



Revision to ASR and/or Attachments

Date: 1/22/2016
To: Clerk of the Board of Supervisors
CC: County Executive Office
From: Steve Franks, Director, OC Community Resources
Re: ASR Control #: 15-001472, Meeting Date 1/26/2016 Agenda Item No. #
34
Subject: Newport Dunes Lease Amendment and Consents to Subleases

2016 JAN 22 PM 1:51

Explanation: Revisions are needed to the ASR and attachments, as follows:

**Revise votes required for approval from 4/5 vote to 3 Votes Board Majority.

Revisions are also required to add percentage rent increase language and to update ASR Background Information, as shown in tracked changes on the attached ASR.

- Revised Recommended Action(s)
See Attached ASR
- Make modifications to the:
 - Subject
 - Background Information
 - SummarySee Attached ASR

- Revised Attachments (attach copy of revised attachment(s))

Attachment B (First Amendment to Amended and Restated Lease and Option) has been revised in line with revisions made to the ASR

Attachment G (Redlined New Lease) has been added.



AGENDA STAFF REPORT

ASR Control 15-001472

MEETING DATE: 12/08/15
LEGAL ENTITY TAKING ACTION: Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S): 2
SUBMITTING AGENCY/DEPARTMENT: OC Community Resources (Approved)
DEPARTMENT CONTACT PERSON(S): Stacy Blackwood (949) 923-3743
 Scott Mayer (714) 834-3046

SUBJECT: Newport Dunes Lease Amendment and Consents to Subleases

CEO CONCUR Concur	COUNTY COUNSEL REVIEW Approved Agreement to Form	CLERK OF THE BOARD Discussion <u>4/5 Vote 3 Votes Board Majority</u>
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Budgeted: N/A **Current Year Cost:** N/A **Annual Cost:** N/A

Staffing Impact: No **# of Positions:** **Sole Source:** N/A

Current Fiscal Year Revenue: N/A

Funding Source: N/A **County Audit in last 3 years:** No

Prior Board Action: 8/25/2009 #64, 12/09/2008 #15

RECOMMENDED ACTION(S):

1. Find that the subject activity is not a project within the meaning of CEQA Guidelines Section 15378 and is therefore not subject to review under CEQA.
2. Approve and authorize the ~~Chairman of the Board~~ Chief Real Estate Officer to execute the First Amendment to Amended and Restated Lease and Option between Waterfront Resort Properties, L.P. and Newport Dunes Marina, LLC (Tenant) and the County of Orange in substantially the same form as attached, upon execution by Tenant, which, among other things, allows the development of two hotels on the leasehold premises, ~~and~~ extends the lease option period to ~~2020~~ 2021, and includes agreement to increase the percentage rent due to the County under a hotel sublease operation under the New Lease.
3. Approve and authorize the Chairman of the Board to execute the Consent to Hotel Sublease between Tenant and Brighton Management, LLC.
4. Approve and authorize the Chairman of the Board to execute the Consent to Amended and Restated Sublease (2015) between Tenant and Newport Dunes Resort and Marina Partnership.
5. Delegate to the CEO/Chief Real Estate Officer, or designee, the authority to consent to a hotel sublease to an affiliate of Brighton Management, LLC when such sublease is substantially in the form of the sublease attached to the Consent to Hotel Sublease and when such sublease has been

approved by County Counsel.

6. Delegate to the CEO/Chief Real Estate Officer, or designee, the authority to enter into a subordination, attornment and non-disturbance agreement with Brighton or with a Brighton affiliate and estoppel agreements that permit subordination to financing entities and allow the financing entity to be notified of and be provided with cure periods for defaults, as well as entering into a new lease or assignment of the lease under the same terms and conditions in the event of a foreclosure or bankruptcy, when such agreements have been approved by County Counsel and executed by Brighton or a Brighton affiliate.

SUMMARY:

Approval of the First Amendment to Amended and Restated Lease and the Consents to Subleases between Tenant and Brighton Management, LLC will promote the development of a waterfront family inn hotel, resulting in significant recreation and economic benefits for Orange County.

BACKGROUND INFORMATION:

Newport Dunes is a 102-acre recreation facility on County-owned tidelands in Upper Newport Bay in Newport Beach and is currently leased to Waterfront Resort Properties, L.P. and Newport Dunes Marina, LLC (Newport Dunes) through 2039.

In 1983 as a precursor to the redevelopment of the Newport Dunes marina property, the City of Newport Beach, the County and the then Newport Dunes marina tenant entered into a settlement agreement to resolve jurisdictional and entitlement disputes relating to the development of the Newport Dunes property. The settlement agreement limits the land uses and development of the property. One of the key development limitations requires that any hotel constructed on the property not exceed 500,000 S.F. of gross floor (including service storage and food/beverage preparation areas), that the hotel be attractive to families, and that accommodations not exceed 275 rooms, 40% of which are to include kitchenettes.

On December 9, 2008, your Board approved a Letter of Intent, between the County and Newport Dunes, defining lease terms to accommodate development of a 275-room hotel on Parcel C of the leased property (as shown on Attachment A). On August 25, 2009 pursuant to the terms of the Letter of Intent, your Board approved the Amended and Restated Lease and Option Agreement (Lease) which among other provisions established the requirements imposed upon Newport Dunes in order to secure a new 50-year lease (New Lease), which included completion of a hotel and payment of a \$500,000 lease fee. Your Board also approved a sublease between Newport Dunes and the Windsor Capital Group, Inc. (Windsor), the proposed hotel developer at that time. Due to the recent recession, Windsor was unable to proceed with the hotel development and to date a hotel has not been constructed on Parcel C.

Approval is now requested to modify the Lease to allow development of two hotels on Parcel C by a new hotel developer described below, with a combined maximum total of 275 rooms; to extend the option period; to clarify certain option conditions including when the \$500,000 payment is to be made; to substitute the Hotel Development Plan lease attachments, to increase the percentage rent to be paid to County by five percent under the New Lease for a hotel sublease operation; to increase by five percent any percentage rent adjustments which may apply to business activities allowed on Parcel C. and to edit certain defined terms.

The Lease contemplated a five-year period for Newport Dunes or a third party to obtain entitlements to develop the hotel and to allow any such third party to sublease Parcel C for the hotel. The option provision also provided for three one-year extensions to obtain entitlements and two one-year extensions to complete construction, provided construction had commenced during the entitlement period. As previously stated, as a result of the recession, Windsor was unable to proceed.

Newport Dunes has now entered into an agreement with Brighton Management LLC (Brighton) to develop a Holiday Inn Resort and a Staybridge Hotel on Parcel C. The development calls for utilizing a single common entry and certain shared common facilities such as food service to create greater efficiency for the hotel operations, while providing two separate hotel concepts, both representing value-oriented accommodations. Holiday Inn Resort represents a reasonably priced hotel product. Likewise, Staybridge represents a value-oriented line, but with the expectation of a somewhat more extended stay for guests, consistent with the family orientation for the Newport Dunes location.

Brighton has been working towards development of conceptual plans and is proceeding with the entitlement process. Newport Dunes is seeking to reset the option periods to allow a realistic time period for Brighton to obtain all requisite approvals. The proposed restart of the option periods, assuming a ~~December 2015~~January 2016 restart, would result in the developer having until ~~December 2020~~January 2021 to obtain entitlements, with extensions up to ~~December 2023~~January 2024, and provided construction is underway by ~~December 2023~~January 2024, the developer would have until ~~2025-2026~~ to complete construction. Under the current option provision, the entitlement period including extensions will end in August 2017. It is unlikely that Brighton will be able to get through CEQA reviews and obtain City of Newport Beach and California Coastal Commission approvals by that date. Without approval of the Lease amendment extending the hotel development period, Brighton will be unable to develop the hotel and Parcel C will remain undeveloped and will continue to be used by the tenant for dry boat and RV storage and a pedestrian walkway.

Your Board is also being requested to consent to a sublease between Newport Dunes and Brighton. It is contemplated that Brighton, at a future date, will form a joint venture or single purpose entity for financing purposes. As such, your Board is being requested to delegate authority to the CEO/Chief Real Estate Officer, or designee, to approve the sublease to this entity and enter into a subordination, attornment and non-disturbance agreement with Brighton or with a Brighton affiliate, as well as estoppel agreements for financing when such agreements have been approved by County Counsel and executed by Brighton or an affiliate. The subordination, attornment and non-disturbance agreement and estoppels will provide that, in the event the Lease with Newport Dunes is terminated, the Brighton Hotel sublease shall remain in effect as a lease between County and Brighton or a Brighton affiliate, as the case may be and that a new lease in substantially the form of the current lease will be executed in the event of a bankruptcy or transfer due to a foreclosure. They may also provide for notice and cure periods for lenders to remedy any defaults under the lease.

Your Board is also being requested to approve an Amended and Restated Sublease (2015) between Newport Dunes Resort and Marina Partnership, a California general partnership. Newport Dunes has made certain adjustments in the economic arrangements between its affiliated entities, particularly on the Waterfront Resorts side. In order to implement those adjustments, Newport Dunes has proposed an Amended and Restated Resort Sublease (2015) providing for such economic changes. The instrument is otherwise just a continuation of the Amended and Restated Resort Sublease put into place and approved by the County when Newport Dunes acquired the leasehold interest in 2002. While Newport Dunes has entered into such Sublease effective April 1, 2015, the document expressly provides that the Sublease will not take effect until it is approved by both the County of Orange and the City of Newport Beach.

Compliance with CEQA: This action is not a project within the meaning of CEQA Guidelines Section 15378 and is therefore not subject to CEQA, since it does not have the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. The approval of this agenda item does not commit the County to a definite course of action in regard to a project since it solely involves fiscal activities related to the terms and conditions of the County's lease with Waterfront Resort Properties, L.P. and Newport Dunes Marina, LLC. The development of the hotel will be subject to separate CEQA review.

General Plan Conformity: The proposed project conforms with the City of Newport Beach General Plan.

FINANCIAL IMPACT:

The amendment to the lease primarily allows for the development of two hotels instead of one and extends the lease option period. It does not change the revenue or rental terms of the lease. Additionally, the consents to subleases are related to arrangements between outside parties and do not have a financial impact on the County.

STAFFING IMPACT:

N/A

ATTACHMENT(S):

Attachment A - Location Map

Attachment B - First Amendment to Amended and Restated Lease and Option

Attachment C - Redline Amended and Restated Lease and Option

Attachment D - Consent to Hotel Sublease

Attachment E - Consent to Amended and Restated Sublease (2015)

Attachment F - Real Estate Questionnaire

Attachment G – Redlined New Lease

1 HA55B-153
2 Upper Newport Bay
(Newport Dunes)

3
4 LEASE

5 THIS LEASE ("Lease") is made _____, _____, by and between the County of Orange,
6 a political subdivision of the State of California, (hereinafter referred to as "COUNTY"), and Waterfront
7 Resort Properties, L.P., a California limited partnership, and Newport Dunes Marina, LLC, a California
8 limited liability company, (hereinafter referred to as "TENANT"), without regard to number and gender.

9 RECITALS

10 WHEREAS, COUNTY is the owner of certain real property located in Upper Newport Bay in the City of
11 Newport Beach commonly known as Newport Dunes Aquatic Park (hereinafter referred to as "Newport
12 Dunes"); and

13 WHEREAS, on February 16, 1989, COUNTY and Newport Dunes Partnership entered into a lease
14 ("Original Lease") to facilitate a three-phase redevelopment project for Newport Dunes; and

15 WHEREAS, Phase I was development of an RV Park, launch ramp and dry boat storage facility, Phase II
16 was development of boat slips and the marina center, and Phase III was development of a Family Inn
17 (hotel); and

18 WHEREAS, on August 1, 2002, COUNTY consented to the assignment of the Original Lease from
19 Newport Dunes Partnership to Waterfront Resort Properties, LP, (formerly known as Tahoe Shores,
20 LTD.) and Newport Dunes Marina, LLC; and

21 WHEREAS, on _____, 2009, COUNTY and TENANT entered into an Amended and Restated
22 Lease and Option to facilitate the completion of the Family Inn (hotel); and

23 WHEREAS, TENANT has now completed all three phases of the redevelopment project for Newport
24 Dunes.

25 NOW, THEREFORE, in consideration of the above, the parties hereto mutually agree to the following
26 terms and conditions:

1. DEFINITIONS (PMA2.1 S)

The following words in this Lease have the significance attached to them in this clause, unless otherwise
apparent from context:

"Amended and Restated Lease and Option" means that certain lease by and between Waterfront Resort
Properties, LP, and Newport Dunes Marina, LLC, dated _____, 2009.

"Auditor-Controller" means the Auditor-Controller of the County of Orange, or designee, or upon written
notice to TENANT, such other person or entity as shall be designated by the Board of Supervisors.

1 “Board of Supervisors” means the Board of Supervisors of the County of Orange, a political subdivision of
2 the State of California.

3 “CDP” means the Coastal Development Permit, dated January 24, 1984, as amended, for the Newport
4 Dunes project approved by the California Coastal Commission.

5 “City” means the City of Newport Beach, a municipal corporation.

6 “Director of OC Parks” means the Director, Orange County Parks, OC Community Resources, County of
7 Orange, or designee, or upon written notice to TENANT, such other person or entity as shall be
8 designated by the Board of Supervisors.

9 “Director of Internal Audit” means the Director, Internal Audit, County of Orange or designee, or upon
10 written notice to TENANT, such other person or entity as shall be designated by the Board of
11 Supervisors.

12 “Original Lease” means that certain lease, as amended, by and between Newport Dunes Partnership
13 dated February 16, 1989 and as subsequently assigned to Waterfront Resort Properties, LP, (formerly
14 known as Tahoe Shores, LTD) and Newport Dunes Marina, LLC.

15 “Parcel A, B, B-2, and C” refer to the parcels as identified on Exhibit B.

16 “Pedestrian Promenade” means the public walkway that serves as a unifying design element and
17 provides public access around the lagoon connecting Phase I, II, and III.

18 “Settlement Agreement” means the tri-party agreement dated May 17, 1983, as amended, between
19 COUNTY, Newport Dunes, Inc., and the City of Newport Beach that sets forth the redevelopment plan
20 and established the maximum level and conditions of development allowed for the Premises.

21 **2. PREMISES (PMA3.1 S)**

22 COUNTY leases to TENANT, and TENANT takes and leases in an “as is” condition from COUNTY, that
23 certain property (land and water) hereinafter referred to as “Premises,” described in “Exhibit A” and
24 shown on “Exhibit B”, which Exhibits A and B are attached hereto and by reference made a part hereof.

25 **3. SUPERSEDES PRIOR AGREEMENTS (PMA4.1 N)**

26 It is mutually agreed that this Lease shall supersede any prior leases or agreements, including any
amendments thereto, between the parties hereto covering all or any portion of the Premises including the
Amended and Restated Lease and Option dated _____, 2009.

Notwithstanding the above, all approvals granted or amendments to the Amended and Restated Lease
and Option executed after the effective date of the Amended and Restated Lease and Option are hereby
incorporated by reference into this Lease. In the event of any conflict between the terms of any such
approval or amendment to the Amended and Restated Lease and Option and the terms of this Lease, the
prior approval or amendment shall prevail unless stated otherwise.

1 4. LIMITATION OF THE LEASEHOLD (PMA5 1 S)

2 This Lease and the rights and privileges granted TENANT in and to the Premises are subject to all
 3 covenants, conditions, restrictions, and exceptions of record or apparent, including those which are set
 4 out in the Tidelands Grant by the State of California to the County of Orange (Chapter 526, Statutes of
 5 1919, State of California, as amended) (the "Tidelands Grant"). Nothing contained in this Lease or in any
 6 document related hereto shall be construed to imply the conveyance to TENANT of rights in the Premises
 7 which exceed those owned by COUNTY, or any representation or warranty, either express or implied,
 8 relating to the nature or condition of the Premises or COUNTY's interest therein. TENANT acknowledges
 9 that TENANT has conducted a complete and adequate investigation of the Premises and that TENANT
 10 has accepted the Premise in its "as is" condition.

11 5. REQUIRED AND OPTIONAL SERVICES AND USES (PMB1.3 N)

12 A. Required Services and Uses. COUNTY's primary purpose for entering into this Lease is to
 13 promote the redevelopment of, and make available, recreational facilities and services for the
 14 benefit of the public on the Premises. In furtherance of that purpose, TENANT shall, during the
 15 entire lease term, maintain and operate the following:

16 1. Parcel A:

- | | |
|--|---------------------------------|
| 17 a. Boat Launch Facility | j. Drinking Fountains |
| 18 b. Dry Boat Storage | k. Pay Telephones |
| 19 c. Public Swim Beach (including picnic
tables) | l. Sewage Dump Station |
| 20 d. Recreational Vehicle Park (RV Park) | m. Interpretive Center |
| 21 e. Overnight Camping | n. RV Convenience Store |
| 22 f. Human-Powered Watercraft Launch
Area | o. Pedestrian Promenade |
| 23 g. First Aid Facility | p. Day Use Public Parking |
| 24 h. Beach Concessions (e.g., snack
stand, equipment rental) | q. Transient Boat Slips |
| 25 i. Public Restrooms | r. Restaurant (Back Bay Bistro) |

26 2. Parcel B:

- 27 a. Marina (with restroom/shower facilities)
- 28 b. Boat Sewage Pump Out Facility
- 29 c. Drinking Fountains
- 30 d. Pay Telephones
- 31 e. Pedestrian Promenade

32 3. Parcel C:

- 33 a. Family Inn (hotel) (with restaurant/food service)
and Appurtenant Facilities
- 34 b. Ancillary guest services: Video, Internet,
Computer, Telephones, Recreational
Equipment Rental, Laundry and Dry Cleaning
- 35 c. Drinking Fountains

- d. Pay Telephones
- e. Pedestrian Promenade
- f. Guest Parking

B. Optional Services and Uses. Subject to the prior written approval of use and location by Director of OC Parks, TENANT may provide those additional services and uses which are ancillary to and compatible with the required services and uses herein. Said optional services and uses may include but are not limited to the following:

1. Vending Machines – Beverages and Snacks*
2. Game Machines
3. Newspaper Racks*
4. Marine Repair Facility*
5. Equipment Rental*
6. Commercial Offices/Business (marine related)
7. Restaurant or Banquet Facility – Parcel B-2 (subject to Settlement Agreement terms and conditions)
8. Mobile Cabins*
9. Boat Shows*
10. RV Super Sites*
11. Stacked Dry Boat Storage (subject to Settlement Agreement terms and conditions)
12. Automatic Teller Machines (ATM)*
13. Bicycle Rentals*
14. Bait and Tackle*
15. Laundry Machines*
16. Cabanas*
17. Outside Catering*
18. Tents for Scheduled Events*
19. Alcoholic Beverage Service outside of the restaurant and convenience stores areas per ABC license issued to TENANT and approved by COUNTY*
20. On-Site Employee Residences*
21. Business Center Services
22. Spa Services and/or Facility
23. Child-Care Services
24. Day Guest Membership and Access
25. Automobile Rental
26. Concierge Service
27. Closed-Circuit Television Licensing

* COUNTY acknowledges previous approval of this service or use under the Original Lease and/or Amended and Restated Lease and Option or approval herein; terms and conditions of such prior approval shall apply.

C. Interpretive Center. That portion of the Premises, shown on Exhibit B and identified as Interpretive Center Area thereon, shall be maintained by TENANT exclusively as a nature study area. The Interpretive Center will conform to requirements of the Settlement Agreement and CDP. TENANT shall not permit or allow any sales, services, or other uses to be conducted, transacted or performed in the Interpretive Center Area unless specifically approved in writing by Director of OC Parks.

1 D. Other Concessions or Services. TENANT agrees to establish, maintain, and operate such other
2 facilities, concessions, and services as TENANT and COUNTY may jointly from time to time
determine to be reasonably necessary for the use and enjoyment of the Premises by the public.

3 TENANT and COUNTY shall not unreasonably fail, neglect, or refuse to give their written consent
4 to any such proposed concession or service.

5 E. Restricted Use. The above-listed services and uses, both required and optional, shall be the only
6 services and uses permitted. Such services and uses shall be consistent with requirements and
7 restrictions of the Tidelands Grant, Settlement Agreement, and the CDP. TENANT agrees not to
8 use the Premises for any other purpose or engage in or permit any other business activity within
or from the Premises without the prior written approval from the Director of OC Parks. The
Director of OC Parks will respond to any request for use for another purpose or business activity
within thirty (30) days following such request, provided that in no event shall a failure to timely
respond to any such request be deemed an approval of the requested use or activity.

9 No beer, wine, or other intoxicating beverages shall be sold from or consumed in public areas on
10 the Premises. Sale of such items shall be limited to the RV Convenience Store and restaurants
11 as designated by Director of OC Parks, and within the Family Inn to the extent permitted by any
ABC license issued for the Family Inn and approved by the Director of OC Parks. Consumption
12 shall be limited to restaurants and areas specifically designated in writing by the Director of OC
Parks.

13 TENANT shall use its best efforts to ensure that TENANT's customers and guests comply with
14 this requirement. This shall include, but is not limited to, placement of signs that intoxicating
beverages are prohibited in public areas on the Premises. All such signs shall be of a size,
format, design, and location acceptable to the Director of OC Parks.

15 6. TERM (PMB2.1 S)

16 The term of this Lease shall be fifty (50) years, commencing the first day of the first full calendar month
17 following the date of execution of this Lease by COUNTY.

18 7. RENT (PMC1.2 N)

19 A. Minimum Annual Rent. The minimum annual rent for the Premises shall be equal to the minimum
20 annual rent as in effect for the Amended and Restated Lease and Option immediately prior to the
execution date of this Lease by COUNTY [\$ 2,007,000 as of March 1, 2009].

21 On January 1, 2015, and every five years thereafter, the minimum annual rent shall be
22 automatically adjusted in accordance with the provisions of Clause 10 (REVISION OF RENT) of
this Lease.

23 Should this Lease be terminated during an accounting year, the applicable minimum annual rent
shall be prorated on the basis of a three hundred and sixty-five (365) day year.

24 B. Percentage Rent. Percentage rent for the Premises shall be calculated and automatically
25 increased using percentages of gross receipts from business activities conducted on or from the
Premises in accordance with the following schedules:

1. General.

<u>Business Activities/ Service or Use</u>	<u>Percentage of Gross Receipts</u>
	%
Automatic Teller Machine (of payment made to TENANT)	5
Bait and Tackle	5
Dry Boat Storage – Parcel A	
Open/Enclosed	20
Storage Lockers	25
Dinghy Racks	25
Boat Launch	10
Boat (Sales/Charter)	
Rental	20
Charter	5
Sales - New/Used	1.5
Brokerage/Commissions	10
Instruction/Lessons	10
Boat Sewage Pump-Out Facility (of payment made to TENANT)	5
Boat Slips	25
Conference/Meeting Rooms/Tents (including pavilions)	5
Cabanas	10
Equipment Rentals	10
Hotel (see schedules below)*	
Insurance Brokerage	10
Laundry Machines	5
Marine Repair	
Boat Repair	4
Do-it-yourself	5
Ships Chandlery	4
Parts (Wholesale)	4
Miscellaneous (subject to Director of OC Parks approval)	5
Office Rent	10
Overnight Camping	20
Outside Catering (of payment made to TENANT)	10
Parking	20
Pay Telephone (of payment made to TENANT)	10
Pump-out/Dump Station	5
Restaurants/Catering	
Food	3
Beverages/Bar	5
Retail Stores	3
RV Convenience Store	5
RV Park	20
RV Park – Mobile Cabins	10
Snack Stands	5
Transient Boat Slips	25
Third Party Equipment Rentals (of payment made to TENANT)	5

1 Unapproved Use 100

2 2. Hotel Percentage Rent. Phased-in percentage rents for the hotel are as follows:

3 a. TENANT Operation. TENANT operation means operation or management by
4 TENANT or an affiliate or wholly-owned company of TENANT.

