

DUPLICATE



**CITY OF SAN DIEGO
PERCENTAGE LEASE**

BY AND BETWEEN

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

AND

**NORTHEAST MB, LLC
A CALIFORNIA LIMITED LIABILITY COMPANY, LESSEE**

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 Northeast MB, LLC, a California limited liability company ("LESSEE"), to be effective when signed by the parties and approved by the San Diego City Attorney (the "Effective Date").

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 69.9 acres of land, and approximately 6.15 acres of water space, commonly known as "De Anza Cove," located at 2727 De Anza Road, San Diego, California, 92109, and more particularly described and depicted in the multi-paged **Exhibit "A": Description of Premises**, attached hereto and made a part hereof (the "Premises").
- B. The Premises was the subject of litigation and a lengthy resolution process related to use of portions of the Premises as a mobile home park. During the pendency of litigation and its resolution, the City contracted with a third-party contractor to operate portions of the Premises as an RV park. The CITY's current contractor elected to terminate its operating contracts with the CITY effective June 30, 2019.
- C. At this time, CITY desires to enter into a short term lease of the Premises with LESSEE in connection with a negotiated settlement of pending litigation between an affiliate of the LESSEE and the CITY and to facilitate continued use of the Premises as an RV park pending completion of the Amendment to the Mission Bay Park Master Plan for the De Anza Cove Special Study Area. This Lease is not intended to restrict any future rights to uses of the Premises or in any way restrict or limit the City's discretion to plan for the long term use of the De Anza Special Study Area.
- D. CITY and LESSEE have agreed that, on and subject to the terms of this Lease, LESSEE will provide capital improvements at the Premises within twenty-four (24) months of the Lease commencement date, which improvements are more particularly described on **Exhibit "B-1"** attached hereto and made a part hereof (the "Development Plan Capital Improvements") at a cost of approximately Eight Million Fifty Thousand Dollars (\$8,050,000). LESSEE will also perform operational improvements estimated to cost an additional Eight Million Two Hundred Thousand Dollars (\$8,200,000) which would provide added benefits to the RV park operations; such operational improvements are set forth in **Exhibit "B-2"** attached hereto and made a part hereof (the "Operational Improvements").
- E. As of the time Council approves this Lease, the City will have complied with the California Environmental Quality Act by making appropriate findings with respect to the approval of

this Lease and will timely post a Notice of Exemption with the San Diego County Recorder's Office.

- F. CITY desires to lease to LESSEE and LESSEE desires to lease from the CITY the Premises pursuant to the terms and conditions set forth in this Lease.

SECTION 1 LEASING; USE OF PREMISES

- 1.1 Leasing and Operations Turnover. 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 includes all improvements currently located on the Premises and/or those that previously existed or were constructed or installed on the Premises prior to the Effective Date.

1.1.1 CITY further leases certain personal property located on the Premises ("Equipment") for use by LESSEE as identified on **Exhibit "D"** attached hereto and made a part hereof. CITY makes no representations and warranties as to the quality or utility of the Equipment and is under no obligation to repair, maintain, or replace the Equipment prior to or during the Term or any Options. LESSEE shall not be required to repair or replace any Equipment; however, LESSEE shall notify CITY if any of the Equipment requires repair, maintenance, or replacement. CITY shall, in its sole discretion, elect whether to repair or replace the specific Equipment. Any replacement personal property provided by LESSEE in lieu of the Equipment shall remain the sole property of LESSEE.

1.1.2 CITY shall use its best efforts to cause its managing agent to, on or before the Commencement Date, (i) deliver to LESSEE an amount (in good funds) equal to all deposits for reservations existing as of the Commencement Date, including reasonably detailed back-up documentation (such as customer names, the dates of stays, the quoted rate for such stays and the amount of the corresponding reservation deposit), and (ii) provide LESSEE with full access to software and data with respect to all such reservations (collectively, the "Turnover Obligations"). In the event CITY (or its managing agent) fails to deliver the deposits to LESSEE, as described above, then LESSEE shall have the right to terminate this Lease by providing written notice to CITY at any time during the 90-day period referenced in Section 1.22 below. In such event, this Lease shall automatically terminate ninety (90) days from the date of LESSEE's termination notice. In the event LESSEE terminates this Lease pursuant to this Section 1.1.2, then Campland LLC shall receive a rent credit toward the rent first coming due and payable by Campland LLC under the lease of the Campland property equal to the amount of the deposits which were not received by LESSEE under this Lease, for the period under which LESSEE is operating the Premises. CITY agrees to otherwise reasonably cooperate with LESSEE to provide a smooth transition of the Premises operations to LESSEE.

- 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 RV camping, tent campsites and RV parking, including storage of RVs, boats and other vehicles;
- (b) Operation and maintenance of a general merchandise store and food service, which may include the sale of alcoholic beverages for consumption on the Premises or on the neighboring Campland property, as approved by the California Department of Alcoholic Beverage Control;
- (c) Operation and maintenance of laundry facilities, gift shops, camping equipment and bike rentals, and beverage and snack vending machines;
- (d) Operation and maintenance of aquatic rentals, including aquatic equipment and boats;
- (e) Operation and maintenance of game rooms;
- (f) Operation and maintenance of automated teller machines (ATMs);
- (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. In particular, LESSEE acknowledges that it is aware that CITY's Planning Department is currently planning to bring forward a Mission Bay Park Master Plan Amendment related to De Anza Cove by the end of 2019. Notwithstanding such planning efforts and the adoption of Plan amendments subsequent to the approval of this Lease, the parties acknowledge and agree that during the Term and any Options, LESSEE may use the Premises for the Allowed Uses (including the alteration of existing mobile home spaces for use as one hundred fifty (150) RV campsites; such location of the RV

campsites is within the yellow area identified for "guest housing" depicted on Exhibit "E").

- 1.5 Public Use. Certain portions of the Premises, including the bike and pedestrian paths, beach, and public parking lot, identified in Exhibit "A-1", are to remain open for use by the general public at all times, except during renovation or improvement work performed under this Lease as approved by CITY. The general public shall have access to the remaining portions of 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 entire Premises; provided, however, and notwithstanding the foregoing, that with respect to areas of the Premises not identified in Exhibit "A-1", LESSEE may apply reasonable restrictions, on a nondiscriminatory basis, for the general public's use of the Premises consistent with the Allowed Uses. Such reasonable restrictions may include restricting public access to the RV park, camping areas and amenities to paying customers only (or an invited guest of a paying customer) and/or restricting public access to the RV park and bike/pedestrian paths between the hours of 11:00 p.m. to 6:00 a.m. 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 in-kind replacement of the signage currently installed on the Premises and except for customary signage in the ordinary course of LESSEE's business (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, not to be unreasonably withheld. 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 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 any existing fixtures, structures, installations or mobile homes from the Premises, or to construct, maintain, repair or replace improvements, fixtures, structures, and installations on the Premises. Except for the Rent Credit authorized by this Lease, CITY shall have no obligation or responsibility to pay for or reimburse LESSEE for any repair, replacement, or maintenance of any improvement, fixture, structure, or installation at the Premises.

1.11 Operation of the Premises. Subject to force majeure events, LESSEE shall conduct its business and operate the Premises continuously during LESSEE's hours of operation throughout the Term (as further defined below), 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. In addition, residents of the City of San Diego shall be offered a twenty percent (20%) discount on daily camping fees, 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.

1.12 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.

- 1.13 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.
- 1.14 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.
- 1.14.1 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.
- 1.15 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 (collectively, the "Superior Interests"). 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.
- 1.16 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 similar required governmental approvals.

