

Project: Miramar Beach Public Swim
Platform
APN: N/A
Agent: JKL

MASTER AGREEMENT

THIS MASTER AGREEMENT (“Master Agreement”) is made by and between:

COUNTY OF SANTA BARBARA, a political
subdivision of the State of California (“COUNTY”),

and

MIRAMAR ACQUISITION CO., LLC, a California
Limited Liability Corporation, (“LICENSEE”),

with reference to the following:

WHEREAS, COUNTY is entering into Lease No. PRC 7082 with the California State Lands Commission, which is attached hereto and herein incorporated by reference as Exhibit “A” (hereinafter “Lease”); and

WHEREAS, the Lease allows COUNTY to designate a special use area at Miramar Beach with seasonal placement of swim buoys between May 1 and October 15 each Summer; and

WHEREAS, LICENSEE desires to provide for public recreation at Miramar Beach by installing, operating, and maintaining a floating public swim platform within the COUNTY special use area at Miramar Beach as described by the Lease; and

WHEREAS, COUNTY and LICENSEE have mutual interest in the placement of a floating public swim platform at Miramar Beach for recreation purposes; and

WHEREAS, COUNTY and LICENSEE are entering into a License Agreement whereby COUNTY granted LICENSEE a personal, revocable, non-exclusive, and non-assignable right to use of a portion of the special use area at Miramar Beach to install, operate, and maintain a floating public swim platform, which is attached hereto and herein incorporated by reference as Exhibit “B” (hereinafter “License Agreement”); and

WHEREAS, COUNTY is applying for all required Coastal Development Permits from the California Coastal Commission for LICENSEE’s installation, operation, and maintenance of a floating public swim platform within a portion of the special use area at Miramar Beach, which is attached hereto and herein incorporated by reference as Exhibit “C” (hereinafter “CDPs”); and

WHEREAS, LICENSEE shall be responsible for installing, operating, and maintaining the floating public swim platform as set forth in LICENSEE’s Operations and Maintenance Plan, which is attached hereto and herein incorporated by reference as Exhibit “D” (hereinafter

“Operations Plan and Maintenance Agreement”); and

WHEREAS, LICENSEE shall be responsible for curing all notices of violation relating to the Lease (to the extent applicable to the swim platform or any other matters set forth in the CDPs) and the CDPs, and to all Federal, State, and County laws; and

WHEREAS, COUNTY and LICENSEE are entering into an agreement whereby LICENSEE agrees to reimburse COUNTY for all of COUNTY’s costs and expenses incurred and to be incurred by COUNTY in entering into the Lease and applying for the CDPs, which is attached hereto and herein incorporated by reference as Exhibit “E” (hereinafter “Agreement for Payment of Fees”); and

NOW, THEREFORE, in consideration of the provisions, covenants, and conditions contained herein, COUNTY and LICENSEE agree as follows:

1. **ADMINISTRATION AND ENFORCEMENT**: The provisions of this Master Agreement shall be administered and enforced for COUNTY by the Director of the Community Services Department or Director’s designee (hereinafter “Director”), and for LICENSEE by its officer or officer’s designee.

2. **TERM**: The term of this Master Agreement shall be for a period of approximately ten (10) years, commencing upon May 1, 2024, and expiring on April 30, 2034, unless otherwise terminated sooner pursuant to Section 8 or extended pursuant to Section 3 of this Master Agreement.

3. **OPTIONS TO EXTEND**: Provided LICENSEE is in compliance with all terms and conditions of this Master Agreement, Lease, CDPs, Operations Plan and Maintenance Agreement, and Agreement for Payment of Fees, COUNTY, in its sole discretion, may renew this Master Agreement for two (2) additional terms of five (5) years on the same terms and conditions contained herein, unless either party provides written notice of termination to the other at least thirty (30) days prior to the expiration of the then current term. Any extension is subject to all applicable California State Lands Commission Leases and California Coastal Commission Coastal Development Permits. Extension periods are set forth as follows:

Extension One: May 1, 2034 through April 30, 2039 and

Extension Two: May 1, 2039 through April 30, 2044.

4. **ASSIGNMENT**: LICENSEE shall not assign, transfer, hypothecate, pledge, or encumber this Master Agreement or any part hereof or any right or privilege appurtenant hereto. Any attempt by LICENSEE to do so shall be voidable and without legal effect and a material breach of this Master Agreement and grounds for termination at COUNTY’s sole discretion.

5. **DEFAULT**: Except as provided in Sections 4, 12, or as otherwise required herein, should either party at any time be in default hereunder with respect to any material term, covenant, condition, or reservation contained herein, the non-defaulting party shall give notice to the defaulting party specifying the particulars of the default, and the defaulting party shall promptly commence remedial action to cure the default. Should such default continue uncured for a period

of thirty (30) calendar days from such notice, this Master Agreement shall terminate at the option of the non-defaulting party, unless the cure of such default shall reasonably take more than thirty (30) calendar days in which case the defaulting party shall proceed with all due speed to cure the default and shall have a reasonable time to effectuate its cure. For the avoidance of doubt, no act of LICENSEE or any of its agents, employees, volunteers, independent contractors, invitees, or guests that is permitted pursuant to LICENSEE's private property rights or entitlements or governmental approvals related to that certain real property owned and operated by LICENSEE adjacent to Miramar Beach, commonly known as Rosewood Miramar Beach Resort (the "Resort Property") shall be deemed to be in violation of this Agreement or any of the agreements attached as Exhibits hereto, and nothing in this Agreement or any of the agreements attached as Exhibits hereto shall be construed to limit LICENSEE's private property rights with respect to Resort Property or otherwise modify the entitlements or governmental approvals related thereto.

6. **REMEDIES:** In the event of a default or breach, either party may exercise any right or remedy at law or in equity which such party may have by reason of such default or breach including, but not limited to, the following:

- A. The non-defaulting party may waive the default or breach in accordance with Section 7, WAIVER, herein below.
- B. Where COUNTY is the non-defaulting party, COUNTY may terminate this Master Agreement.

7. **WAIVER:** It is understood and agreed that any waiver of any term of this Master Agreement or of any default or breach of this Master Agreement shall not be deemed to be a waiver of any continuing or subsequent default or breach of any other provision of this Master Agreement. Waivers of provisions of this Master Agreement must be in writing and signed by that party's respective designee under Section 1, ADMINISTRATION AND ENFORCEMENT, of this Master Agreement.

8. **TERMINATION:** This Master Agreement shall terminate and all rights of LICENSEE hereunder shall cease if either party exercises its rights to terminate as provided in Section 3, OPTIONS TO EXTEND, or as follows:

- A. Upon termination of the Lease;
- B. Upon termination of the License Agreement;
- C. Upon expiration, revocation, surrender, or abandonment of the permits, entitlements, or approvals issued by the California Coastal Commission regarding, concerning, or related to the public swim platform at Miramar Beach;
- D. As provided in Section 4, ASSIGNMENT;
- E. Upon the failure of either party to satisfy, observe, or perform any term or condition set forth in this Master Agreement and the expiration of the cure period as provided in Section 5, DEFAULT;
- F. As provided in Section 12, COMPLIANCE WITH THE LAW; or
- G. Upon delivery of a written thirty (30) day notice of termination without cause by either party.

9. **INDEMNIFICATION AND INSURANCE:** The parties shall comply with the

indemnification and insurance provisions as set forth in Exhibit “F” attached hereto and incorporated herein by reference. The indemnification and insurance provisions in this Master Agreement shall survive termination of this Master Agreement.

10. **NOTICES**: Any notice to be given to either party, by the other, shall be in writing and shall be served, either personally or by registered or certified mail, to the following:

LICENSEE: Miramar Acquisition Co., LLC
101 The Grove Drive
Los Angeles, CA 90036
Attention Legal Department

COUNTY: Parks Assistant Director
Community Services Department
123 Anapamu Street, 2nd Floor
Santa Barbara, CA 93101

All notices hereunder shall be deemed to have been given on the date delivered, if personally delivered, or if mailed, then on the first business day following the date on which it is mailed, by certified or registered mail, postage prepaid, addressed to the address specified above, or to such other address designated by a party as provided for herein.

11. **SUCCESSORS IN INTEREST**: This Master Agreement and the covenants contained herein shall be binding upon and inure to the benefit of the respective parties and to any private organization or government into which LICENSEE or COUNTY may be merged, respectively.

12. **COMPLIANCE WITH THE LAW**: The parties shall comply with all applicable laws, regulations, ordinances, rules, and orders, all as may be amended, affecting this Master Agreement now or hereafter in effect.

Violation of any applicable law, regulation, ordinance, rule, order, or any term or condition of this Master Agreement, the Lease, CDPs, Operations Plan and Maintenance Agreement, or Agreement for Payment of Fees shall constitute an immediate default and breach of this Master Agreement with no cure period that might otherwise be available under Section 5 of this Master Agreement, and this Master Agreement shall be subject to immediate termination at COUNTY’s sole discretion.

13. **CONFLICTS**: In the event of any conflict between the terms of this Master Agreement and the Lease or the CDPs, the terms of the Lease or CDPs shall control. In the event of any conflict between the terms of this Master Agreement and the License Agreement, Agreement for Payment of Fees, or the Operations Plan and Maintenance Agreement, the terms of this Master Agreement shall control.

14. **NONDISCRIMINATION**: The parties shall comply with the laws, rules, and regulations regarding nondiscrimination as such are found in the Santa Barbara County Code and as such may

from time to time be amended. These provisions are incorporated herein as if they were fully set forth. Noncompliance with provisions of this section shall constitute a material breach of this Master Agreement and in addition to any other remedies provided by law, COUNTY shall have the right to terminate this Agreement and the interest hereby created without liability therefor.

15. **AMENDMENTS**: This Master Agreement may only be amended by written consent of the parties, and such changes shall be binding upon the successors of the parties.

16. **CAPTIONS**: The title or headings to the sections of this Master Agreement are not a part of this Master Agreement, and shall have no effect upon the construction or interpretation of any part hereof.

17. **SEVERABILITY**: If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal, or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Master Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

18. **CERTIFICATION OF SIGNATORY**: The signatories of this Master Agreement represent and warrant that they are authorized to execute this Master Agreement and that no additional signatures are required to bind LICENSEE and COUNTY to its terms and conditions or to carry out duties contemplated herein.

19. **EXECUTION IN COUNTERPARTS**: This Master Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

20. **FACSIMILE/ELECTRONICALLY TRANSMITTED SIGNATURES**: In the event that the parties hereto utilize facsimile transmitted documents or electronically transmitted documents which include signatures, such documents shall be accepted as if they bore original signatures provided that documents bearing ORIGINAL SIGNATURES are provided within seventy-two (72) hours of transmission; however, documents shall not be accepted for recordation by the Clerk-Recorder of the County until and unless such documents bearing original signatures are received by COUNTY.

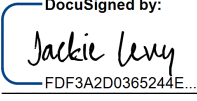
21. **ENTIRE AGREEMENT**: The parties to this Master Agreement intend that their negotiations, conversations, and statements made prior to and at the time of execution of this Master Agreement are fully integrated and expressed herein, and no such negotiations, conversations, and statements shall be deemed to create rights or obligations other than those stated herein.

Project: Miramar Beach Public Swim Platform
APN: N/A
Folio:
Agent: JKL

IN WITNESS WHEREOF, LICENSEE and COUNTY have executed this Master Agreement by the respective authorized representatives as set forth below to be effective as of the date executed by COUNTY.

“LICENSEE”

Miramar Acquisition Co., LLC

By: 

Jackie Levy
Chief Financial Officer

Date: 1/24/2024 | 5:11 PM PST

Project: Miramar Beach Public Swim Platform

APN: N/A

Folio:

Agent: JKL

IN WITNESS WHEREOF, LICENSEE and COUNTY have executed this Master Agreement by the respective authorized representatives as set forth below to be effective as of the date executed by COUNTY.

APPROVED:

“COUNTY”

COUNTY OF SANTA BARBARA

DocuSigned by:
Jesús Armas
DBB784FFB03741D...

Jesús Armas, Director
Community Services Department

By: _____
Steve Lavagnino, Chair
Board of Supervisors

Date: 1/24/2024 | 8:18 AM PST

APPROVED AS TO FORM:
RACHEL VAN MULLEM
COUNTY COUNSEL

DocuSigned by:
Mike Munoz
B9828E0E6649481
By: _____
Deputy County Counsel

APPROVED:

DocuSigned by:
Gregory Milligan
DC240AC1E84247D
By: _____
Greg Milligan, ARM, AIC
Risk Manager

EXHIBIT "A"

LEASE

RECORDED AT THE REQUEST OF
AND WHEN RECORDED MAIL TO:
STATE OF CALIFORNIA
California State Lands Commission
Attn: Land Management Division
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

**STATE OF CALIFORNIA
OFFICIAL BUSINESS**

Document entitled to free recordation
pursuant to Government Code Section
27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

A.P.N.: Various
County: Santa Barbara

LEASE 7082

This Lease consists of this summary and the following attached and incorporated parts:

Section 1	Basic Provisions
Section 2	Special Provisions Amending or Supplementing Section 1 or 3
Section 3	General Provisions
Exhibit A	Land Description
Exhibit B	Site and Location Map
Exhibit C	Sublease Endorsement

SECTION 1: BASIC PROVISIONS

THE STATE OF CALIFORNIA, hereinafter referred to as Lessor acting by and through the **CALIFORNIA STATE LANDS COMMISSION** (100 Howe Avenue, Suite 100-South, Sacramento, California 95825-8202), pursuant to Division 6 of the Public Resources Code and Title 2, Division 3 of the California Code of Regulations, and for consideration specified in this Lease, does hereby lease, demise, and let to **County of Santa Barbara Community Services Department**, hereinafter referred to as Lessee, those certain lands described in Exhibit A hereinafter referred to as Lease Premises, subject to the reservations, terms, covenants, and conditions of this Lease.

MAILING ADDRESS:

Santa Barbara County
Community Services Department
Attn: Parks Assistant Director
123 Anapamu Street, 2nd Floor
Santa Barbara, CA 93101

LEASE TYPE: General Lease – Public Agency Use

LAND TYPE: Sovereign

LOCATION:

Pacific Ocean, at Miramar Beach, Arroyo Burro Beach, Butterfly Beach, Goleta Beach, and Lookout Beach, near Goleta, Montecito, and Summerland, Santa Barbara County, as described in Exhibit A and shown on Exhibit B (for reference purposes only), attached and by this reference made a part hereof.

LAND USE OR PURPOSE:

Seasonal placement and use of swim and channel marker buoys, floats, and signs for the creation of “Special Use Areas”; at Miramar Beach, Arroyo Burro Beach, Butterfly Beach, Goleta Beach, and Lookout Beach; boat launch corridor at Goleta Beach; and seasonal placement and use of one swim platform with two attached anchors at Miramar Beach.

TERM:

20 years; beginning May 1, 2024; ending April 30, 2044, unless sooner terminated as provided under this Lease.

CONSIDERATION:

Annual rent in the amount of \$198 with an annual Consumer Price Index adjustment, with additional consideration being the public use and benefit. Subject to modification by Lessor as specified in Paragraph 10 of Section 2 – Special Provisions.

