Delaware North

Asilomar Conference Grounds

10 Years
June 1, 1997 – May 31, 2007

Amendment # 1 – May 17, 1999
Changed CPI procedure

STATE OF CALIFORNIA
DEPARTMENT OF PARKS AND RECREATION
CONCESSION CONTRACT
ASILOMAR STATE BEACH AND CONFERENCE GROUNDS

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STATE OF CALIFORNIA

DEPARTMENT OF PARKS AND RECREATION

CONCESSION CONTRACT

Asilomar State Beach and Conference Grounds

Located In

Asilomar State Beach

City of Pacific Grove

Monterey County, California

THIS CONTRACT, between the **STATE OF CALIFORNIA**, acting through its Department of Parks and Recreation, hereinafter referred to as **"State"**, and **DELAWARE NORTH PARKS SERVICES at ASILOMAR, INC.** a California Corporation, hereinafter referred to as **"Concessionaire"**, and **DELAWARE NORTH PARKS SERVICES, INC.** a Delaware Corporation, of Buffalo, New York, **"Guarantor"**; is made with reference to the following:

RECITALS:

WHEREAS, Asilomar State Beach and Conference Grounds was established to perpetuate, and to make available to the people of California, the spectacularly beautiful coastlines, dunes, and coastal forests of the Monterey Peninsula from Point Pinos to Point Joe; the architecture of Julia Morgan and others, both within and outside of the historic campus core of

the Conference Grounds; and the social history of the original development of Asilomar and its continuation in the conference grounds theme and function; and,

WHEREAS, the State is charged with defining and executing a program to perpetuate the unit's declared values, and provide recreational facilities, opportunities and interpretation that make these values available in a manner consistent with their perpetuation; and,

WHEREAS, Public Resources Code Sections 5080.02, et seq. authorizes the Department to enter into concession contracts for the operation of State Park facilities and Section 5080.25 requires entering into a contract for the construction, maintenance, and operation of concessions at the Asilomar Conference Grounds and specifies certain minimum requirements for inclusion in such contract, and

WHEREAS, Delaware North Parks Services, Inc. a Delaware Corporation having its principal place of business at 438 Main Street, Buffalo, New York, submitted a proposal for the construction, maintenance, and operation of concessions at the Asilomar Conference Grounds in response to a Request for Proposals issued by the State and said proposal contemplated that Delaware North Parks Services, Inc., or its assignee, would be obligated to perform its obligations in accordance with the proposal and the Request for Proposals, and

WHEREAS, Delaware North Parks Services, Inc. was awarded the contract by the State and Delaware North Parks Services, Inc. has formed a wholly-owned subsidiary which will conduct the concession operations at the Asilomar State Beach and Conference Grounds, and

WHEREAS, the State is willing to consent to the assignment of its right to enter into this contract by Delaware North Parks Services, Inc. to Delaware North Parks Services at Asilomar, Inc. subject to acknowledgment by Delaware North Parks Services, Inc. that it is not being released of its obligations under the terms of its proposal and the Request for Proposals and this resultant contract and that it guarantees and/or agrees to perform any obligations under the contract that are not performed by Delaware North Parks Services at Asilomar, Inc. , and

WHEREAS, it is appropriate that the following contract be entered into to achieve the above stated goals and to promote the safety and convenience of the general public in the use and enjoyment of, and the enhancement of recreational and educational experiences at, Asilomar State Beach and Conference Grounds;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **APPROVAL AND EFFECTIVE DATE OF CONTRACT:** This contract, and any amendments, shall not be effective until approved by the Department of General Services and the Attorney General.

2. DESCRIPTION OF PREMISES: The State, pursuant to the authority of and in accordance with Section 5080.02 et seq. of the Public Resources Code of the State of California, and for and in consideration of the agreements hereinafter stated, grants to Concessionaire for the purposes stated herein, the right, privilege and duty to equip, operate and maintain a non-exclusive concession for use of those premises together with all improvements, equipment, furnishings, supplies and materials thereon and therein, located within the boundaries of the City of Pacific Grove and known as "Asilomar State Beach and Conference Grounds", (hereafter referred to as "Asilomar"), which premises are described in Exhibits "A" and "B", which are attached hereto and hereby made parts of this contract.

Facilities designated as historic on Exhibit "B" shall be maintained in accordance with all applicable laws pertaining to historic structures and their preservation including, but not limited to, Public Resources Code section 5024, 5024.5 and Secretary of the Interior Guidelines for Historic Preservation.

Title to all property, whether in fee as to all real property, or otherwise as to all other property, personal or otherwise including, without limitation, the name Asilomar State Beach and Conference Grounds, Asilomar, Asilomar Conference Center, or any variation of them, remains in the State. The interest in all property, real or personal, acquired by Concessionaire by reason of this agreement is a possessory interest only and is subject to the terms and conditions of this agreement.

The possessory interest herein given to the Concessionaire does not exclude the general public from the premises; however, the use by the general public is limited by the terms and conditions of the possessory interest given herein, and the rules and regulations of the State Park System. This contract is not intended to confer third party beneficiary status to any member of the public who is benefited by the terms of this contract. Notwithstanding the non-exclusive nature of the possessory interest held by Concessionaire in the concession facilities under this Contract, State agrees to not authorize any uses at the premises which would reasonably be deemed to constitute a competitive service, activity, program, or merchandising activity.

The possessory interest is subject to all valid and existing contracts, leases, licenses, encumbrances, and claims of title which may affect said property.

3. CONDITION OF PREMISES: The taking of possession of the subject premises by the Concessionaire shall, in itself, constitute acknowledgment that the subject premises are in good and sufficient condition for the purposes for which Concessionaire is entering into this agreement. Concessionaire agrees to accept said premises in their presently existing condition, "AS IS", WITH ALL FAULTS and that the State shall not be obligated to make any alterations, additions, or betterments thereto, except as otherwise provided for in this agreement.

4. TERM: The term of this contract shall be for a period of Ten (10) years, and shall commence on the first day of the month following the date of approval by the Department of General Services as shown below or on the date Concessionaire takes possession of the premises

as evidenced in writing by State, whichever event should occur last, but in no event earlier than June 1, 1997. Should Concessionaire temporarily remain in possession of the premises after the expiration of the term of this contract pending the advertising, selection, and award of a new contract, transition to a new contract, or for any other reason, either by the inaction of the State or with the express or implied consent of the State, such possession following termination shall be at the pleasure and sole discretion of the State at the herein stated prescribed concession fees and financial considerations, subject otherwise to all the terms and conditions of this contract, excepting and excluding the right to a ten year term. At the expiration or termination of this contract, including any consented to possession following termination of the agreement, as herein provided, the Concessionaire shall, without further demand or notice, within thirty (30) days thereafter remove from said premises, or otherwise dispose of in a manner satisfactory to State, all personal property belonging to Concessionaire located on the premises. Should Concessionaire fail to remove or dispose of said personal property as herein provided, State may, at its election, consider such property abandoned and may dispose of same at Concessionaire's expense. Also, at the expiration or termination of this contract, the Concessionaire shall quit and surrender the said premises, including real property improvements, equipment, furnishings, supplies and materials inventory or equivalent thereof provided by State for Concessionaire's use, in a state of repair equivalent to the condition as received and sufficient for the purpose for which such property is intended and for the continuing operation of the concession, damage by matters for which Concessionaire is not obligated by this agreement to repair or replace excepted, provided that such exculpatory provision shall not extend to any risk which Concessionaire is required to insure against as herein provided.

For purposes of this contract, the term "contract year" shall mean each one-year period of time which commences on the first day of the contract term as set forth above and extends twelve (12) months therefrom and each anniversary throughout the term of the contract. The term "anniversary", wherever used in this contract means the first day of each contract year.

5. QUITCLAIM DEED: Upon termination of the rights hereby granted, the Concessionaire shall execute and deliver to State within thirty (30) days after service of written demand therefor, a good and sufficient quitclaim deed to the rights arising hereunder, together with any other documents found necessary to remove any claim of interest of Concessionaire in and to all property belonging to the State. Should Concessionaire fail or refuse to deliver to State a quitclaim deed or other documents as aforesaid, a written notice by State, recorded in Monterey County, reciting the failure of the Concessionaire to execute and deliver said quitclaim deed or other documents as herein provided, shall after ten (10) days from the date of recordation of said notice be conclusive evidence against the Concessionaire and all persons claiming under Concessionaire of the termination of said contract. Such notice shall have no effect as to any property which concessionaire has, in writing, notified the Department that the Concessionaire disputes is property of the State under the terms of this Contract, until such time as the dispute is resolved.

(Is this recorded?)

6. CONCESSION FEES AND OTHER PAYMENTS: Concessionaire shall pay, without demand, as an annual concession fee the sum of One Million Dollars ($1,000,000)

("Minimum Flat Rate") or the following percentages of gross annual receipts, whichever is greater:

8.61% of all annual gross receipts up to the "base level" as defined below, plus 25% of all annual gross receipts in excess of the "base level".

"Base level" is defined as Fourteen Million Nine Hundred Thirty Thousand Dollars ($14,930,000) at the beginning of Contract Year One. The "base level" shall be adjusted at the beginning of Contract Year Two and each contract year thereafter to reflect changes in the Consumer Price Index. Beginning with contract year two (2), the $1,000,000 Minimum Flat Rate shall be adjusted on the first day of each contract year to reflect changes in the Consumer Price Index or such other index or procedure as may replace or amend the Consumer Price Index (CPI). Such CPI adjustments shall be made in accordance with the procedure set forth in Exhibit "H" attached to and made a part of this contract. The term "gross receipts", wherever used in this contract means all monies, property, or any other thing of value received by Concessionaire and any subconcessionaire or operator, if other than Concessionaire, through the operation of said concession or from any other business carried on or upon said premises, or any portion thereof, or from any other use of said premises or any portion thereof without any deduction or deductions; it being understood, however, that the term "gross receipts" shall not include receipts from park passes sold by Concessionaire; any sales taxes imposed by any governmental entity and collected by Concessionaire; receipts from employees for meals provided at cost; gratuities or service charges paid to concessionaire to the extent such gratuities or service charges are actually paid

over to or properly due the employees of the concessionaire; receipts from refunds, discounts, rebates or allowances received by Concessionaire from wholesalers or suppliers; receipts from the sale or trade-in value of equipment owned and/or used on the premises by the Concessionaire; and receipts for which full or partial refund subsequently is made by the Concessionaire to the purchaser of the item on which the charge, sale, rental or fee was earned. In addition, gross receipts shall include only the profit margin to Concessionaire on the rentable portion of subcontracted revenues for the following incidental items or services: audio/visual equipment; computers and related equipment; meeting tools (e.g.; easels, podiums, etc.); lighting equipment and services; custom draping; labor for extensive set up services; special operators (e.g.; audio or visual engineer); flowers; bands; recreational events; and other additional and similar services as may be approved in writing by the District Superintendent. The profit margin to Concessionaire on the rentable portion of subcontracted revenues for the foregoing services shall mean the difference between the amount charged by Concessionaire to conference center guests or conference group for the service and the amount paid by the Concessionaire to the service provider for the service or rented property plus any actual, direct, out of pocket expense incurred by the Concessionaire for arranging for or providing the service to the conference center guest or group.

Bad debt losses, including, but not limited to, counterfeit currency, bad checks and employee embezzlements, shall not be deducted from gross receipts. Reservation deposits shall not be included in gross receipts until the services which relate to the deposit have been rendered

by concessionaire or the reservation has been canceled and the deposit has been retained by Concessionaire in accordance with its deposit policy.