- 1.16.1 LESSEE to Obtain Approvals. LESSEE, at LESSEE's sole cost and expense, shall obtain all required permits and approvals from applicable governmental authorities.
- 1.16.2 No Determinations. LESSEE acknowledges and agrees that although CITY has approved the Development Plan Capital Improvements set forth on **Exhibit "B-1"** in its capacity as property owner and lessor, 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, although the CITY approves of the Development Plan Capital Improvements in its capacity as property owner and lessor, the CITY does not represent, warrant or guarantee any future approval of any improvements on the Premises, including those improvements proposed in **Exhibit "B-1"**, 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.
- 1.17 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.
- 1.18 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.
- 1.19 Estoppel Certificates. 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. Within fifteen (15) business days after LESSEE's written request, CITY shall execute and deliver to LESSEE an estoppel certificate regarding this Lease and in a form reasonably determined by LESSEE, indicating in the certificate any exceptions to the statements in the certificate that may exist at that time.
- 1.20 Operating Plan – Lifeguard Division Approval. At least sixty (60) days prior to each October 1 during the Term, 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, in regards to aquatic equipment rentals. 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.

- 1.21 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.
- 1.21.1 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.
- 1.21.2 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.
- 1.21.3 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, including CITY consultants for purposes of work related to the Mission Bay Park Master Plan for the De Anza Cove Special Study Area.
- 1.21.4 Noninterference. In the exercise of the rights reserved under this section, CITY shall not unreasonably interfere with LESSEE's use of the Premises.
- 1.21.5 Costs. CITY shall pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.
- 1.22 Claims Contingency. LESSEE shall not be obligated to commence work on (or incur costs for) the Development Plan Capital Improvements described on **Exhibit "B-1"** until the expiration of 90 days from the date this Lease is approved by City Council. If a legal challenge(s) to this Lease or any action by the City related to this Lease is filed during those 90 days, LESSEE's obligation to commence work on (or incur costs for) the Development Plan Capital Improvements will be further tolled until such actions have been resolved in favor of the validity of this Lease (the "Claims Contingency"). All time periods in this Lease related to LESSEE's obligation to construct the Development Plan Capital Improvements shall be tolled until the Claims Contingency is satisfied (with a corresponding extension of the expiration of such time periods).

SECTION 2 TERM

- 2.1 Term. The term of this Lease ("Term") shall commence on July 1, 2019 ("Commencement Date") and shall continue for 4 years, subject to extension as provided herein.
- 2.2 One Year Right to Extend Term upon Completion of Development Plan Capital Improvements. The Term shall be extended by one year automatically if LESSEE completes all of the improvements identified on the Development Plan Capital Improvements by October 1, 2021. In order for the Term to extend for a fifth year under

this section, LESSEE shall notify CITY in writing that the Development Plan Capital Improvements have been timely completed on or before October 1, 2021, which date may be extended for unavoidable delay pursuant to Section 8.12, and the CITY shall confirm, in writing, that the Development Plan Capital Improvements have been completed to the reasonable satisfaction of the City. All terms and conditions of this Lease applicable to the regular Term shall apply to any extension of the Term authorized under this section.

- 2.3 Options. At the conclusion of the four-year Term, or five-year Term if extended pursuant to Section 2.2, LESSEE may request the right to extend the Term for up to four (4) individual one-year option periods (or if the Term was extended to five (5) years, then three (3) individual one-year option periods) ("Option" or "Options"). The CITY, in its sole discretion subject to the provisions of Section 2.5, will determine whether LESSEE will be allowed to exercise an Option in each instance.

In order to exercise the first Option, LESSEE shall notify CITY in writing, no sooner than six (6) months prior to the expiration 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 the second Option. In order to exercise the third Option, LESSEE shall notify CITY in writing, no sooner than six (6) months prior to the expiration date of the second Option period and no later than three (3) months prior to the expiration date of the second Option period, of its desire to exercise the third Option.

If LESSEE is in default under this Lease (or if, upon the passage of time and/or giving of notice, LESSEE would be in default) either on the date the Option notice is given or on the date the Option term is to commence, then the Option shall be of no force and effect and this Lease shall expire at the end of the then-current term. All terms and conditions of this Lease applicable to the regular Term shall apply to the Option terms.

- 2.4 Lease Year. "Lease Year" shall mean each twelve (12) month period during the Term.
- 2.5 CITY Termination for Convenience. At any time after July 1, 2022 (if the Lease Term is four (4) years) or after July 1, 2023 (if the Lease Term is five (5) years), CITY may, in its sole discretion, provide LESSEE with twelve (12) months advance written notice to terminate this Lease for convenience. However, CITY may not terminate this Lease or fail to grant any of the Options for the sole reason of allowing use and occupancy of the Premises by, or entering into a management agreement with, another resort management company or similar business entity for continued short-term operation of an RV park or guest accommodation/lodging of four (4) years or less. This right to terminate for convenience shall be in addition to any termination rights of CITY in the event of LESSEE's default of this Lease.
- 2.6 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 percent (100%) 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.

2.7 Surrender of Premises. Upon the expiration or earlier termination of this Lease, LESSEE shall vacate and surrender the Premises to CITY in operable condition, reasonable wear and tear and damage by casualty excepted and free and clear of all liens and encumbrances resulting from LESSEE's possession, use or occupancy of the Premises.

2.7.1 If LESSEE fails to so surrender the Premises to CITY free and clear of all such liens and encumbrances, and fails to put the Premises in operable condition, reasonable wear and tear and damage by casualty excepted, LESSEE shall be solely responsible for and shall pay for the removal of such liens and encumbrances and for putting the Premises in operable condition, reasonable wear and tear and damage by casualty excepted. Should LESSEE fail to expeditiously remove all such liens and encumbrances and fail to put the Premises in operable condition, reasonable wear and tear and damage by casualty excepted, 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.

2.7.2 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.

2.7.3 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 Credit.** CITY acknowledges that during the first twenty-four (24) months, LESSEE will invest approximately Eight Million Fifty Thousand Dollars (\$8,050,000) on the Development Plan Capital Improvements provided that in no event shall LESSEE be obligated to invest any funds for any Development Plan Capital Improvements (i) for which the LESSEE cannot obtain any required permits or approvals from the California Coastal Commission provided that LESSEE is diligently pursuing the processing of such permits or (ii) for which the actual cost to complete any of the items numbered 2 through 6 on **Exhibit "B-1"** is more than ten percent (10%) greater than estimated in **Exhibit "B-1"**, as a result of the existence of hazardous substances (other than relating to the existing mobile homes) or regulatory/governmental requirements.

As consideration for LESSEE's timely investment in improvements at the Premises, CITY shall grant LESSEE a rent credit ("Rent Credit") equal to the actual cost incurred (including design, permit fees, consultant costs, and other soft costs) of the improvements identified in the Development Plan Capital Improvements, except for any fines or penalties, in an amount not to exceed Eight Million Fifty Thousand Dollars (\$8,050,000). The Rent Credit shall be applied by LESSEE to reduce LESSEE's monthly rent payable effective as of the first day of the first month of the Term. LESSEE shall provide monthly invoices and proof of payment for the items being credited towards the Rent Credit. The Rent Credit shall be applied to one hundred percent (100%) of LESSEE's rent continuously on a monthly basis until the Rent Credit is fully applied. Any application of the Rent Credit during the Claims Contingency period including, in the event Tenant terminates this Lease pursuant to Section 1.1.2, any additional period of time from the date of Tenant's termination notice until the date this Lease is terminated shall be in the form of a rent credit toward the rent payable under this Lease or by Campland LLC for the lease at the Campland property. No fees, interest charges or adjustment based on financing shall be applied to any of the Rent Credit calculations. As used in this Lease, the term "Rent Credit" shall also include any rent credit described in Section 1.1.2.

If LESSEE has not fully applied the Rent Credit to rent owed under this Lease during the first four years of the Term (or five years of the Term, if extended pursuant to Section 2.2), then LESSEE may apply any remaining portion of the Rent Credit to offset rents due to CITY pursuant to Campland LLC's lease of the Campland property during the remaining years of that lease, in addition to applying the Rent Credit to offset rents due to CITY during the any Option year of this Lease.

Any Rent Credit not used by LESSEE during the Term of this Lease and during the term of the Campland lease, if allowed, shall be considered unused and waived by LESSEE. CITY shall not reimburse LESSEE and shall not be liable to LESSEE for any unused portion of the Rent Credit.

