

DUPLICATE



**CITY OF SAN DIEGO
PERCENTAGE LEASE**

BY AND BETWEEN

**THE CITY OF SAN DIEGO,
A CALIFORNIA MUNICIPAL CORPORATION, LESSOR**

AND

**CAMPLAND, LLC
A DELAWARE LIMITED LIABILITY COMPANY, LESSEE**

DOCUMENT NO RR- 311006
FILED APR 04 2017
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

Table of Contents

SECTION 1: LEASING; USE OF PREMISES	2
1.1 Leasing	2
1.2 Allowed Uses	2
1.3 Only Allowed Uses	3
1.4 Dedicated Public Park and Master Plan	3
1.5 Public Uses	3
1.6 Signs	3
1.7 Business Objective	3
1.8 No CITY Representation	4
1.9 Competent Management	4
1.10 Repair and Maintenance	4
1.13 Parking	4
1.14 Operation of the Premises	4
1.15 Local Coastal Program	5
1.16 No Dredging of Mission Bay	5
1.17 Trash and Refuse	5
1.17.1 Recycling Ordinance	5
1.18 Superior Interests	6
1.19 Governmental Approvals	6
1.19.1 Lessee to Obtain Approvals	6
1.19.2 Not Determinations	6
1.20 City's Consent, Approval	6
1.21 Quiet Possession	6
1.22 Tenant Estoppel Certificate	7
1.23 Operating Plan – Lifeguard Division Approval	7
1.24 Reservation of Rights	7
1.24.1 Mineral Rights	7
1.24.2 Easements	7
1.24.3 Repairs	7
1.24.4 Noninterference	7
1.24.5 Costs	7
SECTION 2: TERM	
2.1 Term	7
2.2 Option Periods	8
2.3 Lease Year	8
2.4 Holdover/Tenancy at Sufferance	8

2.5	Surrender of Premises	8
-----	-----------------------------	---

SECTION 3: RENT

3.1	Rent	9
3.2	Rent Statements	9
3.3	Gross Revenue	9
3.4	Minimum Annual Rent	10
3.5	Percentage Rent	10
3.6	Additional Uses Not Previously Approved	11
3.7	Percentage Rent Adjustments	11
3.7.1	The New Percentage Rent Shall be Determined by Qualified City Staff	11
3.8	Unauthorized Use Charge	11
3.9	Time and Place of Payment	12
3.10	Records	12
3.11	Financial Statements	12
3.12	City's Right to Inspect and Audit	13
3.12.1	Audit Cost	13
3.12.2	Rent Deficiency and Overpayment	13
3.13	Delinquent Payments	13

SECTION 4: ENCUMBRANCES; ASSIGNMENT & SUBLETTING

4.1	Leasehold Encumbrances	14
4.2	Assignment and Subletting	14
4.3	Consent Conditions	14
4.4	Charter Section 225	15
4.5	Additional Consideration to City	15
4.5.1	Basis of Two Percent Calculation	15
4.5.2	Transaction Statement	16
4.5.3	When Not Applicable	16

SECTION 5: DEFAULT AND REMEDIES

5.1	Default	16
5.2	Remedies	16
5.3	Abandonment by Lessee	17

SECTION 6: EMINENT DOMAIN

6.1	Eminent Domain	17
6.1.1	Full Taking	18
6.1.2	Partial Taking	18
6.1.3	Lessee's Award	18

6.1.4	Transfer	18
6.1.5	No Inverse Condemnation	18

SECTION 7: INDEMNITY, HOLD HARMLESS; INSURANCE

7.1	Indemnification & Hold Harmless	18
7.2	Insurance	19
7.2.1	Additional Insureds	19
7.2.2	Primary & Non-Contributory	20
7.2.3	Severability of Interest	20
7.2.4	Qualified Insurer(s)	20
7.2.5	Deductibles/Retentions	20
7.2.6	Continuity of Coverage	20
7.2.7	Modification	20
7.2.8	Accident Reports	21
7.2.9	Causes of Loss – Special Form Property Insurance	21

SECTION 8: IMPROVEMENTS; ALTERATIONS

8.1	Improvements/Alterations	21
8.2	Construction Bonds.....	21
8.2.1	Prevailing Wage	21
8.3	Liens	22
8.4	Personal Property	22
8.5	Late Removal	22
8.6	Waste, Damage, or Destruction	23
8.7	Entry and Inspection	23
8.8	Utilities	23
8.9	Taxes	23
8.10	Unavoidable Delay	24
8.11	Hazardous Substances	24
8.11.1	Release	24
8.11.2	Hazardous Substances	24
8.11.3	Remediation	24
8.11.4	Removal	24
8.11.5	Indemnity	25
8.11.6	Notice of Release	25
8.11.7	Environmental Assessment	25
8.11.8	Above Ground Propane Storage Tank	26

SECTION 9: GENERAL PROVISIONS

9.1	Notices	26
-----	---------------	----

9.2	Compliance with Law	26
9.3	Restriction on Food Containers	27
9.4	California Public Records Act	27
9.5	Equal Opportunity.....	28
9.6	Equal Benefits	28
9.7	Disabled Access Compliance	28
9.8	Drug Free Workplace	29
9.9	City Employee Participation Policy	30
9.10	Local Business and Employment	30
9.11	Water Quality Assurances	30
9.11.1	NPDES	30
9.11.2	Stormwater Management	30
9.12	Nondiscrimination	31
9.13	Waiver	31
9.14	Cumulative Remedies.....	31
9.15	Survival	31
9.16	Joint and Several Liability	31
9.17	No Affiliation	31
9.18	Entire Agreement	31
9.19	Partial Invalidity	32
9.20	Acceptance of Premises	32
9.21	Controlling Law/Venue	32

SECTION 10: CONTRACT AUTHORITY

10.1	Authority to Contract	33
------	-----------------------------	----

EXHIBIT A: DESCRIPTION OF PREMISES34

CITY OF SAN DIEGO
PERCENTAGE LEASE
[MISSION BAY PARK]

THIS CITY OF SAN DIEGO PERCENTAGE LEASE ("Lease") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY") and CAMPLAND, LLC, a Delaware limited liability company ("LESSEE" or "CAMPLAND") d.b.a. Campland on the Bay, to be effective as of APRIL 25, 2017 (the "Effective Date"), when signed by the parties and approved by the San Diego City Attorney.

FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, the parties agree as follows:

RECITALS

- A. CITY owns that certain real property consisting of approximately 40.140 acres of land, and approximately 5.478 acres of water space, commonly known as "Campland on the Bay," located at 2211 Pacific Beach Drive, San Diego, California, 92109, and more particularly described and depicted in the multi-paged **Exhibit A: Description of Premises**, attached hereto (the "Premises").
- B. CITY and TRI-SQUARE CONSTRUCTION CO. INC. a California corporation entered into that certain Lease Agreement dated November 8, 1967, filed as Document No. 723339 with CITY's Office of the City Clerk. Said Lease Agreement was amended by that certain First Amendment to Lease Agreement dated January 23, 1969, filed as Document No. 726824 with CITY's Office of the City Clerk; that certain Second Amendment to Lease Agreement dated March 10, 1970, filed as Document No. 731191 with CITY's Office of the City Clerk; that certain Third Amendment to Lease Agreement dated June 15, 1977, filed as Document No. 759649 with CITY's Office of the City Clerk; and by that certain Fourth Amendment to Lease Agreement dated August 22, 1983, filed as Document No. RR-259130 with CITY's Office of the City Clerk (collectively the "Original Lease").
- C. The Original Lease was assigned from TRI-SQUARE CONSTRUCTION CO. INC. to MISSION BAY CAMPLAND INC., by an assignment of lease dated June 13, 1968, filed as Document No. 727225 in CITY's Office of the CITY Clerk, which interest was subsequently assigned to ASSOCIATED MOBILE ESTATES, by an assignment filed as Document No. 759628 with CITY's Office of the City Clerk, which interest was subsequently assigned to DE ANZA CAMPLAND, LLC by that Assignment and Assumption of Lease dated July 9, 1999. The name of the lessee was changed from DE ANZA CAMPLAND, LLC to CAMPLAND, LLC by that certain notice to CITY by LESSEE received by CITY on October 6, 2008.
- D. The Original Lease expires November 7, 2017.
- E. LESSEE is now requesting authorization to remain as the lessee of the Premises, beyond the expiration date of the Original Lease, while the CITY: (a) completes studies regarding the

feasibility of converting the Premises into wetland; (b) finalizes the settlement between the De Anza Cove Homeowners Association and the CITY; and (c) while the update of the Mission Bay Park Master Plan for the future of De Anza Point and adjacent areas, including the current CAMPLAND leasehold area, is worked on/finalized. The foregoing is estimated to be complete by 2020.

- F. Rather than seek authorization to extend the Original Lease, and make all the required updates and changes to that lease, the CITY and LESSEE have agreed to the terms and conditions of this new Lease, which is intended to provide appropriate consideration to CITY for LESSEE's use and possession of the Premises and to ensure the ongoing routine maintenance of the Premises.

SECTION 1: LEASING; USE OF PREMISES

- 1.1 **Leasing.** CITY hereby leases the Premises to LESSEE, and LESSEE hereby leases the Premises from CITY, under the terms and conditions of this Lease. The "Premises" shall include all improvements that previously existed, and/or were constructed or installed under the Original Lease, as well as any improvements constructed or installed during the Term (defined in Section 2.1 below). **Exhibit A** describes and depicts the Premises. **Exhibit A** is comprised of eight (8) pages of legal descriptions describing the Premises; four (4) pages of Rick Engineering B-Sheets depicting aspects of the Premises; and one (1) page, an aerial photo of the area of the Premises, on which Parcels "1" through "8", which parcels make up the Premises, are depicted. By this reference, the above Recitals and **Exhibit A** are hereby incorporated into and made a part of this Lease.
- 1.2 **Allowed Uses.** Subject to all applicable laws, rules, regulations, directives and approvals in each instance of CITY (as the landlord under this Lease and in its capacity as a governmental entity) and other competent governmental authorities, LESSEE may use the Premises only for the following purposes (the "Allowed Uses"):
- (a) Operation and maintenance of a public camping facility, including tent campsites and RV parking ("parking" shall include grandfathered parking as indicated on Exhibit A, and shall be subject to the limitations required by the Mission Bay Master Plan Update referenced in Section 1.4 below);
 - (b) Operation and maintenance of a general merchandise store, which may include the sale of alcoholic beverages, as approved by the California Department of Alcoholic Beverage Control;
 - (c) Operation and maintenance of a laundromat, foodservice, gift shops, camping equipment and bike rentals, and beverage and snack vending machines;
 - (d) Operation and maintenance of boat slips and launching ramps, including aquatic equipment rentals, and enclosed dry boat and boat trailer storage;

- (e) Operation and maintenance of game rooms;
 - (f) Operation and maintenance of automated teller machines (ATM's);
 - (g) Operation and maintenance of parking facilities for use by LESSEE's invitees, guests, licensees, sublessees, and the general public; and
 - (h) Incidental recreational activities for the LESSEE's invitees and guests, including amplified sound; provided that the use of amplified sound is subject to CITY's ongoing approval and/or restrictions.
- 1.3 Only Allowed Uses. LESSEE shall not use the Premises for any purpose other than the Allowed Uses without CITY's prior written consent in each instance. CITY may approve additional Allowed Uses from time to time in CITY's sole discretion. Each and all Allowed Uses shall be conducted in compliance with all applicable laws, rules, regulations and directives of competent governmental authorities.
- 1.4 Dedicated Public Park and Master Plan. LESSEE acknowledges that the Premises are part of a dedicated public park, and are therefore subject to CITY's public park restrictions. Furthermore, this Lease and all activities on the Premises are and shall be subject to the City of San Diego Mission Bay Park Master Plan Update, adopted August 2, 1994, and amended July 9, 2002, and as it may be further amended from time to time.
- 1.5 Public Use. The general public shall have access to the Premises for the uses allowed under this Lease during LESSEE's hours of operation. The general public shall not be wholly or permanently excluded from any portion of the Premises. Notwithstanding the foregoing, LESSEE may apply reasonable restrictions, on a nondiscriminatory basis, for the general public's use of the Premises consistent with the Allowed Uses. In addition, LESSEE shall not unreasonably interfere with or deny public access and use of the public areas or any part thereof if the same is deemed by applicable laws, rules, regulations or directives of competent governmental authorities to be public areas and designated or dedicated for public use.
- 1.6 Signs. LESSEE shall install and maintain CITY-approved signs identifying the Premises as CITY-owned and available for public use consistent with the terms of this Lease. If so directed, LESSEE shall install additional signs at locations reasonably directed by CITY. Other than signage currently installed on the Premises (subject to said signage having received previous CITY approval), LESSEE shall not erect or display any additional banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising without CITY's prior written consent in each instance. If any such unauthorized item is found on the Premises, LESSEE shall remove the item at its expense within twenty-four (24) hours after written notice by CITY, or CITY may thereafter summarily remove the item at LESSEE's cost.
- 1.7 Business Objective. LESSEE shall diligently conduct its business on the Premises using commercially reasonable best efforts to maximize revenue.

- 1.8 No CITY Representations. CITY makes no representation or warranty regarding either the lawfulness of any of the Allowed Uses; including without limitation whether any of the Allowed Uses are permitted under applicable land-use laws or as to the suitability of the Premises for the Allowed Uses or any particular use.
- 1.9 Competent Management. LESSEE shall provide competent management of the Premises to the satisfaction of the CITY. For the purpose of this paragraph, "competent management" shall mean demonstrated ability in management and operation of a public camping facility and related activities in a fiscally responsible manner.
- 1.10 Repair and Maintenance. LESSEE, at its sole cost and expense, shall repair and maintain the Premises and repair, maintain and/or replace all improvements, fixtures, structures, and installations thereon in a clean, decent, safe, healthy and sanitary condition reasonably satisfactory to CITY. CITY shall have no obligation or responsibility to remove debris, or to construct, maintain, repair or replace improvements, fixtures, structures, and installations on the Premises. Notwithstanding the foregoing, LESSEE shall not be responsible for the repair or replacement of major utility facilities (i.e., main pipelines) within the Premises that are required to be maintained by CITY in its governmental capacity. However, LESSEE shall be responsible for the repair, replacement or maintenance of any water or sewer laterals, and other utility facilities serving the Premises.
- 1.13 Parking. LESSEE shall provide and maintain on the Premises parking facilities as approved by CITY, with no less than one hundred seventy two (172) parking spaces, including at least thirty-one (31) complimentary parking spaces reserved for the general public (i.e., persons not patronizing or otherwise using the Premises for an Allowed Use), unless precluded by condemnation or other actions instituted or imposed by a competent governmental authority, including without limitation, CITY in its capacity as a governmental entity. Subject to the above-referenced thirty-one (31) complimentary parking spaces reserved for the general public, LESSEE shall have the right to charge a reasonable fee for its remaining parking spaces and restrict parking entrance therefor to patrons of LESSEE and its subtenants/licensees.
- 1.14 Operation of the Premises. LESSEE shall conduct its business and operate the Premises continuously throughout the Term, except during any period of reasonable and necessary closures, including without limitation usual and customary closures for remodeling or alteration of the Premises' facilities during times of least interference with the public's use. The length of stay by overnight guests permitted during the occupancy shall be subject to regulation by the CITY. The usual occupancy limitation shall be two (2) weeks; provided however, that during the period of October 1 through May 15, the maximum period of stay shall be no more than 90 days. Guests who have stayed at the Premises for 89 days shall be required to move out from the Premises on the 90th day and not return. Residents of the City of San Diego, prior to May 15 of each year, shall have priority for making reservations for accommodations for their own use during the period June 15 through September 15 of each year; all other reservations and admissions

throughout the year will be on the first-come, first-served basis. LESSEE shall annually hold at least 40 campsites in Parcel 1, as shown on **Exhibit A**, for such City of San Diego resident priority reservations. In addition, residents of the City of San Diego shall be offered a 20 percent (20%) discount on daily camping fees in Parcel 1, year-round. All advertisements and brochures shall contain the following language: **"Inquire regarding discount and reservation priority for San Diego City Residents."** LESSEE shall diligently conduct its business and furnish services to the public in a creditable manner in conformity with all applicable laws, rules, regulations and directives of competent governmental authorities. LESSEE shall not operate or allow the continued operation of any food-handling services on the Premises that do not qualify for the "A Card" as issued by the County of San Diego Department of Environmental Health to operators of food-handling establishments, or such other rating/approval system adopted to replace the system as it exists on the Effective Date.

