

CONCESSION LEASE AGREEMENT  
FOR MOCCASIN POINT RECREATION AREA, DON PEDRO PROJECT  
LOCATED IN  
TUOLUMNE COUNTY, CALIFORNIA

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CONCESSION LEASE AGREEMENT  
FOR MOCCASIN POINT RECREATION AREA, DON PEDRO PROJECT  
LOCATED IN  
TUOLUMNE COUNTY, CALIFORNIA

THIS AGREEMENT ("Agreement"), entered into in Stanislaus County, California, and made and executed in triplicate on March 25, 1997, by and between the TURLOCK IRRIGATION DISTRICT and the MODESTO IRRIGATION DISTRICT, hereinafter referred to collectively as the DON PEDRO RECREATION AGENCY or "Agency" and MOCCASIN POINT MARINA, a Limited Liability Company, hereinafter referred to as "Concessionaire".

1. LEASE TERMS.

1-1. DESCRIPTION OF CONCESSION AREA.

1-1.01. Grant to Concessionaire. Agency grants to Concessionaire the right to develop, operate, and maintain for the convenience and safety of the public the concession area shown in Exhibits A, B, and C which are attached hereto and incorporated herein by reference.

a. Moccasin Point Location: The concession shall be located at the Moccasin Point location, described in Exhibit A, so long as the lake level remains at or above a sufficient level for the concession to operate at the standards required by this Agreement.

b. Jacksonville (Harney Lane) Location: At such periods when the lake level drops below a sufficient level for the concession to operate at the standards required by this Agreement at the Moccasin Point location, the Concessionaire's floating improvements shall be moved to a temporary location in the vicinity of Jacksonville, described in Exhibit B.

c. Six Bit Gulch Location: At such periods when the lake level drops below a sufficient level for the concession to operate at the standards required by this Agreement at the Jacksonville location, the Concessionaire's floating improvements shall be moved to a temporary location in the vicinity of Six Bit Gulch, described in Exhibit C.

d. Lowest Water Level Location: If the lake level should drop below the Six Bit Gulch area rendering it unusable, the Concessionaire would be permitted to move the installation to a location approved by the Agency as would be necessary to maintain protective buoyancy, solely to protect the facilities and then only for the duration of such low levels.

e. The temporary locations at Jacksonville, Six Bit Gulch, and the lowest water level location shall be deemed to be within the concession area only when used by Concessionaire. All costs associated with moving the marina to and from the temporary sites shall be borne solely by Concessionaire. Agency has no obligation to assist with moving the marina. As provided in Section 3-4.02a, Concessionaire is required to construct and maintain roads and safe and convenient access to Jacksonville marina facilities at all time and at Concessionaire's expense. To the extent that the Agency has existing legal ownership or right-of-ways access to the Jacksonville location from the nearest public roads, Concessionaire may use such access for any required Concessionaire roads. It is not anticipated that Concessionaire would have land access to the other two temporary locations.

f. Concessionaire acknowledges that the primary purpose of Don Pedro Lake waters are for irrigation and power generation. Agency has no obligation to maintain the water at any particular level nor to consider the interests of the Concessionaire when altering the water level.

1-1.02. Exclusive Concession Rights. Concessionaire shall have the exclusive use of the property within the concession area for the authorized concession activities set forth herein.

## 1-2. TERM.

1-2.01. Term of Agreement. The term of this Agreement shall be for a period of thirty (30) years, commencing on the first day of the month following final Agency approval, and only so long as the Don Pedro Project continues to be licensed to the Districts by the Federal Energy Regulatory Commission. The current Don Pedro Project License is scheduled to terminate in the year 2016.

1-2.02. Option to Extend Term. Concessionaire is given the option to extend the term for a period of ten (10) years, so long as the Don Pedro Project continues to be licensed to the Districts by the Federal Energy Regulatory Commission, upon such conditions as may be mutually agreed upon by the parties by giving written notice of exercise of the option to Agency at least six (6) months but not more than five (5) years before the expiration of the term.

1-2.03. Concessionaire Unable to Operate. In the event Concessionaire believes it is unable to feasibly operate its business as set forth herein due to government control, restriction, or failure to have use of the necessary ancillary facilities, such as, but not limited to, adequate utilities, waste disposal, ground access, or use of products required for business operations, the Parties agree to negotiate



appropriate amendments to this Agreement. If the Parties fail to reach an agreement, the Parties agree to arbitrate under section 1-16 of this Agreement with the intent to make the operation economically feasible.

1-3. COMPENSATION. Concessionaire shall pay to the Agency the sum of ONE HUNDRED TEN THOUSAND (\$110,000.00) for the privilege of developing and operating the Moccasin Point Marina and acquisition of title to the existing marina facilities owned by Agency. This sum shall be paid in one installment of ONE HUNDRED THOUSAND DOLLARS (\$100,000) on or before April 1, 1997, with the additional TEN THOUSAND DOLLARS (\$10,000) to be obtained by the Agency through cashing the bid bond (check number 4500 drawn on Bank of America account number 122101706) which the Concessionaire has previously provided to the Agency. Concessionaire agrees to waive the conditions placed on the bid bond regarding refunding of the bond.

1-4. PURCHASE OF FACILITIES ON AS IS BASIS. Concessionaire has had adequate opportunity to and has performed a thorough inspection and investigation of the facilities referenced in section 1-3, above, and Exhibits A, B, and C attached hereto, prior to purchase. Concessionaire agrees that purchase of such facilities is on an AS IS basis. Agency makes no warranty whatsoever, either express or implied, as to the condition or suitability of such facilities.

#### 1-5. CONCESSION FEE.

##### 1-5.01. Concession Fee Rate.

a. Concessionaire shall pay to Agency a sum equal to five percent (5%) of Concessionaire's annual Gross Receipts as defined in section 1-5.03, made from or upon the concession area during each concession year. If the Concessionaire moves the marina to the Jacksonville location in accordance with section 1-1.01.b of this Agreement, the concession fee shall be reduced to four percent (4%) while the marina is at that location. If the Concessionaire moves the marina to the Six Bit Gulch location in accordance with section 1-1.01.c of this Agreement, the concession fee shall be reduced to two percent (2%) while the marina is at that location.

b. The concession fee shall be computed each concession fee period. On or before the last day of the calendar month immediately following the close of each monthly concession fee period, Concessionaire shall pay to Agency the amount computed as the concession fee percentage of Concessionaire's Gross Receipts during the concession fee period.

c. Within sixty (60) days after the end of each concession year, Agency shall determine the amount of concession fees based on the Gross Receipts of Concessionaire during the concession year and the sums paid to Agency as concession fees for the concession year. If Concessionaire has paid to Agency an amount of concession fees greater than the concession fees it is in fact obligated to pay for the concession year as determined in this paragraph, the excess so determined shall be applied against the next concession fees due to Agency, except that if any unused excess exists at the expiration or termination of the term, the sum of the unused excess shall be paid by Agency to Concessionaire. If Concessionaire has paid to Agency an amount of concession fees less than Concessionaire is required to pay, Concessionaire shall immediately pay the difference to Agency.

d. Payments to Agency shall be made to the order of the Turlock Irrigation District, P. O. Box 949, Turlock, California 95381, or its designated successor.

#### 1-5.02. Concession Fee Period; Accounting Periods Defined.

a. The concession fee period shall be monthly. The last concession fee period shall end on the date the term expires or terminates.

b. A "concession year" is a calendar year, except that the first concession year shall commence on the date the term commences and last concession year shall end on the date the term expires or terminates.

c. "Monthly" concession periods are calendar months within each concession year, except that the first monthly rent period shall commence on the date the term commences and the last monthly concession period shall end on the date the term expires or terminates.

#### 1-5.03. Gross Receipts Defined.

a. "Gross Receipts" of Concessionaire means the gross selling price of all merchandise or services sold, leased, licensed, or delivered in or from the concession area or within the Don Pedro Project boundaries by Concessionaire whether for cash, property, or any other thing of value, or on credit (whether collected or not), including the gross amount received by reason of orders taken within the concession area although filled elsewhere, and whether made by Concessionaire personnel or vending machines. Any transaction on an installment basis, including, without limitation, any "lay-away sale or like transaction, or otherwise involving the extension of credit, shall be treated as a sale for the full price at time of transaction, irrespective of the time of payment or

when title passes. Gross Receipts also shall include any sums that Concessionaire receives from pay telephones, stamp machines, music machines, or amusement machines permitted by Agency.

b. Gross Receipts shall not include, or if included there shall be deducted (but only to the extent they have been included), the following:

(1) The selling price of all merchandise returned by customers and accepted for full credit, or the amount of discounts, refunds, and allowances made on such merchandise.

(2) Sales and use taxes, so-called luxury taxes, consumers' excise taxes, Gross Receipts taxes, state gasoline taxes, and other similar taxes now or in the future imposed on the sale of merchandise or services, but only if such taxes are added to the selling price, separately stated, collected separately from the selling price of merchandise or services, and collected from customers.

(3) Any sum paid to the State of California representing proceeds from the sale of hunting and fishing licenses. Any commissions or fees received by Concessionaire for selling such licenses are included in Gross Receipts.

#### 1-5.04. Statement of Gross Receipts.

a. Concessionaire shall furnish to Agency a statement of Concessionaire's Gross Receipts in the format specified by the Agency within thirty (30) days after the end of each monthly concession fee period, and an annual statement of Gross Receipts within sixty (60) days after the end of each concession year. Each statement shall be signed and certified to be correct by Concessionaire or its authorized representative, and if Concessionaire is a corporation the statement shall be signed and certified to be correct by an officer of Concessionaire.

b. Concessionaire shall keep at the Concessionaire's home office in Tempe, Arizona, full and accurate books of account, records, cash receipts, and other pertinent data showing its Gross Receipts. Concessionaire shall install and maintain at its own expense accurate receipt-printing cash registers as may be deemed necessary by Agency. Such cash registers shall use and contain continuous registering tape. Such books of account, records, cash receipts, and other pertinent data shall be kept for the most recent seven years up until one year after the expiration or termination of this Agreement. The receipt by Agency of any statement, or any payment of concession fees for any period, shall not bind Agency as to the correctness of the statement or the payment.

c. Agency shall be entitled during the term and within one (1) year after expiration or termination of this lease to inspect and examine all Concessionaire's books of account, records, cash receipts, and other pertinent data. Concessionaire shall cooperate fully with Agency in making any such inspection. Agency shall also be entitled, once during each concession year and once after expiration or termination of this Agreement, to an independent audit of Concessionaire's books of account, records, cash receipts, and other pertinent data by a certified public accountant to be designated by Agency. The audit shall be conducted during usual business hours at Concessionaire's home office in Tempe, Arizona. If the audit shows that there is a deficiency in the payment of any concession fee, the deficiency shall become immediately due and payable. The costs of the audit shall be paid by Agency unless the audit shows that Concessionaire understated Gross Receipts by more than three and one half percent (3.5%) in any concession year, in which case Concessionaire shall pay all Agency's costs of the audit.

