

DUPLICATE

**MANAGEMENT SERVICES AGREEMENT
BETWEEN THE CITY OF SAN DIEGO AND
NEWPORT PACIFIC CAPITAL COMPANY, INC.**

THIS management services agreement ("Agreement") is made and entered into between the City of San Diego, a municipal corporation ("CITY"), and Newport Pacific Capital Company, Inc., a California Corporation ("MANAGER") to provide management services to CITY for the real property and the improvements and operations located at 2727 De Anza Road, San Diego, California, formerly known as De Anza Harbor Resort ("Property").

RECITALS

- A. The Property consists of approximately 70 acres of land and 6 acres of water located at De Anza Point within CITY's Mission Bay Regional Park. The Property is dedicated park land and is located on tidelands granted by the State of California to CITY for park and recreational use. The Property contains a newly re-opened 259 space RV park. The legal description for the Property is attached as Exhibit A.
- B. In 1981, the State of California adopted legislation permitting residential use on the Property until November 23, 2003 upon specific conditions including that on and after November 23, 2003, the Property be developed solely for park and recreation purposes.
- C. On November 18, 2003, the San Diego City Council approved Resolutions 298609 and 298610 regarding implementation of a transition plan to end permanent residential use on the Property and return the Property to park and recreational use consistent with the City Charter, the State's legislation, and the Tidelands Trust.
- D. Until November 23, 2003, the Property was leased by CITY to De Anza Harbor Resort & Golf, LLC (DHRG), who operated a mobile home and recreational vehicle park on the Property. DHRG vacated the Property on expiration of its lease, leaving its tenants in place.
- E. As of November 24, 2003, when CITY took possession of the Property from DHRG, the roads, electrical systems, water and sewage systems, and other infrastructure designed to serve the residents on the Property were in very poor condition.
- F. As part of its transition plan, CITY has entered into settlement agreements with many of the residents and mobile home owners on the Property. As part of the settlement agreements, individual residents may continue to reside on the Property until their specified departure date.

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- G. The residents' homeowners association filed an action against CITY relating to continued residency on the Property, entitled *De Anza Cove Homeowners Association, Inc. v. City of San Diego*, San Diego Superior Court Case No. GIC 821191. On January 15, 2004, the Court issued a Preliminary Injunction providing that "City shall not discontinue services to Mission Bay Park residents or close down any of the common areas during the pendency of this action," and that CITY may accept and expend rent and other charges from the residents without prejudice to CITY's position that the residents are not tenants of CITY. The Preliminary Injunction is attached to this Agreement as Exhibit B, and incorporated by this reference.

NOW THEREFORE, based on these facts, CITY and MANAGER agree as follows:

ARTICLE 1 - DEFINITIONS

The following terms shall have the respective meanings set forth below:

Agency Account - As defined in Section 6.2.

Buildings - All buildings, structures and improvements now or hereafter located on the Property, including fixtures such as plumbing, electrical, ventilating, heating, and air conditioning systems.

Effective Date - Effective Date - The date upon which this Agreement is executed by all of the parties and approved by the City Attorney.

Gross Revenues - All revenue and income of any kind derived from operation and management of the Property, including income from space fees, but specifically excluding:

- a. Amounts received for utility charges (water, electricity, gas and sewer), trash and cable television service, government mandated fees, and any park owned mobile home principal and interest income.
- b. Federal, State and Municipal excise, sales and use taxes collected directly from residents and/or guests.
- c. Any proceeds arising from the sale or other disposition of Capital assets including CITY's mobile home coaches.
- d. The proceeds (in cash or otherwise) of any financing or refinancing pertaining to the Property.
- e. Insurance proceeds.

Impositions - All taxes, assessments, water, sewer or other rents, rates and charges, levies, license fees, all common area charges, permit fees, inspection fees, and any other authorization fees and charges, which at any time may be assessed, levied, confirmed or imposed on the Property, including real estate and personal property taxes.

"MANAGER" - Shall include Newport Pacific Capital Company, Inc., a California Corporation, its officers, agents, representative's affiliates and employees.

Management Fees - As defined in Section 4.1.

Management Services - All aspects of operation and management of the Property including but not limited to: maintenance, repair, security, accounting, billing, collection, contracting for needed services, payment of expenses, handling of resident issues and complaints, resident legal compliance services, litigation support, implementation of the Transition Plan, supervision of rehabilitation of the RV Area, and all other services necessary to the operation of the Property.

Modified Preliminary Injunction - the order issued by the San Diego Superior Court on October 14, 2005 in De Anza Cove Homeowners Association, Inc. v. City of San Diego, Case No. GIC 821191, [Exhibit B].

Operating Budget - The annual budget of expenditures for management and operation of the Property approved by CITY as set forth in Section 6.1.

Operating Equipment - All furniture, furnishings, fixtures and equipment required for the operation of the Property including, but not limited to: carpeting and floor coverings, draperies, appointments, paintings, office furniture, safes, cash registers, facsimile machines, data processing, accounting, duplicating and communication equipment, laundries, window coverings, common area lighting, grounds maintenance equipment, and all other fixtures, equipment and apparatus needed for such purpose. All Operating Equipment is the property of the CITY and may not be taken from the Property without the prior written consent of CITY.

Operating Period. - Period commencing on the Effective Date and terminating upon the termination of this Agreement.

Operating Year - The period from the Effective Date through and including the first June 30th thereafter, and each twelve (12) month period thereafter.

Property - The real property at 2727 De Anza Drive as more specifically described in the legal description attached to this Agreement as Exhibit A, and all Buildings, together with all entrances, exits, rights of ingress and egress, easements and appurtenances belonging or appertaining to the property.

RV Area - Any area developed on the Property for the transient tourist use of recreational vehicles.

ARTICLE 2 - MANAGEMENT SERVICES

- 2.1 Property Management. CITY hereby retains MANAGER and MANAGER agrees to supervise and direct the management and operation of the Property ("Management Services") at the direction of CITY. MANAGER agrees to devote all necessary time and effort to management and operation of the Property pursuant to this Agreement.
- 2.2 Manager's Control and Discretion. Subject to the terms of this Agreement, MANAGER shall have all reasonable control and discretion in the operation, management and supervision of the Property for the purpose of carrying out the terms of this Agreement and subject to the terms of all existing and future Court orders relating to the Property, except as follows:
- a. Limit on Manager's Authority. MANAGER shall obtain CITY's written consent before incurring any expense not contained in the approved Operating Budget where the amount payable exceeds one thousand dollars (\$1,000.00). This limit does not apply to the payment of utilities.
- 2.3 Industry Standards. MANAGER shall use its best efforts to operate and maintain the Property in a safe, clean, and aesthetically acceptable condition. MANAGER agrees that the Management Services rendered under this Agreement shall be performed in accordance with the standards customarily adhered to by an experienced and competent professional property management firm using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of California. Where approval by CITY is required, it is understood to be general approval only and does not relieve MANAGER of responsibility for complying with all applicable laws, codes, and good property management practices.
- 2.4 City Modification of Management Services. CITY may, without invalidating this Agreement, order changes in the scope of the Management Services by altering, adding to, or deducting from the Management Services to be performed. All such changes shall be in writing and shall be performed in accordance with the

provisions of this Agreement. If any such changes cause an increase or decrease in MANAGER's cost of, or the time required for, the performance of any of the Management Services, MANAGER shall so notify CITY. If appropriate, an equitable adjustment to MANAGER's compensation may be made, provided that any adjustment must be approved by both Parties in writing. The City Manager or his designee is authorized to provide approval on behalf of CITY for the changes contemplated by this Section.