- 1.15 Local Coastal Program. If a local coastal program ("Local Coastal Program") is adopted for the Mission Bay/Mission Beach community, and if the Local Coastal Program provides for the collection of a traffic impact mitigation fee from commercial lessees in the Mission Bay/Mission Beach community to fund all or a portion of the cost of a beach shuttle or other substantially similar public-access improvements, LESSEE shall, at its sole cost and expense, contribute its fair and equitable share, as calculated pursuant to the Local Coastal Program, to such a traffic impact mitigation program, without liability to CITY or reduction of any rents or other monies owed CITY under this Lease.
- 1.16 No Dredging of Mission Bay. CITY shall have no obligation to dredge Mission Bay or any part of the Premises. LESSEE releases and shall hold CITY harmless from any responsibility or liability related to any real or perceived need for such dredging. In the event of changed navigability conditions in Mission Bay and/or the Premises, LESSEE shall have the right, but not the obligation, to discontinue any of the water-oriented Allowed Uses.
- 1.17 Trash and Refuse. LESSEE shall, at its sole cost and expense, provide containers on the Premises to receive trash and refuse generated on the Premises. LESSEE shall not locate refuse containers outside the Premises. LESSEE shall ensure that such containers are covered and emptied regularly enough to prevent them from overflowing or creating unhealthful, unsightly or unsanitary conditions. LESSEE shall ensure that the contents of the containers are disposed of as required under applicable law.
 - 1.17.1 Recycling Ordinance. LESSEE shall comply with CITY's Recycling Ordinance (San Diego Municipal Code sections 66.0701-66.0718, as amended from time to time), which requires responsible persons to provide on-site recycling service (including the provision of signage on recycling receptacles); ensure that occupants are educated about recycling services; and to require occupant participation in recycling programs. Occupant participation shall include separating recyclable materials from other solid waste and depositing the recyclable materials into recycling containers for collection. Recyclable materials includes, without limitation, plastic and glass bottles and jars,

paper, newspaper, metal containers, cardboard, and rigid plastics including clean food waste containers, jugs, tubs, trays, pots, buckets, and toys. All compliance with the requirements of this section shall be in accordance with Recycling Ordinance specifications and all related regulations.

- 1.18 Superior Interests. This Lease is subject to all priority liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, permits and licenses, easements and rights-of-way pertaining to the Premises and existing on the Effective Date, whether or not of record. LESSEE shall obtain all licenses, permits and agreements from such third parties as may be or become necessary or reasonably advisable to allow its use of the Premises, relative to any such superior interest. If LESSEE's use of the Premises is or becomes inconsistent or incompatible with a preexisting, superior interest, LESSEE shall take such actions and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.
- 1.19 Governmental Approvals. By entering into this Lease, CITY is not obligating itself to LESSEE or to any governmental agent, board, commission or agency with regard to any discretionary action relating to LESSEE's occupancy, use or maintenance of the Premises or improvements thereon. Discretionary action includes without limitation development plans, re-zonings, variances, environmental clearances and all other required governmental approvals.
- 1.19.1 LESSEE to Obtain Approvals. LESSEE, at LESSEE's sole cost and expense, shall obtain all required permits and approvals from competent governmental authorities.
- 1.19.2 No Determinations. LESSEE acknowledges and agrees that CITY has not made, nor now makes, any determinations regarding any aspect, sufficiency or legality of any improvements on the Premises, or any aspect thereof. Furthermore, CITY does not represent, warrant or guarantee any future approval of any improvements on the Premises or any aspect thereof by CITY in its governmental capacity, nor shall anything in this Lease be interpreted as representing, warranting or guaranteeing any such future approval.
- 1.20 CITY's Consent, Approval. Unless otherwise required by law or expressly provided herein, CITY's consent or approval under this Lease shall mean the written consent or approval of the Mayor of CITY, or his or her designee ("Mayor"), and shall be made in the Mayor's discretion. CITY's discretionary acts under this Lease shall be made in the Mayor's discretion, unless otherwise required by law or expressly provided herein.
- 1.21 Quiet Possession. LESSEE, performing the covenants and agreements in this Lease, shall at all times during the Term peaceably and quietly have, hold and enjoy the Premises. If LESSEE is temporarily dispossessed through action or claim of a title superior to CITY's, this Lease shall not be voidable nor shall CITY be liable to LESSEE for any resulting burden, expense or loss incurred.

- 1.22 Tenant Estoppel Certificate. Within ten (10) business days after CITY's written request, LESSEE shall execute and deliver to CITY a tenant estoppel certificate regarding this Lease and in a form reasonably determined by CITY, indicating in the certificate any exceptions to the statements in the certificate that may exist at that time.
- 1.23 Operating Plan – Lifeguard Division Approval. At least sixty (60) days prior to each October 1 during the term of this Lease, LESSEE shall, at its sole cost and expense, submit to CITY a written, annual operating plan describing how LESSEE intends to conduct each of the Allowed Uses in the waters of Mission Bay and the Premises. Each such operating plan shall be in a form, and contain content, reasonably satisfactory to CITY. Except as required by law, LESSEE shall not make any changes to an existing CITY-approved operating plan without CITY's prior written approval in each instance, which may not be unreasonably withheld or delayed. LESSEE shall conduct each Allowed Use in the waters of Mission Bay and the Premises in accordance with its most recently CITY-approved operating plan.
- 1.24 Reservation of Rights. The following reservation of rights, and each exercise thereof, shall be without compensation of any kind to LESSEE. LESSEE EXPRESSLY WAIVES ANY AND ALL CLAIMS AGAINST CITY AND ITS ELECTED OFFICIALS, OFFICERS, EMPLOYEES, REPRESENTATIVES AND AGENTS FOR ANY BURDEN, EXPENSE OR LOSS WHICH LESSEE INCURS AS A RESULT OF CITY'S EXERCISING ITS RIGHTS RESERVED UNDER THIS SECTION.
- 1.24.1 Mineral Rights. CITY reserves all rights, title and interest in and to any and all subsurface natural gas, oil, minerals and water on or within the Premises.
- 1.24.2 Easements. CITY reserves the right to grant, establish and use easements and rights-of-way over, under, along, across and through the Premises for utilities, thoroughfares or access as it deems advisable for the public good.
- 1.24.3 Repairs. CITY may at all reasonable times upon reasonable prior notice to LESSEE (except in the event of an emergency, in which case no prior notice shall be required) enter upon the Premises for the purpose of making repairs to or developing municipal resources and services.
- 1.24.4 Noninterference. In the exercise of the rights reserved under this section, CITY shall not unreasonably interfere with LESSEE's use of the Premises.
- 1.24.5 Costs. CITY shall pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

SECTION 2: TERM

- 2.1 Term. Although this Lease shall become effective upon the Effective Date hereof, the term of this Lease shall commence on November 8, 2017 ("Commencement Date"), and

expire on November 7, 2020 ("Term"), unless terminated earlier pursuant to the terms and conditions of this Lease. It is intended by the parties hereto that none of the terms and conditions of this Lease will take effect until the Commencement Date.

- 2.2 Option Periods. LESSEE may request the right to extend the Term for up to two (2) individual one (1) year option periods ("Option" or "Options"). The CITY, in its sole discretion, will determine whether LESSEE will be allowed to exercise one or both of the individual Options.

In order to exercise the first Option, LESSEE shall notify CITY in writing, no sooner than six (6) months prior to the expiration date of the Term and no later than three (3) months prior to the expiration date of the Term, of its desire to exercise said Option. In order to exercise the second Option, LESSEE shall notify CITY in writing, no sooner than six (6) months prior to the expiration date of the first Option period and no later than three (3) months prior to the expiration date of the first Option period, of its desire to exercise said Option. In both cases, CITY shall notify LESSEE whether it has granted the individual Option within thirty (30) days of LESSEE's request therefor.

- 2.3 Lease Year. "Lease Year" shall mean each twelve (12)-month period during the Term.

- 2.4 Holdover/Tenancy at Sufferance. Any holding over by LESSEE after the expiration of this Lease shall not be considered a renewal or extension of this Lease. LESSEE's authorized occupancy of the Premises after the expiration of this Lease shall constitute a month-to-month tenancy at will, terminable upon CITY's delivery to LESSEE of a "Thirty Day Notice to Quit". During any such holdover, CITY may demand and receive from LESSEE as rent, on a *per diem* basis, a minimum of one hundred twenty-five percent (125%) of the then fair market rent for the Premises with the Allowed Uses, such fair market rent to be determined by a qualified member of CITY's staff. Said holdover rent shall be effective as of the first day of the holdover period. Applicable rent during any holdover shall also be subject to Percentage Rent and related adjustments, as described hereinafter. All other terms and conditions of this Lease shall continue in full force and effect, unless stated otherwise in this Lease.

If LESSEE continues to occupy the Premises after the early termination of this Lease or during any other non-authorized time period, said occupancy shall be as a tenant at sufferance, during which time LESSEE shall have no right of possession, estate or title to the Premises, and, subject to applicable law, no notice to quit shall be legally required to remove LESSEE from the Premises. During any such tenancy at sufferance, CITY may then demand and receive from LESSEE as rent, on a *per diem* basis, a minimum of two hundred percent (200%) of the then fair market rent for the Premises with the Allowed Uses, such fair market rent to be determined by a qualified member of CITY's staff, and which rent shall be effective as of the first day of the tenancy at sufferance period.

- 2.5 Surrender of Premises. Upon the expiration or earlier termination of this Lease, LESSEE shall vacate and surrender the Premises to CITY free and clear of all liens and

encumbrances resulting from LESSEE's possession, use or occupancy of the Premises, and in a condition reasonably satisfactory to CITY, reasonable wear and tear excepted.

- 2.5.1 If LESSEE fails to so surrender the Premises to CITY free and clear of all such liens and encumbrances, and in such reasonably satisfactory condition, LESSEE shall be solely responsible for and shall pay for the removal of such liens and encumbrances and putting the Premises in a condition reasonably satisfactory to CITY. Should LESSEE fail to expeditiously remove all such liens and encumbrances and fail to put the Premises into a condition reasonably satisfactory to CITY, CITY may take all actions necessary to do the same and shall be entitled to reimbursement for any and all costs related thereto, including reasonable attorneys' fees and costs.
- 2.5.2 At any time after the expiration or earlier termination of this Lease, LESSEE shall execute and deliver to CITY, within thirty (30) days after CITY's request, a valid and recordable quitclaim deed covering all of the Premises and all improvements thereon. If LESSEE fails or refuses to deliver the required quitclaim deed, CITY may prepare and record a notice reciting LESSEE's failure to perform this Lease obligation, and the notice shall be deemed conclusive evidence of the termination of this Lease and all of LESSEE's rights in and to the Premises.
- 2.5.3 These provisions shall survive the expiration or termination of this Lease.

SECTION 3: RENT

- 3.1 Rent. LESSEE shall pay to CITY rent on a Lease-Year basis in an amount equal to the greater of the "Minimum Annual Rent" (defined below) and the total "Percentage Rent" (defined below and payable monthly) paid during each Lease Year. If the total Percentage Rent payable during a Lease Year is less than the Minimum Annual Rent for that Lease Year, LESSEE shall make a lump-sum payment of the difference to CITY when the Percentage Rent for the last month of the Lease Year is payable.
- 3.2 Rent Statements. Within thirty (30) days after the end of each month during the Term, LESSEE shall deliver to CITY a statement of LESSEE's "Gross Revenue" (defined below) for the month, together with a statement of that month's Percentage Rent payable, each prepared using generally accepted accounting principles consistently applied, with revenue categorized by source, and deductions categorized by type.
- 3.3 Gross Revenue. "Gross Revenue" shall mean all revenue, whether actually collected or not, derived from the Allowed Uses whether earned directly or through sublessees or licensees. Possessory interest taxes or other property taxes shall not be deducted in computing Gross Revenue. Gross Revenue shall not include: (a) federal, state or municipal taxes collected from consumers (regardless of whether such amount is stated to the consumer as a separate charge) and paid periodically by LESSEE to a governmental agency and accompanied by a tax return or statement as required by law; (b) refunds for

goods returned for resale on the Premises or refunds of deposits; or (c) gratuities paid to employees working on the Premises. LESSEE shall clearly indicate the amount of all such excluded items on its books and records.

- 3.4 Minimum Annual Rent. The minimum annual rent ("Minimum Annual Rent") for the Original Lease is set to be adjusted on July 1, 2017, approximately four (4) months prior to the Commencement Date. Accordingly, CITY and LESSEE agree that the Minimum Annual Rent under the Original Lease, as adjusted on July 1, 2017, will become the initial Minimum Annual Rent rate for this Lease. Said Minimum Annual Rent amount shall be inserted in the following blank space upon the Commencement Date of the Term of this Lease: \$ _____ (to be determined). The Minimum Annual Rent, as set forth above, shall not be adjusted during the Term of this Lease.
- 3.5 Percentage Rent. "Percentage Rent" shall mean rent in an amount equal to the following percentages of Gross Revenue derived from the following activities:

<u>Percentage of Gross Revenue</u>	<u>Business Activity</u>
Twenty Percent (20%)	Campsites or other facility whose primary function is to furnish lodging
Twenty Percent (20%)	Dry boat and boat trailer storage
Twenty Five Percent (25%)	Boat slips rentals
Ten Percent (10%)	Boat or equipment rentals
Five Percent (5 %)	General merchandise store
Three and One Half Percent (3.5%)	Operations involving the serving of meals or dispensing of food or non-alcoholic beverages, including without limitation snack bar or restaurants
Six and One Half Percent (6.5%)	Sale of alcoholic beverages
Five Percent (5 %)	Operation of game rooms
Seven Percent (7 %)	Operation of gift shop
Fifty Percent (50%)	Wireless telecommunication facilities installed or operated on or from the Premises
Five Percent (5%)	Operation of recreational facilities
Three Percent (3%)	Propane

Seven Percent (7%)	Laundry facility revenue
Five Percent (5%)	Front Desk Revenue
Ten Percent (10%)	Auto Rental and Travel Commission
Fifty Percent (50%)	Telephone Commission
Twenty Percent (20%)	Auto Parking Revenue
Ten Percent (10%)	All other "incidental" uses. For purposes of this Lease, "Incidental" is defined as "an unplanned or subordinate conjunction with something else". All incidental uses must still be pre-approved by CITY.