1-6. TAXES. Concessionaire agrees to pay all lawful taxes, assessments or charges which at any time may be levied by the State, Tuolumne County or any other tax or assessment levying body upon any interest in this contract or any possessory right which Concessionaire may have in or to the concession area covered hereby or the improvements thereon by reason of its use or occupancy thereof or otherwise as well as all taxes, assessments, and charges on goods, merchandise, fixtures, appliances, equipment and property owned by it in or about the concession area.

#### 1-7. INDEMNITY; INSURANCE; WAIVER OF CLAIMS.

##### 1-7.01. Indemnification and Hold Harmless.

Concessionaire agrees to indemnify, defend and hold harmless Agency, its governing board and its members, their directors, officers, employees, agents and representatives, and each of them, from and against any and all liabilities [actual or threatened], claims, actions, judgments, orders, damages [including, without limitation, foreseeable and unforeseeable consequential damages], costs, expenses, fines, penalties, and losses [including, without limitation, sums paid in settlement of claims], and all consultants, experts, and legal fees and expenses [including, without limitation, all investigative costs] and all other losses or damages of any kind [including, without limitation, liability resulting from any injury or death of persons or damage to property of Concessionaire or any other person or to natural resources] to the extent such liabilities, claims, actions, judgments, orders, damages, costs, expenses, fines, penalties, and losses are attributable to Concessionaire's actions or failure to act.

Upon identifying any matter or incident to which this indemnity may apply or receiving a notice or claim from any third party of such matter or incident, Concessionaire shall notify Agency in writing of such matter or incident within twenty days.

Concessionaire's obligation to indemnify shall survive the expiration or termination of this Agreement. Concessionaire's covenants to indemnify Agency are not intended to and shall not be interpreted in any manner that limits Concessionaire's insurance obligations nor the obligations of any insurance carrier under the policies required to be carried by this Agreement.

#### 1-7.02. Insurance.

Concessionaire shall at Concessionaire's sole cost and expense, without limiting any of its other obligations or liabilities, maintain in effect at all times after the execution of this Agreement not less than the following coverages and limits of insurance, which shall be maintained with insurers and under forms of policies satisfactory to Agency.

##### A. Workers' Compensation

Workers Compensation Insurance as required by the State of California including Employers Liability limits of not less than one million dollars (\$1,000,000) per occurrence.

##### B. Commercial General Liability or Comprehensive General Liability

Commercial General Liability or Comprehensive General Liability Insurance which shall include, but not necessarily be limited to, coverage for premises and operations, contractual liability, personal injury liability, products/completed operations for the term of the Agreement, broad form property damage and independent contractors, in an amount not less than one million dollars (\$1,000,000) per occurrence combined single limit for bodily injury and property damage, two million dollars (\$2,000,000) aggregate. Such insurance shall specifically insure the performance by Concessionaire of the indemnity agreement set forth herein.

##### C. Business Automobile

Business Automobile or Comprehensive Automobile Insurance including, as applicable, owned, non-owned, and hired motor vehicles, in an amount not less than one million dollars (\$1,000,000) per occurrence, combined single limit of

bodily injury and property damage. If applicable, coverage shall include U.S. Department of Transportation Form MCS-90 (or comparable form required by other agencies) providing pollution coverage for transportation of hazardous waste.

D. Umbrella or Excess Liability

Umbrella or Excess Liability Insurance in an amount not less than five million dollars (\$5,000,000) over and above the underlying limits with the Umbrella or Excess exclusions and conditions substantially similar to the underlying policies.

E. Fire Insurance

Fire insurance with extended coverage endorsements on all Concessionaire improvements in an amount equal to ninety percent (90%) of the full replacement cost and/or value thereof. The policy shall contain a replacement cost endorsement naming Concessionaire as the insured, provided, however, that if there is a lender on the security of the improvements so insured, the proceeds of any such policy or policies may be made payable to such lender. In either case, whether proceeds are paid to Concessionaire or to lender, the policy shall contain a special endorsement that such proceeds shall be used to repair or rebuild any Concessionaire improvements so damaged or destroyed.

F. Environmental Impairment Liability Insurance

Environmental Impairment Liability Insurance which shall include, but not necessarily be limited to, coverage for bodily injury, property damage, cost of defense, and on-site and off-site cleanup of Hazardous Materials and Substances, in an amount not less than one million dollars (\$1,000,000).

1-7.03. INSURANCE POLICY FORM.

All policies of insurance provided for herein shall be issued by insurance companies with a general policy holder rating of not less than A and a financial rating of not less than Class VIII as rated in the most current available "Best's Key Rating Guide," and shall be acceptable to the Agency. All such policies shall be issued in the name of Concessionaire with Agency named as an additional insured. All policies shall be for the mutual and joint benefit and protection of Agency and Concessionaire. All policies of insurance shall contain the following special endorsements:

1. "The Turlock Irrigation District and Modesto Irrigation District, the City and County of San Francisco, and Don Pedro Recreation Agency, their

governing boards, directors, officers, employees, agents and representatives are hereby declared to be additional insureds under the terms of this policy, both as to the activities of the Concessionaire and as to the activities of the said insureds as related to the concession activity described herein."

2. "This insurance shall be primary insurance as respects the interests of the additional insureds and any other insurance maintained by the additional insureds shall be excess and not contributing insurance with this insurance."

3. "This insurance policy shall not be terminated, canceled or coverage reduced without thirty (30) days prior written notice to the Agency. The Agency is not liable for the payment of premiums or assessments on this policy."

All policies of insurance shall also contain provisions or endorsements stating that such insurance applies to the liability assumed by Concessionaire under this Agreement, including without limitation that set forth in 1-7.01, Indemnification and Hold Harmless, and that such insurance applies separately to each insured against whom claim is made or suit is brought, except with regards to the limits of the insurer's liability.

No cancellation provision in any insurance policy shall be construed in derogation of the continuous duty of Concessionaire to furnish insurance during the term of this Agreement. Said policy or policies shall be underwritten to the satisfaction of Agency. Signed complete duplicate policies shall be submitted to Agency concurrently with the execution of this Agreement. Signed complete duplicate policies showing that such insurance coverage has been renewed or extended shall also be filed with Agency. A certificate of memorandum of insurance does not, for Agency purposes, constitute a signed complete duplicate. Executed copies of renewal policies or certificates thereof shall be delivered to Agency within thirty (30) days after the renewal of the term of each such policy. All policies shall contain a provision that Agency, although named as an additional insured, shall nevertheless be entitled to recovery under said policies for any loss occasioned to it, its servants, agents and employees. The policies shall contain no special limitation on the scope of protection afforded to Agency, its governing board, directors, officers, employees, agents or representatives, or any of them. Any failure with reporting provisions of the policies, including breaches or warranties, shall not affect the indemnity or other obligations of Concessionaire to the Agency under the terms of this Agreement.

Any deductible and/or self-insured retention must be declared to and approved by Agency. Agency reserves the option to: (1) require the Concessionaire to reduce or eliminate such deductible or self-insured retention as

to Agency, or (2) require Concessionaire to procure a bond guaranteeing the payment of any deductible or self-insured retention of losses, related investigations, claims administration and defense expenses.

The foregoing requirements as to the types, limits and Agency's approval of insurance coverages to be maintained by Concessionaire are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Concessionaire under the Agreement.

#### 1-7.04. Additional Insurance.

If Agency reasonably concludes, justified by the industry standards, that the amounts of coverage required by Paragraph 1-7.02 are no longer adequate, then Concessionaire shall increase or obtain the insurance coverage required by Agency. Concessionaire agrees that if Concessionaire fails to provide the insurance required with evidence thereof to Agency, then Agency, in addition to any other remedies, may obtain such insurance at Concessionaire's sole cost and expense and Concessionaire agrees to reimburse Agency for such insurance, within ten (10) days after Agency sends Concessionaire notice thereof.

1-7.05. Agency's Title to Real Property. Concessionaire acknowledges the jurisdiction and title of Agency to all roads leading to the lake and marina, and to the concession area, excepting removable improvements owned by Concessionaire, and Concessionaire agrees never to contest said title in any court or administrative proceeding.

