

DUPLICATE

**FIRST AMENDMENT
TO
LEASE AGREEMENT
(Northeast MB, LLC – 2727 DeAnza Road)**

This First Amendment to Lease Agreement ("**First Amendment**") is entered into by and between the CITY OF SAN DIEGO, a California municipal corporation ("**City**"), and NORTHEAST MB, LLC, a Delaware limited liability company, doing business as Mission Bay RV Resort, as of the date this First Amendment is approved as to form by the San Diego City Attorney as shown on the signature page to this First Amendment ("**First Amendment Effective Date**"). City and Lessee are sometimes referred to in this First Amendment, each individually, as a "**Party**" or, collectively, as the "**Parties**." This First Amendment is entered into by City and Lessee with reference to the following recited facts ("**Recitals**"):

RECITALS

A. City and Lessee entered into that certain Percentage Lease Agreement, filed in the Office the San Diego City Clerk on June 24, 2019, as Document No. RR-312531-1 ("**Lease**"), related to that certain City-owned real property depicted in Exhibit "A" of the Original Lease ("**Premises**"). The Lease, as amended by this First Amendment, is sometimes referred to in this First Amendment as the "**Amended Lease**."

B. City and Lessee enter into this First Amendment to (i) extend the Term; (ii) modify the Minimum Annual Rent and the Percentage Rent; (iii) modify the Allowed Uses; and (iv) incorporate current City-standard lease provisions;

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND PROMISES SET FORTH IN THIS FIRST AMENDMENT, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION INCLUDING THE USER PAYMENT (DEFINED BELOW), CITY AND LESSEE AGREE, AS FOLLOWS:

1. **Recital A Amendment.** Recital A of the Lease is amended to read in its entirety as follows:

A. City owns that certain real property consisting of approximately 76.83 acres of land, and approximately 8.31 acres of water space, commonly known as "De Anza Cove," located at 2727 DeAnza 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**").

2. **Section 1.2 Amendment.** Section 1.2 of the Lease is amended to read in its entirety as follows:

1.2 **Allowed Uses.** Subject to all applicable laws, rules, regulations, directives, and approvals 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 (collectively, 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 of water taxis and operation and maintenance of aquatic rentals, including aquatic equipment (such jet skis, windsurfing equipment, kayaks, and stand-up paddleboards) 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;
- h. Rental of recreational vehicles (RVs) and temporary accommodations including tents and yurts;
- i. Rental of recreational equipment, vehicles, and gear intended for outdoor activities, sports, or personal transportation, including golf carts and electric bicycles, and skates;
- j. The operation of day camps, summer camps, and afterschool programs; and
- k. Incidental recreational activities for Lessee's invitees and guests, including rentals of tents for events, and amplified sound; provided that the use of amplified sound is subject to City's ongoing approval and restrictions.

3. **Section 1.11 Amendment.** Section 1.11 of the Lease is amended to read in its entirety as follows:

1.11 **Operation of Premises.** Lessee shall conduct its business and operate the Premises continuously throughout the Term, except during any period of reasonable and necessary closures, including without limitation, usual and customary closures for remodeling or alteration of the Premises' facilities during times of least interference with the public's use.

The length of stay of overnight guests in the recreational vehicles and temporary accommodations including tents and yurts are subject to the following restrictions: (i) during the

period of July 1 through September 7 of each Lease Year, the maximum period of stay for overnight guests shall be 21 consecutive nights (i.e., guests must checkout by noon on the day immediately following their (21st) consecutive night of stay and must wait at least twenty-four (24) hours before returning under a separate reservation); and (ii) during each period of September 8 through June 30 of each Lease Year, the maximum period of stay for overnight guests shall be eighty-nine (89) consecutive nights (i.e., guests must check out by noon on the day immediately following their eighty-ninth (89th) consecutive night of stay and must wait at least twenty-four (24) hours before returning under a separate reservation). The residents of the City of San Diego, prior to May 15 of each year, shall have priority for making reservations of recreational vehicles and temporary accommodations including tents and yurts for their own use during the period of 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. Residents of the City of San Diego shall be offered a 20 percent (20%) discount on daily camping fees. Rental accommodations, including recreational vehicles, tents, and yurts must be located on existing camping sites. All advertisements and brochures for temporary accommodations on the Premises 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 or approval system adopted to replace the system as it exists on the Effective Date.

