

SECOND LEASE AMENDMENT
Lease No. 5025

This Second Lease Amendment ("Amendment"), dated for reference purposes only as of August 1, 2004 is by and between the COUNTY OF SAN MATEO, a political subdivision of the State of California, ("County" or "Landlord"), as Lessor, and COYOTE POINT YACHT CLUB, INC., a California non-profit corporation ("TENANT"), as Lessee.

Recitals

A. As authorized by San Mateo County Resolution No. 24252 County and Tenant entered into a lease agreement dated for reference purposes as of September 16, 1967 for land at Coyote Point Park, San Mateo California, which lease was amended by First Amendment of Lease dated October 5, 1993 as authorized by Resolution No. 57634. The lease as amended by the First Amendment of Lease is hereinafter the "Lease".

B. As authorized by the First Amendment, the Lease expires September 15, 2011, subject to the right of Tenant to extend the Lease for one additional five-year term through September 15, 2016.

C. Tenant desires to lease from County, and County desires to lease to Tenant, all of the Premises for an extended term expiring September 15, 2024 on the same terms and conditions contained in the Lease, except as specifically hereinafter set forth.

D. As an inducement to extend the term, County requires certain improvements to the Premises in order to comply with ADA (The Americans with Disabilities Act).

In consideration of the mutual benefit to County and Tenant, the sufficiency of which is hereby acknowledged, County and Tenant hereby agree to amend the Lease as follows:

Agreement

1. Term

The first paragraph of Section 2. (Term) of the First Amendment is deleted in its entirety and replaced with the following:

Other provisions of the Lease as previously amended notwithstanding, the term of the Lease shall expire on September 15, 2024 unless sooner terminated as set forth in the Lease or this Amendment. Tenant shall have no further right to renew or extend the term of the Lease.

2. Section 34 is hereby added to the Lease, as previously amended, to read as follows:

34. Alterations

Tenant shall not make or permit any alterations to the interior or exterior of the Building, including without limitation painting, without the prior written consent of the County's Director of Parks and Recreation in each instance. All Alterations shall be done at Tenant's expense in accordance with the plans and specifications approved by County, and any alterations may only be performed by qualified personnel or contractors approved by the County and subject to any conditions that County may reasonably impose.

3. Section 35 is hereby added to the Lease, to read as follows:

35. Improvements by Tenant

Tenant, shall, at its own and sole expense, engage and retain a general contractor("Contractor") to make certain improvements to the premises, as set forth herein. The selection of the contractor shall be subject to the approval or rejection by the by County The agreement between tenant and contractor shall require contractor to I perform the work and make the improvements to the Premises as set forth in the attached Exhibit 1 ("Work Letter"), in order to comply with The Americans with Disabilities Act ("ADA") (the "Improvements"). The Improvements shall be completed at Tenant's sole cost.

If, for any reason, Tenant fails to meet the following scheduled dates for completion of the improvements, county shall have theright, but not the obligation, to terminate the Lease as of September 15, 2011:

Submit Design Development Documents for County approval:March 1, 2005
Submit Construction Documents for County approval: July 1, 2005
Obtain all permits necessary to commence construction:.....January 1, 2006

If Tenant has commenced construction of the Improvements pursuant to the Work Letter, but the Improvements are not Substantially Complete on or before September 1, 2006 as set for in the Work Letter, the County shall have the right, but not the obligation, to complete any work in progress at Tenant's sole cost and expense.

4. Section 36 is hereby added to the Lease, to read as follows: .

36. Maintenance

Tenant shall maintain, at its sole expense and at no expense to County, the Premises (including without limitation, the interior plumbing) in good and working order and in a clean, secure, safe, and sanitary condition.

5. The following is added to the end of Section 3 (Access Road and Utilities) of the Lease as Amended:

In the event Landlord installs a separate electrical meter at the premises, Tenant shall be responsible for all monthly charges for such service and shall promptly pay such charges directly to the provider as such charges may become due.

6. **Effective Date; Approval.**

This Amendment shall become effective (the "Effective Date") when the County Board of Supervisors adopts a resolution authorizing the execution of this Amendment, and the Amendment is duly executed by the County and delivered to Tenant.

7. **Counterparts.**

This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

8. **No Further Amendments; Conflicts.**

All the terms and conditions of the Lease as previously amended remain in full force and effect except as expressly amended herein. The Lease as amended by this Amendment constitutes the entire agreement between County and Tenant and may not be modified except by an instrument in writing duly executed by the parties hereto. In the event of any conflict between the terms of the Lease and the terms of this Amendment, the terms of this Amendment shall control.