#### 1-8. ENVIRONMENTAL COMPLIANCE.

1-8.01. Compliance with Environmental Laws. It is the intent of both Agency and Concessionaire, and Concessionaire hereby agrees, that Concessionaire shall at all times be responsible and liable for, and shall be in complete compliance with all governmental laws, ordinances, rules and regulations, licenses, permits, orders, approvals, plans, authorizations, and similar items, and all applicable judicial, administrative and regulatory decrees, judgments and orders (all collectively referred to herein as "laws"), present and future; relating to environmental protection, Environmental Matters, and Industrial Hygiene, directly or indirectly affecting the use, occupancy, enjoyment or operation of the concession area being used or having been used including the Moccasin, Jacksonville and Six Bit Gulch Locations ("Premises"). "Governmental" as used herein shall include, without limitation, federal, state, and local governments, and political subdivisions and agencies, departments, commissions, boards, bureaus and instrumentalities of the federal, state and local governments. "Hazardous Materials" as used herein shall include, without limitation, whether



now or subsequently listed in any Governmental listing or publication defining hazardous materials, common household items containing substances now or subsequently listed as a hazardous material or substance, chemicals, drugs, any materials used for laboratory analysis, nuclear and/or radioactive materials, toxic substances, Hazardous Substances ("Hazardous Substance" means any substance, material or waste [including petroleum and petroleum products] which is or becomes designated, classified or regulated as being "toxic" or "hazardous" or a "pollutant," or which is or becomes similarly designated, classified or regulated, under any federal, state or local law, regulation or ordinance), hazardous wastes, contaminated or polluting substances, materials or waste. "Environmental Matters" and "Industrial Hygiene" shall include, without limitation, any matter which affects the environment or which may affect the environment, the use of sophisticated electrical and/or mechanical equipment, chemical, electrical, radiological or nuclear processes, radiation, sonar and sound equipment, use of lasers, and laboratory analysis and materials. As between Concessionaire and Agency, Concessionaire shall be deemed to be (1) the person in control, (2) an operator of the Premises, and (3) the person in charge with respect to the Premises for purposes of reporting requirements under "The Comprehensive Environmental Response, Compensation and Liability Act of 1980" ("CERCLA") and as amended by the "Superfund Amendments and Reauthorization Act of 1986" ("SARA"), any subsequent amendments thereto, or replacement statutes or ordinances, any rules and regulations enacted with respect to CERCLA and SARA, and any state or local laws with respect to environmental protection, Environmental Matters, and Industrial Hygiene.

Concessionaire further agrees, at its sole expense, to procure, maintain in effect, and comply with all conditions of any and all permits, licenses, approvals, authorizations and similar items required by Governmental agencies for Concessionaire's use of the Premises. Concessionaire shall, prior to any use of the Premises affecting Industrial Hygiene or involving the use of Hazardous Materials or Substances, in, on or under the Premises, notify Agency of the intended use of such Hazardous Materials or Substances and provide Agency evidence of compliance with all Governmental agencies and laws pertaining to such use. Concessionaire shall in all respects handle, treat, deal with and manage any and all Hazardous Materials and Substances in, on, under or about the Premises in total conformity with all applicable Governmental laws, relating to Hazardous Materials and Substances, environmental protection, and Industrial Hygiene.

1-8.02. No Hazardous Materials or Substances on Premises. Except to the extent commonly and lawfully used in the day-to-day operation of the Premises, Concessionaire shall not cause, permit or suffer any Hazardous Materials or

Substances to be brought upon, treated, kept, stored, disposed of, discharged, released, produced, manufactured, generated, refined or used upon, about or beneath the Premises or any portion thereof by Concessionaire, its agents, employees, contractors, tenants or invitees, or any other person without the prior written consent of Agency. Any request by Concessionaire shall be in writing and shall demonstrate to the reasonable satisfaction of Agency that such Hazardous Materials or Substances are necessary to the business of Concessionaire and will be stored, used and disposed of in a manner that complies with all laws applicable to such Hazardous Materials and Substances. Such consent shall not be unreasonably withheld, but Agency shall in no case be obligated to consent to the presence of any Hazardous Materials or Substances which will increase the likelihood or magnitude of liability for environmental damages or to any treatment, storage or disposal of which requires a permit or variance under the Federal Resource Conservation and Recovery Act (42 U.S.C. section 6901 et seq.), or state analogues thereto, and Concessionaire shall in no case be obligated to execute any application for such a permit or variance.

1-8.03. Concessionaire's Duty to Monitor; Disposal of Oil and Batteries. Concessionaire agrees to monitor the Concession Area to ensure compliance with environmental laws. Concessionaire shall, at its own cost, provide and maintain used oil recycling and battery disposal facilities.

1-8.04. Notice to Agency. Concessionaire shall not take any remedial action in response to the presence of Hazardous Materials or Substances in, on, under, or about the Premises, nor enter into any settlement agreement, consent decree or other compromise in respect to any investigations, claims or proceedings relating to Hazardous Materials or Substances in any way connected with the Premises, without first notifying Agency of Concessionaire's intention to do so and affording Agency a reasonable opportunity to appear, intervene or otherwise appropriately assert Agency's interest with respect thereto.

1-8.05. Environmental Assessment by Agency. At any time that Agency, in Agency's sole discretion, has reason to believe that any adverse environmental condition may be present on the Premises, Agency may conduct an environmental assessment of the Premises. If an adverse environmental condition is found on or about the Premises and is attributable to the acts or omissions of Concessionaire and/or its Authorized Representatives, and/or to events occurring within the Premises during the Term, Concessionaire shall immediately reimburse Agency for Agency's expenses in conducting the environmental assessment, in addition to Concessionaire's indemnification obligations with respect to the environmental condition as described in this Agreement.

1-8.06. Environmental Assessment by Concessionaire.

Upon execution of this Agreement and every two years from the anniversary date of this Agreement, Concessionaire shall at its sole cost and expense engage a licensed certified Environmental Consultant acceptable to Agency to perform an environmental assessment of the Premises. The Environmental Consultant shall prepare a report of its assessment and the report shall be submitted to Agency within ten (10) days of its completion. The initial assessment and report shall be completed not later than sixty (60) days after execution of this Agreement and each assessment and report thereafter shall be completed not later than sixty (60) days after each applicable anniversary date. Each assessment and report must adequately assess and report on the presence or non-existence of Hazardous Materials or Substances within the entire concession area or areas (if the Concessionaire has relocated to a temporary location as described in Section 1-1). In addition, Concessionaire shall perform, or have performed at its cost and expense, any environmental assessments or other investigation of the Premises that may be required by any Governmental agency.

1-8.07. Environmental Remediation. In the event an environmental assessment or investigation discloses any condition reasonably related to Concessionaire's use of the Premises that requires remediation, Concessionaire shall, at its sole cost and expense, promptly take all actions to remediate the Premises which are required by any Governmental agency or which are reasonably necessary to mitigate the condition or to allow full economic use of the Premises. Such actions shall include but not be limited to preparation of a remedial action plan by the Environmental Consultant designed to correct all conditions of the property. Any proposed remedial action plan shall be submitted for approval to all Governmental agencies that have jurisdiction and also submitted to Agency for Agency's approval, which approval shall not be unreasonably withheld.

If Agency disapproves of any proposed Remediation Plan, Agency shall provide a written disapproval within sixty (60) days of Concessionaire's submittal to Agency. In the event Agency reasonably disapproves of the proposed Remediation Plan, the Concessionaire shall submit a revised Remediation Plan to Agency for approval pursuant to the terms of this section.

Upon approval of the Remediation Plan by Agency and Governmental agencies with jurisdiction over the Premises, Concessionaire shall remediate contaminants in accordance with the Remediation Plan. In addition Concessionaire shall conduct any necessary cleanup operations to remove hazardous waste contaminants or other contaminants that are attributable to Concessionaire's use occupancy or enjoyment of the Premises (including cleanup of groundwater) to levels acceptable by all appropriate Governmental agencies, and provide Agency with written certification thereof. Agency's approval shall

not be deemed to create any obligation or responsibility on the part of Agency or to release Concessionaire from any obligation, responsibility or liability under this Agreement.

Concessionaire shall keep Agency fully informed of the status of all remedial actions taken and shall provide Agency with copies of all environmental tests, reports, correspondence and other documents delivered to and received from any Governmental agency, Environmental Consultant or other firm that views, inspects or performs work on site. Agency shall have the right to join and participate in, as a party if it so elects, any negotiations, settlements, remedial actions, legal proceedings or actions initiated in connection with any investigations, claims or proceedings concerning the Premises or the Remediation Plan; provided, however, that Concessionaire may amend the Remediation Plan without the approval of Agency in the event any Governmental agency requires modification of the Remediation Plan.

Concessionaire shall provide Agency with a copy of a written remediation report from the approved Environmental Consultant sent to the appropriate Governmental agency or agencies certifying that the levels of contamination are within acceptable levels. Concessionaire's final remediation report shall be submitted to Agency for approval in accordance with the procedures set forth for the Remediation Plan.

1-8.08. Additional Indemnity Regarding Hazardous Materials and Substances. In addition to the indemnity provisions of section 1-7.01, Agency and Concessionaire also agree that with regard to any and all matters that relate to Hazardous Materials and Substances on the Premises and remediation and cleanup by the Concessionaire, the following specific indemnity and notice provisions shall apply.

a. Concessionaire shall defend, indemnify and hold Agency, its governing board, its members, their directors, officers, employees, agents, and representatives, and each of them harmless from any and all liability [actual or threatened], claims, actions, administrative proceedings, judgments, orders, damages [including, without limitation, foreseeable and unforeseeable consequential damages], costs, expenses, , Governmental charges, fines, penalties and losses [including, without limitation, sums paid in settlement of claims] and all consultant, expert and legal fees and expenses [including those incurred in connection with any investigation of site conditions or any clean-up, remedial, removal or restoration work, whether of the property or Premises, or any other property], or any resulting damages, harm or injuries to the person or property of any third parties or to any natural resources, arising directly or indirectly out of or in connection with the violation of any laws relating to environmental

protection, Environmental Matters or Industrial Hygiene, or any provision of this section 1-8, or the use, transportation, generation, storage, and/or disposal of Hazardous Materials and Substances by Concessionaire in, on, under, or about the Premises during Concessionaire's occupancy of the Premises, and arising out of or in connection with any Hazardous Materials or Substances being present in, on or around any part of the Premises, or in the soil, groundwater or soil vapor on or under the Premises. This obligation shall include, without limitation, the cost of any required or necessary repair, cleanup, or detoxification and the preparation of any closure or other required plans whether such action is required or necessary prior to or following the termination of this Agreement. Neither the written consent by Agency to the use, generation, storage, or disposal of Hazardous Materials and Substances nor the strict compliance by Concessionaire with all laws and precautions pertaining to Hazardous Materials and Substances shall excuse Concessionaire from Concessionaire's obligation of indemnification pursuant to this section or section 1-7.01.