Lessee shall maintain the bike and jogging paths on the Premises so that such paths are serviceable and accessible to the public. Lessee shall not be obligated to repair damages to the shoreline caused by erosion or undertake shoreline reinforcement work.

4. **Section 2.1 Amendment.** Section 2.1 of the Lease is amended to read in its entirety as follows:

2.1 **Term.** Although this Lease shall become effective upon the Effective Date, the term of this Lease shall commence on July 1, 2019 ("**Commencement Date**") and expire at 11:59 PM Pacific Time on June 30, 2037 ("**Expiration Date**"), unless (i) City terminates this Lease earlier under the terms of the Lease (collectively, the "**Initial Term**"); or (ii) the Initial Term is extended as provided in Section 2.3.

5. **Section 2.3 Amendment.** Section 2.3 of the Lease is amended to read in its entirety as follows:

2.3 **Term Extension.** If Lessee is not in default of the Lease as provided under Section 5.1, Lessee may request one (1) extension of the Term for five (5) years ("**Extended Term**"). Lessee may only request the Extended Term by written notice to City as required under Section 9.1, at least one hundred eighty (180) days, but not more than three hundred sixty-five (365) days, before the end of the Initial Term. The beginning of the Extended Term is subject to all the

following conditions: (a) Lessee not being in default of the Lease, as provided under Section 5.1, on the last day of the Initial Term; and (b) the prior written consent of the Mayor, which consent shall be given, withheld or conditioned in the Mayor's sole and absolute discretion, within thirty (30) days after City's receipt of Lessee's written notice to City as provided under Section 5.1 requesting the Extended Term (provided that the Mayor may not reject the extension request and lease the Property to a different operator). The duration of this Lease for either the Initial Term or, if the Extended Term is entered into in accordance with this Section 2.3, then the Initial Term plus the Extended Term, are sometimes referred to in this Lease as the "Term."

6. **Section 3.5 Amendment.** Section 3.5 of the Lease is amended to read in its entirety as follows:

3.5 Minimum Annual Rent. Effective as of the First Amendment Effective Date, the Minimum Annual Rent shall be \$937,316.56 per year.

7. **Section 3.6 Amendment.** Section 3.6 of the Lease is amended to read in its entirety as follows:

3.6 Minimum Annual Rent Adjustments. On the fifth anniversary of the First Amendment Effective Date (the first adjustment occurring on such date) and every five years thereafter during the Term, the Minimum Annual Rent shall be increased to the amount equal to eighty percent (80%) of the average annual sum of all rents paid during the immediately preceding three (3) Lease Years. In no event shall any such adjustment result in a decrease in the Minimum Annual Rent in effect immediately prior to the adjustment. Following the effective date of each increase in the Minimum Annual Rent pursuant to this Section 3.6, City shall notify Lessee in writing of the increased Minimum Annual Rent, with reasonable detail regarding the calculation of the increased Minimum Annual Rent. Each such notice may be given by City at any time following an increase in the Minimum Annual Rent pursuant to this Section 3.6. Lessee shall pay to City all increased Minimum Annual Rent accrued between the effective date of such Minimum Annual Rent increase pursuant to this Section 3.6 and City's notice of such Minimum Annual Rent increase, within thirty (30) days following notice of the subject increase. Until City gives Lessee notice of a Minimum Annual Rent increase, Lessee shall continue to pay the Minimum Annual Rent in effect prior to delivery of such notice, subject to Lessee's obligation to pay increased Minimum Annual Rent amounts accrued between the effective date of such increase in the Minimum Annual Rent pursuant to this Section 3.6 and City's notice of such increase in the Minimum Annual Rent, as provided in this Section 3.6.