3.6 Additional Uses Not Previously Approved. As with all proposed uses of the Premises, including additional business activities that do not clearly fit within the above-designated Business Activities categories, as determined by CITY, such uses shall be first approved in writing at the sole discretion of the CITY. Prior to CITY's approval of any use determined by CITY not to be an incidental use, or a use determined by CITY to be an additional Business Activity use, CITY and LESSEE shall determine by mutual written agreement the Percentage Rent calculation applicable to such use.

3.7 Percentage Rent Adjustments. Upon at least sixty (60) days prior notice to LESSEE, CITY may, at its option, adjust the Percentage Rent upward to fair-market Percentage Rent, and upward only, to be effective anytime during the Options or Holdover.

3.7.1 The new Percentage Rent shall be determined by qualified CITY staff.

The new market Percentage Rent determined by CITY staff (which rates shall only be higher, not lower, than the then-current percentage rates), shall become the percentage rates used to determine the Percentage Rent under this Lease as of the applicable effective date, pursuant to and as specified in the notice described in Section 3.7 above, regardless of when the new Percentage Rent determination is actually completed. If the adjustment is retroactively applied, LESSEE shall pay all resulting Percentage Rent deficiencies within ninety (90) days after CITY's notice to LESSEE of the amount of such deficiencies. The Percentage Rent determined by the CITY staff in accordance with the above procedures shall be binding on the parties.

3.8 Unauthorized Use Charge. LESSEE shall pay to CITY one hundred percent (100%) of the gross receipts from any use of the Premises that is not allowed by this Lease, regardless of any related penalties charged LESSEE by competent governmental authorities. Such unauthorized use charge shall be payable to CITY within thirty (30) days after LESSEE receives such gross receipts. No unauthorized use charges shall satisfy or be a credit against any other rent obligation of LESSEE's under this Lease. The unauthorized use charge shall otherwise be considered "rent" under this Lease, and shall

be subject to all costs and penalties for delinquent payments hereunder. The existence of such unauthorized use charge and CITY's acceptance thereof shall not constitute authorization for the use in question, and shall not waive any of CITY's rights under this Lease.

- 3.9 Time and Place of Payment. All rent payments shall be made payable to "City Treasurer" and mailed to:

The Office of the City Treasurer
City of San Diego
P.O. Box 129030
San Diego, California 92112-9030

or hand-delivered to:

The Office of the City Treasurer
Civic Center Plaza
1200 Third Avenue, First Floor
San Diego, California 92101

CITY may change the place of payment at any time upon thirty (30) days written notice to LESSEE. Mailed payments shall be deemed paid upon the date the payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed received only upon actual receipt.

- 3.10 Records. LESSEE shall keep or cause to be kept true, accurate and complete books, records and accounts of all financial transactions in the operation of LESSEE's activities conducted on the Premises, and all financial transactions resulting from LESSEE's use of the Premises. The records shall be supported by source documents such as sales slips, daily cash register tapes, purchase invoices or other documents (which may be in electronic form) as necessary to allow CITY to easily determine Gross Revenue. All retail sales or charges shall be recorded by means of cash registers or other comparable devices which display to the customer the amount of the transaction and automatically issue a receipt. Such registers or other devices shall record sales totals and other transaction numbers and sales details, and shall not be re-settable. Registered totals shall be read and recorded at the beginning and end of each business day. All sales and charges may be recorded by a system other than cash registers or other comparable devices, provided such system is pre-approved in writing by CITY.
- 3.11 Financial Statements. Within ninety (90) days after the end of each Lease Year, LESSEE shall, at its sole cost and expense, deliver to CITY a statement of annual Gross Revenue for the Lease Year, prepared using generally accepted accounting principles consistently applied, with revenue categorized by source, and deductions categorized by type. Each such statement shall be signed by an officer, general partner or principal of LESSEE attesting to the accuracy and completeness thereof, which shall be legally binding upon LESSEE. LESSEE shall comply with all reasonable requests by CITY to modify the form and content of such financial statements. LESSEE shall provide such additional

information reasonably requested by CITY regarding the operation of LESSEE's business and all other business activities conducted on the Premises and all financial transactions resulting from LESSEE's use of the Premises.

- 3.12 CITY's Right to Inspect and Audit. LESSEE shall keep all of its books of account, records and supporting documentation throughout the Term plus five (5) years. LESSEE shall make such books, records and documentation available for inspection and audit by CITY in one location within the County of San Diego. LESSEE shall maintain separate books and records related to LESSEE's possession, use and/or occupancy of the Premises. Upon reasonable prior notice, CITY may inspect and audit the operation of LESSEE's business in connection with its possession, use and/or occupancy of the Premises and all other business activities conducted on the Premises, and all financial transactions in connection with LESSEE's possession, use and/or occupancy of the Premises as CITY may deem necessary, in its sole discretion, to protect CITY's rights under this Lease. If required by competent governmental authority, LESSEE shall promptly deliver to CITY, at CITY's reasonable request and at LESSEE's sole cost and expense, any and all data reasonably needed to fully comply with such authority's requirements related to LESSEE's possession, use and/or occupancy of the Premises and all other business activities conducted on the Premises, and all financial transactions in connection with LESSEE's possession, use and/or occupancy of the Premises. CITY's right to audit LESSEE's books and records shall terminate on the date five (5) years after the end of the Term.
- 3.12.1 Audit Cost. The full cost of each CITY audit shall be borne by CITY, unless one or both of the following conditions exists, in which case LESSEE shall reimburse CITY for all costs of the audit:
- (a) For any given Lease Year, if an audit reveals an underpayment of rent of more than five percent (5%), calculated as the difference between the rent reported as payable by LESSEE and the rent payable as determined by the audit; or
 - (b) LESSEE failed to maintain true, accurate and complete books, records, accounts and supporting source documents as required by this Lease.
- 3.12.2 Rent Deficiency and Overpayment. Any rent deficiency determined by the audit shall be delinquent rent, subject to all penalties and remedies provided to CITY for delinquent payments under this Lease. CITY shall credit any overpayment determined by the audit, without interest, against future rents due under this Lease. If no future rents are then due under this Lease, CITY shall refund to LESSEE any overpayment determined by the audit, without interest, within sixty (60) days after CITY's certification of the audit.
- 3.13 Delinquent Payments. If LESSEE fails to make any payment under this Lease when due, LESSEE shall pay to CITY, in addition to the unpaid amount, five percent (5%) of the unpaid amount, which shall be additional rent. If any amount of such payment remains

unpaid after fifteen (15) days past due, LESSEE shall pay to CITY an additional five percent (5%) of the unpaid amount [being a total of ten percent (10%)], which shall be additional rent. Notwithstanding the foregoing, in no event shall the charge for late payment of rent be less than Twenty-Five Dollars (\$25). After thirty (30) days past due, unpaid amounts due CITY under this Lease may be referred to the San Diego City Treasurer for collection, and shall be subject to San Diego Municipal Code section 22.1707, as may be amended from time to time. LESSEE shall pay to CITY any collection-referral fee and all other fees and charges plus interest as may then be charged by the San Diego City Treasurer under authority of the San Diego Municipal Code. Acceptance of late charges and any portion of the late payment by CITY shall neither constitute a waiver of LESSEE's breach or default with respect to the late payment nor prevent CITY from exercising any other rights and remedies available at law or in equity. As required by law, LESSEE is hereby notified that a negative credit report may be submitted to a credit reporting agency if amounts due CITY are not paid when due.

SECTION 4: ENCUMBRANCES; ASSIGNMENT & SUBLETTING

- 4.1 Leasehold Encumbrances. LESSEE may not encumber LESSEE's leasehold estate by deed of trust or other security instrument.
- 4.2 Assignment and Subletting.
 - 4.2.1 LESSEE shall not assign this Lease or any interest in this Lease to any person or entity.
 - 4.2.2 LESSEE shall not sublet the Premises or any part of the Premises without CITY's prior written consent in each instance, which shall be in CITY's sole discretion.
 - 4.2.3 LESSEE shall not grant any license or other right or appurtenant privilege to the Premises, or permit any other person, except LESSEE's employees, agents, guests, invitees and subtenants, to use or occupy the Premises or any part of the Premises without CITY's prior written consent in each instance.
 - 4.2.4 Neither this Lease nor any interest in it shall be assignable, as to LESSEE's interest, by operation of law without CITY's prior written consent in each instance.
 - 4.2.5 As used in this Lease, "assignment" shall include without limitation the transfer of any interest in this Lease and, if LESSEE is other than a natural person, the transfer of a controlling interest in LESSEE.
- 4.3 Consent Conditions. CITY may require, as a condition to consenting to any grant of rights related to the use and occupancy of the Premises, that this Lease be revised to

include then current CITY lease provisions and that such grant of rights be subject and subordinate to each and every provision of this Lease.

- 4.4 Charter Section 225. Pursuant to San Diego City Charter section 225, LESSEE shall make a full and complete disclosure of the name and identity of each and every person/entity directly or indirectly involved in this Lease, including any interest any person/entity has in the City's real or personal property resulting from this Lease, and the precise nature of all interests of each such person. Each and every person/entity proposed to have an interest in this Lease shall be subject to CITY's review and approval.

4.4.1 The interests of all proposed "assignees" and "sublessees" are reviewed and approved through CITY's mandatory "consent" process.

4.4.2 The interests of all campers who develop an interest in the Premises pursuant to California Civil Code Sections 799.20 through 799.79, shall be reviewed and approved by CITY through the following process:

- (a) LESSEE shall procure from all campers information sufficient to give CITY a full and complete disclosure of all of the individual names and identity for all persons occupying lots on the Premises; and
- (b) LESSEE shall then communicate said information to CITY in a manner and timeline that ensures that CITY shall have sufficient time to review said information and provide LESSEE with any individual objections to any individual person(s) prior to any campers being able to establish a tenancy. CITY shall have the affirmative duty to inform LESSEE of its objection to any such person(s). If LESSEE is not informed of an objection to any such person(s), such failure to object shall be deemed an approval for such person(s). In no case shall LESSEE ever allow any person(s) to become a "resident" of the Premises, as evidenced by said person being allowed to consecutively occupy the Premises for nine (9) or more months.

- 4.5 Additional Consideration to CITY. If LESSEE subleases a majority of the Premises (i.e., at any point LESSEE no longer has day-to-day control of at least fifty percent (50%) of the total Premises), then in addition to any other amounts payable by LESSEE under this Lease, LESSEE shall pay to CITY an amount equal two percent (2%) of all amounts to be paid to LESSEE in consideration of such sublease.

- 4.5.1 Basis of Two Percent Calculation. The amount upon which such two percent (2%) payments shall be based shall be the total consideration resulting from the transaction, including without limitation all cash payments and the market value of non-cash consideration, including without limitation stocks, bonds, deferred payments, secured and unsecured notes, and forbearances regarding claims and judgments.

- 4.5.2 Transaction Statement. Prior to CITY's consent to any majority subletting, LESSEE shall deliver to CITY a written statement of all sums due and owing to CITY from LESSEE pursuant to these Additional Consideration provisions, together with an acknowledgment from the proposed sublessee as to the amount due CITY, which shall be attested to in writing by and binding upon LESSEE and such entity. The consideration payable to CITY for each majority subleasing shall be paid concurrently with the closing of the proposed transaction and shall be in addition to any rent or other payment required under this Lease.
- 4.5.3 When Not Applicable. The applicable two-percent (2%) payments shall not apply to:
- (a) a transfer of a beneficial interest in the leasehold resulting from devise, bequest, intestate succession or by operation of law for the benefit of the spouse or descendants of the individual who is LESSEE or the holder of a controlling interest in LESSEE; or
 - (b) an assignment deemed by CITY, in its sole reasonable discretion, not to materially affect the legal and equitable ownership interests in the leasehold, such as a change in LESSEE's legal or fictitious name without any other change in the equity, beneficial use of, or legal title to, the leasehold as an asset or the income produced thereby.

SECTION 5: DEFAULT AND REMEDIES

- 5.1 Default. LESSEE shall be in default of this Lease if any of the following occurs:
- (a) LESSEE fails to make any payment required under this Lease when due;
 - (b) LESSEE breaches any of its obligations under this Lease, other than those requiring payment to CITY, and fails to correct the breach within thirty (30) days following written notice thereof from CITY, or if not curable within thirty (30) days, fails to commence to correct the breach within thirty (30) days and diligently pursue the cure to completion;
 - (c) LESSEE voluntarily files or involuntarily has filed against it any petition under any bankruptcy or insolvency act or law, and such proceeding is not dismissed within sixty (60) days thereafter;
 - (d) LESSEE is adjudicated a bankrupt; or
 - (e) LESSEE makes a general assignment for the benefit of creditors.
- 5.2 Remedies. Upon LESSEE's default, CITY may, at its option, in the case of a failure to make a timely payment, terminate this Lease upon three (3) days prior notice to Pay or

Quit delivered to LESSEE (or any person claiming rights through LESSEE), or, in the case of a breach from something other than a failure to make a payment, terminate this Lease upon thirty (30) days prior Notice of Intent to Terminate delivered to LESSEE (or any person claiming rights through LESSEE). If CITY delivers such notices and LESSEE (or the persons claiming rights through LESSEE) does not cure the default within the stated time period, CITY may, in compliance with all applicable laws, terminate this Lease and all rights of LESSEE (and/or each person claiming rights through LESSEE) to the Premises, take possession of the Premises, and, as awarded, recover from LESSEE the sum of:

- (a) the worth at the time of award of any unpaid rent that was due at the time of termination;
- (b) the worth at the time of award of the amount by which the unpaid rent that would have been earned after termination until the time of award exceeds the amount of rental loss, if any, that LESSEE affirmatively proves could have been reasonably avoided;
- (c) the worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of rental loss, if any, that LESSEE affirmatively proves could be reasonably avoided;
- (d) any other amount necessary to compensate CITY for all the detriment proximately caused by LESSEE's breach and default, or that in the ordinary course of things, would be likely to result; and
- (e) all other amounts in addition to or in lieu of those previously stated as may be permitted at law or in equity.

As used in clauses (a) and (b), above, the "worth at the time of award" is computed by allowing interest at the rate of ten percent (10%) per annum. As used in clause (c), above, the "worth at the time of award" is computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco (or other similar financial institution) at the time of award plus two percent (2%). As used in this section, the term "rent" shall include rent and any and all other amounts payable by LESSEE under this Lease.

- 5.3 Abandonment by LESSEE. If LESSEE abandons the Premises, this Lease shall continue in effect as long as CITY does not terminate this Lease, and CITY may enforce all of its rights and remedies under this Lease, including without limitation the right to recover rent as it becomes due, plus damages.

