

**RESTATED SUMMER BEACH CONCERT SERIES PRODUCER
AGREEMENT BETWEEN THE CITY OF HERMOSA BEACH
AND PHILIA GROUP LLC dba SAINT ROCKE**

This RESTATED SUMMER BEACH CONCERT SERIES PRODUCER AGREEMENT ("Restated Agreement") is made and entered into by and between the CITY OF HERMOSA BEACH ("City"), a municipal corporation, and Philia Group, LLC dba Saint Rocke, a California Limited Liability Corporation ("Producer").

RECITALS

A. On October 1, 2010 City and Producer entered into a Summer Beach Concert Series Producer Agreement ("Agreement") under which Producer acting in its capacity as a qualified independent contractor has produced City's 2011 and 2012 summer beach concert series ("Summer Concerts" or "concerts" or "concert series").

B. The parties now desire to revise certain provisions of the Agreement and memorialize the modifications in the form of a fully integrated restated agreement.

NOW, THEREFORE, in consideration of the promises, covenants, and agreements set forth herein, the parties hereto agree and represent as follows:

1. TERM OF AGREEMENT/RIGHT OF FIRST REFUSAL

The term of this Agreement shall commence on October 1, 2010 and shall terminate September 30, 2015 unless terminated in writing by the City prior to that date. On or before December 31 of each year this Agreement is in effect, City will decide, in its sole and absolute discretion, whether to present a concert series during that calendar year. If the City elects to present a concert series, Producer shall be offered the first right of refusal to produce the concerts in accordance with the terms and conditions set forth below in this Agreement. Producer shall reply to such offer within ten (10) days. In the event that Producer declines, City shall be free to contract with any other person or entity for production of the concerts for that calendar year.

2. PRODUCER'S OBLIGATIONS AND RIGHTS

A. Producer shall at its sole cost and expense organize, manage and conduct the City's summer concert series and do all of the following:

- (1) Secure and compensate performing artists, subject to City Manager approval, for the number of concerts on the dates and at the times approved by City. City Manager approval of performing artists shall be given within seven days of Producer's delivery of names of proposed artists. The City-approved concert schedule each year this Agreement is in effect shall be considered an addendum to this Agreement.

- (2) Provide a stage and sound system from a licensed production company, sound crew and stage crew.
- (3) Provide all staffing necessary to execute all aspects of the concerts relating to staging, sound and artist performances.
- (4) Provide stage specifications to the Building Department for review and approval prior to construction of the stage.
- (5) Secure a banner permit, design at Producer's expense and provide City with two banners that satisfy City's regulations and specifications for installation by City at Pacific Coast Highway and 1st Street and the intersection at Pier and Hermosa Avenues. Banner content is subject to advance approval by the City Manager, which approval will not be unreasonably withheld. ** Banners printed, hung at city cost*
- (6) Comply with all applicable laws and City ordinances in the performance of this Agreement.
- (7) Attend pre-operation and post-concert meetings with City staff.
- (8) Publicize the concerts on its website and otherwise in its discretion. Producer may at its sole cost and expense, and subject to concurrence by the Hermosa Beach Chamber of Commerce, erect street pole banners in accordance with the terms of an agreement, if one is executed, between the City and the Chamber. The content of such banners is subject to advance City written approval by the City Manager, which approval will not be unreasonably withheld.
- (9) Obtain and maintain in force for the duration of this Agreement a policy of commercial general liability and property damage insurance, insuring CITY its elected and appointed officers, agents, and employees from claims for damages for personal injury, including death, as well as from claims for property damage which may arise from Producer's actions and performance under this Agreement, whether or not done by Producer or anyone directly or indirectly employed by Producer. Such insurance shall have a combined single limit of not less than \$2,000,000. City, its elected and appointed officers, agents, and employees shall be named as additional insureds on the policy. Producer shall furnish CITY, prior to the execution of this Agreement, satisfactory evidence of the insurance required, issued by an insurer authorized to do business in California, and an endorsement to each such policy of insurance evidencing that each carrier is required to give CITY at least 10 days prior written notice of the cancellation during the term of the Agreement. All required insurance policies are subject to approval of the City Attorney. Failure on the part of Producer to procure or maintain said insurance in full force and effect shall constitute a material breach of this Agreement; in such event City may pay any premiums therefor at Producer's expense. Producer shall also carry Worker's Compensation Insurance for all Producer's employees to the extent required by the State of California.

