

MINUTES OF THE WARNER RANCH  
COMMITTEE MEETING OF  
VISTA IRRIGATION DISTRICT

November 13, 2017

A meeting of the Warner Ranch Committee of Vista Irrigation District was held on Monday, November 13, 2017, at the offices of the District, 1391 Engineer Street, Vista, California.

**1. CALL TO ORDER**

Chair Dorey called the meeting to order at 10:02 a.m.

**2. ROLL CALL**

Committee members present: Dorey and MacKenzie.

Committee members absent: None.

Staff present: Assistant General Manager, Brett Hodgkiss; Director of Water Resources, Don Smith; Water Resources Specialist, Mark Saltz; Secretary of the Board, Lisa Soto.

Other attendees: None.

**3. APPROVAL OF AGENDA**

The Committee approved the agenda as presented.

**4. PUBLIC COMMENT TIME**

No public comments were presented on items not appearing on the agenda.

**5. RECREATIONAL CONCESSION**

See staff report attached hereto.

Director of Water Resources Don Smith pointed out a typographical error made on Page 22 of the draft Concession Management Agreement (Agreement), in the last sentence of paragraph C, stating that the increased "In Lieu Rent" should be \$1,150 per month in 2019, and \$1,200 per month in 2020. He also noted a change to the map included in the Agreement; Mr. Smith said that another pasture had been added to the map and was to be used for "put and take" pheasant hunting. He handed out a new map that was all inclusive (attached hereto as Exhibit A). Mr. Smith handed out a correction to Appendix F on Page 3 of 6, adding the Monkey Hill pasture (the area added on the map) as Item 3 of paragraph 4 (attached hereto as Exhibit B).

Mr. Smith reviewed the table in the staff report showing the fees charged for the recreational concession based on the adjusted gross receipts. He provided an overview of the amendments to the current agreement, stating that all of the amendments were incorporated into one comprehensive Agreement with the substantive changes shown in redline/strikeout. Mr. Smith reviewed the "Typical Hunting Calendar for Warner Ranch Hunting Sub-concession", stating that seasons are set by the California Department of Wildlife, and can fluctuate from year to year.

Chair Dorey said he noticed a few references to the “California Department of Fish and Game” in the Agreement, which should perhaps be updated to reflect the new agency name, “California Department of Wildlife”. Mr. Smith said that he would follow up and make corrections as needed.

The Committee requested clarification regarding the mention of selling gasoline on Page 2, Paragraph 1.2.a. Mr. Smith stated that the Mendenhalls (Concessionaire) keep gasoline stored above ground, onsite for boat rentals. Mr. Smith said it is unclear as to whether the gasoline is provided as part of the rental fee, or if it is sold separately. He said he would get more information related to the gasoline stored onsite. The Committee received clarification that water fowl hunting is permitted only on Lake Henshaw but not on Swan Lake.

Director MacKenzie suggested changing the parenthesis on Page 8, Paragraph III, to commas, to make it consistent with other passages in the document where the same phrase is used. She also suggested adding verbiage on Page 11, Paragraph “iv” to require the Concessionaire to notify the District if any corrective actions are required from any governmental entity or regulatory authority.

Chair Dorey expressed a concern about the goldspotted oak borer, an invasive species that poses a major threat to oak trees. The species is typically introduced to an area through the transporting of firewood. The Committee requested added verbiage to Page 7, Paragraph ii to prohibit the transport and use of firewood within the recreational area originating from non-District lands.

The Committee discussed Paragraph d on Page 22, “Imputed Income Receipts”, and requested that this paragraph be simplified. On Page 24, Paragraph C, “Major Maintenance/Capital Improvement Report”, Director MacKenzie suggested reorganizing the first sentence to begin with the words “By January 31”. On Page 27, Paragraph e, the Committee asked to change the word “therefore” to “thereof”, and simplify the first sentence of the paragraph.

Mr. Smith stated that the Mendenhalls were concurrently reviewing the draft Agreement and may have comments or requested changes. The Committee indicated that it was agreeable to the term of the Agreement, set at 15 years per the request of the Mendenhalls. The Committee requested that the draft Agreement be presented in redline/strikeout for consideration by the Board at its December 6 meeting. The Committee commended staff, especially Management Analyst Alisa Nichols, for its extensive work in compiling the comprehensive draft Agreement.

**6. COMMENTS BY COMMITTEE MEMBERS**

None were presented.

**7. COMMENTS BY GENERAL MANAGER**

None were presented.

**8. ADJOURNMENT**

There being no further business to come before the Committee, Chair Dorey adjourned the meeting at 11:42 a.m.



Paul E. Dorey, Chair

ATTEST:



Lisa Soto, Secretary

Board of Directors

VISTA IRRIGATION DISTRICT



**WARNER RANCH COMMITTEE  
STAFF REPORT**

**Agenda Item: 5**

**Meeting Date: November 13, 2017**  
**Prepared By: Don Smith**  
**Reviewed By: Brett Hodgkiss**  
**Approved: Eldon Boone**

SUBJECT: RECREATIONAL CONCESSION

RECOMMENDATION: Discuss draft Concession Management Agreement.

PRIOR BOARD ACTION: On April 5, 1995, the Board approved the Concession Management Agreement for the Lake Henshaw Recreation Area (Recreational Concession). The Recreational Concession has been amended eight (8) times, including amendments approving the purchase of all shares of Lake Henshaw Resort, Inc. by Frank and Janice Mendenhall from Al and Gwen Socin and a Trespass Sublease Agreement with My Country Club, Inc. for hunting activities on the Warner Ranch.

FISCAL IMPACT: The fee for the Recreational Concession is variable based on “Adjusted Gross Receipts”. Adjusted Gross Receipts, the corresponding Concession Payment and Hunting Sub-concession Rents and total income received by the District since 2006 are shown below.

<b>Calendar Year</b>	<b>Adjusted Gross Receipts</b>	<b>Concession Payment</b>	<b>Hunting Sub-concession Rent</b>	<b>Total District Income</b>
2006	\$729,351.24	\$52,117.86	N/A	\$52,117.86
2007	\$746,460.21	\$55,155.33	\$50,000	\$105,155.33
2008	\$760,319.70	\$56,561.89	\$50,000	\$106,561.89
2009	\$708,714.90	\$48,082.49	\$50,000	\$98,082.49
2010	\$689,649.26	\$44,106.32	\$60,000	\$104,106.32
2011	\$710,889.60	\$48,817.83	\$70,000	\$118,817.83
2012	\$636,555.95	\$34,157.08	\$80,000	\$114,157.08
2013	\$623,439.34	\$33,672.19	\$80,000	\$113,672.19
2014	\$630,116.47	\$31,617.38	\$80,000	\$111,617.38
2015	\$654,161.10	\$36,473.93	\$80,000	\$116,473.93
2016	\$684,479.01	\$41,911.10	\$80,000	\$121,911.10
2017*	\$568,375.24	\$42,961.61	\$110,000	\$152,961.61

\* 2017 Adjusted Gross Receipts and Concession Payment through September.

SUMMARY: The Recreational Concession and associated hunting sub-concession will expire on December 31, 2017. Lake Henshaw Resort, Inc. has expressed interest in continuing as the District’s Concessionaire; staff recommends entering into a new agreement with Lake Henshaw Resort, Inc., incorporating language from multiple amendments and adding new language and/or provisions as needed.

DETAILED REPORT: The primary activities under the existing Recreational Concession include:

1. Mobile home park
2. Campground
3. Cabin rental
4. Fishing and boating on Lake Henshaw
5. General store
6. Restaurant (Roundup Grill)
7. Public waterfowl hunting on Lake Henshaw

8. Hunting sub-concession on the Warner Ranch, including deer, turkey, dove, quail, archery deer, put and take of game birds

Other significant provisions include the Concession Fee (10% of monthly Adjusted Gross Receipts over \$35,000 but less than \$40,000; 15% over \$40,000 but less than \$50,000; and 20% over \$50,000); requirements for capital improvements and major maintenance (10% of annual Adjusted Gross Receipts over \$700,000 but less than \$800,000 and 20% over \$800,000); and the term of the agreement (original agreement was for a period of ten years with two optional five year renewal periods; proposed new term is 15 years).

A description of the various amendments to the existing Recreational Concession is included below:

<b>Amendment Number</b>	<b>Date</b>	<b>Description</b>
1	7/3/1996	Provided "In-Lieu Rent" for restaurant operations; substituted a leach field in place of a percolation pond in required capital improvements; and modified date Concessionaire must submit audited financial statements
2	11/19/1996	Concessionaire agrees to be bound by the Construction and Operation Contract required by the California Department of Boating and Waterways for the construction of a boat launching facility at Lake Henshaw.
3	5/1/2003	Provided for the transfer of ownership of Lake Henshaw Resort, Inc. from Al and Gwen Socin to Frank and Janice Mendenhall; allowed the Concessionaire to permit third party organizations (including My Country Club members) to use District facilities within the Recreation Area under the condition that the Concessionaire would report "Imputed Income" equivalent to public usage.
4	12/27/2006	Provided a three year sub-concession agreement with My Country Club to allow turkey and rifle deer hunting within defined zones ("Hunting Lands") on the Warner Ranch.
5	3/22/2010	Provided a short term extension of the hunting privileges described in the 4 <sup>th</sup> Amendment.
6	8/24/2010	Significant revision of Hunting sub-concession to allow dove, quail, and archery deer hunting, along with more comprehensive contractual protections; extended the term of the Concession Management Agreement and Hunting sub-concession through December 31, 2017.
7	9/12/2016	Modified timing of reporting of Adjusted Gross Receipts and Concession Payment; allowed the substitution of reviewed financial statements in place of audited financial statements.
8	1/17/2017	Allowed for the guided "put and take" hunting of commercially raised game birds.

**ATTACHMENTS:**

1. Draft Concession Management Agreement
2. Hunting Calendar for Warner Ranch Hunting Sub-concession

VISTA IRRIGATION DISTRICT  
CONCESSION MANAGEMENT AGREEMENT  
LAKE HENSHAW RECREATION AREA

This agreement is made and entered as of \_\_\_\_\_, 2017, by and between the Vista Irrigation District, a special governmental district organized and existing under the laws of the State of California, hereinafter referred to as “District,” and Lake Henshaw Resort, Inc., a California corporation, hereinafter referred to as “Concessionaire”.

WITNESSETH

Whereas District owns, operates and maintains Henshaw Dam and Lake Henshaw in the County of San Diego, State of California, and certain structures and lands adjacent to said lake, for irrigation and water supply purposes; and

Whereas District has permitted public fishing, boating, hunting and camping at said reservoir and public recreation on certain lands adjacent thereto, all pursuant to applicable California law; and

Whereas District desires to enter into a concession management agreement for the operation, maintenance and capital improvement of District owned public recreation facilities and mobile home/recreational vehicle park upon and adjacent to Lake Henshaw (the “Recreation Area”) and for the conduct of limited hunting activity on other lands owned by the District (the “Hunting Lands”). The Recreation Area and the Hunting Lands are further delineated and depicted on the maps attached hereto as Attachment A, which are incorporated herein by this reference.

Now therefore in consideration of the mutual covenants, conditions and agreements herein contained, Concessionaire and District agree to the following:

1. CONCESSIONAIRE RIGHTS AND OBLIGATIONS

1.1 Concessionaire as Independent Contractor

Concessionaire in the performance of the terms and conditions of this Agreement is and shall be an independent contractor, and neither it nor any of its agents, employees or representatives are or shall be agents or employees of District.

1.2 Use of Premises

District conveys to Concessionaire the exclusive right, privilege and concession within the Recreation Area to conduct the following activities and operate the following facilities:

a. Marina, Moorage, Docks, Boat Launch and Boating Facilities

To operate the marina, docks, boat launch and mooring facilities; to rent boats, with and without outboard motors, for operation on Lake Henshaw by the public for aquatic recreation; to issue fishing licenses, daily fishing access permits, and boating and mooring permits for privately owned boats; to sell fishing bait, fishing tackle, gasoline and motor oil, life jackets (Coast Guard approved), and boat and motor items and other miscellaneous items in connection with said rental services; ~~and~~ to sell as a dealer small boats and motors consistent with applicable federal, state, and local laws and ordinances; and to comply with all applicable terms of the Construction and Operation Contract with the State of California Department of Boating and Waterways, dated September 16, 1996, through its expiration date of May 19, 2018.

b. Water Fowl Hunting

To issue water fowl hunting licenses and daily water fowl hunting access permits on Lake Henshaw consistent with applicable federal, state, and local laws and ordinances.

c. Food Service and Store Facilities

To operate food service and store facilities, or such other facilities as may be approved by District, and to provide, sell and/or serve hot and cold foods, alcoholic (beer and wine only) and non-alcoholic beverages, tobacco, groceries, sundries, picnic supplies, firewood, and other merchandise consistent with the terms of this Agreement. ~~approved by District which is commonly sold at recreation areas in the state of California.~~

d. Entrance Gates, Parking Lots, and Picnic Areas

To operate entrance gates, parking lots, and picnic areas, and to sell vehicle parking permits.

e. Overnight Camping, Recreational Vehicle (RV) Facilities, and Cabins

To operate overnight camping facilities, to rent cabins, and to sell camping and RV (including travel trailer) site use permits.

f. Mobile Homes

To operate and maintain mobile home sites and to collect fees for use of such sites.

g. Hunting and Fishing

To conduct limited hunting activities, as described herein, on the Hunting Lands. While only the Concessionaire or approved sub-concessionaires may conduct hunting activities on the Hunting Lands, the District reserves the right to conduct non-hunting activities on those same lands. ~~In addition to the other uses authorized under the Concession Management Agreement, the Hunting Lands may be used by Concessionaire or sub-concessionaire for hunting, fishing and other uses normally incidental thereto, and for no other purpose without the prior written consent of the District.~~

h. Common Infrastructure

To operate and maintain the private roadways, and water, sewer, storm drain, and electrical and other utility infrastructure that serves any of the facilities that are part of this Agreement. Concessionaire shall provide reasonable water service to the three employee residences, office, and appurtenant facilities owned by the District in proximity to Henshaw Dam.

1.3 Additional Concessionaire Operations

Concessionaire shall not offer or allow any activities or operate any facilities in the Recreation Area or on the Hunting Lands other than those specifically provided for in this Agreement without the prior written consent of District, which may be withheld by District in its sole and absolute discretion.

1.4 Relation between Concessionaire's Use and Grazing Licenses

a. Priority of Grazing Licenses

Concessionaire understands that property owned by District which is adjacent to the Recreation Area and certain portions of the Recreation Area and Hunting Lands ~~itself that are adjacent to Lake Henshaw~~ are subject to licenses (the "Grazing Licenses") pursuant to which they are used for cattle grazing and related activities. Except as set forth in this Paragraph, which shall have priority over any conflicting provisions in the Grazing Licenses, whenever there is a conflict between the terms (including without limitation the grant of rights to use District's property) of this Agreement and the Grazing Licenses (including future modifications and renewals thereof), the terms of the Grazing Licenses shall ~~have priority~~ prevail over any conflicting or inconsistent provision of this Agreement.



b. Lake and Areas Adjacent to Lake Outside of Boat Launch and Dock Areas

- (i) Concessionaire shall have full use of Lake Henshaw for fishing and boating purposes, and shall have full use for waterfowl hunting of that portion of the Recreation Area which is north of Highway 76~~adjacent to Lake Henshaw~~ but also subject to the Grazing Licenses.
- (ii) Concessionaire shall assure that fishermen, boaters, and hunters do not harass cattle which are present in the Recreation Area and on the Hunting Lands.

c. Cooperation in Excluding Cattle from Boat Launch and Dock Areas

- (i) Concessionaire shall cooperate with the licensees under the Grazing Licenses in keeping cattle out of the Lake Henshaw boat launching and dock areas during periods when ~~they are busy with~~ recreational users are using or occupying such areas; but Concessionaire shall allow cattle to graze in ~~those~~such boat launching and dock areas for limited periods of time when recreational users are not using or occupying such areas and they are not busy and when doing so will not jeopardize the public safety.
- (ii) District shall ~~assure~~use commercially reasonable efforts to cause that the licensees under the Grazing licenses to cooperate with Concessionaire in keeping cattle out of the Lake Henshaw boat launching and dock areas when ~~they are busy with~~ recreational users are using or occupying those areas, and during periods when it would be unsafe to allow ~~them~~cattle in those areas there.