SECTION 6: EMINENT DOMAIN

- 6.1 Eminent Domain. If all or part of the Premises is taken through condemnation

proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE (or beneficiary or mortgagee) shall be as follows:

- 6.1.1 Full Taking. If the entire Premises are taken, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- 6.1.2 Partial Taking. If a partial taking of the Premises occurs, and in the opinion of CITY, the remaining part of the Premises are reasonably suitable for continued Lease operation, this Lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The rent shall be equitably reduced to reflect the portion of the Premises taken, only to the extent that LESSEE's operations are reduced or impaired.
- 6.1.3 LESSEE's Award. LESSEE shall have the right to seek the fair market value of its leasehold interest under this Lease for the then-remaining Term and the value of its loss of goodwill, if any, from the taking authority. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.
- 6.1.4 Transfer. CITY may transfer CITY's interests in the Premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If such transfer occurs, LESSEE shall retain all its rights under this Lease.
- 6.1.5 No Inverse Condemnation. The exercise of any CITY right under this Lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

SECTION 7: INDEMNITY, HOLD HARMLESS; INSURANCE

- 7.1 Indemnification & Hold Harmless. LESSEE shall protect, defend, indemnify and hold CITY and its elected officials, officers, employees, representatives and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LESSEE's officers, employees, invitees, guests, agents or contractors, which arise out of or are in any manner directly or indirectly connected with this Lease or LESSEE's occupancy, use, development, maintenance or restoration of the Premises, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that LESSEE's duty to indemnify and hold CITY harmless shall not include any established liability arising from the sole negligence or willful misconduct of CITY or its elected officials, officers, employees, representatives or agents. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any

claim related to this indemnification, LESSEE shall pay all of the reasonable costs related thereto, including without limitation reasonable attorney fees and costs.

- 7.2 Insurance. LESSEE shall obtain and maintain throughout the Term, at its sole cost and expense, all insurance required by this Lease. LESSEE's liabilities under this Lease, including without limitation LESSEE's indemnity obligations, shall not be deemed limited in any way to the insurance coverage required herein. LESSEE's maintenance of the required insurance coverage is a material consideration for this Lease.

Notwithstanding any provision of this Lease to the contrary, if LESSEE fails to maintain or renew the insurance coverage required herein, or fails to deliver evidence of same to CITY, LESSEE shall be in default of this Lease, and at CITY's discretion, this Lease may be terminated. LESSEE shall not modify any policy or endorsement thereto which increases CITY's exposure to loss. LESSEE shall obtain and deliver to CITY's Real Estate Assets Department current certificates of insurance and relevant endorsements for (and subject to CITY's written approval of same):

- (a) Commercial General Liability Insurance ("CGL") written on an *ISO Occurrence form CG 00 01 07 98* or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury, including death, and property damage with limits of at least Five Million Dollars (\$5,000,000) per occurrence, subject to an annual aggregate of at least Ten Million Dollars (\$10,000,000). There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.
- (b) Commercial Automobile Liability Insurance, providing coverage for all bodily injury, including death, and property damage on an *ISO form CA 00 01 12 90* or a later version of such form or an equivalent form providing coverage at least as broad for a combined single limit of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated in performing any and all work pursuant to this Lease.
- (c) Workers' Compensation Insurance, as required by applicable laws, for all of LESSEE's employees who are subject to this Lease, with employers' liability coverage with a limit of at least One Million Dollars (\$1,000,000), and an endorsement that the insurer waives the right of subrogation against The City of San Diego and its elected officials, officers, employees, representatives and agents.

- 7.2.1 Additional Insureds. To the fullest extent allowed by law, including without limitation California Insurance Code section 11580.04, each policy must be endorsed to include as an insured "The City of San Diego and its elected officials, officers, employees, representatives and agents" with respect to liability arising out of: (a) ongoing operations performed by LESSEE or on LESSEE's behalf; (b) LESSEE's products; (c) LESSEE's work, including without limitation LESSEE's operations performed by LESSEE or on

LESSEE's behalf; or (d) the Premises.

- 7.2.2 Primary & Non-Contributory. Each policy must be endorsed to provide that the insurance afforded is primary to any insurance or self-insurance of The City of San Diego and its elected officials, officers, employees, representatives and agents as respects operations of the named insured. Any insurance maintained by The City of San Diego and its elected officials, officers, employees, representatives and agents shall be in excess of LESSEE's insurance and shall not contribute to it.
- 7.2.3 Severability of Interest. Each policy must be endorsed to provide that LESSEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.
- 7.2.4 Qualified Insurer(s). Except for the State Compensation Insurance Fund, all insurance required by this Lease shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by CITY. CITY may accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (i.e., the LESLI list). All policies of insurance carried by non-admitted carriers shall be subject to all of the requirements for policies of insurance provided by admitted carriers described herein. Each insurer shall be subject to CITY's approval in each instance.
- 7.2.5 Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of LESSEE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
- 7.2.6 Continuity of Coverage. All policies shall be in effect on or before the first day of the Term, except "course of construction fire insurance" shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. The policies shall be kept in force for the duration of the Term. At least thirty (30) days prior to the expiration of each insurance policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Lease. LESSEE shall provide proof of continuing insurance at least annually during the Term and otherwise upon CITY's request. If insurance lapses or is discontinued for any reason, LESSEE shall immediately notify CITY and shall immediately obtain replacement insurance as soon as possible.
- 7.2.7 Modification. To assure protection from and against the kind and extent of risk existing with the Allowed Uses, CITY, at its reasonable discretion, may require

the revision of amounts and coverage at any time by giving LESSEE thirty (30) days prior written notice. LESSEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY's reasonable re-evaluation of risk levels related to the Allowed Uses.

- 7.2.8 Accident Reports. LESSEE shall immediately report to CITY any accident causing property damage or injury to persons on the Premises or otherwise related to the Allowed Uses. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- 7.2.9 Causes of Loss - Special Form Property Insurance. LESSEE shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of LESSEE's insurable property related to the Allowed Uses of the Premises under this Lease or the Premises in an amount to cover 100 percent (100%) of the replacement cost. LESSEE shall deliver a certificate of such insurance to CITY's Real Estate Assets Department.

SECTION 8: IMPROVEMENTS; ALTERATIONS

- 8.1 Improvements/Alterations. No improvements, structures or installations shall be constructed on the Premises, and the Premises may not be altered, without CITY's prior written approval. LESSEE shall not make any structural or architectural design alterations to approved improvements, structures or installations on the Premises without CITY's prior written approval. Notwithstanding the foregoing, nothing in this provision shall relieve LESSEE of any maintenance, repair and/or replacement obligation under this Lease. CITY shall not be obligated by this Lease to make or assume any expense for any improvements or alterations to the Premises.
- 8.2 Construction Bond. CITY may at any time require LESSEE to deposit with CITY a faithful performance bond in the amount of one hundred percent (100%) of the estimated cost of any work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the work commenced by LESSEE will be completed in accordance with the plans approved by CITY or, at the option of CITY that the uncompleted work will be removed and the Premises restored to a condition satisfactory to CITY. The bond or cash shall be held in trust by CITY for the purpose specified above, or at CITY's option may be placed in an escrow approved by CITY.
- 8.2.1 Prevailing Wage. In the event that LESSEE initiates work or procures services in qualifying amounts and which constitute a "public works" or a maintenance contract pursuant to CITY's "Compliance with State Prevailing Wage Laws" Ordinance (SDMC section 22.3019, which may be amended from time to time) and California Labor Code section 1720, LESSEE shall ensure,

including by ensuring the provision for such in all agreement(s) for such work or services, that the contractor shall comply with said Ordinance and all applicable California Labor Code provisions regarding prevailing wages. LESSEE shall obtain from CITY, prior to entering into any agreements for or otherwise authorizing commencement of any such public works or maintenance contract, the most current version of CITY's standard contract provisions regarding said Ordinance and applicable California Labor Code provisions, for use by LESSEE in ensuring that such contractors comply with these provisions.

- 8.3 **Liens.** LESSEE shall protect, defend, indemnify and hold CITY harmless from and against all claims for labor or materials in connection with operations, improvements, alterations or repairs on or to the Premises and the costs of defending against such claims, including without limitation reasonable attorney fees. If LESSEE causes improvements, alterations or repairs to be made to the Premises, and a lien or notice of lien is filed against the Premises, LESSEE shall notify CITY of the lien within five (5) days after LESSEE first becomes aware of the existence of the lien, and within thirty (30) days after the filing either: (a) take all actions necessary to record a valid release of the lien; or (b) file with CITY a bond, cash or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.
- 8.4 **Personal Property.** LESSEE shall remove LESSEE-owned machines, appliances, equipment, trade fixtures and other items of personal property, upon the expiration of the Term, or as soon as practicable on or after the earlier termination of this Lease. Any such items which LESSEE fails to remove shall be deemed abandoned and shall be disposed of according to applicable law at LESSEE's sole cost and expense. LESSEE shall promptly pay CITY for all costs incurred for such work immediately upon receipt of an invoice therefor. LESSEE, at its sole cost and expense, shall also be responsible for the repair of any and all damage resulting from the removal of its personal property from the Premises. If LESSEE does not make such repairs, CITY shall make said repairs at LESSEE's cost and expense. LESSEE shall promptly pay CITY for all costs incurred for such work immediately upon receipt of an invoice therefor.
- 8.5 **Late Removal.** Notwithstanding any provision of this Lease to the contrary, LESSEE shall pay rent to CITY for any period of time after the expiration or earlier termination of this Lease needed to remove trade fixtures, or personal property owned by LESSEE. Such rent shall be calculated on a *per diem* basis using the rent in effect at that time. If LESSEE fails to remove fixtures or personal property owned by LESSEE if and as required within sixty (60) days after the expiration or earlier termination of this Lease, then CITY may then demand and receive from LESSEE rent, on a *per diem* basis, at one hundred twenty-five percent (125%) of the-then fair market rent for the Premises, as determined by a qualified CITY staff, which rent shall be effective as of the first day following the expiration or earlier termination of this Lease, being retroactively applied to such date after the rental rate is determined by CITY.

- 8.6 Waste, Damage, or Destruction. LESSEE shall not commit or allow to be committed any waste or any public or private nuisance on the Premises, shall keep the Premises clean and clear of refuse and obstructions, and shall dispose of all garbage, trash and rubbish in a manner satisfactory to CITY. If the Premises are put into a condition which is not clean, decent, safe, healthy and sanitary, LESSEE shall restore the Premises to a clean, decent, safe, healthy and sanitary condition within a reasonable time and to CITY's reasonable satisfaction. If LESSEE does not make such restoration repairs, CITY shall make said repairs at LESSEE's cost and expense. LESSEE shall promptly pay CITY for all costs incurred for such work immediately upon receipt of an invoice therefor.
- 8.7 Entry and Inspection. Upon reasonable prior notice to the LESSEE (except in the event of an emergency in which case no prior notice shall be required), CITY, as the lessor under this Lease with no effect on its governmental rights and powers, may enter and inspect the Premises and the operations conducted on the Premises, provided that such entry and inspection shall not unreasonably interfere with LESSEE's or LESSEE's subtenants'/licensees' use of the Premises.
- 8.7.1 Notwithstanding any provision of this Lease allowing LESSEE an opportunity to correct a breach, if the Premises are not in a clean, decent, safe, healthy and sanitary condition, CITY shall have the right but not the obligation, after ten (10) days prior written notice to LESSEE, to have any maintenance work done that is reasonably deemed by CITY in its sole discretion to be necessary, and all at LESSEE's sole cost and expense. LESSEE shall promptly pay CITY for all costs incurred for such work immediately upon receipt of an invoice therefor.
- 8.7.2 CITY may require LESSEE to file with CITY a faithful performance bond to ensure the prompt correction of any condition which is not clean, decent, safe, healthy and sanitary. The bond shall be in an amount reasonably determined by CITY to be adequate to correct the unsatisfactory condition. LESSEE shall pay the cost of the bond.
- 8.8 Utilities. LESSEE shall order, obtain and pay for all utilities and all utility installation and service charges in connection with its use of the Premises. All newly-installed utilities shall be subject to CITY's prior approval and may be required to be installed underground.
- 8.9 Taxes. LESSEE shall pay, before delinquency, all taxes, assessments and fees assessed or levied upon the Premises or upon LESSEE's use and occupancy of the Premises, including without limitation licenses and permits, and including the land and any improvements or fixtures installed or maintained by LESSEE thereon. LESSEE acknowledges that this Lease may create a possessory interest subject to property taxation and that LESSEE may be subject to the payment of taxes levied on that possessory interest. LESSEE shall pay all such possessory interest taxes. LESSEE's payment of taxes, fees and assessments shall not reduce any rent due to the CITY. CITY shall not assume any responsibility for any taxes whatsoever resulting from LESSEE's possession, use or occupancy of the Premises.

- 8.10 Unavoidable Delay. If the performance of an act required by this Lease is directly prevented or delayed by a cause beyond the reasonable control of the party required to perform the act, that party shall be excused from performing the act for a period equal to the period of the prevention or delay. This provision shall not apply to obligations to pay rent. The party claiming a delay shall notify the other party in writing within ten (10) days after the beginning of any claimed delay.
- 8.11 Hazardous Substances. LESSEE shall not allow the illegal installation, storage, utilization, generation, sale or release of any Hazardous Substance or otherwise regulated substances in, on, under or from the Premises. LESSEE and LESSEE's agents and contractors shall not install, store, utilize, generate or sell any hazardous substance on the Premises without CITY's prior written consent. LESSEE shall, prior to initiating any operations that involve Hazardous Substances, obtain all required permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a Hazardous Substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment or device which holds or incorporates a Hazardous Substance or hazardous waste.
- 8.11.1 Release. For purposes of this Lease, a "release" shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or otherwise disposing of a Hazardous Substance.
- 8.11.2 Hazardous Substance. For purposes of this Lease, "Hazardous Substance" shall mean any substance listed by the Environmental Protection Agency or the State of California as a hazardous substance, and all types of petroleum-related substances and their chemical constituents.
- 8.11.3 Remediation. If LESSEE's occupancy, use, development, maintenance or restoration of the Premises results in a release of a Hazardous Substance, LESSEE shall pay all costs of remediation and removal to the CITY's satisfaction for unrestricted reuse of the Premises, and in accordance with all applicable laws, rules, regulations and directives of competent governmental authorities.
- 8.11.4 Removal. If LESSEE or LESSEE's contractor or agent has received approval and permits to store, utilize, generate or install, or otherwise bring Hazardous Substances to the Premises, LESSEE and/or LESSEE's contractor or agent shall remove all Hazardous Substances in any type of container, equipment or device from the Premises immediately upon or prior to the expiration or earlier termination of this Lease. CITY reserves the right to conduct inspections of the

Premises and/or request documentation demonstrating the legal removal and/or disposal of the hazardous materials, wastes or other containers, equipment or devices from the Premises. LESSEE shall be responsible for any and all costs incurred by CITY to remove any container, equipment or device requiring disposal or removal as required by this provision.

- 8.11.5 Indemnity. LESSEE shall protect, defend, indemnify and hold CITY harmless from any and all claims, costs and expenses related to environmental liabilities resulting from LESSEE's occupancy, use, development, maintenance or restoration of the Premises, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary CITY response costs; (v) all fines, penalties or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, LESSEE's officers, employees, invitees, guests, agents or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.
- 8.11.6 Notice of Release. If LESSEE knows or has reasonable cause to believe that a Hazardous Substance has been released on, from or beneath the Premises, LESSEE shall immediately notify CITY and any appropriate regulatory or reporting agency pursuant to California Code of Regulations Title 19 and any other applicable laws or regulations. LESSEE shall deliver a written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If LESSEE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, LESSEE shall take all actions necessary to alleviate the danger. LESSEE shall immediately notify CITY in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Premises.
- 8.11.7 Environmental Assessment. Upon reasonable cause to believe that LESSEE's occupancy, use, development, maintenance or restoration of the Premises ("LESSEE's Operations"), resulted in any Hazardous Substance being released on, from or beneath the Premises, CITY shall notify LESSEE of such belief and allow LESSEE up to fifteen (15) days after such notice to commence the performance of an environmental assessment under regulatory oversight of the suspect area by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist or Registered Civil Engineer. If LESSEE fails to cause such an environmental assessment to be commenced with the noticed time period, CITY may cause the assessment to be performed. The environmental assessment shall be obtained at LESSEE's sole cost and expense, and shall establish what, if any, Hazardous Substances have more likely than not been caused by LESSEE's Operations on, in, from or under the Premises, and in what quantities. If any such Hazardous Substances exist in quantities greater than allowed by city, county, state or

federal laws, statutes, ordinances or regulations, or require future restricted re-use of the Premises, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws or statutes, and estimates of the cost of such remediation or removal. LESSEE shall cause, or if LESSEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, CITY may cause, the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Premises and compliance with environmental law and regulations are achieved, and LESSEE shall pay all costs and expenses therefor.