AUTHORIZED IMPROVEMENTS:

- Miramar Beach – Seasonal placement of 13 swim and channel marker buoys, one swim platform with two attached anchors
- Arroyo Burro Beach – Seasonal placement of 5 swim and channel marker buoys
- Butterfly Beach – Seasonal placement of 12 swim and channel marker buoys
- Goleta Beach – Seasonal placement of 12 swim and channel marker buoys; and a boat launch corridor
- Lookout Beach – Seasonal placement of 6 swim and channel marker buoys

LIABILITY INSURANCE: \$0

SURETY BOND OR OTHER SECURITY: \$0

SECTION 2: SPECIAL PROVISIONS

BEFORE THE EXECUTION OF THIS LEASE, ITS PROVISIONS ARE AMENDED, REVISED, OR SUPPLEMENTED AS FOLLOWS:

1. Lessee shall install or have installed the authorized seasonal facilities, including the swim platform and anchors subject to the sublease attached hereto as Exhibit C, on or after May 1 and shall remove or have removed said facilities on or before October 15 of each lease year.
2. Kelp beds will not be disturbed during installation or removal operations.
3. Lessee hereby agrees that signage will be prominently displayed indicating the special use areas, including the swim platform, are for public use.
4. Lessee shall indemnify, hold harmless, and, at the option of Lessor, defend Lessor from all damages, injuries, or claims arising from the maintenance of Lessee's facilities within the lease premises.
5. Lessee shall limit any vehicles, equipment, or machinery to be used on the Lease Premises to those which are directly required to perform the authorized use. Lessee shall not use any vehicles, equipment, or machinery that may cause damage to the Lease Premises or lands subject to Lessor's jurisdiction.
6. All vehicles, equipment, machinery, tools, or other property taken onto or placed within the Lease Premises or lands subject to Lessor's jurisdiction shall remain the property of the Lessee or its contractors. Such property shall be promptly and properly removed by Lessee, at its sole risk and expense.
7. Lessor does not accept any responsibility for any damages to any property, including any vehicles, equipment, machinery, or tools within the Lease Premises or lands subject to Lessor's jurisdiction.
8. Lessee shall not refuel, maintain, or repair any vehicle or equipment within the Lease Premises or lands subject to Lessor's jurisdiction.
9. Lessee shall promptly and completely remove all waste material and debris created by Lessee or its contractors from the Lease Premises and lands subject to Lessor's jurisdiction.
10. Paragraph 3 (c) of General Provisions, Section 3, is deleted and replaced with:

Rent Adjustment

The rent specified in Section 1 of this Lease will be adjusted annually by the Consumer Price Index as specified in Title 2, California Code of Regulations

Section 1900(m) & (n). Lessor will provide a courtesy invoice thirty days prior to the date rent is due specifying the updated rent at the address currently on file for the Lessee. If Lessor does not send a courtesy invoice, Lessee shall submit rent in the amount of the prior year's rent when due and contact Lessor within 30 days to determine the balance due.

11. Should Lessee require the placement of additional marker buoys to demarcate the special use areas, Lessee shall notify Lessor in writing requesting authorization to place the additional marker buoys, the request shall identify both the location and number of additional buoys to be placed. Upon receipt of the written request Lessor's staff shall notify Lessee in writing whether an application for an amendment of the lease is required.
12. Lessee acknowledges that the land described in Exhibit A of the Lease is subject to the Public Trust and is presently available to members of the public for recreational, waterborne commerce, navigation, fisheries, open space, or other recognized Public Trust uses and that Lessee's authorized activities and use of the Lease Premises shall not interfere with or limit the Public Trust rights of the public.
13. In issuing this Lease and authorizing the use and maintenance of the facilities, Lessor is relying on the information and data provided by the Lessee in its application and accompanying materials. It is the responsibility of the Lessee to ensure that the information provided is accurate. If the information and data prove to be false, materially incomplete, or inaccurate, this Lease may be modified, suspended, or revoked, in whole or in part, or the Lessor may, in addition, institute appropriate legal proceedings to have the structure modified or removed from the Lease Premises in accordance with Section 3, General Provisions - Default and Remedies, Paragraph 12 of this Lease.
14. Lessee acknowledges that the Lease Premises and adjacent upland are located in an area that may be subject to effects of climate change, including sea-level rise. To prepare for the potential effects of sea-level rise, including flood damage, erosion damage, tsunamis, and damage from waves and storm-created debris, the Lessee acknowledges and agrees to the following:
 - a. Hazards associated with sea-level rise may require additional maintenance or protection strategies regarding the improvements on the Lease Premises.
 - b. Consistent with Section 3, Paragraph 8, the Lessee assumes the risks associated with such potential hazards and agrees to be solely responsible for all damages, costs, and liabilities arising as a result of the impacts of such hazards on the Lease Premises. Any additional maintenance or protection strategies necessitated by such hazards may require additional approval by Lessor pursuant to Section 3, Paragraph 5(a) and be subject to environmental review.

15. Lessee shall maintain for the term of the lease all regulatory permits and authorizations from the owners of the adjacent uplands for the use of the uplands and access to the Lease Premises.
16. Lessee shall obtain all necessary approvals prior to the beginning of any placements on the Lease Premises, from all agencies having jurisdiction over the activities. Upon request, Lessee shall provide Lessor copies of all permits.

(Remainder of page intentionally left blank)

SECTION 3

GENERAL PROVISIONS

1. GENERAL

In the case of any conflict between these General Provisions and Special Provisions found in Section 2, the Special Provisions control.

2. DEFINITIONS

For the purposes of this Lease, the following terms shall be defined as stated below:

"Additions" shall be defined as any use or Improvements other than those expressly authorized in this Lease.

"Alterations" shall be defined as any material change in the size, scope, density, type, nature, or intensity of Improvements on the Lease Premises from what is authorized in this Lease. Alterations shall also include any modifications, alterations, or renovations of the land or waterways on the Lease Premises other than those authorized by this Lease.

"Breach" shall be defined as a party's unjustified or unexcused nonperformance of a contractual duty the party is required to immediately perform.

"Damages" shall include all liabilities, demands, claims, actions or causes of action whether regulatory, legislative or judicial in nature; all assessments, levies, losses, fines, penalties, damages, costs and expenses, including, without limitation: (i) reasonable attorneys', accountants', investigators', and experts' fees and expenses sustained or incurred in connection with the defense or investigation of any such liability, and (ii) costs and expenses incurred to bring the Lease Premises into compliance with Environmental Laws, a court order, or applicable provisions of a Regulatory Agency. The term "Damages" also includes, expressly, those Damages that arise as a result of strict liability, whether arising under Environmental Laws or otherwise.

"Default" shall be defined as a material Breach of magnitude sufficient to justify termination of the Lease.

"Environmental Law" shall be defined as and include all federal, state, and local environmental, health, and safety laws, statutes, ordinances, regulations, rules, judgments, orders, and notice requirements, which were in effect as of the date of execution of this Lease or are subsequently enacted and lawfully applied hereto, which regulate or relate to (a) the protection or clean-up of the environment; (b) the use, treatment, storage, transportation, handling or disposal of hazardous, toxic or otherwise dangerous substances, wastes or materials; (c) the quality of the air and the discharge of airborne wastes, gases, particles, or other emissions; (d) the preservation or protection of waterways, groundwater, or drinking water; (e) the health and safety of persons or property; or (f) impose liability with respect to any of the foregoing, including without limitation, the California Environmental

Quality Act (CEQA) [PRC §§ 21000 et seq.]; the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) [42 USCS §§ 9601 et seq.]; the Resource Conservation and Recovery Act of 1976 (RCRA) [42 USCS §§ 6901 et seq.]; the Clean Water Act, also known as the Federal Water Pollution Control Act (FWPCA) [33 USCS §§ 1251 et seq.]; the Toxic Substances Control Act (TSCA) [15 USCS §§ 2601 et seq.]; the Hazardous Materials Transportation Act (HMTA) [49 USCS §§ 1801 et seq.]; the Insecticide, Fungicide, Rodenticide Act [7 USCS §§ 136 et seq.]; the Superfund Amendments and Reauthorization Act [42 USCS §§ 6901 et seq.]; the Clean Air Act [42 USCS §§ 7401 et seq.]; the Safe Drinking Water Act [42 USCS §§ 300f et seq.]; the Solid Waste Disposal Act [42 USCS §§ 6901 et seq.]; the Surface Mining Control and Reclamation Act [30 USCS §§ 1201 et seq.]; the Emergency Planning and Community Right to Know Act [42 USCS §§ 11001 et seq.]; the Occupational Safety and Health Act [29 USCS §§ 655 and 657]; the California Underground Storage of Hazardous Substances Act [H & S C §§ 25280 et seq.]; the California Hazardous Substances Account Act [H & S C §§ 25300 et seq.]; the California Hazardous Waste Control Act [H & S C §§ 25100 et seq.]; the California Safe Drinking Water and Toxic Enforcement Act [H & S C §§ 24249.5 et seq.]; the Porter-Cologne Water Quality Act [Water C §§ 13000 et seq.] together with any amendments of or regulations promulgated under the statutes cited above.

“Hazardous Material” shall be defined as and include any substance which falls within the definition of hazardous substance, hazardous waste, hazardous material, toxic substance, solid waste, pollutant, or contaminant, under any Environmental Law.

“Improvements” shall be defined as any modification, alteration, addition, or removal of any material, and any other action which serves to change the condition of the Lease Premises from the natural state whether situated above, on, or under the Lease Premises. Improvements include, but are not limited to buildings, structures, facilities, decks, docks, wharves, piers, walks, curbs, bridges, buoys, landscaping, roadways, shoreline protective structures of all types, foundations, pilings or similar support structures whether above or below the water line, fences, utilities, pipelines, and any other construction of any type situated on the Lease Premises.

“Lease” shall be defined as this lease contract together with all amendments and exhibits.

“Lease Premises” shall be defined as the area of land, together with any improvements located thereon, the use and occupancy of which is authorized by this Lease.

“Lessor” shall be defined as the state of California, acting by and through the California State Lands Commission, including the Commissioners, their alternates and designates, the Executive Officer, and the staff of the California State Lands Commission.

“Regulatory Agency” shall include any Federal, State, County, Municipal, or Local agency having jurisdiction over the Lease Premises.

“Repairs” shall be defined as all work of any kind made to maintain, change, restore, strengthen, replace, alter, or otherwise affect any Improvement on the Lease Premises.

“Residence” shall be defined as any Improvement, whether permanent, movable, or temporary, or a portion thereof, which is for the time being a home or place of lodging. A Residence includes any Improvement affixed to the land such as trailers or cabins, built on a raised foundation such as stilts or pilings, and floating residences such as boats, barges, arks, and houseboats, and any combination of such Improvements which provide residential accommodations to the Lessee or others. “Residence” shall not include transitory, intermittent, recreational use of facilities such as campgrounds.

“Residential Use” shall be defined as Improvements such as, but not limited to, sundecks, and sunrooms which are extensions of, or additions to, the upland property and are not water-dependent uses. Although the various uses or Improvements which may fall under this definition may vary by geographic area, lease type, or other factors, it is the intention of the parties to include in this definition all uses and Improvements which are not water-dependent but residential in nature, or those uses and Improvements which are not consistent with common law public trust principles and values.

3. **CONSIDERATION**

(a) **Absolute Triple Net Lease**

This Lease is an absolute triple net lease, pursuant to which Lessor has no obligation with respect to the payment of taxes, insurance, the cost of maintenance, utilities and repairs or other costs or obligations associated with the Leased Premises, except as expressly stated herein.

(b) **Rent**

Lessee agrees to pay Lessor rent as stated in this Lease, in annual installments, for the use and occupancy of the Lease Premises. The first installment shall be due on or before the beginning date of this Lease and all subsequent installments shall be due on or before each anniversary of its beginning date during each year of the Lease term, or as otherwise provided in this Lease. Said sums shall be paid in lawful money of the United States of America. Lessee shall send said rent to the mailing address of Lessor. Timeliness of receipt of remittances sent by mail shall be governed by the postmark date as stated in Government Code Section 11002. Invoices for rent due may be provided by Lessor as a courtesy. Lessor's failure to, or delinquency in, providing invoices shall neither excuse Lessee from paying rent, nor extend the time for paying rent.

(c) **Modification**

Lessor may modify the method, amount, or rate of consideration effective on each fifth anniversary of the beginning date of this Lease. Should Lessor fail to exercise such right effective on any fifth anniversary it may do so effective on any one (1) of the next four (4) anniversaries following such fifth anniversary, without prejudice to its right to effect such modification on the next or any succeeding fifth anniversary of the beginning date. No

such modification shall become effective unless Lessee is given at least thirty (30) days' notice prior to the date of the Commission meeting wherein the rent modification is considered, or thirty (30) days' notice prior to the effective date of the increase, whichever provides a greater notice period.

If the consideration for this Lease is based on a percentage of income, royalties, profits, or any similar business performance indicators, Lessee shall provide Lessor with financial statements and all other documents necessary to determine the relevant basis for income.

(d) Penalty and Interest

Any installments of rent accruing under this Lease not paid when due shall be subject to a delinquency charge equal to five percent (5%) of the principal sum due. Annual payments shall bear interest as specified in Public Resources Code Section 6224 and the Lessor's then existing administrative regulations governing penalty and interest.

(e) Non-Monetary Consideration

If the consideration to Lessor for this Lease is the public use, benefit, health, or safety, Lessor shall have the right to review such consideration at any time and set a monetary rental if the Lessor, at its sole discretion, determines that such action is in the best interest of the State. Lessee's assignment or transfer of this Lease pursuant to Section 3 Paragraph 11 below to any third party which results in royalties, profits, or any form of compensation, whether monetary or otherwise, shall give Lessor the right to reevaluate the requirements of this Lease as stated in Section 3 Paragraph 11. Lessee shall be given at least thirty (30) days' notice prior to the date of the Commission meeting wherein the rent modification is considered, or thirty (30) days' notice prior to the effective date that this Lease is converted to a monetary rental, whichever provides more notice.

(f) Place for Payment of Rent

All rent that becomes due and payable under this Lease shall be paid to Lessor in person or by United States mail at the Sacramento Offices of the California State Lands Commission, currently at 100 Howe Avenue, Suite 100-South, Sacramento, CA 95825-8202, or at any other place or places that Lessor may designate by written notice to Lessee. Alternately, Lessee may contact Lessor's accounting department for Lessor's current practices for payment by credit card or electronic fund transfer.

4. BOUNDARIES

This Lease is not intended to establish the State's boundaries and is made without prejudice to either party regarding any boundary or title claims which may be asserted presently or in the future.

5. LAND USE

(a) General

(1) Lessee shall use the Lease Premises only for the purpose or purposes stated in this Lease and only for the operation and maintenance of the Improvements expressly authorized in this Lease. Lessee shall commence use of the Lease Premises within ninety (90) days of the beginning date of this Lease or within ninety (90) days of the date set for construction to commence as set forth in this Lease, whichever is later.

(2) All demolition, construction, remodeling, reconstruction, maintenance, repairs, removal, or remediation performed on the Lease Premises at any time by Lessee shall first be authorized by all appropriate Regulatory Agencies. Lessee is solely responsible for determining what approvals, authorizations, or certifications are required, and shall be solely responsible for all costs incurred thereby. In addition, Lessee shall obtain and comply with preventative or remedial measures required by any environmental reports, assessments, or inspections, including, but not limited to those required by the California Environmental Quality Act and/or the National Environmental Policy Act, or as otherwise required by law or reasonably requested by Lessor. Nothing in this Lease shall be interpreted as a pre-approval of any permit, certification, or any other precondition required for the use of the Lease Premises.

(b) Continuous Use

Lessee's use of the Lease Premises shall be continuous from commencement of the Lease until its expiration. Lessee's discontinuance of such use for a period of ninety (90) days shall be presumed to be an abandonment unless Lessee demonstrates to Lessor's satisfaction that Lessee's use of the Lease Premises is consistent with similarly situated properties. In the event of an abandonment, Lessor may elect to terminate the Lease as provided in Paragraph 12(a)(3). Abandonment of the Lease Premises shall not relieve Lessee of any obligations under this Lease.