- 3.3 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, including the applied Rent Credit.
- 3.4 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.
- 3.5 Minimum Annual Rent. The Minimum Annual Rent for the first Lease Year of the Term shall be Five Hundred Ninety Thousand Nine Hundred Ninety-Six Dollars (\$590,996.00).
- 3.6 Minimum Annual Rent Adjustment.
- 3.6.1 Effective as of the second Lease Year, the Minimum Annual Rent shall be recalculated to be equal to eighty percent (80%) of the annual average of all rents paid and accrued during the first (1st) Lease Year, including without limitation the Percentage Rent and Minimum Annual Rent. In no event shall any such adjustment result in a decrease in the Minimum Annual Rent in effect immediately prior to the recalculation. LESSEE acknowledges that such adjustments shall be calculated by CITY after receipt of all applicable Gross Income schedules and Percentage Rent statements. LESSEE further acknowledges that any adjustment shall apply retroactively and shall be payable by LESSEE as in effect of the first day of the Lease Year in which the adjustment is made. Until such calculations are completed, LESSEE shall continue paying the current Percentage Rent.
- 3.6.2 Effective as of the first day of first Option, if exercised, the Minimum Annual Rent shall be recalculated to be equal to eighty percent (80%) of the annual average of all rents paid and accrued during the three (3) Lease Years preceding the adjustment date, including, without limitation, the Percentage Rent and Minimum Annual Rent. In no event shall any such adjustment result in a decrease in the Minimum Annual Rent in effect immediately prior to the

recalculation. LESSEE acknowledges that such adjustments shall be calculated by CITY after receipt of all applicable Gross Income schedules and Percentage Rent statements. LESSEE further acknowledges that any adjustment shall apply retroactively and shall be payable by LESSEE as in effect on the first day of the Lease Year in which the adjustment is made. Until such calculations are completed, LESSEE shall continue paying the most current Percentage Rent.

3.7 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
Ten Percent (10%)	Aquatic 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.

- 3.8 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.
- 3.9 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.
- 3.9.1 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 3.9 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.
- 3.10 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.

- 3.11 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.

- 3.12 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.
- 3.13 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, including the applied Rent Credit. 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.

3.14 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, as extended by any Options.

3.14.1 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.

3.14.2 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.

3.15 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. Subject to CITY's prior written consent in each instance, LESSEE may encumber LESSEE's leasehold estate by deed of trust or other security instrument to assure the payment of LESSEE's debts, upon the express condition that the net proceeds of such loan or loans be devoted exclusively to capital expenditures for the purpose of developing, improving, repairing, refurbishing, and/or maintaining the Premises or to finance such capital expenditures previously advanced by LESSEE. CITY's consent may be based in part on its determination that a loan does not exceed eighty percent (80%) of the appraised value of the leasehold estate and that LESSEE's net operating income to be derived from the leasehold is adequate to service the debt and LESSEE's expenses, including without limitation the payment of rent under this Lease. Each such encumbrance shall be subject to all of the terms, covenants, and conditions of this Lease, shall not be deemed to amend or alter any of the terms, covenants, or conditions of this Lease, and shall be subordinate to CITY's fee interest in the Premises and any and all of CITY's encumbrances on that fee interest, now and in the future. If any such approved deed of trust or other security interest is foreclosed upon or transferred in lieu of foreclosure, CITY shall accept the mortgagee or beneficiary thereof as its new lessee under this Lease with all rights and obligations granted and imposed in this Lease.

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.

CITY consents to LESSEE entering into a concession or sublease agreement with De Anza San Diego Food and Beverage, Inc. pertaining to food and alcoholic beverage concessions and with Adventure Water Sports pertaining to boat rentals.

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 assignee and sublessee identified in Section 4.2.6 above that has or obtains an interest in the City's real or personal property resulting from this Lease, including identified any interest any such 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 where such failure continues for ten (10) days after LESSEE's receipt of written notice of such failure from CITY;
- (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 Default if Leasehold is Encumbered. If, upon LESSEE's default, there is a CITY-approved encumbrance on LESSEE's leasehold interest, CITY shall give the mortgagee or beneficiary written notice of the default when the same is sent to LESSEE, and the same mortgagee or beneficiary shall have thirty (30) days from the notice to cure the default, or, if the default is not curable within thirty (30) days, to commence to cure the default and diligently pursue the cure to completion. CITY may extend the cure period if the mortgagee or beneficiary uses reasonable diligence to pursue a cure. If the mortgagee or beneficiary chooses to cure the default through litigation or foreclosure, then CITY may exercise any of the following options:

- (a) CITY may cure the default and charge the costs to the account of LESSEE, which charge shall be due and payable on the date that the rent is next due after CITY's notice of such costs to LESSEE, and mortgagee or beneficiary.
- (b) CITY may cure the default and pay the costs from the proceeds of any insurance fund held by CITY, CITY and LESSEE, or by CITY and mortgagee or beneficiary, or CITY may use the funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to cure the default or to pay the costs of correction performed by or at the direction of CITY.
- (c) CITY may terminate this Lease as to the rights of LESSEE by assuming or causing the assumption of liability for any trust deed or mortgage. LESSEE shall assume and pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgages as a condition of early payoff of the related obligations by CITY. City may, as an alternative, substitute the terminated LESSEE with a new lessee reasonably satisfactory to the mortgagee or beneficiary. LESSEE shall pay to CITY all reasonable costs incurred by CITY in re-leasing to a new lessee.

If the default is non-curable by LESSEE, then any lender holding a beneficial interest in the Premises, whose qualifications as an assignee have been approved by CITY, shall have the absolute right to substitute itself to the estate of LESSEE hereunder and to commence performance of this Lease. If the mortgagee or beneficiary gives notice in writing of its election to substitute itself within the thirty (30) day period after receiving CITY's written notice of a default, and the default, if curable, is cured by the mortgagee or beneficiary, then this Lease will not terminate pursuant to the default. In that event, CITY consents to the substitution and authorizes the mortgagee or beneficiary to perform under this Lease with all the rights and obligations of LESSEE, subject to the curing of the default, if possible, by mortgagee or beneficiary.

5.3 Remedies. Upon LESSEE's default (beyond the expiration of all applicable notice and cure periods), 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.

5.4 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 will 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, restoration, or improvement of the Premises, and all expenses of investigating and defending against same, including without limitation attorneys' fees and costs; provided, however, that LESSEE's duty to indemnify and hold CITY harmless will not include any established liability arising from the sole negligence or willful misconduct of CITY and its elected officials, officers, employees, representatives, and agents and shall not extend to any Hazardous Substances existing in, on or about the Premises as of the date hereof (other than asbestos or Hazardous Substances existing in the mobile homes located on the Premises on the Commencement Date or released by LESSEE's removal of the mobile homes) nor to Hazardous Substances not otherwise caused to be located in, on or about the Premises by LESSEE or LESSEE's contractors or agents. CITY may, at its own discretion, conduct the defense, or participate in the

defense, of any claim related in any way to this indemnification. If CITY elects 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 will pay the CITY for all costs related thereto, including, without limitation, reasonable attorneys' fees and costs

7.2 Insurance. LESSEE shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by LESSEE, his agents, representatives, employees, or subcontractors.

7.3 Types of Insurance. At all times during the term of this Lease, the LESSEE shall maintain insurance coverage as follows:

- (a) Commercial General Liability Insurance ("CGL"). Insurance 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 or property damage in the amount of Two Million Dollars (\$2,000,000) per occurrence and subject to an annual aggregate of Four Million Dollars (\$4,000,000). 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. For all of the LESSEE's automobiles including owned, hired and non-owned automobiles, the LESSEE shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of One Million Dollars (\$1,000,000) per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).
- (c) 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 one hundred percent (100%) of the replacement cost. LESSEE shall deliver a certificate of such insurance to CITY's Real Estate Assets Department
- (d) 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.
- (e) Pollution Liability. Pollution Legal Liability coverage that includes Transportation coverage with limits of at least One Million Dollars (\$1,000,000)

per claim and Two Million Dollars (\$2,000,000) aggregate. If the coverage is written on a "claims made" form, the LESSEE must ensure that the policy retroactive date is on or before the effective date of this Lease and that coverage is maintained or the policy has a reporting period of at least three (3) years following completion or termination of the performance and services. The CITY shall be named as an additional insured and coverage must be primary.

