

1 HA55B-101.21, 101.4, 101.51
2 Upper Newport Bay
3 (Newport Dunes)

4 AMENDED AND RESTATED LEASE
5 AND OPTION

6 THIS AMENDED AND RESTATED LEASE AND OPTION ("Lease") is made _____, 2009, by
7 and between the County of Orange, a political subdivision of the State of California, (hereinafter referred
8 to as "COUNTY"), and Waterfront Resort Properties, L.P., a California limited partnership, and Newport
9 Dunes Marina, LLC, a California limited liability company, (hereinafter referred to as both "TENANT" and
10 "OPTIONEE"), without regard to number and gender.

11 R E C I T A L S

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

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

17 WHEREAS, the Original Lease expires February 28, 2039; 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, Phase I consisting of an RV Park, launch ramp and dry boat storage facility and Phase II
22 consisting of a 450-slip marina and the marina center have been completed; and

23 WHEREAS, Phase III consisting of the 275-room Family Inn remains to be completed; and

24 WHEREAS, TENANT now proposes to complete Phase III by developing a 275-room "Family Inn" on the
25 Premises; and

26 WHEREAS, COUNTY has agreed to grant TENANT an option for a new lease with a 50-year term
exercisable upon completion of the Family Inn in accordance with a Letter of Intent approved by
COUNTY's Board of Supervisors on December 9, 2008.

NOW, THEREFORE, in consideration of the above, the parties hereto mutually agree to the following
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:

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

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

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

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

8 “Design Review Board” means the architectural review committee which may be established by the
9 Director of OC Parks to review and approve the orderly and compatible site development and
10 construction plans for the various parcels within Newport Dunes, or upon written notice to TENANT, such
11 other person or entity as shall be designated by the Director of OC Parks.

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

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

18 “Family Inn” as used herein, as well as reference to “Hotel” means the hotel structure(s), with
19 accommodations not to exceed 275 guest rooms, which may be developed and constructed on Parcel
20 “C,” as contemplated in Clause 19 (Hotel Development Plans).

21 “New Lease” means the replacement lease (HA55B-153) that will commence upon completion of the
22 Family Inn and exercise of the option by TENANT contained herein for hotel development.

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

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

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

“Phase I” means the first phase of a three-phase development plan for the Newport Dunes project in the
City of Newport Beach. Phase I improvements include development of an RV Park, launch ramp and dry
boat storage facility.

“Phase II” means the second phase of a three-phase development plan for the Newport Dunes project in
the City of Newport Beach. Phase II improvements include development of a 450-slip marina and marina
center.

“Phase III” means the third phase of a three-phase development plan for the Newport Dunes project in
the City of Newport Beach. Phase III improvements include development of a 275-room Family Inn.

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

2. PREMISES (PMA3.1 S)

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

3. SUPERSEDES PRIOR AGREEMENTS (PMA4.1 S)

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 Lease dated February 16, 1989, the First Amendment to Lease dated April 28, 1992, the Second Amendment to Lease dated November 5, 1996, the Third Amendment to Lease dated November 18, 2003, the Parcel B Amendment dated December 31, 1990, and the Parcel C Amendment dated November 15, 1994, except with respect to continuing obligations of the parties, including, but not limited to, indemnification for occurrences during the prior lease term.

4. LIMITATION OF THE LEASEHOLD (PMA5 1 S)

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

5. REQUIRED AND OPTIONAL SERVICES AND USES (PMB1.3 S)

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

1. Parcel A:

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|--|---------------------------|
| a. Boat Launch Facility | j. Drinking Fountains |
| b. Dry Boat Storage | k. Pay Telephones |
| c. Public Swim Beach (including picnic tables) | l. Sewage Dump Station |
| d. Recreational Vehicle Park (RV Park) | m. Interpretive Center |
| e. Overnight Camping | n. RV Convenience Store |
| f. Human-Powered Watercraft Launch Area | o. Pedestrian Promenade |
| | p. Day Use Public Parking |
| | q. Transient Boat Slips |

- g. First Aid Facility
- h. Beach Concessions (e.g., snack stand, equipment rental)
- i. Public Restrooms
- r. Restaurant (Back Bay Bistro)

2. Parcel B:

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

3. Parcel C:

- a. ~~Hotel, hereinafter referred to as~~ "Family Inn" and Appurtenant Facilities
- b. Restaurant as part of Family Inn
- c. Drinking Fountains
- d. Pay Telephones
- e. Pedestrian Promenade

COUNTY acknowledges that TENANT is not obligated to build the hotel and TENANT acknowledges that COUNTY is under no obligation to extend the term of this Lease to accommodate or facilitate the construction of the hotel, except as hereinafter provided in Clause 18 (HOTEL DEVELOPMENT OPTION) of this Lease.

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. Interim Dry Boat and RV Storage – Parcel C*
14. Bicycle rentals*
15. Bait and Tackle*
16. Laundry Machines*
17. Cabanas*
18. Outside Catering*

- 19. Tents for scheduled events*
- 20. Alcoholic Beverage Service outside of the restaurant and convenience store areas per ABC license issued to TENANT and approved by COUNTY*
- 21. On-Site Employee Residences*

* COUNTY acknowledges previous approval of this service or use under the Original Lease 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.

D. Other Concessions or Services. TENANT agrees to establish, maintain, and operate such other 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.

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

E. Restricted Use. The above-listed services and uses, both required and optional, shall be the only services and uses permitted. Such services and uses shall be consistent with requirements and restrictions of the Tidelands Grant, Settlement Agreement, and the CDP. TENANT agrees not to 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.

No beer, wine, or other intoxicating beverages shall be sold from or consumed in public areas on the Premises. Sale of such items shall be limited to the RV Convenience Store and restaurants as designated by Director of OC Parks. Consumption shall be limited to restaurants and areas specifically designated in writing by the Director of OC Parks.

TENANT shall use its best efforts to ensure that TENANT's customers and guests comply with 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.

6. TERM (PMB2.1 S)

Subject to any earlier termination in accordance with Clause 18 (HOTEL DEVELOPMENT OPTION) of this Lease, the term of this Lease shall be fifty (50) years, commencing March 1, 1989, hereinafter referred to as the "Effective Date" of this Lease.

7. RENT (PMC1.2 S)

A. Minimum Annual Rent. The minimum annual rent for the Premises shall be Two Million Seven Thousand Dollars (\$2,007,000).

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

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

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

7 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	11
Storage Lockers	25
Dinghy Racks	25
Dry Boat Storage and RV Storage – Parcel C	35
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 schedule 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

1	Parking	20
	Pay Telephone (of payment made to TENANT)	10
2	Pump-out/Dump Station	5
	Restaurants/Catering	
3	Food	3
	Beverages/Bar	5
4	Retail Stores	3
	RV Convenience Store	5
5	RV Park	20
	RV Park – Mobile Cabins	10
6	RV Replacement Rent (of payment made to TENANT)**	20
	Snack Stands	5
7	Transient Boat Slips	25
	Third Party Equipment Rentals (of payment made to TENANT)	5
8	Unapproved Use	100

**In the case of a sublease, 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.

2. Hotel Percentage Rent. It is the intent of this section that TENANT's obligation to pay percentage rent for hotel use on Parcel C shall commence upon the filing of a Notice of Completion for the hotel, issuance of a Use and Occupancy permit from the City, or the expiration of the first eighteen months of construction, whichever occurs first.

Phased-in percentage rents for the hotel are as follows:

<u>Business Activities/ Service or use</u>	<u>Percentage Rents and Effective Dates</u>			
	<u>Hotel Construction</u>	<u>Operating Years 1-2</u>	<u>Operating Years 3-5</u>	<u>Thereafter to Scheduled Revision</u>
	%	%	%	%
Hotel				
Rooms	0	3	4	6
Meeting Rooms	0	3	5	5
Ancillary Charges (Video, Internet, Computer, Telephone, etc.)	0	3	5	5
Hotel Restaurant(s) (Including Room Service)				
Food	0	3	3	3
Beverage	0	3	3	5

Notwithstanding the foregoing, if TENANT exercises the Option granted pursuant to Clause 18 (HOTEL DEVELOPMENT OPTION) of this Lease, then percentage rent for hotel use on Parcel C

1 shall be determined pursuant to Clause 7.B.2 (Hotel Percentage Rent) of the New Lease from and
 2 after the filing of a Notice of Completion or issuance of a Certificate of Occupancy (or such other
 3 evidence from the City as is then typically provided that improvements are completed and
 4 occupancy may occur), and any percentage rent for hotel use in excess of such amounts
 5 previously paid pursuant to this Clause 7.B.2 shall be adjusted between COUNTY and TENANT
 6 within thirty (30) days following the commencement of the term of the New Lease.

7 COUNTY and TENANT recognize that percentage rent to COUNTY for interim dry boat storage
 8 on Parcel C is substantially greater than for similar uses on Parcel A. This differential is the
 9 mutual intent of COUNTY and TENANT, now and in the future, owing to the fact that under the
 10 original negotiated lease, Parcel C was to remain COUNTY's property unless TENANT met option
 11 requirements to timely construct a hotel and restaurant and that TENANT's proposed use involves
 12 minimal capital investment and minimal incremental added operating costs. COUNTY and
 13 TENANT further agree that the percentage rent to COUNTY for Parcel C in this instance is not a
 14 market comparable rent and will not be used by COUNTY to establish "market rents" for dry boat
 15 or RV storage.

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

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

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

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

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

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

TENANT shall pay to COUNTY each accounting year, subject to Clause 10 (REVISION OF RENT) of this
 Lease at the times and in the manner herein provided, an amount of money equal to the following

1 percentages of the gross receipts from operations and business conducted on or from the Premises
 2 which are approved as optional services and uses by the Director of OC Parks, in accordance with
 3 Clause 5 (REQUIRED AND OPTIONAL SERVICES AND USES) of this Lease. This Clause does not
 4 authorize or allow any lists service or use. This Clause merely establishes a percentage rent for services
 5 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

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

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

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

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

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

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

1. 5-Year Revision: On January 1, 2015, and every five (5) years thereafter, the minimum annual rent shall be automatically adjusted to seventy-five percent (75%) of the average (mean) annual rent (including both minimum and percentage rent) paid by TENANT to COUNTY for the preceding three (3) accounting years.

