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30-2023-01356055-CU-BC-CJC - ROA # 2 - DAVID H. YAMASAKI, Clerk of the Court By S. Burns, Deputy Clerk.

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Attorneys for Plaintiff, WHITEWATER WEST INDUSTRIES, LTD

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE, UNLIMITED JURISDICTION

Assigned for All Purposes
Judge Nico Dourbetas

WHITEWATER WEST INDUSTRIES, LTD. also known as WHITE WATER WEST INDUSTRIES, LTD., a corporation formed under the laws of the Dominion of Canada, Plaintiff, vs. WILD RIVERS WATERPARK IRVINE SPE, LLC.; and DOES 1 through 100 inclusive, Defendants.	CASE NO. 30-2023-01356055-CU-BC-CJC COMPLAINT FOR DAMAGES 1. Breach of Contract; 2. Quantum Meruit; 3. Open Book Account; 4. Account Stated; 5. Enforcement of Mechanics Lien;

Plaintiff, WHITEWATER WEST INDUSTRIES, LTD. also known as WHITE WATER WEST INDUSTRIES, LTD, a corporation formed under the laws of the Dominion of Canada ("WHITEWATER") alleges as follows:

GENERAL ALLEGATIONS

1. WHITEWATER is a corporation formed under the laws of the Dominion of Canada authorized to conduct business under and by virtue of the laws of the State of California.

2. WHITEWATER alleges, upon information and belief, that the Defendant,

WILD RIVERS WATERPARK IRVINE SPE, LLC ("WILD RIVERS"), is a limited liability corporation duly organized and existing under the laws of the State of Delaware and maintains a place of business in Orange County, California. WILD RIVERS is the owner of the leasehold estate in the real property which is the subject of this dispute located in Great Park Boulevard, Irvine, California, commonly known as Wild Rivers Waterpark in leasehold estate as described in the certain Memorandum of Ground Lease Agreement recorded in the Official Records of Orange County, California on July 1, 2021, as Document Number 2021000431073.

3. WHITEWATER is a licensed contractor in the State of California.

4 WHITEWATER, upon information and belief, alleges that Defendants, DOES 1 THROUGH 100, inclusive, whether individual, corporate, associate or otherwise, are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names. WHITEWATER will seek leave of the Court to amend this complaint to insert the true names and capacities of these fictitiously named Defendants when they are ascertained.

5. At all times material, each of the Defendants sued in the cause of action alleged in his complaint was the agent of the remaining Defendants and, in doing the things alleged in this complaint, was acting within the course and scope of such agency.

6. WHITEWATER alleges, upon information and belief, that Defendant WILD RIVERS, at all times herein material, was and now is the owner and/or reputed owner of the leasehold estate in the real property which is the subject of this dispute located in the Great Park Boulevard, Irvine California commonly known as Wild Rivers Waterpark in leasehold estate as described in the certain Memorandum of Ground Lease Agreement recorded in the Official Records of Orange County, California on July 1, 2021 as Document Number 2021000431073 ("the subject real property").

7. WHITEWATER alleges, upon information and belief, that Defendant WILD RIVERS, as owner, entered into a contract with Bergman KPRS which was assigned to KPRS CONSTRUCTION SERVICES, INC. and thereafter assigned to Defendant WILD

RIVERS. WHITEWATER is further informed and believes WILD RIVERS authorized KPRS CONSTRUCTION SERVICES, INC. and/or Bergman KPRS to retain WHITEWATER to supply and install waterslides and water play areas for the Wild Rivers Water Park for the construction of a work improvement at the Great Park Boulevard, Irvine California commonly known as Wild Rivers Waterpark in leasehold estate as described in the certain Memorandum of Ground Lease Agreement recorded in the Official Records of Orange County, California on July 1, 2021, as Document Number 2021000431073 hereafter referred to as ("PROJECT") on the subject real property in as set forth in the contract attached hereto as Exhibit A and expressly incorporated herein by reference.

8. WHITEWATER alleges, upon information and belief, that on or about May 27, 2019, Whitewater and Bergman KPRS, LLC, a California limited liability company ("Bergman KPRS"), entered into an Agreement for labor and materials related to the construction of a water park at the subject real property.

9. WHITEWATER alleges, upon information and belief, that WILD RIVERS took assignment of the WHITEWATER contract by an assignment from Bergman KPRS, and, as part of this assignment, acknowledged receipt of WHITEWATER's preliminary notices issued and served pursuant to California Civil Code.

FIRST CAUSE OF ACTION

AGAINST DEFENDANTS AND EACH OF THEM

(Breach of Contract)

10. Plaintiff realleges and incorporates by reference paragraphs 1 through 9, above.

11. In or about June 2019, WHITEWATER and KPRS CONSTRUCTION SERVICES, INC and DOES 1 through 20, entered into a written Agreement by which WHITEWATER, agreed to supply and install waterslides and water play areas for the Wild Rivers Water Park for the PROJECT. Attached hereto as Exhibit "B" is a true and

correct copy of the relevant portions of the Agreement. This agreement was subsequently assigned as alleged herein.

12. WHITEWATER has performed all of the covenants and conditions on its part to be performed under this agreement, and any modifications to the PROJECT, except as such performance has been prevented or excused by the Defendants.

13. Defendant has breached its subcontract with WHITEWATER by failing and refusing to pay the balance of money due to WHITEWATER under the Agreement and furnished and installed by WHITE WATER to the PROJECT.

14. As a result of the breach of contract alleged above, WHITEWATER has sustained general damages in the approximate sum of $1,700,000.00, together with interest on such sums at the legal rate per annum.

SECOND CAUSE OF ACTION

AGAINST DEFENDANTS AND EACH OF THEM

(Quantum Meruit)

15. WHITEWATER realleges and incorporates by reference paragraphs 1 through 14 above.

16. Within the last three years, WHITEWATER provided certain labor and materials related to the WORK for the PROJECT at the special instance and request of Defendants and each of them and for which Defendants promised to pay the reasonable value.

17. WHITEWATER has demanded payment for such labor and materials from said Defendants and each of them but said Defendants have failed and refused to make the payments in the due sum of $1,700,000.00.

18. The fair and reasonable value of the labor, goods and materials provided by WHITEWATER on behalf of and for the benefit of Defendants, and each of them, was in a sum in excess of $1,700,000.00 and the balance due to WHITE WATER on said amount is $1,700,000.00 together with interest at the legal rate per annum.

///

THIRD CAUSE OF ACTION

AGAINST DEFENDANTS AND EACH OF THEM

(Open Book Account)

19. WHITEWATER realleges and incorporates by reference paragraphs 1 through 18 above.

20. Within three years last past, in the County of Orange, California, Defendants and each of them became indebted to WHITEWATER, on an open book account for labor and materials furnished to them, at their request, in a sum in excess of $1,700,000.00

21. No part of the above sum has been paid to WHITEWATER, leaving a balance due and owing of $1,700,000.00, together with the legal rate per annum.

FOURTH CAUSE OF ACTION

AGAINST DEFENDANTS AND EACH OF THEM

(Account Stated)

22. WHITEWATER realleges and incorporates by reference paragraphs 1 through 21 above.

23. Within the three past years, in the County of Orange, California, Defendants and each of them became indebted to WHITEWATER, on an account stated, for labor and materials furnished to them, at their request, in a sum in excess of $1,700,000.00.

24. No portion of the amount owed on the account has been paid to WHITEWATER, leaving a balance due to WHITEWATER in the sum of $1,700,000.00, together with interest thereon at the legal rate per annum.

FIFTH CAUSE OF ACTION

AGAINST DEFENDANTS AND EACH OF THEM

(Enforcement of Mechanics Lien)

25. WHITEWATER realleges and incorporates by reference paragraphs 1 through 24, above.

26. Plaintiff alleges, upon information and belief, that WILD RIVERS and/or DOES 21 to 75, was at all of the times in this complaint mentioned and is now the owner or reputed owner of that certain real property described as follows: a leasehold estate as described in the certain Memorandum of Ground Lease Agreement recorded in the Official Records of Orange County, California on July 1, 2021, as Document Number 2021000431073 on the subject real property as set forth in the contract attached hereto as Exhibit A and expressly incorporated herein by reference

27. In or about June 2019, WHITEWATER entered into a written Agreement whereby Plaintiff agreed to supply and install waterslides and water play areas for the WORK OF IMPROVEMENT

28. Plaintiff provided as acknowledged herein and/or as a direct contractor was excused from giving written notice, pursuant to Section 8200 *et. seq.* of the Civil Code of the State of California, to Defendants.

29. Plaintiff furnished to the Defendants, at their special instance and request, the aforementioned labor, materials, and equipment to be used in the construction of the PROJECT.

30. That the said labor and materials furnished to Defendants, and each of them, and consumed within the PROJECT are of a reasonable value in excess of $1,700,000.00. That there is now due, owing, and unpaid to Plaintiff, the sum as stated on the Mechanics Lien of $1,700,000.00, after deducting all just credits and offsets, and the same has not been paid, neither in whole nor part. Demand for payment of said sum has been made upon Defendants and refused by same.

31. Within the time required by Section 8414 of the Civil Code of the State of California, Plaintiff's Notice and Claim of Lien was duly recorded in the official records of the County Recorder, wherein said property is located containing a statement of its demands after deducting all just credits and offsets, the names of the owners or reputed owners of said property, together with a general statement of the kind of labor done and material furnished by Plaintiff, the name of the person by whom Plaintiff was employed

and to and from whom Plaintiff furnished said labor and materials, and a description of property sought to be charged with said lien sufficient for identification.

32. On July 19, 2023, a copy of the Notice of Mechanics Lien pursuant to Civil Code section 8416 was mailed to Defendant WILD RIVERS as the owner or reputed owner of the subject real property. On July 20, 2023, WHITE WATER's claim of lien was recorded by the Orange County recorder's office.

33. Plaintiff has paid as a necessary charge and expense for verifying and recording said Mechanics Lien, which has not been repaid to Plaintiff, nor any part thereof.

34. The whole of the land hereinbefore, particularly described upon which the WORK OF IMPROVEMENT was erected, is necessary and required for the convenience use and occupation of said WORK OF IMPROVEMENT.

35. Defendants, DOES 21 through 75, and each of them, have or claim to have some estate, lien, right, title, or interest in or upon said premises or some part thereof, which said claim and all such claims or liens are subject, subsequent and subordinate to the lien of Plaintiff as aforesaid.

WHEREFORE, Plaintiff seeks a judgment as follows:

1. For the sum of $1,700,000.00 together with interest thereon at the legal rate per annum from the recording of the Mechanics Lien on July 20, 2023, against the Defendants, and each of them;

2. That it be decreed that Plaintiff has a Lien upon the building, structures, and land described hereinbefore and owned by Defendants, and each of them;

3. That said building and land be sold under a decree of this Court, and the proceeds applied to the payment of Plaintiffs claim together with interest at the legal rate per annum from the date of recording said Lien;

4. That Plaintiff have execution for any deficiencies against the Defendants and each of them;

5. That all the right, title, interest, and claim in and to said premises and

buildings of Defendant, and each of them, be adjudged subordinate and subject to the Lien of Plaintiff herein;

6. For costs of suit against the Defendants, and each of them; and

7. For such other and further relief as this Court may deem just and proper in the premises.

8. That WILD RIVERS be ordered to tender payment to Plaintiff in an amount equal to that of awarded judgment;

9. For costs of suit;

10. For such other and further relief that the court may deem just and proper.

DATED: October 10, 2023

CRAWFORD & BANGS, LLP

By:_____
E. SCOTT HOLBROOK, JR.
Attorney for Plaintiff

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GROUND LEASE AGREEMENT

by and between

CITY OF IRVINE,
a California municipal corporation

and

WILD RIVERS WATERPARK IRVINE SPE, LLC,
a Delaware limited liability company

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EXHIBIT "C" Site Map
EXHIBIT "D" Project Description
EXHIBIT "E" Event Marketing Guidelines
EXHIBIT "F" Design Review Process
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GROUND LEASE AGREEMENT

This GROUND LEASE AGREEMENT ("**Lease**") is entered into as of December 7, 2020, by and between the CITY OF IRVINE, a California municipal corporation ("**City**"), and WILD RIVERS WATERPARK IRVINE SPE, LLC, a Delaware limited liability company ("**Lessee**").

RECITALS

A. City owns in fee that certain real property that has been designated for development of a metropolitan park known as the "Orange County Great Park," located in the City of Irvine, County of Orange, State of California, in the general location depicted on Exhibit "A" attached hereto ("**Great Park**").

B. Lessee is a Delaware limited liability company. As the operator of the former Wild Rivers Water Park in Irvine, the principals of Lessee are experienced in operating water parks.

C. Lessee desires to develop or to cause to be developed a first-class water park on that portion of the Great Park comprised of approximately twenty (20) acres, more particularly described in the legal description attached hereto as Exhibit "B" ("**Premises**"), and depicted on the site map attached hereto as Exhibit "C" ("**Site Map**").

D. City and Lessee desire to enter into this Lease to provide for City to lease to Lessee and Lessee to lease from City the Premises and for Lessee to design, develop and operate the water park on the Premises, on the terms and conditions set forth herein.

E. City has exercised its discretion in approving the proposal and use of the Premises, and selecting the Lessee as the proposed lessee of the Premises. Such selections and approvals were made to protect and improve the public health safety and welfare in the City of Irvine.

COVENANTS

Based upon the foregoing Recitals, which are incorporated into this Lease by reference, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by both parties, City and Lessee hereby agree as follows:

1. BASIC LEASE INFORMATION.

The following is a summary of basic lease information ("**Basic Lease Information**"). Each item below shall be deemed to incorporate all of the terms in this Lease pertaining to such item. In the event of any conflict between the information in this Section and any more specific provision of this Lease, the more specific provision shall control.

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City:	City of Irvine, a California municipal corporation
Lessee:	Wild Rivers Waterpark Irvine SPE, LLC, a Delaware limited liability company
Premises:	The property comprised of approximately twenty (20) acres, which is more particularly described in the legal description attached hereto as Exhibit "B" and depicted on the Site Map. In addition, during the initial five (5) Lease Years of the Term, Lessee has an option to lease an additional three (3) acres, as depicted on the Site Map attached .
Term (Section 4.1):	Possession Commencement Date: Upon the satisfaction of the Possession Conditions in Section 4.2. Operations Commencement Date: The date City issues a certificate of occupancy for the Premises. Expiration Date: Thirty (30) Lease Years following the Operations Commencement Date. A Lease Year is each consecutive January 1st – December 31st period (or remaining portion thereof, with respect to the first Lease Year), following the Operations Commencement Date. Lessee shall have seven (7) options to extend the Term, in each instance for an additional five (5) year period, as set forth in Section 4.3.
Construction Schedule (Section 6.3):	Construction of the Project by Lessee shall commence by beginning the demolition of existing structures and/or rough grading of the Premises, no later than fifteen (15) days after the Possession Commencement Date and shall be completed within twenty-four (24) months after the Possession Commencement Date.
Rent (Section 5):	For each Lease Year, Rent due and payable is the greater of Minimum Rent and Percentage Rent. Minimum Rent is $550,000 per Lease Year for the first 5 Lease Years. Minimum Rent shall increase in year 6 and every 5 years thereafter for the remaining term of the Lease, by the lesser of (i) 10% of Minimum Rent for the immediately prior Lease Year, and (ii) the cumulative increase in the CPI over the immediately preceding 5 years. Minimum Rent is paid as follows: (a) $250,000 (which amount shall increase at the same time, and by the

	same percentage, as Minimum Rent) shall paid in 5 equal installments on May 1, June 1, July 1, August 1, and September 1; and (b) the remaining balance of Minimum Rent shall be paid on October 31. Percentage Rent is 4.5% of Gross Revenue. By October 31, if Percentage Rent exceeds Minimum Rent, then the amount by which Percentage Rent exceeds Minimum Rent is due and payable on October 31. Any additional Percentage Rent for the Lease Year is due and payable within 90- days after the close of the Lease Year.
Use (Section 8):	For the purpose of developing and operating a water park and other ancillary uses, as more particularly described in Section 8.
Notice Address of City (Section 22.1):	City of Irvine City Hall One Civic Center Plaza Irvine, CA 92623-9575 Attn: Interim City Manager Email: mmarysheva@cityofirvine.org
with a copy to:	Orange County Great Park Corporation P.O. Box 19575 Irvine, CA 92623 Attn: Interim Chief Executive Officer Email: mmarysheva@cityofirvine.org
and to:	Rutan & Tucker, LLP 611 Anton Blvd. Suite 1400 Costa Mesa, CA 92626 Attn: Jeffrey T. Melching, City Attorney Email: jmelching@rutan.com
Key Contact for City:	Marianna Marysheva
Telephone No.:	(949) 724-6249
Address for Lessee	Wild Rivers Waterpark Irvine SPE, LLC 83 Pelican Lane Irvine, CA 92618 Attn: Mike Riedel Email: mike@wildrivers.com
with a copy to:	Ice Miller LLP 250 West Street, Suite 700 Columbus, Ohio 43215

Attn: Greg Gorospe
Email: greg.gorospe@icemiller.com

2. DEFINED TERMS.

The following terms as used in this Lease shall have the meanings given below unless expressly provided to the contrary:

"**Affiliate**" means any person or entity directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Lessee, which, if Lessee is a partnership or limited liability company, shall include each of the constituent members or partners, respectively thereof. The term "control" as used in the immediately preceding sentence, means, with respect to a person that is a corporation, the right to the exercise, directly or indirectly, of more than fifty percent (50%) of the voting rights attributable to the shares of the controlled corporation, and, with respect to a person that is not a corporation, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled person.

"**AIG**" shall have the meaning ascribed in Section 14.11 of this Lease.

"**Applicable Laws**" means all valid and enforceable federal, state, regional, and local laws, statutes, ordinances, regulations, and official policies applicable to the Premises and the referenced activity, as the same may be amended from time to time.

"**Approvals**" means and refers to all of the discretionary entitlements, permits and approvals required by any Governmental Agency with jurisdiction over the Premises and/or the Project for the development of the Project, including all environmental review of the Project pursuant to CEQA.

"**Approved Institution**" means a person or entity (a) that is a Qualified Lender, (b) that satisfies the Minimum Asset Threshold, and (c) whose businesses include interim, construction or permanent lending secured by real estate, including, without limitation, through bond financing. Notwithstanding the foregoing, or anything to the contrary in this Lease, the trustee of the original bond issuance, the proceeds of which were utilized to fund the Project, and which bond issuance was approved by City as part of Lessee's Evidence of Financial Capability, and any successor to such trustee, is an Approved Institution.

"**Approved Loan**" means a loan or other financing that comprises all or a part of Lessee's Evidence of Financial Capability, as approved by City, and any refinancing of such loan, provided (i) such refinancing loan is obtained from an Approved Institution, (ii) such refinancing loan is made on reasonable commercial terms, as reviewed and verified by City in City's reasonable discretion, and (iii) the principal amount of such refinancing loan does not exceed the sum of (1) the outstanding principal balance of the loan it is replacing, and (2) the closing costs of such refinancing loan; provided, however, a refinancing loan that does not satisfy the requirements of clause (iii) shall constitute an Approved Loan if (a) Lessee proposes to use the excess amount of such loan to make

capital repairs to the Improvements on the Premises, and (b) City has approved Lessee's proposed capital repairs in its reasonable discretion.

"**Business Day**" shall mean a day on which the City of Irvine is open for business.

"**City**" shall mean the City of Irvine, a California municipal corporation. The term "City" as used in this Lease includes the City of Irvine and any assignee of or successor to its rights, powers, and responsibilities.

"**City Conditions to Possession**" shall mean the conditions in Section 4.2.1 that must be satisfied or waived by City prior to Lessee's right to possess the Premises.

"**City Manager**" shall mean the individual duly appointed to the position of City Manager of City or his or her authorized designee. The City Manager shall have the authority to administer and implement the terms of this Lease in accordance with Section 22.14 of this Lease.

"**Covered Parties**" shall mean City and the Orange County Great Park Corporation and their respective elected and appointed boards, members, officials, officers, agents, contractors, representatives, professional consultants, employees and volunteers.

"**CPI**" shall mean the Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics, for All Urban Consumers, Los Angeles-Riverside-Orange County Average, All Items (1984 = 100) (the "Index") or, if said Index is discontinued, such official index as may then be in existence and which is most nearly equivalent to said Index.

"**Default Interest Rate**" means an annual rate of interest equal to the lesser of (a) the rate of interest which is announced and/or published in the Money Rates section of *The Wall Street Journal* from time to time as the prime rate (or if a range of rates is announced and/or published, the Prime Rate shall mean the highest of such rates), or (b) the highest rate permitted by Applicable Law, if any.

"**Effective Date**" shall mean the date on which this Lease is approved by City at a public meeting, which date shall be inserted into the preamble to this Lease.

"**Environmental Policy**" shall have the meaning ascribed in Section 14.7 of this Lease.

"**Force Majeure**" shall mean any event (the existence of which was not known as of the date this Lease was signed, or the date on which construction upon the Premises commenced, as applicable) beyond such party's control and not caused by the acts or omissions of the delayed party which results in delays in a party's performance of its obligations hereunder, including, without limitation, acts of nature or of the public enemy, fires, floods, earthquakes, strikes, freight embargoes, and unusually severe weather; delays of contractors or subcontractors due to any of these causes; strikes and substantial interruption of work because of labor disputes, delay in the granting of permits and other governmental approvals; inability to obtain materials or reasonably acceptable

substitute materials (provided that the delayed party has ordered such materials on a timely basis and the delayed party is not otherwise at fault for such inability to obtain materials); encountering Toxic Materials associated with Pre-Existing Environmental Conditions; and Lessee's inability to access the Premises because City has restricted all reasonable access to the Premises or because City's construction and/or other activities within or adjacent to the Great Park prevent all reasonable access to the Premises. Force Majeure does not include failure to obtain financing or have adequate funds, or any event that could have been avoided by exercising that standard of foresight and due diligence that any reasonably prudent and competent person would exercise under the circumstances.

"**Governmental Agency**" means and refers to any and all courts, boards, agencies, commissions, offices, or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city, or otherwise), including the City, pursuant to its general police power jurisdiction, whether now or later in existence with jurisdiction over the Property and/or Project.

"**Great Park**" shall mean the Orange County Great Park referred to in Recital A of this Lease.

"Gross Revenue" shall mean all revenues and receipts of any kind or nature, whether cash, credit, or barter, received by Lessee in connection with or derived from the Premises, the Improvements thereon, or Lessee's Parking License for the Lease Year in question, including, without limitation: (i) all amounts paid to or on behalf of Lessee by any party for the use or occupancy of any portion of the Premises, including, without limitation, payments for the use of the Premises and payments made by third parties for costs related to the operation of any portion of the Premises such as maintenance charges, taxes, utilities, insurance costs, and service fees; (ii) all gross receipts of every kind and nature, from any business, use, or occupation, or any combination thereof, transacted, arranged, or performed, in whole or in part, on, from, or for services or sales from the Premises; (iii) proceeds of business interruption and similar insurance payable as a result of loss of revenues; and (iv) the fair market value of any non-monetary tangible or intangible item or service of value provided to or on behalf of Lessee by any person for the use or occupancy of any portion of the Premises or the use of the name of the Water Park thereon for advertising or promotional purposes. In the computation of Gross Revenues, there shall be excluded therefrom the following amounts: (a) proceeds of casualty insurance or condemnation awards; (b) rebates, refunds, and discounts (exclusive of credit card discounts or commissions paid to a credit card system) to customers given in the ordinary course of obtaining such revenues; and (c) excise, sales, and use taxes collected directly from patrons or guests or as a part of the sales price of any goods or services, such as gross receipts, admission, or similar taxes, which are accounted for by Lessee and remitted or paid to any Governmental Agency. Sales upon credit shall be considered cash sales and shall be included in the gross receipts for the period during which the goods or services are delivered or performed. Without limiting the foregoing, Gross Revenues shall include, without limitation, revenues from general admissions ticket sales, season passes, special events, gift certificates, sales of merchandise, food, beverages, and services, locker and other equipment rentals, vending

machines and arcade games, photography services, and any funds received from sales by any concessionaire or licensee of Lessee, provided that any such concessionaire or licensee shall only be permitted if it is a bona vide third party in which Lessee has no ownership or other interest. Lessee acknowledges and agrees that the term "Gross Revenue" shall be broadly interpreted, in a manner that maximizes "Gross Revenue".

"**Imposition**" or "**Impositions**" shall mean Taxes and all assessments, franchises, excises, license and permit fees, and other governmental levies and charges, general and special, ordinary and extraordinary, unforeseen and foreseen, of any kind and nature whatsoever which at any time during the Term may be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or in respect of, or become a lien on (a) the Premises and Improvements or any part thereof or any appurtenance thereto; (b) the income received by Lessee from guests, or others for the use or occupation of the Premises and the Improvements thereon; or (c) this Lease.

"**Improvements**" shall mean any improvements to the Premises, whether previously existing or constructed on the Premises by Lessee or City pursuant to this Lease, and including any and all amendments, modifications, additions, substitutions, and replacements thereof.

"**Lease**" shall mean this Lease and all exhibits attached hereto.

"**Lease Year**" shall mean each January 1st – December 31st (or remaining portion thereof, with respect to the first Lease Year), during the Lease Term, following the Operations Commencement Date.

"**Leasehold Mortgage**" shall mean any mortgage, deed of trust, assignment of rents, fixture filing, security agreement, or similar security instrument, or other lien or encumbrance secured by an interest in the leasehold estate or any improvements, fixtures or equipment on the Premises, as more fully explained in Section 18.

"**Leasehold Mortgagee**" shall mean the holder of a Leasehold Mortgage. The terms of this Lease require that the holder be an Approved Institution.

"**Lessee**" shall mean Wild Rivers Waterpark Irvine SPE, LLC, a Delaware limited liability company. The term "Lessee" includes any legally permissible assignee or successor to the rights, powers, and responsibilities of Lessee hereunder, in accordance with Section 13 of this Lease.

"**Lessee Conditions to Possession**" shall mean the conditions in Section 4.2.2 that must be satisfied or waived by Lessee prior to Lessee's obligation to possess the Premises.

"**Lessee Parties**" shall mean Lessee Personnel and any guests or invitees of Lessee.

"**Lessee Personnel**" shall mean Lessee, and any employee, volunteer, contractor, subcontractor, consultant, representative or agent of Lessee, any person under Lessee's

supervision, control or direction, or any person retained or engaged by Lessee to conduct the Water Park or any provision of this Lease.

"**Lessee's Evidence of Financial Capability**" shall have the meaning ascribed in Section 4.2.1(b) of this Lease.

"**Lessee's Parking License**" shall have the meaning ascribed in Section 3.3 of this Lease.

"**Minimum Asset Threshold**" shall mean assets (capital and surplus) in excess of Five Hundred Million Dollars ($500,000,000).

"**Minimum Rent**" shall have the meaning ascribed in Section 5.1.1(a) of this Lease.

"**OCGPC**" shall mean the Orange County Great Park Corporation, a California non-profit mutual public benefit corporation.

"**Operating Plan**" shall have the meaning ascribed in Section 8.5 of this Lease.

"**Operating Season**" shall mean the period during each Lease Year when the Water Park is open for business to the general public. Lessee anticipates that the Operating Season will commence on or about the first day of May and continue through the last day of October.

"**Operations Commencement Date"** shall mean the date City issues a certificate of occupancy for the Premises.

"**Option**" shall have the meaning ascribed in Section 4.3 of this Lease.

"**Outside Possession Commencement Date**" shall mean the date that is fifteen (15) months after the Effective Date, or such later date as may be mutually approved in writing by both parties.

"**Percentage Rent**" shall have the meaning ascribed in Section 5.1.1(b) of this Lease.

"**Permitted Transferee**" shall mean an entity that either directly or through its wholly owned or controlled subsidiary(ies) has continuously owned and operated a waterpark within North America during the immediately preceding five (5) years that had annual revenues of at least Fifteen Million Dollars ($15,000,000) (the "**Minimum Permitted Transferee Revenue Threshold**") for each of the immediately preceding three (3) years. The Minimum Permitted Transferee Revenue Threshold shall be increased by two percent (2%) every year following the Effective Date.

"**Possession Commencement Date**" shall mean the date on which City provides possession of the Premises to Lessee commences, which shall occur upon the satisfaction of the Possession Conditions in Section 4.2.

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"**Possession Conditions**" shall mean, collectively, the City Conditions to Possession and the Lessee Conditions to Possession.

"**Pre-Existing Environmental Conditions**" shall have the meaning ascribed in Section 10.8 of this Lease.

"**Premises**" shall mean that certain real property consisting of approximately twenty (20) acres of land area described in the legal description attached hereto as Exhibit "B" and depicted in the Site Map. The interests granted by City to Lessee hereunder are subject to any and all covenants, conditions, restrictions, reservations, rights, rights-of-way, easements, and other exceptions of record and/or as referenced in this Lease. The lease of the Premises does not include any mineral, oil, gas, water, or other rights relative to the land.

"**Project**" shall mean the development described in Exhibit "D" to this Lease, and landscaping, lighting, signage, and other amenities, and all other on-site and off-site improvements required for development of the Premises, with all such improvements to be consistent with the Approvals, all Applicable Laws, and development and building plans and permits approved by City. If there is any inconsistency between the description of the Project in this Lease and the approved plans and permits for those improvements, the approved plans and permits shall govern.

"**Project Budget**" shall mean a line-item budget to be submitted by Lessee to the City Manager pursuant to Section 4.2.1(b) of this Lease that sets forth the costs to plan, design, engineer, finance, and construct the Project. The Project Budget shall be an amount not less than Fifty Million Dollars ($50,000,000).

"**Project Construction Loan**" shall mean an Approved Loan made by a Leasehold Mortgagee to Lessee for the development of the Project thereon in an aggregate amount equal to (i) the Project Budget less (ii) the amount of Lessee's equity funds available and committed to the development of the Project, all as more particularly described in Section 4.2.1(b) of this Lease.

"**Qualified Lender**" shall mean a savings bank, a savings or building and loan association, a commercial bank or trust company (whether acting individually or in any fiduciary capacity), an insurance company, an educational institution, an institutional pension or retirement fund or system, or a real estate investment trust.

"**Remedial Plan**" shall mean that certain City of Irvine Remedial Plan dated August 2012, a copy of which has been made available to Lessee for its review.

"**Replacement Reserve**" shall have the meaning ascribed in Section 8.18 of this Lease.

"**Rent**" shall mean Minimum Rent, and Percentage Rent, all as set forth in Section 5.1 of this Lease.

"**Schedule of Performance**" shall mean that certain Schedule of Performance attached hereto as Exhibit "G" and incorporated herein by reference, setting out the dates and/or time periods by which certain obligations and conditions set forth in this Lease must be accomplished or satisfied.

"**Site Map**" shall mean that certain site map attached hereto and incorporated herein as Exhibit "C".

"**Taxes**" shall mean all real and personal property taxes, possessory interest taxes, fees, assessments and charges, water and sewer rates and charges, and other similar governmental charges and impositions, whether general or special, ordinary or extraordinary, which may be levied, assessed, charged or imposed, or may become a lien or charge upon the Premises or any part or parts thereof, or upon Lessee's leasehold interest in the Premises, Lessee's ownership rights in the improvements and fixtures on the Premises, and Lessee's rights pursuant to this Lease, or upon City's ownership of the Premises, including, without limitation, all existing and future assessments and fees for public improvements, services, and facilities and impacts thereon, including arising out of any Community Facilities Districts, "Mello Roos" districts and similar assessment districts.

"**Term**" shall have the meaning ascribed in Section 4.1 of this Lease.

"**Toxic Materials**" shall mean any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government, including, without limitation, any material or substance which is (i) defined as a "hazardous waste", "extremely hazardous waste" or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substances Account Act), (iii) defined as a "hazardous material" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) asbestos, (vii) polychlorinated biphenyls, (viii) formaldehyde, (ix) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20, (x) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. Section 1251 et seq. (33 U.S.C. Section 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Section 1317), (xi) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (42 U.S.C. Section 6903) ("RCRA"), or (xii) defined as "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. (42 U.S.C. Section 9601).

"**Usual Operating Season**" shall mean May 1st through September 20th. If the Operations Commencement Date is on or before May 1st of the initial Lease Year, then the initial Lease Year shall be deemed to include a Usual Operating Season.

"Water Park" shall have the meaning ascribed in Section 8.1 of this Lease.

3. PREMISES.

3.1 Lease of Premises. Effective upon the Effective Date, City hereby leases to Lessee, and Lessee hereby leases from City, the Premises, for the Term and upon the terms and conditions set forth in this Lease; provided, however, that Lessee shall have no right to possession of the Premises prior to the Possession Commencement Date.

3.2 Lessee's Option to Lease Additional Premises. Provided Lessee is not in default under the terms of this Lease, Lessee shall have an option to lease the additional three (3) acre parcel designated on the Site Map as the "**Wild Rivers Option Parcel**", by providing a written notice to City, prior to the close of the fifth (5th) Lease Year, of its election to lease the Wild Rivers Option Parcel. Upon Lessee's exercise of its election to lease the Wild Rivers Option Parcel, Minimum Rent shall increase by One Hundred Twenty-Five Thousand Dollars ($125,000), to Six Hundred Seventy-Five Thousand Dollars ($675,000).

3.3 Parking.

3.3.1 Construction of City Parking Lot. By the Operations Commencement Date, City shall construct a parking lot containing not less than one thousand two hundred ten (1,210) parking spaces, in the location designated on the Site Map as "Parking Parcel" (the "**City Parking Lot**"). If the City Parking Lot is not substantially complete and capable of daytime use, and made available for Lessee's use, by the Operations Commencement Date, then for the period beginning with and including the Operations Commencement Date, and ending on and excluding the date that City substantially completes construction of the City Parking Lot such that the City Parking Lot is capable of daytime use, and makes the City Parking Lot available to Lessee (the "**Parking/Rent Abatement Period**"), all Rent will be abated on a per-day basis for any day during the Parking/Rent Abatement Period on which the Water Park is open to the public (each such day, a "**Rent Abatement Day**"). The amount of Rent abated for each Rent Abatement Day shall be (a) with respect to each Rent Abatement Day prior to July 1 of the initial Lease Year, one and one-half percent (1.5%) of the aggregate Rent ultimately paid for the initial Lease Year; and (b) with respect to each Rent Abatement Day on or after July 1 of the initial Lease Year, two percent (2%) of the aggregate Rent ultimately paid for the initial Lease Year. Notwithstanding anything in this Lease to the contrary, City shall not be required to begin construction of the City Parking Lot prior to the date that Lessee begins construction of the Water Park. If the City Parking Lot is not substantially complete and capable of daytime use prior to the Operating Commencement Date, then until such time as City substantially completes construction of the City Parking Lot such that the City Parking Lot is capable of daytime use, and makes the City Parking Lot available to Lessee, City shall grant to Lessee a license, for use by Lessee and its

employees, agents, contractors, vendors, customers and invitees, for temporary parking in a location within a portion of the area identified as "Temporary Parking Zone" on the temporary parking zone site map attached hereto as Exhibit "C-1". Any such parking area shall have a sealed or coated surface.

3.3.2 License. Lessee shall have a license to use the City Parking Lot, on an exclusive basis, during the operating hours of the Water Park, on any day on which the Water Park is open for business, whether to the general public or for a private event, for a maximum of one hundred ten (110) days during each Operating Season (the "**Lessee's Parking License**"), as set forth in Lessee's annual Operating Plan. Lessee's Parking License shall include, on any of such days, the exclusive use of the City Parking Lot for the one hour period prior to the time the Water Park opens for business, and the nonexclusive use of the City Parking Lot for the one hour period after the time the Water Park closes. During any such period of non-exclusive use by Lessee, City shall have the right to utilize any parking spaces not then utilized by Lessee. City shall have the exclusive right to use the City Parking Lot at all times except the times when Lessee has the exclusive right to use the City Parking Lot pursuant to Lessee's Parking License. Lessee may include any charge to its patrons for parking in the City Parking Lot into Lessee's ticket or pass fee, or may collect a separate parking fee at or within the City Parking Lot, at Lessee's election.

3.3.3 Maintenance. During any period in which Lessee exercises Lessee's Parking License, as set forth in Lessee's annual Operating Plan, Lessee shall maintain the City Parking Lot; provided that City will at all times be responsible for capital improvements, capital repairs, or capital replacements to the City Parking Lot. City will be responsible for maintaining the City Parking Lot during all periods in which Lessee is not exercising Lessee's Parking License.

4. TERM.

4.1 Term. This Lease shall be effective between the parties as of the Effective Date; provided, however, that Lessee shall have no right to possession of the Premises prior to the Possession Commencement Date. Subject to the possibility of earlier termination as provided for herein, the term of the Lease ("**Term**") for the Premises shall commence on the Effective Date and shall continue thereafter until the expiration of the thirtieth (30th) Lease Year following the Operations Commencement Date, subject to extension pursuant to Section 4.3 of this Lease. The Possession Commencement Date shall occur on the date that all of the Possession Conditions in Sections 4.2.1 and 4.2.2 have been satisfied or waived in writing by the benefitted party or parties, as provided therein; provided, however, that if the Possession Commencement Date does not occur by the Outside Possession Commencement Date, the provisions of Section 4.2.4 shall apply. The parties agree to cooperate in causing a short form Memorandum of Lease to be recorded against the Premises on or about the Effective Date that memorializes the existence of this Lease, and recites that this Lease is available for public review and inspection as a public record in the office of the City Clerk of City the "**Memorandum of Lease**". The parties agree to cooperate in causing an amendment to the Memorandum of Lease to be recorded against the Premises on or about the Operations

Commencement Date that identifies the Operations Commencement Date, the Term, the Options, and the expiration date of the Term.

4.2 Conditions Precedent to Possession.

4.2.1 City Conditions to Possession. Notwithstanding any other provision set forth in this Lease to the contrary, City's obligation to provide possession of the Premises to Lessee shall be contingent and conditional upon the fulfillment or City's express written waiver of each of the following conditions precedent (collectively, the "**City Conditions to Possession**"):

(a) *Approvals for Project*. Lessee shall have obtained all Approvals required for demolition (if applicable) and rough grading of the Premises from City and each other Governmental Agency with jurisdiction over all or any portion of the Property and/or Project, and any statutory time period for filing an action appealing or challenging the Approvals shall have expired with no such action having been timely filed or, if any such action is timely filed, such action has been concluded in a manner that upholds the validity and enforceability of the challenged Approvals. Additionally, Lessee must be actively working toward obtaining the remaining Approvals required for development of the Project.

