

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EMERYVILLE APPROVING ASSIGNMENT OF THE SPORT FISHING CONCESSION AGREEMENT BETWEEN THE CITY OF EMERYVILLE AND CRAIG STONE TO ANDREW GUILIANO AND AUTHORIZING THE CITY MANAGER TO EXECUTE WRITTEN APPROVAL OF ASSIGNMENT

WHEREAS, the City of Emeryville and Craig Stone ("Stone") entered into that certain Sport Fishing Center Concession Agreement ("Agreement") on January 1, 2002, for a ten year term expiring on December 31, 2011; and

WHEREAS, on December 21, 2011, the Parties executed a Month-to-Month Extension of the Agreement, in which the Parties agreed to continue the terms of the Agreement on a month-to-month basis; and

WHEREAS, on September 6, 2016, the City Council held a duly noticed public hearing in which the Council considered the staff report and its attachments, staff presentation and testimony taken at a public hearing ("Record"); and

WHEREAS, due to the status of Stone's health, the Parties wish to allow for Stone to assign his rights and obligations under the Agreement under the same terms and conditions of the Agreement to Andrew Guiliano ("Guiliano"); and therefore be it

RESOLVED, based on the Record, the City Council of the City of Emeryville hereby makes the following findings:

1. Based on Stone's health status, there is good cause to waive the requirement that Stone provide at least ninety (90) days' written notice of his intent to assign the Agreement to the City prior to doing so; and
2. Given his prior experience in assisting Stone with the Agreement, Guiliano has demonstrated the ability to perform the obligations as required by the Agreement; and
3. There is no substantial evidence to support a finding that Stone is in breach of the Agreement, and to the extent there was a breach, there is good cause to waive this requirement due to Stone's declining health; and
4. The objection lodged by Mr. Boudames of Comp Express, Inc. is not material on the basis that:
 - a. The purchase and sale agreement provided by Mr. Boudames is an agreement between Emeryville Sport Fishing, signed by Mr. Stone in his capacity as an officer for the company, which is contrast to the Agreement executed by Stone in his individual capacity.

- b. Under section 1.1.3 of the purchase and sale agreement, only permits and licenses, to the extent the seller's rights in such licenses are transferable, are included in the purchase and sale agreement.
- c. Per the terms of section 6 of the Agreement, the Agreement is not transferrable without City approval and terminates upon transfer to a third party without the consent of the City.
- d. It is unclear whether the Agreement falls under the definition of license and permit as used in the purchase and sale agreement.

AND FURTHER RESOLVED, the City Council of the City of Emeryville approves of the assignment of the Agreement from Stone to Guiliano and authorizes the City Manager to execute written approval of the assignment in a form, attached hereto as Attachment A, on behalf of the City.

ADOPTED, by the City Council of the City of Emeryville at a regular meeting held Tuesday, September 6, 2016, by the following vote:

AYES:
NAYES:
ABSTAIN:
ABSENT:

ATTEST:

MAYOR

APPROVED AS TO FORM:



CITY CLERK

CITY ATTORNEY

ASSIGNMENT AGREEMENT

This ASSIGNMENT AGREEMENT made this September __, 2016 by and between Byron Stone (by power of attorney from his brother Craig Stone included as Exhibit “A” to this Agreement) (hereinafter referred to as “Assignor”), and Andrew Guiliano of Pleasant Hill, California (hereinafter referred to as “Assignee”), in consideration of the mutual covenants herein contained and other good and valuable consideration, the sufficiency of which is hereby acknowledged, witnesseth:

WHEREAS, Assignor entered into a Contract (included as Exhibit B to this Agreement and incorporated by reference) named “Sport Fishing Center Concession Agreement”, hereinafter referred to as Contract between Byron Stone (by power of attorney from Craig Stone) and the City of Emeryville, a municipal corporation in the state of California (“City”).

WHEREAS, on December 21, 2011, pursuant to Section 5 of the of the Contract, the parties agreed in writing to extend the term of the Contract on a month to month basis, and a copy of said writing is attached here to as Exhibit C and incorporated by reference.

WHEREAS, Assignor wishes to assign all of his rights and obligations under the Contract to Assignee.

WHEREAS, assignment of the Contract to Assignee requires the approval of the City.

WHEREAS, on September 6, 2016, the City Council of the City of Emeryville held a duly noticed public hearing to consider whether to approve said assignment.

WHEREAS, at the conclusion of said public hearing, the City Council of the City of Emeryville adopted Resolution No. __ approving the assignment and authorizing the City Manager to execute written approval of the assignment.

Now, therefore, Assignor and Assignee agree as follows:

1. Assignor and Assignee hereby agree that Assignor shall assign all its rights, title and interest and shall delegate all of its obligations responsibilities and duties, in and to the Contract, to Assignee.
2. Assignee hereby accepts the assignment of all of Assignor's obligations, responsibilities and duties under the Contract and all of Assignors rights, title and interest in and to the Contract.
3. All other provisions of the Contract shall remain in full force and effect and this Assignment Agreement shall remain subject to said promises.

IN WITNESS WHEREOF the Assignor and Assignee have executed this Assignment Agreement, which shall become effective as of the date the City Manager executes said agreement on behalf of the City.

Byron Stone Date
ASSIGNOR

Andrew Guiliano Date
ASSIGNEE

It is so approved.