Business Activities/ Service or use	<u>Percentage Rents and Effective Dates</u>		
	Operating Years <u>1-2</u>	Operating Years <u>3-5</u>	Thereafter to Scheduled <u>Revision</u>
	%	%	%
Hotel			
Rooms	3	4	6
Meeting Rooms and Support	3	5	5
Ancillary Charges (Video, Internet, Computer, Telephone, Recreation Equipment Rental, Laundry and Dry Cleaning, etc.)	3	5	5
Hotel Restaurant(s) (Including Room, Meeting Room and Catering Service)			
Food	3	3	3
Beverage	3	3	5
Hotel Parking			
Guest, Restaurant, and Banquet	3	5	5
Public	20	20	20

18 b. Sublease Operation. Sublease operation means operation or management by a
19 non-affiliated company or operator approved herein by COUNTY in accordance
20 with Clause 31 (ASSIGNING, SUBLETTING, AND ENCUMBERING) of this Lease.

Business Activities/ Service or use	<u>Percentage Rents and Effective Dates</u>		
	Operating Years <u>1-2</u>	Operating Years <u>3-5</u>	Thereafter to Scheduled <u>Revision</u>
	%	%	%
Hotel			
Rooms	<u>1.895</u>	<u>2.46</u>	<u>3.69</u>
Meeting Rooms and Support	<u>1.895</u>	<u>3.025</u>	<u>3.025</u>

1	Ancillary Charges	1. 895	3. 025	3. 025
2	(Video, Internet, Computer,			
3	Telephone, Recreation,			
4	Equipment Rental, Laundry			
5	and Dry Cleaning, etc.)			
6	Hotel Restaurant(s) (Including			
7	Room, Meeting Room and			
8	Catering Service)			
9	Food	1. 895	1. 895	1. 895
10	Beverage	1. 895	1. 895	3. 025
11	Hotel Parking			
12	Guest, Restaurant, and	1. 895	3. 025	3. 025
13	Banquet			
14	Public	20	20	20
15	RV Replacement Rent (of	20	20	20
16	payment made to TENANT)**			

In addition to the above percentages rents, any and all other percentage rent(s), rents or payments received by TENANT from a hotel subtenant, shall be apportioned between COUNTY and TENANT as follows:

COUNTY ~~6065~~%
TENANT ~~4035~~%

Also in consideration for this modified schedule of percentage rents for a subleased hotel operation, COUNTY shall retain the right to approve in advance the brand or flagship of the hotel to ensure the brand or flagship is in keeping with the concept of a Family Inn as set forth in the Original Lease. Any change in the brand or flagship of the hotel shall also require COUNTY's prior approval. Approvals in this section shall also include the right to review any hotel franchise agreements entered into by a subtenant.

**In the case of Sublease operation, the sublessee may be obligated to pay to TENANT an amount designated as RV Replacement Rent to compensate TENANT for the lost opportunity of development of additional RV Park facilities on a portion of Parcel C. Such payment shall be subject to percentage rent as if earned by TENANT from the operation of RV sites.

Any percentage rent for hotel operation in excess of the amounts stated in this Clause 7.B.2 previously paid pursuant to Clause 7.B.2 of the Amended and Restated Lease and Option from and after the filing of a Notice of Completion or issuance of a Certificate of Occupancy (or such other evidence from the City as is then typically provided that improvements are completed and occupancy may occur) to the commencement of the term of this Lease shall be adjusted between COUNTY and TENANT within thirty (30) days following the commencement of the term of this Lease.

1 Percentage rental rates for approved optional services and uses shall be in accordance with
 2 Clause 8 (RENT FOR OPTIONAL SERVICES AND USES) of this Lease. Percentage rent for
 other approved uses to be determined prior to implementation.

3 Percentage rental rates shall thereafter be subject to revision in accordance with Clause 10
 4 (REVISION OF RENT) of this Lease.

5 C. Gross Receipts. Gross receipts shall be defined in accordance with the provisions of Clause 12
 6 (DEFINITION OF GROSS RECEIPTS) of this Lease. The term "gross receipts" as it applies to
 individual activities (categories) or uses shall be determined by the Director of OC Parks.

7 D. Annual Rent. TENANT shall pay to COUNTY for each accounting year either the minimum
 8 annual rent or the percentage rent, whichever is greater.

9 E. Payment of Rent. Rent payments shall be made in accordance with the provisions of Clause 13
 10 (RENT PAYMENT PROCEDURE) of this Lease.

11 F. Parcel C Option Fee. Under the Parcel C Amendment to the Original Lease, TENANT agreed to
 12 pay COUNTY Two Hundred and Fifty Thousand Dollars (\$250,000) in option fees. The Parcel C
 13 Amendment provided for the option fee to be paid with Fifteen Thousand Dollars (\$15,000) upfront
 14 with the balance of the option fee, Two Hundred and Thirty Five Thousand Dollars (\$235,000),
 15 amortized over the remaining term of the lease at ten percent (10%) interest. COUNTY
 16 acknowledges receipt of the initial Fifteen Thousand Dollars (\$15,000) and TENANT agrees to
 17 pay COUNTY the balance in equal monthly installments of principal and interest based on an
 18 amortization period commencing December 1, 1994 and ending February 28, 2039. Payments
 19 shall be made in accordance with Clause 13 (RENT PAYMENT PROCEDURE) of this Lease and
 20 shall be subject to late fees in accordance with Clause 14 (CHARGE FOR LATE PAYMENT) of
 this Lease. Interest shall commence December 1, 1994.

8. RENT FOR OPTIONAL SERVICES AND USES (PMC2.1 S)

21 TENANT shall pay to COUNTY each accounting year, subject to Clause 10 (REVISION OF RENT) of this
 22 Lease at the times and in the manner herein provided, an amount of money equal to the following
 23 percentages of the gross receipts from operations and business conducted on or from the Premises
 24 which are approved as optional services and uses by the Director of OC Parks, in accordance with
 25 Clause 5 (REQUIRED AND OPTIONAL SERVICES AND USES) of this Lease. This Clause does not
 26 authorize or allow any lists service or use. This Clause merely establishes a percentage rent for services
 and uses that may be allowed by Director of OC Parks.

<u>Optional Service or Use</u>	<u>Percentage of Gross Receipts</u>
	%
Machine Vending	
Owned by TENANT	5
Leased	5
Newspaper Racks (of payment made to TENANT)	5
Game Machines	25
On-Site Employee Residences	0

1 Rent for other services and uses approved by the Director of OC Parks, shall be determined by the
2 Director of OC Parks.

3 9. CHARGE FOR UNAUTHORIZED SERVICES AND USES (PMC3.1 S)

4 In the event TENANT breaches this Lease by using or permitting the Premises to be used in any manner
5 other than as expressly approved under this Lease, TENANT shall pay COUNTY a sum equal to 100% of
6 the "gross receipts" as defined in Clause 12 (DEFINITION OF GROSS RECEIPTS) of this Lease for any
7 service or use that is not permitted by this Lease, or not otherwise approved pursuant to Clause 5
8 (REQUIRED AND OPTIONAL SERVICES AND USES) of this Lease. Said payment is subject to the
9 "due date" provided in Clause 13 (RENT PAYMENT PROCEDURE) of this Lease and the "charge for late
10 payment" provided in Clause 14 (CHARGE FOR LATE PAYMENT) of this Lease. The existence of the
11 100% charge in this Clause, or the payment or receipt of money under this Clause, does not constitute
12 authorization for TENANT to provide a particular service or make a particular use of the Premises and
13 does not constitute a waiver of COUNTY's right to require TENANT to terminate such service or use.
14 The parties agree that COUNTY's actual damages, in the event of such a breach by TENANT, would be
15 extremely difficult or impossible to determine; therefore, an amount of 100% of such gross receipts has
16 been agreed upon, after negotiation, as the parties best estimate of COUNTY's reasonable damages.

17 10. REVISION OF RENT (PSB4.3 N)

18 It is the intent of COUNTY and TENANT that rents payable under this Lease not be less than the fair
19 market rental value of the Premises throughout the term of this Lease. Recognizing that percentage
20 rents and the minimum annual rent provided in this Lease may be inadequate for this purpose, COUNTY
21 and TENANT further agree that the monthly rent payable pursuant to Clause 7 (RENT) of this Lease shall
22 be subject to periodic adjustment as provided in this Clause.

23 A. Revision of Minimum Annual Rent. The minimum annual rent shall be adjusted as follows:

- 24 1. 5-Year Revision: Effective January 1, 2015, and every five (5) years thereafter, the
25 minimum annual rent shall be automatically adjusted to seventy-five percent (75%) of the
26 average (mean) annual rent (including both minimum and percentage rent) paid by
TENANT to COUNTY for the preceding three (3) accounting years.
2. 10-Year Revision: Effective January 1, 2015, and every ten (10) years thereafter, the
minimum annual rent shall be adjusted to the greater of the amount determined in Clause
10.A.(1) (5-Year Revision), above or ten percent (10%) of the then current fair market
value of Parcels A, B and B-2 and either (a) ten percent (10%) of the current fair market
value of Parcel C in the case of TENANT operation of the Family Inn, or (b) six percent
(6%) of the then current fair market value of Parcel C in the case of Sublease operation of
the Family Inn. The fair market value shall be the value of the land as if free and clear of
encumbrances and available for the highest and best use permitted by this Lease. In the
case of any determination of the fair market value of the Premises pursuant to this Clause
10.A.(2), the fair market value of each (a) Parcel C and (b) Parcels A, B and B-2,
collectively, shall be determined separately. In the event the determination of the
minimum annual rent is delayed beyond January 1, for any reason, the effective date of
the rent adjustment shall be retroactive to January 1.

Notwithstanding the foregoing, the minimum annual rent for Parcel C shall not be adjusted
to the then current fair market value of Parcel C on January 1, 2015, and such adjustment

1 shall be deferred until January 1, 2025. Prior to January 1, 2025, the minimum annual rent
 2 applicable to Parcel C will still be subject to adjustment pursuant to Clause 10.A. (1), 5-
 3 year Revision, above. In the event that the date of this Lease occurs after January 1,
 4 2015, and the minimum annual rent of the Premises has been previously adjusted to ten
 5 percent (10%) of the then current fair market value of the Premises pursuant to the
 6 Amended and Restated Lease as of January 1, 2015, the minimum annual rent shall be
 7 adjusted as of the commencement of the term of this Lease as to Parcel C only by
 8 decreasing the minimum annual rent for Parcel C to the amount which would have then
 9 most recently been determined under Clause 10.A.(1), 5-year Revision, of the Amended
 10 and Restated Lease and Option based upon the average (mean) annual rent (including
 11 both minimum and percentage rent) paid by TENANT to COUNTY for the preceding three
 12 (3) accounting years solely on account of operations upon Parcel C. (For example:
 13 Assume that as of January 1, 2015, the total minimum annual rent for the Premises based
 14 on the average of the three (3) preceding accounting years would be \$2,500,000, with
 15 \$2,400,000 of such rent being based upon operations of Parcels A, B and B-2, and
 16 \$100,000 based on operations of Parcel C. Further assume that the minimum annual rent
 17 as of January 1, 2015 would be \$3,500,000 based on the then current fair market value of
 18 the Premises, with the minimum annual rent for Parcels A, B and B-2 being \$2,700,000
 19 and the minimum annual rent for Parcel C being \$800,000. In such case, on the
 20 commencement of the term of this Lease following January 1, 2015, the minimum annual
 21 rental would be adjusted to \$2,800,000, such amount being equal to the minimum annual
 22 rent based on fair market value as to Parcels A, B and B-2, plus the minimum annual rent
 23 for Parcel C based on the average annual rent for the three (3) accounting years
 24 preceding January 1, 2015.)

14 The revision of minimum annual rent that becomes effective January 1, 2015, and every
 15 ten (10) years thereafter, will, if possible, be made by negotiation that shall commence on
 16 or about February 1 of the year preceding the date of adjustment. If agreement is not
 17 reached by June 1 of such year, the final determination of the fair market value of the
 18 Premises shall be made by appraisal. COUNTY and TENANT shall, prior to August 1 of
 19 such year, each employ a qualified real estate appraiser to undertake the appraisal
 20 procedure set forth in Clause 10.A. 4 (Appraisal Procedure), below.

- 18 3. Revision Upon Assignment: At the time of any assignment of the leasehold estate under
 19 this Lease which requires the consent or approval of COUNTY under Clause 31
 20 (ASSIGNING, SUBLETTING, AND ENCUMBERING) of this Lease the minimum annual
 21 rent payable pursuant to Clause 7 (RENT) of this Lease shall be adjusted to ten percent
 22 (10%) of the fair market value at the date of assignment of Parcels A, B and B-2, and
 23 either (a) ten percent (10%) of the fair market value at the date of assignment of Parcel C
 24 in the case of TENANT operation of the Family Inn, or (b) six percent (6%) of the fair
 25 market value at the date of assignment of Parcel C in the case of Sublease operation of
 26 the Family Inn. The fair market value shall be the value of the land as if free and clear of
 encumbrances and available for the highest and best use permitted by this Lease. In the
 case of any determination of the fair market value of the Premises pursuant to this Clause
 10.A.3, the fair market value of each of (a) Parcel C and (b) Parcels A, B and B-2,
 collectively, shall be determined separately.

The revision of minimum annual rent that becomes effective upon assignment, will, if
 possible, be made by negotiation that shall commence upon written notice from TENANT
 to COUNTY of:

- 1
- 2 a. The proposed assignment and
- 3 b. TENANT's estimate of the fair market value of the Premises. TENANT and
- 4 COUNTY shall attempt to mutually agree, each with the other, as to the fair market
- 5 value of the Premises. If agreement cannot be reached within forty-five (45) days
- 6 after receipt of such written notice from TENANT, the final determination of the fair
- 7 market value of the Premises shall be made by appraisal. COUNTY and TENANT
- 8 shall, within sixty (60) days of expiration of the forty-five (45) day negotiation
- 9 period, each employ a qualified real estate appraiser to undertake the appraisal
- 10 procedure as set forth in Section (4), Appraisal Procedure, below.

11 If TENANT fails or elects not to complete such assignment within four (4) months of the

12 determination of fair market value in accordance with such appraisal procedure, then:

- 13 c. TENANT shall reimburse COUNTY, upon demand, for all costs incurred by
- 14 COUNTY in connection with the determination of the fair market value of the
- 15 Premises, including without limitation, appraisal and attorney fees and reasonable
- 16 overhead and administrative expenses, and
- 17 d. said determination of fair market value and the revision of the minimum annual rent
- 18 in accordance therewith shall no longer be of any force or effect, and, if the
- 19 proposed assignment is subsequently completed, Director of OC Parks shall
- 20 decide, at his discretion, whether the value earlier determined in accordance with
- 21 the appraisal procedure shall be used as a basis for revision of the minimum
- 22 annual rent or whether the process for revision of the minimum annual rent
- 23 described in this Section (3), Revision Upon Assignment, shall be reinstated from
- 24 its beginning.

- 25 4. Appraisal Procedure: The term "qualified real estate appraiser," as used herein, shall
- 26 mean and refer to a real estate appraiser designated as a "senior" member or equivalent
- by a nationally recognized appraisal organization. The appraiser(s) selected shall be
- qualified for and experienced in appraising ocean-oriented property similar to the
- Premises. Each appraiser shall have experience in appraising ocean-oriented property in
- the Southern California area. In the event either party should fail to employ a qualified real
- estate appraiser within the time required, then the qualified real estate appraiser employed
- by the other party shall be the sole appraiser responsible for determining the fair market
- value of the Premises and his opinion shall be binding upon the parties hereto. If two
- appraisers are timely employed by COUNTY and TENANT, the two appraisers shall within
- twenty (20) days select a third qualified real estate appraiser.

In the event the two appraisers should fail to select a qualified real estate appraiser prior to

expiration of the twenty (20) day period, then TENANT and Director of OC Parks shall

each provide a list of three (3) qualified appraisers within ten (10) days for the previously

employed appraisers selection of a third appraiser. In the event the appraisers fail to

make said third appraiser selection within seven (7) days then TENANT shall meet with

the Director of OC Parks within five (5) days and the names of the six appraisers

previously identified shall be placed in a receptacle and TENANT shall draw one name

who shall be the third appraiser.

1 In the event TENANT fails to provide a list of three (3) qualified appraisers, cannot meet
2 with Director of OC Parks, or select the third appraiser, then the final selection of the third
3 appraiser shall be made by the Director of OC Parks.

4 After selection of the appraisers, the Director of OC Parks shall immediately fix a time and
5 place for a conference with the Director of OC Parks, TENANT, and the appraiser(s). The
6 conference shall be for the purpose of agreeing upon and giving general instructions to the
7 appraiser(s) which shall include:

- 8 a. Determine the fair market value of the Premises (land only) as if free and clear of
9 encumbrances and available for the highest and best use permitted by the Lease.
- 10 b. The date of value shall be July 1 of the year preceding the date of adjustment.
- 11 c. Fair market value is defined as the highest price in terms of money which the
12 Premises would bring in a competitive and open market under all conditions
13 requisite to a fair sale, the buyer and seller acting prudently, each dealing with the
14 other with the full knowledge of all the uses and purposes for which the land is
15 reasonably adaptable and available and permitted by this Lease.

16 TENANT and COUNTY shall pay the fee of the appraiser each has selected and shall
17 each pay one-half the fee of the third appraiser.

18 Each appraiser selected in accordance with this appraisal procedure shall, within one
19 hundred twenty (120) days after receiving instructions, deliver to TENANT and COUNTY
20 copies of a fully documented written report containing the appraiser's independent opinion
21 of the fair market value of the Premises.

22 Each appraiser shall conduct an independent investigation and analysis of the Premises
23 for the purpose of estimating the fair market value thereof. If any appraiser fails to deliver
24 such a written report within the time required, then the estimates of value evidenced by the
25 reports timely delivered by the other appraiser(s) shall be the only estimates of value used
26 to implement the revision of minimum annual rent. If three appraisal reports are timely
delivered, the three estimates of fair market value of the Premises shall be compared and
the two closest in magnitude shall be mathematically averaged, and the third estimate of
fair market value shall be disregarded. If two appraisal reports are timely delivered the two
estimates of fair market value shall be mathematically averaged. If only one appraisal
report is timely delivered, the value estimate contained in that report shall be determined to
be the fair market value of the Premises.

The fair market value of the Premises as so determined shall be the basis for calculating
the revision of minimum annual rent and shall be binding upon the parties hereto.

COUNTY and TENANT hereby agree that in no event shall the amount of the revised
minimum annual rent be less than the minimum annual rent existing on the day preceding
the date of revision.

- B. Revision of Percentage Rent. Any of the percentage rents specified in Clause 7 (RENT) or
Clause 8 (RENT FOR OPTIONAL SERVICES AND USES) of this Lease or of percentage rents
which may be established for other services and uses shall be subject to revision to be effective

1 on January 1, 2025, and every ten (10) years thereafter, upon written demand of either party
2 made between February 1 and March 31 of the year preceding the date of adjustment. Any
3 revision in percentage rents determined after said revision is effective shall be retroactive to
4 January 1.

5 The intent and purpose of revision of percentage rents and the instruction to appraisers, if
6 necessary, shall be to adjust percentage rents for each of the business activities (categories)
7 allowed by this Lease on the Premises based on the percentage rents then current and/or
8 appropriate for similar business activities in the Southern California/Newport Beach area,
9 provided, however, that in the event of Sublease operation, any percentage rents applicable to
10 Parcel C shall be adjusted to sixty percent (~~60~~65%) of the fair market percentage rent for each of
11 the business activities (categories) allowed on Parcel C.

12 Adjustments will, if possible, be made by negotiation that shall commence on or about April 1 of
13 the year preceding the date of adjustment. If agreement is not reached by June 1 of such year,
14 the final determination of the percentage rents for each of the business activities (categories) shall
15 be determined as follows. COUNTY and TENANT shall, prior to August 1 of such year, each
16 employ a qualified real estate appraiser. The term "qualified real estate appraiser," as used
17 herein, shall mean and refer to a real estate appraiser designated as a "senior" member or
18 equivalent by a nationally recognized appraisal organization. The appraiser selected shall be
19 qualified for and experienced in appraising ocean-oriented property similar to the Premises. Each
20 appraiser shall have experience in appraising ocean-oriented property in the Southern California
21 area. In the event either party should fail to employ a qualified real estate appraiser prior to
22 August 1 of such year, then the qualified real estate appraiser employed by the other party shall
23 be the sole appraiser responsible for determining the revised percentage rents hereunder, and his
24 opinion shall be binding upon the parties hereto. TENANT and/or COUNTY may choose to use
25 the same appraiser each has employed in Clause 10.A (Revision of Minimum Annual Rent),
26 above. If two appraisers are timely employed by COUNTY and TENANT, the two appraisers shall
within twenty (20) days select a third qualified real estate appraiser.

16 In the event the two employed appraisers should fail to select a qualified real estate appraiser
17 prior to expiration of the twenty day period, then TENANT and Director of OC Parks shall each
18 provide a list of three (3) qualified appraisers within ten (10) days for the previously employed
19 appraisers selection of a third appraiser. In the event the appraisers fail to make said third
20 appraiser selection within seven (7) days, then TENANT shall meet with the Director of OC Parks
21 within five (5) days and the names of the six appraisers previously identified shall be placed in a
22 receptacle and TENANT shall draw one name who shall be the third appraiser.

20 In the event TENANT fails to provide a list of three (3) qualified appraisers, cannot meet with
21 Director of OC Parks, or select the third appraiser, then the final selection of the third appraiser
22 shall be made by the Director of OC Parks.

22 After selection of the appraisers, Director of OC Parks shall immediately fix a time and place for a
23 conference with Director of OC Parks, TENANT, and the appraiser(s). Said conference shall be
24 for the purpose of agreeing upon and giving general instructions to the appraiser(s) regarding the
25 business activities (categories) to be considered in each report.

24 TENANT and COUNTY shall pay the fee of the appraiser each has selected and shall each pay
25 one-half of the fee of the third appraiser.

1 Each appraiser selected shall, within one hundred twenty (120) days after receiving instructions,
 2 deliver to TENANT and COUNTY copies of a fully documented written report containing the
 3 appraiser's independent opinion of the fair market percentage rents for each of the business
 4 activities (categories) allowed by this Lease upon the Premises as identified by the Director of OC
 5 Parks in the conference.

6 Each appraiser shall conduct an independent investigation and analysis of the percentage rents
 7 then current and/or appropriate in the Southern California/Newport Beach area for business
 8 activities similar to those allowed by this Lease. If any appraiser fails to deliver such a written
 9 report within the time required, then the estimate of percentage rents evidenced by the reports
 10 timely delivered by the other appraiser(s) shall be the only estimates of percentage rent used to
 11 implement the revision of percentage rents. If three reports are timely delivered, the three
 12 percentage rent estimates relating to each business activity (category) shall be compared and the
 13 two closest in magnitude shall be mathematically averaged, and the third estimate of the fair
 14 market percentage rents for each business activity [category] shall be disregarded. If two reports
 15 are timely delivered the two estimates of percentage rent relating to each business activity
 16 (category) shall be mathematically averaged. If one report is timely delivered, the percentage rent
 17 estimates contained in that report shall be determined to be the percentage rents for each
 18 business activity (category).

19 The averaged percentage rents for each of the business activities (categories) permitted by this
 20 Lease shall be determined to be the revised percentage rents to be paid for each of the business
 21 activities (categories) allowed by this Lease, and shall be binding upon the parties hereto.

22 11. OPERATIONS TO MAXIMIZE RENT (PRT1.1 N)

23 TENANT agrees that in connection with its use and operation of the Premises:

- 24 A. To at all times provide professional and competent real property management for the Premises.
- 25 B. All subleases shall be entered into pursuant to arms-length bargaining between TENANT, as
 26 sublessor, and subtenants; substantially reflect fair market rental rates and include percentage
 rental, cost of living and/or other rental adjustment provisions prevailing for comparable tenancies
 in comparable projects; and require that subtenant be unrelated to TENANT and that neither party
 have a pecuniary interest in the other, unless such sublease and such subtenant have been
 approved in advance in writing by COUNTY.

