

1
2 **2019-45 (2nd READING): ORDINANCE TO AUTHORIZE THE LEASE OF PROPERTY**
3 **LOCATED AT 5901 S KINGS HWY, MYRTLE BEACH, SC 29575 CONTAINING**
4 **APPROXIMATELY 20.5 ACRES IDENTIFIED AS PIN 460-00-00-0002/TMS 192-00-01-038,**
5 **AND APPROXIMATELY 56.0 ACRES IDENTIFIED AS PIN 460-00-00-0004/TMS 192-00-**
6 **01-020, FOR A FIVE YEAR PERIOD FOR CONTINUED OPERATION AS A CAMPGROUND.**

7
8 **Applicant/Purpose:** Staff/to agree to a new 5-year lease w/ the owners of Lakewood
9 Campgrounds.

10
11 **Brief:**

- 12 • These properties were conveyed to the City from the US Government in 1948, &
13 have been leased to Ponderosa & used for campground purposes since 1990.
- 14 • The entire campground includes privately-owned properties as well. The
15 proposed lease only includes the City-owned parcels.
- 16 • The lease agreement has been amended several times & expires in 02/2020.
- 17 • Significant new lease terms include:
 - 18 ○ Lease term expires on February 28, 2025. No extension rights included.
 - 19 ○ On 02/29/20 (Reset Date) the rent calculations change as follows:
 - 20 ▪ Base Rent from \$120,000/year to \$160,000.
 - 21 ▪ Percentage Rent from 25% of Gross Campground Receipts to 28.5%.
 - 22 ▪ From 14% of concessions & amusements to 16%.
 - 23 ▪ From 17% of Villa Rentals to 18%.
- 24 • No changes since 1st reading.

25
26 **Issues:**

- 27 • This agreement is not an extension of the existing lease. The proposed action
28 terminates the existing lease & replaces it with a new agreement.
- 29 • Per the proposed agreement the tenant indemnifies the City from any claims
30 attributable to campground operations.
- 31 • The tenant is responsible for all campground related expenses & maintenance.

32
33 **Public Notification:** Normal meeting notification.

34
35 **Alternatives:**

- 36 • Do not adopt ordinance, and let the current lease expire.
- 37 • Modify the proposed lease terms.

38
39 **Financial Impact:**

- 40 • In FY the lease revenues totaled \$1,347,314. No change is expected for 2019-20.
- 41 • Beginning in 2020-21 the total is projected to increase by 16%.

42
43 **Manager's Recommendation:**

- 44 • I recommend 1st reading (8/27/19).
- 45 • I recommend approval (9/10/19).

46
47 **Attachment(s):** Proposed lease Agreement.

CITY OF MYRTLE BEACH
COUNTY OF HORRY
STATE OF SOUTH CAROLINA

**ORDINANCE TO AUTHORIZE THE LEASE OF PROPERTY
LOCATED AT 5901 S KINGS HWY, MYRTLE BEACH, SC
29575 CONTAINING APPROXIMATELY 20.5 ACRES
IDENTIFIED AS PIN 460-00-00-0002/TMS 192-00-01-
038, AND APPROXIMATELY 56.0 ACRES IDENTIFIED
AS PIN 460-00-00-0004/TMS 192-00-01-020, FOR A
FIVE YEAR PERIOD FOR CONTINUED OPERATION AS A
CAMPGROUND.**

WHEREAS, the City of Myrtle Beach originally acquired the subject parcels (collectively the "Property") from the U.S. Government in October 1948 (see attachment 1); and

WHEREAS, the subject parcels have been operated by Lakewood Camping Resort, Inc. as part of a larger thriving campground operation since 1990; and

WHEREAS, the original lease has been amended and extended several times over the years; and

WHEREAS, the current lease agreement is set to expire in February 2020.

Now therefore be it ordained that the City Council finds that:

1. The continued lease of the subject parcels, and use of the property for campground purposes serves the economic interests of the entire community.
2. The proposed lease terms are reasonable in relationship to the value of the Property.
3. The City Manager is hereby authorized to execute the attached lease agreement through February 28, 2025 (see attachment 2).

This ordinance is effective upon second reading.