Beginning with the 15th day of the month following the commencement of the contract term, and on or before the 15th day of each month thereafter, Concessionaire shall furnish to the District Superintendent a verified statement of the concession's gross receipts for the preceding month. Such statement shall be in a format provided by the State and shall specify the current period and cumulative total of gross receipts for the concession through the end of the preceding month for the then current contract year. With such monthly statement, the Concessionaire shall pay to State the concession fee for the preceding calendar month as prescribed above. If, at the end of any contract year, the total of monthly percentage concession fee payments made (or due) during that contract year are less than the Minimum Flat Rate required for that contract year, the difference shall be remitted to State along with the last monthly sales statement of the contract year.

Concessionaire also shall pay to State, without demand, a monthly sum of Twenty Five Thousand Seven Hundred Fifty Dollars ($25,750) ("State Support Fee"). Said payment may be used at State's discretion for its costs of operations at Asilomar. On the first of each new contract year, Concessionaire shall increase this monthly payment by five percent (5%) from that amount paid for the last month of the previous contract year.

Monthly payments to State shall be made with two separate checks for the amounts described above, one for the Concession Fee and one for the State Support Fee, and shall be made to the order of the Department of Parks and Recreation and mailed concurrently by first class mail, postage prepaid or delivered to the office of the District Superintendent at the Monterey District Office, 2211 Garden Road, Monterey, CA 93940 or at such other location as may from time to time be designated by State.

Concessionaire also shall be obligated as follows:

(a) Deposit, as an initial obligation under this contract and within 15 days from the date the contract commences as set forth in Section 4, a cash payment in the amount of Five Hundred Thousand Dollars ($500,000) in the "Facility Improvement Account" as set forth and described in Section 14 of the contract.

(b) In accordance with Section 14 of the contract, deposit each month in the Facility Improvement Account, within fifteen days after the end of each month for the term of this contract, an amount equal to five percent (5%) of the monthly gross receipts for the previous month.

(c) In accordance with Section 12 of the contract, provide One Hundred Forty Thousand Dollars ($140,000) to State during the first contract year for State's use in its administration of resource management programs and projects within

Asilomar State Beach. On each anniversary, Concessionaire shall increase the amount provided by five percent (5%) from that amount provided during the previous contract year.

(d) In accordance with Section 13 of the contract, provide Thirty Seven Thousand Dollars ($37,000) to State during the first contract year for State's use in its administration of interpretive programs and projects within Asilomar State Beach. On each anniversary, Concessionaire shall increase the amount provided by five percent (5%) from that amount provided during the previous contract year.

Each payment and deposit called for in this Section shall be made by separate check. In the event a payment or deposit, called for herein, is not made on or before the due date provided, Concessionaire shall pay to State a late administrative charge on the late amount, calculated at the rate of one percent (1%) per month of the amount of the late payment or portion thereof. Upon written request by the Concessionaire to the District Superintendent, demonstrating adequate reasons for the late payment or deposit, the State may, in its sole discretion waive the late charge. Nothing in this Section shall limit State's remedies for failure to make such payments or deposits including, but not limited to, termination of the contract, damages, attorneys fees and costs, or interest at the prevailing legal rate on such payments from the date due until paid or on any judgments at law rendered in a suit for such payments.

7. **FACILITIES, EQUIPMENT AND SERVICES TO STATE:** Provide to State, for State's exclusive occupancy and/or use, facilities, equipment and services as follows:

(a) Asilomar State Park Office facility located in the Eastwoods area or other equivalent facility acceptable to State. The facility shall include all equipment, furnishings and services necessary for State's efficient operation and management of Asilomar State Beach consistent with standard business practices. Office equipment and services provided in connection with this facility shall include telephones, fax, copier, facility and equipment maintenance, and housekeeping. Equipment and furnishings shall be upgraded and replaced by Concessionaire in a manner and on a schedule consistent with State standards. All associated utility and service fees, including telephone, will be paid by Concessionaire.

(b) In addition to the foregoing, Concessionaire shall supply equipment to include: one vehicle, six portable radios and one cellular telephone.

(c) Equipment shall meet State specifications and shall be maintained, upgraded and/or replaced by Concessionaire in a manner and on a schedule consistent with State standards.

8. **USE OF PREMISES:** Concessionaire shall not use or permit the subject premises to be used in whole or in part during the term of this contract for any purpose, other

than as herein set forth, without the prior written consent of the State. The Concessionaire shall provide first-class visitor conference facilities and services at the Asilomar Conference Grounds in a manner, and at a level, consistent with or exceeding those which have traditionally been provided at Asilomar. "First Class" as used in this Section, and elsewhere in this contract, unless otherwise specified in the context used, shall mean the level and quality of goods, equipment, furnishings, and services consistent with, or, at the discretion of Concessionaire, exceeding services and facilities provided at Asilomar within the five to ten year period preceding the effective date of this Contract.

Of prime importance to State under this contract, is Concessionaire's obligation to fully cooperate with State to operate the premises in a manner that provides a high quality retreat experience at reasonable and affordable prices for Asilomar visitors and the obligation to balance the dual objectives of providing a quality conference experience for park visitors and protecting the ecologically sensitive natural environment and historically significant cultural environment that makes Asilomar unique. Concessionaire's manner of operation shall promote Asilomar's spirit of place; protect and accentuate the unique, one-of-a-kind nature of Asilomar; and provide the opportunity for all visitors to relax, refresh, and focus their minds.

(a) Concession Services and Facilities

Concessionaire is responsible for, among other things:

(1) Provision of first-class group conference facilities with lodging and meeting accommodations.

(2) Provision of food services, including conference meals, on-site catering, and special barbecue events. Alcoholic beverages may be provided, but only in accordance with the provisions of Section 9 below.

(3) Operation of a retail store offering gifts, sundries, toiletries, and souvenirs for conference grounds guests. Gift and souvenir sales shall be limited to those items which are consistent with and support the mission of the California State Park System and are appropriate for the public's use and appreciation of Asilomar. State reserves the right to review and approve or disapprove items offered for sale. Concessionaire shall prominently devote at least 35% of sales space, up to a maximum of 600 square feet, for the display and sale of "State Park Exclusive" merchandise and state park passes. Department shall make a list of such State Park Exclusive merchandise available to Concessionaire for sale by Concessionaire in the retail store.

(4) Provision of all utilities, including electricity, heat, hot and cold water, and garbage and sewage disposal, to the conference grounds in accordance with Section 20 of the contract.

(5) Provision to State of meeting facilities, residential accommodations and dining services related to State's use of William Penn Mott, Jr. Training Center located in Eastwoods. Such accommodations and services shall be offered at specified rates and Concessionaire shall provide State with scheduling preference. Service requirements and prescribed rates for such services are set forth in Exhibit "D" attached hereto and by this reference made a part of this contract.

(6) Expansion and/or relocation of facilities or provision of other facilities and/or services as agreed to in writing by Concessionaire and State.

All concession facilities and services shall be made available and accessible to the general public for conference ground purposes at all times without discrimination and on a first-come, first-served basis. Reservations for use of said facilities shall be made on the same basis.

Throughout the term of this contract, priority shall be given to conference uses of the premises. Only insofar as space is not being used for conference purposes may such space be made available to other members of the public on a first-come, first-served basis.

(b) Carryover of Obligations from prior Operation

Concessionaire shall cooperate with State to provide a smooth, coordinated transition from operations under the prior contract to the implementation of operations by Concessionaire

under this contract. To this end, Concessionaire shall carry out the requirements of the transition plan approved by State and set forth as Exhibit "E" to the contract and any closing documents prepared and agreed to by the parties, including without limitation, escrow instructions, necessary to implement the transition.

In accordance with Public Resources Code Section 5080.25 (f) and the RFP, Concessionaire shall give preference to the employees of the Pacific Grove-Asilomar Operating Corporation when staffing the operation of the concession by Concessionaire. Concessionaire's plan for complying with this provision shall be set forth in the transition plan approved by State and set forth in Exhibit "E".

(c) Asilomar State Beach General Plan

Concessionaire's use of the premises shall be subject to those directives, guidelines and limitations as set forth in the Asilomar General Plan, including all amendments, in existence as of the date of this contract and as such plan may, from time to time, be amended.

In accepting the obligations under this Contract, and that such obligations are subject to the General Plan as provided for in this Section, Concessionaire acknowledges and understands that a substantial revision to the existing 1975 Asilomar General Plan was begun in 1992 and should be completed sometime after the commencement of this contract.

The pending general plan revision and any subsequent revisions may identify and describe changes to the operating conditions set forth in this contract. Such changes could necessitate amendment(s) to the contract. Concessionaire is expected to be conversant and knowledgeable about the revision process, alternative approaches, and revision proposals as they are developed and shall cooperate with and assist State to the fullest extent possible in completing the general plan revision process. Concessionaire agrees to enter into such amendments to this Contract as are reasonably required by any amendments to the General Plan.

(d) Operations Schedule and On-Site Management

Concessionaire shall provide services 24 hours a day, 365 days a year to fully accommodate the public throughout the term of the contract. In the event State deems Concessionaire's hours of operation inadequate for proper service to the public, State may require Concessionaire to adjust the hours of operation. In the event of extraordinary adverse weather or other situations affecting health and safety of operations, the District Superintendent or District Superintendent's authorized representative, in his or her discretion, may permit the Concessionaire to adjust the hours of operation accordingly during the period of emergency.

A concession manager competent to manage the entire concession operation shall be on the premises at all times during the term of the contract. If the on-site manager is to be other than the Concessionaire, State reserves the right to approve the qualifications of such manager in advance.

(e) State and Concessionaire Operating Plans

Concessionaire shall develop and continually update, a plan for the concession operation of Asilomar State Beach and Conference Grounds. The plan shall cover such items as: days and hours of operation, scope and quality of services, fees and rates schedule, reservation system, management and supervisory oversight, employee and employment policies, emergency procedures, safety program, sanitation, security plan, loss control, lost and found, complaint review process and other appropriate areas of operational concern.

Additionally, since Concessionaire is expected to set an example in waste management and environmental awareness which will lead to preservation of the resources of the state, Concessionaire shall prepare and execute a formal program designed to recycle and reduce environmental impacts that result from conference grounds activities. This program shall be set forth in writing and shall be submitted to State as part of Concessionaire's Operating Plan. The program shall specifically address, but not be limited to, the following issues: solid waste management, including reduction, reuse and recycling; water and energy conservation; pest management; hazardous materials handling and storage; air quality; historic preservation; wildlife management; vegetation management; and cultural resource management.

The environmental program shall require Concessionaire to reduce the amount of trash and waste generated, to acquire products with consideration given to the ability to reuse or recycle the products and/or their packaging, and to recycle all recyclable materials. A container

deposit program or some other approach that minimizes such trash and assures recycling shall be implemented as part of the overall environmental program.

As part of the environmental program, Concessionaire and State shall, from time to time, review items sold and containers or utensils used or dispensed by Concessionaire and, whenever possible, eliminate the use of non-returnable containers, plastics, etc. State reserves the right to prohibit the sale or use of non-recyclable containers or plastics. No Styrofoam cups or other non-biodegradable cups are to be used or sold by Concessionaire.

In addition, the environmental program shall require Concessionaire to develop and implement sound practices of energy and water conservation in its daily operations and in the design, construction, and/or maintenance of new and rehabilitated facilities within Asilomar State Beach and Conference Grounds.

Concessionaire shall coordinate and cooperate with State to ensure that Concessionaire's Operating Plan is consistent with the goals and purposes of Asilomar State Beach and Conference Grounds and that it is consistent with the State's staffing and operational activities and responsibilities within the Asilomar park unit as set forth in Exhibit "C" attached hereto including any changes thereto. Concessionaire's Operating Plan and any significant revision to said plan, shall be submitted to the District Superintendent for review and approval no less frequently than the first day of each contract year throughout the term of the contract. If written approval, or a written response specifically detailing the reasons why the Operating Plan as submitted is

unacceptable, is not made within 30 business days from the date of submittal by Concessionaire, then the Operating Plan as submitted shall be deemed approved. When approved, said plan and subsequent revisions shall become Exhibit "F" of the contract.