B. Producer shall have:

- (1) Sole and exclusive control over the production, presentation and performance of the concerts, including but not limited to the details, means and methods of the performances of the performing artists.
- (2) The exclusive right to photograph, record or reproduce the performances, or any part thereof and use of recorded footage for promotional or other purposes.
- (3) The sole and exclusive right but not the obligation to sell souvenir programs or other souvenir items, including audio recordings in any and all formats and media in connection with and at the concerts, receipts from which shall belong exclusively to Producer.
- (4) The right to sell sponsorships for the concert series, provided that sponsors shall be subject to advance City written approval by the City Manager, which approval will not be unreasonably withheld. Sponsor advertising and displays will be permitted subject to City approval of location and manner of advertising and displays, which approval will not be unreasonably withheld. Sponsor tents must be not less than ten (10) feet from the Strand wall and interiors of tents shall be shielded from view from the Strand with opaque backing. Sales of food, non-alcoholic beverages and merchandise may only be made from within sponsor tents and only from the west-facing side of the tents. Producer shall give restaurants within the Hermosa Beach downtown (as defined in Hermosa Beach Municipal Code section 5.04.200(B)) a right of first refusal to sell food from a sponsor tent by way of an email invitation. Restaurants will be afforded ten calendar days within which to respond in writing to the invitation; failure to timely respond in writing will constitute a declination of the invitation.
- (5) The right to establish a secure VIP backstage area immediately behind the stage. Access to the backstage area is available to any person who purchases an annual donor pass, the price of which is subject to advance approval of the City Manager, and which will be valid for all or a portion of a single year concert series. Walk-up day-of-concert purchase of donor passes on a concert-by-concert basis is prohibited. Producer may serve food and beverages, excluding alcoholic beverages, in the backstage area. Producer may utilize the revenues from the sale of donor passes to offset the production costs of the concert series.

3. CITY'S OBLIGATIONS AND RIGHTS

A. City shall be responsible for providing the following:

- (1) Publicity for the concert series by way of postings on the City's

Website calendar, posting on the marquee sign on Pacific Coast Highway/Pier Avenue, and installation of two banners across the public right-of-way at Pacific Coast Highway and 1st Street and at the intersection of Hermosa and Pier Avenues for the period commencing thirty days prior to the date of the first concert and ending on the day following the last concert. City will reimburse Producer the cost of printing the banners.

- (2) General comprehensive liability insurance coverage in an amount not less than its usual limits through the ICRMA insurance pool to protect against any claim for personal injury or property damage brought by or on behalf of any person as a result of or in connection with the concerts. Producer will be named as an additional insured on City's policy as regards City's responsibilities under this Restated Agreement.
- (3) Services from its Public Works Department and Building & Safety Division; volleyball net removal and replacement; Amplified Sound Permit; portable toilet facilities; trash and recycling receptacles; and marking of beach quadrants and handicap access.
- (4) Make a portion of the City beach and a 40' x 40' space in the far northwest corner of Pier Plaza, as described in Exhibit A attached hereto and incorporated herein by reference available for the concerts. City shall prepare, after consultation with Producer, a scaled plot plan showing the location of all structures, tents, seating areas, portable toilets, generators, waste and recycle bins and any other equipment to be used for the concerts. The 40' X 40' space on Pier Plaza will be made available to Producer commencing at 11:00 a.m. on the day of each concert.
- (5) Forty reserved parking spaces on the westerly portion of Lot A from 10:00 a.m. until 6:00 p.m. on the day of each concert. City will provide parking passes to Producer for its production staff for use of the reserved spaces. Any unused spaces will be made available for public use after 6:00 p.m. Producer may at its expense provide a monitor to manage the reserved spaces.
- (6) Crowd management, utilizing its usual and customary police and other staff resources and private security to the extent deemed necessary in City's discretion. City will consider Producer's recommendations regarding the need for additional security.
- (7) Provide perimeter security fencing for the stage.

B. City reserves all right, title and interest to the summer concert series whether located on the beach or in a City park. Producer acknowledges the City's exclusive right, title, and interest in and to the summer concert series and acknowledges that nothing herein shall be construed to accord to Producer any rights in the concert series to Producer. Producer warrants and represents that it will not at any time challenge the City's right, title, or interest in the summer concert series.

C. City reserves the right to approve the location and manner of sponsor advertising and displays, which approval will not be unreasonably withheld.

4. COMPENSATION

City shall have no obligation to compensate Producer for its services under this Agreement. Producer shall be compensated solely from sponsorship fees and revenues from souvenirs that it arranges pursuant to its rights under Section 2 of this Agreement. The concerts shall be free to the public and no tickets will be sold or required to attend the concerts.