- 7.3.2 Self-Insured Retentions. Self-insured retentions must be declared to and approved by CITY. CITY may require contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or CITY.
- 7.3.3 Acceptability of Insurers. Except for the State Compensation Insurance Fund, all insurance required by this Lease or in the Special General Conditions 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 the CITY. The CITY will 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 (LESLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.
- 7.3.4 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.
- 7.3.5 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.
- 7.3.6 Required Endorsements. The following endorsements to the policies of insurance are required to be provided to the CITY before any work is initiated under this Lease.

Commercial General Liability Insurance Endorsements:

- (i) **ADDITIONAL INSURED.** To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by you or on your behalf, (b) your products, (c) your work, including but not limited to your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled or used by you.
- (ii) **PRIMARY AND NON-CONTRIBUTORY COVERAGE.** The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents and representatives shall be in excess of contractor's insurance and shall not contribute to it.

Workers' Compensation Insurance Endorsements:

- (iii) **WAIVER OF SUBROGATION.** The Workers' Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against the CITY and its respective elected officials, officers, employees, agents and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for the CITY.

SECTION 8 IMPROVEMENTS; ALTERATIONS

- 8.1 **Improvements/Alterations.** Except for the Development Plan Capital Improvements, no other improvements, structures or installations shall be constructed on the Premises, and the Premises may not be altered, without CITY's prior written approval, not to be unreasonably withheld or conditioned. Except for the Development Plan Capital Improvements, 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, not to be unreasonably withheld or conditioned. 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 any improvements, repairs, or alterations to the Premises. LESSEE understands and acknowledges that CITY will not pay for, reimburse, or assume any expense for any improvements, fixtures, or alterations to the Premises, except for the Rent Credit authorized by this Lease.
- 8.2 **Ownership of Improvements.** LESSEE shall own all improvements, fixtures, structures, and installations or additions to the Premises constructed or installed on the Premises by

LESSEE. Upon expiration or termination of this Lease, all such improvements, fixtures, structures, and installations or additions shall be deemed a part of the Premises and owned by CITY. LESSEE shall not be required to remove any improvements, fixtures, structures, installations or additions to the Premises made by LESSEE as part of the Development Plan Capital Improvements or Operational Improvements approved by CITY. Notwithstanding the foregoing, CITY may, upon notice to LESSEE at Lease termination or at any time prior to the expiration of the Term, elect to have part or all of any LESSEE installed improvements, fixtures, structures, installations or additions not identified as part of the Development Plan Capital Improvements in **Exhibit "B-1"** or any repairs or upgrades to gas and utility distribution identified as Item number 4 on the Operational Improvements in **Exhibit "B-2"** removed by LESSEE at the end of the Term. In that case, LESSEE shall, at LESSEE's sole cost and expense, remove those items designated for removal in CITY's notice and restore the Premises to CITY's reasonable satisfaction as soon as practicable, but in no event later than sixty (60) days after the expiration or earlier termination of this Lease. LESSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of such items. If LESSEE fails to remove the items as required herein, CITY may, at its option, remove them at LESSEE's sole cost and expense.

- 8.3 Construction Bond. Prior to commencing the improvements identified in Development Plan Capital Improvements, LESSEE shall deposit a faithful performance bond in the amount of one hundred percent (100%) of the estimated cost of removal of the mobile homes from the Premises, but shall not be required to deposit a performance bond for any other improvements identified in the Development Plan Capital Improvements and the Operational Improvements.

For improvements not contemplated in the Development Plan Capital Improvements in **Exhibit "B-1"** and the Operational Improvements in **Exhibit "B-2"**, 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. Any bond required under this Section 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.

- 8.4 Prevailing Wage. Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed under this Lease is subject to State prevailing wage. For construction work performed under this Lease cumulatively exceeding Twenty-Five Thousand Dollars (\$25,000) and for alteration, demolition, repair and maintenance work performed under this Lease cumulatively exceeding Fifteen Thousand Dollars (\$15,000), Lessee, its contractors and subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed in **Exhibit "C"**, attached hereto and made a part hereof.

8.5 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.

8.6 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.

8.7 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.

8.8 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.

• 8.9 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.

- 8.9.1 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.
- 8.9.2 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.
- 8.10 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 except for above-ground utility pedestals. Any utility deposits provided by LESSEE shall be returned to LESSEE upon the expiration or sooner termination of this Lease.
- 8.11 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.
- 8.12 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 thirty (30) days after the beginning of any claimed delay.
- 8.13 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. Except for cleaning agents and other

substances used in the ordinary course of LESSEE's business conducted 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.

- 8.13.1 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.
- 8.13.2 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.
- 8.13.3 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 required for reuse of the Premises as visitor accommodations, and in accordance with all applicable laws, rules, regulations and directives of competent governmental authorities.
- 8.13.4 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. With the exception of asbestos and other Hazardous Substances in the mobile homes or released by LESSEE's removal of the mobile homes existing on the Premises as of the date hereof, in no event shall LESSEE be responsible for the removal of any Hazardous Substances existing in, on or about the Premises as of the date hereof nor Hazardous Substances not otherwise caused to be located in, on or about the Premises by LESSEE or LESSEE's contractors or agents.

8.13.5 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. With the exception of asbestos and other Hazardous Substances in the mobile homes existing on the Premises or released by LESSEE's removal of the mobile homes, in no event shall LESSEE's indemnity obligations extend to any Hazardous Substances existing in, on or about the Premises as of the date hereof nor Hazardous Substances not otherwise caused to be located in, on or about the Premises by LESSEE or LESSEE's contractors or agents.

8.13.6 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.

8.13.7 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.

- 8.13.8 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.
- 8.14 Asbestos Disclosure. Portions of the structural components existing on the Premises may contain asbestos. LESSEE acknowledges receipt of notice from CITY of the presence of such asbestos in accordance with California Health and Safety Code Section 25915. LESSEE shall disclose to all appropriate parties the existence of asbestos on the Premises, as required by California Health and Safety Code Section 25915. LESSEE shall protect, defend, indemnify and hold CITY harmless from any loss or claim which may result from the existence of asbestos on the Premises.
- 8.15 Asbestos. LESSEE shall be responsible for any removal of asbestos and any other Hazardous Substances in the existing mobile homes located on the Premises or released by LESSEE's removal of the mobile homes and shall pay all costs associated therewith as part of the completion of the Development Plan Capital Improvements. Such asbestos and Hazardous Substances removal, management, or containment shall be conducted in accordance with all applicable laws and as approved by CITY. In no event shall LESSEE's removal obligation relating to asbestos and other Hazardous Substances relating to the existing mobile homes located on the Premises include the obligation to remediate any other existing asbestos or other existing Hazardous Substances in, on, under or about the Premises and/or any improvements thereon. CITY reserves the right to inspect any improvements, alterations or repairs to the Premises made by LESSEE. CITY may, at its discretion, station supervisory personnel at the work site to ensure that LESSEE's obligations under this section are fulfilled. Each party shall coordinate with the other any improvement, alteration or repair, and except in the event of an emergency, the party responsible for such work shall provide written notice to the other party at least fifteen (15) days prior to commencing the work.

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:

Northeast MB, LLC
6310 San Vicente Blvd. #560
Los Angeles, CA 90048-5445
Attention: Sheila Schrank, Vice President

With a copy to:

Terra Vista Management, Inc.
P.O. Box 9262
Rancho Santa Fe, CA 92067
Attention: Michael Gelfand, President

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 Single Use Plastic Reduction Ordinance. Unless an exception applies, Lessee will comply with the Single Use Plastic Reduction Ordinance codified in San Diego Municipal Code sections 66.0901 through 66.0907. By signing this Lease, Lessee certifies that it will comply with the requirements of the Single Use Plastic Reduction Ordinance throughout the Term.
- 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 22.4301-22.4308, as may be amended from time to time, which require lessees of CITY-owned property to offer the same employment benefits to employees with spouses and employees with registered domestic partners. By signing this Lease, LESSEE certifies that it will maintain such equal benefits throughout the term of this Lease. LESSEE's failure to maintain equal benefits will be a breach of this Lease.