(f) Compliance with Laws, Rules, Regulations and Policies

Concessionaire shall comply with all applicable laws, rules and regulations, including obtaining and maintaining all necessary permits and licenses. Concessionaire acknowledges and warrants that it is, or will make itself, through its responsible concession managers, knowledgeable of all pertinent laws, rules, ordinances, regulations, or other requirements having the force of law affecting the operation of the concession facilities, including but not limited to laws affecting, health and safety, hazardous materials, historical preservation, environmental impacts, building standards, and the like. It shall be no defense to a breach of this contract for failure to comply with laws, that such laws affecting the operations of the concession facilities and related activities are not expressly set forth or referred to in this contract or otherwise provided by the State. State shall have no obligation under this Contract, express or implied, to inform, advise, or otherwise make such information available to Concessionaire. This contract is expressly subject to regulations and policies of the State Park and Recreation Commission and the Director of the California Department of Parks and Recreation. Department shall be obligated to make any policies as are unpublished available in writing to Concessionaire at commencement of the Contract or at such later time as new or amended policies are developed and adopted by the Department. Concessionaire shall be responsible for compliance with unpublished Department or

Commission policies only after such are made available in writing to Concessionaire by Department. In the event of conflict between the contract and regulations or any policies made available to Concessionaire in writing, the State Park regulations and policies shall prevail.

9. ALCOHOLIC BEVERAGES: Concessionaire is authorized to sell beer and wine for on-premises consumption, but only where such beer and wine is served with bona fide meals provided within the dining hall, or where served in other areas where meals are commonly provided, or where served in conjunction with guest gatherings catered on the premises by the Concessionaire. Any other sale or provision of alcoholic beverages by Concessionaire is expressly prohibited. However, if the Director of the Department of Parks and Recreation provides written authorization therefor, additional provision and/or sale of alcoholic beverages by Concessionaire for on-premises consumption may be permitted.

The sale of alcoholic beverages shall be subject to any regulations established for the State Park System by the Director of the Department of Parks and Recreation, and the regulations established by the Department of Alcoholic Beverage Control. Advertising of the sale of alcoholic beverages, to the extent applicable laws and regulations of the Department of Alcoholic Beverage Control are consistent, shall be limited to brochures, menus and signs which are approved in writing by the District Superintendent.

A competent adult person 21 years of age or over, shall be on the premises at all times to supervise the sale of alcoholic beverages.

In order to protect the health and safety of park visitors and to preserve the peace within a park unit, the District Superintendent or designee may, at her or his discretion, require the Concessionaire to temporarily discontinue the sale of alcoholic beverages.

Concessionaire shall work closely with State's District Superintendent in the development and management of its alcoholic beverage program. The State reserves the right, in its sole discretion, to prohibit or modify the manner and circumstances of Concessionaire's sale and service of alcoholic beverages.

10. QUALITY OF SERVICE: Concessionaire agrees to staff, operate and manage the services and facilities in a first-class manner, and comparable to other first-class concessions providing similar facilities and services. Concessionaire shall furnish and dispense foods and beverages of the best quality and shall maintain a high standard of service at least equal to that of other establishments in State Parks and to those prevailing in adjacent communities for similar products and services.

Concessionaire shall select, train and supervise its employees in a manner consistent with the service-oriented nature of Asilomar. Concession employees shall be hospitable and courteous in their relations with customers, other members of the general public utilizing any aspect of the concession, and representatives of the State.

State reserves the right to prohibit or modify the sale or rental of any item, accommodation, or service to ensure that the public receives, in the State's view, fair pricing, proper service, and adequate quality.

11. CONTROL OF RATES, FEES AND CHARGES: Concessionaire shall, prior to opening for business, obtain the District Superintendent's approval of a schedule of fees, rates, charges and prices for all concession accommodations, services, rentals and products. A copy of the approved schedule shall be posted by Concessionaire in a conspicuous place in the Administration Building of the Asilomar Conference Grounds and in such other places as may be designated by State.

copy as Exhibit

With regard to concession fees, rates and charges, Concessionaire agrees to honor, throughout the first contract year, all rates and reservations committed to by the prior operator.

Beginning with contract year two, Concessionaire may propose for State's consideration, rate, fee and charge increases. ~~However, such proposed increases shall not exceed the percentage increase for the previous contract year~~ as reflected in the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index (CPI). The methodology set forth in Exhibit "H" shall be used in computing such increases.

All proposed rate increases, if approved, shall commence on Jan. 1 of the year for which such rate increase shall be effective ("the Rate Increase Year"). However, such proposed increases shall not exceed the percentage increase for the calendar year immediately preceding the calendar year preceding the Rate Increase Year

per Amendt 5/17/99

Concessionaire may also propose fee and rate increases based upon documented extraordinary circumstances. Concessionaire acknowledges that any fee increase must be

reviewed and approved by the State in advance and in writing. Concessionaire further understands and agrees that State reserves the right, at its sole discretion, to approve or deny any fee, rate or charge increase. Additionally, authorization of such fee increases may necessitate renegotiation of contract terms, including rental provisions. Any significant changes to contract terms are subject to execution of a written amendment to this Contract after prior review and approval by the State Legislature and approval of appropriate State control agencies.

Check?

If the State shall determine any price, rate or charge to be unreasonable or inappropriate, the same shall be modified as directed by the State after Concessionaire has been advised and given a reasonable opportunity to justify such price, rate or charge.

12. RESOURCE PROTECTION: Asilomar State Beach and Conference Grounds contains significant natural, cultural and historic resources. Concessionaire shall coordinate all environmental and preservation compliance through the State Park District Superintendent and shall not commence any project, program, construction, or surface disturbing activity which will affect natural, cultural or historic resources without first obtaining written consent from the State.

Beginning with contract year one, Concessionaire shall allocate and expend, at State's direction, One Hundred Forty Thousand Dollars ($140,000) to accomplish resource programs and projects at Asilomar State Beach and Conference Grounds. On each anniversary thereafter, Concessionaire shall increase this allocation and expenditure by five percent (5%) from the allocation required for the previous contract year. Concessionaire shall coordinate the budgeting

and expenditure of such funds with State and obtain State's approval prior to any such expenditure. State shall have final authority to establish priorities and methods to accomplish such resource project expenditures, including the option to complete such resource work with State staff. Within 60 days after the conclusion of each contract year throughout the term of the contract, Concessionaire shall provide to State an accounting for state-directed resource expenditures for the prior contract year. If said expenditures, as approved and accepted by State, exceed the required allocation in any one contract year, the excess expenditure shall be credited to Concessionaire's allocation for the following contract year. If said expenditures for any one contract year, as approved and accepted by State, are less than the required allocation, Concessionaire shall submit to State, within thirty days of such determination and written notification by State, a cash payment in an amount sufficient to bring the total to the allocation required for that year.

Verify actuals

13. INTERPRETATION: The State intends that the natural and cultural history of Asilomar State Beach and Conference Grounds be presented and interpreted for the education and enjoyment of the visiting public. To this end, Concessionaire shall provide and maintain interior and exterior settings and interpretive signs, materials and programs appropriate to Asilomar State Beach and Conference Grounds in a professional manner and in accordance with the Concessionaire's Interpretive Program Statement, which is Exhibit "G" hereto.

Verify

State shall have the right to review and approve all facets of Concessionaire's Interpretive Program. Additionally, Concessionaire agrees to adjust the scope, content, methodology, and/or presentation of its Interpretive Program to meet professional standards as determined by State.

In addition to Concessionaire's Interpretive Program and any other expenditures required by this Contract and beginning with contract year one, Concessionaire shall allocate and expend, at State's direction, Thirty Seven Thousand Dollars ($37,000) to accomplish interpretive programs and projects at Asilomar State Beach and Conference Grounds. On each anniversary thereafter, Concessionaire shall increase this allocation and expenditure by five percent (5%) from the allocation required for the previous contract year. Concessionaire shall coordinate the budgeting and expenditure of such funds with State and obtain State's approval prior to any such expenditure. State shall have final authority to establish priorities and methods to accomplish such interpretive project expenditures, including the option to complete such projects with State staff. Within 60 days after the conclusion of each contract year throughout the term of the contract, Concessionaire shall provide to State an accounting for state-directed interpretive expenditures for the prior contract year. If said expenditures, as approved and accepted by State, exceed the allocation required in any one contract year, the excess expenditure shall be credited to Concessionaire's allocation for the next contract year. If said expenditures for any one contract year, as approved and accepted by State, are less than the required allocation, Concessionaire shall submit to State within thirty days of such determination and written notification by State, a cash payment in an amount sufficient to bring the total to the allocation required for that year.

14. FACILITY IMPROVEMENT ACCOUNT: In accordance with Section 6 and within 15 days from the effective date of this contract, Concessionaire shall establish and fund a Facility Improvement Account with a financial institution licensed to do business in the Monterey Peninsula area and acceptable to State. The Account shall be interest-bearing, with all interest accruing to the account. The account shall be structured so that any withdrawal from said account shall require the co-signature of State's authorized representative. To carry out the terms of this Section, the parties agree to execute a Facility Improvement Account Trust Agreement in the form substantially as shown in Exhibit "M", attached to this Contract.

The purpose of said account shall be to carry out an ongoing multi-year program of facility development, facility improvement and resource management within the Asilomar State Beach and Conference Grounds. Concessionaire shall, at State's direction, be responsible for the implementation of this program, including project planning, development and execution or implementation and administration of any required construction contract(s), and the expenditure of funds from the Facility Improvement Account. State shall identify projects, set priorities and must approve all program expenditures in advance.

Prior to initiating any facility improvement or construction project, and no later than sixty (60) days from the start of each contract year throughout the term of this contract, Concessionaire shall meet and confer with State's District Superintendent to discuss and review a proposed program for the expenditure of Facility Improvement Account funds during the then-current and future contract year(s). Subsequent to such meetings, State shall provide

Concessionaire with specific written direction for each approved project. Such project direction shall follow guidelines and directives set forth in the general plan for Asilomar. Upon receipt of written direction for any project, Concessionaire shall follow procedures set forth in Section 15 to plan, design, undertake and complete the specified project. All expenditures from the Facility Improvement Account shall be fully documented in accordance with standard business practices and in a manner acceptable to State. All payments made under the Facilities Improvement Account Trust Agreement shall be approved in advance by the District Superintendent or her or his designee.

Concessionaire shall provide the State with monthly Facility Improvement Account balance statements issued by the financial institution holding the account. Said monthly statements shall be provided to State concurrently with payment of Concession Fees and State Support Fees as required under Section 6 above. Additionally, Concessionaire shall, within sixty (60) days after the conclusion of each contract year, submit to the State's District Superintendent an itemized statement documenting all Facility Improvement Account expenditures for the previous contract year. Should such expenditures, as approved and accepted by State, exceed available Facility Improvement Account funds, then the excess expenditure shall be credited to Concessionaire's account allocation for the next contract year. Any account balance, including accrued interest, shall carry over to the next contract year.

Should State at anytime determine and so notify Concessionaire in writing that Facility Improvement Account funds have been expended by Concessionaire for purposes other than those

specifically approved in writing by State, Concessionaire shall promptly reimburse the account, within thirty (30) days of such notification, for the amount in question, including all interest which would have accrued had such unauthorized expenditure not been made.

Notwithstanding the procedures set forth above, State, at its sole discretion and at any time during the term of this contract, may elect to receive all or part of the funds retained in the Facility Improvement Account, including accrued interest. Within thirty (30) days after request by the State, Concessionaire will cooperate in signing any documents necessary for the release of funds from the Facility Improvement Account to the State in accordance with the terms of this Contract.

15. CONSTRUCTION/MODIFICATION OF IMPROVEMENTS:

Pursuant to Section 14 of the contract, Concessionaire will be required to plan, design and implement various facility improvements at Asilomar State Beach and Conference Grounds. In addition, Concessionaire may desire to undertake certain improvement projects at its own cost and expense. In either case and in the event of any construction project under this contract, Concessionaire shall comply with the following procedures.