1.5 Operation of Facilities

a. Hours of Operation

The hours of operation for all activities conducted by Concessionaire in the Recreation Area, including the hours during which hunting, fishing, and boating are allowed in the Recreation Area, during which boats and motors are rented to the public, and during which the food service facilities, store, and office are open to the public shall be set by Concessionaire, subject to District's right, in its reasonable discretion, to require changes to such times and business hours upon reasonable notice to Concessionaire and for good cause shown.~~District approval.~~

b. Locations of Entrance Gates and Parking, Camping, RV and Mobile Home Use Areas

Concessionaire shall not add or eliminate entrance gates or change the locations at which parking, picnicking, overnight camping, RV, or Mobile Home use are permitted from the locations at which those activities are permitted as of the date of execution of this Agreement without the express written approval of District.

c. Limitations on Use of Rental Cabins

Concessionaire ~~shall~~ may rent cabins for transient habitation or recreational use only, and shall not rent cabins for permanent residential use. In operating said cabins, Concessionaire shall comply with all applicable federal, state, and local laws and ordinances, including without limitation section 6402(e) of the San Diego County Zoning Ordinance, in such a manner as to assure that none of the cabins are used as permanent residences.

d. Limitations on Use of Campground, Recreational Vehicle, and Mobile Home Park Spaces

(i) In operating the Campground and Recreational Vehicle Park, Concessionaire shall comply with all applicable federal, state, and local laws and ordinances, including without limitation section 6456 of the San Diego County Zoning Ordinance, in such a manner as to assure that the spaces are used for recreational purposes only and not for permanent residential use, and are not occupied by any person for longer than ~~is~~ legally permitted.

(ii) Concessionaire shall comply with all federal, state, and local laws that regulate the operation of recreational vehicle and mobile home parks, and shall take all steps necessary to assure that all Recreational Vehicle and Mobile Home users and tenants in the Recreation Area comply with all applicable laws.

1.6 Maintenance of Facilities

a. General

(i) Concessionaire shall, at its expense, perform such ~~reasonable routine~~ maintenance and repair on all property, equipment, structures and facilities operated or used by them in its operations under this

Agreement as shall reasonably be required to maintain a first rate operation, or as District in its discretion may direct. Such property as is owned or furnished by District and used by Concessionaire shall be returned to District upon the termination of this Agreement in as good condition as when received by Concessionaire, ordinary wear and tear excepted. Concessionaire waives the benefits of California Civil Code Section 1942, et seq.

- (ii) Certain Major Maintenance and Capital Improvement Projects shall be performed as set forth in Section 3.4 herein ~~and expanded upon in Attachments B and C, attached hereto and made a part hereof.~~
- (iii) ~~Except as set forth in Section 3.5,~~ District shall not be obligated to make any improvements, alterations, additions or repairs in or upon any facility, structure, property, utility, or equipment operated or used by Concessionaire.

b. Routine Maintenance

District agrees to maintain the perimeter fencing in the Recreation Area which exists as of the date of execution of this Agreement. The Concessionaire shall be responsible for the maintenance and repair of all other systems, equipment and facilities within the Recreation Area, including but not limited to above ground electrical, propane, water and sewer systems, landscape, roadways, signs, fences (except perimeter fencing), parking areas, headwalls, culverts, drains and drainage ditches, and buildings.

c. Restrooms

Concessionaire shall ensure that all flush toilet restrooms are cleaned and serviced routinely and as-needed to maintain them in a safe, neat, clean, well-supplied, and sanitary condition. Concessionaire shall be responsible for cleaning and maintaining all portable chemical toilets within the Recreation Area. The location of portable chemical toilets shall be subject to the approval of District, and portable chemical toilets shall not be located within 100 feet of the shoreline of Lake Henshaw without the prior written consent of District, which the District may withhold in its sole and absolute discretion.

d. Trash and Litter Collection

- (i) Litter shall be removed as needed to maintain the clean appearance of the Recreation Area and all its facilities.

- (ii) Litter includes but is not limited to cigarette butts, paper and paper products, plastic and plastic products, glass bottles or glass fragments, fishing line and other fishing apparatus, debris including cans, foil, metal articles or fragments thereof, trash, garbage, Styrofoam and any inorganic product or organic material not natural to the area.
- (iii) Concessionaire shall empty garbage containers and remove the litter and refuse from District property on a regular basis. The location of containers for the storage of litter and refuse within the Recreation Area shall be subject to District approval.

e. Invasive Species, Pests & Vermin

- (i) Concessionaire shall conduct watercraft operations on Lake Henshaw per the recommendations of the State of California or as directed by the District to prevent the introduction of aquatic invasive species to Lake Henshaw. Specifically, the Concessionaire shall inspect all watercraft, trailers, fishing tackle, hunting decoys, etc. before their use in or on Lake Henshaw and shall complete a Watercraft Inspection Report as provided by the District for each watercraft before launch. Unless a watercraft was last used in Lake Henshaw alone, as demonstrated by a Henshaw boat & trailer band, the Concessionaire shall clean the boat with a high-pressure hot water wash as recommended by California or Pacific States Marine Fisheries Commission guidelines. The Concessionaire is responsible to provide and maintain a high-pressure hot water washer in good order for such use.
- (ii) The Concessionaire will exercise best management practices to prevent the introduction of and/or limit the spread of invasive species within the Recreation Area and Hunting Lands.
- ~~(i)~~(iii) The Concessionaire will exercise due diligence to eradicate or limit pests and vermin within the Recreation Area, consistent with sanitary and aesthetic standards.

e.f. Boats and Motors

Concessionaire shall be responsible for providing and maintaining boats to be used for public rentals. These shall be maintained at all times in good repair

and attractive condition and shall conform to the safety regulations of Federal, State, County and local governments. Each rental boat shall be equipped with at least one United States Coast Guard approved personal flotation device for each passenger, and the boat shall be plainly marked with the maximum weight that can be carried safely.

| f.g. Landscape

- (i) Concessionaire shall be responsible for all landscape maintenance in accord with standard landscaping practices.
- (ii) Concessionaire shall immediately take such steps, including removal, to limit any and all hazards posed by trees, including closure of the affected area until the hazard can be corrected.
- (iii) Concessionaire understands that maintenance of the quality of surface and subsurface waters in and around Lake Henshaw and the Warner Ranch are paramount concerns of District; and Concessionaire shall not use any fertilizers, herbicides, poisons, chemicals or other substances, whether naturally occurring or artificially manufactured, without the prior written approval of District (which District may withhold in its sole and absolute discretion) as to type, quantity used, and frequency and location of application.
- (iv) Concessionaire may dispose of organic waste generated by landscaping operations within the Recreation Area with the prior approval of District. District shall not unreasonably withhold such approval so long as District determines that a use or place of use proposed by Concessionaire would have no potential to adversely impact the water in Lake Henshaw, the San Luis Rey River, or the Warner Groundwater Basin. District may require organic material to be “chipped” before being disposed of within the Recreation Area only if District provides for the chipping. District may require Concessionaire to burn organic waste if doing so would be safe and would not be in violation of any law, ordinance or regulation. If any organic waste cannot be burned and District will not allow it to be disposed of within the Recreation Area, Concessionaire shall deposit it into containers as directed by District, and District shall pay the cost of its removal from the Recreation Area.

1.7 Standards of Concessionaire Performance

a. General

- (i) Concessionaire shall at all times conduct its business and operations in a safe, quiet, orderly and professional manner. Concessionaire shall provide sufficient personnel, labor, equipment, inventories, supplies, utilities, telephone service, fuel and other services, goods and commodities (except as expressly provided by District hereunder), necessary for Concessionaire's performance of the services, operation, maintenance and replacement responsibilities which it has assumed hereunder.
- (ii) Concessionaire shall exercise general supervision and control over the operation of the public boat launch ramps to assure the reasonable and safe use by the public of the marina area and each facility, structure, or improvement in the Recreation Area or on Lake Henshaw.

b. Maintenance

All buildings, structures and facilities occupied or made available for public use by Concessionaire hereunder, and the areas surrounding same, shall be maintained by Concessionaire at all times and in such a manner as to protect the public safety and to present a neat, clean, orderly, inviting and attractive appearance and in accordance with the provisions of Section 1.6.

c. Services and Goods

All services and goods offered to the public by Concessionaire shall be subject to the conditions set forth in Section 2.2 and shall be in good taste and of good quality and shall be offered in sufficient quantity and variety and at such times as are necessary to meet the reasonable demands of the visiting public. District reserves the right, in District's sole and absolute discretion, to prohibit Concessionaire from selling any specified goods or providing any specified services.

d. Personnel

Concessionaire shall employ sufficient competent personnel to operate the facilities and equipment described in Section 1 hereof and to perform the services, maintenance and capital improvements which Concessionaire agrees to provide under this agreement.

e. Employee Orientation Training Program

Concessionaire shall conduct an Orientation Program for its employees working within the Recreation Area. Such orientation shall be sufficient to enable Concessionaire's employees to address inquiries about the Recreation Area from the visiting public. It shall also include training in the operation of the Emergency Action Plan as prepared by the District~~required by the Federal Energy Regulatory Commission~~, which Emergency Action Plan training will initially be provided to Concessionaire by District. The employee Orientation Program is subject to the approval of District.

f. Sanitation, Safety and Patrol

(i) Concessionaire shall maintain the Recreation Area in a safe and sanitary condition at all times, and shall not permit unsafe or unsanitary conditions or a public or private nuisance to develop or exist on adjacent property as a result of conditions in the Recreation Area; and Concessionaire shall operate the Recreation Area and all buildings, structures, equipment and facilities thereon, and in particular, lands immediately adjoining Lake Henshaw, in a safe, clean and sanitary condition, and in accordance with the health, sanitation, safety, water quality and water contamination laws, rules, regulations and orders of all public agencies and authorities having appropriate jurisdiction and also in conformity with rules and regulations governing the Recreation Area as from time to time are established by District.

(ii) Concessionaire in the performance of its responsibilities, shall inform visitors as to the proper use of the Recreation Area and Hunting Lands with emphasis on safety, health, rules and regulations, and water quality, including prohibited activities and areas that are restricted from public access.

g. Licenses

Concessionaire shall, at its expense, obtain and display as required such licenses, permits or certificates as may be required and issued by all applicable governmental~~federal, state or county~~ health, sanitation and resource authorities certifying that the business operations, community water system, equipment, facilities, products on sale and methods of preparing, serving and selling thereof, all meet current health and sanitation regulations.

h. Compliance with Laws, Rules, Regulations, and Policies

- (i) Concessionaire shall comply with all federal, state, county and other local government laws, ordinances and regulations, including such rules, regulations, and polices as may be promulgated by District in its capacity as both a governmental water agency, and as the owner of the Recreational Area and Hunting Lands. No permit, approval or consent given under this Concession Management Agreement by District shall affect or limit Concessionaire's obligations hereunder, nor shall any approvals or consents given by the District, in its capacity as a party to this Concession Management Agreement, be deemed to be approval as to compliance or conformance with any applicable governmental codes, laws, orders, rules or regulations.
- (ii) Should District propose significant changes to District rules, regulations, or policies, these changes shall be presented to the Concessionaire for review prior to their implementation. Should District determine that these proposed changes ~~be such that they would~~ significantly affect the gross receipts ~~or ability~~ of Concessionaire or its ability to make a reasonable net profit, then District agrees to renegotiate the terms (including the amount and timing of payments) ~~agreed to set forth~~ herein.
- (iii) Concessionaire recognizes and understands that this Agreement may create a possessory interest subject to property taxation, and Concessionaire shall pay any property taxes levied on such interest.
- (iv) Should Concessionaire receive any citations, cease and desist orders, levies of fines, or other notices from any governmental entity or regulatory authority related to the Recreation Area or its operation, Concessionaire shall notify District immediately upon receipt.

i. Non-discrimination

To the fullest extent possible without being required to modify the facilities as they exist as of the date of execution of this Agreement, Concessionaire shall make available to the general public without discrimination as to race, creed, color, sex, sexual orientation, religion, disability, or national origin, all of the facilities and services operated or provided by them under this Agreement.



j. Commercial Hunting Club License Required

Concessionaire shall obtain, or require any Sub-concessionaire of the Hunting Lands to obtain, a commercial hunting club license in accordance with and as required by Sections 3240.5, et seq. of the California Fish and Game Code. Concessionaire shall furnish to the District a copy of each such commercial hunting club license, and any renewed or successor commercial hunting club license governing the Hunting Lands, prior to commencing use of the Hunting Lands. Concessionaire shall maintain, or require any Sub-concessionaire of the Hunting Lands to maintain a commercial hunting club license at all times during the term of this Concession Management Agreement.

k. Users' Conduct

Concessionaire shall not permit intoxicated, disorderly, disruptive or offensive person(s) to enter upon or occupy or use the Hunting Lands or any part thereof, and Concessionaire shall promptly eject such person(s) from the Hunting Lands and shall exert every possible effort to see that all person(s) entering upon or using the Hunting Lands shall conduct themselves in an orderly and inoffensive manner. Concessionaire shall also each Sub-concessionaire to comply with and enforce this provision.

l. Fish and Game Department Requirements

Concessionaire shall comply with all laws and regulations concerning hunting as established by the California Department of Fish and Game, and shall require each Sub-concessionaire likewise to comply with such laws and regulations.

m. Rules and Guidelines, and Releases

Concessionaire shall comply with the rules and regulations contained in Attachment B of the Concession Management Agreement and incorporated herein by this reference. Concessionaire shall require each Sub-concessionaire and all of its members to execute District's standard Warner Ranch Guidelines and Rules in a form substantively identical to those set forth in Attachment C attached hereto and incorporated herein by this reference. Concessionaire shall require each Sub-concessionaire and all of its members to execute District's Release and Indemnification form in substantially the same form as set forth in Attachment D attached hereto and incorporated herein by this reference.

n. Limitation on Hunting Sub-concessionaire Membership

Concessionaire shall require each hunting Sub-concessionaire to limit its membership to 100 hunters who are eligible to hunt on District Property each year.

1.8 Concession Operations Subject to District Uses of Water in Lake Henshaw

a. Primary use of Lake Henshaw for Water supply

Concessionaire understands that the water of Lake Henshaw is used as an irrigation and domestic water supply and for other downstream uses, that such uses are of paramount and primary importance to District, and that the Henshaw Lake surface water levels may vary to meet these needs. Concessionaire further understands that Henshaw Dam and Lake Henshaw, the wellfield operated by District on the Warner Ranch, and part or all of the Recreation Area are subject to ~~licensing~~ permitting and conditions which may be imposed ~~by the Federal Energy Regulatory Commission or by other~~ federal, state, or local agencies.

b. Duty to Protect Lake Henshaw and Adjacent Lands from Pollution, Contamination, and Unsanitary Conditions

(i) Concessionaire further understands and agrees that its use of the Recreation Area and Hunting Lands is subject to District's above described irrigation and domestic water supply uses and shall depend on the ability of District and Concessionaire to protect Lake Henshaw and adjacent lands from pollution, contamination and unsanitary conditions. Concessionaire, in the conduct of its business and operations hereunder, shall at all times diligently guard against the contamination or pollution of Lake Henshaw and the adjacent lands, including the Recreation Area and Hunting Lands, or the creation of unsanitary conditions therein or thereon by Concessionaire, its agents, employees, or representatives, or by the general public. Concessionaire shall keep those portions of Lake Henshaw, and the Recreation Area and Hunting Lands in which it conducts its business and operations in a safe, clean and sanitary condition and shall promptly collect, remove and dispose of, away from property of District, all rubbish, refuse and waste material accumulating from the conduct of its business or operations, including that resulting from the use of the Recreation Area facilities and/or Hunting Lands by the public. Concessionaire shall not dispose of any waste of whatever nature into Lake Henshaw or upon the adjacent watershed land and shall

use diligence to prevent such disposal by the public using the Recreation Area facilities or Hunting Lands.