(c) Repairs and Maintenance

(1) Lessor shall not be required to make any Repairs in, on, or about all or part of the Lease Premises. Lessee shall, at all times during the term of this Lease and without any cost or expense to Lessor, keep and maintain the Lease Premises, including all Improvements, in good order and repair and in a clean, safe, sanitary, and orderly condition.

(2) Lessee shall make, or cause to be made, any Repairs which may be required by any Regulatory Agency. Lessee shall observe and comply with, any law, statute, ordinance, plan, regulation, resolution, or policy applicable to the Lease Premises in making such Repairs. All work shall be performed with reasonable diligence, completed within a reasonable time, and performed at the sole cost and expense of Lessee.

(3) Lessee expressly accepts the Lease Premises "as is" and expressly acknowledges that:

- (i) Lessor has made no representations or warranties as to the suitability of the Lease Premises for any Improvements. Lessee shall conduct all tests necessary to determine the suitability of the Lease Premises for any proposed use or Improvements authorized; and
- (ii) Lessor has made no representations or warranties as to the quality or value of any Improvements found on the Lease Premises, or of their conformity to any applicable building codes, zoning ordinances, or other regulations. Lessee agrees to inspect any preexisting Improvements at its own cost to determine whether such Improvements are safe and suitable for the Lessee's intended use; and
- (iii) Lessee shall neither be entitled to any reduction in rent, nor any extension of the terms of this Lease because of damage to or destruction of any Improvements on the Lease Premises.
- (iv) Lessee and Lessor agree that any Improvements on the Lease Premises constitute the personal property of Lessee and that fixture law does not apply.

(4) In the event that the Lease Premises is partly, or in whole, comprised of tidal, submerged, or waterfront property, Lessee expressly accepts the hazards involved in using or improving such lands. Lessor is not responsible for, and Lessee shall not be reimbursed for nor receive any offset of rent for, any damages or reduced use of the Lease Premises caused by: local or invasive flora or fauna, flooding, erosion, sea level rise, storms, freezing, inclement weather of any kind, acts of god, maintenance or failure of protective structures, and any other such hazards.

(d) Additions, Alterations, and Removal

No Improvements other than those expressly authorized in this Lease shall be constructed by the Lessee on the Lease Premises without the prior written consent of Lessor. Any Additions or Alterations are expressly prohibited. Lessee is also prohibited from any Additions or Alterations which cause a material change to the environmental impact on or around the Lease Premises.

(e) Enjoyment

This Lease is non-exclusive, and is subject to the provisions of Section 3, Paragraph 6 below. Lessee shall have the right to exclude persons from the Lease Premises only when their presence or activity constitutes a material interference with Lessee's use and enjoyment of the Lease Premises.

(f) Discrimination

Lessee, in its use of the Lease Premises, shall not discriminate against any person or

class of persons on any basis protected by federal, state, or local law, including: race, color, creed, religion, national origin, sex, sexual orientation, gender identity, age, marital/parental status, veteran status, or disability.

(g) Residential Use

Unless otherwise provided for in this Lease, no portion of the Lease Premises shall be used as a location for a Residence, for the purpose of mooring or maintaining a structure which is used as a Residence, or for Residential Uses.

(h) Commercial Use

Unless otherwise provided for in this Lease, the Lease Premises is to be used by Lessee and Lessee's invitees or guests only. Use of the Lease Premises for commercial purposes; conducting a business, whether for profit or otherwise; and any subleasing, rental, or any transaction whereby Lessee directly or indirectly receives compensation from a third party in exchange for use of the Lease Premises shall constitute an immediate Default of this lease with no cure period.

6. RESERVATIONS, ENCUMBRANCES, AND RIGHTS-OF-WAY

(a) Reservations

(1) Lessor expressly reserves all natural resources in or on the Lease Premises, including but not limited to timber, minerals, and geothermal resources as defined under Public Resources Code sections 6401, 6407, and 6903, respectively; the right to grant and transfer the same; as well as the right to grant leases in and over the Lease Premises which may be necessary or convenient for the extraction of such natural resources. Such leasing shall be neither inconsistent nor incompatible with the rights or privileges of Lessee under this Lease.

(2) Lessor expressly reserves a right to go on the Lease Premises and all Improvements for any purposes associated with this Lease or for carrying out any function required by law, or the rules, regulations, or management policies of the State Lands Commission. Lessor shall have a right of reasonable access to the Lease Premises across Lessee owned or occupied lands adjacent to the Lease Premises for any purpose associated with this Lease.

(3) Lessor expressly reserves to the public an easement for convenient access across the Lease Premises to other State-owned lands located near or adjacent to the Lease Premises and a right of reasonable passage across and along any right-of-way granted by this Lease; however, such easement or right-of-way shall be neither inconsistent nor incompatible with the rights or privileges of Lessee under this Lease.

(4) Lessor expressly reserves the right to lease, convey, or encumber the Lease

Premises, in whole or in part, during the Lease term for any purpose not inconsistent or incompatible with the rights or privileges of Lessee under this Lease.

(b) Encumbrances

The Lease Premises may be subject to pre-existing contracts, leases, licenses, easements, encumbrances, and claims and is made without warranty by Lessor of title, condition, or fitness of the land for the stated or intended purpose.

7. RULES, REGULATIONS, AND TAXES

(a) Lessee shall comply with and be bound by all presently existing or subsequently enacted rules, regulations, statutes or ordinances of the State Lands Commission or any Regulatory Agency. Occupancy or use of the Lease Premises provides no exemption from applicable regulations including, but not limited to, federal, state, county and local regulations, regulations promoting public health, safety, or welfare, building codes, zoning ordinances, and sanitation regulations. Lessee expressly acknowledges that Regulatory Agencies have jurisdiction over the Lease Premises unless such laws are in direct conflict with state law or public trust principles.

(b) Lessee understands and agrees that a necessary condition for the granting and continued existence of this Lease is that Lessee obtains and maintains all permits or other entitlements. Lessee expressly acknowledges that issuance of this Lease does not substitute for, or provide preference in obtaining authorizations from other Regulatory Agencies.

(c) Taxes

(1) In addition to the rent due under this Lease, Lessee accepts responsibility for and shall pay any and all real and personal property taxes, including possessory interest taxes, assessments, special assessments, user fees, service charges, and other charges of any description levied, imposed on, assessed, or associated with the leasehold interest, Improvements on the Lease Premises, any business or activity occurring on the Lease Premises, the Lease Premises itself, or any portion thereof, levied by any governmental agency or entity. Such payment shall not reduce rent due Lessor under this Lease and Lessor shall have no liability for such payment.

(2) In the event that this Lease commences, terminates or expires during a tax year, Lessee shall pay the taxes for the period of such year during which this Lease was in effect.

(3) Any and all taxes and assessments and installments of taxes and assessments required to be paid by Lessee under this Lease shall be paid when due and the official Form 51.16 (Rev. 10/14)

and original receipt for the payment of such tax, assessment, or installment shall be delivered to Lessor upon request.

(4) Lessee shall indemnify and hold Lessor, the Lease Premises, and any Improvements now or hereafter located thereon, free and harmless from any liability, loss, or Damages resulting from any taxes, assessments, or other charges required by this Lease to be paid by Lessee and from all interest, penalties, and other sums imposed thereon and from any sales or other proceedings to enforce collection of any such taxes, assessments, or other charges.

8. INDEMNITY

(a) Lessee's use of the Lease Premises and any Improvements thereon is at Lessee's sole and exclusive risk.

(b) In addition to any other obligation to indemnify Lessor as otherwise provided in this Lease, except to the extent caused by the sole negligence and/or willful misconduct of the Lessor, Lessee shall indemnify, hold harmless, and, at the option of Lessor, defend Lessor, its officers, agents, and employees from any and all Damages resulting from Lessee's occupation and use of the Lease Premises. Lessee shall reimburse Lessor in full for all reasonable costs and attorneys' fees, specifically including, without limitation, any Damages arising by reason of: (1) The issuance, enjoyment, interpretation, Breach, or Default of this Lease; (2) The challenge to or defense of any environmental review upon which the issuance of this Lease is based; (3) The death or injury of any person, or damage to or destruction of any property from any cause whatever in any way connected with the Lease Premises, or with any of the Improvements or personal property on the Lease Premises; (4) The condition of the Lease Premises, or Improvements on the Lease Premises; (5) An act or omission on the Lease Premises by Lessee or any person in, on, or about the Lease Premises; (6) Any work performed on the Lease Premises or material furnished to the Lease Premises; (7) Lessee's failure to comply with any material legal or other requirement validly imposed on Lessee or the Lease Premises by a Regulatory Agency.

(c) The reimbursement provisions of this Paragraph 8 shall not apply to any claims, litigation, or other actions which may be brought by either Lessee or Lessor against each other.

(d) Nothing in this paragraph shall be construed as requiring that Lessor defend itself against all or any aspect of any challenge to this Lease or any associated environmental review. However, Lessee may take whatever legal action is available to it to defend this Lease or any associated environmental review against any challenge by a third party, whether or not Lessor chooses to raise a defense against such a challenge.

(e) Lessee shall notify Lessor immediately in case of any accident, injury, or casualty on the Lease Premises.

9. **INSURANCE**

(a) Lessee shall obtain and maintain in full force and effect during the term of this Lease comprehensive general liability insurance and property damage insurance, with such coverage and limits as may be reasonably requested by Lessor from time to time, but in no event for less than the sum(s) specified against any and all claims or liability arising out of the ownership, use, occupancy, condition, or maintenance of the Lease Premises and all Improvements.

(b) The insurance policy shall identify the Lease by its assigned number. The specific Improvements shall also be generally identified, as well as their location on state owned property. The coverage provided shall be primary and non-contributing. Lessee shall keep such policy current. Lessor shall be named as a "certificate holder" and/or an "additional interest" on the policy. Lessee shall provide Lessor with a current certificate of insurance at all times. At Lessor's request, Lessee shall provide a full copy of the current insurance policy, along with any and all endorsements or other such documents affecting the coverage. Lessor will not be responsible for any premiums or other assessments on the policy.

(c) The insurance coverage specified in this Lease shall be in effect at all times during the Lease term and subsequently until Lessor has either accepted all of the Lease Premises as improved or restored by Lessee as provided elsewhere in this Lease. Lessee shall notify Lessor within five (5) business days if the insurance is canceled for any reason.

10. **SURETY BOND**

(a) When required by Section 1 of this Lease, Lessee shall provide a surety bond or other security device acceptable to Lessor, for the specified amount, and naming the State of California, California State Lands Commission as the assured, to guarantee to Lessor the faithful observance and performance by Lessee of all of the terms, covenants, and conditions of this Lease.

(b) Lessor may require an increase in the amount of the surety bond or other security device to cover any additionally authorized Improvements, any modification of consideration, or to provide for inflation or other increased need for security. The surety bond or other security device may be increased on each fifth anniversary of the beginning date of this Lease. Should Lessor fail to exercise such right effective on any fifth anniversary, it may do so effective on any one (1) of the next four (4) anniversaries following such fifth anniversary without prejudice to its right to effect such modification on the next or any succeeding fifth anniversary. No such modification shall become effective unless Lessee is given at least thirty (30) days' notice prior to the date of the Commission meeting wherein the modification of the bond or security is considered, or thirty (30) days' notice prior to the

effective date of the increase, whichever provides more notice.

(c) The surety bond or other security device shall be maintained in full force and effect at all times during the Lease term and subsequently until Lessor has either accepted all of the Lease Premises as improved or restored by Lessee as provided elsewhere in this Lease. Lessee must first seek approval of Lessor before changing the type of security device used, or the bond holder.

11. ASSIGNMENT, ENCUMBRANCING OR SUBLETTING

(a) Lessee shall not either voluntarily or by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this Lease and shall not sublet the Lease Premises, in whole or in part, or allow any person other than the Lessee's employees, agents, servants and invitees to occupy or use all or any portion of the Lease Premises without the prior written consent of Lessor, which consent shall not be unreasonably withheld.

(1) Notwithstanding the foregoing prohibition against transfer and assignment, the Lease may be transferred by Lessee if the transfer is caused by the death of a spouse and the full interest of the deceased spouse is transferred to a surviving spouse; or the transfer is caused by the dissolution of the marriage of Lessee and the full interest of one of the spouses is transferred to the other spouse. In the event of such a transfer, Lessor shall be notified in writing within 30 days of the transfer.

(2) Notice to Lessor of Successor Trustee(s): In the event this Lease is held in trust, and the Lessee is a trustee thereof, the substitution or succession of a new trustee shall not be an assignment or transfer for the purposes of this Paragraph. Lessee (and by operation of law, any successor trustee) agrees to provide prompt notice to Lessor of any succession or substitution of trustee in accordance with Paragraph 16(c) of General Provisions, no later than sixty (60) days after the named trustee as appears on the face of this Lease becomes unable or ceases to serve as trustee for any reason.

(b) The following shall be deemed to be an assignment or transfer within the meaning of this Lease:

(1) If Lessee is a business entity, any dissolution, merger, consolidation or other reorganization of Lessee, or the sale or other transfer of substantially all the assets of Lessee. If Lessee is a publicly traded entity, transfers of interests in Lessee shall not constitute an assignment requiring the consent of Lessor.

(2) If Lessee is a partnership, a transfer of any interest of a general partner, a withdrawal of any general partner from the partnership, or the dissolution of the partnership.

(c) If this Lease is for sovereign lands appurtenant to adjoining littoral or riparian land, Lessee shall not transfer or assign its ownership interest or use rights in such adjoining lands

separately from the leasehold rights granted herein without the prior written consent of Lessor.

(d) If Lessee desires to assign, sublet, encumber or otherwise transfer all or any portion of the Lease Premises, Lessee shall do all of the following:

(1) Give not less than 90 days' prior written notice to Lessor;

(2) Provide the name, complete business organization, operational structure, and formation documents of the proposed assignee, sublessee, secured third party, or other transferee; and the nature of the use of and interest in the Lease Premises proposed by the assignee, sublessee, secured third party or other transferee.

(3) Provide the terms and conditions of the proposed assignment, sublease, or encumbrance or other transfer;

(4) Provide audited financial statements for the two most recently completed fiscal years of the proposed assignee, sublessee, secured party or other transferee; and provide pro forma financial statements showing the projected income, expense and financial condition resulting from use of the Lease Premises; and

(5) Provide such additional or supplemental information as Lessor may reasonably request concerning the proposed assignee, sublessee, secured party or other transferee.

(6) Lessor will evaluate proposed assignees, sublessees, secured third parties and other transferees and grant approval or disapproval according to standards of commercial reasonableness considering the following factors within the context of the proposed use: the proposed party's financial strength and reliability, their business experience and expertise, their personal and business reputation, their managerial and operational skills, their proposed use and projected rental, as well as other relevant factors.

(e) Lessor shall have a reasonable period of time from the receipt of all documents and other information required under this provision to grant or deny its approval of the proposed party. Lessor may reevaluate the rent, insurance and/or bond provisions of this Lease, and may condition its approval of the proposed assignment, sublease, hypothecation, mortgage, or other transfer on the party's acceptance of the new terms. Lessee's rights stated in this paragraph shall apply regardless of whether the proposed transfer coincides with a regular rent review period as stated in Section 3 Paragraph 3(c) above.

(f) Lessee's mortgage or hypothecation of this Lease, if approved by Lessor, shall be

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subject to terms and conditions imposed by a separately negotiated encumbering agreement.

(g) Upon the express written assumption of all obligations and duties under this Lease by an assignee approved by Lessor, the Lessee may be released from all liability under this Lease arising after the effective date of assignment and not associated with Lessee's use, possession or occupation of or activities on the Lease Premises; except as to any hazardous wastes, substances or materials as defined under federal, state or local law, regulation, or ordinance manufactured, generated, used, placed, disposed, stored or transported on the Lease Premises during Lessee's tenancy.