CITY OF EMERYVILLE

Carolyn Lehr, City Manager

Approved as to form:



Michael Guina, City Attorney

CALIFORNIA GENERAL DURABLE POWER OF ATTORNEY

**THE POWERS YOU GRANT BELOW ARE EFFECTIVE
ONLY IF YOU BECOME DISABLED OR INCOMPETENT**

CAUTION: A DURABLE POWER OF ATTORNEY IS AN IMPORTANT LEGAL DOCUMENT. BY SIGNING THE DURABLE POWER OF ATTORNEY, YOU ARE AUTHORIZING ANOTHER PERSON TO ACT FOR YOU, THE PRINCIPAL. BEFORE YOU SIGN THIS DURABLE POWER OF ATTORNEY, YOU SHOULD KNOW THESE IMPORTANT FACTS: YOUR AGENT (ATTORNEY-IN-FACT) HAS NO DUTY TO ACT UNLESS YOU AND YOUR AGENT AGREE OTHERWISE IN WRITING. THIS DOCUMENT GIVES YOUR AGENT THE POWERS TO MANAGE, DISPOSE OF, SELL, AND CONVEY YOUR REAL AND PERSONAL PROPERTY, AND TO USE YOUR PROPERTY AS SECURITY IF YOUR AGENT BORROWS MONEY ON YOUR BEHALF. THIS DOCUMENT DOES NOT GIVE YOUR AGENT THE POWER TO ACCEPT OR RECEIVE ANY OF YOUR PROPERTY, IN TRUST OR OTHERWISE, AS A GIFT, UNLESS YOU SPECIFICALLY AUTHORIZE THE AGENT TO ACCEPT OR RECEIVE A GIFT. YOUR AGENT WILL HAVE THE RIGHT TO RECEIVE REASONABLE PAYMENT FOR SERVICES PROVIDED UNDER THIS DURABLE POWER OF ATTORNEY UNLESS YOU PROVIDE OTHERWISE IN THIS POWER OF ATTORNEY. THE POWERS YOU GIVE YOUR AGENT WILL CONTINUE TO EXIST FOR YOUR ENTIRE LIFETIME, UNLESS YOU STATE THAT THE DURABLE POWER OF ATTORNEY WILL LAST FOR A SHORTER PERIOD OF TIME OR UNLESS YOU OTHERWISE TERMINATE THE DURABLE POWER OF ATTORNEY.

THE POWERS YOU GIVE YOUR AGENT IN THIS DURABLE POWER OF ATTORNEY WILL CONTINUE TO EXIST EVEN IF YOU CAN NO LONGER MAKE YOUR OWN DECISIONS RESPECTING THE MANAGEMENT OF YOUR PROPERTY. YOU CAN AMEND OR CHANGE THIS DURABLE POWER OF ATTORNEY ONLY BY EXECUTING A NEW DURABLE POWER OF ATTORNEY OR BY EXECUTING AN AMENDMENT THROUGH THE SAME FORMALITIES AS AN ORIGINAL. YOU HAVE THE RIGHT TO REVOKE OR TERMINATE THIS DURABLE POWER OF ATTORNEY AT ANY TIME, SO LONG AS YOU ARE COMPETENT.

THIS DURABLE POWER OF ATTORNEY MUST BE DATED AND MUST BE ACKNOWLEDGED BEFORE A NOTARY PUBLIC OR SIGNED BY TWO WITNESSES. IF IT IS SIGNED BY TWO WITNESSES, THEY MUST WITNESS EITHER (1) THE SIGNING OF THE POWER OF ATTORNEY OR (2) THE PRINCIPAL'S SIGNING OR ACKNOWLEDGMENT OF HIS OR HER SIGNATURE. A DURABLE POWER OF ATTORNEY THAT MAY AFFECT REAL PROPERTY SHOULD BE ACKNOWLEDGED BEFORE A NOTARY PUBLIC SO THAT IT MAY EASILY BE RECORDED.

YOU SHOULD READ THIS DURABLE POWER OF ATTORNEY CAREFULLY. WHEN EFFECTIVE, THIS DURABLE POWER OF ATTORNEY WILL GIVE YOUR AGENT THE RIGHT TO DEAL WITH PROPERTY THAT YOU NOW HAVE OR MIGHT ACQUIRE IN THE FUTURE. THE DURABLE POWER OF ATTORNEY IS IMPORTANT TO YOU. IF YOU DO NOT UNDERSTAND THE DURABLE POWER OF ATTORNEY, OR ANY PROVISION OF IT, THEN YOU SHOULD OBTAIN THE ASSISTANCE OF AN ATTORNEY OR OTHER QUALIFIED PERSON.

NOTICE TO PERSON ACCEPTING THE APPOINTMENT AS ATTORNEY-IN-FACT BY ACTING OR AGREEING TO ACT AS THE AGENT (ATTORNEY-IN-FACT) UNDER THIS POWER OF ATTORNEY YOU ASSUME THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT. THESE RESPONSIBILITIES INCLUDE:

1. THE LEGAL DUTY TO ACT SOLELY IN THE INTEREST OF THE PRINCIPAL AND TO AVOID CONFLICTS OF INTEREST.

2. THE LEGAL DUTY TO KEEP THE PRINCIPAL'S PROPERTY SEPARATE AND DISTINCT FROM ANY OTHER PROPERTY OWNED OR CONTROLLED BY YOU. YOU MAY NOT TRANSFER THE PRINCIPAL'S PROPERTY TO YOURSELF WITHOUT FULL AND ADEQUATE CONSIDERATION OR ACCEPT A GIFT OF THE PRINCIPAL'S PROPERTY UNLESS THIS POWER OF ATTORNEY SPECIFICALLY AUTHORIZES YOU TO TRANSFER PROPERTY TO YOURSELF OR ACCEPT A GIFT OF THE PRINCIPAL'S PROPERTY. IF YOU TRANSFER THE PRINCIPAL'S PROPERTY TO YOURSELF WITHOUT SPECIFIC AUTHORIZATION IN THE POWER OF ATTORNEY, YOU MAY BE PROSECUTED FOR FRAUD AND/OR EMBEZZLEMENT. IF THE PRINCIPAL IS 65 YEARS OF AGE OR OLDER AT THE TIME THAT THE PROPERTY IS TRANSFERRED TO YOU WITHOUT AUTHORITY, YOU MAY ALSO BE PROSECUTED FOR ELDER ABUSE UNDER PENAL CODE SECTION 368. IN ADDITION TO CRIMINAL PROSECUTION, YOU MAY ALSO BE SUED IN CIVIL COURT.