- 8.11.8 Above Ground Propane Storage Tank. Subject to obtaining and maintaining all necessary permits and approvals, LESSEE shall be permitted to retain and operate the one (1) above-ground propane storage tank that exists on the Premises as of the Effective Date hereof.

SECTION 9: GENERAL PROVISIONS

- 9.1 Notices. Any notice required or permitted to be given under this Lease shall be in writing and may be served personally, delivered by a nationally recognized courier service, or by the United States Postal Service ("USPS"), postage prepaid. If Notice is given by USPS, it shall be deemed given as of the date four (4) USPS business days after the postmark date, unless the postmark is illegible or a return receipt is requested, in which event it shall be effective when received. Notices shall be addressed as follows:

If to LESSEE:

CAMPLAND ON THE BAY
Attention: Manager
2211 Pacific Beach Drive
San Diego, California 92109

If to CITY:

THE CITY OF SAN DIEGO
Attention: Director, Real Estate Assets Department
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101

Any party entitled or required to receive notices may designate by notice to the other party a different address to which notices shall be sent.

- 9.2 Compliance with Law. LESSEE shall at all times in the construction, maintenance, use, occupancy, restoration and operation of the Premises comply with all applicable laws,

rules, regulations and directives of competent governmental authorities, at LESSEE's sole cost and expense. Upon CITY's request, LESSEE shall promptly deliver to CITY copies of all documentary evidence of such compliance received by or otherwise available to LESSEE (e.g., validation of periodic inspections, if any).

- 9.3 Restriction on Food Containers. LESSEE shall not provide to its customers any prepared food, takeout, or supplied/resale food in polystyrene foam packaging. LESSEE's food packaging for all food shall be recyclable plastic, and LESSEE shall deliver to CITY upon request evidence in the form of paid invoices for the purchase of compliant containers in amounts sufficient to indicate compliance with this section. If recyclable plastics are not available for purchase in the quantities required by LESSEE, LESSEE shall use biodegradable food packaging materials to the extent such items are available, and to the extent they are not, LESSEE may use other food packaging materials, all subject to CITY's prior approval. "Prepared food" means food or beverage prepared on the Premises for immediate consumption. "Takeout food" means food or beverage to be consumed off the Premises. "Supplied/Resale food" means foods or beverages which are supplied by a third party to LESSEE for either preparing food or beverages on site or direct sell. "Food packaging" means all bags, sacks, wrapping, containers, bowls, plates, trays, cartons, cups, straws and lids which are not intended for reuse, and on or in which any prepared food or takeout food is provided on or from the Premises.

- 9.4 California Public Records Act. If LESSEE submits any documents or information clearly marked "confidential" or "proprietary," CITY shall protect and treat the same with confidentiality to the extent permitted by law and in conformity with the California Public Records Act ("CPRA"). CITY shall determine, in its sole discretion, whether information provided to CITY by LESSEE is or is not a public record subject to disclosure under the CPRA. If LESSEE notifies CITY that it objects to the disclosure of certain information to a third party, LESSEE shall deliver to CITY with such notice specific and detailed legal grounds, including any applicable case law, upon which CITY may rely for withholding any information requested pursuant to the CPRA. If CITY withholds disclosure of information in reliance on such legal analysis provided by LESSEE, LESSEE shall protect, defend, indemnify and hold CITY and its elected officials, officers, employees, representatives and agents harmless for and from legal actions or challenges seeking to obtain the information from CITY and all costs incurred by CITY associated therewith, and shall defend, at LESSEE's sole expense, any action brought against CITY resulting from CITY's nondisclosure of the information. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, LESSEE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.

- 9.4.1 CITY shall not be liable or obligated for any burden or loss (financial or otherwise) incurred by LESSEE as a result of CITY's disclosure or non-disclosure of LESSEE information requested pursuant to the CPRA.

- 9.4.2 LESSEE's Waiver. LESSEE EXPRESSLY WAIVES ANY CLAIM AGAINST CITY AND ITS ELECTED OFFICIALS, OFFICERS, EMPLOYEES, REPRESENTATIVES AND AGENTS FOR ANY BURDEN, EXPENSE OR LOSS THAT LESSEE INCURS AS A RESULT OF CITY'S DISCLOSURE OR NON-DISCLOSURE OF LESSEE INFORMATION REQUESTED PURSUANT TO THE CPRA.
- 9.5 Equal Opportunity. LESSEE shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375 and 12086; the California Fair Employment Practices Act; and all other related and applicable federal and state laws and regulations. LESSEE shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition or place of birth. LESSEE shall cause the foregoing provisions to be inserted in all of LESSEE's contracts for work related to this Lease so that such provisions will be binding upon each of LESSEE's contractors. LESSEE shall fully cooperate with any investigation conducted by CITY pursuant to CITY'S Nondiscrimination in Contracting Ordinance (i.e., San Diego Municipal Code sections 22.3501 through 22.3517, as amended from time to time), and upon CITY's request LESSEE shall submit a current Workforce Report. LESSEE acknowledges that failure to comply with the requirements of this section and/or submitting false information in response to these requirements may result in termination of this Lease and debarment from participating in CITY contracts for a period of not less than one (1) year.
- 9.6 Equal Benefits. LESSEE shall comply with San Diego Municipal Code sections 22.4301 through 22.4308, which require applicable parties to offer the same employment benefits to employees with spouses and employees with domestic partners. LESSEE shall certify that it will maintain such equal benefits throughout the Term. LESSEE's failure to maintain equal benefits shall be a material breach of this Lease.
- 9.7 Disabled Access Compliance. LESSEE shall, at its sole cost and expense and as applicable to the Premises and LESSEE's possession, use and occupancy thereof, comply with the California Government Code, Sections 11135 through 11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 ("ADA"); and all other applicable laws, rules, regulations and directives of competent governmental authorities protecting the rights of people with disabilities. LESSEE's compliance shall include without limitation the following:
- 9.7.1 LESSEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs and termination of employment.
- 9.7.2 No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs or activities of LESSEE.

- 9.7.3 LESSEE shall include language in each future commercial sublease agreement which indicates the commercial sublessee's agreement to abide by the foregoing provisions of this section. LESSEE and each of its commercial sublessees shall be individually responsible for their own ADA employment programs.
- 9.7.4 LESSEE shall, as required by law, post a statement addressing the requirements of the ADA in a prominent place at the work site.
- 9.7.5 Where required by law, LESSEE shall cause improvements, fixtures, structures and installations on the Premises to comply with disabled-access requirements by bringing up to code and making accessible any areas of the Premises that deny access to disabled persons. All such improvements and alterations shall be at LESSEE's sole cost and expense.
- 9.7.6 LESSEE acknowledges and agrees that failure to comply with the above requirements and/or submitting false information in response to these requirements shall be a default of this Lease.
- 9.7.7 Accessibility Assessment. In accordance with California Civil Code section 1938, CITY hereby states that the Premises has not been inspected by a Certified Access Specialist (CAsp). Further, pursuant to California Civil Code section 1938(e), CITY is required to state: "A Certified Access Specialist (CAsp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CAsp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CAsp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CAsp inspection, the payment of the fee for the CAsp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises."
- 9.8 Drug-free Workplace. LESSEE shall abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:
- 9.8.1 Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of controlled substances are prohibited on the Premises and specifying the actions that will be taken against employees for violations of the prohibition; and
- 9.8.2 Establish a drug-free awareness program to inform employees about all of the following:

- 9.8.2.1 The dangers of drug abuse in the workplace;
- 9.8.2.2 LESSEE's policy of maintaining a drug-free workplace;
- 9.8.2.3 Any available drug counseling, rehabilitation, and employee assistance programs; and
- 9.8.2.4 The penalties that may be imposed upon employees for drug abuse.

LESSEE shall include in each contract related to this Lease language obligating each sublicensee and contractor to comply with the provisions of this section to maintain a drug-free workplace. LESSEE, and each of its sub-licensees and contractors, shall be individually responsible for their own drug-free workplace program.

- 9.9 CITY Employee Participation Policy. CITY may unilaterally and immediately terminate this Lease if LESSEE employs an individual who, within the twelve (12) months immediately preceding such employment did, in their capacity as a City of San Diego officer or employee, participate in negotiations with or otherwise have an influence on a recommendation made to the City Council related to the selection of LESSEE for this Lease. It is not the intent of this policy that these provisions apply to members of the City Council.
- 9.10 Local Business and Employment. LESSEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. For work associated with this Lease and to the extent legally possible, LESSEE shall use commercially reasonable efforts to solicit applications for employment and bids and proposals for contracts from qualified local residents and firms and to hire same as opportunities occur.
- 9.11 Water Quality Assurances. LESSEE shall, at its sole cost and expense, comply with all applicable laws, rules, regulations and directives of competent governmental authorities (such as the San Diego Regional Water Quality Control Board) relating to water quality assurance and storm water management in connection with its possession, use and occupancy of the Premises. LESSEE acknowledges and agrees that such legal requirements may change at any time and from time to time.
 - 9.11.1 NPDES. LESSEE shall comply with all applicable requirements of the National Pollutant Discharge Elimination System ("NPDES") permit in force on the Effective Date of this Lease (i.e., Permit No. R9-2013-0001), and any and all amendments thereto and all applicable succeeding NPDES permits.
 - 9.11.2 Stormwater Management. LESSEE shall comply with all applicable requirements of the San Diego Municipal Code Chapter 4, Article 3, Division 3: Stormwater Management and Discharge Control (the "Stormwater Code"), and employ "Best Management Practices," as that term is defined by the Stormwater Code, and as approved by CITY, in its governmental capacity, under its

Stormwater Management Program.

- 9.12 Nondiscrimination. This Lease is made and accepted upon and subject to the covenant and condition, which shall run with the land, that LESSEE or any person claiming under or through LESSEE shall not discriminate or allow any discrimination against or segregation of any person or group of persons on account of race, color, religion, gender, gender identity, disability, sexual orientation, marital status, national origin, ethnicity, ancestry, familial status or source of income in the possession, use and occupancy of the Premises or in the selection, location, number, use or occupancy of tenants, subtenants or vendees on the Premises.
- 9.13 Waiver. The property constituting the Premises is publicly owned and held in trust for the benefit of CITY's citizens. CITY's failure to insist upon the strict performance of any of LESSEE's obligations under this Lease, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. CITY's waiver of a default shall not be a waiver of any other default. Any waiver of a default must be in a writing executed by CITY to constitute a valid and binding waiver. CITY's delay or failure to exercise a right or seek a remedy shall not be deemed a waiver of that or any other right or remedy under this Lease, at law, or in equity. The exercise of any particular right or the use of any particular remedy for any default shall not waive the use of any other right or remedy for the same default or for another or later default. CITY's acceptance of any rents shall not be a waiver of any default preceding the rent payment. CITY's failure to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY may at any and all times require the cure of the default.
- 9.14 Cumulative Remedies. CITY's rights and remedies under this Lease are cumulative and shall not limit or otherwise waive or deny any of CITY's rights or remedies at law or in equity.
- 9.15 Survival. Any obligation which accrues under this Lease prior to its expiration or termination shall survive such expiration or termination.
- 9.16 Joint and Several Liability. If LESSEE is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of LESSEE under this Lease.
- 9.17 No Affiliation. Nothing contained in this Lease shall be deemed or construed to create a partnership, joint venture or other affiliation between CITY and LESSEE or between CITY and any other entity or party, or cause CITY to be responsible in any way for the debts or obligations of LESSEE or any other party or entity.
- 9.18 Entire Agreement. This Lease constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties and agreements between them pertaining to this Lease and LESSEE's occupancy, use, development, maintenance and restoration of the Premises. Any modification, alteration or amendment

of this Lease shall be in writing and signed by all the parties hereto. Each party represents and warrants that this Lease is binding upon such party in accordance with its terms.

- 9.19 Partial Invalidity. If any term, covenant, condition or provision of this Lease is found invalid, void or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.
- 9.20 Acceptance of Premises. By signing this Lease, LESSEE represents and warrants that it has independently inspected the Premises and made all tests, investigations and observations necessary to satisfy itself as to the condition of the Premises and its suitability for the Allowed Uses. LESSEE further represents and warrants that it is not relying on any representation by CITY as to the condition of the Premises or its suitability for the Allowed Uses or any particular use, and that LESSEE is relying solely on its own and independent inspections, tests, investigations and observations of the Premises in entering into this Lease. LESSEE accepts the Premises in its current condition. LESSEE acknowledges and agrees that unless set forth in this Lease, CITY neither had nor has any obligation to improve, modify, repair, replace, alter or otherwise develop the Premises at any time either prior to, on or after the Effective Date. LESSEE shall not hold CITY responsible for any defects in the Premises, excepting defects resulting from established liability arising from the gross negligence or intentional misconduct of CITY or its elected officials, officers, employees, representatives or agents. LESSEE accepts and assumes all risk of harm to all persons and property, including without limitation LESSEE's employees, agents, guests, invitees and subtenants, from any defects in the Premises, and shall be solely responsible therefor.
- 9.21 Controlling Law/Venue. This Lease and all Lease documents shall be deemed to be made under, and shall be construed in accordance with and governed by the laws of the State of California without regard to the conflicts or choice of law provisions thereof. The venue for any suit or proceeding concerning this Lease, including the interpretation or application of any of its terms or any related disputes, shall be in the County of San Diego, State of California.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

SECTION 10: CONTRACT AUTHORITY

- 10.1 Authority to Contract. Each individual executing this Lease on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Lease on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws or other written rules of conduct or governing agreement. Each party represents and warrants that this Lease is binding upon such party in accordance with its terms. Each party which is not a natural person represents and warrants that it is a valid, qualified corporation, limited liability company, partnership or other unincorporated association in good standing in its home state and that it is qualified to do business in California.

IN WITNESS WHEREOF, this Lease is executed to be effective as of the Effective Date.

Date: 3-8-17

CAMPLAND, LLC, a Delaware limited liability company

BY: [Signature]

Name: Michael Gelfand

Title: President

Date: 4/24/17

THE CITY OF SAN DIEGO, a California municipal corporation

BY: [Signature]

Name: CYBEC J. J. J.