- (ii) Concessionaire's obligations under this Section 1.8(b) with respect to cattle shall be limited to Concessionaire's right to remove cattle droppings from the immediate area of the launch ramp, fishing float, and boat dock, and dispose of them outside of the high water level of Lake Henshaw in a location approved by District. District will provide a site on its adjacent property for such disposal.

c. Waiver of Claims Based on Fluctuation in Water Level

Concessionaire hereby releases District and its officers, employees and agents from all claims on account of any loss or damage which Concessionaire may sustain by reason of fluctuation in the water level of Lake Henshaw; and District may at all times operate Lake Henshaw and its facilities in connection therewith as it may deem advisable. District shall not be liable to Concessionaire in any respect whatsoever if public fishing on or public use of Lake Henshaw or of the Recreation Area or Hunting Lands is prevented or limited due to Lake Henshaw surface water level fluctuations or to action of any public official, agency, board or commission.

d. Renegotiation of Terms Based on Fluctuation in Water Level

In the event that public use of the Recreation Area is diminished by acts or events beyond Concessionaire's control to the point where [District determines that](#) the Concessionaire's ability to make a reasonable net profit is unreasonably impaired, District agrees to renegotiate the terms (including the amount and timing of payments) agreed to herein. Concessionaire understands and agrees that such renegotiation shall be its sole remedy against District for losses caused by limitations on the activities which it can conduct in the Recreation Area.

1.9 Residency Requirement of Concessionaire

a. Required Residency of Manager

During the term of this Agreement, Concessionaire's manager, or other District-approved representative of Concessionaire with authority to represent Concessionaire's interests, shall reside in said Recreation Area in a location approved by District. It is understood and agreed that said residency requirement shall be solely for the purpose of Concessionaire performing the

operations, maintenance and capital improvement obligations issued hereunder, and shall be without charge to Concessionaire except for the obligations assumed hereunder regarding electrical, propane, telephone and garbage service. It is further understood and agreed that said residency requirement shall not in any way create any vested right to or interest in any District property, and said residency requirement shall cease and terminate upon the termination of this Agreement as hereinafter provided.

b. Optional Residency of Other Employees or Sub-Concessionaires

The privilege of residence may be extended in accordance with this Section, with approval of District, to additional employees or Sub-concessionaires of Concessionaire.

1.10 Signs and Advertisements

Concessionaire shall not at any time place or display any sign, placard, notice or advertisement on or about Lake Henshaw, the Recreation Area, nor the Hunting Lands, nor on public roads in proximity to these areas, unless the written approval of District is first obtained.

1.11 Promotion

Concessionaire shall, at its sole cost and expense, undertake full promotion, advertising and publicity of the Recreation Area, the Hunting Lands, and activities thereon, subject, however, to prior approval by District of any and all ~~major~~ promotional releases, brochures, scripts, advertisements, press releases, tapes or video spots, and any other means or methods of said promotion, advertising or publicity.

1.12 Utility Service

Concessionaire shall promptly pay when due all charges for utility services in connection with its operations.

1.13 Fire Protection

Concessionaire shall take all necessary precautions to prevent fire in the Recreation Area and on Hunting Lands and shall train its employees in fire prevention and containment.

1.14 Commercial Uses of Property

No commercial activities other than those specifically permitted pursuant to this Agreement shall be permitted within the Recreation Area or on Hunting Lands without the prior express written permission of District. District reserves the right to issue licenses or permits for the use of the Recreation Area and Hunting Lands to persons or entities for other uses or purposes when such activities will not interfere unreasonably with the business of Concessionaire, including but not limited to licenses and permits for the production of commercials, for taking still and motion pictures.

1.15 Hazardous Substances

Concessionaire shall not cause, permit or suffer any “hazardous material,” “hazardous waste” or “hazardous chemicals” as those terms are used in CERCLA (42 U.S.C. § 9601(14)) or SARA (42 U.S.C. § 110211(e)) or any similar Federal, State, or local law, statute, ordinance, regulation or order, or otherwise determined by District ~~OCWD~~, to be brought upon, left, used or abandoned on the Recreation Area or Hunting Lands. Notwithstanding the foregoing, Concessionaire may bring upon and use reasonable quantities of hazardous materials that are commonly used in the ordinary course of commercial activities for the operation and maintenance of commercial facilities and vehicles. All such hazardous materials, including gasoline and oil, shall be stored, handled, and dispensed in such a manner as to protect the quality of the surface and subsurface waters in and around the Recreation Area, and in compliance with all applicable federal, state and local laws, ordinances, rules and regulations.

1.16 Condition and Inspection of Recreation Area and Hunting Lands

a. Recreation Area and Hunting Lands “As-Is”

Concessionaire/Sub-Concessionaire acknowledges that the Recreation Area and Hunting Lands are being used on an “As-Is” basis, and Concessionaire/Sub-concessionaire takes and occupies the Recreation Area and Hunting Lands without reliance upon any representation by the District, or any of its officers, employees, agents or representatives, or any other person, concerning the Recreation Area and Hunting Lands, their fitness for Concessionaire’s/Sub-concessionaire’s intended use or any other particular purpose or use, their income producing history, potential or capabilities, their value, or any other promise, representation or inducement not expressly set forth in the this Agreement.

~~b. No Representation or Warranty Concerning Hunting Lands~~

~~Concessionaire/Sub-concessionaire acknowledges that neither the District nor any of its officers, employees, agents or representatives, has made any written or oral representation, promise or warranty, expressed or implied, concerning the Premises, their fitness for Concessionaire's/Sub-concessionaire's intended use or any other purpose or use, their income producing history, potential or capabilities, their value, or any other matter not expressly set forth in this Concession Management Agreement.~~

~~e.b.~~ Inspection by Concessionaire/Sub-concessionaire

Concessionaire/Sub-concessionaire acknowledges that it has had the opportunity to and has inspected the Recreation Area and Hunting Lands prior to the execution of this Agreement, and that Concessionaire/Sub-concessionaire takes and occupies the Recreation Area and Hunting Lands in the condition in which they exist as of the date of this Agreement. Concessionaire stipulates that the Recreation Area and Hunting Lands are in good, clean, safe and usable condition, and fit for Concessionaire's and any Sub-concessionaire's intended use, as of the date of this Agreement.

2. DISTRICT RIGHTS AND OBLIGATIONS

2.1 Hours of Operation Subject to District Approval

a. District Right to Alter Schedule

~~For good cause shown,~~ District shall have the full right and authority, in its reasonable discretion, to determine and alter the schedule during which Lake Henshaw and the Recreation Area shall be open to public use, and Concessionaire agrees to abide by such determination without demand or liability upon District.

b. Release of Liability re Schedule

Concessionaire hereby releases District and its officers, employees and agents from all claims on account of any loss or damage which it may sustain by reason of changes required by District in the schedule of operations of any or all activities in the Recreation Area. In the event that District determines that changes in the schedule of operations in the Recreation Area required by District unreasonably impair ~~causes~~ Concessionaire's ability to make a

reasonable net profit ~~to be unreasonably impaired~~, District agrees to renegotiate the terms (including the amount and timing of payments) set forth herein. Concessionaire understands and agrees that such renegotiation shall be its sole and exclusive remedy against District for losses caused by changes in hours of operation required by District.

## 2.2 Objectionable Sales and Uses

District reserves the right to prohibit the sale, rental or use by Concessionaire of any article or item which District ~~regards~~ determines, in its sole and absolute discretion, to be ~~as~~ objectionable or beyond the usual scope of merchandise or equipment deemed necessary for providing proper service to the public.

## 2.3 Competing Activities on Adjacent District Land; Patrol

### a. Competing Activities

The Recreation Area is a part of approximately 43,000 acres of contiguous land which is owned by District and known as the Warner Ranch. District shall not enter into any agreement with any third party to conduct fishing, boating, hunting, camping, or similar recreational use, or to operate a recreational vehicle park, mobile home park, restaurant, or store of the general type operated by Concessionaire on any part of the Warner Ranch without first giving Concessionaire the opportunity to enter into an agreement under identical terms to that offered to said third party.

### b. Patrol

~~It shall be the obligation of~~ District and the licensees under the Grazing Licenses ~~to~~ patrol the Warner Ranch outside of the Recreation Area to prevent ~~assure that it is free from~~ trespassers and ~~that there is no~~ fishing, boating, hunting, or camping activities there. If Concessionaire observes any fishing, boating, hunting, camping or other recreational use of the Warner Ranch outside of the Recreation Area, it shall promptly report it to District or the licensees under the Grazing Licenses. However, Concessionaire shall not enter upon the Warner Ranch outside of the Recreation Area without District's consent, and shall take reasonable steps to assure that users of the Recreation Area do not enter upon the Warner Ranch outside of the Recreation Area without District's consent. The Concessionaire and its Sub-concessionaires and customers may cross portions of the Warner Ranch as necessary to access Hunting Lands during applicable hunting seasons or as allowed under this Agreement.

2.4 District Operating Rights and Titles

District has the following rights and titles:

a. Perform Work on or Close any Part of Lake Henshaw or the Recreation Area

- (i) The right to perform work which it determines to be necessary for the improvement, maintenance, or operation of the Recreation Area, Lake Henshaw, or any structures or facilities used in connection with Lake Henshaw or the adjacent land, or authorized for use by third parties (including telecommunication facilities). Concessionaire shall be given reasonable notice, except in the event of an emergency, prior to performance of such work.
- (ii) The right to close any part or all of Lake Henshaw, the Recreation Area, or adjacent lands to recreational or other specified uses, without penalty, when in its judgment conditions become unsafe or when it becomes necessary for water quality, water supply, or other purposes.
- (iii) In the event that District determines that the exercise of the rights set forth in Section 2.4(a) unreasonably impair Concessionaire's ability to make a reasonable profit, then District agrees to renegotiate the terms (including the amount and timing of payments) agreed to herein.

b. Enter and Inspect any Part of the Recreation Area

The right to enter and inspect all or any part of the Recreation Area at any time and for any purpose, including the right to inspect any or all of the structures, facilities and equipment used by Concessionaire in performance of its concession operations.

c. Title to Facilities and Equipment

Except as otherwise agreed in writing between Concessionaire and District, title to all facilities and equipment which are affixed to the real property in the Recreation Area or to any of the structures located therein, and to any replacements, substitutions or modifications thereof, whether purchased or installed by District or by Concessionaire, shall remain in District, and shall remain upon and within the Recreation Area and be surrendered upon termination of this Agreement whether by expiration of its term, termination or otherwise. No such facilities or equipment shall be removed from the Recreation Area by Concessionaire at any time; provided, however, that Concessionaire may temporarily remove equipment from the premises to



perform maintenance thereon after giving advance notice of such removal to District.

d. District's Reservations:

- (i) The District hereby reserves the right to grant easements and rights-of-way for pole or power lines for transmission of electricity, and easements, leases and rights-of-way for telephone, telegraph, telecommunication facility, gas, water, sewer and oil lines, for roads and highways, and for other similar uses over and across the Recreation Area and Hunting Lands at any location or locations within the Recreation Area or Hunting Lands. In the event ~~Concessionaire~~District determines that ~~the District's~~ granting or exercise of any such easement, lease, or right-of-way significantly interferes with Concessionaire's possession or use of the Recreation Area or Hunting Lands, then District agrees to renegotiate the terms (including the amount and timing of payments) agreed to herein.~~Concessionaire's only remedy shall be to terminate its hunting rights and obligations under this Agreement, upon thirty (30) days' written notice to District.~~ Concessionaire shall not interfere with any easements, licenses, or rights-of-way pertaining to or affecting the Recreation Area or the Hunting Lands.
- (ii) The District hereby reserves the right onto itself to operate, protect, replenish or conserve the surface water reservoir and the surface and groundwater supplies within the Recreation Area and Hunting Lands. Such work may be performed without incurring any liability of any nature whatsoever to Concessionaire, which hereby releases the District from, and covenants not to sue the District for, any such liability.
- (iii) The District reserves the right to remove any portion of the Recreation Area or the Hunting Lands from the scope of the Agreement at any time for water conservation and/or mitigation purposes. Concessionaire agrees not to hold the District liable for any losses or damages that may occur by reason of District's removing a portion of the Recreation Area or Hunting Lands for water conservation and/or mitigation purposes, and Concessionaire hereby releases the District from, and covenants not to sue the District for, any such action. In the event ~~Concessionaire~~District determines that its~~the District's~~ removal of any portion of the Recreation Area or the Hunting Lands from the scope of the Agreement for water conservation and/or mitigation purposes significantly interferes with

Concessionaire's possession or use of the Recreation Area or Hunting Lands, then District agrees to renegotiate the terms (including the amount and timing of payments) agreed to herein.~~Concessionaire's only remedy shall be to terminate its hunting rights and obligations under the Agreement, upon thirty (30) days' written notice to District.~~

### 3. PAYMENTS, FEES AND LIABILITIES

#### 3.1 Security Deposit

Prior to the commencement of the term hereof, Concessionaire shall furnish to District a security deposit in the amount of \$10,000 to guarantee Concessionaire's performance of all the terms and conditions of this Agreement. Such security deposit shall be in the form of:

- a. A deposit made with District, or deposited under pledge or escrow agreement satisfactory to District, of cash, governmental obligations in bearer form, or publicly traded stocks satisfactory to District; or
- b. A surety bond issued by a company authorized to do business as a surety in the State of California; or
- c. An irrevocable letter of credit for the term of the Agreement issued in a form and by a commercial bank satisfactory to District; or
- d. A security agreement secured by real property satisfactory to District.

#### 3.2 Adjusted Gross Receipts

##### a. Definition of "Adjusted Gross Receipts"

The term "Adjusted Gross Receipts", wherever used in this Agreement, shall mean all money, property, or any other item of value, without any deductions, received by Concessionaire through the operation of the concession under this Agreement, including the "In Lieu Rent" described in section 3.2.c and Imputed Income described in section 3.2.d. ~~∴~~Provided, however, that the words "Adjusted Gross Receipts" shall not include:

- (i) any sales or excise taxes imposed by any governmental agency;
- (ii) any portion of fishing or hunting license revenue remitted to the State of California; or

(iii) the cost of goods sold from the store in the Recreation Area; or

~~(iii)~~(iv) any hunting club membership fees paid to the Concessionaire or Sub-concessionaire for use of the Hunting Lands under the terms of this Agreement.

b. Thefts or Losses borne by Concessionaire

Any thefts or other losses of Adjusted Gross Receipts shall be borne solely by Concessionaire and shall not reduce any of the percentage payments provided for by this Agreement.

c. Accounting for Operation of Restaurant

For as long as Concessionaire or a Sub-concessionaire operates the restaurant in the Recreation Area, neither the revenues from the restaurant nor the cost of goods sold at the restaurant shall be considered in calculating Adjusted Gross Receipts. Instead, "In Lieu Rent" in the amount of \$91,100 per month shall be added to the amounts described in subsection 3.2.a to determine Adjusted Gross Receipts for ~~1996~~2018. For each year after ~~1996~~2018 for the remainder of the term of the Agreement, the amount of In Lieu Rent shall increase by \$50 per ~~month~~year, so that it is ~~\$950~~1,050 per month in ~~2019~~1997, ~~\$1,001~~00 per month in ~~2020~~1998, etc.

d. Imputed Income Receipts

Unless a discounted charge or fee is approved in advance in writing by District, if, by virtue of membership in any group or organization (including but not limited to My Country Club, Inc., or any similar organization) any person is permitted to use any facilities or participate in any activities in the Recreation Area for a charge or fee which is lower than that offered to members of the public at large, the charge or fee offered to members of the public at large, not the discounted charge or fee, shall be utilized in the calculation of Adjusted Gross Receipts, regardless of the amount actually received by Concessionaire.