9. **Authority:** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE AMENDMENT, LANDLORD ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF COUNTY HAS AUTHORITY TO COMMIT COUNTY HERETO UNLESS AND UNTIL THE COUNTY'S BOARD OF SUPERVISORS HAS ADOPTED A RESOLUTION AUTHORIZING THE EXECUTION OF THIS SECOND AMENDMENT. ANY OBLIGATIONS OR LIABILITIES OF COUNTY HEREUNDER ARE CONTINGENT UPON ADOPTION OF SUCH A RESOLUTION, AND THIS AMENDMENT SHALL BE NULL AND VOID UNLESS COUNTY'S BOARD OF SUPERVISORS AUTHORIZES EXECUTION OF THIS SECOND AMENDMENT. APPROVAL OF THIS AMENDMENT BY ANY DEPARTMENT, COMMISSION OR AGENCY OF COUNTY SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ADOPTED, NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON COUNTY.

Tenant and County have executed this Second Lease Amendment as of the date first written above.

TENANT:

COYOTE POINT YACHT CLUB

By: Matthew B Martell
MATTHEW B MARTELL
COMMODORE, CPYC 2004

COUNTY:

COUNTY OF SAN MATEO,
a political subdivision of the State of
California

Attest:

By: _____
Mark Church
President, Board of Supervisors

Clerk of the Board

Resolution No.: _____

EXHIBIT 1

WORK LETTER Coyote Point Yacht Club

This Work Letter is part of the Second Lease Amendment dated September 23, 2004 (the "Amendment"), of that certain lease dated September 16, 1967 and as amended on October 5, 1993 by First Amendment of Lease (collectively the "Lease"), by and between County of San Mateo, as Landlord, and Coyote Point Yacht Club, as Tenant, covering the premises described in the Lease. All terms that are capitalized but not defined herein shall have the same meanings given to them in the Lease.

Tenant, at its sole cost and expense and through its general contractor approved by County (the "Contractor"), shall furnish and install within the Premises the improvements shown on the Construction Documents to be approved by County pursuant to paragraph 1c below (the "Improvements" or the "Improvement Work"), in accordance with the provisions of this Work Letter.

1. Plans and Specifications. On or before March 1, 2005, Tenant shall cause its architect or space planner approved by County (the "Architect") to prepare and submit to County for its approval plans and specifications for the following work:

- Backyard improvements and deck
- Landscaping upgrades
- Electrical plan for ADA lift and backyard lighting
- ADA lift and ramps
- ADA door conversions
- ADA signage, parking lot striping and non-skid ramps
- ADA bathroom upgrades

and fixing and describing the size and character of the Improvements including, without limitation, architectural, mechanical, electrical and such other elements as may be appropriate, together with fully developed floor plans, interior elevations, reflected ceiling plans, wall and building sections (collectively the "Design Development Documents"). The Design Development Documents shall be subject to approval by County in accordance with Paragraph 1c below.

a. Accessibility Improvements. Tenant shall through its approved Contractor furnish and install all improvements that are required to bring the Premises and the Common Areas serving the Premises, including, without limitation, the lobbies, corridors, drinking fountains, elevators, elevator vestibules, stairs, stair vestibules and restrooms, and signage in all such areas, into full compliance with all Disabled Access Laws. All costs of such work shall be performed at Tenant's sole cost and expense.

b. Construction Documents. Based on the approved Design Development Documents and any further adjustments approved by County, on or before July 1, 2005, Tenant shall cause its Architect to prepare and submit to County for its approval final plans,

specifications and working drawings for the Improvements, setting forth in detail all aspects of the design, function and construction of the Improvements, sufficient for submittal for building permits, and in conformity with all of the requirements of this Work Letter (collectively, the "Construction Documents"). Such Construction Documents shall be subject to approval by County in accordance with Paragraph 1c below.

c. County's Approval of Plans. The Design Development Documents and Construction Documents shall be subject to approval by County, which approval shall not be unreasonably withheld or delayed, in accordance with the following procedure. After submission of the Design Development Documents, Construction Documents or proposed Change Order by Tenant to County, County shall have five (5) days to disapprove any element thereof. If County does so, then County shall notify Tenant within such period of its disapproval and of the revisions that County reasonably requires in order to obtain approval consistent with the terms of this Work Letter. As soon as reasonably possible thereafter, but in no event later than five (5) days after receipt of such notice, Tenant shall submit to County documents incorporating the required revisions. Such revisions shall be subject to approval by County, which shall not be unreasonably withheld or delayed. Such revisions shall be deemed approved by County if County fails to notify Tenant of any objection within five (5) days after receipt of the revision.

d. Payment for Plans. The costs of preparing the Design Development Documents and the Construction Documents shall be paid by Tenant.

e. Changes to Approved Construction Documents.