(h) If the Lessee files a petition or an order for relief is entered against Lessee, under Chapters 7, 9, 11 or 13 of the Bankruptcy Code (11 USC Sect. 101, et seq.) then the trustee or debtor-in-possession must elect to assume or reject this Lease within sixty (60) days after filing of the petition or appointment of the trustee, or the Lease shall be deemed to have been rejected, and Lessor shall be entitled to immediate possession of the Lease Premises. No assumption or assignment of this Lease shall be effective unless it is in writing and unless the trustee or debtor-in-possession has cured all Defaults under this Lease (monetary and non-monetary) or has provided Lessor with adequate assurances (1) that within ten (10) days from the date of such assumption or assignment, all monetary Defaults under this Lease will be cured; and (2) that within thirty (30) days from the date of such assumption, all non-monetary Defaults under this Lease will be cured; and (3) that all provisions of this Lease will be satisfactorily performed in the future.

(i) In the event of any transfer or assignment, under this Paragraph 11 or by any other means authorized by this Lease, the Lease terms shall be for the remaining years existing on the Lease prior to the transfer or assignment. A transfer or assignment shall not extend the term of this Lease.

12. **DEFAULT AND REMEDIES**

(a) **Default**

The occurrence of any one or more of the following events shall immediately and without further notice constitute a Default of this Lease:

(1) Lessee's failure to make any payment of rent, royalty, or other consideration as required under this Lease; or

(2) Lessee's failure to obtain or maintain liability insurance or a surety bond or other security device as required under this Lease; or

(3) Lessee's abandonment of the Lease Premises (including the covenant for continuous use as provided for in Paragraph 5(b)) during the Lease term; or

(4) Lessee's failure to obtain and maintain all necessary governmental permits or other entitlements; or

(5) The maintenance of the Lease Premises in violation of, or failure to comply with, any applicable provisions of any Regulatory Agency, Environmental Law, or maintenance of the Lease Premises in a condition constituting nuisance; or

(6) Lessee's Failure to commence to construct and to complete construction of the Improvements authorized by this Lease within the time limits specified in this Lease.

(7) Lessee is found to sublet or otherwise surrender daily management and control of the Lease Premises to a third party without the knowledge, expressed written consent or authorization of the Lessor.

(b) Lessee's failure to observe or perform any other term, covenant, or condition of this Lease when such failure shall continue for a period of thirty (30) days after Lessor's giving written notice shall constitute a Default of this lease. However, if the nature of Lessee's Default under this paragraph is such that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed to be in Default if Lessee commences such cure within such thirty (30) day period and diligently proceeds with such cure to completion.

(c) Should Lessee Breach any term, covenant, or condition of this Lease under Paragraph 12(b) above three (3) times in any three hundred and sixty-five (365) day period, the third Breach will be a Default under this Lease and Lessor will be entitled to immediately terminate this Lease, and take other appropriate action. Lessor will provide written notice of each Breach as provided above, and provide written notice that future Breaches will constitute immediate Default with no cure period.

(d) Remedies

In the event of a Default by Lessee and Lessee's failure to cure such Default if such a cure period is applicable, Lessor may at any time and with or without notice do any one or more of the following in addition to any rights or remedies permitted by law:

(1) Re-enter the Lease Premises, remove all persons and property, and repossess and enjoy such premises; or

(2) Terminate this Lease and Lessee's right of possession of the Lease Premises by any lawful means. The termination shall not relieve Lessee of any obligation, monetary or otherwise, which has accrued prior to the date of termination. Such termination shall be effective upon Lessor's giving written notice and upon Lessee's receipt of such notice. Lessee shall immediately surrender possession of the Lease Premises to Lessor. Lessor shall be entitled to recover from Lessee all amounts to which Lessor is entitled pursuant to Section 1951.2 of the California Civil Code, or any other provision of law, including any necessary Repair, renovation, alteration, remediation, or removal of Improvements; or

(3) Maintain this Lease in full force and effect and recover any rent, royalty, or other consideration as it becomes due without terminating Lessee's right of possession regardless of whether Lessee shall have abandoned the Lease Premises, subject to the conditions imposed by Cal. Civil Code § 1951.2; or

(4) Exercise any other right or remedy which Lessor may have at law or equity.

(e) Determination of Rental Value

If rent under this Lease is calculated as a percentage of Lessee's income attributable to the Lease Premises and Lessee abandons the Lease Premises during some or all of the applicable period, then the reasonable rental value shall be the percentage of proceeds Lessor would have received had Lessee operated the Lease Premises in the usual and customary manner.

(f) Waiver of Rights

The failure or delay of either party to exercise any right or remedy shall not be construed as a waiver of such right or remedy or any Breach by the other party. Lessor's acceptance of any rent shall not be considered a waiver of any preexisting Breach by Lessee other than the failure to pay the particular rent accepted regardless of Lessor's knowledge of the preexisting Breach at the time rent is accepted.

13. RESTORATION OF LEASE PREMISES AND ENVIRONMENTAL MATTERS

(a) Restoration of Lease Premises

(1) Upon expiration or sooner termination of this Lease, Lessee must immediately surrender possession of the Lease Premises to Lessor. Prior to the time of surrender, Lessee must remove all or any Improvements together with the debris and all parts of any such Improvements at its sole expense and risk, regardless of whether Lessee

actually constructed or placed the Improvements on the Lease Premises; or Lessor, at its sole and absolute discretion, may itself remove or have removed all or any portion of such Improvements at Lessee's sole expense. Lessor may waive all or any part of this obligation in its sole discretion if doing so is in the best interests of the State.

(2) As a separate and related obligation, Lessee shall restore the Lease Premises as nearly as possible to the conditions existing prior to the installation or construction of any Improvements. For purposes of this Lease, restoration includes removal of any landscaping; removal of any Hazardous Materials; and to the extent possible, undoing any grading, fill, excavation, or similar alterations of the natural features of the Lease Premises. Lessor may waive all or any part of this obligation in its sole and absolute discretion.

(3) Unless otherwise provided for in this Lease, Lessee shall submit to Lessor no later than one (1) year prior to the expiration of this Lease either: (a) an application and minimum expense deposit for a new lease for the continued use of the Lease Premises, or (b) a plan for the restoration of the Lease Premises to be completed prior to the expiration of the lease term together with a timeline for obtaining all necessary permits and conducting the work prior to the expiration of this Lease.

(4) In removing any or all Improvements, or conducting any restoration work, Lessee shall be required to obtain any permits or other governmental approvals as may then be required by any Regulatory Agency, including, without limitation, any Environmental Law.

(5) Lessor may, upon written notice, in its sole and absolute discretion, accept title to any or all Improvements at the termination of this Lease. Lessor shall notify Lessee that Lessor intends to take title to any or all Improvements within six (6) months of Lessee submitting a plan for restoration under Paragraph 13(a)(3)(b) above. If Lessor elects to take title to any such Improvements, Lessee shall deliver to Lessor such documentation as may be necessary to convey title to such Improvements to Lessor free and clear of any liens, mortgages, loans, or any other encumbrances. Lessor shall not pay, and Lessee shall not be entitled to compensation for Lessor's taking title to such property.

(b) Environmental Matters

(1) Lessee's Obligations:

(i) Lessee will not use, occupy, or permit any portion of the Lease Premises to be used or occupied in violation of any Environmental Law. Lessee shall not manufacture or generate or store Hazardous Material on the Lease Premises unless

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specifically authorized under other terms of this Lease.

(ii) Lessee shall practice conservation of water, energy, and other natural resources.

(iii) Lessee shall notify Lessor and the appropriate governmental emergency response agency, or agencies immediately in the event of any release or threatened release of any Hazardous Material.

(2) Lessor may at any time during the Lease term require Lessee to conduct at its own expense and by a contractor approved by Lessor an independent environmental site assessment or inspection for the presence or suspected presence of Hazardous Material generated, used, placed, disposed, stored, or transported on the Lease Premises during the term of the Lease. Lessee shall provide the results of the assessment or inspection to Lessor and the appropriate governmental response agency or agencies and shall further be responsible for removing or taking other appropriate remedial action regarding such Hazardous Material in accordance with applicable Environmental Law.

(3) Environmental Indemnity.

Lessee shall indemnify, defend, and hold Lessor and Lessor's, officer, appointees, volunteers, employees, agents, successors and assigns free and harmless from and against all Damages that may at any time be imposed upon, incurred by, or asserted or awarded against Lessor in connection with or arising from any Breach of Lessee's obligations hereunder; or out of any violation by Lessee of any Environmental Law; or resulting in the imposition of any lien or claim for the recovery of any costs for environmental cleanup or other response costs relating to the release or threatened release of Hazardous Materials on the Lease Premises during the Lessee's tenancy. This obligation shall include any prior leases between Lessor and Lessee and will continue through any periods Lessee is in holdover, unlawful detainer, or any subsequent month-to-month tenancies created by operation of law. Lessee's obligations hereunder will survive the expiration or sooner termination of this Lease.

(4) Violation of this section shall constitute grounds for termination of the Lease. Lessor, shall notify Lessee when, in Lessor's opinion, Lessee has violated the provisions of this section. Lessee shall immediately discontinue the conduct and respond within five (5) business days. Lessee shall take all measures necessary to remedy the condition.

14. QUITCLAIM

Lessee shall, upon the early termination of this Lease and at Lessor's request, execute and

deliver to Lessor in a form provided by Lessor a good and sufficient release of all rights under this Lease. Should Lessee fail or refuse to deliver such a release, Lessor may record a written notice reciting such failure or refusal. This written notice shall, from the date of its recordation, be conclusive evidence against Lessee of the termination of this Lease and all other claimants.

15. HOLDING-OVER

(a) This Lease shall terminate without further notice upon the expiration of the term of this Lease. Lessee shall have removed any Improvements and completed any restoration as required by Lessor prior to the expiration of this Lease, and shall surrender possession of the Lease Premises. Any failure by the Lessee to remove Improvements, restore the Lease Premises, and/or surrender possession of the Lease Premises at the expiration or sooner termination of this Lease shall not constitute a renewal or extension and shall not give Lessee any rights in or to the Lease Premises or any part thereof except as expressly provided in this Lease. Lessee shall be deemed in unlawful detainer of the Lease Premises and Lessor shall be entitled to all resulting legal remedies.

(b) Lessor may, in its sole discretion, choose to accept Rent for the Lease Premises instead of immediately taking legal action to recover possession of the Lease Premises. Any tenancy created by operation of law on Lessor's acceptance of rent shall be deemed a month-to-month tenancy regardless of what sum or sums Lessee delivers to Lessor. Except as set forth below, any subsequent tenancy created in this manner shall be on the same terms, covenants, and conditions set forth in this Lease insofar as such terms, covenants, and conditions can be applicable to a month-to-month tenancy

(c) In recognition of the increased accounting, land management, and supervisory staff time required for month-to-month tenancies, the rent for each month or any portion thereof during such holdover period may be an amount equal to one hundred fifty percent (150%) of one-twelfth (1/12) of the total compensation for the most recent year paid. In the event this Lease does not require monetary compensation, Lessor shall have the right to establish rent based on the fair market value of the Lease Premises. The month-to-month tenancy may be terminated by Lessee or Lessor upon thirty (30) calendar days' prior written notice to the other.

16. ADDITIONAL PROVISIONS

(a) Waiver

(1) No term, covenant, or condition of this Lease and no omission, neglect, Default or Breach of any such term, covenant or condition shall be deemed to have been waived by Lessor's acceptance of a late or nonconforming performance or otherwise, unless such a waiver is expressly acknowledged by Lessor in writing. No delay or omission of Lessor to exercise any right or power arising from any omission, neglect,

Default or Breach of term, covenant, or condition of this Lease shall be construed as a waiver or any acquiescence therein.

(2) Any such waiver shall not be deemed to be a waiver of any other term, covenant or condition; of any successive Breaches of the same term, covenant, or condition; or of any other Default or Breach of any term, covenant or condition of this Lease.

(b) Time

Time is of the essence for this Lease and each and all of its terms, covenants or conditions in which performance is a factor.

(c) Notice

All notices required to be given under this Lease shall be given in writing, sent by U.S. Mail with postage prepaid, to Lessor at the offices of the State Lands Commission and the Lessee at the address specified in this Lease. Lessee shall give Lessor notice of any change in its name or address.

(d) Consent

Where Lessor's consent is required under this Lease its consent for one transaction or event shall not be deemed to be a consent to any subsequent occurrence of the same or any other transaction or event.

(e) Changes

This Lease may be terminated and its term, covenants, and conditions amended, revised, or supplemented only by mutual written agreement of the parties.

(f) Successors

The terms, covenants, and conditions of this Lease shall extend to and be binding upon and inure to the benefit of the heirs, successors, and assigns of the respective parties.

(g) Joint and Several Obligation

If more than one Lessee is a party to this Lease, the obligations of the Lessees shall be joint and several.

(h) Captions

The section and paragraph captions used in this Lease are for the convenience of the parties. The captions are not controlling and shall have no effect upon the construction or interpretation of this Lease.

(i) Severability

If any term, covenant or condition of this Lease is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each term and provision of this Lease shall remain valid and enforceable to the fullest extent permitted by law.

(j) Representations

Lessee agrees that no representations have been made by Lessor or by any person or agent acting for Lessor. Lessor and Lessee agree and acknowledge that this document contains the entire agreement of the parties, that there are no verbal agreements, representations, warranties or other understandings affecting this Lease, and Lessor and Lessee, as a material part of the consideration of this Lease, waive all claims against the other for rescission, damages, or otherwise by reason of any alleged covenant, agreement or understanding not contained in this Lease.

(k) Gender and Plurality

In this Lease, the masculine gender includes both the feminine and neuter, and the singular number includes the plural whenever the context so requires.

(l) Survival of Certain Covenants

All covenants pertaining to bond, insurance, indemnification, restoration obligations, Breach, Default, and remedies shall survive the expiration or earlier termination of this Lease until Lessee has fulfilled all obligations to restore the Lease Premises as required by this Lease.

(m) Counterparts

This agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement.

(n) Delegation of Authority

Lessor and Lessee acknowledge Lessor as defined herein includes the Commission Members, their alternates or designees, and the staff of the Commission. The ability of staff of the Commission to give consent, or take other discretionary actions described herein will be as described in the then-current delegation of authority to Commission staff. All other powers are reserved to the Commission.

STATE OF CALIFORNIA - STATE LANDS COMMISSION

LEASE 7082

This Lease shall become effective only when approved by and executed on behalf of the State Lands Commission of the State of California and a duly executed copy has been delivered to Lessee. The submission of this Lease by Lessor, its agent, or representative for examination by Lessee does not constitute an option or offer to lease the Lease Premises upon the terms and conditions contained herein, or a reservation of the Lease Premises in favor of Lessee. Lessee's submission of an executed copy of this Lease to Lessor shall constitute an offer to Lessor to lease the Lease Premises on the terms and conditions set forth herein.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the date hereafter affixed.

LESSEE:

**COUNTY OF SANTA BARBARA
COMMUNITY SERVICES DEPARTMENT**

LESSOR:

**STATE OF CALIFORNIA
STATE LANDS COMMISSION**

By: _____

By: _____

Robert Brian Bugsch

Title: _____

Title: Chief, Land Management Division

Date: _____

Date: _____

ATTACH ACKNOWLEDGMENT

Execution of this document was authorized by the California State Lands Commission on _____.

