

# **MONTEREY COUNTY WATER RESOURCES AGENCY**

## **STANDARD LEASE AGREEMENT (General / Recreational)**



LEASED PREMISES:	<b>APNs 080-077-002-000 &amp; 080-111-010-000, a portion of the subject parcels totaling 66 acres</b>
LESSEE:	<b>Tri-Counties Club P.O. Box 314 San Luis Obispo, CA 93406</b>

**MONTEREY COUNTY WATER RESOURCES AGENCY  
STANDARD LEASE AGREEMENT  
(General / Recreational)**

**PREAMBLE**

THIS Lease ("Lease" or "Agreement") is made by and between the MONTEREY COUNTY WATER RESOURCES AGENCY, a public agency created pursuant to the Monterey County Water Resources Agency Act (Cal. Water Code, Appendix Chap. 52) ("LESSOR") and **Tri Counties Club**, a California corporation ("LESSEE"). LESSOR and LESSEE hereby agree as follows:

**ARTICLE 1 - PREMISES**

1.1 **Description:** LESSOR hereby leases to LESSEE and LESSEE hereby leases from LESSOR, upon the terms and conditions herein set forth, that certain real property and its appurtenances, situated at **Nacimiento Reservoir** (the "Premises" or the "Property") and described as follows:

**Tri-Counties Club General/Recreational Lease. The lease property is 66 total acres.**

1.2 **Compliance with the "Americans with Disabilities Act of 1990" (ADA):** If applicable, LESSEE shall ensure that the Premises are in compliance with the Americans with Disabilities Act of 1990 ("ADA"), as amended, and, if necessary, prior to the Commencement Date, shall modify the Premises to comply with the Act and the regulations promulgated to implement the ADA requirement.

1.3 **Common Areas:** [This standard provision is not applicable to this Agreement.]

1.4 **Parking Areas:** [This standard provision is not applicable to this Agreement.]

1.5 **Compliance with "No Smoking Law" (2003 Assembly Bill 846):** If and as applicable, LESSOR shall ensure that the Premises are in compliance with Government Code Title 1, Division 7, Chapter 32 (commencing with section 7596), as amended, and, if necessary, prior to the Commencement Date, shall modify the same to comply with the law and the regulations promulgated to implement 2003 Assembly Bill 846.

1.6 **Items to be completed within ninety (90) days of Lease Commencement date:** [This standard provision is not applicable to this Agreement.]

**ARTICLE 2 - TERM**

2.1 **Lease Term:** The term of this Lease ("Lease Term") shall be two (2) years, commencing on March 31, 2020 ("Commencement Date") and ending April 1, 2022, subject to the rights of

**Commented [RT1]:** We just need to be sure this includes the lower launch ramp as well as the area on the south side of the TCC property. Perhaps an aerial "Google Earth" photo description.

**Commented [RT2]:** This is insufficient to present to the Membership of TCC. Perhaps more detail on 2.2

termination of the Lease Term in this Agreement.

2.2 **Extended term:** [This standard provision is not applicable to this Agreement.]

**Commented [RT3]:** We must have the framework for the lease into the future.

### **ARTICLE 3 - RENT**

3.1 **Rent:** LESSEE agrees to pay LESSOR, annually the sum of **\$10,500.00**, which is calculated as a recreational fee with an allowance for up to 35 dock owners to moor docks at \$25 per dock per month. This recreational lease fee and dock allowance is rent towards authorized use of LESSORS lands and does not provide any credit toward the annual boat dock inspection and licensing fee due to the LESSOR. A late payment penalty of five percent (5%) of the monthly rent will accrue on any payment not made by LESSEE within fifteen (15) days of the first of the month and shall be paid as part of the following month's rent payment.

**Commented [RT4]:** This needs to be worded differently. The Flats will be available for all members of TCC. We don't estimate over 35 docks, but it makes it look like we are not allowing all members to use the area. LESSEE agrees to pay LESSOR, annually the sum of \$10,500 for TCC dock owners to moor docks along the shoreline within the area designated. Current use is 5 docks.