BRENDA BETHUNE, MAYOR

ATTEST:

JENNIFER STANFORD, CITY CLERK

1ST READING: 8-27-19

2ND READING: 9-10-19

MAGIC HARBOUR TRACT
 200 4600000000 100 4600000000

Owner
 CITY OF VICTORIA
 200 4600000000 100 4600000000
 200 4600000000 100 4600000000
 200 4600000000 100 4600000000
 200 4600000000 100 4600000000

Primary Building
 200 4600000000 100 4600000000
 200 4600000000 100 4600000000
 200 4600000000 100 4600000000
 200 4600000000 100 4600000000
 200 4600000000 100 4600000000
 200 4600000000 100 4600000000

Taxable Values
 200 4600000000 100 4600000000
 200 4600000000 100 4600000000
 200 4600000000 100 4600000000
 200 4600000000 100 4600000000
 200 4600000000 100 4600000000
 200 4600000000 100 4600000000

Pin #460-00-00-0002

1

515 US 97 BUS
 200 4600000000 100 4600000000

Owner
 CITY OF VICTORIA
 200 4600000000 100 4600000000
 200 4600000000 100 4600000000
 200 4600000000 100 4600000000
 200 4600000000 100 4600000000

Primary Building
 200 4600000000 100 4600000000
 200 4600000000 100 4600000000
 200 4600000000 100 4600000000
 200 4600000000 100 4600000000
 200 4600000000 100 4600000000
 200 4600000000 100 4600000000

Taxable Values
 200 4600000000 100 4600000000
 200 4600000000 100 4600000000
 200 4600000000 100 4600000000
 200 4600000000 100 4600000000
 200 4600000000 100 4600000000
 200 4600000000 100 4600000000

Pin #460-00-00-0004

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46

LEASE

THIS LEASE made and entered into as of this 27th day of August, 2019 (the "Effective Date") by and between City of Myrtle Beach, South Carolina, a political subdivision of the State of South Carolina ("Landlord"), and Lakewood Camping Resort, Inc., a South Carolina corporation ("Tenant").

WITNESSETH:

In consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant agree for themselves, their successors and assigns, as follows:

1. **PREMISES.** Landlord, in consideration of the rents, covenants, and agreements hereinafter reserved and contained to be paid and performed by Tenant, hereby demises and lets unto Tenant that certain land located in Horry County, South Carolina, containing approximately 20.5 acres identified as PIN 460-00-00-0002/TMS 192-00-01-038, and approximately 56.0 acres identified as PIN 460-00-00-0004/TMS 192-00-01-020 (collectively, the "Premises"), together with all rights, appurtenances, easements, and privileges thereto.

2. **TERM.** The term of this Lease (the "Term") shall commence on the Effective Date and shall expire at 11:59 p.m. February 28, 2025.

3. **RENT.**

a. **Base Rent:** Beginning upon the Effective Date and continuing through February 29, 2020 (the "Reset Date"), Tenant shall pay to Landlord, as base rent for the Premises (the "Base Rent"), the sum of One Hundred Twenty Thousand and No/100 Dollars (\$120,000.00) per year payable in equal quarterly installments, payable on the last day of January, April, July and October.

Beginning upon the day after the Reset Date, Tenant shall continue to pay Base Rent in the sum of One Hundred Sixty Thousand and No/100 Dollars (\$160,000.00) per year payable in equal quarterly installments, payable on the last day of January, April, July and October.

b. **Percentage Rent:** In addition to the Base Rent to be paid above, beginning on the Effective Date and continuing until the Reset Date Tenant shall pay to Landlord the following percentage rental of Gross Campground Receipts, as defined hereinafter, on an annual basis ("Percentage Rent;" and together with Base Rent and all other sums payable by Tenant hereunder, collectively, the "Rent"):

(i) Twenty-five percent (25%) of Gross Campground Receipts over Six Hundred Thousand and No/100 Dollars (\$600,000.00).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48

For the purposes of this Lease, Gross Campground Receipts shall be defined as the sum of all receipts or income from campground site rentals operated on or in connection with the Premises, excluding any admission, sales, or amusement taxes paid to the State, Federal or any local government and excluding rentals on campsites included under (c) below. For the purposes of determining Gross Campground Receipts hereunder, such receipts shall include all receipts whether received by the Tenant hereunder or any other person or entity operating a campground on the Premises or providing property management services for the Premises. Provided, however, that Gross Campground Receipts received by some person or entity other than Tenant shall be included only once and any sums paid to Tenant by such other person or sublessee as rental or commissions would not be again included in Gross Campground Receipts, it being intended that such sums be included only once in computing Gross Campground Receipts.