9.7 Disabled Access Compliance. LESSEE shall, as applicable to the Premises and LESSEE's possession, use, and occupancy of the Premises, comply with all accessibility requirements under California Government Code sections 11135-11139.5; Title 24 of the California Code of Regulations; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and all other applicable state and federal laws, rules, and regulations of competent governmental authority protecting the rights of individuals with disabilities. When a conflict exists between any federal or state accessibility requirements, LESSEE will follow the most restrictive accessibility requirement (i.e., that which provides the most access). LESSEE's compliance will 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 sublease agreement which indicates the sublessee's agreement to abide by the foregoing provisions of this section. LESSEE and each of its 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, all improvements, fixtures, structures and installations on the Premises shall comply with municipal, state, and federal accessibility requirements by bringing up to code and making accessible any areas of the Premises which deny access to individuals with disabilities. All such improvements and alterations shall be at LESSEE's sole cost and expense.

9.7.6 LESSEE's failure to comply with the accessibility requirements of this section or submitting false information in response to these accessibility requirements, or both, shall be a breach of this Lease.

9.8 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.

9.9 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:

9.9.1 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

9.9.2 Establish a drug-free awareness program to inform employees about all of the following:

9.9.2.1 The dangers of drug abuse in the workplace;

9.9.2.2 LESSEE's policy of maintaining a drug-free workplace;

9.9.2.3 Any available drug counseling, rehabilitation, and employee assistance programs; and

9.9.2.4 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.

9.10 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.

9.11 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.

- 9.12 Water Quality Best Management Practices. CITY and LESSEE are committed to the implementation of controls (best management practices, or BMPs) to manage activities on the Premises in a manner which aids in the protection of City's precious water resources. It is LESSEE's responsibility to identify and implement an effective combination of BMPs so as not to cause pollutant discharges to the storm drain system in violation of San Diego Storm Water Management and Discharge Control Ordinance (San Diego Municipal Code sections 43.0301 to 43.0312).

Therefore, LESSEE will, at a minimum, implement and comply, as applicable, with the Minimum Industrial and Commercial BMPs adopted under the San Diego Municipal Code section 43.0307(a).

It is ultimately LESSEE's responsibility to prevent pollutant discharges to the storm drain system. Therefore, LESSEE will identify and implement any additional BMPs that may be required to avoid the discharge of pollutants to the storm drain system.

- 9.13 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 establish or allow any discrimination against or segregation of any person or group of persons on account of race, color, religion, gender, gender identity, gender expression, disability, sexual orientation, marital status, national origin, ancestry, familial status or source of income in the possession, use or occupancy of the Premises or in the selection, location, number, use or occupancy of tenants, subtenants or vendees on the Premises.

- 9.14 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.

- 9.15 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.

- 9.16 Survival. Any obligation which accrues under this Lease prior to its expiration or termination shall survive such expiration or termination.

- 9.17 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.
- 9.18 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.
- 9.19 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.
- 9.20 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.
- 9.21 Acceptance of Premises. By signing this Lease, LESSEE represents and warrants that it had an opportunity to independently inspect the Premises and perform tests, investigations and observation. LESSEE intends to perform a Phase 1 Environmental Assessment of the Premises after the date hereof and LESSEE shall have no liability for any Hazardous Substances revealed by such Phase 1 (or follow-up Phase 2) other than asbestos and other Hazardous Substances in the existing mobile homes or released by LESSEE's removal of the mobile homes. LESSEE 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 or remove any existing improvements, fixtures, or personal property from the Premises, including to the mobile home coaches and their contents, 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.
- 9.22 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.

9.23 Equal Pay. Unless an exception applies, Lessee will comply with the Equal Pay Ordinance codified in San Diego Municipal Code sections 22.4801 through 22.4809. By signing this Lease, Lessee certifies that it will comply with the requirements of the Equal Pay Ordinance throughout the Term.

9.23.1 Lessee and Sublessee Requirement. The Equal Pay Ordinance applies to any sublessee of the Premises to the same extent as it would apply to Lessee. Lessee will require sublessees to certify compliance with the Equal Pay Ordinance in their subleases.

9.23.2 Notice Requirement. Lessee must post a notice informing its employees of their rights under the Equal Pay Ordinance in their workplace or job site.

SECTION 10 DEVELOPMENT PLAN CAPITAL IMPROVEMENTS

10.1 Development Plan Capital Improvements. LESSEE shall, subject to receiving applicable approvals, redevelop the Premises and make the Development Plan Capital Improvements set forth in **Exhibit "B-1"**. LESSEE shall secure CITY's prior written approval to commencing work on the improvements in the Development Plan Capital Improvements.

10.1.1 CITY and LESSEE understand, acknowledge and agree that reasonable modifications of the Development Plan Capital Improvements may be necessary in connection with the processing of building permits and other approvals from the CITY acting in its regulatory capacity, and any such modifications shall be subject to the prior written approval of CITY as lessor under this Lease.

10.1.2. LESSEE has designated Michael Gelfand as its sole representative in connection with LESSEE's performance of the work described on **Exhibit "B-1"** who, until further notice to CITY, shall have full authority and responsibility to act on behalf of LESSEE as required under this Lease.

10.2 Permits and Approvals. Prior to commencing any work on the Premises in accordance with the Development Plan Capital Improvements, LESSEE shall: (1) submit development plans and all documents required by the applicable CITY departments (e.g., Development Services Department); and (2) secure all required permits and approvals from competent governmental authorities for all work set forth in the Development Plan Capital Improvements, including final review pursuant to the California Environmental Quality Act ("CEQA"). For the avoidance of doubt, approval of this Lease does not foreclose all options, alternatives or mitigation measures for purposes of CEQA.

10.2.1 Coastal Development. As part of the Development Plan Capital Improvements, LESSEE shall, at its sole cost and expense, seek and obtain from the California

Coastal Commission and all other competent governmental authorities all necessary permits for improvements contemplated in the Development Plan Capital Improvements and any development, redevelopment, or renovation of the Premises, or for any changes to any applicable permit now in effect for the Premises.

10.3 Failure to Meet Schedules; Termination

10.3.1 Failure of to Redevelop the Premises. LESSEE's failure to complete the Development Plan Capital Improvement shall not constitute a breach or default of this Lease. Notwithstanding any provision of this Lease to the contrary, CITY may, in its sole discretion, terminate this Lease at the completion of the fourth Lease Year if any of the following occurs:

- (a) LESSEE fails to commence construction of the Development Plan Capital Improvements within six (6) months after the Commencement Date;
- (b) LESSEE fails to complete construction of the Development Plan Capital Improvements within twenty-four (24) months of the Commencement Date; or
- (c) If after commencement of the construction of the Development Plan Capital Improvements, the construction is stopped for more than three (3) months, unless such work stoppage is caused by a force majeure, meaning an event beyond LESSEE's reasonable control, including, without limitation, strikes or other labor difficulties, unavailability or scarcity of materials or labor, war, riot, civil insurrection, accidents, material adverse weather conditions and acts of God, but does not include delays attributable to obtaining necessary governmental permits and approvals (including building permits or certificates of occupancy).

10.3.2 The time for LESSEE's performance in this Section 10.3.1(a) and (b) and Sections 2.2 and 3.2 are subject to the Claims Contingency described in Section 1.2 and reasonable extension for unavoidable delay as set forth in Section 8.12 .

10.4 City's Costs; Indemnity. In addition to all fees, costs, etc., required to be paid by LESSEE for the processing of its construction plans through the City of San Diego's Development Services Department, or any other regulatory agency, LESSEE shall reimburse CITY for all reasonable out-of-pocket costs and expenses (including, without limitation, any architect and/or engineer fees) incurred by CITY in approving or disapproving LESSEE's plans for any improvements. LESSEE shall be liable for and shall indemnify and defend CITY from any claim, demand, lien, loss, damage or expense, including reasonable attorneys' fees and costs, arising from LESSEE's construction or installation of any improvements permitted under this Lease.

SECTION 11 CONTRACT AUTHORITY

- 11.1 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.