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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 the Premises. 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 of (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.

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

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3. Revision Upon Assignment: At the time of any assignment of the leasehold estate under this Lease which requires the consent or approval of COUNTY under Clause 33 (ASSIGNING, SUBLETTING, AND ENCUMBERING) of this Lease the minimum annual rent payable pursuant to Clause 7 (RENT) of this Lease shall be adjusted to ten percent (10%) of the fair market value of the Premises at the date of assignment. 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.

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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:

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

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If TENANT fails or elects not to complete such assignment within four (4) months of the determination of fair market value in accordance with such appraisal procedure, then:

1 c. TENANT shall reimburse COUNTY, upon demand, for all costs incurred by
 2 COUNTY in connection with the determination of the fair market value of the
 3 Premises, including without limitation, appraisal and attorney fees and reasonable
 4 overhead and administrative expenses, and

5 d. said determination of fair market value and the revision of the minimum annual rent
 6 in accordance therewith shall no longer be of any force or effect, and, if the
 7 proposed assignment is subsequently completed, Director of OC Parks shall
 8 decide, at his discretion, whether the value earlier determined in accordance with
 9 the appraisal procedure shall be used as a basis for revision of the minimum
 10 annual rent or whether the process for revision of the minimum annual rent
 11 described in this Section (3), Revision Upon Assignment, shall be reinstated from
 12 its beginning.

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

24 In the event the two appraisers should fail to select a qualified real estate appraiser prior to
 25 expiration of the twenty (20) day period, then TENANT and Director of OC Parks shall
 26 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.

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

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

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

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

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

8 Each appraiser shall conduct an independent investigation and analysis of the Premises
9 for the purpose of estimating the fair market value thereof. If any appraiser fails to deliver
such a written report within the time required, then the estimates of value evidenced by the
10 reports timely delivered by the other appraiser(s) shall be the only estimates of value used
11 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
12 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
13 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.

14 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.

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

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18 B. Revision of Percentage Rent. Any of the percentage rents specified in Clause 7 (RENT) or
19 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
20 on January 1, 2015, and every ten (10) years thereafter, upon written demand of either party
made between February 1 and March 31 of the year preceding the date of adjustment. Any
revision in percentage rents determined after said revision is effective shall be retroactive to
21 January 1.

22 The intent and purpose of revision of percentage rents and the instruction to appraisers, if
necessary, shall be to adjust percentage rents for each of the business activities (categories)
23 allowed by this Lease on the Premises based on the percentage rents then current and/or
appropriate for similar business activities in the Southern California/Newport Beach area.

24 Adjustments will, if possible, be made by negotiation that shall commence on or about April 1 of
the year preceding the date of adjustment. If agreement is not reached by June 1 of such year,
25 the final determination of the percentage rents for each of the business activities (categories) shall
be determined as follows. COUNTY and TENANT shall, prior to August 1 of such year, each

1 employ a qualified real estate appraiser. The term "qualified real estate appraiser," as used
2 herein, shall mean and refer to a real estate appraiser designated as a "senior" member or
3 equivalent by a nationally recognized appraisal organization. The appraiser selected shall be
4 qualified for and experienced in appraising ocean-oriented property similar to the Premises. Each
5 appraiser shall have experience in appraising ocean-oriented property in the Southern California
6 area. In the event either party should fail to employ a qualified real estate appraiser prior to
7 August 1 of such year, then the qualified real estate appraiser employed by the other party shall
8 be the sole appraiser responsible for determining the revised percentage rents hereunder, and his
9 opinion shall be binding upon the parties hereto. TENANT and/or COUNTY may choose to use
10 the same appraiser each has employed in Clause 10.A (Revision of Minimum Annual Rent),
11 above. If two appraisers are timely employed by COUNTY and TENANT, the two appraisers shall
12 within twenty (20) days select a third qualified real estate appraiser.

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

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

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

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

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

1 estimates contained in that report shall be determined to be the percentage rents for each
2 business activity (category).

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

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

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

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

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

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

- 20 A. The sale price of all goods, wares, merchandise, and products sold on or from the Premises by
21 TENANT, whether for cash or credit and whether payment is actually made or not, whether
22 delivery of the items sold is made from the Premises, and whether title to such items is
23 transferred.
- 24 B. The charges made by TENANT for the sale or rendition on or from the Premises of services of
25 any nature or kind whatsoever, whether for cash or credit, whether payment is actually made or
26 not, and whether the services are actually performed or not.
- 27 C. All admission, entry, rental, and other fees of any nature or kind charged by TENANT and/or
28 subtenants (including but not limited to deposits accepted by TENANT and/or subtenants).
- 29 D. Office Use. Office use where subtenants do not typically pay percentage rent, the term "gross
30 receipts" upon which office use percentage rents are to be based shall mean and refer to the
31 dollar amount of all of TENANT's total revenues, receipts, sums, subtenant rentals (including
32 without limitation reimbursements of operating expenses), charges and all other amounts of every
33 kind and description paid to TENANT by or on behalf of subtenants. The term "gross receipts"
34 shall also include amounts paid by or under such subleases for office use to third parties for
35 casualty insurance on TENANT's property; exterior and/or structural maintenance and repair of
36 TENANT's building; the maintenance, operation, insuring and/or repair of common areas; utilities
37 (other than telephone and cable television) provided to or for the benefit of the subleased
38 premises and real property taxes and assessments (other than personal property taxes on the
39 subtenant's personal property) pursuant to their subleases.

1 Notwithstanding the above, the term "gross receipts" shall not include payments by subtenants to
2 a merchant's association for promotional and/or advertising purposes.

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

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

15 E. Vending Machines. All sums deposited into any coin-operated vending machine or other device
16 maintained on the Premises, regardless of the ownership of the machine or device, or whether
17 such sums are removed and counted by TENANT or others, and regardless of what percentage
18 thereof TENANT is entitled to receive except for pay telephones and newspaper racks as follows:

19 1. Pay telephones gross receipts shall be determined as follows:

20 a. If telephones are owned by TENANT, gross receipts shall be the gross amount
21 deposited or charged for use of the telephones.

22 b. If telephones are owned and operated by a third party, gross receipts shall be the
23 commission or payment received by TENANT.

24 2. For newspaper racks gross receipts shall be the commission or payment received by
25 TENANT from racks owned and operated by a third party.

26 F. Non-Profit Organizations/Public Agencies. Subject to prior written approval of the Director of OC
Parks, TENANT shall be allowed to rent space/facilities to non-profit organizations and public
agencies for either no charge or for a nominal fee. Gross receipts for approved non-profit
organizations or public agencies shall be the actual rent or fee, if any, paid to TENANT.

G. Third-Party Equipment Rentals. For third-party equipment rentals or services not offered or
normally not available at Newport Dunes, gross receipts shall be the commission or surcharge
retained by TENANT.

H. Amusement Park Ticket Sales. Gross receipts for ticket sales to non-affiliated amusement parks
or other tourist-oriented attractions such as Disneyland, Knott's Berry Farm or the Bower's
Museum shall be the commission or surcharge retained by TENANT.

I. Nominal Activity Fees. TENANT shall be permitted to collect nominal activity fees collected for
such activities such as ice cream socials for RV guests and popcorn sales by roving vendors

1 during "Movies on the Beach" nights without providing individual receipts to customers, using sign-
2 in sheets or mobile cash registers.

- 3 J. Direct Utility Charges. Gross receipts shall exclude payments made by boat slip tenants to
4 TENANT for actual metered electric consumption for each respective boat slip. Said payments
5 shall be based on (1) the then current kilowatt-hour rate charged by the supplying utility company
6 to TENANT and (2) the actual electrical kilowatt-hour consumption to each respective boat slip as
7 evidenced by a metering device approved in writing by the Director of OC Parks. Said right to
8 exclude utility charges from gross receipts as set forth above, may be withdrawn at the sole
9 discretion of Director of OC Parks. Such determination shall be based on matters including, but
10 not limited to, willful misreading of the meters, errors, or charging boat slip tenants at a rate in
11 excess of the rate charged by the utility company. TENANT shall maintain adequate records
12 which shall include, but shall not be limited to, the maintaining of a monthly log to track individual
13 slip consumption and the then current utility charge from the local utility company, in a form
14 approved by the Auditor-Controller, to verify the utility charge for each boat slip tenant.
- 15 K. ATM Fees and Charges. Gross receipts for ATM transactions shall be the commission or
16 surcharge retained by TENANT.
- 17 L. Discount Coupons/Promotional Activities. Gross receipts for Discount Coupons/Promotional
18 Activities shall be the actual sales price received by TENANT.
- 19 M. Employee Meals. Gross Receipts for officer and employee meals, including meals, snacks and
20 drinks from vending machines provided solely for use by employees, the actual charge, if any,
21 paid by officers or employees for food and beverage while on duty.
- 22 N. Gratuities/Tips. Gross receipts for gratuities and tips accepted on behalf of employees or charged
23 by TENANT for the benefit of employees and paid to employees shall be excluded from gross
24 receipts.
- 25 O. Sales of Fixtures, Equipment or Property. Sales of fixtures, equipment or property which are not
26 TENANT's stock in trade shall be excluded from gross receipts.
- 27 P. Travel Agent Fees/Commissions. Gross receipts for hotel rooms shall not be reduced by fees or
28 commissions paid by TENANT to travel agents and reservation services.
- 29 Q. Other Purposes. The fair rental value of facilities used by TENANT or its employees for purposes
30 other than the business purposes for which the Premises are leased and the value of all
31 consideration other than cash, received by TENANT or his employees in exchange for items sold
32 or services rendered.