In addition, Concessionaire shall defend and indemnify and hold Agency, its governing board, its members, their directors, officers, employees, agents, and representatives, and each of them, harmless from any and all costs, expenses and damages, including clean up and remediation costs and expenses, fines and penalties arising from Concessionaire's failure to perform completely its clean up and remediation obligations set forth herein.

b. Agency and Concessionaire shall each promptly notify the other if either knows or has reason to know, suspects or believes that there may be any Hazardous Materials or Substances in, on, or around the Premises, or in the soil, groundwater or soil vapor on or under the Premises, or that Agency, Concessionaire or the Premises may be in violation of or subject to any threatened or pending investigation, inquiry, claim, proceeding, notice or order by any Governmental agency or any other person under any law pertaining to any Hazardous Materials or Substances.

1-8.09. Notwithstanding the amount, the Agency warrants to Concessionaire, to the best of its knowledge, that the areas subject to the lease and purchase are, at the time of execution of this lease, in conformity with all the rules, regulations and laws pertaining to hazardous materials or substances and the Agency agrees to hold Concessionaire harmless from all claims and liabilities relating to any such matters existing prior to the date of execution of this Agreement.

#### 1-9. PERFORMANCE BOND.

1-9.01. Performance Bond. So long as Concessionaire provides the Environmental Impairment Liability Insurance coverage as required by Section

1-7.02F, Concessionaire is not required to provide the Performance Bond under this Section 1-9.01. Otherwise, Concessionaire agrees to secure and maintain from the date the Concessionaire cannot comply with Section 1-7.02F and until such time as Agency has received certification from all appropriate Governmental agencies that remediation pursuant to section 1-8 has been completed, a performance bond or other form of surety in the amount of Two Hundred Thousand and NO/100 Dollars (\$200,000.00), which amount shall apply toward covering necessary clean up operations to remove hydrocarbons and/or Hazardous Materials or Substances that are directly attributable to Concessionaire's tenancy as described in section 1-8 herein. Such bond shall be in substantially the form prescribed by Agency and attached as Exhibit D to this Agreement and hereby incorporated by reference. Concessionaire may propose another form of surety which provides the same amount of security as a performance bond. Approval of such other form of surety shall be in the sole discretion of the Agency. Such bond or other form of surety shall be delivered to Agency not later than the date the Concessionaire can no longer comply with Section 1-7.02F, and maintained in Agency's possession at all times during the term of this Agreement. If Concessionaire has unreasonably delayed or failed to perform all required remediation provided for in the Remediation Plan as described in sections 1-8 and 1-14.02, Agency may redeem the performance bond or other form of surety. Notwithstanding this form of surety, the amount of such surety does not fix the Concessionaire's maximum financial responsibility for any cleanup that is required pursuant to sections 1-8 and 1-14.02.

#### 1-10. ASSIGNMENT AND SUBLEASE.

1-10.01 Agency Approval for Transfer or Assignment. Except as provided in section 1-10.02, no transfer or assignment by Concessionaire of this Agreement or any part thereof or interest therein, directly or indirectly, voluntarily or involuntarily, shall be made unless such transfer or assignment is first approved in writing by Agency. Agency approval shall not be unreasonably withheld. Should Concessionaire desire to enter into an assignment, Concessionaire shall request approval, in writing, at least sixty (60) days before the effective date of any such assignment, and provide the following:

- a. The full particulars of the proposed transaction, including its nature, effective date, terms and conditions, and copies of any offers, draft agreements, subleases, letters of commitment or intent, and other documents pertaining to such proposed transaction;
- b. A description of the identity, net worth, and previous business experience of the Assignee, including, without limitation, copies of Assignee's latest income, balance sheet and change-of-financial-position statements (with

accompanying notes and disclosures of all material changes thereto) in audited form, if available, and certified as accurate by Assignee;

c. Any further information requested by the Agency; and

d. A statement that Concessionaire intends to consummate the transaction if Agency grants approval.

1-10.02. Assignment of Improvements for Security Purposes. The Concessionaire's possessory interest in Concessionaire's improvements, for the purpose of affording security only, may be assigned, transferred or encumbered only with prior written approval of the Agency. Any document by which an interest is granted, subject to approval of Agency, shall affirm that the person acquiring that interest has been advised of the terms of this Agreement, and expressly agrees that upon termination of the interest of Concessionaire granted by this Agreement, its interest shall also be terminated.

1-10.03. Assignee as Tenant upon Termination. In the event of termination of this Agreement, Agency at its sole option, may elect to treat any assignee, sub-tenant, or holder of any interest conveyed by Concessionaire as Agency's tenant, subject to the terms and conditions of this Agreement that would be applicable but for the termination.

1-10.04. Indebtedness upon Concessionaire's Assets. No mortgage shall be executed, and no bonds or other evidence of interest in, or indebtedness upon the assets or proposed assets of Concessionaire shall be issued except for the purposes of installing, enlarging, or improving plant and equipment and extending facilities for the accommodation of the public, and then only upon prior authorization in writing in each case obtained from Agency. In the event of default on such mortgage or such other indebtedness or of another assignment, transfer or encumbrance, and in the event that the creditor thereof shall succeed to the possessory interest of Concessionaire in Concessionaire's improvement, then under these circumstances, operating rights and privileges shall be as outlined in this Agreement; however, the right of any person or persons to actually operate the said concession is subject to the approval of Agency.

#### 1-11. AGENCY'S RIGHT OF ENTRY.

1-11.01 Purposes of Entry. Agency and its authorized representatives, employees, and agents shall have the right to enter the concession area at any time for any of the following purposes:

a. To inspect, investigate, and survey the concession area, except that any inspection, investigation, or survey of any area which Concessionaire has locked shall only be conducted during Concessionaire's normal business hours.

b. To do any and all work of any nature necessary for the preservation, maintenance, and operation of the Don Pedro Recreation Area.

1-11.02. Notice of Entry. Agency may inspect, investigate, and survey the concession area without notice to the Concessionaire. Concessionaire shall be given reasonable notice when Agency intends to perform any work in the concession area that may impact the operation of the marina. Concessionaire shall adjust its operations such that the Agency's work may proceed expeditiously and Agency will conduct its activities within the concession area in a manner that will cause the least possible inconvenience, annoyance, or disturbance to Concessionaire.

1-11.03. No Liability for Agency Entry. Agency shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of Agency's entry into the concession area. However, Agency must use due diligence to protect the Concessionaire's interest and business during such entry.

#### 1-12. DEFAULT.

1-12.01. Concessionaire's Performance. Concessionaire's performance under this Agreement is of prime material consideration to the Agency.

1-12.02. Concessionaire's Default. The occurrence of any of the following shall constitute a default by Concessionaire as determined by the Agency in the Agency's sole discretion:

a. Failure to pay any concession fee when due, if the failure continues for five (5) days after registered notice has been given to Concessionaire.

b. Abandonment and vacation of concession area, consisting of failure to operate the concession for at least five (5) consecutive days when scheduled to do so.

c. Failure to perform any other provision of this Agreement if the failure to perform is not corrected within fifteen (15) days after registered notice has been given to Concessionaire, except that Concessionaire shall be considered to be in default if it fails to correct immediately any problem presenting a hazard or emergency of which it has knowledge. If the default cannot reasonably be



corrected within 15 days, Concessionaire shall not be in default if it commences to correct the default within the 15-day period and diligently and in good faith continues to correct the default.

d. Concessionaire becomes insolvent, makes an assignment for the benefit of creditors, institutes any proceedings under the Bankruptcy Act as the same now exists or under any amendment thereto which may hereafter be enacted, or under any other act relating to the subject of bankruptcy wherein Concessionaire seeks to be adjudicated a bankrupt, or to be discharged of its debts, or to effect a plan of liquidation, composition or reorganization, or an involuntary proceeding is filed against Concessionaire under any such bankruptcy laws. In any of these events, Concessionaire's interest in this Agreement shall not become an asset in any of such proceedings.

1-12.03. Agency's Remedies. Agency shall have the following remedies if Concessionaire commits a default. These remedies are not exclusive; they are cumulative and in addition to any remedies now or later allowed by law.

a. Termination of Agreement. Agency may terminate this Agreement, including Concessionaire's right to possession of the concession area. To this end, Concessionaire hereby irrevocably appoints the Agency as its agent to remove any and all persons or property within the concession area and place any such property in storage for the account of and at the expense of Concessionaire. Agency may re-let the concession area upon such terms and to whom it deems proper and Concessionaire shall be liable immediately to Agency for all costs Agency incurs in re-letting the concession area. However, Agency must use due diligence to not incur costs unreasonably.

b. Appointment of Receiver. Agency may have a receiver appointed to collect concession fees and conduct Concessionaire's business. Neither the filing of a petition for the appointment of a receiver nor the appointment itself shall constitute an election by Agency to terminate this Agreement.

c. Agency's Right to Cure Concessionaire's Default. Agency, during such time as Concessionaire is in default, may cure the default at Concessionaire's cost. If Agency at any time, by reason of Concessionaire's default, pays any sum or does any act that requires the payment of any sum (including payment of Agency's employees' salaries and related costs for work performed by them to cure the default), the sum paid by Agency shall be due immediately from Concessionaire to Agency at the time the sum is paid, and if paid at a later date shall bear interest at the rate of ten percent (10%) per annum from the date the sum is paid by Agency until Agency is reimbursed by Concessionaire. The sum, together with interest thereon, shall be in addition to any concession fees.

d. Interest on Unpaid Concession Fees. Concession fees not paid when due shall bear interest at the rate of .7974 percent per month or the maximum rate allowed by law, whichever is less, from the date due until paid.

1-12.04. Procedure for Termination of Agreement. If Agency elects to terminate this Agreement, as provided for in Sections 1-12.02 and 1-12.03, the following procedure shall be followed:

a. The decision to terminate shall be made by the Recreation Director of the Agency, pursuant to his or her authority to enforce the Rules and Regulations of the Agency.

b. If Concessionaire desires to appeal any such decision to terminate as made by the Recreation Director of the Agency, Concessionaire shall have the right to appeal to the Board of Control, pursuant to the duty of the Board of Control to act as an appeals review board on all appeals from Rules and Regulations enforcement actions by the Recreation Director.

c. If the Board of Control upholds any such termination made by the Recreation Director, and Concessionaire desires to appeal that decision by the Board of Control, Concessionaire shall submit the dispute between Concessionaire and Agency to mediation and complete the entire mediation process before resorting to court action. All mediation fees shall be divided equally between Concessionaire and Agency. Pursuant to Evidence Code Section 1152.5 all evidence and testimony offered in the course of mediation shall not be admissible in evidence or subject to discovery in any court action.

d. Before initiating any court action, Concessionaire must follow the requirements of this section. If Concessionaire fails to follow the provisions of this section before initiating a court action, it is hereby expressly agreed that any court action initiated in violation of this section shall be dismissed upon motion by the Agency pursuant to applicable statutes. Agency shall recover its attorneys' fees in defending the court action pursuant to this Agreement and as sanctions for bad faith litigation tactics pursuant to applicable statutes.