3.3 Concession Agreement Payment

a. Amount of Payment

Concessionaire shall pay to District during the entire term of this Agreement for the right to exercise the privileges herein contained, an amount equal to ten

percent (10%) of all monthly Adjusted Gross Receipts over \$35,000 but less than \$40,000, 15% of all monthly Adjusted Gross Receipts over \$40,000 but less than \$50,000, and 20% of all monthly Adjusted Gross Receipts over \$50,000.

b. Timing of Payment

Payment to the District shall be made no later than thirty (30) days from receipt of invoice from the District. The payment shall be based on Adjusted Gross Receipts of the preceding calendar month and shall be paid to District at its principal office in Vista, California. In the event a payment is not made on or before the due date herein provided, Concessionaire shall pay to District a late charge on said unpaid amount at the rate of one and one half percent (1.5%) per month from and after the due date thereof until the date of payment.

c. Hunting Activities

As set forth in Attachment F to this Agreement (Sub-concessionaire Agreement for Hunting), any Sub-concessionaire shall pay to District rent for the use of the Recreation Areas and Hunting Lands for fishing and hunting purposes. The rent shall consist of a base rent, to include the spring turkey season, the rifle deer season, waterfowl, duck and goose hunting, and fishing privileges. Supplemental rents shall be assessed for dove, quail, archery deer seasons and “put and take” hunting of commercially raised game birds (generally pheasant, grouse or chukar) at times of year allowed by the California Department of Fish and Wildlife~~from January 1 through the start of the turkey hunting season and September 1 through December 31~~, based on the schedule of rents and payment dates set forth in the form Sub-concessionaire Agreement for Hunting attached hereto as Attachment F. Concessionaire and any Sub-concessionaire shall be responsible for ensuring the avoidance of all conflicts between all hunting and recreational uses, and for coordinating the hunting uses with District and District’s other lessees and licensees.

In addition, the District may allow the hunting of wild pig under this Agreement from time to time by written permission. Due to the evolving nature of wild pig distribution and population, its potential for damage to District resources, and its potential to enhance the revenue of the Concessionaire, the terms and conditions of such permission will be negotiated at the time that such permission is granted.

3.4 Concessionaire's Obligation for Major Maintenance and Capital Improvements

a. Identification of Major Maintenance and Capital Improvement Projects

For purposes of this Agreement, the phrase "Major Maintenance and/or Capital Improvement Projects" means projects which enhance or create facilities which are owned by District and are of a more permanent nature than the ordinary maintenance items described above or are projects which have been agreed upon by District and Concessionaire.

b. Major Maintenance Obligation Based on Adjusted Gross Receipts

(i) In any calendar year other than the last year of the Term the Concessionaire's Adjusted Gross Receipts exceed \$700,000, then during the following calendar year the Concessionaire shall spend at least: ten percent (10%) of the amount by which said Adjusted Gross Receipts are greater than \$700,000 and less than \$800,000 and twenty percent (20%) of the amount by which said Adjusted Gross Receipts are greater than \$800,000 (which amount shall be the Major Maintenance Obligation) on Major Maintenance or Capital Improvement Projects.

(ii) If the Concessionaire incurs a Major Maintenance Obligation during the last year of the Term, the Concessionaire shall pay to the District the amount of that Major Maintenance Obligation at the same time and under the same terms as the last month of the Concession Agreement Payment.

c. Major Maintenance/Capital Improvement ReportPlan

Concessionaire, ~~in cooperation with District staff,~~ shall prepare an annual Major Maintenance/Capital Improvement ReportPlan of ~~proposed~~ work performed each year by January 31 ~~November 30~~ of the following each year and forward a copy to District ~~for approval, which approval District shall not unreasonably deny.~~ The report shall describe the work performed, the dates the work was executed, the actual or expected completion date, and the resources and expenses utilized in performing the work. In years in which the Concessionaire incurs a Major Maintenance Obligation, the Major Maintenance/Capital Improvement Report shall demonstrate that the Concessionaire has met the requirements of that obligation.

d. Performance of Work on Required Major Maintenance and/or Capital Improvement Projects

- (i) Except in the event of an emergency or an opportunity to perform a specific project under unusually favorable circumstances, no work which is to be paid for in whole or in part with funds which Concessionaire is required by this Agreement to spend on Major Maintenance and/or Capital Improvement Projects shall begin without District's prior written approval.
- (ii) In the event there is an emergency, and it is impracticable to obtain District's written consent before beginning, Concessionaire may begin the work and thereafter seek District's written consent at its first reasonable opportunity.
- (iii) All work on required Major Maintenance and/or Capital Improvement Projects shall be performed by Concessionaire using outside contractors or its own work force, as initially determined by Concessionaire, subject to District's approval, which shall not be unreasonably withheld. If Concessionaire uses its own employees, expenditures by Concessionaire for such labor for the purpose of this Agreement shall be calculated at such rate as is agreed in advance by District and Concessionaire, but in no event more than the rate normally paid to said employees by Concessionaire, plus an allowance for fringe benefits. No payment for management/supervision by Concessionaire or for use of tools or equipment owned by Concessionaire will be included.

e. Use of Additional Concessionaire Funds Encouraged

Nothing in this Agreement shall be interpreted to prohibit Concessionaire from using additional funds for Major Maintenance or Capital Improvement Projects in the Recreation Area, and District encourages Concessionaire to so use its funds.

~~3.5 — Capital Improvements by District~~

~~As soon as practicable, the District, at its own cost and expense, shall perform the maintenance and make the capital improvements in the Recreation Area which are listed below. These are the only Major Maintenance and/or Capital Improvement Projects which District is required by this Agreement to undertake. Once District~~

~~has completed each of these projects, Concessionaire shall be solely responsible for ongoing maintenance.~~

3.5 Right to Terminate Agreement Because of Major Improvements, Repairs, and Replacements or Annual Adjusted Gross Receipts under \$600,000

a. Concessionaire and District Not Obligated to Incur Additional Expense

It is understood and agreed that, except as provided herein, District shall not be required to incur any cost or expense for maintenance, repair, or construction of capital improvements in the Recreation Area, and neither Concessionaire nor District shall be required to incur any cost or expense for the installation or construction of new buildings, structures or facilities or for major improvements, repairs or replacements ~~(those which~~that will cost in excess of \$50,000 ~~)per structure~~each during the term of this Agreement. However, nothing in this Agreement shall be interpreted to prohibit Concessionaire or District from using its own funds for major maintenance or capital improvements in the Recreation Area.

b. Right to Terminate Agreement

- (i) In the event that major improvements, repairs or replacements ~~(those which will~~that will cost in excess of \$50,000 ~~per structure)~~each become necessary which neither Concessionaire nor District is required by this Agreement to make, which are beyond the ability of Concessionaire to make, and which District is unwilling in its sole discretion to make, either Concessionaire or District may elect to terminate this Agreement.
- (ii) In the event that Concessionaire's annual Adjusted Gross Receipts are below \$600,000 for any year, District may elect to terminate this Agreement unless Concessionaire can show that the reason said Adjusted Gross Receipts were below \$600,000 was beyond the reasonable control of Concessionaire.

3.6 Concessionaire Records

a. Maintenance of Records

Concessionaire shall maintain books, records, documents, and other evidence of its operations hereunder on an accrual basis in accordance with generally accepted accounting principles.

b. District Access to Records

District and any of its duly authorized representatives shall have access to Concessionaire's books, records, documents, and other evidence of its operations hereunder, including business income tax returns and the business schedules from personal tax returns, for the purpose of inspection, audit and copying upon reasonable notice at any time during the term of this Agreement and for a period of five (5) years following the termination of this Agreement. Concessionaire shall provide proper facilities for such access and inspection.

c. Monthly Statements by Concessionaire

Concessionaire shall furnish to District, on or before the twenty-fifth (25<sup>th</sup>) day of each calendar month during the term of this Agreement, an itemized statement, broken down by revenue categories, showing the Adjusted Gross Receipts from Concessionaire's operations under this Agreement during the preceding calendar month. Such statement shall also include attendance by category.

d. Annual Reviewed Financial Statements by Concessionaire

- (i) On or before February 1 of each year, Concessionaire shall submit to District a statement of Concessionaire's Adjusted Gross Receipts for the previous calendar year of operation hereunder.
- (ii) On or before May 31 of each year, Concessionaire shall submit to District Concessionaire's reviewed financial statements (including an independent accountant's report thereon) for the previous calendar year of operations. Copies of any management letters issued by the Concessionaire's independent accountants shall be submitted to District within thirty (30) days of issuance. The cost of obtaining reviewed financial statements shall be borne solely by Concessionaire.

e. Additional Statistical Information

In addition to the documentation and information otherwise required by this Agreement to be provided to District, Concessionaire shall provide to District, within a reasonable period after request therefor, ~~above, Concessionaire may be asked by District to provide~~ additional statistical information relating to the operations of the concession. This may include expanded visitor information including permanent residence, age, category, number of disabled visitors, revenue reports, fishing surveys and other recreation use information. Surveys



may be required from time to time to identify the number of visitors per vehicle, peak weekend use and other requested information.

f. Club or Group Members Using Facilities at Discount

Concessionaire shall maintain a separate record or account showing each occasion where, by virtue of membership in any group or organization (including but not limited to My Country Club, Inc., or any similar organization), any person is permitted to use any facilities or participate in any activities in the Recreation Area for a charge or fee which is lower than that offered to members of the public at large. The information maintained in this separate record or account shall be included as a separate category in the itemized monthly statement required by subdivision (c) of this subsection. At a minimum, each entry shall show, for each occasion where a lower fee or charge is assessed, the name of the person using the facilities or participating in the activities for which the lower fee or charge was assessed, the name of the group or organization in which such person is a member by virtue of which the lower fee or charge was assessed, a description of the facilities such person used or activities in which such person participated, the amount actually charged, and the amount of any adjustment required by Section 3.2 for purposes of calculating Adjusted Gross Income.

3.7 Fees for Use of Recreation Area and Facilities

a. Establishment and Posting of Fees

(i) All fees for use of the Recreation Area or activities or facilities therein and all other prices and charges collected by Concessionaire from the public for its business operations under this Agreement shall be set by Concessionaire, subject to District review. Such fees, prices, and charges shall be reasonable, consistent with quantity and quality of the goods and services provided, and consistent with those usually applied in similar public recreation areas.

(ii) Concessionaire shall post the recreational fees in the Recreation Area at such places as may be designated by District. District shall have access to and the right to inspect the schedule of prices for all goods sold and services rendered or performed within the Recreation Area. Any price or charge determined by District in its sole and absolute discretion to be unreasonable for the services rendered or the item sold, or any portion determined by District in its sole and absolute discretion to be

inadequate, shall be modified by Concessionaire promptly as directed by District. District shall give reasonable notice to Concessionaire of any required change to any price or charge, and shall require change to any price or charge only for good cause.

b. Collection of Fees

Concessionaire shall collect all fees for use of the Recreation Area or activities or facilities therein and all other prices and charges for its business operations under this Agreement.

3.8 Payment of Debts-Prohibition of Liens

Concessionaire shall promptly pay all debts incurred by Concessionaire for materials, supplies, equipment, merchandise or services used in or about or in connection with its business or operations in the Recreation Area, and the wages and salaries of all employees employed therein. Concessionaire shall permit no liens to be levied upon or to attach to any property used by Concessionaire in the performance of this Agreement. Concessionaire shall pay before delinquency all license fees, taxes and assessments imposed, levied or assessed upon Concessionaire or upon any property used by Concessionaire in the performance of this Agreement or upon Concessionaire's possessory interest therein, upon its business or activity conducted hereunder or its right to conduct same, or based upon the proceeds of such business or activity.

3.9 Indemnification and Insurance

a. Indemnification

- (i) Concessionaire acknowledges and agrees that it has the ~~entire~~sole, exclusive and entire responsibility in the Recreation Area for any and all injury to persons or property arising out of the occupancy, use or operation of the Recreation Area or any of the facilities or equipment therein, except for liability associated with District reservoir operations outside the scope of this Agreement. ~~or injury to District employees or independent contractors who are present in the Recreation Area solely in connection with the performance of Concessionaire's duties or contractual obligations to District.~~
- (ii) Concessionaire ~~expressly agrees to~~shall indemnify, defend and hold District, its agents, directors, officers, and employees free and harmless from and against any and all loss, liability, expense, claims, costs, suits

and damages, including attorneys' fees, in any way arising out of the occupancy or use of the Hunting Lands and Recreation Area or any of the facilities or equipment therein, as provided under the terms and conditions of this Agreement by Concessionaire, except when such injury or damage is caused ~~solely~~ by the sole active negligence or intentional and willful misconduct of District or its agents, directors, officers, or employees.

b. General Insurance Requirements

(i) Insurance. Concessionaire shall carry all insurance required by Federal, State, County and local laws. Concessionaire shall procure and maintain, during the life of the Agreement, adequate worker's compensation, public liability and property damage insurance. The specific requirements for insurance as set forth in this article shall be considered minimum requirements. Concessionaire shall procure and maintain, during the life of this Agreement, such commercial general liability and automobile liability insurance necessary to protect Concessionaire and District from all claims for bodily injury, including accidental death and property damage claims arising from operations under this Agreement. District shall be named as additional primary insured on Concessionaire's policy without offset against Concessionaire's existing insurance and the certificate of insurance shall include reference to such provisions.

a. Minimum Scope of Insurance. Coverage shall be at least as broad as:

- i. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
- ii. Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
- iii. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

b. Minimum Limits of Insurance. Concessionaire shall maintain limits no less than:

- i. General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage with a general aggregate limit of twice the occurrence limit in combination with umbrella insurance policy coverage of \$5,000,000.
- ii. Automobile Liability: \$1,000,000 per accident for bodily injury, death, and property damage.

- iii. Workers' Compensation: California Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided as required by law, with limits of not less than \$1,000,000.00 per accident or bodily injury, and \$1,000,000.00 per disease per employee. In the alternative, Concessionaire may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the California Labor Code shall be solely in the discretion of District.
- c. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by District. At the option of District, either:
  - i. The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects District, its officers, officials, employees and authorized volunteers; or
  - ii. Concessionaire shall provide a financial guarantee satisfactory to District guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- d. Other Insurance Provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:
  - i. District, its directors, officers, employees, and authorized volunteers are to be covered as additional insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of Concessionaire; and with respect to liability arising out of work or operations performed by or on behalf of Concessionaire including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Concessionaire's insurance using ISO endorsement CG2010, CG2033, or equivalent, or as a separate owner's policy.
  - ii. For any claims related to this Agreement, Concessionaire's insurance coverage shall be primary insurance as respects District, its directors, officers, employees, and authorized volunteers. Any insurance or self-insurance maintained by DISTRICT, its directors, officers, employees, or authorized volunteers shall be excess of Concessionaire's insurance and shall not contribute within.
  - iii. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by mail, has

been given to District, except for non-payment of premium for which ten (10) days prior notice will be given. For purposes of this notice requirement, any adverse material change in the policy prior to its expiration shall be considered a cancellation. Concessionaire shall, upon demand of District, deliver to District all such policy or policies of insurance and the receipts for payment of premiums thereon.

e. Acceptability of Insurers. To be acceptable, insurers must have an A.M. Best rating of no less than A minus: VII, or equivalent, unless otherwise approved by District General Manager.

a.f. Verification of Coverage. Concessionaire shall furnish District with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on the standard ACORD insurance form or on another form approved by District, provided those endorsements or policies conform to the requirements. All certificates and endorsements are to be received and approved by District. District reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

~~(i) Concessionaire shall take out and maintain during the term of the Agreement all of the insurance required by the Agreement with insurers satisfactory to the District and shall submit certificates of insurance and insurance endorsements to the District for its review and approval. Acceptance of such certificates and endorsements by the District shall not relieve Concessionaire of any of the insurance requirements set forth herein, nor decrease the liability of Concessionaire. District reserves the right to require Concessionaire to provide insurance policies for its review. District shall notify Concessionaire in the event any of the insurance required by this Agreement is found upon review to be inadequate.~~

~~(ii) At least thirty (30) days prior to the expiration of any insurance policy required by this Agreement, Concessionaire shall file with the District a signed and complete certificate of insurance and all insurance endorsements required by this Agreement, showing that such insurance coverage has been renewed.~~

~~(iii) Concessionaire shall require any Sub-concessionaire to procure and maintain all of the insurance required by this Section 3.10 9 in its Sub-concessionaires or as set specified in Sub-concession agreements (e.g.~~

~~(Sub-concession Agreement for Hunting) in its own name, and all of the requirements of this Section 3.10 9 and/or set forth in a Sub-concession agreement shall be binding upon Sub-concessionaire.~~

~~(iv) The policies of liability insurance provided for in subdivision (d) of Section 3.109 shall specify that this specific Agreement is insured and that injury to participants resulting from Concessionaire's activities are not excluded, and be in a form satisfactory to District and shall contain the following separate endorsements:~~