12. DEFINITION OF GROSS RECEIPTS (PMC5.2 S)

As used in this Clause, the term "TENANT" shall include TENANT, its agents, subtenants,
 concessionaires, or licensees, or any person acting under contract with TENANT. The term "gross
 receipts" upon which percentage rents for the services and uses listed in Clause 5 (REQUIRED AND
 OPTIONAL SERVICES AND USES) of this Lease are to be based shall include:

- A. The sale price of all goods, wares, merchandise, and products sold on or from the Premises by
 TENANT, whether for cash or credit and whether payment is actually made or not, whether
 delivery of the items sold is made from the Premises, and whether title to such items is
 transferred.

- 1 B. The charges made by TENANT for the sale or rendition on or from the Premises of services of
2 any nature or kind whatsoever, whether for cash or credit, whether payment is actually made or
3 not, and whether the services are actually performed or not.
- 4 C. All admission, entry, rental, and other fees of any nature or kind charged by TENANT and/or
5 subtenants (including but not limited to deposits accepted by TENANT and/or subtenants).
- 6 D. Office Use. Office use where subtenants do not typically pay percentage rent, the term “gross
7 receipts” upon which office use percentage rents are to be based shall mean and refer to the
8 dollar amount of all of TENANT’s total revenues, receipts, sums, subtenant rentals (including
9 without limitation reimbursements of operating expenses), charges and all other amounts of every
10 kind and description paid to TENANT by or on behalf of subtenants. The term “gross receipts”
11 shall also include amounts paid by or under such subleases for office use to third parties for
12 casualty insurance on TENANT’s property; exterior and/or structural maintenance and repair of
13 TENANT’s building; the maintenance, operation, insuring and/or repair of common areas; utilities
14 (other than telephone and cable television) provided to or for the benefit of the subleased
15 premises and real property taxes and assessments (other than personal property taxes on the
16 subtenant’s personal property) pursuant to their subleases.

17 Notwithstanding the above, the term “gross receipts” shall not include payments by subtenants to
18 a merchant’s association for promotional and/or advertising purposes. “

19 TENANT shall cause each subtenant under a sublease that requires the subtenant to pay any of
20 the preceding expenses to third parties to provide a certified quarterly statement within fifteen (15)
21 days of the end of each quarter, pursuant to which the subtenant certifies to TENANT and
22 COUNTY as to the amount of each such expense paid by or under such subtenant during the
23 preceding quarter and deliver said certified statement to COUNTY concurrently with the monthly
24 statement of gross receipts required by Clause 13 (RENT PAYMENT PROCEDURE) of this
25 Lease for such quarter. Each such sublease shall authorize TENANT and COUNTY to inspect
26 the books and records of the subtenant relating to such expenses.

Any sublease to a third party for development or operation of a Family Inn shall not be construed
as a sublease for office use, provided that a sub-sublease of office space within the Family Inn by
such subtenant may be considered to constitute a sublease for office use subject to the provisions
of this Clause 12.I.

- 27 E. Vending Machines. All sums deposited into any coin-operated vending machine or other device
28 maintained on the Premises, regardless of the ownership of the machine or device, or whether
29 such sums are removed and counted by TENANT or others, and regardless of what percentage
30 thereof TENANT is entitled to receive except for pay telephones and newspaper racks as follows:
- 31 1. Pay telephones gross receipts shall be determined as follows:
 - 32 a. If telephones are owned by TENANT, gross receipts shall be the gross amount
33 deposited or charged for use of the telephones.
 - 34 b. If telephones are owned and operated by a third party, gross receipts shall be the
35 commission or payment received by TENANT.

- 1 2. For newspaper racks gross receipts shall be the commission or payment received by
2 TENANT from racks owned and operated by a third party.
- 3 F. Non-Profit Organizations/Public Agencies. Subject to prior written approval of the Director of OC
4 Parks, TENANT shall be allowed to rent space/facilities to non-profit organizations and public
5 agencies for either no charge or for a nominal fee. Gross receipts for approved non-profit
6 organizations or public agencies shall be the actual rent or fee, if any, paid to TENANT.
- 7 G. Third-Party Equipment Rentals. For third-party equipment rentals or services not offered or
8 normally not available at Newport Dunes, gross receipts shall be the commission or surcharge
9 retained by TENANT.
- 10 H. Amusement Park Ticket Sales. Gross receipts for ticket sales to non-affiliated amusement parks
11 or other tourist-oriented attractions such as Disneyland, Knott's Berry Farm or the Bower's
12 Museum shall be the commission or surcharge retained by TENANT.
- 13 I. Nominal Activity Fees. TENANT shall be permitted to collect nominal activity fees collected for
14 such activities such as ice cream socials for RV guests and popcorn sales by roving vendors
15 during "Movies on the Beach" nights without providing individual receipts to customers, using sign-
16 in sheets or mobile cash registers.
- 17 J. Direct Utility Charges. Gross receipts shall exclude payments made by boat slip tenants to
18 TENANT for actual metered electric consumption for each respective boat slip. Said payments
19 shall be based on (1) the then current kilowatt-hour rate charged by the supplying utility company
20 to TENANT and (2) the actual electrical kilowatt-hour consumption to each respective boat slip as
21 evidenced by a metering device approved in writing by the Director of OC Parks. Said right to
22 exclude utility charges from gross receipts as set forth above, may be withdrawn at the sole
23 discretion of Director of OC Parks. Such determination shall be based on matters including, but
24 not limited to, willful misreading of the meters, errors, or charging boat slip tenants at a rate in
25 excess of the rate charged by the utility company. TENANT shall maintain adequate records
26 which shall include, but shall not be limited to, the maintaining of a monthly log to track individual
slip consumption and the then current utility charge from the local utility company, in a form
approved by the Auditor-Controller, to verify the utility charge for each boat slip tenant.
- K. ATM Fees and Charges. Gross receipts for ATM transactions shall be the commission or
surcharge retained by TENANT.
- L. Discount Coupons/Promotional Activities. Gross receipts for Discount coupons/Promotional
Activities shall be the actual sales price received by TENANT.
- M. Employee Meals. Gross Receipts for officer and employee meals, including meals, snacks and
drinks from vending machines provided solely for use by employees, the actual charge, if any,
paid by officers or employees for food and beverage while on duty.
- N. Gratuities/Tips. Gross receipts for gratuities and tips accepted on behalf of employees or charged
by TENANT for the benefit of employees and paid to employees shall be excluded from gross
receipts.
- O. Sales of Fixtures, Equipment or Property. Sales of fixtures, equipment or property which are not
TENANT's stock in trade shall be excluded from gross receipts.

1 P. Travel Agent Fees/Commissions. Gross receipts for hotel rooms shall not be reduced by fees or
2 commissions paid by TENANT to travel agents and reservation services.

3 Q. Other Purposes. The fair rental value of facilities used by TENANT or its employees for purposes
4 other than the business purposes for which the Premises are leased and the value of all
5 consideration other than cash, received by TENANT or his employees in exchange for items sold
6 or services rendered.

7 Under Clause 5.B (Optional Services and Uses) of this Lease, TENANT has been granted the option to
8 provide certain additional services and uses subject to the approval of the Director of OC Parks. Unless
9 otherwise provided herein, the term "gross receipts" as it applies to such services and uses shall be
10 determined by the Director of OC Parks at the time approval is granted.

11 Gross receipts shall exclude all sales and excise taxes payable directly by TENANT to federal, state,
12 county, or municipal governments as a direct result of operations under this Lease. Refunds for goods
13 returned and deposits shall be deducted from current gross receipts upon return. Bad debt losses shall
14 not be deducted from gross receipts.

15 13. RENT PAYMENT PROCEDURE (PMC6.1 S)

16 A. Procedure. On or before the twentieth (20th) day of each month, TENANT shall deliver to Auditor-
17 Controller a correct statement of all applicable gross receipts for that portion of the accounting
18 year which ends with and includes the last day of the preceding calendar month. The statement
19 shall be signed by TENANT or its responsible agent under penalty of perjury and shall be in the
20 form prescribed by Auditor-Controller. Each statement shall indicate:

- 21 1. One twelfth (1/12) of the annual minimum rent payment.
- 22 2. The total gross receipts for said portion of the accounting year, itemized as to each of the
23 business activities (categories) for which a separate percentage rental rate is established.
24 A breakdown of the gross receipts of each business conducted on the Premises must be
25 attached to each statement where a reported business activity (category) is comprised of
26 more than one business operation.
- 27 3. The related itemized amounts of percentage rent computed as herein provided and the
28 total thereof.
- 29 4. The total rent previously paid by TENANT for the accounting year within which the
30 preceding month falls.
- 31 5. The rent due for the preceding month.

32 B. Payment of Rent. Concurrently with the rendering of each monthly statement, TENANT shall pay
33 the greater of the following two amounts:

- 34 1. The total percentage rent computed for that portion of the accounting year ending with and
35 including the last day of the preceding month [Item (3) above], less total rent previously
36 paid for the accounting year [Item (4) above], or

1 2. One twelfth (1/12) of the annual minimum rent, multiplied by the number of months from
2 the beginning of the accounting year to and including the preceding month, less total rent
3 previously paid for the accounting year [Item (4) above].

3 C. Place of Payment and Filing. Rent payments shall be delivered to, and statements required by
4 this Clause and Clause 15 (RECORDS AN ACCOUNTS) of this Lease shall be filed with the
5 Auditor-Controller, County of Orange, P.O. Box 567, Santa Ana, California 92702. The
6 designated place of payment and filing may be changed at any time by Auditor-Controller upon
7 ten (10) days written notice to TENANT. Rent payments may be made by check made payable to
8 the County of Orange. TENANT assumes all risk of loss if payments are made by mail.

9 All rents due under this Lease shall be paid in lawful money of the United States of America,
10 without offset or deduction or prior notice or demand. No payment by TENANT or receipt by
11 COUNTY for a lesser amount than the rent due shall be deemed to be other than on account of
12 the rent due, nor shall any endorsement or statement on any check or any letter accompanying
13 any check or payment as rent be deemed an accord and satisfaction, and COUNTY shall accept
14 such check or payment without prejudice to COUNTY's right to recover the balance of said rent or
15 pursue any other remedy in this Lease.

16 14. CHARGE FOR LATE PAYMENT (PMC7.1 S)

17 TENANT hereby acknowledges that the late payment of rent or any other sums due hereunder will cause
18 COUNTY to incur costs not contemplated by this Lease, the exact amount of which will be extremely
19 difficult to ascertain. Such costs include but are not limited to costs such as administrative processing of
20 delinquent notices and increased accounting costs.

21 Accordingly, if any payment of rent as specified in Clause 7 (RENT) of this Lease or of any other sum due
22 COUNTY is not received by COUNTY by the due date, a late charge of two percent (2%) of the payment
23 due and unpaid plus One Hundred Dollars (\$100) shall be added to the payment, and the total sum shall
24 become immediately due and payable to COUNTY. An additional charge of one and one-half percent
25 (1.5%) of said payment, excluding late charges, shall be added for each additional month that said
26 payment remains unpaid.

 TENANT and COUNTY hereby agree that such late charges represent a fair and reasonable estimate of
 the costs that COUNTY will incur by reason of TENANT's late payment.

 Acceptance of such late charges (and/or any portion of the overdue payment) by COUNTY shall in no
 event constitute a waiver of TENANT's default with respect to such overdue payment, or prevent
 COUNTY from exercising any of the other rights and remedies granted hereunder or available by law.

15. RECORDS AND ACCOUNTS (PMC8.1 N)

 A. Records. TENANT understands and agrees, at all times during the term of this Lease, to keep or
 cause to be kept true and complete books, records, and accounts of all financial transactions in
 the operation of all business activities, of whatever nature, conducted in pursuance of the rights
 granted herein. The records must be supported by source documents such as sales slips, cash
 register tapes, purchase invoices, or other pertinent documents.

 Except as otherwise provided herein, all retail sales and charges shall be recorded by means of
 cash registers or other comparable devices which display to the customer the amount of the

1 transaction and automatically issue a receipt. The registers shall be equipped with devices which
 2 lock in sales totals and other transaction records with counters which are not resettable and which
 3 record transaction numbers and sales details. Totals registered shall be read and recorded by
 4 TENANT at the beginning and end of each business day.

5 In the event of boat launching, parking, and/or rental charges, TENANT shall issue serially
 6 numbered tickets for each vehicle or rental and shall keep an adequate record of said tickets, both
 7 issued and unissued.

8 All retail sales, rentals, and charges may be recorded by a system other than cash registers or
 9 other comparable devices provided said system is approved by the Auditor-Controller.

- 10 B. The Accounting Year. The accounting year shall be twelve (12) full calendar months. The
 11 accounting year may be established by TENANT, provided TENANT notifies Auditor-Controller in
 12 writing of the accounting year to be used. Said accounting year shall be deemed to be approved
 13 by Auditor-Controller unless Auditor-Controller has objected to TENANT's selection in writing
 14 within sixty (60) days of TENANT's written notification.

15 In the event TENANT fails to establish an accounting year of its choice, regardless of the cause,
 16 the accounting year shall be synonymous with the twelve-month period contained in the first one-
 17 year term of this Lease.

18 Any portion of a year that is not reconciled, should the accounting year and the anniversary year
 19 of the lease commencement not be the same, shall be accounted for as if it were a complete
 20 accounting year.

21 Once an accounting year is established, it shall be continued through the term of this Lease
 22 unless Auditor-Controller specifically approves in writing a different accounting year. The Auditor-
 23 Controller shall only approve a change in accounting years in the event of undue hardship being
 24 placed on either TENANT or COUNTY, and not because of mere convenience or inconvenience.

- 25 C. Financial Statements. Within ninety (90) days after the end of each accounting year, TENANT
 26 shall at its own expense submit to Auditor-Controller a balance sheet and income statement
 prepared by a Certified Public Accountant ("CPA") who is a member of the AICPA or the California
 Society of CPAs in accordance with generally accepted accounting principles reflecting business
 transacted on or from the Premises during the preceding accounting year. At the same time,
 TENANT shall submit to the Auditor-Controller a Statement of Gross Receipts audited by a CPA
 wherein the total gross receipts for the accounting year are classified according to the categories
 of business established for percentage rent and listed in Clause 7 (RENT) and Clause 8 (RENT
 FOR OPTIONAL SERVICES AND USES) of this Lease and for any other business conducted on
 or from the Premises. The audit must be performed in accordance with Generally Accepted
 Auditing Standards (GAAS) of the United States of America.

TENANT shall provide COUNTY with copies of any CPA's management letters prepared in
 conjunction with such audits of TENANT's operations from the premises. Copies of management
 letters shall be provided directly to COUNTY by the CPA at the time TENANT's copy is provided
 to TENANT.

TENANT acknowledges its understanding that any and all of the "Financial Statements" submitted to COUNTY pursuant to this Lease become public records and are subject to public inspection pursuant to Section 6250, et seq., of the California Government Code.

- D. Audit. All TENANT's books of account and records and supporting source documents related to this Lease or to business operations conducted within or from the Premises shall be made available at one location within the limits of the County of Orange. COUNTY shall, through its duly authorized agent or representatives, have the right to examine and audit said books of account and records and supporting source documents at any and all reasonable times for the purpose of determining the accuracy thereof, and of the monthly statements of sales made and monies received. However, as a courtesy to TENANT, Auditor-Controller will attempt to give written notice to TENANT in the event of a full audit or work that will require more than one day.

The full cost of said audit, as determined by the Director of Internal Audit, shall be borne by TENANT if either or both of the following conditions exist:

1. The audit reveals an underpayment of more than two percent (2%) between the rent due as reported and paid by TENANT in accordance with this Lease and the rent due as determined by said audit;
2. TENANT has failed to maintain true and complete books, records, accounts, and supporting source documents in accordance with Section "A. Records" above. The adequacy of records shall be determined at the sole discretion of the Director of Internal Audit.

Otherwise, COUNTY shall bear the cost of said audit.

Upon the request of Auditor-Controller, TENANT shall promptly provide, at TENANT's expense, necessary data to enable COUNTY to fully comply with any and every requirement of the State of California or the United States of America for information or reports relating to this Lease and to TENANT's use of the Premises. Such data shall include, if required, a detailed breakdown of TENANT's receipts and expenses.

- E. Failure to Maintain Records. In addition to any other remedies available to COUNTY at law or in equity or under this Lease, in the event TENANT fails to maintain and keep books, records, and accounts for the Premises and/or source documents relating thereto, or to make the same available to COUNTY for examination and audit, or to record sales and/or to maintain registers to record sales, or to provide financial statements and other information to COUNTY regarding gross receipts as required by this Lease, COUNTY, at COUNTY's option, may:

1. Perform such examinations, audit, and/or investigations itself or through agents or employees as COUNTY and/or its auditors may deem appropriate to confirm the amount of percentage rents payable by TENANT under this Lease, and any and all costs and/or expenses incurred by COUNTY in connection therewith shall be promptly reimbursed to COUNTY by TENANT upon demand.
2. Provide accounting services and/or a system for recording retail sales and charges, including without limitation cash registers, for use by TENANT in business transactions upon or from the Premises, and, at COUNTY's option, maintain personnel on the Premises to observe and/or record such sales during TENANT's business hours, or from time to

1 time, all at TENANT's sole cost and expense. In such event, TENANT shall promptly
2 reimburse COUNTY for any and all costs incurred by COUNTY in connection therewith.

- 3 3. Require that TENANT pay percentage rents based on COUNTY's best good faith estimate
4 of TENANT's gross receipts from business operations conducted on or from the Premises
5 and any such determination made by COUNTY shall be conclusive and binding upon
6 TENANT.

7 The above costs payable by TENANT shall include reimbursement to COUNTY of COUNTY-
8 provided services at such rates as COUNTY may from time to time, in good faith, establish for
9 such services. In the case of services provided by COUNTY's employees, such rates shall be
10 sufficient to reimburse COUNTY for employees' salaries, including employee taxes and benefits
11 and COUNTY's overhead or, at COUNTY's option, may be the rate for such services that would
12 be charged by a qualified third party or parties, approved by COUNTY, if engaged by COUNTY to
13 perform such services.

- 14 F. Reserves for Replacement. The intent and purpose of this Section is to require TENANT to plan
15 and provide for a long-term maintenance program to assure that high quality facilities compatible
16 with the recreational needs of the public are maintained in very good condition for the full Lease
17 term.

18 To accomplish this, TENANT agrees to establish a Capital Replacement Fund in the amount of
19 Two Hundred Thousand Dollars (\$200,000) per year, or more at TENANT's option, (hereinafter
20 referred to as "CRF") to be used for replacement of furniture, fixtures, and equipment, and for
21 capital repairs and renovations to improvements constructed within the Premises in accordance
22 with the provisions of Clause 25 (INTERIM MODERNIZATION OF LEASEHOLD STRUCTURES)
23 of this Lease. Notwithstanding the provisions of Clause 25, and subject to Director of OC Parks'
24 prior written approval, TENANT may use the CRF prior to the benchmark years as stated in
25 Clause 25 in the event the CRF is used for replacement of furniture, fixtures, and equipment, and
26 for capital repairs and renovations to improvements constructed within the Premises provided that
(i) TENANT justifies the need to make such replacement, repairs or renovations prior to the
Interim Modernization period described in Clause 25, and (ii) such replacements, repairs or
improvements would not generally be considered as routine replacements, repairs or
improvements made in the normal day to day maintenance of the facilities. In the event TENANT
wishes to use a portion of the CRF for such use, TENANT shall notify Director of OC Parks, as to
which improvements it intends to use the CRF for at the time it submits the Annual Work Plan, as
described in Clause 24.A (Maintenance and Repair), herein. Use of the CRF for such items
identified shall require Director of OC Parks' specific written approval and shall not be subject to
the approval provisions in Clause 24.A. Completion of the work on such items shall relieve
TENANT from undertaking work on the same items during the Interim Modernization Periods
described in Clause 25, unless necessitated by normal wear and tear.

The annual CRF deposits shall be placed in an interest bearing account, and shall be
distinguishable as TENANT's CRF. CRF deposits shall be due on or before July 31 of each year.
The CRF Account may be held by TENANT's Secured Lender. In the event TENANT's Secured
Lender is holding the CRF, TENANT shall not be relieved of any of its "interim modernization"
obligations as described in Clause 25, in the event such Secured Lender refuses or delays in
releasing the CRF to TENANT in a timely manner.

TENANT shall annually provide COUNTY with an itemized accounting of the CRF concurrently with submittal of its annual financial statements in accordance with the provisions of this Clause 15. In the event money in the CRF is insufficient to accomplish required capital repairs and/or capital renovations, TENANT may finance the additional cost subject to the provisions of Clause 31 (ASSIGNING, SUBLETTING AND ENCUMBERING) of this Lease.

- G. Non-Performance. In addition to any other actions provided by Clause 15 (RECORDS AND ACCOUNTS) of this Lease liquidated damages may be assessed in accordance with the provisions of Clause 33 (LIQUIDATED DAMAGES) of this Lease.

16. SECURITY DEPOSIT (PMC9.2 N)

- A. Security Deposit. During the term of this Lease and subject to the provisions for adjustment as provided hereinafter, TENANT shall provide COUNTY with a security deposit in the sum of Thirty Thousand Dollars (\$30,000) or as revised under the terms of the Amended and Restated Lease and Option [\$52,000 as of March 1, 2009].
- B. Revision of Security Deposit. Effective January 1, 2015, and every five (5) years thereafter, concurrently with each revision of minimum annual rent pursuant to Clause 10.A (Revision of Minimum Annual Rent), the security deposit to be provided by TENANT shall be automatically adjusted to the proportional change in the Consumer Price Index for Los Angeles – Anaheim – Riverside (All Urban Consumers – All Items) promulgated by the Bureau of Labor Statistics of the U.S. Department of Labor, or any replacement index published thereto. Each adjustment shall be calculated by the following formula, then rounded upward to the nearest one hundred dollars:

$$X = \$30,000 \times \frac{Y}{Z}$$

X = Adjusted security deposit

Y = Consumer Price Index for the month immediately preceding the month in which each adjustment is to become effective or for the most recent month for which a monthly index is available.

Z = Consumer Price Index for the month of the Effective Date of the Original Lease (March 1989).

In no event shall the amount of the security deposit be reduced. All increased amounts in the security deposit resulting from the above adjustment shall be due and payable to County of Orange within ten (10) days of receipt of a notice of security deposit adjustment from Director of OC Parks. In the event that the Consumer Price Index is not issued or published for the period for which such security deposit is to be adjusted and computed hereunder, or in the event that the Bureau of Labor Statistics of the United States Department of Labor should cease to publish said index figures, then any similar index published by any other branch or department of the United States Government shall be used and if none is so published, then another index generally recognized and authoritative shall be substituted by COUNTY.

- C. Form and Disposition of Security Deposit. The security deposit shall take one of the forms set out below and shall guarantee TENANT's full and faithful performance of all the terms, covenants, and conditions of this Lease.

1. Cash

2. The assignment to County of Orange of a savings deposit held in a financial institution in Orange County acceptable to Director of OC Parks. At the minimum, such assignment shall be evidenced by the delivery to Director of OC Parks of the original passbook reflecting said savings deposit and a written assignment of said deposit to County of Orange, in a form approved by Director of OC Parks.
3. A Time Certificate of Deposit from a financial institution in Orange County wherein the principal sum is made payable to County of Orange, or order. Both the financial institution and the form of the certificate must be approved by Director of OC Parks.
4. An instrument or instruments of credit from one or more financial institutions, subject to regulation by the state or federal government, pledging that funds necessary to secure performance of the lease terms, covenants, and conditions are on deposit and guaranteed for payment, and agreeing that said funds shall be trust funds securing TENANT's performance and that all or any part shall be paid to County of Orange, or order upon demand by Director of OC Parks. Both the financial institution(s) and the form of the instrument(s) must be approved by Director of OC Parks.