In the event that such campsites are made available for use free of charge, or in exchange for goods or services, rent shall be imputed based on the average rent received for all similar campsites rented for cash payment.

- (ii) Fourteen percent (14%) of all receipts from amusement items, the sale of food and beverage, and gift and novelty items purchased on the Premises by retail customers and received by Tenant or Tenant's sub-contractors, concessionaires, licensees or sub-tenants, excluding any admission sales or amusement taxes paid to the state, federal or any local government.
- (iii) Seventeen percent (17%) of all receipts for rentals of structures located on the Premises now known as "villas." In the event that such structures are not rented for cash payment, but are made available for use free of charge, or in exchange for goods or services, rent shall be imputed based on the average rent received for all similar structures rented for cash payment.

Beginning upon the day after the Reset Date, Tenant shall pay to Landlord the following Percentage Rent in lieu of the foregoing:

- (iv) Twenty-eight and one-half percent (28.5%) of Gross Campground Receipts over Six Hundred Thousand and No/100 Dollars (\$600,000.00).
- (v) Sixteen percent (16%) of all receipts from amusement items, the sale of food and beverage, and gift and novelty items purchased on the Premises by retail customers and received by Tenant or Tenant's sub-contractors, concessionaires, licensees or sub-tenants, excluding any admission sales or amusement taxes paid to the state, federal or any local government.
- (vi) Eighteen and one-half percent (18.5%) of all receipts for rentals of structures located on the Premises known as "villas". In the event that such structures are made available for use free of charge, or in exchange for goods or services, rent shall be imputed based on the average rent received for all similar structures rented for cash payment.

1
2 Tenant shall furnish to the Landlord detailed financial reports, annually on a calendar year basis,
3 showing the Gross Campground Receipts received from said property and itemizing the source
4 from which each portion of such receipts shall be received. Further, the Landlord shall have the
5 right, at any and all reasonable times, to inspect the Premises and the mode and manner of the
6 operation thereof, to determine whether or not a violation of any of the provisions of the Lease
7 shall have been made.

8
9 Further, the Tenant agrees that it will establish proper and adequate accounting practices so as
10 to ensure, as nearly as possible, that all sources of income described above from said venture shall
11 be accurately accounted for, and to this end, the Tenant agrees that it will receive and carry out
12 the reasonable recommendations of the Landlord with respect to such accounting practices, as
13 nearly as shall be possible. Provided, however, that if there should be any dispute between the
14 Landlord and the Tenant with regard to the mode of record-keeping, accounting practices or the
15 sufficiency thereof, then Landlord and Tenant shall agree on a certified public accountant as an
16 arbitrator and shall abide by the arbitrator's decision and recommendations with reference
17 thereto. Should Landlord and Tenant not be able to agree on a certified public accountant, then
18 each shall select and appoint a certified public accountant to represent them respectively and the
19 two certified public accountants so selected and appointed shall select a third certified public
20 accountant and the decision of two of the three shall control; and provided further, that any
21 certified public accountant so selected shall not be in the regular employ of the one so appointing
22 such arbitrator.

23
24 Percentage Rent due hereunder shall be due and payable annually on a calendar year basis and
25 shall be determined on a calendar year basis with such Percentage Rent being due on March 15
26 following each calendar year period.

- 27
28 4. **USE OF PREMISES.** Tenant covenants and agrees that the Premises shall be used solely for
29 campground resort activities which are consistent with the activities of campground resorts
30 in the Myrtle Beach, South Carolina area (the "Permitted Use").
31
32 5. **QUIET ENJOYMENT.** Tenant, upon paying the Rent herein reserved and performing and
33 observing all of the other material terms, covenants, and conditions of this Lease on Tenant's
34 part to be performed and observed, shall peaceably and quietly have, hold, and enjoy the
35 Premises during the Term, subject to the terms of this Lease.
36
37 6. **TAXES.** Tenant shall pay promptly when due or make reimbursement to Landlord upon
38 demand for all ad valorem taxes imposed upon the Premises and the improvements located
39 thereon.
40
41 7. **UTILITIES.** Tenant shall, in its own name, contract for and pay, prior to delinquency, all
42 electricity, heat, water, sewer, trash removal, and all other utility charges and costs of any
43 kind for utilities used or consumed at the Premises.
44
45 8. **ANNEXATION.** Tenant acknowledges that Landlord may wish to annex the Premises into the
46 City of Myrtle Beach in the future. Landlord agrees to take no steps to do so prior to calendar
47 year 2022. At such time as Landlord begins annexation in accordance with this Section,
48 Tenant will not contest or interfere with annexation. With respect to such annexation,