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

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

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13. RENT PAYMENT PROCEDURE (PMC6.1 S)

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

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

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

1. The total percentage rent computed for that portion of the accounting year ending with and including the last day of the preceding month [Item (3) above], less total rent previously paid for the accounting year [Item (4) above], or
2. One twelfth (1/12) of the annual minimum rent, multiplied by the number of months from the beginning of the accounting year to and including the preceding month, less total rent previously paid for the accounting year [Item (4) above].

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

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

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

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

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

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15. RECORDS AND ACCOUNTS (PMC8.1 S)

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

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

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

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

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

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

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

8 C. Financial Statements. Within ninety (90) days after the end of each accounting year, TENANT
9 shall at its own expense submit to Auditor-Controller a balance sheet and income statement
10 prepared by a Certified Public Accountant ("CPA") who is a member of the AICPA or the California
11 Society of CPAs in accordance with generally accepted accounting principles reflecting business
12 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
13 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
14 or from the Premises. The audit must be performed in accordance with Generally Accepted
Auditing Standards (GAAS) of the United States of America.

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

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

21 D. Audit. All TENANT's books of account and records and supporting source documents related to
22 this Lease or to business operations conducted within or from the Premises shall be made
23 available at one location within the limits of the County of Orange. COUNTY shall, through its
24 duly authorized agent or representatives, have the right to examine and audit said books of
25 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
26 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;

- 1 2. TENANT has failed to maintain true and complete books, records, accounts, and
2 supporting source documents in accordance with Section "A. Records" above. The
3 adequacy of records shall be determined at the sole discretion of the Director of Internal
4 Audit.

5 Otherwise, COUNTY shall bear the cost of said audit.

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

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

- 17 1. Perform such examinations, audit, and/or investigations itself or through agents or
18 employees as COUNTY and/or its auditors may deem appropriate to confirm the amount
19 of percentage rents payable by TENANT under this Lease, and any and all costs and/or
20 expenses incurred by COUNTY in connection therewith shall be promptly reimbursed to
21 COUNTY by TENANT upon demand.
- 22 2. Provide accounting services and/or a system for recording retail sales and charges,
23 including without limitation cash registers, for use by TENANT in business transactions
24 upon or from the Premises, and, at COUNTY's option, maintain personnel on the Premises
25 to observe and/or record such sales during TENANT's business hours, or from time to
26 time, all at TENANT's sole cost and expense. In such event, TENANT shall promptly
 reimburse COUNTY for any and all costs incurred by COUNTY in connection therewith.
3. Require that TENANT pay percentage rents based on COUNTY's best good faith estimate
 of TENANT's gross receipts from business operations conducted on or from the Premises
 and any such determination made by COUNTY shall be conclusive and binding upon
 TENANT.

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

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

1 To accomplish this, TENANT agrees to establish a Capital Replacement Fund in the amount of
 2 Two Hundred Thousand Dollars (\$200,000) per year, or more at TENANT's option, (hereinafter
 3 referred to as "CRF") to be used for replacement of furniture, fixtures, and equipment, and for
 4 capital repairs and renovations to improvements constructed within the Premises in accordance
 5 with the provisions of Clause 27 (INTERIM MODERNIZATION OF LEASEHOLD STRUCTURES)
 6 of this Lease. Notwithstanding the provisions of Clause 27, and subject to Director of OC Parks'
 7 prior written approval, TENANT may use the CRF prior to the benchmark years as stated in
 8 Clause 27 in the event the CRF is used for replacement of furniture, fixtures, and equipment, and
 9 for capital repairs and renovations to improvements constructed within the Premises provided that
 10 (i) TENANT justifies the need to make such replacement, repairs or renovations prior to the
 11 Interim Modernization period described in Clause 27, 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 26.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 26.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 27, unless necessitated by normal wear and tear.

12 The annual CRF deposits shall be placed in an interest bearing account, and shall be
 13 distinguishable as TENANT's CRF. CRF deposits shall be due on or before July 31 of each year.
 14 The CRF Account may be held by TENANT's Secured Lender. In the event TENANT's Secured
 15 Lender is holding the CRF, TENANT shall not be relieved of any of its "interim modernization"
 obligations as described in Clause 27, in the event such Secured Lender refuses or delays in
 releasing the CRF to TENANT in a timely manner.

16 TENANT shall annually provide COUNTY with an itemized accounting of the CRF concurrently
 17 with submittal of its annual financial statements in accordance with the provisions of this
 18 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 33 (ASSIGNING, SUBLETTING AND ENCUMBERING) of this Lease.

- 19 G. Non-Performance. In addition to any other actions provided by Clause 15 (RECORDS AND
 20 ACCOUNTS) of this Lease liquidated damages may be assessed in accordance with the
 provisions of Clause 35 (LIQUIDATED DAMAGES) of this Lease.

21 16. SECURITY DEPOSIT (PMC9.2 N)

- 22 A. Security Deposit. During the term of this Lease and subject to the provisions for adjustment as
 23 provided hereinafter, TENANT shall provide COUNTY with a security deposit in the sum of Thirty
 Thousand Dollars (\$30,000) [\$52,500 as of March 1, 2009].
- 24 B. Revision of Security Deposit. On January 1, 2015, and every five (5) years thereafter,
 25 concurrently with each revision of minimum annual rent pursuant to Clause 10.A (Revision of
 Minimum Annual Rent) of this Lease, the security deposit to be provided by TENANT shall be
 26 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

1 Statistics of the U.S. Department of Labor, or any replacement index published thereto. Each
 2 adjustment shall be calculated by the following formula, then rounded upward to the nearest one
 hundred dollars:

$$3 \quad X = \$30,000 \times \frac{Y}{Z}$$

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 5 X = Adjusted security deposit

6 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.

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

8 In no event shall the amount of the security deposit be reduced. All increased amounts in the
 9 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
 10 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
 11 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
 12 recognized and authoritative shall be substituted by COUNTY.

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

15 1. Cash

16 2. The assignment to County of Orange of a savings deposit held in a financial institution in
 17 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
 18 reflecting said savings deposit and a written assignment of said deposit to County of
 Orange, in a form approved by Director of OC Parks.

19 3. A Time Certificate of Deposit from a financial institution in Orange County wherein the
 20 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.

21 4. An instrument or instruments of credit from one or more financial institutions, subject to
 22 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
 23 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
 24 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.

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

3 Regardless of the form in which TENANT elects to make said security deposit, all or any portion of
4 the principal sum shall be available unconditionally to Director of OC Parks for correcting any
5 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.

6 Should TENANT elect to assign a savings deposit to COUNTY or provide a Time Certificate of
7 Deposit or provide an instrument of credit to fulfill the security deposit requirements of this Lease,
8 said assignment, certificate, or instrument shall have the effect of releasing the depository or
9 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.

10 In the event Director of OC Parks withdraws any or all of the security deposit as provided herein,
11 TENANT shall, within ten (10) days of any withdrawal by Director of OC Parks, replenish the
12 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.

13 The security deposit shall be rebated, reassigned, released, or endorsed to TENANT or order, is
14 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.

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

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

18 COUNTY and TENANT acknowledge that the following improvements constructed under the terms of the
19 Original Lease by TENANT on the Premises adequately accommodate those services and uses required,
20 and any other optional services and uses approved pursuant to Clause 5 (REQUIRED AND OPTIONAL
SERVICES AND USES) of this Lease.

21 A. Parcel A.

- 22 1. Boat Launching Facility (6 lanes)
 - 23 a. Boat Launch Parking (approximately 200 spaces)
 - 24 b. Wash Rack
- 25 2. Dry Boat Storage, 270 spaces (400 maximum)
- 26 3. Public Swim Beach
 - a. Day Use Parking, 800 (min.) (Minimum, includes boat launch parking)
 - b. Restrooms
 - c. Showers

- d. Picnic Tables
- e. Concession Facilities (i.e., snack stand, equipment rental, etc.)
4. Recreational Vehicle Park (RV Park), 382 spaces and 24 cottage spaces (444 maximum)
 - a. Support Facility (offices, convenience store, showers, laundry, swimming pool, recreation room, and group picnic area)
 - b. Sewage Dump Station
5. Restaurant (Back Bay Bistro)
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)

B. Parcel B.

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

C. Parcel C Without Hotel.

1. Interim Dry Boat and RV Storage (130-160 spaces)
2. Pedestrian Promenade (Public Walkway)

COUNTY acknowledges that the above listed improvements may not exceed the maximum allowable levels of development as set forth in the Settlement Agreement. Subject to the terms and conditions of Clause 20 (FUTURE CONSTRUCTION AND/OR ALTERATION BY TENANT) of this Lease, TENANT shall be permitted to add additional improvements up to the maximum levels of development as set forth in the Settlement Agreement or as the Settlement Agreement may be amended in the future. All 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. HOTEL DEVELOPMENT OPTION (PMO3.1 N)

COUNTY hereby grants to OPTIONEE an option ("~~Option~~") to enter into the New Lease (HA55B-153)}, ("~~Option~~"), which New Lease is attached hereto as "Exhibit F", in accordance with a Letter of Intent approved by COUNTY's Board of Supervisors on December 9, 2008. ~~At any time during the option term that OPTIONEE shall have performed all of the following conditions, OPTIONEE may exercise this option by giving COUNTY written notice of election to do so, accompanied by properly executed copies of the New Lease along with evidence of items A. and C., below, which evidence may take the form of a letter from TENANT transmitting a copy of the required Notice of Completion or Certificate of Occupancy (or~~

1 such other evidence from the City as is then typically provided) and confirming that TENANT is not then
 2 in default of any covenant, condition, restriction or reservation of this Lease:

3 ~~A. Filing of a Notice of Completion. OPTIONEE shall file a Notice of Completion or obtain from City a
 4 Certificate of Occupancy (or such other evidence from the City as is then typically provided that
 5 improvements are completed and occupancy may occur) for the Family Inn improvements to be
 6 constructed by OPTIONEE as set forth in the Hotel Development Plans, as hereinafter defined.
 7 OPTIONEE shall provide to COUNTY copies of the Notice of Completion or Certificate of
 8 Occupancy (or such other evidence from the City).~~

9 ~~B. New Lease Fee. OPTIONEE shall pay to COUNTY a \$500,000 new lease fee.~~

10 ~~C. No Default. TENANT is not in default of any covenant, condition, restriction or reservation of this
 11 Lease.~~

12 Upon proper exercise of the option and confirmation that all conditions have been satisfied for the New
 13 Lease by OPTIONEE, as defined in this Clause, COUNTY shall execute the New Lease within ten (10)
 14 working days. If COUNTY determines within such ten (10) working days that any of the conditions set
 15 forth above have not been satisfied, COUNTY shall provide OPTIONEE written notice of such
 16 determination, in which case, OPTIONEE'S exercise of the Option shall remain effective and following
 17 performance of the unsatisfied condition, OPTIONEE may provide COUNTY written notice of such
 18 performance, and COUNTY shall confirm such performance and execute the New Lease within ten (10)
 19 working days. It is understood that the date of the New Lease shall be the date of execution of the New
 20 Lease by COUNTY, and that the term of the New Lease shall commence as of the first day of the first full
 21 calendar month following the date of execution of the New Lease by the COUNTY. Effective as of the
 22 commencement of the term of the New Lease upon the first day of the first full calendar month following
 23 the date of execution of the New Lease by the COUNTY, this Lease is hereby terminated.

