

# **Spanish Flat Resort**

2<sup>nd</sup> extension, if exercised, expires on  
~~July 31, 2008~~  
January 13, 2009

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of January 1959 by and between COUNTY OF NAPA a political subdivision of the State of California, hereinafter called "County", and Wesley B. Plunkett, Elsie G. Plunkett, and Donald J. McFarland and Berneice M. McFarland, a partnership, doing business as SPANISH FLAT RESORT, hereinafter called "Concessioner",

W I T N E S S E T H:

That whereas, ON July 31, 1958 and agreement was made and entered into between UNITED STATES OF AMERICA and COUNTY OF NAPA entitled "Management Agreement with Napa County for Lake Berryessa (Monticello Reservoir) Area, whereby UNITED STATES OF AMERICA transferred to County the administration of the federally owned or controlled lands of the reservoir area of Monticello Reservoir in Napa County, which said agreement is attached hereto, marked "Exhibit A", and made a part hereof by reference thereto; and,

WHEREAS, United States and the County have not provided facilities and services for the public visiting the area and desire the Concessioner to establish and operate the same at reasonable rates within are "E" as shown upon the Public Use Plan for said area (which said are "E" is more particularly described as follows), to wit:

Beginning at a point on the westerly boundary of the land acquired by the United States of America for Monticello Reservoir, now known as Lake Berryessa, said point is North 59° 38' East 1434.8 feet from the northwest corner of Section Twenty (20), township Eight (8) North, range Three (3) West, Mount Diablo Meridian; running thence from said point of beginning North 22° 46' West along said westerly boundary 200.0 feet; thence leaving said boundary North 67° \_\_\_\_\_ East 600.00 feet; thence North 88 30' West 730. Feet to the first crossing of elevation 350; thence southerly along the 350 feet contour to a point that is South 56° 00' East 1400.0 feet and South 78° 25 East 400.0 feet, more or less, from the intersection of the northerly boundary of Section Twenty nine (29), township Eight (8) North, Range Three (3) West of the mount Diablo Meridian with the westerly boundary of said land of the United States of America; thence North 56V 00' West 1400.0 feet; thence North 78° 15' West 400.0 feet more or less to the aforesaid intersection of the northerly boundary of Section 29 with the westerly boundary of said land of the United States of America; said intersection is North 89° 55' East 2959.5 feet from the northwest corner of said Section 29; thence along the aforesaid westerly boundary of land of the United States of America as follows: North 12° 39' West 1649.7 feet, North 27° 43' West 3103.5 feet, North \_\_\_\_\_ 56' East 527.1 feet; South 56° 37' East 1090.3 feet; North 61° 44' East of 75.6 feet and North 28° 15' West 1742.7 feet to the point of beginning.

WHEREAS, the establishment and maintenance of such facilities and services involve a substantial investment of capital and the assumption of the risk of operating loss, and it is therefore proper that the Concessioner

be given assurance of security of said investment and of a reasonable opportunity to make a fair profit.

NOW, THEREFORE, the said parties, in consideration of the mutual promises herein expressed, covenant and agree to and with each other as followings:

1. "As provided for the Management Agreement with Napa County for Lake Berryessa (Monticello reservoir area) the County may issue and administer licenses, permits, and contracts to persons or associations making available services and facilities for the use of the public and for the purpose of regulating the privileges to be exercised in the area. All licenses, permits and contracts affecting the lands within the primary jurisdiction of the United States, as defined in Article 1, shall be submitted to the Bureau of Reclamation before issuance and all instruments used for such purposes throughout the area shall be subject to applicable terms of this agreement and shall contain certain language recognizing the purposes of the Solano Project and effecting releases and indemnification to and for the United States, its successors and assigns, and its officers agents, and employees engaged in the construction and operation and maintenance of project works. The terms of such licenses, permits and contracts shall contain the following provisions:

(a) In the event of the termination of the Management Agreement between the United States and C the County, the United States shall be deemed to stand in the stead of the County as grantor for the remainder of the term of this agreement: Provided, however, in the event of such termination, the United States, at any time within ninety (90) days thereafter, may terminate this agreement by giving to the Concessioner, thirty (30) days written notice thereof and in such event the Concessioner shall have the privilege of selling or removing, for a period of ninety (90) days after termination of this agreement, or such longer period as may be determined by the Bureau of Reclamation to be reasonable, improvements which have been construed on the premises at the sole cost or expense of the Concessioner; otherwise, after the expiration of such period of time, the title to such improvements shall vest in the United States."

(b) "The Concessioner recognizes that Monticello Reservoir is a feature of the Solano Project, constructed for the primary purposes of irrigation and domestic, industrial and municipal water supply in Solano

County. The fulfillment of these purposes will require that the level of the reservoir be fluctuated to meet use demand, and the United States reserves the right to vary the water level to the extent deemed necessary or desirable for the purposes of project operations. Over the years the water surface will fluctuate between a minimum elevation of about two hundred fifty-three (253) feet and a maximum of about four hundred fifty-five (455) feet. The concessioner shall not do or omit to do, or knowingly suffer, or permit to be done by others, anything by which act or omission, any persons may be endangered or injured by the use of the Reservoir area. The Concessioner shall save the United States and the County harmless from any claim on account of any personal injury or property damage by reason of anything done, or knowingly suffered or omitted to be done by the concessioner in his exercise of the privileges granted by this contract.

