

DUPLICATE

FIRST AMENDMENT TO LEASE AGREEMENT

THIS FIRST AMENDMENT TO LEASE AGREEMENT ("First Amendment"), by and between The CITY OF SAN DIEGO, a municipal corporation, herein after referred to as "CITY", and CAMPLAND, LLC, a Delaware limited liability company, hereinafter referred to as "LESSEE", is made with reference to the following facts:

RECITALS

- A. CITY and LESSEE entered into a Percentage Lease Agreement ("Lease") effective on April 25, 2017, known as City of San Diego Document No. RR-311006, for that certain real property described in Exhibit "A" of the Lease ("Campland property").
- B. CITY and LESSEE wish to amend the Lease in order to accommodate certain provisions of the Percentage Lease Agreement between Northeast MB, LLC and CITY, entered into on ~~JUN 24 2019~~ ^{JUN 24 2019}, known as City of San Diego Document No. ~~311006~~ ³¹²⁵³¹⁻¹ ("De Anza lease"), including to: 1) extend the term of the Lease by three (3) years (i.e. through June 30, 2023), with four (4) 1-year options to extend; and 2) provide an option for LESSEE to extend the term of this Lease for an additional twenty-four (24) months, only in the event that CITY exercises its right to terminate the De Anza lease at the end of the fourth (4th) year or fifth (5th) year of the De Anza lease.
- C. All initially capitalized terms herein shall have the same meaning as in the Lease, unless otherwise specifically defined herein.
- D. 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 First Amendment and will timely post a Notice of Exemption with the San Diego County Recorder's Office.

NOW THEREFORE, in consideration of the above recitals and the mutual promises contained herein, the parties agree as follows:

- 1. AMENDMENT OF THE LEASE. The Lease is amended as follows:
 - 1.1. In Section 1.2 of the Lease, entitled Allowed Uses, Section 1.2(b) is hereby deemed deleted in its entirety and replaced as follows:
 - (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 De Anza property, as approved by the California Department of Alcoholic Beverage Control;
 - 1.2. In Section 1.2 of the Lease, entitled Allowed Uses, Section 1.2(c), the words "food service" are hereby deemed deleted.

DOCUMENT NO R-312531-2
FILED JUN 24 2019
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

- 1.3. Section 1.22 of the Lease, entitled Tenant Estoppel Certificate is hereby deemed deleted in its entirety and replaced as follows:

1.22 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 ten (10) 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.

- 1.4. Section 2.1 of the Lease, entitled Term, is hereby deleted in its entirety and replaced as follows:

- "2.1 Term. Although this Lease shall become effective upon the Effective Date hereof, the term of this Lease shall commence on November 8, 2017 ("Commencement Date") and expire on June 30, 2023. It is intended by the parties hereto that none of the terms and conditions of this Lease will take effect until the Commencement Date.

- 1.5. Section 2.2 of the Lease, entitled Option Periods, is hereby deleted in its entirety and replaced as follows:

- "2.2 Lease Extensions.

2.2.1 Option Periods. LESSEE may request to extend the Term for up to four (4) individual one (1) year option periods ("Option" or "Options"). The City, in its sole discretion, will determine whether LESSEE will be allowed to exercise each of the four (4) one (1) year Options. The City may not disallow the exercise of an option for the sole reason of leasing (or other occupancy arrangement for) the Premises to, 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.

In order to exercise each Option, LESSEE shall notify CITY in writing, no sooner than six (6) months prior to the expiration date of the then current Term (as may be extended pursuant to Section 2.2.2 or this Section 2.2.1) and no later than three (3) months prior to the expiration date of the Term, of its desire to exercise said Option. The CITY, in its sole discretion in accordance with this Lease, will determine whether LESSEE will be allowed to exercise said Options. All terms and conditions of this Lease applicable during the regular Term shall apply to the Option terms.

2.2.2 Twenty-Four (24) Month Extension. Only in the event that the CITY exercises its right to terminate the De Anza lease at the end of

the fourth (4th) year or fifth (5th) year of the De Anza lease (which has an initial term ending on June 30, 2023), the term of this Lease will be automatically extended, on the same terms and conditions, for an additional twenty-four (24) months ("Lease Extension") period from the termination of the De Anza lease, and the Options shall thereafter be limited to two (2) Options in the case where the De Anza lease is terminated at the end of the fourth (4th) year or to one (1) Option in the case where the De Anza lease is terminated at the end of the fifth (5th) year.