3.2 **Possessory interest tax: Initial Lease Administrative Charge:** An initial Lease Administrative Charge (ILAC) calculated by the LESSOR Finance Department will be added to the rent. Rent will be re-calculated and increased annually according to cost of living provisions in this lease. In addition to such rent, LESSEE is responsible to separately pay the corresponding real property taxes and assessments (assessed by San Luis Obispo or Monterey County). LESSEE is advised that by entering into this Lease a possessory tax interest may be created. The property interest if created may be subject to property taxation, and LESSEE may be subject to the payment of property taxes levied on the interest. The imposition or payment of such possessory interest tax shall not give rise to an entitlement on LESSEE's part to an off-set for any portion of the rent due and owing attributable to such possessory interest tax liability. LESSEE's failure to pay taxes constitutes a breach of this Agreement.

**Commented [RT5]:** Are we paying a use tax to SLO?? The Agency is paying tax on this area I would assume? Everyone must understand that this area is underwater and unusable.

### **ARTICLE 4 - ANNUAL RENT ADJUSTMENT**

At the end of each one-year pay period of the Lease Term the monthly base rent shall be adjusted to reflect any increase in the Cost of Living Indexes for all urban consumers for the San Francisco-Oakland-San Jose area. The monthly base rent shall be increased at the end of each year by the percentage increase in said index in the twelve (12) calendar month period preceding such adjustment, based on the most recent publications of the index prior to the adjustment rate.

**Commented [RT6]:** We would ask that we fix the rate for the first 5 years then adjust according to the either the CPI or Cost of living whichever is lower. This is raw land that is often covered with water. This is not a structure.

### **ARTICLE 5 - TERMINATION BY LESSOR**

LESSOR may terminate this Lease for good cause upon sixty (60) days written notice. Good cause shall include non-payment of rent, breach of any provision of this Agreement, or breach of any rules or regulations governing the use of the Premises.

### **ARTICLE 6 - NOTICES**

6.1 **Written notices:** All notices or correspondence provided for herein shall be effective when made in writing, personally delivered or deposited in the United States mail, sent certified, postage prepaid, and addressed as follows:

6.2 **Service of notices:** All notices, correspondence, or other written communication related to this Agreement shall be sent to the following:

**LESSEE:**

Faron Goodwin, Commodore  
Tri Counties Club  
P.O. Box 314  
San Luis Obispo, CA, 93406

**LESSOR:**

Brent Buche  
General Manager  
Monterey County Water Resources Agency  
1441 Schilling Place, North Building  
Salinas, CA 93901

**Commented [RT7]:** Our current Commodore is Faron Goodwin. This office is voted on each year. We generally have a Commodore for 2 years. General information.

6.3 Rent payments to LESSOR shall be directed to the LESSOR's Finance Manager at the address listed above.

6.4 Any notice or correspondence shall be deemed delivered upon personal delivery or five (5) days after notice is mailed. Correspondence other than notices may be given by phone, regular mail, email or facsimile. Any correspondence sent by facsimile shall also be sent by United States mail if requested by either party. By written notice to the other, either party may change its own mailing address or correspondence information.

6.5 LESSOR's designated property management representative shall be available to LESSEE by phone during regular business hours, and for emergencies after hours and weekends. LESSOR or LESSOR's designated property management company shall subscribe to a 24-hour, 7 days a week emergency answering service that maintains contact phone numbers of key personnel or maintenance/service companies in event of an emergency. **Emergency answering service phone number for LESSOR is 831-796-1166.**

6.6 LESSEE shall be available to LESSOR, by phone during regular business hours, and for emergencies after hours and on weekends. LESSEE shall subscribe to a 24-hour, 7 days a week emergency answering service that maintains contact phone numbers of key personnel or maintenance/service companies in event of an emergency. **Emergency answering service phone number for LESSEE is 805-XXX-XXXX.**

**Commented [RT8]:** We can give you a few numbers as this is generally a vacation or recreation place.

**ARTICLE 7 - IMPROVEMENTS BY TENANT**

7.1 **Fencing:** Fencing shall be according to specifications approved by LESSOR in writing prior to commencement of construction.

**Commented [RT9]:** The Flats have no fencing as it is often under water and we are not grazing. We cannot be responsible for any 3B leaseholders fences. Suggest deleting this.

7.2 All improvements, construction of all types shall meet or exceed construction and uniform codes of San Luis Obispo County and approved by LESSOR. Where applicable, or where required by the LESSOR, improvements and construction shall meet other applicable codes and regulations, such as the health, environmental health, operations and regulatory requirements of the United States, State of California, and San Luis Obispo County.

7.3 In granting approval for any construction or work, LESSOR may impose special standards or conditions. Digging, excavation, piling or mounding of material such as earth, and the use of heavy equipment shall be approved in writing by LESSOR beforehand. Operation of machinery and equipment shall be by trained and experienced operators who are licensed and adequately insured for that purpose.