EXHIBIT A

LEASE 7082

LAND DESCRIPTION

FIVE (5) parcels of submerged land situate in the bed of the Santa Barbara Channel, in the Pacific Ocean, County of Santa Barbara, State of California, more particularly described as follows:

PARCEL 1 – GOLETA BEACH

COMMENCING at a NGS monument “PELICAN 2, PID EW8087” (Epoch 1991.35) having CCS83 Zone 5 coordinates of Northing (y) = 1974888.40 feet, Easting (x) = 6005404.49 feet which bears South 83° 27’ 50” East, 10578.59 feet from a NGS monument “CAMPBELL PROPERTY MANAGEMENT, PID EW6640” (Epoch 1991.35) having CCS83 Zone 5 coordinates of Northing (y) = 1976092.54 feet, Easting (x) = 5994894.66 feet; thence North 37° 39’ 19” East, 4103.78 feet to the **POINT OF BEGINNING**; thence North 00° 47’ 31” West, 282.31 feet; thence North 85° 50’ 45” East, 2040.55 feet; thence South 04° 57’ 02” East, 255.80 feet; thence South 85° 07’ 17” West, 2060.83 feet to the **POINT OF BEGINNING**.

PARCEL 2 – ARROYO BURRO BEACH

COMMENCING at a NGS monument “WHEELER, PID EW7983” (Epoch 1991.35) having CCS83 Zone 5 coordinates of Northing (y) = 1971833.75 feet, Easting (x) = 6038902.49 feet which bears South 65° 19’ 20” East, 6296.09 feet from a NGS monument “REX, PID EW8106” (Epoch 1991.35) having CCS83 Zone 5 coordinates of Northing (y) = 1974462.47 feet, Easting (x) = 6033181.43 feet; thence North 71° 01’ 13” West, 3038.23 feet to the **POINT OF BEGINNING**; thence South 04° 24’ 01” West, 334.96 feet; thence North 70° 54’ 11” West, 1290.03 feet; thence North 19° 09’ 02” East, 420.63 feet; thence South 66° 19’ 02” East, 1208.52 feet to the **POINT OF BEGINNING**.

PARCEL 3 – BUTTERFLY BEACH

COMMENCING at a NGS monument “WET USE ECC, PID EW8032” (Epoch 1991.35) having CCS83 Zone 5 coordinates of Northing (y) = 1973983.05 feet, Easting (x) = 6052600.02 feet which bears South 85° 42’ 27” East, 2222.99 feet from a NGS monument “DIBBLEE 3, PID EW7985” (Epoch 1991.35) having CCS83 Zone 5 coordinates of Northing (y) = 1974149.44 feet, Easting (x) = 6050383.27 feet; thence North 72° 15’ 49” East, 12412.80 feet to the **POINT OF BEGINNING**; thence North 13° 37’ 30” East, 323.77 feet; thence South 75° 59’ 21” East, 3073.47 feet; thence South 15° 53’ 29” West, 365.41 feet; thence North 75° 12’ 46” West, 3059.58 feet to the **POINT OF BEGINNING**.

PARCEL 4 – LOOKOUT BEACH

COMMENCING at a NGS monument “HPGN CA 05 01, PID EW9544” (Epoch 2010.00) having CCS83 Zone 5 coordinates of Northing (y) = 1979265.39 feet, Easting (x) = 6077331.62 feet which bears South 56° 05’ 12” East, 1232.98 feet from a NGS monument “JOSTENS, PID EW7955” (Epoch 2010.00) having CCS83 Zone 5 coordinates of Northing (y) = 1979953.32 feet, Easting (x) = 6076308.39 feet; thence South 27° 43’ 27” East, 965.72 feet to the **POINT OF BEGINNING**; thence North 89° 08’ 20” East, 493.97; thence South 66° 36’ 33” East, 1383.77 feet; thence South 15° 04’ 31” West, 299.85 feet; thence North 76° 21’ 27” West, 1731.11 feet; thence North 00° 30’ 10” West, 423.17 feet to the **POINT OF BEGINNING**.

PARCEL 5 – MIRAMAR BEACH

COMMENCING at a NGS monument “WET USE ECC, PID EW8032” (Epoch 1991.35) having CCS83 Zone 5 coordinates of Northing (y) = 1973983.05 feet, Easting (x) = 6052600.02 feet which bears South 85° 42’ 27” East, 2222.99 feet from a NGS monument “DIBBLEE 3, PID EW7985” (Epoch 1991.35) having CCS83 Zone 5 coordinates of Northing (y) = 1974149.44 feet, Easting (x) = 6050383.27 feet; thence North 76° 07’ 53” East, 17799.38 feet to the **POINT OF BEGINNING**; thence North 07° 55’ 59” East, 389.31 feet; thence North 75° 29’ 14” East, 487.67 feet; thence South 74° 16’ 03” East, 2892.40 feet; thence South 03° 53’ 47” West, 1310.43 feet; thence North 63° 48’ 51” West, 3589.21 feet to the **POINT OF BEGINNING**.

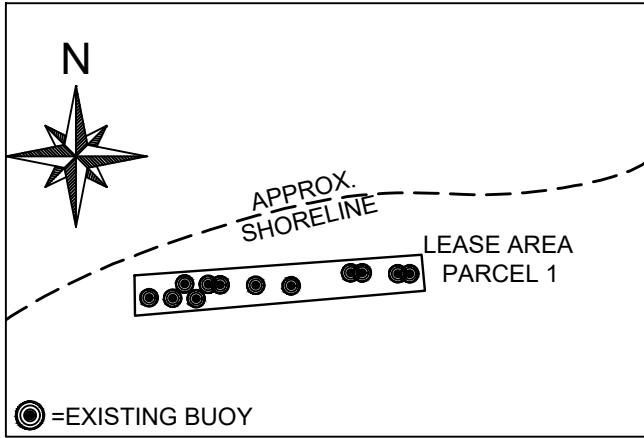
END OF DESCRIPTION

Prepared 11/01/2023 by the California State
Lands Commission Boundary Unit.

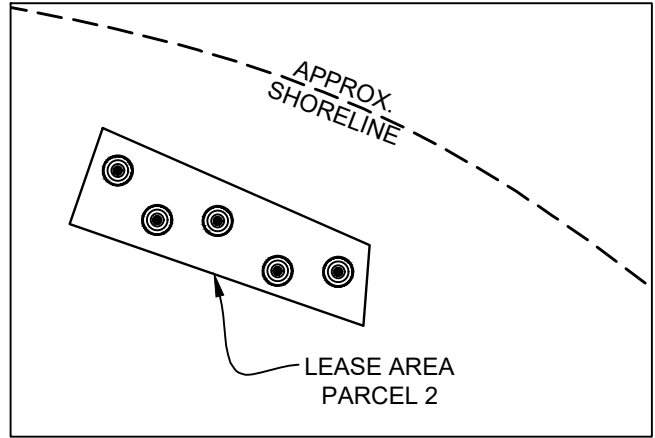


NO SCALE

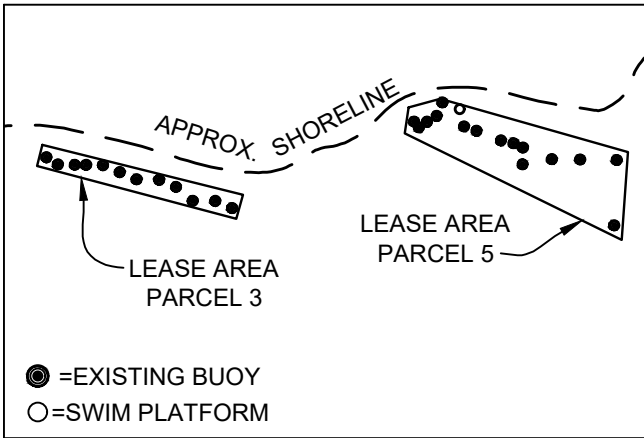
SITE



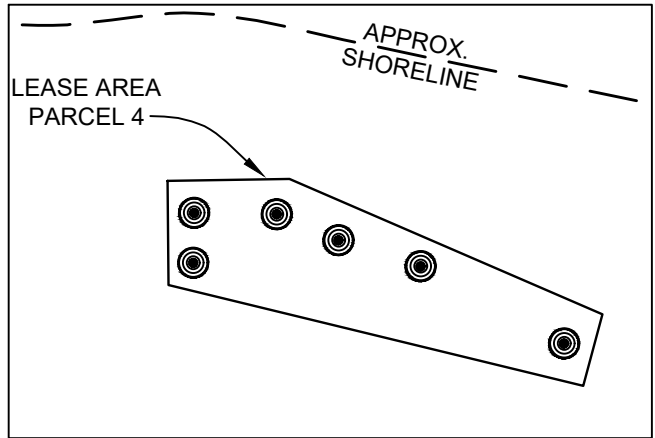
GOLETA BEACH



ARROYO BURRO BEACH



BUTTERFLY AND MIRAMAR BEACH

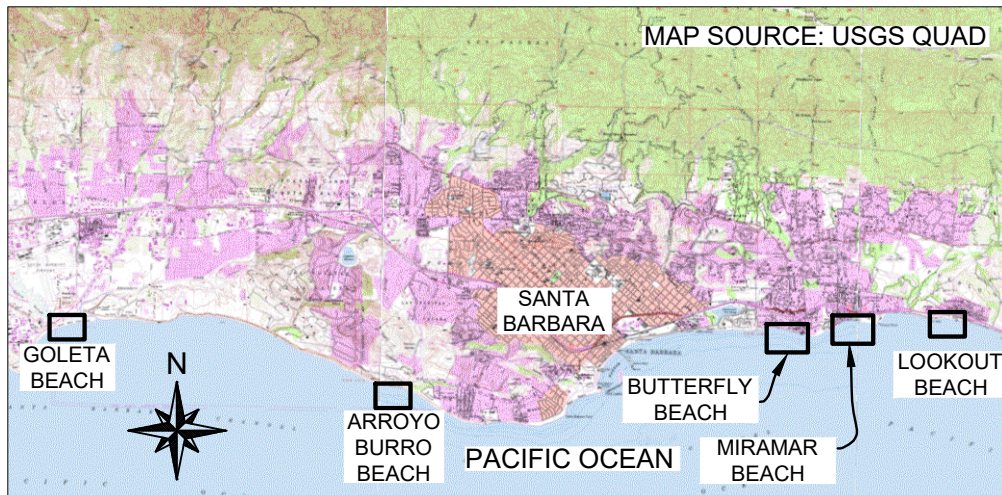


LOOKOUT BEACH

GOLETA, ARROYO BURRO, BUTTERFLY, MIRAMAR AND LOOKOUT BEACHES, NEAR SANTA BARBARA

NO SCALE

LOCATION



THIS EXHIBIT IS SOLELY FOR PURPOSES OF GENERALLY DEFINING THE LEASE PREMISES, IS BASED ON UNVERIFIED INFORMATION PROVIDED BY THE LESSEE OR OTHER PARTIES AND IS NOT INTENDED TO BE, NOR SHALL IT BE CONSTRUED AS, A WAIVER OR LIMITATION OF ANY STATE INTEREST IN THE SUBJECT OR ANY OTHER PROPERTY.

EXHIBIT B

LEASE 7082
 COUNTY OF SANTA BARBARA
 COMMUNITY SERVICES
 DEPARTMENT
 GENERAL LEASE -
 PUBLIC AGENCY USE
 SANTA BARBARA COUNTY



SITE
 DdV 11/20/23

EXHIBIT "B"

LICENSE AGREEMENT

Project: Miramar Beach Public Swim
Platform
APN: N/A
Agent: JKL

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (“Agreement”) is made by and between

COUNTY OF SANTA BARBARA, a political
subdivision of the State of California (“COUNTY”),
and

MIRAMAR ACQUISITION CO., LLC, a California
Limited Liability Corporation, (“LICENSEE”),
with reference to the following:

WHEREAS, COUNTY has entered into Lease No. PRC 7082 with the California State
Lands Commission (hereinafter “Lease”); and

WHEREAS, the Lease allows COUNTY to designate a special use area at Miramar Beach
with seasonal placement of swim buoys between May 1 and October 15 each Summer; and

WHEREAS, LICENSEE desires to provide for public recreation at Miramar Beach by
installing, operating, and maintaining a floating public swim platform within the COUNTY special
use area at Miramar Beach as described by the Lease; and

WHEREAS, COUNTY and LICENSEE have mutual interest in the placement of the
public swim platform at Miramar Beach for recreation purposes; and

NOW, THEREFORE, in consideration of the provisions, covenants, and conditions
contained herein, COUNTY and LICENSEE agree as follows:

1. **ADMINISTRATION AND ENFORCEMENT**: The provisions of this Agreement shall
be administered and enforced for COUNTY by the Director of the Community Services
Department or Director’s designee (hereinafter “Director”), and for LICENSEE by its officers or
its officers’ designee.
2. **LICENSED AREA**: COUNTY hereby grants to LICENSEE a personal, revocable, non-
exclusive, and non-assignable right to use of a portion of the special use area at Miramar Beach as
shown on Exhibit “A” attached hereto and incorporated herein by reference (hereinafter “Licensed
Area”). LICENSEE’s use of the Licensed Area shall be subject to the terms herein.
3. **PURPOSE AND USE**: LICENSEE shall use the Licensed Area for the purpose of
providing a no cost, non-commercial, and public swim platform for recreational uses between May

1 and October 15 each Summer during the term of this Agreement. LICENSEE shall not use the Licensed Area for any other purposes without the express written consent of COUNTY.

4. **TERM**: The term of this Agreement shall be for a period of approximately ten (10) years, commencing upon May 1, 2024, and expiring on April 30, 2034, unless otherwise terminated sooner.

5. **OPTIONS TO EXTEND**: Provided LICENSEE is in compliance with all terms and conditions of this Agreement, COUNTY, in its sole discretion, may renew this Agreement for two (2) additional terms of five (5) years on the same terms and conditions contained herein, unless either party provides written notice of termination to the other at least thirty (30) days prior to the expiration of the then current term. Any extension is subject to all applicable County State Lands Commission Agreements and California Coastal Commission Coastal Development Permits. Extension periods are set forth as follows:

Extension One: May 1, 2034 through April 30, 2039 and
Extension Two: May 1, 2039 through April 30, 2044.

6. **RENT**: As consideration for the rights and privileges granted by this Agreement, LICENSEE shall provide use of the Licensed Area and the swim platform improvements as a no cost public use and benefit.

7. **ACCESS TO PREMISES**: LICENSEE shall permit COUNTY and its authorized agents, employees, and independent contractors to enter onto the Licensed Area at all reasonable times for the purpose of inspecting the Licensed Area or the swim platform to determine whether LICENSEE is complying with the terms of this Agreement, for the purpose of performing other lawful acts that may be necessary to protect the COUNTY'S interest in said Licensed Area and swim platform, and for the purpose of performing any duties and obligations on COUNTY'S part under this Agreement.

Any act of LICENSEE or any of its agents, employees, volunteers, independent contractors, invitees, or guests that prevents, interferes, restricts, or limits any member of the public's use of, enjoyment of, or access to any portion of the Licensed Area shall constitute an immediate default and breach of this Agreement with no cure period that might otherwise be available under Section 15, and this Agreement shall be subject to immediate termination at the sole discretion of COUNTY. For the avoidance of doubt, no act of LICENSEE or any of its agents, employees, volunteers, independent contractors, invitees, or guests that is permitted pursuant to LICENSEE's private property rights or entitlements or governmental approvals related to that certain real property owned and operated by LICENSEE adjacent to Miramar Beach, commonly known as Rosewood Miramar Beach Resort (the "Resort Property") shall be deemed to be in violation of this Agreement, and nothing in this Agreement shall be construed to limit LICENSEE's private property rights with respect to Resort Property or otherwise modify the entitlements or governmental approvals related thereto.

8. **UTILITY CHARGES AND JANITORIAL SERVICES**: LICENSOR shall pay for all utilities and janitorial services, including gas, electricity, water, sewer, garbage, telephone, and internet charges.