1 Landlord will ensure that the applicable zoning of the Premises does not limit Tenant's
2 continued use of the Premises for the Permitted Use.

3
4 9. **SUBLEASES.** Tenant has subleased portions of the Premises to third parties under annual
5 leases whereupon permanent or semi-permanent structures have been constructed. Not
6 later than six (6) months prior to the end of the Term, Tenant shall arrange for the termination
7 of all such subleases effective not later than the end of the Term. If Tenant shall fail to do so,
8 then Tenant shall indemnify Landlord for all Liabilities incurred by Landlord resulting
9 therefrom in accordance with Section 17 hereof.

10
11 10. **INSURANCE REQUIRED OF TENANT.** Tenant agrees to procure and maintain a policy or
12 policies of insurance, at its own cost and expense, insuring Tenant from all claims, demands
13 or acts for bodily injury liability subject to a minimum limit of liability of \$2,000,000.00 each
14 occurrence and for property damage liability of \$100,000.00 each occurrence, made by or on
15 behalf of any person or persons, firm or corporation, arising from, related to, or connected
16 with the conduct and operation of Tenant's business in the Premises. Said insurance shall not
17 be subject to cancellation except after at least ten (10) days' prior written notice to Landlord,
18 and the policy or policies, or duly executed certificate or certificates for the same, together
19 with satisfactory evidence of the payment of the premium thereon shall be deposited with
20 Landlord at the commencement of the term and renewals thereof not less than thirty (30)
21 days prior to the expiration of the term of such coverage and shall contain, in addition to the
22 matters customarily set forth in such a certificate under standard insurance industry practices,
23 an undertaking by the insurer to give Landlord not less than ten (10) days' written notice of
24 any cancellation or change in scope or amount of coverage of such policy. Said policy shall
25 also name Landlord as an additional insured.

26
27 11. **WAIVER OF SUBROGATION; MUTUAL WAIVER.** Landlord and Tenant hereby release each
28 other and each party's officers, directors, employees, and agents from liability or
29 responsibility for any loss or damage to their respective property covered by insurance
30 policies, or which would have been covered by insurance if the party had complied with the
31 terms and provisions of this Lease. This release shall apply to Landlord and Tenant and anyone
32 claiming through or under Landlord or Tenant, by way of subrogation or otherwise, even if
33 the occurrence was caused by the fault or negligence of Landlord or Tenant or anyone under
34 their control. Each of Landlord and Tenant shall cause insurance which it maintains in respect
35 to the Premises to contain a provision whereby the insurer waives any rights of subrogation
36 against the other party.

37
38 12. **REPAIRS.** During the Term hereof, Tenant agrees to perform all repairs, replacements, and
39 maintenance of improvements located on the Premises.

40
41 13. **IMPROVEMENTS.** Any permanent structural improvement to the Premises must be approved
42 by Landlord in writing prior to commencement of construction. Otherwise, Landlord's
43 approval is not required.

44
45 14. **DAMAGE OR DESTRUCTION.** Landlord and Tenant agree that no damage or destruction to
46 any buildings or improvements by fire, windstorm, or any other casualty shall entitle Tenant
47 to surrender possession of the Premises or for either party to terminate this Lease. In the
48 event all or any portion of the buildings or improvements on the Premises shall be damaged

1 or destroyed, Tenant, at its sole cost and expense, shall either promptly repair, restore, and
2 rebuild same as necessary, or raze such improvements and return the Premises to a neat and
3 attractive condition.
4