(a) State Directed Construction/Modification

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When Concessionaire is directed in writing by State to undertake specific facility development, improvement or modification work, Concessionaire shall comply with the following:

Unless specifically exempted in writing by State, Concessionaire shall utilize the services of an architect and/or a contractor, licensed by the State of California, for the construction or modification of facilities. Employment of any other professional, such as an engineer, must be approved by State. The professional must be licensed by the State of California in the field of work involved. Copies of any contract contemplated between Concessionaire and any contractor, architect or other professional to be utilized by Concessionaire shall be furnished to and consented to in writing by State in advance of execution by Concessionaire. Any architect's services shall include the preparation of working drawings, detailed specifications, estimates of cost of construction, supervision and stage inspection.

All working drawings, detailed specifications and estimates of construction costs shall be submitted to State for approval in accordance with the Plan Approval Procedure set forth in Exhibit "I", which is attached hereto and incorporated herein by that reference. After plans and specifications have been submitted and approved as required, Concessionaire shall submit an equipment schedule, including catalog cuts, to State for approval. The State shall not unreasonably withhold approvals. If the State disapproves any drawings, plans or specifications, Concessionaire shall submit necessary modifications and revisions. Once approved, no changes or alterations shall be made in working drawings, plans or specifications without prior written approval of State.

Upon approval of and in accordance with the working drawings, plans, and specifications Concessionaire shall commence construction of facilities authorized therein and prosecute the same to completion with all due diligence. Inspection reports shall be timely provided to State throughout the construction project. The State shall authorize progress payments to be made from the Facility Improvement Account based on the percentage of completion for a particular project and in accordance with the terms of any contract for such project executed by Concessionaire pursuant to written direction from the State as provided for in Section 14.

Upon completion of construction, the construction shall be certified by the architect to be in substantial accordance with the latest State-approved plans and specifications and all applicable laws, building codes, regulations, industry standards, or other requirements pertaining to the particular work of improvement. Additionally, upon said completion, Concessionaire shall file a Notice of Completion of Construction with State. When construction has been completed and facilities accepted by State, Concessionaire will be so notified in writing by State.

During the first year of this Contract, Concessionaire shall be allowed to charge the Facility Improvement Account an amount equal to five percent (5%) of the total cost for a particular project as reimbursement for its services and expenses in administration of the project. Concessionaire will maintain true and accurate records of all expenses incurred in the administration of FIA projects. At the end of the first year, the State shall review these records and determine the allowable percentage for reimbursement for administration of FIA projects for the remainder of the Contract term.

At the time of filing of Notice of Completion of Construction with the State, whether for FIA projects or projects on Concessionaires' own account, Concessionaire will submit verified cost statements accompanied by substantiating invoices and bills of labor, material, or any other evidence of reasonable construction costs for the project, to State. After all statements, invoices, and bills or other evidence of project costs have been examined by State, State will in its sole discretion establish in a reasonable and fair manner the cost of facilities and improvements to which the Notice of Completion relates. As to projects undertaken by Concessionaire on its own account, in the event cost statements, with substantiating material, are not filed by Concessionaire at the time specified, State shall estimate the cost of the project and serve the same on Concessionaire in the manner provided herein. With regard to FIA projects, final payment on any construction contracts, including final progress payment and any retention amounts, will not be made until notification by State that the costs are acceptable. State shall perform such final inspections of the work and audits and reviews of the cost documentation as it deems necessary within 30 days of receipt of the documentation and notify Concessionaire of any deficiencies or approval of final payment to contractors as provided for in Section 14.

All architectural and landscape architectural plans, drawings, and construction documents are the property of the State. Concessionaire will provide State with copies of all such documents prepared, or contracted for, by Concessionaire along with a licensing agreement signed by the architect or other preparer of the plans, drawings, and construction documents acknowledging State's rights to the documents.

State's approval or acceptance of the work or of contracts, plans, specifications, working drawings, or other documents required by this Section or elsewhere in the Contract shall be for the purpose of determining that such work conforms in scope and quality to State's policies and requirements and shall in no way relieve Concessionaire or its contractors or subcontractors from the responsibility for performing such work accurately and completely, and in conformance with industry standards and all applicable laws.

(b) Concessionaire Originated Construction/Modifications

In the event that Concessionaire desires to make modifications or additions to concession improvements, including changes to structural design, landscape design or interior or exterior fixtures or furnishings, the approval in writing of the State shall be obtained prior to commencement of such modification or addition. The State, at its discretion, shall direct the Concessionaire to use the procedure set forth in subsection (a) above or the plan approval procedure prescribed in Exhibit "I" to undertake and accomplish any such modification or addition.

(c) Construction/Modification of Historic Facilities

All work involving designated historic buildings or structures shall be carried out in accordance with all applicable laws pertaining to historic structures and their preservation

including, but not limited to, Public Resources Code section 5024, 5024.5 and Secretary of the Interior Guidelines for Historic Preservation.

In addition to the procedures set forth in this Section 15 , when work involves planning, restoration, alteration, or major repair of, or to, designated historic buildings or structures, Concessionaire shall utilize the services of an architect with specialized experience in the rehabilitation and/or restoration of historic buildings. Likewise, contractors and/or workers employed on such projects must have and demonstrate experience with historic properties. Selection of architects, engineers or contractors for historic rehabilitation and/or restoration projects must be made through the Request for Qualifications (RFQ) procedure and selection panels must include a representative of the State approved by the District Superintendent. All contracts awarded through the RFQ process are subject to approval by the State.

16. TITLE TO IMPROVEMENTS: Concessionaire hereby acknowledges the title of State in and to the premises described in this contract, including real property improvements existing or hereafter erected thereon, by Concessionaire, State, or others, and hereby covenants and agrees never to assail, contest, or resist said title.

17. EQUIPMENT AND FURNISHINGS: Concessionaire shall maintain, replace, repair or otherwise keep all equipment and furnishings in fully functional "turn-key" condition throughout the term of this Contract as provided in this Section 17 and such that the concession

premises and equipment and furnishings are fully operational upon termination of this Contract and transition to whomever takes over operation of the concession.

a. State shall provide to Concessionaire for Concessionaire's use in the operation and maintenance of Asilomar State Beach and Conference Grounds at the onset of the contract, the equipment, furnishings, supplies and materials listed in the Equipment and Furnishings Inventory, Exhibit "J", attached hereto and hereby made a part of this contract. Concessionaire shall maintain an inventory of all property listed on the Equipment and Furnishings Inventory, Exhibit "J" and any property which may be added after the commencement of the contract in accordance with standard business practices and accounting procedures and shall provide for ongoing maintenance and replacement of all identified items. To this end, as set forth in this Section, within thirty (30) days after the end of each contract year throughout the term of the contract, Concessionaire shall provide State with an updated Equipment and Furnishings Inventory. Such annual inventories shall identify all items that were deleted, replaced or added during the previous contract year and shall include information regarding costs, dates of purchases, manner of disposals, salvage values and other information relevant to the management of Asilomar property.

b. Not less frequently than once per Contract Year, on or about the anniversary date of the Contract or such other date mutually agreed by State and Concessionaire, Concessionaire shall prepare and submit for State's review and approval, an equipment replacement plan or schedule ("Equipment Replacement Plan'). If written approval, or a written response specifically detailing the reasons why the Equipment Replacement Plan as submitted is unacceptable, is not

made within 30 business days from the date of submittal by Concessionaire, then the Equipment Replacement Plan as submitted shall be deemed approved. In accordance with such the approved Equipment Replacement Plan, Concessionaire, at Concessionaire's own cost and expense, shall provide, replace, substitute, maintain and/or upgrade any and all additional equipment, furnishings and goods and supplies as might be necessary to completely equip the concession facilities described in this Contract and for the purposes set forth and required in this Contract. Concessionaire shall keep the premises equipped in a safe and first-class manner throughout the term of this Contract.

Concessionaire shall replace those items listed on the Equipment and Furnishings Inventory with items of equal or greater value, quality and utility as necessary to maintain the equipment and furnishings in a functionally equivalent manner as when received.

c. All equipment, furnishings, materials and supplies or substitutions and additions or betterments thereto, whether provided by State or Concessionaire, shall be the property of the State and title to same shall vest with State, except where Concessionaire has obtained written approval from the District Superintendent to allow Concessionaire to retain title to specified personal property purchased and maintained exclusively by Concessionaire for Concessionaire's use in the operation and maintenance of Asilomar. At the end of the contract term, or upon termination of the contract, Concessionaire shall return said equipment, furnishings, supplies and materials inventory, or, if replaced or substituted during the term of the Contract, to State in an

overall condition as good, or better than, or functionally equivalent to the condition of the items received by Concessionaire at the onset of the contract.

d. As an aid in interpretation of this Section, Concessionaire is obligated to return the concession facilities to the State, or turn the facilities over to any subsequent Concessionaire at termination of this Contract in a turnkey, fully operational condition functionally and qualitatively equivalent to the facilities at the time received by Concessionaire at the inception of this Contract.

e. Thirty (30) business days prior to expiration or termination of the contract, Concessionaire, at its own cost and expense, shall provide State with a pre-closing inventory of all equipment, furnishings, supplies and materials. State shall review and approve the pre-closing inventory within 30 business days or provide a written explanation of the reasons for non acceptance. It shall be Concessionaire's sole responsibility to cure all non acceptable items on the preclosing inventory in conjunction with any other transition activities connected with a new concession contract or Concessionaire. Cure of non acceptable items may include provision of any missing items or replacement of any substandard items or payment of a cash payment equivalent to such missing or substandard items. In no event shall Concessionaire have any responsibility for non acceptable items on the pre-closing inventory or associated problems if the pre-closing inventory is consistent with and conforms to the most recent Equipment Replacement Plan approved by the State.

~~f. At no time and in no event shall State be obligated to supply any new equipment, furnishings, or supplies or to replace existing equipment, furnishings, or supplies; provided,~~

f. At no time and in no event shall State be obligated to supply any new equipment, furnishings, or supplies or to replace existing equipment, furnishings, or supplies; provided, however, that, if a new building or other facility is constructed at the direction of the State in accordance with Section 15(a) of this Contract, the initial equipment, furnishings, fixtures and supplies necessary to equip such building or facility shall be purchased using funds from the Facility Improvement Account

18. RESERVED PROPERTY: Certain items of property identified as Reserved Property may be made available to Concessionaire for Concessionaire's use in its operation and interpretation of Asilomar. Reserved Property includes historic artifacts and other historic items which relate to or are integral parts of Asilomar facilities. Historic artifacts include such items as photographs, manuscripts, architectural drawings, and objects associated with the history of Asilomar Conference Grounds and which are a part of the Department of Parks and Recreation historic collection. Other Reserved Property items include, but are not necessarily limited to, removable architectural fixtures and decorative building elements, including historic signage and panels, movable and built-in furniture, draperies, and landscape hardscape features. Reserved Property items are identified in Exhibit "K" attached hereto and hereby made a part of this contract.

Reserved Property requires special attention, care and treatment. Therefore, items of Reserved Property left on the premises and/or made available to the Concessionaire for Concessionaire's use in the operation and interpretation of Asilomar shall be provided by State in

accordance with a custody agreement, DPR 416, designated Release of Art and Artifacts – Outgoing, a sample of which is attached hereto as Exhibit "L". Said document(s) shall be executed between State and Concessionaire prior to use by Concessionaire.

All artifacts used by Concessionaire in the operation of Asilomar, whether owned by Concessionaire or by State, shall be displayed, used and maintained in accordance with guidelines set forth in the State's program for artifact management and the executed custody agreement document(s) referenced above. Reserved Property shall be managed in accordance with all other applicable provisions and procedures governing the care and protection of artifacts and historic architectural property.