~~A. The District, its officers, directors, employees and representatives, are hereby declared to be additional insureds on all of the above-described liability insurance policies, with respect to the operations of the named insured at or from the premises of the District described above. The coverage shall contain no special limitations on the scope of protection afforded to the District, its officers, directors, employees and representatives.~~

~~B. This insurance policy shall not be cancelled, limited or non-renewed until thirty (30) days after receipt by the District of a written notice of such cancellation, limitation or reduction of coverage.~~

~~C. This insurance policy is primary insurance and no insurance held or owned by the designated additional insureds shall be called upon or looked to cover a loss under said policy; the District shall not be liable for the payment of premiums or assessments on this policy.~~

~~D. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the District, its officers, directors, employees or representatives.~~

~~(v) The policies of worker's compensation insurance provided for in subdivision (e) of this subsection shall be in a form satisfactory to District and shall contain the following separate endorsements:~~

~~A. The insurer issuing the above-described worker's compensation insurance policy waives all rights of subrogation against the District, its officers, directors, employees and representatives.~~

~~B. This insurance policy shall not be cancelled, limited or non-renewed until thirty (30) days after receipt by the District of a written notice of such cancellation, limitation or reduction of coverage.~~

~~e. Worker's Compensation Insurance~~

~~Concessionaire shall take out and maintain during the life of the Agreement, Worker's Compensation Insurance for all employees working in the business or operations outlined herein in strict compliance with all federal, state and local laws and regulations.~~

~~d. Public Liability Insurance~~

~~Concessionaire shall take out and maintain during the life of the Agreement commercial general liability insurance and comprehensive automobile liability insurance that provide protection from claims which may arise from operations or performance under this Agreement. The amounts of insurance shall not be less than the following:~~

~~(i) Commercial General Liability Insurance, providing coverage in the following minimum limits: Combined single limit of One Million Dollars (\$1,000,000) per occurrence for Bodily Injury, Personal Injury or Death and Property Damage with a general aggregate limit of twice the occurrence limit, in combination with an umbrella insurance policy with liability coverage with a \$5,000,000 limit.~~

~~(ii)(i) Comprehensive Automobile Liability Insurance, including owned, non-owned, leased, hired and borrowed automobiles and similar vehicles, providing the following limits: Combined single limit of One Million Dollars (\$1,000,000) per occurrence for Bodily Injury or Death and Property Damage.~~

~~e.c. Broad Form Property Insurance~~

(i) Concessionaire shall take out and maintain during the life of the Agreement broad form property insurance on all concession improvements, whether owned by District or placed or constructed upon the premises by Concessionaire, in an amount equal to ~~at least ninety percent (90%) of the~~ their full replacement cost and/or value thereof. Said insurance shall provide coverage for losses caused by fire, lightning, explosion, windstorm or hail, smoke, aircraft or vehicles, riot

or civil commotion, vandalism, sprinkler leakage, sinkhole collapse, volcanic action, breakage of glass, falling objects, weight of snow, ice or sleet, and water damage.

- (ii) Said policy(ies) shall contain a full replacement cost endorsement(s), including endorsements for ordinance or law (also known as “building ordinance” coverage which provides coverage for the higher costs required to bring new construction up to present day code standards) and demolition costs, naming District as the insured as to all District owned property.
- (iii) Said policy(ies) shall contain endorsements providing that District will be notified in writing at least thirty (30) days in advance of any cancellation or reduction in coverage, and that District is not liable for the payment of any premiums or assessments against the policy(ies).

f.d. Business Income and Extra Expense Insurance

Concessionaire shall take out and maintain during the life of the Agreement Business Income and Extra Expense Insurance to provide revenue protection during any period of reconstruction following a loss.

g.e. No Limitation on Liability of Concessionaire

Nothing contained in these insurance requirements shall limit the liability of Concessionaire.

h.f. Review of Coverage

The District shall have the right at any time to review the coverage, form, and limits of insurance required under this Agreement. If, in the sole and absolute discretion of the District, the insurance provisions herein do not provide adequate protection for the District, the District shall have the right to require Concessionaire to obtain insurance sufficient in coverage, form and limits to provide adequate protection, and Concessionaire shall promptly comply with any such requirement. The District’s requirements shall not be unreasonable, but shall be adequate in the sole opinion of the District to protect against the kind and extent of risks which may exist at the time a change of insurance is required, or thereafter.



i.g. Concession Management Agreement Void Without Insurance

Notwithstanding any other provision herein, this Agreement shall be null and void at all times when the above-referenced certificate of insurance and insurance endorsements (and their renewal certificates and endorsements) are not on file with District.

3.10 Liability for Damage to District Property

a. In General

Concessionaire shall be liable for any and all damages to District property occurring by reason of its performance or operations under this Agreement.

b. Destruction of Buildings

In the event of destruction, loss or damage by fire or other cause of any of the District-owned buildings, improvements, structures, or facilities used by Concessionaire in connection with its operations or business hereunder for which insurance coverage has been obtained, District shall use the proceeds of such insurance to rebuild or replace any property so damaged or destroyed, up to the amount of the proceeds. District shall not be obligated to replace any destroyed, lost or damaged property except to the extent it is covered by insurance pursuant to this Agreement, nor shall District be liable to Concessionaire for any such loss of use or damage.

c. Contamination Caused by Predecessors

Concessionaire shall not be liable for damage to District property or environmental contamination caused by operations in the Recreation Area before ~~the commencement of the term of this Agreement~~ Concessionaire commenced concession activities on the Recreation Area, including but not limited to petroleum hydrocarbon contamination caused by the operation of a gasoline station in the Recreation Area by the Warner Resort Company.

4. TERM, AMENDMENTS AND OTHER

4.1 Term

The Term of the Concession Management Agreement shall continue until and expire on December 31, 2032, unless terminated on an earlier date as provided

in this Agreement. Concessionaire shall have no unilateral option to renew the term of this Agreement.

#### 4.2 Default

##### a. Events of Default

The following events shall constitute events of default under this Agreement:

- (i) Concessionaire's ~~willful~~ understatement of Adjusted Gross Receipts for any period, including but not limited to failure to properly include in Adjusted Gross Receipts the full charge or fee offered to members of the public on each occasion where, by virtue of membership in any group or organization (including but not limited to My Country Club, Inc., or any similar organization), any person is permitted to use any facilities or participate in any activities in the Recreation Area for a charge or fee which is lower than that offered to members of the public at large;
- (ii) Concessionaire's failure to pay to District any of the sums required by this Agreement to be paid at the times and in the manner herein provided;
- (iii) Concessionaire's failure to operate ~~said~~this concession in accordance with the standards prescribed by District, including permitting the same to be conducted in an unlawful manner;
- (iv) Concessionaire's violation of any terms or conditions of this Agreement;
- (v) A transfer by Concessionaire of any assets ~~in fraud of~~that has the effect of defrauding creditors, or an assignment by Concessionaire for the benefit of creditors;
- (vi) The commencement of voluntary proceedings of any kind by Concessionaire under the Federal Bankruptcy Act or under any other insolvency, bankruptcy, or reorganization act, or the filing of an involuntary petition in bankruptcy by Concessionaire's creditors with the petition remaining undischarged for a period of ninety (90) days;
- (vii) The appointment of a receiver to take possession of a substantial part of Concessionaire's assets;

(viii) The levy upon this Agreement, any property subject to this Agreement, or any property of Concessionaire which is used in the performance of or as security for this Agreement by attachment, execution, or other judicial seizure and the failure of Concessionaire to have the attachment, execution, or other seizure vacated within thirty (30) days;

~~(ix) Concessionaire's willful failure to disclose or to maintain a separate record or account showing each occasion where, by virtue of membership in any group or organization (including but not limited to My Country Club, Inc., or any similar organization), any person is permitted to use any facilities or participate in any activities in the Recreation Area for a charge or fee which is lower than that offered to members of the public at large.~~

b. District Rights in the Event of Default

In the event of Concessionaire's default, District may, at its option, in addition to any other remedies it may have, terminate this Agreement and forthwith take possession of the premises, including any and all District property in possession of Concessionaire, and remove any and all persons or property therefrom.

c. Notice of Default

(i) Before any forfeiture shall be declared hereunder by reason of a curable default on the part of Concessionaire, District shall cause written notice to be given to Concessionaire specifying the particulars wherein Concessionaire is in default and demanding performance in accordance with the terms of this Agreement. If, within ten (10) days after such notice is given, Concessionaire shall have fully complied therewith, or (if such default cannot reasonably be cured within ten (10) days) Concessionaire in good faith shall have commenced the work or acts necessary to immediately and fully comply, and thenceforth shall diligently prosecute such work or acts to completion, no forfeiture by reason of such breach shall be declared hereunder; but in the event of Concessionaire's failure to immediately and fully comply with such notice, District may then declare and effect a forfeiture by reason of the default therein specified.

- (ii) District need not give the notice described above before it declares a forfeiture or exercises any other remedy it may have based on a default by Concessionaire which District determines cannot be cured.

4.3 Ownership of Concessionaire; Termination of Agreement upon Transfer of Control or Death or Disability of Mendenhalls; Personal Guaranty

a. Concessionaire to Apprise District of Ownership of Stock

Concessionaire and Mendenhalls warrant that as of the execution of this Agreement, Concessionaire's stock is owned as follows: Frank A. Mendenhall 50,000 shares (50%); Janice L. Mendenhall 50,000 shares (50%). Concessionaire shall promptly advise District of any change of ownership, including without limitation the transfer of any shares of stock owned by any present shareholder and the issuance of any additional shares of stock.

b. Termination upon Transfer of Control or Death or Disability

Unless otherwise agreed by District, this Agreement and all sub-concession agreements hereunder shall immediately terminate upon the occurrence of any of the following events:

- (i) The death or permanent disability of both Frank A. and Janice L. Mendenhall;
- (ii) The transfer of more than fifty percent (50%) of the outstanding stock of Lake Henshaw Resort, Inc., to persons other than Frank A. or Janice L. Mendenhall;
- (iii) The loss of control of Frank A. and Janice L. Mendenhall in the operation and management of Lake Henshaw Resort, Inc.; or
- (iv) Neither Frank A. nor Janice L. Mendenhall remaining actively and continuously involved in the management of Lake Henshaw Resort, Inc., and the performance of this Agreement.

c. Personal Guaranty

The Parties acknowledge that Frank A. and Janice L. Mendenhall have personally guaranteed Concessionaire's performance hereunder, and that said personal guaranty, as set forth in Attachment E to this Agreement, is a material part of the consideration received by District hereunder.

4.4 Concessionaire's Obligations upon Default or Other Termination of Agreement

a. Surrender of Premises

Upon expiration of the term or other termination of this Agreement, Concessionaire shall quit and surrender the Recreation Area and Hunting Lands, including all real property improvements and other property of District located therein, in a good state of repair, ordinary wear and tear excepted.

b. Removal of Concessionaire's Personal Property

Upon expiration of the term or other termination of this Agreement, and if Concessionaire shall not then be in default hereunder, Concessionaire shall within thirty (30) days thereafter, remove from the Recreation Area, Hunting Lands and Lake Henshaw, in a manner satisfactory to District, all personal property belonging to Concessionaire. If Concessionaire fails to remove said personal property, District may, at its election, consider said property as abandoned, and may retain it for District's own use or dispose of it at Concessionaire's expense.

4.5 Attorneys' Fees

In the event of any dispute involving the interpretation or effect of this Agreement, or of any litigation for the interpretation, specific performance or damages for breach of this Agreement, the prevailing party shall be entitled to a judgment or award against the other in an amount equal to reasonable attorneys' fees and court costs, in addition to other remedies.

4.6 Assignment and Sub-Concession Agreements

a. District Consent Required

Concessionaire shall not assign, transfer or sublet any of the rights or privileges given to it under this Agreement, voluntarily or involuntarily, or permit the exercise thereof by any third persons, firms or corporations, public or private, or enter into any sub-concession agreements, without the written consent of District having first been obtained. Concessionaire understands and agrees that District has the absolute right to withhold consent to a proposed assignment or sub-concession agreement for any reason or for no reason at all.

b. Concessionaire Remains Fully Responsible

If consent to a sub-concession agreement or assignment is given by District, Concessionaire shall be and remain fully bound and responsible hereunder for such duties and obligations as it may assign or sublicense to another.

c. Acceptance of Terms by Assignee

Any assignment or sub-concession agreement entered into by Concessionaire shall expressly provide for a recognition and acceptance of all of the terms of this Agreement as binding upon the assignee or Sub-concessionaire.

d. Approval of Sub-concessionaire for Hunting Activities

Subject to Sub-concessionaire's execution of a sublease instrument approved by the District, which expressly provides that Sub-concessionaire acknowledges and accepts all of the terms and conditions of this Concession Management Agreement (including but not limited to the provisions regarding insurance and indemnification) as binding upon it, the District hereby consents to Concessionaire subleasing the Recreation Area and Hunting Lands to My Country Club, Inc., as Sub-concessionaire, for the limited purposes of hunting, fishing and incidental activities.

4.7 Limitation on Duration of Concessionaire Agreements

Concessionaire shall not enter into any agreements, grant any rights or purported rights, or incur any obligations for the use of the Recreation Area, Hunting Lands or any District property beyond the term of this Agreement; and any agreements, grants of rights or purported rights, or obligations for the use of the Recreation Area or any District property entered into, granted, or incurred by Concessionaire shall automatically terminate upon the termination of this Agreement for any reason.

4.8 Consent or Approval of District

Whenever the consent or approval of District is required by this Agreement, it shall be obtained from District's General Manager or the General Manager's designee.

4.9 Agreement in Writing

Except as expressly provided herein, this Agreement contains and embraces the entire agreement between the parties hereto, and supersedes and nullifies any and all prior or contemporaneous agreements, understandings, and representations and

statements, oral and written, between the parties. No modification, waiver, amendment, discharge, or change of this Agreement shall be valid unless the same is in writing and signed by the parties against whom enforcement of such modification, waiver, amendment, discharge, or change is or may be sought.

4.10 Partial Invalidity

If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be void or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

4.11 Captions

The various captions, headings, and numbers in this Agreement and the grouping of provisions of this Agreement into separate sections and paragraphs are for the purpose of convenience only and shall not be considered a part of the Agreement.

4.12 Time of Essence

Time shall be of the essence in the performance of this Agreement.

4.13 Notices

a. Notice by Certified Mail

All notices herein provided 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, certified and postage prepaid, and addressed as follows:

To Concessionaire:

Frank A. or Janice L. Mendenhall  
Lake Henshaw Resort, Inc.  
P.O. Box 261  
Santa Ysabel, CA 92070

To District:

General Manager  
Vista Irrigation District  
1391 Engineer Street  
Vista, CA 92081-8840

Either or both of said addresses may be changed at any time by written notice given by one party to the other as hereinabove provided.

b. Notice by Personal Service

Nothing herein contained shall preclude the giving of any such notice by personal service.



IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

As approved to form:

VISTA IRRIGATION DISTRICT

\_\_\_\_\_  
District Legal Counsel

By: \_\_\_\_\_  
General Manager

CONCESSIONAIRE  
Lake Henshaw Resort, Inc.