I HAVE READ THE FOREGOING NOTICE AND I UNDERSTAND THE LEGAL AND FIDUCIARY DUTIES THAT I ASSUME BY ACTING OR AGREEING TO ACT AS THE AGENT (ATTORNEY-IN-FACT) UNDER THE TERMS OF THIS POWER OF ATTORNEY.

DATE:



(SIGNATURE OF AGENT)

BYRON STONE

(PRINT NAME OF AGENT)

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**THE POWERS YOU GRANT BELOW ARE EFFECTIVE
ONLY IF YOU BECOME DISABLED OR INCOMPETENT**

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE UNIFORM STATUTORY FORM POWER OF ATTORNEY ACT (

_____). IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

I CRAIG STONE

1063-48TH ST. EMERYVILLE, CA 94608-3003 [insert your name and address] appoint

BYRON KELLY STONE
1831 NW SECLUSION COVE WAY, POULSBORO, WA 98370 [insert the name and address of the person appointed]
as my Agent (attorney-in-fact) to act for me in any lawful way with respect to the following initialed subjects:

TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF (N) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS.

TO GRANT ONE OR MORE, BUT FEWER THAN ALL, OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF EACH POWER YOU ARE GRANTING.

TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF IT. YOU MAY, BUT NEED NOT, CROSS OUT EACH POWER WITHHELD.

Note: If you initial Item A or Item B, which follow, a notarized signature will be required on behalf of the Principal.

INITIAL

(A) Real property transactions. To lease, sell, mortgage, purchase, exchange, and acquire, and to agree, bargain, and contract for the lease, sale, purchase, exchange, and acquisition of, and to accept, take, receive, and possess any interest in real property whatsoever, on such terms and conditions, and under such covenants, as my Agent shall deem proper; and to maintain, repair, tear down, alter, rebuild, improve manage, insure, move, rent, lease, sell, convey, subject to liens, mortgages, and security deeds, and in any way or manner deal with all or any part of any interest in real property whatsoever, including specifically, but without limitation, real property lying and being situated in the State of California, under such terms and conditions, and under such covenants, as my Agent shall deem proper and may for all deferred payments accept purchase money notes payable to me and secured by mortgages or deeds to secure debt, and may from time to time collect and cancel any of said notes, mortgages, security interests, or deeds to secure debt.

(B) Tangible personal property transactions. To lease, sell, mortgage, purchase, exchange, and acquire, and to agree, bargain, and contract for the lease, sale, purchase, exchange, and acquisition of, and to accept, take, receive, and possess any personal property whatsoever, tangible or intangible, or interest thereto, on such terms and conditions, and under such covenants, as my Agent shall deem proper; and to maintain, repair, improve, manage, insure, rent, lease, sell, convey, subject to liens or mortgages, or to take any other security interests in said property which are recognized under the Uniform Commercial Code as adopted at that time under the laws of the State of California or any applicable state, or otherwise hypothecate (pledge), and in any way or manner deal with all or any part of any real or personal property whatsoever, tangible or intangible, or any interest therein, that I own at the time of execution or may thereafter acquire, under such terms and conditions, and under such covenants, as my Agent shall deem proper.

(C) Stock and bond transactions. To purchase, sell, exchange, surrender, assign, redeem, vote at any meeting, or otherwise transfer any and all shares of stock, bonds, or other securities in any business, association, corporation, partnership, or other legal entity, whether private or public, now or hereafter belonging to me.

(D) Commodity and option transactions. To organize or continue and conduct any business which term includes, without limitation, any farming, manufacturing, service, mining, retailing or other type of business operation in any form, whether as a proprietorship, joint venture, partnership, corporation, trust or other legal entity; operate, buy, sell, expand, contract, terminate or liquidate any business; direct, control, supervise, manage or participate in the operation of any business and engage, compensate and discharge business managers, employees, agents, attorneys, accountants and consultants; and, in general, exercise all powers with respect to business interests and operations which the principal could if present and under no disability.

(E) Banking and other financial institution transactions. To make, receive, sign, endorse, execute, acknowledge, deliver and possess checks, drafts, bills of exchange, letters of credit, notes, stock certificates, withdrawal receipts and deposit instruments relating to accounts or deposits in, or certificates of deposit of banks, savings and loans, credit unions, or other institutions or associations. To pay all sums of money, at any time or times, that may hereafter be owing by me upon any account, bill of exchange, check, draft, purchase, contract, note, or trade acceptance made, executed, endorsed, accepted, and delivered by me or for me in my name, by my Agent. To borrow from time to time such sums of money as my Agent may deem proper and execute promissory notes, security deeds or agreements, financing statements, or other security instruments in such form as the lender may request and renew said notes and security instruments from time to time in whole or in part. To have free access at any time or times to any safe deposit box or vault to which I might have access.

(F) Business operating transactions. To conduct, engage in, and otherwise transact the affairs of any and all lawful business ventures of whatever nature or kind that I may now or hereafter be involved in.

(G) Insurance and annuity transactions. To exercise or perform any act, power, duty, right, or obligation, in regard to any contract of life, accident, health, disability, liability, or other type of insurance or any combination of insurance; and to procure new or additional contracts of insurance for me and to designate the beneficiary of same; provided, however, that my Agent cannot designate himself or herself as beneficiary of any such insurance contracts.

(H) Estate, trust, and other beneficiary transactions. To accept, receipt for, exercise, release, reject, renounce, assign, disclaim, demand, sue for, claim and recover any legacy, bequest, devise, gift or other property interest or payment due or payable to or for the principal; assert any interest in and exercise any power over any trust, estate or property subject to fiduciary control; establish a revocable trust solely for the benefit of the principal that terminates at the death of the principal and is then distributable to the legal representative of the estate of the principal; and, in general, exercise all powers with respect to estates and trusts which the principal could exercise if present and under no disability; provided, however, that the Agent may not make or change a will and may not revoke or amend a trust revocable or amendable by the principal or require the trustee of any trust for the benefit of the principal to pay income or principal to the Agent unless specific authority to that end is given.