Notwithstanding the requirements set forth above, Concessionaire shall maintain and update at least annually an inventory of all Reserved Property items under its care. Concessionaire shall provide State with a copy of such inventory within 30 days after the end of each contract year throughout the contract term, or more frequently if so requested in writing by State.

In the event Concessionaire is presented with the opportunity to acquire Asilomar-related historic artifacts or movable architectural elements or furnishings by gift or donation, Concessionaire shall direct the source of such items to State's on-site representative for consideration for acceptance.

In the event that Concessionaire comes into possession of Asilomar-related historic artifacts or movable architectural elements or furnishings by any means during the term of this contract, such items shall become the property of the State and must be brought to the attention of the State in a timely fashion in order that they be accessioned in accordance with State's policies and procedures.

Deaccessioning or disposal of Reserved Property is the sole right of the State as governed by applicable statute and regulation.

19. HOUSEKEEPING AND MAINTENANCE: Concessionaire shall, at Concessionaire's expense, maintain and operate the Asilomar concession as a "first-class", "high quality" conference center in a clean, safe, wholesome, and sanitary condition free of trash, garbage, or obstructions of any kind. Concessionaire shall remedy without delay any defective, dangerous, or unsanitary conditions.

(a) Housekeeping

Housekeeping activities are defined as all those activities concerned with keeping facilities clean, neat, and orderly, and include, but are not limited to, raking, sweeping, vacuuming, mopping, stripping, waxing, dusting, wiping, washing, hosing, and other general cleaning of interior and exterior floors, walls, ceilings, doors, windows, facility fixtures, and all adjacent grounds, walks and roads.

In addition to providing housekeeping services for the Asilomar Conference Grounds as described in Exhibit "A", Concessionaire shall be responsible for ensuring that all trails, footpaths, boardwalks, beaches, and roadways in, on, or adjacent to the Asilomar State Beach park unit are maintained in a trash-free condition. As a part of this responsibility, Concessionaire's maintenance personnel shall empty, on a regular and adequate schedule, all trash receptacles on the Asilomar conference grounds, in all beach areas and in all beach parking areas.

Concession housekeeping shall conform to State Park standards and schedules, including special provisions for the protection of historic properties and furnishings, as the State provides in its Facility Maintenance Program or may develop for the Asilomar park unit.

(b) Maintenance

Concessionaire shall maintain all concession facilities on the subject premises in good order and repair at Concessionaire's own cost and expense during the term of this contract. Such maintenance shall include structural and landscape maintenance, and shall conform to the same standards and schedules as the State provides in its Facility Maintenance Program or as it may develop for the Asilomar park unit. When requested by Concessionaire, and determined by State, Concessionaire's structural maintenance obligation shall not include unforeseeable (by reasonable inspection[1]), uninsurable (by insurance ordinarily available and purchased in conjunction with similar facility operations[2]), and unpreventable (by means of maintenance or repairs carried out in the ordinary course of operations as required by the terms of this Contract) events of structural

to maintain the facilities in accordance with the terms of this Contract by Concessionaire. In no event shall State be obligated to fund such repairs from other than the Facilities Improvement Account in accordance with the terms of this Contract and Section 14.

Should Concessionaire fail, neglect, or refuse to do so, the State shall have the right to perform such maintenance or repairs for the Concessionaire. State shall first give Concessionaire ten (10) days written notice of its intention to perform such maintenance or repairs. Within that notice period, Concessionaire may proceed with such maintenance or repairs at Concessionaire's own expense, in which event the State shall, if repairs are properly made, withdraw from the undertaking. In the event, after notice by the State, the Concessionaire fails to make such maintenance or repairs and State performs the maintenance and repairs required, Concessionaire shall promptly reimburse the State for the cost thereof. Notwithstanding the foregoing, the State shall not be obligated to make any repairs to or maintain any improvements on the subject premises. Concessionaire hereby expressly waives the right to make repairs at the expense of the State and waives the benefit of the provisions of Sections 1941 and 1942 of the Civil Code of the State of California relating thereto if any there be.

The term maintenance, for the purposes of this contract, is defined as all repair and preservation work necessary to maintain concession facilities in a good state of repair, as well as to preserve them for their intended purpose for an optimum useful life. Generally, repair, maintenance, and systematic replacement (other than systematic replacement of structures) are considered to be maintenance. Projects categorized as maintenance include, but are not limited

maintenance, and systematic replacement (other than systematic replacement of structures) are considered to be maintenance. Projects categorized as maintenance include, but are not limited to, repainting, reroofing, replacing old equipment items (i.e. air conditioners, boilers, carpeting, ovens, ranges, water heaters, etc.) and road repairs.

(c) Annual Maintenance Plan

No later than thirty (30) days after the start of each contract year, Concessionaire shall submit an annual maintenance plan and budget ("Maintenance Plan") to the District Superintendent for review and approval. At the same time, Concessionaire shall submit to State an itemized statement documenting Concessionaire's maintenance program expenditures and project accomplishments for the previous contract year.. If written approval, or a written response specifically detailing the reasons why the Maintenance Plan as submitted is unacceptable, is not made within 30 business days from the date of submittal by Concessionaire, then the Maintenance Plan as submitted shall be deemed approved.

(d) Resource Sensitivity Considerations

Concessionaire acknowledges that certain portions of the concession premises include landscape, natural areas and facilities which are historically, archaeologically and environmentally sensitive. No activity, including but not limited to repair, maintenance, alteration, modification, demolition, earth-moving, or construction shall be undertaken without the prior written

permission of the State and then only in conformance with all applicable laws, regulations, policies and procedures.

When maintenance work involves significant repair to designated historic buildings or structures, Concessionaire shall utilize the services of contractors and/or workers possessing demonstrated experience with historic properties. Selection of contractors for such historic repairs must be made through the Request for Qualifications (RFQ) procedure and selection panels must include a representative of the State approved by the District Superintendent. All contracts awarded through the RFQ process are subject to approval by the State.

20. UTILITIES AND SERVICES: Concessionaire shall be responsible for the installation, provision and maintenance of all utilities necessary to and used in connection with the concession facilities identified on Exhibits "A" and "B", including, but not limited to electricity, heat, water, sewage disposal and waste disposal. When installing facilities, no trees or vegetation shall be trimmed or cut or any habitat disturbed without permission of the District Superintendent. Concessionaire shall be responsible for the payment of all utility charges, including furnishing all necessary refuse and garbage containers and removal and disposal of all rubbish, refuse, and garbage resulting from concession's operations. All such rubbish, refuse, and garbage shall be disposed of outside the park unit and in accordance with applicable laws. All trash containers and/or trash bins shall be adequately screened to the satisfaction of the District Superintendent.

(a) Co-Generation Plant

State shall be responsible for removal of any equipment remaining on the Premises pertaining to the Co-generation plant and any related equipment or infrastructure excepting underground pipes which shall remain in place.

(b) Communications

In keeping with Asilomar's non-interruptive, contemplative, "summer camp" atmosphere, overnight accommodations are not equipped with telephones or televisions. However, to better serve the communications needs of conference center clientele, Concessionaire may propose to provide centralized computer services, provisions for Telecommunications Devices for the Deaf (TDD) and additional protected and secure public telephones. Concessionaire shall submit any plan to implement such services to the District Superintendent for prior review and approval.

(c) Solid Waste Management Recycle Program

Concessionaire shall develop a formal program to reduce, reuse, and recycle solid waste materials at Asilomar. To this end, Concessionaire shall actively work to reduce the amount of trash and waste generated, to acquire products with consideration given to the ability to reuse or recycle the product and its packaging, and to recycle all recyclable products. A container deposit

program or some other approach that minimizes such trash and assures recycling shall be implemented.

(d) Energy and Water Conservation Practices

Concessionaire shall develop and implement sound practices of energy and water conservation pursuant to daily operations and in the design, construction, and/or maintenance of new and rehabilitated facilities within Asilomar State Beach and Conference Grounds.

21. CONCESSIONAIRE RECORDS: Concessionaire shall keep separate true and accurate books and records showing all of Concessionaire's financial transactions under this contract in a manner which conforms to industry standards and practices and in a manner acceptable to State. The State shall have the right, through its representative and at all reasonable times, to examine and copy such books and records including all tax return records.

Concessionaire's business and financial records related to the construction, maintenance, or operation of concessions at the Asilomar Conference Grounds, including existing records, shall be treated as public records subject to disclosure under the California Public Records Act (Chapter 3.5 [commencing with Section 6250] of Division 7 of Title 1 of the Government Code), except records that would be personal information under Section 1798.3 of the Civil Code if maintained by an agency. The term "employment contract" as used in Section 6254.8 of the

Government Code shall be deemed to mean an employment contract between the Concessionaire and its employee.

Concessionaire will submit to the State, at least quarterly, an income statement and balance sheet for all Asilomar-related business activities. Said reports shall be prepared in accordance with generally accepted accounting principles or in a format previously approved by the State, and shall be verified in writing by Concessionaire.

In accordance with Public Resources Code Section 5080.18 (b), copies of all sales and use tax returns and reports submitted by Concessionaire to the California State Board of Equalization, the Employment Development Department, the Franchise Tax Board, or any other governmental agency, shall be submitted to the Department concurrently with any other reports required by this Section to be submitted.

Additionally, Concessionaire will submit to the State, no later than May 1st each year during the term of this contract, an audited financial statement for the previous calendar year, including all management letters from that review. Such statement shall be prepared by a Certified Public Accountant licensed by the State of California. The particular CPA must be approved in advance and in writing by State. Such approval shall not relieve Concessionaire or the CPA from the responsibility for the submission of accurate and complete reports or performance of required audits. The financial statement shall be submitted on Form DPR 86, "Concessionaire's Financial Statement", or in a format previously approved by the State, and shall

contain an appropriate certification that all gross receipts during the yearly accounting period covered by said statement have been duly and properly reported to the State. Concessionaire shall bear the full cost for the annual financial statement and audits. In accordance with Public Resources Code Section 5080.18 (c), State shall have the right, through its representative and at all reasonable times, to conduct such audits as it deems necessary and to examine and copy all working papers supporting Concessionaire's annual financial statement and, in addition, to conduct additional independent audits and reviews of the concession operation upon written notification of such intent to Concessionaire.

Within 45 days of the expiration or termination of this contract, Concessionaire shall submit to the State a financial statement for the period of operation not previously reported, prepared in the manner stated above.

State further reserves the right to audit, examine and copy all books and records of Concessionaire concerning its operations under this contract at any time during the three (3) year period following the end of this contract.

Concessionaire shall, at its own cost and expense, install and maintain such cash register or other cash and financial transaction handling equipment as may be deemed necessary by State. Such equipment shall provide a continuous record of all transactions and contain such other financial and accounting controls as are customary in the industry and designed to adequately and accurately account for all cash or other financial receipts.

The following materials are the property of the State and shall be treated as public records subject to disclosure under the Public Records Act as cited above:

(a) All project planning documents, specifications, construction documents, and contracts for services related to the preparation of such documents for designated historic properties.

(b) All documents and contracts for services related to the conservation of designated historic properties and "Reserved Property" as specified in Exhibit "K".

22. PUBLIC MEETINGS: If Concessionaire is governed by a board of directors, one or more State-designated representatives shall be present at all meetings of the board of directors relating to the construction, maintenance, finances, or operation of concessions at the Asilomar Conference Grounds and such meetings shall be conducted at least quarterly at Asilomar in accordance with the Bagley-Keene Open Meeting Act (Article 9 [commencing with Section 11120] of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code). If Concessionaire is not governed by a board of directors, Concessionaire shall hold quarterly meetings at the Asilomar Conference Grounds, relating to the construction, maintenance, finances, or operation of concessions at the Asilomar Conference Grounds, at which meetings one or more State-designated representatives shall be present, and such shall be conducted in accordance with the Bagley-Keene Open Meeting Act.