#### 1-13. CONFLICT OF INTEREST.

1-13.01. Warranty of Concessionaire. Concessionaire warrants and covenants that no official or employee of the Turlock Irrigation District, the Modesto Irrigation District or the City and County of San Francisco:

a. Has been employed or retained to solicit or aid in the procuring of this Agreement;

b. Will be employed in the performance of this Agreement without the immediate divulgence of such fact to Agency.

c. Shares in any personal advantage of this Agreement or its operations.

1-13.02. Incompatibility of Conflicting Employment. In the event Agency determines that the employment by Concessionaire of any official or employee of the Turlock Irrigation District, Modesto Irrigation District, or the City and County of San Francisco is not compatible with such official's or employee's duties to any of the above agencies, Concessionaire, upon request of Agency, shall terminate such employment immediately.

1-13.03. Rights of Agency. For violation of this section 1-13, Agency shall have the right both to terminate this Agreement and, in its discretion, to recover the full amount of any compensation paid to such official, employee, or business entity by the Concessionaire.

#### 1-14. SURRENDER OF CONCESSION AREA; PURCHASE OF IMPROVEMENTS BY AGENCY.

1-14.01. Surrender of Concession Area. Within ninety (90) days after the expiration or termination of this Agreement, Concessionaire shall surrender to Agency the concession area in good condition, except for ordinary wear and tear occurring after the last necessary maintenance performed by Concessionaire. Concessionaire shall remove all its personal property (including its trade fixtures) within the above stated time. Concessionaire shall perform all restoration within the above stated time made necessary by the removal of its personal property. All of its personal property shall be disposed of in a manner satisfactory to Agency. Should Concessionaire fail to remove or properly dispose of its personal property within the above stated time, Agency can elect to retain or dispose of that personal property at Concessionaire's expense.

1-14.02. Environmental Investigation and Remediation. Concessionaire shall upon termination of this Agreement at its sole cost and expense, engage a licensed/certified Environmental Consultant acceptable to Agency to perform an environmental investigation of the Premises. The environmental investigation shall, at a minimum, consist of those steps which are the normal and customary items done in an environmental investigation by qualified Environmental Consultants in similar circumstances. The results of such environmental

investigation must be provided to Agency, in writing, not later than sixty (60) days after termination of this Agreement.

In the event the environmental investigation discloses any condition reasonably related to Concessionaire's use of the Premises that requires remediation, Concessionaire shall have a remedial action plan ("Remediation Plan") prepared by the Environmental Consultant designed to correct all conditions of the Premises. Any proposed remedial action plan shall be submitted for their approval to all Governmental agencies that have jurisdiction and also submitted to Agency for Agency's approval, which approval shall not be unreasonably withheld.

If Agency disapproves of any proposed Remediation Plan, Agency shall provide a written disapproval within sixty (60) days of Concessionaire's submittal to Agency. In the event Agency reasonably disapproves of the proposed Remediation Plan, the Concessionaire shall submit a revised Remediation Plan to Agency for approval pursuant to the terms of this section.

Upon approval of the Remediation Plan by Agency and Governmental agencies with jurisdiction over the Premises, Concessionaire shall remediate contaminants in accordance with the Remediation Plan. In addition Concessionaire shall conduct any necessary cleanup operations to remove Hazardous Materials and Substances or other contaminants that are attributable to Concessionaire's occupancy of the Premises (including cleanup of groundwater) to levels acceptable by all appropriate Governmental agencies, and provide Agency with written certification thereof.

Concessionaire shall keep Agency fully informed of the status of all remedial actions taken and shall provide Agency with copies of all environmental tests, reports, correspondence to and from any Governmental agency and to and from any and all Environmental Consultants or firms that view, inspect or perform work on site. Agency shall have the right to join and participate in, as a party if it so elects, any negotiations, settlements, remedial actions, legal proceedings or actions initiated in connection with any claims concerning contamination resulting from Concessionaire's tenancy or the Remediation Plan; provided, however, that Concessionaire may amend the Remediation Plan without the approval of Agency in the event any Agency requires modification of the Remediation Plan.

Concessionaire's obligation to cleanup all Hazardous Materials and Substances resulting from its occupancy of the Premises shall be satisfied when (i) Concessionaire has provided Agency with a copy of a written remediation report from the approved Environmental Consultant sent to the appropriate

Governmental agency or agencies certifying that the levels of contamination are within acceptable levels and, (ii) the Agency approves Concessionaire's final remediation report in writing.

1-14.03. Purchase of Improvements by Agency upon Expiration or Termination of Agreement.

a. Upon expiration or termination of this Agreement, Concessionaire shall sell and Agency agrees to purchase the then existing floating marina buildings and docks, the dry storage building, the above ground fuel storage tank, the houseboat mooring lines, and any other improvements made at the fair market value of such improvements but without regard to the location value of the improvements and of concession lease.

b. The Concessionaire shall supply the Agency with an accurate inventory and documentation of all capital improvements made by Concessionaire and the initial costs thereof by January 1 of the year immediately following the date of this Agreement. Concessionaire shall update such inventory at least annually, by January 31 of each subsequent year. Not later than thirty (30) days before the expiration of this Agreement or not later than ten (10) days after any termination of this Agreement, any capital improvements not included on the most recent inventory shall not be provided to the Agency.

1-15. DURATION OF PUBLIC FACILITIES. By entering into this Agreement, Agency makes no representation, warranties, or stipulations as to the type, size, location, or duration of the public facilities to be maintained within the Don Pedro Recreation Area during the term of this Agreement.

1-16. DISPUTE RESOLUTION.

a. Unless otherwise specified in this Agreement, any dispute arising under this Agreement which is not disposed of by agreement shall be decided by the Recreation Director, who shall reduce his or her decision to writing and mail or otherwise furnish a copy thereof to Concessionaire.

b. The decision of the Recreation Director shall be final and conclusive unless, within 30 days from the date of receipt of the Recreation Director's decision, Concessionaire complies with the following:

(1) Concessionaire shall personally serve the Recreation Director with a demand for arbitration under the Arbitration Rules of the American Arbitration Association ("Rules") setting forth the nature of the dispute and the claim or relief sought (including the amount, if any)

The dispute shall be submitted to one (1) neutral arbitrator selected from the panels of arbitrators of the American Arbitration Association if Concessionaire and the Agency cannot mutually agree on a person to serve as the neutral arbitrator.

The Agency and Concessionaire agree that they will faithfully observe the Rules and will abide by and perform any award rendered by the neutral arbitrator and that a judgment of the court having jurisdiction may be entered on the award. Notwithstanding the Rules, discovery shall be permitted and the provisions of the California Code of Civil Procedure Section 1283.05 are incorporated herein by reference.

The arbitrator hearing shall be held in Sonora, California, unless the parties agree otherwise.

#### 1-17. WAIVER.

1-17.01. No Waiver if Delay or Omission. No delay or omission in the exercise of any right or remedy of Agency on any default by Concessionaire shall impair such a right or remedy or be construed as a waiver.

1-17.02. No Waiver by Acceptance of Concession Fee. The receipt and acceptance by Agency of any delinquent concession fee payment shall not constitute a waiver of any other default; it shall constitute only a waiver of timely payment for the particular concession fee payment involved.

1-17.03. Notice for Termination. Only written notice from Agency to Concessionaire shall constitute acceptance of the surrender of the concession area and accomplish a termination of the Agreement. No other act or conduct of Agency shall constitute an acceptance of the surrender of the concession area by Concessionaire before the expiration of the term. Acceptance by the Agency shall not be unreasonably withheld.

1-17.04. No Waiver for Consent or Approval. Agency's consent to or approval of any act by Concessionaire requiring Agency's consent or approval shall not be deemed to waive or render unnecessary Agency's consent to or approval of any subsequent act by Concessionaire.

1-17.05. Written Waiver Required. Any waiver by Agency of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

#### 1-18. NOTICE.

1-18.01. Written Notice Required. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party or any other person shall be (1) in writing and either served personally or sent by prepaid, registered first-class mail and (2) faxed to the other party or person. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party shall be addressed and faxed to the other party as set forth below. Either party may change its address and fax number by notifying the other party of the change in writing.

a. Notices to Concessionaire shall be addressed to:

Senior Vice President  
Director of Marina Operations  
Forever Resorts  
P. O. Box 52038  
Phoenix, AZ 85072  
Fax number: (602) 968-4355

b. Notices to Agency shall be addressed to:

DON PEDRO RECREATION AGENCY  
31 Bonds Flat Road  
La Grange, CA 95329  
Fax number: (209) 852-2780

1-18.02. Unless this Agreement requires an earlier response or allows a later response, within thirty (30) days of receipt of any communication given pursuant to Section 1-18.01, the receiving party shall respond in writing to the sending party if this Agreement requires a response or if a response is requested by the sending party.

1-19. AGENT FOR SERVICE OF PROCESS. If Concessionaire is not a resident of this State, or is an association or partnership without a member or partner who is a resident of this State, or is a foreign corporation, then Concessionaire shall appoint the California Secretary of State as its agent for the purpose of service of process in any court action between it and the Agency arising out of or in connection with this Agreement, and the delivery to such agent of a copy of any process in any such action shall constitute valid service upon Concessionaire. Concessionaire may also be personally served with such process out of this State, and such service shall constitute valid personal service upon Concessionaire; and it is expressly agreed that Concessionaire is amenable to the process so served,

submits to the jurisdiction of the court so acquired, and waives any and all objection and protest thereto.