24 The term of this Option shall be five (5) years and shall commence upon the date first written above. The
 25 term of this Option shall be extended in annual increments for an aggregate period not to exceed three
 26 (3) years upon receipt by the Director of OC Parks of a written notice of extension by OPTIONEE and
 approval by the Director of OC Parks, which approval shall not be unreasonably withheld as long as
 OPTIONEE or a subtenant of OPTIONEE is making reasonable efforts to obtain all necessary approvals
 for development and/or permits for construction of the Family Inn improvements or has commenced and
 is diligently pursuing to completion the construction of the same. In the event that completion of said
 improvements exceeds the term of this Option, as the same may have been extended in accordance with
 the preceding sentence, but construction of said improvements has been commenced, and OPTIONEE is
 diligently pursuing such construction to completion, the term shall be extended in annual increments for
 an aggregate period not to exceed an additional two (2) years. Such additional two (2) annual extensions
 shall be subject to prior written approval of the Director of OC Parks and verification of the conditions set
 forth in this paragraph.

27 ~~The term of this Option commenced as of the date of this Lease, and shall continue for a period ending
 28 _____, 2020. The term of this Option shall be extended in annual increments for an aggregate
 29 period not to exceed three (3) years provided OPTIONEE or a subtenant of OPTIONEE is making
 30 reasonable efforts to obtain all necessary approvals for development and/or permits for construction of
 31 the Family Inn improvements or has commenced and is diligently pursuing to completion the construction
 32 of the same, and provided OPTIONEE has provided the Director of OC Parks written notice of
 33 OPTIONEE'S election to extend the term of the Option, a minimum of thirty (30) days prior the expiration
 34 of the Option period then in effect. If so requested by the Director of OC Parks, OPTIONEE shall~~

1 promptly provide the Director of OC Parks, verification of the status of construction progress and
2 milestones set forth in this paragraph.

3 In the event that completion of said improvements exceeds the term of this Option, as such term may
4 have been extended in accordance with the preceding paragraph, but construction of said improvements
5 has been commenced, and OPTIONEE is diligently pursuing such construction to completion, the term of
6 the Option may, subject to approval of the Director of OC Parks, which approval shall not be
7 unreasonably withheld, be extended in annual increments for an aggregate period not to exceed two (2)
8 years, provided the Director of OC Parks has been provided with written notice of OPTIONEE'S election
9 to extend the term of the Option, a minimum of thirty (30) days prior to the expiration of the Option period
10 then in effect. If so requested by the Director of OC Parks as a condition of approval of such extension,
11 OPTIONEE shall promptly provide the Director of OC Parks, verification of the status of construction.

12 OPTIONEE may exercise this Option at any time during the Option term, as the same may be extended,
13 by giving the Director of OC Parks written notice of election to do so, accompanied by:

14 A. Two (2) copies of the New Lease properly executed by TENANT;

15 B. Evidence of the filing of a Notice of Completion for the Family Inn Improvements or a Certificate of
16 Occupancy for the Family Inn Improvements (or such other evidence from the City as is then typically
17 provided that the Family Inn improvements are completed and occupancy may occur) constructed by or
18 on behalf of OPTIONEE as set forth in the Hotel Development Plans;

19 C. A written statement from TENANT representing and warranting that to the best of TENANT'S
20 knowledge, TENANT is not then in default of any term of this Lease; and

21 D. A \$500,000 new lease fee ("New Lease Fee") in the form of a check made payable to the "County of
22 Orange."

23 Provided TENANT is not then in default of any term of this Lease, and OPTIONEE has met all OPTION
24 conditions required of OPTIONEE, as defined in this Clause, COUNTY shall execute the New Lease
25 within ten (10) working days following receipt of OPTIONEE'S notice electing to exercise the Option. If
26 the OC Parks Director reasonably determines that any of the Option conditions set forth in this Clause
27 have not been satisfied, the OC Parks Director shall within ten (10) days following receipt of
28 OPTIONEE'S notice electing to exercise the Option, provide OPTIONEE written notice of such unfulfilled
29 condition and shall return the New Lease Fee to TENANT, in which case, OPTIONEE'S notice electing to
30 exercise the Option shall be deemed null and void. Provided the term of the Option has not expired,
31 OPTIONEE may satisfy the outstanding condition and resubmit written notice electing to exercise the
32 Option, to the Director of OC Parks, along with the New Lease Fee; and if the Director of OC Parks
33 reasonably determines that all Option conditions have been met, COUNTY shall execute the New Lease
34 within ten (10) working days following receipt of such notice.

35 It is understood that the date of the New Lease shall be the date of execution of the New Lease by
36 COUNTY, and that the term of the New Lease shall commence as of the first day of the first full calendar
37 month following the date of execution of the New Lease by the COUNTY. Effective as of the
38 commencement of the term of the New Lease, this Lease shall terminate and TENANT agrees to execute
39 and record a mutual cancellation agreement or quitclaim sufficient to remove this Lease from Official
40 Records of Orange County, California.

1 OPTIONEE hereby acknowledges that one of the purposes of this Option is to afford OPTIONEE and
 2 COUNTY the opportunity to determine whether or not OPTIONEE is able to meet the various conditions
 3 of this Option and obtain the required approvals as set forth in this Lease. Several of those conditions
 4 involve obtaining review and approval from officers, employees or agents of COUNTY. Each of those
 5 reviews shall be conducted in an independent manner and nothing contained herein shall be deemed to
 6 limit the jurisdiction or authority otherwise possessed by said officers, employees or agents in the conduct
 7 of such review.

8 Nothing contained in this Lease shall be deemed to imply that said approval will be forthcoming, and the
 9 failure to issue any such approval or permit by any officer, employee or agent of COUNTY shall not be
 10 deemed in any manner a breach of this Lease, nor shall any such denial give rise to any claim, liability,
 11 obligation, or cause of action with respect to this Lease.

12 COUNTY agrees, through its Director of OC Parks to give its consent to any application by OPTIONEE
 13 with respect to any permits or approvals related to activities or improvements approved by COUNTY in
 14 accordance with this Lease which may be required by any governmental or regulatory agency.

15 No permit, approval, or consent given by COUNTY or its officers, employees, or agents, acting in its/their
 16 governmental capacity, shall affect or limit OPTIONEE's obligations under this Lease nor shall any
 17 approvals or consents given under this Lease by COUNTY be deemed approval as to compliance or
 18 conformance with applicable governmental codes, laws, rules, and/or regulations.

19 Notwithstanding any contrary provision of the New Lease, the identification of specified ancillary guest
 20 services specified in Clause 5.A.3.b of the New Lease is intended to identify the permitted ancillary guest
 21 services, which are subject to the prior written approval of the Director of OC Parks, by way of example,
 22 and shall not be construed to require that all such uses be provided in connection with the operation of
 23 the Family Inn. Concurrently with entering into the New Lease, the parties shall add the foregoing
 24 language (or substantially similar language) to Clause 5.A.3.b of the New Lease.

25 19. HOTEL DEVELOPMENT PLANS (N)

26 TENANT is proposing to sublease Parcel C for purposes of development of the Family Inn which
 27 development plans may include development of the Family Inn as two separate hotels, which combined
 28 shall not exceed 275 guest rooms, and which is contemplated to include certain amenities that will serve
 29 both hotels. COUNTY has no objection to the development of the Family Inn as one or two hotel
 30 structures. Development plans for the Family Inn on Parcel C shall conform generally with the guidelines
 31 set forth in the Design Criteria and Minimum Specifications for Construction at Newport Dunes Aquatic
 32 Park, attached hereto as "Exhibit C", and the Hotel Development Plans, attached hereto as "Exhibit E".
 33 Additionally, the Hotel Development Plans shall be subject to the following terms and conditions:

34 A. Plans and Specifications:

35 OPTIONEE shall submit to the Director of OC Parks "Plans and Specifications" for use of said
 36 Premises in accordance with requirements of this Lease. The Plans and Specifications shall be
 37 prepared by an architect licensed in the State of California or a registered civil engineer and shall
 38 include:

1. A detailed site plan of the Premises showing proposed improvements for the Premises. This plan shall show any existing and proposed easements affecting the Premises, ingress and egress to and from the Premises, parking, and location of all utilities;
2. Complete outline and specifications to cover all phases of the work;
3. A detailed cost estimate of the improvements;
4. A detailed estimate of the construction schedule for completion of the improvements.

Within sixty (60) days of submittal, the Director of OC Parks will approve, reject or comment as appropriate. If rejected, OPTIONEE will revise and re-submit the plans. The Director of OC Parks will then have thirty (30) days to approve, reject or comment on the revised plans, which approval shall not be unreasonably withheld.