9. **SITE SUITABILITY AND ACCEPTANCE OF PREMISES:** COUNTY is currently using the Licensed Area. LICENSEE has determined that it is suitable for LICENSEE's intended use. LICENSEE hereby accepts the Licensed Area in its existing condition and acknowledges that COUNTY makes no representations or warranties about said condition or the suitability of same for the intended use by LICENSEE.

10. **MAINTENANCE AND REPAIR:** LICENSEE is responsible for all maintenance and repairs to the Licensed Area. COUNTY is not obligated to repair existing defects, if any, in the Licensed Area except as may be necessary to maintain the Licensed Area in a safe and habitable condition. LICENSEE shall return the Licensed Area to its original condition and arrangement after termination of this Agreement. COUNTY is not responsible for any maintenance or repair.

11. **SIGNS:** LICENSEE may place reasonable signage on the Licensed Area subject to COUNTY prior written approval, at LICENSEE's sole cost and expense, provided such signage complies with all applicable State Lands Commission, Coastal Commission, and County requirements. LICENSEE shall remove all signage at its sole cost and expense upon termination of this Agreement.

12. **ASSIGNMENT / SUBLICENSE:** LICENSEE shall not assign, license, or sublicense the Licensed Area or any part thereof or any right or privilege appurtenant thereto. Any attempt to assign, license, or sublicense LICENSEE's rights under this Agreement shall be void and without legal effect and a material breach of this Agreement and grounds for termination. LICENSEE's use of any portion of the Licensed Area for commercial purposes; conducting a business, whether for profit, or otherwise; or any subleasing, rental, or any transaction whereby LICENSEE directly or indirectly receives compensation or remuneration from a third party in exchange for use of any portion of the Licensed Area shall constitute an immediate default and breach of this Agreement with no cure period that might otherwise be available under Section 15, and this Agreement shall be subject to immediate termination at the sole discretion of COUNTY.

13. **ABANDONMENT:** LICENSEE shall not abandon, vacate, or surrender its use of the Licensed Area at any time during the term of this Agreement. If LICENSEE does abandon, vacate, or surrender use of the Licensed Area, this Agreement and all of LICENSEE's rights thereto shall, at the sole discretion of COUNTY, terminate after notice and the right to cure has been provided as set forth in Section 15, DEFAULT and Section 16, REMEDIES.

14. **REMOVAL OF PROPERTY:** LICENSEE shall remove all personal property from the Licensed Area upon termination, abandonment, vacation, or surrender pursuant to this Agreement. Any property belonging to LICENSEE left in the Licensed Area more than thirty (30) days after such time shall at the sole discretion of COUNTY be deemed abandoned and/or title to such shall pass to COUNTY.

15. **DEFAULT:** Except as provided in Sections 7, 12, and 28, or as otherwise required herein, should either party at any time be in default hereunder with respect to any material term, covenant, condition, or reservation contained herein, the non-defaulting party shall give notice to the defaulting party specifying the particulars of the default, and the defaulting party shall promptly commence remedial action to cure the default. Should such default continue uncured for a period

of thirty (30) calendar days from such notice, this Agreement shall terminate at the option of the non-defaulting party; unless the cure of such default shall reasonably take more than thirty (30) calendar days in which case the defaulting party shall proceed with all due speed to cure the default and shall have a reasonable time to effectuate its cure.

16. **REMEDIES**: In the event of a default or breach, either party may exercise any right or remedy at law or in equity which such party may have by reason of such default or breach including, but not limited to, the following:

- A. The non-defaulting party may waive the default or breach in accordance with Section 17, WAIVER, herein below.
- B. Where COUNTY is the non-defaulting party, COUNTY may terminate this Agreement, and LICENSEE must surrender use of the Licensed Area within seven (7) days of written notice from COUNTY.

17. **WAIVER**: It is understood and agreed that any waiver of any term of this Agreement or of any default or breach of this Agreement shall not be deemed to be a waiver of any continuing or subsequent default or breach of any other provision of this Agreement. Waivers of provisions of this Agreement must be in writing and signed by that party's respective designee under Section 1, ADMINISTRATION AND ENFORCEMENT, of this Agreement.

18. **DESTRUCTION**: If the Licensed Area is partially or totally destroyed by fire or other casualty, this Agreement shall, at the option of either party, terminate.

19. **TERMINATION**: This Agreement shall terminate, all rights of LICENSEE hereunder shall cease, and LICENSEE shall quietly and peacefully vacate the Licensed Area if either party exercises its rights to terminate as provided in Section 5, OPTIONS TO EXTEND, or as follows:

- A. Upon termination of LICENSOR's authorized use of the Licensed Area as set forth in Lease; or
- B. Upon expiration, revocation, surrender, or abandonment of the permits, entitlements, and approvals issued by the California Coastal Commission regarding, concerning, or related to the public swim platform at Miramar Beach; or
- C. As provided in Section 7, ACCESS TO PREMISES; or
- D. As provided in Section 12, ASSIGNMENT / SUBLICENSE; or
- E. Upon abandonment, vacation, or surrender as provided in Section 13, ABANDONMENT; or
- F. Upon the failure of either party to satisfy, observe, or perform any term or condition set forth in this Agreement and the expiration of the cure period as provided in Section 15, DEFAULT; or
- G. As provided in Section 18, DESTRUCTION; or
- H. As provided in Section 28, COMPLIANCE WITH THE LAW; or
- I. Upon delivery of a written thirty (30) day notice of termination without cause by either party.

20. **SURRENDER OF FACILITIES**: Upon termination of this Agreement, LICENSEE shall vacate and surrender possession of, and any claim to, the Licensed Area and shall leave Licensed

Area in good condition, except for ordinary wear and tear.

21. **INDEMNIFICATION AND INSURANCE**: The parties shall comply with the indemnification and insurance provisions as set forth in Exhibit “B” attached hereto and incorporated herein by reference.

22. **NOTICES**: Any notice to be given to either party, by the other, shall be in writing and shall be served, either personally or by registered or certified mail, to the following:

LICENSEE: Miramar Acquisition Co., LLC
101 The Grove Drive
Los Angeles, CA 90036
Attention: Legal Department

COUNTY: Parks Assistant Director
Community Services Department
123 Anapamu Street, 2nd Floor
Santa Barbara, CA 93101

All notices hereunder shall be deemed to have been given on the date delivered, if personally delivered, or if mailed, then on the first business day following the date on which it is mailed, by certified or registered mail, postage prepaid, addressed to the address specified above, or to such other address designated by the party as provided for herein.

23. **NON-INTERFERENCE**: LICENSEE agrees not to use, nor permit those under its control, including, but not limited to, its employees, invitees, volunteers, agents and/or independent contractors, to use any portion of the Licensed Area in such a way that interferes with COUNTY operations within the Licensed Area. Such interference shall be deemed a material breach, and LICENSEE shall terminate said interference immediately upon notice from COUNTY.

24. **SUCCESSORS IN INTEREST**: This Agreement and the covenants contained herein shall be binding upon and inure to the benefit of the respective parties and to any government or private organization into which LICENSEE or COUNTY may be merged.

25. **NOTIFICATION OF ACCIDENTS AND SURVIVAL OF INDEMNIFICATION PROVISIONS**: LICENSEE shall notify COUNTY immediately, but not later than within 48 hours of learning of such incident, in the event of any accident or injury arising out of or in connection with this Agreement. The indemnification provisions in this Agreement shall survive termination of this Agreement.

26. **ENVIRONMENTAL IMPAIRMENT**: The parties shall comply in all material respects with all applicable laws, regulations, ordinances, guidelines, policies, directives, standards, rules, and orders regardless of when they become or became effective, including without limitation those relating to construction, grading, signage, health, safety, noise, environmental protection, waste

disposal, water and air quality, and shall furnish satisfactory evidence of compliance upon request by requesting party.

Should any discharge, leakage, spillage, emission, or pollution of any type occur upon or from the Licensed Area due to LICENSEE's use, activity, or occupancy, LICENSEE shall clean all property affected to the satisfaction of COUNTY and any governmental body having jurisdiction therefor.

27. **TOXICS**: The parties shall not manufacture or generate hazardous wastes on, in, or around the Licensed Area. Each party shall be fully responsible for all hazardous wastes, substances, or materials as defined under Federal, state, or local law, regulation, or ordinance that are manufactured, generated, used, placed, disposed, stored, or transported by either party, its officers, agents, representatives, employees, volunteers, independent contractors, or designees on, in, or around the Licensed Area during the term of this Agreement, and shall comply with and be bound by all applicable provisions of such Federal, state, or local law, regulation, or ordinance dealing with such wastes, substances, or materials. In the event of any release or threatened release of any such wastes, substances, or materials, the responsible party, as the case may be, shall immediately notify the other party and the appropriate governmental response agency(ies).

28. **COMPLIANCE WITH THE LAW**: The parties shall comply with all applicable laws, rules, regulations, and ordinances, as may be amended, affecting the Licensed Area or this Agreement now or hereafter in effect.

In addition, the parties shall comply with and be subject to all terms and conditions of the Lease and all permits, entitlements, and approvals issued by the California Coastal Commission regarding, concerning, or related to the public swim platform at Miramar Beach (the "CDPs"). The terms and conditions of the Lease and CDPs are incorporated herein as if they were fully set forth. In the event of any conflict between this Agreement and the Lease or the CDPs, the terms of the Lease or CDPs shall control.

The parties shall also comply with the terms and conditions of the Master Agreement by and between COUNTY and LICENSOR entered into on or about the date hereof and which incorporates this Agreement as an exhibit thereto, and the Operations Plan and Maintenance Agreement by and between COUNTY and LICENSEE and entered into on or about the date hereof with respect to the operation and maintenance obligations related to the swim platform. The terms and conditions of the Master Agreement and the Operations Plan and Maintenance Agreement are incorporated herein as if they were fully set forth. In the event of any conflict between this Agreement and the Master Agreement, the terms of the Master Agreement shall control. In the event of any conflict between this Agreement and the Operations Plan and Maintenance Agreement, the terms of this Agreement shall control.

Violation of any applicable law, rule, regulation, ordinance or any term or condition of the Lease, CDPs, Master Agreement, or Operations Plan and Maintenance Agreement shall constitute an immediate default and breach of this Agreement with no cure period that might otherwise be available under Section 15, and this Agreement shall be subject to immediate termination at the sole discretion of COUNTY.

29. **NONDISCRIMINATION**: The parties shall comply with the laws, rules, and regulations regarding nondiscrimination as such are found in the Santa Barbara County Code and as such may from time to time be amended. These provisions are incorporated herein as if they were fully set forth. Noncompliance with provisions of this section shall constitute a material breach of this Agreement and in addition to any other remedies provided by law, COUNTY shall have the right to terminate this Agreement and the interest hereby created without liability therefor.
30. **AMENDMENTS**: This Agreement may only be amended by written consent of the parties, and such changes shall be binding upon the successors of the parties.
31. **AGENCY DISCLOSURE**: LICENSEE acknowledges that the Community Services Department, Parks Division of the COUNTY is the agent for the COUNTY exclusively, and is neither the agent for the LICENSEE nor a dual agent in this transaction.
32. **CAPTIONS**: The title or headings to the sections of this Agreement are not a part of this Agreement, and shall have no effect upon the construction or interpretation of any part hereof.
33. **SEVERABILITY**: If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal, or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
34. **CERTIFICATION OF SIGNATORY**: The signatories of this Agreement represent and warrant that they are authorized to execute this Agreement and that no additional signatures are required to bind LICENSEE and COUNTY to its terms and conditions or to carry out duties contemplated herein.
35. **EXECUTION IN COUNTERPARTS**: This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.
36. **FACSIMILE/ELECTRONICALLY TRANSMITTED SIGNATURES**: In the event that the parties hereto utilize facsimile transmitted documents or electronically transmitted documents which include signatures, such documents shall be accepted as if they bore original signatures provided that documents bearing ORIGINAL SIGNATURES are provided within seventy-two (72) hours of transmission; however, documents shall not be accepted for recordation by the Clerk-Recorder of the County until such documents bearing original signatures are received by COUNTY.
37. **ENTIRE AGREEMENT**: The parties to this Agreement intend that their negotiations, conversations, and statements made prior to execution of this Agreement are fully integrated and expressed herein, and no such negotiations, conversations, and statements shall be deemed to create rights or obligations other than those stated herein.

Project: Miramar Beach Public Swim Platform

APN: N/A

Agent: JKL

IN WITNESS WHEREOF, LICENSEE and COUNTY have executed this Agreement by the respective authorized representatives as set forth below to be effective as of the date executed by COUNTY.

“LICENSEE”

Miramar Acquisition Co., LLC

By: _____

Date: _____

Name: Jackie Levy

Title: Chief Financial Officer

Project: Miramar Beach Public Swim Platform

APN: N/A

Folio:

Agent: JKL

IN WITNESS WHEREOF, LICENSOR and COUNTY have executed this Agreement by the respective authorized representatives as set forth below to be effective as of the date executed by COUNTY.

APPROVED:

“COUNTY”
COUNTY OF SANTA BARBARA

Jesús Armas, Director
Community Services Department

By: _____
Steve Lavagnino, Chair
Board of Supervisors

Date: _____

APPROVED AS TO FORM:
RACHEL VAN MULLEM
COUNTY COUNSEL

By: _____
Deputy County Counsel

APPROVED:

By: _____
Greg Milligan, ARM, AIC
Risk Manager

EXHIBIT "A"
Licensed Area

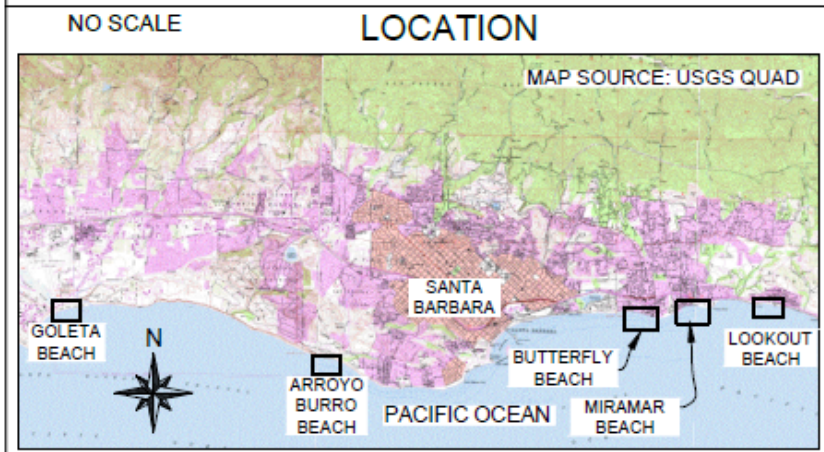
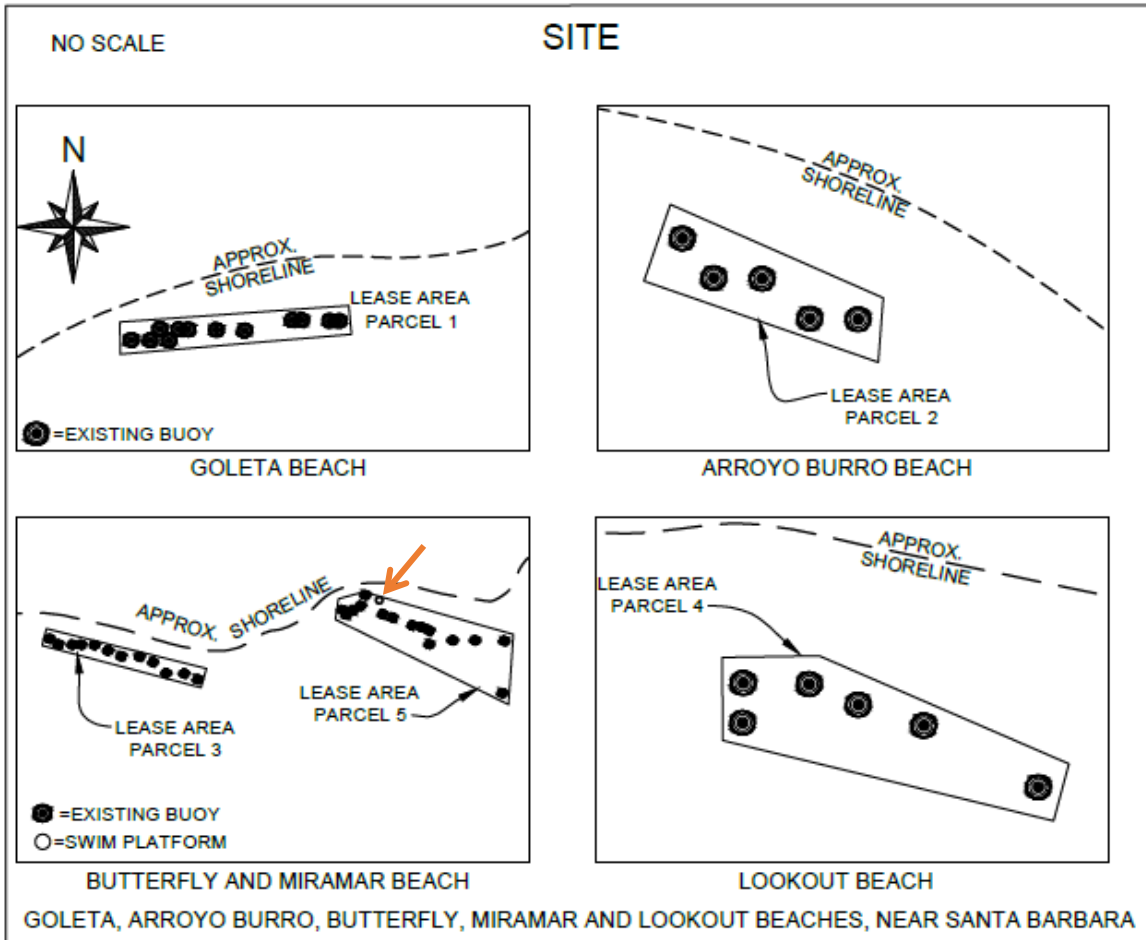