By: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

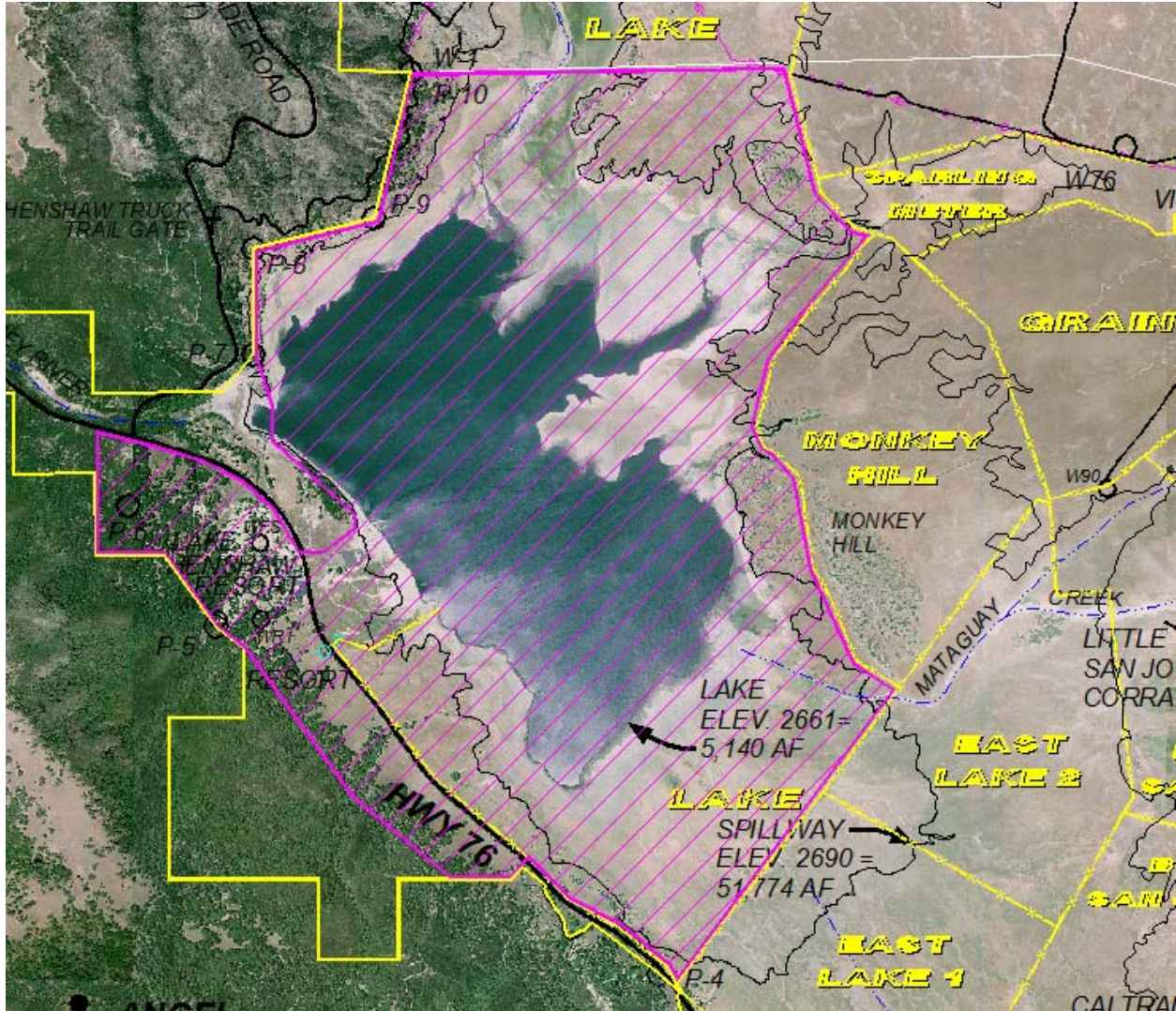
Title: \_\_\_\_\_

**Attachment A**  
**Concession Management Agreement Maps**

## Concession Management Agreement Maps

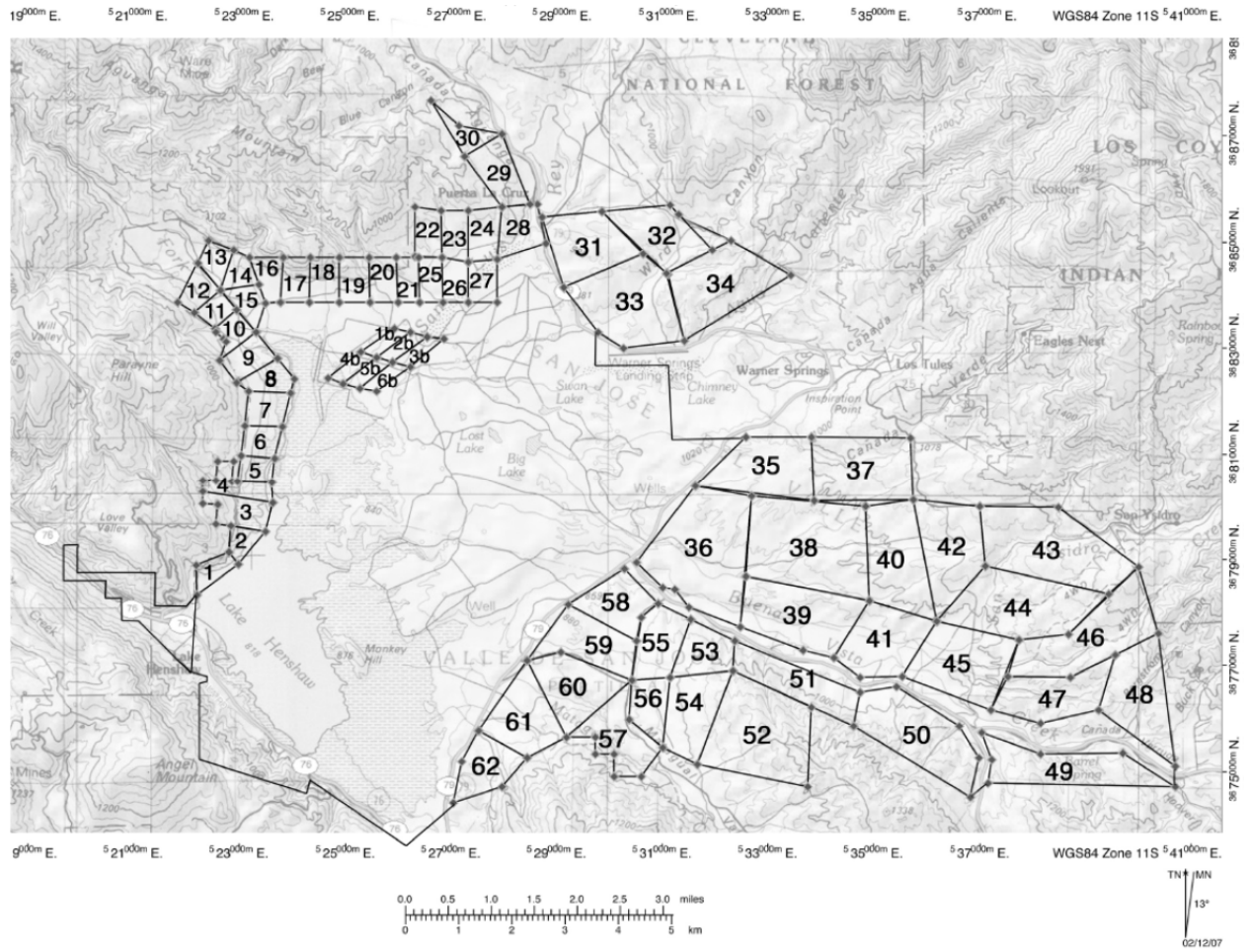
### Map of Recreation Area

The Recreation Area is indicated by the magenta hatched area on the figure below:



# Map of Hunting Lands

The Hunting Lands are comprised of the all the numbered hunting zones indicated on the map below:



**Attachment B**  
**My Country Club**  
**Rules and Regulations**

## My Country Club Rules and Regulations

My Country Club, Inc. is a privately owned Corporation that is engaged in business of operating a private recreation club. My Country Club, Inc. arranges trespass leases for its members to enter private lands. My country Club, Inc. is licensed by the Department of Fish and Game; members must obey all Fish and Game laws.

In order to ensure compliance with all appropriate rules, regulations and lease terms, each member is required to complete this application. This application set forth the rules that each member is required to abide by.

I, \_\_\_\_\_, prospective member of My Country Club, Inc., agree that if I am accepted as a member of My Country Club, Inc., I will abide by the following rules:

1. Safety, common sense and courtesy will be the #1 rule of My Country Club, Inc.
2. I will treat my fellow members with respect. Conduct, which is objectionable, dangerous, or detrimental to lessee or lesser, may result (at the sole option of My Country Club, Inc.) in loss of membership.
3. I will display the appropriate club decal and picture identification when entering lands operated by My Country Club, Inc., and present both my membership and picture identification when asked by and My Country Club, Inc. representative.
4. I will not operate my vehicle off of any marked roads.
5. I will park my vehicle in marked areas only.
6. I will submit a copy of my current automobile insurance to My Country Club, Inc., for any and all vehicles I intend to use on My Country club, Inc. properties, prior to using the properties. I will keep a copy of current proof of insurance in my vehicle(s), and will present it upon requires of any My Country Club, Inc. representative.

No off road vehicles are allowed on to properties.

I will make the appropriate reservation(s) prior to using the land(s) operated by My Country Club, Inc. I understand that reservations are available one (1) month in advance, only, and are available on a first come first served basis.

7. Camping limits could be in affect during busy seasons, so all members can enjoy.
8. I will leave gates open or closed, as I found them. Each gate that I open I will immediately close After passing.
9. I will camp only in designate areas.
10. Drinking and driving are not allowed. No one under the influence of illegal substances allowed.
11. NO ILLEGAL SUBSTANCE (S) ALLOWED ON THE PROPERTIES.
12. No handling of firearms allowed during or after consuming alcohol. Anyone breaking this rule will immediately forfeit membership.
13. Due to extreme fire danger, I will not permit, or start, an open fire. I am allowed to use a GAS BARBECUE grill only, and the barbecue grill must be at least two (2) feet off the ground, in an area clear of vegetation, for fire clearance.

14. Smoking is permitted only in automobiles and/or green areas only. No cigarette butts will be left on the ground.
15. I will bring my own drinking and use water onto the properties with me. I understand that water on properties, including water in the springs, tanks, troughs, pipelines, is untreated, and it's quality is uncertain.
16. I will not swim in the ponds located on property operated by My Country Club, Inc.
17. I will obey all County, State and Federal laws including all California Fish and Game laws, while enjoying my membership with My Country Club, Inc.
18. I will handle my hunting equipment in a safe and courteous manner at all times. No bullet, shot or arrows will be launched in such a manner to leave property boundaries. I will not bring any guns into the designated archery areas.
19. Currently, due to insurance requirement, no tree stands are allowed.
20. My Country Club, Inc.'s Herd Management policies` will regulate taking of game. To continue to provide quality hunting. Herd Management Policies will be revised, as management determines appropriate.
21. Currently, one animal male per large-game species, turkey bag limit is per Fish and Game regulations, this is per membership (individual or family), per year.
22. I will recognize that the designated Caretaker will resolve problems in the field and I agree to abide by his/her decision in the field.
23. I will adhere to any request by the landowner.
24. I will take all measures necessary to protect any livestock using the properties.
25. I understand that my membership only allows for me to enter the lands operated by My Country Club, Inc., and that if I want to bring a quest I must get special permission to do so. Guests are only able to go to the properties, no hunting is allowed by any guest.
26. I will report the taking of any big game to the caretaker or the following My Country Club, Inc. phone number: 760-782-3503 or 760-782-3502.
27. I understand that all membership dues must be paid before I am allowed to use the facilities of My Country Club, Inc.
28. All Dogs must be under the control of their handler at all times.
29. I will not divert or stop the water flow to lakes or streams.
30. I will not litter. I will remove all material refuse and litter I deposit. Everything I bring in, I am responsible to take out. To every reasonable extent, including but not limited to shell casings. I will leave the land in the condition I found it.
31. My Country Club, Inc. advocates a "catch and Release" or "Catch and Eat" policy for all fish caught.
32. I will use "Catch and Release" only on all Bass caught, and on all ponds so designated. I understand that some ponds will be designated as Lunkers ponds, and Catch and Release will be required for all fish caught in those ponds.

33. All non-Catch and Release designated ponds have a five (5) fish, per species, "in possession" limit, per individual membership or ten (10) fish, per species, "in-possession" limit, per family membership. This includes, but is not limited to Catfish, Bluegill, and Crappie.
34. Memberships are for one-year minimum.
35. Family membership is member and spouse and their dependent children under 18 years of age.
36. I agree to indemnify and hold harmless any Landowners, My Country Club, Inc. it's Officers, affiliates, and family members from any liability arising out any association or inferred association, or use, or misuse, intended or otherwise, including negligence on the part of My Country Club, Inc., with my membership. This does not apply to the sole negligence of My Country Club, Inc.
37. I agree to indemnify and hold harmless any Landowners, My Country Club, Inc. it's Officers, affiliates, and family members for property closures or lands lost due to governmental actions, lawsuits or other actions.
38. Members have no right beyond use of recreation land. My Country Club, Inc., has the right to terminate any membership at its sole discretion, at any time, without cause. Any monies paid in advance will be refunded. Any infraction of these rules and regulation may, at the sole discretion of My Country club, Inc. result in the immediate revocation of my membership.
39. No disturbing or collecting any archeological, historical, natural or cultural artifacts, or destroying their sites.
40. No cutting or gathering of firewood.
41. All hunting to be done on foot. No hunting from any vehicle.
42. No shooting into, around, or near domestic livestock. Your ammunition must not disturb domestic livestock.
43. When using any property leased from the Vista Irrigation District, I will sign and carry with me a current copy of the District's "Guidelines for use of the Warner Ranch" and follow both its general intent and specific rules, in addition to any rules set forth herein. Where these rules are contradictory, the rules and guidelines set forth in the Vista Irrigation District's Guidelines shall take precedence.

---

SIGNATURE

---

DATE



**Attachment C**

**Vista Irrigation District**  
**Rules and Guidelines for Use of the**  
**Warner Ranch**

January 2018

**To: Members of *My Country Club, Inc.***

**Subject: Rules and Guidelines for Use of the Warner Ranch**

The Vista Irrigation District Board of Directors welcomes you to the Warner Ranch and hopes you have a safe and pleasant stay while you are here. The Board has authorized *My Country Club, Inc.* to conduct hunting operations on parts of the 43,000 acre Warner Ranch subject to its successful coexistence with other activities that are vital to the mission of the District. Please take a few minutes to familiarize yourself with our missions and requirements as outlined below in order to assure that *My Country Club, Inc.* enjoys continued access to some of the most pristine and beautiful land in San Diego County. **Note that you must sign and retain a copy of these Rules and Guidelines while you are on District Lands.**

### **General Guidelines**

1. The Warner Ranch is a working ranch. It supports water production, grazing activities and other uses, and may have a variety of District employees, lessees, ranch hands, military personnel and utility workers on the grounds at any given time. Please conduct your activities at all times to assure the safety of these personnel, their livestock and equipment, and your fellow club members.
2. The Warner Ranch has many neighbors. These include private land holders who may access their land across District lands as well as major interests such as the Boy Scouts of America (Camp Mataguay), the Department of the Navy (Remote Training Site, Warner Springs) and two Indian Reservations (Los Coyotes and Santa Ysabel). The District values the good relationships we enjoy with our neighbors and asks that you respect their property, sense of peace, and safety.
3. The Warner Ranch is a beautiful preserve, abundant in wildlife, scenic vistas, archeological artifacts and rare and endangered species. While we are proud to share these resources with you, we take our stewardship responsibility seriously. The District believes that responsible, well managed hunting is consistent with this responsibility, but requires your conscientious cooperation to be successful.

### **Specific Rules**

1. All entrants onto District property must sign and file with *My Country Club* an “*Assumption of the Risk, Waiver, Release, and Indemnification for Hunting and Associated Activities on the Warner Ranch*”.
2. All entrants onto District property shall comply with any specific directions given to them by District employees or *My Country Club* representatives.
3. Club members shall check in and check out each day with *My Country Club* personnel at the Lake Henshaw Resort. Report all shots made and game taken when you check out.
4. No camping. Hunters may leave public roads no earlier than 4:30 am and must leave private roads no later than ½ hour after dusk.