B. Environmental Clearance/Planning Approval

Upon approval by the Director of OC Parks of the Plans and Specifications, OPTIONEE shall submit the plans to the City for environmental clearance. The City, at OPTIONEE's expense, if any, shall complete an Initial Study for the project and determine whether: 1) the project is exempt from the requirements of the California Environmental Quality Act ("CEQA"), 2) a Negative Declaration ("ND") is appropriate or 3) an Environmental Impact Report ("EIR") is required.

If an ND is determined to be appropriate, it shall be prepared and processed by the City of Newport Beach at OPTIONEE's expense.

If an EIR is required, the Notice of Preparation ("NOP") shall be prepared and processed by the City at OPTIONEE's expense. The OPTIONEE, at OPTIONEE's expense, will be responsible for obtaining an EIR; the City shall be responsible at OPTIONEE's expense for reviewing and processing the EIR.

C. Construction Contract Documents

Within two hundred seventy (270) days of: 1) the exemption being issued, 2) the end of the posting period for the ND or 3) the end of the public review period for the Draft EIR, OPTIONEE shall submit to the Director of OC Parks "Construction Contract Documents" and contractor's cost estimates for the improvements. "Construction Contract Documents" shall consist of the following:

1. Complete working drawings;
2. Complete specifications;
3. Construction contract form;
4. Construction schedule;
5. A detailed cost estimate of all improvements.

The Director of OC Parks will approve, rule, reject, or comment on the Construction Contract Documents within thirty (30) days of the day the Construction Contract Documents were submitted, which approval shall not be unreasonably withheld so long as the Construction Contract Documents is not materially different from the Plans and Specifications previously approved by the Director of OC Parks.

D. Plan Check

1 At the same time Construction Contract Documents are submitted in accordance with Clause
2 19.C, above, OPTIONEE will submit Construction Contract Documents to the City/Building
Department for plan check and pay such fees as required.

3 E. Corrections to Construction Contract Documents

4 After review of Construction Contract Documents as called for in Clauses 19.C and 19.D above,
5 OPTIONEE shall have completed all corrections and adjustments in construction contract
6 documents as required by the Director of OC Parks, the City of Newport Beach/Building
Department, and other concerned agencies, and shall have obtained the Director of OC Parks'
approval and appropriate permits for construction.

7 F. Additional Submittals to Director of OC Parks. OPTIONEE shall submit the following and obtain
8 approval from the Director of OC Parks:

- 9 1. Satisfactory evidence of OPTIONEE's ability to finance the cost to demolish existing
10 improvements and to construct development planned for Parcel C in accordance with the
11 requirements of this Lease. If OPTIONEE plans to hypothecate the leasehold or a portion
12 thereof as security for a loan, OPTIONEE shall submit all documents proposed in the loan
transaction along with a request and processing fees for COUNTY consent to the
13 proposed hypothecation. Such hypothecation documents shall be submitted in
14 accordance with Clause 33 (ASSIGNING, SUBLETTING, AND ENCUMBERING) of this
Lease.
- 15 2. Assurance of construction completion in accordance with Clause 21 (TENANT'S
16 ASSURANCE OF DEMOLITION AND CONSTRUCTION COMPLETION) of this Lease, or
17 a letter of intent to bond that is sufficient to assure COUNTY that a bond is forthcoming.
- 18 3. Evidence that the proposed development is in conformance with CEQA and with the
19 General Plan and Settlement Agreement from the City.
- 20 4. Evidence that the proposed development is in conformance with the CDP as provided in
21 Paragraph G, below.

22 G. California Coastal Commission. The development proposed by OPTIONEE for Parcel C will be
23 independently reviewed for consistency and compliance with the approved CDP prepared for
24 Newport Dunes and approved by the California Coastal Commission. OPTIONEE shall obtain
25 final approval of plans and specifications from the Director of the California Coastal Commission
26 (hereinafter referred to as the "Director of CCC") regarding compliance with all conditions and
requirements of the CDP. The approval and written determination of compliance shall be made
by Director of CCC and issued to the Director of OC Parks. Any proposed development that
deviates from the approved CDP may require an amendment to the CDP or a separate CDP.

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20. 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 as though originally stated herein. TENANT may, at any time and at its sole expense, install and place business fixtures and equipment within any building constructed by TENANT.
- B. Strict Compliance with Plans and Specifications. All improvements constructed by TENANT within the Premises shall be constructed in strict compliance with detailed plans and specifications approved by the Director of OC Parks, and issuance of a Certificate of Occupancy by the City (or such other equivalent as then typically provided) shall be deemed to confirm compliance so long as the working drawings submitted to the City and on the basis of which permits were issued were approved by the Director of OC Parks (with no material subsequent revisions not approved by the Director of OC Parks).
- C. City Review and Approval. Upon completion of improvements, any phase thereof, or any approved modification thereto, TENANT shall obtain from City and deliver to Director of OC Parks, a Certificate of Occupancy, Notice of Completion, or equivalent document which shall indicate that City has inspected and approved all of the improvements.
- D. Notice of Non-Responsibility. For any construction, COUNTY may record and post upon the Premises a "Notice of Non-Responsibility". There shall be no limitation to the number or times said Notice of Non-Responsibility may be posted by COUNTY.

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

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

- A. Completion bond issued to COUNTY as obligee.

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

3 C. Cash.

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

11 E. Any combination of the above.

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

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

21 22. MECHANICS LIENS OR STOP NOTICES (PMD4.1 N)

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

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

A. Record a valid Release of Lien, or

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

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

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

24 Within ninety (90) days following completion of any substantial improvement within the Premises,
25 TENANT shall furnish the Director of OC Parks a complete set of reproducibles and two sets of prints of
26

1 “As-Built” plans and a magnetic tape, disk or other storage device containing the “As-Built” plans in a form
 2 usable by COUNTY, to COUNTY’s satisfaction, on COUNTY’s computer aided mapping and design
 3 (CAD) equipment. CAD files are also to be converted to Acrobat Reader (*.pdf format), which shall be
 4 included on the disk or CD ROM. In addition, TENANT shall furnish the Director of OC Parks an itemized
 5 statement of the actual construction cost of such improvement. The statement of cost shall be sworn to
 6 and signed by TENANT or its responsible agent under penalty of perjury. TENANT must obtain the
 7 Director of OC Parks’ approval of “As-Built” plans, and the form and content of the itemized statement.

8 24. OWNERSHIP OF IMPROVEMENTS (PMD6.1 S)

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

17 25. UTILITIES (PME1.2 S)

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

21 26. MAINTENANCE OBLIGATIONS OF TENANT (PME2.1 N)

22 A. Maintenance and Repair. TENANT shall, to the satisfaction of Director of OC Parks, keep and
 23 maintain the Premises and all improvements, landscaping, installations, facilities or equipment
 24 (hereinafter referred to as “Improvements”) of any kind which may be erected, installed, or made
 25 thereon, in good condition and substantial repair. It shall be TENANT’s responsibility to take all
 26 steps necessary or appropriate to maintain said Improvements in such good standard of condition
 and repair which shall include the painting of equipment and structures. Maintenance and repair
 shall be in accordance with all applicable laws, rules ordinances and regulations of:

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

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

All workmanship and materials used in the maintenance, repair, restoration, or replacement of the
 Improvements shall be equal in quality, and durability of workmanship and materials of the

1 Improvements existing before the event giving rise to the work, except as expressly provided to
2 the contrary in this Lease.

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

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

15 TENANT shall no later than February 28, of each year, submit to Director of OC Parks, a report
16 outlining the actual work, cost and month each item of repair, replacement or renovation outlined
17 in the previous calendar year's Work Plan was completed. An explanation is to be given for each
18 item not completed. Upon written notice to TENANT, Director of OC Parks may, at Director of OC
19 Parks' sole discretion, require that any item of repair, replacement or renovation which was not
20 completed in accordance with the Work Plan, be completed within a reasonable timeframe
21 specified by Director of OC Parks. In the event TENANT fails to complete such outstanding item
22 of repair, replacement or renovation within the allotted timeframe, Director of OC Parks may, at
23 Director of OC Parks' option, make or cause such outstanding item of repair, replacement or
24 renovation to be made at TENANT's cost in accordance with the terms outlined in Clause 26.B
25 (COUNTY's Right to Repair) of this Lease.

26 B. COUNTY's Right to Repair. If TENANT fails to maintain or make repairs or replacements as
required herein, Director of OC Parks may notify TENANT in writing of said failure. Should
TENANT fail to correct the situation within three (3) days after receipt of written notice, or fail to
provide an action 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.

C. Regulations. TENANT shall at all times comply with all applicable laws, ordinances, and
regulations pertaining to health, building, safety, and fire prevention and shall furnish and keep
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.

If TENANT receives an inspection notice or a deficiency notice following an inspection by any
public or regulatory agency having jurisdiction, TENANT agrees to make any and all corrections in
the manner required immediately upon receipt of such notice. TENANT's failure to comply with

1 the provisions of this Clause shall constitute a serious breach of this Lease, and upon such failure
2 this Lease shall be in default and shall be subject to immediate termination.

3 27. INTERIM MODERNIZATION OF LEASEHOLD STRUCTURES (PSB2.1 N)

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

7 A major renovation and modernization program, to bring the exterior and interior of all structures on the
8 Premises up to competitive quality and prevailing standards for the uses authorized, must be scheduled
9 to occur and shall be completed between the twenty-fifth (25th) (2014) and the thirtieth (30th) (2019) year
10 of this Lease (the "Modernization Period").

11 The renovation and modernization undertaken by TENANT at that time must satisfy the Director of OC
12 Parks, that the improvement(s) on the Premises will, for the balance of the Lease term, retain
13 attractiveness as a recreational facility, remain structurally sound, and provide appropriate facilities for the
14 uses authorized, thus assuring both satisfactory service and income.

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

21 The complete modernization plan and implementation schedule will be submitted to and approved by
22 Director of OC Parks, before implementation and must be scheduled for completion no later than the
23 Modernization Period.