- 2.5 Service Contracts. MANAGER shall negotiate and enter into service contracts required in the ordinary course of business in operating the Property, including, without limitation, contracts for electricity, gas, telephone, cable TV, cleaning, extermination, water heater maintenance, sanitary sewer maintenance, pool and spa maintenance, resident billing and collection services, utility meter reading, landscaping and grounds keeping, security services, street sweeping, utility meter testing, preventive and corrective maintenance services, lot preparation, emergency repairs and all other maintenance contractors that MANAGER deems advisable. MANAGER shall also ensure that all contractors are properly and adequately licensed and insured.
- 2.6 Payment of Utilities. MANAGER shall pay, for and on behalf of and at the expense of CITY and without need of further authorization from CITY, all costs actually incurred for utilities on the Property including gas, electrical, water, and sewer in accordance with Section 4.2.
- 2.7 Payment of Taxes. Manager shall pay, for and on behalf of and at the expense of CITY, all property taxes due for property in accordance with Section 4.2.
- 2.8 Purchase of Operating Supplies. MANAGER shall purchase or arrange for the purchase of all supplies, inventories, provisions, and Operating Equipment which in the normal course of business are necessary to maintain and operate the Property properly, subject to Section 2.8, below. CITY shall be credited with the full amount of any discounts or commissions obtained by MANAGER on any of such purchases.
- 2.9 Repairs and Maintenance. MANAGER shall cause to be made, on behalf of CITY, all reasonable repairs, replacements, alterations, additions and improvements to the Property necessary for the continued operation of the Property. MANAGER shall obtain CITY's written consent before entering into any contract or agreement for such repairs and improvements if the amount payable exceeds two thousand five hundred dollars (\$2,500.00) and has not previously been approved as part of the Operating Budget. CITY may, in its sole discretion, review and revise this limit as needed. If any of the work required is caused by the failure, default or deficiency of labor or materials provided or performed by past contractors (prior to this Agreement) as to which any

guarantees or warranties exist in favor of CITY, then MANAGER will notify CITY in writing of this fact and then invoke said guarantees or warranties, and seek to enforce them.

If MANAGER determines that: (a) a dangerous condition exists at the Property; (b) repairs, alterations or replacements are required to assure the continued safe operation of the Property or to comply with any applicable legal or insurance requirements; or (c) expenditures are required arising out of fire or other like or unlike casualty or other emergency; then MANAGER shall immediately notify CITY of the situation, and then MANAGER, in consultation with CITY, may take all reasonable steps and make such expenditures necessary to cure such condition, and may make such repairs or alterations or replacements or actions otherwise so required. CITY agrees to reimburse MANAGER for all such expenses reasonably incurred within thirty days of receipt of a computation statement for same.

- 2.10 Licenses and Permits. MANAGER shall apply for and obtain and maintain in the name and at the expense of CITY all licenses and permits required of CITY or MANAGER in connection with the management and operation of the Property. CITY shall execute and deliver any and all applications and other documents, and otherwise cooperate to the fullest extent with MANAGER in applying for, obtaining, and maintaining such licenses and permits. MANAGER shall maintain all applicable licenses and permits and is responsible for updating said information with the governing authorities, institutions and agencies.
- 2.11 Rates and Fees. CITY will establish rates and fees to be charged at the Property in accordance with and pursuant to CITY's Transition Plan and the Preliminary Injunction.
- 2.12 Marketing and Leasing Services. MANAGER shall cause to be designed and implemented all plans and preparations for advertising, public relations and promotional campaigns for the purpose of operating a RV Area on the Property. MANAGER shall operate and manage the RV Area, including reservations, check-ins and check-outs, and other guest services.
- 2.13 Laws and Ordinances. MANAGER shall make all reasonable efforts at CITY'S expense to comply with all applicable laws, rules, regulations, requirements and ordinances of any federal, state or municipal authority, including any orders issued by any Court pertaining to the management of the Property, and those of any insurance companies covering any of the risks against which the Property is insured.
- 2.14 Newsletter. MANAGER will prepare and distribute a monthly newsletter for residents containing information regarding events, maintenance that may impact

residents and any information that may enhance the communication between MANAGER and residents. A copy will be provided each month to CITY.

- 2.15 Reports. Monthly reports regarding maintenance, security and financials for each month are due to CITY by MANAGER on or before the tenth (10th) day of the month following the reporting period. MANAGER will deliver a monthly report of resident complaints, the response by MANAGER and any outstanding issues. MANAGER will deliver to CITY a profit and loss statement showing results of the Property's operation for the previous calendar month and fiscal Operating year-to-date and adherence to the Operating Budget, including a computation of the Management Fee and explanation of variances from budget greater than ten percent (10%) or one thousand dollars (\$1,000) of the year-to-date budget for any line item.

ARTICLE 3 - DURATION OF AGREEMENT

- 3.1 Term. The term of this agreement shall be one (1) year commencing on its Effective Date.
- 3.2 Renewal. This Agreement may be renewed for two successive one (1) year periods with the consent of CITY.
- 3.3 Termination for Convenience. CITY and MANAGER agree that either party may terminate this Agreement upon thirty (30) days written notice to the other party, beginning upon receipt of the notice. Such notice shall be delivered by certified mail with return receipt. After termination of this Agreement, MANAGER shall complete any and all additional work necessary for the orderly closing of MANAGER's Management Services under this Agreement.
- 3.4 Termination for Default. If MANAGER fails to perform or adequately perform any obligation required by this Agreement, MANAGER's failure constitutes a default. If MANAGER fails to satisfactorily cure a default within ten (10) calendar days of receiving written notice from CITY specifying the nature of the default, CITY may immediately cancel and/or terminate this Agreement, and terminate each and every right of MANAGER, and any person claiming any rights by or through MANAGER under this Agreement. The rights and remedies of CITY enumerated in this Section are cumulative and shall not limit, waive, or deny any of CITY's rights under any other provision of this Agreement. Nor does this Section otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement or hereinafter enacted or established, that may be available to CITY against MANAGER.

- 3.5 Force Majeure. If a default is the result of delays in the performance of the Management Services caused by unforeseen events beyond the control of both Parties, such delay may entitle MANAGER to a reasonable extension of time, but such delay shall not entitle MANAGER to damages or additional compensation. The following conditions may constitute such a delay: war; changes in law or government regulation; labor disputes; strikes; fires, floods, adverse weather or other similar condition of the elements necessitating cessation of MANAGER's work; inability to obtain materials, equipment or labor; or other specific reasons agreed to between CITY and MANAGER; provided, however, that this provision shall not apply to an inability to perform caused by the acts or omissions of MANAGER.

ARTICLE 4 – COMPENSATION

- 4.1 Management Fees. As compensation for the Management Services rendered by MANAGER pursuant to this Agreement, MANAGER will be paid monthly as follows:

5% of the first \$35,000 of income from the mobile home park,
3 ½% of the income over \$35,000

5% of the first \$35,000 of income from the RV park,
3 ½% of the income over \$35,000

In no event will the total combined monthly payment to MANAGER be less than \$10,000 (ten thousand dollars).

Fees paid to MANAGER for any partial months will be prorated.

- 4.2 Financial Obligations. Except as otherwise agreed herein, all debts and expenses arising from the operation of the Property in accordance with this agreement are those of the CITY and are to be paid by CITY. In no event will MANAGER be required to bear any loss or advance any of its funds for the operation of the Property; except however, if MANAGER does so it will be entitled to prompt reimbursement by CITY of the sums so advanced.