Title: ON SCHE, RON. ENR. 15245

ENVIRONMENTAL ANALYSIS SECTION ENVIRONMENTAL CLEARANCE:

This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines Section 15301 (Existing Facilities)

Date: April 25, 2017

BY: [Signature]

Name: Anna L. McPherson

Title: Senior Planner

Approved as to form this <u>25th</u> day of <u>April</u> , 2017.
MARA W. ELLIOTT , City Attorney
By: <u>[Signature]</u>
Name: <u>Debra J. Bevier</u>
Title: <u>Deputy City Attorney</u>

Exhibit A: Description of Premises

J-17352

EXHIBIT "A"

Parcel 1:

Those portions of Acre Lot 75 of Pacific Beach, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 854 filed in the Office of the County Recorder of San Diego County; portions of the Pueblo Lands of San Diego, according to Map thereof made by James Pascoe in 1870, a copy of which said map was filed in the Office of the County Recorder of San Diego County and known as Miscellaneous Map No. 36, together with a portion of Mission Bay which was granted to the City of San Diego by act of the legislature of the State of California, approved April 27, 1945 entitled "An act granting certain lands, tide lands and submerged lands of the State of California to the City of San Diego upon certain trusts and conditions" described as follows:

Beginning at the Point of intersection of the center line of Olney Street and Oliver Avenue as shown on Pacific Beach, according to Map thereof No. 922, filed in the Office of the County Recorder of San Diego County; thence along said centerline of Olney Street, South 14°29'00" East 390.00 feet; thence leaving said center line North 75°31'00" East 40.00 feet to the easterly line of Olney Street as shown on said Map No. 854, being the **TRUE POINT OF BEGINNING**; thence along said easterly line South 14°29'00" East 660.08 feet (record 660.00 feet); thence North 75°31'00" East 880.00 feet; thence South 14°29'00" East 250.00 feet; thence North 75°31'00" East 1150.00 feet; thence North 09°27'33" West 913.59 feet (record 913.50 feet) to a point in a line which bears North 75°31'00" East parallel with the southerly line of Pacific Beach Drive, formerly Pacific Avenue, as shown on Mission Bay Park Tract, according to Map thereof No. 1120, filed in the Office of the County Recorder of San Diego County, from the true point of beginning; thence along said parallel line South 75°31'00" West 2110.00 feet to the **TRUE POINT OF BEGINNING**.

Excepting from that portion lying upland from the mean high tide line all oil, gas, other hydrocarbons and minerals, together with the right to use the surface of said land and all portions of the subsurface of said land for the development and production of oil, gas, other hydrocarbons and minerals from beneath said land as reserved by the State of California, in an agreement recorded October 21, 1964 as File No. 192661, and also as reserved in the lease recorded February 24, 1969 as File No. 32884.

Also excepting from that portion lying below the mean high tide line all the deposits of minerals, including oil and gas, together with the right to prospect for, mine and remove such deposits and to occupy and use so much of the surface as may be required therefore as reserved by the State of California in an act of the legislature approved April 27, 1945, statutes of California Chapter 142, and also as reserved in the lease recorded February 24, 1969 as File No. 32884.

Parcel 2:

That portion of the Pueblo Lands of San Diego, in the City of San Diego, County of San Diego, State of California, according to Map thereof made by James Pascoe in 1870, a copy of which said map was filed in the Office of the County Recorder of San Diego County and known as

Miscellaneous Map No. 36, together with a portion of Mission Bay which was granted to the City of San Diego by act of the legislature of the State of California, approved April 27, 1945 entitled "An act granting certain lands, tide lands and submerged lands of the State of California to the City of San Diego upon certain trusts and conditions" described as follows:

Beginning at the Point of Intersection of the center line of Olney Street and Oliver Avenue as shown on Pacific Beach, according to Map thereof No. 922, filed in the Office of the County Recorder of San Diego County; thence along said centerline of Olney Street, South 14°29'00" East 390.00 feet; thence leaving said center line North 75°31'00" East 40.00 feet to the easterly line of said Olney Street as shown on Pacific Beach, according to Map thereof No. 854, filed in the Office of the County Recorder of San Diego County; thence along said easterly line South 14°29'00" East 660.08 feet (record 660.00 feet); thence North 75°31'00" East 880.00 feet; thence South 14°29'00" East 250.00 feet to the **TRUE POINT OF BEGINNING**; thence South 14°29'00" East 600.00 feet; thence North 75°31'00" East 425.00 feet; thence North 14°29'00" West 600.00 feet; thence South 75°31'00" West 425.00 feet to the **TRUE POINT OF BEGINNING**.

Excepting from that portion lying upland from the mean high tide line all oil, gas, other hydrocarbons and minerals, together with the right to use the surface of said land and all portions of the subsurface of said land for the development and production of oil, gas, other hydrocarbons and minerals from beneath said land as reserved by the State of California, in an agreement recorded October 21, 1964 as File No. 192661, and also as reserved in the lease recorded February 24, 1969 as File No. 32884.

Also excepting from that portion lying below the mean high tide line all the deposits of minerals, including oil and gas, together with the right to prospect for, mine and remove such deposits and to occupy and use so much of the surface as may be required therefore as reserved by the State of California in an act of the legislature approved April 27, 1945, statutes of California Chapter 142, and also as reserved in the lease recorded February 24, 1969 as File No. 32884.

Parcel 3:

That portion of the Pueblo Lands of San Diego, in the City of San Diego, County of San Diego, State of California, according to Map thereof made by James Pascoe in 1870, a copy of which said map was filed in the Office of the County Recorder of San Diego County and known as Miscellaneous Map No. 36, together with a portion of Mission Bay which was granted to the City of San Diego by act of the legislature of the State of California, approved April 27, 1945 entitled "An act granting certain lands, tide lands and submerged lands of the State of California to the City of San Diego upon certain trusts and conditions" described as follows:

Beginning at the Point of Intersection of the center line of Olney Street and Oliver Avenue as shown on Pacific Beach, according to Map thereof No. 922, filed in the Office of the County Recorder of San Diego County; thence along said centerline of Olney Street, South 14°29'00" East 390.00 feet; thence leaving said center line North 75°31'00" East 40.00 feet to the easterly line of said Olney Street as shown on Pacific Beach, according to Map thereof No. 854, filed in the Office of the County Recorder of San Diego County, being Point "A"; thence along said easterly line South 14°29'00" East 660.08 feet (record 660.00 feet); thence North 75°31'00" East 880.00 feet; thence South 14°29'00" East 250.00 feet; thence North 75°31'00" East

1150.00 feet to the **TRUE POINT OF BEGINNING**; thence North 09°27'33" West 913.59 feet (record 913.50 feet) to a point in a line which bears North 75°31'00" East parallel with the southerly line of Pacific Beach Drive, formerly Pacific Avenue, as shown on Mission Bay Park Tract, according to Map thereof No. 1120, filed in the Office of the County Recorder of San Diego County, from said Point "A"; thence North 75°31'00" East 100.00 feet; thence South 09°27'33" East 913.59 feet to a line which bears North 75°31'00" East from the true point of beginning; thence South 75°31'00" West 100.00 feet to the **TRUE POINT OF BEGINNING**.

Excepting from that portion lying upland from the mean high tide line all oil, gas, other hydrocarbons and minerals, together with the right to use the surface of said land and all portions of the subsurface of said land for the development and production of oil, gas, other hydrocarbons and minerals from beneath said land as reserved by the State of California, in an agreement recorded October 21, 1964 as File No. 192661, and also as reserved in the lease recorded February 24, 1969 as File No. 32884.

Also excepting from that portion lying below the mean high tide line all the deposits of minerals, including oil and gas, together with the right to prospect for, mine and remove such deposits and to occupy and use so much of the surface as may be required therefore as reserved by the State of California in an act of the legislature approved April 27, 1945, statutes of California Chapter 142, and also as reserved in the lease recorded February 24, 1969 as File No. 32884.

Parcel 4:

Those portions of Acre Lots 74 and 75 of Pacific Beach, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 854 filed in the Office of the County Recorder of San Diego County, together with a portion of Mission Bay which was granted to the City of San Diego by act of the legislature of the State of California, approved April 27, 1945 entitled "An act granting certain lands, tide lands and submerged lands of the State of California to the City of San Diego upon certain trusts and conditions" described as follows:

Beginning at the Point of intersection of the center line of Olney Street and Oliver Avenue as shown on Pacific Beach, according to Map thereof No. 922, filed in the Office of the County Recorder of San Diego County; thence along said centerline of Olney Street, South 14°29'00" East 390.00 feet; thence leaving said center line North 75°31'00" East 40.00 feet to the easterly line of Olney Street as shown on said Map No. 854, being the **TRUE POINT OF BEGINNING**; thence along said easterly line South 14°29'00" East 660.08 feet (record 660.00 feet); thence South 75°31'00" West 50.06 feet; thence North 14°29'00" West 660.08 feet; thence North 75°31'00" East 50.06 feet to the **TRUE POINT OF BEGINNING**.

Excepting from that portion lying upland from the mean high tide line all oil, gas, other hydrocarbons and minerals, together with the right to use the surface of said land and all portions of the subsurface of said land for the development and production of oil, gas, other hydrocarbons and minerals from beneath said land as reserved by the State of California, in an agreement recorded October 21, 1964 as File No. 192661, and also as reserved in the lease recorded February 24, 1969 as File No. 32884.

Also excepting from that portion lying below the mean high tide line all the deposits of minerals, including oil and gas, together with the right to prospect for, mine and remove such deposits

and to occupy and use so much of the surface as may be required therefore as reserved by the State of California in an act of the legislature approved April 27, 1945, statutes of California Chapter 142, and also as reserved in the lease recorded February 24, 1969 as File No. 32884.

Parcel 5:

Those portions of Acre Lots 74 and 75 of Pacific Beach, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 854 filed in the Office of the County Recorder of San Diego County; portions of the Pueblo Lands of San Diego, according to Map thereof made by James Pascoe in 1870, a copy of which said map was filed in the Office of the County Recorder of San Diego County and known as Miscellaneous Map No. 36, together with a portion of Mission Bay which was granted to the City of San Diego by act of the legislature of the State of California, approved April 27, 1945 entitled "An act granting certain lands, tide lands and submerged lands of the State of California to the City of San Diego upon certain trusts and conditions" described as follows:

Beginning at the Point of intersection of the center line of Olney Street and Oliver Avenue as shown on Pacific Beach, according to Map thereof No. 922, filed in the Office of the County Recorder of San Diego County; thence along said centerline of Olney Street, South 14°29'00" East 390.00 feet; thence leaving said center line North 75°31'00" East 40.00 feet to the easterly line of Olney Street as shown on said Map No. 854, being the **TRUE POINT OF BEGINNING**; thence parallel with the southerly line of Pacific Beach Drive, formerly Pacific Avenue, as shown on Mission Bay Park Tract, according to Map thereof No. 1120, filed in the Office of the County Recorder of San Diego County, North 75°31'00" East 726.73 feet; thence North 45°53'46" West 4.69 feet to the beginning of a tangent 70.00 foot radius curve concave Southwesterly; thence Northwesterly along the arc of said curve through a central angle of 58°33'40" a distance of 71.55 feet; thence South 75°32'34" West 643.67 feet to the beginning of a tangent 150.00 foot radius curve concave Northerly; thence Westerly along the arc of said curve through a central angle of 09°15'35" a distance of 24.24 feet to the beginning of a compound 50.00 foot radius curve concave Northerly; thence Westerly along the arc of said curve through a central angle of 31°48'11" a distance of 27.75 feet; thence North 63°23'40" West 6.31 feet to the beginning of a tangent 29.50 foot radius curve concave Southwesterly; thence Northwesterly along the arc of said curve through a central angle of 08°32'11" a distance of 4.40 feet; thence non-tangent to said curve North 18°04'10" East 0.50 feet to the beginning of a non-tangent 30.00 foot radius curve concave Southerly to which a radial line bears North 18°04'10" East; thence Westerly along the arc of said curve through a central angle of 28°31'00" a distance of 14.93 feet; thence non-tangent to said curve South 14°29'00" East 63.28 feet; thence North 75°31'00" East 50.06 feet to the **TRUE POINT OF BEGINNING**.

Excepting from that portion lying upland from the mean high tide line all oil, gas, other hydrocarbons and minerals, together with the right to use the surface of said land and all portions of the subsurface of said land for the development and production of oil, gas, other hydrocarbons and minerals from beneath said land as reserved by the State of California, in an agreement recorded October 21, 1964 as File No. 192661, and also as reserved in the lease recorded February 24, 1969 as File No. 32884.

Also excepting from that portion lying below the mean high tide line all the deposits of minerals, including oil and gas, together with the right to prospect for, mine and remove such deposits and to occupy and use so much of the surface as may be required therefore as reserved by the State of California, in an act of the legislature approved April 27, 1945, statutes of California Chapter 142, and also as reserved in the lease recorded February 24, 1969 as File No. 32884.

Parcel 6:

Those portions of Acre Lots 74 and 75 of Pacific Beach, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 854 filed in the Office of the County Recorder of San Diego County; portions of the Pueblo Lands of San Diego, according to Map thereof made by James Pascoe in 1870, a copy of which said map was filed in the Office of the County Recorder of San Diego County and known as Miscellaneous Map No. 36, together with a portion of Mission Bay which was granted to the City of San Diego by act of the legislature of the State of California, approved April 27, 1945 entitled "An act granting certain lands, tide lands and submerged lands of the State of California to the City of San Diego upon certain trusts and conditions" described as follows:

Beginning at the Point of intersection of the center line of Olney Street and Oliver Avenue as shown on Pacific Beach, according to Map thereof No. 922, filed in the Office of the County Recorder of San Diego County; thence along said centerline of Olney Street, South 14°29'00" East 390.00 feet; thence leaving said center line North 75°31'00" East 40.00 feet to the easterly line of Olney Street as shown on said Map No. 854, being a point on a line parallel with the southerly line of Pacific Beach Drive, formerly Pacific Avenue, as shown on Mission Bay Park Tract, according to Map thereof No. 1120, filed in the Office of the County Recorder of San Diego County being Point 'A'; thence along said parallel line North 75°31'00" East 726.73 feet to the **TRUE POINT OF BEGINNING**; thence continuing along said parallel line North 75°31'00" East 1410.67 feet; thence North 14°31'08" West 19.00 feet; thence South 88°56'46" West 125.58 feet to the beginning of a non-tangent 167.00 foot radius curve concave Northerly to which a radial line bears South 13°19'12" East; thence Westerly along the arc of said curve through a central angle of 13°23'17" a distance of 39.02 feet to the beginning of a reverse 153.00 foot radius curve concave Southerly; thence Westerly along the arc of said curve through a central angle of 14°17'53" a distance of 38.18 feet; thence South 75°46'11" West 20.00 feet to the beginning of a tangent 153.00 foot radius curve concave Southeasterly; thence Southwesterly along the arc of said curve through a central angle of 14°38'59" a distance of 39.12 feet to the beginning of a reverse 167.00 foot radius curve concave Northwesterly; thence Southwesterly along the arc of said curve through a central angle of 14°31'58" a distance of 42.36 feet; thence South 75°39'11" West 89.72 feet to the beginning of a tangent 493.00 foot radius curve concave Southeasterly; thence Southwesterly along the arc of said curve through a central angle of 01°13'40" a distance of 10.56 feet; thence South 74°25'31" West 129.12 feet to the beginning of a tangent 507.00 foot radius curve concave Northwesterly; thence Southwesterly along the arc of said curve through a central angle of 01°13'42" a distance of 10.87 feet; thence South 75°39'13" West 139.92 feet to the beginning of a tangent 507.00 foot radius curve concave Northwesterly; thence Southwesterly along the arc of said curve through a central angle of 03°21'17" a distance of 29.69 feet; thence South 79°00'30" West 21.95 feet to the beginning of a tangent 493.00 foot radius curve concave Southeasterly; thence Southwesterly along the arc of said curve through a central angle of 03°21'14" a distance of 28.86 feet; thence South 75°39'16" West 169.03 feet to the beginning

of a tangent 507.00 foot radius curve concave Northwesterly; thence Southwesterly along the arc of said curve through a central angle of 03°07'23" a distance of 27.64 feet; thence South 78°46'39" West 46.10 feet to the beginning of a tangent 493.00 foot radius curve concave Southeasterly; thence Southwesterly along the arc of said curve through a central angle of 03°07'23" a distance of 26.87 feet; thence South 75°39'16" West 72.05 feet to the beginning of a tangent 153.00 foot radius curve concave Southeasterly; thence Southwesterly along the arc of said curve through a central angle of 11°51'26" a distance of 31.66 feet to the beginning of a reverse 167.00 foot radius curve concave Northwesterly; thence Southwesterly along the arc of said curve through a central angle of 24°38'46" a distance of 71.84 feet to the beginning of a reverse 153.00 foot radius curve concave Southeasterly; thence Southwesterly along the arc of said curve through a central angle of 32°28'15" a distance of 86.71 feet; thence South 55°58'20" West 6.15 feet to the beginning of a tangent 167.00 foot radius curve concave Northwesterly; thence Southwesterly along the arc of said curve through a central angle of 09°58'04" a distance of 29.05 feet; thence non-tangent to said curve South 75°01'02" West 20.84 feet; thence South 75°32'55" West 128.65 feet to the beginning of a non-tangent 70.00 foot radius curve concave Southwesterly to which a radial line bears North 14°27'26" West; thence Southeasterly along the arc of said curve through a central angle of 58°33'40" a distance of 71.55 feet; thence South 45°53'46" East 4.69 feet to the **TRUE POINT OF BEGINNING.**

Excepting from that portion lying upland from the mean high tide line all oil, gas, other hydrocarbons and minerals, together with the right to use the surface of said land and all portions of the subsurface of said land for the development and production of oil, gas, other hydrocarbons and minerals from beneath said land as reserved by the State of California, in an agreement recorded October 21, 1964 as File No. 192661, and also as reserved in the lease recorded February 24, 1969 as File No. 32884.