24 The reason for the renovation and modernization provision of this Lease is to assure that high quality
25 facilities compatible with the recreational needs of the public are maintained for the full lease term.
26 TENANT is required in Clause 15.F (Reserves for Replacement) of this Lease to establish a capital
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
condition for fulfilling the requirements to undertake the renovation and modernization program. All work
shall be done at TENANT's expense.

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

Any renovation and modernization work completed prior to the Modernization Period utilizing funds 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 27 (INTERIM MODERNIZATION
OF LEASEHOLD STRUCTURES) of this Lease.

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

2 A. Maintenance. Except as otherwise provided in Clause 28.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 28.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 D", attached hereto
 and by this reference made a part thereof, and in accordance with the procedures set forth
 in Clause 28.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 D as appropriate to facilitate public access to and use of the Premises.
 Subject to the initiation procedures of Clause 28.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 28.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 28.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 28.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 28.G, 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 28.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
 11 DRF. COUNTY's required contribution for 1997 shall be One Hundred and Twenty
 12 Thousand Dollars (\$120,000). COUNTY's required annual contribution thereafter shall be
 13 One Hundred Seventy-Seven Thousand Dollars (\$177,000), subject to adjustment as
 14 herein provided [\$252,200 as of January 1, 2009]. (COUNTY'S annual base contribution to
 the DRF for the purposes of the adjustment calculation set forth in paragraph 28.C.(2)b.
 shall be \$177,000.00). TENANT's required annual base contribution to the DRF shall be
 15 Thirty Thousand Dollars (\$30,000) [\$54,400 as of January 1, 2009], which is TENANT's
 16 maximum and total financial contribution toward maintenance dredging. The amount of
 17 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.

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

- 20 2. Adjustments to Dredging Reserve Fund Contributions. Both COUNTY's and TENANT's
 21 annual contributions to the DRF shall be automatically adjusted on January 1, 2015 and
 every five (5) years thereafter in proportion to changes in the Consumer Price Index for
 22 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.

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

$$10 X = \$177,000 \times \frac{Y}{Z}$$

11 X = Adjusted Contribution
 12 Y = Consumer Price Index for the month immediately preceding the month
 13 in which each adjustment is to become effective or for the most recent
 14 month for which a monthly index is available.
 15 Z = Consumer Price Index for the month November 1996

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

- 19
 20 3. Refund of Unallocated DRF Funds; TENANT Default. Upon expiration or earlier
 21 termination of this Lease any unallocated funds in the DRF shall revert to the COUNTY
 22 provided that the actual total cost of maintenance dredging over the term of this Lease
 23 exceeds the total amount of TENANT's contribution to the DRF over the term of this
 24 Lease. Except for TENANT's payments to the DRF as provided in Clause 28.D.3 below, if
 25 the total amount of TENANT's contribution to the DRF exceeds the actual total cost of
 26 maintenance dredging over the term of this Lease, then the amount by which TENANT's
 contribution to the DRF exceeds the actual total cost of maintenance dredging shall be
 paid to TENANT, up to the available balance in the 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 28.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.

1 D. TENANT's Performance of Dredging. If COUNTY has failed to commence dredging by a date
2 which is eighteen (18) months after the initiation of a dredging project as determined by the trigger
3 mechanism defined in Clause 28.E, below, (the "Dredging Commencement Trigger Date"),
4 TENANT shall concurrently provide written notice to COUNTY stating that unless COUNTY
5 commences said dredging by a date which is twenty-four (24) months after the Dredging
6 Commencement Trigger Date, TENANT shall have the right, but not the obligation, on sixty (60)
7 days prior written notice ("TENANT Dredging Date"), to undertake and fulfill the performance of
8 COUNTY's dredging project (hereinafter referred to as "TENANT Dredging"). Such undertaking of
9 COUNTY's dredging project by TENANT shall be without waiver by either party of any rights and
10 remedies available to said parties and shall be subject to the following terms, covenants and
11 conditions:
12

- 13 1. TENANT shall perform all TENANT Dredging in full compliance with all applicable laws.
- 14 2. If TENANT undertakes TENANT Dredging, then TENANT shall be entitled to
15 reimbursement from the DRF. To the extent more monies are deposited in the DRF during
16 TENANT's performance of TENANT Dredging such additional deposits shall be used as
17 needed to fund the TENANT Dredging. TENANT may charge all TENANT Dredging
18 related Direct Costs (as such term is defined in Clause 28.C hereof) against the DRF
19 provided that for purposes of TENANT Dredging, a Direct Cost shall include all Direct Cost
20 fees, charges and expenses incurred by TENANT's personnel or incurred as a result of
21 contracting out to third parties, but shall exclude any charge for TENANT's corporate or
22 other overhead rates.
- 23 3. To the extent the funds in the DRF are insufficient to reimburse TENANT for Direct Costs
24 incurred by TENANT due to the TENANT Dredging, then COUNTY shall deposit funds in
25 the DRF in an amount sufficient to reimburse TENANT for said Direct Costs. If COUNTY
26 fails to so fund said deficiency, then TENANT shall have the right (but not the obligation),
after sixty (60) days prior written notice to COUNTY, to pay the monthly rent provided
hereunder into the DRF, but only to the extent of said deficiency and without then being in
default in the performance of its rental obligations hereunder. Rent amounts so deposited
into the DRF shall be funded to TENANT in the same manner otherwise set forth in Clause
28.D.2 above. Upon the completion of the TENANT Dredging, after all Direct Costs have
been paid and any disputed charges have been fully resolved by means of the alternative
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 28, 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

1 undertake TENANT Dredging until COUNTY's time for performance, as extended by any
2 Allowable Delay, has expired as provided for hereinabove in this Clause 28.D.

- 3 6. To allow TENANT to perfect and effectuate its rights under this Clause 28.D, COUNTY
4 shall cause all permits and approvals for any dredging to be undertaken by COUNTY
5 under this Lease to be issued in the name of TENANT and COUNTY (as required by law
6 to permit TENANT to perform the dredging). Permits and approvals in the name of
7 COUNTY only shall be assignable by COUNTY to TENANT ("Assignable Permits"). As to
8 the Assignable Permits, COUNTY hereby irrevocably assigns the same to TENANT,
9 effective as of the TENANT Dredging Date. To the extent that TENANT is named as an
10 applicant or permittee in any such permit or approval, or application therefore, then
11 TENANT shall reasonably cooperate with COUNTY in causing the issuance/maintenance
12 of the same.

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

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

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

26 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.

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.

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.

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.

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

A. Standards of Operation

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

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

The ultimate purpose of this Lease is the complete and continuous public use of the Premises for the benefit of the public, and all facilities and services shall be made available to the public without discrimination.

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

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

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

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

The Santa Ana and San Diego Regional Water Quality Control Boards ("RWQCB") have issued permits which regulate stormwater and non-stormwater discharges (Stormwater permits) resulting

1 from areas owned and operated by the County of Orange and Orange County Flood Control
 2 District (collectively referred to as the COUNTY) including activities conducted under this Lease.
 3 The COUNTY and cities within Orange County have enacted water quality ordinances that
 4 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
 9 Maintenance Procedures and BMP Fact Sheets (the Model Maintenance Procedures and BMP
 10 Fact Sheets contained in the DAMP/LIP shall be referred to hereinafter collectively as “BMP Fact
 11 Sheets”) and contain pollution prevention and source control techniques to minimize the impact of
 12 those activities upon dry-weather urban runoff, stormwater runoff, and receiving water quality.

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

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

The COUNTY may enter the Premises and/or review TENANT records at any time to assure that
 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
 requirements of this section.

19 C. On-Site Management

- 20 1. Manager. TENANT shall employ a competent manager who shall be responsible for the
 21 day-to-day operation and level of maintenance, cleanliness, and general order for the
 22 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
 24 enforce compliance by TENANT’s agents, employees, subtenants, concessionaires, or
 25 licensees with the terms and conditions of this Lease and any and all rules and regulations
 26 adopted hereunder. TENANT expressly agrees that any notice herein required to be
 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
 effect as service upon TENANT. TENANT shall notify COUNTY in writing of the name of
 the Manager currently so employed as provided in Clause 39 (NOTICES) of this Lease.

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

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

10 D. Policy and Procedures to be Established by TENANT

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

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

- 16 a. TENANT shall at all times retain active, qualified, competent, and experienced
 17 personnel to supervise TENANT’s operation and to represent and act for TENANT.
 18 b. TENANT shall require its attendants and employees to be properly dressed, clean,
 19 courteous, efficient, and neat in appearance at all times. TENANT shall not employ
 20 any person(s) in or about the Premises who shall use offensive language or act in
 21 a loud, boisterous, or otherwise improper manner.
 22 c. TENANT shall maintain a close check over attendants and employees to ensure
 23 the maintenance of a high standard of service to the public. TENANT shall replace
 24 any employee whose conduct is detrimental to the best interests of the public.
 25 d. TENANT shall provide lifeguard services as further defined in Section E (Lifeguard
 26 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.
 g. TENANT shall establish an appropriate maintenance schedule for all public rest
 rooms on said Premises to be inspected for cleanliness and supplies several times
 each day and shall maintain the highest standards of cleanliness therein.

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

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

5 E. Lifeguard Services. During all periods that the lagoon and pool(s) are open to the public,
 6 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
 7 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.

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

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

11 30. DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS (PME4.1 S)

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

19 However, in the event that damage or destruction resulting in thirty percent (30%) of the improvements on
 the Premises being unsafe or unfit for their intended use as determined by Director of OC Parks occurs
 20 within five (5) years of the end of the term of this 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
 21 reconstruct said improvements.