(b) *Lessee's Evidence of Financial Capability.* Lessee shall have submitted to City and City shall have approved all of the following (collectively, "**Lessee's Evidence of Financial Capability**"): (i) the Project Budget; (ii) if a Project Construction Loan is to be obtained, Lessee's Project Construction Loan documents (which shall be ready to record on the Possession Commencement Date), (iii) If the Project Construction Loan will be funded from the issuance of bonds, the offering memorandum for the bonds, (iv) evidence of the amount of Lessee's equity funds available and committed to development of the Project on the Premises (if the Project Construction Loan does not equal or exceed the Project Budget); and (v) evidence that the sum of Lessee's Project Construction Loan and available and committed equity funds collectively equal or exceed the Project Budget. Lessee shall certify that each of the items contained within Lessee's Evidence of Financial Capability is true and correct at the time of submittal. Lessee shall submit Lessee's Evidence of Financial Capability within the time set forth in the Schedule of Performance, and City shall review and approve or disapprove the same no later than thirty (30) days after receipt of a complete submittal. City shall not unreasonably withhold, delay, or condition its approval.

(c) *Project Permits*. All site demolition (if applicable), rough grading, and site preparation plans for the Project shall be collectively ready for permit issuance (i.e., all regulatory reviews with respect to such plans are complete and plans for the Project are ready to be approved) upon Lessee's payment of the requisite fees, posting of required security, and compliance with similar routine and ministerial requirements of City.

(d) *Insurance*. Lessee shall have provided to City the evidence of insurance required under Section 14 of this Lease, except that property insurance will not be required for any Improvements while those Improvements are covered by builder's risk insurance.

(e) *Additional Insured Endorsement*. AIG shall have issued an endorsement to the Environmental Policy, to be effective as of the Possession Commencement Date, listing Lessee and any Leasehold Mortgagee as additional insureds with respect to the Pre-Existing Environmental Condition of the Premises, and City shall have approved any conditions imposed by AIG in connection with said endorsement.

(f) *Utilities*. Lessee shall have obtained "will serve" letters from any such applicable providers of utilities and services confirming that any and all utilities and services necessary for the development and operation of the Water Park will be delivered and available to the Premises.

(g) *No Default*. Lessee shall not be in default of any of the terms or conditions of this Lease.

At such time as each of the foregoing conditions has been satisfied, or waived by Lessee, Lessee shall provide written notice thereof to City, as evidence of said satisfaction or waiver. City hereby acknowledges and agrees that a Leasehold Mortgagee shall have the right to satisfy some or all of the foregoing conditions on behalf of Lessee.

4.2.2 Lessee Conditions to Possession. Notwithstanding any provision set forth in this Lease to the contrary, Lessee's obligation to accept possession of the Premises from City shall be contingent and conditional upon the fulfillment or Lessee's express written waiver of each of the following conditions precedent (collectively, the "**Lessee Conditions to Possession**"):

(a) *Approvals for Project*. Lessee shall have obtained all Approvals required for demolition (if applicable) and rough grading of the Premises from City and each other Governmental Agency with jurisdiction over all or any portion of the Property and/or Project, and any statutory time period for filing an action appealing or challenging the Approvals shall have expired with no such action having been timely filed or, if any such action is timely filed, such action has been concluded in a manner that upholds the validity and enforceability of the challenged Approvals. Additionally, Lessee must be actively working toward obtaining the remaining Approvals required for development of the Project.

(b) *Project Permits*. All site demolition (if applicable), rough grading, and site preparation plans for the Project shall be collectively ready for permit issuance (i.e., all regulatory reviews with respect to such plans are complete and the plans are ready to be approved) upon Lessee's payment of the requisite

fees, posting of required security, and compliance with similar routine and ministerial requirements of City.

(c) *Additional Insured Endorsement*. AIG shall have issued an endorsement to the Environmental Policy, to be effective as of the Possession Commencement Date, listing Lessee as an additional insured with respect to the Pre-Existing Environmental Condition of the Premises, and City shall have approved any conditions imposed by AIG in connection with said endorsement.

At such time as each of the foregoing conditions has been satisfied, or waived by Lessee, Lessee shall provide written notice thereof to City, as evidence of said satisfaction or waiver. City hereby acknowledges and agrees that a Leasehold Mortgagee shall have the right to satisfy some or all of the foregoing conditions on behalf of Lessee.

4.2.3 Satisfaction of Possession Conditions. Subject to any reserved rights and City's exercise of its legislative discretion, where satisfaction of any of the Possession Conditions requires action by City, the applicable party shall use its diligent efforts, in good faith, and at its own cost, to expeditiously satisfy such condition(s). If one party is not in a position to know whether or not a particular condition has been satisfied or the status thereof, then upon such party's request the other party that is aware of the status of the satisfaction of the condition shall provide such information to the inquiring party with respect to such condition as shall be within the knowledge of the responding party.

4.2.4 Termination if Possession Conditions Not Satisfied. In the event that by the Outside Possession Commencement Date each of the City Conditions to Possession set forth in Section 4.2.1 has not been fulfilled, or waived in writing by City, and City is not then in default of its obligations hereunder, City at its option may terminate this Lease by delivery of written notice of termination to Lessee. In the event that by the Outside Possession Commencement Date each of the Lessee Conditions to Possession set forth in Section 4.2.2 has not been fulfilled, or waived in writing by Lessee, and Lessee is not then in default of its obligations hereunder, Lessee at its option may terminate this Lease by delivery of written notice of termination to City. In the event of a termination pursuant to this Section 4.2.4 in a situation in which neither party is then in default of its obligations set forth in this Lease, neither party shall have any further rights or obligations hereunder. No termination under this Lease shall release either party then in default from liability for such default.

Notwithstanding anything to the contrary in this Section 4.2.4, if a Leasehold Mortgagee provides documentary evidence reasonably satisfactory to the City Manager that the Leasehold Mortgagee has disbursed proceeds from a Project Construction Loan to Lessee, neither City nor Lessee may terminate this Lease pursuant to the terms of the foregoing paragraph for a period of sixty (60) days following the Outside Possession Commencement Date, to enable the Leasehold Mortgage an opportunity to satisfy the unfulfilled conditions(s), and if the unfulfilled condition(s) is/are not susceptible of being fulfilled within such sixty (60) day period, then the Leasehold Mortgagee shall have up to

an additional thirty (30) days, for a maximum cumulative period of ninety (90) days following the Outside Possession Commencement Date, to fulfill such condition(s) before City or Lessee (as applicable) may terminate this Lease.

4.3 Option to Extend Term. Lessee shall have seven (7) options to extend the Term for, in each instance, a period of five (5) additional Lease Years, upon the terms and conditions set forth herein (each, an "**Option**"). In the event Lessee elects to exercise an Option to extend the Term, Lessee shall deliver to City written notice of its intent to exercise the Option in the manner set forth in Section 22.1 which requires a copy of the notice be sent to the OCGPC and the City Attorney (an "**Option Exercise Notice**"), at least one hundred eighty (180) days prior to the expiration of the Term. If any default of Lessee under this Lease is outstanding either at the time of Lessee's delivery of an Option Exercise Notice or at any time prior to the first day of an extension Term (or if any event shall have occurred which with the giving of notice or the passage of time or both would constitute such an default), then City may elect by delivering written notice to Lessee on or before the first day of an extension Term to reject Lessee's exercise of its option to extend, whereupon the extension shall be null and void unless Lessee subsequently cures the default within the time period permitted under this Lease for cure of the default at issue. If Lessee elects to exercise an Option, the term "Term" as used herein shall include the extended Term and all terms and conditions of this Lease shall continue to apply.

4.4 Lessee's Right of Entry Prior to Possession Commencement Date. Subject to the terms and conditions set forth herein, Lessee and Lessee's agents, contractors, consultants, and employees shall have reasonable access to the Premises prior to the Possession Commencement Date, during normal business hours, as may be reasonably necessary for the purpose of conducting inspections and tests, and preparing the plans and specifications for the Project. As a condition to any such entry, inspection or testing, Lessee shall (a) apply for and obtain an entry permit from City in a form customarily issued by City (the "**Entry Permit**"); (b) notify City in advance of the date and purpose of the intended entry and coordinate such entry with City personnel required to accompany Lessee, provide to City the names and affiliations of the persons entering the Premises; (c) conduct all activities in a diligent, expeditious and safe manner and not allow any dangerous or hazardous conditions to occur on the Premises; (d) comply with all Applicable Laws, governmental regulations, and the Entry Permit; (e) keep the Premises free and clear of all materialmen's liens, lis pendens and other liens arising out of the entry by or on behalf of Lessee; (f) promptly cause the repair of any and all damage to the Premises caused by Lessee, or any of their respective agents, employees, contractors, or consultants, to a condition as near as reasonably possible to the condition existing prior to such damage; (g) maintain in effect the insurance described in Section 14 of this Lease (except that property insurance will not be required for any Improvements while those Improvements are covered by builder's risk insurance); and (h) not materially interfere with any construction work or other activities of City or any other party. In connection with clause (i) of the preceding sentence, Lessee acknowledges that there may be times when access to the Premises will not be available to Lessee due to City's construction and other activities thereon and that City may from time to time need to schedule Lessee's access to a more convenient time. Lessee shall indemnify, defend

and hold harmless the Covered Parties from and against any and all loss, cost, liability or expense (including reasonable attorneys' fees) arising from the entries of Lessee or any of Lessee's agents, contractors, consultants, and employees upon the Premises or from Lessee's failure to comply with the conditions to entry onto the Premises provided for herein, including, without limitation, in the Entry Permit. Notwithstanding anything to the contrary set forth in this Lease, such indemnity shall survive the termination of this Lease for any reason.

5. RENT.

5.1 Rent.

5.1.1 Minimum Rent and Percentage Rent. Commencing on the earlier of (i) the Operations Commencement Date, and (ii) the date that is twenty-four (24) months following the Possession Commencement Date, Lessee shall pay as rent to City, for each Lease Year, the greater of Minimum Rent and Percentage Rent.

(a) "**Minimum Rent**" is Five Hundred Fifty Thousand Dollars ($550,000) per Lease Year, for the first five (5) Lease Years, subject to the terms of Section 3.2 above, increasing in year six (6) and every five (5) years thereafter for the remainder of the Term by the lesser of (i) ten percent (10%) of Minimum Rent for the immediately prior Lease Year, and (ii) the cumulative increase in the CPI over the immediately preceding five (5) Lease Years. Minimum Rent shall be paid as follows: (i) Two Hundred Fifty Thousand Dollars ($250,000) (which amount shall increase at the same time, and by the same percentage, as Minimum Rent) shall be paid in five (5) equal installments, on each May 1, June 1, July 1, August 1, and September 1 of each Lease Year (such portion, the "**Installment Portion of Minimum Rent**"); and (ii) the remaining balance of Minimum Rent shall be due and payable on October 31 of each Lease Year.

(b) "**Percentage Rent**" is four and one-half percent (4.5%) of Gross Revenue. If Percentage Rent accrued through September 30th of any Lease Year (the "**Operating Season Percentage Rent**") exceeds total Minimum Rent for such Lease Year, then provided Lessee has timely paid all of such Minimum Rent for such Lease Year, (i) Lessee shall receive a credit in the amount of the Minimum Rent, and (ii) Lessee shall pay to City the remaining balance of the Operating Season Percentage Rent (i.e., the difference between Operating Season Percentage Rent and Minimum Rent) by October 31st of that Lease Year. Any additional Percentage Rent accrued during the period between October 1st and December 31st of each Lease Year shall be paid concurrently with the submittal of the statement of Gross Revenue for that Lease Year pursuant to Section 5.4 below.

For example, if Minimum Rent is $550,000 and Operating Season Percentage Rent is $800,000, then provided Lessee has timely paid all Minimum Rent, the Percentage Rent payment due and payable by Lessee by October 31 is $250,000. If

Percentage Rent of $50,000 is accrued between October 1st and December 31st of that Lease Year, then all of such Percentage Rent shall be paid by Lessee concurrently with Lessee's submittal of its statement of Gross Revenue for that Lease Year.

For example, if Minimum Rent is $550,000 and Operating Season Percentage Rent is $500,000, then provided Lessee has timely paid all Minimum Rent, no Percentage Rent shall be due and payable by Lessee by October 31. If additional Percentage Rent of $75,000 is accrued between October 1st and December 31st of that Lease Year, then $25,000 of such additional Percentage Rent shall be paid by Lessee concurrently with Lessee's submittal of its statement of Gross Revenue for that Lease Year.

5.1.2 Calculation of Rent During Initial Lease Year. If the Operations Commencement Date occurs after May 1st, then Minimum Rent and Percentage Rent for the initial Lease Year shall be adjusted as follows:

(a) Minimum Rent shall be equal to (i) $550,000 multiplied by (ii) a fraction, the numerator of which is the number of days the Water Park is open during the initial Lease Year and the denominator of which is 110. All such Minimum Rent for the initial Lease Year shall be paid on or before the first September 1st following the Operations Commencement Date.

(b) Percentage Rent shall be equal to 4.5% of Gross Revenues multiplied by (ii) a fraction, the numerator of which is the number of days the Water Park is open during the initial Lease Year and the denominator of which is 110. All such Percentage Rent that is due and payable for the initial Lease Year (i.e., all of such Percentage Rent that exceeds the Minimum Rent calculated pursuant to subparagraph (a) above and timely paid by Lessee) shall be paid on or before the first November 30th following the Operations Commencement Date.

5.2 Partial Rent Deferral. In any Lease Year in which all of the circumstances described in (a), (b), and (c) below have occurred, Lessee shall have the right, in Lessee's sole and absolute discretion, to elect to receive a partial rent deferral pursuant to the process set forth in this Section 5.2:

(a) Gross Revenue for the Lease Year is less than Twelve Million Dollars ($12,000,000), as verified by City pursuant to the statement of Gross Revenue for that Lease Year or other documentary evidence reasonably satisfactory to City.

(b) Lessee was unable to operate the Water Park for the minimum one hundred (100) days required under this Lease during the Usual Operating Season due to:

(i) an unexpected change in County, State or Federal law and/or regulations that, due to no fault of Lessee and with no recourse

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available to Lessee despite Lessee's exercise of its best efforts, directly prevented or materially adversely affected Lessee's ability to operate the Water Park; or

(ii) the occurrence during the Usual Operating Season of an abnormal number of days with measurable precipitation at John Wayne Orange County Airport (KSNA), as supported by records maintained by the National Oceanic and Atmospheric Administration. As used in this subparagraph, an "abnormal number of days" means a number of days that is more than fifty percent (50%) greater than the average number of days with measureable precipitation during the Usual Operating Season, over the past twenty (20) years.

For example, if over the past twenty years the average measureable precipitation during the Usual Operating Season was eight (8) days, then an abnormal number of days for a Usual Operating Season would be a number of days of measureable precipitation in excess of twelve (12) days.

(c) Lessee has filed a claim under Lessee's business interruption insurance, and despite Lessee's good faith and diligent efforts in pursuing such claim, the insurance carrier has rejected the claim on a legitimate basis, due to no fault of Lessee and no failure of Lessee to comply with the terms of the policy; provided, however, that (i) prior to filing any such claim, Lessee shall meet and confer with the City Manager with respect to such claim and shall reasonably consider any recommendations of the City Manager with respect to such claim, and (ii) Lessee shall keep City informed regarding the status of the claim, and shall seek guidance from the City Manager with respect to any correspondence with the insurance carrier regarding such claim.

In the event Lessee has provided documentary evidence reasonably satisfactory to the City Manager that evidences that all of the circumstances in (a), (b), and (c) above have occurred in a particular Lease Year (any such Lease Year, a "**Partial Rent Deferral Lease Year**"), Lessee shall be entitled to a partial deferral of the rent due for the Partial Rent Deferral Lease Year, pursuant to the process set forth in the remainder of this Section 5.2.

A. Interim Thresholds for Partial Rent Deferral. If, as of September 30 in any Lease Year, Lessee has provided documentary evidence reasonably satisfactory to the City Manager that evidences that (i) the circumstances in (b) above have occurred in the Lease Year, and (ii) Gross Revenue for the Lease Year (through September) is less than Eleven Million Dollars ($11,000,000), then the remaining Minimum Rent due for the Lease Year (i.e., total Minimum Rent less the Installment Portion of Minimum Rent, referred to hereinafter as the "**Lump Sum Portion of Minimum Rent**"), and any Operating Season Percentage Rent due for the Lease Year, shall be temporarily deferred, until such time as the City Manager determines if the Lease Year qualifies as a Partial Rent Deferral Lease Year.

B. Failure to Qualify for Partial Rent Deferral. If the interim thresholds for a partial rent deferral described in paragraph A above are satisfied, but after receipt of Lessee's statement of Gross Revenue the City Manager determines that the Lease Year does not satisfy all of the criteria for a Partial Rent Deferral Lease Year, Lessee shall pay to City, within fifteen (15) days after Lessee's receipt of the City Manager's written determination , the Lump Sum Portion of Minimum Rent, and any Percentage Rent due for the Lease Year (i.e., Percentage Rent less total Minimum Rent).

C. Qualification for Partial Rent Deferral. If after receipt of Lessee's statement of Gross Revenue the City Manager determines that the Lease Year is a Partial Rent Deferral Lease Year, then (i) the Lump Sum Portion of Minimum Rent due for the Partial Rent Deferral Lease Year shall be deferred, and paid pursuant to the terms of paragraph D below. and (ii) the portion of Percentage Rent then due and payable shall be the difference between two and one-half percent (2.5%) of Gross Revenue and the Installment Portion of Minimum Rent, and (iii) the remaining portion of Percentage Rent (i.e., the difference between four and one-half percent (4.5%) of Gross Revenue and the sum of (a) total Minimum Rent payable for the Partial Rent Deferral Lease Year, and (b) the portion of Percentage Rent paid pursuant to clause (ii) (the "**Deferred Portion of Percentage Rent**"), shall be deferred, and paid pursuant to the terms of paragraph D below.

D. Payment of Deferred Rent. Lessee shall pay the deferred Lump Sum Portion of Minimum Rent and the Deferred Portion of Percentage Rent in five (5) equal annual installments, on each May 1 commencing with the Lease Year following the Partial Rent Deferral Lease Year. Provided Lessee timely makes each of the foregoing five (5) payments, no interest shall accrue on the outstanding balance.

> EXAMPLE NO. 1: If the 4th Lease Year is a Partial Rent Deferral Lease Year, and Gross Revenue is $10,000,000, then provided Lessee has timely paid the Installment Portion of Minimum Rent due during the Partial Rent Deferral Year, then:
>
> Lessee is entitled to defer the Lump Sum Portion of Minimum Rent and all Percentage Rent for the Partial Rent Deferral Year.
>
> EXAMPLE NO. 2: if the 4th Lease Year is a Partial Rent Deferral Lease Year, and Gross Revenue is $11,000,000, then provided Lessee has timely paid the Installment Portion of Minimum Rent due during the Partial Rent Deferral Year, then:
>
> Lessee is entitled to defer the Lump Sum Portion of Minimum Rent, Lessee is obligated to promptly pay $25,000 in Percentage Rent (2.5% x $11,000,000 = $275,000; $275,000 - $250,000 = $25,000), and there is no Deferred Portion of Percentage Rent.

Notwithstanding anything to the contrary in this Lease, Lessee may obtain no more than three (3) partial rent deferrals during the initial thirty (30) year Term of this Lease,

and Lessee may obtain no more than one (1) partial rent deferral during any five (5) year extension Term.

5.3 Place for Payment of Rent. All Rent to be paid by Lessee and any other amounts to be paid to City as provided in this Lease shall be payable in lawful money of the United States of America without prior notice or demand and without abatement, offset, or deduction of any kind, to City at its address set forth in Section 22.1 or at such other place or places as may be designated from time to time in writing by City.

5.4 Submittal of Gross Revenue Statement. By the January 31 following the close of each Lease Year, Lessee shall submit to City for its review and approval a statement in the form attached hereto and incorporated herein as Exhibit "H" containing an itemization and a reasonable explanation of the composition of Gross Revenue for the applicable Lease Year, certified by Lessee (and individually by an officer, partner, member or trustee of Lessee, if Lessee is a corporation, partnership, limited liability company or trust) as an accurate accounting of Lessee's Gross Revenue. Such statement shall be accompanied by a certificate of an independent certified public accountant with a national accounting firm or otherwise reasonably acceptable to City ("**Accountant**"). The Accountant's certificate shall be addressed to City, and shall state that the Accountant is familiar with the definition of Gross Revenue in this Lease and is attesting to the accuracy of Gross Revenue. Lessee shall provide to City such other additional reports and information on Gross Revenue as reasonably required by City, and Lessee agrees that each such additional report and information shall be and is hereby certified to be true and correct.

5.5 Books and Records; Rights of Inspection and Audit. Lessee shall keep and cause any third parties to keep Books and Records in an accurate manner according to generally accepted accounting principles consistently applied. As used herein, the term "**Books and Records**" shall mean all of the books, records, receipts, sales slips, invoices, cash register tapes, and accounting reports or statements relating to Gross Revenue, and any other information or records relevant to the determination of Gross Revenue. Such Books and Records shall be kept for a minimum period of seven (7) years after the end of the Lease Year to which such items pertain and shall be kept and maintained and/or made available to City in Orange County. City shall be entitled to inspect, examine, and to copy at City's expense the Books and Records for the purpose of this Lease. Lessee shall cooperate fully with City in making the inspection. City shall also be entitled to an independent audit of Lessee's Books and Records by a certified public accountant to be designated by City. The full cost of such audit shall be borne by Lessee if either or both of the following conditions exist: (i) the audit reveals an underpayment of more than three percent (3%) between Rent due as reported and paid by Lessee in accordance with this Lease and Rent due as determined by said audit, and (ii) Lessee has failed to maintain true and complete books, records, accounts and supporting source documents in accordance with this Section. Otherwise, City shall bear the cost of such audit.

5.6 Net Lease. This is an absolute net lease and, except as otherwise expressly set forth in this Lease, all costs, expenses, and obligations of every kind relating to the Premises and to the use, operation, management, and occupancy thereof, whether

now existing or hereafter arising, and whether or not now customary or within the contemplation of the parties hereto, which may arise or become due during the Term, shall be paid by Lessee. Lessee shall make all payments required by this Lease, including, without limitation, the payment of Rent, without any claim on the part of Lessee for diminution, set-off, or abatement, and nothing shall suspend, abate, or reduce any Rent to be paid hereunder, except as may be otherwise specifically provided in this Lease.

6. CONSTRUCTION OF PROJECT.

6.1 Lessee Obligation to Develop Project. Provided the Possession Commencement Date occurs, Lessee shall develop the Project on the Premises in strict accordance with this Lease, the approved permits, the plans and drawings to be submitted by Lessee and approved by City as set forth herein, and all Applicable Laws; provided, however, that nothing herein shall constitute a representation, warranty, or guarantee by City that City or any other Governmental Agency with jurisdiction will approve any of such plans, drawings, or other documents or submittals. If Lessee desires to make any material change in any development or building plans after the same have been approved, the proposed change shall be submitted to City for approval. Lessee expressly acknowledges that City shall have no obligation to make any additions, alterations, improvements or repairs in, on or about the Premises. As used in this Section 6.1, "material change" shall mean any change that: (a) impairs the structural integrity of the buildings or amusements/rides comprising the Improvements; (b) adversely affects the performance of the mechanical, electrical and life safety systems of the Improvements in any material way; (c) results in a reduction in cost of more than Two Hundred Fifty Thousand Dollars ($250,000) on an individual basis (or a series of related changes relating to the same building or amusement/ride that result in a reduction in cost of more than Two Hundred Fifty Thousand Dollars ($250,000) on a combined basis); or (d) when aggregated with all other changes to the Project that have not been approved by Landlord in writing, result in an aggregate reduction in costs for all such changes of more than One Million Dollars ($1,000,000). Notwithstanding the foregoing, however, nothing in this Section 6.1 or anywhere else in this Lease shall be construed to eliminate any requirement of Lessee to obtain consents and approvals from City as required by City in its capacity as a regulatory agency rather than a landlord.

6.2 Development Approvals.

6.2.1 Design Review. Lessee acknowledges that the Water Park, the related Improvements and overall Project shall be a first class facility, including, without limitation, in architectural design and quality. In addition to all other design approvals required by Applicable Law, Lessee shall also submit to the "Design Review Process" pursuant to the terms and conditions set forth in Exhibit "F" attached hereto. City and Lessee agree to cooperate in the Design Review Process and Lessee shall submit all such plans, drawings, and materials pertaining to the Project as required by Exhibit "F" for approval by City within the time periods set forth therein.

6.2.2 Plans, Approvals, and Permits. Within the time set forth in the Schedule of Performance, Lessee shall submit to City and any other Governmental

Agency with jurisdiction over the Project applications and preliminary plans, drawings, and materials for all permits and approvals and land use and other entitlements which may be required for the Project by City or any other Governmental Agency with jurisdiction over the Project, including, without limitation, an access study. Lessee shall diligently respond to all comments received from City staff, including making any revisions to said plans, drawings, and materials as necessary to address City's comments. Lessee's final construction drawings, plans, and specifications for the Project ("**Final Plans**") shall be in conformity with all requirements set forth in this Lease, City's Municipal Code, and all Applicable Laws. The Final Plans shall contain all information required to obtain all permits. Lessee shall pay all normal and customary City fees and post or provide all normal security instruments relating to its final plans, the issuance of such construction permits, and inspection of the work to be performed in constructing the Project.

City shall not be responsible either to Lessee or to third parties in any way for any defects in the Final Plans, nor for any structural or other defects in any work done according to the approved Final Plans, nor for any delays reasonably caused by the review and approval processes established by this Section 6.2.

6.3 Construction Schedule. Within fifteen (15) days after the Possession Commencement Date, Lessee shall begin construction of the Project by commencing demolition of existing structures (if any), site work, and rough grading of the Premises. Once construction is commenced by Lessee, it shall be continuously and diligently pursued to completion and shall be completed no later than the date that is twenty-four (24) months after the Possession Commencement Date, and shall not be abandoned for more than five (5) consecutive Business Days, subject to extension based upon the occurrence of any Force Majeure delay. During the course of construction, Lessee shall keep City informed of the progress of construction by providing on a monthly basis written progress reports. Notwithstanding anything to the contrary contained in this Lease, in the event that in connection with a foreclosure or assignment in lieu of foreclosure Lessee's interest in this Lease and the Premises are transferred to a Leasehold Mortgagee or its designee or, subject to the terms of Section 13.2 below, to a transferee of the Leasehold Mortgagee or its designee, such transferee person or entity may have up to an additional twelve (12) months beyond any applicable construction deadline to complete the applicable work, provided that (i) within thirty (30) days after such transferee acquires Lessee's interest in this Lease and the Premises such transferee attends a meeting with City staff to discuss the transferee's proposal for completing construction, and to prepare a mutually acceptable schedule for the same, and (ii) following such meeting the transferee timely completes the performance tasks set forth in the approved schedule.

6.4 Project Costs. Lessee shall be responsible for all costs of constructing the Project, including, without limitation, pre-development costs incurred for items such as planning, design, and engineering, all development, building, and inspection fees, costs for insurance and bonds, and all construction costs.

6.5 Energy Efficiencies. Lessee shall construct and operate the Project with energy efficient materials, structures, and equipment pursuant to the requirements set

forth in the Irvine Zoning Ordinance, and all building codes adopted by reference by the Irvine City Council, including, without limitation, the Green Building Code.

6.6 As-Built Plans and Construction Costs. Within sixty (60) days following Lessee's completion of construction of the Project, Lessee shall furnish the City Manager a complete set of reproducible "As-Built" plans on a magnetic tape, disk or other storage device containing the "As-Built" plans in a format usable by City, to City's satisfaction, on City's computer-aided mapping and design (CAD) equipment. CAD files are also to be converted to Acrobat Reader (e.g., pdf format), which shall be included on the disc or CD ROM. In addition, Lessee shall furnish the City Manager an itemized statement of the actual construction cost of the Improvements. The statement of cost shall be sworn to and signed by Lessee or his responsible agent under penalty of perjury.

7. GENERAL PROVISIONS FOR ALL CONSTRUCTION.

7.1 Permits. Prior to commencing any work on the Premises, including, without limitation, any demolition, grading, construction and/or installation of attractions for the Water Park, Lessee shall secure all permits and Approvals required for, and shall thereafter perform, all demolition, site work and rough grading required for the Project (collectively, the "**Preliminary Site Work**"). Upon Lessee's completion of all Preliminary Site Work pursuant to the immediately preceding sentence, Lessee may perform the remaining site work, construction and/or installation activities pursuant to the following requirements and limitations: (i) prior to commencing construction and/or installation of any infrastructure, landscaping, or buildings required for the Project (collectively, the "**Standard Construction Work**"), Lessee shall secure all permits and Approvals required for all of the Standard Construction Work, and (ii) prior to commencing construction and/or installation of any individual slide, pool, or other Water Park attraction (any of the foregoing, a "**Water Park Attraction**"), Lessee shall secure all permits and Approvals required for that individual Water Park Attraction.

7.2 Contractors. All contractors and subcontractors shall be licensed contractors in accordance with all Applicable Laws, possessing good labor relations, capable of performing quality workmanship. All work shall be coordinated with any other construction or other work in the Great Park in order not to adversely affect, in any material way, construction work being performed by or for City or its lessees.

7.3 Materials. Lessee shall use only new, high-quality materials for the Improvements, except where explicitly shown in the plans approved by City. All work shall be done in a good and workmanlike manner. Lessee shall obtain contractors' warranties of at least one (1) year duration from the completion of the work against defects in materials and workmanship.

7.4 Schedule. Once any work of repair, alteration or improvement has been commenced by or under Lessee, Lessee shall cause such work to be diligently prosecuted to completion, at no cost or expense to City, in a good and workmanlike manner according to and in conformance with all Applicable Laws and the applicable

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requirements of this Lease and in substantial conformance with plans and specifications approved in writing by City.

7.5 Liens. Lessee shall keep the Premises free from any liens arising out of any work performed, materials furnished or obligations incurred by or for Lessee. In the event that, within twenty (20) days following the imposition of any such lien, Lessee fails to cause the same to be released of record by payment or posting of a proper lien release bond, City shall have, in addition to all other remedies provided herein and by law, the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including payment of or defense against the claim giving rise to such lien. All sums paid by City and all expenses incurred by it in connection therewith shall create automatically an obligation of Lessee to pay to City an equivalent amount within five (5) days after Lessee's receipt of City's demand therefor with interest at the Default Interest Rate to be charged from date of payment by City until paid by Lessee. Nothing herein shall imply any consent by City or subject City's estate to liability under any mechanics' or other lien law. Lessee shall indemnify, defend and hold City harmless from and against any lien or claim of lien filed against the Premises which result from Lessee's use of the Premises or the Water Park. Lessee shall have the right, at no cost to City, to contest, oppose, or object to the amount or validity of any lien. Lessee shall give City prompt notice in writing of any such contest. City shall cooperate reasonably, at no cost to City, in any such contest permitted by this Section 7.5, and shall execute any documents or pleadings reasonably required for such purpose. Any such proceedings to contest the validity or amount of any lien shall be prosecuted by Lessee at Lessee's sole cost and expense; and Lessee shall indemnify and save harmless City against any and all loss, cost, or expense of any kind, including, without limitation, reasonable attorneys' fees and expenses, which may be imposed upon or incurred by City in connection therewith.

7.6 Notice of Non-Responsibility. City shall, at any and all times during the Term, have the right to post and maintain on the Premises and to record any notice or notices of non-responsibility.

7.7 Rights of Access. Representatives of City shall have the reasonable right of access to the Premises without charges or fees, at normal construction hours during the period of any construction for the purposes of this Lease, including, without limitation, inspection of any work being performed. City shall provide reasonable prior notice to Lessee of such entry (at least twenty-four (24) hours' notice, except in an emergency (as determined by City), in which case no notice is required, and shall seek to minimize interference with Lessee's use of the Premises and Improvements as much as is reasonably feasible. Such entry shall be in compliance with all applicable safety rules and regulations. The procedures set forth in this Section shall not apply to inspections by City building inspectors carried out by City in its capacity as a regulatory agency rather than a landlord.

7.8 Compliance with Laws. Lessee shall carry out the design and construction of any Improvements, including the Project, in conformity with all Applicable Laws, including the City zoning and development standards, building, plumbing, mechanical, fire, and electrical codes, and all other provisions of City's Municipal Code, all applicable

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disabled and handicapped access requirements, and all environmental mitigation measures imposed as conditions of approval of the development. In addition, Lessee shall carry out the construction of the Project and the development of the Premises in conformity with all applicable federal and state labor laws, including, without limitation, the requirement under California law to pay prevailing wages and hire apprentices, if applicable. Lessee acknowledges and agrees that it shall be independently responsible for reviewing the Applicable Laws with respect to development on the Premises and complying therewith. Notwithstanding the foregoing, in addition to any other Lessee indemnifications of City set forth in this Lease, Lessee shall indemnify, defend, and hold the Covered Parties harmless from and against any liability, loss, damage, cost or expenses (including, without limitation, reasonable attorneys' fees, expert witness fees, court costs, and costs incurred related to any inquiries or proceedings) which, in connection with the development or construction by or under the direction of Lessee, arises from or is related to (a) the noncompliance by Lessee of any Applicable Law, including, without limitation, any applicable federal and/or state labor laws (including, without limitation, if applicable, the requirement to pay state prevailing wages and hire apprentices); (b) the implementation of Section 1781 of the Labor Code, as the same may be amended from time to time, or any other similar law; and/or (c) failure by Lessee to provide any required disclosure or identification as required by Labor Code Section 1781, as the same may be amended from time to time, or any other similar law. It is agreed by the parties that, in connection with the Lessee's development and construction on the Premises, Lessee shall bear all risks of payment or non-payment of prevailing wages under California law and/or the implementation of Labor Code Section 1781, as the same may be amended from time to time, and/or any other similar law. "Increased costs," as used in this Section 7.8, shall have the meaning ascribed to it in Labor Code Section 1781, as the same may be amended from time to time. Lessee shall be solely responsible for determining and effectuating compliance with such laws. Lessee hereby expressly acknowledges and agrees that City has not previously affirmatively represented to Lessee or its contractor(s) for the construction or development of the Project or any other improvement, in writing or otherwise, in a call for bids or otherwise, that the work to be covered by this Lease is not a "public work," as defined in Section 1720 of the Labor Code.

7.9 Non-Discrimination During Construction. Lessee for itself and its successors and assigns agrees that in the construction of any Improvements on the Premises, Lessee will not discriminate against any employee or applicant for employment because of sex, sexual orientation, marital status, age, race, color, creed, religion, national origin, ethnicity, or ancestry or any other basis prohibited by law.

7.10 Faithful Performance and Labor and Material (Payment) Bonds. Lessee shall procure, or cause the procurement of, contractor's bonds covering labor, materials, and faithful performance for construction on the Premises and the Improvements in accordance with the following requirements:

(a) As to the Project, such bonds shall be in an amount equal to one hundred percent (100%) of the construction price in the contract entered into by Lessee and the general contractor.

(b) As to subsequent work involving repair or alteration of the Improvements in an aggregate amount exceeding Five Hundred Thousand Dollars ($500,000), such bonds shall be in the amount equal to one hundred percent (100%) of the construction price of such subsequent work contracted for by Lessee and its general contractor. Subsequent work in an aggregate amount of Five Hundred Thousand Dollars ($500,000) or less shall not be subject to bonding requirements.

Said bonds and the construction contract must first be approved in writing as to content and form by City, such approval not to be unreasonably withheld, conditioned or delayed. Lessee shall, prior to commencement of construction, deliver to City a certificate or certificates from the bonding company or companies issuing the aforesaid bonds. The provisions of paragraphs (a) and (b) of this Section shall be applicable to construction, repairs, or alterations to the Premises and the Improvements at all times during the Term.

7.11 Consent for Alterations. Following the completion of the Project, Lessee shall not make or permit to be made any alteration of, addition to, or change in the Improvements, other than (a) routine maintenance, repairs, interior decoration, and minor interior alterations and (b) alterations, additions, or changes not open to public view which cost in the aggregate less than an amount equal to Five Hundred Thousand Dollars ($500,000), nor demolish, destroy, waste, or remove all or any part of the Improvements, without the prior written consent of City, which consent shall not be unreasonably withheld, conditioned or delayed. In requesting such consent, Lessee shall submit to City detailed plans and specifications of the proposed work and an explanation of the need and reasons thereof. Notwithstanding the prohibition in this Section 7.11, Lessee may make such changes, repairs, alterations, improvements, renewals, or replacements to the Improvements as are required by reason of any Applicable Laws. Nothing in this Lease shall be construed to eliminate any requirement of Lessee to obtain consents and approvals from City as required by City in its capacity as a regulatory agency rather than a landlord.

7.12 Ownership of Improvements. All Improvements on the Premises constructed or installed by Lessee as permitted or required by this Lease shall, during the Term, be and remain the property of Lessee. Lessee's rights and powers with respect to the Improvements are subject to the terms and limitations of this Lease.

8. USE OF PREMISES; OPERATIONAL OBLIGATIONS OF LESSEE.

8.1 Permitted Use of Premises. Lessee shall use the Premises, in its entirety, for the purpose of developing and operating a water park-themed amusement park ("**Water Park**") on the terms and conditions set forth herein.

8.2 Required Facilities, Amenities, and Services. Lessee shall develop, operate, and maintain the Water Park on the Premises to include water-themed recreational facilities, and amenities and services customarily found in water park-themed amusement parks.

8.2.1 The Water Park shall include, without limitation, all of the following facilities, amenities and services on the Premises:

(a) Water slides, wave pool, lazy river, and other similar and/or related facilities;

(b) Food and beverage concessions;

(c) Merchandise sales;

(d) Public restrooms and drinking fountains; and

(e) Special events and banquets.

8.2.2 Lessee shall be permitted, but is not obligated, to develop, operate, and maintain the following ancillary facilities, amenities and services:

(a) Surf pool;

(b) Arcade games;

(c) Vending machines;

(d) Photography services;

(e) Ropes course;

(f) Day camp; and

(g) Holiday events.