ARTICLE 5 - CONTRACT ADMINISTRATION

- 5.1 Contract Administrator. The Real Estate Assets Department is the contract administrator for this Agreement. MANAGER shall provide Management Services under the direction of the Director of the Real Estate Assets Department and designees. The Director and designees will communicate with MANAGER

on all matters related to the administration of this Agreement and MANAGER's performance of the Management Services rendered hereunder. When this Agreement refers to communications to or with CITY, those communications will be with the Director or other person designated by the Director, unless the Agreement specifies otherwise.

- 5.2 Confidentiality of Services. All Management Services performed by MANAGER, including but not limited to all drafts, data, correspondence, proposals, reports, and estimates compiled or composed by MANAGER, pursuant to this Agreement, are for the sole use of CITY, its agents and employees. Neither the documents nor their contents shall be released to any third party without the prior written consent of CITY.

ARTICLE 6 - FINANCIAL AND LEGAL MATTERS

- 6.1 Annual Operating Budget. MANAGER shall submit to CITY on an annual basis a budget itemizing all monthly revenues and operating expenses for the Property estimated by MANAGER for the forthcoming Operating Year. For each line item MANAGER shall provide detail sufficient to the CITY to determine how the budgeted amount was derived. The Operating Budget for the partial first year of this Agreement is due to CITY prior to execution of this Agreement. Thereafter, MANAGER shall submit the annual Operating Budget by April 1 of each year, for the period of July 1 through June 30 thereafter. The CITY shall review each Operating Budget with MANAGER, and both parties shall endeavor to resolve any differences so that a mutually satisfactory budget can be agreed upon. CITY shall make every effort to approve a budget by July 1 for the following Operating Year.

The various expense categories in the approved Operating Budget shall be reviewed by CITY and MANAGER monthly for possible revision upward or downward. Any revisions shall be mutually agreed upon in writing by the parties.

Should CITY fail to approve a new Operating Budget prior to its implementation on July 1 of that year, CITY shall continue to reimburse MANAGER for expenditures as approved by CITY.

- 6.2 Agency Account. MANAGER shall deposit in a banking institution, selected by MANAGER, in accounts in the Property's name ("Agency Account"), all monies furnished by MANAGER and/or CITY as working capital and all monies received by MANAGER for or on behalf of CITY and will disburse and pay the

same as required in connection with the ownership, maintenance and operation of the Property, to include: taxes, and all costs and expenses of maintaining, operating and supervising the operation of the property, including insurance, Impositions, compensation for MANAGER, and expenses incurred by CITY on behalf of the Property. Monies received by MANAGER in the operation of the Property shall not be commingled with MANAGER's own funds.

- 6.3 Manager Not to Pledge City's Credit. MANAGER shall not pledge CITY's credit and shall not, in the name of CITY, borrow any money or execute any promissory note or other encumbrance without the prior consent of CITY.
- 6.4 Maintenance of Books and Records. MANAGER shall maintain books, records, logs, documents and other evidence sufficient to record all actions taken with respect to the rendering of Management Services for the Property, throughout the performance of the Management Services and until turned over to CITY.
- 6.5 City's Right of Inspection and Review. MANAGER shall, upon reasonable notice, accord to CITY and its accountants, attorneys and agents, the right at reasonable times during the term of this Agreement to inspect the Property and to examine and make copies of the Property's books and records. Such inspections and examinations shall be at reasonable times and shall be done with as little disruption to the business of the Property as possible. Upon the termination of this Agreement, all such books and records shall forthwith be turned over to CITY so as to insure the orderly continuation of the operation of the Property; provided, however, all such books and records shall thereafter be available to MANAGER at the Property for inspection, audit, examination and extracting, at all reasonable times upon reasonable notice.
- 6.6 Unlawful Detainer/Legal Action Consent. MANAGER must receive CITY'S prior written consent and leave of court as may be required before instituting legal action or proceedings to collect charges for space fees and utilities, resident charges and other costs, to evict residents or their guests, or to cancel or terminate residencies for breach or default.
- 6.7 Legal Actions for Resident Default. MANAGER shall institute, in its own name or in name of CITY, but at the expense of CITY, legal actions or proceedings to collect space fees, utility charges and other charges, to evict Property residents or their guests with the written consent of the CITY and leave of court as may be required.
- 6.8 Other Court Actions. MANAGER must receive CITY'S prior written consent and leave of court as may be required before instituting other court actions.

- 6.9 Independent Contractor. MANAGER and any subcontractors employed by MANAGER shall be independent contractors of the CITY. Any provisions of this Agreement that may appear to give CITY any right to direct MANAGER concerning the details of performing the Management Services, or to exercise any control over such performance, shall mean only that MANAGER shall follow the direction of CITY concerning the end results of the performance.

ARTICLE 7 - RISK MANAGEMENT

7.1 Indemnification.

- a. MANAGER agrees to defend, indemnify, protect, and hold the CITY, its elected officials, officers, agents, representatives, and employees harmless from and against any and all claims, actions, suits, proceedings, losses, costs, damages, liabilities, deficiencies, fines, penalties, punitive damage awards or expenses, including, but not limited to attorneys fees and costs of suit, incurred directly or indirectly, for liability asserted or liability established for damages or injuries to any person or property, which arise out of, or are in any manner, directly or indirectly connected with or relating to the MANAGER'S (including MANAGER'S officers, agents, representatives and employees) willful acts, wrongful acts, negligent acts, natural acts, errors or omissions, to the extent that any such acts were not authorized or ratified by the CITY. Provided, however, MANAGER'S duty to indemnify and hold the CITY harmless shall not include any claims or liability arising from the negligence, or willful misconduct of the CITY, its elected officials, representatives, agents, officers, or employees.
- b. In addition to, and not as a limitation of any other obligations, the CITY agrees to indemnify, defend and hold MANAGER harmless from and against any and all claims, actions, suits, proceedings, losses, costs, damages, liabilities, deficiencies, fines, penalties, punitive damage awards or expenses, including, but not limited to attorneys fees and costs of suit, incurred directly or indirectly, resulting from, or arising out of: (i) the CITY's execution or performance of any agreement regarding the Park, including any other agreement or obligation to sell the Park or change the zoning for the Park, or arising from any claim or cause of action asserted by the residents of the Park or any representative or representative association thereof, and/or (ii) based upon or in connection with the allegations in the Third Amended Complaint in the San Diego Superior Court Case GIC 821191, entitled *De Anza Cove Homeowners Association, Inc. v. City of San Diego, et al.* (the "Lawsuit"), whether or not such actions occurred or arose, prior to, or after, the execution of this Agreement. Provided, however, that subsections (i) and (ii) do not apply to any such actions which are a result of any acts by MANAGER-which

are not authorized by the CITY, are not in accordance with the terms of this Agreement, or are subject to MANAGER's duty to indemnify the City as described in paragraph 7.1a. above. The CITY also acknowledges that the indemnification obligations under this Agreement shall also include any matter or claim which is covered under a standard property owner's policy for a facility such as the Park.

In addition, the CITY's obligations under this Agreement shall be joint and several, as to the CITY, and any and all of its divisions and agencies, to the extent permitted by law or Court order. Furthermore, with regard to the indemnification under this Agreement, MANAGER shall be named as an additional insured under any insurance policies maintained and/or obtained by the CITY, or self insurance maintained by CITY, whether or not in regard to the Lawsuit, or generally, with regard to the Park for matters in which CITY must indemnify and defend MANAGER as described above. However, nothing in this section seeks to relieve MANAGER from the requirements of carrying the minimum insurance that provides coverage for acts listed in 7.1a in the amounts listed in 7.3 through 7.7 through the life of the management contract.