7.4 **Reimbursement for improvements:** [This standard provision is not applicable to this Agreement.]

#### **ARTICLE 8 - NOTICE OF COMPLETION**

[This standard provision is not applicable to this Agreement.]

#### **ARTICLE 9 - PUBLIC WORKS LAWS**

Under Section 1720.2 of the California Labor Code, any construction contract to improve owned or leased by LESSOR may be considered a "public work" if certain conditions are met. If applicable, LESSEE shall comply with provisions of law governing public works including, without limitation, Labor Code sections 1773, 1773.2, 1773.3, 1773.8, 1775 (payment of prevailing wages), 1776 (payroll records), and 1777.5 (employment of apprentices), all as amended from time to time.

#### **ARTICLE 10 - TIME LIMIT AND PRIOR TENANCY**

It shall be LESSOR's responsibility to remove any prior LESSEE in the Premises at LESSOR's sole cost and expense.

**Commented [RT10]:** This item must be completed before we sign an agreement. I suggest that this be deleted.

#### **ARTICLE 11 - USE**

11.1 **Use:** Subject to the following, LESSEE may use the Premises for boat launching, LESSEE owned boat docks, day beaching and picnicking. Except as provided in Section 11.2, LESSEE may alter said use to any lawful purpose, upon the written consent of LESSOR, which consent shall not be unreasonably withheld.

**Commented [RT11]:** The lease is with TCC. This should be worded differently  
*Subject to the following, members of the LESSEE may use the Premises for Members boat launching as well as Member owned and approved docks.*

11.2 **Vineyards:** Notwithstanding any other provision of this Agreement, and regardless of the uses permitted under the applicable planning and zoning regulations, vineyards are not a permitted use or activity on the leased premises without the prior written approval of LESSOR.

11.3 **Parking adjacent to oak trees:** Notwithstanding any other provision of this Agreement, parking shall not be allowed within twenty (20) feet of any oak tree.

**Commented [RT12]:** Suggest deleting 11.3

11.4 **Hours: no parking:** The Premises shall be closed between the hours of 10:00 p.m. and 6:00 a.m. No overnight parking shall be allowed during the hours the Premises is closed. All private property must be removed when the Premises is closed.

11.5 **Docks:** Only those docks that are owned by LESSEE shall be allowed on the Premises. Tri

**Commented [RT13]:** *Only those docks that are owned by TCC Members of the LESSEE shall be etc.*  
Also, as the water recedes, TCC Members may place their dock on the shoreline of the area designated with the number approved by Monterey County.

Counties Club must obtain approval from the Monterey County Water Resources Agency prior to adding and/or allowing additional docks.

**11.6 Boat Launch Ramp Rules:** All LESSEE Boat Launch Ramp (“Launch Ramp”) Rules shall apply to the Premises. A copy of the LESSEE Launch Ramp rules and rule changes adopted xxxx xx, 2020, are attached as **Exhibit B** and incorporated by reference. Launch Ramp rules shall conform to all applicable laws and regulations and the provisions of this Agreement.

**Commented [RT14]:** Is there a standard format for *Boat Launch Ramp Rules*?

**11.7 Construction, building, cutting timber:** LESSEE may not erect any permanent structures or improvements, or make alterations, on the Premises without the prior written consent of LESSOR. LESSEE shall not cut, and shall not allow the cutting, of any timber without the prior written consent of the LESSOR. LESSEE shall not remove or place soil, sand, rocks or gravel to or from the subject property without the prior written consent of the LESSOR.

**Commented [RT15]:** Suggest you delete 11.7 Area is often covered by water.

**11.8 Ejection from property:** Any LESSEE member or member of the public may be ordered to leave the Premises by any peace officer, Monterey County employee, or LESSOR employee, for violation of any law, regulation or rule, or any provision of this Agreement. Persons ordered to leave the Premises under this provision shall not be allowed to return onto the Premises for a period of at least seven (7) days. LESSOR may increase the time prior to return at its sole discretion.

**11.9 Compliance with Laws:** LESSEE represents and warrants to LESSOR that any construction performed by, for or on behalf of LESSEE, and LESSEE’s current and proposed uses, and the operation of the Premises are in full compliance with applicable building and seismic codes, environmental, zoning and land use laws, and other applicable local, state and federal laws, regulations and ordinances. LESSEE agrees to defend and indemnify LESSOR for any responsibility for any code violations or other deviations from applicable local, state and federal laws, regulations and ordinances related to LESSEE’s use, operations or construction.