8. **Section 3.7 Amendment.** Section 3.7 of the Lease is amended to read in its entirety as follows:

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%)	Rental of temporary accommodations, including recreational vehicles, tents, and yurts
Ten Percent (10%)	Recreational Rentals
Five Percent (5%)	Day camps, summer camps, and after-school programs

9. **Addition of Section 3.9.2.** Section 3.9.2 is added to the Lease as follows:

3.9.2 Extended Term Percentage Rent Adjustment. If the Extended Term is entered into in accordance with Section 2.3, then on the first day of the Extended Term, the Percentage Rent will be increased to an amount determined by City in accordance with Section 3.9.1.

10. **Section 4.2 Amendment.** Section 4.2 of the Lease is amended to read in its entirety as follows:

4.2 Assignments and Subleases.

4.2.1 Definitions. the following words, terms, or phrases indicated to be defined terms in this Section 4.2 by initial capitalization are used in this Section 4.2 with the following meanings:

i. Sublease. Each: (a) sublease; (b) agreement or arrangement (including a concession, license, or occupancy agreement) allowing any entity to occupy, use, or possess any part of the Premises; (c) sub-sublease or any further level of subletting; or (d) modification or assignment of any of the agreements or arrangements described in clauses "(a)" through "(c)" of this Section 4.2.1 i. Notwithstanding the foregoing, the defined term "Sublease" shall exclude (i) any agreements between Lessee and its affiliates; (ii) all rental or occupancy agreements between Lessee and any campers or guests who stay on the Premises; and (iii) all other concession, license, rental and occupancy agreements between Lessee and any affiliate of Lessee allowing any entity or person to occupy, use, or possess any part of the Premises, provided that Lessee is already paying percentage rent in connection with such concession, license, rental or occupancy agreements in accordance with the terms of Section 3.7 in connection with such agreement and Lessee remains in control of the entirety of the Premises and its operations.

ii. Subrent. All money due and payable by Subtenants under Subleases.

iii. Subrent Payment Notice. A notice from City to a Subtenant directing the Subtenant to pay its Subrent to City and not to Lessee.

iv. Subtenant. Each entity entitled to occupy, use, or possess any part of the Premises under a Sublease.

4.2.2 Subleases.

i. Lessee's Authority to Sublease. Subject to the other terms and conditions of this Lease, when Lessee is not in default under the Lease, Lessee may enter into Subleases with City's consent, which consent may be given or withheld in City's sole and absolute discretion. No Sublease will affect any obligation of Lessee or right of City under this Lease, all of which will continue in full force and effect, notwithstanding any Sublease. Each Sublease will be subject and subordinate to this Lease and expire no later than one day before the Expiration Date. The fact that a Subtenant causes a default will not relieve Lessee of Lessee's obligation to cure all defaults. Lessee must take all steps reasonable and necessary to prevent

defaults caused by Subtenants. Lessee will perform its obligations under all Subleases and Lessee will enforce all its rights under Subleases in a commercially reasonable manner. Lessee acknowledges and agrees that, under the circumstances that this Lease is entered into by City and Lessee, the restrictions in this Lease on Subleases are reasonable.

ii. Sublease Revenue Sharing with City. If City approves a Sublease, Lessee will pay to City fifty percent (50%) of the Gross Revenue received by Lessee under the Sublease within ten (10) days after Lessee receives each payment of the Gross Revenue, including up-front payments and periodic payments.