(I) Claims and litigation. To commence, prosecute, discontinue, or defend all actions or other legal proceedings touching my property, real or personal, or any part thereof, or touching any matter in which I or my property, real or personal, may be in any way concerned. To defend, settle, adjust, make allowances, compound, submit to arbitration, and compromise all accounts, reckonings, claims, and demands whatsoever that now are, or hereafter shall be, pending between me and any person, firm, corporation, or other legal entity, in such manner and in all respects as my Agent shall deem proper.

(J) Personal and family maintenance. To hire accountants, attorneys at law, consultants, clerks, physicians, nurses, agents, servants, workmen, and others and to remove them, and to appoint others in their place, and to pay and allow the persons so employed such salaries, wages, or other remunerations, as my Agent shall deem proper.

(K) Benefits from Social Security, Medicare, Medicaid, or other governmental programs, or military service. To prepare, sign and file any claim or application for Social Security, unemployment or military service benefits; sue for, settle or abandon any claims to any benefit or assistance under any federal, state, local or foreign statute or regulation; control, deposit to any account, collect, receipt for, and take title to and hold all benefits under any Social Security, unemployment, military service or other state, federal, local or foreign statute or regulation; and, in general, exercise all powers with respect to Social Security, unemployment, military service, and governmental benefits, including but not limited to Medicare and Medicaid, which the principal could exercise if present and under no disability.

(L) Retirement plan transactions. To contribute to, withdraw from and deposit funds in any type of retirement plan (which term includes, without limitation, any tax qualified or nonqualified pension, profit sharing, stock bonus, employee savings and other retirement plan, individual retirement account, deferred compensation plan and any other type of employee benefit plan); select and change payment options for the principal under any retirement plan; make rollover contributions from any retirement plan to other retirement plans or individual retirement accounts; exercise all investment powers available under any type of self-directed retirement plan; and, in general, exercise all powers with respect to retirement plans and retirement plan account balances which the principal could if present and under no disability.

(M) Tax matters. To prepare, to make elections, to execute and to file all tax, social security, unemployment insurance, and informational returns required by the laws of the United States, or of any state or subdivision thereof, or of any foreign government; to prepare, to execute, and to file all other papers and instruments which the Agent shall think to be desirable or necessary for safeguarding of me against excess or illegal taxation or against penalties imposed for claimed violation of any law or other governmental regulation; and to pay, to compromise, or to contest or to apply for

refunds in connection with any taxes or assessments for which I am or may be liable.

ATTACHMENT 1

~~(N) ALL OF THE POWERS LISTED ABOVE.~~ YOU NEED NOT INITIAL ANY OTHER LINES IF YOU INITIAL
LINE (N).

SPECIAL INSTRUCTIONS:

ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

THIS POWER OF ATTORNEY SHALL BE CONSTRUED AS A GENERAL DURABLE POWER OF ATTORNEY.

THIS POWER OF ATTORNEY BECOMES EFFECTIVE ONLY UPON MY DISABILITY OR INCAPACITY. I shall be considered disabled or incapacitated for purposes of this power of attorney if a physician certifies in writing at a date later than the date this power of attorney is executed that, based on the physician's medical examination of me, I am mentally incapable of managing my financial affairs. I authorize the physician who examines me for this purpose to disclose my physical or mental condition to another person for purposes of this power of attorney. A third party who accepts this power of attorney is fully protected from any action taken under this power of attorney that is based on the determination made by a physician of my disability or incapacity.

(YOUR AGENT WILL HAVE AUTHORITY TO EMPLOY OTHER PERSONS AS NECESSARY TO ENABLE THE AGENT TO PROPERLY EXERCISE THE POWERS GRANTED IN THIS FORM, BUT YOUR AGENT WILL HAVE TO MAKE ALL DISCRETIONARY DECISIONS. IF YOU WANT TO GIVE YOUR AGENT THE RIGHT TO DELEGATE DISCRETIONARY DECISION-MAKING POWERS TO OTHERS, YOU SHOULD KEEP THE NEXT SENTENCE, OTHERWISE IT SHOULD BE STRICKEN.)

Authority to Delegate. My Agent shall have the right by written instrument to delegate any or all of the foregoing powers involving discretionary decision-making to any person or persons whom my Agent may select, but such delegation may be amended or revoked by any agent (including any successor) named by me who is acting under this power of attorney at the time of reference.

(YOUR AGENT WILL BE ENTITLED TO REIMBURSEMENT FOR ALL REASONABLE EXPENSES INCURRED IN ACTING UNDER THIS POWER OF ATTORNEY. STRIKE OUT THE NEXT SENTENCE IF YOU DO NOT WANT YOUR AGENT TO ALSO BE ENTITLED TO REASONABLE COMPENSATION FOR SERVICES AS AGENT.)

Right to Compensation. My Agent shall be entitled to reasonable compensation for services rendered as agent under this power of attorney.

(IF YOU WISH TO NAME SUCCESSOR AGENTS, INSERT THE NAME(S) AND ADDRESS(ES) OF SUCH SUCCESSOR(S) IN THE FOLLOWING PARAGRAPH.)

Successor Agent. If any Agent named by me shall die, become incompetent, resign or refuse to accept the office of Agent, I name the following (each to act alone and successively, in the order named) as successor(s) to such Agent:

Choice of Law. THIS POWER OF ATTORNEY WILL BE GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA WITHOUT REGARD FOR CONFLICTS OF LAWS PRINCIPLES. IT WAS EXECUTED IN THE STATE OF CALIFORNIA AND IS INTENDED TO BE VALID IN ALL JURISDICTIONS OF THE UNITED STATES OF AMERICA AND ALL FOREIGN NATIONS.