22 31. CONDEMNATION (N)

23 A. Total Taking. If the entire Premises are taken for any public or quasi-public use under any statute
 by right of eminent domain, or by purchase by public authority in lieu thereof, this Lease shall
 24 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
 25 proceeds of the award shall be distributed in the following order of priority:

- 1 1. COUNTY shall receive that portion of the award which shall constitute compensation for
2 the value of its fee interest in the Premises as encumbered by this Lease;
- 3 2. TENANT shall be compensated for its interest in the Premises, including direct loss of
4 investment in improvements constructed on the Premises, the cost of removal of any
5 fixtures and equipment, and the loss of the economic benefit of TENANT's leasehold
6 estate, and;
- 7 3. The remainder of the award, if any, shall be divided equally between COUNTY and
8 TENANT.
- 9 B. Partial Taking. If any portion of the Premises is taken for any public or quasi-public use under,
10 any statute by right of eminent domain, or by purchase by public authority in lieu thereof, and if the
11 taking or purchase does not, in TENANT's reasonable judgment, substantially impair the
12 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
15 Premises taken bears to the total area of the Premises immediately prior to such taking;
16 and,
- 17 2. The net proceeds of the award shall be allocated in the following order of priority:
- 18 a. The payment of the costs of prompt restoration by TENANT, of the improvements
19 located on the Premises to substantially the same character and condition as prior
20 to such taking, to the extent physically possible;
- 21 b. Compensation to COUNTY for the value of its fee interest in the portion of the
22 Premises taken as encumbered by this Lease;
- 23 c. Compensation to TENANT for its interest in the portion of the Premises taken,
24 including without limitation, the value of the leasehold estate, direct loss of
25 investment in improvements constructed on the Premises, the cost of removal and
26 reinstallation of any fixtures and equipment, and the loss of the economic benefit of
 that portion of TENANT's leasehold estate; and
- d. The remainder of the award, if any, shall be divided equally between COUNTY and
 TENANT.

If any portion of the Premises is taken for any public or quasi-public use under any statute by right 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 the remainder of the Premises, or substantially impairs the operation of TENANT's business thereon, TENANT shall have the option of terminating this Lease without further liability hereunder. If TENANT so elects to terminate, it shall do so by written notice to COUNTY no later 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.

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

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

10 In the event, however, that any such taking on a temporary basis is a total taking and continues
11 for a period in excess of one (1) year, then TENANT shall have the right to terminate this Lease
12 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
17 formal service of legal process received by either COUNTY or TENANT, but also any
18 preliminary indication of such intent. Thereafter, COUNTY and TENANT shall keep each
19 other fully informed as to all aspects of such proceedings and/or negotiations.
- 20 2. COUNTY and TENANT shall each have the right to represent their respective interests in
21 each proceeding or negotiation with respect to a taking or intended taking and to make full
22 proof of their respective claims. No agreement, settlement, sale, or transfer to or with the
23 condemning authority shall be made without the consent of COUNTY and TENANT.
24 COUNTY and TENANT each agree to execute and deliver to the other any instruments
25 that may be required to effectuate or facilitate the provisions of this Lease relating to
26 condemnation.
3. A leasehold mortgagee shall have the right, at its own expense, to participate in any
proceedings involving a taking of the Premises. Leasehold mortgagees shall have the right
to receive proceeds otherwise payable to TENANT pursuant to Paragraph A and
Paragraph B above to be paid towards the satisfaction of any outstanding obligations
secured by a leasehold mortgage on TENANT's leasehold interest.

32. INSURANCE (PME5.1 S)

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

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

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

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

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

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

Qualified Insurer

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

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

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

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

<u>Coverages</u>	<u>Minimum Limits</u>
<p>5 <u>Builders Risk Insurance</u>. "All risks" builders 6 risk insurance, including vandalism and 7 malicious mischief, covering all materials and 8 equipment at the job site furnished under 9 contract, but excluding contractor's, sub- 10 contractor's and construction manager's tools 11 and equipment and property owned by 12 contractor or sub-contractor's employees. 13 (Only required when there is any demolition or 14 construction occurring on the Premises)</p> <p>15 <u>Commercial General Liability</u> including, but not 16 limited to, bodily injury, personal injury, 17 property damage liability, contractual liability, 18 products/completed operations liability, broad 19 form property damage liability, independent 20 contractors liability, liquor liability, owned and 21 non-owned watercraft liability, innkeepers 22 liability, garagekeepers legal liability, marina 23 operators liability including but not limited to 24 loss of or damage to watercraft, their motors 25 and trailers, or the property of others while in 26 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 connection with operation a. or b. above, and/or e. Fueling and miscellaneous servicing of a transient nature. <p>27 <u>Fire and Extended Coverage</u> including 28 contents and business income (applicable to 29 TENANT only).</p>	<p>Not less than 100% of the total estimated cost of the demolition and construction.</p> <p>\$10,000,000 combined single limit per occurrence.</p> <p>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.</p>

1	<u>Automobile Liability</u> including coverage of all owned, non-owned and hired vehicles.	\$10,000,000 combined single limit per occurrence.
2		
3	<u>Workers' Compensation</u> (if applicable)	Statutory
4	<u>Employers' Liability</u> (if applicable)	\$1,000,000 per occurrence.

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

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

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

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

13 All insurance policies required by this Lease shall give the County of Orange thirty (30) days notice in the 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:

16 SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE
 17 EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30
 18 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.~~

19 All insurance policies required by this Lease shall waive all rights of subrogation against the County of 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.

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

22 The TENANT is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Workers' Compensation or be self-insured in accordance with provisions of that code. The TENANT will comply with such provisions and shall furnish the 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.

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

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

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

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

17 33. ASSIGNING, SUBLETTING, AND ENCUMBERING (PME7.1 S)

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

26 Should COUNTY consent to any Encumbrance, such consent shall not constitute a waiver of any
of the terms, covenants, or conditions of this Lease or be construed as COUNTY'S consent to any
further Encumbrance. Such terms, covenants, or conditions shall apply to each and every
Encumbrance hereunder and shall be severally binding upon each and every party thereto. Any
document to mortgage, pledge, hypothecate, encumber, transfer, sublet, or assign the Premises
or any part thereof shall not be inconsistent with the provisions of this Lease; and in the event of
any such inconsistency, the provisions of this Lease shall control.

Notwithstanding the foregoing, COUNTY hereby confirms that it previously has consented to the
sublease of the Premises 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.

B. Personal Information to be Supplied COUNTY. TENANT shall supply Director of OC Parks with
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
otherwise encumber the Premises by reason of agreements made by TENANT.

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

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

24 D. Conditions of COUNTY Approval.

- 25 1. Subleases of five (5) years or less, assignments of subleases with a remaining term less
 26 than five (5) years, and assignment of stock shall be subject to the following procedures:
 - 27 a. Subleases for a period of five (5) years or less (hereinafter referred to as short-term
 28 subleases), assignment of subleases with a remaining term of five years or less, or
 29 assignment of stock as hereinbefore described shall not be subject to the
 30 requirement of prior approval by COUNTY. TENANT shall not, however, be
 31 precluded from requesting such prior approval.
 - 32 b. TENANT must notify COUNTY of all short-term subleases, assignment of
 33 subleases, or assignments of stock by providing Director of OC Parks with:
 - 34 (1) A copy of all documents relating thereto, and
 - 35 (2) A statement of all terms and conditions of said transaction, including the
 36 consideration therefor.
 - 37 c. Should TENANT choose not to obtain COUNTY's approval of short-term
 38 subleases, assignment of subleases, or assignment of stock, COUNTY reserves
 39 the right to disallow any unapproved short-term sublease, assignment of sublease,
 40 or assignment of stock if any of the following conditions prevail:

- 1 (1) TENANT, its successors, or assigns are in default in the terms of this Lease
2 at the time of execution of the short-term sublease or assignment of the
3 stock whether notice of default has or has not been given by COUNTY.
- 4 (2) Subtenant or assignee has not agreed in writing to keep, perform, and be
5 bound by all the terms, covenants, and conditions of this Lease.
- 6 (3) Subtenant's use is in conflict with the terms of this Lease.
- 7 (4) All terms, covenants, and conditions of Encumbrance, including the
8 consideration therefor of any and every kind, have not been revealed in
9 writing to COUNTY.
- 10 (5) Additions to or alteration of existing structures, or construction of new
11 structures by subtenant or that are required of TENANT as a result of the
12 short-term sublease, have not been approved by COUNTY and are not in
13 compliance with all government regulations and ordinances.
- 14 (6) If subtenant or assignee prove to be of undesirable character.

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

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

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

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

- (1) TENANT or any of his successors or assigns are in default in any term,
covenant, or condition of this Lease, whether notice of default has or has
not been given by COUNTY.
- (2) The prospective Encumbrancer has not agreed in writing to keep, perform,
and be bound by all the terms, covenants, and conditions of this Lease.
- (3) All the terms, covenants, and conditions of Encumbrance, including the
consideration therefore of any and every kind, have not been revealed in

1 writing to COUNTY. The Director of OC Parks shall be given a copy of any
2 or all appraisals made to determine the value of TENANT's interest.

- 3 (4) The construction required of TENANT as a condition of this Lease has not
4 been completed to the satisfaction of Director of OC Parks.
- 5 (5) TENANT must present evidence acceptable to the Director of OC Parks
6 that any proposed assignee has the necessary experience, organization,
7 and financial capabilities to fulfill the provisions of this Lease.
- 8 (6) The minimum rent has not been adjusted in accordance with Clause 10.A
9 (Revision of Minimum Annual Rent) of this Lease if applicable, provided
10 such adjustment shall be waived if the encumbrance holder obtains a
11 transfer of TENANT's leasehold interest at foreclosure sale pursuant to a
12 trust deed, by judicial foreclosure, or by an assignment in lieu of
13 foreclosure.
- 14 (7) The processing fee required by COUNTY and set forth below has not been
15 paid to COUNTY by delivery of said fee to Director of OC Parks.

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

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

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

- (1) Said trust deed and all rights acquired thereunder shall be subject to each
and all of the covenants, conditions, and restrictions set forth in this Lease
and to all rights and interests of COUNTY hereunder, except as herein
otherwise provided.
- (2) In the event of any conflict between the provisions of this Lease and the
provisions of any such trust deed, the provisions of this Lease shall control.
- (3) Upon and immediately after the recording of a trust deed affecting
TENANT's leasehold interest in the Premises, TENANT at TENANT's
expense shall cause to be recorded in the office of the Recorder, County of
Orange, California, a written request, executed and acknowledged by
Director of OC Parks, for a copy of any notice of default and of any notice of

1 sale under the trust deed as provided by the statutes of the State of
2 California relating thereto.

