

AMENDMENT NO. 1 TO LEASE BETWEEN THE CITY OF HUNTINGTON BEACH
AND MICHAEL ALI dba ZACK'S TOO

THIS AMENDMENT is made and entered into by and between the CITY OF HUNTINGTON BEACH, a municipal corporation of the State of California, hereinafter referred to as ("CITY") and MICHAEL ALI, sole proprietor, doing business as ZACKS TOO ("LESSEE").

RECITALS

WHEREAS, CITY and LESSEE are parties to that certain agreement, dated November 19, 2012, entitled "Lease Between the City of Huntington Beach and Michael Ali for Zack's Too, which agreement shall hereinafter be referred to as the "Original Agreement;" and

LESSEE leases from CITY certain real property (the "Property"), described as a beach concession, which shall now be known as Zack's Too Beach Concession, whose address is 21579 Pacific Coast Highway, Huntington Beach, CA, together with a building and other related improvements (collectively referred to as "Improvements"). The term "Premises" as used in this Lease shall mean both the Property and the Improvements. CITY desires to lease the Premises in the manner set forth below.

LESSEE and CITY have mutually agreed to extend the Lease Agreement dated November 19, 2012 and expiring at 12:01 a.m. on December 1, 2022, for an additional five (5) year term, with an option for two (2) additional five (5) year term extensions upon mutual agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, CITY and LESSEE agree as follows:

SECTION 1. All references to Community Services Department in the original Lease, shall now be known as and referred to as Community & Library Services Department.

SECTION 2. Section 10 of the Lease is hereby amended to read as follows:

RENT

LESSEE agrees to pay to CITY a percentage of rent (the "Rent"), for the use and occupancy of the Premises, of the amount of Gross Sales, as defined in Section 12 below based on the following:

A. ADJUSTMENT OF MINIMUM BASE RENT

Commencing on the first anniversary of this Lease, and each anniversary thereafter ("Rent Adjustment Date"), the Minimum Base Rent shall be adjusted by the annual increase in the Consumer Price Index published by the Bureau of Labor Statistics, United States Department of Labor, for the Long Angeles-Long Beach-Anaheim, CPI-U, as available for the prior one-year period from October 1 through September 30. In no event shall the Minimum Base Rent be decreased from the previous year.

B. PERCENTAGE RENT

Low Season (Jan. Feb. Nov. and Dec.) = 4.5% of Gross Sales

Mid Season (March, April, September and October) = 8.0% of Gross Sales

Peak Season (May, June, July and August) = 11% of Gross Sales

Monthly rent will equal Minimum Base Rent or percentage of Gross Sales for the month, whichever is greater.

C. MINIMUM BASE RENT

Low Season = \$327.29 per month plus annual CPI increases

Mid Season = \$975.95 per month plus annual CPI increases

Peak Season = \$1,951.89 per month plus annual CPI increases.

LESSEE shall pay the Rent monthly to CITY at the City Treasurer's Office, P.O. Box 711, Huntington Beach, CA 92648, or at such other places or places as CITY may from time-to-time designate by written notice delivered to LESSEE. LESSEE shall pay Rent, which must be received by the City Treasurer within fifteen (15) calendar days after the end of the month for which the Rent is being paid, or on the next business day if the fifteenth day falls on a weekend or holiday.

SECTION 3. Section 18 of the Lease is hereby amended to read as follows:

QUALITY OF SALES, RENTALS AND SERVICE.

LESSEE, at its sole cost and expense, shall equip, operate, manage and maintain the Premises and Concession in good, safe working condition and shall keep the same equipped and maintained in a manner acceptable to City during the entire term of this Lease or any renewals or extensions thereof or during any holdover period. It is the intent of CITY that the Concession's services be provided in a manner to meet the needs of the visiting public, and should CITY deem the Concession's hours of operation and/or food, merchandise, services or rentals inadequate to meet such needs, CITY may require LESSEE to make such changes requested by CITY. LESSEE shall not use or permit the Premises to be used, in whole or in part, during the entire term of this Lease or any renewals or extensions thereof or during any holdover period for any purpose other than as herein set forth, without the prior written consent of CITY.