I am fully informed as to all the contents of this form and understand the full import of this grant of powers to my Agent.

I agree that any third party who receives a copy of this document may act under it. Revocation of the power of attorney is not effective as to a third party until the third party learns of the revocation. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney.

Signed this 24th day of DECEMBER, 2015

X [Signature]
[Your Signature]

[Redacted]
[Your Social Security Number]

PLEASE NOTE: THIS DURABLE POWER OF ATTORNEY MUST BE DATED AND MUST BE ACKNOWLEDGED BEFORE A NOTARY PUBLIC OR SIGNED BY TWO WITNESSES. IF IT IS SIGNED BY TWO WITNESSES, THEY MUST WITNESS EITHER (1) THE SIGNING OF THE POWER OF ATTORNEY OR (2) THE PRINCIPAL'S SIGNING OR ACKNOWLEDGMENT OF HIS OR HER SIGNATURE. A DURABLE POWER OF ATTORNEY THAT MAY AFFECT REAL PROPERTY SHOULD BE ACKNOWLEDGED BEFORE A NOTARY PUBLIC SO THAT IT MAY EASILY BE RECORDED. EACH WITNESS MUST BE A MENTALLY COMPETENT ADULT. WITNESSES SHOULD IDEALLY RESIDE CLOSE BY, SO THAT THEY WILL BE EASILY ACCESSIBLE IN THE EVENT THEY ARE ONE DAY NEEDED TO AFFIRM THIS DOCUMENT'S VALIDITY.

STATEMENT OF WITNESSES

On the date written above, I declare under penalty of perjury under the laws of California that the person who signed or acknowledged this document is personally known to me (or proved to me on the basis of convincing evidence) to be the principal, that the principal signed or acknowledged this durable power of attorney in my presence, that the principal appears of sound mind and under no duress, fraud, or undue influence, that I am not the person appointed as attorney in fact by this document. I am not related to the principal by blood, marriage or adoption, and to the best of my knowledge, am not entitled to any part of the estate of the principal upon the death of the principal under a will now existing or by operation of law.

_____[Signature of Witness #1]

_____[Printed or typed name of Witness #1]

_____[Address of Witness #1, Line 1]

_____[Address of Witness #1, Line 2]

_____[Signature of Witness #2]

_____[Printed or typed name of Witness #2]

_____[Address of Witness #2, Line 1]

_____[Address of Witness #2, Line 2]

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of ALAMEDA)

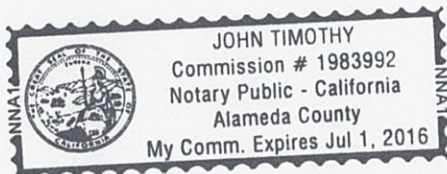
On 24 DECEMBER 2015 before me, JOHN TIMOTHY, Notary Public, State of California,
 Date Here Insert Name and Title of the Officer

personally appeared CRAIG STONE
 Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Signature]
 Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document DARABLE

Title or Type of Document: GENERAL P.O.A. Document Date: 12-24-2015

Number of Pages: 07 Signer(s) Other Than Named Above: no other signers

Capacity(ies) Claimed by Signer(s)

Signer's Name: CRAIG STONE

☐ Corporate Officer — Title(s): _____

☐ Partner — ☐ Limited ☐ General

☒ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

Signer's Name: _____

☐ Corporate Officer — Title(s): _____

☐ Partner — ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC

STATE OF CALIFORNIA
 COUNTY OF A

On _____, before me, the undersigned notary public, personally appeared

_____, personally know to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

[Notary Seal, if any]:

 (Signature of Notarial Officer)

Notary Public for the State of California

My commission expires: _____

ACKNOWLEDGMENT OF AGENT

BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, THE AGENT ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.

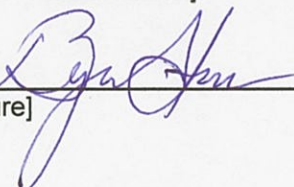
BYRON STONE
 [Typed or Printed Name of Agent]


 [Signature of Agent]

PREPARATION STATEMENT

This document was prepared by the following individual:

BYRON STONE
 [Typed or Printed Name]


 [Signature]

SPORT FISHING CENTER CONCESSION AGREEMENT

This Sport Fishing Center Concession Agreement ("Agreement") is entered into as of January 1, 2002, by and between the City of Emeryville ("City"), on the one hand, and Craig Stone ("Concessionaire"), on the other hand.

RECITALS

Whereas, the City of Emeryville Marina ("Emeryville Marina" or "Marina") contains one dock commonly referred to as "J-Dock," at which numerous sport fishing boat operators ("Operators") currently offer fishing trips to the public; and

Whereas, pursuant to that certain Sport Fishing Center Concession Agreement, dated April 11, 1988 (the "ESC Concession Agreement"), between the City and the Emeryville Sportfishing Center, Inc. ("ESC, Inc."), a sport fishing center concession has operated at the City of Emeryville Marina with the right to book and service passengers for certain commercial sport fishing Operators offering trips to the public from the Marina. The ESC Concession Agreement also imposed upon ESC, Inc. numerous corresponding duties, including promotion of the Marina and its services and collection of a City Tax on ticket sales by the sport fishing boat Operators (the "Concession"); and

Whereas, the aforementioned Concession has been operated by the ESC, Inc., with Craig Stone actively and successfully managing the Concession operations during the term thereof; and

Whereas, ESC, Inc. desires to terminate the ESC Concession Agreement; however, the City desires to continue the Concession operations; and

Whereas, on December 18, 2001, the City Council held a public hearing to consider a new concession operation agreement with Craig Stone, and thereafter did adopt a resolution thereby terminating the ESC Concession Agreement and authorizing this Sport Fishing Center Concession Agreement between the City of Emeryville and Craig Strong;

NOW, THEREFORE the parties hereto agree to the terms and conditions set forth below.