5 15. **CONDEMNATION.** In the event the entire Premises shall be appropriated or taken under the
6 power of eminent domain by any public or quasi-public authority, this Lease shall terminate
7 and expire as of the date of such taking or conveyance made in lieu thereof and Landlord and
8 Tenant shall thereupon be released from any further duties or obligations hereunder. If a
9 portion of the Premises is taken, or conveyance made in lieu thereof, then Rent shall be
10 equitably apportioned according to the portion of the Premises so taken, and Tenant shall, at
11 its own expense, restore the remaining portion of the Premises to operate as the Permitted
12 Use. Tenant shall be entitled to pursue compensation for the taking of buildings, alterations
13 and improvements to the Premises constructed by Tenant. Landlord will have the right to
14 make a claim for all other compensation awarded or paid upon such a total or partial taking
15 of the Premises.
16

17 16. **ASSIGNMENT OR SUBLETTING.** Tenant shall not assign or sublet this Lease without the prior
18 written consent of Landlord, upon such terms and conditions as Landlord may approve in its
19 reasonable discretion. Any assignment or sublease of the Premises shall not release or relieve
20 Tenant from any obligations of this Lease.
21

22 17. **INDEMNITY.** Except to the extent caused by the negligence or willful misconduct of Landlord,
23 or its agents, contractors, servants, or employees, Tenant agrees to indemnify, defend, and
24 hold Landlord harmless from and against any and all claims, suits, proceedings, liabilities
25 (including, without limitation, strict liabilities), expenses, demands, damages, costs,
26 obligations, debts, fines, penalties, charges, fees, expenses, judgments, awards, amounts paid
27 in settlement and damages of whatever kind or nature (including, without limitation,
28 reasonable attorneys' fees, court costs and other costs of defense and any and all costs,
29 expenses, and liabilities incurred in connection with any such claims and/or proceedings
30 brought thereon) (collectively, "Liabilities") for, or in connection with, any accident, injury, or
31 damage whatsoever caused to any person or property (i) arising out of the business
32 conducted in or the use and/or occupancy of the Premises, or (ii) occurring in, on or about
33 the Premises or any part thereof, or (iii) arising from any negligence or intentional misconduct
34 of Tenant or any concessionaire or sub-tenant or their respective licensees, servants, agents,
35 employees, contractors, subcontractors or invitees.
36

37 18. **MECHANIC'S LIENS.** If any mechanic's lien or other lien or order for the payment of money
38 shall be filed against the Premises or any building(s) or improvements thereon by reason of
39 or arising out of any labor or material furnished or alleged to have been furnished to or for
40 Tenant at the Premises, or for or by reason of any change, alteration, or addition by Tenant,
41 or the cost or expense thereof, or any contract relating thereto, or against Landlord, then
42 Tenant shall, within thirty (30) days after the filing of any such lien, cause the same to be
43 cancelled and discharged of record by bond or otherwise at the expense of Tenant.
44

45 19. **HAZARDOUS MATERIALS.** Throughout the Term, Tenant and Tenant's employees, agents,
46 invitees, licensees, servants, contractors, and subcontractors shall not cause, permit, or allow
47 any substances, chemicals, materials, or pollutants (whether solid, liquid, or gaseous) deemed
48 to be toxic or hazardous or the manufacture, storage, transport, or disposal of which is

1 regulated, governed, restricted, or prohibited by any federal, state, or local agency or
2 authority, or under any federal, state, or local law, ordinance, rule, or regulation related to
3 the environment, health, or safety (collectively, "Environmental Laws"), including, without
4 limitation, any oil, gasoline, petroleum, petroleum by-products, hazardous substances,
5 infectious waste, toxic substances, hazardous waste, asbestos, or asbestos containing
6 materials (collectively, "Hazardous Materials") to be handled, placed, stored, dumped,
7 released, manufactured, used, transported, or located on, in, under, or about the Premises;
8 provided, however, Tenant shall be permitted to use and otherwise handle on the Premises
9 minor quantities of such Hazardous Materials as are ordinarily and typically used and handled
10 as part of the Permitted Use so long as such Hazardous Materials are used and handled in
11 accordance with all Environmental Laws. Upon the expiration or earlier termination of this
12 Lease, Tenant shall, at Tenant's sole cost and expense, remove all Hazardous Materials from
13 the Premises that were introduced thereto by Tenant.

14
15 20. **SIGNAGE.** Tenant shall comply with all applicable requirements of all jurisdictional regulatory
16 requirements pertaining to signage and signage installation.