- c. With regard to the indemnifications under Paragraphs (a) and (b), the indemnifying party shall be obligated, at the sole expense of the indemnifying party, to provide legal counsel selected by the indemnifying party and approved by the indemnified party, to provide defense for and on behalf of the indemnified party.
- d. The obligations to indemnify, defend, and hold harmless, as provided in this Agreement, shall continue on or after the termination of this Agreement as to acts and events occurring before expiration of the Agreement. Furthermore, MANAGER and the CITY acknowledge and agree that the indemnity provisions contained herein are a result of the CITY's inability or unwillingness to acquire otherwise commercially available insurance, or the CITY's determination, in the future, to self-insure rather than to carry liability insurance, even if such insurance is commercially available.

7.2 CITY'S Insurance.

- a. CITY certifies that it is self insured for public liability and property damage claims up to \$2 million dollars per occurrence subject to an aggregate of \$2 million, in compliance with California Government Code Section 11007.4.

- b. Furthermore, CITY reserves the right to procure and maintain a separate Commercial General Liability policy at any time during the term of this Agreement.

7.3 MANAGER's Insurance. MANAGER shall procure and maintain, at all times during the term of this Agreement, a minimum of the insurance set forth below:

- a. Professional Liability Insurance. MANAGER will keep in full force and effect a professional liability policy with liability coverage of no less than one million dollars (\$1,000,000) for each claim for real estate services professional and personal injury liability.
- b. Workers' Compensation. For all of MANAGER's employees who are subject to this Agreement and to the extent required by the State of California, MANAGER shall keep in full force and effect, a workers compensation policy. That policy shall also provide employers liability coverage with limits of one million dollars (\$1,000,000), and MANAGER shall provide an endorsement that the insurer waives the right of subrogation against the CITY and its respective elected officials, officers, employees, agents and representatives.
- b. Fidelity Bond. MANAGER shall keep in full force and effect fidelity bond for all on-site Property employees. The fidelity bond shall provide a minimum of one million dollars (\$1,000,000) coverage and shall cover the loss of client funds, including rental income and fee payments.
- c. Commercial Automobile Liability. For all of MANAGER's automobiles including owned, hired and non-owned automobiles, MANAGER shall keep in full force and effect, automobile insurance for bodily injury and property damage providing coverage to a combined single limit of \$1 million per occurrence. Insurance certificate shall reflect coverage for any automobile. The CITY shall be named as an additional insured, but only for liability arising out of Management Services performed under this Agreement.

7.4 Rating Requirements. All insurance required by express provision of this Agreement shall be carried only by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Rating Guide and have been approved by CITY.

7.5 Deductibles and/or Self-insured retentions. All deductibles and/or self-insured retentions on any policy obtained pursuant to Section 7.3 shall be the responsibility of the Manager. In addition, all deductibles and/or self-insured retentions under Section 7.3 in excess of ten thousand dollars (\$10,000.00) shall

be disclosed to and approved by City at the time evidence of insurance is provided.

7.6 Specific Provisions Required. Each insurance policy required under this Article shall expressly provide, and an endorsement shall be submitted to CITY, that reflects the following:

- e. Except as to Workers Compensation insurance, the City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be named as additional insureds. CITY's Additional Insured status must be reflected on an additional insured endorsement form CG 20 10 (11/85) or equivalent, which shall be submitted to CITY.
- b. The policies shall include a waiver of any rights of subrogation.
- c. The policies are primary and non-contributory to any insurance that may be carried by the CITY, as reflected in an endorsement which shall be submitted to the CITY.
- d. The policies cannot be canceled, non-renewed or materially changed except after thirty (30) calendar days prior written notice by MANAGER to the CITY by certified mail, except for non-payment of premium, in which case ten days notice will be provided.
- e. Before performing any Management Services, the MANAGER shall provide the CITY with all Certificates of Insurance accompanied by all endorsements.
- f. MANAGER shall not modify any policy or endorsement which increases the CITY's exposure to loss for the duration of this Agreement.

7.7 Waiver. Neither MANAGER nor CITY shall assert against the other and each does hereby waive with respect to the other any claims for any losses, damages, liabilities and expenses (including attorney's fees and disbursements) incurred or sustained by it on account of damage or injury to persons or property arising out of the ownership, operation or maintenance of the Property, to the extent that same are (1) covered as prescribed herein and (2) further to the extent that any such losses are in fact reimbursed by said insurance.

7.8 Accident Reports. MANAGER shall promptly investigate and make a full written report to CITY as to all material accidents involving bodily injury and/or claims for property damage of \$2,500 or more relating to the ownership, operation, and

maintenance of the Property, including the estimated cost of repair. All such accident reports shall be delivered to CITY within forty-eight (48) hours.

- 7.9 Mandatory Assistance. If a third party dispute or litigation, or both, arises out of or relates in any way to the Management Services provided under this Agreement or out of the residential use of or cessation of residential use on the Property, upon CITY's request, MANAGER, its agents, officers, and employees agree to assist in resolving the dispute or litigation. MANAGER's assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation. MANAGER's obligation to provide mandatory assistance shall survive the term of this Agreement.

If mandatory assistance is rendered by MANAGER after expiration of the term of this Agreement, then CITY shall compensate MANAGER for its time incurred in providing Mandatory Assistance in the amount of \$500 per day for corporate officers. For other employees of MANAGER, CITY shall reimburse MANAGER for the time spent at the employee's regular wages. If, however, it is established through resolution of the third party dispute or litigation that liability is solely attributable to the acts or omissions of MANAGER, its agents, officers, and employees, then MANAGER shall reimburse CITY.

- 7.10 Supersedure. It is mutually agreed that this agreement, upon execution, supersedes and annuls the prior month to month agreement for management executed by CITY and MANAGER .

ARTICLE 8 - NOTICES

- 8.1 Delivery of Notice. All notices, demands and requests which may or must be given by either party to the other shall be in writing and shall be personally delivered or sent by facsimile and United States certified mail to the address of the party set forth below. Any notice or other document delivered hereunder shall be deemed to have been delivered effective upon delivery, if delivered personally or by facsimile, and within seventy-two (72) hours following the mailing of notice.

Notice to the MANAGER shall be addressed to:

Paul R. Prentice, Vice President of Operations
Newport Pacific Capital Company, Inc.
17300 Red Hill Avenue, Suite 280
Irvine, CA 92614
FAX: (949) 852-5582

Notice to CITY shall be addressed to:

City of San Diego
Real Estate Assets Department
ATTENTION: Director
1200 Third Avenue, Suite 1700 (MS-51A)
San Diego, California 92101
FAX (619) 236-6706

- 8.2 Required Notice. Notice shall be provided in the event of an occurrence which would give MANAGER or CITY the right to terminate this Agreement, or any event which, after notice or lapse of time or both, would constitute such an event.

ARTICLE 9 - ADDITIONAL REQUIREMENTS

- 9.1 Drug-Free Workplace. MANAGER agrees to comply with CITY's Drug Free Workplace requirements set forth in Council Policy 100-17, adopted by Council Resolution No. R-277952 and incorporated into this Agreement by this reference. MANAGER shall certify to CITY that it will provide a drug-free workplace by submitting a MANAGER Certification for a Drug-Free Workplace form.
- a. MANAGER's Notice to Employees. MANAGER shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the work place, and specifying the actions that will be taken against employees for violations of the prohibition. MANAGER shall post the drug-free policy in a prominent place.
- b. Drug-Free Awareness Program. MANAGER shall establish a drug-free awareness program to inform employees about all of the following:
1. The dangers of drug abuse in the work place.
 2. The policy of maintaining a drug-free work place.
 3. Available drug counseling, rehabilitation, and employee assistance programs.
 4. The penalties that may be imposed upon employees for drug abuse violations.