**Commented [RT16]:** 11.8 and 11.9 should both be deleted as the area is often covered with water.

**11.10 Hazardous Substances:** LESSOR shall have no liability or responsibility for toxic or hazardous materials or substances on the Premises which result from LESSEE's acts or omissions, or which occur on property not owned and occupied by LESSOR. LESSEE will comply with all applicable laws concerning the handling and removal of any hazardous materials, including asbestos or polychlorinated biphenyl (PCB) containing materials. Nothing in this Lease shall be taken as LESSOR’s assumption of any duty or liability not otherwise imposed by law.

**11.11 Environmental Hazards:** LESSEE shall immediately notify LESSOR of any suspected appearance of toxic mold spores and of any conditions (such as excessive moisture) that may lead to the appearance of toxic mold spores, and LESSOR agrees to investigate same.

## **ARTICLE 12 - SIGNS AND FIXTURES**

**Commented [RT17]:** Article 12 has no bearing on this lease. Suggest that it is deleted.

LESSEE may place such signs and advertisements upon the Premises as LESSEE may desire, subject to compliance with applicable law and approval by the LESSOR which consent shall not be

unreasonably withheld provided, however, that at the expiration of the term hereof or any renewal or extension of this Lease, LESSEE will remove said signs and will repair any damage caused by such removal. Any trade fixtures, equipment, furniture, demountable walls, and other movable personal property installed in the Premises by and at the expense of the LESSEE (except those reimbursed in whole or part by LESSOR) shall remain the property of the LESSEE, and the LESSOR agrees that the LESSEE shall have the right at any time, and from time to time, to remove any and all of its trade fixtures, equipment and other movable personal property (except those reimbursed in whole or part by LESSOR) which it may have stored or installed in the Premises, provided that LESSEE repairs any damage caused by such removal. The LESSOR agrees not to mortgage or pledge the LESSEE's trade fixtures, equipment and other property. Upon termination of this Lease, LESSEE shall return the Premises in the same condition as when delivered to LESSEE, except for reasonable wear and tear, and damage by casualty or condemnation, and alterations approved by LESSOR.

#### **ARTICLE 13 - SERVICES AND UTILITIES**

Unless expressly so provided under this Agreement, this Agreement does not authorize LESSEE to use water from the reservoir on the premises for domestic, potable, farming, livestock or similar purposes.

#### **ARTICLE 14 - REPAIR AND MAINTENANCE**

14.1 **Maintenance of property:** LESSEE shall operate and maintain the Premises in a clean and orderly manner, and in compliance with all applicable laws, ordinances and regulations, and in compliance with the governing documents of LESSEE. LESSEE shall inform LESSOR in writing within thirty (30) days of the effective date of this Agreement of its plans for controlling and removing litter and trash and maintenance policies.

LESSEE shall request in writing approval from LESSOR prior to repairing and/or maintaining any matters including but not limited to erosion, tree care, shoreline damage and vegetation control.

14.2 **No LESSOR duty to maintain or repair:** LESSOR shall not have any obligation, during the term of this Agreement, to repair, restore, or maintain the Premises, except to the extent of any damage caused to the Premises by willful misconduct or negligent conduct of LESSOR.

14.3 **LESSOR and LESSEE Obligations:** LESSEE's repair and maintenance responsibilities are set forth in **Exhibit C**, Summary of Repair and Maintenance Responsibilities, which by this reference is incorporated herein. As stated in **Exhibit D**, the term "deemed necessary" shall mean that appropriate action needs to be taken to ensure the health, safety and general well-being of the occupants and or invitees of the Premises.

14.4 **Negligent Acts or Omissions of LESSEE:** Notwithstanding the foregoing, LESSEE will pay to LESSOR the reasonable cost of any repairs or maintenance to the extent required as a direct result of the negligence or willful misconduct of LESSEE.

14.5 **Failure of LESSEE to Make Repairs:** If LESSEE fails to maintain the Premises or to make the

**Commented [RT18]:** 14.5 has no bearing on this lease. Suggest that it is deleted.

repairs required in this article within the time periods as specified in Article 23, LESSOR may perform such maintenance or make such repairs at its expense and add the cost of such repairs to the upcoming rent due from LESSEE.