1 **23. CONCESSION NAME, SIGNS AND ADVERTISING:** No names, signs,
2 placards, logos, or other advertising matter shall be used, inscribed, painted, or affixed upon said
3 premises or other property thereon, circulated, or published without prior written consent of the
4 State. Use of the name "Asilomar" in any fashion is prohibited except as permitted by this
5 Contract or otherwise by permission of the Department. No such use shall be deemed to instill in
6 Concessionaire any rights of ownership in such name.
7
8 Concessionaire acknowledges that the Asilomar Conference Center name is the property
9 of the State, and such name may be used by Concessionaire only during such time that
10 Concessionaire operates the business under this contract. Any other business names used by
11 Concessionaire must be approved by State.
12
13 Concessionaire's promotion and advertising shall emphasize the conference features of the
14 grounds, with the understanding that meetings for the purposes of conferring may be solicited.
15 Concessionaire shall not promote, advertise or make arrangements which would encourage the
16 use of the facilities solely as if Asilomar was simply an overnight hotel or motel, instead of a
17 conference facility with lodging only incidental thereto.
18
19 **24. CONCESSIONAIRE LOSS CONTROL PROGRAM:** Concessionaire shall be
20 responsible for the development, training, implementation and inspection of a "Loss Control
21 Program" for the total concession operation. This program shall include written procedures,
22 policies, and documentation for a process to minimize incidents and accidents that will affect

Concessionaire from procuring and maintaining insurance on concession property as required by this contract.

25. EMPLOYEE TRAINING: All concession employees shall receive training to include an orientation on the State Park System, Asilomar State Beach and Conference Grounds, and local points of interest. Such orientation shall be sufficient to permit concession employees to reply adequately to inquiries from the visiting public. Training shall also include job or task-specific training necessary to ensure job performance in a manner consistent with the protection and preservation of historic or environmentally sensitive elements of the Asilomar park unit. To carry out these requirements, Concessionaire shall prepare a written plan for such employee training. This plan shall be submitted to the District Superintendent for review and approval at least annually as part of Concessionaire's Operating Plan as set forth in Section 8 above.

26. EMPLOYEE HOUSING: There are currently no provisions for employee housing upon the Asilomar Conference Grounds and it is not anticipated that employee residential use of conference grounds structures will occur. While changes in the uses of certain buildings within the conference grounds may be authorized under justifiable circumstances, such changes will require the written concurrence of the District Superintendent.

27. BONDS: Concessionaire, at Concessionaire's own cost and expense, shall furnish bonds as follows:

27. BONDS: Concessionaire, at Concessionaire's own cost and expense, shall furnish bonds as follows:

(a) Performance Bond

Prior to entering the premises, Concessionaire shall obtain and deliver to State a valid bond issued by a corporate surety licensed to transact surety business in the State of California and in a form satisfactory to State, in the sum of Two Million Five Hundred Thousand Dollars ($2,500,000) payable to the State. This bond shall be maintained in force throughout the term of this contract. Said bond shall insure faithful performance by Concessionaire of all the covenants, terms, and conditions of this contract inclusive of, but not restricted to, the payment of all rentals, fees, and charges. At least thirty (30) days prior to the expiration of said bond, a signed endorsement or certificate showing that said bond has been renewed or extended shall be filed with the State. In lieu of a bond, the Concessionaire may substitute a deposit of funds or provide other financial instrument acceptable to the State. Interest on the deposit of funds shall accrue to the Concessionaire.

(b) Payment Bond

Prior to the commencement of any construction project hereunder, unless exempted in writing by State, Concessionaire shall obtain and deliver to the State a bond of a corporate surety licensed to transact surety business in the State of California and in a form satisfactory to the

State, with Concessionaire's contractor or contractors as principals, in a sum not less than ninety percent (90%) of the total contract cost of the construction project, guaranteeing the payment for all materials, provisions, provender, supplies, and equipment used in, upon, for, or about the performance of said construction work or labor done thereon of any kind whatsoever and protecting the State from any liability, losses, or damages arising therefrom. In no event shall Concessionaire allow the imposition of a mechanics' lien, or other lien on the concession property and shall take all steps at its sole expense to remove such liens, or the threat of such liens.

(c) Fidelity Bond

Concessionaire shall, at its own cost and expense, maintain in effect a continuous fidelity bond providing complete protection for Concessionaire and State against any loss of funds in the custody of employees, to a limit of not less than Two Hundred Fifty Thousand Dollars ($250,000). An insurance policy endorsement providing equal protection against loss to Concessionaire and State may be substituted subject to State's review and written approval.

28. LIABILITY INSURANCE: Prior to entering the premises, Concessionaire shall provide the following liability insurance which shall be maintained in force during the term of this contract:

PUBLIC LIABILITY

PRODUCTS LIABILITY

LIQUOR LEGAL LIABILITY

AUTOMOTIVE LIABILITY INSURANCE (to cover all owned, non-owned and hired vehicles used by Concessionaire in the conduct of business under this contract).

Each policy of liability insurance described above shall be in an amount not less than Two Million Dollars ($2,000,000) per occurrence for bodily injury and property damage combined.

Each policy of liability insurance shall contain additional named insured endorsements in the name the State of California, through its Department of Parks and Recreation as to all insurable interests of the State including, but not limited to, the premises and all contents as follows:

(a) The State of California, its officers, employees, and servants are included as additional insureds but only insofar as operations and facilities under this contract are concerned;

(b) The insurer will not cancel or reduce the insured's coverage without thirty (30) days prior written notice to State.

No cancellation provision in any insurance policy shall diminish the responsibility of Concessionaire to furnish continuous insurance throughout the term of this contract. Each policy shall be underwritten to the reasonable satisfaction of the State. A signed and complete certificate of insurance together with a copy of each required endorsement required by this Section, shall be submitted to State concurrently with the execution of this contract, showing that the required insurance has been obtained. At least thirty (30) days prior to the expiration of any such policy, Concessionaire shall submit to State a signed and complete certificate of insurance, with all endorsements required by this Section, showing, to the satisfaction of the State, that such insurance coverage has been renewed or extended. Within sixty (60) days of State's request, Concessionaire shall furnish State a signed and complete copy of the required policy.

29. WORKERS' COMPENSATION INSURANCE: Concessionaire shall provide and maintain in effect throughout the term of the contract, a program of workers' compensation insurance, or self-insurance, in an amount and form to meet all applicable requirements of the Labor Code of the State of California. Such insurance shall include employer's liability coverage of One Million Dollars ($1,000,000) and shall specifically cover all persons providing services by or on behalf of the Concessionaire and shall cover all risks to such persons under this contract.

30. FIRE AND PROPERTY INSURANCE: Concessionaire shall, in the event of damage or destruction, repair or replace those buildings and structures and their contents, and other equipment, furnishings, betterments and improvements, supplies, materials and merchandise which were provided to Concessionaire by State at any time pursuant to this contract, or

constructed or provided upon subject premises by Concessionaire and which are determined by State to be necessary to the satisfactory discharge of Concessionaire's obligations under this contract. Concessionaire shall, for this purpose, obtain and maintain in full force during the term of this contract, fire and casualty insurance with extended coverage endorsements thereon, for the full replacement cost of all such property. Initial replacement costs of major facilities, furnishings and other property provided by State are set forth in Exhibit "B" and Exhibit "K" attached. Replacement costs shall be revised periodically to reflect any increase in value. Additionally, Concessionaire shall purchase the following property coverage in amounts acceptable to State:

BOILER AND MACHINERY

SPRINKLER LEAKAGE

PERSONAL PROPERTY

BUSINESS INCOME/LOSS OF RENTS

BUILDERS' RISK (as applicable to improvement or construction projects)

Said policy(s) shall contain a replacement cost endorsement naming the Concessionaire and State as the insured as their interests may appear. Said policy(ies) shall contain the following special endorsements:

(a) Payments made under this policy regarding property damage shall be made to Concessionaire and State as co-payees as their interests may appear and shall be used to repair, rebuild, restore or replace the insured premises described above and

to replace equipment, furnishings, and other property hereunder at State's direction. If the premises, equipment, furnishings, and other property are not repaired, rebuild, or replaced, then the cash proceeds payable under the property insurance policy shall be made to the State and Concessionaire, as their interests may appear.

(b) The insurer will not cancel or reduce the insured's coverage without thirty (30) days prior written notice to State.

A complete and signed certificate of insurance with a copy of all endorsements required by this Section shall be filed with the State prior to the commencement of operations under this contract. At least thirty (30) days prior to the expiration of any such policy, Concessionaire shall submit to State a signed and complete certificate of insurance with all endorsements required by this Section, showing, to the satisfaction of the State, that such insurance coverage has been renewed or extended.

Within sixty (60) days of State's request, Concessionaire shall furnish State a certified copy of the required policy.

In the event of destruction, loss, or damage by fire or other cause of any of the State-owned buildings, improvements, or fixtures used in connection with said concession, which in the opinion of State (notification of which opinion shall be given to Concessionaire in writing as soon

as practicable after the occurrence), is essential to the continued operation of the contract and cannot be repaired or replaced within one-hundred-eighty (180) days of the occurrence, the State, at its election, may terminate this contract by notice in writing to the other party given within fifteen (15) days after such notification. In the event of such termination, State shall be entitled to the cash proceeds payable under any property damage insurance policies pertaining to the loss, as its interest may appear. In the event of such destruction, loss, or damage and the contract is not terminated under this Section, any buildings, improvements, or fixtures constructed by State or Concessionaire (with insurance proceeds or otherwise) and in State's discretion, in replacement of such damaged or destroyed property, shall be subject to the terms and provisions of this contract.

In no event shall the provisions of this Section be deemed or construed to relieve Concessionaire from the requirement to repair or replace any damaged or destroyed property as specifically required by other terms of this Contract.

31. HOLD HARMLESS AGREEMENT: Concessionaire hereby waives all claims and recourse against the State including the right to contribution for loss or damage to persons or property arising from, growing out of, or in any way connected with or incident to this agreement except claims arising from, and to the extent of, the concurrent or sole negligence or other wrongful acts of State, its officers, agents, or employees.

Concessionaire shall protect, indemnify, hold harmless, and defend State, its officers, agents, and employees against any and all claims, demands, damages, costs, expenses, or liability

arising out of the development, construction, operation, or maintenance of the property described herein except for liability arising out of, and to the extent of, the concurrent or sole negligence, or other wrongful acts, of State, its officers, agents, or employees. Costs shall include, without limitation, all attorney fees and costs, court costs, if any, costs of mediators or arbitrators, experts and consultants, and any other costs reasonably incurred in response to any claim.

In the event State is found to be solely or concurrently negligent, or to have engaged in any other wrongful act, by a court of competent jurisdiction, it shall be responsible for any judgment and costs of defense to the extent of its negligence or other wrongful act. In the event judgment is entered against State and Concessionaire because of concurrent negligence of State and Concessionaire, their officers, agents, or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Neither party shall request a jury apportionment. This provision is intended as a complete and voluntary waiver of any right to jury apportionment and each party shall use its best efforts to request and obtain a court apportionment. Concessionaire agrees to pay for any defense costs which are found to be the responsibility of the State and State shall reimburse Concessionaire for all payments made. At State's request, in its sole discretion, any reimbursement required shall take the form of a credit against the Concession Fees or other fees due to State under this agreement.

Notwithstanding the State's obligation to be responsible for its concurrent or sole negligence or other wrongful acts, in the event State is named as a defendant in any claim or legal action arising out of the development, operation and maintenance of the Premises, upon tender of

the claim or action by State to Concessionaire, the Concessionaire shall assume State's defense and represent State in such legal action unless State undertakes to represent itself in such legal action, in which event State shall bear its own litigation costs, expenses, and attorney's fees. Notwithstanding the foregoing, in the event that State is required to represent itself due to a conflict of interest by counsel representing Concessionaire, Concessionaire, on demand by State, shall reimburse State for its reasonable legal costs, including, without limitation, attorney fees, court costs, costs of experts and consultants, and all other incidental costs.