- c. Subcontractor's Agreements. MANAGER further certifies that each contract for subcontractor services for the Property shall contain language that binds the subcontractor to comply with the provisions of Section 9.1 of this Agreement, as required by Sections 2.A.(1) through (3) of Council Policy 100-17. MANAGER and any subcontractors shall be individually responsible for their own drug-free work place program.
- 9.2 Americans with Disabilities Act Statement. MANAGER agrees to comply with CITY's American with Disabilities Act (ADA) requirements set forth in Council Policy 100-04, adopted by Council Resolution No. 282153 and incorporated into this Agreement by this reference. MANAGER shall certify to CITY that it will comply with the ADA by adhering to the following:
- a. Title I - Employment Mandates. "No contractor may discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, disciplines, layoffs, and terminations of employment."
 - b. Title II - State and Local Government. "No qualified individual with a disability may be excluded on the basis, from participation in, or be denied the benefits of services, programs, or activities by contractors or subcontractors providing services to CITY."
 - c. Post a Statement. MANAGER shall post a statement addressing the requirements of the ADA in a prominent place at the worksite.
 - d. Subcontractor Agreements. MANAGER further certifies that any subcontract for providing management services for the Property shall contain language that binds the subcontractor to comply with Section 9.2 of this Agreement. MANAGER and subcontractors shall be individually responsible for their own ADA employment programs.
- 9.3 Disabled Access. MANAGER shall ensure that all repairs and construction on the property comply with CITY's disabled access requirements by bringing up to code and making accessible any areas of the premises which deny access to disabled persons. All such improvements and alterations shall be at the sole cost of CITY.
- 9.4 Compliance with CITY's Equal Opportunity Contracting Program. MANAGER and each of its Subcontractors shall comply with CITY's Equal Opportunity Contracting Program Manager Requirements which is attached hereto as Exhibit C and incorporated herein by this reference.

- 9.5 Non-Discrimination Ordinance. MANAGER shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of subcontractors, vendors or suppliers. MANAGER shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. MANAGER understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions. This language shall be in contracts between MANAGER and any subcontractors, vendors and suppliers.
- 9.6 Compliance Investigations. Upon CITY's request, MANAGER agrees to provide to CITY, within sixty (60) calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that MANAGER has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by MANAGER for each subcontract or supply contract. MANAGER further agrees to fully cooperate in any investigation conducted by CITY pursuant to CITY'S Nondiscrimination in Contracting Ordinance (Municipal Code Sections 22.3501-22.3517). MANAGER understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in remedies being ordered against MANAGER up to and including contract termination, debarment, and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance. MANAGER further understands and agrees that the procedures, remedies and sanctions provided for in the Nondiscrimination Ordinance apply only to violations of said Nondiscrimination Ordinance.
- 9.7 Product Endorsement. MANAGER acknowledges and agrees to comply with the provisions of CITY's Administrative Regulation 95-65, concerning product endorsement. Any advertisement identifying or referring to CITY as the user of a product or service requires the prior written approval of CITY.
- 9.8 Conflict of Interest. MANAGER is subject to all federal, state and local conflict of interest laws, regulations and policies applicable to public contracts and procurement practices, including but not limited to California Government Code sections 1090, et. seq. and 81000, et. seq. CITY may determine that a conflict of interest code requires MANAGER to complete one or more statements of economic interest disclosing relevant financial interests. Upon CITY's request, MANAGER shall submit the necessary documentation to CITY.

MANAGER shall establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business or other relationships.

MANAGER's personnel employed on the Property shall not accept gratuities or any other favors from any current or potential subcontractors, vendors, or suppliers. MANAGER shall not recommend or specify any product, supplier, or contractor with whom MANAGER has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

If MANAGER violates any conflict of interest laws or any of these conflict of interest provisions, the violation shall be grounds for immediate termination of this Agreement. Further, the violation subjects MANAGER to liability to CITY for attorney's fees and damages sustained as a result of the violation.

- 9.9 Best Management Practices. MANAGER and each of its subcontractors shall comply with any Storm Water Pollution Prevention Plan or Best Management Practices adopted for the Property in performing Management Services.

ARTICLE 10 - GENERAL PROVISIONS

- 10.1 Non-Assignment. MANAGER shall not assign the obligations under this Agreement, whether by express assignment or by sale of the company, nor any monies due or to become due, without CITY's prior written approval. Any assignment in violation of this paragraph shall constitute a default and is grounds for immediate termination of this Agreement, at the sole discretion of CITY. In no event shall any putative assignment create a contractual relationship between CITY and any putative assignee.
- 10.2 Compliance with Controlling Law. MANAGER shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement. In addition, MANAGER shall comply immediately with all directives issued by CITY or its authorized representatives under authority of any laws, statutes, ordinances, rules, regulations and Court orders. The laws of the State of California shall govern and control the terms and conditions of this Agreement.
- 10.3 Jurisdiction, Venue, and Attorney's Fees. The venue for any suit or proceeding concerning this Agreement, 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 prevailing Party to this Agreement in any such suit or proceeding shall be entitled to a reasonable award of attorney's fees in addition to any other award made in such suit or proceeding.

10.4 Rights Upon Termination. Except as otherwise provided herein, upon termination of this Agreement, the following shall apply:

- a. All amounts due and owing between the parties shall become immediately due and payable.
- b. All Operating Equipment and supplies including telephones, fax machines, desks, computers, computer software and programs, billing systems, chairs, file cabinets, landscaping and maintenance equipment, and all other equipment and supplies purchased or reimbursed by CITY is CITY Property and shall remain on-site.
- c. MANAGER shall have the right to remove all of its personal property from the Property in a peaceful and orderly manner.
- d. MANAGER shall transfer to CITY all books and records pertaining to the Property which have been in the custody and control of MANAGER.

These rights shall be in addition to and not in exclusion of any and all other rights of the parties.

10.5 No Partnership or Joint Venture. Nothing contained in this Agreement shall constitute or be construed to be or create a partnership or joint venture between CITY, its successors and assignees, on the one part, and MANAGER, its successors and assignees, on the other part.

10.6 Integration; Modifications. This Agreement and the exhibits and references incorporated into this Agreement fully express all understandings of the Parties concerning the matters covered in this Agreement. No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in writing by both Parties or an amendment to this Agreement agreed to by both Parties. All prior negotiations and agreements are merged into this Agreement.

10.7 No Warranty. MANAGER makes no guarantee, warranty, or representation that there will be profits or that there will not be losses from the operation of the Property.

10.8 Headings. The article and paragraph headings contained herein are for convenience of reference only and are not intended to define, limit; or describe the scope or intent of any provision of this Agreement.