If Lessee desires to develop, operate and maintain any other uses at the Water Park, Lessee shall submit a written proposal to the City Manager for review and approval, which approval the City Manager may approve or deny in his or her sole and absolute discretion.

8.3 Water Park Operations. Commencing on the Operations Commencement Date and continuing until the end of the Term, subject to Force Majeure, Lessee shall operate the Water Park for not less than one hundred (100) days during each Operating Season.

8.4 General Duties. Lessee shall cause the Water Park to be operated in a proper and efficient business manner, in accordance with industry standards for first-class water parks, and in accordance with all Applicable Laws. Lessee shall be responsible for the day-to-day management and operation of the Water Park, including hiring and discharging of employees of the Water Park and determining the terms of their employment, maintaining adequate inventories of supplies and merchandise, complying with all Applicable Laws, maintaining quality control, maintaining the operating hours of the Water Park, and marketing and advertising. Lessee agrees at all times to implement

or cause to be implemented the generally applicable policies, rules, and regulations established by City from time to time with respect to the Great Park.

8.5 Operating Plan and Operating Policies and Procedures. Lessee shall at all times maintain a written plan delineating the Operating Season, operating hours and operating procedures for each business operation on or from the Premises, and detailed policies and procedures for operation of the Water Park (collectively, the "**Operating Plan**"). A schedule of prices charged for all goods and/or services supplied to the public on or from the Premises shall also be maintained (the "**Price Schedule**"). Within the time set forth in the Schedule of Performance, Lessee shall submit to the City Manager the Price Schedule and Operating Plan. The Operating Plan and/or Price Schedule may be revised by Lessee from time to time, at Lessee's sole and absolute discretion; provided, however, that Lessee shall promptly provide a copy of such revised Price Schedule and/or Operating Plan (as applicable). At any time during the Term, upon written request of the City Manager, Lessee shall provide a copy of the current Operating Plan and/or Price Schedule to the City Manager. City may require changes to the Operating Plan and/or Price Schedule if City reasonably determines that the Operating Plan and/or Price Schedule may (i) result in a violation of the terms of this Lease, (ii) degrade or devalue other real property located in the Great Park, or (iii) adversely affect City's rights under this Lease.

8.5.1 Operations and Coordination with City, City's lessees and City's licensees. Lessee shall coordinate with City, and City's lessees and licensees, regarding traffic and access management plans.

8.6 Sales. Lessee shall sell or provide or cause or permit to be sold or provided only high quality goods, wares, merchandise, food, beverages, and services.

8.7 On-Site Manager. Notwithstanding Section 8.4, Lessee may employ a manager, and if Lessee so elects to hire a manager, said manager shall be responsible for those portions of the day-to-day management and operation of the Water Park as agreed upon by Lessee and the manager. If a manager is hired, the manager shall be vested with the authority of Lessee with respect to those portions of the supervision over the operation and maintenance of the Premises as agreed upon by Lessee and the manager, which may include the authority to enforce compliance by Lessee's agents, employees, concessionaires, or licensees with the terms and conditions of this Lease and any and all rules and regulations adopted hereunder. Lessee expressly agrees that any notice herein required to be served upon Lessee may, at the option of City, be personally served upon said manager; provided, however, such notice personally served upon said manager shall not relieve City from City's obligation to serve notice in the form required in Section 22.1 of this Lease. Lessee shall notify City in writing of the name of said manager as provided in Section 22.1 of this Lease.

8.8 Standard of Performance. As a material inducement to City entering into this Lease, Lessee represents and warrants that the Water Park will be operated as a first-class water park.

8.9 Lessee Personnel. Lessee shall keep the Premises adequately staffed with sufficient personnel to service the demands and requirements of its customers and guests. Lessee shall ensure that all Lessee Personnel engaged at the Water Park are fully qualified, competent and experienced, and authorized and permitted under Applicable Law to perform the functions for which they were hired. Lessee shall be responsible for hiring, training, discharging, and supervising all Lessee Personnel necessary to properly maintain and operate the Water Park. All Lessee Personnel shall be properly dressed (as appropriate for the applicable position held), clean, courteous, efficient, and neat in appearance at all times. Such personnel shall be employees of Lessee, an affiliate of Lessee, or its manager for all purposes and all costs incidental thereto shall be a cost to Lessee. In connection therewith, Lessee shall pay the costs of the salary and wages, payroll taxes, employee's health insurance, worker's compensation, training and development costs, and termination benefits payable pursuant to Applicable Law and other benefits of employees who are required to manage, operate and maintain the Water Park.

8.10 Lifeguard Services; Pool Safety Regulations.

8.10.1 General Requirements. During all times that the Water Park is open to the public and/or in operation, Lessee shall have lifeguard employees available to supervise and monitor each water attraction in sufficient number to ensure water safety to all users of the Water Park. Lifeguard services for the Premises shall conform to the current requirements and industry standards for lifeguard qualifications, training, and level of service, and shall be performed in compliance with all Applicable Laws.

8.10.2 Certification. Lessee shall maintain on the Premises or electronically (which, if electronically, shall be accessible by Lessee from the Premises) at all times written verification of each lifeguard's certification in cardio-pulmonary-resuscitation ("**CPR**"), senior lifesaving, and basic first aid and/or other approved standards, and shall make any such written verifications available to City upon request.

8.10.3 Pool Safety Regulations. Lessee shall develop and post at appropriate locations around the Water Park, as required to comply with all Applicable Laws and with the requirements of all applicable regulatory agencies, rules, regulations, and procedures for proper use of the water and pool facilities and basic water safety, and to ensure the all such use is in compliance with all Applicable Laws.

8.11 Safety. Lessee shall be responsible at all times for monitoring the conduct and ensuring the safety of the Lessee Parties on the Premises, including, without limitation, employing and ensuring that adequate security personnel are present at the Premises at all times, and installing security cameras and adequate lighting within the Premises and any parking areas on the Premises. Lessee shall employ all additional safety measures required by Applicable Laws. Lessee shall correct all safety deficiencies and violations of safety practices immediately and shall cooperate fully with City in the investigation of accidents occurring on the Premises.

8.12 Licenses, Approvals and Permits. Lessee shall secure, at its sole cost and expense, any and all licenses, permits and approvals that may be required by Applicable Law for Lessee's development and operation of the Water Park and Lessee's use of the Premises. Subject to the provisions of Section 22.8 below, City acknowledges that Lessee plans to obtain a liquor license in connection with the operation of the Premises.

8.13 Advertising. Lessee shall market, advertise and promote the Water Park. Lessee is subject to and shall comply with all terms of the Event Marketing Guidelines attached hereto as Exhibit "E". In addition, at City's option, Lessee shall participate in a promotional service ("**Promotional Service**") established by City or one of its designees, such as the OCGPC. Lessee agrees to pay to City, as Lessee's share of the Promotional Service, an annual charge ("**Promotional Fee**"), to be determined by City, in its reasonable discretion, based upon the total square footage of the Premises, adjusted for Lessee's seasonal operations; provided, however, Lessee's proportionate share of the Promotional Fee shall not exceed Twenty-Five Thousand Dollars ($25,000) per year, increasing annually by the percentage increase (if any) in the CPI. Such Promotional Fee shall be assessed annually and used for Great Park promotional activities at City's discretion.

8.14 City Logo; Naming of Water Park. Lessee shall prominently display the City of Irvine Logo at the Premises in a size, material, and location reasonably approved by the City Manager. City shall have reasonable approval rights over the naming of the Water Park. Without diminishing Lessee's right to obtain City's reasonable approval of other names, City hereby approves each of the following names: "Wild Rivers," "Wild Rivers Waterpark," "Wild Rivers Waterpark Irvine," "Wild Rivers Waterpark, Irvine," and "Wild Rivers Waterpark – Irvine."

8.15 General Prohibitions. Lessee shall not do or permit anything to be done by any Lessee Parties in or about the Premises or the Great Park which will in any way obstruct or interfere with the rights of others involved in the operations, maintenance, construction or use of the Great Park or injure or annoy them or use or allow the Premises or the Great Park to be used for any improper, immoral, unlawful, or objectionable purpose, nor shall Lessee cause, maintain or permit any nuisance or waste in, on, or about the Premises or other portions of the Great Park by any Lessee Parties.

8.16 Drug Free Covenant. Lessee shall all commercially reasonable efforts to maintain a drug free environment on the Premises. Lessee covenants to City that Lessee shall not, nor shall Lessee permit any Lessee Parties to unlawfully manufacture, distribute, dispense, possess or use controlled substances, including such substances defined in 21 United States Code Section 812 and California Health and Safety Code Section 11007 (or successor statutes) on the Premises.

8.17 Lessee Responsible for Costs of Water Park. Lessee shall be responsible for all costs related in any way to the Water Park, and shall provide at its sole cost and expense all signage, facilities, equipment, supplies, materials, staffing, training, and instruction necessary for the Water Park.

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8.18 Replacement Reserve. Commencing as of the close of the third Operating Season of the Water Park, Lessee shall annually set aside a minimum of five percent (5%) of Gross Revenues per year, or such increased amount required by a Leasehold Mortgagee, into a separate interest-bearing trust account (the "Replacement Reserve"), which the Leasehold Mortgagee will be permitted, subject to the terms of the following paragraph, to hold; provided, however, that the maximum amount that Lessee is required to maintain in the Replacement Reserve at any time will be Five Million Dollars ($5,000,000), which amount shall be increased at the same time, and by the same amounts, as Minimum Rent. Funds in the Replacement Reserve shall be used only for capital repairs, improvements, and replacements to the Water Park and equipment which are normally capitalized under generally accepted accounting principles. The non-availability of funds in the Replacement Reserve does not in any manner relieve or lessen Lessee's obligation to undertake any and all necessary capital repairs, improvements, or replacements and to continue to maintain the Water Park as a first-class facility in the manner prescribed herein. Not less than once per year, Lessee, at its expense, shall submit to City an accounting for the Replacement Reserve. Capital repairs to and replacement of the Water Park shall include only those items with a useful life of three (3) years or more, including, without limitation, the following: air conditioning and heating capital repair and replacement; roofing capital repair and replacement; irrigation pipe and controls capital repair and replacement; sewer line capital repair and replacement; water line capital repair and replacement; gas line pipe capital repair and replacement, and the purchase, construction, capital repair, and replacement of new or replacement attractions.

Funds in the Replacement Reserve account may be withdrawn by Lessee only upon the prior written approval of both the City Manager and Leasehold Mortgagee, which approval may be given or withheld in the reasonable discretion of each of the City Manager and Leasehold Mortgagee, except that if at any time the Leasehold Mortgagee no longer employs a construction monitor for the Water Park, then only the City Manager's approval shall be required for any such withdrawal. The City Manager shall not withhold such approval to the extent Lessee demonstrates to the reasonable satisfaction of the City Manager that the funds will be used for capital repair, capital improvements, and capital replacements to the Water Park which are normally capitalized under generally accepted accounting principles. Provided the Leasehold Mortgagee has provided notice to City as required by Section 18.6, then following a default past all applicable cure periods under a Leasehold Mortgagee's Project Construction Loan and the Leasehold Mortgagee's declaration of an event of default with respect thereto and provision to City of notice of such declaration of an event of default, the Leasehold Mortgagee shall have the authority to direct the use of all funds in the Replacement Reserve account for use towards the construction or operation of the Water Park, or to pay down the Leasehold Mortgagee's Project Construction Loan; provided, however, that with the exception of the Leasehold Mortgagee (but only during the time prior to the Leasehold Mortgagee taking over the responsibilities of Lessee hereunder or entering into a "New Lease"), any subsequent "Lessee" hereunder or under a "New Lease" shall be required after taking over the responsibilities of Lessee hereunder or entering into such "New Lease," to commence depositing funds into the Replacement Reserve pursuant to the terms of this Section 8.18. At the end of the Term, if all Improvements elected by City to be removed from the Premises pursuant to Section 21.3.1 have been removed, or if adequate funds

for the "Removal Costs" have been deposited into the "Removal Funds Account" (as those terms are defined in Section 21.3.2), then any amounts contained in the Replacement Reserve will be returned to Leasehold Mortgagee to be held pursuant to Lessee's Project Construction Loan or an Approved Loan, or, if there is no Leasehold Mortgagee, to Lessee. As used herein, the term "New Lease" shall have the meaning ascribed in Section 18.8(d).

8.19 Lessee's Signage. Subject to Lessee's compliance with all Applicable Laws, including without limitation City's zoning ordinance, Lessee shall have the right, at its sole cost and expense, to install exterior signs on the Premises, including but not limited to monument signs; provided that such signage advertises only those uses that are consistent with this Lease and have been approved by City (in its capacity as a regulatory agency) of the Premises. Lessee acknowledges and agrees that Lessee shall not be permitted to advertise the Water Park on an off-Premises monument sign unless such monument sign is part of a comprehensive monument sign program established by City for the Great Park. In such event, Lessee shall have a right, but not the obligation, to advertise the Water Park on a portion of one such off-Premises monument sign, pursuant to the terms and conditions of City's monument sign program. Lessee shall pay to City its proportionate share of the cost to construct, maintain, repair and operate any such monument signage on which Lessee advertises the Water Park.

8.20 Closures and Detours. Lessee acknowledges that the Great Park is expected to undergo continuous development and construction during the Term, and that certain access roads and paths leading to the Premises will be shared by Lessee with other Great Park tenants, users and visitors, and are subject to temporary closure and detour for development and construction during the Term. City shall exercise commercially reasonable efforts to minimize disruption to Lessee's use and enjoyment of such access due to development and construction. In addition, Lessee acknowledges that the Premises and the Water Park may be impacted by other Great Park programs and activities and development that may cause all or portions of the Great Park, including the Premises, to be restricted or closed to the general public for certain periods of time. City shall exercise commercially reasonable good faith efforts to cause such closures to (i) not occur during the Operating Season, and (ii) occur at such times and for such durations as to minimize disruption to Lessee's use and enjoyment of the Premises, including Lessee's operations of the Water Park; provided, however, that City shall have no liability to Lessee for any losses, costs or expenses of any kind incurred by Lessee as a result of or in connection with such activities or closures and Lessee shall not be entitled to any Rent setoff or abatement for any losses to Lessee resulting therefrom.

8.21 Waiver of Relocation Benefits. Lessee, for itself and for its agents, successors, assigns, and all entities related to any of the foregoing, and on behalf of all persons claiming any interest in the Premises or this Lease fully releases, acquits and discharges the Covered Parties, from all rights, claims, demands, actions or causes of action for relocation benefits or assistance under federal and state relocation assistance laws (including, without limitation, California Government Code Section 7260 et seq.) arising from Lessee's use of the Premises or this Lease or its termination.

8.22 Entry and Inspection. Upon not less than twenty-four (24) hours' notice to Lessee (except in an emergency situation, in which case no notice is required), City and its employees, representatives, agents, and consultants shall have the right to enter the Premises for the purpose of inspecting the same and the Improvements thereon, to post notices of non-responsibility, to confirm Lessee's compliance with its maintenance obligations under Article 9 below, to exercise any rights under this Lease, and to make any repairs or improvements which City may deem necessary or proper for the preservation of the Premises if Lessee defaults (beyond any applicable notice and cure period) in its obligation to do so hereunder; provided that nothing contained herein shall be construed as obligating City to make any such repairs or improvements. If City determines, in City's reasonable discretion, that Lessee is failing to meet such maintenance obligations, City may, at its option, provide Lessee with written notice of such deficiencies, and Lessee shall reasonably thereafter cure such deficiencies; provided, however, that if such deficiencies are health and safety concerns, Lessee shall immediately cure such deficiencies. All such deficiencies shall be cured at Lessee's sole cost and expense.

8.23 Payment of Leasehold Mortgage. Lessee shall timely repay any Leasehold Mortgage obtained by Lessee, if any.

8.24 Participation in Cultural Terrace Maintenance Program. Lessee acknowledges and agrees that (i) the Premises are located in an area of the Great Park commonly known as the "Cultural Terrace," (ii) City anticipates that the Cultural Terrace will be developed with various visitor attractions (each such visitor attraction, a "**Cultural Terrace Attraction**"), (iii) City will be entering into a lease or other written agreement with the owners and/or operators of each Cultural Terrace Attraction, and (iv) it is City's intent that each Cultural Terrace Attraction will be required to pay its proportionate, fair share of the costs to maintain the pedestrian plazas, bridges, public roads, parking, lighting, landscaping, and any other public improvements and amenities in the Cultural Terrace (all of such costs collectively referred to as the "**Cultural Terrace Common Area Costs**"), through participation in a community association, community facilities district, or other similar program established by City that allocates the Cultural Terrace Common Area Costs among the Cultural Terrace Attractions based upon factors reasonably determined by City, such as, but not limited to, the total square footage of each Cultural Terrace Attraction in proportion to the square footage of all of the Cultural Terrace Attractions and the annual visitorship to the Cultural Terrace Attraction (any such community association, community facilities district, or other similar program, a "**Cultural Terrace Maintenance Program**"), and (v) Lessee shall participate in the Cultural Terrace Maintenance Program and pursuant thereto shall pay its proportionate share of the Cultural Terrace Common Area Costs, adjusted for Lessee's seasonal operations. Lessee's proportionate share of the Cultural Terrace Common Area Costs may include the Promotional Fee referenced in Section 8.13. Notwithstanding anything herein to the contrary, Lessee's proportionate share of the Cultural Terrace Common Area Costs shall not exceed Thirty Thousand Dollars ($30,000) per year, increasing annually by the percentage increase (if any) in the CPI.

9. MAINTENANCE AND REPAIRS.

Lessee, at its sole cost and expense, shall keep, maintain and repair the Premises and all structures, Improvements, fixtures, displays, windows, doors, fixtures, equipment, and personal property located thereon, in first class condition, quality, and repair and in accordance with all Applicable Laws, and City shall have no liability for costs of such maintenance or repair. As used herein, the term "repair" shall include replacements, repair of damage, and restorations, when necessary, and all such repairs shall be at least equal in quality and class to the original work. Lessee shall be responsible for any damage caused by any Lessee Party to the Premises or any other portion of the Great Park, including, without limitation, the City Parking Lot, normal wear and tear excepted. Lessee shall keep the Premises in a clean, sanitary neat and orderly condition at all times. No refuse matter, or any substance constituting an unnecessary, unreasonable or unlawful fire hazard, or detriment to the public health, shall be permitted or remain thereon, and Lessee shall take all reasonable precautions to prevent any such matter or material from being or accumulating upon the Premises. Lessee shall remove from the Premises all trash and rubbish generated from the Premises using covered, leak-proof receptacles and shall deposit such trash and rubbish within a receptacle or receptacles designated by City for such purpose in a trash area designated by City. Lessee hereby waives all rights to make repairs at the expense of City, and Lessee hereby waives all rights provided for by the Civil Code of the State of California to make said repairs, except to the extent such repairs are caused by City.

10. COMPLIANCE WITH LAWS AND OTHER RESTRICTIONS.

10.1 Compliance with Laws. Lessee shall, at its sole cost and expense, comply with all Applicable Laws relating to the Premises and Lessee's use, operation and occupancy of the Premises, and all conditions, easements or restrictions now or hereafter encumbering the Premises, and shall cause the Water Park to be operated in compliance with such requirements and restrictions. Lessee shall not conduct or permit to be conducted on the Premises any public or private nuisance or commit or permit to be committed any waste upon the Premises or any other act or thing which (i) would disturb the quiet enjoyment of any ordinary person leasing property from City or any ordinary person occupying nearby property, or (ii) in the eyes of an ordinary person would injure the reputation of the Premises or City. City hereby acknowledges and agrees that Lessee's use of the Premises permitted under this Lease and in accordance with the terms of this Lease shall not be deemed a nuisance, waste or a disturbance of any other lessee's quiet enjoyment. Lessee shall make any alteration or improvement to the Premises as is necessary or required to comply with any Applicable Law and to cause the Premises to comply with any Applicable Law with respect to Lessee's use, operation and occupancy of the Premises, including any requirements under the Americans with Disabilities Act of 1990 (42 U.S.C. §12101 *et seq.*) and regulations and guidelines promulgated thereunder, and all other federal, state, and local codes, statutes, and orders relating to disabled access as they are applicable on the date of this Lease, and as they may be subsequently amended from time to time (collectively referred to herein as the "**ADA**"). Lessee shall cause the Lessee Parties to comply with this Lease and all City rules and regulations applicable to the use of the Great Park. If any amendment to this

Lease is necessary to comply with any Applicable Laws, the parties shall enter into such amendment(s) in a form reasonably acceptable to both City and Lessee. Notwithstanding anything to the contrary in this Lease, commencing as of the Effective Date, City shall not establish or adopt any new fees, regulations, or ordinances, or take any other actions, that would have the effect of substantially increasing the cost of constructing the Project or operating the Water Park (any of the foregoing, a "**City Cost Action**"), unless the City Cost Action is (i) required by any federal, state, or regional law, statute, ordinance, or regulation, or (ii) applicable City-wide, and not targeted at construction of the Project or the operation of the Water Park. Upon the occurrence of a City Cost Action, Lessee shall have the right to terminate this Lease, subject to approval of any Leasehold Mortgagee, which approval may be withheld in such Leasehold Mortgagee's sole discretion. Upon such termination, neither party shall have any further rights or obligations hereunder; provided, however that such termination shall not release either party then in default from liability for such default.

10.2 Covenant Against Discrimination. Lessee covenants for itself, its successors, assigns, and all persons claiming under or through it, that there shall be no discrimination against any person on account of race, color, creed, religion, sex, marital status, national origin, or ancestry or any other protected class, in the operation of the Water Park and the performance of this Lease. Lessee further covenants and agrees to comply with the terms of the ADA.

10.3 Occupational Safety and Health Act; Proposition 65. Lessee shall, at its sole cost and expense, comply with the requirements of the Occupational Safety and Health Act of 1970, 29 U.S.C., Section 651 *et seq*. and any analogous legislation in California, as well as Proposition 65, the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code §§25249.5 *et seq*. (collectively, the "**Act**"), to the extent that the Act applies to the Premises and any activities thereon. Without limiting the generality of the foregoing, Lessee covenants to maintain all working areas, all machinery, structures, electrical facilities and the like upon the Premises in a condition that fully complies with the requirements of the Act including such requirements as would be applicable with respect to agents, employees or contractors of City who may from time to time be present upon the Premises, and Lessee shall post on the Premises the notices required under Proposition 65 to the extent required in connection with Lessee's use of the Premises.

10.4 No Toxic Materials. Except as expressly authorized below in this Section 10.4, Lessee shall not permit or suffer placement, storage, disposal or discharge of any Toxic Materials on, under, or at the Premises and Lessee shall not erect, emplace or maintain any tank, vessel or container designed or suitable for holding Toxic Materials on or about the Premises without the prior written consent of City which consent may be withheld or denied or made subject to conditions in the sole discretion of City. City shall not be liable to Lessee or any third party as a result of giving or withholding such consent. Lessee shall, at its sole cost and expense, and whether or not City's consent has been obtained, also comply with all Applicable Laws relating to Lessee's storage, discharge, application, use and disposal of Toxic Materials on, under, in or about the Premises. Notwithstanding anything to the contrary in this Lease, Lessee shall be permitted to place,

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store, and use Toxic Materials on the Premises that are customarily used (i) during and for construction of water park facilities similar to the Water Park. and (ii) for operating and maintaining water park facilities similar to the Water Park, provided (a) such Toxic Materials are used in quantities customary for the uses described in clauses (i) and (ii) above in this Section 10.4, and (b) such placement, storage, and use is permitted by, and is conducted in compliance with, all Applicable Laws. Subject to Lessee's notification obligations, including the notification obligations in Section 10.5 of this Lease, and Lessee's obligation to comply with all Applicable Laws, Lessee shall not be in default under this Section 10.4 for any Toxic Materials on, under, or at the Premises that are present as part of the Pre-Existing Environmental Condition, except to the extent that Lessee's activities exacerbate such Pre-Existing Environmental Condition.

10.5 Lessee to Give City Notice of Environmental Issues. Lessee shall promptly notify City, in writing, and provide to City a copy, of the following environmental entitlements or inquiries related to the Premises: third party claims, notices of violation, notices to comply, citations, inquiries, reports filed pursuant to self-reporting requirements, and reports filed pursuant to any governmental law or regulation relating to underground tanks or Toxic Materials. In the event of any discharge or release of any Toxic Materials to the environment involving the Premises (excluding only the passive migration of Toxic Materials resulting from a Pre-Existing Environmental Condition), Lessee will furnish to City a copy of any and all reports and correspondence with governmental agencies relating to such discharge or release. Upon request of City, Lessee will furnish to City a copy of any and all environmental entitlements or inquiries relating to the Premises, including, without limitation, all permit applications, permits and reports, including those which may be characterized as confidential. Lessee shall not take any remedial action related to Toxic Materials or underground tanks located in or about the Premises, and shall not enter into any settlement, consent decree or compromise in response to any claim related to Toxic Materials or underground tanks which shall be in any way connected with the Premises, without first notifying City of Lessee's proposed action and affording City a reasonable opportunity to appear, intervene, or otherwise participate in any discussion or proceeding for the purpose of protecting City's interests in the Premises. Lessee shall immediately notify City in writing if Lessee discovers any Toxic Materials on the Premises or the release of any Toxic Materials from or onto the Premises.

10.6 Lessee's Indemnity for Toxic Materials. Lessee hereby waives all claims and demands relating to, and agrees to defend, indemnify, reimburse, and hold the Covered Parties harmless from and against, any and all losses, liabilities, general, special, consequential and/or incidental damages, injuries, costs, expenses and claims of any and every kind whatsoever (including, without limitation, court costs, reasonable attorneys' fees, damages to any person (including the Covered Parties), the Premises, or other property or loss of rents due under this Lease) that concerns or in any way relates to Toxic Materials (collectively, the "**Toxic Materials Claims**") which at any time or from time to time, may be paid, incurred or suffered by, or asserted against one or more of the Covered Parties for, with respect to, or as a direct or indirect result of (i) a breach by Lessee of the covenants set forth in this Section 10.6 or any other provision of this Lease, or (ii) the presence on or under, or the escape, seepage, leakage, spillage, discharge,

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emission, or release from, onto or into the Premises, the land, the atmosphere, or any water course, body of water, sewer, or ground water of any Toxic Material to the extent occurring during the Term of this Lease. Notwithstanding the preceding sentence, however, or any other provision of this Lease to the contrary, no Covered Party shall be entitled to indemnification from, or release or waiver of, any Toxic Materials Claim hereunder to the extent such Toxic Materials Claim is ultimately established by a court of competent jurisdiction to have been caused by the active negligence or willful misconduct of one or more of the Covered Parties; nor shall Lessee be obligated hereunder to indemnify any Covered Party for any Toxic Materials Claim arising from a Pre-Existing Environmental Condition except to the extent Lessee's activities on the Premises exacerbate such Pre-Existing Environmental Condition. For any Toxic Materials Claim for which Lessee is obligated under this Section 10.6 to indemnify one or more Covered Parties, City retains the right to (x) refuse Lessee's proffered defense of any action or proceeding brought against City or the Covered Parties regarding which Lessee is obligated to indemnify as provided above, and (y) to select and direct independent legal counsel, and Lessee shall nevertheless pay all of City's reasonable attorneys' fees and costs of litigation incurred in connection therewith. The provisions and undertakings and indemnifications in this Section 10 shall survive termination of this Lease. Payment shall not be a condition precedent to recovery under any indemnification in this Lease, and a finding of liability or an obligation to indemnify shall not be a condition precedent to the duty to defend.

10.7 City's Right to Require Environmental Audit. At any time during or after the Term, City may require Lessee to conduct an environmental audit of its operations and/or an environmental assessment of the condition of the Premises (including a Phase I and/or Phase II Environmental Site Assessment) to determine Lessee's compliance with Applicable Laws regarding the environment and/or the environmental condition of the Premises as a result of Lessee's tenancy. If the audit concludes that Lessee is complying with its obligations contained in this Section 10, all of the costs and expenses of the audit shall be paid by City. If the audit concludes that Lessee is not complying with its obligations contained in this Section 10, the reasonable costs and expenses of the audit shall be paid by Lessee. Subject to Lessee's limited rights pursuant to Section 10.4 of this Lease to use Toxic Materials during and for the construction, operation, and maintenance of the Water Park, City may, in its sole discretion, require Lessee to remove, remediate, mitigate, abate, neutralize or clean up any Toxic Materials discovered or identified by such audit to have been (i) applied to or released upon the Premises by Lessee or any Lessee Party, or (ii) present as part of the Pre-Existing Environmental Condition, but exacerbated by Lessee's activities on the Premises. Any such removal, remediation, mitigation, abatement, neutralization or clean-up activities shall be conducted in accordance with (a) all Applicable Laws, including, without limitation, the requirements of any federal, state, or regional Governmental Agency, (b) the Environmental Policy, (c) the Remedial Plan, and (d) any protocol plan required by City as a condition of City's issuance of a grading permit for the Project. A copy of the written report from any audits commissioned under this Section 10.7 will be provided to City and to Lessee. Lessee shall correct any deficiencies identified in said report. In the event Lessee fails to perform its obligations required hereunder, City, in addition to all other available remedies, may enter upon the Premises and perform such obligations, using

any equipment or materials on the Premises suitable for such purposes. Lessee shall promptly reimburse City for its reasonable incurred costs.

10.8 Pre-Existing Environmental Conditions. Lessee acknowledges that commencing in the 1940's, the Great Park was operated for over fifty (50) years as a military base, including as a "Master Jet Station." Throughout its operational years, the mission of the military involved the operation and maintenance of military aircraft and ground-support equipment. A by-product of these activities was the generation of Toxic Materials at various locations. Since the late 1980's, the Department of the Navy ("**DON**"), which overseas both the United States Navy and Marine Corps, has undertaken environmental investigations, analysis, testing, and remediation activities in the Great Park to address past releases of Toxic Materials. The environmental condition of the Premises as of the Possession Commencement Date is referred to in this Lease as the "**Pre-Existing Environmental Condition**". Lessee acknowledges and agrees that Lessee has reviewed and is familiar with the following documents and the documents referenced therein and all other environmental documents pertaining to the Premises that are a matter of record, referenced herein, and/or otherwise available to Lessee, including, without limitation, those available only upon request to the appropriate regulatory agencies, including the Department of Toxic Substances Control, the California Regional Water Quality Control Board, and the DON, and shall be bound by the terms, reservations, easements, covenants, conditions, restrictions and agreements set forth in such documents as they relate to the Premises, and this Lease shall be subject to and subordinate to such documents and restrictions, and any amendments thereto as may be made from time to time, and/or other remedial or related requirements as may be imposed on the Premises (collectively, the "**Restrictions**"):

- Environmental Baseline Survey for Lease ("**EBS**") and the Finding of Suitability to Transfer. The EBS sets forth certain existing environmental conditions of the Premises as represented by the baseline survey, which has been previously conducted by the United States of American, acting by and through the Department of Navy ("**Government**").

- Federal Facility Agreement entered into by the United States Environmental Protection Agency ("**EPA**"), the State of California, and the Government.

- Quitclaim Deed and Environmental Restriction Pursuant to Civil Code Section 1471 from the Government to HF, recorded on June 3, 2011 as Instrument No. 2011000276334 in the Official Records, and re-recorded on June 16, 2011 as Instrument No. 2011000293986 in the Official Records.

  Pursuant to the foregoing Quitclaim Deed, the Government has a perpetual and assignable easements on the Premises that include the right to perform any environmental investigation, survey, monitoring, sampling, testing, drilling, boring, coring, test-pitting, installing monitoring or pumping wells or other extraction well systems and/or treatment facilities, and associated equipment, response action, corrective action, or any other action

necessary for the Government to meet its responsibilities under Applicable Laws.

- Grant Deed dated June 3, 2011, from HF to City, recorded on June 6, 2011 as Instrument No. 2011000277219 in the Official Records, as corrected by the Corrective Grant Deed from HF to City dated August 29, 2011, and recorded on November 28, 2011, as Instrument No. 2011000600091 in the Official Records, and as further modified by the Quitclaim and Grant of Easement Agreement between the Government and City, dated February 21, 2013, and recorded on March 21, 2013, as Instrument No. 2013000172266 in the Official Records.

(a) Lessee acknowledges that it has reviewed and is aware of the notifications and restrictions contained in the Restrictions, and shall conduct its activities on and about the Premises in accordance therewith. Lessee agrees that should any conflict arise between the terms of such documents as they presently exist or may be amended and the provisions of this Lease, the terms of the other documents will take precedence; provided, however, that to the extent any such other documents require City approval to amend, City shall not approve any amendment that would have a material adverse effect on Lessee's operation of the Water Park unless City is legally required to approve the amendment or City may lose funding if City fails to approve the amendment. Lessee further agrees that City assumes no liability to Lessee should implementation of or compliance with the Restrictions interfere with Lessee's use of the Premises. Lessee shall have no claim against City or any Covered Party on account of any such interference.

(b) Lessee acknowledges that the Great Park project is an installation identified as a National Priorities List ("**NPL**") Site under CERCLA.

(c) Lessee acknowledges that the Government, EPA and the State, and their officers, agents, employees, contractors and subcontractors, have the right to enter upon the Premises for the purposes enumerated in this Lease and for such other purposes consistent with any provisions of the environmental cleanup program (including, without limitation, the BRAC Cleanup Plan, FFA, and the Installation Restoration Program ("**IRP**"). In addition, Lessee acknowledges that access by Government and other governmental agencies may be required:

1. to conduct investigations and surveys, including, where necessary, drilling, soil and water sampling, test-pitting, testing soil borings and other activities related to the cleanup program;

2. to inspect field activities of Government and its contractors and subcontractors in implementing the cleanup program;

3. to conduct any test or survey required by EPA or applicable state equivalent relating to the implementation of the cleanup program; and

4. to construct, operate, maintain or undertake any other response or remedial action as required or necessary under the cleanup program, including, without limitation, monitoring wells and extraction well systems, including pumps, piping, electrical and communication equipment, and all other associated equipment.

(d) Lessee agrees to comply with the provisions of any health or safety plan in effect under the IRP or the FFA during the course of any of the above described response or remedial actions. Lessee shall have no claim on account of such entries against City or any of City's officers, agents, employees, contractors or subcontractors. In addition, Lessee shall comply with all applicable Federal, state and local occupational safety and health regulations.

(e) Lessee shall strictly comply with the hazardous waste permit requirements under the Resource Conservation and Recovery Act or its applicable state equivalent. Lessee must provide at its own expense such hazardous waste management facilities complying with all laws and regulations. Any violation of the requirements of this condition shall be deemed a material breach of this Lease.

(f) Lessee shall cooperate with City in complying with any reporting requirements and documentation of any Governmental Agency with respect to the Premises.

(g) Lessee shall not interfere with or damage any of the remediation equipment that may be located on or near the Premises from time to time.

11. CONDITION OF PREMISES; RELEASE.

11.1 Condition of Premises. Lessee hereby acknowledges that (a) any structures located on the Great Park may contain asbestos, polychlorinated biphenyls, formaldehyde or other Toxic Materials or may otherwise be structurally unsound or uninhabitable, (b) in connection with prior use of the Great Park as a military base, pesticide chemicals (including DDT), agricultural fertilizers, fuels and other economic poisons (as defined in California Food and Agricultural Code Section 12753) may have been used in, on or about the Premises and use of such substances may not be permissible under laws in effect as of the date of this Lease, (c) Toxic Materials, including, without limitation, trichloroethylene or other substances, may be present in the subsurface soil or ground water on, under, in or about the vicinity of the Premises as a result of discharge from military installations in the vicinity of the Premises, (d) access roads and other roadways and intersections between such access roads and public roads may not be maintained by City and may not have been constructed to current public road standards, (e) windrows on or adjacent to the Premises or roadways used for access to or from the Premises are not maintained by City, and limbs may break and fall from such trees without notice, (f) use of adjacent property or roadways may cause or result in dust and/or water (both agricultural and storm runoff) to be deposited on the Premises, and (g) the Great Park is the subject of ongoing environmental remediation.

Lessee acknowledges that it has had sufficient opportunity to inspect and investigate the Premises and all aspects thereof and documents pertaining thereto, including, without limitation, the documents described in Section 10.8 of this Lease, and the files and databases of the California Department of Toxic Substances Control and other regulatory agencies, and it is familiar with the Premises and the condition thereof. Lessee covenants and agrees that it is relying upon its own inspections, examinations, studies and inquiries with respect to the Premises and has not relied upon any representation, warranty or statement of City, or its agents or employees. Lessee shall, upon the execution of this Lease, be deemed to have disclaimed and waived any and all objections to the physical and environmental characteristics and conditions of the Premises, including, without limitation, any Toxic Materials located thereon and the condition of title thereto, whether or not such conditions would be disclosed by a reasonable and diligent inspection. Lessee acknowledges that neither City nor any of its officers, directors, employees, agents, or representatives has made any representations, warranties, or agreements to Lessee as to any matters concerning the Premises, the present use thereof, or the existence of Toxic Materials thereon. The foregoing disclaimers and waivers include, without limitation, topography, climate, air, water rights, utilities, present and future zoning, governmental restrictions, entitlement rights and obligations, and governmental conditions or development, soil, subsoil, subsurface water, environmental contamination, the purpose for which the Premises is suited, drainage, access to public roads, proposed routes or roads or extensions thereof or the availability of governmental permits or approvals of any kind, and the environmental problems associated in any way with prior or future remediation work. Lessee agrees that City shall have no responsibility for any patent or latent defect or physical or environmental condition of the Premises, whether or not known or discovered, and Lessee accepts all such responsibility. The Premises is being leased to Lessee "AS-IS," "WHERE-IS," "WITH ALL FAULTS" without representation or warranty expressed or implied by City, by operation of law, or otherwise. This Lease is made subject to and without liability to City or any other Covered Party because of or resulting from any of the foregoing conditions or any or any other condition of the Premises or adjacent property. Lessee expressly disclaims, which Lessee acknowledges and accepts, any implied warranty or condition and Lessee, for itself, and its officers, employees, agents, representatives, affiliates, successors and assigns, including successors in interest to the Premises, hereby releases and forever discharges on, habitability, merchantability, or fitness for a particular purpose or use.