In the event TENANT elects to make said security deposit in cash, COUNTY shall not be required to keep this security deposit separate from its general funds, and TENANT shall not be entitled to any interest on such deposit.

Regardless of the form in which TENANT elects to make said security deposit, all or any portion of the principal sum shall be available unconditionally to Director of OC Parks for correcting any default or breach of this Lease by TENANT, its successors or assigns, or for payment of expenses incurred by COUNTY as a result of the failure of TENANT, its successors or assigns, to faithfully perform all terms, covenants, and conditions of this Lease.

Should TENANT elect to assign a savings deposit to COUNTY or provide a Time Certificate of Deposit or provide an instrument of credit to fulfill the security deposit requirements of this Lease, said assignment, certificate, or instrument shall have the effect of releasing the depository or creditor therein from liability on account of the payment of any or all of the principal sum to County of Orange or order, upon demand by Director of OC Parks. The agreement entered into by TENANT with a financial institution to establish the deposit necessary to permit assignment or issuance of a certificate as provided above may allow the payment to TENANT or order of interest accruing an account of said deposit.

In the event Director of OC Parks withdraws any or all of the security deposit as provided herein, TENANT shall, within ten (10) days of any withdrawal by Director of OC Parks, replenish the security deposit to maintain it at the amounts herein required. Failure to do so shall be deemed a default and shall be grounds for immediate termination of this Lease.

The security deposit shall be rebated, reassigned, released, or endorsed to TENANT or order, is applicable, at the end of the lease term, provided TENANT has fully and faithfully performed each and every term, covenant, and condition of this Lease.

1 17. INITIAL CONSTRUCTION BY TENANT (PMD1.1 N)

2 TENANT shall be responsible for and shall cause to be designed, constructed and installed within the
3 Premises, at no cost to COUNTY, appropriate improvements to adequately accommodate those services
4 and uses required, and any other optional services and uses approved pursuant to Clause 5 (REQUIRED
5 AND OPTIONAL SERVICES AND USES) of this Lease.

6 COUNTY and TENANT acknowledge that the following improvements constructed under the terms of the
7 Original Lease and/or the Amended and Restated Lease and Option by TENANT on the Premises
8 adequately accommodate those services and uses required, and any other optional services and uses
9 approved pursuant to Clause 5 (REQUIRED AND OPTIONAL SERVICES AND USES) of this Lease.

10 A. Parcel A.

- 11 1. Boat Launching Facility (6 lanes)
 - 12 a. Boat Launch Parking (approximately 200 spaces)
 - 13 b. Wash Rack
- 14 2. Dry Boat Storage, 270 spaces (400 maximum)
- 15 3. Public Swim Beach
 - 16 a. Day Use Parking, 800 (min.) (Minimum, includes boat launch parking)
 - 17 b. Restrooms
 - 18 c. Showers
 - 19 d. Picnic Tables
 - 20 e. Concession Facilities (i.e., snack stand, equipment rental, etc.)
- 21 4. Recreational Vehicle Park (RV Park), 382 spaces and 24 cottage spaces (444 maximum)
 - 22 a. Support Facility (offices, convenience store, showers, laundry, swimming pool,
23 recreation room, and group picnic area)
 - 24 b. Sewage Dump Station
- 25 5. Restaurant (Back Bay Bistro)
- 26 6. Campground, Day Use/Overnight Camping
7. Human-Powered Watercraft Launch Area
8. First Aid Facility
9. Operations Building (approximately 6,000 sq. ft.)
10. Interpretive Center
11. Bike Trail, connecting Back Bay Drive with Bayside Drive
12. Pedestrian Bridge
13. Drinking Fountains
14. Pedestrian Promenade (Public Walkway)
15. Transient Boat Slips (approx. 20 slips)

16 B. Parcel B.

- 17 1. Marina (450 slips)
- 18 2. Restroom/Shower Facilities
- 19 3. Boat Sewage Pump-Out Facility
- 20 4. Drinking Fountains
- 21 5. Pay Telephones
- 22 6. Pedestrian Promenade (Public Walkway)

1 C. Parcel C.

2 1. Family Inn (275 room hotel)

- 3 a. Meeting Rooms, 100-person capacity
- 4 b. Restaurant
- 5 c. Pay Telephones
- 6 d. Drinking Fountains
- 7 e. TENANT shall provide all furniture, fixtures and equipment, hereinafter referred as
- 8 "FF&E", operating equipment, and other personal property to be installed in the
- 9 Family Inn. The quality and type of FF&E to be installed in the Family Inn shall be
- 10 consistent with that normally installed in a first-class facility. FF&E includes all
- 11 items of furnishings and equipment for all guest rooms, public and employee areas,
- 12 including, in general but not limited to, all items attached to or set within or upon
- 13 the finished walls or surfaces of the Family Inn. No lender holding any lien on any
- 14 portion of the FF&E shall have any lien or interest in the land of the leasehold
- 15 estate of COUNTY. Upon termination of this Lease, at the end of the term or upon
- 16 any earlier termination, any FF&E then in the family Inn shall be surrendered to and
- 17 become the property of COUNTY, subject to any liens to which FF&E may be
- 18 subject. Nothing contained herein shall be deemed to limit the right of TENANT to
- 19 lease such items of FF&E as are customarily leased in the hotel industry.

20 2. Pedestrian Promenade (Public Walkway)

21 COUNTY acknowledges that the above listed improvements may not exceed the maximum allowable

22 levels of development as set forth in the Settlement Agreement. Subject to the terms and conditions of

23 Clause 18 (FUTURE CONSTRUCTION AND/OR ALTERATION BY TENANT) of this Lease, TENANT

24 shall be permitted to add additional improvements up to the maximum levels of development as set forth

25 in the Settlement Agreement or as the Settlement Agreement may be amended in the future. All

26 additional improvements shall be in accordance with the terms and conditions of the Settlement

Agreement or as the Settlement Agreement may be amended in the future.

18. FUTURE CONSTRUCTION AND/OR ALTERATION BY TENANT (PMD2.1 N)

TENANT shall not perform any excavation or construction upon the Premises nor shall TENANT modify, alter, or remove any permanent improvements lying within the Premises without prior written approval of COUNTY.

- A. COUNTY's Consent. No structures, improvements, or facilities shall be constructed, erected, or altered within or upon the Premises without the prior written consent of Director of OC Parks, provided, however, that TENANT may make non-structural interior decorative changes without the prior written consent of the Director of OC Parks. TENANT may, however, request waiver of such prior approval of projects costing less than Two Hundred Thousand Dollars (\$200,000) or as the threshold amount is adjusted every five (5) years thereafter in proportional changes in the Consumer Price Index for Los Angeles – Anaheim – Riverside, CA (All Urban Consumers – All Items) promulgated by the Bureau of Labor statistics of the U.S. Department of Labor, or any replacement index thereto. TENANT must notify Director of OC Parks, of all proposed modifications to the Premises whether or not prior approval is required. Any conditions relating to the manner, method, design, and construction of said structures, improvements, or facilities fixed by Director of OC Parks, as a condition to granting such consent, shall be conditions hereof

1 as though originally stated herein. TENANT may, at any time and at its sole expense, install and
2 place business fixtures and equipment within any building constructed by TENANT.

3 B. Strict Compliance with Plans and Specifications. All improvements constructed by TENANT
4 within the Premises shall be constructed in strict compliance with detailed plans and
5 specifications approved by the Director of OC Parks, and issuance of a Certificate of Occupancy
6 by the City (or such other equivalent as then typically provided) shall be deemed to confirm
7 compliance so long as the working drawings submitted to the City and on the basis of which
8 permits were issued were approved by the Director of OC Parks (with no material subsequent
9 revisions not approved by the Director of OC Parks).

10 C. City Review and Approval. Upon completion of improvements, any phase thereof, or any
11 approved modification thereto, TENANT shall obtain from City and deliver to Director of OC
12 Parks, a Certificate of Occupancy, Notice of Completion, or equivalent document which shall
13 indicate that City has inspected and approved all of the improvements.

14 D. Notice of Non-Responsibility. For any construction, COUNTY may record and post upon the
15 Premises a "Notice of Non-Responsibility". There shall be no limitation to the number or times
16 said Notice of Non-Responsibility may be posted by COUNTY.

17 19. TENANT'S ASSURANCE OF DEMOLITION AND CONSTRUCTION COMPLETION (PMD3.1 S)

18 Prior to commencement of approved facilities, or any phase thereof, within the Premises by TENANT,
19 TENANT shall furnish to COUNTY evidence that assures COUNTY that sufficient monies will be available
20 to complete the proposed construction. The amount of money available shall be at least the total
21 estimated cost to complete the proposed construction. Such evidence may take one of the following
22 forms:

23 A. Completion bond issued to COUNTY as obligee.

24 B. Irrevocable letter of credit issued to Director of OC Parks, from a financial institution to be in
25 effect until Director of OC Parks, acknowledges satisfactory completion of construction.

26 C. Cash.

D. The delivery to Director of OC Parks of true and complete copies of all documentation from a
bank, savings and loan association, or other lender approved by Director of OC Parks
relating to and evidencing the commitment of construction funds in an amount not less than
the estimated construction costs to pay said construction costs and that all conditions to the
disbursement of construction loan funds capable of being satisfied prior to the
commencement of construction have been satisfied, which documentation shall be in a form
and content satisfactory to Director of OC Parks.

E. Any combination of the above.

All bonds and letters of credit must be issued by a company qualified to do business in the State of
California and acceptable to Director of OC Parks, and shall be in a form acceptable to Director of OC
Parks, and shall insure faithful and full observance and performance by TENANT of all terms, conditions,
covenants, and agreements relating to the work to be performed by TENANT within the Premises.

1 Prior to commencement of construction of approved facilities, or any phase thereof, within the Premises
 2 by TENANT, TENANT shall furnish to Director of OC Parks, a performance bond and labor and material
 3 bond or performance bond containing the provisions of the labor and material bond in a principal sum
 4 equal to the total estimated construction costs supplied by TENANT's contractor or contractors, provided
 5 said bonds are issued jointly to TENANT and COUNTY as obligees.

6 20. MECHANICS LIENS OR STOP NOTICES (PMD4.1 N)

7 TENANT shall at all times indemnify and save COUNTY harmless from all claims, losses, demands,
 8 damages, costs, expenses, or liability costs for labor or materials in connection with demolition,
 9 construction, repair, alteration, or installation of structures, improvements, equipment, or facilities within
 10 the Premises, and from the cost of defending against such claims, including attorney fees and costs.

11 In the event a lien or stop notice is imposed upon the Premises as a result of such demolition,
 12 construction, repair, alteration, or installation, TENANT shall either:

13 A. Record a valid Release of Lien, or

14 B. Procure and record a bond in accordance with Section 3143 of the California Civil Code,
 15 which frees the Premises from the claim of the lien or stop notice and from any action
 16 brought to foreclose the lien.

17 Should TENANT fail to accomplish either of the two optional actions above within fifteen (15) days after
 18 notice of the filing of such a lien or stop notice, this Lease shall be in default and shall be subject to
 19 immediate termination.

20 21. "AS-BUILT" PLANS AND CONSTRUCTION COSTS (PMD5.1 S)

21 Within ninety (90) days following completion of any substantial improvement within the Premises,
 22 TENANT shall furnish the Director of OC Parks a complete set of reproducibles and two sets of prints of
 23 "As-Built" plans and a magnetic tape, disk or other storage device containing the "As-Built" plans in a form
 24 usable by COUNTY, to COUNTY's satisfaction, on COUNTY's computer aided mapping and design
 25 (CAD) equipment. CAD files are also to be converted to Acrobat Reader (*.pdf format), which shall be
 26 included on the disk or CD ROM. In addition, TENANT shall furnish the Director of OC Parks an itemized
 statement of the actual construction cost of such improvement. The statement of cost shall be sworn to
 and signed by TENANT or its responsible agent under penalty of perjury. TENANT must obtain the
 Director of OC Parks' approval of "As-Built" plans, and the form and content of the itemized statement.

22 22. OWNERSHIP OF IMPROVEMENTS (PMD6.1 S)

23 All buildings, improvements, and facilities, exclusive of trade fixtures, constructed or placed within the
 24 Premises by TENANT must, upon completion, be free and clear of all liens, claims, or liability for labor or
 25 material and at COUNTY's option shall become the property of COUNTY at the expiration of this Lease
 26 or upon earlier termination hereof. COUNTY retains the right to require TENANT, at TENANT's cost to
 remove all TENANT improvements located on the Premises at the expiration or termination hereof. Said
 removal shall include leveling the Premises, the removal of any underground obstructions, and the
 compaction of filled excavations to ninety (90%) compaction, unless otherwise authorized in writing by
 Director of OC Parks.

1 23. UTILITIES (PME1.2 S)

2 TENANT, at no cost to COUNTY, shall construct, or cause to be constructed, all utility facilities necessary
3 for the development and operation of the Premises. TENANT shall be responsible for and pay, prior to
4 the delinquency date, all charges for utilities supplied to the Premises.

4 24. MAINTENANCE OBLIGATIONS OF TENANT (PME2.1 N)

5 A. Maintenance and Repair. TENANT shall, to the satisfaction of Director of OC Parks, keep and
6 maintain the Premises and all improvements, landscaping, installations, facilities or equipment
7 (hereinafter referred to as "Improvements") of any kind which may be erected, installed, or made
8 thereon, in good condition and substantial repair. It shall be TENANT's responsibility to take all
9 steps necessary or appropriate to maintain said Improvements in such good standard of condition
10 and repair which shall include the painting of equipment and structures. Maintenance and repair
11 shall be in accordance with all applicable laws, rules ordinances and regulations of:

- 9 1. Federal, State, County, City and other governmental agencies, authorities, and bodies
10 having or claiming jurisdiction, and all their respective departments, bureaus, and officials;
- 11 2. The insurance underwriting board or insurance inspection bureau having or claiming
12 jurisdiction;
- 13 3. All insurance companies insuring all or any part of the Premises or improvements,
14 installations, or facilities.

15 TENANT shall promptly and diligently repair, restore and replace said Improvements as required
16 to remedy all damages to or destruction of all or any part of the Improvements resulting wholly or
17 in part from causes covered by fire or extended coverage insurance.

18 All workmanship and materials used in the maintenance, repair, restoration, or replacement of the
19 Improvements shall be equal in quality, and durability of workmanship and materials of the
20 Improvements existing before the event giving rise to the work, except as expressly provided to
21 the contrary in this Lease.

22 TENANT expressly agrees to maintain the Premises as a public recreational facility in a safe,
23 clean, wholesome and sanitary condition, to the satisfaction of Director of OC Parks. TENANT
24 further agrees to provide approved containers for trash and garbage and to keep the Premises
25 free and clear of rubbish and litter. Director of OC Parks shall have the right to enter upon and
26 inspect the Premises at any time for cleanliness and safety.

27 TENANT shall, no later than December 15, of each year, submit for Director of OC Parks'
28 approval, an operations and maintenance work plan ("Work Plan") outlining the repairs,
29 replacements and renovations planned for the forthcoming calendar year. Such Work Plan shall
30 include the estimated cost for each item of repair, replacement, or renovation listed, along with the
31 date each item is estimated to be completed. Unless otherwise notified in writing, the Work Plan
32 shall be deemed approved by Director of OC Parks within thirty (30) days of Director of OC Parks'
33 receipt of the Work Plan.

34 TENANT shall no later than February 28, of each year, submit to Director of OC Parks, a report
35 outlining the actual work, cost and month each item of repair, replacement or renovation outlined

1 in the previous calendar year's Work Plan was completed. An explanation is to be given for each
 2 item not completed. Upon written notice to TENANT, Director of OC Parks may, at Director of OC
 3 Parks' sole discretion, require that any item of repair, replacement or renovation which was not
 4 completed in accordance with the Work Plan, be completed within a reasonable timeframe
 5 specified by Director of OC Parks. In the event TENANT fails to complete such outstanding item
 of repair, replacement or renovation within the allotted timeframe, Director of OC Parks may, at
 Director of OC Parks' option, make or cause such outstanding item of repair, replacement or
 renovation to be made at TENANT's cost in accordance with the terms outlined in Clause 24.B
 (COUNTY's Right to Repair) of this Lease.

6 Notwithstanding the foregoing, at any time that the Family Inn is operated upon the Premises
 7 under a franchise which imposes maintenance obligations or standards as a requirement of the
 8 franchisor, so long as the franchisor and the maintenance obligations or standards required by
 9 such franchisor have been approved by the Director of OC Parks, then in lieu of the maintenance
 obligations set forth in this Section 24.A. (Maintenance and Repair), TENANT shall maintain the
 Family Inn and all improvements constituting a part of the Family Inn in accordance with such
 franchisor's maintenance obligations and standards.

10 B. COUNTY's Right to Repair. If TENANT fails to maintain or make repairs or replacements as
 11 required herein, Director of OC Parks may notify TENANT in writing of said failure. Should
 12 TENANT fail to correct the situation within three (3) days after receipt of written notice (or thirty
 13 (30) days after receipt of written notice in the case of the Family Inn), or fail to provide an action
 14 plan indicating the completion date acceptable to said Director of OC Parks, then Director of OC
 Parks, may make such repairs, replacements, and necessary correction(s) or cause them to be
 made and the cost thereof, including but not limited to the cost of labor, materials, and equipment
 and an administrative fee equal to fifteen percent (15%) of the sum of such items shall be paid by
 TENANT within ten (10) days of receipt of a statement of said cost from Director of OC Parks.
 COUNTY may, at its option, choose other remedies available herein or by law.

15 C. Regulations. TENANT shall at all times comply with all applicable laws, ordinances, and
 16 regulations pertaining to health, building, safety, and fire prevention and shall furnish and keep
 17 adequate fire extinguishers in sufficient numbers and in convenient accessible places on the
 Premises. The fire extinguishers shall be fully charged and ready for immediate use as required
 by City fire regulations and applicable laws and ordinances.

18 If TENANT receives an inspection notice or a deficiency notice following an inspection by any
 19 public or regulatory agency having jurisdiction, TENANT agrees to make any and all corrections in
 20 the manner required immediately upon receipt of such notice. TENANT's failure to comply with
 the provisions of this Clause shall constitute a serious breach of this Lease, and upon such failure
 this Lease shall be in default and shall be subject to immediate termination.

21 25. INTERIM MODERNIZATION OF LEASEHOLD STRUCTURES (PSB2.1 N)

22 TENANT and COUNTY hereby understand and agree that in addition to the ongoing maintenance and
 23 repair required in this Lease, the following renovation and modernization program shall be a requirement
 of TENANT, or by anyone holding by, under, or through TENANT.

24 A. General. A major renovation and modernization program, to bring the exterior and interior of all
 25 structures on the Premises up to competitive quality and prevailing standards for the uses
 authorized, must be scheduled to occur and shall be completed between the calendar years 2014

1 and 2019 (the "Initial Modernization Period") and every twenty five (25) years thereafter (a
 2 "Subsequent Modernization Period") (the terms Initial Modernization Period and Subsequent
 3 Modernization Period may be referred to herein collectively as a "Modernization Period"), except
 4 that the Hotel shall not be required to have a major renovation and modernization at the Initial
 5 Modernization Period. Notwithstanding the foregoing, so long as any renovation and
 6 modernization program performed for any Subsequent Modernization Period complies with the
 requirements of any franchise with respect to the Family Inn, which franchise and the
 maintenance obligations or standards thereunder have been approved by the Director of OC
 Parks, then such renovation and modernization will satisfy the requirements of this Clause 25
 (INTERIM MODERNIZATION OF LEASEHOLD STRUCTURES) for such Subsequent
 Modernization Period.

7 The renovation and modernization undertaken by TENANT in any Modernization Period must
 8 satisfy the Director of OC Parks, that the improvement(s) on the Premises will, for the balance of
 the Lease term, retain attractiveness as a recreational facility, remain structurally sound, and
 9 provide appropriate facilities for the uses authorized, thus assuring both satisfactory service and
 income.

10 At a minimum, the modernization program will include reconditioning exteriors by repainting,
 11 replacement of exterior material with like materials, re-roofing, and replacement of landscaping
 materials to original equivalent as necessary. Interior modernization will include as necessary,
 12 painting; replacement of carpeting or other floor covering; replacement or refinishing of cabinets,
 hardware, and bathroom fixtures; and repair or replacement of plumbing, electrical, heating,
 13 ventilating, and air-conditioning systems, as necessary. Refinishing or replacement of interior
 furnishings shall also be included as necessary.

14 The complete modernization plan and implementation schedule will be submitted to and approved
 15 by Director of OC Parks, before implementation and must be scheduled for completion no later
 than the Initial Modernization Period and each Subsequent Modernization Period, as applicable.

16 Any renovation and modernization work completed prior to a Modernization Period utilizing funds
 17 from the CRF in accordance with Clause 15.F (Reserves for Replacement) of this Lease shall be
 deemed to have been completed in satisfaction of the requirements of this Clause 25 (INTERIM
 18 MODERNIZATION OF LEASEHOLD STRUCTURES) of this Lease.

19 B. Marina. TENANT shall replace all boat slips and docks in the marina between calendar years
 2031 and 2041.

20 The reason for the renovation and modernization provision of this Lease is to assure that high quality
 21 facilities compatible with the recreational needs of the public are maintained for the full lease term.
 TENANT is required in Clause 15.F (Reserves for Replacement) of this Lease to establish a capital
 22 replacement fund to assure a sufficient reserve to accomplish the required renovation and modernization
 program and shall not seek a concession or concessions from COUNTY, financial or otherwise, as a
 23 condition for fulfilling the requirements to undertake the renovation and modernization program. All work
 shall be done at TENANT's expense.

24 TENANT understands and agrees that if TENANT does not comply with the requirements of this Clause
 25 to the satisfaction of COUNTY that this Lease shall be in default and shall be subject to immediate
 termination.

1 26. MAINTENANCE RESPONSIBILITY OF COUNTY (PME3.1 N)

2 A. Maintenance. Except as otherwise provided in Clause 26.B (Dredging) below, COUNTY shall
 3 have no obligation or responsibility to, remove debris, or to maintain, repair, or replace
 4 improvements constructed within the Premises; and, upon written notice to TENANT, COUNTY
 5 may at its discretion choose to do any dredging, filling, grading, slope protection, constructing of
 6 seawalls, replacement and/or repairs of any other improvements in order to enhance public safety
 7 and protect the Premises or other property in Upper Newport Bay. TENANT shall not be limited or
 8 precluded from performing such work as TENANT and Director of OC Parks agree is appropriate
 9 for the operation and use at the Premises.

10 B. Dredging. COUNTY and TENANT agree that the costs of dredging and the availability of funds
 11 for dredging during the term of this Lease is presently unknown and creates a risk to be shared
 12 between COUNTY and TENANT. In order to provide appropriate funding, COUNTY shall
 13 establish a Dredging Reserve Fund (hereinafter referred to as "DRF") as defined below.

14 COUNTY agrees to initiate, coordinate and perform dredging projects on the Premises as set forth
 15 in this Clause 26.B, subject only to delays caused by COUNTY's good faith inability to obtain
 16 governmental and administrative permits as a result of acts of God, strikes, boycotts or like
 17 obstructive actions of labor organizations or other delays beyond the reasonable control of
 18 COUNTY (hereinafter collectively referred to as "Allowable Delays"). For purposes hereof,
 19 Allowable Delays shall not mean or include any lack of COUNTY funding or the inability of
 20 COUNTY to devote reasonably sufficient personnel to all or any portion of the applicable dredging
 21 project, except when caused by labor strikes. When Allowable Delays do exist COUNTY shall,
 22 nonetheless and to the greatest extent possible, continue to pursue, process and obtain all
 23 necessary and required administrative and governmental approvals and permits. COUNTY
 24 agrees to pay dredging costs in excess of the amount available in the DRF, except for minor
 25 dredging projects (hereinafter referred to as "Minor Maintenance Dredging") as defined below,
 26 which shall be initiated and paid by TENANT or TENANT's subtenants with Director of OC Parks'
 approval.