14.4 **LESSOR/LESSEE Obligations in Applying Noxious Substances:** If applicable, LESSEE shall not apply any substance as part of any building maintenance or repair which would introduce irritating or noxious odors or any other hazardous condition to occupied spaces with the Premises or the Common Areas without prior coordination and approval of LESSOR. Prior notification and approval shall be made at least forty-eight (48) hours prior to the desired application time. Also, a Product Safety Data Sheet shall be furnished by the proposed applicator to the LESSOR. Examples of such substances or materials include, but are not limited to, the following:

- a. Termite Control Materials
- b. Pesticides
- c. Paint
- d. Water Treatment Chemicals
- e. Any other substance that is or could be construed as hazardous

**Commented [RT19]:** 14.4 has not bearing on this lease. This would be for a structure of which there are none. Suggest that this be deleted.

#### **ARTICLE 15 - INVASIVE SPECIES INSPECTION AND CONTROL MEASURES**

LESSEE shall continue to work with both San Luis Obispo and Monterey Counties to protect Nacimiento Reservoir from the spread of invasive species. To that end, LESSEE has established and will continue to implement an Invasive Mussel Inspection Plan which is attached hereto as **Exhibit E** and incorporated by reference.

#### **ARTICLE 16 - SERVICE COMPANIES**

[This standard provision is not applicable to this Agreement.]

#### **ARTICLE 17 - CONDITION OF THE LEASED PROPERTY**

17.1 **Opportunity to inspect:** LESSEE acknowledges that it has inspected the subject property and knows its condition and further acknowledges that the LESSOR has not, and does not, make any representation or warranty regarding the condition of the subject property.

17.2 **Erosion standards and control:** [This standard provision is not applicable to this Agreement.]

#### **ARTICLE 18 - MECHANICS' LIENS**

18.1 **Mechanic's Liens:** LESSEE shall keep the Premises free from any liens arising out of any work performed by, materials furnished to, or obligations incurred by such LESSE or on its behalf.

#### **ARTICLE 19 - ASSIGNMENT AND SUBLETTING**

LESSEE has no right to assign this Agreement to any party or entity, or in any manner sublease,



transfer, or in any manner encumber, the subject property, without the prior written consent of the LESSOR.

#### **ARTICLE 20 - ENTRY BY LESSOR**

20.1 **Entry by LESSOR:** LESSOR shall, at all times during the term of this Agreement, have the right to enter upon and inspect the property for any purpose, including, but not limited to, assuring that the obligations of LESSEE, including those set forth in Paragraphs 14 and 17, above, are met. LESSOR and LESSOR's agents will give reasonable advance notice of entry (except in the case of emergency), and such entry shall be made in a reasonable manner and not unreasonably interfere with the conduct of LESSEE's business.

20.2 **Entry by peace officers and LESSOR employees:** LESSEE agrees that LESSOR employees, Monterey County employees, and any other federal, state or county peace officer may enter the Premises at any time to routinely patrol the Premises, investigate any crime, or for any other lawful purpose.

#### **ARTICLE 21 - INSURANCE AND INDEMNIFICATION**

21.1 **Insurance:** LESSEE shall, at all times during the term of this Agreement, maintain public liability and property damage insurance of at least \$2,000,000 per occurrence or if LESSEE requires aggregate no less than \$5,000,000 and property damage insurance of at least \$250,000 insuring against all liability of LESSEE and its authorized representatives arising out of and in connection with LESSEE's use or occupancy of the Property. LESSEE must also carry Auto liability of \$1,000,000 combined single limit.

All such insurance shall name the LESSOR as an additional insured and is expressly intended to provide LESSOR with protection from third party property damage and bodily injury claims, and damage to LESSOR property, arising out of the use of the property. LESSEE shall provide proof of such insurance to the LESSOR upon LESSOR's request.

21.2 **Duty to defend and indemnify LESSOR from activities:** LESSEE shall indemnify, defend, and hold harmless LESSOR, the County of Monterey, their officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorney fees) occurring or resulting from the following:

- Boats or other water vehicles sinking in the reservoir;
- Boats or other water vehicles catching fire on the reservoir or on shore; and
- Oil, gasoline, other fuel or contaminant, or any hazardous material spill or contamination on land or in the reservoir.

21.3 **Duty to defend and indemnify LESSOR generally:** LESSEE shall indemnify, defend, and hold harmless the LESSOR, the County of Monterey, their officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorney fees) occurring or resulting to any

**Commented [RT20]:** All our docks are insured with that name MCWRA as additional insured. We would like further discussion on total insurance. We are in the process of getting quotes on coverage for the 66 acres.

and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with the LESSEE's performance of this Agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of the LESSOR. LESSEE's "performance" includes LESSEE's action or inaction and the action or inaction of LESSEE's officers, employees, agents and subcontractors.