11.2 Release of Covered Parties. In addition to anything contained in Section 11.1 above, Lessee, for itself, and its officers, employees, agents, representatives, affiliates, successors and assigns, hereby releases and forever discharges and expressly waives, releases and relinquishes any and all claims, causes of action, rights and remedies Lessee may now or hereafter have against the Covered Parties, whether known or unknown, with respect to the physical, environmental, economic or legal condition of the Premises, including, without limitation, any past, present or future presence or existence or release or threatened release of any Toxic Materials on, under or about the Premises (including, without limitation, in the groundwater underlying the Premises) or with respect to any past, present or future violations of any and all federal, state and local statutes, ordinances, rules, regulations,

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laws, guidance documents, judgments, governmental authorizations, or any other requirement of governmental authorities, as may presently exist or as may be amended or supplemented, or hereafter enacted or promulgated, relating to the presence, release, generation, use, handling, treatment, storage, transportation or disposal of Toxic Materials, or the protection of the environment or human, plant or animal health, including, without limitation, any and all rights Lessee may now or hereafter have against any Covered Party or respecting the Premises under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C.A. §9601, et seq.), as the same may be further amended or replaced by any similar law, rule or regulation. For the foregoing purposes, Lessee specifically waives the provisions of Section 1542 of the California Civil Code, and any similar law of any other state, territory or jurisdiction. California Civil Code Section 1542 provides:

> **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

Lessee hereby specifically acknowledges that Lessee has carefully reviewed this section and discussed its import with legal counsel, and that the provisions of this section are a material part of this Lease.

Lessee Initials: _____ Lessee Initials: _____

12. UTILITIES, TAXES, ASSESSMENTS, AND OTHER CHARGES.

12.1 Utility Charges. Commencing upon the Possession Commencement Date, Lessee shall contract for and pay or cause to be paid, as and when they become due and payable, all charges for utility and communication services rendered or used on or in the Premises, including, without limitation, the costs to install, connect and maintain water (potable and reclaimed), gas, light, heat, telephone, electricity, cable and other communication services. City shall not be liable in damages or otherwise for any failure or interruption of any utility service being furnished to the Premises, and no such failure or interruption shall entitle Lessee to terminate this Lease or withhold any Rent or any other sums due under the terms of this Lease, except to the extent any such failure or interruption is the result of City's active negligence or willful misconduct.

12.2 Taxes and Other Impositions.

12.2.1 Payment Generally. Lessee agrees to pay or cause to be paid, as and when they become due and payable, and before any fine, penalty, interest, or cost may be added thereto, or become due, or be imposed by operation of law for the nonpayment thereof, all Impositions. Pursuant to Revenue and Taxation Code

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Section 107.6, City hereby notifies Lessee that this Lease likely will create a possessory interest subject to property taxation.

12.2.2 City Right to Cure. If Lessee, in violation of the provisions of this Lease, shall fail to pay and to discharge any Imposition, City may (but shall not be obligated to) pay or discharge it, and the amount paid by City and the amount of all costs, expenses, interest and penalties connected therewith, including attorney fees, together with interest at the Default Interest Rate, shall be deemed to be and shall be payable by Lessee as additional Rent and shall be reimbursed to City by Lessee on demand.

12.2.3 Prorations. All Impositions imposed for the tax years in which the Possession Commencement Date occurs or during the tax year in which this Lease terminates shall be apportioned and prorated between Lessee and City on a daily basis.

12.2.4 Proof of Compliance. Within a reasonable time (but in any event, not more than fifteen (15) days) following City's written request which City may give at any time and give from time to time, but not more than one (1) time per calendar year, Lessee shall deliver to City copies of official receipts of the appropriate taxing authorities, or other proof reasonably satisfactory to City, evidencing the timely payment of Impositions.

12.2.5 Contests. Lessee shall have the right to contest, oppose, or object to the amount or validity of any Imposition; provided, however, that any such permitted proceedings shall be begun without undue delay after any contested item is imposed and shall be prosecuted to final adjudication with reasonable dispatch. Lessee shall give City prompt notice in writing of any such contest at least ten (10) days before any delinquency occurs. Lessee may only exercise its right to contest an Imposition hereunder if the subject legal proceedings shall operate to prevent the collection of the Imposition so contested, or the sale of the Premises and Improvements, or any part thereof, to satisfy the same, and only if Lessee shall, prior to the date such Imposition is due and payable, have given such reasonable security as may be required by City from time to time in order to insure the payment of such Imposition to prevent any sale, foreclosure, or forfeiture of the Premises and Improvements or any part thereof, by reason of such nonpayment. In the event of any such contest and the final determination thereof adversely to Lessee, Lessee shall, before any fine, interest, penalty or cost may be added thereto for nonpayment thereof, pay fully and discharge the amounts involved in or affected by such contest, together with any penalties, fines, interest, costs, and expenses that may have accrued thereon or that may result from any such contest by Lessee and, after such payment and discharge by Lessee, City will promptly return to Lessee such security as City shall have received in connection with such contest. City shall cooperate reasonably in any such contest permitted by this Section 12.2.5, and shall execute any documents or pleadings reasonably required for such purpose. Any such proceedings to contest the validity or amount of Imposition or to recover back any Imposition paid by Lessee shall be prosecuted by Lessee at Lessee's sole cost and expense; and Lessee shall indemnify and save harmless City against any and all loss, cost, or expense of any kind, including, without limitation, reasonable attorneys' fees and expenses, which may be imposed upon or incurred by City in connection therewith.

13. ASSIGNMENT AND SUBLETTING.

13.1 Prohibition. The qualifications and identity of Lessee and its principals as developers and owners of first-class water park-themed amusement parks are of particular concern to the community and City. Lessee further recognizes that it is because of such qualifications and identity that City is entering into this Lease with Lessee. Accordingly, except as otherwise expressly set forth herein, Lessee shall not, whether voluntarily, involuntarily or by operation of law, undergo any change in ownership or assign, sublet, transfer, alienate, encumber or otherwise convey any interest in this Lease, the Premises or any portion thereof, or any right or privilege appurtenant thereto (any such change, action, or conveyance, a "**Transfer**"), without the express prior written consent of City which consent may be withheld in City's sole and absolute discretion. City shall approve, conditionally approve, or disapprove any request for City approval of a Transfer within sixty (60) days after City's receipt of a written request therefor. City acknowledges and agrees that Lessee may enter into license and concession agreements for the use of space within the Premises and advertising agreements relative to the Premises in connection with Lessee's operations in the ordinary course of business, and such agreements shall not be deemed an assignment or sublease and shall be permitted without City's review or approval. However, all such license, concession or advertising agreements shall be subject and subordinate to the terms and provisions of this Lease, and shall include a waiver and release of any and all claims against City relative to the Premises in such form as reasonably approved by City.

13.2 Permitted Transfers. Notwithstanding the foregoing provisions of this Article 13, City's consent shall not be required for an assignment of this Lease in its entirety to (i) an entity controlled by Lessee or an Affiliate of Lessee, (ii) a Leasehold Mortgagee or its designee in connection with a foreclosure or assignment in lieu of foreclosure, or (iii) a Permitted Transferee, following a foreclosure or assignment in lieu of foreclosure.

13.3 Assignment and Assumption. Regardless of whether a transfer and/or assignment of this Lease requires City approval, any such transfer and/or assignment shall not be effective until such time as the transferor and transferee have entered into an assignment and assumption agreement in a form approved by the City Attorney in his or her reasonable discretion.

14. INSURANCE.

14.1 Evidence of Insurance. No later than the earlier of (i) thirty (30) days prior to the Outside Possession Commencement Date, or (ii) the Possession Commencement Date, Lessee shall provide City with certificates of insurance and endorsements evidencing the insurance required by this Lease. The insurance obligations under this Lease shall consist of: (1) all of the insurance coverage and/or limits carried by or available to Lessee; or (2) the minimum Insurance coverage requirements and/or limits shown in this Lease; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits, which are applicable to a given loss, shall be available to City. No representation is made that the

minimum Insurance requirements of this Lease are sufficient to cover the obligations of Lessee under this Lease.

14.2 Commercial General Liability Insurance. Lessee shall at its own expense, at all times during the Term maintain in force for the joint benefit of City and Lessee, with deductibles or self-insured retentions reasonably acceptable to City, commercial general liability insurance written on an "occurrence" policy form covering bodily injury, property damage, personal injury, and advertising injury arising out of (directly or indirectly) all operations of Lessee or Lessee's use or occupancy of the Premises, with a combined single limit for bodily injury and property damage per occurrence of Twenty-Five Million Dollars ($25,000,000) (which may be satisfied by a combination of liability insurance and umbrella insurance) or an amount equal to the limit from time to time carried by Lessee, whichever is greater; provided, however, that if a general aggregate limit applies, either the general aggregate limit shall apply separately to this Project/location or the general aggregate limit shall be twice the required occurrence limit.

The commercial general liability policy shall include the following endorsements: (i) an ISO form CG 2010 (11/85) additional insured endorsement or its equivalent naming the Covered Parties, and the Covered Parties' respective successors and assigns, as additional insured with respect to liability or claims arising out of or resulting from the acts or omissions of Lessee or others performing acts on behalf of Lessee, and (ii) a primary/non-contributing endorsement stating that insurance maintained by Lessee is primary and any insurance or self-insurance maintained by the additional insured is excess and non-contributing with Lessee's insurance with respect to liability or claims arising out of or resulting from the acts or omissions of Lessee or others performing acts on behalf of Lessee. The commercial general liability policy must also include the coverage typically provided by the Broad Form Comprehensive General Liability Endorsement, the broadest available form of coverage for contractual liability (including coverage for liability assumed under this Lease as an "insured contract" for the performance of Lessee's indemnity and hold harmless obligations under this Lease), coverage for Fire Damage and Personal and Advertising Injury, and coverage for sexual misconduct, including abuse and molestation, and must contain Severability of Interest and Cross Liability clauses.

14.3 Automobile Liability Insurance. Lessee shall at its own expense, at all times during the Term maintain in force for the joint benefit of City and Lessee, with deductibles or self-insured retentions reasonably acceptable to City, automobile liability insurance with a limit of liability of not less than One Million Dollars ($1,000,000) each occurrence and One Million Dollars ($1,000,000) annual aggregate. The limits shall be provided by either a single primary policy or combination of policies. If limits are provided with excess and/or umbrella coverage the limits combined with the primary will equal the minimum limits set above. Such insurance shall include coverage for all "owned," "hired" and "non-owned" vehicles, or coverage for "any auto." Such insurance shall be endorsed to (i) name the Covered Parties and the Covered Parties' respective successors and assigns, as additional insured with respect to liability or claims arising out of or resulting from the acts or omissions of Lessee or others performing acts on behalf of Lessee, and (ii) provide that the insurance is primary and any insurance or self-insurance maintained by the

additional insured is excess and non-contributing with Lessee's insurance with respect to liability or claims arising out of or resulting from the acts or omissions of Lessee or others performing acts on behalf of Lessee.

14.4 Pollution Liability. Lessee shall at its own expense, at all times during the Term maintain in force for the joint benefit of City and Lessee, with deductibles or self-insured retentions reasonably acceptable to City, pollution liability insurance covering all of Lessee's operations to include onsite and offsite coverage for bodily injury (including death and mental anguish), property damage, defense costs and cleanup costs with minimum limits of Five Million Dollars ($5,000,000) per loss and Ten Million Dollars ($10,000,000) total all losses (which may be satisfied by a combination of liability insurance and umbrella insurance). The policy shall contain no endorsements or provisions limiting contractual liability or coverage for cross liability of claims or suits by one insured against another. Non-owned disposal site coverage shall be provided if handling, storing or generating hazardous materials or any material/substance otherwise regulated under environmental laws/regulations. Such insurance shall be endorsed to (i) name the Covered Parties and the Covered Parties' respective successors and assigns, as additional insureds, and (ii) provide that the insurance is primary and any insurance or self-insurance maintained by the additional insured is excess and non-contributing with Lessee's insurance.

For projects involving transportation of hazardous waste/materials, include coverage for loading/unloading from the project site to final disposal locations, and all disposal locations shall be scheduled as non-owned disposal sites.

If coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the initial Agreement and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least three (3) years from termination or expiration of this Agreement

14.5 Worker's Compensation Insurance. Lessee shall at its own expense, at all times during the Term, maintain in force for the joint benefit of City and Lessee, Worker's Compensation Insurance, including Employers Liability (at a minimum limit of One Million Dollars ($1,000,000) for all persons whom it employs. Such insurance shall be in strict compliance with the requirements of the most current and applicable worker's compensation insurance laws in effect from time to time. The workers' compensation insurance policy must be endorsed with a waiver of subrogation endorsement with respect to and for the benefit of the Covered Parties and the Covered Parties' respective successors and assigns.

14.6 Property Insurance; Business Interruption Insurance.

14.6.1 Lessee shall at its own expense, at all times during the Term, maintain in force insurance against fire, vandalism, malicious mischief and such other additional perils as maybe included in a standard "all risk" form, insuring all leased buildings, improvements and fixtures on the Premises, Lessee's leasehold improvements, trade fixtures, furnishings, equipment and other items of personal property

of Lessee located at the Premises, in an amount equal to not less than their replacement cost and with deductibles or self-insured retentions, to the extent they exceed Fifty Thousand Dollars ($50,000), must be reasonably acceptable to City; provided, however, Lessee shall not be required to maintain earthquake insurance. City shall be named as a loss payee as to improvements owned by City.

14.6.2 Lessee shall at its own expense, at all times during the Term, maintain in force business interruption insurance by which the Minimum Rent will be paid to City for a period of up to one (1) year if the Premises are destroyed or rendered inaccessible by a risk insured against pursuant to the policy required by Section 14.6.1 above, with vandalism and malicious mischief endorsements.

14.7 Insurance Policies/Evidence of Insurance. Except as specifically approved in writing by City, each policy of insurance required to be maintained by Lessee under this Lease must be issued by carriers licensed and approved to do business in California (other than with respect to carriers providing excess and surplus lines), having a general policyholders rating of not less than "A" and a financial rating of not less than "X" in the most current Best's Key Rating Guide. Prior to conducting any operations under this Lease, and at all times during the Term, Lessee shall provide to City an original certificate(s) of insurance and original endorsements evidencing all insurance required hereunder. Each certificate or policy of insurance shall indicate that coverage is primary and not contributing with any other insurance maintained by City, includes a Severability-of-Interest or Cross-Liability clause such as "The policy to which this endorsement is attached shall apply separately to each insured against whom a claim is brought, except with respect to the limits of the company's liability," and shall not be cancelled, modified or non-renewed except upon not less than thirty (30) days written notice to City, except for ten (10) days for non-payment of premium. Each policy, certificate and endorsement required hereunder shall be subject to the reasonable approval of City. Within ten (10) days following insurance renewal, Lessee shall file with City a signed complete certificate of insurance, with all endorsements provided herein, showing that such insurance coverage has been renewed or extended.

14.8 Reevaluation of Insurance Requirements. City shall have the right at any time to review the coverage, form, and limits of insurance required under this Lease. If, in the reasonable discretion of City, the insurance provisions in this Lease do not provide adequate protection for City, City shall have the right to require Lessee to obtain insurance sufficient in coverage, form and limits to provide adequate protection. City's requirements shall not be unreasonable, but shall be adequate to protect against the kind and extent of risks which may exist at the time a change of insurance is required, or thereafter. City shall reasonably take into account any increase for increased insurance requirements and the Lessee's financial ability to incur such expenses in imposing increased requirements, and shall provide Lessee with a reasonable period of time to comply with the increased insurance requirements. Lessee will not be required to maintain property insurance with respect to any portion of the Premises then covered by builder's risk insurance as required hereunder.

14.9 Environmental Liability Policy. City and OCGPC are named insureds on that certain environmental liability insurance policy issued July 12, 2005 by American International Specialty Lines ("**AIG**") Policy No. EPP 1956943 with respect to the Great Park ("**Environmental Policy**"), a copy of which has been made available to Lessee for its review. Lessee represents and warrants that it shall not conduct any activities on the Premises or otherwise act in any manner that would have the effect of voiding any insurance coverage provided to City and/or OCGPC pursuant to the Environmental Policy. On or before the Effective Date, Lessee and any Leasehold Mortgagee will be included as additional insureds on the Environmental Policy with respect to the Premises. Notwithstanding the foregoing, however, or anything in this Lease to the contrary, Lessee acknowledges and agrees that (i) the Environmental Policy will expire on July 12, 2020, (ii) City is under no obligation pursuant to this Lease to obtain a new environmental insurance policy, and (iii) City has the right to determine, in its sole and absolute discretion, whether to obtain a new environmental policy, including the coverage and terms of any such policy, if elected by City. If City elects to obtain a new environmental policy, Lessee and any Leasehold Mortgagee will be included as additional insureds with respect to the Premises.

14.10 Waiver of Subrogation. Lessee hereby waives any rights it may have against City and the other Covered Parties on account of any loss or damage occasioned to Lessee and arising from any liability, loss, damage or injury caused by fire and other perils and risks to the extent covered by Lessee's insurance carried or required to be carried pursuant to this Lease. Lessee's waiver under this paragraph is cumulative with other waivers by Lessee under this Lease.

14.11 Additional Insurance. In addition to the insurance required above, Lessee shall secure, pay for and maintain or cause Lessee's contractors to secure, pay for and maintain during the continuance of any construction work on the Premises, the following insurance:

(a) "All-risk" builder's risk insurance covering 100% of the completed contract cost, including Boiler & Machinery and Soft Costs (including all stored material and equipment), as approved by City, until full acceptance of the work. This insurance shall include the interests of City and Lessee (and their respective contractors and subcontractors of any tier to the extent of any insurable interest therein) in the work and shall insure against physical loss or damage including, without duplication of coverage, for loss or damage from collapse, including collapse from builder's design error, theft, vandalism and malicious mischief. If any materials or equipment will be stored offsite or will be in transit to the job site and are not covered under said "all-risk" builder's risk insurance, then Lessee shall effect and maintain similar property insurance on such materials and equipment. Any loss insured under said "all-risk" builder's risk insurance shall be adjusted with City and Lessee and, subject to the terms of Section 18.11 below, made payable to City, as trustee for the insured, as their interests may appear.

(b) General Liability Insurance, on an "occurrence" basis with a limit of not less than Five Million Dollars ($5,000,000) per occurrence and Ten

Million Dollars ($10,000,000) in the aggregate (which may be satisfied by a combination of liability insurance and umbrella insurance).

(c) Commercial Automobile Liability Insurance, on an "occurrence" bases with a limit of not less than One Million Dollars ($1,000,000) per occurrence and in the aggregate.

(d) Workers' Compensation Insurance, including Employers Liability (at a minimum limit of One Million Dollars ($1,000,000)) for all persons whom it employs. Such insurance shall be in strict compliance with the requirements of the most current and applicable workers' compensation insurance laws in effect from time to time.

(e) Pollution Liability and Environmental Impairment Insurance with limits of not less than Five Million Dollars ($5,000,000) per claim and Ten Million Dollars ($10,000,000) in the aggregate (which may be satisfied by a combination of liability insurance and umbrella insurance).

The liability policies required in paragraph (a) above shall be endorsed to include all additional insured required or permitted herein with coverage equivalent to that provided by ISO form CG 20 10 11 85. Such additional insured endorsements shall be separate from the certificates of insurance required herein.

All other policies in this paragraph (except the worker's compensation policy) shall be endorsed to include the Covered Parties as additional insureds. All insurance policies shall provide that all additional insured shall be given thirty (30) days' prior written notice of any reduction, cancellation or non-renewal of coverage (except that ten (10) days' notice shall be sufficient in the case of cancellation for non-payment of premium) and shall provide that the insurance coverage afforded to the additional insured shall be primary and non-contributory to any insurance carried independently by said additional insured.

Lessee shall be solely responsible for ensuring the compliance of all contractors with the requirements contained in this Lease, including naming City as an additional insured to the contractor's policies. Lessee shall require Lessee's contractors to provide an endorsement evidencing that each required policy herein contains a waiver of subrogation in favor of the additional insured required or permitted herein. Insurance companies shall have a rating of A VI, or higher, in the most currently available "Best Insurance Guide".

15. INDEMNITY.

As a material part of the consideration to City, Lessee shall indemnify, protect, defend and hold harmless, individually and collectively each and all of the Covered Parties from and against all lawsuits, causes of action, claims, demands, damages, injuries, fines, losses, judgments, liens, encumbrances, charges, obligations, liabilities, costs and expenses (including, without limitation, injury or loss of life to persons or damage to or loss of property, reasonable attorneys' fees, expert witness fees and other

costs of defense or of enforcing this indemnity, regardless of whether legal proceedings are actually commenced) (collectively "**Claims**") arising out of or relating to any of the following, except to the extent such matter is caused by the active negligence or willful misconduct of any Covered Party acting in an official capacity: (a) design, permitting or construction of any work of improvement on the Premises; (b) any act or omission by any person or entity occurring on the Premises, or with respect to any improvement work on the Premises; (c) any mechanics', material persons', vendors' or suppliers' lien claimed by any person, furnishing construction, labor, materials, supplies or services to or for the Project, or with respect to any work on the Premises; (d) ownership, use, possession or development of the Premises or the Project, any unsafe or dangerous condition on the Premises, and any accident, injury or damage whatsoever to any person or entity occurring on the Premises, or with respect to any work on the Premises; (e) the breach of any obligation of Lessee contained in this Lease; (f) any willful misconduct or negligent act or omission by Lessee or any Lessee Party; (g) any litigation, administrative or adjudicative challenge by third parties to the validity, applicability, interpretation or implementation of this Lease, the entitlements, or the certification or approval of the environmental document(s) with respect to the Project and this Lease; (h) any relocation assistance or benefits payable to any occupant of the Premises; and (i) any assertion, claim or cause of action that a Covered Party is liable or responsible for the payment or performance of any indebtedness or obligation of Lessee or for any act or omission committed or made by Lessee or any other person or entity (excluding City or any Covered Party acting in an official capacity) in connection with the ownership, operation or development of the Project, whether on account of any theory of relationship, derivative liability, comparative negligence or otherwise. Notwithstanding the foregoing, City retains the right to refuse Lessee's proffered defense of any action or proceeding brought against City and to select and direct independent legal counsel, and Lessee shall nevertheless pay all of City's reasonable attorneys' fees and costs of litigation incurred in connection therewith. Payment shall not be a condition precedent to recovery under any indemnification in this Lease, and a finding of liability or an obligation to indemnity shall not be a condition precedent to the duty to defend. The provisions of this Section 15 and any other indemnity provision herein shall survive the termination or expiration of this Lease. The insurance requirements and other provisions of this Lease shall not limit Lessee's indemnification obligations under this Lease. In the event of any conflict between this Section 15 and Section 10.6 of this Lease, Section 10.6 of this Lease shall control.

16. DAMAGE OR DESTRUCTION

16.1 General; Notice; Waiver.

16.1.1 General. If at any time during the Term any damage or destruction occurs to all or any portion of the Premises, including the Improvements thereon, and including, without limitation, any Major Damage and Destruction, the rights and obligations of the parties shall be as set forth in this Section 16. As used herein, the term "**Major Damage or Destruction**" means damage to or destruction of all or any portion of the Improvements on the Premises (a) to the extent that the hard costs of Restoration will exceed fifteen percent (15%) of the total costs set forth in the Project Budget, increased

by the percentage increase in the CPI from the Effective Date until the date of such Major Damage or Destruction, and (b) which cannot reasonably be repaired within a period of two hundred forty (240) days. The term "**Restore**" or "**Restoration**" means the restoration, replacement, or rebuilding of the Improvements (or the relevant portion thereof) in accordance with all then Applicable Laws to substantially the same condition they were in immediately before an event of damage or destruction. The parties intend that this Lease fully govern all of their rights and obligations in the event of any damage or destruction of the Premises. Accordingly, City and Lessee each hereby waive the provisions of Sections 1932(2) and 1933(4) of the California Civil Code, and of any other statute or law now or hereafter in effect contrary to such obligations of the Lessee as set forth in this Lease, or which relieves Lessee from any obligations hereunder.

16.1.2 Notice. If there is any damage to or destruction of the Premises or of the Improvements thereon or any part thereof, which could materially impair use or operation of the Improvements for their intended purposes for a period of thirty (30) days or longer, Lessee shall promptly, but not more than ten (10) days after the occurrence of any such damage or destruction, give written notice thereof to City describing with as much specificity as is reasonable the nature and extent of such damage or destruction.

16.2 Rent after Damage or Destruction. If there is any damage to or destruction of the Premises, this Lease shall not terminate except as otherwise specifically provided in Section 16.4. In the event of any damage or destruction to the Premises, Lessee shall continue to pay all Rent, subject to the abatement provisions in this Section 16, until Lessee or City terminates this Lease pursuant to Section 16.4 below.

16.3 Restoration Obligations. If all or any portion of the Improvements are damaged or destroyed by an event not constituting an Uninsured Casualty or Major Damage or Destruction for which Lessee elects to terminate this Lease under Section 16.4, then Lessee shall, subject to Section 16.4 hereof, within a reasonable period of time, but not to exceed three hundred sixty (360) days, commence and diligently Restore the Premises to substantially the condition they were in immediately before such damage or destruction, to the extent possible in accordance with then Applicable Laws. If any such Restoration occurs during a portion of an Operating Season, Lessee shall be entitled to a proportionate reduction of Rent for the period of such repairs (but not to exceed one (1) full Operating Season) based upon the extent to which such damage and the making of such repairs materially interferes with Lessee's use or occupancy of the Premises. Except as set forth below, all insurance proceeds received by Lessee for the repair or rebuilding of the Premises shall be used by Lessee for the repair or rebuilding of the Premises. All Restoration performed by Lessee shall be in accordance with the provisions of this Lease, including Section 7, and shall be at Lessee's sole expense. As used herein, the term "**Uninsured Casualty**" means any of the following: (a) an event of damage or destruction occurring at any time during the Term for which the costs of Restoration (including the cost of any required code upgrades) are not insured under the policies of insurance that Lessee is required to carry under this Lease, or (b) an event of damage or destruction occurring at any time during the Term, which is covered under Lessee's policies of insurance that Lessee is required to carry under this Lease, but where the cost of Restoration (including the cost of any required code upgrades) will exceed the

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net proceeds of any insurance payable (or which would have been payable but for Lessee's default in its obligation to maintain insurance required to be maintained hereunder) plus the amount of any applicable policy deductible.

16.4 Major Damage and Destruction or Uninsured Casualty.

16.4.1 Lessee's Election to Restore or Terminate. If an event of Major Damage or Destruction or Uninsured Casualty occurs at any time during the Term, then Lessee shall provide City with a written notice ("**Casualty Notice**") either (a) electing to commence and complete Restoration of the Premises to substantially the condition they were in immediately before such Major Damage or Destruction or Uninsured Casualty to the extent possible in accordance with then Applicable Laws; or (b) electing to terminate this Lease, subject to Section 16.4.2, and provided any Leasehold Mortgagee has consented, in writing, to such termination (which consent may be withheld in such Leasehold Mortgagee's sole discretion). Lessee shall provide City with the Casualty Notice no later than ninety (90) days following the occurrence of such Major Damage or Destruction or Uninsured Casualty. If Lessee elects to Restore the Improvements, all of the provisions of Section 7 shall apply to such Restoration of the Improvements to substantially the condition they were in prior to such Major Damage or Destruction. If any such Restoration occurs during a portion of an Operating Season, Lessee shall be entitled to a proportionate reduction of Rent for the period of such repairs (but not to exceed one (1) Operating Season) based upon the extent to which such damage and the making of such repairs materially interferes with Lessee's use or occupancy of the Premises.

16.4.2 Condition to Termination; Payment of Insurance Proceeds. As a condition precedent to Lessee's right to terminate this Lease upon the occurrence of either of the events set forth in Section 16.4.1 above, Lessee, in its election to terminate described in Section 16.4.1, shall state the estimated cost of Restoration of the Premises, and the amount by which the estimated cost of Restoration exceeds insurance proceeds payable. Subject to the rights of any Leasehold Mortgagee pursuant to Section 18 of this Lease, upon receipt by Lessee of any insurance proceeds paid on account of such casualty for the repair or rebuilding of the Premises, Lessee shall promptly pay or cause to be paid to City such insurance proceeds recoverable by Lessee. Upon such event, Lessee shall provide to City a statement of such costs and the remaining debt, certified as true and correct, together with appropriate backup documentation.

16.5 Effect of Termination. If Lessee elects to terminate this Lease under Section 16.4.1, then this Lease shall terminate on the date that Lessee shall have fully complied with all provisions of the first sentence of Section 16.4.2 and with the provisions of Section 21.3, provided any Leasehold Mortgagee has consented, in writing, to such termination, as required by Section 16.4.1. Upon such termination, the parties shall be released thereby without further obligations to the other party as of the effective date of such termination subject to payment to City of accrued and unpaid Rent, up to the effective date of such termination; provided, however, that the indemnification provisions hereof shall survive any such termination with respect to matters arising before the date of any such termination. City's right to receive insurance proceeds under this Lease shall survive the termination or expiration of the Lease, but shall be subject and subordinate to

the rights of any Leasehold Mortgagee to receive such proceeds pursuant to any Leasehold Mortgage in accordance with Section 18 below.

16.6 Distribution Upon Lease Termination. If Lessee is obligated to restore the Premises as provided herein and this Lease is terminated as a result of a default of Lessee, then, subject to the rights of any Leasehold Mortgagee pursuant to Section 18 of this Lease, at the time of termination Lessee shall transfer to City all remaining insurance proceeds for the repair or rebuilding of the Premises, or the right to such proceeds if not yet received.

17. CONDEMNATION.

17.1 Total Taking. In the event proceedings are taken pursuant to an exercise of the power of eminent domain by any lawful authority to condemn or otherwise acquire the whole Premises or so much of the Premises or Improvements as, when taken, leaves the un-taken portion unsuitable for the continued feasible and economic operation of the Premises by Lessee for the same purposes as immediately before the taking, this Lease shall terminate effective as of the date of possession by the condemning authority or such other later date agreed upon by City and Lessee. In the event of such termination, Rent shall be prorated to the date of termination.

17.2 Partial Taking. In the event of a taking that leaves the un-taken portion suitable for the continued feasible and economic operation of the Premises by Lessee for the same purposes as immediately before the Taking, this Lease shall terminate as to the portion of the Premises taken upon the date which possession of said portion is taken, but this Lease shall continue in force and effect as to the remainder of the Premises and Lessee, with proceeds from such condemnation, shall promptly Restore the remaining portions of the Improvements to an architectural unit as nearly comparable as practicable to the unit existing just prior to such taking. Lessee shall be entitled to a reduction in the Rent payable under this Lease thereafter required to be paid, based on the ratio between square footage taken and the square footage of the Premises.

17.3 Condemnation Proceeds. In the event that an award is made for an entire or partial taking or for damage to the Premises or any interest therein in any action in direct or inverse condemnation or in the event of a taking under the power of eminent domain, the parties hereto agree that their respective rights to the award or compensation paid shall be as follows:

(a) City shall be entitled to that portion of the award received for the taking of the real property within the Premises, exclusive of all the Improvements placed on the Premises by or under Lessee.

(b) Subject to the rights of any Leasehold Mortgagee, Lessee shall be entitled to that portion of the award received for the taking of the Improvements placed on the Premises by or under Lessee and to any award that may be made for the taking of or injury to Lessee's business and profits or on

account of any cost or loss Lessee may sustain in the removal of its merchandise, fixtures, equipment and furnishings from the Premises.

(c) Any severance damages and interest payable on the total award shall be divided between City and Lessee in the same ratio as are the awards granted to them pursuant to the other provisions of this Section.

(d) Lessee shall not be entitled to any portion of the award on the basis that Lessee's interest in this Lease has a bonus value (i.e. that the fair rental value of the Premises for all or any portion of the remainder of the term hereof exceeds the rental reserved under this Lease for such period).

18. LEASEHOLD MORTGAGES

18.1 Lessee's Right to Mortgage Leasehold. Except as expressly permitted in this Section 18, Lessee shall not encumber Lessee's leasehold interest in the Premises or the Improvements or the Lease. Any encumbrance, including any Leasehold Mortgage, that is not permitted hereunder shall be deemed to be a violation of this Lease on the date of its execution or filing of record regardless of whether or when it is foreclosed or otherwise enforced. Pursuant to the terms and to the extent permitted by this Section 18, Lessee shall have the right to encumber Lessee's leasehold estate created by this Lease by way of a permitted Leasehold Mortgage on the terms permitted under this Lease; provided that, notwithstanding any foreclosure thereof, Lessee shall remain liable for the payment of Rent and for the performance of all other obligations under this Lease. Lessee shall promptly notify City of any lien or encumbrance of which Lessee has knowledge and which has been recorded against or attached to the Improvements or Lessee's leasehold estate hereunder whether by act of Lessee or otherwise.

18.2 Leasehold Mortgage Subject to this Lease. With the exception of the rights expressly granted to Leasehold Mortgagees in this Lease, the execution and delivery of a Leasehold Mortgage shall not give or be deemed to give a Leasehold Mortgagee any greater rights than those granted to Lessee hereunder. Notwithstanding anything to the contrary set forth herein, any rights given hereunder to Leasehold Mortgagees shall not apply to more than one Leasehold Mortgagee at any one time. If at any time there is more than one Leasehold Mortgage constituting a lien on any portion of the Premises, the lien of the Leasehold Mortgage prior in time to all others shall be vested with the rights under this Section 18 to the exclusion of the holder of any junior Leasehold Mortgage.

18.3 No Invalidation of Mortgage by Lessee Default. No failure by Lessee or any other party to comply with the terms of any Leasehold Mortgage, including, without limitation, the use of any proceeds of any debt, the repayment of which is secured by the Leasehold Mortgage, shall be deemed to invalidate, defeat or subordinate the lien of the Leasehold Mortgage. Notwithstanding anything to the contrary in this Lease, neither the occurrence of any default under a Leasehold Mortgage, nor any foreclosure action or conveyance in-lieu-of foreclosure, nor any action taken by a Leasehold Mortgagee as permitted under the terms of the Leasehold Mortgage or to cure any default of Lessee under this Lease, shall, by itself, constitute a default under this Lease.

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18.4 Purpose of Leasehold Mortgage; Protections Limited to Permitted Leasehold Mortgagees. A Leasehold Mortgage may be given only to an Approved Institution. A Leasehold Mortgage shall be made only to finance the Project and any subsequent improvement of the Premises, or for the purpose of refinancing a permitted Leasehold Mortgage, and shall not be cross-collateralized or cross defaulted with any other debt of Lessee or any other party. Lessee shall not be permitted to refinance a permitted Leasehold Mortgage in order to take out cash for application to property other than the Premises or for application to the obligations of Lessee other than those created under this Lease. The Leasehold Mortgage shall state on its face that it does not encumber in any way City's fee interest in the Premises or City's interest under this Lease.

18.5 Rights Subject to Lease; Restoration Obligations. All rights acquired by the Leasehold Mortgagee under a Leasehold Mortgage shall be subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and to all rights of City hereunder. None of such covenants, conditions and restrictions is or shall be waived by City by reason of the giving of the Leasehold Mortgage, except as expressly provided in this Lease or otherwise specifically waived by City in writing. Except as set forth below, no Leasehold Mortgagee shall be obligated to Restore any damage to the Premises; provided, however, (a) that nothing in this Section shall be deemed or construed to permit or authorize any such holder to devote the Premises or any part thereof to any uses, or to construct any improvements thereon, other than those uses or improvements permitted under this Lease, and (b) in the event that the Leasehold Mortgagee obtains title to the leasehold and chooses not to complete or Restore the improvements where Lessee otherwise has the obligation to so Restore, it shall so notify City in writing of its election within forty-five (45) days following its acquisition of the tenancy interest in this Lease and shall sell its tenancy interest with reasonable diligence to a purchaser that shall be obligated to Restore the improvements as required under this Lease, but in any event the Leasehold Mortgagee shall cause such sale to occur within nine (9) months following the Leasehold Mortgagee's written notice to City of its election not to Restore. If the Leasehold Mortgagee fails to sell its tenancy interest using good faith efforts within such nine (9) month period, it shall not constitute a default hereunder, but the Leasehold Mortgagee shall be obligated by the provisions of this Lease to Restore the improvements to the extent Lessee is required under this Lease to so Restore.

18.6 Required Notice Provision in Leasehold Mortgage. Lessee agrees to cause any Leasehold Mortgage to provide: (a) that the Leasehold Mortgagee shall by registered or certified mail give written notice to City of the occurrence of any default or event of default under the Leasehold Mortgage; and (b) that City shall be given notice at the time any Leasehold Mortgagee initiates any foreclosure action.

18.7 Notices. City shall give a copy of each default notice City gives to Lessee from time to time of the occurrence of a default, to a Leasehold Mortgagee that has given to City written notice requesting such notice. Copies of such notices shall be given to the Leasehold Mortgagee at the same time as notices are given to Lessee by City, addressed to the Leasehold Mortgagee at the address last furnished to City. City's delay or failure to give such notice to the Leasehold Mortgagee shall not be deemed to constitute a default by City under this Lease, but such delay or failure shall extend for the number of

days until such notice is given, the time allowed to the Leasehold Mortgagee to cure any default by Lessee. Any such notices to Leasehold Mortgagee shall be given in the same manner as provided in Section 22.1 below.

18.8 Leasehold Mortgagee's Right to Cure. If Lessee shall enter into a Leasehold Mortgage in compliance with the provisions of this Lease, then, so long as any such Leasehold Mortgage shall remain unsatisfied of record, the following provisions shall apply:

(a) *Cure Periods*. In the case of any notice of default given by City to Lessee, the Leasehold Mortgagee shall have the same concurrent cure periods as are given Lessee under this Lease for remedying a default or causing it to be remedied plus an additional thirty (30) days thereafter for a monetary default or an additional sixty (60) days thereafter for a nonmonetary default; provided, however, that if such nonmonetary default is not susceptible of being cured within such sixty (60) day period, the Leasehold Mortgagee shall have such additional time as the Leasehold Mortgagee reasonably requires to remedy or cause to be remedied such nonmonetary default, up to a maximum cumulative period of ninety (90) days, and City shall accept such performance by or at the instance of the Leasehold Mortgagee as if the same had been made by Lessee within the applicable cure periods under the Lease.