1. Maintenance Dredging. COUNTY shall endeavor to maintain the design water depths
 within the Premises in accordance with the criteria set forth on "Exhibit C", attached hereto
 and by this reference made a part thereof, and in accordance with the procedures set forth
 in Clause 26.E (Initiation Procedure For Dredging Projects), below, subject only to
 Allowable Delays. The Director of OC Parks, with the prior written consent of TENANT,
 may modify Exhibit C as appropriate to facilitate public access to and use of the Premises.
 Subject to the initiation procedures of Clause 26.E, the scheduling and implementation of
 any dredging or other corrective work shall be done at the Director of OC Parks discretion.
 COUNTY retains the right to enter upon the Premises to perform such work as well as to
 perform inspection(s) and testing as necessary.

2. TENANT Cooperation. When COUNTY initiates, coordinates, designs, permits, or
 performs any dredging work, TENANT shall cooperate in COUNTY's efforts by:

a. Assisting COUNTY in obtaining funding, access, permits, and in coordinating each
 project; it being agreed, however, that TENANT shall have no obligation to
 contribute any portion of the dredging costs, other than the DRF;

b. Notifying COUNTY of any water depth problem areas;

- 1
- 2 c. Providing for and coordinating temporary relocation of boats as is reasonable
necessary and appropriate during any dredging project; and
- 3 d. Providing space to COUNTY or COUNTY's contractor, if such space is reasonably
4 available within the Premises, to temporarily store equipment and/or dredge spoils
5 from the project at no cost to COUNTY; it being agreed, however, that "temporary"
6 means within one year of the deposit of dredge spoils.

- 7
- 8 3. Alternative Dredging in Lagoon. COUNTY and TENANT acknowledge that much of the
9 deposition of sediment within the lagoon is caused by beach sand slumping down into the
10 lagoon. COUNTY and TENANT agree that an acceptable, mutually beneficial alternative
11 to traditional dredging techniques is to relocate the beach sand by using equipment to
12 push or drag sand which has slumped down into the lagoon back up onto the beach. The
13 mutually beneficial goal in utilizing this alternative dredging technique is to reduce the
14 frequency and cost of traditional maintenance dredging project. Shoreline sand
15 replenishment is an incidental result, and not a purpose or goal of this alternative dredging
16 technique.

17 Alternative dredging of the Premises shall be undertaken in accordance with the terms of
18 the "trigger mechanism" as described in Clause 26.E, below. Either COUNTY or TENANT
19 may perform alternative dredging of the Premises even more frequently than required by
20 the "trigger mechanism," so long as prior to the commencement of any such alternative
21 dredging, both COUNTY and TENANT agree to said alternative dredging; in such case,
22 and only in such case, all Direct Costs [as defined in Clause 26.C (Dredging Reserve
23 Fund) below] for the alternative dredging shall be paid out of the DRF. Any disputed Direct
24 Cost item associated with such alternative dredging shall be resolved by the method
25 described in Clause 26.D.4, below. Notwithstanding the foregoing, alternative dredging
26 may be performed by TENANT without the foregoing good faith determination, but only at
TENANT's expense, without reimbursement from the DRF, and only in compliance with all
applicable laws.

- 17 4. Minor Maintenance Dredging. Minor Maintenance Dredging is defined as a maintenance
18 dredging project of five hundred (500) cubic yards or less, if dredge spoils are disposed of
19 landside, or one thousand (1,000) cubic yards or less, if dredge spoils are disposed of at
20 an Environmental Protection Agency (EPA) approved ocean disposal site. Minor
21 Maintenance Dredging not completed by TENANT shall be incorporated into the annual
22 survey performed as part of the "trigger mechanism" or localized project evaluation, as
23 described in Clause 26.E, below.

- 21 C. Dredging Reserve Fund. It is acknowledged that the DRF may not provide total capital funding
22 needed for anticipated maintenance dredging and related support activities and contracts at the
23 time such work is needed. To the extent that the DRF has insufficient funds to pay the cost of
24 dredging, then COUNTY will advance funding for any such deficiency, subject to the provisions
25 and conditions of Clause 26.D.3, below. The DRF is defined as a segregated trust account to be
26 established by the COUNTY and maintained by the Auditor-Controller. Withdrawals from the DRF
shall be made only for the purpose of defraying the actual direct costs for maintenance dredging
on the Premises ("Direct Costs"). With regard to the DRF, Direct Costs are defined as the actual
contract cost of dredging and disposal of dredge spoils, and COUNTY's cost of project design
and administration (e. g., bioassay, environmental certifications, surveys, permits and permit

1 applications, and fees), but excluding COUNTY rates for "County Counsel," administrative, and
 2 departmental overhead. Any interest accrued on funds deposited in the DRF shall be retained in
 the DRF and shall become a part of the DRF.

3 All money in DRF shall be unconditionally available to the Director of OC Parks for direct costs of
 4 dredging. Director of OC Parks may use, apply, or retain the whole or part of any of the DRF:

- 5 a. To the extent any sum is due COUNTY for dredging costs incurred by COUNTY,
 associated with a prior maintenance dredging project, or
- 6 b. To make any required payment to COUNTY's contractor(s) for such dredging, or
- 7 c. To reimburse COUNTY for any direct costs expended by COUNTY for dredging during the
 8 term of this Lease.

9 Director of OC Parks shall provide TENANT, on or about November 1, of each year, with an
 itemized accounting of deposits to and withdrawals from the DRF for the proceeding fiscal year.

10 1. Payments to the DRF. COUNTY and TENANT shall make annual contributions to the DRF.
 11 COUNTY's required annual contribution thereafter shall be One Hundred Seventy-Seven
 12 Thousand Dollars (\$177,000) or as revised under the terms of the Original Lease and/or the
 13 Amended and Restated Lease and Option [Two Hundred Fifty Two Thousand Two Hundred
 14 Dollars (\$252,200) as of January 1, 2009], subject to adjustment as herein provided.
 15 (COUNTY'S annual base contribution to the DRF for the purposes of the adjustment
 16 calculation set forth in paragraph 26.C.(2)b. shall be \$177,000.00). TENANT's required
 17 annual base contribution to the DRF shall be Thirty Thousand Dollars (\$30,000) or as revised
 18 under the term of the Original Lease and/or the Amended and Restated Lease and Option
 [Fifty-Four Thousand Four Hundred Dollars (\$54,400) as of January 1, 2009], which is
 TENANT's maximum and total financial contribution toward maintenance dredging. The
 amount of each party's contribution shall be periodically adjusted (as herein provided).
 Payments to the DRF by TENANT shall be made on or before the first day of January and by
 COUNTY by the later of July 1, or thirty (30) days from the approval by COUNTY's Board of
 Supervisors of the final budget for the respective fiscal year. Payments to the DRF shall be
 made in accordance with the provisions of Clause 13.C (Place of Payment and Filing) of this
 Lease.

19 TENANT payments to the DRF not received by the due date shall be subject to Clause 14
 20 (CHARGE FOR LATE PAYMENT) of this Lease.

21 2. Adjustments to Dredging Reserve Fund Contributions. Both COUNTY's and TENANT's
 22 annual contributions to the DRF shall be automatically adjusted on January 1, 2015 and every
 23 five (5) years thereafter in proportion to changes in the Consumer Price Index for Los Angeles
 – Anaheim – Riverside, CA (All Urban Consumers – All Items) promulgated by the Bureau of
 Labor statistics of the U.S. Department of Labor, or any replacement index thereto.

- 24 a. Each adjustment for TENANT shall be calculated by the following formula, then
 rounded upward to the nearest one hundred dollars.

$$25 \quad X = \$30,000 \times \frac{Y}{Z}$$

1 X = Adjusted Contribution

2 Y = Consumer Price Index for the month immediately preceding the month
3 in which each adjustment is to become effective or for the most recent
4 month for which a monthly index is available.

5 Z = Consumer Price Index for the month of the Effective Date of the
6 Original Lease (March 1989).

- 7 b. Each adjustment for COUNTY shall be calculated by the following formula, then
8 rounded upward to the nearest one hundred dollars.

$$9 X = \$177,000 \times \frac{Y}{Z}$$

10 X = Adjusted Contribution

11 Y = Consumer Price Index for the month immediately preceding the month
12 in which each adjustment is to become effective or for the most recent
13 month for which a monthly index is available.

14 Z = Consumer Price Index for the month November 1996

- 15 c. The adjusted annual contributions are automatic and shall become effective on the
16 adjustment date. Director of OC Parks shall, but is not required to, provide notice
17 to TENANT of each adjusted annual contribution for both COUNTY and TENANT.

- 18 3. Refund of Unallocated DRF Funds; TENANT Default. Upon expiration or earlier termination of
19 this Lease any unallocated funds in the DRF shall revert to the COUNTY provided that the
20 actual total cost of maintenance dredging over the term of this Lease exceeds the total amount
21 of TENANT's contribution to the DRF over the term of this Lease. Except for TENANT's rent
22 payments to the DRF as provided in Clause 26.D.3 below, if the total amount of TENANT's
23 contribution to the DRF exceeds the actual total cost of maintenance dredging over the term of
24 this Lease, then the amount by which TENANT's contribution to the DRF exceeds the actual
25 total cost of maintenance dredging shall be paid to TENANT, up to the available balance in the
26 DRF. In the event this Lease terminates by reason of any default by TENANT in the
performance of TENANT's obligations hereunder, COUNTY shall have the right to deduct and
withdraw from the DRF the amount of COUNTY damages as determined by Director of OC
Parks from the amount, if any, due TENANT.

4. Suspension of Payment to DRF. The Director of OC Parks with one-hundred and twenty (120)
days prior notice to TENANT, may suspend COUNTY's contributions to the DRF if, but only if,
the present available cash balance of the DRF equals 120% of the cost of the most recently
completed leasehold-wide dredging project (but not including alternative dredging or Minor
Maintenance Dredging) and intended to encompass the magnitude of dredging projects
historically undertaken at approximate five (5) year intervals, as adjusted for inflation as set
forth in Clause 26.C.(2)b. Payment to the DRF by COUNTY shall be reinstated automatically
if, at that time, the available cash balance of the DRF falls below the foregoing amount. Any
such suspension and/or reinstatement of the DRF contributions shall not apply to TENANT
who shall be obligated to continue to make its DRF contributions, as herein provided.

- D. TENANT's Performance of Dredging. If COUNTY has failed to commence dredging by a date
which is eighteen (18) months after the initiation of a dredging project as determined by the trigger

1 mechanism defined in Clause 26.E, below, (the "Dredging Commencement Trigger Date"),
2 TENANT shall concurrently provide written notice to COUNTY stating that unless COUNTY
3 commences said dredging by a date which is twenty-four (24) months after the Dredging
4 Commencement Trigger Date, TENANT shall have the right, but not the obligation, on sixty (60)
5 days prior written notice ("TENANT Dredging Date"), to undertake and fulfill the performance of
6 COUNTY's dredging project (hereinafter referred to as "TENANT Dredging"). Such undertaking of
7 COUNTY's dredging project by TENANT shall be without waiver by either party of any rights and
8 remedies available to said parties and shall be subject to the following terms, covenants and
9 conditions:

- 6 1. TENANT shall perform all TENANT Dredging in full compliance with all applicable laws.
- 7 2. If TENANT undertakes TENANT Dredging, then TENANT shall be entitled to
8 reimbursement from the DRF. To the extent more monies are deposited in the DRF during
9 TENANT's performance of TENANT Dredging such additional deposits shall be used as
10 needed to fund the TENANT Dredging. TENANT may charge all TENANT Dredging
11 related Direct Costs (as such term is defined in Clause 26.C hereof) against the DRF
12 provided that for purposes of TENANT Dredging, a Direct Cost shall include all Direct Cost
13 fees, charges and expenses incurred by TENANT's personnel or incurred as a result of
14 contracting out to third parties, but shall exclude any charge for TENANT's corporate or
15 other overhead rates.
- 16 3. To the extent the funds in the DRF are insufficient to reimburse TENANT for Direct Costs
17 incurred by TENANT due to the TENANT Dredging then COUNTY shall deposit funds in
18 the DRF in an amount sufficient to reimburse TENANT for said Direct Costs. If COUNTY
19 fails to so fund said deficiency, then TENANT shall have the right (but not the obligation),
20 after sixty (60) days prior written notice to COUNTY, to pay the monthly rent provided
21 hereunder into the DRF, but only to the extent of said deficiency and without then being in
22 default in the performance of its rental obligations hereunder. Rent amounts so deposited
23 into the DRF shall be funded to TENANT in the same manner otherwise set forth in Clause
24 26.D.2 above. Upon the completion of the TENANT Dredging, after all Direct Costs have
25 been paid and any disputed charges have been fully resolved by means of the alternative
26 dispute resolution method hereinafter provided, any funds then existing in the DRF which
are directly traceable to deposits of rent by TENANT shall be disbursed and otherwise paid
to COUNTY.
4. COUNTY and TENANT agree that binding arbitration shall be the exclusive procedure for
resolution of any disputed Direct Cost item (either COUNTY or TENANT). The arbitration
shall be conducted in Orange County, California before Judicial Arbitration & Mediation
Services under Code of Civil Procedure sections 1280 through 1294.2, except where such
provisions contradict the express terms of this Lease. Judgment upon any interim or final
order, decision, determination or award may be entered and enforced in any court of
competent jurisdiction.
5. Notwithstanding anything to the contrary set forth in this Clause 26, once the Dredging
Commencement Trigger Date has occurred, the time for performance by COUNTY of said
dredging shall be extended on a day for day basis for every day or portion thereof that an
Allowable Delay is in effect. TENANT shall not be permitted to exercise its right to
undertake TENANT Dredging until COUNTY's time for performance, as extended by any
Allowable Delay, has expired as provided for hereinabove in this Clause 26.D.

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6. To allow TENANT to perfect and effectuate its rights under this Clause 26.D, COUNTY shall cause all permits and approvals for any dredging to be undertaken by COUNTY under this Lease to be issued in the name of TENANT and COUNTY (as required by law to permit TENANT to perform the dredging). Permits and approvals in the name of COUNTY only shall be assignable by COUNTY to TENANT ("Assignable Permits"). As to the Assignable Permits, COUNTY hereby irrevocably assigns the same to TENANT, effective as of the TENANT Dredging Date. To the extent that TENANT is named as an applicant or permittee in any such permit or approval, or application therefore, then TENANT shall reasonably cooperate with COUNTY in causing the issuance/maintenance of the same.

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E. Initiation Procedure For Dredging Projects. It is COUNTY's and TENANT's intent to provide a means to initiate the commencement of a dredging project within the Premises to maintain the design depths noted in Exhibit C of this Lease.

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Since acquisition of permits and project funding by the COUNTY can take up to two (2) years to occur after determination of a dredging need, it is prudent to develop a "trigger mechanism" for project initiation.

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The agreed "trigger mechanism, "as described herein, shall be implemented based on the results of a routine monitoring program. The program shall involve measurement of sediment accumulation above the design depth at fifty (50) locations (thirty-five (35) in the marina and access channels, and fifteen (15) in the lagoon) within the Premises boundaries, as shown in Exhibit C. The monitoring shall be performed every spring after the end of storm season (April 15) or after a major sediment producing storm where excessive sediment deposition has been determined to have probably occurred.

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If the monitoring shows that one half of the monitoring stations in the marina and access channels or the lagoon (for purposes of the "trigger mechanism," the lagoon and marina will be considered independently) in the Premises show a deposition of sediment of one (1) foot or greater over the design depth then the "trigger mechanism" shall be activated and permit acquisition and project funding efforts shall be initiated by COUNTY to dredge these areas.

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If localized areas of the Premises, as so measured, exhibit excessive depositions (of two (2) feet or greater and an amount which exceeds the limitation of Minor Maintenance Dredging, as defined) that are determined to provide a hazard to navigation or impediment of beneficial uses, then a dredging project shall be immediately initiated to solve the localized problem.

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Records indicate that dredging has historically reoccurred at the Premises in five (5) year increments. Based on this historical trend COUNTY will plan for periodic dredging by inclusion of an appropriately funded dredging project in its OC Parks five-year capital plan.

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It is the intent and a mutual goal that a dredging project will be implemented using the "trigger mechanism" such that a contract for dredging can be awarded by the Board of Supervisors before sediment accumulation has reached two (2) feet or more above the design depth at one half or more of the monitoring stations in the marina and/or the lagoon.

1 27. OPERATION OBLIGATIONS OF TENANT (PSB3.1 N)

2 A. Standards of Operation

- 3 1. Rents and Services. TENANT shall operate the Premises in a manner similar with those
4 prevailing in Newport Harbor and other marina facilities in Southern California furnishing
5 similar services and amenities. TENANT shall at all times during the Lease term provide
6 adequate security measures to reasonably protect persons and property on the Premises,
7 including lifeguard services and the maintenance of a constant patrol of all beach areas
8 and parking lots for the purpose of preserving order and preventing theft, vandalism, or
9 other improper or unlawful use of the Premises or any of the facilities.

7 The immediate purpose of this Lease is to make available recreational facilities and
8 services for the benefit of the public, in addition to the realization of the greatest possible
9 revenue therefrom by TENANT and COUNTY and in so doing maximize the revenue
10 potential of the Premises.

10 The ultimate purpose of this Lease is the complete and continuous public use of the
11 Premises for the benefit of the public, and all facilities and services shall be made
12 available to the public without discrimination, provided that public access to portions of the
13 Family Inn may be restricted to guests and patrons of the Family Inn, and/or subject to
14 fees imposed for use of Family Inn areas and facilities.

13 It is mutually agreed that the ultimate and immediate purposes are consistent and
14 compatible. Accordingly, TENANT covenants and agrees to operate said Premises fully
15 and continuously to accomplish said purposes.

- 15 2. Protection of Environment. TENANT shall take all reasonable measures available to:
- 16 a. Avoid any pollution of the atmosphere or littering of land or water caused by or
17 originating in, on, or about TENANT's facilities.
- 18 b. Keep the noise level on the Premises to a minimum so that persons in the general
19 neighborhood will be able to comfortably enjoy the other facilities and amenities of
20 Newport Bay.
- 21 c. Prevent the light fixtures of the Premises from emitting light that could negatively
22 affect the operation of cars, boats, or airplanes in the area.
- 23 d. Prevent all pollutants from the Premises, including petroleum products of any
24 nature, from being discharged into the lagoon and/or Back Bay.

22 B. National Pollutant Discharge Elimination System ("NPDES") Requirements.

23 TENANT and all of TENANT's subtenants, agents, employees and contractors shall conduct
24 operations under this Lease so as to assure that pollutants do not enter the municipal storm drain
25 system (including but not limited to curbs and gutters that are part of the street systems), or
26 directly impact receiving waters (including but not limited to rivers, creeks, streams, estuaries,
lakes, harbors, bays and the ocean).

1 The Santa Ana and San Diego Regional Water Quality Control Boards (“RWQCB”) have issued
 2 permits which regulate stormwater and non-stormwater discharges (Stormwater permits) resulting
 3 from areas owned and operated by the County of Orange and Orange County Flood Control
 4 District (collectively referred to as the COUNTY) including activities conducted under this Lease.
 The COUNTY and cities within Orange County have enacted water quality ordinances that
 prohibit activities that result in pollutants being discharged into the Stormwater drainage system.

5 To assure compliance with Stormwater Permits and water quality ordinances, the COUNTY has
 6 developed a Drainage Area Management Plan including a Local Implementation Plan
 7 (“DAMP/LIP”) that contains Best Management Practices (“BMPs”) that parties using COUNTY
 8 owned properties must adhere to. These BMPs are found within the DAMP/LIP in Model
 Maintenance Procedures and BMP Fact Sheets (the Model Maintenance Procedures and BMP
 Fact Sheets contained in the DAMP/LIP shall be referred to hereinafter collectively as “BMP Fact
 Sheets”) and contain pollution prevention and source control techniques to minimize the impact of
 those activities upon dry-weather urban runoff, stormwater runoff, and receiving water quality.

9 TENANT shall review the applicable BMP Fact Sheets contained in the DAMP/LIP. These BMP
 10 Fact Sheets may be modified during the term of the Lease and COUNTY will supply TENANT with
 the replacement exhibits. TENANT, its subtenants, agents, contractors, and employees and all
 11 persons authorized by TENANT to conduct activities on Premises shall comply with these BMP
 Fact Sheets as they exist now or are modified during the term of the Lease, as well as all other
 12 requirements of the Stormwater Permits, the DAMP/LIP, and the BMP Fact Sheets, as they exist
 at the time this Lease commences and as Stormwater Permits, the DAMP/LIP, and/or the BMP
 Fact Sheets are modified throughout the term of this Lease. The BMPs applicable to uses
 13 authorized under this Lease must be performed as described within all applicable BMP Fact
 Sheets. TENANT shall fully understand the BMP Fact Sheets applicable to operations conducted
 14 on the Premises prior to conducting them and maintain copies of the BMP Fact Sheets at the
 Premises throughout the term of the Lease.

15 The TENANT may propose alternative BMPs that meet or exceed the pollution prevention
 16 performance of the BMP Fact Sheets. Any such alternative BMPs shall be submitted to the
 COUNTY for its review and approval prior to implementation.

17 The COUNTY may enter the Premises and/or review TENANT records at any time to assure that
 18 activities conducted on the Premises comply with the requirements of this section. TENANT may
 also be required to implement a self-evaluation program to demonstrate compliance with the
 19 requirements of this section.

20 C. On-Site Management

- 21 1. Manager. TENANT shall employ a competent manager who shall be responsible for the
 22 day-to-day operation and level of maintenance, cleanliness, and general order for the
 Premises. Such person shall be vested with the authority of TENANT with respect to the
 23 supervision over the operation and maintenance of the Premises, including the authority to
 enforce compliance by TENANT’s agents, employees, subtenants, concessionaires, or
 24 licensees with the terms and conditions of this Lease and any and all rules and regulations
 adopted hereunder. TENANT expressly agrees that any notice herein required to be
 25 served upon TENANT may, at the option of COUNTY or Director of OC Parks, be
 personally served upon said Manager and that such service shall have the same force and

1 effect as service upon TENANT. TENANT shall notify COUNTY in writing of the name of
2 the Manager currently so employed as provided in Clause 37 (NOTICES) of this Lease.

- 3 2. Residences. TENANT may provide a maximum of three (3) on-site living quarters
4 (hereinafter referred to as "residences") on Parcel A (Phase I) of the Premises, subject to
5 review and approval by Director of OC Parks. Said approval has previously been
6 conditionally granted to facilitate better management, maintenance, security, and on-site
7 control. Said residences may be authorized for the specific purpose and intent that an on-
8 site manager, assistant manager, or maintenance specialist will be able to provide better
9 management and level of public service. The residences are not provided to benefit
10 individual employees or as a means to circumvent the intent of this Clause to provide
11 better public service and are intended solely for necessary on-site management personnel.

12 Director of OC Parks, at his discretion, may withdraw consent upon thirty (30) days written
13 notice if, in his determination, the residences are not providing or meeting the stated
14 purpose of this Clause or come into conflict with provisions of the Tidelands Grant, as
15 amended.

16 D. Policy and Procedures to be Established by TENANT

- 17 1. Rules and Regulations. Prior to the end of the first year of this Lease term, TENANT shall
18 submit to Director of OC Parks, Policy and Procedures pertinent to the conduct of the
19 permitted services and uses required by this Lease. The Policy and Procedures and any
20 subsequent changes thereto shall be subject to review as set forth in General Conditions
21 Clause 4 (REVIEW OF HOURS, PROCEDURES, AND PRICES) of this Lease.

22 Said Policy and Procedures shall include, but are not limited to, the following:

- 23 a. TENANT shall at all times retain active, qualified, competent, and experienced
24 personnel to supervise TENANT's operation and to represent and act for TENANT.
25 b. TENANT shall require its attendants and employees to be properly dressed, clean,
26 courteous, efficient, and neat in appearance at all times. TENANT shall not employ
any person(s) in or about the Premises who shall use offensive language or act in
a loud, boisterous, or otherwise improper manner.
c. TENANT shall maintain a close check over attendants and employees to ensure
the maintenance of a high standard of service to the public. TENANT shall replace
any employee whose conduct is detrimental to the best interests of the public.
d. TENANT shall provide lifeguard services as further defined in Section E (Lifeguard
Services) below.
e. TENANT shall sell or provide or cause or permit to be sold or provided only high
quality goods, wares, merchandise, food, beverages, and services.
f. TENANT shall keep the Premises adequately and properly lighted after daylight
hours and at such other times as public safety or convenience requires.