i. County Change Orders. If following its approval of the Construction Documents, County requests any change, addition or alteration thereto relating to the design or specifications of the Improvement Work ("County Change Order"), Tenant shall cause the Architect, as applicable, to prepare plans and specifications with respect to such change, addition or alteration. Within five (5) days of County's request, Tenant shall notify County of the cost that would be incurred by reason of such proposed County Change Order and any delay in the anticipated date of Substantial Completion that would result from such County Change Order. If County approves the cost of the County Change Order within five (5) days of receipt from Tenant, then Tenant's Contractor shall proceed with such County Change Order as soon as reasonably practical thereafter. If County does not approve such cost within the above-mentioned five (5) day period, construction of the Premises shall proceed in accordance with the original completed and approved Construction Documents. County shall be responsible for the reasonable cost actually incurred by Landlord in the preparation of the plans and specifications relating to any County Change Order, as evidenced by invoices or other substantiation reasonably required by County.

ii. Tenant Change Orders. If following County's approval of the Construction Documents, Tenant requests or is required to make any change, addition or alteration thereto relating to the design or specifications of the Improvement Work ("Tenant Change Order"), Tenant shall provide County with proposed plans and specifications with respect to such change, addition or alteration, together with notice of any delay in the anticipated date of Substantial Completion that would result from such Tenant Change Order. Any such Tenant Change Order shall be subject to County's prior written approval, in accordance with Paragraph 1c above. No approval by County of any such Tenant

Change Order shall relieve or modify Tenant's obligations hereunder to complete the construction of the Improvements in accordance with the approved Construction Schedule, nor shall any such approval limit any of County's rights or remedies hereunder or under the Lease. Tenant shall be solely responsible for the cost of the Tenant Change Order, including, without limitation, the costs of preparing the plans and specifications relating thereto, and no such amount shall be paid or deducted from the Allowance.

iii. Appointment of Representatives. County and Tenant shall each designate and maintain at all times during the design and construction period a project representative ("Representative"), and an alternate for such Representative ("Alternate"), each of whom shall be authorized to confer and attend meetings and represent such party on any matter relating to this Work Letter. Tenant and County shall not make any inquiries of or requests to, and shall not give any instructions or authorizations to, any other employee or agent of the other party, including without limitation, the other party's architect, engineers, consultants and contractors or any of their agents or employees, with regard to matters associated with this Work Letter. The initial Representatives and Alternates shall be:

County:	Representative --	Steve Alms
	Alternate --	Gary Lockman
Tenant:	Representative --	Matt Martell
	Alternate --	<u>LOIS WATSON</u>

Each party may at any time and from time to time change its Representative or Alternate by written notice to the other party. Each party's Representative or Alternate shall be available during ordinary business hours so that questions and problems may be quickly resolved and so that the Improvements may be completed economically and in accordance with the Construction Schedule. All approvals made by County's Representative or Alternate shall be made in writing.

Notwithstanding any other provision of this Work Letter or Second Amendment, it is expressly understood and agreed that for the purpose of representing or authorizing change orders, the County's representative is the Assistant County Manager or his designee.

2. Responsibility for Obtaining Permits

Tenant shall have the responsibility for obtaining all governmental permits and approvals required to commence and complete the Improvement Work, and promptly upon receipt thereof shall deliver copies of all of such permits and approvals to County. Tenant shall use its best efforts to obtain all such approvals and permits on or before January 1, 2006. Tenant shall have the responsibility of calling for all inspections required by the building inspector in the jurisdiction of the Premises.

3. Construction

a. Construction of Improvements. Following County's approval of the Construction Documents, Tenant shall cause the Improvements to be constructed and installed in a good and professional manner in accordance with sound building practice

and in conformity with the Construction Documents and the terms of this Work Letter. County shall not have any obligation with respect to any such work other than as provided herein.

b. Construction Schedule. Tenant shall commence construction of the Improvements within sixty (60) days after approval of all required permits for construction in accordance with the approved Construction Documents, and shall diligently pursue construction to completion, all in accordance with the construction schedule, which shall be submitted together with the Construction Documents, and upon approval by the County shall become a part of this Work Letter (the "Construction Schedule").

c. Status Reports; Inspections. Tenant shall keep County apprised of the status of permit approval and the progress of construction. Tenant or its Contractor shall furnish County with monthly reports on construction. From time to time during the design and construction of the Improvements, County shall have the right upon reasonable advance oral or written notice to Tenant to enter the Premises at reasonable times to inspect the Premises, provided such inspections do not unreasonably interfere with the construction. Tenant or its representative may accompany County during any such inspection.

d. General Conditions. The performance of all Improvement Work by Tenant shall be subject to the following terms and conditions:

i. All of the Improvement Work shall be performed in compliance with all laws, codes, regulations and building requirements (collectively, "Laws") bearing on construction of the Improvements;

ii. Without limiting the foregoing, the construction of the Improvements shall comply with all requirements of the Americans With Disabilities Act of 1990 and Title 24 of the California Code of Regulations and all other applicable federal, state, local and administrative laws, rules, regulations, orders and requirements intended to provide equal accessibility for persons with disabilities (collectively, "Disabled Access Laws"); and

iii. Tenant and its Contractor shall be responsible for all required insurance.

e. Cooperation. Tenant and County shall cooperate at all times in bringing about the timely completion of the Improvements. Tenant shall resolve any and all disputes arising out of the construction of the Improvements in a manner that shall allow work to proceed expeditiously.