- 10.9 Approval or Consent. Except as otherwise herein provided, whenever under any provision of this Agreement the approval or consent of either party is required, such consent or approval shall be in writing, duly executed by an authorized officer or agent of the party granting such consent or approval, and shall not be unreasonable withheld. Whenever consent of CITY is required under this Agreement, the City Manager or his designee is authorized to provide such consent.
- 10.10 Partial Invalidity. In the event that any one or more phrases, sentences, clauses or paragraphs contained in this Agreement shall be declared invalid by the final and unappealable order, decree or judgment of any court or arbitrator, this Agreement shall be construed as if such phrases, sentences, clauses or paragraphs had not been inserted.
- 10.11 Successors in Interest. This Agreement and all rights and obligations created by this Agreement shall be in force and effect whether or not any Parties to the Agreement have been succeeded by another entity, and all rights and obligations created by this Agreement shall be vested and binding on any Party's successor in interest.
- 10.12 Waiver of Provisions. The failure of either party to insist upon a strict performance of any of the terms or provisions of this Agreement or to exercise any option, right or remedy herein contained, shall not be construed as a waiver or as a relinquishment for the future of such term, provision, option, right, or remedy, but the same shall continue and remain in full force and effect. No waiver by either party of any term of provision hereof shall be deemed to have been made unless expressed in writing and signed by such party.
- 10.13 Third Parties. Subject to other provisions of this Agreement; it is agreed that none of the obligations hereunder of either party shall run to, or be enforceable by, any party other than the other party to this Agreement.
- 10.14 Property Interest. This Agreement shall not be deemed at any time to be an interest in real estate or a lien or security interest of any nature against the Property, including, without limitation any Furniture and Equipment; inventory, motor vehicles, contracts, documents, accounts, notes, drafts, acceptances, instruments, chattel papers, general intangibles or other personal property existing or that may be hereafter acquired or entered into with respect to the Property or the construction or development or operation thereof. This Agreement is for the operation of the Property only, and does not create in MANAGER any possessory interest.
- 10.15 Municipal Powers. Nothing contained in this Agreement shall be construed as a limitation upon the powers of CITY as a chartered city of the State of California.

- 10.16 Drafting Ambiguities. The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each Party. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.

ARTICLE 11 - SIGNATURES

- 11.1 Counterparts. This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all parties had executed the same page.
- 11.2 Signing Authority. The representative for each party signing on behalf of a corporation, partnership, joint venture or governmental entity hereby declares that authority has been obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the other party or parties hereto harmless if it is later determined that such authority does not exist.

Remainder of Page Intentionally Blank

IN WITNESS WHEREOF, this Agreement is executed by The City of San Diego, acting by and through its Real Estate Assets Department Director, pursuant to City Council Resolution No. 301205 authorizing such execution, and by Management.

Dated this _____ day of JAN 30 2006, 2005.

THE CITY OF SAN DIEGO

By [Signature]
~~James T. Waring~~ ~~Jack D. Farris, Acting Director~~
Real Estate Assets Department

I HEREBY CERTIFY I can legally bind Newport Pacific Capital Company, Inc. and that I have read all of this Agreement, this 15th day of December, 2005.

Newport Pacific Capital Company, Inc.

By [Signature] Lauren V Fischer
Authorized Signature
Newport Pacific Capital Company, Inc.

I HEREBY APPROVE the form and legality of the foregoing Agreement this 6th day of March, 2006.

MICHAEL AGUIRRE, City Attorney

By [Signature]
Maria C. Severson
Chief Deputy City Attorney

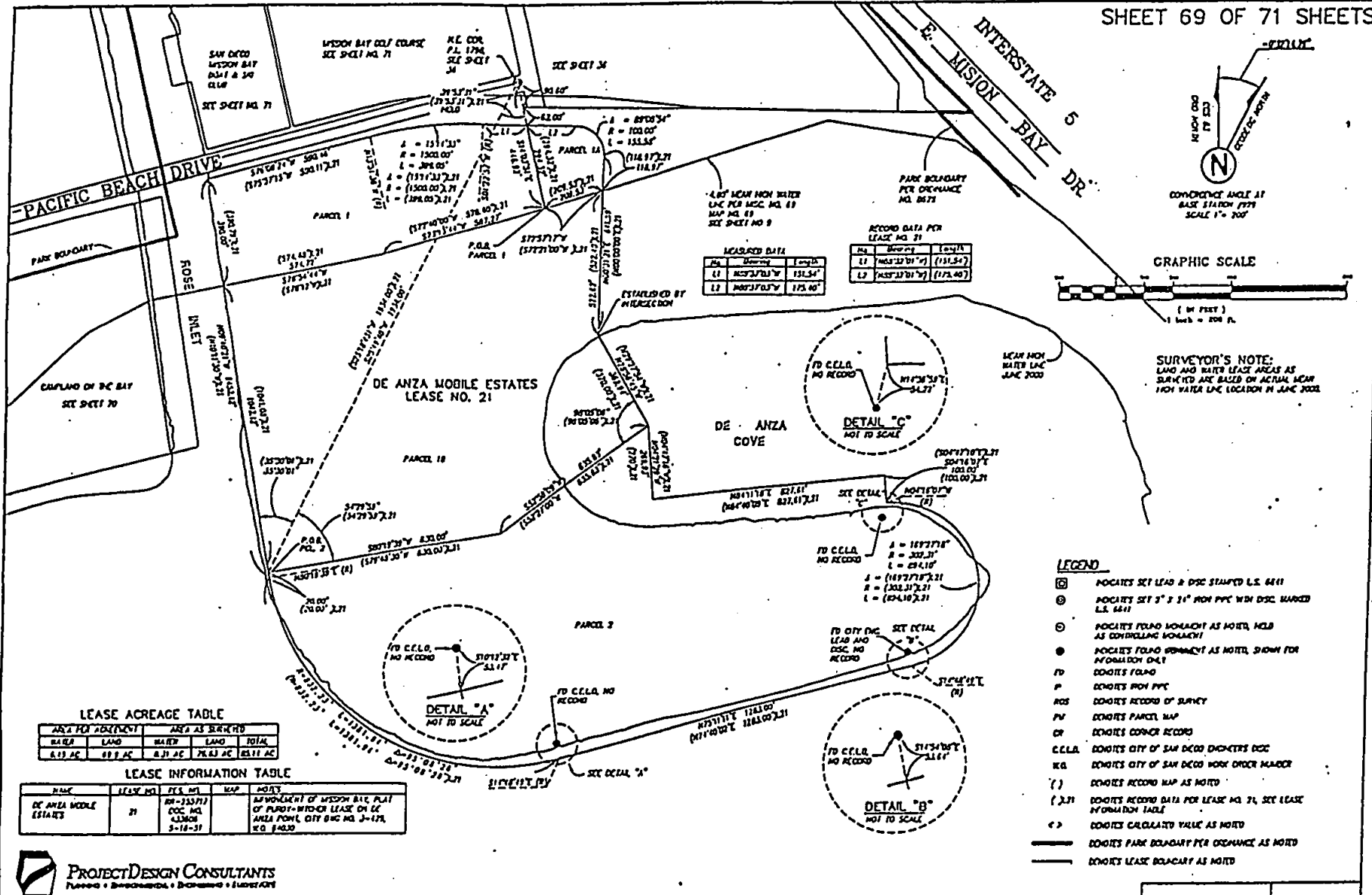


EXHIBIT B

F I L E D
Clerk of the Superior Court

OCT 14 2005

By: R. HENDERSON, Deputy

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

DE ANZA COVE HOMEOWNERS
ASSOCIATION, INC., a California non-
profit corporation; et al.,

Plaintiffs,

vs.

CITY OF SAN DIEGO; DE ANZA
HARBOR RESORT AND GOLF, LLC, a
California limited liability company; et al.,

Defendants.

Case No.: GIC 821191

(Proposed) MODIFIED PRELIMINARY
INJUNCTION

IT IS HEREBY ORDERED THAT THE CITY OF SAN DIEGO, ITS EMPLOYEES,
AGENTS AND ANYONE ACTING ON BEHALF OF THE CITY (here after referred to as
"CITY, EMPLOYEES and AGENTS"), are hereby restrained and enjoined from
engaging in any of the following actions and conduct:

1. UNLAWFUL DETAINERS/LEGAL ACTION.

CITY, EMPLOYEES and AGENTS are hereby restrained and enjoined from
commencing or enforcing any unlawful detainer proceedings or any other legal actions
seeking either damages or equitable relief without first obtaining leave of Court against

any current homeowner, residents or subtenants of Mission Bay Park (formerly known as De Anza Harbor Resort), located at 2727 De Anza Road, San Diego, California 92101 ("PARK").