1 g. TENANT shall establish an appropriate maintenance schedule for all public rest
2 rooms on said Premises to be inspected for cleanliness and supplies several times
each day and shall maintain the highest standards of cleanliness therein.

3 h. TENANT shall establish a waiting list for boat slips and dry boat storage spaces as
4 set forth in General Conditions Clause 28 (AVAILABILITY OF SLIPS AND DRY
BOAT STORAGE) of this Lease.

5 2. Operating Schedule. The facilities on the Premises shall be operated with full services
6 every day except beach concessions and snack stands which are considered seasonal in
nature or other ancillary services.

7 E. Lifeguard Services. During all periods that the lagoon and pool(s) are open to the public,
8 TENANT, or a contractor of TENANT properly licensed and insured, shall have employees
(lifeguards) available to supervise and monitor each location in sufficient number to ensure water
9 safety to all users of the facility. Lifeguard services for the Premises shall conform to the current
requirements of City for lifeguard qualifications, training, and level of service.

10 TENANT shall maintain written verification of each employee's certification in Cardio-Pulmonary-
11 Resuscitation (CPR), Senior Lifesaving, and Basic First Aid and/or other City-approved standards
on the Premises at all times.

12 TENANT shall develop and post at each pool and appropriate locations around in the lagoon:
13 rules, regulations, and procedures for proper use and water safety.

14 28. DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS (PME4.1 S)

15 In the event of damage to or destruction of TENANT-constructed buildings, facilities, or improvements
16 located within the Premises or in the event TENANT-constructed buildings, facilities, or improvements
17 located within the Premises are declared unsafe or unfit for use or occupancy by a public entity with the
18 authority to make and enforce such declaration, TENANT shall, within thirty (30) days, commence and
19 diligently pursue efforts towards the repair, replacement or reconstruction of improvements, which
20 commencement may include obtaining governmental approvals for the same, and after obtaining such
21 approvals, to diligently commence and pursue to completion the repair, replacement. or reconstruction of
improvements to the same size and floor area as they existed immediately prior to the event causing the
22 damage or destruction, as necessary to permit full use and occupancy of the Premises for the purposes
required by this Lease. Repair, replacement, or reconstruction of improvements within the Premises shall
23 be accomplished in a manner and according to plans approved by Director of OC Parks. Except
24 otherwise provided herein, termination of this Lease shall not reduce or nullify TENANT's obligation under
25 this Clause. With respect to damage or destruction to be repaired by COUNTY or which COUNTY elects
26 to repair, TENANT waives and releases its rights under California Civil Code Sections 1932(2) and
1933(4).

27 However, in the event that damage or destruction resulting in thirty percent (30%) of either the Family Inn
28 or the improvements on the Premises other than the Family Inn, being unsafe or unfit for their intended
29 use as determined by Director of OC Parks occurs within five (5) years of the end of the term of this
30 Lease, then TENANT may, at its option, declare this Lease terminated, and of no further force or effect, in
which event TENANT shall have no duty to repair or reconstruct said improvements.

1 29. CONDEMNATION (N)

2 A. Total Taking. If the entire Premises are taken for any public or quasi-public use under any statute
 3 by right of eminent domain, or by purchase by public authority in lieu thereof, this Lease shall
 4 terminate as of the date that possession of the Premises is taken by the public authority or
 TENANT is deprived of its practical use of the Premises, whichever date is earlier. The net
 proceeds of the award shall be distributed in the following order of priority:

- 5 1. COUNTY shall receive that portion of the award which shall constitute compensation for
 6 the value of its fee interest in the Premises as encumbered by this Lease;
- 7 2. TENANT shall be compensated for its interest in the Premises, including direct loss of
 8 investment in improvements constructed on the Premises, the cost of removal of any
 fixtures and equipment, and the loss of the economic benefit of TENANT's leasehold
 estate, and;
- 9 3. The remainder of the award, if any, shall be divided equally between COUNTY and
 TENANT.

10 B. Partial Taking. If any portion of the Premises is taken for any public or quasi-public use under,
 11 any statute by right of eminent domain, or by purchase by public authority in lieu thereof, and if the
 12 taking or purchase does not, in TENANT's reasonable judgment, substantially impair the
 operation of the facilities, then:

- 13 1. The Lease shall continue in full force and effect, except that the Minimum Annual Rent (but
 14 not the Percentage Rent) shall be reduced in the same proportion as the land area of the
 Premises taken bears to the total area of the Premises immediately prior to such taking;
 and,
- 15 2. The net proceeds of the award shall be allocated in the following order of priority:
 16
 - 17 a. The payment of the costs of prompt restoration by TENANT, of the improvements
 located on the Premises to substantially the same character and condition as prior
 to such taking, to the extent physically possible;
 - 18 b. Compensation to COUNTY for the value of its fee interest in the portion of the
 Premises taken as encumbered by this Lease;
 - 19 c. Compensation to TENANT for its interest in the portion of the Premises taken,
 including without limitation, the value of the leasehold estate, direct loss of
 20 investment in improvements constructed on the Premises, the cost of removal and
 21 reinstallation of any fixtures and equipment, and the loss of the economic benefit of
 22 that portion of TENANT's leasehold estate; and
 - 23 d. The remainder of the award, if any, shall be divided equally between COUNTY and
 TENANT.

24 If any portion of the Premises is taken for any public or quasi-public use under any statute by right
 25 of eminent domain, or by purchase by public authority in lieu hereof, and if the taking or purchase,
 in TENANT's reasonable judgment with COUNTY's agreement, renders it impractical to operate
 26

1 the remainder of the Premises, or substantially impairs the operation of TENANT's business
 2 thereon, TENANT shall have the option of terminating this Lease without further liability
 3 hereunder. If TENANT so elects to terminate, it shall do so by written notice to COUNTY no later
 4 than sixty (60) days after the date when possession of (a portion of) the Premises shall be taken
 by the condemnor or TENANT is deprived of its practical use thereof, which notice will specify the
 effective date of such termination (no earlier than sixty (60) days after the date of said notice). If
 TENANT does not elect to terminate this Lease, the provisions of Paragraph B shall govern.

5 C. Temporary Taking. If all or a portion of the Premises shall be taken for any public or quasi-public
 use on a temporary basis, then:

- 6 1. This Lease shall continue in full force and effect without reduction of the Annual Minimum
 7 Rent and Percentage Rent; and
- 8 2. TENANT shall be entitled to claim, recover and retain any award with respect to such
 9 taking, except that if such taking shall be for a period extending beyond the expiration of
 10 the term of the Lease, as the Lease may have been extended, COUNTY shall be entitled
 to receive such portion of the award as shall be attributable to the period occurring after
 such expiration.

11 In the event, however, that any such taking on a temporary basis is a total taking and continues
 12 for a period in excess of one (1) year, then TENANT shall have the right to terminate this Lease
 upon written notice to COUNTY, without further liability hereunder.

13 D. Miscellaneous.

- 14 1. COUNTY and TENANT each agree to promptly notify the other party upon receipt of any
 15 notice from a condemning authority or agency expressing an intention to commence a
 16 taking or condemnation of any part of the Premises. The foregoing shall include not only a
 formal service of legal process received by either COUNTY or TENANT, but also any
 preliminary indication of such intent. Thereafter, COUNTY and TENANT shall keep each
 other fully informed as to all aspects of such proceedings and/or negotiations.
- 17 2. COUNTY and TENANT shall each have the right to represent their respective interests in
 18 each proceeding or negotiation with respect to a taking or intended taking and to make full
 19 proof of their respective claims. No agreement, settlement, sale, or transfer to or with the
 20 condemning authority shall be made without the consent of COUNTY and TENANT.
 COUNTY and TENANT each agree to execute and deliver to the other any instruments
 that may be required to effectuate or facilitate the provisions of this Lease relating to
 condemnation.
- 21 3. A leasehold mortgagee shall have the right, at its own expense, to participate in any
 22 proceedings involving a taking of the Premises. Leasehold mortgagees shall have the right
 23 to receive proceeds otherwise payable to TENANT pursuant to Paragraph A and
 24 Paragraph B above to be paid towards the satisfaction of any outstanding obligations
 25 secured by a leasehold mortgage on TENANT's leasehold interest.

1 30. INSURANCE (PME5.1 S)

2 TENANT agrees to purchase all required insurance at TENANT's expense and to deposit with the
3 COUNTY certificates of insurance, including all endorsements required herein, necessary to satisfy the
4 COUNTY that the insurance provisions of this Lease have been complied with and to keep such
5 insurance coverage and the certificates and endorsements therefore on deposit with the COUNTY during
6 the entire term of this Lease. This Lease shall automatically terminate at the same time TENANT's
7 insurance coverage is terminated. If within ten (10) business days after termination under this Clause
8 TENANT obtains and provides evidence of the required insurance coverage acceptable to Director of OC
9 Parks, this Lease shall be reinstated. TENANT shall pay COUNTY Two Hundred and Fifty Dollars (\$250)
10 for processing the reinstatement of TENANT'S insurance coverage.

11 TENANT agrees that TENANT shall not operate on the Premises at any time the required insurance is
12 not in full force and effect as evidenced by a certificate of insurance and necessary endorsements or, in
13 the interim, an official binder being in the possession of the Director of OC Parks. In no cases shall
14 assurances by TENANT, its employees, agents, including any insurance agent, be construed as
15 adequate evidence of insurance. The Director of OC Parks will only accept valid certificates of insurance
16 and endorsements, or in the interim, an insurance binder as adequate evidence of insurance. TENANT
17 also agrees that upon cancellation, termination, or expiration of TENANT's insurance, COUNTY may take
18 whatever steps are necessary to interrupt any operation from or on the Premises until such time as the
19 Director of OC Parks reinstates the Lease.

20 If TENANT fails to provide Director of OC Parks with a valid certificate of insurance and endorsements, or
21 binder at any time during the term of the Lease, COUNTY and TENANT agree that this shall constitute a
22 material breach of the Lease. Whether or not a notice of default has or has not been sent to TENANT,
23 said material breach shall permit COUNTY to take whatever steps necessary to interrupt any operation
24 from or on the Premises, and to prevent any persons, including, but not limited to, members of the
25 general public, and TENANT's employees and agents, from entering the Premises until such time as
26 Director of OC Parks is provided with adequate evidence of insurance required herein. TENANT further
27 agrees to hold COUNTY harmless for any damages resulting from such interruption of business and
28 possession, including, but not limited to, damages resulting from any loss of income or business resulting
29 from the COUNTY's action.

30 All contractors performing work on behalf of TENANT pursuant to this Lease shall obtain insurance
31 subject to the same terms and conditions as set forth herein for TENANT, however contractors shall only
32 be required to carry \$1,000,000 per occurrence with a \$2,000,000 aggregate Commercial General
33 Liability, \$1,000,000 combined single limits for Automobile Liability covering all owned, non-owned and
34 hired vehicles, and statutory for Worker's Compensation and \$1,000,000 for Employer's Liability. It is the
35 obligation of the TENANT to provide written notice of the insurance requirements to every contractor and
36 to receive proof of insurance prior to allowing any contractor to begin work within the Premises. Such
37 proof of insurance must be maintained by TENANT through the entirety of the project being performed
38 and be available for inspection by a COUNTY representative at any reasonable time.

39 All insurance policies required by this Lease shall declare any deductible or self-insured retention (SIR) in
40 an amount in excess of \$100,000 (\$20,000 for automobile liability), which shall specifically be approved
41 by the COUNTY's County Executive Office (CEO)/Office of Risk Management. TENANT shall be
42 responsible for reimbursement of any deductible to the insurer. Any self-insured retentions (SIRs) or
43 deductibles shall be clearly stated on the certificate of insurance.

1 If the TENANT fails to maintain insurance acceptable to the COUNTY for the full term of this Lease, the
2 COUNTY may terminate this Lease.

3 Qualified Insurer

4 The policy or policies of insurance must be issued by an insurer licensed to do business in the state of
5 California (California Admitted Carrier).

6 Minimum insurance company ratings as determined by the most current edition of the Best's Key Rating
7 Guide/Property-Casualty/United States or ambest.com shall be A- (Secure Best's Rating) and VIII
8 (Financial Size Category).

9 If the carrier is a non-admitted carrier in the state of California, CEO/Office of Risk Management retains
10 the right to approve or reject carrier after a review of the company's performance and financial ratings.

11 The policy or policies of insurance maintained by the TENANT shall provide the minimum limits and
12 coverage as set forth below:

<u>Coverages</u>	<u>Minimum Limits</u>
<p>13 <u>Builders Risk Insurance.</u> "All risks" builders 14 risk insurance, including vandalism and 15 malicious mischief, covering all materials and 16 equipment at the job site furnished under 17 contract, but excluding contractor's, sub- 18 contractor's and construction manager's tools 19 and equipment and property owned by 20 contractor or sub-contractor's employees. 21 (Only required when there is any demolition or 22 construction occurring on the Premises)</p>	<p>Not less than 100% of the total estimated cost of the demolition and construction.</p>
<p>23 <u>Commercial General Liability</u> including, but not 24 limited to, bodily injury, personal injury, 25 property damage liability, contractual liability, 26 products/completed operations liability, broad form property damage liability, independent contractors liability, liquor liability, owned and non-owned watercraft liability, innkeepers liability, garagekeepers legal liability, marina operators liability including but not limited to loss of or damage to watercraft, their motors and trailers, or the property of others while in the TENANT's or subtenant's care, custody, or control for any of the following operations:</p> <ul style="list-style-type: none"> a. Repair, alterations or maintenance b. Storage c. Mooring at ships, spaces or buoys rented by TENANT or subtenants d. Hauling out or launching not in 	<p>\$10,000,000 combined single limit per occurrence.</p>

- 1 connection with operation a. or b.
 2 above, and/or
 3 e. Fueling and miscellaneous servicing of
 4 a transient nature.

5 Fire and Extended Coverage including
 6 contents and business income (applicable to
 7 TENANT only).

TENANT shall insure all buildings,
 facilities, and improvements to at least
 90% of their replacement cost, using a
 standard form fire insurance policy
 containing the "extended coverage"
 endorsement.

8 Automobile Liability including coverage of all
 9 owned, non-owned and hired vehicles.

\$10,000,000 combined single limit per
 occurrence.

10 Workers' Compensation (if applicable)

Statutory

11 Employers' Liability (if applicable)

\$1,000,000 per occurrence.

12 All liability insurance required by this Lease shall be at least \$10,000,000 combined single limit per
 13 occurrence.

14 The County of Orange shall be added as an additional insured on all insurance policies required by this
 15 Lease with respect to work done by the TENANT under the terms of this Lease (except Workers'
 16 Compensation/Employers' Liability, Fire and Extended Coverage. An additional insured endorsement
 17 evidencing that the County of Orange is an additional insured shall accompany the certificate of
 18 insurance.

19 The County of Orange shall be a loss payee on the Fire policy, to the extent of COUNTY's financial
 20 interest in any covered property.

21 All insurance policies required by this Lease shall be primary insurance, and any insurance maintained by
 22 the County of Orange shall be excess and non-contributing with insurance provided by these policies. An
 23 endorsement evidencing that the TENANT's insurance is primary and non-contributing shall specifically
 24 accompany the certificate of insurance for the Commercial General Liability.

25 All insurance policies required by this Lease shall give the County of Orange thirty (30) days notice in the
 26 event of cancellation, except for cancellation due to non-payment of premium which shall be ten (10)
 days notice. This shall be evidenced by an endorsement separate from the certificate of insurance. In
 addition, the cancellation clause must include language as follows, which edits the pre-printed ACORD
 certificate:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE
 EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30
 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT. ~~BUT
 FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY
 KIND UPON THE COMPANY, ITS AGENT OR REPRESENTATIVE.~~

1 All insurance policies required by this Lease shall waive all rights of subrogation against the County of
2 Orange and members of the Board of Supervisors, its elected and appointed officials, officers, agents and
employees when acting within the scope of their appointment or employment.

3 The Commercial General Liability policy shall contain a severability of interests clause.

4 The TENANT is aware of the provisions of Section 3700 of the California Labor Code which requires
5 every employer to be insured against liability for Workers' Compensation or be self-insured in accordance
6 with provisions of that code. The TENANT will comply with such provisions and shall furnish the
7 COUNTY satisfactory evidence that the TENANT has secured, for the period of this Lease, statutory
Workers' Compensation insurance and Employers' Liability insurance with minimum limits of \$1,000,000
per occurrence.

8 Insurance certificates and endorsements shall be forwarded to the County of Orange (OC Community
9 Resources, Orange County Parks, 13042 Old Myford Road, Irvine, CA 92602). TENANT has ten (10)
business days to provide adequate evidence of insurance or this Lease may be cancelled.

10 COUNTY expressly retains the right to require TENANT to increase or decrease insurance of any of the
11 above insurance types to reasonable levels throughout the term of this Lease which shall be mutually
12 agreed upon. Any increase or decrease in insurance will be as deemed by County of Orange Risk
13 Manager as appropriate to adequately protect COUNTY. COUNTY shall notify TENANT in writing of
changes in the insurance requirements. If TENANT does not deposit copies of acceptable certificates of
insurance and endorsements with COUNTY incorporating such changes within thirty (30) days of receipt
of such notice, this Lease may be in breach without further notice to TENANT, and COUNTY shall be
entitled to all legal remedies.

14 The procuring of such required policy or policies of insurance shall not be construed to limit TENANT's
15 liability hereunder nor to fulfill the indemnification provisions and requirements of this Lease.

16 The County of Orange Certificate of Insurance and the Special Endorsement for the County of Orange
17 can be utilized to verify compliance with the above-mentioned insurance requirements in place of
commercial insurance certificates and endorsements.

18 31. ASSIGNING, SUBLETTING, AND ENCUMBERING (PME7.1 S)

- 19 A. General. Any mortgage, pledge, hypothecation, encumbrance, transfer, sublease or assignment
20 (hereinafter in this Clause referred to collectively as "Encumbrance") of TENANT's interest in the
21 Premises, or any part or portion thereof, shall first be approved in writing by COUNTY, unless
22 otherwise provided herein. Failure to obtain COUNTY's required written approval of an
Encumbrance will render such Encumbrance void. Occupancy of the Premises by a prospective
transferee, sublessee, or assignee before approval of the transfer, sublease, or assignment by
COUNTY shall constitute a breach of this Lease. All subleases shall be between TENANT and
subtenants; the entry into sub-subleases is prohibited and shall constitute a breach of this Lease.

23 Should COUNTY consent to any Encumbrance, such consent shall not constitute a waiver of any
24 of the terms, covenants, or conditions of this Lease or be construed as COUNTY's consent to any
25 further Encumbrance. Such terms, covenants, or conditions shall apply to each and every
document to mortgage, pledge, hypothecate, encumber, transfer, sublet, or assign the Premises

1 or any part thereof shall not be inconsistent with the provisions of this Lease; and in the event of
2 any such inconsistency, the provisions of this Lease shall control.

3 Notwithstanding the foregoing, COUNTY hereby confirms that it previously has consented to the
4 sublease of Parcels A, B and B-2 by TENANT to Newport Dunes Resort and Marina Partnership,
a California general partnership, pursuant to that certain Amended and Restated Resort Sublease
dated as of August 1, 2002, as amended.

5 B. Personal Information to be Supplied COUNTY. TENANT shall supply Director of OC Parks with
6 the necessary information to conduct background investigations on all persons or firms that
TENANT proposes to sublet to or assign to, or that might establish rights to enter, control, or
7 otherwise encumber the Premises by reason of agreements made by TENANT.

8 C. Family Assignment. TENANT's interest in this LEASE or any part or portion thereof, may be sold
9 assigned or otherwise transferred by TENANT to any lineal descendant(s) of the individuals
10 directly or indirectly owning more than twenty-five percent (25%) of the interests in TENANT,
11 and/or such issue of descendent(s), and/or any trust and/or business entity created for him or her
12 and/or their exclusive benefit, hereinafter referred to as "Family Assignment." Any Family
13 Assignment in the aggregate exceeding twenty-five (25%) in interest of TENANT shall first receive
consent in writing by the Director of OC Parks. Any Family Assignments less than the aggregate
twenty-five percent (25%) in interest of TENANT as hereinbefore described shall not be subject to
the requirement of prior consent of the Director of OC Parks. TENANT shall not, however, be
precluded from requesting such prior consent. TENANT must notify the Director of OC Parks of
any and all Family Assignments and provide all documentation evidencing such Family
Assignment and the consideration therefor.

14 The Director of OC Parks shall not arbitrarily withhold consent to any Family Assignment but the
15 Director of OC Parks may withhold consent if TENANT has not demonstrated that the proposed
16 assignee, if placed in a management position with respect to TENANT, has the necessary
17 experience, organization, and financial capabilities to fulfill the terms and conditions of this
18 LEASE. TENANT shall submit all documents proposed in the Family Assignment along with the
19 processing fee and request for Director of OC Parks' consent. Failure to obtain the Director of OC
Parks' required prior written approval of a Family Assignment will render such assignment void.
Notwithstanding anything else to the contrary as set forth herein, no such consent shall be
necessary in the case of any transfer or assignment of an interest in TENANT and/or in this
LEASE caused by the death or incapacity of TENANT and/or any party who owns an ownership
interest in TENANT.

20 D. Conditions of COUNTY Approval.

21 1. Subleases of five (5) years or less, assignments of subleases with a remaining term less
22 than five (5) years, and assignment of stock shall be subject to the following procedures:

23 a. Subleases for a period of five (5) years or less (hereinafter referred to as short-term
24 subleases), assignment of subleases with a remaining term of five years or less, or
25 assignment of stock as hereinbefore described shall not be subject to the
26 requirement of prior approval by COUNTY. TENANT shall not, however, be
precluded from requesting such prior approval.

1 b. TENANT must notify COUNTY of all short-term subleases, assignment of
2 subleases, or assignments of stock by providing Director of OC Parks with:

3 (1) A copy of all documents relating thereto, and

4 (2) A statement of all terms and conditions of said transaction, including the
5 consideration therefor.

6 c. Should TENANT choose not to obtain COUNTY's approval of short-term
7 subleases, assignment of subleases, or assignment of stock, COUNTY reserves
8 the right to disallow any unapproved short-term sublease, assignment of sublease,
9 or assignment of stock if any of the following conditions prevail:

10 (1) TENANT, its successors, or assigns are in default in the terms of this Lease
11 at the time of execution of the short-term sublease or assignment of the
12 stock whether notice of default has or has not been given by COUNTY.

13 (2) Subtenant or assignee has not agreed in writing to keep, perform, and be
14 bound by all the terms, covenants, and conditions of this Lease.

15 (3) Subtenant's use is in conflict with the terms of this Lease.

16 (4) All terms, covenants, and conditions of Encumbrance, including the
17 consideration therefor of any and every kind, have not been revealed in
18 writing to COUNTY.

19 (5) Additions to or alteration of existing structures, or construction of new
20 structures by subtenant or that are required of TENANT as a result of the
21 short-term sublease, have not been approved by COUNTY and are not in
22 compliance with all government regulations and ordinances.

23 (6) If subtenant or assignee prove to be of undesirable character.

24 d. Director of OC Parks shall notify TENANT in writing of the disallowance of the
25 short-term sublease or assignment for any of the above reasons, and TENANT
26 shall immediately proceed to remove any persons or firms from the Premises that
were disallowed by said notice. Failure to comply within a reasonable time on the
part of TENANT shall constitute a breach of this Lease.