(b) *Foreclosure*. Notwithstanding anything contained in this Lease to the contrary, upon the occurrence of a default of Lessee, other than a default in the payment of money or other default susceptible of being cured prior to the Leasehold Mortgagee obtaining possession, City shall take no action to effect a termination of this Lease if, within forty-five (45) days after notice of such default is given to Leasehold Mortgagee, a Leasehold Mortgagee shall have (x) obtained possession of the Premises (including possession by a receiver), or (y) notified City of its intention to institute foreclosure proceedings or otherwise acquire Lessee's interest under the Lease, and thereafter promptly commences and prosecutes such proceedings with diligence and dispatch and completes such proceedings no later than nine (9) months thereafter. A Leasehold Mortgagee, upon acquiring Lessee's interest under this Lease, shall be required promptly to cure all monetary defaults and all other defaults then susceptible of being cured by such Leasehold Mortgagee. Any defaults that are not susceptible of being cured by such Leasehold Mortgagee shall be deemed to have been waived by City upon the Leasehold Mortgagee's completion of foreclosure proceedings or upon the Leasehold Mortgagee's acquisition of Lessee's interest in this Lease by a deed in lieu of foreclosure. The foregoing provisions of this Section are subject to the following: (i) no Leasehold Mortgagee shall be obligated to continue possession or to continue foreclosure proceedings after the defaults hereunder referred to shall have been cured; (ii) nothing herein contained shall preclude City, subject to the provisions of this Section, from exercising any rights or remedies under this Lease with respect to any other default by Lessee during the pendency of such foreclosure proceedings; and (iii) the Leasehold Mortgagee shall agree with City in writing to comply during the period City forebears from terminating this Lease

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with the terms, conditions and covenants of this Lease that are reasonably susceptible of being complied with by the Leasehold Mortgagee. Notwithstanding anything to the contrary, the Leasehold Mortgagee shall have the right at any time to notify City that it has relinquished possession of the Premises to Lessee, or that it will not institute foreclosure proceedings or, if such foreclosure proceedings have commenced, that it has discontinued them, and, in such event, the Leasehold Mortgagee shall have no further liability from and after the date it delivers such notice to City, and, thereupon, City shall be entitled to seek the termination of this Lease and/or any other available remedy as provided in this Lease. If Leasehold Mortgagee is prohibited by any process or injunction issued by any court having jurisdiction of any bankruptcy or insolvency proceedings involving Lessee from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, the times specified above for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition, provided that Leasehold Mortgagee shall (1) have fully cured any default due to a default in the payment of money and any default susceptible of being cured by such Leasehold Mortgagee, (2) continue to pay currently such monetary obligations as and when the same become due, and (3) perform all other obligations of Lessee under this Lease to the extent that they are reasonably susceptible of being performed by the Leasehold Mortgagee. Notwithstanding anything herein to the contrary, to the extent the Leasehold Mortgagee is not reasonably capable of performing an obligation under this Lease, such obligation shall be waived by City, provided that such obligation shall apply to and remain effective on a prospective basis to any assignee or transferee of the Leasehold Mortgagee notwithstanding Leasehold Mortgagee's inability to perform. For example, if the obligation was maintaining accurate books and records, Leasehold Mortgagee shall be relieved of the obligation to maintain books and records for the period during which Lessee failed to so perform, but Leasehold Mortgagee shall be obligated, on a prospective basis, to maintain books and records. Notwithstanding anything to the contrary above but subject to the next sentence, if the Premises are not used by Lessee or Leasehold Mortgagee or a designee of Leasehold Mortgagee as required in Section 8 above and such non-use continues for a period of twelve (12) months, then City shall have the right to terminate this Lease by providing thirty (30) days' notice of termination, subject to Lessee's and/or Leasehold Mortgagee's right to cure by commencing operations of the Water Park during the thirty (30) day period and continuing thereafter in accordance with Section 8. City may not, however, exercise its right to terminate this Lease under the preceding sentence if Lessee is unable to use the Premises in accordance with Section 8 because a Restoration is underway, and such Restoration is being diligently pursued to completion by Lessee, or by a Leasehold Mortgagee which has expressly assumed Lessee's obligations to City pursuant to the terms of Section 18.8(c) below.

(c) *Completion of Restoration*. Subject to subsection (b) above, if a default occurs following any damage but prior to Restoration of the Improvements, the Leasehold Mortgagee, either before or after foreclosure or action in lieu thereof, shall not be obligated to Restore the Improvements beyond the extent

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necessary to preserve or protect the Improvements or construction already made, unless the Leasehold Mortgagee expressly assumes Lessee's obligations to City by written agreement reasonably satisfactory to City, to Restore, in the manner provided in this Lease, the Improvements. Upon assuming Lessee's obligations to Restore, the Leasehold Mortgagee or any transferee of Leasehold Mortgagee shall not be required to adhere to the existing construction schedule for completion of the Restoration, but instead all dates set forth in this Lease for such Restoration or otherwise agreed to shall be extended for the period of delay from the date that Lessee stopped work on the Restoration to the date of such assumption.

(d) *New Lease*. In the event of the termination of this Lease (including the rejection of this Lease in connection with any bankruptcy or insolvency proceeding) before the expiration of the Term, except as a result of damage or destruction to the Premises pursuant to Section 16 or a taking pursuant to Section 17, City shall serve upon the Leasehold Mortgagee written notice that this Lease has been terminated, together with a statement of any and all sums which would at that time be due under this Lease but for such termination, and of all other defaults, if any, under this Lease then known to City. The Leasehold Mortgagee shall thereupon have the option to obtain a new lease (a "**New Lease**") in accordance with and upon the following terms and conditions:

(i) Upon the written request of the Leasehold Mortgagee, within thirty (30) days after service of such notice that this Lease has been terminated, City shall enter into a New Lease of the Premises with the Leasehold Mortgagee within such period or its designee, subject to the provisions set forth in this Section; and

(ii) such New Lease shall be entered into at the sole cost of the Leasehold Mortgagee, shall be effective as of the date of termination of this Lease, and shall be for the remainder of the Term and at the Rent and upon all the agreements, terms, covenants and conditions hereof, in substantially the same form as this Lease. Such New Lease shall require the Leasehold Mortgagee to perform any unfulfilled obligation of Lessee under this Lease, except with respect to curing any defaults that have been waived by City pursuant to paragraph (b) above. Upon the execution of such New Lease, the Leasehold Mortgagee shall pay any and all sums which would at the time of the execution thereof be due under this Lease but for such termination, and shall pay all expenses, incurred by City in connection with such defaults and termination, the recovery of possession of the Premises, and the preparation, execution and delivery of the New Lease.

(e) *Limited to Permitted Leasehold Mortgagees*. Notwithstanding anything herein to the contrary, the provisions of this Section 18 shall inure only to the benefit of the holder of a Leasehold Mortgage which is permitted hereunder.

(f) *Consent of Leasehold Mortgagee*. No material modification, termination, or cancellation of this Lease (herein, a "**change**"), except, (a) subject

to the terms of this Section 18.8 hereof, a termination by City as a result of a default by Lessee, or (b) subject to the terms of Section 4.2.4, a termination by City or Lessee as a result of the failure of any Possession Conditions to be satisfied, or waived by City or Lessee (as applicable), shall be effective as against Lessee or a permitted Leasehold Mortgagee unless a copy of the proposed change shall have been delivered to the Leasehold Mortgagee and such Leasehold Mortgagee shall have either (1) approved the change in writing, or (2) failed to either approve or disapprove of the change in writing within ten (10) Business Days after the Leasehold Mortgagee's receipt of the "Second Notice" (as that term is defined below) pursuant to the deemed consent process described in Section 18.8(f)(i-iii) below:

(i) City shall send the Leasehold Mortgagee a written request for approval with respect to such change in accordance with the paragraph above (the "**Initial Notice**"), which Initial Notice shall be (A) accompanied by any information and documentation that would be reasonably required by the Leasehold Mortgagee in order to approve or disapprove such matter (the "**Approval Information**") and (B) marked in bold lettering with the following language: "LEASEHOLD MORTGAGEE'S RESPONSE IS REQUIRED WITHIN FIFTEEN (15) BUSINESS DAYS OF RECEIPT OF THIS NOTICE PURSUANT TO THE TERMS OF A GROUND LEASE BETWEEN THE UNDERSIGNED AND WILD RIVERS WATERPARK IRVINE SPE, LLC" and the envelope containing the Initial Notice shall be marked "PRIORITY-DEEMED APPROVAL MAY APPLY;

(ii) If the Leasehold Mortgagee fails to approve or deny such change in writing to City within such fifteen (15) Business Day period after Leasehold Mortgagee's receipt of the Initial Notice, City shall then submit a second request for approval with respect to such matter in accordance with the applicable terms and conditions hereof (the "**Second Notice**"), which such Second Notice shall be marked in bold lettering with the following language: "LEASEHOLD MORTGAGEE'S RESPONSE IS REQUIRED WITHIN TEN (10) BUSINESS DAYS OF RECEIPT OF THIS NOTICE PURSUANT TO THE TERMS OF A GROUND LEASE BETWEEN THE UNDERSIGNED AND WILD RIVERS WATERPARK IRVINE SPE, LLC" and the envelope containing the Second Notice shall be marked "PRIORITY-DEEMED APPROVAL MAY APPLY";

(iii) For purposes of clarification, (i) the Leasehold Mortgagee's written notice (within the time periods set forth above) to City reasonably requesting additional and/or clarified information and stating the reasons for such request, in addition to approving or denying any request (in whole or in part), shall be deemed a response by the Leasehold Mortgagee for purposes of the foregoing, and (ii) a Leasehold Mortgagee shall be deemed to have received an Initial Notice or Second Notice as follows: (a) if personally delivered or delivered by reputable document delivery service such as Federal Express that provides a receipt showing the date and time

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of delivery, then upon receipt, and (b) if mailed in the United States mail, certified or first class mail, postage prepaid, then on the second Business Day following deposit in the United States mail.

(g) *Limitation on Liability of Leasehold Mortgagee*. No Leasehold Mortgagee shall be liable to perform Lessee's obligations under this Lease unless and until the Leasehold Mortgagee acquires Lessee's rights under this Lease, and the Leasehold Mortgagee shall have no personal liability to City for the Lessee's failure to perform.

18.9 Assignment by Leasehold Mortgagee. The foreclosure of any Leasehold Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Leasehold Mortgage, or any conveyance of the leasehold estate hereunder from Lessee to any Leasehold Mortgagee or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, or from any Leasehold Mortgagee or its designee to a Permitted Transferee, shall not require the consent of City or constitute a breach of any provision of or a default under this Lease, and upon such foreclosure, sale or conveyance City shall recognize the Leasehold Mortgagee or other transferee in connection therewith as the tenant under this Lease. Such Leasehold Mortgagee's or transferee's right thereafter to transfer, assign or sublet this Lease or a New Lease shall be subject to the restrictions of Section 13.

18.10 Transfer of Leasehold Mortgage. City hereby consents to the transfer of a Leasehold Mortgage, provided such transfer is to an Approved Institution and otherwise satisfies the requirements of this Lease, and in the event of any such transfer, the new holder of the Leasehold Mortgage shall have all the rights of its predecessor Leasehold Mortgagee hereunder until such time as the Leasehold Mortgage is further transferred or released from the leasehold estate.

18.11 Insurance Proceeds and Condemnation Awards. Notwithstanding any provision of this Lease to the contrary, but subject to the following sentence, upon any casualty or condemnation, the portion of the insurance proceeds or condemnation awards allocable to the leasehold estate shall be paid first to any Leasehold Mortgagee or its assignee to satisfy the outstanding principal balance of the Leasehold Mortgage and all accrued and unpaid interest thereon and then shall be allocated between City and Lessee in accordance with the terms of this Lease. Notwithstanding the foregoing, so long as no event of default has occurred and is continuing pursuant to the Leasehold Mortgage, insurance proceeds and condemnation awards will be applied to repair and restore the Premises, as more particularly provided in Section 16 of this Lease. The Leasehold Mortgagee, if any, shall have the right to participate in all adjustments, settlements, negotiations or actions with the insurance company regarding the amount and allocation of any such insurance proceeds. Upon the request of any Leasehold Mortgagee, the name of such Leasehold Mortgagee may be added to the "Loss Payable Endorsement" of any and all insurance policies required to be carried by Lessee under this Lease.

18.12 No Merger. There shall be no merger of this Lease, or of the leasehold estate created thereby, with the fee estate in and to the Premises and Improvements by

reason of the fact that this Lease, or the leasehold estate created thereby, or any interest in either thereof, may be held directly or indirectly by or for the account of any person who shall own the fee estate in and to the Premises and Improvements, or any portion thereof, and no such merger shall occur unless and until all persons at the time having any interest in this Lease or the leasehold estate, including the Leasehold Mortgagee and the holder of any mortgage upon the fee estate in and to the Premises and Improvements shall join in a written instrument effecting such merger.

18.13 No Subordination of City's Interests. City's interest in the Premises under this Lease is a vested City's reversionary interest and not just a contractual obligation of Lessee. Notwithstanding anything which is or appears to be to the contrary in this Lease, Lessee shall not encumber City's interest under this Lease or City's fee interest in the Premises by any mortgage, deed of trust, lien, security instrument, or financing conveyance of any kind whatsoever.

19. ATTORNMENT.

In the event any proceedings are brought for the foreclosure of, or in the event of the conveyance by deed in lieu of foreclosure, or in the event of exercise of the power of sale under, any mortgage and/or deed of trust made by City covering the Premises, or in the event City sells, conveys, or otherwise transfers its interest in the Premises, Lessee hereby agrees to attorn to the new owner and covenants and agrees to execute an instrument in writing reasonably satisfactory to the new owner whereby Lessee attorns to City's successor in interest and recognizes the successor as City under this Lease.

20. DEFAULTS AND REMEDIES.

20.1 Lessee's Default.

20.1.1 Default. The occurrence of any of the following events shall constitute a default hereunder by Lessee:

(a) the failure of Lessee to pay any Rents, which failure continues for ten (10) days after written notice thereof by City to Lessee;

(b) the failure by Lessee to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Lessee, other than as described in any of the other subsections of this Section 20.1, where such failure shall continue for a period of thirty (30) days (unless a different time period is expressly provided for herein) after written notice thereof from City to Lessee, provided that if the nature of such default is such that the same cannot be reasonably cured within a thirty (30) day period, Lessee shall not be deemed in default if it diligently commences such cure within such period and thereafter diligently proceeds to rectify and cure such default but in no event shall the cure period exceed ninety (90) days;

(c) the failure of Lessee, on more than three (3) occasions in any twelve (12) consecutive calendar months, to perform the covenants or obligations

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described in subsection (a) above, even if all such failures are cured within the period specified in said subsection;

(d) the making by Lessee of any general assignment for the benefit of creditors;

(e) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease;

(f) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease; or

(g) the filing by Lessee of a voluntary or involuntary petition in bankruptcy; provided that with respect to an involuntary petition such petition is not dismissed within ninety (90) days after filing.

Notification of any default under this Lease shall be in lieu of and not in addition to, any notice required under Section 1161 *et seq*., of the California Code of Civil Procedure.

20.1.2 City's Remedies. In the event of a default by Lessee, City, in addition to any other rights or remedies it may have at law, in equity or otherwise, shall have the following rights:

(a) continue this Lease in effect by not terminating Lessee's right to possession of the Premises, in which event City shall be entitled to enforce all of City's rights and remedies under this Lease, including the right to recover the Rent specified in this Lease as it becomes due;

(b) terminate this Lease and bring an action to recover from the Lessee the amounts set forth below; or

(c) terminate this Lease and bring an action in addition or in lieu of the action described in the preceding subparagraph (b) to reenter and retain possession of the Premises in the manner provided by the laws of unlawful detainer in the State of California then in effect.

Should City elect to terminate this Lease under the provisions of Sections 20.1.2(b) or (c) above, City may recover from Lessee as damages: (a) the worth at the time of award of any unpaid Rent which had been earned at the time of such termination; plus (b) the worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss Lessee proves could have been reasonably avoided; plus (c) the worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Lessee proves could be reasonably avoided; plus (d) any other amount necessary to compensate City for all the detriment proximately caused by Lessee's failure to perform its obligations under this

Lease or which in the ordinary course of things would be likely to result therefrom; plus (e) at City's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State of California. As used in the foregoing provisions, the "worth at the time of award" is computed by allowing interest at the Default Interest Rate.

Any termination of this Lease as herein provided shall not relieve Lessee, or its successors and assigns, if any, from the payment of any sum or sums that shall then be due and payable to City hereunder, or that shall thereafter become due and payable to City hereunder by reason of any act by Lessee or it successors and assigns, and any such termination shall not prevent City from enforcing the payment of any such sum or sums by any remedy provided by law.

20.1.3 Right to Cure Lessee's Default. City, at any time after Lessee fails to perform an obligation or covenant required to be performed by it under this Lease and to cure such failure within any applicable cure period, may, at its sole option, cure such failure. If, in effecting such cure, City incurs any cost or expense or pays any sum, or does any act that requires the payment of any sum, all sums, expenses and costs so paid or incurred by City shall be due from Lessee to City immediately upon demand therefor by City, and shall bear interest at the Default Interest Rate from the date of any payment by City to the date of repayment by Lessee.

20.2 City's Default; Lessee Remedies. City shall be in default of this Lease if it has failed to perform any obligation or covenant to be performed by it hereunder within thirty (30) days after written notice by Lessee to City specifying the nature of City's failure; provided, however, that if the nature of the obligation is such that more than thirty (30) days are required for its performance, then City shall not be deemed to be in default if it shall commence such performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion, but in no event shall the cure period exceed ninety (90) days. Lessee shall be entitled, upon any failure, breach or default hereunder by City to any and all rights and remedies available to it at law and in equity. Notwithstanding anything in this Lease to the contrary, it is expressly understood and agreed that any judgment against City resulting from any default or other claim under this Lease shall be satisfied only out of the net rents, issues, profits and other income actually received from or in connection with City's interest in the Premises, which may, at Lessee's election, be offset against any amounts due to City under this Lease.

20.3 Remedies Not Exclusive. Except with respect to rights and remedies expressly declared to be exclusive in this Lease, the several rights and remedies herein granted to each party shall be cumulative and in addition to any others to which a party may be entitled at law or in equity, and the exercise of one or more rights or remedies shall not prejudice or impair the concurrent or subsequent exercise of any other rights or remedies a party may have, and shall not preclude the exercise by a party, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

21. END OF TERM.

21.1 Ownership During Term. All of the Improvements shall be and remain the property of Lessee during the Term.

21.2 Surrender of Premises. At the expiration of the Term or earlier termination of this Lease, Lessee shall surrender the Premises and, subject to Section 21.3 below, the Improvements to City in good order, condition and repair, broom clean, ordinary wear and tear excepted. Subject to the terms of Section 21.3 and Section 21.4 below, all of the Improvements shall become the property of City upon expiration or earlier termination of the Term, free from any claims or liens.

21.3 City Election Regarding Removal of Improvements.

21.3.1 City's Election Regarding Removal. City may, at City's election, demand the removal from the Premises of all Improvements by providing written notice thereof ("**City's Improvements Removal Notice**") to Lessee by (i) with respect to the expiration of the Term, the later of (a) not less than one hundred twenty (120) days prior to the end of the Term (as it may have been extended pursuant to Section 4.3 of this Lease), and (b) within thirty (30) days after receipt of Lessee's FF&E Improvements Notice pursuant to Section 21.4 below, or (ii) with respect to an earlier termination of this Lease made pursuant to the terms of this Lease, including, without limitation, pursuant to Section 16 or Section 17, within thirty (30) days after the effective date of such termination. If City provides City's Improvements Removal Notice to Lessee, then Lessee shall cause all Improvements, including, without limitation, all vertical Improvements and utility Improvements, to be removed from the Premises, and the Premises to be regraded to a pad condition per all applicable City grading and drainage regulations (all of the foregoing, "**Lessee's Removal Requirements**"), all at the sole cost and expense of Lessee, within six (6) months after the expiration or earlier termination of the Term.

21.3.2 Removal Funds. In order to ensure that Lessee has sufficient funds reserved to perform Lessee's Removal Requirements, if elected by City pursuant to this Section 21.3, City, in the twenty-eighth (28th) Lease Year of the initial Term, or in the event Lessee has exercised an Option to extend the Term, in the third (3rd) Lease Year of the extension Term, may request and Lessee must deliver a statement reasonably acceptable to the City Manager of City showing the estimated costs for performing Lessee's Removal Requirements (collectively, the "**Removal Costs**"). Upon City's receipt of the statement, City may request and Lessee shall promptly establish a separate account, in a bank or other financial establishment approved by the City Manager (such account, the "**Removal Funds Account**"). If the Removal Funds Account is established in the twenty-eighth (28th) Lease Year of the Initial Term, then Lessee shall fund one-half (1/2) of the Removal Costs into the Removal Funds Account in each of the twenty-eighth (28th) Lease Year and the twenty-ninth (29th) Lease Year of the initial Term. If the Removal Funds Account is established in any extension Term, then Lessee shall fund an amount equal to all Removal Costs to the Removal Funds Account during such third (3rd) Lease Year of such extension Term. Funds in the Removal Funds Account shall be maintained for the duration of the Lease term or applicable extension Term and

may be expended solely (i) by Lessee, to fund Lessee's performance of Lessee's Removal Requirements under this Section 21.3, or (ii) by City, to fund City's repair of damage caused to the "Remaining Improvements" by Lessee's removal of the "Lessee Removal Improvements" (as those terms are defined in Section 21.3.4 below). Funds in the Removal Funds Account shall also be explicitly available to City to perform Lessee's Removal Requirements in the event that Lessee does not comply with the terms of this Section 21.3 upon the time periods set forth herein. Notwithstanding anything to the contrary in this Section 21.3, if after Lessee's establishment of the Removal Funds Account Lessee is eligible to and does exercise an Option to extend the Term pursuant to the terms of Section 4.3 of this Lease, then the funds in the Removal Funds Account may be expended by Lessee for any purpose or transferred to any other account by Lessee in Lessee's sole discretion, provided that the terms of this paragraph requiring the delivery of another statement of estimated removal costs and the funding of the Removal Funds Account with new funds shall apply to the extension Term. At such time as all of Lessee's Removal Requirements have been completed, as reasonably determined by the City Manager of City, or all repair work to the Remaining Improvements has been completed by City pursuant to Section 21.3.4, any funds remaining in the Removal Funds Account may be expended by Lessee for any purpose (including in Lessee's sole discretion, transfer to any other account by Lessee.

21.3.3 City's Election Regarding Removal of Violating Improvements. City may, at City's election, demand the removal from the Premises of any Improvements made to or placed on the Premises in violation of this Lease by Lessee or any other person at the direction of Lessee or with Lessee's consent, by providing written notice thereof ("**City's Violating Improvements Removal Notice**") to Lessee at any time prior to the end of the Term. If City provides City's Violating Improvements Removal Notice to Lessee, Lessee shall cause such Improvements made to or placed on the Premises in violation of this Lease to be removed from the Premises, at the sole cost and expense of Lessee, within two (2) months after the expiration or earlier termination of the Term.

21.3.4 Ownership of FF&E. All fixtures, furniture, equipment and signs installed by or under, or brought onto the Premises, by Lessee, including, without limitation, kitchen and bar equipment and appliances, food catering carts/kiosks, sound systems, telephone systems, radios, computers, point of sale equipment, cabanas, cabana equipment and cabana furniture, deck furniture, picnic tables, umbrellas and shade structures, first aid equipment, safety and lifesaving equipment, office furniture, office equipment, projectors and screens, security cameras and surveillance equipment, employee and guest lockers, pallet jacks, trash cans and bins, maintenance and pool cleaning equipment, tools scrubber and fork lift (collectively, "**FF&E**"), shall be and remain the property of Lessee at the expiration or earlier termination of the Term. Not less than seven (7) months prior to the end of the Term, Lessee shall provide written notice to City ("**Lessee's FF&E/Improvements Notice**") specifying the FF&E and other Improvements Lessee desires to remove from the Premises at the end of the Term (the "**Lessee Removal Improvements**"). At the end of the Term, Lessee shall convey to City any FF&E and/or Improvements that Lessee has not elected to remove pursuant to Lessee's FF&E/Improvements Notice and that City has not elected to require Lessee to remove pursuant to Section 21.3.1 (the "**Remaining Improvements**") for the sum of Ten Dollars

($10.00), and shall execute a Bill of Sale evidencing such conveyance to City. Such Bill of Sale shall include Lessee's covenants to City that Lessee is the lawful owner of such Remaining Improvements, free and clear of all liens, encumbrances, security agreements and financing statements, that such Remaining Improvements are owned and not leased by Lessee and that Lessee for itself, its successors and assigns, shall warrant and forever defend the right and title to such Remaining Improvements. Subsequent to the conveyance of the Remaining Improvements to City, Lessee will have no responsibility to repair, replace or maintain any Remaining Improvements, and will have no rights or responsibilities in or with respect to the Remaining Improvements; provided, however, that City shall have the right to expend funds in the Removal Funds Account to repair any damage or injury caused to the Remaining Improvements by Lessee's removal of the Lessee Removal Improvements.

21.4 Holding Over. This Lease shall terminate without further notice upon the expiration of the Term, and any holding over by Lessee after the expiration of the Term shall not constitute a renewal or extension of this Lease, or give Lessee any rights under this Lease, except when in writing signed by both parties. If Lessee holds over for any period after the expiration (or earlier termination) of the Term without the prior written consent of City, such possession shall constitute a tenancy at sufferance only; such holding over with the prior written consent of City shall constitute a month-to-month tenancy commencing on the first (1st) day following the termination of this Lease. In either of such events, possession shall be subject to all of the terms of this Lease, except that the Rent for each calendar month shall be one-twelfth (1/12) of one hundred fifty percent (150%) of the total Rent for the twelve (12) month period immediately preceding the date of termination. If Lessee fails to surrender the Premises upon the expiration of the Term despite demand to do so by City, Lessee shall indemnify, defend, and hold City harmless from and against all loss or liability, including, without limitation, any claims made by any succeeding tenant relating to such failure to surrender. Acceptance by City of Rent after the termination of this Lease shall not constitute a consent to a holdover or result in a renewal of this Lease. The foregoing provisions of this Section are in addition to and do not affect City's right of reentry or any other rights of City under this Lease or at law.

22. MISCELLANEOUS.

22.1 Notices, Demands, and Communications Between the Parties. Formal notices, demands, and communications between City and Lessee shall be given either by (a) personal service, (b) delivery by reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery, (c) mailing in the United States mail, certified or first class mail, postage prepaid, or (d) e-mail, addressed to:

To City: City of Irvine
City Hall
One Civic Center Plaza
Irvine, CA 92623-9575
Attn: City Manager

With a copy to:	Orange County Great Park Corporation P.O. Box 19575 Irvine, CA 92623 Attn: Chief Executive Officer
And to:	Rutan & Tucker, LLP 611 Anton Blvd. Suite 1400 Costa Mesa, CA 92626 Attn: Jeffrey T. Melching, City Attorney
To Lessee:	Wild Rivers Waterpark Irvine SPE, LLC 83 Pelican Lane Irvine, CA 92618 Attn: Mike Riedel
With a copy to:	Ice Miller LLP 250 West Street, Suite 700 Columbus, Ohio 43215 Attn: Greg Gorospe

Notices personally delivered or delivered by document delivery service shall be deemed effective upon receipt. Notices mailed shall be deemed effective on the second Business Day following deposit in the United States mail. Such written notices, demands, and communications shall be sent in the same manner to such other addresses as either party may from time to time designate in writing.

22.2 Non-liability of City Officials and Employees. No member, official, employee, or contractor of City shall be personally liable to Lessee in the event of any default or breach by City or for any amount which may become due to Lessee or on any obligations under this Lease.

22.3 Binding on Heirs. This Lease shall be binding upon the parties hereto and their respective representatives, transferees, successors, and assigns; provided, however, that nothing in this Section is intended to modify or restrict the scope of the provisions set forth in Section 19.

22.4 Third Party Beneficiaries. With the exception of the following sentence, except as expressly provided herein as to Covered Parties, each of which is an intended third party beneficiary with the right, but not the obligation, to enforce the terms hereof, this Lease shall not confer any rights or benefits on any third party. Any Leasehold Mortgagee shall be an intended third party beneficiary with respect to the provisions in this Lease that benefit Leasehold Mortgagees, and with respect to such provisions any Leasehold Mortgagee shall have the right, but not the obligation, to enforce the terms hereof.

22.5 Sale of Premises by City. In the event of any sale, exchange or other conveyance of City's interest in the Premises by City and an assignment by City of this

Lease, City shall be and is hereby entirely freed and relieved of all liability under any and all of its covenants and obligations contained in or derived from this Lease arising out of any act, occurrence or omission relating to the Premises or this Lease occurring after the consummation of such sale, exchange or other conveyance and assignment.

22.6 Litigation Expenses. Should any litigation be commenced between the parties to this Lease concerning the Premises, this Lease, or the rights and duties of either in relation thereto, the party prevailing in that litigation shall be entitled, in addition to any other relief that may be granted in the litigation, to a reasonable sum as and for that party's attorneys' fees in that litigation that shall be determined by the court in that litigation or in a separate action brought for that purpose.

22.7 Relationship of Parties. Nothing in this Lease shall be construed to form a joint venture, partnership, or similar relationship between City and Lessee.

22.8 City Acting as Owner of Real Property. Lessee understands and agrees that City is entering into this Lease in its proprietary capacity, as the holder of fee title to the Premises, and not in its capacity as a regulatory agency of City. Lessee understands that City's entering into this Lease shall not be deemed to imply that Lessee has obtained, or will be able to obtain, any required approvals from City departments, boards or commissions which have jurisdiction over the Premises, including City itself in its regulatory capacity. By entering into this Lease, City is in no way modifying Lessee's obligations to (i) comply with all applicable City requirements, including, without limitation, requirements pursuant to the Irvine Municipal Code (including Irvine Zoning Ordinance), or (ii) cause the Premises to be used and occupied in accordance with all Applicable Laws, as provided herein.

22.9 Monitoring. Lessee shall cooperate with City and shall make available to City all information, documents, and records reasonably requested by City for the purpose of assuring Lessee's compliance with this Lease.

22.10 Entire Agreement, Waivers, and Amendments. This Lease incorporates all of the terms and conditions mentioned herein, or incidental hereto, and supersedes all negotiations and previous agreements between the parties with respect to all or part of the subject matter hereof. All waivers of the provisions of this Lease must be in writing and signed by the appropriate authorities of the party to be charged. A waiver of the breach of the covenants, conditions or obligations under this Lease by either party shall not be construed as a waiver of any succeeding breach of the same or other covenants, conditions or obligations of this Lease. Any amendment or modification to this Lease must be in writing and executed by the appropriate authorities of City and Lessee.

22.11 Interpretation. The terms of this Lease shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Lease or any other rule of construction which might otherwise apply. The section headings are for purposes of convenience only, and shall not be construed to limit or extend the meaning of this Lease. All references to the

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term “days” in this Lease shall mean calendar days unless otherwise specifically indicated.

22.12 Applicable Law; Venue. The laws of the State of California shall govern the interpretation and enforcement of this Lease without regard to conflict of law principles. All legal actions must be instituted and maintained in the Superior Court of the County of Orange, State of California, in any other appropriate court in that county, or in the Federal District Court in the Central District of California.

22.13 Severability. If any term, provision, covenant, or condition of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of this Lease shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Lease.

22.14 Administration of Lease. City shall maintain authority of this Lease and the authority to implement this Lease through its City Manager (or his or her duly authorized representative). The City Manager shall have the authority to make approvals, issue interpretations, execute documents, waive provisions, and/or enter into certain amendments of this Lease on behalf of City so long as such actions do not materially or substantially change the uses or development permitted on the Premises or materially add to the costs incurred or to be incurred by City as specified herein. Such approvals, interpretations, waivers and/or amendments may include extensions of time to perform.

22.15 Force Majeure. Except as otherwise expressly provided in this Lease, if the performance of any act required by this Lease to be performed by either City or Lessee is prevented or delayed by reason of Force Majeure, the time or times for performance of the obligations will be extended for the period of the delay; provided, however, (a) within thirty (30) days after the beginning of any such delay, the delayed party shall have first notified the other party in writing of the cause or causes of such delay and claimed an extension for the reasonably estimated period of the delay, and (b) the delayed party cannot, through commercially reasonable and diligent efforts (not including the incurring of overtime premiums or the like), make up for the delay within the time period remaining prior to the applicable completion date. Under no circumstances shall an event of Force Majeure exceed twelve months without City’s consent, which consent shall not be unreasonably withheld, conditioned, or delayed.

22.16 Termination. No termination of this Lease shall release any party in default and this Lease shall survive for purposes of allowing a party to enforce its rights and remedies under this Lease in the event of a default, including, without limitation, the provisions of Section 22.6. All indemnification provisions shall survive the termination of this Lease.

22.17 Authority to Execute. The person(s) executing this Lease on behalf of the parties hereto warrant that (a) such party is duly organized and existing, (b) they are duly authorized to execute and deliver this Lease on behalf of said party, and (c) by so executing this Lease, such party is formally bound to the provisions of this Lease.

22.18 Execution in Counterpart. This Lease may be executed in several counterparts, and all so executed shall constitute one agreement binding on both parties hereto, notwithstanding that both parties are not signatories to the original or the same counterpart.

22.19 Estoppel Certificates.

22.19.1 Request by Leasehold Mortgagee. Upon a Leasehold Mortgagee's written request, City shall provide the Leasehold Mortgagee within fifteen (15) Business Days after such request with an estoppel certificate which shall certify to such requesting Leasehold Mortgagee, (i) the amount and status of all rent payments and security deposits under this Lease, (ii) that Lessee is not in default in the payment, performance or observance of any obligation to be performed or observed by Lessee under this Lease, or if Lessee is in default, the nature and duration of such default, and (iii) such other matters related to this Lease as Leasehold Mortgagee may reasonably request from time to time. In the event City receives more than one such request in any twelve (12) month period, Lessee shall be responsible to reimburse City for all reasonable legal and/or third party consultant costs City incurs in preparing such estoppel.

22.19.2 Request by City Upon City's written request, Lessee shall provide City within fifteen (15) Business Days after such request with an estoppel certificate which shall certify to City, (i) the amount and status of all rent payments and security deposits under this Lease, (ii) that Lessee is not in default in the payment, performance or observance of any obligation to be performed or observed by Lessee under this Lease, or if Lessee is in default, the nature and duration of such default, and (iii) such other matters related to this Lease as City may reasonably request from time to time.

22.20 Subordination and Impairment. The parties to this Lease each acknowledge and agree that (a) this Lease and any Leasehold Mortgage shall not be, and are not intended to be, subordinated to any "Fee Loan" or "Fee Mortgage" and (b) any foreclosure (or deed-in-lieu thereof) of any such Fee Mortgage shall not impair in any way this Lease or any Leasehold Mortgage. As used in this Section 22.20, the term "**Fee Loan**" shall mean any loan or other financing entered into by City, and the term "**Fee Mortgage**" shall mean any mortgage or deed of trust encumbering City's fee interest in the Premises.

22.21 Exhibits. This Lease incorporates by reference the following nine (9) exhibits attached hereto:

Exhibit "A" Area Map of Great Park
Exhibit "B" Legal Description of Premises
Exhibit "C" Site Map of Premises
Exhibit "D" Project Description
Exhibit "E" Event Marketing Guidelines
Exhibit "F" Design Review Process
Exhibit "G" Schedule of Performance
Exhibit "H" Form of Gross Revenue Statement

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IN WITNESS WHEREOF, City and Lessee have entered into this Lease as of the date set forth above.

"CITY"

CITY OF IRVINE, a California municipal corporation

By: DocuSigned by: Marianna Marysheva
Marianna Marysheva
Interim City Manager

ATTEST:

DocuSigned by: Molly Perry
Molly M. Perry, City Clerk

APPROVED AS TO FORM:
RUTAN & TUCKER, LLP

DocuSigned by: Jeffrey Melching
Jeffrey T. Melching, City Attorney

"LESSEE"

WILD RIVERS WATERPARK IRVINE SPE, LLC, a Delaware limited liability company

By: Michael Riedel
Michael Riedel, President

EXHIBIT "A"

AREA MAP OF GREAT PARK

That certain real property located in the City of Irvine, County of Orange, State of California, described as follows:

Orange County Great Park Site Map

December 2019

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EXHIBIT "B"

LEGAL DESCRIPTION OF PREMISES

That certain real property located in the City of Irvine, County of Orange, State of California, described as follows:

[see attached]

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LEGAL DESCRIPTION
WILD RIVERS WATER PARK BOUNDARY

THAT CERTAIN PARCEL OF LAND IN THE CITY OF IRVINE, COUNTY OF ORANGE, STATE OF CALIFORNIA, BEING THOSE PORTIONS OF LOT 276 BLOCK 154, LOT 277 BLOCK 141, LOT 280 BLOCK 140 AND LOT 281 BLOCK 155 OF IRVINE'S SUBDIVISION, AS FILED IN BOOK 1, PAGE 88 OF MISCELLANEOUS RECORD MAPS, RECORDS OF ORANGE COUNTY, AND ALSO BEING A PORTION OF THE FORMER UNITED STATES MARINE CORPS AIR STATION EL TORO PROPERTY, AS SHOWN ON RECORD OF SURVEY 97-1038, FILED IN BOOK 171, PAGES 1 THROUGH 49, INCLUSIVE OF RECORDS OF SURVEY, RECORDS OF SAID COUNTY, DESCRIBED AS FOLLOWS:

POINT OF COMMENCING (**POC**) BEING THE SOUTHERLY TERMINUS OF THAT CERTAIN COURSE HAVING A BEARING OF N06°20'27"W AND A DISTANCE OF 55.89' AS SHOWN ON TRACT NO. 18177 RECORDED NOVEMBER 5, 2018 PER INSTRUMENT 2018000400148 IN BOOK NO. 979, PAGES 31 THROUGH 39 OF MISCELLANEOUS MAPS RECORDS OF SAID COUNTY, SAID POINT ALSO BEING THE NORTHWESTERLY TERMINUS OF THAT CERTAIN COURSE BEING A CURVE HAVING A RADIUS OF 2654.00', A DELTA OF 4°19'52" AND A LENGTH OF 200.62' AS SHOWN ON SAID TRACT NO. 18177; THENCE S 40°41'50" W, A DISTANCE OF 54.23' ALONG THE PROLONGATION OF A RADIAL LINE TO A POINT ON A CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 2600.00', SAID RADIAL LINE TO SAID POINT BEARS N 40°41'50" E; THENCE NORTHWESTERLY ALONG SAID CURVE A DISTANCE OF 40.73' THROUGH A CENTRAL ANGLE OF 0°53'51"; THENCE N 50°12'29" W A DISTANCE OF 287.49' TO THE BEGINNING OF A CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 1880.00'; THENCE NORTHWESTERLY ALONG SAID CURVE A DISTANCE OF 40.75' THROUGH A CENTRAL ANGLE OF 1°14'31"; THENCE S 38°33'00" W ALONG A RADIAL LINE TO SAID CURVE A DISTANCE OF 47.00' TO THE TRUE POINT OF BEGINNING (**TPOB**) AND TO A POINT ON A NON TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 720.00' A RADIAL LINE TO SAID NON TANGENT CURVE BEARS N 55°19'35" W; THENCE ALONG SAID CURVE A DISTANCE OF 644.87' THROUGH A CENTRAL ANGLE OF 51°19'02"; THENCE S 01°36'06"E A DISTANCE OF 166.68'; THENCE N 55°55'32"W A DISTANCE OF 816.08'; THENCE N 66°09'57" W A DISTANCE OF 579.52'; THENCE N 21°27'21" E A DISTANCE OF 312.13'; THENCE S 68°41'12" E A DISTANCE OF 57.58'; THENCE N 21°05'15" E A DISTANCE OF 506.22' TO A POINT ON A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 1927.00', A RADIAL LINE TO SAID POINT BEARS S 45°59'13" W; THENCE SOUTHEASTERLY ALONG SAID CURVE A DISTANCE OF 608.98' THROUGH A CENTRAL ANGLE OF 18°06'24"; THENCE S 62°07'12" E A DISTANCE OF 213.11' TO THE BEGINNING OF A CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 1833.00'; THENCE SOUTHEASTERLY ALONG SAID CURVE A DISTANCE OF 341.35' THROUGH A CENTRAL ANGLE OF 10°40'12" TO THE TRUE POINT OF BEGINNING (**TPOB**).

