee of \$4,800.00 payable one week prior to program's commencement as compensation for the use of the City's Property and services hereunder.

Inspection - An inspection will be conducted by the City prior to the program to ensure that the location is in accordance with the City approved site plan. When implementing the site plan Licensee shall ensure that no damage is done to landscaping or foliage of the Permitted Area.

Clean-up of Permitted Area - Licensee shall be responsible for clean-up of the Permitted Area during and after the program. Licensee shall further be responsible for the dismantling and removal of any supplies and equipment.

Parking - Licensee acknowledges that parking shall be available for the public during the event by use of the city's public parking areas and facilities and at no time will parking fees be waived.

Background Checks - Licensee, its employees, volunteers; subcontractors and all other agents providing services under this Agreement shall comply with the City's Youth Programs Background Screening Policy as set forth in Exhibit D. At least one week prior to Licensee or any of its agents providing services under this Agreement, Licensee shall provide the City's Contract Administrator a completed and fully-executed Release on all such persons so that City, at the cost of Licensee, can conduct the background checks required hereunder. City reserves the right to refuse to permit Licensee or any of its agents to provide services under this Agreement based upon the grounds for disqualification as stated in the Youth Programs Background Screening Policy.

EXHIBIT B

INSURANCE REQUIREMENTS: SUMMER CAMP

CONTRACTOR shall not commence services under the terms of this Agreement until certification or proof of insurance detailing terms and provisions has been received and approved in writing by the CITY's Risk Manager. If you are responding to a bid and have questions regarding the insurance requirements hereunder, please contact the City's Purchasing Department at (954) 786-4098. If the contract has already been awarded, please direct any queries and proof of the requisite insurance coverage to City staff responsible for oversight of the subject project/contract.

CONTRACTOR is responsible to deliver to the CITY for timely review and written approval/disapproval Certificates of Insurance which evidence that all insurance required hereunder is in full force and effect and which name on a primary basis, the CITY as an additional insured on all such coverage. **Such policy or policies shall be issued by United States Treasury approved companies authorized to do business in the State of Florida. The policies shall be written on forms acceptable to the City's Risk Manager, meet a minimum financial A.M. Best and Company rating of no less than Excellent, and be part of the Florida Insurance Guarantee Association Act. No changes are to be made to these specifications without prior written approval of the City's Risk Manager.**

Throughout the term of this Agreement, CITY, by and through its Risk Manager, reserve the right to review, modify, reject or accept any insurance policies required by this Agreement, including limits, coverages or endorsements. CITY reserves the right, but not the obligation, to review and reject any insurer providing coverage because of poor financial condition or failure to operate legally.

Failure to maintain the required insurance shall be considered an event of default. The requirements herein, as well as CITY's review or acceptance of insurance maintained by CONTRACTOR, are not intended to and shall not in any way limit or qualify the liabilities and obligations assumed by CONTRACTOR under this Agreement.

Throughout the term of this Agreement, CONTRACTOR and all subcontractors or other agents hereunder, shall, at their sole expense, maintain in full force and effect, the following insurance coverages and limits described herein, including endorsements.

A. Worker's Compensation Insurance covering all employees and providing benefits as required by Florida Statute, Chapter 440, regardless of the size of the company (number of employees) or the state in which the work is to be performed or of the state in which Contractor is obligated to pay compensation to employees engaged in the performance of the work. Contractor further agrees to be responsible for employment, control and conduct of its employees and for any injury sustained by such employees in the course of their employment.

B. Liability Insurance.

(1) Naming the City of Pompano Beach as an additional insured as City's interests may appear, on General Liability Insurance only, relative to claims which arise from Contractor's negligent acts or omissions in connection with Contractor's performance under this Agreement.

(2) Such Liability insurance shall include the following checked types of insurance and indicated minimum policy limits.

Type of Insurance

Limits of Liability

GENERAL LIABILITY:

Minimum \$1,000,000 Per Occurrence and \$2,000,000 Per Aggregate

* Policy to be written on a claims incurred basis

- XX comprehensive form bodily injury and property damage
- XX premises - operations bodily injury and property damage
- explosion & collapse hazard
- underground hazard
- XX products/completed operations hazard bodily injury and property damage combined
- XX contractual insurance bodily injury and property damage combined
- XX broad form property damage bodily injury and property damage combined
- XX independent contractors personal injury
- XX personal injury

- XX sexual abuse/molestation Minimum \$300,000 Per Occurrence and Aggregate

AUTOMOBILE LIABILITY:

Minimum \$1,000,000 Per Occurrence and \$2,000,000 Per Aggregate. Bodily injury (each person) bodily injury (each accident), property damage, bodily injury and property damage combined.