1. **Description of Duties of Concessionaire.** Concessionaire will operate a sport fishing Concession at the Marina. As part of the Concession, the Concessionaire will do the following:
 - a. **Book Sport Fishing Passengers.** The Concessionaire shall have the exclusive right to book passengers for the Operators berthed at the designated J-Dock Slips. The Concessionaire shall determine whether a passenger has a preference for a specific Operator. If a passenger does not state a preference for a particular Operator or Operators, then the Concessionaire shall direct that passenger to the Operator's boats pursuant to the Rotation System described below. The Concessionaire shall be responsible

Sport Fishing Center Concession Agreement
Craig Stone
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for collecting fees from all passengers booking through the Concessionaire. On a weekly basis, the Concessionaire shall remit to the Operators their share of such fees, less the Percentage Fee and City Tax described below, together with the calculations of ticket revenues, Percentage Fee and City Tax.

- b. Collect Percentage Fee. As compensation for services in booking passengers for the Operators, Concessionaire will be entitled to receive a Percentage Fee based upon gross revenues generated by all sales of tickets, either by the Concessionaire or by the individual Operators. The Percentage Fee will be equal to 7.5% of such gross revenues and may be increased only with the approval of the City Council, in its sole discretion, after public notice and an opportunity for a public hearing. Any such increase (and the giving of public notice and the opportunity for a public hearing relating thereto) will be conditioned upon a showing by the Concessionaire to the City Council that the expenses of operating the Concession have increased to the point where the concessionaire can no longer make a reasonable profit without an increase in the Percentage Fee. As part of this showing, the Concessionaire must demonstrate that these expenses have not been adequately offset by increases in revenues generated by increases in ticket prices charged by the Operators to passengers. In the event that the Percentage Fee is increased, then Concessionaire may not request an additional increase until at least three years have elapsed since the effective date of the preceding increase.
- c. Collect City Tax. The Concessionaire shall be responsible for collecting and remitting to the City a City Tax equal to 2.5% of the gross revenues generated by sales of tickets either by the Concessionaire or by the Operators to passengers of the Operators. This 2.5% City Tax shall be in addition to the 7.5% Percentage Fee paid to the Concessionaire. The City Tax is charged in lieu of a business tax from the Operators. Within five days of the end of each calendar month, the Concessionaire shall remit to the City the entire City Tax due for such calendar month. The City Tax shall be made payable to the City of Emeryville and delivered in person or by first class mail to City of Emeryville, Finance Department, 1333 Park Avenue, Emeryville, CA 94608 or may be remitted in such other manner as may be agreed upon by the City and the Concessionaire.
- d. Enforce Rotation System. If a passenger or potential passenger requests to be booked on the boat of a particular Operator, the Concessionaire shall honor that request if space is available. If the prospective passenger does not initiate a request for a particular Operator or cannot be booked on the requested Operator's boat for some reason (e.g., the boat is not running or is full), the Concessionaire shall assign the passenger to a particular Operator in accordance with the rotation

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system ("Rotation System") agreed upon annually by the Operators who have their ticket sales booked through the Concessionaire. The Rotation System will include a set of written criteria to be drafted and agreed upon by a majority of the Operators who book through the Concessionaire on an annual basis or at such intervals as a majority of said Operators shall determine. Each such Operator shall have one vote regardless of how many boats the Operator has berthed at J-Dock. The Concessionaire shall not have a vote unless he operates a boat or boats out of J-Dock, in which case he shall have one vote. The Concessionaire shall be responsible for assuring that the City at all times has a copy of the then-current criteria. Notwithstanding the foregoing, the Operators who book through the Concessionaire need not develop criteria or a Rotation System for bass or albacore fishing; but in the event that such Operators elect to develop a Rotation System, it shall fall within the provisions of this Agreement.

The Concessionaire will be responsible for distributing passengers in accordance with the criteria and the Rotation System in effect at the time. Whether or not a Rotation System is in place or written criteria for referrals have been adopted, neither the Concessionaire nor any Operator may discriminate against any Operator by steering a disproportionate share of "walk-ins" to a particular Operator, or by pirating passengers from one Operator to another. Repeated violations of this anti-discrimination provision by the Concessionaire, or the repeated failure of the Concessionaire to enforce the Rotation System, will be grounds for termination of the Concessionaire by the City.

In the event of any complaint regarding the implementation of the Rotation system by the Concessionaire or any Operator, or in the event of any other type of complaint regarding the Concession by the Concessionaire or any Operator, then the City, Operator, or the Concessionaire may initiate administrative proceedings with the City Manager to investigate and enjoin such behavior by submitting a written declaration under penalty or perjury from a witness or any other party who has first-hand knowledge of the alleged objectionable behavior. Within 7 days after notice, the affected parties will attempt to resolve their disputes informally in a meeting presided over by the City Manager of the City. If these informal discussions are unsuccessful, then the City Manager may initiate a formal administrative hearing if, in the sole discretion of the City Manager, such hearing would be advisable and productive. Notwithstanding the above, the City Manager will not call for a formal administrative hearing on the basis of an isolated complaint relating to a single episode, but the City Manager will require a hearing when, in his opinion, the complaint or complaints relate to persistent or continuous acts or failures to act.