iii. Assignment of Subrents. To secure Lessee's performance under this Lease, Lessee assigns, transfers, and sets over to City, subject to the conditions in this Section 4.2 all of Lessee's right, title, and interest in and to all Subleases and Subrent. Lessee grants to City, and its agents and representatives, a right to enter, and sufficient possession of, the Premises to permit and assure City's collection of Subrent. City's exercise of its rights to collect Subrent will not constitute an eviction of Lessee. Until a default by Lessee under Section 5 (that is not timely cured) or the termination of the Lease occurs, Lessee has a license to exercise its right, title, and interest in and to all Subleases and Subrent. City may revoke this license, in City's sole and absolute discretion, only after the occurrence of a default by Lessee under Section 5 (that is not timely cured) or after the termination of the Lease. Upon revocation of Lessee's license to exercise its right, title, and interest in and to all Subleases and Subrent, City may collect Subrent directly from Subtenants and apply the net amount collected to amounts owed to City by Lessee. City's revocation of Lessee's license to exercise its right, title, and interest in and to all Subleases and Subrent does not constitute City's waiver of any term or condition of this Lease or acceptance of any Subtenant as Lessee, or release Lessee from any obligation under this Lease.

iv. City Subrent Collection. City will not send any Subrent Payment Notice unless a default by Lessee under Section 5 (that is not timely cured) occurs, or the Lease has been terminated. If City collects any Subrent after a default by Lessee under Section 5 (that is not timely cured) or the termination of the Lease occurs, City will apply it first to pay all of City's costs in collecting such Subrent, including Legal Costs, then to pay all Minimum Annual Rent and Percentage Rent then due, and then to cure all defaults and then to pay all costs of the Premises. City will then remit to Lessee, any remaining Subrent. Lessee directs City accordingly. If City sends a Subrent Payment Notice, and Lessee subsequently cures all defaults, and the Lease has not been terminated, then City will, at Lessee's expense (including City's legal costs), give each Subtenant a notice rescinding any previous Subrent Payment Notice related to the default cured by Lessee.

v. Required Sublease Provision. Each Sublease must contain a provision substantially as follows:

All terms, covenants, and provisions of this Sublease and all rights, remedies, and options of Subtenant under this Sublease are and will at all times remain fully subject and subordinate in all respects to the Lease. If the Lease terminates, then this Sublease will automatically and concurrently terminate. In that event, Subtenant, only at the option and request of City (except as City has agreed otherwise in writing), will attorn to City and recognize City as Subtenant's direct City under this Sublease. Subtenant will sign and

deliver, at any time and from time to time, upon the request of Lessee, City, or any Lender, any instrument necessary or appropriate to evidence such attornment. This appointment is coupled with an interest and is irrevocable. Subtenant, for the express benefit of City, waives its rights under any Law that may allow Subtenant to terminate this Sublease or surrender possession of the demised subpremises, if the Lease terminates.

vi. Lessee Deliverables.

(1) *Subleases.* Lessee will deliver to City a copy of each signed Sublease, all associated agreements, and all Sublease amendments, all certified as complete and accurate by both Lessee and the Subtenant, within fifteen (15) days following Lessee entering into the particular Sublease, associated agreement, or Sublease amendment.

(2) *Sublease Lists.* Lessee will, upon request (no more frequently than once every six (6) months) give City a current list of all Subleases.

(3) *Sublease Update Packages.* Lessee will give City copies of all Subleases and amendments to Subleases, to the extent that the copies have not previously been delivered to City, or a certificate that no new Sublease or new Sublease amendment has been entered into (such copies or certificates, collectively, a "Sublease Update Package"), at least, once each Lease Year, within thirty (30) calendar days following the first day of each Lease Year, together with a current rent roll for the Premises, listing all Subleases and Subtenants and their current Subrent and security deposits.

4.2.3 Assignments. Lessee shall not have any right to make or allow any assignment of the Lease without the prior written consent of City, which may be given or withheld in City's sole and absolute discretion. Lessee acknowledges and agrees that, under the circumstances that this Lease is entered into by City and Lessee, the restrictions in this Lease on assignments are reasonable.

4.2.4 Subtenant Subleasing or Assignment. The provisions of this Section 4.2 also apply to any future subleasing or assignment by any Subtenant previously approved by City under this Section 4.2.