2. RULES AND REGULATIONS – MEET AND CONFIR PROCESS.

a. CITY, EMPLOYEES and AGENTS are restrained and enjoined from changing PARK operations, practices, procedures, rules and regulations of the PARK that existed at the PARK on and prior to November 20, 2003, including, the "Rules and Regulations De Anza Harbor Resort, Mobilehome Community" dated July 14, 1997 ("RULES"). CITY, EMPLOYEES and AGENTS shall refrain from enforcing the City's "Community Rules and Regulations During Transition Period" distributed in February 2004.

b. Changed circumstances warranting any departure from the RULES may be presented to the Court after compliance with the following meet and confer process: management shall meet and confer with the PARK homeowners and/or their representatives after providing each homeowner in the park with at least 10 days written notice of the proposed changes to the RULES. The notice shall also state the date, time and place of the meeting.

c. Park Management shall maintain and post in a prominent common area at their offices at the PARK a copy of these RULES and this Modified Preliminary Injunction and shall make copies available for current homeowners and residents upon request. In addition, copies of this Modified Preliminary Injunction shall be provided to the park management company, the designated on-site security company, the City Manager and the Director of Real Estate Assets.

3. SUBLEASING.

CITY, EMPLOYEES and AGENTS are restrained and enjoined from interfering with the PARK's homeowners, tenants, and residents subleasing of their homes in accordance with the RULES, section VIII "Subleasing/Subletting." However no new subtenants shall be permitted to enter the PARK unless they execute a written waiver of any and all rights to relocation assistance or benefits arising from the lease of a mobilehome. The waiver shall be in the form of an executed Waiver of Rights & Acknowledgment form which may be obtained from Park management. All executed waiver forms shall be timely served on counsel for the parties and maintained by Park management.

4. EX - PARTE COMMUNICATIONS.

CITY, EMPLOYEES and AGENTS are restrained and enjoined from initiating communications directly with any past or current homeowners, residents or sub-tenants about any subject matter related to the ongoing litigation and/or settlement including discussing, engaging seeking, ordering, or otherwise attempting to secure any settlement agreements related to the litigation. The litigation is to go forward without interference from communications by the parties listed above. However, this is not intended to prevent the City Attorney or representatives of the City Attorney from responding to contacts initiated by Residents.

5. PARK MAINTENANCE AND SERVICES - MEET AND CONFER PROCESS.

a. CITY'S EMPLOYEES and AGENTS are restrained and enjoined from

1 discontinuing or diminishing any current services to the PARK residents or to close
2 down any common areas including the Bay Club, the Pavilion, laundry facilities,
3 common area parking lots (exclusive of individual resident parking spaces), walking
4 paths, or other commonly used facilities, buildings, or structures. The hours of
5 operation for the clubhouses shall not be changed from the hours of operation that
6 existed on and prior to November 20, 2003.
7

8 b. CITY, EMPLOYEES and AGENTS are requested to review with the De
9 Anza Cove Homeowners Association the City's commitment to refurbish the Pavilion
10 and the Bay Cub at the defendant City of San Diego's expense.
11

12 c. CITY, EMPLOYEES and AGENTS are restrained and enjoined from
13 conduct in the maintenance or operation of the PARK that permanently alters, limits,
14 curtails, reduces, obstructs or denies access to any common areas, facilities, buildings,
15 structures, utilities, or other structures without leave of Court. The Court orders the
16 following meet and confer process to take place regarding any modification of the
17 PARK's maintenance or operation prior to seeking leave of Court: The CITY,
18 EMPLOYEES and AGENTS shall meet and confer with the PARK homeowners and/or
19 their representatives after providing each homeowner in the park with at least 10 days
20 written notice of the proposed modifications. The notice shall also state the date, time
21 and place of the meeting.
22
23

24 i. A good faith meet and confer process involving the parties
25 regarding proposed changes in maintenance or operation which permanently alter, or
26 limit, curtail, reduce, obstruct or deny access to any common areas, facilities, buildings
27 or other structures is essential to the preservation of the status quo during this litigation.
28

1 ii. Should the parties not be able to agree to the terms and conditions
2 of the proposed changes in maintenance or operation, an ex-parte hearing may be
3 scheduled before the Court.

4 iii. Exigent circumstances only, including jeopardy of life or limb,
5 imminent injury or grave danger, shall excuse compliance with the terms of this
6 injunction.

7 iv. Notice of non-compliance with the terms of this injunction and
8 declarations in support of non-compliance should be filed with this Court and served
9 upon Counsel at the earliest opportunity in conformity with the ex-parte procedures of
10 this Court.

11
12
13 **6. ACCEPTANCE OF RENT.**

14 The Court finds that defendant City of San Diego, Employees and Agents may
15 accept and expend monthly rent and other charges from all residents. The City,
16 Employees and Agents' acceptance and expenditure of monthly rent and other charges
17 from Residents by the City, Employees and Agents subsequent to the filing of this
18 action shall not serve as the basis for any contention or argument by these parties that
19 the defendant City of San Diego by acceptance of such funds is operating a mobile
20 home park thereby creating a landlord/tenant relationship.

21
22
23 **7. MAINTENANCE AND OPERATION OF PARK – OPTION TO**
24 **PURCHASE IMPROVEMENTS.**

25 The Court finds it is understood and agreed between the plaintiff De Anza Cove
26 Homeowners Association and defendant City of San Diego that the continued
27 maintenance and operation of the PARK pursuant to Court Order of any common areas,
28

1 facilities, buildings, structures or utilities October 2003 does not constitute the exercise
2 of any option to purchase any improvement under the ground lease with DHRG or any
3 other obligation to pay for the use of any such common areas, facilities, buildings or
4 other structures.
5

6 **8. QUIET ENJOYMENT.**

7 CITY, EMPLOYEES and AGENTS are restrained and enjoined from interfering
8 with the Residents' right to quiet enjoyment of the property. Park Management will
9 ensure that the PARK premises are clean.
10

11 **9. SETTLEMENT AGREEMENTS.**

12 a. All Settlement Agreements entered into by defendant City of San Diego
13 and any third parties, shall be stayed, upon receipt of the written request of the party to
14 the Settlement Agreement. A notice shall be sent to all parties to the Settlement
15 Agreement who still live at the PARK, explaining the option to stay any settlement
16 agreement upon receipt of written notice. Any homeowner who desires to abide by the
17 terms of their Settlement Agreement, and/or who opts to leave the PARK shall be
18 allowed to do so.
19

20 b. In the event Park Management or other City Agent is notified by any
21 Resident, tenant, subtenant or other individual(s) that said person(s) is/are interested in
22 a City settlement, City Agent shall obtain a name and telephone number for the
23 individual(s) and forward that information to the City Attorney's Office. The City
24 Attorney shall be allowed to discuss settlement and may enter into settlement
25 agreements with any party, but shall file and serve on Plaintiff's counsel a Notice of
26 Intent to Settle Claims with the Court prior to finalizing the Settlement.
27
28

Copies of this injunction shall be timely served upon all employees, agents and persons acting on behalf of the City of San Diego in the operation and management of the City of San Diego. Proofs of Service shall be timely filed with this Court.

12. This Injunction is effective immediately and shall continue in full force and effect pending the adjudication of this action.