EXHIBIT B
LEASE 7082
COUNTY OF SANTA BARBARA
COMMUNITY SERVICES
DEPARTMENT
GENERAL LEASE -
PUBLIC AGENCY USE
SANTA BARBARA COUNTY

SITE
DdV 11/20/23

THIS EXHIBIT IS SOLELY FOR PURPOSES OF GENERALLY DEFINING THE LEASE PREMISES, IS BASED ON UNVERIFIED INFORMATION PROVIDED BY THE LESSEE OR OTHER PARTIES AND IS NOT INTENDED TO BE, NOR SHALL IT BE CONSTRUED AS, A WAIVER OR LIMITATION OF ANY STATE INTEREST IN THE SUBJECT OR ANY OTHER PROPERTY.

EXHIBIT "B"
Insurance and Indemnification

1. INDEMNIFICATION

A. LICENSEE shall fully defend, indemnify, and hold COUNTY, the California State Lands Commission, and each of their officers, officials, employees, volunteers, or agents (the "Indemnitees") harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the negligent performance of this Agreement. LICENSEE's duty to indemnify includes the duty to settle claims or pay judgments against the Indemnitees based on damages arising out of LICENSEE's negligent operation of the swim platform. The County has the right to consent to any settlement and such consent will not unreasonably be withheld. The only limitation on this indemnity obligation is that LICENSEE has no obligation to defend the Indemnitees for damages caused by an Indemnitee's sole negligence or willful misconduct.

2. INSURANCE

LICENSEE shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the LICENSEE, its agents, representatives, employees, contractors or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than \$5,000,000 per occurrence and \$5,000,000 in the aggregate.
2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if LICENSEE has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation:** Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. ***(Not required if LICENSEE provides written verification that it has no employees)***

If the LICENSEE maintains broader coverage and/or higher limits than the minimums shown above, the COUNTY requires and shall be entitled to the broader coverage and/or the higher limits maintained by the LICENSEE. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the COUNTY.

B. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **Additional Insured** – COUNTY, the California State Lands Commission and each of its officers, officials, employees, agents and volunteers are to be covered as additional insureds on the CGL policy, including any umbrella or excess liability policies, with respect to liability arising out of work or operations performed by or on behalf of the LICENSEE including materials, parts, or equipment furnished in connection with such work or operations related to the swim platform. General liability coverage can be provided in the form of an endorsement to the LICENSEE'S insurance at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 forms if later revisions used).
2. **Primary Coverage** – For any claims related to this contract, the LICENSEE'S insurance coverage shall be primary insurance primary coverage at least as broad as ISO CG 20 01 04 13 as respects the COUNTY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, officials, employees, or volunteers shall be excess of the LICENSEE'S insurance and shall not contribute with it.
3. **Notice of Cancellation** – Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the COUNTY.
4. **Waiver of Subrogation Rights** – LICENSEE hereby grants to COUNTY a waiver of any right to subrogation which any insurer of said LICENSEE may acquire against the COUNTY by virtue of the payment of any loss under such insurance. LICENSEE agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the COUNTY has received a waiver of subrogation endorsement from the insurer.
5. **Deductibles and Self-Insured Retention** – Any deductibles or self-insured retentions must be declared to and approved by the COUNTY. The COUNTY may require the LICENSEE to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
6. **Acceptability of Insurers** – Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum A.M. Best's Insurance Guide rating of "A- VII".
7. **Verification of Coverage** – LICENSEE shall furnish the COUNTY with proof of insurance, original certificates and amendatory endorsements as required by this Agreement. The proof of insurance, certificates and endorsements are to be received and approved by the COUNTY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the LICENSEE'S obligation to provide them. The LICENSEE shall furnish evidence of renewal of coverage throughout the term of the Agreement. The COUNTY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
8. **Failure to Procure Coverage** – In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, COUNTY has the right but not the obligation or duty to terminate the Agreement. Maintenance of required insurance coverage is a material element of the Agreement and failure to maintain or renew such coverage or to provide evidence of renewal may be treated by COUNTY as a material breach of contract.
9. **Subcontractors** – LICENSEE shall require and verify that all contractors and subcontractors maintain insurance meeting all the requirements stated herein, and

LICENSEE shall ensure that COUNTY and the California State Lands Commission is an additional insured on insurance required from subcontractors.

10. **Claims Made Policies** – If any of the required policies provide coverage on a claims-made basis:

- i. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
- ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract work.
- iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the LICENSEE must purchase “extended reporting” coverage for a minimum of five (5) years after completion of contract work.

11. **Special Risks or Circumstances** – COUNTY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. LICENSEE agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of COUNTY to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of COUNTY.

EXHIBIT “C”

CDP Waiver

CALIFORNIA COASTAL COMMISSION

455 MARKET STREET, SUITE 300
SAN FRANCISCO, CA 94105
FAX (415) 904-5400
TDD (415) 597-5885



January 2, 2024

**NOTICE OF
PERMIT WAIVER EFFECTIVENESS**

To: County of Santa Barbara Community Services, Parks Division

From: Cassidy Teufel, Deputy Director
Wesley Horn, Environmental Scientist

Subject: Coastal Development Permit (CDP) Waiver 4-23-0638-W

Please note that CDP Waiver 4-23-0638-W was reported to the California Coastal Commission on December 15, 2023 and became effective as of that date. CDP Waiver 4-23-0638-W allows for:

The proposed project would include the annual installation and removal of a 105 square foot, publicly available swim platform located approximately 300 feet offshore of Miramar Beach. The swim platform would consist of interconnected pre-molded plastic shells with two ladders at opposing sides to facilitate swimmer access to the top of the platform. The swim platform would be anchored in place using two, 33-pound claw anchors connected to 75 feet of marine grade chain. The swim platform and anchors would be placed in the water offshore of Miramar Beach from May through September and would be removed during periods of storm activity or rough ocean conditions. The project would include signage at three public access locations in the immediate area and posts on social media to notify the public that the swim platform is available for all users and not limited to hotel guests. The project would also include signage to notify platform users about the hours that lifeguards would be on duty and also to discourage rough play on the platform.

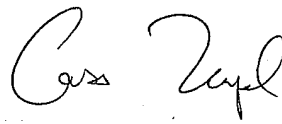
At: 300 feet offshore of Miramar Beach, Santa Barbara County

Please be advised that CDP Waiver 4-23-0638-W only authorizes the development as proposed and described in the Commission's files; any changes to the proposed and described project may require a CDP to account for the changes or a CDP for the entire project. If you have any questions, please contact Wesley Horn in the Energy, Ocean Resources and Federal Consistency Division at the address and phone number above.

cc: Commissioners/File

Sincerely,

Kate Huckelbridge
Executive Director

A handwritten signature in black ink, appearing to read "Cassidy Teufel". The signature is fluid and cursive, with the first name "Cassidy" written in a larger, more prominent script than the last name "Teufel".

Cassidy Teufel
EORFC Program Manager
cc: Commissioners/File

EXHIBIT “D”

OPERATIONS AND MAINTENANCE PLAN

**Miramar Beach – Swim Platform
Miramar Acquisition Co. LLC
Maintenance and Operations Plan**

Project Description. The project proposes to reintroduce the seasonal placement of a publicly-accessible Swim Platform (aka “float” or “Swim Platform”) to Miramar Beach.

The 105sf swim platform is designed and manufactured by Super Deck and comes with certification from the Army Corps of Engineers. The swim platform is comprised of 100% virgin grade material, ultra violet stabilized, linear low density pre-molded shell with compartmentalized air for secondary flotation. The platform is 10.5’ x 10’ with a flotation clearance ranging from 9 to 11 inches of freeboard under dead load plus a 20 psf uniform live load. The platform will include two ladders at opposing sides to facilitate swimmer access to the top of the platform.

The swim platform will be anchored in place using two (2) 33-lb claw anchors, each with 75 feet of 5/16” marine grade chain. The chain and anchors will only be in place when the swim platform is in the water. No permanent anchors or anchoring system will be installed.

The Swim Platform, chain and anchors will be placed into the water between the months of May and September (consistent with the dates the existing Miramar Beach swim buoys are in service) and will be removed during periods of anticipated sustained inclement weather or rough current.

The swim platform will be located approximately 200 feet due south from the mean low tide line (or 300 feet due south from mean high tide line).

The swim platform will be assembled on-site and installed using the same (or comparable) vendor that the Parks Division uses to install the swim buoys. Anchors are attached and set in place when the swim platform is placed in the water. No permanent anchoring system is proposed. When not in use, or during adverse weather conditions, the swim platform and anchors will be removed and stored on the Miramar Hotel property. To determine adequate marine conditions, staff (including lifeguards) will monitor www.17ft.com and/or other marine forecasting site(s) to determine safe placement and operation.

Signage will be placed on the beach as follows:

Sign	Sign Type	Location	Size	Copy
1	Portable A-Frame Sign	On dry sandy beach near Eucalyptus Ln Access Stairs	24” x 36”	“Miramar Beach Public Swim Float” (arrow)
2	Portable A-Frame Sign	On dry sandy beach adjacent to Miramar hotel	24” x 36”	“Miramar Beach Public Swim Float” (arrow)
3	Fixed Sign	Lifeguard Tower (East façade)	24” x 16”	“Miramar Beach Public Swim Float”
4	Fixed Sign	Lifeguard Tower (West façade)	24” x 16”	“Miramar Beach Public Swim Float”
5	Fixed Sign	Lifeguard Tower (East façade)	30” x 16”	“Lifeguard on Duty 9am to 5pm”
6	Fixed Sign	Lifeguard Tower (West façade)	30” x 16”	“Lifeguard on Duty 9am to 5pm”
7	Fixed Sign	Swim Platform	24” x 18”	“No Rough Play”
8	Fixed Sign	Swim Platform	24” x 18”	“No Rough Play”

**Additional signage may be added as specified by Coastal.*

Cleaning

Swim Platform will be cleaned at a minimum of once weekly using non-toxic, phosphate-free, biodegradable products consistent with the California Coastal Commission’s “Boat Topside Maintenance for Water Pollution Prevention” (2019).

Routine Maintenance

The swim platform will be checked on a biweekly basis to ensure supports, locknuts, washers, chain and anchoring systems are secured in place.

EXHIBIT "E"

AGREEMENT FOR PAYMENT OF FEES

Project: Miramar Beach Public Swim
Platform
APN: N/A
Agent: JKL

AGREEMENT FOR PAYMENT OF FEES

THIS AGREEMENT FOR PAYMENT OF FEES (“Fee Agreement”) is made by and between:

COUNTY OF SANTA BARBARA, a political subdivision of the State of California (“COUNTY”),
and

MIRAMAR ACQUISTION CO., LLC, a California Limited Liability Corporation, (the Financially Responsible Party (hereinafter “FRP”)),

with reference to the following:

WHEREAS, COUNTY is negotiating Lease No. PRC 7082.1 with the California State Lands Commission (hereinafter “Lease”); and

WHEREAS, the Lease allows COUNTY to designate a special use area at Miramar Beach with seasonal placement of swim buoys between May 1 and October 15 each Summer; and

WHEREAS, FRP desires to provide for public recreation at Miramar Beach by installing, operating, and maintaining a floating public swim platform within the COUNTY special use area at Miramar Beach as described by the Lease; and

WHEREAS, COUNTY and FRP have mutual interest in the placement of a floating public swim platform at Miramar Beach for recreation purposes; and

WHEREAS, COUNTY is applying for all required Coastal Development Permits from the California Coastal Commission for FRP’s installation, operation, and maintenance of a floating public swim platform within a portion of the special use area at Miramar Beach (“CDPs”) pursuant to a License Agreement granting FRP a personal, revocable, non-exclusive, and non-assignable right to use a portion of the special use area at Miramar Beach for these purposes; and

WHEREAS, FRP shall be responsible for curing all notices of violation relating to the Lease (to the extent applicable to the swim platform or any other matters set forth in the CDPs) and the CDPs, and to all Federal, State, and County laws; and

WHEREAS, FRP agrees to reimburse COUNTY for all of COUNTY’s costs incurred and to be incurred by COUNTY in entering into the Lease and applying for the CDPs; and

NOW, THEREFORE, in consideration of the provisions, covenants, and conditions contained herein, COUNTY and FRP agree as follows:

1. **ADMINISTRATION AND ENFORCEMENT**: The provisions of this Fee Agreement shall be administered and enforced for COUNTY by the Director of the Community Services Department or Director's designee (hereinafter "Director"), and for FRP by its officer or officer's designee.
2. **TERM**: The term of this Fee Agreement shall commence on July 10, 2023, and expire on July 10, 2024, unless otherwise terminated sooner pursuant to Section 16 of this Fee Agreement.
3. **PROJECT COST ESTIMATE WORKSHEET**: The FRP will receive from the COUNTY a Project Cost Estimate Worksheet. This Worksheet is informational. It is a good faith effort to provide the FRP with an estimate of COUNTY's costs for the duration of this Fee Agreement. If unforeseen circumstances arise that substantially increase the level of effort and estimated costs, COUNTY will send the FRP a revised worksheet.
4. **SECURITY DEPOSIT**: FRP and COUNTY agree that, because of the nature and scope of the CDPs and the Lease that must be approved by the California Coastal Commission and the California State Lands Commission, it is impossible to ascertain the full extent of the costs involved in pursuing the CDPs and Lease and preparing the necessary environmental documentation. FRP agrees it will be benefited by retaining greater cash liquidity and will make additional payments upon notification by the COUNTY when necessary. COUNTY agrees it will be benefited through the greater certainty of recovering its full costs to pursue the CDPs and Lease. FRP and COUNTY further agree that it is in the interest of the parties and the intent of this Fee Agreement to provide for payment of: (a) an initial security deposit of a portion of the estimated costs prior to applying for the CDPs and negotiating the Lease; (b) subsequent security deposits for periodic billings and payments necessary to keep a positive balance on account; and, (c) security deposits as necessary to fund consultant costs.