32. TAXES: Concessionaire agrees to pay all lawful taxes, assessments, or charges which at any time may be levied by the State, County, City, or any tax or assessment-levying body upon any interest in or created by this contract, or any possessory right which Concessionaire may have in or to the premises covered hereby, or the improvements thereon by reason of Concessionaire's use or occupancy thereof, or otherwise, as well as all taxes, assessments, and charges on goods, merchandise, fixtures, appliances, equipment, and property owned or used by Concessionaire in or about said premises.

33. INSPECTION OF PREMISES: The State hereby reserves the right to enter upon the premises occupied by Concessionaire at any reasonable time.

State also reserves the right of ingress and egress to inspect, investigate, and survey said premises as it deems necessary, and to do any work thereon of any nature necessary for preservation, maintenance, and operation of the Asilomar park unit. The State shall give

Concessionaire reasonable notice when such entry and/or work is required. Concessionaire shall adjust concession operations in such a manner that State may proceed expeditiously.

34. BREACH OF CONTRACT: If Concessionaire breaches any of the terms, conditions or covenants of this contract, the State shall provide concessionaire with written notice of such breach and Concessionaire shall have (i) ten (10) calendar days to cure a monetary default; or (ii) thirty (30) calendar days to cure a non-monetary default; provided, however, that if the nature of the alleged default is such that it cannot be reasonably cured within thirty (30) calendar days, Concessionaire may cure such default by commencing in good faith to cure such default promptly after receipt of such written notice and prosecuting the cure of such default to completion with diligence and continuity within a reasonable time thereafter. If Concessionaire fails to cure the default within the foregoing time periods, the State shall serve Concessionaire with a written declaration of termination and may enter upon and take possession of the premises and Concessionaire shall vacate the premises within thirty (30) days after the State's declaration of termination. Notwithstanding the foregoing provision, if Concessionaire is adjudicated bankrupt either voluntarily or involuntarily, or a receiver is appointed for the business and property of Concessionaire or if Concessionaire makes an assignment for the benefit of creditors, or should Concessionaire create or allow to be created a nuisance on the premises described herein, or should Concessionaire abandon its obligations hereunder, then the State may serve an immediate written declaration of termination and enter upon and take possession of the premises without further notice to Concessionaire and Concessionaire shall vacate the premises within thirty (30) days after State's declaration of termination.

In addition to any damages for which Concessionaire is liable due to contract termination, Concessionaire agrees to pay all costs incurred by State in its taking possession of the premises pursuant to this Section 34 and shall hold State harmless from and against all damage or injury to Concessionaire or its property incurred as a result of State taking possession under this Section 34, except for damages resulting from the gross negligence of State.

35. STATE BUY-OUT PROVISIONS: Notwithstanding any other provision in this contract and in addition to any other remedy available to State, upon 12 months written notice, State shall have the option to terminate the contract and to pay Concessionaire the then-depreciated value of Concessionaire's initial $500,000 cash payment to the Facility Improvement Account as set forth in Section 6 and 14 above and to pay Concessionaire the then-depreciated cost of any facilities placed, created, or developed on the premises by Concessionaire at Concessionaire's sole cost and expense as such costs are determined herein. Facilities or improvements funded through the Facility Improvement Account described in Section 14 herein or funded by means of the annual maintenance allocation described in Section 19 shall not qualify for buy-out reimbursement.

The amount to be paid as the then-depreciated value of Concessionaire's initial $500,000 Facility Improvement Account payment in the event of termination under this Section shall be based on a ten-percent (10%), 10-year (120-month) capital recovery schedule, which shall provide the sum of $4,166.67 per month for the remainder of the contract term. This provision shall also apply following termination in the event of destruction of improvements which are not

rebuilt except to the extent of any insurance proceeds received by Concessionaire in connection with such destroyed improvements.

The amount to be paid as the then-depreciated value of Concessionaire funded facilities in the event of termination under this Section shall be based on a capital recovery schedule similar to that referenced above. However, the beginning cost for any facility evaluated under this Section shall be the actual construction cost as determined from Concessionaire cost records, subject to audit verification by State and the number of years allotted for the recovery schedule shall be the number of years remaining on the contract term at the commencement of construction of such facility.

In accordance with Public Resources Code Section 5080.18 (h), where the Contract has been terminated due to a breach of this Contract on the part of the Concessionaire the State shall not be obligated to purchase any improvements or to provide any buyout. In the event the contract is terminated at Concessionaire's request, the State shall not be obligated to provide any buyout.

Any buyout by the State called for in this Section shall only be operative when funds required by State for such buy-out are lawfully available to State, either through appropriation by the Legislature and through the normal budgeting processes of the State or otherwise.

1 **36. AGENT FOR SERVICE OF PROCESS:** Guarantor's agent for the purpose of
2 service of process in any court action between Concessionaire and the State arising out of or
3 based upon this contract for which Guarantor has retained responsibility under this Contract shall
4 be: Concessionaire Delaware North Parks Services at Asilomar, Inc. at its address shown in
5 Section 38. Service in accordance with California law on such agent of a copy of any process in
6 any such action shall constitute valid service upon such Guarantor. If for any reason service of
7 such process upon such agent is not possible, then Guarantor may be served by delivery of such
8 process out of this State to the address set forth in Section 38 and such service shall constitute
9 valid service upon Guarantor. Guarantor will accept the process so served, submits to the
10 jurisdiction of the court so acquired, and waives any and all objection thereto.
11
12 **37. RIGHT OF ENTRY AS AGENT:** In any case in which provision is made herein
13 for the termination of this contract by the State or in the case of abandonment or vacating of the
14 premises by Concessionaire, the State, in lieu of declaring a forfeiture, may enter upon the
15 premises. To such end, Concessionaire hereby irrevocably appoints the State as Concessionaire's
16 agent to remove any and all persons or property on said premises and place any such property in
17 storage for the account of and at the expense of Concessionaire and to enter into such other
18 contracts for operation of the concession premises as the State may deem, in its sole discretion,
19 appropriate. If a sufficient sum shall not be realized thereby, after paying expenses of such reentry
20 and contracting, to satisfy the rent and other sums herein agreed to be paid by Concessionaire,
21 such shortage of rent and expenses shall be paid by Concessionaire. Concessionaire agrees to

save the State harmless from any loss or damage or claim arising out of the action of the State in accordance with this Section.

38. CONTRACT NOTICE: Except for rent, as provided for herein, any notices to be given, or which may be given by either party to the other, shall be deemed to have been fully given when made in writing and deposited in the United States mail, postage prepaid, and addressed as follows:

To the Concessionaire at:

Delaware North Parks Services at Asilomar, Inc.
800 Asilomar Avenue
Pacific Grove, California 93950

With a copy to Guarantor and Parent Corporation at:

Delaware North Parks Services, Inc.
438 Main Street
Buffalo, New York 14202
Attn: Dennis J. Szefel, President

To the State at:

Department of Parks and Recreation
Monterey District
2211 Garden Road
Monterey, California 93940

With a copy to:

Department of Parks and Recreation
Park Services Division
Concessions and Reservations Office
P.O. Box 942896
Sacramento, California 94296-0001

The address to which notices shall or may be mailed as aforesaid by either party, shall or may be changed by written notice given by such party to the other, but nothing in this section shall preclude the giving of any such notice by personal service if such service is made on the State in the same manner as is required for a summons under California law.

39. DURATION OF PUBLIC FACILITIES: By entering into this contract, State makes no representation as to the type, size, location, or duration of public facilities to be maintained at this unit, or to the continuation of State ownership thereof, nor does the State

guarantee the accuracy of any financial or other factual representation which may be made regarding this concession.

40. EMINENT DOMAIN: If, during the term of this contract, any property described herein or hereinafter added hereto, is taken in eminent domain, the entire award shall be paid to State, provided,, however, that the concessionaire shall be paid the 10-year, straight line depreciated value of Concessionaire's initial $500,000 cash payment to the Facility Improvement Account as required under Section 6 above and the book value of any facilities placed, created, or developed on the premises by Concessionaire at Concessionaire's sole cost and expense as such costs are determined in accordance with the terms of this Contract. Facilities or improvements funded through the Facility Improvement Account described in Section 14 above, or any work classified as maintenance and funded by concessionaire pursuant to the requirements of Section 19 shall not qualify for reimbursement.

Book value shall be the established cost of improvements as determined by Section 15 above, less depreciation based on a straight line method of depreciation on a life as established for such facilities by the United States Internal Revenue Service .

41. CONFLICT OF INTEREST: Concessionaire warrants and covenants that no official, employee of State, or any person associated with any official or employee of State by blood, adoption, marriage, and/or cohabitation, nor any business entity in which an official, employee of State, or person associated with any official or employee of State (1) has been

employed or retained to solicit or aid in the procuring of this contract; or (2) will be employed in the performance of this contract without the immediate divulgence of such fact to State. In the event State determines that the employment of any such official, employee, associated person, or business entity is not compatible with such official's or employee's duties as an official or employee of the State of California, Concessionaire, upon request of State, shall terminate such employment immediately. For breaches or violation of this Section, State shall have the right both to annul this contract without liability and, in its discretion, recover the full amount of any such compensation paid to such official, employee, or business entity.

42. PHOTOGRAPHY: Subject to the Motion Picture, Television, and Commercial Industries Act of 1984, commencing with Section 14998 of the California Government Code, State may grant permits to persons or corporations engaged in the production of still and motion pictures and related activities, for the use of said premises for such purposes when such permission shall not interfere with the primary business of the concession. Such permits shall not be deemed to be a competitive activity with regard to Concessionaire's rights to possession and operation under this Contract.

43. HAZARDOUS SUBSTANCES: Concessionaire shall not, on the premises:

(a) Keep, store or sell any goods, merchandise or material which are in any way explosive or hazardous;

(b) Carry on any offensive or dangerous trade, business or occupation;

(c) Do anything other than is provided for in this contract; or

(d) Use or operate any machinery or apparatus which will, in any way, injure the premises or adjacent buildings.

Nothing in this Section shall preclude Concessionaire from bringing, keeping, or using on or about said premises such materials, supplies, equipment, and machinery as are appropriate or customary in carrying on Concessionaire's said business or from carrying on Concessionaire's business in all usual respects. As provided for elsewhere in this Contract, all materials defined as hazardous or toxic, and all gasoline and oils shall be stored, handled and dispensed as required by law.

Concessionaire will comply with all laws pertaining to the use, storage, transportation and disposal of any hazardous substance, as that term is defined in such applicable law. In the event the State or any of its affiliates, successors, principals, employees, or agents should incur any liability, cost or expense, including attorney's fees and costs, as a result of the Concessionaire's illegal or alleged illegal use, storage, transportation or disposal of any hazardous substance, including any petroleum derivative, the Concessionaire shall indemnify, defend and hold harmless any of these individuals against such liability. Where the Concessionaire is found to be in breach of this provision due to the issuance of a government order directing the Concessionaire either to

1 cease and desist any illegal action in connection with a hazardous substance, or to remediate a
2 contaminated condition caused by the Concessionaire or any person acting under Concessionaire's
3 direct control and authority, the Concessionaire shall be responsible for all costs and expenses of
4 complying with such order including any and all expenses imposed on or incurred by State in
5 connection with or response to such government order. Notwithstanding the foregoing, in the
6 event a government order is issued naming the Concessionaire or the Concessionaire incurs any
7 liability, during or after the term of the contract, in connection with contamination which
8 preexisted the Concessionaire's obligations and occupancy under this contract or which were not
9 caused by the Concessionaire, State shall be solely responsible as between Concessionaire and
10 State for all expenses and efforts in connection therewith and State shall reimburse Concessionaire
11 for all reasonable expenses actually incurred by Concessionaire therewith.
12
13 All pest control activities, chemical and non-chemical, shall be approved by the
14 Department prior to action by the Concessionaire. The Concessionaire, or the pest control
15 business acting on behalf of the Concessionaire, must submit a Pest Management
16 Recommendation and Control Report Form DPR 191 (or equivalent) to the District
17 Superintendent for approval. The State has fourteen (14) days to approve or deny the request.
18
19 The Concessionaire, or the pest control business acting on behalf of the Concessionaire,
20 must submit a report of completed work for each pest management action to the District
21 Superintendent no later than seven (7) days after performance of the work. The report may be
22 submitted on a Form DPR 191 (or equivalent).