5. DEFAULTS

In the event that it is determined that either party has committed a material breach in the performance of any of the terms or conditions of this Agreement or fails to conform to the rules and regulations or any of the directions or instructions that may be properly made by the City in the exercise of its powers or becomes unable through corporate incapacity to fulfill its obligations under this agreement or defaults in the performance of any of the other terms or provisions therein required, the claiming party shall provide the defaulting party a written notice of such default. If the defaulting party does not cure said default within ten (10) days after such notice was first received or, make reasonable efforts to cure said default, it is mutually agreed and understood that this Agreement may be terminated. In the event of such termination, should the non-defaulting party be liable for the cost of services performed or acquired or expenses incurred by itself or the defaulting party, , the defaulting party shall pay to the non-defaulting party amounts due and owing prior to such termination. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach.

In the event of a default in the performance of this Agreement, the maximum damages which either party may seek to recover will be limited to out-of-pocket costs referenced in the paragraph above, taking into account any amounts that the non-defaulting party recovered or could have recovered using its best efforts to mitigate its damages. Notwithstanding the foregoing, neither party will be entitled to recover any alleged lost profits or similar damages. Under no circumstances will either party be liable to the other in contract, tort or otherwise for any indirect, incidental, special, consequential, punitive, exemplary or similar damages that result from its performance or nonperformance hereunder.

6. NOTICES

All notices, requests, demands and other, communications between the parties shall be in writing and, unless specifically provided otherwise, shall be delivered personally, by email or mailed first class with postage prepaid and properly addressed as follows:

If to Producer, to:

Saint Rocke
142 Pacific Coast Highway
Hermosa Beach, CA 90254
Attn.: Allen Sanford

If to the City, to:

Tom Bakaly, City Manager
City of Hermosa Beach
1315 Valley Drive
Hermosa Beach, Malibu CA 90254

All notices shall be deemed to have been received upon personal delivery, receipt of email or three (3) days after deposit in the U.S. Mail, whichever is earlier.

7. ASSIGNMENT AND DELEGATION

Neither Producer nor the City shall assign or otherwise alienate any of its rights or delegate or otherwise transfer any of its duties hereunder except those duties and subcontracts reasonably anticipated under the Agreement. Any permitted assignment or delegation of a party's rights or duties hereunder shall not relieve such party of primary responsibility for the performance thereof.

8. EFFECTIVENESS OF AGREEMENT

This Agreement shall not be of any force or effect unless and until it is executed by the authorized representatives of Producer, approved by the City Council of the City, and executed on behalf of the City by the City Manager. Each party represents and warrants that it has the right and authority to enter into this Agreement and that by entering into this Agreement it will not violate, conflict with or cause a material default under any other contract, undertaking, judgment or encumbrance to which it is a party.

9. INDEMNITY

City shall indemnify, protect, defend and hold harmless Producer from and against any and all losses, liabilities, damages, costs and expenses, including reasonable attorney's fees and costs which arise out of, pertain to, or relate to the City's negligent or wrongful performance of its obligations under this Agreement, provided such claims are not caused by negligence or misconduct of the Producer.

Producer shall indemnify, protect, defend and hold harmless City, its officers, employees and agents, from and against any and all losses, liabilities, damages, costs and expenses, including reasonable attorney's fees and costs which arise out of, pertain to, or relate to the Producer's and Producer's subcontractor's negligent or wrongful performance of its obligations under this Agreement, provided such claims are not caused by negligence or misconduct of the City.

These indemnity obligations shall survive termination or expiration of this Agreement.

10. NO WARRANTIES

Producer makes no warranties of any kind, express or implied, in connection with the performances of the performing artists. Producer hereby expressly disclaims any implied warranties arising from a course of dealing or course of performance. Except as provided herein, no oral or written information given by Producer will create a warranty or representation and City expressly acknowledges that it has not entered into this Agreement in reliance upon any alleged representation or warranty of Producer.

11. FORCE MAJEURE

A force majeure event under this Agreement is an event beyond the control of the Producer that makes performance of its obligations hereunder impossible, impracticable or unsafe, including fire; threats or acts of terrorism or other forms of civil disorder in or near the concert venue; strikes or lockouts or other labor strife; acts of God; absence of electrical power or other essential services; any act or rule of any court of governmental agency with jurisdiction; or other similar cause. If a force majeure event occurs, the parties' obligations hereunder will be excused fully, without any additional obligation and each of the parties will bear its own costs incurred in connection with this Agreement.

12. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of California and of the City. In the event of a dispute concerning the rights, duties, and obligations arising out of this Agreement, the parties agree that exclusive venue for all such disputes shall be in the State of California, County of Los Angeles.

13. NONDISCRIMINATION

Producer shall not discriminate on the basis of race, national origin, gender, age, sexual orientation or religion in the performance of this Agreement.

14. AMENDMENT

This Agreement may only be amended by a writing executed by all of the parties hereto.

15. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the City and Producer on this subject matter and supersedes any and all oral or written agreements or understandings between the parties as to the subject matter of this Agreement. This Agreement may be changed only by

a writing executed by both parties that expressly states that it is changing the provisions of this Agreement.

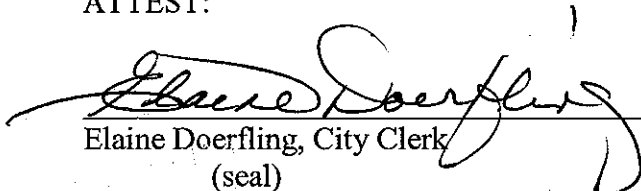
16. NO AGENCY. The parties hereto are separate and independent, and no agency, partnership, joint venture, employee-employer or franchiser-franchisee relationship is intended or created by this Agreement. Neither party shall make any warranties or representations on behalf of the other party.

This Restated Agreement is executed on this 7th day of March, 2013, at Hermosa Beach, California, and effective as of _____, 2013.

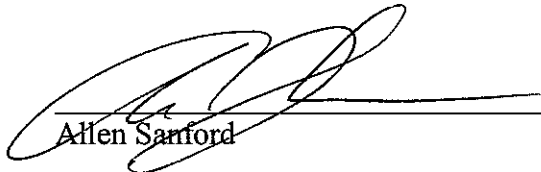
CITY OF HERMOSA BEACH:


Tom Bakaly, City Manager

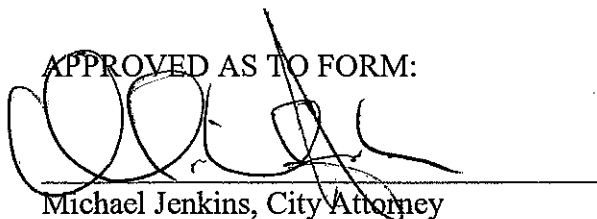
ATTEST:


Elaine Doerfling, City Clerk
(seal)

SAINT ROCKE


Allen Sanford

APPROVED AS TO FORM:


Michael Jenkins, City Attorney

**FIRST AMENDMENT TO RESTATED SUMMER BEACH CONCERT SERIES
PRODUCER
AGREEMENT BETWEEN THE CITY OF HERMOSA BEACH
AND PHILIA GROUP LLC dba SAINT ROCKE**

This FIRST AMENDMENT TO RESTATED SUMMER BEACH CONCERT SERIES PRODUCER AGREEMENT ("First Amendment") is made and entered into by and between the CITY OF HERMOSA BEACH ("City"), a municipal corporation, and Philia Group, LLC dba Saint Rocke, a California Limited Liability Corporation ("Producer").

RECITALS

- A. On October 1, 2010 City and Producer entered into a Summer Beach Concert Series Producer Agreement ("Agreement") under which Producer acting in its capacity as a qualified independent contractor has produced City's 2011, 2012 and 2013 summer beach concert series ("Summer Concerts" or "beach concerts").
- B. On 5/13/14, City and Producer revised certain provisions of the Agreement in the form of a Restated Summer Beach Concert Series Producer Agreement ("Restated Agreement").
- C. The parties now desire to extend the term of the Restated Agreement.

NOW, THEREFORE, in consideration of the promises, covenants, and agreements set forth herein, the parties hereto agree and represent as follows:

Section 1 of the Restated Agreement is amended in its entirety to read as follows:

1. TERM OF AGREEMENT

The term of this Agreement shall commence on October 1, 2010 and shall terminate December 31, 2018. City reserves the right for the City Council at any time to cancel one or more of the summer beach concerts contemplated by this Agreement if it finds based on evidence that the concert(s) are detrimental to public safety.

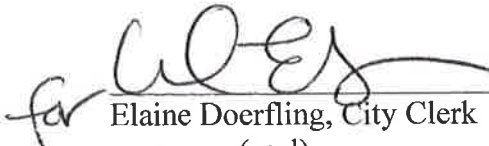
May This First Amendment to Restated Agreement is executed on this 13th day of 2014, at Hermosa Beach, California.

CITY OF HERMOSA BEACH:



Tom Bakaly, City Manager

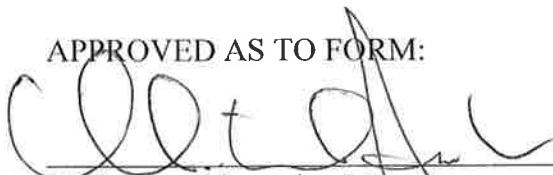
ATTEST:


Elaine Doerfling, City Clerk
(seal)

PHILIA GROUP LLC dba SAINT ROCKE


Allen Sanford

APPROVED AS TO FORM:


Michael Jenkins, City Attorney