- XX comprehensive form Minimum \$10,000/\$20,000/\$10,000
- XX owned (Florida's Minimum Coverage)
- XX hired
- XX non-owned

REAL & PERSONAL PROPERTY

- comprehensive form Agent must show proof they have this coverage.
-

EXCESS LIABILITY	Per Occurrence	Aggregate	
___ other than umbrella	bodily injury and property damage combined	\$1,000,000	\$1,000,000

PROFESSIONAL LIABILITY	Per Occurrence	Aggregate	
___ * Policy to be written on a claims made basis		\$1,000,000	\$1,000,000

CONTRACTOR is required to provide professional liability if engineering and design is used.

(3) If Professional Liability insurance is required, Contractor agrees the indemnification and hold harmless provisions of Section 12 of the Agreement shall survive the termination or expiration of the Agreement for a period of three (3) years unless terminated sooner by the applicable statute of limitations.

C. Employer's Liability. CONTRACTOR and all subcontractors shall, for the benefit of their employees, provide, carry, maintain and pay for Employer's Liability Insurance in the minimum amount of One Hundred Thousand Dollars (\$100,000.00) per employee, Five Hundred Thousand Dollars (\$500,000) per aggregate.

D. Policies: Whenever, under the provisions of this Agreement, insurance is required of the CONTRACTOR, the CONTRACTOR shall promptly provide the following:

- (1) Certificates of Insurance evidencing the required coverage;
- (2) Names and addresses of companies providing coverage;
- (3) Effective and expiration dates of policies; and
- (4) A provision in all policies affording CITY thirty (30) days written notice by a carrier of any cancellation or material change in any policy.

E. Insurance Cancellation or Modification. Should any of the required insurance policies be canceled before the expiration date, or modified or substantially modified, the issuing company shall provide thirty (30) days written notice to the CITY.

F. Waiver of Subrogation. CONTRACTOR hereby waives any and all right of subrogation against the CITY, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then CONTRACTOR shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy which includes a condition to the policy not specifically prohibiting such an endorsement, or voids coverage should CONTRACTOR enter into such an agreement on a pre-loss basis.

EXHIBIT C

RECORDKEEPING, INSPECTION AND AUDIT PROCEDURES

LICENSEE shall use such accounting methods and procedures as may be prescribed by CITY, in accordance with generally accepted accounting principles, which shall include but not be limited to, those methods and procedures set forth in Agreement and in this Exhibit.

LICENSEE shall preserve and keep a true and accurate account of records, and agrees to make available locally at all reasonable times for CITY's inspection and audit, all such financial records and supporting documentation attendant to LICENSEE agreement and activities. Records shall include but not be limited to, all business records, bookkeeping/accounting records, receipts, invoices, bank statements, attendance rosters, financial/statistical records including all monies received attendant to LICENSEE activities under this agreement.

LICENSEE shall be required to record and preserve complete and accurate records attendant to this Agreement for a period of three (3) years after its termination or as otherwise required by applicable law(s), including the required retention period of the Florida Public Records Act, Chapter 119, of Florida Statutes as referenced in agreement. However, if an audit has been initiated and audit findings have not been resolved, the records shall be retained until resolution of the audit findings.

If such inspection or audit discloses a liability of fees, LICENSEE shall promptly pay the amount due within ten ((10) calendar days. If such liability exceeds three percent (3%) of the fees, LICENSEE shall pay CITY the full amount due and also pay for the cost of the CITY's audit within 10 calendar days.