17
18 21. **DEFAULT.** Tenant shall be in default hereunder if (a) Tenant fails to pay Rent and any other
19 sums within ten (10) business days after when due under this Lease; or (b) Tenant fails to
20 observe and perform any of the other terms, covenants, and/or conditions of this Lease and
21 such default shall continue for more than thirty (30) days after written notice from Landlord
22 to Tenant. If the nature of a default under (b) above is such that it cannot reasonably be cured
23 within the aforesaid cure period, and work thereon shall be commenced within said period
24 and diligently prosecuted to completion within sixty (60) days after Landlord's written notice
25 to Tenant, then Landlord's rights under this Section shall be inapplicable.

26
27 In the event of any default by Tenant, Landlord may (i) cure Tenant's default at Tenant's cost
28 and expense, or (ii) terminate this Lease upon not less than five (5) business days' written
29 notice to Tenant. If Tenant shall at any time be in default hereunder, and if Landlord shall
30 deem it necessary to engage attorneys to enforce its rights hereunder, the determination of
31 such necessity to be in the sole discretion of Landlord, Landlord will be reimbursed by Tenant
32 for its expenses incurred thereby, including but not limited to court costs and reasonable
33 attorneys' fees.

34
35 The failure of Landlord to insist upon strict performance of any of the terms, conditions, and
36 covenants herein shall not be deemed to be a waiver of any rights or remedies that Landlord
37 may have and shall not be deemed a waiver of any subsequent breach or default in the terms,
38 conditions, and covenants herein contained except as may be expressly waived in writing.

39
40 22. **LANDLORD'S RIGHT TO INSPECT.** Upon reasonable prior written notice to Tenant, Tenant
41 agrees to permit Landlord to enter the Premises during Tenant's usual business hours to
42 inspect the same and, during the last six (6) months of the Term, show same to prospective
43 tenants or purchasers.

44
45 23. **SURRENDER OF PREMISES.** Tenant agrees, at the termination of this Lease, whether by
46 limitation, forfeiture, or otherwise, to quit, surrender, and deliver to Landlord possession of
47 the Premises in good condition and repair. Tenant further acknowledges and agrees that as
48 of the end of the Term of this Lease that it has no further right to occupy or use the Premises.

1
2
3
4
5
6
7
8
9
10

24. **NOTICES.** Whenever notice shall be given by either party to the other (the "Notice"), Notice shall be in writing addressed to the party being notified at the address set forth below or to such other address as a party may designate upon five (5) days' Notice to the other party. Notice may be given by priority mail, postage paid certified or registered mail with return receipt requested. Each Notice which is given, served, or sent in the manner specified in this Section 24 shall be deemed to have been given and received as of the date it is delivered or as of the date on which delivery is refused or unclaimed by the addressee upon presentation. Notice addresses are as follows:

LANDLORD:	TENANT:
City of Myrtle Beach	Lakewood Camping Resort, Inc.
P.O. Box 2468	5901 South Kings Hwy
Myrtle Beach, SC 29577	Myrtle Beach, SC 29575
Attention: City Manager	Attention: President
	<u>With a copy to:</u>
	Nexsen Pruet, LLC
	Attn. Franklin G. Daniels, J.D., LL.M.
	1101 Johnson Ave, Suite 300
	Myrtle Beach, SC 29577

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

25. **HOLDING OVER.** Tenant may not remain upon the Premises after the day of expiration of the Term without Landlord's prior written approval. With Landlord's approval, Tenant shall become a tenant-at-will and any such holding over shall not constitute an extension of this Lease. During such holding over, Tenant shall pay one hundred fifty percent (150%) of the Rent in effect as of the expiration of the Term. If Tenant holds over without Landlord's written approval, Tenant shall then be a tenant-at-sufferance and shall pay two hundred percent (200%) of the then-effective Rent until Tenant surrenders possession. Nothing contained herein shall be interpreted to grant permission to Tenant to holdover or to deprive Landlord of any rights and remedies with respect thereto. Such occupancy shall be subject to all the terms, covenants and conditions of this Lease, except that any Renewal Option shall be of no force or effect.

26. **SECURITY DEPOSIT.** None.