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If, following a formal administrative hearing on the matter, the City Manager concludes that a complaint is valid and relates to serious or repeated violations, the City Manager may make recommendations to the City Council including but not limited to the commencement of any legal or administrative action against the Concessionaire or Operator, or the termination of the Concession by the City.

e. Maintain Books and Records. The Concessionaire will keep and maintain for three (3) years after the close of each year accurate books and records regarding (a) all gross revenues generated by the Concessionaire, (b) operating expenses incurred by the Concessionaire, (c) the Percentage Fee, and (d) the City Tax. All such books and records shall be available for inspection, audit and copying by any agent or representative of the City upon reasonable notice.

f. Rent Equipment. The Concessionaire will have the exclusive right to rent and sell fishing equipment, including rods and reel (collectively, the "Equipment") to Operators' passengers who do not bring their own Equipment, subject to exceptions set forth below. The Concessionaire will maintain all Equipment in good and usable condition. The Concessionaire at all times will maintain sufficient Equipment to service all passengers for the Operators. The Concessionaire may offer to sell and rent tackle and other fishing supplies (e.g. hooks, line, sinkers, and bate), but this right is not exclusive in that the Operators may sell such items to their own customer, provided that the Operators may not make any off-vessel rentals or sales of tackle or supplies. The Concessionaire will not discriminate against the Operators by charging them or their customers higher prices than the Concessionaire charges for comparable quantities to non-Operators, although nothing herein shall preclude the Concessionaire from giving volume discounts so long as such discounts are made available on a non-discriminatory basis.

g. Sell Fishing Licenses, Foods and Beverages. The Concessionaire will have the exclusive right to sell fishing licenses to passengers of the Operators who are required to purchase licenses in order to fish with the Operators. The Concessionaire will also have the exclusive right to sell food and beverages to passengers of the Operators, subject to the exceptions set forth below; however, the passengers will have every right to bring licenses, food and beverages with them from outside the J-Dock area. Notwithstanding the above, all Operators will be allowed to sell and provide catered food and beverage service to passengers (such as a meal serviced to virtually every passenger) without having to purchase such food and beverages from the Concessionaire. Further, the Operators will be free to purchase bait and gasoline from any vendor of their choosing.

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- h. Provide Promotion and Advertising. The Concessionaire will apply a portion of the proceeds of the Percentage Fee collected from the Operators who book ticket sales through the Concessionaire to promote and advertise the Sport Fishing Center, the Marina, and the services of said Operators generally, all in the manner and at a penetration level consistent with or greater than what has been provided by ESC, Inc. during the two years ending on December 31, 2001. In addition to the above, the Concessionaire will use its best efforts to have the Operators who book through the Concessionaire enter into and agree upon a cooperative advertising program to be administered and implemented by the Concessionaire. The cost of this cooperative advertising program will be allocated among said Operators pro-rata to the number of boats involved and the relative cost of each component of the advertising material relating to a particular Operator. Notwithstanding the above, no Operator will be required to contribute any amount to such cooperative advertising program beyond the Percentage Fee except when an additional contribution is being paid by all Operators who book through Concessionaire, pro rata to the boats involved, following approval by the majority vote of all such Operators.
2. J-Dock. Concessionaire acknowledges that City has no obligation to provide slip spaces to Operators at J-Dock, since City has entered into a lease with Emeryville Marina, LLC, a Delaware limited liability company, 11226 Indian Trail, Suite 200, Dallas, Texas 75229, successor by assignment from Westrec Marina Management, Inc. ("Emeryville Marina"), which lease encompasses J-Dock. Notwithstanding the foregoing, City will use good faith efforts to encourage Emeryville Marina to lease slip spaces at J-Dock to Operators. Although the Concessionaire is not under any duty to maintain and repair J-Dock, the Concessionaire will use good faith efforts to notify the City and Emeryville Marina as soon as it learns of any damage or injury to J-Dock or any maintenance or repair needed at J-Dock.
3. Insurance. The Concessionaire shall provide primary general liability and property damage insurance in an amount not less than One Million Dollars (\$1,000,000.00). The City will be named as an additional insured on any such policy.
4. Exception to Concessionaire's Exclusive Rights. The City has leased to Emeryville Marina, LLC, a Delaware limited liability company, 11226 Indian Trail, Suite 200, Dallas, Texas 75229, successor by assignment from Westrec Marina Management, Inc. ("Emeryville Marina") certain real property (the "Ground Lease") encompassing most of the Emeryville Marina, including J-Dock. Under said Ground Lease, Emeryville Marina has the right, among other things, of (i) berthing, fueling, and selling boats; (ii) providing berthing spaces for owners of boats who wish to reside on their boats; (iii) other uses that are generally consistent with waterfront recreation areas; and (iv) providing services related to any of the activities described in subsections (i) - (iii), or any other commercially reasonable services arising in connection with operation of the Marina. Any concession granted hereunder will be subject to the

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rights of Emeryville Marina or its succession-in-interest under the Ground Lease with the City. Irrespective of whether the Concessionaire and the lessee under the Ground Lease are the same person or entity at any given time, any rights and remedies arising under the Ground Lease are separate, distinct, and independent from any rights and remedies arising under this Agreement.

5. Term of Concession. The Concession created by this Agreement shall run for a period of ten years commencing January 1, 2002, and terminating December 31, 2011, although it will be terminable by the City in the event the Concessionaire materially fails to perform its obligations as described in this Agreement.

6. Assignment of Concession. The Concessionaire shall not be entitled to assign any of its rights or obligations under this Agreement to any person or entity by operation of law or otherwise, and any assignment or transfer in violation of this prohibition will, at the City's option, terminate this Agreement. City may, in its sole discretions, authorize an assignment of Concessionaire's rights and obligations under this Agreement. Such an assignment must be authorized in writing by the City provided that (a) the Concessionaire provides the City with ninety (90) days prior written notice of its intention to assign together with a complete description of the proposed assignment and assignee; (b) the Concessionaire demonstrates to the satisfaction of the City that the proposed assignee will be capable of operating the Concession and performing its duties under this Agreement in a satisfactory manner at a quality level at least as good as has been provided by the concessionaire to the date of the proposed assignment; (c) the Concessionaire is not in breach of any obligation under this Agreement; and (d) there are not objections raised to the proposed assignment or assignee by any Operator, any creditor of the Concessionaire, or any person attending any public hearing held in connection with the assignment, which objection is considered material by the City Council. Materiality under subparagraph (d) above shall be determined by the City Council in its sole discretion with reference to (a) fitness and ability of the intended assignee to perform its obligations under this Agreement, and (b) financial condition.