Incomplete and incorrect entries in LICENSEE ' s records will be grounds for the CITY's rejection of any fees based upon such entries as well as termination of this Agreement.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
1/10/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER O2 Sports Insurance 110 E Broward Blvd, Suite 1700 Fort Lauderdale, FL. 33301	CONTACT NAME:		
	PHONE (A/C, No, Ext): 1-855-351-2020	FAX (A/C, No) 1-855-984-2379	
	E-MAIL ADDRESS: info@o2sportsinsurance.com		
	PRODUCER CUSTOMER ID:		
INSURED Living Water Surf School LLC 1511 SW 20 St Boca Raton, FL 33486	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: Vantapro Specialty Insurance Company		44768
	INSURER B:		
	INSURER C:		
	INSURER D:		
	INSURER E:		

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:	X		5077-0948-00	06/05/2022 12:01 AM	06/05/2023 12:01 AM	EACH OCCURRENCE	\$1,000,000
							DAMAGE TO RENTED PREMISES (Ea Occurrence)	\$300,000
							MED EXP (Any one person)	Excluded
							PERSONAL & ADV INJURY	\$1,000,000
							GENERAL AGGREGATE	\$3,000,000
							PRODUCTS - COMP/OP AGG	\$1,000,000
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	
	<input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						BODILY INJURY (Per person)	
							BODILY INJURY (Per accident)	
							PROPERTY DAMAGE (Per accident)	
	UMBRELLA LIAB						EACH OCCURRENCE	
	<input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION						AGGREGATE	
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY		N/A				PER STATUTE <input type="checkbox"/> OTHER <input type="checkbox"/>	
	<input type="checkbox"/> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. EACH ACCIDENT	
							E.L. DISEASE - EA EMPLOYEE	
							E.L. DISEASE - POLICY LIMIT	

APPROVED
By Danielle Thorpe at 5:15 pm, Jun 09, 2022

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Sexual Abuse or Sexual Molestation Liability - \$500,000 each occurrence (included above)/\$500,000 aggregate (included above)
The certificate holder is added as an additional insured, but only for liability caused, in whole or in part, by the acts or omissions of the named insured. All policy terms and conditions apply.
Activites Include: Watersports, Surfing,snorkeling,and beach games.

CERTIFICATE HOLDER City of Pompano Beach 100 W. Atlantic Blvd. Pompano Beach, FL. 33060	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <i>Kandace Kalin</i>
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Coverage is only extended to U.S. events and activities.

**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY**

INFORMATION PAGE WC 00 00 01 (A)

APPROVED

Thorpe
By Danielle Thorpe at 5:52 pm, Jun 09, 2022

POLICY NUMBER: (6FR13UB-6G46880-5-22)

RENEWAL OF (6FR13UB-6G46880-5-21)

INSURER: FLORIDA W.C. JUA

NCCI CO CODE: 80179

1.

INSURED:

LIVING WATER SURF SCHOOL LLC
C/O WILLIAM ZIMMERMAN
1511 SW 20TH ST
BOCA RATON FL 33486

PRODUCER:

ATLANTIC PACIFIC INS INC
11312 PROSPERITY FARMS RD
123
PALM BEACH GARDENS FL 33410

Insured is a **A LIMITED LIABILITY COMPANY**

Other work places and identification numbers are shown in the schedule(s) attached.

2. The policy period is from 05-07-22 to 05-07-23 12:01 A.M. at the insured's mailing address.

3. **A. WORKERS COMPENSATION INSURANCE:** Part One of the policy applies to the Workers Compensation Law of the state(s) listed here:

FL

B. EMPLOYERS LIABILITY INSURANCE: Part Two of the policy applies to work in each state listed in item 3.A. The limits of our liability under Part Two are:

Bodily Injury by Accident:	\$	1000000	Each Accident
Bodily Injury by Disease:	\$	1000000	Policy Limit
Bodily Injury by Disease:	\$	1000000	Each Employee

C. OTHER STATES INSURANCE: Part Three of the policy applies to the states, if any, listed here:

SEE ENDORSEMENT FWCJUA 03 01

D. This policy includes these endorsements and schedules:

SEE LISTING OF ENDORSEMENTS - EXTENSION OF INFO PAGE

4. The premium for this policy will be determined by our Manual of Rules, Classifications, Rates and Rating Plans. All required information is subject to verification and change by audit. **ANNUALLY.**

DATE OF ISSUE: 04-28-22 MC

ST ASSIGN: FL

OFFICE: RMD FWCJUA 821

PRODUCER: ATLANTIC PACIFIC INS INC

253HR

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