Date: OCT 14 2005

CHARLES R. HAYES
HONORABLE CHARLES R. HAYES,
Judge of the Superior Court

**EQUAL EMPLOYMENT OPPORTUNITY (EEO)
PLAN REQUIREMENTS**

An acceptable Equal Employment Opportunity (EEO) Plan must include at least the following assurances that:

1. The Contractor will maintain a working environment free of discrimination, harassment, intimidation and coercion at all sites and in all facilities at which the contractor's employees are assigned to work;
2. A responsible official is designated to monitor all employment related activity to ensure the company EEO Policy is being carried out and to submit reports relating to EEO provisions;
3. The Contractor disseminates and reviews its EEO Policy with all employees at least once a year, posts the policy statement and EEO posters on all company bulletin boards and job sites, and documents every dissemination, review and posting with a written record to identify the time, place, employees present, subject matter, and disposition of meetings;
4. The Contractor reviews, at least annually, all supervisors' adherence to and performance under the EEO Policy and maintains written documentation of these reviews;
5. The Contractor discusses its EEO Policy Statement with subcontractors with whom it anticipates doing business, includes the EEO Policy Statement in its subcontracts, and provides such documentation to the City upon request;
6. The Contractor documents and maintains a record of all bid solicitations and outreach efforts to and from subcontractors, contractor associations and other business associations;
7. The Contractor disseminates its EEO Policy externally through various media, including the media of people of color and women, in advertisements to recruit, maintains files documenting these efforts, and provides copies of these advertisements to the City upon request;
8. The Contractor disseminates its EEO Policy to union and community organizations;
9. The Contractor provides immediate written notification to the City when any union referral process has impeded the Contractor's efforts to maintain its EEO Policy;
10. The Contractor maintains a current list of recruitment sources, including those outreaching to people of color and women, and provides written notification of employment opportunities to these recruitment sources with a record of the organizations' responses;

11. The Contractor maintains a current file of names, addresses and phone numbers of each walk-in applicant, including people of color and women, and referrals from unions, recruitment sources, or community organizations with a description of the employment action taken;
12. The Contractor encourages all present employees, including people of color and women employees, to recruit others;
13. The Contractor maintains all employment selection process information with records of all tests and other selection criteria;
14. The Contractor develops and maintains documentation for on-the-job training opportunities and/or participates in training programs for all of its employees, including people of color and women, and establishes apprenticeship, trainee, and upgrade programs relevant to the Contractor's employment needs;
15. The Contractor conducts, at least annually, an inventory and evaluation of all employees for promotional opportunities and encourages all employees to seek and prepare appropriately for such opportunities;
16. The Contractor ensures the company's working environment and activities are non-segregated except for providing separate or single-user toilets and necessary changing facilities to assure privacy between the sexes;
17. The Contractor establishes and documents policies and procedures to ensure job classifications, work assignments, promotional tests, recruitment and other personnel practices do not have a discriminatory effect; and
18. The Contractor is encouraged to participate in voluntary associations which assist in fulfilling one or more of its non-discrimination obligations. The efforts of a contractor association, contractor/community professional association, foundation or other similar group of which the Contractor is a member will be considered as being part of fulfilling these obligations, provided the Contractor actively participates.

102
1/30/06

(R-2006-532)
(COR. COPY)

RESOLUTION NUMBER R- 301205
DATE OF FINAL PASSAGE FEB 03 2006

A RESOLUTION OF THE CITY OF SAN DIEGO
AUTHORIZING THE CITY MANAGER TO ENTER INTO
AN AGREEMENT WITH NEWPORT PACIFIC CAPITAL
COMPANY, INC. FOR THE OPERATION AND
MANAGEMENT OF DE ANZA POINT TOURIST AREA.

WHEREAS, on May 18, 1951, the City entered into a master ground lease for the development and use of the "De Anza Point Tourist Area" [the Property] for use as a transient tourist and trailer park area, as amended and assigned from time to time thereafter [the Lease]; and

WHEREAS, in 1981, the California State Legislature adopted legislation permitting the mobile home residential use that had developed over the years to continue until November 23, 2003 [the Kapiloff Legislation], also being the end of the Lease term; and

WHEREAS, anticipating the end of the Lease and the cessation of the State's authorization for residential use of the tidelands at De Anza Point, the City contracted with Hawkeye Asset Management [Hawkeye] from November 23, 2003, until the present to manage the Property and assist the City in transition of the Property to park and recreational use; and

WHEREAS, the City Manager issued a notice of termination to Hawkeye on July 14, 2005, with one hundred and eighty days notice, in accordance with the terms of that management agreement; and

WHEREAS, Newport Pacific Capital Company Inc, [Newport Pacific] was chosen to replace Hawkeye through a Request for Proposal [RFP] process and currently manages sixty-one

mobile home parks totaling over 11,500 spaces and has experience with managing and transitioning mobile home parks; and

WHEREAS, the proposed Agreement will replace the existing agreement with Hawkeye; and

WHEREAS, the term for the proposed Agreement is one year and begins upon the execution of the proposed Agreement, with two options to extend (upon mutual agreement) for one year each, or until terminated by either party upon 30 days notice; and

WHEREAS, the management monthly fee under the proposed Agreement is 5% of the first \$35,000 of income from the mobile home and RV park and 3.5% of income over \$35,000, or a minimum of \$10,000 per month; and

WHEREAS, under the proposed Agreement, Newport Pacific will be responsible for all aspects of operation and management of the Property during its transition including accounting, billing, collections, resident legal compliance services, litigation support, maintenance, on-site staffing, and including operation and management of the recreational vehicle park area; and

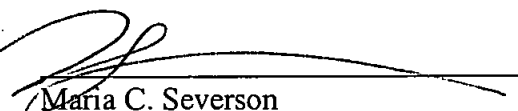
WHEREAS, under the proposed Agreement, the City Manager must pre-approve the yearly Operating Budget for the Property and unbudgeted expenditures over \$1,000 must be submitted for City Manager approval; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the Mayor be and he is hereby authorized and empowered to execute, for and on behalf of said City, an Agreement with Newport Pacific Capital Company, Inc. to manage all day to day operations and facilitate the

orderly transition of the De Anza Point Tourist Area to a legal park use, under the terms and conditions set forth in the Agreement on file in the office of the City Clerk as Document

No. RR- 301205

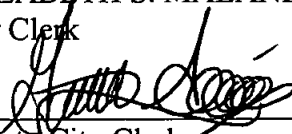
APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Maria C. Severson
Deputy City Attorney

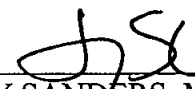
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11/21/05
02/01/06COR.COPY
Or.Dept:READ
R-2006-532

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at its meeting of JAN 30 2006.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 2.3.06
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

Passed by the Council of The City of San Diego on JAN 30 2006, by the following vote:

YEAS: **PETERS, FAULCONER, ATKINS, YOUNG, MAIENSCHIN, FRYE, MADAFFER, HUESO.**

NAYS: **NONE.**

NOT PRESENT: **NONE.**

VACANT: **NONE.**

AUTHENTICATED BY:

JERRY SANDERS

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

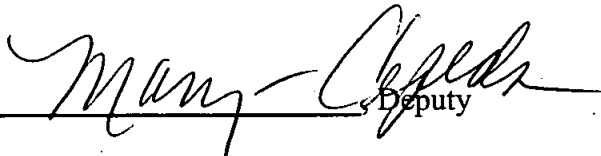
By: Mary Cepeda, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. R- 301205, passed by the Council of The City of San Diego,
California on JAN 30 2006.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(SEAL)

By: , Deputy