Also excepting from that portion lying below the mean high tide line all the deposits of minerals, including oil and gas, together with the right to prospect for, mine and remove such deposits and to occupy and use so much of the surface as may be required therefore as reserved by the State of California in an act of the legislature approved April 27, 1945, statutes of California Chapter 142, and also as reserved in the lease recorded February 24, 1969 as File No. 32884.

Parcel 7:

That portion of the Pueblo Lands of San Diego, in the City of San Diego, County of San Diego, State of California, according to Map thereof made by James Pascoe in 1870, a copy of which said map was filed in the Office of the County Recorder of San Diego County and known as Miscellaneous Map No. 36, together with a portion of Mission Bay which was granted to the City of San Diego by act of the legislature of the State of California, approved April 27, 1945 entitled "An act granting certain lands, tide lands and submerged lands of the State of California to the City of San Diego upon certain trusts and conditions" described as follows:

Beginning at the Point of intersection of the center line of Olney Street and Oliver Avenue as shown on Pacific Beach, according to Map thereof No. 922, filed in the Office of the County Recorder of San Diego County; thence along said centerline of Olney Street, South 14°29'00" East 390.00 feet; thence leaving said center line North 75°31'00" East 40.00 feet to the easterly line of said Olney Street as shown on Pacific Beach, according to Map thereof No. 854, filed in

the Office of the County Recorder of San Diego County, being Point "A"; thence along said easterly line South 14°29'00" East 660.08 feet (record 660.00 feet); thence North 75°31'00" East 880.00 feet; thence South 14°29'00" East 250.00 feet; thence North 75°31'00" East 1150.00 feet to the **TRUE POINT OF BEGINNING**; thence South 09°27'33" East 113.07 feet; thence South 75°31'00" West 210.82 feet; thence North 09°27'33" West 113.07 feet; thence North 75°31'00" East 210.82 feet to the **TRUE POINT OF BEGINNING**.

Excepting from that portion lying upland from the mean high tide line all oil, gas, other hydrocarbons and minerals, together with the right to use the surface of said land and all portions of the subsurface of said land for the development and production of oil, gas, other hydrocarbons and minerals from beneath said land as reserved by the State of California, in an agreement recorded October 21, 1964 as File No. 192661, and also as reserved in the lease recorded February 24, 1969 as File No. 32884.

Also excepting from that portion lying below the mean high tide line all the deposits of minerals, including oil and gas, together with the right to prospect for, mine and remove such deposits and to occupy and use so much of the surface as may be required therefore as reserved by the State of California in an act of the legislature approved April 27, 1945, statutes of California Chapter 142, and also as reserved in the lease recorded February 24, 1969 as File No. 32884.

Parcel 8:

That portion of the Pueblo Lands of San Diego, in the City of San Diego, County of San Diego, State of California, according to Map thereof made by James Pascoe in 1870, a copy of which said map was filed in the Office of the County Recorder of San Diego County and known as Miscellaneous Map No. 36, together with a portion of Mission Bay which was granted to the City of San Diego by act of the legislature of the State of California, approved April 27, 1945 entitled "An act granting certain lands, tide lands and submerged lands of the State of California to the City of San Diego upon certain trusts and conditions" described as follows:

Beginning at the Point of Intersection of the center line of Olney Street and Oliver Avenue as shown on Pacific Beach, according to Map thereof No. 922, filed in the Office of the County Recorder of San Diego County; thence along said centerline of Olney Street, South 14°29'00" East 390.00 feet; thence leaving said center line North 75°31'00" East 40.00 feet to the easterly line of said Olney Street as shown on Pacific Beach, according to Map thereof No. 854, filed in the Office of the County Recorder of San Diego County; thence along said easterly line South 14°29'00" East 660.08 feet (record 660.00 feet); thence North 75°31'00" East 880.00 feet; thence South 14°29'00" East 850.00 feet to the **TRUE POINT OF BEGINNING**; thence North 75°31'00" East 425.00 feet; thence South 14°29'00" East 35.00 feet; thence South 75°31'00" West 425.00 feet; thence North 14°29'00" West 35.00 feet to the **TRUE POINT OF BEGINNING**.

Excepting from that portion lying upland from the mean high tide line all oil, gas, other hydrocarbons and minerals, together with the right to use the surface of said land and all portions of the subsurface of said land for the development and production of oil, gas, other hydrocarbons and minerals from beneath said land as reserved by the State of California, in an agreement recorded October 21, 1964 as File No. 192661, and also as reserved in the lease recorded February 24, 1969 as File No. 32884.

Also excepting from that portion lying below the mean high tide line all the deposits of minerals, including oil and gas, together with the right to prospect for, mine and remove such deposits and to occupy and use so much of the surface as may be required therefore as reserved by the State of California in an act of the legislature approved April 27, 1945, statutes of California Chapter 142, and also as reserved in the lease recorded February 24, 1969 as File No. 32884.

Patrick A. McMichael 2-20-2015
Patrick A. McMichael, LS 6187 Date

PAM:RH:sr:Files\17352\Text\Legals\Lease Parcels 02.19.15



Exhibit A: Description of Premises (continued)

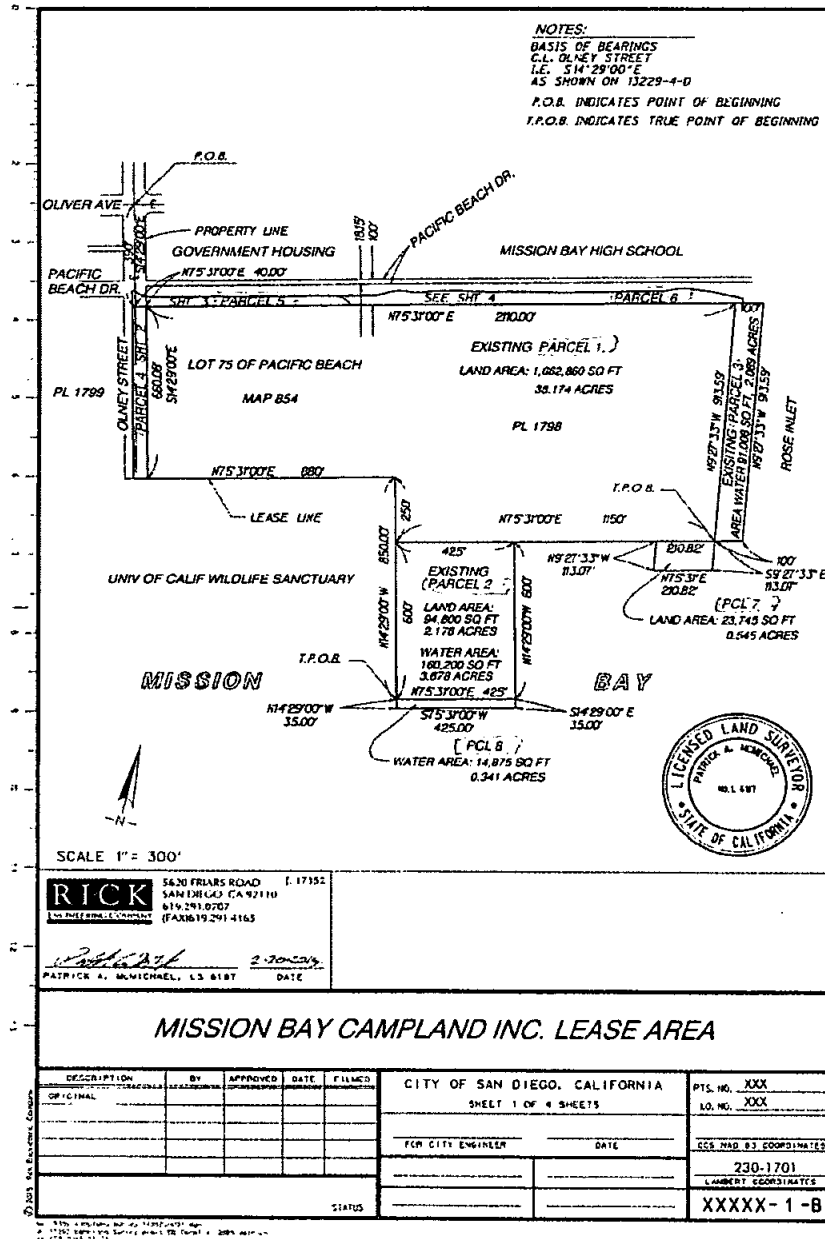
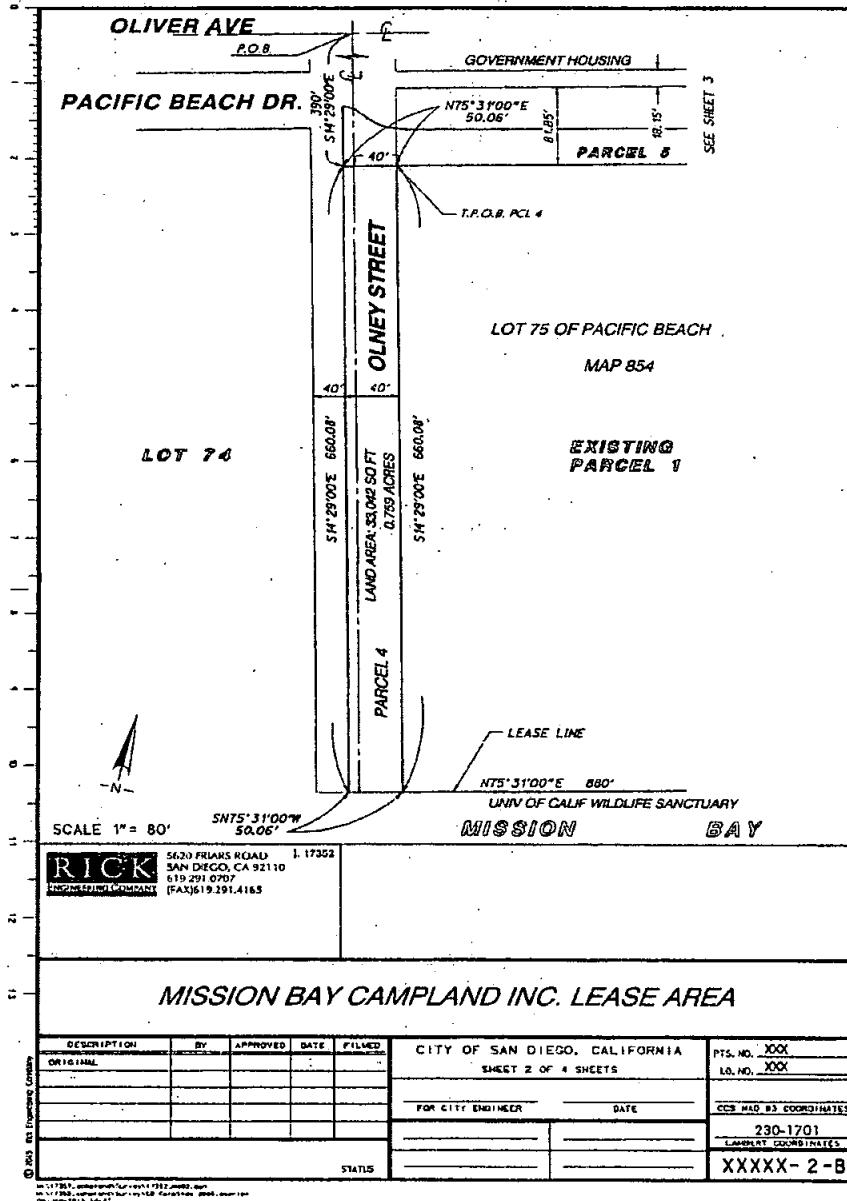


Exhibit A: Description of Premises (continued)



COURSE TABLE

No.	DIRECTION	LENGTH
L1	N 63° 23' 40" W	6.31
L2	S 75° 31' 00" W	50.06
L3	N 18° 04' 10" E	0.50

CURVE TABLE

NAME	DELTA	RADIUS	ARC
C1	08° 32' 11"	29.50	4.40
C2	28° 31' 00"	30.00	14.93

Map Labels: PARCEL 4, OLNEY STREET, LOT 75 OF PACIFIC BEACH, MAP 854, T.P.O.B., 380', 514° 29' 00" E, 514° 29' 00" E, 6-31.48 FT R=50.00 L=27.75, 6-518' 35" R=150.00 L=24.24, OLIVER AVE, GOVERNMENT HOUSING, PACIFIC BEACH DR., 643.67', 515° 32' 34" N, LAND AREA: 29,228 SQ. FT. 0.671 ACRES, N15° 31' 00" E 726.73', LEASE LINE, EXISTING 1, 61.85', 18.15', 4-58° 33' 40" R=70.00 L=71.55, N45° 53' 45" W 4.69'

Scale: 1" = 80'

North Arrow: N

Surveyor Information: RICK ENGINEERING COMPANY, 5620 FRIARS ROAD, SAN DIEGO, CA 92110, 619.291.0707, (FAX) 619.291.4165, J. 17352

Exhibit A: Description of Premises (continued)