CONTAINING 19.98 ACRES MORE OR LESS.

SUBJECT TO COVENANTS, CONDITIONS AND RESTRICTIONS, RIGHT OF WAY AND EASEMENTS OF RECORD, IF ANY.

MORE PARTICULARLY SHOWN ON EXHIBIT B ATTACHED HERETO AND BY THIS REFERENCE MADE A PART THEREOF.

_____

DEREK J. McGREGOR, PLS #6496 DATE

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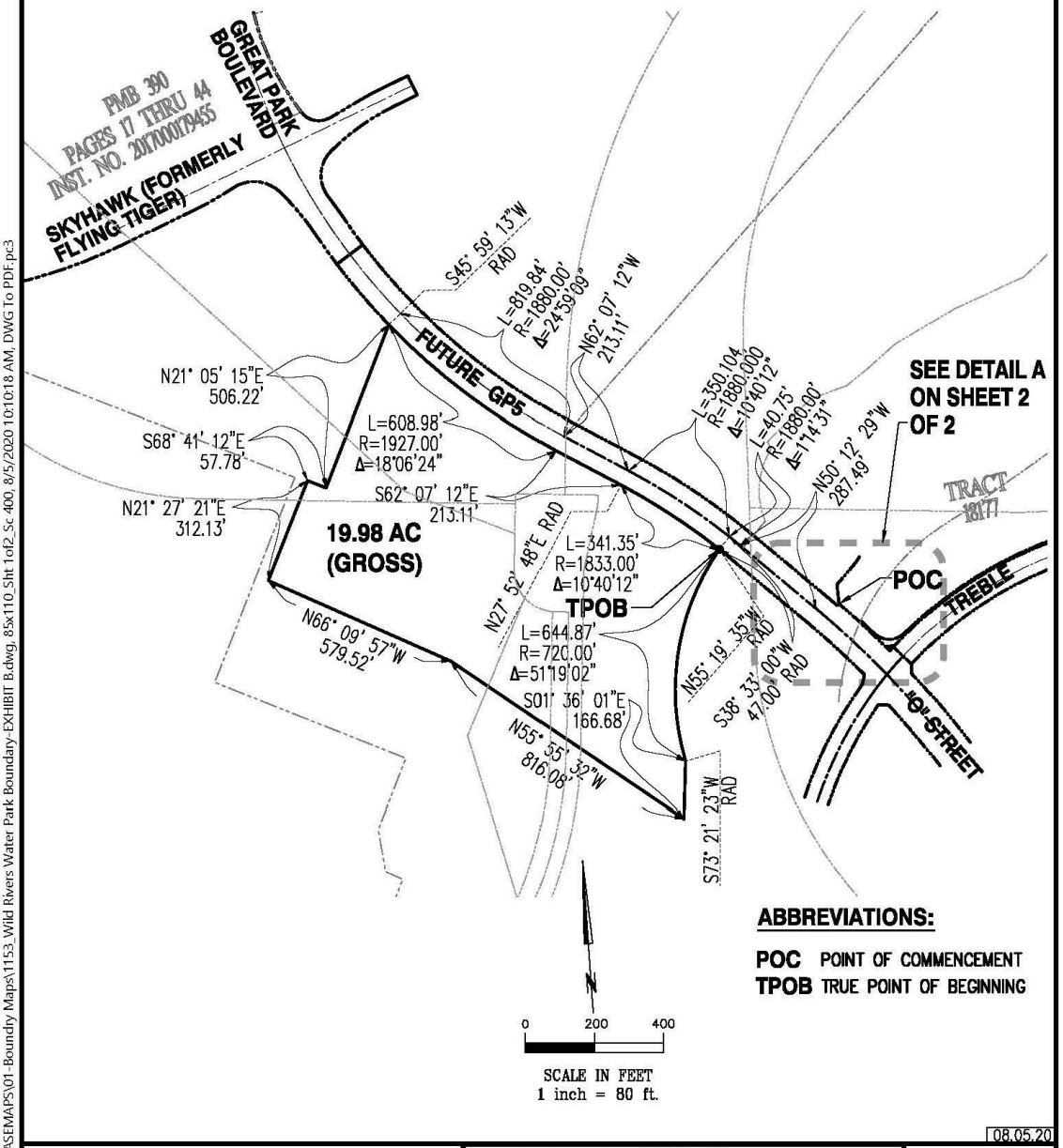
EXHIBIT "B"

SKETCH TO ACCOMPANY
LEGAL DESCRIPTION



ABBREVIATIONS:

POC POINT OF COMMENCEMENT
TPOB TRUE POINT OF BEGINNING

08.05.20

WILD RIVERS WATER PARK BOUNDARY **IRVINE, CALIFORNIA**	**DMc ENGINEERING** CIVIL ▪ SURVEYING ▪ PLANNING ▪ CONSTRUCTION Tel: (949) 753-9393 18 Technology Drive, Suite 100, Irvine, California 92618 E-Mail: dmc@dmceng.com ♦ www.dmceng.com	DATE: 08.05.20 DRAFTED: NAT CHECKED: DMC SHEET: 1 OF 2

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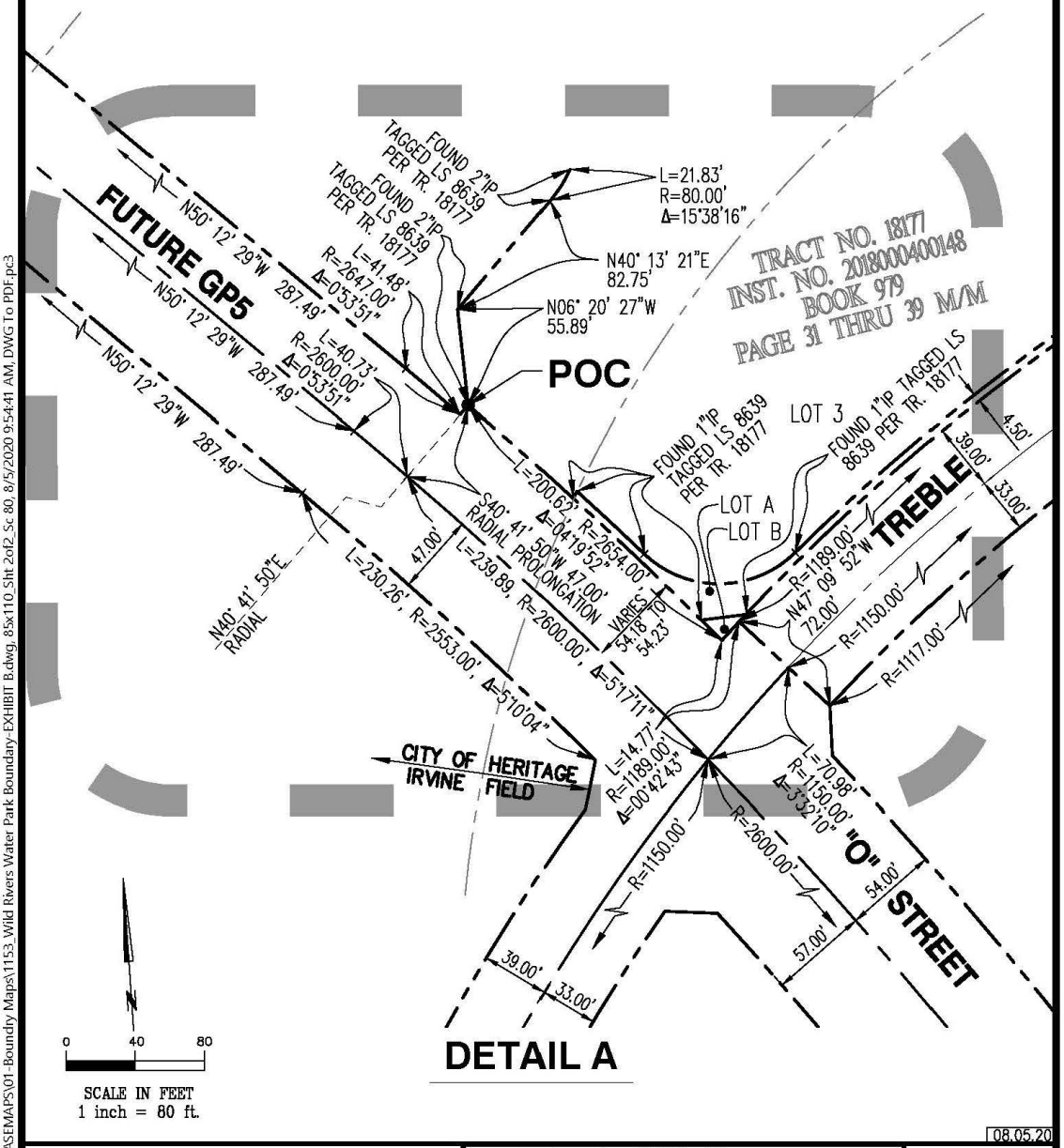
EXHIBIT "B"

SKETCH TO ACCOMPANY
LEGAL DESCRIPTION



08.05.20

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WILD RIVERS WATER PARK BOUNDARY
IRVINE, CALIFORNIA

DMc ENGINEERING
CIVIL ▪ SURVEYING ▪ PLANNING ▪ CONSTRUCTION
Tel: (949) 753-9393
18 Technology Drive, Suite 100, Irvine, California 92618
E-Mail: dmc@dmceng.com ♦ www.dmceng.com

DATE:	08.05.20
DRAFTED:	NAT
CHECKED:	DMC
SHEET:	2 OF 2

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EXHIBIT "C"

SITE MAP OF PREMISES

[see attached]

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SITE MAP

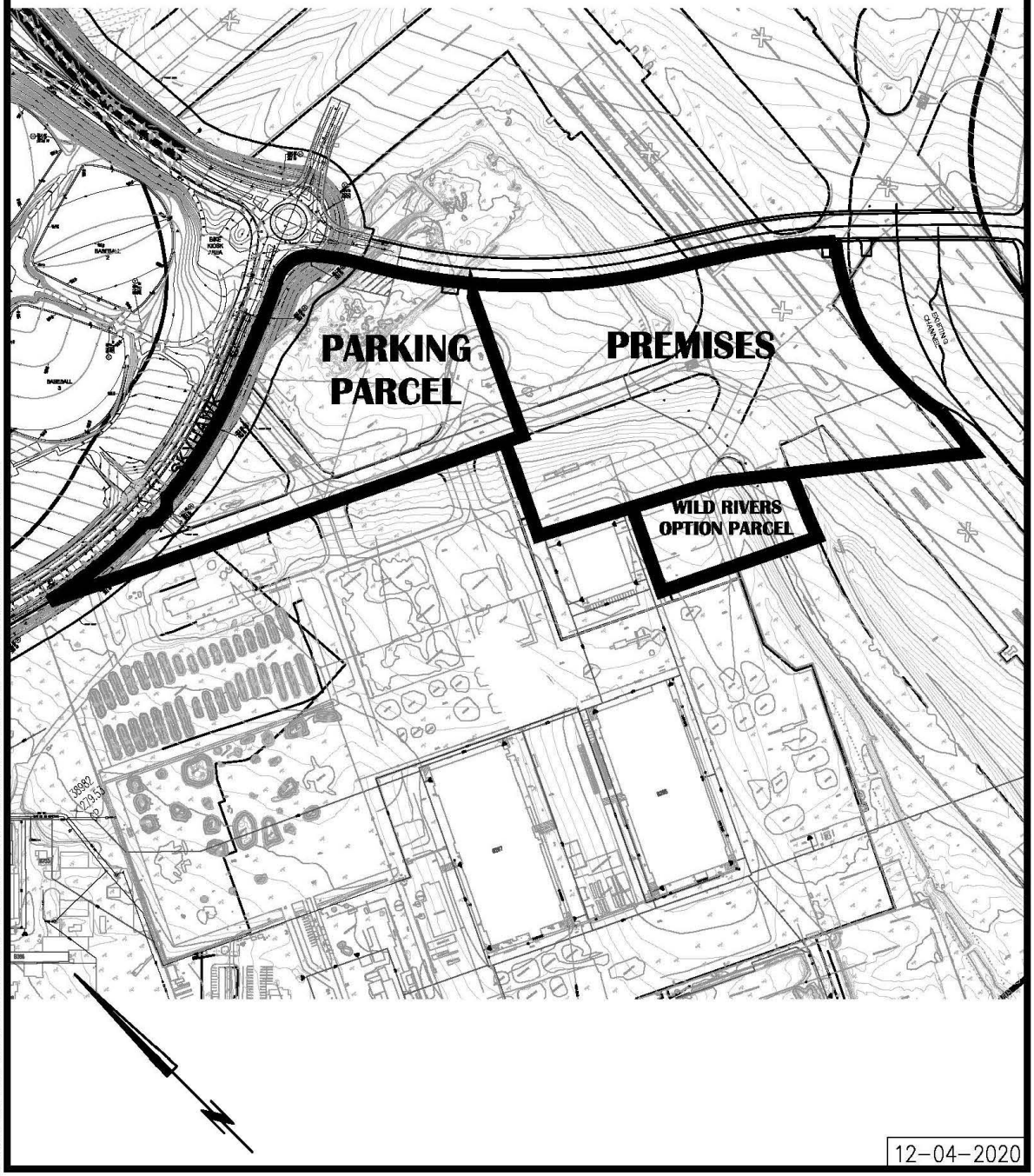

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EXHIBIT "C-1"

TEMPORARY PARKING ZONE SITE MAP

[see attached]

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TEMPORARY PARKING ZONE SITE MAP

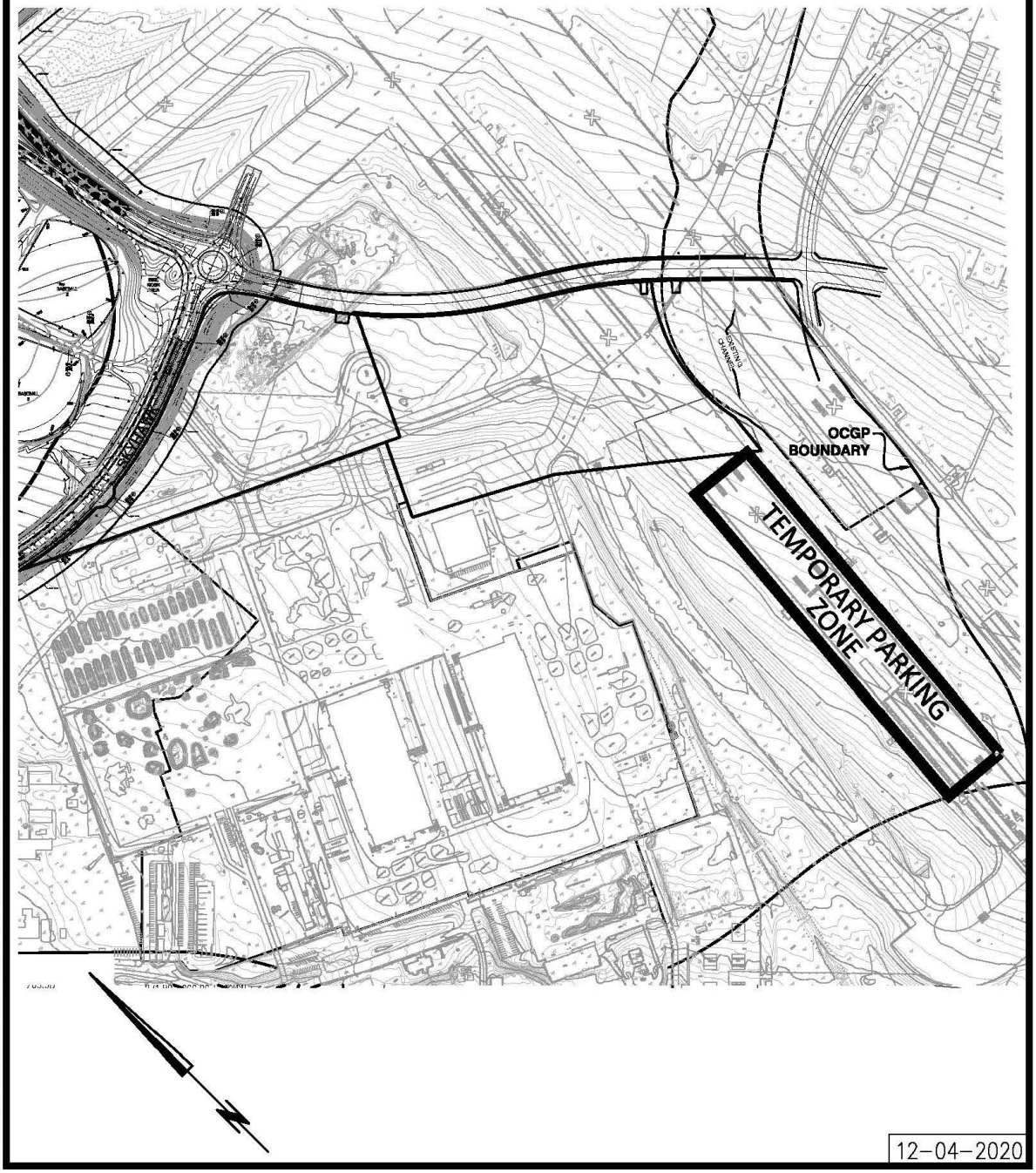

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EXHIBIT "D"

DESCRIPTION OF PROJECT

The Project is the development of a first-class water park-themed amusement park

The Project includes development and installation of all equipment (including mechanical and electrical), fixtures, furnishings, and other property to operate and maintain a first class community water park, including, without limitation, the attractions and amenities set forth in Section 8.2.1 of this Lease. Lessee shall expend not less than Fifty Million Dollars ($50,000,000) to develop the Project.

EXHIBIT "E"

EVENT MARKETING GUIDELINES

In order to not cause confusion between City events at the Great Park, which are funded through City's Great Park Fund, and events brought to the Great Park through site rental/lease agreements or contract service agreements the following marketing guidelines have been established. Adherence to these guidelines is required under the Lease.

Throughout this document, events and shows that are open to the public and produced at the Great Park through a site rental/lease agreement or contract service agreement are referred to as "community events."

General Marketing Agreement

All site rental, lease and contract service agreements for Great Park property are covered by the following general marketing agreement, including all guidelines set forth in this document.

Employees of City are not obligated to perform or support the marketing of community events and programs at the Great Park.

Courtesy public relations and marketing functions may be conducted at the discretion of City. This may include the inclusion of one or many community events in the Great Park events calendar. This may by circulated online or in print, at the discretion of City.

City also reserves the right, at its discretion, to promote community events and programs to the local media. City staff will also, upon request, provide media contacts directly to site lessees for their use.

City reserves the right to distribute upcoming Great Park events information at any site rental/leased location while an event is occurring. If appropriate to the setup of the event, City may request a booth to distribute and share information at all events held at the Park.

Through negotiating the site rental/lease agreement or contract service agreement, City staff will be available to review any promotional or marketing materials to ensure compliance with these guidelines. This is a service that will ensure all marketing is conducted to best benefit all parties.

Accepted Terms and Titles

- City reserves the right to list the lessee's or service provider's event on the Great Park Web Site (www.ocgp.org) as a "Community Event at the Great Park."
- When referencing the event location, the following terms are preferred:
    - At the Orange County Great Park in Irvine

  - At the Great Park in Irvine

- Terms *not* to be used:

  - Irvine's Great Park
  - OC Great Park
  - Irvine Great Park
  - Preview Park
  - El Toro Marine Base (or any variation)

- Unless otherwise agreed upon in a separate marketing agreement, when titling a community event/program that will be held at the Great Park, the words "Great Park" cannot be used in the name of the event, associated URLs, Twitter user names, Facebook page titles, or any other use that would imply that this is an event funded through City's Great Park Fund. Some *prohibited* examples:

  - Great Park Home Show
  - Bridal Expo at the Great Park
  - Greatparkexpo
  - www.greatparkhomeshow.com

- Nowhere in any marketing or promotional material or verbiage for your event/program should it be implied that City is partnering, sponsoring or hosting an event/program unless otherwise specified in a separate written marketing agreement between the site lessee or service provider and City.

- The Great Park amenities such as the Balloon are not included as an amenity in any site rental/lease or service agreement, and should never be referred to as such in marketing a community event/program.

Logos and Imagery

- Imagery of the Great Park Balloon in marketing or promotion for any community event/program is prohibited.

- Images provided by City to be used in any event-related or program-related marketing should include the credit "Photo courtesy of the City of Irvine."

- Photos provided by City for use in event-related or program-related marketing cannot be edited or "photo-shopped" in any way, including, without limitation, adding amenities, modifying the look of the Great Park, adding event logos into the Great Park imagery, or erasing Great Park features.

- Photos of specific site venues at the Great Park are available for use in promotion, but should never be used as the main graphics or imagery in promoting a community event/program.

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- The “@the Orange County Great Park” logo was developed to provide community events/programs with a distinctive way to identify their event location. The use of the “@the Orange County Great Park” logo is not required, but if it is used and such use is subject to City’s approval, the following guidelines must be followed:
    - The logo must not be used in conjunction with the community event title or as a primary graphic in any promotional materials.
    - Use only the colors and colorways provided. Full color and grayscale logos are provided.
    - The logo must be used as-is, with no parts removed and nothing added to the graphic.
    - The logo must be used in the given proportion and layout.
    - The overall height of the logo should never be less than ¼”, and should never appear to be larger than half the size of the logo or logotype of the name of the community event.

- City shall have the right to prohibit or restrict Lessee from using any City or Great Park logo, with the understanding that City may grant to other parties exclusive use of certain logos for certain purposes.

- Event-specific signage is permitted in specific locations at the Great Park. Those locations are included in a separate document specific to each event location. Posting signs, banners, fliers or any other marketing outside of these areas is prohibited.

- Any on-site signage, including banners or directional signage, may be subject to City permitting policies.

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EXHIBIT "F"

DESIGN REVIEW PROCESS

All design review for the Great Park is conducted by City's Great Park staff and City's designated consultants.

Stage I: Preliminary Review

Not later than ninety (90) days after the Effective Date, Lessee shall submit to City for City's review, the "Preliminary Review" designs, which include the following, with scales specified for architectural drawings:

1. Site plans at not smaller than 1:600 (1"-50').

2. Ground floor plans with proximate site area at not smaller than 1:200 scale (1/16" 1'0" is the same as 1:192).

3. Above and below ground floor plans at not smaller than 1:200 scale.

4. At least two project sections and two exterior elevations at not smaller than 1:200 scale.

5. Two exterior perspective drawings, at least one of which has a street-level viewpoint, and, if applicable, one perspective drawing of two major attractions. The perspective shall be constructed, two-point drawings; the interior can be a one-point or two-point. The drawing images shall be within a 60-degree cone of vision.

6. Tabulation of areas of major exterior and public interior spaces and tabulation of parking by size and type of space.

7. Dimensions of site, parking areas, buildings, setbacks, exterior spaces and major public indoor spaces.

8. Plant selections for the landscape design.

9. A narrative description of the project that includes proposed uses, design concepts, public spaces, urban design materials, and landscaping, and describes how the design of the project conforms with any cultural terrace design standards.

Stage II: Final Review

"Final Review" occurs at the end of the design development phase of architectural design, at which time all the major design and cost decisions for a Project should have been made. The design submission for Final Review shall be submitted to City for City's review within ninety (90) days after City's approval of the Preliminary Review designs, and includes a completed set of the architect's design development materials and the artist's final designs, which update and supplement the Preliminary Review requirements.

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1. Update Stage II: Preliminary Review site plan requirement.

2. Update Stage II: Preliminary Review ground floor plan requirement.

3. Update Stage II: Preliminary Review requirement. For floor plans plus roof plan(s) at not smaller than 1:200 scale (1/16”-1’0” is the same as 1:192).

4. Update Stage II: Preliminary Review section and elevation requirement plus two project sections and all remaining exterior elevations at not smaller than 1:200 scale.

5. Update Stage II: Preliminary Review perspective drawings requirements.

6. Update Stage II: Preliminary Review requirement for tabulation of areas and parking spaces.

7. Update Stage II: Preliminary Review dimensions requirement.

8. Update Stage II: Preliminary Review materials selection requirement plus material and color boards of exterior walls, exterior hardscape (at the ground plane, at visible roofs and at usable roof decks) and major interior public spaces.

9. Update Stage II: Preliminary Review landscape requirement plus landscaping site plan, floor plans, sections and elevations at not smaller than 1:200 scale, including hardscape, lighting, equipment, furnishings and planting schedules for on-site and off-site improvements.

10. Update Stage II: Preliminary Review outline specifications requirement, making detailed outline specifications for the project.

11. Material and color selections for exterior walls, exterior hardscape, and walls and floors of major interior public spaces.

City shall have the authority to waive any of the aforementioned items from the Design Review Process and/or move from one Stage of the process to a subsequent Stage.

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EXHIBIT "G"

SCHEDULE OF PERFORMANCE

[Schedule of Performance to be completed prior to execution of Lease]

TIME FOR PERFORMANCE	ITEM OF PERFORMANCE
Effective Date	City and Lessee execute and record Memorandum of Lease
Not later than 75 days after the Effective Date (Section 4.2.1(c))	Lessee submits plans for demolition and rough grading
Not later than 130 days after the Effective Date (Section 4.2.1(b))	Lessee submits Lessee's Evidence of Financial Capability
Not later than 30 days after receipt of complete submittal of Lessee's Evidence of Financial Capability (Section 4.2.1(b))	City reviews Lessee's Evidence of Financial Capability
Note later than 130 days after the Effective Date (Section 4.2.1(d) & (e))	Lessee submits Lessee's Evidence of Insurance and additional insured endorsement
Not later than 30 days after receipt of complete submittal of Lessee's evidence of insurance and additional insured endorsement (Section 4.2.1(d) & (e))	City reviews Lessee's evidence of insurance and additional insured endorsement
Not later than the Outside Possession Commencement Date (Section 4.2.1)	Lessee obtains final City approval of grading plans and City ready to issue grading permits and demolition permits, and satisfies all of the City Conditions to Possession
Not later than 15 days following Possession Commencement Date (Section 6.3)	Lessee commences demolition and grading activities
Not later than 60 days following Possession Commencement Date (Section 6.2)	Lessee submits building plans

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TIME FOR PERFORMANCE	ITEM OF PERFORMANCE
Not later than 60 days prior to Operations Commencement Date (Section 8.5)	Lessee delivers to City proposed Operating Plan and Price Schedule.
No later than twenty-four (24) months following Possession Commencement Date (Section 6.3)	Lessee completes construction of Project
Date City issues certificate of occupancy (Section 4.1)	Operations Commencement Date occurs
On or about the Operations Commencement Date (Section 4.1)	City and Lessee execute and record amendment to Memorandum of Lease.
From Operations Commencement Date until Lease termination or expiration (Section 5.1)	Lessee pays Minimum Rent and Percentage Rent
Within ninety (90) days after the end of each Lease Year (Section 5.4)	Lessee submits Gross Revenue statement
No later than 180 days prior to expiration of Term (Section 4.3)	Lessee delivers Option Exercise Notice
In the 28th year of the initial Term or the 3rd year of an extension Term (if timely exercised) (Section 21.3)	Lessee delivers a statement showing estimated costs for removal of Improvements and, if elected by City, establishes the Removal Funds Account

It is understood that the foregoing Schedule of Performance is subject to all of the terms and conditions set forth in the text of the Lease. The summary of the items of performance in this Schedule of Performance is not intended to supersede or modify the more complete description in the text; in the event of any conflict or inconsistency between this Schedule of Performance and the text of the Lease, the text shall govern.

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EXHIBIT "H"

FORM OF GROSS REVENUE STATEMENT

Gross Revenues

Admissions	$11,000,000.00
Food Service	3,400,000.00
Parking Revenue	900,000.00
Rentals	300,000.00
Merchandise Sales	250,000.00
Day Camp	1,500,000.00
Concessionaire / Licensee Sales	0.00
Other	100,000.00
Subtotal: Gross Revenues Before Permitted Offsets	$17,450,000.00
Less: Refunds	($25,000.00)
Less: Excise, Sales & Use Taxes paid by patrons or Guests	($1,000,000.00)

Gross Revenues
$16,425,000.00

Bergman KPRS

National

SUBCONTRACT AGREEMENT

Subcontract No:	5316 - 001	**Date:**	5/27/2019
Subcontractor:	WhiteWater West Industries LTD.	Phone:	604.273.1068
Address:	6700 McMillan Way	Fax:	604.273.4518
	Richmond, BC V6W 1J7 Canada	Email:	Scott.Haycock@whitewaterwest.com
		Contact:	Scott Haycock
Job Description:	Wild Rivers		
Address:	Marine Way @ Skyhawk		
	Irvine CA 92618	**Superintendent:**	TBD
Job Site Phone:	TBD	**Project Manager:**	David Bergman
Job Site Fax:	TBD		
Owner:	Wild Rivers Waterpark Irvine, LLC	**Lender:**	Store Capital
Address:	150 Via Monte Doro	Address:	8377 E. Hartford Dr Ste 100
	Redondo Beach CA 90277		Scottsdale, AR 85255

This AGREEMENT is between BergmanKPRS **BergmanKPRS** located at 2850 Saturn Street, Suite 100, Brea, CA 92821 hereafter called "CONTRACTOR", and **WhiteWater West Industries LTD.** , hereafter called "SUBCONTRACTOR".

1. **DESCRIPTION OF WORK**: SUBCONTRACTOR agrees to furnish and/or participate in the DOSH Permiting process and are limited to there scope of work, sales taxes, management, qualified supervision, labor, services, installation, clean-up (refer to Section 20), cartage, hoisting, materials, supplies, insurance, equipment, scaffolding, tools and description required per plans and specifications. This is to insure prompt and efficient execution and timely completion of the work described herein:

EXHIBIT "A" - Scope of Work	Waterslide supply and install	per plans and specifications (See Page 7 for attachments)

2. **CONTRACT PRICE AND PAYMENT SCHEDULE:** CONTRACTOR agrees to pay SUBCONTRACTOR for the strict performance of his work, the sum of:

Thirteen million, thirty nine thousand, seven hundred and twenty two dollars 00/100	$13,039,722.00

subject to additions and deductions for changes in the work as may be agreed upon in writing, and to make payment in accordance with the following: Attached draw schedule listed in Attachment "A" Scope of work and Attachment "J" Whitewater's proposal.

Contractors and/or subcontractors of listed contractor are required by law to be licensed and regulated by the Contractors' State License Board. Any questions should be directed to the Contractors' State License Board.

IN WITNESS WHEREOF: The parties hereto have executed ALL pages, attachments and exhibits to this Agreement for themselves, their heirs, executors, successors, administrators, and assignees on the day and year first written below.

SUBCONTRACTOR:	**WhiteWater West Industries LTD.**	CONTRACTOR:	**BergmanKPRS**
Signed:		Signed:	
Print:		Print:	DAVID BERGMAN
Title:		Title:	DIRECTOR
Date:		Date:	6/3/19
License No.:		License No and State:	CA 982577

LUC BENAC
DIRECTOR COMMERCIAL & RISK MGT.
MAY 30, 2019.

6/3/19

3. PLANS, SPECIFICATIONS and SUBCONTRACT: For this design build package, the plans, specifications and this subcontract are intended to supplement each other. In the event of conflict between the plans, specifications and the provisions of the subcontract, the specifications shall control the plans, and the provisions of this subcontract shall control both.

4. LABOR and MATERIALS: SUBCONTRACTOR shall promptly pay all valid charges for labor and materials used on the work covered by this subcontract. If CONTRACTOR pays for any labor or materials ordered by SUBCONTRACTOR on the project, SUBCONTRACTOR shall immediately reimburse CONTRACTOR.

5. EXTRA WORK: The subcontract price set forth in this subcontract shall be deemed to be full compensation for all work and materials furnished by the SUBCONTRACTOR whether specifically called for by the contract, plans, or specifications, or not. The SUBCONTRACTOR warrants that he is providing a complete job in accordance with all applicable codes, and that no extra charges and/or changes in the work are required for a complete job. Otherwise, it will be conclusively presumed that the CONTRACTOR and SUBCONTRACTOR have agreed that such work or materials are within the scope of the original contract and that no additional compensation will be paid. SUBCONTRACTOR hereby agrees to make any and all changes, furnish the materials and perform the work that CONTRACTOR may require, without nullifying this Agreement, at a reasonable addition to, or reduction from, the Contract Price stated herein, and pro rata to the same. SUBCONTRACTOR shall adhere strictly to the plans and specifications unless a change is authorized in writing. Under no conditions shall SUBCONTRACTOR make any changes, either as additions or deductions, without the written order of the CONTRACTOR and CONTRACTOR shall not pay any extra charges made by the SUB-CONTRACTOR that have not been agreed upon in writing by CONTRACTOR; SUBCONTRACTOR shall submit immediately to the CONTRACTOR written copies of his firm's cost or credit proposal for changes in the work. SUBCONTRACTOR shall not proceed with any extra work without written approval from CONTRACTOR. SUBCONTRACTOR shall provide written cost breakdown in the form of a proposal for extra work and all applicable supporting documents for extra work within 5 working days after the work or materials in questions are furnished. Disputed work shall be performed as ordered in writing by the CONTRACTOR and the proper cost or credit breakdowns shall be submitted without delay by SUBCONTRACTOR to CONTRACTOR. Changes shall include profit and overhead of no greater than 10% of all charges, unless defined differently in the scope of work. All change orders must be signed by BergmanKPRS Senior management, prior to performance or payment of the work. These signatures are required prior to any work being performed by a subcontractor as a change order. No additional compensation shall be paid to the SUBCONTRACTOR unless an executed change order is signed by the Contractor. Contractor is released from any obligation to pay for any work not appropriately approved.

6. ALTERNATES: The SUBCONTRACTOR shall not deviate from the requirements of the plans and specifications as to materials and equipment to be furnished or the method of performing the work unless prior written approval has been obtained from the project OWNER. The SUBCONTRACTOR warrants that any alternate equipment, materials or method proposed by the SUBCONTRACTOR will achieve all performance standards established by the contract documents.

7. TIME: Time is of the essence of this Agreement. It shall be SUBCONTRACTOR'S obligation to conform to CONTRACTOR'S progress schedule, subject to CONTRACTOR'S modification, which is incorporated herein by this reference and made a part hereof. SUBCONTRACTOR shall include necessary manpower, overtime or shift work, if necessary, to comply with the CONTRACTOR'S progress and/or the project schedule which ever is the faster, or per the project schedule and shall prepare and obtain approvals as required by the Contract Documents for all shop drawings, details, samples, and do all other things necessary and incidental to the prosecution of his work in conformance with said progress schedule. He shall coordinate the work covered by this Agreement with that of all other contractors, subcontractors, and the CONTRACTOR in a manner that will facilitate the efficient completion of the entire work. CONTRACTOR shall have complete control of the premises on which the work is to be performed and shall have the right to decide the time or order in which the various portions of the work shall be installed or the priority of the work of the other subcontractors, and, in general, all matters representing the timely and orderly conduct of the work of SUBCONTRACTOR on the premises. Should SUBCONTRACTOR be delayed in the prosecution or completion of the work by the act, neglect or default of OWNER, of ARCHITECT, or should SUBCONTRACTOR be delayed waiting for materials, if required by this Contract to be furnished by OWNER or CONTRACTOR, or by damage caused by fire or other casualty for which SUBCONTRACTOR is not responsible, or by the combined action of workman, in no way caused by, or resulting from default or collusion on the part of SUBCONTRACTOR, or in the event of a lockout by CONTRACTOR, then the time herein fixed for completion of the work shall be extended the number of days that SUBCONTRACTOR has thus been delayed, but no allowance or extension shall be made unless a claim is presented in writing to the CONTRACTOR within 48 hours of the commencement of such delay, and under no circumstances shall the time of completion be extended to a date which will prevent CONTRACTOR from completing the entire project within the time that OWNER allows CONTRACTOR for such completion. No claims for additional compensation or damages for delays, whether in the furnishings of material by CONTRACTOR, or delays by other subcontractors or OWNER, will be allowed by the CONTRACTOR, and said extension of time for the completion shall be the sole remedy of SUBCONTRACTOR. Nothing herein contained shall require CONTRACTOR to make any claim against OWNER for such delays, and it is specifically agreed that the failure of CONTRACTOR to prosecute any such claim against OWNER shall not entitle SUBCONTRACTOR to any claim for damages against CONTRACTOR.