7. Anti-discrimination. The Concessionaire agrees that it will not discriminate against any employee or applicant for employment on account of race, creed color, national origin or ancestry. The Concessionaire agrees to take affirmative action to insure that applicants for employment and employees during their employment are treated without regard to their race, color, religion, ancestry or national origin. Such action shall include but not be limited to the hiring, firing, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Concessionaire further agrees that it will not discriminate against any person on account of race, creed, color, national origin or ancestry in the performance of any function undertaken under this Agreement.

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8. **Termination.** Concessionaire may, upon thirty (30) days prior written notice to the City, terminate this Agreement upon a showing to City that fifty percent (50%) or more of the Operators that were renting slip spaces at J-Dock of the Emeryville Marina as of the date of this Agreement no longer have slip spaces at J-Dock of the Emeryville Marina as of the date of the written notice of termination.
9. **Notices.** Any notice contemplated by or made pursuant to this Agreement shall be in writing and shall be deemed delivered on the date of delivery if delivered personally or five (5) calendar days after the date of mailing if sent by U.S. mail. Any notice to the City shall be directed to the City Manager, 1333 Park Avenue, Emeryville, CA 94608 (Phone: 510-596-4370; Facsimile: 510-596-3724) or to the Concessionaire at the Concessionaire's facility at 3310 Powell Street, Emeryville, CA 94608 (Phone: 510-654-6040) unless advised to the contrary in writing by the intended recipient.
10. **Controlling Law.** This Agreement shall be interpreted, enforced, construed, and governed in accordance with the laws of the State of California applicable to documents, persons, and transactions which have legal contacts and relationships solely within the State of California. The parties agree that the exclusive jurisdiction and venue of any action to confirm or enforce this Agreement shall be in the Superior Court of California for the County of Alameda (if under State law) or the United States District Court for the Northern District of California (if under Federal law).
11. **Severability.** If any provision of this Agreement is determined to be invalid or unenforceable, the remaining provisions shall be enforceable to the maximum extent possible.
12. **Mutual Assistance.** The parties hereto agree to provide each other with any necessary documents which will assist the other in complying with requirements of government agencies who are not parties to this Agreement, provided that nothing herein shall compel a party to do anything that substantially alters the economic terms of this Agreement.
13. **No Waiver.** Any waiver by either party to this Agreement of any provision of this Agreement must be in writing, shall not be construed as a waiver of any other provision of this Agreement, nor shall such waiver be construed as a waiver of such provision respecting any future event or circumstances.
14. **Complete Agreement.** This Agreement constitutes the entire agreement between the City and the Concessionaire. All prior or contemporaneous agreements, proposals, undertakings and communications between or involving the City and the Concessionaire with respect to the operation of a sport fishing concession at the Emeryville Marina are merged into this Agreement. This Agreement may be

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amended only by a written instrument executed by both the City and the
Concessionaire.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the
date first set forth above.

CONCESSIONAIRE:

CRAIG STONE

By: Craig Stone

Date: 12/27/01

CITY:

CITY OF EMERYVILLE

By: John A. Flores
John A. Flores, City Manager

Date: 12-27-01

Approved as to form:

Michael G. Biddle
Michael G. Biddle, City Attorney



CITY OF EMERYVILLE

INCORPORATED 1896

OFFICE OF THE CITY MANAGER

1333 PARK AVENUE

EMERYVILLE, CALIFORNIA 94608-3517

TEL: (510) 596-4370

FAX: (510) 596-3724

December 21, 2011

Mr. Craig Stone
Emeryville Sport Fishing
3310 Powell Street
Emeryville, CA 94608

Re: Month-to-Month Extension of Sport Fishing Center Concession Agreement

Dear Mr. Stone:

Pursuant to section 5, Term of Concession, of the Sport Fishing Center Concession Agreement dated January 1, 2002 ("Agreement"), between the City of Emeryville ("City") and Craig Stone ("Concessionaire", the Agreement is set to expire on December 31, 2011. The City would like to extend the terms of the existing Agreement on a month-to-month basis, during which time the City will explore all options for the continued operation of a sport fishing concession at the Emeryville Marina, including soliciting requests for proposals for the operation of a sport fishing concession. This offer of a month-to-month extension of the Agreement shall not be considered a guarantee that the existing Concessionaire will prevail as the recipient of any new agreement to operate a sport fishing concession at the Emeryville Marina.

If you are interested in continuing the terms of the existing Agreement on a month-to-month basis until such a time as the City either (i) awards a new agreement to operate a sport fishing concession at the Emeryville Marina or (ii) elects to terminate this extension, please sign and date this letter, and return this letter to Maurice Kaufman, in the Department of Public Works at the City Emeryville. Failure to sign, date, and return this letter by December 31, 2011, shall result in revocation of this offer of a month-to-month extension of the Agreement, and the Concessionaire shall cease all sport fishing concession operations at the Emeryville Marina pursuant to the Agreement as of January 1, 2012.

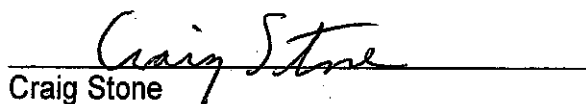
This month-to-month extension of the Agreement shall be conducted pursuant to the same terms and conditions set forth in the Agreement provided however that this month-to-month extension of the Agreement can be terminated by either party upon 30 days written notice.

Sincerely,



Patrick O'Keeffe, City Manager

Agreed and Accepted this 21 day of December, 2011



Craig Stone

cc: Michael G. Biddle, City Attorney
Maurice Kaufman, Public Works Director