#### **ARTICLE 22 - DESTRUCTION**

22.1 **Destruction of property:** If the Premises is totally destroyed by fire or other casualty, either party may terminate this Lease immediately by giving notice to the other party.

22.2 **LESSOR termination for default:** If LESSEE remains in occupancy of the Premises though partially destroyed, the rent for said Premises as herein provided, during restoration, shall be reduced by the same ratio as the rentable square feet LESSEE is thus precluded from occupying, bears to the total rentable area in the Premises. For purposes of this Article, "rentable area" shall not include public areas.

**Commented [RT21]:** Suggest that 22.1 and 22.1 be deleted as they have no bearing on this lease.

#### **ARTICLE 23 - DEFAULT BY LESSEE**

23.1 **Default:** If any of the following events occur, each such event shall constitute a material breach of this Lease, and LESSOR may, at LESSOR's option, exercise any or all rights available to a LESSOR under the laws of the State of California:

- a. A default in the payment of rent or other obligation when such default continues for a period of thirty (30) days after written notice from LESSOR to LESSEE of such default;
- b. LESSEE fails to faithfully perform or observe any other covenant or undertaking required under this Lease and such failure continues for a period of thirty (30) days after written notice thereof from LESSOR to LESSEE of such default or, if such default is not reasonably curable within such thirty (30) day period, LESSEE fails to commence to cure such default within such thirty (30) day period and thereafter diligently pursue such cure to completion;
- c. LESSEE is adjudicated bankrupt; or
- d. LESSEE's lease interest is sold under execution of judgment.

Notice of default is sufficient if it is in writing, identifies the act, omission, or condition that constitutes the default, and is served upon LESSEE in the manner provided by this Lease for the giving of notice.

23.2 **Remedies:** If LESSEE fails to cure a prospective default within the time frames outlined above, if any, LESSOR shall have the option to cure the default, if curable, or to terminate this Lease, in addition to any other remedies at law not inconsistent herewith. Should LESSOR elect to cure the default itself, all reasonable costs associated with such cure, including reasonable attorney fees (if any), shall be reimbursed by LESSEE to LESSOR, as additional rent, within thirty (30) days of receipt

of LESSOR's invoice for said costs.

23.3 **Termination following notice to cure:** In the event that LESSEE defaults under any provision of this Agreement the LESSOR may, if such default is not cured within thirty (30) days following written notice given by the LESSOR to LESSEE, elect to terminate this Agreement. Such termination is effective upon the expiration of the thirty (30) day cure period and a written "notice of election to terminate" being served upon LESSEE by the LESSOR.

Such election to terminate in no way absolves LESSEE from any obligations under this Agreement, including the payment of any rent then owing, or the obligation to return the property in substantially similar condition to that at the effective date of this Agreement.

#### **ARTICLE 24 - DEFAULT BY LESSOR**

24.1 **Default:** LESSOR shall not be in default unless LESSOR fails to perform its obligations under this Lease within a reasonable time, but in no event later than thirty (30) days after written notice by LESSEE to LESSOR specifying wherein LESSOR has failed to perform such obligations. If the nature of LESSOR's obligation is such that more than thirty (30) days are required for performance, then LESSOR shall not be in default if LESSOR commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

24.2 **Remedies:** If LESSOR fails to cure a prospective default within the time periods outlined above, LESSEE shall have the option to cure the default or to terminate this Lease, in addition to any other remedies at law not inconsistent herewith. Should LESSEE elect to cure the default itself, all reasonable costs associated with such cure, including reasonable attorney fees (if any), shall be reimbursed by LESSOR to LESSEE within thirty (30) days of receipt of LESSEE's invoice for said costs.

#### **ARTICLE 25 - CONDEMNATION**

If the Property are taken or condemned for a public or quasi-public use, or the part taken renders the entire Property insufficient for the conduct of LESSEE's business and operations, then this Lease shall terminate at the option of LESSEE as of the date title shall vest in the condemner. If only part of the Property is taken and the remainder of the Property is sufficient for the conduct of LESSEE's business and operations, then the Lease shall continue as to the part not taken, but the monthly rent shall be reduced in proportion that the rentable area of the Property taken bears to the rentable area of the Property before the taking.