8. DAMAGES CAUSED BY DELAYS: Should SUBCONTRACTOR default in the proper performance of his work, thereby causing delay to the prime contract work, he shall be liable for any and all loss and damages, including liquidated damages limited to a daily rate of $1,500 beginning seven (7) days from written notice issued by the CONTRACTOR up to a maximum liquidated damage aggregate of five percent (5%) of the contract price of the delayed equipment. SUBCONTRACTOR shall not be liable under this paragraph if such default be caused by strikes, lockouts, acts of God, or other reasons beyond the control of SUBCONTRACTOR, concerning which, however, notice of occurrence of same shall be given in writing immediately by SUBCONTRACTOR to CONTRACTOR. If the project is delayed as a result of the actions of Contractor or its affiliates, Owner (as might apply), as well as their partners, directors, officers then the project schedule will be adjusted accordingly, and WhiteWater will be entitled to reimbursement for its actual costs but only when such costs exceed the aggregate sum of $2,000 for the term of the contract. Costs to be reimbursed will include costs related to demobilization and mobilization of equipment, crew and/or supervisory personnel as a result of such delay but not exclusively such. Separate and apart from the costs set forth above, should WhiteWater be required to store work in progress and/or finished goods for a period of more than fourteen (14) days, WhiteWater shall be entitled reimbursement for the actual cost of such storage.

9. PROGRESS OF WORK: SUBCONTRACTOR agrees to follow the Project Schedule provided by Sub-contractor and included in this Contract as Exhibit C provided however that the Contract and Information required have been received by the date indicated in the Schedule. Subcontractor shall continue said work diligently to completion with sufficient men and equipment upon the job at all times. SUBCONTRACTOR agrees to hold a pre-job conference on the site with CONTRACTOR'S superintendent, and to man the job with competent supervision to oversee and perform the SUBCONTRACTOR'S work in accordance with this Agreement. Sub-Contractor agrees to work within the master project schedule and accepts the written completion date.

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10. RECOURSE BY CONTRACTOR: In the event that SUBCONTRACTOR at any time refuses or neglects to supply a sufficient number of properly skilled workmen or a sufficient quantity of materials of proper quality or perform work in compliance with plans and specifications, or be adjudicated as bankrupt, or files an arrangement proceeding, or commits any act of insolvency, or makes an assignment for benefit of creditors without CONTRACTOR'S consent, or fails to make a prompt payment to his material men or laborers, or fails in any respect to properly and diligently prosecute the work covered by this Agreement, or becomes delinquent with respect to contributions or payments for any required employee benefit program or trust, or fails to fulfill these Subcontract Provisions by him to be performed, or otherwise fails to perform fully any and all of the agreements herein contained, CONTRACTOR may, at his option, after giving forty-eight (48) hours written notice (confirmed fax, email, registered letter or hand delivered) to SUBCONTRACTOR, provide any such labor and materials as may be necessary and deduct the cost thereof from any money then due or thereafter to become due to the SUBCONTRACTOR under this Agreement; or CONTRACTOR may, at his option, terminate SUBCONTRACTOR'S right to proceed with the work and, in that event, CONTRACTOR shall have the right to enter upon the premises of the project and take possession, for the purpose of completing the work included under this Agreement, of all materials, tools, and appliances of SUBCONTRACTOR, and may employ any other person or person's to finish the work and provide the materials. In case of such termination of SUBCONTRACTOR'S right to proceed with the work, said SUBCONTRACTOR shall not be entitled to receive any further payment under this Agreement until the work undertaken by CONTRACTOR in his prime contract is completely finished. At that time, if the unpaid balance of the amount to be paid under this Agreement exceeds the expenses incurred by CONTRACTOR in finishing SUBCONTRACTOR'S work, such excess shall be paid by CONTRACTOR to SUBCONTRACTOR; but, if such expense shall exceed such unpaid balance, then SUBCONTRACTOR shall promptly pay to CONTRACTOR the amount by which the expense exceeds such unpaid balance. The expense referred to in the last sentence shall include expenses incurred by CONTRACTOR for furnishing materials, for finishing the work, for attorneys fees, and any damages sustained by CONTRACTOR by reason of SUBCONTRACTOR'S default, plus a markup of 15% General Overhead and 10% Profit on any and all such expenses; and CONTRACTOR shall have a lien upon all materials, tools and appliances taken possession of, as aforesaid, to secure the payment thereof. The notice referred to in this paragraph will be sufficient and complete when mailed to SUBCONTRACTOR at his address shown in this Agreement CONTRACTOR may withhold, or on account of subsequently discovered evidence, nullify the whole or a part of any payment under SECTION 2 to such extent as may be necessary to protect CONTRACTOR from loss, including costs and attorney's fees on account of (1) defective work not remedied; (2) claims filed or reasonable evidence indicating probable filing of claim; (3) failure of SUBCONTRACTOR to make payments properly to his subcontractors or for material, labor, or for fringe benefits; (4) a reasonable doubt that this Agreement can be completed for the balance then unpaid; (5) damage to another subcontractor. When the above grounds are removed, such amounts are then due and owed shall be paid or credited to SUBCONTRACTOR.

11. TERMINATION OF AGREEMENT: In the event the prime contract is terminated prior to its completion, SUBCONTRACTOR shall be entitled only to payment for the cost incurred and the work in progress performed at the pro-rata of the price herein set forth unless CONTRACTOR itself receives additional compensation or damages on account of such termination; in which event, SUBCONTRACTOR shall be entitled to such proportion of the additional compensation or damages actually received as is equitable under all of the circumstances. Nothing herein contained shall require CONTRACTOR to make any claim against OWNER for such additional compensation or damages in the event of termination before completion, and it is specifically agreed that the failure of CONTRACTOR to prosecute any such claim against OWNER shall not entitle SUBCONTRACTOR to any claim for additional compensation or damages against CONTRACTOR.

Notwithstanding the preceding paragraph, CONTRACTOR reserves the absolute right to terminate this Agreement. In the event of termination, SUBCONTRACTOR shall be entitled to payment only as follows:

1. Cost of the work actually completed in conformity with this Agreement; plus
2. Other costs actually incurred by SUBCONTRACTOR; plus
3. 10% of the cost referred to in Paragraph 1 above, for overhead and profit.
4. The Contractor acknowledges that once an order is placed with WhiteWater, considerable expense is incurred by WhiteWater to provide the Design Services, and manufacturing the equipment and accordingly, this Agreement may not be terminated by the Contractor unless there is a material default by WhiteWater under this Agreement and in that case only in accordance with section 10.2 and 10.3 below.

5. If WhiteWater materially defaults in carrying out its duties under this Agreement, the Contractor will give WhiteWater notice of the default in which case WhiteWater will have ten (10) days to remedy the default or propose a satisfactory remedy to cure the default. If WhiteWater is unable to make such remedy, the Contractor may elect to terminate the Agreement.
6. If the Contractor should fail or wrongfully refuse to approve or refuse to make payment in accordance with this Agreement, then WhiteWater may elect to terminate the contract, by notice in writing. WhiteWater may recover from Contractor payment for all work satisfactorily completed and to recover all direct costs prorated from contract amounts, incurred up to the time of termination. If Contractor cures its nonpayment within fifteen (15) days then WhiteWater's notice of termination will be rendered ineffective.

There shall be deducted from such sums as provided in this paragraph the amount of any payments made to SUBCONTRACTOR prior to the date of termination of this Agreement. SUBCONTRACTOR shall not be entitled to any claim of lien, against CONTRACTOR or against OWNER for any additional compensation or damages in the event of such termination and payment.

In the event this Agreement is terminated for cause, SUBCONTRACTOR shall not be entitled to receive any further payment until the work undertaken by CONTRACTOR in his prime contract is completely finished. At that time, if the amounts earned but not paid SUBCONTRACTOR before said termination exceed the expenses incurred by CONTRACTOR in finishing SUBCONTRACTOR'S work, any excess shall be paid by CONTRACTOR to SUBCONTRACTOR; but, if such expense shall exceed the said amount earned and unpaid, SUBCONTRACTOR shall promptly pay to CONTRACTOR the amount by which the expense exceeds said sum. The expense incurred by CONTRACTOR, as just referred to, shall include CONTRACTOR'S expense for furnishing materials, for finishing the work, for attorney's fees, and any damages incurred by CONTRACTOR by reason of SUBCONTRACTOR'S default.

12. ARBITRATION: Any controversy arising out of the construction of the structure referred to in this subcontract or regarding interpretation of this subcontract or any sub-subcontract is subject to arbitration. The OWNER, the CONTRACTOR and all SUBCONTRACTORS, sub-subcontractors, material suppliers, and other parties concerned with the construction of the structure are bound, to each other, by this arbitration clause, provided such party has signed this contract or has signed a contract which incorporates this contract by reference, or signs any other agreement to be bound by this arbitration clause.

Arbitration (refer to Section 34 for venue) shall be held in accordance with the arbitration provision contained in the contract between the OWNER and the PRIME CONTRACTOR, if there is any such arbitration provision. Upon the demand of the arbitrator or any party to an arbitration initiated under the arbitration provisions of the contract between the OWNER and the CONTRACTOR, SUBCONTRACTOR and all parties bound by this arbitration provision agree to join in and become parties to and be bound by such arbitration proceedings.

If no arbitration provision is in the contract between the OWNER and the CONTRACTOR, then arbitration shall be in accordance with the Construction Industry Rules of the American Arbitration Association, which are in effect at the time of the arbitration.

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Should any party refuse or neglect to appear or to participate in arbitration proceedings the arbitrators are empowered to decide the controversy in accordance with whatever evidence is presented by the party or parties who do participate. The arbitrators are authorized to award any party or parties such sums as they shall deem proper for the time, expense and trouble of arbitration, including arbitration fees and attorney fees.

13. INSURANCE: Subcontractor shall at all times carry on all operations hereunder, Workmen's Compensation Insurance covering all its employees, Public Liability and Property Damage Insurance and Automotive Public Liability if required and for onsite specific subtrades and Property Damage Insurance, including liability coverage for (a) all operations, (b) subcontract work, (c) contractual obligations, (d) product or completed operations, (e)The sub contractors subcontractors owned and non-owned vehicles. SUBCONTRACTOR shall name CONTRACTOR as additional insured, in forms, for the amount not less than $1,000,000.00, by the specifications and specified by the CONTRACTOR, and underwritten by insurance companies satisfactory to CONTRACTOR. Before SUBCONTRACTOR performs any work at, or prepares or delivers materials to, the site of construction, SUBCONTRACTOR shall furnish certificates of insurance evidencing the foregoing insurance coverages and such certificates shall provide that the insurance is in force and will not be cancelled without thirty days written notice to CONTRACTOR. SUBCONTRACTOR shall maintain all of the foregoing insurance coverage's in full force until the work under this Agreement is fully completed. The requirement for carrying the foregoing insurance shall not derogate from the provision for indemnification of CONTRACTOR by SUBCONTRACTOR under paragraph 14 of this agreement. Should a SUBCONTRACTOR fail to provide adequate insurance coverage, 20% of the SUBCONTRACTOR's contract shall be deducted and applied toward coverage for SUBCONTRACTOR. An aggragate liablity policy upto $10M is an exceptable policy for this project.

14. GENERAL INDEMNITY: All work covered by this Agreement done at the site of construction or in preparing or delivering materials or equipment, or any or all of them, to the site shall be at the risk of SUBCONTRACTOR exclusively SUBCONTRACTOR shall, with respect to all work, which is covered by, or incidental to this subcontract, indemnify and hold CONTRACTOR harmless from and against all of the following:

1. Any claim, liability, loss, damage, cost, expenses, including reasonable attorneys' fees, awards, fines or judgments arising by reason of the death or bodily injury to persons, injury to property, design defects (if design originated by SUBCONTRACTOR), or other loss, damage or expense, including any of the same resulting from CONTRACTOR'S alleged or actual negligent act or omission, regardless of whether such act or omission is active or passive; and

2. Any and all claims, liability, loss, damage, costs, including reasonable attorneys' fees, awards, fines or judgments arising by reason of any obligation or indemnity which CONTRACTOR has to OWNER.

It is expressly acknowledged and agreed that each of the foregoing indemnities is independent, and that both shall be given effect. However, SUBCONTRACTOR shall not be obligated under this Agreement to indemnify CONTRACTOR or Owner with respect to the sole negligence or willful misconduct of the indemnified party, his agents or servants or subcontractors who are directly responsible to CONTRACTOR or owner, excluding SUBCONTRACTOR herein.

15. BONDING OF SUBCONTRACTOR: In lu of Bonding, The SUBCONTRACTOR agrees to provide a 10% perfromance bank guarantee.

16. INDEMNITY CLAUSE RE SAFETY: SUBCONTRACTOR shall at its own expense comply with all specific safety requirements by any governmental authority, including, without limitation, the requirements of the applicable Federal and State Occupational Safety and Health Administration (OSHA) Standards (Code of Federal Regulations, Title 29), and all parties or agencies which administer said Acts. SUBCONTRACTOR shall have and exercise full responsibility for compliance hereunder by itself, its agents, employees, materialmen, and subcontractors with respect to its portion of the work on this Project; and shall directly receive, respond to, defend and be responsible for any citation, assessment, fine or penalty by reason of SUBCONTRACTOR'S failure or failure of SUBCONTRACTOR'S agents, employees, materialmen and subcontractors to so comply. SUBCONTRACTOR shall indemnify and hold harmless CONTRACTOR from and against any liability, loss, damage, cost, claims, awards, judgments, fines, expenses, including litigation expenses, reasonable attorneys' fees, claims or liability for harm to persons or property, expenses incurred pursuant to or attendant to any hearing or meeting and any other applicable cost which may be incurred by CONTRACTOR resulting from SUBCONTRACTOR'S failure to fulfill the covenants set forth in this paragraph. In the event SUBCONTRACTOR fails to comply with any citation issued by the Secretary of Labor, any order issued by the Occupational Safety and Health Review Commission or any order issued by the governing authority responsible for the administration and or enforcement of any statute, regulation or ordinance relating to occupational health and safety within the period specified in any such citation or order. CONTRACTOR may, in his discretion, exercise the rights and remedies provided him under the terms of this Subcontract, including, but not limited to the rights and remedies provided in Paragraph 10, Recourse by Contractor.

17. CONDUCT: SUBCONTRACTOR shall at all times and in all ways supervise its employees and cause them to act in an exemplary manner reflecting the highest in personal and professional standards. SUBCONTRACTOR understands and acknowledges that the CONTRACTORS image with the client is valuable. The SUBCONTRACTOR agrees to indemnify and hold harmless CONTRACTOR, employees, sureties, heirs and client for any and all acts by the SUBCONTRACTOR, its employees, delivery people, visitors, etc. from any and all liability including any misconduct, violations of law, violations of local zoning ordinances, fraternization with CONTRACTOR staff, client employees, clients' customers, and passers by, et-al SUBCONTRACTOR agrees to compensate CONTRACTOR for any loss including internal costs and economic loss due to loss of client or reputation pursuant to any violation of this tenant. SUBCONTRACTOR agrees to cooperate fully and immediately with any investigations conducted by any municipal agency, CONTRACTOR, and/or client.

18. DELIVERIES: SUBCONTRACTOR shall accept all required material delivered to the site for SUBCONTRACTORS scope of work. SUBCONTRACTOR is solely responsible for the contents of the delivery, loading and unloading, quantity, quality, and that all delivered materials are for this project and correct per plans and specifications. SUBCONTRACTOR is solely responsible for delivery coordination with CONTRACTOR, storage, security and transport prior to delivery. The CONTRACTOR shall have limited responsibility to accept, qualify, inventory, store, protect or install any SUBCONTRACTOR supplied materials. Under no circumstances will the SUBCONTRACTOR cause to be delivered or accept delivery of any materials not a part of this project.

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19. INDEMNITY CLAUSE FOR EQUAL EMPLOYMENT OPPORTUNITIES VIOLATIONS: SUBCONTRACTOR shall, at his own expense, conform to the equal employment opportunity policies of the CONTRACTOR, and, in addition, shall comply with all equal employment opportunity requirements promulgated by any governmental authority, including, without limitation, the requirements of the Civil Rights Act of 1964, 42 United States Code, Section 1983, Executive Orders 11246, 11375 and 11478, the California Fair Employment Practices Act, the California Plan, (if project is in California) any other applicable statute or ordinances, plans or programs, inclusive, and all successors and amendments thereto, and all plans, programs, standards and regulations which have been or shall promulgated or approved by the parties or agencies which administer said Acts or Orders (hereinafter collectively referred to as EEO laws). SUBCONTRACTOR shall have and exercise full responsibility for compliance hereunder by itself, its agents, employees, materialmen and subcontractors with respect to its portion of the work on this Project; it shall directly receive and respond to, defend and be responsible for any citation, order, claim, charge, or criminal or civil actions, arising by reason of failure of SUBCONTRACTOR or its agents, employees, material- men and subcontractors to so comply, regardless of whether such non-compliance results from active or passive acts or omissions or whether such non compliance is the sole or a contributory cause of any of those matters against which SUBCONTRACTOR is obligated hereunder to indemnify and hold harmless CONTRACTOR. SUBCONTRACTOR shall indemnify and hold harmless CONTRACTOR from and against any liability loss (including any loss of profits or prospective advantage occasioned by the suspension, cancellation or termination of any contract, or CONTRACTOR'S eligibility therefore), damage, costs, claims, awards, judgments, fines, expenses, including litigation expenses, reasonable attorneys' fees, claims or liability for harm to persons or property, expenses incurred pursuant to or attendant to any hearing or meeting or any applicable costs which may be incurred by CONTRACTOR resulting from SUBCONTRACTOR'S failure to fulfill the covenants set forth in this paragraph.

In the event SUBCONTRACTOR fails to comply with any of the aforementioned EEO laws, or any judgment, order or award issued by the Office of Federal Contract Compliance, United States Department of Labor, or any other federal, state or local agency or any court of law, or any other body responsible for the administration and or enforcement of any EEO laws, within the period specified in any such laws, judgments, order or award, CONTRACTOR may, at his discretion, exercise the rights and remedies provided him under the terms of this Subcontract, including, but not limited to, the rights and remedies provided in Paragraph 10. Recourse by Contractor.

20. CLEAN UP: During the course of construction, SUBCONTRACTOR shall remove waste materials from the site to supplied dumpsters, recurrently (daily if necessary) as it is necessary to maintain the premises in a clean and orderly condition. Upon completion of the work under this Agreement, SUBCONTRACTOR shall remove from the site all temporary structures, debris and waste incident to his operation and clean all surfaces, fixtures, equipment, etc., relative to the performance of this Agreement. If SUBCONTRACTOR fails to perform a clean-up function within two days after notification from CONTRACTOR to do so, CONTRACTOR may proceed with function as he judges necessary and in the matter he may deem expedient, and the cost thereof shall be charged to SUBCONTRACTOR and deducted from monies due under this Agreement.

21. GUARANTEE: SUBCONTRACTOR guarantees all materials and workmanship and agrees to replace at his sole cost and expense, and to the satisfaction of CONTRACTOR, any and all materials adjudged defective or improperly installed as well as guarantee the OWNER and CONTRACTOR against liability, loss or damage arising from said installation during a period of one year from completion and acceptance of the work covered by the prime contract. If, however, the period of guarantee is stipulated in excess of one year by the Contract Documents, SUBCONTRACTOR shall be bound during the longer period stipulated. SUBCONTRACTOR to provide CONTRACTOR with a standard 1 Year Warranty Form (Exhibit _"J"__) or Extended Warranty, if required by contract documents, and Operation and Maintenance Manuals for all equipment installed.

22. FAILURE TO PERFORM: Any act or omission of CONTRACTOR which SUBCONTRACTOR might claim as an excuse for his own failure to perform shall be deemed waived by SUBCONTRACTOR unless he shall notify CONTRACTOR of his intention to assert such excuse within 5 Business days after the occurrence of any such act or omission. SUBCONTRACTOR waives the right it may have to assert the provisions of the California Civil Code Section 1054 against CONTRACTOR if project is in California).

23. ATTORNEY'S FEES: In the event either CONTRACTOR or SUBCONTRACTOR institutes suit in court or by way of arbitration against the other party, or against the surety of such party, in connection with any dispute or matter arising under this Agreement, the party which prevails in that arbitration or suit shall be entitled to recover from the other its attorney's fees in reasonable amount, which shall be determined by the court or arbitrator and included in the judgment or award in said suit.

24. RELIANCE ON PROPOSAL: Until a copy of this subcontract, signed by the CONTRACTOR, is delivered to SUBCONTRACTOR, it constitutes a proposal by the SUBCONTRACTOR to perform the work, and the CONTRACTOR may rely upon the proposal in determining the amount of any proposal or bid which the CONTRACTOR may make to the OWNER

25. SUBCONTRACTING BY SUBCONTRACTOR: The SUBCONTRACTOR agrees that he will not subcontract any of the work herein defined in this agreement without the prior written approval of the CONTRACTOR.

26. WORKMANSHIP: Every part of the work herein described shall be executed in strict accordance with the Contract Documents in the most sound, workmanlike, and substantial manner. All workmanship shall be of the best of its several kinds and must meet final acceptance by the CONTRACTOR and OWNER. All materials used in the work herein described shall be furnished in ample quantities to facilitate the proper and expeditious execution of the work, and shall be new and the best of their respective kinds, except such materials as may be expressly provided in the Contract Documents to be otherwise.

27. PERMITS: SUBCONTRACTOR shall pay for and obtain all necessary permits, any required trade specific permits and inspections for his work. Subcontractor must have a representative present for all scheduled inspections. Subcontractor shall coordinate all required inspections with the governing authority and Contractor's superintendent and shall have a representative for all scheduled inspections.

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19. INDEMNITY CLAUSE FOR EQUAL EMPLOYMENT OPPORTUNITIES VIOLATIONS: SUBCONTRACTOR shall, at his own expense, conform to the equal employment opportunity policies of the CONTRACTOR, and, in addition, shall comply with all equal employment opportunity requirements promulgated by any governmental authority, including, without limitation, the requirements of the Civil Rights Act of 1964, 42 United States Code, Section 1983, Executive Orders 11246, 11375 and 11478, the California Fair Employment Practices Act, the California Plan, (if project is in California) any other applicable statute or ordinances, plans or programs, inclusive, and all successors and amendments thereto, and all plans, programs, standards and regulations which have been or shall promulgated or approved by the parties or agencies which administer said Acts or Orders (hereinafter collectively referred to as EEO laws). SUBCONTRACTOR shall have and exercise full responsibility for compliance hereunder by itself, its agents, employees, materialmen and subcontractors with respect to its portion of the work on this Project; it shall directly receive and respond to, defend and be responsible for any citation, order, claim, charge, or criminal or civil actions, arising by reason of failure of SUBCONTRACTOR or its agents, employees, material- men and subcontractors to so comply, regardless of whether such non-compliance results from active or passive acts or omissions or whether such non compliance is the sole or a contributory cause of any of those matters against which SUBCONTRACTOR is obligated hereunder to indemnify and hold harmless CONTRACTOR. SUBCONTRACTOR shall indemnify and hold harmless CONTRACTOR from and against any liability loss (including any loss of profits or prospective advantage occasioned by the suspension, cancellation or termination of any contract, or CONTRACTOR'S eligibility therefore), damage, costs, claims, awards, judgments, fines, expenses, including litigation expenses, reasonable attorneys' fees, claims or liability for harm to persons or property, expenses incurred pursuant to or attendant to any hearing or meeting or any applicable costs which may be incurred by CONTRACTOR resulting from SUBCONTRACTOR'S failure to fulfill the covenants set forth in this paragraph.

In the event SUBCONTRACTOR fails to comply with any of the aforementioned EEO laws, or any judgment, order or award issued by the Office of Federal Contract Compliance, United States Department of Labor, or any other federal, state or local agency or any court of law, or any other body responsible for the administration and or enforcement of any EEO laws, within the period specified in any such laws, judgments, order or award, CONTRACTOR may, at his discretion, exercise the rights and remedies provided him under the terms of this Subcontract, including, but not limited to, the rights and remedies provided in Paragraph 10. Recourse by Contractor.

20. CLEAN UP: During the course of construction, SUBCONTRACTOR shall remove waste materials from the site to supplied dumpsters, recurrently (daily if necessary) as it is necessary to maintain the premises in a clean and orderly condition. Upon completion of the work under this Agreement, SUBCONTRACTOR shall remove from the site all temporary structures, debris and waste incident to his operation and clean all surfaces, fixtures, equipment, etc., relative to the performance of this Agreement. If SUBCONTRACTOR fails to perform a clean-up function within two days after notification from CONTRACTOR to do so, CONTRACTOR may proceed with function as he judges necessary and in the matter he may deem expedient, and the cost thereof shall be charged to SUBCONTRACTOR and deducted from monies due under this Agreement.

21. GUARANTEE: SUBCONTRACTOR guarantees all materials and workmanship and agrees to replace at his sole cost and expense, and to the satisfaction of CONTRACTOR, any and all materials adjudged defective or improperly installed as well as guarantee the OWNER and CONTRACTOR against liability, loss or damage arising from said installation during a period of one year from completion and acceptance of the work covered by the prime contract. If, however, the period of guarantee is stipulated in excess of one year by the Contract Documents, SUBCONTRACTOR shall be bound during the longer period stipulated. SUBCONTRACTOR to provide CONTRACTOR with a standard 1 Year Warranty Form (Exhibit _"J"__) or Extended Warranty, if required by contract documents, and Operation and Maintenance Manuals for all equipment installed.

22. FAILURE TO PERFORM: Any act or omission of CONTRACTOR which SUBCONTRACTOR might claim as an excuse for his own failure to perform shall be deemed waived by SUBCONTRACTOR unless he shall notify CONTRACTOR of his intention to assert such excuse within 5 Business days after the occurrence of any such act or omission. SUBCONTRACTOR waives the right it may have to assert the provisions of the California Civil Code Section 1054 against CONTRACTOR if project is in California).

23. ATTORNEY'S FEES: In the event either CONTRACTOR or SUBCONTRACTOR institutes suit in court or by way of arbitration against the other party, or against the surety of such party, in connection with any dispute or matter arising under this Agreement, the party which prevails in that arbitration or suit shall be entitled to recover from the other its attorney's fees in reasonable amount, which shall be determined by the court or arbitrator and included in the judgment or award in said suit.

24. RELIANCE ON PROPOSAL: Until a copy of this subcontract, signed by the CONTRACTOR, is delivered to SUBCONTRACTOR, it constitutes a proposal by the SUBCONTRACTOR to perform the work, and the CONTRACTOR may rely upon the proposal in determining the amount of any proposal or bid which the CONTRACTOR may make to the OWNER.

25. SUBCONTRACTING BY SUBCONTRACTOR: The SUBCONTRACTOR agrees that he will not subcontract any of the work herein defined in this agreement without the prior written approval of the CONTRACTOR.

26. WORKMANSHIP: Every part of the work herein described shall be executed in strict accordance with the Contract Documents in the most sound, workmanlike, and substantial manner. All workmanship shall be of the best of its several kinds and must meet final acceptance by the CONTRACTOR and OWNER. All materials used in the work herein described shall be furnished in ample quantities to facilitate the proper and expeditious execution of the work, and shall be new and the best of their respective kinds, except such materials as may be expressly provided in the Contract Documents to be otherwise.

27. PERMITS: SUBCONTRACTOR shall pay for and obtain all necessary permits, any required trade specific permits and inspections for his work. Subcontractor must have a representative present for all scheduled inspections. Subcontractor shall coordinate all required inspections with the governing authority and Contractor's superintendent and shall have a representative for all scheduled inspections.

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28. PROTECTION OF WORK: SUBCONTRACTOR shall effectually secure and protect the work hereunder during installation and assume full responsibility for the condition thereof until final acceptance by ARCHITECT, OWNER and CONTRACTOR. SUBCONTRACTOR further agrees to provide protection as is necessary to protect the work and workmen of the CONTRACTOR and other subcontractors from his operations. Subcontractor shall be liable for any loss or damage to any work in place or to any equipment and materials on the job site caused by him or his agents, employees or guests. CONTRACTOR will provide an onsite secure lay down area for the SUBCONTRACTOR to store their materials. CONTRACTOR will protect against 3rd party damage to the material.

29. LIENS: SUBCONTRACTOR shall at all times indemnify and save CONTRACTOR and OWNER harmless against all liability for claims and liens for labor performed or materials used or furnished to be used on the job, including any costs and expenses for attorney's fees and all incidental or consequential damages resulting to CONTRACTOR or OWNER from such claims or liens. Further, in case suit on such claim is brought, SUBCONTRACTOR shall defend said suit at his own cost and expense, and will pay and satisfy any such lien or judgment as may be established by the decision of the court in said suit. SUBCONTRACTOR agrees within (10) days after written demand to cause the effect of any such suit or lien to be removed from the premises, and in the event SUBCONTRACTOR shall fail to do so, CONTRACTOR is authorized to use whatever means in its discretion it may deem appropriate to cause said lien or suit to be removed or dismissed and the cost thereof, together with reasonable attorney's fees, shall be immediately due and payable to CONTRACTOR by SUBCONTRACTOR. SUBCONTRACTOR may litigate any such lien or suit provided he causes the effect thereof to be removed, promptly in advance, from the premises, and shall further do such things as may be necessary to cause OWNER not to withhold any monies due to CONTRACTOR from OWNER by reason of such liens or suits.

It is understood and agreed that the full and faithful performance of this Agreement on the part of SUBCONTRACTOR (including the payment of any obligations due from SUBCONTRACTOR to CONTRACTOR, and any amounts, due to labor or materialmen furnishing labor or material for said work) is a condition precedent to SUBCONTRACTOR'S right to receive payment for the work performed, and any monies paid by CONTRACTOR to SUBCONTRACTOR under the terms of this Agreement shall be impressed with a trust in favor of labor and materialmen furnishing labor and material to SUBCONTRACTOR on the work herein sub-contracted.

30. BANKRUPTCY: If the CONTRACTOR or the SUBCONTRACTOR should become bankrupt or make an assignment for the benefit of creditors, the SUBCONTRACTOR, or his trustee in bankruptcy, shall be paid the reasonable value of all work theretofore performed, and the obligations of all parties under this subcontract shall thereupon terminate. In determining the reasonable value under this paragraph, the subcontract price shall be deemed to be reasonable.

31. NOTICES: Any notice required or permitted under this subcontract may be given by ordinary mail and\or e-mail at the addresses contained in this subcontract, but such address may be changed by written notice given by one party to other from time to time. Notice shall be deemed received in the ordinary course of the mail and\or e-mail.

32. BINDMENT: SUBCONTRACTOR shall be bound to CONTRACTOR to the same extent CONTRACTOR is bound to OWNER by all terms and provisions of the prime contract and be expressly bound by any provisions thereunder pertaining to SUBCONTRACTOR. It is expressly understood and agreed that the undersigned subcontractor, supplier or individual will not enter into any negotiations, discussions, contracts or other agreement directly with Contractor or Contractor's representatives that would in any way be in conflict with this agreement.

33. BACKCHARGES: CONTRACTOR may make claims for back charges for corrective work he reasonably thinks necessary on the condition that he so notifies SUBCONTRACTOR in writing by certified mail (confirmed fax or email will be acceptable as notice) and further on condition that SUBCONTRACTOR fails to commence said corrective work within forty-eight (48) hours after receipt of said notice.

34. LAW GOVERNING AND FORUM: This agreement shall be governed by and construed in accordance with the laws of the state of California, and any litigation or arbitration actions shall be conducted in the county of Orange, California.

35. LICENSE REQUIREMENTS: Subcontractor hereby represents and warrants to Contractor that it maintains a valid and current contractor license for the jurisdiction of the project with the governing State License Board, or other governing authority; and that it is properly licensed to perform the work under this Agreement. Subcontractor hereby expressly agrees and acknowledges that prior to performing any work, he has no right to commence any work without first providing such acceptable documentation to Contractor.

36. PLEASE READ AND INITIAL

If your company is contracted with BergmanKPRS, LLC to provide additional scopes for this project or any other project and fails to properly respond to a 48 hour notice provided, may be considered in violation of all active contracts with BergmanKPRS, LLC and subject to immediate cancellation.

Acknowledged_____ initial

Subcontractors Initials LB

Subcontract # 5316 - 001

BG 6/7/19

The following 'List of Exhibits is incorporated into this agreement by reference:

Exhibit "A"	- Scope of Work
Exhibit "C"	- Schedule
Exhibit "D"	- Plan Pages and Other Contract Documents
Exhibit "E"	- Subcontractor's Application for Payment
Exhibit "G1"	- Conditional Progress Release
Exhibit "G2"	- Unconditional Progress Release
Exhibit "G3"	- Conditional Final Release
Exhibit "G4"	- Unconditional Final Release
Exhibit "H"	- IRS Form ~~W-9~~ W-8 BEN
Exhibit "I"	- Insurance Requirements
Exhibit "J"	- Warranty Guarantee
Exhibit "K"	Whitewater proposal

Subcontractors Initials

Subcontract # 5316 - 001

Bergman KPRS National

EXHIBIT "E"

SUBCONTRACTOR'S APPLICATION FOR PAYMENT

Subcontractor: WhiteWater West Industries LTD.
Address: 6700 McMillan Way
Richmond, BC V6W 1J7 Canada

Date:
Phone #: 604.273.1068
Fax #: 604.273.4518

Application No.:
Sub Contract No. 5316 - 001
Project Name: Wild Rivers
BergmanKPRS Job No.: 5316

Period To:
Subcontract Date: 5/27/2019
Project Address: Marine Way @ Skyhawk
City/State: Irvine CA 92618

CERTIFICATE OF THE SUBCONTRACTOR / PROJECT SCHEDULE OF VALUES:

Contract Item	Description	Total Project Value	% Complete	Total this billing
1				
2				
3				
4				
5				
	Total			

1. Original Contract Amount $ $ 13,039,722.00
2. Approved Change Order Nos. _____ (As per attached breakdown) Net: $
3. Contract Sum to Date $
4. Value of Work Completed to Date $
5. Less Amount Retained (10%) 10 % $
6. Total Earned Less Retainage $
7. Less Previous Certificates for Payment $
8. Current Payment Due This Request: $
9. Balance to Finish (Including Retainage) $

CERTIFICATE OF THE SUBCONTRACTOR:

The undersigned Subcontractor certifies that to the best of the Subcontractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Subcontract Documents, that all amounts have been paid by the Subcontractor for Work which previous Certificates for Payment were issued and payments received from the Contractor, and that current payment shown herein is now due.

SUBCONTRACTOR:

Date: _____
State of _____
County of _____
Subscribed and worn to before me this day of

_____

Notary Public: _____
My Commission expires: _____

By: _____
Subcontractor

_____
Title

Bergman KPRS

National

Exhibit "I"

INSURANCE REQUIREMENTS

Subcontractor Insurance requirements are considered a part of your subcontract agreement; Evidence of Commercial General Liability, Automobile and Worker's Compensation Insurance coverage and required endorsements must be submitted as follows:

1. Evidence of commercial automobile liability insurance limited the subcontractors subcontractors, covering owned (Only in the case and as a condition of where SUBCONTRACTOR or its agents will bring owned autos to the site), hired car and non-owned automobiles with coverage of $1,000,000 combined single-limit bodily injury and property damage.
2. A certificate evidencing statutory workers' compensation coverage

General Liability Insurance Requirements

We require an A.M. Best Rating of 'A / XIII' or better general liability insurance carrier. The following documents must be submitted: a certificate of insurance, an additional insured endorsement, a primary / non-contributory endorsement, a waiver of subrogation endorsement as well as a 30-day cancellation notice.

Certificate of Insurance

The certificate of insurance must indicate the following:

1. Insured: Legal Business Name as listed on the subcontractor agreement.
2. Certificate Holder/Additional Insured : BergmanKPRS LLC
3. Comprehensive General Liability (occurrence only-claims made and/or modified occurrence will not be accepted) for at least $1,000,000 combined single limit for bodily injury and/or property damage liability including:
   - (a) Manufacturers and Contractors basic coverage with X, C and U exclusions deleted;
   - (b) Premises operations, products/completed operations, hazard, contractual insurance, independent contractors and personal injury;
   - (c) Contractors protective coverage;
   - (d) Full blanket contractual coverage; and
   - (e) Broad form property damage coverage (including completed operations)
4. Description of Operations to State;

   'ALL RELATED PROJECTS WHERE SUBCONTRACTOR PERFORMS WORK'.

Additional Insured Endorsement

The policy number and name of the insured must be printed on this endorsement. The following names should be included on a 'FORM B' CG20 101185 Additional Insured Endorsement;

BergmanKPRS

Primary / Non-Contributory Endorsement

The Policy Number and Name of the Insured must be printed on this endorsement. This endorsement provides that; The insurance afforded by this policy for the benefit of the additional insured shown below, shall be primary insurance but, only with respect to any claims loss or liability arising out of the operations of the named insured, and any insurance maintained by the additional insured shall be non-contributory.

30-Day Amended Cancellation Notice

We require a 30-Day Written Notice of Cancellation. The policy number and name of the insured must be printed on this endorsement. This endorsement provides that;

Should any of the above described policies be canceled before the expiration date thereof, the issuing company will notify the named additional insured in writing, by mail, a 30 day notice prior to cancellation of the insurance.

Please be aware that once under contract, failure to maintain insurance requirements constitutes a breach of contract and may result in a halt on the processing of work agreements and payments, or a cessation of work until any and all insurance deficiencies treated as breaches of contract are resolved.

EXHIBIT "1"

Insurance Provided

Commercial General Liability policy written on ISO Commercial General Liability Form CG 0001 0413 issued by Liberty Mutual Insurance Company (A rating A.M. Best Co and Standard & Poor's)

Policy aggregate limits.

• General Aggregate	$2,000,000
• Products and Completed Operations Aggregate	$2,000,000
• Personal and Advertising Injury	$2,000,000
• Damage to Rented Premises	$2,000,000
• Each Occurrence	$2,000,000
• Medical Expense Limit – Each Person	$10,000
• Medical Expense Limit – Each Accident	$25,000
• Non-Owned Automobile Liability	$2,000,000

- This policy provides coverage for loss or damage arising out of the use or operation of any automobile that is not owned or that is hired, resulting from bodily injury or property damage

- Professional services that are an integral part of other work performed by or on behalf of the Insured or are incidental to the manufacture, installation, sale, handling or distribution of the Insured's products.

- All entities where required by written contract with the Named Insured and to whom a certificate of insurance has been issued to are added as Additional Insured but only with respect to liability arising out of the operations of the Named Insured.