27. **OTHER PROVISIONS.**

a. **Memorandum of Lease.** This Lease shall not be recorded. The parties hereby agree that, upon the request of either party, each will execute, acknowledge and deliver a short form or memorandum of this Lease in recordable form. Recording, filing and like charges and any stamp, charge for recording, transfer, or other tax shall be paid by Tenant.

- 1 b. **Entire Agreement.** This Lease contains the entire agreement of the parties and may
2 not be amended, modified, released, or discharged, in whole or in part, except by an
3 instrument in writing signed by the parties.

- 4 c. **Captions.** The captions contained in this Lease are for convenience and reference
5 only, and shall not be held to explain, modify, amplify, or aid in the interpretation,
6 construction, or meanings of the provisions of this Lease to which they relate.

- 7 d. **Provisions Severable.** If any provision of this Lease shall to any extent be invalid or
8 unenforceable, the remainder of this Lease or the application of such provision or any
9 portion thereof to any person or circumstances shall not be affected thereby, and
10 each valid provision or portion thereof shall be enforceable to the fullest extent
11 permitted by law.

- 12 e. **Relationship of Parties.** Nothing contained in this Lease shall be construed to make
13 the parties partners or joint venturers or to render either of said parties liable for the
14 debts or obligations of the other, except as expressly provided in this Lease.

- 15 f. **Nuisance.** Tenant covenants that it will not create or maintain or allow others to
16 create or maintain any nuisance on the Premises.

- 17 g. **Successors.** Subject to the provisions of this Lease, the covenants, conditions, and
18 agreements contained herein shall bind and inure to the benefit of Landlord and
19 Tenant and their respective successors, heirs, and assigns.

- 20 h. **Force Majeure.** In the event Landlord or Tenant shall be delayed, hindered or
21 prevented from the performance of any act required hereunder, by reason of
22 governmental restrictions, scarcity of labor or materials, strikes, fire, or any other
23 reasons beyond its control, the performance of such act shall be excused for the
24 period of delay, and the period for the performance of any such act shall be extended
25 for the period necessary to complete performance after the end of the period of such
26 delay, except to the extent such delay, hindrance, or prevention of performance is
27 caused, in whole or in part, by any act whatsoever, whether intentional or negligent,
28 committed by Tenant, its employees, agents, independent contractors, or licensees.
29 The provisions of this Section 27(h) shall not be applicable to Tenant's obligations to
30 pay rent or any other sums, monies, costs, charges or expenses required to be paid
31 by Tenant hereunder.

- 32 i. **Counterparts.** This Lease may be executed in two or more counterparts, each of
33 which will be deemed an original, but all of which together will constitute one and
34 the same instrument.

- 35 j. **Successors and Assigns.** This Lease and the covenants and conditions herein
36 contained shall inure to the benefit of and be binding upon Landlord, its successors
37 and assigns, and shall be binding upon Tenant, its successors and assigns, and shall
38 inure to the benefit of Tenant and only such assigns of Tenant to whom the
39 assignment of this Lease by Tenant has been consented to by Landlord in writing.
40 Upon any sale or other transfer by Landlord of its interest in the Premises, Landlord
41 shall be relieved of any obligations under this Lease occurring thereafter.

1
2
3
4
5
6
7
8
9
10

k. **Original Lease.** Landlord and Tenant are parties to that certain Lease Agreement dated October 15, 1990 (the "1990 Lease") for the Premises, as amended by the Amendment to Lease Agreement dated January 13, 1999 (the "First Amendment"), and as further amended by Amendment to Lease Agreement dated March 17, 2009 (the "Second Amendment;" and together with the 1990 Lease and the First Amendment as well as any other properly executed and effective agreements between the parties relating to the Premises, the "Original Lease"). From and after the Effective Date, the Original Lease shall be of no further force or effect, and the relationship between Landlord and Tenant shall hereafter be exclusively as specifically set forth in this Lease.

11
12
13

IN WITNESS WHEREOF, the parties have executed this Lease under seal as of the Effective Date.

WITNESSES:

Name: _____
Name: _____

LANDLORD:

City of Myrtle Beach, South Carolina,
a political subdivision of the State of South Carolina

By: _____
Name: _____
Title: _____

WITNESSES:

Name: _____
Name: _____

TENANT:

Lakewood Camping Resort, Inc.,
a South Carolina corporation

By: _____
Name: _____
Title: _____

14