#### **ARTICLE 26 - HOLDING OVER**

If LESSEE remains in possession of the Property after the Lease Term or any Extended Term, this Lease shall automatically be extended on a month-to-month basis at the monthly rent applicable to the last month of the Lease Term, subject to termination upon sixty (60) days' written notice by either party. During such holdover period, the cost of living increases provided by this Lease shall

**Commented [RT22]:** Is this what we have for an extended lease?

be applied to rent. All other terms and conditions shall remain in full force and effect.

#### **ARTICLE 27 - WAIVER**

The waiver by LESSOR or LESSEE of any term, covenant or condition herein contained shall not be deemed to be a waiver of any other term, covenant or condition, nor shall either party consent to any breach of any term, covenant or condition, nor shall either party be deemed to constitute or imply its consent to any subsequent breach of the same or other term, covenant or condition herein contained.

#### **ARTICLE 28 - QUIET POSSESSION**

LESSEE shall at all times during the term of this Lease peaceably and quietly have, hold and enjoy the Property, without suit, trouble or hindrance from LESSOR or any person claiming under LESSOR, subject to the terms of this Lease.

#### **ARTICLE 29 - ESTOPPEL CERTIFICATE**

Within thirty (30) days of written notice by one party to the other, each will execute, acknowledge and deliver to the other an estoppel certificate in writing declaring any modifications, defaults or advance payments and whether the lease, as may be modified, is in full force and effect. Any such certificate may be conclusively relied upon for the intended transaction for which the statement was requested.

#### **ARTICLE 30 - MISCELLANEOUS PROVISIONS**

30.1 **Amendment; Waiver:** This Lease may be amended or modified only by an instrument in writing signed by LESSEE and LESSOR. Any waiver of any term or condition of this Lease must be in writing and signed by LESSEE and LESSOR. A waiver of any of the terms and conditions of this Lease shall not be construed as a waiver of any other term or condition in this Lease.

30.2 **Time is of the Essence:** Time is of the essence of in each and all of the provisions of this Lease.

30.3 **Binding Effect:** Subject to any provision hereof restricting assignment or subletting by LESSEE, this Lease shall bind the parties, their personal representatives, successors, and assigns.

30.4 **Invalidity:** The invalidity of any provision of this Lease as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision hereof.

30.5 **Authority:** Any individual executing this lease on behalf of LESSEE or LESSOR represents and warrants hereby that he or she has the requisite authority to enter into this Lease on behalf of such party and bind the party to the terms and conditions of this Lease.

30.6 **Interpretation of Conflicting Provisions:** In the event of any conflict or inconsistency between the provisions of this Lease and the provisions of any addendum or exhibit attached hereto, the provisions of this Lease shall prevail and control.

30.7 **Integration:** This Lease, including the exhibits and addenda, represents the entire agreement between LESSEE and LESSOR with respect to the subject matter of this Lease and shall supersede all prior negotiations, representations or agreements, either written or oral, between LESSEE and LESSOR as of the effective date of this Lease, which is the date that LESSEE signs this Lease.

30.8 **Successors and Assigns:** This Lease and the rights, privileges, duties, and obligations of LESSEE and LESSOR under this Lease, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successor, permitted assigns, and heirs.

30.9 **Headings:** The headings in this Lease are for convenience only and shall not be used to interpret the terms of this Lease.

30.10 **Governing Law:** This Lease shall be governed by and interpreted under the laws of the State of California.

30.11 **Construction of Lease:** LESSEE and LESSOR agree that each party has fully participated in the review and revision of this Lease and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this lease or any amendment to this Lease. The parties agree that they have been afforded an opportunity to have this Agreement reviewed by counsel of their choice. In interpreting this Agreement there shall be no presumption based upon the authorship of this Agreement.

30.12 **Counterparts:** This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Lease.

30.13 **Disputes; consultations by parties:** In the event that any problem or issue arises with respect to the implementation or interpretation of the Agreement, the parties mutually agree to meet at the request of either of them to discuss and resolve the issue. In such event, the General Manager of LESSEE will meet with the General Manager of the LESSOR or his/her designee to reach a mutually satisfactory and reasonable conclusion.

If the parties cannot resolve the dispute pursuant to the preceding paragraph above, the Parties agree to mediate any disagreements in good faith. Should either Party determine the dispute cannot be resolved in mediation, it is agreed that the dispute may be resolved in a court of law competent to hear the matter.