2. Assignments, including assignments of subleases with a remaining term greater than five
years, transfers, subleases (both long-term and short-term), hypothecations, mortgages, or
other encumbrances shall be subject to the following procedures:

a. COUNTY agrees that it will not arbitrarily withhold consent of an assignment as
required by this Clause, but COUNTY may withhold consent at its sole discretion if
TENANT has not demonstrated that the proposed assignee has the necessary
experience, organization, and financial capabilities or if any of the conditions
identified in Section (2) b. below exist, excepting therefrom items 4 and 6.

1 b. With exception of Section (2) a. above, COUNTY agrees that it will not arbitrarily
2 withhold consent of any Encumbrance, but COUNTY may withhold consent at its
sole discretion if any of the following conditions exist:

3 (1) TENANT or any of his successors or assigns are in default in any term,
4 covenant, or condition of this Lease, whether notice of default has or has
not been given by COUNTY.

5 (2) The prospective Encumbrancer has not agreed in writing to keep, perform,
6 and be bound by all the terms, covenants, and conditions of this Lease.

7 (3) All the terms, covenants, and conditions of Encumbrance, including the
8 consideration therefore of any and every kind, have not been revealed in
writing to COUNTY. The Director of OC Parks shall be given a copy of any
or all appraisals made to determine the value of TENANT's interest.

9 (4) The construction required of TENANT as a condition of this Lease has not
10 been completed to the satisfaction of Director of OC Parks.

11 (5) TENANT must present evidence acceptable to the Director of OC Parks
12 that any proposed assignee has the necessary experience, organization,
and financial capabilities to fulfill the provisions of this Lease.

13 (6) The minimum rent has not been adjusted in accordance with Clause 10.A
14 (Revision of Minimum Annual Rent) of this Lease if applicable, provided
such adjustment shall be waived if the encumbrance holder obtains a
15 transfer of TENANT's leasehold interest at foreclosure sale pursuant to a
trust deed, by judicial foreclosure, or by an assignment in lieu of
foreclosure.

16 (7) The processing fee required by COUNTY and set forth below has not been
17 paid to COUNTY by delivery of said fee to Director of OC Parks.

18 A fee equal to the estimated actual costs to be incurred by COUNTY as
19 established by the Director of OC Parks shall be paid in advance to
COUNTY for processing each assignment, transfer, sublease, mortgage,
20 pledge, hypothecation, or encumbrance submitted to COUNTY as required
by this Lease. This processing fee shall be deemed earned by COUNTY
when paid and shall not be refundable.

21 If a processing fee has been paid by TENANT for another phase of the
22 same transaction, a second fee will not be charged.

23 c. If requested by TENANT, in order to obtain financing for improvements to the
24 Premises, COUNTY agrees to execute its written consent to an assignment of this
Lease to a trustee under a trust deed for the benefit of a lender (herein called
25 "Beneficiary"), provided that TENANT has complied with all other provisions of this
Clause, upon and subject to the following covenants and conditions:

- 1 (1) Said trust deed and all rights acquired thereunder shall be subject to each
2 and all of the covenants, conditions, and restrictions set forth in this Lease
3 and to all rights and interests of COUNTY hereunder, except as herein
4 otherwise provided.
- 5 (2) In the event of any conflict between the provisions of this Lease and the
6 provisions of any such trust deed, the provisions of this Lease shall control.
- 7 (3) Upon and immediately after the recording of a trust deed affecting
8 TENANT's leasehold interest in the Premises, TENANT at TENANT's
9 expense shall cause to be recorded in the office of the Recorder, County of
10 Orange, California, a written request, executed and acknowledged by
11 Director of OC Parks, for a copy of any notice of default and of any notice of
12 sale under the trust deed as provided by the statutes of the State of
13 California relating thereto.
- 14 (4) At the time of requesting consent to a trust deed, TENANT shall furnish to
15 Director of OC Parks a complete copy of the trust deed and note to be
16 secured thereby, together with the name and address of the holder thereof.
- 17 (5) COUNTY agrees that it will not terminate this Lease because of a default or
18 breach on the part of TENANT if the Beneficiary under any trust deed to
19 which COUNTY has given its consent, within sixty (60) days after service of
20 written notice on the Beneficiary by COUNTY of its intention to terminate
21 this Lease for such default or breach, shall:
 - 22 (a) Cure such default or breach if the same can be cured by the
23 payment or expenditure of money required to be paid under the
24 terms of this Lease; or if such default or breach is not curable,
25 cause the trustee under the trust deed to commence and thereafter
26 diligently pursue to completion steps and proceedings for the
exercise of the power of sale under and pursuant to the trust deed
in the manner provided by law; and
 - (b) Keep and perform all of the covenants and conditions of this Lease
requiring the payment or expenditure of money by TENANT until
such time as the leasehold shall be sold upon foreclosure pursuant
to the trust deed or shall be released or reconveyed thereunder;
provided, however, that if the Beneficiary shall fail or refuse to
comply with any or all of the conditions of this paragraph, then and
thereupon COUNTY shall be released from the covenant of
forbearance.
- (6) The prior written consent of COUNTY shall not be required:
 - (a) To a transfer of the leasehold at foreclosure sale pursuant to a trust
deed, by judicial foreclosure, or by an assignment in lieu of
foreclosure; or

1 (b) To any subsequent transfer by the Beneficiary if the Beneficiary is
2 an established bank, savings and loan association, insurance
3 company, retirement trust fund, or other organization that has been
4 approved by COUNTY and such Beneficiary is the purchaser at
5 such foreclosure sale; provided that in either such event, the
6 Beneficiary forthwith gives notice to COUNTY in writing of any such
7 transfer, setting forth the name and address of the transferee, the
8 effective date of such transfer, and the express agreement of the
9 transferee assuming and agreeing to perform all of the obligations
10 under this Lease and submits to Director of OC Parks a copy of the
11 document by which such transfer was made.

7 (7) The amount of the principal indebtedness to be secured by the proposed
8 trust deed (together with the principal balances secured by any underlying
9 trust deeds encumbering TENANT's leasehold estate) shall not exceed
10 eighty percent (80%) of the fair market value of TENANT's leasehold estate
11 (which includes the value of existing and proposed improvements to or on
12 the Premises) as determined by a qualified real estate appraiser, which
13 appraiser and appraisal shall be subject to Director of OC Parks' approval,
14 which approval shall not unreasonably be withheld. This provision,
15 however, shall not prohibit the addition of accrued but unpaid interest to the
16 principal balance secured by said deed of trust or the trust deed and
17 beneficiary's advance of additional funds to protect the value of the security
18 for its trust deed and/or do enforce its rights under its trust deed. Said
19 appraisal shall include, without limitation:

14 (a) An appraisal of the fair market value of the COUNTY' s interests
15 under this Lease and of its reversionary interests in and to the
16 Premises, taking into account all rents and other sums payable
17 hereunder by TENANT and the revisions and the adjustments to
18 such rents and other sums provided for herein,

17 (b) An appraisal of the fair market value of TENANT' s leasehold
18 estate under this Lease, and

19 (c) An appraisal of the fair market value of the real property demised
20 by this Lease, including without limitation all improvements
21 constructed upon said real property by or under TENANT,
22 appraised as though unencumbered by this Lease.

21 Said appraisal shall be based on the uses then being made of the
22 Premises, provided that if any portion of the Premises is then
23 undeveloped, such portion shall be appraised for the highest and
24 best use or uses for such portion permitted under this Lease.
25 Notwithstanding the above, in the case of a construction loan, said
26 appraisal shall take into account the value to be added by the
proposed construction for its intended uses. COUNTY shall have a
period of up to forty-five (45) days following receipt of such
appraisal to determine whether or not to consent to TENANT's
proposed trust deed.

32. HAZARDOUS MATERIALS (PMF9.1 S)

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- A. Definition of Hazardous Materials. For purposes of this Lease, the term “Hazardous Material” or “Hazardous Materials” shall mean any hazardous or toxic substance, material, product, byproduct, or waste which is or shall become regulated by any governmental entity, including, without limitation, the COUNTY acting in its governmental capacity, the State of California or the United States government.
- B. Use of Hazardous Materials. TENANT or TENANT’s employees, agents, independent contractors or invitees (collectively “TENANT Parties”) shall not cause or permit any Hazardous Materials to be brought upon, stored, kept, used, generated, released into the environment or disposed of on, under, from or about the Premises (which for purposes of this clause shall include the subsurface soil and ground water). Notwithstanding the foregoing, TENANT may keep on or about the Premises small quantities of Hazardous Materials that are used in the ordinary, customary, and lawful cleaning of and business operations on the Premises. Said permitted Hazardous Materials shall be stored in a suitable, safe location and shall be disposed of in a manner provided by law.
- C. TENANT Obligations. If the presence of any Hazardous Materials on, under or about the Premises caused or permitted by TENANT or TENANT Parties results in (i) injury to any person, (ii) damage to or contamination of the Premises (or a portion thereof), or (iii) damage to or contamination of any real or personal property wherever situated, TENANT shall immediately notify the Director of OC PARKS of said damages, and/or contamination and/or injuries, and TENANT, at its sole cost and expense, shall promptly take all actions necessary or appropriate to return the Premises to the condition existing prior to the introduction of such Hazardous Materials to the Premises and to remedy or repair any such injury, damage, or contamination. Without limiting any other rights or remedies of COUNTY under this Lease, TENANT shall pay the cost of any cleanup, repair, or remedial work performed on, under or about the Premises as required by this Lease or by applicable laws in connection with the removal, disposal, neutralization or other treatment of such Hazardous Materials caused or permitted by TENANT or TENANT Parties. Notwithstanding the foregoing, TENANT shall not take any remedial action in response to the presence, discharge or release, of any Hazardous Materials on, under or about the Premises caused or permitted by TENANT or TENANT Parties, or enter into any settlement agreement, consent decree or other compromise with any governmental or quasi-governmental entity without first obtaining the prior written consent of the COUNTY not to be unreasonably withheld. All work performed or caused to be performed by TENANT as provided for above shall be done in a professional and workmanlike manner and in compliance with plans, specifications, permits and other requirements for such work approved by COUNTY.
- D. Indemnification for Hazardous Materials. To the fullest extent permitted by law, TENANT hereby agrees to indemnify, hold harmless, protect and defend (with attorneys acceptable to COUNTY) COUNTY, its elected officials, officers, employees, agents and independent contractors from and against any and all liabilities, losses, damages (including, but not limited to, damages for the loss or restriction on use of rentable or usable space or any amenity of the Premises or damages arising from any adverse impact on marketing of the Premises), diminution in the value of the Premises, judgments, fines, demands, claims, recoveries, deficiencies, costs and expenses (including, but not limited to, reasonable attorneys’ fees, disbursements and court costs and all other professional or consultant’s expenses), whether foreseeable or unforeseeable, arising directly or indirectly out of the presence, use, generation, storage, treatment, on or off-site disposal or transportation of Hazardous Materials on, into, from, under or about the Premises by

TENANT or TENANT's Agents. The foregoing indemnity shall also specifically include the cost of any required or necessary repair, restoration, clean-up or detoxification of the Premises and the preparation of any closure or other required plans.

33. LIQUIDATED DAMAGES (PSB5.1 N)

In addition to all other remedies available to COUNTY for violations or breaches of this Lease, COUNTY shall have the right to demand and TENANT agrees to pay liquidated damages in the sum of one two-hundredth (1/200) of the security deposit required by this Lease, as adjusted, for each day TENANT violates the requirements of any one or more of the following clauses of this Lease:

Lease Clause

- Clause 5 REQUIRED AND OPTIONAL SERVICES AND USES
- Clause 15 RECORDS AND ACCOUNTS
- Clause 18 FUTURE CONSTRUCTION AND/OR ALTERATION BY TENANT
- Clause 24 MAINTENANCE OBLIGATIONS OF TENANTS
- Clause 27 OPERATION OBLIGATIONS OF TENANT
- Clause 30 INSURANCE

GENERAL CONDITIONS

- Clause 4 REVIEW OF HOURS, PROCEDURES, AND PRICES

Such damages are, and will continue to be, impractical and extremely difficult to determine. Execution of this Lease shall constitute agreement by TENANT and COUNTY that one two-hundredth (1/200) of the security deposit required by this Lease, as adjusted, per day is the minimum value of the damage caused by any violation named in the Clause.

Such damages shall not be payable for any period preceding written notice to TENANT from Director of OC Parks, that a violation exists.

34. COPIES OF LEASE AND GENERAL CONDITIONS FOR SUBTENANTS (PME8.1 S)

TENANT shall provide a copy of this Lease including General Conditions to each of its subtenants, except boat berthing and storage tenants. However, a copy of this Lease and General Conditions shall be maintained at all times in the on-site office and shall be available for review by the public and boat berthing/storage tenants.

35. COUNTY'S FIRST REFUSAL RIGHT (PMF8.1 S)

TENANT grants to COUNTY the exclusive right at COUNTY's option to purchase TENANT's leasehold estate under this Lease upon the same terms and conditions and at the same price as any bona fide offer for the purchase of said leasehold estate received by TENANT from any person or entity and which offer to purchase TENANT desires to accept. Upon receipt of a bona fide offer which is acceptable to

TENANT, and each time any such offer is received, TENANT shall notify COUNTY in writing of the full details of such offer, including price, terms, length of escrow, etc., and deliver to COUNTY copies of any and all title reports, plans and specifications, rent rolls, subleases and any other documentation relating to TENANT's leasehold estate theretofore delivered or made available to the offeror, whereupon COUNTY shall have sixty (60) days from receipt in which to elect to exercise COUNTY's prior right to purchase. TENANT shall cause any such offeror to separately state the purchase price for TENANT's leasehold estate under this Lease, in an equitable manner, if the offer includes additional leasehold estates or other real property.

No sale or voluntary transfer of title to said leasehold estate shall be binding on COUNTY unless and until the foregoing requirements are fully complied with. In the event that COUNTY fails to exercise its prior right to purchase as granted herein with respect to any proposed offer, TENANT may accept such offer and thereafter assign this Lease to the offeror pursuant to and in accordance with the terms and provisions of Clause 31 (ASSIGNING, SUBLETTING, AND ENCUMBERING) of this Lease and upon all of the terms and provisions of this Lease including without limitation the provisions of this Clause which shall continue in full force and effect. Any material amendment or modification to the terms of said offer shall constitute a new offer for the purposes of this Clause.

36. CHILD SUPPORT ENFORCEMENT REQUIREMENTS (PMF6.12 S)

In order to comply with child support enforcement requirements of the County of Orange, TENANT agrees to furnish Director of OC Parks, COUNTY's standard form District Attorney Child Support Enforcement Certification Requirements, which includes the following information.

- a) In the case where TENANT is doing business as an individual, TENANT's name, date of birth, Social Security Number, and residence address;
- b) In the case where TENANT is doing business in a form other than as an individual, the name, date of birth, Social Security Number, and residence address of each individual who owns an interest of ten percent (10%) or more in the contracting entity;
- c) A certification that the TENANT has fully complied with all applicable federal and state reporting requirements regarding its employees; and
- d) A certification that the TENANT has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply.

Failure of TENANT to timely submit data and/or certifications required above or to comply with all federal and state reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of this Lease. Failure to cure such breach within sixty (60) days of notice from the Director of OC Parks shall constitute grounds for termination of this Lease.

It is expressly understood that this data will be transmitted to governmental agencies charged with the establishment and enforcement of child support orders and will not be used for any other purpose.

37. NOTICES (PMF8.1 S)

All notices pursuant to this Lease or required by law shall be validly given if addressed as set forth below or as either party may hereafter designate by written notice and personally delivered or deposited in the

1 United States mail, duly registered or certified, return receipt requested, postage prepaid. If any notice is
2 sent by registered or certified mail, as aforesaid, the same shall be deemed to have been served or
3 delivered twenty-four (24) hours after mailing thereof as above provided. Notwithstanding the above,
COUNTY may also provide notices to TENANT by personal delivery or by regular mail and any such
notice so given shall be deemed to have been given upon receipt.

4 TO: COUNTY

TO: TENANT

5 County of Orange
6 OC Community Resources
7 Orange County Parks
13042 Old Irvine Blvd.
Irvine, CA 92602

Waterfront Resort Properties, LP
6310 San Vicente Boulevard, #560
Los Angeles, CA 90048
Attn: Herb Gelfand
Michael Gelfand

8 Attn: Director, Orange County Parks

and

9 Newport Dunes Marina, LLC
10 5150 Overland Avenue
Culver City, CA 90230

11 Either party may from time to time, by written notice to the other, designate a different address which
12 shall be substituted for the one above specified.

13 38. ATTACHMENTS TO LEASE (PMF11.1 S)

14 This Lease includes the following, which are attached hereto and made a part hereof:

- 15 I. GENERAL CONDITIONS Clauses 1 through 31
- 16 II. EXHIBIT A – Legal Description
- 17 III. EXHIBIT B – Parcel Map
- 18 IV. EXHIBIT C – Design Depths and Monitoring Station Locations

1 IN WITNESS WHEREOF, the parties have executed this Lease the day and year first above written.

2 TENANT

3 Waterfront Resort Properties L.P., a California
4 limited partnership

5 By: De Anza Corporation,
6 a California corporation,
7 Its operating General Partner

8 By: _____
9 Herbert M. Gelfand
10 Chairman of the Board

11 APPROVED AS TO FORM:
12 County Counsel

13 By: _____
14 Date _____

15 Newport Dunes Marina, LLC,
16 a California limited liability company

17 By: WLB GP Group LLC,
18 a California limited liability company

19 By: _____
20 Warren L. Breslow, Manager

21 Signed and certified that a copy of this
22 document has been delivered to the Chair of
23 the Board per G.C. Sec 25103, Reso 79-1535

24 COUNTY

25 County of Orange

26 ATTEST:

Clerk of the Board of Supervisors
Orange County, California

By: _____
Chair, Board of Supervisors

1 I. GENERAL CONDITIONS

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3 1. TIME (PMG1.2S)

4 Time is of the essence of this Lease. Failure to comply with any of the time requirements of this Lease shall constitute a significant breach of this Lease.

5

6 2. SIGNS (PMG2.2 S)

7 TENANT agrees not to construct, maintain, or allow any signs, banners, flags, etc., upon the Premises except as approved by Director of OC Parks. Unapproved signs, banners, flags, etc., may be removed by Director of OC Parks without prior notice to TENANT. All costs for removal shall be paid by TENANT.

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9 3. PERMITS AND LICENSES (PMG3.2 S)

10 TENANT shall be required to obtain any and all approvals, permits, and/or licenses which may be required in connection with the operation of the Premises. No permit, approval, or consent given hereunder by COUNTY in its governmental capacity shall effect or limit TENANT's obligations hereunder, nor shall any approvals or consents given by COUNTY, as a party to this Lease, be deemed approval as to compliance or conformance with applicable governmental codes, laws, rules, or regulations.

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12 4. REVIEW OF HOURS, PROCEDURES, AND PRICES (PMG4.2 N)

- 13
- 14 A. General. TENANT shall at all times maintain a written schedule delineating the operating hours and operating procedures for each business operation on or from the Premises. A schedule of prices charged for all goods and/or services supplied to the public on or from the Premises shall also be available.

15

16 Upon written request, TENANT shall furnish the Director of OC Parks a copy of said schedules and procedures. Should the Director of OC Parks, upon review and conference with TENANT, decide any part of said schedules or procedures is not justified with regard to fairly satisfying the needs of the public, TENANT shall upon written notice from Director of OC Parks, modify said schedules or procedures to the satisfaction of said Director of OC Parks.

17

18 Primary consideration shall be given to the public's benefit in implementing this Clause. All prices charged for goods and/or services supplied to the public on or from the Premises shall be fair and reasonable, based upon the following considerations:

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- 21 1. COUNTY's primary purpose for entering into this Lease is to promote the development of, and make available, recreational facilities and services for the benefit of the public.
- 22 2. TENANT shall be entitled to charge prices for the goods, accommodations, and services offered in accordance with this Lease that are reasonably consistent with market prices charged by other competing and/or comparable businesses.
- 23 3. TENANT shall operate and manage the services and facilities offered in a competent and efficient manner at least comparable to other well managed operations of similar type.
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1 TENANT agrees that when alternate forms of packaging are available, only items packaged in a
2 manner most compatible with the goals of reducing litter and preserving the environment shall be
3 sold. Sale of beverages in pop-top cans or in non-returnable metal or glass containers shall not
4 be permitted. Recyclable and push-top type beverage containers are permitted.

5 B. Launch Ramp Prices. TENANT and COUNTY agree that launch ramp price adjustments will be
6 subject to the following procedures to ensure that this service is available to the general public
7 and that prices charged for this service shall be fair and reasonable. The prices will initially be
8 proposed by TENANT and reviewed/approved by Director of OC Parks and thereafter will be
9 subject to either of the following methods of adjustment:

10 1. CPI Adjustment. TENANT shall be permitted to adjust launch ramp prices no more than
11 once annually in proportion to cumulative changes in the Consumer Price Index (CPI) for
12 Los Angeles – Anaheim – Riverside (All Urban Consumers – All Items) promulgated by the
13 Bureau of Labor Statistics of the U.S. Department of Labor or any replacement index
14 thereto. The proposed adjustment, indicating method of calculation, shall be submitted by
15 TENANT to the Director of OC Parks for verification and approval at least ninety (90) days
16 prior to scheduled implementation. The adjustment shall be deemed to be approved by
17 Director of OC Parks unless Director of OC Parks has objected in writing within sixty (60)
18 days of TENANT's submittal; or

19 2. Other Adjustments. As an alternative to Section (1), CPI Adjustment, above, TENANT
20 may propose adjustments to launch ramp prices that exceed the CPI Adjustment set forth
21 above. Such proposal shall be made no more than once annually and must be approved
22 by Director of OC Parks before implementation. Said request shall be presented and
23 reviewed based on the following considerations:

- 24 a. COUNTY's primary purpose for entering into this Lease is to promote the
25 development of, and make available, recreational facilities and services by
26 TENANT for the benefit of the public.
- 27 b. TENANT shall be entitled to charge prices that are reasonable consistent with
28 market prices charged by other competing and/or comparable businesses.
- 29 c. TENANT shall provide Director of OC Parks with a survey of boat launch facilities
30 with access to the ocean and provide a recommendation for increased fees.
31 TENANT shall submit public service/economic justification to support a change in
32 prices as requested by Director of OC Parks.

33 In either event, TENANT shall give at least thirty (30) days public notice of TENANT's intent to
34 increase prices, setting forth the new price and effective date. A copy of the public notice shall be
35 submitted to the Director of OC Parks at least sixty (60) days prior to the scheduled
36 implementation date.

37 In the event that Director of OC Parks notifies TENANT that any of the proposed price
38 adjustments are not approved, TENANT shall have the right to confer with the Director of OC
39 Parks and to justify said prices. If after reasonable conference and consultation, the Director of
40 OC Parks shall determine that any of the prices are not fair and reasonable, the same shall be
41 modified by TENANT or its subtenants, as directed.

1 TENANT may request price increases more than once annually in the event of economic
2 adversity not within the control of TENANT. In such event, Director of OC Parks shall respond to
said request as quickly as possible.

3 5. LEASE ORGANIZATION (PMG5.2 S)

4 The various headings and numbers herein, the grouping of provisions of this Lease into separate clauses
5 and paragraphs, and the organization hereof are for the purpose of convenience only and shall not be
considered otherwise.

6 6. AMENDMENTS (PMG6.2 S)

7 This Lease sets forth all of the agreements and understandings of the parties with regard to its subject
8 matter and any modification must be written and properly executed by both parties.

9 7. UNLAWFUL USE (PMG7.2 S)

10 TENANT agrees no improvements shall be erected, placed upon, operated, nor maintained within the
11 Premises, nor any business conducted or carried on therein or therefrom, in violation of the terms of this
Lease, or of any regulation, order of law, statute, bylaw, or ordinance of a governmental agency having
jurisdiction.

12 8. NONDISCRIMINATION (PMG8.2 S)

13 TENANT agrees not to discriminate against any person or class of persons by reason of sex, race, color,
14 creed, or national origin. TENANT shall make its accommodations and services available to the public on
fair and reasonable terms.