- 1.6. Section 3.14 entitled "Rent Credits" is hereby added to the Lease as follows:

3.14 Rent Credit. If (i) Northeast MB, LLC is entitled to the Rent Credit as that term is defined in Section 3.2 of the De Anza lease, (ii) the De Anza lease has terminated, and (iii) Northeast MB, LLC has not fully applied the Rent Credit to rent Northeast MB, LLC owed during the term of the De Anza lease, then LESSEE shall be permitted to apply the amount of any remaining portion of the Rent Credit due Northeast MB, LLC to offset rents then (and thereafter) due to CITY pursuant to this Lease, if not earlier terminated. If Northeast MB, LLC does not have any unused Rent Credit, then no Rent Credit shall apply to this Lease. Any Rent Credit not utilized by the end of the Term of this Lease and the end of the De Anza lease term shall be considered unused and waived by LESSEE. The Rent Credit shall be applied to LESSEE's monthly rent payable from and after the termination of the De Anza lease as described above. The Rent Credit shall be applied continuously on a monthly basis until the Rent Credit is fully applied. No fees, interest charges or adjustment based on financing shall be applied to any of the Rent Credit calculations. City shall not reimburse LESSEE for any unused Rent Credits following the end of the term of this Lease (as may be extended).

- 1.7. Section 9.3 of the Lease, entitled Restriction on Food Containers, is hereby deleted in its entirety and replaced as follows:

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 First Amendment, LESSEE certifies that it will comply with the requirements of the Single Use Plastic Reduction Ordinance throughout the Term.

- 1.8. Section 9.7 of the Lease, entitled Disabled Access Compliance, is hereby deleted in its entirety and replaced as follows:

Accessibility Compliance. LESSEE will, 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 will not discriminate against qualified individuals 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 will include language in each sublease which indicates the sublessee's agreement to abide by the provisions of this section. LESSEE and each of its sublessees will be individually responsible for their own ADA employment programs.

9.7.4 LESSEE will 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, or installations on the Premises will 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 improvements and alterations will be at LESSEE's sole 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, will be a breach of this Lease.

9.7.7 Accessibility Assessment. In accordance with California Civil Code section 1938, City hereby states that the Premises has not been inspected by a Certified Access Specialist (CASp).

Further, pursuant to California Civil Code section 1938(e), CITY is required to state: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or

lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.

- 1.9. Section 9.12 of the Lease, entitled Nondiscrimination, is hereby deleted in its entirety and replaced as follows:

9.12 Nondiscrimination. This Lease is made and accepted upon and subject to the covenant and condition, which will run with the land, that LESSEE or any person claiming under or through LESSEE will 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 in the Premises.

2. SURVIVAL. In the event of a termination of the De Anza lease pursuant to Section 1.1.2 of the De Anza lease or in the event the De Anza lease is invalidated as a result of a legal challenge as described in Section 1.22 of the De Anza lease, then (i) the terms and conditions of this First Amendment shall remain in full force except for Sections 1.4 and 1.5 and, (ii) Section 2.2 of the Lease, entitled Option Period, shall be deemed modified to add the following as the last sentence thereof:

The City may not disallow the exercise of an option for the sole reason of leasing (or other occupancy arrangement for) the Premises to, 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.

3. EFFECT OF AMENDMENT.

- 3.1. As hereinabove amended, the Lease shall remain in full force and effect.
- 3.2. In the event of a conflict between the provisions of the Lease and those of this First Amendment, this First Amendment shall control.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this First Amendment on the date first written above.

Date: 6/14/19

CAMPLAND, LLC, a Delaware limited liability company

BY: [Signature]
Name: Michael Goldford
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: Kathy J. Steinman
Title: Deputy City Attorney

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- 312531¹ 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- 312531².

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

(R-2019-697)

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 Krueger, 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 Irwin, 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 Irwin, Deputy