Rules and Guidelines for Use of the Warner Ranch

January 2018

Page 2 of 2

5. Place the identification cone furnished by *My Country Club* on the roof of all vehicles traveling on private roads or parked on District property. We recommend that you remove this cone while traveling on public roads so that it does not blow off your vehicle.
6. Keep vehicles on established roads only. Drive safely and do not exceed 25 mph on any of the District's private roads. Park within 10 feet of the traveled road, near your designated hunting area, and park in such a manner that the road remains completely unobstructed. ***Be aware that cattle may damage unattended vehicles*** – we recommend that you park in a pasture not occupied by grazing cattle and monitor the movement of cattle throughout the day.
7. No target practice. Firearms will only be fired with a reasonable expectation of taking a legal game animal.
8. Tree stands are not allowed. Do not disturb earth or vegetation to create hunting blinds.
9. Please exercise a pack-in pack-out ethic. Remove all temporary blinds, litter and evidence of usage, including shell casings.
10. No open flames, no wood gathering.
11. Please use portable toilets when convenient. Otherwise, use a digging tool to bury human waste 7-inches deep, 100 feet from water or dry stream bed.
12. Do not disturb or collect Indian or other historical artifacts, vegetation, rocks, minerals or non-game animals.
13. Leave all gates in the condition you find them (whether open, closed, or locked).
14. Keep dogs under the strict control of their handler at all times. Due to a pervasive problem with wild and abandoned dogs and their harassment of cattle, unattended dogs run the risk of being shot. Bring dogs onto the ranch only at your own risk.
15. Report all damage and all unusual or dangerous conditions to *My Country Club* personnel upon checkout (or earlier when a threat to people or property is discovered). Please report all incidents of trespassing immediately. *My Country Club* phone number: 760-782-3503 or 760-782-3502.
16. Keep a signed copy of these Rules and Guidelines with you at all times while on the Warner Ranch and be prepared to show them and proof of *My Country Club* membership to anyone who asks to see them.
17. Club members shall adhere to all applicable laws and all other membership rules as established by *My Country Club, Inc.* When Club rules are in conflict with those stated in these "Rules and Guidelines for Use of the Warner Ranch", these Rules and Guidelines shall take precedence.

I have read and understand these Rules and Guidelines and agree to follow them.

---

Signed

---

Date

## **Attachment D**

# **Assumption of the Risk, Waiver, Release, and Indemnification for Hunting and Associated Activities on the Warner Ranch**

**Assumption of the Risk, Waiver, Release, and Indemnification  
for Hunting and Associated Activities on the Warner Ranch**

The undersigned (“User”) desires to enter upon real property (the “Warner Ranch”) owned by the Vista Irrigation District (“District”) to engage in hunting and associated activities and, in consideration of receiving permission, User enters into, acknowledges, and agrees as follows:

1. **ASSUMPTION OF RISK.** User is aware of the inherent risks of injury, death, and property damage involved in hunting and associated activities, including, without limitation, risks due to: the use and/or misuse of firearms and other weapons; road hazards on private roads that may or may not be maintained, marked, or signed; wild animals (including deer, cougar, venomous snakes and poisonous or stinging insects); domestic animals (including bulls and other cattle and the damage they may inflict to persons, automobiles, or other property); active and abandoned wells, equipment, structures, fencing or implements; ticks; poison oak; wildfire; weather related conditions; and other hazards; and the negligence of third parties, including other hunters, whether or not they have obtained permission to use the Warner Ranch. User is aware of the risks of injury, death, and property damage that may result from, among other causes, the active or passive negligence of District and its officers, directors, employees, agents, lessees and guests (collectively, “Released Parties”), including, without limitation, the risk of negligent instruction or supervision. User is voluntarily engaged in hunting and associated activities with knowledge of the risks of injury, death, property damage, and other risks, and assumes any and all known and unknown risks of injury, death, and property damage that may result from hunting and associated activities.
2. **WAIVER AND RELEASE OF LIABILITY AND COVENANT NOT TO SUE.** User waives, releases and covenants not to sue Released Parties, or any of them, from and for any and all liability to User and User’s principals, employees, agents, representatives, guardians, successors, assigns, heirs, children, and next of kin for all liability, claims, damage, or demands for personal injury, death or property damage, arising from or related to this Contract or to hunting and associated activities, whether the injury, death, or property damage occurs on or off the Warner Ranch. This release includes, without limitation, any personal injury, death, or property damage caused by the active or passive negligence of any of the Released Parties or any third party. User bears sole responsibility for any loss. User acknowledges that he or she has read, understands and voluntarily waives any rights that User may have under California Civil Code §1542, which provides: “A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release which, if known by him or her must have materially affected the settlement with the debtor.”
3. **INDEMNIFICATION.** User shall, to the fullest extent permitted by law, indemnify and hold each of the Released Parties harmless from and against all liability, claims, damages, losses, expenses and other costs (including costs of defense, expert costs, and attorneys fees in defending against all claims incurred by Released Parties by an attorney reasonably selected by the Released Parties) for injury to all persons and property, whomsoever, whatsoever, and wheresoever, including, without limitation, to User and all other persons both on or off the Warner Ranch, and the property of such persons including the loss of use thereof, arising out of, resulting from or in any manner connected with hunting and associated activities. User’s indemnity obligations and Released Parties freedom from liability shall apply regardless of whether or not the claimed loss, damage or injury is caused in part by any act or omission, including the negligence, of a party indemnified hereunder, and further provided that in the event of claims or liability arising in part from the gross negligence or willful misconduct of a party indemnified hereunder, liability shall be determined on the basis of principles of comparative fault.
4. **KNOWING AND VOLUNTARY EXECUTION.** User acknowledges that he/she has carefully read this Contract, understands its contents, and understands that this Contract includes an assumption of the risk of the Released Parties’ negligence, a release of their liability, and a responsibility for their indemnification. User acknowledges that the District is materially relying on this waiver and is allowing User to engage in hunting and associated activities on the Warner Ranch.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature of User)

\_\_\_\_\_  
(Printed name of User)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature of Legal Guardian, if User is a Minor)

\_\_\_\_\_  
(Mailing address)

**Attachment E**  
**Personal Guaranty**

## PERSONAL GUARANTY

This Guaranty is made and entered into at Vista, California, this \_\_\_\_ day of December, 2017, by and between Vista Irrigation District, a special governmental district organized and existing under the laws of the State of California (“District”), and Frank A. Mendenhall and Janice L. Mendenhall (“Guarantors”).

1. Basis for Guaranty.

For valuable consideration, as a material inducement to and in consideration of District entering into an agreement entitled “Concession Management Agreement” (“Agreement”) with Lake Henshaw Resort, Inc., a California corporation (“Concessionaire,” of which Guarantors are the owner), pursuant to which District has granted to Concessionaire the right to conduct certain activities and operate certain facilities on real property owned by the District in the vicinity of Lake Henshaw Dam and Reservoir in San Diego County, California, ~~under the supervision and control of Guarantors,~~ Guarantors unconditionally guaranty and promise to District, for the benefit of District, that the “Obligor” as defined below shall perform all provisions of the Agreement which was entered into on, between District and Concessionaire, as said agreement has been and may be amended from time to time that Obligor is to perform. For the purposes of this Agreement, the term “Guarantors” refers to Frank A. Mendenhall and Janice L. Mendenhall individually and collectively

2. Definition of Obligor.

For purposes of this Guaranty and the obligations and liabilities of Guarantors, the term “Obligor” shall be deemed to include, in addition to Concessionaire, any and all agents, licensees, franchisees, department operators, tenants, subtenants, assignees, and others directly or indirectly involved in the performance of Concessionaire’s obligations under the Agreement, or conducting any other activities subject to the Agreement.

3. Guaranty.

Guarantors absolutely and unconditionally, guarantee to District the timely payment of all amounts that Obligor may at any time owe under the Agreement, and under any extensions, renewals, or modifications of the Agreement. Guarantors further guarantee to District the full, faithful, and timely performance by Obligor of the Agreement, and of any extensions, renewals, or modifications of the Agreement. If Obligor shall default at any time in the payment of any sum due or in the performance of any covenant or obligation to be performed under the Agreement, then Guarantors, at Guarantors’ sole expense, shall on demand by District fully and promptly pay all sums to be paid and perform all other covenants and obligations to be performed by Obligor pursuant to the Agreement. In addition, Guarantors shall, on demand by District, pay to District all sums due to District, including, without limitation, all interest on past due obligations of Obligor, costs advanced by District, damages, and all expenses (including, without limitation, court costs and reasonable attorneys’ fees) that may arise in consequence of Obligor’s default.

4. Joint and Several Obligations.

If this Guaranty is signed, or if the obligations of Obligor are otherwise guaranteed, by more than one party, their obligations shall be joint and several, and the release or limitation of liability of any one or more of the Guarantors shall not release or limit the liability of any other Guarantors.

5. Independent Obligations.

Guarantors’ obligations are independent of and may exceed Obligor’s obligations. If Obligor defaults under the Agreement, District may proceed immediately against any or all Guarantors or Obligor, or any combination of them, or District may enforce against any or all Guarantors or Obligor, or any combination of them, any rights that it has under the Agreement or pursuant to applicable laws. If the Agreement terminates and District has any rights it can enforce against Obligor after termination, District

## PERSONAL GUARANTY

Concessionaire Management Agreement for Lake Henshaw Recreation Area

Frank A. and Janice L. Mendenhall

Page 2

may enforce those rights against either or both Guarantors without giving prior notice to Obligor or Guarantors, and without making any demand on any of them.

A separate action or actions may be brought and prosecuted against Guarantors whether or not action is brought against Obligor or any other guarantor, and whether or not Obligor or any other guarantor is joined in any such action or actions. Guarantors may be joined in any action or proceeding commenced by District against Obligor arising out of, in connection with, or based upon the Agreement. Guarantors waive any right to (i) require District to proceed against Obligor or any other person or entity or pursue any other remedy in Obligor's power; (ii) complain of delay in the enforcement of District's rights under the Agreement; and (iii) require District to proceed against or exhaust any security held from Obligor or any Guarantor. Guarantors further waive all demands upon and notices to Obligor and to Guarantor, including, without limitation, demands for performance, notices of nonperformance, notices of nonpayment, and notices of acceptance of this Guaranty.

### 6. Waivers.

a. Guarantors authorize District, without notice or demand and without affecting Guarantors' liability under this Guaranty, to:

- i. Consent to any extensions, accelerations, or other changes in the time for any payment provided for in the Agreement, or consent to any other alteration of any covenant, term, or condition of the Agreement in any respect, whether done expressly or by course of conduct, and to consent to the assignment or reassignment of the Agreement or to the entry into any modification of the Agreement;
- ii. Take and hold security for any payment provided for in the Agreement or for the performance of any covenant, term, or condition of the Agreement, or exchange, waive, or release any security; and
- iii. Apply ~~this~~[the security referenced in Section 6\(a\)\(ii\)](#) and direct the order or manner of its sale as District may determine.

b. Guarantors expressly waive all rights under California Civil Code §§ 2819, 2845, 2849, and 2850, [and any and all statutes and laws of similar import or effect.](#)

c. Notwithstanding any termination, renewal, extension or holding over of the Agreement, this Guaranty shall continue until all of the covenants and obligations on the part of Obligor to be performed have been fully and completely performed by Obligor and Guarantors shall not be released of any obligation or liability under this Guaranty so long as there is any claim against Obligor arising out of the Agreement that has not been settled or discharged in full.

### 7. No Reporting Duty.

Guarantors assume full responsibility for keeping fully informed of the financial condition of Obligor and all other circumstances affecting Obligor's ability to perform Obligor's obligations under the Agreement, and agree that District will have no duty to report to Guarantors any information that District receives about Obligor's financial condition or any circumstances bearing on Obligor's ability to perform such obligations.

### 8. Continuing Guaranty.

This Guaranty shall remain in full force notwithstanding the appointment of a receiver to take possession of all or substantially all of the assets of Obligor, or an assignment by Obligor for the benefit of creditors, or any action taken or suffered by Obligor under any insolvency, bankruptcy, reorganization, moratorium, or other debtor relief act or statute, whether now existing or later amended or enacted, or the disaffirmance of the Agreement in any action or otherwise. Guarantors waive any defense arising by



reason of any disability or other defense of Obligor or by reason of the cessation from any cause whatsoever of Obligor's liability.

9. Limitation on Guarantors' Right of Subrogation.

Until all Obligor's obligations to District have been discharged in full, Guarantors shall have no right of subrogation, and waive any right to enforce any remedy which Guarantors now have or may hereafter have against Obligor, and waive any benefit of, and any right to participate in any security now or hereafter held by Obligor.

10. Subordination of Obligor's Indebtedness to Guarantors.

Any indebtedness of Obligor now or hereafter held by Guarantors, or any of them, is hereby subordinated to the obligations of Obligor to District, and such indebtedness of Obligor to Guarantors, if District so requests, shall be collected, enforced, and received by Guarantors as trustees for District and be paid over to District on account of the indebtedness of Obligor to District but without reducing or affecting in any manner the liability of Guarantors under the other provisions of this Guaranty.

11. Successors and Assigns.

This Guaranty shall be binding upon Guarantors and Guarantors' heirs, administrators, personal and legal representatives, successors, and assigns, and shall inure to the benefit of District and District's successors and assigns. District may, without notice, assign this Guaranty, the Agreement, or any or all of the sums payable under the Agreement, in whole or in part. If District assigns or otherwise disposes of its interest in the Agreement, "District" shall mean District's successor(s).

12. Attorneys' Fees.

In the event of any dispute involving the interpretation or effect of this Guaranty, or of any litigation, arbitration, or other proceeding for the interpretation, specific performance or damages for breach of this Guaranty, the prevailing party shall be entitled to a judgment or award against the other in an amount equal to all of its reasonable attorneys' fees and all other costs and expenses so incurred, (including those costs, such as expert witness fees, which are not ordinarily allowable by statute) in addition to other remedies.

13. Severance.

If any of the provisions of this Guaranty shall contravene or be held invalid under the laws of any jurisdiction, this Guaranty shall be construed as if it did not contain those provisions, and the rights and obligations of the parties shall be construed and enforced accordingly.

14. Counterparts.

This Agreement may be signed in counterparts with the same effect as if the signatures to each counterpart were upon a single instrument, and all such counterparts together shall be deemed an original of this Agreement. For purposes of this Agreement, a facsimile copy of a party's signature shall be sufficient to bind such party.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Frank A. Mendenhall

\_\_\_\_\_  
Date

\_\_\_\_\_  
Janice L. Mendenhall

**Attachment F**  
**Sub-Concession Agreement for Hunting**

## Sub-Concession Agreement for Hunting Lake Henshaw Recreation Area

This sub-concession agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between MY COUNTRY CLUB, INC., a California corporation, hereinafter called “Sub-concessionaire”, ~~and~~ LAKE HENSHAW RESORT INC., a California corporation, hereinafter called “Concessionaire,” and VISTA IRRIGATION DISTRICT, a special governmental district organized and operating under the laws of the State of California (“District”).

### RECITALS

- A. District owns a large parcel of land in unincorporated San Diego County, California, known and the “Warner Ranch. District has entered into a Concession Management Agreement with Concessionaire for the use of a—portions of the Warner Ranch designated therein as the “Recreation Area” and “Hunting Lands”, which Concession Management Agreement is attached hereto as Exhibit “A” and incorporated herein by this reference. District has also entered into a series of “grazing licenses” over the Hunting Lands and for portions of the Warner Ranch adjacent to the Recreation Area. Concessionaire has ~~a first right of refusal from District~~ the right under the Concession Agreement, for all camping, hunting, and fishing rights within the Warner Ranch, and the District has the right under the grazing licenses to allow Concessionaire to conduct camping, hunting, and fishing activities throughout the Warner Ranch.
- B. Concessionaire and Sub-concessionaire wish to enter into an Sub-concessionaire Agreement for hunting (hereinafter referred to as “Sub-concessionaire Agreement”) incorporating herein by reference all of the terms of the Concession Management Agreement so that Sub-concessionaire is bound to all terms of the Concession Management Agreement to the same extent that Concessionaire is bound to District.
- C. Sub-concessionaire is in the business of operating a private recreational club and proposes to enter into a Sub-concessionaire Agreement so its members may enter the lands of District and Concessionaire subject to rules, regulations, and sub-concession terms set forth in this document.
- D. Concessionaire desires to allow Sub-concessionaire to use all of the above-described property being operated by Concessionaire under the terms of the Concession Management Agreement.

THEREFORE, Concessionaire and Sub-concessionaire agree as follows:

#### Demise and Description of Property

- 1. Sub-concessionaire hereby hires from Concessionaire, on and subject to the terms, conditions, and covenants hereinafter set forth, the property, hereinafter referred to as the “Hunting Lands,” located in San Diego County, California, described as follows: the Lake Henshaw Recreation Area in San Diego County, California 92070. Sub-

concessionaire hereby expressly assumes and is bound to all terms of the Concession Management Agreement to the same extent that Concessionaire is bound to District.