11. **Addition of Section 7.3(f).** Section 7.3(f) is added to the Lease as follows:

(f) Liquor Liability Insurance against claims for bodily injury, personal injury, death, or property damage arising from selling, servicing, or furnishing of any alcoholic beverages on the Premises, with a minimum liability limit of One Million Dollars (\$1,000,000) for any one occurrence and Two Million Dollars (\$2,000,000) aggregate.

12. **Addition of Section 7.3.7.** Section 7.3.7 is added to the Lease as follows:

7.3.7 Subcontractors. All subcontractors of Lessee performing any alteration, construction, demolition, excavation, fill, grading, development, expansion, reconstruction, removal, replacement, rehabilitation, redevelopment, repair, restoration, or other work affecting the Premises shall maintain all the insurance coverage described

in Subsections 7.3 (a), (b), and (d). In addition, subcontractors of Lessee performing any environmental remediation work, fuel tank installation or removal work, or large-scale excavation, grading or demolition at the Premises shall further maintain the insurance coverage described in Subsections 7.3 (e).

13. **Section 8.9 Amendment.** Section 8.9 of the Lease is amended to read in its entirety as follows:

8.9 **Access and Inspection.** Notwithstanding anything to the contrary in this Lease, City and its agents may enter the Premises upon reasonable advance notice, without the payment of charges or fees, during regular hours of operation of the Premises, solely to: (a) ascertain whether Lessee is complying with this Lease; (b) cure Lessee's defaults as permitted by this Lease; (c) perform such tests, borings, or other analyses as City determines are necessary or appropriate relating to possible (non)compliance with applicable law or possible Hazardous Substance release; provided, however, no invasive testing shall be conducted by City without Lessee's prior written consent, not to be unreasonably withheld. In entering the Premises, City and its agents shall not unreasonably interfere with Lessee's Allowed Uses of the Premises and shall comply with Lessee's reasonable instructions. City's entry onto the Premises under this Section 8.9 shall not entitle Lessee to any rights or remedies, except as expressly provided in this Section 8.9, and such entry shall not constitute an actual or constructive eviction of Lessee from the Premises, nor shall it entitle Lessee to any offset, deduction, or abatement of Minimum Annual Rent or Percentage Rent. City may enter the Premises without written notice to Lessee in the event of an emergency. All City representatives or agents who enter the Premises shall identify themselves at the main entrance to the Premises and shall always be accompanied by a Lessee representative while on the Premises. Lessee shall make a Lessee representative available for this purpose during all regular hours of operation for the Premises upon reasonable advance written notice from City. If in City's reasonable judgment it is necessary, City shall have the further right, from time to time, at its own cost, to retain a consultant or consultants to inspect the Premises regarding compliance by Lessee with this Lease. Lessee acknowledges and agrees that: (i) all such City inspections are for the sole purpose of protecting City's rights under this Lease; (ii) are made solely for City's benefit; (iii) City's inspections may be superficial and general in nature; (iv) are for the purposes of informing City of the conformity of the Premises with this Lease; and (v) Lessee shall not be entitled to rely on any such inspection(s) as constituting City's approval, satisfaction, or acceptance of any materials or workmanship, conformity of the Premises with this Lease or otherwise. Lessee agrees to make its own regular inspections of the Premises to determine the conformity of the Premises with this Lease.

14. **Waiver of Rent Credits.** As of the later of (i) the First Amendment Effective Date under this Lease; and (ii) the Second Amendment Effective Date under the Campland Lease (the "**Effective Date of the Lease Extensions**"), Lessee waives all unused or remaining Rent Credits granted to Lessee under Section 3.2 of the Lease; provided that, in the event either the First Amendment or the Second Amendment to the Campland Lease is adjudged by a court of competent jurisdiction to be invalid or ineffective, all unused or remaining Rent Credits shall be reinstated without any further action of the Parties. Subject to the immediately preceding sentence, beginning on the Effective Date of the Lease Extensions, Lessee will pay City all Minimum Annual Rent and Percentage Rent owed to City under the Amended Lease without any credit, reduction, or offset.