1-20. MODIFICATION OF AGREEMENT. The parties may by mutual consent agree in writing to any modification of or addition to this Agreement which is not prohibited by law. Agency may grant reasonable extensions of time to Concessionaire for the performance of any obligation by Concessionaire.

1-21. MISCELLANEOUS PROVISIONS.

1-21.01. Time of Essence. Time is of the essence of each provision of this Agreement.

1-21.02. Successors. This Agreement shall be binding and inure to the benefit of the parties and their successors. As used in this Agreement, the word successor means assignee, transferee, personal representative, heir, or other person or entity succeeding lawfully, and pursuant to the provisions of this Agreement to the rights or obligations of either party.

1-21.03. California Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of California.

1-21.04. Paragraph Titles; Table of Contents. The paragraph titles and the table of contents of this Agreement shall have no effect on its interpretation.

1-21.05. Singular and Plural. When required by the context of this Agreement, the singular shall include the plural, and the plural shall include the singular.

1-21.06. Severability. The unenforceability, invalidity, or illegality of any provision shall not render the other provisions unenforceable, invalid, or illegal.

1-21.07. Ambiguities. Each party and its counsel have had sufficient opportunity to and have fully reviewed this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement.

1-21.08. Entire Agreement. This Agreement constitutes the entire agreement between the parties and all prior negotiations, documents, memoranda, or writing are merged into this Agreement.

2. DEVELOPMENT.



2-1. CONCESSIONAIRE PROPOSAL. Concessionaire has submitted a proposal for the Acquisition, Development and Operation of the Moccasin Point Marina ("Proposal"), which is hereby incorporated by reference. A copy of the Proposal is on file and available for inspection at the Agency's headquarters. Concessionaire has also submitted a Schedule and Cost Estimate for Marina Upgrades ("Schedule") which is attached as Exhibit E and is hereby incorporated by reference. The cost figures in the Schedule shall be considered estimates only and the Parties recognize that such figures may vary. The Schedule and Proposal describe the improvements the Concessionaire shall make to the marina facilities. All improvements shall be made in accordance with the Schedule first, and then in accordance with the Proposal to the extent it does not conflict with the Schedule, unless the Concessionaire obtains the prior written approval of the Agency.

2-2. TIME OF COMPLETION OF IMPROVEMENTS. Concessionaire must complete the improvements in accordance with the Schedule and/or Proposal, as determined under Section 2-1, or within the following time limits, whichever is earlier:

2-2.01. Improvements Necessary for Compliance with Laws. Improvements necessary to bring the marina facilities into compliance with federal, state, and local laws, regulations, and codes must be completed in accordance with the time limits established in the Schedule and/or Proposal, as determined under Section 2-1, but in no event later than twenty-four (24) months after the date of this Agreement, with the exception of electrical work which must be completed within ninety (90) days after the date of this Agreement. Upon the request of the Concessionaire, the Agency may grant extensions of these time limits for delays caused by circumstances beyond the control of the Concessionaire. The following improvements necessary for compliance with the Americans with Disabilities Act must be completed as expediently as possible, in accordance with the Schedule and/or Proposal, as determined under Section 2-1, but in no event later than three years after the date of this Agreement: renovation of marina restrooms, access to marina restrooms, and access to marina store. The dates established in this Agreement for Concessionaire's compliance with laws, regulations and codes are intended only for purposes of determining default under this Agreement and in no way excuse Concessionaire from any penalties, claims, damages, losses, or liability for violation of such laws, regulations, and codes. Agency assumes no liability for such violations. Concessionaire assumes no liability for any penalties, claims, damages, losses or liability for violation of such laws, regulations, codes and for any event, claim or violation prior to the date of this Agreement. Concessionaire is responsible for making any further improvements necessary to comply with the Americans with Disabilities Act that were not contemplated at the time of this Agreement. If

such improvements exceed \$15,000 on a per occurrence basis, the Agency agrees to allow the Concessionaire to recoup such expenses through the temporary adjustment of rates and charges upon mutually agreeable terms.

2-2.02. Improvements to Correct Structural Deficiencies. Correction of structural deficiencies must be completed in accordance with the Schedule and/or Proposal, as determined under Section 2-1, but in no event later than twenty-four (24) months after the date of this Agreement.

2-2.03. Improvements to Facilitate Movement and Operation. Improvements proposed to facilitate the movement and operation of the marina at the Moccasin location shall be completed in accordance with the Schedule and/or Proposal, as determined under Section 2-1, but in no event later three years of the date of this Agreement.

2-2.04. Improvements for Provision of All Services. Improvements proposed and/or necessary for the full provision of authorized services, and the operation of the marina at the standards required by this Agreement, including utilities, shall be completed in accordance with the Schedule and/or Proposal, as determined under Section 2-1, but in no event later three years of the date of this Agreement.

## 2-3. Authorized Services.

2-3.01. Marina Services. Concessionaire shall, unless indicated as optional, at its own expense construct, maintain, and operate a boat marina for the public offering the following services:

### a. At the Moccasin Point Location:

(1) Floating marina facility providing at least one grade of fuel, ice, propane, fishing supplies, food service, beverages, groceries, and sewage pump out facilities.

(2) Emergency marine services, repairs, and towing. This service may be contracted out by the Concessionaire upon approval of the Agency which will not be unreasonably withheld.

(3) Thirty-two (32) boat slips.

(4) Twenty-four (24) houseboat slips.

(5) Ten (10) houseboat rentals, subject to the conditions in section 2-4 of this Agreement.

(6) Twenty-four (24) water craft rentals consisting of any combination of the following, subject to the conditions in section 24 of this Agreement: fishing boats, deck boats, water ski boats, or personal water craft ("Wave Runners").

(7) Private houseboat mooring lines consisting of two (2) parallel mooring lines of twenty-four (24) mooring buoys each.

(8) 22-bay dry storage building at the Moccasin Point location.

(9) Coin-operated ice facility at Agency's boat launch ramp (optional).

2-3.02. Authorized Use of Two Campground Spaces for Concessionaire Marina Employee Housing. The Concessionaire is authorized at no additional fee to use two (2) Agency-designated campground spaces within the Agency's Moccasin Point campground for housing for Concessionaire employees who work at the marina. Mobilehomes or other type manufactured residential housing used shall comply with all applicable State and Tuolumne County laws. Concessionaire has inspected and approved the two campground spaces. Up to three housing units may be installed on the pads provided at the designated site subject to Agency approval of design and layout which shall not be unreasonably withheld. Agency has provided service hookups for two housing units. Additional hookups may be installed at the Concessionaire's expense.

2-3.03. Authorized Houseboats. The maximum number of private houseboats (not including any rental houseboats authorized under Section 2-3.01) shall be sixty-two (62) houseboats.

2-3.04. Repair of Concessionaire's Rental Boats and Crafts Authorized at Agency-Approved Land Location. Concessionaire is authorized to repair its own authorized rental boats and crafts at an Agency-approved land location or locations within the Moccasin Point concession area, except that land-based repairs to Concessionaire rental houseboats shall be limited to two (2) rental houseboats at any one time.

2-3.05. Additional Services and Facilities. Additional services and facilities may be negotiated by the parties as situations demand.

## 2-4. CONDITIONS FOR BOAT AND WATER CRAFT RENTALS.

2-4.01. Conditions for Boat and Water Craft Rentals. Concessionaire may provide boat and water craft rentals as authorized in section 2-3.01 of this Agreement subject to the following conditions:

a. Prior to providing any boat and water craft rental services, Concessionaire shall establish written qualifications which must be met by all persons who wish to operate a boat or water craft. The qualifications shall be subject to the prior review and approval of the Agency. The qualifications shall be included in any advertising paid for or sponsored by the Concessionaire which mentions boat or water craft services.

b. Prior to providing any boat and water craft rental services, Concessionaire shall establish written safe operating instructions for boats and water craft. The instructions shall be subject to the prior review and approval of the Agency. Concessionaire shall have a program for educating renters about the safe operation of the boats and crafts.

c. If water ski boat and/or personal water craft rental services are provided, the Concessionaire shall additionally obtain an endorsement to its liability insurance policies which expressly covers the water ski boat and personal water craft rental services and any and all claims, lawsuits, and liabilities arising therefrom. The water ski boat and personal water craft rental services and the activities related thereto shall not cause any increase in the cost of the liability insurance or in the insurance retention amount allocated by the Districts for Don Pedro Reservoir recreation-related activities.

2-4.02. Agency review and approval as required by this section shall not be construed as endorsing the qualifications or instructions, nor as any warranty as to the adequacy of the qualifications or instructions.

2-5. IMPROVEMENTS SUBJECT TO AGENCY APPROVAL. The location, design, and construction of improvements constructed or moved onto the concession area by Concessionaire shall be subject to Agency's prior approval.

## 2-6. PAYMENT BOND.

a. The Concessionaire shall furnish and maintain a Payment Bond or, with Agency approval which shall not be unreasonably withheld, sufficient guarantee in place of any bond in an amount at least equal to fifty percent (50%) of the total cost estimate for anticipated capital improvements stated in the Schedule ("Work") or such lesser amount as agreed upon by the Concessionaire

and Agency. The Payment Bond or sufficient guarantee inures to the benefit of all persons named in Civil Code Section 3181 which sets forth which persons may file stop notices. The Payment Bond or sufficient guarantee shall remain in effect until the last of the following occur: (i) the statutory time has expired to commence a legal action on the Payment Bond or sufficient guarantee and no legal action was filed, (ii) satisfaction of all judgments against the Payment Bond or sufficient guarantee, and (iii) as otherwise provided by law. Such bond, guarantee, or other forms of surety shall be delivered to Agency prior to commencement of the Work which will utilize persons intended to be benefited by Civil Code Section 3181.

b. All bonds, if required, shall be substantially in the forms prescribed by the Agency and attached hereto as Exhibit F to this Agreement, and hereby incorporated by reference, and be executed by a corporate surety acceptable to the Agency and authorized to issue such surety bond in the State of California. All bonds signed by an agent must be accompanied by a certified copy of the agent's authority to act.

c. If the surety on any bond furnished by the Concessionaire is declared a bankrupt or becomes insolvent or its right to do business is terminated in California or it ceases to meet the requirements of this section, the Concessionaire shall within five (5) days thereafter substitute another bond and surety, both of which shall be acceptable to the Agency.