- Commercial general Liability is Primary and Non-Contributory and includes Contractual Liability and a Waiver of Subrogation where required by written contract.

Workers' compensation and Employers' Liability policy issued by Liberty Mutual Insurance Group

• Workers' Compensation	Statutory limit
• Employers' Liability – Bodily Injury by Accident, Each Accident	$1,000,000
• Employers' Liability – Bodily Injury by Disease, Each Employee	$1,000,000
• Employers' Liability – Bodily Injury by Disease, Policy Limit	$1,000,000
• US Longshoreman and Harbor Workers' Compensation Act	$1,000,000

- Stop gap employers' liability in monopolistic states (ND, OH, WA and WY)
- Waiver of Subrogation where required by written contract with the Insured
- Experience modification 0.79 except California 0.83

Umbrella Additional aggregate limits to Commercial General Liability and Employer's Liability policies

• Aggregate	$8,000,000
• Each Occurrence	$8,000,000

Should one of the above-noted policies be cancelled before their expiry date, the insurer will endeavor to provide 30 days written notice to the certificate holder.

LB

SAMPLE

ACORD®

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 11/27/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER

BFL CANADA Insurance Services Inc.
Suite 200 - 1177 West Hastings Street
Vancouver, BC V6E 2K3

CONTACT NAME: George Lagaditis
PHONE (A/C, No, Ext): 604-678-5447 FAX (A/C, No): 604-683-9316
E-MAIL ADDRESS: glagadilis@bflcanada.ca

INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A :	Liberty Mutual Insurance Company	
INSURER B :	Arch Insurance Canada Ltd.	
INSURER C :		
INSURER D :		
INSURER E :		
INSURER F :		

INSURED

Whitewater West Industries Inc. a/o FlowRider Inc.
a/o Whitewater West Industries Ltd.
6700 McMillan Way
Richmond, BC V6W 1J7

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: X POLICY PRO-JECT LOC OTHER:			TB1-B71-170574-018 / 1000122366-12	11/30/2018	11/30/2019	EACH OCCURRENCE	$ 2,000,000 USD
							DAMAGE TO RENTED PREMISES (Ea occurrence)	$
							MED EXP (Any one person)	$
							PERSONAL & ADV INJURY	$
							GENERAL AGGREGATE	$ 2,000,000 USD
							PRODUCTS - COMP/OP AGG	$ 2,000,000 USD
							Non-Owned Automobile Liability	$ 2,000,000 USD
	AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident)	$
							BODILY INJURY (Per person)	$
							BODILY INJURY (Per accident)	$
							PROPERTY DAMAGE (Per accident)	$
								$
A	X UMBRELLA LIAB X OCCUR EXCESS LIAB CLAIMS-MADE DED RETENTION $			1000047349-12	11/30/2018	11/30/2019	EACH OCCURRENCE	$ 5,000,000 USD
							AGGREGATE - GENERAL	$ 5,000,000 USD
								$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y / N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N / A					PER STATUTE OTH-ER	
							E.L. EACH ACCIDENT	$
							E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$
B	Excess Liability (Occurence Based Policy)			UFP 0060828-01	11/30/2018	11/30/2019	$3,000,000 USD Each Occurrence and in the Aggregate in Excess of the underlying Umbrella Liability Limits	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

To Whom It May Concern

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

BFL CANADA Insurance Services Inc.

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HB

SAMPLE

ACORD®

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 07/30/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER

Liberty Mutual Insurance
175 Berkeley Street
Boston, MA 02116

CONTACT NAME: Amy Mehta
PHONE (A/C, No, Ext): 416-307-4664 FAX (A/C, No):
E-MAIL ADDRESS: amy.mehta@libertyiu.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Employers Insurance Company of Wausau	
INSURER B :	
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED

Whitewater West Industries Inc.
a/o Whitewater West Industries Ltd.; a/o FlowRider Inc.
9250 East Costilla Avenue, Suite 500B
Greenwood Village, CO 80112

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	$
	CLAIMS-MADE / OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$
							MED EXP (Any one person)	$
							PERSONAL & ADV INJURY	$
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$
	POLICY / PRO-JECT / LOC						PRODUCTS - COMP/OP AGG	$
	OTHER:							$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	ANY AUTO						BODILY INJURY (Per person)	$
	ALL OWNED AUTOS / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS / NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	$
								$
	UMBRELLA LIAB / OCCUR						EACH OCCURRENCE	$
	EXCESS LIAB / CLAIMS-MADE						AGGREGATE	$
	DED / RETENTION $							$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N / A		WCC-B71-170574-028	07/31/2018	07/31/2019	X PER STATUTE / OTH-ER	
							E.L. EACH ACCIDENT	$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE	$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Workers Compensation includes coverage for all states of the USA, excluding Monopolistic states.

Employers Liability includes coverage for all states of the USA.

CERTIFICATE HOLDER

To Whom It May Concern

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

For US Workers' Compensation Only

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(THIS DOCUMENT IS TO BE COPIED ONTO SUBCONTRACTORS LETTERHEAD SIGNED, AND RETURNED WITH EXECUTED SUBCONTRACTOR AGREEMENT)

Exhibit "J"

SUBCONTRACTOR WARRANTY/GUARANTEE

Project Name:	Wild Rivers	Date:	
Job #:	5316	Sub Contractor:	WhiteWater West Industries LTD.
Address:	Marine Way @ Skyhawk	Address:	6700 McMillan Way
City/State:	Irvine CA 92618	City/State:	Richmond, BC V6W 1J7 Canada
Job Site Phone #:	TBD	Phone #:	604.273.1068
Job Site Fax #:	TBD	Fax #:	604.273.4518
Superintendent:	TBD		
Project Manager:	David Bergman		

Subcontract Date 5/27/2019 **Completion Date** _____ **Date of Warranty** _____

Subcontractor signing below warrants to General Contractor and Owner that all materials and equipment furnished under said Subcontract Agreement will be new unless otherwise specified. All work will be of good quality, free from defects of any kind and in strict conformance with the requirements of the Project Documents and the Subcontract Agreement. All work not conforming to these requirements of the Project Documents may be considered defective. The Subcontractor hereby warrants to Contractor that for a period of one (1) year following the date upon which final payment of the Contract Price is made hereunder. Subcontractor agrees to repair or replace any or all work together with any work or property which may be displaced, damaged or marred in so doing, which is considered defective as herein above provided in materials or workmanship of expense to Owner, ordinary wear and tear expected. The warranty given herein by the Subcontractor is in addition to any other warranties that may be available to Owner from a manufacturer or otherwise. It shall not be construed to modify or limit, in any way, any rights or actions that the Owner may otherwise have against the Contractor by law or statute, or in equity. Subcontractor shall supply to Owner, prior to final payment hereunder, all manufacturer warranties, owner's manuals, or instruction booklets on materials or equipment installed under Subcontractor's 'Scope of Work'. The Subcontractor warrants that title to all work will pass to the Owner upon the earlier of its incorporation in the Project or the completion of the work.

In the event of our failure to comply with the above mentioned conditions within a reasonable time as determined by the Owner and after being notified in writing, we, the undersigned, do hereby authorize the Owner to have said defects, repairs and /or replacements made good. Further, we will refund to the Owner on demand all costs and charges therefore, including all collection costs and reasonable attorney's fees.

_____ Date

WhiteWater West Industries LTD.
Subcontractor

By: _____

Signature: _____
Title: _____
State License No.: _____

Subcontractors Initials _____

Subcontract # 5316 - 001

Rev 07/20/11

EXHIBIT "H"

Form **W-8BEN-E**

(Rev. July 2017)
Department of the Treasury
Internal Revenue Service

Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities)

▶ For use by entities. Individuals must use Form W-8BEN. ▶ Section references are to the Internal Revenue Code.
▶ Go to *www.irs.gov/FormW8BENE* for instructions and the latest information.
▶ Give this form to the withholding agent or payer. Do not send to the IRS.

OMB No. 1545-1621

Do NOT use this form for:	Instead use Form:
• U.S. entity or U.S. citizen or resident	W-9
• A foreign individual	W-8BEN (Individual) or Form 8233
• A foreign individual or entity claiming that income is effectively connected with the conduct of trade or business within the U.S. (unless claiming treaty benefits)	W-8ECI
• A foreign partnership, a foreign simple trust, or a foreign grantor trust (unless claiming treaty benefits) (see instructions for exceptions)	W-8IMY
• A foreign government, international organization, foreign central bank of issue, foreign tax-exempt organization, foreign private foundation, or government of a U.S. possession claiming that income is effectively connected U.S. income or that is claiming the applicability of section(s) 115(2), 501(c), 892, 895, or 1443(b) (unless claiming treaty benefits) (see instructions for other exceptions)	W-8ECI or W-8EXP
• Any person acting as an intermediary (including a qualified intermediary acting as a qualified derivatives dealer)	W-8IMY

Part I Identification of Beneficial Owner

1 Name of organization that is the beneficial owner
Whitewater West Industries Ltd

2 Country of incorporation or organization
Canada

3 Name of disregarded entity receiving the payment (if applicable, see instructions)

4 Chapter 3 Status (entity type) (Must check one box only):
☑ Corporation ☐ Disregarded entity ☐ Partnership
☐ Simple trust ☐ Grantor trust ☐ Complex trust ☐ Estate ☐ Government
☐ Central Bank of Issue ☐ Tax-exempt organization ☐ Private foundation ☐ International organization

If you entered disregarded entity, partnership, simple trust, or grantor trust above, is the entity a hybrid making a treaty claim? If "Yes" complete Part III. ☐ Yes ☐ No

5 Chapter 4 Status (FATCA status) (See instructions for details and complete the certification below for the entity's applicable status.)

☐ Nonparticipating FFI (including an FFI related to a Reporting IGA FFI other than a deemed-compliant FFI, participating FFI, or exempt beneficial owner).
☐ Participating FFI.
☐ Reporting Model 1 FFI.
☐ Reporting Model 2 FFI.
☐ Registered deemed-compliant FFI (other than a reporting Model 1 FFI, sponsored FFI, or nonreporting IGA FFI covered in Part XII). See instructions.
☐ Sponsored FFI. Complete Part IV.
☐ Certified deemed-compliant nonregistering local bank. Complete Part V.
☐ Certified deemed-compliant FFI with only low-value accounts. Complete Part VI.
☐ Certified deemed-compliant sponsored, closely held investment vehicle. Complete Part VII.
☐ Certified deemed-compliant limited life debt investment entity. Complete Part VIII.
☐ Certain investment entities that do not maintain financial accounts. Complete Part IX.
☐ Owner-documented FFI. Complete Part X.
☐ Restricted distributor. Complete Part XI.
☐ Nonreporting IGA FFI. Complete Part XII.
☐ Foreign government, government of a U.S. possession, or foreign central bank of issue. Complete Part XIII.
☐ International organization. Complete Part XIV.
☐ Exempt retirement plans. Complete Part XV.
☐ Entity wholly owned by exempt beneficial owners. Complete Part XVI.
☐ Territory financial institution. Complete Part XVII.
☐ Excepted nonfinancial group entity. Complete Part XVIII.
☐ Excepted nonfinancial start-up company. Complete Part XIX.
☐ Excepted nonfinancial entity in liquidation or bankruptcy. Complete Part XX.
☐ 501(c) organization. Complete Part XXI.
☐ Nonprofit organization. Complete Part XXII.
☐ Publicly traded NFFE or NFFE affiliate of a publicly traded corporation. Complete Part XXIII.
☐ Excepted territory NFFE. Complete Part XXIV.
☑ Active NFFE. Complete Part XXV.
☐ Passive NFFE. Complete Part XXVI.
☐ Excepted inter-affiliate FFI. Complete Part XXVII.
☐ Direct reporting NFFE.
☐ Sponsored direct reporting NFFE. Complete Part XXVIII.
☐ Account that is not a financial account.

6 Permanent residence address (street, apt. or suite no., or rural route). Do not use a P.O. box or in-care-of address (other than a registered address).
6700 McMillan Way

City or town, state or province. Include postal code where appropriate.
Richmond, BC V6W 1J7

Country
Canada

7 Mailing address (if different from above)

City or town, state or province. Include postal code where appropriate.

Country

8 U.S. taxpayer identification number (TIN), if required
98-0126754

9a GIIN

b Foreign TIN

10 Reference number(s) (see instructions)

Note: Please complete remainder of the form including signing the form in Part XXX.

For Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 59689N Form **W-8BEN-E** (Rev. 7-2017)

Part II Disregarded Entity or Branch Receiving Payment. (Complete only if a disregarded entity with a GIIN or a branch of an FFI in a country other than the FFI's country of residence. See instructions.)

11 Chapter 4 Status (FATCA status) of disregarded entity or branch receiving payment

☐ Branch treated as nonparticipating FFI. ☐ Reporting Model 1 FFI. ☐ U.S. Branch.

☐ Participating FFI. ☐ Reporting Model 2 FFI.

12 Address of disregarded entity or branch (street, apt. or suite no., or rural route). **Do not use a P.O. box or in-care-of address** (other than a registered address).

City or town, state or province. Include postal code where appropriate.

Country

13 GIIN (if any)

Part III Claim of Tax Treaty Benefits (if applicable). (For chapter 3 purposes only.)

14 I certify that (check all that apply):

a ☑ The beneficial owner is a resident of Canada within the meaning of the income tax treaty between the United States and that country.

b ☐ The beneficial owner derives the item (or items) of income for which the treaty benefits are claimed, and, if applicable, meets the requirements of the treaty provision dealing with limitation on benefits. The following are types of limitation on benefits provisions that may be included in an applicable tax treaty (check only one; see instructions):

☐ Government
☐ Tax exempt pension trust or pension fund
☐ Other tax exempt organization
☐ Publicly traded corporation
☐ Subsidiary of a publicly traded corporation
☐ Company that meets the ownership and base erosion test
☐ Company that meets the derivative benefits test
☑ Company with an item of income that meets active trade or business test
☐ Favorable discretionary determination by the U.S. competent authority received
☐ Other (specify Article and paragraph):

c ☐ The beneficial owner is claiming treaty benefits for U.S. source dividends received from a foreign corporation or interest from a U.S. trade or business of a foreign corporation and meets qualified resident status (see instructions).

15 **Special rates and conditions** (if applicable—see instructions):
The beneficial owner is claiming the provisions of Article and paragraph Article vii (4)
of the treaty identified on line 14a above to claim a 0 % rate of withholding on (specify type of income):
Explain the additional conditions in the Article the beneficial owner meets to be eligible for the rate of withholding:

Part IV Sponsored FFI

16 Name of sponsoring entity:

17 **Check whichever box applies.**

☐ I certify that the entity identified in Part I:

- Is an investment entity;
- Is not a QI, WP (except to the extent permitted in the withholding foreign partnership agreement), or WT; and
- Has agreed with the entity identified above (that is not a nonparticipating FFI) to act as the sponsoring entity for this entity.

☐ I certify that the entity identified in Part I:

- Is a controlled foreign corporation as defined in section 957(a);
- Is not a QI, WP, or WT;
- Is wholly owned, directly or indirectly, by the U.S. financial institution identified above that agrees to act as the sponsoring entity for this entity; and
- Shares a common electronic account system with the sponsoring entity (identified above) that enables the sponsoring entity to identify all account holders and payees of the entity and to access all account and customer information maintained by the entity including, but not limited to, customer identification information, customer documentation, account balance, and all payments made to account holders or payees.

16

Part V Certified Deemed-Compliant Nonregistering Local Bank

18 ☐ I certify that the FFI identified in Part I:

- Operates and is licensed solely as a bank or credit union (or similar cooperative credit organization operated without profit) in its country of incorporation or organization;
- Engages primarily in the business of receiving deposits from and making loans to, with respect to a bank, retail customers unrelated to such bank and, with respect to a credit union or similar cooperative credit organization, members, provided that no member has a greater than 5% interest in such credit union or cooperative credit organization;
- Does not solicit account holders outside its country of organization;
- Has no fixed place of business outside such country (for this purpose, a fixed place of business does not include a location that is not advertised to the public and from which the FFI performs solely administrative support functions);
- Has no more than $175 million in assets on its balance sheet and, if it is a member of an expanded affiliated group, the group has no more than $500 million in total assets on its consolidated or combined balance sheets; and
- Does not have any member of its expanded affiliated group that is a foreign financial institution, other than a foreign financial institution that is incorporated or organized in the same country as the FFI identified in Part I and that meets the requirements set forth in this part.

Part VI Certified Deemed-Compliant FFI with Only Low-Value Accounts

19 ☐ I certify that the FFI identified in Part I:

- Is not engaged primarily in the business of investing, reinvesting, or trading in securities, partnership interests, commodities, notional principal contracts, insurance or annuity contracts, or any interest (including a futures or forward contract or option) in such security, partnership interest, commodity, notional principal contract, insurance contract or annuity contract;
- No financial account maintained by the FFI or any member of its expanded affiliated group, if any, has a balance or value in excess of $50,000 (as determined after applying applicable account aggregation rules); and
- Neither the FFI nor the entire expanded affiliated group, if any, of the FFI, have more than $50 million in assets on its consolidated or combined balance sheet as of the end of its most recent accounting year.

Part VII Certified Deemed-Compliant Sponsored, Closely Held Investment Vehicle

20 Name of sponsoring entity: _____

21 ☐ I certify that the entity identified in Part I:

- Is an FFI solely because it is an investment entity described in Regulations section 1.1471-5(e)(4);
- Is not a QI, WP, or WT;
- Will have all of its due diligence, withholding, and reporting responsibilities (determined as if the FFI were a participating FFI) fulfilled by the sponsoring entity identified on line 20; and
- 20 or fewer individuals own all of the debt and equity interests in the entity (disregarding debt interests owned by U.S. financial institutions, participating FFIs, registered deemed-compliant FFIs, and certified deemed-compliant FFIs and equity interests owned by an entity if that entity owns 100% of the equity interests in the FFI and is itself a sponsored FFI).

Part VIII Certified Deemed-Compliant Limited Life Debt Investment Entity

22 ☐ I certify that the entity identified in Part I:

- Was in existence as of January 17, 2013;
- Issued all classes of its debt or equity interests to investors on or before January 17, 2013, pursuant to a trust indenture or similar agreement; and
- Is certified deemed-compliant because it satisfies the requirements to be treated as a limited life debt investment entity (such as the restrictions with respect to its assets and other requirements under Regulations section 1.1471-5(f)(2)(iv)).

Part IX Certain Investment Entities that Do Not Maintain Financial Accounts

23 ☐ I certify that the entity identified in Part I:

- Is a financial institution solely because it is an investment entity described in Regulations section 1.1471-5(e)(4)(i)(A), and
- Does not maintain financial accounts.

Part X Owner-Documented FFI

Note: This status only applies if the U.S. financial institution, participating FFI, or reporting Model 1 FFI to which this form is given has agreed that it will treat the FFI as an owner-documented FFI (see instructions for eligibility requirements). In addition, the FFI must make the certifications below.

24a ☐ (All owner-documented FFIs check here) I certify that the FFI identified in Part I:

- Does not act as an intermediary;
- Does not accept deposits in the ordinary course of a banking or similar business;
- Does not hold, as a substantial portion of its business, financial assets for the account of others;
- Is not an insurance company (or the holding company of an insurance company) that issues or is obligated to make payments with respect to a financial account;
- Is not owned by or in an expanded affiliated group with an entity that accepts deposits in the ordinary course of a banking or similar business, holds, as a substantial portion of its business, financial assets for the account of others, or is an insurance company (or the holding company of an insurance company) that issues or is obligated to make payments with respect to a financial account;
- Does not maintain a financial account for any nonparticipating FFI; and
- Does not have any specified U.S. persons that own an equity interest or debt interest (other than a debt interest that is not a financial account or that has a balance or value not exceeding $50,000) in the FFI other than those identified on the FFI owner reporting statement.

Part X Owner-Documented FFI *(continued)*

Check box 24b or 24c, whichever applies.

b ☐ I certify that the FFI identified in Part I:

- Has provided, or will provide, an FFI owner reporting statement that contains:
  - (i) The name, address, TIN (if any), chapter 4 status, and type of documentation provided (if required) of every individual and specified U.S. person that owns a direct or indirect equity interest in the owner-documented FFI (looking through all entities other than specified U.S. persons);
  - (ii) The name, address, TIN (if any), and chapter 4 status of every individual and specified U.S. person that owns a debt interest in the owner-documented FFI (including any indirect debt interest, which includes debt interests in any entity that directly or indirectly owns the payee or any direct or indirect equity interest in a debt holder of the payee) that constitutes a financial account in excess of $50,000 (disregarding all such debt interests owned by participating FFIs, registered deemed-compliant FFIs, certified deemed-compliant FFIs, excepted NFFEs, exempt beneficial owners, or U.S. persons other than specified U.S. persons); and
  - (iii) Any additional information the withholding agent requests in order to fulfill its obligations with respect to the entity.
- Has provided, or will provide, valid documentation meeting the requirements of Regulations section 1.1471-3(d)(6)(iii) for each person identified in the FFI owner reporting statement.

c ☐ I certify that the FFI identified in Part I has provided, or will provide, an auditor's letter, signed within 4 years of the date of payment, from an independent accounting firm or legal representative with a location in the United States stating that the firm or representative has reviewed the FFI's documentation with respect to all of its owners and debt holders identified in Regulations section 1.1471-3(d)(6)(iv)(A)(2), and that the FFI meets all the requirements to be an owner-documented FFI. The FFI identified in Part I has also provided, or will provide, an FFI owner reporting statement of its owners that are specified U.S. persons and Form(s) W-9, with applicable waivers.

Check box 24d if applicable (optional, see instructions).

d ☐ I certify that the entity identified on line 1 is a trust that does not have any contingent beneficiaries or designated classes with unidentified beneficiaries.

Part XI Restricted Distributor

25a ☐ (All restricted distributors check here) I certify that the entity identified in Part I:

- Operates as a distributor with respect to debt or equity interests of the restricted fund with respect to which this form is furnished;
- Provides investment services to at least 30 customers unrelated to each other and less than half of its customers are related to each other;
- Is required to perform AML due diligence procedures under the anti-money laundering laws of its country of organization (which is an FATF-compliant jurisdiction);
- Operates solely in its country of incorporation or organization, has no fixed place of business outside of that country, and has the same country of incorporation or organization as all members of its affiliated group, if any;
- Does not solicit customers outside its country of incorporation or organization;
- Has no more than $175 million in total assets under management and no more than $7 million in gross revenue on its income statement for the most recent accounting year;
- Is not a member of an expanded affiliated group that has more than $500 million in total assets under management or more than $20 million in gross revenue for its most recent accounting year on a combined or consolidated income statement; and
- Does not distribute any debt or securities of the restricted fund to specified U.S. persons, passive NFFEs with one or more substantial U.S. owners, or nonparticipating FFIs.

Check box 25b or 25c, whichever applies.

I further certify that with respect to all sales of debt or equity interests in the restricted fund with respect to which this form is furnished that are made after December 31, 2011, the entity identified in Part I:

b ☐ Has been bound by a distribution agreement that contained a general prohibition on the sale of debt or securities to U.S. entities and U.S. resident individuals and is currently bound by a distribution agreement that contains a prohibition of the sale of debt or securities to any specified U.S. person, passive NFFE with one or more substantial U.S. owners, or nonparticipating FFI.

c ☐ Is currently bound by a distribution agreement that contains a prohibition on the sale of debt or securities to any specified U.S. person, passive NFFE with one or more substantial U.S. owners, or nonparticipating FFI and, for all sales made prior to the time that such a restriction was included in its distribution agreement, has reviewed all accounts related to such sales in accordance with the procedures identified in Regulations section 1.1471-4(c) applicable to preexisting accounts and has redeemed or retired any, or caused the restricted fund to transfer the securities to a distributor that is a participating FFI or reporting Model 1 FFI securities which were sold to specified U.S. persons, passive NFFEs with one or more substantial U.S. owners, or nonparticipating FFIs.

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Part XII Nonreporting IGA FFI

26 ☐ I certify that the entity identified in Part I:

- Meets the requirements to be considered a nonreporting financial institution pursuant to an applicable IGA between the United States and _____. The applicable IGA is a ☐ Model 1 IGA or a ☐ Model 2 IGA; and is treated as a _____ under the provisions of the applicable IGA or Treasury regulations (if applicable, see instructions);
- If you are a trustee documented trust or a sponsored entity, provide the name of the trustee or sponsor _____. The trustee is: ☐ U.S. ☐ Foreign

Part XIII Foreign Government, Government of a U.S. Possession, or Foreign Central Bank of Issue

27 ☐ I certify that the entity identified in Part I is the beneficial owner of the payment, and is not engaged in commercial financial activities of a type engaged in by an insurance company, custodial institution, or depository institution with respect to the payments, accounts, or obligations for which this form is submitted (except as permitted in Regulations section 1.1471-6(h)(2)).

Part XIV International Organization

Check box 28a or 28b, whichever applies.

28a ☐ I certify that the entity identified in Part I is an international organization described in section 7701(a)(18).

b ☐ I certify that the entity identified in Part I:

- Is comprised primarily of foreign governments;
- Is recognized as an intergovernmental or supranational organization under a foreign law similar to the International Organizations Immunities Act or that has in effect a headquarters agreement with a foreign government;
- The benefit of the entity's income does not inure to any private person; and
- Is the beneficial owner of the payment and is not engaged in commercial financial activities of a type engaged in by an insurance company, custodial institution, or depository institution with respect to the payments, accounts, or obligations for which this form is submitted (except as permitted in Regulations section 1.1471-6(h)(2)).

Part XV Exempt Retirement Plans

Check box 29a, b, c, d, e, or f, whichever applies.

29a ☐ I certify that the entity identified in Part I:

- Is established in a country with which the United States has an income tax treaty in force (see Part III if claiming treaty benefits);
- Is operated principally to administer or provide pension or retirement benefits; and
- Is entitled to treaty benefits on income that the fund derives from U.S. sources (or would be entitled to benefits if it derived any such income) as a resident of the other country which satisfies any applicable limitation on benefits requirement.

b ☐ I certify that the entity identified in Part I:

- Is organized for the provision of retirement, disability, or death benefits (or any combination thereof) to beneficiaries that are former employees of one or more employers in consideration for services rendered;
- No single beneficiary has a right to more than 5% of the FFI's assets;
- Is subject to government regulation and provides annual information reporting about its beneficiaries to the relevant tax authorities in the country in which the fund is established or operated; and

(i) Is generally exempt from tax on investment income under the laws of the country in which it is established or operates due to its status as a retirement or pension plan;

(ii) Receives at least 50% of its total contributions from sponsoring employers (disregarding transfers of assets from other plans described in this part, retirement and pension accounts described in an applicable Model 1 or Model 2 IGA, other retirement funds described in an applicable Model 1 or Model 2 IGA, or accounts described in Regulations section 1.1471-5(b)(2)(i)(A));

(iii) Either does not permit or penalizes distributions or withdrawals made before the occurrence of specified events related to retirement, disability, or death (except rollover distributions to accounts described in Regulations section 1.1471-5(b)(2)(i)(A) (referring to retirement and pension accounts), to retirement and pension accounts described in an applicable Model 1 or Model 2 IGA, or to other retirement funds described in this part or in an applicable Model 1 or Model 2 IGA); or

(iv) Limits contributions by employees to the fund by reference to earned income of the employee or may not exceed $50,000 annually.

c ☐ I certify that the entity identified in Part I:

- Is organized for the provision of retirement, disability, or death benefits (or any combination thereof) to beneficiaries that are former employees of one or more employers in consideration for services rendered;
- Has fewer than 50 participants;
- Is sponsored by one or more employers each of which is not an investment entity or passive NFFE;
- Employee and employer contributions to the fund (disregarding transfers of assets from other plans described in this part, retirement and pension accounts described in an applicable Model 1 or Model 2 IGA, or accounts described in Regulations section 1.1471-5(b)(2)(i)(A)) are limited by reference to earned income and compensation of the employee, respectively;
- Participants that are not residents of the country in which the fund is established or operated are not entitled to more than 20% of the fund's assets; and
- Is subject to government regulation and provides annual information reporting about its beneficiaries to the relevant tax authorities in the country in which the fund is established or operates.

Part XV Exempt Retirement Plans *(continued)*

d ☐ I certify that the entity identified in Part I is formed pursuant to a pension plan that would meet the requirements of section 401(a), other than the requirement that the plan be funded by a trust created or organized in the United States.

e ☐ I certify that the entity identified in Part I is established exclusively to earn income for the benefit of one or more retirement funds described in this part or in an applicable Model 1 or Model 2 IGA, or accounts described in Regulations section 1.1471-5(b)(2)(i)(A) (referring to retirement and pension accounts), or retirement and pension accounts described in an applicable Model 1 or Model 2 IGA.

f ☐ I certify that the entity identified in Part I:

- Is established and sponsored by a foreign government, international organization, central bank of issue, or government of a U.S. possession (each as defined in Regulations section 1.1471-6) or an exempt beneficial owner described in an applicable Model 1 or Model 2 IGA to provide retirement, disability, or death benefits to beneficiaries or participants that are current or former employees of the sponsor (or persons designated by such employees); or

- Is established and sponsored by a foreign government, international organization, central bank of issue, or government of a U.S. possession (each as defined in Regulations section 1.1471-6) or an exempt beneficial owner described in an applicable Model 1 or Model 2 IGA to provide retirement, disability, or death benefits to beneficiaries or participants that are not current or former employees of such sponsor, but are in consideration of personal services performed for the sponsor.

Part XVI Entity Wholly Owned by Exempt Beneficial Owners

30 ☐ I certify that the entity identified in Part I:

- Is an FFI solely because it is an investment entity;
- Each direct holder of an equity interest in the investment entity is an exempt beneficial owner described in Regulations section 1.1471-6 or in an applicable Model 1 or Model 2 IGA;
- Each direct holder of a debt interest in the investment entity is either a depository institution (with respect to a loan made to such entity) or an exempt beneficial owner described in Regulations section 1.1471-6 or an applicable Model 1 or Model 2 IGA.
- Has provided an owner reporting statement that contains the name, address, TIN (if any), chapter 4 status, and a description of the type of documentation provided to the withholding agent for every person that owns a debt interest constituting a financial account or direct equity interest in the entity; and
- Has provided documentation establishing that every owner of the entity is an entity described in Regulations section 1.1471-6(b), (c), (d), (e), (f) and/or (g) without regard to whether such owners are beneficial owners.

Part XVII Territory Financial Institution

31 ☐ I certify that the entity identified in Part I is a financial institution (other than an investment entity) that is incorporated or organized under the laws of a possession of the United States.

Part XVIII Excepted Nonfinancial Group Entity

32 ☐ I certify that the entity identified in Part I:

- Is a holding company, treasury center, or captive finance company and substantially all of the entity's activities are functions described in Regulations section 1.1471-5(e)(5)(i)(C) through (E);
- Is a member of a nonfinancial group described in Regulations section 1.1471-5(e)(5)(i)(B);
- Is not a depository or custodial institution (other than for members of the entity's expanded affiliated group); and
- Does not function (or hold itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle with an investment strategy to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes.

Part XIX Excepted Nonfinancial Start-Up Company

33 ☐ I certify that the entity identified in Part I:

- Was formed on (or, in the case of a new line of business, the date of board resolution approving the new line of business) _____ (date must be less than 24 months prior to date of payment);
- Is not yet operating a business and has no prior operating history or is investing capital in assets with the intent to operate a new line of business other than that of a financial institution or passive NFFE;
- Is investing capital into assets with the intent to operate a business other than that of a financial institution; and
- Does not function (or hold itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes.

Part XX Excepted Nonfinancial Entity in Liquidation or Bankruptcy

34 ☐ I certify that the entity identified in Part I:

- Filed a plan of liquidation, filed a plan of reorganization, or filed for bankruptcy on _____;
- During the past 5 years has not been engaged in business as a financial institution or acted as a passive NFFE;
- Is either liquidating or emerging from a reorganization or bankruptcy with the intent to continue or recommence operations as a nonfinancial entity; and
- Has, or will provide, documentary evidence such as a bankruptcy filing or other public documentation that supports its claim if it remains in bankruptcy or liquidation for more than 3 years.

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Part XXI 501(c) Organization

35 ☐ I certify that the entity identified in Part I is a 501(c) organization that:

- Has been issued a determination letter from the IRS that is currently in effect concluding that the payee is a section 501(c) organization that is dated _____; or
- Has provided a copy of an opinion from U.S. counsel certifying that the payee is a section 501(c) organization (without regard to whether the payee is a foreign private foundation).

Part XXII Nonprofit Organization

36 ☐ I certify that the entity identified in Part I is a nonprofit organization that meets the following requirements.

- The entity is established and maintained in its country of residence exclusively for religious, charitable, scientific, artistic, cultural or educational purposes;
- The entity is exempt from income tax in its country of residence;
- The entity has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
- Neither the applicable laws of the entity's country of residence nor the entity's formation documents permit any income or assets of the entity to be distributed to, or applied for the benefit of, a private person or noncharitable entity other than pursuant to the conduct of the entity's charitable activities or as payment of reasonable compensation for services rendered or payment representing the fair market value of property which the entity has purchased; and
- The applicable laws of the entity's country of residence or the entity's formation documents require that, upon the entity's liquidation or dissolution, all of its assets be distributed to an entity that is a foreign government, an integral part of a foreign government, a controlled entity of a foreign government, or another organization that is described in this part or escheats to the government of the entity's country of residence or any political subdivision thereof.

Part XXIII Publicly Traded NFFE or NFFE Affiliate of a Publicly Traded Corporation

Check box 37a or 37b, whichever applies.

37a ☐ I certify that:

- The entity identified in Part I is a foreign corporation that is not a financial institution; and
- The stock of such corporation is regularly traded on one or more established securities markets, including _____ (name one securities exchange upon which the stock is regularly traded).

b ☐ I certify that:

- The entity identified in Part I is a foreign corporation that is not a financial institution;
- The entity identified in Part I is a member of the same expanded affiliated group as an entity the stock of which is regularly traded on an established securities market;
- The name of the entity, the stock of which is regularly traded on an established securities market, is _____; and
- The name of the securities market on which the stock is regularly traded is _____.

Part XXIV Excepted Territory NFFE

38 ☐ I certify that:

- The entity identified in Part I is an entity that is organized in a possession of the United States;
- The entity identified in Part I:
  - (i) Does not accept deposits in the ordinary course of a banking or similar business;
  - (ii) Does not hold, as a substantial portion of its business, financial assets for the account of others; or
  - (iii) Is not an insurance company (or the holding company of an insurance company) that issues or is obligated to make payments with respect to a financial account; and
- All of the owners of the entity identified in Part I are bona fide residents of the possession in which the NFFE is organized or incorporated.

Part XXV Active NFFE

39 ☑ I certify that:

- The entity identified in Part I is a foreign entity that is not a financial institution;
- Less than 50% of such entity's gross income for the preceding calendar year is passive income; and
- Less than 50% of the assets held by such entity are assets that produce or are held for the production of passive income (calculated as a weighted average of the percentage of passive assets measured quarterly) (see instructions for the definition of passive income).

Part XXVI Passive NFFE

40a ☐ I certify that the entity identified in Part I is a foreign entity that is not a financial institution (other than an investment entity organized in a possession of the United States) and is not certifying its status as a publicly traded NFFE (or affiliate), excepted territory NFFE, active NFFE, direct reporting NFFE, or sponsored direct reporting NFFE.

Check box 40b or 40c, whichever applies.

b ☐ I further certify that the entity identified in Part I has no substantial U.S. owners (or, if applicable, no controlling U.S. persons); or

c ☐ I further certify that the entity identified in Part I has provided the name, address, and TIN of each substantial U.S. owner (or, if applicable, controlling U.S. person) of the NFFE in Part XXIX.

Part XXVII Excepted Inter-Affiliate FFI

41 ☐ I certify that the entity identified in Part I:

- Is a member of an expanded affiliated group;
- Does not maintain financial accounts (other than accounts maintained for members of its expanded affiliated group);
- Does not make withholdable payments to any person other than to members of its expanded affiliated group;
- Does not hold an account (other than depository accounts in the country in which the entity is operating to pay for expenses) with or receive payments from any withholding agent other than a member of its expanded affiliated group; and
- Has not agreed to report under Regulations section 1.1471-4(d)(2)(ii)(C) or otherwise act as an agent for chapter 4 purposes on behalf of any financial institution, including a member of its expanded affiliated group.

Part XXVIII Sponsored Direct Reporting NFFE (see instructions for when this is permitted)

42 Name of sponsoring entity: _____

43 ☐ I certify that the entity identified in Part I is a direct reporting NFFE that is sponsored by the entity identified on line 42.

Part XXIX Substantial U.S. Owners of Passive NFFE

As required by Part XXVI, provide the name, address, and TIN of each substantial U.S. owner of the NFFE. Please see the instructions for a definition of substantial U.S. owner. If providing the form to an FFI treated as a reporting Model 1 FFI or reporting Model 2 FFI, an NFFE may also use this part for reporting its controlling U.S. persons under an applicable IGA.

Name	Address	TIN

Part XXX Certification

Under penalties of perjury, I declare that I have examined the information on this form and to the best of my knowledge and belief it is true, correct, and complete. I further certify under penalties of perjury that:

- The entity identified on line 1 of this form is the beneficial owner of all the income to which this form relates, is using this form to certify its status for chapter 4 purposes, or is a merchant submitting this form for purposes of section 6050W;
- The entity identified on line 1 of this form is not a U.S. person;
- The income to which this form relates is: (a) not effectively connected with the conduct of a trade or business in the United States, (b) effectively connected but is not subject to tax under an income tax treaty, or (c) the partner's share of a partnership's effectively connected income; and
- For broker transactions or barter exchanges, the beneficial owner is an exempt foreign person as defined in the instructions.

Furthermore, I authorize this form to be provided to any withholding agent that has control, receipt, or custody of the income of which the entity on line 1 is the beneficial owner or any withholding agent that can disburse or make payments of the income of which the entity on line 1 is the beneficial owner.

I agree that I will submit a new form within 30 days if any certification on this form becomes incorrect.

Sign Here ▶ _____ Daryn Abercrombie 04/16/2019

Signature of individual authorized to sign for beneficial owner | Print Name | Date (MM-DD-YYYY)

☑ **I certify that I have the capacity to sign for the entity identified on line 1 of this form.**