Except as permitted in advance in writing by CITY, all foods and beverages shall be sold in disposable paper or plastic containers. No pull-top cans or Styrofoam

containers are to be vended or dispensed from the Premises unless pre-approved in writing by CITY. LESSEE, wherever feasible, shall eliminate the use of non-recyclable containers and plastics. CITY may from time to time review the items sold and containers or utensils used or dispensed by LESSEE. CITY reserves the right to prohibit the sale or use of non-recyclable containers or plastic.

CITY in its sole discretion reserves the right to prohibit LESSEE's sale, provision or rental of any item or service rendered or performed, which it deems objectionable, offensive, dangerous or unsafe, beyond the scope deemed necessary for proper service to the public, inappropriate for sale, provision or rental by the Concession, or of inferior quality.

SECTION 4. Section 26 of the lease is hereby amended to read as follows:

MAINTENANCE OF PREMISES.

CITY'S maintenance responsibilities of the Premises shall be limited to maintaining all sewers and drain lines, roofs and attached public restrooms (if they exist). Except as set forth in the preceding sentence, LESSEE agrees to maintain the Premises in good order and repair, at LESSEE's cost and expense, during the entire term of this Lease or any renewals or extensions thereof or during any holdover period, pursuant to the CITY's maintenance standards. A copy of the quarterly evaluation summary sheet setting forth the CITY'S maintenance checklist as attached as **Exhibit "B"**, and incorporated herein by this reference. Except as provided above, LESSEE, at its sole cost and expense, shall perform any maintenance and repairs including, without limitation, facility maintenance and landscape maintenance on the Premises.

LESSEE'S objections include, without limitation, maintaining and operating of the Premises and adjacent areas to a distance of not more than fifty (50) feet, in clean, safe, wholesome and sanitary condition free of trash, garbage or obstructions of any kind and in compliance with any and all present and future laws, codes, general rules or regulations of any governmental authority now, or at any time during the entire term of this Lease or any renewals or extensions thereof or during any holdover period, in force, relating to sanitation or public health, safety or welfare, or for the protection of life, limb or property; and LESSEE, at its sole cost and expense, shall remedy without delay any defective, dangerous or unsanitary condition(s) caused by LESSEE or anyone related thereto. Provided, however, that LESSEE shall have no obligation to repair or maintain sewer lines or responds to sewer leaks. However, LESSEE shall be responsible for maintaining and repairing the drain lines and grease traps within the building, along with repair and maintenance of ventilation and fire suppression systems. LESSEE shall also be responsible for repair and replacement of rollup doors where needed, interior walls, ceilings and floors within the building.

LESSEE shall paint, stain or seal the Premises' exterior surfaces a minimum of every three (3) years unless City determines in its sole discretion that such work shall be done on a more frequent basis. All exterior metal surfaces, except the roof, shall be painted with rust resistant paint no less than once every other year. All paint must be approved by CITY prior to application. Any and all graffiti on the Premises shall be removed by LESSEE, at its sole cost and expense, within forty-eight (48) hours of LESSEE receiving notice thereof or of LESSEE becoming aware of such graffiti. In addition, with or without notice from CITY, LESSEE shall, at its sole cost and expense,

repair and/or replace any broken glass within forty-eight (48) hours of its becoming broken, regardless of cause, except by fault of CITY. Except as provided above for graffiti and broken glass, LESSEE, at its sole cost and expense and with or without notice from CITY, shall repair and/or replace all damage or destruction to the Premises caused by act(s) of vandalism as soon as possible but in no event later than fourteen (14) days after the date such damage or destruction occurred. LESSEE, at its sole cost and expense, shall repair and/or replace all other damage or destruction to the Premises, regardless of cause, except by fault of CITY.