2-7. MONTHLY REPORT. A monthly report of accounts due and payments made by Concessionaire during construction of improvements shall be furnished to Agency.

2-8. MODIFICATION OF IMPROVEMENTS. In the event that any modification, alteration, or addition to Concessionaire improvements are desired, the written approval of Agency must be obtained prior to commencement of any such work. Such approval will not be unreasonably withheld.

### 3. OPERATION AND MAINTENANCE.

#### 3-1. QUALITY OF SERVICE.

3-1.01. Facilities and Services Provided in First-Class Manner. Concessionaire agrees to equip, operate, and manage the services and facilities offered in a first-class manner during the term. Where Concessionaire provides a food service, Concessionaire agrees that it shall furnish and dispense food and beverages of good quality and shall maintain a high standard of service at all times.

3-1.02. Personnel. The concession area shall be staffed with competent personnel at all times Concessionaire remains open for operation under this Agreement.

### 3-2. OPERATION OF CONCESSION AREA.

#### 3-2.01. Agency Control of Rates, Charges, and Items Sold.

a. Concessionaire shall not charge the public a fee for the use of the land or Agency-owned public facilities within the concession area or for the use of Don Pedro Lake or the right of access thereto. Concessionaire may charge for the use of its improvements within the concession area.

b. Concessionaire shall post rates and prices for all merchandise and services provided in such places as may be designated by Agency.

c. The Agency shall have access to and reserves the right to inspect and approve the schedule of prices and rates for all merchandise sold and all services rendered or performed within the concession area in accordance with Agency regulation 9000.002, Review of Concessionaire Fees by the Agency, as it may be amended from time to time, or any successive regulation. At the initiation of this Agreement, Concessionaire may charge for facilities and services provided at the rates included on the schedule included as Exhibit G to this Agreement.

d. Agency reserves the right to prohibit the sale or rental of any item which it deems objectionable or beyond the scope of merchandise deemed necessary for proper service to the public.

#### 3-2.02. Days and Hours of Operation.

a. During the term, Concessionaire shall remain open every day, Sunday through Saturday, at the marina, except Agency approved days.

b. The hours of operation for the concession shall be as agreed upon with Agency.

c. Any requested changes in the days and hours of operation shall be submitted in writing to Agency for approval.

d. In the event of adverse weather or any other adverse operating conditions, Agency or its authorized representative may permit Concessionaire to temporarily close its operations.

3-2.03. Limitations on Use of Concession Area. Concessionaire shall not use or permit the concession area to be used in whole or in part, during the term of this Agreement, for any purpose other than as herein set forth, without the prior written consent of the Agency. Concessionaire shall at all times faithfully obey and comply with all laws, rules and regulations applicable thereto adopted by Federal, State, County, or other governmental bodies or departments or officers thereof, and this Agreement is expressly subject to the Rules and Regulations of the Agency, and its successor. Concessionaire has been provided a copy of, and has reviewed and understands, all Agency Rules and Regulations.

3-2.04. Advertising; Signs; Logo; Photography.

a. Advertising. Agency reserves the right to review and approve all advertising to be published or circulated by or on behalf of Concessionaire prior to publication or circulation. Approval shall not be unreasonably withheld. Concessionaire agrees to revise or delete any portions of the advertising that Agency deems to be false or misleading.

b. Signs. No sign, name or placard shall be posted, displayed or affixed upon any Concessionaire improvements or posted within the concession area without the prior written consent of Agency which approval will not be unreasonably withheld. Agency shall have the right to post appropriate Agency signs within the concession area at locations mutually agreed upon by the parties.

c. Logo. The Don Pedro Recreation Agency logo may only be used with the prior approval of the Agency.

d. Photography. Agency shall have the right to grant permission to persons or corporations engaged in the production of still or motion pictures and related activities for the use of the concession area for such still or motion picture purposes when such permission shall not interfere with Concessionaire's concession business.

3-2.05. Nondiscrimination.

a. Concessionaire and its employees shall not discriminate because of race, religious creed, color, ancestry, national origin, physical disability, mental disability, medical condition, marital status or sex against any person by refusing to furnish such person any accommodation, facility, service or privilege offered to or enjoyed by the general public. Nor shall Concessionaire or its employees publicize the accommodations, facilities, services or privileges in any manner that would directly or inferentially reflect upon or question the acceptability of

the patronage of any person because of race, religious creed, color, ancestry, national origin, physical disability, mental disability, medical condition, marital status or sex.

b. In the performance of this Agreement, Concessionaire will not discriminate against any employee or applicant for employment because of race, religious creed, color, ancestry, national origin, physical disability, mental disability, medical condition, marital status or sex. Concessionaire shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, religious creed, color, ancestry, national origin, physical disability, mental disability, medical condition, marital status or sex.

### 3-3. MAINTENANCE.

3-3.01. Maintain Improvements in Good Order and Repair. Concessionaire agrees to maintain its improvements in good order and repair during the term and to perform any required maintenance and repairs at its own expense.

3-3.02. Maintain Improvements in Clean Condition and in Compliance with Law. Concessionaire agrees at all times during the term and at its own expense to maintain and operate its improvements and immediately adjacent areas in a clean, safe, wholesome and sanitary condition, free of trash, garbage, rubbish or obstruction of any kind, and in compliance with any and all present and future laws, general rules or regulations of any governmental authority now or at any time during the term of this Agreement in force relating to sanitation or public health, safety or welfare.

3-3.03. Monitoring of Fuel Storage System. Concessionaire shall monitor the leak detection devices for the fuel storage tank(s), permanent or temporary, and any pipelines for leakage on a weekly basis and document each inspection. The record of all inspections shall be retained for three years by the Concessionaire who shall make the records available to the Agency upon request.

3-3.04. No Obligation On Agency to Repair. Agency shall not be responsible or obligated to make any repairs to or maintain any Concessionaire improvements within the concession area unless damage is caused by Agency necessitating repair. Concessionaire expressly waives the right to make any repairs or perform any maintenance at Agency's expense.

### 3-4. FACILITIES, ACCESS, UTILITIES, AND SERVICES.

3-4.01. At Moccasin Point Location.



a. Facilities and Access. Concessionaire shall at its own expense construct, maintain and operate facilities as described in the Proposal which must include a utility yard, roads, a parking area for at least 50 cars above the 830' contour, and safe and convenient access to marina facilities at all times.

b. Concessionaire to Arrange and Pay for Utilities. Concessionaire shall make all arrangements for and pay for all utilities and services furnished to or used by it, including, without limitation, gas, electricity, and telephone service, and for all connection charges.

c. Refuse Collection. Concessionaire shall furnish all necessary refuse containers and shall be responsible for the removal and disposal of all rubbish, trash, and garbage resulting from the concession operations and activities and transfer to the Agency's collection point. All such refuse collection shall be performed to the satisfaction of Agency and Tuolumne County.

d. Sewage Disposal. Concessionaire shall be responsible for the proper disposal of all sewage within the concession area. Agency agrees to allow Concessionaire to dispose of the sewage at the Moccasin Point Sewage Treatment Facility under the following conditions:

(1) Concessionaire shall keep and make available to the Agency a record of the number of loads, date of delivery, and the number of gallons per load of sewage delivered into the Sewage Treatment Facility.

(2) In no event shall the Agency be required to expand any part of the Moccasin Point sewage system to accommodate Concessionaire's sewage.

(3) At no time shall any Hazardous Material or Substance be introduced into the Sewage Treatment Facility. Cleanup of any Hazardous Material or Substance released into the Sewage Treatment Facility in violation of this section may be initiated by the Agency at the cost of Concessionaire.

(4) Agency reserves the right to terminate Concessionaire's use of the Sewage Treatment Facility upon one year's notice to Concessionaire. If the sewage system is upgraded by the Agency, the Concessionaire will be responsible for a mutually agreed percentage of the cost of improvements. These costs to be recovered as a sewage charge to Concessionaire that is comparable with sewage charges by utility companies elsewhere. Agency agrees to transport and dispose of Concessionaire's sewage until such time as the upgraded Sewage Treatment Facility is operational. Agency may terminate upon less than one year's notice if the Agency fails to meet or may fail to meet the regulatory requirements of its waste discharge permit for any reason, or if legislation or

regulatory action requires the Agency to change its waste disposal practices or procedures. If Concessionaire's deposit of sewage into the Sewage Treatment Facility partially or wholly causes the Agency to violate the terms of its waste discharge permit, Concessionaire shall be liable to the extent the Concessionaire's actions caused the violation.

3-4.02. At Jacksonville (Harney Lane) Location. Upon approval of the Agency, these services may be provided in combination with both sites. Agency approval shall not be unreasonably withheld.

a. Facilities and Access. Same requirements as Section 3-4.01a.

b. Utilities. Same requirement as Section 3-4.01b.

c. Refuse Collection. Same requirement as Section 3-4.01c.

d. Sewage Disposal. Concessionaire shall be responsible for the proper disposal of all sewage within the concession area. The system of disposal must be approved by the Agency, the Tuolumne County Health Department, and any other applicable governmental agencies. Concessionaire may dispose of sewage generated at the Jacksonville location at the Moccasin Point Sewage Treatment Plant under the same conditions for the plants use as specified under Section 3-4.01d.

3-4.03. At Six Bit Gulch Location. As provided under Section 2-3.01c, Concessionaire is not required to provide any services to the public at the Six Bid Gulch Location or at lower reservoir levels. To the extent that Concessionaire does provide services to the public, then Concessionaire shall comply with the applicable requirements under Section 3-4.02, except that Concessionaire shall not be required to comply with Section 3-4.02a, Facilities and Access.

### 3-5. SERVICES PROVIDED TO AGENCY.

3-5.01. Concessionaire shall during its normal hours of operation provide gasoline to Agency at the marina for official Agency boats at Concessionaire's cost from the distributor to Agency's boats.

3-5.02. Concessionaire shall provide without cost to Agency mooring for one (1) Agency boat at all times during the term of this Agreement.