15 9. INSPECTION (PMG9.2 N)

16 During reasonable hours, COUNTY, or its authorized representative, shall have the right, but not the
17 obligation, to enter upon and inspect the Premises and operations to determine if the provisions of this
Lease are being complied with. Said representative may make written demand upon TENANT to perform
18 its obligations under this Lease. Such demand shall specify the obligations to be performed.

19 10. HOLD HARMLESS (PMG10.2 S)

20 TENANT hereby waives all claims and recourse against COUNTY including the right of contribution for
21 loss or damage of persons or property arising from, growing out of, or in any way connected with or
related to this Lease except claims arising from the concurrent active or sole negligence of COUNTY, its
22 officers, agents, and employees. TENANT hereby agrees to indemnify, hold harmless, and defend
COUNTY, its officers, agents, and employees against any and all claims, loss, demands, damages,
23 costs, expenses, or liability costs arising out of the operation or maintenance of the Premises described
herein, and/or TENANT's exercise of the rights under this Lease except for liability arising out of the
24 concurrent or sole negligence of COUNTY, its officers, agents, or employees, including the cost of
defense of any lawsuit arising therefrom. In the event COUNTY is named as co-defendant, TENANT
25 shall notify COUNTY of such fact and shall represent COUNTY in such legal action unless COUNTY
undertakes to represent itself as co-defendant in such legal action, in which event TENANT shall pay to
26 COUNTY its litigation costs, expenses, and attorney fees. In the event judgment is entered against
COUNTY and TENANT because of the concurrent negligence of COUNTY and TENANT, their officers,

1 agents, or employees, an apportionment of liability to pay such judgment shall be made by a court of
2 competent jurisdiction. Neither party shall request a jury apportionment.

3 11. TAXES AND ASSESSMENTS (PMG11.2 S)

4 This Lease may create a possessory interest which is subject to the payment of taxes levied on such
5 interest. It is understood and agreed that all taxes and assessments (including but not limited to said
6 possessory interest tax) which become due and payable upon the Premises or upon fixtures, equipment,
7 or other property installed or constructed thereon, shall be the full responsibility of TENANT, and
8 TENANT shall cause said taxes and assessments to be paid promptly.

9 12. SUCCESSORS IN INTEREST (PMG12.2 S)

10 Unless otherwise provided in this Lease, the terms, covenants, and conditions contained herein shall
11 apply to and bind the heirs, successors, executors, administrators, and assigns of all the parties hereto,
12 all of whom shall be jointly and severally liable hereunder.

13 13. CIRCUMSTANCES WHICH EXCUSE PERFORMANCE (PMG13.2 S)

14 If COUNTY and/or TENANT shall be delayed or prevented from the performance of any act required
15 hereunder by reason of acts of God, restrictive governmental laws or regulations, or other cause without
16 fault and beyond the control of the party obligated (financial inability excepted), performance of such act
17 shall be excused for the period of the delay and the period for the performance of any such act shall be
18 extended for a period equivalent to the period of such delay.

19 14. PARTIAL INVALIDITY (PMG14.2 S)

20 If any term, covenant, condition, or provision of this Lease is held by a court of competent jurisdiction to
21 be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and
22 effect and shall in no way be affected, impaired, or invalidated thereby.

23 15. WAIVER OF RIGHTS (PMG15.2 S)

24 The failure of COUNTY or TENANT to insist upon strict performance of any of the terms, covenants, or
25 conditions of this Lease shall not be deemed a waiver of any right or remedy that COUNTY or TENANT
26 may have and shall not be deemed a waiver of the right to require strict performance of all the terms,
covenants, and conditions of this Lease thereafter, nor a waiver of any remedy for the subsequent breach
or default of any term, covenant, or condition of this Lease. Any waiver, in order to be effective, must be
signed by the party whose right or remedy is being waived.

16. DEFAULT IN TERMS OF THE LEASE BY TENANT (PMG16.1 S)

The occurrence of one or more of the following events shall constitute a default hereunder by TENANT:

A. The abandonment or vacation of the Premises by TENANT.

B. The failure by TENANT to make any payment of rent or any other sum payable hereunder by
TENANT, as and when due, where such failure shall continue for a period of three (3) days after
written notice thereof from COUNTY to TENANT; provided, however, that any such notice shall be
in lieu of, and not in addition to, any notice required under California Code of Civil Procedure
Section 1161 et seq.

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C. The failure or inability by TENANT to observe or perform any of the provisions of this Lease to be observed or performed by TENANT, other than specified in (1) or (2) above, where such failure shall continue for a period of ten (10) days after written notice thereof from COUNTY to TENANT; provided however, that any such notice shall be in lieu of, and not in addition to any notice required under California Code of Civil Procedure Section 1161 et seq.; provided, further, that if the nature of such failure is such that it can be cured by TENANT but that more than ten (10) days are reasonably required for its cure (for any reason other than financial inability), then TENANT shall not be deemed to be in default if TENANT shall commence such cure within said ten (10) days, and thereafter diligently prosecutes such cure to completion.

D. In case of or anticipation of bankruptcy, insolvency or financial difficulties:

1. TENANT or any guarantor of TENANT's obligations hereunder shall generally not pay its debts as they become due or shall admit in writing its inability to pay its debts, or shall make a general assignment for the benefit of creditors.
2. The appointment of a trustee or receiver to take possession of substantially all of TENANT's assets located at the Premises or of TENANT's interest in this Lease, where such seizure is not discharged within thirty (30) days; or
3. TENANT's convening of a meeting of its creditors or any class thereof for the purpose of effecting a moratorium upon or composition of its debts.

In the event of any such default, neither this Lease nor any interests of TENANT in and to the Premises shall become an asset in any of such proceedings and, in any such event and in addition to any and all rights or remedies of the COUNTY hereunder or by law; provided, it shall be lawful for the COUNTY to declare the term hereof ended and to re-enter the Premises and take possession thereof and remove all persons therefrom, and TENANT and its creditors (other than COUNTY) shall have no further claim thereon or hereunder.

In the event of any default by TENANT, then, in addition to any other remedies available to COUNTY at law or in equity, COUNTY may exercise the following remedies:

- A. COUNTY may terminate this Lease and all rights of TENANT hereunder by giving written notice of such termination to TENANT. In the event that COUNTY shall so elect to terminate this Lease, then COUNTY may recover from TENANT:
1. The worth at the time of award of the unpaid rent and other charges, which had been earned as of the date of the termination hereof;
 2. The worth at the time of award of the amount by which the rent and other charges which would have been earned after the date of the termination hereof until the time of award exceeds the amount of such rental loss that TENANT proves could have been reasonably avoided;
 3. The worth at the time of award of the amount by which the unpaid rent and other charges for the balance of the term hereof after the time of award exceeds the amount of such rental loss that TENANT proves could be reasonably avoided;

- 1 4. Any other amount necessary to compensate COUNTY for all the detriment proximately
2 caused by TENANT's failure to perform its obligation under this Lease or which in the
3 ordinary course of things would be likely result therefrom, including, but not limited to, the
4 cost of recovering possession of the Premises, expenses of reletting, including necessary
5 repair, renovation and alteration of the Premises, reasonable attorney fees, expert witness
6 costs, and any other reasonable costs; and
- 7 5. Any other amount which COUNTY may by law hereafter be permitted to recover from
8 TENANT to compensate COUNTY for the detriment caused by TENANT's default.

9 The term "rent" as used herein shall be deemed to be and to mean the annual rent and all other
10 sums required to be paid by TENANT pursuant to the terms of this Lease. All such sums, other
11 than the annual rent, shall be computed on the basis of the average monthly amount thereof
12 accruing during the twenty-four month period immediately prior to default, except that if it
13 becomes necessary to compute such rental before such twenty-four month period has occurred,
14 then on the basis of the average monthly amount during such shorter period. As used in
15 subparagraphs 1. and 2. above, the "worth at the time of award" shall be computed by allowing
16 interest as provided in Clause 14 (CHARGE FOR LATE PAYMENT) of this Lease. As used in
17 subparagraph 3. above, the "worth at the time of award" shall be computed by discounting such
18 amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award
19 plus one percent (1%), but not in excess of ten percent (10%) per annum.

- 20 B. Continue this Lease in effect without terminating TENANT's right to possession even though
21 TENANT has breached this Lease and abandoned the Premises and to enforce all of COUNTY's
22 rights and remedies under this Lease, at law or in equity, including the right to recover the rent as
23 it becomes due under this Lease provided, however, that COUNTY may at any time thereafter
24 elect to terminate this Lease for such previous breach by notifying TENANT in writing that
25 TENANT's right to possession of the Premises has been terminated.
- 26 C. Nothing in this Clause shall be deemed to affect TENANT's indemnity of COUNTY liability or
27 liabilities based upon occurrences prior to the termination of this Lease for personal injuries or
28 property damage under the indemnification clause or clauses contained in this Lease.

29 No delay or omission of COUNTY to exercise any right or remedy shall be construed as a waiver
30 of such right or remedy of any default by TENANT hereunder. The acceptance of COUNTY of rent
31 or any other sums hereunder shall not be:

- 32 1. A waiver of any preceding breach or default by TENANT of any provision thereof other
33 than the failure of TENANT to pay the particular rent or sum accepted, regardless of
34 COUNTY's knowledge of such preceding breach or default at the time of acceptance of
35 such rent or sum, or
- 36 2. Waiver of COUNTY's right to exercise any remedy available to COUNTY by virtue of such
37 breach or default. No act or thing done by COUNTY or COUNTY's agents during the term
38 of this Lease shall be deemed an acceptance of a surrender of the Premises, and no
39 agreement to accept a surrender shall be valid unless in writing and signed by COUNTY.

40 Any installment or rent due under this Lease or any other sums not paid to COUNTY when due
41 (other than interest) shall bear interest at the maximum rate allowed by law from the date such
42 payment is due until paid, provided, however, that the payment of such interest shall not excuse
43 or cure the default.

1 All covenants and agreements to be performed by TENANT under any of the terms of this Lease
 2 shall be performed by TENANT at TENANT's sole cost and expenses and without any abatement
 3 of rent. If TENANT shall fail to pay any sum of money, other than rent required to be paid by it
 4 hereunder or shall fail to perform any other act on its part to be performed hereunder, or to
 5 provide any insurance or evidence of insurance to be provided by TENANT, then in addition to
 6 any other remedies provided herein, COUNTY may, but shall not be obligated so to do, and
 7 without waiving or releasing TENANT from any obligations of TENANT, make any such payment
 8 or perform any such act on TENANT's part to be made or performed as provided in this Lease or
 9 to provide such insurance. Any payment or performance of any act or the provision of any such
 insurance by COUNTY on TENANT's behalf shall not give rise to any responsibility of COUNTY to
 continue making the same or similar payments or performing the same or similar acts. All costs,
 expenses, and other sums incurred or paid by COUNTY in connection therewith, together with
 interest at the maximum rate allowed by law from the date incurred or paid by COUNTY shall be
 deemed to be additional rent hereunder and shall be paid by TENANT with and at the same time
 as the next monthly installment of rent hereunder, and any default therein shall constitute a
 breach of the covenants and conditions of this Lease.

10 17. RESERVATIONS TO COUNTY (PMG18.2 N)

11 The Premises are accepted "as is" and "where is" by TENANT subject to any and all existing conditions,
 12 buildings, easements, and encumbrances. COUNTY reserves the right to install, lay, construct, maintain,
 13 repair, and operate such sanitary sewers, drains, storm water sewers, pipelines, manholes, and
 14 connections; water, oil, and gas pipelines; telephone and telegraph power lines; and the appliances and
 15 appurtenances necessary or convenient in connection therewith, in, over, upon, through, across, and
 16 along the Premises or any part thereof, and to enter the Premises for any and all such purposes,
 17 provided that such rights shall be limited to areas of the Premises not improved with structures, which
 areas may include parking areas (but not parking structures), landscaped areas and other unimproved
 areas of the Premises. COUNTY also reserves the right to grant franchises, easements, rights of way,
 and permits in, over, upon, through, across, and along any and all portions of the Premises. No right
 reserved by COUNTY in this Clause shall be so exercised as to interfere unreasonably with TENANT's
 operations hereunder or to impair the security of any secured creditor of TENANT

18 COUNTY's reservations, without compensation to TENANT, shall include, but are not limited to:

- 19 A. Reservation of Air Space. COUNTY reserves, for the use and benefit of the public, a right of flight
 20 for the passage of aircraft in the air space above the Premises, together with the right to cause in
 such air space such noise as may be inherent in the operation of aircraft, now or hereafter using
 the air space or landing at or taking off from airports operated by the County of Orange.
- 21 B. Water Quality Testing. COUNTY reserves, for the benefit of the public, a right to maintain a
 22 temporary office or trailer within the Premises to facilitate Water Quality Testing for Upper
 Newport Bay. The exact location will be recommended by TENANT for review and approval by
 Director of OC Parks.
- 23 C. Noise Monitoring Equipment (Coney Island). COUNTY reserves, for the benefit of the public, a
 24 right to install and maintain Noise Monitoring Equipment on that portion of the Premises shown on
 Exhibit B and identified as Coney Island thereon. The exact location and conditions regarding
 25 access and use shall be subject to review and approval by Director of OC Parks.

1 D. Access and Use of the Premises. COUNTY or its authorized representative shall have the right at
2 all reasonable times to access the Premises for inspection, testing, or maintaining COUNTY's
3 equipment. COUNTY further reserves the right to use the boat launching ramp by boats and
4 equipment owned by COUNTY.

5 E. Reservation of Easement.

- 6 1. COUNTY reserves for the benefit of the public an easement over any waterways
7 developed within the Premises.
- 8 2. COUNTY also reserves, for the benefit of the public, an easement across Parcel A, B and
9 C to access and enjoy that portion of the Premises shown on Exhibit B and identified as
10 the Swimming Lagoon thereon. The exact location and conditions regarding access and
11 use shall be approved by Director of OC Parks.

12 COUNTY agrees that rights granted to third parties by reason of this Clause shall contain provisions that
13 the surface of the land shall be restored as nearly as practicable to its original condition upon the
14 completion of any construction. COUNTY further agrees that should the exercise of these rights
15 temporarily interfere with the use of any or all of the Premises by TENANT, the rent shall be reduced in
16 proportion to the interference with TENANT's use of the Premises.

17 18. HOLDING OVER (PMGI9.2 S)

18 In the event TENANT shall continue in possession of the Premises after the term of this Lease, such
19 possession shall not be considered a renewal of this Lease but a tenancy from month to month and shall
20 be governed by the conditions and covenants contained in this Lease.

21 19. CONDITION OF PREMISES UPON TERMINATION (PMG20.2 S)

22 Except as otherwise agreed to herein, upon termination of this Lease, TENANT shall redeliver
23 possession of said Premises to COUNTY in substantially the same condition that existed immediately
24 prior to TENANT's entry thereon, reasonable wear and tear, flood, earthquakes, war, and any act of war,
25 excepted. References to the "termination of the lease" in this Lease shall include termination by reason
26 of the expiration of the Lease term.

20. DISPOSITION OF ABANDONED PERSONAL PROPERTY (PMG21.2 S)

If TENANT abandons or quits the Premises or is dispossessed thereof by process of law or otherwise,
title to any personal property belonging to TENANT and left on the Premises fifteen (15) days after such
event shall, at COUNTY's option, be deemed to have been transferred to COUNTY. COUNTY shall have
the right to remove and to dispose of such property without liability therefor to TENANT or to any person
claiming under TENANT and shall have no need to account therefor.

21. QUITCLAIM OF TENANT'S INTEREST UPON TERMINATION (PMG22.2 N)

Upon termination of this Lease for any reason, including but not limited to termination because of default
by TENANT, TENANT shall execute, acknowledge, and deliver to the Director of OC Parks, within thirty
(30) days after receipt of written demand therefore, a good and sufficient deed whereby all right, title, and
interest of TENANT in the Premises is quitclaimed to COUNTY. Should TENANT fail or refuse to deliver
the required deed to the Director of OC Parks, the Director of OC Parks may prepare and record a notice
reciting the failure of TENANT to execute, acknowledge, and deliver such deed and said notice shall be

1 conclusive evidence of the termination of this Lease and of all right of TENANT or those claiming under
2 TENANT in and to the Premises.

3 22. COUNTY'S RIGHT TO RE-ENTER (PMG23.2 S)

4 TENANT agrees to yield and peaceably deliver possession of the Premises to COUNTY on the date of
5 termination of this Lease, whatsoever the reason for such termination.

6 Upon giving written notice of termination to TENANT, COUNTY shall have the right to re-enter and take
7 possession of the Premises on the date such termination becomes effective without further notice of any
8 kind and without institution of summary or regular legal proceedings. Termination of this Lease and re-
9 entry of the Premises by COUNTY shall in no way alter or diminish any obligation of TENANT under the
10 lease terms and shall not constitute an acceptance or surrender.

11 TENANT waives any and all right of redemption under any existing or future law or statute in the event of
12 eviction from of dispossession of the Premises for any lawful reason or in the event COUNTY re-enters
13 and takes possession of the Premises in a lawful manner.

14 Notwithstanding the above, COUNTY at COUNTY's sole discretion, may allow TENANT to redeem when
15 redemption is determined by COUNTY to be in the public's best interest and consistent with the
16 Tidelands Grant upon which the Premises is held by COUNTY.

17 23. AUTHORITY OF TENANT (PMG24.2 S)

18 If TENANT is a corporation, each individual executing this Lease on behalf of said corporation represents
19 and warrants that he is duly authorized to execute and deliver this Lease on behalf of said corporation, in
20 accordance with the by-laws of said corporation, and that this Lease is binding upon said corporation.

21 24. PUBLIC RECORDS (PMG25.2 S)

22 Any and all written information submitted to and/or obtained by COUNTY from TENANT or any other
23 person or entity having to do with or related to this Lease and/or the Premises, either pursuant to this
24 Lease or otherwise, at the option of COUNTY, may be treated as a public record open to inspection by
25 the public pursuant to the California Records Act (Government Code Section 6250, et seq.) as now in
26 force or hereafter amended, or any Act in substitution thereof, or otherwise made available to the public
and TENANT hereby waives, for itself, its agents, employees, subtenants, and any person claiming by,
through, or under TENANT, any right or claim that any such information is not a public record or that the
same is a trade secret or confidential information and hereby agrees to indemnify and hold COUNTY
harmless from any and all claims, demands, liabilities, and/or obligations arising out of or resulting from a
claim by TENANT or any third party that such information is a trade secret, or confidential, or not subject
to inspection by the public, including without limitation reasonable attorney fees and costs.
Notwithstanding the foregoing, TENANT may mark any confidential information submitted to the
COUNTY as "Confidential," in which case, upon receipt of any California Public Records Act request,
subpoena, order of any court or other request for disclosure from any person, entity or governmental
agency, COUNTY will provide to TENANT as much notice as permissible in connection with the
requested or required disclosure to allow TENANT to take such legal action as TENANT may deem
necessary or appropriate, at no expense to COUNTY, to protect such information from disclosure.

1 25. RELATIONSHIP OF PARTIES (PMG26.2 S)

2 The relationship of the parties hereto is that of lessor and tenant, and it is expressly understood and
3 agreed that COUNTY does not in any way or for any purpose become a partner of TENANT in the
4 conduct of TENANT's business or otherwise, or a joint venturer with TENANT. The provisions of this
5 Lease and the agreements relating to rent payable hereunder are included solely for the purpose of
6 providing a method by which rental payments are to be measured and ascertained.

7 26. DECLARATION OF KNOWLEDGE BY TENANT (PSB10.1 N)

8 TENANT warrants that TENANT has carefully examined this Lease and by investigation of the site and of
9 all matters relating to the Lease arrangements has fully informed itself as to all existing conditions and
10 limitations affecting the construction of the Lease improvements and business practices required in the
11 operation and management of the uses contemplated hereunder.

12 27. QUIET ENJOYMENT (PSB11.1 N)

13 TENANT, paying the rent herein reserved and performing and observing the several covenants and
14 conditions by it to be kept and performed, may peaceably hold and enjoy the Premises subject to the
15 terms, covenants, and conditions of this Lease during the term hereof.

16 COUNTY further warrants that development on COUNTY-owned property adjacent to the Premises shall
17 be of compatible uses. COUNTY and TENANT agree that this Lease shall in no way limit COUNTY's
18 right to develop like-business enterprises and other compatible uses at any time adjacent to the
19 Premises.

20 28. AVAILABILITY OF SLIPS AND DRY BOAT STORAGE (PSB12.1 N)

21 As required in General Conditions Clause 8 (NONDISCRIMINATION) of this Lease, TENANT shall make
22 slips and dry boat storage spaces available on fair and reasonable terms and without discrimination. To
23 assure implementation of this policy, TENANT shall permanently maintain a public register of persons
24 seeking to rent boat slips and dry boat storage spaces within the Premises. The register shall contain the
25 names and addresses of such persons and the slip or space length sought, listed in the order in which
26 applications to rent were received. This register shall be composed initially of persons interested in
renting slips and storage spaces at the Premises whose names are included in an existing list compiled
and maintain by TENANT or TENANT's subtenant.

In the event COUNTY serves notice to TENANT that a portion of the slips are to be used for transient
berthing (not to exceed 5%), TENANT will be relieved of the obligation to fill the transient slips from the
above mentioned register. However, each person on the register will maintain his position with regard to
availability of slips on a non-transient basis. A reasonable effort shall be made to contact those persons
registered and to allow them an opportunity to rent boat slips or dry boat storage spaces of appropriate
length as such slips and spaces become available for rent. The initial rental solicitation by TENANT shall
involve the persons on the existing list maintained by TENANT or TENANT's subtenant. These persons
shall be given preference in the rental of slips and storage spaces. Persons subsequently registered
shall be offered an opportunity to rent slips of the appropriate length in the order in which applications to
rent are received and as such slips and spaces become available for rent.

1 29. PROTECTION OF PREMISES (PSB13.1 N)

2 TENANT shall maintain its facilities in such a manner as to protect COUNTY's property from damage,
3 injury, loss, or liability arising from rainfall and other action of the elements, excepting such as may be
4 caused by fault or negligence of officers, agents, or employees of COUNTY.

4 30. GOVERNING LAW AND VENUE (PMG28.3 S)

5 This Lease has been negotiated and executed in the State of California and shall be governed by and
6 construed under the laws of the State of California. In the event of any legal action to enforce or interpret
7 this Lease, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange
8 County, California, and the parties hereto agree and do hereby submit to the jurisdiction of such courts,
9 notwithstanding Code of Civil Procedure section 394, provided, however that TENANT reserves the right
10 to make a motion to such courts for the removal of such legal action to a court of competent jurisdiction
11 located in another county within the State of California.

9 31. RIGHT TO WORK AND MINIMUM WAGE LAWS (PMG 29.1 S)

10 In accordance with the United States Immigration Reform and Control Act of 1986, TENANT shall require
11 its employees that directly or indirectly service the Premises, pursuant to the terms and conditions of this
12 Lease, in any manner whatsoever, to verify their identity and eligibility for employment in the United
13 States. TENANT shall also require and verify that its contractors or any other persons servicing the
14 Premises, pursuant to the terms and conditions of this Lease, in any manner whatsoever, verify the
15 identity of their employees and their eligibility for employment in the United States.

16 Pursuant to the United States of America Fair Labor Standard Act of 1938, as amended, and State of
17 California Labor Code, Section 1178.5, TENANT shall pay no less than the greater of the Federal or
18 California Minimum Wage to all its employees that directly or indirectly service the Premises, in any
19 manner whatsoever. TENANT shall require and verify that all its contractors or other persons servicing
20 the Premises on behalf of the TENANT also pay their employees no less than the greater of the Federal
21 or California Minimum Wage.

22 TENANT shall comply and verify that its contractors comply with all other Federal and State of California
23 laws for minimum wage, overtime pay, record keeping, and child labor standards pursuant to the
24 servicing of the Premises or terms and conditions of this Lease.

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