15. **Coastal Development Permit.** Following the First Amendment Effective Date, Lessee must, at its sole cost and expense, use commercially reasonable efforts to obtain an extension of its Coastal Development Permit applicable to a portion of the Premises from the California Coastal Commission prior to the expiration of such Coastal Development Permit.

16. **City Termination of Lease for Wetlands Expansion.** City may terminate the Lease at any time upon two years' written notice to Lessee if City determines, in its sole and absolute discretion, that termination of the Lease is necessary for City's wetlands expansion under the De Anza Natural Amendment to the Mission Bay Master Plan; provided City will work with Lessee as the low-cost visitor accommodation facility operator to plan for the future of Lessee's facilities and will design and phase development in a manner that minimizes disruption to low-cost visitor accommodation access and in a manner that does not prematurely impact existing low-cost visitor accommodations. Wetland restoration, buffer zones, and other land uses proposed for the site of existing low-cost visitor accommodation facilities like Lessee's should be implemented after Lessee's facilities have been modified, moved, or replaced for continued use, unless imminent climate hazards necessitate more immediate mitigation. Upon the expiration of such two-year period, this Lease and the Term shall automatically, and without further action, terminate, expire, and come to an end, by the mere lapse of time, as fully and completely as if the expiration of such two-year period were the Expiration Date. The passage of such two-year period constitutes the limit beyond which Lessee's tenancy no longer exists.

17. **User Payment.** Concurrent with Lessee signing and delivering this First Amendment to City, Lessee shall also submit a user payment in the amount of Five Thousand Dollars (\$5,000.00) in the form of a cashier's check or certified check ("User Payment"), naming City as beneficiary or payee, as applicable. The User Payment shall be made in consideration of City entering into this First Amendment and shall be used by City to cover expenses incurred by City in connection with this First Amendment, including legal expenses, financial analysis expenses, administrative and staff expenses, materials, and labor ("Expenses"). The User Payment shall be fully earned by City on the First Amendment Effective Date and shall be non-refundable to Lessee. Lessee waives any claim or right to any refund of the User Payment or any interest accrued on the User Payment.

18. **Zero Emissions Municipal Buildings and Operation Policy.** Lessee will comply with all requirements of Council Policy 900-03, as amended from time to time, which are incorporated into the Amended Lease by this reference.

19. **Confirmation of Agreement.** The Lease, as amended by this First Amendment, is in all respects confirmed and all the terms, provisions, and conditions of the Lease, as amended by this First Amendment, shall be and remain in full force and effect.

20. **Incorporation of Recitals.** The Recitals are true and correct and are incorporated into this First Amendment by this reference, as though fully set forth in this First Amendment.

21. **Entire Agreement.** The Lease, as amended by this First Amendment, represents the entire understanding between the Parties as to the subject matter of the Lease, as so amended.

22. **Counterparts.** This First Amendment may be signed by the authorized representatives of the Parties in multiple counterpart originals (including electronic counterpart originals), each of which shall be deemed an original, and all such counterpart originals, when taken together, shall constitute one agreement.

23. **Principles of Interpretation.** No inference in favor of or against any Party shall be drawn from the fact that such Party drafted any part of this First Amendment. The Parties participated substantially in the negotiation, drafting, and revision of this First Amendment, with advice from legal and other counsel and advisers of their own selection. A word, term or phrase defined in this First Amendment may be used in the singular, plural, past tense, or future tense, regardless of how it is defined, all in accordance with ordinary principles of English grammar, which shall govern all language in this First Amendment. The words "include" and "including" in this First Amendment shall be construed to be followed by the words: "without limitation." Each collective noun in this First Amendment shall be interpreted as if followed by the words "(or any part of it)," except where the context clearly requires otherwise. Every reference to a document, including this First Amendment, refers to such document, as modified from time to time (excepting any modification that violates the Lease), and includes all exhibits, schedules, addenda, and riders to such document. The word "or" in this First Amendment includes the word "and," except where the context clearly requires otherwise. Every reference to a law, statute, regulation, order, form, or similar governmental requirement in this First Amendment refers to each such requirement as amended, modified, renumbered, superseded, or succeeded, from time to time.