3-5.03. Concessionaire shall provide without cost to Agency, one attachment to the houseboat mooring lines for Agency use. Agency shall provide its own mooring buoy.

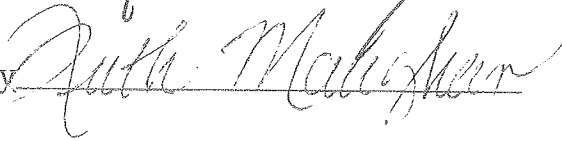
IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year first above written.

CONCESSIONAIRE

MOCCASIN POINT MARINA, LLC

[All limited liability company members must sign Agreement.]

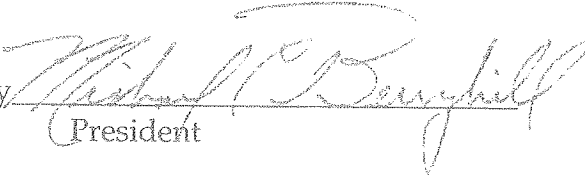
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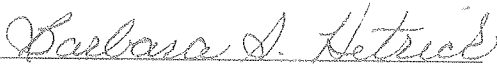
By 

By \_\_\_\_\_

FOR THE AGENCY


TURLOCK IRRIGATION DISTRICT

By   
President

By   
Secretary

MODESTO IRRIGATION DISTRICT

By   
President

By   
Secretary

**FIRST AMENDMENT TO THE CONCESSION LEASE AGREEMENT  
FOR MOCCASIN POINT RECREATION AREA**

This Amendment to that certain agreement entitled "Concession Lease Agreement for Moccasin Point Recreation Area, Don Pedro Project, Located in Tuolumne County, California," dated March 25, 1997, is made as of \_\_\_\_\_, 1998, between the TURLOCK IRRIGATION DISTRICT and MODESTO IRRIGATION DISTRICT ("Districts") and MOCCASIN POINT MARINA, a Limited Liability Company ("Concessionaire") who agree as follows:

1. Section 2-3.01.a(5) shall be deleted and replaced with, "Twenty (20) houseboat rentals, subject to the conditions in section 2-4 of this Agreement."
2. The amendment of section 2-3.01.a(5) shall take effect on January 1, 1999 and is subject to the Concessionaire meeting the following conditions:
  - a. On or before December 31, 1998, the electrical and sewage disposal systems shall be upgraded by (1) burying the electrical lines from the Moccasin Point Campground Kiosk restroom to the marina, and (2) installing a new sewage pump and lift station near the dry storage complex so that sewage can be pumped into the Don Pedro Recreation Agency's ("Agency") main sewer line in the campground.
  - b. On or before April 30, 1999, the marina access road from the campground to the low water crossing near the marina shall be paved.
  - c. On or before December 31, 1998, the Concessionaire shall make all upgrades to the floating propane tank and the barge that are necessary to meet all federal, state and local laws, rules and regulations.
3. The amendment of section 2-3.01.a(5) shall also be subject to the Concessionaire completing the following improvements on an "as needed" basis, to be determined by the Director of the Agency prior to bringing each additional rental houseboat into service:
  - a. The marina shall be extended as shown in the attached Exhibit 1 to provide capacity for (i) eighteen rental houseboats, (ii) additional small boat parking, and iii) a courtesy dock. The extension shall be constructed to accommodate low water years.
  - b. Additional above ground fuel storage tanks shall be installed as shown on Exhibit 1.

c. Two new pumpouts, two new fuel stations, and fresh water refills shall be installed as shown on Exhibit 1.

d. Additional parking areas shall be created along the access road above the covered dry storage units and in the area adjacent to the lower marina access road.

e. Traffic patterns in the marina cove shall be monitored and altered as necessary so that traffic moves safely, smoothly and without undue delay.

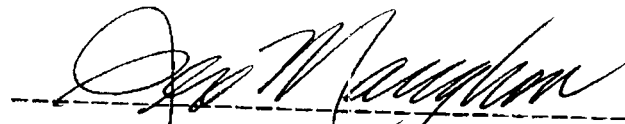
4. Except as set forth in this Amendment, all the provisions of the Agreement shall remain unchanged and in full force and effect.

CONCESSIONAIRE

MOCCASIN POINT MARINA, LLC

[All limited liability company members must sign amendment]

By



By



FOR THE DISTRICTS

TURLOCK IRRIGATION DISTRICT

By

\_\_\_\_\_  
President

By

\_\_\_\_\_  
Secretary

**MODESTO IRRIGATION DISTRICT**

By

\_\_\_\_\_  
President

By

\_\_\_\_\_  
Secretary

**SECOND AMENDMENT TO THE CONCESSION LEASE AGREEMENT  
FOR MOCCASIN POINT RECREATION AREA**

This Amendment to that certain agreement entitled "Concession Lease Agreement for Moccasin Point Recreation Area, Don Pedro Project, Located in Tuolumne County, California," dated March 25, 1997, is made as of \_\_\_\_\_, 2000, between the TURLOCK IRRIGATION DISTRICT and MODESTO IRRIGATION DISTRICT ("Districts") and MOCCASIN POINT MARINA, a Limited Liability Company ("Concessionaire") who agree as follows:

1. Section 2-3.02 shall be deleted and replaced with the following:

2-3.02. Authorized Use of Two Campground Spaces for Concessionaire Marina Employee Housing. The Concessionaire is authorized at no additional fee to use two (2) Agency designated campground spaces within the Agency's Moccasin Point campground for housing Concessionaire employees who work at the marina. Mobilehomes or other type manufactured residential housing units used shall comply with all applicable State and Tuolumne County laws. Concessionaire has inspected and approved the two campground spaces. All housing units shall be subject to Agency approval of design, layout, color, and visual appearance, which shall not be unreasonably withheld. Agency has provided service hookups for two housing units. Additional hookups may be installed at the Concessionaire's expense. There are currently three housing units installed on the pads. A fourth housing unit may be installed on the upper pad subject to the following conditions:

- a. The upper pad shall be extended approximately 30 feet at the expense of the Concessionaire.
- b. There shall be minimal site disturbance in extending the pad and in placing the housing unit.
- c. The design, layout, color, and visual appearance of the housing unit must be approved in advance by Agency.

2. Except as set forth in this and any prior amendments, all the provisions of the Agreement shall remain unchanged and in full force and effect.

[Signatures continued on Page 2]

CONCESSIONAIRE

MOCCASIN POINT MARINA, LLC

[All limited liability company members must sign amendment]

By 

By \_\_\_\_\_

FOR THE DISTRICTS

TURLOCK IRRIGATION DISTRICT

By \_\_\_\_\_  
President

By \_\_\_\_\_  
Secretary

MODESTO IRRIGATION DISTRICT

By \_\_\_\_\_  
President

By \_\_\_\_\_  
Secretary



**THIRD AMENDMENT TO THE CONCESSION LEASE AGREEMENT  
FOR MOCCASIN POINT RECREATION AREA**

This Amendment to that certain agreement entitled "Concession Lease Agreement for Moccasin Point Recreation Area, Don Pedro Project, Located in Tuolumne County, California," dated March 25, 1997, is made as of March 12, 2002, between the TURLOCK IRRIGATION DISTRICT and MODESTO IRRIGATION DISTRICT (Districts) and MOCCASIN POINT MARINA ("Concessionaire") who agree as follows:

1. Section 2-3.01.a(6) shall be deleted and replaced with, "Thirty (30) water craft rentals consisting of any combination of the following, subject to the conditions in Section 24 of this Agreement: fishing boats, deck boats, water ski boats, or personal water craft ("Wave Runners").

CONCESSIONAIRE

**MOCCASIN POINT MARINA, LLC**

(All limited liability company members must sign amendment)

By [Signature]

By [Signature]

FOR THE DISTRICTS

**TURLOCK IRRIGATION DISTRICT**

By [Signature]  
President

By [Signature]  
Secretary

**MODESTO IRRIGATION DISTRICT**

By [Signature]  
President

By [Signature]  
Secretary

**FOURTH AMENDMENT TO THE CONCESSION LEASE AGREEMENT FOR  
MOCCASIN POINT MARINA**

This Amendment to that certain agreement entitled "Concession Lease Agreement for Moccasin Point Recreation Area, Don Pedro Project, Located in Tuolumne County, California," dated March 25, 1997, is made as of November 25, 2003, between the TURLOCK IRRIGATION DISTRICT and MODESTO IRRIGATION DISTRICT (Districts) and MOCCASIN POINT MARINA ("Concessionaire") who agree as follows:

1. The following shall be added to Section 2-3.02:

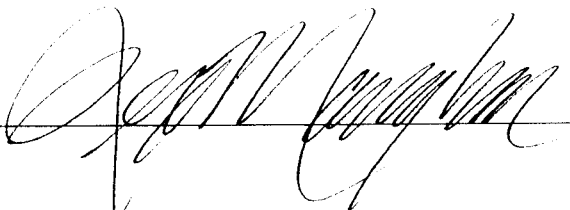
The Concessionaire is authorized to install a housing pad and housing unit with hookups in the dry storage area subject to the following conditions:

- a) The pad will not take parking space away from Marina customers.
  - b) All work will be done at the Concessionaire's expense.
  - c) Pad will be no larger than 32' X 9' and be constructed with minimal disturbance to existing area.
  - d) Exact location and visual appearance of the housing unit and grounds must be approved in advance by the Agency.
2. Except as set forth in this and any prior amendments, all the provisions of the Agreement shall remain unchanged and in full force and effect.
  3. Districts' approval of this amendment does not remove any responsibility or liability of the Concessionaire for Concessionaire's work performed pursuant to this amendment.

**CONCESSIONAIRE**

**MOCCASIN POINT MARINA, LLC**

[All limited liability company members must sign amendment]

By   
By \_\_\_\_\_

FOR THE DISTRICTS

**TURLOCK IRRIGATION DISTRICT**

By Randy Jimini  
President

By Bulawa A. Hetch  
Secretary

**MODESTO IRRIGATION DISTRICT**

By Allen Slint  
General Manager

By \_\_\_\_\_  
Secretary