[Signature Page Follows]

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

Date: 6/14/19

NORTHEAST MB, LLC, a California limited liability company

BY: [Signature]
Name: Michael Gelman
Title: President

Date: 6/27/19

THE CITY OF SAN DIEGO, a California municipal corporation

BY: [Signature]
Name: Cybele Thompson
Title: Director, Real Estate Assets

Approved as to form this 27th day of June, 2019.

MARA W. ELLIOTT, City Attorney

By: [Signature]
Name: Heather Ferbert
Title: Deputy City Attorney

760-035
424-00.
TIDELANDS

EUREKA LEM TRAC

MISSION BAY PARK TRACT RESUB.

MISSION BAY SENIOR HIGH SCHOOL

PARK TRACT

MAP 1120

DE ANZA COVE

DE ANZA POINT

TIDELANDS - MISSION BAY &
PUBLIC LANDS

885035.03/SD
376949-00001/5-30-19/MLT/bp

Exhibit "A-1"
Public Uses

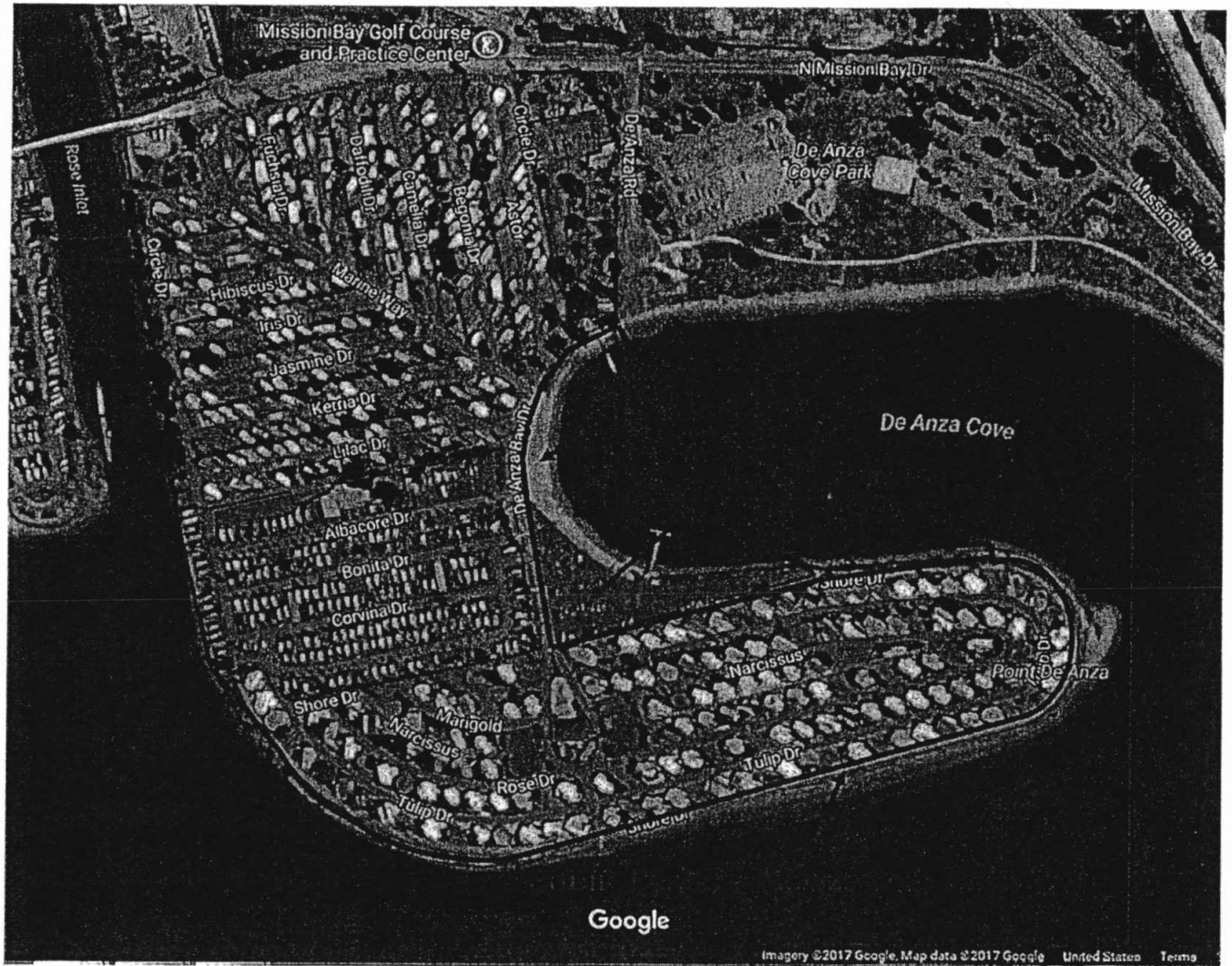


Exhibit "B-1"
Development Plan Capital Improvements

#	Project Phase	Phase Task	Estimated Timeframe	Improvement Cost (Rent Creditable)
	Total Described Improvements		24 months	
1	Removal of mobilehomes consistent with state mandate	Removal of remaining mobilehomes and lot space debris within the mobilehome sections of the property, and asbestos abatement within mobilehomes as necessary, consistent with applicable federal, state, and local regulations for containment and management of potential hazardous materials.	6-9 months	\$3,600,000.00
2	Repair roads in existing mobilehome park	a. Patch and repair asphalt in main roadway from property entrance to the existing RV section and existing pool area of the property. b. Patch and repair asphalt accessing RV sites referenced in #6 below.	10-12 months	\$500,000.00
3	Provide cleanup and backfilling of landscape areas of mobilehome sections	a. Backfill softscape areas of lot spaces within the mobilehome sections of the property. b. Trees will be trimmed for health, safety, and overall aesthetics. c. All palm tree trimming debris will be removed and disposed of at an offsite location. d. Clean-up will include the removal of trimming debris, brush, and raking or use of a blower to clean the affected areas where tree trimming occurred. e. Mature trees will be preserved along the Rose Creek channel and surrounding the clubhouse and pool.	2-4 months	\$250,000.00
4	Re-open and repair existing bayfront bike/pedestrian paths	Install new asphalt on or immediately adjacent to the existing waterfront path.	4-6 months	\$100,000.00
5	Renovate existing pool, laundry, and recreation building.	a. Reconstruct/Renovate the existing pool, spa, and pool decking inclusive of new pump room and equipment. b. Renovate existing laundry facility and install new washers and dryers (either owned or leased). c. Aesthetically renovate the existing recreation building to be reopened for use.	12-15 months	\$600,000.00
6	Alteration of existing mobilehome sites to accommodate RV usage	Upgrade utility hookups and repair pads for 150 RV campsites.	15-18 months	\$3,000,000.00
Total Improvements Costs (Rent Creditable):				\$8,050,000.00

Exhibit "B-2"
Operational Improvements

#	Project Phase	Phase Task	Estimated Timeframe	Estimated Improvement Cost
	Total Described Improvements		Over 5 years	
1	Provide Hospitality Rangers	24/7 hospitality rangers to provide both stationary and roaming services and guest relations throughout the property.	Over 5 years	\$3,200,000.00
2	Improve RV operations at De Anza.	Improve customer service, marketing, recreation activities and other RV operations.	Increased payroll over 5 years: \$60,000 in 1 st year; \$400,00 in payroll over 5 years.	\$4,500,000.00
3	Electrical and gas upgrades	Oversee electric and gas utility distribution repairs and upgrades throughout the redeveloped sections of the property as needed.	Over 5 years	\$500,000.00
Total Estimated Improvements Costs:				\$8,200,000.00

Exhibit "C"
Prevailing Wage Requirements

Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed under this Lease may be subject to State prevailing wage laws. For construction of a public work performed under this Lease cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed under this Lease cumulatively exceeding \$15,000, LESSEE and its contractors and subcontractors shall, if applicable, comply with State prevailing wage laws including, but not limited to, the requirements listed below.