The Hunting Lands are referred to and depicted in the Concession Management Agreement as the “Hunting Lands,” and such depiction is incorporated herein by reference. District has approximately 43,000 acres which belong to it and comprise the Hunting Lands, and a portion of that is subject to a series of grazing licenses. District and/or Concessionaire will advise Sub-concessionaire of the terms of each of those grazing licenses so that Sub-concessionaire’s seasonal access to the Hunting Lands by way of this Sub-concessionaire Agreement will not conflict with the grazing licenses.

The parties acknowledge that District is a party to this Agreement only for purposes of enforcing its right to rent and to enforce the provisions of the Concession Management Agreement against Sub-concessionaire. The parties acknowledge and agree that District shall have no liability for any acts or omissions of Concessionaire or Sub-concessionaire under this Agreement, and that Concessionaire and Sub-concessionaire shall indemnify, defend and hold District harmless for any such actual or claimed liabilities in accordance with the indemnity provisions of the Concession Management Agreement.

#### Term

2. The term of this Sub-concessionaire Agreement shall continue until and expire concurrently with the Concession Management Agreement unless this Sub-concessionaire Agreement expires or is terminated prior to such date.~~provided, however, that this Sub-concessionaire Agreement shall sooner terminate by surrender, forfeiture, or other of either the Concession Management Agreement or this Sub-concessionaire Agreement.~~

#### Rent

3. (A.) Sub-concessionaire shall pay to District as rent for use of the Hunting Lands an annual rent as indicated below. The rent shall consist of a base rent, to include the spring turkey season, the rifle deer season, waterfowl, duck and goose hunting, and fishing privileges. Supplemental rents shall be assessed for dove, quail and archery deer seasons. Half of the base rent and half of the supplemental rent for the “put and take” hunting of commercially raised game birds shall be paid not later than February 1 and the second half of the base rent plus all applicable supplemental rents shall be paid not later than September 1.

#### (B.) Schedule of Annual Rents

Base Rent	Dove	Quail	Archery Deer	“Put & Take” of Game Birds	Total Rent
\$60,000	\$9,000	\$9,000	\$2,000	\$30,000	\$110,000

In addition, the District may allow the hunting of wild pig under the Concession Management Agreement from time to time by written permission. Due to the evolving nature of wild pig distribution and population, its potential for damage to District resources, and its potential to enhance the revenue of the Concessionaire, the terms and conditions of such permission will be negotiated at the time that such permission is granted.

#### Use of Premises

4. The Hunting Lands shall be used by Sub-concessionaire for hunting, fishing, and for uses normally incident thereto and for no other purpose. The parties intend limited participants in limited areas. Hunting for water fowl, duck, and goose shall be limited to Lake Henshaw. Fishing is on Lake Henshaw. Hunting of dove, quail, and archery deer on the bull pasture, steer pasture, and Mataguay area. Turkey and rifle deer hunting shall be conducted on the entire Hunting Lands. Guided “put and take” hunting of commercially raised game birds (generally pheasant, grouse or chukar) at times of year allowed by the California Department of Fish and Wildlife~~from January 1 through the start of the spring turkey hunting season and September 1 through December 31~~ shall generally be conducted in the following pastures: 1) northern and eastern shores of Lake; 2) North Lake; 3) Bull; 4) Steer; 5) Ranchita 1 & 2; 6) Windmill; and 7) Mataguay 1 & 2. District reserves the right to limit hunting use from season to season based on good wild life management practices or health and safety issues. The Sub-concessionaire shall maintain District approved hunting zones for each hunting season and shall limit deer and turkey hunting to a single hunting party per day within each hunting zone. Hunting shall be restricted to the legal hunting season, but shall not exceed a single five week season per year for deer and turkey, each. Any limitation in use imposed by District will result in a reasonable rent reduction arrived at through good faith and fair dealing negotiations between the parties. Rent may be increased if additional hunting and fishing species are added. No rights or uses other than those specifically conferred by this agreement shall be extended to the Sub-concessionaire. All other provisions of the Concession Management Agreement shall remain intact.

#### Obligations of Sub-concessionaire

5. (A) Sub-concessionaire hereby expressly assumes and agrees to perform all the obligations and covenants required by the Concession Management Agreement to be kept or performed by Concessionaire as Concessionaire therein, except that the obligation and covenant to pay rent to the District required by the Concession Management Agreement shall be considered performed by Sub-concessionaire to the extent and in the amount rent is paid to District in accordance with Paragraph 3 of this sublease. District ~~is an intended third party beneficiary with~~has the express right to enforce against Sub-concessionaire any of the terms of the Concession Management Agreement. Sub-concessionaire agrees to abide by all changes in use conditions imposed by District.

(B) Sub-concessionaire shall name District as an additionally named insured in a commercial general liability insurance policy in an amount not less than one million dollars (\$1,000,000.00) for a single incident and two million dollars (\$2,000,000.00) for a combined limit, in

combination with an umbrella insurance policy with liability coverage with a \$5,000,000 limit. The Sub-concessionaire shall, to the fullest extent permitted by law, defend, indemnify and hold harmless the Concessionaire and the District, and their respective directors, officers, employees, and authorized volunteers from any and all liabilities, claims, losses, damages, and costs (including attorneys' fees and costs of defense) resulting from any and all activities arising out of the Sub-concessionaire's (including any and all members of My Country Club, Inc., and any other of its invitees) use of the premises as provided in this agreement.

(C) Sub-concessionaire shall comply with the rules and regulations contained in the Concession Management Agreement as Attachment B, and shall require all of its members and guests to execute District's standard Warner Ranch Guidelines and Rules, and Release and Indemnification form in a form substantively identical to those set forth in Attachments C and D of the Concession Management Agreement.

(D) Sub-concessionaire covenants and agrees to pay the rent herein reserved, use the Hunting Lands for the purpose of hunting, fishing, and uses normally incident thereto, and to surrender the Hunting Lands on expiration or earlier termination of the term hereof in as good condition as they now are, reasonable wear and tear excepted.

(E) Sub-concessionaire shall defend, indemnify and hold harmless District from any litigation involving an environmental or regulatory challenge to the hunting and fishing uses allowed by this agreement. Sub-concessionaire may terminate this agreement should Sub-concessionaire determine in its sole opinion that environmental applications, compliances, and/or litigation is not economically feasible.

(F) Sub-concessionaire will be required to perform the following functions in oversight of the hunting and fishing operations for Concessionaire:

1. Zone the ranch using GPS coordinate into viable hunting zones.
2. Log name, location, and date of each member's use.
3. Issue a combination for the specific gate for that area.
4. Issue a cone for the top of each member's vehicle, similar to the ones used by car dealerships, for easy visual identification by District employees and cowboys.
5. Require members to only drive on existing roads and park parallel on them. All hunting will be done on foot.
6. Require members to display placards in windows and show wallet sized membership cards if asked.
7. Control of access by changing the combination on locks.

8. Daily patrol during hunting seasons when hunters are present, enforcing all rules and guidelines set forth in the then current versions of Attachments B and C of the Concession Management Agreement.
9. Comply with all rules and regulations of state and federal agencies including Fish and Game and all other applicable laws.
10. The Sub-concessionaire understands that the Hunting Lands shall be used concurrently by the Sub-concessionaire, the District and other authorized users, and that the long term success of the Sub-concessionaire's operations requires cooperation among all parties. The Sub-concessionaire shall provide all such cooperation as required.
11. The Sub-concessionaire shall maintain daily records, by hunting zone, of:
  - a) Names of hunters;
  - b) Names of guests;
  - c) Number of shots fired;
  - d) Description of game taken;
  - e) Comments about unusual events or observations (i.e. trespassers noted, damage observed, etc.)
12. Provide a guide to accompany hunters at all times while on District property for "put and take" hunting of game birds.

(G) Sub-concessionaire will be required to prepare an annual assessment of the size and health of the local deer herd, with recommendations for limitations and requirements for deer take. This annual report shall be prepared by a Certified Wildlife Biologist or other professional as approved by the District and shall be submitted to the District not later than the opening of deer season. The Sub-concessionaire shall be responsible to enforce the report's recommendations upon its hunting membership.

(H) Sub-concessionaire shall limit its membership to 100 hunters who are eligible to hunt on District Property each year. "Put and take" game bird hunters are not required to be members of the Sub-concessionaire's hunt club, but shall be subject to all its rules and regulations.

#### Termination

6. This Agreement, or an individual activity that may comprise the Supplemental Rent payments, may be terminated by the District upon thirty (30) days written notice with or without cause and rent (or Supplemental Rent) shall be prorated for the remaining term. In addition, the District retains the right to immediately suspend all hunting or fishing activities, at its sole discretion, for health and safety reasons or as reasonably necessary to protect the public good.

Executed at Escondido, California, on the day and year first above written.

SUB-CONCESSIONAIRE

CONCESSIONAIRE

---

My Country Club, Inc.

---

Lake Henshaw Resort, Inc.

**ACCEPTANCE OF SUB-CONCESSION AGREEMENT FOR HUNTING**

District, as owner, accepts this Sub-concession Agreement and shall have the right to enforce any terms of this Sub-concession Agreement against Sub-concessionaire.

DISTRICT

---

Eldon Boone, General Manager  
Vista Irrigation District



## Typical Hunting Calendar for Warner Ranch Hunting Sub-concession

	January	February	March	April	May	June	July	August	September	October	November	December
<b>Turkey</b>												
<b>Deer (rifle)</b>												
<b>Duck (lake only)</b>												
<b>Dove</b>												
<b>Quail</b>												
<b>Deer (archery)</b>												
<b>Put &amp; Take Game Bird</b>												

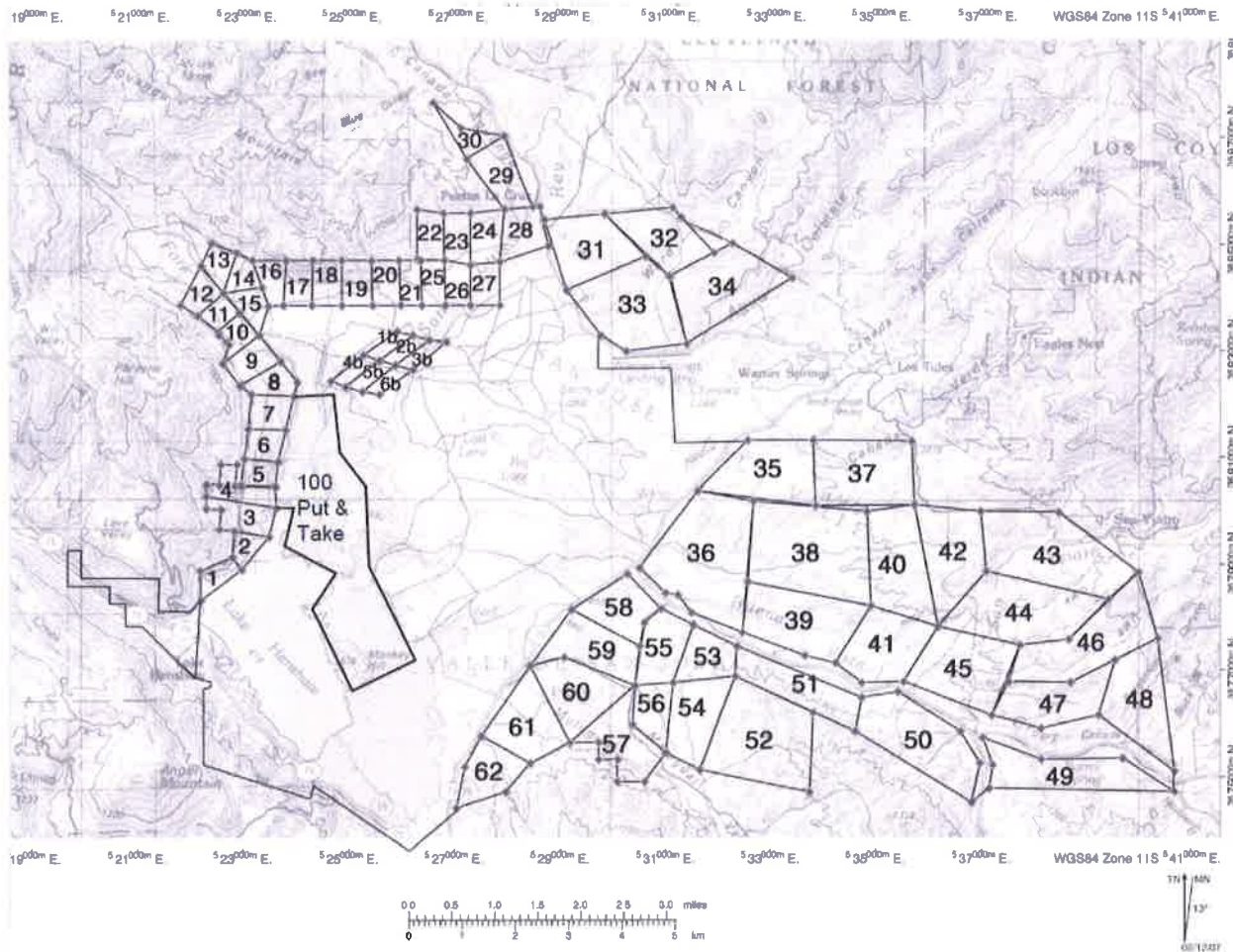
Notes:

- 1) Actual Hunting seasons change each year as established by the California Department of Fish and Wildlife; Concessionaire may elect to shorten season within the allowable seasons shown above.
- 2) The base hunting sub-concession rent is comprised of first three rows of calendar (turkey, rifle deer, and duck). All other hunts are supplemental rents.

EXHIBIT A

**Map of Hunting Lands**

The Hunting Lands are comprised of the all the numbered hunting zones indicated on the map below:



In addition, the District may allow the hunting of wild pig under the Concession Management Agreement from time to time by written permission. Due to the evolving nature of wild pig distribution and population, its potential for damage to District resources, and its potential to enhance the revenue of the Concessionaire, the terms and conditions of such permission will be negotiated at the time that such permission is granted.

#### Use of Premises

4. The Hunting Lands shall be used by Sub-concessionaire for hunting, fishing, and for uses normally incident thereto and for no other purpose. The parties intend limited participants in limited areas. Hunting for water fowl, duck, and goose shall be limited to Lake Henshaw. Fishing is on Lake Henshaw. Hunting of dove, quail, and archery deer on the bull pasture, steer pasture, and Mataguay area. Turkey and rifle deer hunting shall be conducted on the entire Hunting Lands. Guided "put and take" hunting of commercially raised game birds (generally pheasant, grouse or chukar) at times of year allowed by the California Department of Fish and Wildlife from January 1 through the start of the spring turkey hunting season and September 1 through December 31 shall generally be conducted in the following pastures: 1) northern and eastern shores of Lake; 2) North Lake; 3) Monkey Hill; 4) Bull; 45) Steer; 56) Ranchita 1 & 2; 67) Windmill; and 78) Mataguay 1 & 2. District reserves the right to limit hunting use from season to season based on good wild life management practices or health and safety issues. The Sub-concessionaire shall maintain District approved hunting zones for each hunting season and shall limit deer and turkey hunting to a single hunting party per day within each hunting zone. Hunting shall be restricted to the legal hunting season, but shall not exceed a single five week season per year for deer and turkey, each. Any limitation in use imposed by District will result in a reasonable rent reduction arrived at through good faith and fair dealing negotiations between the parties. Rent may be increased if additional hunting and fishing species are added. No rights or uses other than those specifically conferred by this agreement shall be extended to the Sub-concessionaire. All other provisions of the Concession Management Agreement shall remain intact.

#### Obligations of Sub-concessionaire

5. (A) Sub-concessionaire hereby expressly assumes and agrees to perform all the obligations and covenants required by the Concession Management Agreement to be kept or performed by Concessionaire as Concessionaire therein, except that the obligation and covenant to pay rent to the District required by the Concession Management Agreement shall be considered performed by Sub-concessionaire to the extent and in the amount rent is paid to District in accordance with Paragraph 3 of this sublease. District is an intended third party beneficiary withhas the express right to enforce against Sub-concessionaire any of the terms of the Concession Management Agreement. Sub-concessionaire agrees to abide by all changes in use conditions imposed by District.

(B) Sub-concessionaire shall name District as an additionally named insured in a commercial general liability insurance policy in an amount not less than one million dollars (\$1,000,000.00) for a single incident and two million dollars (\$2,000,000.00) for a combined limit, in