(2) Terms of Contract, This contract shall be for and during the term of twenty (20) years from January 13, 1959, except as it may be terminated as herein provided;

(3) Accommodations, facilities and services authorized. The Concessioner agrees to develop the said area E in accordance with the design and area use shown upon the Public Use Plan, which said Public Use Plan is an exhibit to "Exhibit A" attached hereto, and on file in the office of the County Clerk of the County of Napa, and Concessioner agrees to install in accordance therewith and substantially or in general conformity, with the plan and design attached hereto marked "Exhibit to Exhibit A".

The Concessioner agrees to construct within said area E substantially in accordance with Public Use Plan the following improvements;

Calendar year 1959:

- (a) Entrance and gateway office as shown upon Exhibit "B";
- (b) Access road and roads within the area will meet the requirements outlined upon Exhibit "C", or mutually agreed upon revisions whereof;
- (c) Fifteen (15) launching ramps, each ramp to be fifteen (15) feet in width. Ramps to be of sufficient structural design for the loading conditions applicable; of a type suitable for the usage intended and the physical conditions of the location; all installations subject to the approval of the Park Director;
- (d) One hundred-fifty (150) picnic or camping units

- (e) Eight (\*) areas of graded parking area to meet the requirements as outlined upon Exhibit "C";
- (f) One (1) swimming area having a frontage of at least one hundred-fifty (150) feet with sand bottom and beach, as shown upon Exhibit "B";
- (g) One (1) store building as shown upon Exhibit "B", final plans of which shall be approved by the Park Director;
- (h) Forty (40) boat berths of a design shown upon Exhibit "B"

Calendar year 1960:

- (a) Forty (40) additional boat berths;
- (b) Fifty (50) additional camping or picnic sites.

Calendar year 1964:

Complete development of the Day Use Area.

4. Plant, personnel and rates.

(a) The Concessioner shall maintain and operate the same accommodations, facilities, and services to such an extent and in such manner as the Park Director of County may deem satisfactory provided that the Concessioner shall not be required to make investments inconsistent with an opportunity to make a fair profit on the total of its operations hereunder.

(b) All rates and prices charged to the public by the Concessioner for accommodations, services of goods sold or furnished hereunder shall be subject to regulation and approval by the Park Director, provided that such rates and prices shall not be inconsistent with an opportunity for the concessioner to make a fair profit from that total of its operations hereunder. In determining fair profits for this purpose consideration shall be given to the rate of return required to encourage the investment of private capital and to justify the risk assumed or the hazard attached to the enterprise the cost and current sound value of capital assets used in the operation, the rate of profit on investment and percentage profit in gross revenue considered normal in the type of business involving the financial history and the future prospects of the enterprise, and other significant factors ordinarily taken into consideration in the determination of a fair profit or return upon investment.

Reasonableness of rates and prices will be judged primarily by comparison with those currently charged for comparable accommodations,

services, or goods furnished or sold outside of the area under similar conditions, with one allowance for length of season, provision for peak loads, accessibility, availability and cost of labor and materials, type of patronage, and other conditions customarily considered in determining charges.

5. Land and improvements. In addition to the improvements which the Concessioner agrees to construct under Paragraph 3 of this contract, the Concessioner may construct or install within the area which is the subject of this agreement such other buildings, structures and improvements consistent with the Public Use Plan, or mutually approved revisions thereof. Special plans and specifications, all improvements and structures to be constructed will be approved in advance of construction by the Park Director of the County, which plans and specifications may be subject to the approval of the Bureau of Reclamation as the Parks Director may determine.

The Park Director shall have the right at any time to enter upon any lands which are the subject of this agreement for any purpose he may deem reasonably necessary for the administration of the area, but not so as to unreasonably interfere with the Concessioner's use of such lands or the improvements thereon.

Any permanent type building structures shall be equipped with flush type toilets and all toilets and sanitary installations shall be constructed and maintained in accordance with requirements of the Napa County Health Department whether such requirements are new in existence or hereafter adopted by said County Health Department.

6. Concessioner's improvements. Concessioner's improvements as used herein means buildings, structures, fixtures, equipment and other improvements affixed to or pertaining to the land assigned hereunder to use of the Concessioner in such manner as to be a part of the realty, including all such improvements as provided herein constructed upon or affixed to the lands assigned to the Concessioner and all alterations, additions or improvements thereto.

Concessioner agrees to keep and maintain all improvements upon said lands in a good state of improvement and repair during the term of this agreement and to insure such improvements against loss by fire in such amount as may be agreeable to the Park Director with loss payable to Concessioner and to County as their interest may appear at the date of a

loss; County agrees to promptly restore any of Concessioner's improvements damaged or destroyed by fire during the term of this agreement to the extent that the proceeds of such fire insurance are available for such restoration.