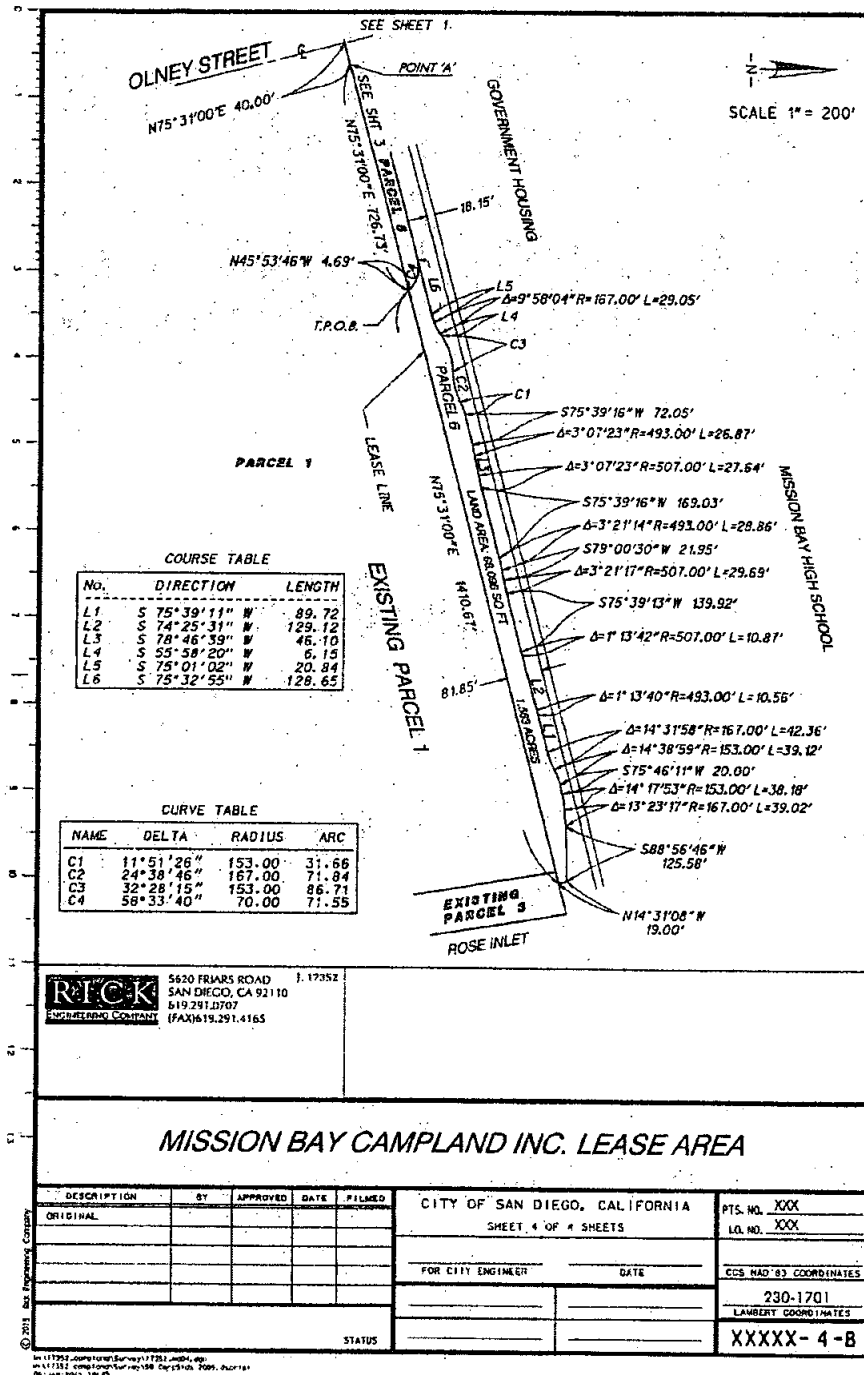
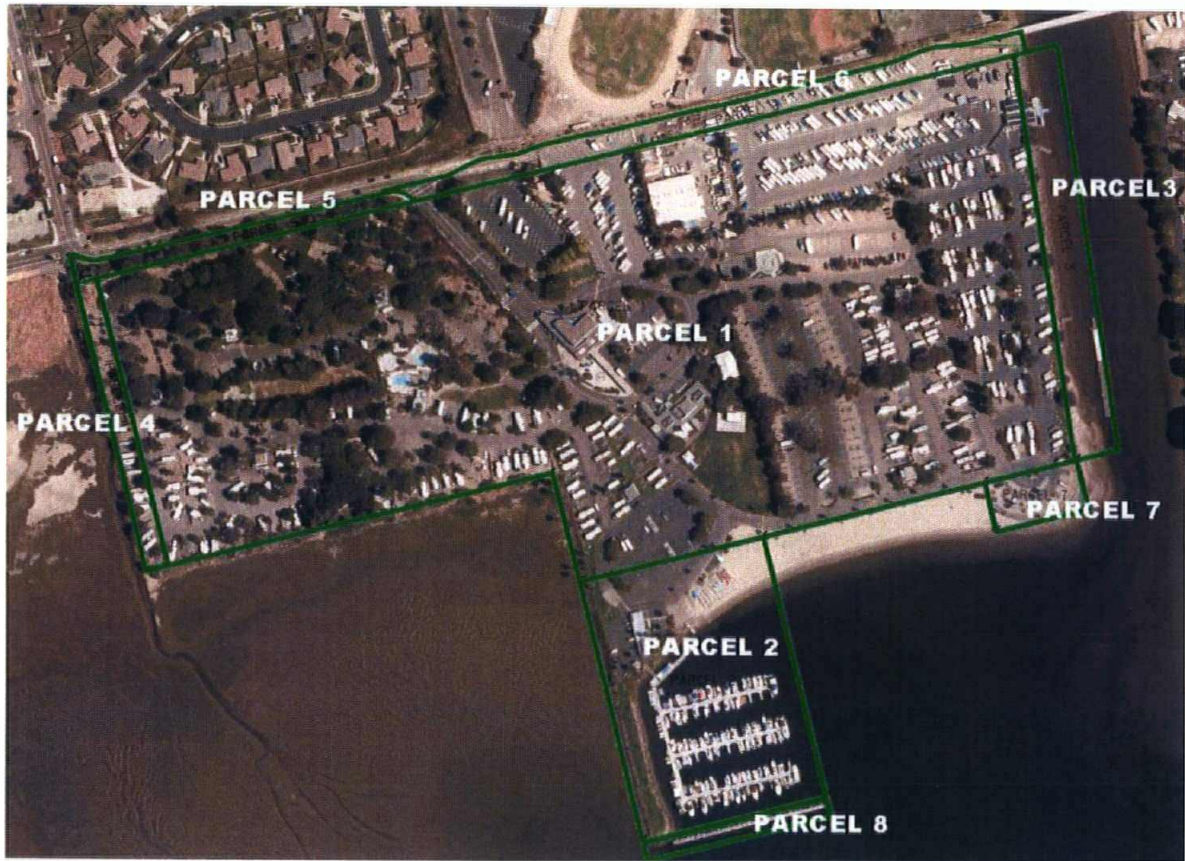


Exhibit A: Description of Premises (continued)



RESOLUTION NUMBER R- 311006DATE OF FINAL PASSAGE APR 13 2017

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE MAYOR, OR HIS DESIGNEE, TO EXECUTE THAT CERTAIN NEW THREE-YEAR PERCENTAGE LEASE BETWEEN THE CITY OF SAN DIEGO AND CAMPLAND, LLC, FOR THE CONTINUED LEASING, OPERATION AND MAINTENANCE OF THE CITY-OWNED PROPERTY COMMONLY KNOWN AS CAMPLAND ON THE BAY.

WHEREAS, the City of San Diego (City) owns that certain real property, consisting of approximately 40.14 acres of land and 5.48 acres of water, in the Mission Bay Park, which is currently leased to Campland, LLC, a Delaware Limited Liability Company, d.b.a. Campland on the Bay (Lessee) pursuant to an existing 50-year Lease Agreement (Current Lease); and

WHEREAS, under the Current Lease, Lessee has been operating a public camping facility improved with camp sites, parking, storage, boat slips, a general merchandise store, and other support facilities; and

WHEREAS, the Current Lease expires on November 7, 2017; and

WHEREAS, Lessee has requested and negotiated a new three year (Term) percentage lease (Proposed New Lease), the terms and conditions of which will include: (a) two one-year options to extend the Term; (b) the same uses as authorized in the Current Lease; and (c) an increase to the total leasehold area caused by the addition of approximately 43.89 acres of land in order to incorporate the adjacent City-owned parcels that are currently maintained by Lessee under separate permits, and the addition of approximately 6.11 acres of water in order to correct the current legal description of the leasehold; and

WHEREAS, allowing the Lessee to continue its present operations on the City-owned property during the Term of the Proposed New Lease will provide for the continued maintenance and oversight of the City's property while the City determines/finalizes it plans for the future use of the property; and

WHEREAS, the initial rent under the Proposed New Lease will be either a minimum annual rent of \$1,024,132, or percentage rents from all operations conducted on the leased premises, whichever is higher. The minimum annual rent will be adjusted on July 1, 2017. The percentage rent rates were set by an appraisal that was undated by a staff appraiser on January 19, 2017; and

WHEREAS, because the Lessee could extend the Term of the Proposed New Lease to as long as five (5) years by exercising the options set forth in the Proposed New Lease, City Council authorization is required for the Proposed New Lease; and

WHEREAS, the market value of the real estate subject to the Proposed New Lease, as appraised by an independent fee appraiser on January 19, 2017, is \$3,000,000; NOW,

THEREFORE,

BE IT RESOLVED, that the Mayor, or his designee, is authorized and directed to execute that certain City of San Diego Percentage Lease by and between the City of San Diego and Campland, LLC, the terms and conditions of which are more fully set forth in Document No. ^{RR}311006, which is on file with the City Clerk.

BE IT FURTHER RESOLVED, that the Chief Financial Officer is authorized to accept and deposit lease rent proceeds into General Fund 100000.

APPROVED: MARA W. ELLIOTT, City Attorney

By

Debra J. Bevier
Deputy City Attorney

DJB:mcm
February 16, 2017
Or.Dept:Real Estate Assets Dept.
Doc. No.: 1445985

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of APR 04 2017.

ELIZABETH S. MALAND
City Clerk

By

Deputy City Clerk

Approved:

4/12/17
(date)

Vetoed:

(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on APR 04 2017, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	☒	☐	☐	☐
Lorie Zapf	☒	☐	☐	☐
Chris Ward	☒	☐	☐	☐
Myrtle Cole	☒	☐	☐	☐
Mark Kersey	☒	☐	☐	☐
Chris Cate	☒	☐	☐	☐
Scott Sherman	☒	☐	☐	☐
David Alvarez	☒	☐	☐	☐
Georgette Gomez	☒	☐	☐	☐

Date of final passage APR 13 2017

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By *My. Brady*, Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 311006

Passed by the Council of The City of San Diego on April 4, 2017, by the following vote:

YEAS: BRY, ZAPF, WARD, COLE, KERSEY, CATE, SHERMAN,
ALVAREZ, & GOMEZ.

NAYS: NONE.

NOT PRESENT: NONE.

RECUSED: NONE.

AUTHENTICATED BY:

KEVIN L. FAULCONER

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

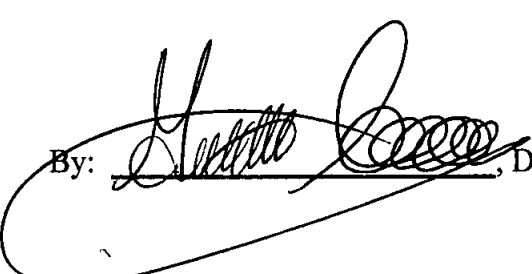
By: Gil Sanchez, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true, and correct copy of
RESOLUTION NO. R-311006, approved on April 12, 2017. The date of final passage is
April 13, 2017.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By:  Deputy

RESOLUTION NUMBER R- 311007DATE OF FINAL PASSAGE APR 13 2017

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO DETERMINING THAT THE APPROVAL OF A NEW THREE YEAR PERCENTAGE LEASE BETWEEN THE CITY OF SAN DIEGO AND CAMPLAND, LLC, FOR THE CONTINUED LEASING, OPERATION AND MAINTENANCE OF THE CITY-OWNED PROPERTY COMMONLY KNOWN AS CAMPLAND ON THE BAY IS CATEGORICALLY EXEMPT FROM CEQA PURSUANT TO SECTION 15301 OF THE STATE CEQA GUIDELINES.

WHEREAS, the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.), section 21084, states that the CEQA Guidelines thereto (California Code of Regulations, Title 14, Chapter 3, Section 15000 et seq.) shall list those classes of projects which have been determined not to have a significant effect on the environment and which shall be exempt from CEQA; and

WHEREAS, pursuant to that authority, CEQA Guidelines sections 15300-15333 list the categorical exemptions promulgated by the California Office of Planning and Research and adopted by the Secretary of the California Natural Resources Agency for those classes of Projects which have been determined not to have a significant effect on the environment; and

WHEREAS, the City of San Diego desires to authorize a new three year Percentage Lease with Campland, LLC, a Delaware Limited Liability Company, d.b.a. Campland on the Bay, a copy of which is on file in the Office of the City Clerk as Document No.

RR- 311006 (Project); and

WHEREAS, the Development Services Department has established that the Project is categorically exempt from CEQA pursuant to CEQA Guidelines section 15301 and that no

exception to the exemption, as set forth in CEQA Guidelines section 15300.2, applies to the Project; and

WHEREAS, the Council of the City of San Diego (City Council) has considered the potential environmental effects of the Project; and

WHEREAS, the City Council held a duly noticed public meeting and considered the written record for the Project as well as public comment; and

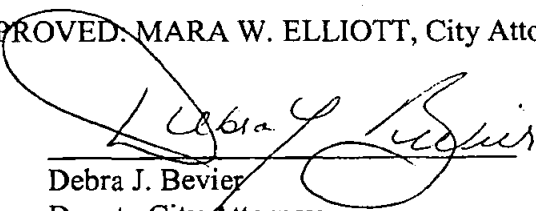
WHEREAS, the City Council, using its independent judgment, has determined that the Project will not have a significant effect on the environment because it involves the operation and leasing of an existing public or private facility, with negligible or no expansion of the use of the property; NOW, THEREFORE,

BE IT RESOLVED, that the City Council determines that the Project is categorically exempt from CEQA pursuant to CEQA Guidelines section 15301, and that an exception to the exemption does not apply.

BE IT FURTHER RESOLVED, that the City Council has determined that an exception to the exemption as set forth in CEQA Guidelines section 15300.2 does not apply.

APPROVED: MARA W. ELLIOTT, City Attorney

By


Debra J. Bevier
Deputy City Attorney

DJB:mcm

March 13, 2017

Or.Dept: Real Estate Assets Dept.

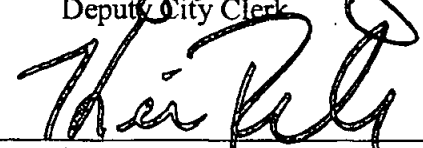
Doc. No.: 1460591

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of APR 04 2017.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 4/12/17
(date)


KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on APR 04 2017, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	☒	☐	☐	☐
Lorie Zapf	☒	☐	☐	☐
Chris Ward	☒	☐	☐	☐
Myrtle Cole	☒	☐	☐	☐
Mark Kersey	☒	☐	☐	☐
Chris Cate	☒	☐	☐	☐
Scott Sherman	☒	☐	☐	☐
David Alvarez	☒	☐	☐	☐
Georgette Gomez	☒	☐	☐	☐

Date of final passage APR 13 2017.

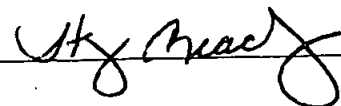
(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

(Seal)

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By , Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 311007