### **31 – LESSEE FEES AND EXPENSES**

In addition to any other rates, rents, charges, cost of living increases or other fees and expenses otherwise provided for in this Agreement, LESSEE agrees to pay, upon invoice or demand, those costs, fees and expenses provided for in **Exhibit F** to this agreement, or as may be provided for by a schedule of fees and expenses adopted by the LESSOR from time to time.

Standard Lease Agreement (General / Recreational)

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Dated: \_\_\_\_\_ Dated: \_\_\_\_\_

Monterey County Water Resources Agency      Tri Counties Club  
[form of business entity]

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

LESSOR      By \_\_\_\_\_  
LESSEE

Exhibits

- A. Description of property
- B. Boat Launch Ramp Rules
- C. Lessee Maintenance Responsibilities
- D. Lessor Summary of Repair and Maintenance
- E. Invasive Mussel Inspection Plan
- F. Lessee Fees & Expenses

*[signature page follows]*

**LESSEE: MONTEREY COUNTY  
WATER RESOURCES AGENCY**

By: \_\_\_\_\_  
Brent Buche

Title: General Manager

Date: \_\_\_\_\_

**APPROVED AS TO FORM:  
Charles J. McKee, County Counsel**

By: \_\_\_\_\_  
Kelly L. Donlon

Title: Deputy County Counsel

Date: \_\_\_\_\_

Standard Lease Agreement (General / Recreational)

**APPROVED AS TO FISCAL PROVISIONS: (County Auditor/Controller)** **APPROVED AS TO LIABILITY PROVISIONS: (County Risk Management)**

By: By:  
Name: Name:  
Title: [Assistant] Auditor Controller Title: Risk Manager  
Date: Date:

**LESSEE:** **LESSEE:**  
( ) ( )  
By: By:  
Name: Name:  
Title: Title:  
Date: Date:

**EXHIBIT A**

**DESCRIPTION OF PROPERTY**

Within those portions of property owned by the MONTEREY COUNTY WATER RESOURCES AGENCY adjacent to the NACIMIENTO RESERVOIR; Parcels and/or portions of parcels all within San Luis Obispo County as shown on the Exhibit "A" map on file in the office of said MONTEREY COUNTY WATER RESOURCES AGENCY, 1441 Schilling Pl., Salinas, California.

Tri-Counties Club General/Recreational Lease contains approximately 66 total acres, 1 acre above the high water line and 65 acres below the highwater line.

In case of a discrepancy between words and figures, the words shall prevail.

**San Luis Obispo County Assessor Parcel Number: Parcels and/or portions of parcels;**

**080-077-002-000 (portion) & 080-111-001-000 (portion)**

See attached map(s) of premises:

Surveyed Map  
APN Map



**EXHIBIT B**

**BOAT LAUNCH RAMP RULES**

DRAFT

**EXHIBIT C**

**LESSEE MAINTENANCE RESPONSIBILITIES**

DRAFT

**EXHIBIT D**

**LESSOR SUMMARY OF REPAIR AND MAINTENANCE**

DRAFT

**EXHIBIT E**

**INVASIVE MUSSEL INSPECTION PLAN**

DRAFT

**EXHIBIT F**

**LESSEE FEES AND EXPENSES**

Name	Purpose	Amount/Rate
<i>Initial Lease Administration Charge (ILAC – Annually)</i>	Administrative costs include: Property taxes, processing, inspections, management of account)	Ten percent (10%) of the Annual Lease
<i>Follow-up/ Compliance Inspection Fee</i>	Triggered by deficiencies such as untimely or inadequate Lessee reporting, document compliance; follow-up from annual field inspection	Flat fee: \$600 per incident  Hours – Position: 1 – Deputy General Manager 2 – County Counsel 3 – Administrative Services Assistant
<i>Late charge</i>	Assessed on balances 30 days after they come due, unless a different time is specified.	Ten percent (10%) of the Annual Lease
<i>Lease violation (Breach) Administrative Penalty (LVAP)</i>	A contractual penalty assessed when certain breaches of lease occur: e.g.: unauthorized improvements & booms; illegal dumping; runaway vessels; pollution; encroachment; allowing access to/for unauthorized tenants & uses.	First breach: \$250.00  Second breach: \$500.00  Third and subsequent breaches: \$1,000.00
<i>Pollution Clean-up fee</i>	Fee for clean-up, such as pollution, dumping, abandoned property.	Actual costs, plus ten percent (10%) Administrative Fee