1 **44. NONDISCRIMINATION:** Any discrimination by the Concessionaire or
2 Concessionaire's agents or employees against any person because of the age, ancestry, color,
3 disability, marital status, medical condition, national origin, political affiliation, race, religion, sex,
4 sexual orientation or veteran status of that person is prohibited.
5
6 As part of compliance with the foregoing, the Concessionaire and Concessionaire's
7 employees shall not discriminate because of age, ancestry, color, disability, marital status, medical
8 condition, national origin, political affiliation, race, religion, sex, sexual orientation or veteran
9 status against any person by refusing to furnish such person any accommodation, facility, service,
10 or privilege offered to or enjoyed by the general public. Nor shall the Concessionaire or
11 Concessionaire's employees publicize the accommodation, facilities, services, or privileges in any
12 manner that would directly or inferentially reflect upon or question the acceptability of the
13 patronage of any person because of age, ancestry, color, disability, marital status, medical
14 condition, national origin, political affiliation, race, religion, sex, sexual orientation or veteran
15 status.
16
17 Additionally, in the performance of this contract, the Concessionaire will not discriminate
18 against any employee or applicant for employment because of age, ancestry, color, disability,
19 marital status, medical condition, national origin, political affiliation, race, religion, sex, sexual
20 orientation or veteran status. The Concessionaire will take affirmative action to ensure that
21 applicants are employed, and that employees are treated during employment without regard to
22 their age, ancestry, color, disability, marital status, medical condition, national origin, political

1 affiliation, race, religion, sex, sexual orientation or veteran status. Such action shall include, but
2 not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or
3 recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and
4 selection for training, including apprenticeship. The Concessionaire shall post in conspicuous
5 places, available to employees and applicants for employment, notices setting forth the provisions
6 of Government Code Sections 12970 and 12974. Such notices may be obtained from the
7 Department of Fair Employment and Housing.
8
9 The Concessionaire will permit access to Concessionaire's records of employment,
10 employment advertisement, application forms, and other pertinent data and records by the State
11 Fair Employment and Housing Commission, or any other agency of the State of California
12 designated by the awarding authority, for the purpose of investigation to ascertain compliance
13 with the State Fair Employment and Housing Section of this contract.
14
15 The State may determine a willful violation of the State Fair Employment and Housing
16 Act to have occurred upon receipt of a final judgment having that effect from a court in an action
17 to which Concessionaire was a party, or upon receipt of a written notice from the State Fair
18 Employment and Housing Commission that it has investigated and determined that the
19 Concessionaire has violated the State Fair Employment and Housing Act and has issued an order,
20 under Government Code Section 12970, which has become final, or obtained an injunction under
21 Government Code Section 12974. In the event of violation of this Section, the State will have the

the right to terminate this contract, and any loss of revenue sustained by the State by reason thereof shall be borne and paid for by the Concessionaire.

45. INTERPRETATION OF CONTRACT: This contract is made under and is subject to the laws of the State of California in all respects as to interpretation, construction, operation, effect, and performance.

46. WAIVER OF CLAIMS: The Concessionaire hereby waives any claim against the State of California, its officers, agents, or employees for damage or loss caused by any suit or proceeding directly or indirectly attacking the validity of this contract, or any part thereof, or by any judgment or award in any suit or proceeding declaring this contract null, void, or voidable, or delaying the same, or any part thereof from being carried out.

47. ASSIGNMENTS AND SUBCONCESSIONS: No transfer, assignment, or corporate merger by the Concessionaire that affects this contract or of any part thereof or interest therein, directly or indirectly, voluntarily or involuntarily, shall be made unless such transfer, assignment, or corporate merger is first consented to in writing by State.

(a) Assignment for Security: The Concessionaire's possessory interest in Concessionaire's improvements under the terms of this contract, for the purposes of affording security only, may be assigned, transferred, or encumbered when first consented to in writing by State. No mortgage shall be executed and no bonds or

other evidence of interest in, or indebtedness upon the assets or proposed assets of the Concessionaire in the State unit shall be issued except for the purposes of installing, enlarging, or improving plant and equipment, and extending facilities for the accommodation of the public in the State unit and then only upon prior consent in writing in each case obtained from the State. In the event of breach and foreclosure on such a mortgage or such other indebtedness or of other assignment, transfer, or encumbrance, the purchaser under the foreclosure sale shall succeed to the possessory interest of the Concessionaire in Concessionaire's improvements. Under these circumstances, operating rights and privileges shall be as outlined in this contract; however, the right of any person or persons to actually operate the said concession is subject to the consent of State.

(b) Assignment for Other Than Security: Concessionaire shall neither assign, sublease, or otherwise convey any interest of any sort granted by this contract, to any person or persons, entity or entities whatsoever without prior written consent of State of the assignee and of the conveying document.

Before State considers such assignment, evidence must be given to State that the proposed assignee qualifies as a "best responsible person or entity submitting a proposal" under the terms of Section 5080.23 of the Public Resources Code and the Request for Proposals under which this Contract was awarded and executed. Any such assignment, to be effective, must

comply with applicable law, including, without limitation on generality, Public Resources Code Sections 5080.20 and 5080.23.

The Concessionaire's interest hereunder shall not be assignable in bankruptcy, nor shall said interest be assignable by operation of law. Any document by which an interest is granted, subject to the consent of State, shall indicate that the person acquiring that interest has been advised of the terms of this contract and takes said interest subject to the terms and conditions in this contract and recognizes that upon termination of the interest of the Concessionaire granted by this contract, said interest shall also be terminated. However, in the event of termination of this contract, State, at its sole option, may elect to treat any assignee, subtenant, or holder of an interest conveyed by Concessionaire as State's tenant, subject to the terms and conditions of this contract and that entered into between the Concessionaire and Concessionaire's assignee, subtenant, or holder of an interest conveyed by Concessionaire.

In the event that State does consent to the assignment of Concessionaire's interest in the concession, the State may prescribe the conditions of assignment, including the price therefor.

(c) Subconcessions: Only under exceptional circumstances and with prior written approval of State, may portions of this concession be operated by others. In such cases, the following conditions must be met:

(1) The subconcessionaire must be fully qualified.

(2) Subconcessionaire's rights, interest, and obligations shall be subordinate and in all ways subject and conform to the terms of this Contract.

(3) The subconcessionaire contract must have prior written approval of State except for those services listed in section 6 as not being included in gross receipts.

(4) Gross annual receipts shall include all receipts of such subconcessionaire, except as otherwise described in Section 6.

48. TERMS BINDING ON SUCCESSORS: All the terms, covenants, and conditions of this contract shall inure to the benefit of and be binding upon any subconcessionaire, successor and assigns of the parties hereto including, without limitation, any party taking an interest by foreclosure or through a foreclosure proceeding. The provisions of this Section shall not be deemed as a waiver of any of the conditions against assignment hereinbefore set forth.

49. TIME OF ESSENCE: Time shall be of the essence in the performance of this contract.

50. SECTION TITLES: The Section titles in this contract are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope or intent of this contract or in any way affect this contract.

51. CONTRACT IN COUNTERPARTS: This contract may be executed in counterparts, each of which shall be deemed an original.

52. ABATEMENT OF CONCESSION FEES OR OTHER PAYMENTS REQUIRED: Upon the occurrence of any events listed below in this Section 52, the following fees and other payments shall be abated in proportion to the amount by which gross receipts are reduced by the occurrence of such events: (i) Minimum Flat Rate in section 6; (ii) payments required by Sections 6 (c) and 6 (d):

A. ACTS OF GOD: In the event Concessionaire is prevented from carrying on the operations contemplated herein by reason of an Act of God, or other reasons beyond Concessionaire's control, and when requested in writing by Concessionaire, and when such is so determined by State.

B. PROPERTY INTEREST CLAIMS: Any loss of use by Concessionaire of the Premises or portions of the Premises due to third party claims of title, easements, reversionary interests, or other claims adversely affecting title to real property that is the subject of this Contract.

53. STATE'S DISTRICT SUPERINTENDENT: For purposes of this contract, the "District Superintendent" is the State representative in direct charge of Asilomar State Beach and Conference Grounds and other units of the State Park System as may be assigned. The District Superintendent is charged with the day-to-day administration of this contract and is the Concessionaire's initial contact with the State for information, contract performance, and other problems as might arise.

54. ENTIRE AGREEMENT IN WRITING: This concession contract contains and embraces the entire agreement between the parties hereto.

55. WAIVER OF CONTRACT TERMS: No waiver by either party at any time of any of the terms, conditions, or covenants of this contract shall be deemed as a waiver at any time thereafter of the same or of any other term, condition, or covenant herein contained, nor of the strict and prompt performance thereof. No delay, failure, or omission of the State to re-enter the premises or to exercise any right, power, or privilege or option arising from any breach, nor any subsequent acceptance of rent then or thereafter accrued shall impair any such right, power, privilege, or option or be construed as a waiver of such breach or a relinquishment of any right or acquiescence therein. No notice to the Concessionaire shall be required to restore or revive time as of the essence after the waiver by the State of any breach. No option, right, power, remedy, or privilege of the State shall be construed as being exhausted by the exercise thereof in one or more instances. The rights, powers, options, and remedies given to the State by this contract shall be deemed cumulative.

56. MODIFICATION OF CONTRACT: Notwithstanding any of the provisions of this contract, the parties may hereafter, by mutual consent expressed in writing, agree to modifications thereof, additions thereto, or termination thereof, which are not forbidden by law. Such written modifications or additions to this contract shall not be effective until signed and acknowledged by the State and Concessionaire and approved in writing by the Department of General Services and the Attorney General of the State of California. The State shall have the right to grant reasonable extensions of time to Concessionaire for any purpose or for the performance of any obligation of Concessionaire hereunder.

57. GUARANTEE: State hereby consents to Guarantor Delaware North Parks Service, Inc., a Delaware Corporation's, assignment of rights to undertake this contract to Concessionaire, and, in as an inducement for such consent and in connection with such assignment, acknowledges to the State that Guarantor has not been relieved of its obligations under this Contract, its proposal, or the Request for Proposals issued in connection with this Contract and that it unconditionally guarantees the performance of, and/or agrees to perform the obligations of, Concessionaire should Concessionaire fail to perform its obligations under this Contract.

(Execution signature pages follow on next page)

IN WITNESS WHEREOF, the parties hereto have executed this concession contract at the respective times set forth below.

CONCESSIONAIRE:

By: Dennis Byfel

Title: President

Date: 5/2/97

GUARANTOR:

By: Dennis Byfel

Title: President

Date: 5/2/97

STATE OF CALIFORNIA
DEPARTMENT OF PARKS AND RECREATION
DONALD W. MURPHY, DIRECTOR

By: Donald W Murphy

Title: DIRECTOR

Date: May 8, 1997

APPROVED:

ATTORNEY GENERAL:

Approved as to legal sufficiency in accordance with the requirements of Sections 5080.02-5080.21 of the Public Resources Code.

DANIEL E. LUNGREN, Attorney General of the State of California

By: _____
Deputy Attorney General

Dated: _____

APPROVED:

DEPARTMENT OF GENERAL SERVICES:

FORM | POLICY | BUDGET
Department of General Services
APPROVED
MAY 1 9 1997
BY
Asst. Chief Counsel