Lessee shall comply with all written notices served by City with regard to the care and maintenance of the Premises. Any written notice hereunder shall specify the work to be done and the period of time deemed to be reasonably necessary for completion of such work. Should Lessee fail to commence making the necessary repairs within seven (7) days after receiving such notice, or within twenty-four (24) hours of the glass becoming broken in the case of broken glass, or fail to diligently proceed to complete the necessary repairs within the period of time reasonably specified in the City's notice, or within forty-eight (48) hours of the glass becoming broken in the case of broken glass, or within the forty-eight (48) hour time period for removing graffiti, or within fourteen (14) days of the date that the vandalism damage or destruction occurred, City shall proceed to cause the required work to be performed, and Lessee shall promptly reimburse City for the cost of labor and materials thereof and pay City a penalty on such costs at the penalty rate set forth in Section 11 above from the date the costs were incurred by City to the date they are reimbursed to City by Lessee.

Lessee hereby expressly waives the right to make repairs at the expense of City and the benefit, if any, of the provisions of Sections 1941 and 1942 of the *California Civil Code* relating thereto.

SECTION 5. Section 31 of the Lease is hereby amended to read as follows:

UTILITIES AND SERVICES

Excluding any attached public restrooms, if they exist, Lessee shall be responsible for the payment of all utility charges, including, without limitation, gas, electricity, water, telephone service, cable TV service, internet services, and any other technology services available during the term of this Lease, and the furnishing of all necessary refuse and garbage containers and the removal and disposal of all rubbish, refuse and garbage resulting from the operation of the Premises and/or the Concession. All such rubbish, refuse and garbage removed shall be disposed of in accordance with applicable laws and local ordinances. All trash containers and/or trash bins shall be adequately screened and located to the satisfaction of City. For the purposes of this Section, sewage disposal shall be construed as a utility. All such charges shall be paid by Lessee directly to the provider of the service and shall be paid as they become due and payable. Upon request, Lessee shall promptly furnish to City satisfactory evidence establishing such payment.

SECTION 6. Section 59 of the Lease is hereby added to read as follows:

CITY'S OPTION TO CLOSE THE PREMISES

CITY may close the Premises, at its sole discretion, if the operations conflict with Specific Events with five (5) day prior written notice to LESSEE. CITY will take steps to reopen the Premises as soon as possible. Should CITY require closure of the Premises for the aforementioned reasons, or any other purpose, CITY may, at its sole

discretion, waive LESSEE's monthly rent fee. CITY shall not be liable for any loss of revenue during such closure.

SECTION 7. REAFFIRMATION

Except as specifically modified herein, all other terms and conditions of the Original Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their authorized officers on _____, 2022.

MICHAEL ALI,
a sole proprietor

By: _____



print name

ITS: (circle one) Chairman/President/Vice President

AND

By: _____

print name

ITS: (circle one) Secretary/Chief Financial Officer/Asst.
Secretary - Treasurer

CITY OF HUNTINGTON BEACH,
a municipal corporation of the State
of California

City Manager

INITIATED AND APPROVED:



Director of Community & Library Services

APPROVED AS TO FORM:



City Attorney

discretion, waive LESSEE's monthly rent fee. CITY shall not be liable for any loss of revenue during such closure.

SECTION 7. REAFFIRMATION

Except as specifically modified herein, all other terms and conditions of the Original Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their authorized officers on _____, 2023.

MICHAEL ALI,
a sole proprietor

By: _____

print name

ITS: (circle one) Chairman/President/Vice President

CITY OF HUNTINGTON BEACH, a
Municipal corporation of the State of
California

Mayor

AND

By: _____

print name

ITS: (circle one) Secretary/Chief Financial Officer/Asst.
Secretary - Treasurer

City Attorney

INITIATED AND APPROVED:

ATTEST:

Director of Community & Library Services

City Clerk

REVIEWED AND APPROVED:

City Manager



ZACKS-1

OP ID: MG

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/08/2022

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 Huntington Pacific Ins. Agency 7901 Professional Circle Huntington Beach, CA 92648 Robin Hatfield		714-841-6283		CONTACT Robin Hatfield NAME: PHONE (A/C, No, Ext): 714-841-6283 FAX (A/C, No): 714-842-2538 E-MAIL: robln@huntepacificinsurance.com ADDRESS:	
INSURED Zack's Mike Ali 8181 Deauville Drive Huntington Beach, CA 92646		INSURER(S) AFFORDING COVERAGE		NAIC #	
		INSURER A: Capitol Specialty Insurance		31470	
		INSURER B: NorGUARD Insurance Co.			
		INSURER C:			
		INSURER D:			
		INSURER E:			
INSURER F:					

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 SUBR INSD 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 checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	X	BR20220456-01	03/11/2022	03/11/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 2,500 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY					COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	MIWC308622	09/12/2022	09/12/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The City of Huntington Beach, it's officers, elected or appointed officials, employee, agents and volunteers are additional insured in respects to the General Liability per written contract and attached endorsement.*10 day Notice for Non Payment. Operations are Beach Concessions, Beach accessory Rentals, Surf Lessons and Catering. This Insurance is (continued)

APPROVED AS TO FORM

By:

MICHAEL E. GATES
CITY ATTORNEY

CITY OF HUNTINGTON BEACH

CERTIFICATE HOLDER

CITY012

City of Huntington Beach It's
Agents, Officer & Employees as
Additional Insureds
2000 Main Street
Huntington Beach,, CA 92648

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



CERTIFICATE OF LIABILITY INSURANCE

ZACKS-2

OP ID: MG

DATE (MM/DD/YYYY)

12/14/2022

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.

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PRODUCER
Huntington Pacific Ins. Agency
7901 Professional Circle
Huntington Beach, CA 92648
Mark Heberden

CONTACT NAME: Mark Heberden

PHONE (A/C, No, Ext): 714-841-6283

FAX (A/C, No): 714-842-2538

E-MAIL ADDRESS: mark@huntpacifinsurance.com

INSURER(S) AFFORDING COVERAGE

NAIC #

INSURER A : AmGuard Insurance Company

42390

INSURED
Zack Salt Creek, Mike Ali
8181 Deauville Drive
Huntington Beach, CA 92646

INSURER B :

INSURER C :

INSURER D :

INSURER E :

INSURER F :

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
	COMMERCIAL GENERAL LIABILITY						
	<input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR						EACH OCCURRENCE \$
							DAMAGE TO RENTED PREMISES (Ea occurrence) \$
							MED EXP (Any one person) \$
							PERSONAL & ADV INJURY \$
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE \$
	<input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC						PRODUCTS - COMP/OP AGG \$
	OTHER:						\$
B	AUTOMOBILE LIABILITY			MIAU316854	11/17/2022	11/17/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	ANY AUTO						BODILY INJURY (Per person) \$
	ALL OWNED AUTOS	<input checked="" type="checkbox"/>	SCHEDULED AUTOS				BODILY INJURY (Per accident) \$
	HIRED AUTOS	<input type="checkbox"/>	NON-OWNED AUTOS				PROPERTY DAMAGE (Per accident) \$
	<input checked="" type="checkbox"/> UM \$250,00	<input checked="" type="checkbox"/>					MEDICAL PAY \$ 5,000
	UMBRELLA LIAB						EACH OCCURRENCE \$
	EXCESS LIAB						AGGREGATE \$
	DED						\$
	RETENTION \$						
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						PER STATUTE
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<input type="checkbox"/>	N/A				E.L. EACH ACCIDENT \$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$
							E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

CANCELLATION

CITY012

City of Huntington Beach It's
Agents, Officer & Employees
2000 Main Street
Huntington Beach,, CA 92648

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

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**PRIMARY AND NONCONTRIBUTORY –
OTHER INSURANCE CONDITION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The following is added to the **Other Insurance** Condition and supersedes any provision to the contrary:

Primary And Noncontributory Insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

- (1) The additional insured is a Named Insured under such other insurance; and

- (2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.