24. **Governing Law.** The procedural and substantive laws of the State of California shall govern the interpretation and enforcement of this First Amendment, without application of conflicts of laws principles or statutes.

25. **Binding on Successors and Assigns.** This First Amendment shall be binding upon and inure to the benefit of the Parties and their respective legal representatives, successors, and assigns.

26. **No Other Representations or Warranties.** Except as expressly set forth in this First Amendment, no Party makes any representation or warranty material to this First Amendment to any other Party.

27. **Incorporation of Defined Terms.** All terms, phrases, or words indicated to be defined terms by initial capitalization in this First Amendment that are not specifically defined in this First Amendment (if any) shall have the meaning ascribed to the same term, phrase, or word in the Lease.

28. **Electronic Signatures.** The Parties agree: (a) to deliver and accept signatures on or pursuant to this First Amendment by e-mail, or electronic means (including digital signatures); and (b) that signatures delivered by e-mail, or electronic means (including digital signatures) shall be binding as originals upon the Party so signing and delivering.

[Remainder of page intentionally blank. Signatures appear on immediately following page.]

**SIGNATURE PAGE
TO
FIRST AMENDMENT TO
LEASE AGREEMENT
(Northeast MB, LLC - 2727 DeAnza Road)**

IN WITNESS WHEREOF, City and Lessee sign and enter into this First Amendment, by and through the signatures of their respective authorized representatives, as follows:

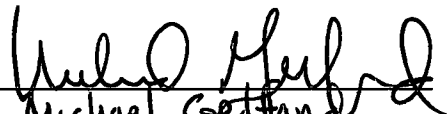
CITY:

The City of San Diego, a California
municipal corporation

LESSEE:

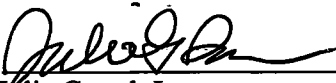
Northeast MB, LLC, a California limited
liability company

By: 
Name: Christina Bibler
Title: Director Economic Development

By: 
Name: Michael Gettman
Title: President

APPROVED AS TO FORM
on August 19, 2025:

HEATHER FERBERT,
City Attorney

By: 
Julie Gough Inman
Deputy City Attorney

R-316362

RESOLUTION NUMBER R- **316362**DATE OF FINAL PASSAGE **JUL 31 2025**

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING THAT CERTAIN FIRST AMENDMENT TO LEASE AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND NORTHEAST MB, LLC, A DELAWARE LIMITED LIABILITY COMPANY, RELATED TO REAL PROPERTY LOCATED AT 2727 DE ANZA ROAD; AND WAIVING APPLICATION OF COUNCIL POLICY 700-10.

RECITALS

The Council of the City of San Diego (Council) adopts this Resolution based on the following:

A. The City of San Diego (City) owns certain real property located at 2727 De Anza Road, San Diego, California 92109, consisting of 76.83 acres of land and 8.31 acres of water, identified as San Diego County Assessor's Parcel Number 760-035-01 (Property).

B. By San Diego Resolution R-312531 (June 24, 2019), the Council approved that certain Percentage Lease Agreement (Lease) between the City and Northeast MB, LLC, a Delaware limited liability company (Tenant), for Tenant's operation and maintenance of a public campground on the Property. The City and Tenant signed the Lease dated June 27, 2019, on file with the Office of the City Clerk as Document No. RR-312531-1.

C. The City and Tenant now desire to amend the Lease and have negotiated the terms of a proposed First Amendment to the Lease (First Amendment), included in the docket materials accompanying this Resolution. The First Amendment will amend the Lease to, among other things: (i) extend the Lease term by ten years, plus one five-year option to extend; (ii) expand the allowed uses to include the rental of recreational vehicles, equipment, and temporary accommodations; (iii) increase the minimum annual rent to \$937,316.56; and (iv)

allow the City to terminate the Lease with two years' notice for the purpose of wetlands expansion.