All plans, appliances and machinery to be used in connection with the rights granted to Concessioner by this contract as well as the location and installation of such appliances and machinery shall first be approved by the Park Director in writing.

7. Accounting records and reports. The Concessioner shall maintain such accounting records as may be prescribed by the Park Director. It shall submit annually no later January 15 in each year of the term of this agreement a written report for the preceding calendar year of operations giving such information about its business and operations under this contract as may be prescribed by the Park Director and such other reports and data as may be required by the Park Director. The Park Director shall have the right to verify all such reports from the books, correspondence, memoranda and other records of the Concessioner and of the records pertaining thereto of any affiliated company, if any, during the period of the contract and for such time thereafter as may be necessary to accomplish such verification.

8. Franchise fee. The Concessioner shall pay to the County quarterly in each year during the term of this contract a franchise fee for the privileges authorized herein as follows: A sum equal to three percent (3%) of the Concessioner's gross receipts as herein defined for the preceding quarter. For said purpose the quarters of the year shall begin January 1, April 1, July 1, and October 1 and said fee shall be payable on the 16<sup>th</sup> day of each month following the close of a quarter.

The term "gross receipts" as used herein shall be construed to mean the total amount received or realized by or accrued to the Concessioner from all sales for cash or credit of services, accommodations, materials and other merchandise made pursuant to the privileges authorized in this contract, including gross receipts of subconcessioners, and commissions earned on contracts or agreement with other persons or companies operating in this area, but excluding intra-company earnings on account of charges to other departments of the operation (such as laundry, charges to employees for meals, transportation, etc.) cash discounts on purchases, cash discounts on sales, returned sales and allowances, interest on money loaned

or in bank accounts, income from investments, income from subsidiary companies outside of the area, sales and excise taxes, gasoline taxes, fishing licenses, postage stamps and items for which the Concessioner is accountable in full.

9. Termination of contract by County. In case of any substantial default or continued unsatisfactory performance by the Concessioner under this contract, the County may terminate this contract by the following procedure:

(a) The County shall give to the Concessioner written notice specifying the particulars of the alleged default or unsatisfactory performance.

(b) No less than thirty (30) days after receipt by the Concessioner of such notice the County shall grant to the Concessioner an opportunity to be heard upon the charges:

(c) Following such opportunity to be heard the County shall have power to determine by acting of its Board of Supervisors whether there has been such a default or unsatisfactory performance;

(d) If the County shall determine that there has been such a default or unsatisfactory performance it shall give to the Concessioner written notice of such decision specifying the particulars thereof;

(e) If the Concessioner fails or refuses to remedy such default or unsatisfactory performance within such period of time as may be fixed by the County may determine this contract terminated upon such date or such contingency as it may deem proper to protect the public interest and thereupon all right of the Concessioner under this contract to use or occupy the area which is the subject of this agreement shall forthwith terminate and title to all improvements in said area installed by the Concessioner shall vest in the County without right on Concessioner's part to remove any of the same or to recover the cost or value thereof.

10. Assignment or Mortgage. No transfer or assignment by the Concessioner of this contract or of any part thereof or interest therein directly or indirectly, voluntary or involuntary, shall be made unless such transfer or assignment is first approved in writing by the County.

11. Insurance. The Concessioner shall carry such insurance against loss by fire, public liability or other hazard that may be required by the Park Director and shall hold harmless the United States and County

for all loss occasioned by operations of the Concessioner, its agents or employees.

12. Concessioner's employees. The Concessioner shall employ at least one (1) employee whose primary duty shall be the enforcement of law and order in the concession and who shall be approved as to qualifications by the Sheriff of the County. The Concessioner shall not employ or retain in its service or permit to remain upon any of the premises covered by this agreement, any person declared by the Park Director to be unfit for such employment or otherwise objectionable. The Concessioner shall require its employees to observe all impartiality as to rates and services and in all circumstances to exercise courtesy and consideration in their relations with the public.

In connection with the performance of work under this agreement, the Concessioner agrees not to discriminate against any employee or applicant for employment because of race, religion, color or national origin. The aforesaid provision shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Concessioner agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause. The Concessioner further agrees to insert the foregoing provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

13. General provisions. The Concessioner shall maintain the area which is the subject of this agreement in clean, orderly and sanitary conditions and strictly obey all laws, rules and regulations pertaining to health and public safety promulgated by any governmental agency having jurisdiction over the area.

Concessioner shall maintain in boating and swimming areas within the area covered by this agreement such buoys, markers and safety devices as may be required by law or by regulation of the Park Director.

Concessioner shall participate in the Napa County annual registration and licensing of boats. The Concessioner is to receive five percent (5%) of the registration fee.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands  
the day and year first above written.

COUNTY OF NAPA, a political subdivision  
of the State of California,

By \_\_\_\_\_  
CHAIRMAN of its Board of Supervisors

ATTEST:

\_\_\_\_\_  
COUNTY CLERK of the County of Napa,  
and ex-officio Clerk of its Board  
of Supervisors.

COUNTY

SPANISH FLAT RESORT

\_\_\_\_\_  
Partner

\_\_\_\_\_  
Partner

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Partner

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Partner