4. Substantial Completion

a. Construction Schedule. Subject to unavoidable delays as hereinafter set forth, the Tenant shall complete the Improvement Work on or before September 1, 2006.

b. Substantial Completion. The Improvements shall be deemed to be "Substantially Complete" for purposes hereof when the Improvements are complete in accordance with the Construction Documents and the terms of this Work Letter, and all inspections required in connection with the completion of the Improvements have been completed and signed off as approved by the appropriate government authorities.

c. Unavoidable Delays. For purposes hereof, "Unavoidable Delays" shall mean any delays by reason of acts of God, accidents, breakage, repairs, strikes, lockouts, other labor disputes, inability to obtain labor or materials after using diligent and timely efforts, enemy action, civil commotion, protests, riots, demonstrations, or by any other reason without fault and beyond the reasonable control of the party obligated to perform. In the event of any such delay, the party affected by such delay shall give prompt written notice to the other of the occurrence of such event and the projected delay in performance, and thereafter shall keep the other party regularly informed of the status of such Unavoidable Delay. Under no circumstances shall the number of days of Unavoidable Delays exceed a total of sixty (60) days.

d. Tenant Delays. Subject to any Unavoidable Delay, County shall be responsible for any delay in the construction of the Improvements due solely and directly to any of the following (collectively, "County Delays"): (i) a delay in granting its reasonable approval of plans and specifications (beyond the period granted therefor), and (ii) County Change Orders to the Construction Documents, provided such delay shall be limited to the number of days consented to in writing at the time of approval of the Change Order by County. Such County Delays in the completion of construction of the Improvement Work shall extend the date for Substantial Completion hereunder. Notwithstanding the foregoing, County shall be responsible, and the date for Substantial Completion shall be extended, only to the extent any delays are actually and directly caused by County Delays.

5. General Provisions.

a. Notices. Except as may be otherwise specifically provided herein, any notice given under this Work Letter shall be in writing and given by delivering the notice in person, by commercial courier or by sending it by first class mail, certified mail with a return receipt requested, or Express Mail, return receipt requested, with postage prepaid, and addressed to the parties as follows:

County: Real Estate Division
400 County Center
Redwood City, CA 94063
Attn: Assistant County Manager

Tenant: Coyote Point Yacht Club
1820 COYOTE POINT DR, SAN MATEO, CA, 94401
Attn: COMMODORE

or such other address as a party may designate to the others as its new address for such purpose by notice given to the others in accordance with the provisions of this paragraph. Any notice hereunder shall be deemed to have been given and received two (2) days after the date when it is mailed if sent by first class, certified mail, one day after the date when it is mailed if sent by overnight courier, or upon the date personal delivery is made. Neither party may give official or binding notice by facsimile.

b. Tenant's Duty to Notify County. Tenant shall promptly notify County in writing of (i) any written communication that Tenant may receive from any governmental, judicial or legal authority, giving notice of any claim or assertion that the Property, Building

or Improvements fail in any respect to comply with applicable laws, rules and regulations; (b) any known material adverse change in the physical condition of the Property, including, without limitation, any damage suffered as a result of earthquakes; and (c) any known default by the Contractor or any subcontractor or material supplier, or any known material adverse change in the financial condition or business operations of any of them.

c. Approvals. Tenant understands and agrees that County is entering into this Work Letter in its capacity as a property owner and not as a regulatory agency with certain police powers. Notwithstanding anything to the contrary herein, no approval by County of the plans for the Improvements (including the Design Development Documents or Construction Documents), completion of the Improvement Work nor any other approvals by County hereunder shall be deemed to constitute approval of any governmental or regulatory authority with jurisdiction over the Premises. All approvals or other determinations of County as landlord hereunder may be made only by County's Assistant County Manager or his designee unless otherwise specified herein.

d. County's Right to Cure. If the Tenant does not make timely payment to Contractor or any of its subcontractors or material suppliers, County may, but shall not be obligated to, advance County's funds directly to such Contractor or its subcontractors or material suppliers to pay the cost of the Improvements, and any such advance shall be payable to County immediately upon demand, with interest at the rate of the lesser of twelve percent (12%) per annum or the maximum rate permitted by law.

e. Time of the Essence. Time is of the essence with respect to all provisions of this Work Letter in which a definite time for performance is specified, including, without limitation, the date for Substantial Completion.