1. **Compliance with Prevailing Wage Requirements.** Pursuant to sections 1720 through 1861 of the California Labor Code, LESSEE, its contractors and subcontractors shall ensure that all workers who perform work under this Lease are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.
 - 1.1. Copies of such prevailing rate of per diem wages are on file at the City of San Diego's Equal Opportunity Contracting Department and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. LESSEE, its contractors and subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.
 - 1.2. The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of this Permit. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to this Lease in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of this Lease, each successive predetermined wage rate shall apply to this Lease on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of this Lease, such wage rate shall apply to the balance of the Lease.
2. **Penalties for Violations.** LESSEE and its contractors and subcontractors shall comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed. This shall be

in addition to any other applicable penalties allowed under Labor Code sections 1720 – 1861.

3. **Payroll Records.** LESSEE and its contractors and subcontractors shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. LESSEE shall require its contractors and subcontractors to also comply with section 1776. LESSEE and its contractors and subcontractors shall submit weekly certified payroll records online via the CITY's web-based Labor Compliance Program. LESSEE is responsible for ensuring its contractors and subcontractors submit certified payroll records to the CITY. LESSEE and its subcontractors shall also furnish the records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required in Labor Code section 1771.4.
4. **Apprentices.** LESSEE and its contractors and subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. LESSEE shall be held responsible for their compliance as well as the compliance of their contractors and subcontractors with sections 1777.5, 1777.6 and 1777.7.
5. **Working Hours.** LESSEE and its contractors and subcontractors shall comply with California Labor Code sections 1810 through 1815, including but not limited to:
(i) restrict working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specify penalties to be imposed on design professionals and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.
6. **Required Provisions for Subcontracts.** LESSEE shall include at a minimum a copy of the following provisions in any contract they enter into with a contractor or subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.
7. **Labor Code Section 1861 Certification.** LESSEE in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing this Lease, LESSEE certifies that "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."
8. **Labor Compliance Program.** The CITY has its own Labor Compliance Program authorized in August 2011 by the DIR. The CITY will instruct LESSEE to withhold contract payments pursuant to the agreement between LESSEE and LESSEE's contractors or subcontractors when payroll records are delinquent or deemed inadequate by the CITY or other governmental entity, or it has been established after an investigation

by the CITY or other governmental entity that underpayment(s) have occurred. For questions or assistance, please contact the City of San Diego's Equal Opportunity Contracting Department at 619-236-6000.

9. **Contractor and Subcontractor Registration Requirements.** This project is subject to compliance monitoring and enforcement by the DIR. A contractor or subcontractor shall not be qualified to enter into any contract for public work, as defined in this chapter of the Labor Code unless currently registered and qualified to perform the work pursuant to Section 1725.5. In accordance with Labor Code section 1771.1(a), "[i]t is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded."
 - 9.1. Intentionally omitted.
 - 9.2. A contract entered into with any contractor or subcontractor in violation of Labor Code section 1771.1(a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of section 1725.5 of this section.
 - 9.3. LESSEE certifies that he or she has verified that all subcontractors used on this public works project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and LESSEE shall provide proof of registration for themselves and all listed subcontractors to the CITY at the time of bid or proposal due date or upon request.
10. **Stop Order.** For LESSEE or its contractors or subcontractor(s) engaging in the performance of any public work contract without having been registered in violation of Labor Code sections 1725.5 or 1771.1, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered contractor or unregistered subcontractor(s) on ALL public works until the unregistered contractor or unregistered subcontractor(s) is registered. Failure to observe a stop order is a misdemeanor.
11. **List of all Subcontractors.** The CITY may ask LESSEE for the most current list of subcontractors (regardless of tier), along with their DIR registration numbers, utilized on this Lease at any time during performance of this Lease, and LESSEE shall provide the list within ten (10) working days of the CITY's request. Additionally, LESSEE shall provide the CITY with a complete list of all subcontractors utilized on this Lease (regardless of tier), within ten working days of the completion of the work authorized by this Lease, along with their DIR registration numbers.

Exhibit "D"
Property List

Office Equipment:

- General Office Equipment

New Equipment:

- Electric Hog Hedge Trimmer
- Wet/Dry Shop Vac. 14 gal.
- (2) Backpack Blower PB-580T
- Backpack Blower
- Toro Electric Blower/Vacuum/Mulcher
- Twenty Volt Auger

Used Tools:

- (2) Backpack Blower PB-580T
- (3) Weed Wacker Echo SRM-230
- Weed Wacker Echo SRRM-226
- Paint Sprayer Graco 190LTS
- Bosch Hammer
- Jack Hammer
- Ryobi Chop Saw
- Miller Blue Star Generator/Welder
- Ridgid K-400 Snake
- General Speed Rooter

Tool Sets:

- Twenty-Eight Piece Universal Pass Through Set
- Commercial Electric Voltage Detector
- Husky Four Piece Plier Set
- Husky Allen SAE-MM
- Ten Piece Screwdriver Set
- Eighteen Piece Wrench Set
- (2) Four Drawer Tool Chest with 105-Piece Tool Set
- Electrical Test Kit

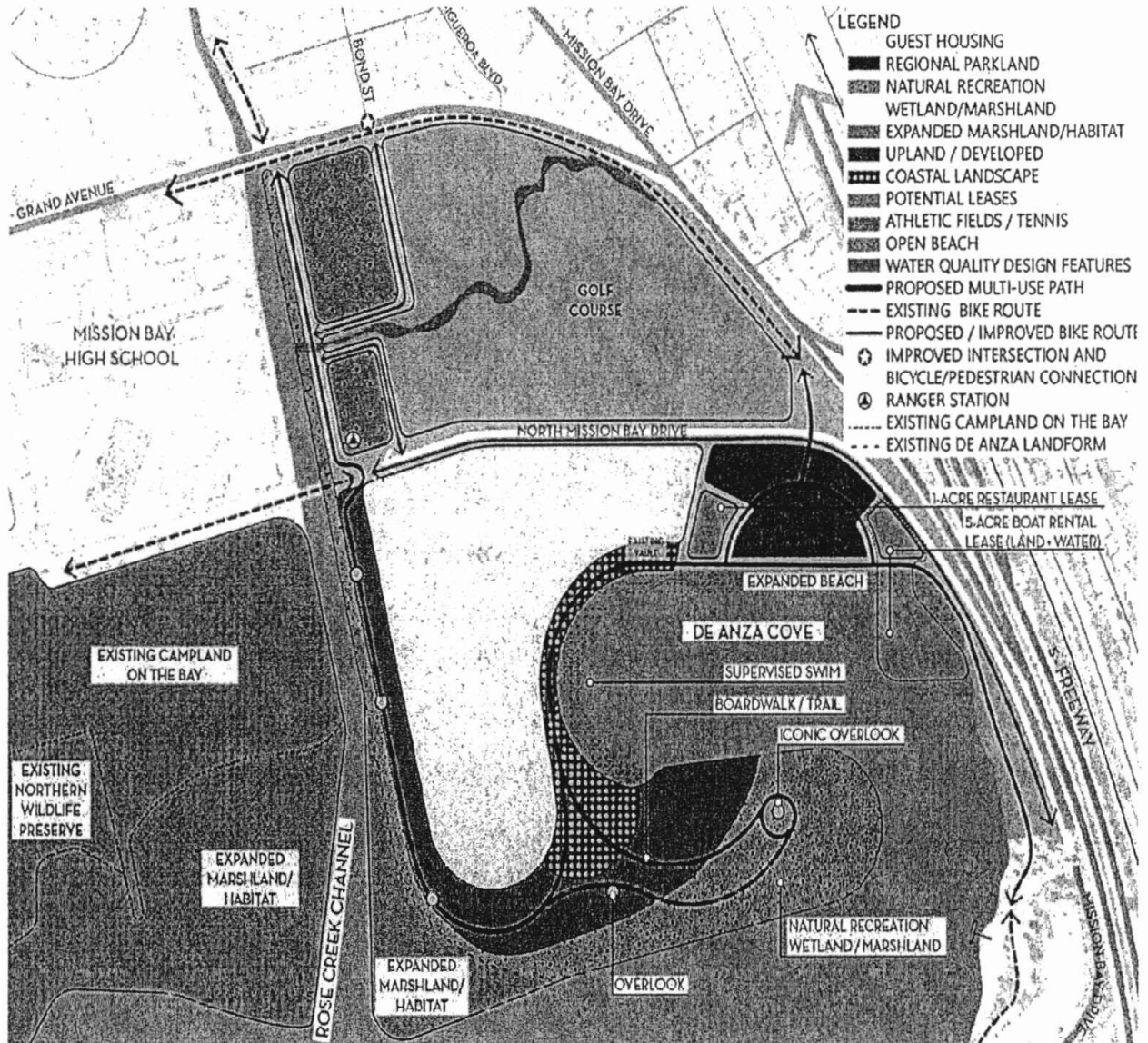
Golf Carts:

- (3) Golf Cart

Golf Carts Not in Use:

- (3) Golf Cart

Exhibit "E" RV Campsite Locations



201 A
6/24/19

(R-2019-697)

RESOLUTION NUMBER R- **312531**

DATE OF FINAL PASSAGE **JUN 26 2019**

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING AND DIRECTING THE EXECUTION OF A CITY OF SAN DIEGO PERCENTAGE LEASE WITH NORTHEAST MB, LLC FOR THE LEASE OF CITY-OWNED PROPERTY, COMMONLY KNOWN AS DE ANZA COVE, LOCATED AT 2727 DE ANZA ROAD, SAN DIEGO, CALIFORNIA AND AUTHORIZING AND DIRECTING THE EXECUTION OF A FIRST AMENDMENT TO THAT CERTAIN CITY OF SAN DIEGO PERCENTAGE LEASE WITH CAMPLAND, LLC FOR THE LEASE OF CITY-OWNED PROPERTY, COMMONLY KNOWN AS CAMPLAND ON THE BAY, LOCATED AT 2211 PACIFIC BEACH DRIVE, SAN DIEGO, CALIFORNIA, AND RELATED ITEMS.

WHEREAS, the City of San Diego (City) owns that certain real property consisting of approximately 69.9 acres of land and 6.15 acres of water space, commonly known as De Anza Cove, located in Mission Bay Park at 2727 De Anza Road, San Diego, California (De Anza Property); and

WHEREAS, the De Anza Property has been the subject of several years of litigation and a lengthy resolution process related to use of portions of the De Anza Property as a mobile home park, including suit brought by De Anza Harbor Resort and Golf (DHRG) and its affiliate Terra Vista Management, Inc. in the Superior Court for the County of San Diego. The suit is entitled *De Anza Harbor Resort and Golf v. City of San Diego, et al.*, Superior Court Case No. GIC-821191 (Litigation); and

WHEREAS, portions of the De Anza Property were, and continue to be, operated as a recreational vehicle (RV) park by a City contractor, who elected to terminate its operating contract with the City as of June 30, 2019; and

WHEREAS, City staff negotiated a "City of San Diego Percentage Lease" with Northeast MB, LLC, a California limited liability company (De Anza Lease) as part of a negotiated settlement of the Litigation. Northeast MB, LLC is an affiliate of plaintiffs in the Litigation; and

WHEREAS, City staff negotiated the proposed terms and conditions of the De Anza Lease including use of the De Anza Property for a public camping facility, including RV and tent camping, for a four-year term. The De Anza Lease may be automatically extended by one year if certain improvements are timely completed. Additionally, the De Anza Lease may be extended for up to three one-year options exercisable at the City's discretion; and

WHEREAS, the De Anza Lease authorizes Northeast MB, LLC to provide certain improvements at the De Anza Property, which include removing the remaining mobile homes, repairing existing roads and landscaping, repairing and reopening the bike and pedestrian paths along Mission Bay, renovating the existing pool, laundry, and recreation building, and altering the existing mobile home sites to accommodate use by up to 150 RVs, all at a cost of approximately \$8,050,000. In consideration of these improvements, Northeast MB, LLC will be eligible for rent credits equal to the actual cost of improvements performed, up to \$8,050,000; and

WHEREAS, as appraised by an independent fee appraiser, the market value of the De Anza Property, if vacant, is approximately \$13,125,000 and the market value of the existing RV Park operating at the De Anza Property is approximately \$25,450,000; and

WHEREAS, the City owns that certain real property consisting of approximately 40.140 acres of land and 5.478 acres of water space, commonly known as Campland on the Bay, in Mission Bay Park at 2211 Pacific Beach Drive, San Diego, California (Campland Property); and

WHEREAS, the City leases the Campland Property to Campland, LLC, a Delaware limited liability company, pursuant to that certain City of San Diego Percentage Lease effective on April 25, 2017, and on file with the San Diego City Clerk as Document No. RR-311006 (Campland Lease). Campland, LLC is an affiliate of plaintiffs in the Litigation and Northeast MB, LLC; and

WHEREAS, the Campland Lease expires in November 2020 and contains two one-year options to extend; and

WHEREAS, City staff negotiated a "First Amendment to Lease Agreement" with Campland, LLC (Campland Amendment) to accommodate certain provisions in the De Anza Lease; and

WHEREAS, the Campland Amendment would extend the term of the Campland Lease through June 30, 2023 and add four one-year options exercisable at the City's discretion. If the De Anza Lease terminates at the conclusion of its fourth or fifth year, the Campland Lease will instead extend automatically for another two years and the number of options will be reduced; and

WHEREAS, the Campland Amendment would also allow Campland, LLC to apply rent credits earned at the De Anza Property to rent owed under the Campland Lease if Northeast MB, LLC timely completes the improvements contemplated in the De Anza Lease and has not applied all of the rent credits earned to rent owed under the De Anza Lease by the time the De Anza Lease terminates; and

WHEREAS, as appraised by an independent fee appraiser, the market value of the Campland Property is approximately \$3,000,000; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego as follows:

1. The Mayor, or designee, is authorized and directed to execute that certain Percentage Lease with Northeast MB, LLC, a California limited liability company, on file in the Office of the City Clerk as Document No. RR- **312531**¹ for approximately 69.9 acres of land and 6.15 acres of water space, commonly known as De Anza Cove and described in the Percentage Lease.
2. The Mayor, or designee, is authorized and directed to execute that certain First Amendment to Lease Agreement with Campland, LLC, a Delaware limited liability company, on file in the Office of the City Clerk as Document No. RR- **312531**².
3. The Mayor, or designee, is authorized to execute and deliver all such agreements and all other instruments necessary to effect and complete the transaction contemplated by this Resolution and settlement of *De Anza Harbor Resort and Golf v. City of San Diego, et al.*, Superior Court Case No. GIC-821191.

APPROVED: MARA W. ELLIOTT, City Attorney

By



Heather M. Ferbert
Deputy City Attorney

HMF:nja:als
06/10/2019
Or.Dept: Real Estate Assets
Doc. No.: 2016711

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of JUN 24 2019.

ELIZABETH S. MALAND
City Clerk

By *Kinda Bruin*
Deputy City Clerk

Approved: 6/26/19
(date)

Kevin L. Faulconer
KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on JUN 24 2019, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	☐	☒	☐	☐
Jennifer Campbell	☒	☐	☐	☐
Chris Ward	☒	☐	☐	☐
Monica Montgomery	☒	☐	☐	☐
Mark Kersey	☒	☐	☐	☐
Chris Cate	☒	☐	☐	☐
Scott Sherman	☒	☐	☐	☐
Vivian Moreno	☐	☒	☐	☐
Georgette Gómez	☐	☒	☐	☐

JUN 26 2019

Date of final passage _____.

(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 Linda Irwin, Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- **312531**

Passed by the Council of The City of San Diego on June 24, 2019, by the following vote:

YEAS: CAMPBELL, WARD, MONTGOMERY, KERSEY, CATE, SHERMAN.

NAYS: BRY, MORENO, GÓMEZ.

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: Linda Irvin, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true, and correct copy of
RESOLUTION NO. R-312531, approved on June 24, 2019. The date of final
passage is June 26, 2019.

ELIZABETH S. MALAND

City Clerk of the City of San Diego, California

(Seal)

By: Linda Irvin, Deputy