3 (4) At the time of requesting consent to a trust deed, TENANT shall furnish to
4 Director of OC Parks a complete copy of the trust deed and note to be
5 secured thereby, together with the name and address of the holder thereof.

6 (5) COUNTY agrees that it will not terminate this Lease because of a default or
7 breach on the part of TENANT if the Beneficiary under any trust deed to
8 which COUNTY has given its consent, within sixty (60) days after service of
9 written notice on the Beneficiary by COUNTY of its intention to terminate
10 this Lease for such default or breach, shall:

11 (a) Cure such default or breach if the same can be cured by the
12 payment or expenditure of money required to be paid under the
13 terms of this Lease; or if such default or breach is not curable,
14 cause the trustee under the trust deed to commence and thereafter
15 diligently pursue to completion steps and proceedings for the
16 exercise of the power of sale under and pursuant to the trust deed
17 in the manner provided by law; and

18 (b) Keep and perform all of the covenants and conditions of this Lease
19 requiring the payment or expenditure of money by TENANT until
20 such time as the leasehold shall be sold upon foreclosure pursuant
21 to the trust deed or shall be released or reconveyed thereunder;
22 provided, however, that if the Beneficiary shall fail or refuse to
23 comply with any or all of the conditions of this paragraph, then and
24 thereupon COUNTY shall be released from the covenant of
25 forbearance.

26 (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

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

(7) The amount of the principal indebtedness to be secured by the proposed
trust deed (together with the principal balances secured by any underlying

1 trust deeds encumbering TENANT's leasehold estate) shall not exceed
 2 eighty percent (80%) of the fair market value of TENANT's leasehold estate
 3 (which includes the value of existing and proposed improvements to or on
 4 the Premises) as determined by a qualified real estate appraiser, which
 5 appraiser and appraisal shall be subject to Director of OC Parks' approval,
 6 which approval shall not unreasonably be withheld. This provision,
 7 however, shall not prohibit the addition of accrued but unpaid interest to the
 8 principal balance secured by said deed of trust or the trust deed and
 9 beneficiary's advance of additional funds to protect the value of the security
 10 for its trust deed and/or do enforce its rights under its trust deed. Said
 11 appraisal shall include, without limitation:

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

23 Said appraisal shall be based on the uses then being made of the
 24 Premises, provided that if any portion of the Premises is then
 25 undeveloped, such portion shall be appraised for the highest and
 26 best use or uses for such portion permitted under this Lease.
 Notwithstanding the above, in the case of a construction loan, said
 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.

34. HAZARDOUS MATERIALS (PMF9.1 S)

- 27 A. Definition of Hazardous Materials. For purposes of this Lease, the term "Hazardous Material" or
 28 "Hazardous Materials" shall mean any hazardous or toxic substance, material, product, byproduct,
 29 or waste which is or shall become regulated by any governmental entity, including, without
 30 limitation, the COUNTY acting in its governmental capacity, the State of California or the United
 31 States government.
 32 B. Use of Hazardous Materials. TENANT or TENANT's employees, agents, independent contractors
 33 or invitees (collectively "TENANT Parties") shall not cause or permit any Hazardous Materials to
 34 be brought upon, stored, kept, used, generated, released into the environment or disposed of on,
 35 under, from or about the Premises (which for purposes of this clause shall include the subsurface
 36 soil and ground water). Notwithstanding the foregoing, TENANT may keep on or about the

1 Premises small quantities of Hazardous Materials that are used in the ordinary, customary, and
 2 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.

3 C. TENANT Obligations. If the presence of any Hazardous Materials on, under or about the
 4 Premises caused or permitted by TENANT or TENANT Parties results in (i) injury to any person,
 5 (ii) damage to or contamination of the Premises (or a portion thereof), or (iii) damage to or
 6 contamination of any real or personal property wherever situated, TENANT shall immediately
 7 notify the Director of OC PARKS of said damages, and/or contamination and/or injuries, and
 8 TENANT, at its sole cost and expense, shall promptly take all actions necessary or appropriate to
 9 return the Premises to the condition existing prior to the introduction of such Hazardous Materials
 10 to the Premises and to remedy or repair any such injury, damage, or contamination. Without
 11 limiting any other rights or remedies of COUNTY under this Lease, TENANT shall pay the cost of
 12 any cleanup, repair, or remedial work performed on, under or about the Premises as required by
 13 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.

14 D. Indemnification for Hazardous Materials. To the fullest extent permitted by law, TENANT hereby
 15 agrees to indemnify, hold harmless, protect and defend (with attorneys acceptable to COUNTY)
 16 COUNTY, its elected officials, officers, employees, agents and independent contractors from and
 17 against any and all liabilities, losses, damages (including, but not limited to, damages for the loss
 18 or restriction on use of rentable or usable space or any amenity of the Premises or damages
 19 arising from any adverse impact on marketing of the Premises), diminution in the value of the
 20 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.

21 35. LIQUIDATED DAMAGES (PSB5.1 N)

22 In addition to all other remedies available to COUNTY for violations or breaches of this Lease, COUNTY
 23 shall have the right to demand and TENANT agrees to pay liquidated damages in the sum of one two-
 24 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:

25 Lease Clause

26 Clause 5 REQUIRED AND OPTIONAL SERVICES AND USES

1 Clause 15 RECORDS AND ACCOUNTS

2 Clause 20 FUTURE CONSTRUCTION AND/OR ALTERATION BY TENANT

3 Clause 26 MAINTENANCE OBLIGATIONS OF TENANT

4 Clause 29 OPERATION OBLIGATIONS OF TENANT

5 Clause 32 INSURANCE

6 GENERAL CONDITIONS

7 Clause 4 REVIEW OF HOURS, PROCEDURES, AND PRICES

8
9 Such damages are, and will continue to be, impractical and extremely difficult to determine. Execution of
10 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.

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

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

14 TENANT shall provide a copy of this Lease including General Conditions to each of its subtenants,
15 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.

16 37. COUNTY'S FIRST REFUSAL RIGHT (PMF8.1 S)

17 TENANT grants to COUNTY the exclusive right at COUNTY's option to purchase TENANT' s leasehold
18 estate under this Lease upon the same terms and conditions and at the same price as any bona fide offer
19 for the purchase of said leasehold estate received by TENANT from any person or entity and which offer
20 to purchase TENANT desires to accept. Upon receipt of a bona fide offer which is acceptable to
21 TENANT, and each time any such offer is received, TENANT shall notify COUNTY in writing of the full
22 details of such offer, including price, terms, length of escrow, etc., and deliver to COUNTY copies of any
23 and all title reports, plans and specifications, rent rolls, subleases and any other documentation relating to
24 TENANT's leasehold estate theretofore delivered or made available to the offeror, whereupon COUNTY
25 shall have sixty (60) days from receipt in which to elect to exercise COUNTY's prior right to purchase.
26 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 33 (ASSIGNING, SUBLETTING, AND ENCUMBERING) of this Lease and upon all

1 of the terms and provisions of this Lease including without limitation the provisions of this Clause which
2 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.

3 38. CHILD SUPPORT ENFORCEMENT REQUIREMENTS (PMF6.12 S)

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

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

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

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

22 39. NOTICES (PMF8.1 S)

23 All notices pursuant to this Lease or required by law shall be validly given if addressed as set forth below
24 or as either party may hereafter designate by written notice and personally delivered or deposited in the
25 United States mail, duly registered or certified, return receipt requested, postage prepaid. If any notice is
26 sent by registered or certified mail, as aforesaid, the same shall be deemed to have been served or
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.

27 TO: COUNTY

TO: TENANT

28 County of Orange
29 OC Community Resources
30 Orange County Parks
31 13042 Old Irvine Blvd.
32 Irvine, CA 92602

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

1 Attn: Director, Orange County Parks

and

2 Newport Dunes Marina, LLC
3 5150 Overland Avenue
Culver City, CA 90230

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

6 40. ATTACHMENTS TO LEASE (PMF11.1 S)

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

- 8 I. GENERAL CONDITIONS Clauses 1 through 31
- 9 II. EXHIBIT A – Legal Description
- 10 III. EXHIBIT B – Parcel Map
- 11 IV. EXHIBIT C – Design Criteria and Minimum Specifications for Construction at Newport Dunes
Aquatic Park
- 12 V. EXHIBIT D – Design Depths and Monitoring Station Locations
- 13 VI. Revised EXHIBIT E – Hotel Development Plans
- 14 VII. EXHIBIT F – New Lease (HA55B-153)

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

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TENANT

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

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

By: _____
Herbert M. Gelfand
Chairman of the Board

APPROVED AS TO FORM:
County Counsel

By: _____
Date _____

Newport Dunes Marina, LLC,
a California limited liability company

By: JG Group GP, LLC,
a California limited liability company

By: _____
Jona Goldrich, Manager

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

COUNTY

County of Orange

ATTEST:

Darlene Bloom
Clerk of the Board of Supervisors
Orange County, California

By: _____
Chair, Board of Supervisors

I. GENERAL CONDITIONS

1. TIME (PMG1.2S)

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.

2. SIGNS (PMG2.2 S)

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.

3. PERMITS AND LICENSES (PMG3.2 S)

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.

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

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.

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.

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:

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.
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.
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.

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 adversity
2 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 right 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 statue 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 Public Records Act (Government Code Section 6250, et seq.) as now
26 in 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 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.

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

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

8 27. QUIET ENJOYMENT (PSB11.1 N)

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

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

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

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

23 In the event COUNTY serves notice to TENANT that a portion of the slips are to be used for transient
24 berthing (not to exceed 5%), TENANT will be relieved of the obligation to fill the transient slips from the
25 above mentioned register. However, each person on the register will maintain his position with regard to
26 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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