D. City staff produced a Restricted Appraisal Report for the Property showing that, as of June 15, 2025, the minimum annual rental value for the Property is \$937,316.56. A copy of the Restricted Appraisal Report is included in the docket materials accompanying this Resolution.

E. The California Surplus Land Act (SLA), Government Code sections 54220-54234, requires the Council to take formal action at a regular public meeting to declare that City-owned real property is either surplus land or exempt surplus land before the City may take any action to dispose of the real property. However, under Government Code section 54221(d), the City's leasing of its real property is not a disposition of surplus land for SLA purposes if either: (1) the lease term, including any extension or renewal options, is 15 years or less; or (2) no demolition or development activities will occur on the leased premises, regardless of the term of lease. The California Department of Housing and Community Development confirmed that the First Amendment is not a disposition of surplus land because (i) the extension of the Lease term is 15 years or less; and (ii) the new allowed uses under the First Amendment do not constitute development or demolition.

F. The Council intends to waive the requirement in Council Policy 700-10 that Tenant make a qualifying capital investment in the leasehold improvements on the Property.

G. The Office of the City Attorney prepared this Resolution based on the information provided by City staff (including information provided by affected third parties and verified by City staff), with the understanding that this information is complete and accurate.

ACTION ITEMS

Be it resolved by the Council of the City of San Diego:

1. The Council approves the First Amendment.
2. The Mayor or designee is authorized, on the City's behalf, to sign and deliver the First Amendment. When signed by both parties, the First Amendment will be placed on file in the Office of the City Clerk as Document No. RR- 316362.
3. The Chief Financial Officer is authorized and directed to accept the consideration payable to the City under the First Amendment, including rent payments, and deposit such consideration into Fund Number 100000, General Fund.
4. The Council waives the application of the requirement in Council Policy 700-10 that Tenant make a qualifying capital investment in the leasehold improvements on the Property.

APPROVED: HEATHER FERBERT, City Attorney

By 
Julie Gough Inman
Deputy City Attorney

JGI:cw
7/15/2025
Or. Dept: EDD
CC No.: N/A
Doc. No.: 4126531

I certify that the Council of the City of San Diego adopted this Resolution at a meeting held on
JUL 22 2025

DIANA J.S. FUENTES
City Clerk

By Connie Peterson
Deputy City Clerk

Approved: 7/31/25
(date)

Todd Gloria
TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

Passed by the Council of The City of San Diego on JUL 22 2025, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	☒	☐	☐	☐
Jennifer Campbell	☒	☐	☐	☐
Stephen Whitburn	☐	☐	☒	☐
Henry Foster, III	☒	☐	☐	☐
Marni von Wilpert	☒	☐	☐	☐
Kent Lee	☐	☐	☒	☐
Raul A. Campillo	☒	☐	☐	☐
Vivian Moreno	☒	☐	☐	☐
Sean Elo-Rivera	☐	☐	☒	☐

Date of final passage JUL 31 2025

(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:

TODD GLORIA
Mayor of The City of San Diego, California.

(Seal)

DIANA J.S. FUENTES
City Clerk of The City of San Diego, California.

By Connie Patterson Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- **316362**

Passed by the Council of The City of San Diego on July 22, 2025, by the following vote:

YEAS: LACAVA, CAMPBELL, FOSTER III, VON WILPERT, CAMPILLO, & MORENO.

NAYS: NONE.

NOT PRESENT: WHITBURN, LEE, ELO-RIVERA.

RECUSED: NONE.

AUTHENTICATED BY:

TODD GLORIA

Mayor of The City of San Diego, California

DIANA J.S. FUENTES

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-316362 approved on July 22, 2025. The date of final passage is
July 31, 2025.

DIANA J.S. FUENTES

City Clerk of the City of San Diego, California

(Seal)

By: Linda Irvin Deputy