Therefore, FRP agrees to pay an initial security deposit based on the Project Cost Estimate Worksheet that shall be due and collected from FRP upon execution of this Fee Agreement. If in COUNTY's judgment costs may exceed the initial security deposit or unique characteristics or complex issues would make the CDP applications more expensive to process or the Lease more expensive to negotiate, COUNTY may require FRP to provide additional security deposits. FRP agrees it shall provide additional security deposits not later than thirty (30) calendar days after receipt of written notice from COUNTY. If it is necessary to utilize consultant services, COUNTY will request from FRP a security deposit to cover consultant costs prior to execution of a contract with a consultant. The parties to this Fee Agreement recognize that during the preparation of environmental documents or during completion of special studies and/or compliance efforts, it may become necessary to execute change order provisions in COUNTY's contract(s) with consultant(s). The need for change orders shall be determined by COUNTY after consultation with FRP. If, in the reasonable judgment of COUNTY, changes in the scope of work require more funds than already deposited, FRP agrees to deposit these additional funds with COUNTY. FRP agrees it shall provide, prior to COUNTY's contracting with a consultant for services, and prior to change

orders, all security deposits not later than thirty (30) calendar days after receipt of written notice from COUNTY. Upon issuance of all CDPs and the Lease or within three (3) months of termination of this Fee Agreement, any remaining security deposit balance(s) will be refunded to FRP.

5. **PAYMENT OF COSTS:** FRP understands and agrees it is impracticable for COUNTY to complete processing or present sufficient information to the California Coastal Commission and the California State Lands Commission to enable either or both Commissions to approve the CDPs and Lease, unless costs are paid in full prior to the Commissions' decisions. The parties desire by this Fee Agreement to provide for FRP's payment of COUNTY's costs of applications for the CDPs and negotiations of the Lease so as to ensure the continued, uninterrupted, and efficient processing of the applications and negotiation of the Lease. FRP understands and agrees COUNTY may charge and collect all COUNTY costs, including consultant costs, for the CDPs and Lease and that a signed agreement for payment of all COUNTY costs and consultant costs and an initial deposit submitted to COUNTY is a condition precedent to pursuing the CDPs and the Lease. FRP agrees to pay all of COUNTY's costs COUNTY has incurred, incurs, and will incur related to, in connection with, or arising from the CDPs and the Lease, including, but not limited to, all clearances, conditions, follow-on permits, and services such as inspections, remediation, research, violations, compliance, and appeals. FRP will receive monthly invoices to be paid within 30 days from invoice date. COUNTY will not accept any CDP or execute the Lease without receipt of FRP's full payment for COUNTY's costs, unless waived or adjusted by the Board of Supervisors upon showing of good cause.

6. **CONSULTANT COSTS:** FRP agrees consultant costs include, but are not limited to, those necessary to satisfy COUNTY's duty to meet the requirements of the California Environmental Quality Act (CEQA) and COUNTY's CEQA Guidelines resulting in preparation of environmental documents such as Environmental Impact Reports, joint Environmental Impact Reports/Statements, and Negative Declarations. FRP further agrees consultant costs also include the costs of any necessary special studies or programs pursuant to CDP or Lease conditions, including any condition requiring assessment of compliance with CDP or Lease conditions during construction and operation where necessary. COUNTY shall retain and contract necessary services of environmental and technical consultants, after consultation with FRP, consistent with COUNTY's normal contracting procedures. FRP further agrees it shall deposit with COUNTY 100% of the contract amount for consultant's services plus any funds required for contingency. COUNTY shall use these funds to meet the projected costs for completion of tasks as contracted with consultant. FRP agrees the adequacy and extent of payment to consultants for work shall be determined by COUNTY after consultation with FRP. FRP agrees all decisions concerning the preparation, administration, and enforcement of contractual documents lies with COUNTY.

7. **REVIEW OF INVOICES:** FRP shall have the right to review COUNTY's monthly invoices and consultant costs as billed to FRP. If, in FRP's opinion, there are expenditures outside the scope of this Fee Agreement or consultant contract(s), FRP shall reimburse COUNTY for the expenses in question but may request in writing that COUNTY evaluate the issues involved as identified by FRP. COUNTY shall conduct such evaluations within a reasonable time and, if necessary, halt any work outside the scope of this Fee Agreement or consultant contract(s). FRP agrees nothing herein shall be construed as relieving FRP of its responsibility to reimburse

COUNTY pursuant to this Fee Agreement.

8. **AUDITS OF RECORDS:** COUNTY shall maintain true, correct, and complete records in connection with its costs, contracted work, and all transactions related thereto, for a period of not less than three (3) years after completion of the work or termination of the contract(s). FRP may audit COUNTY's records for costs for a period not to exceed the three (3) year period identified above. FRP shall provide a written request prior to conducting such review or audit, and shall have the right to conduct no more than one audit per year without written consent by COUNTY. Any audit and review conducted pursuant to this paragraph shall be conducted by FRP's auditors, or at COUNTY's option by a mutually acceptable third-party accounting firm, at FRP's expense. If a contract for consultant work is executed, COUNTY shall require that consultant to maintain its records and make such records available for audit in compliance with this paragraph.

9. **STOP WORK:** If an invoice or security deposit is not paid within 30 days, COUNTY may suspend or stop work, close the CDP applications and/or end Lease negotiations.

10. **ACCOUNTS IN GOOD STANDING:** If FRP owes any amount due on any other project with COUNTY, COUNTY will not pursue the CDPs or the Lease, unless waived by the Director.

11. **CHANGE IN FINANCIALLY RESPONSIBLE PARTY:** The FRP is responsible for payment of all costs associated with the CDPs and the Lease. If, during the course of processing, the financial responsibility changes, the new financially responsible party must complete a new Agreement for Payment of Fees that will release FRP from further financial obligations and designate the new FRP. The undersigned FRP remains financially responsible until a new FRP signs a separate Agreement for Payment of Fees. If this Fee Agreement supersedes a previous agreement for payment of fees, the previous financially responsible party must also sign this Fee Agreement to acknowledge release of responsibilities.

12. **ASSIGNMENT:** FRP shall not assign, transfer, hypothecate, pledge, or encumber this Fee Agreement or any part hereof or any right or privilege appurtenant hereto. Any attempt by FRP to do so shall be voidable and without legal effect and a material breach of this Fee Agreement and grounds for termination at COUNTY's sole discretion.

13. **DEFAULT:** Except as provided in Sections 12, 19, or as otherwise required herein, should either party at any time be in default hereunder with respect to any material term, covenant, condition, or reservation contained herein, the non-defaulting party shall give notice to the defaulting party specifying the particulars of the default, and the defaulting party shall promptly commence remedial action to cure the default. Should such default continue uncured for a period of thirty (30) calendar days from such notice, this Fee Agreement shall terminate at the option of the non-defaulting party, unless the cure of such default shall reasonably take more than thirty (30) calendar days in which case the defaulting party shall proceed with all due speed to cure the default and shall have a reasonable time to effectuate its cure.

14. **REMEDIES:** In the event of a default or breach, either party may exercise any right or remedy at law or in equity which such party may have by reason of such default or breach including, but not limited to, the following:

- A. The non-defaulting party may waive the default or breach in accordance with Section 15, WAIVER, herein below.
- B. Where COUNTY is the non-defaulting party, COUNTY may terminate this Fee Agreement.

15. **WAIVER**: It is understood and agreed that any waiver of any term of this Fee Agreement or of any default or breach of this Fee Agreement shall not be deemed to be a waiver of any continuing or subsequent default or breach of any other provision of this Fee Agreement. Waivers of provisions of this Fee Agreement must be in writing and signed by that party's respective designee under Section 1, ADMINISTRATION AND ENFORCEMENT, of this Fee Agreement.

16. **TERMINATION**: This Fee Agreement shall terminate and all rights of FRP hereunder shall cease if either party exercises its rights to terminate, or as follows:

- A. As provided in Section 12, ASSIGNMENT;
- B. Upon the failure of either party to satisfy, observe, or perform any term or condition set forth in this Fee Agreement and the expiration of the cure period as provided in Section 13, DEFAULT;
- C. As provided in Section 19, COMPLIANCE WITH THE LAW; or
- D. Upon delivery of a written thirty (30) day notice of termination without cause by either party.

17. **NOTICES**: Any notice to be given to either party, by the other, shall be in writing and shall be served, either personally or by registered or certified mail, to the following:

FRP: Legal Department
 Miramar Acquisitions Co., LLC
 101 The Grove Drive
 Los Angeles, CA 90036

COUNTY: Parks Assistant Director
 Community Services Department
 123 Anapamu Street, 2nd Floor
 Santa Barbara, CA 93101

All notices hereunder shall be deemed to have been given on the date delivered, if personally delivered, or if mailed, then on the first business day following the date on which it is mailed, by certified or registered mail, postage prepaid, addressed to the address specified above, or to such other address designated by a party as provided for herein.

18. **SUCCESSORS IN INTEREST**: This Fee Agreement and the covenants contained herein shall be binding upon and inure to the benefit of the respective parties and to any private organization or government into which FRP or COUNTY may be merged, respectively.

19. **COMPLIANCE WITH THE LAW**: The parties shall comply with all applicable laws,

regulations, ordinances, rules, and orders, all as may be amended, affecting this Fee Agreement now or hereafter in effect. Violation of any applicable law, regulation, ordinance, rule, order shall constitute an immediate default and breach of this Fee Agreement with no cure period that might otherwise be available under Section 13 of this Fee Agreement, and this Fee Agreement shall be subject to immediate termination at COUNTY's sole discretion.

20. **CONFLICTS**: In the event of any conflict between the terms of this Fee Agreement and the Lease or the CDPs, the terms of the Lease or CDPs shall control.

21. **AMENDMENTS**: This Fee Agreement may only be amended by written consent of the parties, and such changes shall be binding upon the successors of the parties.

22. **CAPTIONS**: The section titles or headings of this Fee Agreement are not a part of this Fee Agreement and shall have no effect upon the construction or interpretation of any part hereof.

23. **SEVERABILITY**: If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal, or unenforceable in any respect, then such provision shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Fee Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

24. **CERTIFICATION OF SIGNATORY**: The signatories of this Fee Agreement represent and warrant they are authorized to execute it and no additional signatures are required to bind FRP and COUNTY to its terms and conditions or to carry out duties contemplated herein.

25. **EXECUTION IN COUNTERPARTS**: This Fee Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

26. **FACSIMILE/ELECTRONICALLY TRANSMITTED SIGNATURES**: In the event that the parties hereto utilize facsimile transmitted documents or electronically transmitted documents which include signatures, such documents shall be accepted as if they bore original signatures provided that documents bearing ORIGINAL SIGNATURES are provided within seventy-two (72) hours of transmission; however, documents shall not be accepted for recordation by the Clerk-Recorder of the County until and unless such documents bearing original signatures are received by COUNTY.

27. **ENTIRE AGREEMENT**: The parties to this Fee Agreement intend that their negotiations, conversations, and statements made prior to and at the time of execution of this Fee Agreement are fully integrated and expressed herein, and no such negotiations, conversations, and statements shall be deemed to create rights or obligations other than those stated herein.

Project: Miramar Beach Public Swim
Platform

APN: N/A

Folio:

Agent: JKL

IN WITNESS WHEREOF, FRP and COUNTY have executed this Fee Agreement by the respective authorized representatives as set forth below to be effective as of the date executed by COUNTY.

“FRP”

Miramar Acquisition Co., LLC

By: 

Date: 7/10/23

Name: JACKIE LEVY

Title: CFO

EXHIBIT "F"
Insurance and Indemnification

1. INDEMNIFICATION

A. LICENSEE shall fully defend, indemnify, and hold COUNTY, the California State Lands Commission, and each of their officers, officials, employees, volunteers, or agents (the "Indemnitees") harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the negligent performance of this Agreement. LICENSEE's duty to indemnify includes the duty to settle claims or pay judgments against the Indemnitees based on damages arising out of LICENSEE's negligent operation of the swim platform. The County has the right to consent to any settlement and such consent will not unreasonably be withheld. The only limitation on this indemnity obligation is that LICENSEE has no obligation to defend the Indemnitees for damages caused by an Indemnitee's sole negligence or willful misconduct.

2. INSURANCE

LICENSEE shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the LICENSEE, its agents, representatives, employees, contractors or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than \$5,000,000 per occurrence and \$5,000,000 in the aggregate.
2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if LICENSEE has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation:** Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. ***(Not required if LICENSEE provides written verification that it has no employees)***

If the LICENSEE maintains broader coverage and/or higher limits than the minimums shown above, the COUNTY requires and shall be entitled to the broader coverage and/or the higher limits maintained by the LICENSEE. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the COUNTY.

B. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **Additional Insured** – COUNTY, the California State Lands Commission and each of its officers, officials, employees, agents and volunteers are to be covered as additional insureds on the CGL policy, including any umbrella or excess liability policies, with respect to liability arising out of work or operations performed by or on behalf of the LICENSEE including materials, parts, or equipment furnished in connection with such work or operations related to the swim platform. General liability coverage can be provided in the form of an endorsement to the LICENSEE'S insurance at least as broad as ISO Form ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).
2. **Primary Coverage** – For any claims related to this contract, the LICENSEE'S insurance coverage shall be primary insurance primary coverage at least as broad as ISO CG 20 01 04 13 as respects the COUNTY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, officials, employees, or volunteers shall be excess of the LICENSEE'S insurance and shall not contribute with it.
3. **Notice of Cancellation** – Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the COUNTY.
4. **Waiver of Subrogation Rights** – LICENSEE hereby grants to COUNTY a waiver of any right to subrogation which any insurer of said LICENSEE may acquire against the COUNTY by virtue of the payment of any loss under such insurance. LICENSEE agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the COUNTY has received a waiver of subrogation endorsement from the insurer.
5. **Deductibles and Self-Insured Retention** – Any deductibles or self-insured retentions must be declared to and approved by the COUNTY. The COUNTY may require the LICENSEE to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
6. **Acceptability of Insurers** – Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum A.M. Best's Insurance Guide rating of "A- VII".
7. **Verification of Coverage** – LICENSEE shall furnish the COUNTY with proof of insurance, original certificates and amendatory endorsements as required by this Agreement. The proof of insurance, certificates and endorsements are to be received and approved by the COUNTY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the LICENSEE'S obligation to provide them. The LICENSEE shall furnish evidence of renewal of coverage throughout the term of the Agreement. The COUNTY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
8. **Failure to Procure Coverage** – In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, COUNTY has the right but not the obligation or duty to terminate the Agreement. Maintenance of required insurance coverage is a material element of the Agreement and failure to maintain or renew such coverage or to

provide evidence of renewal may be treated by COUNTY as a material breach of contract.

9. **Subcontractors** – LICENSEE shall require and verify that all contractors and subcontractors maintain insurance meeting all the requirements stated herein, and LICENSEE shall ensure that COUNTY and the California State Lands Commission is an additional insured on insurance required from subcontractors.
10. **Claims Made Policies** – If any of the required policies provide coverage on a claims-made basis:
 - i. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
 - ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract work.
 - iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the LICENSEE must purchase “extended reporting” coverage for a minimum of five (5) years after completion of contract work.
11. **Special Risks or Circumstances** – COUNTY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. LICENSEE agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of COUNTY to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of COUNTY.